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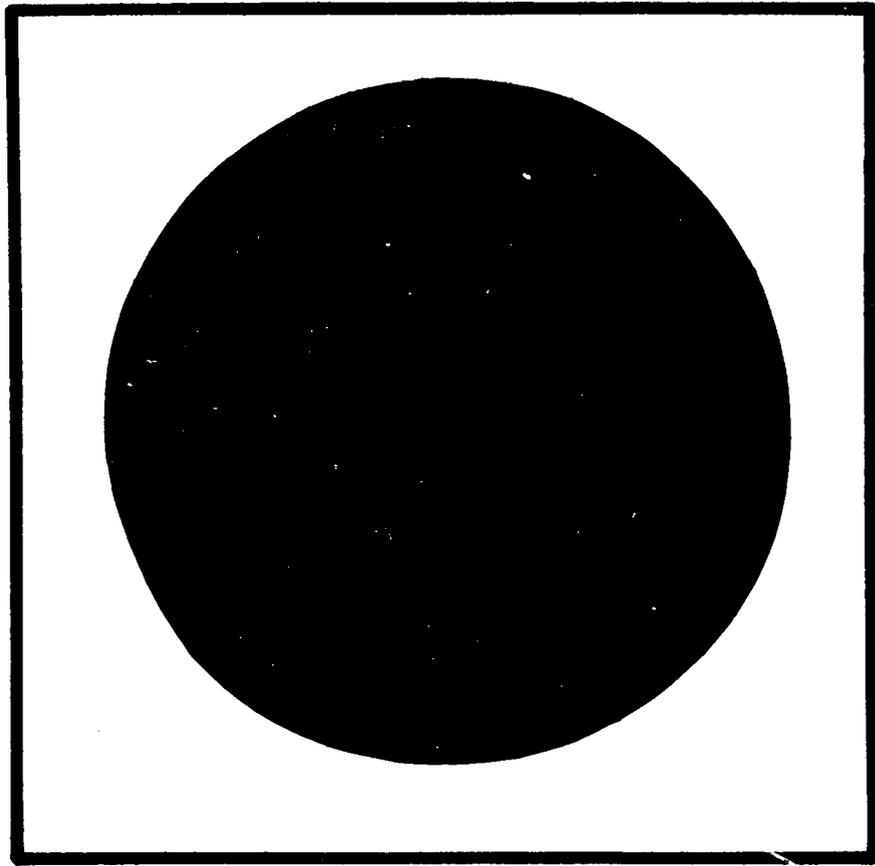


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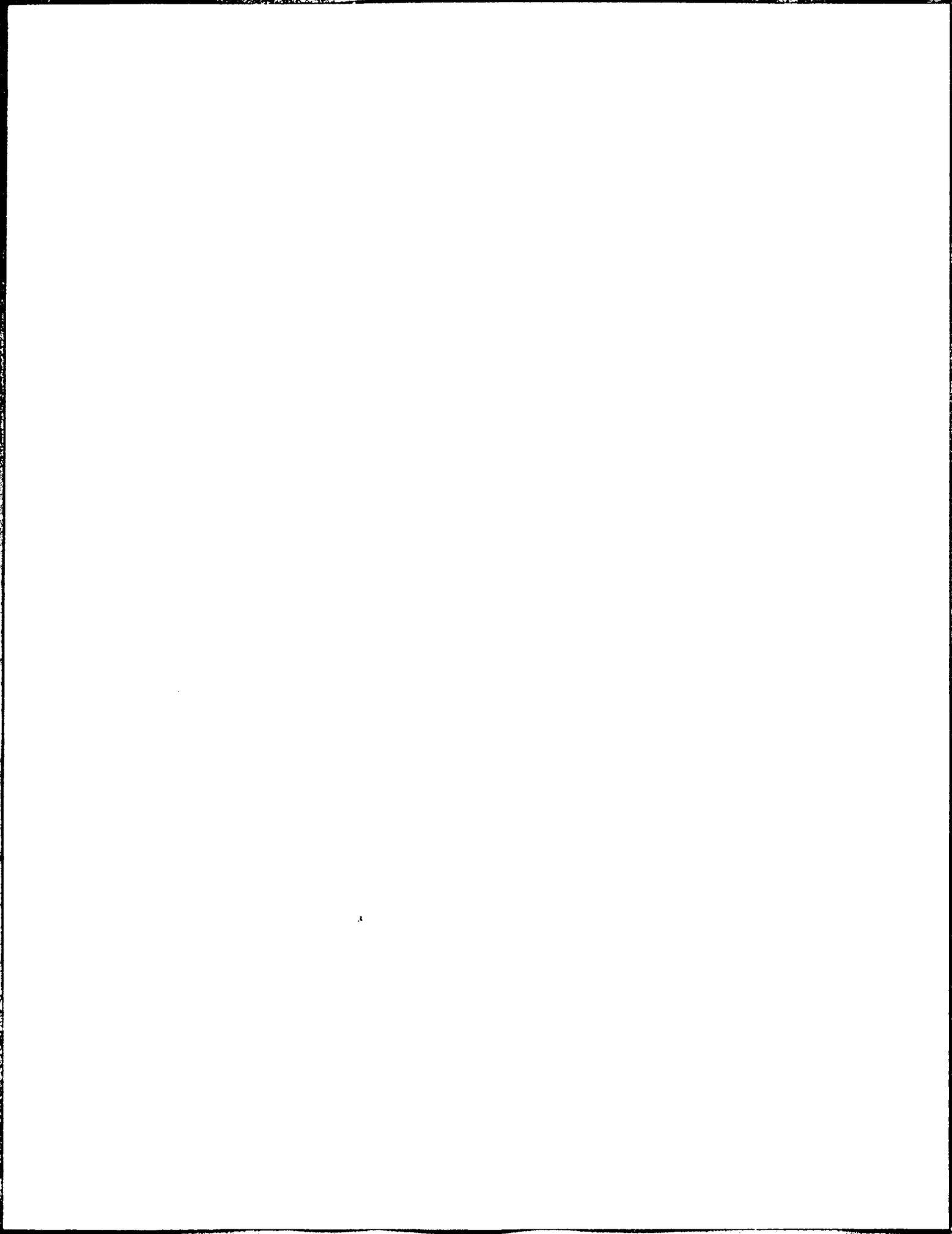
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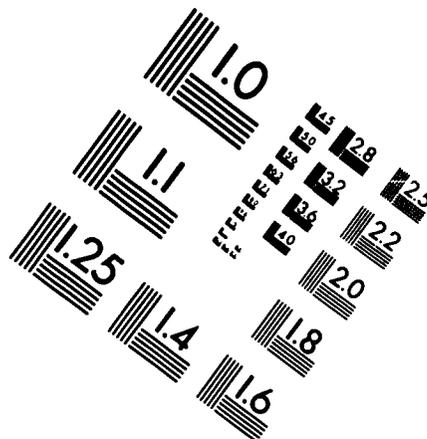
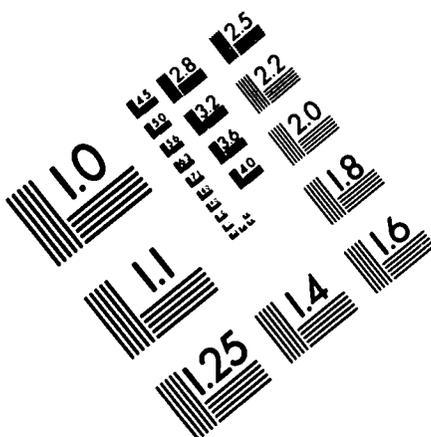
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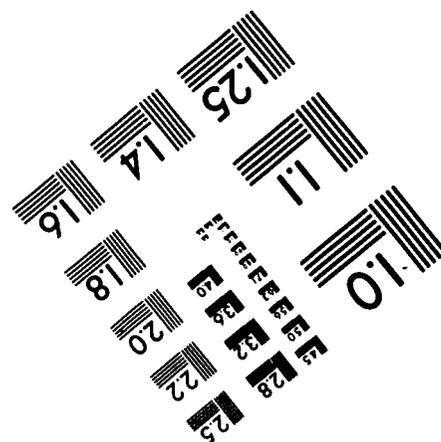
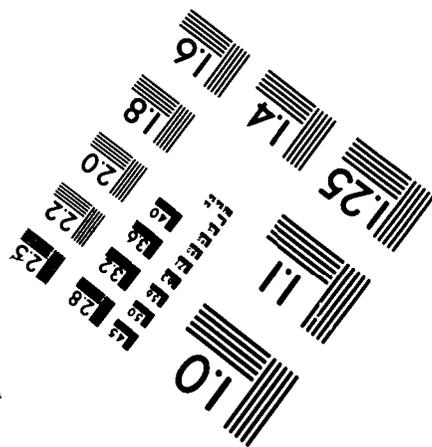
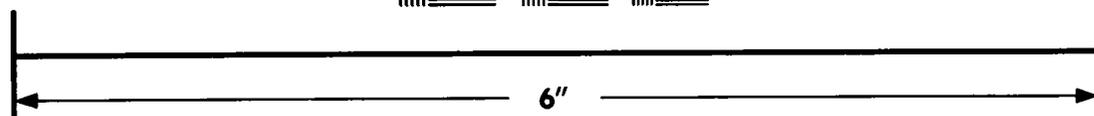
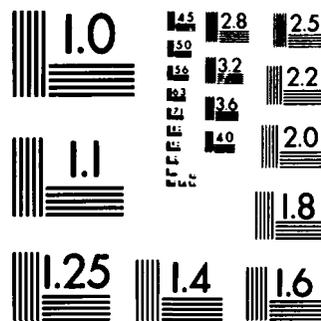
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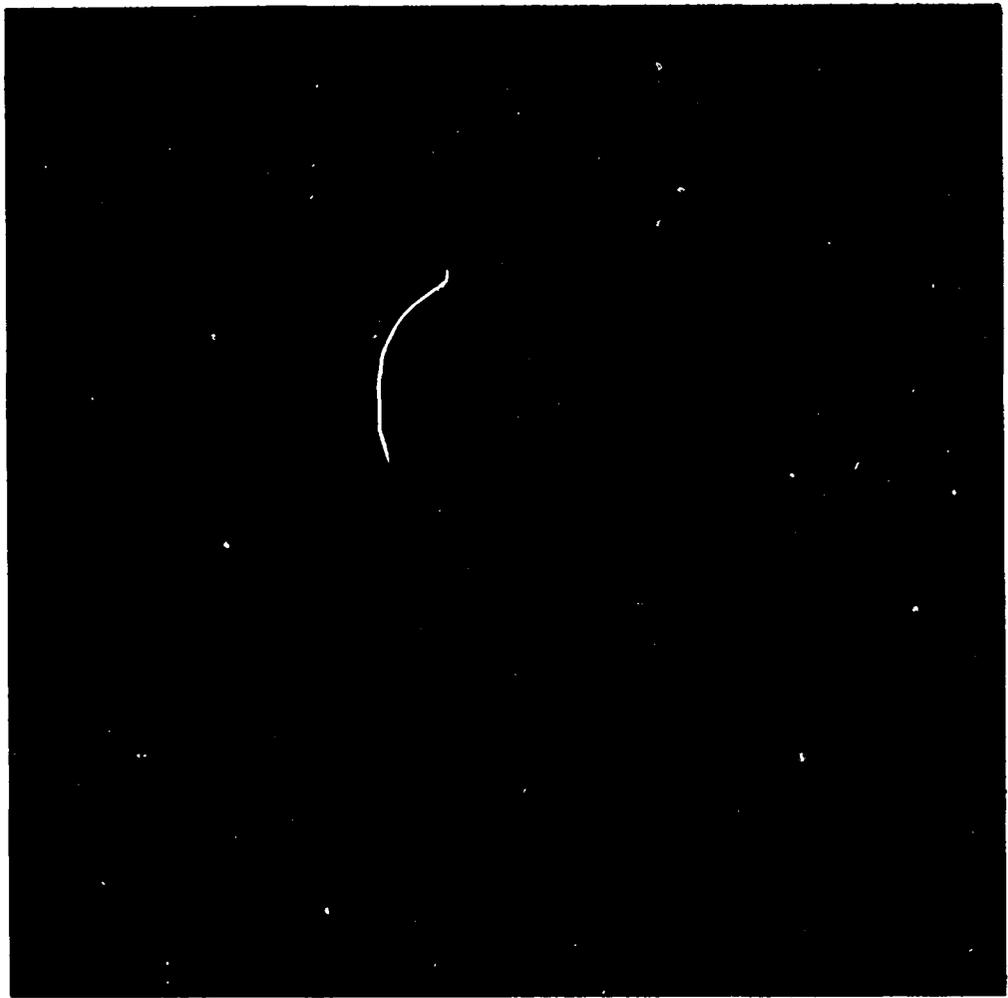




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23 MARCH 1948

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1 Tuesday, 23 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. H. NORTHCROFT,
14 Member from the Dominion of New Zealand, not sitting
15 from 0930 to 1600; HONORABLE JUSTICE B. V. A. ROLING,
16 Member from the Kingdom of the Netherlands, not
17 sitting from 1500 to 1600.

18 For the Prosecution Section, same as before.

19 For the Defense Section, same as before.

20 - - -

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

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

2 THE PRESIDENT: All the accused are present
3 except MATSUI, SHIRATORI, and UMEZU, who are repre-
4 sented by counsel. The Sugamo Prison Surgeon certi-
5 fies they are ill and unable to attend the trial
6 today. The certificates will be recorded and filed.

7 With the Tribunal's permission, the accused
8 ARAKI will be absent from the courtroom the entire
9 day conferring with his counsel.
10

11 Mr. MIGITA.

12 MR. MIGITA: Mr. President and Members of
13 the Tribunal, I shall continue on the HOSHINO Summa-
14 tion from paragraph 36 on page 42.

15 HO-36. When HOSHINO went into the office,
16 the national general mobilization law had already
17 been in force since March 1938,^{a.} and the so-called
18 Four-Year Plan for the expansion of productive power
19 had also been put into operation since January 1939.^{b.}
20 The material distribution plan had been formed year
21 by year since 1938.^{c.}

22 HO-37. At this time, supplies of materials
23 available to Japan were shrinking in the face of the
24

25 HO-36. a. Ex. 2802, T. 25212.
b. Ex. 2802, T. 25208; Ex. 842, T. 8270.
c. Ex. 2802, T. 25206.

1 trade bans of the foreign countries while demand
2 therefor was increasing as the China Incident ex-
3 panded, with no termination in sight.^{a.} In such a
4 difficult situation, the plan for the expansion of
5 productive power was resorted to in an effort to
6 bolster Japan's weakened economy and get her by with
7 what she had.

8 The object of this plan was to turn out
9 producers' goods for those most necessary items cut
10 off from Japan by the trade bans of the foreign
11 countries, and to attempt to balance the industries.^{c.}

12 The attention paid to heavy industry in the
13 plan was based on the need for balancing Japan's
14 economy, her heavy industry being far inferior to her
15 light industry. The plan aimed at no future war but
16 took into consideration only the China Incident.
17 It was based on a continuation of peace-time trades.^{d.}
18 Had other wars been under consideration the plan would
19 have been of a very different nature.^{e.} The plan was
20 impractical and had to be constantly revised in the
21 face of changing circumstances.^{f.} The end of the
22 plan was set for March 1942 on paper, but those work-
23 ing with them knew that no definite accomplishment
24

25 HO-37. a. Ex. 3214, T. 29145. e. Ibid.
c. Ex. 3214, T. 29147. f. T. 29146.
d. Ibid.

could be realized by that time.^{g.}

1 HO-38. In drafting the yearly material dis-
2 tribution plan, the Planning Board had nothing to do
3 with any details concerning the use of the allocated
4 materials. It only took in the over-all estimates
5 from the various demands as submitted by various de-
6 partments, and worked out an over-all scheme of allo-
7 cation.^{a.} So far as their use was concerned, HOSHINO
8 did not know where the material demanded by the army
9 and navy went nor the use to which they were put.^{b.}
10 This information was kept entirely secret. There
11 was so much argument and difficulty over these allo-
12 cations between the authorities concerned that the
13 agreement on allocation used to be deferred considerably
14 each year.^{c.} HOSHINO was able, however, to cut down
15 the allocation demanded by the army and navy by a large
16 per cent in favor of civilian needs and the expansion
17 of productive power. The army and navy never got the
18 full amounts of their allocations.^{d.}

20 HO-39. Prosecution summarizes HOSHINO's
21 statement in the interrogation on these future plans as
22 if he stated that the plan had necessarily affected

23 HO-37. g. T. 29148.

24 HO-38. a. T. 5148-9.

b. T. 5150; T. 29147.

25 c. T. 29148.

d. T. 29148.

1 Manchukuo unfavorably (GG-27). However, careful
2 scrutiny of this part of his interrogation reveals
3 that HOSHINO simply meant that the plans had no con-
4 nection with the Government of Manchukuo; but the plans
5 included just estimates of what to send to Manchukuo
6 and what to import from her and how much and in what
7 enterprises investment were to be made in Manchukuo.^{a.}
8 After all, what he stated clearly shows that in these
9 plans Manchukuo was treated on the same basis as any
10 other foreign country having close ties with Japan in
11 connection with trade and investment. All other
12 evidence relied upon by the prosecution in this matter
13 (GG-27) is taken from HOSHINO's Strategic Bombing
14 Survey interrogations which the defense respectfully
15 submits the Court should disregard on the grounds as
16 stated before.

17 HO-40. "Outline of the Basic National
18 Policy"^{a.} embodied what the "Four Important Ministers"
19 had agreed upon in the "Ogikubo Conference" before
20 the formation of the cabinet.^{b.} It was decided upon
21 as set forth in the final text in the cabinet meeting
22 on July 26th.^{c.} This was made to serve as the basis
23 for the domestic policy of Japan.^{d.}

24 HH-30. a. T. 5138.

25 HH-40. a. Ex. 541, T. 6271. c. T. 36183.

b. Ex. 3655, T. 36179. d. Ibid.

1 HO-41. As to the policies decided upon in
2 the Liaison Conference of July 27, TOJO stated that
3 it was presented by the Supreme Command, and was
4 approved by the Liaison Conference of the same date.^{a.}
5 The prosecution failed to prove that HOSHINO had any
6 connection with this decision.
7

8 Negotiations with France Concerning French
9 Indo-China.

10 HO-42. The negotiations with France on
11 this subject were commenced on August 1st between
12 Foreign Minister MATSUOKA and French Ambassador to
13 Japan Charles Arsene Henry,^{a.} and an understanding
14 was reached on August 30th after a formal exchange
15 of notes.^{b.} The prosecution exhibit 620 made it
16 clear that the negotiations were conducted either
17 by MATSUOKA or OHASHI, the Vice-Minister of Foreign
18 Affairs, exclusively in the Foreign Office.^{c.} None
19 of HOSHINO's activities has ever been shown relating
20 to the negotiations.
21

22 Negotiations With Netherlands East Indies.

23 HO-43. Evidence shows that prosecution

- 24 HO-41. a. Ex. 3655; T. 36182, 36184.
25 HO-42. a. Ex. 3655, T. 36200.
b. Ex. 620, appendix 10, 11.
c. T. 6886.

exhibit 1311 was a draft only, ^{c.} prepared by the
1 secretarial office which Foreign Minister MATSUOKA
2 handed to Minister of Industry and Commerce KOBAYASHI
3 merely for his information or as a reference to be
4 used in his trade negotiations with the authorities
5 of Dutch East Indies. ^{b.} Evidence also shows that
6 KOBAYASHI, who was in charge of the business concerning
7 oil and other commodities, personally went to Batavia
8 in the early part of September 1940 and there con-
9 ducted trade negotiations with the Dutch delegates for
10 more than a month. ^{c.} None of the evidence has estab-
11 lished the facts alleged by the prosecution, especially
12 regarding HOSHINO's participation in this matter.
13

14 Tri-PARTITE PACT

15 1. HO-44. TOJO described all the events
16 leading up to the signing of the Tri-Partite Pact. ^{c.}
17 According to his statement, discussions concerning
18 this move had been going on privately before the
19 establishment of the Second KONOYE Cabinet; ^{b.} Foreign
20 Minister MATSUOKA was in complete charge of all nego-
21 tiations; ^{c.} the conclusion of the treaty was, in
22 effect, to carry out one of the policies which the
23

24 HO-43. a. T. 25294. b. T. 25291. c. T. 25272.
25 HO-44. a. T. 36188-95; b. T. 36189; c. T. 36188.

1 "Four Ministers" had agreed upon in "Ogikubo Con-
 2 ference."^{d.} In their conference of September 4th, the
 3 "Four Ministers" again agreed to approve the proposal
 4 made by MATSUOKA to strengthen the Japan-Germany
 5 Italy Axis;^{e.} this agreement was confirmed by the
 6 Liaison Conference and the Imperial Conference of
 7 19 September 1940,^{f.} in which MATSUOKA stated in his
 8 reply to the President of the Privy Council that under
 9 the circumstances then prevailing a firm stand on the
 10 part of Japan was the only way war could be avoided.^{g.}
 11 MATSUOKA then proceeded to confer with Stahmer and
 12 drafted the Tri-Partite Pact, which later was decided
 13 upon by the cabinet and approved by the Privy Council
 14 September 26th.^{h.} This evidence, together with
 15 SAITO's testimony on the activities of MATSUOKA,
 16 concerning the negotiations with Ott and Stahmer,^{i.}
 17 we submit, discloses sufficiently the circumstances
 18 as to how the Tri-Partite Pact was formed and who
 19 were really responsible therefor. HOSHINO has never
 20 received any German decorations nor been recommended
 21 for receiving such in relation to the pact.^{j.}

22
 23 2. The only evidence against him concerning

24 HO-44. d. T. 36188. g. T. 36192.
 e. T. 36189. h. Ibid.
 25 f. T. 36190. i. T. 34960.
 j. Ex. 1272, T. 11352.

1 the pact is that showing his explanations in the
2 Privy Council Meeting. HOSHINO attended the meeting
3 of the Investigation Committee and the meeting of
4 the Privy Council held on September 26, 1940, relat-
5 ing to this pact. Both exhibit 552^{k.} and exhibit
6 553^{l.} list his name not among State Ministers but
7 among "explainers" who were mostly Chiefs of Govern-
8 ment Boards or Bureaus. In the former meeting HOSHINO
9 made some explanations about the conditions of materials
10 in order to supplement the replies made by the State
11 Ministers; however, these explanations were made in
12 answer to the question put by one councillor asking
13 them, "How about our preparations to meet the situa-
14 tions when the worst turns up?"^{n.} The true intent of
15 all concerned, we submit, can be seen clearly from
16 the decision of the Investigation Committee.^{n.} They
17 decided among others that any incitement that might
18 develop from that proposition against the United States
19 and Great Britain should be avoided, and that they
20 should demand the government authorities not to neg-
21 lect preparations for the possible worst situation.

22 HO-44. k. Ex. 552, p. 1.
23 l. Ex. 553, p. 2.
24 m. Ex. 552, p. 2.
25 n. Ibid, p. 9.

Plan for Japan-Manchukuo-China Block Economy.

1
2 HO-45. The plan embodied the cabinet decision
3 of August 1st.^{a.} Its aim was to achieve a self-suffi-
4 cient economy for Japan and a block economy relation-
5 ship with Manchukuo and China in the face of the in-
6 creasingly difficult economic condition. The economic
7 relationship between Japan, Manchukuo and North China
8 had been actually inter-dependent for many reasons^{c.}
9 and it was considered even in 1932 that the trend of
10 public opinion was in favor of the completion and the
11 development of the block economy relationship between
12 those three countries.^{d.} The plan, therefore, was
13 drafted by the Planning Board in cooperation with the
14 ministries concerned for the purpose of putting such
15 relationship in more concrete shape in accordance with
16 the cabinet decision.^{e.} In this plan, Japan was made
17 to take leadership in the block because she was more
18 advanced in highly developed industries than were the
19 other two countries.^{f.} The goal of this plan was set
20 ten years from November 1941.^{g.}
21

22 HO-45. a. Ex. 2224; T. 15954.

b. Ex. 3214, T. 29151.

23 c. Ibid.

d. Ex. 3339; T. 30692.

24 e. T. 15954.

f. T. 29151.

25 g. Ex. 2224; T. 15951..

Population Policy.

1 HO-46. The main purpose of the population
2 policy was not to increase the population of Japan,
3 but to maintain the same ratio of increase which she
4 had. The necessity of this policy was felt in many
5 quarters because the rate of population increase was
6 declining due to the change in social conditions in
7 Japan and the China Incident. The goal of this policy
8 was set at 100,000,000 in 1960. This would be around
9 the same figure if Japan could continue on up to 1960
10 with the same percentage of increase which she had had.
11 In its execution the plan presupposed a state of peace
12 (Tr. 29,151). One of its immediate effects would be a
13 decrease in the labor supply, since the plan aimed at
14 the encouragement of marriage and restriction of employ-
15 ment of women over twenty years of age.^{c.} HOSHINO's
16 connection with the population plan was slight, being
17 limited to an explanation of it as was his responsibi-
18 lity according to custom, and he did not show much
19 interest in it nor express an opinion thereon even to
20 his Vice-President, OBATA.^{d.} The population plan was
21 prepared substantially by the Welfare Ministry, not
22 the Planning Board, and that ministry was to carry it

25 HO-46. b. Ex. 865; Tr. 8808.

c. Tr. 29,152.

d. Ibid.

1 out. ^{e.} It may be noted in passing that exhibit 1067 ^{f.}
 2 states that HOSHINO merely explained the plan at the
 3 cabinet meeting, whereas the War, Welfare and Education
 4 Ministers expressed their opinion of it.

5 Mobilization Law.

6 HO-47. The prosecution exhibit 1055 ^{a.} relating
 7 to this subject, is an extract from a newspaper
 8 article, and shows that it was the Parliament itself
 9 that passed the revised Mobilization Law. The govern-
 10 ment simply put this revised law in operation as the
 11 power to do such had been delegated to it by the law
 12 itself. ^{b.}

13 HOSHINO's Relation to the Total War Institute.

14 HO-48. The title of this institute certainly
 15 gives the impression that it might have been a research
 16 body of considerable importance. However, what was in
 17 fact established under this title as all the evidence
 18 clearly shows, was a different institution in its
 19 objectives and activities. In the submission of the
 20 defense, the intention of the government relating to
 21 this institute is clearly indicated in the ordinance
 22 and the subsequent treatment given to the institute by
 23

24 HO-46. e. Ibid.
 f. Tr. 9,878.
 25 HO-47. a. Tr. 9,842.
 b. Ex. 84; page 25.

1 the government. The Ordinance for Organizing the Total
2 War Research Institute^{a.} provides for its aims that it
3 shall take charge of the fundamental investigation and
4 research, and the education and training of officials
5 concerning the nation's total war effort.

6 The provision puts two things together, namely,
7 fundamental research and education. Some time after
8 its establishment, the government decided to allow only
9 160,000 yen a year for its total expenditures,^{b.} and
10 without giving any instruction or guidance, it left
11 everything to what the director thereof would later
12 decide and carry out.^{c.} Appointment of the director was
13 delayed very much, and when it eventually began to
14 operate with its staff and students, it was in April
15 1941, six months after its establishment.^{d.}

17 HO-49. The staff or faculty of the institute
18 was very small, consisting of seven persons at the
19 beginning,^{a.} which number was later increased. However,
20 as increased it was not more than fifteen, as the
21 prosecution exhibit 869-AA clearly shows. The average
22 number of students was about forty in each term, and
23 each term was for one year.^{b.} The government reduced

24 HO-48. a. Ex. 868-A; Tr. 8817-8.

b. Ex. 3217; Tr. 29,184.

25 c. Ex. 3030; Tr. 27,067; Tr. 29,184.

d. Ex. 869; page 8.

HO-49. a. Ex. 3217; Tr. 29,183.

b. Ex. 869.

1 the number of the staff members at the end of 1942,^{c.}
 2 and again cut it by half in November 1943 in the midst
 3 of the Pacific War.^{d.} The institute ceased to operate
 4 practically from January 1944.^{e.} Exhibit 869-BB shows
 5 that the last term which should have continued on to
 6 March 1944, was cut down half way in December 1943.

7 The personnel of the institute staff was never
 8 permanent, most of them were changing after short service
 9 therein. This was also the case with its directors.
 10 IIMURA, the first director, to which appointment the
 11 prosecution attaches very much importance, remained in
 12 the office only for ten months, leaving there October
 13 1941, and four other directors, of which two being from
 14 the navy, had been appointed in succession within a
 15 very short period.^{f.} Some army and navy officers of
 16 colonel rank were included in the staff membership,
 17 but the number thereof was a few in any one period.^{g.}

19 HO-50. Now, on the activities of the institute,
 20 prosecution witness HORIBA testified that the primary
 21 emphasis placed was upon lectures while table-top
 22 maneuvers, inspection tours and trips were also under-
 23 taken.^{a.} The same witness further stated that the staff

24 HO-49. c. Tr. 29,186.
 25 d. Tr. 32,055-56.
 e. Tr. 29,186.
 f. Ex. 869.
 g. Ex. 869.
 HO-50. a. Tr. 8,878.

1 members occupied the posts of instructors and gave
2 lectures.^{b.} These facts were also established by the
3 list of the lecturers which is prosecution exhibit
4 869-CC.^{c.}

5 Witness OSHIMA, who was one of the staff mem-
6 bers from the beginning, stated that he had also to
7 perform miscellaneous works for the institute.^{d.} From
8 the smallness of the budget for the institute, it is
9 reasonably inferred that all other staff members were
10 also placed in the same position without a sufficient
11 number of clerks to assist them. HORIBA stated that
12 "generally speaking, the institute was so much taken
13 up with training and practice that it was not able to
14 extend its efforts into study and research."^{e.}

15 HO-51. According to exhibit 869-EE and
16 HORIBA's statement,^{a.} the documents owned by the insti-
17 tute are generally divided into two categories; namely,
18 the collections of the studies made by students and
19 those compiled by the institute as materials for re-
20 search and training. Exhibit 688, to which the prose-
21 cution attaches much importance, belongs to the last
22 category. It contains a note on the first page stating

24 HO-50. b. Tr. 8,880.
25 c. Ex. 869, page 12.
d. Ex. 3217; Tr. 29,182-3.
e. Tr. 8,832.
HO-51. a. Tr. 8,832.

1 that they are mere studies carried out by the staff
2 members of the institute, pointing and guiding the
3 general course it should pursue, with the main object
4 of educating the students. ^{b.}

5 About the lectures given in the institute,
6 as the prosecution has pointed out (GG-42), lectures
7 were many and subjects chosen by them covered a wide
8 range of matters, spiritual and physical, as well as
9 historical and current. Those subjects were never
10 limited to such as one would commonly consider in
11 relation to total war. Moreover, in our submission,
12 the more were the lectures, the less the time was there
13 devoted by each lecturer; the more the subjects of the
14 lectures varied, the more the information they gave
15 became general and superficial. A glance at the titles
16 of all lectures contained in exhibit 869-CC reveals
17 that what they purported to give was just a fundamental
18 knowledge or general information only. ^{c.} HORIBA stated
19 that even about war, the studies were limited to "just
20 the basic things that people should know." ^{d.}

21
22 HO-52. In our submission, the nature of the
23 documents being such, it is entirely out of question
24 that either the institute could have submitted any to

25 HO-51. b. Ex. 3719-A; Tr. 37,048-9.
c. Ex. 869, page 12.
d. Tr. 8,875.

1 the government even for reference purposes or the
2 government could have adopted any as its policy. Of
3 the circumstances under which all the documents owned by
4 the institute came to the custody of the cabinet secre-
5 tariat, HORIBA stated that after the abolition of the
6 institute, they were turned over into the hands of the
7 cabinet.^{a.} Prosecution's witness MURAKAMI also testi-
8 fied to the same effect.^{b.}

9 HO-53. Exhibit 869-DD discloses that from
10 May to November 1941, the students made many tours and
11 trips to various remote districts, spending for that
12 purpose altogether 61 days.. The objectives of these
13 tours, according to the same evidence, was to pay
14 tribute to some shrines or inspect various establish-
15 ments including some village farming. In view of
16 the shortness of the term and great number of days
17 devoted to such tours, it is a reasonable inference
18 that the students did not accomplish much. Of the
19 table-top maneuvers, HORIBA stated that approximately
20 one month's time out of the year (1941) was spent upon
21 them.^{a.} All evidence shows that these maneuvers as
22 well as the lectures of the institute were partly open

24 HO-52. a. Tr. 8,855, 8,870.

b. Tr. 32,055.

25 HO-53. a. Tr. 8,878.

b. to the public. As is shown in exhibit 869-BB, there
 1 was included in each class of students a few students
 2 admitted from the press. Prosecution witness MURAKAMI
 3 stated that these students had access to any materials,
 4 secret or otherwise, used by the students of the insti-
 5 tute. c. HORIBA also testified d. to the same effect. c.

HO-54. In view of all this evidence, it is
 7 suggested that the Court accept the testimonies of
 8 witnesses HORIBA, IIMURA and OSHIMA as a true statement
 9 of the aims and position of the institute. These wit-
 10 nesses all corroborated one another's testimony in
 11 stating that the aim of the Total War Institute was
 12 chiefly to educate and train junior officials and others
 13 with a view to eradicate the evil of sectionalism then
 14 prevalent among government offices and civilian orga-
 15 nizations. a.

HO-55. HOSHINO was made the acting director
 18 of the Total War Research Institute from October 1 to
 19 January 11, 1941. a. However, this appointment was of
 20 a temporary character in order just to fill the post
 21 nominally until the director would be appointed. As
 22 IIMURA was eventually appointed the director on the
 23

HO-53. b. Tr. 8856-8; 27,069.

c. Tr. 32,045.

d. Tr. 8,857.

HO-54. a. Tr. 8847; 29,182; 27,070.

HO-55. a. Ex. 109.

b.
1st of January, HOSHINO was relieved of the post of
acting director. Before the appointment of IIMURA,
the institute did not operate at all for all practical
purposes.
c.

HO-56. Exhibit 869-BB shows that first term
students came in on April 1, 1941, while exhibit 869-E
discloses that all of these compilations of the insti-
tute were done in and after 1941. During the period
of his incumbency, HOSHINO needed not and did not attend
the business concerning the institute.
a. Witness OSHIMA
stated that HOSHINO simply told the staff member of
the institute that "he would leave all matters to them";
b.
and "he did not visit the institute at all, gave no
orders, no instructions nor suggestions concerning it."
c.
In May 1941, HOSHINO was selected by the institute as
one of the councillors which consisted of 15 or 16
persons; the position of councillor was really nominal
and honorary, having no practical work relating to
the institute, and HOSHINO as such gave neither
instructions nor suggestions thereto.
d. His councillor-
e.
ship ceased on November 24 of the same year.

HO-55. b. Tr. 29,184-5.

c. Tr. 29,184.

HO-56. a. Tr. 29,184.

b. Tr. 29,183.

c. Tr. 29,184.

d. Ibid.

e. Ex. 109, page 6.

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The New Economic Structure

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3 HO-57. The prosecution stated that the New
4 Economic Structure was intended to effect revolutionary
5 changes in the economic structure in order to promote
6 the completion of armaments, and that the plan provided
7 for a high degree of Government control (GG-33.) The
8 prosecution's own witness, Liebert, showed that this
9 allegation was unfounded when he testified that under
10 this system business largely ran the control associations
11 nominating the directors thereof who were then approved
12 by the Commerce and Industry Ministry.^{a.} This evidence
13 was substantiated by the witness OBATA who testified
14 that, in fact, there was a partial transfer of control
15 of industry and business from government to businessmen
16 so that under the new system there was actually less
17 government control than before. In any event, the Plan-
18 ning Board had nothing to do with how the plan was
19 carried out since this was done by the Commerce and
20 Industry Ministry.^{b.} In this connection, it should be
21 noted that it was only in September, 1941, that is, five
22 months after HOSHINO's resignation, when Major Industries
23 Association Ordinance^{c.} was eventually passed. Under
24

25 (HO-57. a. T. 8627, 8732.
b. T. 29150-51.
c. Ex. 2797-A, T. 29164.)

1 the provisions of this Ordinance, the Ministry of
2 Commerce and Industry was vested with the power to carry
3 out the plan for the "New Economic Structure." Exhibit
4 2797-A made it clear that this Ordinance indicated the
5 failure of the plan to introduce a drastic program for
6 state regimentation of industry and transformation of
7 private cartels into public organs directed by govern-
8 ment officials.^{d.}

9 2. The original plan for the "New Economic
10 Structure"^{e.} had been prepared by some of the young
11 officials of the Planning Board in the autumn of 1940,
12 but in settling the draft plan HOSHINO concurred with
13 KOBAYASHI, the Minister of Commerce and Industry, in
14 making important changes therein^{f.} so that it would be
15 more in favor of a laissez-faire economy, protect the
16 small and medium enterprisers rather than force them to
17 combine, prevent their being operated under "one-leader
18 principle," and in general favoring the maintenance of
19 status quo. This was a reversal of the original plan in
20 many points and a check on possible radical changes.^{g.}
21 Assuming as true, for the sake of argument only, the
22 prosecution premise that bureaucratic control of industry
23 constituted planning and preparation for aggressive war,
24

25 (HO-57. d. *ibid.*
c. Ex. 865, p. 41.
f. Ex. 3214, T. 29149.
g. T. 29149, 29150.)

1 the evidence is clear that HOSHINO was opposed to any
2 such scheme.

3 HOSHINO's Resignation in April 1941.

4 HO-58. The prosecution says that the resig-
5 nations of HOSHINO and KOBAYASHI were brought about by
6 the disputes that arose over the plan for the New
7 Economic Structure (GG-42.) But so far as HOSHINO and
8 KOBAYASHI were concerned there were no disputes between
9 them. There is no evidence whatsoever as to any dispute
10 having ever arisen between them. As the prosecution
11 also says (GG-51) and as the evidence clearly shows,
12 HOSHINO did agree with KOBAYASHI on the changes of the
13 economic plan. Witness OBATA stated that the changes
14 were to act as a check on the too great emphasis on a
15 synthetic and planned economy and was a check on possible
16 radical changes.^{a.} This witness further stated that
17 the final plan on which HOSHINO and KOBAYASHI concurred
18 was a reversal of the original plan in many points.^{b.}
19 The original plan had been drafted by the young officials
20 of the Planning Board, and HOSHINO agreed to such
21 material change thereof.^{c.} It can be inferred from this
22 fact that much discontent with HOSHINO would have been
23 caused among the young officials and the supporters of
24

25 (HO-58. a. T. 29149-50.
b. T. 29150.
c. T. 29149.)

reform.

1 In our submission, the circumstances relating
2 to HOSHINO's resignation are quite clear in KONOYE's
3 Memoire.^{d.} It shows that the economic Ministers, which
4 included HOSHINO, were considered the "weak point;"
5 hence the Cabinet must be reshuffled.^{e.} It was suggested
6 that the Finance Minister also should be changed but it
7 was finally decided that only the Minister of Commerce
8 and Industry and the President of the Planning Board
9 should be changed.^{f.} It was necessary that the President
10 of the Planning Board be a person who knew about the
11 commodity mobilization plan, and the "inner working of
12 the Army and must be a forceful person."^{g.} (Obviously
13 HOSHINO did not meet these requirements.) The successor
14 to the Presidency of the Planning Board was named from
15 the Army.^{h.} Then KONOYE decided that the new Minister
16 of Commerce and Industry should be chosen from the Navy
17 side. These two changes, it was considered, would mark
18 an advance toward the perfection of the national
19 defense structure.^{i.} After the Cabinet's change had
20 been agreed upon HOSHINO was informed by TOJO first,
21

22 (HO-58. d. Ex. 3216-A, T. 29169-81.

23 e. T. 29169.

24 f. T. 29170.

25 g. T. 29171-2.

h. *ibid.*

i. T. 29174.)

1 later by Prince KONOYE that he must resign. ^{j.} KOBAYASHI
2 also consented to resign, expressing that he would not
3 so consent if the choice of his successor had been
4 FUJIWARA ^{l.} (a businessman.) The newspapers characterized
5 the reorganization "as a stroke of genius," and ex-
6 pressed approval and placed "great expectations in the
7 future." ^{m.} This KONOYE Memoire, it is submitted, is as
8 significant for what it does not say as for what it
9 does say.

10 To any fair observer, this will reveal that
11 HOSHINO was simply considered not to be as forceful as
12 his post required and was replaced by a competent
13 person. There is not a word of anyone's consulting
14 HOSHINO about his resignation, nor of any opinion ex-
15 pressed by HOSHINO when he was told that he had to re-
16 sign. His attitude on resigning, we submit, was a
17 typical example of the attitude that a career civil
18 servant would very often take.

19 Period Between April 14, 1941, and October
20 18, 1941.

21 1.

22 HO-59. HOSHINO resigned from the Second KONOYE
23 Cabinet on April 14, 1941. In the interrogation of

24 (HO-58. j. T. 29178.
25 l. *ibid.*
m. T. 29179-80.)

1 HOSHINO by the prosecution, he stated that "for a half
2 year after the resignation, he was doing no special job,
3 and visiting various parts of the country." ^{a.} These
4 were mostly private trips to see the condition of the
5 country as he had been away in Manchuria for a long
6 period. Witness MURAKAMI, Hajime, who had been his
7 secretary, and almost always lived with HOSHINO at his
8 private house at this time testified to the same effect. ^{b.}
9 Witness INADA stated that ^{c.} HOSHINO told him that all he
10 had been doing after resigning from the KONOYE Cabinet
11 in April, 1941, was to travel around Japan. According
12 to the testimony of MURAKAMI, HOSHINO made only one
13 courtesy call on the War Minister at his official resi-
14 dence immediately after his resignation, and since then
15 HOSHINO had no contact with TOJO at all; his contacts
16 with the outside world were limited to those with his
17 intimate friends and a few others for amusement purposes. ^{d.}

18
19 2. On the evening of 17 October 1941, he was
20 enjoying a Kabuki play with his family when he came to
21 know that TOJO had been ordered by the Emperor to form
22 the Cabinet, ^{e.} and while he still continued seeing the
23 play he was unexpectedly called out by a loud speaker to
24 visit TOJO. At this time he was expected to go on a

25 (HO-59. a. T. 29203.
b. T. 29191.
c. T. 29199.

d. T. 29190.
e. T. 29192.)

1 trip to Korea and Northern Kyushu with his friend, and
2 the arrangements for the trip had been already completed.^f
3 The prosecution made a great deal of argument on HOSHINO'
4 activities in this period. But, we submit, these argu-
5 ments are after all only supposition and supported by no
6 evidence. It was quite natural for a career civil
7 servant like HOSHINO to spend such a life of "unemploy-
8 ment to the letter" after his resignation. It was also
9 natural for HOSHINO who had been away from Japan for a
10 number of years to want to travel and look over the
11 conditions of the country. After his resignation in
12 April, HOSHINO was appointed a member of the House of
13 Peers, a Councillor of the Total War Research Institute
14 and a member of the National Mobilization Investigation
15 Committee respectively in April, May and July.^{g.} However,
16 since the Parliament was in adjournment since March to
17 December, 1941, HOSHINO of course had no duty relating
18 thereto, and the position of the Councillorship of the
19 Total War Research Institute was rather nominal and
20 honorary,^{h.} while the membership of the National Mobil-
21 ization Investigation Committee did not require his
22 attendance as the Committee was not meeting. The prose-
23 cution had ample opportunity to challenge the defense
24

25 (HO-59. f. T. 29191.
g. Ex. 109.
h. T. 29184.)

1 evidence concerning these points when it was offered,
2 but they failed to do so.

3 C. HOSHINO as Chief Secretary of the Cabinet
4 from October, 1941, to July, 1941.

5 1.

6 HO-60. On receiving a message from TOJO in
7 the Kabuki Theater, HOSHINO visited him at his official
8 residence late in the evening of October 17, 1941,^{a.} and
9 was requested by TOJO to become Chief Secretary of the
10 Cabinet. This came as a surprise proposal to HOSHINO
11 who had spent a life of leisure for half a year since his
12 resignation in April from the Second KONOYE Cabinet,^{b.}
13 but he accepted it.

14 2. As to the circumstances relating to this
15 unexpected appointment, witness INADA^{c.} testified that
16 about six o'clock in the evening of TOJO's receipt of
17 the mandate to become next Prime Minister, INADA visited
18 TOJO when suddenly requested to do so and was asked for
19 his opinion concerning the choice of a candidate for the
20 post of the Chief Secretary of the Cabinet. According
21 to this witness, TOJO said that he had to select some-
22 one as Chief Secretary, but that he was not familiar
23 with the affairs of civil service. He then asked INADA
24 for his general opinion on the matter.^{d.} TOJO then
25

(HO-60. a. Ex. 3218, T. 29192.

d. T. 29198.

b. T. 29191.

c. T. 29197-8.

1 showed him a list of a few persons, including HOSHINO
2 and SHIOBARA, Tokisaburo,^{e.} a Bureau Chief in the Welfare
3 Ministry, and asked if the Secretariat could work
4 smoothly under HOSHINO as Chief, to which INADA replied
5 that in view of HOSHINO's experience in official business
6 he would be proper for the post and the Secretariat could
7 work well under him. TOJO stated concerning this choice
8 that "because he needed an assistant, it was necessary
9 for him first to choose the Chief Secretary of the
10 Cabinet" and that "he rang up HOSHINO at half-past eight
11 and asked him to comply with his wishes."^{f.} He went on
12 to say that by "assistant" he meant somebody to make
13 telephone calls for him and to take down notes of what
14 he was saying and so forth.^{g.}

15 1.

16 HO-61. It is submitted that this evidence
17 clearly shows that HOSHINO was chosen by TOJO purely
18 from the consideration of his being fit for the secre-
19 tarial work and not for his political ability. It is
20 quite reasonable to infer that TOJO should have appraised
21 HOSHINO's abilities and inabilities in his experience in
22 the Second KONOYE Cabinet, from which HOSHINO had
23 resigned in disappointment. It is suggested that TOJO

24 (HO-60. e. T. 29203.
25 f. T. 36314.
g. T. 36499-500.)

1 stated his true view of HOSHINO when he said, "HOSHINO
2 having been one of my colleagues in the Second KONOYE
3 Cabinet, I considered him the ideal man for the post of
4 the Chief Secretary both in point of previous career
5 and personal ability."^{a.}

6 2. This inference is more clearly drawn after
7 considering TOJO's testimony concerning his serious and
8 unprejudiced attitude toward the choice of his Cabinet
9 members. TOJO stated that with regard to the formation
10 of a new ministry, "he determined that the choice of
11 each man's personal timber, that is to say, those well
12 versed in several administrative capacities should be
13 assigned suitable posts."^{b.} His consultation with INADA
14 who held the position of Chief of the Secretariat Sec-
15 tion for many years, on the choice of the Chief Secre-
16 tary, is also very significant in this connection. It
17 was unusual for a Prime Minister designate to consult a
18 mere Section Chief on such matters. This extraordinary
19 attitude of TOJO itself shows that he tried his best to
20 make the most unbiased choice possible.
21

22 3. Assuming for the sake of argument only,
23 that HOSHINO had been in conspiracy with TOJO and TOJO
24 had chosen him for some personal reason as the prose-
25 cution suggests, there would have been no need to make

(HO-61. a. T. 36314.

b. T. 36312-3.)

1 such consultation, of if HOSHINO had been appointed to
2 the post for the sake of his personal influence, he
3 would have been also made a Minister Without Portfolio,
4 as was usually the case when some political activities
5 and influence was expected and desired from a Chief
6 Secretary. In spite of the charges made in the Indict-
7 ment, HOSHINO never was made the Minister Without
8 Portfolio in the TOJO administration, this charge has
9 not been pressed by the prosecution.

10 When HOSHINO was asked how it happened that he
11 became Secretary of the Cabinet, he replied, "There was
12 no special reason except that I had been requested to
13 become the Cabinet Secretary on the 17th by TOJO. At
14 that time I had already purchased a ticket in anticipation
15 of going to Korea."^{c.} In the light of all evidence
16 relating to this matter, it is suggested that the Tri-
17 bunal should accept the above reply of HOSHINO as an
18 honest and clear-cut statement of the circumstances
19 relating to his appointment.
20

21 HO-62. Concerning the policy of the TOJO
22 Cabinet relating to the American-Japanese negotiations,
23 TOJO himself stated that, "As for the clean slate
24 message, I felt it imperative and was firmly resolved
25 that it must be accomplished without fail."^{a.} The

(HO-61. c. T. 29204.
HO-62. a. T. 36311.)

1 witness YAMAMOTO stated that in the Liaison Conference
2 which opened immediately after the formation of the
3 TOJO Cabinet, TOJO declared that the new cabinet will
4 consider the Japan-American negotiations entirely on
5 a clean slate, freed from the decision on September 6. ^{b.}

6 Duties of Chief Secretary of the Cabinet.

7 HO-63. The duties of the Chief Cabinet
8 Secretary are defined by the Ordinance. ^{a.} His main
9 duties were to assist the Prime Minister, take charge
10 of confidential documents and manage the general affairs
11 of the Cabinet. ^{b.} The so-called confidential documents
12 consisted principally of those relating to personnel
13 matters and those which had been referred to Cabinet
14 meetings. ^{c.} As to the "general affairs of the Cabinet"
15 the definition was also given in the Ordinance. ^{d.} As
16 a glance will show, they are chiefly the secretarial
17 duties concerning various public documents and seals.

18 As will be clear from these duties, the position
19 of Chief Secretary of the Cabinet is secretarial as its
20 name indicates. It is submitted that HOSHINO's duty in
21 this position is best appreciated by referring to two
22 instances of which there was evidence in this case. One
23 related to his visit with Foreign Minister TOGO in the

24 (HO-62. b. T. 33018.

25 HO-63. a. Ex. 3217, T. 29193

b. T. 29194.

c. T. 29201.

d. T. 29193-4.)

1 matter of the establishment of Greater East Asia
2 Ministry, ^{e.} while the other was concerned with the
3 drafting of the Imperial Ordinance declaring war. ^{f.} An
4 examination of the evidence clearly reveals that in
5 both instances his was just in a transmittal or
6 secretarial capacity.

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25 (HO-63. e. T. 35757-8.
f. T. 31048.)

1 HO-64. Generally speaking, the scope of
 2 the assistance that the Chief Secretary should give to
 3 the Prime Minister is limited to the affairs which
 4 come directly under the jurisdiction of the Prime
 5 Minister. In other words, it has nothing to do
 6 with military matters nor with such matters that
 7 fall under the direct control of each department of
 8 the Government. HOSHINO's duties as Chief Secretary,
 9 of course, were subject to the above limitations,
 10 both legally and practically. TOJO had four private
 11 secretaries,^a of whom two were Col. AKAMATSU^{b.} and
 12 a Navy Captain. According to the Ordinance, they were
 13 to take charge of secret business under the directions
 14 of the Prime Minister.^{c.}

15
 16 As to HOSHINO's relation to the military
 17 and foreign affairs, TOJO stated, "that both by his
 18 nature and as a matter of policy, on all important
 19 matters concerning foreign affairs I consulted the
 20 Foreign Minister, and as for military affairs, I did
 21 not allow HOSHINO to interfere."^{d.} HOSHINO also stated
 22 that, "I have not been asked for any advice by TOJO
 23 previous to the war, nor have I given any. I have

24 HO-64. a. T. 29,202
 25 " b. T. 29,198
 " c. Ex. 3219; T. 29,195
 " d. T. 36,503

just carried out instructions as a secretary." ^{e.}

HO-65. As Chief Cabinet Secretary,

1 HOSHINO sat in on the cabinet meetings together with
 2 Chiefs of the Legislative and Information Boards.
 3 He had no right to a vote, ^{a.} nor did he actually
 4 vote. He attended some of the Privy Council meetings
 5 when requested, however, as one of many explainers
 6 who were merely to explain when called upon with the
 7 approval of the President. ^{b.} He was not, of course,
 8 a member thereof and not permitted to express anything. ^{c.}

10 As is clear from the evidence, HOSHINO in
 11 fact did not speak anything in any of the Privy
 12 Council Meetings held in this period. Concerning
 13 the Privy Council Meetings held in connection with
 14 the organization of the Greater East Asia Ministry,
 15 he only sat in on three meetings but he was absent
 16 from all important meetings subsequently held on the
 17 same subject. It is submitted that this shows that
 18 his position was unimportant in such meetings.

20 Concerning the various appointments which
 21 HOSHINO held after October 1941, (GG-61), these were
 22 rather nominal positions to be held ex-officio or

23 HO-64. e. Ex. 3212-A; T. 29,206
 24 HO-65. a. Ex. 2212-A; T. 29,205
 " b. Ex. 3213; T. 29,234
 25 " c. Ex. 3212-A; T. 29,206

1 otherwise as Chief Secretary of the Cabinet. The
2 prosecution fails to prove any activities HOSHINO
3 had in relation thereto.

4 HOSHINO's name appears in the list of those
5 who attended the assembly of East Asiatic Nations.^{d.}
6 But none of his activities, if any, therein was ever
7 shown.

8 HOSHINO's Relation to Liaison and Imperial
9 Conference

10 HO-66. Concerning the position of HOSHINO
11 as Chief Cabinet Secretary in the Liaison or Imperial
12 Conference, much evidence has made it clear that he
13 merely attended such conference as one of the three
14 secretaries, and he could neither voice his opinion
15 nor vote in it.^{a.} The secretary took charge of the
16 clerical work in the Conference;^{b.} namely, the
17 preparation, explanation and adjustment of the drafts,
18 etc. By preparation of the drafts it was meant only
19 to prepare for submitting the drafts which had been
20 duly studied and written by proper authorities. If
21 the draft was on military matters, the proper
22 authorities in the Army or Navy or Supreme Command
23 respectively wrote it while on diplomatic matters,
24

25 HO-65. d. Ex. 1346; T. 12,098

HO-66. a. Ex. 3444; T. 33,018; T. 36,497-8

" b. T. 33,017

Foreign Office authorities took charge of the
writing.^{c.} Prosecution exhibit 1175, we submit, is
very important in this connection. According to
witness HARA,^{d.} the document was nothing but a draft
for study prepared by the officials of the five
authorities concerned in regard to the fundamental
reasons relative to the opening of hostilities. These
five authorities were officials representing the two
General Staffs, War and Navy Ministers, and the
Foreign Office. This witness testified that five
copies were made of this draft and distributed among
the officials. This shows that the Cabinet Secretariat
did not participate in the making of the draft nor
receive its distribution. Some of the drafts of a
similar nature are in evidence but none of them has
any connection with HOSHINO.

HO-67. The prosecution in their attempt
to prove HOSHINO's activities in some of the Liaison
Conferences used an interrogation of TOGO that was
made under peculiar circumstances.

We objected to the use of the statements
made by TOGO on the ground that it came under the
general rules as expressed in the Tribunal's ruling

HO-66. c. ibid
" d. T. 34,452-3

1 that it would receive the statements by an accused
2 only against the accused making them and not against
3 the other accused.^{a.} Mr. Higgins also declared that
4 the prosecution would not insist that there should
5 be any relaxation or broadening of these general rules
6 in this case.^{b.}

7 TOGO's statements in question were made by
8 him in response to the interrogation by Mr. Morgan
9 on March 8, 1946.^{c.} At this time TOGO was still
10 remaining at home, while most of the accused including
11 HOSHINO had been confined in Sugamo Prison.

12 It is true that such interrogation was
13 offered in a cross-examination of TOGO. This probably
14 was the reason why the Tribunal receive it over the
15 objection by the defense. However, it was placed in
16 evidence by confronting TOGO with his interrogation
17 and in effect daring him to deny it on the penalty of
18 being proven to be that which they had already accused
19 him of being, a user of "weasley words".

20 We submit that such evidence is worthless
21 and should not be given any consideration whatsoever.

22 HO-68. On the activities of the secretary
23 in the Liaison or Imperial Conference, TOJO stated
24

25 HO-67. a. T. 16,106
" b. T. 16,105
" c. T. 36,083

1 that the secretary did not participate in the
 2 discussions,^{a.} and he did not allow the secretary
 3 to voice his opinion in such Conferences.^{b.} He
 4 further stated that HOSHINO privately told him, ex-
 5 pressing his joy,^{c.} "Now that plans A and B have
 6 been decided on, the American-Japanese negotiations
 7 will probably go very smoothly."

8 HO-69. In this connection, the evidence
 9 concerning the preparation for the Imperial Decree
 10 for peace is very significant as showing HOSHINO's
 11 real position and attitude toward the American-Japanese
 12 negotiations. Witness INADA testified^{a.} that toward
 13 the end of November, HOSHINO handed him a memorandum
 14 entitled "Measures to be taken in case Japan should
 15 suffer great hardship", and the first item of its
 16 contents reads, 'Request the Emperor to proclaim
 17 Imperial Decree--Settle the people's minds and
 18 retention of the National Power'. According to this
 19 witness,^{b.} HOSHINO ordered him to draft this decree
 20 together with the decree for the Declaration of War,
 21 which had been ordered to be prepared by the Prime
 22 Minister.^{c.}

23 HO-68. a. T. 36,497
 24 " b. T. 36,500-1
 " c. T. 36,501
 25 HO-69. a. T. 29,199-200 b. T. 29,199
 " c. Ex. 3,655; T. 36,405

1 The drafting of an Imperial Decree concerning State
 2 Affairs is one of the prescribed duties^{d.} of the
 3 Cabinet Secretariat both by Ordinance and custom,
 4 and the drafting means to perform all clerical
 5 work, including the arrangement in a customary form
 6 of letters and phrases of the contents as desired by
 7 proper authorities concerned. INADA accordingly
 8 drafted the Rescript for Peace, the general purport
 9 of which was that "Japan would be put in a very
 10 difficult position but that the Japanese people should
 11 endeavor to maintain the national strength and keep
 12 friendly relations with other nations of the world".^{e.}
 13 HOSHINO perused the rough draft and returned it to
 14 INADA for reconsideration. However, eventually the
 15 draft was cast aside as the situation took the last
 16 turn toward the war.
 17

18 HO-70. The evidence shows that there was
 19 still slight hope left for the peaceful settlement
 20 of the American-Japanese negotiations.^{f.} The evidence
 21 presented by TOJO also shows that even in October it
 22 was felt extremely difficult to avoid internal confusion
 23 in case American-Japanese negotiations should come to
 24 a peaceful settlement.^{b.}

25 HO-69. d. T. 29,199

" e. T. 29,200

HO-70. a. Ex. 3646; T. 35,712-3

" b. Ex. 3665; T. 36,312

1 In our submission, the fact that HOSHINO ordered a
2 decree for peace to be drafted under such circumstances
3 shows that he expected that the peaceful termination
4 of the negotiations might come even at the last moment
5 and he intended to prepare for the eventuality in
6 which he might be suddenly requested to draft a decree.

7 HOSHINO' Relation to Alleged Atrocities

8 HO-71. All the evidence, we submit, has made
9 it clear that HOSHINO as a Chief Secretary of Cabinet
10 had nothing to do with the alleged atrocities. As
11 to the protests from Foreign Powers relating to
12 this matter, the evidence has also made it clear that
13 it has been dealt with exclusively by the Foreign
14 Office and the War and Navy Ministries according to
15 their respective jurisdictions. Such matters have
16 never come to the notice of HOSHINO.^{a.}

17 HO-72. In conclusion, we submit that the
18 prosecution has wholly failed to prove their case
19 against HOSHINO. Their evidence shows only that
20 HOSHINO has held a few positions in the Government
21 and in that capacity performed some official acts.
22 However, we have shown that all such acts of HOSHINO
23 were discharged by him purely as his duties to the
24 Governments in which service he then was, and he did
25 HO-71. a. T. 35,251; Ex. 3337; T. 30,658

1 them in his effort to carry out his duties faithfully
2 to the Governments and their people; namely, his
3 conduct throughout was what any civil official might
4 reasonably be expected to do, if he had been placed
5 in that position under the same circumstances.

6 We have shown also that HOSHINO has never
7 been in a "policy-making" position. It is true that
8 he was the Minister Without Portfolio in the Second
9 KONOYE Cabinet from July 1940 to April 1941. However,
10 there has been no evidence showing his activities as
11 such except that he signed one Imperial Decree together
12 with and at the last of all other Cabinet members.
13 Evidence has also disclosed that he had to resign from
14 this post as he was deemed incompetent. We submit
15 that he has not violated any law of the Charter nor
16 any international law and should be found "not guilty".
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2 to the Governments and their people; namely, his
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THE PRESIDENT: Mr. Cole.

1 MR. COLE: May it please the Tribunal, I am
2 proceeding somewhat sooner than I had expected, as the
3 result of which I have not been able to check my draft
4 as much as I would like to. I should like to request
5 the permission of the Tribunal to file later an
6 errata sheet if it becomes necessary.

7 THE PRESIDENT: You may make any corrections
8 you desire.

9 MR. COLE: I beg your Honor's pardon.

10 THE PRESIDENT: You may make corrections.

11 MR. COLE: May it please the Tribunal, on
12 behalf of General NUTO I address your Honors in what
13 I choose to consider the proudest assignment of my
14 professional life.

15
16 2. It is my conviction that if ever I was
17 privileged to represent a man completely innocent of
18 all the charges leveled at him, that man is the one
19 for whom I make this plea today. On his behalf I
20 subscribe to the general arguments which have been
21 made in the interest of all the accused. Those argu-
22 ments, in my submission, should be sufficient to
23 require the acquittal of all these accused, in view
24 of the novel and often preposterous charges under the
25 Indictment, and the failure of the prosecution to

~~prove those charges, even under the uniquely liberal~~
1 rules which govern the deliberations of this Tribunal.
2 But in this summation I confine myself to a consider-
3 ation of the evidence adduced against MUTO, and of
4 its total disproof so far as any guilt is concerned.

5 3. It is redundant to observe that this
6 trial is unparalleled in the history of jurisprudence.
7 That observation has been made innumerable times dur-
8 ing the course of the past two years. But, under-
9 lying all that we have done here, there is the basic
10 and persistent realization that in this courtroom
11 twenty-five men are on trial for their lives. That
12 stark fact is, to my mind, the ultimate one to con-
13 sider.
14

15 4. For the purpose of setting the tone and
16 main theme of this plea, I should like at the outset
17 to quote your Honor, the President, and to make an
18 observation of my own. Your Honor observed^{a.} "MUTO
19 has been represented to us as a mere public servant
20 or soldier." I replied to that, "I agree with that
21 perfectly, sir. In fact, we contend that."
22

23 5. The observation of my own which I wish
24 to make in setting the direction of this summation is
25 one that I have made so often that a reference to the

4.
a. Tr. 37857.

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24 to make in setting the direction of this summation is
25 one that I have made so often that a reference to the

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a. Tr. 37857.

1 transcript seems unnecessary. That is, that during
2 the entire course of this trial MUTO has never once
3 been shown to have done one thing which could not
4 have properly been done by any military man of com-
5 parable rank in any country in the world. In the
6 clear light of reality, some of which has become much
7 more clear throughout the world since this trial
8 began and is daily becoming more clear, that claim
9 cannot be and has not been effectively disputed.

10 6. In the presentation of our individual
11 defense case, we considered the prosecution's evidence
12 against MUTO under four main headings: China, the
13 Military Affairs Bureau, Sumatra, and the Philippines.
14 The prosecution's summation against him makes it
15 quite clear that they now attempt to put the greatest
16 blame on him for his tenure of office as Chief of the
17 Military Affairs Bureau. In fact, it is attempted
18 to make his actions during that period responsible
19 for everything that followed the outbreak of war and
20 a great deal of that which preceded it. It appears
21 to be an attempt to make that period of his career a
22 catch-all for other charges which they must realize
23 have not been proved. And in view of the tremendous
24 emphasis which was put on the alleged misdeeds and
25 atrocities in Manila in the prosecution's case in

1 chief, I submit to the Tribunal that it is indeed
2 strange that not one question was asked him on cross-
3 examination as to this seemingly important phase of
4 their case against him.

5 7. We intend, for the above-stated reasons,
6 to go into considerable detail about the Military
7 Affairs Bureau period, and, in addition, to demonstrate
8 how all other charges against him have been disproved.
9 Before going into those particular matters, however,
10 we ask the Tribunal to consider the testimony of
11 TANAKA, Ryukichi, upon whom the prosecution has put
12 the heaviest reliance in their case against MUTO. As
13 was so aptly stated by another defense counsel,
14 TANAKA is "the one professional witness to emerge in
15 this trial."^a

16 8. TANAKA appeared here so many times that
17 he truly can be called the perennial witness of this
18 trial. He testified glibly and often on a great
19 variety of matters. He acknowledged good friends sit-
20 ting in the dock, and then proceeded, with what seemed
21 eagerness, to do his best to convict them. He appeared
22 as a "happy and smiling warrior," but the key to all
23 of TANAKA's testimony is that he is an exceedingly
24 unhappy warrior -- a man of intelligence, but of
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7.
a. Tr. 34378.

1 jealousy and consuming ambition, who had natural
2 aspirations for promotion and recognition, who left
3 the Army because of illness, and who could not bear
4 the fact that another man was appointed to the
5 position he aspired to. As a result, he has a cold
6 hatred for MUTO whose position he wanted, and for
7 SATO, who received the assignment. That is the key
8 to all of TANAKA's testimony against those two
9 accused.

10 9. We have presented to the Tribunal sound
11 evidence against every damaging claim of TANAKA
12 as far as MUTO is concerned. A comparison between
13 his testimony and that offered by the defense will
14 show convincingly the right and wrong in each case;
15 it will show clearly which testimony is based on
16 truth and common sense, and which on a desire for
17 vengeance. His testimony alone demonstrates that
18 fact. On 21 January 1947, as he was quoted in the
19 prosecution's summation,^{a.} concerning the relationship
20 between MUTO and TOJO, he stated, "In reality the Army
21 was the driving force in Japan, and, as a matter of
22 fact, almost all of the policies of the Army were
23 evolved from the brilliant mind of this same General
24 MUTO as Chief of the Military Affairs Bureau."^{b.}
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9. a. 00-4.

b. Tr. 15863.

1 At the time, the President observed, "I don't suppose
2 you expected answers just in that terminology. That
3 is outside his province as a witness."^c On the very
4 next day, on being hard pressed on cross-examination,
5 TANAKA admitted that the above was merely his subjec-
6 tive view and was not based on facts.^d

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c. Tr. 15864.
d. Tr. 15900.

10. On two different occasions before this
1 Tribunal TANAKA claimed that he had no ambition to be-
2 come Chief of the Military Affairs Bureau and that he
3 never dreamed of getting that position.^a Yet he claimed
4 that that position carried more influence and power
5 than that of the Military Service Bureau, whose chief
6 he was; in fact, he claimed that it was one of the
7 most influential positions within the government.^b
8 On cross-examination TANAKA acknowledged that his sub-
9 ordinates and followers wished for him to become head
10 of the Military Affairs Bureau. He also acknowledged
11 that he was aware of public comment that he wanted to
12 see MUTO's fall because of his, TANAKA's, failure to
13 get that position.^c All his denials as to any ambi-
14 tions for that office become completely incredible; he
15 was a professional military man until his resignation,
16 he was personable and ambitious, and to salve his
17 wounded ambitions he turns with smiling glibness on his
18 former friends and associates, for reasons which are
19 quite obvious.
20

21 11. On 8 July 1946, in the early stage of
22 the prosecution's case in chief, TANAKA testified that
23 he had been informed of the progress of the Japanese-
24

25 10. a. Tr. 14,363, 15,915
b. Tr. 14,285-6
c. Tr. 15,916-7

American negotiations by Vice Minister of War KIMURA
1 and the then Chief of the Military Affairs Bureau SATO,
2 but he never claimed to have heard anything about it
3 from MUTO.^a But on 22 January 1947 he testified that
4 MUTO had talked with him about that subject.^b He also
5 testified that Vice Minister KIMURA told him that
6 "not on one occasion alone, that if Ambassador KURUSU went
7 to the United States a settlement could be reached be-
8 tween the two countries."^c Yet he declared in later
9 testimony that he had been told that the sending of
10 Ambassador KURUSU to the United States was a camouflage.^d
11 His testimony becomes completely willful, changeable,
12 unpredictable, and adapted to the needs of the moment.
13 It discredits him by his own words, even without the
14 consideration of the motives behind his attitude.

15
16 12. Now as to the particulars of the indict-
17 ment and proof. MUTO has been indicted on all counts
18 except 18, 25, 35, 48, 49, 50 and 52. The evidence
19 which has been presented completely refutes those charges.
20 The prosecution has strained at every possibility to
21 prove the charges, but they have not proved one single
22 criminal act committed by him. They have indulged in
23 conjecture and surmise and innuendo, attempting to

24 11. a. Tr. 2050-1
25 b. Tr. 15,871
c. Tr. 2051
d. Tr. 15,871

1 suggest that because of his position and his admitted
2 attendance at many conferences he must have had a power-
3 ful and sinister influence. We submit that it is not
4 a crime to be intelligent and efficient. MUTO was both.
5 So are the top men, military or otherwise, in any country
6 represented here. But it is indeed strange that the
7 prosecution, for all its claims as to his actions in
8 these so-called all-important conferences, has been
9 unable or unwilling to show to this Tribunal one single
10 quotation of his, in such conferences, by which to bear
11 out their contention.

12 13. Further, on the unreliability and paucity
13 of the prosecution's evidence, we respectfully call atten-
14 tion to the record as to MUTO's speech before a committee
15 of the Diet, which was supposed, by the prosecution's
16 questions, to have been accepted in responsible circles
17 as a ringing advocacy for the dissolution of all politi-
18 cal parties.^a The prosecution presented only a news-
19 paper article discussing that speech, whereas we present-
20 ed, most willingly, the actual minutes.^b This is one
21 more example of the indifference of the prosecution as
22 to presenting the true and complete facts, of which
23 more can be said later. If we can produce the actual

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25 13. a. 00-22-5; ex. 2243-A, tr. 16,150
b. Ex. 3440, tr. 32,966-73

~~stenographic record of such a meeting, the prosecution~~
1 could have done the same instead of relying on a news-
2 paper article that was obviously editorialized.

3 THE PRESIDENT: We will recess for fifteen
4 minutes.

5 (Whereupon, at 1045, a recess was
6 taken until 1100, after which the proceed-
7 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. Cole.

4 MR. COLE: May it please the Tribunal, I
5 continue reading at page 9, Big Sub-Section I, para-
6 graph 14. (Reading):

7 I. CHINA AND MANCHURIA

8 14. We repeat that the prosecution's evidence
9 falls into four phases, so far as MUTO is concerned:
10 China and Manchuria, the Military Affairs Bureau,
11 Sumatra, and the Philippines. He is not indicted
12 for the initiation of the Manchurian Incident, but in
13 Count 19 he is mentioned as one of those responsible
14 for starting the war against China. With regard to
15 this, the prosecution points out that at the time of
16 the Mukden Incident, 18 September 1931, he was a
17 junior officer, a major attached to the General Staff
18 Office; in 1936-7 he became a staff member of the
19 Kwantung Army as a Lieutenant Colonel, and that in
20 March 1937 he was appointed Chief of the 2nd Section
21 of the General Staff in charge of operations and
22 organization.^a From that it is concluded that he had
23 responsibility for the operations against North China
24 in July 1937.^b It also shows, as if it were a grave
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14. a. Tr. 16,872.

b. 00-9

1 offense, that he was decorated in 1940 for his merit-
2 orious services from 1931-4 and again in connection
3 with the China Incident in 1934.^c But what, in reality,
4 does it prove to show that he was a junior officer at
5 the time of the incident in question? The prosecution
6 is playing on a term that has been used carelessly
7 and quite indiscriminately throughout this trial to
8 show a conspiracy that can not be proved. If by
9 "seinen-shoko" is meant those lawless young officers
10 who were prone to disregard discipline and who planned
11 and carried out political manipulations, it is quite
12 clear that MUTO not only did not belong to such a
13 group, but that in the 26 February Incident he barely
14 escaped bodily harm or death at the hands of that group
15 and that he made every effort to correct the trouble
16 they had caused.^d This is from MUTO's affidavit,
17 but completely uncontradicted.

18 15. It is unrealistic and absurd to contend
19 that, because he was a junior officer on the staff of
20 the Kwantung Army, he was taking part in a conspiracy
21 or responsible for what may have happened. The same
22 applies to the matter of decoration for meritorious
23 services. It is a known fact that such decorations are

24 14. c. Pros. Sum. 00-1, 8, 9, 18
25 d. Ex. 3454, T. 33,084

are given in quite a routine manner, in any army.^a

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16. In the above respects the prosecution has been able to produce nothing to show criminality of any kind or degree. On the contrary, the defense has given a forthright account of all matters which the prosecution raised. MUTO himself, in his affidavit, covered every point on which he is accused, but neither on cross-examination nor otherwise has there been a successful effort to disprove his testimony.

17. As shown by our evidence, at the outbreak of the Manchurian Incident MUTO was a major and member of the line-of-communications staff of the Army General Staff. He was engaged in the compilation of regulations on communication and transport. That continued up to March of the following year.^a After that he was assigned to a regiment in Tokyo and then to the Military Administration Section of the Military Affairs Bureau (from March 1935 to June 1936) and then to the staff of the Kwantung Army (from June 1936 to March 1937). And in March 1937, when the China Incident broke out, he was transferred to the office of the General Staff. But he had no part in plans for operations against China. Such plans, if any, were made before

15. a. Ex. 3147, T. 28,026-33

17. a. Ex. 3454, T. 33,082

1 he came to the General Staff Office. And those plans,
2 instead of aiming at an attack on China, consisted in
3 the dispatch of some troops for the mere purpose of
4 giving protection to Japanese residents in North and
5 Central China. Because of the outbreak of the Incident,
6 revisions in plans were necessary, and MUTO was ordered
7 by his superiors to make a study of such revisions.
8 However, in October of the same year he was ordered to
9 go on an inspection tour of the Shanghai area and
10 remained there, without returning to Tokyo, in conse-
11 quence of being appointed Deputy Chief of Staff to
12 General MATSUI.^b Here again we respectfully direct
13 the Tribunal's attention to the fact that never, through-
14 out MUTO's professional career as a military man, did
15 he have an assignment which carried command responsi-
16 bility, except for the period in Sumatra, during which
17 period he is entirely blameless, as the record dis-
18 closes. We refer to this period later. In light of
19 the above, there can be no question that he was in no
20 responsible position with regard to the initiation of
21 either the China Incident or the Manchurian Incident,
22 and such accusations are in every respect groundless.

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24 18. In Count 45, MUTO is charged with responsi-
25 bility for the attack on the city of Nanking, and for

17. b. Ex. 3454, T. 33,085

~~the murdering of large numbers of civilians and dis-~~
1 armed soldiers. The evidence fails utterly to show
2 any responsibility on his part for such a claim. At
3 the time, MUTO was a colonel and deputy chief of staff
4 of the Central China Area Army. His duties consisted
5 in playing an intermediary role with regard to supply
6 of necessary personnel, food, arms and ammunition, and
7 he had no power to make independent decisions.^a

8 19. It is also important to note that the
9 Central China Area Army Headquarters was a purely
10 strategic organ, and that it did not have a legal
11 section up to the time of the attack on and fall of
12 the city of Nanking.^a From a legal point of view,
13 it was the duty of the Shanghai Expeditionary Force and
14 the 10th Army, both of which had legal sections, to
15 maintain discipline and morality among the troops and
16 to impose penalties in case of violations. MUTO, as a
17 Deputy Chief of Staff, had neither the authority nor
18 the duty to interfere in such cases.^b Surely this is
19 sufficient to account for his lack of responsibility as
20 to the prosecutions' allegations.

22 20. Also, the evidence further shows that
23 MUTO personally took no part in the attack on Nanking,

24 18. a. Ex. 3462, T. 33,283; Ex. 3454, T. 33,090

25 19. a. Ex. 2577, T. 21,912

b. Ex. 2577, T. 21,912-3; 21,914-5;
Ex. 3454, T. 33086-7; Ex. 3498, T. 33,819-20

1 owing to the illness of General MATSUI, whom he was
2 attending;^a that it was on the entry ceremony on
3 17 December that he entered Nanking and that he
4 stayed there for only four or five days;^b that during
5 his stay there he devoted himself to an investigation
6 of the camping and billeting facilities outside the
7 city of Nanking; that he always called the attention
8 of the staff officer in charge to the need for pro-
9 tection of interests of foreign nationals; that he
10 made efforts to remove from the city the troops which
11 had entered contrary to General MATSUI's orders;^c
12 and that he arranged to include on the staff Major
13 NAKAYAMA, for the particular reason that NAKAYAMA had
14 studied in the United States and China and could cap-
15 ably attend to relations with foreign nationals and
16 best make liaison with them and protect their interests.^d
17 These contentions remain entirely undisputed by the
18 prosecution and must, therefore, in all fairness, be
19 known to be true. All the evidence as to Nanking,
20 regarding MUTO, has gone undisputed, and it shows that
21 he not only had no responsibility for the operation,

- 22 20. a. Ex. 3454, T. 33,088; T. 21,899
23 b. T. 21,911-2
24 c. Ex. 3454, T. 33,090; T. 21,915-6;
25 T. 21,444-6
d. T. 21,915-6; T. 21,464; E. 3454,
T. 33,088-91

1 but that he merely performed his duties in regard to
2 supply and billeting.

3 21. MUTO was indicted for the Khalkin-Gol
4 River Affair, during the summer of 1939 under Counts
5 26, 36 and 51; but this charge also proves to be ground-
6 less. MUTO served as Deputy Chief of Staff to the
7 North China Area Army from July 1938 to January 1939.^a
8 The incident occurred during this period, and the
9 units which took part in the operation were entirely
10 independent of the North China Area Army.^b Thus, he
11 could have had no connection whatever with that
12 incident.

13 22. The same must apply to counts 46 and 47.
14 The first of these refers to the attack on the city of
15 Canton on 21 October 1938, and charges MUTO with
16 responsibility for it. But the attack on Canton was
17 carried out by units completely separate from the North
18 China Area Army to which he was attached.^a Likewise,
19 the attack on the city of Hankow, around 27 October 1938,
20 under Count 47, was not executed by the North China Area
21 Army in which MUTO was then serving.^b There can be no
22 dispute on these points, and they serve to show the
23

24 21. a. Ex. 3454, T. 33,091
b. Ex. 3454, T. 33,092

25 22. a. Ex. 3454, T. 33,092
b. T. 33,092

blanket charges of the prosecution and the complete
1 failure to prove and document their allegations.

2 23. Thus far, we have disproved the prosec-
3 ution's charges against MUTO under Counts 19, 26, 36,
4 45, 46, 47 and 51. From the beginning he has not been
5 charged under Counts 18, 25, 35, 48, 49, 50 and 52.

6 The prosecution would try to hold him responsible for
7 the alleged atrocities in North China which are supposed
8 to have taken place while he was a vice-chief of staff
9 for the North China Area Army.^a In this connection
10 we make the same point as in regard to the Nanking
11 Incident: the vice-chief of staff was in no way respons-
12 ible for the maintenance of military discipline.^b The
13 prosecution has never produced evidence to connect
14 MUTO with these matters because it is impossible to
15 do so.

17 II. THE MILITARY AFFAIRS BUREAU

18 24. Regarding the Military Affairs Bureau,
19 MUTO was appointed Director in October 1939 and remained
20 there until he was transferred to Sumatra as commander
21 of the Imperial Guard Division, soon after the outbreak
22 of the Pacific War. The prosecution tries to picture
23 him as a sinister policy-maker, due to the duties he
24

- 25 23. a. OO-107
b. Ex. 3462, Art. 13, T. 33,283;
Ex. 3454, T. 33,090;
Ex. 2577, T. 21,912-5

carried out as Director during this period. Most of
1 the charges made in Counts 1-34, the so-called crimes
2 against peace, Counts 37-44 -- the prosecution avoided
3 discussion of Counts 37 and 38 in their summation --
4 and in Counts 53-55, the charges as to conventional
5 war crimes and crimes against humanity, relate to the
6 activities of MUTO as Director of the Military Affairs
7 Bureau. These charges prove to be groundless, as can
8 be demonstrated.

9
10 25. We consider first the underlying charge
11 that MUTO took part in a conspiracy. In the first
12 place, we strongly deny the existence of a conspiracy.
13 During the defense's presentation in both the general
14 and individual cases, it has been made clear that there
15 never existed, as charged, any conspiracy to dominate,
16 in conjunction with Germany and Italy, the Orient,
17 Pacific and Indian Oceans and all the adjacent islands
18 by waging an aggressive war against any powers which
19 might oppose it. We do not argue this point, as it
20 has already been fully covered. We merely point out
21 that MUTO had no part in any such alleged conspiracy.

22 26. First, it surely has not been proven
23 that he ever embraced any intention of joining in a
24 conspiracy. Existence of a joint cause or intention
25 simply remains a bald charge under the Indictment,

1 completely without substantiation, and there has been
2 no evidence whatever to show that such a joint intent
3 ever existed, and ample evidence to show that it did
4 not exist.

5 27. There is an assertion that MUTO, as a
6 member of the so-called Secret Liaison Committee with
7 the Five Ministers' Conference, concerned himself with
8 the exploitation of China and its people and that he
9 must have participated in the establishment of the
10 Wang Ching-wei Government, or in the conclusion of a
11 treaty with that government.^a On cross-examination
12 an attempt was made to force MUTO to admit to having
13 been a member of the so-called Secret Liaison Committee,
14 but his answer was that he did not know of such things
15 as the Five Ministers' Conference and the Secret
16 Liaison Committee. That that was a true and correct
17 answer is shown from the passage, "The committee is
18 dissolved upon the establishment of the Chinese Board,
19 (Tai-shi-in)" found at the end of the document shown to
20 MUTO and presented in the prosecution's rebuttal
21 evidence.^b At the time of his assumption of office
22 as Chief of the Military Affairs Bureau, neither the
23 Five Ministers' Conference nor its Liaison Committee

24 27. a. 00-15

25 b. Ex. 3457, T. 33,202; T. 37,365

1 existed any longer. This point was clarified by
2 the prosecution's summation against OKA.^c

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27. c. Summation re OKA, PP-31

1 28. MUTO was on the "Committee for Liaison
2 with the Asiatic Renovation Board (Ko-A-In).^a This
3 was never called a secret committee, as is clearly
4 shown in MUTO's personal history.^b As to the scope
5 and duties of that committee, the prosecution evidence
6 shows nothing. The duty of the Liaison Committee
7 that had co-existed with the Five Ministers' Confer-
8 ence consisted, as was stated by the prosecution, in
9 study and investigation, and it had no authority
10 whatever.

11 29. Here we invite the special attention of
12 the Tribunal to the fact that when MUTO became head
13 of the Military Affairs Bureau the basic Chinese
14 policy of the First KONOYE Cabinet had already been
15 definitely established.^a After his assumption of
16 that post, no conferences of special importance were
17 held. To charge him, from the simple fact of his
18 having been a member of the Liaison Committee of the
19 Asiatic Renovation Board, (Ko-A-In) with active
20 participation in exploitation of China is not only
21 false, but demonstrates the lack of convincing
22 evidence against him.

23 28. a. Ex. 3459, Tr. 33,203

24 b. Ex. 118, Tr. 742

25 29. a. 00-10

1 30. Moreover, it is charged that the Military
2 Affairs Bureau was represented on the committee
3 of the Five Ministers' Conference by the bureau chief,
4 the Chief of the Military Affairs Section and one more
5 person as managing secretary, giving the impression
6 that there were three representatives.^a This is
7 another inaccurate statement. The fact is that the
8 section chief himself acted concurrently as managing
9 secretary. The prosecution's statement gives the
10 impression that the Military Affairs Bureau alone was
11 represented by three members. Actually there were
12 only two; further, both the East Asia Bureau of the
13 Foreign Office and the Financial Management Bureau^b
14 of the Finance Ministry were similarly represented.
15 The claim is another case of careless exaggeration.

16 31. We submit that the prosecution has pro-
17 duced no evidence of MUTO's alleged participation in
18 the establishment of the Wang Government nor of the
19 conclusion of a treaty with it.

20 32. The prosecution has submitted^a that
21 MUTO, together with Admiral OKA, deliberated on the
22 fundamental terms for settlement of the China Incident,
23 at the official residence of the Foreign Minister on
24

25 30. a. 00-14
b. Ex. 3457, Tr. 33,202; 37,365
32. a. 00-16, 17

6 September 1941;^b that the terms were included in
1 Japan's terms of peace with China handed to Ambassador
2 Grew later on;^c and that Japan insisted on them up
3 to the last stage of the Japanese-American negotia-
4 tions.^d It is true that MUTO participated in the
5 conference of the Foreign Ministry, as was his proper
6 duty as liaison officer between the War and Foreign
7 Ministries. But the document itself discloses that
8 it was not drafted by MUTO and OKA, but was prepared
9 as a result of a conference of the Foreign Ministry
10 itself.^e Moreover, it is erroneous to claim that
11 Japan insisted on it to the bitter end. The TOJO
12 Cabinet made step-by-step concessions, as testified
13 to by ISHII, Akiho.^f

15 33. It is claimed by the prosecution that
16 the terms included the stationing of troops on Hainan
17 Island, where no threat of Communism existed; and
18 that the Japanese forces availed themselves of Hainan
19 as a jumping-off base on 8 December 1941. But it must
20 be noted that the stationing of troops was aimed at
21 joint defense, not merely against Communism, in view
22

- 23 32. b. Ex. 3456, Tr. 33,192
24 c. Ex. 1245, Tr. 10,792-5
25 d. OO-16, 17
e. Ex. 3456, Tr. 33,192
f. Ex. 3480, Tr. 33,674

of the annexed note.^a Further, the occupation of
1 Hainan was carried out in March 1939, prior to
2 MUTO's appointment as Chief of the Military Affairs
3 Bureau.^b Hence it is clear that he cannot have any
4 responsibility for it.
5

34. In view of the above-mentioned errors
6 and misconceptions in the prosecution's case, we
7 wish to demonstrate the kind of opinion MUTO enter-
8 tained in regard to the Chinese question. First, the
9 Tribunal will recall the testimony of Major General
10 Piggott of Great Britain, who came in contact with
11 MUTO at the Japanese-British negotiations in 1938
12 and 1939. He testified to the effect that MUTO was
13 instrumental, under General HATA's orders, in affect-
14 ing a noticeable improvement in Anglo-Japanese rela-
15 tions; that he wished to see a speedy and successful
16 outcome of the conference in Tokyo; and that he ex-
17 pressed good wishes for the success of the conference.^a
18

35. MUTO explained most clearly and reason-
19 ably his attitude toward China. When he took office
20 as Chief of the Military Affairs Bureau, he had no
21 knowledge of diplomatic or political problems; but,
22

23
24 33. a. Ex. 3456, para. 4, Tr. 33,192

b. Tr. 6730-1; Ex. 613A, Tr. 6733

25 34. a. Ex. 3438, Tr. 32,941-3

1 since he had served in China, he did have certain
2 convictions about that situation. He considered that
3 the trouble between Japan and China was assuming the
4 character of a racial war, and that their differences
5 would not be solved by maintaining the erstwhile
6 views of the so-called experts on China; and that
7 Japan should work out at once a plan for dealing
8 with the Chiang Regime, breaking the impasse and
9 bringing the incident to a close as soon as possible.
10 He also wanted to harmonize relations between Japan,
11 the United States and Britain. This is amply demon-
12 strated by evidence to be discussed later.^a

13 36. That the above statement was honest and
14 forthright was clearly seen in his actions as Director
15 of the Military Affairs Bureau. This was further clari-
16 fied by the testimony of Lieutenant Colonel ISHII, who
17 was in charge of foreign affairs in the Army as a
18 senior officer of the Military Affairs Section under
19 MUTO.^a Colonel ISHII stated that MUTO felt that early
20 settlement of the China difficulty was the first requi-
21 site. He always advocated the maintenance of peace-
22 ful cooperation with other countries, and on at least
23 three occasions was heard to oppose aggressive policies.
24

25 35. a. Ex. 3454, Tr. 33,095
36. a. Ex. 3480, Tr. 33,675-6

1 Under orders of MUTO, Colonel ISHII studied plans for
2 opening of the Yangtze-kiang and Chu-kiang Rivers, in
3 order to comply with American wishes. The Chu-kiang
4 was opened, but difficulties prevented the opening
5 of the Yangtze. However, on at least two occasions
6 MUTO urged further efforts to that end.

7 37. The prosecution submitted in summation
8 that MUTO played a positive role in the fall of the
9 YONAI Cabinet, due to the resignation of War Minister
10 HATA, leading externally to the conclusion of the
11 Tripartite Pact and internally to the formation of
12 the Imperial Rule Assistance Association.^a As to
13 this claim, we must point out the contradiction in
14 the testimony of YONAI, Mitsunasa, and TANAKA, Ryu-
15 kichi, on which the prosecution relied.^b While
16 YONAI testified that the reason for the fall of his
17 Cabinet was that the Army considered it to be weak,
18 as it had failed to support the establishment of the
19 Imperial Rule Assistance Association as well as the
20 Japanese-German Alliance, TANAKA claimed that it was
21 mainly due to the issue of concluding the Tripartite
22 Pact which, he said, the Military Affairs Bureau had
23 insisted upon.

24 37. a. 00-25-28

25 b. YONAI, Ex. 3831A, Tr. 37,999-38,002;
TANAKA, Tr. 15,901

1 38. As to the testimony of YONAI,^a it
2 should be noted that at that time the Imperial Rule
3 Assistance Association did not exist and could not
4 have been anticipated, and that the question of a
5 Japanese-German alliance was not introduced to the
6 YONAI Cabinet, as YONAI himself said. The Tribunal
7 will also recall the inconclusive and dubious quality
8 of YONAI's testimony, in view of his often disjointed
9 and confused answers as a witness.^b As for TANAKA,
10 he was absent from Tokyo at the time of the resigna-
11 tion of the YONAI Cabinet, serving in China as a staff
12 officer. TANAKA based such testimony on hearsay, and
13 from persons long-since deceased; so that he could
14 only admit that he had not been able to get first-
15 hand information, let alone any comment from MUTO.^c
16 Thus it is demonstrated that TANAKA's testimony above
17 cited was so groundless as all his other attacks on
18 MUTO.
19

20 39. Contradictory to this testimony, the
21 record shows the following facts. It was in the
22 middle of October 1939, when the ABE Cabinet was in
23 power, that MUTO took office as Chief of the Military
24 Affairs Bureau. On assuming office, he found that,

- 25 38. a. Ex. 3831, Tr. 37,999-38,002
 b. Tr. 28,939
 c. Tr. 1945-6; Ex. 3238, Tr. 29

1 at the time of the HIRANUMA Cabinet (preceding the
2 ABE Cabinet) the Army, hoping for the conclusion of
3 the Tripartite Pact, endeavored to realize it but was
4 unsuccessful, due to the conclusion of the Russo-
5 German Non-Aggression Pact. In those days there
6 was strong feeling in Japan that Japan had been cir-
7 cumvented by Germany and that Hitler and Mussolini
8 could not be trusted. MUTO was also of the same
9 opinion,^a saying that while Hitler and Mussolini
10 might fail and still find personal glory, if Japanese
11 statesmen failed in their guidance of the country,
12 they would spoil a national pride going back three
13 thousand years, and that it was dangerous to deal
14 with new-comers like Hitler and Mussolini. MUTO
15 expressed this thought even to a German, Colonel
16 Groner.^b

17
18 40. At the time of the battle of Dunkirk
19 it was generally believed in Japan that Germany
20 would win the final victory and that the Tripartite
21 Alliance should be concluded. It is a tribute to
22 MUTO's sound judgment as a military man that he pre-
23 dicted that the war between Britain and Germany would
24 be protracted, and doubted that Germany would get the

25 39. a. Ex. 3454, para. 19, Tr. 33,111

Also reference Tr. 33,218

b. Tr. 33,112

final victory.^a

1
2 41. In summation, the prosecution stated
3 that when MUTO was interrogated at Sugamo he admitted
4 that as an individual he was in favor of the Tripar-
5 tite Pact, but in his official capacity he had no
6 say on matters of policy, which had already been de-
7 cided upon by the Chief of the General Staff and the
8 War Minister.^a But this is unquestionably a mistake
9 in translation, as MUTO testified that what he said
10 was that "I said I was not in favor of it."^b This is
11 clear from his statement, "I did not advocate it,"
12 given immediately preceding the passage cited; and
13 also from his reply, "No, personally I did not advo-
14 cate it."^c Furthermore, the tone of the entire inter-
15 rogation substantiates these assertions.^d He gave
16 forthright and explicit answers on these points on
17 cross-examination^e and, both by his actions and his
18 words, has left no room for doubt as to his attitude.
19 These matters were also clarified by the testimony
20 of IWAKURO and ISHII.^f
21

22 40. a. Ex. 3454, Tr. 33,112-3; Ex. 3442, Tr. 32,996;
Ex. 3480, Tr. 33,219

23 41. a. 00-44

b. Tr. 33,225

24 c. Tr. 33,226

d. Ex. 255, Tr. 33,225-7

25 e. Tr. 33,225-6

f. Ex. 3442, Tr. 32,995; Ex. 3480, Tr. 33,676-7

1 42. Next, the resignation of the YONAI
2 Cabinet was by no means due to a sharp division of
3 opinion between War Minister HATA and the Cabinet.
4 While HATA was in office he never once called for
5 conclusion of the Tripartite Alliance. In regard
6 to this point, both YONAI, then Premier, and ARITA,
7 Foreign Minister, testified before the Tribunal.^a
8 Moreover, in an excerpt from the HARADA Memoirs pre-
9 sented by the prosecution, it is said that MUTO said
10 to ISHIWATA, Chief Secretary of the Cabinet, that as
11 far as diplomatic matters were concerned it was going
12 very well.^b
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25 42. a. Ex. 3198, Tr. 28,917; Ex. 3200, Tr. 28,945
 b. Ex. 3808, Tr. 37,862

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1 43. In those days the General Staff, eager
2 to bring about a settlement of the China Incident as
3 speedily as possible, demanded that Japan call upon
4 Germany to act as an intermediary. At the same time,
5 it called for strengthening the domestic structure
6 on the ground that the international situation might
7 deteriorate at any time. However, the YONAI Cabinet
8 did not react enthusiastically to the request of the
9 General Staff.^a Just at that time Prince KONOYE
10 resigned as President of the Privy Council and started
11 a campaign to set up a new political party with a
12 view to reforming the domestic structure. While he
13 received the support of dominant public opinion, the
14 YONAI Cabinet became unpopular. Such being the case,
15 the Chief of the General Staff issued a strong warning
16 to War Minister HATA that he should do his utmost to
17 cope with the situation.^b The result was that HATA
18 was caught between the General Staff and the Cabinet
19 and felt obliged to resign his post. This is the
20 true reason for the resignation of the YONAI Cabinet,
21 and illustrates again the superior influence and
22 aggressiveness of the General Staff.
23

24 44. The prosecution, however, has attempted
25 (43. a. Ex. 3454, Tr. 33,114.
b. Tr. 33,115.)

persistently to impress the Tribunal with MUTO's role.

1 For that purpose they have cited the testimony of
2 TANAKA, Ryukichi, YONAI's interrogatory, and a passage
3 from the HARADA Memoirs which says that when MUTO,
4 with Vice Minister ANAMI, called on Chief Cabinet
5 Secretary ISHIVATA, he, MUTO, said, "There is no
6 other way but to have War Minister HATA resign."^a

7 However, as to the falsehood of this passage from
8 HARADA's Memoirs, it has been made clear by MUTO's
9 answers to the questions of the acting President
10 when he stood in the witness box, explaining the
11 reasons and circumstances of his calling on ISHIVATA,
12 and explaining that his visit was made under orders
13 from the War Minister and Vice Minister.^b Moreover,
14 ISHIVATA later testified himself that, MUTO being a
15 military man and particularly careful in his use of
16 words, could not have said that War Minister HATA, his
17 superior, would be compelled to resign. He did say
18 that HATA, by the circumstances, might be obliged to
19 resign.^c

21 45. We invite the particular attention of
22 the Tribunal to the fact that the defense has chal-
23 lenged throughout the accuracy and reliability of
24

25 (44. a. Ex. 3808-A, Tr. 37,862; Ex. 3831-A, Tr. 38004;
also Tr. 15,901.

b. Tr. 33,241-6

c. Ex. 3883, Tr. 38,710-1).

1 the HARADA Memoirs. I personally challenged an excerpt
2 offered against MUTO to the effect that he had visited
3 ISHIMATA in the company of the War Vice Minister;
4 and we later produced the affidavit of ISHIMATA
5 himself, flatly denying the accuracy of the HARADA
6 Memoirs by stating "positively" that he did not talk
7 with MUTO in the company of Vice Minister ANAMI.^a
8 I further made the observation, which I think is
9 highly important for the Tribunal's consideration,
10 that the prosecution could have presented testimony
11 by ISHIMATA himself, rather than relying on the second
12 and third-hand hearsay of HARADA.^b The prosecution
13 did not even wish to cross-examine him. As for
14 YONAI's remark, it is only a statement that MUTO
15 was Chief of the Military Affairs Bureau at the time,
16 and moreover he immediately added that he did not
17 know MUTO personally.^c

18 46. Lastly, as to TANAKA's testimony, we
19 repeat that his absence from Tokyo at that time dis-
20 qualifies him from giving reliable testimony on the
21 point in question.^a

22 47. Further, it should be noted that during

23 (45. a. Ex. 3883, Tr. 38,710

24 b. Tr. 38,709

25 c. Ex. 3831-1, Tr. 38,004.

(46. a. Reference Tr. 29,397-8; LD-61)

1 the period in which the issue assumed the most serious
2 proportions, MUTO, accompanying the Emperor of Man-
3 chukuo, who was on a visit to Japan, was absent from
4 Tokyo; and that on returning he found that the letter
5 from the Chief of the General Staff had already been^a
6 delivered to General HATA by the Vice Chief of Staff.
7 Surely the general resignation of the Cabinet is not
8 attributable to MUTO. The prosecution states that
9 MUTO was present at the Three Military Chiefs' con-
10 ference prior to the resignation of War Minister
11 HATA, and suggests that he was also present when
12 HATA consulted with the military councillors of the
13 Army Council.^b Put this is untrue. HATA met
14 separately some of the generals who were military
15 councillors at that time; he did not cause a conference
16 to be held. Moreover, the prosecution's contention
17 on these points is based on rejected evidence.^c

18 48. The conclusion of the Tripartite Pact
19 was chiefly due to the part played by MATSUOKA,
20 Foreign Minister of the KONOYE Cabinet. It was not
21 until the chief of the treaty bureau explained in the
22 Investigating Committee of the Privy Council as to
23 the interpretation of the articles of the treaty that
24

25 (47. a. Ex. 3454, Tr. 33,114-5, 33,230, 33,244-7,

29,023

b. 00-27

c. Tr. 28,942, 37,246-7)

MUTO could understand the significance of the treaty.^a

1 And as Colonel ISHII testified, MUTO, about the middle
2 of June in 1941 was bewildered at the real intentions
3 of Foreign Minister MATSUOKA, who advocated an
4 aggressive policy against the Soviet Union at one
5 time and proposed Japan's advance towards the South
6 at another.^b And again ISHII stated that MUTO
7 never insisted personally on Japan's participation in
8 the Triple Alliance between Japan, Germany and Italy;
9 that Foreign Minister MATSUOKA had the whole field
10 to himself in the conclusion of the pact; that MUTO
11 himself read the text of the treaty for the first
12 time after its conclusion; and that, even in the
13 Foreign Ministry, only those especially concerned
14 with it participated in the negotiations.^c As to
15 this, the witness TAKURO testified much to the same
16 effect.^d

18 49. Asserting that MUTO's receiving a decor-
19 ation was strong evidence of his co-operation with
20 Germany and entry into the alleged common conspiracy,
21 the prosecution stated that "MUTO was recommended to
22 Ribbentrop for the decoration of the Great Cross of
23

24 (48, a. Ex. 3480, Tr. 33676; Ex. 3442, Tr. 32,995;

Ex. 3454, Tr. 33,116-7.

25 b. Ex. 3480, Tr. 33,678

c. Ex. 3480, Tr. 33,676

d. Ex. 3442, Tr. 32,995)

Germany because of his contribution to German-Japanese cooperation.^a But exchange of decorations is commonly known to be diplomatic custom, and it is universally known that those who ought to be recognized because of their occupying official positions habitually receive decorations of suitable degree from other countries. That he was recommended for recognition due to extraordinary activities, rather than for the position he held, is another of the prosecution's unconvincing contentions. The question has been clarified by the testimony of General Kretschmer.^b Further, General MUTO's answer on cross-examination^c makes clear that he was against the conclusion of the Tripartite Pact; that the Germans did not make a "colossal diplomatic blunder" (the prosecution's term) in recommending him for a decoration; and that the simple truth was that, once the Tripartite Pact had been concluded at the insistence of Foreign Minister MATSUOKA, the collateral matters related thereto were handled, in the case of the War Ministry, by the Military Affairs Bureau. His personal opinions were of no consequence whatever, and he simply worked, as any good military man would, within the bounds of

(49. a. 100-46-51; Tr. 11,355, 16,874

b. Ex. 3034, Tr. 27,092-5

c. Tr. 33,222-3)

the duties assigned him.^d In point of fact, he
1 first learned of the matter of the recommendation
2 when he heard of it in this courtroom. At the time
3 of the recommendation he had already been transferred
4 to Sumatra, and never received any such decoration.^e

5 50. Presenting excerpts from a newspaper
6 article, the prosecution presented a totally unfair
7 version of a speech made by MUTO before the Diet
8 Accounts Committee, attempting to show that he
9 advocated totalitarianism and extreme nationalism,
10 disclaiming party politics and liberalism.^a The
11 summation suggests that, taking advantage of good
12 opportunities such as the German victory at Dunkirk
13 and France's surrender, he made this public speech
14 as a preliminary step to Japan's conclusion of a
15 military alliance with Germany.^b We wish to point
16 out, however, that this speech was made about two
17 months prior to the battle of Dunkirk and the
18 surrender of France. It could hardly be possible
19 for him to have foreseen Germany's victory two months
20 before it occurred. Here, again, the weakness,
21 sometimes even the absurdity, of the charges against
22

23 (49. d. Tr. 33,223

24 e. Ex. 3454, Tr. 33,118

(50. a. Ex. 2243, Tr. 16,137-9; 00-20, 22

25 b. 00-20, 22)

him are disclosed. Moreover, the newspaper report,
1 introduced by the prosecution, is a distorted report
2 of the speech, and a study of the stenographic record
3 of the same speech, which was presented in his defense,
4 makes the distortion clear.^c

5 51. The above-mentioned speech was presented
6 by MUTO, owing to the War Minister's inability to
7 attend, before a small committee of perhaps ten
8 members -- not, as charged, on the floor of the Diet.
9 He made the speech as the War Minister's representative.
10 In it he stated that cooperation between the political
11 parties, high government officials and the military
12 was indispensable to overcome the national crisis
13 then confronting Japan. As is clear from that steno-
14 graphic report, his statement, far from disclaiming
15 party politics, urged their strong development. And
16 the phrase, "the totalitarian principle should be
17 adopted", came from the interpellator, not from MUTO.
18 He acknowledged that that term was used in Europe,
19 but that it was inappropriate for Japan; that the
20 best expression he could think of for Japan's par-
21 ticular creed was "a principle of national polity."
22 The Japanese expressions for that phrase and for
23 "nationalism" are very much alike -- Kokutai Shugi
24 (50. c. Ex. 3440, Tr. 32,966-73)
25

and kokuke shugi -- but a study of the stenographic
1 record shows his true attitude.

2 52. As for his denial of liberalism, as
3 alleged by the prosecution, MUTO merely emphasized
4 the great need for everyone to work for the national
5 welfare in a time of great need, and to sacrifice
6 thought of self. Furthermore, he replied to HAMAJI's
7 denunciation of the bureaucrats, the military, and the
8 political parties by saying that all such elements,
9 if they were truly at fault, should correct themselves
10 and accept criticism. He welcomed any such suggestions
11 as far as the military were concerned. ^a The Prosecu-
12 tion quotes the interpellation by Diet member INADA, ^b
13 whereas INADA was not present when MUTO spoke, and,
14 moreover the document relative to that speech was
15 rejected by the Tribunal.

17 53. An unbiased reading of MUTO's speech
18 proves that there is not a single sentence insisting
19 on the abolition of political parties and liberalism.
20 Yet it is contended by the prosecution that his speech
21 brought immediate results, such as Ambassador Ott's
22 concerning the stiffening of Japan's attitude toward
23 Britain, Count ARIMA's talk with KIDO regarding the

24 (52. a. Ex. 3440, Tr. 32,968; Tr. 32,972;
25 Ex. 3454, Tr. 33,098-101.
 b. 00-23-4)

1 merger of political parties, and KONOYE's dining with
2 these two persons.^a However, such events took place
3 because of changes in the general situation at home
4 and abroad, and no reliable evidence has been produced
5 to prove that the speech by MUTO brought about such
6 events.

7 54. MUTO's testimony on redirect examination
8 renders this even more clear, and it stands unrebutted.
9 He showed that he attended that committee meeting in
10 question at the request of the War Minister, who was
11 unable to attend; that he was never aware at any time
12 of insistence on the part of the Army that there be
13 a single political party; rather, that the Army felt
14 that a single party system would be tantamount to no
15 political parties at all and would collapse through
16 internal corruption; and that the Army never insisted
17 on the disbanding of all political parties.^c This
18 situation was also testified to by the witness OKADA,
19 one of the former leaders of the Seiyukai.^b

20 55. TANAKA, Ryukichi, testified that,
21 shortly after the reply of 25 November was received
22 from Secretary Hull, to Foreign Minister TOGO's
23 proposal, at a meeting of Bureau Chiefs of the War
24

25 (53. a. 00-23-4

(54. a. Tr. 33,273-4

b. Tr. 17,741-2)

Ministry MUTO said that if Japan adopted the proposal
1 of the United States it would result in a general ex-
2 haustion of Japan's resources, and a general collapse.^a
3 He testified also that at a meeting in the War Ministry
4 on 9 December 1941 MUTO said that the dispatch of
5 Ambassador KURUSU and the Tatsuta Maru was nothing
6 more than a camouflage.^b He also testified that at
7 a meeting of bureau chiefs on or about 27 November
8 1941 MUTO read a document entitled "Principle Reasons
9 Alleged for the Commencement of Hostilities Against
10 the U.S.A. and Britain."^c This is entirely false
11 testimony by TANAKA, as is shown by the testimony
12 of the witness MIKI, then Chief of the Medical Affairs
13 Bureau, who also attended the same meeting. MIKI,
14 after testifying that what TANAKA stated was untrue,
15 added that on 9 December 1941 all the bureau chiefs
16 did not assemble in the diningroom, as they were all
17 too busy.^d

19 56. MUTO himself flatly denied the above
20 claims of TANAKA, saying that he understood the dis-
21 patch of KURUSU to America was a step sincerely taken.
22 He knew nothing regarding the dispatch of the Tatsuta

23 ((55. a. Tr. 15,868
24 b. Tr. 15,871
25 c. Ex. 1175, Tr. 10,362
d. Ex. 3447, Tr. 33,056)

Maru, which had no connection with the War Minister.^a

1 57. It is suggested that it is evidence of
2 participation in a conspiracy that NUTO attended
3 Liaison and Imperial Conferences and the Investigating
4 Committee of the Privy Council.^a It is quite clear
5 that this is wrong, and that he attended such con-
6 ferences only in the capacity of a secretary or ex-
7 plainer. He had no voice, and no right to sign the
8 resolutions decided upon. On cross-examination he was
9 asked how it was possible for such a high-ranking
10 officer to do such insignificant work, and this
11 suggestion was repeated in the summation.^b As compared
12 to the high officials who were members of such con-
13 ferences, the Chief of the Military Affairs Bureau
14 was insignificant. The ranks which he held at the
15 time were less than corresponding ranks in most other
16 armies, and it was not at all unnatural that he attended
17 to miscellaneous matters as a secretary or administra-
18 tive official. Does the prosecution contend that dis-
19 cussions on such high levels in any other country would
20 be attended by some lowly private or non-commissioned
21 officer? It would be an absurd contention; yet that is
22 the implication found in their cross-examination.
23
24

(56. a. Ex. 3454, Tr. 33125.

(57. a. Tr. 16,800; Ex. 3480, Tr. 33,673-4; Tr. 16,873

b. Tr. 33,180-1)

MUTO explained in detail about the arrangements at these conferences and the work of the secretaries. And Mr. YAMAMOTO, in explanation of their duties, testified that they involved only clerical work, namely the "preparations, explanation and adjustment of the draft, as well as the collection of the materials concerned." And he made clear that drafts discussed at such conferences were not written by the secretaries, but rather by the ministries concerned. "To collect and submit and distribute these drafts to the conference is what is meant by 'preparation'." The decision of the conference was not made by a simple majority, but was continued until all views of the members present were completely agreed, then all members present signed the draft decided upon. But ". . . neither HOSHINO, MUTO nor OKA had any right to express their opinions, to vote, nor had they the right to sign the document." The secretaries at the Imperial Conferences had even less to do, simply distributing the documents prepared by the organ in charge; and, again, never signing the resolutions. As to the duties of the explainers at the Investigation Committee of the Privy Council, it should be noted that, primarily, only political matters

58. a T. 33,269-70

b Ex. 3444, T. 33,016-8

1 were to be explained and only when technical explana-
2 tion of details was required did the explainers speak
3 for the minister. MUTO was such an explainer, but
4 actually ne never explained even once.^c That was as
5 he testified; and it is curious that throughout this
6 trial the prosecution has never once been able to
7 quote him at these conferences, or even to prove what
8 subjects he allegedly discussed. The only remote ap-
9 proach to such a thing was by a reference in the prose-
10 cution's summation which was later corrected by an
11 errata sheet, since it apparently was based on a pro-
12 posed exhibit which was never actually accepted by
13 the Tribunal.^d

14 59. The accused TOJO has given reliable and
15 authoritative testimony on the matter of these con-
16 ferences, showing that the cabinet was responsible
17 for matters of administration, while matters of supreme
18 command were the concern of the High Command. "The
19 Directors of the Military and Naval Affairs Bureau
20 and the Chief Cabinet Secretary were to be present at
21 the conference, but they were not responsible members."^a
22 The prosecution asserts that, through cross-examination
23 of TOGO, it has found evidence that MUTO took part in
24

25 58. c Ex. 3454, T. 33,097-8

d 00-83-4

59. a Ex. 3000, T. 36,336-7

the conference discussions. ^b However, the testimony centered on HOSHINO; and, even as to him, his participation was not as significant as is asserted; the prosecution obviously strains the point by giving a somewhat elaborate explanation of what it means to take part in a debate. TOGO testified, however, only that HOSHINO spoke as an explainer, within the limits of his duty, and never persisted in his point as the prosecution asserts. It is clear that TOGO does not recollect anything that MUTO said, and, as already noted, there is no evidence whatsoever that he was an active debater, discussing matters of policy-making. ^c The fact that he attended conferences, which is not disputed, does not mean that he participated in a so-called joint conspiracy.

60. It has been proved that MUTO did not attend the Imperial Conference of 2 July. ^a Although the prosecution originally claimed that he attended, this was abandoned in the answer to our motion to dismiss. ^b In spite of this, the prosecution in its summation again contends that he attended, demonstrating again the confusion and distortion in the claims against

59. ^b 00-81

^c T. 36,085-6

60. ^a Ex. 1107, T. 10,140; Ex. 3480, T. 33,673-4

^b T. 16,873

MUTO.

1 61. The prosecution emphasizes the importance
2 of the functions of the Chief of the Military Affairs
3 Bureau, and suggests that MUTO was what might be
4 called the "Chief of Staff of the War Ministry."^a
5 It is further suggested that, even though he and
6 others attended conferences only in a secretarial
7 capacity, "they were all persons of much greater posi-
8 tion and influence than the word would imply."^b Further,
9 it is said that he was a member of several boards and
10 committees and that he "exercised directing or possi-
11 bly controlling influence over domestic and interna-
12 tional policies and politics, over propaganda and
13 press control, and over military and naval action.
14 For instance, in June 1940 he was with KOISO in a dis-
15 cussion with the German Ambassador of various aggres-
16 sive schemes."^c The record does not support any such
17 claims, unless it be the testimony of TANAKA, who was
18 rumored to be a rival of MUTO at that time, and
19 YAMAZAKI, Shigeru, an officer attached to the P.O.W.
20 Administration Bureau.^d We have already demonstrated
21 the unreliability of TANAKA's testimony,^e and have
22

23 60. c 00-58
24 61. a 00-4
25 b T. 16,800
 c Ex. 523, T. 15,870-1; 16,873
 d 00-4; 100
 e T. 15,863-4

observed how heavily the prosecution has relied on it.

1 As to YAMAZAKI,^f he was not attached to the bureau when
2 MUTO was the Chief of the Military Affairs Bureau
3 and he may well have testified as he did in order
4 that the P.O.W. Administration Bureau might not be
5 involved in the responsibility for disregarding the
6 organization and system of the War Ministry. Under
7 such considerations, his testimony is highly suspect.

8
9 62. As to the authority of the Military Af-
10 fairs Bureau and its chief, we submitted the affidavit
11 of Colonel NISHIURA, who had long served with the bu-
12 reau, was well acquainted with MUTO's actions, and who
13 was at the same time generally admitted as an authority^a
14 on the subject of the bureau's duties and functions.
15 He made it clear that the Chief of the Military Affairs
16 Bureau had exactly the same authority as other bureau
17 chiefs, within and without the War Ministry. As a
18 result it is clear that he had no authority whatsoever
19 in deciding important policies; he has not been shown
20 even once to have given a decision on such matters. He
21 merely acted as a subordinate to the War Minister and
22 discharged faithfully such duties as were placed upon
23 him. It is apparent, too, that his duties required him
24 to handle business between the General Staff and the
25

61. f T. 14,844-6

62. a Ex. 3439, T. 32,946-59

1 War Ministry, and to act as spokesman for the General
2 Staff in dealing with other government agencies.

3 63. It is insisted that MUTO often repre-
4 sented both the Army and Navy at the same time. This
5 contention is based on the fact that he once gave an
6 address on behalf of the Army and Navy at a meeting
7 of the Imperial Rule Assistance Association. However,
8 it had been agreed by the War and Navy Ministers that
9 such addresses were to be given by representatives of
10 both ministries.^b

11 64. The prosecution exaggerates the point
12 stated by TANAKA that the War Ministry, particularly
13 the Military Affairs Bureau, had authority to rule
14 the budget and thus control the General Staff.^a To
15 that assertion, NISHIURA's words are an adequate answer.^b
16 He explained that budget matters were the concern of
17 the Military Administration Section; and that that
18 section could never intentionally interrupt a plan of
19 the General Staff, which was thoroughly familiar with
20 the amount of appropriations and the outline of their
21 distribution. It is further alleged that MUTO acquired
22 for the Army its necessary appropriations, but this

- 23 63. a 00-6
24 b T. 33,266
25 64. a T. 15,859-60
b Ex. 3439, T. 32,956-7

also is untrue. As shown in the organization ordinance, with regard to the Army appropriation, negotiations with the Finance Ministry were to be conducted by the Chief of the Intendance Bureau, and, at cabinet meetings, by the War Minister.^c

65. NISHIURA also makes clear that although MUTO was named to various committees of the cabinet or other ministries, this was equally true of all other bureau chiefs, for the purpose of liaison. The resolutions of such committees were not binding on the ministries involved, and, as a matter of fact, those named to the committees were rarely present, being most often represented by a proxy.^a Anyone who occupied the post that MUTO did would likewise be appointed to such committees.

66. The prosecution further asserts that MUTO exerted remarkable influence on propaganda and control of newspapers.^a This assertion must be based only on what TANAKA, Ryukichi, testified.^b His error has been conclusively proved.^c TANAKA is apparently ignorant of the regulations with regard thereto. MUTO has given a thorough, detailed, and undisputed explanation of this

64. c 00-6; Ex. 74, Art. 25, p. 684

65. a Ex. 3439, T. 32,958

66. a T. 16,873

b T. 15,871

c Ex. 3439, T. 32948-9; Ex. 3454, T. 33,093,

33,108

^d
matter, showing that, during his tenure, the Military
1 Affairs Bureau took charge only of editing the
2 "Tsuwamono", an innocuous army weekly; that soon after
3 the Second KONOYE Cabinet was organized, all censor-
4 ship and control of newspapers and magazines relating
5 to the army were taken over by the Intelligence Bureau
6 of the Cabinet; and that the Chief of the Information
7 Section of Imperial General Headquarters was not at
8 all controlled as such by the Chief of the Military
9 Affairs Bureau.

10
11 67. TANAKA, Ryukichi, testified that, from
12 his own "subjective view" and "from the side lines",
13 General TOJO was influenced by MUTO,^a and that the
14 Military Affairs Bureau promoted the idea of an alliance
15 with Germany.^b He gave nothing concrete -- merely his
16 own opinion. Moreover, his testimony has been com-
17 pletely upset by cross-examination.^c He testified that
18 various bureau chiefs were treated equally by TOJO and
19 that officers were never allowed to do anything outside
20 his will or intentions. Further, Lieutenant General
21 TANAKA, Shinichi, confirmed that MUTO served most faith-
22 fully, always respecting the instructions and orders
23

24 66. ^d Ex. 3454, T. 33,103-9

25 67. ^a T. 15,900

^b T. 15,900-1

^c T. 15,906-8; 38,900

1 of his superior, and remaining strictly within the
2 bounds of his actual duties.^c

3 68. We should like to refer to what MUTO
4 testified regarding the above^a and to NISHIURA's affi-
5 davit, in which he deposed that from the time General
6 TOJO took the post of War Minister, no views of the
7 Chief of the Military Affairs Bureau were considered
8 on personnel matters.^b As a final consideration on
9 this subject, we point to the fact that MUTO, soon
10 after the outbreak of the Pacific War, was ordered to
11 make a trip to the southern region (in March 1942) and
12 upon his return was transferred to Sumatra, not return-
13 ing to Tokyo until the end of the war.^c Had he served
14 as the "brain" of General TOJO, as stated by TANAKA,
15 why would he have been transferred at the most criti-
16 cal moment? General TOJO served for two years as
17 Premier and War Minister after General MUTO was trans-
18 ferred.

19 : THE PRESIDENT: We will adjourn until half
20 past one.

21 (Whereupon, at 1200, a recess was taken.)
22

23 67. d T. 16,170-1
24 68. a Ex. 3454, T. 33,120-1
25 b Ex. 3439, T. 32,949
c Ex. 3454, T. 33,131

AFTERNOON SESSION

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2 The Tribunal met, pursuant to recess, at
3 1330.

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

6 THE PRESIDENT: With the Tribunal's permission,
7 the accused KAYA will be absent from the courtroom
8 the entire afternoon, conferring with his counsel.

9 Mr. Cole.

10 MR. COLE: May it please the Tribunal, I
11 resume at page 51, paragraph 69:

12 69. In its reply to the defense motion to
13 dismiss, and in summation, ^(a) the prosecution refers to
14 exhibit 523 and alleges therefrom that MUTO was "with
15 KOISO in a discussion with the German Ambassador of
16 various aggressive schemes." ^(b) But the exhibit itself
17 warrants no such allegations. ^(c) On the contrary, it
18 serves only to show how hard MUTO worked for peace
19 between Japan and China, and his recognition of the
20 need to settle the China Incident. And MUTO's comment ^(d)
21 shows that the date of the exhibit corresponds with the
22

23 69. (a) 00-52-61.
24 (b) Tr. 16,873.
25 (c) Ex. 523, Tr. 6174-8.
(d) Ex. 3454, Tr. 33,115-6.

1 very time when opinion in Japan was in favor of asking
2 Germany to act as mediator. As for the French Indo-
3 China reference, it was at the time when an agreement
4 had been reached regarding transportation of materials
5 to the Chungking Regime, and an Inspection Corps under
6 NISHIHARA had already departed for Indo-China. This
7 did not involve MUTO's personal opinions, "but a
8 description of what was then really going on." The
9 references to KOISO and MUTO have no connection with
10 the talk with the German Ambassador either in point
11 of time or place.

12 70. With regard to Japan's advance into the
13 South Seas region, ^(a) that is, particularly MUTO's
14 alleged connection with it, there is absolutely no
15 convincing proof. It is claimed ^(b) that he was
16 appointed advisor of the South Seas Bureau of the
17 Overseas Ministry, requiring him to supervise the
18 detailed development of Japan's intrusion to the south.
19 According to the organizational regulation of that
20 ministry, ^(c) it was a nominal and powerless post,
21 carrying no important duty. And there is no evidence,
22 whatever that he attended any meetings or took part
23 in their deliberations or decisions. The same is true
24

25 70. (a) 00-52-61.
(b) 00-56.
(c) Ex. 87, Tr. 684.

1 of the allegation as to his appointment as a member of
2 the Establishment Committee of the South Seas Develop-
3 ment Bank. (d)

4 71. Now as to exhibit 3445, presented by the
5 prosecution. It was attempted to show that the document
6 was drawn up by MUTO. (a) (b) In summation the prosecution
7 made the same attempt most pertinaciously. The document
8 is a tentative draft of a demand for oil and other
9 materials in case either Plan A or B should be accepted
10 by the United States. Because, on the cover, there is
11 a pencilled notation, "From MUTO, Chief of the Military
12 Affairs Bureau. YAMAMOTO," the prosecution erroneously
13 urges that MUTO draw the plan. In fact, both in the
14 questions and in the summation, they refer to it as
15 "the MUTO plan" -- a term which is completely unjusti-
16 fied by the evidence and is the prosecution's attempt
17 to fasten on him the authorship of the document.

18 72. The testimony of both witness YAMAMOTO
19 and MUTO (a) prove the error of this supposition.
20 YAMAMOTO testified (b) that when MUTO forwarded the docu-
21 ment he explained that the General Staff had sent it
22 with "very strong terms"; because of that, he was
23

24 70. (d) Ex. 118, Tr. 742.

25 71. (a) Tr. 33,037.

(b) 00-88-91a.

72. (a) Tr. 33,151-5.

(b) Tr. 33,043-4.

1 sending it on for reference; that because of his efforts
2 for the submission of Plans A and B, the General Staff
3 was provoked and drew up the proposal partly to
4 embarrass MUTO and as if giving "tit for tat." YAMAMOTO
5 also testified that MUTO said that he was dismayed at
6 that attitude of the General Staff.

7 73. It is only common sense to assume that
8 the pencilled note on the cover of the document is an
9 indication of the person who sent it to YAMAMOTO;
10 surely if MUTO had originated it, it would not appear
11 merely as a pencilled note. To know who originated
12 the document, we have the clear-cut and totally undis-
13 proved testimony of both MUTO and YAMAMOTO. The prose-
14 cution contends that if, as claimed, TOGO had scolded
15 YAMAMOTO for receiving the proposal, the Foreign Minis-
16 try would not have marked it "top secret." But it
17 must be obvious that such a notation would be affixed
18 by the originating office, that is, the General Staff.

19 74. The contents of the document show plainly
20 that it was drafted by those who disliked the negotia-
21 tions between Japan and the United States. The prosecu-
22 tion takes a peculiarly contradictory position by show-
23 ing MUTO's influencing General SUGIYAMA to stop his
24 opposition to the plan, and at the same time claiming
25 that MUTO was the author of this exhibit in

1 question. (a) MUTO's sincerity in the matter of negotia-
2 tions with America is vividly demonstrated by the testi-
3 mony of Bishop Walsh, which will be discussed later.

4 75. The prosecution attaches importance to (a)
5 MUTO's alleged participation in politics, especially
6 to his being a secretary to the Preparation Committee
7 on the construction of Prince KONOYE's new order.
8 But such assignments were a routine duty for the Military
9 Affairs Bureau. MUTO's views on politics are disclosed
10 in the prosecution's own evidence from the HARADA
11 Memoirs (b) in which he was quoted as saying that the
12 main characteristic of the new organization was that
13 of being an association of political parties, and,
14 because of that, it was not desirable for the army to
15 participate in it. MUTO also testified that military
16 men should not participate in politics, but that the
17 War Minister, being in the cabinet, must do so for
18 obvious reasons, and must have within his ministry a
19 means of carrying out the policies decided upon. The
20 Military Affairs Bureau was the bureau whose task and
21 duty that was -- to carry out the decisions, but not
22 to interfere in politics itself. (c)

24 74. (a) 00-90.

25 75. (a) Tr. 15,900; 15,915-6.

(b) Ex. 3809-A, Tr. 37,874-5.

(c) Ex. 3454, Tr. 33,122.

1 76. On the basis of MUTO's interrogatory, (a)
2 it is alleged that he was always active in politics as
3 Chief of the Military Affairs Bureau, but this is not
4 disclosed at all in the exhibit. (b) As he stated on the
5 stand, he was required as a matter of duty to study
6 political matters as they affected national defense. (c)

7 77. It is further claimed that MUTO took part
8 in formulating the "Outline of the Fundamental National
9 Policy" of 26 July 1940. (a) The fact is, however, that
10 the Military Affairs Section was ordered to draw up a
11 policy plan which was to be presented to the Premier
12 by War Minister TOJO. This was submitted to the cabinet
13 conference, and it was there that the so-called "Outline
14 of the Fundamental National Policy" was developed, the
15 suggestions of the Military Affairs Section being a part
16 of the materials considered for it. (b) This fact clearly
17 demonstrates three points: 1. That the draft from
18 the Military Affairs Section as a whole was not adopted
19 for the final plan; 2. That MUTO, not being a cabinet
20 member, was not present at the conference when the
21 final plan was adopted; 3. That the draft from the
22 Military Affairs Section was merely in the form of
23

24 76. (a) Ex. 255, Tr. 3435.

(b) 00-26A.

(c) Ex. 3454, Tr. 33,120.

25 77. (a) 00-30, 31-32.

(b) Tr. 33,251-4.

1 suggestions, drafted under orders from War Minister
2 TOJO, and not at all the responsibility of MUTO. With
3 regard to the allegation that he attended the Liaison
4 Conference when this matter was discussed, it is pro-
5 bably superfluous to observe that he was only a secre-
6 tary, had no right to speak or vote, nor to affix his
7 signature. (c) As regards these matters, the prosecution
8 quotes two statements, but we are at a loss to find
9 them anywhere in the record. (d)

10 78. MUTO is claimed to have tried to dissolve
11 the political parties and to organize a pro-militarist
12 party. (a) It is made clear by his testimony that the
13 claim is a distortion of the facts. He testified that
14 the army had some interest in the new movement by
15 KONOYE, but had no idea of a single party, which would
16 be tantamount to no party at all and would lead to
17 political corruption; he further denied flatly that
18 he ever urged the dissolution of political parties. (b)
19 The committee of secretaries above mentioned was a
20 group, ranking definitely below the cabinet members,
21 for the purpose of studying drafts made by other
22 organizations, but no plan was drafted by it. (c) The

24 77. (c) Ex. 3444, Tr. 33,916-8; Ex. 3439, Tr. 32,958.

(d) 00-32.

25 78. (a) 00-33-38.

(b) 33,251-4.

(c) Tr. 33,259.

1 prosecution, however, charges that MUTO tried to delete
2 that part of KONOYE's announcement to the effect that
3 the "new order" was neither Nazism nor Fascism. MUTO
4 explained that, although he urged the cutting of the
5 original draft to half its length, he withdrew that
6 suggestion when he was informed that the original draft
7 had been made by KONOYE himself. The prosecution called
8 that an excuse, both implausible and ridiculous. ^(d) We
9 consider that it is quite plausible that a soldier
10 should want to avoid wordiness, and to claim that this
11 proves him a believer in Nazism or Fascism is in itself
12 implausible and ridiculous. As is evident from MUTO's
13 words before the Diet committee, ^(e) he advocated that
14 Japan should not adopt occidental totalitarianism. And
15 he had no contact with KONOYE so far as the drafting
16 of the constitution was concerned.

17 79. Next, as to the evidence offered regarding
18 the talk between Captain TAKAGI and HARADA, which
19 appears in the HARADA Memoirs, the prosecution con-
20 tended that MUTO said he would have the political
21 parties dissolved, organize pro-military parties, and
22 make KONOYE a robot of the military circles. ^(a) It must
23 be fresh in the minds of the Tribunal that the decision
24

25 78. (d) 00-36.

(e) Ex. 3440, Tr. 32,966-73.

79. (a) 00-37.

1 of the language board proved that only one slight portion
2 of that excerpt was the quotation of MUTO, the rest
3 being the opinions of either TAKAGI or HARADA. (b) In
4 that quotation, MUTO stated that the military's parti-
5 cipation in a politically-tinged group was undesirable;
6 and this has been his consistent belief.

7 80. We have demonstrated in the foregoing that
8 MUTO had no aim or intention of any kind concerning a
9 conspiracy, and that no act of conspiracy has been shown.
10 Throughout his whole military career he never held
11 command responsibility except for the period in Sumatra,
12 and as to that period no crimes were committed under
13 his jurisdiction. At all other times he has simply
14 observed a soldier's duty of carrying out the assign-
15 ments given to him. We take due cognizance of Article 6
16 of the Tribunal's Charter, which states that "Neither
17 the official position, at any time, of an accused, nor
18 the fact that an accused acted pursuant to an order of
19 his government or of a superior shall, of itself, be
20 sufficient to free such accused from responsibility
21 for any crime with which he is charged." But we contend
22 that faithful attention to duty, and the lack of command
23 responsibility must, in all fairness, play the major part
24 in a consideration of charges against a professional
25 military man.

79. (b) Tr. 37,874-5; 37,979.

1 81. Furthermore, there is strong, undisputed
2 testimony, of an unimpeachable character, that MUTO
3 devoted himself to a successful conclusion of the
4 negotiations with America during this period in the
5 Military Affairs Bureau. This testimony includes the
6 affidavits of Bishop Walsh of Maryknoll,^{a.} General
7 IWAKURO,^{b.} who assisted Ambassador NOMURA, Mr. YAMA-
8 MOTO,^{c.} of the American Bureau in the Foreign Office,
9 and Colonel ISHII,^{d.} who dealt with diplomatic
10 matters, as they affected the army, in the Military
11 Affairs Section under MUTO.

12 82. Bishop Walsh, whose integrity and
13 motives can hardly be questioned, in concert with
14 the late father Drought made efforts to bring the
15 Japanese-American negotiations to a successful con-
16 clusion. He testified that MUTO was deeply concerned
17 about, and earnestly exerted himself for the mainte-
18 nance of peace between Japan and the United States;
19 that their joint efforts proved to be dangerous for
20 both; and that, when he returned to America with
21 Premier KONOYE's letter to President Roosevelt, MUTO
22 provided him with a letter of safe conduct, which
23

- 24 81. a. Ex. 3441, T. 32978.
25 b. Ex. 3442, T. 32992.
c. Ex. 3444, T. 33016.
d. Ex. 3480, T. 33674.

proved to be of practical use.^{a.} Bishop Walsh's
 1 testimony was of such convincing force and sincerity
 2 that the prosecution could do nothing but to ignore
 3 it.
 4

83. Witness YAMAMOTO testified that MUTO
 5 had considerable anxiety in adjusting and softening the
 6 strong opinion of some of the military, and always
 7 wished the negotiations to succeed.^{a.}
 8

84. Witness IWAKURO testified that on 15
 9 April 1941 a tentative draft of an understanding be-
 10 tween Japan and America was handed to Secretary Hull
 11 by Ambassador NOMURA and was reported to the Japanese
 12 Foreign Ministry and to TOJO. "MUTO was very delighted
 13 at this and sent me a telegram of thanks."^{a.} This
 14 was confirmed by the testimony of Lieutenant Colonel
 15 ISHII, who said that upon receipt of word of the draft
 16 of an understanding MUTO was very much pleased.^{b.}
 17

18 IWAKURO further testified that when he told MUTO that
 19 there was a good possibility of success in the nego-
 20 tiations, MUTO was very delighted.^{c.} From all of
 21 these undisputed facts, MUTO's sincerity becomes
 22 abundantly clear.
 23

24 82. a. Ex. 3441, T. 32986-7; Ex. 3441-A, T. 32991.

83. a. Ex. 3444, T. 33018.

25 84. a. Ex. 3442, T. 32998.

b. Ex. 3480, T. 33676.

c. Ex. 3442, T. 32999.

1 Tripartite Pact; that diplomatic negotiations must
2 succeed at no matter what cost; that he cooperated
3 with the Foreign Ministry in attempts to meet America's
4 wishes, made strenuous efforts to avert war, prepared
5 to attend the proposed KONOYE-ROOSEVELT talks, and
6 said that war should be averted at all costs. All
7 this testimony remains uncontroverted. It is convinc-
8 ing throughout, and substantiates HUTO's motives in
9 everything he did.

10 87. As to the document which was drafted at
11 a conference attended by HUTO and OKA, held at the
12 residence of the Foreign Minister on 6 September,
13 the prosecution has erroneously contended that it was
14 drafted by those two alone, and that Japan made no
15 concessions. But the testimony of ISHII^{a.} shows that
16 Japan had a very compromising attitude and that
17 actually many concessions were made in the draft by
18 the TOJO Cabinet.^{b.}

19 88. Concerning the circumstances which
20 brought about the fall of the Third KONOYE Cabinet in
21 October 1941, the prosecution produced the document
22 called "Facts Pertaining to the Resignation of the
23

24 87. a. Ex. 3480, T. 33680.

25 b. DD 3100, Gen. Summation, Japanese-American
Negotiations, Para. 55-56.

1 Third KONOYE Cabinet." ^{a.} This was written personally
2 by Prince KONOYE, and demonstrates MUTO's sincere
3 effort to avoid war by attempting to make the Navy's
4 attitude clear, and thus to control certain elements
5 in the army. This fact is also recognized in the
6 prosecution's answer to the motion to dismiss in
7 regard to the accused OKA. ^{b.} MUTO testified fully on
8 the matter, ^{c.} showing that his attempt to get a clear
9 statement of the Navy's attitude was for the purpose
10 of more effectively dealing with the General Staff
11 and the aggressive elements within the army. This
12 testimony is confirmed in statements of Prince KONOYE,
13 quoted in the Report on the Pearl Harbor Attack,
14 published by the United States Government. ^{d.}

15 89. Witness IKHII told how MUTO urged War
16 Minister TOJO that the negotiations should succeed
17 and that the China Incident should be settled; that
18 MUTO induced General SUGIYAMA to cease his opposition
19 to the proposed A and B Plans of TOGO; that he thought
20 America would agree to that plan; and that he was
21 criticized for being weak-kneed. ^{e.}

22 90. The prosecution has strongly contended

23 88. a. Ex. 1148, T. 10265.

24 b. T. 16971.

25 c. Ex. 3454, T. 33104-5.

d. Ex. 3446, T. 33050-1, 33162-4.

89. e. Ex. 3480, T. 33681-3.

1 General SUGIYAMA's change of mind is convincing
2 evidence of General MUTO's attitude and influence.
3 But it is the duty of a good senior officer to listen
4 to and to adopt opinions expressed by his subordinates
5 if he thinks those opinions are right and adequate.
6 This instance cannot reasonably be considered against
7 MUTO; on the contrary, it shows his sincere attitude
8 toward the negotiations. The prosecution argues that
9 he expressed no objection to his senior's opinion on
10 other occasions. According to the prosecution theory,
11 when one's opinion is accepted he can be considered
12 influential, (and thus guilty, in the prosecution's
13 mind) and when he keeps silence he is also charged
14 with guilt. If that be true, how could a man ever at
15 any time be guiltless?

16 91. For his great eagerness for successful
17 negotiations with America, MUTO was regarded as weak-
18 kneed by some groups, and as a consequence his life
19 was sometimes in danger.^{a.} He was therefore guarded
20 by the police, as was testified to even by the prosecu-
21 tion witness TANAKA, Ryukichi, who was Chief of the
22 Military Service Bureau at the time.^{b.}

23 92. After the outbreak of war, MUTO was

24 91. a. Ex. 3454, T. 33103.
25 b. T. 15919.

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2 evidence of General HUTO's attitude and influence.
3 But it is the duty of a good senior officer to listen
4 to and to adopt opinions expressed by his subordinates
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17 negotiations with America, HUTO was regarded as weak-
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19 was sometimes in danger.^{a.} He was therefore guarded
20 by the police, as was testified to even by the prosecu-
21 tion witness TANAKA, Ryukichi, who was Chief of the
22 Military Service Bureau at the time.^{b.}

23 92. After the outbreak of war, HUTO was

24 91. a. Ex. 3454, T. 33103.
25 b. T. 15919.

1 anxious that it be terminated immediately. On New
2 Year's day, 1942, he told Foreign Minister TOGO that
3 wrong; the people there prevailed an atmosphere of
4 victory, and that such a condition was dangerous; that
5 the war would be extremely difficult, and something
6 should be done to bring about its termination as soon
7 as possible; and he requested TOGO, in considering his
8 plans, to make those which would bring about the
9 earliest possible termination of the war.^{a.}

10 93. As mentioned above, it is an undeniable
11 fact that HUTO exerted earnest efforts, sometimes
12 risking his life, to avoid war with America. The
13 prosecution unwillingly admits that "HUTO might have
14 been threatened by some elements in Japan for what
15 they considered his weak-kneed attitude toward the
16 United States."^{a.} But they argue that there was no
17 essential difference between the actions of the ultra-
18 nationalist element and HUTO's, except in point of
19 method, comparing him to a heavily-armed thug who
20 smilingly demands what he wants from his victim; it is
21 even contended that these were the methods he employed
22 in his negotiations with Bishop Walsh and Father Drought.^{b.}

24 92. a. T. 33177-9.

25 93. a. T. 15853, 15919, 33103; 00-91.

b. 00-91, Ex. 3441, T. 32979-90.

This would seem to be the ultimate in sophistry.

1 Even after a long and deadly war, Bishop Walsh took
2 pains to forward his affidavit here, praising NUTO in
3 the highest terms. His integrity and that of Father
4 Drought have never been questioned, and it is a well-
5 known fact that Father Drought participated in draft-
6 ing the preliminary American-Japanese understanding
7 of 12 May 1941.^{c.}
8

9 94. Regarding the alleged preparations for
10 war, the contention is made that SUGIYAMA, Chief of
11 the General Staff, issued instructions to TANAKA,
12 Shinichi, Chief of the Operations Department of
13 General Headquarters, to begin preparations for
14 operations,^{a.} and that NUTO is responsible therefore
15 because he allegedly knew about the instructions.^{b.}
16 As a matter of fact, the Chief of the Military Affairs
17 Bureau, being outside the line of the High Command,
18 had no direct connection whatever with operations plans.
19

20 95. Attempts are made to charge NUTO with
21 guilty knowledge of several matters, but there is no
22 evidence of these claims and they amount, once more,
23 to surmise, insinuation and innuendo. This statement
24 applies to the reference to the printing of money for
25 93. c. Ex. 3442, T. 32997; T. 10855; Ex. 1070,
T. 9891; Ex. 1059, T. 9851.
94. a. 00-63, T. 16145; b. 00-64; T. 16145.

1 use in occupied territories; ^{c.} participation in the
2 activities of the Total War Research Institute, and
3 the alleged fortification by the navy of the mandated
4 islands in the South Seas, on which there is not the
5 slightest evidence connected with HUTO. ^{b.} Nor does
6 he have responsibility for rough drafts ^{c.} on diplomatic
7 affairs, drafted by subordinate officers, when neither
8 his signature, seal nor any mark of approval appears
9 thereon. As to the printing of military currency,
10 two points should be considered as of prime signifi-
11 cance. First, HUTO's signature and seal appear no-
12 where in the document; it was not signed by him.
13 Second, as is clear from page 1 of the document, it
14 came from an entirely different bureau, the Intendance
15 Bureau, and was directed to the Financial Bureau of
16 the Ministry of Finance. What kind of proof is this
17 that HUTO had "guilty knowledge" of it? ^{c.}

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22 95. a. 00-67.
23 b. 00-67a, b.
24 c. 00-69.
25 d. Ex. 852.

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1 96. The prosecution states the importance of
 2 considering whether MUTO knew of the secret operational (a)
 3 plans against Pearl Harbor, Singapore, and other points
 4 and offered four arguments, all of which prove inadequate.
 5 The first is that he was Chief Secretary of the Military
 6 Council. (b) The council, however, as shown by its
 7 organization, (c) was not informed of top-secret
 8 operational plans. The second argument relates to the
 9 testimony of Lieutenant General TANAKA, Shinichi, (d)
 10 saying that he was ordered by SUGIYAMA to write the
 11 order for preparations for the possible outbreak of war
 12 to the commander of the South Seas region, and which
 13 required the signatures of War Minister TOJO, Vice-
 14 Minister KIMURA and Military Affairs Bureau Chief MUTO.
 15 But it is true, as stated by TANAKA on cross-examination,
 16 that MUTO's was not a signature of approval on the part
 17 of the Military Affairs Bureau, but simply for the prompt
 18 execution of business thereafter. MUTO's testimony was
 19 to the same effect, and there remains no evidence to
 20 dispute its truth. (e)
 21

22 97. Thirdly, in connection with the unsworn
 23 statement of Major Merrill, he claimed that MUTO said

24 (96. (a) 00-94.
 25 (b) 00-95.
 (c) Ex. 3645, T. 35616.
 (d) Ex. 16169-70, 00-96.
 (e) Ex. 3454, T. 33106-7.)

1 that probably the situation could not be settled without
2 resort to arms, and that, if they could not be, the two
3 might meet in Manila in six weeks. (a) Even if this
4 were true -- and it has been substantially disproved --
5 it does not prove any guilty knowledge as to operational
6 plans. Taken with all of MUTO's other words and acts,
7 it is another demonstration of the eager sincerity of
8 an honest and straightforward military man. The true
9 facts of the conversation are as testified to by
10 NAKAMURA, Masao. (b) And as is quite generally known,
11 it is a Japanese custom never to express dates by a
12 certain number of weeks. The prosecution asserts that
13 MUTO denied having had an interview with Merrill; but
14 he was referred to as major, whereas at the time Merrill
15 was a captain, and MUTO testified to an interview with
16 a young American captain, denying however, as alleged,
17 that he had ever invited a military attache to his
18 office.
19

20 98. Fourthly, how can it be claimed -- even
21 if true, which it obviously is not -- that MUTO's saying
22 that General TOJO had become a hero on 8 December 1941
23 is proof that MUTO had been informed of operational
24 plans? This, again, was TANAKA's testimony. (a) MUTO
25

(97. (a) 00-97.

(b) Ex. 3884, T. 38714; Ref. Ex. 74, Art. 12, T. 684.

98. (a) 00-98.)

1 knew from Imperial General Headquarters the general
2 outline of war plans, but knew nothing of the Navy's
3 plans to attack Pearl Harbor. The same must be said
4 with regard to his testimony that MUTO called the des-
5 patch of Ambassador KURUSU and the Tatsuta Maru a matter
6 of mere camouflage. It is as Lieutenant General MIKI,
7 Chief of the Medical Bureau, testified ^(b) that all of
8 TANAKA's testimony is false. There has been no attempt
9 to rebutt, and it is plainly true. That TOJO had become
10 a hero was in fact what TANAKA himself told MUTO. ^(c)

11 And when TANAKA was asked if he told TOMINAGA, Chief
12 of the Personnel Affairs Bureau, that TOJO had become a
13 hero, he appeared confused, and after hesitation replied
14 that he had no recollection of having said it. ^(d) If
15 this question were based on untruth, it is reasonable
16 to assume that TANAKA would have denied it promptly and
17 vehemently.

18
19 99. With regard to the drafting of the declar-
20 ation of war, the prosecution argument is based solely
21 on his interrogation at Sugamo, the correctness of which
22 MUTO denied under oath, to the effect that it had been
23 formulated by MUTO, OKA, and HOSHINO. But MUTO stated
24 under oath that any Imperial edicts of such nature were

25 (98. (b) Ex. 3447, T. 33055-6.
(c) Ex. 3454, T. 33124.
(d) T. 15920.)

1 required to be prepared by the Cabinet; and that he and
2 OKA only furnished HOSHINO with reference material. (a)

3 INADA, a witness for the accused HOSHINO, made two
4 drafts for an Imperial Rescript, one to be used in case
5 the negotiations succeeded and the other in case they
6 failed. (b) There was no rebuttal on this point, either.

7 And repeatedly throughout this trial the accuracy of the
8 interpreters who participated in the interrogations at
9 Sugamo has been questioned. They surely cannot stand
10 up against sworn testimony, subject to cross-examination,
11 from the witness box.

12 100. We have thus far demonstrated that MUTO
13 had no part in an alleged conspiracy. Our argument
14 applies likewise to the "opening and prosecution of
15 aggressive war." It is true that he was Chief of the
16 Military Affairs Bureau at the commencement of the
17 Pacific War and continued there until around 20 March
18 1942. The responsibility for opening and prosecution of
19 the war was that of the Army General Staff or the
20 Imperial Headquarters. But MUTO was a member of neither,
21 attending, if at all, merely as an attendant of the
22 War Minister. (a)

23 The testimony of the accused TOJO makes
24 clear the nature of those conferences and the execution

25 (99. (a) 00-92; Ex. 3454, par. 28, T. 33125-6.

(b) Ex. 3220, T. 29199.

100. (a) Ex. 3000, T. 36336-7, 36192-3.)

1 of their decisions. MUTO had no voice in such confer-
2 nces, as has been clearly shown heretofore. What MUTO
3 did do was faithfully to carry out his assignments. His
4 conduct went not one step beyond the limits of what is
5 regarded in any country in the world as the proper
6 performance of a soldier. Whoever might have held the
7 same position, no one could have expected acts other
8 than those which he performed.

9 101. Next I should like to consider the matter
10 of command responsibility, for the reason that the lack
11 of it in his case makes the question particularly applic-
12 able. The prosecution, in its summation, has conjured up
13 a category of persons, aside from those who had final
14 responsibility, such as state ministers, "who had the
15 duty or responsibility for policy formulation in a
16 subordinate or intermediate capacity," and has taken
17 as an example the Chief of the Military Affairs Bureau. (a)
18 However, despite the provisions of the Charter, of which
19 we are well aware, it has long been held that inter-
20 mediaries are not held responsible for an act of duty
21 under orders of their superiors, unless such act is
22 plainly and clearly criminal. The prosecution itself,
23 being unable to ignore the principle, says, "There is,
24 unfortunately, a tendency in modern political thinking to
25 (101. (a) K-5, 9.)

1 overlook the importance of this intermediate group in
2 the formulation of government policy and to impose sole
3 liability upon the persons with ultimate responsibility." (b)

4 102. The prosecution now suggests the abolition
5 of this established principle, and to apply criminal
6 responsibility to such persons also. But such a pro-
7 posal, aside from giving complete disregard of the
8 principle of ex post facto, is dangerous simply from
9 the practical point of view. The principle of imposing
10 responsibility only upon the person who has the power of
11 decision, and not upon those who perform their duties
12 in conformity to orders received, is indispensable for
13 the functioning of a modern state. If the commander and
14 the commanded are regarded on the same level, and held
15 equally responsible, no one will be willing to obey
16 orders. The theory of exempting such intermediary
17 persons from responsibility is thus not to be regretted,
18 but rather considered a source of security. The
19 prosecution, while contending for the responsibility of
20 intermediate persons, states that if such a person shows
21 "that in the particular instance he had nothing to do
22 with the specific act or that the policy accepted was in
23 fact opposed by him and contrary to that which he
24 counselled," then he might be exempt from responsibility. (a)

25 (101. (b) K-9.

102. (a) K-9.)

1 The fact that MUTO, as we have shown, did his best to
2 preserve peace, but that, with all his efforts, it was
3 impossible to avoid war, must bring him within the scope
4 of exemption from responsibility as admitted by the
5 prosecution.

6 103. It is maintained by the prosecution that,
7 on the occasion of the interrogation at Sugamo, MUTO
8 said that he had always held the same opinion as TOJO.
9 But plainly what he meant by "holding the same opinion"
10 (and this was added by the monitor) was that he con-
11 formed to what he was told to do; the key to his
12 activities is in recognition of his life as a genuine
13 soldier.

14 104. It is contended that MUTO was interested
15 in political affairs. (a) He simply stated that he felt
16 obliged to study political affairs in order to perform
17 his duties efficiently. (b) And as a matter of fact,
18 after holding the post of Chief of the Military Affairs
19 Bureau for some time, he desired a change of assignment
20 and applied for it several times to the Chief of the
21 Personnel Affairs Bureau and others. MUTO stated that
22 he also specifically asked for a transfer at a meeting
23 attended by the War Minister, Vice-Minister and Chief
24 of the Personnel Bureau. (c) This was verified by the
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(104. (a) 00-26a. (c) Ex. 3454, T. 33119.)
(b) Ex. 3454, T. 33120.

1 witness NODA, then Chief of the Personnel Bureau;
2 though no action was taken because it was considered
3 inadvisable at that time. (d) In the above connection,
4 it is necessary to discuss briefly the prosecution's
5 contention that, in case one could not agree with his
6 minister's view, he should either resign or assume
7 responsibility for his conduct of official duties. (e)
8 Only TANAKA's testimony was relied on as the basis of
9 this contention (f) to the effect that there had been a
10 case where a bureau chief had differed with the minister
11 and had resigned. But on cross-examination at an
12 earlier stage of the trial, when asked if it were not
13 true that officers on the active list could not resign,
14 except for illness, even though they had opinions opposed
15 to those of the minister, he said, "Yes, as you say." (g)
16 This is unquestionably correct, and has been shown by
17 numerous defense witnesses. For instance, witness
18 YOSHIF, when asked under what circumstances an officer
19 could resign, said that except on account of illness,
20 under which he could not continue his work, no other
21 reason was recognized. (h) As we pointed out in opening
22 the individual defense, resignation in the Japanese Army
23

24 (104. (d) T. 29398.

(h) T. 34388.

(e) T. 16795-6.

(f) T. 15900.

(g) T. 2101-2.

(i)
was peculiarly and traditionally impossible and this
1 is most worthy of the Tribunal's consideration. MUTO's
2 request for a transfer was realized soon after the out-
3 break of the Pacific War. On his return from an
4 inspection trip, 12 April 1942, he was advised of his
5 appointment to command the Imperial Guard Division in
6 Sumatra (j) and he left Tokyo around 24 or 25 April. We
7 wish to draw the Tribunal's special attention to the fact
8 that MUTO was transferred from the post of Chief of the
9 Military Affairs Bureau at a most crucial period and
10 transferred to a far-distant post. It can reasonably
11 be assumed that if he were as important and influential
12 a person as the prosecution claims, he would not have
13 been transferred from Tokyo, to one of the quietest
14 sectors of the war.
15

16 105. We proceed to the question whether MUTO
17 had any responsibility for ordinary war crimes,
18 especially maltreatment of prisoners of war and other
19 alleged atrocities. Our contention on this point is
20 simple: In the first place, prisoners of war came under
21 the War Minister's jurisdiction only after they had been
22 transferred from Imperial Headquarters, and moreover,
23 the Military Affairs Bureau was not the office in charge
24

25 (104. (i) T. 32934.
(j) Ex. 3454, T. 33131.)

1 of their management. For this purpose there existed
2 special organs called the Prisoner of War Administration
3 Bureau and Prisoners of War Information Bureau. This
4 has been made clear in the general summation. MUTO has
5 given accurate testimony on it. (a) NISHIURA, an
6 authority on the Army system, also gave testimony in
7 detail. (b) The accused TOJO, the person most highly
8 responsible for military administration and later
9 command also, gave authoritative testimony as to the
10 truth of our contention. (c)

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24 (105. (a) Ex. 3454, T. 33127.
25 (b) Ex. 3098, T. 27694-702.
(c) Ex. 3000, T. 36412-3.)

106. What is more important is the fact
1 that during the period when MUTO occupied the post as
2 Chief of the Military Affairs Bureau, plans for the
3 handling of POW were in an undeveloped state and
4 problems such as maltreatment had not arisen, or, if
5 they had, it did not come to his knowledge. MUTO's
6 testimony is clear and unrefuted on this point. (a)
7 He states that the War Prisoners Control Department
8 (Administration) was established toward the end of
9 March 1942; but this was done when he was absent, owing
10 to his inspection trip in the southern area. He was
11 informed of it later.
12

13 107. The prosecution attempts to hold him
14 responsible for alleged atrocities in Singapore, Hongkong,
15 Manila, Bataan and elsewhere in the early stages of
16 the Pacific War. (a) But those offenses occurred in
17 the course of battles, and if there is responsibility
18 it is on field commanders or finally the Chief of the
19 General Staff. They have no connection with the
20 Military Affairs Bureau of the War Ministry. Except
21 for perhaps ten or twelve days, MUTO was absent from
22 Tokyo from about 20 March 1942 until after the capitulation;
23

24 106. (a) Ex. 3454, T. 33,128
25 107. (a) 00-100-3

1 during that long period he at no time had a post (b)
 2 with the Central Government. He further testified
 3 that up to the time he left Tokyo, plans for handling
 4 war prisoners were not yet laid, since the Imperial
 5 Headquarters had made no authentic report and the
 6 problems of transportation, housing, etc. were under
 7 investigation. No study had been made at all as to
 8 POW labor. And he knew of no protests from any
 9 country during his tenure as director.

10 108. It is contended that MUTO must have
 11 read the secret diary (a) of the Imperial Headquarters
 12 concerning the incident at Singapore in February and
 13 March 1942, (b) but as to this pure surmise he testified
 14 that he had never seen it, had no seat in the Imperial (c)
 15 Headquarters, and had no right to see such a document.
 16 The prosecution has failed completely to show any
 17 connection of MUTO to the alleged atrocities. When
 18 the Bataan "Death March" occurred, he was no longer
 19 Chief of the Military Affairs Bureau, and even if he
 20 were, the responsibility could not possibly have
 21 rested on him. We have pointed out, responsibility
 22 for offenses committed in the field rests on the field
 23 commanders. Even if the War Minister had been responsible
 24

25 107. (b) Ex. 3454, T. 33,128-9
 108. (a) Ex. 476, T. 5624
 " (b) 00-102
 " (c) Ex. 3454, T. 33,129-30

1 for offenses in the field, which he was not, the
2 blame would have rested, not on the Chief of the
3 Military Affairs Bureau, but on the Chief of the
4 Military Service Bureau, TANAKA, Ryukichi, as is (d)
5 seen from the Ordinance of Military Organization
6 previously referred to, MUTO's complete and absolute
7 disconnection with POW offenses is plain.

8 III. SUMATRA

9 109. He arrived in Medan, Sumatra, on
10 11 May 1942 and assumed command of the Imperial
11 Guard Division. As he testified, (a) it was the first
12 time in his thirty years' life as a soldier that he
13 had ever had a responsible post with a certain decisive
14 power, and that period ended when he left Sumatra in
15 1944.

16 110. Alleging the commission of atrocities
17 against POW and civilian internees in Sumatra, the
18 prosecution attempts to incriminate MUTO on the sole
19 ground that he was a divisional commander stationed
20 there. However, no reference whatever has been made
21 to connect him with any such offenses. There are good
22 reasons for this silence. While he was in Sumatra,
23 military discipline and morale were most strictly
24

25 108. (d) Ex. 74, Art. 14
109. (e) Ex. 3454, T. 33,131

maintained so that no problems arose between his
 1 soldiers and the natives, interned enemy nationals
 2 or POW. Especially in the light of the fact that
 3 administration of POW and interned civilians did not
 4 come under his control, it is impossible to attribute
 5 to him any legal responsibility in this connection.
 6 The above has been made clear, in addition to MUTO's
 7 affidavit, by the testimony of KOSHI, Saburo and
 8 OHIRA, Hideo. ^(a) His duty was to defend Northern
 9 Sumatra. Military administration was in the charge
 10 of the military administrative organs which were
 11 stationed in every province and were under the direct
 12 control of the 25th Army; and between military
 13 administration and defense, a clear line was drawn. ^(b)
 14 That MUTO's sole duty was defense was borne out by
 15 the testimony of OHIRA, his Chief of Staff. ^(c) He
 16 further makes clear, in full detail, that MUTO had
 17 no duties nor responsibility for either POW or civilian
 18 internees. ^(d) MUTO states ^(e) that while he was in
 19 Sumatra there were no hostilities and, accordingly,
 20 no war prisoners taken; nor did he ever employ war
 21 prisoners for labor, although other units did so employ
 22 them.
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- 25 110. (a) Ex. 3095, T. 27,655; Ex. 3450, T. 33,061
 " (b) Ex. 3454, T. 33,131-2
 " (c) Ex. 3450, T. 33,062-3
 " (d) Ex. 3450, T. 33,063-4
 " (e) Ex. 3454, T. 33,132-3

111. On the matter of military morale and discipline, OHIRA stated that army statistics on crime showed that the 25th Army's discipline was the most strict, and that of all the units under the 25th Army, the Second Imperial Guard Division gave the best showing; further that he recalled no complaint regarding any misconduct of members of the division. (a)

MUTO testified to the absence of complaints, even though he ordered distinctive markings for his division, (b) which could be recognized at a glance.

112. Lastly, in this connection, we must refer to the witness KOSHI. He was described in the testimony of prosecution witness Leenheer as a Japanese who tried his best to "relieve the women internees there of their suffering." (a) And at the time when he left for Japan, he was especially given a farewell address by an English prosecutor expressing "our deepest gratitude for your treatment of us European people during the war." (b) He was the Assistant Resident of the East Coast Residency in Sumatra from August 1942 to August 1945. (c)

113. He appeared before this Tribunal as a

111.	(a)	Ex. 3450, T. 33,064-5
"	(b)	Ex. 3454, T. 33,133
112.	(a)	T. 13,758
"	(b)	Ex. 3095, T. 27,667
"	(c)	T. 27,656

1 witness in the general phase and stated that he must
2 say that he owed "all his honor to the guidance and
3 instruction given by Division Commander MUTO" for
4 his faultless conduct during war time. (a) We (b)
5 respectfully refer the Tribunal to his testimony
6 which specifically details the advice given him by
7 MUTO.

8 IV. THE PHILIPPINES

9 114. Finally, we must consider MUTO's
10 activities in the Philippines as Chief of Staff to
11 General YAMASHITA. The prosecution has alleged the
12 Japanese Army's maltreatment of POW and atrocities
13 against the people at large in the Philippines, and
14 charges MUTO also as responsible for such atrocities.
15 We believe, however, that we have sufficiently
16 demonstrated that such an accusation against him is
17 quite unfounded.

18 115. Our contention on this matter can be
19 summed up in two points. First of all, it was on
20 20 October 1944 that MUTO went to take up his post
21 in the Philippines; that is, two days after the United
22 States forces landed on Leyte. (a) Consequently we can
23 disregard all the matters which had taken place before
24

25 113. (a) Ex. 3095, T. 27,667
" (b) Ex. 3095, T. 27,668-73
115. (a) Ex. 3099, T. 27,729; Ex. 3454, T. 33,134.

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 2 say that he owed "all his honor to the guidance and
 3 instruction given by Division Commander MUTO" for
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 " (b) Ex. 3095, T. 27,668-73
 115. (a) Ex. 3099, T. 27,729; Ex. 3454, T. 33,134.

1 that date. Further, the Japanese Army in the
2 Philippines was, soon after MUTO's arrival there,
3 scattered into small isolated groups by the United
4 States forces, which planned and operated to bring
5 about such separation of the Japanese units. YAMASHITA's
6 chain of command was destroyed and communications
7 were impossible. Such being the case, MUTO and others
8 were totally unaware of such atrocities as alleged
9 by the prosecution; and even if they had been aware
10 of such, there was nothing that they could do to
11 prevent them. In brief, it was beyond MUTO's control. (a)

12 116. Secondly, MUTO, as Chief of Staff,
13 had no power to decide anything by himself. He was
14 with Commander in Chief YAMASHITA always and acted
15 according to the commander's intentions. Consequently,
16 from the legal point of view, he cannot be held
17 responsible. (a)

18 117. We wish now to go somewhat into the
19 details of the above facts, on the basis of the evidence
20 that has been shown here. The true circumstances as
21 to the destruction of the command organization of the
22 Japanese Army in the Philippines are made clear by

23 115. (b) Ex. 3453, T. 33,079; Ex. 3451, T. 33,075;
24 Ex. 3454, T. 33,134, 33,138-40.
25 116. (a) Ex. 3462, Art. 10, T. 33,283; Ex. 3451,
T. 33,076.

1 the testimony of MUTO himself, (a) and the excerpt
2 from General Marshall's report. (b) MUTO testified
3 that the Japanese found their command system
4 instantly destroyed and were forced to fight
5 independently, taking up their individual positions;
6 and that he learned of the fighting conduct of the
7 various units only after the war had ended. (c)

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24 117. (a) T. 33,137-9
25 " (b) Ex. 3453, T. 33,077
" (c) Ex. 3454, T. 33,140, 33,143

1 To isolate the Japanese Army in very small groups
 2 was the operational plan of the United States forces,
 3 and it was thus entirely successful. The Tribunal
 4 will recall that this was graphically shown in the
 5 excerpt from General Marshall's Report. ^(d) It shows
 6 that the Japanese drove in all directions in confusion,
 7 became involved in road jams, and "generally dissipated
 8 what chance they might have had to repel the landing
 9 force". ^(e) It further states that the Japanese were
 10 placed "in an impossible situation", and were "forced
 11 into a piecemeal commitment" of their troops. ^(f)

12
 13 118. Especially hard hit were the lines of
 14 communications. Witness KUMEGAWA, who was a member
 15 of YAMASHITA's operations staff at the time, stated
 16 that Japanese facilities were "beyond all comparison"
 17 inferior to those of the United States Army and that,
 18 even before the operations, communications were difficult;
 19 after operations began it was so much worse that it
 20 was barely possible to pass even the most urgent
 21 communications, and "any detailed information was not
 22 reported at all." ^(a) MUTO, too, testified to this
 23 point. ^(b)

24 117. (d) T. 33,077
 25 " (e) Ex. 3453, T. 33,079
 " (f) Ex. 3453, T. 33,079
 118. (a) Ex. 3451, T. 33,074
 " (b) Ex. 3454, T. 33,139-40

1 It is clear beyond question that YAMASHITA's head-
2 quarters, with MUTO as Chief of Staff, had its communi-
3 cations and chain of command completely destroyed and
4 lost the means of controlling the units under its
5 command. All of the atrocities charged to have been
6 committed during MUTO's tenure in the Philippines
7 took place in the confused conditions described
8 above. He and others did not know of the occurrence
9 of such atrocities -- they were not in a position
10 that enabled them to find out. He never ordered the
11 commission of such atrocities, nor, knowing of such,
12 gave his tacit approval.

13 119. We propose now to demonstrate his
14 innocence with regard to particular instances. The
15 prosecution holds him responsible for atrocities
16 perpetrated in the city of Manila. The witness
17 KOBAYASHI, however, testified that YAMASHITA decided
18 to abandon Manila; that MUTO insisted on abandonment
19 from the outset and gave that opinion to YAMASHITA. (a)
20 And witness KUMEGAWA testified that it appeared impossible
21 to defend the region including the city of Manila;
22 that it was wrong, in YAMASHITA's opinion, to turn
23 it into a field of battle; and that Chief of Staff
24 MUTO also insisted on abandonment. Moreover, neither
25 119. (a) Ex. 3099, T. 27,729-30

Imperial Headquarters nor the Southern General Army
1 ordered the city defended to the last. (b) MUTO
2 testified that YAMASHITA never ordered defense of the
3 city to the last; that, on the contrary, he ordered
4 MUTO to study the possibility of making it an open
5 city; that study disclosed that such action was
6 impossible and could not be put into practice; and
7 that YAMASHITA was at last resolved at least to place
8 Manila outside the battlefield. (c)

10 120. It is obvious that he made every effort
11 to see that the citizens of Manila would be spared
12 the horrors of war; however, a battle did take place
13 there. Then how and why did it happen? MUTO's
14 testimony shows that some naval forces, as to their
15 land operations alone, were put under Lt. General
16 YOKOYAMA who commanded the Japanese forces in the
17 vicinity of Manila; YAMASHITA had removed to Baguio
18 some time before, to command operations around Lingayen
19 Gulf; when, about 10 February 1945, he learned of
20 continuing hostilities within the city, YAMASHITA
21 ordered immediate withdrawal, but, for unknown reasons,
22 Rear Admiral IWABUCHI, commander of forces within the
23 city, did not obey. Those forces were annihilated;

25 119. (b) Ex. 3451, T. 33,072-3
" (c) Ex. 3454, T. 33,141

1 there were about 1,800 army troops, compared to some
2 20,000 in the navy force. (a)

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120. (a) Ex. 3450, T. 33,141-2.

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121. Witness KOBAYASHI showed that Manila was in confusion and chaos; that Japanese headquarters outside the city of Manila endeavored to ascertain actual conditions, but could not because of destroyed communications; that it was as late as 18 February that they obtained any general confirmation of conditions, but that, even then, details remained uncertain.^a Staff member KUMEGAWA explains that headquarters had no reports of the killing of Filipines or ill-treatment of POW; that YAMASHITA and MUTO were utterly ignorant of it; and that murder or maltreatment were never ordered.^b It is clear that alleged atrocities were committed without MUTO's knowledge, and that it was beyond his power to prevent them even if he had had such knowledge.

122. As to countermeasures against guerillas, KOBAYASHI shows that YAMASHITA's orders were directed definitely against "armed guerillas."^a MUTO's testimony is also detailed and concrete: General YAMASHITA ordered attacks on armed guerillas, but never ordered them to be sentenced to death without trial; that he and his staff were utterly ignorant that, in February or March of 1945, some inhabitants of the Batangas district were murdered,

121. a. Ex. 3099, Tr. 27731-2. 122. a. Ex. 3099,
b. Ex. 3451, Tr. 33074-5. Tr. 27733.

1 nor did he have any report of alleged atrocities in
2 other parts of the islands. An attempt was made to
3 investigate the sole report from Tokyo, but this was
4 fruitless, owing to the total destruction of Japan-
5 ese forces in Manila by the end of February.^{b.}

6 123. When MUTO arrived at his post in the
7 Philippines, POW and internees were under the juris-
8 diction of YAMASHITA. But the fact was that the
9 chief of the prisoners' camp was managing them under
10 the direction of the commander of the line of com-
11 munications; and this was not changed particularly
12 thereafter.^{a.} As to rations, although they were
13 gradually reduced as a result of the general shortage
14 of food in Luzon, there was no marked difference in
15 allowance between the prisoners and the Japanese
16 troops. This is clear from the testimony of a wit-
17 ness in the YAMASHITA trial, ISHIKAWA,^{b.} in addition
18 to MUTO's testimony. Further, the fact that MUTO
19 paid special consideration to the life and welfare
20 of POW and internees under the then-existing difficult
21 circumstances can be seen from the fact that he sent
22 staff-member ISHIKAWA to their camps especially for
23 inspection.^{c.}

24 122. b. Ex. 3454, Tr. 33142-3.

25 123. a. Ex. 3454, Tr. 33144. c. Ex. 3094, Tr. 27629-30.
b. Ex. 3094A, Tr. 27627.

124. With the continued reverses of the Japanese Army, the problem of what to do with the prisoners became very serious. YAMASHITA made definite plans for their release, taking steps for proper notice under international law, but was told by the Commander in Chief of the Southern General Army that it was too early to do so. Since it was impossible to remove them from Manila, arrangements were made for their release, including the provision of a month's food supply. MUTO learned only after the war that the chief of the war prisoners' camp had been in error as to notifying the neutral power, Switzerland, as to actions being taken, but that as to other matters he had taken all possible steps to release them without their being involved in hostilities.^a This is verified by witness KOBAYASHI.^b

125. Finally, we emphasize the fact that MUTO was a Chief of Staff and did not have authority to render decisions himself, since "The Army Chief of Staff has as his major duty to assist the Army Commander."^a And in the relationship between MUTO

124. a. Ex. 3454, Tr. 33147.

b. Ex. 3099, Tr. 27734.

125. a. Ex. 3462, Tr. 33283.

and YAMASHITA there was a point of particular
1 significance, in that the disrupted conditions at
2 the time compelled them to be together constantly,
3 eating together, sharing at one time the same desk
4 and the same air-raid shelter. MUTO had no right
5 to decide principal matters, and, in case of doubt
6 as to YAMASHITA's intentions, he reserved instruc-
7 tions until he obtained YAMASHITA's directions. He
8 gave no order to any unit, but confined himself to
9 routine matters which lay within the competence of
10 the Chief of Staff. Even in such routine matters,
11 the commander often gave his views, and MUTO never
12 acted in his stead on any occasion. Further, YAMA-
13 SHITA was always in such good health that illness
14 never prevented him from doing duty even a single
15 day. All this is attested by KUMEGAWA.^{b.}

17 126. From all of the foregoing, I believe
18 it is evident that MUTO bears no responsibility for
19 alleged atrocities in the Philippines, the prosecution
20 having failed to prove his connection with them. But
21 in spite of this, by citing the judicial decision
22 against YAMASHITA, they insist that he is responsible.
23 However, citing the YAMASHITA decision does not and
24 125. b. Ex. 3451, Tr. 33075-6.
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25

cannot fix any responsibility on MUTO. Moreover,
1 although the YAMASHITA trial took place in Manila,
2 and MUTO was held there until March 1946 and investi-
3 gated as a possible war criminal, he was advised by
4 Captain Carter, the chief of the camp, and by a
5 lieutenant, a member of the War Crimes Investigation
6 Committee, both officers of the United States Army,
7 that he was clear of the crime.^a My colleague,
8 Mr. Howard, has quoted from the majority opinion in
9 the YAMASHITA case, and I invite the Tribunal's
10 attention to the unanswerable logic of Mr. Justice
11 Murphy in the dissenting opinion.
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25 126. a. Tr. 33150.

127. "In other words," Justice Murphy writes,
1 "read against the background of military events in
2 the Philippines subsequent to October 9, 1944, these
3 charges amount to this: "We, the victorious American
4 forces, have done everything possible to destroy and
5 disorganize your lines of communication, your effect-
6 ive control of your personnel, your ability to wage
7 war. In those respects we have succeeded. "We have
8 defeated and crushed your forces. And now we charge
9 and condemn you for having been inefficient in main-
10 taining control of your troops during the period when
11 we were so effectively beseiging and eliminating your
12 forces and blocking your ability to maintain effect-
13 ive control. Many terrible atrocities were committed
14 by your disorganized troops. Because these atrocities
15 were so widespread we will not bother to charge or
16 prove that you committed, ordered or condoned any of
17 them. We will assume that they must have resulted
18 from your inefficiency and negligence as a commander.
19 In short, we charge you with the crime of inefficiency
20 in controlling your troops. We will judge the dis-
21 charge of your duties by the disorganization which we
22 ourselves created in large part. Our standards of
23 judgment are whatever we wish to make them."

24 THE PRESIDENT: You adopt Mr. Justice
25 Murphy's reasoning as your argument?

MR. COLE: I beg your Honor's pardon.

1 THE PRESIDENT: You adopt Mr. Justice
2 Murphy's reasoning as your argument?

3 MR. COLE: Yes, sir.

4 THE PRESIDENT: That is the only way you
5 can get that in.

6 MR. COLE: 128. "Nothing in all history,"
7 Justice Murphy continues, "or in international
8 law, at least as far as I am aware, justifies such a
9 charge against a fallen commander of a defeated force.
10 To use the very inefficiency and disorganization
11 created by the victorious forces as the primary basis
12 for condemning officers of the defeated armies bears
13 no resemblance to justice or to military reality."
14

15 129. "International law makes no attempt
16 to define the duties of a commander of an army under
17 constant and overwhelming assault; nor does it impose
18 liability under such circumstances for failure to meet
19 the ordinary responsibilities of command. The omission
20 is understandable. Duties, as well as ability to
21 control troops, vary according to the nature and intens-
22 ity of the particular battle. To find an unlawful
23 deviation from duty under battle conditions requires
24 difficult and speculative calculations. Such calcula-
25 tions become highly untrustworthy when they are made

by the victor in relation to the actions of a van-
1 quished commander. Objective and realistic norms of
2 conduct are then extremely unlikely to be used in
3 forming a judgment as to deviations from duty. The
4 probability that vengeance will form the major part
5 of the victor's judgment is an unfortunate but ines-
6 capable fact. So great is that probability that
7 international law refuses to recognize such a judgment
8 as a basis for a war crime, however fair the judgment
9 may be in a particular instance. It is this considera-
10 tion that undermines the charge against the petitioner
11 in this case. The indictment permits, indeed com-
12 pels, the military commission of a victorious nation
13 to sit in judgment upon the military strategy and ac-
14 tions of the defeated enemy and to use its conclu-
15 sions to determine the criminal liability of an enemy
16 commander. Life and liberty are made to depend upon
17 the biased will of the victor rather than upon object-
18 ive standards of conduct."^a

20 130. It must be observed that the above
21 can be more strongly applied to the case of MUTO, who
22 was not commander of the army but only Chief of Staff.

23 131. And now in conclusion: May it please
24 the Tribunal, I should like to mention briefly and
25 concisely the main points, fully demonstrated and

^a 129. *U.S. Supreme Court of the U.S., Nos. 61 and 672*
Misc., October Term 1945

documented herein, which we respectfully urge the
1 Tribunal to consider.

2 132. The prosecution has failed to connect
3 MUTO with any responsibility for the initiation or
4 execution of either the Manchurian or China Incidents.
5 The closest they have come to any such proof was to
6 describe him, in those days, as being a young officer,
7 thus to classify him, only by insinuation and no
8 proof, with a group which throughout this trial has
9 been vilified; and probably properly so. But we
10 have demonstrated that he opposed them to the point
11 of being in great danger himself, and that he worked
12 earnestly to clear up the trouble they caused, in the
13 26 February Incident.
14

15 133. With regard to Nanking, the prosecu-
16 tion has shown no guilty knowledge or approval on
17 MUTO's part, while we have shown that he devoted him-
18 self to the problem of removing from the city those
19 large numbers of troops which had entered contrary to
20 General MATSUI's orders; and that as Vice Chief of
21 Staff he had no power of command and thus no respon-
22 sibility.

23 134. As to the Military Affairs Bureau, it
24 has been shown that MUTO had no power of decision in
25 important matters; we have shown this not alone through

our witness NISHIURA, a recognized expert on army organization, but through the prosecution's own witness, TANAKA, Ryukichi. We have shown that he worked earnestly and well for the improvement of Japanese-American relations and the complete avoidance of war.

135. For the period -- the largest part of the war -- that MUTO spent in Sumatra, the prosecution has failed to show his knowledge of or connection with one single atrocity. Sumatra was, during his period there, probably the quietest sector of the whole Pacific War. His troops had a record of exemplary conduct, the best in the Japanese Army. He had no responsibility whatever for the control or administration of prisoners and civilian internees, nor did he ever employ them for labor.

136. Again, as to Manila and the Philippines, the prosecution has failed utterly to connect him, legally, literally, or in any other way, with knowledge, approval or condonation of one single atrocity. Again, he did not have command responsibility. And I am sure that we have demonstrated, to the Tribunal's satisfaction, that throughout his tenure there the conditions of battle were such that control of troops was absolutely impossible even if he had had such responsibility, which he plainly did not have.

1 137. With regard to over-all policies on
2 problems of prisoners and internees, I submit that
3 MUTO left Tokyo so soon after the outbreak of war that
4 he had no part whatsoever in the establishment of
5 policies. That is a fact which the prosecution has
6 been unable to dispute.

7 138. MUTO has been admired, respected and
8 praised by men of such divergent professions as
9 British Major General Piggott, another professional
10 soldier, and Bishop Walsh, a clergyman of high rank.
11 I submit that such appraisals, by such men, are a
12 tribute to MUTO's integrity.

13 139. MUTO has been shown to be intelligent
14 and efficient. Possession of those qualities does
15 not constitute a crime. It applies to the finest of
16 our public servants in our home countries as well as
17 in Japan, and is a truth for which we can be thankful.

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

20 (Whereupon, at 1445, a recess was
21 taken until 1500, after which the proceed-
22 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. Cole.

4 MR. COLE: If it please the Tribunal, I
5 resume at page 100, paragraph 140:

6 140. In commenting on the failure of the
7 prosecution to establish even the semblance of a
8 case against MUTO, I cannot but emphasize two last
9 points. The first is, that, in spite of their em-
10 phasis on the importance of his having attended many
11 conferences which the prosecution claims were all-
12 important, they have been completely unable to quote
13 one word of MUTO's on such occasions. I respectfully
14 call the Tribunal's attention to the undeniable fact
15 that the only attempt to do that was in the prosecu-
16 tion's summation, and based upon an alleged document
17 which is not in evidence, as a result of which that
18 section of their summation had to be corrected by an
19 errata sheet. That, I submit, is eloquent comment
20 on the weakness of their case against him.

21 141. The second point is that because of
22 their lack of proof, they have fallen back on the
23 practice of suggestion, inuendo, implication and pure
24 guesswork, at all times skirting around the perimeter
25 of their alleged facts, but never going straight to

1 the point. I cannot help but resent the use of such
2 expressions in their summation as "specious arguments,"
3 "sheer insolence," "hypocrisy," "naivete or brazenness,"
4 and "brazenness and audacity"; and I submit that the
5 resort to such language displays weakness.

6 142. We urge upon the Tribunal that MUTO was
7 a professional soldier. We have professional soldiers
8 in our own countries, and recognize the vital and
9 indispensable contribution they make to our welfare;
10 we honor them for concepts of diligence and duty
11 which are common to the military throughout the world
12 and throughout history. I repeat -- and I suggest that
13 this is the most important single point in considera-
14 tion of the charges against him -- that in almost two
15 years of trial MUTO has not been shown to have done
16 one single thing which violated the code of military
17 men the world over, whether it be in Japan, or in any
18 country represented on this Tribunal.

19 143. We have been living in a world of
20 angry men, angry at those things which threaten their
21 security. That is a human characteristic, not the
22 exclusive possession of any one nation or group of
23 nations. And there is probably no injustice so great
24 as the "justice" of angry men.
25

1 144. I appeal to this Tribunal, in all sin-
2 cerity, to find that the accusations against MUTO
3 have gone completely unsubstantiated; that, on the
4 contrary, he has been proved to have worked always
5 with integrity, and for good. This record, I re-
6 spectfully submit, calls for a finding of "not
7 guilty."

8 Thank you.

9 THE PRESIDENT: Mr. Freeman.

10 MR. FREEMAN: If the Tribunal please, this
11 is the summation for the defendant SATO.

12 I

13 INTRODUCTION

14 The brevity of this summation not only
15 matches that of the prosecution in regard to the
16 accused SATO, but it is entirely in keeping with the
17 complete lack of evidence offered against him.

18 The prosecution has divided its argument
19 with the fulcrum resting upon the appointment of SATO
20 to the post of Chief of the Military Affairs Bureau
21 in April, 1942. We shall follow their procedure to
22 the end of a logical presentation designed for clarity.
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II

ACTIVITIES PRIOR TO SATO BECOMING
A SECTION CHIEF IN THE MILITARY
AFFAIRS BUREAU.

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1. The prosecution elects to disregard any activities of this accused prior to 1 August, 1936. Therefore, nothing will be included in this summation prior to that date. On this date the accused SATO was attached to the Army Ordnance Depot and became a staff member of the Military Affairs Bureau. In March, 1937, he was promoted to Lieutenant Colonel, and in June made an investigator of the Planning Board, which position was abolished in October of the same year. In November, 1937 he was appointed a secretary to the Planning Board and relieved of this post in July, 1938 (RR-2, T. 41,596). The Tribunal should bear in mind that during this period his primary duties were those of a staff member of the Military Affairs Bureau.

Now, what significance does the prosecution place upon these appointments, particularly that with the Planning Board? After some reference to acts and orders of the President of the Planning Board, they stated: "It is thus apparent that the Planning Board had been working on this plan . . . the period during

1 which SATO was one of its members." Also: "SATO
2 must have participated in the creation of the plan."
3 Without any assistance from the evidence, SATO be-
4 comes a member of the Planning Board, a participant
5 in plans that "aim at a huge increase in war poten-
6 tials with 1941 as its goal," and enters the alleged
7 conspiracy (RR-6, T. 41,600).

8 All this, notwithstanding the fact that the
9 evidence shows that he was never a member of the
10 Planning Board; that he was with the Board as an
11 investigator three months, and as a secretary six
12 months over a period of less than a year (Ex. 122,
13 T. 768). Notwithstanding the fact that the witness
14 OKADA testified that while he was a member of the
15 War Preparations Section of the Mobilization Bureau
16 of the War Ministry, he himself drew up exhibit 841,
17 which was concerned with military plans and exhibit
18 842, which was a plan for the establishment of a
19 peacetime economy (T. 18,272-73). It is well to note
20 that neither of these plans were ever used because
21 of the outbreak of the China Incident, although
22 approved by the War Ministry (T. 13,272-286). The
23 prosecution attaches no importance to the fact that
24 the Planning Board consisted of members from all
25 walks of life, only a few of whom are among the

1 accused, and that the Planning Board had some 60 to
2 70 full-time investigators and secretaries, none
3 of whom are in the prisoner dock (Ex. 71). It is
4 also unimportant to the prosecution that the accused
5 SATO's position therein was that of a part-time
6 secretary and that these so-called "plans" were
7 drawn up in the War Mobilization Bureau where he had
8 no duty or function (Ibid). No evidence of any
9 nature is offered that this accused ever participated
10 in any activity of the Planning Board, or the prepara-
11 tion of the plans referred to.

12 The prosecution continues to attach import-
13 ance to the accused SATO's relation with the Planning
14 Board for they contend "It was very probable on ac-
15 count of this . . . that he (SATO) was chosen to
16 act as 'explainer' to the Diet of the General Mobili-
17 zation Law and so facilitate its passage." (RR-7,
18 T. 41,601). It is not in furtherance of the prosecu-
19 tion's purpose that the Mobilization Law is entirely
20 different from the five-year industrial plan (Ex. 84,
21 T. 684 and Ex. 2802, T. 25,210), nor that one of
22 the requirements of his position in the Military
23 Affairs Bureau was to explain such bills and their
24 implication to the Diet (Ex. 74, T. 684), and it
25 would not further their objective to admit that the

1 functions of an explainer were merely to answer
2 questions propounded by Diet members (T. 32,959).

3 2. Early in the trial the prosecution sought
4 to attach great importance to two alleged speeches of
5 SATO's purportedly delivered before a conference of
6 Chiefs of the Police at the Home Ministry in August,
7 1938 (Ex. 270, T. 3605). Shortly after the intro-
8 duction of these speeches in evidence, the authenti-
9 cation of which was still in doubt, the prosecution
10 characterized this exhibit as a "record of policy-
11 making conference of the highest Japanese Government
12 officials occurring in January, 1938" (T. 9502).

13 Later they came back with a new and revised trans-
14 lation of this document, but still without proper
15 authentication (Ex. 2235, T. 16,069). Finally, a
16 certificate was obtained from the drafter of the
17 document. What does KUMAGAI, the writer, say about
18 the document? He states that during the session of
19 this conference he attended a lecture given by
20 Colonel SATO, Chief of the Press Section of the War
21 Ministry, who had been invited by the Police Bureau
22 of the Home Office for the occasion. He recalls that
23 after the speeches were made, he jotted down some
24 notes but that SATO had spoken rapidly and his notes
25 were not accurate because he does not use shorthand.

1 For this reason, he explains, in the preface he
2 wrote: "The words and contents are those of the
3 writer." (Ex. 3864, T. 38,578-79). After this the
4 prosecution abandoned its contention that this docu-
5 ment represents "a policy-making conference of the
6 highest Japanese officials." Shifting ground, they
7 now say its importance "lies in the deep knowledge
8 they show SATO to have had of Japan's plans for
9 aggression against Russia." (RR-8, T. 41,602).

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its face that this document...

1 Encircling some 60 to 70 secretaries to the
2 Planning Board (Ex. 71), making the unadopted five-year
3 industrial plan and the mobilization law one and the
4 same, they endeavor to bring SATO into the alleged
5 conspiracy. Do they seriously contend that "a great
6 policy-making document of the highest officials of
7 the Japanese Government," born of the notes of an
8 unofficial observer at a Policeman's Conference,
9 binds SATO to a conspiracy charge of accomplishing
10 aggressive war? Weighing the issues in light of the
11 importance they deserve, will they not recognize
12 that the writer himself questions the accuracy of his
13 document? It is apparently unimportant to the prosec-
14 ution that at the time these speeches were made SATO's
15 peculiar duties as head of the Press Section of the
16 War Ministry brought him to the conference, and that
17 since no official record was kept of the speeches, it
18 is highly probable that several speakers, other than
19 SATO, may have been the source of subject matter in-
20 cluded in this document. Could it be that the
21 importance of the document for the prosecution lies
22 in the extreme scarcity of evidential material to be
23 utilized in preparing the accused SATO's summation?
24 This question is not asked lightly. It is obvious on
25 its face that this document could have no probative

1 value. It is suggested that its importance lies in
2 the fact that with the exception of one other speech,
3 all the evidence offered against this accused was by
4 TANAKA, Ryukichi.

5 Be that as it may, the remarkable fact is
6 that this is the sum total of evidence which the
7 prosecution contends is sufficient to indicate "that
8 he (SATO) was at this time a party to the conspiracy
9 charged in Counts 1 to 5 of the Indictment." (RR-8,
10 T. 41,603.)

11 3. In May, 1939, Colonel SATO went to China
12 as a Staff Officer of the China Expeditionary Forces.
13 In July and August, 1940, he visited French Indo-China
14 (Ex. 2238-A, T. 16,083). The prosecution admits there
15 is no evidence of any activities of SATO while on these
16 visits. However, they make this observation: "no doubt
17 the invasion of French Indo-China was carried out in
18 furtherance of the Japanese conspiracies . . . referred
19 to in Count 1 of the Indictment." (RR-9, T. 41,604.)

20 After first admitting there is no evidence as
21 to the accused's activities while on these visits to
22 Indo-China, they ask the Tribunal to presume that he
23 was there preparing the invasion of French Indo-China
24 in furtherance of Japanese conspiracy referred to in
25 Count 1 of the Indictment. They then make this observ-

1 ation: that from the time SATO "entered into the
2 conspiracy, he loses his shield of being a soldier" -
3 but how and when did he enter the alleged conspiracy?
4 According to the prosecution, it was when he became a
5 part-time secretary to the Planning Board, for a period
6 of less than a year, at which time the Planning Board
7 had a rostrum of 60 to 70 full-time secretaries and
8 investigators. (Ex. 71)

9 It is significant to note that the accused SATO
10 is not named in Counts 23 and 33 of the Indictment,
11 which allege that a number of the accused, on or about
12 22 September, 1940, initiated and waged a war of aggress-
13 ion and a war in violation of international treaties,
14 etc., against the Republic of France. These counts in
15 the Indictment could only refer to the so-called
16 "invasion" of French Indo-China. It is apparent that
17 even the prosecution itself placed no importance on
18 SATO's being a Staff Officer to the China Expeditionary
19 Forces when this Indictment was drawn. It is unnecessary
20 to refer to the duties of a Staff Officer. He is little
21 more than aide to the Chief of Staff (Ex. 78, T. 684.)

22 III. ACTIVITIES WHILE A SECTION CHIEF
23 OF THE MILITARY AFFAIRS BUREAU

24 1. In March 1941 SATO became Chief of the
25 Military Affairs Section of the Military Affairs Bureau.

1 There are two sections in this Bureau; namely, Military
2 Administration Section and Military Affairs Section.

3 Among other duties of the Military Administration Section
4 were (Ex. 74):

5 a. Matters concerning the fundamental principles
6 of national defense.

7 b. Matters concerning the general control of
8 estimates.

9 c. Matters concerning fundamental munition
10 administration.

11 The duties of the Military Affairs Section were:

12 a. Matters concerning general affairs of national
13 defense policy.

14 b. Matters concerning international regulations.

15 c. Matters concerning affairs with the Imperial Diet.

16 d. Matters concerning popularization of national
17 defense spirit and counter-plan for nation's thoughts
18 (Ex. 74).

19
20 The prosecution contends that by virtue of his
21 functions in the Military Affairs Section listed under
22 a, "it is thus clear that SATO's section was within the
23 War Ministry primarily concerned with the preparation of
24 this policy of aggression" (RR-11, T. 41,605). It
25 further contends that the decision of Imperial Head-
quarters of April 1941, to resort to war under certain

1 conditions, is clearly a matter concerning national
2 defense policy in general, and therefore, "in the absence
3 of evidence to the contrary, we are compelled to assume
4 that SATO's section was concerned with the preparation
5 of this decision" (RR-12, T. 41,606). This assumption
6 is made, notwithstanding the fact that as a Section
7 Chief he was not permitted to even attend Bureau meet-
8 ings within the War Ministry (Ex. 2238-A, T. 14,331
9 and 16,083), much less attend a meeting of the Imperial
10 General Staff who made such a decision. It also does
11 not consider the fact that function a of the Military
12 Administration Section is almost identical with function
13 a of the Military Affairs Section. Upon what line of
14 reasoning, therefore, are we compelled to assume that
15 SATO's section was concerned with this decision? Accord-
16 ing to the prosecution, the answer lies in the absence
17 of evidence to show that he was not concerned with the
18 decision; reasoning which is void of logic and absurd
19 on its face.
20

21 Actually, however, there is evidence explaining
22 function a of the Military Affairs Section. Colonel
23 NISHIURA, who was Chief of the Military Administration
24 Section at this same time, testified as follows:

25 "One of the matters placed under the charge
of the Military Affairs Section was matters concerning

1 the national defense policy in general. This might be
2 understood to mean that the Bureau had authority to
3 make a final decision on matters of national defense
4 policy, but the exact contrary is the case. Matters
5 of national defense and tactics were the exclusive
6 concern of the Chiefs of the Army and Navy General
7 Staffs." (Ex. 3439, T. 32,955).

8 According to this witness, both the Military
9 Administration Section and the Military Affairs Section
10 were merely to coordinate activities when such plans
11 involved consultation with the War Minister. The
12 duties were purely administrative and had nothing to
13 do with the formulation of policy of national defense
14 plans. This evidence has not been contradicted by the
15 prosecution.
16

17 2. The prosecution contends that in October
18 1941, at the time of the fall of the 3rd KONOYE Cabinet,
19 "when a crucial point had been reached in Japan's
20 conspiratorial aims", SATO busied himself in promoting
21 a TOJO Cabinet (RR-13, T. 41,606). What are the
22 facts? What is the evidence offered to the Tribunal in
23 support of this contention? The prosecution offered
24 the testimony of TANAKA, Ryukichi, who stated that SATO
25 told him he went to see Senior Statesmen ABE and HAYASHI

1 on behalf of TOJO becoming Prime Minister to succeed
2 Prince KONOYE (T. 15,873). SATO's interrogation
3 recites:

4 "I was sent by TOJO to see ABE and HAYASHI
5 following the resignation of Prince KONOYE in October
6 1941, to explain to them that TOJO thought some person
7 like Prince HIGASHI-KUNI would be the logical successor."

8 SATO denied having mentioned TOJO to ABE or
9 HAYASHI. He denied having influenced General TOJO's
10 appointment as Premier. He expressed surprise when
11 informed the next day of TOJO's appointment as Premier
12 (Ex. 3532, T. 34,445). What does TOJO say about this?
13 He testified that TANAKA's testimony on this point has
14 "no factual foundation whatsoever." He relates that
15 he felt no one but Prince HIGASHI-KUNI could have
16 handled the situation with success following the resig-
17 nation of the KONOYE Cabinet and that he had expressed
18 this opinion to Prince KONOYE and to the Lord Keeper of
19 the Privy Seal, KIDO. Therefore, he sent SATO to
20 transmit this opinion to ABE and HAYASHI (Ex. 3655,
21 par. 80, T. 36,909); and it should be noted he was
22 not alone in this thought, for Navy Minister OIKAWA
23 likewise favored Prince HIGASHI-KUNI (T. 34,570).
24

25 What does General ABE have to say about this
~~visit of SATO's? He states that SATO came to visit him~~

1 on the day the 3rd KONOYE Cabinet resigned, bringing
2 him a message from General TOJO recommending Prince
3 HIGASHI-KUNI as Prime Minister. General ABE stated
4 that at no time did SATO mention TOJO's name as Prime
5 Minister. He further testified that at the meeting
6 of the Senior Statesmen, after much discussion, KIDO
7 suggested TOJO's name as Prime Minister and there was
8 no objection (Ex. 3522, T. 34,404-411). In the face
9 of this positive contradiction of TANAKA's testimony,
10 the prosecution states: "this cannot possibly affect
11 TANAKA's credit" (RR-13, T. 41,607). ABE and TOJO
12 are confirmed in this regard by KIDO (T. 31,009).
13 In any event, the story of TANAKA becomes highly irrele-
14 vant for ABE was not challenged by the prosecution on
15 cross-examination.

16 3. The prosecution offered in evidence a
17 document entitled "Principle Reasons Alleged for the
18 Commencement of Hostilities against the United States
19 and Britain," dated 11 November, 1941, certified by
20 TANAKA, Ryukichi, which stated that to the best of
21 his knowledge and belief, the document was "prepared
22 by or under the direction of SATO, Kenro, the Chief
23 of the Military Affairs Section of the Military Affairs
24 Bureau" (RR-14; Ex. 1175, T. 10,362). The purpose of
25 this document was to show by inference that SATO knew

1 that Japan was preparing to precipitate a war and he
2 or one of the members of his Section prepared this
3 document for the accused MUTO to read at a Bureau
4 meeting. MUTO denied having read this document at a
5 Bureau meeting, or having ever discussed such a matter
6 with SATO (T. 33,161-62). The witness HARA testified
7 that this document "was drafted collectively by officials
8 of the Army General Staff, Navy General Staff, Army
9 Minister, Navy Minister and Foreign Office. It was not
10 written by the Chief of the Military Affairs Section
11 SATO, as testified by the prosecutor's witness TANAKA,
12 Ryukichi." (T. 34, 453). He also testified that it
13 was not an official document prepared in the War
14 Ministry, nor was it considered by any Liaison Confer-
15 ence. He was familiar with the document because he
16 was assistant to Colonel TANEMURA, who participated
17 in the drafting of this document on the part of the
18 General Staff office (Ex. 3533, T. 34,452-460). Atten-
19 tion is called to the fact that he did not testify,
20 either on direct or cross-examination, that any part
21 of this document came from the Military Affairs Section
22 of the Military Affairs Bureau, as is inferred in the
23 summation of the prosecution (RR-14, T. 41,610).

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4. The prosecution contends that SATO, by virtue of his position as head of the Military Affairs Section, knew the extent of the Japanese war plans (RR-15, T. 41,611). Their only support of this contention is the testimony of TANAKA, Ryukichi, who said that the General Staff draws up the plans for operations, but they cannot be put into effect unless they have the consent of the War Minister because moneys and supplies for carrying out operations are provided by the Military Affairs Bureau (Tl 15,859-62). In refutation of this, Colonel NISHIURA, head of the Administrative Section, told the Tribunal that the matter of estimates from the General Staff "is negotiated with the Finance Ministry through the Intendance Bureau; for materials, with the Planning Bureau or the Munitions Ministry through the Equipment Bureau." (T. 32,952). He further testified that the Military Administration Section, and not the Military Affairs Section, had certain duties in connection with budget matters. The Military Affairs Bureau's only duty in regard to the budget was performed by the Administrative Section whose only function in turn was - "To do its best to adjust the organization and application of budget business of other bureaus and sections to the requirements of national defense, as set by the

General Staff." (T. 32,956).

1 5. The prosecution has laid great stress on
2 a speech made by the accused SATO on 10 March 1942 at
3 Hibiya Hall on Army Day celebration. It is unnecessary
4 to refer to the fact that Japan was at this time al-
5 ready at war and that one of SATO's duties in the
6 Military Affairs Section was that of ordinary wartime
7 propaganda (Div. II, para. 3 of this Summation). This
8 speech naturally was calculated to bolster the morale
9 of both soldiers and Japanese nationals. The speech
10 is not dissimilar to thousands made in every country
11 at war. SATO was still in charge of the Press Section
12 of the War Ministry. It was nothing more nor less
13 than a typical wartime speech and does not merit fur-
14 ther discussion (RR-16, T. 41,611).

16 Up to this time the highest position the ac-
17 cused SATO has held was that of a Section Chief in the
18 War Ministry. Attention is directed to the fact that
19 in the War Ministry there were some twenty odd sec-
20 tion chiefs, not one of whom are in the dock except
21 SATO (Ex. 3031, T. 27,077). Therefore, we submit that
22 undue importance has been attached to SATO's position
23 herein, in so far as it has any bearing on the issues
24 of this case.
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IV.

ACTIVITIES AFTER APPOINTMENT AS CHIEF
OF MILITARY AFFAIRS BUREAU UNTIL JAPAN'S
SURRENDER.

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1. We come now to the real reason why SATO finds himself an accused in this case. Some four months after the outbreak of hostilities in the Pacific, he became head of the Military Affairs Bureau. The prosecution contends that in the position as Chief of the Military Affairs Bureau, SATO was concerned, among other things, with (a) making of domestic and external plans for the conduct of propaganda, and (b) with the drafting of replies to protests forwarded from the Foreign Office in regard to the treatment of POW's (RR-16, T. 41,613). The former we admit but the latter is emphatically denied.

Again the prosecution relies on TANAKA, Ryukichi, the ever-present witness, for their evidence in this regard. (T. 14,286). As usual, TANAKA's testimony is not corroborated by any other witness. To contradict this evidence, the defense offered the witness NINOMIYA, who was head of the Military Affairs Section while SATO was Chief of the Military Affairs Bureau during the war with the exception of a short time in 1942. It is in this section that TANAKA stated replies

1 to protests were prepared. This section, according to
2 TANAKA, received all protests from the Foreign Office.
3 NINOMIYA, however, testified that replies to protests
4 were not prepared by the Military Affairs Section, but
5 by the POW Information Bureau, entirely separated from
6 the Military Affairs Bureau. Protests from the Foreign
7 Office were forwarded to the POW Information Bureau
8 and matters relating to POW's were handled by this
9 bureau (T. 34,414). The prosecution contends that
10 this witness admitted on cross-examination having seen
11 and signed such documents, and, therefore, his evidence
12 is "valueless and was designed to mislead" (RR-20,
13 T. 41,614-15). Let's be perfectly fair. The document
14 presented to NINOMIYA was Item 28 of Exhibit 3367,
15 which NINOMIYA, after examining, stated, and I quote:
16 "Yes, my name appears there, so does the name
17 of the Chief of the Military Affairs Bureau SATO,
18 but in those cases seals by proxy appear."
19 Also -
20 "It appears a Staff member of the Bureau by
21 the name of YAMAZAKI impressed the seal by proxy,
22 both as to SATO's name and mine." (T. 34,419)
23 This document was then offered in evidence and became
24 Exhibit 3528. But is this document a protest or a
25 reply to a protest, as the prosecution infers in its

1 summation? It is not. The document refers to the
2 application of Article 86 of the Geneva Treaty and has
3 nothing to do with protests as to treatment of POW's.
4 This document has been circulated through the entire
5 War Ministry, as is indicated in the introductory cap-
6 tion. The prosecution then asked the witness to iden-
7 tify certain documents, including exhibits 1968 and
8 1973-76, and 3120, in not one of which the Military
9 Affairs Section was concerned, and none of them having
10 anything to do with protests and replies (T. 34,424-
11 433).

12 2. The prosecution makes a number of refer-
13 ences in its summations to various documents wherein
14 they allege distribution to the Military Affairs Bureau,
15 among others, in an effort to point a suspicious finger
16 at the Military Affairs Bureau in relation to POW mat-
17 ters. However, in each instance the captions of these
18 documents showed that they were copies and circulated
19 throughout the War Ministry; as, for illustration, in
20 the document referred to on the cross-examination of the
21 witness WIKLIYA (T. 34,422).

22
23 The witness KUDO, who was Chief of the 3d Sec-
24 tion of the Bureau of Treaties of the Foreign Office,
25 when asked where the Foreign Office sent complaints,
replied:

1 "They were sent to the department of Govern-
2 ment concerned; namely, the POW Information Bureau."
3 (T. 27,158)

4 He also testified that "replies from authorities
5 concerned" meant "with regard to POW's they were re-
6 ceived from the POW Information Bureau, and with re-
7 gard to civilian internees, from the Ministry of Home
8 Affairs and the Ministry for Overseas." (T. 27,157).

9 Mr. SUZUKI of the Foreign Office also testi-
10 fied that protests went from the Foreign Office to the
11 POW Information Bureau (T. 12,840). Colonel NISHIURA
12 who was head of the Military Administration Section
13 during this time, testified that no protests were re-
14 ceived from the Foreign Office in his section, nor
15 did his section prepare any replies to protests
16 (T. 32,960). When asked this question:

17 "Q. Do you know where policies and regulations
18 were made relative to the treatment of POW's - what
19 Bureau or Section?"

20 he answered:

21 "A. By the POW Administration Bureau." (And that
22 can be Control Bureau) That is where they were drafted."
23 (T. 32,962)

24 TANAKA himself admitted on cross-examination
25 that replies to protests were prepared by the POW

1 Information Bureau; that all reports of POW camp com-
2 manders were made to the POW Information Bureau
3 (T. 14,352 and 14,369). That protests relative to the
4 treatment of POW's and replies thereto were forwarded
5 to and received from the POW Information Bureau in the
6 War Ministry is further corroborated by the accused
7 TOGO, who was Foreign Minister during this period (Ex.
8 3646, T. 35,768-69).

9 Therefore, whose testimony is "valueless and
10 designed to mislead"? It is our submission that TANAKA
11 discredited himself as a witness long ago. The Tri-
12 bunal's attention need not again be directed to the
13 fact that TANAKA has appeared as a witness before this
14 Tribunal some nine or ten times, testifying both for
15 the prosecution and the defense. He admitted that as
16 head of the Military Service Bureau, the Kempei-tai
17 was under his control; that it was necessary that the
18 seal of his bureau be affixed to the document setting
19 up the procedure for the trial of the Doolittle fliers
20 (T. 29,047). It is a matter of evidence that TANAKA
21 has been provided his livelihood while testifying
22 before this Tribunal (T. 2,168-69). He testified
23 that there was friction between his bureau and the
24 Military Affairs Bureau (T. 14,342). It is submitted
25 that his failure to attain the post of Chief of the

Military Affairs Bureau has bred resentment within
1 him against the accused SATO.

2 TANAKA's background and conduct during this
3 trial argues strongly against acceptance of his testi-
4 mony. Were it not for the fact that the prosecution
5 predicates its case against the accused SATO largely
6 on this witness' utterances, we would be inclined to
7 pass him off without comment. The very fact of his
8 repeated appearances indicates strongly his willingness
9 to divide his testimony between prosecution and defense
10 as his interests dictate.

11 In July 1946 TANAKA testified that he was
12 dismissed as Chief of the Military Service Bureau in
13 September 1942 (T. 1,947). He later testified, with
14 an elaborate explanation, as to why he resigned as
15 Chief of the Military Service Bureau in September 1942
16 (T. 2,053). He admitted on cross-examination that he
17 was continuously with the prosecution while it was
18 presenting its case, with the exception of two weeks
19 to return to his home in the Fujiya Mountain area. He
20 stated on cross-examination on July 8, 1946, that
21 he had been under daily investigation by the Interna-
22 tional Prosecution Section (T. 2,081).

23 After changing his affiliation from the prose-
24 cution to the defense, on the only occasion he was
25

1 cross-examined by the prosecution, TANAKA made a mis-
2 statement of fact (T. 29,053), testifying that Colonel
3 OTSUKI was in the Administration Section of the Mili-
4 tary Affairs Bureau and wanted the Doolittle fliers
5 severely punished. The truth came out when Colonel
6 OTSUKI testified here in this trial himself that at
7 that time he was in Saigon and the prosecution did not
8 attempt cross-examination (T. 34,438). We contend
9 that TANAKA has demonstrated that he was, firstly,
10 interested in avoiding indictment himself; secondly,
11 in reaping what personal benefits he could; and third-
12 ly, obtaining revenge upon certain of the accused whom
13 he dislikes.

14 Relying upon the statement of law given by
15 the President of the Tribunal: -

16 "English law appears to be this, as I un-
17 derstand it; Witness A can be asked whether
18 witness B is a credible person, and witness A
19 can base his opinion on the general reputation
20 or the general character of that person,"

21 (T. 14,391) -

22 When the defense first offered TANAKA as a
23 witness, counsel for SATO made this statement:

24 "If the Tribunal please, since the accused
25 SATO intends to attack the credibility of this

1 witness at a later date, we do not join in his
2 being called as a witness." (T.22,713)

3 Later, at the time the accused SATO's individ-
4 ual case was being presented, we offered evidence as
5 to the bad reputation this witness had for truth and
6 honesty. We were overruled by the Court, through the
7 announcement of the Acting President (T. 34,389-392).
8 It is, therefore, our contention that this Tribunal
9 should disregard the testimony of this witness, at
10 least as to the accused SATO.

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3. In its conclusion the prosecution states
1 that the power to prevent atrocities and other breaches
2 of conventions relating thereto rested in the War
3 Minister (RR-24, T. 41,617). They do not charge SATO
4 with the commission of illegal acts but rather with
5 the omission to act in the furtherance of the pre-
6 ventions of such alleged violations. The statement
7 of the prosecution that SATO was in agreement with
8 the policy of the War Minister is misleading, for
9 it infers that he approved of the alleged mistreat-
10 ment of the POW's. Such has never been proven and
11 until the law announced by this Tribunal (T. 33) is
12 changed, the burden of proof rests upon the prosecu-
13 tion to sustain such charges with proof beyond a
14 reasonable doubt.

16 Such evidence as has been introduced against
17 SATO as to his words spoken after the commencement of
18 war has no bearing upon the issues arising from the
19 Indictment, unless the heretofore admirable trait
20 of patriotism or loyalty to ones country during a
21 period of war is to become a tainted and condemnable
22 thing.

23 4. The accused SATO relinquished his office
24 as Chief of the Military Affairs Bureau in December,
25 1944, and became Assistant Chief of Staff of the China

1 Expeditionary forces until April, 1945, when he
2 assumed command of the 37th Division in Siam. The
3 prosecution itself states that while this Division
4 had been responsible for atrocities before SATO took
5 command, after his command in April, 1945, "there is
6 no evidence of any atrocities committed by them af-
7 ter that month." (RR-26)

8 V. CONCLUSION

9 1. It is not with facetiousness that we say
10 the accused SATO's case presents aspects which are
11 the simplest and, yet the most difficult of under-
12 standing. It is difficult to understand why he was
13 indicted in the first place, and the lack of evi-
14 dence presented against him to sustain the charges
15 in the Indictment makes the consideration of the
16 issues involving him the simplest.

17 2. As to the planning, preparation and
18 initiation of aggressive war, the evidence both of
19 the prosecution and defense solidly discloses that
20 there is no basis for a consideration of guilt. As
21 to the waging of aggressive war, which some might
22 accept as a natural consequence of his being a soldier
23 during wartime, we sincerely urge the Tribunal to
24 weigh carefully whether this accused is actually
25 chargeable with an offense such as contemplated by

1 the magnitude of these proceedings. As has been
2 heretofore stated, the factory worker who turned the
3 wheel in the manufacture of a weapon of war, or the
4 farmer who supplied his grain to feed a soldier are,
5 in the same sense, participating in the waging of
6 war. The difference is only one of degree and the
7 degree to which the accused here participated is not
8 such as would warrant a conviction.

9 The President of this Tribunal said:

10 "The distribution of powers and responsibil-
11 ity among the Government departments and sub-
12 departments is very likely the same in Japan as
13 elsewhere. We are concerned about the activities
14 of the individuals and more particularly, the
15 accused." (T. 15,885).

16
17 Wherein SATO's participation in Governmental
18 affairs or the carrying on of his ordinary functions
19 of military office were criminal, is difficult of
20 understanding. At no time has the prosecution offered
21 even a scintilla of evidence that the accused SATO
22 conducted himself other than as a reasonable and
23 patriotic man in compliance with the duties imposed
24 upon him. Nor was he at any time in a position such
25 as could command the charge of policy-making.

3. The prosecution quite appropriately divided

1 their argument into two divisions, one bearing upon
2 SATO's activities before assuming the post of Chief
3 of the Military Affairs Bureau, and the other after
4 that date. The assumption of such office, as the
5 evidence has clearly shown, was after the commence-
6 ment of hostilities. It is not mere speculation or
7 surmise that leads us to the belief that SATO would
8 never have found himself one of the accused in this
9 courtroom had he not assumed this post. After accep-
10 tance of this assignment, the evidence leads us to
11 the sound conclusion that he perpetrated no wrong
12 cognizable by the Charter of this Tribunal.

13 4. We respectfully urge the Tribunal to
14 consider the imprisonment of this man during the long
15 pendency of this trial in light of the utter failure
16 of the prosecution to initially justify even his
17 indictment, much less to prove his guilt. In so
18 doing, we ask for a verdict of "Not Guilty" on each
19 and every count in the Indictment in which he is
20 charged.

21 THE PRESIDENT: Well, what is the next case?

22 MR. FREEMAN: Mr. Levin is ready.

23 THE PRESIDENT: Mr. Levin.

24 MR. LEVIN: Mr. President: In view of the
25 lateness of the hour I think we might well be advised

1 and I would suggest that the Tribunal adjourn until
2 the morning. We have been desirous of cooperating
3 with the Tribunal that there should be no loss of
4 time but our summation has just been completed and
5 has not as yet been completely distributed. I don't
6 believe Brigadier Nolan has his copy.

7 THE PRESIDENT: The head of the Translation
8 Section told me during the recess that he, too, would
9 like a few minutes longer. We will give him those
10 few minutes.

11 We will adjourn until half past nine tomorrow
12 morning.

13 (Whereupon, at 1552, an adjournment
14 was taken until Wednesday, 24 March 1948, at
15 0930.)
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24 MARCH 1948

I N D E X

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1 Wednesday, 24 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. H. NORTHCROFT,
14 Member from the Dominion of New Zealand, not sitting
15 from 0930 to 1600; HONORABLE JUSTICE I. M. ZARYANOV,
16 Member from the USSR., not sitting from 1330 to 1600;
17 HONORABLE JUSTICE R. B. PAL, Member from India and
18 HONORABLE JUSTICE JU-AO MEI, Member from the Republic
19 of China, not sitting from 1500 to 1600.

20 For the Prosecution Section, same as before.

21 For the Defense Section, same as before.

22
23 (English to Japanese and Japanese
24 to English interpretation was made by the
25 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 UMEZU, MATSUI, and SHIRATORI, who are represented
5 by counsel. The Sugamo Prison surgeon certifies that
6 they are ill and unable to attend the trial today. The
7 certificates will be recorded and filed.

8 Mr. Levin.

9 MR. LEVIN: Mr. President, I now make the
10 presentation on behalf of SUZUKI, Teichi.

11 1. At the beginning of this trial, the
12 President announced that the Members of this Tribunal
13 had signed a joint affirmation to administer justice
14 according to law without fear, favor or affection;
15 that there has not been a more important criminal trial
16 in all history; that the Tribunal is not a Senate or
17 House of Peers met for the impeachment of Verres or a
18 Hastings, but a court of plain men selected from the
19 Superior Courts of the respective nations which consti-
20 tute the Tribunal, and that the onus would be on the
21 prosecution to establish guilt beyond a reasonable
22 doubt. (1) The same idea is also expressed by the chief
23 prosecutor in his opening statement. (2) The chief
24 prosecutor also indicated in his opening statement (3)
25 that to hold the accused guilty in connection with the

(1) T. 21, May 3, 1946; (2) T. 434; (3) T. 405.

1 charges under planning and initiating a war of aggres-
2 sion, two things are essential: (1) There must be an
3 international law covering the subject; and (2) there
4 is a crime under that law. It is, however, disquieting
5 to note that the chief prosecutor speaks of "legal
6 technicians" in a contemptuous vein recalling James I
7 in that historic Sunday Conference which has become locus
8 classicus in judicial history. The answer of the defense
9 is that of Sir Edward Coke that causes which concern the
10 life or liberty of the accused is to be decided not by
11 the natural reason of the conquerors, but the artificial
12 reason and judgment of the law (of nations.) It is
13 hard to believe that the chief of counsel is desiring
14 to give James I the last laugh over Sir Edward. At any
15 rate we are confident that the Tribunal through its
16 President were expressing their determination to follow
17 the path of the law indicated by Lord Coke, a procedure
18 which is essential for maintaining the supremacy of law
19 among nations as well as for safeguarding fundamental
20 human rights.

21
22 2. In a case of this magnitude involving
23 statesmanship of the accused, it is not possible properly
24 to evaluate the behavior of the accused, without knowing
25 the man and his ideology. Before answering specific
charges by the prosecution, therefore, we may be

1 permitted to note certain characteristic features of his
2 life and thought, as the defense understands them, in
3 view of the evidence in the record and SUZUKI's affidavit
4 in particular. (4)

5 3. It is apparent from uncontradicted state-
6 ments in SUZUKI's affidavit that professional soldier as
7 SUZUKI was, his political ideology was deeply influenced
8 especially by his intimate intercourse with a group of
9 young statesmen like Prince KONOYE who were all ardent
10 admirers of Prince SAIONJI's political liberalism. This
11 accounts largely for his behavior evincing a strong
12 antipathy to dictatorial and totalitarian government
13 and the Nazi Germany in particular. Like most Japanese
14 liberals interested in Chinese affairs SUZUKI belonged
15 to the school which was in sympathy with the national
16 aspirations of China. He was, therefore, an advocate of
17 Sino-Japanese friendship in terms of equality and his
18 Chinese friends were mostly of the Nationalist Party.
19 This attitude was manifested in SUZUKI's hearty support
20 of the political views advanced by Hwang Fu, a
21 Nationalistic statesman, in 1933 in Peiping, and his
22 favorable report of the same to his superiors in the
23 War Ministry. His opinion was not accepted, largely
24 because it was contrary to the ideas of the opposite
25 (4) T. 35173 et seq.

1 school concerning China then dominant in the War
2 Ministry, and partly because he, then a mere Lieutenant
3 Colonel, was not influential enough to change this
4 political trend. In view of the fact that SUZUKI's
5 views on China were regarded as heterodox in the army
6 circle, it is not to be wondered at that he was soon
7 removed to posts such as a member of the Intelligence
8 Corps, an instructor of military science in the War
9 College or a Cabinet investigator which had nothing to
10 do with the conduct of Chinese affairs or to posts
11 away from the centre as in the eastern corners in
12 Manchuria. No wonder then that when the China Incident
13 occurred in 1937 the liberal and pro-Chinese SUZUKI
14 watched with profound concern the spread of military
15 clashes between the Japanese and the Nationalist armies
16 in China. It is no wonder again that when in 1938 he
17 was called back to Tokyo to assume the post of a section
18 chief of the China Affairs Board, and when he was
19 obliged to execute his duties within the framework of a
20 policy not personally approved by him, he endeavored
21 nevertheless to do his duty with the three principles
22 based on his personal convictions. Every public servant
23 must execute the orders of his superiors; otherwise the
24 business of government cannot be conducted. Yet if he
25 is possessed of critical intelligence, he may sometimes

1 be highly skeptical of the very policy he is in duty
2 bound to execute. SUZUKI was such a man; he had on
3 the other hand a keen sense of military and official
4 discipline. And this behavior of the accused in the
5 China Affairs Board must be interpreted as a compromise
6 between the exigencies of his official duty and those
7 of his own convictions and conscience. Here too he was
8 a mere chief of a section and was impotent to stem the
9 tide of the main political current.

10 4. He was a liberal, but certainly not a
11 communist. Like most Japanese liberals he felt that the
12 Russian people were entirely free to live under a
13 political regime they liked, but that those subversive
14 Communistic movements which undermined the very found-
15 ations of the Japanese State aided and abetted by the
16 Third International should be vigorously opposed. How-
17 ever, SUZUKI, through his studies in the problems of
18 national economy, was able to look at national defense
19 in the context of broader national life. He was
20 certainly opposed to the activities of the Third Inter-
21 national, but clearly saw that a conflict with a major
22 power like the U.S.S.R. would be disastrous to his
23 country whatever its outcome. The same idea was mani-
24 fested in SUZUKI's ingenious plan to avoid border
25 ~~incidents which he practised with success during his~~

assignments in Eastern Manchuria.

1 5. The choice of SUZUKI by the Prime Minister
2 KONOYE as President of the Planning Board was due to the
3 fact that unlike most military officers SUZUKI had an
4 intelligent understanding of the problems of national
5 economy in general, and also to the fact that he would
6 be able more effectively than civilians to check the
7 exorbitant demands for allocations by the armed forces
8 which were then fraught with the danger of jeopardizing
9 national livelihood. Unlike ministers of the Departments
10 SUZUKI as head of that Board was not charged with the
11 responsibility to carry out any of the plans decided
12 upon; that was the function of the respective Ministries
13 His main duty was to assist the Premier in exercising the
14 political function of conciliating and co-ordinating the
15 conflicting demands of the Ministries, and to evolve such
16 economic plans as could be consented to by all the
17 Ministries. It is true that the Planning Board was
18 apprised of the details regarding the economic require-
19 ments of the Ministries, except in the case of the War
20 and Navy Ministries which latter were not allowed under
21 the heavy penalties of law to reveal to the Planning
22 Board or to anybody else the details regarding the
23 allocation demanded. The Planning Board was thus in a
24 key position to know the civilian economic situation of
25

1 the country as a whole. So the President of the Planning
2 Board was the logical person to be asked to explain on
3 behalf of the Prime Minister economic matters before the
4 Liaison Conference or the Cabinet. There were, however,
5 serious lacunae in the information available to the
6 Board on economic matters, such as petroleum, which was
7 kept secret by the military departments from the
8 Planning Board. The Planning Board when requested to
9 make explanations to elucidate matters relating to
10 petroleum as a whole in the Liaison Conference, it had
11 to rely with implicit confidence on data supplied by
12 the two branches of the armed services. The function of
13 the Planning Board was no more than the above.

14 6. SUZUKI, however, was a trusted friend of
15 KONOYE. KONOYE as Prime Minister had of course his
16 official and private secretaries. But KONOYE saw that
17 in dealing with some domestic political situations
18 SUZUKI's ability and position was such as to make him
19 more suitable for the purpose than his other secretaries,
20 And that accounts for the part played by SUZUKI in the
21 important liaison work as between KONOYE, KIDO, TOJO,
22 and HIGASHIKUNI immediately before the fall of the Third
23 KONOYE Cabinet. And that was also the reason why he was
24 asked to attend the Ogikubo Conferences not indeed to
25 participate in the major discussions but to record its

1 proceedings. SUZUKI often expressed his views or
2 tendered advice to KONOYE, but it was given as KONOYE's
3 friend, not in the capacity of the President of the
4 Planning Board. The advice evinced his efforts to avert
5 a drift of the nation into war with America, by coming
6 to terms by negotiation with the United States which
7 SUZUKI like all intelligent Japanese statesmen heartily
8 desired.

9 7. SUZUKI's function in the TOJO Cabinet was
10 strictly confined to his work as the President of the
11 Planning Board. He was not TOJO's personal friend as he
12 certainly was KONOYE's, and SUZUKI was not in a position
13 to act as TOJO's high-class secretary or confidential
14 political adviser, although he was certainly an official
15 immediately subordinate to him and assisted him faith-
16 fully in matters which fell within the purview of the
17 Planning Board.

18 8. Until November 27 or 28 he sincerely hoped
19 for peace and thought that terms could be made with the
20 United States, though the subsequent course of events
21 proved to be such that his judgment cannot possibly
22 escape the censure of having been a bit of wishful
23 thinking.
24

25 8-A. The accused does not deny that he gave
his assent to the cabinet decision for war. It is clear

1 that he was doing his best within his power to avoid
2 that war. However, after the Hull note of 26 November
3 he came to believe in the light of informations supplied
4 by his expert colleagues in charge and the military
5 authorities, that the danger to his country was so
6 immediate as to make war inevitable as a measure of
7 self-defense.

8 9. The accused does not deny that after the
9 national decision had been made, he bent his efforts
10 towards bringing the war to a success.

11 10. In making this presentation on behalf of
12 the accused SUZUKI, it is not our purpose to discuss
13 the law applicable to the case. That has already been
14 fully done in the course of the defense summation and
15 will only be referred to in relation to a situation
16 specially applicable to this accused.

17 11. The relation of the accused SUZUKI to the
18 events involved in this case are divided in two main
19 categories:

20 (1) His services in the Army until April, 1941.

21 (2) His services as President of the Planning
22 Board, in the Second and Third KOFUYE Cabinets and in
23 the TOJO Cabinet.
24

25 It is our contention with reference to (1) that
the services that SUZUKI rendered while in the Army were

1 the customary and usual services of an Army officer and
2 for which he cannot be held responsible under any of the
3 Counts of the Indictment; for they were "performed
4 officially in accordance with the policy already
5 established* * *." (5) If the prosecution had not
6 attempted to make a mountain out of a mole hill by
7 referring to the activities of SUZUKI from 1931 to
8 April, 1941, we would feel justified in making no
9 reference to his activities during this period. However,
10 they having done so, we feel it incumbent upon us, in
11 justice to the accused, to refute seriatim the argu-
12 ments made by the prosecution during this period also.
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(5) T. 40539.

I. MILITARY AFFAIRS BOARD

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2 12. In the course of 'SUZUKI's cross- (6)
3 examination the prosecution referred to a document,
4 and inquired whether or not SUZUKI remembered the
5 document and whether or not he had handed this docu-
6 ment to MORISHIMA, Section Chief of the Asiatic
7 Affairs Bureau of the Foreign Ministry. SUZUKI
8 denied both. (7) The alleged delivery of a document
9 to MORISHIMA, even if proved, means nothing. It is
10 a routine liaison work between two Ministries. If
11 that is all, the defense may well leave this allegation
12 unanswered. The prosecution, however, not only
13 charges the accused with the delivery of the document
14 to MORISHIMA, but seems to endeavor to insinuate that
15 SUZUKI had something to do with the formulation of
16 the policy therein mentioned. It is therefore
17 incumbent on the defense to elucidate the situation
18 and show that the said charge and insinuation are
19 quite unfounded in view of the circumstances stated
20 below.

21
22 13. As the prosecution recognizes (8) SUZUKI
23 was despatched to Peiping some time after the conclusion
24 of the Tang-ku Agreement of 31 May, 1933. The decision

25 (6) Ex. 3607-A, T. 35,261
(7) T. 35,259
(8) T. 35,256

1 to make SUZUKI to proceed to Peiping must have been
2 made around the middle of June at the earliest. In
3 those days it took about 10 days for a return trip
4 to Peiping, and allowing the necessary time for
5 conducting his mission at Peiping he must be presumed
6 to have been still on his journey on 6 July, 1933,
7 when the War Ministry and the Army General Staff
8 approved the recommendations contained in that docu-
9 ment.

10 The policy indicated in the said document
11 is not only diametrically opposed to the ideas long
12 entertained by SUZUKI concerning Chinese affairs, but
13 contrary to the policy indicated in the three points
14 of Hwang Fu, which SUZUKI reported to his superiors
15 with approval, adding his own view that the solution
16 of various local issues in North China should be
17 undertaken by relying upon and trusting the various
18 North China organs of the Chinese and in cooperation
19 with the Chinese. (9) His view did not meet with the
20 approval of his superiors in the War Ministry, (10)
21 and it is significant that in August 1933 he was
22 removed to a post (Intelligence Corps of the War
23 Ministry), which could not deal with Chinese affairs. (11)

25 (9) T. 35,388-9
(10) T. 35,340
(11) T. 35,174

There were two other SUZUKIs, viz. Lieutenant
1 Colonel SUZUKI in the War Ministry and Lieutenant
2 Colonel SUZUKI in the Army General Staff. (12)
3

4 14. In view of the above circumstances it
5 is the contention of the defense that the alleged
6 delivery of the document to MORISHIMA must have been
7 made not by the accused but by one of the other
8 Lieutenant Colonel SUZUKIs, and that the accused did
9 not participate at all in the formulation - not to say
10 approve the policy indicated in the said document.
11 It is natural in such circumstances that the answers
12 of the accused to the two questions put by the
13 prosecution were both in the negative.

14 15. In connection with the Hu Lin testimony (13)
15 the prosecution contends that SUZUKI was deceiving Hu
16 Lin as to "the real policy of the War Ministry and the
17 Army General Staff," and makes a further and broader
18 accusation that SUZUKI's alleged sympathy with the
19 Chinese Nationalistic movement was "a sham". (14)
20

21 The defense submits that these allegations
22 are startling accusations and that without any evidence
23 whatsoever to support them.

24 16. In 1935 when Hu Lin and SUZUKI met,

25 (12) T. 35,340-1
(13) T. 3518-4
(14) T. 41,817

1 SUZUKI was conducting a heart-to-heart talk with his
2 old friend and he was expressing his private views,
3 as SUZUKI testifies. ⁽¹⁵⁾ He was not in any way
4 interpreting the current views of the War Ministry
5 and the Army General Staff. Of these Hu Lin, the
6 owner and editor-in-chief of the largest paper in
7 China, could and undoubtedly did judge for himself
8 in view of the then political developments in North
9 China, such as the North China Self-Government movement
10 and Ho-UMEZU Agreement, etc. SUZUKI himself was then
11 a cabinet investigator and an instructor of military
12 science in the War College and was certainly not in
13 an official position adequately to interpret "the
14 real policy of the War Ministry and the Army General
15 Staff." ⁽¹⁶⁾ No, SUZUKI was expressing his personal
16 conviction on Sino-Japanese friendship and his personal
17 sympathy to the Nationalist movement which never
18 suffered any change since his encounter with Hu Lin
19 in 1927. It must certainly be presumed that the
20 political view of a man like SUZUKI which had been
21 formed after his long experience and studies in Chinese
22 affairs can not so easily be changed by the adverse
23 currents of contemporary politics.
24

25 (15) T. 35,264-5

(16) T. 35,174

1 We are quite at a loss to understand, what
2 the alleged "evidence" is for making a surprising
3 charge against the accused that his sympathy with the
4 Nationalist movement is a sham. We remind the
5 Tribunal there is no such evidence, but the statement
6 is only an unjust and dogmatic assumption made by the
7 prosecution.

8 17. It is contended by the prosecution
9 that "as early as 1933 SUZUKI was, in fact, advocating
10 the expansion of Japan by means of aggressive war"
11 and that he is "attempting to conceal his real attitude
12 to serve his present purpose."⁽¹⁷⁾

13 And this allegation is made on two very weak
14 bits of evidence.

15 18. The one is a remark attributed to him
16 that Russia is an absolute enemy.⁽¹⁸⁾

17 This does not imply in any way an advocacy
18 of an aggressive war against Russia. It simply meant
19 as SUZUKI states in his affidavit that so long as
20 the Soviet Union aided and abetted the Third International
21 which plotted to effect a Communist revolution in
22 Japan involving the overthrow of such basic national
23 institutions as the Emperor-system, Russia was an absolute

25 (17) T. 41,819

(18) T. 41,818, Ex. 2253, T. 16,216

(19)
 enemy.

1
 2 To a Communist this statement might appear
 3 "reactionary," as similar statements by contemporary
 4 statesmen in America and England certainly would. The
 5 concern for the revolutionary activities of the Third
 6 International, however, was then quite common to
 7 Japanese liberals as well as to Japanese Conservatives,
 8 and there was nothing in such remarks as indicating a
 9 propensity to aggressive war on the part of the accused.

10 19. The second is TAKEBE's testimony which
 11 says SUZUKI made a speech which consisted in "laying
 12 the ground for the necessity for a war of Japan against
 13 the Soviet Union and for the necessity of capturing
 14 the Soviet Maritime Province and Siberia."⁽²⁰⁾

15 The making of any speech by SUZUKI at the
 16 meeting of the Toyama military school was denied by
 17 SUZUKI himself,⁽²¹⁾ which is corroborated by KOSAKA
 18 who testified for the accused ARAKI.⁽²²⁾ SUZUKI
 19 was at the function together with other officers of
 20 the War Ministry and was explaining to the War Minister's
 21 guests in an ante-chamber to the great Hall, the then
 22 military situation in Manchuria with the help of a
 23 number of maps. Such a procedure of making subordinates

24
 25 (19) T. 35,231
 (20) T. 41,818, Ex. 3371, T. 31,835
 (21) T. 41,819, 35,232
 (22) T. 36,985

~~explain to Ministry's guests concerning matters~~

1 within its charge is common usage in Japan. TAKEBE's
2 memory is admittedly obscure, he himself confessing,
3 "Naturally I do not remember the exact wording of
4 the ARAKI's and SUZUKI's statements as many years have
5 passed since then."⁽²³⁾ And TAKEBE's testimony itself
6 was a vague one that SUZUKI "explained various problems
7 of the international situation to lay the ground to
8 the alleged necessity."⁽²⁴⁾

9
10 20. The above two evidence are certainly
11 too weak to make the serious and astonishing charge
12 that as early as 1933 SUZUKI was advocating the
13 expansion of Japan by means of "aggressive war" --
14 a gratuitous and fatuous argument unproved by any
15 evidence whatever.

16 Moreover, SUZUKI's conception of national
17 defense vis-a-vis Russia is most eloquently expressed
18 by his successful endeavors to prevent "border
19 incidents" so that they will not develop into a major
20 war between the two countries.⁽²⁵⁾

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24 (23) T. 31,837
25 (24) T. 31,835
(25) T. 35,192-3

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1 21. It is also significant that throughout
2 the entire record the prosecution has presented only
3 isolated and sporadic instances, of an ambiguous kind
4 two in number, of SUZUKI's attitude toward Russia,
5 when on the other hand it makes no comment on the
6 uncontradicted testimony concerning his successful
7 efforts to prevent border incidents as indicated in
8 the preceding paragraph.

9 II. CHINA AFFAIRS BOARD

10 22. In order to evaluate SUZUKI's behavior
11 during his tenure of office in the China Affairs
12 Board, it is necessary first to revise two erroneous
13 assumptions which the prosecution seems to make.

14 23. It speaks of the China Affairs Board
15 as a "powerful" Board.²⁶ This must be taken with
16 the serious qualification that although the Board
17 was established in order to check the arbitrary actions
18 of the Army through its special service agencies in
19 China, the Army continued such agencies even after
20 the formation of the China Affairs Board.

21 The prosecution's witness OIKAWA testified
22 about this situation by saying: "Local military
23 commanders had as part of their staff a special
24 service organization for effecting economic, political
25
26. Tr. 41826.

1 and cultural matters."²⁷. Moreover, there were
2 organs such as KAGESA and DOHIHARA agencies far more
3 powerful than special service agencies.²⁸ The China
4 Affairs Board was not in a position to obtain much
5 information of the activities of these military
6 agencies and the Board had no control over them. To
7 the extent that the policy decided on by the China
8 Affairs Board was often nullified on the plea of
9 military necessity by the military in China, the
10 China Affairs Board with its branch offices was an
11 innocuous body in its practical operations.

12 24. Secondly, the prosecution speaks of
13 SUZUKI as one of its important heads²⁹. which tends
14 to suggest that SUZUKI was responsible for major
15 policies formulated by the Board. This certainly is
16 an erroneous assumption. As a matter of fact
17 SUZUKI's position in the Board was a minor one.³⁰ The
18 Board was headed by the President, who was the Prime
19 Minister. He was assisted by four vice-presidents
20 composed of the heads of the Foreign, Finance, War
21 and Navy Ministries. Then came the Secretary General
22 whose function was to put into effect the decisions
23

24 27. Tr. 4771.
25 28. Tr. 39285, 40654.
29. Tr. 41826.
30. Ex. 455, Tr. 3183.

made by the President and Vice-Presidents.^{31.}

1 SUZUKI was a mere section chief under the Secretary
2 General and was not in a position to formulate the
3 policies of the Board. His duty was to help the
4 Secretary General in the execution of such policies
5 as already had been decided, so far as the functions
6 of his own section were concerned.
7

8 25. The prosecution says that his alleged
9 efforts toward minimizing interference and to bring
10 about cooperation between China and Japan are un-
11 supported by evidence.^{32.} Of course the three
12 principles SUZUKI mentions in his affidavit^{33.} were
13 by way of his own personal guide in exercising the
14 authority assigned to him, and did not represent the
15 policy of the Board. In the nature of things, no
16 extrinsic evidence is available regarding a matter
17 relating to his personal guide, and it must be ad-
18 mitted that his efforts in that direction did not
19 bear much fruit and that chiefly because of the
20 influence of the military agencies in China, i.e.
21 because of the military situation as SUZUKI puts it
22 in his testimony.^{34.}
23

24 31. Ex. 455. Tr. 3183.

25 32. Tr. 41&17.

33. Tr. 351/4.

34. Tr. 35194-5.

1 26. But his three principles are perfectly
2 consonant with his long-standing views in Chinese
3 Affairs.

4 His personal conviction was to come to terms
5 with Generalissimo Chiang Kai-shek regarding it unwise
6 to set up new regimes in China.³⁵ But the latter
7 policy was decided upon by the decisions of January
8 1938 and October 1938, in the formulation which he
9 was naturally not concerned at all.³⁶ As a section
10 chief there was nothing for him but to perform his
11 duties within the framework of that policy.

12 27. As for the WU Project SUZUKI was, of
13 course, not responsible for the formulation of such a
14 policy. A section chief did not attend the confer-
15 ence of the China Affairs Board at which decision on
16 such weighty matters was made.³⁷ His part concerning
17 that project was a mere routine work of his section
18 to convey to the Chief of the East Asiatic Bureau of
19 the Foreign Ministry and the China Affairs Board Branch
20 Offices in the China area the communications sent to
21 him from the War Ministry.³⁸

22 28. The giving of a letter to KAGESA who was

- 23
24 35. Tr. 35194.
25 36. Tr. 41821, 35270.
37. Tr. 35284.
38. Tr. 41823.

1 going to see Wang was also routine work. Secretary
2 General YANAGAWA who was the logical man to write such
3 a letter did not know Wang, and SUZUKI who knew Wang
4 wrote a letter at the request of the Secretary
5 General.^{39.}

6 29. The interview with Goette simply means
7 that SUZUKI frankly told the American correspondent
8 about his own view that the policy of the government
9 to deal with Wang was illusory, Chiang Kai-shek being
10 the only real ruler in China and that so long as Japan
11 could not come to terms with General Chiang Kai-shek
12 the war could not but go on⁴⁰ -- an intelligent view
13 which was indeed contrary to the official view of the
14 day, but one quite becoming SUZUKI, a liberal and a
15 China expert.

16 30. Unless we make the extraordinary
17 assumption that a military officer was committing a
18 wrong in executing the orders of his superiors because
19 they were contrary to his conceptions of policy, the
20 defense cannot see anything blameable in SUZUKI's
21 behavior during his service in the China Affairs
22 Board. It must be remembered that under the Japanese

23 39. Tr. 35287-8.

24 40. Tr. 41225, 3780, 38234.

1 law a military officer cannot resign of his own
2 accord or request to be removed to another post.
3 It is a significant fact that not only during his
4 service in the China Affairs Board but before or
5 after that period, SUZUKI was never known to have
6 written or spoken in public in support of the China
7 Incident.

8 31. The defense therefore considers it
9 preposterous for the prosecution to contend that
10 SUZUKI was "in favor of aggressive warfare in China
11 and was active in the exploitation of that country
12 and its resources." 41.

13 III. THE TRIPARTITE PACT

14 31-A. The prosecution has laid great
15 emphasis on the significance of the Tripartite Pact
16 and its relation to its claims for the development
17 of the alleged conspiracy in this case. It is in-
18 conceivable that one charged with participation under
19 practically all the counts of the Indictment from
20 1931 to 1941 could have nothing to do with this Pact.
21 Nevertheless, although this did not come within the
22 sphere of his functions in the China Affairs Board,
23 SUZUKI WOULD CONCEDE that he objected to the conclusion
24 of the Tripartite Pact, and this fact is conceded by
25 41. Tr. 41826.

1 the prosecution.^{42.} Not only this, but as an indi-
2 cation of SUZUKI's strong opposition to Nazi Germany,
3 and to the implications of this Pact, he went a
4 step further -- after the outbreak of the German-
5 Soviet War, he recommended to Prince KONOYE that it
6 would be better to terminate the Triple Alliance.^{43.}

7 IV. THE PLANNING BOARD

8 32. After carefully reading the prosecution's
9 charges under this head, the defense cannot but feel
10 that language, especially when rendered into that
11 of a foreign country with a different social back-
12 ground, is often deceptive. And the defense regards
13 it essential to clarify some of the terms so that
14 there be no misunderstanding.

15 33. First, the term Cabinet Planning
16 Board may give the invidious impression that it was
17 the all-powerful central organ for controlling the
18 entire national economy, in military and civil
19 fields, and that for purposes of aggressive war!

20
21 As a matter of fact the Planning Board had
22 nothing to do with the planning not only of operation-
23 al but of economic affairs in the military sphere.
24 It was entirely in the dark as to how the materials
25 allocated to the armed services are or were to be

42. Tr. 35190, 41825. 43. Tr. 35191.

44. ~~used. This was a natural consequence of the~~

1 system of independence of the Supreme Command
2 peculiar to Japan. The planning did not, therefore,
3 extend to the economic planning in the military
4 sphere which was the exclusive business of the armed
5 services themselves.^{45.} The only part which the
6 Planning Board played was the amount of materials
7 to be allocated to the Army and the Navy.

8 The planning was, therefore, confined to
9 the non-military sphere. In this sphere the Planning
10 Board was in a position to obtain information from
11 the Ministries concerned as to how the materials
12 allocated to them were or were not to be used.^{46.}

13 However, the Planning Board could not evolve a plan
14 in an autonomous way and compel the Ministries to
15 accept it. The plan could only be made by concil-
16 iating and coordinating the conflicting demands and
17 subject to the approval of the various Ministries.^{47.}

18 The Planning Board had, moreover, nothing to do with
19 the execution of such a plan which was the function
20 of the respective Ministries.^{48.} It is, therefore,

22 44. Tr. 18362.

23 45. Tr. 35239-40.

24 46. Tr. 35239.

24 47. Tr. 35240.

25 48. Tr. 41827, 35240.

1 a grave error to describe the Planning Board as an
2 all-powerful body "controlling Japanese economy"⁴⁹. --
3 a picture which the Liebert testimony is apt to
4 convey. It was a body offering technical advice to
5 the Prime Minister in national economic matters,⁵⁰
6 although its president had the further task of
7 assisting the Prime Minister by the exercise of his
8 political ingenuity in conciliating and coordinating
9 departmental requirements to formulate an allocation
10 plan acceptable to all the Ministries.

11 34. Secondly, the military word "mobiliza-
12 tion" suggests that it is connected with war, and
13 the "economic mobilization" suggests mobilization
14 for a war to come. As a matter of fact the
15 "economic mobilization" with which the Planning
16 Board was entrusted simply means that resources be
17 effectively utilized or "mobilized" as to satisfy
18 national economic needs in view of the palpable
19 shortage of those resources.⁵¹ It is a metaphor
20 to indicate a trend opposite to that of laissez-
21 faire. It is true that national economic needs
22 comprised requirements of national defense, but the
23 word did not mean mobilization for a definite war
24

25 49. Tr. 41826, 8403, 35241.

50. Tr. 41827, Ex. 71.

51. Tr. 35197, 35239.

1 such as a war against the United States and Great
2 Britain as the prosecution seems to assume.

3 35. Thirdly, the prosecution certainly is
4 lacking in the sense of humor when it takes hold of
5 such phrases as "the strengthening of national
6 defense" and "war-time structure" used by the Plan-
7 ning Board, to prove that the Commodity Mobilization
8 Plan or other plans were in the nature of a "war
9 plan."⁵² It forgets that statesmen often use lan-
10 guage to conceal their thoughts rather than express
11 them. Taking the conditions of the country into full
12 account, it is patent to all intelligent persons that
13 SUZUKI was urging the Japanese people to direct their
14 endeavors towards an increase of production with a
15 view to tiding over the grave difficulties caused by
16 the economic severance effected by America, Britain
17 and the Netherlands.⁵³ The revelation of the real
18 economic difficulties caused by such severance would
19 certainly have turned the national sentiment against
20 the United States who would be stigmatized as the
21 primus mobile of such economic difficulties. This
22 would become a serious obstacle in the way of
23 American-Japanese negotiations, the success of which
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25 52. Tr. 41830, 41835.

53. Tr. 35237-8.

1 •SUZUKI heartily desired.^{54.}

2 36. The main contention of the prosecution
3 is that SUZUKI was actively engaged in the formulation
4 and execution of plans and preparations for aggressive
5 war.

6 The prosecution here charges the Planning
7 Board President not only with the formulation but
8 with execution of the plans. But clearly the Planning
9 Board had no responsibility for the execution of plans,
10 as the prosecution itself seems to recognize by saying,
11 "It is probably quite true. . . that the execution of
12 such plans was not the responsibility of the Planning
13 Board."^{55.} So the question narrows itself into one
14 as to whether or not the Planning Board was engaged
15 in formulating plans for aggressive war. And in
16 view of the context it seems clear that by "aggressive
17 war" the prosecution refers to the Pacific War. The
18 prosecution does not certainly charge the President
19 of the Planning Board with planning military plans
20 for opening hostilities with America, Great Britain,
21 etc., for that was a matter falling under the ex-
22 clusive jurisdiction of the Supreme Command, and of
23 which the Planning Board had no concern whatsoever.
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25 54. Tr. 35239.
55. Tr. 41827.

1 So the question is whether the Planning Board made
2 its plans with the object of initiating the Pacific
3 War, not merely by taking into account exigencies
4 of national defense in view of the prevailing inter-
5 national situation. It is the contention of the
6 defense that those plans were certainly not made
7 with the view of opening hostilities against America
8 and her Allies.

9 37. If the planning had been made in order
10 to initiate the Pacific War, the allocation for the
11 Navy must have increased, for in a war against the
12 United States and Great Britain, the Navy would
13 necessarily have to play the major role, and consid-
14 erable loss of shipping must also be expected. But
15 we do not see any increase in the allocation for the
16 Navy in the Commodity Mobilization Plan for 1941.
17 The allocations for military use was determined with
18 main stress laid on the replenishing of the consump-
19 tion of the Army's munitions due to the troubles in
20 China and no increase in the allocation for the Navy
21 or in the way of increase in ship-building appears
22 in the said plan.⁵⁶ After the Imperial presence
23 Conference of 6 September, the Navy Vice-Minister
24 requested the Planning Board to modify the plan,
25 56. Tr. 35341.

1 demanding an additional allocation of 300,000 tons
2 of steel. The Planning Board refused to comply
3 with this demand, and the matter remained pending 57.
4 until the decision for war was taken on December 1.

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57. Tr. 35204.

1 38. The Commodities Mobilization Plan for
2 1941 was accompanied with a plan for importing materials
3 from America, Britain, and the Netherlands, calculated
4 at FOB prices.⁵⁸ The plan for the above imports was
5 naturally nullified by the economic severance, but the
6 very fact that the Commodities Mobilization Plan pre-
7 supposed imports from America, Britain and the Nether-
8 lands and not any stoppage of such imports also goes
9 to show that the Commodities Mobilization Plan for 1941
10 was not a "war plan."

11 37. It is true that in the Commodities
12 Mobilization Plan for 1941 the allocation for military
13 purposes, especially for the army, was seemingly some-
14 what increased as compared with the plan for the pre-
15 vious year.⁵⁹ This, however, was due to the fact that
16 the allocation for "indirect military use" which had
17 in the previous plan been comprised under allocation
18 for non-military use was included in the allotment for
19 military use in the Plan for 1941. The seeming in-
20 crease in military allotment was, therefore, merely
21 apparent and did not, therefore, signify any real in-
22 crease.⁶⁰ This also goes to show that the Plan for
23 1941 was not a "war plan."
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25 58. Tr. 18,368

59. Tr. 35,239

60. Tr. 18,368

1 40. SUZUKI's main function as the Planning
2 Board President toward the fulfillment of which he did
3 his best until 1 December 1941 was to safeguard civilian
4 requirements by suppressing the exorbitant and insist-
5 ent demands by the armed forces.⁶¹ Immediately after
6 the assumption of his post, therefore, he set up a
7 section in the Board to investigate by scientific
8 methods the quantities of materials absolutely required
9 for the nation's livelihood.⁶² Backed by accurate
10 figures he vigorously resisted the demands made by the
11 armed forces in favor of those for general civilian
12 requirements. He succeeded in persuading the army and
13 navy to concede a substantial reduction of 40 to 50
14 per centum of their original demands.⁶³ How on earth
15 can such behavior as the President of the Planning
16 Board be interpreted as having been actively engaged
17 in the formulation of plans of aggressive war?
18

19 41. The prosecution also refers to the
20 Traffic Mobilization Plan of 5 September, 1941, and the
21 Workers Mobilization Plan of 13 September, 1941.⁶⁴
22 These plans were simply normal economic control plans
23 necessitated by the straitened conditions of national
24 economy created by the outbreak of the German-Soviet War

25 61. Tr. 35,197
62. Tr. 35,197-8
63. Tr. 18,365
64. Tr. 41,835

on the one hand and the economic severance effected by
1 America and her Allies on the other.⁶⁵ Certainly it
2 was not a "war plan."

3 42. The prosecution refers to the Key Indus-
4 trial Control Ordinance of 30 August 1941 and the Im-
5 perial Petroleum Company Ordinance of 15 March 1941.⁶⁶
6 These ordinances simply are manifestations of a general
7 world-wide drift towards controlled economy which was
8 especially necessitated by the straitened conditions of
9 Japanese economy due to years of large-scale military
10 engagements with China. They have nothing to do what-
11 ever with the Pacific War. The policy itself was de-
12 cided on and the ordinances themselves were enacted
13 before SUZUKI's assumption of office, although the for-
14 mer ordinance came into effect and the Imperial Petro-
15 leum Company⁶⁷ was organized during his incumbency.

17 43. The Five Year Plan which SUZUKI took
18 over from his predecessor and revised was a general
19 long-range plan to build up Japanese civilian economy
20 on the principle of self-supply. Such a drift towards
21 autarcy is a part of world-wide trends toward bloc-
22 economy, in view of which Japan considered herself com-
23 pelled to plan her economy in terms of self-supply.

24 ⁶⁵. Tr. 35,237-9, 35,297-8

25 ⁶⁶. Tr. 41,835-6

⁶⁷. Tr. 35,240-1

1 This Plan has certainly nothing to do with the initia-
2 tion of war against the United States and its allies.

3 44. The establishment of the Stationary
4 Economic Investigation in the Japanese Consulate in
5 Fanoi and Saigon⁶⁸ and the dismantling of the oil in-
6 stallations by the army and navy,⁶⁹ even if they might have
7 come to the knowledge of SUZUKI, were certainly matters
8 which were entirely beyond the control of the Planning
9 Board.

10 45. The answers of the Planning Board to the
11 three problems, the study of which was ordered by the
12 Prime Minister KONOYE were of such a nature as would
13 tend to discourage any idea of war with the United
14 States.⁷⁰ The report made by SUZUKI to the Emperor on
15 29 September 1941 referred to by the prosecution is
16 exactly of the same tenor.⁷¹

17 45-A. With regard to the Sixth Committee
18 referred to in paragraph 64, it must be noticed that
19 SUZUKI was appointed its chairman on 2 December, 1941,
20 when the national decision for war had already been
21 made. SUZUKI's work as chairman of the said Committee
22 is, therefore, essentially distinct in character from
23 his work as the President of the Planning Board prior
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25 69. Tr. 41,834
70. Tr. 41,833-4, 35,200
71. Tr. 41,838, 35,242

1 to 1 December, 1941.⁷² The accused does not deny that
 2 after national decision had been made he did his best
 3 to make that war a success. It is plain that if Japan
 4 is ever to dare challenge the combined forces of America
 5 and Britain with their vast resources she must acquire
 6 and exploit resources of the Southern Areas as a war
 7 measure.⁷³

8 46. The prosecution mentions four occasions
 9 on which SUZUKI attended the meetings of the Privy
 10 Council.⁷⁴ Unlike Ministers of State with Portfolio,
 11 SUZUKI had no vote in the Privy Council, his capacity
 12 being simply that of an explainer, i. e., to make such
 13 necessary explanations as might be ordered by the Min-
 14 ister in charge, in SUZUKI's case the Prime Minister.⁷⁵
 15 This incidentally shows that SUZUKI as President of the
 16 Planning Board was treated as being a grade lower than
 17 the ministers for the departments. This also shows
 18 that SUZUKI's title of Minister of State was more or
 19 less ornamental. It gave prestige and dignity to his
 20 post, but his proper function was to perform the essen-
 21 tially administrative duties of the Planning Board
 22 President, assisting the Premier under the control of
 23 the latter.⁷⁶ His responsibility for general affairs

25 72. Tr. 41,836

73. Tr. 35,244-5

74. Tr. 41,837-8

75. Tr. 83, organization of
the Privy Council, Art. 11

76. Tr. 35.196

1 of state was more or less nominal and certainly less
2 neavy than that of the ordinary ministers of state.

3 47. The first occasion mentioned was a
4 meeting in July 1941, which discussed matters relating
5 to the conclusion of a protocol between France and Japan
6 with regard to the defence of French Indo-China. The
7 matter was mainly within the competence of the Foreign
8 Minister and Ministers for the defence services, and
9 SUZUKI naturally was not asked to make any explanation. 77

10 47-A. This was related to the despatch of
11 troops to Southern Indo-China. In paragraph 53-54 the
12 prosecution seems to hold SUZUKI responsible as one of
13 the Cabinet Ministers who decided to despatch the
14 troops. This may be nominally so, in the sense of
15 collective (political) responsibility of the cabinet,
16 even if it was not a matter within the competence of
17 SUZUKI. When he was told by KONOYE that troops might
18 be despatched he voiced the view from an economic
19 standpoint that it would be a serious matter if Japan
20 was subjected to embargo in consequence of such a step. 78
21 The Prime Minister told him that the step was necessary
22 to ward off an immediate danger of war with the Soviet
23 Union and that since the move was not directed against
24

25 77. Tr. 41,837, 7069, 7074
78. Tr. 41,832, 35,198

1 America or Britain, America would understand if he ex-
2 plained the matter. ⁷⁹ SUZUKI was not an expert in diplo-
3 macy, and was quite justified to rely on the judgment
4 of his colleagues who were better informed and not to
5 push his view to the point of resigning, of which ⁸⁰
6 latter step the prosecution seems to require of him.
7 Moreover, it may be noted that, in view of the situa-
8 tion of domestic politics then prevailing, if SUZUKI
9 resigned, his resignation would have placed KONOYE in
10 an extremely awkward position and would have strengthened
11 MATSUOKA's position. As a matter of fact, KONOYE put
12 MATSUOKA outside of the cabinet through resignation en
13 bloc. SUZUKI's failure to resign is quite unimpeachable
14 also from the standpoint of practical domestic politics.
15 As to criminal responsibility, the defense entirely
16 denies any responsibility on the part of SUZUKI.

17 It may here be noted that SUZUKI is not
18 indicted under count 33.

19 48. The second and third occasions were at
20 the meetings of 8 and 11 December 1941. ⁸¹ They were
21 after the war had already commenced and the matters
22 brought before those meetings were concerned with
23 the prosecution of the war.

24 79. Tr. 35,199
25 80. Tr. 41,832
81. Tr. 41,837-8

1 49. The fourth occasion was his attendance
2 at the investigation committee meetings of the Privy
3 Council. The subject was "the Organization of the
4 Greater East Asia Ministry." ⁸² The issue regarding
5 the new establishment of such a ministry was one con-
6 cerning mainly the administration of occupied areas --
7 whether or not it was better as a war measure to or-
8 ganize a new ministry for such purpose. The Foreign
9 Minister TOGO naturally opposed a measure which spelled
10 curtailment of the competence of his ministry, and
11 probably also from diplomatic considerations. The
12 Cabinet Board Presidents considered that the establish-
13 ment of a new ministry with a new staff was better than
14 leaving the work to the Foreign Ministry as heretofore
15 from the standpoint of more efficient administration.
16 There was nothing of right or wrong in the moral sense
17 for supporting the one or the other, the issue being
18 essentially a question of administrative expediency.
19 The stand of the government on this disputed question
20 having finally been decided upon, it was perfectly
21 proper for SUZUKI to explain, on behalf of the Prime
22 Minister, and as an explainer, the views of the govern-
23 ment at the meetings of Privy Council Committee, and
24

1 also that the government had no intention to change
2 the name of the ministry.⁸³ He is not to be blamed
3 for drawing upon the then current popular slogan,
4 "the establishment of Greater East Asia,"
5 to explain and uphold the policy already fixed by the
6 government. It may be noted that this domestic
7 struggle for jurisdiction ending in the separation
8 of the Foreign Ministry and the Greater East Asia Min-
9 istry was later solved when the Foreign Minister
10 SHIGEMITSU became concurrently the Minister for the
11 latter ministry.

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gV. LIAISON CONFERENCE

1 50. The defense does not deny that SUZUKI
2 attended many of the Liaison Conferences at which
3 important decisions were arrived at. Neither does the
4 defense deny that SUZUKI was during the period a
5 Minister without Portfolio. The prosecution seems to
6 assume that those two facts are enough to impose
7 criminal responsibility upon the accused, irrespective
8 of the part he played in the conferences he attended
9 and whether or not his behavior actually contributed
10 in any way to the outbreak of the Pacific War. The
11 defense, however, is confident that the Tribunal
12 will reject such a notorious and oppressive doctrine
13 of "guilt by association" based on sheer assumption,
14 that it will abide by the eminently sound doctrine
15 that guilt is personal and scrutinize the exact part
16 SUZUKI played in those conferences in order to deter-
17 mine whether or not his behavior can be characterized
18 as "criminal." The defense, therefore, will endeavor
19 to assist the Tribunal in that investigation by elucidat-
20 ing certain aspects of the actual functioning of the
21 Liaison Conference and the part which the President
22 of the Planning Board played in its sessions.
23
24

25 51. The fact that SUZUKI attended the Liaison
Conferences in the capacity of the President of the

1 Planning Board, a subordinate administrator under the
2 control of the Prime Minister, naturally made it
3 impossible for him to state his personal opinions in
4 conflict with the Premier's.⁸⁴ Accordingly, the defense
5 desires to call the Tribunal's special attention to the
6 fact that SUZUKI's position at the said conference was
7 quite different not only from that of the Prime Minister,
8 the War, Navy and Foreign Ministers, but even from that
9 of the Finance Minister, who attended the conferences
10 in his independent capacity as a Cabinet Minister.

11 52. It is not denied that the Liaison Confer-
12 ence was an important meeting based on constitutional
13 conventions at which an understanding was arrived at
14 between the Government represented by the Prime Minister
15 and the High Command. It was certainly not a policy-
16 deciding organ over and above the Cabinet, and this is
17 shown by the fact that it was customary to postpone the
18 execution of the decisions arrived at until the approval
19 of the Cabinet had been obtained.⁸⁵ However, vis-a-vis
20 the Supreme Command, political and moral responsibility
21 certainly rested on the Prime Minister and the Ministers
22 in charge who attended the Conference especially the
23 Foreign Minister (in relation to the Japanese-American
24 diplomatic negotiation which was the main theme before
25

84. T. 35,202

85. T. 41840, 35,203

1 the outbreak of the Pacific War) to persuade their
2 colleagues in the Cabinet to agree to the understanding
3 arrived at, and it was natural that the other Ministers
4 placed confidence in the Prime Minister and in the
5 Foreign Minister within whose competence the Japanese-
6 American relations lay.⁸⁶ Such political or moral
7 responsibility, of course, was not assumed by the
8 President of the Planning Board who attended the con-
9 ference as technical assistant to the Prime Minister to
10 elucidate such economic matters as fell within the
11 competence of the Board.

12 53. The position of the President of the
13 Planning Board in the Liaison Conference can be further
14 clarified by the following facts:

15 First, TOGO testified that "the drafts of the
16 decisions of the Liaison Conference were always prepared
17 beforehand -- the matters were examined by the staffs
18 of the ministries concerned and coordinated by the three
19 secretaries before they were submitted to the Conference."⁸⁷

20 TOGO's testimony is further confirmed and supplemented
21 by SUZUKI's testimony on this point: "Before subjects
22 for discussion were submitted to the Liaison Conference
23 considerable study and investigation on these matters had
24

25 86. T. 41,840-1, 35,320

87. T. 35,677-8

1 been given to it by the officials of the War, Navy, and
2 Foreign Ministry, and therefore it was not usual for
3 people not connected with these ministries to make any
4 remarks on these subjects."⁸⁸

5 This means that the Planning Board was not
6 generally consulted in formulating the proposals to be
7 referred to the Liaison Conference.

8 54. Second, TOGO testified that "the copies
9 of all important cablegrams were automatically routed
10 by the Foreign Ministry to the War and Navy Ministries
11 and the General Staffs through the Military and Naval
12 Affairs Bureau."⁸⁹

13 This means that copies of such cablegrams were
14 not given to such Ministers as the Finance Minister or
15 the President of the Planning Board, with the consequence
16 that they were less informed about the American-Japanese
17 negotiations than, for instance, Chiefs of Military and
18 Naval Affairs. This throws light on the position of the
19 President of the Planning Board, especially in matters
20 relating to American-Japanese negotiations.

21
22 55. Third, it is apparent that there were
23 some Liaison Conferences to which such men as KAYA and
24 SUZUKI were not invited. This is clearly the case with

25 88. T. 35,303

89. T. 35,707

the Liaison Conferences of 11 and 13 November 1941.

1 According to the testimony of YAMAMOTO, who
2 testified that he attended every one of the Liaison
3 Conferences which were held during the period between
4 the establishment of the TOJO Cabinet and the outbreak
5 of the Pacific War, a document entitled "Principal
6 Reasons for the Commencement of Hostilities against the
7 United States and Britain,"⁹⁰ was adopted at a liaison
8 conference⁹¹ and is dated 11 November 1941. Now on
9 the cover of that document it appears that only five
10 copies of the document were made. And there can be no
11 doubt that the five persons to whom the document was
12 intended to be handed over were the Prime Minister, the
13 Foreign Minister, who was also the War Minister, the Navy
14 Minister, and the two representatives of the Supreme Com-
15 mand referred to in the exhibit.1103.⁹²

17 Again, according to the testimony of TOGO,
18 exhibit 919, a document entitled "Basic Principles for
19 Rapid Conclusion of War against the United States,
20 England and the Netherlands"⁹³ was adopted at the
21 Liaison Conference of 13 November 1941.⁹⁴ Again it
22 appears on the cover that only five copies of the docu-
23

24 90. Ex. 1175, T. 10,362

93. T. 9,261

25 91. T. 26,057

94. T. 35,703

92. T. 10,171

1 ment were issued. This shows that the document was
2 deliberated on by the same five persons alone. It may
3 also be presumed that the document entitled "Measures
4 towards the Foreign Countries"⁹⁵ adopted on the same
5 day must have been discussed by the Big Five.

6 It may be concluded that there were some
7 Liaison Conferences such as the above two conferences,
8 at which SUZUKI's presence was not required.

9 56. All these facts go to show that SUZUKI
10 was stating the exact truth when he testified that he
11 attended the Liaison Conferences as a technical assist-
12 ant to the Prime Minister.⁹⁶ He was not in any way
13 minimizing the part he played in the Liaison Conference
14 to meet the purpose of the present trial, as the
15 prosecution surmises.

16 57. The fact, moreover, that SUZUKI was not
17 consulted even regarding the amount of oil to be
18 requested of America at the time of agreement on the
19 A and B proposals,⁹⁷ a topic which might possibly be
20 regarded as falling within the purview of the Planning
21 Board, throws a side light on the insignificant part
22 played by SUZUKI regarding American-Japanese negotiations
23

24 95. Ex. 1169, T. 10,333;
Ex. 876, T. 10,366 the same document

25 96. T. 41,840, 35,202, 35,301

97. T. 35,703

1 which formed the major topic of the Liaison Conferences
2 immediately prior to the outbreak of the Pacific War.

3 58. Of the Liaison Conferences the prosecu-
4 tion claims that SUZUKI attended, the defense denies
5 that SUZUKI attended the Liaison Conferences of 11 and
6 13 of November, 1941 for the reasons already mentioned.
7 It is true that SUZUKI stated, in answer to the prosecu-
8 tion: "After the establishment of the TOJO Cabinet
9 Liaison Conferences were held continuously up to the
10 end of November, and I attended all these conferences."⁹⁸
11 This must be interpreted to mean that he attended all
12 the conferences to which he was invited. He did not,
13 of course, attend the Liaison Conferences of the Big
14 Five at which his presence was not asked.

15 The defense denies also that SUZUKI attended
16 "the Liaison Conferences of the first week in December
17 when the terms of the Final Note were discussed."⁹⁹
18

19 59. There is no evidence whatever that SUZUKI
20 went beyond his capacity as technical assistant to the
21 Premier and expressed his opinion on matters which were
22 beyond his purview. As TOJO states, he "had a voice"
23 in the conference,¹⁰⁰ but SUZUKI "voiced" his views to
24 the conference only on matters which were within the

25 98. T. 41,841, p. 35,304

99. T, 41,842-3, p. 41,856-7

1 jurisdiction of the Planning Board, and was not in any
2 way active in discussing matters which fell within the
3 jurisdiction of the Foreign or other Ministers.

4 60. As technical assistant to the Prime Minister
5 SUZUKI's function was to explain economic matters in an
6 objective way. This involves a statement of facts
7 known to the Planning Board and an economic prophesy
8 based on those facts. He cannot be held responsible
9 for a statement of a semi-scientific kind, whatever its
10 consequences, unless indeed he distorted such facts, of
11 which there is no evidence whatsoever. Moreover the
12 Report of the Planning Board made to the Prime Minister
13 TOJO¹⁰¹ shows that it presented not a rosy but a highly
14 pessimistic picture of Japanese economy. It suggested
15 that whether there was war or no war, Japanese economy
16 would be in a predicament unless Japan came to terms
17 with the United States.

18 61. What is stated in paragraph 75¹⁰² (TOGO's
19 statement in the course of cross-examination) is, it is
20 submitted, a tendentious picture of what took place in
21 the Liaison Conference of 1 November. What actually
22 took place was that SUZUKI did not voice any opposition
23

24 100. T. 41,843, 36,266

25 101. T. 41,850-1, 35,215-9

102. T. 41,841.

103
to the Prime Minister as his chief. The matter
1 discussed was essentially one which did not directly
2 concern the Planning Board and of which SUZUKI was not
3 competent to express any independent judgment.
4

5 62. It may be concluded that SUZUKI was not
6 expected to play or did play any important part in the
7 American-Japanese negotiations in or out of the Liaison
8 Conferences. He attended those conferences only as
9 technical assistant to the Prime Minister. There is no
10 evidence that SUZUKI in such capacity or otherwise
11 behaved in such a way as to be instrumental in bringing
12 about the Pacific War. He, on the contrary, always
13 wished for and expected that the negotiations would be
14 successful. The defense feels that there can not be
15 the slightest reason for charging such a man with any
16 crime, simply because he attended Liaison Conferences
17 and that to assist the Prime Minister in elucidating
18 the economic situation of the country.
19

20 VI. THE MEETING AT OGIKUBO ON 12 OCTOBER 1941

21 63. The Ogikubo Conference of 12 October was
22 one convened by the Prime Minister to persuade the War
23 Minister to avoid war by a frank exchange of views
24 between the Ministers concerned. SUZUKI's testimony
25 on the character of this conference ¹⁰⁴ stands uncontra-

1 dicted. His presence at the conference to record the
2 proceedings could not be impugned in any way. But the
3 prosecution charges that SUZUKI was minimizing his
4 importance.¹⁰⁵ This assumption is not only unfair,
5 but is contradicted by the prosecution's own evidence,
6 namely, a portion of TOJO's interrogation, in which it
7 was stated by TOJO that its important members were the
8 War, Navy and Foreign Ministers, as well as the Prime
9 Minister, and that he did not even remember whether the
10 President of the Planning Board was there or not.¹⁰⁶
11 The meeting was a secret one and the Chief Secretary
12 of the Cabinet, TOMITA, or any other secretary of the
13 Prime Minister, was not allowed to be present. The
14 logical person to be invited in such circumstances to
15 record the proceedings was SUZUKI, who was KONOYE's
16 trusted subordinate and friend and who assumed a
17 ministerial rank. This was not to be wondered at in
18 view of the fact that KONOYE often made use of SUZUKI
19 to do the work of a secretary for him, e.g., as a
20 messenger to TOJO or KIDO.¹⁰⁷ SUZUKI was not attend-
21 ing the conference as the President of the Planning Board
22 to report on economic matters nor to participate in the
23 discussion which was to be conducted as between the
24

25 105. T. 41,844
106. T. 10,271

107. T. 35,203 et seq.,
35,243

1 Prime Minister, War, Navy and Foreign Ministers. SUZUKI
2 is telling the plain truth about his doings in the
3 conference not in any way endeavoring to minimize his
4 importance; his part in the conference was not, in fact,
5 important. It is, therefore, highly misleading for
6 the Prosecution to conclude, in paragraph 85, that "he
7 was one of those persons active in the discussions
8 leading up to the outbreak of war."¹⁰⁸

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

11 (Thereupon, at 10:45, a recess was
12 taken until 11:00, after which the proceedings
13 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. Levin.

Mr. LEVIN: Mr. President. If the Tribunal
please, I continue with Subdivision VII, The Fall of
the Third KONOYE Cabinet.

64. SUZUKI fully testified in his affidavit
(109)
concerning the above subject; the testimony was not
contradicted by the prosecution. The prosecution sum-
marized SUZUKI's detailed account in his affidavit,
supplemented by further facts elicited by cross-
examination, without any suggestion that his statement
was wrong at any point.
(110)

65. SUZUKI's testimony shows in the first
place that KONOYE had much confidence in SUZUKI and
employed him in the highly important liaison work with
TOJO, KIDO and HIGASHIKUNI.

66. During this period SUZUKI acted strictly
as messenger. It is to be seen, however, that SUZUKI
offered his own suggestions to KONOYE, KIDO, and
HIGASHIKUNO but not to TOJO. Those suggestions were
all in the nature of bringing the American-Japanese
negotiation to success and avoiding Japan's drift into
war. First, he ultimately succeeded in having Prime

(109) T. 35,208-12

(110) T. 41,846-9

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

THE PRESIDENT: Mr. Levin.

Mr. LEVIN: Mr. President. If the Tribunal
please, I continue with Subdivision VII, The Fall of
the Third KONOYE Cabinet.

64. SUZUKI fully testified in his affidavit
(109)
concerning the above subject; the testimony was not
contradicted by the prosecution. The prosecution sum-
marized SUZUKI's detailed account in his affidavit,
supplemented by further facts elicited by cross-
examination, without any suggestion that his statement
(110)
was wrong at any point.

65. SUZUKI's testimony shows in the first
place that KONOYE had much confidence in SUZUKI and
employed him in the highly important liaison work with
TOJO, KIDO and HIGASHIKUNI.

66. During this period SUZUKI acted strictly
as messenger. It is to be seen, however, that SUZUKI
offered his own suggestions to KONOYE, KIDO, and
HIGASHIKUNO but not to TOJO. Those suggestions were
all in the nature of bringing the American-Japanese
negotiation to success and avoiding Japan's drift into
war. First, he ultimately succeeded in having Prime

(109) T. 35,208-12

(110) T. 41,846-9

1 Minister KONOYE and Lord Keeper KIL0, who were directly
2 in a position to do so, to get the Emperor to rescind
3 the decision made before the Imperial Presence on 6
4 September 1941. The defense submits that this in
5 itself was no small achievement on his part in the
6 cause of peace. Secondly, he together with KONOYE
7 made every effort that a new cabinet be formed with
8 Prince HIGASHIKUNI as Premier. (111) It was not ques-
9 tioned by the prosecution that the Prince was an en-
10 thusiastic advocate for the continuation of the Jap-
11 anese-American negotiations and often encouraged the
12 Premier KONOYE to do his level best to bring them to
13 success.

14 67. The "activities of SUZUKI in this period"
15 and "the political maneuvers" in which SUZUKI is said
16 by the prosecution to have been engaged (Para. 94) (112)
17 were of the nature above described.
18

19 They were activities or maneuvers not at all
20 worthy of censure, on the contrary of a laudable kind.
21 And the fact that SUZUKI "had an intimate knowledge
22 possessed by few people of what was going on behind
23 the scenes in Japanese politics leading to the TOJO
24 Cabinet" was entirely due to SUZUKI's personal intimacy

25 (111) Testimony of Prince HIGASHIKUNI. T. 35,169,
et seq., 35,208-9)

(112) Para. 94. T. 41,849

1 with KONOYE which caused the latter to employ him in
2 the important liaison work and does not furnish any
3 reason whatsoever for accusing SUZUKI in any way.

4 VIII. THE TOJO CABINET

5 68. The prosecution concludes this topic as
6 follows:

7 "The prosecution submits that the willingness
8 of SUZUKI to serve in the TOJO Cabinet leads to the
9 irresistible conclusion that he was willing to plunge
10 Japan into war, a conclusion which is supported by his
11 subsequent conduct."
(113)

12 The defense wonders how such a daring con-
13 clusion can ever be drawn from the facts which are not
14 controverted by the prosecution.

15 (114)
16 69. Paragraph 95 summarizes the uncontra-
17 dicted testimony of SUZUKI elucidating the circum-
18 stances in which SUZUKI joined the TOJO Cabinet. We
19 quote one paragraph of this testimony.

20 "Marquis KIDO has telephoned me (i.e. Premier
21 KONOYE) that TOJO is to form a cabinet. At the same
22 time, he is to receive word from His Majesty to carry
23 on the American negotiation, wiping the September 6
24 decision off the slate. Accordingly, TOJO will, I
25 believe, check the war faction and proceed with the

(113) T. 41,853

(114) T. 41,849

1 American negotiation. So, you will do well to remain
2 in office and help him in case he asks you to do so.
3 If the new cabinet comprises many members of my cab-
4 inet, it will show that the new cabinet desires to
5 carry on the negotiations for peaceful settlement of
6 the difficulties between Japan and the United States." (115)

7 The entry of SUZUKI into the TOJO Cabinet in
8 such circumstances certainly cannot be interpreted as
9 evincing SUZUKI's "willingness to plunge Japan into
10 war."

11 70. In paragraph 96 reference is made to
12 SUZUKI's answer in the course of cross-examination
13 to the question as to whether he thought that TOJO
14 would be able to check the faction. (116) SUZUKI's answer
15 must surely be taken to have been in the affirmative. (117)

16 He stated that it was not TOJO himself but the
17 Army war faction that was urging war. It was quite
18 reasonable for SUZUKI to think that TOJO, a military
19 man receiving the Imperial command and backed by the
20 Imperial prestige would check the Army so as to effect
21 peaceful settlement.
22

23 71. Paragraph 97 refers to TOJO's injunction
24 to SUZUKI at the time of joining the Cabinet mentioned

25 (115) T. 35,212-3
(116) T. 41,849
(117) T. 35,300

(118)

in SUZUKI's affidavit which is uncontradicted:

1
2 "It is my (i.e. TOJO's) desire that you con-
3 centrate your energy on the work of economic mobiliza-
4 tion (i.e. the work of the Planning Board) and not to
5 meddle in political affairs. You should especially
6 keep in mind that the President of the Planning Board
7 is to function under the control of the Prime Minister."⁽¹¹⁹⁾

8 The statement in the second sentence on the
9 position of the President of the Planning Board was
10 true of SUZUKI's status both in the KONOYE and the
11 TOJO Cabinets.⁽¹²⁰⁾ The Prime Minister was primus inter
12 pares, or the first among equals, with regard to Cab-
13 inet Ministers, but the President of the Planning Board,
14 though enjoying the status of a Minister without Port-
15 folio, was a subordinate administrator functioning
16 under the control of the Prime Minister. An injunction
17 not to meddle in political affairs differentiated
18 SUZUKI's political status from that in the KONOYE Cab-
19 inet. He was relegated to the status pure and simple
20 of an administrator, i.e. a technical assistant to the
21 Premier.
22

23 SUZUKI states that he followed this injunction
24 and concentrated his energy on the work of the Planning

25 (118) T. 41,850
(119) T. 35,214
(120) T. 35,213

(121)
Board but this certainly can never be interpreted that
1 he was "willing to plunge Japan into war."
2

3 72. Paragraphs 98 to 101 summarize the report
4 of the Planning Board to questions put to him by the
5 Prime Minister.
(122)

6 The report is a faithful and objective state-
7 ment on facts known to the Planning Board coupled with
8 a prophesy which was based on those facts. But there
9 was nothing in the report which tended to instigate
10 Japan's plunge into war. On the contrary the report
11 suggested that in case the American-Japanese negotiation
12 unfortunately failed, then war or no war, Japanese
13 economy would be confronted with tremendous difficul-
14 ties. (123) This is not contradicted by the prosecution.
15 The report was one of the factors for making Premier
16 TOJO to decide to persuade the Supreme Command to con-
17 tinue the negotiation. (124)

18 So these paragraphs again do not show that
19 SUZUKI was "willing to plunge Japan into war."
20

21 73. In paragraphs 102 to 107 the prosecution
22 refers to SUZUKI's understanding of the decisions of
23 the Imperial Presence Conference of 5 November 1941 as

24 (121) T. 35,214
25 (122) T. 41,850-1, 35,215-9
(123) T. 35,219
(124) T. 35,219

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24 (121) T. 35,214
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(124) T. 35,219

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10 Japan's plunge into war. On the contrary the report
11 suggested that in case the American-Japanese negotiation
12 unfortunately failed, then war or no war, Japanese
13 economy would be confronted with tremendous difficul-
14 (123) ties. This is not contradicted by the prosecution.
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24 (121) T. 35,214
25 (122) T. 41,850-1, 35,215-9
(123) T. 35,219
(124) T. 35,219

(125)
fully stated in his affidavit.

1
2 The prosecution seems to challenge SUZUKI's
3 statement to the effect that the recognition of the
4 withdrawal of troops made the conduct of negotiations
5 more favorable than at the time of the KONOYE Cabinet,
6 by pointing out that the withdrawal did not contem-
7 plate an immediate or complete withdrawal. (126) But
8 America would not have expected a complete or imme-
9 diate withdrawal which would not only have been disas-
10 trous to Japanese legitimate rights and interests in
11 China but physically impossible. The withdrawal if
12 to be effected must necessarily be by stages. What
13 America really feared was the permanent stationing of
14 Japanese troops in China which would virtually spell
15 the eventual conquest of China. The recognition of
16 the withdrawal of troops in principle means that Japan
17 assures America that she is not bent on the conquest
18 of China. The question regarding the conditions for
19 or stages in the withdrawal of troops involves on
20 Japan's part that they may not be such as to jeopardize
21 her legitimate rights and interests in China, and on
22 America's part that they be such as are adequate for
23 making Japan's assurance to her an effective one. So
24 the question was a proper one to be fixed by diplomatic
25

(125) T. 41,851-3, 35,219-22

(126) T. 41,852

1 negotiations. Moreover, it was SUZUKI's understanding
2 that the conditions laid down could be changed accord-
3 ing to the progress of the negotiations. (127) So even if
4 the withdrawal was one only in principle and not imme-
5 diate or complete but subject to certain conditions
6 does not vitiate SUZUKI's statement that it made the
7 conditions for successful negotiation more favorable
8 than during the KONOYE Cabinet. For during the latter
9 period even the withdrawal of troops in principle was
10 not recognized.

11 74. His understanding of the decision of
12 the Imperial Conference of 5 November was a common
13 sense one. He thought that the decision was not a de-
14 cision for war; it was a preliminary agreement to make
15 such decision in early December. In the meanwhile the
16 negotiation was to be accelerated. In case the nego-
17 tiation should not be concluded by early December, it
18 did not necessarily mean war, for the decision can again
19 be annulled in conformity with the precedent set by
20 the annulment of the decision of the Imperial Presence
21 Conference of 6 September 1941. The conditions for
22 successful negotiation became more favorable than dur-
23 ing the KONOYE Cabinet by the recognition by the
24 Supreme Command of the withdrawal of troops from China
25

1 and Southern Indo-China. He, therefore, felt "not so
2 much that the war became imminent but that a new pros-
3 pect of peace had arisen on the horizon." (128) It must
4 be remembered in this connection that SUZUKI was not
5 an expert on diplomacy, nor did the Foreign Minister
6 supply him with copies of important cables. (129) After
7 all he had to rely on the judgment of the Prime Minis-
8 ter and the Foreign Minister. The defense contends
9 that he was perfectly honest and sincere in such under-
10 standing and that no conclusion can be drawn there-
11 from that "he was willing to plunge Japan into war."

12 75. In view of the foregoing considerations
13 the defense submits that there is not the slightest
14 evidence to support the assertion that "the willing-
15 ness of SUZUKI to serve in the TOJO Cabinet leads
16 to the irresistible conclusion that he was willing to
17 plunge Japan into war."

18 If by "a conclusion which is supported by
19 his subsequent conduct" the prosecution means his
20 assent given to the opening of hostilities on 1 Decem-
21 ber 1941 or his acts in relation to the execution of
22 the Pacific War, the defense must point out that those
23 acts are essentially of a category entirely different
24 from his acts prior to the decision for war, and can
25

(128) T. 35,222
(129) T. 35,767

1 not serve as evidence for elucidating the nature of the
2 behavior of the accused before that date.

3 IX. THE IMPERIAL CONFERENCE

4 76. The prosecution says: "It is enough to
5 say that SUZUKI cannot escape from assuming responsi-
6 bility for his share of the responsibility for the
7 decision for war on 1 December 1941."⁽¹³⁰⁾

8 If by "responsibility" the prosecution means
9 criminal responsibility, the defense categorically
10 denies such responsibility. The defense is confident
11 that the Tribunal will reject the doctrine of Criminal
12 Implied Agency in capital cases which the prosecution
13 assumes, and abide by the enlightened doctrine of
14 criminal jurisprudence that guilt is personal. If the
15 latter theory is to be recognized by the Tribunal, there
16 is not the slightest evidence in the record regarding
17 SUZUKI's behavior in these conferences which can be
18 interpreted as being morally or legally culpable.

19 X. THE DECISION FOR WAR

20 77. So long as the Tribunal abides by the
21 doctrine that guilt is personal, there is no basis
22 whatsoever for asserting that SUZUKI "cannot escape
23 (criminal) responsibility for the decision to wage
24 aggressive war contrary to the principles of
25 (130) T. 41,854

1 79. SUZUKI, who was not an expert in diplomacy
2 relied with reference to the nature of the Hull note
3 on the judgment especially of the Foreign Minister
4 who can be assumed to possess ex officio superior
5 knowledge about such matters. The Prime Minister and
6 the Foreign Minister both declared that the Hull note
7 of 26 November 1941 was tantamount to an ultimatum,
8 demanding Japan immediately to evacuate the armed and
9 police forces from the whole territory of China, in-
10 cluding Manchuria, and also demanding the renunci-
11 ation of the Manchurian and Nanking Governments. ¹³³

12 80. TOGO had, moreover, been the very man
13 who in the Liaison Conference prior to the decision
14 of the Imperial Presence Conference of 5 November
15 1941 so vigorously opposed the position of the Supreme
16 Command. This is apparent from the testimony of TOGO
17 himself and of SUZUKI. ¹³⁴ TOGO was by no means a man
18 in favor of war. This same man now declared that the
19 Hull note was tantamount to an ultimatum. SUZUKI
20 had, therefore, no ground for doubting TOGO's veracity.
21 Neither was he in a position to challenge the accuracy
22 of his expert analysis of the Hull note.
23

24 81. He had also been informed by the Supreme
25 Command that America and Britain were strengthening

(133. T. 36127 TOGO, 36356 TOJO
134. T. 35211)

1 their armed forces in the Western Pacific and that
2 delay would spell a disaster to the defense of the
3 country.¹³⁵

4 82. In these circumstances, it was quite
5 natural and reasonable for SUZUKI honestly to believe
6 that the opening of hostilities was unavoidable for
7 the defense of the country. He had indeed to acknow-
8 ledge the fact reluctantly, for he had cherished a
9 strong desire and had been doing what he could to
10 facilitate the success of the diplomatic negotiations.¹³⁶

11 83. It may also be noted in this connection
12 that SUZUKI was not fully advised of the diplomatic
13 negotiations which were being carried on. He was not
14 shown the telegram from Ambassadors NOMURA and KURUSU¹³⁷
15 nor the personal message from the President of the
16 United States to the Emperor.¹³⁸ Accordingly he was
17 in no position to doubt the character of the note in
18 question as explained by the Prime Minister and the
19 Foreign Minister.

20 84. The prosecution makes some points with
21 reference to SUZUKI's disinterest as to the contents
22 of the final note to the United States or of the plans
23 for the commencement of hostilities on 8 December 1941
24

25 (135. T. 35225
136. T. 41856, 35190
137. Ex. 1189, T. 10418
138. T. 35707, 35727 et seq.)

1 and that his explanation for the failure to notify
2 the United Kingdom of the commencement of hostilities
3 is unworthy of consideration. ¹³⁹ We submit, on the
4 contrary, that there is no evidence in the record
5 which might indicate any responsibility on the part
6 of SUZUKI in relation to these matters. He had nothing
7 to do with operational matters; he had nothing to do
8 with the technique in diplomacy; his only function
9 being that of head of the Planning Board which was
10 the making of plans for the allocation of materials.

11 85. It is, therefore, the contention of the
12 defense that SUZUKI honestly and reasonably believed,
13 in giving his assent to the decision on 1 December
14 1941 that the opening of hostilities was inevitable
15 for the defense of the country. And all his actions
16 after the making of the catastrophic national decision
17 must also be interpreted on the same hypothesis.

18 Whether or not the Pacific War was an aggressive or
19 defensive one according to the canons of international
20 law, it is amply clear that SUZUKI cannot ever be held
21 criminally responsible in the light of the canons
22 of enlightened criminal jurisprudence, for giving his
23 assent to the decision for war, or for his subsequent
24 conduct in relation to the execution of that war.

25 (139. T. 41859)

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22 of enlightened criminal jurisprudence, for giving his
23 assent to the decision for war, or for his subsequent
24 conduct in relation to the execution of that war.

25 (139. T. 41859)

1 Certainly he had no mens rea or guilty mind to initiate
2 or execute an "aggressive war."

3 XI. PRISONERS OF WAR

4 86. The prosecution has endeavored in
5 exhibit 1971-A, a document entitled "Monthly Report
6 of Foreign Affairs," to give an impression as if the
7 Planning Board had been concerned in the employment
8 of POW's. But it was clarified by the testimony of
9 witness KAMEYAMA that these documents were neither
10 done up by nor even distributed to the Planning
11 Board.¹⁴⁰ The contents of the documents are extremely
12 inaccurate, being based on hearsay information.

13 87. The prosecution has already proved by
14 the testimony of its witness TANAKA that the decision
15 upon the transport and employment of POW's was made
16 by the War Ministry toward the end of April, 1942¹⁴¹
17 and not shared by any other person, and that the
18 location of the prisoner's barracks was done by the
19 Military Affairs Section of the Military Affairs
20 Bureau¹⁴² and not shared by any other person.

21 88. The meeting, as stated in paragraph 127
22 of the prosecution summary, was held by the officials
23 of the Prisoners Information Bureau, after these
24

25 (140. T. 35162
141. T. 14288
142. T. 14286)

1 were actually made, to explain the principles to the
2 representatives of the ministries concerned in a room
3 borrowed from the Planning Board.¹⁴³ This meeting was
4 not aimed at reaching any conclusion on debate, but
5 aimed at communicating a part of what the War Ministry
6 had previously decided. The Planning Board had per-
7 mitted the use of a room according to custom to
8 facilitate the meeting by calling the representatives
9 of the ministries concerned for the convenience of the
10 Prisoners Information Bureau.

11 89. All the orders relating to the procedure
12 for the employment of POW's were drawn up by the War
13 Ministry.¹⁴⁴ According to these orders, it was neces-
14 sary in case of employing POW's within the Army, to
15 obtain the approval of the War Minister by the applica-
16 tion of the Army commander exercising control of the
17 Prisoners barracks. In case of dispatching POW's to
18 engage them in labor outside the Army, it was provided
19 that the candidates should apply for the permission of
20 the War Minister. The former procedure belonged to
21 matters exclusively within the purview of the Army,
22 and was secretly taken without informing any govern-
23 ment office thereof. In case of the latter also, it

24 (143. T. 35162-3

25 144. Ex. 1965, T. 14440 et seq., esp.)

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2 representatives of the ministries concerned in a room
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21 matters exclusively within the purview of the Army,
22 and was secretly taken without informing any govern-
23 ment office thereof. In case of the latter also, it

24 (143. T. 35162-3

25 144. Ex. 1965, T. 14440 et seq., esp.)

1 was provided that the War Minister's permission should
2 be granted in the shape of secret orders, just as
3 Exhibit 1970-A was marked "Army Secret (ASTA. No. 3129)"
4 on its last line of the first page.¹⁴⁵ The Planning
5 Board was not in a position to know where the prisoners
6 were employed.

7 90. Thus although the Planning Board had
8 authority to draw up plans of labor supply, it had
9 no authority whatsoever over the supply of or demands
10 for the labor of POW's nor was any information available
11 to the Board as to where they were engaged in labor.
12 It was customary for every ministry to demand of the
13 Planning Board the allocation of the amount of labor
14 minus the part to be met by the POW's, or to mention
15 merely the amount of the Japanese labor required.¹⁴⁶
16 As SUZUKI testified,¹⁴⁷ "the various ministries con-
17 cerned notified the Welfare Ministry as well as the
18 Planning Board of the number of laborers available from
19 the general labor supply after the prisoners of war
20 had been deducted." It must particularly be noted
21 that the planning for allocation by the Planning Board
22 was, therefore, concerned with Japanese labor alone
23 not of POW labor at all.

24
25 (145. T. 14499
146. T. 35321
147. T. 35321)

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91. The only evidence adduced by the prosecution in relation to any connection of the Planning Board with POW's was the exhibit 1971-A mentioned above. The witness KAMEYAMA, director of the Third Division (148) of the Planning Board from November 1941 to July 1943, testified that the Planning Board was not invested with any authority in relation to the management of POW's, and the Planning Board did not formulate any principles for the transfer and employment of POW's. He further testified that the request for holding a meeting in the room of the Planning Board came from the POW Information Bureau. KAMEYAMA further testified that he approved the loan of the conference room but did not notify the President or the Vice-President of the Planning Board of such a routine matter. (149) It is submitted, therefore, that this charge against SUZUKI on the basis of the tenuous evidence of the prosecution is entirely groundless. For it is amply clear that the Planning Board had nothing whatsoever to do with the employment of POW labor, and that its planning for allocation of labor was confined to Japanese labor only.

XII. PRESENTATION OF DECORATIONS.

92. The prosecution makes a point in relation to the decoration granted by Germany to SUZUKI. (150)

148. T. 35,162.

150. T. 41,861-2.

149. T. 35,164.

SUZUKI's antipathy to Nazi Germany is evidenced by

1 his objection to the Tripartite Pact and the granting
2 of this decoration was based merely on a unilateral
3 account on the part of the Germany Ambassador.

4 We invite the attention of the Tribunal to exhibit 3034, (151)
5 the testimony of Kretschmer, former Germany Military
6 Attache in Japan. He stated as follows: (152)

7 " * * * Usually, the Japanese officers thus
8 mentioned to me for a German decoration did not know
9 anything about it themselves and were often surprised
10 when they received the order. German decorations were
11 given neither as a reward nor as a bribery but as an
12 act of diplomatic courtesy without much significance."
13

14 93. The tenuous value of this point is indi-
15 cated by the fact that in making the recommandation,
16 it was made even though SUZUKI was considered "ambiguous
17 toward Germany." (153) It may also be noted that SUZUKI
18 declined the invitation to the invitation to the inves-
19 titure and that at a time when war had already been
20 commenced and Germany and Japan were fighting as Allies, (154)

21 94. As stated by the prosecution, several
22 Japanese decorations were conferred upon SUZUKI. How-
23 ever, one class of decoration was conferred on all
24

25 151. T. 27,091.
152. T. 27,093.
153. T. 11,353.
154. T. 35,241.

1 colonels in active service without any special merit
2 and the other was conferred on all major generals in
3 active service also without any special merit. ⁽¹⁵⁵⁾ This
4 testimony stands uncontradicted.

5 XIII. CONCLUSION.

6 95. In fine, we submit that the defendant
7 SUZUKI cannot be held guilty under any of the charges
8 under the Indictment. On the contrary, the claim that
9 SUZUKI as early as 1932 participated in the alleged
10 over-all conspiracy charged in counts 1 to 5, is not
11 based on any evidence. The prosecution has distorted
12 a few sporadic expressions of views or normal official
13 activities of the accused between 1931 and 1941 and
14 contends that these indicate his guilt. Not only does
15 this evidence not meet the test of "proof of guilt
16 beyond a reasonable doubt," but does not meet any test
17 of evidence which would permit an adverse finding as
18 to him. The evidence simply indicates that his activi-
19 ties were the customary and usual ones of a man who
20 devoted his life to military service and such additional
21 civilian assignments as are frequently given to military
22 men by their governments. Not only is there a lack
23 of proof of SUZUKI's guilt on the basis of this evi-
24 dence, but as a matter of fact the evidence as
25 155. T. 35,250.

correctly evaluated is most persuasive in his favor.

1 96. In this connection and in connection with
2 our discussion on the two periods of SUZUKI's activities,
3 we direct the attention of the Tribunal to the state-
4 ment of the prosecution: (156)

5 "* * * no man has been charged with either
6 crimes against peace or conventional war crimes and
7 crimes against humanity unless he is in some way respon-
8 sible for the aggressive policy followed by Japan, which
9 gave rise to those crimes. No man has been charged in
10 this proceeding because of any act committed or any
11 statement made by him in the course of his official
12 duties pursuant to an already-established policy if
13 those matters were his only connection with that
14 aggressive policy. * * * He has been charged with such
15 crimes only if he participated in the formulation of
16 the aggressive policy of the government, or if he, in
17 the first instance, induced the aggression which was
18 subsequently made the policy of the government * * *"

19 We believe that the activities of SUZUKI
20 covering his two periods of service: (1) in the army
21 until 1941 and (2) his services as President of the
22 Planning Board in the second and third KONOE cabinets
23 and TOJO cabinet come well within this statement by the
24
25 156. The Liability of Defendants, Vol. 2,
T. 40,539.

question is, what will its impact be on the generations
1 to come, and what effect will it have on the world to
2 be? The world is already much smaller. Milton
3 expressed it much better than he knew when he said, "The
4 earth, a spot, a grain, an atom." We now submit this case
5 with supreme confidence in the Tribunal.
6

7 Mr. Mattice will continue.

8 THE PRESIDENT: Mr. Mattice.

9 MR. MATTICE: May it please the Tribunal,
10 on behalf of the accused ITAGAKI we desire to say:

11 In regard to the essential nature of the so-
12 called Manchurian Incident which started with the Mukden
13 Incident, the prosecution, in counts 1, 18 and 27 of
14 the Indictment, and also in its opening statement,
15 accused the defendant ITAGAKI and other defendants to
16 the effect that Japan instituted and waged a war of
17 aggression against China by obtaining the military, as
18 well as political and economic, control of her pro-
19 vinces of Liaomin, Kilin, the Amur, and Jehol, and
20 by establishing a puppet government which was controlled
21 by the Japanese Government and manipulated by the
22 Kwantung Army, thereby making these provinces the base
23 for going into the adjacent regions in China.
24

25 As to this accusation, the evidence in this
case shows that the resons: b: currence

1 did not rest with the defendants since the action taken
2 by the Japanese Army was prompted by self-defense for
3 the protection of the lives and interests of the Japan-
4 ese residents and interests; the creation of a Manchurian
5 Government was due to the spontaneous movement of the
6 Manchurians; this Manchurian Government was not a puppet
7 government; and Japan did not make Manchuria the base
8 for the purpose of invading adjacent regions in China.

9 While availing ourselves of the general
10 argument made by other counsel concerning the whole of
11 the Manchurian Incident, which is equally applicable to
12 ITAGAKI, we wish to say the following in his behalf,
13 individually:

14 A. During the Period He Was a Staff Officer
15 of the Kwantung Army.

16 Prior to the Mukden Incident.

17 Defendant ITAGAKI was appointed staff officer
18 of the Kwantung Army on May 1, 1929, and held that post
19 until July 30, 1932. The Commander-in-Chief of the
20 Kwantung Army at the time of the Manchurian Incident was
21 Lt. General HONJO, Saigeru, and the Chief of Staff was
22 Major General MIYAKE, Mitsuji. The movements of the
23 Kwantung Army before and after the incident were made
24 within the bounds of the authority of the Commander-in-
25 1. Ex. 3316, Tr. 30,254.

1 Chief under the Regulations of the Kwantung Army's
2 Headquarters. ^{1.} The duties and privileges of the Com-
3 mander-in-Chief, the Chief of Staff, and the staff
4 officers were defined by the Regulations. The
5 duties of ITAGAKI, as a staff officer, were to maintain
6 contact between staff officers and to manage the staff
7 office, and also to attend to liaison business of the
8 army. ^{2.}

9 The Discipline of the Kwantung Army after
10 Chang Tso-lin's Death.

11 The witness ISHIHARA, Kanji, testified that
12 "after Chang Tso-lin was killed, there had been some
13 criticism, in Japan, of the Kwantung Army, and so the
14 leaders of the army by issuing a strict warning
15 demanded the utmost circumspection in the movement of
16 the army, and especially Colonel ITAGAKI, as a staff
17 officer, correctly and carefully managed the staff
18 office so that they were quite confident that there
19 would be no misbehavior on the part of the army. ^{3.}"
20

21 The prosecution, alleging that the so-called
22 March Incident and the October Incident had some con-
23 nection with the Manchurian Incident, intimated that
24 ITAGAKI had been involved in these incidents. These

- 25
1. Ex. 2415, Tr. 19,554.
2. Ex. 3316, Tr. 30,254.
3. Ex. 2584, Tr. 22,116.

1 two incidents had no connection with the Manchurian
2 Incident, and the defendant ITAGAKI had absolutely no
3 concern with them.

4 The defendant HASHIMOTO told this Tribunal
5 that: "I participated in the so-called March Incident
6 which had been planned by Dr. OKAWA for the purpose
7 of forming a new cabinet with General UGAKI, Issei, as
8 the Premier in order to bring about the reconstruction
9 of Japan in March 1931. This plan was not realized
10 because of Mr. UGAKI's disapproval, and the affair
11 had nothing to do with the Manchurian Incident."^{1.}

12 Furthermore, he said: "I planned the so-called
13 October Incident which was to form a new cabinet with
14 Lt. General ARAKI as the Premier, in October of the
15 same year, and urged Mr. ARAKI to do so. Contrary to
16 my expectation, however, I was severely reprimanded
17 by him, and I was arrested by the military police by
18 order of War Minister MINAMI and was prosecuted.

19
20 "This incident had no connection with the Man-
21 churian Incident. The October Incident was primarily
22 conceived early in October between Captain CHOYU, who
23 had just returned to Tokyo from Peiping, and myself,
24 but was stopped while the plan was still in my head, as
25 I was arrested before it was carried out."^{2.}

1. Ex. 3195, Tr. 28,790.

2. Ex. 3195, Tr. 28,793-4.

The defendant KOISO deposed as follows:

1 "As far as I know, I have never heard that any officer
2 of the Kwantung Army had any concern with either the
3 March or the October Incident."^{1.}
4

5 The witness ISHIIHARA, Kanji, told this
6 Tribunal: "The officers of the Kwantung Army had
7 no connection with the so-called March Incident.
8 Nor were they members of the Society known by the
9 name of Sakura Kai."²

10 Further, he said: "At the time of the so-
11 called October Incident which happened right after
12 the Manchurian Incident, the Kwantung Army kept
13 its head cool, and I who was bent on fulfilling my
14 duties as well as all other officers and men, had
15 never participated in scheming such an incident as
16 this."^{3.}
17

18 The witness KATAKURA, Chu, said: "As there
19 was an inquiry from Tokyo on 18 October whether
20 there was any scheme on the part of the Kwantung
21 Army to become independent of the Japanese Army, I
22 made an investigation. There was, however, nothing
23 of the sort in the Kwantung Army, which fact was
24 telegraphed to the War Minister and the Chief of the
25 General Staff by HONJO, Commander-in-Chief. General

1. Ex. 3375, T. 32265; 2. L. 504 T. 22115-6.

3. T. 2. 1'

1 SHIRAKAWA too was afraid of such a scheme, I thought,
2 but as it was clarified that there had been no such,
3 there was no further investigation into this matter." ^{1.}

4 The defendant ITAGAKI testified that: "I
5 had no concern whatever with the so-called March
6 Incident or the October Incident. I did not know
7 even of the existence of such a society as Sakura Kai.
8 As for Dr. OKAWA, I had neither met nor correspond
9 with him for five or six years prior to the Incident
10 on September 18." ^{2.}

11 From that evidence it is clear that the so-
12 called March and October Incidents had no connection
13 with the Manchurian Incident, and that the defendant
14 ITAGAKI had no connection whatever with these two
15 incidents.

16 In exhibit No. 2177-A (the deposition of
17 OKAWA), it was stated that defendant DOIHARA was one
18 of those who had been involved in the October Incident, ^{3.}
19 but nothing was told of what connection he had or of
20 the actual facts. It was purely a conclusion on his
21 part and has no evidentiary value.

22 Defendant KOISO pointed out that the court
23 exhibit No. 2177-A was erroneous. ^{4.} According to the
24

25 1. T. 18950-1.

2. T. 30323.

3. Ex. 2177-A, T. 15587.

4. Ex. 2275 T. 32214.

1 deposition of OKAWA, "The Manchurian Incident was
2 started from the destruction of the Manchurian
3 Railroad at Liutiokon on 18 September 1931. The
4 then cabinet was that of SHIDEHARA's interim and the
5 policy of the cabinet was never established . . .
6 General ARAKI was not connected with the October
7 Incident."¹

8 Everybody knows that the Manchurian Incident
9 occurred, not during the period of SHIDEHARA's interim
10 Cabinet but of WAKATSUKI's Cabinet. It is also
11 clear that the October Incident occurred in order to
12 make General ARAKI Premier, and that it was stopped
13 because of the General's wish not to be made Premier.
14 Since he commits such a grave error as this, Mr.
15 OKAWA's deposition cannot be relied upon to ascertain
16 the truth of the matter. It must be noted that he was
17 then already mentally deranged.

18 The True Condition of the Kwantung Army.

19 The defendant ITAGAKI testified: "In China,
20 since 1925, a movement for the recovery of alleged
21 lost national rights had been started and anti-
22 Japanese actions became increasingly active. In
23 Manchuria also there occurred violations of Japan's
24 1. Ex. 2177-A, T. 15585-8.
25

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24 1. Ex. 2177-A, T. 15585-8.
25

1 rights and interests. In 1928 the Chang Hsueh-liang
2 regime affiliated with the Nanking Government, changed
3 the Manchurian colors, and adopted the "blue-sky and
4 white sun" ensign, letting influences of the Chinese
5 Nationalist Party penetrate into Manchuria. The
6 anti-Japanese movement there was organized under the
7 direction of the Kuomintang and government offices,
8 and it became very active and intense. The Japanese
9 rights in Manchuria were infringed and the Japanese
10 nationals were squeezed into the belt-like strip
11 along the South Manchurian Railway. The extreme
12 pressure against the Korean immigrants, violence and
13 oppression of the Japanese and obstruction to commu-
14 nication, etc., were intensified and increased in
15 number. In spite of the earnest and sincere coopera-
16 tive policy of Foreign Minister SHIDEHARA, no prospect
17 for relaxation of the anti-Japanese activities in
18 China was in sight, and the situation was continuously
19 aggravated. Just before the outbreak of the Incident,
20 several hundred questions were pending.^{1.}

21
22 "On the other hand, in the military field,
23 Chang Hsueh-liang, since taking office as the Vice-
24 Commander of the Kuomintang Army in the fall of 1928
25 planned to strengthen and reorganize the army under
1. Ex. 3316, T. 30255-6.

1 his control, increased the strength of the standing
2 army to two hundred odd thousand, enlarged the scale
3 of the Mukden Arsenal, equipped the army with such
4 modern arms as tanks and aeroplanes, and strengthened
5 the system of discipline. Thus he endeavored to raise
6 both the quality and the quantity of his army and, as
7 a result, as compared with the Kwantung Army at that
8 time, not only in its strength but in its equipment,
9 his army was far superior to it.

10 "Since then the anti-Japanese sentiments
11 gradually influencing the Chinese troops, they assumed
12 a contemptuous attitude toward the Japanese troops, and
13 as the anti-Japanese sentiments of the officers and men
14 became very vigorous, there was a fear that there
15 might occur a collision between the Chinese and the
16 Japanese troops. Moreover, the disposition of the
17 Chinese troops was changed so as to encircle our
18 garrison areas along the South Manchurian Railway,
19 and the Kwantung troops, which had been placed dis-
20 persedly, fell into a situation extremely dangerous
21 from the military point of view. That is to say,
22 while no more than ten odd thousand Kwantung troops,
23 with the inferior equipment and formation, had been
24 stationed dispersedly, still on peace time footing, in
25 the area almost one thousand kilo . . . along

1 the South Manchurian Railway, they came to be placed
2 under siege by the large force of two hundred thousand
3 odd Chinese troops, equipped with superior arms,
4 burning with anti-Japanese zeal, and assuming a most
5 provocative attitude. And if we were to avoid the
6 collision, there was no solution for us except to
7 abandon all the special rights and interests we had
8 in political, economic and military fields generally. 1.

9 KONOJO, Shigeru said: "In August 1931, I
10 assumed the post of the Commander-in-Chief of the
11 Kwantung Army. The anti-Japanese sentiments which
12 had been growing intense and active for some time,
13 had become worse by this time, and such unfortunate
14 incidents as the murder of Captain NAKAMURA and
15 Sergeant-Major ISUGI, the massacre of Korean farmers
16 by both Manchurian troops and people, and the Man-
17 paoshan Incident were taking place one after another.
18 While the solution of the situation was still pending,
19 the general conditions of Manchuria were becoming
20 more and more apprehensive. The gravity of apprehen-
21 sion deepened when I assumed my post. Violence and
22 oppression of the Japanese nationals were intensified
23 and increased in number, and obstruction by all means
24 to the military maneuvers which the Kwantung Army was
25 1. Ex. 2043, T. 19254-5.

1 rightfully assured of by the treaties occurred to such
2 an extent that the outdoor training of the troops,
3 which was the life of the army, was virtually nulli-
4 fied. Insults and violence committed on our officers
5 and men as well as our nationals both in day time and
6 at night, in the streets and villages, were still
7 more intensified, and untoward incidents and unlawful
8 acts became countless. Because of such a situation
9 when I assumed my post, the crisis might be expected
10 to come at any moment.^{1.}

11 According to the testimony given by ISHI-
12 HARA, Kanji, the situation was as follows: "The
13 officers and men of the Kwantung Army were insulted,
14 oppressed and obstructed at their garrison duties of
15 railways and in their maneuvers and on other innumer-
16 able occasions. The Japanese troops, far inferior
17 in equipment and number as they were still on peace-
18 time footing, had to face the Chinese troops superior
19 in number and arms and burning with anti-Japanese
20 sentiments. While there were no diplomatic measures
21 being taken for the solution of countless questions
22 pending, only there being lip service for the easing
23 off the tension, the situation remained as fearful
24 as a volcanic mountain at the point of eruption. And
25 1. Ex. 2584, T. 22110, 22116.

1 having witnessed, on one hand, the actual conditions
2 of anti-Japanese sentiments, especially the burning
3 zeal of the Chinese Army against the Japanese Army, the
4 violence committed on the Japanese nationals, and, on
5 the other, the failure of diplomatic negotiations
6 between the two countries, despite the cooperative
7 policy of Japan, and the public opinions in both
8 countries becoming stronger than ever, all the officers
9 and men of the army from the Commander-in-Chief down
10 to the private came to the conclusion that a collision
11 of arms was now inevitable.^{1.}

12 According to the testimony given by TANAKA,
13 Ryukichi, "The condition prior to the Mukden Incident
14 was a state of undeclared war."^{2.}

15 From such evidence in regard to the then
16 existing situation in Manchuria, it is clear that a
17 collision of arms provoked by the Chinese Army was
18 inevitable.

19 The Kwantung Army endeavored to the utmost
20 to avoid the collision of the two armies.

21 According to the testimony of the defendant
22 ITAGAKI, "the situation between Japan and China at
23 that time was the collision between the two conflicting
24

25 1. Ex. 2584, T. 22110, 22116.

2. T. 2092.

1 demands, the recovery of China's alleged lost rights
2 and the maintenance of our rights and interests, and
3 the solution of the situation seemed extremely diffi-
4 cult unless either the Japanese or Chinese would con-
5 cede or compromise. But the Chinese had no intention
6 at all to compromise and the situation was such that
7 anti-Japanism by force of arms would be inevitable.
8 The Kwantung Army, however, tried hard to avoid the
9 friction with the Chinese, sought all means of appease-
10 ment, admonished our officers and men to be patient
11 and cautious, prohibiting any rash acts."^{1.}

12 According to the testimony of the witness
13 ISHIHARA, Kanji, when HONJO, the Commander-in-Chief,
14 came to take his office in August, 1931, in view of
15 the frequent occurrences of such incidents as Captain
16 NAKAMURA's case, the incident of Wampooshan, the
17 collision of men in various garrison areas, etc., and
18 appreciating the gravity of situation, he admonished
19 his officers and men to be patient and cautious,
20 prohibiting any rash acts."^{2.} ISHIHARA further testi-
21 fied to the effect that in spite of the fact that the
22 murder of Captain NAKAMURA was a serious case, the
23 Kwantung Army hoped its solution would be attained by

24
25 1. Ex. 3316, T. 30257-8.
2. Ex. 2584, T. 22112-3.

1 Diplomatic negotiations. The case was solved through
2 the diplomatic negotiations as they had expected.
3 The fact shows that the Kwantung Army tried its
4 utmost to avoid any friction with the Chinese. 1.

5 THE PRESIDENT: We will adjourn now until
6 half-past one.

7 (Whereupon, at 1200, a recess
8 was taken.)
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1. T. 30325-.6.

AFTERNOON SESSION

1
2 The Tribunal met, pursuant to recess, at 1330.
3
4 MARSHAL OF THE COURT: The International
5 Military Tribunal for the Far East is now in session.
6
7 THE PRESIDENT: Mr. Mattice.
8
9 MR. MATTICE (Continued):
10 The Kwantung Army Adopted an Emergency Measure.
11 According to the testimony given by defendant
12 ITAGAKI, "although the Kwantung Army tried hard to
13 avoid friction with the Chinese by seeking all means
14 of appeasement, admonishing our officers and men to be
15 patient and cautious, and prohibiting any rash acts,
16 it became necessary for the Army to work out an
17 emergency counter-measure in case of collision between
18 the Japanese and the Chinese troops, which might
19 happen by positive military actions on the part of
20 the Chinese. The Kwantung Army, in order to deal with
21 the pressing situation of its troops, wished to
22 replete its equipment, but this desire was not approved
23 by the central authorities of the army. Therefore,
24 the Kwantung Army mapped out a plan with the then
25 existing strength and equipment, without getting
assistance from the central authorities since the
previous year. They established a plan of operations

1 that in case of collision between the Chinese and
2 the Japanese troops, the Kwantung Army would concentrate
3 its main forces in the vicinity of Mukden and deliver
4 a heavy blow to the nucleus of the Chinese forces in
5 Mukden, and thus by sealing the fate of the enemy,
6 would settle the matter within a short period. They
7 decided to make preparations necessary for education,
8 training, communication, transportation and other
9 things, in accordance with the above plan, and to
10 make up for the shortcomings of the fighting power
11 by utilizing the material for military operations,
12 which could be found in Manchuria, to the best possible
13 advantage. It was a part of that plan that they set
14 two heavy guns in the premises of the Mukden Independent
15 Garrison Barracks in Mukden. These guns were those
16 which became needless as the result of scaling down
17 of the fortifications of Port Arthur, and were
18 appropriated.^{1.}

19 Defendant ITAGAKI further said: "For working
20 out plans of operations, there was an officer in charge,
21 and the will or views of superior officers through
22 the directives and orders from the Headquarters
23 were taken into account. I was not directly concerned
24 with the matter."^{2.}

(1) Ex. 3316, T. 3025-9
(2) T. 30,339

1 Witness ISHIHARA, Kanji testified: "Because
2 the situation in Manchuria became so serious, especially
3 the anti-Japanese sentiment of the Chinese Army
4 became so strong that there was a danger of collision
5 between the Japanese and the Chinese troops, military
6 preparations for an emergency had to be made with the
7 object of solving the situation by a force of arms
8 in accordance with the directives and orders given
9 from the central authorities of the army during the
10 past several years. Thus a plan of operations was
11 established that in case of collision between the
12 Chinese and the Japanese troops, the Kwantung Army
13 would concentrate its main forces in the vicinity
14 of Mukden and thrust a heavy blow to the forces
15 gathered in and around Mukden and, in accordance with
16 this plan, necessary preparation for education, training,
17 transportation and many other things were made. In
18 order to accomplish this difficult task by our
19 small forces against the vast number of the enemy,
20 it was necessary for the Army to be very cautious in
21 making plans and preparations, to strengthen the
22 unity of the Army, and to be exact in training. And
23 in view of conditions of the Army being inferior in
24 equipment and number and there being no hope of getting
25 reinforcement from the central authorities of the

1 arry, the Kwantung Army tried to make up for the
2 shortcomings of the fighting power by utilizing the
3 material for military operations, which could be
4 found in Manchuria, to the best of advantage. The
5 setting of two heavy guns in the premises of the
6 Mukden Independent Garrison Barracks in Mukden was
7 but an instance of this utilization."^{1.}

8 In reply to a question in cross-examination
9 the witness ISHIHARA, Kanji said: - "What I stated
10 in my deposition that the Kwantung Army would concentrate
11 its coming forces in the vicinity of Mukden and
12 thrust a blow to the Chinese forces gathered in and
13 around Mukden, meant that this was the only possible
14 operation for the Army to find the way out of death,
15 and as there was no reinforcement coming which we had
16 asked, we tried our best in fulfilling our duties."^{1.}

17 He further stated: "Neither the central
18 authorities of the army nor the Kwantung Army hoped
19 that the problem would be solved by a force of arms."^{2.}

20 And then he testified as follows: "I stated
21 in my deposition that all the officers and men from
22 the Commander-in-Chief to Staff officers and unit
23 commanders came to the conclusion that collision of
24

25 (1) Ex. 2584, T. 22,111-3
(1) T. 22,178
(2) T. 22,183

1 errs was now inevitable, because we thought that the
2 military actions on the part of the Chinese were so
3 positive and active that we should be obliged to be
4 acted upon by them. This does not mean that we would
5 take any initiative at all events."³

6 It is true that the Kwantung Army prepared
7 an emergency counter-measure at that time, but its
8 plan of operations had been made in accordance with
9 the directive and orders from the central authorities
10 of the army, changing customarily from year to year,
11 and reporting accordingly. Moreover, it is clear
12 that these plans had been framed for the purpose of
13 defense, and never positive military operations, as
14 they should be carried out only in case of attack
15 from the Chinese on the occasion of collision between
16 the Japanese and the Chinese troops.

17 B. The Mukden Incident.

18 ITAGAKI's Behavior at the Special Service
19 Section Office. Coming of Major-General TATEGAWA
20 and ITAGAKI's Meeting with Him.

21 According to the testimony of ITAGAKI, he
22 accompanied Commander-in-Chief HONJO on his informal
23 inspection trips of the troops under his command, and
24

25 (3) T. 22,195-6

1 finished the trips with the inspection of the troops
2 located at Liaoyan on 18 September 1931. On the
3 same day Commander-in-Chief HONJO was informed by
4 the Chief of Staff MIYAKE that Major-General TATEKAWA,
5 the Chief of the First Department of the General Staff
6 Office, was coming to Mukden; and that MIYAKE requested
7 him to send ISHIKAWA or ITAGAKI, Staff officers, to
8 Mukden to meet the Major-General. Commander-in-Chief
9 HONJO ordered ITAGAKI to go to Mukden; accordingly,
10 ITAGAKI went to Mukden from Liaoyan. Toward evening
11 that day Major-General TATEKAWA arrived, and he
12 greeted and talked with him. The Major-General was
13 quite tired, besides, since he was scheduled to stay
14 there for a few days, he did not mention his business
15 immediately except a few words to the effect that the
16 superiors were worrying about the careless and
17 unscrupulous conduct of the young officers. ITAGAKI
18 answered that there was no need of worrying if that
19 was the business and, remarking that he would hear
20 him at leisure the next day, he took leave.^{1.}

21
22 According to the testimony of witness
23 ISHIHARA, Kanji, on 18 September Commander-in-Chief
24 HONJO was informed that Major-General TATEKAWA
25 was coming to Mukden for the purpose of liaison.

(1) Ex. 3316, T. 30,260

1 So, on the same day toward evening, after inspection
2 of the troops was finished, Commander-in-Chief HONJO
3 ordered Colonel ITAGAKI to meet the Major-General,
4 and, at the same time, make liaison with the Special
5 Service Section in regard to the case of NAKAMURA,
6 and also with the Consulate-General.¹ ITAGAKI
7 met the Major-General, who mentioned the conduct
8 of the young officers, and partly finished his
9 business; but as he had to make liaison concerning
10 the case of NAKAMURA, he called at the Special Service
11 Section. As it was necessary for him to prepare some
12 papers concerning the case of NAKAMURA, besides as
13 it was too early to go to bed, and also the Special
14 Service Section lay on his way home, it was natural
15 for him to stop at this Section in order to get some
16 new materials, relating to the case of NAKAMURA, to
17 TATEKAWA.

18 Liaison of SHIMAMOTO and HIRATA.

19 Acceptance of ITAGAKI. Report to the
20 Commander-in-Chief.

21 As stated in his testimony, ITAGAKI, on his
22 way to his billet after taking leave of Major-General
23 TATEKAWA, stopped at the Special Service Section,
24 but as there was no particular news, he chatted for a
25

(1) Ex. 2584, T. 22,117-8

1 while with the staffs. He was about to return to his
2 billet when there was a telephone call from the
3 garrison troops, calling the Special Service Section
4 and reporting the case of blasting the railway line
5 at Liochiaokon. By several following contacts by
6 telephone, he understood that just after 10:00 P.M.,
7 Chinese troops blasted the rail line of the South
8 Manchurian Railway at the western side of Peitaying,
9 north of Mukden, and the patrolling scouts of the
10 company of Hushihtai received shots from the enemy
11 lying in ambush. Upon receiving the information
12 the company of Hushihtai hurriedly went to the rescue,
13 collided and engaged in a battle with Chinese troops.
14 Although they had occupied a corner of Peitaying, in
15 spite of the enemy's resistance, with the enemy
16 increasing fire with machine guns and infantry guns,
17 the company was hard pressed. From the report of the
18 railway guard it was clear that the incident was not
19 a mere infringement upon rights and interests in the
20 shape of blasting the railway, but a planned challenge
21 of the Chinese Regular Army against the Japanese
22 Army; and it was judged that the Seventh Brigade
23 of Peitaying was in action against the Japanese.
24 Therefore, he keenly felt the risk was so close that
25 if the Japanese hesitated a moment the leased territories

1 attached to the South Manchurian Railway, and the
2 Japanese troops, would be encircled and attacked by
3 the Chinese Army in Mukden.

4 At that moment Lieutenant Colonel SHIMAMOTO,
5 the Second Battalion Commander of the Independent
6 Infantry Garrison, stated that he would immediately
7 go with all his troops to rescue the Hushihtai company,
8 which was in a desperate battle at a corner of
9 Peitaying, and HIRATA, the 29th Regimental Commander,
10 who had been informed of the situation, declared that
11 he, as the Commander of the Garrison, made up his
12 mind to cooperate with HASHIMOTO's battalion by
13 attacking the Mukden Wall with all the power under
14 his command. These determinations were intimated to
15 the Commander-in-Chief and others through the Special
16 Service Section of Mukden.

17 In the capacity of a Staff officer who
18 happened to be present there, ITAGAKI accepted their
19 determinations and took steps to report to the
20 Commander-in-Chief that the Independent Garrison
21 would fight it out with the enemy at Peitayang, and
22 the 29th Regiment against the enemy within Mukden.
23 The reasons why he accepted were:

24 (1) The determinations of the above
25 commanders were absolutely necessary, in line with the

1 plan of operations of the army in case of emergency,
2 not only for the self-defense of the troops in Mukden,
3 but also for the benefit of the activities of the
4 main force of the army; and

5 (2) He thought it was proper to give these
6 commanders assurance in taking action according
7 to their determinations by his acknowledgment, since
8 he as a Staff officer was fully conversant with the
9 intentions of the Commander-in-Chief previously
10 expressed.

11 When he reported the details of the above
12 steps to the Commander-in-Chief HONJO, as the headquarters
13 of the Kwantung Army moved to Mukden on 19 September,
14 he approved the steps as they completely coincided
15 with his intentions.^{1.}

16 According to the testimony of HIRATA, Yukihiro,
17 he received a telephone call from Colonel SHIMAMOTO,
18 about 10:40 P.M. on 18 September, that "as Chiang
19 Hsueh-liang's army at Peitaying had blasted the
20 railway, attacked our patrol scouts, and a section
21 of this patrol unit was fighting against them, he
22 would call out his battalion and go immediately to
23 rescue our scouts." HIRATA replied to him, through
24 the telephone, that it would be very well for him

25 (1) Ex. 3316, T. 30,261-5

1 to do so, and he himself would call out his regiment
2 and go to the barracks, where he would meet the
3 Colonel and talk over the matter in detail.

4 Immediately HIRATA called by telephone
5 the Commanding Officer on duty and ordered him to
6 make an emergency call of the regiment, put on his
7 uniform, and hurried to the barracks. When he arrived
8 there, Colonel SHIMAMOTO came running to meet him
9 and said that he would attack the enemy at Peitayang
10 with all the men under his command, which HIRATA
11 accepted and, replying that he himself would attack
12 the Mukden Wall, parted with him.^{1.} At that time
13 Chang Hsueh-liang had his army of twenty-odd thousand
14 placed in a position encircling the Mukden Wall.
15 Against this, the Japanese Army numbered less than
16 fifteen hundred and was dispersed in an area of about
17 four kilometers around the Mukden Wall. Therefore
18 he thought it would suffer a total annihilation if
19 the Chinese troops should make an attack.^{2.} The
20 moment he was informed of the occurrence by Colonel
21 SHIMAMOTO, he felt that Chang's Army was making a
22 planned challenge. So he accepted the report made
23 by Colonel SHIMAMOTO that he would come to rescue the
24

25 (1) Ex. 2404, T. 19,285
(2) Ex. 2404, T. 19,287

1 men engaged in a battle, with all the men in his
2 command.^{3.}

3 What led HIRATA to this determination when
4 he was informed of the occurrence in the barracks
5 by Colonel SHIMAMOTO was that he would surely be
6 annihilated if he did not attack the Mukden Wall. (1)

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(3) Ex. 2404, T. 19,288
(1) Ex. 2404, T. 19,297

1 From that evidence it is plain that SHIMAMOTO
2 made his determination to make an attack upon Peitaying
3 and go to rescue the men at the time when the Garrison
4 reported to HIRATA by telephone, and that HIRATA, upon
5 being informed of the occurrence from SHIMAMOTO,
6 accepted the latter's determination, and himself made
7 up his mind to attack the Mukden Wall, for the reason
8 that he would be annihilated if he should not do so.

9 Furthermore, HIRATA said that when he went to
10 the Special Service Section he found Colonel ITAGAKI
11 there, so he requested him to communicate his determin-
12 ation to attack the Mukden Wall to the Commander-in-
13 Chief and the 2nd Division Commander;^{2.} that he thought
14 Colonel ITAGAKI had no authority to order Colonel
15 SHIMAMOTO and himself to make such an attack as this;
16 that as a matter of fact he did not issue any order;
17 that he never showed Staff Officer ITAGAKI his plan of
18 action for approval.^{3.}

19 Although ITAGAKI accepted what Lieutenant
20 Colonel SHIMAMOTO and Colonel HIRATA had informed the
21 Special Service Section, the action was taken on the
22 responsibility of each unit, and not on his order. Then,
23 he stayed all night at the Special Service Section.
24

25 According to the testimony of the defendant

(2) T. 19307; (3) T. 19312.

ITAGAKI and the witness HIRATA, upon the receipt of
1 information from the Garrison and request for assistance,
2 Lieutenant Colonel SHIMAMOTO made up his mind to rescue
3 the garrison with all the men at his command and make an
4 attack upon Peitaying, and so informed Colonel HIRATA.
5 When Colonel HIRATA was informed of this he agreed, and
6 he himself was determined to attack the Mukden Wall, the
7 reason being that if he should not take this action, he
8 would be annihilated. These facts are clear. The
9 reason why Lieutenant Colonel SHIMAMOTO and Colonel
10 HIRATA had gone to the Special Service Section of Mukden
11 was because of the request they wanted to make of the
12 Section to report to the Commander-in-Chief, the former
13 of his determinations to attack Peitaying, the latter to
14 attack the Mukden Wall, and for the sake of getting their
15 respective permissions.
16

17 ITAGAKI had no authority to order such attacks
18 and, as a matter of fact, he did not order them.
19 ITAGAKI happened to be present there and, in the capacity
20 of a Staff Officer, recognizing their determination as
21 being absolutely necessary for the occasion and in
22 accord with the will of the Commander-in-Chief, accepted
23 them and took steps to report to the Commander-in-Chief
24 that they would fight it out with the enemy.
25

The Commander-in-Chief Was Determined to Take

Action Upon Receipt of the Report.

1 The witness ISHIHARA, Kanji, told this Tri-
2 bunal that: On 18 September 1931, the Commander-in-
3 Chief HONJO, finishing his last inspection of the
4 troops located at Liaoyan, on his informal trips of
5 inspection of the troops under his command, returned
6 with the Staff officers that night to Port Arthur. At
7 about midnight he received an urgent call from a certain
8 NAKAMURA to come to the official residence of the Chief
9 of Staff. He hurried there and found Staff Officer
10 TAKESHITA and all other Staff officers already assembled
11 through the arrangement of Staff Officer Captain
12 KATAKURA. They were then told of the first military
13 secret telegram which stated that a little after ten
14 o'clock on the night of the 18th some Chinese troops
15 blasted the railway line of the South Manchurian Railway,
16 attacking the garrison guards there, whereupon the
17 guards engaged in a fight and, upon the receipt of this
18 report, the 2nd Battalion of the Independent Garrison
19 infantry of Mukden was moving to the spot. A telephone
20 message was sent to the Commander-in-Chief at his
21 official residence by the Chief of Staff MIYAKE. They
22 all stayed there that night in order to study adequate
23 measures for the occasion.
24
25

"On or about eighteen minutes after midnight

1 they received the second report from the Special Service
2 Section of Mukden when the Commander-in-Chief arrived.
3 The Chief of Staff and others, after a careful study,
4 reached the conclusion that by the outrageous acts of
5 the Chinese Army the situation had come to an extremity
6 which was worse than they ever expected and beyond their
7 patience to endure; that since it had come to such a
8 pass, if they did not take punitive measures and fore-
9 stall the enemy, the situation might become worse than
10 ever that night. The tense condition between the
11 Japanese and Chinese armies at that moment permitted no
12 hesitation. Taking a firm stand, the Army with its
13 whole strength should thrust a vital blow to the nucleus
14 of the enemy.' As the head officer in charge of
15 operations, he expressed his views to Commander-in-Chief
16 HONJO, who sat with eyes closed and meditated for
17 several minutes. When he opened his eyes he said,
18 'Very well, let us do it on my responsibility,' and under
19 this solemn and weighty determination of their Commander
20 they felt great responsibility. Then the Commander-
21 in-Chief issued orders calling out each of the units.
22 At three o'clock on the morning of the 19th he left
23 Port Arthur for Mukden.^{1.}
24

25 According to the Lytton Report, it is stated
(1. Ex. 2584, T. 22117-22121.)

1 that "The Committee did not reject the hypothesis that
2 officers on the spot were acting for self-defense."^{1.}

3 That the opinions of Lieutenant Colonel
4 SHIHAMOTO and Colonel HIRATA happened to coincide with
5 that of the Commander-in-Chief was because of the situ-
6 ation in Manchuria, which was then a state of undeclared
7 war and also because of the necessary steps to be taken
8 for self-defense, born of the judgment that the action
9 of the Chinese Regular Army had been a planned challenge.

10 Some may wonder at the speed with which the
11 orders from the Army were carried out, but these orders
12 were issued in due procedure and carried out.

13 The President of this Tribunal made some inquiry
14 of ITAGAKI on this subject, and received the following
15 answers:

16 "Q Whether there was any special order given
17 to troops stationed at Chungchun, Antung, and Fushan?

18 "A Orders must have been issued from the
19 Commander-in-Chief.

20 "Q What these orders were?

21 "A As I was not in Mukden at the time, so I
22 heard later. As I was not there, I was not informed of
23 exactly. As far as I remember, as for Chungchun unit,
24 they were to concentrate at Mukden in accordance with
25 (1. Ex. 57, T. 1797-8.)

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2 officers on the spot were acting for self-defense."^{1.}

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17 to troops stationed at Chungchun, Antung, and Fushan?

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19 Commander-in-Chief.

20 "Q. What these orders were?

21 "A. As I was not in Mukden at the time, so I
22 heard later. As I was not there, I was not informed of
23 exactly. As far as I remember, as for Chungchun unit,
24 they were to concentrate at Mukden in accordance with
25 (1. Ex. 57, T. 1797-8.)

1 the hitherto made plan; so the plan was altered to make
2 the Chungchun unit remain there for a while. As for the
3 Fushun unit, I heard to the effect that there was no
4 direct order from the Army, but the Commander of the
5 2nd Battalion of the Independent Garrison infantry, who
6 was in Mukden, issued an order to hasten to Mukden upon
7 the occurrence of the incident. As to the Antung unit,
8 I do not know.

9 "Q Whether he acknowledged them?

10 "A When the orders were given out, I was not
11 at Port Arthur. As I was then at Mukden, I had no
12 concern with them.

13 "Q Whether he could explain how the battle
14 began at these places on that night?

15 "A This is from the later report I am speaking
16 At Chungchun, the Commander of the Brigade stationed
17 there was to come up to Mukden, according to the plan,
18 but he was told to remain there for the time being. He
19 might leave Chungchun at any time and march his men to-
20 ward Mukden. In that case, from the viewpoint of the
21 protection of the Japanese nationals and the railway,
22 and feeling a great danger from the Chinese Army at
23 Kuanchentzu, Nahring, near Chungchun, started an attack
24 of his own accord.
25

"Q Whether it was not very surprising that

1 fighting began at four places including Mukden on that
2 night almost at the same time. Could he explain?

3 "A The time of the opening of hostile action
4 was different at different places.

5 "Q What were the various times?

6 "A I am not certain as to the time, but the
7 hostilities commenced in Chungchun on the 19th around
8 noon. There was no action at Fushan. The Chinese
9 troops at Huanfingcheng were disarmed, but that was on
10 the 1st of September. That is to say, that took place
11 after a telegraphic order had been sent by the Kwantung
12 Army Headquarters at Port Arthur."^{1.}

13 In summation the prosecution asserted that
14 ITAGAKI stated that communications were bad and he was
15 unable to ascertain the true nature of the situation,
16 but that he arbitrarily approved the field commander's
17 plan to attack the Chinese Army without even troubling
18 himself to find out what was really going on.

19 As to this ITAGAKI testified that he ascertained
20 the real conditions at that time as much as possible;
21 that he heard every telephone call at the Special
22 Service Section; that he tried to gather materials to
23 make a correct judgment of the matter,^{2.} that as it was
24 quite an emergency, the reports from the front were often
25 (1. T. 30523-6. 2. T. 30356.)

1 quite fragmentary and inconsistent. Besides, communi-
2 cation stations moved from place to place; that because
3 of these conditions, it required some time to get
4 information.

5 In spite of the difficulties in securing in-
6 formation, ITAGAKI made efforts to learn the true
7 conditions of the incident and obtained materials to
8 form a correct conclusion.

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1 As stated in his affidavit in Section 5,
2 in view of the fact that there was no other way for
3 him to make further investigation of the case and
4 the matter permitted no delay, it was but natural for
5 ITAGAKI to accept the plans made by the commanders at
6 the spot.

7 ITAGAKI cannot be blamed or held responsible.

8 Negotiations with the Consul-General at Mukden.

9 Exhibit No. 2193 is the telegram reporting
10 to Foreign Minister SHIDEHARA of the negotiations made
11 by ITAGAKI with the Consul-General HAYASHI, which was
12 sent by the latter. According to the testimony of the
13 defendant ITAGAKI, the nature of these negotiations
14 was as follows:

15 On the night of 18 September the Consulate-
16 General at Mukden was informed by telephone of the
17 outbreak of the incident and of the actions taken by
18 the army. Consul MORISHIMA was asked to come up to
19 the Special Service office where the circumstances
20 were explained in detail and his cooperation requested.
21 ITAGAKI also talked about the matter with Consul-
22 General HAYASHI several times by telephone. Consul-
23 General HAYASHI said that, as Japan and China had not
24 yet formally entered into war and as the Chinese,
25 through consultant Chau, Hsin-po, had announced

1 their adoption of the principle of non-resistance,
2 he hoped that the army would arrange the matter so
3 it could be dealt with through diplomatic agents,
4 putting an end to the military actions on the part
5 of Japan at that time.

6 In reply to his assertion, ITAGAKI explained
7 to him that the incident, this time, was different
8 from the previous ones because the Regular Army of
9 the Chinese had challenged the Japanese Army; that
10 fighting between the Chinese and the Japanese was
11 already under way, and it was impossible, for the
12 present, to separate them; that anyway, unless the
13 present military actions would be settled, it was
14 practically impossible to transfer the case to
15 diplomatic negotiations; that although the Chinese
16 were saying that the Chinese were abiding by the
17 principle of non-resistance, according to the report
18 from the frontier, they were attacking at Hushihtai,
19 causing dead and injured; that he could not imagine
20 that Chao, Hsin-po would be able to arrange a cease-
21 fire agreement on his own responsibility because he
22 was a mere civil official, having no influence in
23 military affairs; that particularly what had to be
24 considered was that it could not be known whether it
25 might not turn out to be the enemy's habitual trick

1 in order that they might gain time to rearrange the
2 situation and bring about Japanese army delay and
3 unalertness.

4 ITAGAKI also told him they had to be careful;
5 that the condition was of such a grave nature that it
6 permitted no hesitation^{1.} and asked HAYASHI's con-
7 sideration.

8 That was the first ITAGAKI had heard of the
9 Chinese principle of non-resistance and, moreover,
10 the Chinese were then actually fighting against the
11 Japanese.

12 The Provoking Actions of the Chinese Army.

13 Exhibit No. 2423 (Report on the Investigation
14 into the Matters Relating to the Destruction of the
15 South Manchurian Railway) is the report made after
16 an investigation conducted at the site by OYAMA,
17 Fumio, officer of the Military Affairs of the Kwan-
18 tung Army Headquarters, with seven others by order
19 of the Commander of the Army.

20 In the report the conditions were described
21 in effect as follows:

22 . . . While standing beside the corpses and
23 looking over in a northeastern direction of Peiping,
24 one could perceive, beyond the cornfields at a
25

1. Ex. 3316, Tr. 30265-7.

1 distance of about 150 meters, some barricade south-
2 west of Peitaying. Judging from their personal
3 features, clothes and arms, it was plain that these
4 three had been men belonging to the Chinese Army,
5 and from the condition they are in it was believed
6 that several scores of hours (four or five days) had
7 elapsed since they died. Evidently the dead had
8 never been removed from the place where they had
9 fallen. The investigation confirmed that after
10 accomplishing the blasting of the railway by means
11 of explosives, these Chinese soldiers were discovered
12 by some of the men at garrison duties on the railway,
13 whereupon while firing and retreating toward Peitaying,
14 they were pursued by our garrison men, when they were
15 wounded and died, remaining in the position in which
16 they fell.^{1.}

17 The witness OYAMA, Fumio, testified to the
18 truth of exhibit 2423 and, in reply to the questions
19 put by the counsel, he explained minutely the basis
20 of making his judgment that the three dead had not
21 been brought to the spot from some other place.^{2.}

22 From this evidence it can be seen that the
23 blasting of the railway was accomplished by the
24

25 1. Ex. 2423, Tr. 19627.
2. Tr. 19660.

willful action of Chinese soldiers, and that the
1 Mukden Incident was not planned by the Kwantung
2 Army at all. The prosecution has not presented
3 any evidence that shows the destruction of the rail-
4 way at Lintiokon was brought about by the Japanese.
5

6 In the Lytton Report the incident is stated
7 as follows (in effect): According to the story
8 related by Japanese, it is said that Lieutenant
9 KAWAMOTO, with six privates, while on patrol duty
10 on the night of September 18, heard the noise of a
11 loud explosion. They turned and ran back and dis-
12 covered that a portion of one of the rails had been
13 blown out. . . On arrival at the site of the explo-
14 sion the patrol was fired upon from the east side of
15 the line. . . Whereupon they returned their shots;
16 the enemy ceased their firing and retreated. When
17 the Japanese forces pursued, they were again fired
18 upon by forces numbering between three to four hun-
19 dred, whereupon Lieutenant KAWAMOTO directed one of
20 his men to report to KAWASHIMA, the company commander,
21 who was also engaged in night manoeuvres and, at the
22 same time, ordered another to telephone to the
23 battalion headquarters at Mukden, asking for re-
24 inforcements. Reinforcements were then sent by
25 Captain KAWASHIMA and Lieutenant Colonel SHIMAMOTO.^{1.}

1. Ex. 57, Tr. 1787-92.

1 The commission goes on to state that it
2 "does not exclude the hypothesis that the officers
3 on the spot may have thought they were acting in
4 self-defense."¹.

