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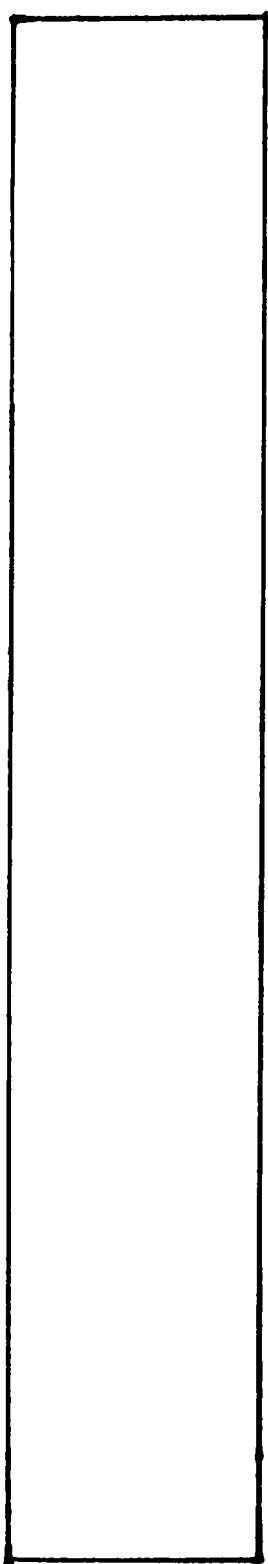
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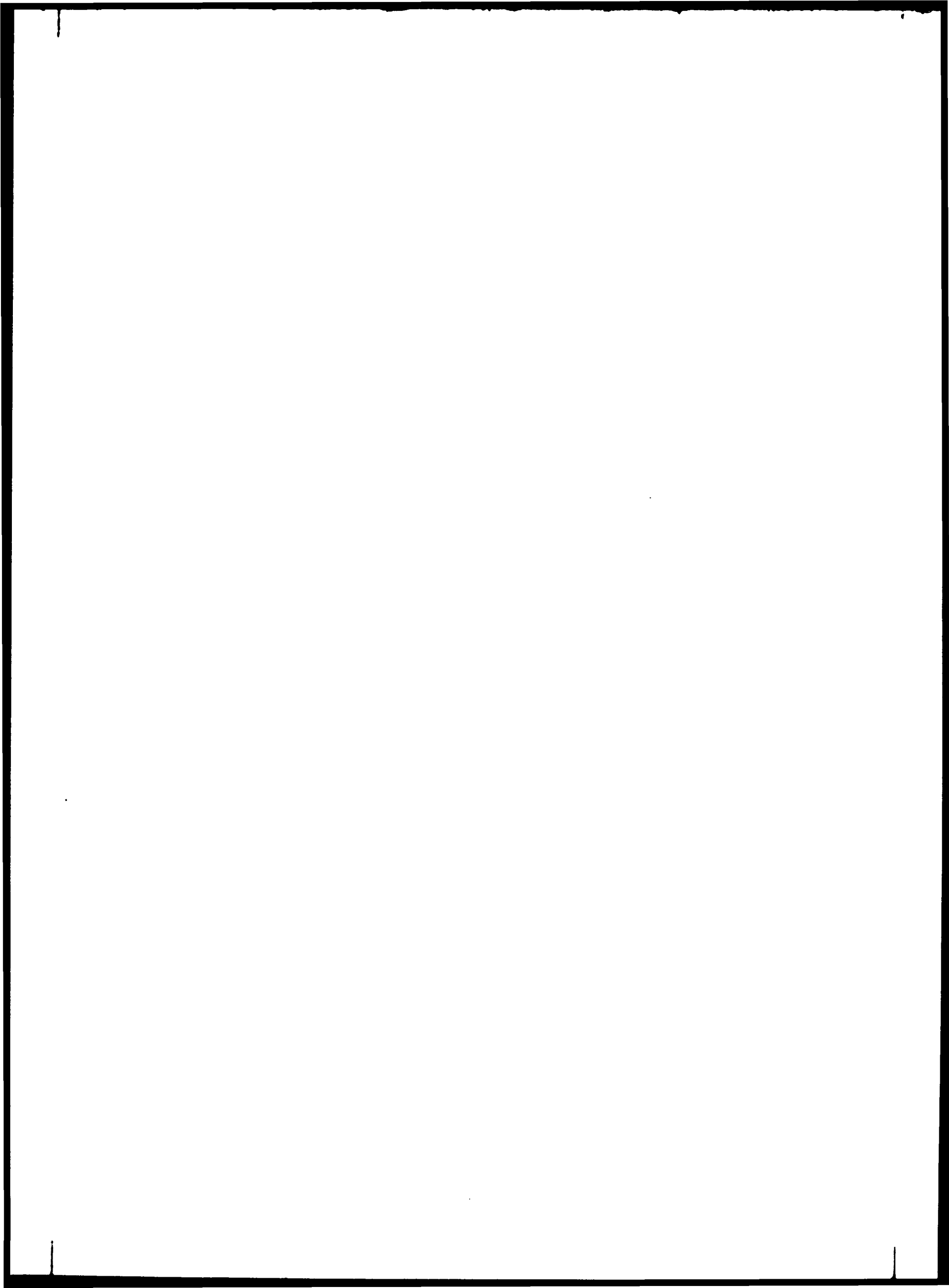
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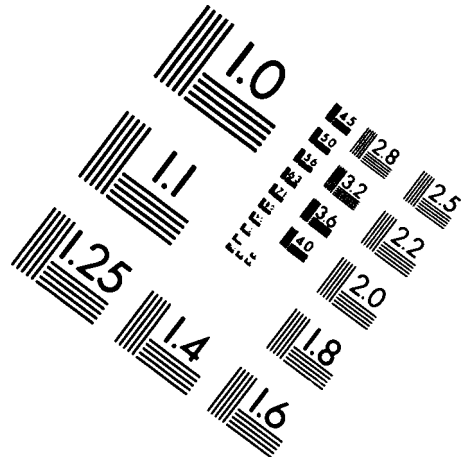
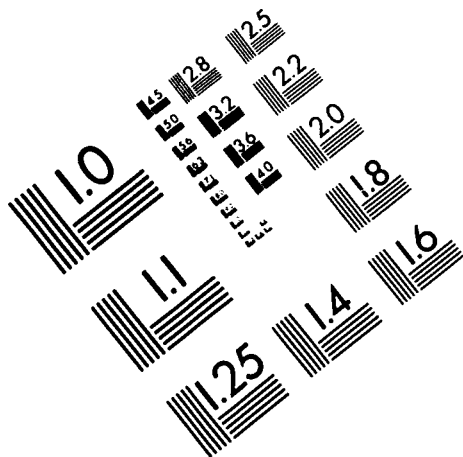