5 From the above evidence, together with the
6 testimony of ITAGAKI and the witness HIRATA, we sub-
7 mit that it is clear that the Mukden Incident was
8 not planned and carried out by the Japanese Army,
9 but it was an incident caused by the provocative
10 actions of the Chinese Army in Manchuria.

11 The witness HIRATA, Yukihiro, testified
12 that there had been so frequent disturbances of the
13 railway traffic that the troops had been called
14 twice to be ready for service against an emergency.².

15 HONJO, Shigeru said that since Lintiokon
16 was so closely situated to Peitaying, the Chinese
17 soldiers in the barracks there often came out
18 strolling along the railroad, and on such occasions
19 they frequently attempted to derail the train by
20 placing stones on the rails.³.

21 The Case of the Company at Hushan.

22 KATAKURA, Chu testified that there was a
23 company, with Captain KAWAKAMI as commander,
24

- 25 1. Ex. 57, Tr. 1797-8.
2. Ex. 2404, Tr. 19287.
3. Ex. 2043, Tr. 19260.

stationed at Fushan. About the middle of September,
1 KAWAKAMI called together some men from the South
2 Manchurian Railway and others concerned, and told
3 them that the group who had gone to the investigation
4 of the case of NAKAMURA would return on the 16th or
5 17th of that month; and, that depending on the atti-
6 tude taken by the Chinese, the situation might become
7 serious. There was, however, no provision for night
8 trains at Fushan in case of emergency, therefore,
9 preparations would be desirable. Whereupon those who
10 were present at the gathering were greatly surprised,
11 especially the South Manchurian Railway which sent a
12 director to KAWAKAMI in order to ascertain the truth
13 of the matter. As he was told, however, that no such
14 thing would happen on the 17th, he soon returned to
15 Darien. This news, though, reached Consul HAYASHI
16 at Mukden who sent it on to Tokyo.^{1.}
17

18 ISHIHARA, Kanji, testified that after
19 KAWAKAMI received a new order from HONJO concerning
20 his duties he became anxious about the defense of
21 Fushan, whenever he should leave that city pursuant
22 to said order, so he conceived a plan of his own.
23 This plan prompted him to gather together some police-
24 men and ex-service men, in order to consult with them
25
1. Tr. 18933.

1 as to the defense of Fushan. His idea was that there
2 might be some untoward incident in the vicinity of
3 Mukden on the 18th of September and he consulted with
4 them as to what they thought best, as to whether or
5 not he should go there. This was, however, rescinded
6 and notification of annulment sent out to the various
7 quarters. KAWAKAMI admitted that he had no ground
8 for what he did and apologized for it. On the 18th
9 KAWAKAMI was in utter confusion, made no attack upon
10 the air field, and arrived in Mukden very late without
11 even being properly armed.^{1.}

12 Thus it appears that the action taken by
13 Captain KAWAKAMI, company commander at Fushan, by
14 calling together policemen and ex-service men and
15 others concerned, and consulting with them as to
16 preparation of trains for moving the garrison company,
17 was due entirely to his rashness and excessive excite-
18 ment over the situation, and that this action of his
19 had no connection with his superior officers. The
20 matters relating to his consultation were rescinded
21 on the 17th and, as for KAWAKAMI himself, he did not
22 even fulfill his duties on the 18th of September.

23
24 Defendant ITAGAKI testified that he heard of
25 the incident of the company at Fushan for the first
1. Tr. 22140.

time after the Mukden Incident had taken place.^{1.}

1 Court exhibit 3739 is a telegram sent from
2 Foreign Minister SHIDEHARA to Consul HAYASHI. ITAGAKI
3 denied that he had any knowledge of the contents of
4 the telegram. He said: "I have neither any knowledge
5 of the Society by the name of Kokusui Kai nor any con-
6 nection with it. I have been very poor and had no
7 money. There is no reason for my having ample funds.
8 As for the Kwantung Army itself, there was no such
9 funds either."^{2.}

11 According to the testimony of KATAKURA, Chu
12 the secret service funds of the Kwantung Army were
13 only fifty thousand yen per month, which were appro-
14 priated for expenses for collecting information,
15 guards and for entertainment,"^{3.} and of course these
16 funds could not be used by ITAGAKI of his own accord.

17 ITAGAKI was at that time at Port Arthur, a
18 little corner of the Kwantung territory, and as the
19 place was remote and had very little to do with the
20 Chinese, there was no occasion for him to be engaged
21 in either political or social activities. To quote
22 from the testimony of ISHIHARA, Kanji: "In those days
23 Colonel ITAGAKI, as a high ranking staff officer,
24

- 25 1. Tr. 30349.
2. Tr. 3044.
3. Tr. 18945.

perfectly managed the staff office of headquarters."¹.

1 Furthermore, this exhibit is nothing but a
2 rumor of affairs in Mukden which was heard by the
3 Foreign Minister in Tokyo. If such had been the
4 case a report should have been made by the Consul at
5 Mukden to the Foreign Minister; and upon inquiring
6 into the matter, a reply must have been made if there
7 was any truth in it. There was, however, no reply.
8 The exhibit therefore must be regarded as a mere
9 rumor.
10

11 Court exhibit 181-(1). This exhibit is a
12 telegram sent from Consul HAYASHI to Foreign Minister
13 SHIDEHARA, stating that: "According to private in-
14 formation received from KIMURA, Director of the
15 Manchurian Railway, a number of trackmen have been
16 sent out from the Manchurian Railway for the repair
17 of the railroad which was said to have been destroyed
18 by the Chinese, but the Army seems to have not allowed
19 them to come near the spot. Presumably the incident
20 was due to the preconceived plan of the Army."
21

22 That the Army did not allow the trackmen
23 sent out from the Manchurian railway to come near the
24 spot might have been due to the necessity for making
25 an investigation of the matter at that point by the
1. Tr. 22116.

perfectly managed the staff office of headquarters."¹.

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2 rumor of affairs in Mukden which was heard by the
3 Foreign Minister in Tokyo. If such had been the
4 case a report should have been made by the Consul at
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21

22 That the Army did not allow the trackmen
23 sent out from the Manchurian railway to come near the
24 spot might have been due to the necessity for making
25 an investigation of the matter at that point by the
1. Tr. 22116.

1 Army. Therefore, this cannot be said to have been
2 due to the preconceived plan of the Army. The tele-
3 gram itself recognizes that this was merely a pre-
4 sumption. Furthermore, the information of KIMURA,
5 Director of the Manchurian railway, was not based upon
6 facts which he had obtained by going himself to the
7 spot, but which he obtained from others. Therefore,
8 it must be said that the exhibit has no evidentiary
9 value.

10 After the Mukden Incident.

11 The prosecution asserted in its summation
12 that, immediately after the capture of Mukden,
13 DOHIHARA was appointed as mayor and ITAGAKI was one
14 of those who made the municipal administration by the
15 Japanese Army possible, and he is one of those re-
16 sponsible for recommending DOHIHARA for this position.

17 The facts about this appointment of DOHIHARA,
18 as testified to by defendant ITAGAKI, were as follows:
19 Mukden became a city without order and it could not be
20 left that way, even for a moment, in the interests of
21 public safety. In view of the above circumstances,
22 and also to cope with the earnest desire of the citi-
23 zens, the army commander, HONJO, for the purpose of
24 maintaining public safety, promulgated immediately an
25 emergency municipal administration and appointed

Colonel DOHIHARA as the temporary mayor. The Kwantung
1 Army had no intention of instituting a military adminis-
2 tration. They did not admit any other soldier than
3 Colonel DOHIHARA to take part in the administration,
4 and the greater part of the functionaries were
5 Chinese nationals. Thus its purpose was to maintain
6 the public peace as a temporary measure with the
7 arrangement that whenever a qualified Chinese was
8 available the power of administration should immed-
9 ately be transferred to him. Colonel DOHIHARA served
10 only one month as temporary mayor and on the 20th of
11 October Mr. Chao, Hsin-po, became mayor."¹

13 Moreover, ITAGAKI told this Tribunal that:
14 "It was not I who recommended DOHIHARA to the mayor
15 of Mukden. He was appointed by General HONJO. I heard
16 the conversation between the Chief of Staff and Consul
17 MORISHIMA in which, upon being asked whether there
18 would be a military administration by the Consul, the
19 Chief of Staff said that there should be no military
20 administration. I also remember I heard from the
21 Chief of Staff that Consul General HAYASHI visited
22 General HONJO and talked about the municipal govern-
23 ment. General HONJO said there would be no military
24 administration, and with that understanding the Consul
25 General left there for home.

1. Ex. 3316, Tr. 30267.

1 The witness KATAKURA, Chu, said it was not
2 for the purpose of a military administration that Col-
3 onel DOIHARA was appointed Mayor; that at that time
4 there were many and various Chinese public establish-
5 ments and facilities in Mukden, as well as various
6 Chinese organizations, but most of the Chinese leaders
7 had abandoned that locality. Colonel DOIHARA was
8 appointed as the temporary Mayor with the condition
9 that this was a temporary measure to maintain the peace,
10 and also that whenever a qualified Chinese was found
11 he would soon resign for him. There was no other soldier
12 than Colonel DOIHARA who took part in the administra-
13 tion of the city government of Mukden.²

14 The Lytton Report said that what was urgently
15 needed was the organization of the city government and
16 the normal life of the citizens, but this was already
17 begun by the Japanese and was going on speedily and
18 efficiently. DOIHARA was appointed Mayor, and within
19 three days after his appointment the usual administra-
20 tion of the city was revived. The activities of public
21 services were revived. The Colonel was in his office
22 for one month, and on the 20th of October the power of
23 administration was transferred to a qualified Chinese body
24
25 2. Tr. 18,926

with Mr. Chao Hsin-po as Mayor.

1 All the functionaries who were holding im-
2 portant posts of the government had fled; the police,
3 communications, and the banking services all came to
4 a standstill, and the city became utterly chaotic.
5 Generally speaking, under such circumstances to appoint
6 a soldier as Mayor for the purpose of restoring peace
7 and order of the city as a temporary measure would be
8 natural and cannot be regarded as a military government.
9 Of course, the commander of an army on such occasion
10 can appoint from his free will one of the men under his
11 command as the temporary Mayor. To make such an appoint-
12 ment he needs no recommendations from his inferiors --
13 the point needs no further argument. If so, ITAGAKI
14 was not the one who brought about the city administra-
15 tion by the army, nor was he responsible for recommend-
16 ing DOIHARA for Mayor. The argument put up by the
17 prosecution is not sustained by the facts.

19 The prosecution cited exhibit No. 3407 as
20 the proof that during one month of the military adminis-
21 tration after its establishment, the temporary city
22 government of Mukden planned to obtain its funds through
23 securing a monopoly of the sale of opium by secret
24 l. Ex. 57, tr. 502, Lytton Report, chap. VI, p. 88.
25

means and also through issuing lottery tickets; but the
1 sources of this information, as given in the exhibit,
2 are unknown and its accuracy cannot be determined.
3 Furthermore, the extraordinary city government of Muk-
4 den was a temporary arrangement to be transferred to
5 the Chinese, and as a matter of fact, Mayor DOIHARA
6 resigned his mayorship on the 20th of October, i. e.,
7 after being in office for one week (from the date of
8 the court exhibit). Such being the case, there was
9 no reason for the city government, with DOIHARA as
10 Mayor, to plan a monopoly for the sale of opium and
11 issuance of lottery tickets in order to secure the ex-
12 penses of the city government; nor should there be any
13 reason for the headquarters of the Kwantung Army to
14 approve such plan. As a matter of fact, since there
15 was no such plan as mentioned in the exhibit carried
16 into effect, the exhibit does not prove what the
17 prosecution alleges.
18

19 Furthermore, defendant ITAGAKI denied know-
20 ledge of such plans.
21

22 The views of Commander in Chief HONJO ruled
23 the behavior of the staff officers. According to the
24 testimony of the defendant ITAGAKI, Commander in Chief
25 1. Tr. 30,362

PONJO made public at the end of October, 1931, at the
1 Kwantung Army headquarters, an important statement,
2 the gist of which is stated in exhibit No. 3316 and in
3 ITAGAKI's deposition, section 8 a,b,c,d,e,f, and g.
4 When he made this statement there was a general tendency
5 throughout Manchuria for the establishment of a new
6 state. The object was, to quote from ITAGAKI, "to make
7 certain that an unfortunate incident of this nature
8 should never happen again. In order to do so, we must
9 devise measures with which to settle the incident to
10 the complete satisfaction of both countries. The first
11 step toward materialization of this measure would be
12 to pay high regard to the expressed desires of the
13 whole Manchurian people. In order to eliminate the
14 bitter feeling of enmity which the anti-Japanese
15 movement had created, something had to be done to en-
16 hance the spirit of racial harmony to such extent that
17 the people of both countries feel no racial discrimina-
18 tion among them... So long as Japan maintains her
19 special rights and interests in Manchuria, it cannot
20 help causing a sense of inequality and a sense of being
21 oppressed among the Manchurians... Therefore Japan
22 should voluntarily give up her rights and interest
23 there if by so doing the interests of both countries
24 become identical and the sense of racial discrimination
25

1 be eliminated... The Kwantung Army should be indifferent
2 to all political affairs of Manchuria. It should leave
3 all the administrative matters of the new state to the
4 independent and autonomous regime of the Manchurian
5 people, to assist the maintenance of law and order.
6 However, the national defense should be a problem for
7 the joint strength of Japan and the new state, and for
8 the time being, the Kwantung Army should appoint it-
9 self to this task... What we should do at this junc-
10 ture is, while devoting our undivided attention to
11 our primary duty as an army, we had to make close
12 observation upon the future relation between Manchuria
13 and Japan in order to be able to report the true aspect
14 of the situation to the central government, and at the
15 same time should be determined not to interfere with
16 their political movement which is intended to represent
17 the unanimous desire of thirty million Manchurian
18 people of immediately serving the present situation of
19 turmoil. While we should not be reluctant in giving
20 assistance within our power to the Manchurian people,
21 whenever asked for it, we must not force ourselves
22 upon them."¹

23 Defendant ITAGAKI and all the rest of the

24 ¹. Ex. 3316, tr. 30,268-72
25

1 staff officers acted upon this instruction given by
2 their Commander in Chief. Defendant ITAGAKI and the
3 rest of the staff officers were ruled by this view
4 as the standard for their conduct.

5 According to this view of the Commander in
6 Chief, they sounded out the opinions of the political
7 leaders and important men, among the Chinese, and then
8 reported to the authorities concerned.

9 ITAGAKI took every opportunity to talk with
10 the Chinese leading authorities and powerful civilians
11 to ascertain their views, so that he could report them
12 to the Military Commander. He learned that among those
13 personages there prevailed, as a common sentiment, a
14 strong feeling of animosity against Chang Hsueh-ling, a
15 dislike of the Koumintang politics, and consequently
16 the observance of the principle of the "border security
17 and the peace for the people." He learned from Lo Chen-
18 yu that the faction for the Restoration wished to call
19 the Emperor Hsuan Tung to Manchuria, and later he
20 learned that Yu Chunf-han had suggested to Commander
21 HONJO the necessity of establishing a new state. Within
22 a short time after the incident, in many provinces and
23 districts independence was declared, so ITAGAKI
24 successively interviewed, by order of the Army Commander,
25 during the period from the latter part of November to

the middle of December, the political leaders of the
1 various districts who were the supporters of independ-
2 ence, such as Chang Ching-kui at Harbin, Ma Chen-shan
3 at Hailun, Hsi Chia and Hseh Chie-shin at Kirin, and
4 Tsang Shih-i and Yuan Chin-kai at Mukden. They were,
5 without exception, strongly opposed to the return of
6 the Chang Hsueh-liang regime to Manchuria, and also
7 they did not want the Nanking Government in Manchuria,
8 as they hated the politics of the Kuomintang. Their
9 common and earnest desire was to take active steps to
10 establish an independent state. After having heard
11 from other leaders wishing an independent state, ITAGAKI
12 made a detailed report of their opinions to Commander
13 ¹
14 HONJO.

15 It was due to the view of Commander HONJO
16 that the defendant thus sounded out the various opinions
17 of the Chinese political leaders and powerful men. As
18 to why ITAGAKI gathered their opinions, the defendant
19 stated: "Some of these men were governors of provinces,
20 some others were commanders of armies, all of them be-
21 ing men of real power among the people, or having
22 responsibility for the people. It was necessary for
23 the Kwantung Army to ascertain their opinions in order
24

25 1. Ex. 3316, tr. 30,272-8

1 to maintain the peace and order of the people. They
2 were all landowners." ¹

3 These men were the landlords who formed the
4 background of the people; consequently their opinions
5 might be taken for the will of the people.

6 The allegation by the prosecution in its
7 summation that the defendant ITAGAKI gathered opinions
8 from those Chinese political leaders and powerful men,
9 and reported thereof to the Military Commander for the
10 purpose of manipulating puppet politicians, is unfound-
11 ed and has no factual basis.

12 The prosecution, citing exhibit No. 2406-A
13 and No. 2407-A, alleges that the Kwantung Army gave
14 to Chang Hai-peng 3,000 rifles and guns and 200,000
15 yuan in order to control Northern Manchuria, but the
16 witness TAKEDA, Ju said: "So far as I know, I am firm-
17 ly convinced that there was no such thing as giving to
18 Chang Hai-peng 5,000 rifle guns and a fund of 200,000
19 dollars by the Kwantung Army with the object to aid the
20 movement for independence. Consul-General HAYASHI's
21 telegram was an over-excited and exaggerated report, I
22 believe." ¹

23 The witness KATAKURA, Chu said that: "Early
24 in October, 1931, General Chang Hai-peng established
25 1. Tr. 30372-3. 1. Tr. 19363.

1 an independent state at Taonan, but the Kwantung never
2 gave money in connection with the movement for inde-
3 pendence or autonomy made by Manchurian generals and
4 others. At that time the special funds per year for
5 the whole of the Kwantung Army was no more than
6 50,000 yen, and the army was at a loss because it
7 had no money for such movements."¹.

8 The defendant ITAGAKI, in his cross-
9 examination, said: "The Kwantung Army gave no aid
10 to Chang Hai-peng by way of appropriating funds or
11 guns."².

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25 1. Tr. 18953-4.
2. Tr. 30369.

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There is no reason for the Kwantung Army to give away the arms in use. These arms, reserved or stored, were only to replace those needing repairs, and there could not be such a great number of rifles as 2,000. As for the funds, the secret service funds for the Kwantung Army were very small in amount, said KATAKURA, and there could not be so great an amount as 200,000 yen or 200,000 Chinese dollars. At that time, as the government of Kirin Province had considerable funds, it might be thought to have given some aid. Since peace time Taonan had been of no great importance and consequently there had been no special organ of the Army. If the Kwantung Army were to give such an enormous amount of military funds and arms, they would, as a rule, have surely established some special military organ there. As a matter of special mention, there has never been a staff officer named OTA, as mentioned in the telegram. This is an instance of the valuelessness of this information. Thus the above two telegrams are mere accumulations of rumors and have no value whatsoever.

The prosecution alleges that Ma Chen-shan, who had some forces, was recognized by ITAGAKI as a worthy man. To deal with him by way of politics instead of force of arms, ITAGAKI went to him to urge

1 him to cooperate with Japan. Moreover the prosecu-
2 tion alleges the Japanese Army, by giving arms to
3 the Mongolians in Northern Manchuria, aided their
4 movements for independence.

5 As to the relation between Ma Chan-shan and
6 ITAGAKI, however, KATAKURA, Cho has testified that
7 "at the end of October, 1931, as a result of colli-
8 sion with the Japanese Army, Ma Chan-shan retreated
9 to Hailun, north of Harbin. At that time Colonel
10 ITAGAKI went to Hailun alone and talked with him,
11 making him understand the real intentions of Japan."¹
12 ITAGAKI's interview with Ma Chan-shan was to bring
13 about the conclusion of a truce at the fall of
14 Tsitsihar. No evidence has been produced for the
15 allegation that ITAGAKI dealt with Ma Chan-shan by
16 means of politics instead of arms, or that the Japan-
17 ese Army aided the movement for independence of the
18 Mongolians in North China by supplying them with
19 arms.

20
21 The prosecution alleged by exhibit No. 305
22 that during the period of preparation for the estab-
23 lishment of puppet government for the whole of Man-
24 churia, the Japanese adventurers, on the pretext of
25 self-defense, started movements in various places
in Manchuria, and that clearly those movements were

1 due to the plans or policies devised by ITAGAKI.

2 There is no evidence that the said nationals' self-
3 protecting army started movements at various places
4 in order to establish a puppet government for the
5 whole of Manchuria. The prosecution, by exhibit
6 No. 219, claimed that ITAGAKI had been manipulating
7 the politicians in Manchuria. The exhibit was a
8 telegram sent by the Consul-General at Mukden to
9 Foreign Minister INUKAI, which said:

10 "According to the reliable sources, the
11 army is going to call here the Governor from each
12 province also, with the object of settling the situa-
13 tion, and regarding this matter, it is said that
14 Staff Officer ITAGAKI asked an interview with Tsang
15 today, the 14th."¹

16 There is no evidence, however, that the
17 governors of provinces were summoned to Mukden for
18 the purpose of settling the situation at that time.
19 Especially, as General Tsang had no post then, there
20 is no reason for making contact with him in order to
21 request him to attend the governors meeting. There-
22 fore, this telegram is incredible. Assuming the
23 contrary to be the case, it is unreasonable to con-
24 clude from this telegram alone that ITAGAKI was

25 1. Ex. No. 2195, Tr. 15,739

1 manipulating all other politicians in Manchuria.

2 Defendant ITAGAKI testified as follows:

3 "Having been called by telegram from the
4 Central authority and comprehending the designs of
5 the army commander HONJO, I left mukden for Tokyo on
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1 the 4th day of January 1932. Presenting myself at
2 the Military Headquarters and War Ministry, I made
3 reports:

4 "(1) That the general tendency of Manchuria
5 was toward an independent State. After having assid-
6 uously sounded the prominent authoritative persons and
7 men of real worth in the outside of official circle,
8 I could affirm that they were all earnestly advocat-
9 ing the creation of an independent state, and that
10 the general public, too, were against not only the
11 return of Chang Hsueh-liang's regime to Manchuria, but
12 also against the advance of Kuomintang Government in
13 Manchuria.

14 "(2) That the Kwantung Army was entirely
15 absorbed in the maintenance of the public peace, and
16 that it placed no limit on the political desires of
17 the native people;

18 "(3) That if the matter should go as it
19 was, an independent State would undoubtedly be formed,
20 so that the Japanese Government should be well pre-
21 pared to meet the situation;

22 "(4) That the Commander HONJO was of the
23 opinion that there remained no other way than to
24 adopt the theory of an independent State, in view of
25 the general trend of the situation at that time.

1 "Then the War Minister ARAKI told me that
2 though the Government policy was not decided yet,
3 as the new cabinet had just been constructed, his
4 principle was to observe the actual situation on
5 the spot, but as to the issue of independence of
6 the State, he did not interfere one way or the other.
7 During my stay in Tokyo I explained in detail the
8 new conditions in Manchuria and the Central authori-
9 ties well understood regarding the actual situation.
10 Coming back to Mukden, I submitted my report to the
11 Commander HONJO, concerning the above liaison affair
12 with the Central authorities."¹

13 The prosecution alleges: That it was neces-
14 sary to have an Emperor for a puppet government, and
15 Pu-Yi seemed to be the most appropriate person for
16 this position, that for this mission DOHIHARA was
17 dispatched to Peiping in 1931 by Commander HONJO and
18 that the interview between DOHIHARA and Pu-Yi had
19 been arranged by ITAGAKI.

20 But first in regard to the above matter,
21 ITAGAKI in cross-examination replied as follows:

22 That in October, 1931, Colonel DOHIHARA was
23 sent to Tientsin by the Commander HONJO and not by
24 him. Upon his departure he looked after his expense

25 l. ex. No. 3316, Tr. 30,278-80

1 money and the like, but did not make detailed arrange-
2 ment for his meeting with Pu-Yi and so forth. As
3 there had been information that an earnest desire had
4 been expressed by Pu-Yi to come to Manchuria from
5 Tientsin, the Commander HONJO ordered DOHIHARA among
6 other duties to ascertain whether this was true.¹ The
7 main purposes of Commander HONJO dispatching Colonel
8 DOHIHARA TO Tientsin were, therefore, as testified
9 by the witness KATAKURA,² to get information about the
10 attitude of the Government at Chin-chou; and utilizing
11 this occasion, he also assigned the duty to DOHIHARA
12 to ascertain Pu-Yi's intention about his coming over
13 to Manchuria as there was information to that effect
14 from Tientsin at that time. ITAGAKI only supplied
15 DOHIHARA with his travelling expenses, and, as to
16 the detailed arrangement for this interview, he had
17 no concern with it. Furthermore, it is clear that
18 on 13 November when Pu-Yi landed on Taying, the
19 officers of the Kwantung Army were surprised.³

20
21 Exhibit No. 303 is a pure fabrication, no
22 more than a rumor, since ITAGAKI has never made such
23 an arrangement, and also it is a fact that the ex-
24 Empress came over there after the ex-Emperor Hsuan

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1. Tr. 30,373, 30,377, 30,379-80
2. Tr. 18,970
3. Tr. 18,972

1 Tung had moved to Manchuria. KAWASHIMA, mentioned in
2 the telegram, was related to Pu-Yi; therefore, if
3 there were such, it must have been the activities
4 started of her own accord.

5 Interview of Pu-Yi with ITAGAKI:

6 In regard to the interview of Pu-Yi with
7 ITAGAKI, ITAGAKI testified that: By order of Com-
8 mander HONJO, he had an interview with Mr. Pu-Yi in
9 Port Arthur on January 29, 1932 (7th year of Showa).
10 An enthusiastic desire for the creation of an inde-
11 pendent state had become extremely strong among
12 the powerful as well as the general public of
13 Manchuria at that time and the tendency of forming
14 such a new state, apart from the Restoration move-
15 ment, reached its high pitch with the probability of
16 having Mr. Pu-Yi, the ex-Emperor of Hsuan Tung, who
17 has a close connection with Manchuria, as the sover-
18 eign of the new State.

19 So Commander HONJO ordered ITAGAKI to meet
20 officially with Mr. Pu-Yi and ascertain his intention
21 regarding this matter. He first gave Mr. Pu-Yi
22 general information concerning the establishing of
23 a new State, and then asked his opinion about it.
24 Mr. Pu-Yi was already aware of the trend in Manchuria
25 for the establishment of a new State through the

information he had obtained from various sources.

1 No declared that it was of great necessity to estab-
2 lish a new independent State in Manchuria, seceding
3 from China, and to have a good administration for
4 the sake of the 30,000,000 inhabitants there, in
5 close cooperation with Japan. He also stated that he
6 had the intention to accept the sovereignty of the
7 new State. He also insisted upon the Restoration
8 and the conversation lasted for several hours. The
9 main reasons were as follows:
10

11 (1) The courteous treatment and conditions
12 offered to the Ching Family did not abolish the title
13 of "Emperor." So he was still an Emperor. Conse-
14 quently, he could not accept any post which did not
15 carry this title;

16 (2) The cultural level of the people of
17 Manchuria being low, the Imperial Rule was necessary;

18 (3) As to the system of the Imperial Rule,
19 a general cabinet had to be established, in subor-
20 dination to a political organ under the direct
21 control of the Emperor who shall decide himself
22 all the state affairs.
23

24 ITAGAKI wondered whether the real intention
25 of Mr. Pu-Yi was to decline to accept the sovereignty
of a new State if the State was not formed according

1 to the principle of the Monarchal Restoration, or
2 whether he would accept the offer to be the head
3 of the new State anyway. However, as the interview
4 had lasted pretty long already, ITAGAKI took his
5 leave, and in another room he met Cheng Chui, the
6 son of Cheng Hsiao-hsi, whom he asked if Mr. Pu-Yi
7 had an idea to refuse to become the head of a new
8 state. Cheng was very much astonished at that and
9 said that could not be so; on the contrary he thor-
10 oughly understood the present day political situa-
11 tion, and was ready to accept the offer to become
12 the head of a new state. He further explained to
13 ITAGAKI that, though he did not know the true meaning
14 of Mr. Pu-Yi's talk to him, he thought that it must
15 have been, perhaps, a simple expression of his de-
16 sire before accepting the office. Then ITAGAKI
17 asked him if he could construe the attitude of Mr.
18 Pu-Yi, as meaning he would agree to become the head
19 of the new state, and he could make report to Com-
20 mander HONJO to that effect. He said "Yes." Then
21 ITAGAKI left Port Arthur for Mukden, and submitted
22 his report to the Commander HONJO.
23

24 The object of his interview with Mr. Pu-Yi
25 was not to persuade him to become the head of the
new state, but merely to learn his intention.

1 ITAGAKI had absolutely no notion whatever or acted
2 in such a way as to coerce or intimidate Pu-Yi, or
3 to cause his advisor Cheng Chui to make Mr. Pu-Yi
4 agree to become head of the new state

5 Later on, on the 21st of February, Lo
6 Chen-yu and his son came to see ITAGAKI at the Head-
7 quarters of the Kwantung Army, saying that they were
8 sent by the Emperor Pu-Yi. They said that the Em-
9 peror was still contending for the Imperial Rule of
10 the new state. However, at that time North-East
11 Administration Committee had already issued, on the
12 13th of February, the declaration of independence,
13 and decided on the 19th that they should establish
14 a republican state and that Mr. Pu-Yi, the ex-
15 Emperor Hsuan Tung, be requested to accept the admin-
16 istrationship. The Kwantung Army, therefore, con-
17 sidered that this move of Lo Chen-yu was due to the
18 lack of adequate knowledge on the part of Mr. Pu-Yi
19 of the atmosphere of the North-Eastern Administra-
20 tion Committee. So they saw the necessity of directly
21 communicating to Mr. Pu-Yi the actual situation of
22 the North-East Administration Committee, and by order
23 of Commander HONJO, ITAGAKI took the night train for
24 Port Arthur. On the next day, the 22nd, he met Mr.
25 Pu-Yi and conveyed to him that information. Mr.

1 Pu-Yi understood the circumstance, was already
2 acquainted with the decision taken by the North-
3 East Administration Committee, and expressed his
4 approval. He also gladly accepted the decision of
5 the North-East Administration Committee in regard
6 to the title of the state, the national flag, and
7 the site of Metropolis and the name of era. In
8 the midst of their talk ITAGAKI had a telephone call
9 from the Commander HONJO and reported the progress
10 of their interview to him.¹

11 THE PRESIDENT: We will recess for fifteen
12 minutes.

13 (Whereupon, at 1445, a recess was
14 taken until 1500, after which the proceed-
15 ings were resumed as follows:)

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24 1. Ex. No. 3316, Tr. 30,280
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MARSHAL OF THE COURT: The International
1 Military Tribunal for the Far East is now resumed.

2 THE PRESIDENT: Mr. Mattice.

3 MR. MATTICE: Much evidence has been pro-
4 duced to prove that Manchukuo was, after all, a pup-
5 pet government under the control of Japan. The most
6 important of all was the testimony made by witness
7 Pu-Yi. From the cross-examination and all that related
8 to this witness, however, his testimony can be re-
9 garded as untrustworthy. He was not only so often in-
10 consistent in his testimony but also more often than
11 not evaded his answers to the questions put to him by
12 saying, "I do not remember", or "I said such and such
13 under coercion", etc. In short, even if we accept
14 what he said, the impression we received was that his
15 statement was not based on the facts. The testimony
16 of this witness in regard to the creation of Manchu-
17 kuo and his return to Manchuria as the Emperor was con-
18 tradictory to that of Semiyonov. This witness stated
19 in his deposition (exhibit No. 668) that he was asked
20 by Pu-Yi to make a request of the Japanese to restore
21 him to the Emperor, in compliance with which he nego-
22 tiated with the Japanese on behalf of the ex-Emperor
23 Pu-Yi. (Refer to deposition, section 6,7) Again,
24 Pu-Yi denied his authorship of the alleged epistle to
25

1 General MINAMI (exhibit No. 278), but by the hand
2 writing expert TAKAMURA, Iwao, the epistle was proved
3 to be Pu-Yi's own hand writing. It was judged that
4 the epistle (exhibit No. 278) was written by the same
5 hand that had written the poem on the fan (exhibit No.
6 282), the signature in the Manchukuo document (exhibits
7 No. 283, 284, 285), and the Chinese letters or char-
8 acters written by Pu-Yi in the presence of this expert
9 judge TAKAMURA and others at the Consulate of the
10 Soviet Union on 29 August 1946 -- all these had been
11 recognized and admitted to be Pu-Yi's¹. Even in this
12 respect Pu-Yi is incredible as a witness, and conse-
13 quently, it can be said that his testimony was alto-
14 gether unreliable.

15 In his deposition H. G. Woodhead denied the
16 truth of the rumor that Pu-Yi had been restored to the
17 position of the Emperor against his will or that the
18 Emperor Pu-Yi had not been able to act on his free
19 will, as such, he stated, was contrary to the fact.
20 Furthermore, Woodhead explained in detail as to Pu-Yi's
21 motives of becoming the Chief Executive of Manchukuo,
22 which were two, one being political and the other per-
23 sonal. Pu-Yi's escape from Tientsin was not due to
24 any abduction. Whether he was living in the concession
25
1. Ex. No. 2440, 2440-A, T. 20,188

1 or in Manchuria, he was not restricted. Never did he
2 receive any oppression, Woodhead testified. Pu-Yi
3 left then for Chengchun, with the firm conviction that
4 it was his duty to assume the position of the Chief
5 Executive of Manchukuo, where he would adopt the prin-
6 ciples of royalty, based on the teaching of Confucius
7 for the administration of Manchukuo, so he told Wood-
8 head.¹

9 From this testimony it is indisputably clear
10 that Pu-Yi's assumption of the Chief Executive of
11 Manchukuo was because of his earnest desire and not
12 due to any coercion or inducement on the part of Japan,
13 and also that he was never restricted on his freedom of
14 action. Pu-Yi's testimony is plainly contradictory to
15 the facts, and so cannot be given any credence.

16 The Autonomy Directing Department and ITAGAKI

17 The prosecution alleged that the Autonomy
18 Directing Department was an organ belonging to the
19 Kwantung Army, and that ITAGAKI played a leading role
20 in this connection. ITAGAKI had no connection with
21 this department whatsoever, as testified by witness
22 ISRIHARA as follows:
23

24 "The Autonomy Directing Department was an
25 organ established for the purpose of directing

1 self-government in the provinces by Chang Hai-
2 peng, who hold the principle of independence.
3 The department was not under the perfect control
4 of the Kwantung Army. In regard to the actions
5 of the department, there was no such thing as
6 obtaining permission from the Kwantung Army
7 before the activities started by the department.
8 So far as the peace and order was concerned, the
9 department reported to the Kwantung Army. The
10 Kwantung Army, as a rule, was cautious not to
11 make any interference with the department.
12 ITAGAKI had almost no connection with this de-
13 partment, and neither was he an advisor thereof,
14 as far as I know."¹

15 Witness KATAKURA Chu testified that the rela-
16 tion of Kwantung Army with the Autonomy Directing De-
17 partment was in such a degree as the fourth section of
18 Press information under the third bureau of the Public
19 Peace had the liaison business; no soldier of the
20 Kwantung Army had participated in this department; and
21 never did the Kwantung Army give any funds to them.²

22 Nor did the witness KASAGI, Yoshiaki, say
23 that ITAGAKI was advisor to this Autonomy Directing
24 Department.³

- 25
1. T. 22,246-9
2. T. 18,977-8
3. T. 2,789

1 From this evidence it is clear that the
2 Autonomy Directing Department was organized and super-
3 vised by Chang Hsi-peng, a popular figure, he himself
4 being its head, and the regular salaries of its staffs
5 and other expenses for activities being not met by
6 the Kwantung Army. It is also clear that no soldier
7 of the Kwantung Army was in the department, as it was
8 not an organ of the Kwantung Army. Furthermore, since
9 the Kwantung Army did not interfere with the political
10 policies and activities of its department, and ITAGAKI
11 was not an advisor to it, the latter's part in its
12 activities cannot be as the prosecution alleges.

13 The Concordia Association and ITAGAKI.

14 The prosecution claims that ITAGAKI was one of
15 the organizers of the Concordia Association of Man-
16 churia, but witness YAMAGUCHI, Juji, testified that
17 "ITAGAKI, the former Staff Officer, was not a member
18 of the organizing committee of the Concordia Associa-
19 tion."¹ Also the witness OLAWA, Kaisaku, said in his
20 testimony that "Colonel ITAGAKI, of the Kwantung Army,
21 was not a member of the arrangement committee of the
22 Concordia Association. Never did he participate in
23 its organization."² If that was the case, the exhibit,

- 24
25 1. T. 18,851-2
2. T. 30,076-7

1 which constitutes the basis of the prosecution's alle-
2 gation, is clearly in error.

3 The prosecution maintained that the defendants
4 DOHIHARA and ITAGAKI had controlled the puppet politic-
5 ians, and cited exhibits Nos. 3479-E, F, G, H, I. But
6 these have no direct bearing upon ITAGAKI, as the de-
7 fendant in his cross-examination said that he had no
8 knowledge whatever of the contents of the exhibit.¹

9 IV. Later Period of ITAGAKI's Service in
10 the Kwantung Army.

11 Judgment of the True Conditions by the
12 Kwantung Army of this Period.

13 According to the testimony of defendant
14 ITAGAKI, the situation about 1934 or 1937 was as fol-
15 lows:

16 After the truce at Tangku, continuous efforts
17 were made by the Chinese and Japanese well-informed
18 circles to alleviate the tension between the two na-
19 tions and to eradicate the causes of future evils.
20 Consequently, traffic was opened and mail system estab-
21 lished between the two nations after September 1934.
22 Foreign Minister HIROTA made a speech on the two nations
23 rapprochement before the Diet in January, to which
24 replies were made by Chiang Kai-shek and Wang

25 1. T. 30,366-8

1 Chiao-ming and finally, in June, an Amity Law was
2 promulgated.

3 In view of the Chinese Communist Army's north-
4 ward expansion with the aims of intensifying the
5 strain between Japan and China, the Chinese Government
6 issued an order to exterminate that army (February
7 1935), assigning Yu Hsun-chung as the head of the
8 expeditionary army (June 1935). The Chinese Communist
9 Army, nevertheless, broke through the Chinese Nation-
10 alist Army and was drawing near the Mongolian Region.

11 The U.S.S.R. persisted in accusing Japan of
12 being imperialistic and aggressive. It was double
13 tracking the Siberian Railway and proceeding with
14 fortification of the Far East for military bases. The
15 strength of the U.S.S.R. was four times as large as
16 that of the Kwantung Army and was being still further
17 increased.

18
19 THE PRESIDENT: I am told that there is no
20 evidence of that. I can't recollect whether there is
21 or not. We are going to disregard every statement of
22 fact not supported by evidence. That applies to all
23 summations.

24 MR. MATTICE: At the moment I am not prepared
25 specifically but I think it will be found in the
accused ITAGARI's affidavit.

1 Armed communists and bandits in Manchuria
2 were much curbed by the Japanese and Manchurian expe-
3 ditionary forces, though not entirely suppressed.

4 Some Japanese and Manchurian notables were
5 beginning to advocate that Japan should abolish her
6 extraterritoriality in Manchuria.

7 Judging from the situation stated above, if
8 the principle of co-prosperity advocated by Japan and
9 Manchukuo should succeed in forcing out the designs of
10 the communist power, Japan, Manchuria and China would be
11 able to pursue the way of prosperity in peace. Whereas,
12 the three nations would be thrown into the quagmire
13 of war and revolt if Japan's advocacy should fail and
14 the situation should develop in favor of the commun-
15 ists. The above prospect became all the more probable
16 after the comintern held a general meeting at Moscow
17 in July 1935, passed a resolution to concentrate on
18 efforts to overthrowing Japan and accomplishing world
19 revolution, and the Chinese Communist Party issued a
20 proclamation on the basis of the said resolution, to
21 substitute the principle of "resist Japan and save the
22 nation movement", and also by their threat to resort
23 to the tactics of the anti-Japanese united front and
24 announcing its resolution to put these programs into
25 action.

1 The concensus of opinion of the Kwantung
2 Army's Headquarters under the commander and the chief
3 of the General Staff was that the basic policies to be
4 adopted by Japan and Manchukuo should be as follows:

5 (a) Strengthening ourselves by:

- 6 i. Construction of co-prosperity society.
7 ii. Financial construction centering around
8 improving the national wealth and enrich-
9 ing the national resources.
10 iii. Securing the national defensive power
11 enough to insure peace and order, and
12 in an emergency, strong enough to check
13 any enemy invasion.
14 iv. Establishing international friendship
15 by diplomatic means.

16 (b) Tiding over the impending crisis through
17 the above measures.

18 (c) The realization of harmonious coopera-
19 tion of the races in Manchuria.
20

21 According to the testimony of ITAGAKI, while
22 he was Chief of the General Staff of the Kwantung Army,
23 Manchukuo had many persons of broad views and high per-
24 sonality, such as Premier Chiang and successive chiefs
25 of General Bureau. As for ITAGAKI, he trusted and

1 cooperated with them in their policy in accordance with
2 the intentions of his superior officers.

3 In June 1936 the first abolishment of the
4 extraterritoriality took place. Since the outbreak
5 of the Manchurian Incident ITAGAKI favored this. So
6 also, in consideration of the trend mentioned above,
7 he tried to aid the work of the concerned Japanese
8 and Manchurian personages and to facilitate its mater-
9 ialization.

10 Concerning the personal affairs of the Jap-
11 anese officials, ITAGAKI assisted in the service of
12 the Manchukuo Government, in accordance with the or-
13 der of the commander of the army. He had nothing to
14 do with the internal personal administration and the
15 personal affairs of Manchukuo officials.¹

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23 1. Ex. 3316, T. 30,289
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The National Defense Against U.S.S.R.

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2 According to the testimony of ITAGAKI,
3 implementing the national defense against the U.S.S.R.
4 was the basic duty of the Kwantung Army and the basic
5 principle thereof was established sometime ago, and
6 ITAGAKI followed it as Chief of Staff. The program
7 established by the Kwantung Army, however, was based,
8 of course, upon the instruction of the General Staff
9 and was of purely defensive nature with the object
10 of providing for the emergency which would be pre-
11 cipitated by an attack by the U.S.S.R. The Army
12 never made any aggressive war plan, much less one
13 for aggressive war against the Soviet and Mongolia. 1

14 Interview with Ambassador ARITA.

15 The prosecution alleged that soon after
16 ITAGAKI was promoted to the Chief of Staff, he inter-
17 viewed Ambassador ARITA and discussed the importance
18 of Mongolia in relation to Japan and Manchuria, in
19 which the former stated that, in connection with the
20 aggressive move of China and the Soviet Union, if
21 Japan and Manchuria should unite, the Soviet territories
22 in the Orient would be endangered. As proof of this
23 the prosecution cited exhibit No. 761-A. The prosecu-
24 tion read only two sections, or the second problem of
25 (1. Ex. 3316, Tr. 30,289-90)

Outer Mongolia and the third problem of Inner Mongolia.

1 Both of these have no meaning apart from the first
2 problem of relations with the Soviet Union. The
3 problem of Mongolia was purely subsidiary to the
4 problem of relations with Mongolia; hence it should be
5 read with its main issue, or the first problem of
6 relations with the Soviet Union, which is the content
7 of exhibit No. 2613. In the section dealing with the
8 second problem of Outer Mongolia, there is described
9 in the outset its history, its geographical importance
10 from the strategical point of view, and the words,
11 "Annexation to Manchuria and Japan, etc." are used
12 there hypothetically for the sake of explanation,
13 which do not show any intention of aggression on the
14 part of the Kwantung Army. Further on it says that
15 "therefore, the Army by all means is trying to
16 strengthen the power of Manchuria and Japan against
17 Outer Mongolia." This may seem unsound of a glance,
18 but, if carefully examined respecting its true meaning,
19 it will show an attempt to establish amicable relations
20 with that country, recognizing it as an independent
21 state. This is not inconsistent with the policy of
22 the Soviet Union, as it makes peace and friendship
23 the principle of international relations, and it must
24 be said that it is a very sound intention. Lastly,
25

1 the affirmation of the policy, not to violate and
2 not to have the border violated, was a measure of
3 self-defense taken by Manchukuo and the Kwantung Army,
4 and the same became later a motto of the Kwantung
5 Army. There was no intention of aggression on the
6 part of Manchukuo and the Kwantung Army. The third
7 problem of Inner Mongolia was a result of fear that
8 the communist movement might penetrate into Manchuria
9 through Inner Mongolia. We were compelled to fear
10 Bolshevism because of the 7th General Meeting held
11 by the Comintern at Moscow in the previous year, or
12 July 1935, and also because of the announcement made
13 by Vice Chief of Staff Trakovsky of their plan of
14 campaign in both East and West for the accomplishment
15 of world revolution. In Manchuria there was already
16 formed the Manchurian Province Committee, an organ of
17 Bolshevism, and its movement was becoming active. It
18 was a matter of necessity for the Army to adopt a
19 measure for self-defense in order to prevent its
20 further propagation of Bolshevism.

21 The Policy in Regard to Mongolia.

22 As to the policy in regard to Mongolia,
23 ITAGAKI testified that:
24

25 There were many Mongolians in the interior
of Manchuria and their living places were found even

along the railway between Changchun and Dairen.

1 Accordingly the trends in the Outer and Inner Mongolia
2 involved sharp repercussion on the Mongolians living
3 in Manchukuo, and became the problems of the domestic
4 peace and of the defense of Manchukuo. Accordingly
5 the Kwantung Army and Manchukuo always had a special
6 interest in Outer and Inner Mongolia. Inner Mongolia
7 was assigned as a region in charge of the Kwantung
8 Army for collecting information regarding the U.S.S.R.
9 and Mongolia, and it was under this assignment that
10 the Kwantung Army dispatched intelligence agents and
11 collected information in Inner Mongolia near the
12 frontier line between Manchuria and Mongolia.
13

14 The influence of the northward expansion of
15 the Chinese communist army and the foundation of
16 Manchukuo and other factors combined to give rise to
17 Inner Mongolian's voluntary movement for uniting all
18 Mongolians under the banner of local self-government.
19 In this connection Japan and Manchukuo hoped for its
20 healthy growth from the angle of defense against the
21 U.S.S.R. and prevention of the spread of Bolshevism,
22 but the Kwantung Army did not seek to induce or support
23 the movement, so far as I know.
24

25 The North China Problem.

According to the testimony of ITAGAKI, the

(I. Tr. 30,290-1)

1 Kwantung Army, from the view point of defense against
2 the U.S.S.R., was interested in the North China Problem
3 to secure peace in the rear in case of emergency,
4 but even that interest was diverted to concentrate
5 on the defense of the Northern and internal fortifica-
6 tion of Manchukuo toward December 1935. Accordingly,
7 it is not a fact that the Kwantung Army sent troops
8 to North China.¹

9 The prosecution stated that in May 1935 the
10 Japanese army unit stationed at Tientsin was oppressing
11 China in her home administration, and that ITAGAKI
12 then was Vice Chief of Staff, being of the opinion
13 that the negotiations with China should not be left
14 for diplomatic agents but the Army should take the
15 lead, and by making use of the staffs of the South
16 Manchurian Railway as well as of the Japanese Army,
17 he actually oppressed China, the result of which was
18 the agreement reached between the two countries known
19 as the UMEZU and Ho Ying-chin Agreement. For its
20 proof of this fact, the prosecution cited exhibit
21 No. 2192 (KIDO's Diary). KIDO's Diary, however, is
22 no more than the record of a biased view of the Foreign
23 Office. The Kwantung Army then had no controlling power
24 over North China, its only concern being with the
25 (1. Ex. 3316, Tr. 30,291)

1 maintenance of friendly relations there and with the
2 progress of warfare in the area mentioned in the
3 Tangku Truce Agreement. The crystalization of this
4 concern was the conclusion of the UMEZU and Ho Ying-
5 chin Agreement. It was the problem which belonged
6 entirely to the Tientsin Army.

7 The Kwantung Army could not command the
8 Tientsin Army. The defendant ITAGAKI, then as the
9 Chief of Staff of the Kwantung Army, had no power
10 over the affairs. Nor had he any hand in the con-
11 clusion of the UMEZU and Ho Ying-chin Agreement.

12 Formation of East Hopei Autonomous Anti-
13 Communis Council.

14 According to the testimony of the witness
15 KAWAHE, Torashiro, by the Tangku Truce Agreement, a
16 certain district along the Manchurian border was
17 fixed as an unarmed area, over which the Kwantung
18 Army had the right to inspect at will as to its real
19 condition. After the Agreement was reached, Yin
20 Ju-keng, by the recommendation of Hyang fu, Chairman
21 of the North China Political Council, became the
22 sole supervisor of this unarmed area, which included
23 twenty-two prefectures of East Hopei. Then Yin Ju-
24 keng, being dissatisfied with the policies of the
25 Nanking Government on the Financial problems, and also

1 in view of the movement for local self-government
2 started in his own supervising area by farmers in
3 October 1935, organized the East Hopei Autonomous
4 Anti-Communist Council, with himself as the Chairman,
5 and promulgated the establishment of a self-govern-
6 ment, thereby asserting his political power for the
7 furtherance of his autonomous anti-communism.¹

8 Neither did the East Hopei Autonomous Council
9 nor its self-government come into existence under the
10 coercion or by the interference of the Kwantung Army.
11 Defendant ITAGAKI who was at that time the Vice-Chief
12 of Staff of the Kwantung Army did not associate him-
13 self with the formation of the council or self-
14 government. Nor did he have any concern with them in
15 one way or other.
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23 (1. Ex. 2489, Tr. 20,757-9)
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Concerning the DOHIHARA and Chin Te-chun

1 Agreement.

2 According to the testimony made by witness
3 KAWABE, Torashiro:

4 "In the vicinity of the border line between
5 Manchuria and Chahar Province in China, the border
6 questions have arisen so frequently such as the case
7 of insulting a Japanese Army officer and a secretary
8 of the Foreign Office by Sung Che-yuan's Army, at
9 Changpeh in October 1934; the invasion of some of his
10 army into Manchuria on 24 January 1935; the invasion
11 of some other army of his into Manchuria for the second
12 time, which opened fire upon our garrison guards on
13 the border. In view of these frequent occurrences along
14 the border and fearing that the situation might lead
15 to an unfortunate incident between Manchukuo (or Japan)
16 and China, the Commander-in-Chief of the Kwantung Army,
17 becoming cognizant of the appropriateness of extending
18 the purport of the Tangku Truce Agreement over this
19 area, and after obtaining the approval of the central
20 authorities, dispatched Major General DOHIHARA, the
21 then Chief of the Special Service Section at Mukden
22 under the Kwantung Army, in order to negotiate with
23 the authorities of Chahar Province in China. Through
24 these negotiations the DOHIHARA and Chin Te-chun
25

1 Agreement was concluded on 27 June 1935. The agreement
2 contained the appropriate measures to be taken for the
3 men responsible for the incident, the cessation of
4 anti-Japanese movement in Chahar, the regulations re-
5 lating to the truce area, etc. By this agreement, the
6 unarmed area established by the Tangku Truce Agreement
7 came to be extended over a part of Chahar Province,
8 securing the peace and quietude of this border area." 1.

9 By this testimony the reason for the conclu-
10 sion of the DOHIHARA and Chin Te-chun Agreement is
11 made very clear. The agreement was not made from the
12 aggressive intention of the Kwantung Army. At that
13 time ITAGAKI was the Vice-Chief of Staff of the
14 Kwantung Army but he did not participate in the
15 conclusion of the agreement.

16 Concerning Exhibits No. 3317-A and No. 3318-A.
17 Exhibit No. 3317-A is the order issued by the
18 Kwantung Army to concentrate some forces around Shan-
19 kaikwan, and exhibit No. 3318-A, that to gather some
20 air forces in the vicinity of Shankaikwan. In regard
21 to these exhibits defendant ITAGAKI in cross-examination
22 stated that as far as he could remember, he heard
23 later that some forces had been moved but he thought
24 that was in the sense of a peacetime movement. He
25 1. Ex. No. 2489, Tr. 29,754-6.

also heard of the movement of air forces after the
event had taken place.¹

Concerning these orders, the defendant ITAGAKI does not remember very well, as he had no concern with the reason why these orders were issued. Furthermore, the purport of these orders was to concentrate some forces around Shankaikwan, i.e., it was to move forces within Manchuria, not to the south of Shankaikwan, or into China.

At this time, if the Tribunal please,
Mr. SASAGAWA will continue the reading.

THE PRESIDENT: Mr. SASAGAWA.

MR. SASAGAWA: (Reading)

SUMMATION ON BEHALF OF ITAGAKI, SEISHIRO.

CHAPTER I. ITAGAKI AS COMMANDER OF THE 5TH
DIVISION.

I. On March 1, 1937, ITAGAKI, who at that time was Chief of the Staff of the Kwantung Army, was transferred to the post of Commander of the 5th Division at Hiroshima, and remained in that post until June 3, 1938, when he became Minister of War. In exhibit 110² it is stated that on May 25, 1937, he was ordered to become an officer attached to the General Staff. This was an error. Not in 1937 but in 1938 ITAGAKI received

1. Tr. 30,395.

2. Ex. 110; Tr. 716.

such an order. In order to bring him from the front
1 where he was active as commander for the purpose of
2 complying with certain formalities and custom such
3 entry was made, but the fact remains that he was not
4 ordered to Tokyo to become an officer attached to the
5 General Staff, and he did not become attached to the
6 General Staff but was installed as War Minister.

The proof shows that at that time the 5th
7 Division was organized on a peacetime footing, and as
8 its commander, ITAGAKI had the entire responsibility
9 for the military affairs and conditions only within
10 the divisional district. As regards any matters
11 other than those, he had no authority and was not in
12 a position to submit opinions or plans of his own to
13 the army central authorities. As regards this matter,
14 the prosecution has made no issue thereof. On the
15 basis of these circumstances, we may say that at the
16 time of the outbreak of the so-called Marco Polo Bridge
17 Incident on July 7, 1937, ITAGAKI was at his post in
18 the 5th Division Headquarters at Hiroshima and that
19 he knew nothing of the event until, to his surprise,
20 he saw it in the newspapers the next morning.²

Therefore, the charge against the defendant
21 in count 19, alleging that on or about July 7, 1937,
22

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1. Ex. 3316, Tr. 30,293.
2. Ex. 3316, Tr. 30,294.

1 he initiated a war of aggression and a war in violation
2 of international law, treaties, agreements and assur-
3 ances, against the Republic of China, has not been
4 sustained.

5 II. On July 27, 1937, emergency mobilization
6 orders were issued to the 5th Division and ITAGAKI went
7 over to North China as its commander.¹

8 Once around August 31, 1937, while he was
9 stationed at Hwailai, he had an interview with John
10 Goette, chief correspondent for the International News
11 Service.² This latter person took the stand in this
12 case and testified that General ITAGAKI spoke freely
13 about what had been accomplished in a military way, and
14 then the question was put to him: "Is there a possibi-
15 lity that you might turn south and advance to the
16 Yellow River?" and that the correspondents were sur-
17 prised at his reply that he might so turn. We presume
18 that the prosecution hoped to have this Tribunal believe
19 from this testimony that General ITAGAKI then had
20 knowledge of a plan of conquest on Japan's part at a
21 time when the affair was called merely an 'incident'
22 and not a 'war' in the strict sense of the term, and
23 that ITAGAKI's claim of being a great sympathizer with
24 the Chinese people was betrayed by this remark.
25

1. Ex. 3316 (as shown above); Tr. 30,294.

2. John Goette's Test.; Tr. 3768.

1 However, in cross-examination the same witness Goette
2 testified that what ITAGAKI replied was simply "that
3 is possible."¹

4 His statement to the correspondent was
5 nothing but an informal conversation and was but a
6 remark to please the correspondent. It is difficult
7 to believe that such a high-ranking and able officer
8 as ITAGAKI would have disclosed such highly confidential
9 matter which concerned future strategic activities of
10 his force if he had any such information. It was but
11 the general's witticism intended to foil the corres-
12 pondents who sought information and to mystify them
13 by such an unexpected reply.

14 III. In the testimony of ITAGAKI himself² and
15 in the affidavit of the witness KOKUBU, Shinshichiro,³
16 it is shown that in December 1937 the main force of
17 the 5th Division under the command of General ITAGAKI
18 was turning from Shansi Province, North China, toward
19 Pao-Ting, Hopei Province, and that on December 17 at
20 Pao-Ting ITAGAKI was informed of entry into the city
21 of Nanking of the Japanese forces in Central China.
22 Since ITAGAKI was stationed at Pao-Ting, away from
23 Nanking, as one of the divisional commanders of the
24

- 25 1. Cross-examination upon John Goette; Tr. 3784.
2. Ex. 3316, ITAGAKI's Affidavit; Tr. 30,295.
3. Ex. 3298, Witness KOKUBU's Affidavit; Tr. 30,082.

1 North China Area Army entirely independent of the
2 Central China Area Army, it is clear that he had no
3 connection with the so-called Nanking Incident.

4 Thus we are able to point out that the charge
5 against ITAGAKI concerning conspiracy to commit atro-
6 cities in count 44 is groundless and that the charge
7 against him in count 45 of unlawfully killing and
8 murdering civilians and disarmed soldiers during the
9 attack of Nanking on December 12, 1937, and after, is
10 also entirely groundless for he was not at the scene
11 and the prosecution has not shown that he was in any
12 way responsible or had any connection with it.

13 IV. ITAGAKI, while he was at the front in
14 North China as Commander of the 5th Division (from
15 August 1937 to May 1938), was wholly attentive to his
16 duty in scrupulous obedience to the orders of the
17 commander above him (the army commander) and took
18 special caution in firmly establishing and maintaining
19 military discipline of the highest degree.¹ The steps
20 he took to prevent wrongs which might be committed
21 against inhabitants, have been shown by the witness
22 KOKUBU, Shinhachiro, to say nothing of his own testi-
23 mony.²

- 24
25 1. Ex. 3316 (as shown above); Tr. 30,295.
2. Ex. 3298 (as shown above); Tr. 30,083.

General ITAGAKI held office in China for many years and was known to be a man well acquainted with Chinese matters. Accordingly, he was profoundly cognizant of China and had a deep affection for her and her people. For instance, when some Chinese soldiers surrendered to or some bandits were captured by our army, he would not leave them at his subordinates' disposal but had them brought to him as far as circumstances might permit and took the trouble to place them under close examination, using the Chinese language in which he was quite proficient. Moreover, he strictly prohibited his officers and men from quartering within the city of Taiyuan immediately after its fall and made preparations for the prevention of wrongful acts against the inhabitants.

This is established by the fact that no officers and men who belonged to the 5th Division under the command of ITAGAKI have ever been reported to be war criminal suspects after the close of the war. He had the most rigorous idea of military discipline, a deep sympathy for inhabitants in the area of war, and a warm heart and fair attitude towards prisoners of war who surrendered to the Japanese Army.

REGARDING COUNTS 46 and 47.

V. The prosecution intimated that ITAGAKI

1 was connected with outrages allegedly committed at the
2 time of the attack of the armed forces of Japan upon
3 Kwantung City on October 21, 1938, and thence forwards,
4 and upon Hankow City before and after October 27, 1938,
5 as alleged in counts 46 and 47 respectively. At that
6 time ITAGAKI was War Minister.¹ The China Incident was
7 not regarded as hostilities but as an affair and no
8 rules of international law in time of war were applied
9 thereto, and so there existed no central organ such
10 as the Prisoners' Intelligence Bureau, etc., in which
11 business about prisoners of war should be conducted.
12 The business came under the management of the Supreme
13 Command, being regarded as a commitment of military
14 activities, and was chiefly attended to by the com-
15 mander of unit at the front. Therefore, it was beyond
16 his authority and power of execution to participate in
17 it. No evidence has been produced by the prosecution
18 which shows that ITAGAKI was in any way culpable under
19 the charges in Counts 46 or 47.

20
21 ITAGAKI AS WAR MINISTER.

22 I. As to the circumstances under which
23 ITAGAKI was appointed as War Minister (he was installed
24 on the 3d of June, 1938), the defense proved by the
25 testimony of the witnesses ITAGAKI himself, FURUNO,

1. Ex. 110 and ex. 3316 (as shown above); Tr. 30,297.

Inosuke and KONOYE's note, that:

1 Just after KONOYE's Cabinet-making was
2 completed, the Lukowkiao Incident broke out, spreading
3 over, in spite of the Japanese non-aggravation efforts,
4 from North China to the central part of China, while
5 at the same time the entirely untrustworthy trend such
6 as the duplicity of the War Minister's utterances was
7 prevailing in the army circle. Thus faced with these
8 serious difficulties, the necessity consequently arose
9 of revamping the Japanese policy toward China, and
10 appointing as War Minister a person who could and would
11 carry out and realize the General Staff's Lt. General
12 ISHIHARA, Kanji's non-aggravation policy. Therefore,
13 ITAGAKI was proposed strongly to the army by KONOYE,
14 to be War Minister, as his ideas were in keeping with
15 ISHIHARA's. KONOYE sent FURUNO to ITAGAKI who ascer-
16 tained and reported to KONOYE that ITAGAKI believed
17 that the way to settle the incident peacefully was to
18 withdraw all Japanese troops from China as rapidly as
19 possible.
20 2 3
21

22 Being satisfied with this change of War Minister
23 which had taken place at the initiative of the cabinet
24 itself, KONOYE proceeded toward the "KONOYE Statement."

- 25
1. Ex. 3300-A, KONOYE's Note; Tr. 30,094.
 2. Ex. 3299, Witness FURUNO's Affidavit; Tr. 30,088.
 3. Ex. 3316 (as shown above); Tr. 30,297.

Those facts make it clear that ITAGAKI was appointed War Minister because he was the man best able to realize the nonaggravation policy of the Japanese Government, and accomplish a peaceful settlement of the China Incident which was then spreading over China contrary to the desires of the Japanese; and because it was felt that his executive talent would be applied to efforts for peace and an end to hostilities.

ITAGAKI's reputation in army circles, his unbiassed thoughts, and how strongly he hoped, then, to see the rapid and peaceful settlement of the China Incident, is shown by defense exhibit 3340, a part of KIDO's Diary.

KIDO DIARY - on March 2, 1936, KIDO wrote:

"Monday. Fine. At 9:00 a. m. I called on Messrs. HIRADA and SAIONJI, Machiro at the sleeping room of the Ministry. HIRADA went to the palace in response to Prince CHICHIBU's calling. Hearing there Prince CHICHIBU's notice, he came back after 9:00. The notice follows:

"For carrying out a purge in the army (which means the disposition of the incident of February 26); leading officers were convened and

1. Ex. 3340 KIDO's Affidavit; T. 30316-7.

held a conference and they agreed to the opinion
1 that all the present generals be discharged, while
2 Lieutenant-General ITAGAKI might be appointed to
3 the Minister; and that such a Prime Minister as
4 would be able to act his part in concert with
5 Lieutenant-General ITAGAKI be selected. . .'

6
7 "(§96) War Minister SUGIYAMA opposed to the
8 'Cabinet Reorganization.' But being keenly desirous
9 of settling the China Incident, Prince KONOYE and
10 I made every effort in our power, even by opposing
11 to the part of War Ministry.

12 "And for terminating the incident we pro-
13 ceeded with the plan that seemed to be possibly
14 realized. And the plan was realized at the time of
15 the 'Cabinet Reorganization' on the 26th of May by
16 joining Messrs. UGAKI, Ikeda, and ARAKI, in the
17 cabinet, which consequently served the purpose of
18 enhancement of the cabinet's dignity and internal
19 potential of Japan.

20 "Being not only well in touch with the
21 Chinese and their affairs but also popular with them,
22 Lieutenant-General ITAGAKI was appointed to the War
23 Minister as a suitable one who might lead the incident
24 to the end."

25 "(§97) Through the above written course the

1 cabinet was reorganized. Invited by Prince KONOYE, I
2 had the opportunity to dine with War Minister ITAGAKI
3 and Prince KONOYE on the 18th of June, in which we
4 freely spoke out our feelings, our hope to terminate
5 the incident as rapidly as possible, exchanging further
6 our frank opinions about the discussion thereof by
7 the cabinet. Knowing the War Minister's true heart,
8 I could set my heart at rest."

9 On cross-examination of the witness FURUNO,
10 Inosuke, he was shown exhibit 2197,^{1.} a newspaper
11 account from the "Japan Advertiser," according to
12 which ITAGAKI, after he was made War Minister on
13 June 26, 1938 (the 13th Year of Showa) told a corre-
14 spondent of the "Domei Tsushin" that Japan must make
15 sufficient preparations to carry on war for ten years
16 more and that general support was asked for the pur-
17 pose.

18 The witness FURUNO did not verify the account
19 as an authentic one. Exhibit 2197 has no probative
20 value. It was stated by the witness^{2.} that even when
21 military operations were going on, constant efforts
22 were being made to find out how peace could be made

- 23 1. Ex. 2197, account from "Japan Advertiser," T.15741.
24 2. Cross-examination upon FURUNO, 6 October 1947;
25 T. 30090.

1 with China. The prosecution, which has the burden,
2 has not established the contrary.

3 As is previously stated, ITAGAKI, who did not
4 belong to any of the so-called cliques and who was
5 a strictly impartial general with no political career,
6 was selected War Minister while serving as a divisional
7 commander at the front. This appointment as successor
8 to War Minister SUGIYAMA was made on the government's
9 own accord, based on the firm belief of Premier KONOYE,
10 that ITAGAKI's trust in and concern for China made him
11 the best man to bring about an early peaceful settle-
12 ment of the unhappy Sino-Japanese War.

13 It was ITAGAKI's view that the way to an
14 early peace was to withdraw all Japanese troops from
15 China and he urged that this be done. These facts
16 are of great importance in considering the subsequent
17 movements of ITAGAKI.

18 (a) ITAGAKI, not knowing of what the prosecu-
19 tion calls the military clique, had no concern with it.
20 It has been shown that he had nothing to do with
21 either the SAKURA-KAI, the March Affair, the October
22 Affair, the 15th May Affair, or the 26th February
23 Affair.
24

25 (b) ITAGAKI, strictly a military man, had
no interest in politics. However, under those

1 circumstances especially at the earnest wish of
2 Premier HONOYE and on the unanimous recommendation
3 of the three chiefs of the army^{1.} he decided to
4 serve his country and accept the order of direct
5 appointment by His Majesty the Emperor.

6 (c) He deeply regretted that he had not
7 after all been able to attain his object in his
8 later activities as War Minister, but he had been
9 compelled to abandon his post, leaving the intended
10 peaceful settlement of the Sino-Japanese Affair
11 unaccomplished. This was partly because various
12 relations at home and abroad made it impossible for
13 ITAGAKI to effect his purpose, and partly because of
14 his lack of ability. He deeply regretted this failure.
15 He did neither intend nor try to plan, prepare and
16 wage a war of invasion of China, as alleged by the
17 prosecution.

18 II. The circumstances under which ITAGAKI
19 was made War Minister have been shown. It was quite
20 natural and proper that in his activities as War
21 Minister he should have followed the governing
22 principle, which had been established by his firm
23 conviction as follows:
24

25
1. Ex. 3316 (as shown above) T. 30300.

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2 Premier KONOYE and on the unanimous recommendation
3 of the three chiefs of the army¹. he decided to
4 serve his country and accept the order of direct
5 appointment by His Majesty the Emperor.

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8 later activities as War Minister, but he had been
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19 was made War Minister have been shown. It was quite
20 natural and proper that in his activities as War
21 Minister he should have followed the governing
22 principle, which had been established by his firm
23 conviction as follows:
24

25
1. Ex. 3316 (as shown above) T. 30300.

1 It was Japan's constant policy toward
2 China that the two nations should not fight each
3 other, but go hand in hand. But, after all efforts
4 made by Japan for nonenlargement and local settlement,
5 a local trouble between the two countries, which
6 broke out in North China, had gradually developed
7 into an over-all conflict between Japan and China.
8 The Sino-Japanese Affair had then reached a stage
9 of a protracted and extensive war, sinking into a
10 fathomless bog. Thus Japan was not only driven into
11 such an unexpected situation, but she was also con-
12 fronted with another serious danger. That was that
13 Soviet Russia, her northern neighbor, was threatening
14 Japan with her overwhelmingly superior military prepa-
15 rations in the Far East, which was brought about by
16 Russia's remarkably increased national strength due
17 to her five-year plans. Britain and the United States
18 had become more active than ever in giving aid to the
19 Chiang Regime and interfering with Japan's military
20 operations. Above all, American pressure on Japan,
21 mostly economical, had to be watched carefully. In
22 these circumstances, it was unavoidable that Japan, if
23 she sat still with her hands folded and doing nothing,
24 would be forced into a position of international
25 isolation by the encircling influence of Britain, the

1 United States, the Soviet and China. Therefore,
2 Japan must lose no time in making peace with China.
3 As to her relations with China, all the past issues
4 between the two countries should be laid aside, and
5 new relations built upon a broader point of view, too,
6 in order to establish reciprocal equality and friend-
7 ship.^{1.} Convinced that this governing principle was
8 right, ITAGAKI, as War Minister decided to conduct
9 state affairs along the following lines:

10 "As the policy of the army to endeavour
11 to establish military discipline and secure defensive
12 strength against the Soviet.

13 "Domestically -- efforts were to be made to
14 effect an early peaceful settlement with China by
15 moderating the peace terms and also to reorganize
16 drastically the management of State affairs, in fuller
17 recognition of the serious situation, for the purpose
18 of making good the increasing depletion of materials
19 and supplies and keeping up defensive strength against
20 the Soviet.
21

22 "As to China -- further efforts should be
23 made to suspend our armed advancement, evacuate some
24 part of the armed forces, stabilize the occupation
25 zones, and, at the same time, bring about a peaceful
settlement with the Chiang Regime.

1. Ex. 3316 (as shown above); Tr. 30,298.

1 "A careful watch on the movements of the
2 Soviet Union should be kept.

3 "Britain and France should be persuaded to
4 cease giving aid to the Chiang Regime, and to keep
5 pace with Japan's efforts to suspend hostilities.

6 "As to Germany and Italy -- both friendly
7 nations, Japan is to ask for promotion of friendship
8 with her and also for cooperation in Japan's efforts
9 at settlement of the Sino-Japanese Affair.

10 "As for the United States -- Japan should
11 secure her as a friendly nation and have her become
12 a propelling factor in settling the Sino-Japanese
13 Affair."

14 In connection with these, ITAGAKI concen-
15 trated his efforts on suspending hostilities with
16 China, and then effecting pacific settlement of the
17 affair.
18

19 The said governing principle, of which he
20 was firmly convinced, and his policy of conducting
21 state affairs, must be referred to, and kept in mind,
22 in examining the subsequent movements of War Minister
23 ITAGAKI. This case is one in which all the wide and
24 complicated fields of national and international poli-
25 cies are involved, and in which it is sought to call

1. Ex. 3316 (as shown above); T. 30300.

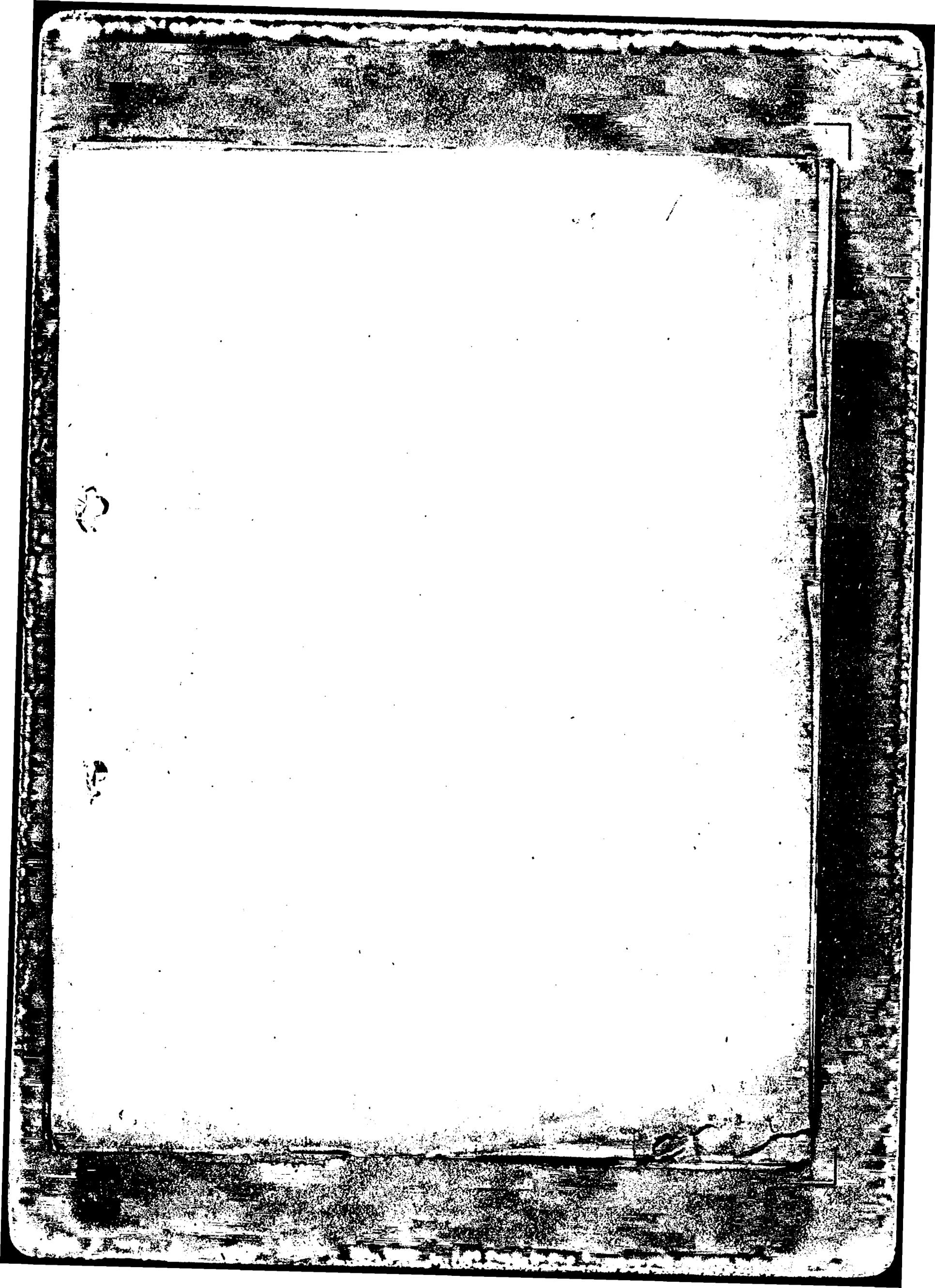
1 a person to account, concerning his official acts as
2 an executive, as well as a subject of a state with
3 independent sovereignty, in connection with the ac-
4 tions of the State. Therefore, it is vitally important
5 to inquire into what he thought, what he believed,
6 and was convinced of -- that is his mental state.
7 On all the evidence it appears that he was not
8 possessed of a guilty mind, that he had no criminal
9 intent.

10 The prosecution has not sustained its burden
11 of establishing his guilt beyond a reasonable doubt.

12 THE PRESIDENT: We will adjourn until half-
13 past nine tomorrow morning.

14 (Whereupon, at 1600, an adjournment
15 was taken until Thursday, 25 March 1948, at
16 0930.)
17

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25 MARCH 1946

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Thursday, 25 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 R. B. PAL, Member
from India and HONORABLE JUSTICE E. H. NORTHCROFT,
Member from the Dominion of New Zealand, not sitting
from 0930 to 1600; HONORABLE JUSTICE B. V. A. ROLING,
Member from the Kingdom of the Netherlands, not sitting
from 0930 to 1045.

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, IMIFE.)

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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 certificates will be recorded and filed.

8 MR. SASAGAWA: If the Tribunal pleases,
9 Mr. Mattice will continue reading.

10 THE PRESIDENT: Mr. Mattice.

11 MR. MATTICE: At page 111, III. With refer-
12 ence to the substance of the so-called Sino-Japanese
13 Affair which started with the Lukouchiao (Marco Polo
14 Bridge) Incident, the prosecution charged in the
15 related counts and the opening statements that Japan,
16 taking advantage of the Lukouchiao Incident, the same
17 type as the Mukden Incident, as an opportunity for a
18 large-scale military invasion, initiated an aggressive
19 war against China, expanded it from North China to
20 Central China, Shanghai, Hankow, Nanking and South
21 China and, by military, political and economic conquest
22 and domination of China, intended to make preparations
23 for the future war for domination over the world, or
24 to make China a base for it. The defense made it clear
25 that no responsibility for the outbreak of the

1 Lukouchiao Incident lay with Japan, and that despite
2 the fact that Japan exerted the utmost effort to
3 prevent this incident from developing into an unhappy
4 incident, with it as the origin, thoroughly sticking
5 to the principle of nonexpansion and settlement on the
6 spot, the incident spread against Japan's intention
7 owing to a provocative attitude on the part of the
8 Chinese, during which period Japan took self-defensive
9 action necessary for safeguarding her rights and
10 interests in China and for protection of her residents
11 there. The objective of her military action was to
12 cause the anti-Japan, or insulting Japan, regime
13 reflect its wrong and thereby to realize good relations
14 based upon morality and to bring about a normal situa-
15 tion of reciprocity and equality between Japan and
16 China.

17 ITAGAKI was War Minister in the KONOYE
18 Cabinet from 3 June 1938 to 4 January 1939, and also
19 War Minister (remaining in office) in the HIRANUMA
20 Cabinet from 5 January 1939 to 29 August of the same
21 year.^{1.}
22

23 While the accusation and proofs by the
24 prosecution of ITAGAKI's action during these periods
25 are extremely general and indirect and very few are
1. Ex. 110 (ITAGAKI's Personal History), Tr. 716.

1 directly and concretely pointed to the individual
2 responsibility of ITAGAKI, it seems that the prose-
3 cution's points lie in the matters of the disposition
4 of the China Affair in which he participated as the
5 War Minister, and of negotiations between Japan,
6 Germany and Italy, with the additional matters con-
7 cerning "Changkufeng Incident" (incident in the area
8 of Lake Khasan) and "Nomonhan Incident" (incident in
9 the area of Khalkin-Gol River). Therefore, for con-
10 venience sake that arrangement will be followed.

11 (i). The matter concerning the disposition
12 of the China Affair.

13 (a). It has been shown that, since ITAGAKI
14 had nothing to do with the Lukouchiao Incident, the
15 charge of Count 19 is unfounded.

16 (b). As evidence concerning what may be
17 called ITAGAKI's attitude on the disposition of the
18 China Affair, the prosecution presented exhibit 2200,
19 a news and editorial article called "Japanese Press
20 Comments" which appeared in the Japan Advertiser,
21 17 May 1939 to show that ITAGAKI expressed, in a
22 session of the Diet, his belief that, in order to
23 execute the Japanese policy to create the so-called
24 "New Order in East Asia," disputes with third powers
25

1. were unavoidable. This was, however, merely a
1 newspaper story which has little, if any, probative
2 value. Moreover, ITAGAKI,^{2.} the evidence shows, never
3 made such statement in the Diet Session at that time
4 and the prosecution introduced no evidence proving
5 that he did.

6 The prosecution also introduced exhibit
7 2201,^{3.} the article titled "YONAI, ITAGAKI Abuse
8 Powers for Interference" in the "Japan Times and
9 Mail" dated 7 July 1939 in an attempt to show that
10 ITAGAKI agreed to crush interference by third powers
11 with his view that it was Japan's mission to establish
12 a new order in East Asia. However, this evidence, too,
13 is only a news article which is unfounded and without
14 certain source, and there is no evidence to show that,
15 as appeared in the paper, ITAGAKI, together with YONAI,
16 made such statement on that day, that is, on the eve
17 of the second anniversary of the outbreak of China
18 Affair. Assuming that there was such a statement it
19 was but a natural thing for the War Minister to state
20 in the situation existing at that time.

21 Thus the prosecution failed to prove anything
22 under any count with regard to ITAGAKI's fundamental
23

24 1. Ex. 2200, Tr. 15746.

25 2. Ex. 3316, Tr. 30312 (as shown above).

3. Ex. 2201, Tr. 15748.

1 attitude as War Minister and to his policy for
2 dealing with State affairs. ITAGAKI^{1.} admitted the
3 failure of the KONOYE declaration^{2.} of 16 January
4 1938 and exerted himself to realize the immediate and
5 peaceful settlement of the China Affair by moderating
6 and modifying the Japanese peace proposals to China
7 into concrete and more impartial and reasonable ones
8 so that China would accept them, unlike such as were
9 made through Mr. Trautman. Consequently, the KONOYE
10 statement^{3.} of 3 November of the same year was issued
11 and declared to the world that the Japanese government
12 only hoped to establish the relations of mutual aid
13 and cooperation ranging over all the fields of
14 politics, economy, culture, etc., establish inter-
15 national justice, achieve the anti-communism objective,
16 create a new culture, realize the economic combination,
17 between Japan and China, and thereby to establish a
18 new order to secure the eternal stability of East Asia.

19 In the interest of realizing those Japanese
20 policies, the policy of adjusting new relations
21 between Japan and China was decided by the Government
22 on 30th of the same month.^{4.}

23 Furthermore, as a detailed explanation, the
24

- 25 1. Ex. 3316, Tr. 30305 (as shown above).
2. Ex. 268, Tr. 3563.
3. Ex. 268, Tr. 3564.
4. Ex. 369, Tr. 3590.

1 KONOYE statement was issued on 22 December of the
2 same year.^{1.}

3 This further declared to the world, showing
4 the greatest concession practicable, that what Japan
5 wanted of China was not territory, nor reimbursement
6 of war expenses, but that Japan was willing, not
7 only to respect the sovereignty of China, but also
8 to withdraw her extraterritoriality, as well as to
9 positively give consideration to returning the settle-
10 ment.

11 ITAGAKI was supported by the witness
12 YAMAWAKI, Masataka,^{2.} who testified that: "With
13 regard to peace settlement between Japan and China,
14 War Minister ITAGAKI held fundamental ideals of re-
15 establishing friendship between them on broadminded
16 basis, respecting mutually each other's sovereignty
17 and territorial integrity and dealing with matters
18 cultural and economical on cooperative and reciprocal
19 basis."
20

21 War Minister ITAGAKI directed his efforts
22 to propel the so-called "KONOYE's Three Principles"
23 disclosed on December 22, 1938, which quite agreed
24 with his opinion. Thereby, the fact was proved that
25

1. Ex. 268, Tr. 3565.

2. Ex. 3301, Tr. 30103 (YAMAWAKI's affidavit).

1 ITAGAKI admitting, as Prime Minister KONOYE himself
2 did, the wrong of Japan's policy regarding the settle-
3 ment of the China Incident which had been pursued
4 prior to the government statement issued on 16 Jan-
5 uary 1938, exerted himself to revise and moderate
6 the policy adopted during the period of the predeces-
7 sors, and at the same time he made every possible
8 effort to bring about peace settlement between both
9 countries as soon as possible.

10 It should be noted that ITAGAKI did not take
11 any part in the Four Minister Conference at which
12 "the outline regarding the settlement of the China
13 Incident,"^{1.} exhibit 3262 which was affirmed by
14 witness HORINOUCI, Kensuke at the time of the
15 HIROTA individual defense, was decided upon, in the
16 cabinet decision of the said outline,^{2.} nor in the
17 Imperial Conference opened on 11th January 1938 to
18 decide upon the national policy towards China,^{3.}
19 because he, as Chief of the 5th Division, was then
20 active on the North China front. Every possible effort
21 was made by ITAGAKI to revise and moderate the said
22 outline and the peace conditions through the good
23 offices of Mr. Trautman, based upon the outline,
24

25 1. Ex. 3262, Tr. 29772.
2. Ex. 3263, Tr. 29817.
3. Ex. 3264, Tr. 29837.

1 because he feared that these had a trend to aggres-
2 sion, which, therefore, would lead the future
3 diplomatic relations between both countries to
4 rupture.

5 The prosecution in the cross-examination of
6 ITAGAKI, exhibited to him an IPS document,^{1.} entitled
7 Collection of Decisions of the Five Ministers'
8 Conference, and said to have been found in the
9 Foreign Office of the Japanese Government, and sought
10 to have him identify it as a record of such decisions
11 during the period from June to October 1938. General
12 ITAGAKI was not able to identify the instrument as
13 being what the prosecution was intimating it was,
14 that is, a record of decisions of the Five Ministers'
15 Conference and told this Tribunal that as no record
16 of any kind was made or kept of conference decisions
17 he could not say this was such record. The plain
18 meaning of his statement in this regard was that the
19 instrument shown him was not a record of any such
20 decisions.^{2.}

22 On January 14, 1948, during the prosecution's
23 misnomered rebuttal the instrument (IPS 2570-B) was
24 offered and, over objection, admitted in evidence.

- 25
1. IPS document 2570-B, Tr. 30414.
 2. Ex. 3457, Tr. 37350.

1 Not only did ITAGAKI himself tell this
2 Tribunal that this document was not a record of any
3 decisions of the conference, but the witness UGAKI,¹
4 who was the only other person present at the confer-
5 ences who testified in this case, and, who is, there-
6 fore, best qualified to tell this Tribunal whether
7 or not such document is a record of the decisions
8 of the conference, told this Tribunal the document
9 is not a record of such decisions, but merely a
10 compilation of materials or proposals to be made to
11 said conferences, which someone gathered up for the
12 purpose of reference, thought and opinion; that the
13 only writings before said conferences were, at times,
14 written proposals which were submitted to the confer-
15 ence for study and discussion and that, as to any
16 of those, if any copies thereof were in the Foreign
17 Office, they would bear the witnesses' signature, as
18 he commonly signed them and handed them to subordinates.
19

20 This being the situation of the proof regard-
21 ing these alleged records of decisions of the Five
22 Ministers' Conferences, we most earnestly invite the
23 Tribunal's attention to the extremely doubtful char-
24 acter of the evidence thus permitted to be intro-
25 duced, over defense objection. There were other

1. Ex. 3899, Tr. 38811 (Affidavit of UGAKI).

1 persons present at the Five Ministers' Conferences
2 besides ITAGAKI and UGAKI, who are still living. The
3 prosecution might have called persons who were pres-
4 ent and obtained the truth about what the decisions
5 were. It did not attempt to do so, but contented
6 itself with an endeavor to establish the decisions
7 by documentary proof--which, as we can see, is cer-
8 tainly not the best evidence. We believe that it is
9 the universal rule that when a party to a law suit
10 knows of the existence of witnesses who are shown by
11 the evidence to have knowledge of and concerning a
12 matter in issue and such witnesses are available to
13 such party, the failure to call them gives rise to
14 the presumption that if such witnesses had been
15 called, their testimony would have been unfavorable
16 to the party thus failing to call them.

17 C. Despite Japan's sincerity and endeavors
18 rendered for amending and moderating her national
19 policy towards China, Japan did not receive any
20 answer from the Chinese authorities, especially
21 Chiang Kai-shek. Thus Japan's efforts so far made
22 for peace negotiation with China came to naught. For
23 this reason, Japan had to consider joining hands with
24 some important Chinese persons known to have an
25 urgent desire for peace and to work with them toward

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1 an over-all peace. For this purpose, Prime Minister
2 KONOYE personally sent an instruction to BANZAI,
3 Rihachiro, (recommended by Foreign Minister UGAKI)
4 in July 1938 and had him to contact Tang Shao-yi and
5 Wu Pei-fu, popular men in China who were both eager
6 for making peace and ask for their cooperation. The
7 Army and the Navy sent their representatives, Major-
8 General DOHIHARA and Vice-Admiral TSUDA respectively
9 to China and had them cooperate in the move.¹ It
10 was in accordance with the government decision that
11 Major General DOHIHARA was sent to China. Yet this
12 effort proved to be a failure.

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1. Ex. 3316, Tr. 30307.

1 D. Mr. Wang Chao-ming, sympathizing with
2 Japan's sincerity and endeavors for revising and
3 moderating her national policy towards China, got out
4 of Chungking of his own free will with an intention
5 of devoting himself to making peace and saving the
6 nation. ITAGAKI, feeling that the prospect of making
7 peace was nearer with the government understanding,
8 asked Mr. Wang to hasten the peace movement.² With
9 respect to this matter, there was the testimony of the
10 witness KAGEA³ and of the witness SHIMIZU, Kunzo⁴
11 establishing that. With his real understanding of
12 Japan's true intention as previously mentioned and his
13 sincere desire for making peace and saving the nation,
14 Mr. Wang, as vice-President of the Kuomintang, separated
15 himself from Chungking of his own accord and established
16 Wang's Regime as a means for accomplishing his purpose.
17 His final objects were, however, the unification of
18 his and Chiang's regimes and complete peace settlement.
19 The Japanese Government did not give any guidance, in-
20 terfere, or exercise supervision in this matter; much
21 less had it intention to illegally deprive China of her
22 sovereignty and accomplish a conquest of her country.

23 2. Ex. 3316: tr. 30,314 (ITAGAKI's Affidavit)

24 3. Ex. 2721, the record of KAGEA's interrogatory,
June 11, 1947, tr. 23,973

25 4. Ex. 2585, affidavit of witness SHIMIZU, May 15,
1947, tr. 22,260

1 On the contrary, Japan respected Wang's regime, con-
2 cluded a fundamental treaty on an equal basis, limited
3 the Japanese economical penetration in China to a con-
4 siderable extent, and carried out relinquishment of her
5 extra-territoriality rights and returning the Japanese
6 Settlement. In the cross-examination of the witness
7 KAGUSA, the prosecution, offering a series of telegrams
8 indicating that at the time when Mr. Wang moved from
9 Hanoi to Shanghai and stayed there the Japanese agents
10 rendered help in protecting and guarding him against
11 assassination, attempted to prove that Japan treated him
12 only as a puppet.¹ But that was not the fact. The
13 truth was that the Japanese agents at Wang's request
14 assisted him according to his desires. Additionally,
15 in the cross-examination of ITAGAKI² the prosecution
16 tried to establish that Mr. Wang's movement of "making
17 peace and saving the nation" was originated by the "Save
18 the Nation and Anti-Communism Association," which had
19 been given funds by Japan. But this was denied by the
20 witness and the prosecution did not prove that it was.
21 The prosecution asserted that together with DOHARA
22 and KAGUSA, ITAGAKI did the same sort of thing in China
23 under the name of "peace" as he had, in league with
24

25 1. Ex. 2721, the record of KAGUSA's interrogatory,
June 11, 1947, tr. 23,973
2. Cross-examination upon ITAGAKI, tr. 30,435

1 DOPIHARA, done in Manchuria under the name of "independ-
2 ence." They said that ITAGAKI exerted all possible
3 efforts to establish a puppet government in China,
4 while manoeuvring into its premiership Wang chin-wei,
5 one of the leading figures of the Chinese Government.
6 But it has been admitted by the prosecution itself that
7 Wang was then a personage of great importance in the
8 Chinese Government, and that, what is more, he was in
9 Chungking beyond the range of Japan's influence. Does
10 this fact now show that, with all efforts ITAGAKI
11 would not have been able to win Wang over without any
12 initiative on the latter's part? So genuine was his
13 love for China that Wang, after understanding the real
14 meaning of the two statements of 3 November and of
15 22 September, 1938, by the Japanese Government as amend-
16 ments to the partly erroneous KONOYE statement of 16
17 January of the same year, made up his mind to go over
18 to the enemy and devote himself wholly to making peace
19 and saving the nation. From this patriotism came all
20 his activities, which fact is shown by exhibit No. 2590,
21 composed of his various declarations. In his declara-
22 tion of 9 December, 1938, at Honei, Wang urged the
23 necessity of finding a way to peace negotiations, call-
24 ing attention to the fact that the statement of the

25 1. Ex. 2590, excerpt from "Sharing the Fate," tr. 22,306

1 Japanese Government on 3 November had modified its
2 attitude expressed by that of 10 January. Wang then
3 sent to Chang Kai-shek the following wireless message:
4 "Although Chao-ming (T.N. Wang Chin-wei) made a pro-
5 posal on December 24, 1938, to the effect that a per-
6 manent peace of Eastern Asia be established by adjust-
7 ing Sino-Japanese relations based on the KONOYE State-
8 ment of Japan, it was not adopted unfortunately. But
9 Chao-ming strove to achieve the peace movement regard-
10 less of many difficulties and sacrifices tying up with
11 my comrades some of whom successively lost their
12 lives discussing with the Japanese people both in and
13 out of office to find a plan for peace. I have devoted
14 one year to cleaning up the past complications in order
15 to realize a hope for the future..."¹

16 From the "Declaration of the Return of the
17 Capital,"² it is evident that Wang earnestly desired to
18 lead to an over-all peace as soon as possible under a
19 united leadership of Chiang and himself, and he felt
20 forced to make his utmost effort to preserve the State
21 and maintain the lives of the people. Though he early
22 intended to initiate the peace movement, staying out
23 of the Kuomintang Party and pointing out the wrong of
24

25 1. Ex. 2600, excerpt from "Sharing the Fate," tr. 22,352
2. Ex. 2605, "Declaration of Returning to the Capital,"
tr. 22,367.

1 the anti-Japanese theory and persuading the National
2 Government to change its policy, yet he found it diffi-
3 cult to do so merely by talking. Thus, realizing that
4 it would be more effective to create a peace govern-
5 ment, endorsed by Japan's execution of her fair and
6 appropriate policies, bring about a successful result
7 of Sino-Japanese cooperation and thereby influence the
8 Chungking Government to turn to peace, Wang was de-
9 termined to establish such a peace government on his
10 own initiative and asked Japan for her full understand-
11 ing and support.¹

12 It was such feelings of patriotism and great
13 enthusiasm of intrepid Wang that moved Japan to feel
14 willing to extend cooperation to China with sincerity
15 and conciliatory spirit. So far as human rationality
16 is concerned, it is inconceivable that such a great man
17 as Wang was willing to get out of Chungking for the
18 purpose of making himself a puppet of Japan.

19 F. In connection with the establishment of
20 the China Affairs Board (December 18, 1938) and the
21 principle in its operation, the defense established
22 that following the outbreak of the China Incident
23 Japan had avoided setting up military government in
24

25 1. Ex. 2721-A, interrogatory of the witness KAGESA
by the Commissioner, tr. 23,984-8

1 China and fully lived up to the principle of leaving
2 China's home administration for maintaining peace and
3 order and for operating the civil government in the
4 hands of the Chinese themselves. Except, of course,
5 out of necessity of coordination with military opera-
6 tions, some matters had to be taken in charge by the
7 Japanese authorities, namely, by the Special Duty
8 Department, which resulted in adding to the burden of
9 the army. Then the army, with a view of unifying,
10 planning, execution and getting rid of that burden and
11 unifying policies, proposed to the Central Government
12 that the China Affairs Board be organized, which the
13 Cabinet decided to establish as a part of the national
14 policy. Consequently, the board made its debut on 18
15 December 1938 as a synthetic organ, with the Premier
16 as its president and the War, Naval, Foreign and Fin-
17 ance Ministers as its Vice-Presidents.¹ The Liaison
18 Office on the spot started its work in March of the
19 following year for the promotion of political, economi-
20 cal and cultural policies in concert with the Chinese
21 authorities, and the army's interference with it was
22 minimized.¹

24 As to this, the prosecution claims that about

25 1. Py. 455, tr. 5183
1. Ex. 3316, tr. 30,305

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1 the latter part of August 1938, contrary to the Japan-
2 ese Foreign Office's proposition to set-up an organ
3 in the Foreign Office as a emergency measure pending
4 the progress of the China Incident, the army offered
5 its counter proposition to form an organ of perennial
6 nature which would direct China's politics and economics
7 and attain the goal of Japan's defensive and economical
8 desire. That Foreign Minister UGAKI opposed it and
9 because of it he resigned. That a little later the
10 China Affairs Board was brought into being and was
11 made the instrument of Japan's aggression in China.
12 But the prosecution produced no evidence so proving,
13 and ITAGAKI's categorical denial stands uncontradicted.
14

15 They sought, in the cross-examination of the
16 witness KIDO, regarding the reason for Foreign Minister
17 UGAKI's resignation¹ at the end of September, 1938, to
18 develop that one of the main reasons for his resigna-
19 tion was the alleged effort to strip the Foreign Office
20 of the control of China Affairs Board by appointing
21 the War Minister to the post of vice-chief of the Board.
22 In this the prosecution failed, KIDO instead saying
23 that he knew of no reason why UGAKI had tendered his
24 resignation to KONOYE. That at the time when KIDO was
25

2. Cross-ex. of ITAGAKI, tr. 30,449

3. ditto.

1. Cross-ex. of KIDO, tr. 31,538

1 consulted by KONOYE in this connection the problem was
2 in reality in a tangle, but after strenuous efforts
3 among the competent authorities of the War, Naval, and
4 Foreign Ministers, an agreement was finally worked out.
5 UGAKI's resignation took place just at this juncture.
6 That KONOYE told KIDO that he was quite at a loss to
7 understand the reason for UGAKI's resignation.

8 Whereby it was made clear that the establish-
9 ment and operation of the China Affairs Board was, as
10 may be seen in Article I of the Organization of the
11 China Affairs Board,¹ a temporary organ pending the
12 China Incident to handle the political, economical and
13 cultural (except diplomatic) affairs in China and to
14 set forth the policies in connection with the said
15 business. Especially, it was the comprehensive organ to
16 deal with the cultural affairs in China and unify the
17 administrative works concerning China of all depart-
18 ments and branches of the government.

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24 1. Ex. 455, tr. 5183
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1 The army thus freed from the burden hereto-
2 fore shouldered by it could concentrate on its proper
3 duty. The Board aimed at the synthetic enforcement
4 of Japan's China Policies on the basis of national
5 unification. Japan had no intent to accomplish an
6 economic monopoly and none was set up.

7 Japan had no intention of requiring China to
8 restrict the interests of the foreign nations of
9 good will who had the understanding of the ideal
10 of a New Far East and would join hands in this cause.
11 The Board had in view the realization of cooperation
12 between Japan and China. That is to say, promotion
13 of the economical welfare of both countries. ¹ UGAKI's
14 resignation had its motives somewhere else.

15 Quoting KAGESA's testimony, the prosecution
16 asserts that the China Affairs Board made out a
17 tentative plan which was accepted by Mr. Wang Ching-
18 wei on 30 December 1939. However, it is not clear
19 what it means and what connection it would show
20 ITAGAKI had with it. To avoid misunderstanding in
21 this regard, we quote KAGESA's testimony:

22 "The KONOYE statement of December 22, 1938
23 (Showa 13) is the only datum available to Mr. Wang
24 Ching-wei with regard to Japan's desire toward China.
25

1. Ex. 458-A, Tr. 5250

1 But it is too abstract, that various opinions, both
2 form and moderate would arise therefrom if one were
3 to put it in practice.

4 "It may be said that in order to show the
5 Japanese Government's sincerity toward Mr. Wang and
6 also to make the peace movement a success, the
7 Japanese Government should deliberate with Mr. Wang
8 as to the embodiment of the KONOYE statement prior
9 to Mr. Wang's organizing a government.

10 "However, in case the contentions of both
11 sides do not agree, Mr. Wang has the liberty to sus-
12 pend establishing his government.

13 "I (KAGESA) presented the above view to the
14 government and it was approved. In October, 1939
15 (Showa 14), a tentative plan was shown me by the
16 China Affairs Board.

17 "I, together with Rear Admiral SUGA, Foreign
18 Office Secretary YANO and INUKAI, Ken on our side
19 and Chou Fu-Hai, Mei Ssu-ping, Lin Pai-sheng and
20 Chou Lung-Hsinang on Wang's side, conducted exhaust-
21 ive investigations and discussions. Due amendments
22 were made to the said draft plan and a conclusion was
23 reached on December 30. To this amended plan both
24 the Japanese Government and Wang Ching-wei expressed
25

1 mutual agreement.

2 (F) Japan, in taking her military actions,
3 paid close attention to observe the laws of warfare,
4 the Nine Power Treaty, etc. She respected the
5 rights and interests of third powers in China and
6 tried, as soon as possible after the war, to make
7 reparation for damages unavoidably caused by her
8 military actions. Japan not only declared again and
9 again that she had no intention to boycott third
10 powers in China, that she would not frustrate the
11 principle of equal opportunity, but she endeavoured
12 to carry out the declaration with sincerity.²

13 The prosecution introduced "Documents on
14 the U.S.-Japanese Diplomatic Relations" (from 1931
15 to 1941) and quoted the letters exchanged between
16 the United States and Japan as to the Nine Powers
17 Treaty extending from October 6, 1938 to December
18 30.³

19
20 The Nine Power Treaty has already been dis-
21 cussed in detail.

22 But in the aforesaid letters exchanged be-
23 tween the U.S. and Japan especially in the letter

- 24 1. Ex. 2721-A, Interrogatory of KAGESA, Sadaoki
25 by the Commissioner, Tr. 23,999-24,000
2. Ex. 3316, Tr. 30,310
3. Ex. 457, Tr. 5209
4. Ex. 28, Tr. 17,210

1 dated November 18, 1938, and returned by the Foreign
2 minister ARITA to United States Ambassador to Japan,
3 Mr. Grew, Mr. ARITA made known to the United States
4 that "In view of the new situation which is now
5 developing in the East Asia, the attempt to apply
6 the old idea and principle prior to the Chinese
7 Incident to the new situation without any modifica-
8 tions will not make any contribution to the solution
9 of impending questions and will give no assurance of
10 enduring peace in the East Asia.¹

11 It was expected that the United States and
12 other countries would understand the real aim of
13 Japan, which was endeavoring strenuously to build
14 up a new order in East Asia in accordance with
15 international justice and would participate in the
16 great task of rebuilding East Asia in all branches
17 of commerce and industry.

18 The United States and other countries ap-
19 peared unwilling to understand the real aim of
20 Japan. Instead, they simply applied pressure to
21 Japan using as tools the general principles of the
22 Treaty, which was not applicable to the then state of
23 affairs. This was made an excuse for giving aid to
24 Chiang Kai-shek. In such a situation revising the
25

1 Nine Powers Treaty would be out of the question.

2 Furthermore, diplomatic matters were under the juris-
3 diction of the Foreign Minister and the War Minister
4 had no direct responsibility for it, nor had he par-
5 ticipated in it specifically.

6 (G) "The outline of five year plan on
7 manufacturing munitions" formulated by the War Depart-
8 ment on June 23, 1937¹ and "Outline of plan to expand
9 productivity" decided by the Cabinet meeting on
10 January 17, 1939² were introduced by the prosecution
11 witness Liebert.

12 Liebert's opinion was that the above-stated
13 two plans, together with "Outline of five-year plan
14 on essential industries,"³ were designed to complete
15 the plan of the wartime supply of principal muni-
16 tions. That aim of those plans was to promote in-
17 dustry and prescribe control in order to secure the
18 special products of final stage which would determine
19 the fate of military efforts in the part of Japan.⁴

20 Inasmuch as ITAGAKI became War Minister on
21 June 3, 1938, he had nothing to do with "Outline of
22 five-year plan on essential industries" dated May 29,
23 1937 or the "Outline of five-year plan on manufacturing
24

25 1. Ex. 841, Tr. 8261 3. Ex. 840, Tr. 8260
2. Ex. 842, Tr. 8269, 8264. 4. Ditto

1 munitions," dated June 23 of the same year.

2 Regarding "Outline of plan to expand pro-
3 ductivity," ITAGAKI testified that at the occasion
4 of his assumption of office he attempted, as one of
5 the items of the established national policies, to
6 bring the Chinese Incident to peaceful settlement as
7 soon as possible by offering China modified condi-
8 tions for peace. At the same time he set up a plan
9 of supplying the operational materials which were
10 being rapidly consumed and which were needed to make
11 up for a deficiency in Japanese defense against
12 Russia. In other words, he intended to set up
13 peaceful economy in Japan and to secure a feeling of
14 safety in her national defense against Russia. Above
15 all, he wished the integrity of Manchukuo and also he
16 wished to see the Five-Year Plan on Industries in
17 Manchuria, formulated by the Government of Manchukuo,
18 realized.
19

20 That the plan just mentioned was not intended
21 for preparation for war is shown by the testimony of
22 the witness OKADA,² who told this Tribunal that the
23 Outline of the Five-Year Plan on manufacturing muni-
24 tions (hereafter referred to as the "A" Plan) and

- 25 1. Ex. 3316 (as shown above), Tr. 30,311
2. Direct Exam. upon OKADA, Tr. 18,271-18,288.

1 Outline of Plan to Expand Productivity (hereinafter
2 referred to as the "B" Plan), which have been men-
3 tioned, were both for the purpose of strengthening
4 the national defense of Japan. "A" was exclusively
5 a military plan, while "B" was a plan to construct
6 the peaceful economy involving many military elements.
7 They were measures taken by Japan as precautions
8 against Russia whose national power had been making
9 rapid progress by her successive five-year plans.
10 Japan's heavy industry was only intended to make
11 Japan competent as one of the modern nations and, as
12 such, she hoped to promote the welfare of her people
13 as far as possible.

14 Japan, however, was obliged to give up "A"
15 before it was put in operation because of the out-
16 break of the China Incident. "B" was not brought
17 to completion¹ until the end of the fiscal year 1938.
18 It was reduced to a four-year plan. Furthermore,
19 actually, it was not carried out as it was expected
20 to be, but was curtailed and distorted a great deal.
21 "B" plan originally contemplated a small scale con-
22 trol. At first industrial mobilization was put
23 into force, then economic mobilization took effect
24 because of the China Incident which had spread
25
1. Cross-exam. of witness Liebert, Tr. 8583.

1 contrary to the wishes of Japan and as the situation
2 developed national mobilization became necessary.

3 "B" plan took its origin from the proposal
4 made by Colonel K. ISHIHARA (later, Major General),
5 the then Chief of the second section of the staff
6 (later Chief of the first department) about one and
7 a half years before the Cabinet decision. It's chief
8 aim was the peaceful construction of economy of
9 Japan and the assurance of safety in her national
10 defense against the threat of Russia, including the
11 integrity of Manchukuo. It was to start at the
12 same time as the Five-Year Plan on Industries in
13 Manchuria.

14 The cross-examination of the witness OKADA
15 indicated a prosecution desire to intimate that the
16 above-mentioned plans were formed in anticipation
17 of war in 1941, but the witness strongly denied it
18 and the prosecution has not shown the contrary.¹

19 In the second direct examination, the
20 witness made it clear that in forming the plan in
21 the year 1941 it was tentatively fixed as the first
22 year of war, as was customary on making operational
23 plans, and there was no particular meaning in this.

24
25 1. Cross-exam of witness OKADA, Tr. 18,330

1 Those plans involved a plan which would be
2 extended to 1943.¹

3 (H) When Liebert's interrogatories were pre-
4 sented to the Court, the prosecution introduced two
5 notes containing the decisions of the Cabinet as
6 evidence against ITAGAKI, as War Minister. One was
7 the note of the decision of the Cabinet regarding
8 "Thoroughgoing Enforcement of Policies for Urgent
9 Matters Concerning National Mobilization" dated
10 June 23, 1938, sent from the Chief Secretary of the
11 Cabinet to War Minister ITAGAKI;² the other, the
12 "Revision of Plan for Arranging Demand and Supply
13 for Essential Materials for 1938" (the date, address-
14 er and addressee are the same.)³

15 By these the prosecution hoped to establish
16 that by the decision of the Cabinet to acquire es-
17 sential materials the Japanese Government planned
18 a war or wars of aggression, but it has not suc-
19 ceeded.

20 We find it rather difficult to know what
21 the prosecution claims to have established under
22 some Counts relating to ITAGAKI. At the time Japan
23

- 24 1. Redirect-exam of OKADA, Tr. 18,336
25 2. Ex. 856, Tr. 8492
3. Ex. 857, Tr. 8498
4. Ex. 840, Tr. 8491

1 had hoped that the battle of Hsuechow would bring the
2 China Incident to a close. But the predominance of
3 the enemy's strength, as well as the vastness of
4 the operational area, caused Japan to miss a fine
5 chance for making peace, China concentrated large
6 forces in front of Hankow, determined to make a
7 thorough-going resistance, vigorously pushing forward
8 extensive preparations for a counter-attack. If
9 left unchanged, it would have been a matter of course
10 that Japan's troops, less in number and scattered
11 over the vast area, would be exposed to grave danger,
12 and the Supreme Command of the Army was forced to
13 prepare for operations in the Hankow area as there
14 was no alternative but to make another counter-attack
15 upon the enemy and develop a new opportunity for
16 ¹ peace.

17 It was considered and believed that the more
18 fighting power Japan put in China, the weaker would
19 become her defense power against Russia in the North,
20 and the defects in her defenses were expected to
21 become worse and worse in the future. ²

22 Under such circumstances it was quite
23 natural and reasonable that in order to replenish war
24

- 25 1. Ex. 3316, Tr. 30,902
2. Ditto

materials which were consumed rapidly and to make

~~up the defects in her defense against Russia, the~~

1 total power of the nation should be brought into
2 full play. And it was nothing but an emergency and
3 makeshift measure for coping with the situation to
4 adopt a national policy of encouraging export trade --
5 securing foreign exchange -- and putting strict con-
6 trol upon demands from private enterprises. How can
7 it be said that Japan, who made every possible effort
8 to pull herself out of the quagmire -- the spread of
9 the China Incident, was disposed to be aggressive?

10 It is suggested in the beginning of exhibit
11 856 that the fall of Hsuechow caused the war situa-
12 tion to develop further, but prospects of its end
13 being far remote, the whole nation should make up
14 its mind to endure the difficulties. The realization
15 of the national mobilization plan for 1938 became
16 difficult because of the seriously unfavorable balance
17 of foreign trade, and, if left unimproved, the re-
18 plenishment of war materials and the producing power
19 of the nation would be crippled, bringing serious
20 consequences in its wake. Exhibit 857 made it clear
21 that the demands for war materials increased as the
22 war developed so that the amount of war materials,
23 estimated at the beginning of the incident, was not
24
25

1 sufficient for replenishing the mobilized troops with
2 necessary equipment, and much larger demand was ex-
3 pected.

4 (I) As to the matter of closing the British
5 Concession at Tientsin -- about June or July in 1939 --
6 in connection with the settlement of the China Inci-
7 dent, Premier HIRANUMA consulted ITAGAKI about June
8 26 or 27, 1939, saying that as Britain was desirous
9 of having a diplomatic negotiation about the above
10 problem, he wanted to know the opinion of the army,
11 which he thought to be most important, prior to his
12 talk with the Foreign Office. ITAGAKI at once agreed
13 with him and made efforts to bring the negotiation
14 to a successful conclusion, inviting the representa-
15 tives of the authorities on the spot to the negotia-
16 tion so as to leave little difference of opinions be-
17 tween the Central authorities and those on the spot.
18 As the result the negotiation reached a successful
19 conclusion as to the problem of public peace; and as
20 to the question of general principle, too, Britain
21 and Japan made a joint declaration on July 24. Thus
22 it is shown that he made every possible effort to
23 settle the Incident.^{1,2}
24

- 25 1. Ex. 3301, Tr. 30,106
2. Ex. 269, Tr. 3586

The prosecution did not dispute this.

1 ITAGAKI testified that he hoped a forward step would
2 be made in the attempt of rearranging the Japanese-
3 American negotiations by contracting a loan from the
4 United States, with the Pan-Pacific Trading and
5 Navigation Company as leading contractor; in view of
6 the result of the above successful negotiation with
7 Britain, he expected to be able to pave the way for
8 the settlement of the Anglo-Japanese problem, and he
9 endeavored to contract the loan with Mr. HIRANUMA's
10 ardent support since January of that year, extending
11 active help to enterprises in general.¹
12

13 This, also, has not been disputed. Evidence
14 was given that the Navy's plan of holding Hainan Island,
15 presented to the Five Ministers Council on November 25,
16 1938², had been approved by the Council as a necessary
17 temporary measure for pure military purpose to make the
18 blockade effective against China so as to bring the
19 Incident to an end as soon as possible.²
20

21 This has not been disputed.

22 III. Regarding the Triple Negotiations

23 Between Japan, Germany and Italy.

24 The problem of negotiations for strengthening

- 25
1. Ex. 3316; T. 30,313
2. Ex. 612; T. 6731
3. Ex. 3316; T. 30,309

1 the anti-Comintern Pact between Japan, Germany and Italy
2 started when Major General KASAHARA,¹ who had been
3 stationed in Berlin at that time, after bringing Foreign
4 Minister Ribbentrop's proposal to Tokyo, asked the
5 intention of the Japanese military authorities. It
6 was the beginning of August 1938, soon after ITAGAKI's
7 inauguration as War Minister.² In July of the same
8 year, showing a draft as to a mutual conference and
9 an assistance pact between Japan, Germany and Italy,
10 Foreign Minister Ribbentrop requested Military Attache
11 OSHIMA³ to ask the intention of the Japanese Army on
12 this idea. As soon as Major General KASAHARA reached
13 Tokyo, he explained the German proposal to the heads of
14 Army and Navy and to Foreign Minister UGAKI.³ Foreign
15 Minister UGAKI then referred the matter to the Five
16 Ministers Conference late in August of the same year,
17 and decided to send a communication to Germany so as to
18 promptly start the official diplomacy and, on the other
19 hand, waited for the formal proposal from Germany^{4, 5}
20
21 Though the contents of the German proposal at that time
22 are not in evidence, the purport was that when either
23 Japan, Germany or Italy was threatened by a third power,

- 24 1. Ex. 3493, KASAHARA's Affidavit, T. 33,717
25 2. Ex. 3508, OSHIMA's Affidavit, T. 33,908
3. Ex. 3493, KASAHARA's Affidavit, T. 33,718
4. Ex. 3316, ITAGAKI's Affidavit, T. 30,308
5. Ex. 3508, OSHIMA's Affidavit, T. 33,998

1 political aid should be given mutually, and when any of
2 the three powers was attacked, military aid¹ should be
3 given. In the before-mentioned Five Ministers Conference
4 it was decided that Japan might enter into the official
5 diplomatic negotiation provided that some phraseologies
6 would be altered along the line that would make the
7 Soviet Union the main objective and the other third
8 powers the secondary objective, in view of strengthening
9 the anti-Comintern Pact.^{2,3.} And all the amendments
10 had the nature of alleviation, as "mutual aid duty" was
11 altered to "will immediately enter into conference as to
12 mutual aid;2 and below "threat and attack" was added:
13 "which is made without provocation."⁴ This pact was to
14 be of a purely defensive nature, that is to say, it was
15 no more than an extension of the originally existing
16 anti-Comintern Pact. Its principal objective was the
17 Soviet Union and it was so made that it would not
18 create the impression that Britain, France, et al were
19 the objectives. At the same time, it restricted immed-
20 iate and unconditional military aid, making a provision
21 that a conference should be held before entering into an
22 aid and limiting the aid in the case of "other power's
23

24 1. Ex. 3493, KASAHARA's Affidavit (as shown before)

25 2. Ex. 3508, OSHIMA's Affidavit

3. Ex. 2735-A, Prince KONOYE's Note "regarding the
Triple Alliance," T. 24,290

4. Ex. 3514, Army Telegram 235; T. 34117

1 attack without provocation."¹

2 It is obvious that, at the Five Ministers
3 Conference in August 1938, according to the above-
4 mentioned principle, effort was made to alleviate the
5 German proposal considerably, thereby turning the pact
6 into an entirely defensive mutual aid pact with the
7 Soviet Union as its main object along the line of
8 strengthening the anti-Comintern Pact. It was absolute-
9 ly not a fact, at that time, that a pact of large scale
10 was decided upon to be concluded according to the Army's
11 assertion. The quotation of Ambassador Ott's telegram,
12 exhibit 700, is a mistake, because there is a discrep-
13 ancy in date between this problem and the telegram.
14 Moreover, what is "a pact of large scale?" And what
15 sort of relation is there between this problem and the
16 Count? They are absolutely obscure.

17 In the early part of November 1938 the German
18 tentative plan for the pact was shown by Foreign Minister
19 Ribbentrop to Ambassador OSHIMA, who, in turn, reported
20 it to Foreign Minister ARITA.² Then this problem was
21 referred to the Five Ministers Conference to discuss on
22 the 11th of the same month.³ Foreign Minister ARITA
23 dispatched a reply to Ambassador OSHIMA, stating that

24 1. Ex. 3515, Army Telegram 236, T. 34,119
25 2. Ex. 3508, OSHIMA's Affidavit, T. 34,000
3. Ex. 3316, ITAGAMI's Affidavit, T. 30,308

1 this was a splendid plan, with which one could kill
2 three birds with one stone, by making the contribution
3 to the settlement of the China Incident, defense against
4 the soviet Union and to the strengthening of our
5 diplomatic position, and that the Minister would tele-
6 graph to the Ambassador as soon as the concrete counter-
7 measure of the government would be decided. Ambassador
8 OSHIMA received this.¹ However, there was a difficulty
9 in realizing agreement in opinion of the Cabinet members
10 and time passed on, so things ran counter to ITAGAKI's
11 expectation, who wished to make for the quick material-
12 ization of the peace between Japan and China by means
13 of the conclusion of Japan-Germany negotiations.²
14 Thus, the negotiations had not been in progress until
15 January 1939, when the HIRANUMA Cabinet dispatched ITO
16 as envoy to Germany.³

17 Quoting an article in the "Japan Advertiser,"
18 dated 2 October 1938⁴ the prosecution stated that War
19 Minister ITAGAKI sent a congratulatory telegram to
20 Hitler regarding the successful disposition as to the
21 Sudeten problem. However, with regard to such newspaper
22 article, we cannot be responsible. However, if there

- 23
24 1. Ex. 3508, OSHIMA's Affidavit
25 2. Ex. 3316, ITAGAKI's Affidavit
3. Ex. 3494, UAHII, Utsuhiko's Affidavit, T.33,734
4. Ex. 2199, T. 15,745

1 had actually been such fact, it was no more than a
2 ceremonial greeting to the head of Germany which was,
3 at that time, one of the Japanese friendly nations.
4 It is quite obvious that such a thing cannot aid the
5 charges against ITAGAKI.

6 Moreover, with regard to the matter of the end
7 of cooperative relations between Japan and the various
8 organizations of the League of Nations¹ which, on
9 2 November 1938, was considered and decided at the
10 Privy Council, it was brought forward by Foreign Minister
11 and was decided through the investigations and the dis-
12 cussions of the members of Foreign Ministry.² Although
13 it withdrew from the League of Nations several years
14 before, Japan had been doing her best to cooperate with
15 various organizations of the League. However, being
16 influenced by the international situations, the League
17 had gradually become unfriendly to Japan, and finally
18 pitted against it, all along the line. In view of the
19 national prestige of Japan, it was obliged to discontinue
20 the cooperation. This was the reason why Japan discontin-
21 ued the cooperation with the League.^{3,4} With regard to
22
23

- 24 1. Ex. 271 & 2264; T. 30,863
25 2. Ex. 3340, KIDO's Affidavit
3. Ex. 3340, KIDO's Affidavit
4. Ex. 3316, ITAGAKI's Affidavit

1 to the matter of the conclusion of an agreement between
2 Japan and Germany for cultural cooperation, which was
3 referred to the Privy Council on 22 November 1938,¹ the
4 Japanese intention was to conclude the agreement of
5 this sort not only with Germany, but also with other
6 powers so far as circumstances thereafter would permit
7 and, by means of cultural diplomacy, to contribute to
8 the general object of the diplomacy, and it is obvious
9 that it would not bring any direct political influence.
10 The prosecution stated that it was, after all, a
11 political move to conclude a pact with Germany and there-
12 by leading it to the war. However, no one can find
13 anything to support the prosecution's statement by
14 inspecting page 6577 of the transcript. What is
15 stated on this page rather makes clear the fact that,
16 in reply to a committee's (Adviser ISHIZUKA) question
17 to the effect that although the agreement is not
18 directly connected with politics, if there is any doubt
19 to bring political influence, Foreign Minister ARITA
20 affirmed that he did not think it bore any influence
21 upon politics. The above mentioned two matters have
22 nothing to do with the Japanese Germany negotiations
23 regarding the strengthening of the anti-Comintern Pact
24 and are no more than a part of entirely separate

1. Ex. 589

operations. They have nothing to do with any Count.

1
2 In January 1939 the counter-measure of the
3 Japanese Foreign Ministry about the Germany proposal
4 was presented for consideration by the HIRANUMA Cabinet
5 and was slightly altered. The Cabinet made this the
6 plan for reply, and it was decided that a mission headed
7 by ITO would be sent to Europe with this reply. As was
8 acknowledged also by the accused OSHIMA,¹ this plan
9 for reply was as shown in exhibit 2619.

10 The contents of the plan for reply were:

11 CONFERENCE AND AID AGREEMENT
12 BETWEEN JAPAN, ITALY AND GERMANY.

13 Acknowledging the fact that the friendly rela-
14 tions between Japan, Italy and Germany have become still
15 more intimate since the conclusion on 25 November 1936
16 of the pact against the Comintern-International, and
17 believing firmly the fact that the international
18 activities of the Comintern-International would menace
19 the peace of both Europe and Asia, the governments of
20 Japan, Italy and Germany determined to strengthen,
21 according to the spirit of the above-mentioned pact,
22 the defense against the communistic destruction in Europe
23 and Asia and to protect the common interests of the High
24 Contracting Parties and made an agreement as stated below:
25

1. Ex. 3508 OSHIMA's Affidavit; T. 34,002

1 Article One. If one of the High Contracting
2 Parties get into a difficulty owing to the attitude of
3 either a power or several powers that does not or do not
4 take part in this agreement, the High Contracting Parties
5 will immediately hold a conference about the common step
6 that should be taken.

7 Article Two. If one of the High Contracting
8 Parties were threatened without provocation by either
9 a power or several powers that does not or do not take
10 part in this agreement, the other countries of the High
11 Contracting Parties will be under obligation to give
12 political and economical support to the one that is
13 being threatened in order to get rid of the threat.

14 Article Three. If one of the High Contracting
15 Parties were made the object of attack without provoca-
16 tion, by either a power or several powers that does not
17 or do not take part in this agreement, the countries
18 of the High Contracting Parties will be under obligation
19 to give support and aid. The three High Contracting
20 Parties, in such case, will immediately hold conference
21 regarding the necessary steps for the fulfillment of the
22 responsibility.

24 Article Four. The text of this agreement is
25 written in Japanese, Italian and German.

This agreement will be carried out from the

1 very date of signing, and will be available for five
2 years.

3 The High Contracting Parties, in a proper time
4 before the termination of the above-mentioned period,
5 will seek an understanding about the form of future
6 cooperation. In order to testify the above-mentioned
7 fact, the plenipotentiaries who are invested with full
8 powers by each government have hereby signed and sealed.

9 THE PRESIDENT: We think this has been read
10 into the transcript. We do not want you to read
11 documents already in evidence. It is in evidence, of
12 course.

13 MR. MATTICE: Yes, sir. Resuming then at the
14 following page, that is, at page 160 ---

15 THE PRESIDENT: Well, as you have written it,
16 some of the Judges would like you to read it, so read
17 it. Some of the Judges prefer to read it, so read it.

18 MR. MATTICE: Yes, your Honor.
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eMR. MATTICE: SIGNATURE PROTOCOL

1 At the moment of proceeding to the signature
2 of the Agreement concluded this day, each Plenipoten-
3 tiary has agreed as follows:

4 (a) With reference to articles II and III
5 of the Agreement; menace or attack against Manchukuo
6 shall be regarded as menace or attack against Japan in
7 the light of Paragraph 2 of the Protocol concluded
8 between Japan and Manchukuo on September 15th, 1932.

9 (b) With reference to Paragraph 2 of
10 Article IV of the Agreement, the Agreement shall
11 remain in force until the situation necessitating
12 support, assistance or aid ends, if support, assistance
13 or aid based upon Article II to III is still continued
14 at the expiration of the term.

SECRET ADDITIONAL PROTOCOL.

15 At the moment of proceeding to the signature
16 of the Agreement concluded this day, the undersigned
17 plenipotentiaries have agreed regarding the follow-
18 ing.

19 (a) With reference to Articles II and III,
20 authorized officials of the three High Contracting
21 Parties shall deliberate, previously and as soon
22 as possible after the Agreement is formed, as to the
23 existence of every possibility of conflict and as to
24
25

1 the way and the scope, within which the High Contract-
2 ing Parties give their mutual support, assistance,
3 or aid according to the geographical conditions.

4 (b) High Contracting Parties shall be
5 obliged not to conclude an armistice or peace individu-
6 ally in a war they jointly wage.

7 (c) In the case some of the obligations
8 based upon treaties already concluded with third
9 powers are contrary to the provisions of this Agree-
10 ment, High Contracting Parties shall not be restrained
11 by these obligations.

12 (d) The present Secret Additional Protocol
13 shall not be published or transmitted to the third
14 powers without High Contracting Parties' approval.

15 (e) The present Secret Additional Protocol
16 shall remain in force for the same term as the
17 Agreement and the Signature Protocol and they shall
18 be three inseparable parts of a whole.

19
20 DOCUMENT NO. 4

21 Under instruction from the Japanese Govern-
22 ment, I request you to acknowledge that, at present
23 and in the near future, Japan will be able to ful-
24 fill her obligation of supplying assistance, and aid
25 which Japan consented in Article III of the Agreement,
only in the limited scope so far as the military

1 relation is concerned. Details of the military
2 assistance to be given in future according to the
3 circumstances shall be submitted to the deliberation
4 provided in the Secret Protocol.¹

5 That nature of the draft in this negotiations,
6 as its title shows, is consultation and assistance.
7 Its main object is to strengthen the united defense
8 against the destructive operation of the Comintern;
9 with Soviet Russia as its chief object but not any
10 other third power as its object. No intention of
11 world domination can be detected in any of its articles.
12 It is very pacific and harmless. It is an agreement
13 for neutral consultation and assistance, involving
14 no offensive intent. Repeated discussions in the
15 HIRANUMA Cabinet resulted from a difference of views
16 between Japan and Germany concerning the technical
17 problem as to whether a document or a verbal under-
18 standing be presented regarding Japan's reservation
19 that in case the third powers (such as Britain or
20 America) except Russia be regarded as the object,
21 for supplying military assistance would be in accord-
22 ance only with the circumstances, for instance when
23 the said country turned red, its enforcement and its
24 degree would be independently decided according to

25 (1) Ex. 2619 (Draft Agreement to Strengthen
the Anti Communistic Treaty); Tr. 22,546)

the situation, and it would be explained to the outside
1 as an extension of the Anti-Communist Agreement. In
2 other words, they resulted from the fact that while
3 Japan desired a documental reservation, Germany
4 demanded to make it general, eliminating the limita-
5 tion regarding third powers except Russia with an aim
6 of the general and political success, though she was
7 fully aware that Japan could not supply military
8 assistance under present circumstances. 1, 2, 3.

9
10 The HIRANUMA Message of May 5, 1939, frankly
11 explaining Japan's standpoint, asked Germany to under-
12 stand and to make concession.

13 ITAGAKI had Military Affairs Bureau Chief
14 MACHIJIRI request German concession to Military
15 Attache Ott. However, Germany, understanding Japan's
16 allegation that if Germany be attacked by third powers
17 except Russia Japan could not offer any military
18 assistance for her for a while and may stand neutral,
19 did not agree to making this secret understanding an
20 exchange document. While the negotiations remained
21 in a dead-lock, the Non-aggressive Treaty between
22 Germany and Russia was concluded on August 22, conse-
23 quently this negotiation ended. The later Tripartite
24

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- (1. Ex. 3316, ITAGAKI's Affidavit (op. cit.)
 2. Ex. 3301, YAMAWAKI, Kosataka's Affidavit;
Tr. 30,103
 3. Ex. 3308, OSHIMA's Affidavit; Tr. 34,003)

1 Pact was concluded by the different responsible per-
2 sons under an entirely distinct new condition and had
3 no relation with this negotiation. This has already
4 been proved by Foreign Minister MATSUOKA's attitude,¹
5 his explanation at the Imperial Conference on September
6 27, 1940,² and KONOYE's Memoirs concerning the Tri-
7 partite Pact.³

8 ITAGAKI's intentions regarding the negoti-
9 ation between Japan, Germany and Italy were for the
10 purpose of rescuing the Japanese nation from death
11 from suffocation and ending chaos on the Chinese
12 continent, to make Japan's relation with friendly
13 powers closer with formal diplomatic negotiations
14 within the scope which was authorized by the diplomatic
15 right of an independent sovereign state in International
16 Law, to raise Japan's internationally isolated position,
17 to take the chance of its causing the Chinese Govern-
18 ment give up its pro-communistic and anti-Japanese
19 policy, to cause the powers supporting the Chiang
20 regime to turn anti-communistic, to adopt the co-
21 existence and co-prosperity doctrine; and, in the
22 end, to bring the Chinese Incident to an immediate
23 settlement. He firmly believed that considering

- 24 (1. Tr. 35,049
25 2. Tr. 6341
3. Tr. 24,291)

1 Japan's situation at that time, his intention was a
2 right and above-board action from the standpoint of
3 of International law. Particularly because the draft
4 agreement was pacific and harmless, and because the
5 negotiation was discontinued before conclusion as
6 the result of Germany's betrayal. We find in these
7 facts no evidence of an intention to commit crimes
8 or of commission. The prosecution, availing itself
9 of exhibit No. 2214, has adopted what it styles
10 ITAGAKI's declaration. But it was proved that this was
11 the record of ARITA's speech, not ITAGAKI's or KOISO's
12 declaration. The prosecution, however, appears to
13 forget that they so agreed.¹ By the KIDO Diary
14 entry of August 4, 1939, the prosecution suggests that
15 the army's opinion on the Military Agreement caused
16 the threat of ITAGAKI's resignation from the War-
17 Ministership.² But, as the Diary itself has made it
18 clear, they were but rumors, and nothing but groundless
19 hearsays.

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21
22 (1. Defense Attorney Brook's correction at the
23 opening of the KOISO Phase, October 31,
24 1947, Tr. 32,200.
25 2. Ex. 2271, KIDO Diary, 24 January 1947,
Tr. 16,237)

1 It has been proved that the fact was that
2 ITAGAKI faithfully followed the government's adopted
3 (1)
4 policy, especially as he, sending the telegram about
5 May 1939, to the effect that he had no intention of
6 overthrowing the then cabinet, admonished military
7 attache to Germany, KAWABE. (2) The prosecution has pro-
8 duced the HAKADA-SAIONJI Memoirs as the last resort
9 to accuse falsely that, against the Emperor's desire
10 to have only Russia as the object of the agreement
11 in this negotiation, ITAGAKI, supporting consistently
12 negotiations by OSHIMA and SHIRATORI, screened both
13 ambassadors' wayward conduct from the Emperor's censure,
14 and struggled bitterly with the power opposing the
15 agreement with Germany in the area inside Shanghaiwan.
16 However, the credibility of these memoirs is doubtful
17 and such second and third degree hearsay does not con-
18 tribute to a fair trial.

19 (3)
20 The Ott telegram dated September 6, 1939
21 shows that ITAGAKI worked hard to strengthen the rela-
22 tions between Japan and Germany, but it definitely
23 recognized that he failed to do so in consequence of
24 the change in European situation. Ambassadors OSHIMA
25 and SHIRATORI fulfilled respectively their duties by

- (1) Ex. 3301, YAMAWAKI's Affidavit, T. 30,106
(2) Ex. 3495, KAWABE's Affidavit, T. 23,770
(3) Ex. 2198, the Ott telegram, T. 15,744

1 using their authority as ambassadors, qualified by
2 international law in conformity to Japan's national
3 law, and they never acted violating the national law
4 or against the ideal of international law.

5 In short, ITAGAKI's conduct in this negotia-
6 tion of 1938-1939 was the faithful fulfillment of his
7 official responsibility within the scope of the proper
8 exercise of national rights, with no malice or breach
9 of responsibility. The content of this negotiations,
10 as repeatedly mentioned, involves nothing to be crit-
11 icized from the international diplomatic viewpoint.
12 Moreover, this negotiation ended before any agreement
13 was concluded. Accordingly, Counts 5, 17, 23, 29 as
14 to ITAGAKI are not sustained.

15 IV. The Settlement of the Chengkufeng and
16 Nomonhan Affairs.

17 The prosecution alleges in Counts 1, 4, 5, 17,
18 25, 26, 35, 36, 44, 51 and 52, together with Appendix
19 A, Section 8, Japan's aggression on the Soviet Union
20 and is prosecuting ITAGAKI with the charge of his
21 being concerned with all the counts mentioned above.
22 and in the phase of the Soviet Union beginning with
23 (1)
24 the opening statement and in its supplement, the prose-
25 cutor first asserts that the conclusion of the

(1) Prosecutor Golunski's opening statement in the
phase of the Soviet Union, Oct. 8, 1946, T. 7,213

1 Anti-Comintern Pact constituted, from a political
2 point of view, the crime of aggression and, secondly,
3 alleges the Changkufeng (Lake Khassan) affair in 1938,
4 the Nomonhan (the Khalkin-Gol River) affair in 1939,
5 and plots intended for military aggression against the
6 Soviet Union (the special maneuvers of the Kwantung
7 Army, etc.) in other years, as constituting aggression
8 from military viewpoint.

9 With the Anti-Comintern Pact concluded on
10 November 25, 1936, ITAGAKI had no connection whatever.
11 As at that time he was in Manchuria as Chief of Staff
12 of the Kwantung Army he occupied no responsible posi-
13 tion concerning the decision of our national plan
14 nor had authority of any sort with regard to the con-
15 clusion of the pact.

16 And also in operating the plan of the special
17 maneuvers the Kwantung Army made he was not a partici-
18 pant. When the reinforcement of the Japanese military
19 forces in Manchuria, lasting until October from July
20 1941, was put into practice, he was in Korea (Seoul)
21 as Commander of the Japanese Army in Korea. (2) The
22 above-mentioned maneuvers were intended for reinforcing
23 the Kwantung Army in order to meet the need of strength-
24 ening warlike preparations against the Soviet Union,
25

(1) Ex. 110, ITAGAKI's career, T. 716

(2) Ex. 110, ITAGAKI's career, T. 716

1 and orders from the Japanese General Headquarters
2 being dispatched to the Commander of the Kwantung Army,
3 the Commander of the Japanese Army in Korea had no
4 connection therewith and was not invested with any
5 degree of authority to interfere therein. (1)

6 Let us take up the Changkufeng and the Nomon-
7 han affairs.

8 THE PRESIDENT: We will recess for fifteen
9 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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25 (1. Ex. 3576, TANAKI, Shinichi's Affidavit,
May 29, 1947; Tr. 23,329)

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1 THE PRESIDENT: We have decided not to sit on
2 Army Day, by a majority.

3 Mr. Mattice.

4 MR. MATTICE: Reading now page 169:

5 (A) The Changkufeng Incident.

6 The circumstances in which Japan was placed at
7 the outbreak of the Changkufeng affair in July, 1933,
8 was as follows: In consequence that she failed in
9 seizing the opportunity of settling the affair peace-
10 fully due to the reason that the battle of Hsuchow by
11 the victory of which the Japanese Supreme Command had
12 expected to find the key to the solution of the China
13 Incident fell short of attaining her object of operations
14 and ended in missing a prize ready at hand owing to a
15 vast gulf between her strength and that of China and the
16 spaciousness of the battlefield, Japan was driven to such
17 a plight as to be compelled to remove her forces for the
18 preparations made necessary to venture the Hankow mili-
19 tary operation in order that she might find out the way
20 of making peace with riddance of an aggravated menace
21 to which the armed forces of Japan were exposed because
22 of the dispersed disposition of her small strength
23 against the overwhelming odds China concentrated upon
24 the front of Hankow and of a vociferous cry China dared
25 to raise for thoroughgoing resistance to Japan. It was,

1 therefore, everything for Japan to maintain her relations
 2 with the Soviet Union in quietude and tranquility. It
 3 would be beyond reason that Japan under such conditions
 4 dare to open hostilities with the Soviet Union, and it
 5 must be the least possible thing, too. Japan was
 6 astonished at the outbreak of this affair. (1)(2)

7 Really this affair had its origin in a strife
 8 about the position of the frontier caused by the
 9 ambiguity of the treaty on the frontier line which was
 10 not clear and about which some sort of strife was going
 11 on. (3)(4)(5) It was occasioned by the fact that on July
 12 11, 1938, some forty Soviet soldiers trespassed upon the
 13 territory of Manchukuo in the vicinity of Chanchi (a
 14 place which belongs to the territory of Manchukuo and
 15 even the Soviet Union so admits) and occupying Changkuferg
 16 started the construction of positions. (6)(7)(8) The
 17 military police sent out by Japan and Manchuria were
 18 shot at, one of them being killed while the rest were
 19 captured. (9)(10) (July 15)

20 ((1) Ex. 3316, ITAGAKI's affidavit, 8 October 1947, T.
 21 30304. (2) Ex. 2622, HASHIMOTO, Gun, affidavit, 20 May
 22 1947, T. 22586. (3) Ex. 756, the record of the confer-
 23 ence between SHIGEMITSU and Litvinov, T. 7760.
 24 (4) Ex. 2626, the Peking Supplementary Treaty, 16 Nov.
 25 1860, T. 22696. (5) Ex. 2627, the protocol on the
 eastern frontier of Hunchun, T. 22698. (6) Ex. 2622,
 HASHIMOTO, Gun, affidavit, T. 22586. (7) Ex. 2628,
 TANAKA, Ryukichi, affidavit, T. 2271. (8) Ex. 2633,
 excerpts from Litvinov's diary, T. 22803. (9) Ex. 753
 (read) T. 22819. (10) Ex. 2642, MIURA, Waichi, affidavit,
 T. 22899.)

1 Foreign Minister UGAKI, on July 14, prior to
2 dispatching telegraphic instructions to Deputy Amba-
3 sador NISHI at the Soviet Union requiring the Soviet
4 forces to make its rapid withdrawal tried to settle the
5 affair by recouring to diplomatic negotiations. (1)

6 Deputy Ambassador NISHI visited Deputy Minister
7 of the Foreign Affairs of the Soviet Union Stomeniyakov
8 at noon on the following day, the 15th, and delivered
9 the demand to him. (2)(3)

10 Ambassador SHIGEMITSU protested also on July
11 20 over one week before the serious encounter of July
12 29th. (4)

13 But at the actual place Soviet forces had re-
14 inforced since July 20, and in the neighborhood of
15 Manchuli, Suifen-ho and Hulin, they repeated transgres-
16 sion upon the territory of Manchukuo by land and by air,
17 and so the Japanese Government dispatched telegraphic
18 instructions to her Ambassador at the Soviet Union. (5)

19 The Japanese Supreme Command regarded it as
20 a petty strife of which the frontier between the Soviet
21 Union and Manchukuo had hitherto frequently been the
22 scene, when it received the first news from the actual
23 place, but because, on the one hand, the Japanese Army
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25 ((1) Ex. 2647-A, the returns of the Foreign Office, T.
22923. (2) May 23, 1947, T. 22923. (3) Ex. 753, excerpt
from Litvinov's diary, T. 7760. (4) Ex. 754 already
referred to. (5) Ex. 2647-A already referred to.)

1 in Korea was not experienced in this sort of affair and
2 on the other hand the Supreme Command was most unwilling
3 to its expansion which might be made by any chance just
4 at the time when preparations for the Wuchang-Hankow
5 operations were being attended to, it decided to lead
6 the Japanese Army in Korea to take a cautious attitude
7 and also fixed the principle of settling the affair by
8 transferring it to formal diplomatic negotiations and to
9 the Army in Korea dispatched a telegram to that effect.
10 At the same time the Supreme Command took the course of
11 offering through the War Ministry to the Foreign Office
12 that negotiations therewith should be opened. In
13 addition, the authorities instructed General NAKAMURA,
14 Kotaro, in that principle prior to start for his new
15 post as Commander of the Japanese Army in Korea, while,
16 once again, Major-General HASHIMOTO, Gun, the Chief in
17 the First Department of the General Staff has a talk
18 with the General about the foregoing when the former
19 saw the latter off at Haneda Airdrome on the morning of
20 his departure. (1)

21
22 ITAGAKI, as the War Minister, wholeheartedly
23 observing the Government's principle of not expanding
24 the affair and looking for a settlement which should be
25 reached by means of diplomatic negotiations, strove for

((1) Ex. 2622, HASHIMOTO's affidavit, T. 22587; Ex. 3340,
KIDO's affidavit, T. 30854.)

1 settling rapidly and locally in complete agreement with
2 the General Staff. (1)

3 Foreign Minister UGAKI affirmed that ITAGAKI
4 was faithful in observing the Government's principle of
5 localizing the affair and aided the Government in
6 settling the affair rapidly and peacefully. (2)

7 When, on July 21, ITAGAKI reported to his
8 Majesty on matters under his jurisdiction concerning
9 this affair, His Majesty asking him if his report was
10 not somewhat different from that which Foreign Minister
11 UGAKI submitted to the Throne, was pleased to postpone
12 his decision until ITAGAKI could investigate. The
13 prosecution intimated that ITAGAKI was severely
14 reprimanded by His Majesty, when he reported that UGAKI
15 approved of employing force of arms against the Soviet
16 Union and introduced to support it "the recollections of
17 HARADA and SAIONJI." Not only is this hearsay, but
18 Foreign Minister UGAKI attested that he had not heard of
19 such a thing. (3)

20
21 ITAGAKI himself knows this matter quite well.
22 There was a discrepancy between the report which was

- 23 ((1) Ex. 3316, ITAGAKI's affidavit, already referred to
24 (2) Ex. 2715, UGAKI, Kazushige, affidavit, T. 23870.
25 (3) Cross-examination upon UGAKI, January 10, 1947,
T. 23889.)

1 submitted to the Emperor by UGAKI, the Foreign Minister,
2 and that of ITAGAKI, in respect to preparations of the
3 Army to meet the situation, wherein, if, by any chance,
4 the Soviet forces might cross the boundary, taking an
5 aggressive attitude in connection with the Changkufeng
6 Incident. As the results of the investigation made by
7 Premier KONOYE, it became explicit that there had been
8 some misunderstanding on the part of Foreign Minister
9 UGAKI. Consequently, after Premier KONOYE presented an
10 explanation to the Throne, ITAGAKI was again granted an
11 audience by the Emperor and received the Imperial
12 sanction. (1)

13 The Japanese High Command, in view of the slow
14 progress of the diplomatic negotiations, fearing the
15 unexpected enlargement of the conflict might ensue, both
16 sides facing each other on the spot, decided to recall
17 the troops which the Chosen Army dispatched for rein-
18 forcement of the boundary guard and to watch quietly
19 the development of the situation. Accordingly, such an
20 order was issued on July 26. (2)

21 No sooner had the Japanese troops begun to
22 withdraw (3) than the Soviet troops penetrated into the
23 territory of Manchuria at 9:30 a.m., July 29, crossing
24

25 ((1) Direct Examination of ITAGAKI, Oct. 10, 1947,
T. 30521. (2) Ex. 2622, HASHIMOTO, Gun, affidavit,
T. 22588. (3) Ex. 2628, TANAKA, Ryukichi, affidavit
T. 22716.)

1 over the boundary line north of Changkufeng and south
2 of Shatsaofeng, which the Soviet Union alleged to have
3 been fixed by agreement, and set about to build fortifi-
4 cations. Whereupon, the Japanese forces drove back
5 these Soviet troops from there and then withdrew as far
6 as the western hill in order to avoid any further
7 clashes. The Soviet troops, having seen the weak
8 attitude of the Japanese forces, attacked them under
9 cover of tanks. Such being the state of things, the
10 Japanese forces engaged in battle reluctantly for self-
11 defense. (1)

12 After that, Soviet troops, until the conclusion
13 of the agreement, the highest peak of activities being
14 August 2, using long range cannon, even using airplanes,
15 bombed far into the interior regions of Korea. But,
16 the Japanese troops took such method as to repel the
17 enemy wherever they made assault, never transgressed the
18 boundary line and sticking to the defense line. In the
19 face of the daily increase of damages, especially after
20 the request for permission to use airplanes by the
21 Chosen Army had been turned down by the Central Author-
22 ities, the Japanese Army, fighting an unfavorable
23 battle, waited patiently the outcome of the diplomatic
24 negotiations. (2)(3)

25 ((1) Ex. 2647-A as shown above, T. 22932. (2) Ex. 2647-A
as shown above. (3) Ex. 2622 as shown above.)

1 During this period formal diplomatic negoti-
2 ations between SHIGEMITSU and Litvinov were carried on
3 several times and finally the agreement of truce was
4 signed August 11. ⁽¹⁾ Thus the affair came to a settle-
5 ment.

6 Such is the truth of the Changkufeng Incident
7 as testified by all positive evidence. Though the
8 prosecution witness Licutenant Colonel Tereskin's
9 testimony ⁽²⁾ can scarcely be said to be substantially
10 important and relevant to this incident, for he only
11 took command of the battle of July 30 and 31 and soon
12 retired from the front line on account of an injury,
13 though he admitted that the Soviet troops had built
14 fortifications at Changkufeng on July 11. ⁽³⁾

15 The witness Chernopyatko's testimony was the
16 same. ⁽⁴⁾ Vartarmin's testimony was likewise the same. ⁽⁵⁾

17 Exhibit 753 is a report made by the Border
18 Defense Bureau of the Soviet People's Home Commissariate
19 on March 21, 1946. We call to the Court's attention
20 that this report was not made at the time of the inci-
21 dent but worked out quite recently in consideration of

22 ((1) Ex. 2647-A as shown above.

23 (2) Direct Examination of Tereskin, October 5, 1946,
T. 7782.

24 (3) Cross-examination of Tereskin, October 15, 1946,
T. 7802.

25 (4) Ex. 755, October 15, 1946, T. 7809.

(5) Ex. 756, October 15, 1946, T. 7815.)

1 this trial. It is clear that this Changkufeng Incident
2 was not instigated by Japan with aggressive intentions,
3 but the fact was just the reverse. Japan endeavored to
4 settle the incident by means of diplomatic negotiations,
5 at the same time tried earnestly to prevent its enlarge-
6 ment, localizing it on the spot at the expense of great
7 damages and sacrifice. ITAGAKI faithfully followed the
8 aforesaid policy of the Japanese Government and tried
9 his best to settle it. It is, therefore, emphasized
10 that this case shall not be taken up in the Indictment,
11 therefore, the alleged Counts of 17, 25, 35, 44, and 52
12 are groundless.

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(B) The Nomorhen Incident.

1 Like the Chankufeng Incident, this incident
2 was one arising from an inaccuracy of the boundary line
3 between countries. Japan, at that time being absorbed
4 in solving the China Incident, she wanted nothing but
5 peace with the Soviet Union. Consequently, Japan,
6 maintaining a passive attitude against the Soviet
7 Union all the time and sustaining great damage and
8 disadvantage, fought the defensive battle against the
9 challenge of the Soviet Union, as an independent state,
10 as well as on the ground of common defense of Japan
11 and Manchukuo. Besides, this incident was settled
12 September 13, 1939, by the regular diplomatic
13 negotiations and handed over to the Common Committee
14 of both countries, which finally fixed the boundary
15 line after two years study. Thus, the whole matter
16 came to a close. ITAGAKI, the then War Minister,
17 consulting with the Supreme Command and obtaining
18 the consent of the Cabinet, endeavored to settle
19 the incident as quickly as possible maintaining
20 the Kwantung Army's policy of localization on defense
21 line.
22 (1)
23

24 It seems that the prosecution assumed that
25 the Kwantung Army had already in mind this military

(1) Ex. 3316, ITAGAKI's affidavit, October 8, 1947;
P. 30, 315.

1 operation three years before the happening of this
2 incident, and that the objective of such operation
3 had been to cut the main line of the Siberian Railway
4 so that the Far East might be kept out of the Soviet
5 Union, referring to Ex. 761-A, in which ITAGAKI was
6 quoted as having told ARITA to that effect on March
7 28, 1936. That is really an incomprehensible assertion.
8 As the map will clearly show, the region where this
9 incident occurred is a remote prairie pasture along
10 the Harhigol River. It may be of some worth to the
11 natives, but it is beyond our comprehension how the
12 securing of this region had any bearing on the cutting
13 of the main line of the Siberian Railway.

14 Referring to the interrogation of the
15 accused HIRANUMA, dated April 24, 1946, the prosecution
16 assumed that ITAGAKI had again stated his views that
17 the combat should have been continued against Premier
18 HIRANUMA's intentions. ⁽¹⁾ Nevertheless, the President
19 of this Tribunal ruled, sustained by a majority of
20 the Members, that the interrogation of one of the
21 accused may be used favorably or unfavorably in
22 respect to that accused only. But, that as to others,
23 it may not be considered. ⁽²⁾ Furthermore, when

25 (1) Ex. 768-A, Interrogation of HIRANUMA, T. 7853-6.

(2) June 17, 1948; T. 24,572.

Mr. Tavenner made a proposal on August 13, 1947,
1 that the foregoing rule be changed, the President
2 again ruled that an accused statement, made after the
3 war's end, in an interrogation, may only be admitted
4 against him who made it. (3) In pointing out the fore-
5 going fact we conclude that the statement of the
6 prosecution is supported by no proper evidence. In
7 addition, the prosecution produced exhibit 274 and
8 assumed that the Japanese and Mongolian Armies had
9 been strengthened and expanded at the same time.
10 This exhibit made clear the basic principles of
11 establishing the Mongolian Army and shows the
12 fundamental principles of training and administering
13 the Mongolian Army, thus making it alert and able
14 to fulfill its duty or defense of its country.

16 We cannot see that there exists any relation
17 between this exhibit and the matter dealt with.
18 Besides, ITAGAKI had no connection with it.

19 In the first place the Nomohan Incident
20 was only one instance of those frontier disputes
21 which were apt to happen concerning obscure boundaries
22 everywhere in the world. The fact that the greater
23 part of the evidences offered to this Court regarding
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25 (3) T. 25,662

(1) (2) (3)

this matter, were maps of the region

1 clearly show the nature of the disputes. Moreover,
2 the responsibilities of the incident were evidently
3 on the side of the Outer Mongolia for it was the Outer
4 Mongolian Army which crossed the River Halhar on
5 May 12, 1939, which was believed to be the Manchurian
6 and Mongolian boundary and attacked the Manchurian
7 Army. The Kwantung Army as a matter of duty dispatched
8 twice a small branch force to expel the invading
9 army but as soon as its task had been accomplished,
10 the detached force returned every time to their
11 original station, taking every precaution to prevent
12 further enlargement. At first the matter was left
13 entirely to the hand of the Kwantung Army, but on
14 May 31, in the General Staff Office, was decided
15 the policy to localize it, keeping an eye on the
16 development of the incident.
17

18 From June 15 on, however, considerable
19 numbers of the Outer Mongolian Army, equipped with
20 guns and tanks, invaded, and Russian airplanes came to
21 bomb. Thus their attacks gradually became intense.
22 As it was a definite policy of the Supreme Command
23 not to make air operation in the conflict the Kwantung
24

25 (1) Ex. 2650, YANO's affidavit, May 26, 1947; T. 22,994.

(2) Ex. 2655, TAKUSHIRO, Hattori's affidavit, May 26,
1947; T. 23,014.

(3) Ex. 2656, OGISU's affidavit, May 26, 1947; T. 23,029.

1 Army had to suffer serious damages, and was forced,
2 finally, to reciprocate. On August 30, the Vice-
3 Chief of the General Staff, NAKAJIMA, brought the
4 order to the Kwantung Army not to enlarge the operation
5 in the area of Nomonhan, but to bring it to a close
6 as speedily as possible. And, on the 3rd of September,
7 the Vice-Chief of the General Staff, was again dispatched
8 to Hsinking to hand over the order to the Commander
9 of the Kwantung Army. The contents of the order was
10 that "the Imperial Headquarters is intending settle-
11 ment of the incident and offensive operations should
12 cease." For the purpose of implementing the order,
13 UEDA, the Commander of the Kwantung Army was relieved
14 of his post. He found himself in a very difficult
15 position, to have to stop the operational movements
16 of the ~~army~~ ^{army} which had already been on the move
17 and a new commander was appointed who was expected
18 to carry out the order. (1)

19 On the other hand the diplomatic negotiation
20 was carried out in Moscow between TOGO and Molotov
21 and on September 16, an agreement of truce was signed
22 and the hostilities ended. (1) (2)

23 (1) Ex. 2622, HASHIMOTO, Gun's affidavit, May 22,
24 1947; T. 22,595.

25 (1) Ex. 2659, OIA, Saburo's affidavit, May 27, 1947;
T. 23,098.

(2) Ex. 2661-A, Nomonhan Agreement of Truce; T. 23,142.

1 As stated, just like the Changkufeng Incident,
2 it was not the Japanese that opened fire with the
3 intention of aggression, but it was that the Outer
4 Mongolian Army (and the Russian Army joined later),
5 crossed the boundary and initiated the offensive
6 attack. Japan, under the heavy burden of settling
7 the China Incident, sincerely wished the peace of the
8 northern area, was bent on quick solution of the
9 matter, localizing it, avoiding its further development.
10 Thus, she intended the voluntary settlement, even
11 at the expense of great sacrifices. It is endorsed
12 by the fact that the damages sustained by the Kwantung
13 Army were far greater than those sustained by their
14 opponents. We wish to call the attention of the
15 Court to the fact that as the result of the formal
16 diplomatic negotiation between the two countries, the
17 agreement was reached and settlement of the boundary
18 was realized by the work of the joint committee
19 extending through two years. And, thus this matter
20 was fait accompli. This matter should have been omitted
21 from the Indictment and, accordingly, the Counts
22 against ITAGAKI, numbers 17, 26, 36, 51, and 52, have not
23 been sustained.
24

25 At this point, if the Tribunal please, Mr.
SASAGAWA will read.

THE PRESIDENT: Mr. SASAGAWA.

MR. SASAGAWA: CHAPTER III

ITAGAKI as Chief of Staff in China.

ITAGAKI was in an easy position after the collapse of the HIRANUMA Cabinet. But as soon as the General Headquarters of the dispatched Army to China had been organized, he went to Nanking, being ordered to become the Chief of Staff, under the Commander in Chief, NISHIO, and he held this post until July 7, 1941. During this period he tried in every way to bring about promptly the all-rounded peace between Japan and China, which, though it was his ardent desire, he had not been able to realize during his tenure of office as War Minister. He now devoted his energy to it, according to the changing circumstances on the spot. (1) During the period of his said office, the military movements were limited to supplementary operations for the purpose of enforcing the blockade of the replenishing route to Chungking, and he was chiefly engaged in maintaining the occupied area. Public security and peace were his chief concerns. The cooperation with the Wang Regime was wholly left in the hands of the Ambassador ABE. It was an earnest desire of the Army that the Nanking Government would

(1) Ex. 3316, ITAGAKI's affidavit, October 8, 1947;
T. 30,317.

1 finally join the Chungking Regime, though the Army
2 supported the Wang Peace and Salvation movement. This
3 is made evident by the fact that in 1940, supporting
4 most earnestly the peace negotiation with Chiang
5 Kai-shek through the mediation of Sung Tzu-liang,
6 the younger brother of Sung Tzu-chieh, ITAGAKI tried
7 to have an interview with Chiang Kai-shek in Changsha. (2) (3)

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24 (2) Ex. 3316, ITAGAKI's affidavit, (as shown above).
25 (3) Ex. 3305, OKADA, Yoshimasa's affidavit, October
6, 1947; T. 30,151.

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1 Also it was proved by the fact that he used
2 endeavored to obtain the mediation of the President
3 of the United States,^{1.} with the help of Dr. Stuard,
4 President of Peiping University.

5 We wish to call attention to the fact that
6 it was proved that a troop of the South China expe-
7 ditionary forces, sent to North Indo-China under an
8 order of the Imperial Headquarters, dated July 5,
9 1940, had been under direct command of the Imperial
10 Headquarters, completely severed from the China
11 Expeditionary forces to which ITAGAKI belonged and
12 consequently he had nothing to do with that troop
13 movement into North Indo-China.^{2. 3.}

14 The prosecution merely said that when the
15 China Expeditionary Forces headquarters was organized,
16 ITAGAKI was appointed its Chief of Staff and he kept
17 on carrying out his former plan even after his appoint-
18 ment. But they did not cite concretely any offenses
19 committed by him.

20
21 The period between July 1941 and September
22 1945, when ITAGAKI was Commander in Chief of the
23 Korean Army and of the 7th Area Army.

- 24 1. Ex. 3316, ITAGAKI's affidavit, T. 30319.
25 2. Ex. 3316, (as shown above).
3. Ex. 3306-A, SAWADA's affidavit, T. 30157.

1 1. In the argument concerning the accused
2 ITAGAKI, the prosecution asserted in paragraph 55,
3 that count 1 was substantiated by paragraphs 1-54,
4 which meant the whole of its surmation. We do not
5 see any necessity of attempting to answer such a
6 vague and omnibus assertion. They also said that
7 counts 29 to 34 were substantiated by paragraphs
8 53 and 54. These two paragraphs discuss matters
9 concerning ITAGAKI after his appointment as the
10 Commander in Chief of the Korean Army in 1941.

11 In reference to count 1 the prosecution
12 said:

13 "In that position he seemed to be less
14 active, but judging from his opinions, ideas and
15 schemings in the past, he was certainly not free
16 from the responsibility for the outbreak of the
17 Pacific War, which in every respect was an outcome
18 of the overall conspiracy in which ITAGAKI had played
19 a most active part."

20 But where are his opinions, ideas, and
21 schemings, which prove his participation in any con-
22 spiracy which brought about the outbreak of the
23 Pacific War? His participation in such over-all
24 conspiracy has not been shown. On the contrary, we
25 have established many instances of his efforts to

bring about peace in the Orient.

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2. Next the prosecution asserted that counts 29 to 34 (waging war against the United States, the Philippines, the British Commonwealth, the Netherlands, France and Thailand) were substantiated by the said two paragraphs. However, there is nothing stated in those paragraphs which shows the guilt of ITAGAKI as a wager of war of aggression against those countries. Do they mean to say that, simply because the Pacific War broke out while he was Commander in Chief of the Korean Army? ITAGAKI testified that the Korean Army was on a peace-time footing until February 1945.¹ Apart from this fact of his being the Commander of the Korean Army, there is no evidence sustaining these charges. We, therefore, say that ITAGAKI is not guilty of the charges in counts 29 to 34.

3. Next, the prosecution says that counts 45 to 47 were substantiated by paragraphs 53 and 54. Counts 45 to 47 related to an attack on Nanking (12 December 1937), on Canton (21 October 1938), and on Hankow (27 October 1938), respectively, and have nothing to do with the period covered by paragraphs 53 and 54 of their summation.

1. T. 30321.

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1. T. 30321.

1 4. They do not charge ITAGAKI under
2 count 54 and count 55 for the period of the Pacific
3 War, but refer to evidence concerning conventional
4 war crimes and crimes against peace in their general
5 and individual summation for this period. The prose-
6 cution says that by the general summation they do not
7 propose to link the individual accused with the con-
8 mission of or other responsibility but we feel it is
9 necessary to deal in detail with all evidence referred
10 to by the prosecution, and by both their and the
11 defense evidence we shall make it clear that ITAGAKI
12 has not committed, in law or in fact, any of the
13 crimes charged in counts 54 and 55.

14 5. The defendant General ITAGAKI was the
15 Commander in Chief of the Korean Army for the period
16 of 1942 and April 1945. The prosecution said, in the
17 paragraph J-14 of their general summation on POW,
18 that some POW's were punished by the POW Camp Com-
19 mander for informing untruthfully to the representa-
20 tive of the International Red Cross in 1943. They
21 expressed their regret to the Red Cross representative
22 in 1944 for not thanking the Camp Commander in the
23 previous year. That they did this because they feared
24 reprisal if they did not express their gratitude.
25 Are we to believe that officers of Great Britain would

1 stoop so low as to express gratitude on behalf of
2 several hundred compatriots to a third person, if not
3 true, fearing that they might be punished by a few
4 days' confinement if they did not?

5 There is no evidence to show what would
6 have happened to them if they did not express their
7 gratitude to the Red Cross representative. We can
8 therefore assume with stronger conviction that these
9 men felt really thankful for the treatment of the
10 commander that their gratitude did come out of their
11 hearts.

12 The witness IHARA^{1.} and the reports of the
13 representative of the Red Cross stated clearly the
14 actual conditions of the various camps in Korea and,
15 beyond doubt, they were better than any other camps.
16 Five months have elapsed since this evidence was
17 introduced and the prosecution has produced only one
18 exhibit^{3.} in rebuttal, which was an affidavit of a
19 soldier who claimed to know all important events
20 which happened in the POW camps in Korea. The gist of
21 the affidavit was that he heard that the list of
22 complaints compiled by the prisoners was not received
23

- 24 1. Ex. 3307, T. 30163.
25 2. Ex. 3308, 3309, 3310.
3. Ex. 3844, T. 38167.

by the representative.

1 Not a word was uttered to show what they
2 suffered from and what their complaints were about.
3 We submit that their complaints must have been very
4 unreasonable ones.
5

6 6. In paragraph J-21 the prosecution
7 referred to evidence showing that the POW and civilian
8 internees suffered a great deal owing to the lack
9 of food and medicine in Singapore, Java, Sumatra,
10 Borneo and other places under the jurisdiction of
11 the 7th Area Army.

12 ITAGAKI was Commander in Chief of the 7th
13 Area Army from 21st of April 1945 to the end of war.

14 We shall argue fully later on the fact that
15 the 7th Area Army had only limited direct power over
16 prisoners of war in the Singapore Area. But here we
17 say that ITAGAKI had control of POW's only in the
18 Singapore area so we refrain from dealing with exhibits
19 regarding Java, Sumatra and Borneo.
20

21 These areas, however, were suffering terribly
22 from the difficulty of communication and of obtaining
23 foodstuffs and medicines for the use of the soldiers
24 and natives owing to the continued attack by the Allied
25 Forces from sea and air on the Japanese communication
lines. It is quite understandable that those in

1 authority preserved the stock of these necessities
2 as much as possible since they did not know how long
3 this state of siege would continue.

4 With regard to the exhibits referred to by
5 the prosecution concerning the Singapore area the
6 most of them concern periods prior to May 1945. If
7 we limit them to the period later than April 1945 we
8 find there are nothing but complaints of shortage of
9 supply of food and medical care. There was no evidence
10 of maltreatment or atrocities. The prosecution
11 accused the defendant about the fact that much food
12 and medicine were kept in stock together with what
13 the Japanese Army obtained from the British Army.
14 But self-preservation is the law of nature. The
15 Japanese Army did not know how long the war would
16 last and they could not know when the state of siege
17 would be lifted. They could neither tell how soon
18 food and other necessities would reach them even if
19 the tide of war changed. Under such circumstances
20 it was natural and necessary for those who were
21 responsible to sustain the lives of hundreds of
22 thousands including the prisoners of war, to conserve
23 the supply by minimizing the consumption to the utmost,
24 which of course lowered the living conditions.
25

This was based on the law of nature which is

1 superior even to the international conventions.
2 It was clear from the testimony of the witnesses
3 HAZEYAMA, AYABE, and SAITO^{1.} that the rations of
4 food and other things to the POWs were similar to
5 the Japanese soldiers.

6 In fact it is in evidence that ITAGAKI did
7 increase the ration of food to the prisoners of war
8 to the same level as the Japanese soldiers, even
9 under the most strained conditions.

10 7. In paragraphs J-122 VII and J-122-A-11,
11 the prosecution charged the defendant with a breach
12 of the Hague and Geneva Conventions by referring to
13 the report made in the name of ITAGAKI to TOJO regard-
14 ing the regulations of the POW Camps in Korea^{2.} and
15 quoted the passage that the prisoners would be used
16 for industrial development and military labor. But
17 they failed to show any evidence of the Korean Army
18 actually using the POWs for labor directly connected
19 with operation.

20 The prosecution also referred to the portion
21 where the report says that NCO and above should be
22 guided to work voluntarily, and assured that it

23 1. Ex. 3311, 3312, 3313; T. 30198, 30210, 30221, and
24 30231.

25 2. Ex. 1976.

1 meant to make matters so bad that they would eventually
2 work voluntarily. This is such a twisting assumption
3 that it is not worth arguing on our part. They also
4 referred the passage about labor for air field. But
5 there seems to be no evidence of actual use of the
6 POWs in the air field. No evidence was produced to
7 prove such fact.

8 The prosecution have collected a vast amount
9 of evidence about actual atrocities committed by the
10 Japanese Army from all over the areas which were under
11 their control. But with regards to Korea they only
12 produced documents which were made in the name of
13 ITAGAKI by his staff officers, and picked up sentences
14 here and there which appeared to be in breach of
15 conventions. These sentences may appear to be in
16 breach, but where are the facts of breach? No evidence
17 of any facts of breach of conventions were proved in
18 this court.

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20 8. In the paragraph J-123-ii, the prosecu-
21 tion referred to the telegram sent from the Chief of
22 Staff of the Korean Army to the Vice-Minister of War,^{1.}
23 the report sent to the War Minister TOJO in the name
24 of ITAGAKI,^{2.} and the report on the reaction of the

25 1. Ex. 1973.
2. Ditto.

1 general public to the internment of British prisoners
2 of war in Korea issued in the name of the Chief of
3 Staff IHARA to the Vice-Minister of War KIMURA as
4 evidence of breach of conventions which prohibit
5 putting prisoners of war to insult or to the curiosity
6 of the public. The prosecution was again relying on
7 documents issued by the Japanese Army containing
8 some language which if carried out may have produced
9 insult or put the POW's to public curiosity, but
10 ITAGAKI neither caused it nor had any knowledge of
11 it.

12 But the defense would like to know where
13 are the facts of such insult or public ridicule in
14 evidence? The prosecution asserted, without any
15 proof, that the POW's were paraded in Fusan, Seoul,
16 and Jinsen. The POW had to be transported to these
17 places and it was unavoidable to be seen by the
18 public and to rouse the public curiosity. But there
19 is no evidence of insult upon POW's or proof of public
20 ridicule. The witness IHARA, who was the responsible
21 person for sending that report, testified^{1.} that
22 report had no connection whatever with the report of
23 his predecessor or with that which was sent in the
24
25 1. Ex. 3307.

1 name of ITAGAKI^{1.} and that it was a compilation of
2 regular reports from gendarmeries, military affairs
3 sections of various places, station headquarters
4 and commissariats and others. It was one of the
5 customary reports presented to the War Ministry for
6 its information, and that it was of secondary impor-
7 tance,^{2.} and it did not require the commandant's
8 perusal or that he had to look into that later on.^{3.}

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24 1. T. 30169.
25 2. T. 30162.
3. T. 30173.

The witness IHARA also testified that depending
1 on the personal character of the staff officer and on
2 the contents of the decisions there were cases when the
3 Chief of Staff arrived at decision independently and
4 documents were issued under the name of the commander
5 without his knowledge and without being reported to him
6 later on.¹

The defendant ITAGAKI testified in his affi-
8 davit² that regarding the telegrams and reports con-
9 tained in the exhibit No. 1973 he heard later from the
10 then Chief of Staff, Major General TAKAHASHI, that the
11 sending of the Allied prisoners to Korea emanated from
12 the Chief of the POW Information Bureau and that ITAGAKI
13 himself had never seen these documents before.³ We
14 submit therefore that all these documents which the
15 prosecution referred to were composed and sent out by
16 the Chief of Staff of the Korean Army and ITAGAKI did
17 not know anything about them.

19 9. In the paragraph J-124-iii the matter of
20 parole was mentioned but there was no evidence of com-
21 pulsion in Korea.

22 10. Further in paragraphs J-21 and 154 the
23 prosecution refers to exhibit 1514-A.⁴ This is an
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25 1. Tr. 30,165.
2. Ex. 3316.

3. Tr. 30,321.
4. Tr. 12,927.

affidavit of an internee at Outram Road prison in
1 Singapore, and for the period after April 1945 it spoke
2 of the poor condition of food supply and about unlawful
3 execution of some Allied airmen who were taken out of
4 the prison. In this connection the defense witness
5 UESUGI explained in detail, and said that the unlawful
6 execution was done by some officers of the 3d Air Corps,
7 and that the Commander of the 7th Army, ITAGAKI, had
8 no power over the Air Corps. ¹ Thus ITAGAKI had no
9 responsibility and in fact no evidence was produced to
10 show that he had any knowledge of or acquiesced in
11 this.
12

13 11. Next the prosecution argued in paragraph
14 HH-53 of the individual summation against ITAGAKI, that
15 although he became inactive after being appointed as
16 the Commander-in-Chief of the Korean Army he must be
17 presumably responsible for the Pacific War from what
18 his opinions and ideas were previously, and went on
19 to say that it was sinister that ITAGAKI¹ should ask
20 for 1,000 British POWs to Korea. This was mere ground-
21 less suspicion. We have already argued ITAGAKI's
22 innocence on this matter.
23

24 The prosecution referred to exhibit No. 1973-4
25 and 1976 as evidence of atrocities committed in Korea.

1. Ex. 3314; Tr. 30,240.

1 They were policies suggested by some staff officer or
2 officers as already explained. They were not proofs
3 of any atrocities actually committed. The facts were
4 just the contrary. The witness IHARA testified in
5 his affidavit that ITAGAKI took great care to see the
6 POWs would receive comfort and fair treatment. This
7 fact was very strongly supported by the reports of the
8 representatives of the International Red Cross who
9 visited the various camps in Korea while ITAGAKI was
10 the commander.² The Red Cross representatives had
11 visited the camps every year and had interviews with
12 the POWs. Their impression was always good.

13 The civilian internees and POWs were given
14 suitable quarters at the most healthy spots in Korea
15 and were segregated from the curious public eyes.
16 They were supplied with as much clothing as the
17 Japanese Army could supply. The heating and bathing
18 devices were complete in every quarter. They were
19 allowed to have exercise and amusements besides vege-
20 table gardens and domestic animals. The authorities
21 were planning to install radio sets too. Especially
22 in the matter of food the racial customs were taken
23 into consideration. Bread and meat were supplied in

- 24
25 1. Tr. 30,163.
2. Ex. 3308, 3309, 3310; Tr. 30,174.

1 addition to the staple food. The food was given to
2 them in raw material so that POWs might be able to
3 cook them according to their own likings.¹ The fact
4 that these things were carried out in the POW camps there
5 showed that ITAGAKI⁺ cared for justice and humanity.

6 We submit that the treatment of POWs and
7 civilian internees in Korea was exemplary.

8 12. In paragraph HH-54 the prosecution
9 challenged the defense evidence by "overwhelming weight
10 of contrary evidence." But when one looks into those
11 proofs which the prosecution referred to, one finds at
12 once that the majority of them are matters which
13 occurred prior to May 1945, and only one event hap-
14 pened in Singapore while ITAGAKI was stationed there
15 as Commander-in-Chief of the 7th Area Army from the
16 end of April 1945 to the time of surrender. We think
17 it is unnecessary to deal with them one by one but we
18 shall do so for the convenience of the Tribunal.

19 13. Before dealing with the prosecution's
20 proof, in order to argue the responsibility of ITAGAKI
21 with regard to the atrocities committed by the Japanese
22 soldiers in Sumatra, Andaman, Nicobar, Java, and Borneo,
23 which were under the jurisdiction of the 7th Area
24 Army, we feel it necessary to clarify the relations
25

1. Ex. 3307; Tr. 30,160, 30,164.

1 between the Southern Army Command, the 7th Area Army
2 and the commanders of local armies in regard to the POW
3 camps and military administration in these areas.

4 The prosecution's own witness Colonel Wild
5 testified in this court that the commander of the POW
6 camps in southern areas controlled the prisoners under
7 the instructions of Tokyo and liaised with the local
8 army command regarding labor and in the matters of
9 defense. With regard to the treatment of POWs and
10 supply of labor the chief of POW camps had absolute
11 power.¹ He mentioned that instructions came from Tokyo.
12 But he was speaking of the time when General FUKUE
13 was the chief of the POW camps in Malaya. Later the
14 instructions came from the Commander-in-Chief of the
15 Southern Army which fact was proved by other witnesses.

16 In another prosecution exhibit 1681-A, the
17 affidavit of Colonel NAKATA, who was the chief of
18 POW camps in Java up to the end of the war, the colonel
19 stated the Commander-in-Chief of the Southern Army,
20 Count TERAUCHI, was his direct superior. He received
21 his instructions direct through the headquarters of
22 the commander of the army in Java. He further added
23 that the prisoners of war and other internees were
24 directly under his control.²

25 1. Tr. 5389, 5391.

2. Ex. 1681-A; Tr. 13,486.

The defense witness FUWA testified in cross-examination that the commander of an army mentioned in the Article 3 of the Ordinance of Prisoner of War Camps of December 23, 1941, should be interpreted to be the Commander of the Southern Army in case overseas POW camps were considered.¹

The defendant TOJO testified along the same line in reply to the questions put by the Tribunal. He further testified that the Commander-in-Chief of the Southern Army was vested with the responsibility for the military administration of the occupied areas and local commanders -- not the area commander -- were given the authority for the military administration.²

The defense witnesses HAZEYAMA and SAITO, who was the chief of the POW camps in Malaya, also testified in the same way.³

In other words, the responsibility for the treatment of the prisoners of war and civil internees was with the chiefs of POW camps in various areas. The military administration was vested in the local army commanders, both being under the over-all supervision of the Commander-in-Chief of the Southern Army.⁴

1. Tr. 28,733.
2. Tr. 36,804-5.
3. Ex. 3311; Tr. 30,197.
4. Ex. 3313; Tr. 30,230.

1 Thus it is clear that 7th Area Army Commander ITAGAKI,
2 who directly controlled the Singapore area, had no
3 responsibility for the treatment of POWs, civilian
4 internees or for the military administration in other
5 areas.

6 14. We now take up the evidence referred to
7 by the prosecution based upon the above distinction.

8 Exhibit No. 1614 dealt with atrocities committed
9 in Andaman islands. These islands were under the
10 operational jurisdiction of the 29th Army, but the local
11 administration was vested with the naval detachment
12 stationed there, as was testified by the witness
13 UYESUGI.¹

14 Exhibits 1617-1622 referred to matters which
15 occurred in Nicobar islands. The control of these
16 islands was same as Andaman islands. Besides the com-
17 munication between these islands and Singapore area
18 was entirely cut off since 1945, as was proved by the
19 witness UYESUGI.²

20 Exhibits 1655 and 1658 referred to the atro-
21 cities committed in Borneo area. The army in control
22 of this area was the 37th Army. The reported atrocities
23 were all committed prior to May 1945.

24
25 1. Ex. 3314; Tr. 30,241-2.
2. Tr. 30,243.

Exhibits 1668-75 referred to killing and death

1 by starvation of prisoners of war in the march from
2 Sandakan to Renau in Borneo. The witness TAKAYAMA,
3 who was a staff officer of the 37th Army, testified
4 in this court that the march was ordered by the com-
5 mandant of the 37th Army following the order from the
6 Commander-in-Chief of the Southern Army. The 7th Area
7 Army had no connection with the order at all. Further-
8 more, TAKAYAMA testified that the sea and air communi-
9 cation had been completely severed, and the wireless
10 communication with Singapore was limited to very short
11 space of time every day.²

13 Exhibit 1686 also dealt with matters which
14 happened in Borneo. The time of occurrence was prior
15 to April 1945.

16 Exhibits 1691, 1712, 1720-22, 1758-9 dealt
17 with atrocities and shortage of supply of food and
18 medical stuff to the POWs and civil internees in Java.
19 The area was controlled by the 16th Army and the
20 Commander-in-Chief was General HARADA.

22 Exhibits 1769, 1778, Tr. 13,471, 13,573, and
23 13,756, dealt with atrocities and shortage of supply
24 of foodstuff in Sumatra area. In this area there was

- 25 1. Ex. 3315; Tr. 30,247.
2. Tr. 30,250.

the 25th Army in control.

1 THE PRESIDENT: We will adjourn until half-
2 past one.

3 (Whereupon, at 1200, a recess was
4 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. SASAGAWA.

MR. SASAGAWA: 15. Transcript 5418-9 was
the testimony of Colonel Wild where he said that
POWs were employed on constructing defense works.
But the Colonel did not work himself. He must have
heard it from others as to on what kind of work the
prisoners were employed. The witness HAZEYAMA and
AYABE testified that the POWs were employed in con-
structing air raid shelters but they were not put to
work on anything directly connected with operation.^{1.}

The witness SAITO who had the greatest concern
with the treatment of prisoners of war as the Chief
of POW Camps, also testified that they were not
employed in such works^{2.} and that he had never been
questioned in the matter of treatment of prisoners,
either military or civilians.

In this connection we should like to point
out that Colonel Wild testified that the Chief of

1. Tr. 30198, 30208, 30221-2.
2. Tr. 30231.

1 POW Camps, General SAITO, had a very strong power
2 over the treatment of POWs, that the British officers
3 were consulted before any decision of supply of
4 labor, and that "no one could be taken out of the
5 camp without the POW Administration's permission."¹.

6 After thus perusing the evidence which the
7 prosecution referred to, it becomes clear that no
8 conventional or war crimes were committed in the
9 area which was under the direct control of defendant
10 ITAGAKI.

11 Colonel Wild was an expert on war crimes
12 committed in the South Seas and was able to pin the
13 responsibility of these breaches on any defendant who
14 deserved it. He knew ITAGAKI was the 7th Area Army
15 Commander and testified that he had the pleasure of
16 attending the ceremony when the formal surrender was
17 made by ITAGAKI on behalf of Count TERAUCHI.² He
18 testified in this Tribunal in the presence of the
19 defendant, but he did not utter a single word against
20 ITAGAKI in the matter of treatment of POWs. We venture
21 to submit that if he had any dissatisfaction with
22 ITAGAKI in the matter of treatment of POWs he would
23 have blamed him here.
24

25
1. Tr. 5391.
2. Tr. 5491½.

1 We presume that not only he had no dis-
2 satisfaction but knew how fair and just ITAGAKI
3 conducted towards the POWs and civilians in general.

4 16. With regard to the attitude of ITAGAKI
5 towards the POWs and the civilians as has been already
6 stated, the witness HAZEYAMA testified that he
7 ordered an increase in the amount of staple food to
8 the POWs to the same level as the Japanese soldiers.
9 The witness AYABE in his affidavit stated that
10 ITAGAKI was a man of justice and champion of humanity.
11 When a Japanese ship, "Awa-maru," was sunk by the
12 Allied navy and over two thousand civilians were
13 killed, public opinion was enraged and clamored for
14 stopping the distribution of comfort goods for POWs
15 brought by S.S. Awa-maru. ITAGAKI, however, calmly
16 admonished the public by saying that the true spirit
17 of Bushido was to do justice and uphold humanity even
18 under such circumstances by distributing the relief
19 goods to the POWs, and ordered the distribution
20 without delay.^{1.}

22 AYABE explained in detail about the attitude
23 of ITAGAKI regarding food ration to the POWs and
24 stated that when ITAGAKI inspected the POW camps he
25 1. Tr. 30218.

1 specially studied the ration provisions of the
2 internees and ordered the increase of the ration as
3 much as possible.^{1.} In answer to the question,
4 what was ITAGAKI's attitude towards native civilians,
5 AYABE told about ITAGAKI's food policy, dispersment
6 of population policy for the bombed area and treat-
7 ment of native laborers and made it plain that
8 ITAGAKI acted in the spirit of justice and humanity
9 towards civilians too.^{2.}

10 The witness SAITO mentioned in his affidavit
11 an episode of a young officer who intended to commit
12 atrocity to the POWs at the news of defeat. When
13 ITAGAKI heard about it he called the young officer
14 into his private room and convinced him of his mis-
15 take and thus prevented occurrence of violence.^{3.}

17 This may seem a small matter but it is an
18 example to show that ITAGAKI had a firm concept of
19 justice and humanity and acted accordingly whenever
20 occasion arose.

21 We submit that if ITAGAKI had not been there,
22 in the excitement and confusion at the news of de-
23 feat, any unfortunate incident might have happened

- 24 1. Tr. 30220-3.
25 2. Tr. 30224-7.
3. Tr. 30232.

1 in the Singapore area.

2 The witness UESUGI testified in cross-
3 examination that as the result of investigation into
4 the war crimes in the Singapore area which he con-
5 ducted in the capacity of a liaison and investiga-
6 tion officer under the direct order of Colonel Wild,
7 he discovered only one instance of an unlawful
8 execution during the period of ITAGAKI's commander-
9 ship.

10 This was committed by some officers of air
11 corps over which ITAGAKI had no jurisdiction.^{1.}

12 We have thus studied the evidence produced
13 by both prosecution and defense, which related to
14 ITAGAKI in connection with the Counts 54 and 55.
15 We have made it clear that ITAGAKI has not committed
16 any crimes under these Counts. We firmly believe
17 ITAGAKI did as much as possible for the POWs,
18 civilian internees and native populace in the inter-
19 est of justice and humanity, more than the inter-
20 national law required of him, and that he is not
21 guilty of any of these crimes.

22 Mr. Mattice will continue.

23 THE PRESIDENT: Mr. Mattice.

24
25 1. Tr. 30245.

1 MR. MATTICE: The prosecution has arranged
2 its argument concerning ITAGAKI in eight sections.
3 We will follow that arrangement.

4 When a nation or person is in a place where
5 it or he has a right to be and is assailed under such
6 circumstances as that it or he honestly believes
7 existence to be in danger, it or he has a right to
8 defend, even to the extent of taking the life of the
9 assailant.

10 The prosecution's argument relating to this
11 accused follows, generally, a pattern of a summary
12 of its evidence. As far as we can we will answer the
13 same and will point out certain mistakes as a result
14 of which there has been a twisting of what the evidence
15 actually shows.

16 At the point in its argument designated HH-1
17 they begin with a misstatement. They say ITAGAKI
18 identified himself as the recognized leader and cite
19 exhibit 245, Tr. 3016. In this exhibit the witness
20 MORISHIMA said: "During this period, Colonel ITAGAKI,
21 Seishiro, Lieutenant Colonel ISHIHARA, Kanji, and
22 Major HANYA, are among those in the Kwantung Army who
23 became definitely identified with the leadership of
24 this group." That was not ITAGAKI, but MORISHIMA
25 identifying, and he was not saying that ITAGAKI was

1 the leader, but as one of a group of officers who
2 were among the leaders.

3 They say TANAKA repeatedly referred to such
4 alleged fact. TANAKA never once referred to ITAGAKI
5 as the leader, but always spoke of leaders. The same
6 was true of HASHIMOTO and CHO.

7 They say the aspiration of the young officers
8 was to occupy Manchuria, to separate it from China,
9 to keep it for Japan, and to exploit it economically.
10 Their basis for such argument is the testimony of
11 TANAKA^{1.} and MORISHIMA^{2.}

12 This is a good place to pay our respects to
13 those witnesses. TANAKA, the professional witness,
14 known in the Japanese Army as "The Monster," and
15 MORISHIMA, the diplomat, who had a solution for
16 everything but solved nothing. The peculiar workings
17 of the TANAKA mind are past understanding but cer-
18 tainly not reliable. He may well be said to be a
19 man of the character of one concerning whom it was
20 said, "Beware of he who protesteth too loudly." His
21 mouthings certainly cannot and ought not to be given
22 much weight. As against an accused person's denial,
23 TANAKA's statements do not measure up to such a point

24
25 1. Tr. 1976.
2. Tr. 3016.

that they could be said to equal, let alone outweigh.
1 His deep interest in this case and his evident willing-
2 ness to testify to anything and for anybody, stamps
3 a legend of unreliability all over his testimony.
4 MORISHIMA, the diplomat, belonged to that well-
5 known foreign service coterie of every country, who
6 talk and write and are going to settle, by negotiation,
7 but never do. They virtually claim to be possessed
8 of a peculiar skill for doing such things and that
9 nobody else has the brains or the know-how to do so.
10 They commonly object to any other department of
11 government having anything to do with pending matters
12 and then, when they have failed and a grave crisis
13 is precipitated they throw up their hands and say it
14 is a matter for the military to deal with. Therefore,
15 they do not wish the military to prepare, lest, they
16 always say, it impede their diplomatic efforts. Then,
17 when the blow falls, the military is expected to deal
18 with the situation, ready or not. MORISHIMA was not
19 satisfied with the Kwantung Army attitude. That the
20 Kwantung Army, vastly outnumbered and threatened
21 and being "pushed off the sidewalk" every day, was in
22 danger of annihilation, meant nothing to him. Accord-
23 ing to him, the Army must not make any plans or pre-
24 pare to meet an attack by an overwhelming force,
25

1 but must sit quietly by while they, the super
2 diplomats, continue their efforts to settle some 300
3 incidents which had already occurred and none of
4 which had been settled. They did not settle them and
5 could not, for the Chinese, who had caused them with
6 a view of setting the stage for attacking and driving
7 the Japanese out of Manchuria, did not wish them
8 settled and would not settle. Remember, the Japanese
9 then in Manchuria, had a right to be there under
10 treaty and contract arrangements. It should also be
11 remembered that when a nation, like an individual, is
12 in a place where it has a right to be and is attacked,
13 or its nationals and property endangered, under such
14 circumstances as that it honestly believes that its
15 existence or the lives and property of its nationals
16 rightfully in the place are in danger, it has the
17 same right as an individual in those circumstances
18 to defend itself and its nationals.
19

20 At HH-2, the prosecution asserts that
21 ITAGAKI became intimately acquainted with a group
22 around Dr. OKAWA, with the objective of absorbing
23 Manchuria in order to make Japan self sufficient. To
24 sustain this assertion they point to the testimony of
25 OKAWA. Aside from the poor quality of this man as a
witness, reference to the transcript will show that

1 what he was offering was pure hearsay. At page 15587
2 in the record, when asked who drafted the plan, he
3 said: "I don't know exactly, but the person who
4 gave me orders was Kingoro HASHIMOTO," and when asked
5 who was at the top drafting the plan, he said: I
6 have an idea." He was then asked the leading ques-
7 tion: "Are SHIGETO, HASHIMOTO, ITAGAKI and DOHIHARA
8 involved?" and he answered: "Yes."

9 That ITAGAKI and ISHIHARA were the central
10 figures in the Kwantung Army and HASHIMOTO, Major
11 CHO and himself were the same in Japan (HH-3) is
12 what OKAWA is said to have said to the witness
13 TANAKA.

14 MORISHIMA again (HH-4, Tr. 3016) indulges
15 in an opinion and conclusion that "they seemed to
16 want to occupy it and to establish a government
17 there. . . subservient to Japan."

18 At the same point (HH-4) they have TANAKA
19 saying that ITAGAKI personally voiced such an opinion
20 to TANAKA. TANAKA did not say that. What he said
21 was:¹ that in those days no elements of the Army
22 advocated the independence of Manchuria, "but when
23 the situation had reached such a state that diplomatic
24 negotiations were of no avail, it was the stand of
25 1. Tr. 1959.

1 members of the Army that armed force should be re-
2 sorted to in driving the Chinese forces from Manchuria
3 and to set up a new regime under Japanese control, a
4 regime of peace and order." It was TANAKA who said
5 this, not ITAGAKI.¹

6 At HH-4 they say that ISHIHARA in cross-
7 examination admitted that ITAGAKI did entertain the
8 idea that an armed conflict would be inevitable. True,
9 ITAGAKI did entertain the belief that an armed con-
10 flict was inevitable, but not for the reason stated
11 by TANAKA. ITAGAKI felt so for another and different
12 reason, which was that, observing the steady and in-
13 creasing anti-Japanese attitude of the Chinese Army
14 in that region, the constant implementation of its
15 forces there and their ill-treatment of the Japanese
16 people who were lawfully there, it meant nothing less
17 than that the Chinese purposed attacking and driving
18 the Japanese out of Manchuria. Nothing could have
19 been more evident than that such was the case. Being
20 in a place where they had a right to be the Japanese
21 were not required to submit to being oppressed and
22 driven out. ITAGAKI, knowing that Japan would not
23 withdraw, naturally felt that an armed conflict was
24 inevitable.

25 1. Tr. 1959.

1 The prosecution asserts that such conflict
2 was not inevitable because the consuls and Chinese
3 authorities were trying to reach a settlement. They
4 were trying, t'was said, but in view of the fact that
5 some 300 incidents remained unsettled and more were
6 occurring almost daily, it was quite patent that
7 their efforts were futile -- futile because the
8 Chinese did not wish them settled. Their purpose was
9 to make it tough and continue to make it tough for
10 the Japanese, so tough that they would leave Manchuria
11 and abandon their investments and interests there on
12 which they had spent many years of labor and millions
13 of yen.

14 When a man or nation is in a place where he
15 or it has a right to be and is assailed under such
16 circumstances that he or it honestly believes existent
17 to be in danger, he or it may defend.
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1 At PE-6 comment is made regarding the opera-
2 tional plan, which, ISHIFARA said, ITAGAKI knew about.
3 Of course the Kwantung Army had operational plans, as
4 every army of every nation has. These plans were, as
5 stated by General ITAGAKI, defensive. Would any able
6 army staff personnel in a situation such as existed
7 at the times and places stated, believing, in fact
8 knowing, that the Chinese preparations meant nothing
9 less than an attack on the Japanese, fail to make plans
10 to meet such an onslaught? They would be derelict in
11 their duty if they did not. The possession of the
12 large guns at Mukden was but part of an endeavor to
13 be as ready as possible when the attack came and that
14 the gun was used need occasion no surprise. No doubt
15 the Kwantung Army, as is generally the case with all
16 armies, wished they had had more guns, so as not to be
17 in a situation of having "too little."

18 There was no contradiction in ITAGAKI's say-
19 ing that the main force would be afforded an opportunity
20 to deliver a heavy blow to the nucleus of the Chinese
21 Army. Outnumbered as they were some 200,000 to 10,000
22 troops, with the Chinese possessing superior equipment,
23 including tanks, artillery and airplanes, if such a
24 small force was to avoid annihilation it must, if it
25 could, strike a quick hard blow at the head of the giant

which threatened to overwhelm it.

1 At FH-7 it is asserted that the incident was
2 pre-arranged, and this idea is based upon what it is
3 alleged OKAWA, when drunk, told SHIMIZU. We submit
4 that such hearsay statement said to have been made by
5 a drunken man is not sufficient to meet, much less
6 overcome, (the prosecution has the burden) the denial
7 of an accused person.
8

9 It was said that reports came from Tokyo.
10 That ITAGAKI admitted that there were such reports.
11 That the Foreign Minister instructed the consul at
12 Mukden to stop what was rumored to be going on. That
13 TATEKAWA was sent to Mukden for that purpose. That
14 the central authorities sent him in order to control
15 the Kwantung Army. No doubt there were reports and
16 rumors. There always are. Wars and rumors of wars, it
17 has been said. But if the central authorities were so
18 concerned and so motivated, they would not have sent
19 TATEKAWA, for TATEKAWA is said by the prosecution to
20 have been one of the plotters.

21 II THE MUKDEN INCIDENT

22 At FH-8, it is argued that because TATEKAWA
23 did not immediately deliver the message he carried,
24 ITAGAKI put him off until the next day. ISHIPARA¹
25

1. Tr. 22,122

1 testified that ITAGAKI and TATEKAWA met in the evening
2 and under an arrangement to meet the next day separated
3 for the night. ¹ We can see nothing untoward or unusual
4 in that. TATEKAWA had just arrived after a hard jour-
5 ney, complained of being tired and, no doubt, wished to
6 retire early.

7 The prosecution, at PH-10, argues that ITAGAKI
8 assumed the duty of directing the operation on the night
9 of 18 September 1931. ITAGAKI's duty was not opera-
10 tional, he did not have authority to direct operations,
11 and did not direct them. HIRATA had and exercised such
12 authority and, because ITAGAKI, a staff officer, hap-
13 pened to be present, asked his assurance. ITAGAKI,
14 knowing that what HIRATA proposed was in line with
15 Commander in Chief HONJO's wishes, gave such assurance.
16

17 At PH-11 HAYASHI's alleged pleading with
18 ITAGAKI to stop the military action came after the
19 action had commenced and the fighting was in progress.
20 It could not be stopped, even had ITAGAKI possessed
21 the power to stop it, which he did not.

22 III THE CREATION OF A PUPPET STATE

23
24 At PH-13 the obvious intimation is that mili-
25 tary administration of Mukden was set up because DOIHARA
1. Tr. 18,927, 30,267-8

1 was made mayor. The evidence shows ¹ that this was a
 2 temporary arrangement to serve until a competent
 3 Manchurian person could be selected and one soon was. ²

4 YAMAGUCHI did not testify, as claimed, that
 5 ITAGAKI approved the appointment of DOIHARA as mayor.
 6 What YAMAGUCHI said was: that ITAGAKI approved autonomous
 7 operation of the railroad by Manchurians. ³

8 At HH-14 the prosecution asserts that the
 9 Self-Governing Guiding Board policies and activities
 10 were controlled by ITAGAKI and that the witness KASAGI
 11 so testified. This is another error or twisting of
 12 the testimony, for KASAGI said that he believed the
 13 money to support this organization came from the Kwantung
 14 Army, that approval by it was required, and that ITAGAKI
 15 was in charge of this division. ¹ He did not specify
 16 which division and he had listed eight divisions. It
 17 may be noted that this witness said that with Pu-yi as
 18 the central figure the independence movement gradually
 19 took shape. ²

20
 21 With respect to certain suggestions of
 22 ITAGAKI serving the independence movement, KATAKURA
 23 said that "It may be said that ITAGAKI's meeting with
 24 prominent leaders of Manchuria in various areas of that

25 2. Tr. 18,927, 30,267-8 1. Tr. 18,927, 30,267-8

3. Tr. 18,819

1. Tr. 2793-4

2. Tr. 2800-11

1 country and as a result of his assurances given to them
2 at these interviews, that Japan had no intention of
3 occupying Manchuria or any territorial designs on Man-
4 churia. it may be said that this assurance given by
5 Colonel ITAGAKI served as a sort of a suggestion to
6 them in carrying on their independence movement."³

7 At HH-15 it is asserted that the Japanese
8 supplied Chang Hai-peng with 3,000 rifles and 200,000
9 Yuan. There is no real evidence to this effect. Only
10 hearsay. That HAYASHI telegraphed that Chang told him
11 that.¹ In another telegram HAYASHI transmitted some
12 more hearsay, only this time it was 5,000 instead of
13 3,000 rifles.²

14 That Japanese adventurers called themselves
15 a National Guard Unit was based on a policy decided
16 and executed by ITAGAKI was but the opinion and conclu-
17 sion of MORISHIMA, the super diplomat.

18 At HH-16 it is said that while ITAGAKI said
19 the anti-Japanese movement in Manchuria prior to the
20 incident was active and intense, afterward he claimed
21 that the common desire was for the creation of an in-
22 dependent state and leaders in many provinces came for-
23 ward favoring separation from China. ITAGAKI, in connec-

25 3. Tr. 18,043, 19,081
1. Ex. 2407, tr. 37,324
2. Ex. 2406, tr. 37,322

1 tion with this subject, wasn't talking about the same
2 people at the times referred to. The anti-Japanese
3 movement was on the part of the Chang Kai-shek contin-
4 gent of the Chinese people, including the Chinese army.
5 Those favoring an independent state were Manchurians.

6 At HH-18 it is stated that DOIHARA said, in
7 his interrogation, that ITAGAKI arranged the details
8 of his meeting with Pu-Yi, but he did not specify the
9 details. ITAGAKI¹ told this Tribunal that the Commander
10 in Chief, FONJO, ordered DOIHARA to Tientsin and gave
11 him his instructions regarding intelligence work and to
12 sound out Pu-Yi. That he, ITAGAKI, looked after
13 arranging, through the intence officer, for his ex-
14 penses.³ KATAKURA also so testified.⁴ At HH-20, upon
15 his return from Tokyo HONJO ordered ITAGAKI to visit
16 Pu-Yi.⁵ According to ITAGAKI, Pu-Yi's stalling on the
17 matter of becoming the head of the new state was con-
18 cerning whether it would have monarchical form of govern-
19 ment. Pu-Yi said it was because ITAGAKI demanded em-
20 ployment of Japanese as Manchurian officials. Comment
21 will be made a little later regarding the quality of
22 Pu-Yi as a witness. Sufficeth it to say, at this point,

24 1. Tr. 2809-11

25 2. Tr. 30,375-80

3. Tr. 30,375-80

4. Tr. 18,970

5. Tr. 30,284

1 that it does not require any great stretch of the
2 imagination to reach a belief that Pu-Yi, the last
3 of the Chinese Emperors, was extremely anxious to be
4 restored to the throne. That was but a natural desire
5 on his part. And so wishing, it would also be natural
6 that he would be interested primarily in the form of
7 the government to be. He naturally wanted to be Emper-
8 or, as he had been of all of China, and if possible, he
9 wished to avoid taking the post on a basis of anything
10 less. So, according to ITAGAKI, supported by the cir-
11 cumstances as he is, Pu-Yi stalled, hoping to accomp-
12 lish a monarchical form of government. As anxious as
13 he was to become Emperor, he would not have been so
14 concerned about whether some Japanese, who had the know-
15 how, were employed in the new government. And, any-
16 way, if the situation was as the prosecution claims,
17 there would be no reason for ITAGAKI to dicker with Pu-
18 Yi concerning employment of Japanese. If they dom-
19 inated everything, as the prosecution asserts and were
20 acting as puppetiers, they would have falsely agreed
21 to Pu-yi's wishes and later failed to carry them out.
22 On this issue we submit that ITAGAKI's version is es-
23 tablished. If any doubt exists respecting the same,
24 that doubt must be resolved in favor of the accused.
25

Pu-yi testified at this trial that while

1 heading the government of Manchukuo, he had no freedom
2 of speech and that when the Lytton Commission inter-
3 viewed him he could only say what the Kwantung Army per-
4 mitted him to say. He was a prisoner of the Japanese,
5 he said. It is certainly fair argument to say that if
6 he could not tell the Lytton Commission the truth be-
7 cause he was then a prisoner of the Japanese, by the
8 same token he could not tell this Tribunal the truth,
9 because he was for a long time previous, at the time of
10 his appearance here, and, so far as we know, he still
11 is, a prisoner of one of the Allied Powers. We submit
12 that he had, at the time he appeared here as a witness,
13 no more freedom than when the Lytton Commission inter-
14 viewed him. The "gun in the back formula" works both
15 ways.

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IV CONTROL OF MANCHUKUO.

1 At HH-22 it is stated that Pu-Yi said that
2 ITAGAKI was a supporter of the Concordia Society.
3 YAMAGUCHI and OZAWA said he was not a member of the
4 committee.¹ The prosecution bases its claim upon
5 the Decennial Year Book of the Concordia Society as
6 showing that ITAGAKI was one of its committee mem-
7 bers. We decline to be bound by whatever that so-
8 called year book may set out. It was compiled and
9 published by and in Russia and published ten years
10 after that society was formed.

11
12 At HH-23 they say the Kwantung Army was
13 given the authority and an outline for guiding
14 Manchukuo and that Manchukuo was completely dominated
15 by the Japanese.² Manchukuo, newly born, had neither
16 the knowledge nor the equipment to manage and carry
17 on the complex and difficult matters which confronted
18 it. It has no army or other peace restoration and
19 maintenance organization. Manchukuo welcomed the
20 action of the Kwantung Army in restoring and main-
21 taining peace and order. In this, and in other ways,
22 the Japanese assisted the new state. The prosecution
23 calls this domination.

24 At HH-24 it is asserted that ITAGAKI was
25 1. Tr. 18,851-2, 30,076-7 2. Ex. 731, Tr. 7,606

1 connected with the narcotic traffic, and with MINAMI
2 and TOJO, endeavored to set up the Opium Monopoly
3 Bureau. In support of this statement the prosecution
4 makes reference to exhibit 383.¹ Exhibit 383 con-
5 sists of excerpts from the minutes of the 22nd
6 session of the League of Nations Advisory Committee
7 on Traffic in Opium. ITAGAKI, MINAMI and TOJO are
8 not mentioned therein.

9 V. INNER MONGOLIA, NORTH CHINA AND ALL
10 CHINA.

11 In regard to Chahar, at HH-26 the prosecu-
12 tion claims that there was no need for the actions
13 which occurred there; that the Chinese agreed to and
14 did withdraw therefrom. TANAKA was a prosecution
15 witness on July 6, 1946 and,² respecting the treaty
16 made between the Inner Mongolian Autonomous Council
17 and Manchuria, said that: "This treaty definitely
18 was not concluded because of the demands of the
19 Kwantung Army, but because of the earnest desire of
20 Prince Teh himself."
21

22 At HH-27, in its argument, it is asserted
23 that after ITAGAKI was promoted to be Chief of Staff
24 in 1936, he said to ARITA that if Outer Mongolia is
25

1. Tr. 4711-3
2. Tr. 2042

1 combined with Japan and Manchuria, the Soviet terri-
2 tory in the Far East would fall into a very dangerous
3 condition. True, in exhibit 761-A, such a statement
4 does appear but, it was made by ITAGAKI as part of
5 a lengthy conversation between him and ARITA in
6 which, before the statement was made, ITAGAKI had
7 been saying, among other things, that the Kwantung
8 Army was deeply concerned about the Russian problem;
9 that Russia's national military power had been increas-
10 ing; that its troop strength amounted to more than
11 1,400,000; that organization, equipment, disposition
12 of forces were being rearranged to attain the most
13 ideal kind of an army; that Russia had come to be
14 called, both in name and reality, the most powerful
15 army nation of the world; that the development of
16 her heavy industry had attained her expected results
17 and especially in the case of munitions productions
18 she was capable of producing them independently; that
19 her light industry had also developed; that in
20 agriculture she had nearly completed socialization;
21 that the Russian Government had succeeded in estab-
22 lishing a firm dictatorship; that observing the situa-
23 tion in the Far East, in which Japan had special
24 concern, we could not but convince ourselves that
25 the Soviet is preparing for operations by force and

1 is strengthening her power, of prosecuting war alone;
2 that we may say this because she is overtly advocating
3 the independence of Far East military preparations
4 and has assigned more than 200,000 troops and nearly
5 a thousand planes and tanks to the Far Eastern Dis-
6 trict; that she is replenishing communications and
7 supply functions at great cost; that under such cir-
8 cumstances, the Soviet's attitude toward Japan had
9 gradually stiffened and become more active in com-
10 parison with her inactive and negative attitude two
11 and three years ago, although she had not yet assumed
12 to be provocative; taking advantage of Japan's weak-
13 ness; that since the year before the foreign strategy
14 of the Third International had been so revised
15 actively as to assume Japan as their main object;
16 that they resolved to cooperate in fighting with all
17 anti-war members, withdrawing the banner of communism
18 from the surface and advocating anti-fascism or anti-
19 Imperialism; that the Bolshevization Patriotic Move-
20 ment by communist forces in North China was replaced
21 with the slogan of Anti-Japanese Patriotic Movement;
22 that though the number of bandits all over eastern
23 Manchuria had been reduced, the communist bandits
24 were still increasing their power by annexing other
25 bandits and taking a firm attitude with regard to

1 boundary questions, fishery as well as other problems
2 concerning Manchuria.

3 It was part of the discussion had between
4 ITAGAKI and ARITA as to what might be done to meet
5 the Russian menace which had just been described.
6 The prosecution argument says that ARITA and ITAGAKI
7 talked about the importance of Outer-Mongolia to
8 Japan and Manchuria. This is a twisting of the
9 fact about that. What they talked about was the
10 Russian menace and, incidentally, while talking
11 about that, the Outer-Mongolian matter was mentioned.

12 The argument at HH-28 that ITAGAKI favored
13 army leadership, instead of diplomatic, should handle
14 negotiations with China, is based upon an item in
15 KIDO's Diary, where he says that SHIGEMITSU so stated
16 to him. More hearsay.

17 Then, it is said that ITAGAKI and DOHIHARA
18 needed a pretext to set up an autonomous regime in
19 North China and decided to use anti-communism as a
20 slogan. This might well make one wonder whether
21 there are those who will say that because one of the
22 Allied Powers is now spending billions of dollars
23 in an anti-communistic effort, it is doing so as a
24 pretext for something else. The Japanese had good
25 reason to fear communism and it is not surprising

that they took steps to combat it.

1 At HH-29 it was sought, by argument, to
2 hold ITAGAKI responsible for mobilization orders,
3 issued by the Commander in Chief, to prepare forces
4 outside the Great Wall in China. ¹ Shown the exhibit,
5 ITAGAKI said it purported to be what it said, but
6 that he had not seen it before and as to such
7 mobilization, he had heard, later, that there had
8 been ordinary peacetime troop movements. While
9 ITAGAKI was, at the time, Vice-Chief of Staff, he
10 was also assistant military attache of the embassy
11 and his duties in that capacity occupied his time
12 and attention so that, obviously, he was not familiar
13 with the army orders above referred to.
14

15 At HH-30, it is asserted that the Tokyo
16 Government was concerned about the activities in
17 North China and that in connection with this the
18 witness GOTO specifically mentioned ITAGAKI. That
19 witness ² said the highest officers in the Army at
20 that time were -- and he named seven -- one of whom
21 was ITAGAKI. The witness, therefore, merely said
22 that ITAGAKI was one of a number of higher officers.
23

24 At HH-31 it is said that ITAGAKI was
25 Commander in Chief of the Fifth Division in Japan

when, in July, 1937, fighting broke out in China;
1 that he was attached to the General Staff Office
2 shortly before that; that he was, after the fighting
3 began, sent to the front. To support this the
4 prosecution points to exhibit 110, ITAGAKI's person-
5 nel record which, under date of May 25, 1937, shows
6 him attached to the Army General Staff Office.
7

8 This was an error in exhibit 110 not dis-
9 covered by us until now. We submit that the date of
10 ITAGAKI's appointment to the General Staff Office,
11 shown in the exhibit as May 25, 1937 should have
12 read "1938" instead of "1937." Any military man will
13 know that no commander of a division at the front
14 would be a member of the General Staff at the Capitol,
15 and the evidence in this case shows that he was com-
16 mander of the 5th Division at Hiroshima, sent to
17 China and that he came from China to become War
18 Minister on June 3, 1938. Exhibit 110 correctly
19 shows him appointed War minister on that date, but
20 the translation of the entry in his personnel record
21 is faulty in respect to his post as being attached
22 to the General Staff Office. Correctly translated
23 it reads: "Relieved of attachment to the General
24 Staff Office and appointed War Minister. . . ."
25

1. Tr. 716

1 Without more, we think it is clear that he was at-
2 tached to the General Staff Office as of May 25, 1938
3 (agreeable to the usual custom of issuing such an
4 order to bring an officer from the front to install
5 him as War Minister) and, as of June 3, 1938, he was
6 relieved and made War Minister. He was, therefore,
7 attached to, but did not serve on, the General Staff,
8 from May 25, 1938 to June 3, 1938.

9 It is true that ITAGAKI was well acquainted
10 with China and was an authority on Chinese affairs
11 and had an affection toward Chinese people. We sub-
12 mit that the remark the witness Goette attributed to
13 him does not show the contrary. Goette was another
14 witness evidencing a desire to talk, based, no doubt,
15 on his story writing proclivities. And, the remark,
16 if made, was obviously not seriously intended for,
17 if any army officer of any army had knowledge of
18 planned military movements to be carried out in the
19 future, he would not be imparting that information to
20 a newspaper reporter.
21

22 VI. WAR MINISTER, 1938-1939.

23 ITAGAKI was in favor of withdrawing the
24 troops and quickly ending the difficulties with
25 China; in favor of modifying the terms previously
submitted to China to such that China would accept.

1 ISHIHARA and KONOYE held the same view. That the
2 fighting intensified after ITAGAKI became War
3 Minister and peace with China was not attained does
4 not prove that ITAGAKI was not of the opinion and
5 purpose he testified he had. There was opposition.
6 Also, he was new in his post and it is reasonable
7 to suppose that he could not accomplish his desires
8 immediately. That he was never able to accomplish
9 them still does not mean that he did not entertain
10 them.

11 When he became War Minister, plans had al-
12 ready been made for the attack on Hankow, and that
13 fact no doubt occasioned his statement that it was
14 believed it was unavoidable. What ITAGAKI said was,
15 "at that time, as it was believed that the Hankow
16 operation would be unavoidable in view of the general
17 situation, the Supreme Command of the Army had just
18 commenced preparations for that operation." It
19 wasn't ITAGAKI saying such attack was unavoidable.
20 He was saying that the Supreme Command of the Army
21 so believed.¹

23 The policies urged by ITAGAKI were, in the
24 main, adopted by the Five Ministers' Conference.²

25 No record was made or preserved, and we have no way

1 of knowing what such decisions were except we ob-
2 tain the information from someone who was present
3 at the decisions. The evidence shows no one was
4 present other than the ministers -- no secretary,
5 no stenographer, no clerk. This Tribunal has heard
6 from two persons who were present. The prosecution
7 relies upon (1) documents found in the Japanese
8 Foreign Office (admitted here only because so found,
9 but with no showing as to their authorship or
10 verity), and (2) passages in the HARADA-SAIONJI
11 Memoirs which, admittedly, are hearsay, with no
12 disclosure of from whom or where the initial peddler
13 of the hearsay got his information. Matters of that
14 character would not be admissible at all in the
15 national courts. Here, though admitted, they ought
16 not be given much weight, if any. As against the
17 testimony of persons present at the time such de-
18 cisions were made, this being a criminal case and
19 the prosecution required to establish beyond a rea-
20 sonable doubt, it does not operate to equal, let
21 alone exceed, in weight the testimony of those per-
22 sons.
23

24 We learn from the testimony of UGAKI^{1.} that at
25 times proposals were submitted to the Five Ministers'

Conference in written form and that on such occasions
1 written proposals in relation to national policy were
2 signed by UGAKI and handed to his subordinates. That
3 if any such (and obviously the witness had reference
4 to those written proposals) are held at the Foreign
5 Office, they are not originals unless they bore his
6 signature. The witness, here, was referring to
7 written proposals, not decisions. Judge Nyi was
8 either confused about this or inadvertently so framed
9 his question ¹ when he asked UGAKI, "Then in such a
10 case you wouldn't be surprised if you were shown
11 any document containing a decision of the Five
12 Ministers' Conference, although it doesn't bear your
13 signature, would you?" ² The witness at no time
14 said his signature was on any instrument containing
15 a decision of the Five Ministers' Conference, but he
16 did say (and ITAGAKI also said it) that there never
17 were any such.
18

19 On all the competent and creditable evidence
20 in this case the prosecution has not established the
21 Five Ministers' Conference decisions mentioned in
22 its argument. Remember, ITAGAKI said that in the
23 main, his views were adopted. It is apparent, and
24

- 25 1. Tr. 38,816
2. Tr. 38,816

1 to be expected, that after he became War Minister,
2 he was not able, immediately, to accomplish adoption
3 of his views. On the matter of the Japanese policy
4 of not dealing with Chiang Kai-shek, he favored and
5 urged abandonment thereof, but it was not until
6 November or December of that year that such abandon-
7 ment was attained and then only attained by the
8 action of the government itself.

9 Five ministers' Conference decisions had to
10 be unanimous or there was no decision, and thus the
11 refusal of even one minister prevented a decision.

12 In that part of its argument relating to
13 this subject and designated HH-33, prosecution says:
14 "The records of the conference speak for themselves."
15 There is no evidence in the record that these instru-
16 ments are "records of the conference." This Tribunal
17 knows they are not, for the evidence shows (and the
18 President himself developed this fact) that no
19 records were made or kept. The prosecution has
20 presented no evidence disputing this. Nor has it
21 explained how these documents, alleged by it to be
22 records of such decisions, came into existence, by
23 whom they were compiled or what the source of the
24 compiler's information was. We have no doubt that
25 the prosecution was unable to ascertain as to that.

1 We say if we or this Tribunal could reach
2 down into the darkness of the lack of evidence in this
3 score and drag the truth out, it would be found that
4 these instruments were written up by workers in the
5 various government offices in connection with proposals
6 to be laid before the conferences and anticipatory of
7 decisions expected. Then, later, some unidentified
8 person or persons gathered up these anticipatory decis-
9 ions and compiled them into the documents presented here.
10 Suppose no record was made of the proceedings here and
11 counsel on both sides drafted various documents, includ-
12 ing tentative drafts of argument herein. Suppose,
13 later, there being no record of what actually was intro-
14 duced and given to this Tribunal, in some such Tribunal
15 as this, those preliminary or tentative or anticipatory
16 drafts were offered and received in evidence as being
17 what such counsel did or did not do. We have seen just
18 such a thing as that occur in this case. In the cross-
19 examination of the witness UGAKI, Judge Nyi had the
20 witness examine Exhibit 269 and asked him if that was
21 not a report which he made to the Emperor.¹ The instru-
22 ment was not even entitled report to the Emperor, but
23 was plainly designated as "Materials for the Private
24 Report to the Emperor by Minister UGAKI. . ." ² Yet

1. T. 38,822 - 27

2. T. 3584

1 Judge Nyi, in his confusion or zeal, seemingly was under
2 the impression that the instrument was a report, or a
3 copy of a report, made by Mr. UGAKI to the Emperor.

4 Judge Nyi wanted to know of this witness what he could
5 not discern himself, viz., whether the instrument¹ was
6 a correct copy of the report that UGAKI made to the
7 Emperor. He found out. For the witness answered:

8 "As it states, this consisted of materials to supply
9 my mind with ideas on the basis of which I was to make
10 a report to the Throne, and I state that this document
11 contains the opinions of the First Section, which drew
12 up this document, as its opinions and as its desires as
13 being the views which that section wanted conveyed to
14 the Throne. The contents of this document do not repre-
15 sent my opinions, and consequently they were not the
16 opinions I reported to the Throne."²

17
18 At all events, it is most unsatisfactory
19 evidence to be offered and received in any case. Espec-
20 ially so in a case in which men are on trial for their
21 lives. While we felt, and still feel, that they should
22 not have been admitted at all, we submit that they
23 should be given but little, if any, weight.

24 The declaration of the Japanese Government
25 mentioned at PH-34 of the prosecution's argument, came

1. Ex. 269

2. Tr. 38,824

1 after efforts to arrange peace with China had all failed
2 and the Chang Kai-shek regime was continuing its anti-
3 Japanese and pro-communistic policies and conducting
4 increasingly heavy attacks. Japan, under the KONOYE,
5 ITAGAKI, ISHIHARA policy, was willing and tried to deal
6 with Chang Kai-shek, but received no response from him.

7 At HH-35, they assert that ITAGAKI had sent
8 1,600,000 troops to China. This argument is based upon
9 an entry in KIDO's Diary to that effect. But in¹ his
10 cross-examination, KIDO said that he felt that figure
11 was too large. He said: "I think it was under one
12 million." and that the War Minister spoke of decreasing
13 to 650,000.²

14 At the same place in their argument, they
15 referred to exhibit 3304,³ an order issued by the
16 Vice-Minister of War in February 1939, concerning Army
17 discipline and control of speech of returning soldiers
18 regarding their exploits, examples of such being set out.
19 Naturally, the prosecution argues that this instrument
20 proves that atrocities such as are mentioned in the
21 examples had occurred, had been brought to the attention
22 of the War Ministry, and that the Vice-Minister promulgat-
23 ed the order to prevent returning soldiers from telling
24

25
1. Tr. 31,386
2. Tr. 31,386
3. Tr. 30,126

1 about such atrocities after their return. It is no
2 doubt fair argument for the prosecution to indulge in.
3 However, it falls far short of establishing any such
4 facts. The prosecution read only a few lines from
5 pages 4 and 5 of the exhibit, which was the part thereof
6 which set out examples. It did not read the following:

7 Page 3. "The military forces and the men
8 returned from the disturbance area are generally well-
9 disciplined and well-behaved. They are a credit to the
10 Army, and are careful about their speeches and actions
11 but among a fraction of them, overcome by the welcome
12 accorded them ... etc... there are not just a few who
13 do not restrain their speeches and actions. There are
14 some who, upon their return to their homes after being
15 discharged wish to boast of their honor or merits, and
16 fabricate stories about their officers and other units,
17 and thus abuse them, boast about tragedies in the battle-
18 field, allow military secret facts to leak through in
19 their attempts to appear well-informed, exaggerate the
20 slackness of military discipline and morals for the sake
21 of telling stories, etc. The speeches mentioned above
22 sometimes not only become the cause of rumors but also
23 may affect the trust of the people in the Japanese Army,
24 impair the unity of the people at home," etc.¹

1. Ex. 3304, Tr. 30,126

1 Instances are then given, beginning with, (1) There are
2 some men who leave the ranks without reason to speak
3 to welcoming parties and, following the sixth example
4 of that kind, in respect to speech, there follow the
5 examples, many of which were read in evidence.

6 The witness YAMAWAKI (3) testified that the
7 purpose of this order was to restrain irresponsible
8 persons from sounding off relative to military matters
9 and discipline, making mountains out of mole hills and
10 exaggerating gossip and rumor which they had picked up.
11 That it was felt necessary that the officers take care
12 that their men were cautioned about such matters, as
13 they would cause baseless rumors and an undesirable
14 effect upon discipline. It is well known that returned
15 soldiers, in all countries, are prone to brag about their
16 exploits, even to create stories of the kind, and to
17 restrain such conduct is a thing which every army natur-
18 ally does. To utilize examples given of rumors and
19 exaggerations as facts is something like "when a dog
20 barks a false alarm, a thousand curs take up the cry."
21 While this argument is in progress we note that one of
22 the Allied Powers has issued an order prohibiting all
23 Army and Navy personnel from talking or making any
24 statements regarding military affairs, unless such
25 proposed statement is first reduced to writing, submitted

1 to the War or Navy Department and approval obtained.

2 It may also be noted that there is no evidence anywhere
3 showing that ITAGAKI had any knowledge of any such
4 alleged misconduct on the part of Japanese soldiers.

5 When the Chang Kai-shek Government would not
6 and did not exhibit any indications of a sincere desire
7 to establish peace, and knowing that a large portion of
8 the Chinese people favored such action, it was but
9 natural that Japan would contact the intelligent men
10 among them with a view of accomplishing peace.

11 At WH-37 the assumption is indulged in that
12 exhibit 3302 shows that ITAGAKI and DOIHARA performed in
13 China in the name of "peace", what they had done in
14 Manchuria in the name of "independence". In Manchuria
15 the desire for independence was on the part of the
16 Manchurians. In China it was Japan which desired peace.

17 The prosecution counts on the matter of Wang,
18 Ching-wei, a Chinese Government official, who favored
19 peace with Japan, escaping from China and later assist-
20 ing in the effort to establish peace.¹ Wang was one of
21 the many intellectual and influential Chinese who were
22 so disposed. That he was assisted in his travel from
23 China, to Indo-China, to Shanghai and to Japan, is
24 natural.
25

1. Tr. 38-39

1 At HH-40, in offering IPS document 1005 (1),
2 which became exhibit 3744, Judge Nyi stated that same
3 was offered to rebut ITAGAKI's denial that the so-called
4 National Salvation Anti-Comintern League was financed
5 by Japan.¹ ITAGAKI was asked² if it was not financed
6 by Japan and he replied: "I hardly think it possible."³
7 This may have been an inadvertence but the foregoing sets
8 out what occurred and now, in argument, the prosecution
9 says it was not financed by Japan.

10 At HH-47 it is stated that ITAGAKI asked per-
11 mission to use force at Changkufeng and that preparations
12 be made. The testimony of UGAKI,¹ does not bear out
13 the statement regarding the use of force.² The state-
14 ment which was attributed to ITAGAKI was only that, as
15 the Russians might cross the border, preparations should
16 be made.

17
18 At HH-49 it was asserted that ITAGAKI confided
19 to YAMAWAKI that Britain and France might be the next
20 objective. The information given YAMAWAKI by ITAGAKI³
21 was a statement that the Japanese Government's basic
22 condition regarding the pact was to the effect stated,
23 not that it was ITAGAKI's condition.⁴

24 1. T. 30,396
25 2. T. 30,436
3. T. 30,436
4. T. 23,885-6

5. T. 23,885-6
6. T. 30,104
7. T. 30,104

1 At PH-50, it was stated that when Hitler seized
2 part of Czechoslovakia, ITAGAKI sent his congratulations.
3 This statement is based upon a newspaper story, as also
4 was the assertion that ITAGAKI declared it was a welcome
5 fact that Germany and Italy had bound themselves together
6 by military alliance.

7 THE LAW

8 Throughout this trial there has been frequent
9 mention of conspiracy. No count of the Indictment
10 herein charges conspiracy. To determine what is
11 charged the charging part of an indictment must be
12 looked to. When one examines the charging part of
13 each of the so-called conspiracy counts of the Indict-
14 ment herein, we find that the charge is not that the
15 defendants "conspired", "confederated", "combined" and
16 "agreed" together and with each other (the usual language
17 employed in indictments charging the crime of conspiracy),
18 but that they "participated" in the formulation or
19 execution of a common plan, etc. In all conspiracy
20 cases with which we are familiar the verb used in
21 charging that crime was "conspired", or some such verb.
22 Here, the verb employed is "participated". Participa-
23 tion, in itself, never has been and is not now, a crime.
24 Participation in a joint criminal enterprise is commonly
25 the evidence used to convict the participants. Convict

1 them of what? Convict them of the crime charged, whether
2 that charge be larceny, robbery, murder or conspiracy.
3 Participation is never the crime, but may be evidence
4 of the crime. The crime attempted to be charged, in
5 which they participated, must be charged in language
6 clearly informing the accused of the charge against
7 him. The gist of the crime of conspiracy is the plotting,
8 planning, arranging, between two or more persons, to
9 commit a designated crime. The conspiring is the crime
10 declared against.

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The alleged conspiracy counts of the Indictment herein charge the "formulation" and "execution", in the disjunctive, using the disjunctive "or", as also, are stated "common plan" and "conspiracy", so that the accused are charged with formulation or execution of a common plan or conspiracy. Which? The pleader did not say. The courts in the United States have repeatedly held that an indictment which charges one thing and another, using the disjunctive "or", does not charge anything, but is indefinite and uncertain as to what is meant to be charged and the accused cannot know with what or which he is charged. Suppose, in an indictment attempting to charge the crime of larceny, the language employed is: "did steal, 'or' 'take', 'or' carry away, the personal goods and chattels of John Smith," etc. Which did he do, steal or take? And did he steal or carry away? To make out the crime of larceny he must have, at least, done both, steal and carry away, and the indictment must so charge. The result here is there is no charge, in respect to conspiracy, which the accused are called upon to meet, and they must be discharged.

Frequently during this trial mention has been made of the prosecution claim that nothing occurred in Manchuria which justified the Japanese in

1 taking the action which was taken and that the killing
2 of persons was wholly unjustified. We admit that
3 there is, at the present day, not much difference,
4 but it should not be entirely lost sight of that in
5 respect to homicides and matters of self-defense,
6 there are two categories: (1) justifiable homicide,
7 and, (2) excusable homicide. It has been said that
8 really there is only one justifiable homicide. One
9 where the taking of the life of a human being is upon
10 the authority of a valid order of some court. Self-
11 defense, it has been said, does not fall within the
12 category of the killing being justified. Rather,
13 it is a matter wherein, though some blame attaches
14 to the one causing the death, in the eyes of the law
15 he is excused. It may well be that the situation in
16 Manchuria was one of the character in which it would
17 be better to say that their acts claimed to be in
18 self-defense were, therefore, excusable.

20 Anciently, but now abandoned in most juris-
21 dictions, the law of self-defense required the per-
22 son attacked to retreat - to retreat to the last
23 ditch or until his back was to the wall, before he
24 would be excused for killing his assailant. The mod-
25 ern concept is that he is not required to retreat
~~but may stand his ground and, upon proper circumstances,~~

1 take the life of his adversary. It is not believed
2 that nations were ever required to observe the cut-
3 moded doctrine of retreat to the last ditch. Certain-
4 ly they are not at the present time. That was the
5 situation of Japan in Manchuria. Being in a place
6 where, under treaty and contract rights, it and its
7 nationals had a right to be and, under international
8 law being the sole judge of whether it was required
9 to take defensive measures; it was not, when assailed
10 by the Chinese, required to retreat (abandon its rights
11 and interests in Manchuria) but had a perfect right
12 to take such measures as were necessary to defend it-
13 self and its nationals. It did just that. It does
14 not lie in the mouth of the victor to review Japan's
15 decision in that respect and assume to judge, now,
16 whether it acted in self-defense. International law
17 has never set up any machinery for determining any
18 such matter and there exists no court, or body of any
19 kind, anywhere in the world, which has the authority
20 and power to conduct any such review.

22 Frequently during this trial mention has been
23 made of ex post facto law. We will not prolong the
24 debate upon that subject, beyond saying that we be-
25 lieve that in the view of lawyers in the Anglo-Saxon
~~category, the alleged laws attempted to be applied here,~~

1 were created for the purpose of trying the accused
2 and are ex post facto.

3 These alleged laws, tailored for the purpose
4 of this trial, obviously rest upon the basis of
5 "the end justifies the means." It required centuries
6 for freedom-loving people at various places in the
7 world to achieve relief from the Star Chamber session
8 and to have and to be able to maintain certain funda-
9 mental rights and liberties. They are not safe merely
10 by reason of having secured such rights and liberties,
11 but must always be on guard against attempts made from
12 time to time to break down those safeguards. These
13 attempts to break down such safeguards have been and
14 are seen from time to time when organized groups of
15 persons actuated by a single purpose, to the exclusion,
16 of all others, set about an "end justifies the means"
17 attack on them. We have seen such examples as the
18 so-called prohibition, where the proponents of such
19 idea brazenly flouted the Constitutions of the United
20 States and the several states and openly stated that
21 if the safeguards concerning rights and liberties
22 interfered they should be ignored in the interest of
23 law enforcement. The desire of millions of American
24 citizens that officers of banks which closed during
25 the depression period be sent to prison caused a wave

1 of hysterical prosecutions and some convictions which,
2 fortunately for good government, the reviewing courts
3 set aside. The Congress of the United States at this
4 moment is considering the passage of a law, recommended
5 by its President, making lynching a Federal offense.
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SPECIFIC INTENT

1 As is well known, there are certain crimes
2 which has as an essential element the requirement
3 of specific intent. Among these are murder, malicious
4 mayhem, conspiracy, burglary, larceny, etc. In
5 England no one could be guilty of a crime unless he
6 had, at the time of the alleged commission of the
7 offense, a guilty mind. In no case involving the
8 element of specific intent can there be a proper con-
9 viction unless the accused had, at the alleged time
10 of commission, an intent of that kind. The specific
11 intent in murder is the particular intent to kill a
12 human being without excuse or justification. In
13 larceny it is to permanently deprive the owner of his
14 property. In malicious mayhem it is to deprive the
15 injured party of one of his members. The required
16 intent must have existed at the time of alleged com-
17 mission and such intent afterward formed does not make
18 out the offense. We assume that this Tribunal will
19 recognize the well-established law in respect to
20 intent. As murder and alleged conspiracy are charged
21 here, it should be considered that the accused, to be
22 properly held responsible must, at the times involved,
23 have had guilty minds and specifically intended the
24 things required to be particularly intended in those
25

crimes. In murder it must have been a specific intent
1 to kill a human being without excuse or justification.
2 In alleged conspiracy, the criminal object thereof.

3 On the evidence here we think it cannot be
4 said, beyond all reasonable doubt that the accused,
5 in respect to those charges, at the times stated,
6 had such intent and guilty mind. That his or their
7 acts may have resulted in the injury shown does not
8 entitle the prosecution to urge or this Tribunal to
9 find that the accused must have such intent, utiliz-
10 ing the presumption that every sane man is presumed
11 to have intended the probable and natural consequences
12 of his own voluntary acts. We say this because while
13 such presumption may be sufficient in cases not in-
14 volving the element of specific intent, such presump-
15 tion, in cases in which specific intent is a necessary
16 ingredient, is not sufficient, in itself, to establish
17 the existence of such intent. There must be other
18 affirmative evidence showing the existence of such
19 specific intent. The presumption, alone, will not
20 suffice.

21
22 Justice Frankfurter, of the United States
23 Supreme Court, in Davis v. United States, 328 U.S.
24 582, said this: "Stern enforcement of the criminal
25 law is the hallmark of a healthy and self-confident

1 society. But in our democracy such enforcement pre-
2 supposes a moral atmosphere and a reliance upon
3 intelligence whereby the effective administration of
4 justice can be achieved with due regard for those
5 civilized standards. . . which are formulated in
6 our Bill of Rights."

7 "Such constitutional limitations arise from
8 grievances, real or fancied, which their makers have
9 suffered, and should go pari passu with the supposed
10 evil. They withstand the winds of logic by the depth
11 and toughness of their roots in the past. Nor should
12 we forget that what seems fair enough against a
13 squalid huckster of bad liquor may take on a very
14 different face, if used by a Government determined to
15 suppress political opposition under the guise of
16 sedition." said Learned Hand, J. in United States
17 v. Kirschenblatt, CCA 2nd., 16 F. 2d 202, 203,
18 51 ALR 416.

19 The principle to which these eminent justices
20 called attention might well be applied here by this
21 Tribunal. For, it may be said, the end never justifies
22 the means.

23 This Tribunal recognizes that the burden of
24 establishing the charges set out in the Indictment
25 rests upon the prosecution and that, before there can

1 be a conviction of any defendant on any of the
2 charges, the prosecution must have established guilt
3 beyond all reasonable doubt. What is reasonable
4 doubt? It is not a mere chimerical uncertainty but
5 is such a state of things that a prudent person
6 called upon to act in a matter concerning those near-
7 est and dearest to him, would hesitate to act at all.
8 It may be said that before the trier of a criminal
9 case can make a finding of guilty he, or they, must
10 be satisfied of guilt to the extent and degree that
11 one must be satisfied that his own mother is dead
12 before he permits the undertaker to screw down the
13 coffin lid.

14 THE PRESIDENT: Mr. Brannon.

15 MR. BRANNON: If the Tribunal please, Admiral
16 SHIMADA's summation is next. Do you wish to start
17 now?

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

20 (Whereupon, at 1442, a recess was
21 taken until 1500, after which the proceed-
22 ings were resumed as follows:)
23
24
25

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

3 **THE PRESIDENT:** Captain Kraft.

4 **LANGUAGE ARBITER (Captain Kraft):** If the
5 Tribunal please, the following language correction
6 is submitted:

7 Reference, record page 35972, line 24:

8 Delete "Yes, I found them," and substitute
9 "I see, there are initials."

10 Record page 35973, line 1: Delete: "THE
11 WITNESS: I found my initials."

12 **THE PRESIDENT:** Thank you.

13 Mr. Brannon.

14 **MR. BRANNON:** Mr. President and Members of the
15 Tribunal, I am afraid that there may be some repetition
16 here, which is, of course, due to the fact that we haven't
17 read each other's arguments in the limited time. So if
18 there is, I would appreciate being advised by the Tribunal,
19 and I will be glad to omit the parts.

20 **THE PRESIDENT:** We will not be very much con-
21 cerned unless they are very lengthy.
22
23
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25

MR. BRANNON: (Reading) Introduction.

1
2 Vacillating between the realization that war
3 is the great anathema of civilization and the recogni-
4 tion of its apparent unavailability the many nations
5 of the world have in the present century collectively
6 condemned it and sought its prevention, deterrence or
7 regulation. In initiating a procedure invoking indi-
8 vidual liability for a kind of war termed aggressive
9 the prosecution here re-echoed this noble effort in
10 its opening address to the Tribunal. As a supremely
11 worthy concept it is not subject to criticism. But to
12 say that our specific purpose here is the prevention
13 of aggressive war while the broad aim is the orderly
14 administration of justice invites honest speculation
15 as to whether they have not transposed the objectives. 2
16

17 1. There are, of course, those who deem war not only
18 unavoidable but necessary. HOLLAND, LETTERS TO "THE
19 TIMES" UPON WAR AND NEUTRALITY (1881-1909) (1914) 25.
" * * * Without war the world would stagnate, and lose
itself in materialism. * * *"

20 2. "At the very beginning of these proceedings it
21 is essential that those directing the prosecution
22 make clear their purpose. Our broad aim is the
23 orderly administration of justice; our specific purpose
24 is to contribute all we soundly can towards the end
25 -- the prevention of the scourge of aggressive war."
Tr. 384.

1 Rather should it not be stated that our
2 specific purpose is a fair and just determination of
3 the guilt or innocence of these men here accused.
4 In the clear light of reality the physical fact of
5 the trial itself, the mode of its conduction and the
6 interpretation of the law are all that we can contri-
7 bute to those who would undertake to solve the prob-
8 lem of war.¹ In this sense it becomes important not
9 only to interpret the law of individual liability but
10 also the law reciting the defenses which are available
11 to those so charged.

12 It is then with singular motive that counsel
13 devotes his efforts to the complicated task of review-
14 ing the evidence in such a manner as to render the
15 greatest assistance possible in this respect. Our
16 striving for brevity has been modified only by a
17 sincere attempt to treat the essential points of the
18 accused SHIMADA's case with the fullness they deserve.
19

20 Theory of the Defense.

21 The perpetration of aggressive war is the
22 crux of the charges here brought and such other

23 1. Cf. Wyzanski, The Nurnberg War Criminals Trial
24 (a communication to the Academy of Arts and Sciences,
25 Dec. 12, 1945) urging the better method would have
been to dispose of the accused by executive or poli-
tical rather than judicial action.

1 offenses as are named in the Charter flow as the
2 natural consequences therefrom. The burden of proof
3 and the obligation to convince the Court of the pri-
4 soner's guilt beyond a reasonable doubt as to all
5 facts and circumstances essential to the guilt of the
6 accused including the criminal intent are upon the
7 prosecution throughout the trial.¹ The burden is never
8 on the accused to establish any issue beyond a reason-
9 able doubt.² Regardless of the magnitude of the charge
10 of participating in the accomplishment of aggressive
11 war there exists no reason for the exclusion of the
12 common and ordinary defenses available to any accused
13 who faces the accusation of committing a crime. In
14 our discussion of the evidence directed against and
15 in favor of the accused SHIMADA we urgently call to
16 the attention of the Tribunal the doctrine of actus non
17 facit reum, nisi mens sit rea. (An act does not make
18 the doer of it guilty, unless the mind be criminal.)
19

20 That a crime is not committed if the mind
21 of the person doing the act is innocent is a sanctuary
22 of law as old as the common law of England itself and

23 1. Stafford vs. U.S. 300 Fed. 537; U.S. vs. Andrade
24 10 Fed. (2d) 572; Order affirmed 16 Fed. (2d) 776;
Tr. 22-23.

25 2. Ezzard v. U.S. 7 Fed. (2d) 808.

1 as new as the modern decisions of America. It is a
2 principle of jurisprudence so fundamentally sound as
3 to need little discussion. The federal and state
4 courts of the United States are in solid accord that
5 to constitute a crime the act must be accompanied by
6 a criminal intent on the part of the accused.²

7 The contention advanced that those nations
8 who collectively contributed to the defeat of Japan
9 have long since, through official utterances and
10 victory on the battlefield, politically resolved the
11 issue of aggression is a misguided criticism by those

- 12 1. 3 Inst. 107, Lord Kenyon C. J. 7 Term 514;
13 Brown, Max. 306; 22 C.J.S. 84 N. 41;
14 Com. v. Ober 139 N.E. 601, 286 Mass. 25;
15 16 C.J. 74, Note 86; State v. Blacklock 167,
16 p. 714 (N.M.); U.S. v. Schultze D.C.
17 Ky. 28 F. Supp. 234, 235.
- 18 2. 22 C.J.S. 84 N. 42.
19 Herrman v. Lyle D.C. Wash. 41 F. (2d) 759.
20 Moscovitz v. U.S. C.C.A. N.Y. 282 F. 575.
21 Ala. Rogers v. State 122 So. 308.
22 Cal. People v. Hoenschle, 22 P. (2d) 777.
23 Fla. Smith v. State 71 So. 915.
24 Ga. Green v. State 102 S.E. 813.
25 Ill. People v. Fernow 122 N.E. 155.
Mich. People v. Campbell 212 N.W. 97.
Miss. Holmes v. State 98 So. 104.
Mo. Schern v. Gallivan 10 S.W. (2d) 521.
Mont. In re McCue, 261 P. 341.
N.Y. People v. Gordon 204 N.Y.S. 184.
N.C. State v. Agnew 164 S.E. 578.
Pa. Com. v. Am. Agr. Chem. Co. 7 Pa. Dist.
Co. 743.

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1 who do not understand what we have here striven to accom-
2 lish. It is a confusion of the juridical with the
3 political, a factor which this Tribunal constantly strove
4 to avoid. The transcript is ablaze with evidence of
5 the Tribunal's wise and just endeavor to separate the
6 juridical from the political aspects pertaining to this
7 offense. It is nothing less than a tribute to the
8 integrity and honesty of the Tribunal that the starting
9 postulate of this trial was not that Japan waged aggres-
10 sive war with the issue narrowed only to what part
11 each defendant took therein. From the amazingly volu-
12 minous record exhausting nearly two years it is firmly
13 established that these accused were allowed to offer
14 proof that from their view the war or wars waged were
15 not aggressive.

16
17 In personal conflicts every man is permitted
18 within reasonable limits to act upon appearances and to
19 determine for himself when he is in real danger. Does
20 it not logically follow that a government official who
21 acted upon appearances and determined that his country
22 was imperiled ought to be allowed to prove every fact
23 and circumstance known to him or believed by him which
24 would have created an apprehension for the safety of
25 his country.¹ In speaking of the crime of murder

1. Magnifying the rule as expressed by Niblack, J., in Boyle v. State 97 Ind. 322, 326 pertaining to self-defense in murder cases.

1 which differs from the crux of the offenses here charged
2 only in magnitude, it has definitely been stated that
3 such acts as may be calculated to have created apprehension
4 on the part of the accused before he acted
5 are admissible in evidence as bearing on his state of
6 mind.¹

7 Since it is not Japan itself that is under
8 indictment the Tribunal has assumed only the responsibility
9 of judicially establishing the individual guilt
10 or innocence of these accused. Therefore the acceptance
11 of such evidence as would reveal those happenings and
12 events which may have influenced an accused in performing
13 his functions or arriving at his decision was
14 a necessary element toward the end of determining the
15 requisite intent for the establishment of individual
16 guilt or innocence. The Tribunal through the President
17 on one occasion and the Acting President on another
18 clearly announced its willingness to receive such evidence
19 as would cast light upon why the individual
20 accused acted as they did.² Such evidence was actually
21 received throughout the course of the trial.
22

23 1. Eng. 1866 R. v. Hopkins, 10 Cox Cr. 229; Undusen
24 v. U.S. 170 U.S. 481, 42 L. Ed. 1116, 18 Supp. 689;
Wigmore on Evidence Sec. 246 p. 44.

25 2. Tr. 25,553, Tr. 34,680 - Defense exhibits 1482,
1739. These documents were top secret and highly confidential reports prepared by the Japanese Foreign Office on Anglo-American and Dutch activities prior to hostilities.

1 The acceptance by the Tribunal of the broad
2 and specific factual background that motivated or
3 influenced the accused is simply lending ear to the
4 doctrine that an act does not make the doer of it
5 guilty unless the mind be criminal. However, it has
6 been said that the construction of a law other than
7 the common law is a question of legislative intent.
8 This is the only deviation from the common law rule
9 that the scienter is a necessary element of a crime.¹
10 Therefore, to state the rule solidly and without criti-
11 cism, we can say that to constitute a crime the act
12 must, except as otherwise provided by law, be accom-
13 panied by a criminal intent on the part of the accused.²
14 Of course, no one can deny that a legislator or a body
15 dictating what the law shall be may forbid the doing
16 of or the failure to do an act and make its commission
17 or omission criminal without regard to the intent or
18 knowledge of the doer.³

19
20 But do we have before us now such law as
21 precludes the element of criminal intent? Does the
22 law that guides this Tribunal discount the element of
23 intent and provide that the mere doing of the act is
24 sufficient to constitute the crime? We submit the

25 1. 22 C.J.S. p. 86, Note 53.

2. Ibid.

3. Ibid.

1 answer is in the negative. For here we have no
2 legislator of the law. True a Charter has been pro-
3 mulgated in which the offenses charged are set forth.
4 But the prosecution has declared that these accused are
5 being placed in jeopardy for violation of existing
6 international law and that the Charter is merely
7 declaratory of that law.¹ Since the Charter does not
8 create the law but merely reiterates a portion of it
9 we must turn to the broad subject of international law
10 itself to determine whether or not it excludes the
11 element of criminal intent.

12 A study of the various sources of international
13 law does not reveal a single ground which could be used
14 as an argument against the acceptance of this godly
15 principle of justice. Indeed one of the sources of
16 such law is listed as justice, equity and good faith.²
17 If aggressive war is a crime under international law
18 and if there is individual liability for its accom-
19 plishment it would be strange indeed to preclude this
20 cosmopolitan principle of defense which has behind it
21 the wisdom of the ages. From the unwritten sources of
22 the common law it was fostered and developed through
23

24 1. Prosecution Argument para. B-5 - Tr. 39,013.

25 2. Mixed Claims Commission - United States and Germany
1922; Statute of Permanent Court of International
Justice 1936; Prosecution Argument para. B-6 -
Tr. 39,013.

1 sheer necessity and gauged to meet the common needs of
2 mankind for self-regulation. When the high courts of
3 today announce in no uncertain words that even statu-
4 tory law is to be construed in the light of the common
5 law and the existence of a criminal intent is to be
6 regarded as essential in order to make an act criminal,
7 even when not in terms required, there is no earthly
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10 The Charter itself while bearing a resemblance
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16 guilt can be rendered. The Tribunal by the acceptance
17 and use of this doctrine would establish strong and
18 fine international law serving as a restraint against
19 those who would later seek to misuse the law of indi-
20 vidual responsibility here sought to be enforced.

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24 1. 22 C.J.S. 87 N. 61, especially in the case of
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52 S. Ct. 35.

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criminal that in our opening statement during the indi-
1 vidual defense of the accused SHIMADA we proclaimed
2 that the treasured and tightly-guarded prerogative
3 of the nations of the world to judge for themselves
4 what facts constitute a threat to their security was
5 also a reservation which must be capable of inheritance
6 by the individuals who compose the government of that
7 nation itself. This uncontested and established reser-
8 vation of nations must not be restricted to the moral
9 defense of the national entities of the world but also
10 must be made available to a struggling man whose life
11 and freedom are endangered by the charge of individual
12 responsibility for his participation in a decision of
13 his government exercising that right. The element of
14 individual intent here becomes of paramount importance.
15

16 Even though the pattern of conduct of a
17 nation over the course of years is subject to condem-
18 nation it does not necessarily follow that one
19 individual as a cog in the machinery of that govern-
20 ment, serving for only a limited period, is likewise
21 subject to castigation. There are so many modifying
22 factors which dispel the theory of individual guilt
23 invariably flowing from national guilt. It is more
24 than specious reasoning which leads us to acknowledge
25 that a nation or the government of that nation, through

1 a pyramiding parade of ill-considered past decisions
2 and actions may have created an insoluble condition
3 of affairs which, when thrust upon a new participant
4 in that government, is quite incapable of dissolution
5 by means short of hostilities.

6 In this respect Japan and its governmental
7 leaders differed from Germany. There the situations
8 arising from time to time were creations of a conti-
9 nuous group with one leader who held the same govern-
10 mental reins consistently over a period of years. No
11 newcomer was brought into the government upon whom
12 fell the task of providing a solution to a problem
13 parented by the actions of a different government or
14 group of men in the past. But here in Japan such did
15 frequently occur, a notable example being the induction
16 of Admiral SHIMADA into a cabinet post fifty days
17 before the commencement of the Pacific War and the
18 thrusting upon him of a lighted squib of international
19 disruption which had been thrown from hand to hand
20 as its flaming fuse approached the stage of explosion.

21 That he provided no answer to a problem that
22 had spelled defeat for so many others before him cannot
23 be a crime. The adoption of the solution of war cannot
24 ipso facto spell out guilt, for such a conclusion
25 without a deep determination of the inner factual

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without a deep determination of the inner factual

matters leading to that decision would render nugatory
 1 a cardinal principle of justice.

2 CHINA: 1928 - 1935.

3 11-a. While SHIMADA is charged with the
 4 planning, preparation and waging of a war of aggression
 5 against the Republic of China he is not charged with
 6 initiating such war.¹ Nor is he mentioned as one of
 7 the individuals who unlawfully ordered, caused or
 8 permitted the attack on the city of Nanking,² the city
 9 of Canton,³ the city of Hankow,⁴ the city of Changsha,⁵
 10 the city of Hengyang in the province of Hunan and the
 11 cities of Kweilin and Liuchow in the Province of Kwangsi,
 12

13 11-b. At the beginning of the Indictment
 14 years SHIMADA held the rank of captain commanding the
 15 cruiser TAMA.⁸ At the time of the Manchurian Incident,
 16 September 18, 1931, he was Chief of Staff of the
 17 Combined Fleet and First Fleet with the rank of rear
 18 admiral.⁹ In February of 1932 he served as Chief of
 19 Staff of the Third Fleet aboard the flagship of
 20 Admiral NOMURA, later Ambassador to the United States.¹⁰

21 1. Counts 6, 19, 27, 28; Tr. 38-39, 45, 50, 50-51.

22 2. Count 45, Tr. 60.

23 3. Count 46, Tr. 60-61.

24 4. Count 47, Tr. 61.

25 5. Count 48, Tr. 65.

6. Count 49, Tr. 65-66.

7. Count 50, Tr. 66.

8. Tr. 34, 647.

9. Tr. 34, 648.

10. Ibid.

1 In June 1932 he was appointed Chief of the Naval
2 Information Bureau and later in November of the same
3 year became Chief of the Operations Bureau.¹ The
4 prosecution has made no serious attempt to connect
5 SHIMADA with the early hostilities in China since
6 there is no evidence against him except the wearing of
7 his naval uniform.

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1. Ibid.

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1. Ibid.

China: 1935 - 1937

1 12-a. In December 1934 he became a vice-
2 admiral and served as attached officer with the Naval
3 General Staff from February 1935 until December at
4 which time he became Vice-Chief.^{1.} Proof of his
5 activities during his tenure as Vice-Chief of Naval
6 General Staff is limited to such matters as were
7 touched upon by the prosecution in their cross-examina-
8 tion of SHIMADA. Much extraneous matter such as
9 whether the first trans-oceanic bombing took place at
10 this time^{2.} or as to where the airplane units took
11 off from in their bombing missions against China^{3.} or
12 as to whether SHIMADA transmitted orders to his superior
13 full Admiral HASEGAWA, then Commander in Chief of the
14 China Fleet, to carry out the bombing of Nanking
15 occupied much of the prosecution's attention.^{4.} It
16 should be noted that SHIMADA is not named in count 45
17 charging the ordering, causing or permitting of the
18 attack on Nanking. SHIMADA was not Vice-Chief of
19 Naval General Staff when the Pancy was sunk.^{5.}

21
22 12-b. Such orders as were issued by the
23 Naval General Staff were not created by SHIMADA.^{6.}

24 1. T. 34648.

4. T. 34736.

25 2. T. 34734.

5. T. 34737, 34738.

3. T. 34736.

6. T. 34809.

1 and the Vice-Chief of Naval General Staff had no
2 authority to issue orders to Admiral HASEGAWA.^{1.}

3 The orders came from the Chief of Naval General Staff
4 pertaining to all fleet operational matters and he,
5 as Vice-Chief, did not handle the transmission of
6 orders which were usually by telegraph.^{2.} Nor is
7 there evidence he formulated any policies.

8 13-a. At no time has the prosecution con-
9 nected SHIMADA with action pertaining to the 1937
10 China Incident, which would exclude him from their
11 statement previously given that the accused has been
12 charged with crimes against peace "only if he partici-
13 pated in the formulation of the aggressive policy of
14 the government, or if he, in the first instance, in-
15 duced the aggression which was subsequently made a
16 policy of the government."^{3.} The prosecution upon
17 receiving the answer from SHIMADA that he merely
18 acted under orders from then Chief of Naval General
19 Staff Prince FUSHIMI gave vent to their imagination
20 by entering upon a historical discussion of the as-
21 cension to office of Prince FUSHIMI in 1932 and his
22 succession by Admiral NAGANO in 1941.

23 1. T. 34809.

24 2. Ibid.

25 3. Prosecution Argument, para. K-3, T. 40540.

1 13-b. While it is difficult to see where
2 Admiral SHIMADA fits into the picture here the prose-
3 cution concludes that he and "the rest of the navy
4 and army militarists appear to have caused and to
5 have later used these appointments of Imperial princes
6 as Chiefs of Staff as a means of shielding the aggres-
7 sive policies of the army and navy staffs from effec-
8 tive control or criticism."¹ This assumption, vague
9 as it is, rests only upon the clouds of surmise and
10 speculation without the support of the soil of
11 evidence. A reading of the evidence reveals that
12 it was this same Prince FUSHIMI who advised Navy
13 Minister OIKAWA concerning the recommendation of
14 SHIMADA as Navy Minister and it was also the same
15 Prince FUSHIMI from whom SHIMADA requested advice as
16 to whether to accept the assignment.² It may not
17 be too bold to suggest that the prosecution should
18 have reversed its theory.

19 Activities: 1937 - 1940.

20
21 14-a. SHIMADA terminated as Vice-Chief of
22 Naval General Staff in December of 1937 and was
23 assigned as Commander in Chief of the Second Fleet.
24 A year later he was removed to the Kure Naval Station

25 1. Prosecution Argument para. TT-29, T. 41679.
2. T. 34652.

1 as Commander in Chief.^{1.} An analysis of these assign-
2 ments are revealing -- not of extraordinary advance-
3 ment^{2.} as the prosecution would have you believe --
4 but of systematic advances solidly coordinated with
5 his age, experience and seniority. No evidence is
6 directed against him during this period.

7 China: 1940 - 1941

8 14-b. In May of 1940 as vice-admiral he was
9 ordered to assume command of the China Seas Fleet
10 succeeding Admiral OIKAWA who was destined to become
11 Navy Minister under the Second and Third KONOYE Cabi-
12 nets and who in turn had succeeded Admiral HASEGAWA.
13 Six months later he became a full admiral.^{3.} It was
14 to this assignment lasting until September of the next
15 year that the prosecution attached some importance.
16 The prosecution went into some detail at the time of
17 cross-examination relative to his connection with
18 naval operations against China. At no time while
19 occupying this post has the defense ever claimed that
20 SHIMADA as Commander in Chief was not responsible in
21 chain of command for naval operations. Our only con-
22 tention was that he was carrying out the dictate of
23

- 24 1. T. 34648.
25 2. T. 16900.
3. T. 34648.

his government in keeping with recognized rules of warfare.

15-a. It was sought to show SHIMADA perpetrated some offense by reason of the fleet blockade of the China Coast.^{1.} While not only is this act recognized as legal,^{2.} the defense established further that the policy of blockading the China Coast had been put into effect long before SHIMADA's time, being carried out by his predecessors, Admiral OIKAWA and Admiral HASEGAWA.^{3.} Instructions concerning visit, search and capture of vessels were issued by the proper naval authorities in terms fully complying with existing international law.^{4.} Thus the evidence is that SHIMADA continued the functions of his predecessors in this regard and he did not thereby execute a new operational procedure, much less formulate an operational policy. The purpose and object of the blockade was to prevent military supplies from going to Chungking.^{5.}

16-a. As to participation of the Fleet in bombing missions the established policy of the Japanese

1. T. 34740.
2. T. 21509 - 21512; 1932 ed. of American Naval War College International Law Situations with Solutions and Notes.
3. T. 34808.
4. Ex. 2545, T. 21529 - 21536.
5. T. 34739.

1 Navy was to direct such attacks against military
2 objectives only.^{1.} Participants in the attack were
3 under strict instructions to adopt all necessary
4 measures toward the end of bombing exclusively
5 military targets and each plane was instructed to
6 carry maps of the streets edited by the Naval General
7 Staff in order to ascertain the military objectives.^{2.}
8 But this was not all. Not only were orders issued by
9 the Naval General Staff pertaining to these matters
10 but the Navy Ministry had issued written information
11 entitled "Criteria in Air Fighting" designed to
12 clarify the rules of aerial conduct and a supplementary
13 guide entitled, "Miscellaneous Observations on Aerial
14 Bombing," had been distributed with the force of an
15 order.^{3.} SHIMADA gave the prosecutor a straight
16 answer when he said the objectives of the bombing
17 were "troops and military installations."^{4.} Not
18 even by innuendo has the prosecution been able to
19 show SHIMADA ordered the bombing of other than military
20 objectives.
21

22 16-b. Hence, rather than the evidence
23 indicating orders designed to establish a policy

- 24 1. T. 21401.
25 2. T. 21479.
3. T. 21508.
4. T. 34736.

1 of indiscriminate bombing it appears those in com-
2 mand, both at the time of SHIMADA's command and be-
3 fore, had taken such precautions as could reasonably
4 be expected. An answer to the rather ludicrous
5 question of the prosecution put to SHIMADA, "Do you
6 tell this Tribunal that no one in the City of Chung-
7 king was struck by the bombing or affected by it
8 from fire or otherwise?" was forestalled by the
9 Tribunal.^{1.} No one is naive enough to speculate
10 that civilian casualties can be avoided when mili-
11 tary objectives are situated within the city itself.
12 The test is whether or not this accused ordered the
13 attack of non-military objectives or negligently
14 permitted such. There is no evidence which would
15 support the prosecution's contention that he did so
16 order or permit.

17 17-a. In moving on to the next phase of
18 SHIMADA's career we trust we are not guilty of serious
19 misjudgment in ignoring what we consider as irrelevant
20 comments by the prosecution pertaining to his activi-
21 ties in China.

22 1. T. 34741.
23
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25

Interim Between Commander in Chief of ^{ched}
China Seas Fleet and Assumption
of Navy Ministership.

1
2
3 17-b. After finishing his ordinary tour of
4 duty as Commander in Chief of the China Seas Fleet,
5 SHIMADA was ordered to return to Japan.^{1.} The
6 prosecution secured several newspaper clippings
7 which allegedly told of the return of SHIMADA on
8 September 15, 1941, and depicted his interview with
9 the Emperor.^{2.} It might well be said that the
10 accuracy of a newspaper story varies according to
11 the source of the subject matter, the accuracy of
12 the reporter and the editing of the publisher. In
13 any event such reports cannot be considered as the
14 most reliable evidence. Thus it is surprising that
15 the prosecution would attempt to press upon this
16 Tribunal these two documents as valid evidence re-
17 flecting the intention or thinking of the accused
18 SHIMADA on matters which followed later.^{3.}
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- 24 1. T. 34742.
25 2. T. 34694.
3. T. 34694, 34695.

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1. T. 34742.
2. T. 34694.
3. T. 34694, 34695.

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18-a. If, however, the prosecution attached
1 any real significance to the fact that SHIMADA made
2 a report to the Throne upon his return from China
3 they should have been content with the very solid
4 explanation given by Navy Minister OIKAWA when he
5 was cross-examined on this point. OIKAWA said it
6 was a common practice that a general report on operations
7 and operational matters be given to the Throne at
8 such times.² If there is any truth in the newspaper
9 articles which the prosecution seems to advocate as
10 their bible with verse and chapter revealing the
11 true mind and intent of SHIMADA, it is interesting
12 to note exactly what the contents of those articles
13 are.
14

15 18-b. In the first place SHIMADA did not
16 speak of action against China but rather he spoke
17 of the Japanese attack on the Chungking regime.³
18 He spoke of the losses in the war and his regrets.
19 He spoke the same as any military man might have
20 spoken for it was not his duty to return from the
21 fighting front and make an anti-governmental statement.
22 Such might well have been pure treason and hardly in
23 keeping with his sworn duty as a high-ranking military
24 man.
25

2. T. 34,594

3. T. 38,087, 38,088

19-a. What there is in these articles that
1 would show that SHIMADA was possessed of vicious
2 feelings toward the Western Powers escapes our attention.
3 Is it not understandable that a military man whose
4 objective was to end the China Affair according to
5 the dictate of his government would not feel
6 favorably disposed to any country or power that was
7 lending aid to the opposing forces and spilling the
8 blood of his own men? We must give him credit for
9 common sense at least and possessing the honest emotions
10 of an ordinary person. Is there one of us under
11 like or similar circumstances that would have felt
12 strongly in favor of those powers who were openly
13 supporting the enemy? Yet in spite of this there is
14 no evidence that SHIMADA at any time raised his voice
15 against the Western Powers.
16

17 19-b. To the contrary we have the testimony
18 of Admiral SAWAMOTO who recalled that in December
19 1940 as Commander in Chief of the Second Expeditionary
20 Fleet under the China Seas Fleet SHIMADA, as Commander
21 in Chief, called a meeting of the commanders of the
22 various units in Shanghai. During the course of that
23 meeting SAWAMOTO told this Tribunal in no uncertain
24 words that SHIMADA "clearly expressed vital interest
25 in the relations of Japan and the United States."

SHIMADA was very disturbed about the increasing
1 tenseness of the situation, said SAWAKOTO, and "I
2 remember he said there must not be a war between
3 Japan and the Western Powers."¹

4 20-a. This evidence was introduced by
5 the defense for the sole purpose of revealing the
6 true thinking of SHIMADA. The value of this
7 particular bit of testimony is enhanced by the fact
8 that the statement so made was given at a time when
9 SHIMADA had no cause to misrepresent or to speak
10 other than his true feelings for, as the witness
11 testified, it was merely a conversation which could
12 have had no bearing on the political situation of
13 the time.²

14 The Recommendation of SHIMADA as Navy Minister

15 20-b. SHIMADA finished his ordinary tour
16 of duty as Commander in Chief of the China Seas
17 Fleet and moved on to a new assignment as Commander
18 in Chief of the Yokosuka Naval Station.³ Having been
19 away from Japan for two years and never having held
20 a political assignment, a fact admitted by the
21 prosecution,⁴ SHIMADA frankly confessed that he knew

- 22 1. T. 34,607
23 2. T. 34,608
24 3. T. 34,649
25 4. T. 16,901

nothing of the inner fibers of the intense political
1 situation which then threatened to cause the fall
2 of the Third KONOYE Cabinet.⁵ Unquestionably his
3 entire naval career had been relegated to sea
4 assignments and service with the Naval General Staff.⁶

5 20-c. That the matters of government were
6 held in high confidence if not secrecy were attested
7 to by TOGO, who with wide experience in diplomatic
8 affairs and who must have had access to more contacts
9 than SHIMADA which would have given light to the
10 true international situation, testified that at the
11 time of joining the TOJO Cabinet he had no correct
12 knowledge of the progress of the Japanese-American
13 negotiations.¹ Thus the evidence is uncontested
14 that SHIMADA had no inside knowledge of the serious
15 state of affairs with the accompanying issues and
16 could have formed no preconceived opinion on them
17 before accepting the position of Navy Minister.²

18 21-a. It is well to note that no Navy
19 Minister of Japan has ever been other than a senior
20 officer on the active list.³ The Ordinance of 1936
21

- 22 5. T. 34,650
23 6. T. 34,609
24 1. T. 35,666
25 2. T. 34,649
3. T. 34,571

making such mandatory in no way influenced the Navy
1 because they had followed this procedure as a matter
2 of custom and tradition from the very beginning.⁴
3 The duty and obligation of recommending a Navy Minister
4 was in the hands of the outgoing Navy Minister.⁵
5 After the Navy Minister had made a recommendation as
6 to his successor such nomination was tantamount to
7 appointment for it was inherently mandatory upon the
8 Premier who had no actual choice in the matter.⁶ Thus
9 it was that this peculiar tradition of the Japanese
10 Navy which necessarily limited the field of candidates
11 for the Navy Ministership expressed itself in a
12 telephone call received by SHIMADA on October 17th,
13 1941.⁷

15 22-a. It was but several weeks after
16 assuming his new command at Yokosuka that SHIMADA
17 received the order to report to the Navy Ministry
18 in Tokyo. Upon being received at the Navy Ministry
19 he was told by Navy Minister OIKAWA that he was
20 OIKAWA's choice to become the next Navy Minister
21 in a new cabinet to be formed.¹ It was after a short
22 talk with Admiral OIKAWA that SHIMADA explained his
23

- 24 4. T. 34,571
25 5. T. 34,570
6. T. 36,525
7. T. 34,649
1. T. 34,650

position saying he felt himself unqualified for the
1 post because of his long absence from Japan.² He
2 thereupon refused the recommendation which fact is
3 confirmed not only by SHIMADA's testimony but by
4 OIKAWA himself.³ Not only did SHIMADA refuse the
5 appointment but he asked Admiral OIKAWA to continue
6 on as Navy Minister⁴ and this also is confirmed
7 by OIKAWA and unchallenged by the prosecution.⁵

22-b. OIKAWA however had decided as a
9 matter of political morality not to succeed himself.⁶
10 The Chief Prosecutor himself assumed the task of
11 cross-examining OIKAWA and in answer to the question
12 as to what he meant by political morality OIKAWA said
13 that matters had become so complicated that a new
14 cabinet starting afresh and wiping the slate clean
15 made inadvisable the participation of the old members
16 in the new government.⁸ Furthermore OIKAWA had been
17 Navy Minister under two different cabinets each of
18 which had resigned and it was quite understandable
19 that he felt it necessary for a new man to take over
20 his burdensome job.¹

22 2. Ibid.

23 3. T. 34,572.

24 4. T. 34,650.

25 5. T. 34,572.

6. T. 34,570

7. T. 34,591

8. Ibid.

1. T. 34,570, 34,571.

He also made it clear that his decision not to succeed
1 himself as Navy Minister was arrived at before he
2 knew TOJO was to become the new premier.²

3 23-a. The thing that has stung SHIMADA
4 throughout this case is the prosecution's charge
5 that he was selected as Navy Minister "because he
6 was, and was known to be, an active supporter of the
7 TOJO policy."³ Although the prosecution readily
8 made this statement they attempted to offer no evidence
9 in support thereof. Even though their allegation
10 had not the benefit of evidence the defense could
11 not rest without destroying the unjustified inference
12 that may follow this unwarranted statement. It was
13 therefore that the man who recommended SHIMADA was
14 called to the witness box for the purpose of reciting
15 in detail how the appointment occurred. The prosecution
16 also must have interrogated Admiral OIKAWA on this
17 point in the days before the trial but it nevertheless
18 did not prevent their making the statement.
19

20 23-b. At this time SHIMADA was a full
21 admiral on the active list. Other than the present
22 Navy Minister there were eight other admirals ahead
23 of him in seniority.⁴ Starting with the oldest in
24

25 2. Ibid.
3. T. 16,905.
4. T. 34,571.

seniority Prince FUSHIMI, Admiral OIKAWA related
1 to this Tribunal exactly why each of the eight was
2 disqualified by him in regard to their possible
3 selection.⁵ The prosecution did not question OIKAWA
4 on his reasoning and explanation.⁶ The Chief
5 Prosecutor was frank to admit when OIKAWA took the
6 stand and subjected himself to cross-examination that
7 OIKAWA was a key witness.¹ His solid testimony,
8 admittedly of vital importance is worthy of complete
9 study.
10

11 24-a. Admitting that in regard to the
12 question of war or peace the Army took one view and
13 the Navy another the prosecutor was unable to in any
14 way infer from his cross-examination of OIKAWA that
15 the appointment of SHIMADA was other than the
16 voluntary choice of Admiral OIKAWA, the very man whom
17 the prosecution had just stated took that stand for
18 peace.² If SHIMADA had desired to change the existing
19 policy of the Navy, if he was the aggressive man the
20 prosecution would now have you believe he is, would
21 he have requested Admiral OIKAWA to remain in office
22 as Navy Minister? Or would he have been selected by
23

24 5. Ibid.

6. T. 34,575 et seq.

1. T. 34,579.

25 2. Ibid.

1 OIKAWA as his successor if OIKAWA believed him to be
2 in discord with the established naval views? Does it
3 sound reasonable that aggressive, war-like SHIMADA,
4 as the prosecution has painted him, would have
5 refused the appointment as Navy Minister, would
6 have turned down this golden opportunity to give vent
7 to his aggressive intent?

8 24-b. SHIMADA then, on the evening of
9 October 17th, 1941, having told Admiral OIKAWA that
10 after a period of four years away on routine naval
11 assignments he did not feel his knowledge of the
12 political situation at home or of the international
13 complications was sufficient to qualify him, together
14 with the statement that he had never served in the
15 Navy Ministry and had a distaste for politics with no
16 desire to become involved in that line of work,
17 returned to his Tokyo home.¹ But on the following
18 morning he was again summoned to the Navy Minister's
19 official residence where not only Admiral OIKAWA
20 met him but also Chief of Naval General Staff Admiral
21 NAGANO.² On this occasion Admiral NAGANO himself urged
22 SHIMADA to accept the recommendation telling him that
23 it was his duty as a high-ranking admiral to do so.
24

25 1. T. 34,650

2. T. 34,651

1 SHIMADA however told NAGANO, as he had told OIKAWA,
2 that he did not feel himself qualified. Thereupon
3 NAGANO and OIKAWA told SHIMADA that Prince FUSHIMI,
4 then the oldest and most respected of naval officers,
5 had surveyed the field of candidates and determined
6 that SHIMADA was the logical one.³ At the same time
7 as these conversations were taking place at the Navy
8 Minister's official residence several telephone calls
9 came in from the Cabinet Formation Headquarters urging
10 that a candidate for Navy Minister be recommended
11 as soon as possible since all of the other ministers
12 of the new cabinet had been determined.⁴

13 25-a. SHIMADA told this Tribunal that at
14 the time he hesitated and was greatly perplexed. He
15 said he realized that he actually was one of the few
16 senior naval officers available for the high post and
17 that the fact that Prince FUSHIMI, Admiral OIKAWA and
18 Admiral NAGANO had all asked him to accept bore heavily
19 on his mind. In considering these factors he said
20 he reversed his earlier decision and agreed tentatively
21 to accept the recommendation.¹ He then went to consult
22 Prince FUSHIMI personally and there discussed with him
23

24 3. Ibid.

24 4. Ibid.

25 1. T. 34,651, 34,652.

1 the matter of acceptance or refusal of the Minister-
2 ship. The Prince himself urged him to accept the
3 post.^{2.}

4 26-a. SHIMADA has told this Tribunal in
5 a straight-forward fashion and unchallenged by the
6 prosecution that he did accept the assignment although
7 it was "never solicited, initially refused and in fact
8 was an unwanted and unwelcome assignment."³ These
9 statements by Admiral SHIMADA are fully substantiated
10 by the testimony of Admiral OIKAWA.⁴ After the
11 refusal OIKAWA said he told SHIMADA to consider the
12 matter overnight and that the next morning he called
13 SHIMADA again to the official residence where the
14 conversations were resumed as SHIMADA has related.⁵

15 26-b. The prosecution assertion therefore
16 that there was any connection between TOJO and SHIMADA
17 either personally or through mutual political interest
18 falls with a sounding thud. OIKAWA himself, referring
19 to this matter said "there is absolutely no truth to
20 the allegation that Admiral SHIMADA was appointed
21 because TOJO wanted him to be. To my knowledge Admiral
22

23 2. Ibid.
24 3. T. 34,652
25 4. T. 34,572
5. T. 34,573

1 SHIMADA and TOJO were not even acquainted at that
2 time.⁶ As for SHIMADA's own personal statement on
3 the matter he said, after quoting the prosecution
4 allegation, that it was "entirely unwarranted and
5 not founded upon fact."¹

6 27-a. SHIMADA said that he didn't know
7 TOJO having met him only once and for a few moments
8 in Shanghai in 1940. He testified that it would have
9 been impossible for the Premier, an Army man, to
10 even suggest a certain individual in the Navy for the
11 post of Navy Minister since it would have met with
12 violent opposition as a blow to the Navy's prestige
13 and also because of the natural rivalry and opposing
14 viewpoints of the two branches of the armed services.²

15 27-b. Even after agreeing to accept the
16 post of Navy Minister SHIMADA was not content to pick
17 up the working of the office without first exacting
18 a condition from the new Premier TOJO. He states that
19 immediately after informing OIKAWA on the morning
20 of the 18th that he would accept the recommendation
21 he went to visit TOJO for the purpose of laying down
22 a prerequisite for his acceptance of the Navy Ministership.³

24 6. T. 34,572.

25 1. T. 34,653

2. Ibid; T. 36,525

3. T. 34,654

SHIMADA even gives the time of day when this conversation with TOJO took place and he said that he spoke to TOJO personally telling him that he would insist that negotiations with the United States be pursued to the utmost with the firm determination of seeking a peaceful solution to the difficulties between the two countries before he would accept the post.⁴

25 4. Ibid.

1 28-a. OIKAWA stated that SHIMADA and he
2 continued their conversations relative to the Navy's
3 views on pending negotiations with the United States
4 and the need of arriving at a peaceful solution of the
5 difficulties if possible and that he and SHIMADA were
6 in full agreement.^{1.} OIKAWA states that SHIMADA then
7 went to see Premier TOJO laying down his prerequisites
8 of acceptance. SAWAMOTO also states that he personally
9 knew that on the morning of October 18th after agreeing
10 to accept the Ministership, SHIMADA went to see TOJO
11 for the purpose of laying down the prerequisite of
12 acceptance of the post of Navy Minister.^{2.}

13 28-b. TOJO agreed with SHIMADA and as SHIMADA
14 testified: "TOJO emphatically agreed that it would be
15 the policy of the government to start from scratch in
16 attempting to wholeheartedly and sincerely reach a
17 diplomatic understanding to the end of preventing war
18 in accord with the Emperor's wish."^{3.}

19 SHIMADA states that he was relieved and felt
20 that the Army and Navy were in complete agreement on
21 this point which had essentially led to the downfall of
22 the KONOYE Cabinet.^{4.}
23

- 24
25 (1. T. 34573.
2. T. 34610.
3. T. 34654, 35671 (TOGO); 30603 (KAYA); 36311 (TOJO)
4. T. 34654.)

1 28-c. SHIMADA's testimony if fully supported
2 by that of SAWAMOTO who also states that upon returning
3 from his visit to TOJO, SHIMADA related to him that TOJO
4 "had completely agreed with him and they were going to
5 adopt a policy of making utmost concessions to the
6 United States in order to avert war." SAWAMOTO states
7 that "we were all highly pleased."^{1.} TOJO also
8 supports this statement for upon cross-examination he
9 said that SHIMADA came to him before acceptance of the
10 Navy Ministership and insisted that there be an under-
11 standing that negotiations with the United States be
12 carried out.^{2.}

13 29-a. Thus are the facts surrounding SHIMADA's
14 appointment to the post of Navy Minister. It would
15 appear that not only was SHIMADA reluctant to accept
16 the assignment, not only did he refuse initially urging
17 OIKAWA himself to remain but that even after acceptance
18 he did all that any man could do to see that his
19 position in the new cabinet would be in accordance with
20 the policy of peace.
21

22 29-b. As to SHIMADA's attitude or state of
23 mind at the time of joining the cabinet he himself
24 summed it up nicely when he said that he did not have
25 the impression that he was joining a war cabinet under

(1. T. 34610.

2. T. 36523.)

1 which the nation would be plunged into the bitter and
2 tragic struggle that followed but that he thought from
3 the very military strength of the government itself that
4 it would exhaust the last possibility of peaceful efforts
5 to settle the dispute and that it could do so because of
6 its control.^{1.}

7 29-c. OIKAWA who is neither an accused or
8 potential accused would hardly have come into this Tri-
9 bunal and testified on behalf of SHIMADA substantiating
10 as he did word for word SHIMADA's testimony if he had
11 felt that SHIMADA had gone contrary to the stand for
12 peace that he himself had previously taken. OIKAWA
13 stated that SHIMADA and he shared the same view and that
14 the ultimate decision of the Navy to fight was entirely
15 dependent upon the then existing international situation
16 which took a violent turn for the worse.^{2.} Then too
17 there is the testimony of SAWAMOTO who served both under
18 OIKAWA and SHIMADA in the capacity of Vice-Minister of
19 Navy and who certainly must be in a position to under-
20 stand the full views of both Navy Ministers and how they
21 correlated with the attitude of the Navy at the time.
22 It is the prosecution itself who characterizes the
23 position of the Navy as one for peace.^{3.}

24
25 (1. T. 34655.
2. T. 34574.
3. T. 34579.)

30-a. The Navy was traditionally opposed to political matters and refrained from participation in-
1 sofar as such was possible.^{1.} Even at the time of the
2 fall of the Third KONOYE Cabinet the evidence reveals
3 that Admiral OIKAWA as Navy Minister left the decision
4 of war or peace to the Prime Minister himself. Since
5 at that time Prime Minister Prince KONOYE favored con-
6 tinuation of negotiations the outcome was the fall of
7 that cabinet in opposition to the Army. If the same
8 policy adopted by Admiral OIKAWA had been followed in
9 the TOJO Cabinet, that is, leaving the matter to the
10 Prime Minister as the head of the government the result
11 would have depended entirely upon the attitude of the
12 Prime Minister. As it so happened SHIMADA did not leave
13 the matter to the Prime Minister as had been done in
14 the previous cabinet but even before entrance laid down
15 his prerequisite demanding that negotiations be carried
16 on.^{2.} It was the turn of events, the factual situation
17 which was the result of the pyramiding parade of past
18 decisions and events that led to the situation confront-
19 ing SHIMADA at that time.^{3.}

31-a. Reciting that SHIMADA was not well in-
23 formed on the naval situation SAWAMOTO testified that

- 25 (1. T. 34669.
2. T. 34654, 34610.
3. T. 34574.)

1 during the first days of SHIMADA's tenure of office he
2 explained the full situation to SHIMADA and that they
3 talked together quite often.^{1.} He said that he knew
4 SHIMADA's avowed intention at the time of assuming the
5 post of Navy Minister was no different than his prede-
6 cessor Admiral OIKAWA. Such statement was not challenged
7 by the prosecution.

8 31-b. The evidence reveals that SHIMADA very
9 shortly after becoming Minister called a meeting of
10 the higher ranking officers of the Navy Ministry and
11 the Naval General Staff and told them of his determination
12 to push the peace talks and outlined the navy policy
13 which was exactly in keeping with the Navy's views under
14 the old cabinet.^{2.} SAWAMOTO told this Tribunal that
15 SHIMADA said that he would resign his post if elements
16 opposed to exhausting every effort toward achieving
17 peace through diplomacy became too strong.^{3.}

18 32-a. Up to this point therefore do we have
19 a criminal, a man guilty of violating international law,
20 accused of the most infamous of crimes, or do we have a
21 man who sincerely, honestly and in a normal fashion be-
22 fitting his rank and assignment sought to carry out his
23 duties as a prudent and reasonable man would have done?
24

25 (1. T. 34609.
2. T. 34609.
3. T. 34610.)

1 The prosecution cannot ignore these facts. So we urge
2 the Tribunal to accept these undisputed facts for they
3 are matters of extreme importance to the accused
4 SHIMADA as bearing upon his later decision for war.

5 The TOJO Cabinet from October 23rd to
6 November 5th, 1941.

7 32-b. SHIMADA testified in some detail con-
8 cerning his activities at the Liaison Conferences be-
9 ginning October 23, 1941. He frankly told the Tribunal
10 that the vital issues then present were not of his
11 creation nor had he even a minor part in their formation
12 unless as he states "my lifelong career in the Navy
13 qualifies me as responsible."^{1.} His wording cannot be
14 improved upon as expressing the exact state of affairs
15 at that time when he said the problems facing them had
16 already crystallized and his only function was to
17 attempt a solution of them in his new capacity as Navy
18 Minister. The days that followed in pursuance of this t
19 task were the most taxing and trying of his life.^{2.}

20
21 33-a. The first period, as he puts it, was
22 from October 23rd until the Imperial Conference of
23 November 5th.^{3.} During that period of time his thoughts
24 were focused on two main problems, the first being how

25 (1. T. 34656.
2. T. 34656.
3. Ibid.)

1 best to ease the difficult conditions of withdrawal of
2 troops from abroad and to reconcile this with the views
3 of the Army. The second concerned the greatest possible
4 concession that Japan could afford to make in order to
5 bargain for an agreement with the United States. He
6 recognized that the greatest difficulty concerned the
7 withdrawal of troops from China and French Indo-China. ^{1.}

8 33-b. What did SHIMADA do during these times
9 to the end of formulating his opinions and decisions?
10 He tells the Tribunal that he attempted to ascertain
11 the general sentiment of naval circles, that he ob-
12 served the thinking of the other members of the govern-
13 ment and took into consideration the trend of public
14 opinion at the time. Therefore, besides his own mental
15 processes he points to three important factors which
16 influenced him - the people, the government itself and
17 the Navy. ^{2.} He concluded the best solution, therefore,
18 was a compromise with the United States and Great
19 Britain with each side giving ground. ^{3.} But there was
20 a strong prevailing opinion that the matters had devel-
21 oped so far as to make it physically and psychologically
22 impossible to withdraw all of the forces from China. ^{4.}

23 34-a. It was argued that it would have
24

- 25 (1. T. 34657.
2. Ibid.
3. T. 34657.
4. Ibid.)

amounted to a victory for China over Japan and would
1 have raised the prestige and standing of the United
2 States and Great Britain in the Far East thereby relegating
3 Japan to a dependent position for its economic
4 existence and position as a world power.^{1.} His think-
5 ing at the time was that it would be advisable to
6 effect a compromise by a strategic withdrawal from
7 China over a period of time and to effect an immediate
8 withdrawal from French Indo-China.^{2.} But this had to be
9 correlated with opposition to such a step.^{3.} To
10 SHIMADA's thinking there was no doubt that if these
11 steps were possible the present government would be
12 making deep concessions which had not been possible at
13 the time of the preceding Third KONOYE Cabinet.^{4.}
14

15 34-b. The evidence shows that the most
16 important of the issues relative to the downfall of the
17 Third KONOYE Cabinet as expressed by Admiral TOYODA,
18 then Foreign Minister, was the question of withdrawal
19 of troops.^{5.} The Japanese proposal of September 25th,
20 1941, made at the time of the Third KONOYE cabinet
21 stipulated that the stationing of Japanese troops and
22 naval forces in China would be maintained for an
23

24 (1. Ibid, 34658.

25 2. T. 34658.

3. Ibid.

4. Ibid.

5. T. 25490, Ex. 291.)

unnamed period of time.^{1.} SHIMADA's concurrence in
1 what later were called proposals A and B were indeed
2 improvements upon the efforts of the KONOYE Cabinet.^{2.}

3 35-a. Admiral TOYODA, the Foreign Minister of
4 the Third KONOYE Cabinet, on October 13, 1941, in his
5 message to the High Command had proposed the withdrawal
6 of troops from China within a two year period,^{3.} and
7 opposed the further dispatch of troops to French Indo-
8 China.^{4.} SHIMADA early in December, 1940, while
9 Commander in Chief of the China Seas Fleet had opposed
10 the further dispatching of troops to French Indo-China^{5.}
11 and the withdrawal of troops from China over a period
12 of time together with the immediate withdrawal from
13 French Indo-China was voiced later when he was Navy
14 Minister.^{6.}

15
16 35-b. The proposal concerning the withdrawal
17 of most of the Japanese forces from China within a two
18 year period was incorporated in proposal A.^{7.} This
19 proposal with its complete contents was a revision of
20 the former proposal of September 25th and if nothing
21 else indicated an attempt at making concessions regard-
22

- 23 (1. T. 25938, Ex. 1245-E.
24 2. T. 25978, 36327.
25 3. T. 25915.
4. T. 25914, 25915.
5. T. 34607, 34608.
6. T. 34658.
7. T. 25978.)

1 less of the criticism attached to them.^{1.} From
2 October 23rd until November 5th long and continuous
3 liaison conferences were held.^{2.} Much discussion was
4 had concerning the possibility of acceptance of
5 proposals A and B by the United States^{3.} and there
6 were those who were of the opinion that preparations
7 for war should be put into effect even at the same
8 time the negotiations for peace were being made.^{4.}

9 THE PRESIDENT: We will adjourn until half
10 past nine tomorrow morning.

11 (Whereupon, at 1600, an adjourn-
12 ment was taken until Friday, 26 March 1947
13 at 0930.)

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24 1. T. 25,966, Ex. 2925
25 2. T. 34,656
3. T. 25,949
4. T. 25,951, 34,658

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Friday, 26 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. H. NORTHCROFT,
Member from the Dominion of New Zealand, HONORABLE
JUSTICE B. V. A. ROLING, Member from the Kingdom of
the Netherlands and HONORABLE JUSTICE JU-AO MEI, Member
from the Republic of China, not sitting from 0930 to
1445; HONORABLE JUSTICE E. STUART McDOUGALL, Member
from the Dominion of Canada, not sitting from 1330 to
1445.

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

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

7
8 Mr. Brannon.

9 MR. BRANNON: If the Tribunal please, I continue
10 reading at page 36 (reading:)

11 November 5 - November 26, 1941

12 36-a. SHIMADA explains briefly but adequately
13 how the decision came about on November 5th to prepare
14 for war while at the same time steadfastly maintaining
15 efforts for peace through diplomacy.¹ The High Command
16 argued that since the imposition of freezing measures
17 by the United States, Great Britain and the Netherlands
18 Japan's vital resources were subject to gradual depletion
19 with no means of replenishing such resources.² It was
20 feared that the materials necessary for war would be
21 gradually exhausted and Japan would collapse militarily
22 and economically.³ SHIMADA, being a military man, no

24 1. T. 34,658

25 2. T. 25,950

3. T. 25,950

4. T. 34,658

1 doubt viewed the situation practically for he told
2 the Tribunal that the economic encirclement of Japan
3 had an effect more telling than they dared admit to
4 the world.¹ They were alarmed at the increasing
5 armaments of the United States; they took into consid-
6 eration the American Fleet at Hawaii and its reduced
7 distance from Japan, and hovering over them was what
8 they considered to be an unsympathetic and unyielding
9 attitude of the United States toward negotiations.²
10 The American military and economic aid to China with
11 the accompanying bitter feeling it aroused among the
12 Japanese people was viewed along with the military
13 conferences being carried out by the Allied Powers which
14 were pointedly directed against Japan.³

15 37-a. On November 4, 1941, one day before the
16 Imperial Conference, a meeting of the military council
17 lers was held which was a rare proceeding, for such
18 occasion had not taken place since the establishment
19 of the military councillor system in 1903.⁴ Prince
20 KANIN, previously Chief of Army General Staff, presided
21 at the conference and the Emperor submitted the question
22 as to whether or not it was advisable for the Navy and
23 Army High Command to draw up operational plans to meet

24 1. T. 34,658

25 2. T. 34,659

3. Ibid.

4. T. 36,329

1 the eventualities which might arise if the Japanese-
2 American negotiations failed.¹ It was there that
3 Admiral NAGANO, Chief of Naval General Staff, explained
4 that if matters continued in their present form the
5 national strength of Japan would be lost and Japan would
6 find itself in the worst possible situation. He concur-
7 red with the government's bending every effort to tide
8 over the crisis by means of diplomacy but explained that
9 Japan might be put into a position where there was no
10 alternative except to commence hostilities and in that
11 event preparations must be made.²

12 38-a. He did not voice the opinion that Japan
13 could win the war for he said it was bound to be a
14 protracted one and the result depended upon incorporeal
15 elements, the total potential of the respective nations
16 and above all how the world situation develops, which
17 nobody knows at present.³ He said that there was a
18 good chance in the initial operations if the commencement
19 of war be in December on the basis of respective fighting
20 strengths in the Pacific.⁴

22 38-b. It was this same Admiral NAGANO who in
23 July had also told the Emperor that he was not confident

- 24 1. T. 36,329
25 2. T. 36,330
3. T. 36,331
4. T. 36,330, 36,331

of victory at all.¹ NAGANO also said that if Japanese-American negotiations fortunately succeeded, the operational preparations would be countermanded at once.²

38-c. The Army Chief of General Staff SUGIYAMA retorted that they must expect and prepare for a protracted war.³ At the least of the problems was the case of petroleum. Where the stock available for civilian use would be exhausted by June or July of 1942 in spite of strict rationing,⁴ the stock for military use was so small that the Japanese Navy would have been faced with the impossibility of discharging its functions, if the worst came, in less than a year and a half.⁵

39-a. While the government was considering the maximum amount of concessions that could be made and exerting every effort to reach an agreement with the United States within the limits of their ability, the High Command, SHIMADA said, was faced with the problem of being called upon to carry out its function if peace negotiations failed.⁶ He, too, speaks of the oil supply, stating that the High Command argued that the Navy had approximately a two years supply of oil with no more

1. Ex. 1125, as corrected by Lang. Sec., T. 10,667
 2. " 36,330
 3. " 36,331
 4. T. 25,950
 5. Ibid.
 6. T. 34,661

1 coming in. The civilian oil could not have lasted more
2 than six months.¹ Thus, if the High command was to be
3 called upon to perform in the event of the failure of
4 diplomatic negotiations they charged that if forced to
5 wait until the following spring they would be unable to
6 risk a naval fight if called upon to do so because of
7 the steadily decreasing oil supply.

8 39-b. SHIMADA said that at all times they
9 considered that the use of force to break out of the
10 Allied encirclement was a last measure resort and
11 purely defensive. "I never entertained a doubt that
12 Japan or any nation had the sovereign right to act in
13 self-preservation and to determine for herself what
14 accumulation of events would entitle her to exercise
15 that right" said SHIMADA in his testimony before the
16 Tribunal.² Not only was there not a single member of
17 either the government or high command who wanted war,
18 but the military men knew too well that Japan had on its
19 hands the China Affair of over four years duration, which
20 promised no hope of being successfully terminated.³
21 SHIMADA therefore told the Tribunal that "to reason
22 that we would voluntarily incur additional hostilities
23

24 1. T. 34,661
25 2. T. 34,659
3. T. 34,660

1 with such powers as the United States and Great Britain
2 would be to attribute to us unthinkable juvenile military
3 reasoning."¹

4 40-a. SHIMADA's talk was straightforward, if
5 the Tribunal please, and the straightforward revelations
6 of the thinking of an honest military man. It is not
7 our position here to argue that his conclusions were
8 right or wrong but only to insist that they were the
9 result of the workings of an ordinary patriotic mind.
10 These matters which we have before set out are only a
11 sketchy scraping of the surface of the events which were
12 under his observation and before him for consideration.
13 He had, in addition to these matters, reports submitted
14 to him by the experts of the Foreign Office whose com-
15 piled information -- realistic and pointed -- were
16 enough to cause anxiety in the mind of any government
17 leader.² Thus, he said, concerning the days of
18 November 5th and thereafter: "It was then, in an atmos-
19 phere of growing desperation brought on by the factors
20 which I have described, that caused the government to
21 take detailed steps for war even though they hoped for
22 and still felt peace possible through negotiations."³

24 40-b. Thereafter, Ambassador KURUKU was dis-

25 1. T. 34,660

2. T. 25,553, 34,680-Def.Doc.1482 (Ex. 3567);
Def. Doc. 1739 (Ex. 3566)

3. T. 34,662

1 patched to the United States to contribute to the immed-
2 iate solution of the difficulties.¹ SHIMADA straight-
3 forwardly testified that there was no subterfuge or
4 deceit attached to the additional ambassador's going
5 to the United States, for "it was a fight against the
6 time element and a redoubling of our efforts to succeed
7 in diplomacy before we were forced into hostilities."²
8 Not only does SHIMADA state this, but KURUSU himself on
9 November 17th around 11 A.M. told the President of the
10 United States personally that Japan was: ". . . desirous
11 of the success of the negotiations, but the time element
12 has to be taken into consideration because the economic
13 and military ability of Japan to defend herself would
14 deteriorate with procrastination; Japan cannot submit
15 to complete surrender without doing everything to avoid
16 it; and therefore, though Japan is earnest about the
17 success of the negotiations, they must at the same time
18 be concluded speedily."³ There was no subterfuge in the
19 words spoken by KURUSU to the President that the freez-
20 ing regulation had caused impatience in Japan and a feel-
21 ing that Japan had to fight while it still could.⁴ Unless
22 this point is clearly understood and believed a great
23 injustice will result,⁵ SHIMADA testified.

25 1. T. 25,982, 34,664
2. T. 34,664
3. T. 26,034

4. T. 26,043
5. T. 34,664

1 41-a. Of supreme importance in bearing upon
2 the question of whether SHIMADA possessed criminal
3 intent is his statement that in the days that followed
4 he was still very hopeful that peace would eventually
5 come through some diplomatic arrangements.¹ The
6 honesty of this newcomer in the Japanese Government is
7 revealed in his words: "It was during this time that
8 I began to fully appreciate the gravity of affairs."²
9 And it does not sound like a war-minded advocate of
10 aggressive war or a man with criminal motive or intent
11 who, with due humility, stated: "This complicated
12 situation weighed heavily on my mind. Each day I went
13 to the shrine to ask for divine guidance so I might
14 serve the Emperor in bringing about his fervent desires
15 for peace. I was not a statesman nor a diplomat but I
16 tried to borrow upon all of the skill and reasoning I
17 possessed to seek a solution. It was in this mixed
18 atmosphere of doubt, hope, fear and speculation that
19 the Full note of November 26th was received."³
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1. T. 34,664
2. Ibid
3. Ibid, T. 34,665

Tossing the Lighted Squib.

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42-a. It is well to pause here to note that the TOJO Cabinet had not built the structure of differences existing between Japan and the United States.⁴ The pyramiding parade of past events are earmarked by the downfall of the Second⁵ and Third⁶ KONOYE Cabinets which were, of course, governments in which SHIMADA neither participated nor had knowledge of their workings.⁷ The essential differences which plagued these cabinets, and which problems were inherited by the cabinet in which SHIMADA became Navy Minister, are well known to the Tribunal and actually need no further discussion.⁸ The testimony of YAMAMOTO, Kumaichi, well supplemented by documentary evidence, is replete with a graphic description of the troubled times and the diplomatic attempts to rectify the hopeless situation.⁹

4. Tr. 25,870-25,872

5. Tr. 25,749

6. Tr. 25,868

7. Tr. 34,650

8. Tr. 25,871: 1. The problem of stationing or withdrawing of troops from China.
2. Japan's attitude toward the Tripartite Pact.
3. The problem of non-discriminatory trade in the Pacific area.

9. Lx. 2915, Tr. 25,908

1 43-a. It was Japanese-American negotiation
2 troubles that caused the fall of the Second KONOYE
3 Cabinet when the opposition viewpoint of then Foreign
4 Minister MATSUOKA became more than the government
5 could tolerate.¹ But the important fact is that
6 the government fell because it was unable to solve
7 the Japanese-American differences.

8 43-b. The Third KONOYE Cabinet minus
9 MATSUOKA and four lesser ministers and with the addi-
10 tion of the former Vice Minister of Navy, Admiral
11 TOYODA, as the new Foreign Minister undertook to
12 tackle again the problem of negotiations with the
13 United States.² The system of the cabinet holding
14 joint conferences with the Supreme Command in the
15 Palace was instituted.³ What progress, or rather,
16 lack of progress was made in the negotiations has
17 already been revealed in full. Perhaps keynoting
18 the efforts of Japan was the proposal of Prince
19 KONOYE to meet personally with President Roosevelt,
20 made August 4, 1941 to the War and Navy Ministers.⁴

21 44-a. On the same day such a step found the
22 Navy completely agreeing, with KONOYE himself reciting
23

- 24 1. Tr. 25,747
25 2. Tr. 25,748
3. Ibid
4. Tr. 25,766

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23

- 24 1. Tr. 25,747
25 2. Tr. 25,748
3. Ibid
4. Tr. 25,766

1 that "the Navy expressed complete accord and, more-
 2 over, anticipated the success of the conference."¹

3 And this approval was given by Navy Minister OIKAWA
 4 who later so sincerely urged SHIMADA as his successor.²

5 This offer of the Premier to go abroad had no prece-
 6 dent in Japanese history.³ Vice Admiral OKA of the
 7 Naval Affairs Bureau of the Navy Ministry was en-
 8 thusiastic and energetic in his attempt to make
 9 preparations for such a meeting.⁴ The United States,
 10 however, did not choose to ratify or agree to this
 11 procedure.⁵

12 44-b. The Third KONOYE Cabinet resigned
 13 without effecting any results toward the solution
 14 of Japanese-American differences.⁶ On Sunday,
 15 October 12, 1941 Prince KONOYE met at Ogikubo with
 16 the Minister of War, the Minister of Navy, the
 17 Foreign Minister and President SUZUKI of the Cabinet
 18 Planning Board. The Navy Minister OIKAWA at this
 19 crucial meeting reached the traditional naval dis-
 20 taste for engaging in political matters⁷ in the
 21 following statement concerning the continuation of
 22 negotiations or the going to war:
 23

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|----|-----------------------|---------------|
| 24 | 1. Tr. 25,770 | 5. Tr. 25,794 |
| | 2. Ibid | 6. Tr. 25,868 |
| 25 | 3. Tr. 25,788 | 7. Tr. 34,669 |
| | 4. Tr. 33,367, 33,391 | |

1 "We have now indeed come to the crossroads
2 where we must determine either upon peace or war. I
3 should like to leave this decision entirely to the
4 Premier, and, if we are to seek peace, we shall go
5 all the way for peace. Thus, even if we make a few
6 concessions, we ought to proceed all the way with the
7 policy of bringing the negotiations to fruition. If
8 in the midst of negotiations -- after negotiations
9 have gone on for two or three months, one says that
10 "they won't do from any point of view," and "Well,
11 we've got to have war now," -- the Navy will be put
12 to inconvenience. If we are to have war, we must
13 determine upon war here and now. Now is the time.
14 If we decide that we are not to have war, I should
15 like to have us proceed upon the policy that we will
16 bring negotiations to fruition no matter what happens."¹

17 45-a. In leaving the matter to the Prime
18 Minister as head of the government rather than
19 taking upon themselves as a branch of the military
20 to decide this vital issue, criticism was made,
21 whether justly or not, that the Navy took a weak
22 position.² Yet the Army and the Government, as well
23 as the Navy, well knew that Prince KONOYE's position

24
25 1. Tr. 25,863, 36,303
2. Tr. 36,524, 36,303

1 was solidly behind the continuation of negotiations
2 as KONOYE himself had so positively stated.¹ Rather
3 than condemnable it would appear, at least to those
4 who feel the military should be subservient to the
5 civilian, that the statement of the Navy's views
6 was a sound and wise procedure, for it left to the
7 civil authorities the right to make the decision
8 which would bind the Navy. That Premier KONOYE
9 would rather have had the Navy fight his battle for
10 him by taking a positive stand against the Army,
11 through direct words rather than relegate the decision
12 to him, is an understandable but complete extraneous
13 matter. Other than the naval protest against the
14 provisions of the 1930 London Naval Treaty no evi-
15 dence has been presented this Tribunal that the
16 Japanese Navy cast its influence in matters of state.
17 This should not be forgotten.

19 46-a. It was the position of the Army
20 against the withdrawal of troops from China,² to-
21 gether with their contention that war should be
22 decided upon by the middle of October,³ that led
23 to an irreconcilable difference of views in the
24 government. The Imperial Conference decision of

25
1. Tr. 25,864
2. Tr. 25,865
3. Tr. 25,870

1 September 6 recited that if negotiations had no
2 hope of fulfillment by the beginning of October 1941
3 Japan should immediately determine to wage war
4 against the United States, Great Britain and the
5 Netherlands.¹

6 46-b. It becomes apparent, therefore, that
7 the decision to prepare for war was made before any
8 one contemplated that SHIMADA was to be a cabinet
9 member.² At the September 6th conference they went
10 so far as to use the words "a decision for war"
11 which was predicated upon the possibility of
12 failure of Japanese-American negotiations by the
13 middle of October.³ When October came and the
14 negotiations had fared no better than before the
15 difference of views of the Army and the Government
16 pertaining to the execution of this decision ex-
17 pressed itself openly in the intransigent opinions
18 expressed at Ogikubo. A new government was formed
19 and SHIMADA was tossed this lighted squib of irre-
20 concilable national and international differences
21 by Admiral OIKAWA who, we submit, must have enter-
22 tained weak optimism as to the ability of anyone to
23 bring forth a solidification of thought concerning
24

25
1. Tr. 35,582
2. Tr. 25,810, 25,868
3. Tr. 34,582

Japanesc-American problems.

1 47-a. We call attention to the fact that in
2 the government that had just fallen because of its
3 inability to solve the problems facing it the Navy
4 was strongly represented and on the side that
5 favored settlement of the issues through peace. ¹
6 Admiral TOYODA was the Foreign minister, Admiral
7 NOMURA was the Japanese Ambassador in the United
8 States, Admiral OIKAWA was, of course, the Navy
9 Minister and Vice Admiral OKA was the great expo-
10 nent of the prayerful meeting attempted between
11 Prince KONOYE and President Roosevelt. ² Collectively
12 these powerful naval men had failed to do what
13 individually SHIMADA likewise could not achieve.
14 Yet the prosecution would take his life for this
15 failure!
16

17 47-b. The "wipe the slate clean policy"
18 bequeathed to the TOJO Cabinet ³ meant that the
19 Imperial decision of September 6, that is to go to
20 war if negotiations had not succeeded by the middle
21 of October 1941, was to be disregarded. ⁴ Nothing
22 else could be wiped clean -- the difference still
23 existed. The American position was the same. The
24

25 1.. Ex. 2916, Tr. 25,912 3. Tr. 36,309
2. Tr. 25,869, Line 9 4. Tr. 25,921

1 Japanese viewpoint was unaltered. It was simply a
2 matter of continuing negotiations with no new
3 weapons or new thoughts given to aid the new cabinet
4 in its efforts toward success by diplomacy.¹ Navy
5 Minister OIKAWA did not offer any suggestion as to
6 how to achieve the desired compromise with the United
7 States and advisable as it was that he left the
8 matter of war or peace to the government or the
9 Premier for decision it did not make for a construct-
10 ive step toward solving the differences.²

11 48-a. Why should a special stigma be at-
12 tached to a government which in November 1941 decided
13 on the probability of hostilities by December if
14 diplomatic means availed naught, when the govern-
15 ment before it had decided in September that the
16 failure of negotiations by October would lead to
17 war? Pressuring both decisions was the thought of
18 the High Command³ that to wait until spring would
19 have found them unable to risk war, and even to
20 wait until the advent of winter weather would have
21 greatly hampered if not prevented operations on the
22 seas. And in the TOJO Cabinet this time element had
23 reduced itself to where a decision could not be
24

- 25
1. Tr. 36,303
2. Tr. 36,303
3. Tr. 34,662

1 avoided.

2 The Hull Note of November 26th.

3 48-b. At this period when the High Command
4 was reaching the end of its preparations for hos-
5 tilities and the government desperately hoping for
6 a change in the diplomatic picture which could spell
7 peace, there arrived the so-called Hull Note of
8 November 26th. Whatever characterization the prose-
9 cution may have placed on the Japanese reaction to
10 this diplomatic notice¹ it becomes necessary to
11 honestly consider what the Japanese reaction actually
12 was. There is no need for elaboration on its con-
13 tents but only for a discussion of its effect upon
14 the accused SHIMADA. He described it as a "jarring
15 blow."² It was unacceptable in Japanese governmental
16 circles and there was no one who advocated its accept-
17 ance.² The view taken was that it was impossible to
18 accept the terms thereof and that it was an ultimatum
19 threatening the existence of Japan.³ There were in
20 America those who shared the same interpretation.⁴

21 49-a. SHIMADA stated that:

22 "It seems clear that no nation willingly
23 relegates itself to a secondary position as a world
24

25 1. Pros. Argument, para. 6, Tr. 38,952

2. Tr. 34,665

3. Tr. 34,665, 35,830 4. Tr. 10,954

1 power if it can help it. History to this very
2 minute dictates that every leading power constantly
3 seeks to preserve its rights, prestige and dignity
4 and to this end constantly follows a policy which it
5 deems most beneficial to itself. As a patriotic
6 Japanese, loving my country, I was confronted with
7 the question of whether or not Japan could bow to the
8 American demands and yet preserve its standing in
9 the world. It would have been treasonable to have
10 advocated a step contrary to the best interests of
11 my country."¹

12 49-b. Thus it was that SHIMADA said in his
13 opinion the security of Japan was threatened, that
14 she had a right to determine for herself what accumu-
15 lation of events would entitle her to act in self
16 defense and that he formulated his opinion on this
17 basis. Therefore, if we borrow from the well-estab-
18 lished internationally expressed reservation that no
19 treaty or agreement precludes a nation from fighting
20 in self defense or determining for itself what state
21 of affairs provokes that right, a personal defense
22 for an accused who exercises that right as a govern-
23 mental leader participating in such decision is born.
24 Has it not been firmly established from the recitation
25 1. Tr. 34,666

1 of facts that SHIMADA should be a recipient of such
2 a defense? Were not his thoughts predicated upon
3 such factual matters or circumstances as would lead
4 a reasonably prudent man under like or similar cir-
5 cumstances to act as did he?

6 50-a. He did not mince words in his testi-
7 mony when he said: "I frankly state it was this
8 reply of the United States that caused me to step
9 the boundary line of peace when the final decision
10 was made at the Imperial Conference of December 1,
11 1941."¹ However, even at this twilight hour he was
12 of the opinion that there would still have been time
13 to prevent hostilities had the United States recognized
14 that Japan was sincerely attempting to reach a con-
15 promise.² And to this end there was a standing order
16 issued by the Naval General Staff for the Fleet to
17 return upon the giving of notice at any time before
18 the first blow was struck.³

19
20 50-b. The prosecution argues that SHIMADA
21 and NAGANO advised the Emperor on November 30, 1941
22 that the Japanese Navy's preparations for war against
23 the United States and Great Britain were adequate
24 and satisfactory.⁴ Such is quite correct except that

25 1. Tr. 34,666
2. Ibid

3. Tr. 26,727, 26,768
4. Pros. Argument, para. TT-10,
Tr. 41,662

1 SHIMADA on cross-examination explained that the ques-
2 tion of confidence in the ultimate outcome of the war
3 was not the theme of the conversation but only as to
4 whether they were confident of the preparations which
5 the Navy had made.¹ He said the inquiry from the
6 Throne on that day to Admiral NAGANO as Chief of
7 Naval General Staff was "what was the state of the
8 operational plans?" and to him the inquiry from the
9 Emperor was what was the state of preparations as far
10 as the Navy Ministry was concerned. Both he and
11 NAGANO answered that preparations were completed.
12 SHIMADA said he spoke of preparation in connection
13 with personnel and materials and that everything
14 possible was being done in that regard.² We sub-
15 mit that SHIMADA did no wrong in speaking the
16 truth. The converse is to contend that he should
17 have told the Emperor that the Navy was not prepared
18 for action and in doing so have lied to the head of
19 the state.

20 51-a. The KIDO Diary entry concerning this
21 matter is discussed by KIDO himself³ in his testimony.
22 He denounces the prosecution interpretation that the
23 Navy Minister and Chief of Naval General Staff had

- 24 1. Tr. 34,700
25 2. Tr. 34,701
3. Tr. 31,046

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given affirmative answers as to the success of the
war.¹ It is clearly shown that the question was
whether the Navy's hands were too full to engage in
new operations.² SHIMADA volunteered nothing; he was
asked by the Emperor. It was his duty to answer.^{3.}

1. Tr. 31,047
2. Tr. 31,046
3. Tr. 34,700

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1 51-b. The Navy was never confident of
2 winning the war.¹ But, as SHIMADA said, they were
3 confident that they were better prepared at that time
4 to fight than they would have been at any later date.²
5 This is reasonable in face of the evidence hereto-
6 fore given concerning Japan's diminishing war poten-
7 tial. NAGANO previously had told the Emperor in
8 July 1941 that he was not confident of a victory over
9 the United States at all. He made no optimistic state-
10 ment to the Liaison Conference of November 1³ and
11 later on November 4 he refused to say that Japan could
12 win the war.⁴ Thus it would have been manifestly a
13 reversal not subject to reasonable acceptance had he
14 voiced his opinion to the Emperor that the Navy was
15 confident of victory. His contrary statements of
16 only a few days before not to mention his personal
17 statement to the Emperor in July would have provided
18 an inconsistency too glaring for anyone's acceptance.
19 Common sense in view of these facts demands SHIMADA's
20 recital of that conference with the Emperor be
21 accepted.⁵ At this time the Emperor well knew that
22 there was a unanimous agreement on the necessity of
23 going to war.⁶

24
25 (1. Tr. 30,654, 36,331. (4. Tr. 36,331.
2. Tr. 34,666. 5. Tr. 34,667.
3. Tr. 30,654. 6. Tr. 35,711.)

Initiating Hostilities and the
Final Notification.

1
2 52-a. It is established that the operational
3 plans and procedures were solely within the responsi-
4 bility and workings of the Naval General Staff¹ whose
5 head was directly answerable to the Emperor. SHIMADA
6 was first informed of the Pearl Harbor Attack after
7 becoming Navy Minister October 18th, 1941² and had
8 nothing whatsoever to do with the drafting of the
9 operational plans either for the Pearl Harbor Attack
10 or other naval operations.³ The empty prosecution
11 charge to the contrary was never nourished by
12 evidence.⁴

14 53-a. SHIMADA's alleged membership in the
15 Imperial General Headquarters was fully explained
16 as being a technical membership only.⁵ The Imperial
17 General Headquarters which had no central office or
18 singular building was actually composed of the Army
19 General Staff and the Naval General Staff.⁶ SHIMADA
20 did not attend any of the operational discussions
21 that were held by the Naval General Staff and could
22 not have attended those held by the Army.⁷ SHIMADA
23 himself told the Tribunal without contradiction that
24

25 (1. Ex. 2982, Tr. 26,430, (4. Tr. 10,194, 34,662.
 34,663, 34,627. 5. Tr. 34,676
2. Tr. 34,627. 6. Tr. 34,628
3. Ibid. 7. Tr. 34,676, 34,628.)

1 he never attended any of the meetings and had no
2 right to do so, and having no voice in such matters
3 as operational and strategic problems it would have
4 been inappropriate for him to have attended.¹

5 53-b. The prosecution does not and cannot
6 seriously contend that SHIMADA had any direct respon-
7 sibility concerning the operational orders for the
8 opening of hostilities but they do charge that he
9 is to be held answerable for the alleged failure to
10 give proper notice of the commencement of such
11 hostilities in compliance with Hague Convention III.²

12 54-c. The Tribunal has heard much testimony
13 relative to the Navy's position in regard to the giving
14 of notice before the opening of hostilities. Actually
15 it is only relevant in so far as it bears upon the
16 accused Admiral SHIMADA. At no time has either the
17 prosecution or defense even suggested that SHIMADA
18 took a stand in opposition to the delivery of any
19 notification. The man who brought the charge that the
20 Naval General Staff opposed the giving of notice
21 specifically excluded SHIMADA from his accusation.³
22 It was the contention of TOGO that Vice Chief of
23 Naval General Staff ITO demanded that negotiations be
24

25 (1. Tr. 34,676

2. Pros. Argument par. TT-45,

Tr. 41,690.

3. Tr. 35,834 (TOGO).

1 left unterminted in order that the war be started
2 with the maximum possible effectiveness.¹ However he
3 never attributed such a statement to NAGANO, the
4 Chief of Naval General Staff either upon direct or
5 cross-examination. He was quite careful in wording
6 his statements so as to never say NAGANO advocated
7 an attack without notice. He would only say that
8 NAGANO spoke of "a surprise attack,"² a matter which
9 we shall discuss in a moment.

10 54-b. TOGO having testified that Admiral
11 NAGANO wanted to carry out a surprise attack³ stated
12 that on December 5th, four days later, (that perhaps
13 should be three days later) NAGANO said that "this
14 was a very important note and should be delivered to
15 Secretary Hull personally."⁴ He was asked on cross-
16 examination to explain why, if NAGANO was so opposed
17 to the notice, he then insisted on this direct method
18 of delivery to the Secretary of State of the United
19 States.⁵ He answer was that

21 " * * * NAGANO very carefully noticed
22 and gave his attention to matters of diplomatic
23 procedure when he said that it would be better

- 24 (1. Tr. 35,714, 35,715.
25 2. Tr. 35,834, 35,715.
3. Tr. 35,714.
4. Tr. 35,722.
5. Tr. 35,854.)

1 to have the note, being such an important
2 one, delivered to the Secretary of State.
3 And I even gained the impression that Admiral
4 NAGANO, having attended international con-
5 ferences such as those held in Geneva and
6 London paid attention - he gave his full
7 attention to such matters of procedure."¹

8 The Tribunal's attention is called to this obvious
9 inconsistency.

10 55-a. TOGO's assistant YAMAMOTO, Kumaichi
11 who confirmed TOGO's story, also told the Tribunal
12 that, "It was on the 2nd of December that the Liaison
13 Conference agreed that with respect to the time for
14 the notification to be delivered, the Foreign Minister
15 and the High Command should consult each other and
16 draw up - or come to a conclusion on the matter."²

17 55-b. The accused SHIMADA does not recall
18 a Liaison Conference on December 2nd, 1941, and he
19 so testified.³ The accused MUTO stated no Liaison
20 Conferences were held on December 2nd, 1941.⁴ Ob-
21 viously TOGO doubted the memory of his Chief assistant
22 YAMAMOTO, whose testimony he must have perused beforehand,
23

24 (1. Tr. 35,854.
25 2. Tr. 26,125.
3. Tr. 34,674.
4. Tr. 33,156.)

for when TOGO testified he sidetracked the issue

1 saying the discussion came up "at the first Liaison
2 Conference following the Imperial Conference."¹ We
3 submit there is a strong question as to whether or
4 not there was ever a meeting held on the date that
5 the alleged statements are supposed to have been made
6 and we further submit that TOGO's memory may not justi-
7 fy his charge as to the absence of that quality in
8 his fellow accused.²

9 56-a. But not to pursue the matter unneces-
10 sarily it is sufficient to call to the Tribunal's
11 attention that counsel on every possible occasion
12 sought to question any accused regarding the alleged
13 naval opposition to the giving of notice who took
14 the witness box. SHIMADA testified that TOJO, SUZUKI,
15 KAYA, HOSHINO, OKA and MUTO did not recall such a
16 matter occurring.³ MUTO said that it was an important
17 matter and if it had occurred he would have remembered
18 it and his words were, "I do not remember having heard
19 Admiral ITO advocating an attack against the United
20 States without warning."⁴ Admiral OKA said that he
21 had never heard from any source whatsoever that the
22 Naval General Staff entertained any such idea.⁵ The

24 (1. Tr. 35,714.
25 2. Tr. 34,835.
3. Tr. 33,674.

(4. Tr. 33,156, 33,157
5. Tr. 33,403.)

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20 States without warning."⁴ Admiral OKA said that he
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22 Naval General Staff entertained any such idea.⁵ The

24 (1. Tr. 35,714.
25 2. Tr. 34,835.
3. Tr. 33,674.

(4. Tr. 33,156, 33,157
5. Tr. 33,403.)

1 accused KAYA testified "I have no recollection of
2 ever hearing any such thing at any of the Liaison
3 Conferences I attended."¹ TOJO likewise disturbs
4 TOGO's story by saying that such a thing actually did
5 not happen.² TOJO also verified the fact that SHIMADA
6 and NAGANO had questioned him in Sugamo Prison con-
7 cerning this story of TOGO at which time he gave them
8 the same answer he gave the Tribunal.³ Upon cross-
9 examination TOGO was reminded that SHIMADA, TOJO,
10 SUZUKI, KAYA, HOSHINO, OKA and MUTO did not remember
11 the incident and he was asked if he was prepared to
12 say all of these men were actually lying.⁴ His answer
13 was that he had no confidence in their memory.⁵

14 57-c. TOGO had first told his story about
15 the naval opposition to the sending of a notification
16 before being interned with the rest of the accused in
17 Sugamo Prison. Upon hearing of his account of the
18 matter NAGANO and SHIMADA took a poll of their
19 fellow defendants who had attended the Liaison
20 Conferences.⁶ Since every one was solidly against
21 the TOGO story, shortly after the incarceration of
22 TOGO he was engaged in conversation by NAGANO and
23

24 (1. Tr. 30,661.
25 2. Tr. 36,528.
3. Tr. 36,528.
4. Ibid.
5. Tr. 37,030.)

1 SHIMADA,¹ which was their first opportunity to talk
2 over the matter with him.

3 57-b. TOGO was told what the other accused
4 had to say about the matter and undoubtedly there
5 sprang up between TOGO, SHIMADA and NAGANO some
6 bitterness. It was thus that TOGO gave vent to his
7 personal feelings when upon cross-examination by
8 SHIMADA's counsel he testified that SHIMADA had re-
9 quested him not to say anything about the Navy desiring
10 to carry out a surprise attack and also said something
11 in the nature of a threat if he did so.² Upon being
12 asked of the nature of the threat he said, "I did
13 not consider it a threat to do me bodily harm"³ and
14 "I was not able to get specifically what the person
15 who threatened me was intending to do."⁴ And TOGO was
16 not concerned with asking what was meant by the "threat."
17 TOGO would not say it was a threat but only "words
18 which sounded like a threat."⁵

19 58-a. Hence it was that SHIMADA requested
20 the right to again take the stand to refute this
21 story.⁶ Actually the TOGO tale involved only two
22 men -- NAGANO and ITO -- who in the indifference of
23 death could hardly be plagued by his story. Yet SHIMADA

24 (1. Tr. 37,030.
25 2. Tr. 35,838.
3. Tr. 35,976.

(4. Tr. 35,977.
5. Ibid.
6. Tr. 35,859.)

1 accepted it as offensive not only to the organization
2 in which he had served for so many years but to him-
3 self personally. We call to the Tribunal's attention
4 in so far as the credibility of the two men is con-
5 cerned, and this is perhaps the only importance of
6 the matter, that since only three men knew about the
7 conversation,⁴ one of whom is dead, SHIMADA could well
8 have denied the whole story if he was adept at pre-
9 varification. But in his straight-forward manner he
10 told the Tribunal the actual story. It was pointed
11 out that it would have been ridiculous for SHIMADA
12 or NAGANO to have attempted to prevent TOGO from
13 telling his tale since TOGO had already made this
14 statement on several occasions before and could not
15 have retracted it without putting himself in an
16 embarrassing position.³

17 58-b. As SHIMADA said, "to have made a threat
18 to him would have been both absurd and unthinkable
19 and nothing was said which could have led him to
20 this belief."⁴ We also call to the Tribunal's
21 attention that counsel for the accused TOGO attempted
22 to prevent SHIMADA from testifying by joining with

- 23 (1. Tr. 35,859.
24 2. Tr. 35,839
25 3. Tr. 37,031.
4. Tr. 37,031.

1 the prosecution in making objections to SHIMADA's
 2 rebuttal affidavit.¹ And it is likewise called to
 3 the Tribunal's attention that upon conclusion of
 4 SHIMADA's testimony counsel for TOGO did not attempt
 5 to cross-examine.² All of which detracts from such
 6 comments as may be forthcoming in the ex parte safety
 7 of their summation. If the prosecution honestly
 8 believes there were "other occasions" when TOGO was
 9 "threatened," as they would now infer³ they had full
 10 opportunity to bring them out. How can they now
 11 speculate so in their argument?

12 59-c. No one doubts or has any evidence
 13 been offered to the contrary that the Foreign Minister,
 14 was chargeable with diplomatic matters.⁴ Certainly
 15 the final notification to the United States fell
 16 within this category of duties.⁵ The government left
 17 the physical fact of the note's construction and con-
 18 tents to the Foreign Minister with the Navy General
 19 Staff interested mainly in the time element of delivery.⁶
 20 That there was complete agreement between all parties
 21 concerned including the Foreign Minister and the Naval
 22 General Staff with respect to the giving of the

23 (1. Tr. 37,028.

24 2. Tr. 37,034.

25 3. Pros. Argument par. TT-49,
 Tr. 41,696.

(4. Tr. 26,131.

5. Tr. 34,723.

6. Tr. 26,135.)

notification before any attack was carried out is
1 the admission of TOGO himself.¹

2 60-a. SHINADA stated it well when he said:

3 "It was my firm belief that in respect to
4 such matters I could rely upon the knowledge
5 and skill of the Foreign Minister and his
6 experts. Consequently, I never felt any con-
7 cern about the procedure that was adopted
8 until the question was raised after the end
9 of war."²

10 Or as the Prime Minister himself testified when asked
11 in effect if he depended upon the Foreign Minister
12 for his understanding of the law relative to the last
13 notification, "I depended exclusively on the views of
14 the Foreign Minister."³

15 60-b. Although TOGO was asked if he did not
16 feel it was his duty to advise the liaison members
17 concerning the law in regard to the procedure of the
18 note he said that he advised them to take the customary
19 procedure but that there was no discussion on whether
20 or not hostilities commenced by Japan one hour after
21 giving the notice would be in compliance with the law.⁴
22 He further said that his advice was premised on the
23

- 24
25 (1. Tr. 35,856.
2. Tr. 34,673.
3. Tr. 36,532, 34,722.
4. Tr. 35,846.)

fact that all those present were generally familiar
1 with provisions of international law and that he had
2 no intention of conducting a lecture.¹ He did not
3 consider it his duty to give special explanations
4 because "cabinet ministers are naturally generally
5 informed about international law."² Yet, if the Tri-
6 bunal please, in his direct testimony TOGO went to some
7 length to explain that he himself was not an expert on
8 international law and hence studied at great length
9 on the matter pertaining to the notification as well
10 as consulting several expert authorities on inter-
11 national law for legal opinion.³

13
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22 (1. Tr. 35,847.
23 2. Ibid.
24 3. Tr. 35,723.)
25

1 61-a. Suffice it is to say that the "sur-
2 prise attack" contemplated by the Navy through its
3 spokesman NAGAI¹ was the same kind as fully explained
4 in the United States Rules of Land Warfare, the Brit-
5 ish Manual of Military Law and the Japanese Naval
6 Manual, all of which provide that a surprise attack
7 is still possible even under the terms of the Hague
8 Convention III relative to the commencement of hos-
9 tilities. The President himself stated:

10 "Obviously an ultimatum does not prevent a
11 surprise attack. The ultimatum does not in-
12 dicate when and where the attack is coming
13 and its nature."²

14 In these concise words the President expressed what
15 counsel so clumsily had endeavored to without success.
16 The evidence reveals that the Navy fully expected to
17 be apprehended by American forces at least an hour
18 before the attack.³ And hence as far as they were
19 concerned it would have made no difference whatsoever
20 whether a declaration of war in the strongest of lan-
21 guage had been sent to the United States or the notice
22 as it was written by TOGO. Thus Admiral OKA could see
23 no reason for not adding positive words to the
24

- 25 1. T. 36,117, 42,455
2. T. 36,118
3. T. 26,729, 26,769

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2 prise attack" contemplated by the Navy through its
3 spokesman NAGAI¹ was the same kind as fully explained
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24

- 25 1. T. 36,117, 42,455
2. T. 36,118
3. T. 26,729, 26,769

1
notification.

2 61-b. In spite of the openly expressed ill-
3 feeling of the accused TOGO for SHIMADA he told this
4 Tribunal in no uncertain words that "not once has
5 SHIMADA proposed going to war without negotiation
6 first."

7 Conventional War Crimes and
8 Crimes Against Humanity

9 62-a. SHIMADA carefully explained that the
10 duties of the Navy Minister in regard to prisoners
11 of war entailed the issuance of regulations providing
12 for their handling. In pursuance of this responsi-
13 bility the Ministry did issue regulations, one of
14 which is exhibit 3055³. It is hardly necessary to re-
15 mind the Tribunal that the prosecution has introduced
16 no orders issuing from the Navy Ministry or General
17 Staff which would command or permit the mistreatment
18 of prisoners of war.

19 62-b. In connection with the Naval Minister-
20 ial Notification, here referred to, it is shown to the
21 contrary that regulations in compliance with existing
22 international practices were promulgated.⁴ However,
23

- 24 1. T. 33,322
25 2. T. 35,833
3. T. 27,276
4. T. 27,362

1 it may be quite correct to pursue the matter from the
2 position taken by the President when he stated "It
3 isn't what they said that matters, it is what they did
4 that matters."¹ In accordance with this theme it is
5 mandatory upon the prosecution to prove that the Min-
6 istry was so constituted as to permit SHIMADA's con-
7 trol over such matters.

8 62-c. After reception of such regulations as
9 the Navy Ministry issued it became the duty of the
10 commanders in chief of the various areas wherein the
11 prisoners might be located to follow and enforce such
12 directives.² In turn they could issue such orders as
13 were deemed necessary to fit the immediate circum-
14 stances confronting them so long as they were in har-
15 mony with the provisions of the Ministry regulations.³
16 SHIMADA testified that the facts adduced here during
17 the trial were his first appraisal of such misdeeds of
18 naval personnel and he was shocked and ashamed.⁴ He
19 assumed a moral responsibility for the conduct of men
20 on the scene but such is not to be confused with the
21 important factor of chain of command responsibility.⁵

22 63-a. The Navy Ministry was not consulted

- 23 1. T. 27,275
24 2. T. 35,669
25 3. Ibid.
4. T. 34,670
5. T. 34,670

1 by the Naval General Staff in connection with opera-
2 tional orders; and in case of an engagement with the
3 enemy, prisoners of war at the zone of operation were
4 under the complete command of the commanders in the
5 field.¹ The remoteness of the Navy Minister seated in
6 Tokyo from activities on the battle field must con-
7 stantly be borne in mind.

8 63-b. Quoting a man described as the Director
9 of War Crimes Prosecution, Pacific Ocean Area, Captain
10 (now Rear Admiral) Murphy the prosecution sets forth
11 the following words:

12 "The pattern of the policy of the Japanese
13 Government seemed to be to require and permit
14 local military commanders to unlawfully kill on
15 the spot all prisoners of war, except certain
16 ones wanted for questioning by higher authority
17 or other specific purposes unknown."²

18 Quite understandably no attempt was made to read these
19 words into the transcript. As an opinion and conclu-
20 sion on an important issue they are an invasion of the
21 province of this Tribunal and certainly should have
22 been disallowed if a reading had been attempted.

23 64-a. This same affiant states that of 698
24 persons that were known to have been lost in the
25

1. T. 27,363
2. Ex. 2057, T. 15,042

1 Pacific area many of them were undoubtedly killed in
2 battle, but, on the other hand, many were captured by
3 the Japanese.¹ He also states that "investigations
4 show that 149 Americans were illegally executed by the
5 Japanese military authorities while being held as
6 prisoners of war in the Pacific Ocean areas."² We sub-
7 mit that from the very limited statistics given by
8 this man upon whose opinion the prosecution relies to
9 show a governmental pattern of conduct it is proven
10 that there was no such policy.

11 64-b. In regard to the alleged atrocities
12 committed on Kwajalein the prosecution quoted the pur-
13 ported words of Admiral ABE in command of the island:³

14 "However, a directive was issued to me
15 from the Highest Naval Central Headquarters to
16 dispose of them (prisoners of war) on my island,
17 and I had nothing to do but obey it without
18 question."

19 They neglected, however, to set forth from the same
20 record and from their own evidence other statements
21 of ABE which completely destroy the import of this
22 quotation and are quite incompatible with the theory
23 advanced. ABE was asked as to the identity of the
24

- 25 1. T. 15,044
2. Ibid.
3. Pros. Argument para. TT-58, T. 41,702

officer giving him the orders and he said:

1 "Lieutenant Commander OKADA, Sadatomo.

2 From my present viewpoint, I can not definitely
3 say whether the personal opinion expressed by
4 Lieutenant Commander OKADA was the policy of the
5 Navy, but at the time I believed it was the pol-
6 icy of the Navy and that is why I did it.¹

7
8 65-a. He was also questioned prior to this
9 statement concerning the alleged naval policy announced
10 by the Navy Staff officer Lieutenant Commander OKADA
11 and the prosecution evidence shows this answer of ABE:

12 "The staff member (OKADA) did not bring back
13 orders and he did not order me to carry out the
14 executions on the spot, but he expressed the
15 opinion which I took to be the Navy policy that
16 that would be the thing to do and I agreed."²

17 We submit that the prosecution shatters its own con-
18 tention by its own evidence.

19 65-b. The reading of this prosecution exhibit³
20 revealed statements made to ABE as to the effect of his
21 telling a lie and committing the crime of perjury.⁴ At
22 the conclusion of the reading of the document the Pres-
23 ident remarked that the
24

- 25
1. T. 15,029
 2. Ibid.
 3. Ex. 2055-C, T. 15,025
 4. T. 15,028

1 "* * * evidence was obtained by a threat,
2 of course, but what the attitude of the Members
3 of the Tribunal will be to evidence obtained
4 by threat, of course, is a matter for them en-
5 ¹tirely."

6 65-c. The witness TOMIOKA, formerly Chief of
7 the First Section of the Naval General Staff, was
8 called to the witness stand by the defense and testi-
9 fied that he gave orders to Lieutenant Commander Sada-
10 tomo OKADA, Staff Officer of the Naval General Staff,
11 to go to Kwajalein and other islands for the purpose
12 of re-examining the defense projects in the Pacific
13 Ocean area. Such a move was the result of a decision
14 early in October of 1942 of Imperial Headquarters to
15 organize a combined inspection party from both the
16 Army and the Navy for front line defense inspections.³
17 They were sent to the Marshall Group, the Mariannas,
18 the Carolines, the Solomons, New Britain Islands and
19 others, and TOMIOKA personally instructed Lieutenant
20 Commander OKADA who was his subordinate. He abso-
21 lutely denied that he gave OKADA orders for Vice Ad-
22 miral ABE concerning prisoners of war, and told the
23 Tribunal that the First Section of the Naval General
24

- 25
1. T. 15,029-30
2. Ex. 3057, T. 27,284
3. T. 27,285

1 Staff did not handle matters dealing with prisoners
2 of war, such being beyond the scope of his authority
3 and he could not have given any such orders or instruc-
4 tions.¹

5 66-a. He was told of Vice Admiral ABE's
6 statement to the effect that ABE was informed by Staff
7 Officer OKADA that the disposition of Central Author-
8 ities was to execute prisoners where they were captured
9 and not send them to Japan. To this TOMIOKA definitely
10 stated that he knew nothing about it and that ABE's
11 statement differed greatly from the Japanese Navy's
12 official forms for forwarding orders.² TOMIOKA told
13 the Tribunal that there was positively no form for for-
14 warding an oral order through a third person and that
15 he did not know of any case where an order or instruc-
16 tion was forwarded directly to a unit under the command
17 of the fleet from General Headquarters without first
18 going through the Fleet Headquarters.³ OKADA was killed
19 in the Philippines in December, 1944.⁴
20
21
22
23

- 24 1. T. 27,286
25 2. T. 27,287
3. T. 27,287
4. T. 27,289

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19 in the Philippines in December, 1944.⁴
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- 24 1. T. 27,286
25 2. T. 27,287
3. T. 27,287
4. T. 27,289

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1 67-a. The prosecution reference to a report
2 of the executions on Wake Island being forwarded to
3 the Navy Ministry Bureau of Military Affairs is based
4 upon evidence which also reveals that Admiral SAKAI-
5 BARA concocted a false story and this was the one
6 related to the Navy Department in Tokyo.^{3.} Again
7 the evidence revealed the executions were a result of
8 imminent enemy invasion by a convoy on October 7,
9 1943, which had been sighted off the island.^{4.} The
10 evidence reveals that the commander of Wake Island
11 in the initial period of the Japanese invasion
12 telegraphed the Commander in Chief of the Fourth
13 Fleet and the Commander in Chief of the Combined
14 Fleet concerning the captured prisoners. At the same
15 time the information was relayed to the Naval General
16 Staff and the Navy Ministry. Arrangements were made
17 for the transportation of the prisoners from Wake
18 Island to Japan for delivery to the army.^{5.} Many
19 of the prisoners were ill and others voluntarily
20 wished to remain on the island. The Ministry informed
21 them by cable to have every prisoner voluntarily
22

23 1. T. 27287.

24 2. T. 27289.

25 3. Ex. 2036-A, 2036-B - T. 14972-14983.

4. Ibid.

5. T. 27364.

1 sign an agreement to engage in work on the island
2 not directly connected with combat.^{1.} The prosecu-
3 tion states that the executions were reported to
4 Fourth Fleet Headquarters at Truk^{2.} but this the de-
5 fense has been unable to verify for it does not appear
6 in the transcript at that place.

7 68-a. In exhibit 2038^{3.} the prosecution
8 offered the statement of a Japanese prisoner of war
9 guard aboard the Nitta Maru which took some 1200
10 Japanese prisoners of war from Wake Island in January
11 of 1942. As to the atrocities committed aboard that
12 ship the prosecution's own witness said:

13 "I am sure that Captain SAITO did not report
14 the execution of the five American prisoners of war
15 aboard the Nitta Maru in January 1942 to his superiors
16 at the Kure Naval Training Station."^{4.}

17 That the Navy Ministry was not notified of
18 this incident is confirmed by the witness TAKATA who
19 was employed therein as Chief of Section One of the
20 Naval Affairs Bureau.^{5.} The prosecution evidence
21 recites the robbing of prisoners, taking of wrist
22

23 1. T. 27367.

24 2. Pros. Argument para. TT-58 - T. 41701; Ex. 2057 -
T. 15042.

25 3. T. 14992.

4. T. 14999.

5. T. 27369.

1 watches and rings which were distributed among the crew,
2 all of which indicates irresponsible action initiated
3 solely on the part of the captain of the ship.

4 68-b. Horrible as this evidence is, it is
5 merely indicative of isolated action destroying the
6 assumption that it was the policy of the Japanese
7 Government to permit or order such conduct, and reveals
8 that such matters were not reported to the authorities.
9 The prosecution stated that 14 protests and inquiries
10 from the United States Government regarding the
11 civilian prisoners captured on Wake Island were dis-
12 regarded by SHIMADA and other Japanese defendants of
13 the navy and foreign office.^{2.} They forget to tell
14 the Tribunal that the first eight exhibits were in-
15 quiries concerning the American personnel on Wake
16 Island and were not protests of mistreatment. The
17 latter six communications were received when SHIMADA
18 was not in office either as Navy Minister or Chief of
19 Naval General Staff.^{3.} The evidence does not show
20 that such requests were forwarded to the Navy Minister
21 for action.
22

23 69-a. In regard to the prosecution's state-
24 ment that evidence was presented of the execution

25 1. T. 14999.

2. Pros. Argument para. TT-59 -T.41703; T.15001-15042.

3. Ex. 2048-2053 -T.15001.

1 of Allied fliers on Chi-Chi Jima in the Bonin Islands
2 from August 1944 through March 1945 by Japanese Army
3 and Navy officers it is to be observed that SHIMADA
4 was no longer either Navy Minister or Chief of Naval
5 General Staff at this time. They also state without
6 the support of evidence that these executions were
7 reported to higher naval authorities.^{1.} And in check-
8 ing the citation^{2.} we are unable to find at the page
9 designated, or thereabouts the statement the execution
10 of fliers took place. There is only the statement
11 that war crimes were discovered among other places on
12 Chi-Chi Jima Island, Bonin Islands. Again their
13 argument^{3.} that there was a massacre of American
14 prisoners on Palawan Island on 14 December 1944 should
15 have included the statement that at this time SHIMADA
16 had been retired from office for some six months.

17 70-a. The prosecution states the alleged
18 attack on the hospital ship Op Ten Noort and the
19 hospital ship Comfort were SHIMADA's responsibility.^{4.}
20 In regard to the attack on the navy hospital ship
21 Comfort on October 24, 1944 and again on April 30,
22 1945, they say SHIMADA is chargeable and responsible
23

- 24 1. Pros. Argument para. TT-60, T. 41703.
25 2. Ex. 2057 - T. 15042.
3. Pros. Argument para. TT-61, T. 41704.
4. Pros. Argument para. TT-64, T. 41706.

1 even though he had ceased to be Navy Minister and
2 Chief of Naval General Staff because they were a
3 continuation of the policy and practices traceable
4 to his period of responsibility.^{1.} We charge this
5 is not worthy of answering for they have shown no
6 policy or practice, or to say the least, no policy
7 or practices instituted or carried out by SHIMADA.

8 70-b. In regard to the Netherland's hospital
9 ship Op Ten Noort which was captured by the Japanese,
10 the prosecution alleges that protests were directed
11 to the Prime Minister, the Foreign Minister and Navy
12 Minister SHIMADA, and were not honored.^{2.} The pro-
13 tests so mentioned by the prosecution included those
14 from the captain of the ship addressed to the Japanese
15 Navy Minister at Tokyo.^{3.} Being simply letters which
16 would have to be mailed or delivered from the place
17 of internment in war times there is absolutely no
18 evidence that such was done and hence that the Navy
19 Minister received the same.
20

21 71-a. This is the extent of the prosecution's
22 argument against SHIMADA for mistreatment of prisoners
23 of war and civilians. Other than their charge that

24 1. Pros. Argument para. TT-64, T. 41707.

25 2. Ibid - T. 41706.

3. Ex. 2067 - T. 15070.

1 everything the Japanese Navy personnel did in the
2 way of misconduct was directly chargeable to SHIMADA,^{1.}
3 they have produced no evidence which links SHIMADA
4 with responsibility concerning any of the acts. Sur-
5 prise, speculation and indeed far-fetched reasoning
6 does not discharge their onus. No evidence has been
7 given that SHIMADA issued orders commanding or was
8 apprised of any of the alleged atrocities or mistreat-
9 ment of prisoners of war. The Vice-Minister of Navy
10 SAWAHOTO told the Tribunal that he did not receive
11 any protests concerning prisoners of war but that they
12 would probably have been routed to appropriate sub-
13 sections;^{2.} and he further said that if he did not
14 receive them Navy Minister SHIWADA himself, in his
15 high position, would not have received them.^{3.} The
16 prosecution in their efforts to convict are perhaps
17 guilty of a very common oversight and that is the
18 failure to realize just how remote and far removed
19 from the scene of action was the Navy Minister in
20 Japan. The vast majority of the work of the ministry
21 was taken care of by the many bureaus and section
22 chiefs of that ministry and it is humanly impossible
23 to imagine that these isolated matters were routed to
24

25 1. Pros. Argument para. TT-63 -T. 41705.

2. T. 34611.

3. T. 34612.

1 SHIMADA for personal study and consideration but it
2 depicts the setting from a practical, common sense
3 point of view.

4 72-a. In regard to prisoners of war the
5 evidence fully supports the contention that prisoners
6 of war taken by the navy had to be turned over to
7 the army and that their care while in the custody
8 of the navy was designated only temporary.^{1.} Rather
9 than the prosecution proving that the Navy Ministry
10 issued orders commanding the commission of atrocities
11 or the mistreatment of prisoners of war the defense
12 offered in evidence a Navy Ministry notification
13 which was dated 1941 and which provided treatment for
14 prisoners of war not dissimilar to the provisions re-
15 quired under international law.^{2.} At the time of
16 the offering of this exhibit the Tribunal requested
17 that all of it not be read. However, we deem it of
18 great importance.^{3.} Such orders as were issued by
19 the ministry disprove by positive evidence what the
20 prosecution would have you accept through inference.^{4.}
21
22

- 23 1. Ex. 3056 - T. 27278.
24 2. Ex. 3055 - T. 27276.
25 3. Ibid.
4. T. 27278.

Submarine Atrocities.

1
2 72-b. At the risk of repetition, we again
3 remind the Tribunal that the evidence is concise and
4 clear in establishing that the Navy Minister had no
5 control over operational tactics or orders. He was
6 never consulted with regard to submarine operations in
7 the Pacific War.¹ But as we have proceeded to show
8 that such matters were under the jurisdiction of the
9 Naval General Staff we come to a consideration of the
10 six months' period when SHIMADA also held that post.
11 To fully probe the matter we called to the witness box
12 a highly competent witness, former Admiral YAMAMOTO,
13 Chikao, who gave valuable testimony concerning Japanese
14 submarine warfare operations.² The competence of this
15 witness was established by the fact that he was Chief
16 of the First Section of the Naval Department of the
17 Imperial Supreme Command from January 1943 until Decem-
18 ber 1944 and in this capacity had charge of the draft-
19 ing of over-all submarine operational orders.³
20

21 73-a. The witness testified that in the
22 latter part of March 1943 a period known as the Third
23 Phase of the naval campaign was commenced and that in
24 regard to the submarine warfare this phase was broken
25

1. Tr. 27,363.
2. Ex. 3052, Tr. 27,253.
3. Tr. 27,252.

1 down into three minor periods.¹ The first period of
2 submarine activities extended from the latter part of
3 March 1943 to October of the same year.² The second
4 period began in October 1943 and extended until August
5 1944. During the first two periods orders were issued
6 by the Chief of Naval General Staff to Commander-in-
7 Chief YAMAMOTO and to the later Commander-in-Chief of
8 the Combined Fleet Admiral KOC.³ The Navy Minister
9 was not concerned.

10 73-b. Admiral SHIMADA became Chief of Naval
11 General Staff in February and remained as such until
12 August 1944 but during that period no submarine cam-
13 paign orders were issued as the evidence so recites.
14 The third period which began in August of 1944 was
15 not altered in so far as the principle of operation
16 of the previous directive was concerned.⁴ The prosecu-
17 tion has introduced in evidence an alleged submarine
18 operational order dated March 20, 1943.⁵ Tucked away
19 in this order consisting of eight translated English
20 pages together with a map, is a paragraph providing
21 for the destruction of crews of enemy ships after the
22 sinking thereof. The prosecution has sought to make
23

- 24 1. Tr. 27,253.
25 2. Ibid.
3. Tr. 27,255.
4. Tr. 27,256.
5. Ex. 2105, Tr. 15,184.

1 much of this alleged order in so far as the accused
2 SHIMADA is concerned.¹

3 74-a. Before discussing the contents of the
4 alleged order it must be noted that it purportedly was
5 issued in March of 1943 at which time Admiral SHIMADA
6 was Navy Minister alone. It is not an order from the
7 Naval General Staff but is signed by MITO, Hisachi,
8 as commanding the First Submarine Squadron Force. The
9 document was issued from aboard the flagship at Truk
10 and is entitled "First Submarine Force Order." On its
11 face it is limited to the First Submarine Force and
12 does not include any other unit.

13 74-b. The First Submarine Force on March 20,
14 1943, belonged to the Sixth Fleet which did not operate
15 in the Indian Ocean area, being directed largely to
16 the Samoa-Fiji area.² The Southwestern Area Fleet was
17 the one operating in the Indian Ocean.³ The Sixth
18 Fleet had its base at Truk while the Southwestern Area
19 Fleet had its base at Penang with its theater limited
20 to the Indian Ocean.⁴

21 74-c. The defense called MITO, Hisachi, the
22 supposed author of exhibit 2105, the submarine order,
23

24 1. Pros. Argument para. TT-17, Tr. 41,668.

25 2. Tr. 27,258, 27,259.

3. Ibid.

4. Tr. 27,260.

1 in an effort to render the Tribunal the greatest
2 assistance possible in clarifying the question. The
3 prosecution contends that MITO did not deny the authen-
4 ticity of the order.¹ This is not an accurate statement
5 for MITO said he could not concede that such an order
6 would ever have been issued.² He said he had been
7 interrogated several times before by the prosecution
8 relative to this order and had discussed it thoroughly.
9 "I told them that while it appeared to be in the same
10 form as other orders issued I had no recollection of
11 this particular one," he said.³ Further MITO stated,
12 "I denied knowledge of the execution order and also
13 denied that there was any collaboration to my knowledge
14 with German submarines or that we employed any tactics
15 based upon German origin."⁴

16 THE PRESIDENT: Mr. Brannon, who follows you?

17 MR. BRANNON: Mr. McManus, for the accused
18 ARAKI.

19 THE PRESIDENT: We will recess for fifteen
20 minutes.

21
22 (Whereupon, at 1045, a recess was
23 taken until 1100, after which the proceedings
24 were resumed as follows:)

- 25
1. Pros. Argument para. TT-17, Tr. 41,669.
 2. Tr. 34,637.
 3. Tr. 34,636.
 4. Tr. 34,637.

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

THE PRESIDENT: Mr. Brannon.

MR. BRANNON: 75-a. MITO further said that he
had been told that the prosecution submitted that "the
Navy Minister must be held responsible for the top
secret naval order for submarine operation requiring the
complete destruction of ships sunk by submarines.* * *"¹

Said MITO: "This is absolutely contrary to fact. The
Navy Ministry could not issue such an order since it is
a matter entirely within the prerogative of the High
Command and I cannot conceive by any stretch of the
imagination how it can be said that any such order, if
actually issued, came from the Navy Ministry."²

Assuming that the order was actually issued MITO said
that the "parent order or basic order would have come
from the Commander in Chief of the Combined Fleet and
probably would have been received from the Chief of
Naval General Staff at the highest point."³ The
prosecution of course left out the word "probably" when
they attempted to set forth what MITO had said.⁴ But
if such were the case the man in the General Staff at
that time who was drafting the orders was one YAMAMOTO,

- (1. Ibid.
2. T. 34638.
3. T. 34637.
4. Prosecution argument par. TT-17, T. 41668.)

Chikao, the witness who, as stated before, was in the General Staff and was in charge of drafting the submarine orders.

76-a. Said YAMAMOTO when questioned about the principle of annihilation of crew members of a sunken vessel and as to whether such had ever been adopted in the plan of operations drawn up in the Naval General Headquarters: "The Japanese Navy have never adopted such a principle; absolutely no, never." Reciting that it was contrary to the very teachings of the Japanese Navy itself he cited Naval General Staff Directive 15 of 30 November 1941 and Naval General Staff Directive No. 60 of 1 March 1942 as illustrating the policy of the Navy.^{1.} The prosecution cross-examined MITO striving to show that an 8th Submarine Squadron operated in the Indian Ocean and was also under the Sixth Fleet.^{2.} The witness definitely told the prosecution that there was no 8th Submarine Squadron under his command and he commanded the First Submarine Force which was supposed to have issued this order.^{3.}

76-b. The witness TOMIOKA who was YAMAMOTO's predecessor in the drafting of submarine orders was asked if during the war an operational policy was either

- (1. T. 27257, 27258.
2. T. 34641.
3. Ibid.)

1 planned or indicated by General Headquarters to
2 annihilate the crew members of ships sunk by submarines.
3 He said: "Such a thing was never planned nor indicated
4 by Imperial Headquarters Naval Command Instructions. If
5 it were indicated it should be recorded in the file of
6 Imperial Headquarters Naval Command Instructions. Not
7 only is there no such order but this is very far from
8 the spirit of the Japanese Navy."^{1.} The prosecution
9 itself admitted that it was the Southwestern Area Fleet
10 with Headquarters at Penang that operated in the Indian
11 Ocean.^{2.}

12 77-a. The President of the Tribunal said: "Of
13 course, a submarine could have done anything it liked
14 without letting Imperial Headquarters know.* * *"^{3.}
15 This statement was made at the time the prosecution
16 asked the witness YAMAMOTO if local commanders could
17 inaugurate submarine warfare involving the tactics of
18 destroying surviving crews and passengers without
19 Imperial Headquarters knowing of the fact. The question
20 was disallowed by the Tribunal.

21 77-b. Submarine directives from the Naval
22 General Staff were introduced in evidence. Among them
23 were Orders 15, 60 and 61. Directive 15 issued to the
24 (1. T. 27294.
25 2. T. 27266.
3. T. 27265.)

1 Commander in Chief of the Combined Fleet on November
2 30, 1941, and it provided for time to be given the crew
3 and passengers of torpedoed ships to seek safety;^{1.}
4 Directives 60^{5.} and 61, issued to the Commander in Chief
5 of the Combined Fleet and to the Commander in Chief of
6 the China Seas Fleet respectively. The former contained
7 this provision: "In the operation by surface craft it
8 shall be made a rule as far as possible that such attack
9 be preceded by duly processed visit and search, and
10 every possible endeavor shall be made to rescue human
11 lives if circumstances warrant the sinking of the
12 vessels." The latter directive provided: "In dealing
13 with foreign shipping in general due process shall as
14 a rule be taken in accordance with the provision of law.
15 If a sinking is made without (being able) to go through
16 a prescribed process because of some forced circum-
17 stances, every possible means shall be taken to rescue
18 human lives after sinking." Directive 61 could not
19 recind Directive 15 because the latter was issued to the
20 Commander in Chief of the Combined Fleet while the former
21 was directed to the Commander in Chief of the China
22 Fleet - each under independent and separate commands.^{1.}

23 The prosecution's only comment in face of this evidence

24 (1. T. 27296, 26301, Ex. 3058-A.

25 2. T. 27274, Ex. 3054-A.

3. Cf. prosecution argument par. TT-17, T. 41617.)

1 was that the mere issuance of directives does not fully
2 discharge responsibility. As to prosecution comment
3 that Directive 209, dated March 25, 1943, does not
4 contain instructions to save survivors, may it not with
5 balancing logic be said that it does not contain orders
6 to not save them?^{1.} The violent disagreement between
7 this positive evidence and the prosecution's assertions
8 is not reconcilable.

9 78-a. Although the prosecution persistently
10 referred to the German policy of destroying shipwrecked
11 survivors,^{2.} it is interesting to note that the Nuernberg
12 Tribunal passing judgment on Admiral Doenitz stated:
13 "The evidence does not establish with the certainty re-
14 quired that Doenitz deliberately ordered the killing of
15 shipwrecked survivors."^{3.} The prosecution makes the
16 unwarranted statement that two German submarines were
17 given to Japan in return for atrocity submarine warfare
18 as proposed by Hitler.^{4.} Such statement is counteracted
19 more than once by defense evidence. Admiral Wenneker,
20 the German Naval Attache in Tokyo, stated regarding
21 the gift of the submarines: "We wished to assist the
22 Japanese toward the construction of modern and efficient
23 Japanese submarines. To this end we presented them with

24 (1. T. 41617; Ex. 3053-A, T. 27270.

25 2. T. 27261, 27262.

3. Nuernberg decision p. 140.

4. Prosecution argument par. TT-16, T. 41667, 41668.)

1 two new submarines." ^{1.} Admiral NOMURA who was assigned
2 in Germany as a member of a Mixed Technical Committee
3 stated that the gift of the submarines was utterly un-
4 conditional. He said: "In return for this offer no
5 request was made for more intensified submarine warfare
6 on the part of Japan." ^{2.} Hitler's words ^{3.} as quoted by
7 Admiral NOMURA were that he hoped the Japanese Navy
8 would be benefited in her submarine construction and he
9 wished to donate two of the new German submarines to
10 Japan. ^{4.}

11 79-a. Admiral NOMURA stated that the naval
12 authorities in Tokyo simply instructed him by telegram
13 that as the primary objective in bringing the German
14 submarines to Japan lay in the contributory effect of
15 these submarines on Japanese building technique three
16 German technicians should be brought to Japan along with
17 the submarines. ^{5.} The Japanese did not find the German
18 submarines suitable in construction for their purposes
19 and decided they could not be duplicated with practical
20 benefit. ^{6.} And this statement is confirmed by Admiral
21 Wenneker when he said that he was later informed that
22 the Japanese felt they could not duplicate the submarine

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24 (1. T. 26556.
2. T. 26573, 26574.
25 3. T. 26574.
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5. T. 26574
6. T. 26575.)

1. and did not intend to do so.

1 79-b. The long prosecution dissertation con-
2 cerning Ambassador OSHIMA and Foreign Minister Ribben-
3 trop of Germany in connection with the submarine trans-
4 action avails nothing for even their statement that
5 OSHIMA said that Japan intended to accentuate submarine
6 warfare and would like to have the two German submarines
7 is absolutely no offense of any kind. The war at this
8 time was going on.^{2.} At no time did OSHIMA telegraph
9 any messages to the War or Navy Ministers in Japan.^{3.}

10 79-c. The prosecution comments on SHIMADA's
11 statement that he had no knowledge of alleged submarine
12 atrocities and allege that many protests by the Allied
13 Governments were ignored by the Japanese Navy and Foreign
14 Offices.^{4.} Of these protests the Tribunal should take
15 note of the prosecution's failure to relate that all
16 except one are dated after SHIMADA had left both the
17 office of Navy Minister and Chief of Naval General
18 Staff. In complete fairness, they should have notified
19 the Tribunal of this fact. And there is no evidence
20 that he received any protests contrary to his solid
21 statement to that effect.^{5.} All except one of the total

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23 (1. T. 26557.

24 2. Prosecution argument par. TT-16, T. 41668.

25 3. T. 26603.

4. Prosecution argument par. TT-12, T. 41663.

5. T. 34671.)

of nine Japanese submarines operating in the Indian
1 Ocean from 1943 until August, 1944, were reported as
2 missing.^{1.} The Commanding Officer of the remaining sub-
3 marine was killed in action in July, 1944. Under these
4 circumstances with the submarines and their crews fail-
5 ing to return to their base a complete investigation of
6 their activities was impossible.^{2.}

7 80-a. The prosecution brought into the court-
8 room a Japanese Nisei named NAKAHARA who had served
9 aboard the Japanese submarine I-8 as radio monitor.^{3.}
10 His testimony depicts the strained attempt of the
11 prosecution to involve SHIMADA where the facts dictate
12 it should not be done. The testimony of NAKAHARA is
13 hardly a worthy means of attempting to establish
14 responsibility on the part of SHIMADA. Such statements
15 in his affidavit that he was told, after his return to
16 Tokyo, by the Chief of the Third Section of the Naval
17 General Staff not to relate his observations are indic-
18 ative of a desire to cast an inference that the Naval
19 High Command was attempting to cover over the misdeeds
20 of the submarine crew.^{4.} On cross-examination he ad-
21 mitted that such instructions were not given to him in
22 his opinion, to prevent him from revealing the commission
23

24 (1. Ex. 3064, T. 27351.
25 2. T. 27351.
3. T. 38136.
4. T. 38144.)

1 of atrocities but could have been routine security
 2 procedures.^{1.} Again his statement that he was never
 3 questioned at the General Staff or by the Foreign Office
 4 in regard to the happenings aboard the submarine was
 5 designed to cast inference that the authorities were
 6 negligent in not investigating the matter.^{2.}

7 81-a. But again on cross-examination he stated
 8 that not only did he not attempt to report to anybody in
 9 the Naval General Staff concerning the matter^{3.} but as
 10 far as he knew Commander ARIIZUMI did not report the
 11 killings,^{4.} and as far as he knew no one reported the
 12 acts to any one in Tokyo.^{5.} In regard to the order not
 13 to relate overseas experience he explained that they
 14 went to Truk Atoll once and when he returned such state-
 15 ment was made.^{6.} Therefore in point of sequence there
 16 is no connection between his statement and the commission
 17 of submarine atrocities. He testified that the commander
 18 of the submarine ARIIZUMI told him not to tell about the
 19 killings and when asked on cross-examination why he had
 20 been told this if the actions taken were in compliance
 21 with orders his waivering answer was that "it may have
 22 been that it might be troublesome."^{7.} When asked to whom

24 (1. T. 38149.
 25 2. T. 38144.
 3. T. 38149.
 4. Ibid.

5. Ibid.
 6. Ibid.
 7. T. 38148.)

1 it may have been troublesome he answered that he didn't
2 know. He was asked if an officer obeyed orders why he
3 should be afraid to admit that he carried them out.
4 His evasive and confused answer was that he was a
5 civilian and not an officer and didn't know about that.

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(1. T. 38148.)

82-a. As to the attempt to connect the acts
1 of ARIIZUMI, whom they admit in their argument was
2 known as the "gangster"² and the "butcher"³, with the
3 Naval General Staff we have only to point to the
4 method adopted as a means of proof. NAKAHARA's
5 testimony on direct examination that the Commander
6 told him the killings took place under orders from
7 the Naval General Staff⁴ was fully clarified on
8 cross-examination when it was revealed that it was a
9 passing conversation at meal time with no other
10 substantiation of any kind.⁵ The witness admitted
11 that he, being a Nisei, was not trusted with secret
12 information or secret assignments,⁶ and that he had
13 never seen any official orders issued from the Naval
14 General Staff or the Ministry commanding the killing
15 of survivors of enemy vessels.⁷

17 82-b. He further told the Tribunal that the
18 orders of ARIIZUMI, the Commander of the submarine,
19 were obeyed "because we knew he was ruthless." He
20 testified that ARIIZUMI's nick name among the crew
21 was "gyangu" meaning Gangster.⁸ Furthermore a reading of

- 22 2. Pros. Argument para. TT-13, T. 41,664.
23 3. Pros. Argument para. TT-51, T. 41,698.
24 4. T. 38,140.
25 5. T. 38,148.
6. T. 38,147.
7. Ibid.
8. T. 38,140.

the other prosecution evidence relative to the alleged
1 submarine atrocities reveals that the robbery of watches,
2 rings and other items denote plunder and robbery on
3 the part of the captain and crew.¹ It is not beyond
4 possibility that these actions as carried out were
5 the individual misdeeds of the commanders and the
6 crews seeking to benefit by the robbing of the victims
7 of the vessels they sunk. Furthermore NAKAHARA's
8 statement that the submarine would stay surfaced
9 perhaps an hour or two hours² is entirely contrary
10 to the expert statement of Admiral MITO who told the
11 Tribunal such was unthinkable during these days of
12 modern warfare with radar, etc.³

14 83-a. Admiral SHIMADA told the Tribunal
15 that not even by stretching his imagination could
16 he believe that such an order was issued commanding
17 the killing of submarine survivors.⁴ It should also
18 be called to the Tribunal's attention that NAKAHARA
19 reports that he returned to Japan in September of 1944
20 at which time SHIMADA had resigned both as Navy
21 Minister and Chief of Naval General Staff.⁵ Any
22 inference resulting from his not being questioned

- 23 1. T. 15,115.
24 2. T. 38,150.
25 3. T. 34,637.
4. T. 34,671.
5. T. 38,144.

cannot therefore reflect on SHIMADA. The prosecution
1 has limited its charges of submarine atrocities to
2 the destroying of survivors of torpedoed vessels and
3 we do not have need to consider the subject further
4 than has been here presented.⁶

5 Miscellaneous

6 83-b. The prosecution argument relative to
7 SHIMADA's military decorations is hardly worthy of a
8 reply. The defense called to the witness box naval
9 officer NIIJIMI, who was assigned to matters of naval
10 decorations at that time, for a full explanation of
11 SHIMADA's Anti-Comintern decoration.¹ So adequate
12 and complete was his testimony that the prosecution
13 waived its cross-examination. But this did not
14 prevent them from commenting on this particular award
15 in their final argument.² It was explained that
16 SHIMADA's only connection with the Anti-Comintern
17 Pact was his high rank in the Navy and that the
18 decoration received, far from being dependent upon
19 merit, was a mere formality.³ SHIMADA himself
20 explained the awards which he had received and there
21 was no challenge from the prosecution.⁴

22 6. T. 34,772.

23 1. T. 34,630.

24 2. Pros. Argument para. TT-34, T. 41,683.

25 3. T. 34,632.

4. T. 34,675.

84-a. Although abandoning their original
 1 contention that SHIMADA's membership on the China
 2 Affairs Board was of importance,⁵ it is interesting
 3 to note the undisputed evidence shows that whomsoever
 4 became Navy Minister likewise was automatically appointed
 5 as a Vice-Chairman of this board with no duties or
 6 functions attached.⁶

84-b. Another faux pas on the part of the
 8 prosecution in their grasping for evidential straws
 9 was their baseless charge that SHIMADA was recommended
 10 by Premier TOJO as Welfare Minister in the Cabinet
 11 reorganization of July 1944 in order to have a member
 12 of the Imperial Rule Political Society in the cabinet.⁷
 13 TOJO utterly crushed their attempt to connect SHIMADA
 14 in political matters when he testified that the SHIMADA
 15 he had in mind was Toshio SHIMADA entirely a different
 16 person than the accused.¹ SHIMADA himself could not
 17 understand this attempt to characterize him as a
 18 politician by an allegation so easily susceptible of
 19 investigation and discovery of error before it was
 20 made.²

85-a. The prosecution charges that SHIMADA

- 24 5. T. 16,901.
 25 6. T. 34,675.
 7. T. 16,909.
 1. T. 36,526.
 2. T. 34,668, 34,669.

1 showed his belligerent attitude toward the United
2 States and Great Britain because he said according
3 to a newspaper article "the confrontation between the
4 Chiang supporting powers and our nation has come to
5 assume serious proportions suggestive of an aggravated
6 tension in the international situation."³ We hardly
7 know how to answer this except to say that it was
8 perhaps an ultra-honest statement of the time clothed
9 in words of admirable mildness.⁴ The prosecution
10 also disliked the emphatic manner in which the accused
11 testified and submitted that it indicated strong
12 feeling against the United States and Great Britain.⁵
13 That SHIMADA honestly and sincerely believed in that
14 which he testified and did so in a forthright, strong
15 fashion is to us an indication of the sincerity of
16 his thought and hardly subject to the criticism so
17 directed. SHIMADA is no more deserving of criticism
18 for his "emphatic manner of testifying" than is the
19 American Admiral who appeared as a prosecution witness
20 before this Tribunal.
21

22 86-a. As to the relationship between
23 Admiral SHIMADA and those other Japanese naval officers
24 who were associated with him because of rank and age,

- 25 3. Pros. Argument TT-24, T. 41,675.
4. T. 38,086.
5. Pros. Argument TT-24, T. 41,675.

we ask the Tribunal to view the obvious as the answer.

1 It is the weakest of all possible arguments that the
2 prosecution could advance to complain of this factor.
3 For in every navy in every country of the world there
4 is an acquaintanceship and a sharing of mutual duties
5 between those men who from their early naval academy
6 days have advanced through the years to high rank
7 and positions of command. If it were otherwise it
8 would indeed be strange.¹
9

10 86-b. According to the Anglo-American
11 conception of conspiracy lack of acquaintanceship with
12 fellow conspirators is of course no defense. But in
13 the practical common sense view point the fact of
14 SHIMADA's scant acquaintance or no acquaintance at
15 all with the other accused is indicative of his non-
16 political connection and essay the fact that he was
17 simply a naval officer.²
18

19 Conclusion

20 86-c. There is much that should be said no
21 doubt. But within our limited ability we have tried
22 to give you such facts, such evidence and such thoughts
23 as will draw apart the curtains from the stage of
24 misunderstanding as to the charges of criminality aimed

- 25 1. Pros. Argument para. TT-32, T. 41,681.
2. T. 34,676.

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- 25 1. Pros. Argument para. TT-32, T. 41,681.
2. T. 34,676.

1 at SHIMADA. When the Tribunal comes to a deliberation
2 on the maze of evidence before it, predicated upon
3 variegated and intricate factual matters depicting
4 a period of many years and which as a matter of
5 evidence has well nigh exhausted a two year span, it
6 will have before it a problem ominously challenging
7 in all of its many aspects.

8 87-a. Because counsel sincerely and deeply
9 recognizes this fact our constant purpose and intent
10 has been to avoid a twisting and turning of evidential
11 matters into an interpretation favorable to the
12 accused but at the same time to strike at that evidence
13 and those allegations which would lead to a false
14 conclusion. Clearly then, for convenience arising
15 from logical sequence, the case against SHIMADA is
16 capable of division into two periods divided by his
17 appointment as Navy Minister.

18 87-b. The prosecution portrayed SHIMADA's
19 career quite well when they said he joined the Navy
20 in 1901, when 18 years of age and remained in that
21 service as an active naval officer until January 1945;¹
22 and that he held no political office until he became
23 Navy Minister.² Leaving aside for the moment the period
24 commencing October 18, 1941, we have squarely presented
25 a problem of vital interest to military men the world over.

1. T. 16,900. 2. T. 16,901.

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1 87-c. It touches off the query of whether
2 these men can longer pursue their profession of arms
3 without the ever-present fear of ultimate punishment
4 at the hands of a victorious enemy. The honorable
5 profession of arms¹ is subject to no criticism in
6 and of itself. It is not a crime to devote your
7 life to the military whose function is the protection
8 of the land and whose duties flow from the dictate
9 of its current government. If the military efforts
10 of a professional soldier enforcing and carrying out
11 the directive of the policy makers of his nation in
12 compliance with the acknowledged laws of war were a
13 crime, the words of praise and decorations of honor
14 bestowed upon those protectors of the many nations
15 of the world would resolve themselves to sheer
16 hypocrisy and the commendations heaped upon their
17 shoulders would be but proof of guilt.

18 88-a. No one has ever argued this premise²--
19 unless it can be the begging innuendo arising from
20 the prosecution's interpretation of conspiracy or
21 the waging of war that is subject to a later adjudi-
22 cation of aggressive. But for aught that we might
23 here say it does inject into the procedure of a
24

25 1. Nuernberg decision, p. 107.

2. See Nuernberg decision, p. 107: "The Tribunal does not declare the General Staff and High Command to be a criminal organization."

1 military man's life the vexing problem of deciding
2 when his conduct is criminal and when it is commend-
3 able. The protective forces of the nations of the
4 world, the military and the naval, will listen with
5 rapt attention to the utterances of this Tribunal in
6 its finding on this most vital of issues, for it
7 becomes apparent that a line of demarcation must be
8 drawn somewhere.

9 88-b. The other part of SHIMADA's life, the
10 34 months from October 18, 1941 when he became Min-
11 ister of Navy until he resigned as Chief of Naval
12 General Staff on August 2, 1944, presents another
13 problem. If, with full knowledge of the facts, he
14 had solicited the post, if he had maneuvered and
15 campaigned for the job or even if he had behind him
16 a background of political ties and participation in
17 affairs of state an entirely different factual picture
18 would be before the Tribunal for study. But how
19 utterly and completely different it was. From the
20 evidence before us it is undisputed that SHIMADA was
21 drawn into the climaxing moments of the confusing and
22 ebullient Japanese-American differences solely because
23 of his then rank and status in the Navy. It was a
24 trick of fate made possible through the odd tradition
25 of the navy and the ordinance which demanded a high-

1 ranking admiral on the active list for the post of
2 Navy Minister. Of course he did not have to accept
3 and the evidence is indeed positive that he did
4 refuse only to yield to the insistent urgings of those
5 fellow naval officers whose prestige and position
6 he could not well ignore.

7 89-a. In carrying out the functions of his
8 high office there is nothing to show that SHIMADA's
9 actions were at any time accompanied by criminal
10 intent, impelled by criminal motive or the result of
11 criminal negligence based on inadequate factual
12 provocation. And this is all important, for in line
13 with the theme here advanced the Chief Prosecutor
14 said in speaking of an accused, "He is being charged
15 with crime. His state of mind, it seems to me, is
16 of considerable importance."¹ And it was the Presi-
17 dent, who in replying said: "His honest and reasonable,
18 though mistaken, belief in the existence of a state of
19 facts is a defense."²

21 90-a. Thus SHIMADA's thoughts, his belief
22 and conviction that his country was imperiled and its
23 security threatened, giving rise to the right to
24 fight in self-defense have been the subject of much
25 of the evidence presented. As to what criterion can

1. Tr. 36571.

2. Tr. 36571.

1 be applied to determine when a condition of threatened
2 national security arises we can perhaps only specu-
3 late or turn to the thinking of eminent minds.^{1.}

4 90-b. SHIMADA's high rank and position was
5 not bought at the price of membership in a "Nazi"
6 party of Japan. As a member of the Navy he belonged
7 to a powerful organization which the evidence has
8 shown never caused the fall of a cabinet or prevented
9 its formation and seldom took the initiative in
10 state decisions.

11 90-c. The culmination of events that led to
12 war on December 7, 1941 reminds us of the rule of law
13 regarding "proximate cause." "The causes that are
14 merely incidental or instruments of a superior con-
15 trolling agency are not the proximate causes and the
16 responsible ones, though they be nearer in time to

17 1. Cf. Public Papers and Addresses of President
18 Roosevelt, 1940 Volume, introduction thereof:
19 "There was a time when we could afford to
20 say that we would not fight unless attacked,
21 and then wait until the physical attack came
22 upon us before starting to shoot. Modern
23 techniques of warfare have changed all that.***
24 An attack today begins as soon as any base has
25 been occupied from which our security is
threatened. That base may be thousands of
miles away from our own shores. The American
government must, of necessity, decide at which
point any threat of attack against this hemi-
sphere has begun; and to make their stand when
that point has been reached."

1 the result. It is only when the causes are inde-
2 pendent of each other that the nearest is, of course,
3 to be charged with the disaster."¹

4 91-a. It is with a sincere and honest
5 appraisal of the evidence presented in this case
6 that we ask for the acquittal of the accused Admiral
7 SHIMADA, Shigetaro on all relevant counts in the
8 Indictment.

9 91-b. And this last personal word if I may:
10 One of the greater adjective contributions to the
11 future law of nations is destined to be the appear-
12 ance of citizens from the victorious powers repre-
13 senting with sincerity, integrity and without fear
14 those accused members of the enemy who have been
15 called to the bar of justice for alleged transgres-
16 sions. In so acting we have striven to usher in a
17 code of conduct befitting the benevolent powers of
18 the world and which concept is so keenly expressed
19 in the words of a great Englishman: "So let them
20 act up to the level of their power and responsibility--
21 not for themselves but for all men in all lands--and
22 then a brighter day may dawn on human history."²

23
24 1. Blythe v. R.R. Co., 25 702 (Colo.)
Black Law Dictionary, 1458.

25 2. Winston Churchill, August 16, 1945, in speaking
of the United States.

THE PRESIDENT: Mr. McManus.

1 MR. McMANUS: Mr. President and Members of
2 the Tribunal, at this time I should like to present
3 the summation on behalf of Baron General ARAKI, Sadao.

4 I might point out to the Members of the
5 Tribunal that portions of this summation will not be
6 read. I have them marked in my copy, and when I come
7 to such paragraphs or portions of the summation, I
8 shall call them to the attention of the Tribunal.

9 Chapter 1. The Suspicion Against ARAKI

10 A. The Development of That Suspicion

11
12 The prosecution's suspicion against ARAKI can
13 be observed by dividing it into four phases.

14 (1) When ARAKI was detained at the Sugamo
15 Prison, on 19 November 1945, the outline of ARAKI's
16 career was made public as the result of the informa-
17 tion gathered by the Intelligence Section of GHO, SCAP
18 and published in the newspapers throughout Japan the
19 following day. It was as follows:

20 "He was the Minister of Education from 1938
21 to 1939, and in line with ultra-Nationalism, completely
22 reorganized the system of education. As an extreme
23 militarist and as an ardent nationalist, he had influence
24 in the military circle and was a strong force behind
25 General TOJO."

Reading this, ARAKI himself, to say the least,
1 if not the entire population of Japan, was somewhat
2 astounded. It was an overt fact to the whole nation
3 that ARAKI was the man who extinguished the raging
4 flames of the Manchurian Incident and because of this
5 was attacked by the Fascist group of Japan. (He was on
6 the blacklist of the Shimpeitai.¹)

7 It was also known that, while he had nothing
8 whatsoever to do with the "February 26 Incident" of
9 February, 1936, he was compelled to retire from active
10 service together with five other generals, on the
11 ground that as an elderman of the army he should take
12 moral responsibility for its disorder; and that the
13 moment he was put on the reserve list the regulation
14 providing that the War Minister must be in active ser-
15 vice² was revived and ARAKI was completely shut out by
16 the army. Consequently the one who had been expelled
17 from army circles was alleged to be the strong force
18 behind TOJO. The question of this nature which cer-
19 tainly must have been thoroughly clarified during the
20 course of this two-year trial before this Tribunal was
21 primarily the suspicion placed upon him.

22
23 THE PRESIDENT: Mr. McManus, you are reading
24 from rejected documents.

- 25
1. Tr. 28,477, def. doc. 1959 (rejected)
2. Tr. 506, ex. 93

1 MR. McMANUS: If the Tribunal please, I ex-
2 plained to Mr. Brown that there are several quotations
3 from rejected documents here and that when I come to
4 some I shall omit them. However, concerning this
5 particular document, I am sure that the Tribunal, when
6 it comes to page 11 of the summation -- that this fact
7 I mention, the rejected document, will be clarified
8 and will become known to the Tribunal. that there is
9 an exhibit, exhibit 165, transcript page 1636, which
10 I omitted to place here and which I placed on page 11
11 of the summation.

12 THE PRESIDENT: Mr. Brown.

13 MR. BROWN: Your Honor, on behalf of the
14 prosecution, I drew the attention of my learned friend,
15 Mr. McManus, yesterday to the fact that we should ob-
16 ject to citation of rejected documents, and he informed
17 me that he proposed leaving that part out. That is
18 why no objection was taken before the reading of this
19 summation started.

20 THE PRESIDENT: Well, I have said quite often
21 during the summations, and I say again, we will utter-
22 ly disregard any statement of fact not supported by
23 the evidence. We trust you to omit statements of fact
24 not supported by evidence, Mr. McManus.

25 MR. McMANUS: Yes, sir.

(2) The second is the series of charges
1 against ARAKI in the indictment. The prosecution's
2 accusation against ARAKI is comprised of 41 charges:
3 i.e., counts 1 to 17, 27 to 32, 34 and 44 together
4 with all the other accused; and counts 18, 19, 23, 25,
5 26, 33, 35, 45, 46, 47, and 51 to 55 together with
6 some of the other accused.

7
8 Concerning counts 18, 19 and 23 and counts
9 29 to 34, as we have already pointed out to the Court
10 in our motions to dismiss at the end of the prosecu-
11 tion's direct case,¹ and which has further been corrobo-
12 rated during the presentation of the defense case,²
13 ARAKI at the outbreak of all the incidents contained
14 in these counts held no responsible position.

15 This fact will further be corroborated by the
16 presentation of ARAKI's curriculum vitae by Prosecutor
17 Horwitz.³ Concerning counts 26, 36 and 51, counts 28,
18 45, 46 and 47, and counts 44, 53, 54. and 55, while
19 it is true that ARAKI was a cabinet councillor or the
20 Education Minister, by that time the government had
21 adopted the "Five Minister Conference"⁴ and it is ob-
22 vious ARAKI could not have been responsible in view of
23 the fact that the prosecution failed to prove why they

- 24
25
1. Tr. 16,289
2. Tr. 28,121, ex. 3160
3. Tr. 688
4. Tr. 28,486, ex. 3169; tr. 28,508, ex. 3170

1 held ARAKI responsible, who was only cabinet councillor
2 or Education Minister, while such men as Navy Minister
3 VONAI, Foreign Minister ARITA, Finance Minister ISHIWATA,
4 who were actual members of the Five Minister Conference,
5 were not held responsible.

6 "With respect to this point, the prosecution
7 contended in their Summation I-4, "It is no excuse or
8 defense for these accused that other conspirators have
9 not been indicted." However, our contention is that
10 where principal figures whose responsibility in an
11 action should be most important are not indicted, it
12 shows that the criminal nature of the action is non-
13 existent, or if any at all, is very slight -- we contend
14 that there is no criminal nature. A practice of indict-
15 ing unimportant figures, leaving principal figures
16 unindicted certainly would be alien to any kind of
17 justice.

18 Concerning count 27, the prosecution seems to
19 have based their attempted proof of this allegation
20 on the speech ARAKI made in the film "Critical Period
21 for Japan" and of an interrogation¹ of ARAKI. Concern-
22 ing the aforementioned speech, this Tribunal has heard
23 the gist of it and it is our contention that it deserves
24 no comment. With regard to the interrogation afore-

25 1. Tr. 2240, ex. 188 E

1 mentioned, it is respectfully called to the Tribunal's
2 attention all the testimony relating to the misinter-
3 pretations, poor translating and lack of adequate inter-
4 preters during these interrogations conducted at Sugamo
5 Prison at the early stages of this trial,¹ and we
6 particularly call to the attention of this Tribunal the
7 instance of the misinterpretation wherein it was
8 alleged that the War Minister could order the Chief of
9 Staff to conduct a campaign against the four eastern
10 provinces of Manchuria.²

11 Continuing with this second suspicion against
12 ARAKI, the prosecution in presentation of their curricu-
13 lum vitae of ARAKI³ listed him from March 28, 1939, to
14 August 30, 1939, as Chairman of the National General
15 Mobilization Committee. However, Mr. Brown stated
16 during the course of this trial that this was a mistake⁴
17 and that it should have been Chairman of the National
18 General Spiritual Mobilization Committee, against whom
19 there were no charges.
20
21
22

- 23 1. Tr. 28,222, ex. 3161; tr. 28,415
24 2. Tr. 2240, ex. 188 E
25 3. Tr. 688
4. Tr. 28536.

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20
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23 1. Tr. 28,222, ex. 3161; tr. 28,415

24 2. Tr. 2240, ex. 188 E

25 3. Tr. 688

4. Tr. 28536.

This fact is pointed out to show to the
1 Court that this mistake, together with other suspi-
2 cions mentioned in this first phase of this summation,
3 might well have been the reasons why ARAKI was in-
4 dicted in the first place, mistakenly or otherwise.

5 (3) The third phase of the suspicion
6 against ARAKI which might have led to his indictment
7 was a further misunderstanding by the prosecution
8 which is clearly manifested in the prosecution's
9 reply to our motions to dismiss at the conclusion of
10 the prosecution's direct case. It again deals with
11 the General National Mobilization Committee. On
12 January 30, 1947, Mr. Comyns-Carr in reply to our
13 motions states:

14 "It was whilst such a policy was being
15 pursued that ARAKI was appointed President of the
16 General National Mobilization Committee on 28 March
17 1939. It is clearly inconceivable that such a post
18 should have been confided at such a time to anyone who
19 was not heart and soul in sympathy with, and an active
20 supporter of the criminal conspiracy for world con-
21 quest on which the Japanese Government was engaged.

22 "It is submitted that the confidence thus
23 shown in ARAKI by his fellow conspirators after all
24 these years of aggression is very significant of their
25

confidence in him." ^{1.}

1 Brigadier Quilliam, on October 21, 1946,
2 in the opening statement for the prosecution which
3 dealt with general war preparations, stated in the
4 section dealing with general military preparations,
5 as follows:

6 "Significant evidence of the aggressive
7 intentions of Japan is obtained from the function and
8 scope of the General Mobilization Law. This law,
9 which has already been produced in evidence as court
10 exhibit 84, was adopted in 1938. . . It is not too
11 much to say that by the adoption of this law Japan
12 at one stroke became a totalitarian state and finally
13 committed herself to a policy of aggression and ex-
14 pansion. . . It is obvious that without those powers
15 the war preparations could not have been made."^{2.}

17 Consequently, if ARAKI did hold the important
18 post of President of the National General Mobilization
19 Committee during this period the prosecution's inter-
20 pretation was, perhaps, inevitable.

21 However, on the other hand, if ARAKI had
22 never had this post, the prosecution's conclusion
23 should have crumbled right then and there and the
24

25 1. Tr. 16809.
2. Tr. 8197-8198.

1 result should have been a completely reversed con-
2 clusion; namely, that because ARAKI did not approve
3 of criminal conspiracy for the purpose of world
4 domination and because he did not give active
5 support thereto, he was not appointed to such im-
6 portant posts and the conspirators showed no confi-
7 dence towards him. The prosecution has clearly
8 stated that they were mistaken and that it should
9 have been the President of the National General
10 Spiritual Mobilization Committee. They further
11 stated that neither this Committee nor its President
12 were being charged with any crimes.^{1.}

13 At this juncture we were able to find the
14 basic cause and the answer to a question we have had
15 in our mind for a long time. The question is, why
16 was the prosecution under an utterly reversed
17 hallucination in thinking that ARAKI was a strong
18 power behind TOJO? This serious illusion and the
19 misunderstanding of the interrogation by the prosecu-
20 tion are both errors, undoubtedly because of two
21 different languages, and is in addition a glaring
22 example of the difficulties to be confronted in an
23 international trial.

24 1. Tr. 28536.
25

1 (4) The fourth phase of the suspicions
2 maintained against ARAKI deals with the prosecution's
3 argument.

4 When the prosecution heard ARAKI's speech
5 in the film "Critical Period for Japan," and when
6 they realized their mistakes in his interrogation
7 after hearing his explanation in paragraph 28 of
8 his affidavit,¹ and after finding out that he was
9 not the President of the National General Mobiliza-
10 tion Committee but was merely the President of the
11 National General Spiritual Mobilization Committee,
12 which was only a movement for the improvement of
13 national livelihood, we were confident that they
14 would drop their charges against him. However,
15 they have continued to maintain these charges
16 against him, and, to say the least, it is most
17 regrettable.

18 The Key to Clear the Suspicions Against ARAKI.

19 If the following questions are studied the
20 suspicions cast on ARAKI, we are certain, will be
21 clarified.

22 What was ARAKI's reaction toward the
23 October Incident?

24 According to the testimony of witnesses
25 1. Tr. 28221, Ex. 3161.

1 HASHIMOTO, Kingoro,² and WACHI,³ since ARAKI was
2 a man of character they attempted the October
3 Incident, hoping to flaunt him as a figurehead, that
4 is to say, as the Prime Minister, but instead they
5 were reprovved by him and had to cancel the plan, and
6 were themselves taken into custody.⁴

7 (6) Why did ARAKI carry out his purge
8 within the Army when he became War Minister?

9 ARAKI in his affidavit states that he
10 carried out a personnel purge.⁵ If he did incite
11 the so-called political assassins as the prosecution
12 concludes, why would he have purged them? It is his
13 contention that he did this to calm the excitement,
14 to stabilize the nation, and to promptly terminate
15 the Manchurian Incident.

16 It is the further contention of ARAKI that
17 in his advocacy of Kodo he endeavored to teach the
18 Japanese spirit of benevolence and that he further
19 endeavored to awaken the people of Japan, who were,
20 while the world was facing a period of confusion, in
21 a state of utter decadence and illusion. His purpose
22 was to have them reflect upon themselves as one of
23 the fallow nations of the world, so that this
24

25 2. Tr. 28795, Ex. 3195. 4. Tr. 28791, Ex. 3195.
3. Tr. 19667, Ex. 2424. 5. Tr. 28149, Ex. 3161.

awakening would hastily extinguish the Manchurian

1 Incident and prevent a full scale Sino-Japanese War.

2 (7) Why was it that the Shimpeitai attempted
3 to assassinate ARAKI? The Shimpeitai, which was
4 arrested on July 12, 1933, attempted to assassinate
5 all the ministers of the SAITO Cabinet, including
6 ARAKI, holding that the disposition of the Manchurian
7 Incident was too weak-kneed.¹ It was an explosion
8 of the pent-up dissatisfaction of the extreme
9 rightist group over the fact that the Manchurian
10 Incident was brought to a conclusion to prevent a
11 full scale Sino-Japanese war and that the Manchukuo
12 Government was not made a puppet regime.
13

14 THE PRESIDENT: You are entering a new
15 phase really, so this is a convenient time to adjourn.

16 We will not sit after 2:45 p.m., but at that
17 time will adjourn until Monday next.

18 We will adjourn now until half-past one.

19 (Whereupon, at 1200, a recess was taken.)
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1. Tr. 1636, ex. 165

AFTERNOON SESSION

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2 The Tribunal met, pursuant to recess, at
3 1330.

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

6 THE PRESIDENT: Mr. McManus.

7 MR. McMANUS: I shall continue, if the Court
8 please, at page 11, paragraph (8) (reading:)

9 (8) Why did ARAKI resign from his post of
10 War Minister?

11 ARAKI was taken seriously ill on January 1,
12 1934 and for a time he was in a critical state. When
13 he regained his health, somewhat considerably,¹ Premier
14 SAITO and the members of his cabinet and even the Army
15 circles asked him to remain in office. However, he
16 resigned his post for the following reasons:

17 1. From the beginning, the outbreak of the
18 Manchurian Incident gave ARAKI serious worries, but
19 his position was related to education, which had
20 nothing to do with the Incident.
21
22
23
24

25 1. T. 28,430, Ex. 3,166

1 (2) Nevertheless, when finally the incident
2 developed into a serious situation ARAKI was called
3 upon to undertake the important task of clearing up
4 the trouble and he finally succeeded in settling the
5 matter, once and for all, before it exploded com-
6 pletely. However, it is ARAKI's contention that his
7 true intention was not merely the settlement of the
8 Manchurian Incident but a far more important matter
9 was on his mind.

10 (3) He states that his true ideal was the
11 future stabilization of Japan which was in a tempest,
12 and the establishment of peace and good will in the
13 Far East.

14 (4) In his affidavit he said that he had in
15 mind, for a long time, a plan ¹ to establish this a
16 national policy, and that as soon as he was able to
17 place under control the troubles in Manchuria he
18 started to work on this aforementioned plan.

19 (5) In the middle of this task he was taken
20 suddenly ill, and while he did recover he was unable
21 to be active. ²

22 (6) A chance for presenting this plan to the
23 Diet could not be overlooked, but because of his
24

25 1. Tr. 28,157, Ex. 3161
2. Tr. 28,430, Ex. 3166

1 illness he was compelled to resign, but not before
2 entrusting this matter to others, making for its
3 materialization. "Basic Suggestions for Emergency
4 Policies" presented to the Prime Minister was one
5 of them.¹

6 In other words, in his mind the Manchurian
7 Problem was not the main question. When the fight-
8 ing ceased it would be settled. His one desire was
9 the promotion of good will and peace, and because of
10 this ardent intention, he placed reliance on his
11 successor and resigned his office.

12 (9) Why was ARAKI forced out by the Army?

13 In Paragraph No. 12 of his affidavit, ARAKI
14 states, "In the meantime, things completely turned
15 to the worse, and after two years from the time of
16 my resignation, the 2.26 Incident forced myself and
17 other senior members of the army to leave active
18 service altogether."²

19 The prosecution in its exhibit No. 93³ also
20 admits that the Army shut out those men. It is the
21 accused ARAKI's contention that the basic reason for
22 this was because he was strongly opposed to the ten-
23 dency at that time of falling blindly toward pro-

- 24
25
1. Tr. 28,446, Ex. 3166
2. Tr. 28,163, Ex. 3161
3. Tr. 506, Ex. 93

1 Fascism and pro-Germany and Italy, owing to over-
2 zealousness towards "national control."

3 (10) Why did ARAKI join the First KONOYE
4 Cabinet?¹

5 The reason according to the accused why a
6 retired General, purged from the Army, became a
7 Cabinet Councillor and the Education Minister of
8 the First KONOYE Cabinet was because the Premier,
9 Prince KONOYE, much concerned over the outbreak of
10 the China Incident, wanted ARAKI, who had so success-
11 fully terminated the Manchurian Incident, to endeavor
12 once again to settle this further disturbing dispute
13 between China and Japan.²

14 (11) Why did ARAKI turn down the offer of
15 the Home Minister post in the YONAI Cabinet?

16 When asked to enter the YONAI Cabinet as
17 Home Minister, ARAKI refused, stating that from his
18 experience in the KONOYE and the HIRANUMA Cabinets,
19 he was well aware that he would be of no use what-
20 ever as a civilian minister of state.³

21 (12) Why did ARAKI break off his relation
22 with Prince KONOYE?

23 According to the witness TOMITA, Kenji, owing
24

- 25
1. Tr. 688
 2. Tr. 28,203, Ex. 3161
 3. Tr. 28,217, Ex. 3161

1 to strong opposition¹ by ARAKI over the questions
2 concerning the Tripartite Alliance and the Imperial
3 Rule Assistance Association, relations between
4 Prince KONOYE and ARAKI² officially became, for
5 the time being, severed.

6 It is clear from this fact alone how strong
7 his opposition was to Fascist control, and further
8 from this fact, we ask the Tribunal to consider the
9 accused's sincerity in his endeavor to avoid the
10 danger of a Tripartite Pact from an international
11 point of view.

12 Now, if the Tribunal please, it is one con-
13 tention that when the facts herein above are cor-
14 rectly weighed, the Tribunal must conclude that
15 every one of the charges listed by the prosecution
16 against ARAKI have been based upon a complete mis-
17 understanding.

18 Chapter 2.

19 The Conspiracy Charge and ARAKI.

20 (1) In regard to conspiracy, Mr. Keenan in
21 his opening address argues various points in great
22 length, which may be summarized as follows:
23

24 (1) Its purpose was criminal or unlawful;

25 2. Tr. 28,550, Ex. 3172

1. Tr. 28,546, Ex. 3172

1 (2) Even if this purpose, in itself,
2 was not so, its means were criminal or unlawful;

3 (3) The gist of the crime is the
4 confederation or combination of minds;

5 (4) It is constituted by an agreement;
6 it is, however, the result of the agreement and not
7 the agreement itself.

8 He further argued that the object of the
9 charges "was of aggression, and that this was a crime
10 under International Law." Argument of Law is a
11 general matter and not for individual defense. How-
12 ever, Mr. Keenan laid a foundation by stating that
13 International Law was the product of justice, human-
14 ity, and the sense of right and wrong, and originated
15 from the so-called "Natural Law." He further goes on
16 to quote from Webster's New International Dictionary,
17 Second Edition, Unabridged, 1943, what is generally
18 known to all.

19
20 The Chief Prosecutor then enumerates the
21 following as the general facts of conspiracy:

22 (1) The design to instill and encourage
23 militaristic spirit;

24 (2) That the future progress of Japan
25 was dependent upon wars of conquest;

(3) Initiating and organizing ultra-

~~nationalistic plans;~~

1 (4) That all Japan's foreign policies
2 ever since the Russo-Japanese War were either for
3 preparation or for the execution of wars of aggres-
4 sion which was a conspiracy with the Army as its
5 centre;

6 (5) And finally, lists the various
7 occurrences of the 18 long years between 1928 and
8 1945.

9 The conclusion reached from the above is that
10 it will be necessary to study whether the individual
11 charged (1) had the intention and purpose of aggres-
12 sion; whether (2) the means amounted to aggression;
13 and whether (3) the gauge for measuring this is in
14 accordance with the Natural Law of justice and human-
15 ity.
16

17 As we have stated in the chapter before,
18 whatever was the nature of the incidents he faced,
19 ARAKI never had the intention of aggression. His
20 object was always justice, peace and humanity. He
21 fought for this and succeeded in the initial step,
22 establishing peace based upon justice and humanity,
23 by putting an end to fighting.

24 From this broad viewpoint it is clear that
25 the charge against ARAKI as a participant in a con-

1 spiracy is completely misdirected.

2 2. The contention of the prosecution as
3 to ARAKI in the case of conspiracy is not quite clear.
4 It seems that they list in general the following
5 items, based upon their general principles of con-
6 spiracy as already stated.

7 (1) He propagated, educated, and in-
8 cited world domination.

9 (2) He planned and executed the occu-
10 pation of the Four Eastern provinces.

11 (3) He set up, recognized, and led a
12 puppet government.

13 (4) He dispatched troops to Shanghai
14 and intended the aggression of Central China.

15 (5) He took actions in violation of
16 International treaties.

17 (6) He participated in the China
18 Incident.

19 (7) He planned and executed aggression
20 against the Soviet Union;

21 (8) He also planned aggression against
22 the United States and Great Britain.

23 3. Furthermore, the prosecution contends
24 that the participation by ARAKI in the conspiracy
25 begins, at least, from the time he became War

Minister. Their reason for this being that (1) he
1 was responsible because he accepted the post of War
2 Minister knowing that a "military policy" was al-
3 ready in effect; and that (2) thereafter, he fully
4 participated in this conspiracy by ordering aggressive
5 actions.

6 3. The outline of our reply to the prose-
7 cution's contention.

8 (1) ARAKI had no intention of world domina-
9 tion and never participated with any person, includ-
10 ing any of the accused in this case, in a conspiracy
11 for wars of aggression. The purpose of his actions
12 were to stop wars and establish a way for peace and
13 humanity, and therefore he naturally never propagated,
14 educated, nor incited aggressive war. What ARAKI
15 emphasized, based on peace and humanity, was the
16 ideas of KODO, which is founded on benevolence and
17 the inherent freedom of men which is diametrically
18 opposed to ideas of aggression. A careful considera-
19 tion of the speech in the prosecution's film "Critical
20 Period for Japan" alone, will clarify this. However,
21 this matter will be dealt with in detail separately.
22 In addition we wish the attention of the Tribunal to
23 be directed to the fact that ample documents in con-
24 nection with this matter were prepared and tendered,
25

but, unfortunately, most of them were rejected.¹

1 (2) The prosecution seems to contend that
2 ARAKI as an important member of the Kokuhonsha con-
3 spired together with the accused HIRANUMA, KOISO
4 and others in regard to political maneuvers.²

5 (HARADA Memoirs) This matter will be discussed in
6 detail in the specific reply to Paragraph AA-4 of
7 the prosecution's summation.

8 ARAKI never planned or executed the occupa-
9 tion of the Four Eastern Provinces. He acted strict-
10 ly in accordance to the policy of the INUKAI and
11 SAITO Cabinets, which was to promptly terminate the
12 fighting and establish peace and order in these
13 provinces. After a year and a half he was able to
14 attain this objective. The military actions taken
15 were the minimum necessary, and inevitable, for the
16 purpose of maintaining local public peace. The fact
17 that no aggressive plans of occupation existed has
18 been made clear by our counter-evidence (which will
19 be discussed in the subsequent paragraph dealing
20 with the Manchurian Incident.)
21

22 The prosecution relied upon ARAKI's inter-
23 rogatory. This evidence we contend has no value
24 whatsoever.
25

1. Tr. 28,590 2. Tr. 37,492, Ex. 3753;
Tr. 37,560, Ex. 3754-A

1 (3) The independence of Manchukuo came
2 about by the voluntary actions of the local people
3 themselves, and its object was to recover peace and
4 order and terminate further fighting. The various
5 treaties concerning its independence, recognition,
6 and so forth, were left in the hands of the diplomatic
7 channels of the Foreign Ministry. The Army, in regard
8 to its guidance and assistance to Manchukuo, strictly
9 limited it to its initial mission, namely, the
10 maintenance of peace and order, and the newly arisen
11 problems of national defense. The prosecution ten-
12 dered exhibit 222 and several other documents, but
13 these are not sufficient, we submit, to support their
14 contention; and especially as a basis for proving
15 ARAKI's personal responsibility they are futile.
16 These points will be argued in full later.

18 (4) The dispatch of troops to the Shanghai
19 area was carried out in pursuance of the Cabinet's
20 policy to protect the local residents and to deliver
21 the Navy from imminent danger. However, even while
22 the truce negotiations were being conducted, the
23 withdrawal of troops began, and together with the
24 conclusion of the agreement, the general withdrawal
25 was also concluded. This withdrawal was, in fact,

1 due to ARAKI's own insistence.¹

2 (5) ARAKI has never taken any actions in
3 violation of International Treaties. In regard to
4 military actions in Manchuria, as we have previously
5 stated here, when ARAKI became War Minister Manchuria
6 was already a scene of fighting and disturbances.
7 Actions were taken on the basis of the "reserved
8 right to suppress banditry" of December 10, 1931, and
9 was in accordance with the right of self-defense to
10 save the Japanese residents and the troops in Man-
11 churia from danger. The Lytton Report shows how
12 critical the situation was at the time, and actions
13 had to be taken from the standpoint of self-defense.
14 These military actions, the independence of Manchukuo
15 and its recognition were all in accordance with the
16 studies and investigations made by the Foreign
17 Ministry and the policy of the Government. The
18 Government came to its decision after being informed
19 that it would not be in violation of treaties,² and
20 after considering the result of the above-mentioned
21 research. ARAKI, as War Minister, carried out his
22 initial duty of maintaining peace and order within
23 the limits of this decision. He was already at this
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25 1. Tr. 37,618, Ex. 3768-A; Tr. 28,140, Ex. 3161;
Tr. 28,461, Ex. 3168.
2. Tr. 28,150, Ex. 3161.

1 time, greatly concerned with the problem of how to
2 stop the fighting, and used the minimum number of
3 troops without extensive manipulation and without
4 mobilization.¹

5 (6) As regards the China Incident, by re-
6 quest of Prince KONOYE, ARAKI as Cabinet Councillor
7 and as Education Minister exerted all efforts to
8 bring about a prompt termination, but denied the
9 scope in which to exercise his powers, he had no
10 opportunity and was unable to attain this objective.²

11 (7) He never planned nor carried out aggres-
12 sion against the Soviet Union. On the contrary, he
13 was greatly concerned over the advance of the Comin-
14 tern from the point of view of safeguarding the
15 national polity. The armed clashes at the border
16 around Changkufeng and Nomonhan have nothing to do
17 with this issue. This will be discussed in the
18 chapter dealing with the Soviet Union.

19 (8) The advance into French Indo-China, and
20 such other matters relating to Hainan Island and the
21 Spratley Islands were taken up at the Five Ministers'
22 Conference and, as Education Minister, ARAKI did not
23 participate. Actually, the occupation of French
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25 1. Tr. 28,168, Ex. 3161
2. Tr. 28,203, Ex. 3161

1 Indo-China took place after he left public office.

2 (9) He never had aggressive intentions to-
3 wards the United States and Great Britain. Further-
4 more, the prosecution has not been able to prove on
5 what this contention is based. A reading of exhibit
6 3766,¹ and exhibit 3767,² is sufficient to clarify
7 this point, and his determination is clearly stated
8 in the "Outline of Emergency Measures."³

9 (10: The prosecution's view that ARAKI's
10 time of entering the conspiracy was the time he be-
11 came War Minister is a grave mistake. Before he be-
12 came War Minister his duties (Chief of General Af-
13 fairs Bureau of Military Education) did not keep him
14 sufficiently informed about the current situation and
15 he accepted the post following the recommendation by
16 the "Three Army Chiefs."⁴ After his acceptance, as
17 already stated, he took actions to maintain peace and
18 order and to stop the fighting in Manchuria, disre-
19 garding the strong arguments of the political and
20 military circles, but carrying on according to his
21 own ideas; and after a year and a half was able to
22 attain his purpose. The only things he did after
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- 24 1. Tr. 37,612, Ex. 3766
25 2. Tr. 37,612, Ex. 3767
3. Tr. 28,446, Ex. 3166
4. Tr. 28,127, Ex. 3161

1 becoming War Minister were to terminate hostilities
2 and straighten out matters. Instead of having any
3 aggressive intentions, he actually took positive
4 measures for peace. Therefore, it is absolutely
5 untrue to say that he participated in aggressive con-
6 spiracy. When one considers the measures he took
7 after the fighting in Manchuria was stopped, such
8 as his attempt to have everything settled by a
9 Far Eastern peace conference, and his complete with-
10 drawal of troops from Shanghai, maintaining that
11 peace and order can be kept without them, which
12 surprised everyone even at that time, it will be
13 realized that the facts themselves prove that he did
14 not join any aggressive conspiracy.
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5) Our reply to the prosecution's evidence.

1 Some evidence has been tendered by the prosecu-
2 tion concerning the points mentioned above. However, no
3 evidence has been tendered which proves that ARAKI con-
4 spired with others for the purpose of world domination.
5 Instead, it made clear the cause of the prosecution's
6 misunderstanding, and established the fact that he had
7 no intention of aggression or world domination, but was
8 actually exerting his effort for a purpose exactly
9 opposite to it. Arguments regarding the evidence in
10 connection with ARAKI's action subsequent to the
11 Manchurian Incident will be submitted in a later chapter.
12 In the following paragraphs we shall reply to the
13 prosecution's evidence concerning propaganda, education
14 and incitement in relation to conspiracy.

A. Propaganda.

17 Exhibit No. 148, the film "Critical Period for
18 Japan."¹ (The defense considers this film to prove
19 the fact that ARAKI's ideas were opposed to aggression,
20 and for this reason will go into detail.)

21 The prosecution stated that this was a propaganda
22 film of a vicious type² and in connection with this
23 that ARAKI should have been the government's spokesman

24 1. T. 3,155
25 2. T. 1,185

1 te to the public.¹ Explanation as to whether this is,
2 in fact, a vicious propaganda film or not, seems to be
3 unnecessary since the Tribunal has already seen it.
4 Furthermore, as indicated in Part I (which was not
5 projected but is definitely in evidence) this film was
6 made arbitrarily by the Mainichi Shimbun, merely using
7 ARAKI's speech as its subject. Witness MIZUNO also
8 testifies in effect that every bit of responsibility
9 for the making of this motion picture is on the Mainichi
10 Shimbun.²

11 If ARAKI is to be responsible for this film,
12 some kind of proof, such as that he recorded the speech
13 after the film itself was made, or that he gave detailed
14 instructions at the time of its filming, or that he had
15 something to do with its editing, must be established.
16 Unless this is done he cannot be held responsible. The
17 substance of his speech, in outline, is that he shows
18 Japan's position at the time and asks the public to
19 reflect upon it. Up to Part VII, this is merely
20 repeated. After this, that is, in the latter half of
21 this film, he preaches KODO as a way to safeguard Japan
22 and its morals in accordance with the august policy
23 indicated by the Imperial Household, explaining the true
24

25 1. T. 16,806
 2. T. 18,622

1 meaning of national defense and the intrinsic nature
2 of the Imperial Armed Forces. And in conclusion he
3 prays for world peace brought about in cooperation
4 with Europe and the Americas.

5 In Part II he gives the bare facts of the
6 current situation at the time in the Far East, without
7 any ostentation.

8 In Part III, deploring the slackness of the
9 time, he asks the Japanese people to reflect on them-
10 selves, saying:

11 "We, the Japanese people, surpass all other
12 peoples of the world in our fervent love for peace and
13 in our respect for justice and honor.

14 "Truly, this is the great spirit of the found-
15 ing of our Empire and is the fundamental consciousness
16 of our whole race.

17 "The gates of our country were opened in the
18 great reformation at the time of the MEIJI restoration,
19 when the true aspect of Japan was revealed to the whole
20 world.

21 "Ever since then Japan has been advancing with
22 rapid strides, taking her stand for righteousness and
23 with firm resolution to spare nothing for the sake of
24 peace."
25

In Part IV he warned those among the people who

1 were utterly insensible, saying that the ruinous and
2 corruptive conditions brought about by the flippant
3 profligates caused Japan to be looked down upon,
4 continuing to say that this was the real cause of the
5 Manchurian Incident, deploring same, and also saying
6 that this was the reason for Japan's solitary position
7 in the world, "the seed of which I do not hesitate to
8 say, was sown by our own hands." This latter statement,
9 of course, the Tribunal must consider as a condemnation
10 of those people who placed Japan in such a position.

11 In Part V, he asks, ". . . what does it mean
12 to have the consciousness of being Japanese? What is
13 the true nature of Japan?" And says that it is the
14 spirit represented by the Three Articles of Imperial
15 Regalia which symbolize Justice and honor, benevolence,
16 and courage and decision. These are "the great ideals
17 of our Empire." "These are our national virtues,
18 which the Emperor himself has set up as his ideals."
19 "This is the so-called Imperial Way /KODO/." "To
20 protect this Way, to make it more glorious and to advance
21 in this manner should be the only ideal and duty of
22 Japanese subjects."

24 In Part VII he states:

25 "To explain national defense in a few words,
I say that it is the defensive abilities of a country,

1 that is, the defense of the way of the nation. A
2 country or a nation has its own way, the way of our
3 country is . . . the Imperial Way. In short, the
4 army of our country is the Emperor's army, which is,
5 at the same time, the national army. Therefore, I
6 consider the army as the essence of the national
7 virtues. To tread on the path of the Emperor is the
8 spirit by which our army is organized. That is, the
9 spirit of the Japanese forces is realized when they
10 enhance the national virtues, the ideals of the Emperor,
11 in compliance with the spirit of the Emperor who commands
12 them. This is the reason why the Japanese army never
13 starts an act unless being commanded by the Emperor."

14 A further quotation: "The purpose of fighting
15 is solely to observe virtue and to carry it out.
16 Naturally, it is necessary to win, but if the victory
17 should be accompanied by the resentment of the people
18 conquered, it is quite adverse to the spirit of the
19 Imperial Army. If our troops are stationed in a certain
20 place, they must try to be admired and respected by the
21 natives of the place. That is the true spirit of the
22 Imperial Army, through which the glory of our nation
23 will be enhanced."
24

25 How now can it be said that ARAKI taught and
encouraged aggression to the army? It becomes clear that

1 he endeavored to raise the army's moral value. It proves
2 that he did everything to raise the morals of the troops
3 and induce the people to reflect on themselves, hoping
4 for eternal peace and goodwill with all nations.

5 In Part IX he emphasizes the importance of the
6 spiritual element, quoting from the following passage
7 in the "London Times", addressed to the Japanese after
8 the Russo-Japanese War: "The victory you won in the
9 recent Russo-Japanese War is indeed due to the spiritual
10 union of the Japanese."

11 Part X, if your Honors please, it is our
12 contention, does not contain ARAKI's speech.

13 In Part XI, ARAKI, quoting the proverb, "Adversity
14 makes a man wise," encourages the people as follows:

15 ". . . the true spirit of the Japanese race
16 lies in finding order amid chaos and in realizing an
17 ideal world.

18 "Today, Manchuria is called the life-line of
19 our country, but it is not a life-line to satisfy mere
20 appetites for food. . .

21 "We must look, we ought to look upon Manchuria
22 as a moral life-line."

23 It shows, if the Tribunal please, that between
24 this ideal of ARAKI's and the subsequent development of
25 Manchukuo there existed a wide gap. When one reads

1 ARAKI's affidavit¹ this fact becomes very clear.

2 Therein it is stated by him the following:

3 "The development of Manchukuo after that was
4 not quite as it should have been. Dissatisfied with
5 this state, I refrained from attending the 10th annivers-
6 ary celebration of its foundation."

7 In Part XII he concludes his speech by saying:

8 "My compatriots whom I love and honor. . . I
9 firmly believe that with Europe and the United States we
10 can bring about everlasting peace in the whole world."

11 All this shows, if the Tribunal please, that
12 ARAKI never thought of world domination, but actually
13 said, in his conclusion, that if the Japanese were sincere
14 and patient the future of Asia would be bright and that
15 peace could be brought about by joining hands with
16 Europe and the United States.

17 The prosecution produced the witness MAKAI,
18 Kimbei to prove the viciousness of this picture. However,
19 as he stated himself, when this film was produced he was
20 still a middle-school student, two years before he enter-
21 ed the company.

22
23 It is our contention, if the Tribunal please,
24 that he was not qualified to talk about its production

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1. T. 28,153, Ex. 3161
2. T. 1,190

1 or discuss its propaganda value. As for his criticisms,
2 he states that the most aggressive part was where a silly
3 cartoon showed a small Japanese plane eliminating all
4 planes of other nations.¹

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1. T. 3,196

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Defense witness MIZUNO, Shinko, was the man responsible for the production of this film, as the Chief of the Motion Picture Department of the Mainichi Shimbun, and as the actual man who did the general¹ direction at the time of its filming.

This witness testified as to the objective² of the production of the film and the reason for the use of ARAKI's speech. The gist of his testimony was that after the outbreak of the Manchurian Incident Japan became diplomatically isolated in so far as international relations were concerned, while internally there was a great deal of ideological confusion caused by the infusion of Communism and totalitarianism.

To bring order out of this chaotic state, it was decided to make a suitable motion picture, and after a lengthy discussion at a senior officers' conference of the newspaper it was decided that "among all men, whether of the military field or non-military, that the then War Minister ARAKI was the most moderate and the most neutral in his thinking."³

With the actual value of this speech, together with the testimony re its production and the

1. T. 1,177; T. 18,619
2. T. 18,619
3. T. 18,622

1 responsibility therefore by witness MIZUNO, we submit,
2 that the speech by ARAKI was not of a dangerous char-
3 acter contending superiority of the Japanese race, nor
4 was it a propaganda effort for world aggression as the
5 prosecution contends. On the contrary, we submit
6 that the film itself proves that it was an educational
7 motion picture urging the people of Japan to peace-
8 fully reflect upon themselves, and endeavor to show
9 the right way to the Army, which had not at that time
10 been able to shake of its Prussian militarism. How
11 the prosecution came to consider this motion picture
12 as evidence against ARAKI is still a very deep mystery
13 to us.

14 Now, if your Honors please, continuing this
15 first phase of "ARAKI and Conspiracy" the prosecution
16 further attempted to connect the accused with their
17 propaganda allegation by elucidating upon a custom
18 which has prevailed for many years in practically all
19 the countries of the world. The prosecution attempted
20 to make much ado about the sale of such items as candy,
21 ice cream, popsicles and many other such items as would
22 appeal to children. Their contention was that the
23 Government of Japan, particularly when ARAKI was War
24 Minister, was sponsoring sales talks by the vendors
25 of these items for the purpose of instilling in the

1 minds of the aforementioned children ideas of aggres-
2 sion. I might point out to this Court that in my obser-
3 vation and undoubtedly in any one of your Honors' this
4 custom still prevails not only in Japan but in many
5 other countries; but, of course, not for the purposes
6 of propaganda as the prosecution contends.

7 Undoubtedly your Honors are well aware of
8 the fact that when you were small boys, as I myself
9 can vividly recall, vendors of such items above-
10 mentioned would always endeavor to attract a group of
11 potential youthful buyers of their appealing merchan-
12 dise, by not only offering the merchandise itself, but,
13 because of competition, would always dangle an addition-
14 al attraction. I can well recollect that vendors at
15 home would offer such items as picture cards, buttons,
16 etc., for the purpose of having children buy their
17 wares. This promoted such an interest for children
18 that many youthful games were originated such as tos-
19 sing or matching pictures, or making a delightful col-
20 lection of a certain series of buttons.

21 Not only was this practice by the manufac-
22 turers of various items confined to an appeal to chil-
23 dren but this practice was also directed to adults,
24 for instance, in the sale of cigarettes, such pictures
25 or buttons were distributed with various brands of the

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aforementioned cigarettes for the purpose of enticing the public to buy their particular brand with the ultimate aim in view that when a complete collection of possibly 50 or 60 pictures or buttons were collected they could be redeemed for any valuable prize listed in their own particular distributed catalogues.

These pictures and buttons depicted famous prizefighters, movie stars, battleships, famous historians, writers, philosophers, etc.

It is our contention that the prosecution is endeavoring to take advantage of this practice by various manufacturers or vendors for the sole purpose of misleading this Court into the belief that this individual competitive practice was sponsored by the Government of Japan for the purpose of aggression. We further contend that this practice not only until this present day prevails in Japan but in many other countries of the world. To say that this world-renowned manufacturers' competitive practice should be charged to the Government of Japan, or more asinine, to ARAKI, for propaganda purposes, is to say the least, ridiculous.

There is not a scintilla of proof that the Government of Japan or ARAKI ever sponsored any such program for aggressive or nationalistic purposes.

1 Now, if your Honors please, continuing with
2 this second general phase "ARAKI and the Conspiracy"
3 we have divided this phase into four parts, namely:
4 1. Propaganda (which has already been completed);
5 2. Education which should be discussed now but we
6 feel that for the convenience of the Tribunal it would
7 be much better to discuss it later; 3. Incitement
8 (which will be divided into five subsections; namely -
9 "October Incident and ARAKI"; "May 15 Incident and
10 ARAKI"; "February 26 Incident and ARAKI"; "SHIMPEITAI
11 and ARAKI"; and "KODO and ARAKI"); and 4. Imperial
12 Rule Assistance Association.

13 Now, taking up the conspiracy concerning
14 "Incitement."

15 20. Minister Golunsky in his opening statement
16 for the Russian phase used the words, "so-called
17 young officers instigated by the defendant ARAKI and
18 others." However, we find difficulty in discovering
19 where this evidence is.
20

21 Nevertheless, to preclude any misunderstanding,
22 and for the sake of prudence, the relations between
23 ARAKI as an individual and the so-called terrorist
24 groups of assassins and intimidators according to the
25 prosecution, shall be explained.

The "October Incident and ARAKI"

1 The October Incident has already been referred
2 to in the previous section and as stated will be ex-
3 plained in detail in the specific reply to the prose-
4 cution's summation, Paragraph 44-5. ARAKI, while he
5 was being set up as a leader, a figurehead leader,
6 preached justice and moral obligations, and by so doing
7 made them drop the attempt.¹

8 31. The "May 15th Incident and ARAKI"

9 Even since the October Incident ARAKI was
10 deeply concerned over the movements of the young offi-
11 cers, and especially after he became War Minister he
12 kept strict vigilance, cautioning his subordinates
13 never to be rash or to act carelessly. This we submit
14 is why not a single army officer, except eleven Mili-
15 tary Academy cadets who were lured by Navy officers,
16 participated in this Incident.²

17 32. The "February 26th Incident and ARAKI"

18 Young army officers who restrained themselves
19 during the time ARAKI was War Minister and did not
20 join the May 15th Incident did get involved in the
21 February 26th Incident. These men were stirred by the
22 various happenings within the army, such as the trans-
23 fer of the Inspector General for Military Education,
24 the AIZAWA Incident, the discharge of old-time officers,
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1. T. 19,667, Ex. 2424

2. T. 28,196, Ex. 3161

1 and so on. But they avoided ARAKI, owing to the outside
2 propaganda. So even when War Minister KAWASHIMA recom-
3 mended a meeting with him they refused. Since his
4 plans were not being realized and matters in and with-
5 out the Army were going against his ideals, ARAKI
6 retired from the surface and kept his distance even with
7 the Army authorities and old-time officers. However,
8 after this Incident ARAKI and five other generals were
9 retired from the active list, but ARAKI himself had
10 nothing to do with this incident. When it broke out
11 he was extremely worried for the sake of the army and
12 did all he could to end it.

13 The defense, to prove the non-existence of
14 conspiracy in relation to this Incident, prepared
15 the testimony of Mr. Todoroki, Sakae, who was a news
16 reporter assigned to cover the army and was well-
17 acquainted with the situation at that time, but, unfor-
18 tunately, his testimony was also rejected by the Tribu-
19 nal.

20 33. The SHIMPEITAI arrested or assassinated
21 all the cabinet members of the SAITO Cabinet, angered
22 by the weak policy towards Manchuria adopted by War
23 Minister ARAKI and the Premier. In the belief that
24 it was of the utmost necessity to prove ARAKI's
25

1 painstaking labors, in spite of opposition by extrem-
2 ists, by which he settled the Manchurian Incident with-
3 out letting it become an overall Sino-Japanese clash,
4 we prepared the affidavit of witness OMORI, Sogen,¹
5 who was once a member of the SHIMPEITAI, but left the
6 group because he was opposed to the assassination of
7 ARAKI. This was also rejected by the Tribunal. How-
8 ever, the HARADA Diary (97th Entry, Sept. 9, 1933)
9 clarifies this point, and we believe that ARAKI's
10 attitude at the time may be judged by this. Mr. Taven-
11 ner during the examination of witness MITARAI stated:
12 "The WAKATSUKI Cabinet fell, according to that individ-
13 ual, as the result of Army pressure. The testimony
14 introduced in regard to the INUKAI Cabinet is that
15 there was extreme military pressure due to the position
16 that the cabinet was opposed to the military claims
17 in Manchuria."² The above, we submit, shows that ARAKI
18 was not an instigator of the so-called terrorists, but
19 tried to prevent them. He was shunned and finally
20 became one of the marked victims of this group.

21 Further, under this incitement allegation
22 concerning the education and guidance of young officers
23 during his office as Commander of the 6th Division
24 (1929) and as head of the Military Staff College, we
25

1. Def. Doc. 2568

2. T. 17,773

1 prepared the affidavits of Witness KAWAGOE, former
2 staff officer of the 6th Division and witness IIMURA,
3 former senior instructor of the Army Staff College;
4 but these documents also were rejected by the Tribunal.

5 34. "The KODO faction and ARAKI"

6 In regard to the KODO faction there is the
7 testimony of Witness TANAKA, Ryukichi.¹

8 According to Witness TANAKA, Ryukichi, there
9 were the KODO faction and the TOSEI /Control/ faction
10 and their aim was the renovation of the corrupt poli-
11 tics at that time.

12 He goes on to say that the radical officers
13 looked up to General ARAKI, MAZAKI, and YAMAGAWA as
14 the leaders of the KODO faction, and that their prin-
15 cipal objective was the idea of direct rule by the Em-
16 peror, and for this reason it was entirely opposed to
17 Communism, and he also added that they were very antagon-
18 istic towards Soviet Russia but had no enmity towards
19 other nations.

20 However, there did not actually exist a body
21 or group by the name of "KODO Faction". To ARAKI
22 and others who taught that "under the August Virtue
23 of His Majesty the Emperor the Imperial Army should
24 enliven our national virtue and defend the Imperial
25

1. T. 15,855

1 Way /KOLO/". The name, "KODO faction," began to be used
2 by some one or another amongst the journalists. On the
3 other hand, those who advocated immediate "total war
4 formation" in the German style, were identified by
5 someone or another as the "Control faction" /TOSEIHA/.
6 However, in reality, there were no cliques or factions
7 as these within the army itself. The young officers
8 who participated in the February 26 Incident were
9 called the KODO faction by those who created this name,
10 but in reality they were admirers of ARAKI and MAZAKI
11 but their ideas were substantially different from those
12 of MAZAKI. To prove this we attempted to introduce
13 the testimony of witness SUGANAMI¹. ARAKI and the others
14 strongly criticized the dictatorial ways of the Commun-
15 ists and the Nazis, and as a natural result, consid-
16 ered the March Incident and the October Incident most
17 deplorable. The reason why no young officers partici-
18 pated in the May 15th Incident was because ARAKI's
19 endeavor to lead them on the right path was well con-
20 sidered.

21
22 When ARAKI became the War Minister, and Gen-
23 eral MAZAKI the Vice Chief of the General Staff, and
24 Lieutenant General YAMAGAWA the Vice Minister of War,
25 the press called it the golden age of the KODO faction,

1 and it was said that the Army started to advance ser-
2 iously towards becoming an army in accordance with the
3 fundamental principles laid down for which it was
4 created.

5 ARAKI and the others transferred the extrem-
6 ists from the central army authorities and attached
7 them to the field units with the object to suppress and
8 calm them, and to let them have experience of the field
9 units. They, ARAKI and the others aforementioned,
10 skillfully managed the Shanghai and Manchurian Inci-
11 dents, stopped the fighting and disturbances, and thus
12 prevented a general Sino-Japanese clash.

13 In answer to ARAKI's resignation due to ill-
14 ness, one after another of these men left their impor-
15 tant posts and at the time of the February 26th Inci-
16 dent not a single one of them was holding an important
17 post in central army offices. And they, together, left
18 active service about the time the February 26th Inci-
19 dent occurred. Furthermore, by the adoption of the
20 regulation providing that the War Minister must be on
21 active service, ARAKI's way back to the Army was
22 blocked.

23
24 The prosecution contends that the revival of
25 the "War Minister Active Service" system was one of
the means of the conspiracy amongst the militarists.

1 Then the prosecution plunges into an extraordinary con-
2 tradiction by charging ARAKI, the victim, as one of
3 the participants in this same conspiracy. The reason
4 for Premier KONOYE bringing ARAKI in as Cabinet Coun-
5 cillor and Education Minister was because he wanted
6 the so-called KODO people to promptly settle the China
7 Incident as they did in the case of the Manchurian In-
8 cident. However, a retired general shut out by the
9 army could do nothing and the peaceful settlement of
10 the China Incident did not succeed. An excerpt from
11 the KONOYE Diary ("Lost Politics") was prepared to
12 prove this point, which was, however, rejected. Other
13 documents dealing with the KODO faction were prepared,
14 but these too, unfortunately, were rejected.

15 35. Imperial Rule Assistance Association

16 In Section 6 of Appendix A of the Indictment
17 it is stated, "During this period such free Parlia-
18 mentary institutions as previously existed were grad-
19 ually stamped out and system similar to the Fascist or
20 Nazi model introduced. This took definite shape by
21 the formation (on the 12th October, 1940) of the Imper-
22 ial Rule Assistance Political Society."
23

24 However, defense witness TOMITA, Kenji, Chief
25 Cabinet Secretary in the Second KONOYE Cabinet, testi-
fied that ARAKI declined the post of Cabinet Councillor

1 because he was opposed to the establishment of the
2 Imperial Rule Assistance Association and the conclusion
3 of the Tripartite Alliance; and from then onwards pub-
4 lic association between Prince KONOYE and ARAKI was
5 discontinued.
6

7 In view of what has been shown in the preceding
8 passages we respectfully request this Tribunal to con-
9 clude that ARAKI's intention was to establish an ideal
10 fundamental peace - not a sham superficial peace, but
11 a peace based on spiritual promotion through morality.

12 ARAKI puts into words his real sentiment, es-
13 pecially at the beginning and the end of the speech he
14 wrote himself addressed to the people of the world -
15 namely, "Peace and Humanity of the World! May Glory
16 be unto You!" There are many other pieces of evidence
17 to prove this; such as his books, "Only at the Sacri-
18 fice of One's Self!", and "Youth and Mental Training!",
19 his radio broadcast for young boys and girls, and his
20 speeches in the Diet. These, however, were rejected
21 by this Tribunal as being repetitious. Since the out-
22 line of these documents -- I shall skip that sentence,
23 if your Honor please.

24 As a matter of fact, ARAKI, sacrificing him-
25 self, ignoring all criticism and fame, relentlessly

1. T. 28,546, 25,550

1 tried to correct the fundamental faults of the mili-
2 tary. It is our contention that the evidence shows
3 that he was, in actuality, taking exactly the opposite
4 direction to that of the prosecution's allegation of
5 conspiracy. As to Mr. Keenan's address in regard to
6 the principles of conspiracy, it is further our conten-
7 tion that it has been proved that no aggressive purpose
8 ever existed re ARAKI, and that, on the contrary, his
9 means and intention were to stop hostilities and estab-
10 lish peace, with a fervent desire towards realization,
11 and this, therefore, does not constitute a crime.

12 The foregoing, together with our arguments
13 in ARAKI's individual motion to dismiss at the end of
14 the prosecution's direct case, concludes our reply to
15 the conspiracy charge against this accused, and I
16 respectfully refer your honors to transcript pages
17 16,277 to 16,288.
18
19
20
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25

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15 the conspiracy charge against this accused, and I
16 respectfully refer your honors to transcript pages
17 16,277 to 16,288.
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1 Now, if your Honors please, the beginning
2 of Chapter III, from page 48 to page 72, depicts
3 the domestic and international situation at the time
4 of ARAKI's assumption of the office of War Minister.
5 I shall call it to the Language Section's attention
6 that the Japanese pages are from 29 to 46. I believe
7 that these conditions have been gone over completely
8 and fully in the general phase of the presentation
9 of the defense's case and, therefore, I shall omit
10 reading same. However, I shall ask your Honor to
11 have these pages considered as part of the summation
12 and considered also as part of the record.

13 THE PRESIDENT: Mr. McManus, you are not at
14 liberty to say that certain things would have been
15 established but for the fact that documents were
16 rejected. That is tantamount to using rejected docu-
17 ments. If in the balance of the summation there are
18 such statements please omit them.

19 Now at what page do we start?

20 MR. McMANUS: Page 72, if the Tribunal please.
21 The next title will be the Formation of the INUKAI
22 Cabinet.

23 I shall do my best to comply with your
24 Honor's wishes.
25

1 (The following is the portion of the
2 summation not read but incorporated in the
3 record:)

4 III. THE MANCHURIAN INCIDENT AND ARAKI.

5 I. Domestic and International Situation at
6 the Time of ARAKI's Assumption of Office
7 as War Minister.

8 ARAKI took up his duties as War Minister
9 three months after the outbreak of the Manchurian
10 Incident. The domestic and international situation at
11 the time was as follows:

12 A. International Situation.

13 (36) Heavy Oppression of the USSR

14 The Lytton Report states at the beginning of
15 Chapter One (p. 13) as follows: "The events of
16 September 18, 1931 were but the outcome of
17 a long chain of minor occasions of friction
18 A knowledge of the essential factors is neces-
19 sary to a complete understanding of the present con-
20 flict. . . . The national aspirations of the Republic
21 of China; the expansionist policy of the Japanese
22 Empire and of the former Russian Empire; the present
23 dissemination of communism from the U.S.S.R.; the
24 economic and strategic needs of these three countries;
25 such matters as these, for example, are factors of

1 fundamental importance in any study of the Manchurian
2 problem."¹

3 Further, in connection with the relationship
4 between Japan, Soviet and China, the Lytton Report
5 reads as follows:

6 "The attitude of the Soviet Government gave
7 a strong impetus to China's nationalistic aspirations.
8 As the Soviet Government and the Third International
9 had adopted a policy opposed to all Imperialist Powers
10 which maintained relations with China on the basis of
11 the existing treaties, it seemed probable that they
12 would support China in the struggle for the recovery
13 of sovereign rights. This development revived all the
14 old anxieties and suspicions of Japan towards her
15 Russian neighbor . . . the possibility of a danger
16 from across the North-Manchurian border again became a
17 matter of concern to Japan. The likelihood of an
18 alliance between the Communist doctrines in the North
19 and the anti-Japanese propaganda of the Kuomintang in
20 the South made the desire to impose between the two
21 a Manchuria which should be free from both, increasingly
22 felt in Japan. Japanese misgivings had been still
23 further increased in the previous few years by the
24 predominant influence acquired by the U.S.S.R. in
25 (1. Tr. 18,665)

1 Outer Mongolia and the growth of Communism in China."¹

2 Exhibit No. 2373 (John B. Powell's "My
3 Twenty-Five Years in China,"² fully reveals U.S.S.R.'s
4 interest in Manchuria.

5 On page 211 of the said book, there is the
6 following account: "One day I visited a parade ground
7 and was surprised to see a regiment of Korean troops
8 drilling and maneuvering under Soviet officers. I
9 was told that the Korean regiment was part of the
10 Soviet border-defence force. Later, in the vicinity
11 of Lake Baikal, I observed even larger bodies of
12 Oriental troops wearing the uniform of the Soviet
13 army."³
14

15 In those days, Japan, who, after the World
16 War I, had fallen behind in point of armament, was
17 profoundly menaced by the U.S.S.R., double-tracking
18 the eastern section of the Trans-Siberian Railway,
19 constructing the Bam (Baikal-Amur) Railway, and
20 establishing the seat of heavy industries in the Mar-
21 itime Province of Siberia, with Khabarovsk as its
22 center.

23 The cause of even greater anxiety than this
24 were the activities, under the directive of the Third
25

(1. Tr. 18,732
2. Tr. 18,420
3. Tr. 18,432-3)

International, for the internal disorganization of
1 Japan. Mr. Besedovsky, Soviet Charge d'Affaires to
2 Tokyo from 1926 to 1927, describes in detail those
3 maneuvers going on during his stay in Japan. His book,
4 "Spying on Japan," translated into Japanese, was widely
5 read around 1931.
6

7 It was when such a state of affairs had set
8 the nerves of the Japanese people on edge against the
9 U.S.S.R. that ARAKI was selected as War Minister.

10 (37) Oppression of the United States, Great
11 Britain and the League of Nations.

12 Although the outbreak of the Manchurian
13 Incident was occasioned by a chance occurrence, at
14 the very root of the matter was the aggravation of the
15 anti-Japanese tendencies in China, brought about by a
16 lack of understanding on the part of the Great Powers
17 towards Japan. As a matter of fact, it being impossible
18 for Japan to take care of her annually increasing popu-
19 lation, she had no alternative but to resort to peace-
20 ful overseas activities by the nationals. However,
21 the emigration of the Japanese people into other
22 countries was prohibited. Her economic activities
23 overseas, again, came up against tariff walls. In
24 such a way, Japan's recourse to overseas activities,
25 by way of a solution to the increase in population,

1 which is a natural phenomenon, was completely baffled
2 by these two obstacles. Inasmuch as emigration and
3 freedom of commerce are the natural requirements for
4 the peaceful development of a nation, the denial of
5 such giving rise to the question of how to maintain
6 existence, various problems with regard to self-
7 existence and self-defense are liable to ensue. Among
8 nations, however, there exist treaties prohibiting
9 arbitrary conduct. Nevertheless, a nation has to do
10 something to save herself from perishing altogether.
11 To ward off this ultimate deadlock of existence was
12 at once the function of diplomacy and the mission of
13 the League of Nations. However, neither showed, as
14 it ought to have shown, much zeal for a full and
15 fundamental solution of the matter, and the racial
16 discrimination, the immigration law, the denunciation
17 of the Lansing-ISHII Agreement and so on drove Japan
18 to a most difficult situation. In fact in those days
19 the passion for national existence was obullient among
20 the Japanese people. ARAKI's speech "Emergency Japan"
21 is one example. To check at once all the activities
22 of a big nation, with more population than it could
23 take care of, was nothing less than the taking of life
24 given by the God. It is too selfish a way of advocating
25 the maintenance of a status quo. Such pacifism is

1 against the natural law and morally deficient and is
2 therefore short-lived, as history proves. It was when
3 the anti-Japanese movements and a boycott of Japanese
4 goods in Manchuria, following the denunciation of the
5 Lansing-ISHII Agreement, the enforcement of the
6 immigration law, the abrogation of the Anglo-Japanese
7 Alliance and so on, had all but obliged Japan to come
8 forward to grapple with the situation. It was at
9 this time that the Manchurian Incident broke out
10 and rapidly spread among the three countries. Upon
11 the outbreak of the Manchurian Incident, again, the
12 world, in utter disregard of the historical background
13 of Manchuria, showed no sympathy. The SHIDEHARA
14 diplomacy, presumably legitimately, aimed at dealing
15 with various issues by peaceful means. It was but
16 natural, however, as has been pointed out by the
17 witness Liebert¹ that Japan, failing to lay openly
18 before the other party her claims for self-existence,
19 should only have invited for herself the others'
20 contempt and that, ultimately, an unfortunate calamity
21 should have occurred. It was after such a calamity
22 had actually broken out and, furthermore, after Japan
23 had suffered the censure of the Council of the League
24 of Nations as expressed by 13 to 1 vote against herself,
25

(1. Tr. 8,413)

1 that ARAKI assumed the office of War Minister. The
2 outburst of the national emotion of the Japanese
3 people, which resulted from many years of oppression
4 that they had undergone and which could not possibly
5 be subsided by such a superficial vote, gave rise to
6 various untoward events within the country. In
7 addition, Japan having become more and more isolated,
8 the Japanese people were in the height of excitement
9 in those days.

10 Confronted with such a situation, ARAKI
11 recognized that in order to restore Japan from her
12 isolated condition it was of major importance to urge
13 the self-reflection of the Japanese people themselves,
14 and accordingly he aimed chiefly at the elevation of
15 national morality.

16 (38) The State of Affairs in China.

17 It is stated in the Lytton Report as follows:
18 "Having started upon the road of international cooper-
19 ation for the purpose of solving her difficulties, as
20 was done at Washington, China might have made more
21 substantial progress in the ten years that have since
22 elapsed had she continued to follow that road. She has
23 only been hampered by the virulence of the anti-foreign
24 propaganda which has been planned. In two particulars
25 has this been carried so far as to contribute to the

1 creation of the atmosphere in which the present
2 conflict arose -- namely, the use made of the economic
3 boycott, to which reference is made in Chapter VII,
4 and the introduction of anti-foreign propaganda into
5 the schools." (omitted)¹ "As a result of this virulent
6 anti-foreign propaganda carried through every phase
7 of public life, the students have been induced to engage
8 in political activities which sometimes have cul-
9 minated in attacks on the persons, homes or offices
10 of Ministers and other authorities, and in attempts
11 to overthrow the Government. Unaccompanied by effective
12 internal reforms or improvements in national standards,
13 this attitude tended to alarm the foreign powers and
14 to increase their reluctance to surrender the rights
15 which are at the moment their only protection."²

16
17 "In the North had occurred the rebellion of
18 General Shi-Yu-san, supported by a hostile inter-
19 vention on the part of the Cantonese troops in the
20 province of Hunan; simultaneously with this inter-
21 vention came the events of September 18th at Mukden.
22 Encouraged by these circumstances, the Reds resumed
23 the offensive, and before long the fruits of the
24 victorious campaign were almost completely lost."³

25 (1. Tr. 18,688.
2. Tr. 18,689
3. Tr. 18,702.)

1 As these quotations reveal, there were in
2 China still a number of rival chiefs each holding his
3 own sphere of influence, as in the days of the
4 Revolution. It was set forth in the written opinion
5 submitted by the Japanese Government to the League of
6 Nations that instead of the three governments in ex-
7 istence at the time of the conclusion of the Nine
8 Power Treaty, China now had five, including the Com-
9 munist Government and that they were in continual strife
10 with each other. The pledges, made at the time the
11 Nine Power Treaty was concluded, of the reduction of
12 the Army and the realization of national unity had
13 completely vanished. The preservation of the ter-
14 ritorial integrity of China and the unification and
15 the independence of China, which constituted the main
16 points of the Nine Power Treaty, had not yet been
17 attained. Under such circumstances, it was impossible
18 to carry out the provisions of the Nine Power Treaty,
19 however ardently one may have desired to abide by
20 them. Further, while Mr. Chiang continually vacillated
21 in his policies, now tolerating Communism and now
22 opposing it, a number of untoward events, occasioned
23 by the anti-foreign sentiment, were already taking
24 place (at Nanking, Kewkiang, Hankow, Chinan, etc.).
25

1 (39) The State of Affairs in Manchuria.
2 Relations with Japan.

3 The Lytton Report says, "So far as Japan is
4 China's nearest neighbor and largest customer, she has
5 suffered more than any other power from the lawless
6 conditions described in this chapter. Over two-thirds
7 of the foreign residents in China are Japanese, and
8 the number of Koreans in Manchuria is estimated at
9 about 800,000. She has more nationals, therefore,
10 than any other power, who would suffer if they were
11 made amenable to Chinese law, justice and taxation
12 under present conditions."¹

13 We also wish to refer to the same report,
14 Chapter III, under "Manchurian Issues between Japan
15 and China Before September 18, 1931,"² "Japanese
16 Investments." Japanese investment in Manchuria in
17 1928 reached ¥1,510,000,000,³ and the Lytton Report
18 estimated it more than ¥1,700,000,000.

19 Foreign Minister YOSHIKAWA in his speech
20 at the Diet on June 22, 1932, said that Manchuria had
21 very important relations with Japan.⁴

22 As these exhibits reveal, especially after
23 the outbreak of the Manchurian Incident, this state
24

25 (1. Tr. 18,706.
2. Transcribed in page 1,757-62
3. Ex. 2398; Tr. 2,914
4. Ex. 2413, Tr. 19,522)

of affairs grew aggravated almost hourly. The situation was such that if Japan should be off her guard even temporarily there was no telling what damage she should suffer and in addition large-scale warfare was in the offing.

(40) The General State of Affairs.

The Military Governors, who had assumed the control over various areas, and their subordinates having already taken to flight, and the whole Manchuria having been reduced to a state of confusion, the peace preservation societies in various localities were the only means to maintain minimum peace and order.

(41) The Condition of Bandits.

The Lytton Report states as follows:

"Banditry has always existed in China and the administration has never been able to suppress it thoroughly. Lack of proper communications was one of the reasons which prevented the administration from getting rid of this evil, which increase or decreased according to changing circumstances. Another contributing cause is to be found in the local uprisings and rebellions which have often occurred in China, especially as a result of misadministration. Even

(1. Lytton Report, p. 88, Chapter VI, Part 1)

1 after the successful suppression of such rebellions,
2 bandit gangs recruited from the ranks of the rebels
3 often remained active in parts of the country. This
4 was specially the case in the period following the
5 suppression of the Taiping rebellion (1850-1865).
6 In more recent times, bandits have also originated
7 from the ranks of u.paid soldiers who were not able
8 to find other means of living and had been accustomed
9 to looting during the civil wars in which they had
10 taken part.¹

11 "As in China, banditry has always existed
12 in Manchuria. Increasing or diminishing in numbers
13 in relation to the activity or the weakness of the
14 Government, professional bandits are to be found in
15 all parts of the Three Provinces and their services
16 were often employed by different parties for political
17 purposes."²

18 (Answers given by Witness INDO, Saburo, under cross-
19 examination by prosecutor Mr. Comyns Carr).³

20 Affidavit of KAWABE, Torashiro, Court Ex. 2489-B.⁴

21
22 (42) Chang Hsueh-liang and his Followers.

23 Rallying scattered troops, Chang Tso-hsiang,
24 one of the followers of Chang Hsueh-liang, was

25 (1. Tr. 18,690-1.
2. Lytton Report, p. 150
3. Tr. 19,508.
4. Tr. 20,517)

1 continuing subversive activities in the rear, in
2 Chinchow. The intervention of the United States and
3 the League of Nations having caused them to regain
4 their strength and in addition, the fact that the
5 Japanese troops had once headed for that district and
6 had turned back halfway having had an inspiring effect
7 on their morale, they advanced as far as to the
8 vicinity of Mukden and were engaged in activities sub-
9 versive of the public peace and order there.

10 In Court exhibit 2414 (The Preliminary Report
11 of the Commission of Inquiry of the League of Nations)
12 it is stated that the number of these bandits totalled
13 some 40,000.¹

14 (43. The Strength of the Kwantung Army and
15 the Number of the Japanese and Korean
16 Inhabitants.

17 Court exhibit 2414 (The Preliminary Report
18 of the Commission of Inquiry of the League of Nations)
19 reads as follows: "The numbers given for the first
20 part of December are 4,000 inside and 8,900 outside
21 the South Manchuria Railway Zone, making a total of
22 12,900."²

23
24 According to the Japanese figures, however,
25 the number of the Japanese troops at the time of the

(1. Ex. 2414, Tr. 19,536
2. Ex. 2414, Tr. 19,533)

1 outbreak of the Manchurian Incident was given as
2 10,400 and the total of the Japanese and the Korean
3 inhabitants as 1,000,000 (the total of the Korean
4 inhabitants being 800,000).

5 Furthermore, "Chapter II, Actual Situation
6 in Manchuria" of the Preliminary Report of the Com-
7 mission of Inquiry of the League of Nations, which is
8 Court exhibit 2414,¹ the speech delivered by War
9 Minister ARAKI before the Diet,² "The Complexity of
10 the Manchurian Problem"³ and so on give a detailed
11 account of the special position and the prevailing
12 conditions of Manchuria.

13 (44) The State of Affairs in Japan.

14 a. Internal Conditions in General.

15 1. The cold weather damages and other
16 natural calamities and disasters, coming on top of
17 the inefficiency of administration, had reduced the
18 rural communities to the depth of misery. Besides,
19 due to the impotency of political parties, the
20 Japanese people were in a most wretched condition.⁴

22 (45) Thought Problems.

23 The aggressive policies adopted by the Third
24 International created a serious repercussion in the

25 (1. Tr. 19,532
2. Ex. 3167, Tr. 28,436
3. Page 234 of the Lytton Report.
4. Tr. 1,421-2)

1 thoughts of the general public, which gave rise to
2 Fascistic movements.¹ Furthermore, the pressure ex-
3 ercised by the League of Nations and the United States
4 engendered among the Japanese fairly strong feelings
5 of hostility.

6 3. Public Peace and Order.

7 It was not long after this that the March
8 and the October Incidents, and the Blood Brotherhood
9 Incident and the May 15 Incident closely followed.²

10 Within the country there prevailed inexpressible
11 tenseness.

12 (46) The State of Affairs in the Army.

13 The army and the government, who, prior to
14 the outbreak of the Manchurian Incident, failed to
15 form a far-sighted judgment of the situation and
16 thereby to prevent it from its inception again failed,
17 now that the Incident had actually broken out, to
18 dispose of it efficiently and thoroughly. To make
19 the matter worse, the general public had for many
20 years been indignant at the corruption of the political
21 world. The army fell into disorder. In the army, as
22 well as in the Government, the leaders lost all their
23 authority over their subordinates; there was a general
24 tendency of insubordination and of placing less
25

(1. Ex. 179-E, Tr. 1934. being an excerpt from

KIDO Diary

2. Ex. 165, 164; Tr. 1,639)

1 confidence in one's superiors, each going, at his
2 pleasure, to serve whomever he liked. Besides, there
3 was no telling when those of youthful vigor might go
4 out of their proper limits and adopt terroristic
5 measures. It was, indeed, a critical period for the
6 Army.

7 Witness WAKATSUKI, in his affidavit,¹ set forth
8 his thoughts and impressions, stating that everything
9 went contrary to his wishes. Court exhibit 2392²
10 (Speech delivered by Prime Minister WAKATSUKI).

11 In Exhibit 179-J,³ which is KIDO's Diary,
12 there is the following entry:

13 "The army is so strongly determined in its
14 positive policy toward Manchuria that orders given by
15 the Central Authorities may not be carried out.

16 "The Emperor has expressed satisfaction and
17 approval to the Prime Minister and the Minister of
18 War for the governmental policy to strive not to ex-
19 tend further the Manchurian Incident. However, the
20 Army is reported to have construed and to be indignant,
21 that the Emperor's opinion had been so induced by his
22 personal attendants.
23

24 "In view of such circumstances, it was

25 (1. Ex. 162, Tr. 1,579
2. Tr. 19,195
3. Tr. 1,938)

1 decided among us that the Emperor had better not say
2 anything further about the Manchurian policy unless
3 he is necessitated to do so, and that the Genro
4 (meaning Prince SAIONJI) against whom the Army harbors
5 antipathy, had better not make a trip to Tokyo."

6 Witness KATAKURA testified that Commander
7 HONJO, in an interview with Ambassador YOSHIZAWA when
8 the latter was on his way home from Europe in order to
9 assume the foreign ministership in the INUNKAI Cabinet,
10 talked to Ambassador YOSHIZAWA on three matters. First
11 of all, he explained about the independence movement
12 which was rapidly maturing. Secondly, he stated that
13 in meeting the situation then prevailing in Manchuria
14 he would not like to see the Manchurian issue settled
15 as a political issue between political parties for
16 their own benefits. Thirdly, in the light of the
17 fact that the soldiers who had devoted their best
18 efforts in the Incident mostly came from fishing and
19 farming villages, he hoped to see the conditions in
20 their villages improved, and thereby to give peace
21 and comfort of mind to these soldiers and to have
22 the benefit of the incident spread to these villages.¹
23 This interview, which took place towards the middle
24 of January 1932, is indicative of how difficult the
25 (1. Tr. 19,000-1)

1 state of affairs was both in Manchuria and in Japan
2 herself, already, in the early days of the Manchurian
3 Incident.

4 (49) Political Situation.

5 The political parties and the bureaucracy
6 were corrupt to the core, so much so that they were
7 utterly incapable of meeting a national emergency.

8 Witness TOKUGAWA, Yoshichika, testified as
9 follows: "According to my interpretation, two
10 political parties were fighting each other at that
11 time in Japan and the people were suffering because
12 of that. Therefore, we endeavored to find a method
13 to establish a new and serene Japan."¹

14 In answer to Counsel ITO's question, "As
15 the critical state of the nation which prevailed at
16 that time was caused by the evils of political parties,
17 financial cliques, and the privileged classes, their
18 object was to give a blow to them in order to effect
19 a national reform. Wasn't that so?" Witness INUKAI,
20 Ken, who was being cross-examined, stated, "What the
21 counsel has just said regarding the reasons behind
22 the assassination of my father at the time of the
23 May 15 Incident, I acknowledge."²

24
25 (1. Tr. 1,447
2. Tr. 1,525)

1 (48) On 28 June 1946, Witness WAKATSUKI, on
2 cross-examination by Counsel OKAMOTO, made the follow-
3 ing answer: "The spreading of the Manchurian Inci-
4 dent was against the hopes of the government, and I
5 viewed this development with great alarm and mis-
6 giving, and I took every step possible to prevent
7 the further expansion of this Incident." He went on
8 to say that finally he came to the conclusion that
9 the current government, by the Minseito Party alone,
10 was too weak and that it would be better to realize
11 a coalition cabinet, including also the opposition
12 party, in order to show where the wish of the Japanese
13 people lay and thereby to urge the Army's self-
14 reflection. He then, according to his testimony,
15 had the Home Minister take some steps; but all this
16 proving a failure, the Cabinet resigned en masse.¹

17
18 1. On June 26, 1946, Witness SHIDHARA,
19 Kijuro, in answer to a question put to him by
20 Prosecutor Helm, stated as follows: "As everyone
21 knows, the Manchurian Incident did not cease. And in
22 spite of all the efforts of General MINAMI,² the
23 Incident continued to develop and expand."

24 2. On 3 July 1946, in the course of a

25
(1. Tr. 1,579
2. Tr. 1,389)

1 cross-examination conducted by Counsel KIYOSE,
2 witness OKADA, Koisuke, made the following replies:
3 "The Army and Navy are a part of the Japanese Govern-
4 ment. All of the successive Army and Navy Ministers
5 have tried their utmost to cooperate with the inten-
6 tions and policies of the Government. Even in spite
7 of this there was an element of younger officers who
8 would not toe the line;" "The leaders in the
9 military, both army and navy, have tried their ut-
10 most to control these elements but could not succeed."¹

11 (49) As the outline in the foregoing para-
12 graphs shows, the situation, both at home and abroad,
13 at the time ARAKI assumed the Office of War Minister,
14 was quite out of the ordinary. Besides, ARAKI had
15 held the post of a divisional commander for a con-
16 siderable length of time, on the distant island of
17 KYUSHU, far away from Tokyo, before he came back to
18 Tokyo towards the middle of August 1931, and became
19 Inspector-General of Military Education, those duties
20 had nothing to do with those complications of the
21 situation. Without, therefore, having had time to
22 become fully conversant with the circumstances
23 surrounding the Manchurian Incident, that had broken
24 out soon after his appointment as Inspector-General
25

(L. Tr. 1,867)

1 of Military Education, he came in December to bear
2 the brunt of this extremely difficult situation. He
3 then devoted himself to the performance of his duties
4 in accordance with the views of the Prime Minister
5 concerning the measures to save the situation, and
6 he finally succeeded in his mission of putting an
7 end to the Incident. The written answer submitted by
8 ARAKI to the Prosecution and entitled "The State of
9 Affairs in Japan after the World War I and the
10 Attitude and Movements of Younger Officers,"¹ gives
11 a detailed account of Japan's domestic and inter-
12 national situation after the World War I. This docu-
13 ment, however, was not received in evidence. The
14 gist of the document is contained in the supplement
15 for reference. In order to form a judgment upon
16 ARAKI's attitude in dealing with the situation, it
17 is of utmost importance to grasp the general state
18 of affairs, as set forth in the foregoing paragraphs.
19 In connection with the disposition of the Manchurian
20 Incident, although Lord Lytton and his party showed
21 fairly good understanding of the affair, still they
22 must have found it difficult to comprehend every
23 delicate turn of the situation. As the Lytton Report
24 itself points out, it must, indeed, have been difficult
25 (1. Def. Doc. 674)

1 for the League Councillors fully to understand these
2 circumstances without first observing the actual
3 state of affairs on the spot. The preceding outline
4 has been given in the hope that it may contribute to
5 the proper understanding of what is to follow. Keep-
6 ing an eye both on the general trend of affairs and
7 on the policies of the government, disregarding all
8 his personal interests, threading his way, so to
9 speak, through various difficulties and deliberating
10 both on internal and international problems, ARAKI
11 made the best of the Manchurian Incident in its
12 changing phases, and succeeded in putting an end,
13 at the least possible sacrifice, to one of the most
14 momentous issues. The repercussion of the world to
15 ARAKI's self-sacrificing resolution and disposition
16 of the Incident was both good and bad and he met with
17 both approbation and reprobation, as well as current
18 misunderstanding. In the belief that it is the duty
19 of us counsels for defense to make this point clear
20 to help in a fair trial against ARAKI, we have set
21 forth in considerable detail how matters stood about
22 the time of his assumption of office as War Minister.
23

24 (Which was all the summation
25 incorporated in the record but not read.)

1 II. The Formation of the INUKAI Cabinet.

2 (50) Prime Minister INUKAI's Mission.

3 1. The WAKATSUKI Cabinet, despite its
4 wholehearted efforts as heretofore set forth, collapsed,
5 helpless to check the surging tides, so to speak, of
6 the general state of affairs both at home and abroad,
7 and in Manchuria as well.

8 2. The responsibility to bear the brunt of
9 this difficult situation fell upon INUKAI, Tsuyoshi,
10 known in the Japanese political circles as an authority
11 upon Chinese affairs.

12 3. In view both of His Majesty the
13 Emperor's confidence and of the Japanese people's
14 expectations in him, he was under obligation by all
15 means to settle this most difficult issue.

16 (51) Circumstances Surrounding ARAKI's
17 Installation as War Minister.

18 The prosecution, through the production of
19 witness INUKAI, alleged as if there had been some un-
20 customary procedure in connection with the appoint-
21 ment of ARAKI, as War Minister. Namely, at Page 1551
22 of the English transcript, Witness INUKAI, Ken,
23 stated that the circumstances leading up to the final
24 recommendation of General ARAKI as War Minister had
25 been somewhat different from the ordinary way of

1 recommending a War Minister, that there had been
2 another candidate, Lieutenant General ABE, and that
3 a great number of officers of field rank, colonels,
4 lieutenant colonels, and majors, had considered
5 ARAKI as best fitted to the post. After all, however,
6 Prime Minister INUKAI had recommended ARAKI to the
7 Emperor, on his own responsibility, and for the reason
8 that if ARAKI became War Minister there would be no
9 gulf between the older officers and the younger
10 officers. ARAKI at that time had no knowledge at all
11 of such a situation. Even if the senior officers
12 might have said something, they could certainly not
13 have influenced the Three Chiefs of the Army or the
14 Prime Minister to change their or his views. We
15 attempted to prove -- I will omit that, if your Honor
16 pleases. I will omit to the bottom of that paragraph.

17
18 Even if INUKAI's testimony be taken at its
19 face value, the reasons therein stated for ARAKI's
20 appointment would point to ARAKI's impartiality and
21 fairness and would reveal ARAKI to be the right man
22 to bring harmony to the Army.

23 Furthermore, there was no fact of younger
24 officers recommending ARAKI, as maintained by witness
25 INUKAI. I will omit the next sentence to the end of
the paragraph, if your Honor pleases.

1 We believe we have now made it clear that
2 all the suspicions that ARAKI's installation as War
3 Minister had been due to recommendations by younger
4 officers or that a conspiracy had existed in connec-
5 tion with Manchurian issues, are exceedingly
6 prejudiced. The subsequent relations between ARAKI
7 and the younger officers will also corroborate our
8 position. It is, therefore, our contention that
9 we have left nothing ambiguous concerning this
10 point.

11 C. The Manchurian Policy of the INUKAI
12 Cabinet.

13 (52) Prime Minister INUKAI, upon the for-
14 mation of his cabinet, had a talk with War Minister
15 ARAKI, who reported to him on the actual state of
16 affairs in the army and on the situation in Manchuria.
17 The Premier, when he got his ideas into shape, sub-
18 mitted them to the Cabinet meeting, and there the
19 Manchurian policy of the INUKAI Cabinet was formally
20 determined. The following is its outline:

21 1. Emphasis should be laid as it had
22 been laid by the preceding cabinet, upon self-
23 defense and non-expansion, and the restoration of law
24 and order. The termination of hostilities especially
25 should be the fundamental policy. Since Chang
(1. Ex. 3161, Tr. 28,131)

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Hsue-liang, the violator of law and order, is the man to deal with, the theater of action must be restricted accordingly.

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1 2. Every measure should be taken to meet
2 and make the best of the imminent danger being en-
3 countered by those on the spot, and in order to do
4 so, the diplomatic negotiations commenced by the
5 former cabinet should be continued and the success-
6 ful conclusion thereof be urged. At any rate, a
7 fundamental policy to meet the aggravation of the
8 critical situation and the development of the
9 general situation should be established and the
10 gradual extension of the scope of action be fore-
11 stalled by all means.

12 3. A thorough explanation should be made
13 to the League of Nations and other countries concern-
14 ing the real state of affairs of Manchuria, and in
15 order to gain their complete understanding investi-
16 gation commissions should be welcomed.

17 In accordance with this decision, the War,
18 Navy, Finance, and Foreign Ministries each discharged
19 its own sphere of duty, always maintaining close
20 contact with one another.^{1.}

21 53. With regard to this policy decided upon
22 by the INUEMI Cabinet, anybody would readily admit it
23 to have been the only way of terminating the hostili-
24 ties as early as possible, in order to forestall a

25
1. Ex. 3161, T. 28130-31.

1 full-scale clash of arms between Japan and China,
2 and as the Lytton Report itself recognizes. Such
3 was the best solution to the prevailing state of
4 affairs, so long as it was impossible for Manchuria
5 to return to the conditions which existed before
6 September 1931.^{1.}

7 Witness INUKAI testified that he had in-
8 tended to ask for an Imperial order to withdraw
9 troops from Manchuria, which would have been a very
10 good idea, if such a thing had been possible. As
11 the Lytton Report itself admitted,^{2.} however, the
12 situation was such that the troops could not be
13 returned to their original post. If their return
14 should have been affected, nevertheless, and if the
15 troops at the front (whose total strength was only
16 about one-twentieth of the army under the command
17 of Chang) and the Japanese residents (numbering
18 1,000,000) should have suffered a heavy loss, which
19 was most likely under the circumstances then prevail-
20 ing, the Supreme Command would have been held responsi-
21 ble. It was, therefore, not the kind of thing the
22 Prime Minister could have executed on his own

24 1. Ex. 3168, T. 28457; Ex. 3174, T. 28582; ARAKI's
handwritten statement - Ex. 3162, T. 28244.

25 2. At page 127 of the English text.

1 responsibility; he had, first of all, to obtain the
2 judgment of the Chief of the Army General Staff. The
3 idea itself might have been good, but not only was
4 the contemplated method of execution erroneous but
5 also such a step did not meet the actual requirements.
6 It is unthinkable that such an experienced politician
7 as Premier INUKAI should have been so thoughtless as
8 to take such a measure. That such a forced step would
9 have led to an unexpected expansion of hostilities
10 has already been made clear.

11 Furthermore, as General HAZAKI testified,^{1.}
12 the Emperor, with his regard for the Constitution,
13 would, under no circumstances, have issued an order
14 for withdrawal, unless so advised by some leading
15 members of the Supreme Command. And Premier INUKAI,
16 even if he may have thought of withdrawal at one time,
17 would not have tried to effect it. As for ARAKI, he
18 knew nothing at all about this matter, and naturally
19 he never expressed any opinion. It is, therefore,
20 evident that the testimony of INUKAI, Ken, is in-
21 credible.

22
23 The fact that this policy of the central
24 government was thoroughly understood by the personnel
25 of the lowest rank was testified to by witness

1. Ex. 3168, T. 28458.

TANGE, Kunji, through his affidavit.¹

1 III. Measures Adopted by War Minister
2 ARAKI.
3

4 A. ARAKI's Resolution.

5 54. The actual state of affairs both at home
6 and abroad and in Manchuria at the time has been
7 elucidated in the foregoing pages.

8 As has been pointed out, ARAKI, who had
9 held the post of the Inspector-General of Military
10 Education, engaged in duties having nothing whatso-
11 ever to do with the actual handling of the situation,
12 was now obliged to accept a position, vested with
13 the heavy responsibility of saving a most difficult
14 situation, unparalleled in the history of the coun-
15 try. A gigantic responsibility of grappling with
16 difficulties which even General MINAMI, the preceding
17 War Minister, with all his ability and popularity, had
18 failed to solve, now fell upon ARAKI's shoulders.
19 Besides, the die was already cast, and the whole of
20 Manchuria had been thrown into a most chaotic state.
21 The very fate of the Kwantung Army, to say nothing of
22 the rights and interests of the Japanese residents,
23 was at stake. The situation was, indeed, so critical
24 that there was the danger that a single misstep would
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1. Ex. 2422, T. 19600.

lead not only to a full-scale clash of arms between
Japan and China, but also to a collision with various
powers and the League of Nations.

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(55) Mr. President, and Members of the
1 Tribunal, we have no knowledge of military affairs.
2 However, confronted with the problem of terminating the
3 hostilities as soon as possible, in order to forestall
4 a full-scale clash between Japan and China,¹ when the
5 antagonistic sentiments were running high between
6 the Japanese and Chinese authorities in the field,
7 when the nationalist sentiments were extremely tense
8 at home, and when the League of Nations and other coun-
9 tries, who had a faulty idea of the current situation,
10 were apt to stimulate and support China, what strategist
11 of what country in the world could have adopted measures
12 better than those actually and successfully effected
13 by ARAKI?
14

15 We most respectfully request that in order
16 to weigh the alleged guilt of ARAKI, the Tribunal will
17 take full notice of what importance he attached to
18 peace, humanity and international agreements in meet-
19 ing the epoch-making and worldwide difficulties that
20 he was confronted with then.
21

22 Now what were the measures that ARAKI took?
23 We feel we need some reference at this stage to the
24 basic ideal of ARAKI as expressed in Chapter 14 of
25 his affidavit,² to which we respectfully invite the
1. Ex. 3173, Tr. 28,557. 2. Tr. 28,170.

Tribunal's attention. For thirty years, ever since
1 World War I, ARAKI has been appealing to the whole
2 world the necessity of avoiding war, or, in case war
3 is inevitable, of minimizing its casualties. He
4 advocated the necessity of the establishment of peace
5 and harmony between Eastern and Western civilization
6 and of spiritual cultivation of conciliation and mutual
7 sympathy. At the time when world Bolshevization and
8 Nazism were rampantly raging, he placed the primary
9 importance of self-defense in furtherance of moral
10 spirit and definitely denounced the idea of expansion
11 of territory. He has once objected to the annexation
12 of Korea. He also objected to imperialism, monopolism,
13 egoism and to the principle of administering control
14 by force. He kept himself aloof from those opportu-
15 nists who were once a dominant feature in Japan, and
16 endeavored to gain friends in and out of Japan, who
17 would support his principle of establishing international
18 morality. This was most clearly manifested in his
19 speech at Karuizawa. He was placed in the turmoil of
20 the Manchurian Incident after it had broken out. He
21 made a deliberate study of the situation and determined
22 to put an end to it as expeditiously as possible.
23
24

25 (56) Immediately after ARAKI's appointment
as War Minister, former War Minister MINAMI,

1 Vice-War Minister SUGIYAMA and Chief of the General
2 Staff KANAYA explained to him about the state of affairs
3 of Japan at that time. The information ARAKI then
4 received was as follows:

5 a. As had already been made public by the
6 former cabinet, the incident had been occasioned by
7 the illegal acts of the Chinese and Japan had merely
8 been exercising her right of self-defense. We had
9 striven to settle the trouble under a non-expansion
10 policy and to maintain law and order with a minimum
11 recourse to arms.

12 b. However, the conditions being excessively
13 menacing, both the Japanese civilian inhabitants and
14 the Kwantung Army were in great trouble. Particularly,
15 Chinchow and its vicinity were in a most dangerous
16 state, since the fact that the Japanese force had
17 returned its troops from the half-way point of its
18 campaign was utilized by the Chinese for their propa-
19 ganda.¹

20
21 c. While the League of Nations had not
22 appreciated the actual situation in full, the coun-
23 cillors' meeting had approved Japan's rightful asser-
24 tion of reserving her rights of pacifying bandits
25 and other groups of turbulent elements. It had also

1. Page 77 of the Lytton Report.

decided to despatch a commission of inquiry.

1 The above is the outline of the information
2 ARAKI received from the two sources, namely, military
3 administration and military command, concerning the
4 prevailing state of affairs. The rest of the informa-
5 tion he gained is contained in his affidavit and,
6 therefore, will be omitted here.¹

7
8 (57) As has already been set forth, ARAKI,
9 after receiving this information, talked with Prime
10 Minister INUKAI, who then, making up his mind and sub-
11 mitting his final decisions to the cabinet meeting,
12 determined the Manchurian policy of the INUKAI Cabinet.
13 ARAKI and INUKAI, who were congenial not only in point
14 of their unworldly character, but also in their tastes
15 in art and culture and were able to exchange their
16 political views in a friendly and confidential manner.
17 ARAKI supported the Prime Minister most whole-heartedly
18 and exerted his utmost efforts to put into execution
19 whatever had been decided upon as the policy of the
20 government.

21
22 THE PRESIDENT: You are coming now to an
23 entirely new matter. We will adjourn until half-past
24 nine on Monday morning next.

25 (Whereupon, at 1440, an adjournment
was taken until Monday, 29 March 1948, at 0930.)

1. Def. Doc. 2527.

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I N D E X

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1 Monday, 29 March 1948

2 - - -

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

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

10 Appearances:

11 For the Tribunal, all Members sitting, with
12 the exception of: HONORABLE JUSTICE B. V. A. ROLING,
13 Member from the Kingdom of the Netherlands and HONORABLE
14 JUSTICE R. B. PAL, Member from India, not sitting from
15 0930 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 they
6 are ill and unable to attend the trial today. The cer-
7 tificates will be recorded and filed.

8 With the Tribunal's permission the accused
9 KAYA will be absent from the courtroom the whole of the
10 morning session conferring with his counsel.

11 Mr. McManus.

12 MR. McMANUS: 58. In order to execute mili-
13 tary administration, of which he was in charge, in ac-
14 cordance with the governmental policy, AKAKI made the
15 following plans:

16 (1) To make the public have a correct view
17 of the situation; to stabilize the conditions in the
18 country through the realization of cooperation and
19 harmony among the military, the government, and the
20 people at large.

21 (2) To stabilize the conditions in the army
22 by means of a radical reshuffle of the army personnel.

23 (3) To check the rapid spread of the hostili-
24 ties by immediately putting an end to the disturbances
25 then taking place, and to make haste to terminate all

1 hostilities, as the first move in the peace measure
2 that is to follow.

3 With these three ends in view and with great
4 resolution, he set to work to administer military af-
5 fairs.

6 59. By then the disturbances had spread all
7 over Manchuria and it was necessary to put out explo-
8 sives, so to speak, taking fire everywhere and at all
9 times. Not alone in Manchuria but also in Japan there
10 were dangerous ignitable objects to be disposed of.
11 It was, nevertheless, but natural that AHAKI should
12 have attached primary importance to the cooperation and
13 conciliation among the military, the government, and
14 the people at large within the country. It was also
15 natural for him to have entertained great expectation
16 in the success of the diplomatic authorities who, in
17 accordance with the policy of the government, were en-
18 deavoring to obtain the understanding of the League of
19 Nations.
20

21 THE PRESIDENT: My colleagues keep asking
22 me, "Is this in evidence?" "Is that in evidence?"
23 I think the reply must be in the negative. However,
24 we can't waste time now in editing this summing up, or
25 summation, so proceed.

MR. McMANUS: To speak in parable form, the

1 situation was similar to a car darting down a slope,
2 at a great speed; it would have been futile to try to
3 stop it with one's bare hands. ARAKI had to jump into
4 this car, risking his own life, to apply the brake. It
5 was a year and a half later that the brakes worked, at
6 Tangku.

7 The first time he put on the brake, his objec-
8 tive was the repression of dangerous thoughts through
9 the conciliation among the military, the government,
10 and the people at large; the second time he did so he
11 aimed at the termination of hostilities at Shanghai and
12 the withdrawal of the entire Japanese troops; the third
13 brake was in connection with his efforts to terminate
14 as soon as possible the hostilities in Manchuria. We
15 should like to elucidate upon these points in the fol-
16 lowing pages.
17

18 After having succeeded in bringing to an end
19 the hostilities then going on, he proposed to the cabin-
20 et that preparations be made for the convening of a
21 Far East Peace Conference, by means of which he hoped
22 to put an end to international alienations, which he
23 thought was at the root of such hostilities.

24 Before the cabinet reached any decision on
25 this matter, however, he withdrew from the scene on
account of illness.

1 In the light of all these circumstances, it
2 would seem that not only was ARAKI void of any aggres-
3 sive intentions but, on the contrary, he voluntarily
4 let himself be involved in the whirlpool of a difficult
5 situation and finally saved it. He is in no way guilty.
6 Rather, it is our contention that his services in the
7 cause of peace should be given due recognition. Here-
8 inafter, we shall endeavor to prove this point.

9 7. Cooperation and Conciliation Among the
10 Army, the Government and the People. (A correct under-
11 standing of the situation and the stabilization of the
12 domestic conditions, through self-reflection, mutual con-
13 ciliation and cooperation.)

14 60. What ARAKI feared at the very outset of
15 his assumption of office as War Minister was a chaotic
16 confusion of Japan's public opinion. As he stated
17 in his speech entitled "Emergency Japan", it was his
18 opinion that the Japanese themselves were to blame
19 for Japan's isolated position and the insults offered
20 by other countries including China. He believed that
21 the key to the solution of the internal confusion and
22 to the recovery of Japan's international confidence lay
23 in the Japanese people's self-reflection and awakening
24 to the importance of peace. Accordingly, though busily

1 engaged in state affairs, he found time to make speeches
2 and to publish his ideas, for the guidance of the people.
3 His speech "Emergency Japan", his talk over the radio
4 addressed to boys and girls in time of emergency,¹ and
5 so on, constitute examples of such. However, "Japan's
6 Mission in the Showa Era",² (which was written by
7 Mr. KINOSHITA, Takeshi, according to an outline given
8 at the request of the Social Education Association),
9 and "An Appeal to the Whole Nation",³ (compiled by Mr.
10 SOMEI, the then Principal of the Aoyama Normal School,
11 who relied upon newspapers and magazine articles) were
12 not written by ARAKI himself and therefore ARAKI could
13 not be held responsible for those publications.
14

15 Thinking it a national disgrace that the mili-
16 tary officers and the government officials were at
17 odds with each other, ARAKI strove to take the lead
18 in cultivating cordial relations with the other members
19 of the cabinet. For example, for two fiscal years the
20 army turned over to the navy a certain amount from the
21 army appropriations.⁴ In dealing with matters pertain-
22 ing to diplomacy, he was always obedient to the views
23 of the Foreign Minister and other diplomatic authori-
24 ties; never once did he act contrary to their views
25

1. Def. Doc. 1960
2. Ex. 760
3. Ex. 3164
4. HARADA Memoirs

1 and policies. An excerpt from HARADA Memoirs asserted
2 that ARAKI, together with Foreign Minister UCHIDA,
3 advocated Japan's withdrawal from the League of Nations,
4 which assertion, however, must have been based upon
5 supposition, since the details of the cabinet meetings
6 are not known. At any rate, this is an example of
7 ARAKI's confidence in the Foreign Minister and agree-
8 ment in views with him in point of diplomacy. ARAKI
9 looked for the Imperial Way as the basis for national
10 unity and sought, by observing His Majesty's injunc-
11 tions and being loyal to him, to develop to the fullest
12 extent the inherent Japanese characteristics and there-
13 by to sober down the general excitement. I shall now
14 delete the rest of that paragraph.

15
16 61. Simultaneously with appealing to the gen-
17 eral public, he required his subordinates in the army
18 strictly to maintain discipline. In view of the fact
19 that the officers of medium grades and younger officers
20 had been in a more or less wild mood ever since the
21 March and October Incidents, he not only strictly ad-
22 monished them to act within limits, to be obedient to
23 their seniors, and to become officers worthy of His
24 Majesty's affection, but also made strenuous efforts to
25 guide them in a proper direction. As a result, not a
~~single young officer of the army participated in the~~

1 May 15th Incident. Unfortunately, however, eleven
2 cadets of the military academy were involved in the
3 Incident. Deeply feeling his responsibility, ARAKI
4 at once tendered his resignation and recommended a cer-
5 tain person as his successor. He remained in office,
6 however, pressed to do so by Prime Minister SAITO.

7 62. Further, ARAKI ardently promoted coopera-
8 tion not only within the army itself but also between
9 the army and the navy, on the contention that if the
10 army and the navy, instead of cooperating were at odds
11 with each other, they would become vulnerable to possi-
12 ble insults, which eventually may lead to some disturb-
13 ances.
14

15 On 3 July 1946, in the course of Counsel
16 OKAMOTO's cross-examination of witness OKADA, Keisuke,
17 the witness admitted that in 1932 the army had turned
18 over to the navy a certain amount from the army approp-
19 riations and stated that "It was a fact that the Army
20 took a very humble attitude towards the Navy." This
21 testimony corroborates our position.

22 For the salvation of the agrarian communities,
23 which had been impoverished to such an extent as to
24 give rise to hostile feelings between urban and rural
25 inhabitants, ARAKI, towards the end of 1933, proposed

1 to convene a Five Ministers' Conference in order to
2 establish appropriate policies. He was present at
3 this meeting and assisted the Agriculture and Forestry
4 Minister in determining the fundamental policies to
5 deal with the agrarian problems. Realizing himself
6 that the absence of such virtues as conciliation, peace
7 and cooperation not only occasioned petty frictions
8 within the country but also, as a result of such, in-
9 vited other countries' contempt, ARAKI endeavored to
10 put his ideas into practice in the actual administra-
11 tion of the affairs of state. He thus made it clear
12 in actual practice that he was not defiant, not egois-
13 tic, not exclusive, not prejudiced nor bigoted in his
14 ideas. He maintained the same attitude also toward
15 international affairs. It is a well-known fact that
16 he advocated conciliation in connection with the im-
17 portation of rice from Siam and also with the agreement
18 with Lancashire concerning cotton spinning. The idea of
19 exploitation or aggression had never entered his mind.

21 I shall delete the balance of that paragraph.

22 C. ARAKI's Reshuffle of the Army Personnel

23 63. In order to tone down, on the one hand,
24 the extreme reformists all over the country, and on the
25 other hand to calm down the outbursts of strong emotion

1 of the leaders on the spot in Manchuria, ARAKI thought
2 it of foremost importance to effect a large-scale re-
3 shuffle of the army personnel, and in spite of many
4 difficulties arising from the fact that the Incident
5 was in progress, he carried it out as soon as possible.
6 That those involved in the March and October Incidents
7 were removed one after another from important posts
8 in the Central Army offices has been revealed by the
9 testimony of the accused HASHIMOTO, the testimony of
10 witness WACHI, Takaji,¹ and the testimony of witness
11 TANAKA, Ryukichi.²

12 THE PRESIDENT: You struck out the last sen-
13 tence of the preceding paragraph. Actually, you should
14 have struck out the whole paragraph. However, proceed.

15 We are disregarding everything not supported
16 by evidence. Our only regret is the time we are wasting
17 in reading material of which we can make no use.

18 MR. McMANUS: May I proceed, your Honor?

19 THE PRESIDENT: Yes.

20 MR. McMANUS: War Minister ARAKI, between the
21 time of his appointment as such and August of the fol-
22 lowing year, the time of the aforementioned personnel
23 change, replaced extremists and belligerents with men
24 who were moderate and impartial and who were sincere
25

1. Ex. 2424, T. 19,667

2. T. 2062

1 and diligent in conducting military affairs. This is
2 clearly shown in Section 8 of witness KAWABE, Torashiro's
3 affidavit.¹

4 Not only in view of the fact that the personnel
5 of the Japanese Army headquarters at the front had
6 become quite exhausted, but also in order to execute
7 thoroughly the new policies resulting from the establish-
8 ment of the New State of Manchukuo, ARAKI effected a
9 complete change in the personnel of the Kwantung Army.
10 He recommended as the new Commander-in-Chief Field Mar-
11 shal MUTO, a man of character, broad views, and intel-
12 ligence. Witness HASHIMOTO referred to this question
13 in the course of Counsel OKAMOTO's cross-examination
14 on 24 March 1947. The witness testified that in August,
15 Commander-in-Chief HONJO was transferred, that in April,
16 Chief of Staff MIYAKE was replaced by HASHIMOTO (not
17 the accused HASHIMOTO), and in August the witness him-
18 self was transferred.²

19
20 65. This radical shake-up laid ARAKI open to
21 the severe censure and to the later movement for ostrac-
22 cizing him. Yet, so drastic was the measure that its
23 effect was equally remarkable. There was now closer
24 cooperation between the Kwantung Army and the army
25 authorities in Tokyo. It was under such circumstances

1. Ex. 2408, T. 19,424
2. T. 19,028

1 that the Tangku Agreement was concluded and the dis-
2 turbances came to an end. Upon close study of this
3 matter, your Honors will find that by August 1932 those
4 who had played major roles in various incidents had been
5 removed from their posts in the central army offices.

6 66. Further, in connection with this personnel
7 shake-up, the witness INUKAI, Ken, testified on 28 June
8 1946 that "Around December of 1931, there was still an
9 opinion within the General Staff and the War Ministry
10 that Manchukuo should not be established as an inde-
11 pendent state. . . In January 1932, following personnel
12 shifts within the army, this opinion ceased, and the
13 great majority of the army were convinced that Manchukuo
14 should be established as a separate state. For instance,
15 one section chief in the General Staff who had been sym-
16 pathetic with my father's views was shifted to the
17 command of the regiment at Kanan in Korea."¹

18
19 That by the "section chief in the General
20 Staff" was meant Colonel SHIGETO, Chiaki, who had
21 participated actively in the March Incident was made
22 clear in the KIDO Diary,² as well as in the testimony
23 if the witness FUJITA, Isamu, made on 27 June 1946.³

24 In view of this fact it was quite natural that
25

1. T. 1,548
2. Ex. 179-C, T. 1,928
3. T. 1,465

1 Colonel SHIGETO should be demoted in connection with
2 the personnel shake-up effected under War Minister
3 ~~ITAKI~~.

4 Whatever might have been the circumstances
5 surrounding his testimony, it is extremely strange
6 for INUKAI to imply in his testimony that Manchukuo
7 was established by relegating Colonel SHIGETO and others
8 who had maintained that the sovereign rights should be
9 respected.

10 To begin with, the independence of Manchukuo
11 was not worked out through the machinations of the
12 Japanese military.

13 The fact is, prior to the Manchurian Incident,
14 the Chang family had declared the independence of the
15 region. Later, because of the maladministration by
16 the Changs, and in view of the past historical develop-
17 ments of Manchuria, various attempts were made to claim
18 independence from the rest of China. With the outbreak
19 of the Manchurian Incident there was a strong demand
20 voiced by Manchukuoans themselves for the establishment
21 of an independent state. The official view of the
22 Kwantung Army on this matter, based upon the necessity
23 for the maintenance of public order, was first sub-
24 mitted to the central army office, particularly to the
25 ~~INUKAI Cabinet on 4 January 1932, by Colonel ITAGAKI,~~

1 who came up to Tokyo.

2 Circumstances surrounding this matter are
3 stated ¹ in ITAGAKI's affidavit, as well as in ARAKI's
4 own affidavit.²

5 Accordingly, INUKAI's testimony serves to
6 prove, if anything, that War Minister ARAKI's personnel
7 purge was a thorough-going one, but not at all that
8 he attempted to establish Manchukuo by relegating offi-
9 cers who advocated paying respect to China's sovereign
10 rights.

11 D. ARAKI's Efforts to Terminate Fighting and
12 for the Restoration of Peace.

13 67. We wish to submit first of all that noth-
14 ing is as far from the facts than to say that ARAKI
15 formulated the plan for the occupation of China's four
16 eastern provinces. We wish to emphasize that he made
17 sincere efforts at terminating the hostilities and
18 restoring peace and order in Manchuria.

19 68. In the introduction of the present docu-
20 ment we have pointed out that the prosecution has in-
21 troduced into evidence notes taken while interrogating
22 ARAKI. The prosecution further tendered in evidence
23 ARAKI. The prosecution further tendered in evidence
24 three excerpts, Nos. 188-A, B and C, from the same exhibit.

25 1. Ex. 3316, T. 30,278

2. Ex. 3161

3. EX. 187

1 in order to prove that ARAKI formed a plan for the occu-
2 pation of the Chinese four eastern provinces.

3 These notes were not taken down in shorthand,
4 they were neither shown nor read to the accused, and
5 were neither sworn to nor signed by him. It is our
6 contention that these documents are nothing more than
7 a prosecutor's memoranda. Due to faulty interpreta-
8 tion, there was a serious lack of understanding between
9 the prosecutor and ARAKI, which caused many errors
10 found throughout the memoranda.

11 Mr. Comyns Carr summoned on 4 September 1947
12 three prosecution interpreters to the court, and re-
13 quested ARAKI to identify them one by one. We feel
14 that this practice by the prosecutor was insufficient,
15 as only three interpreters were produced, and, further-
16 more, it certainly can be no test of the correctness
17 or inaccuracy of the contents of the interrogations or
18 memoranda.

19 We intended, should the interpreters be for-
20 mally called to the witness stand, to point out tho-
21 roughly the places where misinterpretations occurred
22 so that the court should be clearly informed of the
23 circumstances wherein ARAKI was misquoted. However,
24 the interpreters were never summoned as formal witnesses,
25 and the whole affair presented a lamentable lack of

clarification.

1
2 However, the following comments are added by
3 way of refutation.

4 69. In ARAKI's handwritten answer to the
5 prosecutor concerning the circumstances of the disposi-
6 tion of the Manchurian Incident,¹ there was embodied
7 therein nothing about the alleged plan for the occu-
8 pation of the Chinese four eastern provinces, simply
9 because he had no such intention. During the cross-
10 examination of ARAKI, the prosecutor spoke about this,
11 and charged ARAKI's omission proved that he had an
12 aggressive intention. Such a charge lacks a proper
13 foundation.

14 70. The prosecution in their tender of ARAKI's
15 interrogations,² quoted many excerpts therefrom, but it
16 is particularly brought to the Tribunal's attention
17 that they failed to point out other portions of ARAKI's
18 interrogatories which clearly show that throughout
19 the period in question he exerted his utmost for "the
20 restoration of public peace and order." Specific points
21 brought out are as follows:
22

23 His advocacy of a passive occupation of Man-
24 churia which was threatened with general disorder (In-
25 terrogatories dated 5th February);

1. Ex. 3162

2. Ex. 187

1 His advocacy of a non-extension of the Man-
2 churian Incident, and his wishes for its speedy termina-
3 tion;

4 His advocacy to bring peace and order to Man-
5 churia at the earliest date (circumstances did not allow
6 an immediate withdrawal of the Japanese forces into
7 the railway zone) and his statement "I /AKI/ wanted
8 to take the most effective measures for preventing the
9 Incident from spreading all over China, thereby to
10 terminate the Incident locally and ultimately." (In-
11 terrogatories dated 7th February);

12 His further statement, "As the War Minister
13 it was my duty to bring the Incident to a speedy ter-
14 mination; I advocated the opening of diplomatic nego-
15 tiation; however, the war had already begun then."
16 (Interrogatories dated 8th February);

17 Now we come to his statement that the plan
18 for the restoration of public peace and order was drawn
19 up on 17th December 1931; however, AKI was not sure
20 of the exact date. (Interrogatories dated 13th Feb-
21 ruary).

22
23 It should be pointed out here that the gov-
24 ernment's decision was said to have been made on 17th
25 December. The reason for AKI not stating this point
clearly in his handwritten answer to the prosecutor is

1 that Mr. Hider of the prosecution named 17th December
2 as the date of the plenary session of the Privy Council
3 at which session the plan would have been made. Though
4 in his mind ARAKI seriously doubted the accuracy of the
5 date so named, he had to accept the prosecutor's word
6 for the time being. Later it was established that the
7 plenary session of the Privy Council took place on 30th
8 January 1932. Because of this circumstance ARAKI
9 specifically mentioned the date as the 17th December,
10 which of course was an error, and therefore the prose-
11 cution's statement that this plan was made four short
12 days after ARAKI became War Minister is erroneous.

13 We are forced to conclude that the prosecutor
14 simply ignored all these points, and composed the in-
15 terrogatories by taking advantage of insufficient in-
16 terpretation by the interpreters, or by making the ac-
17 cused answer yes or no to questions which included the
18 prosecutor's own conclusions.

19 For instance, exhibits Nos. 188-A, B and C
20 contain serious mistakes. As to the dates of inter-
21 rogation, 188-A was taken on 15th February. Particu-
22 larly the latter portion of the exhibit No. 188-C, the
23 interrogatory taken on 8th February contain passages
24 which are beyond our comprehension.

25 1. Ex. 3174

I shall leave out the next sentence.

1
2 Briefly speaking, however, concerning the
3 alleged decision upon the plan of occupation of the
4 Chinese four eastern provinces, ARAKI himself never
5 employed the word "occupation". In the latter section
6 of Paragraph 2 of his affidavit¹ ARAKI emphatically
7 denies the use of this particular term. Either
8 interpreters' mistake or the prosecutor's misunder-
9 standing caused ARAKI's explanation for the INUKAI
10 Cabinet's decision upon its Manchurian policy to be
11 wrongly put down in his interrogatories.²

12 The prosecutor also misunderstood that the
13 creation of the Chinese four eastern provinces by
14 adding Jehol Province to the theretofore three eastern
15 provinces was due to the widening by ARAKI of the
16 scope of the occupation plan of the region.

17 However, the fact that since 1928 Jehol had
18 been included in the sphere of influence of Chang
19 Hsueh-liang as the Commander-in-Chief of the North-
20 eastern Frontier Army was clearly set forth in the
21 Lytton Report.³ It is extremely regrettable that such
22 an obvious fact should rouse an extraordinary suspicion
23 on the part of the learned prosecutor.
24

25 1. Ex. 3161, pp. 10-11, 10 Sept. 1947, No. 268

2. cf. Para. 28-3 of ARAKI's affidavit and the
Appendix of the present document.

3. T. 18,719

1 (71) During the cross-examinations of witness
2 TAKEDA, Hisashi on 4 April 1947,¹ and of witness
3 KAWABE, Torashiro on 4 April 1947,² the prosecutor
4 questioned them concerning the plan of occupation.
5 Both witnesses definitely answered they neither laid
6 eyes on, nor heard about such a decision, In view of
7 the total absence of the alleged fact and the conse-
8 quent lack of proof it is but natural that no matter
9 how hard the prosecutor should try he should be un-
10 able to uncover a justifiable basis for this accusation.

11 (72) Witness MAZAKI, Jinzaburo, stated in
12 his affidavit³ that upon his appointment as Vice-Chief
13 of the Army General Staff, the then War Minister ARAKI
14 had told him as follows:

15 ". . . the situation has simply become more
16 aggravated. As there is every danger that it
17 will develop into a regular war, we must leave
18 no stone unturned in immediate saving of this
19 complicated situation. . . I think there will
20 be no need of further operations unless our
21 Army is challenged. At any rate, we will try
22 to cease hostilities within the smallest possible
23 scope. The Government is on principle dealing
24

25 (1. Tr. 19,380
2. Ex. 2408, Tr. 19,444
3. Ex. 3168, Tr. 28,457)

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25 (1. Tr. 19,380
2. Ex. 2408, Tr. 19,444
3. Ex. 3168, Tr. 28,457)

1 with Chang Hsueh-liang who is still disturbing
2 peace and order. Therefore our scope of oper-
3 ation is limited under any condition within
4 his sphere of influence. Bearing this in mind,
5 please control the Army strictly. At my
6 appointment my predecessor told me almost the
7 same thing. At the time . . . I met Premier
8 INUKAI . . . who also made some remarks on the
9 situation which was more or less similar to
10 that of War Minister ARAKI."

11 (73) Again, in the testimony of NAKAJIMA,
12 ¹Torakichi there is the following passage:

13 "/The General (ARAKI)/ was then very
14 much worrying over the Manchurian Incident.
15 He said that there was a danger of it develop-
16 ing into an all out clash between Japan and
17 China, if we should leave it to take its own
18 course. . . . I for myself should do my best
19 to put an end to the armed fighting now going
20 on, and to prevent the danger of an all out
21 clash between Japan and China."

22 Prosecution witness INUKAI, Ken, in answer
23 to a question ² expressed his belief that War Minister
24 ARAKI had endeavored to check the expansion of the
25

(1. Ex. 3173, Tr. 28,557
2. Tr. 1,489)

unfortunate Incident. In view of the testimonies
of these witnesses alone, it is clear that ARAKI
thought and acted for the sole purpose of bringing
the hostilities to an end.

(74) War Minister ARAKI, in his speech¹ at the
61st Session of the Imperial Diet (24 March 1932)
summarized the Manchurian situation as follows:

"At present, the Japanese forces now
staying in Manchuria number less than 30,000
and are stationed in the vast area of Manchuria
and Mongolia more than two times ~~and~~ a half as
large as our empire and are directly charged
with protection of the lives and properties
of the 1,000,000 Japanese and Korean residents
and indirectly with the preservation of peace
and welfare of the 30,000,000 inhabitants.
The soldiers have fulfilled their duty with
unfailing rectitude to take up their stand on
the life-line of national defence and safe-
guarded national security."

This makes it evident that ARAKI, in con-
formity with the policy of the Government, was earnestly
devoted to the main duty of preserving peace and order
and strengthening the national defense.

(1. Lx. 3167, Tr. 28,439)

(75) At the plenary session of the Privy
Council on 30 January 1932¹, Foreign Minister
YOSHIZAWA clearly defined the objective of the
Government, by stating as follows:

" . . . the first object of our action in
Manchuria is the maintenance of peace and
tranquility, this being our fundamental
policy toward Manchuria. . . the peace of
that region is an absolute necessity to our
Empire.

I shall omit the next paragraph.

Thus it is clear that ARAKI, as the War
Minister of the INUKAI Cabinet, exerted faithfully
his utmost to terminate the Manchurian Incident,
since to do so in accordance to the cabinet policy,
he thought, was in line with his official duties.

(1. Ex. 3174, Tr. 28,581)

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1 There have been actual instances where its
2 lack of a definite policy made a government powerless
3 to deal with incidents, and invite its antagonist's
4 contempt.

5 In view of these instances, it was necessary
6 for the INUKAI Cabinet to formulate through the cabinet
7 council a definite policy. The cabinet policy once
8 formed, ARAKI as the War Minister transmitted the basic
9 policy to the Chief of the Army General Staff, and
10 himself took charge of matters concerning military
11 administration, which were required for putting
12 operational matters into execution by the Army General
13 Staff.

14 In accordance with the governmental policy
15 transmitted via the Army Minister the Army General Staff
16 effected troop movements whenever necessities arose
17 for the protection of Japanese residents in China and
18 for the maintenance of public peace and order in the
19 region. As soon as such necessities ended forces so
20 despatched were immediately withdrawn. The most
21 conspicuous instance is found in connection with the
22 Shanghai Incident.

24 The entire incident came to an end with the
25 conclusion of the Tang-ku Agreement.

 We submit that the aforementioned evidence

1 proves abundantly that ARAKI, in strict accordance with
2 the set governmental policy, acted throughout the tenure
3 of duty within the definite sphere of his own juris-
4 diction, for discharging his official duties as the
5 War Minister.

6 In line with the governmental policy, ARAKI
7 cooperated and as the result, many untoward incidents
8 which threatened to break out at various places were
9 successfully forestalled, and the Tangku Agreement was
10 arrived at one year and a half later.

11 II. Next we come to the question of the
12 legitimacy of Japan's right to self-defense in Manchuria.

13 The question of self-defense having been
14 decided upon by the preceding cabinet, the INUKAI
15 Cabinet entertained no doubts whatsoever as to its
16 legitimacy. In our submission, ARAKI, who was acting
17 on this belief by the government has nothing to do
18 with the question of the right of self-defense before
19 this Tribunal.
20

21 (80) However, it is pointed out to the court
22 that Chapter I of the Lytton Report gives detailed
23 account of the

24 (1) existence of bandits,

25 (2) existence of several rival political

regimes, and the consequent difficulty of exercising

control over local troops, and

1 (3) conspicuous increase in cases of mass
2 outrages due to the infiltration of communism.

3 China has not been capable of fulfilling her
4 obligation of protecting foreign nationals who are
5 residing, according to the provisions of treaties,
6 within her territories. The right of the home govern-
7 ment of the residents, who suffered losses and damages,
8 to protect its nationals is recognized by international
9 law.
10

11 In fact the condition at that time was so com-
12 plicated that even Lord Lytton admitted in his report
13 that a mere restoration of the status quo would be no
14 solution.¹ WAKATSUKI Cabinet in its Second Declaration
15 expressed the same view. From these two facts, it is
16 clear that the state of danger was still existing.
17

18 Having learned through the Foreign Office's
19 researches in treaty provisions and international law,
20 the legitimacy of exercising the right of self-defense,
21 ARAKI felt perfectly secure in his continued exercise
22 of the right, beginning at the time of his assumption
23 to the War Minister's post. The termination of the
24 hostilities, however, was always his objective.

25 From a purely operational point of view, by
the use of a sufficient number of troops, the enemy

1. Lytton Report, p. 127.

1 could have been immediately suppressed. In order to
2 avoid entering into a full-scale war with China, ARAKI
3 dealt with the incident with a minimum army strength,
4 and without mobilizing additional forces.

5 The entry as to the use of a large force
6 toward the end of the SAIONJI-HARADA Memoir appears to
7 be HARADA's account of what ARAKI told him as an
8 instance of a pure operational matter. Being a non-
9 military man HARADA apparently was unable to grasp its
10 whole significance.

11 At the Council of the League of Nations held
12 on 10 December 1931, the reservation as to the right
13 to suppress bandits was recognized. The actions of
14 self-defense based upon this approved right have con-
15 stituted the foundation of operations since the sup-
16 pression of bandits in Chinchow. Questions concerning
17 this matter are made clear by Foreign Minister YOSHI-
18 ZAWA's address at the Diet.²

19
20 III. The pacification of the Chinchow District
21 was due to the insincerity on the part of Chang Hsueh-
22 liang and the Chinese side. The military action was
23 taken for the purpose of preventing the district from
24 danger.

25 82. The prosecution contends that the INUKAI

1. Ex. No. 3768.
2. Ex. No. 2413, Tr. 19,521.

1 Cabinet, because of the fact that the pacification of
2 the Chinchow district was carried out after the forma-
3 tion of the cabinet, extended the occupation of Man-
4 churia and thus executed aggression in Manchuria and
5 charges ARAKI, then the War Minister, with this respon-
6 sibility. However, the circumstances of the general
7 danger at the time when the INUKAI Cabinet was formed,
8 i.e., when ARAKI assumed the office of the Minister of
9 War, are stated in the preceding chapter and the Chin-
10 chow problems was one of the most important questions
11 left unsolved by the preceding cabinet.

12 In other words, soldiers were dispatched but
13 were soon recalled from the Chinchow district during
14 the latter part of November towards the end of the
15 preceding WAKATSUKI Cabinet, and diplomatic negotia-
16 tions were started to solve the dispute concerning the
17 Chinchow district, which, however, were brought to a
18 standstill. This fact was taken advantage of by the
19 bandits and their instigators who centered in and
20 around Chinchow and they intensified threats against
21 Mukden and its vicinity. The INUKAI Cabinet was formed
22 during this period. Chang Hsueh-liang and the Chinese
23 side still failed to carry out their promise; moreover,
24 the fact that soldiers were once dispatched but were
25 recalled during the period of the preceding cabinet

1 was made a subject of counter-propaganda by the Chinese
2 side who claimed that they had won the victory, where-
3 upon the activities of bandits were greatly increased.
4 Furthermore, the troops under Chang Hsueh-liang insti-
5 gated and joined hands with them. They crossed the
6 Liao River and were menacing the vicinity of Mukden
7 exposing the Japanese residents and troops to imminent
8 danger.¹

9 Taking into consideration the general trend,
10 the INUKAI Cabinet decided upon a general plan to
11 restore peace and order as part of the Manchurian
12 Incident; at the same time, it continued diplomatic
13 negotiations for a further two weeks. During this
14 period, the activities of the bandits became most out-
15 rageous and as many as three to four hundred atrocities
16 were reported in only ten days. These atrocities in-
17 creased daily and amounted to more than 1,500 cases
18 for the forty days since the negotiations were started
19 until December 27, which immediately preceded the dis-
20 patch of Japanese troops. Thus the Japanese residents
21 and even the Japanese troops were faced with imminent
22 danger. Moreover, the diplomatic negotiations which
23 were still continued received lip service only and no
24 concrete results were achieved, which, of course,
25

1. Cf. The Lytton Report: The occupation of Chinchow,
p. 154.

1 contributed to increase the danger and small skirmishes
2 at the front line. The INUKAI Cabinet, then in about
3 two weeks after its formation, i.e., in about one month
4 after the diplomatic negotiations were started, was
5 compelled to take necessary measures for the protection
6 of the Japanese residents as well as to save the
7 Japanese troops. Japan, thereupon, issued a statement
8 on December 27 and resorted to armed actions from the
9 end of December by virtue of her right to suppress band-
10 dity condoned by the League of Nations on December 10.
11 The Japanese Government, moreover, declared at that
12 time that the whole responsibility for this action
13 rested with the Chinese side. Once this firm decision
14 was expressed, the bandits as well as the troops under
15 Chang Hsueh-liang which supported them began a general
16 retreat and the bloodless entry into Chinchow was accom-
17 plished on January 3. Thus the basis for the distur-
18 bance of peace and order in this district as well as
19 causing disturbances around Mukden was obliterated.
20 In accordance with the policy decided by the government,
21 ARAKI informed the Army General Staff of the extent
22 of the military action to be taken and the latter took
23 charge of its execution. Although no specific and
24 definite evidence has been offered by the prosecution
25 with respect to this action, it is tied in with the

1 decision of the policy referred to above and ARAKI's
2 responsibility is charged in counts 2, 6, and 27. It
3 is our contention, however, that this is an extremely
4 arbitrary conclusion and belies the actual state of
5 affairs. The defense submit the following evidence to
6 disprove the foregoing allegation.

7 83. Various facts with respect to the dangerous
8 condition of the district.

9 a. The Lytton Report states:

10 "The districts evacuated by the Japanese were
11 reoccupied by the Chinese troops, and this fact was
12 widely advertised. Chinese morale was slightly raised;
13 and the activities of irregular forces and bandits
14 increased. Profiting by the winter season, they crossed
15 the frozen Liao River at many points and raided the
16 country around Mukden. The Japanese military authori-
17 ties realized that even to maintain their existing
18 positions reinforcements would be necessary, and with
19 these reinforcements they hoped to be able to get rid
20 of the menace of the Chinese concentration at Chinchow."
21

22 Hence the Lytton Report itself proves that
23 the Japanese Government could not remain indifferent.
24 Moreover, how the measures adopted by the preceding
25 cabinet to advance troops once and then recall them
made the opposing party grow presumptuous and brought

1. pp. 154-155.

1 about bad results is well-established not only by the
2 Chinchow Incident but also by the fact witnessed in
3 later years in the Shanghai district. The Lytton
4 Report further states: ¹

5 "The stout resistance put up from the first
6 by the Chinese 19th Route Army, with the assistance
7 later of the 88th Guard Divisions was hailed through-
8 out China with the greatest enthusiasm, and the fact
9 that the original three thousand marines had to be
10 supplemented by three divisions and a mixed brigade
11 of the Japanese Army before the Chinese forces were
12 finally dislodged and driven back after six weeks of
13 fighting created a profound impression upon Chinese
14 morale. The feeling prevailed that China must be saved
15 by her own efforts. The Sino-Japanese conflict was
16 brought home to the people throughout China. Every-
17 where opinion hardened and the spirit of resistance
18 increased. In Manchuria the news from Shanghai put
19 heart into the scattered forces still opposing the
20 Japanese troops. It encouraged the subsequent resis-
21 tance of General Ma Chan-shan and stimulated further
22 resistance of all Chinese. The resistance of the
23 Volunteer Armies increased. Expeditions to suppress
24 them met with indifferent success, and in most areas
25 1. pp. 175-176.

1 the Japanese stood on the defensive, taking up positions
2 along certain railway lines which were frequently
3 attacked."

4 Hence this passive attitude of the Japanese
5 only tended to increase hostilities.

6 84. The declarations before hostilities
7 began by Division Commander UEDA and Commander-in-Chief
8 SHIRAKAWA made in compliance with the desire of ARAKI
9 to promote peace from the beginning and to keep the
10 damages to the minimum in the Shanghai area met with
11 unexpected bad effects and this, we contend, is proof
12 to show wherein rested the difficulty to save the
13 situation. We firmly believe that the proper under-
14 standing of these fundamental circumstances is most
15 important in the execution of a fair trial.

16 I shall omit paragraph 85.

17 86. Witness TAKEDA, Hisashi, in his testimony¹
18 stated:

19 "The conclusion was that so long as we did
20 not capture the base of enemy operations near Chinchow,
21 we would find it difficult to preserve peace in our
22 district. . .and the Chinese troops which gathered in
23 the vicinity of the city reached 35,000 and the
24 number of volunteer bandits, detached forces, incited
25

1. Ex. No. 2405, par. 8, The Dispatch of Japanese Forces
to Chinchow, tr. 19,352.

by the Chinese forces reached from 50,000 to 60,000.

1 Disturbances plotted east of the Liao River gave direct
2 threats to the South Manchuria Railway and the bandits
3 along the Antung-Fengtien Railway appeared to be
4 cooperating. The destruction of railroad and stoppages
5 of traffic occurred in rapid succession. Though we
6 adopted the policy of localizing the affair, the
7 situation became so serious that we could not tolerate
8 it any longer. . . it was a pressing need to capture the
9 base of their operations. The (Kwantung) Army reported
10 the above situation to the central authorities of the
11 army."
12

13 Witness KAWABE, Torashiro, in his testimony¹
14 stated:

15 ". . . the Commander (of the Kwantung Army)
16 and his staff officers were extremely concerned by
17 the repeated violence along the South Manchuria Rail-
18 way by bandits who maintained their base at Chinchow.
19 I heard that the Japanese Government was negotiating
20 with the Nanking Government and also with the Adminis-
21 trative Authority of Chang Hsueh-liang through diplomatic
22 channels at Peiping to have the Military Government at
23 Chinchow withdraw to within the Great Wall, but did
24 not see the result of this revealed.
25

1. Ex. No. 2408, Tr. 19,420-19,421.

1 "Furthermore, since the middle of December,
2 the regular army (TN: of Chang Hsueh-liang) came out
3 of the vicinity of Chinchow to a place near the South
4 Manchuria Railway and took a course of action in
5 cooperation with the bandits."

6 87. ARAKI, in paragraph 4 in his affidavit¹
7 stated, with respect to the measures taken by the
8 government and the central military authorities at
9 that time, as follows:

10 ". . . the Japanese Government had to resort
11 to arms to wipe out the stronghold of the bandits and
12 the lawless mobs in order to save the Japanese nationals
13 from danger. I communicated this decision of the
14 government to the General Staff. In the meantime,
15 the government made a proclamation on the 27th to
16 clarify the situation and explained to the world the
17 difficulties that Japan was confronted with."

18 And he went on to clarify that the operational
19 action was conducted by the Army General Staff. He
20 further made it clear that no positive measures were
21 taken in spite of the casualties suffered by the
22 isolated KOGA Cavalry Regiment and other damages
23 caused by the atrocious activities of bandits in
24 later days. Besides the above, several newspapers
25

1. Ex. No. 3161, Tr. 28,132.

1 in these days reported the circumstances of this immi-
2 nent danger. The foregoing testimony makes it clear
3 that the general condition was such that Japan was
4 compelled to take adequate measures for the sake of her
5 own self-defense, and Witness MINAMI, in his testimony
6 stated that the dispatch of troops to Chinchow was due
7 to the changed condition.

8 88. This dispatch of troops was a lawful
9 measure based upon the Japanese reservation concerning
10 Japan's right of self-defense when the Japanese dele-
11 gate stated at the League Council on December 10, 1931,
12 that his acceptance "was based on the understanding
13 that this paragraph (No. 2) was not intended to preclude
14 the Japanese forces from taking such action as might
15 be necessary to provide directly for the protection
16 of the lives and property of Japanese subjects against
17 the activity of bandits and lawless elements rampant
18 in various parts of Manchuria."

19 89. It is further our contention that this
20 action did not violate the guarantee to the United
21 States of America.

22 It is definitely clear that a stipulation was
23 attached to the guarantee given to Mr. Forbes, United
24 States Ambassador (during the WAKATSUKI Cabinet) on
25 November 24, 1931, as follows:

1 "The clause in the draft prohibiting hosti-
2 lities he agrees to, but is insistent that Japanese
3 citizens must be protected by Japanese troops against
4 marauding bandits which infest the country."¹

5 It is stated already in the foregoing that
6 the pacification of Chinchow did not go one step
7 beyond this condition.

8 90. The pacification of Chinchow was a prob-
9 lem which had been under discussion for some time prior
10 to the assumption by ARAKI to the office of Minister,
11 of War and was the result of the unavoidable self-
12 defensive action caused by the imminent danger to
13 Japan's self-existence as stated above. At that time,
14 Chang Hsueh-liang was playing on Japan on the con-
15 venient pretext of diplomatic negotiations on one
16 hand and was in the practical sense menacing the
17 Japanese troops and residents through bandits on the
18 other hand. At the same time he was trying his best
19 in his propaganda to utilize third parties. The INUKAI
20 Cabinet had to deal with this entangled Chinchow
21 problem which had already been started. Under such
22 circumstances, any cabinet, even the WAKATSUKI Cabinet,
23 was sure to be obliged either to adopt the same
24 measures if things were left as they had been at that
25 time or else there was no assurance that it would not

have brought about military actions on a grand scale
1 thus leading to the outbreak of a real war between
2 Japan and China. All the difficulties mentioned above
3 were dealt with by the INUKAI Cabinet so that not a
4 drop of blood was shed. After that, for as long a
5 period as one year after the establishment of Manchukuo,
6 Jehol, which was the very base for Chang Hsueh-liang
7 to carry out his disturbances against Manchuria, was
8 left untouched and this was for the sole purpose of
9 permitting enough room for negotiations between Japan
10 and China. The INUKAI Cabinet which succeeded the
11 previous cabinet amidst internal disturbances was able
12 to suppress public opinion at home and was also able
13 to take such flexible measures as mentioned above in
14 spite of the fact that the nation had enough real power
15 and the support of the general public so that if she
16 really desired she was in a position to have her own
17 way in everything. All the above goes to prove suffi-
18 ciently that it was due to the peaceful intentions
19 entertained by ARAKI in the INUKAI Cabinet to bring
20 the armed disturbances to a speedy and yet satisfactory
21 end.
22
23

24 The prosecution alleges that the prompt with-
25 drawal on the part of the bandits and Chang Hsueh-liang's
troops upon Japan's resolution to relieve Chinchow

showed that China had no intention of resistance. In
1 fact, this conclusion is far from the truth. It was
2 a well-known conventionality of the Chinese people that
3 where once an attitude of tolerance beyond a certain
4 limit was taken, they were apt to take advantage in it
5 causing disastrous results. Japan had a bitter
6 experience of this nature in Nanking in 1927, where
7 Japanese Army and Navy troops were disarmed and the
8 members of the Japanese Consulate and Japanese nationals
9 suffered casualties. Also at the time of the Su-Pingwen
10 Rebellion, the Japanese nationals in Manchuria would
11 have suffered serious calamities if there was a slight
12 delay on the part of Japan in coping with the situation.
13 These will serve to show how mistaken the prosecution's
14 allegation is.
15

16 91. As explained above, the pacification of
17 Chinchow was really an unavoidable step taken by the
18 INUKAI Cabinet in order to cope with the aggravated
19 situation after all diplomatic measures failed. This,
20 we contend, proves that ARAKI executed the policy of
21 the government in pursuance of his official duties and
22 at the same time, measured the military action with
23 due consideration to bring the armed disturbances to
24 an end in the then near future.
25

IV. Dispatch of Troops to Shanghai.

1
2 92. The handling of the first Shanghai
3 Incident is the best example which reveals the character
4 istic methods peculiar to War Minister ARAKI. The
5 beginning of the first Shanghai Incident related to
6 the action of the Japanese Navy, but as it took place
7 after ARAKI assumed the office of War Minister, he
8 was able, therefore, to take whatever steps he desired
9 to settle the dispute. That was why it terminated not
10 only in a non-expansion of the incident but also
11 clearly depicts the reason why he was able to prevent
12 further disputes by evacuating the whole of the armed
13 forces. This was also one of his actions which will
14 enable one to determine what his intention in the
15 settlement of the Manchurian Incident was to bring
16 the armed disturbances to an end.

17 93. Concerning this incident, he took no
18 interest in the beginning and left the matter entirely
19 to the navy and the Foreign Office. The HARADA
20 Memoirs¹ (Series No. 65) also refers to this matter.

21
22 Witness Powell stated about the strengthening
23 of Japanese Navy and its bombing, this was entirely
24 a navy affair, of which ARAKI knew nothing, and even
25 the navy did not make report to the cabinet.

1. Ex. No. 3768, Tr. 37,618.

1 However, the danger which confronted the
2 Japanese residents and the navy reached such a state
3 of affairs that it could not be left to take its own
4 course and the cabinet at last decided upon dispatching
5 troops. It was decided by consultation between the
6 War Minister and the Chief of the Army General Staff
7 that a minimum number of troops would be dispatched,
8 as the result of which the first mixed brigade in its
9 peace footing was sent out. The situation then was so
10 tense that the troops were transported by destroyers.
11 This was followed by the 9th Division in its peace
12 footing and the total strength of troops sent amounted
13 to some 10,000 in all. The enemy strength of the
14 19th Route Army at that time was estimated at 50,000.
15 From the viewpoint of the fundamental principle of
16 operations, practical sense demands a dispatch of
17 troops equal to the strength of the enemy. However,
18 it was considered that the way to settle the case
19 peacefully would be to show, to the fullest extent,
20 Japan's sincerity to avoid war. This was the reason
21 why the troops of the above strength were dispatched
22 and the commander of the army group, in accordance
23 with the wishes both of the War Minister and the Chief
24 of the Army General Staff, issued a statement concerning
25

1 a peaceful settlement of the incident.¹ ARAKI's
2 attitude and true intention in handling not only the
3 Shanghai Incident but the entire incident may be seen
4 in the foregoing statement and the reason for the
5 unavoidable dispatch of troops is clearly stated in
6 the statement of the Japanese Government.²

7 94. At the time when the 9th Division was
8 first to be sent, ARAKI, as stated above, expressed his
9 desire to Divisional Commander UEDA to avoid hostili-
10 ties as far as possible and to achieve the object
11 through peaceful means. Divisional Commander UEDA
12 addressed the 19th Route Army based upon this very
13 desire of the Minister of War.³ However, this peaceful
14 generosity on the part of ARAKI was taken advantage
15 of by the 19th Route Army, which made complete prepa-
16 rations for war during three days prior to the time
17 limit for evacuation. As a result of this, the UEDA
18 Division had to fight. Although ARAKI's generosity
19 was subjected to ridicule by some Japanese and foreigners
20 he took further measures to cope with the situation.
21

22 95. As the third step, ARAKI upon consulta-
23 tion with the Chief of the Army General Staff, gave
24 the post of Chief of Operations Section to Colonel

- 25
1. Ex. Nos. 3163-A and B, Tr. 28,257, Tr. 28,271.
2. Ex. No. 2417, Tr. 19,563.
3. Ex. No. 3163.

1 OBITA, Binshiro, and requested him to draft an opera-
2 tion plan which would enable the Japanese Army to accom-
3 plish the object of reinforcing their forces in
4 Shanghai with the minimum casualties to be inflicted
5 upon the Chinese. As a result of this, the reinforce-
6 ment division landed at Chi-liao-kou on March 1, and
7 the statement of Army Commander SHIRAKAWA¹ was issued
8 on that very day in accordance with the wishes of
9 War Minister ARAKI. The 19th Route Army immediately
10 retreated as was demanded in the UEDA statement. Their
11 object having been achieved, the expeditionary forces
12 ordered the cessation of hostilities on March 3, two
13 days after their landing. The Chinese Army also
14 issued a similar order the following day. Thus, the
15 object was attained successfully with practically no
16 bloodshed this time in only three days after the van-
17 guard of the reinforcements landed.
18

19 96. The expeditionary forces which ceased
20 hostilities retreated voluntarily to a line in the
21 rear, toward the end of March, and one division and a
22 half were recalled to Japan. After that, Japan wel-
23 comed the assistance and cooperation of the committee
24 composed of the representatives of Britain, America,
25

1. Ex. No. 3163-B, Tr. 28,271.

2. Testimony of MASAKI, Ex. No. 3168, Tr. 28,461.
Dict speech by War Minister ARAKI, Ex. No. 3167,
Tr. 28,443.

1 France and Italy, and a truce agreement was formally
2 concluded on May 5. This welcome by ARAKI of the par-
3 ticipation of the International Committee was ARAKI's
4 fourth method, which we contend shows how ARAKI
5 respected the international relations in Shanghai in
6 view of the international character of the city.

7 97. After the conclusion of the truce agree-
8 ment, the right to station a part of the forces for the
9 time being was recognized in view of the general situa-
10 tion and by virtue of Article 3 of the truce agree-
11 ment (Appendix 2). However, in view of the international
12 character of the city of Shanghai and for the purpose
13 of respecting the sovereignty of China, War Minister
14 ARAKI resolutely carried out general evacuation before
15 the end of May. In connection with this, ARAKI was
16 blamed by some influential Japanese who said that it
17 was quite improper of him to carry out general eva-
18 cuation disregarding the insecurity in Shanghai; at
19 the same time, the Chinese Army made propaganda of
20 this to say, contrary to fact, that the Japanese took
21 to their heels because they lost a war, which exercised,
22 as already referred to above, considerable influence
23 upon the situation in Manchuria.¹ Influential Chinese
24 people declared that the measures adopted by Japan in
25 1. Lytton Report, Chap. 5, p. 175.

1 the settlement of the Shanghai Incident were based upon
2 sincerity and, contrary to their expectation, that Japan
3 might launch upon unprecedented operations. They further
4 declared it was worthy of note to find ARAKI, MASAKI
5 and OBATA in the Japanese Army. The foregoing is the
6 gist of the report appearing in the official organ of
7 the Blue Shirts Society at that time.

8 98. Witness J. B. Powell testified and made
9 it clear in his cross-examination by Counsel Furness
10 on August 6, 1946, that the first Shanghai Incident was
11 brought about by the attack by the Chinese Army on the
12 Japanese landing marines when the latter intended to
13 take their positions in accordance with the martial law
14 proclaimed for the purpose of maintaining peace and
15 order by the Municipal Council of Shanghai, and that,
16 after the conclusion of the truce agreement, the
17 Japanese Army remained in the stipulated area in per-
18 fect good military order,² also testified to by Vice-
19 Admiral SANEJIMA, Tomoshige,³ and Captain KITAURA,
20 Toyoo.⁴

21
22 99. The prosecution included one item in its
23 counts in the Indictment concerning the progress of

24 1. ARAKI Affidavit, Ex. No. 3161, par. 5.

25 2. Tr. 3260.

3. Ex. 2420, Tr. 19,578.

4. Ex. 2421, Tr. 19,586.

1 the Shanghai Incident and charged that ARAKI agreed
2 with the government to dispatch troops and later
3 reinforced one division; however, so far as ARAKI him-
4 self is concerned in this matter, the charge cannot
5 but be declared to be exceedingly impertinent. We
6 shall, however, set forth hereunder a few facts in
7 order to prove ARAKI's state of mind with respect to
8 the situation concerning China.

9 During a period when the national opinion was
10 extremely complicated, it was most difficult to exe-
11 cute the over-all withdrawal of troops. We shall not,
12 for the moment, question the propriety of the ability
13 with which ARAKI handled the troops; however, because
14 ARAKI placed the first and foremost idea in the
15 restoration of peace and the future cooperation between
16 Japan and China he overcame the extreme and popular
17 opinion and succeeded in carrying out this difficult
18 task of the aforementioned withdrawal.

19 The measures taken by ARAKI in handling the
20 Shanghai Incident, we hope now are clear. Not until
21 the ardent desire of the government and the navy
22 was expressed to him did ARAKI reluctantly consent to
23 dispatch troops in the first place, and then only
24 for the purpose of protecting the Japanese residents
25 there. And then in spite of prevailing public opinion

of China provides so many examples."

1 Under the circumstances mentioned above, one
2 Japanese and three Koreans were murdered beside one
3 Japanese flight officer, which forced the Japanese
4 Government to take proper measures for the protection
5 of the Japanese residents. Due to the fact that troops
6 were once before dispatched for the purpose of rescue
7 but were recalled immediately, the situation in that
8 area was further aggravated as was experienced in the
9 case of Chinchow. We call the particular attention
10 of the Tribunal to the latter part of the statement
11 just read in the report, to-wit:
12

13 "Fighting between two irregular Chinese troops
14 would have resulted in the retreat on the town of a
15 defeated army, the horrors of which the recent history
16 of China provides so many examples."
17

18 101. With respect to the circumstances under
19 which troops were dispatched to Harbin, Witness TAKEDA,
20 Hisashi, then the Chief of Staff of the Kwantung Army,
21 clearly testified in his affidavit¹ under the heading,
22 "The dispatch of troops to Harbin," that the Kwantung
23 Army at first maintained an attitude of prudence, but
24 it decided to dispatch troops, now that a few Japanese
25 residents and a flight officer were murdered, in order

1. Ex. No. 2405, Tr. 19,354, par. 9.

completely withdraw them as quickly as possible.

1
2 After this, more than four years elapsed
3 before the outbreak of the China Incident and the rela-
4 tions between Japan and China were calm and cordial
5 and Japan was able to recover her good reputation among
6 the family of nations. This reveals ARAKI's true
7 intentions and state of mind relative to his peaceful-
8 ness and his attitude toward not only China but other
9 nations of the world.

10 We therefore state that the charge made by
11 the prosecution is utterly groundless and declares
12 circumstances which are entirely contrary to facts.

13 V. Dispatch of Troops to Harbin.

14 100. The Lytton Report states as follows: ¹

15 "General Hsi Hsia advanced with his troops as
16 far as Shuang-cheng. . .but when it came to serious
17 fighting . . . the advance was at once checked (by
18 the forces under Generals Ting Chao and Li Tu). The
19 situation thus created was felt by the Japanese to be
20 full of danger for the large Japanese and Korean
21 colonies at Harbin. Fighting between two more or less
22 irregular Chinese forces in the immediate neighborhood
23 would have resulted in the retreat on the town of a
24 defeated army, the horrors of which the recent history
25 l. p. 158.

1 of China provides so many examples."

2 Under the circumstances mentioned above, one
3 Japanese and three Koreans were murdered beside one
4 Japanese flight officer, which forced the Japanese
5 Government to take proper measures for the protection
6 of the Japanese residents. Due to the fact that troops
7 were once before dispatched for the purpose of rescue
8 but were recalled immediately, the situation in that
9 area was further aggravated as was experienced in the
10 case of Chinchow. We call the particular attention
11 of the Tribunal to the latter part of the statement
12 just read in the report, to-wit:

13 "Fighting between two irregular Chinese troops
14 would have resulted in the retreat on the town of a
15 defeated army, the horrors of which the recent history
16 of China provides so many examples."
17

18 101. With respect to the circumstances under
19 which troops were dispatched to Harbin, Witness TAKEDA,
20 Hisashi, then the Chief of Staff of the Kwantung Army,
21 clearly testified in his affidavit¹ under the heading,
22 "The dispatch of troops to Harbin," that the Kwantung
23 Army at first maintained an attitude of prudence, but
24 it decided to dispatch troops, now that a few Japanese
25 residents and a flight officer were murdered, in order

1. Ex. No. 2405, Tr. 19,354, par. 9.

1 to protect the other 5,500 Japanese residents there.

2 We shall not requote TAKEDA here as it has already
3 been referred to in the foregoing.

4 102. Witness KAWABE also gives similar
5 testimony in his affidavit.¹

6 103. ARAKI states in his affidavit² as follows:

7 "The government had taken a cautious attitude
8 toward this district (and wished for a peaceful
9 settlement of the case), but as the situation became
10 so serious the government considered it necessary to
11 take measures to restore law and order in that district
12 to protect the Japanese residents."

13 104. Reply by Foreign Minister YOSHIZAWA at
14 the Privy Council Meeting (January 30):³

15 "As to the dispatch of troops to Harbin, this,
16 as ARAKI has stated, was done by the Kwantung Army
17 as a measure to protect the lives and properties of
18 the Japanese in North Manchuria, who and which were
19 endangered by bandits."
20

21 As stated above, the dispatch of troops to
22 Harbin was exactly the same step taken by the Japanese
23 Government as the powers wished to have adopted to
24 protect their own nationals in various parts of China
25

1. Ex. No. 2408, Tr. 19,420.

2. Ex. No. 3161.

3. Ex. No. 3174, Tr. 28,580.

1 who were then exposed to grave danger. The reason why
2 it was necessary to take measures for the protection
3 of Japanese residents on the spot was, as is stated in
4 the latter part of the report of the Lytton Commission
5 was due to the consideration of the disorder and the
6 subsequent sad plight which would easily be brought
7 about as the result of the clash between the Anti-Kirin
8 and Kirin Chinese regular armies. Japan had a bitter
9 experience with respect to cases of malicious murder
10 by the Chinese during 1928 when the second dispatch
11 of troops to Tsinan was being carried out. As Foreign
12 Minister YOSHIZAWA stated above, the measures were
13 unavoidable under the prevailing disorderly conditions
14 in China at that time, which were well understood by
15 the world powers and were not in violation of inter-
16 national treaties.¹

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1. ARAKI Affidavit, Ex. No. 3161.

VI. Independence of Manchukuo.

1 105. The Lytton Report in Chapter VI states
2 the circumstances of the independence of Manchukuo
3 based upon the materials collected by Lord Lytton and
4 his commission at that time. The fact that an atmos-
5 phere of movements for the Independence of Manchuria
6 had existed prior to the Manchurian Incident was
7 testified to, beside the above materials by various
8 pieces of evidence introduced before this Tribunal
9 such as KASAGI, KANAI, Witness KATAKURA, ITAGAKI
10 affidavit, and the memorandum by HONJO,¹ Chapter 3.
11 This atmosphere made a rapid progress after the out-
12 break of the Manchurian Incident and the Committee of
13 Peace and Order was established on September 24th,
14 while on the 26th declarations contemplating the
15 independence of Mukden Province and of the Three
16 Eastern Provinces were issued. The observations of the
17 Japanese Government addressed to the League of Nations
18 also touched upon this matter (The Lytton Report and
19 this observation is an official document of the Japanese
20 Government). At the time of the formation of the
21 INUKAI Cabinet, the general idea for the independence
22 seemed to have already been in the progress. No
23 definite report was received, it seems, by the Central
24
25 1. Ex. No. 2043.

1 Government in this regard as it was treated at that
2 time as a local affair. In this respect, the army
3 authorities in the WAKATSUKI Cabinet sent instructions
4 on September 26 to those concerned "not to engage
5 themselves in those reported movements," which fact
6 was testified to by WAKATSUKI, SHIDEMARA and HINAMI.

7 At the time when the INUKAI Cabinet was
8 formed, i. e., when ARAKI took the office of War
9 Minister, this movement for independence seemed to
10 have already been progressing to a considerable ex-
11 tent among the influential Chinese, but the INUKAI
12 Cabinet naturally adopted the same policy in this
13 problem as the preceding cabinet and it never became
14 an important question before the cabinet meeting
15 immediately following its formation. It was in the
16 early part of January, 1932, that ARAKI came to know
17 of this matter definitely from Colonel ITAGAKI who
18 came up to the capital in order to make a direct
19 report to the War Minister. (It was about three weeks
20 after ARAKI became War Minister.) (Testimony by
21 ITAGAKI and ARAKI affidavit.) Therefore, it is
22 clear that ARAKI had no knowledge of this matter
23 prior to that period and consequently entertained no
24 interest which would enable him to form an opinion
25 for or against the matter. He was devoting himself

1 entirely to the means by which to restore peace and
2 order and to bring the hostilities to an end.

3 Witness INUKAI seems to have mixed up the
4 establishment of Manchukuo and the question of her
5 recognition, so that the testimony in his affidavit
6 in this regard is inconsistent and is not clear.
7 Stating that it was "to oppose the recognition of
8 the puppet state of Manchukuo," he testified that
9 Premier INUKAI sent a messenger to Chiang Kai-shek
10 in the middle of December, 1931, at which time, how-
11 ever, Manchukuo was not yet established. Manchukuo
12 was not founded yet at that time, therefore, conceding
13 a messenger was really dispatched as he claims, he
14 could not have had anything to do with the question of
15 the puppet state still less with the question of
16 recognition. We are inclined to assume that this
17 matter of dispatching a messenger was motivated from
18 a desire peculiar to Premier INUKAI in order to satisfy
19 his own self-confidence that he was an expert in the
20 affairs of China and also to distinguish himself
21 because of his favorite secret activities. With
22 regard to this matter, therefore, ARAKI knew nothing
23 about it as it was testified to by Witness INUKAI.
24 The transfer of Colonel SHIGETO, which was alleged
25 to have been connected with this matter, was due to

1 the cleaning up of the army personnel and was not due
2 to the alleged interference in the establishment of
3 Manchukuo; further, he was connected with the March
4 Incident, all of these facts were established by the
5 testimony of FUJITA, Isamu. Therefore, prior to
6 ARAKI's assumption of the office of War Minister, the
7 central authorities did not seem to know clearly
8 about the independence movement except as rumors,
9 but the following statements show clearly that it had
10 gained considerable progress at least among personages
11 of high standing in Manchuria as well as the fact that
12 ARAKI had absolutely no relations with this matter.

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106. Upon receiving a report from Colonel
1 ITAGAKI of the views of Commander-in-Chief HONJO,¹
2 ARAKI came to be aware for the first time of the real
3 situation on the spot, and it was his duty as War
4 Minister to report the matter to Premier INUKAI. The
5 prosecution contention that the fact that he made a
6 report of these views to the Premier means ARAKI
7 approved of them, because he could, if he so desired,
8 refuse to report same, is not logically consistent.
9 Moreover, the prosecution's argument is based upon
10 ARAKI's incorrect interrogation taken in the Sugamo
11 Prison.
12

13 It is naturally very difficult for the control
14 army authorities to decide the propriety of such a
15 question and the opinion of the Foreign Ministry must
16 also be considered, it was but natural, therefore,
17 that a report should be made to the Premier (who was
18 holding the Portfolio of the Foreign Ministry con-
19 currently at that time.) In this respect, ARAKI
20 expressed no views but indicated simply that he would
21 devote himself entirely in the maintenance of peace
22 and order. The report made by ITAGAKI, in connection
23 with this matter, of the views of Commander-in-Chief
24

25

1. ITAGAKI Affidavit, Paragraph 1-(10).

1 HONJO is contained in the Memorandum by HONJO¹ as
2 well as in ITAGAKI's Affidavit.² ARAKI, after having
3 heard the views, was following the proper procedure
4 when he reported the matter to the Premier, as stated
5 above, in order to hear the opinion of the Premier
6 and concurrently Foreign Minister on this matter on
7 behalf of the Army whose principal duty it was to
8 maintain peace and order. The circumstances in this
9 respect are clearly stated in ARAKI's Affidavit.³

10 Witness KATAKURA made it clear that ARAKI,
11 upon receiving a report from Colonel ITAGAKI, did
12 not at once approve of the views. In the direct
13 examination of ITAGAKI he denied the testimony of
14 Witness TANAKA, Ryukichi, who stated that he had
15 heard from ITAGAKI that ARAKI had approved of them.
16 TANAKA's testimony in this regard is incorrect.

17 I shall omit down to the end of the next
18 quotation.

19
20 Again, Foreign Minister YOSHIZAWA stated
21 at the Privy Council Meeting, January 30, 1932, "this
22 matter (of a new government in Manchuria) originated
23 among the Chinese themselves in Manchuria."⁴

- 24 1. Ex. No. 2043: The establishment of Manchukuo and
25 thereafter, Para. 3)
2. Ex. No. 3316
3. Ex. No. 3161, para. 8
4. Ex. No. 3174, T. 28,580

1 This fact can clearly be proved by the
2 Independence Declaration of the new Manchu-Mongolian
3 State, and the Proclamation on the Establishment of
4 Manchukuo.¹

5 I shall now omit paragraph 110 entirely.

6 In the memorandum by HONJO, Chapter 3,
7 "Establishment of Manchukuo and afterwards",² it is
8 stated as follows:

9 "The Kwantung Army rose only in self-defense
10 and took action only in self-defense. At first we
11 did not, therefore, consider any aspect of the
12 problem of Manchuria's future status...How could we
13 have expected the safety of our resident nationals'
14 lives and property and of Japanese interests but by
15 the stabilization of life and the public peace? For
16 this reason I supported not only the district self-
17 governing committee which was voluntarily organized
18 by Yuan Ching-kai and others in Mukden within ten days
19 after the outbreak of the incident, but also the self-
20 governing committee of various localities thus gave
21 impetus to self-government...
22

23 "Nevertheless, as these organizations were
24 only makeshift and temporary, some permanent organization.

- 25
1. Ex. No. 2429
2. Ex. 2043, T. 19,264

1 had to be established. Indeed, a cry for this arose
2 promptly and suddenly among the self-governing
3 direction department, district self-governing committee
4 circles, and military and civil notables and prominent
5 men in all quarters who know our activities well."

6 Thus, it is clear that the founding of the
7 nation was not the scheme of Japan to establish a
8 puppet regime.

9 112. Furthermore, the studies made by the
10 Japanese Foreign Office which were accepted by the
11 Japanese Government as its views and contained in the
12 Lytton Report¹ - -

13 I shall now omit the next quotation.

14 Inasmuch as the views were accepted by the
15 Government to be correct, ARAKI, as Minister of War,
16 had only to rely upon the studies carried out by
17 experts on the matter. However, as mentioned already
18 and as was reported at the time in newspapers, ARAKI
19 was exceedingly cautious regarding this matter when
20 he had an interview with Prince SAIONJI on March 10th.
21 His remarks to the Prince were in substance to the
22 effect that although Premier INUKAI had already declared
23 that the recognition was inevitable, ARAKI was of the
24 opinion that no rash actions should be taken to extend
25
1. p. 265.

~~recognition at once, but that fullest studies of the~~

1 question be made and at the same time watch carefully
2 the development of that country. This fact clearly
3 shows ARAKI's attitude at that time and disproves the
4 contention of the prosecution in this respect.

5 Further, in order to corroborate the foregoing
6 fact, we quote hereunder the pertinent portion from
7 the Lytton Report.¹

8 113. "The justification in this case has
9 been that all the military operations have been
10 legitimate acts of self-defense, the right of which
11 is implicit in all the multilateral treaties mentioned
12 above, and was not taken away by any of the resolutions
13 of the Council of the League. Further, the administration
14 which has been substituted for that of China in the
15 Three Provinces is justified on the grounds that its
16 establishment was the act of the local population who,
17 by a spontaneous assertion of their independence, have
18 severed all connections with China and established
19 their own Government. Such a genuine independence
20 movement, it is claimed, is not prohibited by any
21 international treaty or by any of the resolutions of
22 the Council of the League of Nations, and the fact
23 of its having taken place has profoundly modified
24
25 1. p. 265.

1 the application of the Nine Power Treaty and entirely
2 altered the whole character of the problem being
3 investigated by the League."

4 I shall now omit paragraph 114.

5 115. The prosecution, quoting from the
6 HARADA Memoirs, questioned ARAKI on the opinion expressed
7 by Dr. TACHI and Dr. Baty, advisor to the Japanese
8 Foreign Office; and it might have been quite possible
9 that the Foreign Minister took into consideration that
10 opinion in his studies on the question because the
11 former was a non-official of the Foreign Ministry.
12 At any rate, the decision was that it did not violate
13 the provisions of the treaty.

14 We find quite a number of international
15 jurists expressing their opinions in this respect.

16 I shall omit paragraph 116.

17 VII. Recognition of Manchukuo.

18 117. The prosecution contends that the
19 establishment of Manchukuo was a part of the practical
20 aggression upon Manchuria by Japan, who, by making
21 it a puppet state, came to control Manchukuo and it
22 relies entirely upon the testimony of ex-Emperor Pu-
23 Yi. The beginning of Manchukuo was started by the
24 ardent desire which had existed for a number of years
25 and the initiative of influential people in Manchuria,

1 who, through the North-Eastern Administrative Council,
2 of which they were members, declared independence and,
3 with popular support, received Mr. Pu-Yi as the
4 Regent. Mr. Pu-Yi as well as those around him had
5 wished for independence. These people developed their
6 movement into independence by availing themselves
7 of the position taken right after the Incident. The
8 Kwantung Army, which aimed mainly at self-defensive
9 activities from the military point of view engaged
10 exclusively in maintaining peace and order leaving
11 administration to local people without enforcing
12 military administration. The only evidence on which
13 the prosecution relied and tendered was the testimony
14 of Pu-Yi and a few documents which it obtained from
15 the files of the Japanese Foreign Office and the War
16 Ministry which were ill-arranged both in order and
17 contents.¹ The credibility of the testimony of Pu-Yi
18 was broken down in his cross-examination we contend.
19 Considering the present personal condition of Pu-Yi,
20 it will easily be understood to what extent the basis
21 of his testimony may have influenced his state of mind
22 because of his present circumstances, which fact must
23 also be taken into consideration in weighing his
24 testimony. On the other hand, Mr. Woodhead's testimony
25 1. Ex. No. 222 and a few documents immediately following.

1 established facts entirely contrary to those testified to
2 by Pu-Yi.¹ It was made clear by this testimony that the
3 state was not a puppet at least at the time when Manchu-
4 kuo was established as well as when it was recognized by
5 Japan.

6 118. As far as the Japanese Government was con-
7 cerned, now that Manchukuo had actually been established,
8 she wanted to have it guarantee the self-existence and
9 self-defense of Japan which had been endangered in the
10 past due to the misgovernment and extortion of the Chang
11 family in Manchuria.

12 119. The Lytton Report states as follows:²

13 "It must be apparent to every reader of the preceding
14 chapter that the issues involved in this conflict are not
15 as simple as they are often represented to be. They are,
16 on the contrary, exceedingly complicated, and only an
17 intimate knowledge of all the facts, as well as of their
18 historical background, should entitle anyone to express
19 a definite opinion upon the situation. This is not a
20 case in which one country has declared war on another
21 country without previously exhausting the opportunities
22 for conciliation provided in the Covenant of the League
23 of nations. Neither is it a simple case of the

24
25 (1. Ex. 3158.
2. p. 263-4.)

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23 of nations. Neither is it a simple case of the
24

25 (1. Ex. 3158.
2. p. 263-4.)

1 violation of the frontier of one country by the armed
2 forces of a neighboring country, because in Manchuria
3 there are many features without an exact parallel in
4 other parts of the world."

5 It is always difficult to know the real
6 truth by way of only superficial arguments on
7 international law, simple documents or opinions of
8 individuals.

9 With respect to the position of the Sovereignty
10 of Manchuria, we find in the Lytton Report that

11 "China was disturbed by large bandit forces
12 which frequently interfered with communications;
13 when the Washington Conference was still in session,
14 there existed no fewer than three Governments professing
15 to be independent, not to mention the virtually
16 autonomous status of a number of provinces or parts
17 of provinces; the Central Government's authority is
18 still weak, is not, at least openly, repudiated; and
19 the independence of Manchuria was declared by Marshal
20 Chang Tso-lin."¹

21 Concerning the restoration of the status quo
22 ante of the Manchurian Incident, it is out of the
23 question according to the Lytton Report which goes
24 on to say as follows:
25

1. p. 27

1 "It must be clear from everything that we
2 have already said that a mere restoration of the status
3 quo ante would be no solution. Since the present
4 conflict arose out of the conditions prevailing before
5 last September, to restore these conditions would
6 merely be to invite a repetition of the trouble. It
7 would be to treat the whole question theoretically
8 and to leave out of account the realities of the
9 situation."¹

10 "As already stated, there is no question
11 of returning to the conditions before September, 1931.
12 A satisfactory regime for the future might be evolved
13 out of the present one without any violent change."²

14 Further, under Paragraph 4 of the Conditions
15 of settlement, it states:

16 "The rights and interests of Japan in
17 Manchuria are facts which cannot be ignored, and any
18 solution which failed to recognize them and to take
19 into account also the historical associations of Japan
20 with that country would not be satisfactory."³

22 Such being the fact, it was admitted that
23 there was no question of Manchuria returning during
24 the tenure of the SAITO and INUKAI Cabinets, to the

25 1. p. 266
2. p. 271
3. p. 272

1 conditions before the Incident for the sake of future
2 peace of Japan and Manchuria. It was but natural
3 that everybody thought it proper, as it was desired
4 by the people in Manchuria as well as Mr. Pu-Yi at
5 that time, to promote the growth of Manchukuo which
6 had already come into being. The most deliberate studies
7 carried out by the Japanese Foreign Office at that
8 time finally reached the conclusion, as stated in
9 the Lytton Report as well as in Japan's observations
10 to the League of Nations, that the establishment of
11 Manchukuo was the result of self-disintegration within
12 a nation and does not constitute any violation whatever
13 of the stipulations of treaties and the Japanese
14 Government came to make its mind to accord recognition
15 to the New State inasmuch as her foundation had already
16 been laid and there was good prospects for her future
17 development. However, further studies of this question
18 had been continued until the final announcement.

19 THE PRESIDENT: We will recess for fifteen
20 minutes.

21 (Whereupon, at 1045, a recess was
22 taken until 1100, after which the proceed-
23 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. McManus.

4 MR. McMANUS: 120. During that time, a
5 decision that Manchukuo should be recognized was
6 adopted by the House of Representatives in 1932.
7 The awkward position in which the Kwantung Army
8 was placed with respect to the New Government and
9 the task of maintaining peace and order is clearly
10 set forth in the note left behind by HONJO and
11 KATAKURA's testimony.

12 121. These studies by the Foreign Office
13 and the reasons and contents of the approval by the
14 Government of them were stated in detail by Foreign
15 Minister UCHIDA in his replies to the deliberations
16 at a meeting of the Privy Council on September 13,¹
17 the gist of which is as follows:

18 These quotes are all contained in exhibit
19 241. Although they might appear to be from different
20 documents, they are all contained in this one exhibit.
21 I quote:

22 "The action of September 18 was nothing but
23 the exercise of our right of self-defense. It is
24 true, however, that this action was taken advantage
25 1. Ex. 241.

1 of by the people of Manchukuo for creating a new
2 state, but . . . recognizing (the creation of the
3 new state was entirely based on) the free will of
4 the people of Manchukuo. The Nine Power Pact provides
5 that the Chinese territorial integrity shall be
6 respected, but it makes no provision at all for a
7 case where a part of China becomes independent as the
8 result of China's own disintegration. Of course, in
9 this respect, various views are held in the United
10 States and other countries, but these are their own
11 views. We should go ahead with the view given above.
12 In fact, when Ambassador DEBUCHI recently approached
13 the American Government authorities and informally
14 asked if they would protest in case Japan should
15 recognize Manchukuo, they replied that they had not
16 the slightest intention of making a protest or con-
17 voking a Nine Power conference, inasmuch as there
18 was no hope of such a conference reaching any con-
19 clusion. Besides, the convocation of Nine Power
20 conference will be opposed by some European countries.

22 "The powers are concerned with the open
23 door principle, principle of equal opportunity, etc.,
24 but we do not see any conflict between the documents
25 of this bill and these principles."

Further, Privy Councillor ISHII, an

1 authority on Japan's foreign diplomacy, stated in
2 substance as follows at the same meeting of the Privy
3 Council:

4 ". . . the independence of Manchukuo was
5 due to the disintegration of China and that the
6 territorial integrity of the Republic of China was
7 broken by none other than Manchukuo. This will
8 nullify the argument that Japan violated the Nine
9 Power Pact. Now that Japan has concluded an alliance
10 with new Manchukuo for joint national defense, I
11 believe there will be no room for opposing the
12 stationing of Japanese troops in Manchuria, thus
13 making the League's past resolution a dead letter.

14 "Now, supposing that the Lytton's Inquiry
15 Commission recognized China's sovereignty over
16 Manchuria and recommended that China allow autonomy
17 to Manchukuo, and supposing the League adopted this
18 recommendation, Japan need not comment on it. It is
19 for Manchukuo herself to assert that an independent
20 state should not be placed under the sovereignty of
21 any other country. At any rate, in consequence of the
22 independence of Manchukuo, it has become unnecessary
23 for the League of Nations to deliberate on the Man-
24 churian question under Article XV of the League's
25 covenant. It was rather strange that the Manchurian

1 and the Mongolian races had started no independence
2 movement up to now. . . and it will not be difficult
3 to make them (Lord Lytton's party) understand the
4 creation of Manchukuo as well as the problem of
5 racial self-determination."

6 The annexed documents to the Protocol
7 between Japan and Manchukuo contain the agreements
8 stipulated in the following letters which were con-
9 firmed and made official. These letters were exchanged
10 at an early period of the establishment of Manchukuo
11 at the request, it must be noted, of the Regent:

12 122. A letter addressed to HONJO, Commander
13 of the Kwantung Army, from Regent Pu-Yi of Manchukuo
14 under date of March 10, 1932, and

15 A letter in reply addressed to Regent Pu-Yi
16 of Manchukuo from the said Commander HONJO under date
17 of March 12, 1932.

18 123. Witness Woodhead, in his affidavit¹
19 states the impressions he received at the time when
20 he had an interview with Emperor Pu-Yi in September,
21 1932, and thereafter, concerning Mr. Pu-Yi's adminis-
22 trative policy as follows:
23

24 1. "In October 1930 at a private lunch with
25 the Emperor in Tientsin, I had remarked that perhaps

1. Ex. 3158.

next time we met he might not be so accessible. "You see," he observed, "that your prophecy has been fulfilled."

2. "To the question whether he was really happy in his present position, he replied with emphasis that he was."

3. "I then remarked that the general impression that prevailed in Shanghai and indeed throughout China was that he had been coerced into his present position, and that he was not a free agent. From this report he emphatically dissented." (Thus, it was made clear that this rumor at that time was quite groundless.)

4. Ambition of the Regent.

"He had, he maintained, been actuated by a double motive in accepting the office of the Chief Executive. First, on account of political reasons. When the Manchu Dynasty abdicated it had been with the avowed intention of restoring the sovereignty to the people. Twenty years had elapsed since. . . . The political power had passed not into the hands of the people, but of ambitious and grasping militarists (Chinese military cliques). There had been incessant civil war and disorder. China's relations with Foreign Powers had grown steadily worse. And the

1 pledge made in the abdication treaty that absolute
2 equality would be maintained between the five races
3 of China had been flagrantly violated.

4 "Secondly, he was actuated by personal
5 motives. Manchuria was his ancestral home. It was
6 only natural that he should feel greatly interested
7 in what was happening in this territory. Moreover,
8 every undertaking to the Manchu Dynasty contained in
9 the abdication agreement had been wantonly violated.
10 The allowance to be paid to him by the State had been
11 cancelled. His private property had been confiscated.
12 He had been treated with studied disrespect by the
13 Kuomintang. And the ancestral tombs had been
14 violated. . .

15 "It was only natural, therefore, that when
16 trouble occurred in Manchuria he should follow
17 developments with great attention and wonder whether
18 he was not destined to play some part in an attempt
19 to improve the condition of his ancestral provinces."
20

21 5. "At no time, in Tientsin, in the Leased
22 Territory, or in Manchuria, was he ever under any
23 restraint, nor was any coercion applied to him."

24 6. "I asked his views on the government
25 of Manchukuo, and he at once replied that he 'favored
the adoption of the Wang Tao Doctrine, based upon

1 the teachings of Confucious.' Competition and strife
2 between nations only led to war and intense suffering.
3 Confucious taught that governments should rule hon-
4 estly, observe the golden rule toward each other,
5 and work for humanity and peace. That crystallized
6 the Oriental spirit. That was the spirit in which
7 Manchukuo had issued its declaration of independence."

8 7. With respect to international problems:

9 "We should like to have the friendliest
10 relations with Great Britain and all the other Powers.
11 And we believe that we can contribute towards the
12 realization of world peace."
13

14 8. With respect to internal problems:

15 "Our domestic policy will aim at making it
16 possible to lead peaceful and happy lives. We shall
17 have no political parties in the new State. They
18 only make for disharmony." (Thus he anticipated the
19 struggle which might follow immediately upon the
20 establishment of the State and was carefully prepared
21 for it.)

22 9. Concerning bandits: ". . ., it was not
23 a new problem and required all to give all the
24 assistance in their power to eliminate this evil.
25 In this connection, he paid a very warm tribute to
General MUTO, the Chief of the Japanese delegation

1 to Manchukuo."

2 10. Trusting General MUTO, Commander in
3 Chief of the Kwantung Army at that time:

4 "And he (Pu-Yi) felt confident that General
5 MUTO would help to smooth over past and present dif-
6 ficulties."

7 Under the circumstances stated above, Pu-Yi
8 made it clear that Manchukuo was not a puppet state.

9 The latter part of paragraph 8 of the ARAKI
10 affidavit also shows the aspiration entertained by
11 Pu-Yi, Emperor of Manchukuo at that time, and reveals
12 that Pu-Yi was never placed under any restrictions to
13 put into practice his aspiration and to administer
14 state affairs out of his own free will and that he
15 was very keen to execute his ideas.

16 124. The prosecution, as it has already been
17 mentioned in the foregoing, has tried to establish
18 the alleged fact that there was an intention to
19 create a puppet state by means of such phrases as
20 "seizure of real power" and "fait accompli" which it
21 has picked out of the documents obtained from the
22 Army and the Foreign Office. Conceding that these
23 documents are authentic, there was no knowing under
24 the then prevailing circumstances what disputes
25 might happen should influential officials in the

1 Manchukuo Government be permitted to enjoy authorities
2 such as stated by Pu-Yi in the foregoing and later
3 proved by the duplicity in Kolumbuir in North Manchuria
4 as well as in Jehol, these steps were but the natural
5 measures which should be adopted by any country that
6 might anticipate any suffering from the disputes.
7 Especially, as the Army had a very serious responsi-
8 bility for any of these local disturbances, these
9 phrases must have been added by the committee when
10 this question was brought before the Manchuria-
11 Mongolian Deliberation Council attached to the Cabinet
12 at that time, but it was far from the intention of
13 the Government to take them to mean monopolizing
14 Manchuria for the purpose of despoilment. It should
15 be considered to be prepared for an emergency.
16 Granted that these phrases had been included in the
17 first draft, it does not seem that the Cabinet
18 demanded their enforcement. Still less so as the
19 authenticity of these documents is not well established
20 and ARAKI's responsibility in this connection is not
21 clear.

22 126. The matter of deciding Japan's attitude
23 towards the establishment and recognition of Manchukuo
24 being related to diplomacy and was under the charge
25 of the Foreign Ministry, it was, therefore, the

1 natural duty of ARAKI, as Minister of War, to respect
2 the views of the studies of the Foreign Office and
3 have the Army do everything in its power to be fully
4 prepared for the maintenance of peace and order and
5 the safeguarding of national defense so that nothing
6 was to be desired on the part of the army. Therefore,
7 the demand in this respect was proposed, but other
8 than that he listened to and relied upon the views
9 of the Foreign Minister. The views stated above
10 were explained by the Foreign Minister and was later
11 approved and was made the decision of the Government,
12 which became the standard for further actions.
13 Should there have been aggression or its preparations
14 at that time with respect to the military action, it
15 would become a different story, but the lack of the
16 existence of such aggression or its preparation has
17 already been established. That being so, it is
18 natural that ARAKI, as the Minister of War, should
19 bear no responsibility with respect to matters
20 regarding treaties and other similar objects of a
21 crime. It was but too natural to follow these views
22 inasmuch as the reasons made clear said, as stated
23 above, that they did not violate the provisions of
24 treaties. Moreover, the term of a puppet government
25 is used by the third party based upon suspicion for

1 some political purposes or is quoted in connection
2 with some political intrigues for ulterior purposes,
3 and, therefore, should not be concluded lightly.
4 With the testimony already stated above, the contrary
5 fact to a puppet government will be established.

6 127. In addition, the fact that ARAKI
7 respected international treaties and adopted a very
8 prudent attitude to such an extent that peace and
9 order could be maintained is shown in the interroga-
10 tion taken by the prosecution on ARAKI at Sugamo
11 Prison,¹ as follows:

12 "I demanded that it (recognition) should be
13 postponed till the decision is reached by the League
14 of Nations, and I thought it could wait so long as
15 order was maintained." (March 8)

16 "I thought the postponement (of the recogni-
17 tion) was better provided order could be maintained."
18 (March 8)

19 "We did not think that it violated the
20 Treaty (the Nine Power Treaty)." (February 10).

21 I shall omit the next paragraph.

22 As can be seen from the evidence, at the
23 Privy Council meeting in January 1932, ARAKI replied
24 only to matters relating to the maintenance of peace
25

1. Ex. 187.

1 and order, and at the meeting held on September 13,
2 1932, when the recognition was approved, he only
3 stated about the amount of the military expenses to
4 be shared by Manchukuo in her joint defense with
5 Japan by way of the maintenance of peace and order.
6 It is added further, in order to show clearly the
7 whereabouts of the responsibility arising out of
8 official duties, that matters pertaining to treaties
9 and pending diplomatic questions were handled at that
10 meeting by the Foreign Minister.

11 VIII. Pacification of North Manchuria,
12 Kolombuir and Jehol.

13 129. The problems of the pacification of
14 North Manchuria, Kolombuir and Jehol all arose after
15 the declaration of the independence of Manchukuo.
16 Furthermore, the last pacification operations in
17 North Manchuria and the problems of Jehol and
18 Kolombuir arose following the signing of the Japan-
19 Manchukuo Protocol were mainly problems of the
20 preservation of law and order within the State of
21 Manchukuo. Japan, namely, fulfilled its international
22 obligations arising from the Japan-Manchukuo protocol
23 by protecting Japanese residents in Manchukuo and by
24 carrying out mopping-up operations jointly with the
25 Manchukuoan forces against the subversive elements

1 whose activities disrupted the law and order within
2 that country.^{1.}

3 130. The mopping-up operations were first
4 directed against General Ma Chang-shen, who, having
5 once pledged allegiance to Manchukuo, assumed an
6 important position in the government, and later,
7 against the anti-Kirin Army of Ting Chao and the
8 Army of Resistance against Japan and Manchukuo led
9 by Li Tu, both of which attempted rebellion in
10 April 1932. The operations against these armies
11 were started then, and continued up to the time of
12 Ting Chao's surrender in the following year, 1933.
13 Ting Chao later assumed an important post in the
14 Manchukuoan state. We shall omit describing the
15 details of these facts inasmuch as they are noted in
16 General ENDO's testimony,² MAZAKI's testimony,³ and
17 ARAKI's affidavit.^{4.}

18 It is clear from the Lytton Report mentioned
19 before that the Chinese side positively conducted
20 activities aimed at disturbing peace and order in
21 this area after the termination of the Shanghai
22 Incident, pretending that they had won victory in
23 that incident.
24

25 1. Tr. 28153, Ex. 3161. 3. Tr. 28461, Ex. 3168.
2. Tr. 19505, Ex. 2412. 4. Tr. 28154, Ex. 3161.

1 131. As a result of the attempted insurrec-
2 tion of Su Ping-Wei in December 1932 on which occasion
3 two Japanese air officers of a force-landed aircraft
4 were killed and the Japanese residents were endangered,
5 Kolombuir was also made a target of the pacification
6 operations of Japanese-Manchukuoan troops.

7 General ARAKI requested the Kwantung Army
8 to consider fully the maintenance of good relations
9 particularly with the Soviet Union. The Kwantung
10 Army acted in accordance with this request and the
11 Soviet Union also understood its position and cooper-
12 ated with the Kwantung Army in rescuing Japanese
13 residents. Thus the insurrection was suppressed
14 within a short period of time.^{1.}

15 132. The contention of the prosecution
16 concerning the pacification of Jehol was based on
17 court exhibit 192-A,^{2.} which is a statement issued
18 by the Foreign Affairs Department of China.

19 However, in considering this document, one
20 should bear in mind the fact that it was drawn up
21 after the termination of the Pacific War. The
22 prosecution's allegation to the effect that the in-
23 vasion of Jehol was commenced in July 1932 seems to
24

25 1. Ex. 2412, ENDO's testimony, Tr. 19496;
Ex. 3168, MAZAKI's testimony, Tr. 28461;
Ex. 3161, ARAKI's testimony, Tr. 28155.
2. Tr. 2269.

1 point at the skirmish caused as a result of the
2 firing by the Chinese troops on the Japanese
3 searching party, sent out after a Japanese govern-
4 ment official by name of ISHIMOTO, who had been
5 abducted from a train while traveling in Jehol
6 province. The small Japanese searching party, however,
7 withdrew immediately afterwards.¹ The Jehol campaign
8 was carried out by the Japanese-Manchukuoan troops in
9 the spring of the following year under the circumstances
10 as described in the attached table.²

11 War Minister ARAKI requested the Kwantung
12 Army not to let this campaign affect North China, in
13 particular. The Kwantung Army acted well in accord-
14 ance with this request and stopped at the line of the
15 Great Wall, in spite of tremendous operational dis-
16 advantages arising therefrom.

17 The prosecution exhibit 3165, a telegram
18 from the War Minister to the Commander in Chief of
19 the Kwantung Army shows that this expedition was
20 legal, as it was a joint operation of the Japanese
21 and Manchukuoan troops in conformity with the pro-
22 visions of the Japan-Manchukuoan Protocol, and that
23 the prosecution's allegation is without any
24

25 1. Lytton Report, p. 109 of Japanese text.
2. Tr. 19496, Ex. 2412.

1 foundation.^{1.}

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1. Ex. 2412, ENDO's affidavit, Tr. 19496;
Ex. 3168, MAZAKI's testimony, Tr. 28461;
Ex. 3375, KOISO's testimony, Tr. 32202;
Lytton Report (Japanese Tr. pp. 147-148).

1 133. As it is stated in the foregoing para-
2 graphs, the events which occurred after March 1, 1932,
3 when Manchukuo declared its independence in response
4 to the wishes of its leaders and thirty million people,
5 and particularly after September 15 of the same year,
6 when Japan officially recognized the state of Manchukuo,
7 were entirely of a different nature as compared with
8 the events which occurred prior to these dates and were
9 the acts undertaken by Japan purely to discharge its
10 duties arising from her international obligations. The
11 Japanese Army therefore carried into practice the pro-
12 visions pertaining to the military matters stipulated
13 in the agreement between the two governments and thus
14 discharged its duties arising from the protocol binding
15 both the Japanese and Manchukuoan governments. How,
16 then, can these acts be regarded as criminal?
17

18 I shall omit the next three paragraphs.

19 VIII TANGKU TRUCE AGREEMENT AND DAIREN

20 CONFERENCE

21 135. The contents of the Tangu Truce Agree-
22 ment are clear from court exhibit 193. This agreement
23 was signed by General Ho Ying-Ching, the representative
24 of the northern branch of the Military Council of the
25 Kuomintang Government, and Major-General OKAMURA, Neiji,
~~Vice-Chief of Staff of the Kwantung Army, on May 31, 1933.~~

1 The circumstances leading up to the conclusion
2 of this agreement show that the resistance offered
3 against the Japanese troops was motivated by the
4 intention of Chiang Hsueh-liang and not by that of the
5 Chinese Central Government. The retirement from public
6 life of Chiang Hsueh-liang took place prior to the
7 conclusion of this agreement.

8 We can have therein a glimpse of the true
9 nature of the Manchurian regime and its relationship
10 with the Central Government of China, which tends to
11 show that Manchuria had not been completely under the
12 control of Manking as well as the complexity of the
13 Manchurian problem.

14 The Manchurian Incident was not a war between
15 Japan and China from the point of view of international
16 law, and therefore no peace treaty was signed after
17 its termination. A perfect state of peace was restored
18 in the relations between Japan and China following the
19 conclusion of this truce agreement among Japan, China
20 and the newly created state of Manchukuo.¹

21
22 136. Within one year and a half from the
23 assumption of the post of War Minister, ARAKI was able
24 to settle completely the armed conflicts resulting from

25 1. Testimony of witness ENDO, Saburo, tr. 19,496,
ex. 2412; MAZAKI, tr. 28,461, ex. 3168

1 the Manchurian Incident, which was not a war but an
2 outburst of the evils of long years' standing and a
3 most complex and difficult problem which successively
4 gave rise to new situations.¹ Can this be called the
5 commission of an act of aggression? I believe that we
6 should rather recognize therein his meritorious deed
7 which was conducive to the realization of the establish-
8 ment of peace.

9 If one recalls that after the conclusion of
10 this agreement, ARAKI began earnestly to strive for
11 the establishment of internal security and of measures
12 aimed at bringing about world peace from Asia, and that
13 he tried to persuade several senior members of his
14 cabinet within six months after the occurrence of the
15 Incident as the first step of his endeavors, conferred
16 with the British Ambassador and tried to guide properly
17 both the rightist and leftist factions without any
18 ideological prejudice, then one would understand clear-
19 ly his attitude towards the settlement of the Manchurian
20 Incident.²

22 137. Although it is an internationally
23 recognized fact that the Manchurian Incident had been
24 completely settled by the conclusion of the Tangku
25 Truce Agreement, the following material can also be

1. Ex. 3161, tr. 28,156

2. Ex. 3161, tr. 28,454

1 found in the transcript of the court proceedings.

2 a) General MAZAKI testified in his affi-
3 davit,¹ "Then the hostilities were finally settled by
4 the conclusion of Tangu Agreement."

5 b) Prosecution witness Major General TANAKA,
6 Ryukichi stated,² from the practical point of view,
7 peace was established between Japan and China with the
8 Tangku Truce.

9 c) Defense witness Major General KATAKURA
10 testified on March 24, 1947:

11 "Around about June of 1933 the Tangku Truce
12 was concluded between North China and the Manchurian
13 side, and in July the so-called Dairen Conference was
14 held in Dairen with representatives from Japan, Man-
15 churia, and North China. As a result of this confer-
16 ence the military strife between North China and Man-
17 churia was, at least for the time being, brought to a
18 close, and it was decided that other outstanding prob-
19 lems thereafter be settled through amicable processes,
20 and efforts by ARAKI were made to have one-time enemies
21 become friends."
22

23 The transcript page for this quote is 19,033.

24 4. The Dairen Conference

- 25
1. Tr. 28,462
2. Tr. 2,108

138. The Dairen Conference was held beginning from the middle of July, 1933, following the conclusion of the Tangku Truce Agreement, assembling representatives from Manchukuo and China. The conference took up postal and railway issues and reached agreements thereon.¹

The conference later studied the customs, telegraph, and other issues, and solved all issues by the spring of 1935.²

139. As I have stated above, the armed conflict known as the Manchurian Incident ended with the conclusion of the Tangku Truce Agreement, following which the Sino-Japanese relations became closer than before, and two years thereafter the two countries raised the status of their respective diplomatic envoys to ambassadors from that of ministers. In the meanwhile the powers gradually came to recognize the state of Manchukuo. The act of assuming the task of handling, after it had occurred, the Manchurian Incident, an incident which at one stage was feared and suspected might spread into a worldwide conflagration and of terminating the gruesome armed conflict and of laying the foundation for a closer relationship between China and

1. Ex. 2505, witness FURUYAMA, Katsuo, April 28, 1947.
2. Tr. 19,035, testimony of Major General KATAKURA, March 24, 1947.

1 and Japan could not have resulted from a policy based
2 solely upon aggressive ambitions and force. I hope
3 that the Tribunal will fully consider ARAKI's earnest
4 endeavors and peaceful intentions by which he contribu-
5 ted in bringing about such a smooth result.

6 The independence of Manchukuo, an extraordi-
7 nary change which occurred before the termination of
8 the armed conflict, was nothing but a concretion of the
9 trends of long years standing realized at the spur of
10 the military hostilities. From the standpoint of inter-
11 national law, arguments both for and against the crea-
12 tion of Manchukuo are held by various people. However,
13 if one takes into consideration the actual situation
14 which prevailed then and thereafter in China, one cannot
15 pass too rigid a judgment on this matter, especially
16 in the light of the fact that some influential inter-
17 national jurists had also recognized the legality of
18 the state of Manchukuo.

19 Furthermore, ARAKI, far from trying to ob-
20 scure the issue, attempted to discuss the matter fully
21 with the powers to find a clear and peaceful solution.
22 In the midst of his endeavors, to which he devoted him-
23 self, however, ARAKI finally broke down from an illness.

24 140. ARAKI and International Problems

25 A. The relations with the League of Nations.

1) Japan's relations with the League of Nations were rather strained at the time of ARAKI's assumption of the post of War Minister. As the sending of an inquiry commission had already been decided by the League, ARAKI considered it to be a good opportunity to have Japan's faith and the true state of affairs recognized fully. He received the League's commission, entertaining great hopes.

I shall omit the next paragraph.

141. It was as a result of War Minister ARAKI's collaboration with the powers that, on the occasion of the First Shanghai Incident, Japan adopted a cooperative attitude, accepting the good offices of the consular corps of Britain, America, France and Italy, and concluded the truce agreement in consideration of the position of Shanghai as an international city.

142. I shall omit relating here the circumstances which led to Japan's recognition of Manchukuo, as they were already explained in the chapter concerning the recognition of Manchukuo, in which, we believe, ARAKI's concern for the maintenance of international collaboration in regard to Japan's recognition of Man-

1. Ex. 3167, tr. 28,443; ex. 3163, tr. 28,433; ex. 3168, tr. 28,462

chukuo was sufficiently established.

1
2 143. With respect to Japan's relations with
3 the League of Nations, ARAKI endeavored to seek its
4 understanding up to the time of the opening of the
5 General Assembly, by doing his utmost to explain the
6 complexity of the Manchurian Incident and his desire
7 for the maintenance of peace in the future. In the
8 interrogation taken at Sugamo Prison he stated:

9 "While the policy of the League was ex-
10 cellent, they were blind to the actual state of affairs,
11 taking the Lytton Report as a basis for their state-
12 ment. I proposed a Far Eastern Conference in October,
13 1933, to discuss the pending questions. This was wide-
14 ly reported by newspapers. Also in November, I told the
15 press people that the policy of the League of Nations
16 was correct and that we should have remained with the
17 League."

18
19 144. At the time when Mr. MATSUOKA was to
20 be despatched as Japan's chief delegate to the League
21 of Nations, the cabinet then decided that Japan should
22 remain within the League of Nations to the last and
23 endeavor to obtain its complete understanding, and the
24 instruction to the above effect was given to delegate
25 MATSUOKA. The resolution of the General Assembly was
1. Ex. 188 C, Feb. 7, 1946

1 adopted, however, before the termination of the hos-
2 tilities. Japan's position was not understood finally
3 and she withdrew from the League of Nations in accord-
4 ance with Clause 3, Article I of the Covenant. How much
5 ARAKI regretted this action appears in paragraph 10 of
6 the testimony of his close friend Lieutenant-General,
7 NAKAJIMA made on September 16, 1947.¹

8 145. As Japan's secession from the League of
9 Nations was an inevitable step for her and there exist-
10 ed between the League and Japan no differences with the
11 exception of the Manchurian issue, Japan tried even
12 thereafter to continue to cooperate with the League in
13 its various peaceful projects.

14 I shall omit the balance of that paragraph.

15 In other words, it is clear that Japan did
16 not intend from the outset to withdraw from the League
17 of Nations and that the step was taken also against the
18 will of ARAKI. The then government decided for the
19 withdrawal on account of the lack of the agreement of
20 views with the League of Nations resulting from a fail-
21 ure of the diplomatic negotiations. ARAKI, as stated
22 above, regretted it, but he nevertheless gave his
23 agreement to this action from the viewpoint of his
24 responsibility for the maintenance of law and order in
25 1. Tr. 28,557

1 Manchuria. That he had fully respected the treaties
2 and international agreements we have already shown.

3 However, as the handling of these affairs
4 fell under the charge of the Foreign Office, ARAKI
5 respected the opinion of the Foreign Office. The opinion
6 voiced by him, therefore, had only an indirect effect.
7 Thus ARAKI could not carry into practice fully what he
8 had personally intended.

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146. A passage of the HARADA-SATIONJI Memoirs¹ states that together with Foreign Minister UCHIDA, ARAKI insisted on an immediate secession from the League and differed from other members of his cabinet on this point. However, ARAKI, as said above, left the task of handling international problems in the hands of the Foreign Minister, whom he trusted. Therefore, the fact that he supported the Foreign Minister's views by expressing the same views himself, is nothing but a proof of his respect of the opinions of an expert and of the confidence he had placed in the Foreign Office. Viewed in this light, it can be said that the other cabinet ministers were irresponsible persons and that there was nothing unusual about the attitude taken by ARAKI in agreeing with the Foreign Minister's views, which he himself did not advocate positively. Furthermore, the Diet by then had already adopted a resolution approving Japan's move and the atmosphere which prevailed in Geneva was fatal. One must also remember that all this occurred during the last part of February when the final outcome of the issue had already been definitely shaped.

B) The Advocacy of the Far Eastern
Peace Conference.

147. ARAKI was by nature a proponent of inter-
1. Ex. 3772

1 national collaboration. In the concluding portion of
2 his speech in "Japan in Emergency", which was tendered
3 as a prosecution exhibit, ARAKI stated that the light
4 will soon shine in the East, and the future of Japan
5 and of Asia would be promising and, together with
6 Europe and America, it will maintain the real peace
7 of the world.

8 In the course of cross-examination, defendant
9 SHIRATORI replied affirmatively to the question put
10 to him by British prosecutor Comyns-Carr whether or
11 not ARAKI was an advocate of international collaboration,
12 and added an explanation to the effect that ARAKI's
13 spirit of international collaboration did not differ
14 fundamentally from that of Mr. SHIDEHARA.

15 148. ARAKI particularly regretted¹ that
16 Japan had parted with the League of Nations and wished,
17 as a remedial measure therefor, to convene a Far
18 Eastern peace conference assembling all nations having
19 interests in the Far East in order to strive for the
20 establishment of a peace which truly conformed to the
21 existing conditions in that area.² It is as previously
22 stated that ARAKI endeavored for the realization of this
23 conference and engaged in the basic study of emergency
24

25 1. Ex. 3161, T. 28,557
2. Ex. 3161, T. 28,446.

1 national policy projects including this matter and by
2 preparing provisional outlines of his plan immediately
3 after the complete termination of the hostilities in
4 Manchuria brought about by the conclusion of the
5 Tangku Truce Agreement.

6 149. For the purpose of discussing this
7 project fully in the Diet Session of January 1934,
8 he requested the fellow members of his cabinet to
9 exchange their opinions so that he would be able to
10 face the Diet Session after having obtained the
11 unanimity of views on this subject. He therefore held
12 conferences of the ministers concerned (First, a
13 Five Ministers conference, including Premier, Foreign,
14 War, Navy and Finance Ministers; Second, a Six Minis-
15 ters conference, centering around Home, Agriculture,
16 Finance and Prime Ministers and also including War
17 and Communications Ministers - the latter being called
18 to participate as the representative of the political
19 parties) and gradually progressed towards the realiz-
20 ation of his project. Unfortunately, he broke down
21 from pneumonia on January 1, 1934, and his condition
22 became critical. However, his sense of responsibility
23 did not allow him to neglect the important session of
24 the Diet by remaining in his sickbed. He therefore
25 resigned from his post on January 23, after having

earnestly conveyed his cherished ideas to the Prime
1 Minister and asked him to proceed with the establish-
2 ment of a remedial measure.¹

3 150. Be that as it may, it was most unfortun-
4 ate that there existed then within the government no
5 one who was capable of carrying this project into
6 practice, and this plan which was aimed at bringing
7 about stability in Japan and peace in the world was
8 consigned to oblivion. Thus he was disappointed with
9 the members of the SAITO Cabinet. Later, when he was
10 asked to accept again the portfolio of War following
11 the resignation of his successor, War Minister HAYASHI,
12 he declined the offer finally and would not enter the
13 SAITO Cabinet again.²

15 151. The activities of ARAKI for the two years
16 since he had assumed the post of War Minister in Decem-
17 ber 1931, amidst the strained emergency situation to
18 the time when he settled the Manchurian Incident and
19 stabilized thoughts, which tended to go to the extreme,
20 were only a prelude, as it were, of his efforts aimed
21 at contributing to the realization of his ultimate ideal,
22 through which he hoped to eliminate the evils both at
23

- 24 1. Ex. 3166, and testimonies of Witnesses HASAKI
25 and MAKAJIMA, T. 28,446, Ex. 3166; T. 28558,
Ex. 3173
2. Ex. 3161, T. 28,163

home and abroad and to serve his country with the "Kodo" ideals he had long entertained, as well as to assist in laying the foundation for the establishment of world peace. His intentions are apparent in "The Outline of the Draft of Emergency Measures"¹ although this single document is not sufficient to bring the whole picture to light.

152. A review of his activities during those two years, in which he worked earnestly for the realization of this ideal, will reveal ARAKI's intentions at this juncture.

C). The Problem of International Treaties.

We contend that the difference of opinions on the question of international treaties does not, of itself, constitute a crime. We believe that in the event a law concerning war crimes and war trials is stipulated in the future as a result of a fair and just conference of the world powers, then such a law would have a binding force on cases involving violations of international treaties. We cannot accept the theory that the international treaties and agreements as they exist today should have the same binding power. Furthermore, even if we conceded hypothetically to the contention of the prosecution that an interpretation

1. Ex. 3166, T. 28,446

1 of the prosecution that an interpretation placed by
2 those who are powerful of the international treaties
3 is just and right while another interpretation by
4 those who are weak may be criminal, we still claim
5 that, as far as ARAKI himself was concerned, there
6 cannot be found any instance of his violating inter-
7 national treaties and agreements. We shall first
8 rebut the following court exhibits which, the prosecu-
9 tion alleges, are related to ARAKI's testimony concern-
10 ing international treaties, made while he was in the
11 witness box.

12 154. Rebuttal Against Court Exhibit 1104¹

13 This exhibit is Mr. STIMSON's affidavit.

14 Relying on this affidavit, the prosecution contends
15 that, on November 24, 1931, the Japanese Foreign Minister
16 gave the American Ambassador an assurance saying,
17 "the Premier, the Secretary of War, the Chief of Staff
18 and he are agreed that towards Chinchow there shall be
19 no hostile operations and orders to that effect have
20 been issued." According to the same affidavit, how-
21 ever, the military action against the Chinchow Area
22 was again started after December 11, 1931 and Chinchow
23 was captured by the Japanese Troops on January 3, 1932.
24 It further stated that, at this stage, the annihilation
25

1 of the army organized by Chiang Chih-shih was completed
2 and the control of the whole Manchuria fell into Japan-
3 ese hands.

4 This affidavit is full of exaggeration and is
5 written with a complete disregard of the changes of
6 the actual situation. For instance, the allegation
7 that the army organized by Chiang Chih-shih was com-
8 pletely annihilated by the capture of Chinchow and
9 the whole of Manchuria was placed under Japanese
10 control, is nothing but an opinion, which is far too
11 remote from the facts already proven before this
12 Tribunal. This affidavit fails to note the fact that
13 the military expeditions to Chinchow were carried out
14 on two occasions, each under different circumstances,
15 and tends to give the impression as if the assurance
16 given on the previous occasion was broken on the next
17 occasion under exactly the same circumstances.

18 As the learned members of the Tribunal are
19 fully aware, the second military expedition against
20 Chinchow was carried out under the following circumstanc-
21 es: The discontinuation by Japan of the first expedi-
22 tion was utilized by the Chinchow regime as material
23 for counter-propaganda and they showed no sincerity
24 in the subsequent diplomatic negotiations, playing
25 only with treacherous ruses. Under the circumstances,

1 nothing worthy of note had been achieved in over a
2 month since the time of the previous cabinet. Mean-
3 while, soldier-bandits under the protection of Chiang
4 Hsueh-liang's regular troops commenced to make frequent
5 appearances even in the vicinity of Mukden, thus
6 endangering the safety of Japanese residents. It was
7 due to this newly created situation that Japan was
8 obliged to carry out another military expedition in
9 that area, and she attained her aim almost without
10 any bloodshed. The Tribunal will remember that the
11 above circumstances had already been explained in
12 connection with the account of the pacification of
13 Chinchow area. The affidavit in question further
14 stated that the operations were commenced on December
15 11th. According to this allegation, it becomes clear
16 that the expedition had already been started in the
17 field before ARAKI's assumption of the post of War
18 Minister. It would therefore be unjust to place the
19 responsibility for the breach of assurance on ARAKI.

20 In explaining the reason why Japanese expedi-
21 tionary forces, which had once been withdrawn under the
22 WAKATSUKI Cabinet, had to be sent out again for the
23 pacification of the same area under the INUKAI Cabinet,
24 defendant MINAMI testified that the step was taken on
25

1 account of the change of the circumstances.¹

2 155. Rebuttal Against Court Exhibit 2219.²

3 This exhibit had been offered in evidence as
4 an interrogation by the prosecution of defendant ARAKI.
5 However, this document in reality is nothing but a memo
6 taken down by the prosecution and is quite incomplete
7 as an interrogation, as it contains many erroneous
8 facts written down without correction through inadequate
9 interpretation.

10 It appears that this exhibit purports to show
11 where the responsibility lies for the rejection of the
12 protest lodged by the United States in the Spring of
13 1938 concerning the American rights and interests in
14 China. However, as it is already clear to the Tribunal,
15 the problems concerning diplomacy and military affairs
16 were all studied at the time by the Five Ministers
17 Conference, including Prime, War, Navy, Foreign and
18 Finance Ministers. The remaining cabinet members
19 having never been consulted about those matters, it
20 was not possible for ARAKI, who was then the Education
21 Minister, to know this fact, and, consequently, he had
22 no responsibility therefor. This fact has been clearly
23 testified to by witness RITA³ as well as witness ISHIWATA.⁴

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25
1. T. 19,921-2
 2. T. 15,841
 3. Ex. 3169, T. 28,487
 4. T. 15,837

156. Rebuttal Against Court Exhibit 2218.¹

1 This exhibit is a part of ARAKI's interroga-
2 tion taken by the prosecution pertaining to the rela-
3 tions between the Five Ministers Conference and the
4 Cabinet Meeting, and which purports to place the responsi-
5 bility for diplomacy and the military affairs on ARAKI,
6 who was Education Minister at the time.

7 In the first place, the questions and answers
8 contained therein lack clarity. ARAKI explained therein
9 that, should there have arisen important matters, they
10 would have been discussed at the cabinet meeting, but
11 as the importance of the matters then being considered
12 by the Five Ministers conference had not yet been
13 determined, they were not referred to the cabinet meeting.

14 It also seems that various other matters are
15 confusedly interwoven in that part of the interrogation.
16 In the final analysis, it seems to end in ARAKI's favor.
17 It is clear from its final paragraph that, although
18 ARAKI was of the opinion that the diplomatic policies
19 should be discussed at the cabinet meeting, those matters
20 were not discussed before ordinary cabinet sessions be-
21 cause the five ministers had strongly rejected the idea
22 that the cabinet ministers other than themselves should
23 participate in the discussions of the Five Ministers
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1 Conference. It was at the time when Japan was entirely
2 absorbed in the prosecution of the China Incident. This
3 point can also be made clear from the testimony of
4 witnesses ARITA and ISHIWATA.

5 157. Rebuttal Against Court Exhibit 2216.¹

6 This exhibit appears to contain questions and
7 answers on the operational matters of the employment of
8 troops, but, on account of inadequate translation,
9 the meanings of some sentences lack clarity and precis-
10 ion. Moreover, whatever interpretation one may place
11 on them, it is clear that they are only devoted to
12 explaining the fundamental principles for the despatch-
13 ing of the troops. ARAKI being Exucation Minister at
14 the time, merely explained the principles for the use
15 of the troops. In any event, these answers cannot
16 constitute the basis of ARAKI's responsibility as
17 Education Minister.

158. Rebuttal Against court exhibit 2222¹

1 This exhibit contains questions put to
2 ARAKI on the subject of the cabinet meetings and
3 the Privy Council session concerning Japan's with-
4 drawal from the League of Nations.
5

6 As it was stated before, the SAITO Cabinet,
7 having decided at its cabinet meeting not to secede
8 from the League of Nations and to endeavor to seek
9 the League's understanding to the last, instructed
10 Chief Delegate MATSUOKA to that effect before his
11 departure. However, as the result of the develop-
12 ments of the proceedings at the General Assembly,
13 Japan was obliged to leave the League of Nations,
14 and the Government, following the lead, had to make
15 its determination.²
16

17 Such were the circumstances leading up to
18 Japan's withdrawal from the League of Nations. How-
19 ever, the act itself of seceding from the League was
20 permitted by its Covenant, in which there was no
21 provision stipulating that the exercise of this right
22 constituted a crime. Furthermore, in the course of
23 an interrogation by a prosecutor at the Sugamo Prison,
24 ARAKI gave the following reply:

- 25
1. Tr. 15,845
 2. Ex. 3161, Tr. 28,170

1 "From my point of view, I felt sorry about
2 the withdrawal from the League of Nations. I believed
3 that Japan should have stayed in the League.

4 "I also told a newspaper reporter assigned
5 to the War Office that Japan should stay in the
6 League of Nations. My talk was published in the
7 press and the people said that I was weak."¹

8 Witness MAZAKI also stated in his testimony²
9 that he "was under the impression that the War Minister
10 had been prepared with an opinion with which he hoped
11 to persuade the League of Nations."

12 Chapter 5. The Application for the Dismissal
13 of All Charges Concerning the
14 Manchurian Incident.

15 159. We respectfully ask the Tribunal to
16 seriously consider the dismissal of all charges con-
17 cerning the Manchurian Incident, separating them from
18 all the Counts of the Indictment including conspiracy,
19 on the grounds (a) that the Manchurian Incident was
20 an incident of a peculiar and unique nature and that
21 it should be regarded as a problem already solved,
22 and (b) that the jurisdiction of this Tribunal only
23 covers the war which was in existence at the time of
24

- 25 1. Ex. 187, Interrogation of February 11.
2. Ex. No. 3168, Tr. 28,463

1 the issuance of the Potsdam Declaration. However,
2 here we shall deal only with the former ground,
3 leaving the latter to the general summation.

4 The Peculiar Character of the Manchurian
5 Incident.

6 160. The Manchurian Incident was not a war.
7 The Manchurian Incident was a military action which
8 commenced by the Lukouchiao Incident and ended by
9 the conclusion of the Tangku Truce Agreement. How-
10 ever, it was not a war intended to be such by the
11 governments of the two countries involved but a
12 series of armed conflicts caused by untoward local
13 incidents. As it was shown already, the WAKATSUKI
14 Cabinet, which was in power at the time of the sudden
15 outbreak of the incident, proclaimed the exercise of
16 the right of self-defense. The succeeding INUKAI
17 and SAITO Cabinets continued the same policy. The
18 governments of the two countries involved always
19 maintained positions wherefrom they could enter peace
20 at any time, both having no intention to go to war.
21 For that reason, there was no declaration of war
22 and the diplomatic relations of the two countries
23 were being continued throughout the incident.

24 161. From the outset of the incident, the
25 citizens of the two nations lived in each other's

country without being subjected to any restraint or
1 oppression, continued to engage in their peaceful
2 pursuits and received no restriction in traveling
3 within both countries. The diplomatic relations of
4 the two countries had been maintained normally until
5 the two countries terminated the use of military
6 force by the conclusion of the Tangku Truce Agree-
7 ment. As far as the international relations between
8 Japan and China were concerned, it was nothing more
9 than an incident between Japan and Manchuria and an
10 act of self-defense on the part of Japan against the
11 unlawful actions of Chiang Hsueh-liang.
12

13 It must also be remembered that the special
14 character of the Manchurian region as well as the
15 peculiar nature of the relations between the Chiang
16 family and the Central Chinese Government had been
17 left unaltered. Therefore, no peace treaty was con-
18 cluded between Japan and China, and, in this regard,
19 it entirely differs from the Shanghai Incident.
20

21 Immediately after the outbreak of the Inci-
22 dent, Sung Tzu-wen made a proposal concerning the
23 settlement of the incident to the Japanese Ambassador,
24 SHIGEMITSU,¹ and Premier INUKAI, on the Japanese side,
25 also sent his confidant, Mr. KAYANO, Osakazu, to
1. Tr. 3,052

1 Nanking to have him negotiate with the Chinese leaders.

2 The fact that the Manchurian Incident did not
3 result in a rupture of the diplomatic relations be-
4 tween the two countries concerned is a proof that
5 it was an exercise of the right of self-defense.

6 The Lytton Report stated that Japan's action could
7 not be regarded as an act of self-defense as the
8 initial incident was too insignificant, but the same
9 report took cognizance of the then prevailing situa-
10 tion, in which a major conflagration could have been
11 kindled with a single match in view of the local
12 conditions before the outbreak of the Mukden Inci-
13 dent, and stated that it would be difficult, except
14 for those who are thoroughly familiar with the real
15 conditions of that area, to pass a judgment on the
16 situation.

17 The situation having been such, the Japanese
18 Government and the central army authorities neither
19 could foresee nor assess the situation prevailing
20 there. Everyone who had travelled in Manchuria in
21 those days also expressed his impression to the same
22 effect. Everyone equally recognized the absence of
23 law and order there as well as the strained atmos-
24 phere existing between China and Japan. One must
25 take it for granted, however, that a considerable

1 amount of malicious conjecture and calumny should
2 have been contained in the telegrams sent by the
3 Foreign Office representatives, Consuls HAYASHI and
4 MORISHIMA, possibly because of the rumors deriving
5 from the emergency situation and the strained senti-
6 ments which existed between the Army and the local
7 Foreign Office agencies. It must be added that the
8 HARADA-SAIONJI memoirs also have the same tendency
9 in this respect.

10 The circumstances having been such as were
11 set out in the HONJO Testament, both for the central
12 army authorities and the government, the quickest
13 way to prevent the incident from spreading into a
14 major conflagration and to find an amicable solution
15 was to largely respect the views of the authorities
16 in the field.

17 B. The Manchurian Incident was Not an Act
18 of Aggression.

19 162. It was not a mere incident caused be-
20 tween the two countries beyond their borders. A
21 situation arose wherein not only Japan's vested rights
22 and interests in that region residents could not be
23 safeguarded because of the anti-Japanese activities
24 and the people's contempt for Japan, regardless of
25 the fact that Japan possessed various rights and

1 interests there including the right to station
2 troops. When the incident of the blowing up of the
3 railway occurred, the Japanese troops stationed
4 there exercised their right of self-defense in
5 order to carry out their duty. Under the circum-
6 stances which prevailed in China in that period
7 cases of similar nature often occurred on account
8 of the Chinese Government's failure to protect the
9 rights and interests of powers in accordance with
10 the provisions of the treaties.

11 Among the incidents of a similar nature
12 were the shelling of Nanking by the British and
13 American warships and Britain's despatching of troops
14 to Kiukiang. Japan also had her bitter experiences
15 on several occasions in Tsinan and Shanghai. Would
16 international jurists recognize these actions as
17 acts of aggression? The crossing of the Japanese
18 troops beyond the limits of the Manchurian Railway
19 Zone constituted nothing but a combination of the
20 right of self-defense, the legality of which is also
21 recognized by international jurists.

22 163. As it was stated before, as far as
23 Japan was concerned, neither the authorities on the
24 spot, nor the central government authorities enter-
25 tained the least intention to create an independent

1 statc. A declaration to that effect was made before
2 the Diet by Premier INUKAI.¹ Witness MITARAI testi-
3 fied,² "I know that Premier INUKAI was a fervent
4 advocator of respecting the Chinese sovereignty and
5 the security of her territory." Witness ISHIWARA's
6 testimony³ also established this point.

7 The desire for independence, which the
8 people in that region had entertained for a long
9 period, set spurs to the independence movement
10 taking advantage of this opportunity. When the
11 opportunity for the independence of Manchuria had
12 become ripe, the Kwantung Army first assessed the
13 views as to whether this movement should be suppressed
14 or left alone. Finally the Kwantung Army determined
15 its views in favor of independence, if independence
16 was feasible, inasmuch as it would have been impos-
17 sible to maintain law and order in Manchuria, if the
18 rising tide of the independence movement were not
19 left alone. This view, together with a report on
20 the prevailing situation, was conveyed to the central
21 Japanese authorities, when Chief of Staff ITAGAKI was
22 ordered to proceed to Tokyo in January, 1932. The
23 central government, as it was already shown, respected
24

25 1. Ex. 2418, Tr. 19,570
2. Tr. 17,818
3. Ex. 2584

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2 the Diet by Premier INUKAI.¹ Witness MITARAI testi-
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4 advocator of respecting the Chinese sovereignty and
5 the security of her territory." Witness ISHIWARA's
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22 ordered to proceed to Tokyo in January, 1932. The
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2. Tr. 17,818
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1 the views of the army in the field and let the
2 Manchurians proceed according to their own wishes,
3 if they were to cooperate in preserving law and
4 order in that region. (The foregoing circumstances
5 were clearly established in the HONJO Testament,¹
6 testimonies of ITAGAKI, MATSUOKA and ARAKI.)

7 We attribute the reasons why the Lytton
8 Commission's report, while it gave a detailed ac-
9 count of the circumstances, drew a conclusion con-
10 trary to the facts, to the lack of cognizance, on the
11 part of the Commission, of the true situation and
12 their method of basing the report on propaganda
13 and tendencious explanations² which exaggeratingly
14 underlined a few somewhat excessive cases occurring
15 in the course of warlike operations. I shall omit
16 the balance of that paragraph.

17 C. No atrocity was Committed During the
18 Manchurian Incident.

19 164. The Lytton Commission's Report testi-
20 fies to the fact that not a single case of general
21 acts of atrocity occurred during a year and eight
22 months of the Manchurian Incident. This is a proof
23 of the fact that the Manchurian Incident broke out
24

25 1. Ex. 2043, Tr. 15,001-8
2. Ex. 192A

1 in spite of self-restraint on the part of the Japan-
2 ese and that it was not caused through enmity or
3 rancour.

4 165. Major General KATAKURA, Tadashi, testi-
5 fied as a witness:

6 "At the time the Japanese attitude was,
7 those who took a hostile attitude toward Japan would
8 be punished, but those who had ceased resistance would
9 be welcomed and absorbed into ordinary Manchurian life.
10 They were not treated at all as prisoners of war."¹

11 166. The prosecution pressed witness ENDO,
12 Saburo asking him whether regular troops had not been
13 executed under the pretext that they were bandits,²
14 but he replied clearly that it was not the case.

15 167. The only instance which may have served
16 to create the suspicion of the commission of atroci-
17 ties during the Manchurian Incident, was Mr. Powell's
18 testimony which was accompanied by an article from
19 the Chicago Daily Tribune presented to the Tribunal
20 to confirm his testimony. The inquiry conducted in
21 the Tribunal revealed, however, that the Powell
22 testimony was based upon an article appearing in the
23 China Weekly Review, which the witness had written
24

25 1. Tr. 18,997
2. Tr. 19,507-8

1 relying on information from Chinese sources and that
2 the article in the Chicago Daily Tribune was a repro-
3 duction of the same article, being, therefore, devoid
4 of an accurate foundation.

5 The event referred to in that article took
6 place as a result of the fighting which occurred
7 when Lieutenant INOUE, commanding the small Chieng
8 Chin-Tsai Garrison unit while advancing on a search-
9 ing mission, was attacked by a large number of ban-
10 dits, pushing ahead to strike the Chieng Chin-Tsai
11 Garrison troops. It is clear that the event did
12 not occur in the manner as was publicized, but it
13 was reported, on the contrary, that the Japanese
14 unit rescued villagers and other people. All in
15 all, this evidence has no probative value as it was
16 an article written by Mr. Powell on the basis of
17 hearsay which he obtained from the rumours concerning
18 the battle conditions of a small unit in a restricted
19 locality.

20
21 D. The Manchukuoan Government was not a
22 puppet regime.

23 168. What is the definition of a puppet
24 regime?

25 What is the meaning of the expression,
"puppet regime," as used by the prosecution? Could

1 all independent and sovereign states receiving politi-
2 cal, economic or military aid from other countries
3 be called "puppet regimes"? Could the Balkan states
4 and other newly-founded countries of Europe be called
5 puppet regimes manipulated by some other countries?
6 Are the countries generally known as "satellites"
7 puppet regimes? It is customary with all newly-
8 founded states to receive support and assistance of
9 various kinds from their friendly neighbors.

10 It is evident, however, that the countries
11 providing aid are liable to act selfishly and make
12 the recipients of aid their "puppets," vis-a-vis
13 Manchukuo, but it is our contention that the Japanese
14 Government was particularly mindful of this point
15 and took every precaution so as to enable it to
16 govern itself independently. ARAKI having had deep
17 concern particularly about this point, opposed the
18 creation of an advisory organization out of Japan's
19 diplomatic agency and insisted on the exchange of
20 ambassadors. To call Manchukuo a puppet regime, in
21 our contention, is nothing but a political calumny
22 deriving from a malicious design to make unfavorable
23 propaganda between the relations of other countries.

24
25 169. The circumstances leading up to Man-
chukuo's Independence.

1 It is as previously stated that Manchukuo's
2 birth was a result of spontaneous efforts of the Man-
3 churians. Therefore I shall dwell on it only briefly.
4 It is clear that the Japanese leaders had no pre-
5 meditated design towards Manchukuo, judging from the
6 fact that the Japanese Government was flurried at
7 the foundation of Manchukuo and devised measures
8 towards it only after it had come into being. The
9 HONJO Testament testified to this point. Even if
10 assistance and cooperation were given to it in the
11 meantime, one cannot call Manchukuo a puppet regime
12 because of that, as such steps were only natural and
13 the examples of the kind could be found everywhere.

14 Even if a powerful country gave assistance
15 to a powerless country, one cannot say that the
16 former made a puppet of the latter. When the policies
17 of a newly-founded state were a cause of great mis-
18 givings to another state and, if, in that event, the
19 latter state gave guidance to the former so as to
20 forestall disadvantages, can one say that the former
21 has become a puppet manipulated by the latter?
22

23 In other words, to accuse someone irrespon-
24 sibly with aggression or founding of a puppet regime
25 only by seizing upon some transitory phenomena must
be said to be an entirely unreasonable assertion.

1 THE PRESIDENT: Before you go further, Mr.
2 McManus, a serious question arises here. On page
3 195 you attacked the Lytton Commission on certain
4 grounds. On page 196 you disclose the grounds are
5 from the Japanese observations. You strike out the
6 reference to the Japanese observations, and it looks
7 as though you are quoting from the record itself,
8 from the evidence. Unless I make comment such as
9 this from time to time, we will be grossly misled,
10 perhaps, unless we have a clear recollection of all
11 the evidence. I suggest you go through the balance
12 of your summation and strike out everything not
13 supported by evidence; not merely the reference to
14 rejected documents but to the contents of the rejected
15 documents which you have used.

16 MR. McMANUS: If your Honor pleases, I
17 thought I had done that. However, I may have over-
18 looked one or two points, and I shall carefully
19 scrutinize the balance of the summation and try to
20 comply with your Honor's wishes.

21 If your Honors please, it was not my inten-
22 tion in the summation to attack the findings of the
23 Lytton Inquiry. I merely wanted to present certain
24 facts so that your Honors could determine whether or
25 not the Japanese leaders at that time were of the

1 opinion as to whether or not they were right or their
2 state of mind.

3 THE PRESIDENT: The state of mind of every
4 accused must be determined on the evidence before us
5 and not on rejected evidence.

6 MR. McMANUS: I merely mention these facts,
7 if your Honor pleases, with the sole intention, and
8 no other reason except, to try to assist the Tri-
9 bunal.

10 THE PRESIDENT: We cannot be assisted by the
11 reference to evidence or to statements from rejected
12 documents. We can only be misled.

13 We will adjourn until half-past one.

14 (Whereupon, at 1200, a recess
15 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 in session.

THE PRESIDENT: The accused MATSUI is absent
from the courtroom due to illness.

With the Tribunal's permission the accused
KIDO and KAYA will be absent from the courtroom during
the second period of the afternoon session conferring
with their counsel.

MATSUI is represented by counsel.

Mr. McManus.

MR. McMANUS: 170. The true aspects of the
activities of the State of Manchukuo.

So many examples can be seen in past history
as well as at present of a newly-founded country re-
ceiving aid from a friendly third country, that such
a practice can be said to be almost customary among
nations.

Foreign Minister UCHIDA once explained at a
Diet session, Japan at the time of the Meiji Restora-
tion received great assistance both in men and material
from Britain, America, France and Germany. The number
of the foreigners then employed by the Japanese

1 Government exceeded more than 500. Japan, therefore,
2 had relied more on foreign aid than than Manchukuo
3 depended on Japan's assistance at the time of her al-
4 legedly puppet existence. Manchukuo being based on the
5 principle of the harmony of the five races and its
6 government structure well established, culture within
7 that state became incomparably more advanced than at
8 the time of Chang Hsueh-liang's regime, and the people
9 could live happily.¹

10 To a question put to him on cross-examination
11 by Captain Kleiman, prosecution witness ex-Admiral
12 OKADA, Keisuke, replied that he thought he was doing
13 a good deed for Manchuria.² What he stated represents
14 the desire of the then government of Japan and was
15 desired even more strongly by ARAKI. The fact that
16 ARAKI later did not attend the 10th Year Anniversary
17 of Manchukuo because of the situation then prevailing
18 in that country amply explains his state of mind.³ It
19 must also be added that the whole Japanese nation en-
20 tertained the same hopes and desires towards Manchukuo
21 as did ARAKI.

22 A pessimistic observation is made in Part 2,
23 Chapter VI, of the Lytton Commission's Report, in which

- 24 1. Ex. 3158, T. 28,076, Affidavit of Woodhead
25 2. T. 1,894
3. Ex. 3161, T. 28,153

it is stated:

1 "There is no indication that this 'Government'
2 will in fact be able to carry out many of its
3 reforms. To mention but one example, there
4 seem to be serious obstacles in the way of the
5 realization of their budgetary and currency
6 reforms, etc. . . ."

7 In the light of the progress which Manchukuo
8 achieved later, it is evident that the members of the
9 Inquiry Commission did not have an insight into the
10 real causes which lay behind the prevailing situation.
11 The Commission itself testified to the difficulty of
12 assessing the situation in Manchuria for someone with-
13 out a sufficient knowledge about that region. Although
14 the Lytton Commission made great efforts to assemble
15 all kinds of information, its findings included many
16 such matters which did not coincide with the actual
17 state of affairs.

18 ARAKI's contention was that Japan's assistance
19 should have been mainly directed to induce Manchukuo
20 itself to attain the ideal of its foundation, namely
21 the harmony and concord among the five races. His
22 discontent was due to the fact that the reality dif-
23 fered from his aspirations, there being some among the
24 Manchukuoans who were not satisfied with the prevailing
25

1 state of affairs. All this shows that ARAKI was sin-
2 cerely hoping for the success of Manchukuo as an inde-
3 pendent state and did not have the least intention to
4 seek profit from Manchukuo or to make it a puppet re-
5 gime.

6 171. Guidance given by Japan.

7 It is a fact that Japan gave support and as-
8 sistance to Manchukuo ever since Japan's recognition
9 of the new state. Japan extended recognition to Man-
10 chukuo not for the purpose of making it a puppet state
11 but because she hoped that Manchukuo would develop
12 into a full-fledged country. It is needless to say
13 that Japan, because of her peculiar position, had var-
14 ious views and opinions as to the means of giving coop-
15 eration and assistance to Manchukuo, but there had
16 been no one in the responsible position at the time of
17 the INUKAI and SAITO Cabinets who had the intention
18 of infringing upon the independence of Manchukuo. The
19 prosecution had presented nine consecutive documents
20 in evidence starting from court exhibit 222, which
21 we shall refute as follows:

22 We wish to point out first of all that these
23 documents (Ex. 222 and its subsequent numbers) were
24 made after Manchukuo was founded and was officially
25 recognized by Japan; and so most of the cross-examination

by the prosecution based upon these documents, against
1 the contents of ARAKI's affidavit was, we should say,
2 entirely far afield. For instance, the prosecution
3 referred to exhibits Nos. 222, 223, 224, 225, 226, 227,
4 228, 230, 231, 233, 234, and 187,¹ on the cross-
5 examination of ARAKI re his affidavit, in which ARAKI
6 stated:

7 "The decision of the government on this
8 problem was also to leave it alone to the
9 Manchurian people and to make no interference
10 with it inasmuch as the primary concern of the
11 government was in preservation of law and order."²
12

13 However this part of ARAKI's statement con-
14 cerned the state of affairs prior to the independence
15 declaration of Manchukuo, whereas the documents re-
16 ferred to by the prosecution related to matters after
17 the declaration, some of them even after the official
18 recognition of the state.

19 173. Exhibit No. 222³ and others appear to be
20 the documents with which the Japanese Government regu-
21 lated the basic policy of coping with the new state of
22 affairs, but in the absence of a complete record at
23 that time, it is not possible for us to know the
24

- 25
1. T. 28,288
2. T. 28,140
3. T. 2,817

deliberations which constituted the background of
1 these documents, nor are we in a position to know how
2 far the contents of these documents were put into
3 practice. However, we have good reason to believe that
4 some of them were never practiced, whereas some were
5 merely the plans of a division chief or a section chief
6 of the General Staff, and stopped there. There are
7 some in the form of answers to inquiries bearing the
8 name of AKAKI, but with the lack of the original tele-
9 grams of inquiry, there is no way of knowing the exact
10 meaning of those documents. That one (222) is dated
11 the 1st of March is a primary mistake because it appears
12 to be the decision of the cabinet of its policy after
13 Henry Pu-Yi's assumption of the post of the Executive
14 Administrator of Manchukuo. The Customs Office at
15 that time was within the Japanese Leased Territory
16 and in view of its special relation with Japan, Manchu-
17 kuo had to immediately set up a plan to settle this
18 question. This fact caused the Japanese Government to
19 hold a cabinet meeting which resulted in this decision,
20 and this, we contend, is very good proof to show that
21 the foundation of Manchukuo was not the result of a
22 premeditated program of Japan. The request of the army,
23 is stated in Chapter 5, that, that in which it placed its
24 first importance in pacification of bandits and
25

1 protection of Japanese nationals. As for such phrases
2 as "grasp of real power,"¹ and "accomplished status,"²
3 they appear in almost every chapter of this document.
4 It seems that the people in charge of these affairs
5 adopted them, as they were drafted by those who had
6 apprehensions over the situation. As a whole, we be-
7 lieve that this document honestly represents the anxiety
8 on the part of the Japanese Government as to whether or
9 not they could place full confidence in the new regime.
10 This document was made because the government desired
11 that the Government of Manchukuo would not be thrown
12 into utter confusion because of problems such as Open
13 Door Policy, Equal Opportunity and Employment for For-
14 eigners, and we can see further a state of confusion
15 even in the Japanese Government at that time. What
16 we cannot see is how this document could be taken
17 as the one purporting to make the new regime a puppet
18 of Japan, or as the one interfering with it, because
19 the document was a timely measure to avoid a further
20 disorder of the situation.

21 174. Exhibit No. 223³ was presented by the
22 prosecution as the record of cabinet meeting held on
23 April 10, 1932, but YOKOMIZO testified that the cabinet
24

- 25
1. T. 2,819
2. T. 2,819
3. T. 2,825

meeting did not keep any record of its deliberation.

1 This document looks very much like a draft prepared
2 by the Foreign Office concerning Japan's aid and
3 cooperation on finance and economy of Manchukuo. From
4 its wording, ". . . taking into consideration the
5 demands of the new state and its missions towards the
6 Empire"², this document seems to show Japan's intention
7 of financial and economic assistance.

8 175. Exhibit No. 224³ is nothing but the
9 settlement of the question of Japan's purchasing some
10 railways of a private concern, a question which had
11 been pending for some time in the past.

12 176. Exhibit No. 225⁴ is also nothing new.
13 The matter on which a negotiation had started in 1930
14 was brought to a decision at the time of WAKATSUKI
15 Cabinet at its cabinet meeting, and the decision was
16 made into a written form on account of the new founda-
17 tion of the Manchukuo Government. It was possible as
18 well as natural that the military authorities (army
19 and navy) requested that a full consideration be given
20 to the question of Japanese garrison in that area, as
21 it had much importance from the viewpoint of the
22

- 23
24 1. Ex. 3171, T. 28,537
25 2. T. 2,826
3. T. 2,827
4. T. 2,830

national defense. We contend that there was nothing
1 unusual in so doing.

2 177. Exhibit No. 226¹ is not dated but appears
3 from its contents to have been made after the founda-
4 tion of Manchukuo. Primarily, the military affairs
5 concerning Chientao had been under the jurisdiction
6 of the Korean Army, and so was the protection of Japan-
7 ese nationals there. With the organization of the Man-
8 chukuo Government the army submitted to the central
9 authorities its opinion, in this document, that same
10 be transferred to the Kwantung Army. Other matters
11 contained in this document were also administrative
12 measures of similar nature. These questions should
13 have been clarified as far as the Kwantung Army was
14 concerned, and this document shows no sign of Japan's
15 interference with or restriction over the affairs of
16 Manchukuo. That the Kwantung Army negotiated with
17 the Manchukuo Government over these matters was quite
18 natural under the circumstances where the hostilities
19 of the Manchurian Incident were still going on. There
20 is at least nothing in this document which seems to
21 restrict the Manchukuo Government. With the lack of
22 the telegram, to which this document was made in reply,
23 this is the only explanation we can offer about the
24
25

and economic lines as well as in improving installations
for security of national defense and law and order.

182. Exhibit No. 233¹ was made at the time
when Manchukuo, having achieved due development, re-
quired the sound development of her economy, culture
and maintenance of law and order and security of
national defense as her imminent necessity. Especially,
the government under the Executive Administrator had
lasted for two years and there was a gradual outcry
for establishment of a monarchy. This document seems
to have regulated various necessities concerning ad-
ministration. Since Japan had a special agreement with
this nation whose foundation had not been quite solid,
it was only her duty to do this by virtue of her being
a senior nation.

While the army requested the Manchukuo Govern-
ment not to neglect the security of law and order and
the national defense, its attitude was fully defensive.
This is clearly shown in Chapter 6 where the expression
"defensive equipment" is used.

Furthermore, there was a committee in the
cabinet at that time, consisting of several governmental
departments which were related to Manchuria. This
committee, as one of the organs of the cabinet, set up

1. T. 2,926

1 the plan and its method of practice about Manchurian
2 affairs. The regulation was that the important ones
3 should be submitted to the cabinet meeting for decision,
4 and so it was not necessary to submit all matters to
5 cabinet meetings. This fact is further clarified in
6 the document by the descriptions of "Committee of the
7 Investigation of the Executive Policy towards Manchuria
8 and Mongolia", "The Financial Investigation Committee
9 toward Manchuria", and "Japanese and Manchurian Indus-
10 trial Administrating Committee".

11 184. We hope we have fully explained in the
12 above how mistaken and prejudiced it is to assume the
13 exhibits aforementioned as proof of Japan's alleged
14 intention of Manchurian domination. We have repeatedly
15 stated that Japan had been aiming to settle the Man-
16 churian problems in such a way as would set up a land
17 of peace in one corner of the Far East. Japan desired
18 the birth of a model nation to make it a criterion
19 for China for her unification. With regard to the
20 question of the sovereignty of China over Manchuria,
21 ARAKI considered that Manchukuo and China would be able
22 to come to terms after the settlement of these various
23 affairs. ARAKI expressed this view to Lord Lytton,
24 saying that in such a vast country as China, peace had
25 to be established gradually, section by section. Above

1 all, ARAKI had the intention of holding an International
2 Peace Conference of the Far East after the Tangku
3 Treaty to eliminate all causes of future trouble and to
4 consolidate a firm foundation for peace.¹

5 Before the League of Nations had adopted its
6 decisions, the Japanese Government submitted its
7 opinion of the Lytton Report to the League, and fully
8 deliberated the differences of opinion as expressed in
9 the Lytton Report.

10 I shall omit the next sentence.

11 Lord Lytton himself admitted in his report
12 the difficulty of studying the truth of Manchurian
13 affairs.

14 It is a grave mistake to say that because of
15 this cooperation between Japan and Manchukuo, Japan had
16 an intention of dominating Manchuria or that Japan
17 intended to make Manchukuo her puppet government. It
18 is also respectfully called to this Tribunal's atten-
19 tion that many countries officially recognized Manchukuo,
20 and even the United States, in her informal talk, ex-
21 pressed an agreement of the recognition. These facts,
22 it is our contention, will explain, more eloquently
23 than anything else, the real state of affairs at that
24 time.
25

1. T. 28,162

1 the plan and its method of practice about Manchurian
2 affairs. The regulation was that the important ones
3 should be submitted to the cabinet meeting for decision,
4 and so it was not necessary to submit all matters to
5 cabinet meetings. This fact is further clarified in
6 the document by the descriptions of "Committee of the
7 Investigation of the Executive Policy towards Manchuria
8 and Mongolia", "The Financial Investigation Committee
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19 for China for her unification. With regard to the
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20 and even the United States, in her informal talk, ex-
21 pressed an agreement of the recognition. These facts,
22 it is our contention, will explain, more eloquently
23 than anything else, the real state of affairs at that
24 time.
25

185. Aspects of an Independent State.

1 Court exhibit 3165-A offered in evidence by
2 the prosecution on September 12, 1947 (a telegram
3 of congratulations to Manchukuo, sent by the War
4 Minister to the Commander-in-Chief of the Kwantung
5 Army) clearly shows War Minister ARAKI's attitude
6 toward Manchukuo. The telegram contains the con-
7 gratulations and gratitude of the War Minister towards
8 the Commander-in-Chief of the Kwantung Army concerning
9 the completion of the pacification of Jehol on March
10 11, 1933. The text of the telegram includes the
11 following items:
12

13 1) Through a close cooperation of the armies
14 of Japan and Manchukuo,

15 2) a great success has now been accomplished
16 in the task of eliminating banditry in Jehol.

17 3) I congratulate you for having consolidated
18 the foundation of the peace in Asia.

19 4) Please transmit above to the Manchukuoan
20 National Army.

21 In Items (1) (through a close cooperation between the
22 armies of Japan and Manchukuo) and (4) (Please transmit
23 above to the Manchukuoan National Army) it is clearly
24 shown that War Minister ARAKI treated on an equal
25

(1. Ex. 3165-A, Tr. 28,381)

1 footing the armies of Japan and Manchukuo and paid
2 them due respect. Item (2) shows that the Jehol
3 Campaign was nothing more than a mopping-up operation
4 against the bandits in Jehol and Item (3) in which
5 the War Minister expressed his congratulations for
6 the consolidation of the peace in Asia clearly shows
7 ARAKI's objective in settling the Manchurian Incident.
8 It is a communication between organs within the army,
9 being a telegram sent by the War Minister to the
10 Kwantung Army commander, which did not require half-
11 hearted diplomatic phraseology and in which one can
12 perceive the true motives of the sender.

13 It is also customary with the high command
14 and the war offices of every country to send telegrams,
15 in the names of the Chief of the General Staff and the
16 War Minister, after a large military engagement to
17 the highest ranking officer of the army concerned, in
18 recognition of his services. It is difficult to under-
19 stand for what purpose the prosecution tendered this
20 telegram in evidence. For the reason stated above,
21 we shall ask the Court to consider this document as
22 one tendered by the defense also.

23
24 186. The Treatment of Manchukuo by the
25 Powers as an Independent State.

 We shall now further ask the Tribunal to

1 judicially notice the following facts in their con-
2 sideration of ARAKI's connection with the recognition
3 of Manchukuo as an independent state.

4 1) Manchukuo was recognized by Japan on
5 September 15, 1932.

6 2) The Dairen Conference was convened in
7 July, 1933, assembling the representatives from China
8 and Manchukuo and an agreement was concluded con-
9 cerning postal and railway services.

10 3) Between the Soviet Union and Manchukuo,
11 the Agreement on the River and Waterway Traffic was
12 signed in July, 1934. The Agreement for the Sale of
13 the Chinese Eastern Railway was signed in March, 1935.
14 The two countries also exchanged consuls.

15 4) Japan announced the abolition of its
16 extraterritoriality in Manchukuo as well as the trans-
17 fer of the administrative rights of the Manchurian
18 Railway Zones in August, 1935, and enforced the same
19 by the end of November 1937.

20 5) The Vatican recognized Manchukuo in April,
21 1934.

22 6) The Republic of Salvador recognized
23 Manchukuo in May, 1934. Salvador was a member of the
24 League of Nations.
25

7) The Republic of Dominica recognized

Manchukuo in October, 1934.

- 1 1937.
- 2 8) Italy recognized Manchukuo in November,
- 3 1937.
- 4 9) Spain recognized Manchukuo in December
- 5 1937.
- 6 10) Germany recognized Manchukuo in May, 1937.
- 7 11) Poland recognized it in October, 1938.
- 8 12) Hungary recognized it in January, 1939.
- 9 13) Slovakia recognized it in March, 1939.
- 10 14) Rumania in December, 1940.
- 11 15) Bulgaria recognized Manchukuo in May, 1941.
- 12 16) Finland in July 1941.
- 13 17) Croatia recognized Manchukuo in August,
- 14 1941.
- 15 18) Thailand recognized it in August 1941.
- 16 19. Denmark recognized Manchukuo in August,
- 17 1941.
- 18 20) Great Britain despatched an economic
- 19 mission to Manchukuo.

20 E. Now for the purpose, once again, of
21 calling to the attention of the Tribunal that there
22 existed no aggressive warfare conspiracy to dominate
23 any part of Asia or the World, we respectfully point
24 out and contend that there is definitely no relation-
25 ship between the Manchurian Incident and the China

1 Incident.

2 187. It is the fact as has been previously
3 stated that Japan, China and Manchukuo re-entered
4 into a state of peace by the conclusion of the Tangku
5 Truce Agreement and the Dairen Conference.

6 188. The National Government of China issued,
7 on June 10, 1935, an Ordinance for the Promotion of
8 International Amity, which said:

9 ". . . while international good faith
10 should be faithfully kept and international
11 peace should be established in harmonious
12 cooperation with other countries, above all
13 it is of urgent importance to promote friendly
14 relations with our immediate neighbors. . ." ¹

15 By issuing this order, the National Government, in
16 consideration of its bitter past experience of having
17 engendered the Manchurian Incident through the anti-
18 Japanese activities and acts of contempt against Japan,
19 endeavored to re-establish friendly relations between
20 Japan and China so as to avoid the recurrence of
21 incidents of a similar nature.

22 189. In 1934, Japan and China raised the
23 status of their Ministers stationed in their respective
24 countries to that of Ambassadors, and on June 16 of
25 (L. Ex. 2506, Tr. 20,965)

1 the same year, the Japanese Ambassador to China,
2 ARIYOSHI, presented his credentials to Mr. Lin-Shen,
3 the President of the National Government of China.
4 Whereupon, the relations between Japan and China
5 became more friendly and the two countries came to
6 cooperate more fully with each other.

7 190. In July, 1937, the Lukouchiao Incident
8 broke out quite unexpectedly. Two years had elapsed
9 between the time of the conclusion of the Tungk
10 Truce Agreement in May, 1933, and the date of
11 Ambassador ARISUYE's presentation of his credentials
12 in June, 1935. Two more years had passed before the
13 outbreak of the Lukouchiao Incident in July, 1937,
14 making the total of the time elapsed four years. In
15 the light of the developments such as stated above
16 during this long period, it is clear that there is
17 no conceivable relationship between the Manchurian
18 Incident and the China Incident. The relations be-
19 tween Japan and China had become even more close
20 than in the past. We shall attempt to more fully
21 clarify this point by enumerating below views of
22 various circles as extracted from the record of the
23 proceedings of this trial.
24

25 As it was pointed out previously, all Japanese
witnesses, including prosecution witness Major General

1 TANAKA, Ryukichi and defense witnesses Major General
2 KATAKURA, Tadashi and Lieutenant General ENDO, Saburo¹
3 equally stated that the Manchurian Incident had been
4 terminated by the conclusion of the Tangku Truce Agreement.

5 Chinese witness General Ching Ten-chun on
6 July 25, 1946, in answer to a question in cross-examin-
7 ation by counsel OKAMOTO, stated that the Lukouchiao
8 Incident broke out as a result of the Hsien Incident,
9 which was an entirely unforeseen incident. In other
10 words, he meant that the Lukouchiao Incident broke
11 out with the Hsien Incident as its remote cause and
12 that there existed no plan nor connection with which
13 he could link it with the Manchurian Incident.

14 In Court exhibit 213 (prosecution document
15 No. 1871-E, entitled "Summary of Japanese War Crimes
16 in China from September 18, 1931, to August 13, 1937,
17 Ministry of Foreign Affairs, Republic of China) it is
18 stated:
19

20 "Beginning in the summer of 1935,
21 Japanese military planes flew frequently over
22 and landed around Peiping and Tientsin. . . Now
23 North China had become peaceful. Therefore,
24 diplomatic relations between Japan and China
25 should promptly be conducted on a normal basis. . ."

In the above document, it is made clear that

1 the Chinese Government contended that perfect peace
2 was restored between Japan and China through the con-
3 clusion of the Tangku Truce Agreement, that it was
4 after 1935, two years after the conclusion of the
5 Tangku Truce Agreement, that Japanese airplanes flew
6 for the first time to the Peiping-Tientsin area, and
7 not a single incident occurring before the aforementioned
8 1935. It is evident that, even if Japan had relied on
9 a provision of the Tangku Truce Agreement to justify
10 a violation of the border by a Japanese airplane two
11 years later, the act itself did not impair the effect
12 of the Tangku Truce Agreement.
13

14 In the opening statement for the prosecution
15 phase on the General Preparations for War, Prosecutor
16 Brigadier Quillian stated as follows:

17 "In June 1937, the month before the Marco
18 Polo Bridge Incident the Japanese War Office
19 prepared a Five-Year Plan for the production
20 of war materials. . ."

21 "Until 1938 the number of Divisions and
22 Independent Brigades remained fairly constant. . ."

23 "Significant evidence of the aggressive
24 intentions of Japan is obtained from the function
25 and scope of the General Mobilization Law. This

Law, which has already been produced in evidence as

1 Court Exhibit No. 84, was adopted in 1938. . ."

2 "It is not too much to say that by the
3 adoption of this law Japan at one stroke became
4 a totalitarian state and finally committed her-
5 self to a policy of aggression and expansion. . ."

6 "It is suggested that it is of the utmost
7 significance that as early as 1938 this drastic
8 law should have been adopted and such all-
9 embracing powers obtained. It is also sug-
10 gested, indeed it is obvious, that without
11 those powers the war preparations could not
12 have been made. . . ."¹

13 In other words, it was stated that real war
14 preparations could not have been made without the
15 powers embodied in the National Mobilization Law,
16 that the National Mobilization Law first came into
17 being only after the outbreak of the China Incident,
18 and that all measures had been taken on the basis of
19 the China Incident. Leaving aside the question of
20 whether to admit all these contentions, they serve to
21 clarify the fact that there was no direct connection
22 between the Manchurian and China Incidents. It was
23 as though the prosecutor had definitely stated here
24 that there was no war preparation going on at the time
25 (1. Tr. pp. 8196, 8197, 8198)

1 of the Manchurian Incident.

2 On October 24, 1946, prosecution witness
3 Liebert testified as follows:

4 "After 1932, the aggression or war against
5 Manchuria was a closed affair. That had been
6 completed. Whatever happened in the relations
7 between Japan and China didn't break out formally,
8 as I recall, until 1937."¹

9 Although we cannot accept the charge of ag-
10 gression contained in this prosecution's expert witness'
11 report he had unquestionably testified that the Man-
12 churian Affair had been a closed affair and that it
13 had nothing to do with the China Incident. Further-
14 more, that there is no relationship between the Man-
15 churian and China Incidents is a matter of common
16 knowledge among people at large.

17
18 The Conclusion of the Lytton Commission's
19 Report ("Considerations and Suggestions to the Council,"
20 Lytton Commission's Report Chapter X, Comments, Page 291).

21 At the end of the Lytton Commission's report,
22 the following passages can be found:

23 "On August the 30th Count UCHIDA is reported
24 to have declared at Tokyo:

25 "The Government considers the question
of Sino-Japanese relations as more important

(1. Tr. 8,572)

1 than the question of Manchuria and Mongolia.'

2 "We cannot close our Report more appropri-
3 ately than by reproducing here the thought
4 underlying these two statements, so exactly does
5 it correspond with the evidence we have collected,
6 with our own study of the problem, and conse-
7 quently with our own convictions, so confident
8 are we that the policy indicated by these dec-
9 larations, if promptly and effectively applied,
10 could not fail to lead to a satisfactory solution
11 of the Manchurian question in the best interests
12 of the two great countries of the Far East and
13 of humanity in general."

14 Japan and the Lytton Inquiry Commission finally
15 differed in their views concerning the method for the
16 solution of the Manchurian problem, but it is clear
17 from the statement of Foreign Minister UCHIDA that
18 the then Japanese Government attached more importance
19 to the fundamental relations between Japan and China
20 than the problem of Manchuria.

21 It is also clear, therefore, that Japan
22 intended to establish peace between Japan and China
23 on the basis of the Tangku Truce Agreement. The
24 occurrence of the Lukouchiao Incident four years there-
25 after cannot delete the fact that a complete peace was

1 established between Japan and China through the con-
2 clusion of that agreement.

3 191. The prosecution also anticipates the dis-
4 missal of the charge concerning the Manchurian Incident.

5 The following statement was made by prosecutor
6 Comyns-Carr in response to the defense's argument
7 concerning the jurisdiction of this Tribunal.

8 "Whether the war of Japan against China
9 should be regarded as continuous from the
10 18 September 1931, onwards or as having a
11 fresh start on 7 July 1937, is one which the
12 Tribunal may find it necessary to determine on
13 the facts. The Indictment provides distinct
14 Counts (2 and 3, and 18 and 19, and 27 and 28)
15 enabling the Tribunal to give effect to either
16 view which it may take on this question. In
17 our submission, even if the Tribunal should
18 take the view (contrary to the submission that
19 we shall make) that those are to be regarded
20 as separate wars, there is nothing in the
21 Charter, the Terms of Surrender or the Potsdam
22 Declaration to prevent the Tribunal from exer-
23 cising jurisdiction with regard to crimes
24 committed by any of the defendants in connec-
25 tion with either of them."¹

(1. Tr. 173-174)

1 It is obvious that there is no connection
2 whatsoever between the Manchurian and China Incidents.
3 Even if Prosecutor Conyns-Carr might have drawn a
4 clear distinction between the two incidents, he asserted
5 in his conclusion that the jurisdiction of this Tri-
6 bunal which is based upon the Charter and Potsdam
7 Declaration could be exercised over the Manchurian
8 Incident, and pointed out 6 counts of the Indictment,
9 including Count 11.

10 The period of 18 years covered by the Indict-
11 ment is nothing but a tentative limit which the prose-
12 cution had set in presenting their charges, but nothing
13 is mentioned either in the Charter or the Potsdam
14 Declaration whether or not the Manchurian Incident is
15 to be included among the matters to be tried at the
16 present Tribunal, and the decision, therefore, lies
17 entirely in the hands of the prosecution. Consequently,
18 we contend that the Tribunal will have committed no
19 violation of the Charter and the Potsdam Declaration
20 by segregating the charges on the Manchurian Incident
21 from the Indictment and by dismissing them from the
22 present trial.

23
24 The Commander of the Allied Powers, to whom
25 the Chief of Counsel is to render appropriate legal
assistance (Charter, Article 8) issued the purge

1 directive on January 4, 1946, directing the Japanese
2 Government to promulgate the purge order. The same
3 directive stipulated that the persons who had been
4 in public offices between July 7, 1937, and September 2,
5 1945, were to be affected by the purge order but not
6 since September 18, 1931.

7 THE PRESIDENT: Would you give us the exhibit
8 numbers of those purge orders, please?

9 MR. McMANUS: Yes, your Honor, I shall put
10 them on an errata sheet and attach them to the summa-
11 tion.

12 The above directive, therefore, recognizes
13 July 7, 1937, as the date of the commencement of the
14 past war. There is no reason, at this juncture, to
15 make a distinction between the war crimes trials and
16 the purge order.
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1 Furthermore, it must be mentioned that the
2 former Deputy Chief of the General Staff, General
3 HAZAKI, who, having a direct connection with opera-
4 tions, handled the settlement of the Manchurian
5 Incident together with War Minister ARAKI, and who
6 had been incarcerated in the Sugano Prison at the
7 same time that ARAKI was so incarcerated, was released
8 on August 30 last year, 1947. Would this fact not
9 constitute a clear proof that the prosecution had
10 recognized the legality of the military operations
11 at the time of the Manchurian Incident?
12

13 This concludes the chapter of our summation
14 with respect to the Manchurian Incident, and I most
15 earnestly hope that the Tribunal will either dis-
16 miss all charges concerning the Manchurian Incident
17 from the indictment or acquit ARAKI and all the other
18 defendants in so far as these particular charges are
19 concerned.
20

21 Chapter IV - ARAKI's Dissociation with the
22 ARMY.

23 On January 23, 1934, when ARAKI resigned
24 from the post of War Minister due to illness, he was
25 appointed War Councillor and remained at that post
until March 6, 1936, when he was retired from active
service. During this period he was watching the

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18 defendants in so far as these particular charges are
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22 On January 23, 1934, when ARAKI resigned
23 from the post of War Minister due to illness, he was
24 appointed War Councillor and remained at that post
25 until March 6, 1936, when he was retired from active
service. During this period he was watching the

1 army gradually become disorganized, especially
2 between 1934 and 1936 when the ousting of the
3 Inspector General of Military Education, and the
4 assassination of General NAGATA occurred. He was
5 most deeply concerned over the whole matter, but
6 the views of the army leader at that time were
7 different from his own. Ultimately, the deplorable
8 February 26th Incident occurred, and immediately
9 following this he was retired from the active list.
10 After this the War Minister Active Service system was
11 received, closing all ways for his return to army
12 service and completely severed his relation with the
13 army.

14 1) The duties and the authority vested on
15 War Councillors.

16 The position of War Councillor was as often
17 said amongst army officers, an old people's home --
18 a storage for possible war-time army commanders among
19 the generals on active service list without any par-
20 ticular assignment. Therefore, during peace time,
21 to keep these men away from interfering in the army's
22 administration and command, they were given no duties
23 nor was any authority vested in them. Only when an
24 especially important question arose would he be
25 required to answer inquiries by the War Minister, or

1 if the Emperor would address a special question to
2 then, they would get together and reply to the Throne.
3 They were given no power to decide nor had they any
4 rules or regulations as to the council. It is true
5 as Mr. Horwitz stated in his explanation of the
6 Supreme War Council,^{1.} that the council played no
7 part with respect to tactics and strategy. Not only
8 tactics and strategy, but also played no part with
9 respect to army administration.

10 2) While ARAKI was a Military Councillor,
11 except for a scandal within the army, nothing impor-
12 tant took place.

13 (1) He held the post of Military Councillor
14 for approximately two years, but during the entire
15 period not a single enquiry of importance was made
16 of them.^{2.}

17 I shall omit the next paragraph.

18 (3) During his two years' tenure of office,
19 there were incidents extremely damaging for its
20 prestige inside the army. There were namely: the
21 dismissal of the Inspector General of Military Educa-
22 tion; the murder of Major General NAGATA, Chief of
23 the Military Affairs Bureau inside the War Ministry
24

25 1. T. 672.
2. T. 28164.

1 Building; etc. The dissatisfaction of the young
2 officers, who were quieted for a time, again became
3 apparent and improper actions began to be taken. The
4 KODO faction, the TOSEI (Control) faction, the
5 SEIGUN (the picked troops) faction and the sort,
6 were widely discussed, and anonymous and inciting
7 letters were being scattered. Cheap magazine and
8 newspaper reporters and professional political hangers-
9 on were utilizing them as material for instigating
10 public opinion. Information brokers were selling
11 these to businessmen, and in some extreme cases to
12 foreign envoys. Even those of a higher level who
13 were engaged in gathering information began buying up
14 these commercial "intelligence" for their own use.
15 Some of them became the official reports by foreign
16 envoys to their home government and exerted an evil
17 influence on Japan's foreign relations as well as on
18 her internal political affairs. One is surprised to
19 find, in reading Ambassador Grew's "Ten Years in
20 Japan," that it is filled with this type of information.
21 A large quantity of this kind of information seemed to
22 have reached, in particular, the Soviets. This was
23 the reason why ARAKI was gravely misunderstood after
24 the February 26th Incident, at home and abroad.
25 Numerous examples in the HARADA-SAIONJI Memoirs show

1 that HARADA also used these sources of information
2 as a basis and tying them up with the hearsay items
3 he himself heard and reported same to Prince SAIONJI.

4 4) This was about the time such denomina-
5 tions as "KODO faction" and "TOSEI faction" were in-
6 vented by these "information gatherers" and became
7 widely spread among the people. Each person had his
8 own views as to the best way to manage the situation,
9 which meant that there were conflicting opinions, but
10 did not mean that various cliques were formed in the
11 army. Since there were no party rules or regulations,
12 making it clear who were members and who were not, a
13 man was often referred to as belonging to the KODO
14 faction in one of these reprehensible pieces of litera-
15 ture and as belonging to the TOSEI faction in another.

17 Witness TANAKA, Ryukichi, in reply to Mr.
18 Cornyn Carr's question, testified as though bodies
19 by the name of KODO faction and TOSEI faction actually
20 existed. This, too, was probably based upon the
21 rumors circulated at the time. In reply to the prose-
22 cution's question as to who was the head of the KODO
23 faction, Witness TANAKA merely said that the radical
24 officers looked up to IRAKI, NAZAKI, and YAMAGAWA as
25 their central figures, but never said that these men
actually controlled or headed a group of men. In

1 short, it means nothing more than that the young
2 radical officers respected them. Whether Witness
3 TANAKA himself was one of them or not has not been
4 made clear.

5 Nevertheless, except for internal disorder
6 in the army, it will be made clear that no important
7 inquiries were made during the period ARAKI was War
8 Councillor.

9 3) Retirement of General ARAKI.

10 (1) At the time ARAKI was War Councillor,
11 i. e., around 1935, as we have already explained,
12 the army faced a period of grave confusion and dis-
13 order. The fact that the army could not cope with
14 this period suitably became the seed of Japan's
15 internal and external entanglements and misfortune in
16 latter years.

17 (2) The cause of this disorder was the
18 deference of Japan's national opinion. Whether
19 military or the civil population, it was divided as
20 to the best way for Japan to protect herself against
21 the attack by the Third Communist International and
22 the pressure put upon her by the other powers after
23 the Washington Disarmament Conference.

24 First, there were those who began to admire
25 some of the ways of the new Nazis activities in Europe.

1 They wanted to combat the Third Internationale in the
2 Gergan style and at the same time reorganize the nation.

3 Secondly, there were those who wanted to
4 reorganize the country by communism and to look
5 towards Russia as their fatherland.

6 Thirdly, there were the ones who only wanted
7 to be left alone so they could enjoy themselves.

8 These wanted the status quo.

9 Fourthly, there were those who wanted to
10 gain the world's confidence from the moral point of
11 view by idolizing the Imperial House and faithfully
12 following its way. According to Japan's basic teach-
13 ing, these men considered substantial improvement,
14 to the Japanese people to form a moral nation, the
15 prime necessity.

16 Fifthly, there were those who were indecisive
17 with nothing in mind but the advance of themselves.

18 Among the so-called intelligenzia and the members of
19 universities were increasing cries against capitalism.
20 These were not included in the second category. How-
21 ever, among the university professors and students
22 were a number who were against the military and Japan's
23 national policy, advocating communism, or socialism.

24 Amongst the financial circles, party politi-
25 cians and the upper classes many naturally fall into

1 the third category. These were the most frequently
2 attacked by both the left and right extremists. Most
3 of the young members of the army circles also advo-
4 cated reorganization, and began to lift up their heads
5 advocating whichever way they chose -- either the
6 first or the fourth.

7 The fifth group is to be found at any time,
8 in any country. They were preoccupied in self-preser-
9 vation and as far as saving any situation, they were
10 more harmful than helpful.

11 3) It was natural for some of those belong-
12 ing to the first and fourth groups who had a certain
13 amount of worldly knowledge and who somewhat over-
14 stressed reality, or practicality, to attempt practical
15 consolidation of the military by central control,
16 following the wake of the Germans. And they tried to
17 carry out a social reformation on this line. These
18 even commenced to appear among the spirited and in-
19 tellectual members of the central army offices.

20 Opposed to this were those who laid too much
21 stress on ideal or spirit. They saw by their own
22 eyes the bad social conditions and came to the conclusion
23 that to improve this it was first necessary to improve
24 the minds of the public. As a result, remembering the
25 Emperor's words to the effect that he, the Emperor

1 himself, is responsible for each and every Japanese
2 to a place in society and if even a single person was
3 unable to find one it was he, the Emperor's own fault,
4 care to think that the primary teaching for the
5 Japanese was to revere the Emperor and promote his
6 way. Especially the excitable old-time officers
7 attached to provincial units, who were daily seeing
8 the critical state of the farmers came to attempt to
9 carry this ideal out even at the sacrifice of their
10 own self.

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1 THE PRESIDENT: Where did you get all this,
2 Mr. McManus? This is like a speech in the Diet or an
3 address to the U.N. It is not like a summation in a
4 court. It is wholly unrelated to the evidence.

5 MR. McMANUS: If your Honor please, I was
6 just trying to point out ARAKI's association with the
7 KODO faction.

8 THE PRESIDENT: Yes, proceed.

9 MR. McMANUS: I shall omit the balance of
10 that down to the bottom of the page, number 4.

11 4) ARAKI was with the front line troops
12 during World War I and himself observed a war between
13 civilized nations. Since then he held the belief that,
14 together with the development of science, future
15 warfares between civilized nations would be drastic
16 and become the crucial problem for mankind. He
17 considered general mobilization and total warfare the
18 falling step from wars between men to wars between
19 beasts, and earnestly tried to think of a way to
20 remedy this. He came to the conclusion that the
21 cultivation of Japan's basic national teaching of
22 benevolence, and the proper and just martial spirit,
23 in other words practicalness, was the answer. By this,
24 he believed that even if war was inevitable, it would
25 be ended quickly, as human beings should do, and if

possible prevented in time.

1 THE PRESIDENT: This might have been put
2 in a statement from the dock if the Charter permitted
3 it, but as I pointed out months ago the Charter does
4 not permit any such thing. No other accused has
5 attempted anything of this kind, Mr. McManus. It is
6 only wasted on us. We must decide in accordance with
7 the evidence.

8 MR. McMANUS: If your Honor pleases, I shall
9 refrain from reading part of this and ask that it be
10 included and made part of the record.

11 THE PRESIDENT: No, it cannot go into the
12 record if it is objectionable, as it is. This alleged
13 summation covers 420-odd pages. Its length is accounted
14 for by the fact that to a great extent it is not
15 evidence.

16 MR. McMANUS: If your Honor pleases, there
17 are some passages in here which tend to explain the
18 situations at the time and to give your Honors a back-
19 ground so that your Honors --

20 THE PRESIDENT: We cannot be told these things;
21 they are not in evidence. It is not right to keep
22 on repeating that we are confined to the evidence.

23 Is any other accused prepared to present his
24 summation at this stage? If so, we will adjourn this
25

for revision.

1 MR. McMANUS: If your Honor please, I can
2 continue to another chapter.

3 THE PRESIDENT: We do not want to hear
4 anything that is not in evidence. I have made a dozen
5 appeals to eliminate material that is not in evidence,
6 but it has been fruitless as far as I can gather.

7 MR. McMANUS: If your Honor please, I could
8 continue and start at page 248 with paragraph 206.

9 THE PRESIDENT: My Colleagues, who have been
10 perusing the document as I have been talking to you,
11 have discovered a number of quotations from rejected
12 documents.

13 MR. McMANUS: They are marked out, if your
14 Honor please, on my copy. I had not intended to read
15 them.

16 THE PRESIDENT: I do not like to adjourn at
17 this stage. We are within twenty minutes of the mid-
18 afternoon recess, but if KAYA's summation is ready we
19 will take it.

20 Can you guarantee that for the next twenty
21 minutes you will omit anything not supported by
22 evidence, Mr. McManus? If you can, we will hear you.

23 MR. McMANUS: I shall attempt to do so, if
24 your Honor please.
25

1 THE PRESIDENT: Well, if you fail to do so
2 we will adjourn this matter for revision and take the
3 next case that is ready. Proceed for the time being.

4 MR. McMANUS: I shall start at page --

5 THE PRESIDENT: One of my Colleagues wants
6 a conference on this, so we will adjourn for that
7 purpose.

8 (Whereupon, at 1425, a recess was
9 taken until 1500, after which the proceed-
10 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. McManus, we have decided
3 not to hear any more of ARAKI's summation until it
4 is revised; that is to say, until all the statements
5 of fact not supported by evidence are struck out.
6 That will apply to all future summations which may
7 similarly offend. We simply will not allow you to
8 address us on statements of fact, or of alleged fact,
9 not in evidence. No court would.

10 MR. McMANUS: If your Honor pleases, this
11 is quite a lengthy summation and I am sure that you
12 understand it is impossible for me, within a period
13 of just a half-hour or so, to revise this accordingly,
14 so consequently to do as your Honor suggests, it
15 certainly would take me overnight to do it.

16 THE PRESIDENT: Yes. KAYA's case is next
17 and will take the whole of the afternoon and longer
18 perhaps, so we adjourn your summation, or the balance
19 of it, for revision, Mr. McManus, and we will take it
20 after KAYA's summation if you are ready.

21 MR. McMANUS: I might call to the Tribunal's
22 attention that from chapter eight to the end of the
23 summation it is almost exactly as your Honor wants it;
24 however, the part between where I am right now and
25

1 chapter eight will have to be revised, if your
2 Honor pleases.

3 THE PRESIDENT: Mr. Brown.

4 MR. BROWN: Your Honor, may we take it that
5 any statement of fact not supported by citation will
6 be disregarded by the Tribunal?

7 THE PRESIDENT: We expect you to give the
8 citation, either the page of the transcript or of
9 the exhibit, but it will be too much to say that we
10 will reject a statement of fact supported by evidence
11 but where the citation is not referred to or is not
12 given. We do expect citations. Without them, of
13 course, we are put to great trouble, but so far
14 counsel have not offended in that respect. Where
15 they have the evidence they generally refer to it
16 by stating the page of the transcript or the exhibit
17 number.

18
19 MR. BROWN: In this particular summation,
20 your Honor, there are statements which look sometimes
21 as though they might refer to evidence. It is not
22 clear whether they do or do not, and there is no
23 citation. I am merely referring to such cases as
24 that.

25 MR. McMANUS: With regard to Mr. Brown,
if your Honor pleases, I am sure after your Honor

1 has read this summation that you will note all the
2 footnotes and notice the citations which I stated,
3 and in most instances I have struck out the portions
4 where I do not have any citations for any statements
5 made.

6 THE PRESIDENT: Personally I will not
7 disregard any statement of fact in a summation which
8 is supported by evidence simply because it does not
9 give the citation; nevertheless, on behalf of the
10 Tribunal, I direct you to give the citation. That
11 applies to all summations, not only to yours,
12 Mr. McManus.

13 Mr. Levin.

14 MR. LEVIN: Mr. President, Members of the
15 Tribunal.

16 THE PRESIDENT: KAYA was excused from attend-
17 ance this afternoon, but I understand he is present
18 now. In any event you are here, Mr. Levin.

19 Mr. Levin.

20 MR. LEVIN: Mr. President, Members of the
21 Tribunal, I might say before I begin that I was in
22 the midst of preparing an errata sheet in connection
23 with this summation, anticipating that the ARAKI
24 summation would not be concluded before tomorrow
25 afternoon; however, I trust that I may have it ready

1 by sometime tomorrow morning and have distribution
2 of it made so that the Tribunal may avail itself
3 of the information which is contained therein.

4 I request, too, Mr. President, that any
5 portions of the summation which I do not read and
6 which I do not ask to be deleted be made a part of
7 the transcript of the record. There will be quite
8 a number of pages which I shall not read.

9 THE PRESIDENT: Provided the omitted parts
10 contain submissions of law and statements of facts
11 supported by evidence and citations and nothing
12 more than that.

13 MR. LEVIN: I am sure, Mr. President, we
14 made a very scrupulous effort to have this summation
15 contain nothing but references to the evidence and
16 to the documents and such submissions of law as we
17 deem have been presented here.

18 I begin to read the summation on behalf
19 of Mr. KAYA:

20 In making this summation on behalf of the
21 accused KAYA, we shall follow the divisions made by
22 the prosecution and comment seriatim on the evidence.

23 A. First Period:

24 Covers the period from the time he first
25 entered the Finance Ministry up to the time he was

1 appointed Finance Minister on June 4, 1937, that is,
2 the period in which he was a minor official of the
3 Finance Ministry.
4

5 B. Second Period:

6 Covers the period he was Finance Minister in
7 the First KONOYE Cabinet, commencing on June 4, 1937
8 and ending May 26, 1938.

9 C. Third Period:

10 Covers his service as President of the
11 North China Development Company for two years and
12 two months; from the time when he resigned as
13 Finance Minister in the First KONOYE Cabinet until
14 he became Finance Minister in the TOJO Cabinet, from
15 May 27, 1938 to October 17, 1941.

16 D. Fourth Period:

17 Covers the period he served as Finance
18 Minister in the TOJO Cabinet, from October 18, 1941
19 to February 19, 1944.
20

21 At this point we would like to call the
22 attention of the Tribunal to the probative value of
23 the evidence adduced on behalf of the defendant KAYA.
24 We shall classify the evidence into three groups:

25 1. The first comprises evidence tendered
and accepted during the KAYA individual phase.

This group comprises the testimony of

1 fourteen witnesses, three documents, and KAYA's own
2 testimony. None of these witnesses was cross-
3 examined by the prosecution. This is without prece-
4 dent in this trial. The prosecution's cross-examina-
5 tion of KAYA himself was short and simple. This
6 indicates the reliability of the evidence adduced.
7 Of the few points raised by the prosecution in con-
8 nection with the testimony of the defendant KAYA, we
9 shall go into their relevancy at a later stage.
10

11 May I say, Mr. President, that I am reading
12 the summation as corrected, for which I have prepared
13 an errata sheet. There may be some parts where I am
14 reading somewhat different from the document you have.
15

16 2. The second group refers to defense
17 evidence adduced in other phases.

18 Of the evidence in the second group, the
19 two exhibits concerning military currency have direct
20 connection with KAYA. One of these was an affidavit
21 of a witness and there was no cross-examination by
22 the prosecution. And none of the other evidence in
23 reference to KAYA was questioned on the point of
24 relevancy.

25 3. The third group comprises evidence
tendered by the prosecution, and of this group, we
wish to point out those parts which are in KAYA's

1 favor.

2 We believe there will be no objection by
3 the prosecution to this. We wish to point out that
4 the basis of our argument is evidence high in proba-
5 tive value as mentioned above.

6 A. First Period, N-9-2:

7 The prosecution has pointed out that of the
8 accused, KAYA's record with the Japanese Government
9 is the most active and extensive of all. We do not
10 agree with this contention, but we do not wish to
11 argue the matter for the contention does not prove
12 KAYA's criminal responsibility. On the contrary,
13 KAYA's service with the Japanese Government shows
14 the following facts:
15

16 1. That he was sincere, faithful and con-
17 scientious in his work.

18 2. That he struggled against the powerful
19 military when only a mere bureau chief to prevent
20 increase in military expenditures and international
21 race in armaments, and despite the difficulties
22 achieved fair success.

23 3. That he exerted great efforts toward the
24 maintenance of a healthy national finance and inter-
25 national peace, and after entering into wartime con-
ditions, continued to exert his efforts to prevent a

1 break-down of the national defense.

2 4. That he was against outbreak of war and
3 also the spread of hostilities and did everything in
4 his power to prevent them.

5 5. That his policies and method of carrying
6 them out were moderate and sound, respecting as much as
7 possible the will of the people.

8 6. That his policies and methods of carrying
9 them out met with disapproval of the military and he
10 was twice forced to withdraw from the Cabinet.

11 7. That he was not a politician or a
12 schemer and was not associated with any political,
13 military, leftist, or rightist groups. He was purely
14 a financial administrator and not a politician.

15 The above facts can be seen from the various
16 evidence adduced. The above-mentioned facts also
17 become clear from the various evidence referred to
18 in the arguments to follow. Here we wish to point
19 out the following two points:
20

21 1. The various evidence adduced during his
22 individual phase^a bear out our contention.

23 2. The KIDO Diary and the SAIONJI-HARADA
24 Diary records the public and behind-the-screen
25 activities of the statesmen and military men on

a. Ex. 3320, 3337; Tr. 30536-30660.

1 trial in this court, but no mention is made of KAYA
2 that might implicate him for criminal responsibility
3 as charged by the prosecution. Not a single excerpt
4 of the KIDO or the SAIONJI-HARADA memoirs were
5 tendered against KAYA.

6 KIDO has testified that he has known KAYA
7 since 1925,^{b.} the longest among the twenty-five
8 defendants. However, in the voluminous excerpts of
9 this diary tendered as evidence, the only time KAYA
10 is mentioned is in the diary of November 2, 1941,
11 which we tendered as evidence. If KAYA had been
12 politically ambitious or a political schemer, he
13 would no doubt have followed the footsteps of the
14 other politicians and have tried to "work" on KIDO
15 during the period KIDO held the influential positions
16 of Chief of the Secretariat of the Lord Keeper of the
17 Privy Seal and Lord Keeper of the Privy Seal. That
18 he did not is indicated by the lack of any such
19 mention in the KIDO Diary. It indicates that KAYA
20 was an earnest financial administrator who occupied
21 himself with his task.
22
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24

25 b. Ex. 3340, Sec. 324, Tr. 31207.

N-9-3.

The prosecution in paragraph II-3 of its sum-
1 mation has stated that KAYA "held not less than 90
2 governmental appointive positions in various activi-
3 ties." The greater part of these positions were as
4 member or secretary of committees and concerned
5 largely with finance as is noted in his personnel
6 record.^a And it is clear from evidence that the posi-
7 tions mentioned were mostly nominal and
8 required no actual work on his part.^b KAYA's main
9 work, that is, the work that occupied his full time
10 and energy, is explained in paragraph (1) of his affi-
11 davit.^c The prosecution has inferred that as an
12 official of the Finance Ministry KAYA should have known
13 day by day what was going on in the government. This
14 inference drawn from the contention that KAYA held
15 numerous positions is not correct, for as stated, the
16 positions were mostly nominal and that he hardly had
17 any connection with international matters can be seen
18 from his personnel record.^d

20 The contention of the prosecution does not
21 prove in any way that KAYA was party to any conspiracy.
22 It is merely conjecture without proof.

23 The prosecution has charged that KAYA was a

24 a. Ex. 111, tr. 722

25 b. Ex. 3341, tr. 31,675; ex. 3468, tr. 33,304; ex.
3369, tr. 31,809; ex. 3473, tr. 33,379

c. ex. 3337, tr. 30,635

d. Ex. 111, tr. 722

1 member of the Opium Committee in 1934. This is a mis-
2 take. KAYA was a member of the Opium Committee from
3 March 6 to June 3, 1937.^a Evidence has been adduced
4 to show that during the period KAYA was a member of the
5 committee, the committee was purely nominal^b and was
6 merely ex-officio. Again, KAYA is charged as having
7 been counsellor of the Manchurian Affairs Committee,
8 but the prosecution has nowhere adduced any evidence
9 to show the duties and responsibilities of a counsellor
10 of the Committee, nor what KAYA did in that position.
11 Nor has the prosecution pointed out any activity of
12 the Committee during the period KAYA was counsellor.
13 The position of counsellor was purely nominal, like
14 most of the extra positions charged against him, and
15 actually he did nothing as a member of the committee.
16 Again, he is charged as having been a member of the
17 Colonization Plan Investigating Committee for Hokkaido,
18 but Hokkaido is part of Japan proper and its purely
19 domestic policy does not concern foreign countries.

20 The prosecution points out that KAYA attend-
21 ed the Geneva Conference in 1927 and the London Naval
22 Conference in 1929 as a member of the Japanese delega-
23 tions, and seems to attempt to apply a sinister meaning
24

25 a. Ex. 111, tr. 722.

b. Ex. 3335, tr. 30,623

1 to this. But actually KAYA made great contributions
 2 to these conferences by holding down the navy's demands
 3 from the financial point,^a as was brought out in the
 4 testimony of KOBAYASHI, Seizo, head of the navy repre-
 5 sentatives to the Geneva Conference; TOYODA, Teijiro,
 6 navy delegate to the London and Geneva Conferences and
 7 who later served as Foreign Minister in the Third
 8 KONOYE Cabinet; TSUSHIMA, Juichi, Finance Ministry
 9 representative to the London Conference; and KAWAGOE,
 10 Takeo, who was KAYA's superior in the Finance Ministry
 11 at the time of the Geneva Conference, and that of the
 12 defendant himself.^b To what extent the wishes of the
 13 Japanese Navy were suppressed at the London Conference
 14 can be seen from later developments. When the treaty
 15 came up for ratification, the Naval Supreme Command
 16 opposed it on the ground that the prerogatives of the
 17 Supreme Command had been infringed, leading to the
 18 assassination of the then Premier HAMAGUCHI and the May
 19 15 Incident.

20
 21 The prosecution contends that during the per-
 22 iod from 1931 to 1936 fiscal year the army budget had
 23 increased. Against this contention we would like to
 24 point out the following:

25 a. Ex. 3334, tr. 30,620 Ex. 3324, tr. 30,576
 b. Ex. 3329, tr. 30,600 Ex. 3334, tr. 30,619
 Ex. 3328, tr. 30,597 Ex. 3337, tr. 30,637

1 1. Firstly, during the period KAYA was
2 merely an official of the Finance Ministry and acted
3 in accordance to the direction of the Minister and
4 other superiors; he was not in a position to decide on
5 the budgets.^a

6 2. Secondly, during this period the army
7 increased their power tremendously as the result of the
8 Manchurian Incident and the May 15 Incident, and used
9 its power in demanding an increase in military budgets.
10 The critical situation of 1935 and 1936 was made an
11 issue in seeking their demands.^b By this time the
12 military strongly insisted on the independence of the
13 Supreme Command, and its power became so great that the
14 cabinets and the public were in constant fear of the
15 military.

16 Even under such a difficult situation KAYA,
17 as a subordinate of Finance Ministers TAKAHASHI and
18 FUJII, helped the two ministers in applying brakes to
19 the increased demands of the military. Without the
20 efforts of KAYA, the military would have succeeded in
21 getting further increases. It was through his efforts
22 that the budgets were prevented from being larger, an
23 unusual accomplishment for an official of the Ministry.
24

25 a. Ex. 111; ex. 3334, tr. 30,621

b. Ex. 3775, tr. 37,650; ex. 3326, tr. 30,590

1 This fact is confirmed by the testimony of his then
 2 superior officials, Mr. TSUSHIMA, Juichi, who later
 3 became Finance Minister, and KAWAGOE, Takeo, who was
 4 his superior officer at that time; by the testimony
 5 of UCHIDA, Nobuya, who was then Minister of Railways;
 6 by the testimony of Admiral KOBAYASHI, Major-General
 7 OKAZAKI, and Vice-Admiral TATEMOTO, who were the men
 8 in the army and navy having charge of military budgets
 9 at the time, and by the testimony of GOTO, Takanosuke,
 10 a close friend of the late Prince KONOYE, and that of
 11 KAYA himself.^a What efforts he made and what pains he
 12 suffered in bucking the all-mighty military can be
 13 appreciated by going over the above-mentioned testimony.
 14 His stubborn resistance against the powerful military
 15 endangered the life of one cabinet,^b and because of
 16 his resistance he was termed an anti-militarist who
 17 interfered with the prerogatives of the Supreme
 18 Command^c and endangered national defense. The military
 19 men believed that it was KAYA who was instrumental in
 20 enforcing the anti-military policy of Finance Minister

21 a. Ex. 3324, tr. 30,577-79; ex. 3325, tr. 30,584;

22 Ex. 3326, tr. 30,588; ex. 3327, tr. 30,594;

23 Ex. 3329, tr. 30,600; ex. 3330, tr. 30,607;

24 Ex. 3337, tr. 30,636; ex. 3334, tr. 30,622

25 b. Ex. 3325, tr. 30,584

c. Ex. 3326, tr. 30,590; ex. 3327, tr. 30,594

1 TAKAHASHI, which became one of the causes of the
2 February 26 Incident in which TAKAHASHI was assassinat-
3 ed.^a The Incident put an end to the OKADA Cabinet
4 and was followed by the HIROTA Cabinet which gave in
5 to the demands of the military. BABA, who became
6 Finance Minister in the HIROTA Cabinet, removed KAYA from
7 the post of Chief of the Accounts Bureau, accepted the
8 demands of the military, and rejected the TAKAHASHI
9 policy, the result of which was a feeling of uncer-
10 tainty among the economic and financial circles.^b

11 The prosecution has charged that KAYA com-
12 plied with the demands of the military. The charge
13 is far from correct. The military, for instance,
14 was very much dissatisfied with TAKAHASHI and KAYA, and
15 for this reason Prince KONOYE hesitated in appointing
16 KAYA Finance Minister.^c

17 In paragraph II-6 the prosecution stated
18 that KAYA assisted Finance Minister YUKI as Vice-
19 Minister in combatting the military, but the cut he
20 obtained was "a mere fraction." The size of the cut,
21 however, is not a fair basis of judging KAYA's inten-
22 tion and efforts, for the power of the military by that

- 23 a. Ex. 3324, tr. 30,577; ex. 3326, tr. 30,590
24 b. Ex. 3324, tr. 30,579; ex. 3327, tr. 30,596;
Ex. 3322, tr. 30,553-8
25 c. Ex. 3330, tr. 30,607

1 time was far greater than what it was when he was
2 Chief of the Accounts Bureau. In 1936, while he was
3 chief of the Accounts Bureau, the so-called February 26
4 Incident took place. This Incident made the general
5 public regard the military with extreme fear. It was at
6 this time the system of limiting the War and Navy
7 Ministers to officers in active duty,^a and the decisive
8 power of the military became a fact as well as in
9 theory. When UGAKI was commanded to form a cabinet
10 following the fall of the HIROTA Cabinet, the army
11 opposed him, so he was not able to form a cabinet.
12 The army made it clear that it had the power to prevent
13 the formation of any cabinet or break any cabinet
14 in power.^b Under such a situation KAYA's success in
15 cutting the demands of the military to any extent
16 must be regarded as a great achievement. It was a time
17 when the public was concerned as to how far the mili-
18 tary budgets would go, and the cut on their demands had
19 a good effect in soothing the feeling of uncertainty
20 harbored by the economic and financial circles.^c

21 The prosecution has implied in II-7 that
22 there was a sinister meaning connected with KAYA's

23 a. Tr. 16,857-8

24 b. Ex. 3322, tr. 30,553; tr. 1608-9

25 c. Ex. 3322, tr. 30,553

1 entrance into the First KONOYE Cabinet. Their implica-
2 tion is a mere conjecture that disregarded the actual
3 conditions in Japan at the time as shown by the evidence
4 adduced.

5 The prosecution has contended that the
6 efforts on the part of the Finance Minister YUKI and
7 Vice-Minister KAYA to check the growing military expen-
8 ditures were a failure. As already explained, it was
9 no easy matter to curtail demands of the military which
10 had grabbed absolute political power by means of the
11 February 26 Incident and instituting ~~them~~ whereby
12 only officers in active duty could become War or Navy
13 Ministers. Finance Minister TAKAHASHI tried to stop the
14 fast encroaching military power and was assassinated,
15 and the 1937 military budget was approved by Minister
16 BABA as requested by the military. When KAYA became
17 Vice-Minister, this 1937 budget, as far as the govern-
18 ment was concerned, stood decided^a and to reduce a bud-
19 get already decided was many times more difficult than
20 reducing budgets which were still pending. KAYA
21 accomplished the impossible task and succeeded in shav-
22 ing a part of the military budget already decided.
23 Whether this was a success or a failure must be judged
24 in the light of the conditions existing at that time.
25 a. Ex. 3322, tr. 30,553.

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The prosecution has contended that KAYA joined the First KONOYE Cabinet knowing that with him in the Cabinet would be powerful military men. We wish to point out that the Army and Navy Chiefs of Staff, Army Vice-Chief of Staff and Chief of the Awantung Army were not members of the Cabinet, nor part of it. When KAYA joined the Cabinet he did not dream he could control the military completely. The situation at that time was that all the statesmen combined could not resist the military. Four months prior to his appointment to the Cabinet post KAYA was a mere bureau chief in the Finance Ministry without any political leaning or power. Then why did he join? The testimony of YUKI, Toyotaro sheds light on this point:

"Fearing that such expansion policies as upheld by my predecessor might come to reassert itself and convinced of the necessity of adhering to the policy of strict economy followed by me, I recommended Mr. KAYA to Prince KONOYE for the post of Finance Minister."

At that time there were many political climbers who played up to the military. YUKI saw this in BABA. KAYA thought that his becoming the Finance
a. Ex. 332, T. 30,555

1 minister was more helpful to the healthy economy of
2 Japan than any one else assuming that post. He be-
3 lieved so because he had long years of experience
4 with military budgets and he himself sincerely be-
5 lieved that he was most faithful in the maintenance
6 of Japanese finance.

7 A month after KAYA assumed his post the
8 China Incident broke out. The Incident made in-
9 crease in military expenditures inevitable. KAYA
10 endeavored to keep the increases as low as possible
11 and the concensus of the knowing Japanese at that
12 time was that no one could have done better than
13 KAYA. The best proof of this is that the military
14 was dissatisfied with KAYA and forced his resigna-
15 tion.

16 N-9-8

17 The prosecution contended that "policies
18 that reached far into the future" were formed during
19 the days immediately preceding the First KONOYE
20 Cabinet and KAYA must have known about them.

21 1. The first "far-reaching" policy men-
22 tioned is the Anti-Comintern Pact. This Pact was
23 concluded on November 25, 1936^b when KAYA was Chief
24

- 25 a. Ex. 3330, T. 30,608; Ex. 3329, T. 30,600
Ex. 3337, T. 30,641; Ex. 3322, T. 30,555
b. Ex. 36, T. 5934-6

1 of the Financial Bureau, ^a under Finance Minister
2 BABA who did not like KAYA. KAYA certainly did not
3 have anything to do with the conclusion of the
4 Pact. ^b

5 2. As regards the so-called "incidents"
6 in Manchuria, KAYA had no connection with them nor
7 has the prosecution adduced any evidence to show
8 KAYA had a part in them. ^c There is no evidence
9 that KAYA was connected with the military activities
10 in North China and with the Japanese policies in
11 Manchukuo. In 1936 the Finance Minister was the
12 pro-militarist BABA with whom KAYA did not see eye
13 to eye resulting in KAYA's transfer to the Financial
14 Bureau. The conjecture of the prosecution is en-
15 tirely without grounds.

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23 a. Ex. 111, m. 722

24 b. m. 5000; T. 5902

25 c. Ex. 3334, m. 30,620; Ex. 111, T. 722

1 B. Second Period.

2 N-9-9.

3 The prosecution alluded to the Five Year
4 Program of Important Industries and the Five Year
5 Plan for the Production of War Materials in para-
6 graph 11-8, but as the execution of these plans
7 took place after KAYA became Finance Minister I
8 shall discuss them at this time.

9 The prosecution has contended that these two
10 plans formed the basis for a plan of a war of aggres-
11 sion, but adduced no evidence to prove their con-
12 tention. Their contention is no more than a conjec-
13 ture without proof. There is no need for me to go
14 into a discussion as to whether or not the two plans
15 were part of a plan for a war of aggression for KAYA
16 did not adopt the plans nor aided in their execution.
17 He did not even know such plans existed. He heard
18 of them for the first time in this very courtroom.

19
20 1. The testimony of OKADA, Kikusaburo, who
21 drafted the plans in question, testified in this
22 court to the following effect:

23 a. The plan referred to in exhibit 841
24 concerned the Army only and was not submitted to the
25 other ministries or to the Cabinet.^a

a. T. 18,282, 18,325

1 b. The Five Year Program for Important
2 Industries (exhibit 342) was unofficially referred
3 to the Cabinet and concerned ministries as reference,
4 but nothing was done about it on account of the
5 China Incident until January 1939 when a part of the
6 plan received Cabinet approval. This was over
7 eight months after KAYA had resigned.^a

8 c. The various ministers did not know
9 about this plan.^b

10 2. YOSHINO, Shinji, who was Minister of
11 Commerce and Industry in the same Cabinet with KAYA
12 and who resigned at the same time with KAYA has testi-
13 fied in the court that he did not know such a plan
14 existed.^c

15 3. If such a plan had been referred to the
16 Cabinet, it would have been submitted to the Planning
17 Board for study and investigation. However, when
18 UYEMURA, Kogoro, who was department head of the
19 Planning Board from October 1937 to January 1940,
20 testified in this court he said he did not know of
21 any such plan.^d

22 4. Witness Liebert, when cross-examined,
23

- 24 a. Ex. 111, T. 18,309
25 b. T. 18,311
 c. T. 18,232.
 d. Ex. 2802, T. 25,197

1 testified that he did not know whether the plan was
2 adopted by the cabinet.^a

3 5.. ISHIWATA, Shotaro, who was Vice-Minister
4 of Finance under KAYA, testified that he did not
5 know of such a plan and that the Finance Ministry
6 did not adopt nor refer to such a plan.^b

7 6. KAYA, himself, has also testified in a
8 similar vein.^c

9 7. Exhibit 2227 adduced by the prosecution
10 does not mention anywhere that KAYA was acquainted
11 with the plan.

12 The above mentioned evidence proves con-
13 clusively that KAYA knew nothing about such a plan.
14 N-9-10

15 The prosecution in paragraph II-10 stated
16 that Japan in February, 1936 began to emphasize
17 state control of economy, mentioned briefly about
18 oil, coal and establishment of heavy industries in
19 manchukuo and attempted to give the impression that
20 KAYA was responsible for them, without having ad-
21 duced any evidence to support their contention.
22 KAYA did not become Finance Minister until June,
23 1937 and the controlled economy emphasized by the
24

25 a. T. 8570
b. Ex. 3321, T. 30,548
c. Ex. 3337, T. 30,641

1 prosecution in their summation was put into effect
2 when BABA was Finance Minister during the critical
3 time following the February 26th Incident.^a KAYA
4 during this period was Chief of the Finance Bureau,
5 a post which had no responsibilities in deciding
6 policies.^b

7 N-9-11

8 In respect to the reference to the China
9 Incident we wish to call the attention of the Tri-
10 bunal to KAYA's testimony on this point:^c

11 "I became Minister of Finance on June 4,
12 1937 and I knew nothing about the Lukouchiao Inci-
13 dent before its outbreak. The Cabinet made no
14 plan or preparation for the Incident. I learned
15 about it for the first time after the outbreak of
16 the Incident and the report was that hostilities
17 between the Chinese and Japanese broke out due to
18 illegal attack by the Chinese. The Cabinet, of which
19 I was a member, decided on a policy to regard the
20 Incident as a local incident and to settle it on
21 the spot as soon as possible. It was against the
22 sending of troops from Japan, but if that became
23 inevitable to limit the troops to a small number.
24

- 25 a. T. 8543; Ex. 3324, T. 30,579
b. Ex. 3324, T. 30,549; Ex. 3327, T. 30,596
c. Ex. 3337, T. 30,640

1 The sending of troops was due to the Army report that
2 continued illegal attacks on the part of the Chinese
3 troops and the massing of their forces in the area were
4 going on; so when the Army requested an increase in
5 troops in order to protect the lives and interests of
6 Japanese in that area, the Cabinet could not help but
7 give its assent. The Cabinet's motive in assenting to
8 the requests for sending troops by the Army was to protect
9 the lives and interests of Japanese nationals and the
10 small Japanese force stationed there in accordance to
11 treaty. "I opposed especially the dispatching of
12 troops to Shanghai for I believe it would spread the
13 Incident wider. I asked for reconsideration, but my
14 request came to no avail for the other Cabinet members
15 thought the dispatching of troops was necessary in
16 order to protect Japanese interests. However, on every
17 occasion I tried my best to limit the budgets required
18 for the dispatching of troops."

19 This testimony clearly shows that KAYA was
20 not party to any aggression. It shows that KAYA
21 and the Cabinet of which he was a member were opposed
22 to the dispatching of troops and agreed to it only
23 when the situation became inevitable and even then
24 endeavored to limit the troops to a minimum.

25 KAYA's testimony just quoted is confirmed

1 by the testimony of SHIONO,^a who was Minister of
2 Justice in the same Cabinet. This point was not
3 contradicted.

4 KAYA strongly opposed the dispatch of
5 troops to Shanghai. An episode confirming this
6 was unexpectedly introduced into court during the
7 presentation of evidence for HIROTA on February 2,
8 1948. Prosecutor Comyns Carr in objecting to de-
9 fense document No. 3014, mentioned the fact that "the
10 document contained a passage in which the Navy
11 Minister shouted at the Finance Minister in the
12 Cabinet meeting."^b The document in question is an
13 excerpt of the SAIONJI-HARADA Diary of August 1937
14 and speaks of the Cabinet meeting when the question
15 of dispatching troops to Shanghai was discussed.
16 The passage referred to by the prosecutor indicates
17 how strongly KAYA, who was the Finance Minister,
18 opposed the dispatching of troops to Shanghai. As
19 far as KAYA was concerned, his only source of infor-
20 mation on which he based his decision was the re-
21 ports of the military and Foreign Office. KAYA,
22 having been a civilian minister, was not informed
23 about operations beforehand nor consulted about them.^c

25 a. Ex. 3320, T. 30,536

b. T. 38,661

c. Ex. 3337, T. 30,640; Ex. 3320, T. 30,538

1 This is confirmed by other evidence such as the
2 independence of the Supreme Command tendered by
3 both the prosecution and the defense.

4 The prosecution has stated that the Cabinet
5 on July 11, 1937 decided to send a larger army to
6 North China, that KAYA approved this and that this
7 was the beginning of the Sino-Japanese War. We do
8 not agree with this contention. As far as KAYA
9 was concerned, he did not agree to start a war
10 against China, nor did he agree to send a large
11 army. What he agreed to was to send a minimum army
12 necessary to safeguard Japanese nationals and inter-
13 ests from Chinese attacks, and it clearly stated
14 that the troops dispatched were to be returned home
15 as soon as the Incident, which was then regarded as
16 a minor local incident, was settled. KAYA believed
17 that the Cabinet's decision was not only inevitable,
18 but justified, and judging from the situation at
19 the time it was only natural for KAYA to have be-
20 lieved so. On this point, we wish especially to
21 call the attention of the Tribunal to the testimony
22 of KAYA, SHIONO and HORINOUCHI.^a KAYA's belief that
23 lives of Japanese nationals, their interests and the
24 safety of the small Japanese troops were in danger
25

a. Ex. 3260, T. 29,687-9; Ex. 3320, T. 30,537.
Ex. 3337, T. 30,639-40

1 due to the increase and massing of Chinese troops
 2 was justified and can readily be understood by perus-
 3 ing reports obtained by Japan.^a It was natural that
 4 these reports were read and discussed and formed
 5 the basis for the Cabinet's decision.

6 KAYA resigned from the Cabinet in May, 1938,
 7 long before the Incident had spread to the focal
 8 points of Hankow in Central China and Canton in
 9 Southern China and his resignation was due to pres-
 10 sure by the military and to the fact that he har-
 11 bored doubt as to whether Japan's policy was wise
 12 or was within the sphere of necessity.^b

13 N-9-12

14 It is a fact that Japan's military budgets
 15 increased and a Temporary Special Military Account
 16 was set up in 1937, but these were due to the out-
 17 break of the China Incident, and beyond the control
 18 of KAYA. The best test, we believe, as to whether
 19 or not KAYA had any criminal responsibility in
 20 connection with the China Incident, is his attitude
 21 towards the Incident. On the matter of increase
 22 in military budgets, KAYA has testified:

23	a.	Ex. 2481, T. 20,570	b.	Ex. 111, T. 722
24		Ex. 2582, T. 21,974		Ex. 3329, T. 30,602
		Ex. 2518, T. 21,246		Ex. 3330, T. 30,608
25		Ex. 2487, T. 20,628-9		Ex. 3323, T. 30,573
				Ex. 3337, T. 30,641

1 "On every occasion I tried my best to limit
the budgets required for the dispatching of troops." ^a

2 This was confirmed unexpectedly by evidence
3 adduced by other defense counsel.

4 Witness TANAKA, Shinichi has testified that
5 KAYA reduced the Army's request for three months
6 expenditures for dispatching troops to North China
7 to two months. Again TANAKA has testified that
8 the Army was hard put during the operations against
9 Hankow and Canton due to insufficient funds. ^b

10 The evidence just referred to indicates
11 that KAYA hoped the Incident would be settled early
12 and was against its spreading.

13 In connection with the great increase in
14 the 1937 military budget, we wish to call the atten-
15 tion of the Tribunal that the budget for 1937 (ex-
16 cept expenditures for China Affairs) was in reality
17 decided in the autumn of 1936 when Finance Minister
18 BABA accepted the Army's demand in total. KAYA
19 had no connection with this increase. ^c

20 N-9-13

21 I wish to explain briefly at this point
22 KAYA's position in the First KONOYE Cabinet in con-
23

- 24 a. Ex. 3337, T. 30,640
25 b. Ex. 2488, T. 20,689
c. Ex. 3322, T. 30,553

noction with the China Incident. In short, KAYA was
1 not among those who held the actual power of making
2 a decision. The Tribunal is well acquainted with
3 the various evidence in reference to the Five
4 ministers' Conferences. The Five ministers' Confer-
5 ences were frequently held during the HIROTA and
6 OKADA Cabinets and by the First KONOYE Cabinet after
7 the Cabinet change in May 1938. (KAYA resigned dur-
8 ing the Cabinet reshuffle.) These Five ministers'
9 Conferences decided on important matters. While
10 KAYA was in office during the First KONOYE Cabinet,
11 important matters were decided by either the Four
12 Ministers' Conference composed of the Premier,
13 Foreign, War and Navy Ministers or the Three Minis-
14 ters' Conference made up of the Foreign, War and
15 Navy Ministers. Evidence shows that in connection
16 with these ministers' conferences, preparations or
17 investigations were conducted at conferences com-
18 posed of the Vice-Ministers and other subordinate
19 officers of the Foreign, War and Navy Ministries.^a
20
21 KAYA and the Finance Ministry were not included in the
22 setup. His exclusion, to a large measure, was due

23 a. Ex. 3260, T. 29,692-701; Ex. 3734, T. 37,164;
24 T. 22,028, 22,029, 22,034, 22,075-6;
25 Ex. 3876, T. 38,671-3, T. 39,259

to his weak political position. The Finance Minister
1 in the OKADA Cabinet, TAKAHASHI, and the Finance
2 Minister in the First KONOYE Cabinet who took his
3 place, IKEDA, were regarded in high esteem by the
4 public because of their age and fine records. The
5 Finance Minister in the HIROTA Cabinet, BABA, was
6 ten years older than KAYA and on good terms with
7 the military. KAYA, however, was nothing more than
8 a bureau chief in the Finance Ministry but four
9 months before he became Finance Minister.^a He was
10 a career Finance Minister, a man without the backing
11 of a political party or a financial clique. His
12 standing with the military was anything but good
13 for he had for many years bucked against the mili-
14 tary on the matter of budgets. He stood in an
15 extremely weak political position.
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1 In almost every country we find two categories
2 of state ministers: the first with power to decide on
3 state policies and the second, that do not participate
4 in the making of policies but merely administer poli-
5 cies decided by others in the name of the whole as heads
6 of ministries. That KAYA belonged to the latter group
7 is evident from the foregoing explanation.

8 There is no evidence that as Finance Minister
9 in the First KONOYE Cabinet, KAYA entrusted the making
10 of decisions in connection with the China Incident with
11 the Three Ministers and Four Ministers Conferences.

12 N-9-14. The prosecution in II-13/14 quoted
13 KAYA's testimony: "I was occupied with the difficult
14 task before me and I did not dream about a preparation
15 for a future war," and branded the testimony as "a
16 deliberate lie." He is further charged as having
17 made speeches and written articles "in an effort to
18 justify his actions, as well as the decisions of the
19 Cabinet;" that, "he never condemned the increasing
20 activities and control of the military;" that, "at
21 that time Japan's economy was placed on a wartime basis;"
22 and that he was "an active and willing conspirator."

24 Allow me to reply to these accusations:

25 1. When Kava said he did not dream of a future

1 war he meant the Pacific War and this is clear from
2 paragraph 4-e of his affidavit.^a

3 KAYA has testified that he knew nothing about
4 the two five-year plans of the Army labeled by the
5 prosecution as preparations for the Pacific War, and
6 that he had his hands full with financial measures to
7 counter the unexpected outbreak of the China Incident.
8 KAYA has not denied that he took financial measures in
9 connection with the China Incident; his hands were full
10 looking after the financial measures in connection with
11 the China Incident and had no time to ever dream of
12 preparations for the Pacific War. KAYA has not told
13 any "deliberate lies." The following evidence confirms
14 this:

15
16 From the time prior to the China Incident, the
17 financial conditions of the country were anything but
18 good; the Finance Minister KAYA was hard-pressed
19 untangling the unsatisfactory conditions. On top of
20 the unstable economic condition, there was the powerful
21 military and rightist groups whose radical and high-
22 pressure demands only added to the economic and
23 financial distress and uncertainty.

24 Such was the condition when the unexpected
25 China Incident broke out. As the Incident spread,

a. T. 30,639

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2 paragraph 4-e of his affidavit.^a

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4 the two five-year plans of the Army labeled by the
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19 the unstable economic condition, there was the powerful
20 military and rightist groups whose radical and high-
21 pressure demands only added to the economic and
22 financial distress and uncertainty.

23 Such was the condition when the unexpected
24 China Incident broke out. As the Incident spread,
25

a. T. 30,639

1 contrary to the wishes of KAYA, military budgets
2 increased, bond flotations increased and added to the
3 feeling of uncertainty that pestered the economic and
4 financial circles. As the country entered into a
5 quasi-wartime condition, the power of the military and
6 the rightist groups became stronger and their demands
7 for radical and dangerous economic and financial meas-
8 ures became stronger. Such was the situation KAYA
9 faced and he exerted his every effort to forestall
10 financial and economic chaos and pacify the growing
11 feeling of uncertainty among the people.

12 Witness YUKI has testified:^a

13 "In June the same year Mr. KAYA became Minister
14 of Finance, but due to the outbreak of the China
15 Incident soon afterward the feeling of uneasiness in
16 economic circles aggravated. Such difficult problems
17 as financial stringency, abnormal fluctuation of stock
18 exchange market, pressure of increased demand for funds
19 cropped up one after another. The China Incident ex-
20 tended to Shanghai area and everything came to assume
21 a wartime aspect. As things went on in this way, some
22 among the so-called reformists or the radicalists
23 impatiently demanded a drastic reform in the economic
24 set-up of the country, calling for the nationalization
25

a. Ex. 3322, T. 30,558

1 of financial organs, the thoroughgoing control of
2 economy, etc., and this threw the economic circles into
3 profound uneasiness and terror."

4 Again on page 8 of his affidavit, YUKI has
5 testified as follows:

6 "Mr. KAYA, as the Minister of Finance, endeav-
7 ored to adjust capital investments, ease credit, check
8 the rise of interest rate on loans, stabilize the
9 security market and thus keep open the stock exchange
10 and ease the anxiety of the financial circle."

11 "Witness TSUSHIMA has testified:^a

12 "In July the Sino-Japanese hostilities broke
13 out. The demands for increased military expenditures,
14 expansion of production and what-not, became intensified;
15 the financial circle was overtaken by uneasiness more
16 than ever. KAYA, as the Finance Minister, racked his
17 brains to keep the scared finance in order through
18 maintaining the exchange rates, controlling the supply
19 of industrial funds, easing the credit stringency,
20 checking the advance in money rates, averting the clos-
21 ing of the stock exchanges, stabilizing the security
22 market, moderating the panic-stricken sentiment of the
23 financial circle and preventing the self-diffidence,
24 etc. The plight then was such that whoever might

25 a. Ex. 3324, T. 30,579

1 become Finance Minister, it would be the utmost of his
2 power to maintain the order of the financial circle,
3 leaving no room for anything like a preparation in the
4 field of economics and public finance for a future war
5 of aggression."

6 This testimony was not contradicted.

7 2. The prosecution has contended that during
8 the period KAYA was Finance Minister, Japan's economy
9 was established on a wartime basis. However, it was
10 not until January, 1939 or eight months after KAYA
11 resigned that a part of the Army Five-Year Plan was
12 adopted.^a Perusal of the prosecution's evidence on
13 this point will reveal the far greater portion of the
14 important wartime measures were adopted after KAYA
15 resigned from the cabinet. However, it is contrary to
16 facts to conclude that the measures taken by him were
17 in preparation for a war of aggression. In present-day
18 Japan under a new constitution that outlaws war, similar
19 measures that were adopted under KAYA, such as Adjust-
20 ment of Funds and Encouragement of savings, are being
21 carried out by the Japanese Government. These are
22 necessary measures for the absorption of the people's
23 buying power and controlling supply of industrial funds
24 in times when there is an over-supply of currency in
25

a. Ex. 842, T. 8270

1 circulation and a great demand for capital. We repeat,
2 the prolonging and expansion of the China Incident were
3 contrary to KAYA's fond wishes. But when it did spread,
4 it was only proper to adopt adequate measures to meet
5 the changed situation. The gist of the matter is whether
6 the measures were adopted with the intention of waging a
7 war of aggression or whether the measures were adopted
8 to meet an unexpected situation. The motive back of the
9 measure should be the test. We have shown the situation
10 that faced KAYA as Finance Minister and why it was nec-
11 essary for him to adopt such measures as encouragement
12 of savings and adjustment of funds, and that KAYA did
13 not for a moment think they were for preparation for
14 a war of aggression.

15 3. The prosecution has contended that while
16 claiming his hands were full, KAYA found time to make
17 speeches and therefore he was deliberately lying.
18 This is a most unfair conclusion. Witnesses have
19 testified of the chaotic economic conditions that
20 necessitated measures such as the Fund Adjustment and
21 Encouragement of Savings on a grade scale, which the
22 people had not experienced heretofore. The people's
23 understanding was necessary. KAYA disliked to force his
24 measures on the people^a and chose a voluntary method.
25

a. Ex. 3222, T. 30,558; Ex. 3323, T. 30,569-72.

1 By means of speeches, he meant to seek the cooperation
2 of the people. Speech-making became part of his work
3 to prevent the collapse of the financial and economic
4 order. He did not go around making speeches to defend
5 himself.

6 4. The prosecution has contended that KAYA did
7 not condemn the acts of the military. The military,
8 looking at it from the broad point of view, was a part
9 of the government. The War and Navy were attacked in
10 cabinet meetings, it was another matter to criticize
11 them publicly. Any public criticism of the military
12 was a grave matter and any man making the criticism,
13 even if it was a justified criticism, was sure to have
14 the military upon him. If KAYA had openly criticized
15 the military he would undoubtedly have been forced to
16 resign, not that it mattered to him, but it was cer-
17 tain that someone more in tune with the military would
18 have been appointed and his moderate policies would
19 have been cast aside in favor of more radical and
20 dangerous policies.

21 The witness AKASHI has testified:

22 "Many people were doubtful as to whether they
23 were able enough to dispose of the demands on the part
24 of the radical forces and to proceed with moderate
25

policy in maintaining the situation."^a

1 The testimony just referred to gives an idea
2 of the difficult situation. It was necessary to avoid
3 dangerous measures, without clashing with the military,
4 as much as possible. The work called for extreme
5 patience, but it was necessary for the good of the people
6 and the country.
7

8 At the London Naval Conference, Premier
9 HAMAGUCHI exercised a strong hand over the Navy. Prem-
10 ier HAMAGUCHI did gain temporary victory, but because
11 of it he was assassinated and gave rise to the May 15th
12 Incident and through this Incident the military enhanced
13 their power and the Supreme Command's independence be-
14 came universally recognized.

15 Finance Minister TAKAHASHI long fought against
16 the military and succeeded in suppressing them to a
17 great measure. The result was the February 26th
18 Incident in which TAKAHASHI was assassinated. Through
19 this Incident the military gained absolute power and
20 the military budget was at once increased by Finance
21 Minister BABA.^b
22

23 At the London Conference and during the TAKA-
24 HASHI opposition against the military, KAYA worked hard

25 a. Ex. 3323, T. 30,572

 b. Ex. 3322, T. 30,553; Ex. 3324, T. 30,579

to suppress the military. He remembers well the temporary success and their aftermath.

When KAYA was Finance Minister the power of the military was far greater than what it was during the time of HAMAGUCHI or TAKAHASHI and in comparison KAYA had far less power than either of them. To avoid clashing with the military and to pursue a course away from radicalism was the only road open to KAYA. Only by this course could he serve his people and country.^a But this does not mean agreeing to an illegal act. We have clearly shown that KAYA was not an "active and willing conspirator", as charged by the prosecution.