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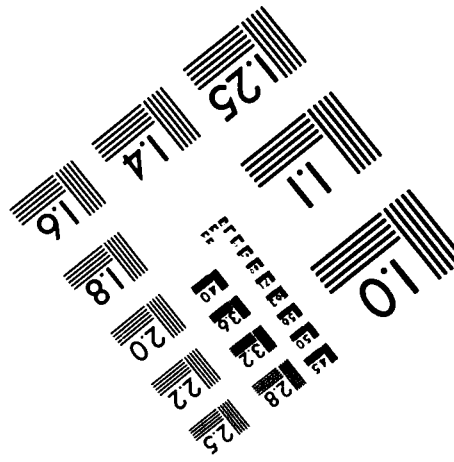
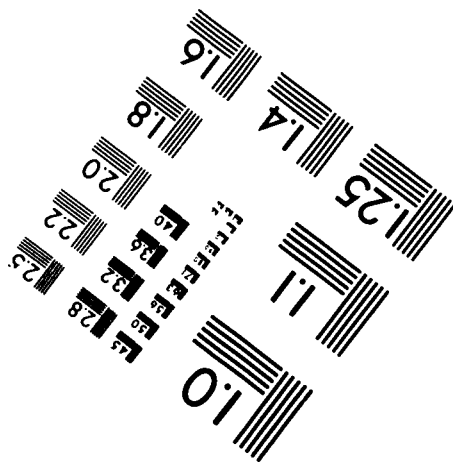
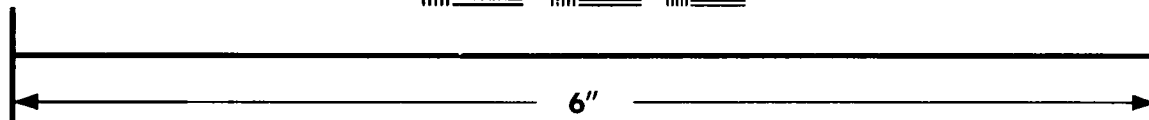
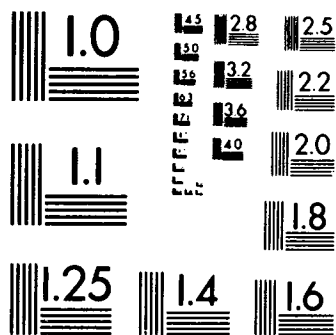
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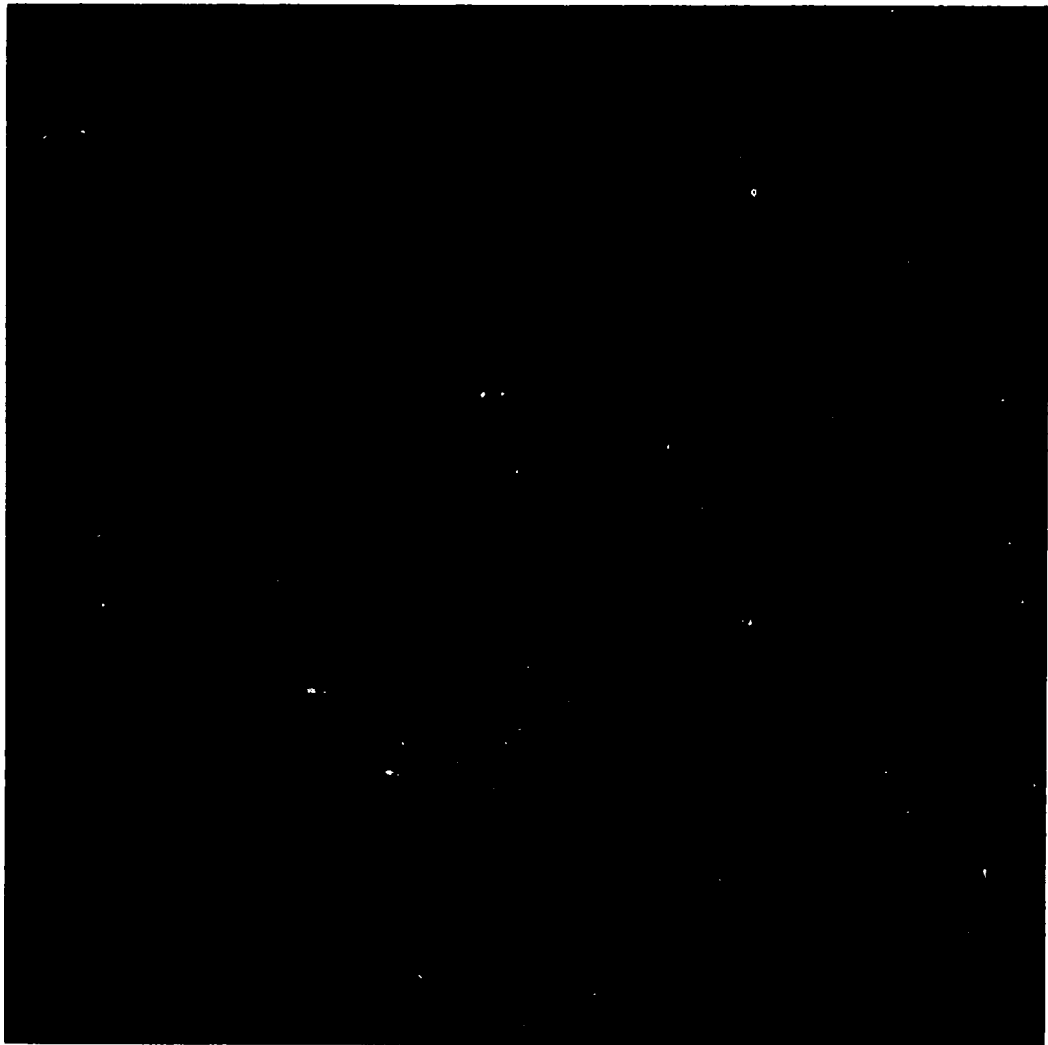