N-9-15. In paragraph II-15, the prosecution has mentioned about KAYA's speeches in exhibit 3338-A. The prosecution has pointed out the topic of the speeches was "Armed War and the War of Economy," but perusing the book "Wartime Economic Life"^b, we note that the speeches are grouped under the heading "Japan's Economic Power." "Armed War and the War of Economy" is a sub-heading under it. This, however, is not important. The topics mentioned were chosen by the editor of the book, and not KAYA. The important thing is the content of the speeches.

a. Ex. 3323, T. 30,572

b. Ex. 3338, T. 30,665

1 While it is evident from the part of the speech
2 that was read into the record, we note upon reading the
3 whole speech that the gist of the speech is: to what
4 extent can the Japanese economy withstand war expend-
5 itures? The speech goes on to explain that considering
6 its economic status, Japan was capable of shouldering
7 a wartime expenditure of Yen 20,000,000,000.^a

8 The question is whether or not KAYA had insist-
9 ed that war efforts should be pushed because the country
10 was able to bear an expenditure of 20,000,000,000. The
11 speech does not contain anything of the sort. On the
12 contrary, the speech bemoans the spread of the China
13 Incident.

14 We shall now go into the motive of the speech.
15 KAYA mentioned in the speech that as the military
16 expenditures approved by the Diet ran up to a huge sum
17 he thought there were many people who had doubts as
18 to whether or not the Japanese economy could shoulder
19 such an expenditure.^b This was a very important and
20 grave problem at that time. We have seen from the
21 testimony of YUKI, AKASHI and TSUSHIMA that the uncer-
22 tain economic conditions that prevailed prior to the
23 outbreak of the China Incident became much more pronounc-

24 a. Ex. 3338-A, T. 30,667

25 b. Ex. 3324, T. 30,579

1 ed on account of the Incident. A financial administrat-
2 or must consider as especially important, the psychology
3 of the people. If a state of economic chaos existed and
4 the financial circle regarded it in an exaggerated light,
5 the actual conditions would become that much worse.
6 Uncertainty and disorder actually made the situation
7 worse. Such being the case, it becomes an important
8 job for the financial administrators to remove any
9 uncertainty that the people might entertain. Witness
10 TSU-HIMA has testified that, "KAYA, as Finance Minister,
11 racked his brain to keep the scared finance in order . . .
12 and prevent self-diffidence . . ."

13 The time was critical and KAYA, as Finance
14 Minister, could not announce a pessimistic outlook; it
15 was necessary for those in charge of financial adminis-
16 tration to caution the people in time of financial
17 stability and make the people feel calm in time of
18 uncertainty.

19 By his speeches, KAYA did not attempt to drum
20 up war fever. He made those speeches in an attempt to
21 alleviate the undesirable situation caused by the
22 Incident.

23 When he stated that it was necessary to meet
24 the demands of the Army and the Navy, he did so because
25 he could not have said otherwise as a member of the

1 Government. Troops were dispatched because they had
2 to be dispatched and what he did was inevitable on
3 account of it. It has already been stated that he
4 opposed the decision to send troops to China, but
5 that was a matter over which he had no control. More-
6 over, the speeches in question were made in October 1937
7 or about two months after the Incident had spread to the
8 Shanghai area, as may be noted at page 26 of Exhibit
9 3338 (Japanese original)^a and not at the beginning of
10 the Incident. They were made at a time when the
11 Incident had spread against his wishes.

12 It is contended that KAYA referred to the
13 Incident as a de facto war. The actual battles at the
14 time between the Japanese and Chinese forces and their
15 effect on the finance and economy of Japan made the
16 Incident no different from a war. It was inevitable
17 that the financial measures take on the aspect of war.

18 N-9-16. The prosecutor has taken up Mr. KAYA's
19 speech delivered in April 1938 in which he urged "Prepar-
20 edness for a Prolonged War." The conclusion the prose-
21 cutor has drawn from it is entirely wrong and he is thus
22 giving a wrong hint or suggestion to the Court.

23 (1) The real caption of this speech was "How
24 to Serve the Country by Savings."
25

a. T. 30,665

1 THE PRESIDENT: Mr. Levin, it is now four
2 o'clock. We will adjourn until half past nine tomorrow
3 morning.

4 (Whereupon, at 1600, an adjournment
5 was taken until Tuesday, 30 March 1948, at
6 0930.)

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30 MARCH 1948

I N D E X

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Tuesday, 30 March 1948

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

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

10 Appearances:

11 For the Tribunal, all Members sitting, with
12 the exception of: HONORABLE JUSTICE B. V. A. ROLING,
13 Member from the Kingdom of the Netherlands and
14 HONORABLE JUSTICE R. B. PAL, Member from India, not
15 sitting from 0930 to 1600; HONORABLE JUSTICE HENRI
16 BERNARD, Member from the Republic of France, not
17 sitting from 1330 to 1600.

18 For the Prosecution Section, same as before.

19 For the Defense Section, same as before.

20
21 (English to Japanese and Japanese
22 to English interpretation was made by the
23 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 UMEZU and SHIRATORI, who are represented by
5 counsel. The Sugamo Prison surgeon certifies that they
6 are ill and unable to attend the trial today. The
7 certificates will be recorded and filed.

8 Mr. Levin.

9 MR. LEVIN: May it please the Tribunal, there
10 may be a few slight corrections in words and grammar
11 that we have not been able to catch last night or
12 during the day yesterday. We would like to have per-
13 mission to make those corrections nunc pro tunc. They
14 will not in any manner change the context or substance
15 of the summation, and we shall make every effort not
16 to place an undue burden on the reportorial staff.

17 THE PRESIDENT: Submit the application to
18 me in the ordinary way, Mr. Levin. I deal with those
19 matters.

20 MR. LEVIN: I begin on page 43, in the middle
21 of the page.

22 "Preparedness for a Prolonged War" was nothing
23 but the heading of a part of the speech. In this
24 speech he appealed to the people for their spontaneous
25 practice of savings, fully explaining its necessity.

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23 but the heading of a part of the speech. In this
24 speech he appealed to the people for their spontaneous
25 practice of savings, fully explaining its necessity.

1 This can be easily understood if we read the whole
2 text of the speech, namely, court evidence No. 3338-B.

3 In a section of his speech not recorded in
4 court evidence No. 3338-B detailed explanation is given
5 about the necessity of savings for checking inflation
6 as well as the ways in which the people's savings are
7 to be made. It is evident that the speech aimed at
8 the encouragement of savings by the people. With the
9 extension of the China Incident contrary to his wishes
10 the war expenditure swelled in an alarming degree,
11 necessitating the issuance of huge amounts of national
12 bonds. Under such a situation, unless the bonds were
13 smoothly absorbed by the people Japan could not main-
14 tain its economy and finance, and with inflation
15 threatening at hand, the Finance Minister ought to
16 exert his best effort to prevent it. Enormous amounts
17 of money were spent by the army and the whole country
18 was being flooded with money. Under such circumstances
19 KAYA thought that the best way to absorb the curren-
20 cies and thereby to check inflation was to increase
21 the savings of the people. And the goal of savings
22 increase was several times as much as in normal times.
23 This he stated unequivocally in his speech. He did
24 not like to enforce savings by means of law as he was
25 not, by his nature, inclined to use coercion. He

1 rather considered it harmful to resort to coercion in
2 such a matter, and therefore found it absolutely
3 necessary to inspire the people with a voluntary will
4 to practice savings.

5 Most of the people were getting increased
6 incomes due to the prosperity of munitions industries
7 and were leading an easy life. They did not deny the
8 necessity of savings, but were not so enthusiastic
9 about their savings, being disposed to satisfy their
10 wants instead.

11 The situation being such, it was a most impor-
12 tant duty of the Finance Minister to make the nation
13 savings-minded so that the desired goal of savings
14 could be attained and the collapse of Japan's national
15 economy averted. And it was a difficult job, but
16 should be carried out in order to safeguard the people's
17 living. One of his tasks he had to do to fulfill his
18 duty was this speech. If he had been a man who
19 could afford to resort to coercion to attain his
20 object, he would not have made such a speech as this.
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1 2. It is true that he advocated in his speech
2 that the nation should be prepared against the possi-
3 bility of a prolonged war. But this cannot be construed
4 as signifying that he wanted a prolonged war. It is
5 entirely wrong to infer from it that he was hoping for
6 such a war and inspiring the people with such notion.
7 China, on her part, had been prepared for a protracted
8 war, manifesting her strong will to fight it out to the
9 bitter end and the cabinet at that time could not but
10 believe it. As it was, Japan was of necessity compelled
11 to provide against it. It was necessary therefore for
12 Japan to take such measures as would enable her to
13 withstand a prolonged war in order to save her finance
14 from imminent danger.

15 It is the rule of the world that many undesir-
16 able things happen. Both the individuals and the
17 countries are required to be prepared against them
18 though they do not like it. Such was KAYA's position.
19 It is wrong to conclude that he desired or willed to
20 have a prolonged war because he advocated the neces-
21 sity of preparedness against such a war.

22 3. The people, when they are getting good
23 incomes usually do not think of the necessity of their
24 saving money to safeguard their living. But the
25 necessity of their practicing saving existed. While

1 they were in a position to save a substantial portion
2 of their incomes, they were liable to spend their money
3 recklessly. It was therefore necessary to appeal to
4 them in various ways so as to make them save their
5 money. Should they think that the war would soon end,
6 they would endeavor to do what they were not well
7 disposed to do. KAYA could not help, therefore,
8 expounding the necessity of the nation's preparedness
9 for a protracted war.

10 Reading the part of his speech quoted by
11 the prosecutor we find that what KAYA stated in his
12 speech was quite commonplace in those days. There can
13 be found nothing in it that would give an impression
14 that he had made any special effort to carry through
15 the China Incident vigorously.

16 4. Attention is called to the fact that the
17 said speech was made on April 12, 1938. It was after
18 the China Incident spread fairly ^(a) extensively and the
19 peace effort between Japan and China failed.
20

21 N-9-17.

22 1. KAYA's speech given in exhibit No. 3338-C
23 is one in which he explains in detail about the neces-
24 sity of economy of consumption and increase of savings
25 for the enlightenment of womenfolk. This can be seen

a. T. 30,673.

1 if we read the entire speech. It was an obvious fact
2 in those days that to effect economy in consumption of
3 various commodities and to increase the people's
4 savings was a vital necessity in order to maintain
5 national finance and economy and to prevent inflation
6 in this country. Much depended upon the Japanese house-
7 wives for the attainment of that object; hence, his
8 speech to the women. When we read through the whole
9 text of this speech, we can readily understand that
10 the speech was not intended in any way for warlike
11 propaganãa.

12 The prosecutor referred to this as if KAYA
13 had given positive publicity to the aim of the
14 National Mobilization Law in that speech but it is
15 wrong. In this speech, he briefly touched upon the
16 National Spiritual Mobilization Campaign. The said
17 National Mobilization Law was enacted in the year
18 following the year in which he had made that speech.
19 Again the speech in question was, as stated by the
20 prosecutor, made in December 1937 when the China Inci-
21 dent was fairly extended already. Never was it the
22 case where he delivered it wishing for the extension
23 of the incident.

24 It must be remembered that these speeches are
25 not a stenographic record of what KAYA said but were

reconstructed by the editor from memory more than a year after they were delivered. KAYA neither examined nor edited them before they were published.

4 In view of this, there is a fair amount of
5 possibility of the existence of some differences between
6 what he actually spoke and what was published as the
7 text of his speeches. The book publishing his speech
8 was issued in September 1938. The China Incident by
9 that time showed a further development than when the
10 speech was delivered. Journalism is generally liable
11 to exaggeration. There is therefore no gainsaying
12 that it is wrong to conjecture what was published had
13 some amount of inaccuracy and exaggeration.

15 2. The court considered that a government's
16 diplomatic announcement made on the occasion of the
17 outbreak of an international dispute or immediately
18 before the commencement of hostilities was liable to
19 be coated with embellishment and not represent the
20 true mind of the government, and on this ground the
21 court often refused to accept such announcements as
22 evidence. There is good reason in this attitude of
23 the court, and we admit its justice. The same concep-
24 tion must justify the fact that "when a war or hostili-
25 ties similar to a war are going on, the government and
its officials are very often apt to use strong terms

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24 tion must justify the fact that "when a war or hostili-
25 ties similar to a war are going on, the government and
its officials are very often apt to use strong terms

1 in what they have got to say to the public outside the
2 government contrary to or against their will." There
3 are often circumstances in which, while they inwardly
4 abhor the state of hostilities and truthfully wish for
5 its early termination, they cannot openly express what
6 is in their mind. Or there are cases where they find
7 it inadvisable to disclose what is in their mind, as
8 it is feared such disclosure might prove disadvantageous
9 for the realization of their true wishes.

10 It is often seen in international relations
11 that a country, while crying for peace, prepares for
12 war, or while showing a strong attitude as if she were
13 ready for a war, she strives for the maintenance of
14 peace. The best at worst that can be said of KAYA's
15 speeches is that they were the hyperbole of the
16 hustings.

17
18 3. Just like the conception as stated above,
19 it is considered there is justice in the following con-
20 ception, namely:

21 The true mind of the official in the adminis-
22 tration of the national affairs is reflected in his
23 word or action uttered or taken behind the scenes,
24 unknown to the government circles or the public. On
25 the basis of this assumption there is nothing that
might be taken as proof or might induce us to surmise

1 that KAYA ever wished or planned for the outbreak of
2 the China Incident or its extension. On the contrary
3 it has been made clear that he endeavored to prevent
4 its extension, and the dispatch of troops to China and
5 that he grieved over its eventual extension and was
6 placed in a very difficult position on that account.

7 Of the materials furnished to the Court the
8 KIDO diary and SAIONJI-HARADA memoirs have been taken
9 up by the prosecution as evidence best showing the real
10 state of affairs in the Japanese political circles in
11 those days. There is nothing in them that might be
12 taken as suggestive of KAYA's having ever wished or
13 strived for the extension of the China Incident or
14 been militaristic or belligerent. If there were found
15 anything in them suggestive of such a fact, the
16 prosecution must have referred to it as evidence
17 against KAYA, but the fact was they did not.
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1 On the basis of the above conceptions and also
2 judging from his actions during the long period of his
3 service in the Ministry of Finance, we are led to the
4 conclusion that the speeches made by KAYA referred to
5 above represent some of his earnest efforts exerted for
6 the realization of the wishes he had persistently
7 cherished, namely, the prevention of the threatening
8 financial collapse of Japan whereby to keep national
9 finance on a stable basis, and that they were in no way
10 intended for the inspiration of his audience with any-
11 thing like warlike sentiments.

12 If KAYA had been a man whose frame of mind
13 allowed him to have recourse to a strong coercive
14 measure to carry through his purpose, he would have
15 resorted to law and authority, and would never have
16 taken the trouble of busying himself with making speeches
17 in the midst of his pressure of business as a Finance
18 Minister.

19 N-9-18.

20 KAYA had nothing to do with Japan entering
21 into the Anti-Comintern and Tripartite pacts. While
22 no such claim was made by the prosecution, by innuendo,
23 they attempt to infer some responsibility on his part
24 because the Japanese Government entered into those
25 pacts while he was in the service of the government.

1 The prosecution mentioned that KAYA had con-
2 nection with the "Extraordinary War Expenditure Account."
3 As minister in charge of finance, this was only natural
4 and there was nothing illegal about it. The Electric
5 Power Law was mentioned, but nothing was said about
6 KAYA's connection with it except that he was a member
7 of the cabinet. That the Electric Power Law was not
8 a preparation for a war of aggression will, no doubt,
9 be argued in another phase. As far as KAYA was con-
10 cerned, it has already been made clear that he did not
11 know about the Army Five-Year Plans, nor had adopted
12 them in any way, nor had any inkling about a future war
13 of aggression. Even if some had considered the Elec-
14 tric Power Law as a preparation for a war of aggression,
15 there is no evidence that KAYA, too, believed so or that
16 he should have guessed it or that he was informed about
17 it. The prosecution mentioned that the Manchurian
18 Heavy Industry was established and was in operation.
19 What has been said in this connection with the Electric
20 Power Law can be said about this. The prosecution
21 pointed out that the North China Development Company
22 was formed on April 30, 1938. This is a mistake.
23 The company was established in November 1938. ^(a) Detailed
24 arguments will be made in connection with the North
25

China Development Company.

1 N-9-19. In paragraphs 18 and 19, the prosecution stated
2 that KAYA was "authorized to apply the Temporary Fund
3 Adjustment Law" and that "KAYA directed the investment
4 policies of all banks thereby destroying the last
5 vestige of the autonomous action in banks." We shall
6 point out the mistake in the prosecution's contention
7 and give the facts as they really happened.
8

9 1. We have already shown that KAYA did not
10 know anything about the Army Five-Year Plans, did not
11 adopt them in any way, nor think about a future war
12 of aggression. The First KONOYE Cabinet also did not
13 adopt the so-called Army Five-Year Plans, and it is
14 clear that the above-mentioned law was not drafted in
15 connection with the Five-Year Plans. The Fund Adjust-
16 ment Law was drafted because of the China Incident and
17 not for a future war of aggression. This can be seen
18 from the fact that law was to become void one year
19 after the termination of the China Incident. (b) The
20 one-year grace was to allow for postwar settlements.
21 This law was put into effect in September 1937 or
22 directly after the incident had spread to the Shanghai
23 area and at that time no one thought the incident would
24

25 (b) Ex. 2788, T. 25,045.

~~last another five or six years.~~

1 Witnesses YUKI and AKASHI have testified that
2 the law was drafted to stabilize the economic circle (a)
3 and prevent inflation threatened by the China Incident.

4 The law recognized large capital be turned
5 towards war industries, but this was inevitable for
6 the incident spread wide, contrary to the wishes of
7 the Japanese Government. Capital, however, would have
8 turned toward the war industries without the law, for
9 capital goes where profit is the largest. For that
10 reason, as testified by witnesses YUKI and AKASHI, (b)
11 capital outlay in total sum was put under control to
12 avoid inflation and for the maintenance of an orderly
13 economy.
14

15 The prosecution's contention seems to be
16 that measures adopted because of the China Incident
17 could be applied to other purposes and therefore could
18 be preparations for a future war. However, it does
19 not become a crime unless it is shown that such measures
20 were adopted with intent to use them in a future war
21 of aggression and were actually used for that purpose.
22 It has already been shown that KAYA's hands were full
23 with the China Incident and he had no time or room to
24

25 a. Ex. 3322, T. 30559; Ex. 3323, T. 30569.
b. Ex. 3322, T. 30559; Ex. 3323, T. 30569.

45,772

1 think of preparing for a future war. We will not go
2 into a general argument, but as far as KAYA was con-
3 cerned there is nothing against him.
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1 2. Witness YUKI, who at that time was
2 Governor of the Bank of Japan, has testified as
3 follows:^{a.}

4 "Again, the decisions of whether or not to
5 give permissions to investment or loans were made at
6 the meeting of a committee formed of members from
7 various government offices concerned and the Bank of
8 Japan. But inasmuch as the criteria by which such
9 decisions were to be made consisted in whether or not
10 the particular industry for which the fund was re-
11 quired was essential in the national emergency created
12 by the China Incident and whether or not there was a
13 prospect of equipments or materials being obtainable
14 for the said industry. The military and the Ministry
15 of Commerce and Industry and other departments of the
16 government which had direct connection with the
17 allocation of materials had the greatest say in making
18 decisions of 'yes' or 'no,' while the Ministry of
19 Finance had little authority, and the actual situation
20 was such that both the Finance Ministry and the Bank
21 of Japan were just to play the part of merely pro-
22 curing funds needed."
23

24 Witness AKASHI, who during the same period
25 was a veteran in the banking circle, has testified as

a. Ex. 3322, T. 30559.

a.
follows:

1 "It had been the most conspicuous feature of
2 Japanese economy since the outbreak of the China
3 Incident, that the material had become the master and
4 the finance the secondary matter."

5 From the above it can be seen that the
6 contention that KAYA directed the adjustment of
7 investment policies is far from correct.

8 3. The accusation that KAYA destroyed the
9 last vestige of the autonomous action in banks is
10 contrary to facts. Witness YUKI and AKASHI have
11 testified that KAYA complied with the wishes of the
12 financial circles and allowed as much freedom as
13 possible.
14 b.

15 Not only that, in the matter of savings
16 campaign KAYA looked to the nation's self-awakening
17 instead of resorting to legal means of compulsion.
18 The two aforementioned witnesses have testified that
19 KAYA's policies were mild and moderate as compared to
20 other war time measures and were regarded with dis-
21 favor by the radical groups and the militarists which
22 led to his resignation.
23 d. In other words, he was in
24 just the opposite camp from that contended by the

25 a. Ex. 3323, T. 30570.

b. Ex. 3322, T. 30559; Ex. 3323, T. 30569.

c. Ex. 3322, T. 30558; Ex. 3324, T. 30571-9.

d. Ex. 3323, T. 30579; Ex. 3329, T. 30602; Ex. 3330, T. 30608.

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d. Ex. 3323, T. 30579; Ex. 3329, T. 30602; Ex. 3330, T. 30608.

the prosecution.

1 The prosecution contended that KAYA
2 "established and operated reserve banks under the
3 direction of his office in China." There is no
4 evidence that such banks were, either directly or
5 indirectly,^{a.} under his direction. Nowhere in the
6 evidence referred to by the prosecution is there any
7 mention that KAYA established and operated banks. We
8 are surprised and astonished that such a statement,
9 not based on any evidence in the record, could
10 possibly have been made by the prosecution. No matter
11 how you look at it, we contend that KAYA had no
12 responsibility in the matter.

13 Third Period: N-9-20. The prosecution
14 contended that while KAYA testified that he had no
15 connection with the cabinet nor was he a government
16 official from May 26, 1928 to October 18, 1941, he
17 did admit upon cross-examination that he held various
18 posts appointed by the cabinet.

19 This contradiction arose from a mistake in
20 translation. The original of his affidavit is in
21 Japanese and the part in question in the original
22 reads: "I was not a member of the cabinet nor an
23 official of the government from . . ." This was
24 a. Ex. 840, sec. 115, T. 8444-5.
25

1 mistranslated to read: "I had no connection with the
2 cabinet. . ." ^{a.} and became the ground for cross-
3 examination on the part of the prosecution. His reply
4 to the prosecution's cross-examination did not con-
5 tradict his testimony for while he held posts appointed
6 by the cabinet, he was neither a member of the cabinet
7 nor an official of the government. ^{b.} This mistake
8 has subsequently been rectified by the Language Board. ^{c.}
9 KAYA testified that during this period he was neither
10 a cabinet member nor an official of the government
11 to show that he was not in a responsible government
12 position when the clashes with Soviet Russia took
13 place, or when the Japanese troops moved into French
14 Indo-China or when the Tripartite Pact was concluded
15 or when the greater part of the alleged preparation for
16 war was made.

17 In short, the seeming contradiction was
18 caused by mistranslation and in no way affects the
19 probative value of the testimony.

20 N-9-21. The prosecutor stated that KAYA
21 made a speech, after his resignation from the post of
22 Finance Minister, encouraging savings. ^{d.} He delivered
23 such a speech because he considered it imperative that
24

25 a. Ex. 3337, T. 30639. c. T. 36995.
b. Ex. 111, T. 30662. d. T. 30679.

1 the people should be minded to practice saving, other-
2 wise a terrible inflation would come upon them as the
3 result of their failure to increase their savings.
4 He feared also that if the people should fail to
5 increase their savings voluntarily, the cabinet
6 which had its finance portfolio held by another man
7 might resort to coercive measures to enforce people's
8 saving. He had it firmly in his mind that such
9 coercive steps should be avoided by all means.

10 Reference to AKASHI's testimony will help one under-
11 stand this.^{a.} The fact that KAYA spoke publicly on
12 the necessity of people's savings even after his
13 resignation shows how enthusiastic he was to prevent
14 inflation.

15 Later he became the chief inspector of the
16 Price Adjustment Committee,^{b.} and exerted his efforts
17 in an attempt to avert inflation since the savings
18 encouragement campaign was going on smoothly on its
19 track. He, who had a ministerial career, willingly
20 accepted the post of the chief inspector of a committee
21 and zealously attended to his work, while many com-
22 mittees were liable to function perfunctorily and
23 frequently were a nominal existence. He could do his
24

25 a. Ex. 3323, T. 30571.
b. T. 30680.

1 job with enthusiasm as his time was free. This also
2 shows how eager he was to prevent inflation. This
3 may have nothing to do with his case, but will serve
4 to aid in understanding the real significance of
5 KAYA's actions.

6 The prosecution referred to two speeches
7 made by KAYA while he was out of office and called
8 attention to the absence of any remark about the
9 savings in those speeches, hinting as if the state-
10 ment that he was an ardent expounder of savings were
11 a falsehood and as if he were inspiring warlike
12 sentiments. But if one is reminded on what occasion
13 those two speeches were delivered one would easily
14 realize that there is no wonder about the absence of
15 any remark about the question of savings.

16 N-9-22. The prosecution offered two
17 exhibits (exhibit 3339 and 3339-A)^{a.} with respect to
18 KAYA's address delivered in November 1938. We contend
19 the exhibits just mentioned show nothing that he
20 advocated war and therefore, has no criminal character.

21 1. The Japan-China-Manchoukuo Round Table
22 Conference in connection with which the address
23 mentioned was delivered, was held with views of
24 inviting Manchoukuoan and Chinese economic interests
25 a. T. 30686, 30698.

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to Japan, having them inspect her industrial and
cultural facilities, promoting friendship among the
economic interests of the three countries and thereby
helping toward mutual cooperation among them.

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1 2. The Pound Table Conference was held under
2 the auspices of purely private economic organizations.

3 3. The Round Table Conference was composed
4 of economists of the three countries and was not a
5 large gathering. KAYA did not attend any of the
6 numerous meetings held in Tokyo. This is clearly shown
7 by the record.^{a.} The address mentioned in exhibit No.
8 3339 was made by KAYA at the time he assumed the post
9 of chairman of the preparatory committee of the confer-
10 ence. This address was made neither before the Japan-
11 China-Manchukuo Economic Round Table Conference, nor
12 before any meeting open to the public.

13 4. Exhibit 3339-A is about the meeting held
14 in Hiroshima, a local city, and, as testified by KAYA,
15 was not a large gathering.^{b.} KAYA testified the speech
16 at Hiroshima was a mere greeting, which the prosecution
17 insisted on calling an address. We do not care to
18 argue with the prosecution as to whether it was a mere
19 greeting or an address, but we would like to say that
20 KAYA said it as a salutation. The last part of exhibit
21 3339, the beginning of exhibit 3339-A shows clearly that
22 he used the word "greeting" in the speech just mentioned.

23 5. The contents of the speech indicate that
24 it was not made with the aim of asserting his own
25

(a. T. 30707.
b. T. 30707.)

1 opinion. He has testified that it was made at a meet-
2 ing of the Sponsors' Preparatory Committee and was a
3 formal address in which the policies adopted by the
4 Government at that time, and what were being generally
5 discussed, were referred to.^{a.}

6 When one examines the contents of his "speech,"
7 it will be understood that they are as he stated and it
8 seems natural for him, assisting with the meeting, to
9 make such statements. He only referred to what was
10 being spoken of generally and as a matter of common
11 knowledge at that time.

12 In addition, what we would like to state now
13 is that according to the court transcript it is recorded
14 that KAYA's testimony concerned exhibit 3338, but it
15 will be well understood that KAYA testified with regard
16 to exhibit 3339 instead. This can be confirmed by re-
17 ferring to the transcript covering redirect examination
18 of the accused KAYA by his counsel.^{b.} The Court ruled
19 that the expression of peaceful intention which diplo-
20 matic authorities made in public is of no value because
21 it cannot be determined as expressing their real in-
22 tentions. Similarly, it will also be a natural con-
23 clusion that his formal address given on such an
24 occasion as stated above cannot be judged as his real
25

(a. T. 30707.

b. T. 30707.)

1 opinion. He has testified that it was made at a meet-
2 ing of the Sponsors' Preparatory Committee and was a
3 formal address in which the policies adopted by the
4 Government at that time, and what were being generally
5 discussed, were referred to.^{a.}

6 When one examines the contents of his "speech,"
7 it will be understood that they are as he stated and it
8 seems natural for him, assisting with the meeting, to
9 make such statements. He only referred to what was
10 being spoken of generally and as a matter of common
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23 clusion that his formal address given on such an
24 occasion as stated above cannot be judged as his real
25

(a. T. 30707.

b. T. 30707.)

1 opinion of the China Affair.

2 KAYA had no knowledge of the fact that his
3 speech was recorded, that is, no procedure was taken
4 that he read the record through and admitted it to be
5 accurate at that time.^{a.} He has testified that while
6 he recollects making a statement at the time, he does
7 not recollect whether he said exactly as recorded in the
8 document. It cannot be said that the document does not
9 contain exaggeration or additions to what he actually
10 said.

11 For reasons mentioned above, we contend it
12 cannot be decided from his "speech" made at the Japan-
13 China-Manchukuo Economic Round Table Conference that he
14 desired the expansion of the China Incident or that he
15 inspired the masses with enthusiasm for a war. On the
16 contrary, his short tenure of office, the uncontradicted
17 fact that he insisted that the matter be settled locally,
18 and finally, his resignation at the request of the
19 Premier speak more eloquently than words that he was
20 opposed to the China Incident.

21 N-9-23.

22 KAYA was president of the North China Develop-
23 ment Company for two years and two months. We shall
24 first show there was nothing criminal about the company.

25 (a. T. 30683-6.)

1 1. The Company was established for the purpose
2 of economic collaboration between China and Japan and for
3 the mutual benefits of the two peoples.

4 a. The establishment of the Company was not in
5 breach of international law or obligations.

6 b. The Company was not established for the
7 purpose of depriving from China and the Chinese people
8 anything unlawfully, nor work against the welfare of
9 China or its people.

10 c. The Company did not discriminate against
11 nationals of Third Powers nor apply unlawful pressure
12 against them.

13 The above-mentioned facts are clear from the
14 testimony of KAYA and OIKAWA, Genkichi, which was not
15 contradicted.^{a.} The facts, furthermore, are confirmed
16 by the prosecution's evidence exhibits 460-A and 3263,^{b.}
17 and there is no evidence in contradiction.

18 2. The Company was not planned for a war of
19 aggression. Development of the natural resources of
20 North China was a blessing to the people of North China
21 and increased materials for the national defense of
22 Japan as mentioned in exhibit 460-A. To strengthen the
23 national defense of a country is not a crime. In
24 planning any economic measure it is only natural to plan
25

(a. Ex. 3337, T. 30645; Ex. 2579, T. 21951-4.

b. T. 5253; T. 29820-4.)

1 it so that it will benefit the livelihood of the people
2 and be of use in the defense of the country. Because an
3 economic measure did these two things, it cannot be said
4 that it was done as a preparation for a war of aggression.
5 Nor can it be said that KAYA realized the establishment
6 of the Company was for a war of aggression.

7 If Japan had confiscated the products of North
8 China it would have been a crime. As Japan paid for
9 what it obtained it cannot be a crime even if the pro-
10 ducts it obtained were used for national defense.

11 The Company did not receive any directive from
12 the Japanese Government to point all expansion of
13 production with the year 1941 or thereabouts as the goal,
14 nor did it do so on its own.^{a.} It is clear from exhibit
15 460-A that the Company aimed for a long-term economic
16 development and not for a short-term production.
17 Deficits in the early years were expected and plans for
18 government subsidies to pay dividends on stocks held by
19 private individuals were made and carried out. Invest-
20 ments in subsidiary companies were made on the basis of
21 long-ranged development and not for immediate profits.^{b.}
22 This shows that the Company was not established as part
23 of a plan to wage war in the very near future. It is
24 clear that what the Company did was no more than ordinary
25

(a. Ex. 3337, T. 30646.

b. Ex. 460-A, T. 5253; Ex. 2579, T. 21955-7; Ex. 3337,
T. 30645.)

1 long-ranged economic development. There is no evidence
2 that the Company had the year 1941 or thereabouts as its
3 goal in carrying out its activities.

4 Again it is mentioned that the Japanese Govern-
5 ment could issue to the Company directives concerning
6 national defense, but in fact, the Government did not
7 issue any directive either for national defense or for a
8 war of aggression.

9 3. The prosecution looks at the establishment
10 of the North China Development Company as part of the
11 Cabinet decision of December 24, 1937, and that while
12 there was nothing sinister about the wording of the
13 decision itself, the real purpose was for a war of
14 aggression. As evidence, KAYA's statement to the press
15 as quoted by Goette was adduced. The prosecution's
16 opinion on this point is far from correct.

17 a. The Cabinet decision of December 24, 1937,
18 was a secret document containing the true intentions of
19 the Cabinet. If the document had been intended for
20 public announcement then there might be room to doubt
21 its sincerity, but as the document was a secret document,
22 there was no need to camouflage its meaning.

23 b. KAYA's statement quoted by Goette was made
24 in 1940 and the statement was made about the Material
25 Mobilization Plan of North China at that time. That the

1 statement was not in reference to the motives of the
2 North China Development Company is clear from the record.^{a.}
3 It might be correctly argued that if the Material Mobil-
4 ization Plan of North China had aimed to supply the
5 needs of the Japanese Army in connection with the China
6 Incident and the needs of the peoples of China and
7 Japan, the products of the companies in which the North
8 China Development Company had financial interest. It
9 was true of the industries in Japan financed by the
10 financial institutions of Japan. Because of this it
11 cannot be justly concluded that all the industries and
12 financial institutions were established on the motive
13 of aggression. The same reason can be applied in the
14 case of the North China Development Company and to judge
15 the nature of the Company from the testimony of Goette
16 is a mistake.

17 c. It is clear from the prosecution's evidence,
18 exhibit 460-A, that the North China Development Company
19 was without exception barred from engaging in business
20 enterprises.^{b.} Thus whether it was or was not a confis-
21 cated enterprise, the North China Development Company
22 could not operate it. And there is no evidence to show
23 that the Company either confiscated or operated an
24 enterprise owned by the Chinese.

25 (a. T. 3872.
b. T. 5253.)

1 4. The Company did not control the economy of
2 North China. The prosecution has given the impression
3 that the Company controlled the whole economy of North
4 China, but this is not correct.

5 a. The Company was connected with only a
6 certain portion of the enterprise of North China as
7 mentioned in exhibit No. 460-A and in KAYA's affidavit.^{a.}
8 The Company was not permitted to become concerned in
9 such active industries as general business, agriculture,
10 spinning, weaving, and tobacco, nor in banking or
11 insurance business.^{b.} Furthermore, it was not connected
12 with all the enterprises in the fields it was permitted
13 to make investments. For instance, during the period
14 KAYA was president, the Company was not connected with
15 the famous Kailan Colliery of North China. As the
16 Company was devoid of any power, it could not make in-
17 vestment, or loan, unless such financial aid was
18 solicited.

19 a. As previously mentioned, the Company was
20 merely a financial organ for investments and loans and
21 was not permitted to engage in business enterprises.

22 c. The Company had no power whatsoever against
23 a second party. It had no power of compulsion against
24

25 (a. Ex. 3337, T. 30643; Ex. 460-A, T. 5253.

b. Ex. 3337, T. 30643.)

1 anyone. ^{a.} Power against a second party rises out of law
2 and no law giving such power to the Company was enacted
3 either by the Japanese Government or the North China
4 Political Council.

5 d. As stated in exhibit 460-A the purpose of
6 the Company as defined by law, was to co-ordinate and
7 adjust the enterprises of North China, that is enter-
8 prises in specified fields, by means of investments and
9 and loans. ^{b.}

10 It can be seen from the foregoing that the
11 Company carried out its activities by means of capital
12 outlay and not by means of force. On this subject matter
13 KAYA has testified as follows: ^{c.} "Loans and investments
14 were subject to contracts under which the company ob-
15 taining the financial aid was required to obtain the
16 approval of the North China Development Company in
17 certain prescribed matters in order to avoid over-
18 investment or unwarranted expansion and thus endeavored
19 to bring about a sound and orderly development of the
20 economy of North China. The Company had no right over
21 any industry except those in which it had a financial
22 interest and even then, the rights were limited to those
23 specified in the contracts."
24

25 (a. Ex. 3337, T. 30645.

b. T. 5253.

c. Ex. 3337, T. 30645.)

From the foregoing it is clear that co-ordination and adjustment were carried out by means of contracts and not by force.

There is nothing new in the procedure whereby the holding company requires the subsidiary companies to seek its approval on matters prescribed in the contract. It is nothing unlawful or anything to be unduly concerned about.

As to the purpose of the North China Development Company in co-ordinating and adjusting the enterprises, exhibit 460-A has the following to say^{a.} "Co-ordination and adjustment of the operation of the subsidiary companies, as provided in the law concerning the North China Company, is designed to eliminate the possible occurrence of circumstances which may hinder synthesized growth of various enterprises relating to development of natural resources and other industries which will be started in that area."

In reference to co-ordination and adjustment we note the following:

1. In the scope, it covers only a portion of the industries of North China.

2. Its method was not by means of force, but through ordinary business procedure.

(a. T. 5253.)

1 3. The Company was not a state organ having
2 governmental administrative powers, nor did the scope
3 of its activities include the entire economy of North
4 China.

5 It is now clear that the phrase used by Liebert
6 in describing the purpose of the Company, "control and
7 adjustment of the economy of North China," as found in
8 his testimony, is far from correct.^{a.}

9 We have shown that the nature and activities of
10 the North China Development Company were not of an
11 aggressive nature, nor infringed upon international law.
12 We wish to point out the following which we believe con-
13 firms our conclusion and makes clear the point that
14 there was no responsibility for unlawful acts on the
15 part of defendant KAYA as president of the Company:

17 1. As already mentioned, the North China
18 Development Company did not administer the entire
19 economy of North China. Its scope of activities was
20 much smaller than the impression imparted by the
21 prosecution's case. This can be seen from the evidence
22 tendered by the prosecution. Statistics prove our con-
23 tention, but we refrained from introducing any for we
24 believed the matter was too unimportant to waste the
25 Court's time. One point we wish to mention is that the

(a. T. 8474.)

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25 Court's time. One point we wish to mention is that the

(a. T. 8474.)

1 figures in the asset and liability columns for the
2 years 1944 and 1945 are rather large, but this was due
3 to the inflation which raged through China at the time.
4 The figures do not represent true values. We wish to
5 point this out although it was long after KAYA's time.

6 2. The Company did not make any unlawful
7 profits. As mentioned in exhibit 460-A, losses were
8 expected and subsidies were provided for. This is also
9 mentioned in the affidavit of OIKAWA, Genkichi. In
10 section 5-3 of his affidavit, KAYA has testified that
11 during the period he was president, the Company was
12 continuously in the red and paid the private stock
13 holders dividends of not more than six per cent per
14 annum out of government subsidies, that the affiliated
15 companies all made small profits, which when distributed
16 as dividends, were made without discrimination among
17 Chinese and Japanese stockholders.^{a.}

18 3. We believe the prosecution has given the
19 impression that the Company was a monopolistic organ,
20 but the Company was not granted any such power by law.
21 It had none as the lack of evidence on the part of the
22 prosecution shows. KAYA mentions this point in section
23 5-b of his affidavit.^{b.} As already mentioned, the
24 Company did not monopolize the enterprises of North
25

(a. Ex. 3337, T. 30645.

b. Ex. 3337, T. 30644.)

China.

1 4. The Company was not an organ with power to
2 enforce its will, nor was it an organ to command the
3 dictates of the government. It is clear it was not an
4 organ to plan the material mobilization of North China
5 or enforce such a plan. This is mentioned in 5-b of
6 his affidavit.^{a.}
7

8 We now wish to reply to the argument of the
9 prosecution in their summation, E 81-94, which is
10 referred to in II-23, T. 41,035-6.

11 1. The prosecution has contended that the
12 North China Development Company had under its control
13 the iron mining industry with 200 million tons of iron
14 ore, but that was the estimated ores in the mines.
15 Prosecution's witness, Chin Tai-ju has testified that
16 during the period of six to seven years, the total iron
17 ore mined was 4,300,000 tons and at that time there was
18 practically no facilities in North China for smelting
19 the ore. This fact is shown in exhibit 462-A.^{b.} The
20 smelting facilities were gradually established with the
21 financial help from the Development Company. The greater
22 part of the ore was by necessity shipped to Japan and
23 Manchukuo to be made into steel. That Japan and Man-
24 chukuo shipped back to North China steel many times more

(a. Ex. 3337, T. 30643.

b. T. 5278.)

45,793

in value than the ore shipped out is clear from the
statistics on export.

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1 I proceed with paragraph 3 on page 79.

2 (The following paragraph, not read,
3 was copied into the transcript as follows:

4 2. The prosecution has contended that the
5 productive industries of North China were taken over
6 by the stock companies, but as already stated, the
7 field of investments of the North China Development
8 Company was limited. It was not permitted to make
9 investments in every industry and even in the permitted
10 fields, to a limited number of companies and Chinese
11 investments in the affiliated companies were treated
12 on the same basis as Japanese investments. There is
13 no evidence of unfair treatment as far as North China
14 was concerned. There is no evidence that the amounts
15 of its investments in the affiliated companies were
16 illegal.)

17
18 3. Goette has testified about the coal
19 shortage in Peiping and gave the impression that the
20 shortage was caused by the North China Development
21 Company. What Goette tried to convey was not true.

22 The area around Peiping produced much coal,
23 but the North China Development Company had nothing
24 to do with the coal produced there. This can be seen
25 by looking at the list of subsidiary companies tendered

1 by the prosecution. (a) The coal mines in which the
2 North China Development Company had financial interests
3 were all located several hundred miles away from
4 Peiping.

5 The coal mines around Peiping and mines
6 in the other districts were from time to time molested
7 by bandits and because of unsatisfactory police
8 protection, production and transportation of coal were
9 often hampered. Shortage of coal in Peiping for the
10 above reasons was met by bringing in coal from distant
11 areas, but due to the fighting going on in certain
12 areas and due to the wreckage of railroads by the
13 bandits, this was not always accomplished, and made
14 temporary shortages inevitable.

15 If Japan had taken out large amounts of coal
16 in spite of the needs of North China, then other cities
17 and in fact, the whole of North China would have
18 suffered coal shortages. Such was not the case, nor
19 has Goette testified about it.

20 4. The prosecution has pointed out that
21 the amount of salt, coal and steel (mistake for iron
22 ore) exported to Japan greatly increased and that this
23 shows Japan controlled the economy of China and tried
24 to give the impression that the North China Development
25

(a) Ex. 470

1 Company had some kind of connection in the matter.
2 This contention of the prosecution is not correct.

3 a. The prosecution's figures of 1945
4 show amount in money value. China at that time
5 was suffering from a bad inflation and the prices
6 of goods were in astronomical figures. Therefore,
7 the increase in money value does not mean increase
8 in goods.

9 b. In spite of the high prices in China,
10 Japan endeavored to maintain the Chinese currency
11 by placing the yuan on par with the Japanese yen. This
12 worked to great disadvantage to Japan, but was done
13 to bring about economic cooperation. The comparison
14 made by the prosecution is meaningless.

15 If survey is to be made on the export
16 statistics, the export-import between Japan and China
17 from 1931 to 1936 is about the same, but from the
18 year 1937, when the China Incident started, to 1941,
19 export from Japan to China exceeded greatly the import
20 into Japan from China. It is clear that China received
21 more from Japan than she shipped to Japan. In other
22 words, the balance was in favor of China. It is clear
23 from the export-important statistics that while China
24 shipped a part of the raw materials, she received in
25 return necessities in the form of manufactured goods.

The conclusion of the prosecution is in error. In fact, the statistics show the contrary, and we commend the table at the bottom of page 82 to the attention of the Tribunal. (a)

After 1942, while Japanese goods were cheap in price, Chinese goods were high. Therefore, in yen the imports from China greatly increased. This, however, does not show the amount and value of goods exchanged. Japanese goods were shipped cheaply to China where the profits were used to bolster the Chinese currency.

(a) Ex. 467	Export from	Export from
Year	Japan to China	China to Japan
1931	155 million yen	145 million yen
1932	141 " "	102 " "
1933	108 " "	113 " "
1934	117 " "	119 " "
1935	148 " "	133 " "
1936	159 " "	154 " "
1937	179 " "	143 " "
1938	312 " "	164 " "
1939	455 " "	215 " "
1940	681 " "	338 " "
1941	629 " "	433 " "

c. Mention is made of the North China Telephone and Telegraph Company. As stated by the prosecution, this Company was established on July 30, 1938. The North China Development Company was established after that, that is, in November of 1938. This shows that the North China Development Company had no connection with the establishment of the North China Telephone and Telegraph Company.

We have shown in our argument on the North China Development Company that there was nothing criminal about the Company, especially during the presidency of KAYA, and this shows no criminal responsibility on the part of KAYA.

We now wish to reply to the argument in II-23 in which the prosecution remarked that employees of this company had been invited by the Chinese. It is true that the Japanese employees had been enjoying the good will of the Chinese but none of them had been invited by the Chinese to China. The prosecutor used the word "officers", but neither the directors nor the Japanese employees were Japanese government officials.

It was also said by the prosecutor that Mr. KAYA's mission as its president had been to furnish financial aid to the Japanese troops in their operations

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It was also said by the prosecutor that Mr. KAYA's mission as its president had been to furnish financial aid to the Japanese troops in their operations

1 in Manchuria and China, whereas the fact was that the
2 Japanese troops were entirely dependent on the money
3 supplied by the Japanese Government.

4 The president of the Development Company
5 never extended even a sen of pecuniary help to the
6 Japanese troops, nor is there found any evidence to
7 show his extension of such a help. The fact was
8 that, far from helping others, the said company
9 was obtaining subsidies from the Japanese Government
10 due to the red-ink situation of its finance. (a)

11 The prosecution, in II-23, stated that
12 "according to KAYA's testimony before this Tribunal,
13 the officers of the North China Development Company
14 were in China upon the invitation of the Chinese, and
15 the invasion in March of the Japanese armies in
16 Manchuria and North China was an excursion put on by
17 the Chinese for the entertainment of the Chinese."
18 If this case were not so serious I would think that
19 my dear friend and colleague from my home state was
20 attempting to be facetious, but I merely remind the
21 Tribunal that there is no evidence by KAYA in this
22 record which bears out this statement. I believe the
23 statement was an error or a misapprehension.
24

25 The prosecutor further stated that he had

(a) Ex. 3337, T. 30,645; Ex. 460-A, T. 5253; Ex. 2579,
T. 21,951-4.

1 the knowledge of the fact that the Japanese Army
2 had forcibly taken over Chinese industries and were
3 operating these industries to support Japanese war
4 efforts. KAYA it is true, was aware of the fact
5 that Japanese troops had supervised some of the
6 Chinese enterprises, but never did he engage in the
7 operation of any of such enterprises. ^(b) He was
8 told that it was to maintain order and to give
9 employment to Chinese people that the Japanese troops
10 had taken over supervision of Chinese enterprises.
11 Therein can be found nothing that might establish
12 KAYA's responsibility for crime.

13 One of the most important facts whereby
14 to judge what responsibility Mr. KAYA had as the
15 president of the Company is that the said Development
16 Company was under the direction and supervision of
17 the China Affairs Board and was not permitted to act
18 on its own initiative or judgment. ^(c) The president
19 of the Company was an administrator pure and simple.
20 He was neither a man holding final responsibility
21 for the establishment of an economic policy in North
22 China nor one in a position to act as an intermediary
23 assistant. As a matter of fact there is no evidence
24 of his action in that direction.

25 (b) Ex. 3337, T. 30,645; Ex. 460-A, T. 5253, T. 30,601-4.
(c) Ex. 3339, T. 30,645; Ex. 460-A, T. 5253;
Ex. 455, T. 5183

1 The prosecutor in his summation has classified
2 the defendant's criminal responsibility into three
3 categories, but the president of the Company does
4 not fall under any of them.

5 In Appendix E of the Indictment it is mentioned
6 that in 1939 KAYA was an advisor to the Bureau of
7 Chinese Affairs (Sina Jimukyoku) but no evidence
8 is given for it. In the organization of the Bureau
9 of Chinese Affairs there was in existence no such
10 post as advisor. (a) This shows the fact that he was
11 not in a position to participate in the drawing-up
12 of the economic policy for North China. In KAYA's
13 personal history there is found nothing to indicate
14 that he was ever in such a position. (b) It is sheer
15 misstatement.

16 Conceding that the nature and action of the
17 North China Development Company were such as would
18 constitute a crime, KAYA in his capacity as its
19 president was not responsible for it. Not less so
20 since the Company itself did nothing criminal.

21 There is no evidence of criminal act on the
22 part of KAYA. On the contrary, evidence shows that
23 KAYA rescued the people of North China from famine. (c)
24 What he did on that occasion was, considering the time,

- 25 (a) Ex. 455, T. 5183.
(b) Ex. 111
(c) Ex. 3337-S, T. 30,646-7.

a very difficult task outside of his responsibility.

1 It shows his friendship toward the Chinese people
2 and his intention when he became president of
3 bringing about close collaboration between China and
4 Japan.

5 Fourth Period

6 KAYA has always hoped for the maintenance
7 of peace with the United States, Great Britain and
8 other countries.
9

10 The prosecution has failed to tender any
11 evidence to show that KAYA was a party to the planning
12 of the war against the United States and other
13 countries as charged before the time (October 18, 1941)
14 he joined the TOJO Cabinet. KAYA had always harbored
15 a strong desire to maintain peace and avoid war with
16 the United States. (Peace with the United States
17 naturally meant peace with Great Britain, Dutch
18 Netherlands and other countries and hereafter peace
19 with the United States will mean peace with the United
20 States, Great Britain, Dutch Netherlands and other
21 countries.)
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1 His strong desire for peace before entering
2 the TOJO Cabinet is shown in the testimony of UCHIDA,
3 Nobuya, TOYODA, Teijiro, who was Foreign Minister in
4 the Third KONOYE Cabinet, his good friend GOTO,
5 Takanosuke and of KAYA, Okinori.^a The testimony
6 of these three individuals rising out of intimate
7 talks with the defendant KAYA shows how deeply he
8 harbored the desire for peace with the United States.
9 When the voice of the militarist and the rightest
10 groups became stronger and stronger and when it came
11 to be rumored around that the Japanese-American
12 negotiations were being stumped with difficulties,
13 KAYA, as one of the intellectual moderates, could not
14 keep his earnest desire for peace locked in his heart.
15 He repeated his feelings to his friends. At the time,
16 he was president of the North China Development
17 Company and was not a member of the Cabinet, his
18 feelings were expressed as a private citizen to his
19 friends in private conversations and not in public
20 speeches or as a government official and there can
21 be no room for doubt as to his sincerity. That he
22 sincerely hoped for peace with the United States is
23 also shown in other evidence. It becomes clear from
24 the conversation between TOJO and KAYA at the time
25

a. Ex. 3325, Tr. 30585; Ex. 3328, Tr. 30598;
Ex. 3330, Tr. 30609; Ex. 3337, Tr. 30648.

1 KAYA received an invitation to join the TOJO Cabinet.
2 TOJO asked KAYA over the telephone to join his
3 cabinet as Finance Minister. TOJO was in fact the
4 representative of the Army and it was generally
5 believed at that time that the Army was in favor of
6 a strong attitude against the United States. KAYA
7 had no way of learning any more about the actual
8 condition of the negotiations, its past history or
9 of the attitude of the Army in regard to the negotia-
10 tions except from current rumors. TOGO has testified
11 that as the Japanese-American negotiations were strictly
12 secret he did not know about them.^a

13 KAYA felt he was qualified for the post for
14 he was a recognized financial expert. However fitted
15 he felt for the post of Finance Minister he did not
16 desire to join the cabinet if TOJO was determined on
17 war. KAYA questioned TOJO on three points, to which
18 TOJO replied:
19

20 1. That he had no intention of waging a war
21 with the United States; that he would continue the
22 Japanese-American negotiations and endeavor to reach
23 a peaceful settlement.

24 2. That in order to make the maintenance of
25 peace with the United States possible, he would

a. Ex. 3337, Tr. 30648; Ex. 3646, Tr. 35674.

endeavor toward closer cooperation between the
Supreme Commands and the Cabinet.

1
2 Needless to say, KAYA was very much sur-
3 prised and pleased at the first reply for public
4 opinion was that the Army might start a war any day.
5 (KAYA did not know about the talks at the Ogikubo
6 Conference nor the reasons back of the resignations
7 of the Third KONOYE Cabinet, nor that TOJO was com-
8 manded by the Emperor to revoke the September 6th
9 Decision and start with a clean slate. He was not a
10 politician and did not know about the inside workings
11 of the political circle.)

12 That TOJO would exert his effort to bring
13 about closer relations between the Cabinet and the
14 Supreme Commands was indeed an important point, for
15 in Japan the Supreme Commands existed as a separate
16 organ from the Cabinet. The Supreme Commands had the
17 power to move troops as it saw fit. Since the Man-
18 churian Incident the people were of the belief that
19 the Supreme Commands could move troops at its own
20 free will and disregarding the wishes of the Cabinet,
21 which led to warlike clashes. Such incidents caused
22 much concern among the people. Considering the con-
23 ditions at the time it was extremely important for
24 the Cabinet to maintain peace and to avoid such lack
25

of cooperation on the part of the Supreme Commands.

1 3. In answer to the third question TOJO
2 replied that he fully agreed with KAYA that the new
3 Cabinet should leave aside ideology and adopt policies
4 in keeping with the time and existing conditions.
5 This point was also very important if peace was to
6 be maintained. Heretofore, the military and the
7 rightest groups had been insisting that the Government
8 should follow radical policies based on the so-called
9 ideology such as totalitarianism and controlled
10 economy. At home, these ideologicistic policies
11 amounted to a radical turn toward militarism. Abroad,
12 it meant a stiff front. It meant if TOJO turned a
13 deaf ear to the ideological demands of the militarist
14 and rightest groups, it would be an important step in
15 avoiding war. The fact that KAYA had pressed this point
16 shows KAYA was nonmilitarist and nonrightest in his
17 strong desire for peace.

19 TOJO's assurance satisfied KAYA. If the
20 Prime Minister-to-be was nonmilitarist and nonrightest,
21 he would naturally have agreed to KAYA's views, but
22 then he would have had a difficult time putting the
23 theories into practice for it was certain he would
24 have received strong pressure from the militarist and
25 rightest groups. However, the Prime Minister-to-be

1 TOJO was a military man having great influence among
2 the military circles and he was in a better position
3 than a nonmilitarist to put such theories into prac-
4 tice. A great deal more could be expected from him
5 than from a nonmilitarist or nonrightest. Even if he
6 were not able to control the militarists completely,
7 in reality he was the most suitable man to control
8 the militarists and for him to harbor such ideas was
9 most promising and under the existing condition the
10 most could be expected from him.

11 KAYA agreed to join the TOJO Cabinet only
12 after receiving from TOJO his full assurance on the
13 above-mentioned three points. This fact is covered by
14 KAYA's testimony and by the testimony of GOTO, Taki-
15 nosuke, KOBAYASHI, Seizo and YUKI, Toyotaro.^a The
16 latter three witnesses have testified that they heard
17 from KAYA shortly after he joined the Cabinet; that he
18 joined the Cabinet only after receiving full assurance
19 from TOJO that he, TOJO, had no intention of starting
20 a war; that the new Cabinet would endeavor to settle
21 the Japanese-American negotiations peacefully. The
22 testimony of these three was offered without any cross-
23 examination from the prosecution. TOJO, himself, has

24
25 a. Ex. 3337, Tr. 30648-9; Ex. 3322, Tr. 30556;
Ex. 3329, Tr. 30603; Ex. 3330, Tr. 30609.

1 testified that both KAYA and TOGO had pressed the
2 point regarding continuation of the negotiations and
3 an endeavor toward a peaceful settlement before the
4 two had agreed to join the Cabinet.^{a.}

5 That TOJO gave TOGO the same assurance that
6 he would endeavor to maintain peace at the time TOGO
7 joined the Cabinet has been brought out in the cross-
8 examination of the prosecution's witness SUZUKI, Tomim
9 by TOGO's counsel.^{b.} The foregoing clearly shows that
10 up to the time KAYA joined the TOJO Cabinet as its
11 Finance Minister, he did not participate in any con-
12 spiracy to wage a war of aggression against the
13 United States, Great Britain, Dutch Netherlands and
14 other countries.

15 N-9-25.

16 The prosecutor in II-25 expresses his doubt
17 of KAYA having peaceful intentions when he entered
18 the Cabinet and gives a few reasons to substantiate
19 such doubt. Now we wish to point out the error of
20 the prosecutor in his judgment.

21 1. The prosecution has stated that while
22 KAYA had put up a constant fight against the swelling
23 budget demands of the military, he saw his efforts
24

25 a. Ex. 3655, Tr. 36315.
b. Tr. 1217.

1 consistently defeated. His efforts, however, were not
2 altogether in vain but bore some fruit, for had it
3 not been for his exertion, the military budget
4 requirements would have easily run into more appalling
5 figures. This is as referred to in N-9-5, N-9-6 and
6 N-9-11. KAYA did not think that he could carry his
7 point and restrain the increase of the military
8 budget requirements as he desired, but believed that
9 he was better able to check to some extent the exces-
10 sive demands of the militarists than any other
11 Finance Minister. This will be admitted as true by
12 perusal of our explanation given previously.

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2. The prosecutor stated that KAYA had been aware of militarism in Japan being uncontrollable. Of course KAYA did not think that he was powerful enough to restrain completely the militarists who were so mighty in those days. But he did think that he possessed more ability than any other Finance Minister who could easily follow the dictates of the military, to check the militarists heading toward danger.

3. The Tripartite Alliance among Germany, Italy and Japan had already been signed in the previous year, and Japan had been steadily proceeding on a path of aggression -- so stated the prosecutor. But whether the Tripartite Alliance and Japan's expedition were aimed at aggression was a matter not quite clear to KAYA, who was not an ordinary politician but was absorbed in the affairs of the North China Development Company, being outside of the government. It was, however, because he felt, according to what was rumored in those days, the existence of tension between America and Japan that might precipitate a war between these countries that he confirmed TOJO's intentions of maintaining peace and his policy for ensuring it when he was approached by the latter to enter his cabinet. As stated before, he joined the cabinet in a comparatively favorable situation.

1 4. The prosecutor further expressed his
2 doubt as to KAYA being confident of his ability to
3 guide the country in a peaceful direction.

4 It was possible that he had no absolute con-
5 fidence in such ability. There is no wonder about
6 it. In those days it was advertized in this country
7 that Japan was being challenged to a war by foreign
8 countries, though it might be a mistake, but the
9 fact was such talks were widely circulated in this
10 country then. There were heard various Jingoistic
11 arguments by militarists and rightist elements. In
12 such an atmosphere prevailing throughout the country
13 it was but natural that he could not be confident of
14 his absolute ability to shift his country's course in
15 a peaceful direction.
16

17 But since TOJO, who was regarded as the most
18 Jingoistic, pledged his exertion towards a peaceful
19 settlement of the American-Japanese controversy in his
20 talk with KAYA, he believed that there was hope for a
21 peaceful settlement of the negotiations and thought
22 that the realization of his hope could best be achieved
23 by his rendering the best cooperation with TOJO's
24 effort, thereby to increase as much as he could the
25 possibility of maintaining peace between the two
countries. By so doing he thought he could better

1 serve his country and the cause of peace than stand-
2 ing aloof as a mere onlooker.

3 5. The prosecutor further stated that the
4 Manchurian Incident had been a prelude that had event-
5 ually developed into a virtual war with China, but we
6 do not wish to argue as to whether or not the prose-
7 cution's point of view is correct. But since he had
8 surveyed the course of events throughout the Manchurian
9 Incident and the China Incident, KAYA confirmed with
10 TOJO about the relations between the cabinet and the
11 Supreme Command before joining his cabinet. He was
12 thus gravely concerned about averting the danger of
13 war.

14 6. Again, the prosecutor charged that KAYA
15 concerned himself in the plans of conversion of peace-
16 time industries to war munitions industries, but the
17 fact remains that during the ten months or thereabouts
18 in the early days of the China Incident he was engaged
19 in financial administration, while the various indus-
20 tries and munition production were affairs with which
21 the Ministry of Commerce and Industry and the Ministries
22 of War and Naval Affairs were concerned, and the in-
23 dustrial planning was a task assigned to the Planning
24 Board, and not to the Finance Ministry. We do not
25 deny that the financial administration handled by the

1 serve his country and the cause of peace than stand-
2 ing aloof as a mere onlooker.

3 5. The prosecutor further stated that the
4 Manchurian Incident had been a prelude that had event-
5 ually developed into a virtual war with China, but we
6 do not wish to argue as to whether or not the prose-
7 cution's point of view is correct. But since he had
8 surveyed the course of events throughout the Manchurian
9 Incident and the China Incident, KAYA confirmed with
10 TOJO about the relations between the cabinet and the
11 Supreme Command before joining his cabinet. He was
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17 fact remains that during the ten months or thereabouts
18 in the early days of the China Incident he was engaged
19 in financial administration, while the various indus-
20 tries and munition production were affairs with which
21 the Ministry of Commerce and Industry and the Ministries
22 of War and Naval Affairs were concerned, and the in-
23 dustrial planning was a task assigned to the Planning
24 Board, and not to the Finance Ministry. We do not
25 deny that the financial administration handled by the

1 Finance Ministry had indirect relation with such
2 affairs, but since in those days the China Incident
3 had developed fairly extensively contrary to his
4 wishes, he could not do otherwise than letting them
5 go on to some extent as they had been. The point is
6 that he had never concerned himself with any plan
7 or action of positively helping them go in that direc-
8 tion.

9 7. It is stated by the prosecutor that
10 KAYA himself had advocated the policies of meeting the
11 demands of the military first, but the real fact on
12 this point is as mentioned in the Second Period of
13 this summation, and the prosecutor's statement is
14 clearly incorrect.

15 The military currency for use in the Southern
16 Regions was prepared and printed before the outbreak
17 of the Pacific War.

18 We do not wish to argue whether the people
19 who prepared the military currency did so as part of
20 the conspiracy or did so because they considered the
21 preparation vital and necessary in case of a war in
22 self-defense, for as far as KAYA was concerned, it
23 was not as part or preparation for a war of aggression.
24 This is clear from evidence tendered.
25

THE PRESIDENT: We will recess for 15 minutes.

(Whereupon, at 1045; a recess was
taken until 1100, after which the proceed-
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. Levin
MR. LEVIN: Mr. President, I continue reading
at page 99:
- - -

Witness YOSHIDA has testified as follows:^a

1
2 "1. I, YOSHIDA, Tosuke, graduated from the
3 Law Department, Tokyo Imperial University in 1926,
4 and immediately entered the Finance Ministry. I was
5 Chief, Treasury Section, Finance Bureau, Finance
6 Ministry, from January 1, 1941 through October, 1942.
7 Therefore, I have full knowledge of the procedure
8 concerning military notes.

9 "2. . . .

10 "3. In January, 1941 the Army requested the
11 Finance Ministry to take steps for printing and manu-
12 facturing military notes with denominations in foreign
13 currencies of the southern regions. Whereupon, in the
14 same month, a Finance Ministry decision on the prepara-
15 tion for the issuance of military notes with foreign
16 currency denominations was made, and a printing and
17 manufacturing order was placed with the Printing Office,
18 a Government organ under the direct supervision of the
19 Cabinet. Around May of the same year certain of the
20 said military notes had been printed and manufactured.
21 Printing and production of same was also continued
22 thereafter.
23

24 "4. About the middle of October of the same
25 year, the Army requested the Finance Ministry to take

a. Ex. 3025, T. 26,972-75

1 necessary measures for dealing with said military notes.
2 We, the staff of the Finance Ministry, were working on
3 the draft measures relating thereto. In the meantime a
4 Cabinet change took place on 18 October 1941, with
5 Mr. KAYA, Okinori as the new Finance Minister. On
6 22 October we completed the drafting of a document
7 entitled 'the issuance of military notes with foreign
8 currency denomination,' which was to be submitted for
9 approval to the ministers concerned. The draft was
10 passed upon by the respective bureaus concerned in the
11 Finance Ministry and went to Mr. KAYA, the new Minister.

12 "Mr. KAYA showed deep concern about the passage
13 in the summarized particulars relative to the issuance
14 of the military notes with foreign currency denomina-
15 tions in the said draft that reads: 'Military notes
16 with foreign currency denominations shall be issued,
17 preparing for the eventuality of our taking military
18 operations in South Seas Regions, when they shall be
19 used by the armed forces concerned, in their payment
20 of military expenditures.'

21
22 "He warned maybe this passage is not erroneous,
23 but it is inadequate to fully express what the drafting
24 authorities are intending. The Army requests that the
25 military notes prepared beforehand, probably because
it fears that exigencies cannot be met by setting about

1 the business in a hurry, just when hostilities have
2 begun. But our country has by no means decided to
3 wage any war. The meaning of drafting this document,
4 therefore, shall be that we want to be provided with
5 measures relating to military notes, in advance, just
6 as a sort of general preparedness to cope with an
7 unexpected eventuality. The document shall make clear
8 the above-said purport and record what is truly meant
9 by the drafters.

10 "Upon this, the Ministry, on 29 October, made
11 out and decided upon a document recording the import
12 of Minister KAYA's remark, and annexed it as a refer-
13 ence to the end of the above-mentioned document for
14 approval, entitled, 'the issuance of military notes
15 with foreign currency denominations.' This was sent
16 around to and approved by the respective Ministries
17 concerned. After being thus approved, the document
18 including the said reference was kept in the Treasury
19 Section where I worked.

20 "5. The 'issuance' of military notes, as
21 mentioned in the aforesaid document, means the crediting
22 by the Bank of Japan to the 'other Government deposit'
23 at the Bank, of the amount of military notes manufactured
24 by the Cabinet Printing Office and received by the Bank
25 from the said Office."

1 Exhibit 3026 is the reference which was made
2 in the afore-mentioned testimony, and states as follows: ^a

3 "The issuance of military notes with foreign
4 currency denominations for the use in the Southern
5 Area military operations.

6 "In view of the present international situations
7 and if in case when war plans in the Southern Area are
8 made for an unexpected eventuality in the future; and
9 considering a necessity which may arise in that con-
10 tingency, the issuance of military notes in foreign
11 denominations shall be made as preparatory measures
12 in order to provide for payment of military expenditures
13 of the unit concerned according to the following general
14 outlines.

15 "Note: The issuance of military notes in the
16 past was decided upon by the cabinet conference, due to
17 the fact that they were issued just at the time of their
18 actual use. The present issuance, however, being a mere
19 preparatory measure conceived for an unexpected event-
20 uality in the future, is decided upon by the ministers
21 concerned only, pending report to the cabinet conference
22 if by any chance an emergency truly happens to necess-
23 itate their actual use."

24 From the evidence referred to, the following

25 a. T. 26,980-1

1 are clear:

2 1. Preparation of military currency was started
3 in January 1941 and the Finance Minister at this time
4 was not KAYA.

5 2. What the Finance Ministry did in reference
6 to military currency was done in compliance with request
7 by the War Ministry.

8 3. There is nothing to indicate that the
9 decision for war was already made.
10

11 4. The decision for preparations to issue
12 military currency, manufacture of printing plates and
13 the actual printing and storage of same were made
14 before KAYA assumed his post.

15 5. The clerical tasks in connection with the
16 military currency at the Finance Ministry were already
17 routine business before KAYA became Finance Minister.

18 6. In compliance with the request of the Army,
19 officials of the Finance Ministry were already at work
20 drafting the documents on rules concerning military
21 currency before KAYA became Finance Minister.

22 7. KAYA directed the officials of the Finance
23 Ministry to attach a memorandum to the documents they
24 had prepared, making clear the following points:

25 a. The documents were not based on a decision
to wage war against the United States, etc.

1 b. The documents were not a decision to wage
2 war.

3 c. They were not made in hope or in expecta-
4 tion of a war.

5 d. They were not a preparation for a planned
6 war.

7 e. The decision was based on the following
8 thought: "In view of the present international situa-
9 tions", and "being a mere preparatory measure conceived
10 for an unexpected eventuality in the future".

11 8. The actual use of the military currency
12 was not decided on at that time.

13 The above-mentioned points have not been contra-
14 dicted and there 's no evidence to the contrary.

15 The document on military currency did not
16 decide on the actual use of the military currency.
17 This can be clearly inferred from Exhibit 3026.

18 The title of one of these documents is, "The
19 Issuance of Military Currency." The word "issue" is
20 generally understood to mean putting the currency in
21 use, but "issue" in this case did not have the same
22 meaning. "Issue" here meant that the Bank of Japan was
23 to book the military currency in a separate account as
24 differed from the general government account. It was
25 merely a step for the Bank of Japan in placing the

1 b. The documents were not a decision to wage
2 war.

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4 tion of a war.

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19 Issuance of Military Currency." The word "issue" is
20 generally understood to mean putting the currency in
21 use, but "issue" in this case did not have the same
22 meaning. "Issue" here meant that the Bank of Japan was
23 to book the military currency in a separate account as
24 differed from the general government account. It was
25 merely a step for the Bank of Japan in placing the

1 military notes under the Bank's custody. It did not
2 mean paying out. Difference in meaning of a term from
3 that generally understood often occurs when technical
4 matters are concerned, such as was the case with the
5 "issue" of military currency. This is evident from
6 the following:

7 1. Affidavit of witness YOSHIDA at Section 5,
8 which we have already quoted.

9 2. Article 6 of directive from the Finance
10 Minister to the Bank of Japan covering procedures in
11 dealing with military currency, states as follows:^a

12 "The Bank of Japan, upon receipt of the foreign military
13 currency in pursuance of the provisions of the preceding
14 Article, shall accept the same as a separate deposit
15 and shall settle it under the item "amount of issuance
16 of the war-notes" in the items of the combined ledger
17 of the Treasury, provided that the acceptance value of
18 the said separate deposits shall be in accordance with
19 the appended table."

20 The reference in Exhibit 3026 was drafted at
21 KAYA's instruction four years before the termination of
22 the war, that is, before the Pacific War began. It was
23 drafted at a time when KAYA did not dream there would be
24 a trial such as the one before this Tribunal. This

25 a. Ex. 583

document is a "top secret" document of the Japanese
1 Government (it is not a notice to the Bank of Japan),
2 and there was no need of camouflaging in the document
3 the real intention of the government and no need of
4 making any gesture to the Japanese public or to foreign
5 countries. The probative value of this document, there-
6 fore, is most high, and it clearly shows that KAYA was
7 not party to any conspiracy, if there was one.

8 The situation in reference to military curren-
9 cy, we believe, has been made clear by the facts
10 already mentioned, but to make it clear from another
11 angle, we would like to briefly describe the internal
12 political situation at the time the draft in reference
13 to the "issuance of military currency" decided on
14 October 31 and the attached memorandum directed by KAYA
15 drafted on October 29, 1941.^a

16
17 1. TOJO announced at the Liaison Conference
18 of October 23, 1941 that the new Government would revoke
19 the Imperial Conference decision of September 6th and
20 would start from scratch in an endeavor to bring the
21 Japanese-American negotiations to an amicable settlement.^b

22 2. At the time KAYA joined the TOJO Cabinet
23 on October 18, he pressed and received TOJO's assurance
24 that every effort would be made to conclude the

25 a. Ex. 3025, T. 26,974

b. Ex. 3444, T. 33,018; Ex. 2915, T. 25,909

Japanese-American negotiations^a

1 3. At the Liaison Conference on November 1,
2 1941 the Supreme Command made the proposal that if the
3 negotiations failed to show sign of a settlement by the
4 end of November, to commence making preparations for
5 operations immediately. KAYA and TOGO argued against
6 the proposal and obtained a day's grace to think over
7 the matter.

8 KAYA communicated his assent to TOJO the fol-
9 lowing day.^b

10 4. The decision for war against the United
11 States and Great Britain was made after the Hull note
12 was received.

13 The above facts show that at the time the
14 "issuance of military currency" was decided on, the
15 Japanese Government was not decided on war. As far as
16 KAYA was concerned, as a member of the Cabinet, he was
17 exerting his every effort to avoid war and the memorandum
18 is a clear indication of his desire to avoid war.

19 We shall now discuss why KAYA did not reject
20 the War Ministry's request to establish a procedure of
21 handling military currency. The reasons were as follows:

22 1. When KAYA assumed his post as Finance
23 Minister, matters concerning military currency were
24

- 25 a. Ex. 3337, T. 30,650
 b. Ex. 3337, T. 30,651-4
 c. Ex. 3337, T. 30,655

already part of the routine work of the Finance Ministry.

1 Work on the military currency was started ten months
2 before KAYA assumed his post, but it was not sufficient
3 reason why KAYA agreed to the Army's request. If KAYA
4 had believed it was a preparation for war, he would
5 not have agreed to it.

6 2. The international situation at the time
7 was precarious and Japan was feeling the effect of the
8 pressure of the ABCD encirclement. The Supreme Command,
9 as evidence shows,^a felt the danger of an attack from
10 the United States and Great Britain, and it was only
11 natural for KAYA to be made conscious of this danger at
12 the Cabinet and Liaison Conference meetings. Under such
13 a situation it was not possible to reject a War Ministry
14 request. KAYA was in a position to argue against war at
15 the Cabinet and Liaison Conference meetings should the
16 vital question of war or peace come up. He, therefore,
17 felt it was all right to do as the War Ministry requested.
18

- 19 a. Ex. 3655, #103, T. 36,338, 36,353
20 Ex. 3029, T. 27,06p
21 Ex. 3565, T. 34,658-9
22 Ex. 3027, T. 27,020-1
23 Ex. 3331, T. 30,612
24 Ex. 3337, T. 30,650-1
25 Ex. 3660, #57, 100, 108, 114, 116, 117, 120,
122, 128, 130, 169, 172, 174, 177, 181,
183, 188, 195, 200, 202, 205, 207
Ex. 2882, T. 35,750-2
Ex. 2847, T. 25,493

1 As KAYA was very anxious of avoiding war, he
2 took special note to make it plain that the "issuing"
3 or the establishment of "procedure of handling" military
4 currency were not measures taken as the result of a
5 decision for war, nor were they taken because war was
6 desired or anticipated. He made it clear that the
7 measures were taken as a mere general preparation in
8 case of an unexpected eventuality by having a memorandum
9 attached to the drafts. He did so to remove any mis-
10 understanding as to his position and that of the
11 Government.

12 The prosecution in II-26 has contended that the
13 draft measure entitled "the issue of military notes with
14 foreign currency denomination" called for the manufacture
15 of military notes by October 20 and November 20, 1941.
16 The document entitled "the issue of military notes
17 with foreign currency denomination" was decided on
18 October 31, 1941 as can be seen from exhibit 852
19 (Communication No. 9) and exhibit 3025, and it is
20 absurd to contend that a measure decided on October 31
21 called for the manufacture of notes by the 20th of the
22 same month. Again, going over Transcript page 8453
23 cited by the prosecution, we note that the prosecution
24 witness has testified that orders for the manufacture
25 of military currency were based on communications

No. 6 and No. 7 of exhibit 852. However, these two
1 communications were drafted and decided on in September
2 1941 as can be seen from the dates on them. KAYA was
3 not in office when the two communications were decided
4 on, therefore, while this may be a trifling matter, it
5 stands to reason that KAYA had no connection with the
6 matter charged by the prosecution.

7 The prosecution, in II-27 and II-28, while
8 admitting that KAYA exerted some effort to avoid war,
9 seems to discount it and to be trying to make it appear
10 as if KAYA had taken a stand to positively propel the
11 nation toward a war. But this is gross distortion of
12 the fact.

13
14 1. We now wish to clarify that KAYA was not
15 in a position to play any leading role at the Liaison
16 Conferences. We have taken this opportunity to do so
17 in order that our later explanations may be better
18 understood.

19 At the said Liaison Conferences various issues
20 centering around the American-Japanese negotiations were
21 most earnestly discussed. His presence at the confer-
22 ences was not essential or of any primary importance.
23 Neither was he expected to play an important part in
24 the conferences.^a It was because of the fact that,

25 a. Ex. 3331, T. 30,611

1 while the major issues of discussion were as mentioned
2 before, he who was purely an expert in financial admin-
3 istration, was a total stranger to the course of events
4 attending the American-Japanese parley and also to various
5 diplomatic affairs. The right to a voice in the discuss-
6 ion of various pending issues of the American-Japanese
7 controversy was virtually held by the Ministries of War,
8 the Navy, Foreign Affairs, and the High Command of both
9 Army and Navy. The drafting of the various instructions
10 wired to the Japanese Ambassador to Washington and of
11 the policies and plans in relation to the conduct of
12 the said negotiations was made upon consultation among
13 War, Navy and Foreign Ministries, and telegraphic
14 messages and other information received from the Japanese
15 Ambassador to America were exchanged between the said
16 three ministries, but never shown to KAYA or to his
17 ministry.^a He was simply informed of such matters at
18 the Liaison Conference or at the Cabinet meeting. The
19 Premier and the ministers of War, the Navy and Foreign
20 Affairs had their own staff respectively at the Liaison
21 Conferences, namely, HOSHINO, MUTO and OKA. Mr. YAMA-
22 MOTO, chief of the American Bureau of the Ministry of
23 Foreign Affairs, was always present at the conference.

24 a. Ex. 2915, T. 25,908; Ex. 3646, T. 35,707;
25 Ex. 3454, T. 33,101-4; Ex. 3480, T. 33,675;
Ex. 3444, T. 33,016-8.

But KAYA had no such staff.

1 As to the plan of how to further conduct the
2 negotiations with America, it was made after exchange
3 of views among the three ministries of War, Navy and
4 Foreign Affairs and after the views of the High Command
5 were taken into due consideration. The plan so worked
6 out was presented to the Liaison Conference.^a Under
7 such circumstances KAYA was in a very difficult position
8 to have any powerful voice at such conferences, and yet
9 he exerted his best to avoid the war, which fact is
10 shown by his own testimony and by that offered by Mr.
11 YAMAMOTO, Kumaichi, then Chief of the American Bureau
12 of the Ministry of Foreign Affairs, who has testified as
13 witness for KAYA.^b

14
15 2. Anticipating the possible failure of an
16 amicable settlement of the American-Japanese controversy,
17 KAYA endeavored to find means whereby to prevent a war
18 and to maintain peace between the two countries. This
19 shows how faithful he was to the cause of peace. Since
20 he came to attend the Liaison Conferences, at which he
21 was informed of the course of events and circumstances
22 attending the negotiations in Washington, as well as of
23 the contentions and views of the High Command, it dawned

24 a. Ex. 2915, T. 25,908; Ex. 3646, T. 35,707;
25 Ex. 3454, T. 33,101-4; Ex. 3480, T. 33,675;
 Ex. 3444, T. 33,016-8.

 b. Ex. 3331, T. 30,611

on him that a successful settlement of the controversy

1 was extremely difficult of realization. Therefore, he
2 thought that, while every effort should be made of
3 course to bring the negotiations to a peaceful settle-
4 ment, such measures as would prevent a war even after
5 the failure of the negotiations should be thought over.^a
6 Whereupon, he proposed a settlement of the oil issue.

7
8 Thus it can be seen that KAYA's effort to avoid
9 the war had a good aim and was positive to say the least,
10 for he was a financial expert, and not a minister in
11 charge of industrial affairs. It is an established
12 custom in Japan that a minister does not and should not
13 meddle with affairs of another ministry, and yet it was
14 KAYA who presented the aforesaid oil problem at the
15 conference.^b The record clearly shows that there was
16 nobody else than KAYA who offered a concrete proposition
17 aimed at the avoidance of war even in the event of the
18 failure of the American-Japanese negotiations.

19 3. It was thought in those days that there was
20 no alternative for Japan other than to open hostilities
21 if she should be shut off from all sources of supply of
22 oil. Before the United States enforced the embargo on

23 a. Ex. 3337, T. 30,650; Ex. 3331, T. 30,611;
24 Ex. 2767, T. 24,861-2

25 b. Ex. 3337, T. 30,650; Ex. 3331, T. 30,611-2;
Ex. 2767, T. 24,861-2

oil export to Japan, the late President Roosevelt said
1 to Ambassador NOMURA to the effect that it was in order
2 to maintain peace in the Pacific that we have hitherto
3 refrained from placing an embargo on oil export to Japan,
4 but now we cannot but place such embargo.^a Thus it was
5 hinted that the oil embargo would lead to war. Again,
6 NAGANO, then chief of Naval General Staff, told the
7 Emperor in July 1941 that Japan had no other alternative
8 than to resort to war if she should be shut off from
9 oil supply from abroad.^b Various evidence shows that
10 it was an overwhelming view both in America and Japan
11 that Japan would be driven to war if she should be shut
12 off from oil supply from abroad.^c For Japan had but
13 meager oil resources within her own territory and had
14 no other source of its supply to depend upon for her
15 requirements should she reach a peaceful settlement in
16 her negotiations with the United States. Without oil,
17 her Navy would be a mere scarecrow and she would be
18 placed in a defenseless position. The oil stored in
19 the country was limited while she was threatened with
20 the so-called ABCD encirclement both militarily and
21 economically.
22

23 a. Ex. 2882, T. 25,750-2

24 b. Ex. 1125, T. 10,185

25 c. Ex. 2915, T. 25,923-4; Ex. 3331, T. 30,611-2;

Ex. 3337, T. 30,650; Ex. 3646, T. 35,691;

Ex. 3655, T. 36,319; Ex. 2882, T. 25,750-2;

Ex. 2833-A, T. 25,336-9, T. 25,345, T. 25,349-50

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1 to Ambassador NOMURA to the effect that it was in order
2 to maintain peace in the Pacific that we have hitherto
3 refrained from placing an embargo on oil export to Japan,
4 but now we cannot but place such embargo.^a Thus it was
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23 a. Ex. 2882, T. 25,750-2

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Ex. 3655, T. 36,319; Ex. 2882, T. 25,750-2;

Ex. 2833-A, T. 25,336-9, T. 25,345, T. 25,349-50

Under such circumstances it was generally feared in

1 Japan that the country might at any moment be attacked
2 by the Allied Powers and that there was nothing to
3 safeguard Japan from such danger.^a

4 KAYA, both at the Liaison Conferences and at
5 the Cabinet meetings, was told of this situation. Now,
6 if Japan could find means to obtain her oil requirements
7 even after the failure of the negotiations then going
8 on between the two countries, and could be assured of
9 its procurement, even to the extent of her minimum
10 needs, the war could be averted, or Japan would
11 find it unnecessary to decide on a war, at least. In
12 other words, if Japan could obtain a continued supply
13 of oil to the extent of her minimum requirements, she
14 could then keep her armament on a working basis by
15 such oil imported together with her oil stored within
16 her territory and would maintain her power of resistance
17 against outside attack, thereby to be assured of her
18 national security to some degree. But, on the contrary,
19 if a continued supply of oil from abroad were not ensur-
20 ed, her stock of oil would soon be exhausted, which would

22 a. Ex. 2655, T. 36,338, 36,353;
23 Ex. 3029, T. 27,061; Ex. 3565, T. 34,658-9;
24 Ex. 3027, T. 27,020-1; Ex. 3331, T. 30,612;
25 Ex. 3337, T. 30,650-1;
Ex. 3660, T. 37,108-114-116-117-120-122-128-130,
T. 57,169-172-174-177-181-183-188-195-200-202-
T. 57,205-207;
Ex. 2882, T. 25,570-2; Ex. 2847, T. 25,493.

render her defenseless against attack from other countries,
1 an eventuality that would spell the loss of her sense of
2 security. Under such predicament a powerful conclusion
3 ,loomed up that Japan should settle the issue by means of
4 a war before her stock of oil was exhausted. Therefore,
5 the solution of the oil problem was considered the only
6 effective means to avoid a war. Hence, KAYA made the
7 aforesaid proposition in regard to the oil problem.
8

9 There is one thing we might add in this connec-
10 tion. The oil problem, that is, the problem of synthetic
11 oil, was one that was to be studied not to wage a war
12 but to avoid it. This fact is clear by referring to
13 evidence^a and various explanations hitherto offered.
14 KAYA's proposition regarding synthetic oil was seriously
15 taken up and studied, but for technical reasons and for
16 lack of sufficient materials it was found and concluded
17 that no sufficient quantities of it could be obtained
18 in time to meet her needs.^b
19
20
21

22 a. Ex. 3337, T. 30,650; Ex. 3331, T. 30,611-2;
23 Ex. 2767, T. 24,861-2.

24 b. Ex. 3655, T. 36,319; Ex. 3605, T. 35,217;
25 Ex. 3331, T. 30,611-2; Ex. 3337, T. 30,650;
Ex. 2767, T. 24,861-2.

1 It is shown in witness OKADA's testimony
2 that KAYA urged a re-study of the said oil problem
3 by the War Ministry after the latter completed its
4 initial study.^a It will be appreciated that KAYA
5 who was a Finance Minister could not possibly do
6 better than what he did.

7 Again, when at the Liaison Conference on
8 November 1, 1941, a plan for the commencement of
9 military preparations for war in the event of the
10 failure of the American-Japanese parley in spite of
11 this Third Plan, KAYA proposed the importation of oil
12 from North Karafuto and, if necessary, the purchase
13 of North Karafuto as the last recourse for Japan to
14 take for the solution of the critical problem of oil.
15 But this proposition was shelved as one impossible of
16 realization in view of the international situation
17 then prevailing.^b But the fact remains that KAYA did
18 all he could to avoid the war.

19 It is an injustice to undervalue KAYA's
20 effort in that direction when the war-mindedness of
21 the powerful High Command was so strong.^c

22 N-9-28. The Liaison Conference of November 1,
23 1941, began in the morning and lasted until two o'clock
24

25 (a. Ex. 2767, Tr. 24,861-2.
b. Ex. 3331, T. 30,611-2; Ex. 3337, T. 30,650
c. Ex. 3646, T. 35,619)

1 of the following morning. At this conference, the
2 Supreme Command was of the opinion that the United
3 States had no intention of coming to an agreement and
4 made a proposal to decide at once on the waging of war.
5 KAYA and the other members of the Cabinet opposed this
6 proposal.^a

7 The Foreign Minister then brought forward
8 two proposals, the "A" and "B" plans which showed
9 great concessions.^b

10 The Supreme Command insisted that: "If by
11 the end of November the negotiations did not show a
12 possibility of a settlement, we should be ready to
13 decide on war and with that in mind there is need of
14 commencing preparations now." "Japan faces a crisis,"
15 stated the Supreme Command in support of its proposal,
16 "due to the military and economic pressures by the
17 Allied Powers. If the negotiations remain unsettled
18 and we drift along as we are, the defensive power of
19 Japan in the Western Pacific in comparison with that
20 of the Allied Powers will day by day decline. We will
21 reach a critical point if we go along as we are until
22 after December. If we are then attacked or there

23
24 (a. Ex. 3337, T. 30,651; Ex. 3655, T. 36,317
36,322.

25 (b Ex. 3655, T. 36327; Lx. 3331, T. 30,611-2;
Ex. 3337, T. 30,651-2)

arises a necessity of waging a war in self-defense
1 Japan will be so weak by then that the Supreme Command
2 will not be able to accept the responsibility of
3 national defense. We must make up our minds to decide
4 on war before the opportune moment is lost and with
5 that in mind we should decide on a preparation for
6 war." ^f

7
8 The Supreme Command further stated:

9 ". . . . However, as it goes without saying
10 that we should continue our best efforts for the
11 success of the negotiation, if we become assured of
12 its success, the operations preparations should be
13 stopped as a matter of course." ^b

14 Such was the purport of the Supreme Command's
15 statement. This is the same Third Plan referred to
16 by TOJO in his affidavit. ^c

17 The Supreme Command's proposal was not a
18 proposal to wage a war, but it greatly increased the
19 possibility of war and to KAYA it was a very grave
20 problem.

21 KAYA wanted to prevent Japan from starting
22 a war even if the negotiations failed. To do this,
23 he realized the only solution was a source of oil.

24
25 (a. Ex. 3337, T. 30,651-2
b. Ex. 3331, T. 30,613
c. Ex. 3655, T. 36,317, 36323)

1 As a counter measure to the Supreme Command's pro-
2 posal, KAYA suggested a plan to import oil from
3 Karafuto. If necessary purchase the island of Kara-
4 futo to make this source of oil a certainty. KAYA's
5 suggestion was a measure of last resort and while no
6 one opposed it, it was not adopted as the current
7 relationship between Japan and Soviet Russia made the
8 immediate realization of such a proposal out of the
9 question.

10 KAYA's proposal showed his sincere desire
11 to avoid war at all cost. He pointed out the danger
12 of war, that even if the war was for self-defense
13 the outcome would be uncertain if it became a long
14 protracted war and the result of defeat after a long
15 protracted war would be far more miserable than if war
16 were averted. All the members except KAYA and TOGO,
17 however, agreed to the Supreme Command's proposal.^e

18 From the point of view of a humanitarian,
19 KAYA sincerely desired to avoid war for he realized
20 both his people and the enemy would suffer the con-
21 sequence of war. As a patriot who loved his country
22 and people, he dreaded to see his country plunged into
23 a dangerous and uncertain war.^b

24 (a. Ex. 3331, T. 30,611-2; Ex. 3337, T. 30,654;
25 T. 36,062.

b. Ex. 3331, T. 30,611-2; Ex. 3337, T. 30,653)

1 However, if settlement was not reached there
2 was no way of safeguarding the very existence of Japan
3 as a nation as KAYA's oil plans were not adopted.
4 Obviously, Japan's fighting power would diminish with
5 time and the Supreme Command was of the opinion that if
6 the days dragged on as things were it could not bear
7 the responsibility of national defense. The situation
8 was such that KAYA, as a civilian member of the con-
9 ference could not openly oppose the Supreme Command's
10 proposal. He felt, however, to give assent would be
11 inviting grave dangers. The conference dragged on un-
12 til the following morning. KAYA wanted to find a
13 solution somehow. He, together with TOGO insisted
14 the matter should be given further serious consider-
15 ation. The Supreme Command insisted on an immediate
16 decision, but due to the strong insistence on the part
17 of KAYA and TOGO, these two were granted another day
18 to consider the matter. This fact KAYA mentioned in
19 his own testimony and confirmed by the testimony of
20 YAMAMOTO, Kumaichi, the KIDO Diary of November 2,
21 1941, and the testimony of TOGO and TOJO.^a

22 Discussion at the Liaison Conference of
23 November 1, 1941, dragged on until the following morning.

24 (a. Ex. 3337, T. 30,650-4; Ex. 3331, T. 30,611-2;
25 Ex. 3332, T. 30,617; Ex. 3655, T. 36,324;
 Ex. 3646, T. 35,695; Ex. 3333, T. 30,618)

1 In view of the prevailing situation, it was no small
2 matter for KAYA to request for more time to think the
3 matter over, after the discussion having lasted all
4 day and night, and since the Army and Navy were
5 strongly determined to immediately begin preparations
6 for operations. (The preparations were not to inter-
7 fere with the negotiations. The preparations were to
8 be ready in case the negotiations failed.)

9 Evidence adduced shows that the final oper-
10 ations plans of the Combined Fleet were made by
11 November 1 of the same year; ^a that the Army and
12 Navy councillors had a joint meeting on November 4: ^b
13 that the proposal of November 1st Liaison Conference
14 was decided on at the Imperial Conference of November
15 5; ^c that on the same day operations command was issued
16 to the Combined Fleet; ^d that on November 6 command for
17 preparation of operations was issued to the Commander-
18 in-Chief of the Southern Areas Army General TERAUCHI: ^e
19 and on November 8 operations agreement was reached
20 between the Army and Navy. ^f

21 KAYA at that time knew nothing about the
22 aforementioned operation commands, but they show how
23

- 24 (a. Ex. 809
25 b. Ex. 3655, T. 36,329
c. Ex. 3655, T. 36,335
d. Ex. 809
e. Ex. 3027, T. 27,032
f. Ex. 3027, T. 27,032)

1 urgent the state of condition was and we can imagine
2 what strong attitude the Army and Navy Supreme Com-
3 mands took on the question of immediate decision on
4 the Third Proposal. The attitude of General SUGIYAMA
5 on the proposal mentioned in the testimony of witness
6 YAMAMOTO could not have been otherwise, looking back
7 at the situation at that time and it is clear that
8 the testimonies of witness YAMAMOTO and of KAYA were
9 not exaggerations and in fact were modest.^a The fact
10 that he reserved his reply for a day cannot be looked
11 at lightly.

12 The prosecution has stated that KAYA was
13 a silent participant at most of the meetings. This
14 was only natural, for as already explained he did not
15 play a major part at the meetings. In spite of his
16 minor role at the meetings, he did stand up strongly
17 against war. The reason the Liaison Conference of
18 November 1, 1941 dragged on until the following morning
19 was that he and TOGO refused to accede to the Third
20 Proposal and it goes without saying that KAYA expressed
21 himself amply at this meeting. The prosecution's
22 charge that he supported the military is without founda-
23 tion. The Imperial Conference was a mere formality and
24 it is only natural that KAYA did not say anything at
25 (a. Ex. 3331, T. 30,611-2; Ex. 3337, T. 30,654)

~~these meetings.~~

1 N-9-29. KAYA has testified that after return-
2 ing home from the Liaison Conference of November 1,
3 he considered the Supreme Command's proposal from all
4 angles, that it was already past the stage as to
5 whether the proposal was good or bad, that he believed
6 it was impossible to stop the proposal. I shall ex-
7 plain the situation.

8 After thinking over the matter, KAYA was con-
9 vinced that while the question that the proposal was
10 good or bad was important, no matter what the reason,
11 if possible the Supreme Command's proposal must be
12 stopped, but concluded that as a practical problem
13 it was impossible to do so. He based his conclusion
14 on the following reasons:

15 1. At the Liaison Conference all except
16 KAYA and TOGO had assented to the Supreme Command's
17 proposal.

18 2. The Supreme Command had insisted that
19 the decision must be made at once and agreed to give
20 KAYA and TOGO just one day to consider the matter and
21 that only after a heated argument.

22 3. For the Supreme Command to make such an
23 important proposal gave rise to the supposition that
24 the Army and Navy were united in their opinions. It
25

1 gave rise to the supposition that radical young
2 officers' groups were decided on going ahead with
3 preparations for operation for the military leaders
4 would not have made such a grave proposal without
5 the backing and urging of the radical young officers'
6 groups. These young officers' groups actually had con-
7 trol of the military. It was not difficult to suppose
8 that the military leaders were having a difficult time
9 suppressing the radical young officers' groups in
10 their demand for immediate disruption of the Japanese-
11 American negotiations.

12 4. The Navy was in complete accord on the
13 proposal. This was very important. Up to that time,
14 it was felt that the Navy was not in favor of war^a and
15 this gave rise to the hope that the decision for war
16 might yet be averted. It was due to this reason that
17 the Imperial Conference decision of September 6 was
18 revoked for a new start. However, on this proposal it
19 was evident that the Navy was in accord with the Army.
20 This was extremely important in making the situation
21 decisive.
22

23 For reasons stated KAYA felt it was impossible

24 (a. Ex. 3470, T. 33,342-3; Ex. 3473, T. 33,388;
25 T. 33,392-3, T. 33,394-5, T. 33,399;
Ex. 3454, T. 33,104-5; Ex. 3467, T. 33,299-
33,320; Ex. 3605, T. 35,205-6; Ex. 3340,
T. 30,963-4)

1 to alter the determination of the militarists. The
2 state of condition in Japan at the time was such that
3 the Army alone could have forced the hand of the Govern-
4 ment. With the Army and Navy united, it was clear that
5 the Government had no power of resisting. If KAYA had
6 opposed, what paths would have been open to him?

7 He might have campaigned his disapproval
8 within the Government, or he might have conspired with
9 the Senior Statesmen in opposition measures. KAYA,
10 however, did not have a political backing^a to carry
11 out an effective campaign and manoeuvring was not
12 his forte. Needless to say, it was impossible for him
13 to stir up public opinion against the proposal in a
14 society in which the military was all-mighty.

15 What would have been the result if he had
16 openly opposed within the Government? He probably
17 would have been asked to resign, and if he had consented,
18 someone having the militarists' point of view would have
19 been appointed to succeed him. If he had refused to
20 resign the Cabinet would have been forced to resign en
21 bloc and the militarists and the ultra-nationalists
22 would have crucified him as a pro-American who caused
23 the nation's defense to fall into danger. Strong
24 criticism against the pro-American elements would have

25 (a. Ex. 3322, T. 30,557; Ex. 3325, T. 30,586;
Ex. 3320, T. 30,606)

1 swept the country and the power of the radical groups
2 would have become only the more stronger. In such a
3 situation the command to form a new cabinet would most
4 probably have gone to someone in the military and in
5 the formation of the new cabinet the question of re-
6 viewing the Japanese-American situation, as was the
7 condition when the TOJO Cabinet was formed on October 17,
8 1941, would probably not have come up. This is clear
9 for the militarists would no doubt have insisted that
10 there was no need of going into it again for the TOJO
11 Cabinet had already studied the problem fully. It
12 will be remembered that the TOJO Cabinet was formed
13 with the condition that the Imperial Conference decision
14 of September 6 be revoked and the Japanese-American
15 problems be studied anew. The Navy was in complete
16 accord with the Army this time.

17 If anyone in favor of absolute peace had
18 been given the command to form the new cabinet, or if
19 the re-study of the Japanese-American problems had been
20 made a condition to the forming of the new cabinet,
21 the militarists, the radicals and rightest groups
22 would have staged a coup d'etat. The prevailing situ-
23 ation made such a presumption highly possible.^a

24 The Senior Statesmen would have guessed that
25 the situation just mentioned would have become a fact

(a. Ex. 3655, T. 36,312; Ex. 3646, T. 35,707-8;
Ex. 3628, T. 35,543; Ex. 3708, T. 36,944)

and even if they had privately agreed to any anti-
1 militarist plan of TOCO or KAYA they would have known
2 it was impossible to take any measures against the
3 militarists under the prevailing situation. It was
4 clear the new cabinet would have adopted from the start
5 a rather pro-war attitude.

6 Under such a situation the Supreme Command's
7 proposal before the November 1 Liaison Conference
8 would have been immediately approved. Those who were
9 not militaristically inclined like KAYA would become
10 the target of severe criticism for having caused the
11 loss of valuable time necessary for operations prepar-
12 ation by bringing about a political upheaval. He would
13 have been ousted from the Cabinet. The moderates would
14 have lost whatever little power they possessed and the
15 pro-militarist sentiment would have spread throughout
16 the country like wild fire. It was clear that in such
17 a situation the possibility of an amicable settlement
18 of the Japanese-American problems would have become
19 extremely weak and the possibility of war would have
20 been aggravated.

21 For reasons mentioned it was clear that it
22 was impossible for KAYA or any other civilian official
23 to stop the Supreme Command's proposal. It was im-
24 possible for a civilian official to stop any measure
25

backed by the entire Army and Navy.

1 The greater majority of the so-called Senior
2 Statesmen seemed to be in favor of peace, but they
3 would not have taken any positive step in opposition
4 to the militarists for they did not have sufficient
5 power to push their opposition and they were afraid
6 the counter-measures the militarists would have taken
7 would not only have endangered their personal safety,
8 but would have plunged the whole nation into danger.
9 At the Senior Statesmen's Conference of November 29,
10 1941, no one openly voiced opposition to war.

11 For reasons stated KAYA, as a member of the
12 Cabinet, gave up the idea of opposing the Third Plan.

13 In spite of his opposition KAYA did not re-
14 sign his post for he believed his resignation would
15 only aggravate the tense situation.^a

16 1. His successor would be named immediately,
17 but it would take a day or two before his successor
18 would be ready to assume his duties and this would
19 lead to stiff criticism by the military that the change
20 cost the loss of valuable time necessary for prepar-
21 ation for operations at such critical time.
22
23
24

25 (A. Ex. 3337, T. 30,655)

2. Even if the reason for his resignation
1 was not made public, it would be generally known that
2 the reason was in connection with the Japanese-American
3 problem. He would be charged as having caused a breach
4 at a time when national unity was highly essential and
5 would be the target for severe criticism by the pro-
6 war factions.

7
8 3. He would have been regarded as a spineless
9 pro-American.

10 The above reasons would stir up the pro-war
11 factions. His personal safety would be endangered.
12 This he did not mind if the result would be to the
13 good of the country and people, but it was clear his
14 resignation would not ease the situation. It was
15 clear the situation would only become worse. The
16 rightist groups and the young military officers were
17 radical and impulsive and had the tendency to vehement-
18 ly fight back opposition and would have made the attack
19 on KAYA an issue in stirring up public opinion for
20 war. Such was the situation and his resignation would
21 have been fuel to the anti-American sentiment of the
22 pro-war groups.

23
24 If the United States had agreed to even a
25 part of the "A" or "B" plans discussed at the Novem-
ber 1st Liaison Conference, Japan would have made

1 further concessions and a compromise might have been
2 possible. (a) However, if the anti-American sentiment
3 grew in intensity, it would have been difficult to make
4 further concessions. Thus the resignation of KAYA
5 would have only lessened the possibility of the
6 Japanese-American negotiations from reaching a settle-
7 ment.

8 If KAYA had resigned his successor would not
9 have been a moderate, peace-loving man like KAYA. It
10 was clear that a man who was in complete accord with
11 the military would have been selected.

12 From the standpoint of national finance, such
13 a prospect worried KAYA deeply. To KAYA, it was a
14 bitter experience when after the February 26th Inci-
15 dent, Finance Minister BABA readily acquiesced to the
16 demands of the military for increased budgets for
17 this caused much uneasiness among the financial and
18 economic circles. KAYA, as Vice Minister and Minister
19 of Finance, had a difficult time overcoming the ill
20 effects caused by the BABA policy. (b)

21 The resignation of KAYA or TOGO would have
22 caused repercussions abroad for news to the effect
23 that their resignations were due to disagreement on
24 major issues of the Japanese-American negotiations was
25

(a) Ex. 3337, T. 30,651, 30,655-6.

(b) Ex. 3322, T. 30,558; Ex. 3324, T. 30,579-80.

1 sure to leak out. At a time when the government was
2 facing an urgent and important diplomatic problem, a
3 discord within the cabinet was bound to have ill ef-
4 fect internationally, especially when it was believed
5 there still was a possibility of reaching an agreement
6 based on the Japanese proposals. Such a breach in the
7 cabinet would have only hampered the negotiations,
8 prolonged settlement and invited further dangers.

9 Having the welfare of the country and people
10 at heart, KAYA decided not to resign. He still had
11 hope and decided to make use of the position in an
12 endeavor to avert war. He believed he could contribute
13 more toward peace as a member of the cabinet.

14 What efforts he exerted for the cause of peace
15 can be seen from the demand he put to the Supreme
16 Command after the receipt of the Hull Note that even
17 after preparations for war operations were made and
18 even after hostilities have commenced, all plans for
19 operations be dropped immediately upon receipt of signs
20 that the negotiations might reach a settlement. To
21 this demand, the Supreme Command agreed. (a)

22 Such was the reason why KAYA decided to remain
23 at his post and finally assented to the Supreme Com-
24 mand's proposal of November 1st. His decision to
25

(a) Ex. 3337, T. 30,656-7; Ex. 3007, T. 26,726-9;
Ex. 3010, T. 26,767-8; Ex. 3444, T. 33,019-20;
Ex. 3027, T. 27,033-4

1 remain in the cabinet did not mean he changed his views
2 on the problem of war. On the contrary, he felt that
3 if he resigned, the effect, both at home and abroad,
4 would be unfavorable towards the settlement of the
5 Japanese-American negotiations and thus aggravate the
6 possibility of a war between the United States and
7 Japan.

8 N-9-29-A.

9 Because of the state of condition already
10 explained, KAYA was not able to oppose the Supreme
11 Command's proposal to commence preparations for opera-
12 tions although he was against it. He hoped that somehow
13 the Japanese-American negotiations would reach a settle-
14 ment. His mind was constantly on the negotiations and
15 he was happy when the news was good and worried when
16 the news was bad.

17 At the Cabinet and Liaison Conference meetings,
18 KAYA had endeavored at every opportunity to soften
19 Japan's attitude.

20 In the meantime, the Hull Note of November 26
21 was received. KAYA had been informed of the strong
22 United States attitude, but the situation eased some-
23 what around the 20th of November and KAYA was hopeful
24 that the negotiations might turn to the better. The
25 arrival of the Hull Note put an end to this hope. When

1 report concerning the Hull Note was made Japan lost
2 hope for a settlement. It was reported that the
3 United States had rejected Japan's proposals which the
4 United States had previously given indications as being
5 (a)
6 acceptable.

7 They were told that if she accepted the Hull
8 Note it was certain Japan would lose, directly or indi-
9 rectly, her international position, that her very
10 existence would be endangered. This was the opinion
11 of the Supreme Command and of the Cabinet members. On
12 top of this, the Prime Minister and the Foreign Minis-
13 ter reported that the Hull Note was a virtual ultimatum
14 and that the United States had no intention of compro-
15 mising. They were also told that behind this firm atti-
16 tude of the United States was a well-prepared fighting
17 (b)
18 force.

19 KAYA was not in possessor of sufficient
20 knowledge to oppose the above-mentioned views. Those
21 who sincerely hoped for a settlement of the negotia-
22 tions and for continuance of peace believed that if
23 the United States had accepted even a part of the "A"
24 or "B" proposal, Japan, too, would have made concession

25 (a) Ex. 3646, T. 35,706; Ex. 3655, T. 36,355
(b) Ex. 3655, T. 36,358; Ex. 3646, T. 35,706;
Ex. 3565, T. 34,665; T. 36,108, 36,135-7;
Ex. 2954, T. 26,072-3; Ex. 2955, T. 26,089,
T. 26,093

1 In an effort to reach a settlement. This last hope
(a)
2 was now gone.

3 It might be said that we are contradicting
4 ourselves for were not the "A" and "B" proposals the
5 final Japanese proposals? Not necessarily. They were
6 not final proposals for those who desired sincerely
7 to attain an amicable settlement. In the discussion
8 for a plan for diplomatic negotiation within the govern-
9 ment, the following situation is probable:

10 There would be a group which would advocate
11 further concessions in order to reach an agreement
12 and a different group which would advocate no conces-
13 sion and bring the negotiations to a close. In the
14 pursuing discussions, a middle ground would most prob-
15 ably be taken signifying the maximum concession and a
16 minimum demand. Otherwise there would be no agreement
17 within the government. The agreement reached within
18 the government would be considered by the government
19 as the final plan and would be handled as such. For-
20 eign Minister TOGO, no doubt, proceeded with the nego-
21 tiations on that basis. However, after negotiating, if
22 there was a sign of reaching an agreement by making some
23 concessions, it would be re-studied by the government.
24 If the advocates of a firm stand persisted on their
25 stand, the discussion would come to naught, however,

(a) Ex. 3337, T. 30,655

1 there is the possibility of a greening to just one more
2 concession. To have such a possibility in mind was,
3 at the time, only natural for those who sincerely be-
4 lieved in averting war. This hope, KAYA explained in
5 his affidavit and was not contradicted.

6 Under the situation there was nothing left
7 but to choose one of the following:

- 8 1. War, or
- 9 2. Continue with the status quo.

10 To follow the second course meant Japan's
11 power of national defense would become weaker each
12 day and the Supreme Command's statement that it could
13 not shoulder the responsibility of national defense
14 under the circumstances could be understood. In con-
15 nection with this we have already related how, without
16 success, KAYA tried to find a solution that would
17 enable the country to go on without going to war. It
18 was thought that when the Hull Note was made public,
19 the militarists, the rightists and the people in gen-
20 eral would be greatly agitated and would advocate im-
21 mediate war. In such a situation a small minority
22 group might try to stave off the frenzy for war, but
23 it was easy to predict that such a minority would be
24 helpless against the war fever. Any attempt to avert
25 war would have been like pouring oil on a fire.

1 The Cabinet and the Liaison Conference held
2 their meetings. War was, in fact, decided at these
3 meetings. At the Senior Statesmen's Conference held
4 on November 29th, no one came out openly against war.

5 We have shown that KAYA did not want war,
6 nor was he indifferent to war. He exerted his every
7 effort to avert war.

8 THE PRESIDENT: We will adjourn until half
9 past one.

10 (Whereupon, at 1200, a recess was
11 taken.)
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AFTERNOON SESSION

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1
2 The Tribunal met, pursuant to recess,
3 at 1330.

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

6 MR. LEVIN: Mr. President, and Members of the
7 Tribunal, I continue reading in the middle of page 145,
8 at N-9-30.
9

10 It is true that KAYA attended the Senior
11 Statesmen's Conference held on November 29, 1941, but
12 there was no decision made at this conference. KAYA,
13 was not one of the Senior Statesmen. Never was he a
14 party to any decision even if made, nor did he say any-
15 thing at the conferences. This was acknowledged by the
16 prosecution. (a)

17 The prosecution stated that KAYA had attended
18 the Imperial Conference held on December 1, 1941, and
19 that he had reported about the financial and economic
20 power of Japan at this conference. But the allegation
21 that he reported on Japan's economic strength is not
22 true. There is no evidence in support of that allega-
23 tion. TOJO has testified that KAYA made merely a
24 financial report. (b)
25 Such economic problems as concerned

(a) T. 36,364-7, Pros. Sum. II-29.

(b) Ex. 3655, T. 36,374.

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(b) Ex. 3655, T. 36,374.

1 industrial production, transportation and goods and
2 resources are matters outside the scope of authority
3 of the Finance Minister. They are matters with which
4 the Minister of Commerce and Industry, the Minister
5 of Agriculture, the Minister of Communications, the
6 Railway Minister and the President of the Planning
7 Board were concerned, and all these ministers were
8 present at the said Imperial Conference. It was out
9 of the question for KAYA to report on such matters. (a)

10 The prosecution stated that KAYA had told
11 the Prime Minister previously that he would not oppose
12 a war. The Liaison Conferences and the cabinet meet-
13 ings held during the period of November 27, 1941, to
14 December 1, 1941, took place after receipt of the Hull
15 Note. The formal decision at such conferences was
16 left over to the Imperial Conference on December 1,
17 but as a matter of fact all members at the conference
18 acknowledged that war could not be avoided. (b)

19 We mean to say that he was merely one of those
20 present at the conference.
21

22 It is true he attended various conferences,
23 but as reiterated before, he always endeavored to
24 avoid war. He was finally compelled to agree to the
25

(a) Ex. 3655, T. 36,372.

(b) Ex. 3655, #106, 108, T. 36,359, 36,360.

1 opening of hostilities, but he did so believing that
2 Japan could not avert the war for the sake of her
3 existence as a nation. Never was it his intentions
4 to support an aggressive war, nor a war in contraven-
5 tion of international treaties. Nor did he take part
6 in the deliberations to make preparations for such.
7 This will be elucidated at length in another part of
8 this summation.

9 It follows therefore that his attendance at
10 the said Liaison Conferences, the cabinet meetings
11 and the Imperial Conference did not in any way consti-
12 tute his alleged conspiracy.

13 To go to war or not to go to war meant whether
14 or not to fight a defensive war.

15 N-9-31.

16 I have already mentioned about the pains and
17 efforts KAYA went to in an attempt to avoid war, that
18 he was against war but assented to war because he
19 sincerely believed the war inevitable in self-defense. (a)
20 On this point KAYA was not cross-examined, nor was its
21 probative value contested.
22

23 If KAYA sincerely believed the war was in
24 self-defense, the question rises as to why he tried so
25 hard to avoid war. I believe I have already made this
(a) Ex. 3337, T. 30,657.

1 clear, but as this is a most important point I shall
2 try to explain briefly why he hesitated in giving his
3 assent.

4 1. It was only natural for a man of KAYA's
5 character to want to avert war. (a) KAYA sincerely
6 believed war brought misery and suffering to the victor
7 as well as to the loser and even to parties not directly
8 concerned. He saw before him the hardships placed
9 upon the people on account of the China Incident. He
10 did not wish to burden the people further.

11 2. KAYA was a financial administrator. War
12 places the finance of a nation in extreme difficulties
13 which continue on until after war. This is true even
14 with the victor nation. In time of war, compared to
15 the men in the fighting forces, a financial administra-
16 tor's work is back-stage work without due recognition.
17 An honest and serious man like KAYA could not desire
18 war from his own standpoint, nor from the standpoint
19 of the nation.

20 3. It was not difficult to foresee that a
21 war against the United States would be extremely
22 dangerous for there were ample reasons to believe the
23 war might be long and protracted. There was no com-
24 parison in the production powers of the two countries

25 (a) Ex. 3337, T. 30,653; Ex. 3331, T. 30,612.

1 and in a long war, the power of production is a deciding
2 factor. Even the headstrong Supreme Command had stated
3 there was no confidence of a sure victory if the war
4 dragged on for over two years. (a) Even if the war was
5 in self-defense, if defeated, the results would be
6 far worse than not going to war at all.

7 Of the three reasons mentioned, KAYA was
8 conscious of the first reason from the very first; of
9 the second reason, even before he became Finance
10 minister; and the third, as a matter of common sense
11 before he joined the TOJO Cabinet, before he listened
12 to the arguments of the Supreme Command.

13 For some time after joining the TOJO Cabinet KAYA
14 was not certain, if a Japanese-American war should break
15 out, whether or not the war was necessary from the
16 standpoint of national defense at that time. KAYA's
17 great fear was that the radical elements in the mili-
18 tary and other outside groups would plunge the nation
19 into war, even were it possible to avoid war. However,
20 after lapse of some days, he could not help but come
21 face to face with the problem of whether or not to go
22 to war for self-defense.

23 KAYA eventually assented to the Third Plan of the
24 Liaison Conference of November 1, 1941. The Third Plan,
25 (a) Ex. 3337, T. 30,654, Ex. 3331, T. 30,612.

1 however, was not a decision for war. It was a decision
2 to commence preparations for operations. That immediate
3 commencement of preparations was necessary for the
4 defense of the nation was the strong contention of the
5 Supreme Command. This is clear from the testimony of
6 KAYA and YAMAMOTO, Kumaichi. ^(a) The Supreme Command was
7 firm in its insistence, but there was not the slightest
8 hint of a war of aggression in the reasons advanced
9 by the Supreme Command as to why immediate commence-
10 ment of preparations was necessary. KAYA did not
11 believe the firm attitude of the Supreme Command
12 meant aggression.

13 Even after it became clear that the impending
14 war was in self-defense, KAYA endeavored to avert it
15 for war, itself, was a calamity and a grave danger to
16 Japan. It is a gross error to conclude that just
17 because he tried to avert it, it was for aggression.
18 Even if he had considered that war was wrong it is
19 clear that he did not think of the war as a war of
20 aggression.

21 We shall explain positively the reasons why
22 KAYA believed the war was to be a defensive war. At
23 the cabinet meetings and Liaison Conferences he was
24 told of the following:

25 (a) Ex. 3337, T. 30,651; Ex. 3331, T. 30,612.

1 1. The Supreme Command was of the opinion
2 that if the state of conditions dragged on until after
3 December without the negotiations reaching a settlement,
4 Japan's power of defending herself in the Western
5 Pacific would become so weak in comparison with that
6 of the ABCD powers that she would not be able to
7 defend herself. To support this assertion, the Supreme
8 Command pointed out the scale and rate of military
9 preparations of the United States, which Japan can
10 nowhere come near; that the ABCD encirclement in pre-
11 paration for war against Japan was getting tighter each
12 day; that without oil from the United States or the
13 Dutch East Indies there would come a time when Japan
14 would not be able to move her battleships or fly her
15 aircraft.

16 2. Japan lost hope of reaching a settlement
17 after receipt of the Hull Note for if the demands of
18 the United States were accepted, it was clear Japan's
19 very existence would be jeopardized. ^(a) She would lose
20 her legitimate rights and might even result in the loss
21 of Korea. Such was the explanation of the leaders of
22 the cabinet and the Supreme Command.

23 3. TOGO and TOJO explained that the Hull
24 Note was a virtual ultimatum.

25 (a) T. 36,108, 36,135-7; Ex. 3655, #104, T. 36,355.

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1 4. As already stated, to go on without
2 reaching a settlement would have caused Japan to lose
3 her power and there would have been no way out for
4 Japan except to subjugate herself to the demands of
5 the other countries. It was believed that the results
6 would be far worse than what would have followed if
7 the Hull Note was accepted.

8 5. Furthermore, the prevailing situation was
9 such that the military was of the opinion that there
10 was no telling when the Allied Nations might commence
11 an attack, ^(a) and there was no good reason to deny this
12 fear, nor any good reason to deny the opinion that
13 Japan would not be able to ward off an attack if the
14 commencement of war was delayed.

15 KAYA at the time did not have any good reason
16 to go against the explanation.

17 For reasons stated, it is clear that it was
18 only natural for KAYA to have arrived at the conclusion
19 that it was inevitable that Japan must go to war for
20 self-defense. And it is not difficult to see that a
21 man of KAYA's humanitarian outlook who dreaded the
22 dangers that a defeat would bring on the nation and
23 for that reason even endeavored to avert a defensive
24 war, could not have thought that the war was for
25

(a) Ex. 3655, T. 36,358; Ex. 2847, T. 25,493;
Ex. 3027, T. 27,020-1.

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(a) Ex. 3655, T. 36,358; Ex. 2847, T. 25,493;
Ex. 3027, T. 27,020-1.

aggression.

1 The explanation of Prime Minister TOJO at
2 the Imperial Conference of December 1, 1941, was clear
3 on the point that Japan was forced to go to war
4 because her very existence was threatened. (a) TOGO
5 made similar explanation at that conference. (b)

6 Even the Kellogg-Briand Treaty recognizes
7 the right of each nation to decide what is defensive.
8 The prosecution and the Tribunal recognize this. The
9 question is whether or not the defendant sincerely and
10 without fault believed the war was in self-defense.
11 KAYA sincerely without fault believed so.

12 At this time we wish to point out the follow-
13 ing:
14

15 We do not deny that KAYA knew before the
16 Pacific War broke out in the southern areas that the
17 southern Pacific would become the battlefields. But
18 it cannot be concluded from this that KAYA thought the
19 war was a war of aggression. It has been said that
20 the front line of United States' defense was the banks
21 of the Rhine River. The Supreme Command of Japan
22 recognized that speedy occupation of the southern areas
23 was necessary for the defense of Japan. (c) It is a
24

- 25 (a) Ex. 2954, T. 26,072-3.
(b) Ex. 2955, T. 26,089-93.
(c) Ex. 3007, T. 26,715.

1 matter of natural conjecture that such an explanation
2 was made to KAYA at the conference meetings. It was
3 common sense that even in a defensive war that battles
4 might take place outside of the homeland.

5 We do not deny that at the time there were in
6 Japan many who believed in a firm stand, many who were
7 for war; that the motive of these people for wanting
8 war might have been other than that of defense, but
9 no one at the cabinet meetings or the Liaison Con-
10 ferences ever suggested any other reason for going to
11 war than that in self-defense. There is no evidence
12 to the contrary.

13 N-9-31-A.

14 What the prosecution contends in II-31 shows
15 the prosecution has misconstrued KAYA's defense.

16 In the first place, the prosecution has con-
17 cluded that KAYA joined the conspiracy. That KAYA was
18 not party to any conspiracy we have already mentioned.

19 KAYA has testified that after the Liaison
20 Conference of November 1, 1941, and again at the time
21 when the decision for waging war was reached, he had
22 considered resigning from the cabinet, but he did
23 not resign. Perhaps it was because of this the prose-
24 cution contends that he did not free himself from
25 the conspiracy. But the contention of the prosecution

1 is in error. If KAYA had considered resigning because
2 he felt the decision was for a war of aggression and
3 had not resigned, then it might be said he did not
4 divorce himself from the conspiracy. But it was not
5 so. KAYA sincerely believed the war was in self-
6 defense. However, he thought of what defeat would
7 mean to the country, that even if the war was in self-
8 defense, if Japan lost the war, she would be in far
9 worse situation than if she did not go to war at all,
10 even if the war was in self-defense. ^(a) He thought of
11 the responsibility as a minister to participate in
12 the decision for such a dangerous war and considered
13 whether it was not better for him to resign. After
14 much consideration he came to the conclusion that to
15 resign would bring bad effects to the country. There-
16 fore, he decided not to resign. We have already
17 related in detail as to why he did not resign on
18 November 2 and we shall now relate why he did not resign
19 on December 1, at the time the decision for war was
20 made.

21 He gave the matter his deepest consideration.
22 Why he decided to stay with the cabinet is expressed
23 ^(b)
24 in his affidavit:

25 (a) Ex. 3337, T. 30,654.

(b) Ex. 3337, T. 30,654; T. 36,996-7.

1 "Japan was embarking on a perilous war,
2 whether good or bad. If the Finance Minister had
3 resigned on the ground that he was against war, there
4 would arise the possibility of adding greater diffi-
5 culties to the already difficult situation. The pub-
6 lic would have interpreted the resignation to mean
7 that financially and economically Japan was not in a
8 position to fight the war successfully, that the
9 Finance Minister resigned because he felt the burden
10 too great for the nation to bear. When it comes to
11 national finance, the feeling of the people is especially
12 important. If the people are made to lose confidence
13 it will breed a feeling of uncertainty and thus
14 become a cause for defeat. I was against the war, but
15 I could not think of increasing the dangers that
16 Japan faced. I felt it my duty to carry out my
17 responsibility."

18 If the people lost faith in the value of the
19 currency they would start buying up goods in a mad
20 rush. This would make prices go up and thus aggravate
21 inflation. In a country, in time of war, the amount
22 of currency increases and commodities become scarce.
23 This phenomenon is especially noticeable in a country
24 with weak production power like Japan. In countries
25 weak in production power, loss of faith during wartime

1 in the country's currency value would bring about a
2 serious inflation that would cause the financial and
3 economic system and order of the country to break down
4 and thus become a basis for defeat. It is natural for
5 the people of the country to lose confidence in their
6 currency value once they begin to feel that the war
7 was too much for them or that finance and economy of
8 the country could not withstand the war.

9 As Finance Minister, KAYA could not think
10 of permitting his own action to contribute toward
11 anticipated dangers.

12 Under such a situation he could not resign.
13 It is clear he did not continue to remain in office
14 because his self-interest dictated. As a patriot who
15 loved his country there remained no choice but to drink
16 back the tears and continue in his position.

17 In II-31, the prosecution has contended that
18 KAYA first of all aided the military. Evidence, how-
19 ever, shows that KAYA constantly endeavored to suppress
20 the military from pushing the country into danger.
21 It is a fact that KAYA was a member of the cabinet in
22 which the military had decisive power and because
23 he did not criticize the military outside of the cabinet
24 it cannot be said that he aided the military.
25

Conditions in Japan at that time were such

1 that there could not have been a cabinet without a
2 strong military influence. Entering such a cabinet,
3 the best possible thing he could do was to endeavor
4 to suppress radical and dangerous measures from within
5 the cabinet. When concerned that someone might do a
6 dangerous thing, the only possible way to prevent it
7 is to be near the person. From the conditions at the
8 time it was clear that to criticize the military at a
9 distance would have brought about disorder and chaos
10 and would not have changed conditions for the better.

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1 Now we wish to call attention to the follow-
2 ing facts in regard to the relations between the
3 Pacific War and KAYA.

4 1. It was an undeniable fact that prior
5 to his entry into the TOJO Cabinet such causes as
6 would, viewed objectively, make the war inevitable
7 had already been a fait accompli, for it was on
8 October 18, 1941 that he joined the TOJO Cabinet. a.
9 The Tripartite Pact was concluded in 1940. Before
10 his entry into the cabinet there had been a decision
11 made at the Imperial Conference held on July 2, 1941,
12 with which he had nothing to do, and in accordance
13 with that decision the Japanese expeditionary forces
14 advanced into southern Indo-China. This action on
15 the part of the Japanese Army was replied to by the
16 United States, Great Britain and the Netherlands in
17 the shape of freezing of the Japanese funds in these
18 countries and an embargo on the export of petroleum
19 products to Japan. This action on the part of the
20 three countries proved a severe blow to Japan and
21 made the American-Japanese negotiations more difficult
22 for Japan. On account of this the Supreme Command of
23 Japan was driven to take a very firm attitude. Later
24 the decision made at the Imperial Conference held on
25 a. Ex. 111.

September 6, 1941 created a situation that forcefully
 1 impelled Japan toward the opening of hostilities.

2 As is seen from these facts, KAYA became a
 3 member of the TOJO Cabinet under difficult conditions
 4 already created. Another fact we wish to draw your
 5 particular attention to is that KAYA entered the
 6 cabinet without any knowledge whatever of the said
 7 decision at the two Imperial Conferences held on
 8 July 2 and September 6, to say nothing of the particu-
 9 lars of the decision as stated previously.

10 2. It is true that KAYA was present at
 11 certain Liaison Conferences and Imperial Conferences,
 12 but he was not informed of many secret matters.

13 a. He was never a party to the deliberations
 14 on the warlike operations, nor was he informed of
 15 them beforehand as to when, where and how operations
 16 would take place. Needless to say, nobody outside
 17 the military was allowed to meddle with the plans of
 18 military action. This is acknowledged by the prosecu-
 19 tion. It is a fact clearly proved by evidence on the
 20 independence of the Supreme Command in Japan and by
 21 other evidence. ^{a.} KAYA was never in a position to

22 a. Ex. 3655, #83, T. 36316; #91, T. 36331; #96, T. 36345;
 23 #111, T. 36366; #112, T. 36369; #115, T. 36375;
 24 #118, T. 36385; #120, T. 36391; #126, T. 36408;
 25 #127, T. 36409.
 Ex. 3646, #64, T. 35702; Ex. 3337, T. 30640, 30658;
 Ex. 3565, #19, T. 34676; Ex. 3336, T. 30627-30.

1 know or be informed beforehand of the plans of attacks
2 on Pearl Harbor and other places.

3 b. As for the proposition for a final effort
4 to be made by Japan to break up the impasse of her
5 negotiations with America in accordance with Ambassa-
6 dors NOMURA and KURUSU's telegram, which suggested a
7 compromise of the negotiations by telegram between the
8 President of the United States and the Emperor of
9 Japan, evidence shows that this proposition was dis-
10 posed of among TOJO, KIDO, SHIMADA and TOGO, and was
11 never submitted to any Liaison Conference or to any
12 cabinet meeting.^{a.}

13 c. President Roosevelt's telegram addressed
14 to the Emperor was likewise disposed of by TOJO and
15 TOGO. It was never presented at any of the Liaison
16 Conferences or of the cabinet meetings.^{b.}

17 d. KAYA was not informed as to the exact date
18 of the commencement of hostilities. It was necessary
19 for him to know the date of commencement of hostili-
20 ties in order to take adequate measures to prevent the
21 anticipated shock and disorder arising therefrom that
22 news of the commencement would cause to the financial

23
24 a. Ex. 3646, #66, #68; T. 35704, 35707; T. 3582044;
Ex. 3655, #108, T. 36360.

25 b. Ex. 3655, #129, T. 36410-11, Ex. 3646, #82, T. 30705-6.

1 circle. He, therefore, inquired of TOJO, SHIMADA and
2 HOSHINO and was finally able to know of the exact
3 date of the commencement of hostilities one or two
4 days previous to the actual commencement of war. ^{a.}

5 e. KAYA's position at the Liaison Conference
6 was as narrated in N-9-27. What I have said in the
7 SUZUKI summation in reference to the November 11 and
8 13 Liaison Conferences can be said in connection with
9 this summation on behalf of KAYA.

10 N-9-31-C. The testimony of the various
11 accused differ as to whether or not the notice for
12 declaration of war and the method of notification was
13 discussed at the Cabinet Meetings and Liaison Conferences.

14 We shall first of all argue from the stand-
15 point that the Declaration notice was discussed at the
16 Liaison Conferences and Cabinet Meetings and that KAYA
17 was present at the meetings when the discussions took
18 place.

19 1. Question of no notice:

20 One of the accused testified that the navy
21 insisted on attacking without giving due notice.
22 Others deny this. Even if the first was true, the
23 responsibility rested with the navy and KAYA had no
24 part in it.
25

a. T. 30705-6.

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a. T. 30705-6.

1 Again, TOGO, who testified that the navy
2 wanted to make the attack without notice, stated that
3 while ITO, who was Vice-Chief of the Navy General Staff,
4 insisted on attacking without notice, he, ITO, with-
5 drew his demand towards the end of the meeting. ^{a.}

6 That at the very next meeting it was decided to give
7 notice before attacking was brought out in the testi-
8 monies of TOGO and TOJO. ^{b.} From this we can conclude
9 that KAYA was not liable to any criminal responsibility
10 for being present at the meetings.

11 As to the time of delivering the note, full
12 responsibility rested with the Supreme Command and
13 the Foreign Minister. ^{c.}

14 On the question of delivering the note after
15 the opening of hostilities, it is clear from evidence
16 that the government in Tokyo had no such intention. ^{d.}
17 Evidence tendered shows that the delay was inadver-
18 tently caused by the officials at the Japanese Embassy
19 in Washington, that it was not through any fault on
20 the part of the Government in Tokyo. Even if the

22 a. Ex. 3646, Sec. 74, T. 35714-6.

23 b. Ex. 3646, Sec. 75, T. 35716; Ex. 3655, Sec. 120,
T. 36390.

24 c. Ex. 3655, Sec. 120, T. 36390.

25 d. Ex. 2915, T. 26096-7; Ex. 3655, Sec. 120, 128,
T. 36390, 36410; Ex. 1216, T. 10534-5; Ex. 1218,
T. 10537; Ex. 3646, Sec. 75, 79, 81, T. 35716, 35722,
35725.

e. Ex. 2964, T. 26189; Ex. 2967, T. 26209.

1 Tokyo Government was responsible for the delay, surely
2 there could be no doubt that the Finance Minister had
3 no responsibility.

4 2. Question concerning the contents of the
5 note.

6 The question is whether or not the commence-
7 ment of hostilities is clearly expressed in the note.
8 We do not wish to argue whether it is necessary to
9 state clearly on the commencement of hostilities.
10 Even if such was necessary we contend there was no
11 evil intent or slip on the part of KAYA for evidence
12 shows that the draft of the notice was made by the
13 Foreign Ministry and was reported to the conference by
14 the competent official on diplomacy and the contents of
15 the note fulfilled the requirements under international
16 law.^{a.} KAYA was not in a position to examine the note
17 and make corrections for he was not a competent official
18 on diplomacy, nor was he a specialist in international
19 law. For the average person, international law was
20 much more difficult to understand than domestic laws
21 for international law contains special terms, inter-
22 pretations of which was reserved by individual coun-
23 tries and there are cases in which actions by countries
24
25 a. Ex. 3655, Sec. 120, T. 36389-93; Ex. 3646, Sec. 76,
77, 78, T. 35718, 35719, 35721.

1 in contradiction to the terms of treaties have been
2 recognized as customary law. It is so complicated
3 that even the diplomats had to study the problems as
4 they arose. It was only natural for KAYA, who was
5 not versed in international law, to accept the
6 interpretation of the responsible competent official
7 on international law.

8 3. On the question of notification to Great
9 Britain.

10 The Foreign Minister concluded that to the
11 best of his knowledge, notification was not necessary^{a.}
12 and for the same reason mentioned in "2." KAYA had
13 no responsibility in the matter.

14 KAYA acknowledges the fact that he was
15 present at most of the Liaison Conference meetings,
16 but there is no evidence that he was present at the
17 meetings held in the beginning of December when the
18 notice was presumably discussed. Witness YAMAMOTO,
19 Kumaichi, has testified that he did not remember
20 whether KAYA attended the Liaison Conference meetings
21 held in December.^{b.} KAYA has also testified that he
22 did not remember whether he participated in the dis-
23 cussions on the Final Note.^{c.} This is only natural
24

25 a. Ex. 3646, Sec. 85, T. 35731.

b. Ex. 3331, T. 30615.

c. Ex. 3337, T. 30657.

considering the prevailing situation.

1 The decision for commencing hostilities was
2 reached at the Imperial Conference of December 1,
3 1941. Except for the extremely slight hope that war
4 might be averted by the negotiations reaching an under-
5 standing, KAYA realized that war was on hand.

6 For Japan, the greatest and most dangerous
7 war in its history was about to commence. KAYA was
8 extremely busy with the many tasks of his ministry.
9 His big job was to prevent financial chaos when news
10 of the commencement of war broke out. It was his
11 responsibility to look after increased war-time
12 expenditures, increased taxes, floating of huge bond
13 issues, establishment of air-raid insurance (at that
14 time a Finance Ministry responsibility) and other
15 big problems.
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1 After the question of peace or war was
2 decided KAYA took less interest in the Liaison
3 Conference. The Conference, too, did not require
4 his attendance and therefore, he attended the meetings
5 irregularly thereafter. Such being the case, it is
6 only natural that he missed the discussions.

7 For reasons stated we contend that KAYA
8 had no responsibility concerning the final Japanese
9 Note.

10 N-9-32

11 The prosecution referred to the establishment
12 of the 6th Committee. If, by this reference the
13 prosecution means that KAYA was responsible because
14 its membership was composed of Finance Ministry
15 officials, we wish to point out that the charge is
16 unfounded. Its members and secretaries were nominated
17 by the Prime Minister and worked under the direction
18 of the President of the Planning Board who was the
19 chairman of the Committee. There was nothing that
20 could be ascribed to the responsibility of the Finance
21 Minister. (a)

22 Further, the said Committee was created
23 after the decision on war and there was nothing in
24 itself that was possessed with a criminal nature.

25 (a) Ex. 1331, T. 11,944.

1 The establishment of the Greater East Asia
2 Ministry became necessary with the progress of war.
3 It was established for the purpose of dealing with
4 matters arising between Japan and the countries
5 cooperating with Japan. Therefore, there is no
6 criminal responsibility for having participated in
7 the discussions for its establishment.

8 ATROCITIES AND TREATMENT OF PRISONERS OF WAR

9 N-9-33.

10 There has been no attempt by the prosecution
11 in any manner to offer any evidence in so far as this
12 accused is concerned in relation to these charges.
13 Their only contention is that his responsibility arises
14 because he was a member of the cabinet. (a) (KAYA not
15 only had the responsibility that every other member
16 of the Cabinet had; we do not concede for a moment
17 that KAYA had the same responsibility that every other
18 member of the cabinet, but contend that responsibility
19 of members of the cabinet was dependent upon the
20 particular function of the cabinet minister, (b) and
21 in the opening statement of Colonel Woolworth (c) and
22 the testimony in the general phase, the name of Mr.
23 KAYA is not adverted to in one single instance.) In
24 support of our position we refer the Tribunal to the
25 uncontradicted testimony of KAYA on this point. (d)

(a) T., p. 30,658-9 (b) T., p. 41,043. (c) T., p. 14262-66
(d) T. 30,658

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(a) T., p. 30,658-9

(b) T., p 41,043.

(c) T., p.

(d) T. 30,658

1 His statement of his knowledge and relation to this
2 subject is a complete answer to the charges in the
3 Indictment. "I, at least, was not even informed about
4 the acts of atrocity, either officially or otherwise.
5 Nothing about the acts of atrocity was mentioned in the
6 press or radio. I was not even informed about the
7 protests from foreign countries. I was of the impression
8 the war was being fought fairly." (a)

9 We have specifically answered each one of the
10 Counts on this subject in the Indictment in subsequent
11 pages and commend them to the Tribunal for its consider-
12 ation, which will serve a more useful purpose than by
13 our reading them at this time.

14
15 - - -
16 (A portion of the summation, which was
17 was not read, is as follows:)

18
19
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(a) T. 41043.

1 KAYA was merely a civil official; in
2 addition to this, the Cabinet in which he was Finance
3 Minister was, unlike those of the other countries,
4 powerless over the Army and Navy both in peace and war
5 and possessed only a limited power over matters concerning
6 war. The Cabinet had no power to participate in
7 operation matters in any way. For KAYA, who was a
8 member of the kind of cabinet just mentioned, to be
9 indicted and charged with counts under Murder was
10 beyond our expectation. Even at the Nurenberg Trials
11 there was no such counts based on such grounds.

12 While we believe the counts in this group
13 are lacking in legal reasons, we wish to deal with
14 them briefly to show that KAYA was not in a position
15 to be responsible for the Counts under this group.

16 1. Count 37

17 To charge KAYA with murder for deaths
18 caused by attacks without due notice is a gross
19 injustice. He was not the minister having jurisdiction
20 over the matter of giving notice, nor did he advocate
21 attack without notice. We have already shown in
22 N-9-31-C that he had no responsibility over the delay
23 in dispatching the notice or concerning the contents
24 of the notice.
25

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23 in dispatching the notice or concerning the contents
24 of the notice.
25

2. Count 38

1 KAYA has testified that he firmly believed
2 the war was a defensive war in which Japan was
3 fighting for her very existence. (a) We have already
4 clearly shown that at that time KAYA sincerely believed
5 so without fault, therefore, it is clear that to charge
6 KAYA with the responsibility of murder because he
7 assented to a war of aggression or a war against
8 treaty guarantees, etc. is unfair.

3. Count 39

9
10 It has been made clear by the testimony
11 of KAYA and other evidence that in Japan the Supreme
12 Command was an independent organ, which without
13 permit from the Cabinet or discussing the matter
14 over with the Cabinet or notifying the Cabinet before-
15 hand, decided on its own authority as to when and
16 how and where an attack will be made. As evidence
17 shows, KAYA did not know beforehand about the attack
18 on Pearl Harbor. (b) Therefore, there is no reason
19 why KAYA should be held responsible for battles in
20 which he had no part, nor could not even if he had
21 wanted to.

22
23 For the reason just stated and for reasons

24 (a) Ex. 3337, T. 30,657
25 (b) Ex. 3655, T. 36,408

1 related under Counts 37 and 38, it is clear that KAYA
2 had no responsibility with this count.

3 4. Counts 40-43

4 For the same reasons mentioned under Count
5 39, KAYA had no criminal responsibility for charges
6 under the above-mentioned counts.

7 5. Count 45.

8 Granted that the alleged atrocities by
9 Japanese troops in Nanking really happened, evidence
10 adduced shows that KAYA had no power to order or permit
11 them. KAYA has testified that he was not consulted
12 beforehand about the attack on Nanking, that he did
13 not know at the time of the alleged acts of atrocity
14 and that he was not in a position to know of them. (a)
15 His testimony was not contradicted and there is no
16 evidence to the contrary.

17 Witness ISHII, who was Chief of the East
18 Asia Bureau of the Foreign Office, has testified
19 in response to a query by prosecutor Comyns Carr that
20 the protests from foreign countries about the acts
21 of atrocity at Nanking were transmitted to the Army
22 and Navy, but other Ministries and the Cabinet meeting
23 were not informed about the protests. (b) KAYA did

24 (a) Ex. 3337, T. 30,640, 30,658

25 (b) T. 29,977, 29,980, 29,983, 29,987

1 not protest because he did not know such acts were
2 contemplated or taking place. It was only natural
3 he did not know about them.

4 5. Counts 46, 47

5 The attacks on Canton and Hankow, mentioned
6 in the above two counts, took place on the 21 and 27
7 October ^(a) respectively, that is, after KAYA's
8 resignation from the Cabinet on May 26, 1938. For
9 this reason and for reasons mentioned in other
10 counts, it is clear KAYA had no responsibility for
11 acts under counts 46 and 47.

12 N-9-33-

13 In regard to the Counts in Group Three, KAYA
14 has testified as follows:

15 "As to the acts of atrocity and other acts
16 in violation of the law of land warfare, I had no
17 connection with them whatsoever. In Japan the Supreme
18 Command existed as an independent organ from the
19 Cabinet and we, civilian members of the Cabinet, were
20 not informed beforehand or consulted on plans and
21 preparations for battles. Furthermore, we civilian
22 members of the Cabinet, had no power to command or
23 stop a battle. We had no voice in the choice of
24 commanders of the Army and Navy. I, at least, was

25 (a) Ex. 111

1 not even informed about the acts of atrocity, either
2 officially or otherwise. Nothing about the acts
3 of atrocity was mentioned in the press or radio. I
4 was not even informed about the protests from foreign
5 countries. I was of the impression the war was
6 being fought fairly.

7 "As to the treatment of prisoners of war,
8 I was not informed nor consulted about it either in
9 the Cabinet meetings or elsewhere, nor was I informed
10 about the protests from foreign countries. It was
11 said that in previous wars Japan had accorded good
12 treatment to prisoners of war. Concerning the treatment
13 of war prisoners during the Pacific War, I was not
14 in a position to even dream that ill-treatment was
15 being accorded to prisoners of war. I did not even
16 hear of rumors that prisoners of war were being
17 ill-treated. The press and radio made no mention of
18 it."^(a)

19 This testimony was not contradicted.

20 KAYA was merely a member of the Cabinet,
21 and was in no way concerned with the crime under
22 Group Three. There is no question other than that
23 of whether he was in a position to restrain or stop
24 any unlawful action though he had no authority to do so.
25 (a) Ex. 3337, T. 30,658-9.

1 Various protests filed by foreign countries were
2 mostly transmitted either to the War Ministry or the Naval
3 Ministry. None of them was ever conveyed to the Finance
4 Ministry. Nor were they presented at the Cabinet meet-
5 ing or at other conferences he attended. (a)

6 Though we now find that the maltreatment of
7 POW and the breaches of international land warfare com-
8 mitted by the Japanese outside Japan proper were made an
9 issue of, in those days the Japanese public and the civil
10 officials being completely shut off from the outside
11 world, were kept ignorant of them and there is no evi-
12 dence to support the conjecture that KAYA was or ought
13 to have been informed of such unlawful conducts on the
14 part of the Japanese.

15 Again, the fact that KAYA consented to the
16 opening of hostilities cannot let anybody infer that he
17 gave his consent to the waging of a war in which breach
18 of international warfare law might be committed.

19 MR. LEVIN: (Reading continued)

20 The prosecution in its summation referred to
21 the Siam-Burma Railway and based its charge on the
22 conjecture that the construction of the said railway
23

24 (a) Ex. 1489, T. 12833; Ex. 2174, T. 15515;
25 Ex. 1488, T. 12821; Ex. 473, T. 5494;
Ex. 2171, T. 15510; Ex. 2172, T. 15511;
Ex. 2173, T. 15513.)

1 could not have been carried out without consultation
2 with KAYA. But there is no evidence in support. Even
3 if he had been consulted in that matter, there could
4 not be any question about his responsibility for the
5 alleged maltreatment of POW employed in its construction
6 work, so long as such consultation was concerned only
7 with the building of the railway itself. Only in
8 such cases where he was consulted about the maltreatment
9 of POW, his responsibility would be open to question
10 as insisted by the prosecution. The fact is that
11 KAYA knew for the first time of the employment of
12 POW in the said railway construction work and of their
13 mistreatment when the matter was brought to light at
14 this Tribunal. It is no wonder, for the Army had no
15 obligation to inform him of this matter. Needless
16 to add, he was never consulted or intimated about the
17 said railway before its construction was started.

18 The employment of POW in any labor was a
19 matter that the Army alone was to decide, which can
20 be seen from the fact that the War Minister was
21 responsible for the control and supervision of POW.

22 To sum up, KAYA was never consulted or
23 informed about the construction of the Siam-Burma
24 Railway and was never consulted, informed or knew
25 about the employment of POW in its work or the

1 maltreatment of POW employed in its construction
2 work, and there is no evidence to prove to the
3 contrary. Court Evidence No. 475 is a report of
4 inquiry into the employment of POW in the said railway
5 construction, but nothing is found therein that might
6 suggest that either the Finance Minister or the
7 Finance Ministry had anything to do with it.

8 By the above, we think we have clarified
9 that KAYA is not guilty of any count presented against
10 him, no matter what may be the legal construction of
11 the conspiracy or of the right of self-defense, etc.
12 We now wish to stress the following facts as data
13 for the Tribunal to pass correct judgment on this
14 defendant.

15 1. Either during the period when the Second
16 KONOYE Cabinet was in power or the period when the
17 Third KONOYE Cabinet was functioning, the Finance
18 Minister never attended any Liaison Conference (though
19 he attended Imperial Conferences.) But KAYA who
20 had neither a powerful political background nor any
21 personal relation with Premier TOJO^(a) used to attend
22 most of the Liaison Conferences held during the TOJO
23 Cabinet. As a matter of fact however there were
24 hardly any discussions on financial matters. Only

25 (a) Ex. 3322, T. 30,557; Ex. 3325, T. 30,586; Ex. 3330,
T. 30,606; Ex. 3337, T. 30,694.

1 one of such matters was given among various items of
2 study in October 1941, ^(a) though no record is available
3 as to what study was made on it. The problems
4 concerning goods and materials, industrial production
5 and transportation were vital issues at that time
6 and the problem of finance was of a secondary
7 importance. Then the question may arise why KAYA
8 who was not politically powerful and whose affairs
9 were of lesser importance attended the Liaison
10 Conference. It is considered possible that it was
11 because of the following reasons:

12 When joining the TOJO Cabinet he confirmed
13 the following points in his talk with TOJO:

14 (a) The negotiations then going on between
15 America and Japan to be continued for a peaceful
16 settlement.

17 (b) The liaison between the Cabinet and
18 the Supreme Command to be maintained effectively
19 to ensure peace.

20 It is considered possible that KAYA frequently
21 attended the said Liaison Conference as its meeting
22 was held with these two items as the main issues of
23 discussion.

24 If such was the case, here is a very curious

25 (a) Ex. 3331, T. 30,611

phenomenon. It is a curious phenomenon for none
1 of the Cabinet Ministers who attended the Imperial
2 Conference on December 1, 1941 at which they decided
3 on war and consented to such decision, but who did
4 not attend most of the Liaison Conferences, were not
5 indicted. One of them, the then Minister of
6 Agriculture and Forestry was released months ago,
7 and it is said that a decision has been made not to
8 indict other Cabinet Ministers on a charge of crime
9 against peace.
10

11 What difference, then, does there exist
12 between KAYA and those Cabinet Ministers? If ever
13 there was any difference, it was that KAYA, unlike
14 those Ministers, was present at most of the Liaison
15 Conferences and zealously endeavored to avoid the
16 war. It so happened that KAYA, who dedicated himself
17 to the cause of peace and strived hard to avert a war,
18 confirmed TOJO's intentions before joining his cabinet
19 and on this account was made to attend the said Liaison
20 Conferences. If that were the reason, whereas other
21 State Ministers escaped indictment, KAYA was indicted
22 merely because he attended the Liaison Conferences.
23 He, who was unusually zealous in the maintenance of
24 peace, had been indicted on a charge of crime against
25 peace. There can be no greater paradox than this.

1 2. It has been proved that he did not intend
2 in any way to commit a breach of international law
3 and treaties, but the fact that he was not only far
4 from indifferent to international law but was a man
5 who respects it can be verified by the absence of
6 any evidence against him of his having ever perpetrated
7 a breach of the international law or any international
8 treaty in the conduct of his affairs in the Finance
9 Ministry as its chief. To substantiate this we might
10 cite the following instances:

11 (a) As for the finance of the Japanese-
12 mandated islands in the Southern Seas it was provided
13 by a treaty that no revenues from those islands should
14 be used as military expenditures of Japan. Hence,
15 he never used it as a source of revenue to meet
16 war expenses, however huge the military requirements
17 might be. There is no evidence whatever to the contrary.

18 (b) During the Pacific War all alien
19 properties in Japan proper were under his custody,
20 and he gave lawful directions in dealing with these
21 properties. No evidence has been adduced of his ever
22 having taken unlawful measures on these properties.

23 THE PRESIDENT: Mr. Levin, you are not
24
25

1 2. It has been proved that he did not intend
2 in any way to commit a breach of international law
3 and treaties, but the fact that he was not only far
4 from indifferent to international law but was a man
5 who respects it can be verified by the absence of
6 any evidence against him of his having ever perpetrated
7 a breach of the international law or any international
8 treaty in the conduct of his affairs in the Finance
9 Ministry as its chief. To substantiate this we might
10 cite the following instances:

11 (a) As for the finance of the Japanese-
12 mandated islands in the Southern Seas it was provided
13 by a treaty that no revenues from those islands should
14 be used as military expenditures of Japan. Hence,
15 he never used it as a source of revenue to meet
16 war expenses, however huge the military requirements
17 might be. There is no evidence whatever to the contrary.

18 (b) During the Pacific War all alien
19 properties in Japan proper were under his custody,
20 and he gave lawful directions in dealing with these
21 properties. No evidence has been adduced of his ever
22 having taken unlawful measures on these properties.

23 THE PRESIDENT: Mr. Levin, you are not
24
25

1 obliged to meet things that are not charged against
2 you. All this is outside the evidence.

3 MR. LEVIN: I think I quite agree with the
4 Tribunal. Mr. KAYA felt that this was sort of an
5 offensive statement rather than a defensive one. I
6 think if we had more time to go over the summation after
7 it had been prepared it might have been omitted. I
8 regret it was in the summation, if the Tribunal please.

9 THE PRESIDENT: We can draw no conclusions,
10 either, from the fact that other ministers were not
11 charged. We do not know what the circumstances were;
12 that is beyond our province.

13 MR. LEVIN: On the whole I quite agree
14 generally with the suggestion of the Tribunal, but I
15 do think it offers a parallel which the Tribunal might
16 give some consideration to.

17 In view of the President's statement I shall
18 omit the paragraph at the top of page 184, and I shall
19 also omit paragraph 3 and 4 and go to page 188, if the
20 Tribunal please.

21 The bottom of page 188:

22 The following two points should be taken
23 into consideration.

24 (a) One of the points is whether or not it
25 was his fault to have judged that it was unavoidable

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1 for Japan to open hostilities or to send her forces
2 in order to ensure her self-defense. As regards
3 this point, the position he was in was as follows:
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2 in order to ensure her self-defense. As regards
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1 He had for himself no means to obtain infor-
2 mation whatever, so that he had to rely solely on
3 information furnished by the ministries of Foreign
4 Affairs, War and Navy and by the High Command in re-
5 gard to the intentions of foreign countries and other
6 international circumstances. It could not be helped
7 that he had to depend upon the views of the Prime
8 Minister and other cabinet members including Ministers
9 of Foreign Affairs, War and Navy as well as of the High
10 Command to form his own judgment.

11 It is true that he should have discounted
12 some of the informations and views on some occasions,
13 and it is considered probably he did so. But it must
14 be admitted that he had no other sources available to
15 him on which to base his judgment, being placed in such
16 a position as he was. Even if there were facts and
17 information that have been brought to light later but
18 that were not available to him at that time, his failure
19 to avail himself of such facts and information could not
20 be ascribable to his fault.

21 (b) As to whether the gradual extension of the
22 China Incident was absolutely unavoidable for Japan he
23 came to harbor some misgivings since the beginning of
24 1938 (though he had no data to make him conclude Japan
25 was wrong.) Further he came to question whether the

1 action Japan was then taking was a wise measure for
2 Japan. This (narrated later) coupled with the militarist
3 opposition to his retention in office accounted for his
4 resignation.

5 CONCLUSION

6 A. FIRST PERIOD.

7 We submit that the evidence establishes that
8 during the first period referred to by the prosecution
9 of KAYA's connection with the Government, that is, until
10 he became Minister of Finance in 1937, he indicated
11 his peaceful attitude, intentions and opposition to the
12 military from the early 20's when, at the London and
13 Geneva Naval Conferences, as a government official in
14 a minor capacity, he exerted every effort to obtain the
15 agreement for the reduction and limitation of naval
16 armaments; that he was not, and did not, participate
17 in a conspiracy or participate in planning or initiating
18 an aggressive war; and that he is not guilty of
19 the charges contained in any of the Counts of the Indict-
20 ment covering that period.

21 B. SECOND PERIOD.

22 That during his brief tenure as Finance
23 Minister in the First KONOYE Cabinet he was opposed to
24 the extension of the China Incident; that he was
25 Finance Minister such a short period of time before the

1 incident occurred that it would have been impossible for
2 him to have known that the incident was contemplated or
3 planned; that he had no part in, and had nothing to do
4 with, and that he did nothing to further the Manchurian
5 Incident; and his opposition thereto and well known
6 attitude for peace is indicated by the fact that he was
7 requested to resign.

8 C. THIRD PERIOD.

9 That when he was President of the North China
10 Development Company he performed his functions within
11 the confines of his duty as an administrator; that the
12 North China Development Company, as admitted by the
13 prosecution, was not to engage directly, and did not, in
14 business enterprises; and that as President of the
15 North China Development Company, he was under the direct
16 control and supervision of the China Affairs Board; that
17 he had nothing to do with the armies in North China and
18 Manchuria; and the evidence is uncontr icted that the
19 North China Development Company did not furnish these
20 armies with financial or other assistance.

21 D. FOURTH PERIOD.

22 That having been in China until shortly before
23 the formation of the TOJO Cabinet, he joined the TOJO
24 Cabinet only after inquiry from TOJO as to what the new
25 Cabinet proposed to do in relation to certain problems

1 which he posed to TOJO, and was assured it would be the
2 policy of the new Cabinet to carry on in accordance with
3 KAYA's position for peace, and successful termination of
4 the negotiations between Japan and the United States;
5 that though unacquainted with the decisions of July 2
6 and September 6, 1941, when he entered the TOJO Cabinet,
7 the subsequent rescission of the September 6, 1941,
8 decision of the Imperial Conference was affirmative
9 evidence of the good faith of the promise made by TOJO
10 to KAYA to continue Japanese-American negotiations for
11 the peaceful settlement of their differences, which
12 certainly justified KAYA's belief in respect thereto.

13 There is to be deleted the next three lines
14 beginning with "and" and ending with "High Command."

15 That the military currency was prepared at the
16 request of the War Ministry long before KAYA became
17 Finance Minister in the TOJO Cabinet, and that arrange-
18 ments were only made for its deposit in the Bank of
19 Japan for use "in the eventuality of an unexpected war;"
20 that decision for war was not decided at the time; that
21 he did everything in his power to avert war with the
22 United States that a civilian member of the Cabinet could
23 do, and was one of two men who obtained postponement of
24 the decision of November 1, 1941; that when subsequently
25 he was advised by those charged with responsibility that

1 the Hull Note was an ultimatum, and that the war was for
2 defense, as a civilian member of the Cabinet he can be
3 charged with no responsibility under the various Counts
4 in the Indictment. He was "not responsible for the
5 aggressive policy followed by Japan" as alleged by the
6 prosecution, and the acts and statements which he made
7 were made "by him in the course of his official duties
8 pursuant to an already established policy."^{a.}

9 The prosecution does not contend that there is
10 any evidence in the record to sustain the Counts of the
11 Indictment in Groups 2 and 3 against KAYA.

12 We submit that the entire case of the prose-
13 cution against KAYA is of the same tenuous character as
14 that indicated in its presentation with reference to
15 Groups 2 and 3, and that there should be a finding of
16 not guilty as to him on all of the Counts in the
17 Indictment with which he is charged.

18 The prosecutor has made reference^{a.} to almost
19 every event that occurred from 1931 to 1945^{b.} (date of
20 surrender) not even excluding the period from 1917 and
21 thereafter when he first entered the Finance Ministry as
22 a clerk by competitive civil service examination^{c.} and
23 desires the Tribunal to sustain the charges in the Indict-
24 ment against KAYA on the basis of those events, the vast
25 (a, b, & c. T. 41025, 41026, 41028, 41029.)

1 majority with which he had absolutely nothing to do, and
2 there is no contention in respect thereto in the evidence.
3 No person, no event, no occurrence is omitted.

4 I am reminded of the remark attributed to
5 Chancellor Thurlow when informed that the Attorney
6 General had taken nine hours for his opening in the
7 famous treason trial of John Horne Tooke. "Nine hours,"
8 exclaimed gruff old Chancellor Thurlow when he was told
9 of the Attorney General's opening. "Nine hours! Then
10 there is no treason, by God." In the language of
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Chancellor Thurlow, then there is no crime., by God.

1 Mr. President and Members of the Tribunal,
2 I now conclude our surmation with absolute sincerity
3 in the integrity of our defense.

4 "The first four acts already passed,

5 "The fifth, will see the closing of the drama
6 of the day,

7 "Time's noblest offspring is its last."
8

9 - - -

10 THE PRESIDENT: Mr. McManus.

11 MR. McMANUS: Mr. President and Members of the
12 Tribunal, with your permission I shall resume with
13 ARAKI's surmation, starting at page 248, paragraph 206:

14 206. Cabinet Councillors of the First KONOYE
15 Cabinet.

16 Having failed in causing General ARAKI and
17 others to be reinstated in the army, Prince KONOYE
18 created on 15 October, 1937, the Cabinet Councillor
19 system for the disposition of the China Incident,¹ and
20 appointed ARAKI a councillor. Circumstances surround-
21 ing his appointment are related in ARAKI's affidavit.
22 Indeed this Cabinet Councillor system was created by
23 Premier KONOYE² for a speedy disposal of the China
24 Incident and was of entirely different character from
25

(1 Ex. 3161, T. 28200.

2 Ex. 3161, T. 28201.)

1 the Cabinet Councillor system established in March,
2 1943, to cope with various problems relating to the
3 Pacific War.

4 In view of the fact that both offices are
5 referred to in the transcript as Cabinet Advisors, it
6 is purposely mentioned here lest the term should lead
7 to a misunderstanding.

8 It is due to a misinterpretation that the
9 exhibit No. 2217 says, "It was compulsory to attend,"
10 and it should be corrected as, "The meeting was
11 scheduled for once or twice a week." In the same
12 way, "I attended all the meetings," should be, "I
13 attended almost all the meetings." Two statements in
14 exhibit No. 2218 that "when I was Minister of Education,
15 I did not attend these meetings," and that "if a
16 question regarding foreign policy came up, this would
17 be discussed at the usual cabinet meetings," are contra-
18 dictory to each other. It is the contention of the
19 accused, these statements should read, "Questions con-
20 cerning diplomatic policies were to be discussed at the
21 Five Ministers' Conference," and, "I did not attend
22 these Conferences."
23

24 As has been pointed out, these mistakes were
25 caused through interpreters' confusion who were unable
(1 T. 28226.)

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21 Five Ministers' Conference," and, "I did not attend
22 these Conferences."

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24 caused through interpreters' confusion who were unable
25 (1 T. 28226.)

1 to distinguish¹ between the question of principle and
2 that of practice.

3 While ARAKI was a Cabinet Councillor he was²
4 unable to participate directly in Chinese problems.

5 I shall now omit the balance of that paragraph
6 and proceed to paragraph 207 on the next page.

7 207. Rape of Nanking.

8 Instead of holding conferences among themselves,
9 the Cabinet Councillors were merely to give advice
10 directly to Premier KONOYE; despite the initial expect-
11 tation of their own importance, theirs was an unpaid
12 honorary position with no authority. As a matter of
13 fact, not a single important question was ever referred
14 to them.³

15 As ARAKI's affidavit states, it is a fact that
16 as a Cabinet Councillor he exerted his efforts for a
17 speedy solution of the China Incident.⁴

18 For the simple reason that ARAKI was a Cabinet
19 Councillor at the time of the fall of Nanking the prose-
20 cution allegedly charges him with some responsibility
21 for the massacre at Nanking. This is not reasonable,
22 for why should a Cabinet Councillor who was vested with
23

24 (1 T. 28227.
25 2 T. 28487.
3 T. 28202.
4 T. 28203.)

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1 little political power and much less with military
2 authority be charged with such a responsibility? ¹ As
3 for moral responsibility, we claim there is none because
4 ARAKI was then totally unaware of the incident, and
5 was unable to present his views.

6 This fact was made abundantly clear by ARAKI's
7 answer to Mr. Comyns Carr's cross-examination on 12
8 September 1947. ² We maintain therefore that this charge
9 is entirely without foundation.

10 B. ARAKI as Education Minister.

11 208. Circumstances surrounding ARAKI's appoint-
12 ment as Education Minister.

13 Premier KONOYE appointed ARAKI a Cabinet
14 Councillor. However, as Cabinet Councillors had no
15 authority and being outside the Cabinet, they had no
16 opportunity to influence cabinet conferences by voicing
17 their views, Prince KONOYE effected a large-scale
18 cabinet reorganization on 26 May 1938. As the result,
19 ARAKI was appointed the Education Minister, General
20 UGAKI, Foreign Minister and IKEDA, Seiin, Finance
21 Minister. A little later ITAGAKI was made the Army
22 Minister.
23

24 209. The Five Ministers' Conference.

25 (1 T 28202.
2 T 28407.)

1 Soon after his reorganization of the cabinet,
2 Premier KONOYE adopted the system of the Five Ministers'
3 Conference. Thus, important matters related to the China
4 Incident were deliberated upon and decided by Premier,
5 Foreign, Finance, Army and Navy Ministers. It so
6 happened, therefore, that though ARAKI entered the
7 cabinet, he was not given the opportunity to participate
8 actively in the disposition of the China Incident.

9 Under the HIRANUMA Cabinet the same situation
10 prevailed, and no important diplomatic and military
11 problems were ever considered at cabinet conferences.
12 ARAKI, accordinally, was aware of neither such problems,
13 nor the Governmental statement set forth in the court
14 exhibit No. 1291, prosecution document No. 1644.¹

15 209. Having no connections with military
16 operations at the front, Education Minister ARAKI was
17 totally excluded from military and diplomatic affairs
18 relating to the China Incident. He was thus a cabinet
19 minister by name only. The situation was the same under
20 the HIRANUMA Cabinet so far as ARAKI was concerned.
21

22 Since military operations at the front were not
23 submitted for the consideration of the cabinet confer-
24 ences in general, either before or after their execution,
25 there is no reason whatsoever that an Education Minister
should be held responsible for them.

(1 Ex. 3169, T. 28487, ISHIWATA's affidavit, Ex. 3170,
T. 28508; Ex. 3161, T. 28215.)

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1 The prosecution is charging ARAKI with the
2 responsibility for the massacres at Hangkow and Canton,
3 and also for the execution of the China Incident.
4 However, these are operational matters pure and simple,
5 and as such they were not revealed beforehand to ARAKI,
6 who merely listened to reports after the operations
7 had taken place. So far as the massacres are concerned,
8 he was not aware of them at any time. Because of the
9 existence of the Five Minister's Conference; and be-
10 cause operational matters were handled exclusively by
11 the High Command, cabinet ministers who were not
12 directly concerned with these matters knew nothing
13 about them.

14
15 The only instance was one immediately after
16 ARAKI's appointment as the Education Minister; he
17 discussed the situation with the Premier in the
18 presence of the Home Minister SUYETSUGU. When ARAKI
19 proposed an immediate termination of the China Inci-
20 dent, SUYETSUGU held a view diametrically opposed to
21 his, and the two had a heated argument. After that
22 ARAKI refrained from participating in any further
23 arguments.^{1.}

24 Since such a strange Five Ministers' Confer-
25 ence was empowered then to deliberate upon and decide

1. ARAKI's Interrogatories; Ex. 2218.

1 matters, we reiterate again that ARAKI as an Education
2 Minister cannot be held responsible for the execution
3 of this China Incident.

4 The question of the Tripartite Pact was
5 under discussion by the Five Ministers' Conference
6 during the HIRANUMA Cabinet. Since a final decision
7 was not reached, the question was not submitted to the
8 Cabinet Conference. As for matters relating to the
9 Wang Ching-wei Government, they were proceeding under
10 cover of secrecy. So much so that the Education
11 Minister ARAKI was not aware even of Wang's coming
12 to Japan.^{1.}
13

14 The prosecution, we contend, has offered no
15 accurate proofs against ARAKI on the foregoing points.

16 211. General educational administration.

17 A. Concerning education while ARAKI was the
18 Education Minister, the prosecution charged him only
19 for the alleged strengthening of military education.
20 It suffices, therefore, for the defense to refute the
21 prosecution's contention on this point alone. It is
22 our belief, however, that to elucidate what sort of
23 educational administration ARAKI put into effect on
24 what ideals while he held the Education Ministership
25 is to prove that he never participated in the alleged

1. Tr. 28216.

1 common conspiracy for any aggressive war or the
2 execution thereof as claimed by the prosecution.

3 212. B. Under paragraph 20 on page 49¹.
4 of his affidavit ARAKI states:

5 "The most serious apprehension of Japan at
6 that time was the disturbance of ideological circles.
7 There was a time when communism spread widely among
8 the people, and once it became the tide of public
9 opinion; then there was a time, later, when people
10 followed Nazism or Fascism. This trend gave rise to
11 complications between the liberalism which had also
12 existed at that time, and caused a terrible state of
13 chaos.

14 "The several unfortunate incidents which
15 arose from the current situation at that time were
16 due to the disturbance of thought on the part of the
17 people. On the other hand, the rise of the Nippon
18 spirit tended to create a dogmatic nationalism, which
19 from its lack of ubiquity, was apt to fall into
20 extreme rightism and was pregnant of much danger. The
21 cause of this defect was due to the fault of perfunctory
22 education which had a tendency of making the people
23 lose sight of ideological independence and lofty
24 ideas. In order to reform this, I advocated that
25 1. Tr. 28207.

the Imperial virtue of benevolence and tolerance,
1 which had been the basic spirit from the time of the
2 foundation of our country, should be borne in mind
3 and cultivate in it an ubiquitous character which was
4 welcome in all the modern civilized countries of the
5 world. Imperial admonition was my guiding principle
6 when attending to this work, inasmuch as the Imperial
7 admonition was teaching us the basic principle of
8 humanity with His Majesty's generosity, and I con-
9 sidered that that was the code that the people should
10 observe. This principle, which had been the basic
11 spirit from the time of the foundation of the Empire,
12 was entirely different from militarism, but it was
13 the one essentially required for the correction of
14 the defect in ideological circles at that time."¹.

16 Thus, ARAKI's ideals, which the prosecution
17 calls extremely militaristic, are in reality tended
18 toward neither communism, nor Nazism, nor narrow
19 nationalistic rightism, but are the same basic
20 ideals of peace and humanism common among all modern
21 civilized nations. It was ARAKI's desire to prevent
22 the Japanese from falling in either one of these
23 extreme ideas through a thorough recognition of this
24 basic spirit. For this purpose ARAKI as the Education
25 1. Tr. 28209.

Minister adopted this ideology as the basic policy
of education.

213. C. In line with this policy the
following concrete measures were taken:

(1) Lest Japan's youth should be influenced
by the Nazi ideology, ARAKI gave orders to have the
group of boys visiting Germany visit also England and
France.^{1.}

(2) ARAKI expressed the strong desire that
Japan should conclude the cultural agreement not with
Germany alone, but with any other countries having
such desire.^{2.}

(3) Declared publicly that no country could
depend upon armed might for being permanently a
first-class Power, that a state could become a real
first-class Power by her cultural merits alone.^{3.}

(4) Encouraged researches in basic sciences
and provided for scholarships and subsidies; also
encouraged technical education.^{4.}

(5) When the suspension of school English
courses was advocated because of adverse sentiment
toward America and England during the China Incident,

1. Ex. 2378, Tr. 28526.

2. Tr. 28526.

3. Tr. 28527.

4. Tr. 28527.

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3. Tr. 28527.

4. Tr. 28527.

1 ARAKI sounded warning against this exclusive
2 dogmatism, and refused to consider such an argument.
3 Instead he instructed the general public that the
4 nation should not boast of its racial superiority,
5 but should try to become one to be loved and praised
6 by others.^{1.}

7 (6) Throughout the tenure of office as the
8 Education Minister, he instructed the general public
9 that in accordance with Emperor MEIJI's wishes the
10 Japanese should make thorough studies of the occi-
11 dental culture, and strive neither to be affected by
12 Fascism, nor become narrow-minded.^{2.}

13 (7) Regarding the deaf and mute training
14 he always stressed in citing the instance of Miss
15 Helen Keller that the divine faculties should be per-
16 fected.^{3.}

17 (8) Whenever American-born Japanese were
18 troubled about American-Japanese problems, he invar-
19 iably requested them to be exemplary American citizens
20 and to lend a hand in removing misunderstanding between
21 the two countries.^{4.}

22 214. D. Though its forepart is styled after
23

- 24 1. Tr. 28528.
25 2. Tr. 28529.
3. Tr. 28529.
4. Tr. 28529.

1 the form of instructions issued by Governmental
2 offices during an incident, even exhibit 138¹ in
3 its latter half contains the following views by
4 ARAKI:

5 "The worth of a state, internationally, is
6 judged according to the amount of respect it enjoys
7 from the rest of the world, and the character of a
8 country depends upon the moral virtues of students
9 and pupils who are responsible for shouldering the
10 future. Students and pupils should be highly proud
11 of themselves. They should polish up their character;
12 cultivate their personality; endeavor constantly in
13 the pursuit of learning and culture lest they be
14 shunned in the least. They must also do the duties
15 that are required of them at the present time."

16 This view by ARAKI was added on to the fore-
17 part of the exhibit consisting solely in what was
18 composed perfunctorily by the secretariat of the
19 Ministry. The whole thing was aimed at uplifting
20 the moral standard of students in general.

21 216. No strengthening of military education.

22 (1) OHUCHI, Hyoye, a prosecution witness,
23 testified on 19th June 1946 as follows:

24 1. Pros. Doc. No. 7113.
25

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2 offices during an incident, even exhibit 138¹ in
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"* * * military training * * * becoming
compulsory in 1938 when General ARAKI became
Minister of Education * * *. General ARAKI as
Minister of Education ordered compulsory military
training and lectures in all universities."

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1 However, in answer to Defense Counsel OKUYAMA's
2 cross-examination, OHUCHI answered:

3 "I have not heard that directly as a school
4 authority, but I have only heard it indirectly."

5 The witness' answer revealed his testimony
6 is based on hearsay.¹

7 As shown in the defendant KIDO's affidavit,
8 OHUCHI was not familiar with the actual state of
9 affairs, as he was imprisoned one year and six months
10 after his arrest in February, 1938. All that he testi-
11 fied to in this connection is what he heard after his
12 release from the prison.

13 OHUCHI testified too that ARAKI had nothing
14 to do with his arrest.

15 217. KAIGO, Tokiomi, a prosecution witness,
16 gave on 18th June, 1946, the following answer when
17 questioned by the prosecutor Mr. Hammack:

18 "Q In addition to lectures on military sub-
19 jects given at any time, did actual military training
20 become compulsory in the universities?

21 "A It was decided in the year 1939 to in-
22 troduce military drill with rifles. And it was put
23 into practice since September of the same year. But

24
25 1. Tr. 979

1 at that time students were told to conduct rifle prac-
2 tice only on the occasion of field maneuvers, and on
3 other occasions they were supposed to attend lectures
4 only."¹

5 It should be noted that beginning September,
6 1939, ARAKI was no longer holding the office of Educa-
7 tion Minister.²

8 "A In November, 1941, the outline of the
9 instruction in military drill was issued; after the
10 issuance of the outline, training with rifle was con-
11 ducted at universities also."³

12 Unlike witness OHUCHI, who was a professor of
13 economics, and was imprisoned for an extensive period,
14 witness KAIGO is a university professor specialized
15 in history of Japanese education who took actual charge
16 of training.⁴

17 "Witness KAIGO's testimony is not hearsay
18 evidence like OUCHI's but is based upon his specialized
19 study and personal knowledge gained through his ex-
20 perience in handling actual affairs.
21

22 218. The following points have been made
23 clear through witness KAIGO's testimony:

- 24 1. Tr. 889
25 2. Ex. 203, ARAKI's curriculum vitae
3. Tr. 889
4. Tr. 936

1 a) Military education at Japanese educa-
2 tional institutions is of long standing.

3 b) Military education has been instituted
4 since the Meiji Era after the example of advanced
5 countries of the world which adopted the policy of
6 wealthy nation, powerful army.

7 c) Revisions were made after the World War
8 I for various reasons

9 1) As a countermeasure for the reduc-
10 tion of armaments.

11 2) For the correction of frivolous ideas.

12 3) As a counter-measure for the anti-
13 militaristic ideas.

14 d) Military education was not instituted
15 with aggressive intention.

16 e) Bolstering of the system with the out-
17 break of the China Incident and the Pacific War was
18 but natural.

19 f) No connections existed between the Educa-
20 tional Council and the military education.

21 g) Racial superiority of the Japanese was
22 not taught in connection with military education.

23 Witness KAIGO also stated as follows:

24 a) Military education has been continuously
25 given at Japanese educational institutions since 1934.

1 b) Officers in active duty were first attached
2 to schools and colleges prior to 1925 (at the same
3 time military training system was put into effect at
4 all universities; and the system became compulsory at
5 high schools, normal schools, and colleges).

6 c) It was in September, 1939, that military
7 drill (field drill with rifle) was put into practice
8 at universities in addition to classroom lectures.

9 It should be noted that ARAKI had already
10 resigned in August, 1939.¹

11 d) Indoor drill with rifle was instituted
12 in November, 1939, when ARAKI was no longer Education
13 Minister.²

14 c) The Educational Council was established
15 in 1937, and through its operation policy for the
16 revision of text-books was laid down in 1939.

17 In view of these facts it is clear the prose-
18 cution's charge that ARAKI as Education Minister
19 brought educational institutions under the influence
20 of militarism is unfounded on the facts.

21 219. Question of the compulsory system of
22 young men's schools.

23 The prosecution charges that as to attend
24 the young men's schools was made compulsory while
25

1. Ex. 203, ARAKI's Curriculum Vitae
2. Ex. 203, ARAKI's Curriculum Vitae

1 ARAKI held the Education Ministership, it amounts to
2 that he made the military education compulsory.

3 However, to make the attendance at young
4 men's schools compulsory was decided upon long before
5 by various educational advisory organs. Later their
6 recommendation was submitted to the Educational Council,
7 which after due deliberation returned its findings.
8 By the time ARAKI was appointed the Education Minister
9 necessary official procedures had been completed,
10 and the order making the system compulsory was issued
11 by him as an official routine.¹

12 220. In his affidavit² witness YOSHIDA testi-
13 fied that "up to 1939 military drill was an elective
14 subject at universities."³

15 However, witness YOSHIDA was a section head
16 of the War Ministry, and bears no comparison with the
17 witness KAIGO, who is a specialist in the subject.
18 In view of KAIGO's testimony, it is clear that the
19 two items in witness YOSHIDA's evidence were based
20 upon his misunderstanding.
21

22 As witness IWAMATSU successively served as
23 the Chief of the Archives Section and the Secretariat
24 Section of the Education Ministry, his testimony on
25

1. Tr. 28,585
2. Ex. 2377
3. Tr. 18,461

1 Japan's educational system is impeccable in its pro-
2 bative value.

3 While submitting evidence IWAMATSU was tem-
4 porarily subjected to prosecutor's challenge in connec-
5 tion with the matter of "sponsor." That his testimony
6 stated the truth should be clear in view of the fore-
7 going.¹

8 221. General Chin Te-chun, a prosecution
9 witness, stated on 24 July, 1946, in answer to the
10 defense counsel's cross-examination that "the central
11 government order was received in the spring of 1936.
12 But prior to that some of the schools had already put
13 up these courses by themselves. In 1937 there was
14 some concentrated training."
15

16 From his testimony it is clear that China
17 issued already in 1936 an order concerning the mili-
18 tary drill at various schools. Inasmuch as national
19 defense is a relative matter, it is but natural for
20 Japan to assume a positive counter-measure when her
21 antagonist in an incident adopted a policy of a con-
22 centrated military education.

23 Testimony by witness KAIGO and IWAMATSU
24 made it abundantly clear that it was beginning 1941
25

1. IWAMATSU's testimony; par. 20 of ARAKI's affidavit;
Tr. 18,563

1 that the military education system in its true sense
2 was established and stressed at Japanese universities
3 and other educational institutions. When this took
4 place, ARAKI was no longer the Education Minister.

5 THE PRESIDENT: We will recess for fifteen
6 minutes.

7 (Whereupon, at 1445, a recess was
8 taken until 1500, after which the proceed-
9 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. McManus.

3 MR. McMANUS: 222. ARAKI as Chairman of
4 National Spiritual Mobilization Committee.

5 The prosecution declared that they were not
6 charging ARAKI with this.¹

7 III Monopoly of Opium.

8 223. The prosecution introduced for the
9 first time in its summation the allegation that ARAKI
10 was connected with the monopoly of opium. However,
11 in going through all the testimony which has been
12 presented in this relation, we fail to find a
13 scintilla of evidence which proved even in the remot-
14 est way the responsibility of ARAKI re this matter,
15 either as War Minister or Education Minister.
16

17 AA-53, the prosecution summation, asserts
18 that an agreement has been reached between Manchukuo
19 and Japan. This is nothing more than an assertion
20 that a free transaction between two countries was
21 approved by the cabinet meeting of Japan.

22 In AA-54 it deals with the establishment of
23 the opium monopoly system in Manchukuo, but there is
24 not the slightest evidence to show any connection

25 1. Tr. 28,536

1 with War Minister ARAKI.

2 AA-55 explains the relations between Man-
3 chukuo, Formosa Government General and the Bureau
4 for the Kwantung Leased Territories. While it shows
5 that the matter was decided upon at the cabinet
6 meeting, upon enquiry to the Opium Committee, it
7 does not refer in any way to the responsibility of
8 Education Minister ARAKI.

9 The question of opium has fully been covered
10 in the Manchurian Phase of the general summation so
11 we will not go any further into this question.

12 By the foregoing we contend that while he
13 was Education Minister, he neither strengthened nor
14 desired to strengthen military education in schools.
15 I shall omit the balance of that paragraph.

16 Chapter VI. Japan-Soviet Relations and
17 ARAKI.

18 224. The prosecution charged that ARAKI had
19 aggressive designs against the Soviet Republic, and
20 that he laid railroad lines in and exploited Man-
21 churia in connection with the Manchurian Incident in
22 order to make preparations for launching an attack
23 against the Soviets. In order to prove this the
24 prosecution held that ARAKI executed repeated attacks
25 against the Soviets, and that as the Education

1 Minister, ARAKI participated in the Changkufeng and
2 Nomonhan Incidents; it relied upon its witness
3 TANAKA's testimony that as a leader of the Kodo-kai,
4 ARAKI harbored ill will toward the Soviets; and it
5 produced for this purpose several newspaper and
6 magazine articles of insufficient probative value
7 and a few additional witnesses.

8 I shall omit the next sentence.

9 The prosecution's contention and the points
10 it intends to prove relate to the following Counts:

11 (1) Count Nos. 25, 26, 35, 36, 51, and 52
12 concerning the Changkufeng and Nomonhan Incidents.

13 II Refutation of exhibits and Counts.

14 225. Counts 25, 26, 35, 36, 51 and 52
15 hold ARAKI responsible for Changkufeng and Nomonhan
16 Incidents while he was the Education Minister. As
17 has been proved in the foregoing section, throughout
18 the First KONOYE and the HIRANUMA Cabinets important
19 state affairs were discussed exclusively by the Five
20 Ministers' Conference composed of the Premier, Army,
21 Navy, Foreign and Finance Ministers. ARAKI as the
22 Education Minister never participated in those con-
23 ferences. Again, in Par. 23 of ARAKI's affidavit it
24 shows the Education Minister's position in the cabin-
25 ets at that time. He could not therefore take part

1 in the discussion of international questions.

2 226. The prosecution made references to
3 ARAKI's interrogatories.¹ As has been pointed out
4 no charge should be based upon the interrogatories,
5 as they contain numerous mistakes.

6 227. Now what was cited in TAKEBE, Rokuzo's
7 affidavit² was not a prefectural governor's conference.
8 The fact was that ARAKI as the War Minister invited
9 for luncheon the prefectural governors who were ad-
10 visors to the Servicemen's Relief Association. On
11 the occasion ARAKI gave an address expressing his
12 appreciation for the assistance the governors rendered
13 to the Association.

14 That ARAKI made no reference whatsoever to
15 an aggressive policy or current situation is proved
16 by the testimony by the Governor of the Tokyo Pre-
17 fecture Kosaka Yasumas,³ who was then the senior
18 governor and by the affidavit of SUZUKI, an accused.⁴

19 The evidence of TAKEBE like that of Pu-Yi
20 was given while he was imprisoned. It is left to the
21 Tribunal's fair judgment to what extent TAKEBE's
22 statements should be credited with probative value,
23

- 24 1. Ex. No. 2218
25 2. Ex. No. 670
3. Ex. No. 3715, Tr. 36,960
4. Ex. No. 3605, Tr. 35,173-9

1 in view of the circumstances wherein he found him-
2 self.

3 228. ARAKI's alleged talk at the Osaka
4 Political and Economic Research Association¹ was
5 reported by the Japan Advertizer. This was origin-
6 ally reported by the Domei News Agency on hearsay,
7 and a hearsay report of the Domei's article was re-
8 printed by the Japan Advertizer. Being a report
9 based upon double hearsay, the significance of the
10 article is utterly incomprehensible.

11 229. At the roundtable conference reported
12 by the Kokumin Shimbun,² ARAKI explained the then
13 prevailing situation by drawing a parallel between
14 the Government's lack of fixed policy for effecting
15 control over the Army and the Navy and its similar
16 lack of a definite policy during the Siberian Affair.

17 Due to the state of affairs at that time,
18 the newspaper was unable to report his talk as it was
19 actually spoken, but made various alterations. As
20 the result the writeup became entirely different
21 from what ARAKI actually said.³

22 230. Exhibits Nos. 746 and 746 relate to
23 notes exchanged between Japan and the Soviet Union
24

- 25 1. Ex. No. 671-A, Pros. Doc. 2527, Tr. 7,334
2. Ex. No. 667, Tr. 7,309-10
3. Ex. No. 3170, Tr. 28,508

1 concerning the Soviet proposal in connection with
2 the Japan-Soviet Non-Aggression Pact of 1933.

3 First of all, international issues were
4 handled by the Foreign Office.

5 In the individual phases of SHIGEMITSU and
6 HIROTA those circumstances were dealt with and
7 clarified.

8 The situation is explained under Par. 14-A
9 of ARAKI's affidavit.¹

10 Now there further is no denying that the
11 Third Internationale was then intensifying its world
12 Bolshevization policy. Hence Japan felt a consider-
13 able misgiving and harbored a strong suspicion.²

14 I shall now turn to the first paragraph on
15 the following page:

16 The two exhibits, 746 and 747, are the
17 notes exchanged between the two governments showing
18 that the proposed Non-Aggression Pact was not con-
19 cluded immediately. They cannot be the evidence to
20 prove that the Japanese Government at that time
21 harbored aggressive intentions. Subsequent events
22 bear out that Japan's suspicions were well founded.

23 I shall omit the balance to the middle of
24 the paragraph 231.
25

1. Ex. 3161, Tr. 68,173 2. Ex. 3161, Tr. 28,173

Contents of the documents 701 and 702 relate
1 to matters under the jurisdiction of the Army General
2 Staff, and the War Minister had no relation whatso-
3 ever with them.¹

4 As witnesses KAWABE and KASAHARA testified,
5 the documents represent results of private researches
6 made between the section heads. It was customary
7 for members of the sections concerned of the Army
8 General Staff to draw up drafts covering subjects
9 they were interested in, and to conduct researches in
10 them. Results of such researches were sometimes sub-
11 mitted to their superiors for reference. Both wit-
12 nesses testified they did not even show the documents
13 in question to their superiors.²

14
15 In view of the contents of the documents it
16 is perceivable that the Japanese Army at that time
17 was in no position to make use of the drafts in any
18 way beyond what the witnesses testified. In our
19 submission, ARAKI who then held the Army Ministership
20 should not be held responsible for the documents.

21 232. As has been stated, ARAKI himself did
22 not write the "Japan's Mission in the Showa Era."

23 I shall delate until the first paragraph on
24 the next page.

25 1. Ex. 3161, Tr. 28,173 2. Tr. 7,633

Under the circumstances, ARAKI cannot assume
1 responsibility for separate sentences contained in
2 the book. Rather, his idea should be grasped by
3 reading the book as a whole.
4

5 Omit the next paragraph.

6 Exhibit No. 760 summarizes the following
7 facts:

8 Around 1921 and 1922 Soviet troops forcefully
9 occupied Outer Mongolia under the pretext of suppress-
10 ing anti-communistic forces in Mongolia, and estab-
11 lished a communistic government. In 1924 the Outer
12 Mongolian Republic was established under the pro-
13 tection of the Soviet Union, and declared its inde-
14 pendence from China. Subsequently the new Republic's
15 influence threatened to extend to Inner Mongolia,
16 Sinkiang, and even to Manchuria. Nevertheless, no
17 country offered a protest against the practice, and
18 it was feared that a general disturbance would con-
19 sequently set in in Asia.

20 I quote from the Lytton Report: "... Japan-
21 ese misgivings have been still further increased in
22 the last few years by the predominant influence ac-
23 quired by the USSR in Outer Mongolia and the growth
24 of communism in China."
25

1. P. 68 of the Lytton Report.

1 Later the Soviet-Mongolian Alliance was
2 formed, and the region was practically annexed to
3 the Soviet Union.

4 I shall start with the second sentence in
5 the next paragraph.

6 ARAKI thought, therefore, such state of af-
7 fairs should be depicted clearly in order to insure
8 peace in Asia, and to safeguard Japan from the impend-
9 ing danger. He stated also, should the Bolshevization
10 of Asia endanger Japan's national polity, counter-
11 measures should have to be adopted. If Outer mon-
12 golia was to become independent, it should negotiate
13 with China with the view toward acquiring a fully
14 independent sovereignty, he said. For, to allow the
15 affair to remain indefinite, he thought, was to
16 create the cause of future evil. ARAKI was relating
17 the actual state of things then existing in Asia.
18 His statement of facts should not be interpreted as
19 revealing his aggressive intentions toward the Soviet
20 Union. Ex. 760.

21 233. In his opening statement, the Soviet
22 prosecutor declared that Japan since long past has
23 been planning aggression against Russia. Going back
24 to the Sino-Japanese War, he contended that all inter-
25 national complications since then have resulted from

1 Japan's aggressive intentions. He asserted that the
2 Manchurian Incident was but an extension of Japan's
3 aggressive action.

4 The prosecutor regarded all measures Japan
5 and Manchukuo adopted for the preservation of peace
6 and the promotion of culture in Manchuria as prepara-
7 tions for an attack against the Soviet Union. The
8 prosecutor charged ARAKI as one of the alleged con-
9 spirators who planned such an act.

10 His allegation is based upon the aforemen-
11 tioned evidence of insufficient probative value; and
12 in addition he made an abstract statement.

13 234. Attention of the Court is called to
14 the fact that the military facilities Japan requested
15 Manchukuo to construct within her territories were
16 limited strictly to those of a defensive nature.¹

17
18 235. Soviet-Japanese negotiations were con-
19 ducted on friendly terms during the Manchurian Inci-
20 dent as well as on the occasions of suppressing un-
21 lawful elements in Kolumbuir and Northern Manchuria,
22 while ARAKI held the Army Ministership. That friendly
23 relations existed between the two countries, neither
24 of the two constituting menace to the other, is tes-
25 tified to in the evidence of the witnesses ENDO and

1. Tr. 2929, Ex. 233

1 TAKEDA, as well as in ARAKI's affidavit.

2 236. The contention by the Soviet prose-
3 cutor that on the occasion of the sale of the Chinese
4 Eastern Railway to Japan, she purchased the line
5 cheap by repeatedly interfering with the operation
6 of the line, and subjecting railroad employees to
7 threats, appears to be nothing but a pretext thought
8 up at this late date.

9 It is carrying the imagination too far to
10 say that after the Manchurian Incident Japan especi-
11 ally incited the Chinese to do that.

12 In Chapter II of the Lytton Report, under
13 Item 3, "Relations with Russia," there appear the
14 following accounts relating to clash of interests
15 between Chang Tso-lin's regime and the Soviet Union.¹

16 I quote: "After the adherence of Manchuria
17 to the Nanking Government, nationalist spirit in-
18 creased in strength, and the efforts of the USSR to
19 maintain predominating control over the railway were,
20 more than ever before, resented ... and many import-
21 ant Soviet organizations and enterprises were forcibly
22 closed down ... many Soviet citizens were arrested,
23 and some were deported."

24
25 1. P. 66

I shall omit the next four paragraphs.

V. Defense Against Bolshevization.

238. (1) As has already been stated, ARAKI had no concern about communistic theories being put into practice within the Soviet Union. As a Japanese national, he was unable to accept the Third Internationale's policy of Bolshevizing the world, and was always on guard against it.

239. He was extremely worried about the two attempts at high treason by communists, at Toranomom in 1922 and Sakuradamon in 1932, and started to keep watch over communistic activities in Japan, lest it should endanger Japan's national polity.

The Kokuhonsha in question was first established during this period and for the very reason aforementioned.

240. "The Basic Plan for Emergency Measures" which ARAKI submitted to Premier SAITO when he resigned as the War Minister, proves this point. ARAKI advocated in this plan that rightist and leftist political offenders should equally be granted amnesty, thereby popular sentiment should be changed

1. Ex. 3161, Tr. 28,173
2. Ex. 3161, Tr. 28,172
3. Ex. 3166, Tr. 28,451

I shall omit the next four paragraphs.

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1. Ex. 3161, Tr. 28,173
2. Ex. 3161, Tr. 28,172
3. Ex. 3166, Tr. 28,451

completely.

1 We submit that this fact proves that unlike
2 old-fashioned, rightistic ultra-nationalists, ARAKI
3 is broadminded, and can be in accord with anybody
4 in the world, in accordance with the Imperial wishes
5 for putting into practice the principle of universal
6 brotherhood. Even though ARAKI did not accept the com-
7 munist theory of bringing pressure upon human
8 rights and human freedom, he maintained no idea to
9 interfere with communism.
10

11 I shall omit paragraph 241.

12 245. Army appropriations during the period
13 when ARAKI was the War Minister (1932-1933) were
14 approximately 170,000,000 yen annually, exclusive of
15 the expenditures covering the Incident. The amount
16 was little more than the appropriations during a
17 normal year. It is noted that the expenditures
18 covering the Manchurian Incident were approximately
19 150,000,000 yen for each of the two years.
20

21 Though, under the provisions of the Japan-
22 Manchukuo Protocol, Japan's obligations for national
23 defense increased, with corresponding increase in the
24 number of garrisons in Manchukuo, there was no material
25 change in the size of the Japanese Army.

1. Tr. 28,193

1 Japan and Manchukuo entered into the agree-
2 ment of common defense; however, Manchukuo's mili-
3 tary facilities were constructed for defensive
4 purposes, and had no aggressive characteristics. It
5 is customary for a newly established state with its
6 aspirations for civilization to construct additional
7 railway lines, to unify communication facilities,
8 and to develop natural resources. This is also
9 necessary for national defense purposes.

10 These considerations should suffice to dis-
11 prove the prosecution's contention that Japan had
12 planned to make Manchuria the base for her alleged
13 aggression against the Soviet Union. The facilities
14 actually established did not exceed the scope of
15 the normal national defense and cultural requirements.

16 In view of the atmosphere then prevailing
17 in the Soviet Union, it was expected her ideological
18 propaganda directed toward Manchukuo would precede
19 an armed invasion, and precedence was given to the
20 organization of precautionary measures against such
21 propaganda. Even the number of the troops stationed
22 in Manchuria at that time was not increased in any
23 appreciative degree.
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25 246. According to the "Table of Growth of
Strength of the Kwantung Army and the Japanese Army

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as a Whole,"¹ it is quite evident that the size of the Japanese Army and its equipment during the time of ARAKI's War Ministership were extremely insufficient. So much so, that it was out of the question for Japan to attempt the invasion of either China or the Soviet Union. Moreover, the undersized Army was left in that state for several years. It was considerably later that the Army was expanded in any way at all.

Considering all the facts abovementioned, we submit that the prosecution's charge concerning the Soviet Union is totally unfounded.

Chapter VII. ARAKI's retirement from political life.

247. After the resignation en bloc of the HIRANUMA Cabinet, ARAKI severed all connections with political life. However, as he was a cabinet councillor in the ABE and YONAI Cabinets, although it was a post in name only, some explanation is believed necessary in this connection.

248. Cabinet Councillor in the ABE Cabinet.

ARAKI and ABE were classmates during their Military Academy days and were close friends. When ABE formed his cabinet and requested him (ARAKI) to

1. Ex. 706, Tr. 7,531

1 be a consultant for the purpose of settling the China
2 Affair, ARAKI could not out of sheer obligation de-
3 cline. Furthermore, as the system of cabinet coun-
4 cillor was already substantially powerless and mere-
5 ly an existence in name only, ARAKI consented.

6 249. After his assumption to the post of
7 cabinet councillor, ARAKI not even once met the
8 prime minister in connection with the current situa-
9 tion.¹ As the ABE Cabinet resigned en bloc (16 Janu-
10 ary 1940) only a month or so after ARAKI became
11 cabinet councillor (1 December 1939) there was not
12 even an opportunity afforded for a meeting between
13 them.

14 I shall omit paragraph 250.

15 251. In the formation of his cabinet,
16 Premier YONAI then requested ARAKI to take the port-
17 folio of Home Affairs. When the YONAI Cabinet was
18 being formed, YONAI made an earnest appeal to General
19 ARAKI through ISHIWATA to take the office of Home
20 Minister, but he declined it on the grounds that he
21 could not render any service as the trends of the
22 times were against him.² Special attention is called
23 to the words "he declined it on the grounds that he
24 could not render any service as the currents of the
25

1. Tr. 28,215 2. Tr. 28,508

time were against him," for from this it becomes

1 quite clear that ARAKI held views contrary to the
2 general trends and to those of the responsible
3 leaders of that time and was completely disassociated
4 from the political circles and the military.

5 252. Thus it was that ARAKI was then re-
6 quested to accept a cabinet councillorship, as he
7 had declined to become the Home Minister. So as he
8 had accepted this minor position in the ABE Cabinet,
9 and considering that if he declined even to become a
10 cabinet councillor, even though it would be in name
11 only, such an attitude might not only impair their
12 friendship, but might also possibly lower YONAI's
13 prestige considerably in political circles, he
14 (ARAKI) decided to accept. However, ARAKI only con-
15 ceded to accept in so far as he was assured that his
16 name alone would be sufficient, and as heretofore
17 mentioned the cabinet councillors continued an
18 inactive existence and ARAKI rarely attended any of
19 their meetings.
20

21 Thus, as the foregoing will abundantly
22 clarify, ARAKI did not participate in any way in the
23 then current situations while cabinet councillor in
24 either the ABE or the YONAI Cabinets.

25 1. Ex. 3161, p. 28,217

1 253. ARAKI declines cabinet councillorship
2 in Second KONOYE Cabinet.

3 254. When Prince KONOYE undertook to organ-
4 ize the Second KONOYE Cabinet he sent Chief Cabinet
5 Secretary TOMITA to ARAKI to request the latter to
6 become a cabinet councillor.¹ When thus approached
7 ARAKI pointed out that Prince KONOYE had already
8 decided on the establishment of the Imperial Rule
9 Assistance Association as a domestic move and on the
10 conclusion of the Tripartite Alliance as an inter-
11 national move and, he, therefore, declined the
12 offer saying that there was no way of his giving any
13 assistance as a cabinet councillor since these two
14 vitally important questions for Japan had already
15 been decided upon.

16 255. Greatly taken a back by the report
17 brought by Chief Cabinet Secretary TOMITA, Prince
18 KONOYE personally called on ARAKI's residence and,
19 although he explained that the Imperial Rule Assist-
20 ance Association was to be an organization which
21 banded together the powerless political parties and
22 that the Tripartite Alliance was to be concluded in
23 order to prevent American participation in war as
24 there was every danger that such participation would

25 1. Ex. 3172, Tr. 28,546

1 lead to a world war, ARAKI replied that whatever may
2 be the Prince's views the actual development of the
3 situation would negate his ideals and drive Japan
4 both domestically and internationally into fascism
5 and advised with utmost candor that the Prince was
6 playing with fire that may lead to the utter de-
7 struction of the country. Five hours of persuasive
8 arguments proved fruitless and ARAKI refused to join
9 the cabinet. Since that time the relations between
10 the two, which had been intimate and friendly, were
11 broken off.¹

12 256. The prosecution alleges that ARAKI
13 desired an attack on the United States and Great
14 Britain and has attempted to tie this up with the
15 Tripartite Alliance. We believe it is sufficient to
16 allude only to the above without referring to a large
17 amount of testimony (such as that of ARITA and
18 ISHIWATA) to meet the prosecution's contention. The
19 SAIONJI-HARADA² memoirs show that already from the
20 midst of the Manchurian Incident ARAKI's attitude
21 toward the United States, Great Britain and the
22 other Powers has been that of cooperation and
23 friendly intercourse.
24

25 1. Ex. 3172, Tr. 28,550
2. Ex. 3766 and 3767

1 Chapter VIII. Comments on the Prosecution's
2 Evidence.

3 ARAKI is well versed in the national liter-
4 ature of Japan and the Chinese classics. Hence, be-
5 cause his addresses and writings are profound in
6 thought and full of flowery rhetoric, they are diffi-
7 cult of full comprehension, in some cases by even the
8 Japanese themselves.

9 I shall proceed to the first paragraph on
10 the next page.

11 A serious case for the many fundamental mis-
12 takes in the prosecution's interrogations of ARAKI
13 is to be found in the prosecution's lack of prelim-
14 inary understanding (at the time the interrogations
15 were taken) of the current situation in the various
16 periods concerning this defendant and in the lack
17 of competence on the part of interpreters. The
18 difficulty of understanding ARAKI's diction may be
19 regarded as another reason why he could not make
20 himself sufficiently understood by them.

22 I shall now turn to page 291, paragraph 258.

23 258. Now, the prosecution, following its
24 usual practice, has picked up just a few lines relat-
25 ing to general situations and has used them as data
upon which to base its charges for certain acts and

1 conspiracy. The prosecution overlooks ARAKI's main
2 point on the enhancement of morality which has noth-
3 ing to do with aggression or hegemony as can be
4 clearly appreciated by a reading of entire texts.

5 261. All excerpts taken by the prosecution
6 from "To All the People of Japan"¹ are parts of a
7 speech made by ARAKI when war was going on.

8 To talk on the question of morality in the
9 midst of war is like pouring water on burning ob-
10 jects, and although the government authorities dis-
11 approved, ARAKI adamantly continued to teach morality.
12 On page 27 in Court exhibit 3164-A, ARAKI is quoted
13 as saying:

14 "Needless to say, the Imperial Army's
15 spirit lies in exalting Kodo (Way of the Imperial
16 House) and spreading the national virtue. That is
17 to say, every bullet must be charged with Kodo and
18 the point of every bayonet must be infused with the
19 national virtue. If there be anyone who opposes
20 Kodo or the national virtue he should be given an
21 injection with this bullet and this bayonet."

22 From this it is clear enough that he is
23 speaking of the bayonet and the bullet of the Im-
24 perial Army in the moral sense. This is also a reply
25 to Par. AA-84 of the prosecution's summation.

1. Ex. 3164-A

I shall omit the next paragraph.

262. Presentation of excerpts as evidence
does not provide data upon which to judge ARAKI's
true intentions.

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When an excerpt is taken omitting the foregoing passage and the meaning of the extracted portion is not truly understood, then it offers every chance that it would be interpreted in an unfavorable light.

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In the aforementioned exhibit 3164-A it is pointed out -- I skip nine lines -- the passage expressing the fact that peaceful conditions were first and foremost was willfully left out. For this reason the excerpt, taken alone, gives rise to the apprehension that the meaning of the main text may be taken as warlike.

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However, a passage just prior to that quoted by the prosecution from page 84 of the same court exhibit was omitted. The omitted passage says,

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"The attitude of our country consistently and unchangingly lies in the independence of Manchuria for the sake of peace in the Far East and peace in the world."

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Because of this omission, ARAKI's true meaning is misunderstood to an extreme degree.

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Although only a few examples have been cited above, the same can be said of nearly every piece of evidence presented by the prosecution. The prosecution, by presenting excerpts into evidence, has obscured the meaning of the entire text of documents. Although this

1 is a disadvantage to all the defendants, ARAKI espec-
2 ially is placed at a serious disadvantage for the reas-
3 ons hereinbefore set forth.

4 263. Evidence which has no Reliability.

5 The reliability of court exhibit No. 3164
6 produced by the prosecution just referred to cannot
7 be established. On 12 September 1947, ARAKI, during
8 the course of his testimony, stated that this book
9 was not written by him, but by a man named SHIBUI,
10 a teacher of a normal school, that in editing the
11 book SHIBUI showed a commercial interest and failed to
12 carry out ARAKI's request that the source of talks and
13 articles and their dates be clearly mentioned and that
14 he had therefore reprimanded SHIBUI for having failed
15 to carry out these instructions. He further stated,
16

17 "I should like to state further
18 that inasmuch as I did not actually write
19 the article by my own hand, some phraseology
20 used is sharp.

21 "With regard to press articles and magazine
22 articles, I think that for the purpose of sel-
23 ling these publications for commercial purposes
24 the state of affairs in the country were taken
25 into consideration and, in parts, strong words
were used. But generally speaking, although

1 I have not glanced through and read the entire
2 book ('and therefore I do not know, I think')
3 the thoughts I had in mind were substantially
4 reproduced.¹"

5 To suddenly present to the defendant an
6 edited collection of potpourri made by someone else
7 that does not give any sources or dates and to ask
8 him for an explanation; and, moreover, to ask him for
9 an immediate reply after showing him only parts thereof
10 in the manner pointed out in the previous section --
11 this cannot be regarded as a practice which completely
12 respects the rights of an accused.

13 Especially if one reads the preface, one will
14 note that SHIBUI states with respect to the circum-
15 stances attending the editing of the book and its con-
16 tents that the book is defective.

17 Prosecution exhibits Nos. 222² and 223 were
18 offered in evidence as records of cabinet meetings.
19 As the originals show, they are documents typewritten
20 on Foreign Office stationery and are, of course, not
21 records in the files of the cabinet. According to the
22 testimony of YOKOMIZO, Mitsuteru, Chief of the General
23 Affairs Section of the Cabinet at the time, records
24 pertaining to cabinet meetings were made by the Cabinet
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1. T. 28,368

2. Pros. Doc. No. 1415-B

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Secretariat. Furthermore, there is not a single signature on this set of documents and there is nothing to show, presuming that the meetings took place, how many decisions were made, how the matters were handled, whether revisions were made, or who was present or what kind of arguments. Moreover, from the face of the documents it has no form as a document pertaining to a cabinet meeting and ARAKI did not identify it. That such unreliable documents cannot have any authenticity is abundantly clear.

11 264. Prosecution's Interrogation of ARAKI.

12 The prosecution, prior to the issuance of the
13 Indictment, interrogated the suspects and tendered in
14 evidence the interrogatories then taken. With regard
15 to ARAKI, they were presented as exhibit No. 187, and
16 excerpts in exhibits Nos. 188-A, B, C, D and E, No. 229
17 and exhibits Nos. 2216 and 2222. However, as ARAKI
18 stated in his affidavit, the interrogatories for the
19 most part were no more than notes taken by the prose-
20 cutor; he was never asked to give an oath; there were
21 no stenographic records taken; he was not shown what
22 had been written nor was anything read to him; and he
23 was not asked to sign anything. Not only were there
24 many mistranslations due to the lack of competence on
25

1 the part of the interpreters, but there were many ob-
2 vious errors of fact. The prosecution's grounds for
3 offering this evidence are probably based on Article 13
4 (a) of the Charter, to-wit: "All purported admissions
5 or statements of the accused are admissible." However,
6 Article 13-C-(d) stipulates "An affidavit, deposition
7 or other signed statement." In this case, it will in
8 all probability be contended that reference is made to
9 statements generally and that they are admissible in
10 the case of the accused under 13-A whether the state-
11 ment is an affidavit or not. However, we cannot accept
12 this view, because all civilized nations are agreed that
13 in criminal proceedings the rights of the accused should
14 have the utmost protection. In every state in the
15 United States the deposition of the accused is handled
16 most carefully and when the accused himself is a wit-
17 ness he is treated in the same manner as a third party.
18 In England, also, the rule is applied that a deposition
19 unfavorable to the accused cannot be used as evidence
20 if the accused so states and does not approve it. In
21 Japan, too, the country of the accused, when a proces
22 verbal or protocol is drawn up at the public procura-
23 tor's office, a clerk of the court is made to attend
24 as a witness and the document is read to or by the
25 deponent who is then asked whether the contents are

1 correct or otherwise. When the deponent requests addi-
2 tions, omissions or changes, they are so recorded in
3 the document. It is stipulated that the deponent affix
4 his signature and seal to the document. (Article 51
5 of the Criminal Proceedings Law). Replies of this
6 accused to the prosecution in his own writing were
7 not accepted and it is submitted that it cannot be
8 called fair and just that an interrogatory not seen by
9 nor read to him should be in evidence. Hence, we can-
10 not but interpret Article 13-A as naturally being
11 restricted by Article 13-C (3) and that a deposition
12 by the accused as in the case of third parties requires
13 his signature. The prosecution should approve this
14 view for in the prosecution's exhibit No. 1981-A (Ex-
15cerpt from TOJO, Hideki's interrogatory) it says: "The
16 above replies were read to the deponent who confirmed
17 that there were no errors." We say this because if
18 the prosecution holds the view that such extra care
19 is unnecessary it would not have troubled itself to put
20 in this superfluous statement.

21
22 Accordingly, we respectfully request the Tri-
23 bunal's consideration of the points which we have set
24 forth above.

25 I shall now proceed to 266 on page 300.

266. Disregard of Evidence Relating to the

Accused's Philosophy.

1 I shall omit the first paragraph.

2 The prosecution has pointed out that the ac-
3 cused had an aggressive philosophy and dared to carry
4 it out. In the case of ARAKI the prosecution says
5 that he propagated, taught and incited aggressive
6 thought. Since the accused's counsel insist that
7 ARAKI never propagated, taught or incited aggressive
8 thought and that what he explained was the Kodo philo-
9 sophy, it is necessary that the Kodo philosophy which
10 ARAKI propounded be explored by the Tribunal. The
11 prosecution objected to a document tendered by the de-
12 fense stating that it was useless to prove that a theft
13 was not committed on Friday against a charge that a
14 theft was committed on Thursday. The President remarked
15 at this time that it is only natural for a skillful
16 conspirator to express nice opinions especially to
17 newspapermen and rejected interviews given by War Min-
18 ister ARAKI to newspapermen of a third country.
19

20 However, we contend that responsible statesmen
21 stand on consistent principles and do not advocate ag-
22 gression on Thursday and give a speech contrary to that
23 on Friday. As a matter of fact, the prosecution has
24 not supplied any convincing data about the crime which
25

it claims was committed on Thursday.

1 I now shall proceed to page 305, last para-
2 graph.

3 Now; if the Tribunal pleases, there follows
4 immediately; hereunder an explanation and refutation of
5 a few of the salient points contained in the prosecu-
6 tion's summation. A complete refutation to the entire
7 summation of the prosecutor is contained in Chapter 10
8 of this summation.
9

10 In reply to Paragraph AA-2 of the prosecution's
11 summation wherein the prosecution assumes that simply
12 because ARAKI held two important educational posts just
13 prior to the invasion of Manchuria that he, therefore,
14 must have known what the Japanese forces were doing in
15 Manchuria, it is the contention of the defense that
16 this assumption simply does not follow. It is purely
17 a speculation on the part of the prosecution. There is
18 not a scintilla of evidence to prove this fact, and,
19 because of the lack of this proof we further contend
20 that the Court must accept ARAKI's direct statement to
21 the contrary, to-wit: that he first learned of the
22 outbreak of the incident from newspapers.
23

24 We further contend that neither does it follow
25 that ARAKI by accepting the post of War Minister

1. Ex. 3161, T. 28,126

1 accepted the responsibility for the invasion of Man-
2 churia, and as the incident had already been in progress
3 three months before ARAKI assumed the post of War Min-
4 ister, the Court might well conclude that ARAKI as a
5 patriot accepted this post for the purpose of putting
6 an end to it as expeditiously as possible. We invite
7 the Court's attention to the affidavit of MASAKI wherein
8 he quoted ARAKI as stating:

9 "As there is every danger that it
10 will develop into a regular war we must
11 leave no stone unturned in immediate saving
12 of this complicated situation."¹

13 Replying to Paragraph AA-4, the prosecution
14 seems to contend that ARAKI as an important member of
15 the KOKUHONSHA conspired together with the accused
16 HIRANUMA, KOISO, and others in regards to political
17 maneuvers.²

18 In regard to this matter, we believe that it
19 will be sufficient to understand the fact, as ARAKI
20 himself has testified,³ that the KOKUHONSHA was created
21 for the purpose of preventing terroristic actions against
22 the Emperor by members of the Communist party; the War
23 Minister at that time, General UGAKI, and the Chief of
24

- 25 1. T. 28,457
2. Exs. 3753 and 3754, HARADA-SAIONJI Memoirs
3. T. 28,332, line 18, to 28,333, line 12

1 the Naval General Staff, Vice Admiral SAITO, were both
2 directors of the KOKUHONSHA. Senior officers of the
3 army and navy in active service, judicial officers,
4 and civil governors, were secretaries, and in the lower
5 stratum there were many laborers and even women members.
6 The fact that army and navy heads were openly secre-
7 taries and that the War and Navy Ministers permitted it,
8 is in itself, sufficient proof that it was not a polit-
9 ical organization.

10 During the later period, i.e. after 1929 when
11 ARAKI was appointed Divisional Commander and left the
12 capital (curriculum vitae)¹ he had in reality no con-
13 nection with the KOKUHONSHA. Thus it is clear that
14 the prosecution's argument has no foundation. This
15 organization disbanded in 1934.

16 The entries in the HARADA Diary² tendered by
17 the prosecution merely contain slanderous gossip against
18 HIRANUMA arising from individual sentiments. ARAKI's
19 relation to HIRANUMA was not that of a follower. This
20 becomes evident when the situation at the time of the
21 HIRANUMA Cabinet is viewed. It has been proved that
22 even at such a critical period HIRANUMA never confided
23 in nor discussed matters with ARAKI personally.
24

25 1. Ex. No. 103, T. 688

2. Ex. No. 3753, T. 37,492; Ex. No. 3754, T. 37,560

1 With reference to Paragraph AA-5, it is dif-
2 ficult for us to understand the prosecution's allega-
3 tion that ARAKI must have known about the outbreak of
4 the Manchurian Incident which occurred in September
5 1931 because of an inference by the prosecutor that he
6 approved of an attempted conspiracy to overthrow the
7 cabinet in October, one month later. This again can-
8 not follow, and the prosecution once more defeats its
9 own contention when it specifically refers to the evi-
10 dence that ARAKI was the one who thwarted this con-
11 spiracy.

12 HASHIMOTO revealed his plans to ARAKI who,
13 because he was a man of character was to be, i.e., the
14 plan was to make him Prime Minister. Now is it logical
15 to assume that if ARAKI had any sympathy with this
16 plot that he would immediately berate and reprove the
17 instigators and then in addition inform the War Min-
18 ister so that appropriate action could be taken, and
19 which was taken when the conspirators were taken into
20 custody under arrest? ¹ As the prosecution contends that
21 the overthrow of the then prevailing cabinet was for
22 the purpose of supplanting it by one with stronger
23 policies concerning the Manchurian affair, it can be
24 logically assumed that ARAKI by his actions condoned
25 1. Ex. 2424, T. 19,667

1 the more temperate policy of the WAKATSUKI Cabinet
2 and harbored no aggressive attitude toward the Man-
3 churian Incident.

4 Replying to AA-6, the prosecution again at-
5 tempts to convince this Tribunal by speculation rather
6 proof that ARAKI must have been aware by this time of
7 the agitation for the extension of the Manchurian Inci-
8 dent. "Must have been aware" - where is the proof?
9 Furthermore, where is the crime in the mere acceptance
10 of a War Minister post?

11 The prosecution continues to endeavor to create
12 inferences by innuendo in this same paragraph by stat-
13 ing that ARAKI was appointed to this post in a manner
14 contrary to customary procedure. ARAKI himself not
15 only denied this¹ but we invite the Court's attention
16 to the testimony of MINAMI when on re-direct examina-
17 tion he stated that as outgoing Minister of War he
18 recommended his successor ARAKI.²

19 Continuing to prosecution's Paragraph AA-7
20 and referring back to the language used in reply to
21 AA-6, that the prosecution was attempting to sway
22 this Tribunal by inferences, by innuendo, such as,
23 ARAKI was appointed War Minister because he, of all
24 people, could control the young officers, the
25

1. Ex. 3161, T. 28,127

2. T. 20,101

1 prosecution has again defeated its own conclusion when
2 they attempt to prove another point by contradicting
3 themselves by another reference to the record that
4 ARAKI could not control the young officers.¹

5 The prosecution states that INUKAI's reason
6 for appointing ARAKI War Minister was because he be-
7 lieved ARAKI could control the young officers and there-
8 fore there would be "no gulf between him (INUKAI) and
9 the young officers." Now I point out to this Tribunal
10 the testimony of young INUKAI himself (the son of the
11 Premier) where on cross-examination he was asked the
12 following question: "If you know what kind of a
13 feeling Premier INUKAI entertained toward General ARAKI,
14 I would like to know." His reply to this question was:

15 "Frankly speaking he didn't seem to have
16 been thinking that General ARAKI, the then
17 War Minister, was a man who was able to control
18 all the younger officers who were in favor of
19 spreading incidents in Manchuria."²

20 In view of this, your Honors, it is our con-
21 tention that the conclusion drawn by the prosecution is
22 completely erroneous. Now again, it is pointed out to
23 this Tribunal the lengths to which the prosecution will
24 go in their endeavor to justify these charges against
25

1. T. 1,488-9; 1,541

2. T. 1,488

1 the accused ARAKI, when in this paragraph of their sum-
2 mation they refer to the First Shanghai Incident as
3 the "China Incident." It is further pointed out to
4 this Court that ARAKI was the only person responsible
5 for the complete withdrawal of all Japanese troops from
6 Shanghai despite severe criticism at home and contempt
7 abroad.¹ The sole reason for this withdrawal was for
8 the interests of peace as stated by ARAKI in the 61st
9 Session of the Diet in March 1932.²

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1. Ex. 3161, T. 28,141
2. Ex. 3167, T. 28,436

1 In Paragraph AA-8 concerning the Army Budget,
2 the prosecution states that ARAKI opposed the reduc-
3 tion of same.

4 Well, if your Honors please, it is a matter
5 of common knowledge that all branches of a government
6 at the end of a fiscal year endeavor to at least ob-
7 tain the same amount of money allotted for the previous
8 year, if only for the purpose of keeping their particular
9 department operating and I dare say in nine out of ten
10 instances, an increase is asked for. It is also a
11 matter of common knowledge that a government is always
12 desirous of cutting down expenses and in most instances
13 this requested increase on the part of a department
14 chief is made with the optimistic hope that he might
15 receive the same amount as the previous year's
16 allotment.

17 However, here the prosecution states that
18 ARAKI stated that doubling the budget would have been
19 a reasonable request. Of course, your Honors must
20 take into consideration that HARADA said this and it
21 is entirely the prerogative of the Tribunal to either
22 accept the veracity of ARAKI's statement which your
23 Honors have heard from ARAKI himself who took the
24 witness stand here ¹, or that of HARADA whose statements
25 (1. Ex. 3161, Tr. 28,193)

1 in our contention have been completely discredited. I

2 Replying to prosecution's paragraph AA-9
3 wherein it is stated that troops were also sent to
4 Chinchow at the end of December, 1941, to relieve
5 Japanese nationals² and that MINAMI stated that the
6 occupation of Chinchow took place while he was absent
7 in Manchuria and on his return he, MINAMI, stated to
8 ARAKI that this act was contrary to policies
9 decided upon during his, MINAMI's, administration,
10 it is respectfully called to the attention of the
11 Tribunal that the defense upon redirect examination
12 of MINAMI endeavored to show that conditions in
13 Chinchow underwent a drastic change over a very
14 short period of time³ and that when it was stated to
15 the Court, the defense should like to clear this matter
16 up, the President stated:⁴ "Whether ARAKI's silence
17 gave consent is something we can't take into con-
18 sideration at all." Consequently, in view of this
19 statement by the President, it was decided by the
20 defense that there was no issue to meet. The
21 prosecution in paragraph AA-10 referring to the
22 occupation of the four provinces states that even
23 though ARAKI complained about the interpretation of
24

- 25 (1. Tr. 37,466 - 37,531
2. Ex. 3161, Tr. 28,193
3. Tr. 20,101
4. Tr. 20,102)

1 his remarks when he was interrogated in Sugamo that
2 it made no difference whether ARAKI said "to restore
3 law and order in or 'occupation'", for the prosecution
4 stated that it was difficult to see how law and order
5 could be restored in the four provinces without
6 occupying them. It is our contention that this
7 conclusion does not follow either. It should be
8 noted that in the preceding paragraph AA-9, the
9 prosecution refers to the restoration of law and
10 order in Harbin and it should be further noted that
11 law and order was restored there without Japanese
12 troops even entering the city but merely approaching
13 the outskirts of same and remaining there for such
14 period of time as was necessary for the aforementioned
15 restoration.

16
17 Part IX Re Rebuttal Evidence.

18 268. Exhibit No. 3754-A, Prosecution Docu-
19 ment No. 3150-ZA¹.

20 The document is introduced, according to the
21 prosecutor, because ARAKI denied the following facts.

22 (1) He was on intimate terms with HARADA.²

23 (2) The Kokyhon-sha was a political organ-
24 ization.³

25 (1. Tr. 37,560
2. Tr. 28,331
3. Tr. 28,332)

1 (3) ARAKI was an admirer of HIRANUMA.¹

2 Re No. 1, in examining Prosecutor Comyns Carr's
3 cross-examination of Witness ARAKI, we find this
4 statement: "Though HARADA was not specially on
5 intimate terms with me, he came to see me occasionally."²
6 He said that though they were not specially intimate
7 they met occasionally. This does not contradict
8 HARADA's statement: "I am also intimate with him."
9 Because in the Japanese language KON-I (intimacy) is
10 generally used with two meanings: common intimacy and
11 special, deep intimacy. Moreover, in the same docu-
12 ment, ARAKI's first name was misrepresented. This
13 shows that both of them were not really intimate.

14 Re No. 2. Regarding the Kokuhonsha, ARAKI
15 replied:

16 "The Kokuhon-sha was not a political
17 organization. . . the object of the organiza-
18 tion was that a similar incident like that of
19 NAMBA, Daisuke should not be allowed to occur
20 again and that in order to prevent such an
21 incident it should be known to the nation that
22 the Emperor had in mind the welfare of the
23 nation . . . I had not so much connection

24
25 (1. Tr. 28,332
2. Tr. 28,331)

1 with it, and I think perhaps it broke up
2 after issuing only a magazine."

3 And that document never says that the Kokuhon-Sha
4 had any political implication. On the contrary, ARAKI's
5 testimony shows that it was not a political organiza-
6 tion.¹ The Kokuhon-Sha aimed at a purely spiritual
7 movement, and not a political one. We believe this
8 is proved by the fact that Minister of War UGAKI and
9 General MAZAKI who were in active service were appointed
10 directors of the Kokuhon-Sha together with Admirals
11 KATO, SUITSUGU and OSUMI who were also on the active
12 list, despite the regulations of the Japanese Army
13 and Navy which prohibited any soldier or sailor on
14 active lists to participate in a political movement.²
15

16 In December, 1920, when the Kokuhon-Sha was
17 founded as is described in Exhibit No. 164, ARAKI was
18 not in Tokyo, but in Kyushu as Regimental Commander
19 of Kumamoto. It was in 1924 (as is stated in Part 1
20 of "Principle Actions" in exhibit No. 164) that
21 ARAKI joined the Kokuhon-Sha. On July 16, 1931, as
22 is stated in the last paragraph of "Principle Actions"
23 (this date coincides with that in HARADA's Memoir -
24 exhibit No. 3754), ARAKI was in Kyushu as the 6th

25
(1. Tr. 28,332
2. Ex. 164, Tr. 1,636)

1 Division Commander and not in Tokyo.¹

2 Re No. 3. ARAKI replied to the question as
3 to whether or not he was an admirer of HIRANUMA as
4 follows:

5 "I cannot understand the intention of
6 the question. I respected him as my senior
7 who had a very sound view regarding ideas."²

8 This clearly shows that ARAKI respected him in some
9 sense. Accordingly, the prosecutor tried, from his
10 misconception, to infer the falsehood of ARAKI's
11 alleged negative statement by that document. Needless
12 to refute, it is self-evident that the prosecutor's
13 assertion is meaningless.

14 269. Concerning exhibit No. 3762A³, Prosecutor
15 Comyns Carr stated that following reason for the
16 presentation of this document. He intends to disprove
17 ARAKI's statement that at the cabinet conference of
18 March 11, 1932, there was no decision to postpone the
19 recognition of Manchukuo as it would be a breach of
20 the Nine Powers Treaty.⁴ But in the transcript of
21 Prosecutor Comyns Carr's cross-examination on
22 September 12, 1947, of witness ARAKI, he says:

- 24 (1. Ex. 103
25 2. Tr. 28,332
3. Tr. 37,598
4. Tr. 28,355)

1 "I am not sure whether or not it was
2 on the 11th day that the cabinet conference
3 was held, but I remember what you said. I
4 think such a policy was taken."¹

5 Therefore, unlike the prosecutor's assertion, he did
6 not deny the cabinet decision. Accordingly this
7 document is favorable to the accused in the follow-
8 ing points:

9 (1) That the government assumed prudent
10 attitude by postponing the recognition in view of
11 the international relations.

12 (2) An agreement was not reached even about
13 the following issues: If Chang Hsueh-liang's Army
14 attacked the new state, what should the Japanese
15 Army do? and whether or not it might be better for
16 Japan to assume the same attitude as that taken by
17 her at the time of the Fengtien-Chili War (A Chinese
18 civil war).
19

20 This strongly proves that Japan never planned
21 to make Manchukuo a puppet by recognizing and guiding
22 that country.

23 270. Re Exhibit No. 3765², the prosecutor
24 presented this document as rebuttal³ against ARAKI's

25 (1. Tr. 28,356
2. Tr. 37,609
3. Tr. 28,366)

1 testimony that he never talked with Prince KONOYE in
2 1932 regarding China's direct proposal for peace
3 negotiations. But in that day's transcript Witness
4 ARAKI says, not "I never talked with him about it,"
5 but "I don't remember it well."¹

6 Though this document is partly obscure, it
7 touches on ARAKI's thought. Therefore let us con-
8 sider it to ARAKI's advantage, as ARAKI wanted the
9 problem solved not through Japan-Chinese direct
10 negotiations, but through the League of Nations. He
11 didn't want Japan to wage war against the whole world,
12 but that as this question was already under discussion
13 in the League, Japan and China should not try to settle
14 it personally, but it should be settled openly by the
15 League after having heard Japan's position on the
16 Eastern situation. That Japan should not take such
17 a half-measure as settling the issue through personal
18 negotiations for fear Japan should become isolated
19 from other nations. That was ARAKI's assertion. It
20 was either KONOYE's or HARADA's misrepresentation to
21 state that ARAKI wanted to wage war against the world.
22 It was clear that ARAKI was not an advocate of
23 international isolation by the fact that he advocated
24 cooperation with England and America and other
25

(1. Tr. 28,366)

1 international friendliness, which will be shown in
2 the discussion relating to the following exhibits,
3 No. 3766 and 3767.

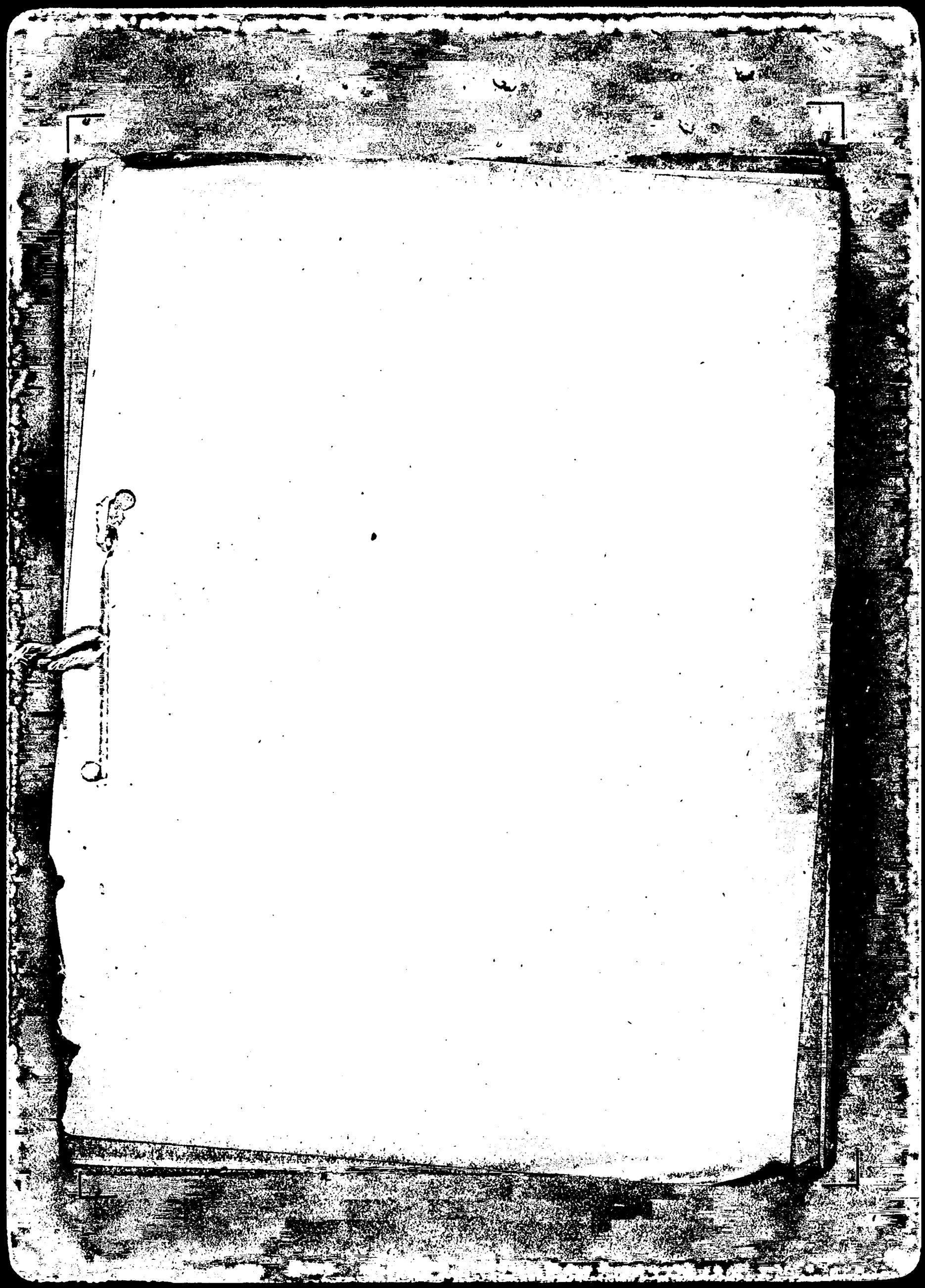
4 271. Concerning exhibit No. 3766A¹, the
5 prosecutor presented this document as rebuttal against
6 ARAKI's denial that he showed his national policies
7 to KONOYE and HARADA in November, 1932, and that
8 Finance Minister TAKAHASHI said that it would take
9 four or five years to fulfill and needed much
10 expenditure.² The transcript shows that when Prose-
11 cutor Comyns Carr asked, "Did you show your plan
12 regarding national policies, first to Prince KONOYE
13 and then to Baron HARADA in November, 1932?" Witness
14 ARAKI replied not in the negative, but, "I don't
15 remember it well."³

16 Though this document states that ARAKI met
17 KONOYE on the morning of October 30, it does not
18 say that they met in November. The prosecution
19 cross-examined ARAKI by disregarding the date or
20 deliberately distorting it because of ARAKI's con-
21 fusion of memory. Therefore ARAKI replied that
22 he did not remember, as he confused it with his Sugges-
23 tion of National Emergency Policies made in the summer

24 (1. IPS Doc. No. 3150-60A-61B, Tr. 37,612

25 2. Tr. 37,612

3. Tr. 28,391)



31 MARCH 1948

I N D E X

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1 Wednesday, 31 March 1948

2 - - -

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

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

10 Appearances:

11 For the Tribunal, all Members sitting.

12 For the Prosecution Section, same as before.

13 For the Defense Section, same as before.

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 UMEZU and SHIRATORI 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 certificates will be recorded and filed.

8 Mr. McManus.

9 MR. McMANUS: With your Honor's permission,
10 I shall resume at page 322, paragraph 272.

11 272. Re Exhibit No. 3767-A,¹ we contend
12 that it works to the advantage of the accused ARAKI
13 because:

14 (1) ARAKI intended to be amicable with
15 Britain, the United States and other nations.

16 (2) That even in the midst of the Manchurian
17 Incident he intended to hold a peace conference by
18 inviting Britain, the United States, France, Soviet
19 Union, China and any other nations that were interested
20 in the East for the purpose of preventing Bolshevism
21 and settling the Manchuria issues in a peaceful manner.

22 (3) That he asserted that Japan's foreign
23 policy should be based on Japan-American amicability
24 and that the same policy should be maintained with
25 other nations.

1. IPS Document No. 3150-61-A, T. 37,612

1 (4) That Japan's armaments should be
2 equipped for national defence so that Japan might not
3 be despised or threatened by other Powers, this being
4 merely a preparation to avert a provocative war.

5 273. Re Exhibit No. 3768-A,¹ the prosecution
6 presented this document as rebuttal against ARAKI's
7 denial of the following.² ARAKI is alleged to have
8 said to HARADA when the latter came to see him on
9 December 6, 1932, as follows:

10 (1) If the Japanese armed forces remained
11 as they were in Jehol, a similar disaster as that of
12 Nicholievsk would have broken out.

13 (2) It should be settled with one stroke
14 by despatching a large number of troops there as in
15 the Shanghai Incident.
16

17 (3) At first the army did intend to despatch
18 troops to Shanghai.

19 (4) The Foreign Office did not recognize
20 that the army settled the Shanghai Incident in a
21 hurry.

22 Now in the transcript, Witness ARAKI says:

23 "As I have said now Mr. HARADA came unexpectedly
24 and after hearing my chats would return home. Therefore

25 1. T. 37,618.
2. T. 28,346.

1 it is difficult to state here when I met him and what
2 I told him unless it was on some special occasion...."¹

3 "As I have repeated now, I cannot now
4 answer for sure regarding what I told Mr. HARADA. As
5 I do not remember what I told or said to him, I cannot
6 answer."²

7 Therefore, ARAKI did not deny the prosecutor's
8 statement as to his interview and the contents of his
9 talk with HARADA, but stated that he did not remember
10 particular circumstances.

11 274. Re Exhibit No. 3769-A,³ the prosecutor
12 presented this document as rebuttal against ARAKI's
13 denial of the following facts:

14 (1) That he opposed the conclusion of the
15 Non-Aggression Pact.

16 (2) That Finance Minister TAKAHASHI said
17 that the Army and gendarmes controlled the public
18 opinion and the press by threatening them.

19 But the following facts will be found by
20 reading the Transcript:

21 Regarding problem (1) opposition to the Non-
22 Aggression Pact, all the cabinet members unanimously
23 agreed that it was necessary first to settle all the
24

- 25
1. T. 28,348
 2. T. 28,349
 3. IPS Document No. 3150-66A, T. 37,630.

1 problems that were pending between Japan and the
2 Soviet Union. After that a Non-Aggression Pact
3 should be concluded with sincerity and in accordance
4 with the true spirit of the pact, for as an alternative
5 a serious situation might develop.¹

6 Accordingly it was not an opposition.
7 Indeed the Japanese Government wished, as it agreed
8 to the intention of the pact, to have more fundamental
9 problems considered in that connection. But it did
10 not develop to be a formal proposal. First ARAKI stated
11 he did not remember and then he denied that it was
12 discussed in a cabinet meeting. It is our contention
13 that this denial can readily be understood if one
14 takes into consideration his first statements that he
15 did not remember and that as the matter never developed
16 into a formal proposal it is quite conceivable that
17 ARAKI could well have believed that no such situation
18 ever occurred.
19

20 Concerning the second part of this document,
21 that the press was controlled by the army when ARAKI
22 was War Minister, we merely call the attention of the
23 Tribunal to the very next document introduced by the
24 prosecution wherein it relates to a verbal chastisement

- 25
1. T. 28,395
2. Ex. No. 6770-A

1 of ARAKI by some members of the cabinet because ARAKI
2 nor the army could control the press. These documents
3 directly contradict each other.¹

4 275. Re Exhibit No. 3770-A,² the prosecutor
5 presented this document as rebuttal against ARAKI's
6 denial of the following fact.

7 At a cabinet conference on February 1, 1933,
8 some member of the cabinet said that the army was
9 instigating the press by advocating Japan's withdrawal
10 from the League of Nations and asked why the Minister
11 of War did not suppress it. In the transcript
12 prosecutor Comyns Carr asks, "Didn't any member of the
13 cabinet complain at a cabinet conference on February
14 1, 1933, that the army was instigating the nation
15 through the press to pave the way for withdrawal from
16 the League?" Witness ARAKI replied, "I don't know."
17 When the prosecutor asks, "Do you mean that you did
18 not instigate but that the newspaper published articles
19 of its own free will?", ARAKI replies, "Yes, I do."
20 When the prosecutor asks further, "Why did you not
21 make the press stop it?", he replied, "The press
22 was not all under our jurisdiction."³

23
24 276. Re Ex. No. 3771-A which the prosecutor

- 25
1. T. 37,630 to 37,634.
2. T. 37,633
3. T. 28,396
4. T. 37,635

1 offers in rebuttal to ARAKI's denial that the cabinet
2 decided in 1933 to avoid further trouble with the
3 League of Nations, to describe the campaign in Jehol
4 as against bandits and not Chinese regular troops,
5 ARAKI contends that if the latter half of this document
6 is read in view of his answer, it is clear that the
7 cabinet decided in the conference that the Japanese
8 forces should operate to keep peace and order in
9 Manchukuo as an obligation of joint defence stipulated
10 in the Japan-Manchukuo Protocol, but that precautions
11 should be taken for the Japanese forces not to march
12 over the Great Wall to the south crossing Jehol. In
13 this respect ARAKI's testimony does not conflict
14 with this document. This is clarified by Witness MAZAKI.¹

15 277. Re Exhibit No. 3772-A,² this document
16 says that the Minister of War together with Foreign
17 Minister UCHIDA, urged immediate withdrawal from the
18 League of Nations at the cabinet conference held on
19 December 15, 1933, but that many other members of the
20 cabinet did not agree with them.

21 But this is HARADA's irresponsible misrepre-
22 sentation, for,
23

24 (1) HARADA could not have known the details

25
1. Ex. No. 3168, T. 28,460
2. T. 37,636

1 of the cabinet conference, as he was not a cabinet
2 member. He must have heard it from someone.

3 (2) This document does not even say from
4 whom HARADA received his information.

5 And (3), Part 13 of ARAKI's Affidavit¹
6 clearly shows that ARAKI was fundamentally opposed
7 to the withdrawal.

8 278. Re Exhibit No. 3775-A,² we call your
9 Honors' attention to the meaningless purpose for which
10 Prosecutor Comyns Carr offers this document re ARAKI.
11 The prosecutor stated in his tender of the document,³

12 "I now offer...in rebuttal of ARAKI's
13 refusal to confirm...that the Japanese Cabinet discussed
14 the attitude of the United States and European
15 countries towards trade matters."

16 "Refusal to confirm" What does this mean?
17 What does it prove?

18 The transcript clearly shows⁴ that ARAKI
19 did not deny, as he said, "I do not remember well."
20 How could he have confirmed what he did not remember well?
21

22 Such an endeavor as this by the prosecution
23 to convince this court of an accused's guilt by trying

- 24 1. Ex. No. 3161, T. 28,170
25 2. T. 37,649
3. T. 37,647
4. T. 28,391

1 to create an erroneous inference must be held against
2 the prosecutor unless he succeeds in convincingly
3 establishing that the accused deliberately lied. We
4 contend he has not done so and therefore all such
5 similar endeavors and attempts must be disregarded
6 and carefully scrutinized by this court.

7 Even though we contend that the entire
8 document should be disregarded there are several other
9 points concerning the contents of same, for the sake
10 of prudence, we believe should be called to the
11 Tribunal's attention. On cross-examination ARAKI
12 said, "I had a hot discussion with Mr. TAKAHASHI. It
13 was on another question. But as it has some bearing
14 on what you ask, shall I tell you about it?" Your
15 Honor, the President, replied "You needn't answer
16 unless you are asked." The matter then, we contend,
17 was ended.¹

18 Another point concerning this document was
19 the mistranslation and I quote the following from the
20 record.

21 On page 37,731, the President said:

22 "The correction made this morning by Captain
23 Kraft is an important one, in my judgment; but it does
24 not help the defense, strangely enough, unless I
25 1. T. 28,391 .

misinterpret the document..."

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On page 37,732-3-4, the record continues:

"MR. McMANUS: Your Honor, insofar as your Honor has referred to the correction made by Captain Kraft this morning, may I just ask your Honor, or at least point out to the Court that the sentence in Japanese concerning this particular sentence of Exhibit 3775-A contains a double negative.

"THE PRESIDENT: It is a common form of expression, grammatically correct. We do not misunderstand it.

"MR McMANUS: But because of this, your Honor, I understand it is very difficult to translate, so consequently, I ask the Court, just for this one point, to have it resubmitted to determine whether this is in the present tense or the future tense. In view of the few sentences before it, as it reads as corrected by the Language Section, your Honor can readily see that it does not make sense.

"THE PRESIDENT: If Captain Kraft cares to reply to you, Mr. McManus, he is at liberty to do so.

"MR. McMANUS: Your Honor, all I request is that it be resubmitted to determine whether this is in the present or future tense.

"THE PRESIDENT: Captain Kraft.

1 "LANGUAGE ARBITER (Captain Kraft): Sir,
2 in regard to the tense of this expression, we discussed
3 the matter quite at length and found in a previous
4 sentence the time referred to was today, and for that
5 reason we translated it to be in the present tense.
6 In the sentence itself it is difficult to determine
7 what is meant. You have to take it from the context,
8 the entire context.

9 "THE PRESIDENT: That is a feature of the
10 Japanese language, I understand. It is not something
11 new.

12 "MR. McMANUS: Your Honor, the crux of the
13 entire discussion was whether or not there would be
14 a crisis in 1935 or 1936 which was sometime in the
15 future.
16

17 "THE PRESIDENT: Put it in your summation."

18 If the Tribunal pleases, we still contend
19 that the correct translation of the last sentence in
20 this document should read "It cannot be said that
21 there will not be a crisis." When it is changed in
22 this way we submit that it is the attitude that a
23 War Minister should assume and that the document then
24 would have no probative value.

25 This further, is only one of many instances
where mistranslations have occurred. To cite just one

1 other glaring example we request the Tribunal to refer
2 to page 37,661 of the record concerning exhibit No.
3 3769-A when after it had been pointed out by the
4 defense counsel that there had been many errors in
5 the aforementioned document, the Language Arbiter
6 made the following corrections (and I quote from the
7 record).

8 "LANGUAGE ARBITER (Captain Kraft): If the
9 Tribunal please, the following language corrections
10 are submitted:

11 "Reference Document No. 3150-66-A, exhibit
12 No. 3769-A, Line 13: Insert 'and such circles' between
13 the words 'army' and 'fear'.

14 "Second paragraph, line 6, delete 'army'
15 and substitute 'military'.

16 "Line 10, delete 'by the army on the reason'
17 and substitute 'because'.

18 "Line 11, delete 'army' and substitute
19 'military'.

20 "Page 2, lines 2 and 3, delete 'mumbled
21 that he would explain later or the like' and substitute
22 'said, well later on or something like that'."

23 All these latter corrections, if the Court
24 will please note occurred in one single document.
25

Now, as aforementioned, as your Honor advised

1 me to call this to the Tribunal's attention in
2 summation I am so doing with the sincere request that
3 your Honors will give same careful consideration.

4 For the last comment on this document, 3775-A,
5 it should be noted that Baron HARADA said this.

6 279. Exhibit No. 3775-B.¹ The transcript
7 says² that Witness ARAKI replied to Prosecutor Comyns
8 Carr's question as follows:

9 "After the five ministers' conference settled
10 the issues regarding national defence and foreign
11 affairs, it was probably issued by the Foreign Office.
12 I cannot understand its details as it has been explained
13 too simply. But I think it could be issued."

14 The prosecutor, however, presented this
15 document as rebuttal against ARAKI's denial. Therefore
16 it is self-evident that it should be disregarded.
17 Moreover, it was proper, as it is stated in the
18 document, that the government and the army should prevent,
19 under the circumstances of the Incident, domestic
20 disturbances caused by the Third International or
21 the Fifth Column. Therefore this document is neither
22 relevant nor important.

23 280. Re Exhibit No. 3777-A,³ this document

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1. T. 37,649
2. T. 28,398
3. T. 37,665

1 only shows Premier OKADA's supposition of ARAKI's
2 intention from the fact that First Division Commander
3 YANAGAWA was constantly attending in the War Minister's
4 room. At that time (September 13 or so, 1934), ARAKI
5 was not Minister of War, but General HAYASHI was War
6 Minister, in whose room First Division Commander
7 YANAGAWA was said to be attending. Apart from whether
8 or not Premier OKADA considered Division Commander
9 YANAGAWA's behavior as an overthrowing movement of the
10 cabinet, General OKADA was well aware that ARAKI
11 was not an advocate of the annexation of Manchuria.
12 For, when Counsel OKAMOTO cross-examined him while
13 he was on the stand:

14 "In SAUNHARST's affidavit such phrases
15 often appear as 'the army's establishment of a puppet
16 regime' or 'the Army's plans to occupy Manchukuo'. Do
17 you really mean by the word 'army' some young officers
18 and not, for instance, these accused here?"

19 Mr. OKADA replied:

20 "That is so."¹

21 ARAKI's affidavit says that he was opposed
22 to the annexation of Korea as he had no territorial
23 ambition, maintaining that a nation which had its own
24 racial history should not be annexed. Furthermore,

25 1. T. 1904

1 HARADA's Memoirs, "Justice Minister Tells", No. 97,¹
2 proves that ARAKI was not an advocate of the
3 annexation of Manchuria. It says:

4 "That the incident of Shimpeitai was a
5 serious one. A considerable number of rioters was to
6 be gathered. A concrete plan was also made by those
7 in Osaka. They announced they would offer prayer to
8 the Meiji Shrine. Many people would gather. While
9 the attentive precautions were made by the police to
10 the prayer-meeting, various quarters would be attacked.
11 Their respective roles seem to have been decided.
12 When he was asked, 'Will you assassinate the War
13 Minister?', SUZUKI, Zen-ichi, replied, 'Of course we
14 will, because of ARAKI we cannot control Manchuria'."
15

16 Therefore ARAKI was not an advocate of the
17 annexation. On the contrary, as he settled the
18 Manchurian Incident in such a way as not to be annexed,
19 the extreme rightists resented this and tried to kill
20 him.

21 281. Re Exhibit No. 3806, this document is
22 concerned with the closing period of the HIRANUMA
23 Cabinet in August, 1939, when the attendant of Prince
24 SAIONJI, a senior statesman, were maneuvering for a
25

1. T. 28,188
2. T. 37,841

1 succeeding cabinet. According to the document HARADA
2 met ARAKI with a view to having ARAKI and KOISO
3 as next cabinet members as it was KONOYE's wishes.
4 But he found ARAKI's view of KOISO was extremely
5 unfavorable, it says. We contend the following two
6 points in this evidence are to ARAKI's advantage.

7 (1) He says, "Such a maneuver is extremely
8 detrimental and contradictory with the time when Japan
9 is going to establish a new order with morality". Thus
10 he asserted that a maneuver was detrimental to Japan
11 in Kodo (the Imperial Way).

12 (2) HARADA says, "ARAKI spoke, not well
13 but extremely ill, of KOISO. And so I felt despaired
14 of KONOYE's intention that KOISO and ARAKI be in the
15 same cabinet". This statement will overrule the
16 prosecution's testimony of the common conspiracy of
17 ARAKI and KOISO supporting HIRANUMA as their head
18 through the Kokuhon-Sha organization. Though ARAKI
19 did not agree to be in the same political activities
20 with KOISO, he denied that he spoke ill of KOISO.
21 ARAKI, who made it a rule never to speak ill of others,
22 replied firmly in the negative when Prosecutor Carr
23 asked him about it without revealing the proposed
24 cooperation of ARAKI and KOISO. It seems that either
25 Mr. HARADA described such an event to endorse his own

1 story or he told ARAKI what he had heard from others.

2 Now, if your Honors please, I have here a
3 list of all ARAKI's evidence in refutation to every
4 paragraph in the prosecution's summation, and I have
5 listed all the evidence that we have put in in
6 refutation to every charge by the prosecution in this
7 particular paragraph, number 10. It contains nothing
8 more than a reference to our documents, and I ask
9 that it be included and accepted by the Tribunal
10 as part of the transcript. Even though it might be
11 only for reference I ask that it be considered part
12 of our summation and I shall refrain from reading same.

13 THE PRESIDENT: It will be included in the
14 transcript.
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(A portion of the surmation, which
was not read, is as follows:)

Refutation to the Prosecution Surmation.

Chapter 10.

11-2.

1. ARAKI was not conversant with the current
state of affairs before he became War Minister.

A. Tr. 28,126, Ex. 3161 (outbreak of the
Manchurian Incident was known to him by the newspapers.)

B. Tr. 2,062 (ARAKI had no connection with the
central political circles.)

C. Surmation chapters 18, 54.

2. Chief of the General Affairs Department of
the Inspectorate General of Military Training was an
advisory position to the chief of the office which had
nothing to do with military administration or operation.

A. Tr. 518.

B. Tr. 28,125, Ex. 3161 (This was an advisory
position to the Inspector General.)

C. Surmation chapters 18, 54.

3. Chairman of the committee of the entrance
examination of the Military Preparatory School was a
position to be occupied by the Chief of the General
Affairs Department of the Inspectorate General of
Military Training.

1 A. Tr. 28126, Ex. 3161.

2 B. Summation chapter 54.

3 4. ARAKI did not accept responsibility for the
4 invasion by accepting the post of Minister of War. He
5 became War Minister to terminate the Incident.

6 A. Tr. 28,457, Ex. 3167 (No stone had to be
7 left unturned in immediate saving of the situation.)

8 B. Tr. 28,557, Ex. 3173 (ARAKI told me he
9 should do his best to put an end to the armed fighting.)

10 C. Summation chapters 52-54.

11 I. Activities Before Appointment as War
12 Minister, December, 1931.

13 AA-3.

14 1. Chairman of the Committee of the Entrance
15 Examination of the Military Preparatory School was under
16 jurisdiction of the Inspectorate General of Military
17 Training, not under the War Ministry, and so the position
18 had nothing to do with the military administration.
19

20 A. Tr. 28,126, Ex. 3161.

21 B. Summation chapter 54.

22 AA-4.

23 1. ARAKI was not concerned in establishment of
24 Kokuhonsha.

25 A. Tr. 1,636, Ex. 164 (It was established in
December, 1920. ARAKI joined it in 1924. "Principle

1 story or he told ARAKI what he had heard from others.

2 Now, if your Honors please, I have here a
3 list of all ARAKI's evidence in refutation to every
4 paragraph in the prosecution's summation, and I have
5 listed all the evidence that we have put in in
6 refutation to every charge by the prosecution in this
7 particular paragraph, number 10. It contains nothing
8 more than a reference to our documents, and I ask
9 that it be included and accepted by the Tribunal
10 as part of the transcript. Even though it might be
11 only for reference I ask that it be considered part
12 of our summation and I shall refrain from reading same.

13 THE PRESIDENT: It will be included in the
14 transcript.
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(A portion of the summation, which
was not read, is as follows:)

Refutation to the Prosecution Summation.

Chapter 10.

A-2.

1. ARAKI was not conversant with the current
state of affairs before he became War Minister.

A. Tr. 28,126, Ex. 3161 (outbreak of the
Manchurian Incident was known to him by the newspapers.)

B. Tr. 2,062 (ARAKI had no connection with the
central political circles.)

C. Summation chapters 18, 54.

2. Chief of the General Affairs Department of
the Inspectorate General of Military Training was an
advisory position to the chief of the office which had
nothing to do with military administration or operation.

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B. Tr. 28,125, Ex. 3161 (This was an advisory
position to the Inspector General.)

C. Summation chapters 18, 54.

3. Chairman of the committee of the entrance
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1 A. Tr. 28126, Ex. 3161.

2 B. Summation chapter 54.

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7 left unturned in immediate saving of the situation.)

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9 should do his best to put an end to the armed fighting.)

10 C. Summation chapters 52-54.

11 I. Activities Before Appointment as War
12 Minister, December, 1931.

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14 1. Chairman of the Committee of the Entrance
15 Examination of the Military Preparatory School was under
16 jurisdiction of the Inspectorate General of Military
17 Training, not under the War Ministry, and so the position
18 had nothing to do with the military administration.

19 A. Tr. 28,126, Ex. 3161.

20 B. Summation chapter 54.

21 AA-4.

22 1. ARAKI was not concerned in establishment of
23 Kokuhonsha.

24 A. Tr. 1,636, Ex. 164 (It was established in
25 December, 1920. ARAKI joined it in 1924. "Principle

1 activities" in Ex. 164.)

2 B. Tr. 688, Ex. 103 (ARAKI was in Kyushu as
3 Commander 23rd Regiment.)

4 C. Summation chapter 268.

5 2. Kokuhonsha had no political significance.
6 It was to promote the spiritual culture of the people.

7 A. Tr. 28,332-28,333.

8 B. Tr. 1,636, Ex. 164 (Page 3 of this exhibit
9 is a list of principle members of Kokuhonsha, which in-
10 cludes several Generals and Admirals. If it were a
11 political organization, those people would not have
12 joined it.)

13 C. Summation chapter 268.

14 3. On or about July 16, 1931, the date of
15 entry of HARADA Memoir, ARAKI was not in Tokyo. He was
16 Divisional Commander in Kumamoto.

17 A. Tr. 1,636, Ex. 164 (principle activities)

18 B. Tr. 37,567, Ex. 3754-B.

19 C. Tr. 683, Ex. 103.

20 D. Summation chapter 268.

21 AA-5.

22 1. ARAKI says he did not know the outbreak of
23 the Manchurian Incident other than by the newspaper
24 reports.
25

A. Tr. 28,126, Ex. 3161.

1 2. ARAKI was scheduled to be the head of the
2 intended cabinet at the October Incident not because of
3 his position, but because of his unimpeachable character.

4 A. Tr. 19,667, Ex. 2424.

5 B. Tr. 28,795, Tr. 3,195.

6 C. Tr. 2,062.

7 3. ARAKI's crushing of the October Incident
8 shows that he was not a member of the conspiracy.

9 A. Tr. 15,586, Ex. 2177-A (ARAKI was not
10 involved in the Incident.)

11 B. Tr. 19,667, Ex. 2424.

12 C. Tr. 28,125, Ex. 3161.

13 D. Summation chapters 5, 14-35.

14 II. Activities as War Minister in Relation to
15 Manchurian Incident.

16 AA-6.

17 1. Circumstances surrounding his appointment
18 were not different from others.

19 A. Tr. 28,127, Ex. 3161.

20 B. Tr. 20,101.

21 C. Summation Chapter 51.

22 2. If the Premier considered that there would
23 be no gulf between the older and younger officers, it
24 must have been one of the motive powers, not the sole
25 cause, of having led him to the decision.

1 A. Tr. 1,551 (ARAKI did know of the feeling)

2 B. Tr. 28,127, Ex. 3161.

3 AA-7.

4 1. ARAKI endeavored to check the spreading of
5 the Incident.

6 A. Tr. 1,489.

7 B. Tr. 28,458, Ex. 3168.

8 C. Tr. 28,557, Ex. 3173.

9 2. ARAKI successfully controlled the young
10 officers.

11 A. Tr. 28,196, Ex. 3161 (During the tenure
12 of his office, there was not a single instance of un-
13 lawful incident by army officers. Army officers did
14 not participate in May 15 Incident.

15 B. Summation chapter 31.

16 3. INUKAI's despatchment of emissary to
17 Chiang Kai-shek was a private affair. Chaing Kai-shek
18 at that time was not the head of the government. In view
19 of the existing state of affairs in Manchuria, it is in-
20 conceivable that INUKAI should have intended having
21 Imperial Command to withdraw the troops.

22 A. Tr. 28,148, Ex. 3161.

23 B. Tr. 28,461, Ex. 3166.

24 C. Summation chapter 31, 53.
25

1 LL-8.

2 1. The army budgets in 1932 and 1933, ex-
3 cluding the budget for the Manchurian Incident, was not
4 more than those of preceding years.

5 A. Tr. 28,193, Ex. 3161.

6 B. Tr. 7,531, Ex. 706 (Strength of army in
7 1932.)

8 C. Summation chapter 245, 246.

9 2. ARAKI kept close co-operation with the
10 Premier to deal with the Manchurian Incident.

11 A. Tr. 28,149, Ex. 3161.

12 B. Tr. 1,867 (Succeeding Ministers of Army
13 and Navy co-operated with the government.)

14 C. Tr. 28,462, Ex. 3168.

15 D. Tr. 19,570, Ex. 2418.

16 E. Summation chapter 57.

17 3. ARAKI's concession of a portion of the army
18 budget to the navy certainly in conflict with HARADA's
19 statement that he requested a doubling of the army
20 budget.
21

22 A. Tr. 28,192, Ex. 3161.

23 B. Tr. 1,902.

24 C. Summation chapter 62.

25 4. It is highly inconceivable that ARAKI
should have discussed a serious problem of the army

budget with HARADA with whom he was not on intimate terms
and who was certainly not a cabinet member.

A. Tr. 37,616, Ex. 3767-4.

B. Tr. 28,331.

C. Summation chapter 272.

AA-9.

1. Harbin Expedition was to protect Japanese
nationals residing there.

A. Ex. 57 (p. 79, Lytton Report.)

B. Tr. 19,355, Ex. 2405.

C. Tr. 19,422, Ex. 2408.

D. Tr. 28,143, Ex. 3161.

E. Tr. 28,583, Ex. 3174.

F. Summation chapters 100,101,102.

2. Chinchow Expedition was to restore law
and order.

A. Ex. 57 (Lytton Report, p. 77)

B. Tr. 19,352, Ex. 2405.

C. Tr. 19,420, Ex. 2408.

D. Tr. 28,133, Ex. 3161.

E. Summation chapters 82, 83, 86, 87.

3. The expedition was based on Japan's reservation
at the Council of the League of Nations.

A. Ex. 57 (Lytton Report, p. 77)

B. Summation chapter 88.

1 4. The expedition was not violating Japan's
2 assurance to the U. S. Government.

3 A. Tr. 2,246-2,247, Ex. 190 (Japanese
4 citizens must be protected by Japanese troops.)

5 B. Summation chapter 89.

6 5. Pacification of Chinchow had started before
7 ARAKI became War Minister.

8 A. Tr. 28,132, Ex. 3161.

9 B. Tr. 10,075, Ex. 1104 (After December 11,
10 1931, the movement towards Chinchow was resumed.

11 C. Summation chapter 90, 154.

12 6. The prosecution distorted MINAMI's testimony.

13 A. Tr. 19,921-2 (This occupation was neces-
14 sitated by the state of the opposition.)

15 B. Tr. 19,923 (All he did was to listen.)

16 C. Summation chapter 87.

17 AA-10.

18 1. There was not a plan for the occupation of the
19 Four Eastern Provinces of Manchuria.

20 A. Tr. 28,131, Ex. 3161 (This is a mistake
21 caused by the interpretation.)

22 Tr. 28,225, Ex. 3161 (This allegation is
23 entirely different from the fact.)

24 Tr. 28,304 (There were no plans to occupy
25 the Four Eastern Provinces.)

- 1 B. Tr. 28,307, Ex. 3162.
- 2 C. Tr. 19,380.
- 3 D. Tr. 19,447.
- 4 E. Tr. 28,457.
- 5 F. Tr. 28,587.
- 6 G. Tr. 1,489 (ARAKI was endeavoring to check
7 the spreading.)
- 8 H. Tr. 28,439.
- 9 I. Tr. 28,581.
- 10 J. Summation Chapters 67-70.
- 11 2. The term "Four Eastern Provinces" was first
12 used in 1928.
- 13 A. Tr. 28,304 (You chose to occupy Jehol as
14 well, making four.)
- 15 B. Tr. 28,304 (That is not correct.)
- 16 C. Tr. 18,719, Ex. 57 (Administration of
17 Manchuria with the addition of Jehol.)
- 18 D. Summation chapter 70.
- 19 3. Restoration of law and order is different from
20 occupation.
- 21 A. Tr. 28,130, Ex. 3161.
- 22 B. Tr. 28,302, 28,310.
- 23 4. Military operation was to execute self-defense.
- 24 A. Tr. 19,522.
- 25 B. Tr. 28,130, Ex. 3161.

1 5. Misunderstanding caused by incompetent inter-
2 pretation.

3 A. Tr. 28,131, 28,225, Ex. 3161.

4 B. Tr. 2,781. (Mr. McManus' objection.)

5 6. Written answer by ARAKI at the Sugamo Prison
6 to the prosecution's interrogation should be considered
7 a part of his interrogation record.

8 A. Tr. 28,223, Ex. 3161 (As I felt uneasy of
9 this situation, I suggested)

10 B. Tr. 2,219, Ex. 188-C (Mr. Hydes said, "We
11 will bring you a copy of the translation," a part of
12 record of interrogation on February 11, 1946, which was
13 not read.)

14 C. Tr. 2,897, Ex. 229 ("All this is written
15 on the sheet of paper I gave to you"....first page of
16 exhibit No. 187-E which was not read.)

17 7. The record of interrogation was not the one
18 ARAKI approved. It was not read for him, his signature
19 was not requested on it, and it was not made on oath,
20 and, furthermore, the Japanese was not even stencraphed.

21 A. Tr. 28,221-2, Ex. 3161.

22 B. Tr. 14,576, Ex. 1981.

23 8. The most obvious mistake in the record of
24 interrogation.

25 A. Tr. 28,225-7, Ex. 3161.

AA-11.

1 1. ARAKI's speech at the Privy Council meeting
2 was his explanation against the rumors.

3 A. Tr. 28,580 (In the declaration of the
4 Commander of the Kwantung Army.)

5 B. Tr. 28,582. (YOSHIZAWA's speech.)

6 III Moves Towards Manchukuan Independence

7 AA-12.

8 1. It was in January, 1932, that the central
9 military authorities learned, by the report of Colonel
10 ITAGAKI, the true state of affairs in Manchuria.

11 A. Tr. 28,144, Ex. 3161.

12 B. Tr. 30,283, Ex. 3316.

13 2. ARAKI carried out personnel shifts to pacify
14 the excited element of the army. The shift of Colonel
15 SHIGETO was also done for the same purpose.

16 A. Tr. 28,196, 28,148, Ex. 3161.

17 B. Tr. 1,926 (SHIGEFUJI is same as SHIGETO.)

18 C. Tr. 1,465.

19 D. Summation chapters 63-66.

20 AA-13.

21 1. Independence of Manchuria was a spontaneous
22 action on the part of the Manchurian people.

23 A. Tr. 2811-2, Ex. 221.

24 B. Tr. 19,002.

1 C. Tr. 30,279, 36,283, Ex. 3316.

2 D. Tr. 19,264, Ex. 2043.

3 E. Tr. 22,132, Ex. 2584.

4 F. Tr. 28,582, Ex. 3174.

5 G. Tr. 503, Ex. 66.

6 H. Tr. 19,703, Ex. 2429.

7 I. Tr. 19,688, Ex. 2425.

8 J. Summation chapters 105,169.

9 2. ARAKI conveyed the report of Colonel ITAGAKI to
10 Premier INUKAI.

11 A. Tr. 28,145, Ex. 3161.

12 B. Tr. 30279, Ex. 3316.

13 C. Tr. 19,002.

14 D. Summation chapter 106.

15 3. The government, after careful study of the
16 situation, decided to leave alone the question of inde-
17 pendence for the sake of maintaining law and order.

18 A. Tr. 28,582, Ex. 3174.

19 B. Tr. 28,146, Ex. 3161.

20 C. Tr. 19,570.

21 A.-14.

22 1. ARAKI's answer to the prosecution's interro-
23 gation was misinterpreted. He meant "The North-Eastern
24 Administration Committee was established in Manchuria
25 by the Manchurian people to make preparation for

independence." Prosecution admits in AA-16 that independence declaration was made on February 18th. Then, it is our submission, it is chronologically wrong to assume that such appointment was done by the Cabinet in February or March. It is a question of common sense that such administrative body should not have been appointed by Tokyo.

A. Tr. 28,225-6, Ex. 3161.

B. Tr. 30,279, Ex. 3316.

C. Prosecution summation AA-16.

AA-15.

1. Prosecution, in an endeavor to show the friction between the Premier and ARAKI, introduced evidence to allege the discussions between ARAKI and Finance Minister TAKAHASHI. No evidence was tendered to prove the former.

A. Tr. 37,632, Ex. 3769-A.

B. Tr. 37,633, Ex. 3770-A.

2. TAKAHASHI, when he spoke to ARAKI about Army, meant the young commissioned officers who were indignant over the current situations. He merely blamed the excess of actions on the part of the military police, acknowledging at the same time that ARAKI did not mean to do it. He admired ARAKI's spirit and requested that his spirit would influence the conduct of the military police.

A. Tr. 37,632, Ex. 3769-A.

1
2 3. ARAKI did not administer any pressure upon the
3 speeches and opinions.

4 A. Tr. 37,633, Ex. 3770.

5 B. Tr. 28,395, Ex. 3161.

6 C. Summation chapter 275.

7 IV. Establishment of Manchukuo Independence and Sub-
8 sequent Economic and Military Moves.

9 AA-16.

10 1. It is quite natural that Japan discussed dip-
11 lomatic matters with a nation which had declared inde-
12 pendence. Moreover, the customs were within Japan's
13 leased territory and it had special relation with Japan.
14 This was the reason why the cabinet hastily held its
15 meeting.

16 A. Tr. 2,817, Ex. 222.

17 B. Summation chapter 173.

18 AA-17.

19 1. The government did not admit that it was a
20 violation of the treaty. It tried to avoid misunder-
21 standing.

22 A. Tr. 37,599, Ex. 3762.

23 B. Tr. 28,356-7, Ex. 3161.

24 2. Government could not decided whether it should
25 take the same attitude as Japan took toward the

1 Feng-Chili War. This itself will show that Japan had
2 not a plan to establish Manchukuo.

3 A. Tr. 37,598, Ex. 3762-A.

4 B. Summation chapter 269.

5 3. Prosecution's evidence shows that the cabinet
6 meeting was carried over to Saturday, having reached no
7 decision over the matter. In the summation, the
8 prosecution cited this evidence as if the decision were
9 made.
10

11 A. Tr. 37,598-9, Ex. 3762.

12 AA-18.

13 1. This is the question concerning the admini-
14 stration of the Kwantung Army, and it has nothing to do
15 with the situation in Manchuria.

16 A. Tr. 2,836, Ex. 226.

17 B. Summation chapter 177.

18 AA-19.

19 1. Support of the new state was necessary for the
20 sake of co-existence and co-prosperity.

21 A. Tr. 2,826, Ex. 223.

22 B. Summation chapter 174.

23 2. No army commissioned officer participated in
24 the May 15 Incident.
25

A. Tr. 28,196, Ex. 3161.

1 AA-20.

2 1. We do not see anything unusual in discussion
3 and coming to terms with the newly established state
4 with respect to her finance and military matters.

5 A. Tr. 2,838, Ex. 227.

6 B. Tr. 2,831, Ex. 225.

7 C. Tr. 28,151, Ex. 3161.

8 AA-21.

9 1. This is a telegram requesting them to be
10 cautious in dealing with the problems concerning the
11 official recognition of the state.

12 A. Tr. 2,846, Ex. 228.

13 B. Summation chapter 179.

14 2. The contents of Mr. Stinson's affidavit do not
15 relate anything unusual, except that he received a
16 telegram informing him that the press had telegraphed
17 the contents of War Minister ARAKI's speech before the
18 Supreme Military Council, which ordinarily ought to be
19 kept secret.

20 A. Tr. 10,081, Ex. 1104.

21 3. ARAKI desired to resort to the League of
22 Nations to settle the matter rather than to rely on
23 direct negotiations with China.

24 A. Tr. 37,610, Ex. 3765-A.

25 B. Summation chapter 270.

1 4. ARAKI was not an isolationist. (The allegation
2 was based on the slip of tongue of KOMOYI.)

3 A. Tr. 37,614, Ex. 3766-A.

4 B. Tr. 37,615, Ex. 3767-A.

5 C. Summation chapter 270.

6 AA-22.

7 1. State of affairs up to the recognition of
8 Manchukuo.

9 A. Tr. 28,472.

10 B. Tr. 2,984-8.

11 C. Tr. 28,150-1, Ex. 3161.

12 2. It was not a puppet government.

13 A. Tr. 28,076, Ex. 3158.

14 B. Tr. 17,818.

15 C. Tr. 22,132, Ex. 2584-5.

16 D. Tr. 15,001-8, Ex. 2043.

17 E. Tr. 30,285, Ex. 3316.

18 F. Tr. 19,002.

19 G. Tr. 28,166-9, Ex. 3161.

20 H. Tr. 1,894.

21 I. Summation chapter 168-186.

22 AA-23.

23 1. Study of the question of recognition.

24 A. Tr. 28,582, Ex. 3174.

25 B. Tr. 2,984, Ex. 241.

1 C. Tr. 28,166, Ex. 3161.

2 D. Tr. 28,356, Ex. 3161.

3 AA-24.

4 1. Exhibit No. 230 was nothing but a tentative
5 plan of the Kwantung Army.

6 A. Tr. 2,902, Ex. 230.

7 B. Summation chapter 180.

8 AA-25.

9 1. Exhibit No. 227 has no direct relation with
10 the Army, being a report from the Chief of Staff to the
11 Vice-Minister of War.

12 A. Tr. 2,844, Ex. 227.

13 B. Summation chapter 178.

14 AA-26.

15 1. The Chicago Tribune reported the hearsay story
16 of witness Powell.

17 A. Tr. 3,220.

18 B. Tr. 6,698, Ex. 610-A, 611-A.

19 2. There was not a single case of atrocity in the
20 Manchurian Incident.

21 A. Ex. 57 (Lytton Report, page 109)

22 B. Tr. 9,027.

23 C. Tr. 28,199, Ex. 3161.

24 D. Summation chapter 167.

25

1 AA-27.

2 1. After the recognition of Manchukuo, the com-
3 munication system was improved and measures were taken
4 to secure law and order.

5 A. Tr. 2,919, Ex. 231.

6 B. Summation chapter 181.

7 AA-28.

8 1. The recognition of Manchukuo was at the same
9 time the desire to establish a happy land.

10 A. Tr. 5,038, Ex. 442.

11 B. Summation chapter 183.

12 AA-29.

13 1. Japan respected the independency of Manchukuo.

14 A. Tr. 2,927, Ex. 233.

15 B. Tr. 2,976, Ex. 241.

16 C. Tr. 28,166, Ex. 3161.

17 2. It was the duty of the Army during the course
18 of the Incident to prepare against clandestine activities
19 for disturbance of order by the fifth column.

20 A. Tr. 37,649, Ex. 3775-B.

21 B. Summation chapter 279.

22 AA-30.

23 1. Monarchy was decided upon by Manchukuo. Japan
24 merely acceded to her request of making preparations in
25 putting into practice this decision.

A. Tr. 2,933, Ex. 234.

1
2 2. Cabinet Councillors were not concerned with the
3 heavy industry plan in Manchukuo.

4 A. Tr. 28,201, Ex. 3161.

5 AA-31.

6 1. The Cabinet Councillor was to terminate the
7 China Incident, and was not in any way concerned in the
8 questions relating to Manchuria.

9 A. Tr. 23,201, Ex. 3161.

10 AA-32.

11 1. Japan did not expand her territory and, there-
12 fore, did not violate the security she gave.

13 A. Tr. 1,808, Ex. 174.

14 B. Tr. 9,483, Ex. 966.

15 AA-33.

16 1. The Minister of War at the time when the Com-
17 mander of the First Division YANAGAWA is alleged to have
18 always remained in his room was General HIYASHI, not
19 ARAKI, date being September 13, 1934.

20 A. Tr. 686, Ex. 103.

21 2. Admiral OKADA knew quite well that ARAKI was
22 not in favor of the opinion of annexing Manchuria.

23 A. Tr. 1,904.

24 V. Shanghai Incident.

25 AA-34-37.

1. The Army did not want to dispatch troops to
1 Shanghai.

2 A. Tr. 37,618, Ex. 3766-A.

3 B. Tr. 28,140, Ex. 3161.

4 C. Summation chapter 93.

5 2. Legality of the expedition.

6 A. Tr. 19,561-2, Ex. 2416;

7 Tr. 19,565, Ex. 2417.

8 B. Tr. 19,578, Ex. 2420.

9 C. Tr. 19,586, Ex. 2421.

10 3. Expedition was made with an intention of
11 bringing peace.

12 A. Tr. 28,257, 28,271, Ex. 3163-A-B.

13 4. Hostilities ceased as soon as the enemy retired
14 to the 20 Kilometer line.

15 A. Tr. 28,138-9, Ex. 3161.

16 B. Tr. 19,572.

17 C. Summation chapter 95-96.

18 5. Over-all withdrawal of troops.

19 A. Tr. 28,462, Ex. 3168.

20 B. Tr. 28,443, Ex. 3167.

21 C. Tr. 28,140, Ex. 3161.

22 D. Summation chapter 97.

23 6. China aggravated the situation by propagandiz-
24 ing that the Chinese troops had won the victory.
25

A. Ex. 57 (Lytton Report, page 87)

1
2 7. Japanese troops maintained discipline and re-
3 mained within the limited area.

4 A. Tr. 3,260.

5 B. Summation chapter 98.

6 VI. Occupation of Jehol.

7 AA-38.

8 1. There was no plan of occupying the Four
9 Eastern Provinces. This question was dealt with under
10 answer to AA-10.

11 2. There is no evidence to prove that ARAKI
12 stated the details at the cabinet meeting and Privy
13 Council meeting in which this matter was decided.

14 A. Tr. 28,580, Ex. 3174.

15 3. The prosecution's record of interrogation con-
16 tains some reference to the Five Minister Conference,
17 but this was a mistake caused by misinterpretation, the
18 explanation of which is made under answer to AA-10.

19 A. Tr. 28,225, Ex. 3161.

20 AA-39-43.

21 1. Exhibit No. 192-A is a document prepared by
22 China after the cessation of the Pacific War, and we
23 contend that it has no probative value.

24 A. Tr. 2,269, Ex. 192-A.

25 B. Summation chapter 132.

1 2. The fighting in Jehol took place in February,
2 1933, prior to which there were merely apprehensions
3 against attack.

- 4 A. Ex. 57 (Lytton Report, page 80-81)
5 B. Tr. 2,270, Ex. 192-A.
6 C. Tr. 19,499, Ex. 2412.
7 D. Tr. 28,153, Ex. 3161.

8 3. Legality of pacification of Jehol.

- 9 A. Ex. 57 (Lytton Report, page 86)
10 B. Tr. 32,227, Ex. 3375.
11 C. Tr. 19,497, Ex. 2412.
12 D. 2,976, Ex. 241.
13 F. 37,618, Ex. 3768-A.

14 4. Difficulties in the pacification campaign.

- 15 A. Tr. 28,461, Ex. 3168.
16 B. Tr. 28,154, 28,375, Ex. 3161.
17 C. Tr. 19,499, Ex. 2412.
18 D. Tr. 37,635, Ex. 3771-A.
19 E. Tr. 28,380, Ex. 3165-A.

20 AA-44.

21 1. The Manchurian Incident was completely termin-
22 ated by the Tangku Truce Agreement.

- 23 A. Tr. 28,462, Ex. 3168.
24 B. Tr. 2,108.
25 C. Tr. 19,027.

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D. Summation chapter 135-139.

2. There is no relation between the Manchurian Incident and the China Incident.

A. Summation chapter 188-191.

VII. Japan's Attitude Toward and Withdrawal from the League of Nations.

1 AA-45-50

2 1. When ARAKI became War Minister, the
3 relations between the League and Japan had already
4 been considerably aggravated, nevertheless ARAKI
5 endeavored to improve it by requesting the League to
6 recognize the actual state of affairs in Manchuria.

7 A. Ex. No. 57 (Lytton Report, pp 10, 12)

8 B. Summation Chapter 140
9

10 2. At the First Shanghai Incident, ARAKI
11 accepted the mediation by the Consular Corps.

12 A. T. 19,573, Ex. 2419

13 B. Summation Chapter 96, 141
14

15 3. Official recognition of Manchukuo was
16 carried out in accordance with the suggestion of the
17 the Foreign Office.

18 A. T. 28,150-1, T. 28,166, Ex. 3161

19 B. Summation Chapter 126
20

21 \$. When MATSUOKA was dispatched to the League
22 of Nations as Japan's delegate, he was instructed by
23 the cabinet to take steps not to withdraw from the League.

24 A. T. 28,857, Ex. 3173

25 B. Summation Chapter 146

1 5. When Japan was compelled to withdraw from
2 the League, ARAKI was of the opinion that Japan should
3 collaborate with the world on all other matters.

4 A. T. 28,170, Ex. 3161

5 B. Summation Chapter 146
6

7 6. When the hostilities in Manchuria were
8 pacified, ARAKI proposed a Far Eastern Peace Conference
9 to improve and adjust the international relations.

10 A. T. 28,453, Ex. 3161

11 B. T. 28,162, Ex. 3161

12 C. T. 28,462, Ex. 3168

13 D. Summation Chapter 148-150
14

15 7. ARAKI exerted his best to maintain inter-
16 national collaboration.

17 A. T. 28,448, Ex. 3166

18 B. T. 3,188, Ex. 148

19 C. T. 28,470

20 D. T. 28,857-8, Ex. 3173

21 E. T. 35,083

22 F. T. 28,188, Ex. 3161

23 G. Summation Chapter 147,154
24
25

AA-51

1 1. Cabinet Councillor was not an institution
2 to discuss such matters as the invitation to attend the
3 Brussels Conference, or any other general diplomatic
4 problems.

5 A. T. 28,201, Ex. 3161

6 B. T. 28,203, Ex. 3161

7 C. Summation Chapter 206

AA-52

8
9
10 1. Japan's non-cooperation with the League of
11 Nations did not mean Japan's abandonment of an attempt
12 toward peace.

13 A. T. 3,650, Ex. 271

AA-53

14
15
16 1. Japan's relation with Manchukuo

17 A. Summation Chapters 222, 223

AA-54

18
19 1. Internal problems of Manchukuo

20 A. Summation chapter 233

AA-55

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22
23 1. We do not see anything unusual or illegal
24 in the procedures taken by the government in connection
25 with opium as stated by the prosecution under this para-

graph. We contend this was a rightful and proper measure
1 on the part of the government

2 A. T. 4,709, Ex. 381

3 B. Summation Chapter 223-4

4
5 AA-56

6 1. We contend that the reports by the U.S.
7 Treasury Attache on the narcotic activities in the
8 various districts cannot be the proper materials
9 with which to accuse the responsibility of ARAKI.

10 IX. ARAKI's attitude towards U.S.S.R.

11 AA-57

12 1. Ex. 702 represented the opinion of a part
13 of the army personnel, with which ARAKI had not been
14 concerned.

15 A. T. 7,515, Ex. 702

16 B. T. 7,679

17 C. T. 7,633

18
19 2. Moreover, the contents of this exhibit
20 were not to advocate a positive war, but to make prepar-
21 ation against the exigency of war in the future.

22 A. T. 7,632

23 B. T. 28,173, Ex. 3161

24 C. Summation Chapter 231
25

AA-58

1 1. Ex. 701 is merely an opinion of an Attache,
2 and we contend that there is nothing unusual for an
3 attache to make such submission of opinion.

4 A. T. 7,509, Ex. 701

5 B. T. 7,680

6 C. T. 28,173, Ex. 3161

7 D. Summation Chapter 231

AA-59

9
10 1. Ex. 3766-A and 3767-A will clearly prove
11 that ARAKI made it a national policy to keep friendly
12 terms with the U.S.A. and other powers.

13 A. T. 37,614, Ex. 3766-A

14 B. T. 37,616, Ex. 3767-A

15
16 2. According to Ex. 3766-A, Finance Minister
17 TAKAHASHI backed ARAKI's emergency policy and encouraged
18 him that it would take four or five years instead of
19 two years.

20 A. T. 37,615, Ex. 3766-A

21
22 3. Japan's armament at that time was extremely
23 poor.

24 A. T. 28,191, Ex. 3161

25 B. T. 7,531, Ex. 706

 C. Summation Chapters 245, 246

1 4. To consider for two years whether or not
2 to attack Soviet Russia means to watch that country,
3 and it does not mean to wage war after two years.

4 A. T. 37,615, Ex. 3767-A

5 5. In order to prevent further spreading of
6 communism in the East, ARAKI planned to invite the
7 powers to hold a peace conference so that an agreement
8 might be reached between Soviet Russia that Communism
9 may not be propagandized.

10 A. T. 37,615, Ex. 3767-A.

11 6. What ARAKI meant was a total budget for
12 Japan. He said the amount to cope with the development
13 of the country, and it did not mean the military budget
14 alone.

15 A. T. 37,616, Ex. 3767-A

AA-60

1. ARAKI was not opposed to the non-aggression
t between Soviet Russia, but he considered settlement
several pending problems prior to such pact would be
sary to avoid further trouble in the future.

A. T. 28,173-4. Ex. 3161.

telling

6 ARAKI was
the government

7 Momonhan Incidents
which ARAKI was not

161
er 210, 225

responsibility for events

March 10, 1936 and October 15, 1937

1. -
when he became Cabinet Councillor, he had no relation
whatever with the Army or the political circles.

21
22
23
24
25

4. To consider for two years whether or not
1 to attack Soviet Russia means to watch that country,
2 and it does not mean to wage war after two years.

3 A. T. 37,615, Ex. 3767-A
4

5 5. In order to prevent further spreading of
6 communism in the East, ARAKI planned to invite the
7 powers to hold a peace conference so that an agreement
8 might be reached between Soviet Russia that Communism
9 may not be propagandized.

10 A. T. 37,615, Ex. 3767-A.
11

12 6. What ARAKI meant was a total budget for
13 Japan. He said the amount to cope with the development
14 of the country, and it did not mean the military budget
15 alone.

16 A. T. 37,616, Ex. 3767-A
17

18 AA-60

19 1. ARAKI was not opposed to the non-aggression
20 pact between Soviet Russia, but he considered settlement
21 of several pending problems prior to such pact would be
22 necessary to avoid further trouble in the future.

23 A. T. 28,173-4. Ex. 3161.
24
25

2. The Soviet's proposal for the non-aggress-
1 ion pact was not made in such a way as would require
2 Japan's formal reply to it.

3 A. T. 7,720, Ex. 746

4 B. T. 7,727, Ex. 747

5 AA-61

6
7 1. In Ex. 3775-A, ARAKI said "It cannot be
8 said that there will be no crisis." This is substan-
9 tially different from the prosecution's allegation
10 that "There will be a crisis." Furthermore, by crisis
11 he meant that international relations would be endangered.

12 A. T. 37,651, Ex. 3775-A

13 AA-62

14
15 1. We submit witness KOSAKA, the most senior
16 member of the prefectural governors at that time,
17 clearly testified the credibility of witness TAKEBE's
18 testimony.

19 A. T. 36,980-5, Ex. 3715

20 B. T. 35,232-3, Ex. 3615

21 C. Summation Chapter 227

22
23 2. War Councillor had nothing to do with oper-
24 ations.

25 A. T. 672

- 1 B. T. 28,164, Ex. 3161
- 2 C. Summation Chapters 193-4
- 3 AA-63
- 4 1. Ex. 667, in our submission, is not telling
- 5 the truth.
- 6
- 7 A. T. 28,507, Ex. 3170
- 8 2. Ex. No. 3170 will testify that ARAKI was
- 9 opposed to the administrative policies of the government
- 10 at that time.
- 11 A. T. 28,506, Ex. 3170
- 12 B. Summation Chapter 229
- 13
- 14 3. The Chang-Ku-Feng and Nomonhan Incidents
- 15 were mere border troubles, with which ARAKI was not
- 16 concerned.
- 17 A. T. 28,216, Ex. 3161
- 18 B. Summation Chapter 210, 225
- 19
- 20 X. ARAKI's responsibility for events
- 21 in China after 1937.
- 22 AA-64
- 23 1. Between March 10, 1936 and October 15, 1937,
- 24 when he became Cabinet Councillor, he had no relation
- 25 whatever with the Army or the political circles.

- 1 A. T. 688, Ex. 103
- 2 B. T. 28,200, Ex. 3161
- 3 C. Summation Chapter 203
- 4 2. Premier KONOYE asked ARAKI to become
- 5 Cabinet Councillor to ask him to settle the China
- 6 Incident.
- 7 A. T. 28,200, Ex. 3161
- 8 B. Summation Chapter 206
- 9
- 10 3. The object of Cabinet Councillor
- 11 A. T. 28,201, Ex. 3161
- 12 B. Summation Chapter 209
- 13
- 14 4. Organization of the Cabinet Councillor
- 15 A. T. 28,201, Ex. 3161
- 16
- 17 5. Cabinet Councillor had no authority over
- 18 political matters.
- 19 A. T. 28,410, Ex. 3161
- 20
- 21 6. Evidence shows that ARAKI was against the
- 22 occupation of Nanking.
- 23 A. T. 28,176, Ex. 3161
- 24
- 25 7. ARAKI did not know of the atrocities in
- Nanking. There is no evidence to show that ARAKI was
- responsible even in the slightest degree for this

1 incident.

2 A. T. 28,407

3 AA-70

4 1. Ex. 2219 and Ex. 2218, in our submission,
5 are not sufficient to prove the responsibility of a
6 cabinet minister. These exhibits show the uncertainty,
7 unreliability and self-contradiction of the record of
8 interrogation by the prosecution, but what we can, even
9 vaguely, know from them is (1) to all matters decided
10 upon at the cabinet meeting all cabinet members are
11 responsible; (2) cabinet ministers other than members
12 of Five Ministers Conference were excluded from the dis-
13 cussion of the China Incident and the important problems
14 were not discussed at the general cabinet meetings.

16 A. T. 15,841, Ex. 2219

17 B. T. 28,412, Ex. 3161

18 C. T. 15,837-8, Ex. 2218

19 D. Summation Chapter 208, 209

20
21 2. KONOYE had ARAKI join the cabinet when he
22 learned that ARAKI as a Cabinet Councillor had no author-
23 ity or say over cabinet affairs. It is our contention
24 that if Cabinet Councillor had been so powerful as the
25 prosecution seems to insist, there were no reasons why
KONOYE should have reshuffled his cabinet to select

1 UGAKI, IKADA and ARAKI from cabinet councillors and
2 appoint them cabinet ministers.

3 A. T. 688, Ex. 103

4 B. Summation Chapter 208

5 3. KONOYE did not appoint ARAKI a cabinet
6 councillor and, later, Education Minister because he
7 considered him an authority on Chinese affairs, but
8 because he wanted him to display the same ability that
9 ARAKI showed in terminating the Manchurian Incident in
10 settling the China Incident.

11 A. T. 28,178, Ex. 3161

12 B. T. 28,201, Ex. 3161

13 4. That ARAKI was opposed to the China Incident
14 was a matter of common sense among the learned class of
15 Japanese people. The prosecution's allegation that
16 ARAKI was an authority on Chinese affairs and that he
17 knew of the Nanking atrocities is a nonsensical distor-
18 tion to well-informed people.

19 A. T. 28,506, Ex. 3170

20 B. T. 28,508-9, Ex. 3170
21
22
23
24
25

1 5. KONOYE adopted, after his reshuffle of the
2 cabinet, the Five Minister Conference system, and this
3 prevented ARAKI from making any suggestion as to the
4 termination of the China Incident.

- 5 A. T. 29,204, Ex. 3161
6 B. T. 28,215, Ex. 3161
7 C. T. 28,486-7, Ex. 3169
8 D. T. 28,508, Ex. 3170
9 E. Summation Chapter 209

10 6. ARAKI did not know the Nanking atrocity
11 case, nor did he have any means of knowing such affairs.
12 The prosecution's query as to if he had not known of it
13 by the newspapers is the one which disregarded the current
14 state of affairs in Japan in those days.

- 15 A. T. 28,407-8
16 B. T. 28,507-8, Ex. 3170

17 7. The Cabinet Councillor meeting was to be
18 held once a week. That the attendance to it was com-
19 pulsory was a misinterpretation. ARAKI only meant that
20 it was so regulated.

- 21 A. T. 28,226, Ex. 3161
22 B. Summation Chapter 68, 264
23
24
25

1 AA-71

2 1. This was the matter to be taken care of
3 by the Five Ministers Conference. ARAKI was not con-
4 cerned in it.

5 A. T. 28,508, Ex. 3170

6 B. T. 28,486-7, Ex. 3169

7 C. T. 28,216, Ex. 3161

8 D. Summation Chapter 209

9
10 AA-72

11 1. ARAKI became Education Minister because
12 it was learned that a Cabinet Councillor had no author-
13 ity towards settlement of the China Incident. He joined
14 the cabinet together with UGAKI and IKEDA, both of whom
15 were members of the Cabinet Councillors and who were
16 opposed to the China Incident.

17 A. T. 28,203-4, Ex. 3161

18 B. Summation, Chapter 208

19
20 2. When a nation is at the state of war against
21 another nation, it is not an easy task for any person
22 outside the military authorities to check the fighting,
23 nevertheless, ARAKI accepted this task in accordance
24 with the persistent request of KONOYE. However, his in-
25 tention was frustrated by the establishment of the Five
Ministers Conference.

- 1 A. T. 28,204, Ex. 3161
2 . T. 28,410-2, Ex. 3161
3 T. 28,215, Ex. 3161
4

5 3. The source of information of ex. 671-A is
6 quite dubious. The Japan Advertizer based this news on
7 the report of DOMEI News Agency which obtained it from
8 unknown source as being the contents of the speech that
9 ARAKI made at the Osaka Political and Economic Research
10 Association. The contents of the speech were made al-
11 most unintelligible during the course of the transmission.

- 12 A. T. 28,235
13 B. Summation Chapter 228
14

15 XI. ARAKI's relation with the Western
16 Powers.

17 AA-73-74

18 1. The Japan-Germany Culture Agreement was
19 under the jurisdiction of the Foreign Office.

20 A. T. 28,215, Ex. 3161
21

22 2. The Agreement had no significance other
23 than culture.

24 A. T. 28,215, Ex. 3161
25

25 3. ARAKI advocated exchange of culture not
only with Germany and Italy alone, but with all other

1 countries of the world.

2 A. T. 28,488, Ex. 3169

3 AA-75

4
5 1. The prosecution's quotation from exhibit
6 2218 omitted the word "usually". What ARAKI answered
7 was, "The matters of great importance to the foreign
8 office, the War, Navy and Finance Ministries were
9 usually not put before the full cabinet meetings," and
10 we believe this answer is not in contradiction with the
11 testimony of ARITA.

12 A. T. 15,836, Ex. 2218

13 B. T. 15,837

14 C. T. 28,488, Ex. 3169

15
16 AA-76

17 1. The Anti-Comintern Pact and the Tripartite
18 Pact were fundamentally different in their nature. It
19 is quite clear that ARAKI was opposed to the Tripartite
20 Pact.

21 A. T. 28,488, Ex. 3169

22 B. T. 28,547, Ex. 3172

23 C. Summation Chapters 254, 255
24
25

1 AA-77

2 1. The Cabinet Councillors were not consulted
3 on those general diplomatic matters.

4 AA-78.

5 1. The Education Minister was not concerned
6 with the Five Ministers Conference. There is no evidence
7 to show that ARAKI was exceptionally concerned in it.
8 ARAKI always advocated friendly terms with Britain, the
9 United States and other powers.

11 A. T. 3,188, Ex. 148

12 B. T. 28,453-4, Ex. 3766-A

13 C. T. 28,453-4, Ex. 3166

14 D. T. 37,615, Ex. 3767-A

15 E. T. 28,179, Ex. 3161

16 F. T. 28,191, Ex. 3161

17 G. T. 15,855

18
19 XII. ARAKI's work as Education Minister.

20 AA-79

21 1. IWAMATSU's testimony clarified that
22 IWAMATSU and other perfunctories of the Education
23 Ministry saw that ARAKI as a civilian minister had
24 acted properly and moderately.

25 A. T. 18,541-2, Ex. 2378

B. Summation Chapters 211-213

1 AA-80

2 1. OUCHI's testimony is to the effect that
3 the universities in Tokyo made a request at the time
4 when ARAKI was War Minister that military drill and
5 lecture should be adopted as part of its curriculum.
6 He did not say, as the prosecution alleges in its summ-
7 ation, that ARAKI advocated it.

8 A. T. 942
9

10 2. Witness OUCHI further testified that he did
11 not believe ARAKI was concerned with it

12 A. T. 964
13

14 3. He further admitted in the course of cross-
15 examination that his statement concerning Education
16 Minister ARAKI was hearsay.

17 A. T. 979
18

19 4. OUCHI stated that the military drill was
20 practiced in 1939, but he did not say that it was so
21 done during ARAKI's tenure of office. While it is true
22 that it was practiced from September 1939, ARAKI resigned
23 from his post in August of that year.

24 A. T. 963

25 B. T. 889

1 5. OUCHI is a professor on economics and
2 finance, and he has a record of having been kept in
3 detention with a charge of thought, whereas KAIGO is a
4 specialist of modern educational history. OUCHI made
5 several corrections of his statements in the course of
6 the cross-examination but KAIGO never changed his state-
7 ment, not even under the request that he may be defined
8 as a hostile witness. This fact speaks for itself as to
9 the credibility of both witnesses. There is not a
10 scintilla of evidence to show that while ARAKI was
11 Education Minister there was a single professor who
12 was either imprisoned or discharged on account of non-
13 collaboration.
14

15 A. T. 946

16 B. T. 902

17 C. Summation Chapters 217, 218
18

19 6. KAIGO testified that military drill with
20 rifle in schools started in November 1939. ARAKI was
21 not Education Minister then.

22 A. T. 890

23 B. Summation Chapter 217
24

25 7. There is no discrepancy between ARAKI's
statement and that of IWAMATSU. ARAKI referred to the
spiritual side of the matter, saying that he endeavored

1 to promote the moral standard of the students, whereas
2 IWAMATSU referred to laws and regulations, saying that
3 no new regulation was issued during ARAKI's tenure of
4 office.

5 A. T. 28,210-1, Ex. 3161

6 B. T. 18,543, Ex. 2378

7
8 8. China started military drill in schools from
9 Spring 1936.

10 A. T. 2,464

11 B. Summation Chapter 221

12 AA-91.

13
14 1. System of Youth's School education had been
15 a long pending problem before ARAKI became Education
16 Minister. It was decided at the Cabinet meeting at
17 the time when ARAKI was Education Minister and the
18 matter was transferred for further deliberation to the
19 Education Council, upon whose decision the Education
20 Ministry took necessary routine procedures to make it
21 a law.

22 A. T. 28,584, Ex. 3175

23 B. T. 28,211, Ex. 3161

24 C. Summation, Chapter 219
25

1 2. It was a responsible system, not compulsory,
2 as the prosecution seems to allege.

3 A. T. 28,584-5, Ex. 3175-A

4 B. Summation, Chapter 214.

5
6 3. The prosecution cross-examined IWAMATSU
7 on Order of Inspection of Military Training at Youth's
8 School on 31 November 1938. This question was later
9 clarified by presenting a document to the prosecution
10 by IWAMATSU explaining that a part of the above-
11 mentioned order which had already existed was deleted
12 on that date, corresponding to the change of Order of
13 Conscription, in which schools designated to be given
14 terms of grace were changed. By this document, it was
15 clarified that ARAKI had not strengthened the military
16 training in schools. Mr. Brown stated before the
17 Tribunal that he would inform the Tribunal if he
18 found anything contrary to our statement. That he has
19 not done so by this time is, we believe, the best answer.

20
21 A. T. 36,986.

22
23 4. ARAKI signed on that Imperial Ordinance,
24 ex. 739, as one of the cabinet ministers who were to
25 countersign on all the Imperial Ordinances.

1 XIII. Speeches and Writings by ARAKI

2 AA-82.

3 We trust the Tribunal has seen, by witnessing
4 the film, that the speech in the "Emergency Period of
5 Japan" did not contain any aggressive meaning.6 1. He said to restore peace in the Far East,
7 not to dominate it.8 2. He only lamented the lack of true recog-
9 nition on the part of the League of Nations of the
10 state of affairs of the Far East.11 3. ARAKI meant to request the Japanese people
12 to reflect on themselves re their deterioration. He
13 said it was the request from heaven to the Japanese
14 people.15 4. Advocacy of a flourishing Japan, is, we
16 contend, nothing unusual for an independent nation.17 5. In ARAKI's conclusion of his speech in the
18 "Emergency Period of Japan" he stated: ". . . and I
19 firmly believe that with Europe and the United States,
20 we can bring about everlasting peace in the whole world."

21 A. T. 3,188-9, Ex. 148-A

22 B. Summation of Chapter 29
23
24
25

1 AA-83

2 1. ARAKI's action during the First Shanghai
3 Incident represents most faithfully his ideal.

4 (1) Commander of the Corps UEDA, at the risk
5 of operational disadvantages, advised enemy to resort
6 to peace terms.

7 (2) Cessation of fire was immediately ordered
8 on the following day, and taking into consideration the
9 intermediation of the corps of consuls, the Truce Agree-
10 ment was duly signed.

11 (3) When the Treaty was signed, ARAKI withdrew
12 the whole of the troops from China. Thus he tried to
13 prevent the cause of future trouble. It is our sub-
14 mission that there is not a single point in this action
15 that deserves censure.

16 A. Summation Chapter 92

17 AA-84

18 1. When ARAKI pointed out the ambiguous border
19 area in Outer Mongolia, he meant precaution from a
20 defensive purpose, and it was by no means any aggressive
21 intention.

22 A. T. 28,174, Ex. 3161

23
24
25

1 2. ARAKI's statement in the "Address to All
2 Japanese People" as quoted by the prosecution is an
3 advice that he gave to the soldiers at the front. He
4 advocated by this that even in fighting strict morality
5 must be observed.

6 A. T. 28,364, Ex. 3164

7 AA-85

8 1. The affidavit of KISAKA, then governor of
9 Tokyo Prefecture, proved the incredibility of the
10 testimony of TAKEBE, who is still in the custody of
11 Soviet Russia. Also, we trust, SUZUKI's statement
12 supported it.

13 A. T. 36,980-5, Ex. 3715

14 B. T. 35,232-3, Ex. 3605

15 C. Summation Chapter 227

16 AA-86

17 1. ARAKI's address given on the 15th Anniversary
18 of the issuance of the Imperial Rescript was a routine
19 work which had been done every year by the chief of the
20 Ministry which was in charge of national spiritual
21 mobilization. It was merely made public by the name of
22 the Minister, although it was written by his subordinates.
23

24 A. T. 28,204-5, Ex. 3161
25

46,030

AA-87

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1. We have already explained about the prosecutions mistakes and its subsequent withdrawal of the charge of National Spiritual Mobilization Committee.

A. T. 28,536

1 MR. McMANUS: I shall now go to page 381,
2 if your Honors please.

3 Chapter 11 CONCLUSION

4 308. General Comments on the Prosecution's
5 Submissions and Proof against ARAKI.

6 A. As stated above, of the 41 counts charged
7 by the prosecution against ARAKI, it has attempted
8 proof of only Count 27 with respect to responsibility
9 for the execution of the Manchurian Incident. If we
10 receive the Tribunal's acknowledgment that ARAKI's
11 part in that Incident was one of merit in ending it
12 as contended by the defense and not one of responsibility
13 for its expansion, there is nothing else upon which
14 to make any charge of responsibility against him.

15 B. The prosecution at first believed that
16 ARAKI's speech in the motion picture film "Japan in
17 Emergency" was strong evidence to support the charge
18 of common conspiracy, but I am sure, the Court completely
19 understands that the speech contains nothing of an
20 aggressive nature after having seen the film projected
21 on the screen. Furthermore, it also became clear
22 that what was said in the prosecution's interrogatory
23 about a plan of occupation of the Four Eastern Provinces
24 being adopted immediately after ARAKI's assumption of
25 office as War Minister was not that, but the fixing

1 of a limit on the area of military operations by the
2 INUKAI Cabinet for the purpose of terminating the
3 incident, something fundamentally different from a
4 plan of occupation.

5 C. The suspicion that ARAKI as a leader
6 of the militarists and as a big power behind the TOJO
7 Cabinet was a propelling force for aggressive war
8 up to the Pacific War has been shown to be based on
9 a complete misunderstanding and it was made clear
10 that General ARAKI who won high praise from Japanese
11 and foreigners for skillfully putting an end to the
12 Manchurian Incident and thus preventing a general war
13 between China and Japan over 15 years ago completely
14 severed connections with the army immediately after
15 the February 26th Incident in 1936.

16 D. It has also become clear that ARAKI
17 became Education Minister not for the purpose of
18 strengthening military education but in accordance
19 with the desire of Prime Minister KONOYE that he help
20 bring the China Incident to a settlement just as he
21 had the Manchurian Incident before by restraining the
22 army; that the compulsory system of the Youth Schools
23 had already been decided by the cabinet during the
24 tenure of his successor and that the Education Ministry
25 did no more than dispose of the steps to be taken as

1 business routine in accordance with the recommendations
2 of the Education Council; and that the compulsory
3 system of Youth Schools was instituted for the purpose
4 of effecting equality in education and not, as the
5 prosecution erroneously claims, as a preliminary step
6 for the strengthening of military education.

7 E. It was also made clear to the Tribunal
8 that since he realized after the inception of the
9 Five Ministers Conference that any minister not among
10 the five could not have been of any assistance with
11 regard to settling the China Incident, ARAKI retired
12 completely from political life. This has been shown
13 by the fact that he declined to become Home Minister
14 in the YONAI Cabinet and at the time of the 2nd KONOYE
15 Cabinet he had a heated argument with Prince KONOYE
16 because of his opposition to the conclusion of the
17 Tripartite Alliance and the establishment of the
18 Imperial Rule Assistance Association at which time he
19 not only declined the request to become a Cabinet
20 Councillor, but even broke off intercourse with the
21 Prince.

22 Thus all misapprehensions on the part of the
23 prosecution were dispelled.

24 309. The Difficult Problems of ARAKI to
25 Advocate Peace and Humanitarianism.

1 A. The problems of modern Japan in the realm
2 of thought and politics were not easy. After World
3 War I leftist movements became active and, at the
4 same time, as a reaction against them fascist thought
5 raised its head. Society was already crowded with
6 the "democratic intelligentsia" who mistook slovenliness
7 for freedom. All this confusion caused a disorderly
8 three-way struggle. The domestic confusion became
9 almost fatal to Japan as the Manchurian Incident
10 became aggravated because of the lack of order in
11 China and lack of understanding by the Powers.

12 B. ARAKI confronted this difficult situation
13 when he assumed the War Ministership. In assuming
14 his office he realized that one of the roads to quell
15 the confusion within the country and to terminate the
16 disturbance in Manchuria lay in having the Japanese
17 people to become conscious of original and traditional
18 spirit of Japan, namely, his idea of KODO. In other
19 words, if he believed that if an understanding of the
20 virtue of benevolence of the Imperial House could
21 have been awakened in the confused minds of the
22 Japanese people their feeling could be stabilized,
23 and contempt on the part of foreign countries eliminated.¹

24 C. On the basis of this belief, ARAKI
25 1. T. 28,188.

1 explained to the people in general and urged them to
2 return to the spirit of Japan and to respond to the
3 virtue of the Imperial House and contribute to world
4 peace. To the officers and men of the army he advised
5 them to be the Emperor's Army which is the guardian of
6 the Emperor's virtue of benevolence that is, to be
7 such soldiers that when they would win they should
8 not be hated by the enemy and when they were stationed
9 they should aim for the friendship of the people. This
10 is exactly as set forth in detail in the address in
11 the talking film, prosecution Exhibit No. 148.
12 Moreover, with regard to the excited elements within
13 the army he forcefully carried out personnel purges
14 while as to army forces in the field outside of the
15 country he demanded the strictest discipline. At the
16 time of the Shanghai Incident, he had every single
17 soldier withdrawn as soon as the troops which had been
18 sent had carried out the assignment for which they
19 had been dispatched. At the time of the pacification
20 of Jehol he ordered the strictest observance of the
21 Great Wall line and did not permit the crossing thereof
22 regardless of any challenge from the opposing side.
23 Thus exactly as he believed and assured he brought about
24 the settlement of the Manchurian Incident.
25

(1) Is there any instance, if the Tribunal

1 pleases, of an armed disturbance which occurred
2 during the period covered by the Indictment being
3 stopped other than that at the time when ARAKI was
4 War Minister?

5 (2) Is there any instance of immediate with-
6 drawal of troops from an area of military operations
7 except that at the time of War Minister ARAKI?

8 (3) Were there any troops which engaged
9 in action during the tenure of War Minister ARAKI
10 who committed atrocities?

11 The foregoing constitute the features of
12 ARAKI's time and we respectfully request the judgment
13 of the Tribunal after due consideration whether
14 ARAKI's activities were aggressive or not, whether
15 he trampled upon international law or not, and whether
16 he ran counter to humanity or not.

17
18 D. Because he resigned as War Minister on
19 23 January 1934, because of illness, he was unable
20 to carry on his movement to convene a Far Eastern Peace
21 Conference which he had been considering for the
22 purpose of adjusting diplomatic relations ever since
23 the conclusion of the Tangku Truce. Domestically he
24 was under attack by fascist elements and he finally
25 and completely broke relations with the army in March
1936. It is our firm belief that this very break of

1 ARAKI's from the army was the turning point in the
2 army's drift toward a tragic fate.

3 E. However, even after that he continued his
4 peace movement as a non-military man. After becoming
5 Education Minister at the behest of Prime Minister
6 KONOYE his teachings to practice the Imperial virtue
7 of benevolence and his contributions to world peace
8 were continued. Sad though he was that by being
9 Education Minister he could not help settle the China
10 Incident as desired by Prime Minister KONOYE, he
11 nevertheless urged the people to self-reflect by
12 contributing an article addressed to Chiang Kai-shek
13 and to the Japanese people in the Bungei Shunju
14 magazine, and, opposing the capture of Nanking, he
15 published in the newspaper a famous poem in which
16 grief is expressed over brethren fighting, manifesting
17 his sorrow over the hostilities between China and Japan.¹
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1. T. 28,178

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F. That ARAKI was unfortunately indicted by
1 the prosecution, notwithstanding these facts, was a
2 matter of deep regret to him. As the Tribunal will
3 probably recall, ARAKI, when he was asked to plead
4 at the time of the arraignment on 6 May 1946, stated
5 that he wished to have his counsel reply as had been
6 arranged, to which the President demanded that he
7 himself make his plea. ARAKI stood up quietly and
8 declared, "I have generally glanced through the
9 Indictment, but the charges of crimes against peace
10 and crimes against humanity which are found in the
11 first part mean divesting ARAKI of all the pride of
12 his seventy years of life. I absolutely cannot
13 acquiesce." Suddenly in this brief instant, in a
14 voice expressing his innermost convictions, he thus
15 manifested his complete dissatisfaction to being
16 tried for crimes against peace and humanity. What he
17 meant was that it was for these very things, for
18 peace and humanity, that he had labored during his
19 seventy years of life, that even though he may have
20 been mistaken, he could not but feel the strongest
21 dissatisfaction that he should be indicted, even in
22 the slightest degree, for crimes against peace and
23 humanity and therefore he absolutely could not submit
24 and expressed his complete innocence. What a person
25

exclaims in a sudden instant usually is the truth.

1 We believe that of all things this brief statement by
2 ARAKI surpasses all evidence offered in his behalf
3 and that this will surely appeal to the human senti-
4 ments of this honorable Tribunal.
5

6 G. The misunderstanding that ARAKI was a
7 militarist arises from the misunderstanding of the
8 Kodo philosophy which he cherished. It is because
9 of ignorance of the fact that the true essence of
10 Kodo is found in the spirit of yamato (Japan), in
11 benevolence, in liberty and in equality that the
12 hasty judgment is passed that those who advocate
13 Kodo are narrow-minded nationalists or dictatorial
14 imperialists. This does not apply only to the prose-
15 cution but also to quite a number of Japanese.
16

17 In fact, there was even one witness who
18 testified before this Tribunal that the Allied
19 General Headquarters had banned the words hakko
20 ichiu and this is proof that the true teachings of
21 Japan are not understood.

22 Frankly speaking, there were among ARAKI's
23 intimate friends quite a number who expressed the
24 desire that such matters as Kodo, the fundamental
25 policy of the State, and the Japanese spirit not be
touched upon in offering his defense before the

1 Tribunal because they were liable to invite misunder-
2 standing and therefore would tend to be unfavorable
3 to him. Thereupon, after careful consideration, we,
4 Mr. SUGAWARA, Mr. HASUOKA, and myself, consulted
5 ARAKI himself and he said:

6 Now, if your Honors please, I can quote
7 what General ARAKI told me and told Mr. SUGAWARA.
8 I don't know whether your Honors will consider this as
9 an addition to his affidavit, whether you want it in
10 the summation, whether I might present it now as
11 additional thoughts pertaining to his state of mind,
12 or whether you want ARAKI himself to tell you in these
13 two pages what he told us.

14 THE PRESIDENT: ARAKI had the option under
15 the charter of appearing personally, that is, of defend-
16 ing himself or of defending himself by counsel. He
17 decided to employ counsel. You are the counsel. You
18 must put his case. He cannot now come to the lectern
19 or even remain in the dock and address us.

20 MR. McMANUS: May I continue, your Honor?

21 THE PRESIDENT: Yes. We are going on to what
22 page now?

23 MR. McMANUS: If your Honor pleases, I just
24 finished 389, and I should like to state in conclusion
25 what ARAKI said to us, even though it might not

1 specifically refer to any particular document in the
2 record. Put it is the conclusion and it is argument,
3 and if permitted I should like to say it so that the
4 Court can determine his ideas or they can disregard
5 them, as they please. I ask the Court to please permit
6 me to continue reading.

7 THE PRESIDENT: Your summation, like every
8 other summation, must be confined to submissions of
9 law and submissions of fact supported by evidence.
10 Permission is refused.

11 MR. McMANUS: If your Honors please, I under-
12 stand the point is --

13 THE PRESIDENT: The Court is unanimous on
14 that, Mr. McManus. I consulted them this morning.
15 They are unanimous.

16 MR. McMANUS: If your Honors please, I shall
17 omit the conversation had with ARAKE, but nevertheless
18 I must take issue with the Court on this point, and I
19 ask your Honors to bear with me. In summation some
20 leeway should be given for argument, for analysis, so
21 that possibly your Honors can at least take one view
22 or another, not a set view.

23 THE PRESIDENT: This is not law and it is not
24 argument on facts, and it is not a statement of fact
25 based on evidence. It is beyond what a summation should

be and therefore you cannot read it.

1 MR. McMANUS: I shall proceed, then, to
2 page 392, if your Honors please.

3 THE PRESIDENT: It is pointed out to me that
4 at least two Judges think you might read it. I was
5 wrong in saying we were unanimous. That is the im-
6 pression I formed when I consulted my colleagues --
7 that we were unanimous. At least nine Judges are
8 against you.
9

10 MR. McMANUS: Well, in view of the disposition
11 of the Court, I shall proceed to page 392.

12 We pray that the Tribunal will accurately
13 understand the intrinsic value of Japanese culture
14 which the accused ARAKI is staking his life to have
15 understood and appreciated without confusing the
16 essence of the peaceful past history of the Japanese
17 people and the result of the late war, and with such
18 understanding pass upon the case of this accused.

19 310. ARAKI often used the expression sekai-
20 teki Nippon, which means "Japan on a world standard."
21 This is an expression which is the exact opposite of
22 Nippon-teki sekai, which means "World on a Japanese
23 standard," coined by narrow-minded rightists.

24 THE PRESIDENT: This is not in evidence, as
25 far as I know.

1 MR. McMANUS: ARAKI always urged self-realization on the part of the Japanese people, that cultivation
2 of individual culture and refinement begins
3 with personal struggle and effort and by serving others
4 by one's own sacrifices, that government rested upon
5 respect of the laws of nature, that is, to permit all
6 things to have each its proper and rightful place in
7 the scheme of things, and that this was the spirit of
8 Kodo.
9

10 ARAKI states, paragraph 14 C of his affidavit:¹

11 "I am not a so-called pro-Anglo-Saxon, nor
12 am I, of course, anti-Anglo-Saxon... Moreover, I am
13 of the opinion of obeying His Majesty the Emperor and
14 bringing about peace and welfare upon the basis of the
15 original doctrine of Japan. I believe so and I have prac-
16 tised so. This was not an opinion formed from so-
17 called divine inspiration or from dogmatic ultra-
18 nationalism. On the contrary, I trust that it is a
19 most humane principle agreeable to the world's omni-
20 present natural law."

21 He states further:²

22 "Primarily my views of peace or views of life
23 do not admit of territorial expansion. Amalgamation
24 of a nation which had its own race and history was one
25

1. Ex. 3161, tr. 28,179

2. Tr. 28,188 - 28,189

1 thing I definitely rejected... That was why I objected
2 to the amalgamation of Korea... Such having been my
3 views, I can clearly declare that never in my life
4 have I entertained an idea of aggression, to say
5 nothing of world domination. If I am allowed to ex-
6 press my views, such ambition as territorial ex-
7 pansion is nothing but an infantile glory which is
8 far from permanent glory. With regard to Manchuria.
9 I accepted the post of War Minister when Manchuria
10 was in a turmoil of disturbances. My whole-hearted
11 attention was devoted to nothing but terminating the
12 hostilities."

13 Members of the Tribunal, even among the Jap-
14 anese people there were those who, without knowing the
15 true essence of KODO, distorted the term and used it
16 as meaning aggression. But this is not the fault of
17 this philosophy. Ignorant opportunists truckling
18 with the general trend spoke of it to suit their own
19 convenience and blasphemed against it. Is not the
20 peaceful and humanitarian philosophy in which the
21 accused ARAKI strongly believes something that is
22 immutable and does it not transcend time and place?
23 Is not this a philosophy which would rebuild a peace-
24 ful Japan and contribute to world peace? We fervent-
25 ly request the wise judgment of this Tribunal.

1 One point which I personally deem very
2 necessary to call to this Tribunal's attention is a
3 question put to the accused ARAKI while he was on the
4 witness stand. With all due respect to this Court and
5 with the knowledge it is doing its utmost to be emin-
6 ently fair, it is my contention that the following
7 question was a grave mistake and might very well lead
8 to a serious miscarriage of justice.

9 Question: "Were you arrested for espionage
10 in middle Asia in April, 1912, by the Russian Secret
11 Service Agents?"

12 Of course the accused ARAKI's answer was:
13 "I was not ¹ arrested."

14 In any important trial where a man's life
15 is at stake if such a question is put to an accused
16 by a prosecutor and the accused's answer is "No," the
17 prosecutor at some time during that trial must offer
18 some evidence to justify himself for putting such a
19 question to the accused. If he does not do so, this
20 particular point will be held against him and the
21 judge himself must give these instructions to a jury,
22 as such a question is an inflammatory one and would
23 very easily sway that jury against that accused.
24

25 Now, as the Tribunal is acting in a dual
capacity as judge and jury, I see no reason why this

1 matter should not be called to the Tribunal's atten-
2 tion at this time.

3 As the accused's answer was "No," the matter
4 was dropped immediately; nevertheless, the inference
5 on the record still remains as a detrimental one
6 towards this accused.

7 If, of course, the answer was "Yes," as it
8 very well appears that this might have been the gamble
9 that the questioner was depending upon, then the
10 Tribunal could very well have continued its question-
11 ing concerning such an episode. But as the answer
12 was "No," it is not sufficient to say, "Let us drop
13 it. Let us forget about it." We insist that this
14 matter should be carefully considered by this Tribunal
15 so as to determine whether or not it was an endeavor
16 to create an unfavorable inference.

17 Furthermore, in asking this question, the
18 Court stated: "They relate to a period before that
19 covered by the Indictment, but it is claimed they go
20 to the character of the witness."¹

21 When the witness answered "No" and the Court
22 upon returning from recess stated: "The question and
23 answer or part answer thereto put to this witness just
24 before we adjourned will not be considered..."² it
25 nevertheless continued with another question, to wit:

1. Tr. 28,419
2. Tr. 28,420

"Do you know anything about the Japanese plan Otsu?"

1 Nor, as the Court just before asking these
2 questions used the plural, we must assume that the
3 letter question was also asked for the same purpose,
4 i.e., to find out about the character of the witness.

5 It is now our contention that at this stage
6 the Court itself opened the door into the character
7 of ARAKI and that the Court erred in its refusal to
8 accept character evidence for this accused.

9 We beseech the Tribunal at this time to recti-
10 fy this alleged mistake and to graciously reconsider
11 the defense documents of Major General F. S. G. Piggott,
12 Sir Francis D. Lindley, and Malcolm D. Kennedy, ¹ attached
13 as an appendix to this summation, in the interest of
14 a fair and just trial for this accused.

15 Now, if your Honors further please, from the
16 foregoing it is quite evident that the prosecution
17 contends that because the accused ARAKI just happened
18 to be a general in the army it goes without saying
19 that he must have been belligerent, aggressive, har-
20 boring ideas of world domination, and furthermore,
21 ardently in love with the intricacies of warfare, and
22 must have been a supreme advocate of war itself. The

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24
25 1. Def. doc. 573, def. doc. 340; def. doc. 573-B,
340-B; def. doc. 339; def. doc. 356; def. doc. 638

1 prosecution would very much like this Tribunal to be-
2 lieve this fantastic conclusion.

3 I am sure that the Court as a whole has come
4 to the conclusion that ARAKI in his speeches and writ-
5 ings was one who advocated Kodo, the Imperial Way,
6 spiritual and moral theories. Nevertheless, I ask the
7 Court this question: Is it inconceivable to believe
8 that because ARAKI was a general in the Japanese Army
9 he could not abhor war, aggression, belligerence,
10 extra-territorial ambitions, personal ambition and
11 confine himself to the spiritual and moral aspect of
12 the people of a nation? Well, just perchance, if it
13 is inconceivable, let us for the sake of argument alone
14 take possibly someone who might be presently in the
15 same high position as ARAKI was in 1931 and 1932.
16 Suppose for the sake of this argument we take the
17 Supreme Commander himself, General MacArthur. Let us
18 look back a few years to see what he had to say as a
19 general in the army about the ideas of military men
20 and his conception of their ideas and particularly
21 his own about war.

22 THE PRESIDENT: This is not in evidence.

23 MR. McMANUS: It is argument, your Honor.
24 It is an analogy.

25 THE PRESIDENT: No, it is not.

1 MR. McMANUS: And in so far as your Honors are
2 not only Judges but jurors also, and you must decide
3 the fate of these men --

4 THE PRESIDENT: We are bound by the evidence
5 as jurors. We excluded this type of thing in the case
6 of the accused TOJO during the evidence for him. At
7 least Mr. Blewett endeavored to get in something of
8 this kind and the Court disallowed it.

9 MR. McMANUS: Well, if your Honors please,
10 I can't say anything other than that it is argument
11 and I ask your Honors to take it. I ask you to per-
12 mit it to be used for the purpose of determining --
13 It is argument and you can disregard it if you wish.
14 It is an apology. After all, the man in the dock should
15 be judged by a jury of their peers and not, as your
16 Honor possibly says, as judges only.

17 THE PRESIDENT: "Peers" is not the appropriate
18 word in the circumstances. You are trying to get in
19 statements of fact that are not evidence. You know
20 it is wrong, and yet you are persisting.

21 MR. McMANUS: Well, if your Honors feel that
22 way, I shall omit any such statements. I only made
23 such an attempt thinking I would be granted some lee-
24 way in my conclusion. I shall continue from page 400,
25 if your Honors please:

1 Now, in conclusion, if your Honors please,
2 I am sure that every one of you members of this
3 Tribunal understand that my sole purpose in coming
4 to Japan was certainly not to free an archcriminal.
5 Frankly speaking, if that were so I can assure every
6 one of you that I would not be here and I hope and
7 know that you believe me. My purpose in defending
8 General ARAKI is not only to present the facts but to
9 do it in a fair and square manner which I think and
10 hope that I have done. Your Honors have said on many
11 occasions that you are not jurors but judges, never-
12 theless, as I dared to point out to this Tribunal on
13 one occasion that your Honors are acting in a dual
14 capacity of judges and jurors. I still know and am
15 of that opinion that your Honors and your Honors
16 alone are the men to decide the fate of these accused.
17

18 Now, for the moment, considering your Honors
19 as the jurors, my job is finished. The responsibility
20 that I had during the course of this trial now shifts
21 from me to you. I know from my experience here during
22 the past two years that this Court will do everything
23 in its power to be eminently fair. I only ask you to
24 consider the evidence very carefully which, of course,
25 I know you all will do, and further, in view of my
personal experiences in this Tribunal, I know that

1 wherever there is the slightest doubt as to the guilt
2 of the accused ARAKI, you will give him the benefit
3 of that doubt.

4 It is my contention that ARAKI is innocent.
5 I hope and pray that your Honors will come to the
6 same conclusion.

7 I humbly ask your Honors to return this man
8 who, in the waning years of his life, has spent these
9 past several years in prison, to the society to which
10 he rightfully belongs, and I sincerely beg your Honors
11 to acquit him.

12 THE PRESIDENT: You have some appendices,
13 Mr. McManus. What do you propose to do with them?

14 MR. McMANUS: I beg your Honor's pardon?

15 THE PRESIDENT: You have a number of appen-
16 dices here.

17 MR. McMANUS: If your Honor please, I laid
18 the foundation for your Honors to please read those
19 documents. I do not intend to read them. They are
20 rejected documents. There are four or five rejected
21 documents. I laid the foundation. It is your Honors'
22 choice whether you care to read them or not.

23 THE PRESIDENT: They will not be included
24 in the transcript.

25 Mr. Caudle.

1 MR. CAUDLE: Mr. President, with the permission
2 of the Tribunal I will proceed in presenting the sum-
3 mation of the accused SHIRATORI.

4 Division I - GENERAL.

5 The defendant SHIRATORI is indicted on Counts
6 1-17, 27-32, 34 and 44; that is to say, he is indicted
7 only on counts common to all the accused in the present
8 case. It may, therefore, be said that the gravamen of
9 the charge against him is his alleged involvement in
10 a conspiracy or conspiracies which the prosecution
11 contends existed during the period from January 1,
12 1928 to September 2, 1945. Relying upon all the evi-
13 dence adduced, and arguments advanced by the defense
14 in the general phase, we have refrained from any legal
15 argumentation for SHIRATORI in this regard, for such
16 an effort would, after all, be of little avail if, in
17 spite of all that the defense counsel have said and
18 done in the general phase, the theory of conspiracy
19 in all the implications read into it by the prosecu-
20 tion were to be adopted in this trial. It would
21 suffice to submit respectfully that granting there
22 had existed some kind of a common plan among some
23 persons at some stages during the period specified in
24 the Indictment, the proofs produced not only by the
25 defense but by the prosecution, go to show the absence

1 on the part of SHIRATORI of any criminal intent, a
2 factor which may be regarded as essential in any legal
3 conception of conspiracy.

4 Since it seems that in charging SHIRATORI
5 with conspiracy, the prosecution attach special impor-
6 tance to Count 5,¹ we have endeavored to try and
7 exculpate him more in detail on this than on Counts
8 1-4. In Counts 6-17, SHIRATORI is charged with plan-
9 ning and preparing a war of aggression, etc., against
10 the prosecuting countries, while Counts 27-32 and 34
11 accuse him of waging such a war against those nations.
12 Apart from the question of conspiracy, we have tried
13 to counter these charges mainly by producing evidence
14 of the nature and character of the positions he held
15 under the Government all that period.

16 The prosecution state in their summation of
17 SHIRATORI's case (UU-18) that "either by reason of
18 misapprehension of the Indictment or because of the
19 absence of any exculpatory evidence," SHIRATORI's
20 defense attempted in general to plead the private
21 character of his conspiratorial acts, but that
22 SHIRATORI was not indicted as Minister to Sweden or
23 as Ambassador to Italy or as Foreign Office Advisor
24 or in any other official capacity." (UU-18). We have,
25 1. Tr. 16924.

1 of course, no quarrel with the prosecution's conten-
2 tion that SHIRATORI stands indicted as an individual
3 charged with certain enumerated crimes and must answer
4 for his actions as an individual." (UU-18) We would
5 like to submit, however, that in determining the
6 criminality of any actions by an individual, it is
7 of vital importance first to consider the harm done
8 or the evil effect brought about by such action, and
9 that in this respect it makes all the difference in
10 the world whether anything said or done by an individual
11 was official or unofficial in character, or whether he
12 was then acting in his official or unofficial capacity.
13 And further in this regard, if no difference existed
14 between the statements of a person acting in an official
15 capacity and those of a person acting as an individual,
16 then every editorial writer on papers in all democ-
17 racies would be subject to indictment on a similar
18 charge. One of the most notable bulwarks of all
19 democracies is the freedom of expression and we con-
20 tend that SHIRATORI, as an individual, certainly had
21 that right.
22

23 In this connection, we desire to refer to
24 Appendix E of the Indictment, which says: "The state-
25 ments hereafter set forth following the name of each
individual defendant constitute matters upon which

1 the prosecution will rely inter alia as establishing
2 the individual responsibility of the defendants,"
3 and that it is mentioned under SHIRATORI's name that
4 he was, between 1928 and 1945: Chief of the Informa-
5 tion Bureau (1930); Minister to Sweden, etc. (1936);
6 Ambassador to Italy (1939); Advisor, Foreign Office
7 (1940); Director I.R.A.P.S. (1943); author of an
8 article in "Contemporary Japan" pointing out the
9 necessity of a world conflict to establish the "New
10 Order in Asia" (April 16, 1941). For reasons best
11 known to themselves, the prosecution did not produce
12 in evidence the magazine article here cited.

13 If the Tribunal please, I learned from
14 Mr. Sandusky that they did include it in another
15 group of articles. I just learned that; but it was
16 not introduced in the same manner referred to in the
17 Indictment.

18 In view of the above, it was but natural that
19 the defense for SHIRATORI should have concentrated on
20 these positions held by him on which the prosecution
21 said they would mainly rely in fixing SHIRATORI's
22 responsibility. They now come out, however, with a
23 new theory and try to assess the responsibility of
24 each individual according to the position he occupied
25 or the part he played in the formulation or adoption

of policies by the Japanese Government. (K-5)

1 Whether the Tribunal will be pleased to accept this
2 thesis or otherwise, we are satisfied that in effect
3 this new definition would make little difference in
4 so far as the proofs tendered and arguments set
5 forth by SHIRATORI's defense are concerned. None of
6 the positions he held during the period of the Indict-
7 ment carried with it any policy-making authority.
8 That point seems to be admitted by the prosecution
9 both in their general and SHIRATORI summations. They
10 state in the general summation (K-4) that: "OSHIMA
11 and SHIRATORI have not been charged with any aggres-
12 sive acts committed or statements made prior to the
13 time they became formulators of national policy."
14 They further make it clear (K-5) that SHIRATORI has
15 been charged solely because he ceased to be "conduit
16 and spearheaded the movement to bring Japan into the
17 Axis partnership in crime." (K-4) Thus they place
18 SHIRATORI in what they call the third category of
19 defendants (K-5), whom they define as "those defend-
20 ants who, although they had no duty or responsibility
21 fixed by the law of Japan, have by their acts and
22 statements placed themselves on the policy-making
23 level and are therefore chargeable with responsibility
24 in fact."
25

1 We expect to enter into discussion on this
2 point in detail in later chapters of our summation.
3 Before doing so, we should like to dwell upon several
4 questions which have important bearings on the con-
5 struction to be placed on the acts and statements
6 cited by the prosecution as reasons for their main
7 charge against SHIRATORI.

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

10 (Whereupon, at 1045, a recess was
11 taken until 1100, after which the proceedings
12 were resumed as follows:)
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1 MARSHAL OF THE COURT: The International
Military Tribunal for the Far East is now resumed.

2 THE PRESIDENT: Mr. Caudle.

3 MR. CAUDLE: I will resume reading at the
4 middle of page 6.

5 1. The prosecution have, both in their
6 rebuttal and summation, persistently attempted to
7 insinuate that SHIRATORI was a favorite of the so-
8 called Military Clique ever since the Manchurian
9 Affair, and that he, in turn, was a friend of theirs
10 and tried to cover up their unlawful activities.
11 Contrary to the prosecution's assertion that he
12 himself admitted "he was in favor with the military,"
13 (UU-6) SHIRATORI's interrogatory at Sugamo clearly
14 shows that he explicitly denied being a friend of
15 the military or a favorite of theirs. If the prosecu-
16 tion had raised this point earlier, we could have made
17 an ample excerpt from the said interrogatory. As it
18 is, we must rest satisfied with submitting that if
19 he had really been a favorite of the military, which
20 the prosecution consider to have been dominant in
21 Japan, SHIRATORI ought certainly to have cut a much
22 more distinguished figure in the latter half of his
23 official career. As shown by SHIRATORI's personal
24 history, (2) up until the Manchurian Incident, his
25

(2. Ex. 125 and Ex. 3575)

1 career as a diplomat was a rather promising one, for
2 he was always assigned first rate posts and his
3 promotion was very rapid until his appointment as
4 Chief of the Information Bureau under Baron SHIDEHARA.
5 The Manchurian Incident and the consequent downfall
6 of the so-called SHIDEHARA diplomacy, however, very
7 adversely affected SHIRATORI's official career and
8 personal life. He was compelled to accept posts he
9 did not like and was often and for long periods
10 placed on the waiting list, which shut him out from
11 all activities in the service of his country except
12 as a private individual, either as a writer, lecturer
13 or commentator. This highest position to which he
14 was ever raised was that of Ambassador to Italy, at
15 best a second rate ambassadorial post in Japan's
16 diplomatic service. He was sometimes mentioned by
17 newspapers as a possible candidate for the Portfolio
18 of Foreign Affairs, but was never once given any
19 ministerial position in any of the numerous cabinets
20 of Japan since 1931. And this was in spite of the
21 prosecution's assertion that besides always enjoying
22 full support of the Army, SHIRATORI had Prince KONOYE
23 as his political patron, a contention which is also
24 based on very meager evidence and is not quite in
25 keeping with reality. The prosecution state (UU-78)

1 that SHIRATORI was raised to the position of Adviser
2 to the Foreign Minister and that this position carried
3 Shin-nin rank, which was the highest in official
4 hierarchy. That is entirely wrong. Though on the
5 waiting list, SHIRATORI was then still an Ambassador
6 of Shin-nin rank, while an Adviser was a Shin-nin
7 Taigu, or a quasi-Shin-nin, so that his appointment
8 to advisership was not a promotion but a demotion, (3)
9 Moreover, the adviser was removable by the Minister
10 at his will and had in any event to resign along with
11 the latter, should such be brought about.

12 2. While stating, as mentioned before (K-4)
13 that SHIRATORI has not been charged for any aggressive
14 acts committed or statements made prior to his appoint-
15 ment as Ambassador to Italy when he volunteered to
16 become a formulator of national policy, the prosecu-
17 tion nevertheless charge that SHIRATORI joined the
18 "conspiracy" at an early date, and in their summation
19 attach a great importance to the charge that SHIRATORI
20 advocated Japan's withdrawal from the League of Nations.
21 On a very flimsy account contained in HARADA Memoirs,
22 which, moreover, was clearly denied by SHIRATORI from
23 the stand, and without the support of any other evi-
24 dence, not so much as hearsay or newspaper reports,
25

(3. Refer to Witness SAITO's testimony,
T. 34,986)

1 the prosecution build a theory all their own and
2 draw serious inferences and conclusions against
3 SHIRATORI. We must respectfully call the Tribunal's
4 attention to the fact that in cross-examining
5 SHIRATORI, the prosecutor did all he could to prevent
6 any explanation or detailed answer, and that he went
7 the length of requesting the Court to intervene and
8 direct the witness to answer only in monosyllables.
9 More especially, in regard to this question of with-
10 drawal from the League, SHIRATORI's offer of explan-
11 ation was rejected so that he had to rest satisfied
12 with a bare denial of having advocated Japan's with-
13 drawal from the League. When the excerpt from HARADA
14 Memoirs was introduced as evidence in rebuttal con-
15 cerning this matter, SHIRATORI was sick in a United
16 States Army hospital, as the record will show, having
17 undergone a throat operation, and could not be contacted
18 by the defense counsel for consultation.

20 3. SHIRATORI's discontent with the official
21 positions allotted him by his superiors ever since the
22 Manchurian Affair was such that he gradually came to
23 assume the role of opposition to each succeeding
24 Government, whether he was in active service or on
25 the waiting list. In his letter to ARITA⁽⁴⁾, if the

(4. Ex. 774-A, read only partly by the
prosecution and defense.)

1 same is to be considered by the Tribunal, we find him
2 criticizing the Foreign Office in bitter terms for
3 its lack of policy and for cowering before the
4 swaggering military. In the article in the magazine
5 (5) Kaiso , the very first he ever contributed to a
6 Japanese journal, he vehemently rebukes not the
7 Japanese people, as the prosecution contend, but the
8 government, for its employment of those threadbare
9 and discredited slogans such as self-defense, wrongs
10 and injustices committed by China, etc., and its
11 failure to give an explanation of the China Affair
12 at once satisfying the conscience of the Japanese
13 people and convincing the outside world at large.

14 SHIRATORI goes even further in expressing
15 his dissatisfaction with the manner in which the Japan-
16 ese Government was attempting to settle the Manchurian
17 and China problems, by saying:

18 "But judging from the past results, only
19 the passive phrase has been applied as in
20 conciliation with all countries. . . The de-
21 nouncement of the Washington Treaty too is with-
22 in the category of passive diplomacy. At least,
23 it cannot be deemed as being a positive diplomacy.
24 One cannot help but entertain doubt as to the
25

(5. Ex. 3596-B, read only in part by the
prosecution.)

1 objective of Japanese diplomacy by the
2 present Foreign Office.

3 "Conciliation is merely a means of
4 diplomacy and is merely technical. If it is
5 a principle, it must be thorough. Have they
6 enough courage to return Manchuria to China,
7 to get reinstated in the League of Nations (5a)
8 and to apologize to the world for the crime?"

9 The prosecution asserted that by opposing
10 his Government in the negotiation for the Tripartite
11 agreement of 1938-39, SHIRATORI voluntarily raised
12 himself to the policy-making level. But it was not
13 the Government's policy itself that he really called
14 in question at that time, but the manner and method
15 they adopted in order to attain their objectives. He
16 time and again told the Government to give up the
17 whole idea of an alliance with the Axis (6), if they
18 could not see their way clear to making concessions
19 in regard to their proposed unilateral reservations.

20 That he criticized both the ABE and YONAI
21 cabinets (7) may well be assumed from his habitual
22 opposition to the powers that be. Though accepting
23 advisorship in the Foreign Office, he was very often

24 (5a. Ex. 774A, p. 9. This part was not read
25 before the Tribunal.

6. Ex. 2234; item (m) of Chapter V of this
summation.

7. Ex. 3838)

1 critical of both MATSUOKA and of the KONOYE Cabinet
2 in general. The interview he gave to the Asahi
3 (8) Shimbun soon after the conclusion of the Tripartite
4 Alliance in September, 1940, shows how independently
5 of his Government he acted and what a detached view
6 of the Alliance he took.

7 That SHIRATORI has tried to show to the
8 Tribunal the personal and individual character of his
9 acts and statements was not for the purpose of denying
10 his responsibility, if any, for them, as the prosecu-
11 tion assert, but was principally because he desired
12 to make it clear that nobody, including his co-defendants
13 in this trial, is to be made to share any liability,
14 if there be such, which we deny, for whatever he did
15 or said.

16 4. Along with Ambassador Ott's telegrams
17 and HARADA Memoirs, SHIRATORI's own writings and
18 speeches form the bulk of the evidence produced against
19 him by the prosecution. We have stated above how
20 SHIRATORI showed a recalcitrant tendency in office
21 and open opposition to the Government when out of
22 office or on the waiting list; how he was neither a
23 favorite nor a friend of the military and how his
24 activities as a writer or speaker such as they were
25

(8) Ex. 2234: this part was not read by the
prosecution.)

1 began so late as the latter part of 1937, which means
2 that all of SHIRATORI's works along this line are
3 products of or largely influenced by that special
4 atmosphere which is witnessed in any country at war.

5 Read against such a background, we submit
6 that the IPS exhibits on this head, numerous as they
7 are, cannot justly lead to any of the conclusions
8 and inferences the prosecution were pleased to draw
9 from them in their summation. In a latter chapter
10 where we deal with some of the items to which the
11 prosecution seem to attach special significance, we
12 shall try and refute their contentions in detail.
13 Here we shall rest satisfied with denying in a general
14 way the prosecution's contention, unsupported by any
15 evidence at all, that SHIRATORI was allotted the role
16 of propagandist for his Government or what they call
17 "The Military Clique" or "Conspirators." They appear
18 to base their allegation for one thing on that part
19 of his public statements where he attempts to justify
20 or apologize for Japan's actions on the continent,
21 and her diplomatic moves. Writing or speaking in public
22 in war time, however, when popular feeling runs high
23 and patriotism or "my country right or wrong" type
24 is apt to become the supreme virtue, who could help
25 trying to justify to the world at large the conduct

and motives of his own country or Government? That
1 SHIRATORI never was looked upon as a propagandist
2 may best be shown by the fact that he was not once
3 appointed or even considered as a candidate to the
4 Presidency of the Government Information Bureau, a
5 ministerial post created before the outbreak of the
6 Pacific war. If SHIRATORI really had been the effective
7 spokesman for the "conspirators" that the prosecution
8 would have the Tribunal believe, it would be difficult
9 to understand why he was not assigned any such role
10 during the Pacific war which they contend represents
11 the culmination of the "conspiracy."

13 5. With respect to SHIRATORI's part in the
14 Pacific war, which we will cover later in full detail,
15 it has been conclusively shown that SHIRATORI became
16 seriously ill in April, 1941, and had no part in the
17 formulation of the plans for, or carrying out this
18 vital issue in any degree whatsoever. Further that,
19 after his resignation as Advisor to the Foreign Office,
20 he never again held a position with the Japanese Govern-
21 ment; and although he was elected to the Diet, he
22 never took any active part in such duties or responsi-
23 bility. Upon his election to the Diet he was also
24 made an ordinary director of the I.R.A.P.S., of which
25 there were a great number -- and not to be confused

1 with a managing director, which was of greater
2 importance and of which there were only a few. It
3 has been clearly shown from the evidence, which we
4 will now discuss before the Tribunal, that SHIRATORI
5 took no part whatsoever in its functions and certainly
6 could not be held liable for any acts he might have
7 committed in such capacity. Moreover, SHIRATORI
8 was relieved of his seat on the directorate after
9 one year and withdrew from the Society itself soon
10 afterwards.

11 Wherefore, the defendant SHIRATORI denies
12 any guilt or responsibility whatsoever for any of
13 the charges against him contained in any of the counts
14 of the indictment. We will now present to the Tribunal
15 a complete resume or summation, with citations, of
16 the evidence submitted by the prosecution and the
17 refutation of same by the said accused, which not only
18 leaves the prosecution in a position where it has
19 failed beyond a reasonable doubt to prove the guilt
20 of the said accused, but, on the other hand, proves
21 his innocence of all charges brought against him.

22 II. MANCHURIAN INCIDENT.

23 The prosecution insisted, "While he (SHIRATORI)
24 is specially concerned with Count 5, we submit that
25 he was in the general conspiracy from the beginning,

1 and responsible under all the counts in which he
2 is charged." (11)

3 The prosecution further stated: "From the
4 31st of October 1930 to the 2nd of June 1933 SHIRATORI
5 was the official spokesman of the Foreign Ministry,
6 and was decorated for his services in the Manchurian
7 Incident." (12) However, at the time of the Manchurian
8 Incident, SHIRATORI was the Chief of the Bureau of
9 Information (13); that is to say, a Section Chief of
10 the Foreign Ministry who is neither a statesman nor
11 a politician, but an official serving under the
12 control and direction of the Foreign Minister. (14)

13 And the prosecution's witness Baron SHIDEHARA
14 testified that during the tenure of his office as
15 Foreign Minister SHIRATORI served as Chief of the
16 Bureau of Information directly under him; that he felt
17 that SHIRATORI definitely and completely fulfilled the
18 duties of his office in line with the peace policy
19 of the WAKATSUKI cabinet, and that SHIRATORI's
20 activities had met with the wholehearted approval of
21 the cabinet and SHIDEHARA himself. (15)

22
23 As to the decoration of SHIRATORI, we
24 respectfully refer to Chapter V of this Summation.

25 (11. T. 16,924
12. T. 16,912

(13. Ex. 3575
14. Ex. 3576, T. 34,831
15. T. 1356)

1 It is true that foreign correspondents chose
2 to refer to SHIRATORI as the "spokesman" of the Foreign
3 Office. However, this is a misnomer, not at all in
4 keeping with the official legal definition of the
5 office and which is moreover misleading as to the
6 relative importance of the Bureau. In the United States
7 Government, for instance, "spokesman" is a name given
8 the Secretary of State or even the United States
9 President himself. (16)

10 The prosecution stated: "Exhibit 179-Q (17)
11 shows him taking part in a discussion as to setting
12 up a new regime in Manchuria." (18)

13 By this statement the impression is given
14 that SHIRATORI made the following statement: "It re-
15 quires prompt solution. In order to reach prompt
16 solution, it will be necessary to create a new regime
17 in Manchuria. If the Central Authorities should give
18 the agitators of the movement a tacit approval to do
19 so, it will facilitate the solution of the problem."
20 However, said exhibit shows explicitly that Mr. HAYASHI
21 made that statement, with which SHIRATORI had nothing
22 to do.
23

24 (16. T. 35,070-71
25 17. T. 1942
18. T. 16,912-13)

1 The prosecution endeavored, by its cross-
2 examination of SHIRATORI (19) to show that he collab-
3 orated and played some part in the Manchurian Incident.
4 The prosecution quoted a passage of its interrogation
5 of SHIRATORI in Sugamo Prison, in order to show that
6 he, as the Chief of the Information Bureau, tried to
7 cover up and pacify the public and make them pleased
8 with what the military had done. (20) But, as shown
9 already, SHIRATORI was only a bureau chief of the For-
10 eign Office, whose main business was nothing more than
11 handing out news items, both good and bad, favorable
12 and unfavorable, to both the domestic and foreign
13 press as well, from day to day, and publishing state-
14 ments and declarations by the government concerning
15 foreign affairs, under the control and direction of
16 the Foreign Minister. (21) SHIRATORI did, at the in-
17 struction of the Foreign Minister, all he could in
18 his attempt at mobilizing the public opinion in favor
19 of a peaceful adjustment of the Manchurian Affair. (22)
20 And the prosecution's witness, Baron SHIDEHARA, testi-
21 fied very favorably to SHIRATORI, as aforesaid. (23)
22

23 The prosecution endeavored to show that

- 24 (19) T. 35,064-085
25 (20) T. 35,066-67
(21) T. 35,031-078
(22) T. 35,030
(23) T. 35,071-75 and 35,137-39

1 SHIRATORI took part in drafting the Japanese reply to
2 the Lytton Report, which was a detailed justification
3 of Japanese action in Manchuria. (24) But SHIRATORI's
4 work was mainly to put into Japanese the draft reply
5 prepared in English by Dr. Baty, an Englishman and an
6 advisor to the Foreign Office. (25)

7 All the other efforts of the prosecution to
8 testify by its cross-examination SHIRATORI's collabora-
9 tion in the Manchurian Incident brought about no re-
10 sults.

11 The prosecution tendered in rebuttal excerpts
12 from HAHADA Memoirs in evidence in order to show cer-
13 tain activities of SHIRATORI during the Manchurian
14 Incident.

15 (a) Exhibit No. 3763-A (26): This is an
16 excerpt from HAHADA Memoirs under date of 3 May 1932,
17 the gist of which was that SHIRATORI, along with many
18 others in the Foreign Office, advocated the withdrawal
19 of Japan from the League of Nations; that in view of
20 past Japanese action in Manchuria since September 18
21 she could not, that is to say, in good conscience,
22 remain in the League; further, that the small nations,
23 who were without sufficient information, were not the
24

25 (24) T. 35,082-083
(25) T. 35,144
(26) T. 37,604-05

1 the proper ones to judge Japanese actions and that
2 it would be better to deal direct with America, Bri-
3 tain and France. Further, that the statement was evi-
4 dently made to the Chief Cabinet Secretary MORI, who
5 evidently was sympathetic to the idea and recommended
6 such action to the Premier.

7 The prosecution insisted in rebuttal that this
8 document was offered to contradict SHIRATOHI's denial
9 on cross-examination (26-a) that he advocated Japan's
10 withdrawal from the League of Nations, and his further
11 denial (26-b), that he ever stated his views on this
12 subject, as recorded by HARADA. (26-c)

13 Now, HARADA does not show from whom, when and
14 under what circumstances he got the above-mentioned
15 information. It is quite clear that this is nothing
16 but a prefabrication made up by HARADA as conclusion
17 on the basis of information he has received from var-
18 ious unknown sources. The passage in quotation marks
19 above, beginning with - "Japan is unable to remain in
20 the League" and ending with "It is quite improper to
21 remain in the League", is not at all an aggressive
22 opinion, even if true, as it advocated negotiations
23 direct with England, France and the United States to

25 (26-a) T. 35,081
(26-b) T. 35,082
(26-c) T. 37,601

1 obtain their understanding about the Manchurian ques-
2 tion. Judging from the general style of recording the
3 passage, it could not be a direct quotation of SHIRA-
4 TORI's talk, and further, SHIRATORI denied it. The last
5 sentence - "He must have aroused Chief Cabinet Secre-
6 tary MOKI's sympathy," was an opinion of HARADA; and
7 the author of the statement - "MORI went directly to
8 the Premier and urged withdrawal from the League,"
9 is not mentioned.

10 The withdrawal of Japan from the League of
11 Nations on 27 March 1933 was, of course, decided by
12 the cabinet and sanctioned by the Emperor on the ad-
13 vice of the Privy Council (26-d). Even if we presume
14 that SHIRATORI really had a talk with MORI and the lat-
15 ter urged the Premier to withdraw from the League,
16 about at the end of April or early in May 1932, it
17 will be very difficult to conclude that that influenced
18 in any way the most important decision of the Japanese
19 Government to withdraw from the League in March 1933,
20 nearly a year later.

21 Moreover, SHIRATORI was the Chief of the In-
22 formation Bureau of the Foreign Office during this
23 period and served under the control and direction of
24 (26-d) Ex. 271, Minutes of the Privy Council con-
25 cerning termination of cooperative relations
between Japanese Empire and various organs of
League of Nations, T. 3,641-52

1 the Foreign Minister. How could he decisively influ-
2 ence any important foreign policy of the government?

3 Furthermore, SHIRATORI replied, during his
4 cross-examination, to a question by the prosecution
5 relying on the above-mentioned excerpt from HARADA
6 Memoirs, as follows:

7 "If you want me to explain, I shall do so,
8 but as to whether or not I advocated such a
9 withdrawal (from the League of Nations), I
10 did not advocate it." (26-e)

11 However, the prosecution did not permit him to explain.
12 And SHIRATORI, in a U. S. Army Hospital due to illness,
13 necessitating a throat operation, was not able to attend
14 court and could not make any explanation about the
15 matter in surrebuttal. Under such circumstances, the
16 real story might, if clarified, have been entirely dif-
17 ferent from that written by HARADA in his Memoirs.

18 In short, the defense for SHIRATORI respect-
19 fully insist that exhibit No. 3763-4 is false, and
20 worthy of no consideration by the Tribunal.

21 (b) Exhibit No. 3764-A (26-f); This is an
22 excerpt from HARADA Memoirs under date of 12 September
23 1932, the gist of which was that HARADA made a visit to
24 SHIRATORI at the Foreign Office, at which time SHIRATORI

25 (26-e) T. 35,081
(26-f) T. 37,606-07

1 suggested the appointment of General ARAKI as Premier,
2 due to the fact that under the then cabinet the exchange
3 rate had dropped considerably; that this was brought
4 about by influence from the Military which caused the
5 government to move to the right after announcing for-
6 eign policies are to be to the left; further, that such
7 confusion was harmful to the country's reputation and
8 that the only solution was to form a strong government
9 which would follow a direct course - to all of which
10 HARADA replied in the negative, stating that the Mili-
11 tary should be kept in the background and that most of
12 the trouble was caused by lack of diplomacy.

13 The prosecution insisted, in rebuttal, that
14 this document was offered to contradict SHIRATORI's
15 denial (26-g) that he ever suggested to HARADA that
16 ARAKI be made Premier, or that he ever expressed an
17 opinion favoring such appointment. (26-h)

18 Even if we presume some credibility in the
19 aforementioned HARADA's story, it must be concluded
20 that SHIRATORI himself did not belong to any group of
21 militarists, but that he only suggested to HARADA that
22 ARAKI be made Premier, in order to be able to stabilize
23 the Japanese foreign policy and thereby also the Japan-
24 ese exchange rate. Apparently SAIONJI, the Cabinet-

(26-g) T. 35,083-84

(26-h) T. 37,605

1 maker, was not influenced by SHIRATORI's suggestion, if
2 such was ever made, and we deny that it was, in any
3 way whatsoever, and at any rate, ARAKI did not become
4 Premier.

5 At that time HARADA was the main furnisher of
6 information for Prince SAIONJI, the Cabinet-maker of
7 Japan. However, SHIRATORI was only a bureau chief of
8 the Foreign Ministry, who was neither a statesman nor
9 a politician, but an official serving under the control
10 and direction of the Foreign Minister, and had, of
11 course, nothing to do with the domestic politics.
12 Therefore, SHIRATORI's opinion on a matter of the above-
13 mentioned sort, if ever expressed and we deny that it
14 was, could not be anything more than that of a layman.
15 Although HARADA recorded in his Memoirs such a talk with
16 SHIRATORI, we cannot appraise very highly the value
17 of the entire HARADA Memoirs, as will be later pointed
18 out.

19 SHIRATORI denied categorically the aforesaid
20 story recorded by HARADA. In his cross-examination he
21 replied to a question put by the prosecution, as fol-
22 lows:
23

24 "Not only did I never express such views
25 to others, but I, myself, never even harbored
such thoughts." (26-1)

(26-1) T. 35,084

1 Therefore, HARADA must have committed some grave mis-
2 takes in recording the above-mentioned entry of his
3 Memoirs.

4 In sum, we respectfully insist that exhibit
5 No. 3764-A is a prefabrication without basis of fact,
6 and is unworthy of consideration by the Tribunal.

7 (c) Exhibit No. 3773-A (26-j): This is an
8 excerpt from HARADA Memcirs under date of 14 May 1933,
9 and contains the passage to the following effect:
10 Vice Minister ARITA came over to HARADA's place after
11 9:00 p.m. and made a statement to the following effect:
12 With the permission of the Minister, a plan was made
13 to change personnel, sending SHIRATORI, Chief of the
14 Information Bureau, abroad and TANI, Chief of the Asia
15 Bureau, to Manchukuo as a Councillor. ARITA submitted
16 the plan to the Foreign Minister UCHIDA, who said to
17 SHIRATORI: "I want you to go abroad either as a Minis-
18 ter or a Councillor," and SHIRATORI stated: "I will
19 give it consideration, but what do you think about
20 sending the Vice Minister abroad also?" Long before
21 that, when SHIRATORI was approached on the same subject,
22 he strongly objected by stating: "If I should be sent
23 out, there is no telling as to what may happen."
24

25 (26-j) T. 37,641-43

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1 Consequently, UCHIDA was finally placed at
2 a complete loss and said to ARITA: "Since SHIRATORI
3 states that if I send you abroad he will go, I want
4 you to go out as Ambassador to Great Britain or to any
5 other country you prefer. If you accept this proposi-
6 tion, the matter will be settled amicably." ARITA
7 thought that if UCHIDA was going to take the stand
8 that in a quarrel both parties were to blame, it was
9 utterly useless for him to give UCHIDA his support,
10 and that it would be best for him to resign before
11 such a decision was reached. On the other hand, when
12 ARITA's resignation became a reality, SHIRATORI seemed
13 to feel that he had to resign also. However, as the
14 result of conferences with SUZUKI of the army,
15 SHIRATORI finally said: "I shall accept the post of
16 Minister to a foreign country, provided that there
17 will be no change in policy." On the next day he
18 made his said intention known to UCHIDA, who was over-
19 joyed at the action of SHIRATORI. UCHIDA seemed to
20 have been especially pleased when SHIRATORI advised
21 him: "Please, in any case, retain the Chief of the
22 Asia Bureau, since he is a very important figure in
23 connection with Chinese problems."
24

25 The prosecution stated that this document
was offered to contradict SHIRATORI's denial on

1 cross-examination (26-k) that he had attempted to
2 bargain with Foreign Minister UCHIDA concerning his
3 transfer; his further denial (26-k) that he had
4 offered to accept a post abroad if Vice-Foreign
5 Minister ARITA were also to be sent out of the
6 Foreign Office; and to contradict a third denial
7 (26-l) that he had finally consented to go abroad
8 as Minister provided there would be no change in
9 the policy of the Foreign Office (26-n).

10 Now, from the general form of the recording
11 of the exhibit, it appears that ARITA's visit to
12 HARADA was some time after 9 o'clock on the 14th
13 day of May 1933. In the conversation set forth in
14 the first part of said exhibit, it states that at
15 that time ARITA was the Vice-Foreign Minister, etc.
16 (T. 37641-43). However, the last part of the exhibit
17 (T. 37643) with no new date line, and presumably
18 pertaining to a conversation with ARITA on the same
19 night, refers to the resignation of the Vice-Minister
20 (ARITA), which goes to conflict in its entirety.
21 Further, HARADA recorded in the exhibit several
22 direct quotations of the conversations between the
23

24 26-k. T. 35084.
25 26-l. T. 35085.
26-m. T. 37640.

1 Foreign Minister UCHIDA and SHIRATORI. These are,
2 of course, nothing more than hearsay. Moreover,
3 HARADA did not show who was the bearer of the follow-
4 ing two direct quotations of SHIRATORI's talks:

5 1). "If I should be sent out, there is
6 no telling as to what may happen." (26-n).

7 2) "I shall accept the post of Minister to
8 a foreign country provided that there will be no
9 change in policy." (26-o).

10 Furthermore, we respectfully call the atten-
11 tion of the court to the following facts:

12 1) As the witness SAITO testified, the
13 Vice-Foreign Minister has control over the personnel
14 affairs of the Foreign Office (26-p). He arranges
15 the change of personnel, and, in case it concerned
16 higher officials, it will usually be communicated in
17 advance to the persons concerned, who will then have
18 occasion to express their personal wishes in regard
19 to the planned change. The final decision lies, of
20 course, in the hands of the Foreign Minister.

21 2) To the question of the prosecution on
22 cross-examination:

23
24 26-n. T. 37642.
25 26-o. T. 37643.
26-p. Ex. 2588, T: 34962.

1 "When ARITA refused to go to England and
2 resigned instead, did you not consent to go abroad
3 as Minister, provided the policy of the Foreign
4 Office not be changed?"

5 SHIRATORI replied as follows:

6 "It is out of the question for bureau
7 chiefs or ministers to make such unwarranted demands,
8 and I have never done such a thing."

9 As SHIRATORI was at that time Chief of the
10 Information Bureau, with only such duties and re-
11 straints as heretofore set forth, his answer must
12 be true. In this respect we would like to refer to
13 the testimony of KADOWAKI to the effect that the
14 Foreign Minister TOGO dismissed four radical
15 diplomats; to wit, one Ambassador, two section chiefs
16 and one junior secretary (25-q).

17 3) With respect to an alleged personal
18 controversy between SHIRATORI and ARITA, as reported
19 by HARADA, SHIRATORI testified also on his cross-
20 examination that at that time there might have been
21 rumors that ARITA and he had quarreled, but that this
22 was absolutely not true (26-r). However, if HARADA's
23 statement as regards the enmity of SHIRATORI and
24 ARITA is taken on its face value, it would strongly
25 26-q. Ex. 3626, T. 35519. 26-r. T. 35084.

1 indicate the absence of a conspiracy and would show
2 much dissent in the Foreign Office at that time.

3 It must therefore be concluded from the above
4 that HARADA's story in exhibit No. 3773-A, in case we
5 presume it contain some truth, must be one made up,
6 strongly distorting the real facts, and accordingly,
7 it has only a very limited probative value. Moreover,
8 it is quite clear that such incident in the Foreign
9 Office cannot have anything to do with the indictment
10 for conspiracy, but controverts the same, as aforesaid.

11 In short, there is no substantial evidence
12 to show that SHIRATORI participated in any conspiracy
13 relative to the Manchurian Incident, in the event it
14 is assumed that such a conspiracy existed. Therefore,
15 the prosecution's insistence that SHIRATORI was in the
16 general conspiracy from the beginning (26- s), is not
17 true, as further borne out by the prosecution's asser-
18 tions in paragraph K-4 of their general summation,
19 heretofore referred to in Chapter I, General, of this
20 summation.

21 In summing up the contentions of the prosecu-
22 tion with respect to SHIRATORI's activities as pertain
23 to the Manchurian Incident, it can be justly said that
24 in the absence of the wholly undependable HARADA Memoirs,
25 26-s. T. 16924.

1 there is no evidence connecting SHIRATORI with this
2 matter. On the other hand, the evidence from the
3 prosecution's own witness Baron SHIDEHARA, the then
4 Foreign Minister, who testified as hereinabove stated,
5 to the effect that SHIRATORI was cooperative with his
6 policy in trying to settle the incident and bring
7 about the peaceful solution thereof, not only refutes
8 HARADA, but is certainly more worthy of belief. In
9 view of this fact, the prosecution's assertions must
10 be deemed to be only assumptions, presumptions and
11 conclusions, based upon the so-called Memoirs of a
12 sick and wholly unreliable person. In this regard
13 we respectfully refer to the summation prepared for the
14 accused KIDO wherein this subject is treated at
15 length at pages -- if it please the Tribunal, at that
16 time I understood Mr. Logan was to present Mr. KIDO's
17 summation prior to me, and I was going to insert the
18 record pages; and I would like permission to insert
19 them after Mr. Logan presents the summation.
20

21 III.

22 SHIRATORI and the USSR.

23 The prosecution state: "On the 4th of
24 November, 1935, SHIRATORI advised ARITA by letter
25 that the threat of future calamity should be removed
while Russia was comparatively impotent. He advocated

1 war if that appeared inevitable in order to shut
2 Russia out completely from advancing into East Asia." 27.

3 In the "Statement of Official Procurement"
4 attached to IPS document No. 2419, it is stated that
5 the said document was obtained from the Japanese Govern-
6 ment.

7 Now, it was clearly shown by the testimony
8 of the witness YATSUGI, Kazuo (28) and by the state-
9 ment of prosecutor Higgins (29), that the Society for
10 the Study of National Policy (Kokusaku Kenkyu-Kai) -
11 this title has also been translated as "National
12 Policy Research Institute" - was a purely private
13 organization, and it was neither an organ of the
14 government nor a part of it. YATSUGI testified also
15 that he had never been an official of the Japanese
16 Government (30); that IPS exhibit 774-A was the copies
17 made by him from copies of SHIRATORI's private letters
18 to ARITA and was confiscated from him by IPS; that he
19 borrowed the said other copies from ARITA and that he
20 had never seen the original of these letters (31).

21 Therefore, the aforesaid "Statement of Official
22

23 27. T. 16925; refer also to Ex. 774-A (IPS doc. 2419-A),
T. 7884.

24 28. T. pp. 7374-78 and 34834.

25 29. T. 11394.

30. T. 34837.

31. T. 34834-35.

1 Procurement" of the prosecution cannot be true, and
2 the document should be stricken from the record. It
3 must also be said that it is not sure whether these
4 "copies of copies" quite conformed to the original
5 (32).

6 On the 12th and 14th of August, on the 24th
7 of September and on the 1st of December, 1947, impor-
8 tant language corrections were made by the Language
9 Arbitration Board with regard to the British trans-
10 lation of exhibit No. 774-A.

11 Exhibit 774-A was read partly by the prose-
12 cution (33) before, and partly by the defense (34)
13 after the correction.

14 If we assume that exhibit 774-A generally
15 conforms to the original letters, then the document
16 speaks very clearly for the following facts: (a)
17 that they were private letters, pure and simple, and
18 are to be clearly distinguished from official documents
19 sent from subordinates to superiors (35); or semi-
20 official documents exchanged between colleagues;
21 (b) that the letters (dated 4th of November and 12th
22 of November, 1935) were written shortly after the
23

24 32. Refer also to T. 7879-82.

25 33. T. 7884-87.

34. T. 34838-44.

35. Refer to T. 34838-40.

1 Seventh Congress of the Communist International in
2 Moscow brought out in August, 1935, a resolution to
3 the effect that Japan and Germany were its primary
4 enemies (36); (c) that SHIRATORI's suggestion was not
5 unreasonably to force a war against the USSR, but to
6 negotiate with her with determination, not refusing
7 even war if it is inevitable, in order to shut her
8 out from advancing into East Asia and thus to remove
9 future calamity when she was comparatively impotent
10 (37); (d) that SHIRATORI was of the opinion that
11 there was no need for Japan to make any specific
12 understanding with Germany as the two nations were in
13 the same boat vis-a-vis Russia (38); (e) that SHIRA-
14 TORI's views in regard to China, England, and the
15 United States of America, etc., were very reasonable,
16 fair and just (39); and (f) that he deplored the
17 decision of his government for the denouncement of
18 the Washington Naval Treaty as a passive diplomacy
19 (in stating as follows (39-a)):
20

21 "But judging from the past results, only
22 the passive phrase has been applied as in concilia-
23 tion with all countries. . . The denouncement of the

24 36. T. 33987.

38. T. 34842-43.

37. T. 34842.

39. T. 34840-44.

25 39-a. Ex. 774-A, p. 9. This part was not
read before the Tribunal.

1 Washington Treaty too is within the category of
2 passive diplomacy. At least, it cannot be deemed as
3 being a positive diplomacy. One cannot help but
4 entertain doubt as to the objective of Japanese diplom-
5 acy by the present Foreign Office.

6 "Conciliation is merely a means of diplomacy
7 and is merely technical. If it is a principle, it
8 must be thorough. Have they enough courage to return
9 Manchuria to China, to get reinstated in the League
10 of Nations and to apologize to the world for the
11 crime?"

12 We would like to call the attention of the
13 Court to the fact that, when the two letters were
14 sent, SHIRATORI was Japanese Minister to Sweden (40),
15 and that ARITA was Ambassador to Belgium, from where
16 he was transferred to China (41), that is to say,
17 ARITA did not yet become Foreign Minister at that
18 time; that, therefore, the prosecution's use of the
19 expression "SHIRATORI advised ARITA, etc." is quite
20 misleading as the latter was not in position to put
21 into execution SHIRATORI's suggestions in this matter.

22 It must also be pointed out that SHIRATORI,
23 in one of the letters explicitly states that it was
24

25 40. Ex. 3575.
41. T. 34845.

1 meant for ARITA personally and that no copy was
2 made by himself. It is very patent from the general
3 context that SHIRATORI's main object in writing this
4 letter was to impress upon ARITA, Ambassador desig-
5 nate to China, the urgent necessity of checking the
6 North China machinations by the military and of
7 stopping all southward advance beyond the Great Wall;
8 and that he expressed his idea that the best way to
9 attain that object was to emphasize the menace from
10 Red Russia and concentrate all Japan's efforts, both
11 military and diplomatic, upon that problem. We do
12 not see anything criminal for a professional diplomat
13 to write to a friend a strictly confidential personal
14 letter of this sort. It was neither propaganda for
15 an aggressive policy nor an advocacy of wanton use
16 of force, but merely a bid for determined diplomatic
17 effort to tackle "the menace on earth" that was
18 hanging over Japan. We respectfully invite the
19 Honorable Court to consider for a moment what vast
20 difference it would have made in the subsequent
21 events and developments in this part of the world if
22 SHIRATORI had really wielded the degree of influence
23 the prosecution aver he did in the formulation of
24 Japanese diplomacy and the line of policy advanced
25 by him in this exhibit had been adopted by Japan

around 1935 or 1936.

1 The prosecution state further: "He (SHIRA-
2 TORI) held the post of advisor until the 22nd of
3 July, 1941, when he resigned owing to ill health.
4 On the 7th of July (42), and again on August the
5 1st (43), Ott stated that he was intending to resume
6 an activist policy, and advocated war against Russia."^{44.}

7 They read only a part of exhibit 1113 (45),
8 and the defense read the entire remaining part (46).
9 In this document, Ambassador Ott himself stated that
10 SHIRATORI was seriously ill, and that he made the in-
11 pression of needing rest and being mentally tired (46).
12 "We would like to refer also to the testimony of Ott
13 given to counsel for SHIRATORI, as well as of the
14 defendant SHIRATORI himself (47). As to the statement
15 attributed to SHIRATORI "that as soon as he was able
16 to take up his political work again, he wants un-
17 changedly to advocate an active course for Japan,
18 and that he regarded the entry into the war against
19 Russia as the most urgent goal" (48), we rely on the
20 testimony of the witness MISHIMA (49) and of the

21
22 42. Ex. 1153, T. 10157-58. 48. T. 10158.
23 43. Ex. 800, T. 7967-68. 49. T. 35013-018.
24 44. T. 16918-19.
25 45. T. 10157-58.
 46. T. 34948-49.
 47. T. 34883-86.

1 witness MURAMATSU (50), in order to show that, granted
2 he had really said anything of the sort, SHIRATORI was
3 too ill at that time to take responsibility for it.
4 At any rate, the assertion is denied.

5 The prosecution read only a part of exhibit
6 800(51), but we would like to rely on the entire
7 exhibit; that is to say, also on the first part of
8 exhibit 800, beginning with "Minister Secretary
9 YAMAMOTO commissioned with the affairs of the Vice-
10 Foreign Minister, gave me the following information
11 about the situation. . ." and ending with "YAMAMOTO
12 did not contradict my remark that both governments . . .
13 and limited themselves, at present, to economic re-
14 prisals," as well as on the last part of exhibit 800
15 which reads as follows:

16 "In regard to my remark that the Soviet
17 Government might then delay Japan's entry into war
18 by delaying negotiations and in cooperation
19 with the progressive pressure of the Anglo-Saxons,
20 until the beginning of winter and thereby perhaps
21 prevent it entirely, YAMAMOTO asserted that he
22 personally believed that a quick entry into war would
23 be the right thing."
24

25 50. T. 35013-018.
51. T. 7967-68.

1 It is quite clear that the prosecution
2 misapprehended exhibit 800, for a closer scrutiny
3 of the same shows that acting Vice-Foreign Minister
4 YAMAMOTO made the statement and not the defendant
5 SHIRATORI, and that from the entire exhibit only
6 the clause "which SHIRATORI, whom I visited again
7 during the past days in his place of convalescence,
8 had pointed out to me as being serious" relates to
9 SHIRATORI. We also refer to the testimony of Ott
10 given to counsel Caudle (52), as well as to the
11 serious illness which made it impossible for SHIRA-
12 TORI at that time to take responsibility for any
13 expression of his views. (See the above-mentioned
14 footnotes (49) and (50).

15 SHIRATORI was appointed Minister to Sweden
16 and was ordered also to serve concurrently for the
17 countries of Norway, Denmark, and Finland in June,
18 1933 (53), where he remained until November, 1936.
19 The Anti-Comintern Pact was negotiated during his
20 stay in Sweden (54), and finally concluded on the
21 25th of November, 1936, while he was en route home
22 from his post at Stockholm (55). Though SHIRATORI,
23 during his stay of three years in Scandinavia (56),
24

25 52. T. 34886.

55. Ex. 3575.

53. Ex. 3575.

56. Ex. 3575;

5 Dec. 1933 - 12 Nov. 1936.

54. T. 33984-87 and Ex. 3575.

1 visited Berlin several times and also met the accused
2 OSHIMA at banquets given by the Ambassador, he did
3 not discuss matters relating to the Anti-Comintern
4 Pact with the latter, who was military attache at
5 that time. As OSHIMA testified, SHIRATORI was never
6 at any time connected with the negotiations or the
7 conclusion of the Anti-Comintern Pact. (57)(58).

8 The prosecution failed to testify that
9 SHIRATORI had anything to do with participation in
10 the Anti-Comintern Pact of Italy on the 6th of
11 November, 1937 (59), of Manchoukuo and other coun-
12 tries (60), as indeed he was in no position to have
13 anything to do with the matter.

14 It is charged in Count 17 that between the
15 1st of January, 1928, and the 2nd of September, 1945,
16 SHIRATORI planned and prepared a war of aggression,
17 etc., against the Soviet Union; but, as abundantly
18 clear from the foregoing, the prosecution have failed,
19 we submit, to substantiate that charge. And as has
20 been pointed out in the general defense, the world
21 knows of the Russian attack on Japan, notwithstanding
22 the fact that the Russian-Japanese Nonaggression Pact
23 was still in full force and effect at that time.

24 57. T. 35085-87.

59. Ex. 36, T. 6036.

25 58. T. 34084-86.

60. T. 6045 and 6046-48.

IV. CHINA AFFAIR.

The prosecution state:

"From the 31st of October, 1930, to the 2d of June, 1933, SHIRATORI was the official spokesman of the Foreign Ministry, and was decorated for his services in the China Affair of the nature of which the prosecution has no other knowledge." (63)

About this matter of decoration of government officials, we should like to refer, among the rest, to the testimony of the witnesses MURATA, NARITA and MATSUMOTO, which clearly shows that an overwhelming number of persons were decorated in the Manchurian and China Affairs; that the awards were, practically speaking, without regard to the actual service rendered but were due mainly to the positions held by the officials concerned, and finally that even persons who were generally regarded as opposed to these affairs were likewise decorated. The fact that SHIRATORI was decorated does not, therefore, prove anything concerning the part he played in the China Affair. At the time of the outbreak of the China Affair, he was on the waiting list of ministers in the Foreign Office and

(63) T. 16,912.

(64) Ex. 3147, T. 28,026-33.

(65) Ex. 3614, T. 35,398-99.

(66) Ex. 3623, T. 36,464-65.

1 had no duty, authority or influence concerning the
2 formulation of policy by his government (67 & 67-a).

3 In his sworn affidavit he states: "About the China
4 war I knew as much or as little as ordinary readers
5 of newspapers either in regard to the circumstances
6 of its outbreak or to the measures the government was
7 adopting one after another."(68)

8 On Japan's China policy he wrote to ARITA in
9 1935, as follows: (68-a).

10 Seven: Paragraph 1, second line of page 4
11 of said exhibit:

12 "The Foreign Office should be aware that the
13 situation prior to the Manchurian Incident more than
14 proved that mere formality such as 'Sino-Japanese Good-
15 will' has no value, on the other hand, the militarists
16 appear to be focusing their eyes on North China, try-
17 ing to build up a somewhat modified and moderated Man-
18 choukuo. Foreign views aside, from the standpoint of
19 the interests of the empire itself, the propriety of
20 such policy is at least very problematic."
21

22 Same paragraph, 17th line of page 4 of said
23 exhibit:

24 (67) Exs. 125 and 3575.

25 (67-a) Refer also to witness SAITO's testimony,
T. 34,970-75.

(68) Ex. 3595, T. 35,031-32.

(68-a) Ex. 774-A, T. 34,840-42.

1 "Therefore, our future policy towards China
2 should be aimed solely at the exclusion of outside
3 influences and disregarding entirely immediate small
4 profits."

5 Same paragraph of page 4 to page 5, first
6 line of said exhibit:

7 "Although we may mention 'exclusion of foreign
8 influences,' we, of course, do not mean the exclusion
9 of all foreign activities in order to acquire monopo-
10 listic positions. For instance, I believe that due
11 respects should be given to the various British,
12 American and other legitimate establishments in China,
13 and moreover, we should be so prepared as to give them
14 willing cooperation. By excluding foreign influences
15 from China, we do not mean to be the so-called 'dog
16 in the manger,' but only the expulsion of all influences
17 which are harmful to China, and consequently to Japan.
18 Although we may say that this shall be applicable to
19 all, regardless of what that country may be, when we
20 take a general view, we find that the activities of
21 the various countries in China today do not retain any
22 vestige of the former days when each country had her
23 own sphere of influences. Only a few relics of the
24 former age remain, but in general, they could be said
25 to be unharmed. If Japan takes the initiative, for

instance, in discarding the rights of extraterritoriality
1 and other formal special rights, and of having the
2 foreign settlement removed, and the number of foreign
3 advisors reduced, would not the rest be satisfactory?

4 "It is needless to say that, among foreign
5 influences that should above all be expelled, is that
6 of Red Russia. This is a question on which our
7 empire's diplomacy must concentrate its main force in
8 the future, and Sino-Japanese concert and cooperation
9 with the Anglo-Americans are necessary for the solu-
10 tion of this problem."
11

12 That alone, if nothing else, would suffice to
13 show beyond all doubt that SHIRATORI could never have
14 had anything to do with the planning and preparing a
15 war of aggression, etc., against China, as the
16 prosecution indict him in count 6.

17 After the unfortunate conflict did take place,
18 and assumed proportions of a regular war, and the
19 feelings of both nations ran high, SHIRATORI could
20 not openly oppose it, although he deeply deprecated
21 it in private. All he could do was to work for its
22 quick settlement and to that end he bent all his
23 efforts (68-b):
24

25 The prosecution charge SHIRATORI, in
(68-b) T. 35,088 and 35,033.

1 counts 27 and 28, with waging war of aggression, etc.,
2 against China; but none of the positions he held from
3 1928 to 1945 had anything to do with the waging of
4 the China war. During the entire period he never once
5 served either in Manchuria or in occupied China, nor
6 was he in any way connected with the numerous wartime
7 organs and commissions which were set up to help
8 prosecute the war.

9 V. NEGOTIATIONS FOR A TRIPARTITE PACT IN
10 1938-1939, and

11 VI. SHIRATORI'S CAREER AFTER AMBASSADORSHIP
12 TO ITALY.

13 I shall proceed with division V.

14 (a) SHIRATORI's warning to the Democracies:

15 The Anti-Comintern Pact concluded between
16 Japan and Germany in 1936 and acceded to by Italy and
17 other nations gave impetus naturally to the counter
18 movement by the communists for the so-called popular
19 front in opposition to what they termed "the national
20 front" of Fascist countries. This counter-movement
21 of Moscow was a great success in that it could range
22 on their side many of the western democracies in so
23 far as opposition to the Fascists was concerned. The
24 Japanese Government and people were rather slow to
25 awaken to the new development, having too long been

1 accustomed to the idea that capitalist democracies
2 and communist Moscow were irreconcilable.

3 That SHIRATORI did not at first like the idea
4 of entering into special agreement with Germany but
5 rather advocated understanding with the democracies,
6 especially England and China, in order to cope with
7 the communist menace can be shown from exhibit 774-A.

8 The article he published in the "Contemporary
9 Japan" of March 1938 issue contained the following:

10 "Japan, Germany and Italy, the three greatest
11 totalitarian countries of the world, have concluded
12 an Anti-Comintern Pact, the sole aim of which repeatedly
13 has been declared by the governments of the three
14 powers to be common defense against the Communist Inter-
15 national and its schemes of world revolution. . . But
16 it is extremely difficult to understand that democratic
17 nations, despite the absence of any attack or threat
18 of attack on themselves, should, from a preconceived
19 notion of their own, place a false construction on the
20 intentions of the 'have not' countries and attempt to
21 check and suppress their activities at every turn.
22 Would not such an attitude only drive these countries
23 beyond the bounds of their original Anti-Comintern
24 Pact and compel them to collaborate in self-defense
25 along more general lines?" (69)

(69) T. 35,104-5.

The prosecution seem to attach great importance to this article which they regard as proof that SHIRATORI advocated the enlargement of the Anti-Comintern Pact as early as the spring of 1938. In their summation they try very hard to intimate that this article had something to do with the German proposal to Japan early in that year for the intention of the Anti-Comintern Pact into a military alliance of general application. The prosecution begin by stating that SHIRATORI visited OSHIMA several times while in Sweden. It is a clear misstatement. Anyone who knows the geography of Europe at all will at once agree that for one who lives in Scandinavia it is necessary first to proceed to Berlin before going to any other parts of Europe except England. There is nothing at all extraordinary that during his three years in Stockholm he should have visited Berlin five or six times. It is not at all likely that SHIRATORI saw Military Attache OSHIMA each time he was in Berlin. At any rate, there was scarcely anything more than a speaking acquaintance between SHIRATORI and OSHIMA before SHIRATORI's arrival in Rome at the end of 1938.

At the time he wrote the article, SHIRATORI of course had not the slightest idea that Germany should actually make a proposal along the line indicated

1 by him. As the article plainly speaks for itself,
2 it is nothing more than a warning or an appeal to the
3 democracies not to lend themselves to the popular
4 front movement and force Japan to fly into the arms
5 of Germany and Italy in spite of her true desire but
6 purely in self-defense. That an article was published
7 in the "Contemporary Japan" which was principally meant
8 for American readers (70-a) and which in Japan was
9 scarcely read by any readers beyond the American and
10 British Embassy and business or press circles, clearly
11 shows that it was meant for these readers and not meant
12 for an advocacy of such an idea among the Japanese
13 statesmen or leaders.

14 THE PRESIDENT: We will adjourn until half-
15 past one.

16 (Whereupon, at 1200, a recess was
17 taken.)

18 - - -

AFTERNOON SESSION

1 The Tribunal met, pursuant to recess, at 1330.

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

5 THE PRESIDENT: Mr. Caudle.

6 MR. CAUDLE: Mr. President, I proceed to
7 read, as we have it listed, page 2 of Section V.

8 (b) SHIRATORI's appointment as Ambassador to
9 Italy: SHIRATORI was appointed Ambassador to Italy
10 on September 22, 1938; left Tokyo November 22, 1938,
11 and arrived in Rome on December 29, 1938.⁽⁷¹⁾ The
12 prosecution stated that SHIRATORI accepted the post
13 of Ambassador to Italy and journeyed to Rome in the
14 latter part of December, 1938, with the expectation that
15 he would succeed in concluding the Tripartite military
16 alliance between Japan, Germany and Italy.⁽⁷²⁾

17 It is true that SHIRATORI accepted the
18 ambassadorship because he was able to see that he
19 would be able, even from Italy, to contribute to the
20 solution of the China Affair, which was the most
21 pressing problem of the time.⁽⁷³⁾ But SHIRATORI makes
22 it clear in his affidavit⁽⁷⁴⁾ that in common with the

23 71. T. 34,906 and Ex. 3575

24 72. T. 16,914; also Ex. 498, p. 6083 and 34,865-66

25 73. T. 35,090 and 35,032-34

74. T. 35,108-09 and 35,032-34.

1 then Premier, Prince KONOYE, he thought that the use
2 of such a pact lay mainly in the effect it would have
3 on England and American regarding their Far Eastern
4 policy. That SHIRATORI was not at all enthusiastic
5 about the proposed Axis rapprochement may be seen from
6 the fact that although he had three months in which
7 to study the problem before leaving Japan for his
8 post, he not only did not peruse or even ask for a single
9 official document bearing on this matter or discuss
10 it with anyone in position of responsibility at all.
11 In short, just as he wrote the magazine article
12 above mentioned as a sort of appeal or warning to
13 America, so he regarded this proposed alliance
14 principally as a gesture on Japan's part to awaken the
15 democracies. It might be well to remind the Tribunal
16 that Germany used these very same negotiations as
17 a leverage to work out the Non-Aggression Pact with
18 Russia.

19 About SHIRATORI's appointment as Ambassador
20 to Italy, the witness UGAKI, the then Foreign Minister,
21 testified to the following effect:

22 Toward the end of August, 1938, Premier
23 KONOYE suggested to UGAKI that he appoint as Vice
24 Foreign Minister, SHIRATORI, who was then on the
25 waiting list as a minister plenipotentiary. While

1 UGAKI had no desire to remove the then Vice-Minister,
2 he thought it a pity to leave SHIRATORI so long without
3 any assignment --

4 Your Honor, it doesn't appear on my sheet
5 but there was supposed to be a revised sheet of this
6 which lists the dates from 28 April 1937 to the
7 22nd of September 1938, it being on the waiting list.
8 For some reason or other mine hasn't been inserted yet.

9 THE PRESIDENT: We have the revised sheet.

10 MR. CAUDLE: (Continued)

11 --from April 28, 1937 to September 22, 1938 --
12 therefore UGAKI proposed to SHIRATORI the post of
13 Ambassador to Italy. SHIRATORI showed reluctance at
14 first, but consented a few days later, and was formally
15 installed on 22 September 1938. In deciding upon this
16 appointment, UGAKI never thought of specifically
17 instructing SHIRATORI to conduct a negotiation looking
18 to strengthening the Anti-Comintern Pact, nor to let
19 him in any way put forth special efforts to induce
20 Italy to participate in such a new agreement. In
21 offering him the Rome post, therefore, no mention
22 whatever was made of this matter. The question of
23 strengthening the Anti-Comintern Pact was brought to
24 the notice of the Japanese Government merely in the
25 form of information from German quarters by the Japanese

Military Attache in Berlin, and not through any diplomatic
1 organ. The whole matter was still at a quite unofficial
2 and sounding stage as pertained to Japan. No mature
3 study had yet been made, nor a final conclusion
4 reached at that time. ⁽⁷⁵⁾ Further, as will be brought
5 out later, Germany and Italy had already agreed on
6 the matter before SHIRATORI ever became in the least
7 way involved therein.

8 The prosecution, relying on Exhibit 3791-A,
9 (75-a) the entry of 16 June 1938 of HARADA Memoirs,
10 contended in the rebuttal that KONOYE told HARADA
11 the story that War Minister ITAGAKI persisted in
12 recommending to Foreign Minister UGAKI, SHIRATORI as
13 Vice Foreign Minister. This story was denied by the
14 witness UGAKI on his cross-examination by the prosecution.
15 (75-b)

16 Moreover, it is a hearsay of hearsay and, as
17 heretofore explained in our discussion of HARADA's
18 memoirs in the Manchurian part of SHIRATORI's defense,
19 the HARADA Memoirs have generally a very limited
20 credibility. Therefore, the sworn testimony of the
21 witness UGAKI on his cross-examination must be preferred
22 to any entry of HARADA Memoirs.

23 It is respectfully requested that the Tribunal
24 read in detail this entire exhibit; namely, 3791-A if
25 HARADA Memoirs are to be given any credit at all,

(75) Ex. 3580, T. 34,908-910; 35,033-34; 35,111.
(75-a) T. 37, 743-44 (75-b) T. 34,916.

1 because this document specifically shows that it was
2 desirable from Prince KONOYE's viewpoint that
3 SHIRATORI be made Vice Foreign Minister, in order
4 to alleviate some of the pressure placed on Foreign
5 Minister UGAKI by the field officers of the Army,
6 necessitating UGAKI's having some means to hold them
7 down, and yet appear to be cooperating with them.
8 It further shows that ITAGAKI, the then Minister of
9 War, was in favor of such a move. This apparently
10 contradicts itself in that if ITAGAKI were the war
11 monger the prosecution insists he was, and was
12 supporting SHIRATORI then how is it that SHIRATORI was
13 also to be used as a tool of UGAKI to keep the military
14 in its place by nefarious methods, which we assume
15 would be submitted by UGAKI?

16 To show further contradiction of any
17 conspiracy at this time, this document states that
18 SHIRATORI's personal conduct at that time was not of
19 the best and for this reason the Navy was wholly
20 opposed to him and said document quoted Vice Minister
21 (Navy) YAMAMOTO especially as saying that in view
22 of this fact - "We cannot keep such a man for official
23 disciplinary reasons." Further, UGAKI is quoted as
24 saying: "I have heard that SHIRATORI is to some extent
25 very 'loose' with his finances. If he's acceptable

1 to the Army, he isn't to the Navy. This is really an
2 awkward situation."

3 The prosecution, relying on Exhibit 3794-A,
4 (75-c) the entry of 2 July 1938 of HARADA Memoirs
5 further contended in the rebuttal that OKAWA, Shumei,
6 recently brought a petition from the young officials
7 of the Foreign Ministry to UGAKI, the Foreign Minister,
8 urging the appointment of SHIRATORI as Vice Foreign
9 Minister. Witness UGAKI denied the story on his cross-
10 examination by the prosecution (75-d). Moreover, the
11 exhibit itself clearly shows that the above story was
12 merely a sort of gossip brought out when HARADA, Navy
13 Minister and Vice Minister, had a leisurely conversa-
14 tion for approximately two hours at the Navy Minister's
15 (75-c).

16 At this time we would like also to call the
17 attention of the court to the fact that SHIRATORI
18 never was appointed Vice Foreign Minister (75-f).
19 SHIRATORI arrived at Rome on the 29th of December 1938,
20 without any special instruction or even sufficient in-
21 formation about the proposed treaty with Germany and
22 Italy (76). He paid informally an inaugural call to
23 (75-c) T. 37,761
24 (75-d) T. 34,915 and 34,917
25 (75-e) T. 37,761
(75-f) Ex. 3575
(76) T. 35,034 and 34,941

1 Italian Foreign Minister Ciano on the 31st of the same
2 month, and requested Ciano to arrange for presentation
3 of his credentials to the Italian King (77). In early
4 January 1939, Premier Prince KONOYE resigned and was
5 replaced by Baron HIRANUMA, but SHIRATORI received no
6 instruction from the new cabinet (78). SHIRATORI
7 presented his credentials to the Italian King on the
8 10th of January, 1939 (79). In this respect we would
9 like to call the attention of the Court to the follow-
10 ing passage on page 356 of "Treatise on International
11 Law", Eight Edition, by William Edward Hall:

12 "A diplomatic agent enters upon the exer-
13 cise of his functions from the moment, and from the
14 moment only, at which the evidence that he has been
15 invested with them is presented by him to the govern-
16 ment to which he is sent, or to the agents of other
17 governments whom he is intended to meet, and has been
18 received by it or them. When he is sent to a specific
19 state, the evidence with which he is required to be
20 furnished consists in a letter of credence of which
21 the object is to communicate the name of the bearer,
22 to specify his rank as ambassador, minister pleni-
23 potentiary, minister resident, or charge d'affaires,

24 (77) T. 34,920 and 35,036

25 (78) T. 35,036

(79) T. 34,918-919 and 34,920-921.

1 to bespeak credit for what he will communicate in the
2 name of his government."

3 It is quite clear, accordingly, that SHIRATORI
4 could only enter upon the exercise of his functions as
5 Japanese Ambassador to Italy from the 10th of January,
6 1939.

7 (c) SHIRATORI had nothing to do with the
8 negotiation for a Tripartite Pact until early 1939.

9 Under the above mentioned circumstances, it
10 goes without saying that SHIRATORI had nothing to do
11 with the initiation, the talk and the negotiation until
12 early 1939, for a Tripartite Pact between Japan,
13 Germany and Italy; also, he could not have anything
14 to do with the matter.

15 As to Ribbentrop's telegram to Ambassador Ott
16 (80), testimony of the witness USAMI (81), and of the
17 witness OSHIMA (82), showed clearly the above-mentioned
18 talk and negotiations were begun and carried on exclus-
19 ively in Germany until early 1939. Furthermore, the
20 witness NAGAI testified that, up until the arrival of
21 SHIRATORI at Rome, the Japanese Embassy there was not
22 in receipt of any official communication from any quart-
23 ers concerning the three-power treaty then being mooted
24

25 (80) T. 6097-6102.
(81) T. 33,731-744
(82) T. 33,997-34,014

1 in Berlin, although SAKAMOTO, Charge d'Affaires, was
 2 said to have privately acquired some knowledge about
 3 the matter from the Military and Naval Attaches, and
 4 that SHIRATORI, who had not brought with him any
 5 written instructions of the Japanese Government, said
 6 to the witness that the whole affair had now become
 7 clear to him as a result of the detailed account given
 8 him by both SAKAMOTO and the Attaches (83).

9 (d) The prosecution insisted that prior to
 10 the arrival of SHIRATORI at Rome, both Ribbentrop
 11 and OSHIMA had failed in their efforts to bring Italy
 12 into agreement for a Tripartite Alliance (84).

13 However, "Ciano Diary" clearly shows that
 14 exactly at the time of SHIRATORI's arrival in Rome,
 15 Mussolini decided on the 1st of January, 1939 (or
 16 maybe on the 31st of December, 1938) to accept Ribben-
 17 trop's proposal to transform the Anti-Comintern Pact
 18 into an alliance and that he wished the alliance to be
 19 signed during the last third of January (85). Ciano's
 20 Diary shows further that Ciano informed Ribbentrop by
 21 telephone of the aforesaid decision of Mussolini on the
 22 2nd of January, 1939 (86), and that he also informed
 23 von Mackensen, the German Ambassador to Italy, (87),
 24

25 (83) T. 34,940-941

(84) T. 16,914

(85) T. 34,922

(86) T. 34,922-923

(87) T. 34,924; refer also to
 Mackensen's memo (T.
 34,926-27).

1 of the same decision. It is quite clear that SHIRATORI
2 had nothing to do with bringing Italy into agreement
3 for a Tripartite alliance.

4 (e) Ciano Diary offered in evidence by the
5 prosecution:

6 The prosecution offered in evidence against
7 SHIRATORI excerpts from "Ciano Diary;" Ex. 499-A;
8 that is, entry for the 7th of January, 1939 (88), and
9 Ex. 501; that is, entries of the 6th of February and
10 the 6th and 8th of March, 1939 (90). These entries
11 reflect only Ciano's one-sided viewpoint. The best
12 evidence of SHIRATORI's official acts and advices to
13 his government would be the telegraphic reports which
14 SHIRATORI sent from Rome at that time, as Japanese
15 Ambassador to Italy. But the defense could not offer
16 them because these telegrams were destroyed by fire
17 and exist no more, as shown by defense Exhibit 3586 (91).

18 SHIRATORI does not remember ever meeting
19 Baron HIRANUMA before he left Japan for Rome in
20 November, 1938, and he had no knowledge or information
21 about HIRANUMA's diplomatic views at that time. The
22 entry in Ciano's Diary to the effect that SHIRATORI
23 told Ciano that the new Premier HIRANUMA was openly

24 (88) T. 6092
25 (90) T. 6095-97
(91) T. 34,931-32

1 in favor of the tripartite alliance, is not true (92).

2 SHIRATORI was received by Mussolini and paid
3 his respects to the latter on the 6th of January, 1939.
4 At that time SHIRATORI had no instructions either of
5 the KONOYE Cabinet or of the new HIRANUMA Cabinet,
6 and, moreover, he was not qualified to act as Ambassador,
7 as his credentials were not yet presented. At that
8 interview Mussolini did all the talking and would
9 scarcely allow SHIRATORI to say anything beyond chiming
10 in occasionally. It seems that Ciano attributed to
11 SHIRATORI some of the things said by his father-in-law
12 on that occasion. Nothing that SHIRATORI gave them to
13 understand warrants the statement contained in exhibit
14 499-1 (93), that he was greatly in favor of the tri-
15 partite alliance, which he regarded as a weapon to
16 force Great Britain to concede "(the many things she
17 owed to us all." (94) After the interview, SHIRATORI
18 told the witness NAGAI that he was surprised to know
19 that Mussolini was all for the proposed treaty, going
20 so far as to expect its consummation within a few
21 weeks, and that inasmuch as a final decision in this
22 matter had first to be made by the Japanese Government,
23 he tried somewhat to dampen Mussolini's zeal (95).

24 (92) T. 35,034-35

(93) T. 6092

25 (94) T. 35,036-37

(95) T. 34,941

1 That being the case, SHIRATORI could not possibly
 2 have assumed the forward attitude ascribed to him
 3 by Ciano in the aforesaid Exhibit 499-A. (96)

4 As to the later entry in Ciano Diary tendered
 5 in evidence by the prosecution, (97) we will explain
 6 afterwards.

7 (f) Instruction brought by the ITO Mission:

8 The first instruction which SHIRATORI ever
 9 received from his Government in regard to the proposed
 10 tripartite pact was that which was brought by the
 11 ITO Mission at the end of February, 1939. This
 12 instruction was addressed to both ambassadors, OSHIMA
 13 and SHIRATORI, and was transmitted to them together
 14 in Berlin. (98)

15 The main part of the Japanese counter-draft
 16 of the Tripartite Pact contained in this instruction
 17 was the same as paper No. 1 of Exhibit No. 2619, (99)
 18 consisting of the following three documents:

19 (A) the pact proper; namely, the pact of
 20 consultation and assistance between Japan, Italy and
 21 Germany.

22 (B) the signing protocol, and (100)

23 (C) the secret accessory protocol.

24 96. T. 35,037-038

25 97. T. 6096, Ex. 501

98. Refer to evidence given by witness OSHIMA (T. 34,000-002), by witness USAMI (T. 33,732-36) and by witness NAGAI (T. 34,941-43).

99. T. 22,539-550

100. T. 33,747-48; see T. 34,000

1 Further, according to the instruction, no limitation
2 or condition was placed on the duty of mutual assistance,
3 in so far as the pact to be published was concerned.
4 However, the following two secret understandings or
5 reservations were to be annexed to the pact, and OSHIMA
6 and SHIRATORI were specially instructed to try and
7 obtain the concurrence of the German and Italian
8 Governments to these reservations:

9 1) That Japan would not render any military
10 assistance in case Germany and Italy were attacked
11 by countries other than Soviet Russia, unless these
12 countries had turned communistic, and

13 2) Explanation would be given to third
14 parties to the effect that this pact was an extension
15 of the Anti-Comintern Pact. (101)

16 As will be explained later, the above
17 mentioned draft pact itself; that is, the pact proper
18 and the two protocols, was a very weak and harmless
19 treaty which, according to SHIRATORI's opinion, would
20 by no means drag Japan, against her will, into a war
21 of Germany's or Italy's making, and, moreover, the
22 existence or possibility of which, so SHIRATORI thought,
23 would contribute to a speedy peaceful solution of the
24 101. T. 34,002-003; 33,736-737, and 34,942-43.
25

1 China affair. Further, the proposed pact contained
2 nothing that would prevent Japan's entering into a
3 separate arrangement with Great Britain and America
4 (102) concerning China and the Far East. There was
5 also reason to expect that Germany and Italy would
6 agree to the Japanese draft-pact. However, the above-
7 mentioned reservation No. 1 was in fact going to limit
8 the duty of military assistance to cases where Soviet
9 Russia was involved, and SHIRATORI was of the opinion
10 that not only was there no prospect for such unilateral
11 reservations ever to be entertained by the German and
12 Italian Governments, but it would be a disgrace to
13 Japanese diplomacy to leave on record a proposal which
14 clearly amounted to taking back with the left hand
15 that which was offered with the right. He cabled
16 his view to the Japanese Government and requested it
17 (103) to reconsider the matter. That Ambassadors
18 submit now and then their opinions to their governments,
19 is a fact which occurs in every country, and which is
20 (104) clearly allowed by law in Japan.
21
22
23
24

- 25 102. T. 35,040.
103. T. 34,942-43; 33,738-39 and 35,040-041.
104. T. 34,003-004; 34,054 and 35,040-041.

1 Now, Ciano stated in his diary that SHIRATORI
2 advised him not to accept the Japanese counter-proposal.¹⁰⁵
3 But this is a very unkind way of interpreting SHIRATORI's
4 words, which were merely to the effect that he was
5 afraid Japanese counter-proposal would be unacceptable
6 to Ciano, but that Ciano did not have to take it as the
7 final word.¹⁰⁶

8 Ciano stated further that SHIRATORI told Ciano
9 that he refused to communicate through official channels,
10 that he asked Tokyo to accept the Pact of Alliance
11 without reservation, and that otherwise he would resign
12 and bring about the fall of the cabinet.¹⁰⁷

13 And apparently relying on this entry of the
14 Ciano Diary, as well as on Ribbentrop's telegram to
15 Ott,¹⁰⁸ the prosecution insisted that SHIRATORI advocated
16 an all-out military alliance without reservations; that
17 he endeavored to impose his convictions upon the Japa-
18 nese Government, and to influence and direct Japanese
19 policy with regard thereto;¹⁰⁹ that he refused to follow
20 the advice of the ITO Mission and to communicate the
21 compromise proposal of the Japanese Government through
22 official channels, and that he threatened to cause the
23

24 (105. Ex. 501, T. 6096.

25 106. T. 35038.

107. Ex. 501, T. 6096.

108. Ex. 502, T. 6100.

109. T. 16914.)

1 ~~fall of the cabinet by resigning from his post unless~~
2 the government reconsidered its stand. ¹¹⁰

3 It goes without saying that such insistences
4 of Ciano, of Ribbentrop and of the prosecution have been
5 contradicted more than sufficiently by the above ex-
6 planation. Moreover, as the witness NAGAI testified,
7 SHIRATORI never threatened the Japanese Foreign Minister
8 with resignation. ¹¹¹

9 (f-1) Exhibit 3797-A, ^{111-a} which was intro-
10 duced by the prosecution and quoted from in paragraph
11 UU-50 of its surmation, states as follows, in part:
12 "Therefore, no matter what they (Ambassadors to Rome
13 and Berlin) might say, the (Japanese) Government cannot
14 cancel its decision. All we have to do is to change
15 the Ambassadors if they are going to rush to conclusions
16 and say that the decisions (of the Japanese Government)
17 will not do. As for the transfer of Ambassadors, I would
18 like to carry it out after the close of the present
19 session of the Diet. In all cases we wired back instruc-
20 tions to both (Ambassadors) to do as recommended by the
21 Japanese Government. . . .In all likelihood, the Premier
22 is presumably of the same opinion." And so you find
23 another glaring inconsistency and gross misstatement by
24 (110. T. 16915; Ex. 501, T. 6096; Ex. 502, T. 6100.
25 111. T. 34045.
111-a. T. 37,773.)

1 by Ciano, who evidently knew little or willingly diverted
2 his writings from the truth.

3 The prosecution insisted that this document
4 was tendered in evidence in rebuttal to contradict the
5 testimony of defendant OSHIMA, ^{111-b} in which he denied
6 receiving instructions from the Foreign Ministry between
7 arrival of the ITO Commission in Berlin in the latter
8 part of March, 1939, to do as recommended by the
9 Japanese Government. ^{111-c}

10 Now, the witness USAMI testified that in reply
11 to the instruction brought by Minister ITO late in
12 February, 1939, OSHIMA and SHIRATORI submitted their
13 opinions to Foreign Minister ARITA early in March, and
14 that late in March ARITA in turn wired a new instruc-
15 tion, but that it was not true that in the meantime,
16 that is, between the beginning and end of March, 1939,
17 ARITA sent an instruction to the Japanese Embassy in
18 Berlin, urging it to carry on the negotiations pursuant
19 to the original instruction brought by ITO. ^{111-d} And
20 as witness NAGAI testified, the negotiations for the
21 Tripartite Alliance were carried on almost exclusively
22 in Berlin, ^{111-e} and, further, the testimony of Stahmer
23 on examination by counsel for SHIRATORI stated that
24

25 (111-b. T. 34129.

111-c. T. 37771.

111-d. Ex. 3908, T. 38872.

111-e. Refer to item (h) of Chapter V.)

1 Italian negotiations were carried on almost entirely by
2 Hitler and Ribbentrop with Mussolini and Ciano, record
3 24,482. Therefore, SHIRATORI could not have received
4 any instruction from ARITA, which was not sent to
5 OSHIMA at the same time. In reality, he also did not get
6 any such instruction as mentioned in exhibit 3797-A.

7 Apart from the general incredibility of HARADA
8 Memoirs, about which we will treat later, this also
9 shows how HARADA wrote incorrectly. It might be that
10 ARITA, in reality, had not yet "wired back instructions
11 to both (Ambassadors)" at that time, and that he could
12 not do so as it was only presumed that the Prime
13 Minister was of the same opinion, but there was no
14 certainty of such a fact.

15 (g) New Instruction of the Japanese Government.

16 In answer to the opinion submitted by OSHIMA
17 and SHIRATORI, as to the instruction brought by ITO
18 Mission, a new instruction of the Japanese Government,
19 revising the original text of the secret understandings
20 or reservations arrived at Berlin and Rome at the end of
21 March, 1939. The gist of this new instruction was as
22 follows: The secret understanding or reservation No. 1
23 was revised to the effect that although Japan accepted
24 the duty of military assistance also in case Germany
25 and Italy were attacked by countries other than Soviet

1 Russia, she would not be able to carry it out effect-
2 ively for the time being. As to the secret understand-
3 ing or reservation No. 2, Japan wanted to reserve that,
4 in case inquiries were made by third parties, Japan
5 would explain that, as far as Japan was concerned, she
6 had nothing in view but the destructive activities of
7 the communist International in concluding this treaty. ¹¹²

8 SHIRATORI communicated the Japanese instruc-
9 tion to the Italian Government in early April, 1939, as ¹¹³
10 the entry for April 2, 1939, of the Ciano Diary relates.
11 It is therefore patent that the prosecution's insistence,
12 relying on exhibit 502, that in April the Japanese
13 Government reconsidered its stand and presented a new
14 draft of the treaty, and that SHIRATORI again refused to
15 communicate officially the Japanese Government's proposal
16 to the nation to which he was accredited, ¹¹⁴ is not true.
17

18 Germany and Italy accepted the Japanese pro-
19 posal insofar as the pact proper, the signing protocol
20 and the secret accessory protocol was concerned, but
21 showed reluctance to accept the secret understandings
22 or reservations. ¹¹⁵ Their opinion was that such matters
23 as mentioned in the reservations should and could be
24 referred to agreements to be made by the conferences of

25 (112. T. 34005-6; 33739.

113. T. 34946-48.

114. T. 16915-16; see also Ex. 502, T. 6100.

115. T. 34947-48, 34006-7, 33739-40.)

the three contracting countries envisaged in the Pact.

(h) Later Negotiations.

The negotiations thereafter were confined exclusively to exchanging arguments concerning the Japanese reservations¹¹⁷ and these reservations were largely accepted by Germany and Italy, the only point of difference that remained to be adjusted narrowing down to whether these reservations were to be committed to black and white, or to remain an oral understanding.¹¹⁸ The papers Nos. 3 and 4 of exhibit 2619¹¹⁹ were a tentative draft, and so-called "Gaus Draft," drawn up by German and Japanese experts at Berlin on the basis of the Japanese reservations, but this Gaus Draft was not accepted¹²⁰ by the Japanese Government.

The Italian Government practically left to Berlin the entire matter of the Tripartite Treaty, and there was not much in the way of exchange of views or negotiation between SHIRATORI and either Mussolini or Ciano. SHIRATORI informed the witness NAGAI at one time "that Ciano had told him with cynicism that the whole question was in the 'able' hands of the German Foreign Minister. Such being the case, the negotiations were

116. T. 33739-40, 34006-7, 34937.

117. T. 34954.

118. T. 35041, 33740-41, 33748-50, 34008-9, 34011-12.

119. T. 22548-50.

120. T. 34008-9, 33740-41, 33748-50, 22541.

1 carried on almost exclusively in Berlin and the part that
2 SHIRATORI played was confined mainly to making suggestions
3 or advancing views to the Foreign Ministry in Tokyo." 121

4 The entire negotiation was finally terminated,
5 due to the conclusion of the German-Russian Non-
6 Aggression Pact on 23 August 1939 about which we will
7 explain later. 122

8 (1) Conclusion of the Italo-German Alliance.

9 Ciano wrote in his diary as follows:

10 (A) February 3, 1939 - that Mussolini was dis-
11 contented with the Japanese delays in concluding the
12 Tripartite Alliance and regretted the way in which
13 Ribbentrop lightly assumed that Japan would agree to con-
14 clude the pact. Mussolini thought it might be a good
15 idea to conclude a double alliance, without Japan, and
16 leave Japan to face Anglo-French forces alone. In this
17 case, the pact would have no anti-British or anti-
18 American flavor whatsoever. 123.

19 (B) March 3, 1939 - that Mussolini and Ciano
20 discussed the Tripartite Alliance. New delays were
21 caused by Japanese red tape and formality. Mussolini
22 was always more in favor of the bilateral alliance with
23 Berlin, leaving Tokyo out. Italo-German alliance with

24 (121. T. 34944-5; refer also to testimony of Stahmer,
25 T. 24482.

122. T. 34012, 33741.

123. T. 34928-30.)

1 Japan would push the United States into the arms of the
2 western democracies once and for all. Mussolini wanted
3 to speed up the German-Italian alliance. ¹²³

4 (C) April 25, 1939 - that news arrived from
5 Berlin that Japan persisted in their reservations with
6 respect to the triple alliance; therefore, the signing
7 was postponed sine die. Mussolini said that he was just
8 as glad; actually for sometime he had considered Japan's
9 adherence more harmful than useful. ¹²³

10 (D) May 6 and 7, 1939 - Mussolini asked Ciano
11 to have the bilateral pact announced which he had
12 always preferred to the Triangular Alliance. Ribbentrop,
13 who at the bottom of his heart, had always aimed at the
14 inclusion of Japan in the pact, at first demurred, but
15 then ended by giving in with the reservation that he
16 must obtain Hitler's approval. Hitler called on the
17 telephone, gave his immediate approval. ¹²³

18 This pact of friendship and alliance between
19 Germany and Italy was signed on the 22nd of May, 1939. ¹²⁴

20 (j) Conclusion of the Non-Aggression Pact
21 Between Germany and U.S.S.R; Negotiations for a Tri-
22 Partite Pact Failed Completely and No Results Were
23 Obtained.

24 SHIRATORI anticipated that the Nazi Government
25

(123. T. 34928-30.
124. T. 6120-22.)

1 would make full use of the proposed alliance in their
2 diplomatic maneuvers in Moscow and wired to Tokyo more
3 than once that a rapprochement between Soviet Russia
4 and Germany was quite possible and that Japan must not
5 forget the policy pursued by Kaiser Wilhelm II, who
6 abetted the Czarist Russia in her Far Eastern adventures
7 by guaranteeing her rear in the west, but his submission
8 was entirely disregarded.¹²⁵ All efforts for a Tri-
9 partite Pact failed completely. The conclusion of the
10 German-Russian Non-Aggression Pact on 23 August 1939
11 struck Japan as a surprising blow and caused the resign-
12 ation of the HIRANUMA Cabinet. All negotiations with
13 Germany and Italy about the alliance were stopped, and
14 relations between Germany and Japan cooled down to a low
15 degree.¹²⁶

16
17 SHIRATORI did not advise Ambassador OSHIMA not
18 to execute the instruction from Tokyo to lodge a protest
19 with the German Government over the German-Soviet Non-
20 Aggression Pact, as exhibit 2232 states.¹²⁷ SHIRATORI
21 had suggested to Foreign Minister ARITA that the pro-
22 test should be presented by himself to Ambassador Ott
23 for transmission to Berlin, as it would be too cruel
24 thus to make OSHIMA "drink boiling water" in addition to

25 (125. T. 35042, 34943.
126. T. 34854-5, 34865, 33743.
127. T. 16006.)

1 his great chagrin at the German-Soviet rapprochement.

2 Accordingly, SHIRATORI telephoned to OSHIMA to suggest
3 that he might wait until Tokyo was further heard from. ^{127-a}

4 There was no need to play for time as so absurdly pro-
5 pounded by the prosecution, ¹²⁸ as all negotiations

6 ceased in toto, and the tire element did not enter into

7 the matter. Further, no delay occurred in the notifi-

8 cation of the German Government concerning Japan's

9 feelings in the matter because only a day afterwards,

10 namely, 25 August 1939, Ambassador Ott telegraphed to

11 his Government that the Japanese Foreign Minister handed

12 him copies of the following instructions he had sent to

13 OSHIMA on the same day: "To inform the German Govern-

14 ment that the Japanese Government had interpreted the

15 conclusion of the Non-Aggression Pact as finally term-

16 inating the present negotiations between Japan and

17 Germany for a Tripartite Pact with Italy." ¹²⁹

18 Furthermore, Ambassador HORINOUCI stated to

19 U. S. State Secretary Cordell Hull on 26 August 1939

20 that, speaking personally, he might say his Government

21 had decided on the previous day to abandon any further

22 negotiations with Germany and Italy relative to closer

23 relations under the Anti-Comintern Pact to which they

24 (127-a. T. 35045.

128. UU-63 of prosecution surmation.

129. T. 6122.)

had been parties for some time.

1 (k) No Casual Relations Existed Between the
2 Negotiations in 1938-39 and the Conclusion of the Tri-
3 partite Pact of 27 September 1940. This is quite clear
4 from the following facts:

5 (A) As explained in item (i) above, SHIRATORI
6 activities in Italy were entirely fruitless. Moreover,
7 SHIRATORI had little contact with the Italian side; he
8 had made few, if any, acquaintances in the political
9 and social circles in Rome, and above all, he did not
10 have any intercourse with the leaders of the Fascist
11 Party and of the Italian Army and Navy.¹³¹ Therefore,
12 it must be said that SHIRATORI contributed very little
13 to the Italo-Japanese rapprochement. SHIRATORI, as
14 Ambassador to Italy and not to Germany, had no duties to
15 work for collaboration of Germany and Japan and did
16 nothing for that. He saw Ribbentrop only on two
17 occasions, in April and in June, 1939. Ribbentrop could
18 not know SHIRATORI very well.¹³² The prosecution has
19 produced no evidence that SHIRATORI ever saw Hitler.
20

21 (B) As explained in item (j) above, the negoti-
22 ations for a Tripartite Pact failed, and terminated
23 finally, no results were obtained, and German-Japanese
24 relations cooled down to a low degree, due to the

25 (130. T. 4197; see also item 9 of Appendix C of the
Indictment. 131. T. 34945.
132. T. 34137, 24481-2, 34128-9.)

conclusion of the German-Russian Non-Aggression Pact.

1
2 (C) The change in the Japanese public senti-
3 ment in favor of the Axis in the late spring of 1940
4 was solely due to the German victories in Europe and the
5 strong economic measures taken by the United States
6 against Japan. ¹³³

7 (D) Foreign Minister MATSUOKA seemed deter-
8 mined from the outset that no person, not excepting
9 Premier KONOYE himself, should share with him either the
10 blame or the credit for the new diplomatic venture for
11 rapprochement with the Axis powers, which he was embark-
12 ing upon. He was particularly secretive or exclusive in
13 the conduct of the negotiations with Stahmer and Ott for
14 the Tripartite Pact. He made it a point of distinguish-
15 ing this pact from that abortive attempt of 1938-39, and
16 refused to study documents or consult persons that had
17 anything to do with the previous negotiations. ¹³⁴

18 MATSUOKA stated at an Imperial Conference
19 regarding the conclusion of the Tripartite Pact of 27
20 September 1940 that the fundamental principle of his
21 negotiations with Germany was entirely different from
22 that of HIRANUMA Cabinet days. ^{135.}

23 (E) Prince KONOYE stated in his article "On
24

25 (133. T. 34855.
134. T. 35049.
135. T. 6341.)

the Tripartite Alliance" that, inasmuch as the alliance
1 of September, 1940, was to be directed against Great
2 Britain and the United States and not against the
3 U.S.S.R., as in the previous year, there was a funda-
4 mental difference in nature between the two plans. ^{136.}

5 (1) The Draft Tripartite Pact Considered in
6 1939 Was a Weak and Harmless One.

7 The prosecution insisted that SHIRATORI advo-
8 cated an all-out military alliance without reservations. ¹³⁷
9 But that is not true. The Tripartite Pact advocated by
10 SHIRATORI was a weak and harmless one, as explained
11 hereunder.
12

13 As shown in item (f) above, the main part of
14 the Japanese draft of the Tripartite Pact contained
15 in the instruction brought by the ITO Mission was the
16 same as paper No. 1 of exhibit 2619, ¹³⁸ consisting of
17 the three documents; namely, the pact proper, the
18 signing protocol and the secret accessory protocol,
19 which were accepted by Germany and Italy at an early
20 stage of the negotiation. ¹³⁹ An analysis of these
21 documents shows the following:
22

23 (A) the title of the Pact proper was "Pact
24 of Consultation and Assistance between Japan, Italy and

25 (136. T. 24291
137. T. 16914; Ex. 501, T. 6095.
138. T. 22539-50.
139. See also item (g) above.)

1 Germany."

2 (B) the draft preamble of the Pact proper
3 left no room to doubt that the Pact was to be primarily
4 directed towards the Comintern and Soviet Russia.

5 (C) as the witness USAMI testified, the Pact
6 was not to be directed against the United States. ¹⁴⁰

7 (D) Article I of the Pact proper stipulated:
8 "In case one of the contracting powers should
9 be drawn into difficulties by the attitude of a power
10 or powers not party to this Pact, the contracting powers
11 shall enter forthwith into a consultation concerning
12 measures to be taken jointly."
13

14 (E) Article II of the Pact proper stipulated:
15 "In case one of the contracting powers should
16 be threatened without provocation by a power or powers
17 not party to this Pact, the other contracting powers
18 engage to render to the threatened power political and
19 economic support for the removal of this threat."
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(140. T. 33751.)

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1 Paragraph 1 of Article III of the Pact
2 proper stipulated: "In case one of the contracting
3 powers should become object of an unprovoked attack
4 on the part of a power or powers not party to this
5 pact, the other contracting powers engage to render
6 their help and assistance."

7 The above-mentioned stipulations clearly
8 limit the obligation to render political and economic
9 support or to render help and assistance, including
10 military assistance, to cases in which unprovoked
11 threatening or attack was made on one of the con-
12 tracting powers. And as such unprovoked threatening
13 or attack was extremely unlikely to be started by
14 England or France, the above stipulations afforded
15 ample guaranty against Japan's involvement in an
16 aggressive war in Europe.^{141.}
17

18 (F) Paragraph 2 of Article III of the Pact
19 proper stipulated: "The three contracting powers
20 shall in this case forthwith consult and decide the
21 necessary measures for carrying out the obligation
22 provided in the foregoing paragraph."

23 Further, item (A) of "Secret Accessory
24 Protocol" stipulated: "Concerning Articles II and III
25 of the Pact, the competent authorities of the three
141. Tr. 35043.

1 contracting powers shall examine in advance, as soon
2 as possible after the Pact becomes effective, what
3 individual possibilities of conflict exist and in what
4 manner and to what extent the contracting powers
5 shall render each other support or help and assistance
6 according to the geographical circumstances."

7 According to these stipulations, support or
8 help and assistance would not be rendered automatic-
9 ly, but the matter would be examined and decided by a
10 conference of representatives of the three countries.^{142.}

11 This fact constitutes the second guaranty against
12 Japan's involvement in an aggressive war in Europe.

13 (G) The above-mentioned draft Tripartite
14 Pact brought by the ITO Mission and accepted by
15 Germany and Italy, contained no stipulation to the
16 effect that the three powers should secure the domina-
17 tion of the whole world, each having special domination
18 in its own sphere, and that for that purpose the
19 three powers should mutually assist one another, as
20 stated in the Indictment.

21
22 (H) Thus, it is clear that the draft Tri-
23 partite Pact was not an all-out military alliance,
24 but was a very weak and harmless document, partaking
25 more of the character of a treaty of mutual
142. See also Tr. 34935-938.

1 consultation and assistance than of a military
2 alliance.^{143.} It cannot be a crime to conclude or
3 to advocate such a pact, with or without the reserva-
4 tions mentioned in item (f) above. SHIRATORI cabled
5 his view against these reservations to the Japanese
6 Government and requested it to reconsider the matter,^{144.}
7 but this fact cannot possibly be a crime.

8 As shown in item (g) above, a new instruction
9 of the Japanese Government, revising the original
10 Japanese reservations brought by the ITO Mission,
11 arrived at Berlin and Rome at the end of March 1939,
12 and SHIRATORI did not oppose this new instruction, but
13 communicated it to the Italian Government early in
14 April 1939. As a result of negotiations concerning
15 the new Japanese reservations, as shown in item (h)
16 above, the point of difference between Japan on one
17 side and Germany and Italy on the other, narrowed
18 down to whether these reservations were to be committed
19 to black and white, or to remain an oral understanding.
20 That, however, appeared to SHIRATORI such a trivial
21 matter, after all, that it was beyond his comprehension
22 why both sides contested that point so stubbornly to
23 the last. He considered that an oral understanding was

24 143. Tr. 35040.

25 144. See item (f) above.

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13 April 1939. As a result of negotiations concerning
14 the new Japanese reservations, as shown in item (h)
15 above, the point of difference between Japan on one
16 side and Germany and Italy on the other, narrowed
17 down to whether these reservations were to be committed
18 to black and white, or to remain an oral understanding.
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20 matter, after all, that it was beyond his comprehension
21 why both sides contested that point so stubbornly to
22 the last. He considered that an oral understanding was

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25 143. Tr. 35040.

144. See item (f) above.

sufficient,^{145.} and urged the Japanese Government
1 not to attach too much importance to their formula
2 of reservations, inasmuch as the stipulations con-
3 tained in the text itself afforded ample guarantee
4 against involvement in an aggressive war in Europe,
5 which was extremely unlikely to be started by England
6 or France.^{146.} The papers Nos. 3 and 4 of exhibit
7 2619 were a tentative draft drawn up by German and
8 Japanese experts at Berlin on the basis of the
9 Japanese reservations.^{147.}
10

11 Now, the gist of No. 1 of the Japanese
12 reservations contained in the aforesaid new Japanese
13 instruction was as follows:^{148.} -- that although Japan
14 accepted the duty of military assistance only in
15 cases when Germany and Italy were unprovokedly
16 attacked by countries other than Soviet Russia, she
17 would not be able to carry it out effectively for
18 the time being.
19

20 And paper No. 4 (draft of a formulated
21 declaration to be made verbally by the Japanese
22 Ambassador before signing) of exhibit 2619 reads as
23 follows:^{149.}

24 145. Tr. 35116-117.

146. Tr. 35041, 35042-043.

25 147. English translation of paper No. 3 was partly
corrected by Language Arbitration Board on
December 2, 1947, Tr. 34318.

148. See item (g) above. 149. Tr. 22541, 22550.

1 "On instruction by my Government, I ask
2 your Excellency to take note that Japan can carry
3 out the obligations, accepted in Article III of the
4 pact, to render help and assistance in a military
5 respect at the present and in the immediate future
6 only to a restricted extent. The details as to the
7 military assistance to be rendered from time to time
8 in the future, shall be reserved to the discussions
9 provided in the secret accessory protocol."

10 It is quite clear that the above-mentioned
11 stipulations, that is, No. 1 of the new Japanese
12 reservations or paper No. 4 of exhibit 2619, consti-
13 tute the third guarantee against Japan's involvement
14 in an aggressive war in Europe.

15 Moreover, the witness USAMI testified that
16 SHIRATORI had never advocated an alliance of contents
17 stronger than the draft, exhibit 2619, and that there
18 was no one else who advocated an alliance stronger
19 than that draft during the negotiations.¹⁵⁰ Therefore,
20 the strongest draft tripartite pact ever considered by
21 anyone during the negotiations in 1939 was the draft,
22 exhibit 2619, which in reality was, as clearly shown
23 above, a very weak and harmless one, partaking more of
24 the character of a treaty of mutual consultation and
25

150. Tr. 33750-751.

1 assistance then of a military alliance. We would
2 like, in this matter, also to refer to SHIRATORI's
3 lecture at the Imperial University Alumni Association
4 in February 1940.^{151.}

5 (1-1) The problem of the so-called "war
6 participation" of Japan: The prosecution's exhibit
7 3798-A, an excerpt from HARADA Memoirs under date of
8 18 April 1939, was tendered in rebuttal substantially
9 for the following purposes:^{151-a.}

10 (A) To contradict the testimony of OSHIMA^{151-b.}
11 in which he denied making the statement to Ribbentrop
12 that Japan would probably participate in war;

13 (B) To contradict the testimony of
14 SHIRATORI^{151-c.} where he testified that: "I never
15 for a moment imagined that such a pact would by any
16 means drag Japan against her will into a war of
17 Germany's or Italy's making."
18

19 And again: "As to accusations that I acted
20 contrary to instructions from my government, I can
21 state with truth that there was not a single instance
22 of any such delinquency on my part."

23 HARADA wrote in exhibit 3798-A that the
24 151. Tr. 34935-938; language corrections by Language
Arbitration Board on 12 August 1947.

25 151-a. Tr. 37773-774; 37777-778.

151-b. Tr. 34135.

151-c. Tr. 35040.

1 Foreign Minister (ARITA) reported to the Emperor on
2 the afternoon of the 8th as follows:

3 "Ambassadors OSHIMA and SHIRATORI made a
4 clarification, which represented their own opinion
5 only, to Germany and Italy of the Empire's intention
6 to fight in the event that these should wage war with
7 England and France, but they should be made to take
8 this back considering that they acted without regard
9 to the wishes of the central authorities and that
10 their words and actions overstepped /their authority/.^{151-d.}"

11 The following prosecution's exhibits (A)-(F)
12 tendered in rebuttal also relate to the same problem
13 of the so-called Japan's war participation:

14 (A) ^{151-e.} Exhibit 3798-B: This is an excerpt
15 from HARADA Memoirs under date of 18 April 1939 and
16 its gist is as follows: Day before yesterday, that
17 is, on the 10th, when the Foreign Minister visited
18 the Palace after the Five Ministers' Conference held
19 a few days ago, the Emperor made an inquiry about the
20 progress of the meeting to the Foreign Minister.
21 Prior to this, the Emperor had learned of the opposi-
22 tion made to governmental instructions by both
23 Ambassador OSHIMA and SHIRATORI concerning the problem

24
25 151-d. Tr. 37779.
151-e. Tr. 37779-780; 37782-784.

of Japan's war participation. On 11 April 1939 the
1 Emperor declared to the War Minister ITAGAKI that the
2 action of OSHIMA and SHIRATORI in expressing inten-
3 tions of participating in war constituted an infringe-
4 ment upon the supreme authority of the Emperor, and
5 he expressed his extreme displeasure with the War
6 Minister's attitude of supporting them under such
7 circumstances.

8 With respect to this document, the Court's
9 attention is respectfully called to the spurious
10 nature, and the haphazard manner in which this pur-
11 ported conversation between ARITA and HARADA was
12 recorded, which upon its face shows that HARADA
13 could not possibly have been correct in quoting a
14 conversation with ARITA, word for word, which said
15 conversation took place on the 11th of April and the
16 word-by-word description thereof dictated in a care-
17 less manner on the 18th of April, fully a week later.
18 We respectfully refer the prosecution to those items
19 mentioned in Section I, General, of this summation,
20 wherein the witness, Mrs. KONOYE, testified on cross-
21 examination to the manner in which HARADA dictated
22 his so-called Memoirs, and the manner in which she,
23 as his secretary, took them down, she stating, among
24 other things, that they were corrected and recorrected
25

1 by various other people who were not even present
2 when the alleged conversation took place. Again I
3 refer to KIDO's summation, the record pages of which
4 we do not have now.

5 (B) Exhibit 3800-A: ^{151-g.} This is an excerpt
6 from HARADA Memoirs under date of 5 May 1939 and
7 contains a passage to the effect that on 25 April
8 1939, after the Five Ministers' Conference, ARITA
9 told HARADA that an urgent request had come from both
10 Ambassadors (OSHIMA and SHIRATORI) for their recall;
11 that, therefore, a discussion was held to devise
12 necessary due countermeasures, and that it was decided
13 that communication be made directly by the Premier
14 with Hitler and Mussolini, through the German and
15 Italian Ambassadors in Tokyo, instead of using the
16 Japanese Ambassadors in Berlin and Rome.

17
18 Now, as to the fact that both Ambassadors
19 requested ARITA for their recall, ITAGAKI and OSHIMA
20 denied it. ^{151-h.} SHIRATORI was never examined by the
21 prosecution about this matter. The so-called request
22 for recall under such circumstances would be at the
23 same time a request for acceptance of resignation.
24 And witnesses USAMI and NAGAI testified that OSHIMA

25
151-g. Tr. 37808-809.
151-h. Tr. 30497; 30498, 34137.

and SHIRATORI never threatened the Government with a
151-i.
1 resignation.

151-j.
2 (C) Exhibit 3801-C: This is an excerpt
3 from HARADA Memoirs under date of 9 May 1939 and con-
4 tains passages of the following gist: ARITA said to
5 HARADA that it was indeed inexcusable for those
6 abroad to propose, on their own authority, such a
7 thing as "participation in war" and to make such an
8 arbitrary reply. A Five Ministers' Conference was
9 scheduled for tomorrow, but this matter would be of
10 considerable difficulty for Premier HIRANUMA was
11 inclined to assume a supporting attitude rather than
12 remain neutral. . . On the 7th HARADA asked ARITA
13 the results of the Five Ministers' Conference. As
14 HARADA had expected, the Premier supported the opinion
15 of the War Minister and upheld OSHIMA's answer to
16 Ribbentrop that in the event of war between one of
17 the contracting parties and a third nation, Japan
18 would be considered to have entered a state of war,
19 although she would not give any military support.

151-k.
21 (D) Exhibit 3803-A: This is an excerpt
22 from HARADA Memoirs under date of 23 May 1939 and
23 contains passages to the following effect: The Five
24

151-i. Tr. 33741, 34945.

151-j. Tr. 37823-824.

151-k. Tr. 37825-827.

1 Ministers' Conference was held on the 20th and the
2 problem was settled in substance roughly. However,
3 with regard to the Foreign Ministers' proposal to
4 make Ambassador OSHIMA retract his affirmative
5 answer to Foreign Minister Ribbentrop's question as
6 to whether it was all right to conclude that /Japan/
7 would enter into a state of war, the Premier was
8 evasive and would not make him retract it. The
9 Foreign Minister, however, cautioned the Premier
10 that he ought to report privately to the Throne,
11 because though it could not be said that a complete
12 agreement in opinion had been reached between the
13 Army and Navy /the matter/ had actually been decided
14 and it appeared that instructions would soon be
15 issued. . . And though the Premier was asked over
16 and over at the Five Ministers' Conference to rescind
17 Ambassador OSHIMA's words, he simply assumed an
18 attitude indicating that that was all right. And so
19 the deletion of Article III of the above-mentioned
20 secret understanding concerning the participant
21 nations, etc., and the revision of the wording of the
22 announcement to be made to the world have finally
23 been carried out, but the statement about "entering
24 into a state of war," etc. by Ambassador OSHIMA /in
25 reply/ to Ribbentrop, the annulment of which was

~~pressed for by Foreign Minister ARITA, had been left~~
1 unrescinded after all. And so this had had much to
2 do with leaving uncorrected a source of trouble for
3 the future.

4 (E) Exhibit 3803-B: ^{151-1.} This is an excerpt
5 from HARADA Memoirs under date of 23 May 1939 and
6 contains passages of the following gist:

7 1) Vice-Minister YAMAMOTO said to HARADA
8 to the following effect: Both Ambassadors, that is,
9 OSHIMA and SHIRATORI, said that nothing could be done
10 about that particular draft and they kicked it back.
11 At the same time the Army claimed that there were
12 some words missing. (T.N. presumably in the draft);
13 therefore YAMAMOTO thought that /the whole business/
14 was scandalous.
15

16 2) Foreign Minister ARITA said to HARADA
17 the Army's contention that words were missing meant
18 a clear-cut expression of participation in war, and
19 ARITA could not agree with them. Yesterday ARITA sent
20 the Vice-Minister to the Premier, but he said that it
21 should be done the way the Army wants. It appeared
22 as if he too wished to have it read "participation in
23 war."
24

25 3) The Navy Minister said to HARADA: It
151-1. Tr. 37828-829.

was outrageous even to mention matters such as participation in war or condition of war. In spite of the fact that the Emperor often said, "I shall not permit it" to the General Staff Headquarters, the War Minister and the Premier concerning participation in war, it was very abominable for the Premier to support the Army and the Ambassadors who took action contrary to the will of the Emperor.

(F) Exhibit 3746:^{151-m.} This is Ott's telegram to the German State Secretary dated 27 May 1939 and contains a passage to the following effect: Army spokesman gave to Ott the following information: Foreign Minister wired decision of the Five Ministers' Conference of 20 May to Berlin and Rome in a form which the Army rejected because it did not automatically fix the entrance into a state of war against England and France, but proposed to make it dependent on the situation at the time. Japanese Ambassadors in Berlin and Rome had refused transmittal. Prime Minister had ascertained this departure from the decision after it had left and had delivered /his/ own correction to the cabinet. With the express approval of the Supreme War Council, the War Minister is again struggling, together with the Prime Minister, for a clear conception of this basic question.

151-m. Tr. 37408-410.

1 Now, as we have already shown and will
2 further show later, both HARADA Memoirs and Ott's
3 telegrams have only a very limited credibility.
4 However, in case we presume that the above-mentioned
5 excerpts from HARADA Memoirs and Ott's telegram
6 contain some truth, we could conclude from them the
7 following facts:

8 1) During the negotiations of the Tripartite
9 Alliance in the spring of 1939, OSHIMA and SHIRATORI
10 answered to the German and Italian Governments to the
11 effect that, in case Germany and Italy should wage
12 war with England and France, Japan would participate
13 in the war.

14 2) The Foreign Minister ARITA opined that
15 both Ambassadors should be made to take their answers
16 back, as they acted without regard to the wishes of
17 the central authorities and as their words and actions
18 overstepped their authorities.

19 3) ARITA reported the matter to the Emperor
20 on the 8th (Ex. 3798-A) or 10th (Ex. 3798-B) of April
21 1939, and the Emperor opined that the action of both
22 Ambassadors was an infringement upon the supreme
23 authority of the Emperor.

24 4) At the Five Ministers' Conferences on
25 about the 6th and 20th of May 1939 ARITA endeavored

1 to attain a decision to make OSHIMA retract his
2 answer to Ribbentrop, that in the event of war
3 between one of the contracting parties and a third
4 nation, Japan would be considered to have entered a
5 state of war, although she would not give any
6 military support, but the Premier and the War
7 Minister opposed ARITA's proposal and the matter
8 was left undecided at the Five Ministers' Conference
9 on 20 May 1939.

10 5) The decision of the Five Ministers'
11 Conference of 20 May 1939 was wired to both Amba-
12 sadors in Berlin and Rome, but they kicked it back.
13 The Army and the Prime Minister opined that the in-
14 struction drafted and sent by the Foreign Minister
15 did not quite conform to the decision of the afore-
16 said Five Ministers' Conference, and the Prime
17 Minister ascertained this departure from the decision
18 after it had left and delivered his own correction
19 to the cabinet.
20

21 The defense for SHIRATORI does not know to
22 what extent the above-mentioned conclusions are true
23 and correct. However, in so far as SHIRATORI was
24 concerned, the truth is as follows:

25 1) As shown in item (1) of Chapter V above,
draft texts of the pact proper, the signing protocol,

1 and the secret accessory protocol of exhibit 2619
2 were accepted by Japan, Germany and Italy at an
3 early stage of the negotiation.
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1 2) Paragraph 1 of Article III of the pact
2 proper stipulates that in case one of the contracting
3 powers should be attacked unprovokedly by a power or
4 powers not a party to this pact, the other contract-
5 ing powers engage to render their help and assistance.
6 It is not clear from this stipulation whether or not
7 the "help and assistance" include also military assist-
8 ance and possible participation in war.

9 3) The gist of No. 1 of the Japanese reser-
10 vations contained in the aforesaid new Japanese instruc-
11 tion, which arrived at Berlin and Rome at the end of
12 March, 1939, and were communicated to the German and
13 Italian governments in early April, 1939, was that,
14 although Japan accepted the duty of military assist-
15 ance also in case Germany and Italy were unprovokedly
16 attacked by countries other than Soviet Russia, she
17 would not be able to carry it out effectively for the
18 time being (151-n).

19 If Japan gave military assistance, though to
20 a restricted extent, to Germany and Italy, it goes with-
21 out saying that Japan would also be participating in
22 war automatically for Germany and Italy. If ARITA
23 opined the military assistance and the war-participa-
24 tion were two different things, he should have indicated
25 (151-n) See items (g) and (1) of Chapter V above;
also refer to paper No. 4 of ex. 2619.

it clearly in his instructions.

1 4) SHIRATORI seems to have answered to an
2 inquiry by the Italian Government about this matter
3 in the above-mentioned sense.
4

5 , 5) As hereinbefore stated, Japan's obliga-
6 tion to render help and assistance included also mili-
7 tary one, and the participation in war for Germany and
8 Italy would not arise automatically, and further, that
9 there were triple guarantees against it, as set forth
10 heretofore, and for the sake of clarity, enumerated
11 again as follows: (a) Should Germany and Italy be
12 attacked unprovokedly (par. 1 of Art. III of the pact
13 proper); (b) A conference of representatives of the
14 three countries would examine and decide whether Japan
15 should render help and assistance, including also mili-
16 tary one, and participate in war for Germany and Italy
17 (par. 2 of Art. III of the pact proper and item (A) of
18 the Secret Accessory Protocol); (c) And further, the
19 Japanese military assistance for Germany and Italy
20 would be for the time being only of a restricted extent,
21 and the details concerning the military assistance
22 should, of course, be reserved to the discussions pro-
23 vided in the Secret Accessory Protocol (No. 1 of the
24 Japanese reservations contained in the new Japanese
25 instruction and paper No. 4). We submit therefore that

1 supposing SHIRATORI actually gave the above explanatory
2 answer to the Italian Government concerning the con-
3 struction of the words "military assistance," he could
4 have said, without any scruples but with perfect truth,
5 that the Tripartite Pact would not have dragged Japan
6 against her will into a war of Germany's or Italy's
7 making.

8 6) Since that time SHIRATORI got no instruc-
9 tion nor reprimand of the Japanese Government about the
10 above-mentioned problem. He never heard how the Emper-
11 or opined about it. If the Japanese Government could
12 not attain any agreement about the matter, it is quite
13 natural that the government also could not have sent
14 any instructions to the ambassador in Rome or reprimand
15 him about it. ARITA's personal opinion could not
16 possibly have been the opinion of the Japanese Government.
17 Therefore, SHIRATORI never acted contrary to any instruc-
18 tions of the Japanese Government in this respect.

19 7) It is quite clear from ex. 3803-A above
20 that the instruction to both ambassadors sent on the
21 basis of the decision of the Five Ministers' Conference
22 on 20 May 1939, if the story of sending such an in-
23 struction be true, related to only the question of the
24 so-called secret understandings or reservations, and
25 not the question of Japan's war-participation, the latter

question having been left undecided at the cabinet
1 conference. And if both ambassadors really kicked the
2 instruction back, as stated in ex. 3803-B above, or if
3 they really refused transmittal of the instruction, as
4 stated in ex. 3746, we must interpret the story in the
5 sense that Germany and Italy did not accept the con-
6 tents of the Japanese instruction. It is significant
7 that the prosecution did not question SHIRATORI on
8 this matter when he testified in his own behalf and
9 introduced this document in rebuttal at a time when
10 SHIRATORI was in a U. S. Army Hospital for a throat
11 operation and could not be contacted by counsel for a
12 reply.
13

14 THE PRESIDENT: Why do you keep repeating
15 that? It looks like this summation was composed by a
16 number of counsel, among whom there wasn't much coopera-
17 tion to avoid repetition. Many other matters have
18 been repeated too. I suggest you go through the balance
19 of this when you get the chance and cut out matters
20 that have already been stated.
21

22 MR. CAUDEL: 8) We would like to call the
23 attention of the Court also to the following fact:
24 As shown in item (1) of Chapter V above, Mussolini was
25 discontented with the Japanese delays and preferred an
Italo-German double alliance to a tripartite one, leav-

ing Japan to face Anglo-French forces alone, as the pact
1 then would have no anti-British and anti-American
2 flavor whatsoever. In April and May, 1939, when Japan
3 persisted stubbornly in their reservations to be attached
4 to the tripartite alliance, Mussolini and Ciano were
5 working eagerly for the double alliance rather than the
6 tripartite pact, considering Japan's adherence to the
7 alliance more harmful than useful. An Italo-German
8 alliance was concluded 22 May, 1939.

9
10 The above-mentioned decision of the Five
11 Ministers' Conference of 20 May 1939 was wired, if we
12 presume the wiring of it as true, to Rome in such an
13 atmosphere.

14 9) We respectfully refer here also to the
15 testimony of the defendant OSHIMA and the witness
16 USAMI concerning the problem of war-participation (151-o
17 (OSHIMA), 151-p, USAMI).

18 10) As pertains to the purported Memoirs of
19 HARADA, if any consideration is to be given them, it is
20 significant that practically all of the so-called in-
21 formation written by him in this matter came supposedly
22 from ARITA, the man whom the prosecution has insisted
23 was at complete odds with SHIRATORI, and even if such

24
25 (151-o) Ex. 3508, tr. 34,006 and 34,008
(151-p) Ex. 3494, tr. 33,740

1 are true, which we deny, such were naturally biased in
2 nature (151-q).

3 (m) The Basic Idea of SHIRATORI As Ambassador
4 to Italy for Concluding a Tripartite Pact

5 Shortly before SHIRATORI's appointment as
6 Ambassador to Italy, the Premier, Prince KONOYE, told
7 him that there was talk of a rapprochement between Japan
8 and the Axis powers; that KONOYE was not enamoured of
9 the idea himself but that inasmuch as direct negotia-
10 tion with Chiang Kai-shek had so far proved almost use-
11 less, some other diplomatic means had to be sought to
12 quickly dispose of the China mess; that in KONOYE's
13 opinion a friendly intervention by England and America
14 was the greatest desideratum, but nothing short of a
15 possible alignment of Japan with the Axis would cause
16 them to modify the anti-Japanese attitude they had
17 maintained ever since the Manchurian imbroglio.

18 SHIRATORI concluded from this talk that at that moment
19 it was not so much the actual rapprochement with Ger-
20 many and Italy that KONOYE really desired as the effect
21 that such a gesture on Japan's part would have on
22 England and America in regard to their Far Eastern
23 policy. He felt he could agree in principle to KONOYE's
24

25 (151-q) Ex. 3738, tr. 35,084-85

1 foreign policy thus outlined and so accepted the
2 Ambassadorship to Italy proposed by the Foreign Minis-
3 ter UGAKI (152).

4 That was the basic idea that influenced
5 SHIRATORI during the whole course of the negotiation
6 in 1939. Therefore, irrespective of whether the
7 negotiation was to succeed or not, he considered it of
8 the first importance that the fact that such pourparlers
9 were going on between Japan and the Axis powers should
10 become known to the world, especially to America and
11 England. He was on occasion intentionally outspoken
12 or indiscreet in his press interviews, generally assum-
13 ing an air of optimism even at moments when the success-
14 ful conclusion of the negotiation seemed more than
15 doubtful (153).

16 The first instruction to SHIRATORI was brought
17 by the ITO Mission, as shown in item (f) above, and as
18 shown in item (1) above, the draft tripartite pact
19 contained in the same instruction was a weak and harm-
20 less one, having twofold guarantees against Japan's
21 involvement in an aggressive war in Europe, which was
22 extremely unlikely to be provoked by England or France,
23 and SHIRATORI thought that such a pact would not only
24
25

(152) Tr. 35,032-033.

(153) Tr. 35,038-039

1 not stand in the way of Japan concluding separate
2 arrangements with England and America concerning China
3 and the Far East, but, on the contrary, the existence
4 of such a pact, or its very possibility or imminence,
5 would serve as a sort of leverage in moving the Anglo-
6 Saxon countries to reconsider their Far Eastern policy,
7 thereby making it possible for Japan speedily to wind
8 up, with their friendly cooperation, the unfortunate
9 conflict with China (154). He considered it of utmost
10 importance for Japan to avoid, by all means, a complete
11 diplomatic isolation which would render all the more
12 precarious the chance of an early settlement by diplo-
13 macy of the China affair, and that unless there were a
14 fair prospect of coming to a satisfactory agreement
15 with the Anglo-Saxon countries in the meantime, the
16 conclusion of the Axis pact for what it was worth would
17 be almost the only way of preventing such an eventual-
18 ty (155).
19

20 With such an idea SHIRATORI advised the Jap-
21 anese Government against the draft reservations to be
22 annexed to the draft tripartite pact, brought by the
23 ITO Mission, and requested it to reconsider the matter,
24 as there was no prospect for such reservations ever
25

(154) tr. 35,040

(155) tr. 35,043

1 to be entertained by the German and Italian Govern-
2 ments (157). The prosecution contend that from the
3 moment when SHIRATORI opposed the ITO Mission, he vol-
4 unteered himself upon policy making level and must
5 bear responsibility in fact. But the whole matter is
6 not so simple as that. The Japanese counter-proposal,
7 as brought to Europe by the ITO Mission, while osten-
8 sibly appearing to represent a marked enlargement and
9 strengthening of the Anti-Comintern Pact, was, by
10 reason of the two reservations proposed, rendered in
11 fact nothing more than the Anti-Comintern Pact with
12 its secret military understanding incorporated in the
13 text of the new treaty. While SHIRATORI did not as-
14 certain this point definitely from Prince KONOYE when
15 the Tripartite rapprochement was first discussed in
16 August, 1938, SHIRATORI had the general idea that the
17 Japanese Government was considering a Tripartite Pact
18 of much wider scope than the Anti-Comintern Pact.
19 After arriving in Rome his impression in this respect
20 was confirmed by various circumstances. He learned
21 how the Japanese Government considered the first German
22 proposal a capital idea calculated to kill three birds
23 with one stone. He learned how General OSHIMA was
24 authorized by Mr. ARITA to call on Mussolini to discuss
25

the matter.

1 The instruction brought by the ITO Mission
2 said that this counter-proposal represented the true Jap-
3 anese policy as determined from the outset and that
4 if there were any different views anywhere, it was a
5 misunderstanding. Misunderstanding or not, Italy cer-
6 tainly had a very different view. She had no quarrel
7 with Soviet Russia and was not a party to the secret
8 protocol of the Anti-Comintern Pact. On the other
9 hand, she had clashes of interests with Britain and
10 France around the Mediterranean and Africa. She wished
11 her diplomatic position strengthened by rapprochement
12 with Germany and also with Japan if that was possible.
13 She was persuaded that such a tripartite arrangement was
14 now within possibility. Mussolini suddenly became
15 very enthusiastic and expected the consummation of the
16 treaty within a few weeks.

17
18 But now comes the Japanese counter-proposal
19 which in plain English tells Italy that "Japan expects
20 Italy to come to her help in case of Russian attack,
21 but that in case of British or French attack on Italy,
22 Japan cannot extend any military help, and that she
23 intends to tell England and France so beforehand.

24 That was not a question of policy but one of
25 common decency. To deliver the Japanese counter-

1 proposal to the Italian Government at that moment
2 would have been little short of an affront. No am-
3 bassador in any position would have submitted to such
4 an instruction.

5 The comparative ease with which the Tokyo
6 Government reconsidered its position shows that the
7 modification of the reservations was more within the
8 scope of technique of negotiation than that of an
9 absolute or supreme policy. And as the new Japanese
10 draft reservations, which revised the original ones
11 brought by the ITO Mission and which constituted the
12 third guarantee against Japan's involvement in an
13 aggressive war in Europe, arrived, and was communicated
14 by SHIRATORI to the Italian Government (158) and as
15 finally Germany and Italy insisted that the reserva-
16 tions should be an oral understanding, while the Japan-
17 ese Government persisted in having them in writing
18 (159) SHIRATORI considered that an oral understanding
19 would be sufficient and urged the Japanese Government
20 not to attach too much importance to their formula of
21 reservations (160).
22

23 When England offered Japan concessions in
24 (158) See item (g) above, and last part of item (1) above
25 (159) See item (h) above.
(160) See middle part of item (1)

1 the Tientsin affair in the middle of 1939, on the
2 basis of which Japan was going to make terms with
3 England, SHIRATORI felt that what he had at first ex-
4 pected as a result of the negotiations for a tripartite
5 alliance brought about in part the results that he
6 had expected. It was the duty of ARITA, the then
7 Foreign Minister, to bring about a closer rapproche-
8 ment between Japan on one side and the United States and
9 Britain on the other, and it was SHIRATORI's task to
10 bring about, to facilitate, an alliance between Japan
11 on one side and Germany and Italy on the other, as
12 Ambassador to Italy. Although on the surface it
13 appeared that the two were moving in opposite direc-
14 tions, actually speaking, the work that SHIRATORI was
15 doing was facilitating and furthering ARITA's work of
16 bringing about a rapprochement with the United States and
17 Britain; and to that end SHIRATORI not only gave his
18 efforts but he "prayed for ARITA's success," (161)

19
20 THE PRESIDENT: We will recess for fifteen
21 minutes.

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

25 (161) Tr. 35,112-113

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

THE PRESIDENT: Mr. Caudle.

MR. CAUDLE: I will proceed, sir, at the next to the last paragraph on page 55.

In this connection, the prosecution cross-examined SHIRATORI as to whether he had not sent two telegrams to ARITA concerning the Tientsin Affair of 1939. Without showing him exhibit 2234, they quoted the following two short sentences:

"In order to establish a new order in China today we must drive out from China the old order which is represented by Britain. . . Therefore, I believe that Japan should conclude a treaty as soon as possible with Germany and Italy in opposition to Britain and France."

SHIRATORI answered that he had no recollection whatever of having sent such a telegram (162). It is no wonder that so brief and insufficient a quotation could not refresh SHIRATORI's memory. This exhibit is an excerpt from a lecture given by SHIRATORI at a meeting of the Imperial University Alumni Association in February 1940 (corrected by the Language Arbitration Board on August 12, 1947 (163), and reads in full as

(162) T. 35,114-116
(163) T. 16,044-046 and 25,512-513

follows:

1 "However, a nation-wide anti-British move-
2 ment broke out with respect to the Tientsin
3 problem. And as I saw that this was supported
4 by the whole Japanese nation, I thought that it
5 was no time to hesitate and in early July I
6 advised the Government twice in details as
7 follows:
8

9 "Germany and Italy are not contemplating a
10 war against the U.S.S.R. If the Government is
11 going to conclude a Treaty on the assumption that
12 war will be waged against U.S.S.R., the idea had
13 better be given up. I believe the intention of
14 Germany and Italy is to draw Russia to their side
15 after concluding an alliance among Japan, Ger-
16 many and Italy. In order to establish a new
17 order in China today, we must drive out from
18 China the old order which is represented by
19 Britain. Therefore, I believe that Japan
20 should conclude a treaty as soon as possible with
21 Germany and Italy in opposition to Britain and
22 France, and then to confront the U.S.S.R. with
23 the combined power of Japan, Germany and Italy;
24 cause her to withdraw from the East, to stop
25 her aid to Chiang Kai-shek, to withdraw her

1 froces from the Manchurian-Soviet border; and
2 gradually effect the solution of the pending prob-
3 lems favorably to us. I believe that this policy
4 is best suited to the occasion for Japan.

5 "'At this moment if we do not conclude an
6 alliance with Germany and Italy, Germany will
7 probably league with U.S.S.R. Moreover, it is
8 drawing near. It is not the time for hesita-
9 tion. If Japan tried to solve the problem
10 between her and U.S.S.R. after the alliance
11 between Germany and U.S.S.R. has been concluded,
12 wouldn't things become unfavorable for Japan,
13 because it is not the logical process?'

14 "But the Government, of course, was unable
15 from the beginning to give thought to my opinion,
16 because they had in view a treaty for fighting
17 with U.S.S.R. whereas this was a proposal for a
18 treaty for making peace with her, an idea very
19 different from the original one."
20

21 The general tenor of SHIRATORI's speech was
22 that seeing that a nation-wide anti-British agitation,
23 apparently unchecked by the Government, had occurred
24 in the early summer of 1939 with the question of the
25 British Concession in Tientsin as its ostensible cause,
SHIRATORI thought that there was now very little

1 prospect of a friendly understanding with the Anglo-
2 Saxons. On the other hand, the Tripartite Alliance
3 negotiation was hanging fire indefinitely, mainly be-
4 cause of Japan's insistence on its formula of reserva-
5 tion, while in SHIRATORI's opinion German-Soviet
6 rapprochement was steadily taking shape. What SHIRA-
7 TORI states in the exhibit is that in face of such a
8 situation, he thought there was not a moment to be lost
9 in quickly concluding the Axis alliance for whatever
10 it was worth, in order that a complete diplomatic iso-
11 lation for Japan might be avoided.

12 It was quite another story, therefore, when
13 later the British Government suddenly changed its atti-
14 tude and negotiation on the basis of their concessions
15 was to take place in Tokyo. We fail to see anything
16 inconsistent in SHIRATORI's stating from the witness
17 box that he fervently hoped for ARITA's success in this
18 negotiation.

19 Now, in order to show that SHIRATORI wanted
20 "to establish a new order in China" and "to drive
21 out from China the old order which is represented by
22 Britain" not by violence or armed forces, but by
23 peaceful means, we would like to quote a short pas-
24 sage from Ex. 2232 (Plessen's Memorandum dated Sept-
25 ember 4, 1939, concerning his interview with SHIRATORI

shortly before SHIRATORI's departure from Rome),

1 which reads as follows:

2 "The goal of Japanese policy in China re-
3 mains, now as then, the establishing of a new
4 order there, with which was linked the expulsion
5 of England from China. In order to attain this
6 goal Japan was hoping for financial help from
7 America." (164)

8 (n) The activities of SHIRATORI as Ambassador
9 to Italy for Concluding a Tripartite Pact, cannot be a
10 Crime.

11 From the detailed explanations above, it must
12 be concluded as follows:

13 (A) SHIRATORI's intention, during the whole
14 course of the negotiation in 1939, was to contribute,
15 in so far as he could, to a peaceful settlement of the
16 China Affair by concluding a weak and harmless tripar-
17 tite pact, which would also prevent the outbreak of a
18 European war. ^(164-A) Therefore, there was not the least sem-
19 blance of criminal intent on his part, but in his mind
20 a means to a solution of a very difficult problem not
21 only to Japan but other nations involved.

22 (B) SHIRATORI's activities, limited as they
23 were, failed completely, both as to conclusion of a
24 tripartite pact or furthering the collaboration of

(164) T. 16,009,010

(164-A) T. 34,935-938, cor.' by Lang.Sec. 12 Aug. 1947)

Japan, Germany and Italy.

1 (C) There was no causal relations between
2 SHIRATORI's negotiations in 1939 and the conclusion
3 of the Tripartite Pact of 27 September 1940.

4 (D) The responsibility for treaties or al-
5 liances did not finally rest with SHIRATORI, an Amba-
6 sador, but with his Government (165), although under
7 the law he had every right as ambassador to make sug-
8 gestions to and advise his government.

9 (E) Therefore, SHIRATORI's activities as
10 Ambassador to Italy for concluding a tripartite pact
11 cannot be a crime as defined in Count 5 of the Indict-
12 ment.
13

14 VI.

15 SHIRATORI'S CAREER AFTER AMBASSADORSHIP

16 TO ITALY

17 SHIRATORI was ordered to return home 2 Septem-
18 ber 1939. He departed from Rome 15 September and ar-
19 rived at Tokyo 13 October 1939; he was released from
20 service in Italy and was placed on the waiting list
21 9 January 1940; he was appointed as Advisor to the
22 Foreign Ministry 28 August 1940; he was released from
23 advisorship to the Foreign Ministry 22 July 1941; he
24 was elected a member of Parliament 30 April 1942; he
25 (165) T. 31,255-57 and 34,975-76

Japan, Germany and Italy.

1 (C) There was no causal relations between
2 SHIRATORI's negotiations in 1939 and the conclusion
3 of the Tripartite Pact of 27 September 1940.

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22 Foreign Ministry 28 August 1940; he was released from
23 advisorship to the Foreign Ministry 22 July 1941; he
24 was elected a member of Parliament 30 April 1942; he
25 (165) T. 31,255-57 and 34,975-76

1 was appointed as a member of the Board of Directors
2 of the Imperial Rule Assistance Political Society 20
3 May 1942; he seceded from the same society 28 June 1943;
4 and he resigned membership of Parliament 5 December
5 1945 (166).

6 VII.

7 SHIRATORI'S ATTITUDE SHORTLY BEFORE

8 DEPARTURE FROM ROME

9 (a) The prosecution contends that shortly
10 before his departure from Rome, SHIRATORI stated to
11 Plessen, a member of the German Embassy at Rome, on the
12 4th of September 1939, to the effect that the goal of
13 Japanese policy in China remained, now as then, the
14 establishing of a new order there, with which was
15 linked the expulsion of England from China; that in
16 order to attain this goal, Japan was hoping for finan-
17 cial help from America; that after the over-powering
18 of Poland the opportunity of an understanding with France
19 and England might present itself; that Germany and
20 Italy were not at present in a position, and France
21 and England were not disposed to wage a war on a truly
22 large scale, and that if it should come to a general
23 conflict into which Italy, the United States, Russia
24 and Japan would then necessarily be drawn, it would
25 (166) T. 34,949-50

1 simply be a catastrophe whose extent could not be con-
2 ceived (167). There is a most significant conflict
3 in these contentions, because it is inconceivable that
4 Japan could hope for financial aid from America to oust
5 Britain, America's friend and natural ally, from China.

6 (b) Exhibit 2232 (168): This exhibit consists
7 of the following two documents:

8 1) Mackensen's telegram to Ribbentrop dated
9 2 September 1939, which contains the following passage:

10 "Japanese Ambassador visited me today to in-
11 form me that he had now received his expected
12 recall. Expects to depart in about three weeks,
13 would particularly welcome /opportunity/ to have
14 detailed talk with German Foreign Minister on
15 homeward trip which he may take via Moscow. He
16 seemed to be of the opinion that with a new Japan-
17 ese Cabinet there was a well-founded chance for
18 successful continuation of the stalled further
19 rapprochement with the Axis Powers. For this
20 very purpose of being able personally to work
21 more effectively than was possible from Rome he
22 was going to Tokyo." (169)

23 2) Plessen's Memorandum dated 4 September

24 (167) Ex. 2232, T. 16,003-010

25 (168) T. 16,003-010

(169) T. 16,003-004

1939 (170).

1 (c) SHIRATORI contradicted, in his affidavit,
2 the aforesaid Mackensen's statement in exhibit 2232,
3 as follows:

4 "The prosecution cites a telegram by the
5 German Ambassador in Rome, (Ex. 2232; T. 16,003)
6 in which I am represented as having assured him
7 of my continued efforts for the sake of German-
8 Japanese friendship. Could I have answered other-
9 wise to a diplomatic colleague who expressed to
10 me his concern about the effect my sudden recall
11 at that particular juncture might have upon the
12 relationship between Japan and the Axis? Accord-
13 ing to the same exhibit of the prosecution, I am
14 reported by the German Embassy in Rome as stating
15 that I would particularly welcome an opportunity
16 to have a detailed talk with the German Foreign
17 Minister on my homeward trip. I do not understand
18 how they could have put the matter in that way,
19 for to the best of my memory, it was Mr. Mackensen
20 himself who told me, through his councillor, one
21 Mr. Plessen, that he had been instructed by von
22 Ribbentrop to inquire if I would not return to
23 Japan by way of Berlin. I answered him that I
24
25

(170) T. 16,004-010

1 had already booked my passage to New York on
2 the Italian steamer Conte di Savoia. If I had
3 really wanted to see Ribbentrop, I could, of
4 course, have easily made a trip to Berlin before
5 my departure from Rome, without consulting Mr.
6 Mackensen at all." (171)

7 Further, the war had broken out between Ger-
8 many and Poland, and the then Foreign Minister was
9 Admiral NOMURA, a pro-British and pro-American diplo-
10 mat, and it is unimaginable that SHIRATORI could have
11 thought that the Axis alliance could have been fur-
12 thered at that time and under those conditions.

13 (d) Exhibits Nos. 3827 and 3827-A: The con-
14 tents of these two documents were used by the prosecu-
15 tion on its cross-examination of SHIRATORI and SHIRATORI
16 denied them (172). And the prosecution tendered in re-
17 buttal the two documents in evidence, in order to rebut
18 the aforesaid SHIRATORI's insistence in his affidavit
19 and his denial on his cross-examination, and contended
20 that, apart from the rebuttal value of these two docu-
21 ments, the prosecution would urge their importance on the
22 ground that they indicated SHIRATORI's determination to
23 continue his collaboration with the Nazis after his
24 government had officially terminated negotiations for
25

(171) Ex. 3595, T. 35,044-045

(172) T. 35,121

an alliance (173). The two documents are as follows:

1 1) Exhibit 3827. This is a telegram dated
2 4 September 1939, from Weizsaecker in Berlin to the
3 German Embassy in Rome and reads as follows:

4 "Please inform SHIRATORI that Reich Foreign
5 Minister will gladly see him at the given time
6 in Berlin. Please keep in contact with SHIRATORI
7 and note his departure." (174)

8 2) Exhibit 3827-A: This is a telegram dated
9 9 September 1939, from Mackensen in Rome to the German
10 Foreign Office and reads as follows:

11 "Response to telegram dated 4, No. 465.
12 SHIRATORI, whom I informed in accordance with my
13 instructions, has in the meantime dropped the
14 idea to return via Siberia. He regrets greatly
15 not to be able to see Reich Foreign Minister again,
16 but plans to ask Ambassador OSHIMA, who will,
17 within a few days, come to Rome, to transmit
18 to Reich's Foreign Minister what he wanted to
19 state to him personally." (174)

20 (e) Now, Plessen wrote in his memorandum
21 mentioned above about his talk with SHIRATORI on the
22 4th of September 1939 as follows:

23 (173) T. 37,985
24 (174) T. 37,986-987
25

1 "To a remark from me that he (SHIRATORI) had,
2 so far as I understood it, the wish to speak
3 to the German Foreign Minister on his return
4 trip to Japan, Mr. SHIRATORI replied that his
5 travel plans were not yet definite. He would
6 presumably return to Japan via Scandinavia and
7 America and would, of course, be happy to talk
8 to the German Foreign Minister in case the latter
9 wished it. I got the impression that Mr. SHIRA-
10 TORI did not wish to ask for a conference on his
11 own initiative, so to speak, probably out of
12 regard for General OSHIMA." (175)

13 Plessen's statement of 4 September is clearly
14 inconsistent with the aforementioned telegram of Mack-
15 ensen dated 2 September. If we presume that Plessen's
16 statement had a certain amount of credibility, it is
17 quite clear that SHIRATORI never asked for a confer-
18 ence with Ribbentrop. and we must then conclude that
19 Mackensen misapprehended or distorted or enlarged some
20 remark of SHIRATORI that might have been casually or
21 gesturely made at the time he called on his German
22 counterpart to say good-bye, and sent his aforesaid
23 telegram of 2 September, although SHIRATORI himself has
24 no recollection altogether of having expressed any such
25 (175) Ex. 2232, T. 16,008-009

1 remark. In reply to Mackensen's telegram, the German
2 Foreign Office sent to Rome the hereinbefore mentioned
3 instruction of 4 September, which Mackensen communicated
4 to SHIRATORI. SHIRATORI answered to the German Embassy
5 that he had already booked his passage to New York on
6 an Italian steamer, and on the basis of this SHIRATORI's
7 answer, Mackensen dispatched the aforesaid telegram of
8 9 September. If we reason in this way, the above-
9 mentioned statement of SHIRATORI in his affidavit must
10 be entirely true and correct.

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1 In concluding Chapter VII of this Summation,
2 namely, SHIRATORI's activities while Ambassador to
3 Rome, we wish again to impress upon the Tribunal the
4 very trivial part SHIRATORI played in these negoti-
5 ations.

6 The evidence as cited hereinbefore, clearly
7 and unimpeachably shows that practically all negoti-
8 ations were carried on directly with Italy from Berlin
9 through German and Italian officials ⁽¹⁷⁶⁾; further,
10 that although SHIRATORI might have been indiscreet
11 in his statements, such action was explained by him
12 thoroughly in that he was more interested in publiciz-
13 ing the negotiations than he was in the consummation
14 of the pact, in order to let the world know Japan
15 considered such a move, which would thereby give her
16 a better leverage to work out an understanding with
17 Britain and America and through their good offices
18 settle the China Affair.

19 It is a well known fact that in diplomatic
20 relations there is much talk back and forth between
21 both sides in a round-about and vague nature. Seldom,
22 if ever, are direct statements made that carry a con-
23 crete meaning. It would appear that only direct
24 statements are made by such diplomats to their home
25 (176. Tr. 24,482)

1 office, and conversations with diplomats representing
2 other nations are such as to leave vague and sometimes
3 misunderstood impressions. If SHIRATORI made state-
4 ments to Plessen or Mackensen or Ciano, alleged by
5 the prosecution, it would seem only reasonable to con-
6 clude that he was talking merely to cover up his
7 embarrassment and to alleviate as much as possible any
8 personal friction that could have resulted between
9 him and such people over the events of the times. It
10 is also safe to presume that inasmuch as he was leaving
11 at once, this was, in diplomatic parlance, "easing
12 his way out." Further, that after his release from
13 the post of Ambassador, he (SHIRATORI) was placed on
14 the waiting list until late August, 1940 (see Chapter
15 VI, this summation), which took him completely out of
16 official contact, and with no duties or authority
17 whatsoever (176-A).

18 Now, with reference to the exhibit referred
19 to in the prosecution's summation (UU-65), namely,
20 exhibit 507, transcript 6129, to the effect that
21 Ribbentrop told Ott "SHIRATORI would soon return to
22 Tokyo and would also work along the lines of German-
23 Japanese cooperation which he had indicated," is
24 absolutely false on its face, in that the exhibit
25

(176-A Tr. 34,970 (bottom of page)
and 34,971)

1 referred to clearly states that the object for which
2 he would work was for better Russian-Japanese relations.
3 However, SHIRATORI did not make this statement to
4 Ribbentrop for the simple reason that he did not see
5 Ribbentrop at any time prior to his departure, and
6 if Ribbentrop had any basis upon which to make such a
7 statement, it must have come from some other source.
8 As hereinbefore set forth, and as the record will
9 show, SHIRATORI only saw Ribbentrop two times, on the
10 occasion of Hitler's Birthday in Berlin in April,
11 1939 (176-B), and June, 1939 (176-C). At any rate,
12 according to Ott, SHIRATORI took no active part what-
13 soever in regard to furthering German-Japanese rela-
14 tions upon his return to Tokyo; that is, at least
15 during the three months period between October, 1939,
16 and January, 1940, during which he retained the title
17 of Ambassador to Italy, and further, Ott stated that
18 it was in the late spring of 1940 before anyone dis-
19 cussed anything at all about German-Japanese relations
20 (176-D). Further, it is shown that after his release
21 from the post of Ambassador, as aforesaid, SHIRATORI
22 was placed on the waiting list until 28 August 1940
23 (176-E), which separated him from official contacts
24

25 (176-B. Tr. 24,481
176-C. Tr. 34,138-39
176-D. Ex. 3579, Tr. 34,854-55.
176-E. Ex. 3575, Tr. 34,949)

1 and conferred upon him no duties or authority what-
2 soever during this period (176-F).

3 The prosecution has gone to great lengths
4 to emphasize what they term the "change" in SHIRATORI
5 upon his arrival in Rome in that he assumed policy-
6 making activities beyond the scope of his authority.
7 However, an ambassador has no policy-making authority
8 whatsoever, and it is certainly within the scope of
9 his duties and his natural right to recommend to his
10 Government such things as he saw on the ground, because
11 after all he was the eyes and ears of his Government
12 in a foreign country many thousand miles away. We
13 feel justified in our contentions that although he
14 barked loud, there was little bite. The net result of
15 his tenure of Ambassador in Rome was absolutely nil.

16 VIII. SHIRATORI AS ADVISOR TO THE
17 FOREIGN OFFICE UNDER MATSUOKA.

18 TRIPARTITE PACT OF September 27, 1942.

19 We will contradict later, also, the prosecu-
20 tion's contention, which related to SHIRATORI's
21 activities in the period from his return home from
22 Italy until his appointment as the advisor to the For-
23 eign Ministry, and which relied upon telegrams of
24 Ambassador Ott as well as upon SHIRATORI's lectures
25 and articles.

(176-F. Last line Tr. 34,970-71.)

The prosecution tendered in evidence a report
1 of the Secretary General of the Metropolitan Police
2 Board, dated 18 June 1940 (177), in order to disprove
3 the statement of SHIRATORI that there was no instance
4 of his opposing the policy of the YONAI-ARITA cabinet,
5 and to contradict his two specific denials of ever
6 having expressed an opinion to the Parliamentary
7 Members' League for the Consummation of the Sacred
8 War, calling for the overthrow of the YONAI-ARITA
9 cabinet (178), as well as to rebut his statement that
10 as an ambassador on the waiting list with no political
11 connections whatever he had no knowledge at all of
12 the circumstances concerning the fall of the YONAI-
13 ARITA cabinet (179). These assertions are incorrect
14 in that SHIRATORI allegedly spoke as follows:

15 "Being a governmental servant, I feel I
16 have to refrain from making recourse to
17 language insinuating the overthrow of the
18 Cabinet, but as regards the re-orientation
19 of Japan's foreign policy, I may say that it
20 appears that we have already missed the op-
21 portunity when we consider the situation in
22 the light of the present advance of Germany.

24 (177. Ex. 3830, Tr. 37,993-995.

178. Tr. 35,123

25 179. Tr. 35,047 and 37,993.)

1 This, however, does not mean that we can see
2 no prospect at all.

3 "Nevertheless, I feel it absolutely
4 impossible to entertain any hope in this
5 regard as long as the persons who opposed
6 the proposition of a Japan-Germany-Italy
7 military alliance remain to hold the minis-
8 terial posts in the cabinet."

9 (Thus, he used words insinuating the over-
10 throw of the Cabinet.)

11 There is certainly no advocacy of the overthrow of
12 the YONAI Cabinet, as the first part of the alleged
13 statement clearly shows -- while the last portion of
14 the statement is nothing more than a remark to the
15 effect that it was impossible to hold any hope for
16 a change toward better Germany-Italy-Japan relations
17 as long as those who opposed it remained in the Cabinet.

18 Moreover, the last sentence, stating - "Thus,
19 he used words insinuating the overthrow of the Cabinet"
20 is nothing but a conclusion of the maker of the report,
21 who was a member of the special higher police.

22 Moreover, this secret political police, which
23 was abolished by order of SCAP, had been responsible
24 for controlling leftist and rightist movements as well
25 as anyone who was opposed to the policy of the

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22 Moreover, this secret political police, which
23 was abolished by order of SCAP, had been responsible
24 for controlling leftist and rightist movements as well
25 as anyone who was opposed to the policy of the

1 government (180), being the counterpart of the German
2 Gestapo, and ever available to trumping up false
3 charges against anyone not strictly in line with the
4 Government of the day by misquoting and other such
5 tactics. Therefore, also in case we presume the
6 above mentioned meeting really occurred and that
7 SHIRATORI attended it, the entire story might be quite
8 different from what was stated in the above report, as
9 SHIRATORI had no recollection about it (181). At any
10 rate, the above report does not show that SHIRATORI
11 had any knowledge of the circumstances concerning the
12 fall of the YONAI Cabinet.

13 However, the real cause of the fall of the
14 YONAI-ARITA Cabinet was as clarified by the witness
15 SAWADA in the defense phase for the accused HATA (182),
16 and such gatherings of small groups of the people
17 as mentioned above could have nothing to do with the
18 matter.

19 The YONAI Cabinet was succeeded by the 2nd
20 KONOYE Cabinet in July, 1940. Prince KONOYE suggested
21 the retention of SHIRATORI, then Ambassador on the
22 waiting list, for the Foreign Office as Vice-Minister,
23

24 (180. Refer to testimony given by prosecution's
witness KOIZUMI (Tr. 1264-65) and defense
25 witness NAKAMURA (Tr. 18,519-525)

181. Tr. 25,123.

182. Ex. 3205, Tr. 29,009-018)

1 but Foreign Minister MATSUOKA had already decided on
2 OHASHI for that post. MATSUOKA told SHIRATORI that
3 he intended to effect a wholesale dismissal of senior
4 diplomats and suggested to SHIRATORI to show the way
5 by resigning the position of Ambassador which he held
6 nominally until then, and by way of compensation
7 MATSUOKA offered SHIRATORI an appointment as advisor
8 to the Foreign Office, along with SAITO, an intimate
9 friend and confidant of MATSUOKA. Although, as has
10 been shown, neither party had any liking for the
11 other, SHIRATORI accepted the offer because he was a
12 career diplomat, without other means of support (183).
13 The competence and duties of the advisor were not
14 clearly defined by any act or ordinance. He had no
15 access, as of right, to any document or information
16 belonging to the Foreign Office. His influence and
17 activities depended largely upon the personal character-
18 istics of the Foreign Minister of the time and es-
19 pecially upon the degree of intimacy and confidence
20 that might exist between him and the Minister (184).

21
22 SHIRATORI had not met MATSUOKA for more than
23 ten years before that time (185). He had little to
24 do with MATSUOKA personally as well as officially (186).

25 (183. Tr. 35,047-048

184. Tr. 34,957 and 34,875-76

185. Tr. 35,047

186. Tr. 34,958)

1 Moreover, MATSUOKA was a man of great self-confidence,
2 who would do everything by himself, rarely asking
3 the advice of others, and he scarcely ever consulted
4 even his intimate friend SAITO, another advisor to
5 him, upon important questions of policy or of govern-
6 ment (187). Therefore, SHIRATORI's advisorship to
7 MATSUOKA was a sinecure from the beginning. He was
8 never consulted by MATSUOKA on any matter of policy;
9 important documents and information concerning the
10 cardinal policies of the government in foreign affairs
11 were being kept from him, a most striking instance of
12 which was IPS exhibit 541, a document containing the
13 basic policy of the Government in regard to the con-
14 clusion of the Tripartite Pact (188). Further than
15 that, Ambassador Ott testified that not only did he
16 not observe any personal influence of SHIRATORI with
17 MATSUOKA but he occasionally got the impression of a
18 certain mistrust between MATSUOKA and SHIRATORI by
19 some remarks they made to him about each other (189).
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25 (187. Tr. 34,958
188. Tr. 35,048 and 34,959
189. Tr. 34,877.)

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MATSUOKA seemed determined from the outset that no person, not excepting Premier Prince KONOYE himself, should share with him either the blame or the credit for the new diplomatic venture he was embarking upon. And it was in the conduct of the negotiations with Stahmer and Ott for the Tripartite Pact that he was particularly secretive or exclusive, especially of SHIRATORI (189-A). He made it a point of distinguishing this pact from the afore-explained attempt of 1938-39, and refused to study documents or consult persons that had anything to do with the previous negotiations. SHIRATORI's opinion was never asked in any respect and at any stage of negotiation and when he was first allowed to see the draft text of the treaty, not to be confused with the preamble thereof, it was already in a finished form in the English language (189-B). Later he was asked to translate into English the preamble of the treaty which Advisor SAITO drafted in Japanese by MATSUOKA's order. As has been shown, MATSUOKA made the first English draft of the preamble to the treaty, which was translated into Japanese by Foreign Advisor SAITO. Thereafter, SHIRATORI re-translated the preamble into

189-A. T. 24480-481.
189-B. Item 4, Ex. 3588, T. 34959-960.

English from the Japanese text prepared by SAITO.

1 MATSUOKA was more impressed with SHIRATORI's English
2 than he was with his own and consequently adopted
3 SHIRATORI's translation (189-C). SHIRATORI was
4 never told by MATSUOKA or anyone else as to the real
5 meaning of the several articles of the pact, nor did
6 he learn if there was any secret understanding concern-
7 ing the document. Until they were read or tendered
8 in evidence before this Tribunal, he was entirely
9 ignorant of the existence of so many annexes and
10 exchanged notes bearing on the Tripartite Pact of
11 27 September 1940 (190).

12 It is stated in exhibit 3145-A, a memorandum
13 with annexes by MATSUMOTO, that "On 5 September 1940
14 a plan, as Annex No. 1, was drafted by Vice-Foreign
15 Minister OHASHI, the advisors SHIRATORI and SAITO, and
16 presented by Foreign Minister MATSUOKA to the Four-
17 Minister Conference for consideration." (191).

18 This statement is entirely erroneous. OHASHI, SHIRA-
19 TORI, and SAITO never made that plan on September 5,
20 1940, or on any other date (192). The said Annex
21 No. 1, attached to exhibit 1145-A, is exactly the
22

23 189-C. T. 34985.

24 190. T. 35049-050 and 34959-960.

25 191. T. 27986.

192. T. 34967.

1 same as the document entitled: "Strengthening of
2 the Japan-Germany-Italy Axis," (193), which was
3 adopted on September 4, 1940, at the Four-Minister
4 Conference, and which was later confirmed by the
5 Liaison Conference of September 19, 1940 (194). It
6 is unimaginable that the plan which was decided upon
7 by the Four-Minister Conference on September 4 should
8 be drafted the following day by OHASHI, SHIRATORI and
9 SAITO to be presented by MATSUOKA to a Four-Minister
10 Conference.

11 The witness SAITO testified that he had no
12 knowledge as to who drafted the original of the
13 aforesaid Annex No. 1; to wit, IPS exhibit 541; that
14 he was shown it by MATSUOKA after it had passed the
15 Four-Minister Conference, but it was not shown to
16 SHIRATORI at any time (196), and that he had nothing
17 to do with the revision of the document by the
18 Foreign Office on September 4, 1940, and he knew for
19 certain that SHIRATORI also had had no connection with
20 it (197).

21 The original of this exhibit; that is, Annex
22 No. 1, on page 12 thereof, shows that the contents
23 193. Ex. 541, T. 6307-08. 196. Refer also to T.34959.
24 194. T. 27994. 197. T. 34967.
25 195. T. 34966.

1 are written in both black and red print. The where-
2 abouts of the original plan is not known, but the
3 black print on said page shows that it is a revised
4 draft made of the original plan by army and navy
5 officials concerned on 6 August 1940. The red print
6 on this page shows corrections made to the aforesaid
7 revised draft by the Foreign Office on 4 September 1940.
8 It will be noted that such of the revised draft of
9 the 6 August 1940 meeting as was changed by the
10 Foreign Office has red lines marked through it, strik-
11 ing the same out. The red print inserted on said
12 page 12, and thereafter, stipulates the corrections or
13 changes made on 4 September 1940.

14 At the top right corner of page 12 there are
15 written in red print two marginal notes, which state:

16 1. "The draft is a revised draft made by
17 army-navy officials concerned."

18 2. "The red letters are a revised draft by
19 the Foreign Office."
20

21 (N. B. Above items read as corrected by the
22 Language Arbitration Board, 24 September and 4 November
23 1947.)

24 On the right margin of page 12, is written
25 in black print - "6 August 1940," which is struck out
by a red line. Next to this is written in red ink

1 "4 September 1940," these being the dates of the
2 revised draft of the army-navy officials, and a
3 further revision thereof by the Foreign Office,
4 respectively.

5 The army-navy draft extends from pages 12
6 to 26 and contains corrections throughout in red ink
7 made by the Foreign Office on 4 September 1940, as
8 aforesaid (N. B. - The English translation extends
9 from pages 2 to 16).

10 Therefore, the original exhibit 3145-A shows
11 on its face that the original draft was made prior to
12 6 August 1940; that the same was revised by army-
13 navy officials concerned on 6 August 1940; and that
14 this draft was again revised on 4 September 1940 by
15 the Foreign Office. On the same day, namely, 4
16 September 1940, this revised draft of the Foreign
17 Office was adopted at the Four-Ministers Conference,
18 which consisted of the Premier and the Ministers of
19 the Army, Navy and Foreign Affairs (exhibit 541,
20 pp. 7-15; T. 6307-08).

21 Thereafter, a plan identical with this plan,
22 word for word, was adopted at the Liaison Conference
23 of 19 September 1940 (exhibit 541, pp. 7-15, T.
24 6307-08).

25 Therefore, it is clear that at least two

drafts had been made, as aforesaid, prior to SHIRATORI's
1 appointment as advisor to the Foreign Office on
2 28 August 1940, and the revised draft adopted by the
3 Foreign Office and thereafter by the Four-Ministers
4 Conference on the same day, namely 4 September 1940,
5 occurred prior to the so-called meeting of OHASHI,
6 SAITO, and SHIRATORI, when the original draft was
7 alleged to have been made, in the erroneous memorandum
8 of MATSUMOTO, on 5 September 1940, a day after the
9 semi-final draft was adopted by the Foreign Office
10 and the Four-Ministers Conference. Consequently, it
11 is unimpeachably shown that MATSUMOTO was mistaken
12 and without proper knowledge of where, when and by
13 whom the various drafts were made, and further shows
14 that SHIRATORI could not have had the part therein
15 stated by MATSUMOTO. This is further substantiated
16 by the evidence of Foreign Advisor SAITO (T. 34966-967),
17 and SHIRATORI himself (T. 35049), lines 19-20).
18

19 It should also be noted that MATSUMOTO was ap-
20 pointed to the Foreign Office on 5 September 1940 and
21 further that he did not assume the duties of his office
22 until the latter part of September 1940, which was
23 after the final draft had been approved by the Liaison
24 Conference 19 September 1940 (T. 34966 and 34982).
25

In short, it is quite clear that SHIRATORI

1 had nothing to do with the conclusion of the Tri-
2 partite Pact of 27 September, 1940. We rely, in
3 this regard, also on the evidence given by the witness
4 Stahmer (199).

5 In MATSUOKA's other diplomatic moves, such
6 as negotiations and agreements with French Indo-China,
7 Siam and Dutch East Indies, as well as the recogni-
8 tion by Japan of the Wang Tshing Wei Regime on
9 November 30, 1940, and the Joint Declaration of Japan,
10 Manchukuo and China, etc., SHIRATORI was even less
11 concerned than in the Tripartite Pact. Also, nothing
12 was made known to SHIRATORI about MATSUOKA's trip to
13 Europe in the spring of 1941 until a few days before
14 his departure from Tokyo. The circumstances under
15 which this trip was decided upon by the government and
16 its object and purpose were kept entirely from him (200).

17 As we will explain later, SHIRATORI became
18 seriously ill at the beginning of April 1941, soon
19 after MATSUOKA left for Europe, and after spending
20 nearly a month in the hospital, moved to the seashore
21 at Hayama, where he remained convalescing in almost
22 complete retirement and unfit for any activities for
23 about a year. Although he was Foreign Office advisor
24
25

199. T. 24480-481 and 24439.
200. T. 35050 and 34960-961.

1 in name until his resignation on 22 July 1941, he
2 did not, during that period, once put in an appearance
3 in the Foreign Office and had nothing to do with the
4 affairs of that office, nor did he ever see MATSUOKA
5 again after the latter's departure for Europe in
6 April 1941, until they were thrown together at Sugamo
7 early in April 1946. SHIRATORI did not concern him-
8 self in any manner in the diplomatic negotiations
9 between Japan and the United States from April to July,
10 1941 (201).

11 In our above argument, we often relied on
12 the testimony given by the Witness SAITO, co-advisor
13 to the Foreign Office, along with SHIRATORI (201-A).
14 The prosecution attacked the credibility of SAITO's
15 testimony in UU-81 and UU-82 (pp. UU 82-85). We
16 contradict this attack as follows:
17

18 1) SAITO stated in his affidavit (201-B)
19 as follows:

20 "Although I saw Mr. SHIRATORI almost daily
21 at that period at the advisor's quarters of the
22 Foreign Office, I am not aware that he was playing

23 201. T. 34961-962 and 35050-051.
24 201-A. Ex. 3588 and 3589, T. 34956-986.
25 201-B. Ex. 3588, T. 34963.

1 any important part as a member of the said directorate."

2 During the cross-examination by the prosecu-
3 tion, SAITO stated as follows (201-C):

4 "Let me add here that Mr. SHIRATORI, while
5 advisor to the Foreign Office, hardly went to the
6 Foreign Office."

7 With regard to this so-called self-contradiction
8 of SAITO relative to how often he saw SHIRATORI,
9 et cetera, we wish to call the attention of the
10 Tribunal to the fact that the particular period SAITO
11 says he saw SHIRATORI daily was prior to and during
12 the period of October 1940, only a little over a
13 month after his appointment as Foreign Advisor, when
14 he would naturally try to take an interest in his
15 position. We further contend that the latter state-
16 ment advanced by SAITO, without even being questioned
17 about it, that SHIRATORI very seldom came to the
18 Foreign Office, was during the period after October,
19 1940, and after SHIRATORI finally became convinced
20 that he was an advisor in name only and that his
21 presence at the Foreign Office was neither needed,
22 expected or required. It will please be noted that
23 SAITO was careful to use the phrase - "Although I
24 saw Mr. SHIRATORI almost daily at that period, etc.,"
25 201-C. T. 34977.

1 strongly indicating that he didn't see him often
2 later on. Therefore, there could be no inconsistency
3 in the testimony of the witness SAITO, as the prosecu-
4 tion would have the Tribunal believe.

5 2) The fact that SAITO did not recollect
6 "the stream of (SHIRATORI's) propaganda lectures and
7 writings" advocating the alliance with the Axis, shows
8 how few people heard or read the lectures and writ-
9 ings in question, and how little influence those
10 lectures and writings exerted. Moreover, we respect-
11 fully refer to the evidence of the witness MISHIMA,
12 who testified that the various magazines in which
13 SHIRATORI's articles appeared varied in circulation
14 from 1000 monthly for the smallest, to from 20,000
15 to 30,000 monthly for the largest (T. 35011-012). We
16 contend this is a very limited circulation of such
17 articles in a country of nearly 80,000,000 people
18 and would not have moulded public opinion to one iota
19 of the extent that the prosecution insists, and so
20 continuously harps on. Further, according to the same
21 witness, the number of persons attending lectures
22 given by SHIRATORI ranged from ten up to seven or
23 eight hundred (T. 35012). This is indeed a limited
24 attendance for one who is alleged to have been the
25 moulder of public opinion in Japan, when even an

1 ordinary speaker in America can draw 15,000 to 18,000
2 in Madison Square Garden or elsewhere for political
3 rallies. Further, we will later show that these
4 lectures and writings were not so numerous as the
5 prosecution described.

6 3) In Part VI of Ex. 2234 (201-E), in his
7 article published in the "Greater Asia Magazine" in
8 June, 1940, SHIRATORI, under the presumption that
9 Germany would win the European war, stated that "Japan
10 cannot remain idle as an onlooker in the event of a
11 wholesale change of territory taking place in the
12 southeast of Asia." However, under such circumstances
13 as prevailed after the great German successes in
14 the Western Front in early summer of 1940, everyone,
15 if placed in the same situation as the Japanese at
16 that time, would say the same thing. It cannot be
17 branded as "SHIRATORI's emphatic espousal of an
18 advance to the South." It must be borne in mind
19 that at the time of this article Germany had overrun
20 the Netherlands and France, who held valuable colonies
21 in the South Seas district, and it could be naturally
22 assumed that Germany, unless something could be done,
23 would exploit these colonies to their own use. There-
24 fore, SHIRATORI's thought was that it was the proper
25

201-E. T. 16063-068. Refer also to Ex. 2234, Part IV,
pp. 33-55, read only in part by the prosecution.

1 time to make some rapprochement with Germany to
2 guarantee some form of commercial operations in
3 these areas. This was doubly important due to the
4 action of America in placing an embargo on exports and
5 imports from and to Japan and by her economic
6 pressure on Japan. Further, it is to be borne in
7 mind that at the time of this article, in June, 1940,
8 SHIRATORI was then on the waiting list and had no
9 duties, authority or functions whatsoever in the
10 Foreign Office (T. 34971), and spoke only as an
11 individual.

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1 4) As we will show later, SHIRATORI almost
2 always aimed by his speeches and writings their indi-
3 rect or reverse effect or influence. Therefore, if
4 SHIRATORI's "inflammatory speeches and writings"
5 appeared as pro-Axis, it cannot be necessarily incon-
6 sistent with the fact that SHIRATORI was in reality
7 not a Germano-phile.

8 5) SAITO testified in his affidavit (ex. 3143)
9 that the English text of the preamble was written and
10 proposed personally by MATSUOKA, but this original
11 draft text had been lost. Therefore, SAITO quoted
12 in the exhibit, as the said original text, the pre-
13 amble in the final form in the Tripartite Pact, as it
14 was not necessary for him to explain the matter in great
15 detail in that exhibit. Now, as the prosecution
16 attacked during his cross-examination the apparent in-
17 consistency between his two statements in exhibits
18 3588 and 3143 (201-F), SAITO explained in detail that
19 there were in fact three drafts of the preamble --
20 MATSUOKA's original draft in English, SAITO's trans-
21 lation of it into Japanese, and SHIRATORI's retrans-
22 lation into English, which became the final version.
23 As MATSUOKA's original manuscript was written by him
24 extempore in the course of his personal negotiations
25 (201-F) Tr. 34,983-985.

1 with Stahmer and Ott, it is quite conceivable that it
2 was not carefully preserved for a long time. Further,
3 as MATSUMOTO actually began to participate in the
4 negotiation for the Tripartite Pact in the latter part
5 of September, 1940 (201-G), when the draft Tripartite
6 Pact was already in a finished form in English, his
7 "official record" (ex. 3145-A) cannot be a first-hand
8 one, correct and authentic in every respect.

9 THE PRESIDENT: You have a whole section here
10 dealing with his illness. That could be dealt with
11 in a couple of lines. You have six pages. The whole
12 thing is terribly overdone. That is all I can say abu
13 about the summation.

14 MR. CAUDLE: I was only trying to put in
15 there what had been brought out in evidence.

16 THE PRESIDENT: Proceed.

17 MR. CAUDLE: IX. SERIOUS ILLNESS OF SHIRATORI,
18 AND OUTBREAK OF THE PACIFIC WAR.

19 Since early 1941, SHIRATORI became deeply
20 absorbed in the study of quite a number of voluminous
21 works on Japanese national polity and Shinto mythology,
22 and frequently sat up all night. His absorption in
23 these topics led him to overtax both his mind and body
24 to the extent that he became afflicted with an
25 (201-G) Tr. 34,982-983.

1 obstinate insomnia and about the 20th of March he
2 was seized with what apparently was an acute case of
3 nervous debility, accompanied by somewhat alarming
4 indications of mental abnormality (202).

5 About the 5th of April he began to show marked
6 signs of exhaustion, and from the night of April 8
7 indications of a mental derangement became apparent
8 Dr. MURAKATSU, Vice-Director of the Matsuzawa Psychi-
9 tric Hospital, Tokyo, lecturer at the Medical Faculty
10 of the Tokyo Imperial University and professor of
11 the Tokyo Medical College, and Dr. MIYAKE, professor
12 of the Tokyo Imperial University, were called in to
13 examine SHIRATORI on the 12th of April, 1941, and
14 found him in a state of so-called delirium and diagnosed
15 his condition as a manic state of manic-depressive
16 psychosis (203).

17 Thereafter, SHIRATORI was sent to the Komine
18 Psychiatric Hospital, Tokyo, on the 16th of April,
19 1941 (204). The witness MISHIMA learned from SHIRATORI
20 afterwards that he (SHIRATORI) had completely lost
21 consciousness from about the 9th of April, 1941,
22 and that it was on the 28th of the same month that he
23 awakened to find himself in bed in an unknown hospital
24

25 (202). Ex. 3592, Tr. 35,003.
(203) Ex. 3593, Tr. 35,014-015.
(204) Tr. 35,015.

hospital (205). In this respect Dr. MURAMATSU testified that he was informed on the 25th of April, 1941, that SHIRATORI had at last recovered his consciousness (206).

SHIRATORI was allowed to leave the hospital on May 10, 1941. Dr. MURAMATSU saw him on the following day and found his mental condition now remarkably settled, but a state of excitement was still present. It was necessary for him still to continue taking a considerable amount of sedatives as late as in the middle of June 1941.

In view of these unsatisfactory circumstances, following his return from the hospital, Dr. MURAMATSU strictly cautioned the patient and his family against receiving visits and taxing his mind with questions concerning international situations and against reading anything, including magazines and newspapers. It was in order to facilitate the practice of such a strict seclusion treatment that Dr. MURAMATSU advised SHIRATORI to remove to a seaside cottage at Hayama, although that involved much inconvenience to him as the physician in charge (207), and SHIRATORI removed there in the middle of June 1941, where he remained

(205) Tr. 35,004.
(206) Tr. 35,015-016.
(207) Tr. 35,016-017.

convalescing until April of the next year (208).

1 Dr. MURAMATSU made his last visit down to Hayama on
2 the 13th of August, 1941, and found that SHIRATORI at
3 that date could hardly be regarded as "completely
4 cured," but he decided to discontinue his visits in
5 the thought that so long as his advice was strictly
6 followed by the patient and his family, expert help
7 could now be safely dispensed with, barring an un-
8 expected change or relapse. Before quitting, Dr. MURA-
9 MATSU renewed his advice to SHIRATORI and his family
10 to use special care to concentrate all their efforts
11 on recuperation for at least half to one year, refrain-
12 ing from all official work or political activities,
13 and having as little as possible to do with the outside
14 world generally, and he emphasized the particular
15 importance of guarding against a relapse which was
16 apt to occur in a case like that of SHIRATORI within
17 one-half to one year of apparent recovery (209).

18 Dr. MURAMATSU learned from SHIRATORI's family that his
19 counsel was being faithfully acted upon by the patient
20 (210). The witness LISHIMA also testified in this
21 regard that to the best of his knowledge, SHIRATORI
22 faithfully observed the injunction by Dr. MURAMATSU,
23
24

25 (208) Tr. 35,004.
(209) Tr. 35,017-018.
(210) Tr. 35,018.

1 especially for the first six months of his retired
2 life (211). According to an entry in his pocket
3 diary, Dr. MURAMATSU had a message from a friend of
4 SHIRATORI's that about the 23d of December, 1941,
5 SHIRATORI had a relapse and was again suffering from
6 lack of sleep. (212). Thus, SHIRATORI was rendered
7 physically and mentally unfit for any activities of
8 any responsibility from April 1941 until about April
9 1942; that is to say, during the most crucial period
10 in the history of Japan. Although he was Foreign
11 Office advisor in name until his resignation on 22 July,
12 1941, he could have, and had nothing to do with the
13 affairs of that office since April 1941 (213), and
14 thereafter he had no official position until he was
15 elected as a member of Parliament, 30 April 1942 (214).
16 As to SHIRATORI's condition of health during his
17 election campaign in April 1942, please refer to
18 item (b) of chapter X hereafter.

19 We have presented this evidence of SHIRATORI's
20 illness rather in detail in order to show that except
21 by such an undue stretch of imagination and of the
22 logic of conspiracy as the prosecution indulge in
23

24 (211) Tr. 35,004.

(212) Tr. 35,018.

(213) Tr. 34,961.

25 (214) See Chap. VI above and Tr. 34,949-950.

(UU-95, pp. UU-74-76), SHIRATORI cannot, in fairness,
1 be charged with planning, preparing or instigating
2 the Pacific War.

3 We also submit this evidence definitely
4 impeaches the credibility of the reports Ambassador Ott
5 sent to Berlin concerning SHIRATORI (ex. 1113 and 800).
6 As witness MISHIMA testifies, the nature of SHIRATORI's
7 malady and his actual conditions at the time were
8 such that it is entirely unimaginable that as early as
9 July 7, 1941, he should have engaged in any serious
10 or sensible conversation with a foreign diplomat on
11 international politics. As SHIRATORI says, Ott's
12 was a surprise visit; that is to say, if Ott's inten-
13 tion to visit him had been made known beforehand,
14 SHIRATORI and his family would certainly have declined,
15 in obedience to the injunction of the physician.
16 SHIRATORI has no recollection of the conversation with
17 Ott on July 7 or about August 1; indeed, the very
18 fact of Ott's visit to him about that time did not
19 occur to SHIRATORI when IPS exhibits were tendered
20 in evidence, but he had to first ascertain it of his
21 family. As for Ott's statement (ex. 608) that he saw
22 SHIRATORI early in December perhaps at Hayama, not
23 only did SHIRATORI have a slight relapse and was
24 more than ever out of touch with the outside world,
25

1 but Hayama being a summer resort, it is impossible to
2 imagine that Ott should be visiting there at so un-
3 seasonable a time as December. If he had been there
4 on purpose to see SHIRATORI, he ought to be able more
5 clearly to recall it. We respectfully submit that
6 apart from other proofs we have offered in this
7 matter, the above few samples ought to show convin-
8 cingly the general character of Ott's telegrams where-
9 in SHIRATORI's name is dragged in.

10 X. IMPERIAL RULE ASSISTANCE ASSOCIATION and
11 IMPERIAL RULE ASSISTANCE POLITICAL SOCIETY and
12 SHIRATORI; and

13 XI. SHIRATORI'S POSITION DURING WORLD WAR II.

14 The first is division X:

15 (a) SHIRATORI and IRAA (Imperial Rule
16 Assistance Association):

17 As to the circumstances surrounding the
18 establishment of the Imperial Rule Assistance Associa-
19 tion, as well as the character and status of the
20 association, we rely on the evidence given by witness
21 ARIMA, former Secretary-General of the association
22 (216), as well as on the evidence given by the defense
23 in their general phases. The IRAA was conceived of
24 from the beginning as a public organization (comparable
25 (216) Ex. 3594, Tr. 35,020-026.

to a hygienic organization) as distinguished from
1 political parties, aiming as it did at organizing
2 the entire nation in such a manner as to enable them
3 more loyally and effectively to discharge their
4 duties as Imperial subjects. Prince KONOYE, the
5 organizer and the first President of IRAA, clearly
6 stated on several occasions that the association was
7 sharply to be distinguished in character from the one-
8 party system of the totalitarian countries of Europe
9 (217).

10 SHIRATORI was among those who were originally
11 invited by Prince KONOYE, in August 1940, to form
12 the Arranging (or Preparatory) Committee for the IRAA,
13 but he did not take any active part in the discussions
14 of the committee. He generally absented himself
15 from its meetings (218).
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25 (217) Tr. 35,021-022; refer also to evidence given by
prosecution's witness GOTO, Tr. 1646 and 1653-54.
(218) Tr. 35,021.

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1 political parties, aiming as it did at organizing
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25 (217) Tr. 35,021-022; refer also to evidence given by
prosecution's witness GOTO, Tr. 1646 and 1653-54.
(218) Tr. 35,021.

1 Witness ARIMA testified that the directors
2 of the IRAA numbered about forty, of whom about dozen
3 were managing directors; that the business of the
4 association was in practice mainly undertaken by the
5 managing directors, the secretary-general, etc.,
6 that SHIRATORI was nominated an ordinary (not managing)
7 director, in October 1940, but that ARIMA did not
8 recollect that SHIRATORI ever attended any of the
9 meetings of the directorate or otherwise played any
10 part in connection with the activities of the associa-
11 tion, and that SHIRATORI's activities in the organiza-
12 tion were in fact so inconsequential that it was not
13 until witness ARIMA was requested by SHIRATORI's counsel
14 to make a deposition regarding the latter's activities
15 in the organization that ARIMA remembered that at one
16 time SHIRATORI was a member of the Arranging Committee
17 and an ordinary director of the IRAA (219).

19 Also, the testimony given by prosecution's
20 witness GOTO, one of the organizers and directors of
21 the IRAA, leads to the conclusion that SHIRATORI did
22 not play a part in the association prominent enough to
23 come to GOTO's notice (220).

24 Witness SAITO testified that the IRAA had for

25 (219) T. 35,022-023.
(220) T. 1,661-63.

1 its object the moral mobilization of the nation and
2 did not concern itself directly with politics, much
3 less with diplomatic questions. Although at that par-
4 ticular time SAITO saw SHIRATORI almost daily at the
5 advisors' quarters of the Foreign Office, he was not
6 aware that SHIRATORI was playing any important part as
7 a director of the association. In fact, SAITO remem-
8 bered SHIRATORI's telling him once that he (SHIRATORI)
9 expected nothing of real value or significance from
10 this organization; and SHIRATORI generally stayed away
11 from the meetings of the association which were held
12 quite frequently at its initial stage (221).

13 When the IRAA was reorganized in the spring of
14 1941, all the directors of the association tendered
15 their resignations. While most of the directors decided
16 by April 30, 1941, to retract their resignations, wit-
17 ness ARIMA and several other directors left their posts.
18 SHIRATORI was among those who resigned and never took
19 any step to retract his resignation, as did various
20 others, but remained completely out of the organization. (222)

21 THE PRESIDENT: We will adjourn until half-
22 past nine tomorrow morning.

23 (Whereupon, at 1600, an adjournment was
24 taken until Thursday, 1 April 1948, at 0930.)

25 (221) Tr. 34,968-64. (222) Tr. 35,023.)

1 APRIL 1948

I N D E X

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Thursday, 1 April 1948

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

7 The Tribunal met, pursuant to adjournment,
8 at 0930.

9 Appearances:

10 For the Tribunal, all Members sitting, with
11 the exception of: HONORABLE JUSTICE I. M. ZARYANOV,
12 Member from the U. S. S. R., not sitting from 0930 to
13 1209.

14 For the Prosecution Section, same as before.

15 For the Defense Section, same as before.

16 ---
17 (English to Japanese and Japanese
18 to English interpretation was made by the
19 Language Section, IMTFE.)
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MARSHAL OF THE COURT: The International
1 Military Tribunal for the Far East is now in session.

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

7 Mr. Caudle.

8 MR. CAUDLE: Mr. President, I will continue
9 where we left off yesterday afternoon on page 4 of
10 Division X of the summation.

11 (b) SHIRATORI and IRAPS (Imperial Rule
12 Assistance Political Society).

13
14 About the time of the general election of
15 April 1942 SHIRATORI was not yet completely recovered
16 from his illness. He had little intercourse with the
17 outside world and rarely saw anyone besides his
18 relatives and close friends. He was mostly engaged
19 in the study and practice of Shintoism. However, a
20 number of young men from his native province asked
21 him for permission to use his name as a candidate in
22 the coming election, expressing their ardent desire
23 to sweep away the long standing abuses of their con-
24 stituency and by conducting a model campaign set an
25 example to the whole nation. SHIRATORI felt no longer

1 any interest at all in politics, but was finally
2 prevailed upon to comply with their desire, on
3 condition that he was not himself to take part in
4 the election campaign and that he would make no
5 speech nor even put in an appearance in his consti-
6 tuency. It was only when rival candidates contended
7 that SHIRATORI was so ill that he could not even come
8 down to his native place, that his friends requested
9 him to make a speech or two if only to counter this
10 hostile propaga~~n~~da. He had to consent, although with
11 much reluctance. He was then very weak, but somehow
12 managed to address several gatherings. He mainly
13 talked about Shintoism and national polity, dwelling
14 almost in passing on current questions of diplomacy
15 and of war. As election speeches in wartime, they
16 were rather uncommon and quite a surprise to many
17 among his hearers.

19 THE PRESIDENT: Mr. Caudle, there is no
20 evidence of this as far as I recollect. There is no
21 reference given.

22 MR. CAUDLE: I have a citation for all that,
23 sir, on the following page. It is practically all a
24 quotation from the testimony of the witness MISHIMA.

25 THE PRESIDENT: Is it? Very well, proceed.

MR. CAUDLE: ~~At this general election,~~

SHIRATORI was one of the so-called recommended
1 candidates, but it was a matter arranged between
2 his supporters and the prefectural branch of the
3 recommending body, and he was not himself concerned
4 in it at all but only learned about it afterwards.
5 When he got elected, on 30 April 1942 SHIRATORI, as
6 a "recommended" member of parliament, almost auto-
7 matically became a member of the Imperial Rule Assist-
8 ance Political Society and was also nominated an
9 ordinary member of the Board of Directors of the
10 Society on May 20, 1942. However, as his health was
11 not yet quite normal and as parliamentary life and
12 internal politics were new to him, SHIRATORI was not
13 able or allowed to play any role to speak of either
14 as a director of IRAPS or a member of parliament.
15 He was soon relieved of his seat in the directorate
16 of the IRAPS and he seceded from the Society itself
17 on 28 June 1943.^{223.}
18

19 We submit that SHIRATORI did little or nothing
20 during the Pacific War and certainly had no part in
21 the waging thereof. The fact that his activities in
22 IRAPS were so insignificant goes to substantiate this
23 contention, and certainly he is without guilt of any
24

25 223. Refer to testimony given by witness MISHIMA, one
of SHIRATORI's closest friends, who was in charge
of SHIRATORI's election business at that time.
Tr. 35004-006; see also Tr. 35053.

kind of charges contained in the Bill of Indictment.

1 XI. SHIRATORI'S POSITION DURING
2 WORLD WAR II.

3 SHIRATORI's connections with the Government
4 completely ended when he resigned as Foreign Office
5 Advisor on 22 July 1941 and he never held any
6 official position again until the end of the war.
7 He had scarcely any friend in the Government or in
8 the Army and Navy, nor did he have any special
9 source of information concerning current events and
10 the real war situation. Although he was a member of
11 Parliament in name until his resignation on 5 December
12 1945, he seldom attended the sessions of the Diet,
13 nor did he serve on any of the Parliamentary commit-
14 tees. He was a perfectly free and independent indi-
15 vidual holding no brief for any group or organization
16 whatever.^{224.}
17

18 We would like, in conclusion, to quote a
19 short passage of the testimony given by witness
20 MISHIMA: "It may be said in sum that the serious
21 illness with which he was seized in the spring of
22 1941 brought about a marked change in Mr. SHIRATORI's
23 character and outlook, drawing him more deeply into
24 a domain of spirituality and religion. He gradually
25
224. Tr. 35053-054.

1 ceased to have anything to do; not only with govern-
2 ment and general political circles, but with most of
3 his friends of many years' standing. I can bear
4 testimony, as one of the few friends remaining close
5 to him to the last, that during the entire period of
6 World War II, Mr. SHIRATORI concerned himself very
7 little with affairs of this workaday world."²²⁵.

8 XII. TELEGRAMS OF AMBASSADOR OTT AND OTHER
9 COMMUNICATIONS RELATIVE TO SHIRATORI'S ACTIVITIES AFTER
10 HIS RETURN FROM ROME.

11 The prosecution offered in evidence a large
12 number of telegrams of Ambassador Ott and other
13 German documents, which formed the most important
14 part of the prosecution's evidence against SHIRATORI.
15 We will treat these telegrams here en bloc, relying
16 on an interrogation of Ambassador Ott by counsel for
17 the accused to refute all allegations and contentions
18 of the prosecution in this regard.²²⁶.

19 With regard to the interrogation of
20 Ambassador Ott by counsel for SHIRATORI in Peiping,
21 China during May 1947, which interrogation the prose-
22 cution has been pleased to belittle and to expiate
23 as an ex parte interrogation, the attention of the
24 Tribunal is called to the following facts:

25 225. Tr. 35007. 226. Ex. 3579, Tr. 34848-904.

1 On 13 November 1946 as the minutes of the
2 Chambers hearings will show, an application was filed
3 for subpoenas to be issued for the production of
4 various witnesses to appear on behalf of the accused
5 SHIRATORI, among which was one for Ambassador Eugene
6 Ott; that thereafter on 26 November 1946 an order was
7 entered granting a subpoena for the production of the
8 said Ott before this Tribunal as a witness. There-
9 after, as the record of the clerk's office will show,
10 a subpoena was issued for the said Ott and was for-
11 warded through regular channels for service, but for
12 some unknown reason said subpoena was never served,
13 and this resulted in the necessity of counsel for the
14 defendant SHIRATORI making a long and arduous trip to
15 Peiping to obtain a sworn statement from the said Ott
16 relative to the aforesaid communications and other
17 matters.
18

19 Further, the attention of the Tribunal is
20 called to a proceedings in Chambers of Thursday,
21 1 May 1947, before Sir William Webb, President of the
22 Tribunal, at which time the prosecution was repre-
23 sented by Mr. Frank S. Tavenner, the then Acting Chief
24 of the prosecution section, and the defendant SHIRATORI
25 was represented by American counsel, Charles B. Caudle.

As these proceedings will show, it was mutually

1 agreed upon between counsel for the prosecution and
2 counsel for the defendant SHIRATORI with the approval
3 of the President of this Tribunal that the said
4 counsel for SHIRATORI should go to Peiping and inter-
5 rogate the said Ott relative to the various communica-
6 tions sent to and received by him from his Government,
7 which have been introduced as exhibits in this trial,
8 together with other matters pertinent to the issue;
9 that immediately upon his return he should submit a
10 copy of the interrogation to the prosecution in order
11 that they might do one of three things: (1) Send a
12 prosecutor to Peiping to cross-examine Ambassador Ott
13 on the interrogation; (2) Mail a questionnaire of a
14 cross-examining nature regarding the interrogation
15 to Ott for his replies thereto, or (3) if so desired,
16 have Ott brought before this Tribunal for cross-
17 examination on the interrogation.
18

19 The records of the clerk's office will show
20 that immediately upon return of counsel from Peiping
21 he filed, on the 25th day of May 1947, the original
22 of the interrogation in the office of the clerk and
23 delivered a duplicate original of the same to the
24 prosecution. It is further called to the attention
25 of the Tribunal that at no time thereafter did the
prosecution make any attempt whatsoever to cross-

1 examine the said Ott by any of the three hereinabove
2 described methods, although they did see fit to send
3 interrogations to him in Shanghai, prior to his
4 repatriation to Germany, in late August or early
5 September 1947, relative to defendant OSHIMA. Yet,
6 as aforesaid, not one word was asked relative to
7 SHIRATORI.

8 (a) SHIRATORI's relation to Hitler,
9 Ribbentrop and Ott. It has been clarified that
10 SHIRATORI saw Ribbentrop only on two occasions, in
11 April and in June 1939, and that, accordingly,
12 Ribbentrop could not know SHIRATORI very well.^{226-A.}
13 The prosecution has produced no evidence that
14 SHIRATORI ever saw Hitler.

15 In the opening statement of the prosecution
16 on 19 September 1946 it was stated: "Former Ambassa-
17 dors OSHIMA and SHIRATORI, who had resigned upon the
18 failure to conclude the Tripartite military alliance,
19 worked in confidential cooperation with the German
20 Embassy in this program, and the German Ambassador
21 was directed by Ribbentrop to keep in close touch with
22 these two collaborators."^{227.}
23

24 As to the former part of this prosecution's

25 226-A. Tr. 34137, 24481-82, 34138-139.
227. Tr. 5860.

1 statement, we will explain later. As to the latter
2 part, it seems that the prosecution relied on exhibit
3 507,^{228.} in which it was stated as follows: "SHIRATORI
4 who will soon return to Tokyo from his post of Amba-
5 sador in Rome, will also work in this idea." However,
6 according to the original German text of this exhibit,
7 it is gramatically quite clear that the above sentence
8 is not a part of Ribbentrop's instruction to Ott, but
9 a part of an unknown person's talk to Ribbentrop,
10 which Ribbentrop quoted in indirect narration in his
11 telegram to Ott. The Language Arbitration Board
12 corrected the above sentence (English translation
13 from the German original), as follows: "SHIRATORI,
14 who would soon return to Tokyo from his post of
15 Ambassador in Rome, would also work along these
16 lines."^{229.}

18 Further, as was shown on page 8, Chapter VII
19 of the summation, this so-called instruction to Ott
20 related only to better Russian-Japanese relations and
21 not as alleged, better German-Japanese relations.
22 Moreover, SHIRATORI testified in his affidavit about
23 the above sentence in exhibit 507 that he promised
24 nobody, nor gave anyone to understand, that he would

25
228. Ribbentrop's telegram to Ott, Tr. 5860.
229. Tr. 13097.

1 cooperate with the German Embassy in Tokyo along the
2 line indicated in that document; that whatever activi-
3 ties he might have engaged himself in after coming
4 home from Europe were entirely of his own accord and
5 in his own judgment, and that he had absolutely no
6 connections whatever, either with the German or the
7 Italian Embassy in Tokyo.^{230.}

8 Other than exhibit 507 above, the prosecution
9 failed to produce any evidence which testified that
10 Ott was directed by Ribbentrop to keep in close touch
11 with SHIRATORI.

12 SHIRATORI testified further, in his affidavit,
13 that he was never in occupation of position of respon-
14 sibility in the Japanese Government at any period
15 during Ambassador Ott's sojourn in Japan; that there-
16 fore there could not be any question of official
17 contact between himself and Ott; that, privately, he
18 and Ott were not on any especially friendly terms,
19 and that it was entirely on social occasions that they
20 saw each other.^{231.}

22 Witness SAITO testified that though during
23 their advisorship to the Foreign Ministry, both
24 SHIRATORI and himself often met the German Ambassador
25 in a social way but there was, to the best of his

230. Ex. 3595, Tr. 35045-046.
231. Ex. 3595, Tr. 35052.

1 knowlege, nothing to indicate that SHIRATORI was on
2 any specially intimate terms with Ott or any other
3 member of the German Embassy in Tokyo. SAITO did not
4 believe SHIRATORI to have been a Germanophile, for he
5 remembered a remark he had made at a gathering of
6 Foreign Office officials during the Pacific War to
7 the effect that it was no less objectionable for them
8 to be pro-Axis as to be pro-Anglo-Saxon.^{232.}
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232. Tr. 34963.

Ott testified in ex. 3579 (233) as follows:

1 1) Ott met SHIRATORI for the first time
2 about October or November, 1938, prior to his depart-
3 ure for Rome as Japanese Ambassador to Italy, on the
4 occasion of a farewell dinner given by the Italian
5 Ambassador in Tokyo (234).
6

7 2) Ott never discussed with SHIRATORI, prior
8 to his departure to Rome, any alliance between Japan,
9 Germany, and Italy; Ott himself didn't know of nego-
10 tiations having been started (235).

11 3) Ott did not hear from SHIRATORI at any
12 time during his stay in Europe (236).

13 4) Ott met SHIRATORI the second time after
14 his return to Tokyo sometime during the latter fall
15 of 1939 at an official function given by the Italian
16 Ambassador; they met rarely thereafter within the next
17 several months and their meetings were social, and no
18 political matters, and particularly the German-Japanese-
19 Italian Alliance, were discussed during that time (237).
20

21 5) "The conclusion of the German-Russian
22 Non-Aggression Pact in August, 1939, struck Japan as a

23 (233) Interrogatory of Ott made on 18 May 1947 by Chas.
B. Caudle, counsel for SHIRATORI, at Peiping,
tr. 34,849-904

24 (234) Tr. 34,852

25 (235) Tr. 34,852

(236) Tr. 34,853

(237) Tr. 34,854

surprising blow, and caused the resignation of the
1 HIRANUMA cabinet. All negotiations about the Alliance
2 were stopped and relations between Germany and Japan
3 cooled down to a low degree. This situation exist-
4 ed until about the late spring of 1940, when the devel-
5 opment of the war in Europe began to reflect in a
6 changed Japanese mind. Also the strong economic
7 measures taken by the U. S. Government against Japan
8 contributed likewise to this change of the Japanese
9 mind." (238)
10

11 I might add this is quoted directly from Ott's
12 statement.

13 6) SHIRATORI was placed on the waiting list
14 of ambassadors about three months after his return to
15 Tokyo, at a reduced salary. He kept this status until
16 late August, 1940, when he was appointed Advisor to
17 the Foreign Minister (239). Ott had no official rela-
18 tions with SHIRATORI during this time and saw him
19 occasionally in a private capacity (240).
20

21 7) SHIRATORI was not in occupation of any
22 important position in Tokyo during the whole of Ott's
23 sojourn in Japan and during Ott's personal acquaintance
24 with him except as Advisor to the Foreign Minister (241).
25

(238) Tr. 34,855
(239) Tr. 34,855
(240) Tr. 34,856
(241) Tr. 34,899

(b) Ott Knew That SHIRATORI Did Not Have

1 So Great an Influence:

2 1) SHIRATORI did not appear to Ott to have
3 any influence in important affairs of state, or to
4 carry any weight with Foreign Minister MATSUOKA in
5 the position as advisor to him (242).

6 2) Judging from later developments and proven
7 facts and events as Ott knew now, SHIRATORI never
8 carried any weight with his government nor influenced
9 the policies thereof, either foreign or domestic,
10 during Ott's acquaintance with him in Tokyo (243).

11 (c) Ott Knew That SHIRATORI Was Very Out-
12 spoken and Talkative.

13
14 Ott heard SHIRATORI several times criticize
15 in a most outspoken manner measures announced by the
16 Japanese Government. SHIRATORI appeared to Ott some-
17 times to be a rather talkative man (244).

18 (d) The prosecution, relying on ex. 800,
19 contended:

20 "SHIRATORI from time-to-time communicated
21 important information to the German Ambassador in
22 Japan." (245)

23 (242) Tr. 34,899

24 (243) Tr. 34,899-900

25 (244) Tr. 34,899

(245) Tr. 16,923; ex. 800, tr. 7968

1 However, as we will explain later, the prose-
2 cution misapprehended the said ex. 800, and it was not
3 SHIRATORI but Acting Vice Foreign Minister YAMAMOTO
4 who gave information to Ambassador Ott, ex. 3579, tr.
5 34,886.

6 Further, Ott testified that SHIRATORI never
7 furnished to the German Embassy in Tokyo any news or
8 information concerning an important policy or decision
9 of his government, or any state secret in general (246).

10 (e) Ott's Personal Relationship with Ribbentrop:

11 1) Ott testified in his interrogatory as
12 follows: (247)

13 "The relations between Germany and Japan went
14 up and down several times during the years of my own
15 experience, 1934-1943. When the Japanese Government
16 in the face of dramatic changes and actions in the Ger-
17 man policy, acted in their own way, Ribbentrop reacted
18 often with marked distrust and decision. He had a
19 strong tendency for 'wishful thinking,' and for over-
20 looking the fact and forces upon which the Japanese
21 Government used to base their decisions.

22 "Then I (Ott) often tried to moderate the
23 views and instructions of Ribbentrop, I awakened a
24 mounting distrust and suspicion that my attitude was
25

(246) Tr. 34,898-899

(247) Ex. 3579, tr. 34,900-902

1 influenced by undue consideration of those Japanese
2 tendencies which were either indifferent or opposed to
3 friendly relations between Japan and Germany, and that
4 I had not sufficient contact with other groups of the
5 political Japanese life. I had to presume that this
6 opinion of Ribbentrop would spoil the success of my
7 moderating work and drive him even more to other sources
8 of information which were more in line with his own
9 ideas.

10 "In order to avoid such a development, I
11 carried on personal relations with the few Japanese
12 who were personally known to Ribbentrop, and whom I
13 had theretofore been instructed to contact (248).

14 "I mentioned these people, among them Am-
15 bassador SHIRATORI, and stressed their cooperation on
16 occasions, especially when I tried to give weight to
17 my opinions or suggestions contrasting Ribbentrop's
18 ideas or instructions or when it seemed necessary to
19 confirm him that my report covered the situation from
20 every point of view."

21 2) In exhibit 504 (tr. 6108-11), Ott's tele-
22 gram dated 6 May 1939, Ott reported:

23 "From the Foreign Ministry a senior official
24 who stands especially close to Ambassador SHIRATORI

25 (248) Prosecution failed to produce in evidence this
instruction, which concerned SHIRATORI; also the de-
fense for SHIR. could not have found it.

1 let me know personally that in the entire government a
2 deep cleft between friends and enemies of the alliance
3 had formed." (249)

4 The above information had nothing to do with
5 SHIRATORI, who was in Europe at that time. And Ott
6 testified that he mentioned the name of SHIRATORI in
7 his telegram above for the reason that it might add
8 to the weight of the report in the mind of the German
9 Foreign Minister (250).

10 3) In exhibit 516 (tr. 6152-53), Ott's tele-
11 gram dated 12 June 1940, Ott reported:

12 "The Embassy is still endeavoring to stir up
13 Japanese ill-feeling against America by influencing the
14 press and leading political personalities in a way
15 deemed proper. I myself have expressed the thought in
16 many discussions with leading political personalities;
17 as for example, KONOYE, SUETSUGU, and KUHARA, that the
18 interests and activity of America ... (one group of
19 words garbled) in the Pacific area and therefore a con-
20 flict between Japan and America is in the long run un-
21 avoidable.

22 "In confidential cooperation with the Em-
23 bassy, Ambassadors OSHIMA and SHIRATORI and circles

24 (249) Tr. 6110 and 34,863
25 (250) Tr. 34,863

1 closely connected with them are operating in the same
2 direction." (251)

3 The prosecution insisted, relying on this
4 telegram, that SFIRAYORI and OSHIMA in the summer of
5 1940, worked in confidential cooperation with the
6 German Embassy in Japan in stirring up Japanese ill-
7 feeling against America by influencing the press and
8 political leaders (252). However, Ott testified about
9 the background of this telegram as follows:

10 "The collapse of France was obviously imminent
11 and the British situation was very precarious, center-
12 ing round Dunkirk. The only effective relief which
13 might keep up the resistance power of England and work
14 against the early settlement of the war could come from
15 the United States of America, and was asked from them
16 very urgently. Therefore, the German Government en-
17 deavoured to hamper such a relief, and considered as a
18 useful way a continued tension in the Pacific area,
19 which might prevent the United States from removing
20 their attention and fighting forces from the Pacific
21 to the Atlantic. It was a complicated matter to ad-
22 vance such a policy upon Japan, because the Japanese
23 attitude was much divided, as it is given in the first
24 part of my report. In this situation I got instructions
25

(251) Tr. 6152-53

(252) Tr. 16,917-918

1 to back an Italian protest obviously against a Japanese
2 measure in favour of the United States and contrary to
3 the Italian interests -- I do not recall the case
4 exactly. "When I presented my objections to the Reich
5 Government's intentions, I had to avoid the permanent
6 distrust of Ribbentrop that I was inclined to block
7 his aims. Therefore, I stressed in paragraphs Nos.
8 3 and 4 of my report that I was working in my own way,
9 and pointed to the cooperation of SHIRATORI and other
10 Japanese persons known to Ribbentrop in order to im-
11 press him and to succeed in my objections." (253)

12 Ott testified further that he did not mean in
13 the last paragraph of the above telegram that the
14 Embassy, SHIRATORI, etc., worked together in a common
15 programme, based upon a mutual understanding and common
16 agreement, because there was no such agreement; that
17 SHIRATORI, as far as Ott knew, warned by private talks
18 and sometimes by the press against the courting of the
19 United States, after they had enforced hard economic
20 measures upon Japan; that it was not a common plan taken
21 by Ott, SHIRATORI, etc.; that Ott had only private
22 talks with each of them separately; that Ott was never
23 in the company of SHIRATORI, etc., at the same time for
24 the purpose of carrying out this so-called political
25 (253) Tr. 34,872-873

1 cooperation; that Ott emphasized the close cooperation
2 in order to give weight to the message, and to carry
3 through his objections, and that Ott might add that he
4 used the names of KONOYE and SUETSUGU for the same
5 reason (254).

6 SHIRATORI gave lectures and interviews after
7 he had returned from Rome. However, he testified in
8 his affidavit that whatever activities he might have
9 engaged himself in after coming home from Europe were
10 entirely of his own accord and in his own judgment, and
11 that he had absolutely no connections whatever with the
12 German Embassy in Tokyo (255).

13 4) About exhibit 1272 (tr. 11,351-358),
14 Ott's telegram dated 17 May 1942 recommending various
15 German decorations (256), Ott testified that he recom-
16 mended SHIRATORI on this occasion of a decorations list
17 for the Tripartite Pact, because he was personally
18 known to Ribbentrop and had been the advisor to the
19 Foreign Minister at the time of the conclusion of the
20 pact, in order to lessen the opposition of the Reich's
21 Foreign Minister against the whole matter of decorations,
22 and, that, judging from later developments, Ott did not
23 think that the efforts of SHIRATORI, and particularly

24 (254) Tr. 34,873-74

25 (255) Tr. 35,045-046; refer also to witness MISHIMA's
testimony, tr. 35,007-008

(256) Tr. 11,351-358

1 the results of such efforts to further Japanese-German
2 relations, deserved the award given to him (257). We
3 will explain about exhibit 1272 later more fully.

4 5) SHIRATORI testified in his affidavit that
5 much of Ott's information, such as it was and false
6 as it was, he was informed, came from the confidential
7 secretary of Prince KONOYE, one OZAKI, Hidemi, who
8 was later tried and executed; that OZAKI was a communist
9 and associate of Zonge, a German by birth but, as
10 SHIRATORI was further informed, a Russian spy who had
11 worked his way as a newspaperman into the confidence of
12 Ott, and that it seemed that SHIRATORI's name was some-
13 times used merely to give credit to this sort of in-
14 formation without his knowledge, as borne out in Ott's
15 interrogatories (258). Further, as SHIRATORI was known
16 to be very outspoken and talkative, this made it
17 opportune for Ott to use his name as aforesaid, to give
18 credence to his communications and thereby allay the
19 suspicions of Ribbentrop. Also, whether by force of
20 habit or not, Ott often used SHIRATORI's name mislead-
21 ingly when the name of some other person would have
22 sufficed (258-A).

23
24 (257) Tr. 34,893
25 (258) Tr. 35,052-053.
(258-A) Tr. 34,898

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1 We will now treat the telegrams of Ott and
2 other German documents one by one:

3 (a) Exhibit 502 (Tr. 6097-6102): This is
4 Ribbentrop's telegram to Ott dated 26 April 1939,
5 which is the reply to a telegram sent by Ott to
6 Ribbentrop, wherein he stated he had heard through
7 his Military Attache, who had obtained the infor-
8 mation from some members of the Japanese Army, that
9 negotiations were being carried on between Germany,
10 Italy and Japan for a further strengthening of the
11 Anti-Comintern Pact, and requesting information as
12 to the matter (259).

13 It will be noted that in this particular
14 document Ribbentrop goes to great lengths to impress
15 upon Ott the confidential and ultra-secret activities
16 theretofore and then being carried on as between him
17 and OSHIWA, and him, OSHIWA, SHIRATORI and Ciano on
18 other occasions. He cautions Ott to make no mention
19 of such negotiations under any circumstances, and
20 goes even further to say not even to discuss it with
21 the Italian Ambassador, who, according to information
22 he (Ribbentrop) had learned from Ciano, had not been
23 informed regarding the matter.
24

25 The prosecution in its summation (UU-51) goes
259. Tr. 34,852-53 and 34,861

1 to great lengths to try to impress upon this Tri-
2 bunal the secrecy in which such negotiations were
3 carried on, using the aforesaid exhibit, and going
4 further to say that the Japanese Government's propos-
5 als to the German and Italian Governments were never
6 transmitted officially by SHIRATORI. (It is inter-
7 esting to note the distinction the prosecution makes
8 between activities of an official capacity and an
9 individual capacity in this regard, and then takes
10 exactly the opposite viewpoint as pertains to speeches
11 and writings made by one in an official capacity in
12 relation to those made in an individual capacity,
13 where they contend there is no difference.)

14 Now, it must be remembered that the original
15 negotiations for the strengthening of the Anti-
16 Comintern Pact began some time in the middle of
17 1938, even before OSHIMA was made Ambassador to
18 Germany and had been carried on to a great extent
19 for nearly a year without Ott having been officially
20 or even semi-officially notified of such. This fur-
21 ther goes to show why Ott felt that Ribbentrop dis-
22 trusted him. It is also logical to conclude that
23 when Ribbentrop received a wire from Ott requesting
24 information on all negotiations up until that time,
25 Ribbentrop had to find some means, or use some lang-

through channels, without Ott having been informed
1 by his Government of any such activities. It is
2 only natural to assume, as aforesaid, that Ribben-
3 trop "doctored" his communications to Ott, to cover
4 up his (Ribbentrop's) utter disregard of Ott during
5 the negotiations.

6 Now, at this period where do we find SHIRA-
7 TORI and what was he doing? Why, the prosecution
8 brings out themselves that SHIRATORI was making
9 statements to the press and otherwise publicizing
10 the negotiations (Tr. 34,140), and SHIRATORI admits
11 in his affidavit that he did just that for, as he
12 contends, he was more interested in the world know-
13 ing of the negotiations than he was in the consumma-
14 tion of the treaty for reasons already set forth
15 herein. (Tr. 35,038, line 23; 35,039.)

16
17 (b) Exhibit 504: ²⁶³This is Ott's telegram
18 to Ribbentrop dated 6 May 1939, and contains the
19 following passage:

20 "From the Foreign Ministry a senior official,
21 who stand especially close to Ambassador SHIRATORI,
22 let me know personally that in the entire government
23 a deep cleft between friends and enemies of the
24 alliance had formed."
25 ²⁶⁴

263. Tr. 6103-7, 34,862-3
264. Tr. 15,744-5; 34,141-5; 34,864-5

Here we find Ott with his ear to the ground,
1 true to Ribbentrop's instructions, to seek out and
2 forward all information he could get, and all the
3 while SHIRATORI is in Rome. This exhibit has been
4 treated already in item 2 of (e) of this Chapter XII.

5 (c) Exhibit 2198: This consists of two
6 telegrams, one from Ott to Ribbentrop dated 11
7 August 1939,²⁶⁵ and the other from Ott to the German
8 State Secretary dated 18 August 1939,²⁶⁶ concerning
9 negotiations for a Tripartite Alliance.
10

11 The first alleged telegram advised Ribben-
12 trop of purported happenings at the Five-Minister
13 Conference on 8 August, 1939, wherein, according to
14 Ott, War Minister ITAGAKI resolved to resign his
15 post if the matter could not be settled by 15
16 August, and further, according to Ott, would entail
17 the resignation of OSHIMA and SHIRATORI. Ott fur-
18 ther states in this telegram that the War Minister
19 would keep Germany advised through OSHIMA and SHIRA-
20 TORI, by-passing the Foreign Minister.

21 Now, Ott testified about his telegram, Ex.
22 2198, that this was the only case he was informed of
23 where the War Minister by-passed the Foreign Minister
24

25 264. Tr. 15,744-5; 34,141-5; 34,864-5

265. Tr. 34,142-3

266. Tr. 34,145

1 in communication with SHIRATORI about these negotia-
2 tions. He stated further that it was a matter of
3 extreme urgency because the answer had been re-
4 quested within four days; that by sending through
5 the usual channels, there was a possibility of delay;
6 that he had no knowledge of what happened immediately
7 thereafter, but that on August 29 the Japanese
8 Cabinet resigned, following the non-aggression pact
9 between Germany and Russia, and that afterwards all
10 negotiations between the three powers ceased. ²⁶⁸

11 However, the Foreign Office, the War Ministry
12 and the Navy Ministry were using different telegraphic
13 codes from and to their respective representatives,
14 and, therefore, it was quite impossible to make
15 direct exchange of telegrams between the War
16 Minister and the Japanese Ambassadors in foreign
17 countries. ²⁶⁹ The defendant ITAGAKI testified, as
18 a witness, to the effect that from the standpoint of
19 the organization or system of the Japanese Government,
20 or actually speaking, he could not possibly do such
21 a thing, as to send a telegram to a Japanese Ambassa-
22 dor abroad and that actually he had never sent such
23 a telegram. ²⁷⁰ Also, the defendant OSHIMA, as a
24

25 268. Tr. 34,865

269. Tr. 38,723, Ex. 3885; Tr. 38,725, Ex. 3886

270. Tr. 30,336-7

1 (e) Exhibit No. 507:²⁷⁴ This is Ribben-
2 trop's telegram to Ott, dated 9 September 1939, and
3 we have already treated it in item (a) at the be-
4 ginning of this Chapter XII. Also, we have shown
5 in this chapter the fact that SHIRATORI did not
6 take the active part predicted in the exhibit.

7 (f) Exhibit No. 511:²⁷⁵ This is a tele-
8 gram to German State Secretary signed by Stahmer-
9 Ott, dated 23 February 1940, and contains the follow-
10 ing passage:

11 "After my arrival here I found such Japanese
12 already known to me as OSHIMA, SHIRATORI, TERAUCHI,
13 ISHII, etc., in an unchanged friendly attitude and
14 ready for every support."²⁷⁶

15 Ott testified about this telegram to the
16 following effect: The message was sent by Stahmer,
17 but due to the regulations for sending of cypher
18 telegrams from the German Mission abroad to the
19 Home Government, the Chief of Mission, that is, Ott,
20 had always to sign such a telegram for expedition.
21 Stahmer paid a private visit in Ott's company to
22 SHIRATORI, due to the instructions of Ribbentrop to

24 274. Tr. 6126-30

25 275. Tr. 6140-42

276. Tr. 6141; also refer to Tr. 16,917 (prosecution
contention relying on this exhibit).

witness, denied the above communication from the
War Minister, in the course of his cross-examination. ²⁷¹

If the wire was sent, although the above shows the
impossibility of such having occurred, Ott gives
his version of why such recourse was used and
further, that it was the only time he ever learned
of such procedure. In any event, the circumstances
surrounding this matter are so confusing and con-
flicting that the document itself loses all weight,
and is not worthy of consideration.

(d) Exhibit 498: ²⁷² This is Ott's telegram
to German State Secretary, dated 8 September 1939,
and contains the following passage:

"The Ambassador in Moscow (note: it should
be 'Rome'), SHIRATORI, will return from Rome, since
at that time he had taken up the post of Ambassador
purely in the expectation that he would succeed in
concluding an Italian-Japanese-German military
alliance."

Ott stated about this telegram that the
information was based on hearsay. ²⁷³ Further, we
have already treated this matter in detail in item
(b) of Chapter V above.

271. Tr. 34,142; 34,144; 34,145

272. Tr. 6082-3; refer also to prosecution's conten-
tion relying on Ex. 498, Tr. 16,914.

273. Tr. 34,866

get in touch with the personal acquaintances of
1 Ribbentrop in Japan. At that time, Stahmer was
2 attached as a representative of Ribbentrop to the
3 mission of the Duke of Saxe-Coburge Gotha, sent to
4 Japan for presenting Hitler's congratulations on the
5 occasion of the 2600th anniversary of the founding
6 of the Japanese Empire, and to the United States
7 as a goodwill mission to the Red Cross Society. ²⁷⁷

8 Stahmer testified to the following effect:
9 He met SHIRATORI first in April, 1939, when SHIRATORI
10 was invited to Berlin during the birthday of Hitler;
11 Stahmer saw him twice during lunch and dinner, and
12 they talked together, but not politically. The next
13 time he met SHIRATORI was in February, 1940, during
14 his short, first stay in Japan as a member of the
15 mission of the Duke of Saxe-Coburge-Gotha. He saw
16 SHIRATORI at that time twice; once during a dinner
17 in the German Embassy and a second time on occasion
18 of a Japanese lunch in Tokyo. On this second occa-
19 sion Stahmer saw SHIRATORI together with some other
20 Japanese, and they talked about general topics. He
21 sent a telegram, wherein he gave a short survey of
22 his impressions of the general political situation,
23 which was a combination of everything he heard from
24
25 277. Tr. 34,868-70

1 the Japanese whom he knew, from the people in the
2 German Embassy, and from the German journalists.
3 The telegram contained a passage that he found such
4 Japanese already known to him as OSHIMA, SHIRATORI,
5 TERAUCHI, ISHII, etc., in an unchanged friendly
6 attitude and ready for every support, but that was
7 Stahner's personal opinion and the impression he
8 got from his conversation with these Japanese. He
9 did not talk with any of them concerning the alliance
10 between Germany and Japan, because at that time the
11 German-Japanese relation was not very good and there
12 was no possibility of such an alliance; he gave up
13 any hope and avoided the talk on that line. Also,
14 these Japanese, including SHIRATORI, did not express
15 any readiness to him at that time to support an
16 alliance with Germany. ²⁷⁸

17 Further, we would like to call the attention
18 of the Court to the fact that SHIRATORI occupied no
19 official status other than that of being on the
20 ambassadorial waiting list during all this time. ²⁷⁹

21 (g) Exhibit 516: ²⁸⁰ This is Ott's telegram
22 to Berlin dated 12 June 1940. We have already

23 278. Tr. 24,402-3; 24,479-80; 24,519; 24,521-23 and
24 24,553-54.

25 279. Refer to Ex. 3575.

280. Tr. 6152-53

1 treated this exhibit in item (3) of this Chapter
2 above.

3 (h) Exhibit 523: ²⁸¹ This is Ott's tele-
4 gram dated 24 June 1940 and contains the following
5 passage:

6 "Also Ambassador SHIRATORI, who is ever
7 more frequently named as the coming Foreign Minister,
8 advocated a Non-aggression Pact with Russia in an
9 interview yesterday with the Yoiuri." ²⁸²

10 This is one of SHIRATORI's activities as a writer
11 and lecturer, about which we will explain later in
12 detail. We would like also to add that he was, at
13 that time, on the ambassadorial waiting list. ²⁸³

14 (i) Exhibit 536: ²⁸⁴ This is Ott's telegram
15 dated 20 July 1940 and contains the following pas-
16 sage:

17 "MATSUOKA's appointment (note: as Foreign
18 Minister) was generally approved by the press, as a
19 new orientation of Japanese foreign policy is ex-
20 pected from him with certainty. OSHIMA and SHIRA-
21 TORI . . . (1 group garbled) expressed themselves
22 in a similar vein at press interviews." ²⁸⁵

24 281. Tr. 6176-77
25 282. Tr. 6177, Tr. 34,874-875
283. Ex. 3575
284. Tr. 6261-62
285. Tr. 6262

1 The prosecution, relying on this exhibit, contended
2 that SHIRATORI lent, by the above press interview ²⁸⁶
3 the weight of his influence to MATSUOKA's policies.
4 However, SHIRATORI was, at that time, still in the
5 ambassadorial waiting list and had almost no
6 political influence. The telegram is another
7 example of using SHIRATORI's name by Ott in the sense
8 explained above.

9 (j) Exhibit 538: ²⁸⁷ This is Ott's telegram
10 dated 2 August 1940 and contains the following pas-
11 sage:

12 "Ambassador SHIRATORI informed confidentially
13 that he had declined the post of Vice Foreign Minister.
14 It is to be considered that he will not be appointed
15 permanent advisor to the Foreign Minister. He be-
16 lieves he can exercise a far-reaching influence in
17 this capacity."

18 About this telegram, Ott testified to the following
19 effect: SHIRATORI did get the appointment as advisor
20 to the Foreign Minister, but he did not exercise a
21 far-reaching influence in such a capacity, as later
22 developments, especially during the negotiations for
23 a conclusion of the Tripartite Pact proved. By his
24 official relations with several Vice-Foreign Ministers'

25 286. Tr. 16,918

287. Tr. 6265

1 of Japan, Ott realized that a Vice Foreign Minister
2 was the permanent representative of the Foreign
3 Minister in all dealings with Foreign Missions,
4 which the Foreign Minister did not take up person-
5 ally. Furthermore, he was responsible for the ad-
6 ministration and personnel matters of the ministry.
7 His position was comparable to the Under Secretary
8 of State of the United States. The advisor had
9 none of these functions, and his effectiveness
10 depended upon the personal influence he had with
11 the Foreign Minister. Ott did not observe that
12 SHIRATORI had any personal influence with MATSUOKA,
13 even during the negotiations for the Tripartite
14 Pact. Ott occasionally got the impression of a
15 certain mistrust between MATSUOKA and SHIRATORI by
16 remarks they made to him about each other of a
17 critical nature. 288

18 Further, this telegram from Ott (Ex. 538)
19 was entirely contrary to the facts, as there was a
20 vast difference in the powers, authority and respon-
21 sibility of a Vice Minister as compared to those of
22 an Advisor, which distinction was fully explained
23 by the witness SAITO, who served as a Foreign
24 Advisor at the same time as SHIRATORI. Also, SAITO
25 288. Tr. 34,875-77

1 was given to understand at the time that SHIRATORI's
2 appointment as advisor was due mainly to Prince
3 KONOYE's recommendation. Moreover, MATSUOKA was a
4 man of great self-confidence, who would do everything
5 by himself, rarely asking the advice of others.
6 SAITO could, therefore, state with truth that
7 SHIRATORI's advisorship under MATSUOKA was more or
8 less nominal. He was not asked to advise on hardly
9 any subject, least of all on important diplomatic
10 questions.²⁸⁹

11 Furthermore, we would like also to refer
12 to the testimony of SHIRATORI as a witness in this
13 matter,²⁹⁰ as well as to our explanation in Chapter
14 VIII above.

15 (k) Exhibit 548:²⁹¹ This is Ott's telegram
16 dated 23 August 1940 and contains the following
17 passages:

18 "1. The Government announces an extensive
19 revisionment of the Foreign Service . . . The Foreign
20 Minister declared to the press, that this action
21 had become necessary in order to secure the new
22 foreign policy introduced by him and to bring the
23 Japanese Foreign Service into coordination with the
24

25 289. Tr. 34,962-3; 34,957 and 34,958
290. Tr. 35,047-49
291. Tr. 6296-98

1 new Japanese conditions . . . The drastic action
2 of the government evidently intends in the first
3 place to render harmless the exponents of pro-Anglo-
4 Saxon courses. This is also strongly underlined by
5 the press. . . .

6 "2. With the aim of further preparation of
7 suitable actions for the adjustment of State affairs
8 on an authoritarian model, the government had
9 formed a commission of 24 leading personalities.
10 Ambassador SHIRATORI was appointed the representative
11 for foreign political matters in the commission.
12 The commission consists mostly of followers of the
13 reform movement and of the policy of cooperation with
14 the Axis powers which is constantly demanded by
15 this movement."
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1 As to the former part, witness SAITO testified
2 that the wholesale dismissal of Japanese diplomats by
3 MATSUOKA and OHASHI (Ex. 548) took place before the
4 appointment of the advisors; that as SAITO's appointment
5 as advisor was then definitely decided upon, he was
6 admitted into counsel over this matter, but that
7 SHIRATORI had nothing at all to do with it, and that,
8 in fact, as an Ambassador on the waiting list, he was
9 counted among the senior diplomats to be dismissed (292).

10 We would like also to refer to the testimony of
11 SHIRATORI as a witness in this matter (293).

12 As to the latter part, Ott testified to the
13 following effect:

14 By that time there were various rumors about
15 interior measures taken by the new cabinet. The reported
16 formation of a commission was one of these rumors. He
17 was never informed who else comprised this commission.
18 After dispatching the message, Ott never heard again of
19 such a commission or of any of its activities. He had
20 to consider that information reported by him was
21 erroneous. (294)

22 Now, witness ARIMA testified that the Imperial
23 Rule Assistance Association was organized on the basis
24

25 (292) T. 34,958-59
(293) T. 35,047-48
(294) T. 34,878

1 of the report of the Arranging (or Preparatory or Prepar-
2 ation) Committee for the New National Structure; that
3 SHIRATORI was among those who were originally invited by
4 Prince KONOYE to form the Committee, but that he did not
5 take any active part in the discussions of the Committee,
6 and that, in fact, he generally absented himself from its
7 meetings (295).

8 It seems that the prosecution was of the opinion
9 that this Preparation Committee and the Commission of 24
10 leading personalities mentioned in Exhibit 548, were one
11 and the same; and the prosecution contended that though
12 Ott attempted to impeach his own report in Exhibit 548,
13 this original official report was true and correct (296).

14 However, the prosecution failed to show that
15 the Preparation Committee consisted of 24 members. More-
16 over, the Japanese are not accustomed to call a commiss-
17 ion or committee by the number of its members, as
18 commission or committee of 24, etc.

19 At any rate, in case we presume that the
20 Preparation Committee and the Commission of 24 were one
21 and the same, it must, nevertheless, be said that the
22 fact that Ott repudiated his own official report clearly
23 shows how shaky and haphazard generally his reports were.

24 (295) T. 35,020-21
25 (296) T. 37,987-88

1 (1) Exhibit 562 (297): This is Ott's telegram
2 to the Reich Foreign Minister dated 31 January 1941 and
3 contains the following passage:

4 "Sharpened attitude of American Government has
5 heightened the political tension of Japan considerably
6 and has brought conflict with America closer.

7 "Unity of government and nation behind the
8 Tripartite Pact has been unmistakably proved in the
9 Diet negotiations, economic circles are also decreasing
10 their resistance. The government is trying to scare
11 America from entering the war by threatening attitude,
12 armament measures, and sharp speeches in Diet and press.

13 "In contrast to this, activistic circles demand
14 preventative attack on Singapore as the key position in
15 the West Pacific Ocean. They expect to deprive America
16 by a surprise action of the possibility of military warfare
17 in the Pacific Ocean or to render it difficult.
18 This minority group is under the leadership of Admiral
19 SUETSUGU, Ambassador SHIRATORI, and has the support of
20 the young officers' corps and individual high leaders
21 of the Army and Navy." (298)

22 Ott testified about this report to the following
23 effect: Ott got this information during the month
24

25 (295) T. 35,020-021
(296) T. 37,987-88
(297) T. 6429-34
(298) T. 6429-30

1 of January 1941, from different members of the German
2 Embassy, and from a number of Japanese of various kinds
3 with whom he had talks. As the report pointed out in
4 the first paragraph, it was a time of heightened polit-
5 ical tension, therefore, a lot of sharp political dis-
6 cussions were going on. However, they were not official,
7 but only the gossip of the day. Ott was not afforded
8 any proof of SHIRATORI being a leader among such a
9 group (299).

10 From this testimony of Ott, it must be concluded
11 that the information is without basis of fact. Moreover,
12 we would like to call the attention of the Court also
13 to the fact that, as already mentioned, Ott testified
14 that he used the names of KONOYE, SUETSUGU and SHIRATORI
15 in order to give weight to his report (300).

16 Furthermore, witness SAITO testified in this
17 matter to the following effect: SAITO knew nothing about
18 SHIRATORI's acting as a leader of "activistic circles"
19 ("minority group") demanding preventative attack on
20 Singapore in January 1941, as stated in Exhibit 562.
21 From what SAITO knew, as a friend and colleague, about
22 SHIRATORI's diplomatic views, he was by no means an
23 advocate of Japan's southward advance (301).

24 (299) T. 34,879-880
25 (300) T. 34,874
(301) T. 34,964

1 (m) Exhibit 1073 (302): This is Ott's telegram
2 to Ribbentrop dated 18 May 1941, and contains, at the
3 end of a long political report, the following passage:

4 "Finally, the activist group which is closely
5 working together with the Embassy, is at present weak-
6 ened by the serious illness of SHIRATORI, who has left
7 the political struggle on account of a serious and
8 apparently incurable illness." (303)

9 This is a typical example of Ott's reports,
10 in which he tried to show to Ribbentrop that he did not
11 fail to consider opinions of every group of the political
12 Japanese life, and especially to keep contact with the
13 few Japanese, including SHIRATORI, who were personally
14 known to Ribbentrop, and whom Ott had been instructed
15 to contact. In this respect, we respectfully refer to
16 the testimony of Ott, mentioned in item (e) of the first
17 part of this Chapter XII (304). We would like also to
18 call attention to the fact that SHIRATORI lay, at that
19 time, in a hospital unconscious, as mentioned in Chapter
20 IX above.

21 (n) Exhibits 3829 and 1113: Exhibit 3829 is
22 Ribbentrop's telegram to Ott dated 3 July 1941, which
23 was offered in evidence by the prosecution in the

24 (302) T. 0909-13

25 (303) T. 0912-13

(304) See also T. 34,900-902

1 rebuttal in order to rebut the attack of Ott on Exhibit
2 1113, hereinafter set forth, whereby Ott claimed it was
3 a casual, neighborly visit of no significance, and to
4 further rebut SHIRATORI's statement that the visit was
5 "quite an informal one" as hereinafter set forth, and
6 to show the importance of SHIRATORI and his activities
7 with his so-called German collaborators (305). Exhibit
8 3829 reads as follows:

9 "You (Ott) reported sometime ago that
10 SHIRATORI was unfortunately having to leave political
11 discussions there as a result of serious illness.
12 When I (Ribbentrop) asked the Japanese Ambassador
13 to Rome when I met him in Venice how SHIRATORI was
14 getting along, he was very astonished to hear of an
15 illness and claimed to have knowledge that SHIRATORI
16 was as well as ever. He had only recently had good
17 news from him. I request a telegraphed report on
18 SHIRATORI's true state." (306)

19 With respect to Exhibit 1113, the same being
20 Ott's telegram to Ribbentrop dated 7 July 1941, four
21 days after receipt by him of the above quoted wire from
22 Ribbentrop - the prosecution read the latter part of
23 this telegram (307) and the defense read the former part
24 (308).

25 (305) T. 37,991
(306) T. 37,992

(307) T. 10,157-58
(308) T. 34,948-49

The entire text is as follows:

1 "Had the opportunity to talk personally to
2 SHIRATORI in a spa, where he is living on account of
3 illness. At this occasion he amplified as follows to
4 news regarding his illness already conveyed to me and
5 the Italian Ambassador from his intimate circle: Since
6 the end of April he is suffering from kidney trouble
7 and was in danger of his life for weeks. Recently
8 there had been an improvement, so that the doctor hopes
9 for recovery until Fall. He has had to abstain from
10 all political work and today, with me, has had his
11 first talk outside of his closest circle. SHIRATORI
12 made the impression of needing rest and being mentally
13 tired; he visibly suffered from a difficulty at walking,
14 and also complained of it.

16 "I transmitted him the best wishes of the
17 German Foreign Minister for his recovery, which
18 evidently greatly pleased him. He asked me to thank
19 the German Foreign Minister and to assure /him/ that
20 as soon as he was able to take up his political work
21 again, he wants unchangedly to advocate an active
22 course for Japan, and that he regarded the entry into
23 the war against Russia as the most urgent goal."

25 Ott testified about this telegram to the follow-
ing effect: At that time, SHIRATORI was residing at

1 Hayama, which is a seaside resort about two hours drive
2 from Tokyo. Ott went many times in the summer to the
3 seaside near Hayama where he had his own villa, as many
4 Foreign diplomats had. On one of these occasions he
5 visited SHIRATORI. The way to his residence was a
6 circuit of just five minutes on the way to his own villa.
7 Ott had been directed by Ribbentrop to convey to SHIRATORI
8 his best wishes for his recovery. However, Ott did not
9 make a special trip to this place for this purpose, but
10 chanced to go by during his visit to his own villa. Ott
11 reported SHIRATORI suffering from kidney trouble, as he
12 had been informed, but he found out later that it was
13 really of a mental nature. At that time SHIRATORI gave
14 him the impression of being mentally tired (309).

15 SHIRATORI testified in his affidavit as follows:

16 "It is a fact that the German Ambassador
17 called on me at my cottage in July, 1941. It was a
18 surprise visit and quite an informal one. I was still
19 in a very weakened condition mentally and physically.
20 I do not retain any clear recollection of that inter-
21 view, but it could never have been such as his cable
22 to Berlin (Exhibit 1113) would seem to suggest." (310)

23 A comparison of the telegram sent by Ribbentrop
24 to Ott (Exhibit 3829) and the reply sent by Ott to

25 (309) T. 34,883,886
(310) T. 35,051

Ribbentrop (Exhibit 1113), shows specifically:

1 1) that if Ott's visit was not a casual one,
2 as we contend, it certainly had no political significance
3 in that he was only requested to find out and report the
4 physical condition of SHIRATORI, which had been confused
5 in the mind of Ribbentrop by Ott's telegram of 18 May
6 1941 (Exhibit 1073), and Ribbentrop's conversation with
7 the Japanese Ambassador in Rome;

8 2) that Ribbentrop had a mounting distrust and
9 suspicion of Ott's reports, or at least so Ott felt
10 during the entire tenure of his ambassadorship in Japan;

11 3) that contrary to Ott's telegram to Ribben-
12 trop, he (Ribbentrop) did not instruct Ott to convey to
13 SHIRATORI his best wishes for his recovery;

14 4) further, that this was not a particular
15 special mission requiring an urgent reply, in that
16 fully four days elapsed between the time Ott received
17 Ribbentrop's telegram and the time he forwarded his
18 reply, although the place of SHIRATORI's residence
19 at that time was hardly two hours from Tokyo.
20

21 As to SHIRATORI's illness, we have already ex-
22 plained in detail in Chapter IX above. It is quite clear
23 from the explanation there that, especially during the
24 first of July, 1941, when the aforesaid Ott's visit
25 occurred, SHIRATORI was still too ill to take responsibil-

ity for any expression of his opinions. This applies
1 also to the so-called SHIRATORI's statement at the end
2 of Exhibit 1113, that, as soon as he was able to take up
3 his political work again, he wanted unchangedly to advo-
4 cate an activist course for Japan, and that he regarded
5 the entry into the war against Russia as the most urgent
6 goal, in case we presume the truth of that statement.
7 SHIRATORI denied categorically such a statement in his
8 affidavit (312).
9

10 Furthermore, we respectfully refer also to our
11 explanations in this matter in Chapters III and IX above.

12 (o) Exhibit 800: This is Ott's telegram dated
13 1 August 1941, and the prosecution read only a part of
14 it (313). As we have already explained in Chapter III
15 above, the prosecution misapprehended the exhibit. The
16 entire statement in Exhibit 800 was made by the acting
17 Vice Foreign Minister YAMAMOTO, excepting the underlined
18 part in single quotation marks in the following sentence,
19 which part alone relates to SHIRATORI:

20 "When I (Ott), because of rumors, 'which
21 SHIRATORI, whom I visited again during the past days
22 in his place of convalescence, had pointed out to me as
23 being serious,' anticipatedly asked whether Japan intended
24

25 (312) T. 35,051
(313) T. 7967-68

to start her active advance with demands on the Soviet
1 Government, the Vice Minister marked this way as the
2 best method of finding a defensive excuse for a Russo-
3 Japanese attack in face of the neutrality agreement."

4 (314)

5 Ott testified about Exhibit 800 to the following
6 effect: Ott held the conversation set forth in the exhib-
7 it with Minister Secretary YAMAMOTO, commissioned with
8 the affairs of Vice Foreign Minister. SHIRATORI was not
9 present there. Ott had visited SHIRATORI during the past
10 days in his place of convalescence. This visit was
11 another one similar to the previous visit mentioned in
12 Exhibit 1113 (314-A). Now, SHIRATORI has no recollection
13 about this second visit by Ott in July 1941, and there-
14 fore, he did not touch it in his affidavit. Though Ott
15 testified that it was another visit, the defense cannot
16 help to presume that Ott did not, in reality make this
17 second visit, but merely used SHIRATORI's name in order
18 to give weight to his report.
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(314) T. 7968
(314-A) Ex. 3579, T. 34,886

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(p) Exhibit 608 (315): This is Ott's telegram to the Reich Foreign Minister dated 5 December, 1941, and contains the following passage:

"SHIRATORI explained to me that the leading circles of Japan have come to the conviction that Roosevelt wants now to enter the war by means of a conflict in the Far East. From various sides the opinion has been advocated that the United States are now sure of the coalition of the ABCD States and Russia, which has been striven for for more than ten years. Therefore, Roosevelt believes that the moment for a settlement has come, since one cannot be certain of the adherence of these states in the future."

Ott testified about this exhibit to the following effect: Only the first sentence of the aforementioned passage (which is underlined) referred to SHIRATORI. He did not recall where he saw SHIRATORI at that time, but it was possible that it was another visit to his seaside villa. SHIRATORI still appeared to be in a state of convalescence. Ott did not think he reported to his government that SHIRATORI had recovered, at that time or before (316).

(315. Tr. 6662-65
316. Tr. 34,887-89)

SHIRATORI testified in his affidavit as

follows:

1 "As to the other interview which General
2 Ott alleges to have had with me after that
3 date (IPS Ex. 608), I cannot recall it at
4 all. As the Ambassador was at his seaside
5 cottage only during the summer months, it is
6 altogether impossible for me to make out how
7 he could say that he had seen me in December,
8 1941, and discussed current questions with me,
9 the more so since I had a slight relapse about
10 that time (317) and was more than ever out of
11 touch with the outside world." (318)
12

13 Now, Exhibit 608 is, as the document itself
14 clearly shows, a very important telegram of Ott, in
15 which he reported to Ribbentrop the attitude of the
16 Japanese Government to the "Hull Note" of 26 November
17 1941, as well as the extremely strained relations
18 between Japan and the United States. SHIRATORI had
19 no official post since 22 July 1941; he remained
20 convalescing in almost complete retirement at Hayama
21 after his serious illness in the spring of 1941, and,
22 moreover, he had a relapse and again suffered from
23 insomnia and mental fatigue in December 1941 as we
24

25 (317. Ex. 3593, Tr. 35,018
 318. Tr. 35,051-052)

1 already explained in detail in Chapter IX above.

2 Under these circumstances we must conclude
3 that Ott again used SHIRATORI's name in this very
4 important telegram to Ribbentrop in order to avoid
5 Ribbentrop's distrust and suspicion, and to give
6 weight to his report (319), though SHIRATORI, re-
7 fraining from all political activities, could not
8 have any political influence and was not able to get,
9 not only officially but, also, as a layman, any
10 information about the current situations, especially
11 at that time. It is contended further that Ott did
12 not, in reality, see SHIRATORI at this time either.

13 (q) Exhibit 576 (320): This is Ott's report
14 to Ribbentrop, from the train, dated 25 March 1941,
15 concerning military preparations in Japan, and en-
16 titled "Note on Situation in Japan." Ott had been
17 recalled to Germany to be present during the MATSUOKA
18 conference at that time (321). The report contains
19 the following passage: "Ambassador SHIRATORI stressed
20 also the necessity to tie up the English fleet."
21

22 Ott testified about this exhibit to the
23 following effect: The note was sent while Ott was in
24 Germany. He was called by his Government to Germany

25 (319. Refer to record pp. 34,900-902
320. Tr. 6477-80
321. Tr. 6475-76)

to be present during the visit of Japanese Foreign
1 Minister MATSUOKA to Berlin. SHIRATORI was at that
2 time in Japan. Ott met SHIRATORI some time, probably
3 in February 1941, during a farewell visit before Ott
4 left for Germany. The meeting was not of an official
5 nature, but purely personal. SHIRATORI was a career
6 diplomat, and at no time saw any service either in
7 the Japanese Army or Navy (322), and the opinion
8 expressed by him was only that of a layman, and not
9 the opinion of a man versed in military tactics. The
10 same opinion had been voiced to Ott during that period
11 by other laymen (323).

13 Now, SHIRATORI was the advisor to the
14 Foreign Office about in February, 1941. But, as ex-
15 plained in detail in Chapter VIII above, his position
16 was a sinecure. He was never consulted by the Foreign
17 Minister MATSUOKA on any matter of policy. Important
18 documents and information concerning the cardinal
19 policies of the government in foreign affairs were
20 being kept from him.

21 Under these circumstances, it is quite in-
22 comprehensible that Ott placed in his "Note on Situ-
23 ation of Japan," Ex. 576, the aforesaid opinion of

24 (322. This is quite correct. See SHIRATORI's
25 curriculum vitae, Ex. 3575.
323. Tr. 34,890-891)

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1 Minister MATSUOKA to Berlin. SHIRATORI was at that
2 time in Japan. Ott met SHIRATORI some time, probably
3 in February 1941, during a farewell visit before Ott
4 left for Germany. The meeting was not of an official
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6 diplomat, and at no time saw any service either in
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22 comprehensible that Ott placed in his "Note on Situ-
23 ation of Japan," Ex. 576, the aforesaid opinion of
24 (322. This is quite correct. See SHIRATORI's
25 curriculum vitae, Ex. 3575.
323. Tr. 34,890-891)

1 SHIRATORI side by side with the opinions of the Chief
2 of the Naval General Staff, Admiral KONDO, and of
3 the Chief of the General Staff, General SUGIYAMA,
4 the highest authorities of Japan in military tactics.
5 There is no other way than to conclude that it is
6 also another example of using SHIRATORI's name by
7 Ott in his report in order to avoid Ribbentrop's
8 distrust and suspicion and to give weight to his
9 message.

10 (r) Exhibit 1272 (324): This is Ott's
11 telegram to his government dated 17 May 1942, and
12 reads in part as follows:

13 "The Japanese Army have repeatedly
14 approached the Military Attache with the
15 request to recommend certain Japanese for
16 receiving German decorations on the occasion
17 of the Tripartite Pact.

18 "Besides above, it crossed 2 or 3 more
19 awardings.

20 "(2) Toshio SHIRATORI, born 8 June 1887
21 in Chiba, formerly Ambassador in Rome. Advisor
22 of the Foreign Minister when the Tripartite
23 Pact was concluded. For a long time he was
24 the principal advocate of intimate cooperation

25 (324. Tr. 11,351-358)

with Germany. Member of the New Diet after
1 having recovered his health, SHIRATORI will
2 probably again play an important part in
3 foreign and home politics. Order: Great
4 Cross."

5 Ott testified about this exhibit to the follow-
6 ing effect: For awarding German decorations the
7 recommendations had to be made to Hitler by his
8 Chancellery, which got the proposals from the various
9 Reich Ministries, as the Foreign Ministry, War
10 Ministry, etc. Ribbentrop was, for himself and for
11 his personal favorites, rather anxious to get foreign
12 decorations, and became very angry when he considered
13 the Japanese Government too reluctant in bestowing
14 a sufficient number of decorations upon German people.
15 He succeeded in blocking in the Reich Government
16 every award of decorations for Japanese for a con-
17 siderable time. Consequently, the Japanese side
18 became very insistent, and stressed the striking
19 contrast with the Italian practice, where there was
20 a sumptuous flow of decorations.
21

22 In order to break this deadlock troubling the
23 atmosphere in Tokyo, Ott eventually presented to
24 Ribbentrop a list wherein Ott recommended decorations
25 to be bestowed on the second anniversary of the

1 Tripartite Pact in September, 1942 (324-A). The
2 German Protocol had provided that the Great Cross is
3 the only class of decoration for which a person of
4 Ambassador's rank is eligible. As this fact was
5 well known to the Japanese Board of Decorations, the
6 bestowal of a lesser decoration would have been con-
7 sidered by the Japanese side principally as most un-
8 favorable, as Ott's long experience proved. Ott
9 recommended SHIRATORI on this occasion of a decor-
10 ations list for the Tripartite Pact because he was
11 personally known to Ribbentrop, and had been the Ad-
12 visor to the Foreign Minister at the time of the
13 conclusion of the Pact, in order to lessen the op-
14 position of Ribbentrop against the whole matter of
15 decorations (324-B). From later developments, Ott
16 did not think that the efforts of SHIRATORI, and
17 particularly the results of such efforts to further
18 Japanese-German relations, deserved the award given
19 to him (324-C).
20

21 MATSUOKA had been decorated previously.
22 SAITO, Yoshie, another Advisor to MATSUOKA during the
23 negotiations for the Tripartite Pact, had been
24 recommended and decorated at the same time as SHIRATORI

25 (324-A. Tr. 34,892
324-B. Tr. 34,893
324-C. Tr. 34,893)

1 with the Great Cross (324-D).

2 There is no need to add anything to this
3 testimony of Ott. We only would like to call the
4 attention of the Court to the following facts:

5 1) That SHIRATORI had been disabled, due
6 to serious illness, for any activities of
7 responsibility from April, 1941, until about
8 April 1942, as shown in Chapter IX above.

9 2) That SHIRATORI had no part whatsoever
10 in the planning or waging of the Pacific War,
11 and never occupied a policy-making position
12 prior to or during that time; that is to say,
13 during his entire career (325).

14 3) That the decoration list proposed in
15 exhibit 1272 comprised persons recommended by
16 Ott, by the Military Attache, and by the Air
17 Attache, and that SHIRATORI was recommended by
18 Ott (326).

19
20 Furthermore, witness SAITO testified in this
21 matter to the following effect: SHIRATORI and SAITO
22 received on the same date a German decoration of the
23 same grade, ostensibly in recognition of their ser-
24 vice relative to the conclusion of the Tripartite

25 (324-D. Tr. 34,894.
325. Ex. 3575
326. Tr. 11,353; 11,354 and 11,356)

1 Fact (ix. 1272). From his experience during his
2 long career as a diplomat, SAITO knew that the ex-
3 change of decorations between governments was, in
4 fact, largely a matter of formality or etiquette,
5 having more to do with the official positions held
6 by the individuals concerned than with their real
7 merit or actual service. It seemed that Ott, in his
8 report to his government, attached undue importance
9 to the position of Foreign Office Advisor (327).
10 Further, Ott gave unwarranted credit to SHIRATORI,
11 as aforesaid.

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24 (327. Tr. 34,964)
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(s) Exhibit 3826 (328): This is Ott's telegram
1 to the German Foreign Office, dated 1 November 1938,
2 and reads as follows:

3 "Japan's attitude towards the European crisis.
4 Prime Minister Prince KONOYE at two meetings
5 during the days of crisis vigorously expressed
6 his high esteem for the German policy but notice-
7 ably avoided going deeper into conversations
8 which would fix clearly the Japanese attitude.
9 I have endeavored through the new Ambassador
10 to Rome, Mr. SHIRATOKI, who is especially active
11 in favor of the anti-Comintern policy, to in-
12 fluence him in the direction of a stronger ex-
13 pression. His congratulatory telegram to the
14 Fuehrer and Reich's Chancellor, by which act
15 he shook off his proverbial reticence in an
16 unusual manner, may have been based upon such
17 influence."
18

19 The prosecution insisted that this document
20 was offered as rebuttal evidence to contradict
21 SHIRATOKI's statement on cross-examination (329) that
22 he had no special conversation with Ott prior to leav-
23 ing for his post in Italy and his specific denial (330)
24

25 (328) T. 37,983-84
(329) T. 35,095
(330) T. 35,096

that Ott had used him to influence Prince KONOYE. The
1 prosecution contended further that this document
2 showed the beginning of SHIKATORI's active collabora-
3 tion with Ott to bring Japan more closely into the
4 Axis camp. (331)

5 Now, the defense could not question Ott about
6 this document, because it was brought out for the first
7 time in rebuttal, long after Ott's departure for home.
8 However, we can call the attention of the Court to
9 Ott's testimony that he met SHIKATORI for the first
10 time and only once, prior to his departure for Rome,
11 on the occasion of a farewell dinner given by the
12 Italian Ambassador in Tokyo (332). It is very unlike-
13 ly that such a delicate talk as Ott pretended in
14 exhibit 3826, could have occurred at the first meeting
15 between himself and SHIKATORI, under such circumstances.
16 This exhibit must rather be counted as the first tele-
17 gram of Ott, in which he used SHIKATORI's name in order
18 to avoid Ribbentrop's distrust and suspicion and to
19 give weight to his report, as he testified in his
20 interrogatory (333). Further, as hereinbefore set
21 forth, SHIKATORI was in the U. S. Army Hospital, having
22 undergone a serious throat operation, during the entire
23
24

25 (331) T. 37,982

(332) T. 34,852; Ott met SHIKATORI the second time af-
ter SHIKATORI's return from Rome to Tokyo in the
Fall of 1939, T. 34,854

(333) Ex. 3579, T. 34,900-902

time the rebuttal evidence was placed before the Tribunal and was not permitted to see his counsel, nor was he later afforded an opportunity to deny the allegation.

Moreover, SHIKATORI testified, in answer to the cross-questioning of the prosecution, that before his departure for Rome, he discussed the matter of Axis alliance with Prince KONOYE only once; that is to say, when he visited KONOYE around the end of August 1938, to consult him about his appointment to Rome. It may also be pointed out that when KONOYE's message in question is said to have been dispatched, he was concurrently the Foreign Minister, and that, therefore, it ought to have been his subordinates in the Foreign Ministry, from the Vice Minister on down, that advised him in the conduct of Foreign Affairs. Ambassador Designate has no function to discharge before his installation in the office at his post, more especially in matters that have no relation whatever to the country to which he is accredited. We submit from the above that this exhibit shows nothing more than the beginning of Ott's misuse of SHIRATORI's name in the dispatches to Berlin with the purpose of advertising his activities in Tokyo (333).

(333) Ex. 3579, T. 34,900-902

1 (t) Exhibit 3828 (334): This is Ott's tele-
2 gram to the German Foreign Office dated 27 January 1941,
3 and contains the following passage:

4 "At my quite private farewell breakfast
5 which I gave for Ambassador OSHIMA today, he
6 and Ambassador SHIRATORI directed the conversa-
7 tion to the topic of recognition of Wang Ching-wei.
8 Both Ambassadors advocated the view that Japan's
9 request to Germany for recognition of Wang Ching-
10 wei is not advisable at this time in order not
11 to decrease the possibility of a later German
12 influence on Chiang Kai-shek. Both Ambassadors
13 found understanding for this view from the For-
14 eign Minister."

15 The prosecution insisted that this document
16 was offered in evidence to contradict SHIRATORI's
17 denial on cross-examination (335), that he or OSHIMA
18 advised with either Ott or MATSUOKA on this matter,
19 and to disprove SHIRATORI's statement in his affidavit
20 (336); that his position as Foreign Office Advisor was
21 a sinecure, and his further statement (337) that, as
22 advisor, he was not interested in MATSUOKA's diplomatic
23 moves (338).
24

25 (334) T. 37,990
(335) T. 35,122
(336) T. 35,048

(337) T. 35,050
(338) T. 37,989

1 Now, this exhibit was also brought out in the
2 rebuttal and the defense could have no opportunity to
3 question Ott about it. As witness SAITO testified,
4 SHIKATOKI had nothing to do with the recognition by
5 Japan of the Wang Ching-wei regime on 30 November 1940
6 (339). If we presume the truth of the exhibit 3828,
7 we must conclude that SHIKATOKI did not want to block
8 the way to attain peace with Chiang Kai-shek through
9 German mediation. That would be an effectuation of
10 his own diplomacy, as heretofore shown, that is, above
11 all, settle the China mess with Chiang Kai-shek, rather
12 than advice-giving as Advisor to the Foreign Minister
13 or an interest-taking in MATSUOKA's diplomatic moves.
14 However, as SHIKATOKI categorically denied the con-
15 tents of the exhibit, in so far as he was concerned
16 (340), we think that this is also another case in
17 which Ott used SHIKATOKI's name in order to add weight
18 to his report.

19 THE PRESIDENT: We will recess for fifteen
20 minutes.

21 (Whereupon, at 1045, a recess was
22 taken until 1100, after which the proceedings
23 were resumed as follows:)
24

25 (339) T. 34,960-961
(340) T. 35,122

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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. Caudle.

4 MR. CAUDLE: If it please the Tribunal, I
5 will resume reading at subsection (u), page 52:

6 (u) Exhibit 3746 (341): This is Otto's
7 telegram to the Reich Foreign Minister dated 27
8 May 1939. We have already discussed this matter in
9 Item (i) of Chapter V.

10 (v) Exhibit 3811 (342): This is a memo-
11 randum dated 21 December 1938, signed at Berlin by
12 Wischl, Chief of the Commercial Bureau of the German
13 Foreign Ministry, offered in evidence by the prosecu-
14 tion in rebuttal, in order to contradict the evidence
15 given by the defendant OSHIMA concerning the negotiation
16 regarding preferential trade treatment to Germany in
17 North China. This exhibit contains the following two
18 passages:
19

20 "On the other hand, the newly appointed am-
21 bassador to Rome, SHIRATORI, in an interview on 26
22 October in Tokyo, also spoke of preferential treat-
23 ment for German technology, industry and trade. (343).
24

25 341. T. 37408-410.
342. T. 37899-902.
343. T. 37900.

1 "The army was for it, also a part of the
2 foreign service, SHIRATORI, for example, were for it;
3 the opposition was to be found principally among
4 domestic economic circles." (344).
5

6 Now, at the time of this purported interview
7 on 26 October 1938, Wiehl was in Berlin with SHIRATORI
8 many thousand miles away in Japan. Further, SHIRATORI,
9 as Ambassador elect, could not have had use of the
10 Foreign Office communications system wherewith to
11 transmit any information such as reported in this
12 document. Nor could he use the same facilities for
13 transmission of such information to Ambassador OSHIMA,
14 who was at that time also in Germany. In fact,
15 SHIRATORI had no recourse whatsoever to any of the
16 Foreign Office communication facilities. Consequently,
17 this report comes from a source unknown. The document
18 states it was an interview. Well, an interview with
19 whom, under what circumstances and where? If it were
20 a newspaper interview, I state as counsel for SHIRATORI,
21 we have been unable to locate it, nor do any of his
22 publications, such as have been produced by the prosecu-
23 tion, indicate any such attitude on the part of
24 SHIRATORI. Consequently, this document is certainly
25 not worthy of consideration. It is only a statement by
344. T. 37901.

1 a man who had never at that time seen SHIRATORI and
2 who does not say where such information comes from,
3 nor have counsel for SHIRATORI, after diligent search,
4 been able to find out. In fact, we do not believe
5 that even Ott, with all his communicating genius, as
6 has hereinbefore been shown, could have sent such a
7 message as this to Germany, although on its face it
8 appears to have a tinge of Ottism.

9 (w) Exhibit 3503-A. The first telegram
10 (345): This is Ott's telegram to Berlin dated 31
11 December 1939, tendered by the prosecution in the
12 phase of the defendant OSHIMA, and contains the
13 following passage:

14 "As the foreign political pressure and serious
15 internal differences continue to exist, neither a
16 coalition cabinet capable of action nor the (complete)
17 affiliation with any of the European power-groups is
18 to be expected for the time being. According to the
19 views of Ambassadors OSHIMA and SHIRATORI, who are
20 working hard for overthrowing the present cabinet,
21 two or three more transit cabinets will be needed in
22 order to bring about a drastic change of the course."

23 Ott testified in the prosecution's cross-
24 interrogatory that this was a general situation report
25 345. T. 33938-941.

which reflected the political pressure in Japan;
1 that the cabinet was inefficient and was being at-
2 tacked from various sides; that the opposition of
3 OSHIMA and SHIRATORI was not a determining factor;
4 that he did not remember the details of their actions
5 and the basis of his knowledge; and that the change
6 of the cabinet in Japan was a subject of common
7 conversations at the time (346).

8 Here again Ott used SHIRATORI's name at the
9 end of his long political report to his government.

10 From his above mentioned testimony for the prosecu-
11 tion, as well as from the text of the telegram itself,
12 it can easily be concluded that Ott used SHIRATORI's
13 name here also in order to avoid Ribbentrop's distrust
14 and suspicion, and to give weight to his report.

15 SHIRATORI held at that time nominally the position of
16 ambassador, without any assignment, and, therefore,
17 he had no influence whatsoever.

18 In conclusion, in the final analysis of the
19 communications forwarded to the German Foreign Office
20 by Ott during his tenure as German Ambassador to
21 Japan, it is glaringly evident from Ott's own ad-
22 missions and from later developments that practically
23 all such communications were sent in a manner so as to
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25 346, Ex. 3503-B, T. 34373.

1 be the most convincing to Ribbentrop. We must not
2 forget that much of this so-called "information" Ott
3 forwarded to his Home Office came from sources which
4 Ott himself admits from time to time were without
5 basis of fact or to be erroneous information. Further,
6 we cannot discount the fact of the presence of the
7 Russian spy Sorge in the official household of Ott,
8 who, in order to strengthen his position in the
9 German Embassy for the obtaining of more important
10 information, submitted various so-called "inside
11 dope" to Ott. This "dope" was obtained by Sorge from
12 OZAKI, Hidemi, the confidential secretary of Prince
13 KONOYE, also a communist and Russian spy, working in
14 league with Sorge and who was later court-martialed
15 and executed for these crimes (T. 35052).

16 Ott, in forwarding these so-called reports,
17 had to give Ribbentrop some assurance as to from
18 where this information came. Inasmuch as Ribbentrop
19 knew SHIRATORI and had instructed Ott to keep in
20 touch with SHIRATORI, he often submitted these reports
21 using SHIRATORI's name to give credence to them. It
22 is to be remembered that Ott had a strong sense of
23 feeling that Ribbentrop mistrusted him and was not
24 satisfied with the reports of Ott because he (Ribben-
25 trop) being a wishful thinker preferred to listen to

~~other people who forwarded information more to his~~

1 liling. For this reason, among others, Ott used
2 SHIRATORI's name, where ordinarily it would not have
3 been necessary, to allay the suspicions of Ribben-
4 trop. (347)

5 We further wish to call attention to the fact
6 that not a single document offered by the prosecution
7 in the way of communications from or to Ott carried
8 any semblance of an oath, and under these circumstances
9 certainly can carry no weight, especially in view of
10 the sworn interrogatories of Ott admitting the falsity
11 thereof, in regard to which the prosecution did not
12 see fit to attack by cross-examining Ott in any man-
13 ner, as agreed upon, and which was set forth in the
14 first part of this chapter.
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25 347. T. 34,900-902.

XIII. SHIRATORI'S ARTICLES AND LECTURES.

1 (a) Witness MISHIMA testified about SHIRA-
2 TORI's activities as a writer and lecturer as follows:

3 "Having undertaken from time to time the
4 task of putting in order and compiling the writings and
5 lectures of Mr. SHIRATORI, I am well acquainted with
6 the circumstances under which he wrote or made speeches.
7 Such contributions of articles to magazines and delivery
8 of lectures by SHIRATORI were made always only upon the
9 basis of his being urged most earnestly by the people
10 requesting them, and, therefore, I have never seen even
11 one instance where he did so voluntarily. . . Mr. SHIRA-
12 TORI was not, properly speaking, a writer or lecturer
13 nor was he ever known as such. His writings and
14 lectures, however, seemed to enjoy a certain amount of
15 popularity and were therefore sought after by journalists
16 mainly because he was generally considered as one of the
17 most outspoken and perhaps indiscreet of our bureau-
18 crats and diplomats. After coming home from Sweden
19 in 1936, he held no responsible position in the govern-
20 ment at Tokyo, having been placed on the waiting list
21 for several years except for a brief space as Ambassa-
22 dor to Rome. He used to say in those days that he could
23 give utterance to his own thoughts all the more freely,
24 because, although nominally still a diplomat, he was
25

1 not admitted into knowledge of state secrets or
2 government policies. In reply to the criticism ex-
3 pressed in some quarters about some of his utterances
4 being too outspoken, Mr. SHIRATORI once told me as
5 follows:
6

7 "In these days of dictators everywhere who
8 do not believe in mincing words, the diplomatic
9 axiom of fortiter in re, suaviter in modo will per-
10 haps have to be reversed. . . Since, however, we do
11 not today want war with any country, it might be
12 permissible or even advisable to indulge in out-
13 spoken language every now and then." (353).

14 (b) SHIRATORI testified in his affidavit
15 about his activities as a writer and lecturer as
16 follows:

17 "In some of my lectures and interviews I
18 tried to show that despite the German-Soviet Non-
19 aggression Pact, the possibility was still there for
20 Japan to enter into agreement with Germany and Italy,
21 together with Soviet Russia this time. Having been
22 relieved of my assignment and placed on the waiting
23 list, I was at liberty to say things which might not
24 necessarily please the government, or which might
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353. Ex. 3592, T. 35007-009; and refer also to the
language corrections by the LAB on 13 February,
1948.

1 appear to run counter to its policy. For one thing,
2 I had to vindicate myself against censures and
3 criticisms poured forth upon me in some quarters
4 either for what I did or for what I failed to accom-
5 plish while in Rome. But my main motive was the same
6 then as before; that is to say, to contribute in my
7 own way toward the speedy termination of the China
8 war. In order to have the Democracies alter their
9 attitude towards Japan, I judged it would be more
10 effective to remind them that Japan's isolation was
11 not nearly so complete as appeared on the surface,
12 than to confess weakness and openly court their
13 sympathy and good will. The advocacy of views like
14 mine by a certain section of the Japanese people
15 could not, in my opinion, have hampered the efforts
16 of the government, but ought, on the contrary, to
17 have helped them along in effect.

19 "The sudden flaring up of public opinion in
20 Japan in favor of the Axis Powers, which occurred
21 towards the summer of 1940, was solely due to the
22 lightning successes of the German arms in the Western
23 front and was in no way to be attributed to the
24 activities of any individuals or groups in this country.

25 (354).

354. Ex. 3595, T. 35046-47.

1 "It is true that soon after the conclusion
2 of the Treaty I was asked for an interview by the
3 Tokyo Asahi Shimbun (IPS exhibit 2234) and that I
4 also wrote a few articles on the subject, the original
5 Japanese text of the article cited in IPS exhibit
6 557-A being one of them, but these represent nothing
7 but my own personal interpretation and argument, not in
8 any way based on official information or inspiration.
9 I am not conscious of ever having put forth any special
10 efforts to unite the nation behind the Axis Pact as
11 the prosecution contends (T. 16919). So unanimous
12 was the acclamation accorded the pact in Japan when
13 it was published that any such efforts would have
14 been quite superfluous." (355).

15 (c) As already shown in detail in Chapter
16 XII above, German Ambassador Ott testified to the
17 effect that SHIRATORI was not in occupation of any
18 important position and had not any great influence,
19 but that he was very outspoken and talkative. Con-
20 sequently, the name of SHIRATORI was, for Ott, quite
21 opportune to be made use of as a furnisher of informa-
22 tion or opinions, and Ott probably used SHIRATORI's
23 name often in his reports for this reason.

24 355. Ex. 3595, T. 35050.

1 (d) The earliest article of SHIRATORI offered
2 in evidence by the prosecution was exhibit 3596-B dated
3 October 1937 (356), and the latest one was exhibit
4 2233-A, dated June 1942 (357). SHIRATORI, after return-
5 ing home from Stockholm, was placed on the waiting list
6 of ministers 28 April 1937, was appointed Ambassador to
7 Italy 22 September 1938, departed from Tokyo 22 November,
8 arrived at Rome 29 December 1938, was ordered to return
9 home 2 September 1939, departed from Rome 15 September,
10 arrived at Tokyo 13 October 1939, was placed on the
11 ambassadorial waiting list 9 January 1940, was appointed
12 Advisor to the Foreign Minister 28 August 1940, was
13 released from the same post 22 July 1941, and was elected
14 as a member of Parliament 30 April 1942 (358). As shown
15 in Chapter VIII above, SHIRATORI's advisorship to the
16 Foreign Ministry was a sinecure. Accordingly, if we pre-
17 sume that SHIRATORI's activities as a writer and lecturer
18 began from October 1937; it is quite clear that they were
19 done in course of the period when SHIRATORI had prac-
20 tically no official duties and responsibilities, except-
21 ing a brief space of ambassadorship to Italy, during
22 which time he did not engage in such activities.

24 (356) Tr. 35,101, read only partly by the prosecution.

25 (357) Tr. 16,012-026. SHIRATORI's articles are: Ex-3596-B,
Ex-3596-A; Ex-2234, Parts I-VII; Ex-557; Ex-3599;
Ex-3597-A; Ex-3598; and Ex-2233.

(358) Ex. 3575

1 (c) From the above explanations, the follow-
2 ing can be concluded:

3 1) SHIRATORI was not, properly speaking, a
4 writer or lecturer, nor was he ever known as such.

5 2) SHIRATORI's writings and lectures seemed
6 to enjoy a peculiar, if not wide popularity, due to
7 his indiscretion.

8 3) SHIRATORI did his activities as a writer
9 and lecturer only in his private capacity; he never
10 made ex officio any propaganda for the government, nor
11 were private utterances and writings ever sanctioned or
12 condoned by the government.

13 4) SHIRATORI contributed articles to newspapers
14 and magazines or delivered lectures only after being
15 urged most earnestly by the people requesting it, that
16 is, the publishers of the newspapers and magazines or
17 organizers of the gatherings, etc., which, as we all
18 know, is not an unusual custom or practice in America or
19 Britain; as witness such people as Roosevelt, Church-
20 ill, Grew, Morgenthau, Byrnes and others, although we
21 are not placing SHIRATORI in such an exalted category as
22 these gentlemen to which the limited circulation of
23 his articles will attest.
24

25 5) SHIRATORI thought it might be permissible
or even advisable to indulge in outspoken and strong

1 language every now and then, so long as Japan did not
2 want war. His outspoken or strong words did not mean
3 always strong action but meant in reality peace.

4 SHIRATORI's motto was: "Fortiter in modo, suaviter in re."

5 It must be emphasized also, that there are often cases,
6 in which strict attitude is more effecting than courting
7 for getting friendship of others.

8
9 6) SHIRATORI wrote some of his articles or
10 made some of his lectures partly for the purpose of
11 vindicating himself against censures and criticisms
12 poured forth upon him in some quarters either for what
13 he did or for what he failed to accomplish.

14 7) The peculiar popularity of SHIRATORI's
15 articles and lectures was mainly based on his out-
16 spokenness and indiscretion, and not on his merit as
17 writer and lecturer, which can well be shown by the type
18 and circulation of the journals in which they were
19 published, all of which were published only monthly and
20 had an extremely small circulation for a country of
21 nearly 80,000,000 people.

22 According to the testimony of the witness
23 MISHIMA (359), who was not cross-examined by the prose-
24 cution on this point, the monthly circulations were:

25 The magazine "Diamond," in the middle of 1940,

(359) Tr. 35,011-12.

1 about 10,000.

2 The magazine "Kokumin-Hyoron" (National Review),
3 in 1940; about 1000-1500.

4 The magazine "Dai-Asia-Shugi" (Greater Asia
5 Magazine), in 1940, about 2000.

6 The magazine "Gendai" (Today), in the middle
7 of 1942, about 20,000-30,000.

8 According to the testimony of the witness Miss
9 UNO (360), the monthly circulation of the magazine
10 "Contemporary Japan," the magazine on which the prosecu-
11 tion relied so much that an article published therein
12 was by reference made a part of the Indictment, in
13 1940-41-42 varried between 1500-2000, and it was
14 strictly an English language magazine and was never
15 published in the Japanese language. She testified fur-
16 ther, that from the outset this magazine was not pub-
17 lished for domestic distribution, that, therefore, the
18 domestic circulation was very small, and that generally
19 its distribution was directed towards the United
20 States (361).

22 Further, the witness MISHIMA testified that
23 the number of the audience in public gatherings, at
24 which SHIRATORI delivered lectures, was anywhere from
25 ten some odd persons as constituting a very small

(360) Ex. 3590, Tr. 34,996-97.

(361) Tr. 34,998.

audience, up to some 700 or 800 (362). These are indeed

1 small audiences for a man alleged by the prosecution
2 to be the moulder of Japanese public opinion, especially
3 when considered in the light of other speakers through-
4 out the world who speak to thousands upon thousands on
5 most any given occasion. The allegations and the extent
6 of proof certainly controvert the other.

7 The above-mentioned magazines were those in
8 which SHIRATORI's articles in IPS exhibits appeared.
9 It must be said from these testimonies that most of
10 the magazines in which SHIRATORI's articles appeared
11 had comparatively small circulation, and that the audience
12 of SHIRATORI's lectures was generally small.

13 (f) Exhibits 3596-B and 3596-A: The prosecu-
14 tion, with reference to these two exhibits, have placed
15 their own interpretation on the actions and talks of
16 SHIRATORI. A close perusal of both documents will show
17 that these are distortions and completely at variance
18 with the true meaning thereof. The prosecution refers
19 to "chiding" the Japanese people into accepting totali-
20 tarianism as the dominant political philosophy of the
21 future, and contends further that SHIRATORI in exhibit
22 3596-A appeared in the role of an apologist for total-
23 itarianism. It goes further to state he tried to
24
25 (362) Tr. 35,012.

1 justify continued cutlawry by ridiculing the democratic
2 idea that a treaty should be considered sacred and in-
3 vincible (UU-95, pg. UU-75), which is entirely different
4 from the true meaning of the contents of either of the
5 exhibits. Throughout the presentation of the prosecution's
6 case, they have resorted to quoting short excerpts from
7 articles, communications and other documents which tend
8 to place an unfavorable light upon the defense. Such
9 assertions, when considered in the full context of such
10 articles or documents, show the meaning to be exactly
11 the opposite and the prosecution's contentions fade into
12 nothing. As, for instance, in exhibit 3596-B, the
13 prosecution in its conclusion of the summation against
14 SHIRATORI, state:

15 "SHIRATORI pronounced a verdict upon himself
16 and his co-conspirators when he said they must plead
17 'guilty' if they were obliged to explain and justify
18 Japan's expansion actions in the light of the western view
19 of things or within the scope of law and treaty. It is
20 our respectful submission that the Tribunal cannot do
21 better than to accept this version as its own." (UU-97,
22 pg. UU-78).

24 If taken at its face value, this assertion on
25 the part of the prosecution could mean nothing more than
SHIRATORI pleading guilty to the offenses charged in

1 the Indictment, but if consideration is given to the
2 entire article, it will prove to be entirely different.

3 This article was written in 1937, long before
4 the Pacific war, and the expression "we" naturally refers
5 to all Japanese, whether they are occupants of the dock
6 or those walking the streets of Tokyo and elsewhere.

7 Although it is not our intention to include, word for
8 word, each article cited by the prosecution, we do think
9 these two particular exhibits have been so distorted that
10 it is well worth the time of the Tribunal to consider
11 the documents on the basis of their true intent. We
12 shall quote not too extensively various other parts
13 thereof, which tend to shed light upon the true meaning
14 of the articles.

15 In exhibit 3596-B, the very first article he
16 ever contributed to a Japanese journal, he vehemently
17 rebukes not the Japanese people, as the prosecution con-
18 tend, but the government, for its employment of those
19 threadbare and discredited slogans such as self-defense,
20 wrongs and injustices committed by China, etc., and its
21 failure to give an explanation of the China Affair at
22 once satisfying the conscience of the Japanese people
23 and convincing the outside world at large.

24 To further show that these expressions were not
25 along the lines as suggested by the prosecution, we wish

1 to refer to a statement contained in a letter from
2 SHIRATORI to ARITA in the latter part of 1935,, which
3 expressions precede but are in line with the assertions
4 contained in the aforesaid exhibit. In this regard, we
5 respectfully refer the Tribunal to the second half of
6 page 11, Chapter I (General) of this summation, and by
7 reference incorporate the same as part of the answer to
8 the assertions of the prosecution in their summation
9 of the meaning and intent of exhibit 3596-B.

10 Both in exhibits 3596-B and 3596-A the prosecu-
11 tion contends that SHIRATORI tried to "urge public accep-
12 tance of his thesis that totalitarianism was to be the
13 dominant political philosophy of the State," (UU-20,
14 p. UU-18), and that SHIRATORI "found it necessary to chide
15 the people because they had not accepted the internal
16 application of the new age totalitarianism that was being
17 applied externally in Japan's continental policy."
18 (UU-21, p. UU-20.)

19 This is a misconstruction placed on exhibit
20 3596-B. The last paragraph of this exhibit shows con-
21 clusively that Japan had not taken aggressive action in
22 China, but was only attempting to rehabilitate Asia, at
23 whatever cost to herself, and is appealing to the entire
24 world for a true understanding of Japan's intentions.
25 For the benefit of the Tribunal, we quote said paragraph:

1 "It is in this light that we view the present
2 China affair. It presents a brave attempt on the part
3 of Japan to rehabilitate Asia at whatever cost to herself.
4 To us Japanese it is human civilization itself that is
5 here at stake. We take it that the whole course of his-
6 tory is now at a turning point. It is from this angle that
7 we request the entire world to regard the present struggle
8 in China."

9 In both of said exhibits, with respect to urging
10 the acceptance of totalitarianism by the Japanese people,
11 the contents of exhibit 3596-A clearly show that from
12 SHIRATORI's viewpoint, Japan had never known anything
13 but a form of totalitarianism, as set forth in the follow-
14 ing excerpt:

15 "But according to the philosophy of totalitarian-
16 ism, the whole state or nation is, to carry further the
17 above simile, one large tree of which individuals consti-
18 tute the branches and leaves. A branch, or a leaf, has
19 its own functions and has, within the whole, its own
20 significance for existence. However, it cannot live
21 apart from the whole, and must always and willingly sacri-
22 fice itself if necessary for the sake of the whole. . .
23 Japan has had no other principle than this ever since
24 the beginning of her history, although there have been
25 certain external modifications in the governmental form

1 under the influence of thoughts imported from abroad.
2 This totalitarian national principle - or national polity,
3 as it is called by the Japanese - is to the Japanese
4 people a thing eternal and immutable."

5 This quotation simply means that Japan's
6 national polity had, since the foundation of the Empire,
7 been established and maintained upon a permanent and
8 unchanging basis, and that totalitarianism embodied the
9 unity of sovereign and subjects as one organic body which
10 has always been the immutable faith of the Japanese people.

11 As to the prosecution's contention that SHIRATORI
12 tried to justify continued outlawry by ridiculing the
13 democratic idea that a treaty should be considered sacred
14 and inviolable (UU-95, p. UU-75), we respectfully call
15 the attention of the Tribunal to the last paragraph of
16 page 3 and all of page 4 of exhibit 3596-B, which shows
17 his intention to be somewhat different from that alleged.

18 Although the prosecution alleges that these
19 articles, etc., were prepared and delivered to mould
20 Japanese public opinion, a careful scrutiny thereof will
21 disclose they were really prepared for outside Western
22 consumption, being strictly negative rather than positive;
23 as witness exhibit 3596-A, which was published in the
24 magazine "Contemporary Japan" which the seventh item of
25 subparagraph (e), Chapter XIII of this summation will

1 show was published primarily and nearly exclusively for
2 American consumption.
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1 (g) With reference to exhibit 2234, trans-
2 cript 16,027-69, which was read only partly by the
3 prosecution and in which language corrections were made
4 on 9 September 1947, transcript 27,925, we wish to call
5 specific attention to the preface to the document, con-
6 sisting of a number of articles bound together in book
7 form, which sets forth SHIRATORI's contentions as to his
8 writings and lectures, as has been emphasized from time
9 to time throughout this summation. In view of this
10 preface, which is frank and bare upon its face, in the
11 interests of time we do not deem it necessary to discuss
12 the document item by item. This preface appears in the
13 record at page 16,029, and various language corrections
14 were made by the Language Arbitration Board which appear
15 on page 27,925 of the record
16

17 These various articles contained in said exhibit
18 2234, parts I to V, inclusive, only went to point out
19 that despite the German-Soviet Non-Aggression Pact,
20 there still remained the possibility of Japan reaching
21 some agreement with Germany and Italy, together with
22 Russia, at that time, and to impress upon the democracies
23 that Japan's isolation was not nearly so complete as
24 appeared on the surface. It is our contention that
25 SHIRATORI felt that by pointing this fact out to the
~~democracies, they would be made to realize that it would~~

be to the best interests of all concerned to contribute
their part to the speedy termination of the China Affair.

1 As stated in the preface, he wanted these articles and
2 lectures to vindicate himself from criticisms which had
3 been uttered against him for his acts of omission and/or
4 commission while in Rome.

5 With reference to part VI of exhibit 2234, the
6 prosecution's contention is very confusing, in that they
7 allege that in an article published in June, 1939,
8 SHIRATORI cited and praised German victories in a war
9 which had not yet begun. This fact was called to the
10 prosecution's attention by the President of the Tribunal,
11 transcript 16,063, but we fail to find any record of its
12 correction. In the absence of this correction, we sub-
13 mit this article should not be considered.

15 Other articles mentioned by the prosecution have
16 been referred to and fully explained at various parts
17 of this summation and we do not deem it necessary to
18 discuss them again in this chapter.

19 (h) In conclusion of this summation relative
20 to SHIRATORI's articles and lectures, we wish to impress
21 upon the Tribunal that every article written or lecture
22 delivered was contributed strictly as an individual ex-
23 pressing his own thoughts in a private capacity. The
24 dates of the articles or lectures will show that they
25

1 were written or delivered only at such times as he was
2 on the waiting list or in some similar capacity when he
3 had no access to government information nor any relation-
4 ship with the government other than to obtain reduced
5 pay until reassigned. The prosecution has utterly
6 failed, in fact have not even tried, to connect any
7 article or lecture with having the auspices, condonement
8 or any relation whatsoever with government propaganda.
9 The only answer the prosecution could make to these
10 assertions was that no difference existed between the
11 responsibility of a person acting in an official
12 capacity and one acting as an individual in a private
13 capacity (UU-18 and UU-85), which construction, if
14 upheld, would lay every newspaper editorial writer in
15 the world open to similar charges and conviction thereof.
16 This certainly is a most desperate and far fetched con-
17 tention, particularly after they, the prosecution, draw
18 an entirely different conclusion as to official and
19 private liability in their contentions that SHIRATORI
20 did not officially convey to Ciano the instructions of
21 the Japanese Government during the negotiations for the
22 Tripartite Pact of 1939, but did so only in a private
23 capacity (UU-51.) We are made to wonder on just what
24 they intend to rely.
25

Be that as it may, it is clear that SHIRATORI

1 never advocated war in his articles and lectures publish-
2 ed before the conclusion of the Tripartite Pact of 27
3 September 1940, and after the conclusion of said Pact,
4 according to Article III thereof, there had always
5 been the possibility that Japan would fight a defensive
6 war for Germany and Italy against the United States and
7 Great Britain and so SHIRATORI warned, in his very
8 limited capacity, of the possibility of war, but he
9 never advocated war.
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XIV. CONCLUSION.

1 The prosecution contended in their summation
2 (UU-97, p. UU-77) that the evidence adduced "leads to
3 the inescapable conclusion that SHIRATORI joined the
4 conspiracy at an early date as a propagandist and
5 apologist for the establishment of a new world order by
6 means of force and aggression," and that "not only did
7 he continue his attempt to influence public opinion
8 throughout the life of the conspiracy but he worked
9 actively both in and out of public office to influence
10 successive governments to take the steps necessary to
11 effectuate the aims of the conspiracy."
12

13 To prove these contentions the prosecution has
14 resorted to various forms of so-called "proof" by
15 devious manipulations in order to cast a mirage upon
16 the evidence adduced and proposed by this illusion to
17 convict the defendant SHIRATORI of the charges against
18 him contained in the Indictment. As a perusal of their
19 summation will show, it contains mostly argument, pre-
20 sumption, assumptions and conclusions without satis-
21 factory evidence to substantiate any such contentions.
22 At the outset and throughout the course of the present-
23 ation of their evidence against SHIRATORI, they have,
24 time and time again, tried to impress the Tribunal with
25 their arguments relating to SHIRATORI's propagandistic

1 activities and the so-called tremendous amount of in-
2 fluence and opinions he (SHIRATORI) imposed upon the
3 Japanese public, and by intimation sought to make him
4 a second Goebbels and the chief moulder of Japanese
5 opinion.

6 As the evidence has shown, SHIRATORI never
7 held but one position that could in the least be called
8 that of a propagandist. This was Chief of the Inform-
9 ation Bureau of the Foreign Ministry. As has been
10 pointed out, this position was only that of a bureau
11 chief and carried no policy-making authority or
12 activities whatsoever; that as such he was directly
13 under and subject to the orders and directions of the
14 Foreign Minister of the time, who, as the record has
15 shown, was Baron SHIDEHARA. As has been pointed out in
16 this summation, Baron SHIDEHARA, while testifying as a
17 prosecution witness, stated that SHIRATORI conducted
18 the affairs of his bureau in line and in accord with all
19 directives from him, and co-operated in every respect
20 toward a peaceful solution of the Manchurian Incident.

21 The prosecution laid great stress upon
22 SHIRATORI's association with the younger officers of
23 the military. It was further pointed out in this regard
24 that the Foreign Office experienced at this time extreme
25 difficulty in determining what was in the minds of those

1 so-called younger officers, who brought about the Man-
2 churian Incident and were at the time engaged in further-
3 ing the same. To this end, as set forth in the record
4 at pages 35,072-73, it was directed that SHIRATORI
5 cultivate these young militarists to gather information
6 for the Foreign Minister; that under the immediate
7 direction of the Foreign Minister he had no alternative
8 in the matter. At no time after being relieved from
9 this position in 1933 did he ever occupy an information
10 position of any nature. The only evidence introduced
11 along this line was various lectures and articles
12 delivered and written by him, which as has been conclus-
13 ively shown, were delivered and written by him in a
14 strictly private and individual capacity. There has
15 not been one iota of evidence introduced to, in any way,
16 connect SHIRATORI's lectures and articles with having
17 been instigated by the government during his entire
18 public life. The evidence will show that he only did
19 what every free individual under democratic laws has a
20 right to do, that is, express his own mind. As was
21 pointed out in this summation, the dates of the articles
22 introduced as evidence by the prosecution, as compared
23 with the dates of his curriculum vitae will show that
24 never at any time was such a lecture or article
25 delivered, written or published while SHIRATORI occupied

an official position. At all times he was either on
1 a waiting list, awaiting reassignment, or holding a
2 position which only called for payment of salary but
3 entailed no authority or duties whatsoever.

4 It is interesting to note that in the Nuernberg
5 trial evidence was adduced that one Hans Fritzsche
6 engaged in propaganda activities under Goebbels and
7 Dietrich, Reich Press Chief, by way of the radio and
8 rose, through various promotions, to Head of the Radio
9 Division of the Propaganda Ministry and Plenipotentiary
10 for the Political Organization of the Greater German
11 Radio. It was proven that through his various propaganda
12 activities he broadcast, or caused to be broadcast,
13 various false information and anti-Semitic propaganda to
14 incite the German people against the Jews and performed
15 various other propaganda activities under and by direc-
16 tion of the government and Nazi party, but the verdict
17 concluded that Fritzsche never occupied a position high
18 enough to bring him within the scope of a policy-maker,
19 and though he did at times make strong statements of a
20 propagandistic nature in his broadcasts, the Nuernberg
21 Tribunal was not prepared to hold that they were in-
22 tended to incite the German people to commit atrocities
23 on conquered people, and he could not have been held to
24 have been a participant in the crimes charged. Further,
25

1 that his aim was rather to arouse public sentiment in
2 support of Hitler and the German war effort. And in
3 conclusion the Nuernberg Tribunal found that Fritzsche
4 was not guilty under the Indictment and directed his
5 discharge.

6 In this instance, Fritzsche had the entire
7 German radio system at his command. The statements and
8 articles of SHIRATORI were so inferior to this man's
9 that they are hardly worthy of mention. There were only
10 fourteen articles in evidence, all of which were pub-
11 lished in monthly magazines of extremely low circulation
12 and some were published in a magazine, namely, "Contemp-
13 orary Japan," which was never meant for Japanese con-
14 sumption, but was primarily for export to America, while
15 his lectures, as the witness MISHIMA states, were
16 attended by audiences ranging from about 10 people at
17 some to 700 or 800 at others.

18 Not by the wildest stretch of the imagination,
19 in the use of which the prosecution appears to be very
20 adept, could SHIRATORI be classified with Fritzsche.
21 Yet it was determined that Fritzsche was not guilty.

22 Further, we have the verdict against Franz von
23 Papen, who was tried with Fritzsche at Nuernberg. In its
24 verdict, the Nuernberg Tribunal lists manipulations of
25 devious and underhanded character carried on in Austria

1 and Turkey by von Papen on behalf of the Nazi party
2 while he served as German Ambassador in both countries.
3 They show how he tried to undermine the Schuschnigg
4 government and how he advised Hitler what action to take
5 in bringing about anchluss in Austria. Also, he arranged
6 a meeting between Hitler and Schuschnigg in Berchtes-
7 gaden on February 12, 1938, and at its conclusion advised
8 Schuschnigg to comply with Hitler's demands which
9 amounted to surrendering Austria to Nazi Germany. How-
10 ever, in its conclusion, the Nuernberg Tribunal found
11 von Papen not guilty. Again we find that not by any
12 stretch of the imagination could the activities of
13 SHIRATORI be classified as even remotely comparable to
14 those of von Papen, and if the decision at Nuernberg is
15 in any manner a criterion on international law governing
16 the issues here involved, SHIRATORI is certainly not
17 guilty of the charges relating to propaganda.

18 As the prosecution contended, SHIRATORI's only
19 acts of alleged policy-making were when he failed or
20 refused to carry out the dictates of the ITO Mission.
21 As we have shown, he never had an opportunity to carry
22 out such directives as the Tripartite Pact of 1938-1939
23 was never concluded. Further, there was no proof of a
24 refusal but only that he gave his government the benefit
25 of such information as he had been able to obtain or

1 acquire on the ground. It must be remembered that the
2 only ambassadorial post in the entire governmental
3 career of SHIRATORI was the ambassadorship to Rome, in
4 which he was actively engaged for a period of a few
5 days over eight months, which duties resulted in exactly
6 nothing. As to the Tripartite Pact of 1940, it has been
7 shown by both the prosecution and the defense witnesses
8 that SHIRATORI had no part whatsoever in the negotiations
9 or conclusion of the same, never having attended even one
10 meeting as Foreign Advisor in regard thereto.

11 As to the Pacific War, it has been conclusively
12 shown that SHIRATORI did not and could not have had any
13 part whatsoever in its planning or waging.

14 Finally, it is desirable to call the Tribunal's
15 attention to the fact that in no instance has any testi-
16 mony of a sworn nature been introduced against
17 SHIRATORI, there being not one sworn statement intro-
18 duced nor one live witness produced to testify against
19 him. The great majority of the evidence against him was
20 the so-called communications between Ambassador Ott and
21 the German Government, together with several extracts
22 from HARADA's Memoirs. However, Ott in his sworn inter-
23 rogatory gave the background of these statements and
24 swore to the falsity of some, stating that others were
25 based on rumors which were never verified and painted a

1 clear picture of why and under what circumstances such
2 communications were sent. As to HARADA's Memoirs, all
3 information contained therein was hearsay and necessarily
4 unreliable. Further, it has been shown that the cir-
5 cumstances and surrounding conditions relating to the
6 mental and physical condition of HARADA and the manner
7 in which the memoirs were written were such as to make
8 them altogether of no factual value. We, therefore,
9 wish to reaffirm that not only has the prosecution failed
10 beyond a reasonable doubt to prove the guilt of SHIRA-
11 TORI on any of the Counts charged against him in the
12 Indictment, but on the other hand, SHIRATORI has pro-
13 duced evidence to controvert the prosecution's evidence
14 to the extent that he has, beyond a reasonable doubt,
15 shown and proven to this Tribunal that he was not guilty.

16 Wherefore, the accused SHIRATORI, through
17 counsel, prays that a verdict of Not Guilty be entered
18 in this matter as pertains to all Counts in the Indict-
19 ment with which he is charged, and that an order be
20 issued releasing him from custody.

21 THE PRESIDENT: Major Furness.

22 MR. FURNESS: May it please the Tribunal:

23 1. I will commence this summation by referring
24 briefly to the prosecution's summation on the general
25 conspiracy Count, Count I of the Indictment, which

(1. Prosecution summation D to H.)

1 outlines not only its general proof on that Count but
2 also its general proof on all crimes against peace.¹ In
3 this outline of general proof, totalling 631 paragraphs,
4 his name is mentioned in only seven: Paragraphs G-53,
5 54, and 56, and H-101, 103, 107, and 199.

6 2. The first three relate to diplomatic con-
7 versations between the defendant as Ambassador to the
8 United Kingdom and Prime Minister Churchill and Foreign
9 Secretary Eden during February, 1941. The next three,
10 H-101, 103, and 107, refer to his diplomatic conversations
11 as Ambassador with Litvinov, People's Commissar for
12 Foreign Affairs of the Soviet Union, in the summer of
13 1938 during the Changkufeng (Lake Khassan) Incident.
14 In H-199 the Soviet prosecution sums up against him,
15 charging him with contributing to initiation of un-
16 declared war at Lake Khassan and various other activities
17 not mentioned in any of the preceding paragraphs of its
18 summation.
19

20 3. I submit that, on its own outline of
21 general proof which refers to him only in six paragraphs,
22 the seventh being undocumented and bare assertion, all
23 relating to purely diplomatic activities as Ambassador,
24 this defendant should be found not guilty on all Counts
25

(1. Prosecution summation I.)

1 charging crimes against peace.¹ It is significant that
2 although charged with planning and waging all wars
3 which commenced on 7 December 1941, he is not charged
4 with initiating any of them, nor for conspiracies to
5 murder or murders upon the initiation of such wars.

6 4. In addition to crimes against peace, he
7 is charged with murder at three Chinese cities,² but
8 these Counts have apparently been dropped since the
9 prosecution does not refer to them in its individual
10 summation against him, and there is certainly nothing
11 resembling proof. He is also charged with murder in
12 the region of Lake Khassan in July and August, 1938.³
13 I submit that no murder was committed there. The prose-
14 cution alleges that this was a war; it is their alle-
15 gation, and they stand or fall by it, and I submit
16 killings in a war, aggressive or not, are never murder;
17 certainly not by an Ambassador, acting under instruc-
18 tions of his Government,⁴ half way across the world from
19 the scene of the fighting and from the seat of his
20

21 (1. Counts 1-18, 23, 25, 27-35. See also prosecution
22 summation K-4: "No diplomat has been charged in any
23 instance because he carried out the instructions of
24 the Foreign Ministry. . . .The reason for non-
25 inclusion of such ambassadors is that the ordinary
character of an ambassador as conduit transmitting
messages and information between his own nation and
the nation to which he has been accredited has been
recognized.

2. Counts 48-50.

3. Count 52.)

4. See prosecution summation K-4 quoted footnote 1,
par. 3, this summation

1 Government where decisions, if any, were made and who
2 neither commanded nor controlled any troops which en-
3 gaged in the fighting.

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1 5. The defendant is also charged under
2 Counts 54 and 55 for the commission of war crimes
3 and crimes against humanity. Counts 44 and 53, the
4 conspiracy Counts, have been dropped by the prosecution.
5 Under Count 54, it is charged that he "ordered,
6 authorized, and permitted the same persons as mentioned
7 in Count 53 to commit the offenses therein mentioned
8 and thereby violated the laws of war." If we examine
9 Count 53, we find that the persons he is charged with
10 "ordering, authorizing and permitting" were "Commanders-
11 in-Chief of the several Japanese naval and military
12 forces....officials of the Japanese War Ministry and
13 persons in charge of camps and labor units for prisoners
14 of war and civilian internees, and the military and
15 civil police of Japan, and their respective subordinates,"
16 and that he is alleged to have "ordered, authorized
17 or permitted" them "frequently and habitually to commit
18 breaches of the Laws and Customs of War" against the
19 armed forces and prisoners of war and civilians of
20 the Allies in the power of Japan. I submit that the
21 phrase "that the Government of Japan should abstain
22 from taking adequate steps in accordance with said
23 Conventions and assurances and Laws and Customs of
24 War, in order to secure observance and prevent breaches
25 thereof" defines only one of the objects of the

1 alleged conspiracy, and, since the conspiracy charge
2 has been dropped, is not carried over into Count 54.
3 Obviously, too, the context of the latter Count
4 charging commission of offenses does not include it.

5 6. Therefore under Count 54 he is charged
6 individually with command responsibility. I submit
7 that he had none. He had, as a civilian Foreign
8 Minister, no power of command over Commanders of the
9 armed forces of Japan, the officials of the War
10 Ministry, or the camp commanders or the police; no
11 power to command under which he could order, authorize
12 or permit. He was Foreign Minister and all the persons
13 he is charged with ordering, authorizing and permitting
14 were under the Army and Navy General Staffs, or the
15 War, Navy and Home Ministries.

16 7. Count 55, I submit, charges no crime
17 under the Charter. It charges that the defendant
18 with others "being by virtue of their respective
19 offices responsible for the observance of the Laws
20 and Customs of War in respect of the armed forces" of
21 the Allies and many thousands of prisoners of war
22 and civilians then in the power of Japan.. "deliberately
23 and recklessly disregarded their duty to take adequate
24 steps to secure the observance and prevent breaches
25 thereof and thereby violated the laws of war." Since

1 the conspiracy counts have been dropped a substantive
2 charge must be proved. This requires proof beyond
3 all reasonable doubt of direct individual responsibility
4 for acts or omissions resulting in commission of crimes.
5 I submit that this charges only neglect of duty, not
6 any crime under the Charter nor under international
7 law, the clause "thereby violated the laws of war"
8 being a bare affirmation referring back to the preceding
9 part of the Count which charges only neglect of duty.
10 It does not charge that atrocities were committed
11 nor that this defendant had control over persons who
12 committed them. Under Article 5 of the Charter,
13 conventional war crimes are defined merely as "Violations
14 of the laws of war." So we must look to international
15 law to find out what these crimes are and I submit that
16 nowhere in international law is neglect of duty,
17 unless coupled with control over those who actually
18 committed atrocities, a war crime. The YAMASHITA case¹
19 extended the liability for command responsibility to
20 an unprecedented degree. But there the charge was
21 that YAMASHITA "While commander of armed forces...
22 unlawfully disregarded and failed to discharge his
23 duty as Commander to control the operations of the
24 members of his command, permitting them to commit
25

1. In re YAMASHITA, 327, U.S.I.

1 brutal atrocities and other high crimes..., and he
2 thereby violated the laws of war." In that charge
3 are found three essential elements in addition to an
4 allegation of neglect of duty; (1) that he commanded
5 the forces, (2) that he failed to control those forces,
6 (3) permitting those forces to commit war crimes.
7 None of those elements appears in this charge. The
8 same reasoning also applies if the charge covers, in
9 addition to war crimes, crimes against humanity since
10 those have some definition in the Charter Article
11 5 C. They are there said to include "murder, exterminatio
12 enslavement, deportation and other inhumane acts, etc."
13 Nowhere in this definition and nowhere else in the
14 Charter is mere neglect of duty defined as a crime.

15
16 8. But regardless of whether this Court
17 alleges a crime under the Charter or under international
18 law or not, we submit that no deliberate or reckless
19 disregard of duty has been proved, much less any
20 deliberate and reckless disregard which must be proved
21 beyond reasonable doubt in order to convict; rather
22 that the evidence shows that this defendant performed
23 his duty and in fact went beyond it in an effort to
24 obtain better treatment of prisoners of war.

25 CHINA

9. The defendant SHIGEMITSU was first assigned

1 to service in China on 27 January 1925 as First
2 Secretary of Legation, serving there until 28 December
3 1927. He returned as Consul General on 20 February
4 1929, becoming also Councillor of Embassy on 24
5 April 1929.¹ He took a prominent part in settling
6 the Tsinan and Nanking Incidents of 1927, 1928 and
7 1929.² He was appointed Minister to China prior
8 to the Mukden Incident on recommendation of Baron
9 SHIDEHARA in order to carry out the latter's policy.³
10 The SHIDEHARA policy was described in the Lytton
11 Report as "conciliatory and peaceful", "good will
12 and neighborliness",⁴ and by its author on the witness
13 stand as one of "friendship" and non-interference in
14 Chinese affairs.⁵ This was the policy of the WAKATSUKI
15 Cabinet, SHIGEMITSU made every effort to carry it out⁶
16 and Baron SHIDEHARA was completely satisfied.⁷ The
17 policy of the Legation under SHIGEMITSU was to avoid
18 cause for incidents, to settle them by negotiation
19 and peaceful means.⁸
20

- 21 1. Ex. 123, T. 775
22 2. T. 3040 to 3042
23 3. T. 1363
24 4. Ex. 57, T. 1764
25 5. T. 1362
6. T. 1587
7. T. 1363
8. T. 3042

10. Prior to the Mukden Incident, anti-
1 Japanese sentiment in the Three Eastern Provinces
2 of China comprising Manchuria was strong.¹ In order
3 that they might investigate this situation which
4 Minister SHIGEMITSU feared might cause Sino-Japanese
5 relations to deteriorate, he arranged for T. V. Soong,
6 the President of the Executive Yuan, to make a trip
7 to Dairen and Mukden so that he might exchange
8 opinions with Count UCHIDA, the President of the
9 South Manchuria Railroad, and Chang Hsueh-liang, the
10 Young Marshal. SHIGEMITSU planned to go north also
11 and lend assistance.² The purpose was to settle as
12 many of the easier questions as possible, then take
13 up the more fundamental ones,³ and thereby reduce
14 tension.⁴ These plans were made during August and
15 September 1931, before the Mukden Incident, and not
16 on account of it in April-May 1932, as argued by the
17 prosecution in its summation.⁵ They were efforts to
18 solve the difficulties which were the fundamental
19 cause of the outbreak of hostilities.
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21

- 22 1. T. 3039
23 2. Ex. 3536, T. 34,470, 34,471
24 3. Ex. 3537, T. 34,472
25 4. Ex. 3538, T. 34,475
5. S.S.-36

11. Before the trip could be made the
1 Incident occurred, but the motives of both men was
2 clear; to relieve the tension, to prevent its breaking
3 out in forceful action. The men with whom he worked
4 were men of power and influence, T. V. Soong, then
5 and now, one of the great men of China, Count UCHIDA
6 who, as President of the South Manchuria Railroad,
7 was the most prominent Japanese civilian in Manchuria,
8 and the Young Marshal, dictator of Manchuria. He
9 would not have enlisted their help unless he had wanted
10 to accomplish a peaceful settlement.
11

12 12. Even after hostilities commenced on the
13 night of the 18th the efforts of T. V. Soong and
14 SHIGEMITSU did not come to an end. On the morning
15 of the 19th, SHIGEMITSU conferred with Soong. It was
16 proposed that a powerful joint commission be appointed
17 to prevent the Incident from expanding, to settle it,
18 to mitigate its disastrous effects on the relations
19 between Japan and China.¹ SHIGEMITSU that day forwarded
20 the proposal to Baron SHIDEHARA,² recommending quick
21 acceptance and urgently awaited approval by return
22 telegram.³ The answer came from SHIDEHARA on the 21st,
23 making the further proposal that the objective of the
24

25 1. Ex. 246, T. 3050
2. Ex. 246, T. 3052
3. Ex. 246, T. 3054, 3055

joint commission be not only the settlement of the
1 incident, but also agreement on basic principles in
2 order that similar incidents might not recur.¹ But
3 due to the rapid spread of hostilities the Chinese
4 Government decided to appeal to the League of Nations
5 and rejected the proposal.²

6 THE PRESIDENT: We will adjourn until half-
7 past one.
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9 (Whereupon, at 1200, a recess was taken.)

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1. Ex. 246, D.D. No. 5- not read
252. Ex. 246, T. 34,480, 34,481

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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: With the Tribunal's permission the accused TOGO will be absent from the courtroom the whole of the afternoon session conferring with his counsel.

Major Furness.

MR. FURNESS: I resume the summation on behalf of the defendant SHIGEMITSU, thirteenth paragraph.

13. On 23 September, five days after the fighting began, SHIGEMITSU sent a telegram to Foreign Minister SHIDEHARA,¹ deploring the incident. He said:

"The recent action of the military was based on their conception of the Emperor's prerogative of supreme Command and was taken, entirely ignoring the government. Deep is my feeling to see that whatever achievements in external affairs resultant of our untiring efforts have been all of a sudden reduced to nothing. I am profoundly distressed to think of the future of the nation."²

1. Ex. 246, Tr. 34477. 2. Tr. 34477.

1 He went on: "In any case, no Chinese
2 authorities will appear hereafter which will be able
3 to conclude any reasonable agreement with Japan on
4 the Manchurian question or to begin negotiations for
5 that purpose. Consequently, we shall have to be
6 prepared to see Japan and China in fact deprived of
7 diplomatic relations for a long time as a result of
8 the present incident which also will have to remain
9 exposed to censure of world public opinion. . ."1.

10 He did more than deplore, he warned: "In
11 this situation it is most earnestly desired that
12 arbitrary action of the military should be interdicted
13 so as to make the word of the state emanate solely
14 through the channel of the government, that irrespon-
15 sible and disadvantageous propaganda of the military
16 circles should be stopped, and that, making its stand
17 clear, the government should re-establish political
18 leadership. . ."2.

19 Again, and this is significant since he has
20 been accused particularly by the Soviet Union, he
21 warned: "Should our troops by any chance advance into
22 North Manchuria, a clash with Russia would immediately
23 be surmized and that will make the situation even
24
25

1. Tr. 34479, 34480.

2. Tr. 34477.

more serious."¹.

1 Finally, he warned against anything which
2 might cause further incidents outside Manchuria, in
3 Shanghai, for example, where fighting started four
4 months later and the Japanese naval forces were first
5 involved: "As the matter stands today there is no
6 foretelling that unpropitious incidents will not
7 happen outside Manchuria. (In this regard I request
8 the Government to call full attention of our Navy in
9 no case whatever to move recklessly)"².

11 14. At the time of the first Shanghai
12 Incident, SHIGEMITSU was still Minister to China. He
13 was not Consul General.³ Consuls Generals are not,
14 as prosecution alleges, subordinates of Ministers.⁴
15 The Tribunal will remember the many telegrams from
16 HAYASHI, Consul General at Mukden, and other consuls
17 in China, reporting direct to Baron SHIDEHARA during
18 1931 and 1932, which were introduced into evidence. No
19 demands were delivered by him and he was, in fact, not
20 in Shanghai, when the demands were delivered on
21 20 January 1932, nor when fighting broke out on
22 29 January 1932, but in Japan. KIDO's diary entry of

- 24 1. Tr. 34479.
25 2. Tr. 34479.
3. Tr. 3799.
4. Tr. 3042.

21 January 1932 shows that after a lecture by
1 SHIGEMITSU in the Emperor's presence, the Emperor
2 asked SHIGEMITSU: "Then is it not possible for the
3 time being to hope for an intimate friendship with
4 China?" The Minister answered that as long as the
5 Manchurian problem exists he felt it was difficult
6 to enjoy good friendship.^{1.}
7

8 15. He did not return to Shanghai until the
9 30th or 31st of January.^{2.} Upon his return he expressed
10 his dissatisfaction at the outbreak of hostilities
11 and thereafter did his utmost to limit and terminate
12 hostilities as soon as possible. Even before formal
13 conferences under the procedure proposed by the League
14 of Nations started, he had informal meetings with the
15 British and American Ministers who, at his request,
16 got in touch with the Chinese general during the
17 height of hostilities and arranged a temporary truce
18 in order that Chinese noncombatants might evacuate
19 Chapei, thus saving the civilian population from the
20 full effect of the fighting. During the course of the
21 fighting, he persuaded the officers in command of the
22 Japanese forces to limit the fighting to Shanghai and
23 the adjacent area and not to advance further into China,^{3.}
24

25 1. Ex. 3340, Tr. 30754.

2. Ex. 3540, Tr. 34487.

3. Ex. 3540, Tr. 34488.

1 and in fact, the Japanese forces did not advance
2 further than the environs of Shanghai.^{1.} By March
3 15, Japanese forces had started to withdraw,^{2.} and
4 by March 20 were not far above the number normally
5 stationed in Shanghai.^{3.} On March 24, Sino-Japanese
6 conferences on the cessation of hostilities began and
7 the Truce Agreement was signed on May 5, 1932. On
8 April 29, five days before it was signed, SHIGEMITSU
9 was gravely injured in a bomb outrage.^{5.} That night,
10 though gravely wounded, with his leg half torn off,
11 SHIGEMITSU ordered his staff to send a telegram to
12 the Foreign Minister, stating that owing to his
13 wounds he would be unable to attend to his daily
14 business, but that he strongly urged the conclusion
15 of the agreement be not hindered or delayed because
16 of the bomb incident, since the conclusion of the
17 truce agreement was, from the viewpoint of national
18 policy, of the utmost importance.^{6.} The agreement
19 formally terminating hostilities was signed by repre-
20 sentatives of the United Kingdom, the United States,
21 France and Italy, as well as representatives of China

- 23 1. Tr. 3260, Tr. 3795. /
24 2. Tr. 3796.
3. Ex. 57, p. 86.
4. Ex. 57, p. 86.
25 5. Ex. 3540, Tr. 34488, Tr. 3264, 3265.
6. Ex. 3540, Tr. 34489.

1 and Japan,^{1.} by Mr. SHIGEMITSU about an hour before
2 his leg was amputated.^{2.} The attitude of the Minister
3 throughout this was one of seeking peace, not aggres-
4 sion. In proof of this I cite the evidence of the
5 witness J. B. Powell, certainly a man who had no
6 incentive for thinking well of things Japanese, who
7 testified on direct examination: "Incidentally, I
8 see Mr. SHIGEMITSU sitting here among the accused.
9 He worked very strenuously to get the thing settled."^{3.}

10 On cross-examination he testified:

11 "SHIGEMITSU as a civilian was doing everything he
12 could to bring about an adjustment of the situation
13 there. That is, no one, I don't think, would class
14 him as an aggressive figure in these activities such
15 as the military were."^{4.}

16
17 16. The prosecution in its summation^{5.} would
18 have us believe that he dictated those telegrams and
19 signed the Truce Agreement under pressure of foreign
20 countries, there on what might have been his death-bed,
21 at the least, permanently and most painfully crippled.
22 Such a statement would be absurd if it were not mali-
23 cious. We have the testimony of the representatives

24 1. Ex. 2419, Tr. 19574. 4. Tr. 3262.
25 2. Ex. 3540, Tr. 34489. 5. SS-4.
3. Tr. 3252.

1 of two of those "foreign countries" who signed with
2 him. Sir Miles Lampson, now Lord Killlearn, who
3 represented Great Britain, testified: "On the
4 Japanese side Mr. SHIGEMITSU from the outset cooper-
5 ated wholeheartedly, and much of the credit for
6 reaching an agreement was due to his persistent
7 efforts and patient cooperation. When agreement had
8 been signed, he was unfortunately seriously wounded
9 in a terrorist outrage. Despite the fact that he
10 was in severe pain, he refused to allow his injuries
11 to hold up the signature of the agreement, which was
12 accordingly taken him in hospital, where he signed
13 it."¹.

14
15 Nelson Trusler Johnson, the Minister from
16 the United States, testified:

17 "From the time when hostilities between
18 Japan and China broke out at Shanghai, China in
19 January 1932, to the signing of the truce that ended
20 those hostilities on May 5, 1932, Mr. SHIGEMITSU
21 devoted all his time and energy first to finding
22 means to bringing his own countrymen and the Chinese
23 to discussions aimed at ending the strife, and latterly
24 with me, British Minister Sir Miles Lampson, now
25 Lord Killlearn, M. Wilden, the French Minister, and

1. Ex. 3543, Tr. 34494.

1 Count Ciano, the Italian Minister, to bring these
2 discussions to a successful conclusion of the Truce
3 Agreement of May 5, 1932. That agreement had to be
4 taken to the bedside of Mamoru SHIGEMITSU at the
5 hospital, where he lay seriously wounded by an
6 assassin's bomb, thrown onto the speakers' platform
7 where he and other Japanese speakers were standing on
8 April 29. Throughout this difficult time Mr. SHIGE-
9 MITSU spared no efforts to localize the incident,
10 and contributed decisively to the creation of an
11 atmosphere of friendliness making possible a truce
12 and the withdrawal of the considerable Japanese
13 military forces landed around Shanghai."¹.

14 17. The prosecution argues that the award
15 to the accused of the Order of Merit with the Order
16 of the Double Rays of the Rising Sun shows his con-
17 nection with expansion in China.² This award was
18 made on 29 April 1934³ and according to his personal
19 record was in recognition of services in the 1931-
20 1934 affairs. Therefore, the award might have been
21 for any services during that period, including his
22 services in bringing to an end the hostilities at
23 Shanghai. So many awards were made of the same type

24
25 1. Ex. 3544, Tr. 34496.

2. SS-3.

3. Ex. 123, Tr. 776.

1 that it is apparent that they were made to almost
2 all persons holding office during that period. Awards
3 for such services were made to 452,826 persons, of
4 whom 158,593 received the same orders as those made
5 to the accused.^{1.} Among those receiving awards for
6 such services were Baron WAKATSUKI, former Premier,^{2.}
7 Baron SHIDEHARA, former Foreign Minister,^{3.} and
8 MORISHIMA, Morito, Consul at Mukden,^{4.} all of whom
9 testified for the prosecution regarding their efforts
10 to avoid and, after hostilities began, to limit the
11 expansion of the Mukden Incident. Another who re-
12 ceived such an award was HAYASHI Kyujiro, who, as
13 Consul General at Mukden, sent many telegrams to
14 Baron SHIDEHARA showing his efforts along these same
15 lines.^{5.}
16

17 18. In the prosecution's summation it is
18 alleged that the accused was a member of the Board of
19 Manchurian Affairs^{6.} and that this shows that he was
20 connected with further development of Japanese expan-
21 sion in Manchuria and with the transformation of
22 Manchukuo into a military base for an attack against

23 1. Ex. 3147, Tr. 28028, 28029.

24 2. Tr. 1553.

25 3. Tr. 1318.

4. Tr. 3006.

5. Examples: Ex. 181, Tr. 2178; Ex. 181, Part 1,
Tr. 2179; Ex. 181, Part 2, Tr. 2183.

6. SS-2.

1 the Soviet Union.¹ His personal record shows that he
2 was appointed Councillor of the Board of Manchurian
3 Affairs on January 18, 1935,² not that he was
4 appointed a member of that Board. From the ordinance
5 establishing that Board³ it is apparent that the
6 duties of that Board were purely administrative.⁴
7 The power of Japan in Manchukuo was the power of the
8 Kwantung Army, not of any civilian board.⁵ No
9 proof has been submitted regarding the powers of a
10 Councillor nor of any policy advocated or furthered
11 by the accused. It is submitted that this merely
12 shows that he held office in the Government during
13 this period.

14 19. The attitude of the accused SHIGEMITSU
15 towards China did not change. While he was Ambassador
16 to the Soviet Union he spoke to his United States
17 colleague, Joseph E. Davies, of his desire to compose
18 peace in China and to end a war he deplored and
19 thought ill-advised.⁶ And after becoming Ambassador
20 in London he expressed the same attitude in conversa-
21 tions with H. A. Grynne, editor of the Morning Post,⁷
22

23 1. SS-3.

24 2. Ex. 123, Tr. 776.

3. Ex. 451.

4. Ex. 451, Tr. 5113.

25 5. Ex. 241, Tr. 2979, Ex. 241, P. 5 (II)C, not read.

6. Ex. 3546, Tr. 34508.

7. Ex. 3552, Tr. 34536.

and with the American Ambassador Joseph E. Kennedy.^{1.}

1 In a telegram to Foreign Minister ARITA in May 1940
2 he recommended conciliation between the Wang Ching-wei
3 and Chiang Kai-shek governments and the Chiang govern-
4 ment and Japan regardless of conditions.^{2.} In
5 August 1940, in a telegram to Foreign Minister
6 MATSUOKA, he said, "I believe to show a liberal-
7 minded attitude towards settling the China problem
8 expresses not weakness but strength on our part."^{3.}

10 20. On 19 December 1941 the accused was
11 appointed Japanese Ambassador to the National
12 Government of China at Nanking.^{4.} On 11 April
13 1942 in a conference with Marquis KIDO he outlined
14 the necessity for radical reorientation of Japan's
15 policy towards China, emphasized that China's inde-
16 pendence and sovereignty should be fully recognized,
17 that China should be returned to the Chinese, and
18 that the two countries should work on a cooperative
19 rather than punitive basis,^{5.} in other words, what
20 came to be known as the New China Policy. On 9 Jan-
21 uary 1943 he signed as Japanese Ambassador a treaty
22 with the Nanking Government, providing for the return
23

24 1. Ex. 3551, Tr. 34532.

25 2. Ex. 1017, Tr. 9685.

3. Ex. 1023, Tr. 9715.

4. Ex. 123, Tr. 777.

5. Ex. 3340, Tr. 31061.

of the international settlements to the jurisdiction
of China and the abolition of extraterritorial
jurisdiction.^{1.}

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1. Ex. 2610, Tr. 22387-22389.

SHIDEHARA sent five days after the hostilities at Mukden broke out, that if they should spread into North Manchuria, he feared a clash with Russia.¹ The witness MORISHIMA testified that the policy of the accused as Minister to China was to try to prevent hostilities which started with the Mukden Incident spreading into North Manchuria, since, if that happened, it would adversely affect Russo-Japanese relations.²

24. He did not approve of the negotiations with Germany for a Tripartite Pact to strengthen the Anti-Comintern Pact in 1939, which later proved abortive.³

25. On 27 August 1936 he was appointed Ambassador to the Soviet Union.⁴ His American colleague, Joseph E. Davies, testified to SHIGEMITSU's successful efforts with Litvinov to prevent the border incident along the Amur River from breaking into war between Japan and Russia.⁵

26. He conducted the negotiations with Litvinov during the summer of 1938, which were first aimed at preventing hostilities breaking out along the border near Lake Khassan, and after they did break out, were

1. Ex. 246, tr. 34,479
2. Tr. 3057
3. Tr. 33,798-9, 34,066
4. Ex. 123, tr. 776
5. Ex. 3546, tr. 34,508, 34,509

1 successful in terminating them. Throughout he acted
2 under the instructions of his government. This is
3 evident, not only from the testimony of the Foreign
4 Minister, General UGAKI,¹ and from the contemporary
5 confidential reports of the Japanese Foreign Office,²
6 but also from the records of the conversations between
7 SHIGEMITSU and Litvinov in the latter's official
8 diary.³ In view of the use made by the prosecution of
9 General UGAKI as a witness, the prosecution cannot
10 well maintain that General UGAKI is a party to any con-
11 spiracy, particularly in this instance, where it has
12 introduced evidence in rebuttal showing that he was
13 instrumental in trying to prevent the incident from
14 breaking into open hostilities.⁴

15 27. The prosecution says that the defense
16 failed to produce these instructions. The defense
17 could not produce the actual instructions because the
18 section in which such records were kept was burned to
19 the ground during the Allied bombing of Tokyo,⁵ and
20 all records in Moscow were destroyed at the begin-
21 ning of the war between the Soviet Union and Japan.⁶
22 The witness HAYASHI, Chief of the Archives Section
23

24 1. Ex. 2715, tr. 23,868 to 23,872

25 2. Ex. 2647-A, tr. 22,922 to 22,942

3. Ex. 2633, tr. 22,804; ex. 2635, tr. 22,826; ex. 2638,
tr. 22,852; ex. 2716-A, tr. 23,906; ex. 2716-B,
tr. 23,907; ex. 27160, tr. 23,908;

4. Ex. 2793-A, tr. 37,756

5. Ex. 2630, tr. 22,760

6. Ex. 2637, tr. 22,845-22,846

of the Foreign Office, testified¹ that he had made a thorough search for such telegrams and communications, could find none, that the records of the Foreign Office showed that the files relating to this incident had been destroyed by fire. After cross-examination this witness was stood down until he produced the Foreign Office records for the inspection of the prosecution.² That he did this I think the prosecution will not deny. The fact that the prosecution at no time asked that he be recalled to the witness stand must indicate that they do not question his testimony accounting for the non-production of such documents.

23. On 11 July 1938 Soviet troops appeared on Chang-ku-feng Hill, and advancing on to the side facing Manchukuo, began to dig trenches. On the 14th instructions were telegraphed to the Japanese Charge d'Affaires in Moscow to protest and demand withdrawal, which instructions he carried out. The Ambassador at that time was away on a trip, but acting on orders of his Government, urgent because of the gravity of the situation, he returned to Moscow on the 18th.³ On the 20th he interviewed Litvinov. SHIGEMITSU, at the beginning of the interview, said: "I have an urgent

1. Ex. 2631, tr. 22,780-22,781
2. Tr. 22,792, 22,794, 22,796, 22,798, 22,800
3. Ex. 2647-A, tr. 22,927

instruction from my Government." ¹ He then stated that
1 on July 11 Soviet troops had unexpectedly occupied the
2 Chang-ku-feng district west of Lake Changchi (Khassan),
3 and had begun to fortify it. ² He continued: "On
4 having studied the question again, the Imperial Govern-
5 ment wired me and instructed to state the following," ³
6 that according to the data at the disposal of the Man-
7 chukuoan Government, the region belonged to Manchukuo,
8 that the west coast of the lake was the border, and
9 "that the Japanese army in virtue of its obligations
10 to Manchukuo might take measures ensuing from these
11 obligations." ⁴ Pursuant to these instructions, he
12 demanded that the Soviet withdraw its troops so as to
13 restore the status quo which had existed until July 11.
14 He was, therefore, as Ambassador, conveying the message
15 of his Government, acting on the assumption that the
16 postulate supplied by his Government was correct,
17 that is, that Manchukuoan territory had been invaded
18 by armed troops who were building fortifications, that
19 Japan had obligations to Manchukuo which it must fulfil,
20 and that demand should be made that such troops withdraw
21 beyond the border. He did not say that the border must
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23

24 1. Ex. 2633, not read
25 2. Ex. 2633, tr. 22,804
3. Ex. 2633, tr. 22,804

be accurately demarcated at that time on the basis of
1 the data of Manchukuo alone, but instead that such
2 determination might be made after tranquility had
3 been restored on the border on the basis of data which
4 each side had at its disposal.¹ Later in the interview
5 he said, according to Litvinov's diary: "Therefore
6 Japan has the right and obligations to Manchukuo to
7 use force in order to make the Soviet troops evacuate
8 from the territory of Manchukuo unlawfully occupied by
9 them.² I submit that this was merely a statement of
10 Japan's obligations; further, that it followed naturally
11 the instructions which he had received from his Govern-
12 ment to say: "The territory belongs to Manchukuo and
13 the Japanese Army might take measures ensuing from
14 these obligations."³ In the course of the interview,
15 SHIGEMITSU pointed out that both the Russian and Chinese
16 texts of the Hunchun Border Protocol indicated that the
17 west coast of the lake was the border.⁴ As to the map
18 which Litvinov produced, SHIGEMITSU replied that he
19 could not tell whether it was false or authentic, he
20 had never seen it before, it had never been published,
21 it did not correspond with the text of the Hunchun
22

- 23 1. Ex. 2633, tr. 22,807
24 2. Ex. 2633, tr. 22,816, 22,817
25 3. Ex. 2633, tr. 22,805
4. Ex. 2633, tr. 22,810

1 Border Protocol, and that when the time came to demar-
cate the border, all maps should be considered.¹ Lit-

2 vinov said that he did not know whether the map had
3 been published or not.² General UGAKI testified that
4 he did not think that the map had been published.³

5 The basis for the Japanese-Manchukuoan claim that the
6 border ran along the west shore of the lake has been
7 outlined in the General Summation on the Russian Phase⁴
8 and will not be repeated here. But there is no reason
9 to doubt that the demand made by SHIGEMITSU was made

10 in good faith, that it was based on the information
11 which he had received from his Government, that he had
12 no reason to disbelieve it, that it was based on the
13 Japanese contention regarding the border, and that he
14 was, as Ambassador, following the instructions of his
15 Government.⁵

16 We contend that the contention of his
17 Government was correct, but whether it was or not was
18 not for him to judge. He was in Moscow, not at Chang-
19 ku-feng. He necessarily had to depend on the informa-
20 tion given him by his Government and to follow its
21 instruction. No Government could operate if its Am-
22

23 1. Ex. 2633, tr. 22,816

24 2. Ex. 2633, tr. 22,812

25 3. Tr. 23,903

4. Defense summation H-12

5. See pros. summation K-4 quoted, footnote 1, para. 3
this summation.

1 bassador was held responsible for the truth of the
2 information supplied him by his Government or the
3 correctness of its contention or if he assumed to judge
4 either.

5 29. The spirit behind his statements was
6 clear: Withdraw troops, which are the potential cause
7 of fighting, and then settle the border after tran-
8 quility had been restored. Litvinov throughout the
9 interview claimed that the hill, not just the western
10 slope, was the territory of Soviet Russia, and rejected
11 the demand.¹

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25 1. Ex. 754, tr. 7,762; ex. 2638, tr. 22,859-60

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30. The Government at Tokyo decided to take
an entirely defensive position.¹ Troops which had
taken up this position were in fact withdrawn on
the 23th of July.²

31. How fighting broke out has been out-
lined in the General Summation.³ There is no evidence
that it was ordered or caused by any action of
this defendant. He commanded no troops. He was
not in a position to authorize to give anyone orders.
There is no evidence that it was caused by him,
nor that any message from him had anything to do
with the commencement of hostilities. There is
no evidence that it was permitted by him. He
had no authority to command or control, under which
he could permit. It cannot be argued that any war
was initiated by him. Wars are not initiated by
two diplomats, each representing his country's
claims, conferring ten days prior to any fighting
and far from the scene of hostilities, and in
SHIGEMITSU's case, far from Tokyo, the seat of his
Government.

1. Ex. 2622, Tr. 22,586, Ex. 3093, Tr. 22,717,
23,886, 23,888, Ex. 3908, Tr. 38,850
2. Ex. 2622, Tr. 22,588, Ex. 2608, Tr. 22,717,
Ex. 2628, Tr. 38,850
3. Defense Summation H-18

1 32. After hostilities broke out, his efforts
2 were devoted to ending them. His next interview
3 with Litvinov was on 4 August 1938. He began it
4 with the statement: "In accordance with instructions
5 received, he had to make a report regarding the border
6 incident,"¹ that he proposed "immediate cessation of
7 hostilities on both sides and settling of the matter
8 in diplomatic negotiations," and said that the
9 Japanese Government was prepared to embark upon
10 concrete negotiations.² Litvinov rejected the pro-
11 posal, saying that it was impossible, while fighting
12 was going on, to consider peaceful settlement of
13 the problem, that first of all the inviolability of
14 the boundary as claimed by Soviet Russia must be
15 guaranteed.³ SHIGEMITSU replied that the proposal
16 related only to the cessation of hostilities, that
17 the juridical questions regarding the border should
18 be considered later, that even the Soviet contention
19 that the boundary passed over the summit did not give
20 it the right to occupy the entire hill.⁴ Again the
21 spirit behind the proposal of the Japanese Govern-
22 ment made by SHIGEMITSU was clear: end hostilities,
23
24

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1. Ex. 2635, Tr. 22,826
2. Ex. 2635, Tr. 22,826
3. Ex. 2635, Tr. 22,826, 22,827
4. Ex. 2635, Tr. 22,831

1 then settle the border. At no time during this
2 interview or any other did he demand that Japan's
3 claims be satisfied as a prerequisite for the cessa-
4 tion of hostilities.¹ Instead, Litvinov demanded
5 that all Russian claims be acceded to before cessa-
6 tion of hostilities.²

8 33. The prosecution's summation admits:
9 "On August 6, 1938, Zaozernaya (Changkufeng) Hill
10 was cleared of Japanese troops by regular troops of
11 the Soviet Army."³ This was affirmed by Litvinov
12 in the next interview with SHIGEMITSU on 7 August
13 1938 during which he stated: "Japanese troops were
14 forced to evacuate Soviet territory,"⁴ and again:
15 "According to my information there were no longer
16 any Japanese troops in Soviet territory."⁵ We do
17 not admit of course that Japanese troops were ever
18 in Soviet territory, but it is significant that,
19 despite his statement that there were no longer
20 Japanese troops on Russian territory, Litvinov
21 again refused to agree to a cessation of hostilities.
22

23 34. The final interview between the two
24 men during the course of the incident took place on
25 10 August 1938. At this interview SHIGEMITSU said

1. Pros. Summation SS-34 4. Ex. 2638, T. 22,855
2. Ex. 2635, Tr. 22,826 5. Ex. 2638, T. 22,856
3. 55-9

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2 interview or any other did he demand that Japan's
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1. Pros. Summation SS-34 4. Ex. 2638, T. 22,855
2. Ex. 2635, Tr. 22,826 5. Ex. 2638, T. 22,856
3. SS-9

1 that the danger of hostilities was due to the fact
 2 that the troops of both countries stood opposite each
 3 other in one line,¹ the very danger which he had
 4 envisaged and to which he had called attention in
 5 the first interview he had with Litvinov on 20
 6 July. He proposed that cessation of military activi-
 7 ties be accompanied by withdrawal of the troops of
 8 both sides from that line, so that, after fighting
 9 had ceased and the border country was calm, it would
 10 be possible to proceed to the demarcation of the
 11 border.² This Litvinov refused, stating that no
 12 Russian troops would be withdrawn; he insisted in-
 13 stead on the unilateral withdrawal of Japanese
 14 troops.³ To this, in order to end the fighting,
 15 SHIGEMITSU agreed.⁴ Later, as a result of a direct-
 16 ive from the Kremlin, Litvinov says in his diary:
 17 "I had decided not to insist on the necessity, for
 18 justice' sake, for the Japanese troops to retreat
 19 one kilometer."⁵ SHIGEMITSU accepted this final
 20 proposal,⁶ and on the following day an agreement
 21 for cessation of hostilities on that basis was signed
 22 by SHIGEMITSU and Litvinov,⁷ and later, forces of
 23 both sides were withdrawn.⁸

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| 1. Ex. 2716A, Tr. 23,906 | 5. Ex. 2716D, Tr. 23,911 |
| 2. Ex. 2716A, Tr. 23,906 | 6. Ex. 2639, Tr. 22,869 |
| 3. Ex. 2716-0, Tr. 23,909 | 7. Ex. 273, Tr. 22,875-6 |
| 4. Ex. 2716D, Tr. 23,910 | 8. Ex. 2641, Tr. 22,878 |

1 Border Protocol and the map attached thereto as
2 basic documents for the delimitation of the border
3 line, thus admitting that he was wrong and that his
4 demands had been unlawful.¹ The Japanese contention
5 that the border was the west side of Lake Khasan was
6 at all times based on its interpretation of the
7 Hunchun Border Protocol. It had from the first
8 interview recognized it as a basic document; had, in
9 fact, based its claim on its interpretation of it.²
10 SHIGEMITSU had stated at the first interview that
11 that map should be considered as well as other maps,³
12 and, at these later interviews after fighting ceased,
13 he did not admit that the Japanese contention was
14 wrong, otherwise there would have been no reason
15 for the formation of a commission. In the interview
16 on 21 August 1938, he insisted that other materials be
17 taken into consideration.⁴ Again on 31 August he
18 said that his understanding was that the commission
19 would consider other material and Litvinov agreed.⁵
20 The understanding therefore was that the Hunchun
21 Border Protocol was a basic document, its interpre-
22 tation would be decided by the commission together
23 with that or other materials which might be submitted.
24

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|-------------------------|-------------------------|
| 1. SS-11 | 4. Ex. 2643, Tr. 22,905 |
| 2. Ex. 2633, Tr. 22,310 | 5. Ex. 2646, Tr. 22,915 |
| 3. Ex. 2633, Tr. 22,807 | |

37. The prosecution in its summation says
1 that after the Lake Khasan Incident, SHIGEMITSU could
2 not remain as Japanese Ambassador in Moscow, the
3 implication being that he had become persona non
4 grata. There is no evidence of this in the Record.
5 In fact, the evidence is directly to the contrary.
6 Foreign minister UGAKI testified that his transfer
7 to London was a promotion, that he had heard from no
8 one in Russia nor from anyone else that the Soviet
9 Union did not desire him to remain as Ambassador, nor
10 that that country was dissatisfied with his work. He
11 testified: "I know that he had done his best to carry
12 out the policy of the Government to remain at peace
13 with the Soviet Union, and that he had been success-
14 ful and therefore recommended his promotion."² He
15 further testified that the persons most responsible
16 for the peaceful settlement of the incident were
17 SHIGEMITSU and himself.³

19 38. I submit that there is no evidence
20 against this defendant on the Counts involving Russia,
21 Counts 17, 25, 35 and 52.
22

- 23
24 1. Prosecution Summation SS-12
25 2. Ex. 2715, Tr. 23,871
3. Tr. 23,903

Ambassador to Great Britain

1
2 39. The accused was appointed Ambassador
3 to Great Britain in September 1938.¹ He had been
4 recommended for the promotion by General UGAKI, the
5 Foreign Minister.²

6 40. While still Ambassador in Moscow, he
7 expressed to his American colleague Joseph E. Davies
8 his eagerness to prevent war in China spreading into
9 conflict between Japan and the United States.³

10 41. His efforts while Ambassador to main-
11 tain good relations between Great Britain and Japan
12 and to avoid rather than plan war are shown in many
13 documents, submitted in his defense, which I shall
14 mention later. The prosecution, however, cites
15 certain telegrams which they argue show him to have
16 been an adherent of aggression. I shall analyze
17 these documents, since in my submission they show
18 that he was striving to prevent the war in Europe
19 from spreading to East Asia, to keep the peace.
20

21 42. First is a telegram from SHIGEMITSU
22 to Foreign Minister ARITA dated 23 March 1940.⁴ In
23 this message written before Germany started its
24 intensive warfare on the western front, the Ambassador

25 1. Ex. No. 123, Tr. 776 4. Ex. 1016, Tr. 9674-82
2. Ex. No. 2715, Tr. 23,871
3. Ex. No. 3546, Tr. 34,508

was reporting a conversation with R. A. Butler,
1 Undersecretary of Foreign Affairs. He tells Butler:
2 "It must be a matter of congratulation if some com-
3 promise can be found between the new Central Govern-
4 ment and the Chungking Government." Butler in reply
5 says that he hopes the new government will be success-
6 ful and that the British Government in settling the
7 Tientsin problem is expressing her desire to be of
8 service.² Later SHIGEMITSU tells Butler that the
9 authorities of both countries should strive for
10 collaboration and conquer every difficulty.³ Butler
11 says that SHIGEMITSU has outlined a large picture
12 of the international relations of the world and that
13 he is of the same opinion.⁴ I submit that in this
14 telegram SHIGEMITSU is shown performing the normal
15 functions of an Ambassador, that it shows no plans
16 for war, but rather a desire for good relations be-
17 tween the country which he represents and the country
18 to which he is accredited.

20 43. The prosecution next⁵ quotes a part
21 of a sentence from a telegram sent by SHIGEMITSU to
22 Foreign Minister ARITA dated May 13, 1940,⁶ and says
23

24 1. Tr. 9646
25 2. Tr. 9677
3. Ex. 1016, Tr. 9679
4. Ex. 1016, Tr. 9680
5. SS-12, Tr. 9635

6. Ex. 1017, Tr. 9683

1 that he urges the latter to "apply our national
2 policies for China and the South Seas in accordance
3 with the policy to make our situation in East Asia
4 firm and stable." The prosecution omitted the first
5 part of the sentence. Including it, this sentence
6 reads: "Taking into consideration the superiority
7 of Germany on land, that of Britain and France at
8 sea, we have to apply our national policies for
9 China and the South Seas in accordance with the
10 policy to make our situation in East Asia firm and
11 stable."¹ I submit that this shows no planning of
12 war against the great naval powers, but instead
13 recommends against war. The telegram taken as a
14 whole makes this even more clear. He predicts that
15 even after the occupation of the coast lines of
16 Holland and Belgium, which apparently has not yet
17 been completed, Hitler will not stop but the scale
18 of warfare will increase, a prediction which was,
19 of course, true; that Japan must be prepared for
20 all possible eventualities and should, therefore,
21 state her policy. He recommends three principles:
22 (1) Japan shall not change the status quo; (2) that
23 no country either belligerent or neutral shall inter-
24

25
1. Ex. 1017, Tr. 9685-6
2. Ex. 1017, Tr. 9684

1 fere with the status quo; and (3) that the interests
2 of the natives of the South Seas be the primary
3 consideration.¹ In view of Japan's relations with
4 the United States, Soviet Union and belligerent
5 countries he recommends urgently conciliation be-
6 tween the Wang Ching-wei Government and the Chiang
7 Kai-shek Government and between the Chiang Kai-shek
8 Government and Japan regardless of conditions.² He
9 points out that even if Germany's success on land is
10 decisive, the naval power of Britain and France will
11 remain strong so that, even if France was over-
12 whelmed, the war will not end, that the victory of
13 Germany would solidify the unity of Britain and
14 France even in defeat, and that if Hitler's success
15 on land is kept in check, the power of those two
16 nations will remarkably rally.³ I submit that all
17 these predictions were true, and that the policy he
18 advocated was a policy opposed to the spread of war
19 to East Asia rather than one of planning war.

21 44. The prosecution then quotes excerpts⁴
22 from SHIGEMITSU's telegram to ARITA of May 25, 1940.⁵

23 This telegram was written after the trend of battle

24 1. Ex. 1017, Tr. 9684

25 2. Ex. 1017, Tr. 9685

3. Ex. 1017, Tr. 9685

4. SS-13

5. Ex. 1018, Tr. 9687

1 had become clear. He speaks of the firm resolution
2 of both Britain and France, but states that Japan
3 must be prepared to cope with the situation if these
4 two great powers which occupy so much of the Far
5 East are defeated, leaving Japan as the only great
6 power in the Far East. I submit that this was a
7 problem which any Japanese diplomat must necessarily
8 consider and report to his chief. His recommendations
9 are made "In order to prevent the war to spread into
10 East Asia."¹ They include the withdrawal of belligerent
11 troops from China and the three-hundred miles
12 principle which had already been advocated for the
13 Western hemisphere. He recommends that all this be
14 done by diplomatic procedure rather than under the
15 pressure of military side or of public opinion.²
16 As a Japanese diplomat, he recommends the strengthening
17 of the Japanese diplomatic foundations by peaceful
18 means in preparation for the ending of the war.
19 Here again I say he is recommending measures which
20 he believes will prevent the spread of war, rather
21 than planning war.
22

23 45. The prosecution in its summation³
24 quotes excerpts from his telegram to ARITA dispatched
25

1. Ex. 1018, Tr. 9689
2. Ex. 1018, Tr. 9690
3. SS-14

46,340

1 about a month later, in June 1940.¹ This telegram
2 was written after France had been overrun and was about
3 to surrender.
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1. Ex. 1019, T. 9691-3

1 The conquering country was Germany. Therefore he states
2 that if the districts of East Asia and the South Seas
3 should be owned by another great power, Japan might be
4 driven to risk war with that country and the stability
5 of East Asia would deteriorate.¹ I submit that this
6 refers to Germany, the conquering country. He says
7 that the British Empire has made it clear that she will
8 continue the war even if France should succumb, that
9 she shows confidence with regard to any invasion of
10 England by Germany and that it is evident that this
11 invasion cannot be as easily carried out as in the
12 case of France.² He says, however, that it is evident
13 that even after the war the influence of Europe in the
14 East will be lessened and that Japan must take this into
15 consideration in defining her general position in East
16 Asia.³ I submit that this was only a prediction and
17 that the events that have followed have shown its truth.
18 He states that the districts of Greater East Asia should
19 not be exploited as plantations,⁴ and I submit that this
20 is the natural and justifiable attitude of an Oriental.
21 The important part of the telegram is his recommendation
22 that Japan state its foreign policy to be, that "Japan
23

- 24
25
1. Ex. No. 1019, Tr. 9,693
 2. Ex. No. 1019, Tr. 9,693
 3. Ex. No. 1019, Tr. 9,693
 4. Ex. No. 1019, Tr. 9,692

1 is gravely concerned with the stability of East Asia,
2 including the South Seas, and is resolved that the
3 spread of European War must be prevented, and is taking
4 policy to exclude the conditions destructive to said
5 stability and to prevent those which may be destructive."
6

7 I submit that this is grave counsel against the spread
8 of war rather than planning war.

9 46. In its Summation², the prosecution quotes
10 from the message from Ambassador SHIGEMITSU to Foreign
11 Minister MATSUOKA of August 5, 1940³. The telegram is
12 addressed to a man who favors an outright alliance with
13 Germany and is in a position to bring it about and
14 SHIGEMITSU is recommending such a policy not be adopted.
15 He urges that Japan instead of entering into any alliance
16 with Germany adopt a policy under which she will retain
17 independence of action. He points out that, while Soviet
18 Russia is at that time following a parallel policy with
19 Germany, she retains the right to compromise with Britain.
20 He points out that the policies of Britain and America
21 are not joint but parallel policies, and that the manner
22 in which they are applied will depend on Japan's attitude
23 He says: "If we carry out our Greater East Asia policy
24

- 25
1. Ex 1019, Tr. 9,692
 2. SS-13, SS-14
 3. Ex. 1023, Tr. 9,712
 4. Ex. 1023, Tr. 9,714 - 9,715

1 with a reasonable fair and square attitude, we may proper-
 2 ly expect Anglo-American constructions to be removed."¹
 3 He warns against powerful movements which would throw
 4 Japan into conflict with Britain and America, which
 5 would expand the China Incident into world war. He says
 6 one of these is a movement to draw Japan into conflict
 7 by making Japan provoke Britain and America. Here again
 8 he fears the spread of war to East Asia and warns against
 9 it.² In regard to China, he says, "I believe that to
 10 show a liberal minded attitude toward settling the China
 11 problem expresses not weakness but strength on our part."³
 12 Then he says: "In view of our high international position
 13 it would be improper for us to be victimized by other
 14 countries, not to speak of adopting an attitude of
 15 supplication or subordination."⁴ And this, I submit,
 16 can only apply to Germany for he follows it with a state-
 17 ment that it is necessary to improve Japanese relations
 18 with the Soviet Union and to proceed with scrupulous
 19 consideration and prudence in Japanese relations with
 20 Great Britain and America.⁵ Even in his reference to
 21 the smaller nations,⁶ one of which having just been
 22 conquered by Germany, gravely affecting the stability of
 23

24 1. Ex. 1023, T. 9,715

25 2. Ex. 1023, T. 9,715

3. Ex. 1023, T. 9,715

4. Ex. 1023, T. 9,716

5. Ex. 1023, T. 9,716

6. Ex. 1023, T. 9,713

1 the Far East, and whose colonies were therefore in danger
2 of being claimed by her, I submit there is no recommen-
3 cation for war. Certainly there is no evidence of any
4 planning of war, of use of force to carry out national
5 policy, rather the reverse. He did not occupy any
6 position in which such plans could be made. He took part
7 in no conferences in which decisions were made. He
8 recommended against an alliance with Germany since by
9 entering into alliance with Germany, Japan would lose
10 her freedom of action to reach an adjustment with the
11 Western Powers.¹

12 47. His recommendations were not followed. In
13 signing the Tripartite Pact on 27 September 1940 Japan,
14 by entering into an alliance, gave up her right to act
15 independently of Germany, to reach an understanding with
16 Great Britain and the United States inconsistent with
17 that Pact, the very thing he feared and warned against.

18 48. During the succeeding months, he sent and
19 received many telegrams, some of which have been offered
20 in evidence and none of which is consistent with plans
21 or preparations for war. We may be certain if there
22 had been any such telegrams, the prosecution would have
23 produced them. The message from Foreign Secretary Eden
24 to MITSUOKA of 7 February 1941 was forwarded saying
25 that Japan, because of her advantageous geographical

1. Ex. No. 1023, T. 9,712, 9,713, 9,716

1 position, should remain aloof from the war,¹ particularly
 2 after four years of the China Incident; that England is
 3 not decadent, that she had the unlimited support of the
 4 United States; that since the crisis of the bombing of
 5 London in September, her power had increased and she
 6 would not be defeated.² Again Prime Minister Churchill's
 7 message to the Japanese Government, 24 February 1941,
 8 was forwarded, in which Mr. Churchill said that even
 9 now His Majesty's Government feels well assured of their
 10 ability to maintain themselves against all comers, and
 11 they have every reason to hope that within a few months
 12 they will, with rapidly increasing supply of materials
 13 which is coming from the United States, be overwhelmingly
 14 strong.³ SHIGEMITSU in two telegrams, one dispatched
 15 24 February 1941⁴ and the other 25 February³ reported
 16 Churchill's conversations with him on the 24th, in which
 17 the Prime Minister said that the British had a firm
 18 resolution for prosecution of the war and that it would
 19 end in victory on the side of Britain. I mention these
 20 because they were also SHIGEMITSU's own views. He brought
 21 back that very message to his government when he returned
 22 to Tokyo in June of the same year. He himself had been
 23

24 1. Ex. 1039, T. 9,785

2. T. 9,787

25 3. Ex. 1049, T. 9,823

4. Ex. 1048, T. 9,819

5. Ex. 1051, T. 9,828

6. Ex. 1048, T. 9,819;
 Ex. 1051, T. 9831

1 in London during the crisis of the war and knew what
2 survival of the crisis meant.

3
4 49. The evidence of the men who knew him in
5 London shows his feeling with regard to his country's
6 signing the Tripartite Pact and his efforts, despite it,
7 to maintain good relations with Great Britain. The day
8 after the Pact was signed Hillman¹, the head of the
9 International News Service in Europe, talked with him
10 and found him annoyed and depressed by the conclusion
11 of the Pact, of which he had been given only half-day's
12 notice. But he intended to remain in London as long as
13 possible in order to mitigate the effects of the Pact
14 and by diplomacy to prevent its being implemented.²

15
16 50. The statement of Lord Hankey, Member of
17 Mr. Churchill's Cabinet, outlines some of these efforts.
18 Early in September 1940, before the Pact was signed,
19 SHIGEMITSU conferred with Lord Hankey, Lord Lloyd,⁴ Chair-
20 man of the British Council, General Piggott and others
21 regarding the deterioration of Anglo-Japanese relations.
22 It was proposed that an official British mission headed
23 by a minister of cabinet rank should visit Tokyo to make
24 the British case better known and to counter the propa-
25 ganda of Nazi visitors in Japan. Viscount Halifax,

1. Ex. 3551, T. 34,533-4

2. Ex. 3551, T. 34,534

3. Ex. 3547, T. 34,511

4. Ex. 3548, T. 34,512

1 Secretary of State for Foreign Affairs, had approved
2 these talks. But the plan for this official mission
3 was dropped because of the signing of the Tripartite
4 Pact a few days later on September 27. Next it was
5 proposed that instead of sending a government mission,
6 a mission headed by Lord Hankey be sent by the British
7 Council. Lord Lloyd undertook to report this proposal
8 to the Foreign Office. Since relations continued to
9 deteriorate, the opportunity for the visit passed.¹
10 The talk then centered around Mr. MATSUOKA's pending
11 visit to Berlin and Rome in the spring of 1941, the
12 bad effect that it had on British public opinion and
13 the dangers that Japan might pass from passive to active
14 membership in the Axis. SHIGEMITSU expressed the opinion
15 that even if the mission could not go to Japan it would
16 be useful to send influential British citizens to explain
17 the Allied situation to Japan, to emphasize the import-
18 ance of recent victories in the Mediterranean and to
19 counter the continuous contacts between Germany and Japan.
20 It was proposed that MATSUOKA be persuaded to come to
21 London to counteract the effects of his visit to Berlin
22 and Rome.² Lord Hankey then urged that the Ambassador
23 meet MATSUOKA at some neutral point in Europe, preferably
24
25

1. T. 34,513-4

2. T. 34,517

1 Switzerland. Lord Hankey appealed direct to the Prime
2 Minister for priority passage for him but the diffi-
3 culties of transport across war-torn Europe from Lisbon
4 to Berne made it impossible for the Ambassador to reach
5 MATSUOKA before his return to Tokyo.¹ General Piggott
6 in his statement² describes SHIGEMITSU's positive
7 attitude; he urged that they not await developments,
8 but counterattack. Lord Sempill in his affidavit tells
9 of his talks with SHIGEMITSU about this trip and of
10 SHIGEMITSU's desire to advise MATSUOKA against closer
11 cooperation with the Axis. SHIGEMITSU was to take with
12 him a number of points which Prime Minister Churchill
13 wanted to put to the Japanese Foreign Minister and Lord
14 Sempill describes SHIGEMITSU's obvious enthusiasm over
15 this important and effective material.³ R. A. Butler,
16 former Undersecretary of Foreign Affairs, identifies
17 these points as Exhibit 1062, and states that Mr.
18 SHIGEMITSU was selected as a representative to bring
19 them before MATSUOKA.⁴ In this letter, setting forth
20 these questions, the Prime Minister says: "From the
21 answers to these questions may spring the avoidance by
22 Japan of a serious catastrophe and a marked improvement
23
24

25 1. T. 34,516 - 34,520
2. Ex. 3518, T. 34,522
3. Ex. 3549, T. 34,525
4. Ex. 3550, T. 34,529

1 between Japan and Great Britain, the great seapower of
2 the west." ¹ I ask the Tribunal to read that prophetic
3 letter. No wise statesman could have read it without
4 thinking; "Will it not be disastrous in the end for us
5 to tie our fortunes to Germany and Italy, should we not
6 keep the peace with the Western Powers?" SHIGEMITSU
7 would not have wanted to carry them unless he had desired
8 Japan to avoid active collaboration with the axis and
9 remain at peace with Britain. The very nature of the
10 letter shows the good faith of the messenger selected
11 to deliver it. It carried with it a note of warning
12 that, due to Japan's accession to the Tripartite Pact,
13 the United States was more likely to enter the war, that
14 the Axis had passed its peak of strength. It was the
15 very message that SHIGEMITSU brought back with him
16 when he returned to Tokyo that summer; Britain had not
17 been defeated and would not be defeated, America's aid
18 would increase, with that great material aid the issue
19 was not in doubt, that Japan should not become involved
20 in war with these two countries, but settle her differ-
21 ences with them and remain at peace. It was good prac-
22 tical advice which it was hoped would be effective in
23 Tokyo during that spring and summer of 1941.

25 1. Ex. 1062, T. 9,871

1 51. His efforts were not confined to govern-
2 ment circles; he used the press. At his suggestion
3 H. A. Gwynne of the Morning Post, editor of one of the
4 great London dailies, ran leading articles pointing out
5 that the war party was losing for Japan the friendly
6 feeling of Britain which dated from the 1914-1918 War.¹
7 The very quality of the men with whom he dealt contra-
8 dicts any suggestion that he was misleading them or
9 that they were being taken in. They had all had the
10 utmost experience in world affairs. They were all great
11 patriots. T. V. Soong, Lord Killearn, Nelson Johnson,
12 Powell in China, Davies in Russia, Kennedy, Lord Hankey,
13 Lord Lloyd, Piggott, Butler, Gwynne, Winston Churchill
14 in Britain -- does anyone think they could have been
15 taken in? Would he have selected T. V. Soong in 1931,
16 Lord Hankey and Lord Lloyd as persons to go on missions
17 to maintain good relations with his country if he had
18 not wanted such good relations?
19

20 52. If any further proof of his good faith is
21 needed, it is found in what he said and did when he
22 returned to his own country in the summer of 1941, for,
23 despite the fact that he was back among his countrymen
24 and there was great resentment there against the nation
25 from which he had come so that his attitude could not

1. Ex. 3552, T. 34, 536-34, 538

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1 53. KIDO, in his Diary entry of 23 July 1941,
2 tells of SHIGEMITSU's report to the Emperor a few days
3 after his arrival in Tokyo. He told the Emperor of
4 the determination of Mr. Churchill and the British
5 people to win the war despite the defeat at Dunkirk,
6 the very statement that Mr. Churchill made when he
7 conferred with him in London in February.¹ On September
8 25, 1941, he told KIDO of the firm determination of
9 Britain and America. He pleaded that Japan should
10 settle all outstanding problems with America and that
11 Japanese-American diplomatic relations should be ad-
12 justed.² On many occasions he told KIDO that, from his
13 experiences in Europe, Japan should not become involved
14 in the European War.³

16 54. Late in August or early September, 1941,
17 he conferred with General MUTO, telling him that there
18 was no likelihood of Britain's losing the war, that
19 there would be no collapse of Britain, that the United
20 States would seriously assist her and that no one must
21 fail to take into consideration the great natural
22 strength of America.⁴ Most important and significant
23 is his report to his chief, the Foreign Minister, Ad-
24 miral TOYODA.⁵ I quote from his affidavit:

1. T. 31,218
2. T. 31,217
3. T. 31,231

4. T. 33,173
5. Ex. 3554, T. 34,541

1 have been very popular, he consistently advised that
2 Great Britain and America were determined and invincible
3 and that Japan should not make them her enemies in war.
4 He arrived in Tokyo about 20 July 1941, and had many
5 talks with Sir Robert Craigie, British Ambassador to
6 Japan, and now member of the United Nations War Crimes
7 Commission. He told Sir Robert that he had returned on
8 leave because he believed that he could do more in Tokyo
9 than in London to arrest the deterioration in Japan's
10 relations with the Western Powers.¹ SHIGEMITSU,
11 Admiral TOYODA, the Foreign Minister, and Sir Robert
12 met at a time when a critical stage had been reached
13 in the Washington negotiations and SHIGEMITSU urged
14 the British Government play its part in averting a
15 breakdown. Later, at Mr. SHIGEMITSU's request, Mr.
16 YOSHIDA, former Ambassador and recently Premier, asked
17 Sir Robert for suggestions for ending the deadlock in
18 regard to Indo-China; but Sir Robert was precluded by
19 his instructions from taking any official part.
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1. Ex. 3555, T. 34, 546
2. T. 34, 547

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3 after his arrival in Tokyo. He told the Emperor of
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5 people to win the war despite the defeat at Dunkirk,
6 the very statement that Mr. Churchill made when he
7 conferred with him in London in February. ¹ On September
8 25, 1941, he told KIDO of the firm determination of
9 Britain and America. He pleaded that Japan should
10 settle all outstanding problems with America and that
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12 justed. ² On many occasions he told KILO that, from his
13 experiences in Europe, Japan should not become involved
14 in the European War. ³

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17 he conferred with General MUTO, telling him that there
18 was no likelihood of Britain's losing the war, that
19 there would be no collapse of Britain, that the United
20 States would seriously assist her and that no one must
21 fail to take into consideration the great natural
22 strength of America. ⁴ Most important and significant
23 is his report to his chief, the Foreign Minister, Ad-
24 miral TOYODA. I quote from his affidavit: ⁵

1. T. 31,218

2. T. 31,217

3. T. 31,231

4. T. 33,173

5. Ex. 3554, T. 34,541

1 "In his report to me which was oral about
2 the European situation, he particularly empha-
3 sized the fact that Great Britain would never
4 be defeated in the war with Germany, and he stated
5 his opinion that Japan should in no case be in-
6 volved in any war, and that the negotiations
7 then under way with the United States should
8 by all means be brought to a successful end."

9 55. It is significant that although the de-
10 fendant was in Tokyo for the five months before Pearl
11 Harbor, and is accused of being a member of the general
12 conspiracies ¹ he is not charged on any of the counts
13 with initiating any war ² nor with conspiring to murder ³
14 anyone on that fateful day.

15 56. I submit that there is no evidence
16 against this defendant on Counts 1, 4, 5, 7 to 16,
17 23 and 29.

18 PRISONERS OF WAR

19 57. The defendant became Foreign Minister on
20 20 April 1943 and occupied that office until 13 April
21 1945. During the period many protests were received
22 from neutral powers representing the Allied countries,
23 which may be divided into two categories: (1) Allega-
24 tions that atrocities had been committed by Japanese

- 25 1. Counts 1, 4 and 5 3. Counts 37,39
2. Counts 39-43

1 troops or that prisoners of war had been subjected to
2 maltreatment or neglect, and (2) Requests for permis-
3 sion to inspect camps and requests to interview pris-
4 oners without the presence of a guard. The proof al-
5 leged against this defendant is that he made answers
6 to these protests, that the statements in these answers
7 were false, and that he denied permission to visit
8 camps and to interview prisoners without the presence
9 of a guard. It is submitted, however, that in order
10 to prove its case against this defendant, if Count
11 55 alleges a crime punishable under the Charter, and
12 we have argued that it does not, ¹ the prosecution must
13 prove beyond all reasonable doubt that he with others
14 deliberately and recklessly disregarded their legal
15 duty to take adequate steps to secure observance and
16 to prevent breaches of the laws of war, and that as a
17 direct result atrocities were committed or that pris-
18 oners of war were neglected or maltreated. We submit
19 that no such proof has been produced.
20

21 58. In order to have some duty with respect
22 to atrocities committed during operations or for neg-
23 lect or maltreatment of prisoners of war, it must be
24 proved that this defendant had the legal duty and the
25 power of command by which he could command or forbid

1. ~~Count 55 of the Indictment~~

1 and it is submitted that he had none; he was a civilian
2 and, of course, commanded no troops either engaged in
3 operations or in charge of internment or custody of
4 prisoners of war.

5 59. Troops engaged in operations were under
6 the command of the Army Commanders who in turn were
7 under the jurisdiction of the Chief of the Army General
8 Staff. Prisoners of war from the time of capture until
9 they were delivered to internment camps were in the
10 custody of such Army Commanders. Responsibility for
11 their custody from the date of their internment was
12 the responsibility of the Minister of War.¹ The Imper-
13 rial Ordinance on Prisoner-of-War Internment camps pro-
14 vides in part:²

15 "Article 1

16 "The Prisoner-of-War Internment Camp is
17 a place under the jurisdiction of the Minis-
18 ter of War for the internment of prisoners of
19 war.
20

21 "Article 3

22 "The Prisoner-of-War Internment Camp shall
23 be administered by the Commander-in-Chief of
24 an army or a garrison as provided for by the

- 25 1. Ex. 3655, T. 36,412-3.
Ex. 3098, T. 27,795 to 27,696
2. Ex. 92, not read; Ex. 1965-A, T. 14,445-6

1 Minister of War and shall be superintended by
2 the Minister of War."

3 The Minister of War was also responsible for the treat-
4 ment of prisoners of war. The Regulations for the
5 Treatment of Prisoners of War ¹ provide in part:

6 "Article 2

7 "The Prisoner of War Administration Division
8 shall be established in the Ministry of War for
9 the conduct of all affairs relative to the
10 treatment of prisoners of war and civilian in-
11 ternees in the theatre of war.

12 "Article 4

13 The Division head shall administer the
14 affairs of the Division under the orders of
15 the Minister of War, and the staff members shall
16 carry out their duties under the orders of the
17 Division head."

18 60. It is unnecessary for the purposes of
19 this Summation to ascertain how this responsibility
20 was divided; sole responsibility was at all times
21 in the military authorities, and none was left over
22 for the Foreign Minister or any other civilian.

23 61. The duties of the Foreign Minister are
24 set forth briefly in the Imperial Ordinance for the

25 1. Ex. 1965-A

Organization of the Ministry of Foreign Affairs which
provides briefly in Article 1:¹

"The Foreign Minister shall take charge
of the administration of matters concerning
state affairs relative to foreign countries."

He administers such affairs, he does not control them.
He is not in any sense a law enforcement officer,
particularly over troops engaged in operations or
commanding internment camps over which he had no con-
trol or command and over whose activities he had no
competence. He is the contact of the Japanese Govern-
ment with foreign countries. Since protests are commun-
ications from foreign countries they were received by
him. Since the answers were communications to foreign
countries they were forwarded by him.²

62. This duty gave him no authority over the
treatment and custody of prisoners of war and without
such authority he could have no duty or responsibility
for their treatment or custody. That he had no such
duty is affirmatively proved by all the witnesses pro-
duced by the defense, none of whom was cross-examined
on this subject,³ and by witnesses called by the

1. Ex. 76 (See Language correction 5 March 1948)
2. Ex. 3646, T. 35,771
3. Ex. 3040, T. 27,147, 27,148, 27,152;
Ex. 3646, T. 35,768-9, 35,771
Ex. 3895, T. 38,782; Ex. 3898, T. 38,787-88

1 prosecution, not only a Foreign Office official¹ but
2 high ranking officers of the Japanese Army who testi-
3 fied that such authority and responsibility was that
4 of the War Minister.²

5 63. General TANAKA testified graphically:

6 "In Japan the handling of prisoners is
7 quite different from other countries, and the
8 Prisoner-of-War Information Bureau and admin-
9 istration of prisoner-of-war matters were under
10 the supervision of the War Minister himself.
11 And, therefore, in so far as the actual hand-
12 ling of matters related to prisoners of war was
13 the responsibility of the War Minister himself,
14 and the Foreign Office was merely a post office
15 which handled the communication."³

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25 1. T. 15,530
2. T. 14,843, 14,883, 14,365, 14,419
3. T. 14,365

1 64. Many witnesses have been produced by
2 both the prosecution and defense to testify as to the
3 responsibility of various Army and Navy officers and
4 officials for prisoners of war. While some of the
5 evidence is conflicting as to the division of respon-
6 sibility between such officers and officials, none
7 has ever testified that the Foreign Office had any
8 responsibility for their custody or treatment.

9 65. The duty of the Foreign Office then was
10 only the receipt of protests and the forwarding of
11 answers to protests. We submit that from this duty,
12 no authority over or responsibility for the treatment
13 of prisoners of war can be derived. But even here
14 the authority and duty of the Foreign Minister was
15 strictly limited. He was not given the duty,
16 authority, or means to investigate and, it follows,
17 could not be held responsible for the answers. It
18 was the authority and duty of the Minister of War, not
19 the Foreign Minister, to investigate the facts alleged
20 in the protests and to communicate the information on
21 which answers to the Protecting Powers were based.
22 Imperial Ordinance No. 1246, promulgated 29 December
23 1941¹ shortly after the war started, established the
24 Prisoner-of-War Information Bureau, and reads in
25 part as follows:

1. Ex. 1965-A, T. 14,440-2

1 "Article I

2 "The Prisoner-of-War Information Bureau
3 shall be under the control of the Minister
4 of War and shall manage the matters mentioned
5 below:

6 "1. The investigation of internments,
7 removals, releases on parole, exchanges,
8 escapes, admissions into hospitals, deaths
9 of prisoners of war, and the maintenance of
10 records for each prisoner.