**IMAGE EVALUATION  
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INDEXING DATA		CODE NO.
PERIOD	<p>United Nations War Crimes Commission (UNWCC) Member Governments, other National Authorities and Military Tribunals - PAG-3/2.3.4.: 423 - 425</p>	
	<p>Transcripts of Proceedings and Documents of the International Military Tribunal for the Far East (Tokyo Trials). Documents of the International Prosecution Section.</p> <p>Numbered Documents of the International Prosecution Section:</p> <p>Response to Defense Motions to dismiss - Summary - Decisions of Imperial Conferences, Cabinet Meetings and other Conferences, as they appear in the Prosecution's Evidence - Rulings of the International Military Tribunal - General Index of the Record of the Defense Case - Nos.: 0002, 0003, 0004, 0006 and 0008.</p> <p>Summation of the Prosecution's Introduction, Indictment and Charges -</p>	
	<p>--- END OF REEL No. 158 ---</p>	

Doc. No. 0002

STATEMENT AND ANALYSIS

SUBMITTED IN RESPONSE TO DEFENSE PETITIONS TO DISMISS

BY:

LUGENE D. ILLIUS

S. SOCIAL ASSISTANT TO CHIEF OF COUNSEL  
INTERNATIONAL PROSECUTION SECTION.

TO: IC, 00000  
JANUARY, 1947.

Doc. No. 0002

*Stewart*

STATEMENT AND ANALYSIS

SUBMITTED IN RESPONSE TO DEFENSE MOTIONS TO DISMISS

BY:

LUGEN D. ILLIUS

S. LEGAL ASSISTANT TO CHIEF OF COUNSEL  
INTERNATIONAL PROSECUTION SECTION.

TOKYO, JAPAN  
JANUARY, 1947.

Mr. President, Members of the Tribunal:

To answer the motions to dismiss made by the several defendants by treating each motion separately would involve a lengthy and in our judgment, unnecessary repetition. For that reason it is our purpose to make one series of arguments which will answer collectively all points presented by the motions of all defendants and each point made by the motion of each defendant.

It is well to bear in mind something of the structure and contents of the Indictment which may be summarized as follows.

Counts 1 to 5 charge that the defendants entered into unlawful conspiracies having as their object the domination by unlawful aggression in violation of treaties etc. (1) all of East Asia, Pacific and Indian Oceans, against any country or countries which might oppose that purpose; (2) that part of the Republic of China commonly known as Manchuria; (3) all of the Republic of China; (4) all of East Asia and of the Pacific and Indian Oceans etc. against the United States, British Commonwealth, France,

Netherlands, China, Portugal, Thailand, Philippines, and the Soviet Union; and (5) a conspiracy between the defendants and Germany and Italy to secure military, naval, economic and political domination of the whole world against any country or countries which might oppose such purpose, and particularly the United States, British Commonwealth, France, Netherlands, China, Portugal, Thailand, Philippines, and the Soviet Union.

Counts 6 to 17, inclusive, allege that all of the defendants planned and prepared the wars of aggression and in violation of international law, treaties, agreements, etc. against various nations separately named in each count, and including in addition to the nations engaged in this prosecution, the Kingdom of Thailand.

All of the defendants are named in each of the 17 counts above enumerated.

Counts 18 to 26, inclusive, allege that certain of the defendants initiated wars of aggression and in violation to international law,

treaties, etc., against China, United States, Philippines, British Commonwealth, France, Thailand, Soviet Union and the Mongolian Peoples Republic.

Counts 27 to 36, inclusive, charge the defendants with waging wars of aggression and in violation of international law, treaties, etc.

All of these counts except 33, 35, and 36, name all of the defendants. Count 33 alleging the waging of war against France, Count 35 alleging the waging of war against the Soviet Union, and Count 36 alleging the waging of war against the Mongolian Peoples Republic, and the Soviet Union do not include certain defendants.

Counts 37 and 38 allege that certain defendants therein named conspired together to murder any and all such persons, both military and civilian, as might be present at the place attacked in the course of initiating of unlawful hostilities against the United States, the Philippines, British Commonwealth, Netherlands and Thailand.



Counts 39 to 43, inclusive, include specific murders at specified places, including Pearl Harbor, Kota Bahru, Hongkong, and the attack on H.M.S. PETEROL at Shanghai, and at Davao in the Philippines, in which many persons were murdered.

Count 44 alleges that all of the defendants participated in a conspiracy for the murder of prisoners of war and civilians on land and at sea.

Counts 45 to 50, inclusive, allege specific acts of murder against defendants named in said counts, at various places in the Republic of China.

Counts 51 and 52 allege that certain named defendants murdered members of the armed forces of the Mongolian and Soviet Republics.

Count 53 alleges that certain named defendants conspired to commit breaches of the law and customs of war in respect of the treatment of prisoners of war and civilian internees.

Count 54 alleges that certain named defendants ordered, authorized and permitted such offenses.

Count 55 alleges that certain named defendants deliberately and recklessly disregarded their legal duty to take adequate steps to prevent such breaches and thereby violated the laws of war.

In this analysis no effort has been made to name the particular defendants charged in specific counts which include any less than all of the defendants. The reason for this will appear from a consideration of the theory and procedure followed by the Prosecution in establishing its case.

The prosecution has presented its case in accordance with the well recognized "Conspiracy" method of proof. That is to say, it has proceeded to prove that an overall conspiracy of a comprehensive character, and of a continuing nature, was formed, existed and operated during the period from 1928 to 1945 covered by the indictment, and that the object and purpose of said conspiracy consisted in the complete domination

by Japan of all of the territories generally known as Greater East Asia described in the indictment; that it was the purpose to secure such domination by war and wars of aggression and in violation of international law, treaties, etc., at whatever places and against whatever nations and persons should be convenient or necessary to accomplish the overall purpose of the conspiracy.

It followed of course as an incident, and as a necessary part of such conspiracy, that in pursuing the object of the conspiracy, and in the planning, initiating and waging of wars of aggression, and wars in violation of international law, treaties, etc. that numerous individuals, both military and civilian, would be killed.

The killing by a belligerent who has planned, initiated, or is waging an unlawful war, constitutes murder.

It therefore follows from fundamental, universal principles of the law of Conspiracy, that any and all persons who were members of the overall conspiracy which I have just described, became individually and severally criminally responsible and liable to prosecution and conviction for each and every act

committed in the course of the conspiracy, whether that act be the unlawful planning, initiation, or waging of war, or whether it be a murder or other atrocity in violation of law committed in the course of the carrying out of the conspiracy.

In view of the adoption of this method of proof, it becomes unnecessary to do more than to examine into and determine two questions:

FIRST: Has a general and continuing conspiracy of the character and scope set forth in Count 1 of the Indictment, been established;

SECONDLY: As to any particular defendant, was he a member of the conspiracy at the time the specific crime set forth in any count, (other than a conspiracy count), was committed.

If these two questions are answered in the affirmative, it follows that any defendant who was a member of the conspiracy at the time any specific act charged as a crime was committed, is guilty of that crime, whether he personally participated therein or not. "he does through another, he does it himself".

It is perhaps an unnecessary precaution, in view of the wide learning and experience of the members of this Tribunal, for me to do so, but as indicating the Prosecution theory in presentation of this case, and the legal basis therefor, I take the liberty of quoting an approved instruction given to the jury in the California case of People v. Sacramento Butchers' Association, 12 Cal. App. 471, at p. 495, which is as follows:

"The common design is the essence of the charge, and while it is necessary in order to establish a conspiracy, to prove a combination of two or more persons, by concerted action, to accomplish the criminal or unlawful purpose, it is not necessary to constitute a conspiracy that two or more persons should meet together, and enter into an explicit or formal agreement for an unlawful scheme, or that they should directly, by words or in writing, state what the unlawful scheme was to be, and the details of the plans or means by which the unlawful combination was to be made effective. It is sufficient if two or more persons, in any manner, or through any contrivance, positively or tacitly come to a mutual understanding to accomplish a common and unlawful design. In other words, where an unlawful end is sought to be effected, and two or more persons, actuated by the common purpose of accomplishing that end, work together, in any way, in furtherance of the unlawful scheme, every one of said persons becomes a member of the conspiracy, although the part he was to take therein was a subordinate one, or was to be executed at a remote distance from the other conspirators."