11 "2. The communications, correspondence
12 and information regarding the conditions of
13 the prisoners of war.

14 * * * * *

15 "Article 4.

16 "The director administers the affairs
17 of the Bureau under the direction and
18 supervision of the Minister of War.

19 "Article 5.

20 "In regard to matters falling within
21 his jurisdiction, the director may demand
22 information from any military or naval unit
23 concerned."
24

25 66. The investigations were to be made by

1 that Bureau. It had the authority and means, of
 2 making them since it could demand information from
 3 the units concerned, a right which the Foreign
 4 Minister did not have. It had jurisdiction over
 5 information regarding Navy prisoners of war as well
 6 as those in the custody of the Army.¹ It was set up
 7 shortly after the beginning of the war pursuant to
 8 International Treaty.² The ordinance is counter-
 9 signed only by the Premier and the Ministers of War
 10 and Navy.³ Under Japanese law an ordinance is counter-
 11 signed by the Premier and any state minister in
 12 charge.⁴ The fact that the Foreign Minister was not
 13 required to sign this ordinance voids any suggestion
 14 that he was in any way responsible for the Bureau or
 15 its activities.

16 67. That the Foreign Office had no author-
 17 ity or duty to make an investigation and no facilities
 18 to do so is proved affirmatively, not only by the
 19 testimony of witnesses called by the defense, on
 20 which matters none was cross-examined,⁵ but also by
 21 witnesses called by the prosecution, not only a
 22 Foreign Office official⁶ but also a high-ranking
 23

24 (1. Tr. 14,879, 14,884

2. Hague Convention IV, Art. 14, Tr. 14,842, 14843

25 3. Ex. 92-A, not read, Tr. 35,585

4. Ex. 3637, Tr. 35,583.

5. Ex. 3040, Tr. 27,148, 27, 152;

Ex. 3898, Tr. 38,788, 38,789, 38,792

6. Tr. 15,530)

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Army officer.¹ Its officials were in fact not

permitted by the Army to visit such camps.² That
the replies were therefore necessarily prepared on
the basis of this information is admitted by the
prosecution.³ It was the duty of the Foreign Office
to forward such replies; it would have violated its
duty, had it not done so.

68. The manner in which protests were
handled is described in the prosecution's General
Summation on prisoners of war.⁴ It is stated:
"Considered as a matter of machinery no fault can
be suggested with regard to this system."⁵ This, I
submit, indicates that the Foreign Office performed
its duty and its only duty in regard to such protests.
The protests were promptly translated and forwarded
by the Foreign Office to the military authorities.⁶
They were forwarded by the military authorities to
the commanders of the prisoner-of-war camps in the
area concerned and from these sources a reply was
prepared and forwarded to the Foreign Office.⁷ That
it was the duty of the military authorities to supply

- (1. Tr. 14,419
2. Tr. 38,901
3. Tr. 15,530-1, Ex. 3040, Tr. 27,151, Ex. 3646
Tr. 35,771; Ex. 3898, Tr. 38,879.
4. J-69 to J-72 (5. J-73)
6. Tr. 15,528; Ex. 3040, Tr. 27,148, 27,151,
Ex. 3898, Tr. 38,789.
7. J-71, Tr. 14,875, 14,876, 14287)

1 the information on which replies were based is
2 apparently admitted by the prosecution, since in its
3 general summation ¹ it states, in referring to the
4 replies of the Foreign Minister on protests regarding
5 camps in Thailand:

6 "It is therefore obvious then when
7 SHIGEMITSU sent his replies of 24 July
8 and 1 October 1943, it was known to the
9 military authorities in Tokyo whose duty
10 it was to supply him with information that
11 the replies were not in accordance with
12 existing facts."²

13 Replies to Protecting Powers were at all times based
14 on the information received from the military
15 authorities and were promptly forwarded to the
16 Protecting Powers.³ The Foreign Office constantly
17 followed up its requests in writing, orally and in
18 conferences with Army and Navy officers.⁴ Until
19 the information was received from the military
20 authorities no answer could be made. There were
21 delays on the part of the War Ministry, but there is
22 no proof that the Foreign Office was responsible for
23

24 (1. J-87

25 2. Ex. 2023 A-2, Tr. 14,792, Ex. 2017, Tr. 14,747

3. Tr. 15,530-1, Ex. 3040, Tr. 27,151; Ex. 3646,
Tr. 35,771, Ex. 3898, Tr. 38,879

4. Tr. 15,529, Ex. 3040, Tr. 27,164, Ex. 3898
Tr. 38,789, 38,790)

1 any such delays. Most protests required information
2 from field commanders or from camps in distant places
3 and communication was at all times difficult and, late
4 in the war, because of the effectiveness of the sub-
5 marines, almost impossible so that replies could sel-
6 dom or never be forwarded immediately.¹ At times the
7 Army was reluctant to answer.² Some protests were
8 perhaps not answered though whether or not a reply
9 was made in individual cases is difficult to determine
10 due to the destruction of documents by Allied incendi-
11 ary bombing during the war and destruction by fire
12 prior to the surrender and when SHIGEMITSU was not
13 in office.³ But there is no evidence that the Foreign
14 Office withheld information or did not accurately,
15 faithfully and promptly forward such information as
16 it had received from the military authorities. The
17 Foreign Office could not forward replies unless and
18 until it received the information from the military
19 authorities. It would have violated its duty had it
20 done so.

21
22 THE PRESIDENT: We will recess for fifteen
23 minutes.

- 24 (1. Ex. 3103, Tr. 27,790, 27,792, 27,793,
Tr. 27,794-6
25 2. Tr. 14,848.
3. Prosecution Summation J-69)

1 any such delays. Most protests required information
2 from field commanders or from camps in distant places
3 and communication was at all times difficult and, late
4 in the war, because of the effectiveness of the sub-
5 marines, almost impossible so that replies could sel-
6 dom or never be forwarded immediately.¹ At times the
7 Army was reluctant to answer.² Some protests were
8 perhaps not answered though whether or not a reply
9 was made in individual cases is difficult to determine
10 due to the destruction of documents by Allied incendi-
11 ary bombing during the war and destruction by fire
12 prior to the surrender and when SHIGEMITSU was not
13 in office.³ But there is no evidence that the Foreign
14 Office withheld information or did not accurately,
15 faithfully and promptly forward such information as
16 it had received from the military authorities. The
17 Foreign Office could not forward replies unless and
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Tr. 27,794-6
25 2. Tr. 14,848.
3. Prosecution Summation J-69)

(Whereupon, at 1445, a recess
was taken until 1500, after which the
proceedings 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: Major Furness.

MR. FURNESS: I shall resume the summation on behalf of the defendant SHIGEMITSU at paragraph 69.

69. The prosecution in its summation against this defendant has listed in footnotes every protest made to the Japanese Government, some before he took office and some after he resigned as Foreign Minister. The prosecution alleges that the facts have been proved. It is not necessary to go into them since all the evidence indicates that the protests were treated uniformly and in a way conceded by the prosecution to be subject to no criticism.¹ They were referred to the military authorities and the answers made were based on the information received from them. Our position was stated by the President when he interrupted the reading of the answer of the Japanese Government to the protest regarding the death march and other alleged atrocities in the Philippines which had occurred long before this defendant assumed office. I quote from the transcript:²

1. Summation J-73.
2. Tr. 14,823, 14,824.

"THE PRESIDENT: Colonel Woolworth, do you
1 submit that this material you have been reading estab-
2 lishes breaches of the convention by way of admission
3 or otherwise?

4 "MR. WOOLWORTH: This is a reply--

5 "THE PRESIDENT: Or that it implicates the
6 accused in any such breach? I know what the document is,
7 but I would like to know why you are reading it to the
8 extent that you are reading it.

9 "MR. WOOLWORTH: If the Tribunal please, the
10 sole purpose in reading this reply by SHIGEMITSU, who
11 is in the dock, is that it has been proven before in
12 this case that the facts which he denies -- were, as a
13 matter of fact, true, that those atrocities had been
14 committed, and I believe it implicates him.

15 "THE PRESIDENT: What he says by way of excul-
16 pation does not tend to prove his guilt unless in the
17 course of excusing himself he makes admission.

18 * * * * *

19 "MR. WOOLWORTH: If the Tribunal please, it
20 appears to the prosecution that the sending of this
21 letter over the signature of the Japanese Foreign Minister,
22 in which statements are contained which have been shown
23 to be absolutely false, carries the imputation of intent
24 on his part and guilty knowledge of the offences which
25

had been committed.

1 "THE PRESIDENT: That would be clear if this
2 could be shown to be pure fabrication on the part of the
3 defendant SHIGEMITSU. But it is otherwise if he was
4 passing on information he had obtained from others, his
5 subordinates included."
6

7 * * * * *

8 There is no evidence that the answer to this
9 protest or to any other was a fabrication by the defen-
10 dant, it is so factual and detailed, stating justification
11 and reasons in many cases, as well as denials that it was
12 obviously based on report of an investigation which had
13 been made by the military authorities.
14

15 70. Other answers denied the facts alleged,
16 and the prosecution asserts that these facts have been
17 proved by evidence that they have produced. But there
18 is no evidence that the accused knew of these facts, nor
19 that he did not accurately report the information given
20 him by the military or naval authorities which had made
21 the investigation. An example is the attacks on survivors
22 from Allied merchant ships by Japanese submarines referred
23 to in paragraph SS-32 of the individual summation. Since
24 the attacks occurred thousands of miles away in the Indian

25 1. Ex. 2024-A-3, Tr. 14,796 to 14,822, 14,826-7,
Ex. 2024-A-4, Ex. 2024-A-5.

Ocean, it is difficult to understand on what theory this
1 defendant could be held responsible. That he requested
2 an investigation, that it was made, and that he accurately
3 reported it is reflected in the evidence. The witness
4 YAMAMOTO, Yoshio, testified:

5 "22. Q. Were protests received in connection
6 with the sinking of Allied Powers merchant ships by
7 Japanese submarines in the Indian Ocean during the war
8 and perpetration of atrocities on the survivors?
9

10 "A. I do not remember the date and the number
11 of times the protests were received, but we did receive
12 some.

13 "23. Q. What steps were taken at the time of
14 the receipt of those protests?

15 "A. The parties in charge of the submarines
16 were asked to make an investigation of those connected
17 with it. Inasmuch as the matter involved operations,
18 the investigation was required to the Naval General
19 Staff and the fact was thoroughly investigated. But as
20 they reached the conclusion that since the Japanese sub-
21 marines were not involved in the protests we replied to
22 such effect to the Foreign Office."
23

24 The reply of the accused was:

25 "Concerning the matter I have had the competent
1st Ex. 3066, Tr. 27,382.

authorities make strict investigations in each case

1 indicated; and it is clear that Japanese submarines at
2 least had nothing to do with such facts as are mentioned
3 in the protest.¹

4 71. Replies were not apparently made to all
5 the letters requesting the list of prisoners on Wake Island.
6 The list of prisoners of war was not kept by the Foreign
7 Office but by the Prisoner-of-War Information Bureau² and
8 there is no evidence that the requests for information
9 were not forwarded in the manner outlined. There is evi-
10 dence that no reply was received from the Prisoner-of-
11 War Information Bureau or the navy on which a reply could
12 be based. The 2d Section of the Naval Affairs Bureau
13 was the reception organ³ while the 1st Section prepared
14 the reply. One witness from the 1st Section testified
15 he never heard of certain memoranda inquiring about prison-
16 ers, but it is impossible to identify any of these memo-
17 randa with any of the evidence in the case.⁴ This, if
18 true, would indicate that the protests were never deliv-
19 ered to the 1st Section, that no reply was sent by the
20 navy which the Foreign Office could forward to protect-
21 ing powers.
22

- 23
24 1. Ex. 2102, Tr. 15,177.
25 2. Ex. 1965-A, p. 9, Articles 15 to 18.
3. Ex. 3065, Tr. 27,358-9, Tr. 33,371-2.
4. Ex. 3066, Tr. 27,378.

72. The provisions of domestic law relevant to
1 visits to camps by neutral representatives are contained
2 in the following articles of the Detailed Regulations
3 for the Treatment of Prisoners of War.
4

"Article 11. Persons who desire to enter the
5 prisoner of war camps shall obtain permission from the
6 commandant of the camp. However, in the case of foreign-
7 ers, such permission shall be granted by the Minister of
8 War.
9

"Article 12. An inquiry shall be made as to the
10 object, status, occupation, etc., of any person who
11 desires to enter a prisoner of war camp, and extreme
12 care shall be taken for controlling them and for prevent-
13 ing espionage, and no persons shall be allowed to enter
14 unless it is necessary.
15

"Article 13. When an interview with a prisoner
16 of war has been authorized, necessary restrictions regard-
17 ing the place, time of interview, and the range within
18 which the conversation shall be conducted may be imposed
19 for the purpose of control and a guard shall also be
20 present at this interview."
21

73. I have already shown that the Minister of
22 War had sole jurisdiction over prisoner of war camps.
23 Three requirements are evident from the provisions I
24 1. Ex. 1965-A, p. 8.
25

have just quoted and are applicable to all requests by
1 neutral representatives to visit camps whether in Japan
2 or in occupied territories.

3 (a) Since these representatives were foreigners,
4 only the Minister of War could grant such requests. It
5 was a decision for him to make; the Foreign Minister had
6 no right to make it.

7 (b) Military security was a paramount considera-
8 tion and in time of war only military authorities could
9 decide what might endanger such security.

10 (c) A third person was required to be present
11 at all interviews.

12 74. Many protests were filed because of the
13 refusal of the military authorities to permit neutral
14 representatives, foreigners, to visit camps. A request
15 by the United States Government that interviews be
16 allowed without the presence of a witness was submitted
17 to the War Minister by the Foreign Ministry in July
18 1942 with a statement that the latter ministry believed
19 the request should be granted. The War Ministry, however,
20 replied:

21 "I ask you to duly understand that our policy
22 is not to permit the representatives of International Red
23 Cross Committee and of those countries protecting the
24

25 1. Ex. 3529, not read.

1 interests of enemy countries to hold interviews with war
2 prisoners and those interned by the army without the
3 presence of an observer.

4 "The reasons for drafting this reply:

5 "1. Article 10 of Detailed Regulations for
6 Treatment of War Prisoners. 'In case any interview with
7 any war prisoner is permitted, considerable limitations
8 should be made, to maintain strict order, as to the place
9 and time for that interview and it should be done in
10 the presence of an observer.'

11 "2. There is a great danger of this being mis-
12 used for transmission of secret information."¹

13 "75." The policy therefore was set long before
14 this defendant assumed office. But it was not only a
15 matter of policy. Under the laws of Japan, only the War
16 Minister could grant permission to the foreigners who
17 were requesting it, and he refused permission on two
18 grounds: (1) military security and (2) Japanese law
19 required presence of a third party. It is submitted that,
20 in conveying this refusal of permission by the Ministry
21 of War to the protecting power, the defendant was per-
22 forming his duty; if he had not done so, he would have
23 violated his duty and his answer would not have been
24 true.
25

1. Ex. 3529, not read.

76. From the early days of the war, visits¹
1 to camps in Japan proper had been made. Some protests
2 were filed because permission was not granted to visit
3 all camps in Japan but permission could only be granted
4 by the Minister of War and the Foreign Minister could
5 only convey his decision to the neutral authorities.²

77. Many protests were, however, filed because
7 of the refusal of the military authorities to grant
8 permission to neutral observers, foreigners, to inspect
9 camps in occupied territories. Here again it was a deci-
10 sion made by the Minister of War who alone had authority
11 to grant such requests,³ not by the Foreign Minister who
12 had no such authority.⁴ Here again in July 1942, long
13 before this defendant assumed office, a request had been
14 submitted by the Foreign Office to the War Ministry which
15 answered:
16

17 "Since it is the Imperial policy not to permit
18 visits by agents of the protecting power of enemy coun-
19 tries to prisoners of war and to internees in occupied
20 areas, and the adjoining operational areas, reply should
21 be made accordingly to the Swiss Minister."⁵

22 The notice of this policy of the War Ministry
23

- 24 1. Ex. 3140, Ex. 3040, Tr. 27,149.
25 2. Ex. 3367-A.
3. Ex. 1965-A quoted above.
4. Ex. 3898, Tr. 38,789.
5. Ex. 3367-A, See language correction, 16 March 1948.

1 was given the protecting powers in July 1942, long
2 before this defendant became Foreign Minister.¹ Here again,
3 this was a policy of the military authorities,² the grounds
4 for which were reasons of military security in time of
5 war which no civilian had a right to judge.³ Neverthe-
6 less, the Foreign Office continuously endeavored to obtain
7 such permission.⁴ At last on 8 December 1944 notice was
8 given that visits would be permitted to camps in the
9 southern area in places where they would not hinder mili-
10 tary operations, provided the governments of the Allied
11 Powers would give reciprocal rights to the International
12 Red Cross to visit camps in territories occupied by the
13 Allies, in which Japanese prisoners of war and civilians
14 were interned.⁵ The Swiss Minister did not notify the
15 Japanese Government until 7 April 1945 that reciprocity
16 already existed with the United Kingdom,⁶ and it was not
17 until 10 May 1945 after SHIGEMITSU had already resigned
18 that the Swiss Minister sent notice that the United
19 States would make arrangements for inspection at Saipan,
20 Guam and Tinian and would endeavor to obtain permission
21 from appropriate authorities for visits to camps in
22

- 23 1. Ex. 2016-A, A-8, A-9, Tr. 14,730.
24 2. Ex. 3898, Tr. 38,795.
25 3. Ex. 3040, Tr. 27,150.
4. Ex. 3898, Tr. 38,795.
5. Ex. 2016, A-56, Tr. 14,743; Ex. 3898, Tr. 38,794.
6. Ex. 2016, A-60, Tr. 14,744.

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New Caledonia. Camps in Thailand and Singapore were
visited.

78. Article 86³ of the Geneva Convention providing
for visits to camps and interviews with prisoners by
representatives of third powers without the presence of
an observer had been one of the reasons for Japan's
refusal to ratify that convention,⁴ since it had been
stated by the navy that this provision would be harmful
from a military point of view. The requirement under
that article is not unqualified and we submit that the
qualification of military security was one a civilian
in time of war could not question.⁵ Furthermore, as I
have pointed out, its enforcement would have contravened
domestic law.⁶ These were the two reasons given by the
military for refusal to permit visits and obviously they
were within the meaning of the phrase mutatis mutandis
used by Japan in its declaration that it would so apply
the Geneva Convention.

1. Ex. 2016, A-64, Tr. 14,744.
2. Ex. 3898, Tr. 38,799.
3. Ex. 15A-113, not read.
4. Ex. 3043, Tr. 27,179.
5. Defense summation M, paragraph 7, 8.
6. This summation, paragraph 72.

1 79. It has already been argued that Japan
2 not having ratified Hague Convention IV,^{1.} was not
3 bound by it,^{2.} that the declaration that she would
4 apply it mutatis mutandis was not an adherence, but
5 merely an expression of intention,^{3.} that the meaning
6 of the phrase should depend on the evidence of those
7 who used it,^{4.} that it was meant certainly to include
8 charges made necessary by conflicts with domestic
9 law^{5.} since that was one of the reasons Japan had
10 refused to ratify the Convention.^{6.}

11 80. We submit that the Japanese Government
12 had in no way extended the meaning of "mutatis
13 mutandis" by stating on 28 April 1944:

14 "By the above-mentioned intention of the
15 Japanese Government to apply 'mutatis mutandis' the
16 provisions of 1929 Convention relating to prisoners
17 of war to American prisoners of war it is meant that
18 the provisions of the Convention will be applied
19 with modifications necessary to conform with the
20 provisions of existing laws and regulations of the
21 country and with the requirements of the actual
22 situation as it develops."^{7.}

24 1. Ex. 15, p. 113, not read.

25 2. Defense summation E, paragraphs 34, 35.

3. Idem. Paragraphs 35, 36.

4. Idem. Paragraph 37.

5. Def. Sum: M. Paragraphs 4-7.

6. Idem. Paragraph 5, 6; Ex. 3045, T. 27140.

7. Ex. 2024 A-4 Ept read.

1 81. It had had that meaning from the begin-
2 ning. TOGO's statement quoted by the prosecution in
3 its summation^{1.} that

4 "Mutatis mutandis' then I supposed to
5 imply that in the absence of serious hindrances the
6 Convention would be applied; I assumed (although this
7 was only an assumption on my part) that when the
8 requirements of the Convention came into conflict
9 with the provisions of domestic law, the former would
10 prevail"

11 was, as he says, a bare assumption within his own
12 mind. No assurance or commitment to the Allies was
13 made to that effect, all other evidence refutes it.
14 Conflicts with domestic law were one of the reasons
15 Japan had not ratified the Geneva Convention though
16 apparently TOGO did not know of this.^{2.}

17
18 82. TOJO, Premier and Minister of War, at
19 the time the phrase mutatis mutandis was first used
20 testified:

21 "In response to an inquiry from the
22 Foreign Office regarding the Geneva Protocol, the
23 War Ministry replied that although it could not
24 announce complete adherence to this protocol, it
25

1. J-52.

2. Ex. 3043, T. 27180.

perceived no objection to the application, with
1 necessary reservations, of its stipulations concern-
2 ing prisoners of war. In January 1942 the Foreign
3 Minister announced through the ministries of
4 Switzerland and Argentina that Japan would apply the
5 protocol with modification (Junyo) Ex. 1469-1957).
6 By the term 'apply with modification' (Junyo) the
7 Japanese Government meant that it would apply the
8 Geneva Protocol with such changes as might be necessary
9 to conform to the domestic law and regulations as well
10 as the practical requirement of existing conditions."^{1.}

12 83. Compare the statement in the letter of
13 28 April 1944:

14 "Modifications necessary to conform with
15 the provisions of existing laws and regulations of
16 the country and with the requirements of the actual
17 situation as it develops."^{2.}

18 And you find no difference.

19 84. Furthermore, the testimony of MATSU-
20 MOTO, who served under TOGO as head of the Treaty
21 Bureau, indicates that this statement of 28 April
22 1944 in no way changed the meaning of this phrase.
23 In his affidavit he testified:^{3.}

- 24
25
1. Ex. 3655, T. 36416.
 2. Ex. 2024 4-4 not read.
 3. Ex. 3039, T. 27135-6.

1 Japan had not ratified the Geneva Conven-
2 tion by reason primarily of the relations between the
3 provisions of domestic law with those of the Convention,
4 and the problems growing from this inter-relation
5 would still have given rise to such difficulty in the
6 event of an undertaking to apply the Convention com-
7 pletely and unconditionally. Moreover, it was antici-
8 pated that great difficulties in practice would result,
9 as large-scale warfare spread over East Asia, if we
10 were to apply strictly all the stipulations of the
11 Geneva Convention, which Japan had not ratified. It
12 was for these reasons that it was replied that the
13 stipulations of the Convention were to be applied
14 mutatis mutandis. It was the intention of Japan with
15 respect to the treatment of prisoners of war that
16 the stipulations of the Geneva Convention be applied
17 so far as circumstances permitted; in other words,
18 unless there were hindrances or obstacles which made
19 its application impracticable.

20
21 85. It is unnecessary to point out that
22 where protests concern the commission of atrocities
23 by combat troops or maltreatment of prisoners, the
24 offenses alleged in the protests had occurred before
25 the protests were received and this defendant could
not be held responsible for such offenses. In many

cases as those of the alleged atrocities during and
1 after the Bataan Campaign in the Philippines, they
2 occurred long before this defendant became Foreign
3 Minister on 20 April 1943.^{1.} The decision to build
4 the Burma-Thai Railroad was made by the Chief of the
5 Army General Staff and the Construction was commenced
6 in June 1942, also long before this defendant became
7 Foreign Minister.^{2.} Most of the actions or omissions
8 alleged occurred in far-distant theatres of war or in
9 camps in occupied territories also thousands of miles
10 away from Tokyo. The prosecution in its individual
11 summation says that this defendant denied the facts
12 stated in protest, that the answers contained false
13 information and that the evidence submitted by it
14 shows that the answers were also false. We submit
15 that this is beside the point. In no case has any
16 proof been offered that the accused knew that the
17 information upon which these replies were based was
18 false or that he had any reason to believe it was false.

20 86. Many witnesses among the military and
21 naval men have testified that they had no knowledge
22 of the acts or omissions alleged in the protests and
23

24 1. Ex. 2016.

25 2. Ex. 3855, T. 36424; Ex. 475, T. 5524;
Ex. 1989, T. 14633.

1 in many cases disclosed by the evidence. If they did
2 not know, is there any evidence, or can any inference
3 ever be drawn, that this defendant, a civilian in
4 Tokyo, knew of them or had any reason to disbelieve
5 the information which he received denying the facts?
6 I submit that no evidence has been produced and no
7 such inference can be drawn. Rigid censorship was
8 imposed by the military against any reports which
9 gave the impression of any cruel treatment. This
10 would have prevented any knowledge reaching him.^{1.}

11 87. As outlined in the General Summation
12 for the defense, many witnesses testified that the
13 instructions for fair treatment of prisoners of war
14 had been given.^{2.} and many reports of inspectors by
15 Red Cross delegates and neutral observers,^{3.} the
16 Vatican representatives,^{4.} have been introduced into
17 evidence. Letters of appreciation by men who were
18 held prisoners have also been produced.^{5.} These
19 indicated no evidence of cruelty and no reports of such
20 men showing bad conditions or cruelty have been offered
21 by the prosecution. That the defendant depended on

22 1. Ex. 1977, T. 14539.

23 2. Defense summation, pages 26-29.

24 3. Ex. 3041-A, T. 27169, T. 17174; Ex. 3042-A, T. 27186;
Ex. 3308, T. 30714; Ex. 3309, T. 30184.

25 4. Ex. 3141, T. 27957.

5. Ex. 3122, T. 27846.

1 these reports is evidenced by the fact that he cites
2 them in replies to protests.^{1.} True, the prosecution
3 has offered evidence that the camps were cleaned up
4 before the inspectors arrived,^{2.} and that prisoners
5 were intimidated,^{3.} but if these deceived the in-
6 spectors, what possible likelihood was there that the
7 defendant could have known anything about the alleged
8 conditions?

9 88. The prosecution's general summation
10 is replete with statements to the effect that this
11 was known to the Japanese Government." These allega-
12 tions being analyzed, we find their basis to be pro-
13 tests, the facts of which were denied by the military
14 authorities who had the authority, duty and means to
15 investigate, whereas this defendant had none,
16 broadcasts alleging facts or warnings which added
17 nothing to the protests and a few reports made by one
18 military or naval man to another military or naval
19 man^{5.} without a trace of evidence that this informa-
20 tion ever reached the Foreign Ministry. The prosecution

- 21
22 1. Ex. 2024 A-3, pp. 17,18; Ex. 2024 A-4, p. 11;
23 Ex. 2024 A-5, p. 3.
24 2. Ex. 3843, T. 38153; Ex. 3843-A, T. 38155;
25 Ex. 3843-B, T. 38156.
3. Ex. 3844, T. 38168.
4. Ex. 1488, T. 12821.
5. Ex. 3066, T. 27379; Ex. 1989, T. 14634.

1. in fact states in its general summation: "The
1 expression 'Japanese Government' is here used in a
2 very wide sense as embracing not merely members of
3 the cabinet but senior officers of the army and navy,
4 ambassadors and senior public servants." It then is
5 evident that in using the expression throughout its
6 summation it asks the Tribunal to assume that knowledge
7 of one or more of these officials constitutes knowledge
8 of all of them, that any report from one army or navy
9 officer to another army or navy officer infers
10 knowledge, not only to all senior army and navy officers
11 but also all civilian officials of the government, an
12 assumption and inference which is totally unwarranted.^{2.}

14 89. The prosecution in its individual summa-
15 tion refers to an exhibit entitled "Draft submitted
16 for Approval of Higher Officers,' Matter Relating
17 to the Establishment of an Office Concerning Japanese
18 Residing in Enemy Countries and Enemy Nationals Residing
19 in Japan." The prosecution nowhere states what it
20 believes this exhibit proves. It refers to it as a
21 regulation but we submit that even a casual reading of
22 it shows that it is not in any sense a regulation but
23

24 1. J-2.

2. See also defense summation, Sec. B (TAKAYANAGI),
pp. 142,143.

25 3. SS-23.

4. Ex. 3845, T. 38174.

just what it is labeled, a draft plan. The prosecution quotes one paragraph of this draft plan but omits another significant one which reads, "1. Work to be Handled by the New Office (Full Liaison shall be maintained with bureaus and sections concerned)."^{1.}

Even in the paragraph quoted by the prosecution it does not state that this bureau looks after the treatment of prisoners of war but merely that it "looks after business related to the treatment." I submit that this only means it looks after the business of the Foreign Office related to such treatment. That is that the office should be the contact with the protecting powers to receive their requests for information and for visits to camps, to provide the liaison necessary within the government to do this work and to forward the answers to the protests and requests -- in other words, this was an assignment of certain work, then being performed by the Foreign Office, to a particular bureau.^{2.} It differs radically from, for example, the Prisoner-of-War Information Bureau which was established by Imperial ordinance under which the authority concerning information and records of prisoners of war was delegated to the War Minister.^{3.}

1. Ex. 3845, T. 38174.
2. Ex. 3898, T. 38788.
3. T. 14879.

1 Since the establishment of this office was an action
2 within the Foreign Office, rather than by government
3 or cabinet action, it in no way expanded nor could it
4 expand the duties or competence of the Foreign Minister.
5 The draft was provisional and changes were made.^{1.} The
6 functions and duties of the bureau set up in the
7 Foreign Office are shown by a document issued by that
8 bureau shortly after it was established, which clearly
9 sets forth the functions and duties actually performed
10 by that office as follows:
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1. T. 38899.

"3. Liaison business relating to enemy
1 nationals who are prisoners of war, internees, or
2 residents in camps under Japanese authority.

"The liaison business relating to the treatment
3 of the above-mentioned enemy nationals (clothing, food
4 living quarters, inquiries into their safety, furnishing
5 of lists, appointment of, and visits by the countries
6 representing their interests and representatives of
7 the international committee of the Red Cross, correspond-
8 ence, relief, labor, punishment, repatriation).

"Such liaison business includes that of handling
9 of outgoing communications to representations from
10 enemy countries and other sources."¹

11 These were the duties performed by the
12 Treaty Bureau before this office was established, they
13 were the duties performed by the new bureau after it
14 was established and throughout the time the defendant
15 was Foreign Minister.² On the date the office was
16 set up the name was fixed as "Bureau in Charge of
17 Japanese Nationals in Enemy Countries", which shows
18 its primary duties and together with the exhibit to
19 which I have just referred showing that the business
20 was liaison, shows that the draft plan was not followed
21 either in its entirety or in the all-important matter
22
23
24
25

1. Ex. 3896, T. 38,784
2. Ex. 3894, T. 38,782

of the scope of its responsibility.¹ Since the Bureau

1 was set up wholly by ministerial action within the
 2 Foreign Ministry, not by any regulations, ordinances,
 3 or law, no approval by any higher source such as the
 4 Cabinet was needed or obtained and no jurisdiction
 5 over treatment or custody of prisoners of war was
 6 imposed upon the Foreign Office. The War Ministry
 7 continued to have sole jurisdiction and authority.²

8 90. It remains only to discuss the
 9 testimony of SUZUKI, Tadakatsu, former Chief of the
 10 Bureau in Charge of Japanese Nationals in enemy
 11 countries³ (not of the office concerning Japanese
 12 residing in enemy countries and enemy nationals
 13 residing in Japan as alleged by the prosecution -
 14 SS-13). The prosecution alleges that his testimony
 15 confirms this defendant's guilt since it states:
 16

17 "He testified only that:

18 "A. SHIGEMITSU knew of the protests of
 19 the protecting powers.

20 "B. In spite of that he never took up the
 21 matters of prisoners of war before the Cabinet.

22 "C. SHIGEMITSU did not permit visits by
 23 the representatives of protecting powers to the

24 prisoner of war camps."

- 25 1. Ex. 3897, T. 38,785
 2. Ex. 3895, T. 38,781, 38,782
 3. Ex. 3898, T. 38,785

1 This does not correctly reflect his testimony
2 so far as it goes, nor does it take account of the
3 fact that he testified to much more - that SHIGEMITSU
4 went far beyond his duty in an effort to ameliorate
5 the conditions of prisoners of war as I shall
6 point out later. I will deal first with (A) and
7 (C).

8 (A) Although none of the pages cited in
9 the footnote contain any evidence showing that
10 SHIGEMITSU knew of the protests by protecting powers,
11 he of course knew that protests were being received.
12 In view of the volume of work of the Foreign Office
13 he could not of course handle it personally or do all
14 this work himself. The witness SUZUKI testified that
15 as for most of the work or the work generally he himself
16 did his utmost to clear up the matters.¹

17 (C) There is also no evidence on the pages
18 of the transcript cited by the prosecution that
19 "SHIGEMITSU did not permit visits by the representatives
20 of protecting powers to prisoner of war camps". I
21 have shown in this summation that the War Minister
22 and the War Minister alone could give such permission
23 and that the defendant merely conveyed his decision
24 to the protecting powers and I will not argue this
25

1 point again. The testimony of the witness on the
2 other hand shows that SHIGEMITSU and his subordinates
3 endeavored long and earnestly to obtain such permission
4 from the War Ministry but that the military authorities
5 would not readily comply with such requests.¹ The
6 witness testified further that as a result of the
7 efforts of the Foreign Office permission to visit
8 such camps on a reciprocity basis was at last granted
9 in December 1944.²

10 91. As to (B), the witness testified that
11 he did not "think" that the accused took up the matters
12 of prisoners of war before the Cabinet.³ It is
13 submitted first, that it has not been shown that the
14 defendant had any legal duty to do so. Furthermore
15 all the information which he had from the ministry
16 whose duty it was to investigate and report the
17 information on which answers to protests were based
18 reported that there was no delinquency. These
19 reports came from his colleague in the Cabinet, the
20 War Minister. The War Minister had sole responsibility
21 for the treatment and custody of prisoners of war.
22 The witness testified that according to Japanese
23 practice and custom it was inconceivable that anything
24

- 25 1. Ex. 3898, T. 38,795,
2. Ex. 3898, T. . . , 38,795; Ex. 2016, A 56
3. T. 38,911

1 relating to prisoners of war should be taken up by
2 the Cabinet unless the matter were submitted by the
3 War Minister.¹ His testimony is borne out by Article
4 6 of the Imperial Ordinance on the Organization of
5 the Cabinet² which provides that the initiative in
6 taking up matters is with the minister in charge,
7 in this case the War Minister.

8 92. It is submitted that SHIGEMITSU took
9 far more effective and practical steps than that of
10 officially calling the matter to the attention of
11 the Cabinet. February, 1944, on the occasion of the
12 American protests he took these matters up with TOJO,
13 the War Minister,³ who then included in his own person
14 the offices of Premier, War Minister, and Chief of
15 the Army General Staff.⁴

16 93. In October 1944, he took further more
17 effective and practical steps by taking these matters
18 up with the Supreme Council for the Direction of the
19 War. Unlike the Cabinet, this body included all
20 officials that had any factual or legal competence over
21 the custody and treatment of prisoners of war.⁵

- 23 1. T. 38,913
24 2. Ex. 70, See also Ex. 73
25 3. Ex. 3898, T. 38,791
4. Ex. 1278, T. 795, 796
5. Ex. 3898, T. 38,793

1 The members of this Council, besides the Foreign
2 Minister, were the Premier,¹ and the War and
3 Navy Ministers, and, not members of the Cabinet but
4 having great competence and power in these matters,
5 the Chiefs of the Army and Navy General Staffs. The
6 Secretariat of the Council were the Directors of the
7 Military and Naval Affairs Bureaus, both of whose
8 offices dealt with prisoner of war matters, and the
9 Chief Secretary of the Cabinet.² On occasions the
10 Vice-Chiefs of the General Staffs, the Army and Navy,
11 attended the Council and members of the Cabinet
12 concerned. In this Council there was no chairman,
13 the Premier was in charge of expediting matters.³
14 Like all the Liaison bodies this Council was formed
15 because the Cabinet and other ordinary Government
16 bodies did not have sufficient power to deal with
17 matters under the military command. That this body

- 19 1. In the Summation for the defendant KOISO (N-12, pp.
20 112-115) reference is made to the testimony of the
21 witness TANAKA, Takeo (T. 32,544). TANAKA testified
22 only that prisoner of war matters were not dealt
23 with by the Cabinet Council. The witness SUZUKI
24 also mentioned (T. 38,914) in that Summation testified
25 only that he did not think that SHIGEMITSU discussed
prisoner of war matters individually with KOISO.
2. Ex. 3390, T. 32,537
3. Ex. 3390, T. 32,537

1 was a more effective instrument for dealing in such
2 matters than the Cabinet and that, its decisions
3 governed the decisions of the Cabinet has been admitted
4 by the prosecution. It has been called by the
5 prosecution the "old Liaison Conference under another
6 name"¹ and this Tribunal well knows the power of the
7 Liaison Conference. It is even stated by the prosecution
8 that this council had more power. I quote:

9 "The succeeding (KOISO) Government separated
10 the military from the administrative and set up this
11 new body called 'The Supreme Council for the Direction
12 of War'. As a result of this reorganization, the
13 Liaison Committee was abandoned largely because it
14 did not have enough power and was unable to iron out
15 the differences of opinion in high governmental circles,
16 particularly upon the question of industrial production.

17 "The new Supreme Council was an effort to
18 unify the supreme command and national affairs after
19 the basic administrative and military policies had
20 been formulated. Its task was one of integration with
21 particular reference to military operations and production.

22 "The new Supreme Council was responsible
23 for decisions relating to the basic plans for the
24 execution of the war and the all-important aircraft and
25

1. T. 681

1 other war production. The basic policies decided by
2 the Council were carried out by the Imperial Headquarters
3 and the Government. The relations between the new
4 Council and the Government were not based on legislating
5 but rather on political considerations. In other
6 words the Cabinet was not bound legally by the decisions
7 of the new Council, but from a political stand-point,
8 as a matter of course, it was governed by the decisions
9 of the Council".¹

10 94. It is submitted that in choosing this
11 body whose decisions governed those of the Cabinet
12 Council, he chose the more effective instrument and
13 the events which followed showed this. As a result of
14 his doing so, the Prisoner of War Information Bureau
15 sent its members to prisoner of war camps to instruct
16 the responsible officers regarding the considerate
17 treatment of prisoners of war.² Brigadier Blackburn
18 testified to the improvement of prisoners of war from
19 October 1944 to April 1945 when the defendant went out
20 of office.³ The witness YAMAMOTI, Yoshio, testified
21 that in December, 1944, the instructions were issued
22 to make a survey report on the conditions of prisoners
23 of war held outside Japan and that when difficulties
24

25 1. T. 631-2

2. Ex. 3898, T. 38,794

3. T. 11,618

1 in traffic and communication resulted in reports¹
2 not reaching Tokyo, the instructions were renewed.
3 The fact that the reports did not come in was, of course,
4 no fault of this defendant. By December of that year
5 he had succeeded in persuading the military authorities
6 to permit visits to camps in occupied territory.

7 95. Testimony of the Witness SUZUKI shows
8 many other efforts to ameliorate the conditions of
9 prisoners of war beyond the limits of the duty of
10 this defendant. The more important include:

11 (A) Efforts to expedite the distribution
12 of relief goods and funds, efforts to provide facilities
13 for sending telegrams and to obtain permission for
14 neutral representatives to visit camps in occupied
15 territories, informal conferences of officials in
16 the Foreign Office with officers of the military and
17 naval services during which it was urged by Foreign
18 Office officials that conditions be corrected if the
19 facts alleged in the protests should in any way be
20 true.²
21

22 (B) Efforts in April 1944 to set up a Cabinet
23 Committee to discuss international law matters which
24 did not succeed because matters of prisoners of war

25
1. Ex. 3066, T. 27,376
2. Ex. 3898, T. 38,790, 38,791, 38,794

1 were exclusively handled by the army.¹

2 (C) Arrangements for the exchange of
3 internees and the transportation of relief goods to
4 civilian internees and prisoners of war from October,
5 1943, and arrangements for another ship Teia Maru
6 as a result of a request by the United States Govern-
7 ment late in 1943.²

8 96. The prosecution in its general summation
9 says "Responsibility for an act follows the power and
10 duty to do the act"³ It is submitted that the duties
11 of the Foreign Minister are defined by Japanese law
12 and it is submitted that no proof has been produced
13 showing he had any duty with regard to the conduct
14 of troops in the field nor over the treatment and custody
15 of prisoners of war. To have duty he must be provided
16 with commensurate power and he had no power over
17 treatment or custody of prisoners of war. It is alleged
18 that he "deliberately and recklessly failed to take
19 adequate steps". It is submitted that he had no power
20 to take such steps, no power of command, just as essential
21 to proof under Count 55 as under Count 54, and could
22 therefore have no duty to take them. His duty was to
23 receive protests, requests for information and to visit
24
25 1. Ex. 3898, T. 38,792, 38,908,
2. Ex. 3898, T. 38,794, 38,795, 38,797; Ex. 3312, T. 30,218
3. Pros. Sum. K-21.

1 camps, and to forward answers if and when he received
2 them from the persons who alone had the duty, power
3 and means to supply such information and to grant such
4 requests. He could not say to the Swiss Minister:
5 "I refuse to give you that information," nor to the
6 Minister of War: "Our enemy has said these acts
7 occurred. You say they did not. I will not give
8 your answer to the Swiss Minister." He had no power
9 to investigate in order to gain knowledge and there-
10 fore could have no duty to do so and was in fact not
11 permitted to do so. He could only forward the information
12 he received if and when he received it, and would have
13 violated his duty had he not done so. He had no
14 power to give permission to visit camps, no power
15 to order the Minister of War in charge of camps to
16 give permission especially when the Minister of War
17 said in time of war such permission would violate
18 military security. Had he purported to do so when
19 those who had power refused to give permission, he
20 would have been untruthful and would have violated
21 his duty. No duty under the laws of Japan has been
22 proved, no power under the laws of Japan has been
23 proved, the one must be commensurate with the other;
24 no disregard of the duties of his office in the Japanese
25 Government; "no evidence that he deliberately and

recklessly disregarded his legal duty," rather that
1 he performed his duty. While he had no knowledge
2 and no power to gain knowledge, he was concerned
3 because he valued the reputation of his country and
4 because of his humanitarian instincts if the facts
5 alleged in the protest which he had no power to
6 investigate should by any chance be true.¹ He could
7 only persuade and while he had no legal duty to do so,
8 he did persuade. And he took the matter up with the
9 most powerful body in war time Japan, one more powerful
10 than the Cabinet, formed like all the liaison bodies
11 because the Cabinet and other ordinary Governmental
12 bodies did not have sufficient power to deal with
13 matters relating to military command. By the prosecution's
14 own test² "No man has been charged with either crimes
15 against peace or conventional war crimes and crimes
16 against humanity unless he is in some way responsible
17 for the aggressive policy followed by Japan which gave
18 rise to those crimes". It is submitted that he should
19 not have been charged under Counts 54 and 55 since
20 there has been no proof that he was in any way responsible
21 for such policy, rather that he opposed it. We submit
22 that there is no evidence against this defendant on
23 Counts 54 and 55.
24
25

1. Ex. 3898, T. 38,791, 38,793

2. Pros. Sum. K-3.

surrender, he worked with SHIGEMITSU for the termination
1 of the war.¹ The first conference recorded in his diary
2 was on 13 May 1943, within a month of SHIGEMITSU's
3 appointment.² Again in January, 1944, SHIGEMITSU stated
4 to KIDO that he believed that unconditional surrender
5 was unavoidable.³ KIDO's Diary shows that they conferred
6 again on 26 June 1944, and he testified that they worked
7 out a plan under which KIDO would assume responsibility
8 for the Imperial Court and SHIGEMITSU for the Govern-
9 ment.⁴ They conferred again on 6 and 15 July⁵ and
10 throughout the summer and fall of 1944. Another con-
11 ference is recorded on 8 March 1945.⁶

13 99. SHIGEMITSU and other members of the KOISO
14 Cabinet disagreed with the Premier regarding negoti-
15 ations with Miao Ping who claimed to have contact with
16 the Chungking Government since it was evident that there
17 was no chance of success and since they felt that he was
18 not a reliable person with whom to deal; that full
19 confidence and trust could not be placed in him.⁷ The
20 fact that after the war Miao Ping was tried, convicted,
21

- 22 (1. Ex. 3340, T. 31069.
23 2. Ex. 3340, T. 31069
24 3. Ex. 3340, T. 31073; see also T. 31224.
25 4. Ex. 3340, T. 31075.
5. Ex. 3340, T. 31106.
6. Ex. 3340, T. 31114.
7. Ex. 3340, T. 31115; see also T. 31245, 31246
Cf. defense summation N-12, pages 54, 98.)

1 and executed by the Government with which it is claimed
2 he had contact ¹ is, I submit, conclusive evidence of his
3 unreliability and that there was no chance of success
4 through him as an intermediary. The disagreement in-
5 volved the approach not the desire or efforts for peace.

6 100. The accused worked for peace not only
7 through his own Government but also through Germany to
8 which country Japan was bound by agreement not to make
9 a separate peace. In August, 1944, he conferred with
10 German Ambassador Stahmer regarding peace between
11 Germany and Soviet Russia as the first step towards
12 common peace between all the nations concerned, ² which
13 conversation Stahmer reported to his Government. Later,
14 in September, Stahmer and the accused conferred again,
15 Stahmer bringing the reply in the form of an aide-memoire
16 in which the German Government stated there was no
17 indication the Soviet Government was ready for an under-
18 standing with Germany. ³ These talks had been initiated
19 by the Foreign Minister. ⁴ He conferred with KIDO on 21
20 August about these matters, ⁵ reported them to the Emperor
21 on 31 August 1944. ⁶

- 23 (1. See T. 32263.
24 2. T. 24483-4
25 3. Ex. 2745, T. 24485, 24486.
4. T. 24488.
5. Ex. 3340, T. 31107-8.
6. Ex. 3340, T. 31108.)

101. He then made plans for the negotiation of peace through the Soviet Union with which country Japan had a neutrality pact. He reported these conversations with Stahmer at a meeting of the Supreme Council for Direction of War on 15 September 1944.¹ He then laid before the meeting a draft of measures to be taken vis-a-vis the Soviet Union.² This detailed and complete plan shows not only the intent of maintenance of neutrality, improvement of diplomatic relations between Japan and the Soviet Union and the realization of peace between Germany and the Soviet Union, but plans for peace between Japan and Chiang Kai-shek Government of China and for general peace with all nations through the good offices of the Soviet Union. He proposed implementation of the neutrality pact, a non-aggression pact, a treaty of good neighborliness and friendship, demarcation of borders, means for solution of conflicts along the border, the use of the good offices for peace between Germany and the Soviet Union, mediation for peace between Japan and the Chiang Regime and for general peace.³ Simultaneously with such negotiations it was proposed that measures be taken for demarcation of the borders and solution of conflicts along such borders. It was fore-

24 (1. Ex. 3557, p. 2, not read.
25 2. Ex. 3557, T. 34551 to 34558.
3. T. 34554-5.)

1 seen that certain demands would be made by the Soviet
2 Union and he recommended that the envoy sent to negotiate
3 be given wide discretion and authority. It was con-
4 templated that these demands would be very extensive
5 and the plan set forth concrete suggestions as to how
6 they would be met in case of complete or partial success
7 in the negotiations. Even if the Soviet Union only
8 agreed to maintain neutrality most of her demands would
9 be acceded to. If general peace was realized all the
10 Soviet demands would be met. Throughout this period he
11 conferred with KIDO and had audiences with the Emperor
12 about these matters.¹

13 102. SHIGEMITSU also worked for peace through
14 another neutral power. The Swedish Minister to Japan,
15 Bagge, was returning to Europe and at SHIGEMITSU's sug-
16 gession sent SAKAYA, the former Japanese Minister to
17 Finland, a friend of Bagge's to see him. Shortly after
18 his talk with SAKAYA, Bagge conferred with SHIGEMITSU who
19 urged him to find out the possibilities of obtaining
20 peace for Japan. Bagge testified that he remembered
21 vividly SHIGEMITSU's express desire to do everything in
22 his power to end the war as soon as possible even at
23 great sacrifice to his country. A few days later SAKAYA
24 saw Bagge and told him that the matter was most urgent
25 (1. Ex. 3340, T. 31107-9.)

1 and that SHIGEMITSU hoped he would leave as soon as
2 possible and go straight to Stockholm to take up the
3 matter with his Government.¹ The cabinet of which
4 SHIGEMITSU was a member resigned shortly afterwards.
5 SHIGEMITSU's successor, TOGO, took the same view of the
6 matter but later decided to try to obtain peace through
7 the good offices of Soviet Russia.²

8 103. Even after he ceased to be a member of the
9 Government he continued his efforts for peace. On 9
10 August 1945 the Government then in office was consider-
11 ing the acceptance of the Potsdam Declaration and it
12 was proposed that Japan make four conditions to its
13 acceptance. SHIGEMITSU called on the Lord Keeper to
14 urge that the Declaration be accepted without any con-
15 ditions.³

16 104. The accused played an all-important part
17 in the final act which ended the great Pacific War. On
18 2 September 1945, he signed the Surrender on board the
19 U.S.S. Missouri in behalf of the Emperor of Japan and
20 the Japanese Government.⁴ This was the culmination of
21 all his diplomatic actions for the attainment of peace.
22 He had worked for peace throughout his diplomatic career
23

24 (1. Ex. 3558, T. 34561 to 34562.

25 2. Ex. 3558, T. 34563, 34564; see also Ex. 3620,
T. 35455-7.

3. Ex. 3340, T. 31176.

4. Ex. 6, T. 17156.)

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2 possible and go straight to Stockholm to take up the
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25 2. Ex. 3558, T. 34563, 34564; see also Ex. 3620,
T. 35455-7.

3. Ex. 3340, T. 31176.

4. Ex. 6, T. 17156.)

and this was the third agreement ending hostilities.

1 which he had signed during the period of the alleged
2 conspiracy for war; the first at Shanghai, the second
3 in Moscow, and the last on the Missouri in Tokyo Bay.

4 105. There had been riots and attempts at
5 assassination when it was decided to accept the Potsdam
6 Declaration¹ so that the decision to accept responsibility
7 for consummating that acceptance by signing the surrender
8 was not a mere expression of good will, not the popular
9 thing to do, but involved risk of life and limb. He had
10 known for thirteen years what an attempt at assassination
11 might mean even if not wholly successful.
12

13 106. Your Honors, we are told you want us to
14 give you facts, not eloquence, for which I am glad, being
15 incapable of the latter. I have at times shown my feel-
16 ings and my only excuse is that they run very deep. I
17 regret any delinquency on my part, if such has occurred,
18 for this client of mine deserves the best of defenses
19 and his many friends all over the world have expected it
20 of me.

21 107. I am very proud to have defended this man
22 though I have never understood why he should be here to
23 defend. Only the prosecution can tell you and I sub-
24 mit it has not done so in its proof or even in its
25 (1. Ex. 3340, T. 31194-8, 31201-2; Ex. 3231, T. 29322-6.

1 summation, the allegations of which, I submit present no
2 offenses within the true intent of the Charter. The
3 testimony in his behalf has been produced not only from
4 witnesses testifying for the defense but from those
5 testifying for the prosecution. Not only his own
6 countrymen, but many men from nations lately at war with
7 his have testified for him, a man accused of crimes
8 against their nations.

9 108. The proof shows that this defendant has
10 never been a party to any conspiracy for war, that this
11 defendant never planned war, never initiated war, never
12 waged war and -- it seems fantastic to have to say it --
13 never murdered anyone. When hostilities started despite
14 his efforts, he did his utmost to limit them, to prevent
15 their breaking into open war, to end them. He tried to
16 prevent the spread of war to East Asia and after it
17 started tried to bring it to an end as soon as possible
18 and he represented his country in the memorable act
19 which ended it. He would not wish you to think him
20 other than a patriotic Japanese, loyal to his country
21 and his Emperor, both before, after and during the war,
22 a Japanese who believed and still believes that the wel-
23 fare of his country lay in working with, not against the
24 western democracies, that Japan and China and the other
25 nations of the Orient, close neighbors and brothers in

1 blood, could and should be equals and friends and that
2 peace should be maintained with the great country which
3 lies between these two cultures, Soviet Russia. His
4 patriotism has been wise and far-seeing, without any
5 taint of aggressive force.

6 109. And so I ask for an acquittal on all
7 Counts. That is all I can ask for now, for the years
8 he has spent in Sugamo Prison can never be returned to
9 him.

10 THE PRESIDENT: It is too late to start the
11 next summation.

12 We will adjourn until half past nine tomorrow
13 morning.

14 (Whereupon, at 1600, an adjourn-
15 ment was taken until Friday, 2 April 1948,
16 at 0930.)
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2 APRIL 1948

I N D E X

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I N D E X

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3300	2765-B		Affidavit of George C. Marshall, General of the Army of the U. S. (Retired) (1st Q. and A.)		46441

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

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

8 Mr. Cunningham.

9 MR. CUNNINGHAM: If your Honors please, this
10 is an application for permission to file the affidavit
11 of General George C. Marshall, retired General of the
12 Army and the present Secretary of State of the United
13 States, in behalf of the accused OSHIMA.

14 Comes now the accused OSHIMA, through his
15 counsel, and respectfully applies to this Honorable
16 Tribunal for permission to file in these proceedings
17 the affidavit of the present Secretary of State of the
18 United States, former General of the Army George C.
19 Marshall, and states as reasons for this application
20 the following:
21

22 In December, 1946, counsel for this accused
23 filed an application with this Tribunal asking for a
24 subpoena for the affiant. The application set forth
25 that the witness will testify from first-hand authority
on the subject:

- 1 1. German-Japanese collaboration, military.
- 2 2. Preparation of the United States for the
- 3 Pacific War.
- 4 3. Japanese-American War no surprise.

5 At that time the witness was in Nanking, China,
6 on a special mission. By order of this Tribunal Number
7 599, permission was granted to interrogate the witness
8 and facilities were to be made available for this
9 purpose. Application was made for travel orders but
10 before the arrangements could be made for the trip to
11 China the affiant was elevated to the post of Secretary
12 of State. After that it was impossible to arrange for
13 a personal interview.

14 Written interrogatories were submitted in
15 September 1947, through military and diplomatic
16 channels. Due to the pressure of other matters, the
17 questions were not answered until March 10, 1948. The
18 affidavit was received in Tokyo, Japan on March 29, 1948,
19 by counsel for the defense.

20 A copy of the affidavit is attached to this
21 application. Its content bears heavily upon the import-
22 ant issues in this case and answers specifically the
23 matters raised in the original application. The document
24 establishes with overwhelming weight from the highest
25 source the evidence of the defense upon the issues

1 involved in Count 5 of the Indictment on the question
2 of lack of collaboration between Japan, Germany and Italy.
3 The document refutes clearly and convincingly the charge
4 made by the prosecution that the three nations collabor-
5 ated to dominate the world. It shows that there was a
6 lack of cooperation.

7 It is in the interests of justice that this
8 historic document prepared for this trial, be admitted
9 as part of the record of these proceedings and be con-
10 sidered as part of the defense evidence. It is only
11 fate and the pressure of the present world events
12 which make this application necessary at this time.
13 Notice was given to the Tribunal on the 3rd day of
14 February, at page 38,730 of the transcript, that the
15 affidavit was being prepared and would be received, it
16 was thought, before the close of the evidence in this
17 case.

18 We submit that this Tribunal in its discretion
19 has full control over the record in this case and has
20 the right to accept evidence at any stage in the proceed-
21 ings. Circumstances over which we had no control pre-
22 vented this document from arriving before this time.

23
24 Out of respect for the statesmanship of the
25 author of the affidavit and in recognition of his

1 wisdom and appreciation for his responsibility in taking
2 his valuable time to execute an instrument of high
3 probative value, and on account of the grave importance
4 of the material covered in the affidavit, surely we can
5 pause long enough to incorporate this useful document
6 as an exhibit in this cause.

7 For these reasons, it is respectfully urged
8 that the record in this cause be held open for the
9 purpose of accepting the affidavit of George C. Marshall
10 as an exhibit in behalf of this accused.

11 THE PRESIDENT: You might ask us to reopen
12 the defense case in order to enable you to tender that
13 evidence. That is as much as you can do, Mr. Cunning-
14 ham. No matter how great General Marshall may be, and
15 no doubt is, that does not justify us in incorporating
16 in the record an affidavit of his. We would not do
17 it with an affidavit of Mr. Churchill's or any other
18 statesman. Your application to have this affidavit
19 incorporated in the record must be refused, but if you
20 would like to ask us to reopen the case to allow you to
21 tender this further evidence, then we shall have to
22 consider your application. Until judgment we have com-
23 plete control over our own proceedings.

24 I understand that there is already in evidence.
25 or there was offered in evidence a similar statement by

General Marshall. I think we said on that occasion
1 that we could not allow even General Marshall to take
2 over our functions and decide issues which are for us
3 to decide. However, this affidavit may contain material
4 which is relevant and material,-- I don't know, I have
5 not read it. If it simply gives General Marshall's
6 opinion, it must be rejected.

7 MR. CUNNINGHAM: I shall answer to both matters,
8 your Honor. You have expressed my desire much more
9 clearly than I have been able to express it, but I wish
10 that the record of this case be reopened for the purpose
11 of accepting the affidavit of General Marshall -- that
12 is my first purpose. Now it is suggested from the table
13 that the case of the defense be reopened for the purpose
14 of accepting this document.
15

16 THE PRESIDENT: Well, we must hear the prosecu-
17 tion first.

18 MR. CUNNINGHAM: That is the first point. Now,
19 on your second point, I subscribe heartily with what you
20 said concerning the evidence which was introduced. The
21 comment of the President at that time was, as I recall
22 it: "Well, are we to accept the opinion of even George
23 Marshall on such a matter?" -- that is, in substance.
24

25 THE PRESIDENT: Personally, I would accept his

opinion; as a judge I am not allowed to do so. I want
that made clear; this may be misunderstood.

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1 MR. CUNNINGHAM: On your second point,
2 there is no necessity, I believe, in anticipating
3 the objections of the prosecution. I should like
4 to answer their objections as to the contents of
5 the document when they have proposed the same to
6 the Tribunal. I don't know whether the Tribunal
7 will consider both questions, the reopening and the
8 admission of the document, at the same time or
9 whether they will take the objections to the re-
10 opening first and then the argument upon the admis-
11 sion of the document.

12 THE PRESIDENT: Well, it is desirable that
13 we should deal with the whole matter at once, un-
14 doubtedly. I see no reason for dividing it, but
15 my colleagues may take a different view. My opinion
16 is that we should deal with it at the same time,
17 deal with both matters together.

18 MR. CUNNINGHAM: In that event, I offer
19 the document as an exhibit.

20 THE PRESIDENT: Mr. Tavenner.

21 MR. TAVENNER: If the Tribunal please, in
22 closing the defense case for OSHIMA, counsel said
23 in substance, page 38,729-30: There are other
24 Japanese documents and witnesses not ready for
25 presentation at this time, and I want to retain the

1 privilege of presenting this evidence if the evidence
2 of the other accused goes long enough to permit the
3 receipt and processing of these documents.

4 The President replied: "Do not conclude
5 from our silence that we are conceding anything to
6 you. Already we can truthfully say that no Court
7 has ever heard a defense more fully."

8 The defense desires now, in the last days
9 of argument, to reopen the case for introduction of
10 evidence which, if admissible at all, should have
11 been tendered in the general phase. The strict
12 rules relating to the receipt of after-discovered
13 evidence are well recognized, but this evidence
14 does not reach that dignity.

15 An examination of the document will dis-
16 close two things: first, the questions posed call
17 for speculative answers and opinion evidence, so
18 much so, in fact, that in many instances the affiant
19 in his answer states that the matter is purely
20 speculative. And, second, the material, not objection-
21 able on the ground mentioned, is purely cumulative.
22 It is respectfully submitted that if this evidence
23 in the exercise of due diligence had been discovered
24 after the close of the case, it still would not be
25 admissible under the after-disclosed evidence rule.

~~A casual reference to the document will~~
1 disclose that it is for the most part taken from
2 defense document No. 1674, General Marshall's Re-
3 port, an excerpt from which was introduced in evi-
4 dence on 19 June, 1947, transcript 24,754. The
5 defense document No. I referred to is General
6 Marshall's Report from which an excerpt was taken
7 and which he so frequently cites in the course of
8 this document. Only a short excerpt was admitted
9 in evidence or tendered in evidence from that docu-
10 ment in June. In other parts of the record there
11 are other excerpts from the same document. This is
12 now an attempt to enlarge upon those excerpts which
13 were introduced in an early phase of the case, a
14 document which has been in the hands of defense
15 counsel from the early days of this trial.

16 THE PRESIDENT: Yes, Mr. Cunningham.

17 MR. CUNNINGHAM: In answer to the first
18 suggestion of Mr. Tavenner, that we closed our
19 evidence, I might say that at page 38,730, your
20 Honor will recall, I announced to the Tribunal that
21 "nine months ago I submitted interrogatories to
22 General Marshall. They are now in the process of
23 preparation."
24

25 THE PRESIDENT: That excerpt was not ob-

jected to by the prosecution.

1 Well, now I raise the question of whether
2 we should take even General Marshall's opinion.
3 What you are proposing to tender now doesn't go
4 beyond the excerpt in substance, does it?

5 MR. CUNNINGHAM: Yes, your Honor. What I
6 am offering now answers specifically the questions
7 which we propounded to General Marshall, and in his
8 excerpt he only gave a conclusion based upon the
9 observations which he makes here, and they are the
10 observations which we consider quite material and
11 observations which we consider quite material and
12 relevant.

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1 THE PRESIDENT: The affidavit contains the
2 reasons for the material on which he based his opinion.

3 Is that what you are saying?

4 MR. CUNNINGHAM: That is right, your Honor,
5 and I took my cue from what your Honor said at the
6 time. We do not want the opinion, we want the facts,
7 and I asked General Marshall for the facts and I be-
8 lieve he has given me the facts.

9 THE PRESIDENT: The prosecution not having
10 objected to the tender of General Marshall's opinion
11 may, on reconsideration, see fit to allow the facts
12 stated by General Marshall as the ground of his opinion
13 to be admitted.

14 MR. TAVENNER: If it please the Tribunal, I
15 think there is a distinction between facts as grounds
16 for an opinion and his reasons.

17 THE PRESIDENT: Doesn't he say in effect --
18 I have just glanced at the affidavit -- "These are the
19 grounds" "These are the facts" "These are the reasons
20 why I form that opinion," and he states them very fully.

21 MR. TAVENNER: He states considerations that
22 he had in mind, he does not call them facts. The first
23 one --
24

25 THE PRESIDENT: General Marshall wouldn't act
on anything but facts. He may have to act on

assumptions sometimes, but surely not in that matter.

1 MR. TAVENNER: The very first consideration
2 was a question which he said he didn't know the answer
3 to.
4

5 THE PRESIDENT: Well, he could not have acted
6 on that one. I am speaking of facts or grounds on
7 which he did act. I didn't say you should admit the
8 whole affidavit.

9 Of course, the weaker the grounds are that
10 General Marshall may have had the stronger should be
11 the reason for the prosecution raising no objection.

12 MR. TAVENNER: If your Honor please, the chief
13 objection that I asserted is to the reopening of this
14 case in the closing days of argument regarding a matter
15 which to the greatest extent was in the hands of defense
16 counsel from early in June.

17 THE PRESIDENT: That is a very strict if not a
18 technical view, Mr. Tavenner. I emphasize, you allowed
19 General Marshall's opinion to be tendered by the de-
20 fense. Now they give us, or purport to give us, the
21 grounds for General Marshall's opinion. Why shouldn't
22 we have them without any further argument? You don't
23 contest that that is General Marshall's affidavit, and
24 you cannot contest that it is on a most vital issue in
25 the case.

1 MR. TAVENNER: The answer to Question 1 is
2 only one page of this document. The rest of that ma-
3 terial has been in defense hands, and I think this is
4 not the right time, at the conclusion of the argument --
5 near the conclusion -- to go into matters that were not
6 presented when they should have been presented.

7 As far as the answer to Question 1 is con-
8 cerned, the matter to which you addressed your atten-
9 tion, that could very well have been introduced in
10 behalf of the prosecution in explanation. I have no
11 quarrel with --

12 THE PRESIDENT: Do you suggest I am exerting
13 pressure on you, Mr. Tavenner? You know that I would
14 have rejected that excerpt and General Marshall's opin-
15 ion would not have been in evidence if I had my way.
16 But you allowed it in, and you may very well now allow
17 us to know the reasons for his opinion. After all this
18 isn't an application made to us after we retire to
19 consider our judgment and before judgment, it is an ap-
20 plication made in the course of the hearing.

21 Unless you wish to say any more, I don't want
22 to hear any more either from you or Mr. Cunningham. We
23 will consider the matter.

24 MR. TAVENNER: I was in the midst of making a
25 statement if you will permit me to finish it.

As I was stating, I have no quarrel with
1 the answer to No. 1 from the standpoint of an explana-
2 tion of the reasons for his statement in his report.
3 Those reasons were not given in his report. But the
4 other matters referred to are matters which could have
5 been introduced at the proper time in the general phase
6 of the defense case.
7

8 THE PRESIDENT: Do I understand you to say
9 the reasons that General Marshall gives in his affidavit
10 for his opinion do not appear in this report from which
11 the excerpt was taken?

12 MR. TAVENNER: No, sir, I do not think that
13 all of the reasons set forth in his answer to the first
14 question appear in the report. Although I have no
15 special objection to hearing his reasons, my objection
16 did go to the entire document.

17 THE PRESIDENT: I didn't suggest you agree to
18 anything other than the grounds upon which he based his
19 opinion.
20

21 MR. TAVENNER: I have understood that, and I
22 have stated I have no quarrel with the first question
23 particularly, question and answer.

24 THE PRESIDENT: Look at the affidavit and tell
25 us whether you agree to any of it, referring to para-
graphs.

1 MR. TAVENNER: Yes, I will agree to the first
question and answer.

2 THE PRESIDENT: Mr. Cunningham.

3 MR. CUNNINGHAM: I don't believe that I have
4 anything further to say, your Honor, except that some
5 of the material covered in the answer to No. 1 is in-
6 filtrated into the answer to 2 and 4 and question No. 5,
7 all relate to corroboration of the answer in No. 1.

8 THE PRESIDENT: We have to decide whether we
9 will reopen the case. Mr. Tavenner can't do that for
10 us. But he can admit a document or a part of it. We
11 will confer on that matter.
12

13 Go on with KIDO. We can confer during the
14 recess or luncheon adjournment.

15 Mr. Logan.
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13 recess or luncheon adjournment.

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1 MR. LOGAN: If the Tribunal please, with
2 the Tribunal's permission I desire to read the
3 summation on behalf of the accused KIDO, Koichi.

4 1. To avoid aimless wandering in the
5 wilderness of complicated and detailed factual matter
6 which has been the outgrowth of the prosecution's
7 case against the accused KIDO, it becomes necessary
8 to analyze the charges against him in the full light
9 of reality unencumbered by such interpretations
10 on irrelevant issues as would lead to our inability
11 to see the forest because of nearsighted examination
12 of the trees. Composing a large portion of the
13 prosecution's evidence is the KIDO Diary itself,
14 voluntarily submitted for use by the prosecution
15 as it saw fit. Interpretation upon interpretation
16 caused by the wide chasm of the language barrier
17 has hampered an accurate portrayal of the events.

18 2. The Charter as the basic document setting
19 forth the offenses for which the accused is to be
20 tried can well be divided into two distinct divisions,
21 the first being Crimes Against Peace and the second
22 Conventional War Crimes and Crimes Against Humanity.
23 It perhaps would have been less complicated had this
24 Indictment followed the Nuernberg pattern narrowed
25 to four counts rather than its present 55, for in an

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25 verbiage we are faced with answering the simple
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21 the first being Crimes Against Peace and the second
22 Conventional War Crimes and Crimes Against Humanity.
23 It perhaps would have been less complicated had this
24 Indictment followed the Nuernberg pattern narrowed
25 to four counts rather than its present 55, for in an

1 analysis of the case, such as we know the Tribunal
2 desires, it becomes almost humanly impossible to
3 touch upon the Indictment allegations with the
4 fullness they deserve.

5 3. As has been said Crimes Against Peace
6 consist only of the planning, preparation, initi-
7 ation and waging of aggressive war or a conspiracy
8 to accomplish the same. Conventional War Crimes and
9 Crimes Against Humanity are such as are contained in
10 the laws of war and as designated in the Charter.
11 We cannot subscribe to the belief that the Tribunal
12 seriously considers the accused KIDO must answer to
13 this latter category for he was neither a soldier
14 in the field nor a formulator of policy regarding
15 these matters. It is the former division -- Crimes
16 Against Peace -- to which the prosecution has sought
17 to attach the actions of KIDO.

18 4. Hovering over this entire proceeding has
19 been the closeness of the accused KIDO to the Emperor
20 of Japan and the accompanying interest which such
21 would naturally arouse. Narrowing down to a brute
22 frankness, shearing away subterfuge and unnecessary
23 verbiage we are faced with answering the simple
24 question of whether the accused is responsible for
25 the accomplishment of aggressive war. Although at

one time a cabinet member occupying an insignificant and minor post, KIDO's chief attraction to the prosecution has been his activities pertaining to the era that led to the Pacific hostilities.

5. In his capacity as Lord Keeper of the Privy Seal the question must be answered as to whether or not he had any power and whether or not such power or influence as he might have possessed was used to perpetrate the offense of aggressive war or not. This issue simply stated is difficult of study and to this end we shall seek to organize our presentation in such a fashion as to assist the Tribunal to the end of arriving at what we consider an obvious verdict of innocence.

A. CRIMES AGAINST PEACE.

6. To attempt a point by point answer in comparable sequence to the prosecution argument would be to force the defense to adopt a procedure not best fitted to relate the evidence as we view it but a sincere and earnest attempt has been made chronologically to answer in its entirety each and every allegation or charge and the citations of alleged evidence in support thereof made by the prosecution. A comprehensive and chronological account of KIDO's activities was rendered by him in his direct

1 testimony.¹ We will not repeat it here, except
2 when obliged to answer the prosecution's summation,
3 but we ask the Tribunal to refer to it when neces-
4 sary to ascertain the true facts. The task of answer-
5 ing the prosecution's summation has been made ex-
6 tremely difficult because with the facts it has
7 intermingled argument and its own interpretation
8 of the facts.

9 I. BIOGRAPHICAL MATTER.

10 7. Marquis KIDO was born on July 18, 1889.
11 His grandfather, Marquis KIDO, Takayoshi was one of
12 the three founders of the new government of Japan
13 during the Meiji Era. KIDO's grandfather served in
14 various ministries in the cabinet and played a
15 prominent role in the drafting of the Constitution
16 which established the Diet. His father, Marquis
17 KIDO, Takamasa was Grand Chamberlain to Emperor
18 Meiji's son who subsequently became Emperor TAISHO.²
19 Thus in his home environment KIDO was imbued with
20 the spirit of the new Japan and the promising future
21 it had under constitutional government.
22

23 8. KIDO graduated from the Law College of
24 the Imperial University of Kyoto in 1915 having
25 majored in political economy and social science. On

(1. Tr. 30,716 - 31,211

2. Aff. par 4, Tr. 30,719)

1 August 30, 1917 he succeeded to his father's title
2 of Marquis and simultaneously became a member of
3 the House of Peers. After graduating from college
4 he joined the government service in the Ministry
5 of Agriculture and Commerce where he served until
6 1930 as an administrative official.³

7 9. In 1930 and upon the recommendation of
8 Prince SAIONJI, Prince KONOYE, Baron HARADA,
9 Viscount OKABE and others⁴ he was appointed Chief
10 Secretary to the Lord Keeper of the Privy Seal
11 which position he held until June 13, 1936. From
12 then until October 22, 1937, he was President of
13 Bureau of Peerage.⁵ He served in the First KONOYE
14 Cabinet as Minister of Education from October 22,
15 1937, until May 26, 1938, (concurrent Minister of
16 Welfare from January 11, 1938) Minister of Welfare
17 from May 26, 1938 to January 5, 1939, and Minister
18 of Home Affairs in the HIRANUMA Cabinet from
19 January 5, 1939 to August 28, 1939, but retired from
20 then until June 1, 1940, when he was appointed Lord
21 Keeper of the Privy Seal upon the recommendation of
22 Prince SAIONJI, Prince KONOYE, Imperial Minister
23 MATSUDAIRA, Tsuneo, Lord Keeper YUASA and Baron

25 (3. Aff. per. 4, Tr. 30,720

4. Aff. per. 5, Tr. 30,721

5. Ex. 112, Tr. 725)

⁶
1 HARADA which position he held until November 1945.

2 10. The undisputed evidence is that KIDO
3 was a disciple of Prince SAIONJI, avidly following his
4 teachings and reasoning as shown in many excerpts
5 from his diary. Prince SAIONJI's penchant for advising
6 that the government, the military, the court, and the
7 Emperor act within the ambits of their respective
8 spheres and in a constitutional manner made a deep
9 impression on KIDO. ⁷ His diary reveals that some of
10 the most important decisions which KIDO made while
11 Lord Keeper of the Privy Seal were difficult because
12 he kept foremost in his mind the thought that the
13 various branches of the government should not usurp
14 the powers and functions of other branches. If the
15 Tribunal would bear in mind the fact that KIDO was a
16 constitutionalist, it will more readily understand
17 the actions which he took.
18

19 II. THE KIDO DIARY.

20 11. At the outset we would like to point to
21 a factor which may serve as a key for the padlock
22 of confusion that has surrounded the involvement of
23 KIDO in this case. The question might well be asked -
24 how did the prosecution acquire this KIDO Diary upon

25 (6. Diary, June 1, 1940. Ex. 2276 and errata
Tr. 16,248 - 16,249, Diary, May 8, 1940,
Aff. par. 129, Tr. 30,890-30,891.

7 Supra, par. 50, pp. 47 - 48)

1 which it predicated so much of its evidence and used
2 as evidence itself? Was it stolen from KIDO? Was it
3 forced from him by confiscation? Was he threatened
4 or bribed into surrendering it to the Allied Powers?
5 The answer is emphatically No! KIDO was advised on
6 December 6, 1945, that he was to be arrested.⁸ He
7 was apprehended ten days later at which time he
8 voluntarily and of his own free will and accord
9 revealed to Lieutenant Colonel Sackett his compre-
10 hensive and voluminous recordation of the vital events
11 during a chaotic period of Japanese history.⁹ As he
12 said, he had nothing to hide or fear. He voluntarily
13 caused his diary to be delivered to Colonel Sackett.¹⁰
14 Why did KIDO voluntarily reveal and turn over his
15 diary? Was it because he knew that there were entries
16 in it which would convict him or was it because he
17 knew that the diary would prove his innocence? If he
18 had been a criminal at heart, as the prosecution would
19 have this Tribunal believe,¹¹ and knew that the diary
20 contained entries which would convict him, would it
21 not have been a natural act for him to have destroyed
22 the evidence?
23

24 (8. Diary, Dec. 6, 1945, Aff. par. 2,
Tr. 30,716.

25 9. Aff. par. 2, Tr. 30,716

10. Ibid.

11. Pros. Doc. 0003, Tr. 16,852.)

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1 12. In submitting his diary, did he not
2 express a desire that the Allied authorities actually
3 comprehend the workings of a state that led to a
4 disastrous result? Was it the act of a guilty con-
5 science or of a man ashamed of the part he had played
6 in his nation's future or was it rather an attempt on
7 the part of a silent historian to educate the minds
8 of those nations whose misunderstanding of Japan and
9 its development led to direful results?

10 13. KIDO's Diary, which the prosecution
11 admits was written with no ulterior motive in mind
12 and should not be doubted,^{12.} like any other diary,
13 requires explanations. A diary is not kept for
14 publicity purposes. It is common knowledge that a
15 diary is kept for one's own information or use, and
16 none but the author can explain the meaning of the
17 entries. The Tribunal should not hesitate to accept
18 KIDO's explanations of his diary entries where it was
19 necessary for him to do so because as KIDO said, "Pres-
20 sure of time prevented me at times from recording some
21 of the events and of recording others fully."^{13.} It
22 would be a remarkable event if a person kept a diary
23 so complete that it needed no explication.
24

25 12. Par. JJ-7, T. 41050.
13. Aff. par. 2, T. 30717.

1 14. In weighing the evidence a most impor-
2 tant point to be considered is the analysis and inter-
3 pretation with a western mind of the English trans-
4 lation of KIDO's Diary. It is submitted that a
5 Japanese explanation (such as KIDO's) of the Japanese
6 original and a translation of the explanation into
7 English is more reliable. KIDO knows what he wrote.
8 He had a clear conscience with nothing to hide or
9 fear as demonstrated by the voluntary revelation and
10 delivery of the diary, and his explanations should be
11 accepted. The diary was written at a time when he
12 had no reason to record anything but the truth.

13 15. After reception of the KIDO Diary the
14 prosecution was faced with the tremendous task of
15 translating into English or into the language of the
16 Allied nations the Japanese writing so as to convey
17 an identical or similar thought concept scattered
18 through the record, from the introduction of the first
19 diary entry to the close of this proceeding, is solid
20 evidence that this was not done. As we said earlier in
21 the trial, the translation from Japanese to English is
22 at best a rough paraphrasing. Therefore, in the event
23 of doubt certainly the issues should be resolved in
24 favor of the accused. No diary entries conflict with
25 KIDO's affidavit, although the prosecution claims some

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24 favor of the accused. No diary entries conflict with
25 KIDO's affidavit, although the prosecution claims some

14.
do. The incorrect translation of the excerpts
1 submitted to this Tribunal, by the prosecution, with
2 corrections made at the defense's request tucked away
3 in subsequent pages of the record over objection,^{15.}
4 have not been conducive to a proper understanding of
5 the diary. Scanned or rough translations were used
6 by the prosecution, over objection. In one instance
7 three translations were made of one entry and the
8 one which was offered was very confusing.^{16.} As the
9 Tribunal observed, "KIDO's Diary was not well trans-
10 lated in the first instance, so we are told."^{17.}

12 16. Only by reading the entire diary can
13 a true picture be portrayed of KIDO, his actions
14 and his innermost thoughts but that, of course, was
15 a physical impossibility in this trial. The prosecu-
16 tion offered approximately 125 excerpts and an equal
17 number was offered by the defense. Many of these 250
18 excerpts are small portions of the daily entries. In
19 addition, out of the 5920 entries in his diary,^{18.}
20

21 14. Par. JJ-9, T. 41052.

22 15. T. 37729; 10244 - 10245.

23 16. Aff. par. 24, T. 30751 - 30752.

24 17. T. 37729.

25 Note: (The diary entries which KIDO complained of.
in his affidavit were referred to the Language Sec-
tion and corrected: This may have been after the
prosecution summation was written and the prosecu-
tion statement thus is excusable. Par. JJ-7,
T. 41050.

18. Aff. par. 3, T. 30717-30718.

1 these 250 excerpts portray a very small cross-section
2 of KIDO's actions and thoughts. The entire diary tells
3 a different story than these few excerpts reveal. It
4 is highly significant that the prosecution fails to
5 point to one single entry out of 5920 wherein KIDO
6 advocated war or aggression. In urging that KIDO's
7 explanations of his diary should be accepted without
8 question, we ask that the Tribunal consider the fact
9 that the prosecution's translations, without KIDO's
10 help, were incorrect and when they were brought to
11 KIDO's attention he pointed out the errors of the
12 translations to counsel, and invariably corrections
13 were made. The fact that KIDO understands English
14 imperfectly should not be criticised. ^{19.} It added
15 to our burden. On the other hand, of all the excerpts
16 which KIDO offered in his defense, and which were
17 translated and approved by him after the translations
18 were explained to him, not one was changed by the
19 Language Section.

20
21 17. We submit that the prosecution has
22 avoided the whole picture so that isolated single
23 details could be stressed and strained. It failed
24 to cross-examine KIDO on most of his diary entries
25 and his explanations thereof. Apparently realizing
19. Par. JJ-7, T. 41050.

1 that it failed to shake KIDO's credibility while he
2 was on the stand ("THE PRESIDENT: There are no
3 shortcuts to proper judicial determinations. Cross-
4 examination still remains the principal means of test-
5 ing credit"^{20.}), and realizing the absence of positive
6 evidence that KIDO at any time voted for war, advocated
7 war, or gave advice to anyone to wage war, the prose-
8 cution repeatedly urges that KIDO's explanations of his
9 diary entries be rejected. The prosecution now says
10 in effect -- do not accept the accused KIDO's explana-
11 tions, we can guess what he meant. In other words,
12 recognizing its mistake in failing to cross-examine
13 KIDO on most of his diary entries and explanations, the
14 prosecution asks the Tribunal to substitute its
15 guesses unsupported by testimony for KIDO's explana-
16 tions. Most of its guesses are contrary to other
17 evidence in the case. It asks the Tribunal to hold
18 that KIDO was a deliberately untruthful witness^{21.}
19 basing its contention on several instances of lack
20 of recollection and in other cases where KIDO's expla-
21 nation's do not coincide with the prosecution's guesses.
22 In so far as the real issues are concerned, these in-
23 stances are pitifully insignificant.
24

25 20. T. 26221.

21. Par. JJ-8, T. 41051.

18. In his testimony VINO pointed to at least
 1 seventeen misinterpretations of various diary entries by
 2 the prosecution in its documents 0001 and 0003.²² The
 3 prosecution never cross-examined or challenged him on
 4 one of these. The same procedure of misinterpretation
 5 is being followed by the prosecution in its summation
 6 and on a larger scale.

8 III. CORROBORATION.

9 19. For general effect only, although no spe-
 10 cific reference save one or two in minor instances is
 11 made thereto in the remainder of the summation, criticism
 12 is directed at the withdrawal of certain affidavits from
 13 22. Aff. par. 27, Tr. 30,756, Ex. 2251, Diary Jan. 28,
 14 1932.
 15 Aff. par. 123, Tr. 30,882, Exs. 2262, 2268, 2269,
 16 2270, 2271, 775, Diaries Aug. 9, 1938, Mar. 31,
 17 1939, Apr. 19, 1939, May 2, 1939, Aug. 4, 1939,
 18 Aug. 22, 1939.
 19 Aff. par. 127, Tr. 30,886, Ex. 2273, Diary Nov. 10,
 20 1939.
 21 Aff. par. 138, Tr. 30,897, Ex. 619, Diary June 19,
 22 1940.
 23 Aff. par. 139, Tr. 30,897, Ex. 1294, Diary June 27,
 24 1940.
 25 Aff. par. 151, Tr. 30,907, Ex. 627, Diary
 Sep. 14, 1940.
 Aff. par. 184, Tr. 30,942, Ex. 1125, Diary
 July 31, 1941.
 Aff. par. 224, Tr. 31,026, Ex. 1155, Diary
 Oct. 18, 1941.
 Aff. par. 238, Tr. 31,044, Ex. 1196, Diary
 Nov. 29, 1941.
 Aff. par. 239, Tr. 31,046, Ex. 1198, Diary
 Nov. 30, 1941.
 Aff. par. 283, Tr. 31,119, Ex. 1282, Diary
 Apr. 5, 1945.
 Aff. par. 285, Tr. 31,122, Ex. 1282, Diary
 Apr. 5, 1945.

23

KIDO's order of proof. If there be any criticism, counsel assumes it as his responsibility and urges that no blame therefor should attach to KIDO. If any explanation is necessary, reference is made to the statement made by counsel at the time the affidavits were withdrawn that they were merely corroborative and contained no new material.²⁴ It is a fundamental principle of law that no presumption arises from non-production of corroborative or accumulative evidence.²⁵ This is especially so where KIDO was extensively cross-examined for six days, his testimony was straightforward,²⁶ corroborated by other evidence, and most of it uncontested on cross-examination.

20. Furthermore, defense counsel have been vigorously criticized by the prosecution at times for offering testimony allegedly offensive to previous rulings of the Tribunal. The Tribunal's ruling on the admission of the evidence which was proposed to have been offered in KIDO's case to corroborate him further had been previously made on several occasions just prior to the time KIDO's case was presented. The Tribunal said on September 29, 1947, when evidence was offered which
" * * * substantiates the testimony of the last witness":

23. Par. JJ-8, Tr. 41,051-41,052.

24. Tr. 31,645.

25. Amer. Juris. Evidence Reprinted from Vol. 20, Amer. Juris. Sec. 188, p. 193.

26. Tr. 31,216-31,614.

1 "THE PRESIDENT: That part of the affidavit was
2 not contested in the cross-examination, if I recollect
3 rightly; that is to say, the first two sentences of para-
4 graph 4."

5 * * * * *

6 "THE PRESIDENT: It seems to be repetitive,
7 Mr. Yakaoka; unnecessary details of what is already stated
8 in the affidavit of the last witness and not contested.
9 I do not think any Member wants to admit it."

10 The objection was sustained.²⁷

11 21. When the affidavit of LATSUDAIRA, Yasumasa,
12 was submitted to the Tribunal on behalf of the accused
13 HIROTA on October 3, 1947, an objection was made by the
14 prosecution to paragraph 2 of the affidavit on a ground
15 that it purported to be information obtained from the
16 accused KIDO as to what happened at the meeting of Senior
17 Statesmen on November 29, 1941.²⁸ The basis of the
18 prosecutor's objection was:

19 "This account therefore is merely repetition
20 and if there are any differences, in my submission, it
21 is not permissible to contradict KIDO's or supplement
22 KIDO's written record of it by this witness' account of
23 what KIDO said to him.

24 "THE PRESIDENT: Probative value is the test and
25

27. Tr. 29,567-29,568.

28. Tr. 30,021.

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1 who took the stand for failure to produce further corro-
2 borative evidence especially when the Tribunal is asked
3 to accept guesses of what KIDO meant in his diary in
4 place of KIDO's well-founded explanations? If YIDO's
5 testimony was questioned, no witnesses were called in
6 rebuttal. There is an abundance of corroborative evi-
7 dence of KIDO's case. Instead of calling someone on
8 rebuttal with personal knowledge, HARADA's diary referring
9 to a few minor points was offered.
10

11 THE PRESIDENT: We will recess for fifteen
12 minutes.

13 (Whereupon, at 1045, a recess was
14 taken until 1100, after which the proceedings
15 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: By a majority the Tribunal has
4 decided to reopen the case to admit the affidavit of
5 General George C. Marshall to the extent of the first
6 question and answer. It is admitted to that extent and
7 will receive the number already given to the excerpt,
8 but will bear the letter "B", if that letter has not
9 already been assigned.
10 CLERK OF THE COURT: Defense document No. 3300
11 will receive exhibit No. 2765-B.
12 (Whereupon, the document above
13 referred to was marked defense exhibit
14 No. 2765-B and received in evidence.)
15 THE PRESIDENT: Do you want it read into the
16 record, Mr. Cunningham?
17 MR. CUNNINGHAM: Will it be satisfactory to
18 read it -- the portion -- into the record at the end of
19 KIDO's summation and not interrupt the record, as it
20 corresponds to the beginning of the case of OSHIMA?
21 THE PRESIDENT: Yes, you may read it in the
22 course of OSHIMA's case.
23 MR. LOGAN: Continuing KIDO's summation, para-
24 graph 23, page 15:
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graph 23, page 15:

IV. THE HARADA-SAIKONJI MEMOIRS

1 23. Since the prosecution states that in its
2 case against KIDO one of its principal sources of in-
3 formation is the HARADA-SAIKONJI Memoirs,³⁸ let us con-
4 sider them. The prosecution criticizes KIDO because
5 his affidavit contained no reference to them.³⁹ In the
6 first place, no excerpt from the HARADA-SAIKONJI Memoirs
7 was introduced in evidence against KIDO before he
8 testified. In the second place, we had no desire to
9 offend the Tribunal by initiating the introduction of
10 evidence whose accuracy is highly questionable. When it
11 was discovered that the prosecution was using them on
12 cross-examination of some witnesses it finally filed
13 the Memoirs, and the prosecution assumes that the
14 defense studied them before KIDO testified. There is no
15 evidence of this. It would have been a humanly physical
16 impossibility to have scrutinized the 300 odd chapters
17 of these Memoirs within the time allotted. Furthermore,
18 we could not anticipate which part of the Memoirs, if
19 any, the prosecution would use. The prosecution states
20 that the Memoirs were filed and were under study by the
21 defense three months before KIDO testified.⁴⁰ They were
22 filed on August 29, 1947.⁴¹ KIDO commenced testifying

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25 (38. Par. JJ-6, T. 41049.
39. Par. JJ-11, T. 41053.
40. Par. JJ-32, T. 41071.
41. Par. JJ-11, 41053.)

1 October 14, 1947, which was only one month, fifteen days
2 previously. Furthermore, KIDO's affidavit was served
3 on October 3, 1947, and we believe the Tribunal realizes
4 that for a long period of time prior to October 3, 1947,
5 time was not wasted by counsel on the examination of
6 memoirs such as HARADA's. After the affidavit was
7 completed only a brief examination of a few items was
8 possible.

9 24. The prosecution devotes a considerable
10 part of its summation in its endeavors to bolster the
11 HARADA Memoirs. We submit that they are entitled to no
12 weight whatsoever. All the circumstances surrounding
13 the preparation of these Memoirs make their accuracy
14 extremely doubtful. Before offering any of the excerpts
15 in evidence the prosecution apparently had grave doubts
16 about the HARADA Memoirs, and as will be shown it had
17 reason to have doubts, because it first introduced
18 evidence as to HARADA's mentality, although the defense
19 had never raised such an issue. As a matter of fact,
20 KIDO, when cross-examined, had testified that HARADA,
21 " * * * showed no signs of going out of his mind." ⁴² The
22 prosecution's procedure was novel but in view of the
23 facts developed, its doubts were well founded.

24 25. The prosecution asks the Tribunal
25 (42. T. 31574.)

1 "* * *to accept without hesitation the evidence of Dr.
2 MURAYAMA"⁴³ (with slight modification as to 1941 and
3 1942 -- referring to testimony of Dr. SASSA, which
4 indicates the prosecution accepts Dr. SASSA's testimony.)
5 Dr. MURAYAMA testified that he treated Baron HARADA from
6 1922 until the time of his death. He positively asserted
7 that Baron HARADA had no other doctors.⁴⁴ Dr. SASSA was
8 called by the defense and was not cross-examined by the
9 prosecution. He produced his clinical records, which
10 have not been contested, and which showed that he treated
11 Baron HARADA from March 15, 1941, until his death, and
12 that Baron HARADA was also treated by three other
13 doctors, SASAKI, SONEDA, and KATSUNUMA.⁴⁵ Dr. MURAYAMA
14 testified that HARADA was affected by thrombosis of the
15 brain for the first time in August,⁴⁶ 1943. He also
16 testified that from 1922 to 1941 Baron HARADA had
17 several illnesses only, none of which were serious, and
18 he suffered only from colds or indigestion.⁴⁷ These
19 statements also are not true. Dr. SASSA's clinical
20 record showed that HARADA told him on March 15, 1941,
21 that about two or three years prior thereto he experienced

23 (43. Par. JJ-11, T. 41055.

24 44. T. 37449.

25 45. T. 38686-7.

46. T. 37448-9.

47. T. 37449.)

difficulty in speaking. Thus he was seriously ill in

1 1938 or 1939. Dr. SASSA's clinical record also shows
 2 that on August 22, 1942, HARADA told him, "About five
 3 or six years ago, his left arm and leg became numb, but
 4 had recovered after a week or so."⁴⁹ This latter ill-

5 ness undoubtedly is the one in 1937 to which KIDO
 6 previously referred on cross-examination. The prose-
 7 cution overlooked this in summation. Dr. SASSA's
 8 diagnosis of HARADA's condition on August 22, 1942, was
 9 "* * *paresis of the right half part of body and there
 10 is fear of aphasia -- 'thrombosis of the brain.'"⁵⁰

11 Exhibit A, attached to his affidavit but not read, also
 12 shows "thrombose" at that time. This affliction was one
 13 year before Dr. MURAYAMA swore that HARADA became ill.⁵¹

14 Yet Dr. MURAYAMA also swore, "I had opportunities to see
 15 him two or three times a month,"⁵² and repeated his

16 assurance that the first time HARADA contracted throm-
 17 bosis of the brain was in 1943.⁵³ He further testified

18 that he never heard of Baron HARADA having a paralytic
 19 condition in 1937.⁵⁴ Dr. MURAYAMA was confronted with
 20 an excerpt from KIDO's Diary of February 27, 1937,⁵⁵

- 21
 22 (48. T. 38686.
 23 49. T. 38689.
 24 50. T. 38689-90.
 25 51. T. 38689.
 52. T. 37451.
 53. T. 37452.
 54. T. 37457.
 55. T. 37457.)

(subsequently admitted in evidence) which reads as

1 follows: "At half-past eight HARADA called at my home.

2 I was greatly surprised to learn that he was suffering

3 from nervous prostration and that the left half of his

4 body was semi-paralyzed. I advised him urgently to take

5 care of himself."⁵⁶ It is significant that the prose-

6 cution also ignored this diary entry in summation in

7 what we consider its attempt to attack KIDO's credibility

8 Even after hearing this read to him, the doctor refused

9 to admit that HARADA was semi-paralyzed in 1937.⁵⁷ How-

10 ever, he did testify that paralysis or semi-paralysis was

11 caused by a blood clot, that a blood clot on the brain

12 causes pressure and is likely to affect the memory.⁵⁸

13 It is submitted the foregoing undisputed documentary

14 evidence written by Dr. SASSA at the time of the occur-

15 rence of the events recorded utterly discredits Dr.

16 MURAYAMA who testified from memory. Yet the prosecution

17 asks the Tribunal to accept his testimony unhesitatingly.

18 It is paradoxical that the prosecution makes light of

19 HARADA's memory of his report of previous illnesses to

20 Dr. SASSA,⁵⁹ yet it asks the Tribunal to accept his

21 exact recollections in his Memoirs of exact quotations

22 of various conversations which took place at considerable

23 (56. Ex. 3879, T. 38683.

24 57. T. 37458.

25 58. T. 37457.

59. T. 38684.)

periods of time previous to the dates on which they
 1 were dictated.

2 26. The evidence leaves in grave doubt which
 3 version of HARADA's Memoirs is before the Tribunal.
 4 The prosecution called Prince KONOYE's sister-in-law.
 5 She testified on direct that HARADA used to dictate to
 6 her""* * *once or twice a week from notes and from
 7 memory.* * *⁶⁰ She admitted, on cross-examination,
 8 however, that there were occasions when she took the
 9 dictation once every three weeks.⁶¹ She testified, on
 10 direct, that HARADA never suffered from drowsiness when
 11 he was keeping the records.⁶² When she was asked, on
 12 cross-examination, as to whether he became sleepy while
 13 he was dictating or while he was talking to someone, she
 14 said, "I cannot say there were no such occasions."⁶³
 15 She admitted, on cross-examination, "He was often
 16 slightly ill or indisposed."⁶⁴ She also admitted, on
 17 cross-examination, that once in a while Baron HARADA
 18 appeared abstracted as though he was thinking of some-
 19 thing else when he was speaking to someone, and she got
 20 the impression that once in a while he did not under-
 21 stand the replies that were made.⁶⁵ She also admitted

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 24 (60. T. 37464.
 25 61. T. 37466.
 62. T. 37465.
 63. T. 37492.
 64. T. 37490.
 65. T. 37491.)

1 that the regularity of her visits to Baron HARADA
2 depended on his health. ⁶⁶

3 27. Mrs. KONOYE also testified as to the
4 method of the preparation of the Memoirs. On direct,
5 she testified that she took notes from Baron HARADA in
6 shorthand, transcribed them, gave them to Baron HARADA
7 for approval, HARADA later took them to Prince SAIONJI
8 for corrections and suggestions, which were incorpor-
9 ated in the completed form, which she wrote in her own
10 handwriting, and which is the photostatic copy in
11 evidence. ⁶⁷ She stated he dictated from memory and
12 notes. ⁶⁸ She also admitted, on cross-examination, after
13 being shown one of Baron HARADA's original diaries,
14 that on subjects other than person's names, HARADA
15 dictated to her from memory, and there were many
16 occasions when he dictated from memory and not from his
17 pocket diary. ⁶⁹ She admitted that after Prince SAIONJI
18 edited the Memoirs, she rewrote them. ⁷⁰ She also stated
19 that when the Memoirs came back from Prince SAIONJI,
20 they were put in a vault at the Sumitomo Bank, and when
21 asked if anyone else made any corrections on them, she
22 replied, "There were people." ⁷¹ She admitted that the

24 (66. T. 37471.

25 67. T. 37462.

68. T. 37472.

69. T. 37473.

70. T. 37481.

71. T. 37483.)

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novelist SATOMI, Ton, made corrections on the Memoirs.

1 She also admitted, on cross-examination, that she re-
2 wrote the document which HARADA had taken to SATOMI for
3 correction, and SATOMI corrected the rewritten copy of
4 that document, which she rewrote again, and that that is
5 the photostatic copy in evidence.⁷³ She left the witness
6 stand at four o'clock and when she came back the next
7 morning, after the prosecution had an opportunity to
8 talk with her, she changed her story. She had acknow-
9 ledged that she did not have a good memory.⁷⁴ Concern-
10 ing her testimony on cross-examination, the prosecution
11 expressed the desire regarding one question, "* * *to
12 tear it up completely.* * *" ⁷⁵ She changed her story,
13 over objections, to say that the photostatic copy con-
14 tained corrections and notifications made by Prince
15 SAIONJI, and SATOMI's corrections were made on another
16 copy.⁷⁶ This new story, however, disagrees with HARADA's
17 own statement.
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24 (72. T. 37483-4.
25 73. T. 37489-90.
74. T. 37511.
75. T. 37502.
76. T. 37481.)

1 28. In the first excerpt from HARADA's 77
2 diaries, which the prosecution offered in evidence,
3 HARADA says:

4 "This is the way in which these memoirs
5 are being made. Every week, I go to see Prince
6 SAIONJI and make a report to him; my memorandum for
7 this report is used as the basic materials and I have
8 it taken down and kept. I then take the transcribed
9 manuscript of the notes to SAIONJI; he reads the
10 material personally, corrects mistakes, and adds
11 whatever additional notes he deems necessary to the
12 manuscript. He returns it to me the next time I go
13 to see him. A clean copy of this is made; this is
14 then edited and filed away."
15

16 29. Thus it appears from HARADA's own state-
17 ment that after SAIONJI made his corrections and
18 additions a clean copy of it was made, which was edited
19 and filed away. Edited by whom? SATOMI? This agrees
20 with the story Mrs. KONOYE gave on cross-examination.
21 There have been some informal statements made by the
22 prosecution which throw more confusion on the photostatic
23 copy in evidence. The prosecution represented to the
24 Court: "We have got a photostatic copy of what my
25 friend calls 'B'. That is to say, the fair copy which

was made by this witness after Prince SAIONJI had

1 made his corrections on the original draft and
 2 incorporating those corrections."⁷⁸ This confirmed
 3 HARADA's statement quoted above. Five days later, on
 4 January 25th, 1948, the prosecution changed its
 5 position. It stated: "***it appears that I was
 6 mistaken in informing the Tribunal that the thing
 7 which had been photostated was 'B', the fair copy. It
 8 is, in fact, 'A'"⁷⁹ "A" has been designated as
 9 the original volume.⁸⁰ Thus it rejects HARADA's
 10 statement and reaffirms Mrs. KONOYE's third story.
 11 The prosecution stated that the photostatic copy had
 12 corrections made by HARADA and corrections made by
 13 SAIONJI,⁸¹ although there is no evidence by any
 14 witness we know of that the photostatic copy shows
 15 changes by HARADA or what they were. This, of course,
 16 disagrees with the prosecution's own exhibit where
 17 HARADA has stated that the clean copy was edited and
 18 filed away.⁸² In accordance with the Tribunal's ruling
 19 that statements of the prosecution not supported by
 20 the evidence will be rejected, we ask that these
 21 statements be rejected.⁸³

24 78. T. 37,529

79. T. 37,884

25 80. T. 37,526

81. T. 37,884

82. Ex. 3751-A, T. 37,552

83. T. 13,483-13,484

30. Out of the matter of testimony, and
1 oral submissions by the prosecution, it is submitted
2 that the only conclusion is that Mrs. KONOYE was
3 telling the truth when she said, on cross-examination,
4 that the photostat was made of the Memoirs after
5 they were edited by SATOMI.

31. The question of the accuracy of the
7 HARADA Memoirs is very doubtful from Mrs. KONOYE's
8 testimony. As shown, she admitted on cross-examination
9 that HARADA's dictation was mostly from memory and an
10 examination of the Memoirs will show that at one sitting
11 she took dictation regarding many conversations which
12 HARADA had at various times with numerous people.
13 Human experience dictates that it requires a genius
14 to accurately quote conversations held as long as
15 three weeks prior to the time of the recording, and
16 HARADA has never been presented to this court as a
17 genius. On the contrary, Mrs. KONOYE testified, on
18 direct, that he was about average in methodical
19 methods of work, being neither outstanding nor lax
20 in the organization of his work. ⁸⁴ She further
21 testified:
22
23

24 "Q. And the way you wrote the entries,
25 isn't it true, Mrs. KONOYE that it would be difficult

84. T. 37,464

1 for one to determine whether Baron HARADA was
2 referring to the present tense or past tense, and it
3 was difficult to determine the predicate and the
4 subject of the sentences, and it was also difficult to
5 tell who was saying what?

6 "A. There were many portions which were
7 as you have indicated."

8 She also testified:

9 "A. When I was transcribing my notes, I
10 had great difficulty in trying to discover just what
11 portion in a given sentence was the subject."

12 "Q. And I suppose you did the best you
13 could and wrote it out the way you thought it should
14 be, is that right?

15 "A. Naturally, yes." ⁸⁶

16 32. Mrs. KONOYE also testified, on cross-
17 examination, that she thought SATOMI was employed
18 "...to make it grammatically correct, to figure out
19 whether Baron HARADA was referring to the present
20 tense or the past tense and who was speaking in the
21 various conversations,***." ⁸⁷ The mere fact that
22 SATOMI was employed for this purpose shows how
23 unreliable the Memoirs are irrespective of which edition
24

25 85. T. 37,486
86. T. 37,487
87. T. 37,485

1 was photostated. In the face of this, how unreliable
2 any translation must be. If the copy in evidence is
3 not the one on which SATOMI made these corrections,
4 then the translator must surely have resorted to
5 guessing.
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1 33. KIDO's testimony that HARADA was ill
2 in 1937 is thus corroborated. In view of the fore-
3 going testimony of Dr. SASSA and the excerpt from
4 KIDO's Diary, can the prosecution be serious in making
5 the bald statement that there is no evidence HARADA
6 was ill during the period he was dictating to Mrs.
7 KONOYE? To say that KIDO's statement that HARADA was
8 ill is "clearly untrue" because of the evidence that
9 he traveled during this time is not understandable.
10 He was able to travel. He was paralyzed when he
11 called on KIDO on February 27, 1937 as shown in
12 KIDO's Diary.⁸⁸ It is also respectfully submitted
13 that with men's lives at stake, the accuracy of
14 HARADA's quotations of the exact statements made by
15 various people should be viewed with extreme scepticism.
16 It may be true that he held conversations and was
17 reporting on the subject matter of the conversations,
18 but it would be contrary to all concepts of justice
19 that the exact words used be accepted by this Tribunal
20 as accurate. In view of Mrs. KONOYE's testimony, it
21 is also extremely doubtful if the persons whom
22 HARADA says he is quoting were the persons who made
23 the statements.
24
25

88. Ex. 3879, Tr. 38683.

1 34. Lacking evidence establishing the
2 accuracy or credibility of the HARADA Memoirs, a
3 retreat is made to argument. Can the prosecution, in
4 this important trial, be serious in representing to
5 the Tribunal (and incidentally confessing its doubts)
6 " * * * even if he sometimes missed some part of
7 what was being said to him, that is no indication
8 that he has invented or distorted those things which
9 he has recorded. No witness has attacked his
10 honesty * * *" ⁸⁹. If he missed part of a conversa-
11 tion, his recordation would be distorted. Let us
12 review what was said:

13 KOISO: "A. Absolutely no. I have heard
14 that that has been entered in HARADA's diary, but
15 that is completely without foundation. It is a com-
16 plete falsehood and a fabrication on his part." ⁹⁰.

17 "A. I have discovered that several times
18 he has twisted what I said and has told lies based on
19 that. And I believe he must have fallen into this
20 practice because of his own subjective view that I
21 was an advocate of the Tripartite Pact, and that is
22 why I deny the portion of the HARADA diary which you
23 just read to me." ⁹¹.

24 89. Par. JJ-11, Tr. 41055.

25 90. Tr. 32326.

91. Tr. 32406.

1 ARITA: "A. Although I do not doubt Baron
2 HARADA's capability nor his sincerity and good faith,
3 still I think there is room for doubt whether he was
4 conveying the truth and the full facts in every case--
5 every instance."⁹².

6 ARAKI: "A. Well, he may have interviewed
7 important influential people. He may have inter-
8 viewed others of the hoi polloi, I do not know. But,
9 I do not think that his reports were necessarily
10 accurate or important."⁹³.

11 TOJO: "A. * * * just a sort of high class
12 information broker. * * *"⁹⁴.

13
14 35. KIDO, when asked on cross-examination,
15 pointed out that the memoirs were only inaccurate and
16 incomplete.

17 KIDO: "A. I cannot now say for certain
18 that I did talk to HARADA in exactly that fashion."⁹⁵.

19 "A. * * * I am somewhat surprised at the
20 strong language employed."⁹⁶.

21 "A. However I feel that HARADA might have
22 been under a misapprehension when he penned such a
23 statement as this."⁹⁷.

24 92. Tr. 28984.

25 93. Tr. 28326, 28331-28332.

94. Tr. 36656-36661.

95. Tr. 31448.

96. Tr. 31449.

97. Tr. 31530.

1 "A. I do not recognize much accuracy in
the writings of HARADA."⁹⁸.

2 "A. But neither can I believe he wrote
3 down everything I said just as I said it."⁹⁹.

4 "A * * * HARADA must have left a great deal
5 out of our conversation."¹⁰⁰.

6
7 V. KIDO HAD NO CRIMINAL MIND.

8 36. Sheared of all superfluities, the
9 prosecution must establish by clear and convincing
10 proof that KIDO had a criminal mind. The prosecution
11 perhaps unwittingly but nevertheless in no uncertain
12 terms demonstrates that he did not.

13 37. It takes the position unreservedly that
14 KIDO was more interested in seeing that agreements
15 were reached no matter what they were so long as they
16 did not disturb the internal peace of Japan.¹⁰¹ It
17 is true that KIDO was very much disturbed and worried
18 about affairs in Japan and was anxious about internal
19 disturbances. He had just cause to be disturbed when
20 we consider the uprisings, planned coup d'etats,
21 revolts and assassinations which had occurred. It is
22 clear that had any of these disturbances come to
23

24 98. Tr. 31530.

25 99. Tr. 31574.

100. Tr. 31575.

101. Par. JJ-51, Tr. 41090; Par. JJ-72, Tr. 41109;
Pros. Doc. 0003, Tr. 16847.

1 fruition it would have been impossible to hold back
2 the tide of the internal situation moving toward the
3 end which KIDO was trying to prevent. The tide would
4 have taken its own course more decisively. He was
5 striving to the best of his ability not to give a
6 chance to radical positivists, and while reducing
7 their evil influence to a minimum degree, he attempted
8 readjustment of the internal situation by making
9 use of events as they presented themselves to change
10 the trend of events toward a greater goal, i.e.
11 world peace.^{102.}

12 38. His concern for the effect which would
13 be brought about by a disturbance of the internal
14 peace such as the elimination of those close to the
15 Throne who were in favor of peace is set forth fully
16 in his diary of April 14, 1939, in a conversation he
17 had with Foreign Minister ARITA about the Tripartite
18 Alliance.

19 "If we should make a mistake in disposing of
20 the matter I was afraid, as a problem of home admin-
21 istration, it should result in leaving to posterity
22 the root of more calamity than that caused by the
23 problem of the London Naval Treaty, and as a result
24 102. Tr. 31316-31322.
25

of it the so-called Senior Statesmen would necessarily and positively be eliminated."¹⁰³.

1
2 39. His diary entries of August 7, 1941¹⁰⁴.
3 and October 9, 1941¹⁰⁵. also show in his counsel to
4 KONOYE that KIDO advocated Japan should bear ten or
5 fifteen years of hardship and privation. Here again,
6 he thought that during this period a change of situa-
7 tion would occur so that Japan could effect political
8 reconstruction.¹⁰⁶ Certainly these thoughts of his
9 expressed in his diary clearly show that his was not
10 a criminal mind.
11

12 40. We now come to an extremely important
13 consideration. The prosecution has summarized and
14 evaluated KIDO's mental attitude on a number of occa-
15 sions, three of which are as follows:

16 (1) "His particular concern was always to
17 avoid internal quarrels in Japan. He did not so much
18 mind what they agreed upon so long as they agreed."¹⁰⁷.

19 (2) "He was not so much concerned as to what
20 kind of alliance was made with Germany so long as they
21 avoided quarrels in Japan."¹⁰⁸.

22
23 103. Aff. par. 115, Tr. 30874-30875.

24 104. Ex. 1130, Corrected by Language Section Tr. 10667.

25 105. Aff. par. 200, Tr. 30960-30961; Ex. 1146,
Corrected by Language Section Tr. 11139.

106. Aff. par. 187, Tr. 30946-30947.

107. Pros. Doc. 0003, P. 45, Tr. 16847.

108. Par. JJ-51, Tr. 41090.

(3) "We submit that KIDO was only interested in securing agreement, no matter what it was."^{109.}

1
2 41. The first is a general appraisal of
3 his mind unrelated to any particular action of his.
4 The second reference is to the advice he gave on the
5 question of whether Japan should enter into a military
6 alliance with Germany and Italy. The third is an
7 estimation of the counsel he suggested on October 13,
8 1941 that KONOYE should try to promote mutual under-
9 standing between the War and Navy Ministers to which
10 the prosecution observed, "Obviously this could only
11 be done by one or the other giving way."^{110.} The law
12 of this case is that the burden of proof is on the
13 prosecution to prove guilt beyond a reasonable doubt.^{111.}
14 Thus the prosecution has the burden of proving KIDO
15 conspired to and did wage various declared or un-
16 declared war or wars of aggression, etc. as set out
17 in the Indictment (assuming for the purpose of this
18 argument but not conceding that the Indictment follows
19 the Charter). But the prosecution repeatedly contends
20 that his counsel and advice was that he was not con-
21 cerned with what they agreed upon so long as they

23 109. Par. JJ-72, Tr. 41109.

24 110. Par. JJ-72, Tr. 41109.

25 111. Tr. 22-23.

1 agreed. (By "they" it is obvious the prosecution
2 refers to other people and not KIDO). This can only
3 mean that the prosecution's position is that KIDO
4 was not interested in whether the decision reached
5 was part of a conspiracy to wage declared or un-
6 declared war or wars of aggression, etc. or the
7 waging thereof; or whether it was for a defensive
8 war or peace or any halfway measure. The prosecution
9 says that all he wanted was that some decision be
10 reached. Thus it logically follows that the prose-
11 cution's position is that in advocating some decision
12 be reached, KIDO was perfectly satisfied if it was
13 a decision to commit some act not charged in the In-
14 dictment -- for example, peace. He is not charged
15 with conspiring to commit or committing some act --
16 he is charged with conspiring to commit and committing
17 the acts set forth in the Indictment. The only con-
18 clusion which can be drawn is that the prosecution
19 admits it has failed to sustain the burden that he
20 conspired to commit or committed the acts set forth
21 in the Indictment. Furthermore, in so far as the
22 conspiracy is concerned, any contention that he did
23 not resign even though his counsel was not taken is
24 immaterial. Under the theory of conspiracy one must
25 conspire ahead of time, not after the act is completed.

1 Even though he continued in office, the prosecution's
2 position by citing other instances is that he gave
3 similar advice on subsequent occasions. By staying
4 in office and trying to hold back the trend toward
5 war KIDO demonstrates the necessity of public offi-
6 cials assuming office to fight the forces of evil.
7 The prosecution's attempt to create law to fit KIDO's
8 case¹¹². does not pass the test of reason. By saying
9 with respect to all his advice, "He did not so much
10 mind what they agreed upon as long as they agreed,"¹¹³.
11 we submit the prosecution admits it has failed to
12 sustain its burden. On the basis of the prosecution's
13 own contention, the counts should be dismissed as to
14 KIDO.

15 42. The prosecution in reply to the motion
16 to dismiss admits, "His particular concern was always
17 to avoid internal quarrels in Japan."¹¹⁴. Bearing
18 in mind the many years KIDO devoted to prevent
19 assassinations, uprisings and revolts in Japan and
20 in some of which he was a target, the Tribunal's
21 attention is directed to two other statements of the
22 prosecution in its general summation,¹¹⁵. wherein it
23

24 112. Par. C-17, Tr. 39050; Par. C-24, Tr. 39057-58.

113. Pros. Doc. 0003, P. 45, Tr. 16847.

114. Ibid.

115. Tr. 38962-38963.

must have overlooked KIDO:

1
2 1. "It seems never to have occurred to any
3 of these accused that they had the first obligation
4 and duty to set their own house in order, to the
5 extent of providing ample security from assassination
6 of their own national leaders, before they proceeded
7 on with this vast scheme to confer the benefits of
8 Japanese civilization throughout such a great part of
9 the world."

10 2. "* * * The record in this case clearly
11 proves that Japan needed to defend itself not against
12 forces from without, but from the evil, malignant
13 and ruthless elements in the heart of its capital."

14 This is precisely what the prosecution in
15 its individual summation says KIDO was doing. If
16 there was ever a man unjustly prosecuted it is KIDO.
17 The prosecution admits he was opposed to the evil it
18 condemns. It even goes further and admires his actions
19 in saying: "No doubt if his advice had been taken we
20 should not be holding this trial today. * * *"116.

21 What a commendation considering the position of Japan
22 and her people today. Notwithstanding this, it con-
23 demns him.
24

25 116. Pros. Doc. 0003, Tr. 16852.

1 43. KIDO's aversion to war is best
2 exemplified in his diary entry of October 20, 1941,
3 after the appointment of TOJO:^{117.}

4 "I told His Majesty that one mistaken step
5 taken in the present cabinet change might have in-
6 advertently plunged us into war. After careful con-
7 sideration I believe this to be the only way of giving
8 a new turn to the situation and had thus recommended
9 it."

10 44. Were these words uttered by the same
11 man whom the prosecution has branded as a criminal,^{118.}
12 a murderer,^{119.} a gangster,^{120.} an aggressor at heart?^{121.}
13 Yes, these are KIDO's words.
14

15 45. The prosecution treats this diary entry
16 with silence not only in cross-examination but also
17 in summation. Why? Because it strikes at the heart
18 of the prosecution's case against KIDO. It does not
19 fit in with its theory that KIDO had a criminal mind
20 and that he recommended TOJO to lead Japan to war.
21 The weakness of the prosecution's case is emphasized
22 by its silent approval. By its silence there is only
23 one conclusion. Apparently the prosecution concedes
24 the fallacy of its theory.
25

117. Ex. 1157, Tr. 10295. 120. Tr. 31544.
118. Indictment. 121. Tr. 16852.
119. Ibid.

1 46. There is no evidence in this case of
2 any inflammatory speeches or harangues by KIDO beating
3 war drums or advocating aggression. It just is not
4 there. It exists only in the prosecution's mind.
5 The evidence is that KIDO was conciliatory, cultivating
6 peace, using his skill to make it bloom. The evidence
7 is that KIDO, well knowing that force destroys those
8 who use it, tried to avoid force and at all times
9 advocated prudence and patience as the method of
10 finding ways to settle Japan's problems.

11 47. In reply to the prosecution's contention
12 that no entry from KIDO's Diary has been produced from
13 either side which shows that he opposed any aggres-
14 sion because it was morally wrong or contrary to
15 international law or treaties, we wish to recall that
16 on cross-examination, when requested to do so by the
17 prosecution, he pointed out twelve different instances
18 where he advised against aggression.¹²² The prose-
19 cution did not pursue the question further. Although
20 the burden is on the prosecution to show he was in
21 favor of aggression, and there is no burden on KIDO
22 to show he was not unless the prosecution had sustained
23 its burden, which it has not done, we are nevertheless
24 willing to accept its challenge and point out to the
25 122. Tr. 31400-31401-31402-31403-31404.

1 Tribunal some of the entries of KIDO's Diary which
2 show he opposed aggression in contradiction of the
3 prosecution's bald statement.

4 June 23, 1931¹²³.

5 "Learned from HARADA deplorable information
6 concerning a serious scheme in Manchuria on the part
7 of some military officers."

8 June 26, 1931¹²⁴.

9 "* * * Called on the Lord Keeper at his
10 official residence and reported to him concerning
11 the information on a conspiracy in China contrived
12 by the military in conjunction with some adventurers."

13 September 22, 1931¹²⁵.

14 "The determination of the military circles
15 towards Manchuria is so strong that it is feared that
16 orders given by the central authorities may not be
17 thoroughly understood."

18 November 13, 1931¹²⁶.

19 "Agreement in opinion has been reached
20 regarding the fact that a deep concern rather than
21 grief is being caused over the present state of the
22 country having no national measures relating to the
23

24 123. Ex. 3340, Aff. par. 10, Tr. 30728.

124. Ex. 3340, Aff. par. 10, Tr. 30728-30729.

25 125. Ex. 179-I, Tr. 1938, as corrected by Language
Section, Tr. 34266-34267.

126. Ex. 3340, Aff. par. 22, Tr. 30742-30743.

1 so-called 'Northward Advance Continental Policy'
2 held forth by the military, by which the country is
3 being vainly dragged along."

4 February 4, 1932^{127.}

5 "HARADA said that when he saw Finance
6 Minister TAKAHASHI, the Minister was deeply anxious
7 about the positive actions of the Army, saying that
8 if things went on as they were, Japan would lose the
9 confidence of the powers * * * and reported the pur-
10 port to the Lord Keeper."

11 February 16, 1932^{128.}

12 "At 4 p.m. had an interview with Dr. TACHI
13 at HARADA's and heard his opinion about the relations
14 between the new state in Manchuria and Mongolia and
15 the Nine Power Treaty. His opinion is that from the
16 standpoint of international common law the open inter-
17 vention on the part of our countrymen could not but
18 be regarded as violation of Article I of the treaty."

19 February 17, 1932^{129.}

21 "His Majesty is deeply concerned about the
22 Shanghai Incident and the attitude of the League of
23 Nations in regard to the incident. I was deeply im-
24 pressed when hearing the Lord Keeper's report and

25 127. Ex. 3340, Aff. par. 28, Tr. 30756-30757.

128. Ex. 3340, Aff. par. 31, Tr. 30761-30762.

129. Ex. 3340, Aff. par. 32, Tr. 30762-30763.

1 could not help sympathizing with His Majesty in his
2 anxiety."

3 August 2, 1938^{130.}

4 "1. In dealing with the present Incident,
5 we are to adopt the policy of nonaggrandizement in
6 order to avoid a war with the USSR.

7 "2. We are to solve this problem by
8 diplomatic negotiations and if the developments
9 thereof make it necessary, we had better withdraw
10 from the Changkufeng line."

11 September 26, 1940^{131.}

12 "It is indeed regrettable that such measures
13 are taken by those in the field who do not understand
14 the general situation. It is people like this who
15 make the grave blunders."

16 December 3, 1940^{132.}

17 "After the present war, there is little
18 doubt that the only uninjured countries will be the
19 USSR and the United States, while others would be
20 exhausted. Then Japan will be placed between the
21 two powers and subjected to an extremely enduring
22 hardship.**** So provided that we are prepared for
23 ten years of hardships and cultivate a morale based
24

25 130. Ex. 3340, Aff. par. 100, Tr. 30854-30855.

131. Ex. 643, Tr. 7049-7050.

132. Ex. 3340, Aff. par. 161, Tr. 30914-30915.

1 on simplicity and virility, I believe it is not so
2 difficult to emerge favorably in the end."

3 July 31, 1941¹³³.

4 "There are several means to be tried regard-
5 ing the relationship between America and Japan. We
6 must deliberate patiently on the matter in a con-
7 structive manner. I would urge the premier's careful
8 consideration on this point."

9 August 2, 1941¹³⁴.

10 "Under these circumstances, we would be
11 threatened by an acute national crisis, if we made
12 any mistake in our diplomatic moves."

13 August 7, 1941¹³⁵.

14 "6. If the above-mentioned were true, we
15 must reach the conclusion that our war with the U.S.A.
16 would be a hopeless one."

17 September 6, 1941¹³⁶.

18 "* * * the Emperor should give a warning in
19 conclusion that the Supreme War Command should exert
20 every effort in order to bring about a diplomatic

21 133. Ex. 1125, Tr. 10186, as Corrected by Language
22 Section, Tr. 10667.

23 134. Ex. 1129, Tr. 10196, as Corrected by Language
24 Section, Tr. 10667.

25 135. Ex. 1130, Tr. 10199, as Corrected by Language
Section, Tr. 10667.

136. Ex. 1135, Tr. 10216, as Corrected by Language
Section, Tr. 31420.

1 success inasmuch as the present decision was such
2 an important one that it might lead to a war in
3 which our national fortunes would be staked."
4 October 9, 1941¹³⁷.

5 "1. The resolution of the Council in the
6 Imperial presence on the 6th of September seemed to
7 me too outright. It was not the conclusion of ex-
8 haustive discussion in my opinion.

9 "2. Judging from the situation both at
10 home and abroad, it is very difficult to predict the
11 outcome of war with the U.S.A. So we had better
12 reconsider it.

13 "3. It would be inadvisable to declare
14 war against the U.S.A. immediately."
15 October 13, 1941¹³⁸.

16 "I expressed my opinion to him. Our con-
17 clusion of the talk was this: The Premier should
18 make an effort to promote mutual understanding with
19 the War and Navy Ministers."
20 October 16, 1941¹³⁹.

21 "I pointed out that the decisions made at
22 the Imperial Conference on September 6 were rather
23

24 137. Ex. 1146, Tr. 10241, as Corrected by Language
25 Section, Tr. 11139.
138. Ex. 1149, Tr. 10275.
139. Ex. 1151, Tr. 10281, as Corrected by Language
Section Tr. 11141.

careless and I urged the revision of the resolution
of the Council in the Imperial presence. * * *

October 17, 1941¹⁴⁰.

"In deciding the fundamental policy of our
country you need not necessarily follow the decisions
of the Council in the Imperial presence on the 6th of
September, but should study carefully conditions both
at home and abroad."

October 20, 1941¹⁴¹.

"I told His Majesty that one mistaken step
taken in the present cabinet change might have in-
advertently plunged us into war. After careful con-
sideration I believe this to be the only way of giving
a new turn to the situation and had thus recommended
it."

November 19, 1941¹⁴².

"Accordingly, I advised His Majesty, when
the Premier solicits His Majesty's final decision, if
circumstances require, the Premier should be ordered
to hold the Council in the Imperial Presence with the
participation therein of all the Senior Statesmen."

140. Ex. 1154, Tr. 10291, as Corrected by Language
Section, Tr. 11142.

141. Ex. 1156, Tr. 10295.

142. Ex. 1181, Tr. 10389, as Corrected by Language
Section, Tr. 11143.

1 November 26, 1941^{143.}

2 "Once the final decision is made this time
3 it would truly be the last and irretrievably final
4 one. Thus if there should be any doubt or any better
5 idea to surmount the difficulties in Your Majesty's
6 mind, I pray that Your Majesty be pleased to elucidate
7 the same without the least reserve and take appro-
8 priate steps which Your Majesty might not repent of
9 afterwards."

10 November 30, 1941^{144.}

11 "I replied that His Majesty's decision is of
12 such gravity that, once decided, it could not later
13 be retracted. Hence it is felt that if there is the
14 least uncertainty every possible precaution should be
15 taken to do that to which His Majesty can give assent."
16

17 47. On the other hand, the prosecution has
18 not pointed out one single diary entry where KIDO
19 said "I urged war," or an equivalent statement.

20 48. Before dealing with the facts in detail,
21 we must confess we are at a loss to understand what
22 facts the prosecution claims establishes a conspiracy
23 in so far as KIDO is concerned, when KIDO is supposed
24

25 143. Ex. 1190, Tr. 10429, as Corrected by Language
Section, 11,143.

144. Ex. 1198, Tr. 10468, as Corrected by Language
Section, 12,480.

1 to have joined it, and what were its purposes. One
2 of the prosecution's chief witnesses, Premier
3 WAKATSUKI never heard of any plan or conspiracy by
4 these accused or any one to plan and wage wars of
5 aggression to conquer China and eventually the world.^{145.}
6 By repetition of the words conspiracy, joined the
7 conspiracy, conspirators, etc., the prosecution does
8 not establish there was one, or that KIDO was a con-
9 spirator.

10 49. In abandoning the conspiracy charges
11 against KIDO for the period of time from October 28,
12 1930 to June 13, 1936^{146.} it must be assumed that the
13 prosecution has also abandoned all charges of sub-
14 stantive crimes during this period, as it has pursued
15 the conspiracy method of proof and fails to point
16 out any proof of substantive crimes against KIDO.

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

20 (Whereupon, at 1200, a recess was taken.)
21
22
23

24 145. Tr. 1591.
25 146. Par. JJ-2, Tr. 41047.

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. Logan.

MR. LOGAN: If the Tribunal please, I will continue reading from page 47, Par. 50, Marquis KIDO:

VI. EVENTS WHILE KIDO WAS CHIEF SECRETARY TO THE LORD KEEPER OF THE PRIVY SEAL:

1930 - June 13, 1936.

50. Briefly, from 1930 to June 13, 1936, KIDO, as Secretary to the Lord Keeper of the Privy Seal, gathered information for the Lord Keeper, so that he could be well informed if the Emperor asked for advice. KIDO was not permitted to hold audiences with the Emperor. ¹⁴⁷ His diary during this period records innumerable instances of his opposition to the military plotting and injecting itself into and

gaining control of the government, his firm conviction that the various branches of the government should be conducted in a constitutional manner,

148. Diary 6/23/31 - Aff. par. 10, Tr. 30,728
 " 6/26/31 - Aff. par. 10, Tr. 30,728-9
 " 7/11/31 - Ex. 179-A, Tr. 1925-6
 " 7/13/31 - Ex. 179-B, Tr. 1926-7
 " 8/7/31 - Ex. 179-F, Tr. 1927-8
 " 8/12/31 - Ex. 179-G, Tr. 1930-1
 " 9/9/31 - Ex. 179-C, Tr. 1934-5
 " 9/12/31 - Ex. 179-D, Tr. 1936
 " 9/19/31 - Ex. 179-H, Tr. 1936-7
 " 9/21/31 - Ex. 179-R, Tr. 1937
 " 9/22/31 - Ex. 179-I, Tr. 1938
 " 9/23/31 - Ex. 179-J, Tr. 1939
 " 10/1/31 - Ex. 179-L, Tr. 1940
 " 10/5/31 - Ex. 179-M, Tr. 1941 and additional excerpt Aff. par. 16, Tr. 30,725
 " 10/6/31 - Ex. 179-N, Tr. 1941 and additional excerpt Aff. par. 17, Tr. 30,736
 " 10/7/31 - Ex. 179-O, Tr. 1941 and additional excerpt Aff. par. 18, Tr. 30,737
 " 10/12/31 - Aff. par. 18, Tr. 30,738
 " 10/14/31 - Ex. 179-P, Tr. 1941-42
 " 11/13/31 - Aff. par. 22, Tr. 30,742-3
 " 11/17/31 - Aff. par. 22, Tr. 30,744-7
 " 1/11/32 - Ex. 2191, Tr. 15,731, Aff. par. 24, Tr. 30,751-2
 " 1/21/32 - Aff. par. 26, Tr. 30,754
 " 2/16/32 - Aff. par. 31, Tr. 30,761-2
 " 2/17/32 - Aff. par. 32, Tr. 30,762-4
 " 5/16/32 - Aff. par. 39, Tr. 30,776-81
 " 5/17/32 - Aff. par. 40, also Ex. 2252, as Corrected by Lang. Sec., Tr. 16,215
 " 2/26/36 - Aff. par. 56, Tr. 30,804-9
 149. Diary, 10/19/31 - Aff. par. 21, Tr. 30,740-1
 " 10/28/31 - Aff. par. 21, Tr. 30,742
 " 3/8/33 - Aff. par. 47, Tr. 30,794-6
 " 3/24/33 - Aff. par. 48, Tr. 30,796-7

1 his association with, and admiration for the policies
 2 of Prince SAIONJI,¹⁵⁰ the historical development of¹⁵¹
 3 the duties of the Lord Keeper during cabinet changes
 4 and his opposition to Fascism.¹⁵² His subsequent
 5 and continued adherence to these principles will
 6 be dealt with hereinafter in more detail.
 7

8 51. It was only two weeks after his assump-
 9 tion of the position of Chief Secretary to the Lord
 10 Keeper of the Privy Seal that Prime Minister HAMA-
 11 GUCHI was assassinated.¹⁵³ Thereafter followed a
 12 series of events, in which as shown by his diary,
 13 KIDO had no part, except as a target of assassins

- 14 150. Diary 4/14/31 - Aff. par. 9, Tr. 30,725
 15 " 12/16/31 - Aff. par. 23, Tr. 30,750-1
 16 " 1/13/32 - Aff. par. 25, Tr. 30,753
 17 " 2/26/32 - Aff. par. 33, Tr. 30,767-9
 18 " 3/27/32 - Aff. par. 37, Tr. 30,774-5
 19 " 4/8/32 - Aff. par. 38, Tr. 30,775-6
 20 " 10/18/32 - Aff. par. 45, Tr. 30,791
 21 " 8/9/34 - Aff. par. 51, Tr. 30,799-800
 22 " 8/29/35 - Aff. par. 53, Tr. 30,801
 23 " 7/4/36 - Aff. par. 62, Tr. 30,823
 24 151. Diary 4/13/31 - Aff. par. 8, Tr. 30,724-5
 " 4/14/31 - Aff. par. 9, Tr. 30,725-8
 " 12/12/31 - Aff. par. 22, Tr. 30,748
 " 2/12/32 - Aff. par. 30, Tr. 30,761
 " 8/26/32 - Aff. par. 42, Tr. 30,787-8
 " 8/27/32 - Aff. par. 44, Tr. 30,789
 " 9/16/32 - Aff. par. 45, Tr. 30,790
 " 12/15/32 - Aff. par. 46, Tr. 30,791-3
 152. Diary 3/3/36 - Aff. par. 58, Tr. 30,818
 153. Aff. par. 6, Tr. 30,722

1 in some of them, but to all of which he expressed
 2 his opposition and used his best endeavors within the
 3 scope of his minor position either to prevent them,
 4 or strove to rectify the resultant effects on Japan's
 5 internal and external affairs: the March Incident
 6 in 1931 which served as the commencement of the Army's
 7 driving power in the political field,¹⁵⁴ the Manchur-
 8 ian Incident, October 17, 1931 Incident,¹⁵⁵ the
 9 Sakurada Incident of January 13, 1932,¹⁵⁶ the assassi-
 10 nation of Dan and INOUE, leader of the Minseito
 11 Party in February 1932,¹⁵⁷ the May 15, 1932 Incident
 12 in which the residence of the Lord Keeper of the
 13 Privy Seal was bombed and Prime Minister INUKAI
 14 assassinated,¹⁵⁸ the so-called god-sent troop affair
 15 in July 1933,¹⁵⁹ the August 1935 Incident,¹⁶⁰ and
 16 the February 26, 1936 Incident in which SAITO, Lord
 17 Keeper of the Privy Seal, TAKAHASHI, Finance Minister
 18 and others were assassinated.¹⁶¹

19
 20 52. Critical reference is made by the
 21 prosecution to several events which occurred during

- 22 154. Aff. par. 7, Tr. 30,723, Diary 3/9/32, par. 36,
 Tr. 30,770-2
 23 155. Diary 10/17/31, Aff. par. 20, Tr. 30,739-40;
 Diary 3/9/32, Aff. par. 36, Tr. 30,772-3
 24 156. Diary 1/13/31, Aff. par. 25, Tr. 30,753
 157. Aff. par. 6, Tr. 30,722
 25 158. Diary 5/16/31, Aff. par. 39, Tr. 30,776-81
 159. Aff. par. 6, Tr. 30,722
 160. Aff. par. 54, Tr. 30,801
 161. Diary Feb. 26, 27, 28, 29, 1936, Aff. par. 56,
 Tr. 30,806-16; Diary 3/2/36, Aff. par. 57,
 Tr. 30,817-8

1 this period. It refers to KIDO's Diary of September
2 10, 1931¹⁶² in which KIDO agreed in general with
3 TANI's opinion that self-defensive action in Man-
4 churia might be unavoidable according to develop-
5 ments. As explained by KIDO, he believed the posi-
6 tion of the Japanese people in Manchuria was becom-
7 ing dangerous and he was afraid that they might be
8 massacred as were the Japanese by the Bolshevik
9 parties in 1920 at Nikolaevsk. The details of that
10 incident were described by the accused MINAMI.¹⁶³

11 53. As abundantly shown in the evidence,
12 when the Manchurian Incident started the official
13 announcement was that the action was taken in self-
14 defense. KIDO believed at that time, and so testi-
15 fied on cross-examination, that the action initially
16 was in self-defense.¹⁶⁴ It was not until about a
17 week later, however, when he heard rumors that the
18 action had not been taken in self-defense and he
19 consequently questioned HAYASHI of the War Depart-
20 ment at Kusan Hall as shown in his diary entry of
21 September 23, 1931.¹⁶⁵ These two statements are not
22 irreconcilable as the prosecution would have the
23

24 162. Par. JJ-4, Tr. 41,048

25 163. Tr. 19,781

164. Tr. 31,476

165. Ex. 179-J, Tr. 1939

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22 irreconcilable as the prosecution would have the
23

24 162. Par. JJ-4, Tr. 41,048

25 163. Tr. 19,781

164. Tr. 31,476

165. Ex. 179-J, Tr. 1939

1 Tribunal believe. One referred to his belief on
 2 September 18, 1931 and the other to his belief on
 3 September 23, 1931. KIDO's position at that time
 4 was very minor and he had nothing to do with poli-
 5 cies or decisions as testified to by the accused
 6 SHIRATORI on cross-examination. ¹⁶⁶

7 ^{54.} As shown in KIDO's Diary of September
 8 22, 1931, ¹⁶⁷ the Emperor had already approved the
 9 government's policy to strive not to extend the
 10 Manchurian Incident and the Army was indignant be-
 11 cause the Emperor's opinion had been induced by his
 12 personal attendants. It also shows that KIDO in
 13 the minor position as Chief Secretary to the Lord
 14 Keeper of the Privy Seal and some of his friends
 15 thought the Emperor had better not say anything
 16 further ". . . unless ~~is~~ necessitated to do so . . ." ¹⁶⁸
 17 and that Prince SAIONJI should not come to Tokyo
 18 ". . . unless there is an important change in the
 19 situation. . . ." ¹⁶⁹ The prosecution fails to mention
 20 the conditional nature of the advice and argues that
 21 if the Emperor and Prince SAIONJI had taken a firm
 22 stand then it might have been decisive although
 23

24 166. Tr. 35,069

167. Ex. 179-I, Tr. 1938 as cor. by Lang. Sec.

25 Tr. 34,266-34,267

168. Ex. 179-I, Tr. 1938 as cor. by Lang. Sec.

Tr. 34,266-7

169. Ibid

trouble with the Army might have been provoked.

1 The first part of this statement is speculation. The
2 latter part of the supposition is probably based on
3 the prosecution's knowledge of what actually happened
4 the next month on October 17, 1931. The prosecution
5 also ignores the fact as reported in KIDO's diaries
6 of October 7, 1931 and October 12, 1931, that KIDO
7 did take part in having Prince SAIONJI return to
8 Tokyo, when a change occurred and the situation
9 did become alarming.¹⁷¹ Was it a crime for KIDO
10 and his friends to express apprehensions at a social
11 gathering, which thoughts were not conveyed to the
12 Emperor?¹⁷² KIDO had no responsibility to advise
13 the Emperor at that time. Was it a crime for KIDO
14 to have the safety of the Emperor and Prince SAIONJI
15 in mind? The assassination of Prime Minister HAMA-
16 GUCHI in November 1930 and the March 1931 Incident
17 were fresh in their minds at that time. The October
18 17, 1931 Incident which occurred one month later
19 justified their apprehensions. As KIDO testified on
20 cross-examination, he was worried about a coup d'etat
21 and the possibility of those close to the Throne
22 being eliminated and replaced by activists. Should
23
24

25 170. Par. JJ-(), Tr. 41,057
171. Aff. par. 18, Tr. 30,737-8
172. Aff. par. 15, Tr. 30,733

1 KIDO be condemned or praised because he worried
2 about the possible machinations of the militarists?
3 Anyone who has opposed militarists would understand
4 why he was worried. Incidentally, when cross-
5 examined on this excerpt of September 22, 1931,
6 KIDO was unjustly accused by the prosecution of
7 using a "weasel" word "thoroughly" which the prose-
8 cution said was not in his diary.¹⁷³ Later when
9 this diary entry was referred to the Language
10 Section, it was found that the word "thoroughly"
11 had been omitted by the prosecution in its transla-
12 tion. The excerpt was corrected¹⁷⁴ but nothing
13 further was said by the prosecution.

14 55. KIDO's evidence of the principal events
15 which happened during this period were corroborated
16 as follows:

17 SHIDEHARA - on the lack of control of the
18 Cabinet over the Army.¹⁷⁵ INUKAI - on the inability
19 to withdraw the Army from Manchuria due to opposition
20 of the Army.¹⁷⁶ The facts regarding the increased
21 political influence of the military during this
22 period of time,¹⁷⁷ as set forth in Fah's book,

- 24 173. Tr. 31,298-9
25 174. Tr. 34,266-7
175. Tr. 1335
176. Tr. 1526-9
177. Ex. 2361-C, Tr. 18,116-122

1 "Government in Japan;" also, as set forth in the
 2 testimony of INOUE, Saburo. ¹⁷⁸ KATAKURA - that the
 3 Army in the Manchurian Affair did not act in accord-
 4 ance with Cabinet decisions. ¹⁷⁹ Telegrams from the
 5 War Minister dated September 19, 1931, confirming
 6 the Cabinet decision to avoid extension of the Man-
 7 churian Incident. ¹⁸⁰ SHHDEHARA - with respect to
 8 rumors of possible happenings in Manchuria. ¹⁸¹ The
 9 events of the October Incident as related by MINAMI. ¹⁸²
 10 The facts concerning the inability of UGAKI to form
 11 a cabinet in January, 1937 as testified to by the
 12 witness TSUGITA, ¹⁸³ and UGAKI. ¹⁸⁴ The facts regarding
 13 the February 26 Incident, as testified to by GOTO. ¹⁸⁵
 14 The fact that Count MAKINO, Prince SAIONJI, and
 15 HARADA, the Elder Statesmen, and KIDO were worried
 16 about the unlawful movements of the militarists;
 17 their efforts for a sound development of parliament-
 18 ary government, and the fact that KIDO and HARADA
 19 often put questions to SUZUKI and INOUE at dinner
 20 parties or tea ceremonies to obtain information
 21 regarding the military movements, as testified to by
 22

- 23 178. Tr. 35,159-61 185. Tr. 1639
 24 179. Tr. 19,088
 25 180. Ex. 3421A, Tr. 32,826; Ex. 3422-I, Tr. 32,843-4
 181. Tr. 33,589-90
 182. Tr. 19,790
 183. Tr. 29,649-50
 184. Tr. 1608, 1609, 1628
 185. Tr. 1639

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 2 testimony of INOUE, Saburo. ¹⁷⁸ KATAKURA - that the
 3 Army in the Manchurian Affair did not act in accord-
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 183. Tr. 29,649-50
 184. Tr. 1608, 1609, 1628
 185. Tr. 1639

186
INOUE.

VII

June 13, 1936 - October 22, 1937

56. During this period of time KIDO was President of the Bureau of Peerage. No events of special importance respecting KIDO have been presented, and no charge is mentioned in the prosecution's summation for this period of time.

VIII

EVENTS WHILE KIDO WAS MINISTER OF
EDUCATION AND AFTER JANUARY 11, 1938
CONCURRENT WELFARE MINISTER
OCTOBER 22, 1937 - MAY 26, 1938

57. We now pass on to consider the facts during the period KIDO was a Cabinet Minister, at the inception of which, October 22, 1937, the prosecution now claims after two years of trial, its case against him begins substantially, ¹⁸⁷ although the Indictment charges him with various crimes dating back almost ten years previous -- to wit, January 1, 1928. He was not a cabinet minister when the China Incident started on July 18, 1937, and, therefore, had no responsibility for the alleged

186. Tr. 35,159-161
187. Par. JJ-1, Tr. 41,047

1 planning, preparation or initiation thereof. The¹⁸⁸
2 prosecution has abandoned this Count against him.

3 58. Under the Constitution of Japan,
4 Article LV, it is stated: "The respective Ministers
5 of State shall give their advice to the Emperor,
6 and be responsible for it."¹⁸⁹ At the meetings of the
7 Cabinet discussions were held but generally speaking
8 the details pertaining to any particular ministry
9 were left to the competent minister of that ministry,
10 and his explanations generally passed the Cabinet.¹⁹⁰

11 It is only natural that when a Minister of State
12 presented a matter to the Cabinet, if the other
13 Ministers had insufficient data or information to
14 raise objections to the competent Minister's opinion
15 they would not be in a position to offer objection.
16 Thus policies submitted by the competent Minister
17 were generally supported by the Cabinet, if the
18 competent Minister explained it satisfactorily. Of
19 course, administrative matters were handled by each
20 Minister without submission to the Cabinet. If
21 Ministers of State are to be indicted as war crim-
22 inals for formalistic responsibility for attending
23 Cabinet meetings and casting a vote in support of
24

25 188. Par. JJ-89, Tr. 41,128

189. Ex. 68, Chapter IV, art. LV, Tr. 17,475

190. Tr. 31,385-31,386

1 measures discussed at the meeting, then may we ask
2 why most of the Ministers of State during the time
3 that KIDO was a Cabinet minister were not indicted?

4 VIII (a)

5 Military Training Was Not Intensified While
6 KIDO Was Education Minister.

7 59. KIDO was Minister of Education from
8 October 22, 1937 to May 26, 1938. There is no
9 competent evidence that as Minister of Education
10 KIDO used his position to further militarism or
11 aggression. KIDO's testimony that when he was the
12 Education Minister he never promoted or encouraged
13 military training in the schools was not challenged
14 by the prosecution on cross-examination. ¹⁹¹ The
15 broad and sweeping conclusions and opinions of
16 Colonel Donald Ross Nugent, prosecution witness,
17 with respect to teaching of aggressive militarism
18 in the schools was shown on cross-examination to
19 have been unwarranted. His testimony regarding the
20 period of time KIDO was Minister of Education was
21 sparse. He readily admitted that he could not
22 understand Japanese well. ¹⁹² He instituted an
23 inquiry to the students through an interpreter. ¹⁹³
24

25 191. Tr. 31,206

192. Tr. 842

193. Tr. 843

1 He was not an education specialist. ¹⁹⁴ He investi-
 2 gated the thoughts of only 300 or 350 of 18 million
 3 students who he said were subjected to military
 4 training. ¹⁹⁵ He inspected only 12 schools out of
 5 40,000. ¹⁹⁶ He admitted that the legal minimum for
 6 military training as late as 1940 to 1941 was only
 7 from 1½ hours to 3 hours and the rest was left to
 8 the discretion of each school. ¹⁹⁷ He could not even
 9 state the amount of time devoted to military training
 10 as distinguished from physical exercise in his own
 11 school. ¹⁹⁸ He admitted he was merely stating his own
 12 opinion. ¹⁹⁹ He also admitted that other influences
 13 outside of school could have inculcated ultra-
 14 nationalism. ²⁰⁰ Not even one textbook was produced
 15 to back up his opinion. Colonel Nugent also admitted
 16 that in the United States from 1937 on, military
 17 training was offered in high schools, colleges,
 18 universities, junior colleges, preparatory schools
 19 and so forth, known as Army and Navy ROTC under
 20 reserve and retired officers of the United States
 21 Army; that such training in land grant colleges was
 22 compulsory. ²⁰¹
 23

24 194. Tr. 363
 25 195. Tr. 863-864-865
 196. Tr. 859
 197. Tr. 861-2
 198. Tr. 862

199. Tr. 865
 200. Tr. 864-5
 201. Tr. 854

60. It is clear from the testimony of
1 prosecution witness Professor KAIGO, Tokioni of
2 Tokyo Imperial University that military training
3 in schools in Japan was not started by KIDO but
4 had been in force and effect in Japan since 1886.²⁰²
5 KAIGO also testified that compulsory rifle drill was
6 not initiated until 1939,²⁰³ which was after KIDO
7 resigned from the Ministry of education.
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202. Tr. 881 -
203. Tr. 889

1 61. The prosecution refers to the testimony
 2 of IKESHIMA. While it is true that he did testify on
 3 direct that in 1937 (he does not state whether before
 4 or after October 22nd) the school system was reorganized
 5 and more school time was devoted to military training
 6 and teaching of military subjects,²⁰⁴ he admitted on
 7 cross-examination that at the time in question he was
 8 an employee of a broadcasting company; that his whole
 9 testimony on direct was hearsay and that he did not
 10 recall how much more time was devoted to military
 11 training when KIDO was Education Minister.²⁰⁵ KIDO
 12 testified that the first statement above made by
 13 IKESHIMA on direct examination was not true.²⁰⁶ This
 14 is corroborated by IWAMATSU who testified on direct
 15 examination that no new measures were issued or taken
 16 with respect to military education by KIDO whether at
 17 his own volition or not,²⁰⁷ and that the reorganiza-
 18 tion which was referred to by IKESHIMA took place some
 19 time around 1941,²⁰⁸ that is, long after KIDO resigned
 20 from the Ministry of Education.
 21

22 62. He also testified that IKESHIMA's testi-

23 204. T. 1,103
 24 205. T. 1,103
 25 206. T. 30,834
 207. T. 18,543
 208. T. 18,558

mony on direct examination to the effect that more
1 time was devoted to military training and teaching
2 of military subjects while KIDO was Education Minister,
3 was incorrect. ²⁰⁹ On cross-examination by the
4 prosecution, IWAMATSU denied that the question of
5 compulsory attendance at the Youth School which came
6 into effect in April, 1939 had been agreed upon while
7 Marquis KIDO was Education Minister. ²¹⁰ The Tribunal's
8 attention is called to the fact that while the prose-
9 cution witness IKESHIMA was an employee of a business
10 concern and he admitted his testimony was hearsay,
11 IWAMATSU was the Chief of the Section of Archives
12 and Documents of the Ministry of Education during
13 KIDO's tenure of office as Minister of Education.
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209. T. 18,577
210. T. 18,568-18,569

63. Prosecution witness OUCHI testified on

1 direct examination that KIDO demanded the dismissal
2 of Professor YANAIHARA from the faculty of the Imperial
3 University of Tokyo and as a result he was requested
4 by officials of the University to resign, which he did.²¹¹

5 But OUCHI, too, admitted on cross-examination that he
6 was testifying from hearsay²¹² and that the reason
7 for the dismissal of YANAIHARA was because of a
8 certain essay which he published and in view of the
9 delicacy of the situation²¹³ he, OUCHI, and other
10 friends of YANAIHARA advised YANAIHARA to resign,
11 which he did voluntarily,²¹⁴ and there is no direct
12 evidence that KIDO demanded YANAIHARA to resign.
13

14 Why did the prosecution fail to call YANAIHARA?

15 On the other hand, TAKAGI, Yasaka, Professor
16 of the Imperial University of Tokyo, who had also
17 attended universities in the United States of America,²¹⁵
18 testified before the Tribunal and he was not cross-
19 examined by the prosecution. He stated that KIDO paid
20 full respect to university autonomy and closely
21 cooperated with Dr. NAGAYO, President of Tokyo Imperial
22

23 211. T. 945
24 212. T. 954
25 213. T. 952
214. T. 954
215. T. 31,640

216
 1 University. He corroborated KIDO's testimony
 2 that KIDO had common ideas with the university author-
 3 ities about university autonomy and that KIDO never
 4 tried to antagonize or bring any pressure whatsoever
 5 to bear upon the university.²¹⁷ In dealing with the
 6 question of Professor YANAIHARA, KIDO told him he
 7 would not interfere, leaving the solution of the
 8 problem to the university authorities.²¹⁸

9 TAKEGI was one of the councillors of the university
 10 at that time and he stated that he knew that Marquis
 11 KIDO did not interfere nor exert any pressure whatso-
 12 ever in connection with Professor YANAIHARA's resigna-
 13 tion.²¹⁹ He also stated that he had frequent talks
 14 with KIDO and knew of no tendencies of KIDO toward
 15 totalitarianism or fascism.²²⁰

17 64. KIDO's cooperation with the authorities
 18 of the university and respect for university autonomy
 19 is also shown in his diary entries of October 29, 1937;
 20 November 9, 1937, and November 30, 1937.²²¹ The testi-
 21 mony of TAKIKAWA is innocuous.²²² The rest of the
 22 general summation of the prosecution, incorporated
 23 in KIDO's individual summation by footnote reference
 24 applies to a period of time after KIDO had resigned as
 25

216. T. 31,642

217. T. 31,642

218. T. 31,642

219. T. 31,642

220. T. 31,641

221. Aff. par. 69, T. 30,828;

Aff. par. 74, T. 30,833

222. Ex. 131, T. 992

as Minister of Education.²²³

1
2 64a. There is no ground for suspicion that
3 a compulsory attendance at the Youth School was for
4 preparation for war. As testified to by YOSHIDA,²²⁴
5 the Youth Training School was renamed the Youth School
6 and compulsory courses did not become effective until
7 April 1939, when the Imperial Ordinance was issued to
8 that effect.²²⁵ This was after KIDO had resigned as
9 Education Minister. YOSHIDA also testified that the
10 school military training at first belonged to the
11 gymnastics course but was created independently of
12 gymnastics in 1939,²²⁶ which, too, was after KIDO
13 had resigned as Minister of Education. And he also
14 testified that in so far as universities were concerned,
15 military training was an optional course up to 1939
16 and, while it was optional, most students were indiffer-
17 ent to such training.²²⁷ This, too, was after KIDO
18 had resigned as Minister of Education on May 26, 1938.
19 The opinions of OUCHI with respect to teaching in
20 schools of ultra-nationalism and preparation for
21 aggression was dispelled by YOSHIDA's explanation of
22

23 223. Par. F.80, T. 39,426-39,427

24 224. T. 18,451

25 225. T. 18,471-18,472-18,473-18,474-18,475-18,476

226. T. 18,457

227. T. 18,461

1 the facts showing no such opinion of OUCHI was
2 justifiable.²²⁸

3 65. In June, 1937 the first KONOYE Cabinet
4 was formed. When Prince KONOYE became Prime Minister
5 in June, 1937 he set up an Educational Council to
6 revamp the education system. Later, while KIDO was
7 Education Minister in November, 1937, in order to
8 prevent the militarists from becoming members of this
9 council he sought and obtained the services of non-
10 military men to serve on this council as President
11 and Members of it.^{228a} This was the highest instru-
12 ment for the renovation of the education system and it
13 comprised as councillors the most prominent persons of
14 learning and experience both in and out of office.²²⁹

15
16 66. On direct examination by the prosecution
17 the witness KAIGO testified that the subjects discussed
18 in the Educational Council commencing December, 1937
19 were deliberated for several years and after December,
20 1937 the education in Japan was devoted to the promo-
21 tion of patriotism.²³⁰ Nothing has been offered by
22 the prosecution which even remotely shows that the
23 Council was set up for militaristic education.
24

25 228. T. 18,486-18,493

 228a. Aff. par.73, Diary, Nov.27,1937, T.30,832-3

 229. T. 28,206

 230. T. 894

1 67. As pointed out by the prosecution,²³¹
2 the cabinet decision of January 21, 1938²³² stated:
3 ". . . it is expected that education will be reformed
4 in order to cultivate the character of the people of
5 a great nation."²³³ This is commendable, not
6 criminal. It is submitted that there is nothing in
7 those quoted remarks which conflicts with KIDO's
8 testimony. It certainly cannot be argued that that
9 part of the cabinet decision pointed to militarism,
10 as the prosecution would have this Tribunal believe.²³⁴
11 KIDO's statement in answer to Baron OKURA's interpell-
12 ation confirms the wholesomeness of KIDO's purpose of
13 education.²³⁵ The prosecution did not produce or
14 refer in its summation to one order, one directive,
15 one ordinance regarding militarism in the schools
16 issued by KIDO as Minister of Education, to substantiate
17 its position, nor was there any evidence to explain
18 their absence, if they had been issued.
19

20 68. The prosecution argues that KIDO knew
21 of the Nanking atrocities and therefore his credit as
22 a witness is destroyed, as he had denied knowledge of
23

24 231. Par. JJ-46, Tr. 41,085

25 232. Ex. 3270, T. 37,251

 233. Ibid.

 234. Par. JJ-46, T. 41,085

 235. Ex. 3737-A, T. 37,285-37,292

1 these atrocities in his affidavit. The prosecution
2 makes light of HARADA's recollection of an illness he
3 had and which he reported to Dr. SASSA had occurred two
4 or three years previously,²³⁷ but condemns KIDO for
5 alleged failure to recall one event of eleven years
6 ago, which had occurred during a kaleidoscopic period
7 of Japan's history. When confronted with a newspaper
8 report of an interpellation of him by Baron OKURA at a
9 budget meeting,²³⁸ and his recollection was refreshed,
10 KIDO readily admitted the occasion, but stated his
11 recollection was that he had talked on the sense of
12 superiority of the Japanese nationals in China.²³⁹

13
14 69. The prosecution then offered in rebuttal
15 the actual proceedings of the budget meeting²⁴⁰ which
16 showed that OKURA mentioned reports in foreign news-
17 papers about distasteful things written about the
18 actions of Japanese forces in the Shanghai-Nanking area.
19 He also discoursed at length upon the attitude found
20 abroad of the sense of superiority exhibited by the
21 Japanese nationals toward the Chinese, and this was
22 the focus of his criticism.

23 70. KIDO acknowledged, in reply to OKURA,

24 237. T. 38,684

25 238. Ex. 3342-A, T. 31,515

239. T. 31,516

240. Ex. 3737-A, T. 37,285-37,292

1 that he had heard of reports concerning the action
2 of the Japanese troops in Shanghai and also heard of
3 reports of the sense of superiority of the Japanese
4 nationals in China and Manchuria. It is quite clear
5 from what KIDO said that the reports he heard were
6 not about Nanking. He also replied to Baron OKURA
7 that work in the elementary schools to correct this
8 sense of superiority had already been started and
9 that further remedial measures would be carried out.
10 Does this sound like a militarist? Since the prosecu-
11 tion's evidence shows KIDO was endeavoring to correct
12 the sense of superiority in the school children's
13 minds, how can it fairly charge that he fostered
14 ultra-nationalism and aggression?
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71. The Prosecution
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1 had seen reports in foreign newspapers about
2 is unsupported by the evidence. There is also no evi-
3 dence that KIDO saw or heard of reports alleged to have
4 been made to HIROTA about Nanking. If KIDO had known
5 of the atrocities of Nanking he naturally would have
6 mentioned it in his reply to OKUMA. The mere fact
7 HIROTA saw them is no evidence KIDO did. The produc-
8 tion by the prosecution of the actual proceedings of
9 the budget meeting verified KIDO's previous statement
10 on cross-examination that his recollection was that
11 he had talked on the sense of superiority of the Japan-
12 ese nationals in China. 242
13 Baron OKUMA's interpellation referred to this topic
14 and not to specific cases of "brutalities" or "atroci-
15 ties" in Nanking is apparent from his questions and
16 also from the fact that he directed his questions to
17 the Minister of Education and not the military. The
18 prosecution's unsupported assertion that KIDO as a
19 cabinet member is responsible for the Nanking atrocities
20 is contrary to the evidence that it was the responsi-
21 bility of the military, and contrary to the prosecution's
22 own claims in other parts of its summation that it was
23 the responsibility of the military.
24
25

241. Par. JJ-34, T. 41,074
242. T. 31,516

the article in question is not a
21 statement of policy" and the Tokyo Gazette is not the
22 "press." Moreover, the prosecution when it put the
23 question to IWANATSU said, "I will leave out the Tokyo
24 245. T. 28,401, 28,402, 28,403, 28,404, 28,405, 28,406,
25 246. T. 28,407
247. T. 33,878, 33,879, 33,880
248. Ex. 3337, T. 30,658
249. Par. JJ-47, T. 41,086; Ex. 226, T. 3,543
T. 18,581

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71. The prosecution's contention that he
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1 had seen reports in foreign newspapers about Nanking
2 is unsupported by the evidence. There is also no evi-
3 dence that KIDO saw or heard of reports alleged to have
4 been made to HIKOTA about Nanking. If KIDO had known
5 of the atrocities of Nanking he naturally would have
6 mentioned it in his reply to OKUMA. The mere fact
7 HIKOTA saw them is no evidence KIDO did. The produc-
8 tion by the prosecution of the actual proceedings of
9 the budget meeting verified KIDO's previous statement
10 on cross-examination that his recollection was that
11 he had talked on the sense of superiority of the Japan-
12 ese nationals in China. 242
13 Baron OKUMA's interpellation referred to this topic
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15 ties" in Nanking is apparent from his questions and
16 also from the fact that he directed his questions to
17 the Minister of Education and not the military. The
18 prosecution's unsupported assertion that KIDO as a
19 cabinet member is responsible for the Nanking atrocities
20 is contrary to the evidence that it was the responsi-
21 bility of the military, and contrary to the prosecution's
22 own claims in other parts of its summation that it was
23 the responsibility of the military.
24
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241. Par. JJ-34, T. 41,074

242. T. 31,516

1 72. Witness ISHII, Iitaro, of the Foreign
2 Office, testified on cross-examination on October 3,
3 1947 that there was nothing about the atrocities in
4 Nanking in the Japanese newspapers; that he never
5 heard that HIROTA ever presented this question to the
6 Cabinet and that he, ISHII, did not regard the Cabinet
7 as a body to discuss such a question; that the Cabinet
8 was not in any position to deal with questions which
9 concerned the military in the field and that he never
10 heard that this matter was submitted to the Cabinet.
11 On redirect examination he stated that the matter was
12 called to the attention of the liaison conferences and
13 warnings were issued to the military and that the
14 Foreign Office could do nothing more than it did from
15 the standpoint of the authority in its possession.²⁴³
16

17 73. Minister of Justice SHIONO, Suehiko, tes-
18 tified that during the First KOMOYE Cabinet, Cabinet
19 Ministers were not informed at the cabinet meetings
20 about the acts of atrocities which were committed in
21 China. He did not know whether there were any protests
22 from foreign countries but if there were, such pro-
23 tests were never brought to the attention of the Cabinet.²⁴⁴
24 He was not cross-examined by the prosecution. The
25

243. T. 29,989, 29,990, 29,992, 29,993, 29,995, 29,997
244. T. 30,358

245 246 247
 testimony of ~~MAKI~~, MATSUI, and ~~KAYA~~ were all to the
 1 same effect.

2 VIII (b)

3 "The Japanese Spirit"

4
 5 74. In support of its contention that KIDO
 6 sympathized with and participated in Japanese aggres-
 7 sion in China the prosecution refers to an article
 8 called "The Japanese Spirit" which appeared in the
 9 Tokyo Gazette of March-April 1938.²⁴⁸ The prosecution
 10 only read into the record a part of this article. It
 11 also contends that the defense witness IWAMATSU stated
 12 that generally speaking no statement would be issued
 13 by the Department of Education without the knowledge
 14 of the Minister of Education. IWAMATSU answered this
 15 when he was quizzed by the prosecution on a hypothetical
 16 question - if it is possible that an important statement
 17 of policy could be issued to the press by the Ministry
 18 of Education without the knowledge and approval of the
 19 Minister himself.²⁴⁹ The article in question is not a
 20 "statement of policy" and the Tokyo Gazette is not the
 21 "press." Moreover, the prosecution when it put the
 22 question to IWAMATSU said, "I will leave out the Tokyo
 23

- 24 245. T. 28,401, 28,402, 28,403, 28,404, 28,405, 28,406,
 28,407
 25 246. T. 33,878, 33,879, 33,880
 247. Ex. 3337, T. 30,658
 248. Par. JJ-47, T. 41,086; Ex. 226, T. 3,543
 249. T. 18,581

Gazette." And it substituted the word "press." It
 1 is clear that IWAMATSU was not purporting to say any-
 2 thing about the Tokyo Gazette when he answered this
 3 question. Nor did the prosecution present that partic-
 4 ular publication of the Tokyo Gazette containing the
 5 article, "The Japanese Spirit" to IWAMATSU and ask him
 6 the direct question whether or not it was issued by
 7 KIL0. The prosecution preferred to drop the question
 8 since the witness said he did not know what the Tokyo
 9 Gazette was and the prosecution observed, "It is prob-
 10 ably not worth pursuing it with regard to the particular
 11 statement."²⁵⁰ Furthermore, IWAMATSU answered the prose-
 12 cution that it was part of his duties to issue state-
 13 ments to the press and he explained the matter in detail.²⁵¹

15 75. The evidence is that the Tokyo Gazette was
 16 published by the Japanese Foreign Affairs Association,
 17 that the material in the magazine was selected from
 18 "Shuho" (The Weekly Report) edited by the Board of In-
 19 formation and that it was this Board under direct con-
 20 trol of the Prime Minister and not the Education Min-
 21 istry that supervised publication of the Tokyo Gazette
 22 in 1938.²⁵³ KIL0 fully explained the method of publica-
 23 tions and stated that he never wrote, edited, published

25 250. T. 18,582

251. T. 18,579, 18,580

252. Ex. 448, T. 5,103 (certificate not read by Pros.)

253. Ex. 448, T. 5,103. See also aff. par. 90, T. 30,843

or approved the printing of the article which appeared
1 in the "Shuho."²⁵⁴ Although KIDO had nothing to do with
2 the article, on direct examination he offered to submit
3 the "Shuho" of February 9, 1938 wherein the article ap-
4 peared but the prosecution did not accept his offer nor
5 did it cross-examine him on this entire matter.²⁵⁵

6 76. The Tokyo Gazette did not reproduce the
7 following statement which appeared originally in the
8 "Shuho."

9 "The Empire's action in the present affair
10 (The China affair) does not contemplate any
11 aggression or conquest as enunciated from time
12 to time with regard to its significance and ob-
13 ject."
14

15 The part of the article which was read by the prosecu-
16 tion was a mere introductory remark. It was not a
17 declaration of national policy but a general historical
18 statement. KIDO endeavored to find out who wrote the
19 article without success.²⁵⁶

20 77. Approval of contributions to the "Shuho"
21 was given by the Vice Minister of Education.²⁵⁷ From the
22 foregoing it is quite apparent that KIDO was not con-
23 sulted in advance about the article nor did he approve
24

25 254. Aff. par. 91, T. 30,844
255. Ibid.
256. Aff. par. 91, T. 30,844
257. Ibid.

1 of it nor was any report submitted to him after the pub-
2 lication. The prosecution offered no other articles
3 issued from any departments controlled by KIDO and as
4 the President of the Tribunal observed: "From such a
5 number of articles a hostile inference might be drawn,
6 but, perhaps, not from one article."²⁵⁸

7 VIII. (c)

8 Peace with Chiang Kai-shek

9 78. The evidence is undisputed as testified
10 to by Mr. KISHI, Secretary to Prince KONOYE, that on
11 the night of December 16, 1937 he brought KIDO a mes-
12 sage from KONOYE stating that since KONOYE could not
13 grasp the Army's real intention, KONOYE wanted KIDO to
14 find out from the War Minister at the next cabinet meet-
15 ing.²⁵⁹ He was not cross-examined. The next day, Decem-
16 ber 17, 1937, at the cabinet meeting KIDO observed that
17 as it is a bilateral negotiation it may become necessary
18 to make further concessions according to China's counter-
19 proposals. He then asked SUGIYAMA if the Army was pre-
20 pared for it and SUGIYAMA said, "No. These are the
21 minimum terms. In case they are rejected by China,
22 there will be no alternative but to keep up military
23 action against her."²⁶⁰ This is corroborated by the

25 258. T. 3,550

259. T. 31,639; see also Aff. par. 79, T. 30,836

260. Aff. par. 79, T. 30,836

261
 1 witness KISHI. It was fully explained by KIDO on
 2 cross-examination. War Minister SUGIYAMA's explana-
 3 tions were not clear and the wishes of the High Com-
 4 mand were known to the cabinet only through him. And
 5 he could not find out from SUGIYAMA the Army's real
 6 attitude toward the China Incident. 264

7 79. The prosecution in its general summation 265
 8 cites KIDO's affidavit as authority for the proposition 266
 9 that according to KIDO the Army was most anxious to
 10 press the peace solution, and that KIDO was the one
 11 who led the battle to keep the terms more abstract and
 12 that "the Army thought the chance of failure so great
 13 that, according to KIDO, it had firmly determined to
 14 bring about peace at any cost." KIDO did not say that.
 15 KIDO said in his affidavit that after he had spoken with
 16 War Minister SUGIYAMA "I failed to fully understand,
 17 therefore, that the Army had made a firm determination
 18 to bring about peace at all cost." 267 Furthermore, KIDO
 19 did not lead the battle to keep the terms abstract.
 20 The cabinet decision was that they would leave the mat-
 21 ter to the Foreign Office and let the Ambassador sound
 22 out Chiang's views by showing comprehensive condition
 23
 24

25 261. T. 31,638-639 266. T. 30,836, 30,837
 262. T. 31,426, 31,430 267. T. 30,836
 263. T. 31,421
 264. T. 31,422
 265. Par. E-54, T. 39,263

1 of intentions of Japan and refrain from showing details
2 as far as possible.²⁶⁸ Furthermore, as shown in KIDO's
3 Diary, December 21, 1937, the German Ambassador re-
4 quested further instructions which were given him.²⁶⁹

5 80. On January 16, 1938 Prime Minister KONOYE
6 issued the statement of the Imperial Government.²⁷⁰ KIDO
7 stated in his affidavit that although there was no evi-
8 dence before the Tribunal that he knew of that he had
9 signed this statement, he voluntarily stated that the
10 fact was that he did sign it.²⁷¹ It speaks for itself.
11 We ask the Tribunal to read it in full.

12 81. At that time it was ascertained that
13 Chiang Kai-shek had no bona fides in restoring peace
14 with Japan, and the Japanese Government thought that
15 a short cut for settlement of the China Affair was to
16 take constructive measures in China in conjunction with
17 those Chinese who shared Japan's ideals rather than
18 overrun the vast territory of China with armed forces
19 and the government decided not to deal with the Chiang
20 Regime.²⁷²

22 82. The Cabinet's decision not to deal with
23 the Chiang Kai-shek Regime was made on the basis of a
24

25 268. T. 30,837, Diary, Dec. 18, 1937

269. T. 30,837; Ex. 2259, T. 16,222

270. Ex. 972-A, T. 9,505

271. Aff. par. 86, T. 30,840

272. Ibid.

1 report drafted by the Foreign Office, and at the cab-
2 inet meeting Foreign Minister HIKOTA told his cabinet
3 colleagues that he had arrived at the conclusion that
4 no bona fides could be discerned judging by the reply
5 from Chiang Kai-shek which was of such a dilatory nature
6 at that late stage, since it sought an elucidation on
7 the meaning of Japan's proposal.²⁷³

8 83. The facts for many months preceding the
9 decision by the Cabinet which adopted the advice of the
10 Foreign Minister are fully explained in the summation
11 of the accused Foreign Minister HIKOTA which we need
12 not repeat but adopt as part of this summation. KIDO
13 held the minor post of Education Minister at this time,
14 and believed what was told him by the Foreign Minister
15 on the diplomatic matters and followed his advice. The
16 many steps enumerated by the accused HIKOTA taken to
17 effect this peace within his duties as Foreign Minister
18 definitely demonstrate that KIDO's part was very minor
19 and any contention to the contrary would be a gross
20 exaggeration. KIDO was asked on cross-examination if
21 he would not admit that it was perfectly obvious that
22 if the intentions of the KONOYE Cabinet were carried out
23 the terms would be so general and lacking in specific
24

25 273. Aff. par. 84, T. 30,838; Ex. 2260, Diary Jan. 14,
1938, as cor. by Lang. Sec. T. 16,223

1 details that it would be quite natural that Japan would
2 get an inquiry back from Chiang Kai-shek requesting more
3 details. KIDO replied that would be but natural. He
4 was then asked whether he had asked the Foreign Minister
5 on what ground he had based his conclusion that no bona
6 fides were being shown by Chiang Kai-shek. KIDO replied
7 that he did not recall whether or not he did question the
8 Foreign Minister. ²⁷⁴ There was no necessity for KIDO to
9 ask the Foreign Minister because prior to the decision
10 mentioned, the Cabinet had received a report from
11 Foreign Minister MIKOTA on the details of the peace nego-
12 tiations with China. ²⁷⁵ With respect to the four funda-
13 mentals of peace, HORINOUCI, ex-Vice Minister for
14 Foreign Affairs, testified:

16 "As to the contents of the four fundamental
17 terms, however, a detailed explanation had al-
18 ready been given through the German Government.
19 It was quite incomprehensible to us that the
20 Chinese Government should make a request to know
21 the contents of the terms to further details.
22 In the light of the progress of the past negotia-
23 tions between the two governments since the out-
24 break of the incident, the Japanese Government
25

274. T. 31,462, 31,464

275. Aff. par. 84, T. 30,838

could not but regard it as an artifice to delay
1 the settlement on purpose. The Foreign Office
2 was greatly discouraged by this reply of the
3 Chinese Government."²⁷⁶

4 On cross-examination HOKINOUCHI testified that he recol-
5 lected that the Foreign Minister HIKOTA gave quite de-
6 tailed explanation in regard to those four terms. In
7 the light of the above it is apparent that the full
8 explanation had been given and that there was no nec-
9 essity for KIDO to ask the Foreign Minister for the
10 ground of his conclusion. The statement of January 16,
11 1938²⁷⁸ does not in any manner indicate that Japan desired
12 to conquer China by armed force. On the contrary it
13 indicates that Japan was eager for an over-all peace
14 between Japan and China and fervently hoped that great
15 efforts would be put forth toward the accomplishment of
16 this. Witness KAGESA testified that the National Gov-
17 ernment once was about to accept the terms of the Japan-
18 ese Government but on the 14th of January 1938 it sud-
19 denly sent an answer contrary to the expectation of the
20 Japanese Government, and upon receipt of the reply of
21 the Chinese Government the Japanese Government drew
22 the conclusion that the Chinese Government had no
23

24 276. T. 29,703, 29,704

25 277. T. 29,831, 29,832

278. Ex. 972-A, T. 9,505

1 sincerity in the peace negotiations between the two
2 countries which led to the announcement of January 16,
3 ²⁷⁹1938.
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279. T. 23,977, 23,978

1 proposal that lenient and detailed terms should be
2 presented to China.²⁸⁵ Under the Japanese Constitu-
3 tion no person other than Cabinet Ministers can attend
4 cabinet meetings and participate in its decisions.
5 It is quite unbelievable that TADA attended any cabinet
6 meeting and discussed the China Affair. There is no
7 evidence that he did. Again on the other hand, KIDO
8 was never a member of the liaison conference and he
9 never had an opportunity to say anything to TADA in
10 that conference.

11 85. Further, according to HARADA's Memoir
12 of December 21, 1937,²⁸⁶ introduced by the prosecution
13 on rebuttal, KIDO is supposed to have told HARADA
14 that he suspected that the Army General Staff was
15 working fairly concretely through the German attache
16 in Tokyo committing to them some definite terms of
17 peace and that he felt a great danger in the sudden
18 haste with which the Army General Staff were turning
19 for a peaceful settlement and that he could not but
20 feel suspicious at the General Staff showing such a
21 degree of eagerness for the negotiations and that he
22 feared that Japan was being made a dupe of by Germany.

24 86. When HARADA submitted to Prince SAIONJI
25 the reports of the German mediation, Prince SAIONJI,

(285. Tr. 29,806

286. Ex. 3788-A, Tr. 37,709)

1 too, was suspicious of the underlying motive of
2 Germany and asked "Is this 'German mediation' to be
3 carried on by the German Government or by some German
4 individuals?" He, too, was greatly concerned about
5 the reasons for and the manner of hurrying through
6 these peace negotiations. ²⁸⁷ From the foregoing it
7 is quite apparent that it is not true that KIDO
8 vigorously opposed peace with China when it was
9 supposed to have been proposed by TADA to the cabinet
10 but if the entries of HARADA's memoirs are accurate,
11 the evidence is both Prince SAIONJI and KIDO were
12 worrying about the conspiracy of the Army General
13 Staff and the German Government in which Japan might
14 be fooled by Germany. Furthermore, it is quite apparent
15 from all the evidence that KIDO, as Minister of Edu-
16 cation, played a very minor part in these peace negoti-
17 ations which were within the competence of and being
18 handled by the Foreign Minister upon whose judgment
19 KIDO relied.

20 ²⁸⁸
21 87. The evidence shows that when KIDO
22 was asked by Prince KONOYE to join his cabinet he
23 declined at first. He did not desire to join the
24 cabinet as he felt dissatisfied with the continuance

25 (287. Ex. 3881, Tr. 38,692
288. Aff. ppr. 65, Tr. 30,825)

1 of hostilities with China. Prince KONOYE, however,
2 insisted that he should join it to assist him in
3 terminating the China Affair and KIDO was moved by
4 KONOYE's importunate request and accepted the offer.
5 The evidence is also undisputed that the Emperor,
6 desiring peace with China, approved of KIDO's resigna-
7 tion as President of the Board of Peerage to join the
8 KONOYE Cabinet, and he thought that KIDO was a man
9 needed in the Government. ²⁸⁹

10 88. The prosecution argues that KIDO ad-
11 mitted that he was in close touch with KONOYE and had
12 been advising him before he joined the cabinet and
13 therefore must have known of the cabinet policies. ²⁹⁰
14 For more than a year prior to joining the KONOYE
15 Cabinet, KIDO was only President of the Bureau of
16 Peerage. There is no evidence indicating that KIDO
17 knew of the cabinet decisions before he joined the
18 cabinet. As a matter of fact the only evidence is
19 that KIDO testified that Prince KONOYE "* * *used
20 to seek my views from time to time, but aside from
21 this I had no direct connection with politics." ²⁹¹
22 He had counselled KONOYE only with respect to the policy
23

24 (289. Diary Oct. 21, 1937, Aff. par. 66

Tr. 30,826 - 30,827

25 290. Par. JJ-26, Tr. 41,066

291. Aff. par. 63, Tr. 30,824)

of pursuing localization and non-expansion of the
China Incident.²⁹² He was not cross-examined on this.

89. The prosecution also failed to cross-examine KIDO on his statement that the policy of the cabinet in regard to the answer to the council in connection with the Nine Power Pact had been decided by the cabinet prior to KIDO's entry into the cabinet, and that the decision at the Extraordinary Session on October 27, 1937, five days after KIDO joined the cabinet, was a matter of form.²⁹³ There is no evidence to the contrary.

90. KIDO's statement that the heavy industries project in Manchuria was decided before he joined the cabinet is also unchallenged and if the prosecution had any evidence to show the contrary it should have produced it in rebuttal.²⁹⁴ The prosecution had listed this in its summary as having been passed after KIDO had joined the cabinet,²⁹⁵ and it was for this reason that KIDO was "careful to allege" it was approved before he joined the cabinet. To say that KIDO must have known of it is the prosecution's usual guess.

91. The prosecution infers²⁹⁶ that KIDO's

(292. Aff. par. 64, Tr. 30,825
293. Aff. par. 68, Tr. 30,827
294. Aff. par 67, Tr. 30,827
295. Pros. Doc. 0001, P. 55
296. Par. JJ-26, Tr. 41,067)

1 conversation with SUGIYAMA on November 3, 1937 was
 2 for the purpose of issuing a declaration of war
 3 instead of settlement of the China Affair. The un-
 4 contradicted and unchallenged testimony is that KIDO
 5 had a talk with Minister of War SUGIYAMA at Prince
 6 KONOYE's request.²⁹⁷ The purpose of the talk was to
 7 bring about a better understanding between these two
 8 and ascertain the War Minister's real intentions
 9 regarding the settlement of the China Affair and con-
 10 vey this information to Prince KONOYE.²⁹⁸ This is
 11 borne out by KIDO's subsequent diary entries of
 12 November 19, 1937²⁹⁹ and the testimony of KIDO³⁰⁰
 13 and KISHI.³⁰¹ The use of the words "declaration of
 14 war" which appears in KIDO's Diary of November 3,
 15 1937 is emphasized by the prosecution but it over-
 16 looks the fact that they were discussing "saving the
 17 situation."³⁰²

18
 19 92. The construction placed by the prosecu-
 20 tion on KIDO's Diary entries of November 15th and
 21 November 16, 1937³⁰⁴ is not in accordance with facts.³⁰⁵
 22 The prosecution on its case did not introduce KIDO's
 23 diary entry of November 15, 1937 in evidence. It was
 24 (297. Aff. par. 70, Tr. 30,828.
 298. Aff. par. 70, Tr. 30,829
 25 299. Ex. 2258 as cor. by Lang. Sec. Tr. 16,221
 300. Aff. par. 79 & 80, Tr. 30,835 & 30,836
 301. Tr. 31,638 - 31,639 (303. Aff. par. 70,
 302. Ex. 2256, Tr. 16,219 Tr. 30,829
 304. Ex. 2257, as cor. by Lang. Sec. Tr. 16,220
 305. Par. JJ-27, Tr. 41,067)

1 admitted into evidence in KIDO's affidavit. From
2 both of these entries it is crystal clear that KONOYE
3 intended to resign as "he had little expected the
4 situation would make such serious developments."
5 KIDO who has joined his cabinet to assist him in
6 effecting peace with China stated in his diary that
7 he was surprised to hear of KONOYE's intentions so
8 suddenly and that "in view of the serious effects
9 it might have urged him to reconsider the question of
10 resignation; but he would not change his mind."

11
12 93. His diary of the next day ³⁰⁶ shows that
13 KIDO objected to KONOYE's resignation because if the
14 KONOYE Cabinet resigned en bloc the foreign exchange
15 rate would collapse and would adversely effect putting
16 and end to the China Incident. The prosecution charge
17 that KIDO's statement that his reason for objecting
18 to KONOYE's intent to resign was because of its
19 probable repercussions on the fortunes of war is not
20 borne out by this entry. It definitely establishes
21 the reason to be because of apprehension of the
22 development of facts complicating the solution of the
23 China Incident. This diary entry in no way contra-
24 dicts the statement made by KIDO in his affidavit. ³⁰⁷

25 (306. Ex. 2257, as cor. by Lang. Sec. Tr. 16,220
307. Aff. Par. 70, 71, Tr. 30,829-30,831)

1 The reference by KIDO to the offensive operation
2 referred to immediate military operation in the field
3 at that time.³⁰⁸

4 94. On November 18, 1937 the General Staff
5 amended Imperial General Headquarters Regulations to
6 include the establishment of Imperial Headquarters
7 by adding the words "in case of incidents" to the
8 existing limitation of "in wartime." The undisputed
9 evidence is that KIDO had nothing to do with this
10 revision.³⁰⁹ It was a General Staff matter.

11 95. KIDO made an inquiry of the War Minister
12 at the cabinet meeting of November 19, 1937³¹⁰ and
13 warned him against abusing the regulations. The
14 assertion by the prosecution that KIDO's affidavit³¹¹
15 misrepresented the diary entry in saying that there
16 is no record of KIDO warning War Minister SUGIYAMA
17 is in part excusable because of the lack of understand-
18 ing by the Western mind of the Japanese.³¹² The
19 question involved the meaning of the word "incident"
20 which in Japanese, used in the new regulations, is
21 very vague and can be construed either widely or
22 narrowly. KIDO's intention was to prevent the Army

24 (308. Aff. Par. 71, Tr. 30,831
25 309. Aff. par. 72, Tr. 30,832
310. Ex. 2258 as cor by Lang. Sec. Tr. 16,221
311. Aff. par. 72, Tr. 30,832
312. Par. JJ-28, Tr. 41,067)

1 from making a wide arbitrary interpretation of the
2 term "incident" when he put the question as to the
3 meaning of an "incident" to SUGIYAMA. When he answered,
4 SUGIYAMA could not be so impudent as to say that the
5 China Affair was included in the term "incident" as
6 a matter of course. Typically Japanese, the warning
7 was implied in questioning the meaning of the term.
8 Furthermore, an explanation of the War Minister's
9 reply ³¹³ definitely establishes that SUGIYAMA
10 accepted KIDO's inquiry as a warning.

11 96. The prosecution claims that KIDO in his
12 affidavit omitted reference to the cabinet decisions
13 of December 24, 1937 and those of January 9th and
14 10th, 1938, in the hope that they had not been dis-
15 covered, because the prosecution had not offered them
16 as part of its case. ³¹⁴ Why did the prosecution
17 wait until HIROTA's defense to offer these documents?
18 Why did it not cross-examine KIDO on the latter two?
19 In any event in no imaginable way do they conflict
20 with KIDO's testimony.
21

22 97. The exhibits the prosecution cites are
23 as follows: Exhibit 3265 is the Foreign Office record
24 concerning the basic policy for settling the China
25 (313. Ex. 2258 as cor by Lang Sec. Tr. 16,221
314. Par. JJ-30, Tr. 41,069; Par JJ-31,
Tr. 41,070; Par. JJ-10, Tr. 41,053)

1 Incident. ³¹⁵ The Foreign, Navy and Army Ministers
2 discussed the policy on January 10, 1938 and they
3 decided that the matter should be discussed at the
4 Imperial Conference as proposed by the General Staff.
5 KIDO did not attend this Three Minister's conference.
6 The policy was discussed at the Imperial Conference
7 on the following day and this decision was announced
8 by the cabinet on January 16, 1938. KIDO fully ex-
9 plained the cabinet statement of January 16, 1938,
10 in his affidavit. ³¹⁶ There was no need of referring
11 to the discussion (it was not a decision), because
12 KIDO did not attend the meeting.

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23 (315. Tr. 29,855
24 316. Aff. Par. 86, Tr. 30,840)
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98. Exhibit 3264 is the record of the
 1 Imperial Household Ministry concerning the Imperial
 2 Conference held on January 11, 1938. KIDO did not at-
 3 tend this either. Here too the decision made by the
 4 Imperial Conference was later announced by the cabinet
 5 on January 16, 1938, to which KIDO fully referred in
 6 his affidavit.^{317.} The fact that KIDO voluntarily
 7 informed the Tribunal that he signed KONOYE's state-
 8 ment although there was no evidence in the prosecu-
 9 tion's case that he did, shows a desire to reveal
 10 facts, not conceal them as the prosecution claims.
 11 We also wish to point out that KIDO was not the Lord
 12 Keeper on January 11, 1938, so that KONOYE's state-
 13 ment to and action of the Lord Keeper then is not
 14 relevant to KIDO's case.^{318.}

15
 16 99. Exhibit 3263^{319.} is the cabinet decision
 17 of the outline of measures of the China Incident
 18 made on December 24, 1937. It is idle to infer that
 19 KIDO tried to hide from his participation in the
 20 cabinet meeting of December 24, 1937.^{320.} The prosecu-
 21 tion had KIDO's Diary since December 1945 and must

22 317. Aff. par. 86, T. 30840-30841.

23 318. Par. JJ-14, T. 41058.

24 319. T. 29815.

25 320. Ex. 3263, T. 29815.

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1 know from the diary entry of December 24, 1937, that
2 he attended the cabinet meeting on that day. If the
3 prosecution attached any importance to it that entry
4 could have been offered in evidence by the prosecu-
5 tion.

6 100. At the cabinet meeting held on December
7 21, 1937 KIDO maintained that policies for cultural
8 movements towards China should be established. The
9 diary entry confirms this and it also states that they
10 deliberated on "counter measures for the China Affair."
11 The prosecution maintains ^{321.} that KIDO omitted all
12 reference to these words in his affidavit. On the
13 contrary these words are explained in his affidavit ³²²
14 when he pointed out that "policies for cultural move-
15 ment toward China should be established instead of
16 carrying out military activities to no purpose." As
17 testified to by KIDO the words just quoted were used
18 to explain what was in his diary.
19

20 101. The prosecution also states that KIDO
21 approved the National Mobilization Law. This law
22 was drafted by the Planning Board. Prince KONOYE
23 spoke before the Diet on the introduction of this
24 bill on March 17, 1938. ^{323.} Previously, on February

25 321. Par. JJ-28, T. 41067.
322. Aff. par. 82, T. 30837.
323. Ex. 2794, T. 25069-25071.

24, 1938, Mr. SAITO told the Diet of the necessity
 1 for the adoption of this bill.^{324.} At that time there
 2 was in existence the Munitions Industry Mobilization
 3 Law of 1918 which was not adequate in its scope and
 4 because of the China Incident the bill was offered to
 5 supplement the deficiencies of that law.^{325.} It was
 6 approved by the Diet but prior to its passage at a
 7 cabinet meeting, KIDO registered opposition because
 8 too much could be done by way of Imperial ordinances.^{326.}
 9 As finally approved it provided that a general mobili-
 10 zation deliberation council would be created in the
 11 Diet with many members representing the Diet, permit-
 12 ting them to participate in the deliberations in
 13 connection with the law.^{327.} The effect of this deliber-
 14 ation council which KIDO favored was well expressed in
 15 a report of the United States Department of State as
 16 follows:
 17

18 "However, the decision to set up a
 19 National Mobilization Council of fifty members
 20 (largely from the two Houses of the Diet) to review
 21 the measures applied under this statute tended to
 22 nullify its effectiveness as a weapon of the military
 23 in the struggle for nationalized industries."^{328.}
 24

25 324. Ex. 2792-C, T. 25061, 25063. 327. Ibid.
 325. T. 25068, 25071. 328. Ex. 2768,
 326. T. 31512, 31513. T. 25099.

1 Actually, it will be noted that the National Mobiliza-
2 tion Bill was passed in May 1938, ten months after the
3 China Incident had commenced, and was drafted on the
4 basis of national mobilization laws of other coun-
5 tries.^{329.} KIDO was not a competent minister directly
6 in charge of this legislation. By merely citing, and
7 failing in its individual KIDO summation to comment
8 on, other bills which were passed while KIDO was a
9 Cabinet Minister, it may be assumed that the prosecution
10 does not attach much importance to them in so far as
11 KIDO is concerned. These laws were in the main under
12 the competency of ministers other than KIDO and as
13 the laws show, they were signed by the Prime Minister
14 and competent ministers in charge pursuant to
15 KOSHIKIREI. In any event, the prosecution's inter-
16 pretation of these bills depended on the opinions and
17 conclusions of Liebert which the Tribunal has been
18 requested to disregard. The purpose of all these
19 bills have been fully explained in the general economic
20 summation. To say that bills passed in 1938 were pur-
21 suant to a plan which was not adopted until January
22 1939 is beyond comprehension. As the Department of
23 State of the United States reported:
24
25 329. Ex. 2802, T. 25210, 25215.

1 "On the whole, even in 1940-41, Japan's
2 economy was financed and operated by private enter-
3 prise, which disposed of profits and dividends with
4 relatively slight government interference."^{330.}

5 102. In reciting the events in May, 1938,
6 KIDO testified, ". . . during the session of the Diet
7 various criticisms were hurled against HIROTA, Koki,
8 Minister of Foreign Affairs, in connection with the
9 statement, issued by the government, refusing to deal
10 with Chiang Kai-shek any more."^{331.} The prosecution
11 argues that one criticism at a budget meeting in
12 February 1938 was of a different kind than KIDO
13 suggests.^{332.} As shown above KIDO made no suggestion
14 as to why HIROTA was criticised. The exhibit corrob-
15 rates KIDO. The fact that KIDO did not hear one of the
16 criticisms at a budget meeting was fully explained by
17 KIDO on cross-examination,^{333.} and is subject to no
18 criticism.
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24 330. T. 25100.

25 331. Aff. par. 94, T. 30847.

332. Par. JJ-34, T. 41073.

333. T. 31491 - 31492.

IX.

EVENTS WHILE KIDO WAS MINISTER OF WELFARE:

May 26, 1938 - January 5, 1939.

103. When the government began to realize that the breaking off of peace negotiations with Chiang-Kai-shek on January 14, 1938, was improvident, KIDO assisted in the efforts to reconstruct the Cabinet in May 1938 for the purpose of preparing for the breaking of the impasse which had been caused by the statement of not dealing with the Chiang regime.^{334.} Dissatisfaction was felt with War Minister SUGIYAMA with whom it was found impossible to get in full touch.^{335.} The War Ministry was opposed to any reconstruction of the cabinet but Premier KONOYE and KIDO exerted their best endeavors and vigorously opposed the War Ministry as they were determined to bring about a settlement of the China Affair. The appointment of Lieutenant General ITAGAKI as War Minister was intended for the settlement of the China Affair, while the selection of Mr. UGAKI as Minister of Foreign Affairs was aimed at facilitating a rapprochement with Chiang Kai-shek.^{336.}

334. Ex. 2261 as cor. by Lang. Sec., T. 38681.

335. Aff. par. 94, T. 30847.

336. Diary May 22, 1938, Aff. par. 94, T. 30846-30848.

1 104. The accused ITAGAKI testified on cross-
2 examination that shortly after he was appointed he
3 called on Marquis KIDO, who was then Minister of
4 Welfare, on June 18, 1938, and the general subject of
5 their conversation was how to effect a speedy settle-
6 ment of the China Incident. KIDO told him at that time
7 that the reorganization of the KONOYE Cabinet was under-
8 taken for the purpose of bringing about a prompt
9 settlement of the China Incident and that KIDO's
10 personal opinion was that the China Incident must be
11 speedily settled. ^{337.}

12 105. The submission made by the prosecution ^{328.}
13 that KIDO's diary entry of May 19, 1938 ^{339.} is com-
14 pletely misrepresented in his affidavit is not so.
15 The part of the diary entry of May 19, 1938 which was
16 used by the prosecution as a ground to form its sub-
17 mission that KIDO was a party to the later reiteration
18 of the decision in November and December 1938 not to
19 deal with Chiang Kai-shek and that KIDO commits him-
20 self to a protracted warfare of about three years in
21 the event peace efforts failed is the quotation of
22 General HONJO's conversation as told by him to KIDO.

24 337. T. 30330 - 30332.

338. Par. JJ-35, T. 41074.

25 339. Ex. 2261, T. 16224 as cor. by Lang. Sec.
T. 38681.

1 In the whole diary entry of May 19, 1938 there is not
2 a single word of KIDO's own opinion regarding the
3 China Affair. KIDO merely said that he agreed generally
4 with HONJO's opinion and promised his efforts. More-
5 over, the diary entry shows that General HONJO told
6 KIDO about elaborate plans of reviewing the declara-
7 tion of the government not to deal with Chiang Kai-shek,
8 and that General HONJO also expressed his opinion to
9 KIDO that it was important to settle the China Affair
10 by negotiations with the Chiang regime soon after the
11 battle of Souchow, but in case it failed HONJO stated
12 it would be necessary to enter into protracted warfare
13 by planning to continue for about three years. These
14 were HONJO's words, not KIDO's. This entry is completely
15 misunderstood by the prosecution, owing probably to
16 the insufficient knowledge of the Japanese language and
17 by its interpretation of an English translation thereof.
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106. As testified to by KIDO in his affida-
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 1 vit, KIDO had an interview with the Foreign Minister
 2 HIROTA at Premier KONOYE's request on May 23, 1938, and
 3 asked HIROTA to think over his resignation. KIDO wrote
 4 in his diary of the same day that he felt relieved to
 5 hear HIROTA say that he would resign at any time. ³⁴¹
 6 On May 26, 1938, as shown in his diary, KONOYE and KIDO
 7 were at the Premier's room working out various plans
 8 to get Mr. UGAKI as the new Foreign Minister and when
 9 the report came that Mr. UGAKI had consented, KIDO
 10 was so rejoiced he took two pieces of Chinese poetry
 11 which KONOYE had composed as "* * * very fine souvenirs
 12 of the occasion." ³⁴² Certainly KIDO's efforts to have
 13 UGAKI join the cabinet cannot be construed as advocating
 14 continuance of the China Incident. Mr. UGAKI testified
 15 that when he accepted the post of cabinet minister he
 16 asked Premier KONOYE to cancel the KONOYE declaration
 17 of January 16, 1938, when the occasion required and
 18 made this a condition in acceptance of his post; that
 19 Premier KONOYE willingly accepted this condition saying
 20 that it was all right to cancel it. ³⁴³ Mr. UGAKI also
 21 testified on cross-examination by the prosecution that
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 23

24 ³⁴⁰. Aff. par. 99, Tr. 30,854.

25 ³⁴¹. Aff. par. 95, Tr. 30,848-30,849.

26 ³⁴². Diary, May 26, 1938, Aff. par. 96, Tr. 30,849-
 30,852.

27 ³⁴³. Tr. 38,811.

when he became Foreign Minister of the First KONOYE
1 Cabinet the government's policy of not dealing with
2 the Chiang Kai-shek Government was already just a
3 policy in name only. That is, it existed just in words.
4 Actually informal or private talks were already under
5 way between the Japanese side and the Chinese regime
6 then at Hankow through the channels of the Japanese Con-
7 sulate General in Hong Kong and the emissaries sent by
8 the Hankow Government to Hong Kong.³⁴⁴ In the light of
9 these facts certainly KIDO cannot be looked upon as
10 an advocate of the continuance of hostilities with
11 China, or that he specifically agreed with that part
12 of HONJO's statement of planning to continue the inci-
13 dent for three years, in the event peace efforts failed.
14
15 107. After the revision of the KONOYE Cabinet
16 in May 1938, KIDO at the suggestion of Prince KONOYE
17 met ITAGAKI and on June 18, 1938, discussed the neces-
18 sity of terminating the China Affair.³⁴⁵ ITAGAKI had
19 entered the KONOYE Cabinet at the latter's suggestion
20 and therefore when KONOYE again revealed an intention
21 to resign on December 12, 1938,³⁴⁶ KIDO believed that
22 this was irresponsible as it placed ITAGAKI on the spot
23 which would not be proper for KONOYE's own sake from
24
25 344. Tr. 38,817-38,818.
345. Aff. par. 97, Tr. 30,852.
346. Diary Ex. 3341, Tr. 31,392.

the standpoint of KONOYE's future politics. It was
 1 not to cover up for ITAGAKI as the prosecution claims ³⁴⁷
 2 but to advise KONOYE that KIDO undertook to discuss
 3 the matter with ITAGAKI;

4 108. Whether KONOYE initiated the talk with
 5 ITAGAKI ³⁴⁸ as related in KIDO's cross-examination when
 6 there was a confusion between the cross-examiner and
 7 KIDO as to what date was being discussed, ³⁴⁹ or whether
 8 KIDO initiated it as shown in his diary ³⁵⁰ is immaterial.
 9 The main point is that KIDO felt that to have the cabi-
 10 net fall at that time when Wang was about to arrive in
 11 Japan would bring to naught the realization of the
 12 China Incident. Apprehensive of this and thinking of
 13 KONOYE's intent to resign KIDO advised him not to do
 14 so. KIDO's purpose is indicated in the latter part
 15 of his diary entry. ³⁵¹ Later the HIRANUMA Cabinet con-
 16 tinued negotiations with the Wang regime and endeavored
 17 to bring the China Incident to an end by getting the
 18 Chiang regime and the Wang regime to a compromise merger
 19 through the Wang regime. The details of this were also
 20 fully explained by SHIMIZU. ³⁵²

22 109. KIDO testified that on August 9, 1938,

23 347. Par. JJ-40, Tr. 41,080.

24 348. Ibid.

24 349. Tr. 31,394, 31,395.

25 350. Ex. 3341, Tr. 31,392.

351. Ibid.

352. Tr. 22,260-22,270; See also Ex. 2586, 2587, 2588,
 Tr. 22,274-22,277.

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25 350. Ex. 3341, Tr. 31,392.

351. Ibid.

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 Tr. 22,274-22,277.

1 he heard from KONOYE that Germany had submitted serious
2 proposals for the conclusion of a military alliance.
3 KONOYE's report of this is set forth in KIDO's Diary.³⁵³
4 KIDO was not shown any draft of the proposal and
5 expressed no opinion about it in his diary except to
6 say, "It is a serious matter." KIDO was not a member
7 of the Five-Ministers' Conference and did not know the
8 details of their meetings, as corroborated by UGAKI³⁵⁴
9 and ARITA.³⁵⁵ The prosecution in support of its
10 contention that he did, merely refers to a large section
11 of its general summation, which we submit does not
12 support its contention. As shown in KIDO's diary of
13 December 17, 1938,³⁵⁶ KONOYE again wanted to resign be-
14 cause of the acts of OSHIMA in Germany and others
15 desiring to make an agreement of a military alliance
16 and a deviation from the policy which had been formerly
17 adopted at the Five-Ministers' Conference concerning
18 the intensification of the Anti-Comintern Pact.
19

20 THE PRESIDENT: We will recess for fifteen
21 minutes.

22 (Whereupon, at 1445, a recess was
23 taken until 1500, after which the proceedings
24 were resumed as follows:)

- 25 353. Ex. 2662, as cor. by Lang. Sec. Tr. 16,225.
354. Tr. 38,829.
355. Tr. 28,489-28,490; Tr. 28,486-28,487.
356. Aff. par. 109, Tr. 30,866.

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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. Logan.

4 MR. LOGAN: Continuing KIDO's summation, page 92:
5 110. KIDO's testimony that he opposed this
6 alliance was corroborated by SHUDO as follows:

7 "I remember that Marquis KIDO told me that
8 although he was not a member of the Five Ministers'
9 Conference, the matter being so important he had heard
10 about this matter, and told me about the domestic
11 situation in regard to this proposed pact, adding that
12 he, himself, felt that this proposal should not be
13 carried through."³⁵⁷

14 Even though KONOYE did participate in the
15 HIRANUMA Cabinet as Minister without portfolio, it is
16 quite apparent that KIDO cannot be held criminally
17 responsible for that. KIDO was not the Foreign
18 Minister in the HIRANUMA Cabinet, but entered it as
19 Home Minister. He was not a member of the Five
20 Ministers' Conference and never meddled in the details
21 of the conference, nor is there any evidence that he
22 did. KIDO's testimony is also corroborated by KONOYE's
23 Memoirs.³⁵⁸ The prosecution's interpretation of

24 357. T. 35,446.
25 358. Ex. 2735-A, T. 24,290-24,291.

1 KIDO's Diary of December 17, 1938 is inaccurate. ³⁵⁹

2 111. KIDO is accused as being directly
3 responsible for Japan's proceedings with regard to
4 opium from the time he became Welfare Minister in
5 the First KONOYE Cabinet. ³⁶⁰ Only minor direct
6 evidence involving KIDO is cited by the prosecution -
7 KIDO's diary for December 12, 1938 ³⁶¹ - which the
8 prosecution offered in evidence but it did not deem
9 it of sufficient importance to read that part of the
10 entry which referred to the Opium Committee. KIDO
11 was not cross-examined about it and there is no evidence
12 of what transpired at that one particular committee
13 meeting. Witness KAMEYAMA, Koichi, testified that
14 the Opium Committee was established by the Opium
15 Committee Organization Regulation Imperial Ordinance
16 No. 38, March 31, 1931, and that this Committee was
17 merely a consultant organ to investigate and consider
18 matters relating to opium and narcotics in response
19 to the request of the Ministries concerned. ³⁶² KIDO
20 was only Chief Secretary to the Lord Keeper of the
21 Privy Seal when that committee was organized.
22

23 359. Par. JJ-50, T. 41,088.

24 360. Par. JJ-38, T. 41,076-41,077.

25 361. Ex. 3341, T. 31,392.

362. Ex. 3335, T. 30,624.

X. EVENTS WHILE KIDO WAS HOME MINISTER

1 JANUARY 5, 1939-AUGUST 28, 1939

2
3 112. The First KONOYE Cabinet resigned en
4 bloc on January 4, 1939. After HIRANUMA received
5 the Imperial Command to form a succeeding Cabinet,
6 he requested KIDO to accept the Portfolio of Home
7 Affairs in his Cabinet. The prosecution argues ³⁶³
8 that KIDO's statement in his diary that he accepted
9 this position on condition that he could "dispose
10 of the many different pending problems in the Ministry
11 at my discretion" ³⁶⁴ is irreconcilable with his
12 statement when he became Minister of Education,
13 that he was anxious to receive information, suggestions
14 and opinions so that he could make proper decisions. ³⁶⁵
15 This is a trivial matter with no merit. Furthermore,
16 the outgoing Minister of Home Affairs, Admiral
17 SUETSUGU, was a Fascist devotee of international fame
18 and when KIDO accepted the Home Ministry there was
19 an atmosphere surcharged with Fascism prevailing among
20 the Home Ministry bureaucrats. When the HIRANUMA
21 Cabinet was formed there was pending a troublesome
22 question for the Home Ministry in the form of a bill
23 for reforming the municipality system which had been
24

25 363. Par. JJ-44, T. 41,082.

364. Ex. 2667 and errata, T. 16,233.

365. Aff. par. 89, T. 30,842.

drafted under SUETSUGU's guidance. KIDO decided

1 not to introduce such Fascist legislation. The
 2 Cabinet approved the decision and the bill died.
 3 Not having any evidence to the contrary, the prosecution
 4 says that KIDO's statement of the facts is not sub-
 5 stantiated by his diary. We refer the Tribunal to
 6 diary excerpt of February 17, 1939 and KIDO's
 7 affidavit.³⁶⁶ We submit if the bill had passed the
 8 prosecution would have offered it in evidence in
 9 rebuttal.

10 113. The veiled inferences of evil because
 11 KIDO and SUETSUGU sat on the same Cabinet are
 12 unsubstantiated in law and in fact.³⁶⁷ As Honorable
 13 Tom Clark, Attorney General of the United States,
 14 recently stated, "'Guilt by association' has never
 15 been one of the principles of our American jurisprudence."³⁶⁸
 16 There is no evidence KIDO participated in his appointment.
 17

18 114. The prosecution assumed on KIDO's
 19 cross-examination that KIDO was in favor of the
 20 conclusion of the military alliance with Germany and
 21 Italy, quoting KIDO's Diary, April 19, 1939,³⁶⁹ in
 22 which KIDO wrote that he conferred with Premier HIRANUMA
 23 on the military alliance and emphasized that in the

24 366. Aff. par. 111, T. 30,869.

25 367. T. 31,415.

368. Dept. of the Army Circular 69, December 15, 1947.

369. Ex. 2269, T. 16,235.

1 event of its ending in failure it would have a
2 dangerous effect on the domestic situation and would
3 be a decisive disadvantage to the settlement of the
4 China Incident, and requested the Premier to exert
5 his increased efforts.³⁷⁰ As KIDO stated on cross-
6 examination, the matter was investigated thoroughly
7 in the Five Ministers' Conference. He also stated
8 that if the proposed agreement with Germany "***was
9 to be merely to the extent of strengthening the Anti-
10 Comintern Pact in such a way as would not aggravate
11 Great Britain and America, I would not oppose it.
12 That was the attitude I then took."³⁷¹ As KIDO
13 also stated, there would be no end to a full explanation
14 of it.³⁷²

15 115. The Army wanted to conclude the Tri-
16 Partite Alliance Pact and the Navy was opposed to it.
17 If the Army and Navy came into a frontal clash, the
18 usual coup d'etat and assassination of the Senior
19 Statesmen and leaders of the Government might easily
20 have occurred. KIDO, as Minister of Home Affairs,
21 was apprehensive about such an incident and he
22 endeavored to avert a clash between the Army and the
23 Navy. The latter clearly appears from his affidavit
24

25 370. T. 31,480.
371. T. 31,480
372. T. 31,482.

373

and diary of April 14th, 1939. The prosecution

1 claims this entry shows KIDO "insisted that the Army
 2 and Navy must arrive at some compromise or other and
 3 that HIRANUMA must write personal letters to Hitler
 4 and Mussolini."³⁷⁴ There can be no inference that
 5 KIDO was in favor of writing these letters to Hitler
 6 and Mussolini for the purpose of arriving at an
 7 agreement. The diary of April 14th, 1939 shows KIDO
 8 suggested to have these letters written to Hitler
 9 and Mussolini as "it was quite necessary to tide over
 10 this deadlock by all means."³⁷⁵ We suggest that the
 11 Tribunal read this diary entry in full.

12
 13 116. If a clash occurred between the Army
 14 and the Navy at home, riots and disorders would spring
 15 up and when China became aware of this breach it would
 16 react unfavorably to Japan. It was for this reason
 17 that KIDO, in his conversation with Premier HIRANUMA
 18 on April 19th, 1939,³⁷⁶ told him that from the view-
 19 points of maintaining public peace at home and settling
 20 the China Affair, he desired him to exert his best
 21 efforts in dealing with the matter so as not to bring
 22 about an unfavorable effect on these problems whether
 23 this agreement was concluded or not.

24 373. Diary April 14, 1938; Aff. par. 115, T. 30,873.

25 374. Par, JJ-51, T. 41,089-41,090.

375. Diary Apr. 14, 1939, Aff. par. 115, T. 30,873.

376. Ex. 2269, T. 16,235.

117. The prosecution cites HARADA's Diary
1 entry reviewing a talk he is supposed to have had with
2 KIDO on April 20, 1939,³⁷⁷ claiming that it showed
3 KIDO used intrigue to persuade the Emperor to agree
4 with the Army's views at HIRANUMA's request. HARADA's
5 Memoir of May 5th, 1939³⁷⁸ sharply conflicts with
6 the HARADA entry of April 20th, 1939, because the
7 former shows KIDO favored suppression of the Rightists.
8 The unreliability of HARADA's Memoirs is further
9 exemplified in this entry because he says that after
10 listening to KIDO, "***I remained silent,***" yet he
11 rambles on with what he is supposed to have replied
12 to KIDO, talking about beating to death five or six
13 people. The prosecution, to a certain extent, recognized
14 KIDO's position in saying that KIDO desired to avoid
15 quarrels in Japan.³⁷⁹

17 118. To brand KIDO as holding the Emperor
18 secretly in some contempt,³⁸⁰ (although if he told
19 HARADA, it no longer was a secret; SAIONJI would have
20 known it), because of a three-line statement appearing
21 in HARADA's Diary would necessitate discarding all the
22 evidence showing a lifetime of effort and devotion

- 23
24 377. Ex. 3799-1, T. 37,789.
25 378. Ex. 3800-1, T. 37,808.
379. Par. JJ-51, T. 41,090.
380. Par. JJ-12, T. 41,056.

1 displayed by KIDO in assisting the Emperor to the
2 best of his ability. HARADA's statement is inconsistent
3 with all of KIDO's thoughts expressed in his diary
4 of fifteen years, all of his acts, all of his
5 testimony and all of the other evidence in this case,
6 either documentary or oral on KIDO's assistance to
7 the Emperor. KIDO's thoughts about the Emperor
8 are recorded in his own diary of April 14, 1939³⁸¹ which
9 was six days before HARADA's statement which he said
10 KIDO made "at one time or another***."³⁸²

11 119. It was in April, 1939 that the
12 strengthening of the alliance between Japan, Germany
13 and Italy was being discussed. KIDO as Home Minister
14 was worried about a frontal clash between the Army
15 and the Navy and perhaps a coup d'etat.³⁸³ KIDO
16 records this in his diary of April 14, 1939, and then
17 records his regard for the Emperor as follows:

18 "Besides, to think that the Emperor who
19 has been concerned about the transaction of the incident,
20 irrespective of day and night, should feel more lonely
21 by that. It is unbearable even to suppose. When we
22 think of this and that, we clearly see that it is a
23 duty of a subject, to defy and exclude all the difficulties
24

25 381. Aff. par. 115, T. 30,873.
382. Ex. 3799-A, T. 37,791.
383. Aff. par. 115, T. 30,873.

not to bring about such circumstances which point,
 1 I have already told to the Premier and War Minister."

2 120. If HARADA and Prince SAIONJI had
 3 believed that KIDO held the Emperor in secret contempt,
 4 would they, as well as the others, such as Prince
 5 KONOYE, Lord Keeper YUASA and Premier YONAI, who were
 6 all close to the Emperor and Prince SAIONJI have
 7 recommended KIDO as Lord Keeper of the Privy Seal?
 8 KIDO's Diary of May 8, 1940,³⁸⁴ May 31, 1940,³⁸⁵ and
 9 June 1, 1940³⁸⁶ records these recommendations. HARADA's
 10 statement of what KIDO is supposed to have said is
 11 fantastic and in view of Mrs. KONOYE's testimony,
 12 the Tribunal should refuse to accept it as accurate.
 13

14 121. The unreliability of HARADA's Memoirs
 15 and the danger of relying on hearsay evidence is clearly
 16 demonstrated again by an examination of HARADA's excerpts
 17 of April 22, 1939³⁸⁷ and May 5, 1939³⁸⁸ and the
 18 prosecution's conclusions based on these excerpts.³⁸⁹

19 The first excerpt is a report of some gossip HARADA
 20 heard, "****it was said****" that KIDO had said to someone
 21 not named that instead of changing the Emperor's views,
 22 he was to be forced to acquiesce by a threat of Cabinet
 23

24 384. Aff. par. 129, T. 30,890.

385. Aff. par. 136, T. 30,891.

25 386. Ex. 2276, T. 16,248.

387. Ex. 3799-B, T. 37,804.

388. Ex. 3800-A, T. 37,808.

389. Par. JJ-15, T. 41,058.

resignation. Comingled with this is HARADA's views
1 and interpretations. In the entry of May 5, 1939,
2 HARADA reports a conversation he had with KIDO on
3 April 24, 1939. (Prosecution erroneously states the
4 conversation was held on May 5, 1939.³⁹⁰) Thus,
5 this conversation was only two days after HARADA
6 had heard the gossip of April 22, 1939. HARADA says
7 in the excerpt of May 5th, 1939:

8
9 "When I called on KIDO on the morning of the
10 24th, he seemed to have greatly changed his attitude
11 and said: 'There is no alternative but to recall
12 both Ambassadors T.N. OSHIMA and SHIRATORI at all cost.
13 If this should happen to influence the peace and order
14 within the nation, I intend to control matters suitably,
15 and I expect to suppress the Rightists myself.'"

16 122. As testified to by NAKAMURA of the
17 Home Ministry, the rightists and leftists were treated
18 and controlled in the same manner.³⁹¹ It is quite
19 obvious HARADA's undisclosed informant of April 22
20 misinformed him of KIDO's views and actually KIDO's
21 attitude at all times was against the rightists. The
22 prosecution after referring to these two excerpts
23 from HARADA's Diary suggests that the Tribunal accept

24 390. Par. JJ-15, T. 41,058.
25 391. T. 18,524.

1 the gossip contained in the entry of April 22, 1939 as
2 showing KIDO held the Emperor in some contempt.³⁹²

3 123. Since KIDO's own conviction, according
4 to the prosecution's evidence,³⁹³ was that the rightists
5 should be suppressed, how can the prosecution conclude
6 that KIDO's mission was "***to guide the Emperor into
7 a more sympathetic attitude towards the views of the
8 Army and the right wing." How can the prosecution
9 genuinely further argue that, "This, we submit, is
10 the key to his whole course of action after he became
11 Lord Keeper in June, 1940."³⁹⁴

12 124. The prosecution interprets these HARADA
13 Memoirs so as to fit them in with its theory in a
14 chronological order as is found in its claim, "On May
15 5th HARADA records that he (KIDO) had changed his
16 attitude since April 20th and was advocating the recall
17 of OSHIMA and SHIRATORI but this was the day after
18 HIRANUMA's letter to Hitler, which was not acceptable
19 to them."³⁹⁵ The prosecution quotes HARADA's Memoir
20 of May 5, 1939.³⁹⁶ As related above this excerpt clearly
21 shows that HARADA is reporting a conversation with
22 KIDO which was on the morning of the 24th. This shows
23 that KIDO was advocating the recall of OSHIMA and
24

25 392. Par. JJ-12, T. 41,056; Par. JJ-15, T. 41,058.

393. Ex. 3800-A, T. 37,808.

394. Par. JJ-12, T. 41,056.

395. Par. JJ-51, T. 41,090-091. 396. Ex. 3800-A, T.
37,808.

~~SHIRATORI ten days before, not the day after, HIRANUMA's~~

1 letter to Hitler.

2 ^a
3 124 . As its concluding argument that KIDO
4 was not an opponent of the military alliance, the
5 prosecution, after citing KIDO's Diary of May 2, 1939,³⁹⁷
6 and August 4, 1939³⁹⁸ and another memoir of HARADA's
7 of August 10, 1939,³⁹⁹ the latter, of course, being
8 totally unreliable states, "It is particularly significant
9 that he was urging compromise, not only to ITAGAKI,
10 who favored full military alliance, but to YONAI, who
11 opposed it."⁴⁰⁰ KIDO did not urge YONAI to compromise
12 and KIDO's Diary entry of May 2, 1939, cited by the
13 prosecution, shows that he did not urge him to compromise.⁴⁰¹
14 This entry shows that KIDO called on the Navy Minister
15 and exchanged views as to how to save the situation.

16 KIDO records:

17 "I stressed that there is no reason to force
18 the conclusion of the Military Alliance, as it depends
19 on the will of the other parties."

20 This definitely shows that KIDO was not
21 eager for the conclusion of the alliance. He further
22 records:

- 23 397. Ex. 2270 as Cor. by Lang. Sec., T. 16,235.
24 398. Ex. 2271 as Cor. by Lang. Sec., T. 16,237.
25 399. Ex. 3807-A, T. 37,846.
400. Par. JJ-51, T. 41,091.
401. Ex. 2270 as Cor. By Lang. Sec., T. 16,235.

1 "But if it fails after so much effort, it
2 would not only have a bad influence on our policy
3 towards the Sino-Japanese Incident, but it would
4 inevitably bring about a feeling of uneasiness and
5 dissatisfaction on the part of the people, especially
6 if the main cause of failure was due to disagreements
7 between the Army and Navy on such an important national
8 policy. Therefore it must be avoided by all means.
9 And so we must do our utmost to unify public opinion
10 as far as possible, even if we should fail to conclude
11 the Treaty. The Navy Minister was entirely of the
12 same opinion and promised me to exert himself to
13 follow the above line."
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1 An assertion that this diary excerpt shows
2 that KIDO was urging YONAI to compromise is beyond com-
3 prehension. It definitely shows that KIDO was pointing
4 out to YONAI the possibility of trouble which would
5 arise at home and the bad influence therefore toward
6 the Sino-Japanese Incident if the treaty failed, and
7 that, therefore, public opinion should be unified in
8 such an event. No suggestion of any compromise was
9 made to YONAI and as shown, YONAI agreed with KIDO's
10 opinion.

11 125. If he urged a compromise, as the prose-
12 cution says, what terms did he urge? His talk with
13 YONAI paralleled the talk he previously held with
14 Premier HIRANUMA on April 19, 1939. ⁴⁰² KIDO had no ob-
15 jection to the spirit of the Anti-Comintern Pact be-
16 tween Japan, Germany, and Italy though he did not plan
17 it. ⁴⁰³ He testified that as mentioned in his diary he
18 was of the opinion that, setting aside strengthening the
19 Anti-Comintern Pact, there would be no necessity for
20 Japan to go so deep as to conclude a military alliance
21 between Germany and Italy. ⁴⁰⁴ It was Von Ribbentrop,
22 German Foreign Minister, who proposed to Japan the
23 strengthening of the Anti-Comintern Pact to the extent
24

25 (402. Ex. 2269, T. 16235.

403. T. 31480.

404. T. 31548; Ex. 2270, T. 16235.)

of the conclusion of a military alliance. With
1 respect to this, Japan was in a passive attitude. The
2 HIRANUMA Cabinet referred the question to the so-called
3 Five Ministers' Conferences, of which KIDO was not a
4 component member. The Five Ministers' Conference met in
5 session more than seventy times and yet failed to reach
6 an agreement of views due to the Navy's stout opposition
7 to the projected alliance with Germany which the Army
8 zealously advocated.⁴⁰⁵ This made the Army impatient
9 so that it started political warfare outside of the
10 government. The result was a very precarious condition
11 involving the maintenance of peace and order at home.
12 As shown in KIDO's Diary of April 14, 1939,⁴⁰⁶ he
13 received a report from the police officials of the Vice-
14 Ministry of Home Affairs regarding the uneasiness of the
15 military due to the deadlock. If the Army and Navy
16 clashed on this question the favorite coup d'etat and
17 assassination of officials close to the throne and
18 Senior Statesmen who were branded as advocates of main-
19 tenance of the status quo or pro-British and pro-
20 American leaders would probably result. Naturally KIDO
21 was apprehensive. It was for this reason that KIDO
22 called on the Navy Minister YONAI on May 2nd as related
23 above.
24
25

(405. Aff. par. 112, T. 30871.

406. Aff. par. 115, T. 30873.)

1 126. In July, 1939, it was rumored in
2 political circles that the Army and Navy were still
3 disagreeing with one another and consequently the Army
4 became more impatient and was planning to lead the
5 Cabinet to resignation en bloc by having the Minister
6 of War resign and to proclaim martial law by taking
7 advantage of that opportunity, and thus finally to
8 establish a military government.⁴⁰⁷ KIDO as Home
9 Minister, considered that if the Army took such measures
10 public peace and order at home would be seriously en-
11 dangered, so he told War Minister ITAGAKI to that effect
12 to urge him to reconsider the matter, as is shown in
13 KIDO's Diary for August 4, 1939.⁴⁰⁸ It is, therefore,
14 apparent that KIDO urged neither YONAI nor ITAGAKI to
15 compromise, as claimed by the prosecution. That there
16 was every possibility of internal disturbance of alarm-
17 ing proportions may be clearly seen from the message
18 which was specially granted by the Emperor to General
19 ABE on August 28, 1939, when he commended him to form
20 a succeeding Cabinet following the resignation of the
21 HIRANUMA Cabinet. "Discretion must be used in choosing
22 the Home Minister and the Justice Minister as the
23 maintenance of public order was of supreme importance."⁴⁰⁹
24

25 (407. Aff. par. 122, T. 30881.

408. Pros. Ex. 2271 as Cor. by Lang. Sec. T. 16237.

409. Ex. 2272, T. 16240.)

1 127. The prosecution's argument is difficult
2 to follow. It claims that the evidence shows that
3 "KIDO insisted that the Army and Navy must arrive at
4 some compromise or other,"⁴¹⁰ but it also concludes that
5 KIDO wanted the Alliance concluded.⁴¹¹ But the resume
6 of the evidence definitely established that KIDO never
7 wanted the Alliance concluded. He only feared that if
8 the Alliance failed owing to a head-on clash of the
9 Army and Navy, it would have a very bad effect not only
10 on the domestic situation, but also on the settlement
11 of the China Incident, and he pointed this out to
12 Premier HIRANUMA,⁴¹² Navy Minister YONAI,⁴¹³ and War
13 Minister ITAGAKI⁴¹⁴ and urged them all to take these
14 questions into consideration, as KIDO was Home Minister
15 at that time and the internal situation in Japan was
16 under his competence. His concern was with the home
17 situation, not the Alliance.

18 128. In its summation of KIDO the prosecution
19 dogmatizes that a Minister who permitted the Five
20 Ministers' Conferences to make decisions of national
21 policy and who did not repudiate those decisions is
22 equally responsible therefor as though he himself had
23

24 (410. Par. JJ-51, T. 41088; Par. JJ-35, T. 41074.

411. Par. JJ-65, T. 41105; Par. JJ-36, T. 41075-6.

412. Ex. 2269, T. 16235.

413. Ex. 2270, T. 16235 as Cor. by Lang. Sec. T. 16235.

414. Ex. 2271 as Cor. by Lang. Sec. T. 16237.)

1 participated in the decision. No responsibility can
2 therefore attach to KIDO with respect to the Five
3 Ministers' Conferences regarding the military alliance
4 between Japan, Germany and Italy because the HIRANUMA
5 Cabinet resigned en bloc before any conclusion was
6 arrived at regarding the military alliance. Furthermore,
7 ARITA testified on cross-examination that inasmuch as
8 the decisions of the Five Ministers' Conferences were
9 not reported to the Cabinet as a whole, there could not
10 have been the possibility of the Cabinet approving it.⁴¹⁵

11 129. By way of footnote, not mentioned or
12 referred to in the body of its individual summation of
13 KIDO, the prosecution apparently claims that KIDO has
14 some criminal responsibility for the enactment of the
15 Motion Picture Law.⁴¹⁶ Apparently the prosecution does
16 not really attach much significance to this because the
17 Motion Picture Law which was enacted on April 5, 1939,⁴¹⁷
18 was not even read by the prosecution. As shown on its
19 face, this law provided for a system of licensing for
20 the production and distribution of pictures which would
21 contribute to advancing national culture. NAKAI,
22 prosecution witness, testified that it was not until
23 1940 (after KIDO was out of the Cabinet) that a ruling
24

25 (415. T. 28496.

416. Par. JJ-34, T. 41073; Par. F-91, T. 39436;
Ex. 155, T. 1315; Ex. 147, T. 1157.

417. Ex. 155, T. 1315.)

1 was made by the Ministry of Education after which about
2 one-third of the pictures were devoted to subjects such
3 as national defense, etc. ⁴¹⁸ Defense witness KIDO, Shiro.
4 testified that the military attached no importance to
5 propaganda by motion pictures between 1938 and 1941,
6 and that the only censorship was the deletion of parts
7 of the pictures contrary to public morals and order. ⁴¹⁹

8 130. Although KIDO is charged in the Indictment
9 with the responsibility for the Changkufeng Incident of
10 June, 1938, and the Nomanhan Incident in 1939, no
11 mention is made by the prosecution in its individual
12 summation against KIDO of any of the facts setting
13 forth his participation in these two incidents.
14 Strangely, the prosecution in its individual summation
15 against KIDO asks for a conviction against him on the
16 Counts in the Indictment referring to these two inci-
17 dents. The prosecution in its general summation of the
18 Russian phase does not. ⁴²⁰ KIDO's testimony on these
19 points is contained in his diary and affidavit. ⁴²¹

20 Perhaps the prosecution failed to comment on the evidence
21 of these incidents in connection with KIDO in its
22 individual summation against him because his attitude
23 against war is clearly expressed in his diary of August
24

25 (418. T. 1200.

419. T. 18601-05.

420. Par. H-193 to H-203, T. 39961-74.

421. Aff. par. 99, 100, 120, T. 30854-5, 30877.)

2, 1938, in reporting the decision of the Cabinet. ⁴²²

1 131. The prosecution refers to a statement
2 that KIDO is supposed to have said to HARADA at the end
3 of July, 1938, with regard to the Emperor's actions in
4 connection with the conversation of ITAGAKI and the
5 Emperor about the Changkufeng Incident. KIDO was not
6 confronted with this document on cross-examination. ⁴²³

7 In view of the dubious nature of the HARADA Memoirs it
8 is most doubtful that KIDO ever made such a blunt remark
9 attributed to him by HARADA. The uncontradicted evidence
10 as shown in KIDO's Diary ⁴²⁴ is that KIDO joined in the
11 cabinet decision to stop the Changkufeng Incident from
12 spreading. Part of the same HARADA Memoir entry to
13 which the prosecution refers ⁴²⁵ which the prosecution
14 did not offer in evidence, but which was read at the
15 request of the defense, states that KIDO told HARADA,
16 "If the Army says that we will have to fight with Russia,
17 then I will recommend KONOYE to resign resolutely. The
18 Premier was also of that determination." ⁴²⁶

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24 (422. Aff. par. 100, T. 30854-5; 37758.
25 423. Ex. 3793-A, T. 37754.
424. Aff. par. 100, T. 30854.
425. Ex. 3793-A, T. 37754.
426. T. 37758.)

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132. In his diary of August 28, 1939⁴²⁷
among other events, KIDO records that when General
ABE was asked to form a cabinet, the Emperor had given
General ABE three instructions:
 "(1) Either UMEZU or HATA should be appointed
War Minister.

427. Ex. 2272 and errata, tr. 16,240

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1 "(2) Diplomatic policy should follow the
2 line of cooperation with Britain and the United States.

3 "(3) Discretion must be used in choosing
4 the Home Minister and the Justice Minister as the main-
5 tenance of public order was of supreme importance."⁴²⁸

6 ABE told KONOYE of this, and as KONOYE was
7 perplexed as to what to do he asked KIDO for his opin-
8 ion. KIDO was no longer a cabinet minister at this
9 time. After thinking it over, KIDO gave KONOYE his
10 opinion for transmittal to General ABE. He advised
11 discretion as to points 2 and 3, and on the basis of
12 his experience as Chief Secretary to the Lord Keeper of
13 the Privy Seal, he advised KONOYE on the procedure
14 which could be followed to have either UMEZU or HATA
15 appointed as War Minister since the Emperor had expressed
16 such a desire, and KIDO thought the matter should be
17 handled, so as not to incur trouble to the Emperor.
18 In so far as KIDO was concerned, it was only a matter
19 of procedure. The prosecution's interpretation of
20 KIDO's advice that General ABE should use discretion
21 as to points 2 and 3 as meaning with respect to point
22 2 "... that ABE could pay just as much or as little
23 attention to it as he thought fit..." is extremely
24 strained, and apparently devised to suit the prosecu-
25

428. Aff. par. 124, tr. 30,882.

429
1 tion's needs. It is to be noted that the Emperor
2 specifically instructed General ABE to use discre-
3 tion, that is, caution, prudence, care, as to item 3
4 and there can be no doubt but that KIDO was using the
5 word in the same sense with respect to item 2. The
6 prosecution criticizes KIDO for not dealing with this
7 subject matter, which it calls "the main point"⁴³⁰
8 in his diary entry when he testified. The affidavit
9 shows KIDO did deal with it.⁴³¹ If it was the main
10 point, the prosecution did not deal with it on its
11 cross-examination of KIDO. It cross-examined him
12 respecting the appointment of the War Minister, apparent-
13 ly considering that the main point, and KIDO had also
14 dealt with this in his affidavit.
15

XI

17
18 EVENTS WHILE KIDO WAS RETIRED, AUGUST
19 28, 1939 - JUNE 1, 1940. A NEW PARTY

20
21 133. On September 8, 1938, KONOYE discussed
22 with KIDO the question of a new party movement which
23 was coming to the fore. The evidence shows that the
24 Home Ministry had prepared a plan which was patterned
25 in many points after the German Nazi Party. KIDO

429. Par. JJ-16, tr. 41,059

430. Par. JJ-16, tr. 41,059

431. Aff. par. 124, tr. 30,882

1 discussed this with Home Minister SUGETSUGU and Justice
2 Minister SHIONO. KIDO expressed his opinion that such
3 a party leadership would be impossible in Japan. After
4 several meetings a draft platform and declaration of the
5 new political party was submitted to the Prime Minister
6 on October 17, 1938. When another conference was called,
7 the Home Office plan was dropped, and instead it was
8 decided to study a movement for a national organiza-
9 tion as an organ for conveying the wishes of the ruling
10 to the ruled and vice versa. On November 15, 1938,
11 another conference was had between KIDO and the afore-
12 mentioned minister, but the cabinet resigned en bloc
13 and no definite plan was worked out.⁴³²

14 134. After the outbreak of the European war
15 the question again came to the fore and discussions
16 were being held by the Japanese people on political
17 reconstruction and concentration of political power.
18 Some advocated that all political parties should be
19 merged into a new one. A movement started to have
20 Prince KONOYE preside over the new political party.
21 Early in 1940 KONOYE began to consider these questions
22 seriously, but paid more attention to the movement for
23 national reorganization than his leadership of a new
24 political party. It was his opinion that he could

432. Aff. par. 105, tr. 30,860 - 30,862

1 prevent the army from advancing politically by concen-
2 tration and establishment of political power. KIDO
3 was opposed to the one state, one party idea as before.
4 In view of the fact that he was out of office at that
5 time he stood aloof from political circles and he
6 only knew what was happening through information
7 brought to him by his friends from time to time.
8 Count ARIMA spoke with him on or about April 14, 1940,
9 at which time the movement was gathering momentum.⁴³³
10 Upon a rumor that the YONAI Cabinet was resigning and
11 that Prince KONOYE would be appointed the next Premier,
12 IKEZAKI called on KIDO on May 10, 1940.⁴³⁴ As the diary
13 entry shows KIDO frankly told him that as long as Prince
14 KONOYE remained in politics, KIDO would assist him by
15 playing a supporter's role, but as far as KIDO himself
16 was concerned, "I had no intention of forming any other
17 new political party." On the other hand, Prince
18 KONOYE, who had found it difficult as Premier of his
19 former cabinet in carrying out his policies because he
20 had no political party, was desirous of obtaining the
21 people's backing in some form in case he was asked to
22 form a new cabinet.⁴³⁵ On May 26, 1940, Prince KONOYE,
23 Count ARIMA, and KIDO at a dinner discussed the new
24

25 433. Aff. par. 130, tr. 30,891 - 30,892
434. Ex. 2274 and errata tr. 16,246
435. Aff. par. 132, tr. 30,893

1 party and national reorganization. ⁴³⁶ At this gather-
2 ing they talked about the union of political parties,
3 but not of "... One State, One Party." ⁴³⁷ KONOYE
4 had strongly opposed this during his first cabinet and
5 the movement had stopped at that time as the result
6 of his efforts. As shown in KIDO's Diary of May 26,
7 1940, they discussed that after the change of cabinet,
8 consideration should be given to the formation of a
9 new party when the movement for the establishment of
10 it was commenced by the political parties themselves.
11 After the issuance of an Imperial Mandate for a new
12 cabinet, they stated that the following points should
13 be considered:

14 (1) The establishment of a supreme national
15 defense conference between the chiefs of the General
16 Staff of both the army and the navy, the Premier, and
17 the War and Navy Ministers.
18

19 The object of this was to have the Premier
20 take charge of the government based upon the backing
21 of a new political party, namely, public opinion.

22 (2) As they were still engaged in hostili-
23 ties with China they believed consideration should be
24 given to the army and navy wishes regarding finances,
25 national defense and foreign affairs, as is shown in

~~436. Ex. 2275 and errata, tr. 16,247~~
437. Aff. par. 133, tr. 30,894

1 the diary, and dissolution of all political parties
2 should be requested. They also suggested that con-
3 sideration be given to the composition of the cabinet
4 of the Premier, the War Minister, the Navy Minister,
5 and according to circumstances, two or three members
6 of the cabinet; for instance, the Minister of Foreign
7 Affairs, etc., should be appointed. The remainder of
8 the cabinet to be selected from the most able members
9 of the new party. KIDO was not cross-examined on this.

10 135. When he was appointed the Lord Keeper
11 of the Privy Seal, he was requested by IKEZAKI to
12 refuse the office of Lord Keeper of the Privy Seal because
13 of the importance of the role KIDO could take in the
14 new party. KIDO refused him, as shown in his diary of
15 June 1, 1940. ⁴³⁸ There is no evidence in the case that
16 KIDO had anything whatsoever to do with that new party
17 or any other party thereafter.
18

19 XII

20 EVENTS WHILE KIDO WAS LORD KEEPER OF THE
21 PRIVY SEAL FROM JUNE 1, 1940 - NOVEMBER 1945

22 (a) Duties of the Lord Keeper of the Privy
23 Seal.

24 136. In considering the position and duties
25 438. Ex. 2276 and errata tr. 16,248

1 of the Lord Keeper of the Privy Seal attention must be
2 paid first and foremost to the fact that the office of
3 the Lord Keeper of the Privy Seal is set up under pro-
4 visions of the law governing it as part of the institu-
5 tions of the Imperial Court - not the cabinet (government),
6 nor the Supreme Command.⁴³⁹ It is the essence and tra-
7 dition of Japanese politics to draw a clear line of
8 demarcation between the government and the Imperial
9 Court.⁴⁴⁰ Simultaneously with the promulgation of the
10 law governing the organization of the cabinet in 1885,⁴⁴¹
11 it was stipulated that the Imperial Household Department
12 be established outside the cabinet and that all court
13 affairs be under the jurisdiction of the Minister of
14 the Imperial Household, who was to be held responsible
15 for advising the Emperor on all affairs relating to
16 the Imperial Family.⁴⁴² The office of Minister of the
17 Imperial Household sounds like the office of a Minister
18 of State, but in reality there is a vast difference.
19 As the evidence of the various laws show, all officials
20 of the Imperial Household Department are regulated by
21 entirely different legal provisions in their treatment,
22 appointment, and retirement from those regulating the

24 439. Tr. 674, 675; ex. 95, tr. 17,535, 17,537

25 440. Ibid

441. Tr. 674

442. Ex. 94, tr. 684, 17,535

1 government officials. Simultaneously the Imperial
2 Ordinance relating to the organization of the office of
3 the Lord Keeper of the Privy Seal was promulgated.⁴⁴³

4 It is part of the various institutions of the Imperial
5 Court.

6 137. Article I of this law stipulates that
7 the office of the Lord Keeper of the Privy Seal shall
8 take charge of the privy and state seals and conduct
9 affairs relating to Imperial rescripts, messages,⁴⁴⁴
10 speeches, and correspondence of the Imperial Court.

11 Article II stipulates⁴⁴⁵ that the Lord Keeper of the
12 Privy Seal shall be personally appointed by the Emperor
13 and shall assist the Emperor, constantly presiding over
14 the office of the Lord Keeper of the Privy Seal.

15 138. The question may well be asked why a
16 court official of the rank and prestige of the Lord
17 Keeper of the Privy Seal was appointed, especially
18 since he enjoyed no actual powers corresponding to his
19 high rank. The answer to this question is found in
20 the Japanese idea about the seal. As it is well known,
21 the time-honored custom of the Japanese people is to
22 create, modify or cancel their rights and obligations
23 with impressions of their seals. The office of the
24

25 443. Ex. 95, tr. 17,535, 17,537

444. Ibid

445. Ibid

1 Lord Keeper of the Privy Seal was set up to add to the
2 dignity of taking custody of the privy and state seals.

3 139. There could be no grosser mistake than
4 to contend that the office of the Lord Keeper of the
5 Privy Seal compares to the British Lord Privy Seal.
6 The latter is a member of the cabinet, resigns with it,
7 and shares a responsibility with it, but the Lord
8 Keeper of the Privy Seal in Japan is not a member of
9 the cabinet but a mere court official. ⁴⁴⁶ He does not
10 share responsibility with the cabinet nor does he resign
11 with the cabinet. His position might be compared to
12 that of Ponsoby who during the Victorian Era was appoint-
13 ed private secretary by Queen Victoria and she sought
14 his views upon important occasions.

15 140. Appendix E to the Indictment describes
16 Marquis KIDO as "chief confidential advisor to the
17 Emperor." It would be a mistake to say that that
18 characterization means that KIDO was responsible for
19 the final and decisive advice to the Emperor on the
20 conduct of state affairs requiring Imperial sanction,
21 including both home and foreign politics and diplomacy. ⁴⁴⁷
22 An impartial survey of the Japanese constitution ⁴⁴⁸
23 and its political composition reveals that the Ministers
24

25 446. Fy. 95, art. II, tr. 17,536

447. Par. JJ-25, tr. 41,065, aff. par. 168, tr. 30,925.

448. Ex. 68, tr. 17,415

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23 and its political composition reveals that the Ministers
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25 446. Fr. 95, art. II, tr. 17,536

447. Par. JJ-25, tr. 41,065, aff. par. 168, tr. 30,925.

448. Ex. 68, tr. 17,415

1 of State are responsible for advising the Emperor on
 2 the conduct of state affairs in general under the
 3 provisions of the constitution, Article LV: the Chief
 4 of Staff of the army and the Chief of Staff of the
 5 navy, respectively, advise the Emperor on the con-
 6 duct of military and naval affairs by virtue of the
 7 army and navy General staff regulations; ⁴⁴⁹ and the
 8 Minister of the Imperial Household Department is
 9 responsible for advising the Emperor on the conduct
 10 of court affairs under provisions of the law govern-
 11 ing the organization of the Imperial Household Department. ⁴⁵⁰

12 The question might then well be posed: "What is meant
 13 by the "HOHITSU" or assistance of the Lord Keeper of
 14 the Privy Seal to the Emperor?"

15 141. The law and responsibility for advising
 16 the Emperor on conduct of state and court affairs
 17 and matters of supreme command is clearly fixed; but
 18 responsibility of the Lord Keeper of the Privy Seal for
 19 assisting the Emperor does not appear. ⁴⁵¹ The evidence
 20 clearly shows that the Minister of State is responsible
 21 to advise the Emperor in connection with the conduct
 22 of state affairs on the propriety or otherwise of
 23 committing some action, and requests His Majesty to
 24 approve his advice. ⁴⁵² The Minister of State does not

449. Ex. 78, ex. 79, tr. 684, 17, 509, 17, 510; ex. 3336, tr. 30, 626

450. Ex. 94, Art. II, tr. 17, 535, 684

451. Ex. 95, Art. II, tr. 17, 536

452. Ex. 68, Art. LV, tr. 17, 475; tr. 36, 381, 35, 332

1 submit his advice to the Throne for more information.
 2 Thus the assistance of the Lord Keeper of the Privy
 3 Seal is entirely different from the advice of the
 4 Minister of State. In his conduct of state affairs
 5 the Emperor commits some actions. For that purpose His
 6 Majesty must be possessed of a correct judgment on his
 7 attitude toward his actions. It is the duty of the
 8 Lord Keeper of the Privy Seal to assist the Emperor
 9 in the proper way to his judgment, so as to help His
 10 Majesty perfect his Imperial virtues.⁴⁵³ It is not a
 11 question of whether it will have any bearing on the
 12 conduct of state affairs, but it is the question on
 13 what subject to advise the Emperor in connection with
 14 state affairs.⁴⁵⁴

15 142. The aide-de-camp system set up in
 16 accordance with the law has particular significance
 17 in considering the office of the Lord Keeper of the
 18 Privy Seal. The aide-de-camps were very close to the
 19 Emperor.⁴⁵⁵ The evidence is that as far as military
 20 and naval affairs are concerned, the army and navy
 21 made appeals and submitted reports and replies to the
 22 Emperor either directly or through their aide-de-camps.⁴⁵⁶

- 24 453. Tr. 35,799
 25 454. Tr. 36,511
 455. Tr. 673, 674
 456. Aff. par. 144, tr. 30,901; tr. 674

1 The Lord Keeper of the Privy Seal had nothing to do
 2 with their appeals or reports to the throne. All
 3 officials of the office of the aide-de-camps to the
 4 Emperor were under the jurisdiction of the War and Navy
 5 Ministers, having nothing to do with the Minister of
 6 the Imperial Household Department. Thus, the army
 7 and navy having direct access to the Emperor was en-
 8 tirely unrelated to the office of the Lord Keeper of
 9 the Privy Seal.⁴⁵⁷ The report of the Lord Keeper of
 10 the Privy Seal to the Emperor is called "gonjo" in
 11 Japanese, while that of the Minister of State to the
 12 throne is called "sojo" or "joso,"⁴⁵⁸ as appears in Japan-
 13 ese in the original KIDO Diary.

14 143. In characterizing KIDO as "chief con-
 15 fidential advisor to the Emperor"⁴⁵⁹ the prosecution
 16 overlooks its own evidence. The Imperial Ordinance
 17 relating to the organization of the office of the
 18 Lord Keeper of the Privy Seal contains the words "Joji
 19 Hohitsu"⁴⁶⁰ in describing the duties of the Lord Keeper.
 20 This has been properly translated as set forth in the
 21 exhibit "he shall 'regularly assist' the Emperor..."
 22 Article II, which provides "Joji Hohitsu," lacks such
 23 word as "responsibility." The Imperial Ordinance

25 457. Tr. 36,511

458. Ex. 1134 as cor. Lang, Sec. tr. 10,668

459. Indictment, Appendix E.

460. Ex. 95, tr. 17,535, 17,537

1 relating to the organization of the Ministry of the
 2 Imperial Household in defining the responsibilities
 3 of the Ministry of the Imperial Household sets them
 4 forth as "Hohitsu," ⁴⁶¹ which has also been properly
 5 translated in that exhibit where it states that the
 6 Minister of the Imperial Household "shall be 'respon-
 7 sible for assistance' to the Emperor." The word
 8 "Hohitsu" and its translation of responsibility for
 9 advice also applies to the Ministers of State. ⁴⁶²

10 From this it is quite apparent that the difference in
 11 the functions of these officials is entirely due to
 12 the fact that the Lord Keeper's assistance was offered
 13 to the Emperor only for his information, ⁴⁶³ the Emperor
 14 being entirely at liberty to adopt it or not, whereas
 15 the Minister of State and the Minister of the Imperial
 16 Household were responsible for the advice they gave. ⁴⁶⁴

17 From this it clearly appears that the "Joji Hohitsu"
 18 offered by the Lord Keeper of the Privy Seal to the
 19 Emperor is not advice but an explanation.
 20

21 144. Another duty of the Lord Keeper of the
 22 Privy Seal which arose through custom was that involv-
 23 ing the appointment of a new Prime Minister. ⁴⁶⁵ This
 24 duty originally devolved on the Genro, or Elder States-

25 461. Ex. 94, tr. 17,535
 462. Ex. 94, tr. 17,535
 463. Aff. par. 55, tr. 30,830
 464. Tr. 36,381
 465. Tr. 675

men. The time came, however, when there was only one
 1 surviving Genro, Prince SAIONJI. As he advanced in
 2 age he declined to submit his views to the throne on
 3 that ground, and as shown, it became customary for the
 4 Emperor to order the Lord Keeper of the Privy Seal to
 5 consult with the Senior Statesmen, as distinguished from
 6 the "Genro," or Elder Statesmen, and to submit recommen-
 7 dations to the throne. ⁴⁶⁶ When a change occurred the
 8 Emperor commanded the Lord Keeper of the Privy Seal
 9 to recommend a suitable candidate for the succeeding
 10 prime minister, "... after consultation with the
 11 Elder Statesmen." ⁴⁶⁷ It naturally follows, the Lord
 12 Keeper of the Privy Seal was not in a position to
 13 recommend a candidate of his own choice to the Emperor
 14 in case the candidate was opposed by all the Senior
 15 Statesmen. If a majority of the Senior Statesmen raised
 16 an objection to the candidate of his choice, the Lord
 17 Keeper could not recommend the candidate to the Emperor,
 18 because it is clear that the Imperial Command signified
 19 that due consideration should be paid to the views of
 20 all the Senior Statesmen or their majority views. ⁴⁶⁸

- 23 466. Ibid; Aff. par. 8, tr. 30,724, Diary Apr. 13, 1941.
 24 467. Ex. 532, tr. 6244-6248; ex. 1277, tr. 11,372;
 25 ex. 1282, tr. 11,388
 468. Ex. 532, tr. 6249-6256; ex. 1117, tr. 10,186
 as cor. Lang. Sec. tr. 10,667; ex. 1154, as
 cor. Lang. Sec. tr. 11,142

1 145. In discussing KIDO and the duties of
 2 the Lord Keeper of the Privy Seal ⁴⁶⁹ the prosecution
 3 advances the theory that "as Lord Keeper he developed a
 4 new function, that of advising the Emperor on the
 5 choice of every new Premier." ⁴⁷⁰ This contention is
 6 conclusively refuted by KIDO's testimony and his diary
 7 entries. ⁴⁷¹ The prosecution says that the discussions
 8 KIDO had with SAIONJI in 1932 "merely show a desire
 9 on the part of SAIONJI, owing to his advancing years,
 10 to have the assistance of the Senior Statesmen in exer-
 11 cising this function..." ⁴⁷² Compare this with the diary
 12 entry. In KIDO's Diary of August 26, 1932, KIDO reports
 13 a talk he had with the Lord Keeper as follows:
 14 "He said when he visited Gotemba the other
 15 day, Prince SAIONJI wished in the future the Emperor's
 16 inquiries as to a new premier be addressed not to the
 17 Genro alone but to a conference of Senior Statesmen
 18 which the Lord Keeper shall call and after deliberation
 19 the Lord Keeper shall submit an answer to the Emperor..." ⁴⁷³
 20 In its resume the prosecution overlooked Prince SAIONJI's
 21 inclusion of the Lord Keeper.
 22

- 23 469. Par. JJ-14, tr. 41,058; Par. JJ-17, tr. 41,059
 24 470. Par. JJ-20, tr. 41,062; par. JJ-24, tr. 41,064
 25 471. Aff. par. 40-46, tr. 30,785-30,793; par. 127,
 tr. 30,886; par. 145, tr. 30,901; ex. 2273,
 Diary Nov. 10, 1939, tr. 16,242
 472. Par. JJ-20, tr. 41,062
 473. Aff. par. 42, Diary Aug. 26, 1932

1 146. A draft of procedure to be used in
2 connection with the Senior Statesmen's Conference
3 prepared by KIDO at the request of the Lord Keeper of
4 the Privy Seal is set forth in his diary of September
5 16, 1932⁴⁷⁴ and December 15, 1932.⁴⁷⁵ In order to make
6 the meeting more democratic KIDO had included a provision
7 in the draft that the President of the House of Peers
8 and of the House of Representatives should be included
9 among the Senior Statesmen. Mr. ICHIKI, the Minister
10 of the Imperial Household, objected to this and it was
11 stricken.⁴⁷⁶

12 147. KIDO testified that the procedure used
13 by him for the appointment of a new prime minister was
14 the same as that "... used by my predecessor, Lord Keeper
15 YUASA except that the Senior Statesmen were to be con-
16 sulted as a body and not individually and separately."⁴⁷⁷
17 The prosecution claims that there is no evidence that
18 the Lord Keeper was to play any part except perhaps that
19 of a convener in connection with the Senior Statesmen's
20 Conferences before KIDO became Lord Keeper. There is
21 evidence, because, as shown, KIDO so testified. In
22 its next sentence the prosecution impliedly admits that
23

24 474. Aff. par. 45, tr. 30,790
25 475. Aff. par. 46, tr. 30,791 - 30,792
476. Ibid
477. Aff. par. 145, tr. 30,902

1 KIDO so testified but claims that there was no corroborative
2 evidence that KIDO's "... predecessor had adopted
3 a somewhat similar method." ⁴⁷⁸ The prosecution has
4 overlooked its own evidence, which disproves its argu-
5 ment. In setting forth the duties of the Lord Keeper
6 of the Privy Seal, the prosecution has admitted:

7 "His most important function in late years
8 has been that of recommending to the Emperor a successor
9 premier upon the resignation of a cabinet. In prior
10 years his sole function in this regard was to transmit
11 the decision of the Elder Statesmen or Genro to the
12 Emperor. In 1935, as Prince SAIONJI grew older, upon
13 resignation of the HAYASHI Cabinet the Lord Keeper him-
14 self was asked to and did himself make the recommenda-
15 tion after consultation with SAIONJI. This precedent
16 was followed until January, 1940, when the Lord Keeper
17 first determined upon the successor premier after con-
18 sultation with the individual ex-premiers and there-
19 after obtained SAIONJI's views." ⁴⁷⁹

20
21 Thus the procedure testified to by KIDO was followed
22 by his predecessor YUASA in the selection of YONAI as
23 Premier on January 19, 1940.

24 148. If there was doubt in the prosecution's

25 478. Par. JJ-20, tr. 41,063
479. Tr. 675 - 676

1 mind on this fact, it had an opportunity to either
2 corroborate or contradict it.

3 149. When the affidavit of Count MAKINO,
4 who was former Lord Keeper of the Privy Seal, was
5 offered in evidence the prosecution objected to it and
6 particularly that part on the "... procedure on the
7 appointment of a new premier..."⁴⁸⁰ The objection
8 to the entire affidavit was sustained. If the prose-
9 cution had the slightest doubt, would it not have been
10 fairer to permit this affidavit in evidence, cross-
11 examine Count MAKINO, and be of assistance to the Tri-
12 bunal instead of waiting until summation to raise its
13 argument? The decision on the affidavit of Count
14 MAKINO discouraged the offering of further corrobora-
15 tive evidence on KIDO's behalf. The prosecution even
16 took an unheard of measure in objecting to evidence in
17 mitigation, and continued to do so even after it was
18 pointed out that such objections were unprecedented.

19
20 149-a. Even if KIDO did develop a new func-
21 tion of advising the Emperor on the choice of each
22 new premier, although this is flatly denied, to what
23 crime alleged in the indictment does that apply?
24 not take it upon himself to recommend a premier.
25 480. Tr. 31,617

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20 tion of advising the Emperor on the choice of each
21 new premier, although this is flatly denied, to what
22 crime alleged in the indictment does that apply? He did
23 not take it upon himself to recommend a premier. He

24
25 480. Tr. 31,617

481

1 was definitely opposed to that. He is even criti-
2 cized by the prosecution for the one instance during
3 the extremely critical time of April 5, 1945, when he
4 sought advice of more people (army, navy ministers,
5 and the chiefs of staff) before the conferences with
6 the President of the Privy Council and the Senior
7 Statesmen. If KIDO had not consulted the President of
8 the Privy Council and the Senior Statesmen, or if he
9 had consulted them and disregarded their opinions and
10 gave his own recommendation, it would seem that the
11 prosecution then would have something about which to
12 complain. The prosecution does not suggest that KIDO
13 ever misinformed the Senior Statesmen or concealed any
14 facts from them or ever misrepresented any fact to them.
15 Obviously not, because he never did. What other pro-
16 cedure than that which was used would have been logical?
17 If there had been anything morally, politically, ethi-
18 cally or criminally wrong with KIDO's actions in the
19 procedure used or in the statements he made in the con-
20 ferences with the Senior Statesmen, the prosecution
21 never proved it from the Senior Statesmen themselves.
22 A number of them appeared on the witness stand. ⁴⁸² We
23 may assume the prosecution did not ask them, because

25 481. Diary Dec. 15, 1932, Aff. par. 46, tr. 30,791
482. YONAI, WAKATSUKI, OKADA, TOJO

1 KIDO had done nothing wrong. Any argument that KIDO
 2 secured more power for himself would be ridiculous in
 3 face of the fact that the recommendations of the Senior
 4 Statesmen were always taken by KIDO and reported to the
 5 throne.⁴⁸³ It was not solely KIDO's opinion. A study
 6 of each of the Senior Statesmen's Conferences reveals
 7 comprehensive discussions by the Senior Statesmen and
 8 decisions based on logical reasoning.⁴⁸⁴ These men were
 9 not rubber-stamp yes-men for KIDO. If they had been,
 10 the prosecution would have seized upon this point, and
 11 rightly so. The fact that they were not shows how un-
 12 important KIDO really was. It showed he had very little
 13 influence, let alone any powerful influence. They were
 14 leaders and former premiers of Japan.

15 150. In the summation offered to the Tribunal
 16 on behalf of HASHIMOTO, Kingoro, one of the accused,
 17 Prince SAIONJI, Count MAKINO, the Senior Statesmen,
 18 KONOYE, KIDO, SUZUKI, SHIGEMITSU, SHIRATORI, INUKAI,
 19 ARIMA, SAKAI, and OKABE are represented as controlling
 20 politics in Japan, with several of them at various
 21 times forming the nucleus of power. No mention, how-

23 483. e.g. Aff. par. 216, tr. 31,018

24 484. Diary July 17, 1940, ex. 532, tr. 6249.

Diary July 17, 1941, ex. 1117, tr. 10,667

Diary Oct. 19, 1941, ex. 1154, tr. 11,142;

25 Aff. par. 216, tr. 30,991 - 31,018

Diary July 17, 1944, ex. 1297, tr. 11,372

Diary Apr. 5, 1945, ex. 1282, tr. 11,388

1 ever, is made of the most important fact of the power-
2 ful influence of the army chiefs of staff and army
3 politicians who could make and break cabinets by hav-
4 ing the War Minister resign or by refusing to appoint
5 a new War Minister. Also overlooked is the fact that
6 of the 17 cabinets from TANAKA in 1927 to SUZUKI in
7 1945 nine of the premiers were of the fighting ser-
8 vices. These facts amply demonstrate that neither KIDO
9 nor any other civilian controlled politics in Japan.

10 151. It is interesting to note that this
11 summation criticizes KIDO's efforts in conjunction with
12 the Senior Statesmen.⁴⁸⁵ Although counsel for HASHIMOTO
13 correctly states that after the death of Prince SAIONJI
14 and the retirement of Count MAKINO, the choice of a new
15 premier was decided upon by the Senior Statesmen and
16 that their decision was then recommended to the throne
17 by KIDO;⁴⁸⁶ on the next page he states that KIDO's ad-
18 vice alone decided the succeeding Prime Ministers upon
19 the collapse of the Third KONOYE Cabinet, which of
20 course is wholly inaccurate.

22 152. Likewise the statement made on behalf of
23 HASHIMOTO, an army man, that KIDO and KONOYE interfered

24 485. HASHIMOTO Summation p. 12
25 486. " " p. 11

1 in the choice of a War Minister at the time of the fall
2 of the HIRANUMA Cabinet is not only remarkable but in-
3 accurate as heretofore shown. ⁴⁸⁷ The balance of the
4 summation insofar as it theorizes with respect to KIDO's
5 action is, we submit, not compatible with the facts.
6 Need we remind the Tribunal that the evidence in KIDO's
7 case showing his fight against the military obtaining
8 political power in Japan is forcefully demonstrated
9 by the criticism directed against KIDO in the aforesaid
10 summation.

11 I might say, your Honors, that it is paradoxical
12 that the two men are in the same box.

13 153. KONOYE in his memoirs accurately por-
14 trayed the effect of the militarists' pressure in
15 politics, which curbed the Premier's efforts, when he
16 said: ⁴⁸⁸
17

18 "Recently Premier TOJO spoke to the Lord
19 Keeper of the Privy Seal KIDO, and sympathetically,
20 that now that he had become Premier he understood for
21 the first time how difficult it was for the previous
22 premiers to do things, and that he himself would to the
23 very end proceed with a duplication of posts; to this
24 I understand the Lord Keeper of the Privy Seal, KIDO,

25 487. Infra. p. 110-111
488. Ex. 2865, tr. 25,671, 25,672

replied that that was not the first time that some-
1 one had said this, that it had been exactly the same
2 from the time of the first KONOYE Cabinet, and that,
3 late though it may be, to have the army realize this
4 point was fine."

5 THE PRESIDENT: We will adjourn until half-
6 past nine Monday morning.

7 (Whereupon, at 1600, an adjourn-
8 ment was taken until Monday, 5 April 1948,
9 at 0930.)
10

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5 APRIL 1948

I N D E X

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Monday, 5 April 1948

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

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

10 Appearances:

11 For the Tribunal, all Members sitting.

12 For the Prosecution Section, same as before.

13 For the Defense Section, same as before.

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 UMEZU, MATSUI and SHIRATORI who are represented
5 by counsel. The Sugamo Prison surgeon certified that
6 they are ill and unable to attend the trial today. The
7 certificates will be recorded and filed.

8 Mr. Logan.

9 MR. LOGAN: If the Tribunal please, I shall
10 continue reading KIDO's summation, page 130, paragraph
11 154.

12 XII. (b) June 1, 1940 - September 12, 1940.

13 154. With respect to KIDO's activities from
14 June 1, 1940 to September 9, 1940 the prosecution
15 makes a few broad general remarks. ⁴⁸⁹ We point out
16 that KIDO had no duty to make protests to the Cabinet
17 Ministers, that he did confer with the Emperor and
18 that KIDO did not accept various views without objec-
19 tion as contended by the prosecution. It was during
20 this period of time that KIDO received information
21 from the Foreign Minister of what transpired at the
22 Four Ministers' Conference regarding French Indo-China
23 as shown in his diary of June 19, 1940. ⁴⁹⁰ He received
24 information from Foreign Minister ARITA about a
25

(489. Par. JJ-53, T. 41,094-41,095
490. Ex. 619, T. 6824)

conversation he had with Ambassador Grew concerning
1 a treaty between the United States and Japan, as
2 shown in his diary of June 27, 1940.⁴⁹¹ The prosecu-
3 tion retreats from its contention⁴⁹² that these
4 exhibits showed KIDO's attitude towards the United
5 States, Great Britain, and the Netherlands, after KIDO
6 had pointed out in his affidavit the prosecution's
7 erroneous conclusions,⁴⁹³ and now only claims that it
8 shows he had knowledge. On July 1, 1940 as shown in
9 his diary⁴⁹⁴ Foreign Minister ARITA told him about
10 various matters including the situation in Hongkong,
11 the negotiations between Japan and America, and requests
12 from Germany of withdrawal of representatives from
13 certain countries, the Netherlands East Indies economic
14 problems, and the probability of sending an economic
15 mission to French Indo-China and the Netherlands East
16 Indies. As is shown in the same diary entry KIDO did
17 report these matters to the Emperor. The prosecution
18 ignores KIDO's diary entry of July 5, 1940⁴⁹⁵ and his
19 affidavit reciting the plot to kill Premier YONAI,
20 Mr. MACHIDA, Count MAKINO, Baron HARADA, Baron ICHIKI,
21

- 22 (491. Ex. 1294 as Cor. by Lang. Sec.
23 T. 38,680
24 492. Doc. 0003, Tr. 16,851
25 493. Aff. par. 138-139, Tr. 30,897-30,898
494. Ex. 1295, T. 11,710
495. Ex. 532, T. 6,241)

1 Mr. KIDEA, Admiral OKADA, Mr. YUASA, and Household
2 Minister MATSUDIARA, who were all close personal
3 friends of KIDO, and KIDO was also on the list. ⁴⁹⁶

4 His diary for that date shows that he reported this
5 to the Emperor.

6 155. His diary of July 7, 1940 ⁴⁹⁷ shows that
7 there were rumors of a political change and Baron
8 HIRANUMA favored the appointment of Prince KONOYE.

9 His entry of July 8, 1940 ⁴⁹⁸ reveals that the Army
10 supported Prince KONOYE. As this entry shows, KIDO
11 received this report from Vice War Minister ANAMI
12 but did not express his opinion. Prince KONOYE was
13 the overwhelmingly popular choice as Premier, also
14 having the backing of the political moves which were
15 steadily being taken to counter the Army's advance
16 in the political field. ⁴⁹⁹ If KONOYE had not been
17 recommended the result would have been to hand over
18 political power entirely to the Army at that time.

19 KIDO's Diary also shows that he discussed these matters
20 with the Emperor on that date. The diary of July 14
21 1940 ⁵⁰⁰ also shows that he discussed with the Emperor
22 the question of heavy artillery mobilization in South
23

24 (496. Aff. par. 141, Tr. 30,899
25 497. Ex. 532, Tr. 6,242
498. Ex. 532, Tr. 6,242-6,244
499. Ex. 143, Tr. 30,900-30,901
500. Ex. 534, Tr. 6,259)

1 China. This diary entry also reveals that when re-
2 quested to obtain information, in accordance with his
3 duty, KIDO avoided conferring directly with the military
4 authorities and had the chief aide de camp to the
5 Emperor make an investigation. It shows that it was
6 not part of KIDO's duties to contact the military
7 authorities with respect to operations. ⁵⁰¹

8 156. The YONAI Cabinet fell after War Minister
9 HATA's resignation and the Army refused to suggest a
10 successor as related in KIDO's Diary of July 16,
11 1940. ⁵⁰² All the evidence shows KIDO had no part in
12 the reasons for the fall of this Cabinet. ⁵⁰³ KIDO
13 conferred with the Emperor and the Emperor requested
14 him to ask the President of the Privy Council and the
15 former Premier about the selection of the head of an
16 incoming cabinet, and to report their answers after
17 consultation with the Senior Statesmen, which he did.
18 KIDO was requested to arrange the council of those
19 people in the palace and that he himself should par-
20 ticipate in it. Attention is directed to the fact
21 that the method of proceeding was ordered by the Emperor.
22

23 (501. Aff. par. 144, Tr. 30,901
24 502. Pros. Ex. 532, Tr. 6244-6248
25 503. Tr. 28,918-28,944-29,945,
Tr. 36,580)

157. His diary of July 17, 1940 sets

1 forth the conference of the Senior Statesmen. WAKATSUKI,
2 former head of the Minseitō Party, was the first to
3 recommend KONOYE. WAKATSUKI, a prosecution witness,
4 has never been represented as a militarist. KONOYE
5 was the popular choice of all those present and he
6 was the popular choice of the political parties, as
7 well as the Army. When KIDO reported the recommenda-
8 tion of the Senior Statesmen to the throne, the Emperor
9 asked KIDO if he could give KONOYE some advice -- that
10 is, that KONOYE should be prudent in the choice of
11 the Foreign and Finance Ministers, as the situation
12 at home and abroad was very grave. KIDO told him it
13 would be a good idea to do so, all of which appears
14 in the diary of July 17, 1940. KIDO's Diary of July
15 18, 1940⁵⁰⁵ reveals that KIDO deplored the fact that
16 the former War Minister had recommended TOJO while
17 KONOYE was in the midst of forming a cabinet and KIDO
18 recorded his wish that this "* * * instance might not
19 set a precedent."
20

21 158. On August 9, 1940 KIDO had an audience
22 with the Emperor⁵⁰⁶ wherein the Emperor expressed a
23 regret that the new Foreign Minister MATSUOKA "* * failed
24

(504. Ex. 532, Tr. 6249-6256

505. Ex. 539, Tr. 6266-6267

506. Diary, Par. 148, Tr. 30,905)

to have any clear perspective of America's future
1 policy." On September 9, 1940 KIDO received a report
2 that the military agreement parley for a peaceful
3 advance into Indo-China had, "*** taken a turn for the
4 worse since the advance of one battalion or so of our
5 troops into French Indo-China."⁵⁰⁷ While it is true
6 that this entry of the diary does not show KIDO's
7 indignation at the actions of the military authorities,
8 he was indignant at the operations of the military as
9 appears in his diary entry of September 26, 1940,⁵⁰⁸
10 when after hearing that an Army unit had landed at
11 Indo-China to bomb Haifong he stated in his diary, "It
12 is indeed regrettable that such measures are taken by
13 those in the field who do not understand the general
14 situation. It is people like this who make the grave
15 blunders."
16

17 159. In September 1940 MATSUOKA's suggestion
18 that an ultimatum be sent to French Indo-China was
19 pending. The Emperor advised KIDO, as is shown in
20 his diary of September 14, 1940⁵⁰⁹ that the views of
21 MATSUOKA and of the Army General Staff did not co-
22 incide exactly and that there would be no other way
23

24 (507. Ex. 626, Tr. 6971

25 508. Ex. 643, Tr. 7049 as Cor. by Lang. Sec. on
Mar. 18, 1948.

509. Ex. 627 as Cor. by Lang. Sec. Tr. 7029,
Tr. 7103, Tr. 36,680)

~~except to let the government carry out its policy under~~

1 the present circumstances. KIDO agreed with this as
2 is shown in the diary, and KIDO recognized that the
3 situation was very grave. The Emperor did not show
4 hearty approval. KIDO added that he should direct
5 the government to take a cautious attitude. In render-
6 ing his assistance, KIDO, as is shown in the diary,
7 pointed out that it was being said that if matters
8 continued without doing anything, the mischief making
9 of England and the United States would become more
10 serious and an opportunity might be given to them to
11 cooperate with French Indo-China, and China. Contrary
12 to the prosecution's contention KIDO was not expressing
13 his opinion on this question; he was merely reporting
14 what others were saying.
15

16 XII. (c) The Tripartite Pact.

17 160. The undisputed evidence is that KIDO
18 first learned of MATSUOKA's secret conduct of negoti-
19 ations for the conclusion of an alliance between Japan
20 and Germany on September 12, 1940. Even the divisional
21 chiefs of the Foreign Office were unaware of this secret.⁵¹⁰
22 The Prosecution makes the usual guess that KIDO knew
23 of what was secretly going on at MATSUOKA's house
24 prior to that date. Contrary to the prosecution's
25 (510. Aff. par. 152, Tr. 30,907)

1 contention KIDO's Diary of September 14, 1940 does not
2 say, with its inference of prior knowledge by KIDO,
3 that TOJO informed KIDO later that evening that the
4 Navy's objection had been withdrawn. The entry
5 specifically shows that TOJO told KIDO that the
6 "***Army and Navy had arrived at an agreement concern-
7 ing relations with Germany and Italy."⁵¹¹

8 161. There is absolutely no evidence in
9 this case that the Emperor ever disapproved of the
10 government's decision after the government had made
11 it and when it was submitted to the throne as a national
12 policy. Prior to making a decision the Emperor may
13 express his views or caution the cabinet or request
14 the cabinet to reconsider its proposed attitude there-
15 upon. The prosecution approaches this proposition as
16 if KIDO had greater power than the Emperor. It tries
17 to create the impression that KIDO was making the
18 decisions. This is, of course, entirely unsupported
19 by the facts. KIDO merely submitted his views to the
20 Emperor and the final decisions were reached by the
21 government and the High Command.

22 162. KIDO discussed the matter of this
23 alliance with Prince KONOYE and Foreign Minister
24 (511. Ex. 627, Tr. 7029 as Cor. by Lang. Sec.
25 Tr. 7103 and Tr. 36,680)

1 MATSUOKA. KONOYI and MATSUOKA argued that the alliance
2 was intended to prevent America from joining in the
3 war and further that in case Japan was isolated in the
4 Pacific without concluding such an alliance, Japan
5 might be attacked by America at any moment. That was
6 their standing explanation and KIDO thought that the
7 alliance might cause an antithesis with America and
8 eventually Japan would have to oppose Great Britain
9 and the United States. 512

10 163. As shown in his diary of September
11 16, 1940⁵¹³ he conferred with the Emperor about the
12 alliance with Germany. On this occasion KIDO testified
13 that he had advised the Emperor that this alliance,
14 if concluded, would divide the world into two parts,
15 irrespective of the opinions of the Prime Minister and
16 MATSUOKA to the contrary. 514

17 164. The prosecution's reasoning with respect
18 to KIDO's actions at the time the Tripartite Pact was
19 consummated is difficult to follow. It says that no
20 entry in HARADA Memoirs is in conflict with any entry
21 in KIDO's Diary. 515 Yet it creates an extreme divergence
22 of views between HARADA's Memoirs of October 20, 1940,
23 516

24 (512. Aff. par. 153, Tr. 30,909

513. Ibid.

514. Ibid.

25 515. Par. JJ-11, Tr. 41,056

516. Ex. 3810, Tr. 37,380)

518 519
 September 16, 1940, and September 21, 1940.

1 All of these exhibits refer to the Tripartite Alliance.
 2 The HARADA entry of October 20, 1940, purports to
 3 quote word for word some conversations HARADA is
 4 supposed to have had with KIDO and KONOYE occurring
 5 about a month previous. Its accuracy is highly ques-
 6 tionable if the Tribunal accepts KIDO's Diary to be
 7 accurate as requested by the prosecution. ⁵²⁰ The gist
 8 of the prosecution's contention seems to be that
 9 according to HARADA, KIDO and KONOYE persuaded (al-
 10 though the exhibit does not use this word) the Emperor
 11 to give Imperial sanction to the Tripartite Pact and
 12 that they told the Emperor that it was the only way
 13 of keeping the United States of America out of the war.
 14 Contrast this with KIDO's Diary entry of September 21,
 15 ⁵²¹ 1940 which is also a prosecution exhibit. In his
 16 diary KIDO said:

17 "With regard to the solution of the China
 18 Incident, I expressed my opinion to His
 19 Majesty to the effect that we should have
 20 eventually to oppose both England and the
 21 United States if we concluded a military
 22

23 (517. Ex. 627, par. 6, 7, 8 not read, Tr. 7029 as
 24 Cor. by Lang. Sec. Tr. 7103 and Tr. 38,680
 25 518. Tr. 30,907-30,908-30,909
 519. Ex. 2277, Tr. 16,250
 520. Par. JJ-3, Tr. 41,048
 521. Ex. 2277, Tr. 16,250)

1 alliance with Germany and Italy. We should,
2 therefore, make necessary adjustments regard-
3 ing our relations with China as soon as
4 possible."

5 Clearly this shows that KIDO told the Emperor that
6 if a military alliance with Germany and Italy was
7 concluded, it would bring on war with both England
8 and the United States. No amount of twisting of
9 language can interpret that as a persuasion of the
10 Emperor to accept the Pact.

11 165. It is quite clear that by making
12 "****necessary adjustments****"⁵²² regarding the China
13 Incident KIDO was talking about making concessions.
14 What else could it have meant? The prosecution asks
15 the Tribunal to reject KIDO's statement in his affidavit
16 that this meant making concessions, but it does not
17 suggest what those words "necessary adjustments"
18 ⁵²³
19 mean.
20
21
22
23
24

25 (522. Aff. par. 154, Tr. 30,910
523. Par. JJ-54, Tr. 41,095)

166. In this Memoir of October 20, 1940,
HAIADA also expressed doubts how the then Lord Keeper

of the Privy Seal and the Prime Minister explained the
1 matter to the Throne. Prince SAIONJI was also doubtful.
2 The very wording of this is based on an assumption that
3 KIDO and KONOYE obtained Imperial sanction. In so far
4 as KIDO is concerned, the evidence is to the contrary
5 as shown in KIDO's Diary of September 21, 1940.⁵²⁴ In so
6 far as Prince SAIONJI having been kept in ignorance,
7 it must be remembered that KIDO, too, was kept in ig-
8 norance by the Foreign Minister until September 12,
9 1940. Furthermore, when cross-examined KIDO fully
10 explained both from the legal and individual standpoint
11 that the duty rested on the Prime Minister to inform
12 Prince SAIONJI, and KIDO understood that the government
13 had discussed the matter with Prince SAIONJI.⁵²⁵ This
14 evidence is uncontradicted.
15

16 167. It is interesting to note that the prose-
17 cution itself does not know what HAIADA is talking
18 about when it questions his memoir of October 20, 1940,
19 where he reports that the Emperor was told by both
20 KONOYE and KIDO that the adoption of the Tripartite
21 Pact was the only way to keep the United States of Amer-
22 ica out of war. The prosecution wants to know what war
23

24 524. Ex. 2277, T. 16,250

25 525. T. 31,572

HARADA is talking about.⁵²⁶ We have no idea.

1 168. The European War and the China Incident
2 were in progress at that time, but the prosecution
3 rejects both of these and claims the HARADA entry re-
4 fers to "proceedings" not "war" intended to take place
5 in the Far East. The purpose of this guess apparently
6 is to tie KIDO into it by referring to a prior diary
7 entry of September 14, 1940.⁵²⁷ This entry was twice
8 corrected by the Language Section, and reveals that
9 KIDO cautioned the Emperor to direct the government to
10 be careful before taking any action. The entry clearly
11 shows that he first told the Emperor of what had been
12 said about the opportunity of Great Britain and the
13 United States to cooperate with French Indo-China and
14 China. Nowhere does it show KIDO's approval as the
15 prosecution claims. This diary entry does not mention
16 military action against British, Dutch and Portuguese
17 possessions in the Far East which the prosecution says
18 the diary entry shows KIDO approved.⁵²⁸ After the gov-
19 ernment had made its decision with regard to the Tri-
20 partite Pact and KIDO had discussed the matter with the
21
22

23 526. Par. JJ-17, T. 41,060

24 527. Par. JJ-17, T. 41,061

25 528. Par. JJ-17; Diary, Ex. 527, T, 7,029, as cor.
by Language Section, T. 7,103 and T, 38,680;
T. 41,061

Emperor, the arranging of the Imperial Conference
 1 for its approval was merely a matter of procedure. ⁵²⁹ No
 2 responsibility can attach to KIDO for the Pact. He
 3 never advocated nor voted for it.

4 169. In discussing KIDO and the Tripartite
 5 Pact, the prosecution says, "It appears that he attended
 6 the Privy Council meeting which finally approved the
 7 Pact," citing its own exhibit 643, last paragraph, 'T.
 8 7,049 (not read). ⁵³⁰ We respectfully suggest that the
 9 prosecution's interpretation cannot be characterized
 10 as fair nor is it compatible with its knowledge of the
 11 facts.
 12

13 170. The authority cited by the prosecution
 14 is KIDO's Diary for September 26, 1940. It says: ⁵³¹

15 "I was informed that the Privy Council
 16 Committee which started sitting this morning
 17 finished finally at 7:30 p.m. after which at
 18 9:30 the full council was convened. On leaving
 19 this I went to the Palace. When I heard that the
 20 council had finished uneventfully at 10:20 I left
 21 the Palace."
 22

23 171. This entry clearly shows KIDO heard
 24 that the council sat until 7:30 p.m., reconvened at 9:30

25 529. Aff. par. 153, T. 30,909; Ex. 643, T. 7,049
 530. Ex. 643, T. 7,049 as cor. by Lang. Sec. on March
 18, 1948

531. Ibid.

and finished at 10:20. ~~Even if we were to accept the~~
1 word "leaving" as correct, there could be no such inter-
2 pretation as claimed by the prosecution. A casual
3 reader would easily discern the typographical error.
4 The word "leaving" should be "learning." The Language
5 Section has recently corrected it. ⁵³² KIDO in on trial
6 for his life.

7 172. Throughout this trial, many of KIDO's
8 Diary entries were not submitted to the Language Section
9 even though they had minor inaccuracies, because we
10 felt they were not of sufficient importance. In several
11 instances, however, the prosecution has endeavored to
12 make capital of these, which we considered insignificant
13 errors in its own exhibits of the diary. They were
14 all duly changed by the Language Section. Since the
15 prosecution, however, is now relying on typographical
16 errors to convict KIDO, if there be any doubt whatsoever
17 in the Tribunal's mind as to the translation of KIDO's
18 Diary with respect to any particular entries already
19 discussed, or which may be referred to in any rebuttal
20 summation after the delivery of this summation, we sug-
21 gest and have no objection to the Tribunal having the
22 entry resubmitted to the Language Section.
23
24

25 532. Ibid.

XII. (d) October 1, 1940--September 1, 1941

1 173. After the conclusion of the Tripartite
2 Pact Foreign Minister MATSUOKA determined to take up
3 negotiations with Chungking in his own hands. At first
4 they appeared to make fair progress but later they
5 reached a dormant political stage. Consequently at a
6 Liaison Conference between the government and the High
7 Command on November 28, 1940 it was decided that a
8 basic treaty be concluded by Ambassador ABE with Wang
9 Ching-wei, paying no attention to the negotiations with
10 Chungking.⁵³⁴ The result was that the China Affair en-
11 tered a definite state of protraction.
12

13 174. Japanese power was becoming exhausted and
14 only pessimism existed as to the prospect for the set-
15 tlement of the China Affair, as related in KIDO's Diary
16 on November 29, 1940.⁵³⁵ KIDO had a conversation with
17 the Emperor wherein the Emperor recommended that there
18 was no alternative but to consider Japan's moves towards
19 Chungking with regard to the settlement of the incident
20 as a failure. In such an event the Emperor was con-
21 cerned as to what Japan's national policy would be as
22 the incident would naturally drag on in the event of
23 the final conclusion of a treaty of peace with the Wang
24

25 533. Aff. para. 159, T. 30,912

534. Ibid.

535. Pros. Ex. 2278 and errata, T. 16,251

1 Regime. KIDO told the Emperor that under the circum-
2 stances, as they then existed, the Emperor was correct
3 in saying that the incident would be a prolonged one
4 and that it would be difficult for Japan to defeat
5 Chungking in view of the exhausted state of Japan's
6 power at that time. As KIDO pointed out there was noth-
7 ing else to do but to complete Japan's national strength,
8 securing keypoints and that Japan would be unable to
9 settle the affair by compromising with positive action
10 proponents in Japan. Certainly this was not an opinion
11 in favor of invasion or aggression. It viewed the situa-
12 tion as it existed at that time. In short, Japan was
13 unable to make peace and KIDO was advocating mainte-
14 nance of the status quo, and waiting for a future chance
15 to settle the affair. Any criticism of KIDO's opinion
16 is wholly unwarranted.⁵³⁶ Any other deductions as to the
17 meaning of these diary entries are unsupported by any
18 evidence in the case.

19
20 175. In his affidavit KIDO sets forth a con-
21 versation he had with the Emperor as revealed by his
22 diary entry of December 3, 1940.⁵³⁷ The Emperor was con-
23 cerned about Japanese-Soviet relations. As shown in
24 the diary KIDO pointed out that the U.S.S.R. was in the
25 most favorable position in the world at that time, and

536. Par. JJ-56, T. 41,098

537. Aff. Par. 161, T. 30,914-15

1 it was possible that she would not readily concede to
2 negotiate with Japan. KIDO pointed out to the Emperor
3 that,

4 "After the present war there is little
5 doubt that the only uninjured countries will
6 be the U.S.S.R. and the United States, while
7 others would be exhausted. Then, Japan will be
8 placed between the two powers and subjected to
9 extremely enduring hardship."

10 He also told the Emperor,

11 ". . . provided that we are prepared
12 for ten years of hardship and cultivate morale
13 based on simplicity and virility, I believe it
14 is not so difficult to emerge favorably in the
15 end."

16 These are, indeed, strange words for a man accused as
17 KIDO is of being an aggressor at heart. Can anyone
18 seriously contend in the face of this that KIDO was
19 conspiring as charged in the Indictment to dominate
20 the world by the use of aggression. It is equally
21 strange that the prosecution did not cross-examine
22 KIDO on this, nor does it mention it in its summation.
23 Apparently no twisting of these words could fit in with
24 the prosecution's theory of KIDO's case.
25

176. In his testimony,⁵³⁸ which was unchallenged and uncontradicted, KIDO pointed out that in January 1941 the Germans were adding to their military achievements which had far-reaching effects on various quarters of Asia, particularly on French Indo-China whose motherland had collapsed, and also on Thailand which had heretofore been under British influence. He pointed out that in Japan discussions were had as to the propriety or otherwise of Japan marching to the South and taking advantage of the great upheaval.⁵³⁹ Various plans were formulated by the Army for that purpose.⁵⁴⁰ Japan mediated in a border dispute.⁵⁴¹

177. An outline of operations on French Indo-China and Thailand was adopted for the purpose of establishing leadership positions in the South and having access to raw materials on the one hand, and on the other hand bringing pressure to bear upon China from the South, so as to settle that affair.⁵⁴² It was natural that Japan could not look on the worldwide upheaval with folded arms, there being no objection to having access to oil, rubber and iron resources on the part of Japan who was lacking in them, but moves for

538. Aff. par. 162, T. 30,915,30,916, 30,917

539. Aff. par. 162, T. 30,915

540. Ibid.

541. Ibid.

542. Ibid.

those purposes must be taken through peaceful channels
1 and resort to armed force and impatience should be
2 strictly guarded against. ⁵⁴³ KIDO directed the attention
3 of Prince KONOYE to that point and the Emperor was solie-
4 itous about it. The diary entry of January 24, 1941 ⁵⁴⁴
5 confirms KIDO's statement that when the Chiefs of Staff
6 of the Army and Navy reported to the Emperor on the
7 military agreement with Thailand the Emperor expressed
8 his fear that it might stimulate Great Britain and
9 the United States.

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543. Aff. par. 162, T. 30,916

544. Aff. par. 162, T. 30,917

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1 178. The prosecution claims ^{545.} that
2 KIDO's Diary of January 24, 1941 set forth in his
3 affidavit ⁵⁴⁶ does not support his assertion set
4 forth in the same paragraph of his affidavit. As
5 related above KIDO recited the conditions as they
6 existed at that time and does not claim that his
7 diary entry of January 24, 1941 supports the asser-
8 tions he made in his affidavit. They are related,
9 however, as the diary shows the Emperor's actions
10 based on conditions then existing.

11 179. The Chiefs of Staff and the Premier
12 reported to the Emperor on measures to be taken
13 toward French Indo-China and Thailand. These are
14 recorded in KIDO's Diary of February 1, 1941, ⁵⁴⁷ and
15 his diaries of February 3, 1941. ^{548.} The prosecu-
16 tion claims that neither the paragraph 163 of his
17 affidavit which sets forth his diary of February 3,
18 1941 nor in his diary of February 1, 1941, does
19 KIDO oppose the intended action regarding Camranh
20 Bay and air bases near Saigon. On the contrary in
21 the diary of February 3, 1941 KIDO stated that he was
22 overawed at His Majesty's concern over those reports
23

24 545. Par. JJ-58, T. 41099.

25 546. Aff. par. 162, T. 30917.

547. Pros. Exh. 1303, T. 11743.

548. Aff. par. 163, T. 30918-30919.

1 of the Chiefs of the General Staff and in his affi-
2 davit he stated, "I regret that the Emperor's advice
3 was not embodied in the measures taken by the govern-
4 ment." The Emperor had given half-hearted approval
5 to this policy. The policy already had been made by
6 Chiefs of the General Staff and Premier, which is the
7 final and definite decision in the Japanese governmental
8 system.

9 180. In April, 1941 Foreign Minister MAT-
10 SUOKA on his way home from visiting Germany and Italy
11 concluded a neutrality pact with Premier Stalin at
12 Moscow.^{549.} On April 18, 1941 a telegram was received
13 from Ambassador NOMURA asking for instructions on a
14 draft plan of an understanding between the United States
15 and Japan which had been evolved as a result of nego-
16 tiations with Secretary of State Cordell Hull and
17 President Roosevelt. MATSUOKA was on his way to Tokyo,
18 and KONOYE, being delighted with the proposed negotia-
19 tions with the United States, requested MATSUOKA to
20 hurry home.^{550.} The China Affair at that time was
21 stalemated and as KIDO stated Japan's policy regarding
22 the Co-Prosperity Sphere in East Asia should be properly

24 549. Aff. par. 166, T. 30922.

25 550. Ibid.

conveyed to the United States so as to avoid mis-
 551.
 understanding.

1 181. The issue of the southern colonies
 2 such as Malaya, Java, Sumatra, and French Indo-China,
 3 and its effect upon Japan's existence were regarded as
 4 a matter of grave national concern. The positivists
 5 were advocating that Japan should immediately secure
 6 those areas in the South even by force. KIDO and
 7 KONOYE had discussed the matter and KIDO had also
 8 discussed it with the Emperor, as shown in his diary
 9 of April 19, 1941. 552. The prosecution's observation 553
 10 that negotiations with the United States were kept
 11 within such narrow limits that it is difficult to see
 12 how anyone on the Japanese side could have had any
 13 belief in their success from the beginning is apparently
 14 made in total disregard of all the evidence produced in
 15 this trial on those negotiations.
 16

17 182. On April 3, 1941, KIDO was consulted
 18 by KONOYE about the appointment of SUZUKI as President
 19 of the Planning Board and concurrent Minister of State. 554.
 20

551. Aff. par. 163, T. 30918.

552. Ex. 1065, T. 9875 as Cor. by Lang. Sec. T.10664.

553. Par. JJ-60, T. 41100.

554. Ex. 1058, T. 9850.

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1 This was in accordance with KIDO's duties to pass on
2 the character and rectitude of high officials such as
3 Cabinet Ministers, who were appointed by the Emperor
4 upon the recommendation of the Premier, so that there
5 would be no subsequent reflection on the Emperor.^{554a.}
6 The prosecution's implication is not warranted.^{555.}

7 183. On April 28, 1941 the Premier, the
8 Foreign Minister and the Lord Keeper were ill simul-
9 taneously. KIDO's Chief Secretary, MATSUDAIRA, came
10 to see KIDO, stating that the Emperor wanted to know
11 to what official His Majesty should turn for advice
12 on diplomatic questions in such a situation, and the
13 Emperor also requested information about the progress
14 of the deliberations on the United States of America
15 negotiations. The above is set forth in KIDO's Diary
16 of April 28, 1941.^{556.} As is also shown in the diary,
17 KIDO said he expressed his opinions about these ques-
18 tions and asked Chief Secretary MATSUDAIRA to submit
19 them to the throne. KIDO set forth in his affidavit
20 what those opinions were. He said⁵⁵⁷ he told MATSU-
21 DAIRA that the Lord Keeper of the Privy Seal had no
22

23 554a. Aff. par. 165, T. 30921.

24 555. Par. G-64, T. 39594.

25 556. Ex. 1066, T. 9876.

557. Aff. par. 168, T. 30925.

1 authority concerning diplomatic matters but to convey
2 Imperial questions to the Premier and the Foreign
3 Minister, nor had he any authority to answer about
4 a diplomatic problem on his own responsibility. He
5 also stated that his Chief Secretary should advise the
6 Emperor that in the event of such simultaneous illnesses
7 the Imperial inquiry should be conveyed by the Grand
8 Chamberlain to the Premier or to the Foreign Minister.
9 With respect to the negotiations toward America, KIDO
10 submitted to the Emperor, through his Chief Secretary,
11 his views on the basis of what he had heard from
12 Prime Minister KONOYE and others about the developments
13 of the situation which were to the effect that KONOYE
14 was anxious to push the negotiations though there was
15 some difficulty so far as Foreign Minister MATSUOKA was
16 concerned. The prosecution does not dispute the truth
17 of the facts contained in KIDO's advice to the Emperor.
18 It does, however, roundly criticise KIDO^{558.} for not
19 calling Chief Secretary MATSUDAIRA to the stand to
20 corroborate KIDO's assertion that "the Lord Keeper had
21 no authority concerning diplomatic matters but to convey
22 Imperial questions to the Premier and Foreign Minister,
23 nor to answer about a diplomatic problem on his own
24 responsibility" and comments on the fact that
25 558. Par. JJ-61, T. 41101.

~~MATSUDAIRA's affidavit was one of those which was~~

1 served and withdrawn. It does not suggest that
2 MATSUDAIRA should have been called to testify to the
3 truth or falsity of whether or not KIDO told him that.
4 It wanted to cross-examine him on whether the fact
5 stated regarding KIDO's authority was correct. As
6 can be seen, the question involved the constitutional
7 interpretation of the Lord Keeper's duties. Two wit-
8 nesses were called on behalf of KIDO with respect to
9 this matter. The affidavit of Count MAKINO, former
10 Lord Keeper of the Privy Seal, covering this precise
11 question on the constitutional duties of the Lord
12 Keeper of the Privy Seal, was offered in evidence.
13 In objecting to it, the prosecution stated, "The affi-
14 davit consists of a dissertation by him on the legal
15 and constitutional position of the Lord Keeper of the
16 Privy Seal."^{559.} Objection to the entire affidavit
17 was sustained.^{560.} If KIDO had misstated his authority,
18 the prosecution could certainly have offered no objec-
19 tion to the affidavit and cross-examined MAKINO about
20 this matter. The second witness called on this point
21 was SAKUDA, Kotaro. Objections were made to his
22 affidavit by the prosecution, particularly to paragraph
23

24 559. T. 31616.

25 560. T. 31623.

1 4, when the prosecution said: "Paragraph 4, until you
2 get to the last four lines on page 6, is a dissertation
3 of the witness's opinion about the working of the
4 Constitution, particularly with regard to advice given
5 by the Minister of State to the Emperor and by the
6 Lord Keeper to the Emperor and the method of choosing
7 a new Premier, as to which again the Tribunal has all
8 the facts and is in a much better position to form an
9 opinion than the witness." Strenuous argument was
10 made by counsel ⁵⁶¹ in an endeavor to have this portion
11 of the affidavit admitted. SAKUDA, of unquestionable
12 qualifications from his long association with the
13 Japanese Government, ⁵⁶² was not offering an opinion
14 but was stating the facts and explaining the duties
15 of the Lord Keeper of the Privy Seal. Here again
16 the objection to this paragraph was sustained. ^{563.} Here
17 again, if the prosecution had any reason to disbelieve
18 KIDO's statement, why didn't it permit SAKUDA's testi-
19 mony to go in evidence and then cross-examine SAKUDA?
20 The prosecution, however, states that the Tribunal had
21 expressly ruled that evidence of precisely this type
22 would be admitted if available, citing the President's
23

24 561. T. 31628.

25 562. T. 31622.

563. T. 31631.

1 observation made on SAKADA's affidavit. The prosecu-
2 tion is in error. The Tribunal was referring to
3 statements of witnesses corroborating what the accused
4 said, and had nothing to do with the question of inter-
5 pretation of the authority of the Lord Keeper of the
6 Privy Seal.

7 184. In the general Pacific phase the
8 prosecution states ⁵⁶⁴ that there was a disruption
9 among the conspirators and as a result KONOYE, HIRA-
10 NUMA and KIDO held MATSUOKA in check and claims that
11 KIDO and the other two were promoters of the southward
12 advance policy, and refers to the entry of KIDO's
13 Diary of June 21, 1941, ⁵⁶⁵ and June 22, 1941 ⁵⁶⁶
14 KIDO's Diary does not support such a conclusion.
15 Foreign Minister MATSUOKA, who was the "problem"
16 Minister of the KONOYE Cabinet, had changed his atti-
17 tude considerably upon his return from his trip to
18 Europe, and ignored Premier KONOYE. ⁵⁶⁷ Premier
19 KONOYE was greatly concerned over this attitude on
20 the part of the Foreign Minister and also told KIDO
21 about his painful position as is recorded in KIDO's

22 564. Par. G-80, T. 39616-39,617; Par. G-81, T. 39618.

23 565. Ex. 781, T. 7910.

24 566. Ex. 1093 as Cor. by Lang. Sec. T. 10664.

25 567. Aff. par. 148, T. 30904; Aff. par. 169-179,
T. 30925-30936.

1 the next day which KONOYE, KIDO and HIRANUMA attended.
2 The reason why HIRANUMA was present was because of
3 KONOYE's reference to the reasons for the resignation
4 of the HIRANUMA Cabinet as a similar instance and
5 wanted to hear from him how the situation stood at
6 that time. As shown in KIDO's diary for June 21,
7 1941,⁵⁷⁴ the discussion was based on KIDO's opinion
8 to KONOYE of the previous day.⁵⁷⁵ KIDO pointed out
9 that the circumstances were entirely different from
10 those which led to the resignation of the HIRANUMA
11 Cabinet in that in the event of a German-Soviet war
12 it would rather be necessary to give reconsideration
13 to the Tripartite Alliance and that for that purpose
14 it would be inevitable that the Foreign Minister
15 MATSUOKA leave the Cabinet, as it would not be advisable
16 for the cabinet to resign en bloc. As further shown
17 in the diary entry KIDO stated that KONOYE should
18 assume leadership.
19

20 186. Just as had been feared, the German-
21 Soviet war broke out on the 22nd. The conduct of
22 foreign affairs in the midst of such a complicated
23 situation was a delicate and difficult question for
24 Japan.⁵⁷⁶ As was to be expected, MATSUOKA began to

25 574. Ex. 781, T. 7910.

575. Ex. 781, T. 7910.

576. Aff. Par. 173, T. 30929.

1 advocate, over Prince KONOYE's head, a military
2 expedition to Siberia which met with disapproval by
3 the Cabinet Ministers as well as KONOYE. It is
4 because of this consideration that KIDO told the
5 Emperor, as is recorded in his diary of June 22,
6 1941,⁵⁷⁷ that His Majesty should impress upon
7 MATSUOKA his desire to have the matters handled
8 through the Premier and also impress upon MATSUOKA
9 the importance of careful consultation with the
10 Premier. A careful reading of KIDO's Diary will
11 definitely establish that KIDO, in his statement to
12 the Emperor, said nothing which might produce an
13 effect on the Emperor's views concerning the govern-
14 ment's policy. That would have been interference by
15 KIDO with the cabinet. He merely expressed his wish
16 that as Emperor he would show an attitude of attach-
17 ing due importance to the Premier and checking the
18 too forward act which might be harmful to the unity
19 of the cabinet. This is an outstanding instance of the
20 scrupulous care with which KIDO, as Lord Keeper of
21 the Privy Seal, exercised in strictly observing the
22 distinction between the Imperial Court and the Govern-
23 ment so as not to encroach upon the proper functions of
24
25 577. Ex. -1093; T. 10664.

1 the government. As KIDO has explained,^{578.} in case
2 the explanation of the government or the Supreme
3 Command regarding any policy was deemed considerably
4 well grounded, the Lord Keeper used to tell the
5 Emperor to approve it. In such a case, however, the
6 Lord Keeper was always strictly cautious if he was
7 asked and gave his own personal opinion.

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25 578. Aff. par. 151, T. 30906.

187. The next day, June 23, 1941, as shown
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1 in KIDO's Diary KIDO had an audience with the Emperor
2 in the morning. He reported to him the conversation
3 of Prince KONOYE with MATSUCKA. In that entry of his
4 diary KIDO mentions the fact that he had a talk with
5 Prince KONOYE from 2:40 p.m. to 4:00 p.m., "* * * ex-
6 changing frank opinions on the changed situation
7 caused by Germany's war against Soviet Russia." The
8 prosecution complains because KIDO did not set out in
9 his diary this conversation and intimates that there
10 was no trace of it. As shown the entry does show he
11 had such a conversation. However, the prosecution did
12 not cross-examine KIDO on this conversation. It is
13 uncontradicted. As KIDO testified on direct KONOYE
14 asked KIDO his opinion. 580 KIDO stated that Germany by
15 waging a war against the Soviet Union had violated the
16 principle that it was necessary for both states to
17 make strides in adjusting diplomatic relations with
18 the Soviet Union. On this principle Germany agreed
19 at the time when the alliance between Germany and Japan
20 was concluded. In other words, Germany's waging a
21 war against Russia had changed one of the elements upon
22 which the alliance was formed. Therefore, the Prime
23
24
25 579. Tr. 10,024.
580. Aff. par. 175, Tr. 30,931.

1 Minister should consider most carefully as to
 2 whether the alliance should be continued any longer.
 3 Prince KONOYE agreed with KIDO on that point and
 4 agreed that he would examine the matter. KIDO sub-
 5 sequently heard that KONOYE had expressed to MATSUOKA
 6 his desire for reconsideration of the alliance, but
 7 MATSUOKA did not take it seriously and only made
 8 a protest by telegram to the German Foreign Minister. ⁵⁸¹
 9 There is no foundation for the prosecution's claim
 10 that this advice conflicts with his diary entry of
 11 June 21, 1941, ⁵⁸² or with the advice he gave the
 12 Emperor on July 31, 1941. ⁵⁸³

13
 14 188. The prosecution points ⁵⁸⁴ to diary entries
 15 of June 18, 1941, ⁵⁸⁵ June 25, 1941, ⁵⁸⁶ and July 5, 1941 ⁵⁸⁷
 16 in support of its contention that they show no record
 17 of KIDO's disapproval or of advice to the Emperor
 18 to stop the advance into southern French Indo-China.
 19 The prosecution must know, although it did not include
 20 it in its excerpt of June 18, 1941, that KIDO did
 21 speak to the Emperor on that day. The prosecution
 22

23 581. Aff. par. 175, Tr. 30,931.

24 582. Pros. ex. 781, Tr. 7910.

25 583. Tr. 30,933.

584. Par. JJ-63, Tr. 41,102.

585. Ex. 1089, Tr. 9998.

586. Ex. 1095, Tr. 10,026.

587. Ex. 1112, Tr. 10,156 as Cor. by Lang. Sec.
 Tr. 10,666.

1 also overlooks the fact that KIDO's diary shows that
 2 he did discuss this matter with the Emperor on
 3 June 22, 1941,⁵⁸⁸ June 23, 1941,⁵⁸⁹ and July 2, 1941.⁵⁹⁰

4 189. There is no necessity for amazement
 5 on the part of the prosecution that KIDO did not know
 6 until he read KONOYE's memoirs that the decision of
 7 the Imperial Conference of July 2, 1941 " * * * con-
 8 templated an advance to French Indo-China and was to
 9 be carried on even if it meant recourse to war
 10 against the United States of America and Britain."

11 As explained by KIDO,⁵⁹¹ he was advised that the dis-
 12 cussions at the liaison conference had centered pri-
 13 marily around MATSUOKA's idea of proceeding north
 14 against Russia. Of secondary importance was the pub-
 15 lic discussion of the necessity of Japan advancing
 16 southward to obtain materials and necessities. As
 17 shown in his diary of July 2, 1941,⁵⁹² it was the
 18 Emperor who told KIDO about the progress of the
 19 Imperial conference. The prosecution, however,
 20 argues that he knew the details of the September 6,
 21 1941, conference as appears from prosecution
 22

23 588. Ex. 1093, Tr. 10,021 as Cor. by Lang. Sec.
 24 Tr. 10,664.

25 589. Ex. 1094, Tr. 10,024.

590. Ex. 1108, Tr. 10,144.

591. Aff. par. 177, Tr. 30,933.

592. Ex. 1108, Tr. 10,144.

1 exhibit 2250, tr. 16,198, which is a historical docu-
 2 ment KIDO wrote in November 1941. Naturally in order
 3 to record the events properly, and as the decision
 4 of the September 6 Conference was most important,
 5 because it was the "cancer" existing at that time, he
 6 ascertained the exact facts in detail. Here again
 7 KIDO was not cross-examined on any of these matters.
 8 The prosecution submits its own conclusions unsup-
 9 ported by facts.

10 190. It is significant that the prosecution,
 11 in its individual summation against KIDO, omits all
 12 reference to KIDO's affidavit and diary entries with
 13 respect to KIDO's opinion that MATSUOKA should resign
 14 because he was proving a stumbling block in KONOYE's
 15 attempts to complete peace negotiations with America,
 16 as set forth in KIDO's diary of July 15, 1941,⁵⁹³
 17 July 16, 1941,⁵⁹⁴ and July 17, 1941.⁵⁹⁵ MATSUOKA's
 18 attitude is confirmed in Prince KONOYE's memoirs,⁵⁹⁶
 19 wherein KONOYE records, "However, in spite of my
 20 efforts, Foreign Minister MATSUOKA's attitude became
 21 increasingly uncooperative. It became clear that
 22 his attitude was one of opposition to the Japanese-

24 593. Ex. 1115, as Cor. by Lang. Sec. Tr. 10,666.

25 594. Ex. 1116, as Cor. by Lang. Sec. Tr. 10,667.

595. Ex. 1117, as Cor. by Lang. Sec. Tr. 11,138;
 Aff. paras. 179, 180, 181, 182, Tr. 30,934-
 30,939.

596. Ex. 2866, Tr. 25,747.

American negotiations." KONOYE also records, with
1 respect to the collapse of his cabinet at that time,
2 "The previous cabinet had done its utmost for the
3 success of the Japanese-American negotiations. * * *
4 The opposition of the Foreign Minister alone had
5 caused the cabinet's collapse."⁵⁹⁷ This is also con-
6 firmed by TOMITA's testimony and the prosecution did
7 not cross-examine him.⁵⁹⁸

9 191. The KONOYE cabinet resigned and the
10 only principal change of the new KONOYE cabinet was
11 that Foreign Minister MATSUOKA was replaced by Foreign
12 Minister TOYODA which was for the purpose of facili-
13 tating negotiations with America.⁵⁹⁹ Ambassador Craigie
14 reported on the change in policy after MATSUOKA's
15 departure as Foreign Minister as follows:⁶⁰⁰

17 "With his departure, a very considerable --
18 brief notable (?but) a radical -- change has occurred
19 in the political situation here, and there exists a
20 more real prospect than at that time of setting in
21 motion a steady swing away from the Axis and towards
22 more moderate policies."

23 Apparently by failing to mention in its

- 24 597. Ex. 2866, Tr. 25,748.
25 598. Tr. 33,298.
599. Par. 182, Tr. 30,939.
600. Ex. 2908, Tr. 25,849.

1 individual summation KIDO's participation in the exodus
2 of MATSUOKA, the prosecution realized KIDC was exerting
3 efforts for peaceful purposes and that they did not
4 represent the acts of a criminal.

5 92. The prosecution reverses its position
6 and asks the Tribunal to accept what KIDO wrote in his
7 affidavit ⁶⁰¹ regarding a conversation KIDO had with
8 Prince KONOYE on August 2, 1941, ⁶⁰² explaining his diary
9 entry of that date. ⁶⁰³ The prosecution seems to think
10 that KIDO should be convicted because he does not
11 state in every excerpt of his diary that he was
12 objecting to war with the United States. KIDO was a
13 historian recording the facts as they occurred. As
14 his diary of August 2, 1941, clearly shows, in a
15 conversation he had with KONOYE the question on hand
16 was that there was a certain element in the navy which
17 was gathering strength which might lead to political
18 difficulties and cause anxiety in the maintenance of
19 harmony between the Supreme Command and the government.
20 They also discussed the fact that because of the
21 embargoes Japan's oil would not last two years, which
22 would result in an acute national crisis and that a

24 601. Par. JJ-64, Tr. 41,103-41,104.

25 602. Aff. par. 185, Tr. 30,943-30,944.

603. Ex. 1129, Tr. 10,196 as Cor. by Lang. Sec.
Tr. 10,667.

1 thorough discussion should be had between the War and
2 Navy Ministers concerning the fundamental national
3 policy and if a complete agreement was not reached,
4 the cabinet would have to resign and the army and
5 navy would then assume charge of the administration
6 of the country. From this it is quite apparent, as
7 explained by KIDO, that there was some talk of going
8 to war with America at that time, and it is clear
9 that the use of the word "now" as referred to by
10 KIDO in his explanation was merely in reference to
11 the fact that there was an element in the navy which
12 was considering a decision to go to war with America
13 at that time. If this diary of August 2, 1941, ⁶⁰⁴ is
14 read in conjunction with KIDO's diary of August 7,
15 1941, ⁶⁰⁵ KIDO's opinion on this entire matter will be
16 clearly discerned. As he stated in his diary of
17 August 7, 1941, if the situation with respect to the
18 oil were true, "We must reach the conclusion that
19 our war with the United States of America would be
20 a hopeless one." Does that sound like the opinion
21 of a man conspiring to wage aggressive war? Emphati-
22 cally no. It definitely establishes that KIDO was
23
24
25 604. Ex. 1129, Tr. 10,196 as Cor. by Lang. Sec.
Tr. 10,667.
605. Ex. 1130, Tr. 10,199 as Cor. by Lang. Sec.
Tr. 10,667.

1 suggesting to KONOYE he should avert war with America
2 by diplomatic negotiations on the ground that if
3 Japan was to go to war with America the blockade of
4 oil would be fatal to Japan.

5 193. He then points out that if an attack
6 was made on the Dutch East Indies and Singapore and
7 the Philippine Islands, they would still not be able
8 to get oil and Japan would be defeated. In paragraph
9 11 KIDO said;

10 "11. We could not do what we wanted on
11 account of the lack of our national power. Although
12 the situation was different in its external appearance,
13 we might be compelled to make the same decision as we
14 did in the case of the Three-Power Interference after
15 the Sino-Japanese War." 606

16 The prosecution, without any evidence to
17 support it, interprets this clause as meaning that
18 what Japan actually did was to submit for the time
19 being and wait for better opportunities to enforce her
20 will upon China which came in 1915, 1931, and 1937.
21 This, of course, is not the decision KIDO refers to.
22 May we take the liberty and advise the Tribunal that
23 KIDO was referring to the decision which was made
24 after the peace conference when Japan as a result of
25 606. Ex. 1130, Tr. 10,200, as Cor. by Lang. Sec.
10,667.

1 the Three-Power interference returned the Liaotung
2 Peninsula to China. (If the prosecution thought this
3 was important, it could have asked KIDO.) The balance
4 of the entry shows that KIDO advocated that the
5 Japanese should do everything in their power to restore
6 friendly relations between the United States of
7 America and Japan which, as is well known, were very
8 critical at that time.

9 194. The evidence is that KIDO knew that
10 Japan was being pressed economically but he felt and
11 told KONOYE that Japan should resolve to toil through
12 ten years of hard struggle.⁶⁰⁷ He pointed out the need
13 for materials and Japan's hopes in the southern
14 regions. The evidence is that he had no thought in
15 mind of obtaining those materials other than by
16 peaceful means.⁶⁰⁸ KIDO testified that he fully
17 realized in his talk with KONOYE that if Japan suc-
18 ceeded in warding off a war with America and the
19 present European war came to an end, the desire for
20 peace would not be impossible to be created after the
21 war and that, therefore, it might be possible to get
22 politics to follow their proper course until that
23

24
25 607. Ex. 1130, Tr. 10,200; Aff. par. 187, Tr. 30,946.
608. Aff. par. 187, Tr. 30,946-30,947.

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2 Peninsula to China. (If the prosecution thought this
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19 present European war came to an end, the desire for
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22 politics to follow their proper course until that
23

24 607. Ex. 1130, Tr. 10,200; Aff. par. 187, Tr. 30,946.
25 608. Aff. par. 187, Tr. 30,946-30,947.

1 time through making redoubled efforts to reconstruct
2 politics and to check the military. His views were
3 expressed to KONOYE for the purpose of having KONOYE
4 convince the militarists of the hopelessness of war
5 with America.⁶⁰⁹

6 195. If the guilt or innocence of KIDO depends
7 upon the prosecution's interpretation of KIDO's diary,
8 we ask as a sample that the Tribunal examine KIDO's
9 diary and his interpretation of the diary entry out-
10 lined above. Then compare the prosecution's inter-
11 pretation of this diary today with its interpretation
12 of the same entry on January 30, 1947.⁶¹⁰ Today the
13 prosecution gives its interpretation of that diary
14 entry and says in conclusion:

15 "We submit that this is the advice of a man
16 who fully shares the aims of the militarists but not
17 their confidence in immediate success; for success
18 he is prepared to wait ten years."⁶¹¹

19
20 On January 30, 1947, in referring to this
21 same diary entry, the prosecution concluded:

22 "No doubt if his advice had been taken we
23 should not be holding this trial today; and if he had

24 609. Aff. par. 187, Tr. 30,947.
25 610. Pros. doc. 0003, Tr. 16,852.
611. Par. JJ-65, Tr. 41,105.

46,620

46,619

resigned when it was rejected we might not have

1 included him except with regard to China."

2 We ask that the Tribunal read this diary
3 entry and accept KIDO's clearcut explanation thereof. ⁶¹³

4 Here again, if there was any doubt as to what KIDO
5 meant, cross-examination of him on this entry would
6 have been of assistance to the Tribunal. Apparently,
7 on January 30, 1947, the prosecution took the view
8 that this diary entry of August 7, 1941, shows that
9 KIDO could not be held criminally liable for the
10 Pacific war but today the prosecution evidently has
11 changed its view. (It cites no additional testimony
12 to support its changed view. It still confines its
13 opinion to the same diary entry.) Is the judgment of
14 this Tribunal on this particular point to be based
15 on either of the prosecution's interpretations of the
16 diary or on KIDO's uncontested explanation thereof?
17 If the prosecution's interpretation is to be taken,
18 which one, the one of January 30, 1947, or today's?
19 Even if for the sake of argument we were to accept
20 prosecution's conclusions that KIDO favored the aims
21 of the militarists but that he was prepared to wait
22 for ten years, this still is not a crime under the
23
24

25 612. Pros. doc. 0003, Tr. 16,852.

613. Aff. par. 187, Tr. 30,946-30,947.

1 Charter or the Indictment. There is no charge in
2 the Indictment for a war to occur ten years from now
3 nor is it part of any conspiracy for two reasons.
4 In the first place, he is not being charged for any
5 conspiracy to commence a war ten years from now, and
6 secondly there is no evidence that anyone agreed or
7 conspired with him to do so. He stood alone on this.
8 Apparently realizing this, the prosecution attempts
9 to drag him back into the conspiracy counts by
10 stating, "His doubts are clearly based on those of
11 NAGANO a week earlier. Later when NAGANO changed
12 his view KIDO fell in with the rest." ⁶¹⁴ The prosecu-
13 tion cites no evidence supporting the last amazing
14 sentence.
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614. Par. JJ-65, Tr. 41,105-41,106.

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1 With respect to the first sentence, the
2 prosecution merely cites an exhibit ⁶¹⁵ without
3 explanation. That exhibit is KIDO's Diary of July 31,
4 1941, wherein KIDO sets forth the conversation he had
5 with the Emperor. The Emperor told KIDO that Admiral
6 NAGANO had made a report to the Emperor stating that
7 in the Navy's opinion war should be averted as much
8 as possible; that NAGANO opposed the Tri-Partite Alliance
9 and so long as it existed, the adjustment of Japanese-
10 American diplomatic relations would be impossible and
11 if they were impossible and oil was cut off and war
12 broke out with America, the oil would only be sufficient
13 for one and one-half years. When the Emperor asked
14 NAGANO if it would be possible to win a sweeping
15 victory, NAGANO replied: "***it was even doubtful
16 whether or not we would ever win, to say nothing of
17 a great victory as in the Russo-Japanese War." KIDO
18 said in his diary:

19
20 "I was filled with trepidation by the Imperial
21 anxiety about the danger of having to wage a desperate
22 war."

23 It further shows KIDO's answer to the Emperor
24 was that NAGANO's opinion was too simple. KIDO told
25 the Emperor that he was doubtful whether Japan could

615. Ex. 1125, T. 10,186 as Cor. By Lang. Sec., t. 10,667.

1 have the confidence of the United States if she
2 annulled the Tri-Partite Pact or whether she would
3 be held in contempt if she annulled it. The diary
4 also shows he further advised the Emperor:

5 "There are several means to be tried regarding
6 the relationship between America and Japan. We must
7 deliberate patiently on the matter in a constructive
8 manner. I would urge the Premier's careful consideration
9 on this point."

10 Are these the words of a criminal,⁶¹⁶ a
11 murderer,⁶¹⁷ a gangster,⁶¹⁸ an aggressor at heart?⁶¹⁹

12 From the foregoing it is apparent that KIDO had no
13 doubt that war with the United States could never
14 succeed. It also shows that he was opposed to it and
15 advocated constructive deliberation. There is no
16 evidence nor does the prosecution cite any evidence
17 showing that he ever, "fell in with the rest." On
18 the contrary as will be shown, he continued to hold
19 to his views in opposition to the rest.
20

21 XII. (e) The End of the Third KONOYE
22 Cabinet, September 1, 1941 - October 15, 1941

23 196. When KONOYE went to the Palace on

24 616. Indictment.
25 617. Indictment.
618. T. 31,544.
619. T. 16,852.

1 September 5, 1941 to submit the agenda for the proposed
2 Imperial Conference he showed it to KIDO and it
3 consisted of three points. 1. War preparations be
4 made against America and Britain. 2. In parallel,
5 the negotiation with America be pushed very hard.
6 3. In case no prospect of an amicable conclusion
7 of the negotiation with America came in sight by the
8 first ten days of October, Japan make up her mind to
9 wage war with America and Britain.⁶²¹ This was the
10 first time KONOYE had made any reference to the
11 question which was now abruptly presented to KIDO.
12 KIDO told KONOYE such a serious plan should not be
13 presented to the Emperor so suddenly as it would
14 embarrass the Emperor because he would not have time
15 to think it over. He also told KONOYE it was dangerous
16 to fix a time limit and asked if it was not possible
17 to modify even this point alone, and if the plan was
18 not abandoned it might lead to war. KONOYE told him
19 that it had already been decided at the Liaison
20 Conference between the Government and the High Command
21 and it was therefore difficult to either modify or
22 give up the plan. KONOYE added that there was no
23 alternative left for him but to devote his efforts to
24 bringing the negotiations to an amicable conclusion.⁶²²
25

621. Aff. par. 190, T. 30,948-30,949.

622. Aff. par. 190, T. 30,949.

Prince KONOYE submitted the agenda to
 His Majesty put various strategical questions
 to him to which KONOYE found it impossible to reply
 and asked the Emperor to summon the Chiefs of Staff
 of the Army and Navy. ⁶²³ Thereafter KIDO was received
 in audience and told the Emperor to follow the Premier's
 advice of summoning the Chiefs of Staff which he did
 and KIDO requested the Aide de Camp to call the Chief
 of the General Staff, the Chief of the Naval General
 Staff and the Premier to the Palace. ⁶²⁴

198. After the audience which Prince KONOYE
 and the Chiefs of Staff had with the Emperor, KONOYE
 told KIDO that the Emperor asked Marshal SUGIYAMA
 when the southern campaign would be terminated and
 he replied in a short period of time. The Emperor
 reprimanded him reminding him that he had said a
 similar thing at the outbreak of the China Incident.
 Fleet Admiral NAGANO also told the Emperor that if
 things went on as they were Japan would lose but there
 would be a hope of recovery if a drastic operation is
 undergone and that is war. KONOYE said that the
 Emperor asked why diplomatic negotiations were not
 placed first to which KONOYE replied that the planning

623. Aff. par. 191, T. 30,950, Ex. 1134, T. 10,215 as
 Cor. Lang Sec., T. 10,668.

624. Ex. 1134, T. 10,215 as cor. Lang. Sec. T. 10,668;
 Ibid.

It
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 retirement
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 .M. the Premier
 to the Throne

19 true
 20 before KONOYE 628 received
 21 same exhibit
 22 proceeded to the Palace and sub-
 23 625. Aff. par. 192, T. 30,952.
 24 626. Par. JJ-66, T. 41,106.
 25 627. Ex. 1134, T. 10,215 as cor. Lang. Sec. T. 10,668,
 and additional excerpt in KIDO's affidavit Par.
 199, T. 30,951.
 628. Ibid.

197. When KONOYE submitted the agenda to
1 the Throne His Majesty put various strategical questions
2 to him to which KONOYE found it impossible to reply
3 and asked the Emperor to summon the Chiefs of Staff
4 of the Army and Navy.⁶²³ Thereafter KIDO was received
5 in audience and told the Emperor to follow the Premier's
6 advice of summoning the Chiefs of Staff which he did
7 and KIDO requested the Aide de Camp to call the Chief
8 of the General Staff, the Chief of the Naval General
9 Staff and the Premier to the Palace.⁶²⁴

11 198. After the audience which Prince KONOYE
12 and the Chiefs of Staff had with the Emperor, KONOYE
13 told KIDO that the Emperor asked Marshal SUGIYAMA
14 when the southern campaign would be terminated and
15 he replied in a short period of time. The Emperor
16 reprimanded him reminding him that he had said a
17 similar thing at the outbreak of the China Incident.
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19 things went on as they were Japan would lose but there
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22 Emperor asked why diplomatic negotiations were not
23 placed first to which KONOYE replied that the planning

25 623. Aff. par. 191, T. 30,950, Ex. 1134, T. 10,215 as
Cor. Lang Sec., T. 10,668.

624. Ex. 1134, T. 10,215 as cor. Lang. Sec. T. 10,668;
Ibid.

1 was aimed at attaching primary importance to diplomatic
2 negotiations and requested the Emperor to approve the
3 plan since it had been decided by the Liaison Conference.⁶²⁵

4 199. The prosecution says: "***there is
5 no trace whatever in the Diary***" of a conversation
6 between KONOYE and KIDO related in KIDO's Affidavit
7 as having taken place after KONOYE and the Chiefs of
8 Staff had seen the Emperor on the 5th of September
9 1941.⁶²⁶ The Diary entry⁶²⁷ shows the conversation
10 was held:

11 "I requested Aide de Camp YOKOYAMA to call
12 the Chief of the General Staff, the Chief of the
13 Naval General Staff and the Premier to the Palace. At
14 6 P.M. they were granted an audience by the Emperor
15 to answer the Imperial questions. After this retirement
16 from the presence of the Emperor, the Premier called
17 on me to have a talk with me. He took leave at 7 p.m."

18 200. The prosecution also says there is no
19 trace in the diary of KIDO's conversation with KONOYE
20 before KONOYE saw the Emperor on that date. This
21 same exhibit⁶²⁸ recites that "At 4:30 P.M. the Premier
22 proceeded to the Palace and submitted to the Throne
23

24 625. Aff. par. 192, T. 30,952.

25 626. Par. JJ-66, T. 41,106.

627. Ex. 1134, T. 10,215 as cor. Lang. Sec. T. 10,668,
and additional excerpt in KIDO's affidavit Par.
199, T. 30,951.

628. Ibid.

1 a plan relative to the holding of a council in the
2 Imperial presence." It is quite apparent that since
3 KIDO knew the exact time KONOYE went in to see the
4 Emperor he must have seen him and talked with him,
5 and the entry shows KIDO knew what KONOYE was going
6 to submit to the Emperor.
7

8 201. The Council in the Imperial Presence
9 was held on September 6th, 1941. Before being summoned
10 by the Emperor that morning KIDO had a conversation
11 with Mr. HARA, President of the Privy Council. They
12 discussed questions which HARA should ask at the
13 Imperial Conference pointing toward emphasis on
14 continuance of diplomatic negotiations rather than
15 preparations for war. The Emperor told KIDO that he
16 would like to ask some questions at the Conference
17 and KIDO told him that since HARA was going to ask
18 important questions on behalf of the Emperor that the
19 Emperor should, in view of the importance of the
20 question, warn the High Command to exert every effort
21 to bring the diplomatic negotiations to an amicable
22 conclusion. ⁶²⁹ This specifically appears in KIDO's
23 Diary of September 6th, 1941 as follows: ⁶³⁰
24

25 "Then I advised His Majesty that since HARA,

629. Aff. par. 192, T. 30,953.

630. Ex. 1135, as Cor. Lang. Sec. T. 31,420.

the President of the Privy Council, would ask important
 1 questions on His Majesty's behalf, the Emperor should
 2 give a warning in conclusion that the Supreme War
 3 Command should exert every effort in order to bring
 4 about a diplomatic success inasmuch as the present
 5 decision was such an important one that it might lead
 6 to a war in which our national fortunes would be
 7 staked."
 8

9 In view of this advice can it be fair to
 10 brand KIDO "***on aggressor at heart?"⁶³¹ Does that
 11 warning suggested by KIDO show a criminal mind?

12 202. KIDO did not attend the Imperial
 13 Conference.⁶³² As shown in his diary KIDO was advised
 14 that HARA asked the questions and the Emperor gave a
 15 warning as suggested by KIDO. This is corroborated
 16 by OIKAWA.⁶³³ OIKAWA also testified that the Emperor
 17 took the High Command to task for not answering the
 18 questions put by HARA.⁶³⁴ That HARA asked the questions
 19 and the Emperor gave the warning was also corroborated
 20 by TOJO.⁶³⁵
 21

22 203. There is no merit to any contention that

- 23 631. Pros. Doc. 0003, T. 16,852.
 24 632. Ex. 1135, as cor. Lang Sec. T. 31,420, Aff. par.
 193, T. 30,953.
 25 633. T. 34,600-34,602.
 634. T. 34,602.
 635. T. 36,512, 36,513.

1 KIDO tried to persuade the Emperor not to ask his own
 2 questions.⁶³⁶ As KIDO pointed out on cross-examination⁶³⁷
 3 and as shown in his diary⁶³⁸ KIDO believed that HARA
 4 should ask the questions as to whether or not emphasis
 5 was to be placed on war preparations or the continuance
 6 of diplomatic negotiations and the Emperor himself
 7 should give a warning on the more important point
 8 that the High Command should exert every effort in
 9 order to bring about diplomatic success. This point
 10 apparently has been overlooked by the prosecution.
 11 The diary clearly shows KIDO's opposition to war.

12 204. The prosecution also states that the
 13 conversation KIDO had with HARA before KIDO spoke
 14 with the Emperor is not mentioned in the diary.⁶³⁹ The
 15 diary entry specifically shows from the tense used
 16 that KIDO did have a prior conversation with HARA. In
 17 the original translation of this diary entry the word
 18 "only" appeared between the words "the Emperor should"
 19 and "give a warning", which was eliminated by the
 20 Language Section during KIDO's cross-examination on
 21 October 21, 1947.⁶⁴⁰

23 636. Par. JJ-70, T. 31,369.

24 637. T. 31,371.

24 638. Ex. 1135 as cor. Lang. Sec. T. 31,420.

25 639. Par. JJ-67, T. 41,106.

25 640. T. 31,420.

1 205. KIDO describes the conversation he and
2 KONOYE had on September 26, 1941, about KONOYE's desire
3 to resign and KIDO's suggestion that the decision of
4 September 6, 1941, should be reviewed,⁶⁴¹ which conver-
5 sation was only summed up in his diary by the statement
6 that "I advised him to be prudent."⁶⁴² The prosecution
7 says his diary does not suggest such a conversation.
8 Again no cross-examination. The diary entry does not
9 suggest anything to the contrary and there is no evidence
10 in the case that anything to the contrary was said and
11 furthermore it does not show a criminal mind.

13 206. In an excerpt from the diary of Ambassador
14 Grew entitled "Ten Years in Japan," there appears the
15 substance of a paraphrase of an original text prepared
16 by the Department of State, September 29, 1941, entitled
17 "The Ambassador in Japan Reports to the Secretary of
18 State" as follows:⁶⁴³

19 "Since the fall of Admiral YONAI's Cabinet in
20 July of 1940, American diplomacy in Japan has been in
21 eclipse temporarily through force of circumstances. How-
22 ever, when the KONOYE-TOYODA regime began last July,
23 American diplomacy obtained a very active new lease of
24 life."
25

(641. Ex. 1141, T. 10230.

642. Par JJ-68, T. 41107.

643. Ex. 2837, T. 25376-7.)

1 Ambassador Grew recalled "* * *that it was not then
2 possible under the existing circumstances for any
3 Japanese leader, or group to reverse the program of ex-
4 pansion and expect to survive;* * *"

5 207. We ask that the Tribunal examine KIDO's
6 diary entry of October 9, 1941. ⁶⁴⁴ It definitely shows
7 that KIDO submitted to KONOYE his opinion that the
8 resolution of the council in the Imperial Presence on the
9 6th of September was too outright and it was not the
10 conclusion of exhaustive discussion; that the reconsider-
11 ation be given to a war with American and advised him
12 that it would be inadvisable to declare war against the
13 United States immediately; it should be made clear that
14 the termination of the China Incident is the first con-
15 sideration and that freedom should be acquired by Japan
16 without paying any attention to economic pressure by the
17 United States. He also advised that the people should be
18 made to understand the necessity for ten or fifteen years
19 of hard struggle on the part of Japan and to establish
20 a highly defensive nation. He also suggested if neces-
21 sary, Japan was ready by belligerency to promote the
22 completion of the China Incident. As KIDO explained in
23 his affidavit ⁶⁴⁵ he expounded his opinion to KONOYE so that
24 KONOYE could use it in arguing with the military. He
25

(644. Ex. 1146 as cor. Lang. Sec. T. 11139.

645. Aff. pars. 200, 201, T. 30960-2.)

1 took great pains in carefully impressing KONOYE with the
2 logic of his opinion. As he said the situation at that
3 time was so bad that he knew the Army would never agree
4 unless some positive diversionary attitude was put
5 forward and it was for this reason that he suggested
6 completion of the China Incident. The military would not
7 listen to any plan which meant entire cessation of
8 hostilities so he suggested if they must fight they
9 should confine their activities to China. It was a sop
10 he was offering in a situation which afforded no other
11 alternatives. It was the only solution to avoidance of
12 a clash with America. ⁶⁴⁶ It is quite apparent that if
13 KIDO had been successful in dissuading the military the
14 question after that would take care of itself in that if
15 the European war was brought to an end in the meantime a
16 big change would occur in the world situation with a
17 powerful peace movement sweeping over the world and Japan
18 might be saved. It is quite clear that his intention
19 was inspired by the desire to absolutely avoid war with
20 the United States by progressing in the proper direction
21 slowly but steadily. The prosecution barely mentions the
22 contents of KIDO's diary of October 9, 1941, in comment-
23 ing that its remarks directed to the entry of August 7,
24 1941, apply to the entry of October 9, 1941. ⁶⁴⁷ But
25

(646. Aff. par. 201, T. 30962.
647. Par. JJ-70, T. 41107.)

648
1 those remarks refer to a few words which do not appear
2 in the latter entry. The prosecution however recognizes
3 that the diary entries of August 7, 1941, and October 9,
4 1941, are similar. It apparently recognized that KIDO's
5 reasoning in the entry of August 7, 1941, was correct,
6 and its remarks regarding it are likewise applicable
7 here -- "No doubt, if his advice had been taken we
8 should not be holding this trial today* * *." 649

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

11 (Whereupon, at 1045, a recess was
12 taken until 1100, after which the proceed-
13 ings were resumed as follows:)

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(648. Par. JJ-65, T. 41104-5.
649. Pros. Doc. 0003, T. 16852.)

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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. Logan.

4 MR. LOGAN: If the Tribunal please, I shall
5 continue reading KIDO's summation, page 178, paragraph
6 208.

7 On October 12, 1941 the Ogibuko Conference
8 was held at Prince KONOYE's house. There were present
9 War Minister TOJO, Navy Minister OIKAWA, Foreign
10 Minister TOYODA, Prince KONOYE and SUZUKI, President
11 of the Planning Board. TOMITA, Chief Secretary to
12 the Cabinet, reported the result of that conference
13 to KIDO and it is fully set forth in his diary of that
14 day.⁶⁵⁰ According to the information KIDO received
15 TOJO contended that the Government should make up its
16 mind to wage war with America in accordance with the
17 decision of the Imperial Conference of September 6th
18 as he thought there was no hope for the negotiations
19 with America. He added, however, that he did not want
20 war if an explanation convincing enough was forthcoming
21 that the negotiations would be brought to an amicable
22 solution with confidence. Navy Minister OIKAWA said
23 in substance that he thought there was still hope for
24
25 650. Ex. 1147, Tr. 10246 as Corrected by Language
Section, Tr. 11139.

1 negotiations, that it was desired that Japan come to
2 terms with America even making considerable concessions
3 and that it would be embarrassing to conduct diplomatic
4 negotiations for some time and then start war. For-
5 eign Minister TOYODA said he thought there was some
6 hope for negotiations but that it was impossible to
7 make any prediction as they had to reckon with America.
8 Prime Minister KONOYE stated that there was still hope
9 for the negotiations which he would like to continue.
10 The War Minister was not satisfied with the Prime
11 Minister's explanation. The Conference adjourned
12 after it was decided to draft a memorandum and entrust
13 the Foreign Minister with its study. KIDO's testimony
14 on the Ogikubo Conference is corroborated by KONOYE's
15 Memoirs,⁶⁵¹ MUTO⁶⁵² and SUZUKI.⁶⁵³
16

17 209. TOMITA also told KIDO that from the
18 conversations he had with Admirals OKA and OIKAWA that
19 the Navy was opposed to war but could not openly
20 express its views and would leave it to the Prime
21 Minister to make a decision whether or not Japan should
22 go to war with America. This is also corroborated by
23 KONOYE's Memoirs in so far as OIKAWA is concerned.⁶⁵⁴
24

25 651. Ex. 2913, Tr. 25862-25865.
652. Ex. 3454, Tr. 33104.
653. Tr. 35251-35253.
654. Ex. 2913, Tr. 25862-25865.

210. In commenting on KIDO's diary entry
of October 12, 1941,⁶⁵⁵ the prosecution says that
KIDO rightly interprets OIKAWA's statement as "even
making considerable concessions."⁶⁵⁶ That is not an
interpretation of KIDO. It is a report of what
OIKAWA said at the Ogikubo Conference as related to
KIDO by TOMITA.⁶⁵⁷ The prosecution then remarks,
"If KIDO had ever given similar advice he would have
shown his sincerity." KIDO's advice on many occasions
went far beyond the mere granting of concessions.
For example, as shown in his diary entries of July 31,
1941,⁶⁵⁸ August 7, 1941,⁶⁵⁹ September 6, 1941,⁶⁶⁰
October 9, 1941,⁶⁶¹ October 17, 1941,⁶⁶² October 20,
1941,⁶⁶³ November 19, 1941, November 26, 1941,⁶⁶⁴ and
November 30, 1941,⁶⁶⁵ he was opposed to war under any
circumstances.

655. Ex. 1147, Tr. 10246 as Corrected by Language
Section, Tr. 11139.

656. Affidavit, par. 202, Tr. 30964; par. JJ-71,
Tr. 41108.

657. Par. JJ-71, Tr. 41107, 41108.

658. Ex. 1125, Tr. 10186 as Corrected by Language
Section, Tr. 10667.

659. Ex. 1130, Tr. 10199 Ibid.

660. Ex. 1135, Tr. 10216 as Corrected by Language
Section, Tr. 31420.

661. Ex. 1146, Tr. 10241, as Corrected by Language
Section, Tr. 11139.

662. Ex. 1154, Tr. 10291, as Corrected by Language
Section, Tr. 11142.

663. Ex. 1156, Tr. 10295.

664. Ex. 1190, Tr. 10429, as Cor. Lang. Sec. Tr. 11143.

665. Ex. 1198, Tr. 10468, as Cor. Lang. Sec. Tr. 12480.

1 211. As shown, everyone's opinion at the
2 Ogikubo Conference of October 12, 1941 hinged on the
3 success or failure of negotiations with America.
4 Although TOJO did express his opinion with regard to
5 the stationing of troops in China and refused to
6 entertain anything that might affect the result of
7 the China Incident, his viewpoint changed before he
8 was appointed Prime Minister. Thus the last important
9 meeting held during the existence of the Third KONOYE
10 Cabinet ended with no decision as to whether or not
11 Japan would go to war with America.

12 212. On October 13, 1941 as a result of the
13 Ogikubo Conference the political atmosphere became so
14 tense that it was feared that a war might break out at
15 any moment under forcible pressure of the militarists.
16 The situation was so delicate that the Emperor on that
17 day showed his concern when he discussed with KIDO an
18 Imperial Rescript in case he was required to grant
19 sanction to the opening of war. This is shown in
20 KIDO's Diary of October 13, 1941, only a small portion
21 of which was processed by the prosecution.⁶⁶⁶ That
22 evening SUZUKI visited KIDO and told him his political
23 views which might contribute in some way " * * * to
24 the making of a new turn in our political condition."
25

666. Aff. par. 204, Tr. 30969.

1 SUZUKI was in fear of a possible change of government
2 or a sudden plunge into war due to the intensified
3 political situation.⁶⁶⁷ KIDO expressed his views to
4 the effect that KONOYE should assume a resolute
5 attitude and have a full talk with the War and Navy
6 Ministers in order to solve the dilemma by some means
7 in order to arrive at a peaceful solution.⁶⁶⁸

8 213. KIDO is accused of adding a gloss to
9 his diary of October 13, 1941.⁶⁶⁹ The prosecution
10 claims that the diary states that KIDO and SUZUKI
11 agreed that KONOYE must try to promote mutual under-
12 standing between the War and Navy Ministers but that
13 KIDO adds the words to his diary "to bring about the
14 peaceful solution."⁶⁷⁰ The prosecution however im-
15 pliedly admits that KIDO had hoped for peaceful
16 solution because of hesitation of the Navy.⁶⁷¹ In
17 its interpretation of this diary entry the prosecution
18 omits to inform the Tribunal and makes no comment on
19 the fact that the diary entry clearly states that
20 SUZUKI and KIDO were talking about some way of
21 "* * * making of a new turn in our political condi-
22 tion."⁶⁷² No one has offered any contradictory
23

24 667. Aff. par. 204, Tr. 30971.

25 668. Aff. par. 204, Tr. 30971.

669. Ex. 1149, Tr. 10274.

670. Aff. par 204, Tr. 30971.

671. Par. JJ-72, Tr. 41109.

672. Aff. par. 204, Tr. 30971.

1 evidence and no one could possibly say that the new
2 turn in political conditions referred to anything
3 other than a peaceful solution. It must be remembered
4 that this was in the middle of October 1941 when,
5 according to the Imperial decision of September 6,
6 1941, a decision for war was to be made. Time was
7 running out. The prosecution does not comment on the
8 fact that the Emperor was so apprehensive that he
9 discussed with KIDO what should be done "in case we
10 decide on war with the United States and Britain,"⁶⁷³
11 yet it refers to the same exhibit in which it is con-
12 tained.⁶⁷⁴ It is concerning this critical period that
13 the prosecution, in its summation, makes the revealing
14 statement: "We submit that KIDO was only interested
15 in securing agreement no matter what it was."⁶⁷⁵ As
16 pointed out heretofore, this clearly shows that even
17 the prosecution admits that it has failed to prove
18 that KIDO had a criminal mind.

19
20 214. In analyzing the situation as it
21 existed on or about October 13, 1941 the prosecution
22 makes three statements. (1) It refers to the China
23 Incident and concludes "* * * for which no one was
24 more clearly responsible than KIDO."⁶⁷⁶ In answer

25 673. Aff. par. 204, Tr. 30970.

674. Aff. par. 204, Tr. 30969.

675. Par. JJ-72, Tr. 41109.

676. Par. JJ-72, Tr. 41108.

1 need we point out that KIDO was not even in the Cabinet
2 when the China Incident started? The prosecution
3 even abandoned Count 19 which charged him with starting
4 this Incident.⁶⁷⁷ (2) With respect to the United
5 States, Britain and the Netherlands refusing to
6 supply Japan with oil in particular, the prosecution
7 says: "They had at last refused to do so."⁶⁷⁸ This,
8 of course, had occurred three months previously, not
9 in October 1941. (3) It sets up three possible
10 courses which were open, the second of which was to
11 make war upon the A.B.C.D. powers and then states:
12 "TOJO had declared himself for No. 2."⁶⁷⁹ The prose-
13 cution gives no citation for this and there is no
14 evidence of such a decisive declaration. The prose-
15 cution, without any evidence to support it, submits
16 a conjectural analysis of the three possible courses
17 which were open to Japan at that time. It is inter-
18 esting to note that in so doing the prosecution does
19 not suggest nor comment on the facts referring to
20 the course suggested at the Ogikubo Conference of
21 October 12, 1941 which KIDO did not attend. It was
22 there suggested to continue negotiations with the
23 United States and if successful "* * * all operational

25 677. Par. JJ-89, Tr. 41128.

678. Par. JJ-72, Tr. 41108-41109.

679. Par. JJ-72, Tr. 41109.

preparations be discontinued."⁶⁸⁰

1 XII. (f) The Recommendation of TOJO as
 2 Premier.

3 215. We now approach the decision around
 4 which the prosecution's interest in KIDO chiefly lies:
 5 the recommendation of TOJO as Premier. The question
 6 to be answered is "Did KIDO have a criminal mind in
 7 the part he played in this critical period in Japan's
 8 history?" The evidence is overwhelming that he did
 9 not. In none of the contemporary documents nor in
 10 the subsequent testimony adduced at this trial is
 11 there any evidence that he did. To hold that KIDO
 12 recommended TOJO to lead Japan to war would necessitate
 13 a decision diametrically opposed to the evidence in
 14 this case.