I also quote from the opinion of the United States Circuit Court of Appeals for the Seventh Circuit, in the case of Allen vs. The United States, 4 Fed. (2) 688 as follows:

"A conspiracy may be established by circumstantial evidence or by deduction from facts. The common design is the essence of the crime, and this may be made to appear when the parties steadily pursue the same object, whether acting separately or together, by common or different means, but ever leading to the same unlawful result. If the parties acted together to accomplish something unlawful, a conspiracy is shown, even though individual conspirators may have done acts in furtherance of the common unlawful design apart from, and unknown to the others. All of the conspirators need not be acquainted with each other. They may not have previously associated together. One defendant may know but one other member of the conspiracy. But if, knowing that others have combined to violate the law, a party knowingly cooperates to further the object of the conspiracy, he becomes a party thereto".

(Italics ours)

Another case which indicates the prosecution theory of proof is the case of People v. Miller, 17 Cal. App. (2) 372, which was a case in which the defendant was convicted of the crime of grand theft, a specific offense. Proof was made by showing that he was a member of a conspiracy in the course of which the theft was committed. The defendant claimed that he

was not responsible because while the theft had admittedly been committed, it had been committed by another person.

The court, in disposing of this contention, stated as follows:

"On the trial of the action it was neither asserted nor attempted to be proved by the prosecution that defendant either directly participated in the actual commission of the offense for the commission of which he was being prosecuted, or even that he was personally present at the time when and the place where the crime was actually committed. To the contrary, defendant's conviction depended upon legal proof of his membership in the conspiracy, or of his having been a party to an agreement to commit the crime.

"Appellant concedes the fact that on the occasion in question the crime of grand theft was committed.

"Apparently without conflicting authority with reference thereto, as a matter of common knowledge, the law recognizes the fact that where two or more persons have engaged in the commission of some criminal act, their antecedent agreement or common understanding, one with the other or the others, so to do, ordinarily has been entered into in secret; but manifestly, where the crime is shown to have been committed by two or more individuals who in its commission have acted in concert, one with the other or the others, it is an inevitable conclusion that the crime was the result of an agreement or conspiracy between or among the participants therein that the crime should be committed."

(Italics ours)

having in mind the theory of the prosecution, as above expressed and the legal principles set forth in the cases just quoted, we have proceeded to prove the existence of the conspiracies alleged, and the membership in the conspiracy, of each and all of the defendants.

I purpose now, very briefly, to point out a sufficient amount of the evidence produced over these many months of trial, to show that such a conspiracy as described in the Indictment has been proved to have existed, and to point out to the court the evidence which shows the object, purpose and scope of this conspiracy.

When I have completed this presentation, I believe it will appear to the satisfaction of the court that the answer to the First question, namely,

"has a conspiracy been proved"  
must be answered in the affirmative.

Following this presentation, my brother, Mr. Comyns-Carr, prosecutor for the United Kingdom, will point out to the court so much of the evidence in respect of the activity of each of the defendants as is sufficient to show that that defendant was at the times involved in the various counts, a member of the conspiracy and therefore liable for the



commission of the crimes specifically set forth.

We feel that this presentation will adequately answer all contentions made by the Defense, and that in addition thereto, it will serve to point out and clarify the issues and will be of some assistance to the court in passing upon such questions of admissibility as may arise in the course of the presentation of the Defense.

As seen from the quotations just read, the cardinal requirement on the prosecution in a conspiracy case is to prove the common design. In some cases the common design is difficult to find while in other cases it is comparatively easy. However, in either case, once the common design has been established, all the evidence, regardless of how disconnected it may seem to be, or regardless of how disconnected the actions of the various defendants may seem, falls easily into its proper and logical sequence.

In this case, it is submitted, it is not at all difficult to locate and spell out the common design. Aside from the evidence on Class B and C Offenses, almost each and every document and the testimony of

each and every witness highlights the common design as being nothing less than to obtain political, military and economic domination of what has come to be known as the Greater East Asiatic Area by and through any and all methods whatsoever including the fighting of aggressive wars. If one grasps this common design as the key string of the mosaic of the evidence, one must inevitably recognize that between the years 1928 and 1945 a conspiracy among certain of the militaristic class of Japan and certain civilians was formed and put into operation. The prosecution of course is unable to name all of the members of that conspiracy. We do know, and the evidence has established, that even prior to 1928 and continuously on down to the end of the conspiracy the defendant Okuma was engaged in promoting, publicizing and inciting the people of Japan to join in a militaristic and ultra-nationalistic "renovation" of Japan for the purpose of bringing about the subjugation and domination by the Japanese Empire of all of East Asia and the Islands of the Pacific and Indian Oceans and the ousting of all the Whites from that territory. The purpose was to start by taking Manchuria, then the rest of China, then (dependent as to order upon current conditions) to move northward and take Siberia, and to move southward

(Ex. 2182a  
A. 15619-  
15631)

and to take Malaya, Malindo, French Indo-China, the Netherland Indies, Burma and India, the Philippines, Australia and New Zealand. The grandiose object of the conspiracy is adequately expressed in Exhibit 2182a.