15
 16 216. The principal persons who were con-
 17 sidered for the Premiership were Prince HIGASHIKUNI,
 18 General UGAKI, Admiral OIKAWA and General TOJO. An
 19 examination of the evidence discloses that the part
 20 KIDO played in the recommendation was that of a man
 21 sincerely and honestly desirous of avoiding war. The
 22 evidence discloses⁶⁸¹ beyond peradventure of doubt

23
 24 680. Diary, Ex. 1147, Tr. 10246, as Corrected by
 Language Section, Tr. 11140.

25 681. Aff. par. 205-219, Tr. 30972-31021.
 Ex. 2250, Tr. 16198.
 Ex. 1148, Tr. 10250, 10266-10267

1 that KIDO believed a Premier was needed who could
2 cope with the following problems:

3 1. The interpretation of the decision of the
4 Imperial Conference of September 6, 1941, which was
5 the cause of the fall of the KONOYE Cabinet.

6 2. A repeal of that decision so as to
7 start afresh with a clean slate.

8 3. After the decision was repealed a re-
9 examination of the diplomatic negotiations with
10 America so as to study the question from a new angle
11 and bring about successful negotiations.

12 4. The control of the younger militarists
13 who were pressing for war and to this end the Premier
14 should be able to control and effect harmony and co-
15 operation in the Army itself and between the Army and
16 the Navy in full pursuance of Imperial wishes.

17 5. An acquaintance with the events and
18 decisions of the past few months; and ability to
19 reflect upon and appraise them accurately; and to
20 this end one who was an outsider would not be able
21 to understand them properly thus defeating the purpose
22 of the cabinet change.

23
24 217. If KIDO had a criminal mind and was
25 seeking to recommend a Premier to lead Japan success-
fully into war it is only reasonable to say that he

1 would never have given a thought to any of the above
2 mentioned matters. All his thoughts, all his acts
3 and all his energies would have been devoted to the
4 question: who could best lead Japan to victory? The
5 absence of such evidence is decisive. The presence
6 of documentary evidence written at that time, showing
7 that KIDO was only interested in avoiding the war,
8 is entitled to the greatest weight of probity,
9 credibility and accuracy. As opposed to this the
10 Tribunal is asked to accept the prosecution's
11 specious arguments, unsupported by the evidence and
12 which confuse rather than clarify the facts. Let us
13 now examine the facts step by step.

14 218. On October 15, 1941 the question of
15 a cabinet headed by Prince HIGASHIKUNI arose. As
16 shown, KIDO, Imperial Household Minister MATSUDAIRA,
17 Tsuneo, and the Emperor were opposed to this.⁶⁸² The
18 advocates of a HIGASHIKUNI Cabinet had different
19 motives. Prince KONOYE desired it as he believed it
20 would restrain the Army and avert war.⁶⁸³ As for the
21 Army, even granted that War Minister TOJO was like-
22 minded as Prince KONOYE, there was grave doubt as to
23

24 682. Ex. 1150 as Corrected by Language Section, Tr.
11140; Aff. par. 206, Tr. 30996-30980.

25 683. Aff. par. 205, Tr. 30972; KONOYE's Memoirs,
Ex. 1148, p. 9, Tr. 10266-10267.

1 the real motives of the military officers who formed
2 the mainstay of the Army. The possibility of availing
3 themselves of the Prince's position as Prime Minister
4 and dragging the country into war was in full evidence
5 because the Prince's entourage included many dangerous
6 elements. It would have been impossible to purge
7 those elements if Prince HIGASHIKUNI formed the
8 succeeding cabinet. In addition, Prince HIGASHIKUNI,
9 although talented, was lacking in political exper-
10 ience and training and as the situation was extremely
11 difficult it would have been well nigh impossible for
12 the Prince to grasp the situation and work out a plan
13 to cope with it. The foregoing appears in KIDO's
14 testimony.^{684.}

15 219. As KIDO pointed out in his affidavit:⁶⁸⁵

16 "The result would be that the Prince would
17 be reduced to a mere figurehead, and actual political
18 power would be assumed by the Deputy Prime Minister.
19 And judging by personalities, available at that time,
20 the probability was quite high that the post of
21 Deputy Premier would be concurrently assumed by the
22 Minister of War. Such being the case, the possibility
23 of averting war would be very slim under the
24

25 684. Aff. par. 205, Tr. 30973.

685. Aff. par. 205, Tr. 30974.

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23 of averting war would be very slim under the

24 684. Aff. par. 205, Tr. 30973.

25 685. Aff. par. 205, Tr. 30974.

HIGASHIKUNI Cabinet."

1 The prosecution guesses that the Deputy
2 Prime Minister would probably be TOJO and that there-
3 fore KIDO well knew that the possibility of avoiding
4 war was even slimmer when TOJO became Premier.⁶⁸⁶ In
5 addition to the fact that the probabilities were that
6 Prince HIGASHIKUNI would have appointed one of his own
7 adherents as War Minister, the evidence is that it
8 would not have been TOJO because according to KONOYE's
9 memoirs⁶⁸⁷ TOJO's opinion was that if Prince HIGASHI-
10 KUNI was appointed, "I believe that there is no other
11 alternative but to return the decision of the recent
12 Imperial Conference back to a clean slate once more
13 by all of us, even including all of the Supreme
14 Command resigning and to start anew with new men
15 coming forward." It is therefore apparent that the
16 prosecution's guess that the new Deputy Prime Minister
17 would have been TOJO is contrary to the evidence.

19 220. The prosecution states with respect
20 to the appointment of a HIGASHIKUNI Cabinet "* * *
21 KIDO would only agree to it if a common policy had
22 previously been worked out between the Army and Navy."⁶⁸⁸
23 The prosecution then states: "Again the diary contains

24 686. Par. JJ-73, Tr. 41110.

25 687. Ex. 1148, Tr. 10265.

688. Par. JJ-73, Tr. 41110.

no indication what this common policy should be,
 1 but Paragraph 205 of the affidavit supplies the
 2 usual gloss * * *."⁶⁸⁹ The diary entry of October
 3 15, 1941,⁶⁹⁰ which the prosecution had before it,
 4 clearly shows what the common policy between the
 5 Army and Navy should be and KIDO's affidavit contains
 6 no gloss. The diary specifically states:

7 "The Premier, who joined our conversation
 8 on his withdrawal from the presence of the Emperor,
 9 said that when he made a report to the Emperor on the
 10 proposed plan, His Majesty said that if the Army and
 11 the Navy agreed upon the peaceful policy and it is
 12 the outcome of necessity to have the Prince's Cabinet,
 13 then there was no alternative but to approve the
 14 plan."⁶⁹¹

15
 16 The diary then relates that KIDO had a talk
 17 with the Premier and later had a telephone conversa-
 18 tion with SUZUKI and according to SUZUKI's report:
 19 "TOJO's purpose was to establish harmony between the
 20 Army and the Navy by the influence of the Prince."⁶⁹²

21 As the diary further shows, KIDO then made the

22 ^{689.} Pap, JJ-73, Tr. 41110.

23 ^{690.} Ex, 1150 as Corrected by Language Section,
 24 Tr. 11140; Aff. par. 206, Tr. 30976-30980.

25 ^{691.} Ibid., Tr. 30979.

^{692.} Aff. par. 206, Tr. 30979.

1 significant statement: "So I objected to the plan."⁶⁹³
2 This definitely shows that KIDO and the Emperor were
3 opposed to a HIGASHIKUNI Cabinet unless the Army and
4 Navy first agreed upon a peaceful policy. In addi-
5 tion, KIDO's Diary of October 16, 1941⁶⁹⁴ substan-
6 tiates this position.
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693. Aff. par. 206, Tr. 30979.

694. Ex. 1151, Tr. 10281 as Corrected by Language
Section, Tr. 11141.

1 all-out war and gambling the fate of the country." ⁶⁹⁸

2 (The prosecution only quoted part of this
3 statement.) ⁶⁹⁰ The exhibit further states that TOJO
4 completely agreed with KIDO's opinion and said:

5 "... that the decision of the Council in the
6 Imperial presence was a cancer and that this war could
7 not be carried out without the firm confidence of the
8 navy." ⁷⁰⁰

9 In his affidavit ⁷⁰¹ KIDO recites, with respect
10 to this interview with TOJO:

11 "... I stated that it was needless to say
12 that the decision of the Imperial Conference was ex-
13 tremely important and therefore must be respected and
14 faithfully executed, but asked him if it was not proper
15 to reconsider in case there was found any point mani-
16 festing want of care therein because I thought the
17 decision was careless. I drew his attention to the
18 report that the navy necessarily had no confidence in
19 itself. Thereupon, the War Minister agreed with me,
20 adding that the decision of the Imperial Conference
21 could not be executed as it was..."

22
23 222. These three consistent recitals of the
24 facts demonstrate a recognition by KIDO of the evil

25 698. Ex. 2250, tr. 16,206 - 16,207

699. Par. JJ-74, tr. 41,111

700. Ex. 2250, tr. 16,207

701. Ex. par. 209, tr. 30,983

1 of the September 6 decision, and that a reconsideration
 2 was necessary. There is no merit to the prosecution's
 3 contention that there is no other contemporary document
 4 on this matter. The diary ⁷⁰² and the account written
 5 in November 1941 ⁷⁰³ which were contemporary, are support-
 6 ed by the Senior Statesmen's Conference of October 17,
 7 1941, ⁷⁰⁴ which the prosecution overlooks in making such
 8 a statement, and all of them are corroborative, not
 9 conflicting.

10 223. As early as September 26, 1941, KIDO
 11 had recognized that the Imperial decision of September
 12 6, 1941, should be reviewed. ⁷⁰⁵ Again on October 9,
 13 1941, he set forth in his diary that this decision
 14 seemed to him to be too outright and that it was not
 15 the conclusion of exhaustive discussion. ⁷⁰⁶ and he
 16 discussed it thoroughly at the meeting of the Senior
 17 Statesmen on October 17, 1941. ⁷⁰⁷ KIDO's objection was
 18 to the whole decision, not a part of it, as the prose-
 19 cution claims. ⁷⁰⁸ As shown in his November 1941 state-
 20 ment in referring to the decision of September 6, KIDO
 21 said:

22 "... I believe it will necessitate a complete
 23 reconsideration." The prosecution's guess that KIDO's

24 702. Ex. 1151, as Cor. Lang. Sec. tr. 11,141, 11,142

25 703. Ex. 225C, tr. 16,198-16,211

704. Aff. par. 216, tr. 31,005 - 31,018

705. Aff. par. 196, tr. 30,956

706. Ex. 1146, tr. 10,241 as cor. Lang. Sec. tr. 11,139

707. Aff. par. 216, tr. 31,012

708. Par. JJ-73, tr. 41,110 - 41,111

~~statement referring to the decision as "rather care-~~
710
less" meant only a part of it is thus made in dis-
regard of the evidence.

224. After expressing his opinion that he thought it would be difficult for the KONOVE Cabinet to handle the situation, TOJO further stated in his conversation with KIDO on October 16, 1941, that he thought there would be no alternative but to petition a Prince of the Blood to form a succeeding cabinet. KIDO asked him whether that meant the army had decided to completely change its past policy and that a Prince of the Blood would be petitioned to dispose of the aftermath, as such a volte-face could not be effected by a subject. TOJO replied in the negative, adding that a Prince of the Blood would be petitioned to form a succeeding cabinet for the purpose of deciding on the policy in the future. KIDO objected to this and expressed that such a cabinet should not be formed except when the country had decided on an absolutely peaceful policy. TOJO remained silent for some time and then abruptly asked, "What will become of Japan then?" KIDO replied that Japan might become a third or fourth rate power if what he was doing was persisted in. KIDO believed

710. Par. JJ-73, tr. 41,110

1 at that time that if he talked to Prince KONOYE and if
2 Prince KONOYE exerted a little more effort, a way out
3 of the difficulties might be found, judging by his
4 interview with the War Minister. KIDO lost no time
5 in telephoning Prince KONOYE, but he had already
6 started having his cabinet colleagues tender their
7 resignations. The foregoing appears in KIDO's testi-
8 mony.⁷¹¹

9 225. KIDO consulted Prince KONOYE after the
10 latter had presented the resignation of his cabinet to
11 the Throne, and the full conversation appears in KIDO's
12 testimony.⁷¹² He told KONOYE that the decision of
13 September 6, 1941, was "cancer" and should be scrapped
14 so as to start afresh with a clean slate. For that
15 purpose someone fully acquainted with the whole situa-
16 tion should undertake the formation of the succeeding
17 cabinet. KIDO believed that one not acquainted with
18 the circumstances, which were all secret, would meet
19 with any army opposition and that there would be no
20 choice except to name Admiral OIKAWA or General TOJO.
21 They discussed the good and bad features of the appoint-
22 ment of either of them. Since TOJO had disagreed with
23 KONOYE it might be taken as a surrender if TOJO were

25 711. Aff. par. 209, tr. 30,983 - 30,984
712. Aff. par. 211, tr. 30,986

1 appointed. On the other hand, if OIKAWA was appointed,
2 because the navy did not want war the army might react
3 stronger. Thus if TOJO were selected and ordered to
4 disregard the decisions of the Imperial Conference of
5 September 6 he would be able to control the army, and
6 if he continued peaceful negotiations the effect on
7 America would be favorable. KONOYE agreed with KIDO
8 and stated that if the army got out of control no one
9 could tell what situation might be precipitated, par-
10 ticularly as the troops were now down south as far as
11 Southern French Indo-China. To avoid such an eventuality
12 TOJO, who had the army in hand, should accept the
13 appointment, especially judging from his remarks within
14 the past few days. He did not advocate waging war
15 immediately with America. As TOJO said, Japan would
16 not be able to wage war if the navy had no confidence.
17 As KONOYE also said, a way out of the difficulty might
18 be found if the Emperor granted a message to TOJO on
19 this point when His Majesty commanded him to form a
20 succeeding cabinet. The foregoing is fully set forth
21 in KIDO's affidavit⁷¹³ and substantiated in KONOYE's
22⁷¹⁴ Memoirs.
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713. Aff. par. 211, tr. 30,986 - 30,987
714. Ex. 1148, tr. 10,269 - 10,271

226. On the night of October 16, 1941

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KIDO gave serious and considerable thought to the problem⁷¹⁵ and reviewed his interview with TOJO in which he had noticed that the latter had become more thoughtful and it did not seem that he would necessarily advocate war with America if the Navy was opposed to it. KIDO stated that a change had apparently come over his way of thinking in the past few days. Another reason was TOJO's character since he was appointed Minister of War. TOJO had consistently respected Imperial wishes even stronger than that common to all Japanese soldiers. KIDO reasoned that if the Emperor issued a command to scrap the decision of the Imperial Conference of September 6 and review the situation on a fresh basis he had sincere confidence that TOJO would change his policy in pursuance of Imperial wishes as the backbone of his contention would be gone, that is, it would not be obligatory on him to execute the decision of the Imperial Conference. Furthermore, because of the development of the situation in the past few days it would be difficult to carry out the past policy. KIDO knew and understood that cynical criticism was rampant among foreign
715. Aff. par. 212, Tr. 30,933-9

1 residents in Japan at that time, that it was of no
2 use to ask the Prime minister or the Foreign
3 Minister about Japan's foreign policy as it was only
4 known at the General Staff of the Army. KIDO per-
5 haps best summed up his thoughts when he said:

6 "In deference to those cynical criticisms,
7 I thought that if the Army was made to conduct
8 state affairs and if the Cabinet, formed by the Army
9 itself, undertook to adjust the relations with
10 America in dead earnest, American misgivings might
11 be dispelled."⁷¹⁶

12 Although KIDO was vigorously cross-examined
13 on the reasons for the recommendation of TOJO, his
14 testimony was unshaken.⁷¹⁷

15 227. The next morning, October 17, KONOYE
16 telephoned him, stating that it was his opinion
17 that TOJO would be a better choice as Prime Minister
18 than the Navy Minister, provided he was given an
19 Imperial command to scrap the decision of September
20 6 and use his best efforts to effect cooperation
21 between the Army and Navy and strive for peace.⁷¹⁸
22 KONOYE's memoirs corroborated this.⁷¹⁹ As shown by

24 716. Aff. par. 212, Tr. 30,988-9

717. Tr. 31,596-31,600

25 718. Aff. par. 213, Tr. 30,990

719. Ex. 1148, Tr. 10,271

1 KIDO in his affidavit, ⁷²⁰ the Senior Statesmen's
2 meeting was held that day, October 17, 1941, from
3 1:10 p.m. to 3:45. p.m.

4 228. At the risk of being repetitive,
5 we repeat -- in order to attach criminal responsi-
6 bility to KIDO for his recommendation of TOJO, it
7 is fundamental that the burden is on the prosecution
8 to show that KIDO did so with a criminal intent in
9 mind. There is absolutely no affirmative evidence
10 to which the prosecution can point to support its
11 burden. No affirmative statement of KIDO's, or
12 of any other witness, and no documents have been
13 introduced in evidence stating or indicating that
14 KIDO appointed TOJO for the purpose of commencing the
15 Pacific War. On the contrary the affirmative evidence
16 and the reasonable inferences to be dispassionately
17 drawn from all the evidence points unmistakably to
18 one conclusion -- KIDO recommended TOJO with the
19 sincere and honest intent that by so doing war
20 would be averted.

21 229. The affirmative evidence is perhaps
22 best demonstrated by the minutes of the meeting of
23 the Senior Statesmen of October 17, 1941. Before
24 discussing these minutes we should like to digress
25 720. Aff. par. 214, Tr. 30,990

1 for a moment. The prosecution failed to introduce
 2 the minutes of this conference in evidence and yet
 3 it is one of the two conferences for which the
 4 prosecution charges criminality against KIDO.⁷²¹
 5 Appendix E of the Indictment charges that KIDO was
 6 ". . . present at and concurred in the decisions
 7 taken . . ." at the conference of October 17, 1941
 8 (ex-Premiers) ". . . which decision prepared for
 9 and led to unlawful war on 7/8 December 1941"⁷²² The
 10 prosecution cannot claim ignorance of the existence
 11 of the minutes of this conference because they are
 12 mentioned in KIDO's Diary of October 24, 1941⁷²³ and
 13 the evidence is that the prosecution had this diary
 14 since about December 16, 1945. It cannot claim
 15 negligence in failing to have had possession of such
 16 an important document because it introduced in evi-
 17 dence the minutes of the Senior Statesmen's confer-
 18 ences of July 17, 1940,⁷²⁴ July 17, 1941,⁷²⁵ July 18,
 19 1944⁷²⁶ and April 5, 1945.⁷²⁷ There is no evidence
 20 in the case that the prosecution did not have these
 21 minutes and no evidence of why they were not intro-
 22

23 721. Pros. Doc. 0003, Tr. 16,851; Par. JJ-86-87,
 Tr. 41,126

24 722. Indictment.

24 723. Aff. par. 215, Tr. 30,990

25 724. Ex. 532, Tr. 6240 726. Ex. 1278, Tr. 11,377

25 725. Ex. 1117, Tr. 10,166 727. Ex. 1282, Tr. 11,388

1 duced. The only reasonable inference is that the
2 prosecution knew that these minutes definitely
3 establish that neither KIDO nor any of the Senior
4 Statesmen had any criminal intent in recommending
5 TOJO. Let us now examine the minutes of this con-
6 ference of ex-premiers of October 17, 1941 and
7 ascertain what took place. The reputation and
8 high standing of the participants is important.
9 There were present besides KIDO, WAKATSUKI, HARA,
10 OKADA, ABE, KIYOURA, YONAI, HIROTA, and HAYASHI.

11 230. Thus there were only two Army men --
12 Generals ABE and HAYASHI, and two navy men -- Admir-
13 als YONAI and OKADA, present. There is no evidence
14 that KIDO saw, spoke to or exerted any influence on
15 these statesmen before the meeting or at the meet-
16 ing. There is no evidence and there can be no in-
17 ference that KIDO controlled or could have controlled
18 the thoughts, words or actions of these men. These
19 statesmen were not politically ambitious. They had
20 no reason to recommend TOJO with any ulterior purpose
21 in mind. Furthermore, there can be no claim by the
22 prosecution that there was any concealment of the
23 facts from these statesmen. A complete and lengthy
24 resume of events carefully prepared by Prince KONOYE,
25 not KIDO, was read to them as the first order of

728
1 business. In this statement Prince KONOYE clearly
2 and painstakingly pointed out the decision of the
3 Imperial Conference of September 6, 1941 which was
4 that if diplomacy should fail by early October the
5 government would make up its mind to go to war. He
6 set forth the divergent contentions of the Army and
7 the government on the likelihood of success of a
8 diplomatic settlement. The Army position was that
9 ". . . there is no prospect of our contentions
10 being accepted . . ." ⁷²⁹ while the government felt
11 that if more time was given diplomacy might succeed.

12 231. Attention was drawn by Prince KONOYE
13 to the fact that the Supreme Command was urging the
14 government to go to war pursuant to the decision of
15 September 6, 1941. (TOJO was not in the Supreme
16 Command.) He further pointed out that the knotty
17 questions which were involved in the negotiations
18 with America were:

- 19 1. The question of the intention of with-
20 drawal of troops from China.
- 21 2. The Tripartite Alliance.
- 22 3. Commercial non-discrimination in the
23 Pacific Area.
24

25 728. Aff. par. 216, Tr. 30,992-31,004
729. Aff. par. 216, Tr. 30,992

1 He explained the position of the Army, the govern-
2 ment and the United States on the most difficult
3 of these questions, to wit, troops in China. The
4 views of the government and the Army on war was
5 set forth in detail; the final conclusion being
6 that the Army contended that the freezing of Japan-
7 ese assets which had been accomplished would eventu-
8 ally impoverish and paralyze Japan, while the
9 government believed that the China Incident should
10 be settled and Japan should husband her resources
11 through hardship and privation. He also explained
12 the Navy's position and its conclusion to leave the
13 decision of diplomacy or war entirely to the Prime
14 minister. He pointed out the strong opinion in
15 Navy circles that war should be avoided. In addi-
16 tion Prince KONOYE chronologically traced the diplo-
17 matic negotiations with America step by step from
18 April up to date. He concluded by again pointing
19 out the divergent views of the Army and the Govern-
20 ment toward the possibility of success of diplomatic
21 negotiations with America.

22
23 232. With this background the Senior
24 Statesmen then expressed their views. ⁷³⁰ WAKATSUKI,
25 HARA, OKADA and ABE opened the discussion by pointing
730. Aff. par. 216, Tr. 31,005

1 to the dangers of war due to the exhaustion of
2 resources, particularly oil. In response to a
3 question by Mr. KIYOURA as to why the government
4 should decide its attitude at once when the Ambassa-
5 dor abroad says there is a chance of success, KIDO
6 replied:

7 "As for that point, the Imperial Conference
8 fixed the date of decision in the first part of Oc-
9 tober. Therefore, there developed a divergence of
10 views between the Government and the Army, and I
11 think the Government could not help but be pushed
12 to the wall."⁷³¹

13 If KIDO had been militarily minded his answer would
14 have been framed to imply that the government was
15 obstructing the militarists. In replying to an ob-
16 servation by Mr. ABE on the same subject, KIDO
17 pointed out that KONOYE wanted to meet President
18 Roosevelt and decide policies on broad lines and
19 that "While America's final reply has not yet been
20 forthcoming, the date of the Imperial Conference is
21 fast approaching. That is the actual situation."⁷³²

22
23 233. The question was then raised as to
24 the intentions of the Imperial General Headquarters

25 731. Aff. par. 216, Tr. 31,007
732. Aff. par. 216, Tr. 31,008

1 and KIDO pointed out that with a question such as
2 risking Japan's national existence involved a per-
3 fect agreement of views between the Army and Navy
4 was essential. KIDO was opposed to the suggestion
5 that the Supreme Command should recommend the candi-
6 date for the succeeding Prime Minister. HAYASHI's
7 proposal that an Imperial Prince in the naval ser-
8 vice should be the next Prime Minister was opposed
9 by Admiral YONAI as he thought that practically it
10 may not work. KIDO also pointed out the impractic-
11 ability of appointing a Prince of the Blood, as he
12 did not think that an Imperial Prince should be
13 called upon to settle the differences between the
14 Army and Navy and that they should settle their dif-
15 ferences before he accepted the post. If he failed
16 to solve this knotty question, the Imperial Family
17 would come in for a strong denunciation from the
18 people.

19
20 234. WAKATSUKI then asked KIDO for his
21 views on a succeeding cabinet. KIDO stated his con-
22 clusion first, that he thought TOJO should be
23 Premier and set forth the reasons: That the Imperial
24 Decision of September 6 was a poisonous and ir-
25 radicable source of difficulty; that the Army knew
it was impossible to wage war with America without

1 the Navy's determination but the Army could not
2 help but proceed in accordance with the Imperial
3 decision of September 6. And that since real
4 cooperation between the Army and Navy was not forth-
5 coming the September 6th decision was hurriedly
6 made. He thought that the most practical way to
7 save the situation would be to command TOJO to form
8 the cabinet and at the same time "order him to effect
9 real cooperation between the Army and Navy and re-
10 examine the decision of the Imperial Conference. ." ⁷³³

11 TOJO was fully acquainted with the development of
12 the situation and the difficulty had been keenly
13 driven home to him. He further pointed out that if
14 a general or admiral not in active service was com-
15 manded to form a cabinet "there may be fear of an
16 unexpected result, in case his formation of the new
17 cabinet is restricted by a section of the public
18 with the decision of the Imperial Conference." ⁷³⁴

19 This clearly shows KIDO realized that a revolution
20 might occur, if one who could not control the military
21 was appointed. It also shows that KIDO believed a
22 certain section ⁷³⁵ might restrict the formation of a
23 cabinet by one not in control of the military.
24

25 733. Aff. par. 216, Tr. 31,012 734. Ibid.
735. Aff. par. 216, Tr. 31,013. Translation says
"section of the public," which is not in Japanese
original.

1 235. Mr. KIYOURA did not think the appointment
2 of Prince FIGASHIKUNI would be proper and believed
3 that some one representing the military authorities
4 should form a cabinet. WAKATSUKI suggested UGAKI
5 but pointed out that ". . . it would be embarrassing,
6 should the militarists be opposed to him as before."⁷³⁶

7 KIDO pointed out that UGAKI was a powerful
8 candidate and an outstanding man possessing actual power
9 but that he had previously been unable to form a cabinet
10 due to military opposition and that if UGAKI was command-
11 ed by the Emperor to form a cabinet there may not be
12 such opposition to him but nevertheless there was not
13 an atmosphere in the Army which would extend support
14 to him. And KIDO concluded by significantly stating
15 "I am inclined to believe that it will be extremely
16 difficult for General UGAKI to restrain the militarists."⁷³⁷

17 ABE also pointed out that it would be difficult for
18 UGAKI to control the situation.

19 236. KIDO also pointed out that the present
20 situation with respect to TOJO was different from that
21 of HATA under the YONAI Cabinet - meaning that HATA had
22 already resigned prior to the fall of the YONAI Cabinet
23 whereas TOJO had not resigned. There can be no question
24

25 736. Aff. par. 216, T. 31,013

737. Aff. par. 216, T. 31,014

1 but what KIDO was relying on the Navy to curb the Army
2 because when OKADA stated: "In any case, the Army em-
3 braces a vigorous opinion. The Lord Keeper of the Privy
4 Seal says that the Army fires the rifles from the rear,
5 but I am afraid that it may develop into a gun."⁷³⁸

6 KIDO replied: "It cannot be said that there is no
7 occasion for worry on that point, but in short, the
8 question is how useful the Navy's strength will be."⁷³⁹

9 (KIDO was obviously referring to the hope that the Navy
10 would restrain the Army.)

11 237. KIDO also stated in answer to a question
12 by Mr. YONAI: "An agreement of views between the Army
13 and Navy and a re-examination of the decision of the
14 Imperial Conference must be the foundation for saving
15 the situation; it may be also a good idea to make the
16 Navy Minister undertake the job, as he stands for
17 prudence."⁷⁴⁰

18 However, this suggestion of KIDO's that
19 the Navy Minister be appointed Prime Minister was reject-
20 ed by the two representatives of the Navy at the Senior
21 Statesmen's Conference as follows:

22 "Mr. OKADA: I think it will not be absolutely
23 proper for the Navy to recommend a succeeding Prime
24 Minister from among its leaders at this time.

25 738. Aff. Par. 216, T. 31,016

739. Ibid.

740. Ibid.

1 "Mr. YONAI: (Was of the same opinion as Mr.
2 OKADA.)" ⁷⁴¹

3 238. It was decided to recommend TOJO and have
4 him concurrently assume the portfolio of war. WAKATSUKI
5 was the only one who had suggested General UGAKI, and the
6 meeting adjourned with Mr. HARA saying: "The Lord
7 Keeper's plan cannot be said to be satisfactory, but as
8 there is no other good plan, we cannot but help proceed-
9 ing forward with it." ^{741-a} In such a plight, can there
10 be any criticism of KIDO or the Senior Statesmen? Was
11 this a decision of a band of conspirators? If so, why
12 weren't WAKATSUKI, OKADA, ABE and YONAI, the remaining
13 living members, indicted?

14 239. As the Chief Prosecutor himself said
15 during the course of cross-examination of Admiral OKADA:

16 "Mr. President, I respectfully call this
17 Tribunal's attention, as Chief Prosecutor appointed under
18 this Charter, to the fact that the accused who are in the
19 dock are the people we believe are really responsible
20 for this war. If there had been anyone else, they would
21 have been in the dock, too." ^{741-b}

22 240. On another occasion, in referring to YONAI,

23 741. Aff. par. 216, T. 31,016
24 741-a Aff. par. 216, T. 31,018
25 741-b T. 29,305

the following observation was made: ⁷⁴²

1 "The President: He is alive in Japan, I
2 understand, and if they thought he was guilty they would
3 charge him."

4 The innocence of the Senior Statesmen emphasizes KIDO's
5 innocence.
6

7 241. The Prosecution sets this conference forth
8 as one of the two KIDO attended at which a decision was
9 made preparing for and leading to the Pacific War. We
10 challenge the prosecution to point to a single statement
11 he made at this Conference, indicating in the slightest
12 way that he or any of the others recommended TOJO for
13 the purpose of preparing for or leading to the Pacific
14 War. The only conclusion possible is that he was
15 recommended for the opposite purpose. The prosecution
16 declines to analyze this conference in detail and points
17 to no statement by KIDO at it to support its claim. The
18 prosecution's only treatment of it is to try to becloud
19 the issue by pointing to unimportant and unfounded picayune
20 details concerning contemporary statements, which in no
21 way conflict with this conference or KIDO's affidavit.
22

23 242. The prosecution contends that UGAKI
24 ". . . was supported by WATANABE and to some extent by
25 OKADA and ABE at the meeting. . ." ⁷⁴³ The minutes of

742. T. 25,162

743. Par. JJ-75, T. 41,114

1 the Senior Statesmen's Conference definitely show that
 2 ABE said "I think it may be very difficult for General
 3 UGAKI to control the situation under the prevailing
 4 circumstances." ⁷⁴⁴ Thus, not only did ABE oppose UGAKI,
 5 and although OKADA had expressed a thought that ". . .
 6 UGAKI may be a good candidate, if the military circles can
 7 be reconciled with him"⁷⁴⁵ OKADA finally stated: "No, I
 8 have not necessarily recommended General UGAKI."⁷⁴⁶ Even
 9 WAKATSUKI's endorsement of UGAKI was qualified by his
 10 statement that ". . . though it would be embarrassing,
 11 should the militarists be opposed to him as before."⁷⁴⁷
 12 Furthermore, as pointed out by General ABE to this
 13 Tribunal, "There was no person against having General
 14 TOJO as Prime Minister absolutely - there was no absolute
 15 objection."⁷⁴⁸

16 243. The prosecution's hindsight guess⁷⁴⁹ set
 17 up General UGAKI as ". . . the only man who might per-
 18 haps have averted war altogether." UGAKI himself doubted
 19 this.⁷⁵⁰ The prosecution, apparently finally realizing
 20 that UGAKI would never have been able to form a cabinet
 21 or control the military, retreated from its position and
 22

23 744. T. 31,015
 24 745. T. 31,017
 25 746. T. 31,017
 747. T. 31,013
 748. T. 34,406 - 34,409
 749. Pros. Doc. 0003, T. 16,853
 750. T. 34,913

on cross-examination of KIDO tried to show that OIKAWA
 1 should have been appointed as Premier but KIDO pointed
 2 out that the two Navy Senior Statesmen were opposed to
 3 OIKAWA. The prosecution then dropped the subject.⁷⁵¹
 4 That both Navy Senior Statesmen OKADA and YONAI opposed
 5 OIKAWA appears in the resume of the Senior Statesmen's
 6 Conference,⁷⁵² and the prosecution does not make a third
 7 suggestion in summation. As mentioned before, KONOYE had
 8 preferred TOJO to OIKAWA.⁷⁵³
 9

10 244. Contrary to the prosecution's assertion,
 11 there is no difference between the contemporary documents
 12 -- the complete record of the meeting of the Senior States-
 13 men;⁷⁵⁴ the brief resume of the important points thereof
 14 contained in KIDO's Diary,⁷⁵⁵ and KIDO's description in
 15 the article he wrote in November 1941.⁷⁵⁶ The prosecution
 16 bandies with words, apparently in the hope that the Tribun-
 17 al will overlook the fact that these three contemporary
 18 documents definitely establish that TOJO was not recommend-
 19 ed by either KIDO or the Senior Statesmen for the purpose
 20 of going to war.
 21

22 245. The idea of KIDO and the Senior Statesmen
 23 to have a military leader assume the helm of state with a

24 751. T. 31,600

752. Aff. par. 216, T. 31,016

753. Ex. 1148, T. 10,271

25 754. Aff. par. 216, T. 30,001 - 31,018

755. Ex. 1154, T. 10,201 as corr.Lang.Sec. T. 11,142

756. Ex. 2250, T. 16,198 - 16,211

strict control over the military was not a new one.

¹MATSUDAIRA, Yasumasa testified that Mr. HIROTA had told
²him in July 1941: "that for the purpose of adjusting the
³eccentric way of the military there was no other way but
⁴to have military leaders occupy the responsible posts
⁵and assume the helm of state with a strict control over
⁶the military"⁷⁵⁷ and that Marquis MATSUDAIRA reported
⁷this to Marquis KIDO prior to October 17, 1941.⁷⁵⁸ The
⁸prosecution did not desire to cross-examine him.
⁹

¹⁰246. Admiral SHIMADA also expressed the same
¹¹sentiments when he said on cross-examination: "The
¹²purport of my meaning as set forth there in my affidavit
¹³is that in this connection, in order to bring about a
¹⁴settlement of the negotiations between Japan and the
¹⁵United States, it would be necessary first of all to
¹⁶effect a powerful control over the General Staff Office
¹⁷of the army. Unless that were done, it would be difficult."⁷⁵⁹

¹⁸247. KIDO fully reported the result of the
¹⁹Senior Statesmen Conference to the Emperor and recommended
²⁰TOJO to the Throne as the next Premier.⁷⁶⁰

²¹248. In order to carry out the suggestion to
²²disregard the Imperial Decision of September 6, 1941 and
²³the suggestion that the Army and Navy cooperate closer,
²⁴

²⁵757. T. 30,026, 30,027

758. Ibid.

759. T. 34,691

760. Aff. par. 218, T. 31,018 - 31,019

1 KIDO asked the Emperor that such instructions be given to
2 TOJO and OIKAWA.⁷⁶¹ TOJO was then called to the palace
3 and received Imperial instructions to form a new cabinet
4 and was told, "At this juncture you will see to it that
5 the cooperation between the army and the navy is made
6 closer than ever."⁷⁶² OIKAWA was then called in audience
7 and instructed by the Emperor that he, himself ". . .
8 must see to it that the cooperation between the army and
9 navy is made closer than ever."⁷⁶³ After retiring from
10 the Imperial presence, KIDO, in accordance with instruc-
11 tions from the Emperor, told both TOJO and OIKAWA:⁷⁶⁴

12 "I presume that you have just received Imperial
13 words in regard to cooperation between the Army and the
14 Navy. As regards the fundamental line of national
15 policy, I am commanded to convey to you the Imperial
16 desire that the careful considerations be taken by
17 studying both the internal and the external situations
18 more comprehensively and more profoundly than ever,
19 regardless of the resolution of the September 6 Imperial
20 Conference."

21
22 249. The prosecution claims that there are two
23 different contemporary statements of the two communica-

24 761. Ibid

762. Aff. par. 219, T. 31,021

25 763. Ibid.

764. Aff. par. 218, Tr. 31,019

1 tions of the Emperor and KIDO's own communication to
2 TOJO and OIKAWA,⁷⁶⁵ one in KIDO's Diary,⁷⁶⁶ and as
3 set forth by KIDO in the statement he made in November,
4 1941.⁷⁶⁷ In his diary KIDO set forth the exact words
5 of the message which he gave to TOJO and OIKAWA. In
6 his resume of November, 1941 he set forth the exact
7 words of this message and, in addition, both instruc-
8 tions that the Emperor had given TOJO and OIKAWA. In
9 his affidavit he sets forth in full the three communi-
10 cations.⁷⁶⁸ There is no difference in the original
11 Japanese of these communications. The original Japanese
12 of all three communications contained in the November,
13 1941 statement is the same as the original Japanese
14 contained in KIDO's affidavit, (which are correct
15 translations) and the same is true with respect to
16 the other communication which KIDO delivered to TOJO
17 and OIKAWA as set forth in his diary of October 17, 1941.
18 The difference is not a difference of contemporary
19 accounts, as the prosecution would have the Tribunal
20 believe. It is a difference of the prosecution's
21 translations.
22

23 765. Par. JJ-77, T. 41,117

24 766. Ex. 1154, T. 10,291-10,299 as corr. by
Lang. Sec., T. 11,142

25 767. Ex. 2250, T. 16,210-16,211

768. Aff. Paras. 218 - 219, T. 31,018-19-20-21.

1 tions of the Emperor and KIDO's own communication to
2 TOJO and OIKAWA, ⁷⁶⁵ one in KIDO's Diary, ⁷⁶⁶ and as
3 set forth by KIDO in the statement he made in November,
4 1941. ⁷⁶⁷ In his diary KIDO set forth the exact words
5 of the message which he gave to TOJO and OIKAWA. In
6 his resume of November, 1941 he set forth the exact
7 words of this message and, in addition, both instruc-
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11 Japanese of these communications. The original Japanese
12 of all three communications contained in the November,
13 1941 statement is the same as the original Japanese
14 contained in KIDO's affidavit, (which are correct
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16 the other communication which KIDO delivered to TOJO
17 and OIKAWA as set forth in his diary of October 17, 1941.
18 The difference is not a difference of contemporary
19 accounts, as the prosecution would have the Tribunal
20 believe. It is a difference of the prosecution's
21 translations.

22 765. Par. JJ-77, T. 41,117

23 766. Ex. 1154, T. 10,291-10,299 as corr. by
24 Lang. Sec., T. 11,142

25 767. Ex. 2250, T. 16,210-16,211

768. Aff. Paras. 218 - 219, T. 31,018-19-20-21.

1 250. The accused TOGO has presented several
2 peeves against KIDO. Although KIDO was not previously
3 cross-examined by TOGO's counsel on any of these, TOGO
4 was cross-examined on all of these. For example, in his
5 direct testimony TOGO complained that the Foreign Minister
6 was ignored in the taking of serious decisions affecting
7 the national policy and cited the instance on October 17,
8 1941 when the Lord Keeper of the Privy Seal called in the
9 outgoing War and Navy Ministers but not the Foreign Min-
10 ister. Yet in the next paragraph he admits in substance
11 that he knew that when asked by TOJO on October 17, 1941
12 to assume the post of Foreign Minister. It is only reas-
13 onable to suppose that the Prime Minister would convey
14 the Emperor's orders to his new cabinet which he, in fact,
15 did. It is also obvious that the reason why the outgoing
16 War and Navy Ministers were given the instructions was
17 because of the Emperor's orders that there should be
18 close cooperation between the Army and Navy, and it was
19 these officials who had a say in the appointment of the
20 new War and Navy Ministers. Furthermore, KIDO was carry-
21 ing out the instructions of the Emperor in giving the
22 orders to the outgoing War and Navy Ministers. ⁷⁶⁹

24 Apparently TOGO relented from his pœve because when he
25 was asked about this criticism of KIDO on cross-examina-

1 ation, and it was pointed out to him the efforts of the
2 Emperor on the advice of KIDO to give those instructions,
3 TOGO stated: "I have no desire whatsoever to comment
4 or criticize the wishes expressed by the Emperor. 770

5 THE PRESIDENT: We will adjourn until half
6 past one.

7 (Whereupon, at 1200, a recess was taken.)

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9 - - -

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: With the Tribunal's permission
the accused TOGO will be absent from the courtroom the
whole of the afternoon conferring with his counsel.

Mr. Logan.

MR. LOGAN: If the Tribunal please, I would
like to continue reading the summation of KIDO, page
212, paragraph 251.

Let us examine the statement of November 1941
in which KIDO stressed the difficulties which attended
his efforts to save the situation following the resig-
nation of the KONOYE Cabinet. ⁷⁷¹ These difficulties as
set forth therein were:

(1) Objectively regarded, there was no can-
didate for the premiership who could stand comparison
with Prince KONOYE.

(2) The real cause of the cabinet change
was the question of interpretation of the decision
of the Imperial Conference of September 6, 1941, infor-
mation on which was not released for publication.

771. Ex. 2250, T. 16, 199 as cor. by Language Section

1 (3) The developments of the situation called
2 for the repeal of the decision of the aforesaid Im-
3 perial Conference so as to start afresh with a clean
4 slate.

5 (4) The decision of the Imperial Conference
6 to the effect that it should be decided to wage war
7 with America unless it would definitely appear that
8 diplomatic negotiations with America would be success-
9 ful not later than the first part of October was tan-
10 tantamount to the transfer of the Imperial standard to
11 the military, and therefore it would be extremely dif-
12 ficult to wipe the slate clean and study the question
13 from a new angle.

14 (5) Consequently one who is to be commanded
15 by the Emperor to form a succeeding cabinet should be
16 able not only to control the Army fully but also to
17 effect harmony and cooperation between the Army and the
18 Navy and in full pursuance of Imperial wishes.

19 (6) One who would be able to fulfill those
20 conditions would not only be fully acquainted with the
21 above circumstances, but be able to reflect on them
22 leading to the present situation. Thus, an outsider
23 would not understand them or be able to oppose the
24 military, therefore defeating the purpose of the cab-
25 inet change.

1 252. Ambassador Grew knew of the elements
2 within the Army pressing for war. In recording his
3 conversation with Prince KONOYE on September 6, 1941
4 he set forth what Prince KONOYE told him as follows:

5 "He admitted that there are certain elements
6 within the armed forces who do not approve his
7 policies, but he voiced the conviction that since
8 he had the full support of the responsible
9 chiefs of the Army and Navy it would be possi-
10 ble for him to put down and control any opposi-
11 tion which might develop among these elements."⁷⁷²

12 253. From the foregoing it is quite apparent
13 that it is idle for the prosecution to say that KIDO
14 at that time did not have in mind a premier who would
15 be able to control the Army if the negotiations for
16 peace were successful. We also refer to the corrobor-
17 ating evidence on cross-examination of the witness
18 ⁷⁷³
19 TOMIYOSHI.

20 254. It is idle for the prosecution to con-
21 tend that no contemporary document sustains KIDO's
22 affidavit in which he states his opinion which was
23 shared by others, that UGAKI would not have been able
24 to form a cabinet for if he did there would have been
25 a revolution in Japan followed by war. KIDO's account

⁷⁷². T. 25,371

⁷⁷³. T. 35,533-7

1 stressed, and there were demands directed to
2 me from various quarters to heed this argument,
3 but as for myself, I estimated it was unsuitable
4 at this time, according to the aforementioned
5 reasons. Consequently, I finally determined to
6 recommend War Minister TOJO to the Throne. Be-
7 ing resolved to take over the whole responsibil-
8 ity upon myself, I submitted the recommendation
9 to the Emperor."⁷⁷⁵

10 255. In view of this can the prosecution
11 seriously contend that KIDO did not have in mind the
12 fact that UGAKI would be unable to form a cabinet or
13 if he did there would have been a revolution in Japan
14 followed by war? It was well known to everyone that
15 UGAKI was unable to control the Army. UGAKI indicated
16 that himself before this Tribunal.⁷⁷⁶ He was retired
17 at that time and was not familiar with the circumstances
18 which had brought on the situation. Furthermore, the
19 contemporary document of the Senior Statesmen Confer-
20 ences⁷⁷⁷ definitely shows that UGAKI was considered by
21 the Senior Statesmen and that they, too, knew that he
22 would be unable to control the militarists. As a
23 matter of fact, as shown KIDO specifically said at that
24

25 775. Ex. 2250 as cor. by Language Section, T. 16,211

776. T. 23,891

777. Aff. par. 216, T. 31,005-31,018

meeting:

1 "I am inclined to believe that it will be
2 extremely difficult for General UGAKI to restrain
3 the militarists."⁷⁷⁸

4 256. This is another example where the prose-
5 cution, lacking evidence that KIDO did anything wrong,
6 endeavors to confuse the issues by beclouding them.
7 What other interpretation could be put on the words
8 "controlling the militarists," than a prevention of a
9 revolution followed by war in the event peace negotia-
10 tions succeeded? The prosecution takes one position
11 in its summation against KIDO and another position in
12 its general summation. It adopts the defense position
13 on this matter in general summation when commenting on
14 the fact that the advisors of the Emperor were in mortal
15 fear of assassination. The prosecution says:

17 "They knew full well that in the event
18 that TOJO, the leader of these irresponsible
19 militarists, was not chosen to be the head of
20 the Japanese Government they faced a national
21 insurrection and even a coup d'etat."⁷⁷⁹

22
23 257. Now, just what did the words, "coopera-
24 tion between the Army and Navy" mean? Let us examine
25 the prosecution's interpretations, and then compare them

778. T. 31,014

779. Par. 18, Pros. Argument, T. 38,962

1 with the evidence. On January 24, 1947, the prosecution's position was that KIDO's words and the Emperor's
2 words to OIKAWA and TOJO,

3 ". . . could only mean that they should
4 appoint a Navy Minister who would do whatever
5 TOJO told them. They appointed SHIMADA -- and
6 he did.⁷⁸⁰"

7
8 Today, however, after it was affirmatively demonstrated
9 that neither KIDO nor TOJO had anything whatsoever to
10 do with the appointment of Navy Minister SHIMADA, now,
11 chameleon-like, the position changes. The prosecution
12 now says with respect to the instructions to TOJO and
13 OIKAWA:

14 "The whole thing in our submission plainly
15 means no more than this -- 'before you decide
16 on war be sure that both the Army and the Navy
17 are agreed that we shall win.'⁷⁸¹"

18 258. Thus, although on two separate occasions
19 it contended that the instructions could mean only one
20 thing, the prosecution sets forth two different things
21 they could mean:

22 (1) A Navy Minister who would do TOJO's
23 bidding;

24 (2) Before decision on war, assurance must
25

780. Pros. Dec. 0003, P. 49, T. 16,853

781. Par. JJ-77, T. 41,118

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2 words to OIKAWA and TOJO,

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780. Pros. Dec. 0003, P. 49, T. 16,853

781. Par. JJ-77, T. 41,118

1 be made that the Army and Navy are agreed that Japan
2 shall win.

3 Let us give the prosecution the benefit of the doubt
4 and assume that it meant to say that its guess is that
5 the instructions meant either or both. The evidence,
6 as opposed to the prosecution's guess, or guesses, shows
7 how wrong is the prosecution.

8 259. Let us now examine the evidence which
9 the prosecution overlooked. First, with respect to
10 SHIMADA. The evidence is overwhelming that KIDO had
11 absolutely nothing to do with the appointment of SHIMADA.
12 Admiral OIKAWA, who was the recipient of the instruc-
13 tions from KIDO and the Emperor, testified that neither
14 KIDO nor anyone on his behalf ever spoke to him and
15 suggested that SHIMADA be appointed Navy Minister.⁷⁸²
16 He also testified that SHIMADA was not appointed Navy
17 Minister at the request of General TOJO or anyone else
18 on his behalf. He stated that he himself ". . . felt
19 that SHIMADA would be the most appropriate person to
20 take charge of the Navy Ministry and to help solve the
21 situation, and did my utmost to persuade SHIMADA to
22 accept the post. Other Navy leaders also felt the same
23 way I did."⁷⁸³ He denied emphatically that anyone outside
24 of the Navy Ministry or naval circles brought any
25

782. T. 33,344

783. T. 33,346

pressure whatsoever to bear with respect to the appoint-
ment of Admiral SHIMADA as Navy Minister. ⁷⁸⁴ Admiral
OIKAWA also testified: ⁷⁸⁵

"From the evening of October 16, 1941 until I arose the following morning I carefully deliberated as to whom to recommend as Navy Minister. Around 11 a.m. that morning I went to see Prince FUSHIMI and told him that I considered SHIMADA as my logical successor and he agreed that SHIMADA was the best choice of available candidates. My opinion was definitely formulated on the morning of October 17, 1941 and before I knew TOJO was to assume the premiership. Therefore, there is absolutely no truth to the allegation that Admiral SHIMADA was appointed because TOJO wanted him to be. To my knowledge Admiral SHIMADA and TOJO were not even acquainted at that time."

260. In his direct testimony Admiral SHIMADA said:

"He (OIKAWA) then told me he would like to recommend me as his successor for the Navy Ministership under a new cabinet which was being formed. He said that he had carefully considered all of

784. T. 33,347
785. T. 34,572

1 the available high-ranking naval officers and
 2 had come to the conclusion that I was best quali-
 3 fied for the post."⁷⁸⁶

4 He, too, clearly stated that no pressure was
 5 brought by KIDO or anyone else to have him appointed
 6 to do the bidding of TOJO.⁷⁸⁷

7 261. TOJO, the other recipient of the instruc-
 8 tions, testified at no time did KIDO either directly
 9 or indirectly, in writing or orally, by any deed of his
 10 or any act, have anything whatsoever to do with the
 11 appointment of SHIMADA as Navy Minister.⁷⁸⁸ To show the
 12 lack of importance of KIDO and that he had no influence
 13 over the military the Tribunal's attention is directed
 14 to the fact that TOJO even went further in saying,
 15 "Even if he did, I would not have permitted him to do
 16 so."⁷⁸⁹ This is further demonstrated by the testimony
 17 of Admiral SHIMADA. After testifying that he only came
 18 to know KIDO after he had been appointed Navy Minister
 19 the record reveals the following questions and answers:⁷⁹⁰

20 "Q Did KIDO at any time prior to your acceptance
 21 of the post of Navy Minister ever speak with you and
 22 ask you to accept the post?

23 "A Preposterous. It is absolutely not the case.

24 "Q Did he ever send anyone to you and ask you
 25

786. T. 34,650

789. Ibid.

787. T. 34,686

790. T. 34,686

788. T. 36,520

on his behalf to accept the position as Navy Minister?

1 "A If any messenger like that came I would just
2 bark at him and kick him out."

3 262. In guessing that SHIMADA was appointed
4 to do TOJO's bidding, the prosecution ignores the fact
5 that NAGANO, who was Chief of the Navy General Staff
6 in the KONOYE Cabinet, continued in that powerful of-
7 fice in the TOJO Cabinet. It was NAGANO who, on July
8 31, 1941, told the Emperor in referring to a war with
9 America, "It was even doubtful whether or not we would
10 even win . . ."⁷⁹¹

11 263. Now let us examine the evidence to see
12 if the prosecution's second guess is correct. KIDO
13 says:
14

15 ". . . on the part of the Army it was to
16 refrain from acting as it pleased in defiance
17 of the intentions of the Navy which was anxious
18 to avoid war with America and on the part of the
19 Navy to manifest its intentions clearly so as to
20 seek a peaceful solution of the outstanding
21 question between Japan and America."⁷⁹²

22 This was the thought behind his statement
23 expressed at the Senior Statesmen Conference.⁷⁹³

24 791. Ex. 1125, T. 10,186 as ccr. by Language Section,
25 T. 10,667

792. Aff. par. 223, T. 31,025

793. Aff. par. 223, T. 31,024-31,025

264. KIDO's statement is corroborated by
others. Admiral OIKAWA testified:⁷⁹⁴

"I interpreted the Emperor's words to mean that both the Army and the Navy should reject all obstacles which hitherto had presented themselves and which might tend to make impossible the further continuance of Japan-American negotiations, and from a new and impartial standpoint confer with each other for the purpose of striving to solve the situation peacefully. This was because the Emperor had always earnestly desired for the peaceful solution of the situation."

TOJO confirmed OIKAWA's interpretation when
cross-examined and said,⁷⁹⁵

"But I am convinced that there can be no lie in what OIKAWA has said before this Tribunal on oath,"

adding,

"I was well aware indeed of the Emperor's state of mind, namely, that the Emperor was extremely desirous of effecting a peaceful solution of the situation, and I am sure that

794. T. 33,345
795. T. 36,506

1 my interpretation of the Emperor's state of
2 mind was correct."⁷⁹⁶

3 When asked if he interpreted the Emperor's
4 words to mean that the Army should blindly follow the
5 Navy or that the Navy should blindly follow the Army
6 as suggested by the prosecution,⁷⁹⁷ TOJO replied,⁷⁹⁸

7 "Even as a matter of common sense such a
8 proposition is inconceivable, and it is equally
9 inconceivable that the Emperor should think of
10 such a stupid thing."

11 There is no evidence in the case refuting this
12 testimony. Both of the prosecution's guesses are con-
13 trary to the evidence.

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23 796. T. 36,507
24 797. T. 36,505
25 798. Ibid.

1 265. Once again in summing up the facts
2 surrounding the recommendations of TOJO and the instruc-
3 tions to him that the September 6th Decision should be
4 re-examined and that there should be cooperation be-
5 tween the Army and Navy, the prosecution says, "As
6 always there was no reference to the kind of agreement
7 to be reached or policy to be adopted."⁷⁹⁹ If this
8 is the most that the prosecution can get out of this
9 evidence we submit that the prosecution admits that
10 it has failed to sustain its burden of proof that KIDO
11 conspired to commit any of the acts set forth in the
12 Indictment, because it charges that he conspired to
13 commit the acts set forth therein, not "some kind of
14 an agreement or policy."

15 266. The prosecution's question⁸⁰⁰ on KIDO's
16 belief that if the Emperor told TOJO to do something
17 he would faithfully obey is why did KIDO not advise
18 the Emperor to order TOJO not to make war. KIDO's
19 belief that TOJO would faithfully obey the Emperor
20 is corroborated by the testimony of MUTO.⁸⁰¹ The
21 Imperial Command given to TOJO and OIKAWA and KIDO's
22 statement to them that close cooperation should be had
23 between the Navy and Army, and that the decision of
24

25 (799. Par. JJ-75, Tr. 41,116
800. Pros Arg. JJ-77, Tr. 41,116
801. Tr. 33,165)

September 6th should be reviewed can be construed as
1 nothing else but the Emperor's order to TOJO and
2 OIKAWA not to plunge Japan into war.

3 267. Although in KIDO's summation the prosecu-
4 tion refuses to accept KIDO's interpretation of these
5 orders, in its individual summation against TOJO it
6 does accept them and claims that TOJO did not examine
7 the negotiations from a clean slate basis and instead
8 "He, in fact, violated a solemn trust imposed upon
9 him by the Emperor, when he was invested with the
10 highest government position in the Empire⁸⁰²***."
11 Compare this with the two guesses above mentioned.

12 268. The contention of the prosecution is
13 that KIDO's recitation of KONOYE's message to him on
14 the morning of October 17, 1941 wherein KONOYE approved
15 of the recommendation of TOJO containing the provision
16 that he strive for peace does not appear in any con-
17 temporary document. Apparently it has overlooked the
18 fact that KONOYE's own memoirs contained words to the
19 same effect.⁸⁰³ Furthermore, as shown above, the
20 prosecution itself has construed the messages of the
21 Emperor and KIDO to OIKAWA and to TOJO as "striving for
22 peace" in its individual summation against TOJO. In
23
24 (802. Pros. Arg. XX-62, Tr. 41,999
25 803. Ix. 1148, Tr. 10,271)

1 view of this, the prosecution's question of why KIDO
2 delivered these messages instead of the Emperor is
3 of no moment,⁸⁰⁴ and the question with respect to what
4 inference OIKAWA could be expected to draw was answered
5 by OIKAWA himself as quoted above.⁸⁰⁵

6 269. The corroborative evidence is over-
7 whelming that TOJO was recommended as Prime Minister
8 for purposes of peace and not war.

9 270. KAYA testified⁸⁰⁶ to the conversation
10 he had with TOJO before he accepted the position as
11 Finance Minister. KAYA stated TOJO replied in the
12 negative to his query as to whether he, TOJO, was
13 decided on waging war against the United States. TOJO
14 definitely stated that he intended to continue with
15 the Japanese-American negotiations and exert his
16 efforts toward an amicable settlement. He also told
17 KAYA he would work toward a closer relationship between
18 the Supreme Command and the Cabinet. KAYA was relieved
19 to learn of TOJO's intentions. YUKI, Toyotaro testified
20 that he had a conversation with KAYA which confirms
21 KAYA's statement above.⁸⁰⁷ YUKI was not cross-examined.
22 KOBAYASHI, Seizo also testified that he talked with
23 KAYA and KAYA told him that TOJO had informed him that
24

25 (804. Par. JJ-77, Tr. 41,117

805. Infra. P. 220

806. Tr. 30,648-30,649

807. Tr. 30,557)

1 the United States-Japanese negotiations would be
2 continued and that he was resolved to do his best to
3 arrive at an understanding. ⁸⁰⁸ KOBAYASHI was not
4 cross-examined. This evidence was also corroborated
5 by GOTO, Ryunosuke. ³⁰⁹ Again no cross-examination.

6 271. TOGO testified that before he accented
7 the position as Foreign Minister he had a conversation
8 with TOJO in which after hearing TOJO's explanation
9 as to the downfall of the KONOYE Cabinet he said he
10 would agree to enter the cabinet only if the Army con-
11 sented to make considerable allowances in reviewing
12 the question of troop stationing and re-examination
13 of the other questions in the Japanese negotiations.
14 TOJO assured him that reconsideration might be under-
15 taken. ⁸¹⁰ SUZUKI, Tomin, an editorial writer from
16 Yomiuri Shimbun, a prosecution witness, testified on
17 cross-examination as to TOJO's intentions for peace
18 when he offered the Foreign Ministership to TOGO. ⁸¹¹
19 TOGO's testimony on this point was also corroborated
20 by TOMIYOSHI. ⁸¹²

21 272. The accused MUTO testified ⁸¹³ that
22 TOJO did not even dream that he would receive an order
23

24 (808. Tr. 30,603
25 809. Tr. 30,609
810. Tr. 35,671-35,672
811. Tr. 1235
812. Tr. 35,524
813. Tr. 33,167)

to form a cabinet. He stated that when TOJO was ordered
1 to appear at the Palace, TOJO left his office feeling
2 that because of the resignation en bloc of the Third
3 KONOYE Cabinet he was to be berated by the Emperor
4 and that he would be asked various questions by the
5 Emperor and he went there prepared for this. The accused
6 MUTO also testified that at the first Liaison Confer-
7 ence after he formed his Cabinet, TOJO said in effect,
8 "that the Liaison Conference, standing on a new
9 position and without being bound by the Imperial Con-
10 ference Decision of September 6th, will study ways
11 and means of bringing about a settlement of the pending
12 issues between Japan and the United States." ⁸¹⁴ This
13 was confirmed by the witness YAMAMOTO, Kumaichi when
14 he said:
15

16 "This intention of the new government
17 was confirmed by Premier TOJO, who in the
18 opening address at the first meeting of
19 the Liaison Confernece after the formation
20 of his ministry said that the policy of the
21 new cabinet would be to reconsider the problem
22 without being bound by the decision of 6
23 September, and asked the agreement thereto
24 of the representatives of the High Command,
25

(814. Tr. 33,172)

which was given." ⁸¹⁵

1 . 273. OIKAWA testified ⁸¹⁶ that when he with-
2 drew from the audience with the Emperor on the evening
3 of October 17 he and General TOJO were seated alone
4 in the waiting room and that he had a conversation
5 with General TOJO, the general outline of which was
6 the firmness of TOJO's resolution to throw away all
7 obstacles which had been obstructing their path in the
8 past, to wipe the slate clean and to start out afresh
9 in line with the words which he had just received
10 from the Emperor. OIKAWA also stated that he received
11 an impression that TOJO did have a strong resolve to
12 carry that out. OIKAWA also testified ⁸¹⁷ on cross-
13 examination that the decision of wiping the slate
14 clean did not mean that an early decision for war would
15 be made but it meant that the decision of the Imperial
16 Conference of September 6th would be scrapped, and
17 that viewing the international situation anew a new
18 approach would be made to the problem. He significantly
19 stated, "At that time no one had any idea of waging
20 a war within the matter of a few weeks simply by the
21 fact of wiping the slate clean." ⁸¹⁸

- 23 (815. Tr. 25,921
24 816. Tr. 33,345-33,346
25 817. Tr. 34,591-34,592
818. Ibid.

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18 approach would be made to the problem. He significantly
19 stated, "At that time no one had any idea of waging
20 a war within the matter of a few weeks simply by the
21 fact of wiping the slate clean."⁸¹⁸

23 815. Tr. 25,921

24 816. Tr. 33,345-33,346

25 817. Tr. 34,591-34,592

818. Ibid.

1 and will be composed primarily of military
2 men. The new Cabinet may even appear to
3 be extremist to persons unacquainted with
4 the set-up of the various groups within
5 the Japanese Army and other factions
6 having influence in the Government. However,
7 Prince KONOYE entertains the hope that
8 the Ambassador will stress to the Govern-
9 ment of the United States that too great
10 importance should not be given to the
11 outward appearance of the new Cabinet.
12 Prince KONOYE also desires the Ambassador
13 to understand that he would not have tendered
14 his resignation at this moment without hav-
15 ing convinced himself that the succeeding
16 Prime Minister would be equally desirous
17 of adjusting Japanese-American relations." 823

18
19
20
21
22
23
24 (823. Tr. 25,858-25,859)
25

determine a person more suitable than TOJO how is it
1 in any position to criticize KIDO, let alone ask for
2 his life.

3 278. We have no desire to criticize the
4 prosecution for being baffled because it required a
5 miracle at that time to appoint some one who would be
6 able to control the militarists and continue the nego-
7 tiations with America. This was so pointedly recorded
8 by Counselor Dooman of the American Embassy in Japan
9 in a memorandum dated October 17, 1941:
10

11 "Prince KONOYE about a week ago had de-
12 cided to resign in view of the internal situ-
13 ation in Japan. At that time it appeared
14 inevitable that the succeeding cabinet would
15 be one of an extremist nature but Prince
16 KONOYE through intensive effort and 'by a
17 miracle' had in recent days been successful
18 in ensuring that the government to succeed him
19 would be composed of persons who did not subscribe
20 to the principle that the conversations with the
21 United States should be broken off.

22 "No Japanese civilian statesman will
23 undertake the task in which Prince KONOYE
24 has failed and consequently the succeeding
25 cabinet must be headed by an Army officer

1 and will be composed primarily of military
2 men. The new Cabinet may even appear to
3 be extremist to persons unacquainted with
4 the set-up of the various groups within
5 the Japanese Army and other factions
6 having influence in the Government. However,
7 Prince KONOYE entertains the hope that
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10 importance should not be given to the
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14 his resignation at this moment without hav-
15 ing convinced himself that the succeeding
16 Prime Minister would be equally desirous
17 of adjusting Japanese-American relations." 823
18
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24 (823. Tr. 25,858-25,859)
25

279. As shown one may read KIDO's November
 1 1941 historical portrayal of the events leading up to
 2 the appointment of TOJO, and all the other contemporary
 3 documents, and oral testimony in vain for any indication
 4 that TOJO was appointed for the purpose of waging war
 5 with America. After consultation with the Senior
 6 Statesmen KIDO personally assumed the responsibility
 7 to the Emperor of making the recommendation and it
 8 would be far fetched to argue that any criminal
 9 responsibility attached from such assumption. There
 10 can be no question but that conditions in Japan were
 11 exceedingly critical at that time with the Allied
 12 pressure from the outside, both economic and military,
 13 and the younger militarists in Japan pressing for war
 14 and the navy undecided. It is no wonder that when
 15 KIDO reported to the Emperor on October 20, 1941, that
 16 ". . . one mistaken step taken in the present cabinet
 17 change might have inadvertently plunged us into war"⁸²⁴
 18 and that the appointment of TOJO was in his belief". . .
 19 the only way of giving a new turn to the situation. . ."⁸²⁵
 20 His Majesty replied "He who will not go into the tiger's
 21 den will not get the tiger cub."⁸²⁶ The Emperor too
 22 realized "nothing ventured, nothing gained."⁸²⁷ The

23 824. Ex. 1156, T. 10295; 825. Ibid. 826. Ibid.
 24 827. Aff. par. 226, T. 31027.
 25

1 question might well be asked -- How long would a
2 person like KIDO have lasted in the Nazi Regime?

3 XII.

4 (G) Events Prior to Pearl Harbor.

5 280. There is an abundance of evidence in
6 this case concerning the effort TOJO and his cabinet
7 made to wipe the slate clean and effect peace between
8 the United States and Japan. KIDO of course had nothing
9 to do with these steps so we will mention them here
10 only briefly. Among other things TOJO undertook an
11 exhaustive study at the Liaison Conferences during
12 the latter part of October of the possibilities of
13 effecting peace negotiations with America; ^{828.} the
14 preparation and submission of proposals A and B; ⁸²⁹
15 the dispatch of KURUSU to America; ⁸³⁰ and TOJO even
16 went so far as to call, upon approval of the Emperor,
17 a meeting of the Military Councillors. This was the
18 first time it was called since the establishment of
19 the Military Councillor system in 1903. ^{831.} TOJO
20 testified to KIDO's elation upon hearing about the
21 decision to withdraw the troops from South Indo
22 China. ^{832.} The situation gradually changed so that it

24 828. T. 36316; 829. T. 36326; 830. T. 36347.
25 831. T. 36329 et seq; 832. T. 36519 - 36520.

1 became necessary for the government to prepare for
2 war and for peace,^{833.} as consideration had to be
3 paid to the worst eventuality of a rupture in negotia-
4 tions.

5 281. The Imperial Conference of November
6 5 came to pass at which Japan's policy towards the
7 United States, England and the Netherlands was decided
8 according to the principles studied by the Liaison
9 Conferences. KIDO of course had no part in this:⁸³⁴

10 At that time a very ugly transformation came over the
11 country.^{835.} The guard around KIDO's house was

12 increased from 10 to 15 policemen in the day time and
13 at night was increased from 25 to 35. He had to follow
14 a different route every day in driving to and from his
15 office.^{836.} The reason for this is quite obvious.

16 The testimony is uncontradicted that KIDO was regarded
17 as pro-British and pro-American. We need refer the
18 Tribunal only to the testimony of former German
19 Ambassador Ott and the accused MATSUI. Ott stated:^{837.}

20 "The attitude of the Reich Government toward
21 Marquis KIDO was one of distrust. He was considered

22 833. Aff. par. 230, T. 31030.

23 834. Aff. par. 231, T. 31031.

24 835. Aff. par. 232, T. 31032.

25 836. Ibid.

837. T. 34908.

4 MATSUDAIRA's views,

5 Berlin."

6 No wonder KIDO never received a decoration
7 from the German Government. MATSUI's statement on
8 cross-examination was as follows: 838.

9 ". . . But on the whole, from my own obser-
10 vation, I felt that the Lord Keeper was somewhat more
11 pro-British and pro-American than such people as
12 myself. But at the same time he was a patriotic
13 Japanese."
14

15 282. KIDO testified the solidarity of young
16 military and naval officers became tightened with the
17 result that an atmosphere was created in the fighting
18 services themselves opposing the policy of the leaders
19 of the army and navy for the adjustment of relations
20 between Japan and America. 839.
21 Fretful impatience was
22 the order of the day. On November 19, 1941 KIDO had
23 an audience with the Emperor. 840.
24 KIDO counseled the
25 Emperor at this time to strongly deprecate entering

838. T. 33920.

839. Aff. par. 233, T. 31032.

840. Ex. 1181, T. 10389 as cor. Lang. Sec. T. 11143.

16 283. The prosecution neither condemns nor
17 commends KIDO for recommending that a meeting with
18 the Senior Statesmen be held. It just misstates the
19 procedure never happened. 843. The reason is obvious.
20 KIDO thought as a last resort the Senior Statesmen
21 might be able to avert the crisis and avoid war. As
22 shown in KIDO's Diary of November 26, 1941 844. the

23 841. Aff. par. 233, T. 31033.

24 842. Ex. 1181, T. 11143.

25 843. Par. JJ-80, T. 41119.

844. Ex. 1190 as cor. Lang. Sec. T. 10429 - additional
excerpts Aff. par. 233, T. 31034 - 31035.

1 as belonging to the group which did not favor the
2 improvement of the Japanese-German relations, primarily
3 under the leadership of the Minister of the Imperial
4 Household, MATSUDAIRA. I considered KIDO in line with
5 MATSUDAIRA's views, and this feeling was shared in
6 Berlin."

7 No wonder KIDO never received a decoration
8 from the German Government. MATSUI's statement on
9 cross-examination was as follows:
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25 838. T. 33920.

839. Aff. par. 233, T. 31032.

840. Ex. 1181, T. 10389 as cor. Lang. Sec. T. 11143.

1 into a state of war with the passing of the end of
2 November just as if it were a matter of routine business
3 and instead that the situation should be handled with
4 a most cautious attitude as it was conceived that the
5 negotiations with America by the end of November might
6 be in one of various states. ^{841.} As the exhibit
7 clearly shows, he further pointed out that by rushing
8 into war, influence on the unification of public opinion
9 would have an undesirable effect in the future and he
10 advised the Emperor. . . . when the Premier solicits
11 His Majesty's final decision, if circumstances require,
12 the Premier should be ordered to hold the council in
13 the Imperial presence with the participation therein
14 of all the Senior Statesmen." ^{842.}

15 283. The prosecution neither condemns nor
16 commends KIDO for recommending that a meeting with
17 the Senior Statesmen be held. It just misstates the
18 procedure never happened. ^{843.} The reason is obvious.
19 KIDO thought as a last resort the Senior Statesmen
20 might be able to avert the crisis and avoid war. As
21 shown in KIDO's Diary of November 26, 1941 ^{844.} the

22 841. Aff. par. 233, T. 31033.

23 842. Ex. 1181, T. 11143.

24 843. Par. JJ-80, T. 41119.

25 844. Ex. 1190 as cor. Lang. Sec. T. 10429 - additional
excerpts Aff. par. 233, T. 31034 - 31035.

1 Emperor approved of the conference with the Senior
2 Statesmen" . . . which should be convened to have
3 broader and more complete discussions on the matter."
4 In reply to the Emperor's statement on November 26, 1941
5 regarding the outlook of the Japanese-American talks
6 and fears that the worst might come to the worse, KIDO
7 replied:

8 "Once the final decision is made this time
9 it would truly be the last and irretrievably final
10 one. Thus if there should be any doubt or any better
11 idea to surmount the difficulties in your Majesty's
12 mind, I pray that your Majesty be pleased to elucidate
13 the same without the least reserve and appropriate
14 steps which your Majesty might not repent of afterwards.
15 I therefore pray that Your Majesty command the Premier
16 without reserve."

17 284. We submit that this speaks for itself.
18 The usual guess, this time extremely brief, of the
19 prosecution's interpretation of both of these diary
20 entries of November 19, 1941 and November 26, 1941 is
21 grossly distorted. ^{845.} The proper interpretation is
22 just the opposite of the prosecution's and clearly
23 demonstrates KIDO's innocence of having a criminal
24 mind. There was no cross-examination of KIDO on these
25 845. Part JJ-78, T. 41778.

1 entries or his testimony regarding them, and therefore
2 was not contested. On its face the diary entry of
3 November 26, 1941 clearly shows KIDO's prayer that
4 the Premier be commanded without reserve. It speaks
5 for itself.

6 285. Upon receipt of Secretary Hull's note
7 of November 26, 1941 it was felt that the American
8 proposal was so strong as to be entirely beyond the
9 pale of the contingencies which were anticipated by
10 KIDO.^{846.} The government said that the Hull note was
11 tantamount to an ultimatum.^{847.} The accused KAYA
12 said: "It was a big blow to all."^{848.}

13 286. On the morning of November 27, 1941,
14 a telegram from NOMURA and KURUSU dated November 26,
15 1941 was received in the Foreign Ministry. In it
16 substantially it was suggested that if conditions
17 do not change negotiations must be given up by them
18 and that they were humiliated at the lack of influence
19 and in this case the only way to bridge the difficulty
20 was to let President Roosevelt cable the Emperor and
21 ask the Emperor to answer.^{849.} This request was
22 conditioned on obtaining the permission from the Foreign
23

24 846. Ex. 1181, as cor. Lang. Sec. 11143.

25 847. Aff. par. 231, T. 31031.

848. T. 30655.

849. Ex. 2249, T. 16197.

Office. KIDO in his affidavit said he never saw this
850.
1 telegram.

2 287. This is confirmed by TOGO's admission
3 on cross-examination that he never showed the telegram
4 to KIDO and KIDO told him that he had not seen the
5 telegram. 851. KIDO testified 852 that he had no
6 recollection of talking to Foreign Minister TOGO about
7 the telegram. KIDO further stated that he does not
8 deny that TOGO spoke to him but if he did it must
9 have been after receipt of Secretary of State Hull's
10 message of the same date which had reached Japan and
11 created a changed situation minimizing the importance
12 of the telegram from NOMURA. He further stated that
13 he never had any weighty conference with TOGO about
14 it and that if TOGO spoke to him it must have been very
15 slightly due to the conditional nature of the telegram.
16 KIDO had nothing to do with Foreign Minister TOGO's
17 answering telegram of November 28, 1941. 853. KIDO
18 was not cross-examined by anyone with respect to either
19 of these telegrams.
20

21 288. According to the testimony of TOGO,
22 elicited on both direct and cross-examination, Secretary
23

24 850. Aff. par. 234, T. 31036.
851. T. 35820, 35821.
25 852. Aff. par. 234, T. 31036.
853. Ex. 1193, T. 10442 - 10443.

1 Hull's note and the telegram of November 26th from
 2 Ambassadors NOMURA and KURUSU arrived almost simultan-
 3 eously on the morning of the 27th.^{854.} He also stated
 4 on direct examination that the two ambassadors had no
 5 confidence in the success of the procedure outlined in
 6 their telegram of the 26th after receipt of Secretary
 7 Hull's note because in their telegram dispatched
 8 shortly after the receipt of the note they reported
 9 that there was no prospect of reaching an agreement and
 10 advised measures to be taken in case freedom of action
 11 was resorted to.^{855.}

12 289. TOGO also testified on direct examination
 13 that on the 28th of November he called on the Premier
 14 fifteen minutes before the cabinet meeting which was
 15 scheduled to convene at 10 a.m.⁸⁵⁶ He testified that
 16 the talk with the Premier and with SHIMADA who was
 17 also present was about the Ambassador's recommendation
 18 as well as the Hull Note.⁸⁵⁷ He explained to them the
 19 contents of this message.⁸⁵⁸ "Both the Premier and the
 20 Navy Minister were of opinion that there was absolutely
 21 no hope of a solution by such means as that proposed
 22 by the Ambassadors."⁸⁵⁹ TOGO then went to the cabinet

24 854. Tr. 35,818.
 25 855. Tr. 35,705, Ex. 2949.
 856. Tr. 35,706-35,707.
 857. Tr. 35,707.
 858. Ibid.
 859. Ibid.

40,705

meeting and left before its completion and he says that
1 before being received in audience he explained to KIDO
2 about the Hull Note and talked with him concerning the
3 two Ambassadors' recommendation. ⁸⁶⁰ YAMAMOTO, a Foreign
4 Office official, sides with TOGO in saying TOGO consulted
5 ⁸⁶¹ KIDO. TOGO further said that KIDO was of the opinion
6 that the Ambassadors' recommendation was insufficient
7 ⁸⁶² to save the situation.

9 290. The prosecution erroneously claims that
10 KIDO told TOGO that "If the conditions suggested by
11 the Ambassadors were accepted, the result might be
12 civil war." ⁸⁶³ The prosecution has misconstrued TOGO's
13 testimony. It is clear that TOGO was referring to
14 the Hull Note when he says that KIDO told him that
15 " * * * if its conditions were adopted as the basis
16 of a settlement, the result might be civil war." ⁸⁶⁴
17 TOGO admitted on cross-examination that there was a
18 discussion about the Hull Note at the cabinet meeting
19 and that the government had no confidence in its
20 realization and that applied to both the Hull Note and
21 ⁸⁶⁵ the telegram from Ambassadors NOMURA and KURUSU.

22 860. Ibid.

23 861. Tr. 26,064-26,065.

24 862. Tr. 35,707.

25 863. Par. JJ-79, Tr. 41,118.

864. Tr. 35,707, 35,708.

865. Tr. 35,818, 35,819.

It is important to note that TOGO testified that the
 1 government's decision on the Hull Note and on the
 2 telegram from NOMURA and KURUSU was made before TOGO
 3 spoke to KIDO.⁸⁶⁶ Thus KIDO had no opportunity to
 4 advise the Emperor, as the government had already made
 5 its decision. TOGO also testified on cross-examination
 6 that when he had an audience with the Emperor after
 7 he spoke with KIDO he spoke to His Majesty about the
 8 Hull Note but did not speak to His Majesty about the
 9 telegram from NOMURA and KURUSU.⁸⁶⁷ TOGO also admitted
 10 that the NOMURA-KURUSU telegram was in the nature of
 11 a diplomatic negotiation. He also admitted that it was
 12 his duty as Foreign Minister under the constitution and
 13 ordinances of Japan, that he had personal responsibility
 14 with respect to the duties of his office.⁸⁶⁸

15
 16 291. Notwithstanding this, he claimed it⁸⁶⁹
 17 was up to the government to decide whether the proposal
 18 contained in the Ambassadors' telegram should be adopted
 19 or not. The telegram however was conditioned upon
 20 approval of the Foreign Office. Although TOGO said
 21 that the government had no confidence in the realization
 22 of the suggestion of the Ambassadors⁸⁷⁰ he admitted later
 23

24 866. Tr. 35,819.

867. Tr. 35,822.

868. Tr. 35,822.

25 869. Tr. 35,822-35,823.

870. Tr. 35,818, 35,819.

on cross-examination that it was not submitted to the
1 cabinet: " * * * since the matter had been agreed upon
2 among the Prime Minister, the Navy Minister and the
3 Foreign Minister the matter need not be presented to
4 the cabinet, and it would be perfectly all right to say
5 that this agreement of views represented the views of
6 the government."⁸⁷¹ From this it is apparent KIDO had
7 no responsibility.
8

9 292. Although TOGO professed no desire to
10 shove responsibility to KIDO⁸⁷² he stated that if KIDO
11 believed steps should be taken in opposition to the
12 views of the government it would have been all right
13 for him to have suggested it to the Emperor.⁸⁷³ Apparently
14 this statement was made to excuse TOGO's report to
15 the Emperor of the government's decision on the Hull
16 Note before KIDO had an opportunity to speak with the
17 Emperor. It is quite apparent that TOGO was not fam-
18 iliar with the duties of the Lord Keeper of the Privy
19 Seal as his testimony is contrary to all the other
20 evidence submitted on the responsibility of the Lord
21 Keeper of the Privy Seal to the Emperor.⁸⁷⁴ Once the
22 government had arrived at a decision it was improper
23

24 871. Tr. 35,823-35,824.

872. Tr. 35,825.

25 873. Tr. 35,824.

874. Infra - p. 116-130.

for the Lord Keeper of the Privy Seal to advise the
 1 Emperor to take steps contrary to the decision of the
 2 government.⁸⁷⁵ As TOJO said "Summing it up, the Emperor
 3 had no free choice from the governmental structure
 4 setting up the cabinet and the Supreme Command. He
 5 was not in a position to reject the recommendations and
 6 advice of the cabinet and High Command. His wishes or
 7 hopes were necessarily assisted by the Lord Keeper,
 8 and even these hopes when expressed finally were to be
 9 scrutinized by the cabinet or the Supreme Command.
 10 Recommendations and suggestions after this careful
 11 examination had to be approved by the Emperor and never
 12 to be rejected. * * * These facts being what they are,
 13 it was solely upon the cabinet and the Supreme Command
 14 that the responsibility lay for the political, dip-
 15 lomatic and military affairs of the nation."⁸⁷⁶ He also
 16 said the Emperor has never rejected the government's
 17 decision on any matter in the entire history of new
 18 Japan.⁸⁷⁷

21 ⁸⁷⁸ 293. On September 29, 1941, KIDO in his
 22 diary related a talk he had with HARA, President of
 23 the Privy Council, about holding a final Imperial

24 875. Aff. par. 222, Tr. 31,024.

25 876. Tr. 36,383.

877. Tr. 36,382.

878. Ex. 1142, Aff. par. 197, Tr. 30,958.

1 Conference before arriving at a decision on war,
2 making it less formal and including the Senior
3 Statesmen in the council. If we understand the
4 prosecution's summation correctly it has misstated to
5 the Tribunal that this was not followed as testified
6 to by KIDO. The meeting was held, it was less formal
7 than usual and the Senior Statesmen were there. 879

8 A plethora of evidence has been produced showing this
9 and it is neither contradicted nor impeached. The
10 Senior Statesmen met at a conference at the palace with
11 the government, they listened to a report given by
12 the Prime Minister on the development of negotiations
13 with America. This meeting was not attended by the
14 Emperor nor by KIDO. It recessed at 1 p.m. at which
15 time the Senior Statesmen, some cabinet members and
16 KIDO had luncheon with the Emperor. After luncheon
17 the Emperor had a one-hour meeting from 2 to 3 with
18 the Senior Statesmen at which TOJO and others from
19 the government were present. KIDO was also present
20 but did not participate or say anything at the meet-
21 ing. The Senior Statesmen gave their views to the
22 Emperor and at the conclusion of this meeting when
23 the Emperor and KIDO withdrew the Senior Statesmen
24

25 879. Aff. par. 236, Tr. 31,037; Aff. par. 237,
Tr. 31,038, Ex. 1196 as revised by Lang. Sec.
Tr. 16,187-16,198.

1 resumed their meeting with the government until
2 4 p.m. after which KIDO was advised by Prince KONOYE
3 that no decision was made at any of the two meetings
4 between the Senior Statesmen and the representatives
5 of the government. KIDO so testified.⁸⁸⁰ His diary
6 records it;⁸⁸¹ OKADA corroborated this;⁸⁸² SHIMADA
7 corroborated it;⁸⁸³ TOJO corroborated it.⁸⁸⁴ It is
8 also corroborated in TOJO interrogations.⁸⁸⁵ There is
9 no evidence to the contrary. That part of the con-
10 ference at which the Emperor and KIDO were present is
11 fully recorded.⁸⁸⁶
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- 23 880. Aff. par. 237, Tr. 31,038.
24 881. Ex. 1196 as revised Tr. 16,187-16,198.
25 882. Tr. 29,262.
883. Tr. 34,795.
884. Tr. 36,508.
885. Ex. 1158-A, Tr. 10,513-10,515.
886. Aff. par. 237, Tr. 31,038.

1 293-a. The reason why the prosecution only
2 devotes six lines of its individual summation against
3 KIDO to the meeting of November 29, 1941, and
4 unwarrantedly states that KIDO's statement that the
5 procedure he talked over with HARA was not followed
6 is quite apparent when one considers the fact that
7 the prosecution charged in Appendix E of the Indict-
8 ment that KIDO was "present at and concurred in the
9 decisions taken at * * * the conference * * * of
10 November 29, 1941 (ex-premiers)" and "* * * which deci-
11 sions prepared for and led to unlawful war on 7/8 Dec-
12 ember 1941." (The only other conference to which a
13 similar charge is made against KIDO is the one of
14 October 17, 1941, which has been considered heretofore.)
15 Naturally, as all the evidence shows no decision was
16 made at this conference of November 29, 1941, and
17 that KIDO did not even say one word there, the prosecu-
18 tion wants to ignore it.

19
20 294. On November 30, 1941, KIDO was summoned
21 by the Emperor and told that Prince TAKAMATSU had told
22 the Emperor in substance that the navy appeared to
23 be opposed to war and Prince TAKAMATSU had wanted to
24 know what was the real intention of the navy. KIDO
25 replied " * * * that His Majesty's decision is of
887. Rar. JJ-80, Tr. 41, 119.

1 such gravity that, once decided, it could not later
2 be retracted. Hence it is felt that if there is the
3 least uncertainty every possible precaution should be
4 taken to do that to which His Majesty can give assent." 888

5 Are these the words of a conspirator, an
6 aggressor at heart? The evidence is that KIDO was
7 not a war monger. 889

8 295. KIDO suggested to the Emperor "that
9 the Navy Minister and the Chief of the Naval General
10 Staff be called at once and the true intention of the
11 Navy be ascertained, and that the matter be conveyed
12 frankly to the Premier also."

13 This is fully related in his diary. 890 The
14 Premier, who was planning to hold an Imperial Con-
15 ference the next day, saw the Emperor a few minutes
16 later and requested that it be called but His Majesty
17 withheld his consent. 891 After the Navy Minister and
18 Chief of Naval General Staff had conferred with the
19 Emperor, KIDO was summoned in audience and the
20 Emperor advised him that these officials had answered
21 his questions with considerable confidence and that
22

23 888. Ex. 1198, Tr. 10,468 as Cor. Lang. Sec.

24 Tr. 12,480.

25 889. Tr. 35,800-801.

890. Ex. 1198, Tr. 10,468 as Cor. Lang. Sec.

Tr. 12,480.

891. Aff. par. 239, Tr. 31,045.

892
KIDO should instruct TOJO to proceed as planned.

1
2 296. As KIDO stated he was told to advise
3 the Premier to proceed with the Imperial Conference
4 the next day which he did. This is confirmed by TOJO
5 who testified ⁸⁹³ that KIDO called him by telephone and
6 stated that the Emperor allowed the Imperial Conference
7 to be held on December 1 as slated. This was also
8 corroborated by SHIMADA on cross-examination by the
9 prosecution. ⁸⁹⁴

10 297. The prosecution guess as to what the
11 Emperor's instructions were ⁸⁹⁵ is not borne out by the
12 testimony. As testified to by Admiral SHIMADA:

13 "Hence, Admiral NAGANO and I on November 30
14 told the Emperor that the navy had made adequate pre-
15 parations. The question of confidence in the ultimate
16 outcome of the war was not the theme of our conversa-
17 tion but only whether we were confident of the prepa-
18 rations which the navy had made." ⁸⁹⁶

19
20 In so far as KIDO is concerned, this diary
21 entry of November 30, 1941, definitely establishes
22 that KIDO did not participate in decisions of the
23 government or High Command.

24 892. Ex. 1198, Tr. 10,468 as Cor. Lang Sec. Tr. 12,480.

25 893. Tr. 36,371.

894. Tr. 34,699.

895. Par. JJ-80, Tr. 41,119.

896. Tr. 34,667.

1 298. The prosecution criticizes KIDO for
2 offering no further advice to avert war after the
3 Imperial Conference of December 1. This is not under-
4 standable. The evidence shows that he did his utmost
5 to avert it before the final decision was made and when
6 it was finally made by the Government and High Command
7 on December 1, 1941, he was powerless. It must be
8 remembered that KIDO was not an advisor to the Throne
9 on these matters. Every one of the fourteen ministers
10 of state of the cabinet and the Premier had access to
11 and advised the Emperor. The officials of the High
12 Command gave direct advice to the Emperor. The
13 Imperial Household Minister also gave advice to the
14 Emperor. Each one of these advisors was charged with
15 the duty and responsibility of advising the Emperor on
16 matters pertaining to his respective office. The
17 prosecution seems to overlook this and tries to create
18 the impression that KIDO was responsible for all this
19 advice. Furthermore, the undisputed evidence is that
20 with respect to matters falling within the sphere of
21 the High Command under Article 11 of the Constitution
22 the Lord Keeper of the Privy Seal had no authority to
23 interfere, and he did not interfere. TOJO testified
24 that he did not think that the Lord Keeper listened o
25 897. Tr. 36,510.

1 to the Emperor's desires in this respect nor gave his
2 advice. As TOJO further stated, "Cabinet decisions,
3 as a matter of course, were made on the responsibility
4 of the members of the cabinet and the decisions of
5 the Supreme Command were made on the responsibility
6 of the members of the Supreme Command; and there was
7 no space for any other person to interfere, and other
8 people naturally includes the Lord Keeper of the
9 Privy Seal."⁸⁹⁸

10 299. The prosecution's argument also over-
11 looks the testimony of SUZUKI who stated it was neces-
12 sary for the Prime Minister to get the agreements of
13 the Ministers of War, Navy and Foreign Affairs to
14 have the Emperor say he did not want war;⁸⁹⁹ that it
15 was only the duty of the Lord Keeper of the Privy
16 Seal to have such advice in case an inquiry was put
17 to him by the Emperor.⁹⁰⁰

18 300. On the morning of December 8, 1941, as
19 shown in KIDO's diary, at 12:40 a.m. Foreign Minister
20 TOGO telephoned KIDO and told him that Ambassador Grew
21 had brought to him a telegram from President Roosevelt
22 addressed to the Emperor. He asked KIDO how the
23 message should be handled.⁹⁰¹ TOGO testified on direct

25 898. Tr. 36,511.

899. Tr. 35,327.

900. Tr. 35,330-35,331.

901. EX. 1239 as cor Lang. Sec. Tr. 16,192.

1 examination that he first knew the contents of the
 2 message about 12:30 a.m. when Ambassador Grew called
 3 on him.⁹⁰² TOGO testified on cross-examination he first
 4 called MATSUDAIRA, Tsuneco, Imperial Household Minister,
 5 about what procedure should be followed with respect
 6 to the telegram.⁹⁰³ TOGO stated that MATSUDAIRA advised
 7 him that he should talk with the Lord Keeper of the
 8 Privy Seal and that TOGO then called KIDO on the tele-
 9 phone.⁹⁰⁴ TOGO further stated on cross-examination
 10 that MATSUDAIRA did not ask him any questions regard-
 11 ing the contents of the telegram.⁹⁰⁵ TOGO further testi-
 12 fied on direct examination that when he spoke with
 13 KIDO on the telephone KIDO suggested that TOGO consult
 14 the Premier, and KIDO also said that the Emperor would
 15 receive him even at such a time.⁹⁰⁶

16
 17 301. On cross-examination TOGO admitted
 18 that he did not tell KIDO the contents of the telegram
 19 over the telephone nor did KIDO ask him.⁹⁰⁷ TOGO fur-
 20 ther testified that he had no recollection that KIDO
 21 did anything whatsoever to obstruct an interview
 22 between him and the Emperor that morning.⁹⁰⁸ As a matter

23 902. Tr. 35,727.
 24 903. Tr. 35,794, 35,795, 35,796.
 25 904. Tr. 35,728.
 905. Tr. 35,796.
 906. Tr. 35,728.
 907. Tr. 35,797.
 908. Tr. 35,798.

of fact, KIDO suggested it.⁹⁰⁹

302. KIDO's diary states that later he was notified that TOGO had proceeded to the palace so KIDO went there at 2:40 a.m.⁹¹⁰ He further testified that he spoke with Foreign Minister TOGO for a few minutes and that he did not see the telegram nor did TOGO tell him of its contents. KIDO went home arriving at 3:30 a.m.⁹¹¹ When cross-examined by the prosecution,

who was the only one to cross-examine him on the subject, KIDO testified that he did not find out what was in President Roosevelt's telegram on the morning of December 8;⁹¹² that when he was talking to TOGO the Chamberlain told him that the Emperor had already come out;⁹¹³ and TOGO immediately left his presence and KIDO did not learn anything from him.⁹¹⁴ KIDO was about to ask him when the Emperor was announced.⁹¹⁵

He further testified that he believed that TOGO arrived at the palace after he did and when TOGO arrived he only spoke to him for a minute or two;⁹¹⁶ that KIDO waited at the palace in the event of any inquiries from the Emperor;⁹¹⁷ that he did not request an audience

909. Ex. 1239 as cor. Lang. Sec. Tr. 16,192.

910. Ibid.

911. Aff. par. 242, Tr. 31,049.

912. Tr. 31,605.

913. Ibid.

914. Ibid.

915. Ibid.

916. Tr. 31,606, 31,607.

917. Tr. 31,609.

as it was improper for him to be received in audience
 together with a minister of state reporting to the
 Emperor on matters under his jurisdiction. ⁹¹⁸ KIDO
 waited until TOGO had completed his audience but TOGO
 went home. When KIDO became aware of that and the
 fact that the Emperor had retired KIDO went home. ⁹¹⁹

303. In his direct testimony TOGO said before
 he had an audience with the Emperor he had a three-
 or four-minute talk with KIDO " * * * telling him the
 contents of the telegram. * * * " ⁹²⁰ If there was more
 to this conversation TOGO failed to reveal it in his
 direct testimony. On cross-examination when TOGO
 was asked if he had told KIDO what TOJO had told him
 he said: "KIDO, first of all, gave me his own opinion
 and then asked me what TOJO's opinion was, to which
 question I said that this opinion was the same as
 yours." ⁹²¹ It is to be noted that here TOGO says KIDO
 expressed his opinion "first of all," which can only
 mean one thing -- to a diplomat accustomed to choosing
 correct words -- "before anything else was said." In
 other words, before he told KIDO the contents of the
 telegram, as he said he did on direct, KIDO expressed

918. Tr. 31,608.
 919. Tr. 31,610.
 920. Tr. 35,729.
 921. Tr. 35,828, 35,829.

1 his opinion. If the first statement KIDO made was
2 to give his own opinion then there would have been no
3 necessity for TOGO to have told him the contents of
4 the telegram because KIDO's opinion would naturally
5 have had to be based on knowledge of the contents of
6 the telegram.

7 304. On cross-examination by the prosecution,
8 TOGO admitted that in the previous telephone conver-
9 sation with KIDO "It did not seem that he knew any-
10 thing about the contents of the message."⁹²² As TOGO
11 also admitted that he did not tell KIDO the contents
12 of the telegram over the telephone nor did KIDO ask
13 him,⁹²³ it is thus difficult to understand how KIDO knew
14 the contents and was able to give his opinion before
15 being advised of the contents by TOGO if TOGO is to
16 be believed that KIDO gave his opinion "first of all."
17 Apparently TOGO was the only one who had the trans-
18 lation of the telegram."⁹²⁴

19
20 305. On cross-examination by counsel for
21 KIDO, after TOGO had stated that KIDO, first of all,
22 gave him his own opinion, TOGO was then asked if he
23 showed KIDO President Roosevelt's telegram. He admitted
24 that he had the translation of the message from

25
922. Tr. 35,874.
923. Tr. 35,797.
924. Tr. 35,728.

1 President Roosevelt in his hand " * * * and I spoke to
2 him about the contents of the telegram." ⁹²⁵ He did not
3 show the telegram to KIDO, and " * * * nor was it
4 necessary for me to show it to him." ⁹²⁶ In other words,
5 it is quite apparent that TOGO did not consider KIDO
6 of sufficient importance to show him the telegram. TOGO
7 admits that the Chamberlain came in announcing that the
8 Emperor was in waiting. ⁹²⁷

9 306. TOGO, over the weekend, after he had
10 an opportunity to reflect, early on Monday morning,
11 December 22, 1947, when the prosecution called his atten-
12 tion to his answer on cross-examination by KIDO's coun-
13 sel that "KIDO, first of all, gave me his own opinion
14 and then asked me what TOJO's opinion was, to which
15 question I said that his opinion was the same as yours," ⁹²⁸
16 stated that this conversation took place after TOGO had
17 told KIDO the contents of the message. We submit that
18 this explanation conflicts with his previous statement
19 that KIDO expressed his opinion "first of all."
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24 925. Tr. 35,829.
25 926. Tr. 35,829.
927. Tr. 35,829.
928. Ibid.

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1 307. Since TOGO has stated that his con-
2 versation with TOJO about the telegram had lasted
3 between fifteen and twenty minutes⁹²⁹ and his subsequent
4 conversation with the Emperor had lasted approximately
5 15 minutes,⁹³⁰ we submit it was impossible for TOGO
6 to have repeated the contents of the message, obtained
7 KIDO's opinion and repeated TOJO's opinion to KIDO,
8 all within the space of "a minute or two" as testified
9 to by KIDO or "within 3 or 4 minutes" as testified to
10 by TOGO. An examination of the length of the document
11 also substantiates this. Certainly the discussion of
12 the reply would not account for the difference in time.

13 308. We also wish to point out that in its
14 summation of TOGO's evidence the prosecution has
15 stated that both KIDO and TOGO agreed that TOGO should
16 see the Emperor and both agreed to the evasive reply
17 which TOGO had drawn up.⁹³¹ The latter statement is
18 directly opposite to the evidence. TOGO specifically
19 stated on cross-examination by the prosecution that
20 he did not tell KIDO "****that the draft of the reply
21 had been decided upon."⁹³² TOGO further stated that
22 the agreement of views on the draft reply was between
23 TOGO and TOJO.⁹³³ There is no evidence KIDO knew what

25 929. T. 35,827.

930. T. 35,729.

931. Par. WW-37, T. 41,936.

932. T. 35,901. 933. Ibid.

1 the draft was and no evidence that he even knew a
2 draft existed.

3 309. That TOGO considered KIDO's position
4 unimportant is further demonstrated by TOGO's testimony
5 on cross-examination by the prosecution that TOGO
6 never even mentioned to the Emperor that he had spoken
7 to KIDO about the matter.⁹³⁴ It is also demonstrated
8 by the fact that TOGO testified he suggested the draft
9 of the Emperor's reply to the Emperor, and obtained
10 the Emperor's consent at that meeting, well knowing
11 that he had never discussed the reply with KIDO and
12 that KIDO had had no opportunity to discuss the reply
13 with the Emperor.⁹³⁵ He admits that he never talked
14 to KIDO about the reply and even went so far as to say
15 he did not think it was necessary for him to give
16 KIDO any additional explanation.⁹³⁶

17 310. The prosecution confronted TOGO with
18 a document from the Foreign Office entitled "Particulars
19 Regarding Cordial Message from President Roosevelt,"⁹³⁷
20 written sometime in 1942.⁹³⁸ It was admitted in
21 evidence and TOGO was examined at length on the contents
22 of it. On cross-examination by the prosecution TOGO
23

24 934. T. 35,904.
25 935. T. 35,904, 35,905.
936. T. 35,907.
937. T. 35,913.
938. T. 36,121.

1 admitted that the document was prepared in the Foreign
2 Office but he could not quite say that the entire
3 contents of it were correct, and he did not order it
4 prepared.⁹³⁹ Although the document deals with the
5 exact language used between TOGO and Ambassador Grew
6 and it refers to what happened when TOGO had an
7 audience with the Emperor, TOGO never admitted that he
8 prepared the document. On cross-examination by the
9 prosecution, he pointed out that there were some
10 errors in the document, one of which was that it did
11 not mention the fact that TOGO met KIDO on the morning
12 of December 8th, 1941.⁹⁴⁰ He overlooked another
13 omission because on recross-examination he admitted
14 that the document also did not mention the telephone
15 conversation that he had with KIDO.⁹⁴¹ He also
16 stated that "the mere fact that a personal pronoun 'I'
17 is used here is not proof that I wrote it."⁹⁴²

19 311. The prosecution also queried TOGO
20 about a statement to one of the prosecutors on February
21 22nd and 28th, 1946 which was signed on March 6th, 1946.
22 There TOGO devoted two complete paragraphs to discussing
23 what happened on the early morning of December 8th, 1941.⁹⁴³

24 939. T. 35,914.

25 940. T. 35,921.

941. T. 36,122.

942. Ibid.

943. T. 36,124.

1 When it was pointed out to TOGO that he had not
2 mentioned the meeting he had with Marquis KIDO on
3 the early morning of December 8th, TOGO said that the
4 statement was prepared by Mr. Morgan, the investigator,
5 in a resume form and that Mr. Morgan "at that time
6 did not ask me any questions pertaining to my relations
7 or connections with Marquis KIDO and so I did not tell
8 him anything about that."⁹⁴⁴ That Mr. Morgan must
9 have spoken to TOGO about his relations with KIDO is
10 apparent because the document recites that he spoke to
11 KIDO on the telephone that morning. And when remindd
12 of this TOGO sidestepped saying: "It is the same thing."⁹⁴⁵
13

14 312. If the question of whose recollection
15 on the morning of December 8th is correct - TOGO's or
16 KIDO's has any importance - we refer to the testimony
17 of MATSUDAIRA, Yasumasa who was Chief Secretary to
18 KIDO and who was called and testified in TOGO's case.
19 Counsel for TOGO objected to and tried to prevent
20 MATSUDAIRA from testifying, although the prosecution
21 did not object.⁹⁴⁶ The prosecution states that KIDO
22 was contradicted on his recollection of the conversation
23 he had with TOGO in the morning by MATSUDAIRA "****who
24 says he heard the contents, though not the details,

25 944. Ibid.

945. T. 36,124, 36,125.

946. T. 35,598, 35,597.

1 from KIDO on the ~~same~~ morning." ⁹⁴⁷ Apparently the
 2 prosecution overlooks the fact that one of MATSUDAIRA's
 3 answers was submitted to the Language Section and
 4 corrected. ⁹⁴⁸ MATSUDAIRA testified that he had a
 5 conversation with KIDO some time before noon on the
 6 morning of December 8th about the telegram, and "Marquis
 7 KIDO said that at that time he was not familiar with
 8 the details." During the course of this examination
 9 a bad interpretation of an answer gave rise to the
 10 question which immediately followed but the answers
 11 clearly show that KIDO told MATSUDAIRA that he was
 12 not familiar with the details nor of the contents of
 13 the telegram. The pertinent questions and answers
 14 originally given and as corrected appear below. ⁹⁴⁹

15 Although TOGO's counsel had tried to prevent MATSUDAIRA

16 947. Par. JJ-81, T. 41,120

17 948. T. 36,597.

18 949. T. 35,600 and as cor. Lang. Sec. T. 36,5

19 "Q: Tell us what you said to Marquis KIDO and
 20 what he said to you.

21 "A: Marquis KIDO said that at that time he was not
 22 familiar with the details.

23 "Q: Had you asked him what the details of the
 24 telegram were?

25 "A: Well, I heard about the contents of the telegram -

"Correction: I heard what the contents of the
 telegram were about."

This corrected answer was subsequently changed by the
 Language Section to read: (T. 36,597)

"A. I asked what that telegram was about, for
 which --

"Q. Was that from Marquis KIDO or from some one
 else?

950
from testifying, he refused to cross-examine him.

1 MATSUDAIRA was not cross-examined by the prosecution
2 either.
3

4 313. The prosecution comments on the fact
5 that KIDO failed to call MATSUDAIRA but only examined
6 him when he was called as a witness for TOGO "although
7 the matter was outside the scope of his affidavit."
8 The prosecution refers to this as if it were something
9 unusual. Time after time during the course of this
10 trial the Tribunal granted permission to other defense
11 counsel to ask questions of witnesses on direct
12 examination outside the scope of the original affidavit.
13 Furthermore no issue had been raised between TOGO
14 and KIDO at the time KIDO testified and there was
15 no necessity for calling MATSUDAIRA at that time on
16 this point to corroborate KIDO. The issue arose in
17 TOGO's affidavit which was served prior to the time
18 MATSUDAIRA took the stand for TOGO. The prosecution
19 also complains that there are other points on which
20

21 949 - Contd.

"A. From Marquis KIDO.

22 "Q. And did he tell you the details as well as
the contents?

23 "A. No, I don't think at that time that I heard
24 anything of the contents from him. He said
25 he was at that time unfamiliar with the details
of the telegram - of the contents of the
telegram.

950. T. 35,602.

1 MATSUDAIRA might have corroborated or contradicted
2 KIDO. If the prosecution thought he would contradict
3 KIDO why didn't it cross-examine him at that time,
4 or call him in rebuttal?

5 314; The prosecution's usual guess that
6 KIDO should have known the whereabouts of the telegram
7 during the day of December 7th is of course without
8 foundation and unsupported by the evidence.⁹⁵¹ That
9 was not his duty. That it has no basis in fact is
10 apparent from the prosecution's subsequent sentence
11 that it was the practice of the Foreign Ministry and
12 the Chief of Staff to collect copies of cables:

13 315. KIDO arrived at his office at 7:15 a.m.
14 on the morning of December 8th, 1941. Prior to that,
15 a little after 6 o'clock one of the aide de camps
16 had called him on the telephone and told him about
17 the naval attack on Hawaii. He did not go into details.⁹⁵²
18 KIDO testified this was the first information he had
19 about the Pearl Harbor Attack. He also testified on
20 direct examination that before leaving his home he
21 heard over the radio about the attack.⁹⁵³ It was
22 shown on cross-examination that it took him about ten
23 minutes to drive from his home to the Imperial Palace.⁹⁵⁴
24
25

951. Par. JJ.81, T. 41,121.
952. Aff. par. 242, T. 31,048.
953. Aff. par. 243, T. 31,050.
954. T. 31,606.

1 Thus he had time to hear the radio report before he
2 left home. The prosecution did not cross-examine him
3 on his telephone conversation with the aide de camp
4 nor did it cross-examine him on the report he heard
5 over the radio. KIDO did not say in his affidavit
6 that it was announced over the radio that Hawaii or
7 Pearl Harbor was mentioned. He stated he received
8 that information from the Aide de Camp. The prosecution
9 says that if he heard the radio report "it would not
10 account for the knowledge shown in the Diary." The
11 prosecution overlooks KIDO's testimony that he heard
12 about Hawaii from the Aide de Camp. The prosecution
13 criticizes the defense for not calling corroborative
14 evidence of this. It was not challenged nor contested
15 on cross-examination. If KIDO's statement was not
16 correct, the prosecution undoubtedly would have called
17 a witness in rebuttal to disprove it. It did not do
18 so nor has it accounted for the absence of such rebuttal
19 evidence. This testimony therefore stands unimpeached.
20

21 316. In addition the prosecution endeavors
22 to create the impression that KIDO knew about the
23 attack on Pearl Harbor ahead of time although there
24 is no evidence to support it. It fails to remind the
25 Tribunal however of the vast amount of evidence that
this attack was highly secretive known only to a limited

~~number of top ranking officials and was a High Command~~

1 matter and not a Cabinet matter.⁹⁵⁵ In view of the
2 fact that KIDO was regarded as pro-American and pro-
3 British and his guard had been increased shortly before
4 it can well be imagined that KIDO would be one of the
5 last who would have been informed by the High Command
6 of the proposed attack. If the prosecution had any
7 doubts about KIDO's evidence on this, why didn't it
8 cross-examine him? In any event, the prosecution
9 complaint is not well founded. For example corroborative
10 evidence definitely shows that no civilian officials
11 knew of the Pearl Harbor Attack as testified to by
12 SHIMADA.⁹⁵⁶ SHIMADA also testified on cross-examination
13 that there would be no chance of Marquis KIDO knowing
14 of the Pearl Harbor Attack before it occurred. He
15 was not one of the high ranking officials of the
16 Japanese Government.⁹⁵⁷ TOJO stated that he, that is,
17 TOJO, was informed of it very secretly,⁹⁵⁸ but the other
18 cabinet members did not know of it.
19

20 317. The prosecution claims that had the
21 Emperor commanded Prime Minister TOJO not to commence
22 the Pacific War, it would not have occurred and that,
23 therefore, KIDO should be held responsible for his

24 955. T. 34,796.
25 956. T. 34,818.
957. T. 34,796.
958. T. 36,390-36,391.

1 failure to advise the Emperor to issue such a command
2 to Premier TOJO. The evidence clearly shows that
3 KIDO submitted his views to avoid the Pacific War to
4 the Emperor on frequent occasions. If it is to be
5 contended that KIDO should have advised the Emperor
6 not to commence the Pacific War and that the Emperor
7 should have followed his advice (this is the desirable
8 state of affairs referred to by the prosecution), just
9 what was the *raison d'etre* of the Japanese Government.
10 Had KIDO the authority to command the Prime Minister,
11 the High Command and the Cabinet? Does the prosecution
12 contend that KIDO was Japan's ruler - more powerful
13 than the Emperor, the Cabinet and the High Command
14 in reality? Does the prosecution contend that KIDO
15 should have been such a powerful ruler of Japan in
16 order to be exonerated now?

17
18 318. Is it fair play to denounce KIDO by
19 capitalizing on an unfortunate circumstance, to say
20 the least, where he is unable to adduce clear convincing
21 and clinching evidence, aside from his diary and other
22 evidence, by calling the Emperor as a witness to
23 corroborate him on his conversations with the Emperor
24 which would prove the groundlessness of the prosecution's
25 allegations that KIDO effected a compromise with the
"Gumbatsu", that he recommended a second KONOYE Cabinet

1 to the Emperor to make the Army's position favorable,
2 that he participated in common planning and conspiracy
3 for aggressive wars, that he was responsible for atrocities
4 that he recommended TOJO to the Emperor as the succeeding
5 Prime Minister for the purpose of waging war and that
6 he persuaded the Emperor to approve the Pacific War?
7 Let us be fair, with a man's life at stake.

8 319. Following the example of the King of
9 England, the Emperor kept himself within a self-imposed
10 pale of power toward the government as a sovereign of
11 a constitutional monarchy. The Emperor reigns but
12 does not govern, according to the interpretation of
13 the Japanese Constitution. He expresses his own desires
14 to the Prime Minister before the government or the
15 High Command makes any decision and cautions the High
16 Command as in the case of the Imperial Conference on
17 September 6th, 1941, but the government makes a decision
18 on its own judgment and does not necessarily make a
19 decision as desired by the Emperor on some occasions
20 as testified to by TOJO.⁹⁵⁹ Where the government
21 makes a decision and petitions the Emperor to sanction
22 it, the Emperor never vetoes it though he personally
23 does not approve of it. This was also testified to
24 by TOJO.⁹⁶⁰ This practice was strictly observed by all

959. T. 36,381. 960. Ibid.

1 Emperors since the establishment of the constitution.
2 The prosecution persistently denounces KIDO and
3 attempts to incriminate him for his alleged negative
4 responsibility during his tenure of office as Lord
5 Keeper of the Privy Seal in spite of Japanese
6 jurisdiction, unwritten law and political reality.

7 THE PRESIDENT: We will recess for fifteen
8 minutes.

9 (Whereupon, at 1445, a recess was
10 taken until 1500, after which the proceed-
11 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. Logan.

4 MR. LOGAN: If the Tribunal please, I will
5 continue reading KIDO's summation, page 260, paragraph
6 319a.

7 XII. (h) Efforts for Peace.

8 319a. KIDO testified⁹⁶¹ that for the first
9 six months after the outbreak of the war Japan was
10 intoxicated with an unbroken string of victories,
11 gained by the Japanese armed forces at various fronts
12 in quick succession. As a patriotic Japanese he
13 naturally was imbued with a patriotic spirit, but
14 nevertheless he could not believe that Japan would
15 be able to emerge victorious from the war. He thought
16 it was necessary for him to exert every effort possible
17 to pave the way for peace with America and Great
18 Britain. On February 5, 1942 he was received in
19 audience by the Emperor and the talk drifted in the
20 direction of peace. KIDO took occasion to submit
21 his views and opinions to the Emperor, during the
22 course of which he stated that although the shortest
23 way to peace would be to fight it out, at the same
24 time it would be necessary to seize occasion to return

25 961. Aff. par. 246, Tr. 31052-31053.

1 to peace as soon as possible for the purpose of
2 minimizing the ravages of war.⁹⁶²

3 320. By reading the entire conversation
4 KIDO had with the Emperor at this time it will
5 be seen that KIDO was giving his opinions to the
6 Emperor. Any conclusion that it shows KIDO was
7 receiving foreign press reports is far fetched.
8 There can be no question that KIDO told the Emperor
9 that an early return to peace should be attempted
10 because as shown in his diary of February 6, 1942,
11 the Deputy Grand Chamberlain told him that the Emperor
12 had expressed to the Empress his impressions about
13 KIDO's views which he had presented to the Emperor
14 on the day previous.⁹⁶³ And it was further stated by
15 KIDO in his diary, "Yesterday when I was received in
16 audience by the Emperor, I submitted my views to His
17 Majesty that the Pacific War would not easily end and
18 therefore that the shortest way to peace would be to
19 fight it out, while paying due attention to construc-
20 tion."⁹⁶⁴ His diary for February 12, 1942 further
21 affirms KIDO's testimony on this point.⁹⁶⁵ In an
22 audience with the Emperor on that date the Emperor
23

24 962. Aff. par. 247, Tr. 31053-31054.

25 963. Aff. par. 248, Tr. 31055.

964. Ibid.

965. Aff. par. 249, Tr. 31055-31056-31057.

1 told KIDO that he had had a conversation with Prime
2 Minister TOJO wherein he had told him, "I presume
3 that you are paying full attention so as not to miss
4 the opportunity to terminate the war. It is not
5 desirable for the sake of humanity and peace to have
6 the war drag on needlessly, extending the ravages
7 wrought by it."⁹⁶⁶

8 321. TOGO's further peeve against KIDO for
9 not advising him of the Emperor's foregoing remarks
10 to TOJO are unjustifiable.⁹⁶⁷ Since the Emperor had
11 conveyed his message to TOJO it was then a matter
12 for TOJO to take up with his cabinet members, not a
13 matter for KIDO to discuss with the cabinet members.
14 Furthermore KIDO had to be extremely cautious with
15 whom he discussed peace at that time when Japan was
16 riding high, wide and handsome on waves of victories.⁹⁶⁸
17 Even TOGO admitted that KIDO had to exercise the ut-
18 most caution.⁹⁶⁹ Apparently TOGO's peeve against KIDO
19 was based on an erroneous assumption that KIDO had
20 spoken to the Prime Minister about an early peace,
21 but this was straightened out on the cross-examination
22 of TOGO,⁹⁷⁰ and shown that KIDO had spoken to the

24 ⁹⁶⁶. Aff. par. 249, Tr. 31056.
25 ⁹⁶⁷. Tr. 35740; Tr. 35807-35809.
⁹⁶⁸. Aff. par. 246, Tr. 31053.
⁹⁶⁹. Tr. 35816.
⁹⁷⁰. Ibid.

Emperor, and the Emperor had spoken to TOJO. Thus
1 contrary to the prosecution's claim that KIDO did
2 not speak to the Emperor about an early peace, we
3 find KIDO's testimony and diary entries that he did,
4 corroborated by TOGO.

5 322. Although TOGO admitted that the
6 responsible authority to advise him of the desire of
7 the Emperor for peace was the Prime Minister he felt
8 that the Lord Keeper should have told him.⁹⁷¹ He
9 nevertheless admitted that KIDO was not an advisor to
10 TOGO or any other cabinet minister.⁹⁷² TOGO makes
11 the general statement that cabinet ministers would
12 tell the Lord Keeper what was told the Emperor and
13 that the Lord Keeper should convey to the cabinet
14 ministers the Imperial will. TOGO, however, failed
15 to advise KIDO either before or after TOGO saw the
16 Emperor on the morning of December 8, 1941 about the
17 draft reply of the Emperor to President Roosevelt's
18 speech. The prosecution's contention⁹⁷³ that KIDO's
19 Diary entry of February 6, 1942 does not support his
20 contention that he spoke with the Emperor about an
21 early peace is without foundation as both the entries
22

23 971. Tr. 35809.

24 972. Tr. 35810.

25 973. Par. JJ-83, Tr. 41122-123.

1 of February 6, 1942 and February 12, 1942 clearly
2 show that the subject matter of both these entries
3 is practically identical.

4 323. After Singapore fell, on February
5 16, 1942, KIDO recites⁹⁷⁴ that he received reports
6 of military successes achieved in quick succession.
7 He also recites pronouncements by the Army and Navy
8 that war preparations had been carefully made, as
9 for example, the surprise attack on Pearl Harbor had
10 been preceded by a mock attack on a harbor similar
11 thereto; that rigid training in jungle warfare had
12 been practiced, and landing operations training had
13 been carried out. These pronouncements captured the
14 fancy and imagination of the people, as a result of
15 which they reposed greater confidence in the fighting
16 services.

17 324. KIDO, who did not know of this previous
18 training, was skeptical and believed that even if
19 these were true, Japan could not maintain her successes
20 for any long period of time. He believed⁹⁷⁵ the
21 differences in the resources of the contending
22 countries would eventually decide the issue, that
23 Japan with her meager resources would come to grief,
24

25 974. Aff. par. 250, Tr. 31058.
975. Ibid.

1 and that although the attack on Pearl Harbor was a
2 big success, at the same time it went a long way
3 toward stirring up a feeling of hostility in America
4 against Japan. Certainly neither this resume nor
5 that contained in KIDO's affidavit⁹⁷⁶ justifies any
6 conclusion that KIDO was receiving foreign press
7 reports.⁹⁷⁷

8 325. KIDO's Diary on April 11, 1942⁹⁷⁸
9 records the conversation KIDO had with SHIGEMITSU
10 about conditions in China concerning which KIDO
11 said, "I cannot but think that the future situation
12 will be very grave." His diary on June 11, 1942⁹⁷⁹
13 sets forth a conversation KIDO had with YOSHIDA,
14 Shigeru, former Ambassador to England, about KONOYE
15 visiting Europe to pave the way for peace. As KIDO's
16 Diary records, KIDO said: "I replied to him that I
17 have, of course, no objection to the basic idea that
18 we must exert ourselves to terminate the war as soon
19 as possible for the sake of world peace. * * *"
20

21 326. Thereafter the fortunes of war turned
22 against Japan. KIDO continued his efforts for peace
23 as shown in his diary and testimony.⁹⁸⁰ He discussed

24 976. Aff. par. 247, Tr. 31053-31054.

25 977. Par. JJ-84, Tr. 41123.

978. Aff. par. 253, Tr. 31061-31062.

979. Aff. par. 256, Tr. 31065-31066.

980. Aff. para. 259-260, Tr. 31068-31069.

1 the possibilities of effecting peace with Marquis
2 MATSUDAIRA and Prince KONOYE on February 4, 1943,
3 and had a talk with the Emperor on the same subject
4 on March 30, 1943.⁹⁸¹ On May 13, 1943 he discussed
5 with Foreign Minister SHIGEMITSU his ideas for peace
6 which envisaged control of the army through a prince
7 of the blood.⁹⁸² The next day, May 14, 1943, as
8 shown in his diary, KIDO told Prince TAKAMATSU that
9 it would be hard "* * *" to reconcile the demands of
10 the military with the terms of peace and that in such
11 a case we should have to rely on the Prince's special
12 assistance in solving the problem."⁹⁸³

13 327. At the beginning of 1944 the outlook
14 for Japan was extremely dreary. In his diary of
15 January 6, 1944⁹⁸⁴ KIDO records a peace plan which he
16 had discussed with Marquis MATSUDAIRA. Contrary to
17 the prosecution's contention KIDO accurately summarized
18 this entry in his affidavit,⁹⁸⁵ and the prosecution's
19 interpretation is misleading. At that time the war
20 situation had been developing so adversely that Japan
21 was compelled to take the defensive on all sectors.
22 Japan's victory was inconceivable. As shown in the
23

24 981. Aff. par. 259-260, Tr. 31068-31069.

25 982. Ex. 1274; Aff. par. 261, Tr. 31069-31070.

983. Aff. par. 261, Tr. 31071.

984. Ex. 1276, Tr. 11367-11371.

985. Aff. par. 262, Tr. 31071-31073.

1 diary entry, KIDO's idea was that Japan should act
2 on her own judgment in the event Germany surrendered
3 unconditionally; that if the so-called A.B.C.D.
4 encirclement line was broken, which was the aim in
5 the Imperial Proclamation of War, Japan's aims would
6 have been fulfilled, and KIDO believed that there
7 would be no hope of setting up a peace plan as stated
8 in his diary, "unless it includes very considerable
9 concessions on our part."⁹⁸⁶ In effecting his plan
10 for peace he set forth five points:⁹⁸⁷

11 (1). Problems of the Pacific shall be
12 dealt with by nations bordering on that ocean.

13 (2). The Pacific question should be handled
14 by a joint commission of Japan, USSR, China, United
15 States of America, and Great Britain.

16 (3). The area under Japanese occupation
17 should be demilitarized.

18 (4). The smaller nations in the Pacific
19 area to be neutralized permanently.

20 (5). The economic policies in these regions
21 should be based on freedom, reciprocity, and equal
22 opportunity.

23 He stated in this diary that measures to
24 effect the peace may be taken with the USSR as a
25

986. Ex. 1276, Tr. 11369.

987. Aff. par. 262, Tr. 31071-31072; Ex. 1276,
Tr. 11379-11380.

go-between. At that time the Soviet Union was
1 maintaining neutrality towards Japan, and it is
2 quite apparent that judging by the developments of
3 the war situation, the Soviet Union could not be
4 excluded from the peace fabric in the Pacific, as it
5 might lead to a constant dispute. With Soviet par-
6 ticipation in the proposed commission a well-balanced
7 program could be effected even from the racial point
8 of view. Interposed as it was between the United
9 States and the Soviet Union, which were possessed of
10 oil resources, it would be extremely difficult for
11 Japan to maintain her prestige as an independent
12 power, and there would be no course left to Japan
13 but to have recourse to diplomacy for safeguarding
14 her independence. KIDO also stated in his affidavit
15 that Japan should devote the coming century to
16 fostering her national resources at home, and that
17 during this period she should cooperate with the
18 Soviet Union and China, and as set forth in his
19 diary: "* * * avoid being isolated and attacked all
20 at once by the nations of the world as a colored
21 race.* * *" ⁹⁸⁸ In other words, that Japan should
22 build up a defense to meet all changing circumstances
23 and save its real strength. Upon discussing this
24
25 988. Ex. 1276, Tr. 11371.

1 plan with Foreign Minister SHIGEMITSU, his opinion
2 was more pessimistic than KIDO's and as a result KIDO
3 maintained silence on this plan to government circles.

4 328. KIDO had further discussions with
5 Foreign Minister SHIGEMITSU--for example on June 26,
6 1944,⁹⁸⁹ and as a result of which it was apparent that
7 the government at that time had no intention of taking
8 any peace action, and if the secret leaked out that
9 they were endeavoring to secure peace, it would defeat
10 the purpose because the fighting services would
11 stiffen in their attitude and it would be extremely
12 difficult to take peace moves in that direction.
13 SHIGEMITSU suggested that the Senior Statesmen be
14 made to serve close to the Emperor so as to strengthen
15 the Imperial Court. KIDO stated the service they
16 would be able to render would not only be problematical,
17 but it might stimulate the public into regarding them
18 as Japanese Badogolios. This, of course, referred to
19 the fact that the Italian Monarchy was ruined by
20 Badoglio's peace, and KIDO was arguing to avoid a
21 similar fate for Japan.⁹⁹⁰ KIDO and SHIGEMITSU
22 believed that the only course left would be to take
23 action on the strength of an Imperial decision when
24 the opportunity presented itself, he to assume
25

989. Aff. par. 263, Tr. 31074-31075.

990. Aff. par. 263, Tr. 31075.

responsibility for the Imperial Court and SHIGEMITSU

1 to act on behalf of the Government. KIDO also dis-
2 cussed what measures might be taken with MATSUDAIRA,
3 Tsuneo, Minister of the Imperial Household.⁹⁹¹

4 329. The war situation rapidly worsened.

5 On the one hand the Senior Statesmen became more and
6 more active and on the other hand the generals and
7 admirals were meeting more regularly.⁹⁹² KIDO

8 received visits from SHIGEMITSU, Prince KONOYE,
9 Minister of State KISHI, and Home Minister ANDO, at
10 various times in July, 1944.⁹⁹³ The informal deci-

11 sion of the Senior Statesmen is shown in KIDO's
12 Diary on July 17, 1944.⁹⁹⁴

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22 991. Diary, June 29, 1944; Aff. par. 264, Tr. 31076.
23 992. Aff. par. 265, Tr. 31076.
24 993. Ibid.
25 994. Aff. par. 266, Tr. 31077-31078.

330. The TOJO Cabinet resigned en bloc on
1 July 18, 1944, placing the responsibility for the cabi-
2 net change on the Senior Statesmen.⁹⁹⁵ The next day
3 the Senior Statesmen met to select a succeeding prime
4 minister. A comprehensive discussion was had by the
5 Senior Statesmen, and KIDO reported the results to the
6 Throne. The eventual decision was that KOISO would be
7 appointed the next prime minister. KIDO's efforts in
8 having an Imperial mandate issued to Admiral YONAI
9 as Navy Minister and Deputy Prime Minister are set
10 forth in his affidavit.⁹⁹⁶ This cabinet was known
11 as the KOISO-YONAI Coalition Cabinet. When the Emperor
12 asked KIDO if he thought, judging from the line-up at
13 the Installation Ceremony, whether or not TOJO might
14 resume his post of War Minister as shown in his diary,⁹⁹⁷
15 "I replied that I feared that it would have an unfavor-
16 able effect on the political situation."
17

18 331. The prosecution states that at this
19 conference KIDO "... twice explained that what he
20 meant by 'finishing the war' was to choose an army
21 man for the strengthening of home defenses, the in-
22 crease of army strength in the homeland and that of
23 the military police."⁹⁹⁸ KIDO made no such explanation.
24

25 995. Aff. par. 268, tr. 31,080

996. Aff. par. 270-271, tr. 31,103-31,104-31,105

997. Ex. 1278, p. 12, as Cor. by Lang. Sec., tr. 16,195

998. Par. JJ-86, tr. 41,126

1 The prosecution has taken two disjointed phrases used
2 at widely different times by KIDO in this conference
3 and united them into one idea. At the beginning of
4 the conference the question arose as to the advisabili-
5 ty of the military confining themselves to the field
6 of strategy and command, and that civil officials
7 should handle political affairs. In view of the long-
8 standing practice in Japan, some of the Senior Statesmen
9 believed that it would be difficult for Japan to reach
10 "this point in one jump." It was while discussing
11 this policy that KIDO said, "In short, it is a prac-
12 tical problem. Our first object is to finish the war.
13 Even if we tried to reform the political situation
14 simultaneously, it would be impossible to do. To think
15 on two planes at this time will obscure our object-
16 ive."¹⁰⁰⁰ The discussion then turned to the question
17 as to whether the next premier should be an army man
18 or a navy man. It was during the course of this
19 latter discussion that KIDO said, "The strengthening
20 of home defenses, the increase of army strength in the
21 homeland and that of the military police require that
22 we choose someone from the army."¹⁰⁰¹ From this it
23 is quite apparent that the prosecution's contention is
24

25 999. Aff. par. 269, tr. 31,087
1000. Aif. par. 269, tr. 31,087
1001. Aff. par. 269, tr. 31,092

naive.

1 332. SHIGEMITSU was retained as Foreign
 2 Minister in the new cabinet and he and KIDO discussed
 3 peace possibilities on many occasions from July through
 4 November 1944, as is shown from the excerpts from
 5 KIDO's Diary as set forth in his affidavit. ¹⁰⁰² KIDO
 6 also discussed this matter with the Emperor on January
 7 6, 1945, as shown in his diary. ¹⁰⁰³ As explained,
 8 "the highest policy" referred to in the diary was the
 9 decision for peace. ¹⁰⁰⁴ In order that the Emperor
 10 and the Senior Statesmen could consult with one another
 11 about effecting a peace without arousing the suspicion
 12 of the military, KIDO reported a plan to the Emperor
 13 that the Senior Statesmen visit him individually on
 14 different days in the form of paying respects to His
 15 Majesty. This idea was carried out as shown in KIDO's
 16 Diary for February 1, 1945. ¹⁰⁰⁵

18 333. On April 5, 1945, Premier KOISO resigned.
 19 Because YONAI as outgoing Navy Minister would not be
 20 able to attend the Senior Statesmen Conference, KIDO
 21 asked his opinion beforehand about a successor to
 22 Premier KOISO, and YONAI approved Admiral SUZUKI, as
 23 shown in KIDO's Diary. ¹⁰⁰⁶ The Senior Statesmen
 24

25 1002. Aff. par. 274, tr. 31,107-31,108-31,109
 1003. Aff. par. 276, tr. 31,111-31,112
 1004. Aff. par. 276, tr. 31,111
 1005. Aff. par. 278-279, tr. 31,113-31,114
 1006. Pros. ex. 1282, tr. 11,351; tr.16,195, p. 3

1 Conference was held on April 5, 1945. The prosecution
2 processed part of this conference, but the complete
3 recordation is contained in KIDO's affidavit. ¹⁰⁰⁷ This
4 meeting clearly shows that in choosing SUZUKI as Premier
5 the Elder Statesmen, as well as KIDO, phrased their
6 words very particularly and meaningfully. Their inten-
7 tion led to SUZUKI's selection as a man capable of
8 bringing the war to an end.

9 334. While it is true that KIDO did say
10 that he was of the same opinion as HIRANUMA after
11 HIRANUMA talked at length on various matters, it is
12 quite apparent from reading the complete conference
13 that KIDO was definitely in favor of SUZUKI for the
14 purposes of bringing about peace. KIDO stated, "The
15 public does not always cooperate earnestly with the
16 measures taken by the government," and after discussing
17 various problems, stated, "... the incoming cabinet
18 must be one that will place confidence in the people."
19 He further stated, "... now that the Japanese soil is
20 on the verge of becoming a battlefield, strengthening
21 of the government has become all the more necessary,
22 and therefore an imposing and sedate cabinet, which
23 has the confidence of the people, must be established."
24
25 1007. Ex. 2282, aff. par. 285, tr. 31,122, tr. 31,147

1 He expressed his hope that SUZUKI would rise to the
2 occasion. It was at this point that KIDO and TOJO
3 had a heated discussion. TOJO would not yield to the
4 appointment of a non-army man, and, on the contrary,
5 he went the length of saying that if such a thing was
6 done the army might look the other way (meaning a coup
7 d'etat by the army). KIDO replied that the nation would
8 look the other way if an army man was chosen. The un-
9 contradicted evidence is that none of the conferees
10 touched upon peace moves explicitly. In view of
11 General TOJO's presence at the conference, any tact-
12 less remark might have stimulated the army to unscrupu-
13 lous counter measures. All of the conferees except
14 General TOJO had a tacit understanding on this point,
15 which was given expression in their desires for "a man
16 free from any commitment in the past," as expressed by
17 KONOYE and HIRANUMA.¹⁰⁰⁸

18 335. The further efforts of KIDO to have
19 Baron SUZUKI accept the premiership are contained in
20 KIDO's affidavit.¹⁰⁰⁹ KIDO continued to have peace
21 talks with various people such as TOGO, Professors
22 NAMBARA and TAKAGI.¹⁰¹⁰ On June 8, 1945, KIDO drafted
23 a tentative peace plan, which is set forth in his diary

24 1008. Aff. par. 285, tr. 31,136
25 1009. Aff. par. 286, tr. 31,142-31,143
1010. Aff. par. 288, tr. 31,145

for that date. ¹⁰¹¹ KIDO continued peace talks with
 1 Chief Secretary MATSUDAIRA, Mr. KASE, of the Foreign
 2 Office, ¹⁰¹² and Colonel MATSUTANI. ¹⁰¹³ He further dis-
 3 cussed this with Prime Minister SUZUKI and Navy Minister
 4 YONAI, TOGO, and ANAMI in June 1945. ¹⁰¹⁴

336. On June 20, 1945, KIDO suggested to the
 6 Emperor that he summon the component members of the
 7 Supreme Council for Discussion of War, especially since
 8 Foreign Minister TOGO felt so apprehensive about the
 9 recent decision of the Imperial Conference. ¹⁰¹⁵ On
 10 June 21, 22, 1945, KIDO had further audiences with the
 11 Emperor. As shown in his diary of the latter date,
 12 Imperial wishes for the termination of the war were con-
 13 veyed by the Emperor to the members of the Supreme War
 14 Directing Council. ¹⁰¹⁶ On June 25, 1945, Baron HIRA-
 15 NUMA approved of KIDO's tentative peace plan. Prior to
 16 that the government, at the instance of Foreign Minis-
 17 ter TOGO, had opened secret negotiations with the
 18 Soviet Ambassador in Tokyo through Mr. HIROTA, but no
 19 progress was made. No agreement of views was reached
 20 by the Supreme Council for the Direction of War. Time
 21 was being wasted. KIDO urged haste. As a result the

24 ¹⁰¹¹. Aff. par. 289; tr. 31,146
 1012. Tr. 31,226
 25 1013. Aff. par. 290, tr. 31,151
 1014. Aff. par. 291-292-293-294-295, tr. 31,152-31,158
 1015. Diary, June 20, 1945; Aff. par. 296, tr. 31,160
 1016. Diary, June 21, 22, 1945; Aff. paras. 297-298;
 tr. 31,161-31,162-31,163

Emperor on July 7, 1945, summoned Prime Minister SUZUKI
 1 to the palace and commanded him to enter into peace
 2 negotiations immediately. ¹⁰¹⁷ His Majesty suggested
 3 that the Soviet Union should be frankly asked for media-
 4 tion and a special envoy dispatched there with the
 5 Emperor's personal message. KONOYE accepted the
 6 order of the Emperor to go to the USSR, but prior to
 7 the reply of the Soviet Union the Potsdam Declaration
 8 was issued by the Allies. ¹⁰¹⁸ As testified to by
 9 TAKAGI, Yasaka, at this time KIDO favored peace efforts
 10 through the USSR, due to her neutral position, and also
 11 wanted to keep two routes open for peace. KIDO told
 12 him the opportunity was then ripe for peace. ¹⁰¹⁹ On
 13 August 6, 1945, the atomic bomb was dropped at Hiroshima.
 14 On August 9, 1945, the Soviet Union declared war on
 15 Japan.
 16

17 337. On the morning of August 9, 1945, KIDO
 18 had an audience with the Emperor, advising him to
 19 accept the Potsdam Declaration and terminate the war. ¹⁰²⁰
 20 The Supreme Council for the Direction of War discussed
 21 the acceptance of the Potsdam Declaration on the basis
 22 of four conditions, but they could not arrive at a
 23

24 1017. Diary, July 7, 1947; Aff. par. 299, tr. 31,114-31,115
 25 1018. Diary, July 12, 1945; Aff. paras. 300-301,
 tr. 31,166-31,171
 1019. Tr. 31,642-31,643
 1020. Diary, Aug. 9, 1945, Aff. par. 302, tr. 31,174-31,177

1 decision. Later the same day, August 9, 1945, the
2 cabinet was unable to arrive at a decision to accept
3 the Potsdam Declaration, and so they decided to submit
4 the question to the Emperor for decision. ¹⁰²¹ That
5 evening an Imperial Conference was held in the presence
6 of the Emperor when it was decided to accept the Pots-
7 dam Declaration on the sole condition of the reaffirma-
8 tion of the Emperor's sovereignty and the Imperial
9 House. ¹⁰²²

10 338. On August 10, 1945, an atomic bomb was
11 dropped at Nagasaki, as a result of which moves and
12 counter moves between the peace and war parties in
13 Japan occurred. KIDO foresaw difficulties ahead to
14 overcome, and he thought there would be no course
15 left but to broadcast an Imperial Rescript to the nation
16 on the part of the Emperor terminating the war. He
17 conferred with Mr. ISHIWATA, Minister of the Imperial
18 Household, who approved of his proposal, and thereafter
19 this was approved by the Emperor.
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25 ¹⁰²¹. Diary, Aug. 9, 1945; Aff. par. 302, tr. 31,177
¹⁰²². Diary, Aug. 9, 1945, Aff. par. 302, tr. 31,177

339. On August 12, 1945 the reply from the
 1 Allies was received and it was submitted to the throne
 2 by Foreign Minister TOGO. There was some opposition
 3 to paragraph four of the Allied reply, but KIDO was
 4 of the opinion that Japan's move should not be swayed
 5 by the opinions of individuals, but that they must abide
 6 by the interpretation of responsible authorities.¹⁰²⁴
 7 The Japanese who were jealous of safeguarding the
 8 national polity and the military stiffened in attitude
 9 after the Allied reply was received. Difficulty was
 10 experienced in opening a meeting of the Supreme Council
 11 for Discussion of War.¹⁰²⁵ On August 12, 1945 KIDO
 12 decided to pass his nights in his office room without
 13 returning to his home, so that he could be of assistance
 14 to the Emperor.¹⁰²⁶ ANAMI contended that paragraph
 15 four of the Allied reply should not be accepted.¹⁰²⁷

17 340. Although Prime Minister SUZUKI exerted
 18 extraordinary efforts, the meeting of the Supreme Council
 19 for the Direction of War was not held on August 13.¹⁰²⁸
 20 On the morning of August 14, 1945, because of handbills
 21 which were being dropped throughout the country, KIDO
 22 felt that indignation and confusion would result, and

23 1024. Aff. par. 308, T. 31,187

24 1025. Aff. par. 306, T. 31,186

1026. Diarv, Aug. 12, 1945; Aff. par. 308, T. 31,187

25 1027. Aff. par. 309, T. 31,188

1028. Aff. par. 310, T. 31,189

the situation might get out of control. He submitted his
 1 views to the Emperor urging him to command the Government
 2 without further loss of time to go through the formalities
 3 for terminating the war.¹⁰²⁹ As the High Command did not
 4 approve of the convocation of the Supreme Council for the
 5 Direction of War, KIDO and Prime Minister SUZUKI advised
 6 the Emperor to invoke an Imperial Conference, which was
 7 done, and at 11 A.M. on August 14, 1945 it was finally
 8 decided to terminate the war.¹⁰³⁰ The Emperor had his
 9 message recorded on a phonograph disc.¹⁰³¹

10 341. KIDO was advised that the Imperial Guard
 11 Division was rebellious and that night they occupied and
 12 cut off the communication facilities of the Imperial
 13 Household Department.¹⁰³² His Majesty's library was
 14 surrounded. KIDO took refuge in the room of the Court
 15 physician, destroyed all his secret important documents,
 16 and later went to the underground vault room, together
 17 with ISHIWATA, Minister of the Imperial Household. The
 18 Imperial Household Department was completely isolated
 19 from the outside world. Later that morning the situation
 20 was controlled by General TANAKA, Seiichi. During the
 21 night the revolutionaries had searched for KIDO at least

23 1029. Aff. par. 311, T. 31,189-90

24 1030. Aff. par. 312, T. 31,191

24 1031. Diary Aug. 14, 1945; Aff. paras. 313-314, T. 31,191-

25 1032. Aff. par. 315, T. 31,195 . 31,194.

1 half a dozen times.¹⁰³³ They were also looking for the
 2 phonograph record, and at noon that day the Emperor
 3 broadcast the Imperial Rescript. That same morning
 4 KIDO's home was raided by gendarmes seeking to assassinate
 5 him.¹⁰³⁴ On the morning of August 16 the same group
 6 went to the residence of Mr. WADA, where KIDO stayed
 7 occasionally, for the purpose of assassinating him. This
 8 group later committed suicide at the top of Atago Hill
 9 with hand grenades.¹⁰³⁵

10 342. The prosecution argues that if it be true
 11 that KIDO advised the Emperor to summon the Supreme
 12 Council for Direction of War and command them to terminate
 13 the war, then the Emperor had such power and could
 14 have issued a similar command to prevent the initiation
 15 of war.

16 343. The assistance KIDO rendered to the Emperor
 17 at the time of the commencement of the Pacific War has
 18 been fully dealt with herein before.¹⁰³⁶ On June 18,
 19 1945 when KIDO made his suggestion to the Emperor, the
 20 War Minister and the Chiefs of Staff of the Army and
 21 Navy were expecting a desperate suicide battle on the
 22 mainland in which millions of lives would be lost on
 23

24 1033. Aff. par. 316, T. 31,196

25 1034. Diary, Aug. 15, 1945; Aff. paras. 315-318,
 T. 31,194-21,197

1035. Aff. par. 319, T. 31,201

1036. Infra. P. 144-230

both sides.¹⁰³⁷ Needless to say, in KIDO's suggestion
1 it was contemplated that the matter would be fully dis-
2 cussed in the conference which he requested His Majesty
3 to call and at which the Emperor would express his desire
4 for termination of the war. That is exactly what was
5 done. As is shown in KIDO's Diary of June 22, 1945,¹⁰³⁸
6 the Council was summoned and His Majesty ". . . communic-
7 ated to them his desire regarding the conclusion of the
8 war." As the diary further shows, the various officials
9 expressed their views.
10

11 344. On the early morning of August 10, 1945,
12 as is shown in KIDO's Diary,¹⁰³⁹ at the Imperial Confer-
13 ence at which His Majesty had expressed his desire for
14 acceptance of the Allied reply, it was decided to accept
15 the Potsdam Declaration on the sole condition of reaffirm-
16 ation of the Emperor's sovereignty and the Imperial House.
17 The Imperial decision is set forth in KIDO's Diary of
18 that day. The Emperor instructed the Foreign Minister
19 to go through the formalities of acceptance of the Potsdam
20 Declaration. Pursuant thereto, Foreign Minister TOGO
21 communicated to the United States of America, Great
22 Britain, U.S.S.R., and China that Japan would accept
23 the Potsdam Declaration on the understanding that any
24

25 1037. Aff. par. 295, Tr. 31,157-31,158

1038. Aff. par. 298, T. 31,162

1039. Aff. par. 303, T. 31,178-31,179-31,180

1 demand for alteration of the Emperor's prerogative of
2 sovereignty was not included in the terms enumerated
3 in the declaration, hoping that the correctness of such
4 an understanding would be affirmed by the Allied Powers. ¹⁰⁴⁰

5 345. The reply of Secretary of State Byrnes
6 was received on August 12, 1945. Paragraph I stated that
7 the Emperor's sovereignty would be placed under restric-
8 tion of the Supreme Commander for the Allied Powers
9 authorized to take measures deemed necessary for the
10 enforcement of the surrender terms. ¹⁰⁴¹ At 11:00 A.M.
11 on that day the Foreign Minister had an audience with
12 the Emperor and submitted the contents of the reply to
13 him. The Emperor told TOGO that the reply from Secretary
14 of State Byrnes was acceptable and instructed him to
15 communicate with Premier SUZUKI to that effect, but two
16 or three cabinet ministers raised objections to the reply,
17 while the Premier himself was hesitant to accept the
18 Potsdam Declaration. ¹⁰⁴²

19 346. On August 13, 1945 KIDO thought that
20 should Japan refuse to accept the Allied reply she would
21 do so without any valid reason and in consequence the
22 Allies would find it impossible to understand why Japan
23 had changed her attitude. The result would be that the
24

25 1040. T. 35,789
1041. Ex. 4, T. 109
1042. T. 35,609

1 Emperor would be subjected to criticism, not only from
2 the Allies but from the whole world. As KIDO stated,
3 he understood on that date His Majesty had taken his
4 decision with profound thought that there must be action
5 pursuant to Imperial decision. ¹⁰⁴³

6 347. On August 14, 1945 when KIDO was received
7 in audience by the Emperor he urged the Emperor " . . .to
8 command the government without further loss of time to go
9 through the formalities for terminating the war."¹⁰⁴⁴ In
10 other words, this was merely carrying out the decision
11 which had been reached at the Imperial Conference of
12 August 10, 1945. It is to be noted that KIDO did not
13 advise the Emperor to stop the war by Imperial command.
14 He was urging that the Emperor lead the way to peace by
15 commanding the government to ~~take~~ the necessary steps so
16 that a cabinet would be convened according to Imperial
17 wishes, at which time the formalities of the termination
18 of the war would be decided.

19 348. In view of the fact that the High Command
20 did not approve of the convocation of the Supreme Council
21 for the Direction of War, KIDO had a conversation with
22 Premier SUZUKI in which he stressed the necessity of
23 petitioning the Emperor to convoke a joint Imperial
24

25 1043. T. 31,188

1044. Aff. par. 311, T. 31,189-31,190

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2 the Allies but from the whole world. As KIDO stated,
3 he understood on that date His Majesty had taken his
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24

25 ^{1043.} T. 31,188

^{1044.} Aff. par. 311, T. 31,189-31,190

Conference of the cabinet ministers and the Supreme
 1 Council for the Direction of War, and to command the
 2 termination of the war and the drafting of an Imperial
 3 Rescript terminating the war.¹⁰⁴⁵ Here again, at this
 4 meeting, the Emperor would express his desire of termin-
 5 ating the war and the decision would be left in the hands
 6 of the members of the Conference. The Conference of the
 7 Supreme Council for Direction of War and cabinet minist-
 8 ers was convened by the Emperor on August 14, 1945 at
 9 which the Premier explained Foreign Minister TOGO's
 10 opinion, which favored an acceptance of the declaration,
 11 and he also explained the opposition to it.¹⁰⁴⁶ The
 12 War Minister and the Chiefs of the General Staffs
 13 maintained the same position of opposition which they
 14 had taken the previous day.¹⁰⁴⁷ After considerable
 15 discussion, when it was found that there was no unanimity
 16 of opinion, the Premier asked the Emperor to give the
 17 decision.¹⁰⁴⁸ The Emperor expressed his decision in
 18 favor of the Potsdam Declaration and the government follow-
 19 ed His Majesty's opinion.¹⁰⁴⁹ As is shown, the Emperor
 20 did not command the government to stop the war before
 21 the question had been fully discussed at the meeting.
 22 The Emperor was asked by the government to choose one
 23 of the two points of view which were discussed at the
 24
 25

1045. Aff. par. 312. Tr. 31,190 1048. T. 35,789-
 1046. Tr. 35,789 35,790
 1047. Aff. par. 309, T. 31,188 1049. Ibid.

meeting. The Emperor was asked by the government to
1 choose one of the two points of view which were discussed
2 in the meeting.

3 349. In ordinary times, when a divergence of
4 views existed in the cabinet, a resignation en bloc
5 would follow, but this, however, is the only one except-
6 ional case in the whole constitutional history of Japan,
7 that the cabinet could not reach its decision and asked
8 the Emperor to decide the policy on behalf of the govern-
9 ment. Time was of the essence. It was an extremely
10 critical situation. Lives would have been lost in a
11 delay which a cabinet change would have entailed. The
12 Japanese nation was in a high state of excitement due
13 to the atom bombs and the threatened invasions, but true
14 to constitutional traditions, the Emperor issued no
15 command to stop the war.
16

17
18 B.

19 CONVENTIONAL WAR CRIMES AND CRIMES
20 AGAINST HUMANITY.

21 350. We know of no facts in this case, or law
22 which points to any responsibility on the part of KIDO
23 for Conventional War Crimes and Crimes Against Humanity.
24 There is no evidence that he ordered, caused, or permitted
25 the commission of any of these crimes alleged in the

Indictment. As Education of Welfare Minister in the
1 First KONOYE Cabinet and as Home Minister in the
2 HIRANUMA Cabinet there is no proof that he had any
3 responsibility or committed any act concerning any
4 atrocities or that he was the formulator of any policy
5 instigating the commission of any such act. These were
6 purely military matters, over which he had no jurisdic-
7 tion or control. KIDO was a civilian, not a military man.
8 Even if he had knowledge of past atrocities, that is no
9 evidence that he participated in the commission of them,
10 that he authorized their continuance, or that he was in
11 a position to prevent them from occurring in the future.

12
13 351. As Lord Keeper of the Privy Seal it has
14 been definitely established that KIDO advised against the
15 Pacific War. He was not a member of the government nor
16 of the military. The evidence on this point shows he
17 had no responsibility or control.¹⁰⁵⁰ As shown in his
18 diary of March 13, 1942,¹⁰⁵¹ he had a talk with Imperial
19 Household Minister MATSUDAIRA about the speech delivered
20 by Great Britain's Foreign Minister Eden, referring to
21 the atrocities at Hong Kong. KIDO testified that he
22 reported this to the Emperor and as a result the Emperor
23 consulted TOJO.¹⁰⁵² TOJO examined into the matter and
24

25 1050. *Infra.* P. 116-130

1051. Ex. 1985, T. 14,606

1052. *Aff. par.* 251, Tr. 31,059 - 31,060

received a report that there were no such instances as
 set forth in the speech and that the treatment of
 1 prisoners was just and fair. The evidence is that
 2 Mr. Eden made a subsequent radio broadcast saying that
 3 the situation in Hong Kong had improved.¹⁰⁵³ Neither
 4 KIDO nor TOJO were cross-examined by the prosecution on
 5 this matter. There is no basis for any contention
 6 that KIDO's testimony and his belief should be rejected.
 7 There is no evidence that he had any reason not to
 8 believe TOJO. Similarly there is no ground for any
 9 claim that KIDO's testimony regarding the American air
 10 men should be rejected.¹⁰⁵⁴ KIDO's testimony with
 11 regard to the American fliers is unimpeached and sub-
 12 stantiated by other evidence in the case.¹⁰⁵⁵ There is
 13 no evidence refuting KIDO's conversations that he had
 14 with SHIGEMITSU regarding Swiss protests. Contrary
 15 to the prosecution's contention that KIDO never reported
 16 to the Emperor or advised him with respect to outrages
 17 "which were occurring within a few miles of his office
 18 as well as in every theater of war", the prosecution's
 19 own exhibit¹⁰⁵⁶ shows that he did report to the Emperor,
 20
 21 on 1053. Tr. 35,771, 35,772
 22 1054. Par. JJ-84, Tr. 41,123
 23 1055. Aff. par. 254, Tr. 31,062; Aff. par. 258,
 24 Tr. 31,067
 25 1056. Ex. 1987, Tr. 14,608

1 when requested to do so by Premier TOJO, regarding the
2 disposition of the Doolittle fliers. At that time TOJO
3 told him that he was advised of their punishment, which
4 was going to be inflicted; that is, death, but that TOJO
5 caused the penalty for most of them to be reduced
6 according to his Majesty's benevolence. As is also
7 shown by the diary, he reported this to the Emperor,
8 pending a report by the Chief of Staff. The Chief of
9 Staff was the sole responsible authority.¹⁰⁵⁷ We know
10 of no law holding knowledge in and of itself is a crime.
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23 1056. Ex. 1987, Tr. 14,608.
24 1057. Aff. par. 258, T. 21,067
25

1 352. Although the prosecution knows that
2 KIDO had no responsibility for any atrocities, it
3 grasps at straws and drags this matter into his
4 summation in a desperate attempt to convict him of
5 something. It even went so far as to try to prove
6 as late as November 4, 1947 that he was the head of
7 the Kempei Tai.¹⁰⁵⁸ The prosecution cites no legally
8 acceptable evidence whatsoever, nor does it point to
9 any law, rule or regulation which could in any stretch
10 of the imagination indicate that KIDO was responsible
11 for any Conventional War Crimes or Crimes Against
12 Humanity. The evidence is that it was not even his
13 responsibility to report such matters to the Emperor;¹⁰⁵⁹
14 that it was the duty and responsibility of the High
15 Command;¹⁰⁶⁰ and that the prosecution well knows this
16 can be readily seen from its general summation. We
17 submit that not only has the prosecution failed to
18 establish KIDO's guilt, but the evidence shows his
19 innocence.

20 C.

21 MITIGATION

22 353. The Tribunal ruled that evidence in
23 mitigation should be offered upon the completion of
24

25 1058. Tr. 32,415
1059. Tr. 36,511
1060. Ibid.

1 all evidence and before summation. We are firmly
2 convinced of KIDO's innocence. In view of the Tri-
3 bunal's ruling we were forced to make a decision
4 either to offer evidence in mitigation or forever
5 lose that valuable right. Upon the assurance of
6 the Tribunal that there would be no implication of
7 guilt where such mitigation evidence is offered be-
8 fore a verdict, the testimony of various witnesses
9 was offered on behalf of KIDO. ¹⁰⁶¹ Although the great-
10 est latitude is permitted in the United States and
11 British countries in permitting an accused or his
12 counsel to present mitigating circumstances on be-
13 half of an accused after he is convicted and before
14 sentence, ¹⁰⁶² the prosecution here adopted a harsh,
15 unprecedented and almost cruel policy in objecting
16 to evidence offered in mitigation. KIDO's evidence
17 in chief shows that he consistently opposed the
18 commencement of the Pacific War and immediately
19 after its commencement he devoted efforts to bring
20 about its early termination. Notwithstanding this,
21 the prosecution now claims that his efforts for peace
22 did not begin until after the war situation began to
23 develop in a way unfavorable to Japan. We offered

24
25 1061. Tr. 38,915, 33,916
1062. Tr. 38,923

1 in evidence the affidavit of YAMAZAKI, Iwao ¹⁰⁶³ to
 2 show that one month after he became Lord Keeper of
 3 the Privy Seal on June 1, 1940 KIDO stayed in office
 4 carrying on his work against the militarists, not-
 5 withstanding the threats made on his life. ¹⁰⁶⁴ It
 6 took courage to accept the position of Lord Keeper
 7 of the Privy Seal, with the past history of assassin-
 8 ations, bombings, and murder surrounding that office
 9 even to the extent of the cold blooded assassination
 10 of the Lord Keeper himself. ¹⁰⁶⁵ The prosecution ob-
 11 jected to YAMAZAKI's affidavit on the ground that
 12 it was a statement of a policy officer who arrested
 13 a number of persons in 1940 who were charged with a
 14 plot to murder certain people including KIDO. ¹⁰⁶⁶ The
 15 objection was sustained. ¹⁰⁶⁷

16 354. Defense document 3074, affidavit of
 17 YONAI, Mitsumasa was offered in evidence ¹⁰⁶⁸ for the
 18 purpose of showing that KIDO, "shortly after war
 19 commenced was already talking about offers to be
 20 made to restore peace, at a time when the Japanese
 21 were riding high on the waves of victory; that it
 22 was not possible at that time to talk openly about
 23

24 1063. Tr. 38,916
 25 1064. Tr. 38,918
 1065. Infra par. 59, p. 49
 1066. Tr. 38,918
 1067. Tr. 38,919

1 restoration of peace, and this evidence shows that
 2 he was discussing it and considering ways and means
 3 of presenting it about at the earliest possible
 4 moment. It also shows that later on, when there was
 5 a plan proposed, proposing a method of continuing the
 6 war, that KIDO was diametrically opposed to it and
 7 still continued to do what he thought was right for
 8 peace." ¹⁰⁶⁹ The prosecution offered technical ob-
 9 jections to the first part of the affidavit and ob-
 10 jected to the balance saying, "the rest of it deals
 11 with peace offers after the outbreak of war, as to
 12 which there is also a great deal of evidence in
 13 existence already." ¹⁰⁷⁰ The objection was sustained. ¹⁰⁷¹
 14 Compare this with the prosecution's claim now, that
 15 these efforts did not commence until after the war
 16 became unfavorable to Japan. ¹⁰⁷²

17 355. In mitigation, Admiral OKADA Keisake
 18 testified in substance, ¹⁰⁷³ over objection by the
 19 prosecution that before the end of the TOJO Cabinet
 20 in July 1944 he spoke with Baron WAKATSUKI, Prince
 21 KONOYE, Baron HIRANUMA and Marquis KIDO who approved
 22 of his idea that it was necessary to have one, who
 23

24 1069. Tr. 38,920
 25 1070. Tr. 38,919-20
 1071. Tr. 38,921
 1072. Ex. JJ-85, Tr. 41,124
 1073. Ex. 3912, Tr. 38,925-6

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23 1069. Tr. 38,920
 24 1070. Tr. 38,919-20
 25 1071. Tr. 38,921
 1072. Far. JJ-85, Tr. 41,124
 1073. Ex. 3912, Tr. 38,925-6

1 would identify himself with the restoration of peace
2 by the termination of hostilities, join the Cabinet
3 as a Minister of State. Efforts were made to have
4 Admiral YONAI reinstated and appointed Navy minister
5 but in vain. Success, however, was obtained in hav-
6 ing Admiral YONAI join the KOISO Cabinet as Minister
7 of the Navy when it was formed after the TOJO
8 Cabinet fell in July, 1944. He further testified that
9 in April, 1944 he and KIDO had an extremely confiden-
10 tial talk about termination of the war. The very
11 nature of this subject required extreme caution on
12 his part. The ideas of KIDO and OKADA coincided in
13 that efforts should be made to end hostilities as
14 quickly as possible, but it was not a matter which
15 could be forced. He had previously discussed this
16 matter with MATSUDAIRA and asked him to transmit his
17 ideas to KIDO after which he and KIDO had many talks.
18 OKADA in the last paragraph of his affidavit extended
19 his congratulations to KIDO "for the success of his
20 heroic efforts."

21 356. The affidavit of HIROSE, Histada over
22 objection of the prosecution was permitted in evi-
23 dence. ¹⁰⁷⁴ He testified that he was Minister of State
24 without portfolio for a short period of time in the
25 1074. Ex. 3913, Tr. 38,927-9

1 KOISO Cabinet and commencing in August 1945 he was
2 Mayor of Tokyo and had known KIDO intimately since
3 1938. He stated KIDO had been watching for a long
4 time for a chance to conclude the war and made
5 great efforts towards that end; the circumstances
6 under which KIDO endeavored to have Admiral YONAI
7 appointed Vice Prime Minister of the KOISO Cabinet
8 in July 1944; his efforts to have Admiral SUZUKI
9 appointed in April, 1945 to realize peace and KIDO's
10 cooperation with YONAI, the chief pacifist of the
11 SUZUKI Cabinet. HIROSE arranged meetings between
12 YONAI and KIDO concerning the peace problems. He
13 testified that upon the conclusion of the war Navy
14 Minister YONAI said, "after all, Marquis KIDO is
15 more responsible than any other for the conclusion
16 of the war."¹⁰⁷⁵

17 357. Over objection by the prosecution the
18 testimony of HOSOKAWA, Morisada was read to the
19 Tribunal.¹⁰⁷⁶ This witness was Prince KONOYE's son-
20 in-law and acted at one time as KONOYE's secretary.
21 He related a conversation he had with Prince KONOYE
22 wherein the latter stated, "Marquis KIDO's efforts
23 for terminating the war have been indeed magnificent."¹⁰⁷⁷

24 1075. Tr. 38,929
25 1076. Ex. 3914, Tr. 38,930-1
1077. Tr. 38,930

1 358. ISHIWATA, Sotoro testified over the
2 prosecution's objection that he was Imperial House-
3 hold minister from June 4, 1945 to January 16, 1946.¹⁰⁷⁸
4 When he assumed the position KIDO emphasized to him
5 the necessity of grasping the earliest possible
6 chance for peace negotiations. He saw KIDO at least
7 two or three times a week while he was in office
8 and stated that KIDO "bravely, patiently and pain-
9 fully fought oppositions until the war was finally
10 terminated on August 15. He was one of the people
11 who contributed most to the quick realization of the
12 capitulation."¹⁰⁷⁹

13 Sometime about July 20, 1945 he had a con-
14 versation with KIDO in which KIDO expressed the hope
15 that he might be spared until the war had been
16 brought to a close, as there was a possibility of
17 violence, such as an assassination of him by the
18 Army. He discussed with him Baron SHIDEHARA as a
19 possible successor as Lord Keeper of the Privy Seal
20 in case he should be killed. ISHIWATA and KIDO had
21 a conversation about the beginning of August regard-
22 ing a request to the Emperor to broadcast as they
23 thought it was the best way to prevent internal
24

25 1078. Ex. 3915, Tr. 38,931-3
1079. Tr. 38,932-3

1081
 which is not disputed . . ." It was pointed out
 1 that the affidavit showed that the people who tried
 2 to kill KIDO were connected with the military. The
 3 objection was sustained. 1082

4 360. Should this Tribunal, despite the
 5 overwhelming evidence which we submit conclusively
 6 establishes KIDO's innocence, reach a contrary
 7 verdict, KIDO's successful efforts in saving hund-
 8 reds of thousands of lives, at the risk of his own,
 9 should make one pause and consider whether the
 10 confinement and humiliation already suffered by
 11 him has been unjust.
 12

13 361. In an extremely startling statement
 14 "KIDO's alleged peace efforts" are belittled as "of
 15 minor importance." 1083 The undisputed facts in evi-
 16 dence, the evidence offered in mitigation and the
 17 prosecution's own prior statement regarding peace
 18 offers "as to which there is also a great deal of
 19 evidence in existence already" 1084 and its deliberate
 20 appraisal "No doubt, if his advice had been taken, we
 21 would not be holding this trial today . . ." must be
 22 entirely disregarded to accept such a view. Is one
 23 who strives for peace and is instrumental in its
 24
 25 1081. Tr. 38,936 1084. Tr. 38,920
 1082. Tr. Ibid 1085. Pros. Doc. 0003, Tr. 16,852
 1083. Par. JJ-85, Tr. 41,124

effectation to be ridiculed and condemned? Are the
1 efforts of anyone who brings about peace even one day
2 sooner with the attendant saving of human lives to
3 be characterized as "of minor importance"? ¹⁰⁸⁶ Would
4 anyone have preferred that the Allied Powers invaded
5 Japan -- to borrow the thought of that great English
6 statesman, Winston Churchill in referring to a differ-
7 ent occasion -- whatever the cost might have been,
8 fighting on the beaches, on the landing grounds, in
9 the fields, in the streets and in the hills? By
10 preventing this, KIDO's efforts, at the risk of his
11 own life, saved hundreds of thousands of lives. 11
12 Surely one must be willing to abandon all standards
13 of right and wrong in a frenzied effort to convict
14 in characterizing KIDO's peace efforts as "of minor
15 importance." Such a position is neither comparable
16 to, nor in keeping with, the opening address of Mr.
17 Justice Jackson, Chief of Counsel for the United
18 States before the Tribunal at Nuernberg November 21,
19 1945:
20

21 "That four great nations, flushed with
22 victory and stung with injury stay the hand of ven-
23 geance and voluntarily submit their captive enemies
24 to the judgment of the law is one of the most
25 1086. Tr. 38,920

significant tributes that Power ever has paid to
Reason."

D.

CONCLUSION

362. In respectfully requesting an acquittal of the accused KIDO, we adopt and ask the Tribunal to consider the law as presented by the defense throughout the trial and in general summation as being decisive, and that on the law and on the facts presented we urge such a verdict would be overwhelmingly substantiated.

363. In conclusion, with the Tribunal's permission, I would feel remiss in my duties as an attorney in failing to add a few personal remarks.

It has been with keen appreciation of the opportunity of assisting in the dispensation of justice on an international level which has guided my meager efforts before this Tribunal. Perhaps the high virtue of justice has been transcended in importance by these proceedings leading the way to a high level of international morality essential for the creation of a society of nations. One may listen to a thousand and one trite arguments on democracy, but in my humble submission, the mere fact we are here urging the cause of our erstwhile opponents represents a

permission, I would feel remiss in my duties as an attorney in failing to add a few personal remarks.

living democracy.

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THE PRESIDENT: We will adjourn until half-past nine Wednesday morning.

(Whereupon, at 1600, an adjournment was taken until Wednesday, 7 April, 1948 at 0930.)

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PAGES 46,775 - 47,526

WERE NOT FILED

13 APRIL 1948

I N D E X

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Tuesday, 13 April 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 JU-AO MEI,
Member from the Republic of China, not sitting from
0930 to 1045.

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 UMEZU and SHIRATORI, 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 certificates will be recorded and filed.

8 Mr. Levin.

9 MR. LEVIN: Mr. President, I would like to
10 present Dr. KUSANO, who will continue the defense sum-
11 mation on personal responsibility. As I understand
12 it, th. TOGO and UMEZU summations are not quite ready,
13 and this, I believe, will fill the gap, if it is agree-
14 able with the Tribunal.

15 THE PRESIDENT: Dr. KUSANO.

16 DR. KUSANO: Mr. President and Members of
17 the Tribunal:

18 1. The object of this summation is to analyze
19 the alleged criminal responsibility of all the defendants
20 from the point of view of modern criminal law.

21 The chief prosecutor said in his opening state-
22 ment as follows:

23 "Since the usual definition of murder in
24 civilized countries is the intentional killing of a
25 human being without legal justification, we should

perhaps see what constitutes legal justification. This
1 justification is usually limited to the defense of one's
2 person or property or, perhaps, in the case of an
3 execution, that he was merely carrying out the order
4 of a properly constituted court."⁽¹⁾
5

6 The question of legal justification is, of
7 course, important, but such can be understood only when
8 the question of "intention" is taken into consideration
9 at the same time. Unfortunately, however, the chief
10 prosecutor left the latter entirely out of his discourse,
11 as if the criminality of the defendants' intention is
12 taken for granted.

13 2. Even in the case where an act has come with-
14 in the purview of certain conditions defining a crime
15 and was done without any cause of legal justification,
16 mentioned by the chief prosecutor, still the person
17 who committed the act will incur no criminal responsi-
18 bility, unless three more requirements are fulfilled:
19 that is, (a) he has been mentally competent to take such
20 responsibility, (b) the act was committed with criminal
21 intent (as a rule) or through criminal negligence (in
22 exceptional cases), and (c) there existed, at the time
23 of commission of the act, a possibility of expecting
24 him not to commit such an act. I shall hereunder
25

(1) Tr. 425.

consider the said three requirements seriatim.

1 3. In reference to the defendants in the pre-
2 sent trial, it will not be necessary to dwell upon their
3 mental competency to take responsibility for their acts,
4 except the case of OKAWA. There is no doubt that each
5 of them has had "the competency to discern the illegality
6 of his conduct or to act according to his discernment
7 of illegality of the conduct."⁽²⁾

9 4. As to criminal intent and negligence,
10 Professor Sayer deplures in his treatise on "Mens Rea":

11 "It is almost hopeless to give an accurate
12 definition of the term mens rea because of the diversity
13 of its construction in judicial decisions and theories."⁽³⁾

14 In view of this remark, I wish, first of all,
15 to determine the basis of my argument by briefly review-
16 ing legislations of those countries which have adopted
17 the most up-to-date principles of criminal law.

18 5. Article 38 of the present Japanese Criminal
19 Code provides in paragraph 1:

20 "No act done without criminal intent shall be
21 punished, except in the case where it is otherwise
22 provided specifically by law."

23 Paragraph 3 of the same article reads:

- 24
25 (2) Article 10, Swiss Criminal Code.
(3) Sayer: "Mens Rea," Harvard Law Review, Vol. 45,
1931-32, p. 974.

1 "Ignorance of law cannot be invoked to establish
2 the absence of criminal intent, but the punishment may
3 be reduced in consideration of the extenuating circum-
4 stances."

5 The said paragraph 1 is the codification of
6 the maxim: "Actus non facit reum nisi mens sit rea,"
7 while the said paragraph 3 is the embodiment of the
8 saying: "Ignorantia juris non excusat." Moreover, the
9 said paragraph 1 is derived from Article 77. Paragraph 1
10 of the old Japanese Criminal Code, which was almost
11 similar in the wording, ⁽⁴⁾ and the said paragraph 3 is a
12 modification of Article 77, paragraph 4, of the old
13 code. Since Article 77 of the old code provided in its
14 paragraph 2 that: "No person shall be punished in the
15 case where he committed a crime without knowing the
16 facts which constitute the crime," the term "criminal
17 intent" has been construed by the majority of judicial
18 decisions as "knowledge of facts which constitute a
19 crime."
20

21 6. According to this interpretation, criminal
22 intent is established where the person in question knew
23 the facts which constituted the crime, i.e., his act and

24 (4) "No act done without criminal intent shall be pun-
25 ished, except in the case where its punishment is pro-
vided specifically by law or regulations."

(5) "Ignorance of law or regulations cannot be invoked
to establish the absence of criminal intent."

1 the natural and probable consequence thereof, but, when
2 such knowledge is once proved, it is not necessary to
3 further enquire whether or not he was aware of the
4 illegality of his act. As the result of this interpre-
5 tation also, mistake of fact is sharply divided from
6 mistake of law. In the former case, criminal intent
7 is entirely precluded. In the latter case, while mis-
8 take of criminal law does not preclude criminal intent,
9 mistake of non-criminal law does so preclude, on the
10 presumption that mistake of non-criminal law is nothing
11 but mistake of fact. For illustration of this interpre-
12 tation, a judgment of the Japanese Supreme Court is
13 quoted as follows:

14 "When a person destroyed the seal and markings
15 of attachment affixed to an attached object in the
16 mistaken belief that the attachment had lost its effect
17 by his payment of debt, his intention to commit the
18 crime (of Article 96 of the Criminal Code) is precluded."⁽⁶⁾
19

20 7. In the above-mentioned case, there is no
21 doubt that the act was committed by mistake of civil
22 law. Can we, however, so hastily conclude as to say that
23 the act was done without knowledge of the facts which
24 constitute the crime? Is it not more natural to construe

25 (6) Judgment of Feb. 22, 1926, by the Second Criminal
Division, Supreme Court. Report, Criminal,
Vol. V, p. 97.

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1 that criminal intent is precluded, not because mistake
2 of civil law has brought about ignorance of facts which
3 constitute the crime, but because, in spite of the
4 offender's knowledge of such facts, mistake of civil
5 law has amounted to ignorance of illegality of his act?

6 8. Professor Hafter of the Zurich University,
7 after discussing the theories and judicial decisions
8 in Switzerland upon the subject of criminal intent,
9 remarks as follows:

10 "Illegality is the essential element in the
11 conception of crime. It does not matter whether it
12 is expressly stated as legal constituent of each crime.
13 If we couple this principle with another that criminal
14 intent must be related with every factor of a crime,
15 we cannot but arrive at the conclusion that the criminal
16 must be conscious of the illegality of his action. To
17 deny this is to surrender to the tyrannical force which
18 belittles mistake of law. In this connection, a brief
19 explanation will be required. Consciousness of
20 illegality of one's act does not mean the knowledge of
21 his acting contrary to certain provisions of law
22 It is quite unnecessary that he should be aware of any
23 particular norm of criminal law. It is necessary,
24 however, that his idea as layman, i.e., his sense of law,
25 should inform him that he is committing an act which is

1 not permissible. . . . Only when a person has such
2 consciousness of illegality, may he be adjudged guilty
3 on the ground that his act was done with criminal
4 intent. The axiom of no punishment without responsibility
5 demands this. Though it will seldom happen in the com-
6 mission of a crime, in the case where a person had no
7 knowledge of his act being contrary to his duty and not
8 permissible and where the impossibility of having such
9 knowledge is actually proved in consideration of his
10 whole personality, it is a shame to adjudge him guilty,
11 however light the punishment may be."⁽⁷⁾

12 9. Professor Hafter further contends:
13

14 "All attempts are futile to make distinction
15 between mistake of fact and mistake of law. Much more
16 so, between mistake of criminal law and mistake of non-
17 criminal law. It is too difficult to draw a line between
18 the two. From the viewpoint of criminal responsibility,
19 mistake as to the criminal nature of one's act must be
20 taken into consideration. In the case where an abductor
21 did not know the age of the abducted girl, or where a
22 person was not aware of the fact that he was harboring
23 a murderer, or where a school teacher mistakenly exer-
24 cised his right of discipline . . . no criminal intent

25 (7) Hafter: "Lehrbuch des Schweizerischen Strafrechts,"
allg. teil, 1926, S. 117, S. 118.

1 should be recognized, if his bona fides is proved beyond
2 reasonable doubt. On the other hand, we need not con-
3 sider his mistake in the punishability of his act, or
4 its legal nature; e.g., whether larceny or embezzlement,
5 or the degree or conditions of punishment, or the
6 existence of certain requirements of legal proceedings,
7 etc."⁽⁸⁾

8 10. The above-mentioned case of abduction will
9 be illustrated by R. V. Prince of 1875 in England.

10 Prince had abducted from her father a girl under the age
11 of sixteen; but in the belief, on adequate grounds,
12 that she was eighteen, in which case the abduction would
13 not have been a crime. The great majority of the judges
14 agreed, however, in the view that "an intention to do
15 anything that is wrong legally," even as a mere civil
16 tort and not as a crime at all, would be a sufficient
17 mens rea. Some judges went even beyond this; laying
18 down a view, according to which there is a sufficient
19 mens rea wherever there is "an intention to do anything
20 that is wrong morally," even though legally it be quite
21 innocent, both criminally and civilly.⁽⁹⁾ Although
22 Professor Sayer criticizes this case as having confused
23 and unsettled the law more than any other upon the
24

25 (8) Hafter: Op. Cit. S. 184.

(9) Kenny: "Outlines of Criminal law," 14th Ed.,
1933, pp. 41-42.

(10)

1 subject, can we not interpret the said opinions of
2 the English judges as their recognition of the knowledge
3 of illegality to be the essential factor of mens rea?

4 11. This idea will become more clear, if we
5 look into the question of negligence. According to
6 Professor Kenny, "the mere fact that there was some
7 degree of negligence on the parent's part will not
8 suffice. There must be a wicked negligence, a negligence
9 so great as to satisfy a jury that the prisoner did not
10 care whether the child died or not." ⁽¹¹⁾ He remarks
11 further that "when motorists are sued in civil actions
12 for negligence, the verdict is usually against them,
13 but is rarely so in prosecutions of them for manslaughter.
14 There must be a wicked negligence -- such disregard for
15 the life and safety of others as to deserve punishment." ⁽¹¹⁾
16 It follows, therefore, that negligence, punishable under
17 criminal law, is not a simple carelessness, but must be
18 wicked or blameworthy. In this sense, it may be said
19 that the difference between criminal intent and criminal
20 negligence is only a matter of degree of knowledge of
21 illegality.
22

23 12. In my submission, the above-mentioned views
24 of the English jurists are the positive side of a
25

(10) Sayer: Op. Cit. p. 1025.

(11) Kenny: Op. Cit. p. 122.

1 principle of the modern criminal law, that is to say,
2 that mens rea should be determined by the presence of
3 knowledge of illegality; while the said opinion expressed
4 by Professor Hafter forms the negative side of the same
5 principle, that is to say, that mens rea will be precluded
6 in the absence of knowledge of illegality. If we read
7 again, with this consideration in mind, the maxim of
8 Ignorantia juris non excusat,⁽¹²⁾ it will mean: (a) a
9 person shall be punished for his act, if he was aware
10 of the illegality of his act, in spite of his ignorance
11 of law, (b) even in the case where he was not aware
12 of the illegality of his act, he shall be punished, if
13 he was negligent in having been unaware of the illegality
14 of his act and if such negligence is blameworthy, and
15 (c) in the case where he was not negligent or, if neg-
16 ligent, not sufficiently blameworthy for such negligence
17 in having been unaware of the illegality of his act, he
18 shall not be punished, even though he had knowledge of
19 the facts which constitute a crime.

20
21 13. Professor Radin remarks as follows:

22 "Mens rea in English law was never held to mean
23 that ignorance of criminal law was an excuse. In the
24 German common law down to the end of the 19th century,
25 the rule was error juris non excusat. Under the influence
(12) Japanese Criminal Code, Article 38, paragraph 3.

of Feuerbach, the excuse was later actually admitted
1 for several decades with the result that there set in a
2 sharp reaction, which has restored the old rule in
3 modern German law. In France, exceptions are made in
4 very unusual circumstances. The Norwegian Code, however,
5 provides that where there is a mistake of law the punish-
6 ment may be decreased or even abrogated altogether. In
7 fact, many of the continental theorists are in favor of
8 abrogating or at least modifying the generally-prevailing
9 old rule, and some of the recent drafts of penal codes
10 provide for milder punishment.⁽¹³⁾

12 14. In stating this, Professor Radin must
13 have had in mind the draft of the Swiss Criminal Code
14 in 1918. However, almost every legislation of the later
15 date provides that mistake of illegality may be the ground
16 not only for the reduction but for the exemption of
17 punishment. It is true that Article 18 of the said
18 Swiss draft recognized only mitigation in the case of
19 mistake of illegality.⁽¹⁴⁾ But the actual Criminal Code,
20 promulgated in 1937, provides in Article 20 as follows:

22 "Where a person committed an act with a good
23 reason to believe that he had a right to do the act,

24 (13) Radin: "Intent" in Seligman's Encyclopaedia of
the Social Sciences, Vol. VIII, p. 129.

25 (14) "If a person committed a crime in the belief that
he had a right to do the act, punishment may be
reduced."

1 punishment may be reduced or remitted at the discretion
2 (15)
3 of the judge."

4 15. Looking back to the Chinese Tentative
5 Criminal Law which existed prior to 1928, Article 13,
6 paragraph 2, provided as follows:

7 "Ignorance of law cannot be invoked to estab-
8 lish the absence of criminal intent, but punishment may
9 be mitigated by one or two degrees in consideration of
10 the extenuating circumstances."

11 The above was amended by the old Criminal Code
12 of 1928, Article 28 of which read as follows:

13 "Ignorance of law shall not discharge any per-
14 son from criminal responsibility; provided however that
15 punishment may be reduced by one-half in consideration
16 of the extenuating circumstances."

17 Now, the present Chinese Criminal Code, which
18 has come into force since 1935, provides in Article 16
19 as follows:

20 "Ignorance of law shall not discharge any
21 person from criminal responsibility; provided however
22 that punishment may be reduced in consideration of the
23 extenuating circumstances. In the case where a person
24 believed that his act was permissible by law and where

25 (15) This Article 20 of the Swiss Criminal Code follows
literally the provisions of Article 17 of the Swiss
Military Criminal Law of 1927.

there was a good reason for him so to believe, punishment may be remitted."

1 The above changes in Chinese law clearly demon-
2 strate the gradual transition from the formal interpre-
3 tation of ignorance of law to the real understanding of
4 the principle of noncognizance of illegality.

5 16. The reason why I have in the above dis-
6 cussed at length this rather elementary principle of
7 criminal law is because Professor Kenny maintains that
8 a mistake of law, even though inevitable, is not allowed
9 in England to afford any excuse for crime. He states:

10 "The utmost effect it can ever have is that it
11 may occasionally, like drunkenness, rebut the existence
12 of the peculiar form of mens rea which some particular
13 kind of crime may require. Thus larceny can only be
14 committed when a thing is stolen without even the appear-
15 ance of right to take it; and, accordingly, a bona fide
16 and reasonable mistake, even though it be of law -- like
17 that of a woman who gleans corn in a village where it is
18 the practice to do so -- will afford a sufficient defense.
19 Similarly a mortgagor who, under an invalid but bona fide
20 claim of right, damages the fixtures in the house which
21 he has mortgaged, will not be guilty of 'malicious' damage.
22 Apart, however, from such exceptional offenses, the rule
23 which ignores mistakes of law is applied with rigour."^{16.}

24 16. Kenny: Op. Cit. pp. 69-70.

17. On the other hand, he remarks:

1 "But I know of no reported decision which
2 extends this rule to mere municipal by-laws. Both in
3 England and in the United States (Porter v. Waring,
4 69 N. Y., 250) a judge would require legal proof of
5 a by-law before enforcing it. Should the law attribute
6 to ordinary people a greater legal knowledge than to
7 the judge?"^{17.}
8

9 Admitting that this Honorable Tribunal might
10 take judicial notice of the fact that there is a large
11 body of international law, known at different times
12 and by different writers as the "common law" or
13 "general law" or "natural law" of international law,^{18.}
14 I respectfully submit that it is a law less clear and
15 definite than a national law and that acts in contra-
16 vention of international law are deemed by any national
17 law not sufficiently blameworthy to incur criminal
18 responsibility, except in a few cases. According to
19 Professor Kenny, it is expounded as follows:
20

21 "The student must bear in mind that, though it
22 is sometimes said that 'International Law is part of
23 the laws of England,' this is true only in that loose
24 historical sense in which the same is also said of

25 17. Kenny: Op. Cit. p. 68, Note 4.

18. Mr. Keenan, Opening Statement, T. 405-6.

1 Christianity. But an indictment will not lie for not
2 loving your neighbor as yourself. Equally little will
3 it lie for trading in contraband of war, or for the
4 running of a blockade. Both these acts are visited by
5 international law with the penalties of confiscation;
6 but neither of them constitutes any offense against the
7 laws of England, or is even sufficiently unlawful to
8 render void a contract connected with it.^{19.}

9 18. The above submission will be opposed by
10 the contention that international law is a law sui
11 juris and can punish any act which it deems fit upon
12 the ground entirely different from any national law.
13 It is said, however, by Lord Wright and quoted by the
14 Chief Prosecutor as follows:

15 "In my earlier essay I pleaded to have it
16 recognized that international law was the product,
17 however imperfect, of that sense of right and wrong,
18 of the instincts of justice and the humanity which are
19 the common heritage of all civilized nations. This
20 has been called for many ages 'Natural Law'; perhaps
21 in modern days it is simpler and truer merely to refer
22 to it as flowing from the instinctive sense of right
23 and wrong possessed by all decent men, or to describe
24 it as derived from the principles common to all
25

19. Kenny: Op. Cit. pp.334-335. As to the question of
trading with the enemy, see p. 335, note 1.

1 civilized nations. That is, or ought to be, the
2 ultimate basis of all law."^{20.}

3 In other words, even though "the source of
4 international law must . . . be sought elsewhere than
5 in the acts of a national law-making authority,"^{20.}
6 it must have a foundation in the instinctive sense of
7 right and wrong, common to all law. It must not be
8 the law of the mighty or the conqueror.

9 19. The heretofore accepted definition of
10 "international law" is that it governs relations
11 between independent States.^{21.} It has been a matter
12 of common sense to understand that: "Public inter-
13 national law is the body of rules which control the
14 conduct of independent States in their relations with
15 each other. It is altogether different in its nature
16 from law in the narrower sense of the word, namely,
17 law capable of judicial enforcement, for that implies
18 a force superior to both the litigants or disputants;
19 and as independent States have no recognized common
20 superior, the rules by which their conduct is governed
21 are incapable of enforcement except by war."^{22.}

22 Even the Chief Prosecutor admits that "the personal

23 20. T. 407-8. 21. The S. S. Lotus (France v. Turkey),
24 Permanent Court of International Justice,
25 Sept. 7, 1927, cited in Hackworth: "Digest
of International Law," 1940, Vol. 1, p. 2.
22. Byrne's Law Dictionary, 1923, p. 487.

1 liability of these high ranking civil officials is
2 one of the most important, and perhaps the only new
3 question under international law to be presented to
4 this Tribunal.^{23.}

5 20. According to the Chief Prosecutor, it
6 is said that the prosecution will "show that each and
7 every one of the accused named in this indictment
8 played an important part in these unlawful proceed-
9 ings; that they acted with full knowledge of Japan's
10 treaty obligations and of the fact that their acts
11 were criminal."^{24.} In my submission, here lies the
12 fallacy of his contention, for knowledge of treaty
13 obligations is entirely a different question from
14 knowledge of criminality of their acts. No modern
15 national law would punish an individual for any breach
16 of contract, whether be it intentional or unintentional.
17 No international law has ever criminally punished an
18 individual for any breach of treaties except perhaps
19 in cases of the so-called conventional war crimes and
20 pirates. Even then, the prosecution admits that "the
21 Hague Convention nowhere designates such practices
22 as criminal, nor is any sentence proscribed, nor any
23 mention made of a court to try and punish offenders."^{25.}

24 23. T. 435. 24. T. 422. 25. T. 39007.

1 21. Evidence adduced either by the prosecu-
2 tion or by the defense has definitely established the
3 fact that all the defendants did their level best to
4 carry out whatever treaty obligations they had to
5 deal with in their respective capacities, not because
6 they were aware of their criminal responsibility for
7 not doing so, but because they wanted to keep the
8 sanctity of the treaty itself. Any breach of treaty
9 obligations, alleged by the prosecution, has been
10 proved to have resulted from inevitable but unforeseen
11 circumstances. All acts of the defendant as indi-
12 cated before this Tribunal, were done in pursuance of
13 the laws of their country. If Professor Hafter is
14 right in saying that "it is necessary that his idea
15 as layman, i. e., his sense of law, should inform him
16 that he is committing an act which is not permissible,"^{26.}
17 how could the defendants have been informed by their
18 sense of law that their acts were not permissible
19 under international law at the same time when their
20 very sense of law was telling them that their acts
21 were permissible under their national law?
22

23 22. The learned judges in the McNaughten's
24 case stated as follows:

25 26. See para. 9 supra.

1 "We are of opinion that, notwithstanding the
2 party accused did the act complained of with a view,
3 under the influence of insane delusion, of redressing
4 or avenging some supposed grievance or injury, or of
5 producing some public benefit, he is nevertheless
6 punishable according to the nature of the crime com-
7 mitted, if he knew at the time of committing such crime
8 he was acting contrary to law: by which expression we
9 understand to mean the law of the land."^{27.} If there
10 was any conflict between the law of the land and
11 international law, the judges would not hesitate to
12 answer the superiority of the former. So would the
13 defendants. But what I wish to emphasize is that not
14 only the defendants had legal justification for their
15 acts under their national law, but they honestly
16 reasonably believed that their acts were justified
17 under international law.

18
19 23. The prosecution contends, in its summation
20 upon conspiracy, as follows:

21 "If he was in office at that time, allowed
22 his scruples to be overruled, and continued in office,
23 we submit that quite clearly he should be convicted,
24 and that in a moral point of view his case is at least

25 27. *McNaughten's Case*, 1843, cited in *Wilshire: "Leading Cases on Criminal Law,"* 3rd Ed., 1935, p. 31.

1 as bad as that of one who had no such scruples."^{28.}

2 And further it maintains, in its summation
3 upon individual responsibility, in particular, of a
4 cabinet minister, that:

5 "He always had alternative of resigning
6 instead of casting his affirmative vote for, or ex-
7 pressing his acquiescence in an aggressive measure.
8 If he did not resign despite his personal convictions
9 because he felt more important that he or the cabinet
10 continue in office, he is legally just as responsible
11 and morally more responsible than an all-out pro-
12 ponent of the aggressive policy, since he deliberately
13 chose to approve the policy with full cognizance and
14 conviction of its evil."^{29.}

15
16 24. Such an accusation misses the mark
17 entirely, so far as the defendants are concerned.
18 During the period of the indictment, i. e., from
19 January 1928 to September 1945, 17 cabinets rose and
20 fell, the average life of a cabinet being only one
21 year. How can we expect any consistent national
22 policy, either aggressive or defensive, under these
23 circumstances? The trouble with the defendant was
24 not that they clung to their prominent posts despite

25 28. T. 39057.
29. T. 40554-5.

1 their personal convictions, but that they foresook
2 such posts too readily, because of their sensitiveness
3 to political responsibility, to carry out their poli-
4 cies. Did or should their sense of law inform them,
5 at the time of their resignation, that they would be
6 also responsible criminally under international law,
7 if they did not resign? No sane man, even the most
8 learned scholar of international law, would dream of
9 such a fantasy, but that will be the only conclusion
10 to be drawn from the logic of the prosecution. What-
11 ever may be the case, the evidence adduced before the
12 trial has proved that the defendant believed that their
13 act were permissible both by the law of their land
14 and by the laws of nations and that they had good
15 reason so to believe. Even if they are to be ad-
16 judged by an ex post facto law as criminally liable
17 under international law, their punishment should be
18 remitted, should the principle embodied in the aforesaid
19 Article 16 of the Chinese Criminal Code³⁰ be adopted.

21 25. Leaving aside for a moment the question
22 of international law, I should like to discuss briefly
23 the principle of criminal responsibility, which requires
24 the existence, at the time of commission of an alleged
25 30. See para. 15, supra.

1 offense, of a possibility of expecting the offender
2 not to commit such an act. Article 34 of the Swiss
3 Criminal Code of 1937 is the best illustration of this
4 principle and provides as follows:

5 "No person shall be punished for his act
6 done in order to avert any impending and otherwise
7 unavoidable danger to his right, in particular, to
8 life, body, liberty, honor or property, if he is not
9 responsible for the occurrence of such danger and if
10 it is impossible to expect him to abandon his endan-
11 gered right in view of the circumstances."
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1 26. Article 37 of the Japanese Criminal
2 Code reads as follows:

3 "No person shall be punished for his act
4 inevitably done in order to avert any impending
5 danger to his or any other person's life, body,
6 liberty or property, if the evil arising out of his
7 act does not exceed the degree of evil which he tried
8 to avert; provided however that punishment as to the
9 act in excess of such degree may be reduced or remitted
10 in consideration of the extenuating circumstances."

11 The underlying thought of this provision
12 is the same as that of the Swiss Code above referred
13 to, i.e., criminal responsibility shall not be attributed
14 to the case where it is impossible to expect a person
15 to avert the evil by anything short of the commission
16 of the offence in question.

17 27. Professor Kenny states as follows:

18 "The defence of necessity, however, can
19 only be important where, as in capital offences, there
20 is a prescribed minimum of punishment. For in all
21 others every English judge would take the extremity
22 of the offender's situation into account, by reducing
23 the sentence to a nominal penalty. Yet where immediate
24 death is the inevitable consequence of abstaining from
25 committing a prohibited act, it seems futile for the

1 law to continue the prohibition, if the object of
2 punishment be only to deter. For it must be useless
3 to threaten any punishment, the threat of which cannot
4 have the effect of deterring. Hence, perhaps, it is
5 that in the United States the defence of Necessity
6 seems to be viewed in favor".³¹

7 Although it may not be so prevalent as in
8 continental countries, the English defence of Necessity
9 is based, in the final analysis, on the same principle
10 as mentioned above in reference to Swiss and Japanese
11 laws.

12 28. As a further application of this principle,
13 I refer to Article 105 of the Japanese Criminal Code,
14 which provides as follows:

15 "In the case where a crime mentioned in
16 this Chapter (i.e. harboring a criminal or suppression
17 of evidence) is committed by a relative of a criminal
18 or a fugitive for the benefit of the criminal or the
19 fugitive, punishment may be remitted".
20

21 The harboring or suppression of evidence by
22 a parent or a wife for the benefit of his or her child
23 or her husband is, indeed, an inevitable manifestation
24 of humanity, as expressed by Confucius in his Analects
25 that "the true justice exists where a father conceals
for the sake of his child and a child for his father".

31. Kenny: Op. cit. pp. 77-78.

1 It would be unreasonable and against human nature to
2 expect him to act otherwise. A similar kind of law
3 is found in England. If a husband who has committed
4 a crime is received and sheltered by his wife, she is
5 not regarded by the law as becoming by such "bare
6 reception" an accessory after the fact or a participator
7 in his treason; for she is bound to receive him.³²

8 29. As another example of the same principle,
9 Article 76 of the old criminal code of Japan provided
10 as follows:

11 "A person, who has performed his official
12 duty under his superior's order, shall not be punished".

13 The present Criminal Code has deleted such
14 a provision on the ground that it is included in Article
15 35, which reads as follows:

16 "No act is punishable, which is done in
17 accordance with the provisions of law or regulations
18 or in pursuance of a legitimate business".

19 It corresponds to Article 32 of the Swiss
20 Criminal Code of 1937 which provides as follows:

21 "Any act, which is required by law or by
22 an official or business duty or permitted or declared
23 not punishable by law, is neither felony nor mis-
24 demeanour".
25

32. Kenny: Op. cit. pp. 73-74

But a husband enjoys no similar exemption when
he assists a felonious wife; he becomes accessory
to her felony (Kenny: Op. Cit. p. 89).

1 30. In the Chinese Tentative Criminal Law,
2 there was no such provision, but in Article 35 of
3 the old Chinese Criminal Code of 1928, it was provided:

4 "No act is punishable, which is done in the
5 course of an official duty under the order of one's
6 superior officer".

7 Then, in Article 21 of the present Chinese
8 Criminal Code of 1935, Articles 34 and 35 of the old
9 Code are combined as follows:

10 "No act is punishable, which is done in
11 accordance with law or regulations.

12 "No act is punishable, which is done in the
13 course of an official duty under the order of one's
14 superior officer, except the case of a person who has
15 known clearly the illegality of such order".

16 The said Article 21, Paragraph 2 of the
17 Chinese Code implies obviously the following two
18 points: Firstly that no crime will be constituted
19 by any act of a subordinate done under a legal order
20 of his superior, and secondly that a subordinate shall
21 not be held responsible for any act done under an illegal
22 order of his superior, unless the subordinate knew
23 clearly the illegality of the order.

24 31. In this connection, the French Criminal
25 Code provides in Article 327 as follows:

1 "Murder, wounding or assault committed under
2 the provisions of law and ordered by a lawful authority
3 shall constitute neither felony nor misdemeanour".

4 And in Article 114, it is provided:

5 "A public official, agent or employee of
6 the government shall be deprived of his civil rights
7 in the case where he has ordered or committed any
8 arbitrary act, or any act inimical to the individual
9 liberty or to the civil rights of one or more citizens
10 or to the Constitution.

11 "If, however, he proves that he has acted
12 under the order of his superiors concerning matters
13 within their jurisdiction, in which matters he is bound
14 to the superiors by a chain of subjugation, he shall be
15 exempted from punishment, etc."

16 32. In reference to criminal responsibility
17 of a subordinate, Professor Donnedieu de Vabres
18 enumerates three points of view: (a) The theory
19 which maintains the irresponsibility of a subordinate
20 on the ground that he is not allowed to criticize
21 the legality of his superior's orders; (b) the so-called
22 "la theorie des baionettes intelligentes", prevalent
23 in the courts of the United States,³³ which have
24 repeatedly refused to recognize any such irresponsibility
25

33. Kenny: Op. Cit. p. 73.

at all on the ground that a subordinate has the right
1 (and duty?) to criticize the legality of his superior's
2 orders; and (c) the theory which admits mitigation of
3 punishment in the case where the content of such order
4 was apparently legitimate and its formality was
5 satisfactory.³⁴

6 33. According to Professor Kenny, the
7 official British Manual of Military Law admits it to
8 be still "somewhat doubtful" (Chapter VIII, par. 95)
9 how far a superior officer's specific command, even
10 not obviously improper, will excuse a soldier from
11 acting illegally.³⁵ Compared to such legislation,
12 the said Chinese Criminal Code (Article 21, Paragraph 2)
13 sweeps away any doubts by stating that punishment
14 will be imposed only upon a subordinate who has acted
15 with a clear knowledge of illegality of his superior's
16 order. It follows, therefore, that in case there
17 existed any ambiguity as to illegality of the order,
18 he shall not be responsible, even if he carried out the
19 order. Since the basic principle of officialdom lies
20 in the chain of command and subjugation, especially
21 in the case of the army and navy, it is according to
22 the thinking of Chinese law, unreasonable to expect
23

24
25 34. Donnedieu de Vabres: "Traite elementaire de droit
criminel", 1937, pp. 246-247. He seems to agree
with the third view.

35. Kenny: Op. Cit. p. 73.

1 him to act contrary to his superior's order, even when
2 he was not quite sure of its being either legal or
3 illegal.

4 34. On the other hand, Professor Liszt
5 contends that "so long as the absolute binding power
6 of a superior's order is acknowledged by law, such
7 an order will preclude the illegality of his subordinate's
8 act done in accordance therewith", on the ground that
9 "an act done in pursuance of one's duty is never
10 illegal".³⁶ This contention is erroneous, because
11 since the superior is held responsible for the
12 execution of his illegal order, "the punishment cannot
13 be linked with a legal act."³⁷ If the superior's order
14 is illegal, we have to admit that the subordinate's
15 act is also illegal. However, the impossibility of
16 expecting him to act otherwise will exempt him from
17 any wickedness or blameworthiness and hence from
18 any criminal responsibility.

19 35. According to Professor Sayer, "the
20 conception of blameworthiness or moral guilt is
21 necessarily based upon a free mind voluntarily choosing
22 evil rather than good; there can be no criminality

23 36. V. Liszt: "Lehrbuch des Deutschen Strafrechts",
24 21-22 aufl. 1919, §35, s. 146.

25 37. N. E. Meyer: "Der allgemeiner Teil des deutschen
strafrechts", 1915, s. 334.

1 In the sense of moral shortcoming, if there is no
2 freedom of choice or normality of will capable of
3 exercising a free choice".³⁸ The Nuremberg Judgment
4 ruled that "the true test...is not the existence of
5 the order, but whether moral choice was in fact
6 possible".³⁹ In my submission, these words are
7 nothing but the enunciation of the principle of
8 impossibility of expectation (Nichtzumutbarkeit).

9 36. The Nuremberg Judgment has brought
10 this principle of criminal law into the field of
11 international law. The relevant provisions of law
12 considered by that Tribunal are articles 7 and 8
13 of its Charter which in combination correspond to
14 article 6 of the Charter governing this honorable
15 Tribunal. The difference between the said provisions
16 of the two charters is that while in the Nuremberg
17 Charter the official position of defendants, whether
18 as heads of states or responsible officials in govern-
19 ment departments, shall not be considered as freeing
20 them from responsibility or mitigating punishment,
21 and only the fact that they acted pursuant to order
22 of their government or of their superiors may be
23 considered in mitigation, the Tokyo Charter provides

24 38. Sayer: Op. Cit. p. 1,004.

25 39. Nuremberg Judgment, p. 16,881.

1 that both their official positions and the fact that
2 they acted pursuant to order may be taken into
3 consideration, if the Tribunal determines that justice
4 so requires.

5 37. Now, the prosecution contends in its
6 summation as follows:

7 "The defendants may be divided into three
8 categories: (1) those defendants who had the ultimate
9 duty or responsibility for policy formation fixed
10 by the law of Japan; (2) those defendants, although
11 they do not have the ultimate duty or responsibility,
12 had the duty or responsibility for policy formation
13 in a subordinate or intermediate capacity fixed by the
14 law of Japan; and (3) those defendants who, although
15 they had no duty or responsibility fixed by the law
16 of Japan, have by their acts and statements placed
17 themselves on the policy-making level and are therefore
18 chargeable with responsibility in fact."⁴⁰

19 As to the defendants of the first category,
20 I have already shown in the above that their acts,
21 done in accordance with the law of Japan and in the
22 honest and reasonable belief that such acts would
23 also be justified under international law, preclude
24 any knowledge of illegality and, therefore, their

25 40. T. 10,342-3.

1 punishment should be remitted.⁴¹

2 38. It is further submitted that under
3 such circumstances as existed during the period of
4 17 years since 1928, no man could have acted otherwise
5 than what the defendants did, should he have been
6 placed in their stead. It was, indeed, humanly
7 impossible for them to stop successive explosions of
8 the long pent-up national sentiments, either at home
9 or abroad. It was also humanly impossible for them
10 to carry out direct control and supervision over
11 numerous subordinates in remote corners of Manchuria,
12 China and elsewhere. In short, can we expect them
13 to exercise their authority and care to such an extent
14 as to turn the tide of national destiny and to prevent
15 the inevitable consequences of sanguine hostilities?
16

17 39. As to the defendants of the second
18 category, there was in Japan the so-called Regulations
19 for the Duty of Government Official,⁴² which provided
20 as follows:

21 "Article 1. Government officials shall,
22 pledging their allegiance and assiduous services to
23 His Majesty the Emperor and the Emperor's Government,
24 obey laws and orders and discharge their respective
25 duties.

41. See Para. 24, supra.

42. Ex. 3510, T. 34,003.

1 "Article 2. Government officials shall, with
2 respect to their duties, observe the orders of their
3 superior officials to whom they are assigned, provided
4 however that they may express their opinions to such
5 orders."

6 In the case of military men, a more special
7 and vigorous duty was imposed upon them for
8 observance of their superior's orders. Those who
9 opposed or did not comply with such orders were
10 severely punished as guilty of the crime of defiance
11 under the Army Criminal Code (Arts. 57-59) or the Navy
12 Criminal Code (Art. 55-57).

13 40. In any case, once a decision or an
14 order was given by his superiors, a civil official
15 or military officer was not allowed to act contrary
16 thereto, whatever his personal opinion might have
17 been. To expect him to act otherwise was, indeed,
18 impossible. Even the Ministers of State and Commanders-
19 in-Chief of various armies and fleets were, in that
20 sense, subordinates to the Emperor. If an Imperial
21 Sanction was issued, they could do nothing but obey
22 it. That is why the Chiefs of Army and Navy General
23 Staffs exercised a great influence not only in military
24 affairs but in political matters by having direct
25 access to the Throne.

1 41. Even if we assume, for the sake of
2 argument, the existence of some criminal responsibility
3 either under international law or under national law
4 upon somebody in the political or military circles of
5 Japan, it is impossible to attribute such responsibility
6 to any person or body of persons, because in the 20th
7 century Japan nobody has ever succeeded in obtaining
8 a single post, much less power in the Government, by
9 plots, revolutions and other unlawful means, such as
10 seen in the history of Germany after the First World
11 War. All plots and attempts of revolution were either
12 nipped in the bud or suppressed. By whom? By the
13 very defendants who now stand in the dock. Every one
14 of them was appointed to his post in due course of
15 his career and in pursuance of the laws and customs
16 of Japan. None of them exceeded his authority or
17 was negligent of his duties, prescribed by the regulations
18 of his office. It is true that they belonged to the
19 higher grade in the hierarchic structure of Japan, but
20 it is also shown by evidence that there was no Hitler,
21 no Mein Kampf, no Nazi Party or criminal organization
22 among them.
23

24 42. As to the defendants of the third
25 category, whatever popularity and influence they had
were derived not from governmental or military sources,

1 but from ordinary citizens at large. They never were
2 powerful enough to be able to force their will upon
3 the politics of Japan. All they could do was to voice
4 the people's sentiments in opposition to the then
5 prevailing bureaucracy. Perhaps they dreamed about
6 the Great East Asia Co-Prosperity Sphere and Asia
7 for Asiatics, but their talks were puerile compared
8 to the nation-wide movement of anti-foreignism in
9 China. If the latter was not treated as an international
10 crime even by the Lytton Report, why should the former
11 be so condemned? If freedom of thought is to be one
12 of the human rights under national law, why should
13 international law try to stop it?

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1 43. The underlying thought of the prosecution
2 in thus accusing the defendants of the above-mentioned
3 three categories is that a state is a fictitious exist-
4 ence, to which no criminal responsibility can be
5 attributed.⁴³ The Chief Prosecutor declares that:

6 "Nations as such do not break treaties, nor
7 do they engage in open and aggressive warfare. The
8 responsibility always rests upon human agents;"⁴⁴
9 and also that:

10 "All governments are operated by human agents,
11 and all crimes are committed by human beings. A man's
12 official position cannot rob him of his identity as an
13 individual nor relieve him from responsibility for his
14 individual offences."⁴⁵ Such a thought follows the
15 maxim: "Societas delinquere non potest," but according
16 to Professor Kearny:

17 "It is now settled law that corporations may,
18 in an appropriate court, be indicted by the corporate
19 name, and that fines may be consequently inflicted
20 upon the corporate property."⁴⁶

21 44. In England, the Interpretation Act, 1889
22 (52 and 53 Vict. c. 63, s. 2) provides that in the con-
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24 43. Prosecutor Jackson: "The Case Against the
25 Nazi War Criminals," 1946, p. 82.

 44. Mr. Keenan, Opening Statement, T. 473

 45. Mr. Keenan, T. 434-435

 46. Kenny: Op. Cit., pp. 65-66

1 construction of every statutory enactment relating to an
2 offence, whether punishable on indictment or on summary
3 conviction, the expression "person" shall, unless a
4 contrary intention appears, include a body corporate.
5 In the United States, the Criminal Code of New York
6 of 1882 (Article 13) provides that in all cases where
7 a corporation is convicted of an offence for the com-
8 mission of which a natural person would be punishable
9 with imprisonment, as for a misdemeanor, such a corpor-
10 ation is punishable by a fine of not more than five
11 hundred dollars, as for a felony by a fine of not
12 more than five thousand dollars. The Criminal Code
13 of California of 1901 (Article 26a) provides that
14 corporations are capable of committing crimes in the
15 same manner as natural persons. This legislation is
16 explained by a text book as follows:

17 "Under the theory that a corporation is in
18 the language of Chief Justice Marshall 'an artificial
19 being, invisible, and existing only in contemplation
20 of law', it was doubted whether a corporation could
21 be guilty of crime. The modern view tends to regard
22 a corporation as a reality, a group of human beings,
23 authorized by law to act as a legal unit, endowed for
24 some purpose with legal personality."
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47. Clark and Marshal: "A Treatise on the Law
of Crimes", 4th ed., 1940, pp. 140-143.

1 And further: "Where conduct is sanctioned
2 by the directors or officers in whom the corporate
3 powers are vested, their intent should be considered
4 the intent of the corporation. Such persons are more
5 than agents for a natural principal. They embody and
6 exercise the mental element essential for corporate
7 action."⁴⁸

8 "In other words, whenever a director's act
9 is deemed to have been done for the interest of his
10 corporation, his intention being also to act on its
11 behalf, such act will be absorbed by the corporation
12 and become its act, losing the identity of any indiv-
13 idual's act."

14 45. There is no doubt that a State is a
15 juristic person under either national law or inter-
16 national law, while a corporation is such under national
17 law. If a corporation, which is nothing but a body of
18 persons bound by a certain economic or social tie, can
19 be a reality, competent to bear criminal responsibil-
20 ity, why cannot a State be more real and more competent
21 than a corporation? Hackworth states as follows:

22 "The terms state and nation are frequently
23 used interchangeably. The term nation, strictly
24 speaking, as evidenced by its etymology (naci, to be
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48. Ibid., p. 140

1 born), indicates relation of birth or origin and implies
2 a common race, usually characterized by community of
3 language and customs. The term state -- a more specific
4 term -- connotes, in the international sense, a people
5 permanently occupying a fixed territory, bound together
6 by common laws and customs into a body politic, possess-
7 ing an organized government, and capable of conducting
8 relations with other states."⁴⁹

9 46. A corporation has no territory nor people
10 over which it can exercise its sovereignty, nor any
11 natural affinity to bind them together, except a
12 certain specific purpose which may be changed or given
13 up at any time. On the other hand, a State is a
14 foreordained existence and follows a course, which no
15 single man, not even the seventeen cabinets in
16 succession within seventeen years, can change or give
17 up. A shareholder may sell out his shares of a cor-
18 poration whenever he likes to do so, but the defendants
19 could not back out from their duties imposed by their
20 State. Any international obligations are executed
21 or miscarried, not only in the name of the State but
22 by the predestined course it takes. If it is defeated
23 in a war, indemnities will be paid or territory be
24 ceded. Are not such measures punishment for its
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49. Hackworth, Op. Cit. Vol. I, p. 47.

1 responsibility under international law? Admitting that
2 the sovereignty of a state should be subject to inter-
3 national law, it is respectfully submitted that no
4 responsibility under international law should be
5 attributed directly to any individual because of the
6 following grounds.

7 47. The Japanese Law No. 125 of 1947,
8 called as the State Redress Law (Article 1), provides
9 as follows:

10 "If a public official entrusted with the
11 exercise of the public power of the State or of a
12 public entity has, in the conduct of his official
13 duties, inflicted illegally with intent or through
14 negligence any damage on other person or persons,
15 the State or the public entity concerned shall be
16 under obligation to make compensation therefor.

17 "If in the case referred to in the preceding
18 paragraph the public official has perpetrated the act
19 intentionally or through gross negligence, the State
20 or the public entity concerned shall have the right
21 to obtain reimbursement from the said public official."

22 The above provisions of the Japanese law are
23 introduced for the purpose of democratization of the
24 Japanese legal and political systems, but they do not
25 recognize any direct claim against an official by an

1 afflicted party for any damage inflicted illegally in
2 the course of the official's duties. This interpreta-
3 tion of the law is confirmed by the fact that the
4 annexed rules to the said Law abolished as from
5 October 27, 1947, Article 6 of the Public Notary
6 Law, Article 4 of the Household Registration Law,
7 Article 13 of the Real Property Registration Law, and
8 Article 532 of the Civil Procedure Code, which provided
9 a direct responsibility of a public notary, mayor of
10 city or village, registration official or bailiff
11 towards a party who suffered damage by an intentional
12 or grave negligent act of the former.

13 48. On the other hand, in the case of
14 Johnstone v. Pedlar, 1921, Viscount Finlay said in
15 the judgment of the British House of Lords:

16 "It is the settled law of this country,
17 applicable as much to Ireland as to England, that if
18 a wrongful act has been committed against the person
19 or the property of any person the wrongdoer cannot
20 set up as a defense that the act was done by the command
21 of the Crown. The Crown can do no wrong, and the
22 Sovereign cannot be sued in tort, but the person who
23 did the act is liable in damages, as any private person
24 would be.

25 "This rule of law has, however, been held

1 subject to qualification in the case of acts committed
2 abroad against a foreigner. If an action be brought in
3 the British Courts in such a case it is open to the
4 defendant to plead that the act was done by the orders
5 of the British Government, or that after it had been
6 committed it was adopted by the British Government.

7 In any such case the act is regarded as an act of
8 State of which a Municipal Court cannot take cognizance.

9 The foreigner who has sustained injury must seek redress
10 against the British Government through his own Govern-
11 ment by diplomatic or other means. This was established
12 in 1848 in the well-known case of Buron v. Denman
13 (2 Ex. 167.)"⁵⁰

14 49. In Finck v. Minister of the Interior the
15 plaintiff, a German who had been engaged in the business
16 of bookselling in Cairo, Egypt, prior to October 1914,
17 brought an action against the Egyptian Government for
18 damages resulting from the sequestration of his property
19 and the arrest and deportation of his agents. He
20 alleged, inter alia, that the decision of the Council
21 of Ministers of Egypt, on August 6, 1914, calling upon
22 the Commander in Chief of the British troops in Egypt
23 to undertake the defense of Egypt against any aggress-
24 ion of a power at war with Great Britain was ultra vires.
25 The Court of First Instance of Cairo of the Mixed

50. 2 A.C. 262, 271, 272, 275, cited in Hackworth:
Op. Cit., Vol. II, p.16.

1 Tribunals of Egypt rejected the claim for damages,
2 stating that the decision of the Council of Ministers
3 resulted in Egypt's being at war with Germany, that a
4 declaration of war is in law an act of the sovereign
5 power, that such power vested in the sovereign is
6 exercised through its ministers, that therefore the
7 decision emanated from the only authority competent
8 to make it, that in law acts of this nature are called
9 "acts of State", and that in principle such an act
10 cannot be made the basis of an action for damages in
11 respect to the injury it causes.⁵¹

12 50. This principle of acts of State should in
13 no way be different whether the case is a civil action
14 or a criminal action. According to the preliminary
15 articles of the Hague Convention IV of 1907 (article 3),
16 a belligerent party that violates the provisions of
17 the regulations respecting the Laws and Customs of War
18 on Land shall, if the case demands, be liable to pay
19 compensation and that it shall be responsible for all
20 acts committed by persons forming part of its armed
21 forces. According to the judgment of In re Piracy
22 Jure Gentium, 1934, it is expounded as follows:

23 "With regard to crimes as defined by inter-
24 national law, that law has no means of trying or punish-
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51. 15 Gazette des Tribunaux Mixtes d'Egypte (Nov.
1924-Oct. 1925) 82; British Year Book of Inter-
national Law (1925) 219; cited in Hackworth:
Op. Cit., Vol. II, p. 19.

1 ing them. The recognition of them as constituting
2 crimes, and the trial and punishment of the criminals,
3 are left to the municipal law of each country."⁵²

4 51. It is respectfully submitted, therefore,
5 that even if the defendant had been guilty of a criminal
6 intent or of gross negligence in carrying out their
7 official duties, all the accepted authorities upon
8 international law would not recognize any direct
9 responsibility upon them vis-a-vis foreign States or
10 foreigners. How can international law impose any
11 responsibility upon those who have done their duties
12 in accordance with the laws of their land and in the
13 honest and reasonable belief that their acts were
14 also in conformity with the prevailing rules of inter-
15 national law? In this connection, I should like to
16 refer to the Statute of the Permanent Court of Inter-
17 national Justice (Article 38), which provides:

18 "The Court shall apply:

19 "1. International conventions, whether general
20 or particular, establishing rules expressly recognized
21 by the contesting States;

22 "2. International custom as evidence of a
23 general practice accepted as law;

24 52. A.C. 586, 589; cited in Hackworth, Op. Cit.,
25 Vol. I, p. 38

1 "3. The general principles of law recognized
2 by civilized nations;

3 "4. Subject to the provision of Article 57,
4 judicial decisions and the teachings of the most highly
5 qualified publicists of the various nations, as sub-
6 sidiary means for the determination of rules of law.

7 "This provision shall not prejudice the power
8 of the Court to decide a case ex aequo et bono, if the
9 parties agree thereto."

10 52. If these defendants must, at any cost, be
11 adjudged directly under international law for acts done
12 in their official capacities, although there exists no
13 such precedent,⁵³ it is my sincere wish that the Tribunal
14 would take into consideration "the general principles of
15 law recognized by civilized nations," in particular,
16 those elementary principles of criminal law which are
17 submitted in the above. Professor Holdsworth remarks
18 that "primitive man is like the civilized State" and
19 compares the criminal law of ancient times with the
20 present state of international law.⁵⁴ I am convinced,
21 however, that the international law which would be admin-
22 istered by this honorable Tribunal would be in no wise
23 contrary to the sense of law developed by criminal
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25 53. Mr. Keenan, T. 459

54. Holdsworth: "History of English Law," 3rd ed.
1923, Vol. II, p. 43.

legislations of modern civilized states.

1 THE PRESIDENT: We will recess for fifteen
2 minutes.

3 (Whereupon, at 1045, a recess was
4 taken until 1100, after which the proceedings
5 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. Blakeney.

4 MR. BLAKENEY: I now sum up on behalf of the
5 defendant TOGO. In reading the document I shall make
6 a few verbal corrections which are to appear on an
7 errata sheet to be circulated later.

8 GENERAL

9 1. There are several circumstances which are
10 calculated to require the summing up of the case of
11 TOGO, Shigenori at greater length than would ordinarily
12 accord with the desires of court or of counsel. One
13 of these circumstances--one quite extraordinary, and
14 in this trial unique--raises questions so basic that it
15 must be mentioned at the outset. The defendant TOGO
16 is charged by 44 of the 55 Counts of the Indictment.
17 Two of these the prosecution, after long shrinking
18 from acknowledgment of the typographical error which
19 in them had put "TOGO" for "TOJO,"¹ in January 1947
20 dismissed as to this defendant;² as to two others the
21 charges "will not be pressed" by the prosecution,³
22 which may be supposed to amount to a nolle prosequi.
23

24 1. Tr. 15827.

25 2. Counts 25 and 35 (Tr. 16121).

3. Counts 44 and 53, Summation, WW-1 (Tr. 41868);
See also C-18 (Tr. 39050).

1 Of the remainder, 25 relate in whole or in part to
2 the activities of Mr. TOGO prior to his becoming
3 Foreign Minister in October 1941. It is from this
4 condition that arise the basic questions mentioned
5 above which perplex us to know what case we have to
6 meet.

7 2. For after the TOGO defense was opened,
8 the Chief Prosecutor arose to state to the Tribunal
9 a limitation of the charges to be urged against this
10 defendant in that the prosecution (subject to the
11 reservation to be mentioned presently) "seeks con-
12 viction of the accused TOGO for his actions beginning
13 with his assumption of duties in the TOJO Cabinet."⁴
14 This limitation, which seems clear enough as it
15 relates to the substantive charges, was subsequently
16 acknowledged by the Chief Prosecutor to imply also
17 that the prosecution did not charge the defendant
18 TOGO with having joined in any conspiracy before he
19 joined the TOJO Cabinet, which was in October 1941.⁵
20 These were, of course, not idle words, spoken without
21 consideration of their effect by the Chief Prosecutor,
22 not an expression of opinion or of an inchoate future
23 intention; they constituted the solemn, official

24 4. Tr. 35347.

25 5. Tr. 35352. "* * * with the further observation that,
as a matter of law, it is our contention that he is
guilty if he joined the conspiracy during October of
1941."

1 statement of the prosecution of its position in
2 regard to the cause, its commitment to the case which
3 it considered it possible and proper to submit to
4 the Tribunal against this defendant. That commitment
5 being stated to have been made "for the purpose of
6 assisting the Tribunal in carrying out Article 12,
7 paragraph (a) of the Charter, that part of it as
8 follows: '* * * to confine the trial strictly to
9 an expeditious hearing of the issues raised by the
10 charges,"⁶ it should presumptively have been pos-
11 sible to rely on it for definition of the issues
12 which the prosecution, who have the right and the
13 power to frame them, would contend to have been made.
14 The defense might reasonably have expected that the
15 case which it would be called upon to meet would be
16 a case limited to investigation of the criminality
17 of Mr. TOGO's actions from the time of his becoming
18 Foreign Minister in October 1941.
19

20 3. It is with surprise, therefore, that
21 after the Chief Prosecutor's solemn abandonment of
22 this large part of the charges stated in the Indict-
23 ment against the defendant TOGO, we find almost one-
24 quarter of his summation against this defendant⁷ (as
25

6. Tr. 35347.

7. Summation, WW-2--WW-10 (Tr. 41868-86).

well as incidental passages in other summations) devoted to argument of the criminality of his acts in the years prior to his "assumption of duties in the TOJO Cabinet." It is with astonishment that we read his final submission, that "by the evidence in this trial the facts alleged by the prosecution in relation to the accused TOGO have been established and that the charges made against him in the Indictment have been substantiated."⁸ Our perplexity is obvious; shall we content ourselves with meeting the case framed and upon mature consideration limited by the prosecution and thereafter answered by evidence from the defense? Or must we meet the summations as well? Our conclusion is that, while we believe the issues to have been sharply delimited, we have no right to risk the defendant's life or liberty on the correctness of our belief. We must meet the evidence and the summations. We must meet the evidence, the summations and the innuendo.

4. Regrettably, this example of irresponsibility given us by the prosecution is not exceptional, but is typical of their conduct of the case against this defendant. Of the ethics of prosecution in other lands I know nothing; but I know that this

8. Id., WW-45 (Tr. 41950).

1 case has been presented in a way which in my country
2 would have called down upon those responsible the
3 condemnation of any court in which it had occurred
4 as being in flagrant disregard of the prosecutor's
5 duty to act as an impartial officer of the court, to
6 be scrupulous in fairness to the defendant who has no
7 other protection than such as is afforded by the fact
8 of just public officials. In a cause of the magnitude
9 of this we are amazed to find the final summations
10 treated in police-court style, breathing the spirit
11 of gross partisanship, evidencing the fixed deter-
12 mination to secure conviction at all costs, at the
13 cost whether of one-sided, distorted and misleading
14 presentation of the evidence, or of creating infer-
15 ences and hypotheses, in the absence of evidence,
16 out of the whole cloth of ipse dixit. Justice is
17 nothing, conviction is the shining goal of this
18 prosecution.

19 Our position is one which may well seem
20 novel or "brazen" to a prosecution which have not
21 hesitated to assert before the Tribunal that the
22 questions of whether the events charged in the Indict-
23 ment constitute aggression, "crimes against peace,"
24 have already been conclusively decided by political
25 action of the prosecuting nations, with only the

1 respective "shares of guilt" of the defendants remain-
2 ing to be assessed by the Tribunal.^{8a} To such a
3 prosecution will appear novel our position that a
4 man is just possibly not to be found guilty on the
5 mere showing that the prosecution have charged him,
6 and repeat often enough their conclusion of his
7 guilt. The Tribunal will find the case against the
8 defendant TOGO to be rested to an altogether remark-
9 able extent on such ipse dixit. Nor are the reasons
10 far to seek. This case is unique in more ways than
11 one. On the one hand, there is very little evidence
12 against this defendant. The evidence relating to him
13 is largely free from conflict, only one or two
14 points of consequence having given rise to dispute.
15 These facts give rise, on the other hand, to an
16 extraordinary number of points of law of more or
17 less intricacy. In this state of the record, such
18 case as the prosecution have against the defendant
19 TOGO must rest on the inferences to be drawn from
20 his actions, and on the application of principles of
21 law to the factual situations disclosed by the evi-
22 dence. The prosecution, perhaps not believing their
23 case to lend itself to treatment on that basis, have
24 not chosen to present it in that way; instead, it is
25 8a. E.g., Tr. 23566-68, 22974.

1 evident that a deliberate, calculated and transparent
2 effort has been made to supply the want of substance
3 in the case by insinuation, by innuendo and by other
4 efforts to create prejudice. This is strong language--
5 and I shall use more before I have done; after I shall
6 have done the Tribunal will be able to judge whether
7 it is justified. So let it be said quite plainly:
8 we propose to demonstrate in instance after instance
9 in the course of this argument distortions of the
10 evidence, assertions of fact unfounded in any evi-
11 dence, disingenuous efforts to ignore the evidence,
12 so numerous and yet so consistent that they cannot
13 have been the result of mistake or inadvertence, but
14 must represent a considered plan to prejudice the
15 Tribunal against the cause of this defendant. Such
16 an effort will be futile, once it is recognized for
17 what it is; the requirement of fair play for my
18 client compels me to expose it, to do what I can to
19 dispel this miasma of bias and prejudice and let
20 the issues as raised by the actual evidence stand
21 forth in plain view. That I am determined to do at
22 whatever cost of time and effort.

23
24 One other thing I propose to attempt. In
25 my view the case of this defendant can be submitted
on the assumption that the principles of liability

1 laid down by the prosecution are correct. (I refer
2 to the principles set out in the general summations
3 on the subject, not to those incidental, by-blow
4 doctrines casually tossed off in the individual
5 summations without regard for logic or for consistency
6 with the general summations or with themselves.) By
7 the tests proposed by the prosecution themselves, I
8 shall submit, this defendant must be adjudged not
9 guilty.

10 5. As a starting point, let me analyze
11 somewhat further the prosecution's abandonment of
12 charges against the defendant TOGO. This act of
13 theirs is passed over in silence by the prosecution
14 in summing up, but it is one with a radical signifi-
15 cance to the case nevertheless, a significance which
16 the prosecution cannot obscure or diminish by the
17 treatment which they choose to give it or to with-
18 hold from it. The significance of that abandonment
19 by the prosecution of such a large part of the
20 charges against this defendant is, it is submitted,
21 clear. Having decided to charge Mr. TOGO for acts
22 performed as Foreign Minister of the TOJO Cabinet
23 which they wished to declare criminal, the prosecution
24 then delved into his past and, in order to lend a
25 specious sort of plausibility to the character which

1 they wish to give him as a criminal and an enemy of
2 society, added to the charges so leveled numerous
3 others of improper conduct in the past -- during his
4 service as Secretary to the Embassy in Germany, as
5 secretary-general of the delegation to the General
6 Disarmament Conference, as Director of the Foreign
7 Ministry European-Asiatic Bureau, as Ambassador to
8 Germany and to the USSR. To support these charges
9 they put into evidence numerous documents, selected
10 seemingly at random, bearing his signature or seal
11 or not, recording his utterances, or mentioning him.
12 Then, when at the conclusion of the prosecution's
13 case the defense moved dismissal of the counts
14 relating to those earlier periods, pointing out the
15 failure of evidence in connection with them, they
16 were vigorously supported by argument including
17 specious misstatements of the record and of fact.⁹
18 When thereafter, the defendant having made ready to
19 present a defense including the issues so framed by
20 the prosecution on these charges determined by the
21 Tribunal to have been prima facie established, the
22 Chief Prosecutor himself announced in open court that
23 the prosecution would not press any of the charges
24 relating to the time prior to October 1941, his action
25 9. E.g., Tr. 16939, 16942-43, 16944.

1 could have but one meaning. By that abandonment of
2 their charges--and, if that were not enough, by
3 failure to cross-examine any of the witnesses pro-
4 duced to testify to the events of those years--the
5 prosecution confessed openly that, having employed
6 the combined r sources of the eleven great powers
7 whom they represent to search the world for evidence
8 against the man, they could find nothing. It is
9 interesting to speculate how many statesmen of any
10 nation could survive the test--his entire career,
11 public and private, subjected to a scrutiny such as
12 there can never before have been opportunity for
13 making; the entire remaining archives of his govern-
14 ment, and the archives of every other government,
15 friendly or enemy, available for ransacking by the
16 prosecution, the very realization of a prosecutor's
17 dream; every enemy whom he has ever made officially
18 or personally encouraged to come forward to win
19 acclaim by the giving of testimony against a man now
20 held up to revilement as a war criminal, an enemy of
21 the human species; the evil construction to be put
22 upon his every word or deed susceptible of alternative
23 meanings. How many statesmen could come through this
24 inquisition unblemished in reputation? I repeat,
25 against this defendant TOGO Shigenori the prosecution

1 found, and confessed that they had found, nothing.

2 6. Now, in summation, they return to the
3 charge. Now they spin their fine web of argument
4 designed to induce the Tribunal to believe this de-
5 fendant to have been engaged in nefarious activities
6 throughout the long years to which the Indictment
7 relates. If this prosecution is an honest one, we
8 can expect of them a candid answer: Did they "believe
9 that it is our duty," as the Chief Prosecutor said
10 that he believed, to state to the Tribunal that their
11 abandonment of the charges represented "our concept
12 of the guilt of TOGO or the lack of guilt"?¹⁰ If
13 they believed that in December, with what logic can
14 they in March submit "that the charges made against
15 him in the Indictment have been substantiated"?¹¹
16 Nothing has occurred in the interim to affect their
17 belief; they cross-examined no witnesses, including
18 the defendant, on their testimony to those matters;
19 in rebuttal nothing was offered by them¹² relating to
20 those charges or that period. The prosecution cannot
21 have believed in December in Mr. TOGO's lack of guilt
22 of charges which they abandoned, and in March believe
23 on the same evidence that he has been proved guilty
24

25 10. Tr. 35352.

11. Summation, WW-45 (Tr. 41950).

12. Tr. 38065-80.

1 of them. By no explanation can it be concealed.
2 They do not believe him guilty; they do not believe
3 him to have been proved guilty of those charges.
4 Then why do they argue them so long and so ingeniously?
5 Let them deny it if they can that the purpose and
6 the sole purpose is to create prejudice against this
7 defendaat, that and nothing more. This, I say, is an
8 irresponsible prosecution.

9 7. Here reference to a specific, concrete
10 example of the prosecution's methods will be useful.
11 As was mentioned above, the prosecution reserved
12 from their confession of failure against Mr. TOGO one
13 point, which I state in their words: "The reservation
14 above referred to pertains to his conduct as Ambassa-
15 dor to the USSR in 1939 and whatever criminal conduct
16 may be found to exist by virtue there in reference
17 to the Nomonhan Incident."¹³ In the evidence is
18 nothing to show any "criminal conduct" of this defend-
19 ant in relation to the Nomonhan Incident--the whole
20 of the evidence is that it was by his initiative and
21 efforts that the incident was settled;¹⁴ in summation
22 no mention is made of any such responsibility of his.
23 Here is how the Nomonhan question is treated, as it

24
25 13. Tr. 35347. An additional reservation was not of
a claim of liability of the defendant.

14. *Infra*, Section 24.

1 relates to Mr. TOGO, in the summation. In the
2 general summation on Nomonhan¹⁵ his name is not
3 mentioned, except as signatory of the TOGO-Molotov
4 Agreement which as its sequel settled boundaries.
5 The word "Nomonhan" does not appear in the summation
6 against him individually; but in its last paragraph
7 are listed, among the counts which charge him,
8 Counts 26, 36 and 51, alleging, as offenses growing
9 out of the Nomonhan Incident, the initiation of war
10 of aggression, the waging of war of aggression, and
11 murder. That paragraph refers, for the discussion
12 of liability on those counts, to paragraph 9 of the
13 summation.¹⁶ I take the liberty of quoting to the
14 Tribunal the entirety of that paragraph 9 which con-
15 stitutes the prosecution's considered judgment of
16 what the record justifies as argument against the
17 defendant TOGO in this connection: "The accused was
18 appointed Ambassador to the Soviet Union on 15 October
19 1938 and arrived in Moscow to take up his new posi-
20 tion on the 27th of the same month."¹⁷

22 15. Summation, H-109--H-124 (Tr. 39854-75).

23 16. Id., WW-45 (Tr. 41951).

24 17. Id., WW-9 (Tr. 41884). The section following
25 continues directly with the matter of his recall,
at the end of his service in Moscow, in August
1940.

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That is the whole of the argument of his liability
in connection with the capital charges based on the
Nomonhan Incident.

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1 The net result of these circumstances, it is
2 submitted, is that the prosecution have by their
3 conduct but made common cause with their own wit-
4 nesses and those of the defense in giving to Mr.
5 TOGO a character as precisely the opposite of that
6 which they now seek to maintain to be his, but seek
7 to maintain by their bare assertion alone. It was
8 admitted when these charges were abandoned -- and it
9 is not now seriously pretended otherwise -- that
10 throughout his career prior to 1941 he had been in
11 opposition to those who preached and practiced ex-
12 tremism, militarism, chauvinism. It was then ad-
13 mitted that this defendant was a man of character,
14 of honor and of honesty, of veracity; the prosecu-
15 tion themselves do not even now seriously challenge
16 his veracity or credibility, but on the contrary
17 rely on his testimony, when it conflicts with that
18 of the few other defendants who -- in every instance
19 disastrously for themselves -- ventured to dispute it.
20 Instances are numerous in which in their summations
21 the prosecution phrase their submissions and con-
22 clusions in the very words of the testimony of this
23 defendant, adopting his statements and explanations
24 as their own.
25

8. Let me summarize what we submit to be the

1 inescapable conclusions to be drawn from this action
2 of the prosecution, and their significance to the
3 Tribunal; they need not be argued again, but may be
4 held in memory when we come to consider the evidence
5 in the case. The prosecution, then, charged this
6 defendant with a variety of crimes, and put in
7 what evidence they could find to sustain the charges.
8 Having done so, and after the defense case had been
9 prepared and served on the prosecution, they aban-
10 doned a substantial part of those charges, confess-
11 ing thereby that there was no evidence of criminality
12 of any act or thought of the man. The defendant, in
13 answer, produced the testimony of a considerable
14 number of witnesses -- the large majority of whom
15 were not cross-examined by the prosecution -- and of
16 himself, who on the witness stand was argued with
17 for more than four days, but was subjected to nothing
18 properly describable as cross-examination to credit.
19 In rebuttal nothing was offered tending to disprove
20 anything which had been testified to by him or his
21 witnesses. In these circumstances, it is submitted,
22 it cannot be contended that the conspiracy charges
23 prior to 1941 against him have any relevance; the
24 charges of substantive crime against him prior to
25 18. Tr. 35,348

1 1941 must be considered to have failed; and the
2 prosecution have in effect placed the cachet of
3 their approval on his credibility. If they wish
4 him to be convicted, it must be for his acts in
5 connection with the Pacific war only, and even there
6 must be on the basis of his testimony taken as ad-
7 mitted.

8 9. Another extraordinary circumstance
9 which must be mentioned as background for discus-
10 sion in detail of the evidence in the TOGO case is
11 the fact that this defendant, alone of the men here
12 on trial had once committed to writing a complete
13 formulation of his views on international relations
14 and the policies which he advocated. This document
15 was written in 1933, and a copy of it by good for-
16 tune preserved was introduced into evidence to form
17 the foundation of the defense of Mr. TOGO.¹⁹ Having
18 this document in its hands, the Tribunal is enabled
19 to know indisputably, without resort to inference,
20 surmise or deduction, this defendant's true inten-
21 tions at one period of his life, at any rate. The
22 Tribunal is urged most strongly to read the entirety
23 of this document. The prosecution have offered a
24 variety of depreciatory comments concerning it --
25 19. Exhibit 3609-A (Tr. 35,362).

... prepared fifteen years ago, which
... before a trial or a defense was ever
... of, it was not for publication, not for
... aganda use, not a theoretical treatise on the
... It was on the contrary a "most Secret"
... al document; it was prepared under order of
... riter's superiors for the confidential infor-
... of the Foreign Ministry, with the aim of

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the Govern-
of these cir-

... compulsion to
4 dissimulate or euphemize, but was from that view-
5 point the completely candid expression of the
6 author's true intentions. On the other hand, this
7 document was, as has been mentioned, not an element-
8 ary text of the theory of diplomacy, for use of
9 students, but was designed to induce action by
10 the author's superiors, and their superiors, the
11 Government. It had, as such, to take account of
12 the national policy as already charted, of the
13 circumstances of the time; the author, faced with
14 conditions, not with theories, had to make the
15 adaptation of his policies to what was practically
16 possible. Had the author been writing of an ideal,
17 he would no doubt have written differently; but he
18 was not, which is precisely what gives this document
19 its transcendant value to the Tribunal. For even
20 in those circumstances -- even at a time, to be
21 specific, when the national policy of establishment
22 of Manchukuo and abandonment of the League of
23 Nations had been decided irrevocably, all of which
24 the author of a suggested policy had to take into
25 account if he had any expectation whatever of its

1 all of which we shall take up in due course -- and
2 by quotation of isolated phrases and sentences from
3 it have attempted in their all-too-familiar way to
4 distort its significance; but again I say, let it
5 but be read as a whole. It is, of course, impossible
6 for me, much as I might wish it, to recite the
7 whole of it to the Tribunal -- though I shall before
8 having done read considerable excerpts from it --
9 but I repeat that there is nothing in this document
10 which we fear, nothing which, read in its context,
11 is damaging or unfavorable to the defendant TOGO;
12 that there is not only nothing in it inconsistent
13 with that peaceful and honorable character which
14 the whole evidence shows to have been his throughout
15 life, but on the contrary the whole spirit of the
16 document bears out this estimate of him.

17 10. The significance of this document can-
18 not be doubted. Prepared fifteen years ago, which
19 was long before a trial or a defense was ever
20 dreamed of, it was not for publication, not for
21 propaganda use, not a theoretical treatise on the
22 Ideal. It was on the contrary a "Most Secret"
23 official document; it was prepared under order of
24 the writer's superiors for the confidential infor-
25 mation of the Foreign Ministry, with the aim of

1 basing the action of the Ministry and the Govern-
2 ment; and it can be supposed, in view of these cir-
3 cumstances, that it recognized no compulsion to
4 dissimulate or euphemize, but was from that view-
5 point the completely candid expression of the
6 author's true intentions. On the other hand, this
7 document was, as has been mentioned, not an element-
8 ary text of the theory of diplomacy, for use of
9 students, but was designed to induce action by
10 the author's superiors, and their superiors, the
11 Government. It had, as such, to take account of
12 the national policy as already charted, of the
13 circumstances of the time; the author, faced with
14 conditions, not with theories, had to make the
15 adaptation of his policies to what was practically
16 possible. Had the author been writing of an ideal,
17 he would no doubt have written differently; but he
18 was not, which is precisely what gives this document
19 its transcendent value to the Tribunal. For even
20 in those circumstances -- even at a time, to be
21 specific, when the national policy of establishment
22 of Manchukuo and abandonment of the League of
23 Nations had been decided irrevocably, all of which
24 the author of a suggested policy had to take into
25 account if he had any expectation whatever of its

1 eventual adoption -- even in such circumstances,
2 nothing can be found in this document which tends to
3 suggest an aggressive or unpeaceful outlook of the
4 author. The prosecution objected to this document,
5 when it was tendered, as irrelevant and as having
6 no probative value.²⁰ The correctness of the argu-
7 ment of its relevance²¹ -- affirmed by the Tribunal
8 in admitting the document into evidence over ob-
9 jection -- has not been challenged in summation.
10 Rather, the prosecution concede its unique relevance
11 by devoting to it several pages of their summation
12 in the endeavor to torture from it some expression
13 or suggestion of aggressive intent. We will agree
14 to the importance of the question as proved by this
15 concern of the prosecution with it; but shall show
16 that when read as written the document not only will
17 bear no such interpretation as the prosecution seek
18 to impose upon it, but completely and conclusively
19 establishes the attachment to the contrary principles
20 which has motivated the defendant's official conduct
21 throughout his career. The final proof of this, as
22 I have mentioned, is in the reading of the document
23 as an entity, as it was written.
24

25 20. Tr. 35,350-52
21. Tr. 35,353-57

11. The document will be reverted to in
1 connection with the several branches of the case --
2 Russian relations, America, China and others -- but
3 now as a preliminary I wish to analyze it in a
4 general way. To raise the issue sharply, let me
5 state again, and in this way, the contention. Japan
6 was in 1933 committed to a certain course of policy --
7 she had withdrawn from the League of Nations and
8 had, as the prosecution mention, incurred the con-
9 demnation of the members of the League and of other
10 nations ²² by her conduct in the Manchurian Affair. Any
11 junior official drawing a proposed policy for
12 Foreign Ministry and Government had to take that
13 condition into account; he would be a fool to pro-
14 pose a course in defiance of the national policy as
15 already established. But it is ventured that even
16 in those circumstances, the policy stated in this
17 document is such that had it been adopted and fol-
18 lowed, there would have been no China Affair and no
19 Pacific war. By the prosecution's analysis, Bureau
20 Director TOGO in this document, while advocating a
21 policy of "temporary peace" and "measures of ap-
22 22. Their "by all other civilized nations" seems to
23 take little account of one largely interested
24 party, the Soviet Union, which never condemned.
25 Summation, SWW-4 (Tr. 41,871)

1 peasement" to the other Powers, in sum "put himself
squarely behind the Japanese policy of aggression."²³

2 Our analysis is utterly and diametrically different.

3 12. The document breathes throughout the
4 one indispensable necessity, of restoring inter-
5 national confidence in Japan -- confidence which, as
6 is bluntly pointed out, had been much damaged by the
7 Manchurian Incident.

8 "Since the Manchurian Incident, various
9 European and American countries have charged Japan
10 with having practically ignored her treaty obliga-
11 tions and embarked on aggressive action. It is an
12 undeniable fact that these countries are apprehen-
13 sive lest Japan should engage in such actions when-
14 ever an opportunity is afforded. As a result,
15 Japan has, since the year before last, as much
16 lost international confidence as she has enhanced
17 her military prestige. In modern international
18 society resort to force is a matter of the utmost
19 seriousness, especially among the great Powers, and
20 every possible effort should be made to avoid it.
21 There are not a few instances in history of the un-
22 justifiable use of armed force resulting in failure.

23 23. Summation, SWW-4, (Tr. 41,873)
24
25

1 . . . Respect for truthfulness should be alike
 2 among nations as among individuals, for it is mani-
 3 fest that when a nation forfeits international con-
 4 fidence it is ultimately the loser."²⁴

5 It is of interest, just by the way, to note
 6 that, apparently in the effort to impress upon the
 7 policy-makers the seriousness of this "forfeiture
 8 of international confidence," unusual emphasis is
 9 placed in this document on the criticisms of Japan
 10 by foreign countries.²⁵

11 As the policy to be adopted by Japan in
 12 place of that which had brought her to the point of
 13 such low international esteem, the author of this
 14 document urges adherence to certain basic principles,
 15 together with concrete proposals to put them into
 16 effect. Among his statements of general principles
 17 are that "any idea of trying to monopolize the
 18 Pacific is unrealistic"²⁶ ; that the use of force to
 19 obtain others' property is "unjustifiable"²⁷ and
 20 that every possible effort should be made to avoid
 21 it;²⁸ that Japanese good faith should be "proved" to
 22 the world.²⁹ Japan, he urges, should make it clear
 23

24. Exhibit 3609-A, pp. 24-25 (Tr. 35,372-3)

25. Id., pp 1-2, 4, 8, 11, 14-15, 24-25

26. Id., p. 3 (Tr. 35,475)

27. Id., pp. 24-25 (Tr. 35,371-2)

28. Id., p. 25 (Tr. 35,372) 29. Ibid.

1 that, even with the Manchurian Affair regarded as a
 2 fait accompli, she "entertains no territorial or
 3 political ambitions in any other area,"³⁰ nor in
 4 Manchukuo itself was there to be Japanese monopoly;³¹
 5 friendly, normal relations should be established
 6 with the United States,³² Great Britain³³ and the
 7 USSR.³⁴ "It is highly advisable," he says, "that our
 8 Government . . . declare to the world our sincere
 9 desire and intention of maintaining peace in the
 10 Pacific, of keeping it always quiet and true to its
 11 name."³⁵

12 May I emphasize? Not that Japan should
 13 fear, while dissimulating, the intention of trying to
 14 monopolize the Pacific, but that such an intention
 15 is unrealistic; not that Japan should cling to
 16 while disclaiming the intention to resort to force
 17 but that every possible effort should be made to
 18 avoid resort to force; not that other nations should
 19 be induced to believe in a fictitious Japanese good
 20 faith, but that good faith should be proved. That
 21 Japan declare her sincere desire to maintain peace
 22 in the Pacific.
 23

24 30. Id., p. 4 (Tr. 35,476) 31. Ibid.

32. Id., pp. 4-5 (Tr. 35,477)

25 33. Id., pp. 5, 8, 27 (Tr. 35,478-84)

34. Id., pp. 17-19, 23-24, 25-26 (Tr. 35,365-8,
 35,370-72, 35,373)

35. Id., p. 15 (Tr. 35,481)

13. The document is eloquent of the
1 author's intention that his Government should be
2 persuaded to make the Manchurian Incident the last
3 such event of her history. The place of Manchukuo
4 itself as an accomplished fact and part of the
5 national policy is accepted; Japan must "pursue
6 her Manchurian policy," he says, because it has been
7 so decided, but the Manchurian Incident itself is
8 nowhere defended, but is inferentially condemned,
9 throughout. The clear warning is sounded that such
10 a course must be abandoned:
11

12 "Since the Manchurian Incident, various
13 European and American countries have charged Japan
14 with having practically ignored her treaty obligations
15 and embarked on aggressive action. It is an unde-
16 niable fact that those countries are apprehensive
17 lest Japan should engage in such actions whenever
18 an opportunity is afforded . . . We should not re-
19 peat acquisition in violation of principle, then in
20 reliance on the principle insist upon retention of
21 the gains."³⁶

22 Every suggestion contained in this policy
23 is the opposite of that of attempting to extend
24 Japanese dominion over east Asia:
25

36. Exhibit 3609-A, pp. 24-25 (Tr. 35,372).

1 "As the United States does not desire the
2 exercise by Japan of absolute superiority over the
3 entire Far East, Japan should not, on her own part,
4 make this her actual policy in the foreseeable
5 future."³⁷

6 Policy toward China is to be peaceful:

7 "As regards China, . . . we should, if any
8 opportunity offers itself, immediately lay down our
9 policy for the speedy restoration of good will, and
10 strictly abide by it and prove our good faith to
11 the world."³⁸

12 Other Powers are not to be excluded:

13 "In China Proper, we should cooperate in
14 the development of that country with other Powers,
15 especially the United States and Great Britain."³⁹
16 . . . The interests of (the United States) and Japan
17 could be adjusted if the principle of the Open Door
18 and equal opportunity were realized in the Far East."⁴⁰

19 Nor is Manchukuo to be made a Japanese pre-
20 serve:

21 ". . . it is essential that the foundations
22 of a really independent Manchukuo be established,
23 and that she be led to observe as much as possible
24

25 37. Id., p. 26 (Tr. 35,483)

40. Ibid.

38. Id., p. 25 (Tr. 35,572-3)

39. Id., p. 26 (Tr. 35,483)

1 the principle of the Open Door and equal opportunity,
 2 and that it be made clear that Japan entertains no
 3 territorial or political ambitions in any other area
 4 except Manchukuo.⁴¹

5 There is in the document no breath of a sug-
 6 gestion that further aggression should be undertaken
 7 from Manchuria; rather, the repeated insistence is
 8 that "every possible effort should be made to avoid"
 9 resort to force, is upon rejecting as Japan's "actual"
 10 policy any attempt to secure domination over the
 11 Far East, upon demonstrating to the world a "sincere"
 12 desire for maintenance of peace.

13 14. The prosecution are able to discover
 14 in this document the intention that a policy of
 15 "appeasement" should be followed while Japan pre-
 16 pared for engaging in further conquests.⁴² Is it
 17 consistent with the idea of appeasement that M^r.
 18 TOGO urges the conclusion with the USSR of a non-
 19 aggression pact,⁴³ the settlement with her of all
 20 issues likely to be sources of trouble,⁴⁴ and that
 21 "we should by all means avoid any clash with the
 22 Soviet Union"?⁴⁵ Is it consistent with the idea of
 23

- 24 41. Id., p. 4 (Tr. 35,476)
 25 42. Summation, SWW-4 (Tr. 41,872)
 43. Exhibit 3609-A, p. 23 (Tr. 35,370)
 44. Id., pp. 23-24 (Tr. 35,370-72)
 45. Id., p. 25 (Tr. 35,373)

1 toward China. Strange "appeasement," this committing
2 of Japan to the permanent courses of a peaceful
3 policy, disarming her, bringing her into such good
4 relations with all potential enemies that there can
5 remain no friction! Strange appeasement, indeed,
6 a policy the principal aim of which is the restoration
7 of deserved international confidence! The prosecu-
8 tion conclude that "the policy as recommended here,
9 although advocating temporary peace, would obviously
10 fit the purposes of the most strenuous advocates of
11 aggression."⁵² Obviously; in precisely the sense
12 that the Ten Commandments would fit the purposes of
13 the most immoral advocate of sin.

14 THE DEFENSE EVIDENCE

15 15. The prosecution like to dwell on what
16 they allege to be the fact that the evidence on be-
17 half of the defendant was largely oral, and was the
18 testimony of "the accused's immediate subordinates,
19 colleagues or superiors during the period of time
20 covered by the Indictment."⁵³ This suggests several
21 reflections. If the remark were true it would be
22 wholly immaterial in so far as concerns any tendency
23 to detract from, minimize or impeach the evidence
24

25 52. Summation, SWW-4 (Tr. 41,874)

53. Summation, SWW-2 (Tr. 41,868-9)

1 "As the United States does not desire the
2 exercise by Japan of absolute superiority over the
3 entire Far East, Japan should not, on her own part,
4 make this her actual policy in the foreseeable
5 future."³⁷

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14 the development of that country with other Powers,
15 especially the United States and Great Britain."³⁹
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17 could be adjusted if the principle of the Open Door
18 and equal opportunity were realized in the Far East."⁴⁰

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20 serve:

21 ". . . it is essential that the foundations
22 of a really independent Manchukuo be established,
23 and that she be led to observe as much as possible
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25 37. Id., p. 26 (Tr. 35,483) 40. Ibid.
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1 the principle of the Open Door and equal opportunity,
 2 and that it be made clear that Japan entertains no
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 4 except Manchukuo."⁴¹

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 14 in this document the intention that a policy of
 15 "appeasement" should be followed while Japan pre-
 16 pared for engaging in further conquests.⁴² Is it
 17 consistent with the idea of appeasement that Mr.
 18 TOGO urges the conclusion with the USSR of a non-
 19 aggression pact,⁴³ the settlement with her of all
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 21 "we should by all means avoid any clash with the
 22 Soviet Union"?⁴⁵ Is it consistent with the idea of
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- 24 41. Id., p. 4 (Tr. 35,476)
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 25 43. Exhibit 3609-A, p. 23 (Tr. 35,370)
 44. Id., pp. 23-24 (Tr. 35,370-72)
 45. Id., p. 25 (Tr. 35,373)

1 appeasement that he recommends conclusion with the
2 United States of treaties of arbitration and media-
3 tion,⁴⁶ Japanese guarantee of the neutrality of the
4 Philippines,⁴⁷ and that "the basis of our policy to-
5 ward the United States should be to avoid war"⁴⁸?
6 That he proposes the cultivation of an atmosphere
7 conducive to Anglo-Japanese cooperation,⁴⁹ and says
8 that "promotion of friendly relations and collabora-
9 tion between Great Britain and Japan is highly essen-
10 tial"⁵⁰? Is it consistent with the intention of
11 appeasement that he urges, in anticipation of the
12 1935 naval disarmament conference that Japan must
13 make every effort to "reconsider our own disarmament
14 policy"⁵¹ -- to agree to American and British desires
15 for disarmament? This "appeasement" is the buying off
16 of opposition to gain time for preparing an offensive,
17 by throwing some sop to allay suspicions; it has no
18 relationship to such policies of permanent, not
19 temporary, measures as those of disarming, entering
20 into treaties, of non-aggression, arbitration and
21 mediation, of promoting the Open Door and equality
22 of opportunity in China, cooperation with Britain and
23 the United States, and a fair and moderate policy
24

25 46. Id., p. 27 (Tr. 35,484). 49. Id. p.8 (Tr. 35,479)
47. Id., p. 4 (Tr. 35,477) 50. Id., p. 27
48. Id., p. 8 (Tr. 35,476) 51. Id. p.27 (Tr. 35,491)

1 toward China. Strange "appeasement," this committing
2 of Japan to the permanent courses of a peaceful
3 policy, disarming her, bringing her into such good
4 relations with all potential enemies that there can
5 remain no friction! Strange appeasement, indeed,
6 a policy the principal aim of which is the restoration
7 of deserved international confidence! The prosecu-
8 tion conclude that "the policy as recommended here,
9 although advocating temporary peace, would obviously
10 fit the purposes of the most strenuous advocates of
11 aggression."⁵² Obviously; in precisely the sense
12 that the Ten Commandments would fit the purposes of
13 the most immoral advocate of sin.

14 THE DEFENSE EVIDENCE

15 15. The prosecution like to dwell on what
16 they allege to be the fact that the evidence on be-
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18 testimony of "the accused's immediate subordinates,
19 colleagues or superiors during the period of time
20 covered by the Indictment."⁵³ This suggests several
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22 wholly immaterial in so far as concerns any tendency
23 to detract from, minimize or impeach the evidence
24

25 52. Summation, SWW-4 (Tr. 41,874)
53. Summation, SWW-2 (Tr. 41,868-9)

1 so given. It is but natural that the evidence best
 2 calculated to explain the official acts and motives
 3 of a professional diplomat will be given by fellow-
 4 diplomats, his immediate subordinates, colleagues
 5 or superiors; by those men with whom he worked, and
 6 who best know him and his acts; not by strangers to
 7 his acquaintance, by physicians, actors or priests.
 8 Just so can the acts of a soldier, and their sig-
 9 nificance, be expected to be best known to his com-
 10 panions-in-arms, or of a lawyer to others of that
 11 calling. The prosecution's statement is, however,
 12 not true; characteristically, they have ignored
 13 both in these sweeping generalizations and in their
 14 analysis of the evidence the testimony given on
 15 behalf of Mr. TOGO by two former premiers of Japan --
 16 Admirals OKADA⁵⁴ and SUZUKI,⁵⁵ the former the prosecu-
 17 tion's own witness of whom the chief prosecutor made
 18 in open court the voluntary statement that "the
 19 prosecution have great respect and confidence in"
 20 him;⁵⁶ by the prosecution's own "star" witness, the
 21 ubiquitous General TANAKA Ryukichi;⁵⁷ of the prose-
 22 cution's own important and highly-respected witness.
 23 General UGAKI Kazushige;⁵⁸ and of other prosecution
 24 witnesses.
 25 54. Tr. 37,163 57. Tr. 35,540
 55. Tr. 35,590 58. Tr. 34,908
 56. Tr. 29,301

1 They have ignored the testimony given on behalf of
 2 this defendant by such other diverse and disinter-
 3 ested witnesses as the prosecution's witness General
 4 KASAHARA Yukio,⁶¹ Vice-Chief of the Army General Staff
 5 TANABE Moritake,⁶² one-time Chief Cabinet Secretary
 6 SAKOMIZU Hisatsune,⁶³ Chief Secretary to the Lord
 7 Privy Seal MATSUDAIRA Yasunasa,⁶⁴ all men of un-
 8 blemished reputation and not the former subordinates,
 9 colleagues or superiors of this defendant. In not
 10 one of these instances, moreover, did the prosecu-
 11 tion see fit to cross-examine. Whether they wish
 12 to cross-examine is their concern; but whether by
 13 failure either to do so or to introduce conter-
 14 vailing evidence they do not concede the truth of
 15 testimony is, as was pointedly and repeatedly made
 16 clear to them by the President of the Tribunal,⁶⁵
 17 the Tribunal's concern. The prosecution may ignore
 18 this evidence as much as pleases them; but they can-
 19 not escape the consequence, which is that in law or
 20 in common sense that which is ignored must, if it
 21 be not on its face incredible or in conflict with
 22 other evidence, be taken as true. So of the testi-
 23 mony of these witnesses.

24 59. Tr. 1220 62. Tr. 35,567 65. Tr. 26,217-26
 25 60. Tr. 35,484 63. Tr. 35,603
 61. Tr. 35,428 64. Tr. 35,595

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16. A few words further about these witnesses
 whose existence the prosecution wish conveniently to
 forget. Half a dozen or more of them occupy yet respon-
 sible positions in the various branches of the Japanese
 Government, one being Minister of Communications in the
 present government; others are mayors of municipali-
 ties; another is a prominent member of the house of
 Councillors of the national Diet. Men of this type
 do not stand in the witness box to lie on behalf of
 their former colleagues or superiors; personal friend-
 ship may well be a matter to be taken into account
 in estimating the weight to be allowed to their evi-
 dence, but little question arises of the weight of
 testimony which has at all times gone unchallenged
 by the prosecution. As one of these men said, when
 asked (by another defense counsel) whether he was not
 happy to testify to anything which would be of help
 to his former superior, "so long as it accords with
 the facts I should be glad to do so according to jus-
 tice." Nor is their testimony to be underestimated

66. NAKITA, Katsushiro (T. 35,388), YUKI, Shiroji
 (T. 26,207), NISHIMURA, Kumao (T. 23,562), INOUE,
 Kojiro (T. 35,493), KADOWAKI, Suemitsu (T. 35,517),
 and HOGEN, Shinsaku (T. 38,837).

67. TOMIYOSHI, Eiji (T. 35,522).

68. OTA, Saburo (T. 35, 585) and KAMEYAMA, Kazuji
 (T. 35,417).

69. SATO, Naotake (T. 35,547).

70. Testimony of INOUE (T. 35,504).

1 because of this friendship or esteem for the defend-
2 ant; rather, the esteem of such men is itself eviden-
3 tiary for him. It is important and proper to prove in
4 this way not only the circumstances and manner of his
5 transaction of the affairs to which they testify, but
6 as well the state of mind with which he did those things.

7 Moreover, while it is true that Mr. TOGO re-
8 lied for his defense largely on the testimony of wit-
9 nesses, it will hardly be forgot that a considerable
10 number of documents concerning the Japanese-American
11 negotiations as conducted by him was introduced also.
12 The defendants are under the obvious disadvantage that
13 the most of the archives of the Japanese Government
14 were destroyed by bombings or by fire during the war,
15 and that most of the rest, having been seized by the
16 occupation forces, are in possession of the prosecution,
17 have been sent to Washington, whence they have not
18 been obtainable, or have been "lost"; it is thus only
19 by chance that any such documents can be obtained by
20 the defense, who must therefore rely largely on the
21 testimony of witnesses.
22

23 17. Lastly, on this subject of the evidence
24 of the defense, it should be remarked that the prose-
25 cution's wonderment at the defendant's introduction of
evidence "aimed at explaining the motives for many of

his actions" is astounding. Here is the best proof of
1 how far this prosecution has strayed from those prin-
2 ciples which should animate any criminal prosecution,
3 that they seem entirely to deny the necessity of their
4 establishing the mens rea of the defendants. Have
5 they forgot that intent is an element of the crime of
6 murder? Have they forgot that intent is an element of
7 the Anglo-American crime of conspiracy, which they
8 would transplant into the law of nations? Do they not
9 remember that the intent with which war is waged differ-
10 entiates the aggressive from the defensive? This--it
11 cannot be emphasized too strongly--is the rot at the
12 root which vitiates the prosecution's entire argument:
13 they like to repeat that such defense evidence proves
14 only ("if that") that the defendant "did not at all
15 times actively participate in furthering the conspiracy
16 either because his official position, or lack of posi-
17 tion, did not enable him to do so or because he tempo-
18 rarily disagreed with" actions being taken. If we ven-
19 ture to add "or because he permanently and fundamentally
20 disagreed with that course", the only answer which we
21 can glean from the summations is the question-begging
22 one, "Oh! no; he is by our hypothesis a bad man, he
23 couldn't really have disagreed in principle." If it
24
25 71. Summation, BW-2 (T. 41,869-70).

1 sounds childish, so stated, it is not my argument,
2 it is the prosecution's. But we shall discuss the
3 prosecution's "conspiracy" somewhat later. What this
4 evidence of the defendant TOGO's intent and opinions
5 in the years prior to 1941 tends to prove is his intent
6 in 1941 and subsequent years. It is a well-known
7 principle in law and obvious in fact that if proof of
8 a man's criminal intent in 1941 may be made by showing
9 his own statements in 1940 or in 1942--or in 1931 or
10 1951--so may his lack of criminal intent be shown by
11 the same proof. The statements antecedent to 1941
12 are naturally of more probative value, having been
13 made at a time when normally there could be no motive
14 for the making of a false statement. Just as the
15 existence in 1933 of a formulated design of this defend-
16 ant to commit aggression against the world at large
17 when and where he could would be of patent probative
18 value on the question of the intent with which in 1941
19 he performed the acts for which he is charged, just so
20 is his entertaining in 1933 of the considered view that
21 aggression should never, in any circumstances, be under-
22 taken probative of the intention with which he performed
23 those acts of 1941. That the mere lapse of time in such
24 case does not impair the probative value of such evi-
25 dence we can state on eminent authority:

1 "The length of the allowable interval depends
2 on whether, under the circumstances of the case,
3 there is any real probability that the continua-
4 tion of the condition was interrupted,"⁷²

5 says Wigmore. That there is no such real probability
6 here appears from the evidence that the design of work-
7 ing for peace expressed by Mr. TOGO in 1933 in his re-
8 port to the Foreign Minister still existed in 1945, at
9 the end of the period covered by the charges herein,
10 when he entered the SUZUKI Cabinet on the express con-
11 dition of being permitted to work for ending the war,
12 and existed at all times intervening concerning which
13 there is proof. For we do not propose to demonstrate
14 that Mr. TOGO committed no crime, performed no repre-
15 hensible act, and kept his skirts clear when such actions
16 were afoot; we propose to demonstrate that throughout
17 his career he has acted affirmatively to prevent, where
18 possible, the performance of such acts. It is not his
19 defense that he was static or passive in the presence
20 of crime, but that he has been a force acting to prevent
21 the commission of crime.

22 We turn now to consideration of the evidence
23 relating to the various charges. Thinking that it may
24 be a convenience to the Tribunal, we shall take up the
25 72. Wigmore, Evidence (1940), §233, ii, 38.

1 various questions so far as it is practicable in the
2 order in which they are dealt with in Mr. TOGO's own
3 affidavit (which also was roughly the order of presen-
4 tation of the remainder of his case).

5 SOVIET AFFAIRS

6 18. Mr. TOGO having throughout his diplomatic
7 career been by chance or otherwise more or less of a
8 Russian specialist,⁷³ it is interesting to note that there
9 is no evidence whatever against him of commission of any
10 offense or even unfriendly act against the U.S.S.R. The
11 charges which are made against him in connection with
12 the Nomonhan Incident have been mentioned above,⁷⁴ to-
13 gether with the "discussion of the evidence relating to"
14 them. What remain are the various charges of planning
15 and preparing aggressive war against the U.S.S.R. from
16 1928 to 1945. These are supported by no evidence; to
17 them is applicable the prosecution's concession that
18 Mr. TOGO participated in no conspiracy during the years
19 that he was connected directly with affairs of the
20 U.S.S.R. We do, however, find in the little anthology
21 of invective and abuse which constitutes the peroration
22 of the summation of the Soviet case this passage--a
23 passage without citation of evidence, framed without
24 reference to any matters mentioned in that summation
25

73. Testimony of TOGO (T. 35,628).

74. Supra, 8-7.

1 theretofore, intemperate, supported by no evidence
2 and false in fact:

3 "Working in the field of diplomacy, TOGO
4 always carried on intense hostile activities
5 against the U.S.S.R., not stopping at the heav-
6 iest crimes. As Foreign Minister from October
7 1941 through September 1942⁷⁵ TOGO, together with
8 TOJO, should bear responsibility for the prepar-
9 ation of a war of aggression against the U.S.S.R.
10 The active role played by TOGO in that matter
11 is emphasized by the fact that during that
12 period he was a member of the Kokusaku Kenkyu-
13 Kai and generously subsidized this society which
14 was engaged in the drafting of plans of aggres-
15 sion against the Soviet Union⁷⁶

16 This may prove that the Soviet Union cherishes a vin-
17 dictive hate for statesmen who have served as ambassa-
18 dor in her capital, have been received there as friends
19 of the Soviet Union and feted by her Foreign Minister
20 in flattering terms; but for the purposes of this case
21 it proves also, and only, by the total failure of a
22 pretense of attempt to support it, that the Soviet
23 counts of the Indictment are without foundation in
24

25 75. This is erroneous. He resigned his office on 1
September; see Ex. 127 (T. 791).
76. Summation, BH-203 (T. 39,973-74).

1 fact or in law, that they should never have been pub-
2 lished to the Tribunal, and that the admission of their
3 baseless character which the prosecution once made,
4 and now in common good faith should stand by, was fully
5 justified.

6 19. We do not, however, propose to rest on
7 the absence of proof to support these charges which
8 to this day the prosecution are pressing--are again
9 pressing. Far from doing so, we propose to show for
10 the strong proof which it gives of his peaceful and
11 law-abiding nature the affirmative facts of Mr. TOGO's
12 life-long policy of peace and good-will toward the
13 Soviet Union.

14 We start with the 1933 document, "On the For-
15 eign Policy of Japan vis-a-vis Europe and America
16 Following Withdrawal from the League of Nations."⁷⁷
17 Mr. TOGO's contact with Soviet affairs prior to 1933
18 had been confined, as appears from the evidence, to
19 service as section chief in the European-American Bu-
20 reau of the Foreign Ministry from 1923 to 1925, at the
21 time when Japanese-Soviet relations, ruptured since
22 the Red Revolution, were being restored. His efforts,
23 primarily (his being the section directly concerned),
24 resulted in the Soviet-Japanese Basic Convention, signed
25 77. Ex. 3609-A (T. 35,362).

1 In Peking in 1925, re-establishing relations on a nor-
2 mal footing.⁷⁸ The first connection which Mr. TOGO had
3 with Soviet affairs during the period here under scru-
4 tiny was, however, when in early March 1933 he assumed
5 the office of Director of the European-American (later
6 European-Asiatic) Bureau of the Foreign Ministry.⁷⁹ Here
7 his first task was the preparation, at the order of
8 the Foreign Minister, of the document above referred
9 to, over a third of which is devoted to the question
10 of Soviet-Japanese relations.⁸⁰ What has been said be-
11 fore regarding the circumstances of its composition
12 must be emphasized: the national policy, of support
13 of Manchukuo and withdrawal from the League, had been
14 established, and with it Mr. TOGO had nothing to do,
15 he had perforce to accept it as he found it and to ac-
16 commodate his proposed policies to it. It would have
17 been neither statesmanlike nor beneficial to the cause
18 of peace, but imbecilic, to propose policy, however
19 idealistic, which failed to take account of the faits
20 accomplis; what the sincere lover of peace must do is,
21 if he is a practical statesman, not to attempt the
22 impossible but, working from conditions as he finds
23 them, to try to change them for the better where they
24

25 78. Testimony of TOGO (T. 35,628).

79. Exs. 127 (T. 791) and 3612 (T. 35,385); testimony
of TOGO (T. 35,629).

80. Testimony of TOGO (T. 35,629).

can be changed.

1
2 20. Now for the proposed foreign policy of
3 Mr. TOGO vis-a-vis the U.S.S.R. It commences with a
4 review of relations between the two countries from the
5 resumption of diplomatic relations⁸¹ and the reasons
6 necessitating their adjustment, making the point that
7 improvement of relations would neither affect injur-
8 iously Japan's relations with America and Britain nor
9 aggravate her domestic problem of Communism.⁸² The analy-
10 sis of the problem is followed by the conclusion that
11 "therefore it is by all means advisable that we make
12 earnest efforts to improve our relations with the
13 Soviet Union", and "a concrete program for the improve-
14 ment of Japanese-Soviet relations."⁸³ The author points
15 out that "of all the concrete measures for the improve-
16 ment of" relations, "that most desired by the Soviet
17 Union is a non-aggression pact", and discusses at
18 length the pros and cons of such a pact as they were
19 then being debated in Japan.⁸⁴ That they should have
20 been discussed, here, at all may strike one as rather
21 remarkable evidence of determination to work for good
22 relations, in view of the fact that it had been only a
23 matter of weeks before that the same foreign minister
24

25 81. Ex. 3609-A, pp. 15-17.

82. Id., pp. 18-19.

83. Id., p.20.

84. Id., pp. 20-23.

1 to whom Mr. TOGO was submitting his recommendations
2 had declined the latest of the tentative Soviet sug-
3 gestions of entering into such a pact.⁸⁵ The conclu-
4 sion which Mr. TOGO arrived at was that "Inasmuch as
5 it is our desire to improve and stabilize our rela-
6 tions with the Soviet Union, there is no reason why
7 we should not meet this desire of the Soviet by the con-
8 clusion of a non-aggression pact. . . . there are no
9 reasons why such a pact should not be concluded. It
10 is recommended that the pact be concluded . . ."⁸⁶

11 Other recommendations were that economic problems be-
12 tween the two nations be solved by conclusion of a
13 commercial treaty, if the domestic situation permitted,
14 and settlement of issues over Japanese concessions in
15 Northern Saghalien; that the problem of demarkation
16 of the Soviet-Manchukuo border be solved, to prevent
17 the threat to peaceful relations posed by the possibil-
18 ity of military border clashes; and that the Chinese
19 Eastern Railway problem be solved by purchase of the
20 Soviet interest therein.⁸⁷ These measures, thought the
21 author, would accomplish the solution of all pending
22 issues and sources of trouble between the Soviet Union,
23 and Japan and Manchukuo.
24

25 85. Summation for the defense, Section "H", "The Soviet Case), §5 (T. 42,712-17).

86. Id., p. 23 (T. 35,370).

87. Id., pp. 23-24 (T. 35,370-72).

1 21. Two misquotations of this document by
2 the prosecution must be mentioned. It is said to con-
3 tain the statement or conclusion "that the Soviet
4 Union was afraid of Japan and not Japan of the Soviet
5 Union."⁸⁸ No such statement appears in the document.
6 The author does say that "the Soviet attitude toward
7 Japan has generally been conciliatory to the extent
8 permitted by their internal situation"⁸⁹, that "the
9 Soviet attitude toward Japan since the Manchurian Inci-
10 dent has been relatively moderate"⁹⁰, and that "at pres-
11 ent" the Soviet Union "is making efforts to avoid con-
12 flict with us."⁹¹ But he says also that "the strong
13 concentration of power enabled Russia to pursue such a
14 policy."⁹² The other misquotation of the evidence is
15 this. He is said to have written that

16 "A conflict with the Soviet Union should be
17 avoided unless Japan could make a common front
18 with Great Britain and the United States. As
19 it was clear, however, that the Soviet Union
20 was making efforts to avoid such an occurrence
21 Japan should, in case of war, stand alone and
22 be condemned as an aggressor."⁹³

24 88. Summation, SWW-4 (T. 41,873). Page 19 of the
exhibit it cited.

25 89. Ex. 3609-A, p. 17.

90. Id., p. 20

91. Id., p. 25 (T. 35,373).

92. Id., p. 17.

93. Summation, SWW-4 (T. 41873-74).

1 We cannot be sure whether this is intentional, be-
2 cause the word supplied by the prosecution can be un-
3 derstood in two ways: the word "should" in the second
4 sentence. What the author said, at any rate, was
5 "would"--but let us see the entire section in his own
6 words.

7 "In case it should become inevitable for
8 us to come to armed conflict with the Soviet,
9 it is most desirable to make a common front with
10 Britain and America. However, as it is clear
11 that the Soviet is making efforts to avoid such
12 an eventuality, other Powers would not support
13 Japan but would rather condemn Japan as an
14 aggressor. We should by all means avoid any
15 clash with the Soviet Union.⁹⁴"

16 Other Powers would condemn Japan as an aggressor--
17 wherefore Japan should not clash with the Soviet Union!
18 This insistence that such a clash should be avoided is
19 reiterated a dozen times in the document; Japan should
20 "promote friendly relationships with other Powers",⁹⁵
21 should "make every effort in accordance with the gen-
22 eral course of policy to promote friendly relations
23

24 94. Ex. 3609-A, p. 25 (T. 35,373, despite the prose-
25 cution's statement (loc. cit. supra n93) that
it was "not read").

95. Id., p. 17 (T. 35,365).

with" the U.S.S.R., should, "endeavoring to avoid un-
1 necessary friction with Russia, establish the relations
2 of a good neighbor with her"; "improvement of Soviet-
3 Japanese relations will have a beneficial influence on
4 third Powers by proving our peaceful intentions, and
5 thus contribute to the betterment of the relations with
6 the United States, Great Britain and other countries";
7 world opinion will become "bitter should a military
8 clash occur between Japan and the Soviet Union. If
9 such an eventuality ever occurs, our international
10 relations will be much worse than at the time of the
11 Manchurian Incident; and if it should be protracted
12 international intervention would have to be expected.
13 Japan should avoid making any issue with the Soviet
14 Union at present"; "It is by all means advisable that
15 we make earnest efforts to improve our relations with
16 the Soviet Union"; "it is our desire to improve and
17 stabilize our relations with the Soviet Union."
18

19 THE PRESIDENT: We will adjourn until half
20 past one.
21

22 (Whereupon, at 1200, a recess was taken.)

- 23 96. Ibid.
24 97. Id., p. 18 (T. 35,367).
25 98. Id., p. 19 (T. 35,368).
99. Id., p. 20.
100. Id., p. 20 (T. 35,369).
101. Id., p. 23

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 35, section 22:

22. This, then, was Mr. TOGO's policy toward
the Soviet Union, and it is submitted to be a peaceful,
proper and laudable one, one which if published at the
time to the Soviet Union instead of having been a "most
secret" governmental document could have given that
nation no cause for alarm or complaint. It remains to
see whether these principles were adhered to in the
author's actions of subsequent years. As he himself
has pointed out, it chanced that his official positions
of later years gave him opportunity to have considerable
connection with Soviet affairs, hence to work for the
fulfillment of his policy. The first matter of busi-
ness which he managed after becoming Director of the
European-American Bureau was that of the sale of the
Chinese Eastern Railway proposed by the Soviet Union.

102. Testimony of TOGO (Tr. 35,630).

103. Id., (Tr. 35,630-32).

1 Concerning this business, of which Mr. TOGO was in
2 charge as the responsible official, it is necessary
3 to mention only one or two points. The prosecution
4 now contend (though they do not mention Mr. TOGO in
5 connection with the matter at all) that the sale was
6 forced, or the purchase price driven down, by the mount-
7 ing by the Japanese-Manchoukuoan side of numerous
8 incidents on and along the railroad during the negotia-
9 tions, with minatory intention. ¹⁰⁴ The Tribunal is
10 reminded, however, that these incidents along the right-
11 of-way had been a feature of this anomalous situation --
12 the extraterritorial railroad -- for years. The Lytton
13 Commission's report itself is authority for the facts
14 that a long history of Russo-Chinese dissatisfaction
15 over the condition, and conflicts and disputes in the
16 railway zone, had culminated in 1929 in a full-scale
17 military invasion of Manchuria by Soviet forces. ¹⁰⁵ Such
18 friction -- although it had decreased after the estab-
19 lishment of Manchoukuo (for there is no record of any
20 such serious clashes after 1931) -- was but an inevi-
21 table consequence of the situation, of a road on
22 territory of one nation owned and operated for its own
23 benefit by another. Doubtless various disputes did

25 104. Summation, §H-83 (Tr. 39,817).
105. Exhibit 57 (Tr. 17,595-99).

1 occur during the Japanese-Soviet negotiations of 1933-35;
2 they may even have increased in number. But while
3 there is no pretence or charge that the diplomats of
4 either nation had anything to do with their occurrence,
5 there is clear evidence that Mr. TOGO took the initiative
6 in trying to lead his own government to the peaceful
7 solution which was eventually arrived at. It is of
8 interest to note that in these negotiations Mr. TOGO
9 had to deal practically with the exact situation which
10 he had mentioned hypothetically in his proposed policy
11 of April 1933: "In the last analysis," he had said
12 then, "it is most desirable that the Soviet Union with-
13 draw completely all its interests in the railway.
14 However, since we cannot justifiably obtain Russian
15 interests in the railway by forcible measures, it is
16 only reasonable that we purchase their share in it. It
17 is true that the cost is great, but other means such as
18 force would raise the cost still higher inasmuch as it
19 would mean the loss of international confidence by Japan
20 and Manchoukuo."
21 ¹⁰⁶

22 Of the truth of this he very soon had to con-
23 vince his own government and military circles; no sooner
24 had the sale of the railroad been proposed by the U.S.S.R.
25 than it developed that "there was an opinion supported
106. Ex. 3609-A, p. 24.

1 by some of the military and other circles that it was
2 useless to pay a high price for a railway which was sure
3 to fall into the hands of Manchoukuo for nothing sooner
4 or later. And it was feared that this might prove an
5 obstacle to the purchase of the railway through peace-
6 ful negotiations. Mr. TOGO, in order to obtain the
7 agreement of the cabinet to acceptance of the above
8 Soviet proposal, and to make the government policy in
9 this regard solid and stable, reasoned Mr. YAMAOKA, Juko,
10 the then Director of the Bureau of Military Affairs of
11 the War Ministry, and Mr. MAGATA, Tetsuzan, the then
12 Director of the Second Department of the General Staff
13 Office, into agreement to his opinion . . ."¹⁰⁷ said the
14 chief witness on this matter (he was not cross-examined).
15 The Soviet Union professed itself satisfied and pleased
16 with the transaction after its consummation,¹⁰⁸ and an
17 item of Mr. TOGO's program for adjustment of Soviet-
18 Japanese relations had been realized by his efforts.

19 23. Opportunity for working at another of
20 those items was promptly offered; for upon the conclu-
21 sion of the Chinese Eastern transaction in the spring of
22 1935 the Soviet Government suggested its willingness to

24 107. Testimony of KAMEYAMA, Kazuji (Tr. 35,420); see
also the testimony of MORISHIMA (Tr. 35,484).

25 108. Exhibits 3251 (Tr. 29,612) and 3252 (Tr. 29,616).

1 enter into negotiation for the establishment of a com-
2 mission for prevention of Soviet-Manchoukuo boundary
3 disputes. ¹⁰⁹ These negotiations finally came to nothing,
4 owing to some disagreement which could not be solved, ¹¹⁰
5 and the achievement of anything toward settlement of
6 the border problem had to be postponed; but during the
7 sixteen months of the negotiations Mr. TOGO worked for
8 establishment of the border-demarkation commission as
9 well as that for prevention of disputes. ¹¹¹

10 24. A last matter of Soviet-Japanese business
11 managed by Mr. TOGO as bureau director was the settle-
12 ment of the Kwan-tsa-tse incident of the summer of 1937,
13 a rather trivial thing, because it was through his
14 efforts stopped at the beginning, but one illustrating
15 his invariable insistence on peaceful methods. ¹¹² Leaving
16 the European-Asiatic Bureau soon after for his new
17 assignment in Germany, he had his next connection with
18 Soviet affairs when he became Ambassador in Moscow in
19 October 1938. During two years of his incumbency there
20 a number of important problems arose, and opportunity
21 was given for significant manifestations of his outlook
22 and intent. These have been testified to by Mr. TOGO

23
24 109. Testimony of KAMEYAMA (Tr. 35,421) and TOGO
(Tr. 35,633-34).

25 110. Ibid.

111. Testimony of TANAKA, Ryukichi (Tr. 35,540).

112. Testimony of TOGO (Tr. 35,635).

1 himself, in some detail; but in view of the prosecution's
2 confession, by failure to cross-examine him or any of
3 his witnesses concerning them or to discuss them in
4 summation, that his conduct was above reproach, it will
5 suffice to sketch them briefly here. The problem of the
6 fisheries convention, which the new ambassador found
7 awaiting him upon arrival in Moscow, was serious enough
8 to threaten a rupture in diplomatic relations, but was
9 finally settled, after negotiations extending over half
10 a year, to the mutual satisfaction of the parties.¹¹³

11 The Nomorhan Incident occurred soon after the conclusion
12 of the fisheries agreement. While the prosecution have
13 now abandoned (as was mentioned above) any claim that¹¹⁴
14 Mr. TOGO bears guilt as a result of that incident, it
15 is worth pointing out that the undisputed evidence is
16 that it was he who took the initiative in suggesting
17 both to the Soviet Government and to his own Foreign
18 Ministry that the incident be settled by diplomatic
19 action.¹¹⁵ Foreign Commissar Molotov afterward stated that
20 "it had been his pleasure that he had been able to solve
21 the Nomonhan Incident with the cooperation of Ambassador
22 TOGO and that Russian-Japanese relations would become
23 more and more friendly in the coming year, thanks to the
24

25 113. Id. (Tr. 35,636); testimony of NOGUCHI, Yoshio,
(Tr. 35,376).

114. Supra, §7.

115. Testimony of OTA (Tr. 23,092).

116

efforts of Ambassador TOGO."

1 As a result of the Nomonhan settlement a
2 second item of Mr. TOGO's program of 1933 for improve-
3 ment of Soviet-Japanese relations came about in part --
4 the demarkation of the Soviet-Mongolian borders with
5 Manchoukuo. The TOGO-Molotov Agreement of 9 June 1940
6 settled the border in the Nomonhan area, and in conse-
7 quence of that agreement a border commission was estab-
8 lished, held numerous meetings in Chita and the Nomon-
9 han area, and actually marked that part of the border,
10 thus -- for the first time in the long history of the
11 border question -- achieving tangible results. This
12 demarkation (not, as the prosecution allege, "redemarka-
13 tion") of the newly-agreed border effected division
14 between the parties of the disputed territory; as has
15 been pointed out elsewhere,¹¹⁸ a simple comparison of maps
16 in evidence demonstrates that there is no substance in
17 the prosecution's assertion that this border coincides
18 with that claimed by the Soviet Union prior to the
19 incident.
20
21

22 25. After settlement of the Nomonhan Incident
23 Mr. TOGO undertook to capitalize on the friendly spirit

24 116. Testimony of NCGUCHI (Tr. 35,376) and TOGO
 (Tr. 35,638).

25 117. Testimony of OTA (Tr. 23,092) and TOGO
 (Tr. 35,637-38).

118. Summation for the defence, Section "H," "The Soviet
Case," §§10, 24 (Tr. 41,727-32, 42,765-71).

of good relations prevailing to conclude a non-aggression
 1 pact, in accordance with his proposal of long before
 2 that the Soviet desire in that matter should be acceded
 3 to. This required first the persuasion of his own
 4 government before authorization could be secured. ¹¹⁹

5 When it had been obtained, the negotiations were com-
 6 menced, and had resulted in a draft agreement when
 7 Ambassador TOGO was recalled to Japan in August 1940. ¹²⁰

8 The contents of the draft then agreed upon and of the
 9 neutrality pact actually executed in the following
 10 April are all but identical; ¹²¹

11 so that Mr. TOGO's own
 12 efforts had in fact resulted in the eventual accomplish-
 13 ment of the third of his objectives in his 1933 plan
 14 for improvement of relations with the U.S.S.R. As a
 15 result of his unceasing insistence between 1933 and
 16 1940, the Chinese Eastern Railway problem had been
 17 solved by its sale to Manchoukuo, as he had recommended;
 18 a beginning had been made on the demarkation of Soviet
 19 borders with Manchoukuo, as he had suggested be done;
 20 and the long-standing Soviet desire for a non-
 21 aggression pact had, as he had so strongly urged, been
 22 complied with. It may well be with astonishment that
 23

24 119. Testimony of OTA (Tr. 23,103) NOGUCHI (Tr. 35,381)
 and TOGO (Tr. 35,638).

25 120. Testimony of OTA (Tr. 23,103), NOGUCHI (Tr. 35,382)
 and TOGO (Tr. 35,639-40).

121. Compare the draft (Tr. 35,381) with the 1941 Pact,
 Ex. 45 (Tr. 513).

1 the Tribunal finds this man charged as a criminal
2 against the Soviet Union.

3 26. One last -- and curious -- piece of
4 prosecution sophistry remains to be dealt with, before
5 we leave Soviet questions. This concerns the recall
6 of Mr. TOGO from Moscow as it bears on his attitude
7 toward aggression. For the first two years of these
8 proceedings the prosecution's contention was that "when
9 Foreign Minister MATSUOKA in the summer of 1940 recalled
10 a great number of Japanese diplomatic representatives,
11 whose attitude was not supposed to be in accordance
12 with Japan's new foreign policy, TOGO remained as
13 Ambassador to the Soviet Union." ¹²² This was false, and
14 the prosecution repeated it knowing it to be false,
15 because the error in the personnel record upon which
16 the statement was based had been called to their atten-
17 tion, and they undertook to and presumably did investi-
18 gate it. ¹²³ Now that the evidence is in, and that evidence
19 shows Mr. TOGO to have been one of those recalled and
20 requested to resign by Foreign Minister MATSUOKA -- or
21 in other words, that his attitude was not "in accordance
22 with Japan's new foreign policy" (i.e., of Axis
23 alignment and aggression) -- it might be expected that
24

25 122. Tr. 6270, 16943.
1.3. Tr. 6364.

1 this line of argument would be dropped. Not at all!
2 Now a change comes o'er the spirit of their dreams;
3 now it is that "his recall was not due to the fact that
4 he was not in favor of Japan's policy of aggression but
5 to the fact that, unlike MATSUOKA, he still believed
6 that the aims of aggression could generally be obtained
7 by measures short of further war." ¹²⁴ This is more than
8 merely casuistic. The contention is supported by no
9 reference to evidence, and of course can be supported
10 by none because it is untrue. There is no evidence
11 whatever that the defendant TOGO was recalled for any
12 such reason as is mentioned. He could not have "still
13 believed" in aggression, for every iota of proof in
14 the record shows that he had never believed in it,
15 but always opposed it, and the prosecution have con-
16 fessed this in disclaiming any charge of conspiracy
17 against Mr. TOGO prior to 1941. The whole thing is a
18 pure creation of the prosecution's imagination, lacking
19 the virtue even of being adapted to any of the proba-
20 bilities which he might more or less plausibly have
21 conjured up. The fact is that there is no evidence
22 whatsoever to show why Mr. TOGO was recalled from Mos-
23 cow except MATSUOKA's announcement that the renovation
24 of the foreign service was necessary to secure the new
25 124. Summation, §WW-10 (Tr. 41,885).

1 foreign policy introduced by him, and what inferences
2 can be drawn from the subsequent events: that MATSUOKA
3 repeatedly requested his resignation, and that it was
4 repeatedly refused with the statement that giving it
5 would be tantamount to approval of the MATSUOKA poli-
6 cies, for which reason it would not be given. Neither
7 cross-examination nor rebuttal evidence purported to
8 attack this evidence. (Incidentally, there is evidence
9 in the record neither to support the prosecution's
10 assertion that Mr. TOGO's recall from Moscow occurred
11 several days after that of others similarly dismissed,
12 nor to explain such a delay if it did exist.)

13 27. But on this matter of Mr. TOGO's opinions
14 the prosecution have a fondly-cherished piece of evi-
15 dence, which they have wrung quite dry in trying to
16 distort it into something of the semblance of proof.
17 This is one of those memoranda of the German Foreign
18 Office -- by one Knoll, this time -- which are held up
19 as paragons of probative value when they mention the
20 names of any of these defendants. Using it as evidence
21 against the defendant TOGO requires not only misquoting
22 and distorting it but mistranslating it as well. Here

24 125. Ex. 548 (Tr. 6296).

25 126. Testimony of TOGO (Tr. 35,641) and KADOWAKI,
Suemitsu (Tr. 35,517).

127. Surmation, §WW-10 (Tr. 41,885).

is the way the prosecution put it:

1 "This (the figment of the imagination quoted
2 above) is borne out by the statement made by Ambassador
3 KURUSU, who, in June 1940, made it clear that for a
4 change from reliance upon the Western Powers to colla-
5 boration between Japan and Germany, improvement of
6 Japanese-Russian relations for the duration of the pre-
7 sent war was necessary. Both TOGO and KURUSU were work-
8 ing feverishly for this and it was becoming more and
9 more clear that Japan's future lay in the south and
10 that the enemy in the north must be made a friend."¹²⁸

12 This rune can have significance only if it
13 means that KURUSU knew TOGO's opinion, and was stating
14 it to Knoll; no contention is made that Mr. TOGO had
15 any personal connection with the matter. But it is
16 undisputed in the evidence that Mr. TOGO neither held
17 such an opinion nor expressed it to Mr. KURUSU;¹²⁹ he denied
18 having expressed such an opinion to Mr. KURUSU, and
19 the prosecution did not cross-examine on the denial
20 nor produce Mr. KURUSU as a witness to refute it. Nor
21 did Knoll even report KURUSU as saying these words,
22 but only "somewhat as follows." Also, the memorandum
23 of Knoll as it appears in evidence does not quote KURUSU
24

25 128. Summation, §WW-10 (Tr. 41,885-86).
129. Testimony of TOGO (Tr. 35,662).

as stating that TOGO held any such opinion; the only
1 clause relating to TOGO is that "TOGO and I are fever-
2 ishly working for" betterment of relations ¹³⁰ -- that is
3 the prosecution's English version; of course the
4 "lebhaft" of the original German does not connote
5 "feverishly." We may, at all events, assume the truth
6 of the statement that Ambassador TOGO was working
7 vigorously ("lebhaft") for improvement of Soviet-
8 Japanese relations -- that was his business as ambas-
9 sador -- and we may assume likewise that Ambassador
10 KURUSU was aware of the fact, since he would have known
11 of the settlement of the fisheries and Nomonhan ques-
12 tions. (KURUSU himself, as Ambassador to Germany, of
13 course had no connection with Soviet-Japanese relations
14 or their improvement.) But Ambassador KURUSU stated
15 no connection between Mr. TOGO's vigorous efforts for
16 improvement of Soviet-Japanese relations and Japan's
17 future in the south. What he was reported to have said
18 was -- "somewhat" to the effect that -- "it becomes
19 more and more clear in Japan that" the future is in
20 the south -- not that it becomes clear in Moscow, not
21 that TOGO said so or thought so, not even that he,
22 KURUSU, thought so. Finally, the whole thing is alleged
23 to be only Ambassador KURUSU's opinion of Ambassador
24
25 130. Ex. 3613 (Tr. 35,386).

1 TOGO's opinion, immaterial in any event, and which if
2 he had actually held it he would doubtless have been
3 produced to swear to instead of stating it through the
4 medium of the German language and one Knoll. Of
5 course it is absurd to speak of Ambassador TOGO's work-
6 ing for Japanese collaboration with Germany, when as
7 we shall see in a moment he had just been transferred
8 from the post of Ambassador to Germany because he had
9 engaged himself while there in working -- in truth
10 "feverishly" -- to sabotage any closer Japanese-German
11 collaboration. The final proof that Ambassadors TOGO
12 and KURUSU did not share this opinion is found (upon
13 the prosecution's theory that what a public servant
14 signs he approves) in the fact that the one was recalled,
15 while the other remained to affix Japan's signature to
16 the Tripartite Pact.

17 This incident of Mr. TOGO's recall from Moscow
18 has been given treatment out of all proportion to its
19 intrinsic importance, and designedly. No better
20 illustration can be found of the way the prosecution's
21 case against this defendant for whom I speak has been
22 built up of surmise, gossip, bold fabrication of
23 inference in the face of unequivocal and undisputed
24 evidence, prejudicial matter; of the prosecution's reck-
25 less disregard for the defendants' rights, for their

own solemn commitments and for common, ordinary fairness; and of the flimsy case which has actually been made. It is an irresponsible prosecution which does this.

28. The prosecution's case wants yet a bit more analysis. In the opening statement of its Soviet phase ten of the defendants were listed as those guilty of "crimes" against the Soviet Union; the name TOGO did not appear. In the presentation of the evidence of that phase the name TOGO was twice mentioned: as a signer of the TOGO-Molotov Agreement, provided for demarkation of the Mongolian-Manchurian border after the end of the Nomonhan fighting; as a member of a society, the Kokusaku Kenkyukai. There is also a mention of a donation to that society by the Foreign Ministry at a time when Mr. TOGO was Minister. Since in the closing statement of the prosecution Mr. TOGO is added as an eleventh arch-criminal, one who did not stop "at the heaviest crimes" against the U.S.S.R., the crimes in question must be those which that evidence discloses.

131. Tr. 7213-85.
132. Ex. 767 (Tr. 2147).
133. Ex. 683 (Tr. 7400).
134. Ex. 678 (Tr. 7358).

135.
 29. Nomonhan has already been referred to,
 1 and except for one point need not be further discussed.
 2 This remaining point is that when the prosecution
 3 announced that they were abandoning their charges
 4 against Mr. TOGO for his actions prior to 1941, they
 5 reserved "the right to interrogate, if available, the
 6 accused TOGO as to his signature appearing upon. . .
 7 a map that was signed by both Mr. Molotov and Mr. TOGO
 8 after the Nomonhan Incident. ^{136.} He was "interrogated"
 9 -- cross-examined -- concerning the map, and identified
 10 a photostatic copy as being a copy of that initialed
 11 by him and Commissar Molotov; the photostatic copy
 12 (which proved to be of the identical map introduced by
 13 the defense ¹³⁷) was introduced into evidence, and there
 14 the matter ended, ^{138.} with no proof or mention of heavy
 15 crime. There remains the Kokusaku Kenkyukai.
 16
 17

18 30. That the prosecution have turned to the
 19 Kokusaku Kenkyukai only in despair of otherwise creat-
 20 ing the faintest suspicion of Mr. TOGO's attitude
 21 toward the Soviet Union is shown by the fact of their
 22 not mentioning him in their opening statement, when but

23 135. Supra, §§ 7. 25.

24 136. T. 35347-48.

25 137. Ex. 2660 (T. 23149).

138. Ex. 3652 (T. 35973); testimony of TOGO (T.35978, as corrected T.).

1 on the following day they were themselves to intro-
2 duce the evidence on the subject. The evidence con-
3 cerning this ridiculous organization was as follows.
4 For the prosecution, the testimony of one YATSUGI,
5 chief of the business bureau of the society, to the
6 effect that it was purely a "private organization,"
7 composed of "non-official civilian members" who "had
8 no responsibility to the association except payment
9 of their established membership fees"; funds were
10 solicited, and received, from governmental as well as
11 private sources; but it is very doubtful whether a
12 contributor could have had any understanding of what
13 its money was being spent for, the explanation accom-
14 panying the request for funds being that the society
15 "in pursuing a study of Greater East Asiatic problems"
16 requested support by donation from "both private and
17 official sources."^{139.} A membership list, showing as
18 a member "TOGO, Shigenori, Member of the House of
19 Peers."^{140.} A number of ludicrous "research docu-
20 ments" of the society.^{141.} For the defense, the
21 testimony of the founder and president of the society
22 (he was not cross-examined) to the effect that the
23

24 139. Testimony of YATSUGI, Kazuo (T. 7397).

140. Ex. 683 (T. 7400).

25 141. Exhibits 679 (T. 7369), 680 (T. 7371), 682 (T. 7374), 684 (T. 7404) and 685 (T. 7411).

donation received from the Foreign Ministry during
1 Mr. TOGO's incumbency was not discussed with nor re-
2 ceived from him, but was given by the vice-minister;
3 that according to his recollection Mr. TOGO joined the
4 society after resigning his portfolio as foreign
5 minister in 1942, but was a "half-hearted and uncoopera-
6 tive member of the society," who did not even attend
7 meetings and did not receive the "research documents"
8 such as those introduced into evidence. ^{142.} Mr. TOGO's
9 own testimony (on which he was not cross-examined) was
10 that he never paid dues to the society, never attended
11 meetings, never took office in it and never had the
12 slightest knowledge of what it was doing or proposed
13 doing; that he took out his membership at the sollicita-
14 tion of a personal friend -- as any man in public life
15 does take out such memberships, without inquiring into
16 the details of the organization's activities -- and
17 that he had no knowledge of the donation made to the
18 society by the Foreign Ministry. ^{143.} All this evidence
19 stands uncontradicted in the record. The totality
20 of the prosecution's proof of the defendant's relations
21 with the society is the showing of the listing of his
22 name among those of its members, in 1942.
23
24

25 142. Testimony of OKURA, Kimmochi (T. 35613).

143. Testimony of TOGO (T. 35626-27).

1 If Mr. TOGO became a member of the society
2 only after his retirement to private life; if he
3 never knew the nature of its activities, never
4 received nor knew the contents of its documents,
5 never paid dues, attended meetings or served the
6 society, how "heavy" is the crime of his membership?
7 The fact is that the whole Kokusaku Kenkyukai question
8 is farcical, that proof of casual membership in one
9 of this prolific clan of Japanese societies alleged
10 to have promoted aggressive aims is less than no proof
11 of the policy or state of mind of the defendant TOGO.
12 Yet it is this membership which "emphasizes Mr. TOGO's
13 active role" in aggression against the USSR! What
14 can be said of a prosecution which in a capital case
15 would set such rubbish as formal membership in a
16 society against the deeds of a lifetime?

17 31. Lastly, the prosecution's summation
18 contains the statement that as Foreign Minister in
19 1941-42 Mr. TOGO "should bear responsibility for the
20 preparation of a war of aggression against the USSR."^{144.}
21 There is of course no citation of authority to this
22 point, and can be none. The prosecution's allegation
23 that "new war plans" against the Soviet Union existed
24 in 1941 and 1942 is founded on a number of facts, none
25 144. Summation, SH-203 (T. 39973-74).

1 of which either concerns the foreign minister or
2 supports the conclusion. The discussion of this
3 subject generally has been made elsewhere, and need
4 not be repeated; that discussion may be referred to
5 for the demonstration that the Army General Staff's
6 annual operations plans did not constitute war plans
7 against the USSR and that the Kantokuen plan of
8 reinforcement of the Kwantung Army had nothing to
9 do with a decision for war.^{145.} There is in no event,
10 nor can be, any contention that the foreign minister
11 had the slightest knowledge of the army's operational
12 plans; Mr. TOGO has specifically testified that he
13 never knew of the existence of the Kantokuen.^{146.}

14 The prosecution's main argument that a war
15 was planned against the USSR in 1941 is the Imperial
16 Conference decision of 2 July 1941,^{147.} with which
17 of course this defendant had nothing to do, not being
18 in office on that date. If that decision had con-
19 stituted, as the prosecution allege it to have done,
20 a decision for war; and if pursuant to it plans for
21 war had been made (which they are nowhere shown to

22
23 145: Defense summation, Sec. "H," "The Soviet Case,"
24 §§31-35 (T. 36766-71).
25 146. T. 35743.
147. Exhibits 588 (T. 6566), and 779 (T. 7904).

1 have been ¹⁴⁸), this defendant would not be liable
2 as a result thereof, in accordance with the prosecu-
3 tion's admission of the position of a man who merely
4 acts "pursuant to an already established policy."¹⁴⁹

5 There is, however, affirmative evidence that no war
6 against the USSR was planned after the TOJO Cabinet
7 took office. The prosecution would brush aside the
8 unequivocal testimony to this effect of General
9 TANAKA, Shinichi ¹⁵⁰ by the statement that it is
10 "wholly unsupported by any documentary evidence."¹⁵¹

11 They overlook their own evidence that the Liaison
12 Conference decided in the middle of November ¹⁵² that
13 "we continue the negotiation founded on the clause
14 No. 1 of the 'Principle of Negotiation with the
15 Soviet Union' decided at the Liaison Conference. . .
16 on August 4, 1941."¹⁵³ There is no evidence that
17 there actually were any such "negotiations" with the
18 USSR; but this Liaison Conference decision stands as
19 proof that war was not decided on, and as the confirma-
20 tion of all the defense evidence to that effect. All
21 that the prosecution can offer to the contrary is this

22
23 148. Defense summation. Sec. "H," "The Soviet Case,"
§39 (T. 39776).

24 149. Summation, BK-3 (T. 40539).

25 150. T. 23337.

151. Summation, §23-A (T. 41905).

152. Testimony of TOJO (T. 36344).

153. Exhibit 1169 (T. 10335).

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23 §39 (T. 39776).

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25 150. T. 23337.

151. Summation, §23-A (T. 41905).

152. Testimony of TOJO (T. 36344).

153. Exhibit 1169 (T. 10335).

1 monstrous sophism: "In substantiation of the fact
2 that military operations against the USSR were purely
3 a matter of timing, it was agreed at a Liaison Con-
4 ference in the latter part of November that if war
5 with Russia broke out, which was not impossible,
6 Japan would occupy the Russian Maritime Province." 154.
7 (This statement, by the way, is supported by citation
8 of the testimony of TANAKA only -- that which just above
9 was "wholly unsupported by any documentary evidence"
10 and was doubted to have "any basic foundation of
11 fact at all.") If war with Russia broke out, they
12 said -- ergo, war was planned! The breaking out of
13 war they considered "not impossible" -- therefore
14 Japan had planned it! And if it came, they planned,
15 the Maritime Province would be occupied -- Japan
16 would resist, which shows a design for war, made in
17 advance! The prosecution would far better have left
18 this matter as it stood in Section WW23 of their
19 summation as originally circulated, before they con-
20 ceived the afterthought of Section WW23-A:

21
22 Around the middle of November it was decided
23 that war with Russia would be avoided, and that an
24 effort would be made to bring about peace between
25 Germany and Russia . . . Later, in the same month,
154. Summation, §WW-23-A (T. 41905).

1 the Liaison Conference agreed that if war with
2 Russia broke out, which was not impossible, Japan
3 would occupy the Russian Maritime Province. ^{155.}

4 This accords with the evidence and the facts.

5 What is quite beyond dispute is that
6 Foreign Minister TOGO, so far from participating in
7 the plotting of any war against the Soviet Union,
8 treated the maintenance of Soviet-Japanese neutrality
9 and observance of the Neutrality Pact as the funda-
10 mental policy of the government. He has so testi-
11 fied, ^{156.} without cross-examination; there was no
12 cross-examination of his witnesses who testified that
13 "from the time that he assumed office Mr. TOGO worked
14 assiduously for the strict and faithful observance,
15 by both parties, of the neutrality then prevailing,"
16 and gave details of his efforts. ^{157.} Equally in-
17 disputable is it that Mr. TOGO, from the time of
18 becoming Foreign Minister, had had and had worked
19 for realization of the desire to bring about a Soviet-
20 German peace. This point serves the prosecution an
21 opportunity for an altogether brilliant manipulation
22

23 155. Original summation, SWF-23.

24 156. T. 35742-43.

25 157. Testimony of NARITA (T. 35395) and NOGUCHI
(T. 35383-84).

1 of the evidence of logic. This desire of Mr. TOGO's
2 was testified to by three witnesses; ¹⁵⁸ rather, however,
3 than cross-examine any one of them, the prosecution
4 write three words: This desire, they say, "if it
5 existed, . . ." ^{159.} As to the logic: the desire
6 "could only have been born out of the hope that Japan's
7 burden in a general war would be lessened if her
8 opponents could be divided in such manner as to permit
9 of their defeat singly." Perhaps we did not hear
10 correctly? Surely, they meant to say, "in such manner
11 as to permit the USSR, freed of her war with Germany,
12 to concentrate her entire power against Japan in that
13 war which, if you remember, had been determined upon
14 by Japan and was 'purely a matter of time'?" What
15 an astute suggestion, that Foreign Minister TOGO,
16 scheming for war against the USSR, would undertake
17 before the war started to see to it that Germany, who
18 would have been her ally in it, withdrew from it and
19 gave her no aid! What an insult to this Tribunal, to
20 suppose that such a riganarole can be imposed upon
21 it in the guise of argument!

23 158. Testimony of TOGO (T. 35792), NOGUCHI (T. 35383-
24 84) and SATO (T. 35553-54).

25 159. Summation, BWV-23-A (T. 41906).

1 Mr. TOGO's "active role" in the "heavy crime"
2 of this imaginary preparation of a hypothetical war
3 against the Soviet Union is "emphasized" by the nomi-
4 nal membership in the Kokusaku Kenkyukai which we
5 have already considered. His connection with a
6 Japanese-Soviet war thereafter until his resignation
7 in 1942 consisted chiefly of his rejections of the
8 German request that Japan attack the USSR contrary
9 to her treaty obligations. 160.

10 32. The "heavy crimes" which have distin-
11 guished Mr. TOGO's career of "intense hostile activi-
12 ties against the USSR" might, then, be summarized.
13 He embarked on his course of crime by negotiating with
14 the USSR the treaty of 1925 by which Japan extended
15 recognition to the new Soviet Union, a treaty not yet
16 repudiated by the USSR as fraudulently induced by
17 Japan, as injurious to it, or as an act of aggression,
18 but relied on in the Indictment herein as valid,
19 binding, in full force and effect and conferring
20 valuable rights and benefits upon the USSR. Next,
21 becoming Bureau Director in charge of Soviet Affairs,
22 he proposed secretly to his own government a policy
23
24 160. Testimony of TOGO (T. 35746); Exhibits 2751
25 (T. 24615), 2762 (T. 24737) and 3508 (T. 33970).

1 of improving relations with the USSR by acceding to her
2 long standing desire for a nonaggression pact, by
3 accepting her offer to sell the Chinese Eastern Rail-
4 way, and by undertaking the demarkation of Manchukuo
5 borders with the USSR. Thereafter in turn he accom-
6 plished consummation of the sale of the Chinese Eastern
7 Railway by the USSR to Manchukuo, a transaction over
8 which the Soviet Union expressed great satisfaction;
9 he settled the Nomonhan Incident and as a consequence
10 made the first agreement for demarkation of part of
11 the Manchukuoan boundary with Soviet territories;
12 he initiated, and all but brought to fruition,
13 negotiations for a nonaggression pact. He left the
14 Soviet capital, his ears ringing not with the vitupera-
15 tions and imprecations against a criminal now hurled
16 at him, but with expressions of the regret of the
17 Foreign Commissar at his recall.
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161. Testimony of TOMIYOSHI (T. 35524) and NOGUCHI
(T. 35379-82).

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33. Can there be a better demonstration
 1 of the prosecution's method -- of postulating a
 2 defendant's viciousness, then arguing from the postulate
 3 that his every act must have been criminal -- than this
 4 treatment of the Soviet charges against Mr. TOGO? It
 5 is with a logic peculiarly their own that the prosecution
 6 can argue at will that refusal to accept a non-aggression
 7 pact proffered by the U S S R is evidence of aggressive
 8 design ¹⁶², and that conclusion of
 9 a non-aggression pact at Japanese initiative equally
 10 is evidence of the same design ¹⁶³. Only the prosecution,
 11 it is ventured, could solemnly argue at once that a
 12 defendant is guilty of criminal aggression when he
 13 acts in a way calculated to bring about bad realtions
 14 between nations, and that when he is "working vigorously"
 15 (or "feverishly", if you like) to improve relations
 16 it is evidence of his attachment to a policy of
 17 aggression short of war.

18
 19 With this we leave the Soviet section of
 20 the case.

21
 22 GERMAN RELATIONS

23 34. Concerning Mr. TOGO's early (1920-21 ¹⁶⁴

24 162. T. 7, 236-37; Summation for the Defence, Section
 "H", "The Soviet Case", Sections 5-6 (T. 42,712-20).

25 163. Summation, SH-180 (T. 39,948).

164. Not, as the prosecution allege, 1920-23. The
 personnel record, Exhibit 127, shows his appointment

and 1929-32) periods of service in Germany¹⁶⁵ it is unnecessary to speak here, for they give rise to no matters touched upon in evidence. We therefore begin our investigation of his connection with German affairs with his service as Director of the European-Asiatic Bureau, when the Anti-Comintern Pact came up. First let us, however, remind ourselves of his German policy as expressed in 1933, in his report to the Foreign Minister. He demonstrates little enough preoccupation with German relations there, for the whole discussion of them occupies only a page and a half¹⁶⁶. The prosecution's statement that at the time of composition of that document "Hitler had only just come to power in Germany and his future foreign policy had not yet taken shape"¹⁶⁷ is not correct; the author clearly recognizes the significance of the rise of the dictatorship of the right in Germany¹⁶⁸, the German

164. (Continued)
on 18 May 1921 as "diplomatic commissioner", which is a unique translation of "gaiko jimukan", "foreign service secretary", meaning service in the Foreign Ministry.

165. Exhibits 127 (T. 791) and 3,612 (T. 35,385).
166. Exhibit 3,609-A, pp. 13-14 (T. 35,423-24).
167. Summation, SWI-4 (T. 41,871-872).
168. Exhibit 3609-A, p. 13.

1 intention to upset the structure of the Versailles
2 peace ¹⁶⁹ and the undesirability of Japan's undertaking
3 any political intimacy with Germany. He recommends,
4 therefore, that Japan's efforts toward Germany "should
5 be confined to promoting friendly relations" ¹⁷⁰; only
6 that Japan make efforts to have Germany understand
7 our international position in the Far East and at
8 the same time to promote closer contact in culture
9 and science between the two nations, so that she may
10 not deviate from her traditional neutral attitude
11 toward Far Eastern problems ¹⁷¹.

12 While the author thus recommends the cultivation
13 of good relations with Germany, there is no suggestion
14 in the document that there should be any intimacy, or
15 political connection of any sort, with her.

16 As Mr. TOGO testified (not "admitted" ¹⁷²),
17 he as director of the bureau in charge of the negotiations
18 which led to the conclusion of the Anti-Comintern
19 Pact had a close connection with it ¹⁷³. From this
20 the prosecution (who once confessed that they could
21 not even contend that Mr. TOGO had taken part in any
22 conspiracy prior to 1941) draw their inevitable conclusion
23

24 169. Ibid.

170. Id., p. 27.

25 171. Id., p.14 (T. 35,424).

172. Summation, SWW-5 (T. 41,875).

173. Testimony of TOGO (T. 35,642).

1 that he supported, approved, and, indeed, all but
2 conceived the pact as an aggressive measure against
3 the U S S R¹⁷⁴. Let us consider what the evidence is.
4 The first information available in Tokyo of the matter
5 which developed into the Anti-Comintern Pact was when
6 report was received by the Foreign Ministry, from the
7 Charge d'Affaires in Berlin, to the effect that
8 negotiations were in progress there for a defensive
9 alliance between Germany and Japan¹⁷⁵. Upon receipt
10 of this advice Bureau Director TOGO requested
11 specific information from the War Ministry and General
12 Staff, but apparently could secure no details¹⁷⁶. Soon
13 afterward, the Japanese Ambassador to Germany, Viscount
14 MUSHAKOJI, then on the point of returning from Tokyo
15 to his post, was instructed by the Foreign Minister
16 (instructions repeated by telegram after his arrival
17 in Berlin) that it "seemed necessary" to conclude a
18 political agreement of some nature with Germany, and
19 that he should, therefore, give study to the matter
20 upon resuming the duties of his post¹⁷⁷. In July,
21 accordingly, Ambassador MUSHAKOJI reported a German
22

23 174. Summation, SFW-5, WW-6 (T. 41,874-81).

24 175. Testimony of Yamaji AKIRA (T. 35,408) and TOGO
(T. 35,643).

25 176. Testimony of TOGO, loc. cit. supra n. 175, and
WAKAMATSU Tadaichi (T. 33,711-12).

177. Testimony YAWAJI (T. 35,409) and TOGO (T. 35,644).

1 proposal, basically the Anti-Comintern Pact, which
2 was referred to the Foreign Ministry Bureau presided
3 over by Mr. TOGO¹⁷⁸. Let me emphasize this -- Mr.
4 TOGO was not Premier, not Foreign Minister; he was
5 presiding over a bureau. It should be hardly worth
6 arguing that a bureau director does not make the
7 national policy, or any part of it -- or, for safety's
8 sake, let us put it this way: he should not make
9 policy, and in the absence of evidence that he went
10 beyond his proper functions there can be no presumption
11 that he did so. A bureau director may make recommend-
12 ations -- he is expected to, is worth little if he
13 doesn't -- but when those are accepted or rejected,
14 when policy is decided, his is only the ministerial
15 duty of carrying into effect so far as it concerns him
16 the policy ordered by his superiors.

17 35. It is undisputed that considerable
18 revisions were made in the draft Pact by Mr. TOGO --
19 none of the witnesses who testified for him on these
20 questions was, of course, cross-examined. The
21 prosecution, however, attempt the mutually contradictory
22 tasks of at once refuting the defendant's statement
23 that he was opposed to the Pact as a whole and in
24 detail and minimizing the extent of his success in
25 178. Testimony of YAJI (T. 35,409) and TOGO (T. 35,644-
46).

1 moderating its terms. That Mr. TOGO was opposed to
2 this Pact specifically, to rapprochement of any
3 political nature with Germany, and to the execution
4 of political agreements on an ideological basis in
5 general, cannot be doubted in view of the wealth of
6 unchallenged evidence to that effect. He himself
7 has testified (without cross-examination) that he
8 "had opposed from the outset the idea of a pact
9 based on Nazi ideological grounds, and so stated to
10 Foreign Minister ARITA"¹⁷⁹ that he endeavored

11 "to persuade my superiors as well as the
12 military authorities concerned of the desirability of
13 making the proposed Japanese-German agreement as weak
14 as possible...that it should be limited strictly to
15 the bare minimum of what had been determined as the
16 national policy to be Japan's needs; and particularly
17 that the matter should be so managed, and the treaty
18 so framed, that it should not injuriously affect our
19 relations with Britain and the United States, as well
20 as with the U.S.S.R., unnecessarily¹⁸⁰ ;...it was my
21 feeling that since Japan had, despite what seemed to
22 be the dangers of such a liaison, determined upon the
23 national policy of entering into the Anti-Comintern

24 179. Testimony of TOGO (T. 35,644).

25 180. Id. (T. 35,644-45).

Pact with Germany, it was essential to keep the
1 foreign policy of our nation on a rational and
2 balanced basis that efforts be made to maintain a
3 closer relationship with the democratic powers--
4 especially; England¹⁸¹ ."

5 Other witnesses have testified (without
6 cross-examination) to the opinion of Mr. TOGO in
7 the matter as they learned it then: "his personal
8 opinion was that he did not think it proper to set a
9 political agreement against an ideology; and that,
10 in principle, he could not agree to taking such measures,
11 though it seemed that it was unavoidable in consideration
12 of the circumstances"; the Anti-Comintern Pact "would
13 not necessarily strengthen the international position
14 of Japan; on the contrary, he was afraid that it
15 might weaken it."¹⁸² "I heard at the time that Mr.
16 TOGO's opinion was that the conclusion of a political
17 agreement for the purpose of coping with an ideology
18 was meaningless"¹⁸³ ; "Director TOGO told me that he was
19 against making any international agreement on the
20 basis of ideologies, because they would only result
21 in the repetition of the failure of the Holy Alliance
22
23

24 181. Id. (T. 35,647).

25 182. Testimony of MORISHIMA Morito (T. 35,487).

183. Testimony of NARITA Katsushiro (T. 35,391).

1 and, therefore, he was against a Japanese-German
2 Anti-Comintern Pact"¹⁸⁴; "When the Anti-Comintern
3 Pact was concluded during his tenure as Director
4 of the Foreign Ministry Bureau of European and
5 American Affairs, he commented more than once that
6 the making of alliances on ideological grounds was
7 undesirable, that Japan should not adopt a policy
8 which would alienate Great Britain and America, to
9 say nothing of the U.S.S.R., and that the effect on
10 Japan's international position from entering into such
11 an arrangement would be bad."¹⁸⁵ These witnesses --
12 has it been mentioned?--were not cross-examined.

13 Apply to this situation the prosecution's
14 own test.

15 "No man has been charged in this proceeding
16 because of any act committed or any statement made
17 by him in the course of his official duties pursuant
18 to an already established policy if those matters were
19 his only connection with that aggressive policy"¹⁸⁶.
20

21 The policy of the Anti-Comintern Pact had
22 been established when Ambassador MUSHIKYOJI was given his
23 orders, before ever the matter was referred to Mr. TOGO's
24 bureau for management. Mr. TOGO promptly voiced

- 25 184. Testimony of YAMAJI Akira (T. 35,410).
185. Testimony of Lurt Meissner (T. 35,461-62).
186. Summation, SK-3, (T. 40,539).

opposition--"I had opposed from the outset".

1
2 "...no man has been charged with...crimes
3 against peace...unless he is in some way responsible
4 for the aggressive policy followed by Japan, which
5 gave rise to those crimes¹⁸⁷."

6 Is a bureau director who, having no part
7 in the decision of the policy, opposed from the outset
8 and worked to offset the policy and to weaken the
9 agreement to the extent that he could, responsible
10 for the aggressive policy, it if was aggressive?

11 36. The prosecution, however, dispose of
12 this mass of evidence of Mr. TOGO's personal opposition
13 to the Anti-Comintern Pact with the statement that
14 his testimony (that of the other witnesses not being
15 mentioned) "ignores the fact that, whatever may be
16 said of the Anti-Comintern Pact itself, the attached
17 Secret Agreement was clearly not one of ideologies
18 but contained a very concrete alliance against Russia."¹⁸⁸
19 This argument "ignores" several facts. The objections
20 so repeatedly expressed by Mr. TOGO at the time were
21 not to "the Anti-Comintern Pact, except for the annexed
22 secret agreement", but were to "the Anti-Comintern Pact",
23 which in the ordinary acceptation of language includes
24

25 187. Ibid.

188. Summation, SWW-5 (T. 41,876).

1 the preamble, the main text and the various articles
2 thereof, and the annexes, secret or otherwise. His
3 objection on ideological grounds would apply equally
4 to the entirety of the document, which as a whole
5 purports to be an "anti-Comintern Pact"--that is,
6 a pact to establish some policy of action against
7 the Comintern and the threat of the spread of Communist
8 ideology. That is one fact ignored by the prosecution.
9 Another fact which they ignore is that the objection
10 because of the ideological nature of the pact is only
11 one of several, which Mr. TOGO mentioned, to the
12 Pact; he had repeatedly contended that the pact
13 would weaken the international position of Japan,
14 would alienate Britain and America, as well as, of
15 course, the U S S R, and would have a bad effect on
16 Japan's international position. A third fact ignored
17 by the prosecution is that the secret agreement to
18 the Anti-Comintern Pact, alleged by them to be "a
19 concrete alliance against Russia", is no such thing.
20 Can they have read it?

21 "ARTICLE I

22 "Should one of the High Contracting States
23 become the object of an unprovoked attack or an
24 unprovoked threat of attack by the Union of Soviet
25 Socialist Republics, the other High Contracting State

1 obligates itself, not to carry out any measures which
2 would, in their effect, be apt to relieve the position
3 of the Union of Soviet Socialist Republics.

4 "Should the case, mentioned in Clause I
5 occur, the High Contracting States will immediately
6 consult which measures they will use to preserve
7 their common interests.

8 "ARTICLE II

9 "The High Contracting States will during
10 the validity of this agreement and without mutual
11 assent conclude no political treaties with the Union
12 of Soviet Socialist Republics which do not conform
13 to the spirit of this agreement"¹⁸⁹.

14 This is what the prosecution are able with
15 a straight face to describe as "a concrete alliance",
16 whatever that may be. Certainly it is not a pact
17 of mutual assistance; the parties' obligations are
18 quite passive, not to do that which would lighten
19 the burden of the Soviet Union in the event of conflict
20 with the other contracting party, and to "consult" over
21 measures which may be desirable; there is no suggestion
22 of an obligation of positive assistance. This is on
23 its face substantially the equivalent of a neutrality
24 pact, nothing more--rather, a good deal less than the
25 189. Exhibit 480 (T. 5,937).

1 Soviet-Japanese Neutrality Pact of 1941¹⁹⁰, for in
2 this one the obligation of maintenance of neutrality
3 is limited to the case of "unprovoked" attack by the
4 U S S R. Compare this secret agreement with the
5 Anglo-Japanese Alliance¹⁹¹, a defensive alliance, to
6 see whether this amounts to one. A fourth fact ignored
7 by the prosecution is that they, themselves, the
8 prosecution, long since admitted that it was not the
9 Anti-Comintern Pact, nor the secret agreement thereof,
10 which they contended to be criminal, but the use to
11 which it was put. Let us notice this admission:

12 "THE PRESIDENT:...I should like to ask Mr.
13 Comyns Carr what case the prosecution allege the defense
14 have to meet in regard to the Anti-Comintern Pact.

15 "MR. COMYNS CARR: Your Honor, in our submission
16 it really raises three points: If this Anti-Comintern
17 Pact was nothing more than appears on its face, a
18 mutual agreement to exchange information and even to
19 assist one another in resisting the spread of communism
20 in their own countries, then I would say no case at
21 all. Various people may agree or disagree with such
22 a policy, but it involves no breach of international
23 law. But, when it is used...as an excuse for armed
24 intervention... we submit, that does involve a serious
25

190. Exhibit 45 (T. 513).

191. Exhibit 2,292 (T. 17,305).

breach of international law..."¹⁹²

1
2 The use to which the Pact was in future to
3 be put has nothing to do with the intention with which
4 the Director of the European-Asiatic Bureau of the
5 Foreign Ministry at the time of its negotiation
6 considered what it appeared on its face to be. There
7 is not a suggestion in the evidence that Mr. TOGO
8 believed, suspected or even heard that the Pact or
9 its secret agreement was anything other than appeared
10 on its face, and had he therefore even enthusiastically
11 supported the Pact he would, by the prosecution's own
12 standard, have been guilty of "no breach of international
13 law". The taking into account of this fourth fact--
14 one of their own creation--ignored by the prosecution
15 must result in the conclusion that it would not have
16 been criminal not to have opposed execution of the
17 Anti-Comintern Pact.

18 As the prosecution point out,

19 "The real significance of the Anti-Comintern
20 Pact did not lie in its immediate or practical effects...
21 It lay in the fact that by concluding the pact Japan
22 took her first step toward allying herself with Germany,
23 the then leading aggressiv. nation of Europe, if not
24 of the world¹⁹³."
25

192. T. 22,451-52.

193. Summation, SF-109 (T. 39,456).

1 It is precisely in his reluctance to see
2 Japan take that first step of alliance, reluctance
3 destined to be his reaction to all subsequent steps,
4 that the Tribunal may find the real significance of
5 Mr. TOGO's opposition to the Anti-Comintern Pact.

6 37. We may take it, however, as fully
7 established that the defendant TOGO was opposed to
8 the Anti-Comintern Pact at the time that it came to
9 him for study and management. It is, on the other
10 hand, equally clear that the policy of concluding
11 such a pact had been determined by the higher authorities,
12 and that the opinion of Bureau Director TOGO of that
13 policy neither was solicited nor would have been
14 welcomed¹⁹⁴. What should the bureau director who
15 feels the policy undesirable do in such case? What
16 can he do but work for the alteration of the document
17 to offset so far as possible the evil effects which
18 he foresees? It is undisputed in the record that--
19 as he testified without provoking cross-examination--
20 Mr. TOGO endeavored

21 "to persuade my superiors as well as the
22 military authorities concerned of the desirability
23 of making the proposed Japanese-German agreement as
24 weak as possible. In other words, I argued that it
25 should be limited strictly to the bare minimum of what

194. Testimony of TOGO (T. 35,644), NARITA (T. 35,391)
and YAMAJI (T. 35,410).

1 had been determined as the national policy to be
2 Japan's needs; and particularly that the matter should
3 be so managed, and the treaty so framed, that it should
4 not injuriously effect our relations with Britain
5 and the United States, as well as with the U S S R,
6 unnecessarily.

7 "...Above all, I strongly asserted that
8 the secret agreement attached to the Pact...should
9 be of strictly defensive nature, and I insisted on
10 changes to that effect ¹⁹⁵."

11 The prosecution attempt to meet this by
12 adopting the position that Mr. TOGO's testimony (which
13 they did not see fit to cross-examine on) is probably
14 not true, but that in any event his efforts toward
15 changing and weakening the Pact, if they existed,
16 amounted to nothing. From this point let us follow
17 their argument step by step. The Foreign Ministry
18 policy toward the Anti-Comintern Pact was drawn by
19 order (not "request", as the prosecution have it; a
20 minister orders his subordinates), by Mr. TOGO's
21 European-Asiatic Bureau, and naturally under his
22 direction ¹⁹⁶; and he has testified that that statement
23 of policy to an extent embodied his views ¹⁹⁷. But this
24

25 195. T. 35,644-46.
196. Exhibit 3,267 (T. 29,885).
197. T. 35,645.

1 policy, object the prosecution, "makes no mention
2 of any objection to the pact whatsoever"; in view
3 of which "his assertions regarding his opposition,
4 no mention of which is to be found in the document
5 drawn up by him at the time, cannot be given weight."¹⁹⁸
6 How naive! Do the prosecution expect that the Tribunal
7 will believe that a governmental bureau director, who
8 is personally opposed to a policy but is directed to
9 manage it conformably to his government's decision,
10 will submit a proposed policy based on his personal
11 beliefs and running counter to the official one?
12 Could he better insure the failure of the policy to
13 which he was attached than by that very act of
14 insubordinate stupidity? The personal opinions of
15 public servants are not the subject of the debates from
16 which emerges a national policy; it was not TOGO
17 Shigenori's opinion the preparation of which was
18 ordered, it was that of the Foreign Minister, to be
19 drawn by the Director of the European-Asiatic Bureau--
20 which of course means that it was to be a synthesis
21 of the views of the Bureau. No; what a sane public
22 servant, to whom the matter had importance, would do
23 would be, not to submit his personal opinion, but
24 precisely what this one did: persuade his superiors
25 198. Summation, §W-5 (T. 41,876-77).

so far as he is able to adopt his views, then loyally
1 draw the statement of policy as ordered by them,
2 prepare what was to be the Minister's opinion to fit
3 his official policy as laid down in the order to
4 prepare it. Even the failure to commit acts of
5 insubordination and disloyalty to his own country is,
6 it is submitted, not the conclusive proof of evil
7 design against others.
8

9 38. Moreover, the prosecution continue,
10 the defendant "makes much of the changes in the text
11 of the Anti-Comintern Pact and the Secret Agreement
12 which were proposed by him and in part incorporated
13 in the final agreement." (They now admit the failure
14 of their original position, that he did not oppose
15 the pact at all.) "A simple comparison between the
16 proposals made by him and the final texts of the two
17 agreements should suffice to show of how little
18 importance they were and how the final agreement was
19 not thereby in any manner altered in character."¹⁹⁹
20 The "simple comparison" is all very well, and we shall
21 make it in just a moment; but comparison of what? Can
22 it be in good faith, this suggestion that we compare
23 Mr. TOGO's proposal and that final form of the agreement
24 199. Surreation, SIA-5 (T. 41,877).
25

and his witnesses say were the same?

3 "The preamble particularly...was greatly
4 changed while the document was in the hands of the
5 European-Asiatic Bureau...with the result of the form
6 as it finally stands...The Text of the Pact, moreover,
7 was rewritten...The term of the pact was reduced...I
8 also removed...provisions...I thus succeeded in
9 making the Pact more businesslike.

10 "...The secret agreement was amended, at
11 my insistence...In connection with Article 2, also,
12 I succeeded in securing German agreement ²⁰⁰ .

13 "...amendment was made to the following
14 effect...The efforts of Director TOGO also succeeded
15 in effecting amendment of the Annexed Secret Agreement
16 in the following points..." ²⁰¹

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25 200. Testimony of TOGO (T. 35,645-46).
 201. Testimony of YAMAJI (T. 35,411).

which he and his witnesses say were the same?

1 "The preamble particularly...was greatly
2 changed while the document was in the hands of the
3 European-Asiatic Bureau...with the result of the form
4 as it finally stands...The Text of the Pact, moreover,
5 was rewritten...The term of the pact was reduced...I
6 also removed...provisions...I thus succeeded in
7 making the Pact more businesslike.
8

9 "...The secret agreement was amended, at
10 my insistence...In connection with Article 2, also,
11 I succeeded in securing German agreement²⁰⁰ .
12

13 "...amendment was made to the following
14 effect...The efforts of Director TOGO also succeeded
15 in effecting amendment of the Annexed Secret Agreement²⁰¹
16 in the following points..."
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25 200. Testimony of TOGO (T. 35,645-46).
 201. Testimony of YAMAJI (T. 35,411).

1 It is perfectly plain that the proposals made by
2 Mr. TOGO were substantially taken into the final
3 Pact; of course, the prosecution's "simple comparison
4 between the proposals made by him and the final texts"
5 show no difference, because they are comparing a thing
6 with itself. The comparison to be made is, of course,
7 between the original German draft and the final text.

8 39. The original draft is unavailable, but
9 the substance of it, so far as it differed from the
10 final text, has been given by the testimony, Mr. TOGO²⁰²
11 and the (un-cross-examined) witness YAJI.²⁰³ To
12 summarize this evidence, the original draft contained
13 much propagandistic, Nazi language and tone, all of
14 which was removed in the rewriting and does not appear
15 in the final Pact. The body of the Pact was originally
16 of much wider scope in the cooperation to be undertaken
17 by the contracting Powers vis-a-vis the Comintern;
18 this was cut down to a provision for simple exchange
19 of information concerning destructive activities of
20 the Comintern and of opinions concerning counter-
21 measures to be taken. The original draft provided a
22 term of ten years for the Pact. This was reduced to
23 five. In the secret agreement there were two major

24 202. Ex. 35,644-10
25 203. Ex. 35,411

alterations. First was the insertion of the word
1 "unprovoked" in Article 1, which had originally called
2 for the agreement's coming into operation "should one
3 of the High Contracting States become the object of an
4 attack or a threat of attack" by the U.S.S.R. Secondly,
5 so many exceptions²⁰⁴ were made from the requirement
6 of Article 2 of the German draft (requiring mutual
7 approval of the contracting of political agreements
8 with the U.S.S.R.) as in effect to mutilate the article
9 so far as concerned any limitation on Japanese action.
10 Are these alterations "of little importance", "the
11 final agreement" by them in no manner "altered in
12 character"? Consider that list of exceptions, as it
13 appears in evidence in the exchange of letters upon
14 the conclusion of the Pact. Germany "fully agreed"
15 that the "political treaties" referred to in Article 2
16 of the secret agreement -- those which should not be
17 entered into with the U.S.S.R. without agreement of
18 Germany -- included "neither fishery treaties nor
19 treaties concerning concessions, nor treaties concern-
20 ing border questions between Japan, Manchukuo and the
21 Union of Soviet Socialist Republics and the like."²⁰⁵
22 Fisheries, concessions, border questions: the entire
23
24

25 204. Exhibit 480, Tr. 5,936

205. Id., p. 1 (not read).

1 gamut of the important and troublesome Soviet-Japanese
2 questions -- and Japan entirely freed of German meddling
3 in them! Confine it, if you please, to consideration
4 of one of these alterations, and to addition of one
5 word: is there no difference of substance between
6 agreements for action "in the event of attack by the
7 U.S.S.R." and "in the event of unprovoked attack by the
8 U.S.S.R."? Would it have in no way altered the situa-
9 tion of June 1941, when Germany attacked the U.S.S.R.,
10 the omission from the Pact of that word which Mr. TOGO
11 inserted? As it chances, the insertion of that single
12 word "unprovoked" into an analogous clause was the very
13 action taken by the United States during the Japanese-
14 American negotiations of 1941, to reserve its right
15 to act in self-defense, and in self-defense only.²⁰⁶

16 We must at the least apply the same canon of interpret-
17 ation to this language of Mr. TOGO's; which being done,
18 we arrive at the conclusion that his change in Article
19 1 of the secret agreement resulted in depriving it of
20 any character which it might otherwise have had of a
21 "very concrete alliance", and converting it into some-
22 thing, even weaker than that which he has described it
23 as having been, "of strictly defensive nature." This
24

25 206. See Summation for the Defense, Section K,
"The Japanese-American Negotiations", § 16,
Supra, Tr. 43,521.

1 simple comparison disposes at once of the question of
2 the importance of his alterations and of the offensive
3 character of the secret agreement.

4 40. Mr. TOGO's attitude toward the Anti-
5 Comintern Pact in 1936 was in short just that which
6 would have been expected of the man who in 1933 had
7 urged that "it is by all means advisable that we make
8 earnest efforts to improve our relations with the
9 Soviet Union."²⁰⁷ Moreover, the Anti-Comintern Pact
10 being calculated, as he felt, to damage Japanese
11 relations with the United States and Great Britain
12 as well, he strongly urged the necessity of undertak-
13 ing concurrently with its conclusion negotiations for
14 ententes cordiales with them.²⁰⁸ The suggestion was
15 not cheerfully received by the military authorities,
16 and it was only after great efforts by Mr. TOGO that
17 their opposition was borne down and authorization
18 obtained for undertaking negotiation even with England
19 -- which negotiations were finally on the point of
20 commencing when the entire plan was frustrated by the
21 outbreak of the China Affair.²⁰⁹ This position of
22 Mr. TOGO's was urged from the outset, as is shown by
23 the fact that his proposed policy in regard to the

24 207. Exhibit 3,609-A, p. 20, Tr. 35,369

25 208. Testimony of MORI-HIMA, Tr. 35,487;
YAMAJI, Tr. 35,413; TOGO, Tr. 35,647-48.

209. Testimony of MORI-HIMA, Tr. 35,488-90;
YAMAJI, Tr. 35,413-14; TOGO, Tr. 35,647-48.

1 Anti-Comintern Pact itself already included the suggest-
2 ion of a rapprochement with Great Britain, with a general
3 outline of his intention, modeled on the familiar
4 treaties of consultation.²¹⁰ Inasmuch as this signif-
5 icant aspect of Mr. TOGO's connection with the Anti-
6 Comintern Pact is not disputed, but is wholly ignored
7 by the prosecution, it is unnecessary to go into detail
8 concerning it, and we may be content with stating the
9 general outlines of his plan for Anglo-Japanese under-
10 standing. The negotiations with Britain were to deal
11 with settlement of the China problem, the adjustment of
12 Japanese and British commercial interests in the markets
13 of the world, and the question of the international
14 money market. Since, however, something more concrete
15 than mere promises could be supposed to be necessary
16 to convince Britain of Japan's sincerity, radical
17 alteration of Japanese policy toward China was
18 requisite. To that end concurrent Japanese-Chinese
19 negotiations were proposed. Mr. TOGO had been able,
20 by the time of the outbreak of the China Affair, to
21 convince the civilian and military authorities concerned
22 of the desirability of such negotiations; Foreign, War
23 and Navy Ministry representatives had actually been
24 dispatched to China and Manchukuo and had there obtained

25
210. Exhibit 3267, Tr. 29,885

1 the understanding of the Japanese military authorities,
2 and preparatory arrangements were being made with the
3 Japanese ambassador in London for the negotiations
4 there.²¹¹ As has been said, the China Affair brought
5 the entire plan to nothing.

6 41. Lastly, the prosecution point out (though
7 no longer, as once, with much confidence in its signif-
8 icance²¹²) that Mr. TOGO attended the meeting of the
9 Privy Council which approved the Pact.²¹³ It need
10 be said only that a bureau director is still a bureau
11 director when he attends as an "explainer" at the Privy
12 Council; he does not participate, he does not vote;
13 he explains if called upon to do so.²¹⁴ Not only was
14 Mr. TOGO not called upon to explain this pact at any
15 meeting, but (quite naturally, he not being an advocate
16 of the Pact) the responsibility for explanations if
17 required had been delegated not to him but to the
18 Director of the Treaty Bureau. In fact, as the evidence
19 shows, the explanations were made by the Premier and the
20 Foreign Minister, and Mr. TOGO said nothing at any
21 meeting.²¹⁵

22 211. Testimony of MORI-HIMA, Tr. 35,489; and
23 YAMAJI, Tr. 35,413.

24 212. Tr. 5,852; 16,940.

25 213. Summation, WTT-5, Tr. 41,877.

214. Testimony of MURAKAMI, Kyoichi, Tr. 29,132.

215. Testimony of TOGO, Tr. 35,649.

42. The adherence of Italy to the Anti-Comin-
 1 tern Pact, as is seen from the evidence, occurred
 2 almost a year after its execution by the original
 3 signatories.²¹⁶ The negotiations which resulted in
 4 Italian adherence were carried on in Europe, not in
 5 Tokyo; Mr. TOGO had already by the time that Italy's
 6 adherence was decided upon been relieved of the functions
 7 of his bureau and was actually not in Japan when the
 8 entrance of Italy into the Pact membership took place.²¹⁷
 9 Italy, in any event, was never a party to (nor, as the
 10 prosecution concede, even informed of²¹⁸) the secret
 11 agreement,²¹⁹ which alone the prosecution seem to
 12 contend to have been vicious. The prosecution's
 13 one-time position that Mr. TOGO was "one of those
 14 most instrumental in the realization of . . . Japanese
 15 Italian collaboration,"²²⁰ supported by no evidence
 16 then, is now shown by uncontroverted affirmative
 17 evidence to have been but another resort to ipse dixit.
 18 In summation the prosecution have no word to say of
 19 any TOGO connection with Japanese-Italian collaboration.
 20

43. Soon after the failure of the proposed
 21 negotiations for an understanding with Great Britain,
 22

23 216. Exhibit 36, Tr. 513.

24 217. Testimony of TOGO, Tr. 35,649-50;
 Exhibit 127, Tr. 791.

25 218. Summation, F-116, Tr. 39,465.

219. Testimony of TOGO, Tr. 35,649; Exh. 491, Tr. 6037.

220. Tr. 16,939

Mr. TUGO was designated Ambassador to Germany, in
1 October 1937. On the subject of this appointment the
2 prosecution have indeed excelled themselves:

3 "Any doubts as to the weight of the accused's
4 allegations concerning his opposition to the Anti-
5 Comintern Pact should be dispelled by the fact that
6 he was appointed Ambassador to Germany within a year
7 after the conclusion of the Pact. No government in
8 the world would appoint as its Ambassador to a country
9 with which it had recently concluded a close military
10 and political alliance the very man who, and this is
11 the inference we are invited to draw, had been through-
12 out the strongest opponent of this alliance."²²¹

13 The prosecution's history also is bad. Without
14 troubling to search for an exact parallel, we may remind
15 them of a rather well-known case which disposes of their
16 theory that no government would send as ambassador one
17 professedly (if privately) unfriendly to rapprochement
18 with the power receiving him. Be reminded, then, of
19 John Adams, in 1785, designated first minister of the
20 United States to the Court of St. James, in which
21 presided His Britannic Majesty George III, that monarch
22 whom Minister Adams had but lately, in his contribution
23 to a celebrated bit of rhetoric which we know as the
24
25 221. Summation, WW-6, Tr. 41,878

1 Declaration of Independence, publicly apostrophized as
2 "A Prince whose character is thus marked by every act
3 which may define a Tyrant, . . . unfit to be the ruler
4 of a free People."²²²

5 44. Mr. TOGO's appointment as Ambassador was
6 considerably overdue in 1937; he had been promised the
7 Moscow post in the spring of 1936 by the Premier, con-
8 currently Foreign Minister, HIROTA, but when a new
9 foreign minister was appointed he designated another
10 to that place, giving as the reason the personnel
11 problems of the ministry (this is undisputed in the
12 evidence).²²³ Mr. TOGO had himself requested, in
13 the summer of 1937, that his appointment to an
14 ambassadorship be still further postponed, in order to
15 enable him to work longer for the success of his policy
16 of rapprochement with England (this is undisputed in
17 the evidence).²²⁴ When those efforts were finally
18 frustrated by the outbreak of the China Affair, he
19 would naturally be given an ambassadorship -- not one
20 of his choice, from which the incumbent would be
21 ejected to make place for him, but one in which a
22 vacancy occurred. That was Berlin (if there had been

23 222. Declaration of Independence, USCA Const.,
24 Part 1, 6.

25 223. Testimony of TOGO, Tr. 35,635.

224. Id. Tr. 35,648

1 alternatives, of course, he knew the German language).
2 To that post he was appointed by Mr. HIROTA, again
3 Foreign Minister, who had earlier demonstrated his
4 appreciation of Mr. TOGO's suitability for designation
5 to Moscow in divulging his intention to send him there.
6

7 45. During Mr. TOGO's brief period of service
8 as Japanese Ambassador to Germany -- ten months -- there
9 were three matters which are important as bearing on
10 the charges, at one time made against him, or on his
11 intentions and motives, which are material here. Of
12 these the prosecution discuss two. We shall discuss
13 three. First of these is the question of his attitude
14 toward the China Affair. To sketch the background
15 briefly, German attempts at mediation between Japan
16 and China, undertaken at Japanese request, had been
17 in progress in Tokyo for some time, but were already
18 on the point of abandonment as a failure at just about
19 the time of Ambassador TOGO's arrival in Berlin.²²⁵

20 While professing concern with strengthening friendly
21 relations with Japan, however, and even while under-
22 taking this mediation in the Sino-Japanese conflict,
23 Germany had been supplying China with arms, munitions,
24 instruction and technical assistance, and was thus,
25

225. Testimony of TOGO, Tr. 35,651-52;
HORINOUCHI, Tr. 29,703-5; KIDO, Tr. 30,839.

in fact, herself engaging in war against Japan.²²⁶ As
 1 the prosecution correctly state, Ambassador TOGO did
 2 not participate in negotiation on the mediation question;
 3 but he had been instructed by the Foreign Minister on
 4 the occasion of his departure from Tokyo for Berlin
 5 that he was to endeavor to effectuate the recall of the
 6 German military mission and the stopping of the shipment
 7 of arms to China.²²⁷

It was in this condition of affairs that
 9 Ambassador TOGO called on German Foreign Minister
 10 von Neurath on 10 January 1938, Neurath's record of
 11 which call²²⁸ the prosecution discuss at some length
 12 in the endeavor to torture from it proof of aggressive
 13 intent of Mr. TOGO's against China. The defendant has
 14 testified that "I had called on von Neurath, as the
 15 memorandum shows, merely to tender the thanks of my
 16 Government for Germany's efforts by way of mediation
 17 between Japan and China . . ." ²²⁹ The Foreign Minister's
 18 memorandum shows that "The Japanese Ambassador referred
 19 to the mediation activities of Germany in the Sino-Japan-
 20 ese conflict when he called on me today. By order of
 21 the Minister HIROTA he expressed his thanks for our
 22 activities."²³⁰ Mr. TOGO testified that von Neurath

24 226. Testimony of TOGO, Tr. 35,650-51.

25 227. Ibid.

228. Ex. 486-D, Tr. 5,091.

229. Tr. 35,651.

230. Ex. 486-D, Tr. 5,991.

"brought up the general question of the China Incident."²³¹

1 The memorandum of von Neurath says: "Making use of
2 this opportunity, I have pointed out to Mr. TOGO the
3 danger which might grow up in Japan on account of the
4 too-prolonged war."²³² Mr. TOGO then stated what he
5 contends to have been the Japanese Government's position
6 toward the China Incident, what the prosecution allege
7 to have been nothing of the sort, but "the desires and
8 plans of those who advocated continuation of the war."²³³

9 Characteristically, the prosecution made no effort to
10 prove any communication of their views by "those who
11 advocated continuation of the war", to Mr. TOGO in
12 Germany; the argument goes on the assumption, apparently,
13 that he had telepathic powers. At any rate, the prose-
14 cution's own statement proves the exact truth of
15 Mr. TOGO's testimony. It needs only a reading of this
16 passage of their summation to see that what Mr. TOGO
17 said to von Neurath concides exactly with the decision
18 of the Imperial Conference of the day following,
19 11 January, which he must therefore have had advance
20 notification of, whether by wire or by telepathy:

21
22 "This division of opinion finally resulted
23 in the Imperial Conference Decision of 11 January 1938,

24 231. Tr. 35,651.

25 232. Ex 455-D, Tr. 5,991.

233. Summation, WV-6, Tr. 41,880.

1 which stated that an effort would be made for a settle-
2 ment of the incident on the basis of specific Japanese
3 terms and only in case this would prove unsuccessful
4 to break with China and continue the war.

5 "It is in this light that the statements of
6 the accused to the German Foreign Minister when he
7 visited him on 10 January 1938 should be considered.
8 He stated that Japan wished for peace and for the
9 soonest conclusion of hostilities. However, Japan
10 was determined to carry on the war to its bitter end
11 and conditions of peace would become harder as the
12 war continued longer. The Japanese Government no
13 longer considered Chiang Kai-shek as representative of
14 the Chinese Central Government. Japan was still will-
15 ing to negotiate with him but if he was not willing to
16 accept the Japanese peace conditions Japan would make
17 peace with each of the provincial governors."²³⁴

18 Where is the contradiction? "Japan is still
19 willing to negotiate with Chiang Kai-shek; but if he
20 will not accept our terms, we will continue the war" --
21 that is the effect of the Imperial Conference decision,
22 it is the effect of the Ambassador's statement. As he
23 said to von Neurath, he was stating the Japanese Govern-
24 ment's determination. Mr. TOGO further testified that
25

234. Id., WW-6, Tr. 41,879.

1 the policy of not dealing with Chiang and of fighting
2 the incident to a military conclusion (as published a
3 few days later in form of the "KONOYE Declaration")
4 had already by then been substantially decided, and had
5 been made known to him.²³⁵ This Imperial Conference
6 decision is eloquent evidence that that policy had been
7 "substantially decided"; and that Mr. TOGO must have
8 known of it is proved to demonstration by the accuracy
9 with which he repeated its terms to von Neurath. If
10 he was "expressing the desires and plans of those who
11 advocated continuation of the war", it was only because
12 those persons were able to control those decisions of
13 Government and Imperial Conference which were forwarded
14 to him.

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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25 235. Testimony of TOGO, Tr. 35,652.

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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 84, Section 46:

5 46. The second question of interest during
6 Mr. TOGO's service in Berlin is that of Japanese-
7 German economic cooperation in China. As it is
8 stated by the prosecution:

9 "The accused's position in relation to
10 Japan's aggression towards China during this period
11 is also clearly shown in the negotiations which took
12 place with Germany concerning German-Japanese coopera-
13 tion in the exploitation of China. In his own testi-
14 mony the accused attempts to make it appear that
15 efforts to reach agreement in this respect were
16 started by Germany in May 1938 and that he, being
17 opposed to such an agreement, did his best to thwart
18 these efforts, even going so far as not to follow,
19 or at least freely interpret the express instructions
20 of his government. The facts, however, are different.²³⁶"

21 The facts are not "different," however much
22 the prosecution may clutch at straws in the effort to
23 prove them so. Ambassador TOGO's conversations with
24 Foreign Minister von Neurath of 10 and 28 January
25 236. Summation, WW-7 (Tr. 41881).

1 are pointed to as the evidence that he himself, the
2 Ambassador, first brought up the subject, and was
3 keen on it. We had best read the evidence, which
4 evidently the author of this passage has not done.
5 The German memorandum of the conversation of the 10th
6 contains only this: "The Ambassador stressed then,
7 in addition, that the Japanese are taking the greatest
8 interest in working hand in hand with the Germans in
9 China's economic development. There would be no
10 exclusion of German trade in China, which was some-
11 times feared by German merchants."²³⁷

12 Is this probative of something important
13 to Mr. TOGO's "position in relation to Japan's
14 aggression towards China"? Was it not Japan's
15 implied obligation under the Nine-Power Treaty
16 which Mr. TOGO has testified to having had in mind
17 in discussion of these economic questions with the
18 German officials,²³⁸ to work "hand in hand" with other
19 countries in China's economic development, and to be
20 party to exclusion of the trade of no country?
21 Germany, of course, was not a signatory of the Nine-
22 Power Treaty; not being a party, and thus not entitled
23 even to most-favored-nation treatment, she had fears

24 237. Ex. 486-D, Tr. 5992.

25 238. Tr. 35656.

1 of total exclusion from the trade of China. The
2 most that Mr. TOGO can be said to have offered here
3 was that Japan, for her part, would in compliance
4 with the spirit of the treaty not deny Germany
5 access to that market. It is submitted that, as the
6 evidence yet to be analyzed will disclose, his position
7 was an eminently fair and proper one. He was unwilling
8 to see even Germany excluded from the benefits of
9 trade in China which it was the intention of the
10 Nine-Power Treaty so far as possible to make avail-
11 able to all nations on terms of equality; but at the
12 same time was adamant against permitting to her
13 anything more than at best most-favored-nation terms,
14 which would have given her preference over other
15 nations.

16 Then, from the memorandum of the conversation
17 of 28 January: "In the further course of the conver-
18 sation which dealt no longer with the supposedly
19 impending British feeler, Mr. TOGO mentioned that
20 the moment would soon come when we would have to
21 start talking about German cooperation with Japan
22 in the New China which is to be constructed.²³⁹
23

24 Is "cooperation in China" synonymous with
25 "exploitation of China"? Does anything appear here to
239. Ex. 486-I, Tr. 6019.

1 indicate either that Mr. TOGO was keen on the subject
2 of this cooperation or that he was not? The whole
3 thing is perfectly neutral, giving no support to an
4 argument either way concerning the speaker's inten-
5 tions (it must be borne in mind that the conversation
6 was recorded, not by Mr. TOGO, but by the Germans,
7 hence represents their view of the matter of the
8 conversation which was of interest).

9 This document also serves the prosecution
10 as proof of Mr. TOGO's having taken an eager initiative
11 in the economic discussions. It will not have been
12 forgot that, as the memorandum shows, the general
13 question of China affairs had been brought up by the
14 Foreign Minister, not the Ambassador, when the latter
15 called on 10 January to express thanks for German
16 mediation. Evidently on the 28th likewise--Ambassador
17 TOGO having called on other business, again relating
18 to mediation--it was the German representative,
19 Weizsacker, who changed the subject to that of
20 economic cooperation in China, as his own memorandum
21 intimates.
22

23 47. We need not attempt further to inter-
24 pret these remarks, which after all might mean much
25 or nothing, for the subsequent events interpret them
for us; but before coming to these, one or two

1 comments here. These remarks of Mr. TOGO's are said
2 by the prosecution to have been made in the absence
3 of "any evidence to show that he had had any instruc-
4 tions from the Japanese Government." Let us give the
5 prosecution a little instruction in the principles of
6 judicial proof, as they relate to this obsession of
7 theirs with the idea that ambassadors, bureau
8 directors--public servants in general--may be presumed,
9 until the contrary be shown, on any given occasion to
10 utter in their public capacities their private
11 thoughts. It is a familiar principle in American
12 law, one doubtless known in other jurisdictions,
13 that public acts of a public official are presumed,
14 until the contrary be shown, to have been regular and
15 in accordance with the law and with usual practice.
16 A contrary presumption would intolerably impede the
17 processes of government, by requiring proof of the
18 regularity of every act of an official before action
19 could safely be taken in reliance upon it. The pre-
20 su mption must be indulged that an ambassador's state-
21 ments are made under instruction; or is the Government
22 to which he is accredited to inquire each time of his
23 own Government? The presumption is, naturally,
24 rebuttable; and we may even concede for purposes of
25 argument that had the prosecution proved that it was

1 the habit and custom of the defendant to perform, as
2 official, unauthorized acts, it might disappear
3 altogether. But the prosecution cannot, simply be-
4 cause they choose to state it, create any such doubt
5 in the absence of evidence produced by them to sustain
6 their burden of proof--cannot shift to the defendant
7 the burden of proving that every act of his career
8 was performed in faithful conformity to his authority
9 and orders. (A glance at von Neurath's memorandum of
10 a conversation with Ambassador TOGO on 22 January,
11 contained in the same document as that of the 28th
12 quoted by the prosecution, will give strong confirma-
13 tion of the presumption that the Ambassador had
14 instructions to make these vague remarks to the
15 German side about cooperation in China, and why--
16 because of the importance to Japan of inducing
17 German extension of credit and expansion of the
18 volume of her trade with Japan.)²⁴⁰

19 48. What is clear is that in May 1938 the
20 German approach was made with a view to securing
21 Japanese agreement to special treatment for German
22 trade in North China. The prosecution's reference
23 to the "approach from the German side, which, if it
24 came at all, was * * *²⁴¹" is a reminder of their
25

240. Ibid.

241. Summation, WW-7 (Tr. 41882).

1 position that the testimony of witnesses who were
2 not cross-examined or refuted by the production of
3 rebuttal evidence can be expunged from the record by
4 the pretense that it does not exist. The witnesses,
5 this time, are Mr. TOGO himself and the Commercial
6 Attache of his Embassy in Berlin, both of whom
7 testified unequivocally and in detail to the German
8 approach. Mr. TOGO said:

9 "Then in May 1938 Foreign Minister
10 Ribbentrop communicated to me his desire to make an
11 agreement to the effect that Germans engaged in trade
12 in North China should be given substantially equal
13 treatment in conditions of trade with Japanese
14 traders. On receipt of this proposal I flatly
15 declined to enter into any negotiations for the
16 reason that I was not authorized to do so.²⁴²

17 Commercial Attache SHUDO supplied full
18 details.²⁴³ Notwithstanding this rejection of his
19 advances, Ribbentrop drew up and presented to Amba-
20 sador TOGO another proposal, this time for "preferen-
21 tial treatment" for German trade. The Ambassador
22 could only forward this, a second proposal, to his
23 Government--and he did not fail to send with it his

24 242. Tr. 35655.

25 243. Tr. 35438-50.

1 opinion that any such agreement would in practice
2 be impossible to carry out without violation of the
3 Nine-Power and other treaties, and that he therefore
4 opposed the granting to Germany of anything more than
5 most-favored-nation treatment.²⁴⁴

6 49. In response to this statement of his
7 views Ambassador TOGO received from Tokyo instruc-
8 tions to proceed with negotiations on Ribbentrop's
9 proposal, and specifically to offer to Germany "the
10 best possible preference," to undertake "not to put
11 Germany in a position inferior to that of other
12 countries," and even to promise that, "in setting
13 up any import and export system, hereafter as far
14 as Germany's economic activities in North China are
15 concerned, Germany's interests will be fully respected
16 and will be given preference over any third country."
17 At the same time--perhaps as a result of Mr. TOGO's
18 warning concerning violation of the Nine-Power Treaty--
19 it was to be understood that Germany could not be
20 allowed a position "equal to us or even inferior, if
21 it gives them a preference which would threaten to cut
22 off entirely the economic participation of England and
23 America in the future."²⁴⁵ On the basis of these

24 244. Testimony of TOGO (Tr. 35656) and SHUDO
(Tr. 35444).

25 245. Ex. 2228-A, Tr. 15986; 15984.

1 instructions Mr. TOGO prepared and presented to the
2 Germans a "Pro Memoria" embodying a Japanese counter-
3 proposal.²⁴⁶ This is the document in speaking of
4 which Mr. TOGO--as the prosecution have it--"attempts
5 to make it appear" that, as he testified, he narrowed
6 down the proposals which he was instructed to present.²⁴⁷
7 As commonly proves to be the case with the prosecution's
8 comments on the significance of documents, a reading
9 of the original is enlightening. When we look at the
10 Pro Memoria we see that whereas the Ambassador had
11 been instructed to offer Germany "the best possible
12 preference," he wrote that Japan would "consider
13 Germany particularly benevolently * * * and will at
14 least grant to her the most favorable treatment that
15 third powers (excepting Manchukuo) will enjoy."²⁴⁸
16 The difference between the preference which Ribbentrop
17 had in mind and this, equivalent to the most-favored-
18 nation treatment embodied in countless international
19 commercial agreements, as well as the significance of
20 the change made by Ambassador TOGO, are self-evident.
21 In addition, he replaced the reference to trade--
22 "economic activities"--of his instructions with
23

24 246. Ex. 591, Tr. 6585.

25 247. Summation, WW-7, Tr. 41881.

248. Ex. 591, Tr. 6588.

1 "foreign trade,"²⁴⁹ and amended his instruction, that
2 he negotiate concerning "North China," to cover
3 "China." No agreement was ever reached; Ribbentrop
4 found these proposals wholly unsatisfactory,²⁵⁰ and
5 Ambassador TOGO, not being convinced of the propriety
6 of offering more, was obstinate until his removal
7 from the Berlin post.

8 50. The prosecution insist that Mr. TOGO's
9 emendation of the proposal which he was instructed
10 to make, by alteration of "North China" to "China,"
11 is evidence of his supporting an aggressive policy
12 of Japanese domination of all China.²⁵¹ This argument
13 rests on the wording of the memorandum of Wiehl, the
14 German underling who purported to record a conversa-
15 tion with the Ambassador of 6 July, and in effect on
16 one word in it; it is an argument which flies in the
17 face of the logic of the circumstances and of all that
18 we know of Mr. TOGO's attitude to the China question
19 in general. Wiehl says:

21 "(1) According to our suggestion the Pro
22 Memoria was to refer to 'the areas of China which are
23 under Japanese influence.' The Ambassador wishes to

24 249. On this point, yielding to German insistence,
25 he finally amended his proposal to conform to
the instructions, (Ex. 593, Tr. 6594).

250. Ex. 532, Tr. 6590.

251. Summation, WW-7 (Tr. 41883).

1 "foreign trade,"²⁴⁹ and amended his instruction, that
2 he negotiate concerning "North China," to cover
3 "China." No agreement was ever reached; Ribbentrop
4 found these proposals wholly unsatisfactory,²⁵⁰ and
5 Ambassador TOGO, not being convinced of the propriety
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22 Memoria was to refer to 'the areas of China which are
23 under Japanese influence.' The Ambassador wishes to

24 249. On this point, yielding to German insistence,
25 he finally amended his proposal to conform to
the instructions, (Ex. 593, Tr. 6594).

250. Ex. 532, Tr. 6590.

251. Summation, WW 7 (Tr. 41883).

1 replace these words throughout merely by 'China' and
2 brought up as a reason that the Japanese Government
3 hoped to extend its influence over all of China,
4 therefore it was for general reasons undesirable to
5 acknowledge in this document the possibility of a
6 division of China into areas which either were or
7 were not under Japanese influence.²⁵²"

8 The "therefore" is the dubious point. TOGO
9 wished to replace "North China" by "China," giving as
10 reason that Japan hoped to extend its influence over
11 all China. So much is intelligible enough. There was
12 war in China--which Mr. TOGO had neither been responsi-
13 ble for nor approved--Japan did hope to win it, and
14 thus to extend over all of China that influence which
15 she had always maintained was natural to her as a
16 result of propinquity. At the same time, it was "for
17 general reasons"--a separate reason: first the
18 specific, then the general reason, different matters
19 without Wiehl's "therefore"--it was for general
20 reasons undesirable to recognize the possibility of
21 a permanent division of China. This is obviously
22 what he said, because Ambassador TOGO favored no
23 permanent division of China; had opposed at all times
24 any such division, but had at all times insisted that
25 252. Ex. 593, Tr. 6593.

1 "speedy restoration of good will" with China,²⁵³ and
2 recognition there of the principle of the Open Door,²⁵⁴
3 were the prime necessities. This Pro Memoria itself,
4 then under discussion--or dissension--between Wiehl
5 and Mr. TOGO, most clearly shows Ambassador TOGO's
6 unwillingness to make any agreement with Germany which
7 should run counter to the Open Door principle of the
8 Nine-Power Treaty:

9 "a) In future the Japanese Government will
10 consider Germany particularly benevolently in her
11 economic activities in China and will at least grant
12 her the most favorable treatment that third powers
13 (excepting Manchukuo) will enjoy. * * * This benevo-
14 lent treatment of Germany, of course, does not
15 exclude Japan's economic cooperation with third
16 powers.²⁵⁵

17 This very memorandum of Wiehl has Mr. TOGO
18 saying that "the Japanese Government could not
19 promise us a better position than third powers and
20 equal treatment with Japan regarding" taxes and the
21 like.²⁵⁰ In the conversation with Ribbentrop when
22 the Pro Memoria was presented, and declared unsatis-
23 factory, Ambassador TOGO had said that "the Japanese
24

25 253. Ex. 3609-A, p. 25, Tr. 35573.

254. Id., p. 26, Tr. 35483.

255. Ex. 591, Tr. 6587.

256. Ex. 593, Tr. 6594.

1 Government was not able to assure Germany a better
2 position than all other powers in treaty form"²⁵⁷ --
3 and never did give such assurance. Obviously, the
4 Ambassador's Government was of a mind to allow to
5 Germany a preference of some nature, but the Amba-
6 sador was diplomatically recalcitrant--it just
7 couldn't be made to accord with his convictions.
8 Yet if there is on the one hand not a trace of evi-
9 dence that Mr. TOGO ever made any offer of a prefer-
10 ential treatment for German interests over those of
11 third powers--all this "evidence" being, as the
12 President of the Tribunal remarked when it was
13 tendered, "the sort of material the defense might
14 use to show lack of cooperation between Japan and
15 Germany"²⁵⁸ -- on the other hand there is no evidence,
16 so far at least as Mr. TOGO is concerned, to support
17 the prosecution's assertion that Japan refused "to
18 allow any nation, even her ally, Germany, to infringe
19 upon the monopoly" which she was trying to create in
20 China.²⁵⁹ And if Mr. TOGO was thus resolute to guard
21 a monopoly and to exclude Germany from it, why were
22 the prosecution so very intent just a moment since
23 on proving from his words that he eagerly made
24

25 257. Ex. 592, Tr. 6588.

258. Tr. 6621.

259. Summation, WW-7, Tr. 41883.

1 advances to the Germans for cooperation in
2 exploitation of China? Which, tell us, do you
3 really wish to submit to the Tribunal as your
4 belief of the facts which constitute his guilt of
5 this capital charge? Did he collaborate with
6 Germany for the exploitation of China, or did he
7 refuse to consent that even Germany should be given
8 illegal preference in China?

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51. And if it were all word for word true,
 1 that Ambassador TOGO said just what the Wiehls, and
 2 Knolls, and the rest, recorded -- what then? How
 3 did the prosecution phrase it? "No diplomat has
 4 been charged in any instance because he carried out
 5 the instructions of the Foreign Minister." ²⁶⁰ Where
 6 is the proof that Ambassador TOGO, when he said these
 7 things -- or whatever actually he did say -- was not
 8 carrying out his instructions?
 9

10 ". . . the ordinary character of an ambassa-
 11 dor as a conduit transmitting messages and informa-
 12 tion between his own nation and the nation to which
 13 he is accredited has been recognized. . . However,
 14 where a diplomat undertakes to bring about a change
 15 in his government's policy in favor of aggression,
 16 he becomes responsible for the formulation of the
 17 aggressive policy, if adopted, ceases to be a
 18 conduit . . ." ²⁶¹

19 Where is the evidence that Ambassador TOGO under-
 20 took to bring about a change in policy except in the
 21 direction of liberalizing it? There is, of course,
 22 none; all the evidence points the other way.
 23

24 260. Summation, SS-4 (Tr. 40,541)

25 261. Ibid.

Why do the prosecution clutch at these
1 straws, of quibbling interpretations of words, of
2 distortions of language, of omissions, to try to
3 hang a man? Why dwell on these trivia but to
4 camouflage their failure of proof on the big points,
5 on the issues in the case? That they could have no
6 belief in these arguments had already become incon-
7 trovertible when the chief prosecutor announced that
8 his abandonment of these charges represented their
9 "concept of the guilt of TOGO or the lack of guilt."
10

11 52. I have just mentioned that Mr. TOGO had
12 always opposed the permanent division of China.
13 Perhaps this is the opportune place to remind the
14 Tribunal of his insistence at the beginning of the
15 China Affair upon a peaceful settlement of it. He
16 was bureau director at the time; it need hardly be
17 pointed out that neither the Foreign Ministry nor
18 the Bureau of European-Asiatic Affairs created the
19 incident. Indeed, the evidence discloses that
20 the Foreign Ministry exerted itself to bring about
21 realization of a policy of non-extension and prompt
22 local settlement of the incident; ²⁶² and Mr. TOGO
23 was one of those Foreign Ministry officials parti-
24 262. Testimony of HORINOUCI, Kensuke (Tr. 29,684)
25

1 cipating in a conference at which was decided the
 2 Foreign Ministry's attitude toward the Army's pro-
 3 posal of mobilizing troops for reinforcement of
 4 the China forces, which attitude was one of oppo-
 5 sition to such measures.²⁶³ Mr. TOGO was neither
 6 then nor at any other time directly charged with
 7 management of China Affairs, which were the business
 8 of the East Asiatic Bureau, but was concerned be-
 9 cause of the interaction of questions of China with
 10 those of Japanese relations to Britain and America,²⁶⁴
 11 always his chief interests.

12 53. We have said that the prosecution have
 13 discussed two of the three important questions which
 14 arose during Mr. TOGO's ambassadorship in Berlin.
 15 The third they mention in this way:

16 "It is not contended by the prosecution that
 17 this accused took any part in the negotiations which
 18 were carried on during his ambassadorship in Berlin
 19 on the subject of strengthening the Anti-Comintern
 20 Pact."²⁶⁵

21 Really, this won't do! This disposition
 22 of the three-power alliance question would be well

23 263. Id. (Tr. 29,687); testimony of TOGO
 24 (Tr. 35,750)

25 264. Testimony of TOGO (Tr. 35,850) and MORISHIMA
 (Tr. 35,487-8)

265. Summation, BWV-8 (Tr. 41,884).

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1 enough had Mr. TOGO at the time been ambassador in
2 Rio or Ankara. Were his defense simply that he had
3 had neither knowledge of nor interest in the negotia-
4 tions for an alliance, this approach might appear to
5 be that of a prosecution intent upon fairness to
6 the defendant consistent with narrowing the issues
7 and eliminating from the case the irrelevant. But
8 when Mr. TOGO was, as the Tribunal well knows him to
9 have been, not Ambassador to Brazil, but Ambassador
10 to Germany; when he was stationed in the very thick
11 of the fray in Ribbentrop's Berlin where the al-
12 liance was being agitated; when he was no ignorant
13 bystander, but one in the nature of things officially
14 concerned, and from first to last the vigorous and
15 uncompromising enemy of the alliance in such cir-
16 cumstances this approach does not enlighten the
17 Tribunal. The prosecution have certainly a reason,
18 the best of reasons, given their view of a prosecutor's
19 function, for ignoring this opposition of his: be-
20 cause it undermines the whole theory of their case
21 against the defendant TOGO, Shigenori which they are
22 going to present to you a few pages later, in con-
23 nection with his activities in 1941 and the years
24 which followed. But they put in issue his aggressive,
25 conspiratorial intent, and I have certainly a

1 reason -- the best of reasons, given my view of the
2 issues of this case -- for destroying this falsehood
3 which they would impose upon the Tribunal by sup-
4 pressio veris.

5 54. It has been proved here beyond the
6 peradventure of a doubt that of all Japanese in
7 public office it was Ambassador TOGO who was the
8 one categorical, unswerving in his opposition to
9 "strengthening the Anti-Comintern Pact" -- to the
10 forming of a German-Italian-Japanese alliance which
11 that phrase implied -- to Naziism and all that it
12 stood for, to the undertaking of any measures to
13 deepen the intimacy with Nazi Germany. It has been
14 testified to by witness after witness -- by thirteen
15 of them at least -- that Mr. TOGO spoke against such
16 plans officially and privately, in season and out
17 that just as he had opposed such a policy in 1933
18 and in 1936, he opposed it in 1938, opposed it in
19 1939, opposed it in 1940 and 1941. It has been
20 proved that he was so dead set against such a
21 scheme that the Japanese military officials in his
22 embassy in Berlin had to work for it in secrecy
23 from him, that so obstinate was his opposition that
24 he was in the end dismissed from his post and re-
25 moved to another where he might have been supposed

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21 scheme that the Japanese military officials in his
22 embassy in Berlin had to work for it in secrecy
23 from him, that so obstinate was his opposition that
24 he was in the end dismissed from his post and re-
25 moved to another where he might have been supposed

1 powerless to interfere. These facts have been testi-
 2 fied to by the defendant TOGO himself, at length;²⁶⁶
 3 by the defendant KIDO (for even in Japan it came
 4 to be known that the Ambassador had to be circum-
 5 vented);²⁶⁷ and by the defendant OSHIMA, then military
 6 attache to the Embassy in Berlin, the man who best
 7 knew whether and why the Ambassador was circumvented,
 8 because he circumvented him.²⁶⁸ The facts have been
 9 testified to by Heinrich Stahmer, liaison official
 10 of the German Foreign Ministry with the Japanese
 11 Embassy in Berlin,²⁶⁹ and by Kurt Weissner, long-
 12 time non-official German resident in Tokyo.²⁷⁰ They
 13 have been testified to by SAKAYE, Tadashi, First
 14 Secretary to the Embassy under Ambassador TOGO;²⁷¹
 15 by SHUDO, Yasuto, Commercial Attache in the Em-
 16 bassy;²⁷² by NARITA, Katsushiro, Third Secretary;²⁷³
 17 by Lieutenant-General KASAHARA, Yukio, General Staff
 18 representative in Berlin who secretly brought to
 19 Tokyo the proposals for tripartite alliance --
 20 secretly, because Ribbentrop knew that Ambassador
 21 TOGO would oppose it if he knew of them.²⁷⁴ They

- 23 268. Exhibits 478 (Tr. 5917) and 497 (Tr. 6050)
 24 269. Tr. 24,468-74
 25 270. Tr. 35,460-3 266. Tr. 35,657-60
 271. Tr. 35,453-55 267. Ex. 2262 (Tr. 16,225)
 272. Tr. 35,439-42
 273. Tr. 35,391-95
 274. Tr. 35,429-31

1 were testified to by Minister ITO, Nobufumi, sent
 2 specially to Europe in 1939 to work on the tripar-
 3 tite alliance problem,²⁷⁵ and by TOMIYOSHI, Eiji,
 4 Member of the House of Representatives to whom in²⁷⁶
 5 1940 Mr. TOGO spoke as fellow-countryman and friend.
 6 These things were testified to by General UGAKI,
 7 Kazushige, prosecution witness and honest man, the
 8 then Foreign Minister of Japan to whom Ambassador
 9 TOGO's opposition -- opposition to such an alliance
 10 directed against any countries whatsoever -- was
 11 officially expressed²⁷⁷ by Admiral OKADA, much-
 12 trusted prosecution witness, former Premier of Japan
 13 who as Elder Statesman recommended Mr. TOGO's ap-
 14 pointment as Foreign Minister in later years.²⁷⁸
 15 There cannot be the slightest, faintest suspicion of
 16 a lingering doubt whether Mr. TOGO was, is and al-
 17 ways had been opposed to a political orientation of
 18 Japan toward Nazi Germany. And how curious, for the
 19 ardent advocate of the Anti-Comintern Pact -- signifi-
 20 cant as that first step, of a few short years before,
 21 toward alliance with Nazi Germany²⁷⁹ -- whom the
 22 prosecution have depicted for the Tribunal's edifica-
 23 tion.
 24

25 275. Tr. 35,458-9
 276. Tr. 35,522-3
 277. Tr. 34,912-3

278. Tr. 37,166-7
 279. Summation, SF-109
 (Tr. 39,456)

1 55. Opposition to the alliance with his
2 Nazi hosts brought Mr. TOGO's career in Berlin to an
3 inglorious end. He has testified to the facts show-
4 ing that his stubbornness in this matter was the
5 cause of his transfer to Moscow in October 1938 --
6 a transfer which, long though the Moscow post had
7 been his goal, he declined, hoping to remain in
8 Berlin to sabotage further efforts for rapprochement
9 with Germany, until he was peremptorily "requested"
10 to accept appointment to the new post. ²⁸⁰

11 His translation to Moscow did not put an
12 end to the fight; so far as opportunities could be
13 found or made, he continued interfering to express
14 his opposition to what, it had by that time come
15 to be clear, was to be a tripartite military al-
16 liance. ²⁸¹ He charged diplomats returning to Japan
17 to make his opinion known in influential quarters. ²⁸²
18 So keen was he to object on every possible occasion
19 that when, in February 1939, Ambassador OSHIMA in-
20 vited to a conference in Berlin, to discuss tripar-
21 tite alliance, Japanese ambassadors and ministers in
22 Europe, Mr. TOGO did not even wait for authorization

23
24 280. Testimony of TOGO (Tr. 35,660). "TOGO allegedly
25 advised Foreign Office of his objections to Tripartite
Pact" (Pros. Sum §QQ-26 (Tr. 41,492). "Alleged" by the
adviser and the advised (testimony of UGAKI Tr. 34,912),
neither of them cross-examined nor contradicted.

281. Test. of SHUDO (Tr. 35,441) and ITO (Tr. 35,459)

282. Testimony of SHUDO (Tr. 35,441-2)

1 from the Foreign Ministry to attend, but departed ²⁸³
2 precipitately for Berlin to register his opposition.
3 Arriving there, he found that the Foreign Ministry
4 had disapproved of General OSHIMA's little conver-
5 sazione, but he availed himself of the opportunity
6 thus afforded to express his views once again to
7 Ambassadors OSHIMA and SHIRATORI, as well as to
8 Minister ITO who at the time was in Berlin on his
9 mission from Tokyo to convey the Japanese Government's
10 views of the alliance question. ²⁸⁴ In connection with
11 this meeting General OSHIMA preferred to testify un-
12 der cross-examination that Mr. TOGO went from Mos-
13 cow to Berlin "at his own initiative," rather than
14 at the General's suggestion. ²⁸⁵ While if true it
15 would only be to Mr. TOGO's credit that of his own
16 initiative he made the trip to oppose alliance with
17 the Nazis, General OSHIMA's testimony on this point
18 cannot be taken seriously. The truth of his state-
19 ment can be tested by his further testimony that Mr.
20 TOGO's arrival was after the visit of the ITO Com-
21 mission, ²⁸⁶ testimony which is in direct contradiction
22 to that of Messrs. TOGO and ITO that they talked to-
23 gether in Berlin at that time, which would scarcely
24

25 283. Testimony of TOGO (Tr. 35,660-1)

284. Ibid.

285. Tr. 37,124

286. Tr. 37,122-3

have been possible if Mr. TOGO had arrived in Ber-

1 lin only after the visit of the ITO Commission.
2 This little inaccuracy is mentioned for its bearing
3 on the probabilities as between Mr. TOGO's testimony
4 and that of General OSHIMA and his witnesses when
5 they differed on other points. ^{286a}

6 56. Whether this voice of Cassandra which
7 sounded so often its rude and ominous note, forcing
8 itself on the notice of higher circles, was a cause
9 of the break-down in 1939 of negotiations for the
10 military alliance, we cannot know. As for 1940, and
11 the conclusion of the Tripartite Pact of that year,
12 that deed was (as the Tribunal knows ²⁸⁷) performed
13 in an atmosphere of such deep secrecy and mystery
14 that there was no opportunity for objection or
15 warning. It is nonsense for the prosecution, in
16 suggesting that no defendant in September 1940 dis-
17 sented in principle from the conclusion of the pact, ²⁸⁸
18 to imply that Ambassador TOGO in Moscow had knowledge
19 that it was being concluded, approved its conclusion
20 or had abated jot or tittle of his long-standing
21 antagonism to it.
22

23 We shall return to the subject of the

24 287. Tr. 24,404
25 288. Summation, §§F-123, F-143 (39,472-3, 39,499-500)
286a. Cf. OSHIMA Summation, §17-28 (Tr. 46,808-27)

Tripartite Pact and Ambassador TOGO.

1 57. Finally, when Mr. TOGO became Foreign
2 Minister in 1941 he again had connection with the
3 Anti-Comintern and Tripartite Pacts, in two ways.
4 First, he became ex-officio a member²⁸⁹ of the general
5 commission which the Tripartite Pact provided should
6 in each of the capitals be constituted of the local
7 Foreign Minister and the ambassadors of the other
8 signatories.²⁹⁰ It is too obvious to need mention
9 that the Foreign Minister's views or ideology did
10 not enter into his designation to this commission;
11 it is undisputed that the commission in Tokyo
12 never met while Mr. TOGO was in office.²⁹¹ The prose-
13 cution, indeed, concede that these general commis-
14 sions did not function;²⁹² whether their explanation
15 for the failure is the correct one we are not con-
16 cerned to investigate (in fact, the general German-
17 Japanese non-cooperation shown by all the evidence
18 will suffice as commentary on this point).

20 58. Secondly, the Anti-Comintern Pact was
21 also renewed and extended for a further term of five
22 years during Mr. TOGO's foreign ministership.²⁹³ This

- 23 289. Exhibit 128 (Tr. 791)
24 290. Exhibits 43 (Tr. 513) and 559 (Tr. 6418)
25 291. Testimony of TOGO (Tr. 35,665)
292. Summation, SF-152 (Tr. 39,511)
293. Exhibit 495 (Tr. 6,046)

1 representing, with the exception of one point, no
2 new policy, but the continuation of the policy in
3 effect since 1936, Mr. TOGO's connection with it
4 evidently is that described by the prosecution when
5 they say that "no man has been charged in this pro-
6 ceeding because of any act committed or statement
7 made by him in the course of his official duties pur-
8 suant to an already established policy."²⁹⁴ Incident-
9 ally, even the extension of the Pact was at the time
10 of Mr. TOGO's taking office already decided policy;
11 Foreign Minister MATSUOKA had in the spring of 1941,
12 during his visit to Berlin, committed Japan to the
13 renewal.²⁹⁵ A few additional nations adhered to the
14 Pact at the time of its renewal; but, as the prose-
15 cution point out, new adherences were of less im-
16 portance than "the strengthening of the substance of
17 the Pact."²⁹⁶ We have just seen what support Mr.
18 TOGO had given to the "strengthening" of the Anti-
19 Comintern Pact in the years 1938-1941.

20
21 The point, mentioned above, in which the
22 extension of 25 November 1941 was not a continuation
23 of policy already in effect was that when it was ex-

- 24 294. Summation, SS-3 (Tr. 40,539)
25 295. Exhibit 2,694 (Tr. 23,562-4)
296. Summation, SF-117 (Tr. 39,465)

1 tended the secret protocol was abrogated. This
2 abrogation Mr. TOGO achieved through his efforts.
3 The significance of Foreign Minister TOGO's thus
4 taking the only measure open to him to weaken the
5 ties with Germany will not have escaped the Tri-
6 bunal's attention. For the evidence is clear that
7 it was entirely as the result of his insistence that
8 the secret agreement was abrogated;²⁹⁷ this is true
9 despite a contrary assertion in summation which is
10 one of the most extraordinary examples of this
11 prosecution's irresponsibility. They have this to
12 say:

13 "The defense evidence, through witnesses,
14 that it was only through the personal efforts and
15 initiative of the accused that the Secret Protocol
16 was abrogated is clearly contradicted by his own²⁹⁸
17 statements to the German Ambassador at the time."
18 Where is the evidence? The citation given is to
19 exhibit 3835. That exhibit as tendered contained
20 the language: "And, as to the abolition of the sec-
21 ret agreement, I fall in with your view," which would
22 perhaps have given some slight support to the as-
23 sertion that ambassador Ott had raised the point --
24

25 297. Testimony of TOGO (Tr. 35,663), NISHIJURA, Kumao
(Tr. 23,563) and MATSULOTO (Tr. 35,466).
298. Summation, SWW-27 (Tr. 41,914)

1 enough to make it arguable, if not "clear." But
2 the translation was questioned; the Tribunal's
3 language arbitration board made the correction, be-
4 fore the document was admitted into evidence and in
5 the hearing of the prosecution who offered it and
6 who now writes this summation: "And, as to the
7 abolition of the secret agreement, I favor it."²⁹⁹
8 The defendant TOGO is on trial for his life.

9 We need not discuss Mr. TOGO's reasons for
10 desiring abrogation of the secret agreement. The
11 "changes in circumstances" rendering it unnecessary
12 as he stated then, without elaboration, to the Com-
13 mittee of the Privy Council, were three: That
14 Germany was at war with the USSR, which was a fact;
15 the existence of the Japanese-Soviet Neutrality Pact,
16 which was a fact (though the prosecution omits men-
17 tion of this reason in stating the evidence),³⁰⁰
18 "formation of alliance between Japan and Germany."³⁰¹
19 If this last refers to the Tripartite Pact (the
20 prosecution distort this third reason into the Tri-
21 partite Pact had superseded this one"), its existence
22 too was a fact, one concerning Mr. TOGO's feeling
23 toward which there can be no question. It cannot
24 be contended that he favored it. There can be no
25

299. Tr. 38,066 Cf. the testimony of Hogen (Tr. 28,837) and Ex. 3902-A (Tr. 38,846).

300. Summ. SW-27 (Tr. 41,914)

301. Ex. 1182 (Tr. 10,396)

1 suggestion that he could abrogate it. There can be
2 no contention that he could decline at his caprice
3 to carry out the renewal of the Anti-Comintern Pact
4 to which his Government was already committed. He
5 could secure abrogation of the secret agreement, and
6 he did. The Tribunal is in a position in view of his
7 past attitude to the German alliance in its every
8 part, to judge correctly of his motives. It re-
9 mains to be added that when he could find grounds
10 for urging abrogation of the Anti-Comintern Pact
11 itself, he did urge it, and successfully, in May
12 1945.³⁰²

13 We submit that there is not a scintilla of
14 evidence in the case to justify the incessant harp-
15 ing on the theme of the defendant TOGO's friendliness
16 to German-Japanese collaboration, but that on the con-
17 trary the Tribunal must adjudge him to have been the
18 most untiring, energetic, and effective opponent of
19 that popular policy throughout its entire history of
20 the 1930's and 1940's.
21
22
23
24
25

302. Testimony of TOGO (Tr. 35,663)

W
h
a
l
e
nTHE "CONSPIRACY"

1 59. We have now reached the period of Mr.
2 TOGO's first term of service as Foreign Minister. It
3 being the prosecution's announced belief that he should
4 have been charged only for his actions from the time
5 of his entry into the TOJO Cabinet, from which time
6 they contend him to have entered into their "conspiracy",
7 this appears to be in their eyes the only sustainable
8 part of their case against him. The prosecution seem
9 to propose also, however--although it is not possible
10 to comprehend exactly what their position is--the im-
11 position upon him of some guilt, legal or moral, for
12 all acts performed by his "fellow conspirators" from
13 1 January 1928 to 2 September 1945. I say that this
14 is impossible to comprehend because, while once saying
15 that for those acts "we do not claim a conviction,"
16 they continue that "from the conspiracy point of view
17 he must be held to have adopted" them; and "in our
18 submission a man who joins the conspiracy late may
19 adopt the fruits of the conspiracy as he finds them
20 and thereby approve after the event(a) policy which he
21 did not support at the time."
22
23

24 I have no intention of repeating here what has

- 25 303. T. 35,347.
304. T. 35,352.
305. Summation, §C-20 (T. 39,053).
306. Id., §C-16 (T. 39,049).

307

1 been said elsewhere concerning the non-existence of
2 conspiracy as an offense known to international law,
3 the impropriety (if this new branch of the law of na-
4 tions is to be created) of adopting with the crime
5 from the Anglo-American law all of those accompanying
6 paraphernalia and ramifications which have rendered it
7 as a doctrine so abhorrent to jurists of every school,
8 not excluding those of America and England. The facts
9 of this case, as disclosed by our consideration of the
10 record up to this point, constitute a far more elo-
11 quent argument against that course than anything which
12 I might say: how a more shocking proposal could be
13 devised than that of imposing responsibility of any
14 nature for the Tripartite Pact, to mention one example,
15 upon the most aggressive opponent anywhere of that Pact
16 and the policy represented by it, it is impossible to
17 conceive.

18 I do wish, however, to discuss briefly the
19 charge of conspiracy, and the proof which is alleged
20 to sustain it, as against this defendant.

21 60. The prosecution's position concerning
22 this defendant's connection with their "conspiracy" is
23 patently not only untenable and shocking, but even
24 ridiculous. We have only to read the words of the
25

307. Summation for the defense, Section "D",
"Conspiracy" (T. 42,352-401).

1 chief prosecutor in expounding it to discover its self-
2 contradictory character:

3 ". . .the prosecution desires to state at
4 this stage that, subject to the following reser-
5 vation, it seeks conviction of the accused TOGO
6 for his actions beginning with his assumption of
7 duties in the TOJO Cabinet.

8 "This is not in any manner an abandon-
9 ment of any charges of his joining at such date
10 in any conspiracy described in the Indictment,
11 commencing at a previous date."
308

12

13 "THE PRESIDENT: Well, do we understand it
14 is the contention of the prosecution, or the ad-
15 mission of the prosecution, that he did not join
16 in any conspiracy before he joined the TOJO Cab-
17 inet?

18 "MR. KEENAN: It is precisely that, Mr. Presi-
19 dent, . . . with the further observation that,
20 as a matter of law, it is our contention that he
21 is guilty if he joined the conspiracy during
22 October of 1941. And we believe that it is our
23 duty to so state to the Tribunal that that is our
24 belief and that is our concept of the guilt of
25

308. T. 35,347.

1 TOGO or lack of guilt . . .³⁰⁹"

2

3 ". . . the prosecution will not press
4 charges other than those which will be clearly
5 set forth, I think, and I believe amply in the
6 record, as it will appear in these proceedings
7 when transcribed.³¹⁰"

8 If the prosecution's "concept of the lack of guilt" of
9 Mr. TOGO finds its expression in these words, that he
10 "joined the conspiracy" only in October 1941, on what
11 rational basis can the prosecution reserve a right to
12 contend that "as a matter of law he is guilty," that
13 "from the conspiracy point of view he must be held
14 to have adopted" criminal acts performed theretofore?
15 If their "concept" is that he is not guilty, they do not
16 believe him to have "adopted" those acts; if they be-
17 lieve him to have "adopted" those acts in such a way
18 that he should be liable for them, they are confessing
19 to dereliction of their duty if they do not "press the
20 charges", do not "seek his conviction." Assertion of
21 a liability even from the date of entry to that of de-
22 parture from the circle of "conspirators" would be com-
23 prehensible; this position is not. If the prosecution's
24 "concept of the guilt of TOGO" is that no guilt existed
25

309. T. 35,352.

310. T. 35,358.

1 prior to his joining the "conspiracy," by what logic--
2 leaving morality out of question--can they contend
3 for imposing upon him a vicarious liability for the
4 thirteen years preceding that date? What justification
5 can law, logic, morality or common decency give for the
6 offer to hold a man responsible for the acts of others,
7 acts with which he was not connected, acts which he
8 fought with every weapon available to him? There is,
9 and can be, none.

10 61. Let us examine the prosecution's method
11 of proving the "conspiracy" against Mr. TOGO. As we
12 have already heard, the prosecution are to contend that
13 he is liable for the conspiracy's results "if he joined
14 the conspiracy during October of 1941." Here, then,
15 we have a good, solid question of fact: did he "join
16 the conspiracy" during October 1941? Here we have a
17 fit subject for evidence, or reasonable deductions from
18 evidence. What is discoverable in the summations--and
19 the Tribunal is assured that I have searched them--is
20 the constant smug assumption, of which I have mentioned
21 too many examples before now, which begs the question
22 at issue. The circuitry of reasoning by which this
23 "conspiracy" would be established is apparent on every
24 page of those summations. It goes like this: "Mr. TOGO,
25 we admit, committed no crime and participated in no

1 conspiracy prior to October 1941. Entering the con-
2 spiracy in that month, he adopted the prior criminal
3 acts of his co-conspirators; having adopted them, he
4 became liable for their total effect, which is a con-
5 spiracy. He must therefore be adjudged guilty of all
6 such criminal acts, because of having entered the con-
7 spiracy the object of which was to commit them." Which
8 is where we entered the circle. Entrance into the con-
9 spiracy imposes guilt for the acts; the guiltiness of
10 the acts establishes participation in the conspiracy.

11 The prosecution have stated, in a general sum-
12 mation on the subject of liability, principles with
13 many of which it is impossible to differ--though the
14 proposed applications of these principles are much dis-
15 torted in a transparent effort to insure snaring all
16 these defendants without regard to the actualities of
17 their responsibilities. Still and all, the document
18 is patently written by a lawyer, and if even the prin-
19 ciples there stated in a somewhat Olympian tone had
20 been followed in preparation of the individual summa-
21 tions we should not now be confronted with much of the
22 preposterous sort of thing in question. But they were
23 not. We can reduce to interrogatory form the prose-
24 cution's position in this matter as it can actually be
25

311. Summation, Section "K", "The Liability of the
Defendants" (T. 40,538-66).

1 found in the summations--as, indeed, it permeates the
2 summations:

3 Q Was "X" a conspirator?

4 A Yes.

5 Q The proof?

6 A He conspired with the others.

7 Q How?

8 A By doing the things we've proved.

9 Q The proof of their criminality?

10 A That they were done by the conspirator, "X".

11 That is, of course, fantastic; but lest I be suspected
12 of facetiousness, look at a concrete example. The
13 prosecution are speaking, discussing the evidence put
14 in by the defendant TOGO concerning his activities prior
15 to "his assumption of duties in the TOJO Cabinet." "All
16 it establishes--if that," they say,

17 "would be that the accused did not at all times
18 actively participate in furthering the conspir-
19 acy either because his official position, or lack
20 of position, did not enable him to do so or be-
21 cause he temporarily disagreed with certain ac-
22 tions taken by the other conspirators."
23 ³¹²

24 This gibberish can be explained on no other hypothesis
25 than that mentioned above--that the status of conspirator
312. Summation SWW-2 (T. 41,869-70).

1 is assumed ab initio. The prosecution here discuss
2 evidence of the absolutely guiltless and actively hon-
3 orable character of this defendant during the entire
4 period in question--evidence negating any idea of
5 his being a conspirator. They have offered no simula-
6 crum of evidence either to refute this or to prove
7 commission by him of other, and criminal, acts during
8 the same period. Proof that he was "unable" to par-
9 ticipate in a conspiracy, proof that he "temporarily
10 disagreed" with its progress, there is none, nor the
11 breath of a suggestion to such effect. But to this
12 prosecution, to these latter-day Daniels, all this is
13 nothing: if every act of his life was against evil,
14 until for one day he held public office, he was but
15 "temporarily in disagreement" with the forces of evil,
16 but biding his time--waiting to become a conspirator
17 when this prosecution should see fit to charge him as
18 such. No need to prove it; state it often and audac-
19 ously enough and it will come to be accepted as axio-
20 matic--"TOGO is a conspirator, TOGO is a conspirator,
21 TOGO is a conapirator! All his evidence proves is that
22 he is trying to hoodwink the Tribunal by concealing his
23 guilt." How childish it is, when a prosecution should
24 be analyzing the evidence to ascertain whether their
25 charges, hastily made ex parte, can be sustained, that

1 instead they assume the question at issue, pretend not
2 to have heard the evidence which destroys their theory,
3 and blandly attempt to justify even those charges which
4 they had already once abandoned! What a laughing-stock
5 they invite the Tribunal to make of itself by acceptance
6 of such puerilities!

7 The basic premise once assumed, a plethora of
8 further assumptions is spewed forth without let or hin-
9 drance.

10 ". . . it is significant to note that
11 at no time during the entire course of the con-
12 spiracy did any of the accused differ with the
13 others on the fundamental object of the conspir-
14 acy itself. All of the conflicts which the evi-
15 dence has shown were based solely on a difference
16 among the accused as to whether certain action
17 being contemplated at a particular moment was
18 properly ³¹³timed."

19 One would expect columns of citations to the evidence
20 to support such an important and sweeping statement
21 as this; need the Tribunal be told that there is no
22 citation? Or need the calculated falsity of the state-
23 ment be even pointed out, in view of the evidence which
24 we have been discussing?
25

313. Summation, §30 (T. 38,973).

1 Once a "conspirator" had "joined the conspir-
2 acy"--by nomination of the prosecution--he will have
3 to make a career of divesting himself of his membership
4 and his responsibility for others' acts:

5 "A man who has once joined the conspiracy
6 cannot therefore absolve himself from respon-
7 sibility for the subsequent actions of his co-
8 conspirators merely by showing that he was not
9 personally in favor of a particular action which
10 they took especially if his opposition was based
11 on mere prudential grounds, provided that action
12 was within the scope of the original conspiracy,
13 and he did not definitely disassociate himself
14 ³¹⁴
from it.

15 "If he was out of office at the time and
16 made clear his objection to the particular war
17 to the extent of disassociating himself from
18 the conspiracy although it was within the scope
19 of the original agreement, we would concede that
20 ³¹⁵
21 he should not be convicted . . ."

22 How is it performed, this disassociating oneself by
23 disassociating oneself? Not by voicing firm and reas-
24 oned objection--that is but to be in "temporary dis-
25 agreement with certain actions," to believe the action

314. Summation SC-17 (T. 39,050).

315. Summation SC-24 (T. 39,058).

"not properly timed." Perhaps by notice in the press?

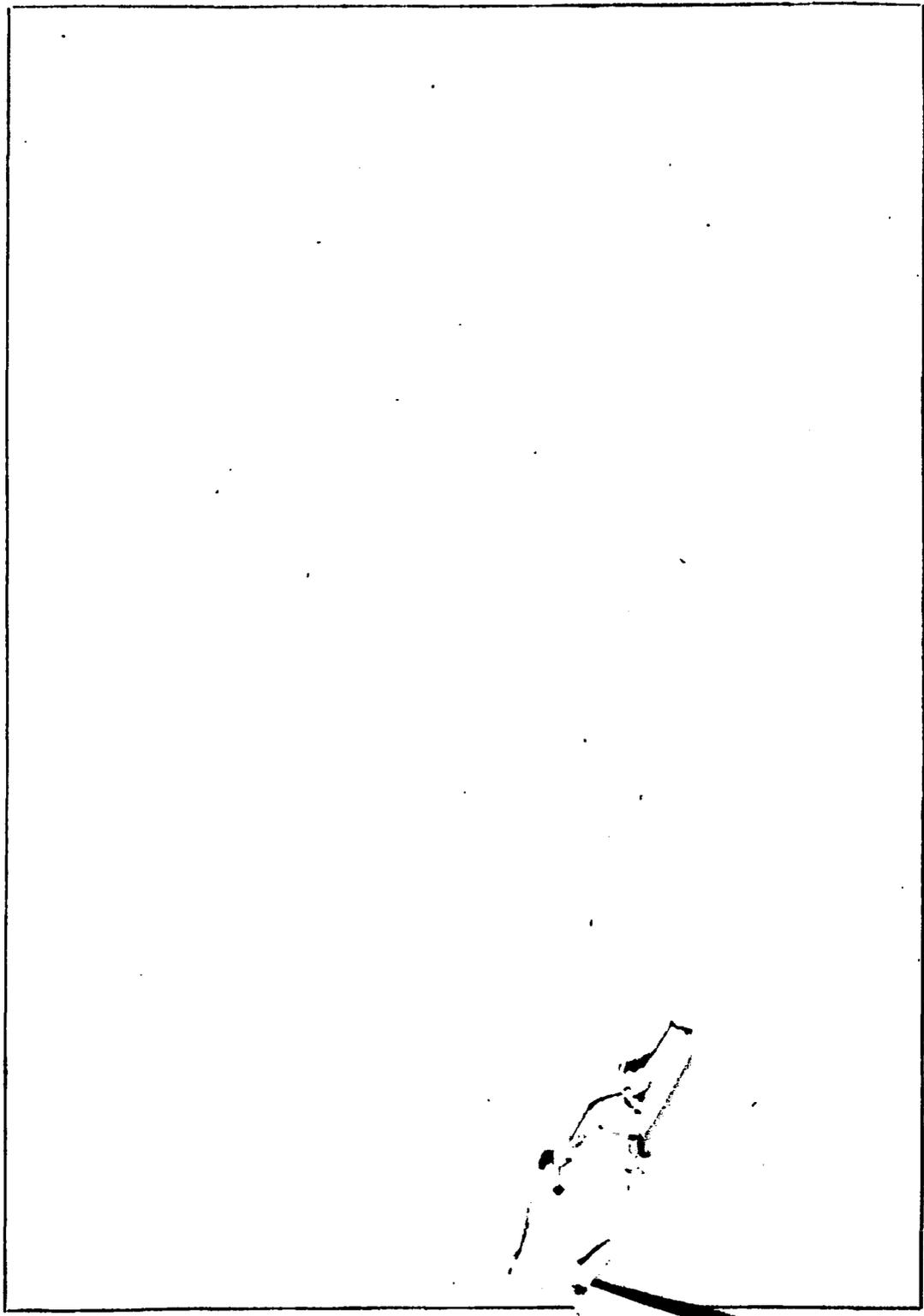
1 "Having as from today disassociated himself
2 from the Greater East Asia Conspiracy, the under-
3 signed will no longer be responsible for its
4 acts."

5 62. Of course, the explanation of all this
6 devious maneuvering is that the prosecution's "conspir-
7 acy" is wholly a creature of their imagination. The
8 Tribunal has not sat here for twenty-three months with-
9 out discovering that the attempt to prove in Japan the
10 existence of a conspiracy, just because there did exist
11 the Nazi conspiracy in Germany, was one ill-conceived
12 in theory, a dismal failure in practice. The prosecu-
13 tion's summations constitute the confession that it did
14 not exist. Their "conspiracy" started out promisingly
15 enough; it was not to be a constructive thing, not the
16 product of assumption, but was to be shown by proof
17 of "a really carefully planned conspiracy or common
18 plan for commission of the crimes set forth in the In-
19 dictment." The pointing out of the plan has, however,
20 somehow been overlooked even in summation, where the
21 prosecution can scarce be said to shrink from supplying
22 the want of evidence by bold assumption. True, the
23 prosecution continue from the premise quoted to refer
24 to
25 B16. Summation, §30 (T. 38,972).

with casual familiarity to "the basic plan", "the
1 original agreement." True, various events of seventeen
2 years are, when the prosecution find them objection-
3 able, readily discovered to have happened "according
4 to plan"; but this is only thinly-disguised induction.
5 Where is the plan? Where is that agreement, or any
6 evidence of it? The whole proof of "plan" and "agree-
7 ment" consists of nothing more than the showing of the
8 course of events of 1928-45: the "conspiracy" has
9 appeared long since to be wholly constructive, the lia-
10 bility purely vicarious.

12 The much-vaunted "conspiracy", when divested
13 of all the pseudo-legal jargon in which it has been so
14 tenderly wrapped, amounts to this, as is perspicuously
15 apparent from the prosecution's summations and cannot be
16 disseminated: that the holding of public office of the
17 Japanese nation, performance of any function of that
18 office, constitutes a man a conspirator if the prose-
19 cution choose so to anathematize him. The hastiest
20 glance at the summations makes clear that the prosecu-
21 tion have confessed it at last: they would indict the
22 Japanese people. What Japanese was not a "conspirator?"
23 Here is a pretty accumulation of them: all members of
24 the TOJO Cabinet, ³¹⁷ but also of the KONOYE Cabinet, its
25 317. Summation, SG-115 (T. 39,654).

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1 predecessor-- and especially Prince KONOYE himself, his
 2 Foreign Minister TOYODA and Navy Minister OIKAWA; the
 3 Privy Councillors and the Elder Statesmen, of course
 4 including the one witness their "great confidence and
 5 respect in" whom the prosecution have publicly announced.
 6 In short, all Japanese premiers and their cabinets,
 7 and inevitably, the Genro Prince SAIONJI who selected
 8 the conspiratorial premiers--but why extend the list?
 9 Usually it is "the conspirators", tout court, in con-
 10 texts leaving the meaning all-embracing and universally
 11 vague, designating everyone and no one. The plain de-
 12 monstration that for the prosecution the test of enter-
 13 ing the "conspiracy" is the taking of office may be
 14 seen from the circumstances of their limitation of the
 15 case against Mr. TOGO: the charges against him were
 16 to have been pressed only from the time he became For-
 17 eign Minister. Not from the time of commission of any
 18 act by him vis a-vis another country; not of his expres-
 19 sion of any opinion or statement of policy; not, by all
 20 means, of his being shown to have agreed to anything
 21

- 22 318. Id., 88G-51--G-112 passim (T. 39,579-652).
 23 319. Id., 88G-81, G-115 (T. 39,618, 39,654).
 24 320. Id., 8G-115 (T. 39,654).
 25 321. Ibid.
 322. Id., 8F-147 (T. 39,505).
 323. Id., 8G-131 (T. 39,679).
 324. Compare Summation, 88I-3--I-5 (T. 39,977-83) with
 818 (T. 38,962).

with anyone: just starkly, nakedly, when he became
1 Foreign Minister.

2 63. The chief prosecutor stated once to the
3 Tribunal that

4 "the accused who are in the dock are the
5 people we believe are really responsible for
6 this war. If there had been anyone else, they
7 would have been in the dock, ³²⁵ too."

8 They wouldn't, of course; these summations name many
9 others whom the prosecution now profess to believe
10 guilty--many living and available, some actually util-
11 ized as prosecution's witnesses, others held for rising
12 three years in Sugamo Prison, and no charges filed
13 against them--none of them charged in any proceedings.
14 The "conspirators" are in fact those "divers other
15 persons unknown" of the old formal language--but in
16 this case forever to remain unknown, for they do not
17 and never did exist. The gigantic Japanese conspiracy
18 was a phantasmagoria conceived in the mind of the prose-
19 cution, and never had substantial existence outside it.

20 THE PRESIDENT: Well, you come into an entirely
21 new section. We will adjourn until half past nine to-
22 morrow morning.

23 (Whereupon, at 1600, an adjournment
24 was taken until Wednesday, 14 April 1948, at

14 APRIL 1948

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1 Wednesday, 14 April 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 LORD PATRICK,
14 Member from the United Kingdom of Great Britain, not
15 sitting from 0930 to 1600; HONORABLE JUSTICE JU-AO MEI,
16 Member from the Republic of China, not sitting from
17 1500 to 1600.

18 For the Prosecution Section, same as before.

19 For the Defense Section, same as before.

20 - - -
21 (English to Japanese and Japanese
22 to English interpretation was made by the
23 Language Section, IMTFE.)
24
25

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 UMLZU who are represented by
5 counsel. The Sugamo prison surgeon certifies that
6 they are ill and unable to attend the trial today. The
7 certificates will be recorded and filed.

8 Major Blakeney.

9 MR. BLAKENEY: Page 118:

10 THE PACIFIC WAR

11 64. It is when we come to consider Mr.
12 TOGO's service in the TOJO Cabinet, during the days
13 which saw the inexorable approach of the Pacific war,
14 that the true significance of the matters which we
15 have considered up to now will become apparent to
16 the Tribunal. It is perhaps a safe assumption that
17 an impartial Tribunal will have been no more impressed
18 by the evidence designed to prove Mr. TOGO's criminality
19 up to this period of his career than were the prosecution
20 who abandoned it as not amounting even to prima facie
21 proof. But this does not mean that my analysis,
22 perhaps seemingly over-elaborate for undisputed evidence,
23 has been without purpose, or that the prosecution's
24 curiously devious and equivocal approach to the entire
25 case of this defendant is a mere aberration. It is

1 precisely in connection with this later phase of Mr.
2 TOGO's career, which the prosecution thought it safest
3 to concentrate on, that these things stand forth in
4 their full significance. For in this matter of the
5 guilt of Mr. TOGO for the Pacific war the prosecution
6 have assumed a tremendous burden of proof, one which
7 might appear to require the production of evidence
8 the clearest and most convincing to sustain; and of
9 such evidence there is none.

10 This burden is nothing less than that of
11 proving that, contrary to all probability and human
12 experience, TOGO Shigenori, having throughout his
13 career fought on the side of honesty and good faith
14 in international dealings, of peaceful friendship
15 among nations, having been the notorious and unrelenting
16 foe of aggression, double-dealing and chauvinism, on
17 17 October 1941 struck his colors--that, repudiating
18 the principles of a lifetime, he ceased his fight
19 against the forces of evil and joined the enemy,
20 entering into a conspiracy with the avowed object of
21 carrying out aggression, war and conquest. We must
22 stop occasionally to remind ourselves--so accustomed
23 have we become to the spirit in which the prosecution
24 have guided these proceedings--that this is a criminal
25 trial before a court; that the usual principles of

proof do hold here; that the Tribunal's presumption
1 of the defendants' innocence until guilt shall have
2 been proved beyond a reasonable doubt does require
3 that the prosecution sustain its burden by proof, not
4 by its unsupported assertion. The prosecution have
5 undertaken a stupendous task in proposing to sustain
6 this burden of proof. To consider whether they have
7 sustained it we go to the evidence.
8

9 65. When he received the call from the
10 Premier-Designate to serve as foreign minister in the
11 cabinet being formed, Mr. TOGO had been in effect in
12 retirement--with the rank and nominal post of ambassador,
13 but with no assignment--for the year since his return
14 from Moscow, in November 1940³²⁶. The offer of the
15 appointment was not the result of any personal relation-
16 ship between General TOJO and Mr. TOGO, for none had
17 existed--nor was there any intimacy between Mr. TOGO
18 and others of the new ministers. Mr. TOGO was then
19 a senior of the Foreign Ministry, eligible in the
20 normal course for appointment to the highest post in
21 that ministry³²⁷, and we need not trouble to seek for
22 any reason other than the natural and obvious one for
23

24 326. Testimony of TOGO (T. 35,641-42).

25 327. Id. (T. 35,672.)

328

his selection . If the question has any interest,
1 a clue to a probable cause of the appointment is given
2 by the testimony of Admiral OKADA (Elder Statesman
3 whose duty of assisting in the selection of a premier
4 perhaps gave him a natural interest in the composition
5 of the cabinet) that before and about the time of
6 formation of the TOJO Cabinet he was recommending Mr.
7 TOGO's appointment to his friends and acquaintances,
8 and especially to Lord Keeper of the Privy Seal KIDO³²⁹ .
9

Whatever the basis of his selection, the
10 intent with which he accepted the office is clear
11 enough. He has testified in considerable detail to
12 some of the facts which entered into the making of his
13 decision; these are of much importance if the position
14 of the foreign minister in modern Japan or the
15 situation of Mr. TOGO at the time is to be understood
16 correctly, and the reading of that part of Mr. TOGO's
17 testimony is invited³³⁰ . For present purposes we may
18 summarize it in this way: On the specific situation,
19 that before entering the TOJO Cabinet Mr. TOGO had
20

21 "in effect no correct knowledge of the progress of the

22 328. Cf. the testimony of TOJO that his selections
23 were made solely on the basis of individual merit
(T. 36,313).

24 329. T. 37,166-67.

25 330. Exhibit 3,646, §§39-43 (T. 35,665-70).

Japanese-American negotiations", nor any concrete
1 knowledge of the state of relations except that
2 "evidently they were gradually deteriorating" and that
3 there was a danger of war³³¹. In a more general way,
4 however, what he was extremely conscious of was the
5 extraordinary impotence of the foreign minister in
6 Japan. Both in theory and in practice the office
7 differed radically from its counterparts elsewhere.
8 Even within the cabinet, the system of collective
9 responsibility of ministers in itself precluded
10 independent management of foreign affairs by the
11 foreign minister by virtue of its corollary of collective
12 management; latterly, the tendency had moreover grown
13 for the premier to assume steadily increasing power
14 over all affairs of state, including foreign affairs.
15 On the other hand, the government itself of recent
16 years had had to yield increasingly to the power,
17 constitutional and usurped, of the military High
18 Command³³². This point is of such specific interest
19 to the case of Mr. TOGO that I must digress a moment to
20 say a word about it.
21

22
23 66. That the Japanese system of independence
24 of the military High Command was unique is admitted

25 331. T. 35,666-67.
332. T. 35,667-68.

1 on all hands. The prosecution have pointed this
2 out, saying that

3 "We should be unwarranted in assuming that
4 the Japanese governmental structure was like that
5 of other nations, particularly the western nations,
6 and it would be unsafe for us to proceed upon that
7 assumption³³³ .

8 "The Supreme Command of the army and navy
9 played a large role in the formulation of Japanese
10 aggressive policy. This was due to the fact that the
11 chiefs of staff of the army and navy, contrary to the
12 practice in all other countries, were not subordinates
13 of the ministers of war and navy, but were in theory
14 independent of and co-equal to those ministers. In
15 fact, they might well be said to have been the superior
16 of these ministers...The evidence fully considered
17 heretofore shows clearly that at all times the Supreme
18 Command exercised the right to participate in formulating
19 policy on matters relating to declaration of war,
20 foreign relations, treaty negotiations and ratification
21 and many external matters because of their relation,
22 actual or supposed, to the subject of national defense...
23 Japan had no political organ which could restrain the
24
25

333. Summation, SK-11 (T. 40,550).

High Command from plunging the nation into hostilities.³³⁴

1 "Although within its own sphere the Supreme
2 Command could not be interfered with by the cabinet,
3 the Supreme Command, in addition to its participation
4 in the formulation of national policy, effectively
5 controlled the cabinet. While with respect to matters
6 within its own realm the Supreme Command was independent
7 of the cabinet, the converse of the statement is not
8 true. The cabinet was not within its own realm
9 independent of the High Command.³³⁵ "

11 But having, with perfect accuracy, acknowledged
12 so much, the prosecution remember the effect that this
13 concession will have on their attempt to convict those
14 members of cabinets who, standing out against this
15 irresistible power of the High Command, finally went
16 under in their effort to prevent it from "plunging the
17 nation into hostilities". They therefore deny all
18 that they have already said, by adding that

19 "The strength and responsibility of the
20 Supreme Command in no way alters the basic responsibility
21 of the Cabinet for the formulation of national policy."³³⁶

23 Oh! does it not? When only a bare half-
24 dozen pages further on they are to approve "the ordinary

25 334. Id., §K-15 (T. 40, 557-58).
335. Id., §K-16 (T. 40, 559).
336. Id., §K-15 (T. 40, 559).

1 presumption...that responsibility for an act follows
 2 the power and duty to do that act"³³⁷ ? The presumption
 3 must have its converse, that non-responsibility follows
 4 upon impotence and absence of duty.

5 In explanation of why an impotent government
 6 must share with the High Command which had usurped
 7 its power the responsibility for exercise of that power
 8 the prosecution can suggest only that

9 "It should be noted that while there was
 10 no organ of control, the government did have the power
 11 to control expenditures. However, the government never
 12 made any effort to withhold the funds demanded by the
 13 Supreme Command and no one in the government ever
 14 proposed to do so. Since the Supreme Command could
 15 not have gone forward unless the government supplied the
 16 funds, this fact should be borne in mind..."³³⁸

17
 18 The extent of the Government's control over
 19 the expenditures of the High Command has not been made
 20 the subject of evidence in the case, and the prosecution's
 21 statement--which is in fact subject to important qualifica-
 22 tions--cannot do duty for proof³³⁹. But if it were exact,
 23 it does not support the conclusion. For the prosecution
 24 have also pointed out that "The Supreme Command could go
 25 further and

337. Id., SK-20 (T. 40,565).

338. Id., SK-15 (T. 40,558-59). 339. The second sentence of the quotation is naturally supported by no evidence.

1 determine whether a new cabinet would be allowed to
2 be created and whether the existing cabinet would be
3 permitted to continue...the evidence shows several
4 instances where cabinets fell and one instance where
5 a cabinet could not be formed because of failure of
6 the chiefs of the army to provide a war minister.
7 ...The Supreme Command had the power to bring about
8 the fall of an unwanted cabinet and to prevent the
9 formation of a new one undesirable to them. The
10 Supreme Command, both through its participation in
11 the formulation of national policy and through its
12 control over the cabinet, had ultimate responsibility
13 for the policy decided³⁴⁰ ."
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Then what becomes of the Government's "power
1 to control expenditures?" If the expenditures demanded
2 are refused, the High Command will bring about, as it
3 can do it at its pleasure, destruction of the cabinet
4 which would obstruct its will; and it can prevent
5 formation of a successor cabinet except upon terms of
6 consent to its demands. Truly, "the High Command
7 effectively controlled the Cabinet;" the government
8 could no more restrain the High Command in its budget-
9 ary demands than it could interfere with its exercise
10 of "the right to participate in formulating policy on"
11 matters claimed to have relation with the national
12 defense, no more than it could "restrain it from
13 plunging the nation into hostilities." The prosecu-
14 tion's original statement of the position was correct:
15 "the Supreme Command . . . had ultimate responsibility
16 for the policy decided" under its ascendancy; "the
17 ordinary presumption prevails that responsibility for
18 an act follows the power and duty to do that act."
19

20 So far as concerns the relations of the High
21 Command to the Government, it should moreover be noted
22 that the Ministers of War and Navy, though in constitu-
23 tional theory representatives of the Government, in
24 practice spoke with the voice of the High Command. This
25 point, which the prosecution have conceded, needs no

1 further demonstration than the fact that it was the War
2 Minister, General TOJO, who brought about the fall of
3 the Third KONOYE Cabinet by giving expression to and
4 maintaining the insistence of the Army High Command that
5 no concession could be made in the matter of withdrawal
6 of troops from China or of continuance of the Japanese-
7 American negotiations.³⁴²

9 67. This excursus has been made to provide
10 background for an understanding of the condition upon
11 which Mr. TOGO entered into the TOJO Cabinet. Being,
12 as he has testified, well aware of this state of affairs,
13 he was unwilling to accept the responsibilities of the
14 foreign affairs portfolio until he could gain some
15 understanding of how international affairs -- and
16 specifically Japanese-American relations -- stood, nor
17 unless he could feel assurance that as foreign minister
18 he would "have scope for action."³⁴³ He therefore told
19 General TOJO, when on invitation he visited him at
20 11:30 on the night of 17 October, that "before coming
21 to any decision whether to accept the portfolio I
22 must first be informed of the situation which had
23 brought about the fall of the preceding cabinet."³⁴⁴

25 342. Summation, G-108 - G-112, Tr. 39,647-52.

343. Testimony of TOGO, Tr. 35,670-71.

344. Tr. 35,671.

1
2 From him he learned "the general direction in
3 which the negotiations were proceeding."³⁴⁵ It is
4 apparent from the evidence that the Premier-Designate
5 at first insisted that the Army would stand firm on the
6 ground which it had theretofore occupied toward the
7 Japanese-American negotiations; the report of the con-
8 versation between the two which Mr. TOGO gave at the
9 time to YAMAMOTO, Kumaichi was to the effect that he
10 had first rejected the offer of the foreign ministership
11 "on the ground that, so long as the Army clung to its
12 old attitude, especially on the question of stationing
13 troops in China, the successful conclusion of the
14 Japanese-American negotiations was hopeless." After
15 further discussion, however, he had accepted upon the
16 promise that the cabinet would strive for successful
17 conclusion of the negotiations by undertaking reconsid-
18 eration of the questions involved, including that of
19 the stationing of troops.³⁴⁶ Mr. TOGO's testimony is
20 to the same effect;

21
22 "After hearing his explanations I said that
23 in the event that the Army's stand was to be uncom-
24 promising, if even only on the question of the station-
25 ing of troops in China, the negotiations would to a

345. Testimony of TOGO, Tr. 35,984.

346. Testimony of YAMAMOTO, Tr. 25,919.

1 certainty end in a breakdown. Since in that case the
2 continuance of negotiations would be meaningless, I
3 said that if the new cabinet was to be formed on the
4 basis of such a prospect I should have to reject the
5 proffered portfolio of Foreign Affairs. I made it
6 quite plain that I would agree to enter the cabinet
7 only if the Army consented to make considerable allow-
8 ances in reviewing the question of troop-stationing,
9 and as well to re-examine the other questions in the
10 Japanese-American negotiations -- in short, only if the
11 Army genuinely intended to facilitate the consummation
12 of these negotiations on a rational basis. In response
13 to my statement of my position, General TOJO assured me
14 that reconsideration of the various questions involved
15 in the negotiations including that of the stationing of
16 troops in China, might be undertaken. (In this assurance,
17 I agreed to accept the Foreign Ministership . . .)³⁴⁷

18
19 On the following day, 18 October, the TOJO
20 Cabinet was sworn in and Mr. TOGO became Foreign Minister.
21 (He assumed concurrently the portfolio of Overseas Affairs;
22 but as nothing hinges on his occupancy of this post,
23 which he relinquished on 2 December 1941, it will not
24 be further referred to.)³⁴⁸

25 68. The prosecution have made some effort at

347. Tr. 35,671-72

348. Testimony of TOGO, Tr. 35,674

1 obfuscation of this simple, but highly significant,
2 transaction. This, together with their conventional
3 presumption of guilt, perhaps represents their attempt
4 (none other is discoverable in their arguments) to
5 demonstrate wherein they have sustained their burden
6 of proving that the defendant TOGO, whom they concede
7 to have been of unblemished character (and whom the
8 evidence proves to have been an active worker for peace)
9 until this day of 17 October 1941, entered into a con-
10 spiracy with aggression as its aim. In response to
11 Mr. TOGO's refusal to accept the foreign ministership
12 unless he was to have scope for action, "TOJO assured
13 him", they say, "that all pending questions would be
14 re-examined but gave no guarantee as to any concess-
15 ions to be made."³⁴⁹ This statement is meaningless.
17 It had been the strong stand of War Minister TOJO on
18 the question, primarily, of troop-stationing in China
19 which had brought about the downfall of the Third KONOYE
20 Cabinet. Learning of this, and gathering from the
21 Premier-Designate's words that he would make it his
22 policy to adhere to his former strong stand, Mr. TOGO
23 at first rejected his offer of the portfolio. Then
24 General TOJO expressed his willingness to re-examine

25 349. Summation, WW-12, Tr. 41.887.

1 had occurred only on the preceding day) could hardly
 2 have been very detailed or accurate -- certainly not
 3 such as to make him "well acquainted" with it. The
 4 prosecution have introduced two misstatements of the
 5 evidence also into their allegation that "both he
 6 and defense witness YANAMOTO stated that he requested
 7 from Prime Minister TOJO specific assurances that on
 8 the several points of the 6 September decision a re-
 9 examination of Japan's attitude would be undertaken,
 10 which he could not have done had he not known about
 11 them." First, there is no testimony that Mr. TOGO
 12 "requested" the assurance; second, there is no testimony
 13 that the assurance given contained mention of any of the
 14 points of the 6 September decision. Mr. TOGO's testimony
 15 is that he simply stated why he could not accept the
 16 foreign ministership; "in response to my statement of
 17 my position, General TOJO assured me . . ." ³⁵³ YANAMOTO
 18 says that "when offered the Foreign portfolio . . . he
 19 had rejected it . . . After exchange of opinions, how-
 20 ever, he said, he had at last accepted the offer upon
 21 General TOJO's promise that . . ." ³⁵⁴ No suggestion
 22 here of a "request for assurance." On the other point,
 23 Mr. TOGO testified that the assurance given by the
 24
 25

353. Tr. 35,671.
 354. Tr. 25,919.

1 the national policy without being bound by the 6 Sept-
2 ember decision -- "I made it plain to (him) as to a
3 policy of a 'clean slate' and answered that we would
4 do our utmost to put through the Japanese-American
5 negotiations."³⁵⁰ And then only did Mr. TOGO agree
6 to take the office. What greater guarantee could one
7 want, than that that very 6 September decision which
8 the prosecution contend to have been the chart for the
9 Pacific war would not be binding, that the question of
10 the stationing of troops would be reconsidered -- which
11 must mean "reconsidered with a view to further concess-
12 ions?" It is as specific a guarantee as could be
13 expected until the details of the entire negotiations
14 should have been studied; it is the assurance that the
15 Foreign Minister would have the right to work for peace.
16

17 But the prosecution -- recognizing that this
18 laudable manifestation of anti-aggressive intent must
19 if possible be disparaged -- profess to find discrepan-
20 cies in details of Mr. TOGO's testimony.

21 "The accused contends that when he accepted
22 this offer, he was insufficiently informed about the
23 then existing situation as he had been in retirement
24 during the whole preceding year. He testified that
25 he had only vague knowledge of the contents of the

350. Testimony of TOJO, Tr. 36,315.

1 decision of the Imperial Conference of 6 September
2 and knew nothing of the Imperial Conference decision
3 of 2 July. His statements are contradictory, however,
4 because he also testified that he was well acquainted
5 with the circumstances surrounding the fall of the
6 KONOYE Cabinet and both he and defense witness
7 YAHAMOTO stated that he requested from Prime Minister
8 TOJO specific assurances that on the several points
9 of the 6 September decision a re-examination of Japan's
10 attitude would be undertaken, which he could not have
11 done had he not known about them.³⁵¹

12 Weeding out three misstatements of the evidence,
13 we find in what remains no trace of a discrepancy or a
14 contradiction. Mr. TOGO never testified that "he was
15 well acquainted with the circumstances surrounding the
16 fall of the KONOYE Cabinet." What he said was, in his
17 affidavit, that he "knew that it was the strong stand
18 of the Army, as expressed through Minister of War TOJO,
19 which had directly brought about the downfall of Prince
20 KONOYE's last cabinet"; and on cross-examination he gave
21 the source of his information: "I heard this from
22 journalists, from newspaper writers."³⁵² The knowledge
23 of journalists, which was the extent of Mr. TOGO's
24 information, of the true history of this event (which
25

351. Summation, ##-12, Tr. 41,887-88.
352. Tr. 35,987.

1 had occurred only on the preceding day) could hardly
2 have been very detailed or accurate -- certainly not
3 such as to make him "well acquainted" with it. The
4 prosecution have introduced two misstatements of the
5 evidence also into their allegation that "both he
6 and defense witness YAMAMOTO stated that he requested
7 from Prime Minister TOJO specific assurances that on
8 the several points of the 6 September decision a re-
9 examination of Japan's attitude would be undertaken,
10 which he could not have done had he not known about
11 them." First, there is no testimony that Mr. TOGO
12 "requested" the assurance; second, there is no testimony
13 that the assurance given contained mention of any of the
14 points of the 6 September decision. Mr. TOGO's testimony
15 is that he simply stated why he could not accept the
16 foreign ministership; "in response to my statement of
17 my position, General TOJO assured me . . ."³⁵³ YAMAMOTO
18 says that "when offered the Foreign portfolio . . . he
19 had rejected it . . . After exchange of opinions, how-
20 ever, he said, he had at last accepted the offer upon
21 General TOJO's promise that . . ."³⁵⁴ No suggestion
22 here of a "request for assurance." On the other point,
23 Mr. TOGO testified that the assurance given by the
24
25

353. Tr. 35,671.
354. Tr. 25,919.

1 Premier was of "reconsideration of the various questions
2 involved in the negotiations"³⁵⁵ -- not of the questions
3 involved in the 6 September decision. YAMAMOTO's
4 testimony is that General TOJO promised "that his
5 cabinet would . . . strive for successful conclusion
6 of the negotiations by undertaking reconsideration of
7 the various unsettled questions . . . without being
8 bound by the Imperial Conference decision."³⁵⁶ Here
9 it appears that the Imperial Conference decision was
10 mentioned; but there is no suggestion that its terms
11 were discussed.

12 So much for this attempt by the prosecution
13 to distort the facts. A word must be added, however,
14 concerning the significance of this TOGO-TOJO conver-
15 sation which has moved the prosecution to treat it so.
16 If the picture which they have carefully depicted were
17 a true one -- if the TOJO Cabinet was formed to initiate
18 the aggressive war, "according to plan," against the
19 United States and others, if Mr. TOGO had been but
20 biding his time until arrival of the glorious day when
21 he could again resume his active part in the conspiracy,
22 he would of course never have commenced such a conver-
23 sation with General TOJO at all. The conspirator
24 invited into the TOJO Cabinet would have cried, "At last!

355. Tr. 35,671

356. Tr. 25,919

1 I accept!" That Mr. TOGO had no intention of joining .
2 in anything which might resemble a "conspiracy" is
3 clear from the facts: He had "heard from Foreign
4 Office acquaintances . . . that it had been decided
5 that the success or failure of the negotiations had
6 to be settled by the middle of October";³⁵⁷ being
7 asked to join in the middle of October a cabinet
8 being formed by the man responsible, as he had heard,
9 for the fall of the preceding cabinet, he naturally
10 wondered whether perhaps the "success or failure of
11 the negotiations" had been already decided, and insisted
12 upon being satisfied, before he would have any part in
13 the new government, that it had not been decided. Even
14 the prosecution are unable to contend that this meeting
15 did not occur, and are timid about suggesting that the
16 contents of the conversation were not those testified
17 to by Messrs. TOGO, TOJO and YAMAMOTO (as well as by
18 other witnesses, including the prosecution's General
19 TANAKA and Suzuki TOMIN, to whom Mr. TOGO spoke of the
20 matter contemporaneously),³⁵⁸ but must content themselves
21 with the attempt to misinterpret it. These circumstances
22 may be left to speak for themselves.
23

24 357. Tr. 35,983.

25 358. Testimony of TANAKA, Ryukichi, Tr. 35,542;
TOMIYOSHI, Eiji, Tr. 35,524, 35,528;
Kurt Meissner, Tr. 35,463; and Suzuki TOMIN,
Tr. 1,235.

1 69. The TOJO Cabinet, the prosecution say,
2 "was generally considered in Japan to be a war
3 cabinet."³⁵⁹ This "generally considered," for whatever
4 it is worth, professes to be supported by the state-
5 ment of two witnesses. The testimony of one,
6 prosecution witness SUZUKI Tomin, on the subject of
7 the TOJO Cabinet's being "generally considered a
8 war cabinet," is: "I have always believed Mr. TOGO
9 to be an exponent of peace, and when he accepted his
10 post as Foreign Minister in the TOJO Cabinet, I was
11 very much surprised, and I asked him why he accepted
12 this post."³⁶⁰

13 The testimony of the other, defense witness
14 TOMIYOSHI, is somewhat contradictory, but does not
15 sustain the prosecution's allegation. Certainly he
16 never used the words "war cabinet"; he referred to
17 "the TOJO Cabinet of the military clique."³⁶¹ He did
18 state that he himself at first believed "that it was
19 organized for some military action";³⁶² but he
20 specifically denied the meaning that the prosecution
21 attribute to his words. Being asked, moreover, "And
22 was that the common understanding, as you observed,
23 that the TOJO Cabinet was committed to military action?"
24

25 359. Summation, W-13, Tr. 41888.

 360. Tr. 1235-36.

 361. Tr. 35524, 35525.

 362. Tr. 35525, 35530, 35533.

1 "Well, that is not my meaning at all. The
2 general understanding with respect to the term ("cabinet
3 of the military clique") I used was that it was largely
4 constituted -- the cabinet was largely constituted by
5 military men. It did not necessarily mean that it was
6 devoted or it was organized for military action, because
7 military actions take place in accordance with or depend-
8 ent upon the course of diplomacy and international
9 conditions, and it was not my interpretation that this
10 particular cabinet was established for the purpose of
11 military actions."³⁶³

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363. Tr. 35,526-27.

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1 The term actually used by the witness--
2 "military clique," not "war cabinet"--is a natural one
3 in view of the composition of the cabinet, which, as
4 he himself pointed out, was not only the first since
5 that of Marshal TERAUCHI (1916-18) to be headed by an
6 active Army officer,³⁶⁴ but included among its member-
7 ship an unusual number of military men: Welfare
8 Minister Lieutenant-General KOIZUMI,³⁶⁵ Communications
9 Minister Admiral TERAJIMA and Minister without Port-
10 folio (later Home Minister) Lieutenant-General ANDO,³⁶⁶
11 as well as of course the service ministers and General
12 SUZUKI, President of the Planning Board and Minister
13 without Portfolio. There is nothing whatever in the
14 testimony of this witness to sustain the prosecution's
15 "there was little doubt in Japan that the new govern-
16 ment was made up of the most uncompromising elements
17 has been testified to by" him;³⁶⁷ this must be a
18 deliberate misstatement of the record, for neither on
19 the page referred to³⁶⁸ nor elsewhere in his testimony
20 is "most uncompromising elements" to be found, while
21 on that page he is found to state that "it was general
22
23

24 364. Tr. 35537-38.

25 365. Tr. 35527-28.

366. Tr. 35538.

367. Summation, WW-13 (Tr. 41888).

368. Tr. 35528.

1 knowledge that a cabinet of this kind was called a
2 cabinet of the military clique"--referring to his
3 immediately preceding remark that it was the presence
4 among the cabinet ministers of this unusual number of
5 military men and not their "uncompromising" character,
6 which led to its being referred to as a "cabinet of
7 the military clique."

8 Like so many of the prosecution's contentions,
9 this one has no importance in itself, but requires the
10 consumption of the time of all concerned to dispose of
11 it just because it represents that calculated attempt
12 to prejudice which was mentioned earlier. This con-
13 tention of theirs would be utterly without significance
14 if it were a correct statement of the evidence. We
15 have seen the undisputed evidence that so far as
16 Mr. TOGO was concerned the TOJO Cabinet was a war
17 prevention cabinet. The opinion of a man, or of two
18 men, or of the seventy million of the Japanese popula-
19 tion who were not in the government, who had no
20 knowledge of the secret Japanese-American negotiations,
21 of the secret Imperial Conference decisions, of the
22 secret instruction of the Emperor to Premier TOJO
23 to re-examine the 6 September decision, of the secret
24 assurance given to Foreign Minister TOGO by the Premier
25 that that would be done, or of the fact that

1 upon that assurance the Foreign Minister had entered
2 the cabinet to work for the success of the negotia-
3 tions with America, to avoid war--the opinions of
4 those who knew only what appeared in the newspapers,
5 can have no value for this Tribunal on the question
6 of the guilt or innocence of Mr. TOGO of conspiring
7 to wage aggressive war.

8 70. To decide for the Tribunal this issue
9 of whether the defendant TOGO participated in a
10 conspiracy to wage the Pacific war or earnestly en-
11 deavored to avert it, the prosecution offer also
12 the opinion of Ambassador, Admiral NOMURA, as he
13 formed it in Washington upon learning of the installa-
14 tion of the TOJO Cabinet.³⁶⁹ The extent of Ambassador
15 NOMURA's knowledge of the situation in Japan and
16 the value of his opinion are perhaps sufficiently
17 obvious;³⁷⁰ but the quite normal incident of his
18 tendering his resignation serves the prosecution well
19 as opportunity to inject prejudicial matter into the
20 case, and we must therefore notice it. Admiral
21 NOMURA's offer to resign stated that he did not
22 wish to stay on in Washington, "deceiving myself and
23 others;" this telegram, the prosecution point out,
24

25 369. Summation, WW-13 (Tr. 41888).

370. Cf. Summation for the Defense, Section "K",
"The Japanese-American Negotiations," Section 81,
(Tr. 43728-34).

1 "was sent by NOMURA notwithstanding the fact that
2 two days previously the accused had informed him
3 that Japan wished to continue the negotiations,
4 NOMURA apparently having little faith in these
5 assertions.³⁷¹ Now, Admiral NOMURA's faith in the
6 negotiations or lack of faith is immaterial; if it
7 were material, it could be measured by the fact that
8 he stayed on in Washington, despite having sent the
9 formal, self-depreciatory telegram of resignation.
10 Mr. TOGO, in the course of his five-day cross-
11 examination--most of which was devoted to this type
12 of footling question--testified that:

13 "In my reply to this telegram from Admiral
14 NOMURA, feeling as I told you before that he was
15 laboring under some misunderstanding, I said that the
16 new cabinet was also earnestly striving for the
17 successful conclusion of the negotiations and that,
18 therefore, I hoped that he would remain at his post
19 and, for the sake of our country, strive for the
20 solution of the negotiations. And Ambassador NOMURA
21 accepted my reply because he chose to remain at his
22 post, and that to me is proof of the fact that
23 NOMURA was under a misunderstanding when he sent me
24 that telegram.³⁷²

371. Summation, WW-13 (Tr. 41889).

372. Tr. 36034-35.

1 The prosecutor undertook to impeach Mr. TOGO
2 on this point--but his methods are novel. First, he
3 asked the defendant, "Is it a fact that you never
4 permitted NOMURA to go alone to see Cordell Hull, the
5 Secretary of State, or the President of the United
6 States, after he sent that telegram to you?"³⁷³ This
7 was categorically denied; the prosecutor produced no
8 telegram of instructions to such an effect from Foreign
9 Minister TOGO to Ambassador NOMURA; he produced no
10 witness, whether Admiral NOMURA himself or any of the
11 many members of the Embassy or the Foreign Ministry
12 staff still in government service and readily avail-
13 able, to testify to any such fact. Admiral NOMURA,
14 whose opinions are now so confidently and reverently
15 presented to the Tribunal by the prosecution, was con-
16 spicuous by his nonappearance as a witness for the
17 prosecution at any stage of the trial, though he is
18 well known to be alive and in Tokyo. Second, coming
19 into court on the following day the prosecutor
20 announced:

21
22 "TOGO, before approaching other matters, I
23 wish to inform you that a search of the documents in
24 our possession has not disclosed any such telegram as
25 you claim to have sent to Ambassador NOMURA after his
373. Tr. 36030.

1 dispatch of his message to you * * * about deceiving
2 people * * * and we suggest to you that there was no
3 such message.³⁷⁴

4 No witness was produced to swear that any
5 search had been made of the files in possession of
6 the prosecution, with the result of finding "no such
7 message"; nor, needless to say, was any other proof
8 of any nature attempted of the truth of this suggestion.

9 So much for the "war cabinet" question; this
10 much time we have wasted out of the necessity of
11 destroying these straw men of the prosecution's
12 creation before continuing discussion of the issues
13 of the case.

14 71. The TOJO Cabinet was, then, organized
15 and commenced to function on 18 October 1941. "This
16 cabinet under TOJO's leadership proceeded to carry
17 out the policy of 6 September,³⁷⁵ is the prosecution's
18 position. Before considering whether this is correct,
19 we must discuss one or two aspects of this question
20 of special concern to the defendant TOGO; and, first,
21 the legal position.
22

23 It is obvious in fact--and the contrary is
24 not contended even by the prosecution--that MR. TOGO
25

374. Tr. 36051.

375. Summation, G-115 (Tr. 39654) and WW-15 (Tr. 41891).

1 had no connection with the 6 September Imperial
2 Conference decision. He had not attended that
3 Imperial Conference, was not then in the government,
4 and was in all but name retired (it might be noted
5 here that with the Imperial Conference decision of
6 2 July also, as well as other policy decisions of
7 the Government or the Government and the High Command
8 since 1937, he had had nothing to do, having been
9 either out of Japan or not in public office). The
10 prosecution agree--in admitting that there is no
11 charge that Mr. TOGO "joined in any conspiracy" prior
12 to 17 October 1941--that he bears no responsibility
13 for the 6 September decision. Yet, the prosecution
14 have laid down the law of the case to be that: "Each
15 and every defendant is charged with the crimes now
16 being tried solely because of the responsibility he
17 bears for his contribution to the formulation, in
18 whole or in part, of Japan's aggressive policy.

19
20 "Stating the proposition conversely, no man
21 has been charged with either crimes against peace or
22 conventional war crimes and crimes against humanity
23 unless he is in some way responsible for the aggressive
24 policy followed by Japan, which gave rise to those
25 crimes. No man has been charged in this proceeding
because of any act committed or any statement made

1 by him in the course of his official duties pursuant
2 to an already established policy if those matters were
3 his only connection with that aggressive policy.³⁷⁶

4 Assuming that the policy of the TOJO Cabinet
5 was the carrying out of the 6 September decision,
6 what liability can be imposed, upon the basis of this
7 test, upon Foreign Minister TOGO? The acts committed
8 and the statements made by him were "in the course of
9 his official duties"; they were "pursuant to (the)
10 already established policy" of 6 September--it is so
11 written in the summation against Mr. TOGO individually;³⁷⁷
12 these "matters were his only connection with that
13 aggressive policy" which the TOJO Cabinet "proceeded
14 to carry out." If the policy of the 6 September
15 Imperial Conference was an aggressive one, and was
16 carried out, Mr. TOGO "bears no responsibility for
17 contribution to the formulation, in whole or in part,
18 of Japan's aggressive policy," he is not "in some way
19 responsible for the aggressive policy followed by
20 Japan." No matter how far back in history the
21 foundation of the "aggressive policy" of Japan may
22 have been laid, Mr. TOGO (not being charged with having
23 joined any conspiracy before the TOJO Cabinet days)
24

25 376. Summation, K-2--K-3 (Tr. 40539).
377. Id., WWI-16 (Tr. 41892-95).

bears no responsibility for it.

1 Is this the final confession of failure to
2 make a case against this defendant? All else long
3 since abandoned, the case now hanging on his having
4 conspired to make a war of aggression in 1941, have
5 not the prosecution been forced to confess that by
6 the test of their own devising he cannot be adjudged
7 guilty? The prosecution cannot have their cake and
8 eat it. Either the TOJO Cabinet carried out the
9 policy of 6 September, in which event Mr. TOGO, not
10 having participated in making that policy, shares no
11 guilt of it; or it did not carry it out, but adopted
12 new policy in the making of which Mr. TOGO bore the
13 burden of opposing aggression and war. Let us see
14 what actually happened.
15

16 72. The TOJO Cabinet formed, a series of
17 Liaison Conferences began. At the opening of the
18 first of these the Premier said that it would be the
19 function of the new cabinet to reconsider the whole
20 problem of the Japanese-American negotiations, without
21 being bound by the 6 September Imperial Conference
22 decision.³⁷⁸ It immediately developed, however, that
23 the "clean slate" policy did not mean to the High
24 Command that the 6 September decision would necessarily
25 378. Testimony of YAMAMOTO (Tr. 25921) and MUTO
 (Tr. 33171).

1 be reconsidered, or, indeed, that the negotiations
2 with the United States would even be continued. For
3 at that same first Liaison Conference meeting both
4 Chief and Vice-Chief of the Army General Staff spoke
5 very strongly against continuing negotiation at all.
6 No time must be lost, said Chief of Staff SUGIYAMA,
7 in arriving at a decision; and since the 6 September
8 decision left almost no room for the making of further
9 concessions on the troop-stationing question, they
10 must absolutely not be made, but in the circumstances
11 hostilities should be commenced at once.³⁷⁹ Vice-
12 Chief TSUKADA was even more intransigent; he said that
13 he could see no possible prospect of successful out-
14 come of the negotiations, and they should be broken
15 off at once and military action taken.³⁸⁰ Those who
16 had longer been members of the Liaison Conference
17 naturally exercised greater influence in its delibera-
18 tions than did newcomers such as Foreign Minister
19 TOGO--as he said, "there is a sort of momentum which
20 must be reckoned with in such a case";³⁸¹ those older
21 members were unable entirely to shake off the influence
22 of the earlier discussions and decisions in which they
23

24 379. Testimony of TOGO (Tr. 35683-84) and YAMAMOTO
(Tr. 25921-22).

25 380. Testimony of TOGO (Tr. 35682-83).

381. Id., (Tr. 35683).

1 had participated. As a result, the prevailing
2 approach to the "re-examination of the 6 September
3 decision" was to take it as a basis and see what
4 revisions could be made in it, rather than to wipe
5 it from memory and attempt a fresh approach; this
6 being the frame of mind, there was a strong feeling
7 that the 6 September decision could not easily be
8 revised.³⁸² Chief of Staff SUGIYAMA had not hesitated
9 to remind the Conference that that decision, the terms
10 of which it was understood were to be disregarded,
11 had contemplated that diplomacy during September should
12 be accorded primary emphasis, but should from the
13 beginning of October be subordinated to military
14 preparations.³⁸³ The Foreign Minister was thus com-
15 pelled from the outset to fight for the very right to
16 carry on diplomatic measures, against the resistance
17 of the armed forces. There is no evidence that in
18 this fight any other member of the Liaison Conference
19 came to his support. In the end it was only his
20 earnest insistence that negotiation must be continued
21 while there existed any prospect of success through
22 it that led the Conference to the decision to go on
23 with the Japanese-American negotiations.
24

25 382. Id. (Tr. 35683).

383. Id. (Tr. 35682).

1 Even with Army and Navy once persuaded that
2 re-examination of the 6 September decision was
3 obligatory, it was only very grudgingly that they
4 would agree to the making of any such concessions as
5 would give meaning to "continuing the negotiations"--
6 it being obviously futile to continue them on the
7 basis of the Japanese position as contained in the
8 6 September decision.³⁸⁴ There is little doubt from
9 the evidence that it was as the result wholly of
10 Foreign Minister TOGO's unceasing insistence that any
11 further moderation of the Japanese terms was finally
12 agreed to. No one pretends otherwise; even the prose-
13 cution admit this, while attempting to belittle its
14 significance. The evidence shows that he received
15 in the Liaison Conference little or no support--there
16 is actually no evidence of any positive action by
17 other members toward relaxation of the conditions of
18 the negotiations--and strongly suggests that it was
19 he alone who carried on the fight against Army and
20 Navy and their supporters. Some pretense has, however,
21 been made by certain defendants that it was the Army
22 alone, or the High Command alone--and in any event
23 not they--who opposed the making of concessions in the
24 negotiations. While understandably Mr. TOGO did not
25 384. Id. (Tr. 35685).

1 wish to testify against his fellow-defendants in this
2 matter, there is evidence showing that it was not
3 Army alone, nor High Command alone, whom he had to
4 deal with.³⁸⁵ No defendant denied the truth of this
5 evidence. The approach of the defendants who testified
6 concerning their participation in the Liaison Confer-
7 ence is to pass the matter in silence by saying only
8 that deliberations were had and resulted in the
9 adoption of a plan (to present Proposals "A" and "B").
10 The testimony of Mr. TOGO and Mr. YAMAMOTO, however,
11 is clear that opposition was encountered from Army
12 and Navy, whom the majority supported.³⁸⁶ In partic-
13 ular, the Navy's attitude--which Mr. TOGO has testified
14 that he was astonished to find "scarcely less strong"
15 than that of the Army--is put beyond doubt by one
16 incident which occurred. Toward the end of October,
17 Mr. TOGO has testified, he sent an emissary to Admiral
18 OKADA, ex-Premier and veteran of the Navy presumably
19 possessed of much influence in naval circles, to
20 request the use of that influence to moderate the
21 strong stand of the Navy toward the negotiations.³⁸⁷

- 22
23
24 385. Testimony of TOGO (Tr. 36076-77, 36083-86,
25 36090-92). One defendant's profession to have
taken positive action is in form of a vague
generality (testimony of SHIMADA, Tr. 35656-57).
386. Testimony of TOGO (Tr. 35685-91 and loc. cit.
supra n385) and YAMAMOTO (Tr. 25940, 25949-50).
387. Tr. 35689.

1 Admiral OKADA testified to having been so approached
2 by Foreign Minister TOGO.³⁸⁸ Neither was cross-examined
3 on the point by any defendant. That action of
4 Mr. TOGO in 1941 could not have been taken in antici-
5 pation of a day in 1947 when he would decide to try
6 to shift his responsibility to the Navy.

7 That it was the Foreign Minister alone who--
8 as would have been expected from his history--was
9 throughout the discussions the consistent foe of
10 extremism must be taken as established. Yet, as
11 General SUZUKI has testified, "the Foreign Minister
12 seemed to be unable to totally disregard the vigorous
13 demands made by the High Command."³⁸⁹

14 73. It was indeed impossible, in the
15 Liaison Conference above all, totally to disregard
16 the demands of the High Command. The extent of the
17 power of the High Command we have already seen
18 correctly stated, as quoted above,³⁹⁰ in the prosecu-
19 tion's summation; the Liaison Conference was where
20 that power was exercised. The very fact of existence
21 of the Liaison Conference is eloquent testimony to the
22 extent of military interference with functions of the
23 Government. It was a body without constitutional
24

25 388. Tr. 37165-66.

389. Tr. 35220.

390. Supra, Section 66.

1 ...brought into existence expressly to co-
 2 of the High Command and to reconcile the viewpoints
 3 very heavily weighted on the military side. Of its
 4 membership four--Premier, Foreign and Finance
 5 Ministers, President of the Planning Board--were
 6 representatives of the civilian Government; four--
 7 the Chiefs of Army and Navy--of the military forces.
 8 But in TOJO Cabinet days the Premier was an active
 9 military man (he who had formerly been the ardent
 10 advocate of the High Command's position); the
 11 President of the Planning Board was a military man;
 12 and the Vice-Chiefs, as well as the Chiefs, of Staff
 13 were in constant attendance. Of three secretaries,
 14 who prepared agenda, draft decisions and other data,
 15 two were military representatives--the Directors of
 16 Military and Naval Affairs Bureaus--one, the Chief
 17 Cabinet Secretary, from the Government. 391 The power
 18 of the military services being known, it needs little
 19 imagination to understand the strength of the military
 20 influence in this Liaison Conference, in which there
 21 sat down as participants two civilians, seven men in
 22 uniform. The Liaison Conference decisions being
 23 391. Testimony of TOGO (Tr. 35677-79).

20 crim-
 21 of a decla-
 22 war in violation o-
 23 ments or assurances; not
 24 ning or preparing domination of one Asiatic-Pacific--
 25 392. Summation, SG-51 (T. 39,579-80)

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sanction, brought into existence expressly to co-
1 ordinate the functions and to reconcile the viewpoints
2 of the High Command and the Government; but it was
3 very heavily weighted on the military side. Of its
4 membership four--Premier, Foreign and Finance
5 Ministers, President of the Planning Board--were
6 representatives of the civilian Government; four--
7 the Chiefs of Army and Navy General Staffs and
8 Ministers of War and Navy--of the military forces.
9 But in TOJO Cabinet days the Premier was an active
10 military man (he who had formerly been the ardent
11 advocate of the High Command's position); the
12 President of the Planning Board was a military man;
13 and the Vice-Chiefs, as well as the Chiefs, of Staff
14 were in constant attendance. Of three secretaries,
15 who prepared agenda, draft decisions and other data,
16 two were military representatives--the Directors of
17 Military and Naval Affairs Bureaus--one, the Chief
18 Cabinet Secretary, from the Government.³⁹¹ The power
19 of the military services being known, it needs little
20 imagination to understand the strength of the military
21 influence in this Liaison Conference, in which there
22 sat down as participants two civilians, seven men in
23 uniform. The Liaison Conference decisions being
24
25 391. Testimony of TOGO (Tr. 35677-79).

1 almost, if not quite, invariably approved by the
2 Cabinet and, in necessary case, by Imperial Confer-
3 ence, it can be readily understood that it was
4 through this organ that the High Command exerted its
5 tremendous power to shape national policies in the
6 field of foreign affairs.

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74. This fight of Foreign Minister TOGO's,
1 single-handed and unflagging, against the Army and
2 Navy is the key to his case. Its results we shall see
3 in a moment; but now consider its significance. Army
4 and Navy say, "Stop these futile negotiations; now is
5 the time for war!" The Foreign Minister replies, "No!
6 Concessions must and can be made; these negotiations
7 must succeed, to avert war." How can this constitute the
8 planning and preparing war of aggression--or of war,
9 or of aggression? How can the fight to conclude peace-
10 ful agreement and settlement be related to conspiracy
11 for aggression? Fighting for, and in the end winning,
12 agreement to make concessions, to continue negotiation,
13 to try to avoid war--this is planning and preparing for
14 peace. There can, it is submitted, be no answer to
15 this proof: Foreign Minister TOGO had no hand in plan-
16 ning war.
17

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18 The answer attempted by the prosecution is
19 that the negotiations themselves were a part of the
20 "conspiracy"; they were the means by which one faction
21 of the "conspirators" hoped to gain their ends without
22 war. This argument overlooks the nature of the of-
23 fenses which this Tribunal is empowered to try. That
24 there may be no mistake about it, I repeat it in the
25 prosecution's own words:

1 ". . . they adopted a two-fold policy: on
2 the one hand, they would negotiate with Britain
3 and the United States on certain specific out-
4 standing problems in accordance with certain pro-
5 posals which, if accepted, would leave Japan
6 the master of the Asiatic-Pacific world . . . ;
7 and on the other hand, they would actively pre-
8 pare for war with those countries with the
9 same objective and results. . . . Both programs
10 had the same objective, and while some of the
11 conspirators felt that they could attain the ob-
12 jectives of the conspiracy through negotiations,
13 others viewed the negotiations as impossible from
14 the beginning and regarded them as useful camou-
15 flage for the active war preparations going on
16 392"
 . . ."

17 But conspiracy to obtain domination of the Asiatic-
18 Pacific world through negotiation is not a crime
19 under the Charter of this Tribunal. The Charter's
20 crime of conspiracy is the planning or preparation
21 of a declared or undeclared war of aggression, or a
22 war in violation of international law, treaties, agree-
23 ments or assurances; not a word there speaks of plan-
24 ning or preparing domination of the Asiatic-Pacific--
25 392. Summation, 8G-51 (T. 39,579-80)

1 or any other--area, by negotiating and concluding
2 agreements. Nor, it need hardly be mentioned, could
3 there be such an offense: the United States required
4 no guardian to prevent her from making, if she saw fit,
5 an agreement which allowed to Japan dominatio of the
6 Asiatic-Pacific world; she was subject to no duress,
7 she could certainly not complain that an agreement
8 which she entered into was aggression against her.

9 This little passage from the prosecution's summation
10 is nothing more nor less than the enactment of a still
11 newer crime than those made by our Charter: conspiracy
12 to attain one's ends without the waging of a declared
13 or undeclared war of aggression, or a war in violation
14 of international law, treaties, agreements and assur-
15 ances, or a war of any nature whatsoever.

16 The prosecution seem to have recognized early
17 this fatal flaw in their case against Mr. TOGO. They
18 decided then to pin all their hopes of conviction on
19 one last point: that he "voluntarily acquiesced in
20 war." This is worth noting more carefully. It comes
21 up on objection to tender into evidence of Mr. TOGO's
22 report to the Foreign Minister in 1933; the chief of
23 counsel says:
24

25 "What we would like to present to this
learned Tribunal is the evidence as to what

1 these accused did, what they said at or about
2 the time of their participation in the offense,
3 whether it be the substantive one or the con-
4 spiracy; but we do not believe, Mr. President,
5 that the state of mind of TOGO in 1933 is the
6 important matter in this case. We believe it
7 is, what was his state of mind when he, as we
8 have proved, I think, and will prove, voluntar-
9 ily acquiesced in war, and aggressive war,
10 against the Western Powers.³⁹³"

11 Assuming, as the prosecution assume it, the "partici-
12 pation in the conspiracy," how is the state of mind
13 of that time proved? By "the evidence as to what
14 these accused did, what they said." The evidence of
15 what Foreign Minister TOGO did, what he said, during
16 the days when war or peace hung in the balance, is
17 clear, unequivocal, uncontradicted and decisive: he
18 fought for peace. There remains, then, only his event-
19 ual "acquiescence" in the decision for war. Of this,
20 we shall have something to say presently; but for
21 the moment, a little more on the intervening events.

22
23 75. The Liaison Conference discussions were
24 concerned, once the continuance of the Japanese-American
25 negotiations had been agreed upon, with three separate
393. T. 35,359.

394

1 but closely-related matters. There was the terms of
2 the negotiations themselves--finding any new terms of
3 concession which could be offered to recommence the
4 negotiations, then dormant--and the treatment of var-
5 ious points which arose once the negotiations had got
6 under way again. Second was certain questions of the
7 national strength as they bore on the ability to carry
8 out national policy--the ability to wage war, always
9 excluding, of course, purely strategic or military
10 questions. Third was the course to be pursued by Japan
11 if negotiations failed. Of these questions it was nat-
12 urally the first which most concerned and occupied the
13 Foreign Minister.

14 76. The subject of the Japanese-American ne-
15 gotiations has already been discussed extensively, our
16 submissions made to the Tribunal of the extent to which
17 Japan after Mr. TOGO's becoming Foreign Minister en-
18 deavored to meet the United States in an agreement. ³⁹⁵
19 What remains to be considered is Mr. TOGO's individual
20 part in the matter.
21

22 As is well known, the Liaison Conference dis-
23 cussions during the latter part of October resulted

24 394. Testimony of YAMAMOTO (T. 25,921-23), SUZUKI
25 (T. 35,213-22), TOJO (T. 36,316-24), TOGO
(T. 35,682-99).

395. Summation for the defense, Section "K", "The
Japanese-American Negotiations" (cited hereinaf-
ter as "The Japanese-American Negotiations")
(T. 49,493-738).

1 in an agreement on Proposals "A" and "B", which after
2 approval by the Imperial Conference of 5 November were
3 in due course presented to the United States.³⁹⁶ The
4 prosecution have treated Proposal "A", the first of
5 these, as amounting to nothing in the way of conces-
6 sion from Japan's prior position, but as being in sub-
7 stance identical with the 25 September proposal, "which
8 in turn contained all the elements of the Imperial Con-
9 ference decisions of 6 September, although clothed in
10 more diplomatic language."³⁹⁷ While if this were true it
11 would, under the prosecution's theory of liability, ab-
12 solve Mr. TOGO of any possible guilt in connection with
13 it,³⁹⁸ it is not a correct statement. There is one aspect
14 of the evidence which, while the prosecution ignore it,
15 is of tremendous significance on this point. I have
16 mentioned before, but without discussing the evidence,
17 that it is quite undisputed, whether by prosecution or
18 defense, that Foreign Minister TOGO had to wage a long
19 fight and a bitter one against the Army and the Navy
20 and their supporters to obtain agreement to the making
21 of new concessions in the negotiations with the United
22 States. There is a considerable amount of evidence on
23 the point, of which the following may be noted. Mr.

- 25 396. Testimony of YAMAMOTO (T. 25,921-86).
397. Summation, SWW-15 (T. 41,891).
398. *Supra*, 871.

TOGO himself testified that:

1 "From the beginning . . . the majority of
2 the participants in the Liaison Conference op-
3 posed the adoption of the principle of withdrawal
4 of troops from the specified areas of China, and
5 I had to fight unceasingly for it; the Army
6 members especially strongly emphasized the
7 necessity of indefinite stationing of Japanese
8 troops in specified areas of China. In the end,
9 as a result of my strong contention that it was
10 improper and disadvantageous to station troops
11 indefinitely on the soil of another country,
12 the others relaxed their stand to the extent
13 of agreeing with me to put a time-limit on the
14 stationing. As to the duration, however, var-
15 ious strong opinions were still presented. . . . I
16 did succeed in winning agreement to limiting the
17 stationing of troops in the geographical sense,
18 by having excluded from the areas where troops
19 would be stationed the Shanghai triangular zone,
20 Amoy and others; this, too, was achieved only
21 after a struggle, for there was opinion by the
22 military and naval authorities that we should
23 retain the right to station troops at all the
24 points specified by the 1940 treaty between
25

Japan and the Wang Ching-wei regime.

1 "A related problem was that of French Indo-
2 China. . . . In this matter, too, the opposi-
3 tion was strong. . . .

4 "Persuading the Liaison Conference to agree-
5 ment on these two major points was not achieved
6 without long and arduous work. . . ."
7 ³⁹⁹

8 Mr. YAMAMOTO's testimony is similar:

9 "But in the Liaison Conference, the Army
10 General Staff especially strongly opposed a
11 limitation on the period of stationing troops
12 on the grounds that if a limitation were im-
13 posed the fruits of the China Incident would
14 be lost, the feeling of defeat would spread over
15 the nation, and the morale of the Army would be
16 lowered. The Foreign Minister insisted, on the
17 contrary, that the negotiations would undoubtedly
18 fail unless the period was limited; and after
19 hot discussions the General Staff at last came
20 to agree to make the decision.

21 ". . . To arrive at an agreement to make
22 such concessions in spite of the many questions
23 left unsettled for future negotiations was a
24 difficult matter, and there were strong objections
25

399. T. 35,686-88.

1 from the Army General Staff, by whom it was
 2 considered an extreme concession on the part
 3 of Japan. . . ."
 400

3 General MUTO's testimony shows it to have been Foreign
 4 Minister TOGO, not some faction of the Liaison Con-
 5 ference, who urged the concessions which would make
 6 possible a peaceful settlement:
 7

8 "At that time, the General Staff Office
 9 was opposed to . . . the adoption of the "A"
 10 and "B" plan. Especially, they were very
 11 strongly opposed to the "B" plan, but with re-
 12 gard to the . . . drafting of the "B" plan, I
 13 had expressed my views to the Chief of the Gen-
 14 eral Staff. I had succeeded in having him agree
 15 to the views entertained by Foreign Minister TOGO."
 401

16 The testimony of General MUTO's witness ISHII shows
 17 that the debate over Proposal "B", produced as his
 18 own plan by the Foreign Minister, was by him alone
 19 against Chief of Staff SUGIYAMA. Even the President
 20 of the Planning Board, General SUZUKI, admitted that
 21 "the Government, especially the Foreign Minister, was
 22 putting up a stiff fight against the contentions of
 23 the High Command."
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 25 400. T. 25,940-41, 25,948-49.
 401. T. 33,152, Cf. Ex. 3333 (T. 30,618).
 402. T. 33,682.
 403. T. 35,221.

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1 from the Army General Staff, by whom it was
 2 considered an extreme concession on the part
 3 of Japan. . . .⁴⁰⁰ "

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 10 and "B" plan. Especially, they were very
 11 strongly opposed to the "B" plan, but with re-
 12 gard to the . . . drafting of the "B" plan, I
 13 had expressed my views to the Chief of the Gen-
 14 eral Staff. I had succeeded in having him agree
 15 to the views entertained by Foreign Minister⁴⁰¹ TOGO."

16 The testimony of General MUTO's witness ISHII shows
 17 that the debate over Proposal "B", produced as his
 18 own plan by the Foreign Minister, was by him alone
 19 against Chief of Staff⁴⁰² SUGIYAMA. Even the President
 20 of the Planning Board, General SUZUKI, admitted that
 21 "the Government, especially the Foreign Minister, was
 22 putting up a stiff fight against the contentions of
 23 the High Command."⁴⁰³

- 24
 25 400. T. 25,940-41, 25,948-49.
 401. T. 33,152, Cf. Ex. 3333 (T. 30,618).
 402. T. 33,682.
 403. T. 35,221.

77. It can, then, only be found that it was
1 Foreign Minister TOGO who contended for, and obtained,
2 relaxation of the conditions of the negotiations. But,
3 say the prosecution, there was in reality no relaxation
4 at all; it was just the same old stand. To Mr. TOGO's
5 case it is strictly immaterial whether this be true;
6 if he believed himself to be fighting for, and to have
7 won, moderation of the military position, his inten-
8 tion is fixed for the Tribunal by that fact.
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1 Whether Japan's proposals represented con-
2 cession or no concession may, however, be tested very
3 simply by consideration of one fact: why, if Pro-
4 posal "A" represented no concession, did the military
5 forces fight it so tenaciously? Why should Mr. TOGO
6 have had to employ all his ability and force to per-
7 suade the Army and the Navy to accept a "more diplo-
8 matic phrasing" of the same demands which had always
9 been maintained? The armed services had no interest
10 in the phrasing of their demands, so they were granted;
11 they wanted the substance, and their opposition proves
12 that they had no slightest doubt whether Proposal "A"
13 represented surrender by them of something substantial.
14 For the prosecution, writing their summations to prove
15 the universal malignancy of those whom they have selected
16 as defendants, it is easy to say that "these changes
17 on which the accused relies most heavily in his defense
18 did not bring any essential difference in the Japanese
19 demands"⁴⁰⁴ ; but let them offer us even a theory which
20 shall explain why Foreign Minister TOGO made his long
21 and single-handed fight against the High Command and
22 its supporters only to win the right to present to
23 the United States proposals which had already been
24 rejected. Let them suggest any alternative hypothesis
25 (404. Summation, § WW-15 (Tr. 41,891))

1 upon which the Liaison Conference would have been so
2 painfully reluctant to sanction the presentation to
3 the United States of Proposal "A". It is so plain
4 that even the prosecution must recognize it -- as
5 they have recognized it by passing the question in
6 silence -- that had the intention of Mr. TOGO and the
7 Liaison Conference been only to work out ways of
8 restating more diplomatically their immutable demands,
9 to cozen the United States with forms of words pend-
10 ing the moment when the hand which held the dagger
11 would plunge it into its neighbor's back, it would
12 have required no days and nights of contention in
13 the Liaison Conference to have the Foreign Minister
14 arrange the fraud. Had the Foreign Minister and
15 the High Command been but in a friendly way prepar-
16 ing together how to present the old proposals in
17 such form as to beguile the United States into be-
18 lieving them new ones, General TANAKA, Ryukichi of
19 the Kempei would not have felt it necessary to order
20 Mr. TOGO's life specially guarded from the irate
21 militarists who wished to "dispose of" him ⁴⁰⁵.

23 78. By this same evidence -- this same testi-
24 mony of circumstances, which cannot be perjured --
25 is refuted the United States' position toward the
(405. Testimony of TANAKA, Tr. 35,543)

1 Japanese proposals. The groundlessness of the
2 prosecution's contention that Proposal "A" repre-
3 sented no concession is, of course, exposed fully
4 by the fact that the United States did not so con-
5 tend at the time. The quite different United
6 States' view of Proposal "A" was that it was insin-
7 ocerely made ⁴⁰⁶. It remains to be explained by any
8 evidence or assumption why the generals, the ad-
9 mirals and Foreign Minister TOGO, entering into a
10 scheme to make to the United States insincere pro-
11 fessions of intent, found it necessary to wrangle
12 acrimoniously for ten days over whether to make
13 the professions. Could it have been to prepare for
14 themselves a defense against the day when, having
15 suffered defeat in the war they were then bent on,
16 they would be tried as "war criminals"?

17 I have said, and I repeat, that it is not
18 only quite undisputed by prosecution or defense, but
19 is affirmatively shown by evidence and is admitted
20 by all, that this fight was made by Foreign Minister
21 TOGO. Oh! the prosecution do, in their inimitable
22 way -- having cross-examined no witness on the sub-
23 ject, having produced no evidence of their own -- say
24 that "even if the accused made the efforts as alleged
25 (406. The Japanese-American Negotiations, §41
Tr. 43,604-05)

1 by him", they have no importance ⁴⁰⁷. No answer is
2 attempted, and it is suggested that none can be made,
3 to the argument of the facts, which is submitted
4 to demonstrate the real importance of these efforts,
5 "if he made them." The facts constitute that
6 "evidence as to what these accused did, what they
7 said at or about the time of their participation
8 in the offense" which the chief prosecutor "would
9 like to present to this learned Tribunal" ⁴⁰⁸, but
10 has not touched upon in summation. We submit that
11 by these facts the Tribunal will be assisted in
12 determining that fundamental question which, unlike
13 the prosecution, they cannot assume a priori:
14 whether there was "participation in the offense."
15

16 79. Other undisputed facts are equally sig-
17 nificant to the case of Mr. TOGO. For example, the
18 prosecution now attempt to depict him as the en-
19 thusiastic defender, while Foreign Minister in 1941,
20 of the Tripartite Pact which from 1938 to 1941 he
21 had fought tooth and nail. The attempt is supported
22 by arguments of that curious naivete so characteristic
23 of this prosecution, arguments which, in substance,
24 amount to the contention that a minister of state

25 (407. Summation, S/W-15, Tr. 41,891)
408. Tr. 35,359)

1 must be held in a public utterance always to speak
2 his private thoughts. They themselves give away the
3 whole argument, when they point out that Foreign
4 Minister TOGO's speech to the Diet on 18 November,
5 containing certain language which they profess to
6 find expressive of his attachment to the Tripartite
7 Pact, "was given to explain the policies of the
8 Cabinet to the Japanese Diet."⁴⁰⁹ Some amount of
9 cross-examination was devoted to learning whether
10 this speech of the Foreign Minister represented the
11 feelings of Mr. TOGO, the individual -- whether he
12 "believed" what he said "to be true". The answer
13 was prompt, inevitable and, it might be supposed,
14 to all but this prosecution the merest common sense:
15 "As Foreign Minister of Japan I was in such a posi-
16 tion that I had to make a speech of that nature!"^{410.}
17 Do the prosecution really believe that a minister's
18 policy statements to the national legislature
19 represent his personal views? Should we rewrite
20 for them on this assumption a number of the famous
21 speeches of history which readily occur to any of
22 us as lending themselves to this treatment?
23

24 The plain, hard facts, with their inescapable

25 (409. Summation, SWT-25, Tr. 41,909
410. Tr. 36,041)

1 implications, answer the prosecution's contention
2 that this Diet speech of Mr. TOGO's "should counter
3 effectively the accused's allegations concerning
4 his opposition to the Tripartite Pact." ⁴¹¹ His
5 "allegations concerning his opposition" to the Pact
6 from 1938 to 1941 have already been fully discussed,
7 together with the prosecution's irresponsible treat-
8 ment of them ⁴¹². What he did in 1941 -- precisely
9 while he was as Foreign Minister making the neces-
10 sary public statement of his Government's policy --
11 was to work in the Liaison Conference for the ef-
12 fectual nullification of the Tripartite Pact. Under-
13 standing with the United States being then believed
14 already to have been reached on that item of con-
15 tention between the two countries, it was rather
16 neglected in the Liaison Conference discussion of
17 the new proposals; notwithstanding which, Mr. TOGO
18 had got the Conference to approve his reaffirmation
19 to the United States of the intention of Japan to
20 "interpret" the Pact "independently of the other
21 signatories" -- that is, not in accordance with
22 Germany's and Italy's desires -- and his commitment
23 that, even with the United States then already at
24

25 (411. Summation, SWW-25, Tr. 41,909
412. Supra. §§53-56)

1 war with Germany, the Pact would not be used as a
2 pretext for attacking the United States⁴¹³. Who
3 but the Foreign Minister instructed Ambassador
4 NOMURA to suggest to the United States that while
5 Japan could not abrogate the Pact, the United States
6 might be able to "read between the lines" of her
7 undertaking⁴¹⁴? And who but the Foreign Minister
8 authorized Ambassador KURUSU, when he went to America,
9 to offer to sign a statement of the plain effect that
10 Japan would not collaborate with Germany in any
11 aggression against or attack upon the United States⁴¹⁵?
12 Mr. TOGO's actions in the Liaison Conference are those
13 which have value for this Tribunal in ascertaining
14 his true intent; not the words which he spoke pub-
15 licly when stating the official line of policy --
16 policy which he did not form, but had to take as,
17 he found it if he was to have any opportunity to
18 work for its alteration. Would an illustration
19 point up the absurdity of the prosecution's reli-
20 ance on the probative value of such evidence? Appar-
21 ently there is only one course of conduct which, by
22 their standard, Mr. TOGO could when offered the
23 foreign ministership have followed without becoming

24 (413. The Japanese-American Negotiations, §53
25 Tr. 43,642.

414. Id. §18, Tr. 43,531

415. Id. §19, Tr. 43,534-37)

1 an aggressor. "As you know," he must say, "I am
2 personally opposed to the Tripartite Pact --
3 always have been. As Foreign Minister I should
4 have at least temporarily to approve it, since it
5 is the existing policy of Japan. But while I rea-
6 lize that you will be unable to find a foreign min-
7 ister who would fight as I should for peace and
8 against war, nevertheless I couldn't make the nec-
9 cessary speech supporting the Tripartite Pact; so
10 you'll have to get some Pact-loving militarist for
11 your foreign minister." Application of the prose-
12 cution's criterion must lead to the result that a
13 vicious or an undesirable policy can never be
14 changed; no statesman opposed to it can risk taking
15 office to work against it, for he may be hanged for
16 paying it the necessary lip-service until he can
17 succeed in reversing it.

18 The rule can be no different as applied to
19 the prosecution's proof and the defense's: that
20 public speeches for propaganda are not probative
21 of those matters which the Tribunal must know, the
22 man's true intent.

23 80. The same facts, of Mr. TOGO's actions
24 in the Liaison Conference, dispose of any contention
25 that he supported the China Affair -- "adopted the

fruits" of it, in the prosecution's quaint phrase.

1 Retention of the fruits of the China Affair was
2 exactly the insistence of those whom he fought.

3 His entire labor in the Liaison Conference was de-
4 voted to bringing about the cancelation of Japan's
5 policy as it had theretofore stood, the policy of
6 insisting on the right of indefinite retention of
7 its forces in China and of asserting other special
8 rights and privileges resulting from geographical
9 propinquity of the two countries. It was the as-
10 ssertion of the principle of the right of indefi-
11 nite -- that is, permanent -- stationing of troops on
12 the soil of China which, as the High Command had
13 pointed out, assured "the fruits of the China In-
14 cident," making it possible to speak with a degree
15 of accuracy of Japan's striving for an "overlord-
16 ship" of China. What is undenied is that it was
17 Foreign Minister TOGO who urged and fought for --
18 his hardest fight -- the abandonment of that insis-
19 tence, and acceptance of the contrary principle,
20 that of withdrawal. Is this aggression? It was
21 Foreign Minister TOGO who obtained agreement to
22 proposing to the United States abandonment of the
23 claim, long asserted by Japan, of special commer-
24 cial and other rights in China based upon propinquity

416

(416. The Japanese-American Negotiations, §25,
Tr. 43,555-56)

1 Is this aggression -- or even "conspiracy to obtain
2 domination of the Asiatic-Pacific world"? Having
3 got consent to recognition of the principle of with-
4 drawal from China -- the adamant refusal of War
5 Minister TOJO and the High Command to consider which
6 had directly caused the fall of Prince KONOYE's
7 government ⁴¹⁷ -- the Foreign Minister undertook to
8 obtain agreement on a definite time-limit; starting
9 with a proposal for one of five years, he fought
10 against suggestions of 40- and 100-year periods,
11 until he got agreement on an "approximate goal" of
12 25 years ⁴¹⁸. Whether twenty-five years was an ex-
13 cessive term (it is clearly not "much the same" as
14 an indefinite period, as the prosecution would have
15 it ⁴¹⁹) is, as has been mentioned elsewhere ⁴²⁰, not
16 the question; excessive or not, it represented to
17 that extent a defeat for the militarists, success of
18 Mr. TOGO's peaceful policy. To the extent that he won
19 that relaxation of Japan's terms, that victory of
20 principle, his conduct is the opposite of aggression.

21 81. Lastly, of our examples -- analysis of
22 the entire evidence, undisputed as it is, would be
23 (417. Ex. 2,913, Tr. 25,860, and Ex. 2,914, Tr. 25,868
24 418. Testimony of TOGO, Tr. 35,686
25 419. Summation, §W-19, Tr. 41,899-900.
420. The Japanese-American Negotiations, §§39, 56
Tr. 43,597-604, 43,649-50)

1 tedious -- is the withdrawal from southern Indo-China,
2 provided in Proposal "B". This offer of withdrawal,
3 this first reversal of the current of armed Japanese
4 advance, may have had no meaning in the eyes of Mr.
5 Ballantine, of the Department of State ⁴²¹; but it ob-
6 viously enough had meaning to Japan's militarists
7 and their adherents, in view of the evidence which we
8 have already quoted of their determined opposition to
9 it. That is the measure of its meaning to the case of
10 Mr. TOGO.

11 However it may be with other matters of the
12 national policy, in the field of diplomacy, at least --
13 in the Japanese-American negotiations -- the 6 September
14 Imperial Conference decision was assuredly not followed
15 without alteration of its substance. It was on the
16 contrary, it is submitted, far departed from, and as
17 the result of the effort of the Foreign Minister.

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

20 (Whereupon, at 1045, a recess was
21 taken until 1100, after which the proceed-
22 ings were resumed as follows:)

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(421. Id., §§59-62, Tr. 43,654-67)

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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 163, Section 81; I'm
5 sorry, Section 82:

6 Concurrently with the diplomatic questions,
7 as has been mentioned, the Liaison Conference con-
8 sidered other subjects bearing upon the national
9 policy to be adopted. A document in evidence lists
10 the "major items to be reexamined concerning essen-
11 tials for the prosecution of the national policy."⁴²²

12 The list includes eleven subjects, to be studied by
13 the High Command, the Planning Board, and the War,
14 Navy, Foreign and Finance Ministries, some to be
15 investigated independently, most of them jointly.

16 The prosecution point out that the Foreign Minister
17 (the document says "Foreign Ministry") was charged
18 with study of five of these points.⁴²³ What is inter-

19 esting to note, as bearing on the extent to which the
20 Foreign Ministry had any hand in influencing these
21 national policies, is that whereas the High Command,
22 the Planning Board and the Finance Ministry was each

23 422. Exhibit 1328 (Tr. 11,923). The document's
24 "Statistics Bureau" has been corrected by the
25 Language Arbitration Board to "Supreme Command"
(Tr. 44,822).

423. Summation, §WW-14 (Tr. 41,890).

allotted subjects for independent study, the Foreign
1 Ministry was in no instance. Every item to be
2 "studied" by the Foreign Ministry was for study by
3 "Foreign, War and Navy Ministries" or by "Foreign
4 Ministry and High Command." The results of these
5 studies⁴²⁴ show only two answers to have been prepared
6 by the Foreign Ministry -- nos. 1 and 3 alone are so
7 indicated -- and those two were of insufficient
8 interest for the prosecution to trouble to read them
9 into the record. The trivial role of the Foreign
10 Ministry in connection with the formation of the
11 national policy, as it is shown in this document, is
12 acknowledged by the prosecution, who point out that in
13 these investigations "main emphasis was laid on Japan's
14 military strength and Japan's position as regards
15 military supplies, especially oil" -- matters which
16 obviously civilian ministries do not meddle in.

18 The dominating role of Army and Navy in
19 management of Japan's foreign affairs so interestingly
20 revealed by this document is emphasized by much other
21 evidence in the case, one item of which might con-
22 veniently be referred to here. Mr. TOGO has testi-
23 fied -- and no one has contradicted -- that in his

24 424. Exhibit 1329 (Tr. 11,928)

25 425. Summation, SWW-14 (Tr. 41,390)

time as Foreign minister, and before, it was the
1 Premier who always reported to the Throne not only
2 the Liaison Conference decisions, but also all mat-
3 ter of national policy in general, including foreign
4 affairs except for the actual proceedings of the
5 Japanese-American negotiations, which were reported
6 by the Foreign minister. ⁴²⁶

7 33. The operational preparations which were
8 being made by the impatient military services, con-
9 currently with the Japanese-American negotiations
10 and the Liaison Conference discussions, were mili-
11 tary secrets and as such not known to civilian mem-
12 bers of the Liaison Conference, nor discussed in
13 that body. ⁴²⁷ That war preparations were in progress
14 was no secret; but these were to become effective,
15 rather than remain merely theoretical, only if the
16 negotiations failed. The interest of the Foreign
17 minister was (except in so far as their momentum
18 generated increased exigence of the High Command)
19 therefore not in those preparations -- the details of
20 which in no event could he know of or interfere in --
21 but with seeing that negotiations did not fail. On

22
23 426. Tr. 35,679. Of. §43 of his affidavit
(Tr. 35,669-70)

24 427. Testimony of TOGO (Tr. 35,698-9, 35,702),
25 YAMAMOTO (Tr. 26,097), KAYA (Tr. 30,657), and
TOJO (Tr. 36,391).

this question likewise the Foreign Minister was in

opposition, supported this time only by Finance
1 Minister KAYA. The time for decision came at the
2 Liaison Conference of 1-2 November. The Army and
3 Navy insisted that if the negotiations did fail,
4 Japan must go to war without further loss of time.
5 The argument ran like this. ⁴²⁸ Unless the negotiations
6 succeeded, Japan must surely fight sooner or later;
7 her dependence upon imports (especially of petroleum)
8 was so great that with economic blockade in progress
9 "gradual exhaustion" of resources would reduce her
10 to the point where she would have to accede to any
11 demands which might be made by America after she
12 should have reached the point of being unable to
13 fight. Since if the negotiations failed she would
14 have to fight in any event, the outcome of them
15 should be ascertained and the war, if there was to
16 be war, commenced while the situation was still
17 favorable to Japan, before it deteriorated with
18 further delay. From the major premise of the great
19 majority of the Liaison Conference, that the only
20 alternative to success in the negotiations was war,
21 the Foreign Minister dissented. He felt and argued
22
23 428. Testimony of TOGO (Tr. 35,690-3), YAMAMOTO
24 (Tr. 25,949-51), KAYA (Tr. 30,651-3) and TOJO
25 (Tr. 36,316-26)

1 that, aside from the fact that a war with the United
2 States and Britain would be disastrous to Japan,
3 war was not the way of progress for a nation, and
4 that even if negotiations failed Japan should be
5 patient and await developments. He attempted to urge
6 the suggestion, once made in the Liaison Conference,
7 that even with relations ruptured, Japan could con-
8 tinue at peace, assuring the supply of oil, which
9 the High Command considered the vital matter, by
10 synthetic production; the Planning Board branded it
11 as impossible. In a last effort to dissuade the
12 Liaison Conference from adopting the decision for
13 war, he attempted to warn them by proving to them
14 that they could not win it, demanding the definite
15 opinions of the military representatives. Nothing
16 dismayed by the challenge, the War Minister said
17 that the prospects were certain that victory could
18 be won; the Navy Minister said that there was "no
19 need for pessimism," and the Chief of the Naval
20 General Staff was very confident.
21

22 In these circumstances, the majority of the
23 Liaison Conference reached their conclusion that war
24 would have to be decided for upon failure of the
25 negotiations. Despite the pressure of the High
429. Ibid., testimony of TOGO (Tr. 35,693-4)

1 Command and the Navy Minister for immediate decision,
2 Foreign Minister TOGO and Finance Minister KAYA in-
3 sisted that they be allowed until the following day
4 to consider further. Mr. TOGO did consider the
5 matter fully, coming to the conclusion that he
6 could in no way refute the views of the armed ser-
7 vices on the prospects of a war and that he could not
8 further influence the decision of the Liaison Confer-
9 ence. Still, before agreeing to the decision, he
10 asked for and got several assurances of Premier
11 TOJO designed to contribute to a successful outcome
12 of the negotiations, including the assurance that if
13 the United States showed a receptive attitude toward
14 the new Japanese proposals, the Premier would sup-
15 port him in obtaining reconsideration and still
16 further moderation of what were then the maximum
17 concessions.⁴³⁰

18 34. The prosecution assert that Foreign
19 Minister TOGO's objection to the decision that war
20 would be necessary if negotiations failed "was based
21 on prudence rather than on principle and on the fact
22 that he was not sure that Japan was strong enough in
23 a military way to wage a successful war."⁴³¹ The

24 430. Testimony of TOGO (Tr. 35,695-7), YAMAMOTO
25 (Tr. 25,951) and TOJO (Tr. 36,314). Finance
Minister KAYA seems to have known of this TOGO-
TOJO understanding (Tr. 30,655).

431. Summation, SWW-16 (Tr. 41,895)

1 demonstration of this has required considerable
2 distortion of the evidence. "He, therefore, advo-
3 cated in the Liaison Conference of 1 November that
4 Japan should be patient and await a changed situa-
5 tion," they say. The implication is that he advo-
6 cated "awaiting a changed situation for starting the
7 war." A reading of the entire sentence from which
8 this quotation was taken shows it to have the oppo-
9 site meaning: "I therefore insisted that even if
10 the negotiations should end in failure, war need
11 not follow; that even in such circumstances we should
12 exercise patience and forbearance and await a changed
13 situation." Better yet, read the whole sentence in
14 its context:

15 "To me it seemed of paramount importance to
16 avoid war at almost any cost; I had seen the after-
17 effects of World War I, in Europe, and knew that
18 modern warfare would bring still greater suffering
19 and misery to the peoples of the belligerent count-
20 ries, and I felt that only by steady, sound develop-
21 ment, avoiding sudden expansion or war, could a
22 nation progress. I therefore insisted that even if
23 the negotiations should end in failure, war need not
24 follow; that even in such circumstances we should
25 exercise patience and forbearance and await a changed

1 the most proper way for Japan to take was to perse-
2 vere under all difficulties and wait for the oppor-
3 tunity to mature."⁴³⁵

4 Does this statement, read as a whole, indicate
5 "waiting for the opportunity to mature to commence
6 hostilities"?

7 It is submitted that there is not an iota of
8 evidence, save the prosecution's presumption of
9 guilt, to support the suggestion that Mr. TOGO's
10 position was one of "prudence," of awaiting a favor-
11 able time to attack. The Tribunal's presumption of
12 innocence, strongly reinforced as it is by the evi-
13 dence of what his actions and intentions theretofore
14 had always been, would be of service in interpret-
15 ing his actions at this moment, if they were ambig-
16 uous; but it is submitted that they were natural,
17 proper, and in no wise indicative of aggressive in-
18 tent. The prosecution mention that he agreed to the
19 decision of the Liaison Conference when he had de-
20 cided that "he was in no position to prove that Japan's
21 military strength was insufficient," that she could
22 not win.⁴³⁶ A perfectly natural position: because
23 he could not prove to the others -- the only way to

25 435. Tr. 35,543
436. Summation, SNW-16 (Tr. 41,895)

1 situation."⁴³²

2 The Tribunal can judge whether the "changed
3 situation" here in question was a more opportune time
4 for war; whether this speaks of prudence or of prin-
5 ciple. The defendant was not cross-examined on this
6 point.

7 The witness YAMAMOTO is represented as re-
8 porting Mr. TOGO to have said that "Japan should de-
9 lay opening war until the United States participated
10 in the European conflict";⁴³³ what he actually quoted
11 Mr. TOGO as saying was that Japan should "manage her-
12 self with patience" -- not "delay opening war"; and
13 what he also said was that Mr. TOGO was "insisting
14 on the necessity of preserving peace."⁴³⁴ General
15 TANAKA is quoted as giving Mr. TOGO's opinion "that
16 Japan should wait for the opportunity to mature";
17 what TANAKA said was that

18 "Mr. TOGO's opinion naturally provoked great
19 disaffection within the military circles when it was
20 revealed that he had declared, at the Liaison Confer-
21 ence held in the first part of November to consider
22 whether hostilities should be opened in case the
23 negotiations should not necessarily mean war, and that
24

25 432. Testimony of TOGO (Tr. 35,690)

433. Summation, SWW-16 (Tr. 41,895)

434. Testimony of YAMAMOTO (Tr. 25,949).

1 the most proper way for Japan to take was to perse-
2 vere under all difficulties and wait for the oppor-
3 tunity to mature."⁴³⁵

4 Does this statement, read as a whole, indicate
5 "waiting for the opportunity to mature to commence
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11 able time to attack. The Tribunal's presumption of
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13 dence of what his actions and intentions theretofore
14 had always been, would be of service in interpret-
15 ing his actions at this moment, if they were ambig-
16 uous; but it is submitted that they were natural,
17 proper, and in no wise indicative of aggressive in-
18 tent. The prosecution mention that he agreed to the
19 decision of the Liaison Conference when he had de-
20 cided that "he was in no position to prove that Japan's:
21 military strength was insufficient," that she could
22 not win.⁴³⁶ A perfectly natural position: because
23 he could not prove to the others -- the only way to

25 435. Tr. 35,543

436. Summation, SWW-16 (Tr. 41,895)

1 persuade them to his way of thinking -- that they
2 could not win, he preferred to agree to continue on
3 their terms, continuing to work for peace, rather
4 than resign and yield his place to one who would be
5 more complaisant in acquiescence to the militarists.

6 85. But, the prosecution object, Mr. TOGO
7 could by resigning, or by refusing his agreement or
8 his resignation, have brought about the fall of the
9 cabinet. ⁴³⁷ In view of the unanimity of the opposi-
10 tion which Mr. TOGO had encountered in his efforts
11 to moderate Japan's position and to delay war long
12 enough for diplomacy to have a chance, it is hardly
13 worth suggesting that forcing the resignation en
14 masse of the TOJO Cabinet would have resulted in
15 the triumph of Mr. TOGO's peace policy, or in any-
16 thing more than formation of a second TOJO Cabinet
17 sans Foreign Minister TOGO. The suggestion here
18 made by the prosecution is, however, a reference to
19 one of their most extraordinary doctrines, and we
20 must deal with it here.
21

22 There has been a marked tendency of prosecu-
23 tors to discuss with defendants on the witness stand,
24 as well as in their summations, the probable effects
25 on Japan's course had those defendants resigned their

437. *Id.*, (Tr. 41,894)

1 offices at various times which the prosecution
2 select. The doctrine upon which these causeries
3 were based has finally been formulated thus:

4 "No cabinet minister can escape his respon-
5 sibility by establishing his personal feelings of op-
6 position to a cabinet decision. The decision could
7 not have been made without his consent. He always
8 had the alternative of resigning instead of casting
9 his affirmative vote for, or expressing his acquies-
10 cence in, an aggressive measure. If he did not
11 resign despite his personal convictions because he
12 felt it more important that he or the Cabinet con-
13 tinue in office, he is legally just as responsible
14 (as) and morally more responsible than an all-out
15 proponent of the aggressive policy, since he delib-
16 erately chose to approve the policy with full cog-
17 nizance and conviction of its evil."⁴³⁸

18 This presumably refers to adoption of a new "aggres-
19 sive policy" or "aggressive measures," not to mere
20 action "pursuant to an already established policy,"
21 the case in which the prosecution say that "no man
22 has been charged."

23 "If he was in office at the time, allowed
24 438. Summation, §S-1? (Tr. 40,554-5)
25

1 his scruples to be overruled, and continued in of-
2 fice, we submit that quite clearly he should be con-
3 victed, and that in a moral point of view his case
4 is at least as bad as that of one who had no such
5 scruples He could, if he was so minded,
6 have absolved himself from the responsibility by
7 resigning, or still more effectively if he was a
8 cabinet minister, by refusing either to agree or
9 resign, in which case the whole cabinet would have
10 had to resign and the war might thus have been pre-
11 vented If he was out of office at the time
12 and made clear his objection to the particular war
13 to the extent of disassociating himself from the
14 conspiracy although it was within the scope of the
15 original agreement, we would concede that he should
16 not be convicted of the offense of initiating or
17 waging that particular war."⁴³⁹

18 I do not propose to dwell long over answering this,
19 for many answers will already have occurred to the
20 Tribunal. I do, however, wish to mention one or
21 two which are peculiarly applicable to the case of
22 Mr. TOGO.

23
24 86. First, as to the assumption of fact
25 underlying this argument. The suggestion that by
439. Summation, §C-24 (Tr. 39,057-8)

1 resigning, or by refusing either his assent to a
2 measure or his resignation, a cabinet minister can
3 substantially alter the course set by a majority, is
4 unfounded. As it chanced, we have in the record
5 here evidence of each type of situation. Mr. TOGO
6 did refuse, in September 1942, to give his assent
7 to the creation of the Greater East Asia Ministry;
8 he failed in the effort to secure support from his
9 fellow-ministers for his position, and was unable
10 to force a general resignation; and he resigned alone.⁴⁴⁰

11 His action had no effect of altering the policy of
12 establishing the new Ministry, but only enabled the
13 leading proponent of the policy, the Premier, to take
14 over the Foreign portfolio, ending all opposition
15 to the policy. On the other hand, in July 1941
16 Foreign Minister MATSUOKA, who had become exceedingly
17 recalcitrant over the Japanese-American negotiations,
18 refused to support or execute the diplomatic poli-
19 cies of the KONOYE Cabinet while continuing to cling
20 to his position in it. A resignation en masse was
21 the solution, with Prince KONOYE immediately forming
22 a successor cabinet with no change of diplomatic
23 significance in its personnel except in the foreign
24

25 440. Testimony of TOGO (Tr. 35,760-1), TANAKA
(Tr. 35,544-5) and YUZAWA (Tr. 35,574)

⁴⁴¹
1 ministership. In neither of these instances did
2 the resignation of the Foreign minister alter the
3 policy, nor yet palliate the condition which had
4 brought it about; in each case its only effect was
5 to give the discarded minister a sense, perhaps, of
6 the correctness of his conduct.

7 87. Secondly, as a question of practical
8 politics, this suggestion of the prosecution's that
9 a minister, to save his skin, is to resign or force
10 a change of government over every difference of
11 opinion is an odd one. It is not a question of
12 whether it is admirable to hold strong convictions
13 and to fight for them; but it is a commonplace that
14 all social life, and not least political life, must
15 be a process of compromise. The prosecution's sug-
16 gested course, prescribing compromise, leads us to
17 nothing but anarchy: governments change daily;
18 there is no policy. Their statesman must, as a
19 matter of course, make an issue of every point aris-
20 ing in the direction of affairs of state, howsoever
21 small it may appear; for any detail of policy may be
22 the link in the chain of causation which will lead
23 him to the gallows. This most novel doctrine which
24 the prosecution suggest is one which even they did
25 441. Exhibit 2344 (Tr. 17,693)

1 not subscribe to until its utility for purposes of
2 conviction was recently noticed. A year ago, in
3 presenting to the Tribunal the prosecution's consid-
4 ered view of the questions of law in the case, a dis-
5 tinguished member of the prosecution's staff said,
6 in speaking of the behavior of Japanese governmental
7 and military officials which was considered by them
8 to be proof of criminal guilt, that "we find ambassa-
9 dors threatening to resign, and resigning, when they
10 did not see eye to eye with the government at home.

11 There was no discipline among them." ⁴⁴² No discipline
12 -- exactly! No discipline, no system, no policy, no
13 government, no society. Anarchy, chaos, nihilism,
14 brought about by resignation of a public official
15 every time he found himself unable to see eye to eye
16 with the majority!

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88. The last point which I wish to mention,
1 in connection with this resignation question, is one
2 of ethics. I must say that the prosecution's doc-
3 trine as quoted above strikes me as expressive of a
4 queer, twisted morality, an unashamed cynicism out of
5 keeping with what should be the aims of these pro-
6 ceedings. Let us test it by application to an actual
7 situation, with a hypothetically altered outcome.
8 Let us suppose that, as did happen, Mr. TOGO, becom-
9 ing Foreign Minister of the TOJO Cabinet with the
10 firm intention to fight to the end for success of the
11 Japanese-American negotiations and to avert war, had
12 secured consent of the Liaison Conference to the
13 Proposals "A" and "B" and had presented them to the
14 United States. We suppose that, contrary to the
15 fact, the United States had shown interest; that
16 accordingly Japan (carrying out the understanding and
17 intention of the Premier and the Foreign Minister) made
18 still further concessions, and that, the negotiations
19 ending in agreement, there had been no Pacific war.
20 Certainly Mr. TOGO would not have been criminal then?
21 Matters did not, of course, fall out so; he failed;
22 but his intention and our estimate of him do not
23 differ because of that. Nothing is changed, except
24 that he stayed on in his office to keep it from falling
25

1 into possession of one who would not struggle to the
2 last for peace, to end the war once it was under way,
3 as he would and did.

4 Do we apply the prosecution's doctrine, what
5 is the result? We laud the weakling, the coward who,
6 seeing failure probable or success problematical,
7 drops duty and flees all to save his paltry life;
8 we hang the statesman of courage to face the Herculean
9 task, accepting with it the onus if he fail. Were
10 Messrs. Hull ⁴⁴³ and Ballantine, ⁴⁴⁴ together with
11 Mr. TOGO, wrong, in believing it the duty of a
12 statesman to work to the last split second for peace?
13 So the prosecution seem to say. If this trial, this
14 International Military Tribunal for the Far East, has
15 a meaning, it must be in the hope that through it
16 future wars may be prevented. Yet if this sort of
17 trial of leaders of a defeated nation is to become a
18 concomitant of each successive war, the hope of ending
19 war will have been perilously impaired. Will there be
20 statesmen? Will men of vision and courage be able to
21 risk accepting public office, knowing that the requital
22 of failure is death? Once the statesman discovers

23 443. Ex. 2840 (T. at 26362).

24 444. Testimony of Joseph A. Ballantine (T. 10963).

1 that the balance of the national policy inclines,
2 be it ever so slightly, in favor of what he may fear
3 could be regarded as aggression, must he abandon all
4 effort, by staying on in office, to influence it for
5 the better, and precipitately flee for his own safety,
6 leaving the field uncontested to the advocates of evil?
7 Such is the plain consequence of adoption of the prose-
8 cution's doctrine of responsibility.

9 89. At any rate, Mr. TOGO did consider
10 resignation before he gave his consent to the Liaison
11 Conference decision of 2 November. He has testified to
12 having given thought to whether his resignation could
13 affect the situation, and to having taken advice; he
14 called on his former senior in the Foreign Ministry,
15 Mr. HIROTA, and "told him that the Japanese-American
16 question was in far more serious state than I had
17 thought when I entered the cabinet, and that there
18 was great danger of war despite my resolution to succeed
19 by diplomacy, and asked his opinion of whether there
20 was a possibility of bringing about a change in the
21 situation by my resignation. Mr. HIROTA was opposed
22 to the idea; if I resigned, he pointed out, a supporter
23 of war might immediately be appointed Foreign Minister,
24 therefore I should remain in office to do all that I
25

445.
could to maintain peace."

1 Interestingly, the identical advice came
2 from General TANAKA, Ryukichi, with whom he seems to
3 have talked at the same time. The General says:

4 "I earnestly requested him to retain his
5 office, pointing out that it would be quite impossible
6 to find another person who would resolutely do his ut-
7 most to check the outbreak of war in opposition to the
8 army; that if such a person as Mr. MATSUOKA should be
9 recalled to replace him, it would naturally become
10 more difficult to prevent war; and that, should war
11 unfortunately break out, his remaining in office
12 would become all the more necessary in consideration
13 of the national strength of Japan, so that he might
14 be able to seize the earliest opportunity to conclude
15 peace.
16 446.

17 Perhaps most of us, undertaking to ascertain
18 another's motives, try to imagine ourselves in his
19 place. This question may well be left there; let
20 one put oneself, assumed to be a peace-lover, an
21 opponent of aggression, in the place where no action
22 of one's own can determine surely the outcome of war or
23 peace, but one's resignation will make war the more

24 445. T. 35697.

25 446. T. 35544.

1 probable, one's staying on may preserve the peace;
2 what does one do?

3 90. "The final decisions having been taken
4 and the accused having assented to them, he became,
5 during the following month, the main figure in further-
6 ing the aims of the conspiracy,"^{447.} say the prosecu-
7 tion. This refers, presumably, to the conspiracy to
8 avoid war by negotiation, the only intention which the
9 evidence has shown the defendant TOGO to have enter-
10 tained up to this point. It still does not suffice --
11 though a prosecutor a thousand times assert him to
12 have been a conspirator, it still does not make him
13 so; there is still the burden of proof to be carried;
14 and it yet remains even to be intimated by evidence
15 that he has not fought against war, aggressive or
16 otherwise, at every step of the way. But, "personally
17 directing Japan's diplomatic maneuvers, he made the
18 strongest efforts to hide the fact that if the demands
19 then presented were not accepted, Japan would imme-
20 diately take recourse to further aggression."^{448.} This
21 calls for a number of comments.
22

23 The prosecution exhibited throughout these
24 proceedings a considerable confusion of thought on

25 447. Summation, §WW-19 (T. 41898).
448. Ibid.

1 the subject of their contention that the TOJO Cabinet's
2 Proposal "A" and "B" were Japan's "final demands."
3 That this condition still obtains is apparent from the
4 treatment of the matter in their final submissions.
5 In obedience to their idee fixe they have been led into
6 untenable positions on a number of points and have even,
7 as we have seen, gone the length of tacitly confessing
8 that they have no case against the defendant TOGO; for
9 to emphasize the "finality" of these "final demands,"
10 they maintain them to have been nothing other than the
11 minimum demands included in the policy of 6 September;
12 and they disclaim the intention of contending for
13 responsibility of a defendant who merely carried out
14 policy already established without participation by
15 him, as that of 6 September was without Mr. TOGO's.
16 The prosecution thus find themselves in the position
17 of now having, as they see it, to contend on one page
18 of their summation that Mr. TOGO made efforts to con-
19 ceal the fact that the offers of Proposals "A" and "B"
20 were final, while in the half-dozen pages following
21 insisting that he impressed strongly upon Ambassador
22 NOMURA and Ambassadors Grew and Craigie, that the
23 proposals then being made were final and that if they
24 resulted in no agreement Japan might have to resort to
25

1 action in self-defense. ^{449.} At any rate, this con-
2 stant statement of the prosecution's conclusion that
3 the proposals were "the last" or "final" is but a
4 play on words; such reiteration of conclusions is
5 submitted to be of little assistance to the Tribunal
6 in ascertaining the legal effect of the defendants'
7 acts.

8 91. The extent to which Proposals "A" and
9 "B" might properly have been spoken of as "final"
10 has been shown by ample evidence from which the
11 Tribunal can draw such conclusions as it may consider
12 necessary to formulating its judgment. For the case
13 of Mr. TOGO, it is perhaps unnecessary to attempt to
14 draw any conclusion whether these proposals are properly
15 characterized as "final"; it is at any rate not
16 necessary for me to offer any argument designed to
17 support interpretation of the November proposals as
18 "final" or otherwise; for what the Tribunal will, we
19 believe, wish to know is his intent as it may be
20 gathered from his actions. I wish, therefore, to
21 remind the Tribunal briefly of the factual situation
22 existing, and to show that in my submission Mr. TOGO's
23 actions were wholly consistent with and indicative of
24 honesty and sincerity of purpose. The Tribunal will
25

1 draw from the facts what conclusion they justify
2 concerning "finality."

3 The facts disclosed by the evidence which we
4 have reviewed are that if Proposals "A" and "B" were
5 the "last word," it was of no desire of Mr. TOGO's
6 that they should be such; but that on the contrary
7 the Foreign Minister had fought to the limit of
8 his ability for moderation of the Japanese position,
9 and had secured this much—which we have submitted
10 elsewhere to represent really substantial concessions.^{450.}
11 It had been decided by the Liaison Conference, despite
12 his objection, that unless agreement could be reached
13 on the basis of these proposals a decision for war
14 would have to be taken -- that the concessions made in
15 them must be the last. The proceedings in the Liaison
16 Conference leave no room for doubt that as of November
17 1941 Proposals "A" and "B" represented the ultimate in
18 the sense that they comprised the general matters, and
19 the only ones, in which concession by Japan would be
20 made. What can, of course, never be lost sight of is
21 that the negotiations with the United States contem-
22 plated, in the Japanese view, some give-and-take, some
23 reciprocal attempt at agreement or compromise; not that
24 450. The Japanese-American Negotiations, §§53-66 (T.
25 43638-78).

1 there would continue to be, as for many weary months
2 there had been, only unilateral efforts to please the
3 other party. So long as the other party "never talked
4 to them in terms of concessions from our principles,"⁴⁵¹
5 there would inevitably come a time when the Japanese
6 would feel that, their last card played, they must
7 give up the effort -- but this matter has been argued
8 elsewhere.^{452.} To the minds of many, that time, as
9 the evidence shows, had come.^{453.}

10 It is therefore submitted that Foreign
11 Minister TOGO's explanations to Ambassadors Grew and
12 Craigie not only were strictly accurate and honest, but
13 so far from having sinister implications were the
14 conduct in the circumstances natural to one intent
15 upon bringing the negotiations to success. The con-
16 versation with Ambassador Craigie speaks the exact
17 situation as it then was: there were "factions in the
18 country which insist that there is no need for negotiat-
19 ing and point out the uselessness of doing so," the
20 negotiations were "being continued only after these
21 factions were checked," the Foreign Minister was
22 "making superhuman efforts" at that time in the attempt

24 451. Testimony of Ballantine (T. 11159).

25 452. The Japanese-American Negotiations, §§46, 57, 82, et
passim.

453. Infra, n459.

1 to save Japanese-American and Japanese-British
2 relations from coming to a crisis. ^{454.} To Ambassador
3 Grew explanation of the same tenor was given, with
4 the additional mention that if conditions continued
5 as they then were, Japan might "feel obliged resolutely
6 to resort to measures of self-defense" ⁴⁵⁵; such was
7 the purport of the decision taken by the Liaison
8 Conference. The two conversations strikingly illus-
9 trate that, so far from attempting "to hide the fact
10 that if the demands then presented were not accepted,
11 Japan would immediately take recourse to further
12 aggression," Foreign Minister TOGO attempted to
13 impress upon the two ambassadors that he could not
14 control the situation any further, had done his ut-
15 most, and now had to rest his hopes on the American
16 reaction to the proposals then made. His words were
17 the most earnest effort to make them realize the gravity
18 of the situation: "Our domestic political situation
19 will permit no further delays in reaching a decision,"
20 he told Ambassador Craisie; "national sentiment will
21 not tolerate further protracted delay in arriving at
22 some conclusion," he said to Ambassador Grew, who

24 454. Exhibit 1174 (T. 10354).

25 455. Exhibit 2918 (T. 25925).

1 from long experience of Japan well knew the Govern-
2 ment's problem of trying to manage the armed services.
3 Foreign Minister TOGO could scarcely have stated to
4 them more accurately the decisions of the Liaison
5 Conference than by these words. And the words were
6 true; the situation was as he described it; it was
7 so despite his most valiant opposition. Where is the
8 fault in him for stating honestly the gravity of the
9 situation, the truth that matters were beyond his
10 control? Where is the "hiding the facts"?

11 92. But if Proposals "A" and "B" represented
12 the area within the limits of which Japan would make
13 concession, the evidence shows equally that, given
14 any display of American interest in those attempts,
15 there might well have been further changes in the
16 actual terms. It will be remembered that the Foreign
17 Minister had obtained from the Premier, before agree-
18 ing to the Liaison Conference decision of 2 November,
19 his undertaking that in the event of American respon-
20 siveness to the proposals he would support the Foreign
21 Minister's effort to obtain still further concession.
22 It is in this sense that must be taken General TOJO's
23 testimony that acceptance by the United States of
24

25 456. Testimony of TOGO (T. 35697), TOJO (T. 36814),
KAYA (T. 30655) and YAMAMOTO (T. 25951).

1 "half" of Proposal "B" might have sufficed to prevent
2 war: that acceptance by America of any item would
3 have served, because the Japanese terms could have
4 been relaxed "if the United States approached us in
5 a spirit of reciprocity."^{457.} So far from this state-
6 ment of General TOJO's being in "controversion" of
7 the evidence in the case,^{458.} the record is filled
8 with evidence that the absence of American response to
9 the Japanese advances had always been stressed by the
10 High Command as indicative of the hopelessness of
11 negotiations and the desirability of early resort to
12 war.^{459.} There is no reason to doubt that support of
13 Premier and War Minister TOJO would have sufficed to
14 enable Mr. TOGO to obtain from the Liaison Conference
15 the further concessions which would have kept the
16 negotiations alive.^{460.} He was hence able quite
17 accurately to advise Ambassador NOMURA that Proposal
18 "A" embodied the "virtually final" concessions.
19

20 There is no contradiction between Mr. TOGO's
21 (and other witnesses') statement that Proposals "A"
22 and "B" represented the utmost concessions which could

23 457. T. 36697-98.

24 458. Summation, §39 (T. 38982).

25 459. Testimony of TOGO (T. 35683-84), TOJO (T. 36297) and
YAMAMOTO (T. 25923-24); exhibit 2924 (T. 25960).

460. Cf. The Japanese-American Negotiations, §81
(T. 43728).

1 be wrung from the military authorities, and the testi-
2 mony that these proposals were nevertheless not
3 "absolutely final." ^{461.} They represented the utmost
4 concession which could be won at that time; it would,
5 admittedly, have been difficult to secure approval
6 of further concessions. Difficult, but not impossible;
7 it would have required the same procedure of Liaison
8 Conference and Imperial Conference approval that was
9 required for Proposals "A" and "B" themselves, but the
10 meaning of the TOGO-TOJO Conversation is that the
11 Premier's powerful support would have been given to
12 that **effort**. What it required above all was, of course,
13 a show of interest -- of sincerity in negotiating --
14 by the United States. That would have armed the
15 Foreign Minister formidably for his fight to convince
16 the militarists that diplomacy could succeed. But
17 the United States showed no interest.

19 93. Foreign Minister TOGO's instructions to
20 his ambassadors in Washington and elsewhere have been
21 very heavily relied on by the prosecution to sustain
22 their contention that it was never intended that
23 further changes in the Japanese position should be
24 made after adoption of Proposals "A" and "B." It is
25 461. Summation, SWW-16 (T. 41892).

submitted that their reasoning is not impressive if
1 the matter be considered in the light of common sense.
2 Evidence offered by the defense to prove the diplomatic
3 practice in accordance with which these instructions
4 were sent was not accepted by the Tribunal; ⁴⁶² But,
5 as I have said, common sense alone will suffice.
6 Before discussing that matter, however, it must again
7 be pointed out that many of the communications from the
8 Foreign Ministry to the Washington Embassy were put in
9 evidence by the prosecution in form of intercepted
10 telegrams, the unreliability of which has we believe
11 been fully demonstrated; ⁴⁶³ although the originals
12 of those containing the gravest errors have been put
13 in evidence by the defense, the prosecution still
14 quote to the Tribunal the more prejudicial mistakes
15 of the intercepts as evidence proving the intention of
16 the Foreign Minister whose language they have been
17 proved not to have been. ^{464.} It may not therefore
18 come amiss to enter a general caveat against acceptance
19 of the language of exhibits 1164, 1165, and 1170, the
20 original forms of which are represented by exhibits
21 2924, 2925, and 2926, respectively.
22
23 462. T. 38841-46.
24 463. The Japanese-American Negotiations, §§42-46
(T. 43607-21).
25 464. Sumner, SSG-117 (T. 39656-57), WW-19 (T. 41898-99),
XX-65 (T. 42002), etc.

1 94. The prosecution's position in connec-
2 tion with Foreign Minister TOGO's instructions to his
3 ambassadors as probative of his aggressive intent is
4 predicated upon the use in those instructions of such
5 language as "the present negotiations are our final
6 effort"; "these proposals are truly our last"; "if
7 speedy conclusion of the negotiations is not to be
8 attained even on the basis of these proposals, break-
9 down of the negotiations is unavoidable, however
10 regrettable it may be. Relations between the two
11 countries face rupture in such a case"; ^{465.} "this is
12 our proposal setting forth what are virtually our final
13 concessions"; "any further concession on our part can
14 hardly be expected." ^{466.} I must confess to being
15 unable to find anything sinister in these expressions.
16 What more natural for a Foreign Minister desperately
17 afraid of the breakdown of negotiations which would
18 mean war than this exhortation to his ambassador to
19 make every effort? This "finality," or "virtual
20 finality," or the pending proposals was not of Mr.
21 TOGO's making, but was the work of the Liaison Con-
22 ference; it cannot be criminal of him to report it,
23 as a fact, to the ambassador on whose efforts he was
24 dependent. It is, moreover, a commonplace in
25 465. Ex. 2924(T.25961); 466. Ex. 2925 (T.25966).

1 diplomatic negotiations -- as in other types of
2 bargaining -- that one does not disclose one's hand
3 at the outset either to one's adversary or to one's
4 agent, who will be the better able to urge the
5 principal's cause if he does not know the terms
6 which will be acceptable. The situation was serious,
7 and it would have been criminal of the Foreign Minister
8 to pretend that it wasn't; only by impressing its
9 seriousness upon the other party direct -- by telling
10 Ambassador Craigie, for example, that it would be
11 useless to continue negotiations if the United States
12 could not consider the latest proposals -- and
13 indirectly, by making one's agent believe it, could
14 it be hoped to save the situation. There had, more-
15 over, been criticism in Tokyo of Admiral NOMURA as
16 "too easy-going," and it was natural therefore to
17 spur him on.^{467.}
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467. Testimony of YAMAMOTO (T. 26058).

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1 The prosecution point out that on 14 November
 2 Ambassador NOMURA sent to Foreign Minister TOGO a
 3 "warning" that war would not be to Japan's interest;
 4 which "clear warning by NOMURA against opening the war
 5 was ignored by TOGO who, in his answer to NOMURA's tele-
 6 gram, stated that he full well realized the truth of
 7 his statements but that the fundamental Japanese policy
 8 had been laid down and that it was out of the question
 9 to wait any longer and see what course the war would
 10 take." ⁴⁶⁸ Admiral NOMURA, who had served in his time
 11 both as Foreign Minister and as a member of the High
 12 Command, doubtless understood this telegram exactly as
 13 it was intended: that Japan's fundamental policy had
 14 been determined, that the Foreign Minister could not
 15 change it, though he quite agreed with the Ambassador's
 16 views of its undesirability, and that therefore all that
 17 either of them could do was to work the harder for suc-
 18 cess in the negotiations. So far from ignoring "NOMURA's
 19 warning," the Foreign Minister told him here plainly
 20 enough that he had tried to influence the decision in
 21 the direction suggested by the Ambassador, ⁴⁶⁹ but could
 22 do no more.
 23

24 95. Perhaps the true significance of the "last
 25 word" issue -- "if it is an issue" ⁴⁷⁰ -- is in its bearing
 468. Summation, SWW-24 (Tr. 41,907).
 469. Ex. 1178, (Tr. 10,380).
 470. ". . . that issue, if it is one . ." (Statement
 by prosecution, Tr. 38,843).

1 on whether the 5 November Imperial Conference decision
2 was a decision for war. The prosecution are now
3 adopting the position that it was such, or at times that
4 it "cannot be seen as other than a qualified decision
5 for war." ⁴⁷¹ It is, needless to say, this "qualification"
6 which represented Mr. TOGO's efforts and his interest;
7 the "decision for war" -- which of course it was not,
8 by any ordinary standard of interpretation of language --
9 was subject to the important qualification that he was
10 working exclusively to prevent the condition from fall-
11 ing out in such a way that war would ensue. So far as
12 he was concerned, it was in no sense a decision for war,
13 because he had given his agreement to it only because
14 in no other way could he gain authorization to carry on
15 his work for agreement with America.

16 But it flies in the face of reason and fact to
17 contend that the 5 November decision was a decision for
18 war. Far more reasonable, it is submitted, is to regard
19 it as another form of the preparations for war, in the
20 event of failure of negotiations, which were being made
21 in parallel with the negotiations; it made war more
22 probable; but it was not a decision for war. As such,
23 it was of little interest to the Foreign Minister by
24 comparison with the negotiations which should prevent
25 471. Summation, §WW-16 (Tr. 41,893).

1 it from becoming effective.

2 96. A few other questions arising from the
3 Japanese-American negotiations during the time of the
4 TOJO cabinet may be discussed in brief as they affect
5 Mr. TOGO. These points have been examined in detail
6 and the very voluminous evidence reviewed in our general
7 summation on the subject, to which reference is made
8 for the full analysis of the evidence and the facts.
9 What is said here is to be regarded as only supplementary
10 to that discussion, and designed solely to demonstrate
11 the bearing of Mr. TOGO's intent on the subject.

12 The dispatch of Ambassador KURUSU to Washington
13 to assist Ambassador NOMURA has long been contended by
14 the prosecution to have been a "trick," or "camouflage"
15 to deceive the United States. We have submitted else-
16 where ⁴⁷² that these epithets of the prosecution have, when
17 examined in the light of the facts, no meaning. The
18 contention rests, after all, wholly upon the testimony
19 of General TANAKA that he was so told by the defendant
20 MUTO; if General MUTO did say anything of the sort
21 (which he has convincingly denied), ⁴⁷³ he could not have
22 attributed to the Foreign Minister any intention of
23 "camouflage," in view of his unquestioned statement that
24

25 472. The Japanese-American Negotiations, §81
(Tr. 43,732-33).

473. Summation, §-20 (Tr. 41,900).

"I also heard it had been suggested as a step sincerely taken for Japanese-American negotiations by Foreign Minister TOGO at the request of Ambassador NOMURA and had been decided upon after his consultation with TOJO, Prime Minister . . ."

General TANAKA himself never suggested any insincerity in Mr. TOGO, and indeed his testimony given on various occasions in his behalf negatives his having had any such suspicion. Here I wish only to touch upon the suggestion that "in view of the fact that KURUSU could not, and in fact did not, arrive in Washington until a very few days before the final deadline set for the negotiations, it remains an open question what other purpose his journey could have had" than that of deceiving the United States and gaining time for military preparations. The prosecution fail to take account of the fact that Ambassador KURUSU's dispatch was arranged at the very earliest moment that it was possible to see any benefit to accrue from it -- immediately upon the adoption of the decision to continue negotiations. Before that decision, when it was still uncertain whether the negotiations would not be permitted to lapse, there would have been no meaning to sending another diplomat -- that

474. Tr. 33,124-25.

475. Tr. 33,125.

1 might have constituted "camouflage," in truth. After
2 the decision had been made nothing would, it is sub-
3 mitted, be more natural than that this long-standing
4 request of Ambassador NOMURA's, which Foreign Minister
5 TOYODA had been on the point of complying with when he
6 quit office, should be taken up and fulfilled. It is
7 the more natural in that at that most serious period
8 of Japanese-American relations, the time which would
9 decide war or peace, Japan was represented at Washing-
10 ton by one who was to say only so much, not a professional
11 diplomat, but a retired admiral. That the request of
12 Admiral NOMURA for the assistance of Mr. KURUSU had been
13 "made, without result, when there was still sufficient
14 time for negotiations"⁴⁷⁶ has nothing to do with Mr. TOGO,
15 who was not then Foreign Minister; he sent him so soon
16 as he had any reason for requiring further representa-
17 tion in Washington.
18

19 97. The so-called deadline set by Foreign
20 Minister TOGO for conclusion of an agreement in Washing-
21 ton has been discussed in another place.⁴⁷⁷ It is there
22 mentioned that there is no evidence to support the
23 prosecution's contention that the "deadline" had con-
24 nection with the departure of the task force which was
25

476. Summation, §WW-20 (Tr. 41,901).

477. The Japanese-American Negotiations, §81
(Tr. 43,733-34).

1 to attack the American fleet at Pearl Harbor, and that
2 the inference, based upon a coincidence of date, of
3 the existence of such a connection is illogical. The
4 prosecution seem, moreover, to accept ⁴⁷⁸ Mr. TOGO's quite
5 natural and convincing explanation ⁴⁷⁹ of the process of
6 thought by which he arrived at the date which he set,
7 and of its purely diplomatic significance. In view of
8 the undisputed evidence that it had been understood at
9 all times that if an agreement were concluded with the
10 United States the military preparations for war would
11 be cancelled, ⁴⁸⁰ it is perhaps sufficiently apparent that
12 the diplomatic "deadline" and the fleet movements had
13 no connection.

14 98. Various other aspects of the evidence are
15 probative of the sincerity with which the Foreign Minis-
16 ter worked for the success of the Japanese-American
17 negotiations. Mr. TOGO's efforts to induce British
18 participation in the negotiations, in order to insure a
19 general settlement of interested parties, have been men-
20 tioned. Equally noteworthy is the fact that he had
21 refused the insistent request of Germany for information
22 on the development of the Japanese-American negotiations,
23 feeling that permitting the Germans to become aware of
24

25 478. Summation, SWW-21 (Tr. 41,902).

479. Tr. 36,099-100.

480. Testimony of TOGO (Tr. 36,099). See also Ex. 809
(Tr. 7,988)

1 the nature and extent of the negotiations would not
2 contribute to their success. Only after receipt of the
3 Hull Note had made war appear highly probable, and
4 after the Liaison Conference had ordered him to negotiate
5 for a no-separate-peace movement, did Foreign Minister
6 TOGO give to the German and Italian Governments even
7 an outline of the negotiations. ⁴⁸¹

8 99. The prosecution have indulged in a con-
9 siderable distortion of the evidence in connection with
10 Mr. TOGO and Proposal "B." ⁴⁸² "Both the accused and the
11 defense witness YAMAMOTO stated that they had confidence
12 that Proposal 'B' would prove acceptable, and that they
13 had full hopes that an agreement could be reached on
14 the basis of this reasonable proposal" ⁴⁸³ is not a correct
15 statement of the evidence. Mr. TOGO testified, at the
16 page of the transcript cited, to nothing remotely resem-
17 bling this pretended paraphrase; what he said was that:

18 "Proposal 'B' was therefore -- after I had
19 secured assent of the Liaison Conference, of course --
20 presented on 20 November. At first conditions appeared
21 promising; when we learned that American newspapers of

22 481. Testimony of TOGO (Tr. 35,735) and Ex. 1199
23 (Tr. 10,469). Cf. Ambassador Ott's statement that on
24 6 November Foreign Minister TOGO "regretted that he could
25 not inform" him of the details of Ambassador KURUSU's
mission (Ex. 3901, Tr. 38,841, not read).

482. Summation, SWW-26 (Tr. 41,910-14).

483. Id., (Tr. 41,911).

1 the 25th were reporting the probability that a modus
2 vivendi would be concluded, we assumed that it was on
3 the basis of Proposal 'B.'"⁴⁸⁴

4 He had also testified -- which is not mentioned
5 that:

6 "I felt that if the United States were willing
7 to understand Japan's position and manifest a spirit of
8 reciprocity, it might be quite possible to break the
9 deadlock by agreement on the general lines of Proposal
10 'A.' By that time, however, matters had reached such a
11 state that settlement of all the outstanding problems
12 at a stroke was likely to be difficult at best, and
13 sure to be impossible if we encountered continued
14 American insistence on their demands. It was for the
15 purpose of averting a crisis by agreement on the most
16 urgent matters calling for immediate solution that I had
17 prepared Proposal 'B' as well.⁴⁸⁵

18
19 "The deliberations of the Liaison Conference,
20 however, continued; it would be a happy solution if the
21 impasse in the negotiations could be broken by the two
22 new proposals, but in the light of the past attitude of
23 the United States sufficient expectations of a favorable
24 reception could not be entertained to justify the abandon-
25 ment of further study toward the eventuality of failure

484. Tr. 35,703.

485. Tr. 35,697-98.

486

in the negotiations.

1 ". . . I discovered that the condition of the
2 negotiations was not quite what we had all thought
3 it . . . This naturally made the prospects of a settle-
4 ment even more remote, though I still had confidence
5 that my proposals 'A' and 'B' were fair and reasonable,
6 and hoped that the United States might be persuaded to
7 recognize that fact."⁴⁸⁷
8

9 Not quite the same as "confidence" that the
10 proposals would prove acceptable, that he had "full hopes"
11 that an agreement could be reached?

12 Mr. YAMAMOTO's testimony was that

13 "In the Foreign Ministry and the Liaison
14 Conference, it was felt that in view of the concessions
15 made upon careful study of the American position on
16 pending questions the United States would give favorable
17 consideration to the proposal 'A'. . . We expected
18 Proposal 'B' to be favorably entertained by the United
19 States . . . On the basis of . . . reports from Washing-
20 ton, the Japanese government offices concerned were
21 hopeful of success in the negotiations."⁴⁸⁸
22

23 Not even Mr. TOGO's subordinate testified to
24 having had any "full hopes"; and the position of Mr. TOGO

25 486. Tr. 35,698-99.

487. Ibid.

488. Tr. 25,986, 26,028, 26,041.

himself is plain enough, that he considered the proposals reasonable and deserving of serious consideration, but had a little hope of them in the best case, none if America should continue uncompromising. All which has no tendency to impeach his testimony -- the purpose for which the prosecution indulged in this exercise in stating the substance of evidence -- that Proposal "B" was designed by restoring conditions to something like normal, to create an atmosphere of calm to permit of further negotiation on the basic questions, with the imminent threat of war removed; the discussion of whether such is the reasonable tendency of Proposal "B" has been made in another summation. Nor do Mr. TOGO's telegrams of 12 and 25 November to diplomatic representatives overseas, warning them of the danger of breakdown of negotiations, provide more support to the prosecution's position; it is customary in times of tension for foreign offices to notify their representatives of the possibility of a crisis in order that they may warn resident nationals to be prepared for eventualities -- not because any course has been decided.

It is in fact well known that in this instance various powers, including the United States, had since the

489. Tr. 35,698.
490. The Japanese-American Negotiations, §§58-66 (Tr. 43,654-78).

preceding year been instructing their nationals to
1 evacuate Eastern Asia.

2 Somehow, the prosecution make out that "exhibit
3 3445, a draft submitted by the accused MUTO to the
4 Foreign Ministry for the action Japan would have to
5 take if the United States agreed to the Proposal 'B'
6 clearly contradicts the assertion that it was the in-
7 tention to create a calm atmosphere for further nego-
8 tiations." ⁴⁹¹ This is because, not of the fact that he
9 had seen this draft prepared elsewhere (which often
10 serves the prosecution as a basis for asserting guilt),
11 but that "it is clear that the demands which Japan was
12 to make, and which he allegedly considered reasonable
13 were not essentially different from the ones laid down
14 in this draft." The prosecution then proceed to state
15 the terms of Proposal "B," including the provision for
16 the amount of oil which was to be asked for upon its
17 conclusion, as being "demands which Japan was to make,"
18 as if the Foreign Minister's own idea. The prosecution
19 overlook that the Foreign Minister had insisted that the
20 High Command demand be reduced, and that it had as a
21 result been reduced to a figure which it is reasonable
22 to suppose the best that he could justify to them --
23
24
25 491. Summation, §WW-26 (Tr. 41,911).

492

the average of a few pre-war years' imports. This
1 little triumph over the military contention that they
2 must always maintain large reserves is not without its
3 own interest as showing the strength of the fight that
4 the Foreign Minister was making. The terms of Proposal
5 "B" have been fully analyzed, and need not be discussed
6 further; but for the prosecution to attempt now to
7 identify them with the terms of a General Staff proposal 493
8 of its demands in the event of agreement is scarcely
9 calculated to promote understanding of the issues.
10

11 100. That "the final preparations for Japan's
12 military advance were now under way" by 25 November
13 and inferentially -- by inclusion of this specimen of
14 logic in the summation against Mr. TOGO -- that the
15 Foreign Minister had made those preparations, the
16 prosecution consider to be proved by the fact of tele-
17 grams' having been sent to the Foreign Minister by
18 diplomatic representatives in Indo-China and Thailand,
19 telling him that "the United States' reply to the
20 Japanese proposals was to be received that same day and
21 that Japan's military forces were prepared to move." 494

22 One might have supposed that by prosecution logic this
23

24 492. Testimony of TOGO (Tr. 35,703), YAMAMOTO
(Tr. 33,025-43) and MUTO (Tr. 33,115-55).

25 493. Ibid.

494. Summation, §WW-28. (Tr. 41,915).

1 would have proved, if anything, that the Foreign Minis-
2 ter did not know of those facts, which was why his
3 representatives in Indo-China had to advise him of them.
4 His representatives, better informed than he though
5 they apparently were of the Japanese-American negotia-
6 tions, missed the date of the Hull Note slightly, of
7 course; but no doubt their advice has for all that a
8 recondite significance. It is not apparent to me, and
9 I cannot attempt to argue it.

10 .101. We have heretofore considered the recom-
11 mendation, made to the Foreign Ministry on 26 November
12 by Ambassadors NOMURA and KURUSU, concerning an
13 exchange of telegrams between President Roosevelt and
14 the Emperor of Japan, and have undertaken to demonstrate
15 that it offered no prospect of solution of the Japanese-
16 American situation.⁴⁹⁵ It has to be added here that,
17 contrary to the prosecution's assertion,⁴⁹⁶ every valid
18 reason existed for the suggestion's not being presented
19 to the Emperor, of which non-action the prosecution seem
20 for some reason inclined to try to make an issue.

22 The suggestion seems to be that, the Emperor
23 being known to be desirous of peace, he might have
24 interfered, had this NOMURA-KURUSU proposal come to

25 495. The Japanese-American Negotiations, §72
(Tr. 43,701).

496. Summation, §WW-29 (Tr. 41,918-20).

1 his attention, to block the plans of the defendants who
2 were determined on war. What is ignored by this argu-
3 ment is the fact, which has never been denied, that
4 the Emperor of Japan acts on advice: of the Lord Keeper
5 of the Privy Seal, whose duty it was to advise the
6 Throne at all times; of the government, who advised
7 on matters of state. In the instance of the two
8 Ambassadors' recommendation, both these sources of
9 advice, having considered it, were opposed to its
10 adoption. The evidence leaves it quite certain that
11 Foreign Minister TOGO, after receipt of the Ambassadors'
12 telegram, discussed it with General TOJO and Admiral
13 SHIMADA, both of them being of opinion that "there was
14 absolutely no hope of a solution by such means," and
15 with Marquis KIDO, Lord Keeper, who not only felt that
16 the proposal was insufficient to save the situation but
17 "even said that if its conditions were adopted as the
18 basis of a settlement, the result might be civil war."⁴⁹⁷

19 To what purpose report the proposal to the Emperor?
20 If he took advice from his government, it could hardly
21 be expected that it would be in opposition to the
22 opinions already announced by Premier, War Minister,
23 Navy Minister -- all powerful members of the cabinet,
24

25 497. Testimony of TOGO (Tr. 35,706-8), TOJO
(Tr. 36,360) and YAMAMOTO (Tr. 26,064-65).

1 and able to voice the opinions of the High Command as
2 well -- and Foreign Minister. If he took advice from
3 his palace advisor, it would be to the same effect.

4 It will be necessary presently to notice in
5 more detail Marquis KIDO's efforts to avoid his
6 responsibility for his connection with the Japanese-
7 American negotiations. Only a few words are necessary,
8 however, at this time. Half a dozen pages of his
9 summation are devoted to a curiously devious treatment
10 of this NOMURA-KURUSU recommendation.⁴⁹⁸ His treatment
11 is devious in that he did not deny, but in fact admitted,
12 when in the witness box, that Mr. TOGO's testimony to
13 the matter was correct;⁴⁹⁹ the attempt to evade respon-
14 sibility now is the more remarkable in that the govern-
15 ment officials concerned fully accepted responsibility
16 for the decision, the ambassadors whose proposal it was
17 had themselves already abandoned it with receipt of
18 the Hull Note, and it is obvious in fact that the
19 decision of all concerned was the only possible one
20 in the circumstances. His treatment of the matter is
21 curious because, for all his maneuverings, Marquis KIDO
22 does not come to the point of saying that "had I had
23 opportunity I should have recommended this plan to
24

25 498. KIDO Summation, §§285-292.
499. Tr. 10,442-43.

the Throne," but only of complaining that the govern-
1 ment's decision on the Hull Note was reported to the
2 Emperor before he, the Lord Keeper, had had an oppor-
3 tunity to speak with the Emperor about it -- which, by
4 his own claim of "no responsibility," he should not
5 have done anyhow. ⁵⁰⁰ There was, in fact, as yet no govern-
6 ment decision at that time.
7

8 The frivolity of the claims advanced by the
9 defendant KIDO to justify his conduct in several
10 instances where his interests conflict with those of
11 Mr. TOGO is emphasized by the ludicrous efforts which
12 he makes to distort the latter's testimony. One of
13 these may be pointed out here. Mr. TOGO testified that
14

15 "Before being received in audience I explained
16 to Lord Keeper KIDO about the Hull Note, and talked with
17 him (telling him that that was their desire) concerning
18 the two Ambassadors' recommendation. He was discouraged
19 by the Hull Note, and he too was of the opinion that
20 the Ambassadors' recommendation was insufficient to
21 save the situation. Marquis KIDO even said that if
22 its conditions were adopted as the basis of a settle-
23 ment, the result might be civil war."
24

25 Marquis KIDO's summation has it that "it is

500. KIDO Summation, §292.
501. Tr. 35,707.

1 clear that TOGO was referring to the Hull Note when he
 2 says that KIDO told him ". . . if its conditions were
 3 adopted the result might be civil war."⁵⁰² Not if
 4 language has any meaning. It may be left to the Tribunal,
 5 what is the antecedent of the pronoun "its" in the last
 6 sentence.⁵⁰³

7 If there could remain any doubt whether the
 8 Ambassadors' recommendation was taken up by Foreign
 9 Minister TOGO with Lord Keeper KIDO, it should suffice
 10 to point out that, the Ambassadors having asked that
 11 Marquis KIDO be consulted,⁵⁰⁴ in reply to them Mr. TOGO
 12 stated that that had been done.⁵⁰⁵ He could have had no
 13 reason at the time to profess to have consulted with
 14 Marquis KIDO when he had not in fact done so, nor
 15 certainly to tell Mr. YAMAMOTO that he had done so.⁵⁰⁶
 16 The contemporaneous evidence speaks louder than any
 17 testimony given here.

18 502. KIDO Summation, §

19 503. For another example of attempt to distort language,
 20 see the KIDO summation, §290 (Tr.), where
 21 Mr. TOGO is made to admit that by the evening of
 22 17 October he already knew of Marquis KIDO's con-
 23 versation with Ministers TOJO and OIKAWA at past
 24 4 o'clock that afternoon. Mr. TOGO is most
 obviously saying, in his affidavit, that he "knew
 very well" the "conditions" mentioned just before,
 which had been discussed in the preceding several
 paragraphs.

25 504. Ex. 2249 (Tr. 16,196).

505. Ex. 1193 (Tr. 10,442).

506. Testimony of YAMAMOTO (Tr. 26,065).

THE PRESIDENT: We will adjourn until half

1 past one.

2 (Whereupon, at 1200, a recess was
3 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: Major Blakeney.

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MR. BLAKENEY: Page 203, Section 102:

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102. We turn from these trivialities to one
of the fundamental questions in the case. Mr. TOGO
has testified that it was the "Hull Note" of 26 November
which decided him that Japan must go to war, in self-
defence, with the United States and her allies⁵⁰⁷. The
importance to his case of his state of mind in this
matter is so self-evident that no explanation or apology
is needed for treating it with some elaboration. The
issue is quite sharp: if his belief, even though
mistaken, was the honest and reasonable one that the
Hull Note forced Japan to act in self-defence, he is
not guilty, in having cast his vote for war, of supporting
war of aggression; if dishonest, his intent may be
found to have been aggressive. Here is the significance
of the prosecution's charge--apparently the last
remaining one, to which their case against him has
507. T. 35,705-6.

25

1 been reduced--that he "voluntarily acquiesced" in
2 the decision for war; here is the meaning of their
3 insistence that it was always intended that there
4 should be war, that the negotiations were a sham,
5 the proposals adopted on 5 November "final demands"
6 rejection of which would lead automatically to war.

7 The intention held by Mr. TOGO in November
8 1941 must be determined from his acts and his words.
9 We have discussed already, at some length, his actions
10 relating to the negotiations--how he fought vigorously
11 the militarists' contention that negotiations were
12 useless, how he fought for agreement on principles
13 which he thought necessary to the reaching of any
14 agreement with America, how he fought against adoption
15 of the 2 November decision that war must be decided
16 upon after failure of the negotiations. He had fought
17 also, but unsuccessfully, against the High Command's
18 insistence on putting a time-limit within which
19 negotiations should succeed or the decision for war
20 be taken; such a time-limit had after all been set for
21 the beginning of December ⁵⁰⁸. He had attempted in
22 every way within his power to impress upon his Ambassadors
23 in Washington that the making of their supreme effort
24 508. Testimony of TOGO (T. 35,700), TOJO (T. 36,326)
25 and YAMAMOTO (T. 26,057).

1 for success was vital; he had urged the importance of
2 the matter upon the British and American ambassadors
3 in Tokyo. He had withheld knowledge of the negotiations
4 from Germany to further their success--action submitted
5 to be utterly inconsistent with an already-formed
6 intention to go to war with America and Britain as
7 Germany's ally. He had "purged" the Foreign Ministry
8 of radical elements which had interposed obstacles
9 to the success of the negotiations which he so desired
10 by instigating adoption of a "strong" policy toward
11 Britain and the United States⁵⁰⁹; he specially
12 appointed as his diplomatic advisor former Foreign
13 Minister SATO, who of the Foreign Ministry seniors
14 had been the one to urge him fervently to leave no
15 stone unturned in his endeavors for peace⁵¹⁰. There
16 are many other actions, pointing to the same conclusion,
17 disclosed by the evidence; time does not permit me
18 to mention them individually, but one more may be
19 adverted to. The unequivocal statement that it was
20 the Hull Note which caused failure of the negotiations
21 is contained in one of those telegrams to ambassadors
22 abroad which, as confidential expressions, the
23 prosecution regard as of such highly probative value

24 509. Testimony of TOGO (T. 35,681-82) and KADOWAKI
25 (T. 35,519-20).

510. Testimony of SATO Naotake (35,550-52).

1 on the question of intent: "it has only been in the
2 negotiations of the last few days that it has become
3 gradually more and more clear that the Imperial
4 Government could no longer continue negotiations with
5 the United States", the Ambassador in Berlin was
6 advised on 30 November ⁵¹¹. All these things are
7 submitted in total to compel the conviction that
8 Foreign Minister TOGO cherished no secret desire or
9 intention, prior to the Hull Note, of waging war
10 against the Western powers.

11 103. We have at hand other types of evidence
12 on this point. One is the proposed foreign policy
13 for Japan submitted by Mr. TOGO in 1933, when he was
14 bureau director, to the foreign minister. The intention
15 of that time, as there expressed, he has not been
16 shown ever to have departed from; in later years, so
17 far as his official duties brought him into contact
18 with affairs of the countries there treated of, he
19 had worked for fulfillment of his proposed policies.
20 His policy then toward Britain had been one of peace.
21 "Among our international relationships", he had written,
22 "that with Great Britain constitutes one of the most
23 important...In the past, the development of Japanese-
24 British relationships has seemed to have a close
25 511. Exhibit 1,199 (T. 10,469).

connection with our national fortune and will continue
1 so in future as well."⁵¹² The existence of obstacles
2 to good relations was recognized; but also the fact
3 that
4

5 "Great Britain not only has by far the
6 greatest interest in China, but plays a leading role
7 in international political affairs. She is the first
8 country with whom cooperation is to be expected,
9 in view of her position in the Far East as well as
10 of our past relationships. Although some sections in
11 Japan talk about the revival of the Anglo-Japanese
12 Alliance, a study of the situation which led to its
13 abrogation will show that such a revival cannot be
14 hoped for. Nor is the restoration of Anglo-Japanese
15 cooperation with respect to the China problem a matter
16 to be easily achieved. However, in view of the fact
17 that Japan and Great Britain have many common interests
18 in China, sufficient room should be found for cooperation
19 with regard to the settlement of Far Eastern questions,
20 especially that of China proper. In order to realize
21 this, it would be reasonable and proper to endeavor
22 to make Great Britain understand thoroughly the
23 fundamental lines of our Manchurian policy⁵¹³, to

25 512. Exhibit 3,609-A, p. 5 (T. 35,478).

513. Which it will be remembered was recommended to
be the laying of the foundations of a "really

respect Britain's rights and interests in China, thereby
 1 eliminating causes of conflict; to cultivate an
 2 atmosphere which would be conducive to Anglo-Japanese
 3 cooperation; and on the other hand to urge her to
 4 help us in improving our relations with the United
 5 States⁵¹⁴ ."

6 He had concluded that "room for collaboration
 7 between us is great as compared with other countries";
 8 "promotion of friendly relations and collaboration
 9 between Great Britain and Japan is highly essential."⁵¹⁵

10 His policy then toward the Netherlands had
 11 been one of peace. Mentioning that the Dutch "have
 12 always been under the impression that Japan might be
 13 entertrining some ambitions toward their island
 14 possessions"⁵¹⁶ , he says that "it is therefore only
 15 proper and appropriate that we should by our actions
 16 eradicate the misgivings of the Dutch and promote
 17 our economic realtions with them"⁵¹⁷

18 "The Japanese Government is now negotiating
 19 with the Netherlands Government, at the latter's
 20 initiative, the conclusion of treaties of arbitration
 21

22 513 (Continued):
 23 independent Manchoukuo", with the principle of the
 24 Open Door and equal opportunity enforced. Supra,
 25 §13.

514. Exhibit 3,609-A, p. 8 (T. 35,478-79).

515. Id., p. 27 (T. 35,484).

516. Id., p. 14 (T. 35,480).

517. Id., p. 15 (T. 35,481).

and mediation. In view of the situation set forth
1 above, we should strive earnestly for the successful
2 consummation of the present negotiations. Furthermore,
3 if the Netherlands should propose the conclusion of a
4 treaty similar in nature to the Four-Power Pact con-
5 cerning the status quo in the Pacific, about which
6 SAITO, our minister to the Netherlands, has submitted
7 his opinion to the government, we should readily
8 respond to her offer, since it would be helpful in
9 eliminating Dutch suspicions and in making clear to
10 the world our desire for peace in the Pacific⁵¹⁸.

11
12 "...It is highly advisable that our government
13 endeavor to promote amity with the Dutch by clearing
14 away all misgivings, and at the same time declare
15 to the world our sincere desire and intention of
16 maintaining peace in the Pacific, of keeping it always
17 quiet and true to its name⁵¹⁹."

18 His policy then toward the United States
19 had been one of peace. He had recognized its first
20 place among the responsibilities of Japanese diplomacy.
21 "The basis of our policy toward the United States", he
22 said, "should be to avoid war and have that country
23 reconsider and revise its Far Eastern policy."⁵²⁰

24 518. Ibid.

25 519. Id., p. 15 (T. 35,481).

520. Exhibit 3,609-A, p. 3 (T. 35,476).

First, to avoid war!

1 "Japanese-American relations should be
2 thoroughly studied from all angles and any measure
3 which would contribute to the prosecution of this
4 basic policy should be carried out to the end that
5 unnecessary conflicts may be avoided and any obstacles
6 in the way of better feeling may be removed, thus to
7 restore stability in the Pacific area. This must be
8 the urgent task of Japanese diplomacy and to it our
9 full efforts must be devoted ⁵²¹ ."

10 Of his concrete suggestions, one is most
11 interesting:

12 "In the light of present international
13 developments, a divergence of opinion is likely to
14 occur between the two countries at the naval disarmament
15 conference scheduled to be held in 1935. If matters
16 were left as they stand, agreement on disarmament
17 would naturally fail to be reached, and as a result
18 the agreement for the maintenance of the status quo
19 with respect to fortifications in the Pacific would
20 be abrogated. The consequences which would ensue--an
21 armaments race, leading to a Japanese-American war--
22 would ultimately bring about a world war. How
23 unfavorable would be the results to Japan has already
24
25 §21. Id., p. 4 (T. 35,476).

1 been pointed out. We on our part should make every
2 effort to have the United States reconsider her Far
3 Eastern policy and, at the same time, reconsider our
4 own disarmament policy⁵²² ."

5 It was only a year later that Mr. TOGO had
6 opportunity to work for adoption of this policy, against
7 the opposition however of the Navy which, finally
8 winning out, brought to an end efforts for international
9 naval disarmament. Admiral OKADA, then Premier,
10 has testified to the fact that Mr. TOGO was vigorous
11 in his opposition to the extreme views of the Navy⁵²³ ;
12 his opposition, as is shown by other evidence, was
13 prolonged, out-spoken and on the identical basis--
14 of concern for peace in the Pacific--on which he
15 had put forward his suggestions of 1933⁵²⁴ .

16 104. Mr. TOGO's policy in 1933 was one of
17 peace. Nothing in the evidence suggests that he had
18 in any particular modified his views by 1941. As
19 we have seen, he had no illusions that Japan could
20 win a war against the United States and Britain⁵²⁵ ,
21 which strongly suggests that, whatever the confident
22 militarists may have thought, he could have come to
23

24 522. Id., p. 27 (T. 35,491).

25 523. T. 37,165.

524. Testimony of INOUE (T. 35,493).

525. Testimony of TOGO (T. 35,695-6), and YAMAMOTO
(T. 25,949).

1 the point of willingness to agree to a war against
2 those countries only if he believed the case to be
3 one of self-defence. He had never come to believe
4 in a possibility of Japanese victory, but had remained
5 sceptical of the Army's and Navy's assurances⁵²⁶; his
6 Foreign Ministry's reports to the Liaison Conference
7 on the subjects assigned to it for study with a view
8 to determining the national policy of war or peace
9 evidence no such confidence in Japan's victory, but
10 rather are informed with pessimism concerning the
11 prospects⁵²⁷. Men highly respected in Japan, then and
12 now, have testified that Mr. TOGO opposed the Pacific
13 war. Admiral OKADA, Elder Statesman during whose
14 premiership Mr. TOGO had fought the Navy for disarmament
15 to prevent the condition which by 1941 had come about,
16 gave his testimony that there was "frequent contact"
17 between them when Mr. TOGO was Foreign Minister, and
18 that he knew Mr. TOGO "to be a lover of peace" who
19 made all efforts to prevent a Japanese-American war⁵²⁸.
20 Admiral SUZUKI, last war-time premier of Japan, has
21 testified that he selected Mr. TOGO as his foreign
22 minister because of his feeling that Mr. TOGO had
23 opposed the war from the beginning.⁵²⁹
24

25 526. Testimony of TOGO (T. 35,695).

527. Exhibit 1,329 (T. 11,928).

528. T. 37,165-67.

529. T. 35,590.

1 "What could the United States, Britain and
2 the Netherlands gain from going to war with Japan?"
3 ask the prosecution. Let us rephrase it: "What
4 could the defendant TOGO have believed that Japan
5 could gain by going to war with the United States,
6 Britain and the Netherlands?" Obviously, nothing.
7 Certain defeat, only. He had never believed that a
8 nation gained by resort to force, by forfeiting
9 international confidence, by war. He had always
10 believed the maintenance of friendly relations with
11 those great Western Powers the urgent task of Japanese
12 diplomacy. He expected only defeat from the under-
13 taking of a war against them. He could not have voted
14 for such a war, it is submitted, unless at the instance
15 of an honest belief that self-defence required it.

16 105. Could he reasonably have believed that
17 the war to which he gave his agreement was one of
18 self-defence? That there are adequate grounds for
19 regarding the Hull Note as implying such a threat to
20 Japanese national existence as to justify exercise of
21 the right of self-preservation, we have submitted
22 elsewhere ⁵³⁰. It is here submitted that those reasons
23 are, to put it no more strongly than this, sufficient
24 530. The Japanese-American Negotiations, §§67-70
25 (T. 43,678-98).

1 that the Tribunal cannot find the conclusion grounded
2 in them to have been an unreasonable one. That the
3 Hull Note was regarded in the same way by all Japanese
4 who passed judgment on it--by the Japanese Ambassadors
5 in the United States, the Liaison Conference in Japan,
6 Cabinet, Supreme War Council, Elder Statesmen--we
7 have seen; there is no evidence of dissent from that
8 view by any Japanese of high station. Such a unanimity
9 of opinion can only suggest by application of the test
10 universally recognized that the opinion cannot have
11 been unreasonable.

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Mention of the Elder Statesmen is a reminder
1 that something must be said of their meeting of 29
2 November. After the Liaison Conference had informally
3 decided that war would have to be undertaken, and
4 before the formal decision of the Imperial Conference
5 of 1 December was asked, a meeting of the Elder States-
6 men was convoked to give their advice to the Throne.
7 The prosecution reiterate the assertion that the
8 opinion of the Elder Statesmen of the necessity for
9 war imposed by the Hull Note, opinion according with
10 that of all other responsible persons, had no validity
11 because "all really vital material was withheld" from
12 them,⁵³¹ they being given only "such information as
13 the Government was prepared to disclose."⁵³² So far
14 at least as concerns the diplomatic negotiations,
15 this assertion is not supported by the evidence. That
16 evidence is an excerpt from the KIDO Diary, recording
17 the meeting, and the testimony of Admiral OKADA, one
18 of the Elder Statesmen participating. Admiral OKADA
19 testified that certain figures and statistics were
20 withheld from the Elder Statesmen on the plea of
21 military secrecy -- the same condition which the
22 Foreign Minister had encountered in the Liaison Confer-
23 ence⁵³³ -- matters which may well have affected the
24
25

531. Summation, G-132, Tr. 39,680.

532. Id., WW-32, Tr. 41,925.

533. Testimony of T000, Tr. 35,695.

1 Elder Statesmen's ability to pass intelligently on
2 the prospects of war. But he made it absolutely
3 certain that nothing was withheld of the diplomatic
4 matters which showed the circumstances in which the
5 commencement of war had been decided to be necessary.
6 The cross-examination of him on that subject was:

7 "Q You have already said, Mr. Witness, that
8 at the meeting of 29 November 1941 explanation was
9 given by the Foreign Minister, TOGO, concerning the
10 Japanese-American negotiations. Can you state to the
11 Tribunal to what extent such explanation was made?

12 "A TOGO explained the progress of the Japanese-
13 American negotiations in considerable detail.

14 "Q Were questions put to the Foreign Minister
15 on this subject by the Elder Statesmen present?

16 "A I believe two or three questions were put
17 to him.

18 "Q Did Mr. TOGO, the Foreign Minister, give
19 answers to such questions as were put to him?

20 "A Yes, TOGO replied to those questions, and I
21 believe that those who asked questions were satisfied
22 with his answers."⁵³⁴
23

24 The KIDO Diary, as corrected (the prosecution
25 summations make no mention of the completely revised

534. Tr. 29,314-15.

1 and corrected exhibit, read into the record by a
2 prosecutor, but cite the original and admittedly
3 incorrect version)⁵³⁵ shows that Prince KONOYE, who,
4 having been engaged in the Japanese-American negotia-
5 tions until six weeks earlier, and being still in
6 touch with informed circles -- was well-advised con-
7 cerning them, expressed himself as content with this
8 explanation and as satisfied that diplomacy could do
9 no more:

10 "I deeply regret that I have not been able
11 to do anything toward the adjustment of Japanese-American
12 relations despite my efforts since last April. But I
13 beg to express my appreciation to the present cabinet
14 for zealously striving to attain this end. To my
15 great regret I am forced to conclude, on the basis of
16 this morning's explanation by the Government, that
17 further continuation of diplomatic negotiations would
18 be hopeless. Still, is it necessary to resort to war
19 at once, even though diplomatic negotiations have
20 been broken off? Would it not be better, I wonder,
21 while carrying on things as they are -- to later find
22 a way out of the deadlock by persevering to the utmost
23 under difficulties?"⁵³⁶

25 535. Summation, G-132, Tr. 39,680 and WW-32,
Tr. 41,925.

536. Ex. 1196, Tr. 16,188. See also testimony of
TOGO, Tr. 35,711-12.

Precisely the question which Foreign Minister
1 TOGO had asked, in almost his very words.

2 That the Hull Note was regarded on the American
3 side of the Pacific as well to be such as would have
4 the natural effect of forcing Japan into war has been
5 well established by the evidence.⁵³⁷ That Mr. Hull,
6 after delivering the document to the Japanese Ambassadors,
7 stated that he had placed the matter "in the hands of
8 the Army and Navy" but confirms the interpretation
9 placed by Japanese on his note. It is submitted that
10 it is impossible for the Tribunal to find to be unreason-
11 able the belief of the author of the document concerning
12 its effect, or that same belief when shared by Japanese.

14 106. And, lastly, a word on the law of self-
15 defense in regard to the Hull Note. The question has
16 been discussed perhaps almost ad nauseam; but it is
17 nevertheless necessary that a word be said in expres-
18 sion of Mr. TOGO's own views. As he has testified, he
19 felt that the war which was waged against the United
20 States and her allies was one of self-defense; he has
21 stated fully his reasons for this belief.⁵³⁸ He has
22 mentioned also that he felt particularly that if the
23 broad interpretation of the right of self-defense which
24

25 537. The Japanese-American Negotiations, § 70,
Tr. 43,693-98.

538. Tr. 36,128, 36,135-38.

the United States was contending for in 1941, during
 1 the negotiations, was correct, the case was even
 2 clearer.⁵³⁹ It will be remembered that that American
 3 interpretation was, as stated by Secretary of State
 4 Hull, that the safety of the United States "calls for
 5 resistance wherever resistance will be most effective."⁵⁴⁰

6 President Roosevelt had stated it even more broadly:
 7 "We in the Americas will decide for ourselves whether
 8 and when and where our American interests are attacked
 9 or our security threatened."⁵⁴¹ The prosecution
 10 disagrees with this American interpretation. Their
 11 doctrine is that, "of course",
 12

13 "the validity of all self-defense pleas must
 14 depend on the facts. We cannot subscribe to the theory
 15 that leaders of nations any more than individuals can
 16 decide such matters for themselves. . ." ⁵⁴²

17 President Roosevelt, nevertheless, enunciated
 18 and put into execution the theory that a nation not
 19 only was the sole judge of the requirements of its
 20 self-defense -- in itself no new idea, but long
 21 affirmed by every nation and every authority on the
 22 subject ⁵⁴³ -- but might exercise the right even at
 23

24 539. Tr. 35,718

540. Ex. 2874, Tr. at 25,719.

541. Ex. 2874, Tr. 25,724.

25 542. Summation, § 37, Tr. 38,890.

543. See for example explanations of Secv. Kellogg
 to Committee on Foreign Affairs, Senate of U.S.
 of the scope of the Kellogg-Briand Pact.

1 such points remote from its territory as it saw fit
2 by stationing its military forces there or by attack-
3 ing (as in the case of the "shoot-on-sight" instruc-
4 tions given the American Navy for its guidance vis-a-
5 vis German and Italian vessels in the North Atlantic.)
6 This course of conduct of the United States, as well
7 as the transfer of a substantial part of
8 the Navy of the United States to Great Britain for use
9 against Germany, has been defended by eminent author-
10 ities as being "the elementary right of anticipatory
11 self-defense in a situation in which belated defense,
12 according to the textbook rules of the strictest tech-
13 nical neutrality, would very probably have proved
14 fatal . . ." ⁵⁴⁴ If so to act was an elementary right
15 of the United States, it must have been action proper
16 for Japan; if American was to "decide for herself"
17 its necessity, Japan cannot be denied the same
18 latitude. Here is no such doctrine as the prosecution
19 advance, that action in self-defense is justifiable
20 "only in the case of a reasonably anticipated armed
21 attack"; ⁵⁴⁵ but if that were the correct doctrine,
22 there is ample evidence which makes it impossible to
23

24 544. Glueck, "The Nuernberg Trial and Agressive
25 War", 59 Harv. L. Rev. (1946) 449.

545. Summation, B-16.

1 say that the leaders of Japan were unreasonable in
2 expecting just that by November 1941. From August
3 there had been growing reason to believe that the
4 United States and Britain had determined to pursue
5 their policy at the risk of war with Japan;⁵⁴⁶ in
6 view of which their strengthening of their measures
7 of military encirclement of Japan⁵⁴⁷ was believed
8 in Japan to be action taken in anticipation of war.⁵⁴⁸

9 107. After the decision for war had been
10 made by the Imperial Conference of 1 December,
11 questions of procedure remained to be settled. In
12 connection with these, which came up for decision at
13 meetings of the Liaison Conference following 1 December,
14 there is no conflict in the evidence so far as concerns
15 the decisions made and the actions taken pursuant to
16 them. Regarding one incident leading up to a decision
17 there is a sharp dispute among the defendants, which,
18 it being not without a certain interest, we shall
19 return to deal with later. Leaving that, however,
20 for now, let us hear the story of decision of the final
21 measures in the words of the one who knows it best,
22 Foreign Minister TOGO:

- 23 546. See Japanese-American Negotiations, §82,
24 Tr. 43,734.
25 547. Tr. 36,338-44, 36,353-55.
548. Tr. 36,355, 36,358-59.

"These questions of procedure," he says, "came
1 up at the first Liaison Conference following the Imperial
2 Conference. At this meeting I asked when operations
3 would commence, General SUGIYAMA, Chief of the Army
4 General Staff, said, 'about next Sunday.' I thereupon
5 said that it was appropriate that the usual and custom-
6 ary procedure be followed in regard to notifying the
7 commencement of hostilities, which I had assumed would
8 be done as a matter of course. I was immediately met,
9 however, with the statement by Admiral NAGANO, Chief
10 of the Naval General Staff, that the Navy wished to
11 carry out a surprise attack, and by the demand by Vice
12 Chief ITO that the negotiations be left unterminated,
13 in order that the war might be started with the maximum
14 possible effectiveness. I rejected this suggestion,
15 saying that it was contrary to the usual practice and
16 highly improper, and that such conduct would be disadvant-
17 ageous because, even if we were going to war, there would
18 be a time when the war would come to an end and we would
19 be a nation at peace again, and we should think of our
20 national honor and repute against that day before
21 committing irresponsible acts at the war's beginning.
22 I had received a telegram from our Ambassadors in
23 Washington actually discussing this very point and
24 urging that if Japan was going to resort to 'freedom of
25

1 action' a notification of the breaking off of negotia-
2 tions should be given also in Washington (Exhibit No.
3 2929), and I quoted this to the meeting to show that
4 my suggestion was the natural and normal one and that
5 notification was absolutely necessary as a matter of
6 international good faith. However, Admiral NAGANO
7 continued to contend strongly that if we were to go
8 to war we must win. None among the members came to my
9 support; which is perhaps the best explanation for the
10 fact that none of them now remembers this altercation.
11 I was disgusted by the Navy's position, and took the
12 initiative in adjourning the Conference, without any
13 decision's having been reached. Immediately upon my
14 arising from my seat, Admiral ITO came to my place and
15 pleaded with me to understand the difficult position
16 of the Navy, and suggested that in any event the notice
17 breaking off negotiations, if one must be given, be
18 given to the American Ambassador in Tokyo, rather than
19 in Washington. I refused, and we parted without any
20 agreement. I felt, nevertheless, that he recognized
21 that the Navy would have to agree to giving somewhere
22 a notification of termination of negotiations before
23 attacking.

24 "Upon the opening of the following Liaison
25 Conference Admiral ITO announced that the Navy had no

objection to delivering the notification of termination
1 of the negotiations in Washington, and requested that
2 the notice be delivered at 12:30 P.M., 7 December,
3 Washington time. No one opposed. . . . It was therefore
4 so agreed." ⁵⁴⁹

5 Here, then, was the first limitation imposed
6 by the Liaison Conference upon this matter of so much
7 concern to the Foreign Minister; he had been overruled
8 in his insistence that a declaration of war should be
9 served upon the enemy-nations-to-be -- the "usual and
10 customary procedure" -- and limited to a notification
11 breaking off the Japanese-American negotiations, to be
12 served upon the United States. The interesting point,
13 which we shall return to, is that the final "diplomatic"
14 document was decided, not on a diplomatic, but on a
15 strategic basis.
16

17 108. In connection with this incident of the
18 Navy's insistence on attack without notice -- the "ITO
19 Incident", as it has come to be known -- I am compelled
20 to the distasteful task of investigating the elaborate
21 effort which has been made by a co-defendant to prove
22 that it never happened, but is a fabrication by Mr. TOGO.
23 Let us be quite clear about the significance of the
24 question. The ITO Incident as such is of no special
25

549. Tr. 35,714-16.

1 concern to Mr. TOGO. It was mentioned in his testimony,
2 just quoted, as showing how it came about that the
3 Liaison Conference imposed the limitation upon the
4 notice which might be given when hostilities were
5 commenced, limiting the notification to one of termina-
6 tion of negotiations instead of a formal declaration of
7 war -- the "usual and customary procedure." But if it
8 never happened, that Admiral ITO objected to the service
9 of a declaration of war in the customary manner, somebody
10 did. For no defendant has yet denied that Foreign
11 Minister TOGO did open the Liaison Conference discussion,
12 as he has testified to having done, with the suggestion
13 that the "usual procedure" should be followed; no
14 defendant has yet denied that the Liaison Conference
15 decision was that which Mr. TOGO has testified to, that
16 a notification of termination of negotiations should be
17 delivered in Washington; no defendant cross-examined
18 Mr. TOGO on those points. Let me repeat this: to this
19 day no defendant or defendant's witness has ever, at
20 any time or place, testified, said or intimated that
21 the Liaison Conference decision was not exactly as
22 testified to by Mr. TOGO, that there should be served
23 only a notification to the Government of the United States
24 ending the negotiations, and not an outright declaration
25

of war. If Mr. TOGO made his proposal, which he is
1 admitted to have done, and the Liaison Conference
2 decision was nevertheless the much more restricted one,
3 which it admittedly was, someone must have made the
4 suggestion that it be limited. Unless that course had
5 been suggested, by Admiral ITO or someone else, the
6 decision to follow it would not have been made, and
7 Foreign Minister TOGO's proposal would have been
8 adopted. None of the defendants who has denied occur-
9 rence of the ITO Incident, however, has in denying it
10 mentioned who may have made that suggestion if it was
11 not Admiral ITO. But to decision of the issues of the
12 case of Mr. TOGO it is a matter of complete indifference
13 whether it was Vice Chief of the Naval General Staff ITO,
14 or someone else, who first raised in the Liaison Confer-
15 ence the suggestion that that decision should be taken
16 which was taken -- whether there was an ITO incident,
17 or a NAGANO Incident, or a SUGIYAMA Incident, the
18 suggestion must have been made, for only on that hypothe-
19 sis is the subsequent decision explicable.
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109. While, however, the ITO Incident has
 1 in this sense no special significance to the case of
 2 Mr. TOGO, I must nevertheless notice it in detail as
 3 the one determined, skillful and long-planned attempt
 4 which has been made from any quarter upon the credi-
 5 bility of Mr. TOGO. The defendant Admiral SHIMADA has
 6 devoted to this question just under one-tenth of his
 7 summation, ⁵⁵⁰ in the effort to prove that there never
 8 was such an occurrence. His concern with it is the
 9 more extraordinary in that he is ostensibly defending,
 10 not himself (whom Mr. TOGO specifically absolved of
 11 having had any part in the disgraceful incident), ⁵⁵¹ but
 12 the memories of the Chief and Vice Chief of the Naval
 13 General Staff, an organization with which he was not
 14 officially connected at the time and for which he pro-
 15 fesses to have no responsibility. Curiously, any pos-
 16 sible plausible motive for Mr. TOGO's manufacturing
 17 such an incident is in no place even hinted at, the
 18 only one ever suggested being absurd on its face--to
 19 escape a "sonse of guilt" over the late delivery of
 20 the final note, ⁵⁵² which all evidence in the case has
 21 shown conclusively to have been the result of no fault

23 550. SHIMADA Summation, SS 54-a-61-b (T. 45,420-31).

24 551. T. 35,834.

25 552. Testimony of SHIMADA (T. 37,037-45).

1 of the Foreign Minister.⁵⁵³ On the other hand, the
2 reasons motivating the seemingly gratuitous attack
3 made upon him have some bearing on the issues in the
4 case. We shall come to those a little later.

5 Counsel for Admiral SHIMADA warns the Tribunal
6 against "such comment as may be forthcoming in the ex
7 parte safety of" the summation on behalf of Mr. TOGO;⁵⁵⁴
8 but in his anxiety he forgets that a summation is not
9 ex parte, because it grows out of the record of pro-
10 ceedings which were adversary. If that record supports
11 him and not me, I will be found out soon enough. Let
12 us examine it briefly.

13 110. The SHIMADA Plan involves the attempt
14 to show by testimony of all participants in the Liai-
15 son Conference where the ITO Incident occurred that
16 none can remember it except Mr. TOGO himself and
17 YAMAMOTO Kumaichi, who being a Foreign Ministry official
18 presumptively would, it is suggested, corroborate
19 Mr. TOGO's testimony out of mere loyalty. Mr. YAMAMOTO,
20 by the way, gave his testimony to this effect when
21 under cross-examination as a witness on behalf of the
22 defense generally, and in the circumstances that Ad-
23 miral SHIMADA and all other defendants knew that such
24

25 553. The Japanese-American Negotiations, §76
(T. 43,711-18).

554. SHIMADA Summation, §58-b (T. 45,427).

1 would be the purport of his testimony--for only after
2 it was stricken from his affidavit did Admiral SHIMADA
3 consent to his testifying as a defense witness. His
4 testimony in general is not now repudiated by Admiral
5 SHIMADA, but is cited repeatedly in his summation as
6 sustaining his contentions.

7 The SHIMADA Plan is adroitly conceived. 'Ad-
8 miral SHIMADA testified that he and Admiral NAGANO
9 "jointly questioned every one of the accused
10 who had attended the Liaison Conferences, in-
11 cluding TOJO, SUZUKI, KAYA, HOSHINO, OKA and
12 MUTO. None of them except TOGO remembered such
13 a thing occurring."
14

15 "Counsel on every possible occasion", he says, "sought
16 to question any accused regarding the alleged naval
17 opposition to the giving of notice who took the wit-
18 ness box."
19 This plan did not prove satisfactory in
20 practice. Mr. HOSHINO not having taken the witness
21 stand, Admiral SHIMADA's quotation of him has no more
22 probative value than the remainder of the Admiral's
23 own testimony. General SUZUKI--oddly--when he was
24 giving testimony, was not examined on this point by
25 counsel for Admiral SHIMADA. Only after cross-examina-
tion of him by the prosecution was a pretense of attempt

555. T. 25,897.

556. T. 34,675.

557. T. 35,835; SHIMADA Summation, §56-a (T. 45,423).

1 made to extract what was obviously direct testimony,
2 when it was known that under the standing rules of pro-
3 cedure of the Tribunal the attempt was not timely and
4 must fail. The failure to examine in good season on
5 the point which counsel had himself undertaken to con-
6 test vigorously, and on which his client had quoted
7 General SUZUKI, is most suggestive of the answer which
8 would have been given by that witness.

9 Admiral SHIMADA, of course, from the witness box
10 denied occurrence of the affair,⁵⁵⁸ as did his satellite
11 Admiral OKA; the defendants TOJO, KAYA and MUTO testi-
12 fied with varying degrees of definiteness to lack of
13 recollection on the point. Of these General TOJO was
14 quite definite;⁵⁵⁹ the remainder gave evidences of having
15 suspiciously better recollections than they cared to
16 admit. These include Admiral SHIMADA himself, whose
17 case we shall consider in a moment; Mr. KAYA, whose
18 testimony was merely that "I do not recall";⁵⁶⁰ (but who
19 also seems to intend to deny that he was present at
20 any Liaison Conference when the matter of the final
21 Japanese note was discussed⁵⁶¹); and General MUTO. The
22 latter "did not remember at all" the ITO Incident, though
23 he admitted that "I have forgotten many things, of

25 558. T. 34,673-74.

559. T. 36,528.

560. T. 30,657.

561. Ibid.

1 ⁵⁶²
2 course." But he obviously had a keen recollection of
3 some passage in the Liaison Conference between Admiral
4 ITO and Foreign Minister TOGO, for he testified that
5 he did remember hearing ITO express the Navy's desire
6 to "harmonize the time of delivery and naval action",
7 as well as the desire that the final note should be
8 delivered as late as possible; ⁵⁶³ the euphemistic char-
9 acter of this language can be readily recognized.

10 Admiral OKA, when interrogated by the prose-
11 cution long before the idea of burking this affair
12 had been thought of, specifically admitted memory of
13 the ITO-TOGO discussion, though contending in the wit-
14 ness box that he had been misquoted. He had been asked,
15 on 30 March 1946, "Do you recall there was some dis-
16 cussion between TOGO, the Foreign Minister, and Admir-
17 als NAGANO and ITO regarding notification of the United
18 States prior to any attack?" and had answered, ac-
19 cording to the stenographic record of the interroga-
20 tion, "I recall it." Being further asked, after two
21 questions on another matter, "What was the gist of the
22 conversation between TOGO, NAGANO and ITO regarding
23 notification prior to any attack?" he had answered "I
24 don't know." ⁵⁶⁴ On the witness stand his explanation was

25 562. T. 33,156.
 563. T. 33,175-76.
 564. Ex. 3653, (T. 36,143, not read).

that his reply to the first question had been "exactly
1 opposite to that which you have just read." ⁵⁶⁵ It is
2 difficult in any language for a reporter to make the
3 error of writing "Yes" when the witness has said "No".
4 If his answer to the first question had been "No",
5 his answer to the second would not have been "I don't
6 know"; it would have been, "I have just said that I
7 remember no such conversation." In court he admitted
8 having answered the second question in three words as
9 shown in his interrogation, ⁵⁶⁶ but claimed that he had
10 given also to the interrogator a further answer which
11 covers half a page of the record, ⁵⁶⁷ but which the inter-
12 rogator somehow failed to hear, for nothing of this
13 appears in the interrogation. He also, he said, ex-
14 plained to the interrogator that owing to the way of
15 conducting the Liaison Conference, no one could deny
16 with conviction that a given remark had not been made.
17 His counsel attempted to come to his rescue by pointing
18 out other parts of the interrogation; but the position
19 remained unchanged.
20

21 III. For this loss of memory by the various
22 defendants who attempted to come to the support of
23 Admiral SHIMADA and the "honor of the Japanese Navy",
24

25 565. T. 33,445.
566. T. 33,446.
567. T. 33,447.

1 memory is one which may be stated and left without
2 argument. It was pointed out by Mr. TOGO: in the
3 dispute between him and Admiral ITO "none of the mem-
4 bers came to my support; which is perhaps the best
5 explanation for the fact that none of them now remem-
6 bers this altercation." If these defendants could
7 forget matters so vital to the question of their
8 liability as those which General TOJO and Admiral OKA
9 have just been seen to have forgot, they could no
10 doubt most readily forget one showing them in such a
11 light as does their failure to support Mr. TOGO in
12 opposition to the ITO proposal.

13 The third reason involves exploring some by-
14 paths. After Mr. TOGO testified to the ITO Incident,
15 he was cross-examined concerning the matter by counsel
16 for Admiral SHIMADA. He stated then that admirals
17 SHIMADA and NAGANO had proposed a talk with him, at
18 which time they had in effect admitted that it had
19 been their desire in December 1941 to commence the
20 war by attack without notice, but had suggested that
21 "it would not be worth my while" to mention it, which
22 words--he said--were "something in the nature of a
23 threat." Promptly after this testimony was given,
24

25 572. T. 35,715.
573. T. 35,840.
574. T. 35,838.

1 three reasons are suggested by the evidence. One is a
2 genuine failure of memory--a point which Mr. TOGO had
3 occasion to mention in cross-examination. He had men-
4 tioned, for example, that until he reminded them of
5 it in Sugamo Prison all of the defendants who had par-
6 ticipated in it had forgot such an important matter
7 as the fact of the 5 November Imperial Conference--a
8 lapse of memory shown by evidence in the record to
9 have been a fact in the case of Premier TOJO himself.
10 Admiral OKA admitted here in cross-examination that
11 when interrogated in Sugamo he had quite forgot that
12 he had ever taken any part in the drafting or revision
13 of the final Japanese note, though since the beginning
14 of the trial he has remembered, with the assistance of
15 a former subordinate, that he had proposed a revision
16 which he now considers quite important to his case.
17 Admiral OKA's testimony in this Tribunal is eloquent of
18 the extent of his ability or willingness to remember:
19 in the course of fifty pages of his cross-examination,
20 we find more than forty times his answer that he had
21 "no recollection" of his personal participation in
22 matters of more or less importance.
23

24 A second reason for the defendants' loss of

- 25 568. T. 35,835.
569. Ex. 1158-A (T. 10,309).
570. T. 33,441-43.
571. T. 33,466-515.

1 memory is one which may be stated and left without
2 argument. It was pointed out by Mr. TOGO: in the
3 dispute between him and Admiral ITO "none of the mem-
4 bers came to my support; which is perhaps the best
5 explanation for the fact that none of them now remen-
6 bers this altercation." ⁵⁷² If these defendants could
7 forget matters so vital to the question of their
8 liability as those which General TOJO and Admiral OKA
9 have just been seen to have forgot, they could no
10 doubt most readily forget one showing them in such a
11 light as does their failure to support Mr. TOGO in
12 opposition to the ITO proposal.

13 The third reason involves exploring some by-
14 paths. After Mr. TOGO testified to the ITO Incident,
15 he was cross-examined concerning the matter by counsel
16 for Admiral SHIMADA. He stated then that Admirals
17 SHIMADA and NAGANO had proposed a talk with him, at
18 which time they had in effect admitted that it had
19 been their desire in December 1941 to commence the
20 war by attack without notice, ⁵⁷³ but had suggested that
21 "it would not be worth my while" to mention it, which
22 words--he said--were "something in the nature of a
23 threat." ⁵⁷⁴ Promptly after this testimony was given,
24

25 572. T. 35,715.
573. T. 35,840.
574. T. 35,838.

1 Admiral SHIMADA's counsel announced that the Admiral
 2 had upon hearing it made known his desire to "take the
 3 stand again.⁵⁷⁵" Leave being subsequently granted to him,
 4 he did so; but as it developed, he took the stand, not,
 5 as his surmation has it, to "refute" Mr. TOGO's words,
 6 but "for the purpose of denying (Mr. TOGO's) inter-
 7 pretation of our conversation"--to admit occurrence
 8 of the conversation just as testified to by Mr. TOGO,
 9 tacitly to admit use of the very words quoted by Mr.
 10 TOGO, but to state that in his opinion they did not
 11 constitute "something in the nature of a threat", and
 12 to pass in silence Mr. TOGO's charge that he and Ad-
 13 miral NAGANO had at that conversation in effect ad-
 14 mitted the truth of what Mr. TOGO now testified to.⁵⁷⁷
 15 In view of this, the nature of the NAGANO-SHIMADA
 16 "questioning" of the other defendants can be left to
 17 the imagination. In fact, asked specifically to
 18 "answer 'yes' or 'no'", whether he had made "any fur-
 19 ther threats at any other time to Mr. TOGO", his
 20 answer was carefully qualified: "Not I, myself."⁵⁷⁸ Who,
 21 then?
 22

23 575. T. 35,859.

24 576. See any standard dictionary of the Japanese lan-
 25 guage to learn whether "kini no tame ni naran daro"
 "it will not be to your interest", the words
 which Admiral SHIMADA did not deny using, (would
 when spoken by two incensed admirals) constitute
 "something in the nature of a threat."

577. T. 37,029-31.

578. T. 37,046.

1 In summation, it is now pointed out that
2 counsel for Mr. TOGO did not cross-examine Admiral
3 SHIMADA on this testimony. It was unnecessary: the
4 testimony did not constitute contradiction of Mr. TOGO's,
5 and showed that there would have been no reason to
6 approach Mr. TOGO except to threaten him.

7 112. Admiral SHIMADA had been cross-examined,
8 on behalf of Mr. TOGO, on his first appearance in the
9 box. His testimony was then that he had no clear recollection
10 of having seen the final Japanese note before
11 it was delivered to the United States on 7 December
12 1941--and he added the embellishment that he did not
13 believe the testimony of Admiral OKA to the effect that
14 that note had been distributed in the Liaison Conference.
15 He was then asked whether he had said, in interrogation
16 by the prosecution prior to the commencement
17 of these proceedings, that he had seen that draft, and
18 had then replied that he had.

19
20 "A. Well, I somewhat recall that, but at the time
21 my recollections themselves were very vague.

22 "Q. You recall that you did say it, but you think
23 your recollection is better now, is that it?

24 "A. At that time when I was interrogated on various
25 ous questions I had not thoroughly surveyed and
~~studied the situation in which I was being interrogated.~~

1 Later, as a result of trying to recall my memory, I
2 have come to the result which I have already spoken to
3 you about in connection with my present state--the
4 present state of my recollection.

5

6 "A To state the facts as directly and frankly
7 as possible, I actually read the document for the first
8 time after I had been confined at Onori Prison. And
9 after receiving a copy of this note from the Foreign
10 Office, and after having read the document, I was rather
11 deeply impressed.

12 "THE MONITOR: And knowing for the first time
13 what it was.

14 "A (continuing) and so I tried to trace back
15 the threads of my memory in connection with this ques-
16 tion, and I came to the conclusion that I had never
17 read this document myself before . . .

18 "Q Were you interrogated by the International
19 Prosecution Section at Onori Prison?
20

21 "A No.

22 "Q Where?

23 "A At Sugamo.

24 "Q That is after you had been at Onori Prison, is
25 it not?

579

"A Yes."

1 If, reading the document at Omori, he realized that he
2 then saw it for the first time, he could not soon af-
3 terward at Sugano, "because he had not studied the
4 situation", have had a vague recollection when he talked
5 to the prosecution about the matter. Thus does he
6 destroy his own credibility. With its protagonist
7 falls the SHILDA Plan.

8 Nor did he survive any better his second ap-
9 pearance on the witness stand. In his direct testimony
10 he stated that in May 1946 Admiral NAGANO, hearing of
11 Mr. TOGO's mention to the prosecution of the ITO Inci-
12 dent, and becoming "inconsed", came to him and asked
13 whether he, Admiral SHILDA, recalled the occurrence.
14 He did not, he said--although as he pointed out to ad-
15 miral NAGANO, as Navy Minister he certainly should have
16 remembered it had it happened. The two then questioned
17 the other defendants "in order to dispel any doubt
18 whatsoever." ⁵⁸⁰ How the statements of the other defend-
19 ants could dispel any doubt--which, as he had said
20 never existed anyway--in the case of such an incident
21 which, if it had not happened, he could certainly never
22 have had any doubt was a fabrication is an interesting
23 point. On cross-examination by the prosecution, more-
24 over, Admiral SHILDA said that when he first heard of
25 580. T. 37,030.

1 the matter from Admiral NAGANO he "did not immed-
2 iately become incensed."

3 "Q. How long did it take you to become
4 incensed?

5 "A. After investigating the matter and
6 trying to call back my memories on this point, as
7 well as ascertaining the recollections of other
8 members who had been present at the Liaison Confer-
9 ence, it became clearly apparent that TOGO was not
10 telling the truth and therefore it was but natural
11 that for the sake of the Navy I should become incensed." 581.

12 Not at all. It was but natural, if Mr.
13 TOGO's story was a falsehood, that for the sake of
14 the Navy he would have become incensed immediately
15 upon hearing it for the first time--no need to wait
16 to try to call back memories, when if the incident
17 had never happened he must have known the falsehood
18 at once for what it was; no need to have the testi-
19 mony of other defendants to support him in his
20 defense of the "honor of the Japanese Navy." If you
21 ask me whether I have seen a murder committed, I
22 have no need to search my memory; if I have, I can
23 never forget it, and I know that I cannot have forgot
24 it if it happened. Admiral SHIMADA would know that
25

1 if ever the honor of his Navy had been murdered
2 before his eyes, he could never have forgot it, and
3 need not search his memory to see whether he had.
4 Far less could he have any interest in the memories
5 of others. He would have become incensed immediately
6 upon first hearing such a false slander. The only
7 explanation, consistent with ordinary human nature,
8 of this delay in becoming incensed, is that the
9 admirals did not become incensed until, having con-
10 ceived their plot of destroying all record of the
11 incident--the SHIMADA Plan--having persuaded or in-
12 timidated all others having knowledge of it to
13 "forget," they became "incensed" ten or fifteen
14 minutes before going to tell Mr. TOGO that "he should
15 be more careful about the truth,"⁵⁸² or that "it
16 would not be worth his while" to mention the matter.

18 "113. Many other circumstances confirm that
19 the ITO Incident is no fabrication. General TOJO
20 has testified that the Emperor on more than one
21 occasion enjoined him to exercise the utmost care to
22 insure that Japan's declaration of war should be
23 delivered prior to commencement of hostilities.⁵⁸³

24 No reason suggests itself for the Emperor's having

25
582. Tr. 37031.
583. Tr. 36390.

1 said such a thing, if he did, unless he had heard of
2 the Navy High Command's proposal; there is no proof
3 of gratuitous Imperial exhortations, in other
4 matters, to obey the law. Admiral SHIMADA himself,
5 moreover, testified to a curious incident which can
6 be explained on no other hypothesis than that of his
7 knowledge of the ITO Incident. "Both the Navy General
8 Staff under Admiral NAGANO and the Combined Fleet
9 under Admiral YAMAMOTO swore to me," he testified,
10 "that the provisions of international law would be
11 observed * * *."⁵⁸⁴ How odd, that top-ranking
12 admirals of the Japanese Navy should occupy themselves
13 with exchanging such vows--unless Admiral SHIMADA,
14 heaving with shame been present at the time of the
15 ITO Incident, had out of his pride for his Navy
16 (the genuineness of which no one doubts) and his
17 solicitude for its good name, the extent of which
18 this whole controversy with Mr. TOGO illustrates,
19 extracted from them their assurance not to do that
20 which would bring disgrace upon it.
21

22 Above all, Mr. TOGO had testified not only
23 to the ITO Incident, but also that Admiral NAGANO
24 had stated at the same Liaison Conference that the
25 Navy "wished to carry out a surprise attack."⁵⁸⁵

584. Tr. 37040.

585. Tr. 35714.

1 This has never been denied, by Admiral SHIMADA or
2 anyone else. Admiral SHIMADA himself did not deny,
3 at the time of his reappearance as a witness, that
4 Admiral NAGANO, in the course of the NAGANO-SHIMADA-
5 TOGO conversation, had admitted having made this pro-
6 posal to the Liaison Conference but had said in
7 effect that even though he had so proposed, the
8 Foreign Minister was not obliged to assent to it.⁵⁸⁶
9 Admiral SHIMADA's summation devotes some argument to
10 the question of two meanings of the term "surprise
11 attack one, an attack without a preceding declaration
12 of war; the other, an attack achieving tactical sur-
13 prise."⁵⁸⁷ This latter is a purely operational matter.
14 Admiral NAGANO's proposal to the Liaison Conference
15 is tacitly admitted in the summation to have been
16 made,⁵⁸⁸ but is contended to have been of the latter
17 kind. It remains to be explained for what possible
18 reason, if it was, it was brought up at the Liaison
19 Conference at all. The Liaison Conference, as is
20 shown by all the evidence in the case, had no concern
21 with and was not permitted knowledge of matters which
22 were purely of military operational or strategic
23 nature.
24 ^{586.} Testimony of TOGO (Tr. 35714-715).
25 ^{587.} Summation of SHIMADA, 54-a--61-b (Tr. 45420-30).
^{588.} Id., (Tr. 45430).

1 concern.⁵⁸⁹ Admiral NAGANO's words in the Conference
2 could not have referred to the operational question,
3 which he would never have hinted to that body; it
4 could have meant only the same thing as Admiral ITO's
5 attack without service of notification. At the
6 Liaison Conference Admiral NAGANO was participating
7 in decision, not of operational naval problems, but
8 of the national policy, and specifically the correla-
9 tion of diplomatic formalities with naval operations;
10 a "surprise attack," mentioned in such a context,
11 can only be an attack which as a matter of national
12 conduct, not of naval operations, should achieve
13 surprise. He would not have mentioned "surprise
14 attack" at all unless it had relation to the matter
15 then under discussion, commencement of war and its
16 relation to service of a declaration of war. It is
17 submitted that this consideration alone would be
18 conclusive whether the ITO Incident had real, or
19 only fanciful, existence.
20

21 The SHIMADA Plan, it is submitted, has
22 wholly failed.

23 114. The prosecution's treatment of the ITO

24 589. Testimony of TOGO (Tr. 35702); TOJO (Tr. 36391),
25 YAMAMOTO (Tr. 26097), and SHIMADA (Tr. 34818).

1 Incident deserves a word or two. They say that
2 "The exact details of this controversy need not
3 concern us here, since the final outcome adopted in
4 accordance with the proposal of this accused, was to
5 give a formal notice in an ambiguous form to be
6 delivered immediately prior to the attack."⁵⁹⁰ This
7 bland "the details need not concern us" is a curios-
8 ity, in view of the fact that the last hope of proving
9 a conspiratorial, a criminal or an aggressive intent
10 of Mr. TOGO's rests on proving him guilty of improper
11 conduct in this matter. However, the prosecution
12 proceed, despite this professed neutrality toward
13 the controversy, to assume "the details," and to
14 assume them contrary to all the evidence in the
15 case. Specifically: The "final outcome" was, as
16 we have seen, not "in accordance with the proposal
17 of this accused," who had proposed taking the usual
18 and customary procedure for starting a war. He
19 never proposed the giving of a notice in "ambiguous
20 form," which would not be "usual and customary pro-
21 cedure"--nor was the "final outcome" an "ambiguous"
22 notice.⁵⁹¹ His proposal was not to deliver the
23 notice "immediately prior to the attack"; for he did
24

25 ⁵⁹⁰. Summation, W-34 (Tr. 41929).

⁵⁹¹. Summation for the Defense, Section "E", "Some
Questions of International Law," Section 16,
(Tr. 42441-46).

1 not know the time of attack and never proposed nor
2 mentioned any hour for delivery of the notice. As
3 we shall see later, these "details" do concern the
4 prosecution vastly; that is a matter which we shall
5 examine fully. But from this example of the prose-
6 cution's methods it will, I believe, readily be
7 recognized that to undertake a detailed answer to
8 their summation against Mr. TOGO individually is not
9 possible within any reasonable limits of time and
10 patience. That summation is packed with this type of
11 misstatement of the evidence and of fact in every
12 paragraph; it is self-contradictory and is in
13 contradiction of the general summations on the same
14 topics; it is filled with inferences purporting to
15 be drawn from evidence which, when turned to, is
16 often squarely opposite in effect to that which it
17 is stated to have. It is irresponsible and prejudicial
18 in effect if not in intent. I shall have to leave
19 the matter with this blunt statement; as time does
20 not permit of pointing out each of these details,
21 neither is it permitted by the endeavor to present
22 with clarity the real issues of the case. If the
23 Tribunal has any doubts in the matter, a brief
24
25 591. Summation for the Defense, Section "E", "Some
Questions of International Law," Section 16,
(Tr. 42441-46).

1 investigation of the summation in question will
2 soon dispel them. Henceforth I shall continue to
3 treat of what the evidence shows in regard to the
4 issues, referring to only the substantial points
5 posed by the prosecution's summation; that document
6 neither will withstand investigation nor is deserving
7 of refutation.

8 115. The type of notice and the time for
9 its delivery having been decided, there remained the
10 question of its contents. "The exact time on which
11 the final notification to the United States should
12 be delivered," say the prosecution, following the
13 lead of some of the defendants, "was left by the
14 Liaison Conference to the decision of the accused,
15 together with the High Command."⁵⁹² "What was done
16 more specifically is in evidence through the testi-
17 mony of several witnesses, and again is disputed by
18 no one. As we have seen above, the question of the
19 time of delivery had come up when the Navy High
20 Command had agreed to service of a notification in
21 Washington. To return to Mr. TOGO's testimony for
22 the full account:

24 "Upon the opening of the following Liaison
25 Conference Admiral ITO announced that the Navy had

592. Summation, WW-35 (Tr. 41932).

1 no objection to delivering the notification of
2 termination of the negotiations in Washington, and
3 requested that the notice be delivered at 12:30 p.m.,
4 7 December, Washington time. No one opposed. I
5 inquired whether that would leave a sufficient time
6 before attack, and he said that it would. * * * It
7 was therefore so agreed.⁵⁹³

8 The time for delivery was thereafter changed
9 from 12:30 to 1:00 p.m. In Mr. TOGO's words, again:

10 "In the afternoon of 5 December the Vice-
11 Chiefs of Army and Navy General Staffs, General
12 TANABE and Admiral ITO, called on me. Upon entering
13 my office Admiral ITO stated that it was the desire
14 of the High Command to postpone delivery of the
15 final note in Washington from 12:30, as previously
16 agreed upon, to 1:00 o'clock, and asked my consent.
17 I feared that the time between notification and
18 attack might be made too short, and asked why the
19 change was desired. Admiral ITO said that he needed
20 the postponement only because of his own miscalcula-
21 tion of the time. General TANABE said that the
22 Army's operations would commence after those of the
23 Navy. I asked how much time was needed between
24

25 593. Tr. 35716; see also testimony of MUTO
(Tr. 33174) and TANABE (Tr. 35569).

1 notification and attack, but was told that the
2 operational plans were secret and could not be dis-
3 closed. I then insisted on knowing whether the
4 proposed arrangement left an adequate time before
5 the attack, and upon receiving Admiral ITO's assur-
6 ance that it did, I agreed to the change. * * * The
7 agreement to change the time was reported to the
8 Liaison Conference by Admiral ITO on the 6th. No one
9 opposed this, and it was approved.⁵⁹⁴

10 The facts of this meeting are confirmed by
11 the testimony of General TANABE, one of the two
12 regular attendants at the Liaison Conferences of
13 those days not a defendant here;⁵⁹⁵ the report of
14 Admiral ITO to the Liaison Conference, by the testi-
15 mony of General NUTO.⁵⁹⁶

16 In this state of the facts, what can be the
17 meaning of the language that "the time for delivery
18 was left by the Liaison Conference to the Foreign
19 Minister and the High Command"? There seems to be
20 an implication of consultation; but all the evidence
21 is that the time was fixed by the Naval High Command,
22 first actually in the Liaison Conference, then as
23 changed presented to the Foreign Minister for his
24

25 594. Tr. 35721-22.
595. Tr. 35569-70.
596. Tr. 33175.

1 approval, and finally approved by the Liaison
2 Conference. It is idle to talk of consultation--far
3 more, as the prosecution do, of the Foreign Minister's
4 having been "appointed" by the Liaison Conference in
5 connection with fixing the time--when the Foreign
6 Minister could get no more definite answer concerning
7 the time between notification and attack than that it
8 would be "sufficient" or "adequate." He had nothing
9 to do with fixing the time; he did not consult over
10 it; the situation is precisely what Admiral SHIMADA
11 himself thrice admitted: that it was the Navy's
12 "demand" which was presented to the Foreign Minister
13 for his approval.⁵⁹⁷ It was not he to whom the time
14 was a vital matter; it was the Navy, for whom it
15 involved operational problems;⁵⁹⁸ it was not he, but
16 the Navy, who had demanded in the Liaison Conference
17 that the note be delivered as late as possible.⁵⁹⁹
18 Certainly the Foreign Minister would not be the
19 party interested in late or otherwise irregular
20 delivery.
21

22 116. The prosecution's purpose in "appoint-
23 ing" Foreign Minister TOGO one of a committee to fix
24 the time of service of the notification in Washington

25 597. Tr. 37042, 37043.

598. Testimony of TOGO (Tr. 35714-16).

599. Testimony of HUTO (Tr. 33176).

1 is to convict him of negligence or malice in
2 connection with the fact that delivery of the
3 notification was not made until after the war had
4 commenced. The argument involves first the assump-
5 tion that Foreign Minister TOGO knew not only the
6 time at which it was planned that the war would
7 commence, which was to have been with the Pearl
8 Harbor attack at 1:25 or 1:30 Washington time,⁶⁰⁰ but
9 as well the actual time at which the first attacks
10 on territories in various parts of Asia would, y
11 by error or violation of orders, in fact take place.
12 It then involves maintaining the contention that--
13 contrary to his own denial and the implications of
14 every word of evidence in the case concerning the
15 methods and attitude of the High Command--Mr. TOGO
16 was advised when the attack would occur. The prose-
17 cution go further, and half-assert the remarkable
18 proposition that he must have known the place of
19 attack, Pearl Harbor--a matter so secret that mention
20 of it was cut out of the Navy's top secret operational
21 orders before they were circulated among the highest
22 naval officials,⁶⁰¹ so secret that it was not

24 600. Summation for the Defense, Section "E", "On
25 Some Questions of International Law," Section
17, n86 (Tr. 42449).

601. Ex. 1252 (Tr. 11193), p. 7, (not read).

disclosed to the Supreme War Council,⁶⁰² and shown
1 by all the evidence to have been known to no cabinet
2 ministers except those of War and Navy.⁶⁰³ The
3 "evidence" which the prosecution consider to prove
4 these points is most amusing.⁶⁰⁴ First, that immediate-
5 ly after the attack on Pearl Harbor Admiral OKA
6 reported it by telephone to Mr. TOGO; "and there is
7 no evidence to show that this telephone call one hour
8 after the time set for delivery of the note evoked
9 any surprise"! The burden being, naturally, on the
10 defendant to prove his surprise. The prosecution did
11 not cross-examine Mr. TOGO about his surprise. Second,
12 that General TOJO "stated that when the accused came
13 to see him with President Roosevelt's message, he
14 mentioned that it was already too late because at
15 that very same time the Japanese planes were taking
16 off from the carriers"; from which words the Foreign
17 Minister, presumably, is to be supposed to have
18 deduced where the planes were going and when they
19 would arrive. General TOJO did not, of course,
20 testify as he is here quoted; he testified to having
21 said that he "was afraid that by this time the planes
22
23

24 602. Tr. 36331.

603. Testimony of TOGO (Tr. 35702), TOJO (Tr. 36826,
36391), SHIMADA (Tr. 34818) and TANABE (Tr. 35569).

25 604. Summation, WW-35 (Tr. 41932-34).

1 would be beginning to take off"; Mr. TOGO in any
2 event denied that there was such a conversation at
3 all.⁶⁰⁵ Third, "the Foreign Ministry acted for the
4 military authorities in obtaining the military
5 information regarding the Pacific area in general
6 and Pearl Harbor in particular just before the out-
7 break of war"; and while admittedly there is no
8 evidence that the Foreign Minister ever knew of such
9 activities, the information was seen by his sub-
10 ordinates, wherefore apparently he should have known
11 that Pearl Harbor was to be attacked--as well as,
12 by a parity of reasoning, Batavia, Panama, Seattle,
13 Vancouver, Portland and other points which were not
14 in fact attacked.⁶⁰⁶ This routine of foreign offices
15 throughout the world is so well known that no answer
16 is needed to the argument that it is proof of know-
17 ledge by the Foreign Minister of when and where war
18 would begin,⁶⁰⁷ nor to the several misrepresentations
19 of the evidence contained in the paragraph.
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605. Tr. 36142-43.

606. Testimony of YAMAMOTO (Tr. 26107).

607. Ibid.

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117. There can scarcely be any doubt in the Tribunal's mind, we suppose, of whether any civilian cabinet minister was permitted knowledge of these jealously-guarded secrets of the High Command. The curious part of the prosecution's tortured attempt to prove knowledge is that in the end they admit that it is immaterial. "It is sufficient," they say, "that he did know there was to be an attack within a short time after the hour fixed for the delivery of the note."⁶⁰⁸ Here we can agree; of course he know that -- he would have been an imbecile not to have deduced it -- and his knowledge of it has no bearing on any issue. So long as he was assured in his own mind that there would be a lapse of time before attack, he would have been guilty of no crime even if he himself had set the time, in view of the fact that international law has been content to leave it sufficient that any period of time whatever elapse.⁶⁰⁹

That Mr. TOGO was however satisfied in his mind, and reasonably so, that there would be a considerable interval between notification and attack is, it is submitted, clear from the evidence. He

(608. Summation, §WW-35, Tr. 41,934

609. Summation for the Defense, Section "E",
"Some Questions of International Law",
§17, Tr. 42,446-51)

1 has testified in his affidavit that, knowing opin-
2 ion of international-law experts to be that even
3 one minute would suffice for compliance with the
4 Hague Convention providing for the giving of notice,
5 he was satisfied "that if a period of at least an
6 hour were allowed" it would be sufficient⁶¹⁰. He
7 was never told by anyone whether the time to elapse
8 would be an hour, or more, or less; his one at-
9 tempt to learn the fact was met with the rebuff
10 from Admiral ITO that it was an operational secret
11 which could not be divulged to him⁶¹¹. In each in-
12 stance when the Navy's demand for delivery at a
13 given time was presented, however, the Foreign Min-
14 ister had requested assurance from Vice-Chief of the
15 Naval General Staff ITO that there would be a "suf-
16 ficient" or an "adequate" time, and that assurance
17 was in each instance given to him⁶¹². In view of
18 the fact that a naval general staff preparing to
19 initiate the hostilities of war would naturally
20 study the questions of procedure -- in addition to
21 which, as they have repeatedly shown by evidence
22 and contended by argument here, the Japanese Navy
23 leaders were specialists on the subject of international
24

25 (610. Tr. 35,723
611. Tr. 35,722
612. Tr. 35,716, 35,722)

1 law relating to war ⁶¹³ -- the Foreign Minister
2 cannot be considered, as he is suggested to have
3 been, negligent in accepting that assurance in a
4 matter in which he was entirely powerless to make
5 himself better informed.

6 His own concept of what would amount to a
7 "sufficient time" being that an hour or more would
8 suffice, he gave further explanation in cross-examin-
9 ation of why he had thought that there would be that
10 much or more time in this instance. The note was to
11 be delivered at 3 a.m. Tokyo time. "I felt," he
12 said:

13 "that it would be at least one hour after the
14 note was delivered that hostilities would com-
15 mence and that probably it would be two hours
16 or more before hostilities actually commenced." ⁶¹⁴

17 Asked to explain why he thought so, he said that in
18 the Liaison Conference of late October the High Com-
19 mand had been speaking of operations in "the South-
20 ern area", and in connection with such operations
21 had mentioned that
22

23 "dawn was a very suitable time for the opening
24 of hostilities. That is to say, they said

25 (613. Testimony of YANO, Tr. 26,456-57, TAKATA
Tr. 27,360-61, and SHIBA, Tr. 33,324-25.
614. Tr. 35,912)

1 that it would be most suitable and effective
2 if landing operations could be conducted in
3 this area at dawn. And when they referred to
4 . . . such subjects, I was assuming that they
5 were speaking about Malaya, the Philippines and
6 other points in that part of the world. As there
7 was not much difference in time, that is, dif-
8 ference in hours between this area which I had
9 just spoken and Japan, I thought that, if any
10 landing operations were to take place at about
11 dawn, the opening of hostilities would be taking
12 place shortly before then. Speaking in terms
13 of Japanese time . . . one p.m. in Washington
14 was about three in the morning in Japan, and
15 so I considered that it would be some time af-
16 ter this hour that hostilities would be commenc-
17 ed. And so, if hostilities were to be commenced
18 just shortly before dawn, then I thought that
19 would be around five o'clock or a little after
20 that, and, therefore, hostilities would commence
21 two hours or maybe a little longer after that --
22 after the time of three o'clock Japan time" ⁶¹⁵ .
23
24 It is difficult to know what more a civilian minister,
25 in this situation, could do to reassure himself than
(615. Tr. 36,141-42.)

1 thus to make his deduction from the information
2 available to him. He could certainly do no more
3 than he had done to insure that the time would be
4 sufficient.

5 As significant of Mr. TOGO's lack of know-
6 ledge of the short time which the Navy had actually
7 scheduled to elapse between notification and at-
8 tack, his reproaching of Admiral ITO after the com-
9 mencement of the war should be considered. Having
10 learned that the attack on Pearl Harbor had taken
11 place less than half an hour after the time for
12 which delivery of the note had been scheduled,

13 "a few days after the outbreak of the war when
14 Vice-Chief of the Naval General Staff ITO ex-
15 plained the matter to me I protested to him
16 that if the attack was to follow so soon on
17 the notification, I saw no reason for the Navy
18 to have objected to notification in the first
19 place. His reply was evasive -- to the effect
20 that "I am sorry for you; we cut it too fine"⁶¹⁶.

21 In the middle of December 1941 Mr. TOGO had mentioned
22 to General TANAKA Ryukichi, who testified to the
23 fact this incident of his rebuking Admiral ITO⁶¹⁷.

24 (616. Tr. 35,725
25 617. Tr. 35,546-47)

1 The occurrence should set at rest any speculation
2 whether Mr. TOGO knew when the attack was to occur,
3 and expected it to be within a very few minutes af-
4 ter 1 P.M. in Washington.

5 118. Lastly, the question of responsibility
6 for the contents, the wording, of the final note
7 must be touched upon. We have seen that the mili-
8 tary High Command were responsible for its form -- a
9 breaking off of negotiations -- and for the time of
10 its delivery; that they controlled its contents is
11 submitted to have been proved by the evidence. The
12 man who drafted it, Bureau Director YAMAMOTO, thus
13 describes the process:

14 "I had drafted the notification in accordance
15 with the decisions of various Liaison Confer-
16 ences; my draft had been submitted to the Army
17 and Navy Ministries, who made some suggestions
18 and changes, and it was then brought to the
19 Liaison Conference of 4 December and copies sub-
20 mitted to the participants, and in its final
21 form was approved by the Conference. . ."
22 ⁶¹⁸

23 The only evidence in contradiction of any part of
24 this testimony is that of Admiral SHI'ADA, who
25 "doesn't believe" that the document was ever distributed
(618. Tr. 26,095-96)

1 to the Liaison Conference. Other defendants, however,
 2 participants in the Liaison Conference, have affirmed
 3 the fact ⁶¹⁹. It is indubitable if anything can be
 4 that the actual drafting of the note was the joint
 5 work of Army, Navy and Foreign Ministries. This
 6 was admitted by General TOJO, who said that

7 "the notification was drafted by the secre-
 8 taries in accordance with the intentions and
 9 desires of the Ministers, and the fact is
 10 that the completed draft was proposed to and
 11 discussed at the Liaison Conference on the
 12 4th of December ⁶²⁰.

13 In this state of the record, the prosecution
 14 have adopted a remarkable position. It is this:

15 "The drafting of the final note to the United States
 16 was done primarily by Foreign Minister TOGO." ⁶²¹ No
 17 contention is made, naturally, that he did not ap-
 18 prove the work of his subordinate; there is on the
 19 other hand no evidence of personal participation by
 20 Foreign Minister TOGO in the actual drafting. All the
 21 evidence is that the contents of the note as drafted
 22 by the American Bureau of the Foreign Ministry were
 23 those dictated by Liaison Conference, War Ministry

24 (619. Testimony of TOJO, Tr. 36,389, TOGO, Tr. 35,721
 25 and OKA, Tr. 33,400.

620. Tr. 38,533

621. Summation 50-134, Tr. 39,682). Note also the
 remarkable statement that "the final text was the
 responsibility of TOJO and TOGO (Sum. §XX-67,
 (Tr. 42,003)

1 and Navy Ministry, and by no means represent the
2 Foreign Ministry's own ideas. Since in such circum-
3 stances it may be interesting to know to what extent
4 the Foreign Ministry is responsible for the con-
5 tents, we should note the language of the document
6 itself. From a reading of the body of the note --
7 down through the first paragraph of section 7 -- one
8 would suppose oneself to be reading the preamble of
9 a declaration of war against the United States and
10 Britain (President Roosevelt's estimate of it ⁶²²).
11 The two countries are mentioned together and (allow-
12 ing for the fact that there had been negotiations
13 with the United States and none with Britain) treated
14 alike; the language of the document is such as gov-
15 ernments habitually, in justification of their
16 course, state as the matter of inducement in declara-
17 tions of war. Now, it will be remembered that the
18 original draft had been prepared by the Foreign Min-
19 istry, which had commenced work on it several days
20 before the Liaison Conference after 1 December which
21 decided the form that it was to take ⁶²³; and here is
22 the strongest possible proof that the Foreign Minis-
23 try had supposed in preparing its draft that it was
24 going to require a declaration of war in conventional
25

(622. Ex. 2973-a, Tr. 26,256

623. Testimony of YAMAMOTO, Tr. 26,095-96)

1 form. As a result of the Liaison Conference decision
2 that only a notice of rupture of negotiations would
3 be given, a concluding paragraph to that effect was
4 added, in place of whatever may have been there orig-
5 inally; other changes, the nature of which is not
6 disclosed by the evidence, were made by the military
7 ministries; but the basic draft stands as it was
8 originally conceived, as a declaration of war. It
9 was plainly the intention of the Foreign Ministry to
10 deliver, and its expectation that it would be re-
11 quired to deliver, a conventional declaration of
12 war. That it did not is the result of the Liaison
13 Conference's decision, not of the Foreign Ministry
14 or the Foreign Minister's action.

15 119. These details of the drafting, form and
16 time for delivery of the final note are those which
17 the prosecution, somewhat earlier, said "need not
18 concern us." The way in which they do concern the
19 prosecution mightily become apparent when we read
20 on in their summation to learn that

21 "It may be true that the text of the final
22 note was approved by the Liaison Conference
23 and that its contents were reported to the
24 Cabinet without opposition. However, the
25 record of this trial is void of any suggestion

1 that, had the accused submitted a different-
2 ly worded document, it would have encountered
3 serious opposition from either the Liaison
4 Conference or the Cabinet" ⁶²⁴ .

5 The record of this trial on the contrary abounds with
6 evidence that the Foreign Minister was absolutely
7 precluded by Liaison Conference action from submit-
8 ting any "differently worded document", in the sense
9 of one of difference in substance rather than mere
10 phraseology. He would certainly have encountered
11 serious opposition if, after the Liaison Conference
12 had decided that only the breaking off of negoti-
13 ations was proper, he had submitted a conventional
14 declaration of war. He would certainly have met
15 with angry resistance if, the Liaison Conference
16 having decided to serve in Washington a declaration
17 going only so far, he had presented to it for its ap-
18 proval a declaration of war to be served upon the
19 Government of Great Britain. The main body of the
20 note even as it was finally approved shows what a
21 differently-worded document the Foreign Minister
22 would have presented had he not been limited by the
23 Liaison Conference decision in what might be done.
24 What an odd spectacle would be that of a foreign
25 (624. Summation, §WW-34, Tr. 41,929)

1 minister who, having only after a struggle against
2 the insistence upon giving no notice at all won
3 agreement to the delivery of a notification discon-
4 tinuing negotiations with the United States, should
5 report back a draft of a declaration of war against
6 the United States and Great Britain!

7 I fear, your Honors, that my discussion of
8 these details in connection with the final Japanese
9 note to the United States may have become tedious. I
10 have felt it necessary to treat it so extensively --
11 and much more, indeed, could be said of what is in
12 the record on this matter -- because I feel that with-
13 out correct and complete understanding of the subject
14 the responsibility and liability of Mr. TOGO cannot
15 be properly decided. Very much, there can be no
16 doubt of it, of the prosecution's case against him
17 revolves about this one point -- both legally, in that
18 he is charged with having been responsible for ar-
19 ranging treacherous attack, in violation of inter-
20 national law and of common decency, upon the United
21 States; and in that the fact of a note from Japan's
22 Foreign Ministry having been served upon the United
23 States after hostilities were actually in progress
24 has created against the Minister of that Ministry a
25 prejudice which the prosecution have utilized to the

full in presenting and arguing their case against
1 him. On the other hand, some of our codefendants
2 have attempted to utilize the same facts as their es-
3 cape from responsibility for Japan's foreign rela-
4 tions and her commencement of hostilities. I wish
5 now to discuss this question of responsibility; and
6 first, the defendants' contentions.

7 THE PRESIDENT: We will recess for fifteen
8 minutes.

9 (Whereupon, at 1445, a recess was
10 taken until 1500, after which the proceed-
11 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: Major Blakeney.

MR. BLAKENEY: Page 253, Section 120:

120. Some mention was promised a few pages

back of the reasons for the maneuverings of Admiral

SHIMADA in connection with the ITO Incident. These

reasons I mention now in connection with their bear-

ing on the much bigger subject. So far as the ITO

Incident is concerned, the matter is as I have said

of no particular importance to Mr. TOGO except as it

affects his credibility. We have seen that there is

no reason for him to have fabricated the incident,

and the logic of the facts show that it must have

occurred. The suggestion of a motive attempted by

counsel for Admiral SHIMADA -- though not by his

client -- of "the openly expressed ill-feeling of the

accused TOGO for SHIMADA," fails in the face of

Mr. TOGO's categorical exoneration of Admiral SHI-

ADA of any part in the matter except that of a by-

stander, and of the fact that the whole question of

Admiral SHIMADA's connection with the affair and his

minatory attitude was mentioned by Mr. TOGO only

when it was brought up by counsel himself in cross-

625. SHIMADA Summation, §61-b (Tr. 45,431)

affects his credibility. We have seen that there is

no reason for him to have fabricated the incident,

1 examination of Mr. TOGO.

2 On the other hand, the reasons impelling Ad-
3 miral SUIMADA thus to rush to the rescue of the Naval
4 High Command, staking on the venture even that last
5 of his prized possessions, his credibility, are plain
6 enough. They relate to the larger question. This
7 is the Admiral's way, more elaborate than that
8 adopted by most of the defendants, of trying to be
9 rid of his share of responsibility, as a powerful
10 member of the Liaison Conference, for the control of
11 Japanese foreign affairs by the militarists. Various
12 of the defendants have joined in this game, and
13 would like to dispose of their part in the manage-
14 ment of foreign affairs through the medium of the
15 Liaison Conference by saying airily, "diplomatic
16 matters were of course the responsibility of the
17 Foreign Minister." This pathetic attempt to evade
18 responsibility is exposed by every page of the record
19 of these proceedings.
20

21 121. Consider the subject-matter of the
22 Japanese-American negotiations, the diplomatic matter
23 of consequence during the time of the TOJO Cabinet.
24 Every item of the negotiations not only involves
25 military questions, but is of primary military inter-
est. Do these defendants mean that the Foreign

1 minister could at his own will fix the terms upon
2 which Japanese troops would be withdrawn from China?
3 Do t suggest that he could have given to the United
4 States the undertaking that Japan would or would not
5 in certain circumstances of American involvement
6 in the European war take action under the Tripartite
7 Pact? They surely do not mean that the Foreign
8 minister could revoke the decision of the Imperial
9 Conference of 2 July, taken at the insistence of the
10 High Command, and order withdrawn from southern
11 French Indo-China the troops which had been dispatched
12 thither in accordance with that decision. The sig-
13 nificance of the question of equality of commercial
14 opportunity in the Pacific area was its bearing on
15 access to military strategic resources. The "sub-
16 jects for study" of the Liaison Conference are dom-
17 inated by those of military interest; what diplomatic
18 questions are included are not committed to the
19 Foreign Ministry alone, but are "to be studied by
20 War, Navy and Foreign ministries and High Command." 626
21

22 "There was no interference in diplomacy from
23 outside the Foreign Ministry"? No defendant has de-
24 nied that the Liaison Conference of October 1941 de-
25 bated long and hotly whether to continue diplomatic
626.. Exhibit 1328 (Tr. 11,923).

1 negotiations with America, at all; none has denied
 2 but all agree, that the very, specific terms which
 3 the Foreign Minister might forward to his ambassador
 4 in the United States as matter for further negotia-
 5 tions were the subject, not only of discussion, but
 6 of the decision of the Liaison Conference. The
 7 time-limit was put on negotiations by the Liaison
 8 Conference, at the instance of the High Command; at
 9 the demand of the High Command, the Liaison Confer-
 10 ence on 1-2 November adopted the precise language of
 11 the proposals which would be presented to the United
 12 States, and voted that a failure of the negotiations
 13 based on them would lead to a decision for war. The
 14 Liaison Conference -- not the Foreign Ministry -- auth-
 15 orized the presentation to the United States of Pro-
 16 posal "B," when it seemed that Proposal "A" had
 17 failed . . . ⁶²⁷ . . . most of the diplomatic telegrams,
 18 including all important ones, being sent to the Army
 19 and Navy Ministries and General Staffs" ⁶²⁸ through the
 20 Military and Naval Affairs Bureaus ⁶²⁹ -- and seemingly
 21 to the Lord Keeper of the Privy Seal as well ⁶³⁰ ---
 22 the Foreign Ministry could scarcely claim to take even

24 627. Testimony of TOGO (Tr. 35,703) and YAMAMOTO
 (Tr. 26,023)

25 628. Testimony of YAMAMOTO (Tr. 25,908)

629. Testimony of TOGO (Tr. 35,707)

630. Id., Tr. 35,820.

the leading part in diplomacy. "Collective manage-⁶³¹
 1 ment" of foreign affairs had come, as Mr. TOGO said,⁶³²
 2 as the corollary of the collective responsibility
 3 of the Cabinet; but the evidence here has shown in a
 4 thousand instances how much of the management during
 5 the Japanese-American negotiations was that of still
 6 another, and an entirely irresponsible, body, the
 7 military High Command. Mr. TOGO gives several
 8 examples of the ignoring of the Foreign Ministry in
 9 matters closely related to foreign affairs -- the
 10 issuance of military occupation currency to be used
 11 in foreign countries, in the spring of 1941, without
 12 consultation with the Foreign Ministry; Lord Keeper
 13 KIDO's injunction to War and Navy Ministers only,
 14 upon the resignation of the KONOE Cabinet, to review
 15 the question of the basic national policy for war or
 16 peace -- many others are known to the Tribunal from⁶³³
 17 the evidence and from history.⁶³⁴

19 122. The position of these defendants is
 20 hopelessly untenable. The record is far too full of
 21 the claims of these same defendants, now asserting the

22 631. Tr. 35,667-8

23 632. Testimony of OKADA, Tadahiko (Tr. 17,752);
 Exhibit 687-B (Tr. 35,557).

24 633. Tr. 35,669-70

25 634. See, for example, TAKEUCHI, War and Diplomacy
in the Japanese Empire (1935).

1 undivided responsibility of the Foreign Minister for
2 diplomacy, of their intentions and actions for
3 settlement of diplomatic matters. Putting aside any
4 further consideration of military control of the
5 national policy, we will mention as exemplary of
6 such control of the actual execution of diplomatic
7 affairs only the Liaison Conference management of
8 the steps for commencement of war against the United
9 States and Britain -- which brings us back to Admiral
10 SHIMADA. This instance is the perfect example of
11 the extent to which the real management of the sub-
12 stance of foreign policy had been firmly grasped by
13 the Army and Navy, leaving to the Foreign Ministry
14 the bare forms; it is the most incredible example
15 of the efforts to shirk responsibility. In connec-
16 tion with these formalities for commencement of hos-
17 tilities the defendants pretend indifference; we can
18 find statements of defendants who participated in
19 the Liaison Conference that "I was of the opinion
20 that the problem of diplomatic procedure should
21 naturally be carried out upon the responsibility of
22 the Foreign Office"; ⁶³⁵ "it was my firm belief that
23 I could rely upon the knowledge and skill of the For-
24 eign Minister and his experts. Consequently, I never
25 635. Testimony of OKA (Tr. 33,401)

felt any concern about the procedure that was adopted

1 until after the end of the war"; ⁶³⁶ "I depended ex-

2 clusively upon the advice of the Foreign Minister"

3 for "understanding of that last notification"; ⁶³⁷

4 "once the decision that was was unavoidable had been

5 reached, all these more or less technical matters

6 were left up to the Foreign Minister to do on his

7 own responsibility in such a way that all proceed-

8 ings would be in accordance with international law

9 and, therefore I did not have much interest in these

10 matters"; ⁶³⁸ "I was of the opinion the matter was

11 competently handled by the responsible officials." ⁶³⁹

12 But who were they? What is the meaning of a Premier

13 who says that he depended exclusively upon the ad-

14 vice of his Foreign Minister in regard to a note,

15 when he had joined with all other attendants to vote

16 down the Foreign Minister's suggestion that he be al-

17 lowed to manage it in the usual and customary way? ⁶⁴⁰

19 636. Testimony of SHIMADA (Tr. 34,673)

20 637. Testimony of TOJO (Tr. 36,532)

21 638. Testimony of SUZUKI (Tr. 33,315)

22 639. Testimony of KAYA (Tr. 30,657)

23 640. The discussion of these matters in the TOJO
 24 affidavit (Tr. 36,388-91), is obviously statement of
 25 bare conclusions, and will not be discussed here.
 Thus, the generality that the note to the United
 States "was to be in the nature of a notification of
 war based upon international law, and Japan was to re-
 serve freedom of action after handing the notification
 to the United States" (Tr. 36,390) is patently General
 TOJO's opinion of the effect of what was done when,

1 If it was their firm belief that they could rely upon
2 the knowledge and skill of the Foreign Minister, why
3 not rely on him, instead of overruling his suggestions
4 in what should have been his own field? If they
5 were of the opinion that the problem of diplomatic
6 procedure should naturally be carried out upon the
7 responsibility of the Foreign Ministry, why did they
8 tell the Foreign Minister what kind of communication
9 he might make, tell him when to deliver it, and
10 participate in the drafting and revising of the
11 very wording of it? What do these people mean? It
12 is difficult to be temperate in the presence of such
13 as this, when we find one of them in his summation
14 saying that

15 "No one doubts or has any evidence been
16 offered to the contrary that the Foreign Minister was
17 chargeable with diplomatic matters. Certainly the
18 final notification to the United States fell within
19 this category of duties. The government left the
20 physical fact of the note's construction and contents
21 to the Foreign Minister with the Navy General Staff
22 interested mainly in the time element of delivery.

23 640. (Cont'd) as he has just stated, "Foreign
24 minister TOGO presented the draft of the notification
25 for discussion at the Liaison Conference of 4 December
based on the above decision. This proposal was ap-
proved unanimously" (Tr. 36,389).

1 It was carried out in the admission of TOGO himself.⁶⁴¹
2 This, from a man who admitted that his subordinate and
3 his subordinates participated in preparing the note!⁶⁴²
4 With what contemptible pusillanimity, now they see
5 what have been the results of their cunning in not
6 allowing the Foreign Minister to do his duty as he
7 knew how to do it, do these militarists scurm and
8 writhe, trying to free themselves of the responsibil-
9 ities which they usurped!

10 123. These defendants were so indifferent,
11 no uninterested bystanders when the procedure for
12 commencing Japan's war against America was under dis-
13 cussion. They could not be, because the Liaison
14 Conference which they controlled had made of that
15 question of procedure, not one of diplomacy, but one
16 of operations, of strategy. They had made it so, by
17 their support of, their failure to reject, the Navy's
18 insistence that it must be such. They had yielded to
19 the Navy's demand that it must have the right to make
20 a surprise attack against the United States; with
21 this they had conceded the Navy's right to determine
22 the form, the contents and the time of delivery of
23 Japan's final note to the United States. No one of

25 641. SHIMADA Summation, §59-a (Tr. 45,427-28)
642. Testimony of OKA (Tr. 33,500).

1 them has claimed or can claim that he fought in the
2 Liaison Conference for starting the war in the usual
3 way -- no one but Foreign minister TOGO, whom no one
4 of them professes to have supported in his fight for
5 the honorable and the decent; they have instead at-
6 tempted to flee the ground and escape responsibility
7 for the controversy by pretending that they never
8 heard of it. They were there; and it happened; and
9 they did not support him, or his contention would have
10 prevailed. It was they, equally with the dead ITO,
11 who limited what the foreign minister might do to
12 the giving of notice to the United States that ne-
13 gotiations were broken off; it was they also who did
14 not permit him at his desire to serve the declaration
15 of war which he urged be in usual and customary form;
16 it was they who acquiesced while the Naval High Com-
17 mand fixed the time for service of the notification
18 to suit its operational needs, and those alone. These
19 are the "more or less technical matters" which one
20 defendant would leave to the Foreign Minister, the
21 "problems of diplomatic procedure" which another is
22 of opinion are the responsibility of the Foreign
23 Ministry. Still another "was of the opinion the
24 matter was competently handled by the responsible
25 officials." Yes, the responsible officials; but who

1 them has claimed or can claim that he fought in the
2 Liaison Conference for starting the war in the usual
3 way -- no one but Foreign minister TOGO, whom no one
4 of them professes to have supported in his fight for
5 the honorable and the decent; they have instead at-
6 tempted to flee the ground and escape responsibility
7 for the controversy by pretending that they never
8 heard of it. They were there; and it happened; and
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11 who limited what the foreign minister might do to
12 the giving of notice to the United States that ne-
13 gotiations were broken off; it was they also who did
14 not permit him at his desire to serve the declaration
15 of war which he urged be in usual and customary form;
16 it was they who acquiesced while the Naval High Com-
17 mand fixed the time for service of the notification
18 to suit its operational needs, and those alone. These
19 are the "more or less technical matters" which one
20 defendant would leave to the Foreign Minister, the
21 "problems of diplomatic procedure" which another is
22 of opinion are the responsibility of the Foreign
23 ministry. Still another "was of the opinion the
24 matter was competently handled by the responsible
25 officials." Yes, the responsible officials; but who

1 are they? He was present when the matter was "handled";
2 he voted; he has no doubt who are responsible.

3 How can a foreign minister take responsibility
4 when he is not allowed to exercise it? Can he be held
5 responsible for the diplomatic documents which he delivers,
6 when they are drawn by order and with the participation of
7 militarists who have the power to make them their business?
8 When he doesn't know and can by no means in his power
9 learn the hour set for war, is he responsible for seeing
10 to it that a declaration be delivered a given time in
11 advance of that hour? These are the questions to which
12 the defendants must give a satisfactory answer before they
13 can be relieved of responsibility.
14

15 124. We have discussed the matters relating
16 to the commencement of the war from the point of view of
17 responsibility. I should by no means, however, wish it
18 to be thought from the extended treatment which I have
19 given to them that there is any attempt to shift from the
20 Foreign Minister a responsibility which is properly his
21 for conduct which is admittedly improper. Whatever share
22 of the responsibility is his, of course he accepts,
23 without, however, accepting that for the actions of
24 others; nor is the course which was
25

1 forced upon him by any means easily to be demonstrated
2 wrong. The question of the legal effect of the steps
3 actually taken has been fully discussed in another
4 place, where we have submitted that the note served
5 upon the United States did, even as limited in its
6 contents, amount in the circumstances to a declara-
7 tion of war; that the time provided for its delivery
8 would, had not the double mishaps of the late deliv-
9 ery and early attack intervened, have been sufficient
10 compliance with the requirements of international
11 law;⁶⁴³ and that those mishaps were in no wise the
12 fault or responsibility of the Foreign Minister.⁶⁴⁴

13 The situation is not one in which the Foreign
14 Minister, at first contending for what was proper,
15 was overruled and in the end weakly acquiesced in
16 that which he regarded as improper. He has testi-
17 fied that his feeling was that "after a hard struggle
18 I had succeeded in stopping the Navy's demand, but
19 had stopped it at the ultimate limit of international
20 law."⁶⁴⁵ It is submitted that he was correct in his
21 belief. As we have already argued, any notification
22 of commencement of war could properly be dispensed
23

24 643. Summation for the defense, Section "E," "So
25 Questions of International Law," §§16-17 (Tr.
42,441-51)

644. The Japanese-American Negotiations, §§75-76
(Tr. 43,710-18)

645. Tr. 35,716

1 with if his belief that the war was one of self-
2 defense was correct; he had recognized this from the
3 outset, but had "thought it better in every way"
4 that the usual course should be followed, "even in
5 a case where it might be superfluous, rather than
6 that there should be any question of Japan's good
7 faith observance of international morality." ⁶⁴⁶ Find-
8 ing himself, however, the only one interested in
9 morality or in Japan's good name, he had finally
10 accepted under compulsion a course which he consid-
11 ered to be technically correct, if undesirable; but
12 the fact that he had disapproved of it originally
13 does not brand it as legally wrong or him as criminal
14 for swallowing his original scruples.

15 Aside from the question of the correctness
16 of the course planned there is that of responsibility
17 for its miscarriage, which resulted in delivery of
18 the final note to the United States after hostilities
19 had commenced. This also has been fully treated in
20 our general summation, ⁶⁴⁷ to which it will suffice to
21 make reference. It has there been submitted that the
22 delay which occurred in Washington was in no way the
23 result of any fault of the Foreign Ministry, but of

24
25 646. Tr. 35,718-19
647. Loc. cit. supra n644

1 the grossest negligence of the Embassy exclusively,
2 and that no exception can reasonably be taken to the
3 Foreign Ministry's arrangements for the delivery. So
4 far as concerns the Foreign Minister's responsibility
5 in the matter it might be pointed out that the making
6 of arrangements for delivery -- the ordering that no
7 typists should be used, for example, in preparation
8 of the final copy, a point so much relied upon by
9 the prosecution -- was the responsibility of the
10 officials of the Foreign Ministry in charge of adminis-
11 trative detail, routine business. Such a contention
12 as that seemingly made by the prosecution, that the
13 Foreign Minister is personally responsible for such
14 an order as that no typists be used in drafting the
15 note (a perfectly normal, natural and proper ar-
16 rangement, by the way) is opposed to common sense and
17 ignores the realities of governmental life. If the
18 prosecution can seriously believe that the Foreign
19 Minister of a nation about to go to war is occupied
20 with nothing weightier than the assignment of typist
21 personnel in an embassy abroad, it is submitted that
22 the Tribunal cannot believe it.
23

24 125. The question of the message of Presi-
25 dent Roosevelt to the Emperor, sent on 6 December in
Washington, delayed in delivery to Ambassador Grew

1 and finally presented to the Throne in the small
2 hours of the morning of 8 December in Tokyo, having
3 been fully discussed in another summation,⁶⁴⁸ it is
4 necessary to say only a few words here concerning
5 it. In summing up against Mr. TOGO the prosecution
6 abandon the charge -- which is supported by no evi-
7 dence -- that he either had anything to do with or
8 had knowledge of the delay. The position now is
9 that "it makes no difference" whether he knew of the
10 delay, because he had some ten days earlier rejected
11 the proposal of the Ambassadors in Washington "to
12 the same effect"; "the appeal by the President would
13 not have been acceded to or even acted upon by him
14 even if it had not been received too late."⁶⁴⁹ The
15 argument already referred to has dealt with the
16 question whether the "appeal by the President" --
17 for such, rather than any proposal for settlement,
18 it was -- offered any substantial promise or hope
19 of leading to an agreement; reference to that argu-
20 ment, or mere reading of the message and the Ambassa-
21 dors' proposal, will dispose of the prosecution's
22 attempt to confound two entirely unrelated and quite
23 different matters. And in any event, the ultimatum
24

25 648. The Japanese-American Negotiations, §§73-74
(Tr. 43,704-10)

649. Summation, SWW-37 (Tr. 41,936)

1 of Mr. Hull which had led Mr. TOGO to the point of
2 resigning himself to war was still not withdrawn;
3 the President's message did not suggest amendment
4 of its terms; there was nothing in the fact of a
5 message from the President, expressing the earnest
6 desire for maintenance of peace (which was Mr.
7 TOGO's desire also), to affect his opinion of the
8 necessity of Japan's acting in self-defense. He had
9 worked arduously for peace, and no doubt would still
10 have done so; but something practical would be re-
11 quired to alter the existing situation, no mere
12 pious hope could be of use.

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1 126. One or two minor points in connection
2 with this message. When Mr. Grew finally got it, came
3 bringing a copy to ask the Foreign Minister to arrange
4 an audience for its presentation to the Throne,
5 MR. TOGO, the prosecution say, "after some hesitation"
6 agreed to present it to the Emperor.^{650.} The evidence
7 is otherwise; the prosecution's own exhibit shows
8 that Foreign Minister TOGO, rather than "hesitating,"
9 told Ambassador Grew that the arranging of an audience
10 with the Emperor at a time past midnight was difficult,
11 and that whether he would be received might depend upon
12 the contents of the message which he had to deliver.
13 Being given a copy of it, the Foreign Minister imme-
14 diately moved to take in regard to it what action it
15 might prove to justify.^{651.} It is quite true that
16 the Foreign Minister, at the interview with Mr. Grew,
17 "made no mention of" the fact that "the Japanese
18 attack was bound to take place within a few hours";^{652.}
19 neither has this any bearing on the efficacy of the
20 presidential message, nor is there any conceivable
21 reason that he should have mentioned it. This naive
22 charge is merely the prosecution's opinion that it was

24 650. Summation, SWW-37 (T. 41936).
25 651. Exhibit 3647 (T. at 35924-25).
652. Summation SWW-37 (T. 41936).

1 the duty of the Foreign Minister, having arranged for
2 declaration of war to be served within a proper time
3 before the commencement of hostilities, to tell the
4 American Ambassador of the declaration because the
5 letter happened to call on him.

6 The Emperor did approve the reply to the
7 President, which, as it was his duty to do, Foreign
8 Minister TOGO had drawn up. The prosecution seem to
9 wish to complain of this; perhaps they would begin to
10 grasp the realities of affairs of state if they once
11 sent a Foreign Minister to his Emperor with a presi-
12 dential message but without a draft of a proposed
13 reply, and saw their Foreign Minister sent back to
14 formulate and prepare for submission to the Throne his
15 advice of what action to take. Whether the Emperor's
16 reply so prepared is accurately characterized by the
17 prosecution as evasive"⁶⁵³ can confidently be left to
18 the judgment of anyone who reads the document with
19 the history of the Japanese-American negotiations in
20 mind.
21

22 It is believed that the conversations of
23 Foreign Minister TOGO with the British and American
24 Ambassadors, on the morning of 8 December, are of no
25 653. Ibid.

1 real significance to the case. The prosecution point
2 out -- which is quite true -- that although those
3 conversations took place after the outbreak of
4 hostilities, no mention of that fact was made by
5 Mr. TOGO; but they fail to mention any significance
6 of this. It is not apparent what difference in the
7 situation would have been created by an announcement
8 by Mr. TOGO of the state of war then in existence,
9 unless to spare the ambassadors that injury to their
10 self-esteem which the prosecution seem to feel for
11 them. It is so plain that when the war had once
12 started Mr. TOGO could have had no ulterior motive
13 in withholding information of the existence of the
14 state of war from the ambassadors that, it is sub-
15 mitted, his own explanation of why he did so can only
16 be accepted, however strange psychologically it may
17 appear from the western point of view: that, dis-
18 liking to mention to old friends the war which had
19 come between their countries, and assuming -- reasonably
20 enough -- that they had heard the news on the radio
21 broadcast which he knew was to have been made, he
22 confined himself to the farewell sentiments that it
23 was a matter of regret that regulations had come to
24 such a state, and that they must part in such
25

654.

1 circumstances.

2 127. In connection with this matter of
3 President Roosevelt's telegram we have again to
4 notice some strange antics of Marquis KIDO. He has
5 seen fit for some reason to deny that Foreign Minister
6 TOGO, in the talk which they two had in the Imperial
7 Palace just before 3 A. M. on the morning of the 8th,
8 informed him of the contents of the President's mes-
9 sage. This is another of those matters wholly imma-
10 terial to the case of Mr. TOGO -- it was no part of
11 his duty to insist that he be permitted to keep the
12 Lord Keeper of the Privy Seal informed, even against
13 his will, of such matters as he thought that func-
14 tionary ought to concern himself with; and whether
15 he did or did not inform Marquis KIDO of the contents
16 of the President's telegram is not even suggested as
17 affecting any liability of his before this Tribunal.
18 But it of course affects his credibility, if Marquis
19 KIDO's testimony is at all likely to be believed.
20

21 It is submitted that his testimony cannot be
22 believed, being incredibly at variance with all the
23 probabilities and out of keeping with the logic of
24 the facts. Here is the story. Mr. TOGO, he had
25 testified, having heard during the day on the 7th

654. T. 35729-30, 36140-41.

1 that the President's telegram might be expected to ar-
2 rive, had kept in touch with the Ministry of the Im-
3 perial Household concerning it, and when he finally
4 received it from Ambassador Grew after midnight he
5 called Lord Keeper KIDO on the telephone and told
6 him that he had the message. Thereafter at Marquis
7 KIDO's advice he consulted with the Premier concern-
8 ing the presidential message, then went to the Palace
9 for an audience, arriving at about 2:40, there met
10 the Lord Keeper and had a three- or four-minute talk
11 with him, telling him the contents of the message,
12 and had his audience. ^{655.} After the audience he
13 returned to the waiting-room, did not see Marquis
14 KIDO, and asked the chamberlain "Where is Marquis
15 KIDO?" Receiving the answer that the Lord Keeper
16 seemed not to be in his room, Mr. TOGO left the
17 Palace. ^{656.}

18
19 Marquis KIDO's testimony is in agreement up
20 to a point. He admits the telephone conversation with
21 Mr. TOGO after midnight, and says that "I was notified
22 that TOGO had proceeded to the Palace, so I went there
23 at 2:40 A. M. I only spoke with Foreign Minister TOGO
24 for a few minutes. I did not see the telegram nor did

25
655. T. 35727-29.
656. T. 35906.

1 he tell me of its contents and I went home, arriving
2 there at 3:30 A. M." ^{657.} He testified also that he
3 stayed in his office for some time, and finally being
4 advised that the Foreign Minister had finished his
5 audience and left, he too went home. ^{658.}

6 Marquis KIDO apparently relies on the fact
7 that his conversation with Mr. TOGO was very brief
8 as proof that he could not have learned the content
9 then -- relies on it so heavily that in his testimony
10 he shortened the length of the conversation, finally
11 from the "few minutes" which he first had it to "a
12 minute or two." ^{659.} At any rate, the difference from
13 Mr. TOGO's "three or four" minutes is still not very
14 great. A simple test will dispose of any evidentiary
15 value of this testimony: read the President's message,
16 understand it, and time yourself while you state the
17 gist of its contents. It will be found that a minute
18 will suffice to the recitation of that substance of
19 it which it would be important to mention at that stage
20 of the negotiations which had preceded it. But, says
21 the Marquis in his summation, the Foreign Minister
22 spent fifteen minutes with the Emperor discussing the

24 657. T. 31048.

25 658. T. 31610.

659. T. 31607.

1 matter, which shows that it would have been impossible
2 to discuss it with the Lord Keeper in three or four
3 minutes. ^{660.} This is a self-evident fallacy. Mr.
4 TOGO's testimony shows that he summarized the tele-
5 gram for Marquis KIDO, while he read it in full to
6 the Emperor; ^{661.} a formal reading in full does take
7 more than three or four minutes. The Emperor's reply
8 had to be discussed with him, and appropriate explana-
9 tions of the circumstances would naturally be given.
10 There is no inconsistency whatsoever in the evidence
11 on this point. It is to be feared that Marquis KIDO's
12 sense of time, by the way, is not very exact. He has
13 stated at all times -- diary, affidavit, cross-examina-
14 tion -- that he arrived at the Palace at 2:40. ^{662.} In
15 diary and affidavit he says that he arrived home at
16 about 3:30, ^{663.} and it required, he says, some ten
17 minutes for the drive between the two points. ^{664.} This
18 would leave him at the Palace for approximately forty
19 minutes. In cross-examination, however, he stated that
20 he remained there "about ten or fifteen minutes." ^{665.}
21 This admission, if true -- it is a little hard to know
22 which of the Marquis' statements represent his best
23

24 660. KIDO Summation, §307 (T.).
25 661. T. 35896.

662. Ex. 1239 (T. 16192); T. 31048.

663. Ex. 1239 (T. 16192); T. 31049.

664. T. 31606.

665. T. 31607.

1 recollection -- disposes of his claim that he waited
2 for Mr. TOGO until he learned that the audience had
3 ended; for Mr. TOGO has said that he finished his
4 audience and left the Palace at 3:15; the Lord Keeper
5 would have left at 2:50 or 2:55, according to this
6 testimony. But he contradicts himself again; for
7 he agrees with Mr. TOGO that their conversation ended
8 when the chamberlain on duty summoned Mr. TOGO to his
9 audience, which would have been very shortly before
10 3 o'clock.
11

12 Counsel for Marquis KIDO seems to imply that
13 the arrival of the chamberlain interrupted the
14 conversation, as if to suggest that Marquis KIDO was
15 prevented thereby from learning of the President's
16 message. ^{667.} If it had been true that there was an
17 interruption -- Mr. TOGO however said that "generally
18 our conversation had been concluded" ^{666.} and that the
19 Lord Keeper wished to learn more, he could have waited.
20 He would have said, "I'll talk with you more after
21 your audience; come to my office." And he would have
22 waited, instead of going home after ten or fifteen
23 minutes at the Palace.

24 128. What are the probabilities? Marquis
25 KIDO, already knowing of the fact of the arrival of
666. Ibid; 667. T. 35829; 668. Ibid.

1 the President's message (and knowing, he being an
2 intelligent man, what significance it had), heard that
3 the Foreign Minister had gone to the Palace, and
4 thereupon himself proceeded thither. For what purpose?
5 Why did he go? Because the Foreign Minister had gone,
6 obviously; to talk with the Foreign Minister. Talk
7 they did. Marquis KIDO doesn't say that he asked
8 Mt. TOGO what the President's message said, and that
9 the Foreign Minister refused to tell him; Marquis
10 KIDO doesn't say what other matter, of such trans-
11 cendent importance as to overshadow this, they may
12 have discussed; Marquis KIDO didn't confide that night
13 to his faithful diary that "I talked with Foreign
14 Minister TOGO, but did not hear the contents of the
15 President's message." Does Marquis KIDO wish to pose
16 as the sort of official who at such a time, having
17 gone specially to the Palace because the Foreign
18 Minister was there with a message from the President of
19 the United States for the Emperor, carefully confined
20 the conversation to the state of the weather? What,
21 tell us, Marquis KIDO, did you discuss with Foreign
22 Minister TOGO for three or four, or a few or one or
23 two, minutes? Is it conceivable that the Foreign
24 Minister in those circumstances could have kept his
25 conversation off the subject which had brought him

1 there for audience at such an extraordinary hour?

2 Marquis KIDO seemingly considers now that
3 President Roosevelt's telegram has a certain impor-
4 tance -- enough at least for him to go to some lengths
5 to explain his connection, or lack of connection, with
6 it. If the Foreign Minister didn't tell him of its
7 contents, why did he not ask? If he did ask, and as
8 he testified was about to be told when interrupted by
9 the chamberlain,^{669.} why did he not wait until after
10 the audience? And if he waited, but somehow missed
11 the Foreign Minister why did he not follow him to his
12 residence, or telephone to him ("it did not occur to
13 me"⁶⁷⁰) to find out about it? His entire failure to
14 make an effort to inform himself in the matter has only
15 one explanation: he was satisfied. He had learned
16 what there was to know about it.

17
18 129. One or two other points in the extended
19 summation of Marquis KIDO in reference to this matter
20 deserve notice. One is the attempt to distort the
21 meaning of Mr. TOGO's language in cross-examination
22 to make him say the absurdity that Marquis KIDO gave
23 his opinion of the Roosevelt message before hearing what
24 the message was about.^{671.} While it might be pointed

25 669. T. 31605.

670. T. 31611.

671. KIDO's Summation, §§303-6 (T.).

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25 669. T. 31605.

670. T. 31611.

671. KIDO's Summation, §§303-6 (T.).

1 out that the Marquis' own testimony leaves it at least
2 doubtful whether he did not already know "the contents"
3 of the President's message before talking with Mr. TOGO.
4 it is no part of my business to speculate how he would
5 have known, still he did say that "the matter was of
6 a nature that it should be handled by the Foreign
7 Minister"⁶⁷² -- that can be passed by. What is clear
8 is that Mr. TOGO at all times meant and in his testimony
9 said, that the sequence of events was that he told
10 Marquis KIDO that he had the President's message, that
11 it said so-and-so; that Marquis KIDO said, "I see that
12 it won't do," then asked what the Premier's opinion
13 was, to which Mr. TOGO said "The same as yours."⁶⁷³
14 There is no difficulty about it, nothing that playing on
15 words can obscure.

16 Marquis KIDO relies much on the testimony of
17 Marquis MATSUDAIRA, long his confidential secretary,
18 to prove that he had not learned from Mr. TOGO the
19 contents of the telegram, Marquis MATSUDAIRE said
20 first, in answer to questioning by Marquis KIDO's
21 counsel, that he had talked with Marquis KIDO toward
22 noon on 8 December about the telegram, and that

24 672. T. 31608.
25 673. T. 35899-900.

1 "Marquis KIDO said that at that time he was not
2 familiar with the details."^{674.} This was obviously
3 not very satisfactory; and in response to some mild
4 leading by counsel he was induced to say further that
5 "I don't think at that time that I heard anything of
6 the contents from him." The witness however was not
7 yet quite content with the accuracy of his testimony,
8 and then added: "He said he was at that time unfamiliar
9 with the details of the telegram -- of the contents of
10 the telegram."^{675.} Allowing for the taking of the
11 fresh start by the court interpreters in translating
12 this sentence, the matter rests at "He said he was at
13 that time unfamiliar with the details of the contents
14 of the telegram." Which is not very strong corrobora-
15 tion for Marquis KIDO; for the reading of the telegram
16 already suggested shows that there are no "details"
17 which would be recited in summarizing its contents.
18 The witness' answer plainly repeats the words of a man
19 who had been told the contents of a document, but has
20 not seen it himself to know the exact language of
21 the "details"; and is thus confirmation of Mr. TOGO's
22 account of the matter.

23 130. It is usually helpful, in these ques-
24 tions of credibility, to look to see who has the
25 674. T. 35600. 675. Ibid.

1 motive for not stating the truth. Mr. TOGO's is
2 undiscoverable; he has readily accepted full respon-
3 sibility for all that he did in connection with the
4 President's message. Marquis KIDO's is readily found.
5 He has somehow got the idea that he should profess to
6 feel that he should have advised the Emperor in the
7 matter -- perhaps that he should have advised that the
8 President's message offered a chance to avert war. It
9 didn't, of course; but the Lord Keeper of the Privy
10 Seal feels that he should have been keeper of the
11 Imperial conscience in that matter. At that time, he
12 admits, he considered that "the matter was of a nature
13 that it should be handled by the Foreign Minister."
14 But now he feels that he must deny that he was ade-
15 quately informed. Every circumstance is against him.
16 For if he had not been informed, he would have made it
17 his business to become so. He would not have chatted
18 with the Foreign Minister for a few minutes about the
19 weather, seen him off to his audience, and gone home --
20 or even waited for his emergence and, having missed
21 him, again gone home -- without further efforts, without
22 indeed pursuing the Foreign Minister until he caught
23 him unless he was perfectly satisfied with the position.
24 He could not have chatted with the Foreign Minister
25 even about the message itself, and left the matter

there, unless he was content.

1 The theme of Marquis KIDO's summation is
2 that Foreign Minister TOGO, receiving President Roose-
3 velt's telegram, had audience of His Majesty, the
4 Emperor, communicated to him the telegram, and ruth-
5 lessly disregarding if not maliciously trampling on
6 the dignity and prerogatives of the Lord Keeper of
7 His Majesty's Privy Seal, advised the Emperor of the
8 action which it would be desirable to take. If the
9 Lord Keeper wanted to exercise his prerogative of
10 advising the Emperor before the Foreign Minister got
11 in his advice, why did he not do so? The time for
12 audience was not set by the Foreign Minister, but by
13 the Lord Keeper's office. Marquis KIDO had only to
14 go to the Foreign Minister's residence and wait until
15 he could get a copy of the translated telegram at the
16 same time that the Foreign Minister got it -- or read
17 the Foreign Minister's copy -- return to the Palace
18 and be about advising. No one would have stopped him,
19 none would have refused him. There is no evidence that
20 anyone ever objected to his meddling in affairs of
21 state or politics. He did not go to the Foreign
22 Minister's residence; he did not ask the Foreign
23 Minister, when talking with him by telephone, "Send me
24 a copy of the translation as soon as it's ready, so
25

1
2
3 that I can advise the Emperor before your arrival."
4 He did nothing. The only explanation of his conduct
5 consistent with the facts is that there was discussion
6 of the President's message at the Palace; that Marquis
7 KIDO did, as Mr. TOGO testified that he did, give his
8 opinion that it would do no good; that he did hear
9 that the Premier's opinion was the same; and that
10 satisfied that with the reporting of that opinion to
11 the Throne, there was no occasion for him to make
12 the same report and give the same advice, he therefore
13 went off to bed in perfect contentment. He cuts a
14 sorry figure when he would deny this evidence of
15 circumstances.
16

17 131. My survey of the events preliminary to
18 and accompanying the commencement of the Pacific war
19 has been necessarily rapid. Limitation of time
20 prevent me from undertaking discussion of many minor
21 points of more or less interest, which because they
22 have been reiterated by the prosecution I should prefer
23 not to pass without remark. No doubt, however, the
24 case will be decided on the large questions, and I
25 have no hesitancy in assuring that decision of the small
ones will be easy once the determination has been made
in such basic matters as the defendant's intent and the
legal questions involved. As one example of this sort

of question, I mention the prosecution's charge that
 1 Foreign Minister TOGO continued the negotiations with
 2 the United States after war had been decided on with
 3 the intent of providing a screen for war preparations.^{676.}
 4 My feeling is that it is not a substantial issue, on the
 5 evidence, for in two ways it may be considered to merge
 6 into the larger question. Mr. TOGO's explanation of
 7 the matter is that there might yet have been some
 8 hope, however faint, of agreement; he had the commit-
 9 ment that all war preparations would be canceled in
 10 such an event;⁶⁷⁷ and that if the United States could
 11 be convinced that Japan would not yield to the Hull
 12 Note she might reconsider, night in accordance with the
 13 suggestion offered to her⁶⁷⁸ turn back and give con-
 14 sideration to Proposal "B."^{679.} This is a statement
 15 of the same viewpoint as that of American Secretary of
 16 State Hull, that it is the duty of a diplomat to
 17 "clutch at straws" even in face of a situation
 18 "virtually hopeless"⁶⁸⁰ -- even, in his case also, after
 19 he had confided Japanese-American relations to the
 20 hands of his army and navy.

- 23 676. Summation, SW-31 (T. 41922-25).
 24 677. Testimony of TOGO (T. 35697) and TOJO (T. 36408-744).
 25 678. The Japanese-American Negotiations, 871 (T. 43699-
 679. Testimony of TOGO (T. 35712-14). 701).
 680. Exhibit 2840 (T. at 26362).

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1 It is submitted that if Mr. TOGO be found to
2 have been sincere in his desire and efforts to conclude
3 a peaceful settlement before the decision of war, there
4 is nothing in the fact of his continuing thereafter to
5 hope and try in desperation to avert war to convict him
6 of having altered his intention. Looking at the matter,
7 moreover, from the legal point of view, solution of the
8 larger question may well dispose of this. Mr. TOGO, it
9 is clear, was expecting that in due course and before
10 the opening of hostilities there would be served upon
11 the United States a notice which was legally tantamount
12 to a declaration of war. The contention that he should
13 in good faith have broken off negotiations or otherwise
14 taken some action vis-a-vis the United States and the
15 negotiations is but to propose placing upon him a duty
16 of giving the United States a prior notification of
17 several days, instead of the hours or minutes which the
18 law makes sufficient.

19 For these same reasons I shall omit mention of
20 numerous related questions, questions which the prosecu-
21 tion have discussed as bearing on Mr. TOGO's intention.
22 Such is the question of the relation to his state of
23 mind of the fact of existence in his ministry of various
24 drafts of proposed courses of action during or after
25 negotiations with the United States, of procedures for

opening of war, and the like. The much-discussed draft
1 by Mr. YAMAMOTO, for example -- the "YAMAMOTO Private
2 Draft,"⁶⁸¹ as it is entitled -- is a document which may
3 or may not support any part of the inferences which the
4 prosecution would draw from it; but it is in any event
5 shown to have been only an example of a class of document
6 in which Japanese government offices abounded,⁶⁸² it is
7 not shown ever to have come to the notice of Mr. TOGO,⁶⁸³
8 and it is submitted to have no bearing on the real issue,
9 that of Mr. TOGO's intention.
10

11 As one further example, the question of the
12 no-separate-peace treaty among Japan, Germany and Italy
13 has, in my submission, no significance -- once war has
14 been decided such agreements are only a natural step
15 by way of preparation for war and, as the President once
16 remarked, not "in themselves criminal"⁶⁸⁴ -- and I there-
17 fore omit discussion of how it was negotiated by the
18 Foreign Minister at the direction of the Liaison Con-
19 ference.⁶⁸⁵
20

21 132. It can scarcely be argued that the com-
22 mencement of war on 8 December 1941 represented the
23 realization of the desires of Foreign Minister TOGO,

24 681. Ex. 2975 (Tr. 26,297).

25 682. Testimony of TOGO (Tr. 35,733-34).

683. Testimony of YAMAMOTO (Tr. 26,333).

684. Tr. 17,468.

685. See the testimony of TOGO (Tr. 35,664-65,
35,734-36).

the one man in Japan shown to have resisted its coming
1 vigorously and consistently, or the fruition of any plans
2 of his. Rather we are compelled by the evidence to the
3 conclusion that to him it was the ruin of all that he had
4 hoped and worked for throughout his career. On this,
5 which is submitted to be the one issue remaining in his
6 case, the main point can never be lost sight of, cannot
7 be obscured by any details which may be ambiguous or
8 doubtful: he had never planned or conspired to wage wars,
9 of aggression or otherwise, against any nation whatsoever;
10 he had fought aggression and the use of force throughout
11 his life. It is incredible that he should have reversed
12 his course in a few days of the autumn of 1941.

14 WAR-TIME DIPLOMACY AND "GREATER EAST ASIA"
15 RELATIONS.

16 133. I have no intention of speaking at
17 length of the events of war-time while Mr. TOGO served
18 as Foreign Minister either still in the TOJO Cabinet
19 until 1 September 1942, or in the SUZUKI Cabinet from
20 April to August 1945. If I am not mistaken, the events
21 of war-time have little bearing on the questions of
22 legal responsibility which it is the duty of this Tri-
23 bunal to decide. If there be a liability resting upon
24 Mr. TOGO as Foreign Minister for bringing the war about,
25 it is one which will not be

increased by his having remained in office and contributed
1 to the extent of his discharge of the responsibilities
2 as Foreign Minister to the conduct of that war. If he
3 has no liability for causing it, none, it is supposed,
4 is to be placed upon him (in accordance with the prosecu-
5 tion's doctrine of execution of a previously-adopted
6 policy) for what he did in support of it, unless he be
7 charged with entirely new and unrelated offenses, which
8 with one exception he is not. My view finds support in
9 the fact that the prosecution have asserted no particular
10 liability of Mr. TOGO for the events of war-time with
11 that exception of the prisoner-of-war question, dis-
12 posing of the entire period of his remaining service in
13 the TOJO Cabinet very casually.

15 It is therefore my intention to refer to such
16 matters only for their bearing upon the case against
17 Mr. TOGO as a whole, for their evidentiary value of his
18 intention in participating in the commencement of the
19 war. The matter being viewed in this aspect, it may be
20 as well to mention first -- though I am postponing dis-
21 cussion of it until later -- Mr. TOGO's attitude toward
22 ending the war. One of the considerations which had
23 decided him to stay on in office after receipt of the
24 Hull Note, when it had become apparent that there was
25 almost no chance that his further efforts could avert

war, had been that by remaining as Foreign Minister even
1 if there was war he might be able to have the opportunity
2 to work for bringing it to an early end.⁶⁸⁶ The evidence
3 shows that he did commence that work at once, and con-
4 tinued it as he had opportunity, when he was in office,
5 until finally he was able to see the end brought about
6 through his efforts in 1945. This subject, however, we
7 shall leave for the time being, to return later.
8

9 134. Diplomacy had in war-time naturally a
10 much-restricted scope, and there is very little in such
11 foreign affairs as Mr. TOGO had connection with which
12 need detain us; only his attitude toward China perhaps
13 is worth discussion. As Foreign Minister in the TOJO
14 Cabinet Mr. TOGO had for the first time in his career
15 direct responsibility for affairs of China; but by that
16 time it was too late for a foreign minister to have
17 much influence on the China policy. That Mr. TOGO had
18 many years earlier formulated his policy for Japanese-
19 Chinese relations as being one of mutuality, cordial
20 relations and fairness we have seen from the excerpts,
21 already quoted in other connections, from his report
22 of 1933 to the Foreign Minister.⁶⁸⁷ Japan had done little
23 to further such a policy in the two decades intervening;
24

25 686. Testimony of TOGO (Tr. 35,708-10).

687. Supra, §13.

1 the Manchuria and China Incidents had so changed the
2 situati^or that achievement of anything in that direction
3 might be expected to offer great difficulties, although
4 as Mr. TOGO said "it was more clear than ever in 1941
5 that the China Incident must be settled, and I hoped
6 when I became Foreign Minister that I should be able to
7 achieve it." ⁶⁸⁸ The success or failure of that venture
8 in 1941 was inextricably bound up with the Japanese-
9 American negotiations, and with their failure the settle-
10 ment of the China Incident had to be put to one side.

11 China affairs had for many years been regarded
12 as a province in which the military services had special
13 interests and privileges, and those services had exercised
14 a growing influence over such affairs for many years. ⁶⁸⁹
15 After the outbreak of the China Affair the process of
16 military seizure of control of Chinese relations had
17 been accelerated, and a new body, the China Affairs
18 Board, had been created especially to manage all poli-
19 tical, economic, cultural and other relations of Japan
20 with China. The purpose of creation of the China Affairs
21 Board had been frankly that of removing from the Foreign
22 Ministry, which was regarded by the militarists as "weak"
23 toward China, the normal functions of a foreign office
24

25 688. Tr. 35,747.

689. See TAKOUCHI, op. cit. supra n634, at 467.

1 so far as concerned China matters. The board being under
2 military control and domination, the relation of the
3 Foreign Ministry to China Affairs was all but severed --
4 the Foreign Minister was (with the War, Navy and Finance
5 Ministers) an ex officio vice-president of the board,
6 but naturally had little influence in the body which
7 had been created specifically to destroy his authority
8 vis-a-vis China. ⁶⁹⁰ In these circumstances there was
9 little that Foreign Minister TOGO could do toward the
10 settlement of the China Affair, which still in war-
11 time he regarded as essential. The question of the
12 fundamental policy for direction of the war came up
13 before the Liaison Conference in March 1942, and
14 Mr. TOGO took that occasion to point out that prompt
15 solution of the China Affair was a matter of primary
16 and vital importance, and to urge that a re-examination
17 from all points of view of Japan's basic policy toward
18 China be undertaken. This proposal was agreed to by
19 the Liaison Conference, but action was subsequently
20 blocked by the High Command, who discovered that carry-
21 ing out the re-examination of policy would entail many
22 difficulties. ⁶⁹¹ Knowing what Mr. TOGO's attitude toward
23 Japanese-Chinese relations had always been, we can
24
25 690. Testimony of TOGO (Tr. 35,747-48).
691. Testimony of TOGO (Tr. 35,750-51).

1 readily conceive that the High Command should not have
2 cared for the sort of policy which any re-examination
3 led by him would have resulted in. Once again, in July,
4 Mr. TOGO tried to capitalize on what he thought an
5 opportunity to secure this reconsideration of Japan's
6 China policy by taking up a suggestion brought back
7 from China by former Ambassador OTA which intimated
8 some possibility of a Japan-China peace; but by then
9 the drift was away from the course which he had in
10 mind,⁶⁹² for the Greater East Asia Ministry idea, which
11 was to be the immediate cause of his final break with
12 the TOJO Cabinet, was taking form.

13 135. Before coming to that, a few words on
14 Mr. TOGO's attitude toward the "Greater East Asia" idea
15 in general. As his entire career demonstrates, he had
16 never supported any idea of extending Japanese control
17 over the countries of East Asia by force. His outlook
18 had always been that Japan, while considering that a
19 role as "stablizing force" conferred by her advanced
20 position among the nations of East Asia was a natural
21 one, should approach those nations in a spirit of
22 friendship and equality, assisting their progress and in
23 turn benefitting from it;⁶⁹³ he had disapproved of the

25 692. Id., (Tr. 35,751).

693. See Exhibit 3609-A, pp. 3, 7, 25 and 26
(Tr. 35,475-84).

1 Manchuria and China Incidents and so far as his duties
2 and positions permitted had opposed them. Since the
3 "Greater East Asia" policy had been created and adopted
4 before he had come into the office of Foreign Minister,
5 it would be neither extraordinary nor criminal in him
6 to have supported it; which makes it the more interesting
7 that he did not in fact do so, but actually worked to
8 discredit the principles underlying it until his opposi-
9 tion led to his elimination from the government. Even
10 when making a policy speech to the Diet, in the atmos-
11 phere of victory in the early days of war-time (January
12 1942), he stated a concept of "Greater East Asia" by
13 no means precisely orthodox. In that speech he naturally
14 made the expected remarks concerning the success of
15 Japanese arms, the characteristics of the enemy, and
16 Japan's war aims. But he said more: that "Japan also
17 does not fight with a narrow-minded exclusive intention.
18 The idea of the Greater East Asia Co-Prosperity Sphere
19 has not the nature of exclusiveness. Accordingly, it
20 is evident that the relations of economy and communica-
21 tion will be dense between the countries in this sphere
22 and other friendly countries as the establishment of
23 this sphere makes progress." In my submission this is
24 an extraordinarily bold hint, for a statesman making a
25 (94. Ex. 1338-A (Tr. 12,032-33).

war-time speech, and above all for one in Japan of
1 TOJO's war-time, of the desire that cooperation should
2 be extended to even the then enemy nations. It is not
3 difficult, knowing Mr. TOGO's outlook to have been what
4 we have seen it, to believe that he used these words --
5 as well as the stock phrases of the "Co-Prosperity
6 Sphere" -- in a different sense from that of those to
7 whom the Co-Prosperity Sphere had been a slogan behind
8 which to cloak aggression.

9
10 While we are on the subject of Mr. TOGO's view
11 of Greater East Asia relations, mention might be made
12 of an event of much later -- of the Greater East Asia
13 Ambassador's Conference of April 1945, when Mr. TOGO
14 was newly Foreign Minister again, in the SUZUKI Cabinet.
15 The "Joint Statement" adopted by that conference at the
16 proposal of the Japanese Foreign Minister contains a
17 series of principles for the common development and
18 enjoyment of East Asia to which no possible exception can
19 be taken -- principles not essentially different from
20 those later adopted by the United Nations Conference at
21 San Francisco.⁶⁹⁵ The continuity of Mr. TOGO's policy
22 toward the nations of East Asia, from 1933 to 1945,
23 is thus interestingly demonstrated.

24
25 695. Ex. 3636 (Tr. 35,579); cf. testimony of TOGO
(Tr. 35,764-65).

1 136. It was in part this attitude of Mr. TOGO's
2 toward the Greater East Asia question which led to
3 his parting company with the TOJO government. The
4 Greater East Asia Ministry proposal was the direct cause
5 of the split. This proposal was the final flowering
6 of the militarists' long-developing scheme for control
7 by them of the foreign affairs of Japan, vis-a-vis Asia
8 at least; its aim was to concentrate into the hands of
9 a body under military domination management of all
10 affairs of countries in the "Greater East Asia" area --
11 Manchoukuo, China, Thailand, French Indo-China and
12 the rest -- and to accord to them "special treatment." 696
13 Not least among the reasons for this scheme was the
14 desire to destroy the Foreign Ministry's still-too-
15 moderate policy toward those countries, a desire which
16 to the militarists could only have accumulated more
17 persuasion of urgency from Foreign Minister TOGO's
18 freely-expressed attitude toward the problems of East
19 Asia relations.
20

21 The plan, first appearing in the spring of 1942,
22 was that chiefly of the Planning Board of the cabinet.
23 By summer it had developed to the point of being
24 probable of realization. Mr. TOGO at that time spoke
25 to Premier TOJO, stating his opposition to the project

696. Testimony of TOGO (Tr. 35,755-56).

on several grounds: that change of administrative
1 structure should not be undertaken in war-time, that
2 the plan's purpose of removing from the Foreign Ministry
3 the essential part of Japan's diplomacy would impair the
4 unity of Japanese diplomacy, and that to treat the coun-
5 tries of East Asia differently from other countries
6 would injure their pride and obstruct cooperation between
7 them and Japan. ⁶⁹⁷ The Premier promised to give the matter
8 careful consideration, but the plan developed exactly
9 in accordance with the original outline, until on
10 29 August the Foreign Minister was suddenly handed a
11 complete draft proposal for establishment of the new
12 Greater East Asia Ministry, with the Premier's ultimatum
13 that he wanted it adopted at the cabinet meeting of
14 1 September. Mr. TOGO again expressed his objection,
15 and urged that consideration of the matter be postponed
16 to allow of more careful study, but was refused, and it
17 did come up for discussion on 1 September. At that
18 meeting the Foreign Minister engaged in a three-hours'
19 debate with the Premier over the propriety of the plan.
20 The arguments which he advanced were again that the
21 creation of a two-headed Japanese diplomacy would render
22 impossible any idea of Japan's having a consistent foreign
23 policy; and that the according to the countries of
24 697. Id., (Tr. 35,755-57).
25

Greater East Asia of special and different treatment

1 not only would arouse among them doubts of the true
2 motives of Japan, but was inconsistent with the princi-
3 ple of real respect for their independence. The pro-
4 posed ministry, he said, was nothing more than an
5 expanded China Affairs Board, which was well known to
6 have been a failure because of its way of exciting the
7 ill-will of the Chinese people. Mr. TOGO was supported
8 by no one, and the cabinet meeting recessed without
9 decision, but with the Premier's suggestion that the
10 Foreign Minister had best resign. This was rejected.⁶⁹⁸

11 137. The prosecution assert that Mr. TOGO's
12 testimony (on which he was not cross-examined) "shows
13 that it was not Japan's war aims which he opposed but
14 the method by which Japan's conquests were to be secured."⁶⁹⁹

15 Inasmuch as his objections throughout the period of
16 war had expressed the thought that a genuine respect
17 for the independence of the countries of East Asia was
18 essential, he was pretty clearly opposed to any war aims
19 which ran counter to that principle -- to any aims of
20 subjugation of other countries or of dominating them
21 by force. His war aim had been the preservation of Japan
22 as a nation. I hope that it will never be suggested

24 698. Id., (Tr. 35,757-60); testimony of YUZAWA, Michio
25 (Tr. 35,577-78).

699. Summation SWW-40 (Tr. 41,941).

~~that in his defence I must say that he wished Japan to~~
1 lose her war; he was of course patriotic, a lover of
2 his country, and of course once a war was under way he
3 hoped and worked for victory. But working for victory
4 is by no means synonymous with approving the incidental
5 war aims of his colleagues, as the evidence just men-
6 tioned makes obvious. Mr. TOGO did, certainly, give
7 as a reason for his opposition to the Greater East Asia
8 Ministry proposal that it would deprive the Foreign
9 Ministry of its jurisdiction to deal with affairs of
10 Asia. This furnishes no support to a contention that
11 he opposed because of, and resigned in a huff over, the
12 curtailment of his powers; the very reason for the
13 militarists' proposing increasing restrictions on the
14 powers of the Foreign Ministry, it must be remembered,
15 had always been that it held overly-liberal attitudes
16 toward foreign countries, to the displeasure of those
17 militarists. ⁷⁰⁰ That it was his attachment to these
18 liberal, moderate views, not to his "power," which moti-
19 vated Mr. TOGO's opposition to the latest proposal,
20 there is no reason to doubt. The prosecution, in stating
21 Mr. YAMAMOTO to have testified that "the Foreign Minis-
22 try was not opposed to the purpose for which the Greater
23 700. Tr. 35,747.
24
25

1 East Asia Ministry was to be set up,"⁷⁰¹ are guilty of
2 again misrepresenting the evidence. Mr. YAMAMOTO made
3 it quite certain that the Foreign Ministry had no
4 objection to the purpose of unification of Asiatic
5 affairs, but objected altogether to those affairs'
6 being taken from the Foreign Ministry, and "contended
7 that the actual carrying out of diplomacy should at all
8 costs be left in the hands of the Foreign Office."⁷⁰²

9 In the end, Mr. TOGO resigned from the cabinet,
10 which immediately thereafter, with General TOJO taking
11 over the portfolio of Foreign Affairs, unanimously
12 adopted the proposal for establishment of the Greater
13 East Asia Ministry. He had at first refused to resign,
14 hoping to be able to force the TOJO Cabinet out of
15 office, and had resisted various blandishments of the
16 militarists that he should reconsider his opposition
17 or should remove himself from the scene. It was finally
18 conveyed to him that the resignation en masse of the
19 TOJO Cabinet was regarded by court circles as undesirable,⁷⁰³
20 whereupon on 1 September he resigned individually.

21
22 The prosecution's view of this incident is quite unin-
23 telligible:

- 24 701. Summation, §WW-40 (Tr. 41,942).
25 702. Tr. 18,048.
703. Testimony of TOGO (Tr. 35,760-61) and TANAKA
(Tr. 35,544-45).

"The actual circumstances surrounding the
1 resignation of the accused will not be discussed here.
2 It is pointed out, however, that if it were true, as
3 the accused will have us believe, that he strongly desired
4 the overthrow of the TOJO Cabinet, it was entirely
5 within his power to do so. His statement that he
6 finally decided to resign personally, so as not to cause
7 annoyance to the Emperor, can hardly carry much weight
8 in view of all that had gone before."⁷⁰⁴
9

10 Wha' "all that had gone before" may be is not
11 explained; but it is submitted that Mr. TOGO's reason
12 for resigning individually is entirely comprehensible,
13 and that his so doing is in no way inconsistent with
14 his having held the genuine desire to bring about a
15 general resignation. The statement that after learning
16 that "a change of cabinet was not desired by the court
17 . . . I decided to and did tender my resignation, out
18 of a desire not to cause annoyance to the Emperor by
19 furt⁷⁰⁵er complicating the matter" can be misunderstood
20 only through that naivete concerning political matters
21 which the prosecution so often demonstrate when it suits
22 their purposes. If the implication of Mr. TOGO's
23 testimony is unclear, see the testimony of TANAKA,
24
25 704. Summation, §WW-40 (Tr. 41,942).
705. Tr. 35,760-61.

Ryukichi, to whom Mr. TOGO conveyed his reasons, for
1 the explanation in words of one syllable:

2 "Nevertheless, Mr. TOGO resigned alone. I
3 asked him the reason when I saw him in the middle of
4 September of that year. His reply was that, although
5 he for his part had fought all he could, he had eventually
6 been compelled to make up his mind to resign alone upon
7 learning from Navy Minister SHIMADA, who had come to
8 see him, that the overthrowing of the cabinet was
9 practically impossible owing to opposition in court
10 circles." 706

12 The court did not desire the overthrow of the
13 TOJO cabinet; if Foreign Minister TOGO forced the issue,
14 and attained its overthrow, Premier TOJO would be
15 commissioned to form another, and Mr. TOGO would only
16 have caused annoyance to the Emperor -- that is the
17 situation, in elementary language.

18 THE PRESIDENT: We will adjourn until half-past
19 nine tomorrow morning.

20 (Whereupon, at 1600, an adjournment was
21 taken until Thursday, 15 April 1948, at 0930.)

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706. Tr. 35,545, as corrected 12 April 1948.

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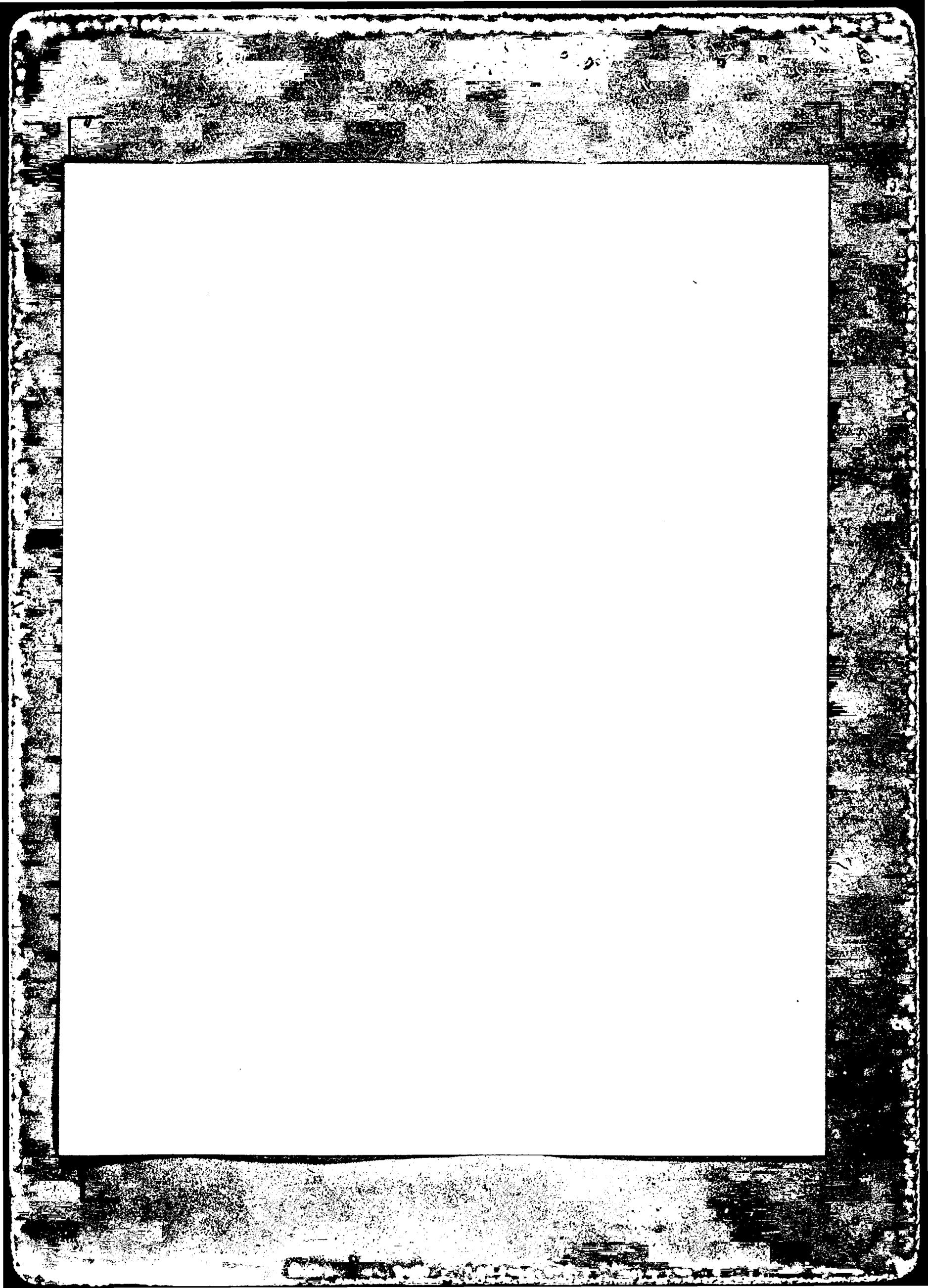
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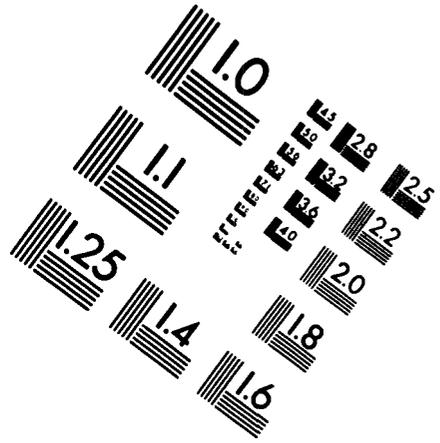
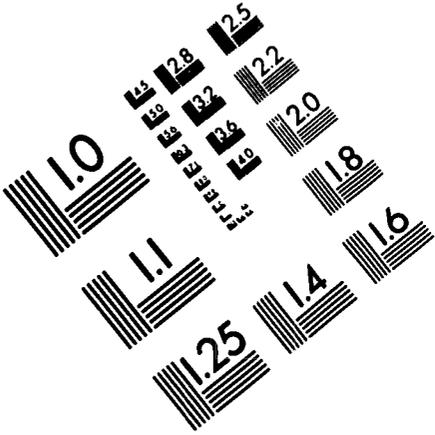
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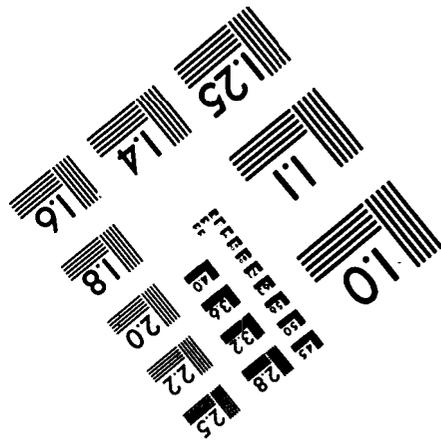
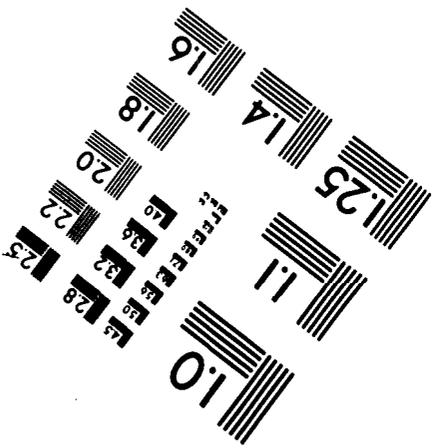
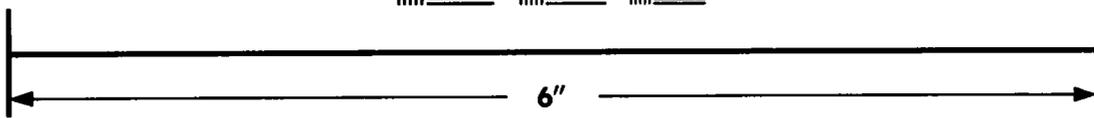
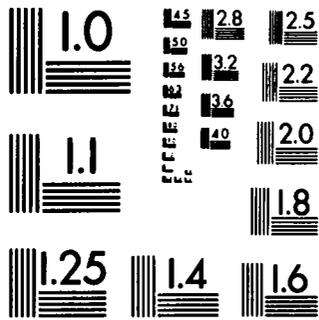
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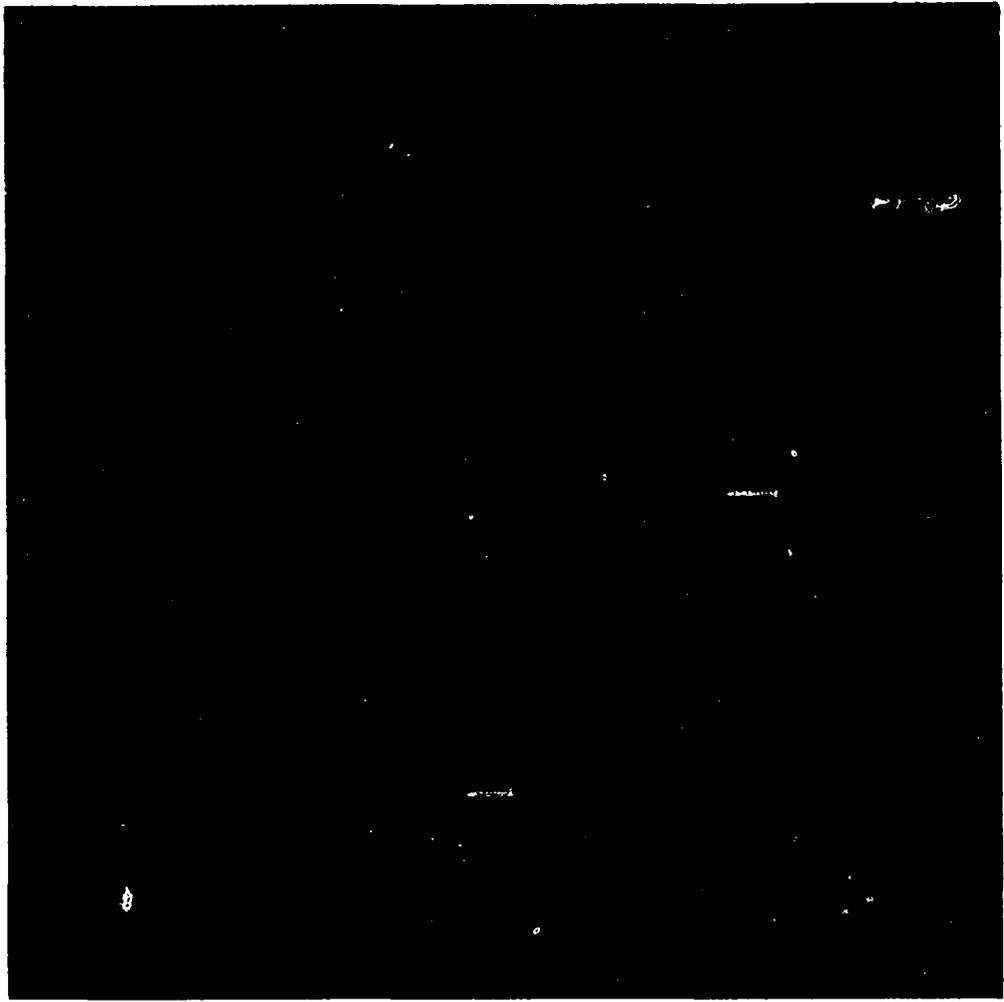




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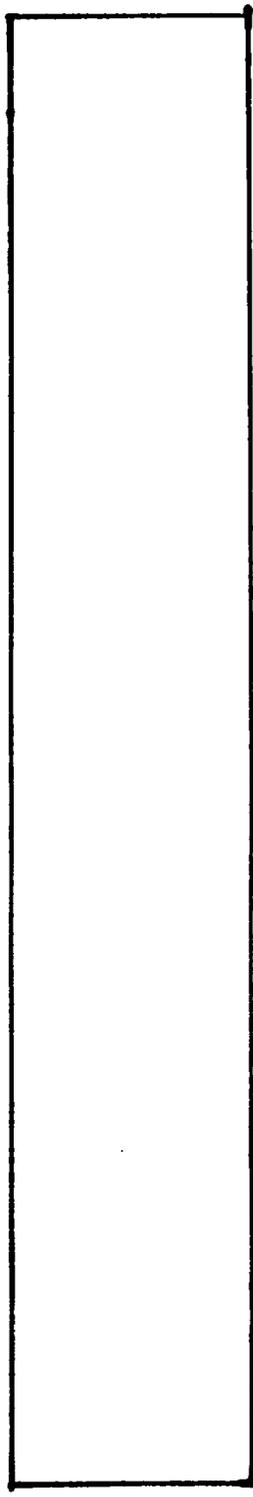


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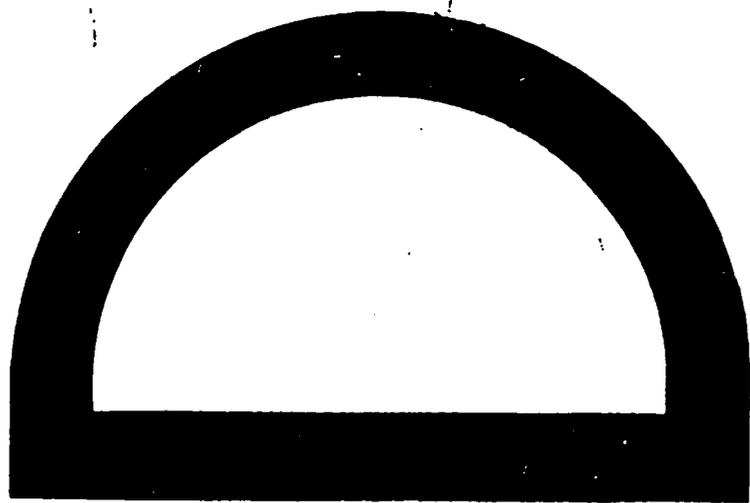
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