This exhibit, taken from the book, "The Establishment of Order in Greater East Asia", by Okamoto, was published 20 August 1943 during the course of the conspiracy and was an expression by one of the conspirators of its object and purpose. I quote as follows:

"If I were to write a modern history of Japan, I should begin it with a description of Shin-en's ideas. This is because in the soul of this great scholar had already been conceived a new Japan in the most concrete form. (from page 9)

"Shin-en's idea, first of all, thought Japan 'the foundation of the world' and believed that Japan would be able to make all the rest of the world her countries or prefectures if she succeeded in 'ruining' over the foundation of the world'. With a view to carrying out this 'great work of renovating the world', he advocated a drastic political renovation of the interior Japan and the order of unifying all nations. 'In order to develop other countries, it is best for the Empire/i.e. Japan/ to make a start by absorbing China into her first of all,' he advocated'.....Even the powerful China is no match for the Empire, not to speak of other barbarous countries.... If China becomes our possession, is it possible for the other countries in the West, Siam and India not to come gradually under the sway of the Empire

"yearning for her power of commanding love and respect, being overawed and falling prostrate before her!" Besides, it was his opinion that in order to control China, 'no other place is easier to occupy than Manchuria.' And at the same time he thought it necessary to obtain the whole 'area in the South Sea covering thousands of islands starting with the Philippines so as to prepare for the northward aggression of the European powers, especially of Great Britain and then obtain gradual control of India and its neighbors and various islands in the Indian Ocean, following the occupation of China, Annam, Shan-Cheng and Cambodia.' (from pages 10-11)."

The conspirators, for the purpose of trying to bring about the dominance of a military class in Japan, planned the so-called March and October Incidents, as well as other incidents, and planned an occurrence at Mukden on September 18, 1931 which made an excuse for the Kwantung Army, poised in preparation for such an event, to sweep over Manchuria and effect its military conquest.

Something of the course of the conspirators' plans is shown in the book written by the accused HASEGAWA (published in 1936 during the course of the conspiracy), in which he states that in 1930 while returning to Japan from Turkey:

(Ex. 177  
R.1917-20)

"During my thirty days' voyage I pondered on how to reform Japan, and as a result I succeeded in drawing a definite plan to a certain degree. And on returning to the General Staff Office, my former haunt, I devised several schemes in order to put my ideas into execution. Although I dare not say it was the only cause of such results, however, the Manchurian Incident, secession from the League of Nations, and renunciation of the Disarmament Treaty, took place successively and within the country, May 15 Incident, Shinpei Tai Incident, and the February 26 Incident took place in succession."

The evidence shows clearly that the defendants Oki, HASHIMOTO, DOIHARU and ITAGAKI and others were members of this conspiracy and that they helped bring about the incident which was intended to, and did, lead to the military aggressions in Manchuria beginning September 18, 1931. See:

(R.1821-22)  
(R.1900-1 and  
1966-1982)

Testimony of OKI; testimony of T.NAKA.

(Ex. 2177a  
R.15560-  
15589)

The testimony of Oki at his trial in Tokyo in 1934 (during the existence of the conspiracy) showed the relation of the March and October Incidents to the Manchurian Incident and the aggressions in Manchuria. He stated that he (Oki) and the accused HASHIMOTO, ITAGAKI and DOIHARU were all in the conspiracy.

(R.15587)

(Ex. 2178B  
R. 155.1-99)

(R. 15600)

Ogata's defense in the Tokyo Court of Appeals sets forth some of his activities in the conspiracy to set off the Manchurian aggressions, and in particular his close cooperation with the KANTO ARMY in selecting Japanese "officials" for Manchuria.

(R. 1962,  
1985-87)

The purpose of the Manchurian Incident was to seize Manchuria by military aggression, to reform it politically as a part of the Japanese Empire, and to consolidate and interrate its economy and finance with that of Japan so that its raw and manufactured materials and labor might be used as a supply and its soil as a base for further aggressions.

(Ex. 186,  
R. 2209-10)

That the high military command of Japan and, in particular, the KANTO ARMY were involved in this conspiracy to seize and dominate Manchuria is shown by the fact that within twenty-four hours of the Incident at Mukden large Japanese armies were spreading out over Manchuria. Such immediate action (in view of our knowledge of logistics) must have been preceded by many weeks or months of preparation. This is also indicated by General LIANG's strong militaristic speech at a conference of Division Commanders concerning Manchuria and Mongolia August 4, 1931.

That the Mukden Incident was a planned one is shown not only by the evidence concerning the plot to which reference has already been made, but is also strongly indicated by the written report of the League of Nations Committee, the testimony of the witness John A. Lowell, the reports of Consul General H. Y. SHI to Foreign Minister S. IWANO, and the testimony of the witness Meridima.

(Ex. 57, 67, 70, 71)  
(R. 3212-16.)

(Ex. 181, R. 2178-9)

(...3016-3023)

All of the evidence concerning what the Japanese did in regard to the territory, politics and economy of Manchuria, together with the circumstances of the establishment of the puppet governments in Manchuria (the latter designed to deceive the other powers), shows that it was at all times the intent of the Japanese conspirators to take permanent physical, political and economic possession of Manchuria, and that this was to be accomplished, and in fact was accomplished, by means of aggressive warfare, in violation of international law and treaties and assurances and, in particular, in violation of the Nine-Power Treaty and the Kellogg-Briand Pact.

(R. 5014-5119)

(R. 1969)  
(Ex. 57, 1.111)  
(Ex. 187 1,  
R. 2784-6)

(R. 2819-2822)

(R.1384-  
1393)

At the time of the Mukden incident the accused ARIMAI was War Minister. He claimed to know nothing of the activities of the Manchung Army and the troops from Korea who were spreading over Manchuria. He claimed he could not control them. It is significant, however, that no action to control the supply of money, material or reinforcements to these armies was undertaken by ARIMAI. He was shortly followed as War Minister by the accused ARIMAI who actively supported the additions to and reinforcements of the Japanese armies fighting in Manchuria. ARIMAI was engaged in propaganda, seeking to whip up the militaristic spirit of the Japanese, to glorify the Japanese Army, to point out its goal in conquering all of East Asia, to point out the probability of war with the United States, and by means of flags and airplanes to show that Japan could conquer and dominate the whole world. This was done by means of a motion picture entitled "Japan in Time of Emergency" which was made and distributed in 1933.

(R.2486-22  
1,2240)(Doc. 57, Pt 77,  
80)

(Ex.146 n)

(Ex.192  
1,2269-70)

During the period from 1932 to 1936 Japan completed its conquest of Manchuria (including Jehol Province); expanded its governmental, economic and industrial control for that territory and prepared



for the next step which was further armed advance into China.

With Korea and the Provinces of Manchuria and Jehol as bases for operations, Japan was in a position to prosecute her plans against the Soviet Union to the north or against the remainder of China to the south. If she elected to proceed first against the Soviet Union, a hostile China more and more united under the strong leadership of Chiang Kai-shek was a threat from the rear, and if she elected to proceed first against China there was danger of unified opposition by China and Russia.

In this dilemma, the accused or their leaders sought the political strength and bargaining power which would be acquired by military alliance with Germany, a nation then engaged in a program of military preparedness for aggressive action in Europe. The result was the conclusion of the Anti-Comintern Pact on 25 September 1936. The pact on its face was directed against the activities of the Communist International, but it was converted into a military alliance aimed at the U.S.S.R. by an accessory protocol and secret agreement.

(Ex. 36  
R. 5934)

(Ex. 480,  
R. 5937)

(Ex. 485,  
R. 5969)

(Ex. 484,  
R. 5963)

(Ex. 486,  
R. 5976)

The anti-Comintern Pact was designed and intended, through the threat of joint military action between Japan and Germany, to operate as a check against the Soviet Union, to strengthen the hand of Japan in China and to afford an excuse for continued Japanese military aggression.

Japan, thus fortified in her international situation, was in a position where she could proceed in comparative safety with the execution of her so-called divine mission of renovating the world, the first step of which was the creation of a New Order in East Asia. The accused or their leaders, by the conclusion of this pact, laid the groundwork for further cooperation of aggressive nations in the accomplishment of the objects of the conspiracy.

(R. 2320,  
2363)

On July 7, 1937, occurred the so-called "Marco Polo Bridge Incident". From that time on aggressive warfare against the rest of China continued with the Japanese gaining month by month and year by year additional territory throughout the balance of the period of the conspiracy. The aggressions of the Japanese Army during this period may best be stated in the language of the witness Doette as follows:

(N.3774)

"The military aim of the Japanese Army as reiterated to me by such Japanese officers, was not so much the acquisition of territory as the annihilation, submission, and killing of Chinese Nationalist armies."

This view is verified by one of the accused, HIRAHARA, who, in his speech before the Diet on 21 January 1939, when as Prime Minister he stated:

(EX.2229,  
A.15988)

"In regard to the China affair upon which both the Government and the people are concentrating their endeavors there exists an immutable policy, for which ample sanction was obtained by the previous Cabinet, and in accordance with which necessary steps have been taken in various directions. As the present Cabinet is, of course, committed to the same policy, it is determined to proceed at all costs to the achievement of the final purpose."\*\*\*

"I hope the above intention of Japan will be understood correctly by the Chinese so that they may cooperate with us without the slightest apprehension. Otherwise the construction of the new order would be impossible. As for those who fail to understand to the end and persist even hereafter in their opposition against Japan, we have no alternative than to exterminate them."

(EX. 148 a)

It may be stated in passing that as indicated by HIRAHARA's speech in the motion picture above referred to, the "extermination" of those who stand in the way or who do not understand the high spiritual purpose

of Japan's military aggressions is called "self-defense".

(n. 3423)

As the Japanese armies fought the Chinese in an "Incident" which lasted from September 1931 to September 1945, and which included from 1937 to 1945 a total casualty list of Chinese soldiers in excess of three million as well as uncounted numbers of civilians killed, wounded and rendered homeless, the Government of Japan undertook to take over the Government, the soil, the economy and the industry of each part of China as it was conquered.

(n. 3476-7)  
(n. 5183  
5254)

(n. 3479-80)  
(n. 5036)

The railways were taken over and put under the joint control of the Kwantung Army and the South Manchurian Railway Company.

(ex. 453  
n. 5119)

At the same time the economy of China was being integrated with that of Japan in accordance with the policy expressed by the accused H. H. H. H. H., in which he envisaged the development of the resources of Manchuria, China and all East Asia for the benefit of Japan (which lacked necessary resources).

(ex. 445,  
n. 5183)

(ex. 459,  
R. 5251, 5297)

through the organization and operation of the China Affairs Board, the North China Development Company, Ltd., and Central China Promotion, Ltd;

(ex.471-474  
R.5347-5499)

(ex.463,  
R.5297)

(ex.465,  
R.5327,5289)

through tremendous investment in Chinese industry; through the setting up of puppet governments in Peiping and Hanking; through the obtaining of special rights and privileges under secret agreements in contravention of the Nine Power Treaty Japan took possession of all of the resources of such parts of China as she conquered.

At the same time she proceeded to embarrass and humiliate the Governments of the United States and England and to kill and destroy the property of nationals of those and other European countries.

(R.2317)

It was Japan's policy not only to establish her "new order" in East Asia, but to drive out Anglo-Americans from China. In 1935 the accused, MATSUI, in a conversation with General Ching "advocated that Asia should be the Asia of the Asiatics and that European and American influences should not be expanded".

In 1940 the accused HASEGAWA wrote:

"The moment we establish a policy to drive out all Anglo-Americans from China, China will begin to move toward a new order".

In 1941 the accused, MATSUO said:

"The work of the establishment of Manchukuo is the first step of the reconstruction of the new order in East Asia, and at the same time was a herald of the construction of the

(R.3500-01)

"World new order and its position in the world history should be said to be very important. The true significance of the Manchurian Incident will be realized for the first time when the construction of the new order in East Asia will be accomplished for which we are now making every endeavor."

In 1944 the accused ITO in an address before the Diet stated:

(R.3715)

"The real intention of Japan lies in the expulsion of Anglo-American influence, the emancipation of China by those countries which has continued for one hundred years and the construction of a Greater East Asia based upon morality and a mutual cooperation."

A prominent Chinese, General Chiang, correctly interpreted Japan's intentions by stating:

(R.2317)

"I was afraid that what he (I.TSUJI) meant by Asia of the Asiatics was actually the Asia of the Japanese".

The League of Nations report of 7 October 1937 concludes:

"After examination of the facts laid before it, the Committee is bound to take the view that the military operations carried on by Japan against China by land, sea and air are out of all proportion to the incident that occasioned the conflict; that such action cannot possibly facilitate or promote the friendly cooperation between the two nations

"that Japanese statesmen have affirmed to be the aim of their policy; that it can be justified neither on the basis of existing legal instruments nor on that of the right of self-defense, and that it is in contravention of Japan's obligations under the Nine Power Treaty of February 6, 1922, and under the Pact of Paris of August 27th, 1928."

Sometimes the conspirators have spoken pleasingly of their desire to stabilize East Asia and to bring peace to troubled peoples.

The all-pervading vice of ~~the~~ ~~convention~~ is that Japan in her aggressions in Manchuria and the rest of China undertook to decide in Japan (and without consulting China) what territory belonging to China she would occupy and how, what form of government should exist and by whom it shall be organized, what industrial, commercial and financial systems should be established, how transportation, communications, press, radio, propoganda, censorship, customs and foreign relations should be controlled and conducted. Yet, neither by custom, International law, treaty, precedent nor otherwise were any of these matters in the slightest or most remote degree the business of Japan. She had no more right to arrogate to herself powers such as these in China than China had to do so in Japan. Her acts were those of a lawless, aggressive invader and conqueror.

(ex. 230-233  
R. 2903-2932)

(ex. 224,  
R. 2933-5)

(ex. 236  
R. 2939-43)

(ex. 240  
R. 2967-71)

(ex. 219  
R. 2748-50)

They were in violation of Chinese sovereignty and of Japan's solemn obligations to China and the other signatories of the Nine Power Pact and other treaties.

These acts were the result of the plotting and planning of these conspirators and a part of the overall plan for the conquest of "Greater East Asia".

Military operations in 1937 and 1938 proved that Japan was engaged in a major war against China. Although Germany protested against Japan's aggression in China under the guise of fighting communism in third states, the accused who were directing and influencing the course of Japanese aggression in East Asia, by the early part of 1938 had won the unreserved support of Germany in her plans against China as well as against the Soviet Union.

Germany was promised preferential trade treatment in China in consideration of the special relations which existed between Japan and Germany after the conclusion of the anti-Comintern Pact. The controversy which arose out of the division of spoils in China afford a high degree of proof of the Japanese plan of subjugation and exploitation by aggressive warfare.

(Ex. 486 n,  
R. 5976, 5977,  
5980)

(Ex. 486-H,  
R. 6002-15)

(Ex. 595,  
R. 6604)



Japan and Germany embarked upon extensive programs of preparation for military operations and demonstrated similar intentions to wage aggressive warfare in their respective spheres of the world. Japan, acting through and under the influence of the accused, and Germany conceived the idea of strengthening their respective international positions by inducing other nations to unite in close association with them. This plan first took shape in the form of recruiting Italy as a member of the Anti-Comintern Pact on 6 November 1937, and was followed by the admission of Manchukuo and Hungary to the Pact on 22 February 1939 and Spain on 27 March 1939. The Pact was renewed on 25 November 1941, at which time Bulgaria, Denmark, Finland, Croatia, Rumania, Slovakia and the puppet Nanking regime, under the name of "National Chinese Government", were admitted by declarations of adherence. The next move was to obtain closer cooperation between the peoples of the axis Powers by resorting to the device of concluding so-called cultural treaties.

Ex. 493,  
n. 6046)

Ex. 494,  
n. 6046)

Although the accused, acting through their leaders, mobilized the entire strength of the nation for its war against China and won many naval and military victories,

they were unable to conclude the so-called China Incident. Consequently, they were brought to the realization of the necessity for closer collaboration of Germany, as demonstrated by the future course of negotiations. In the words of OSIHIA, the accused wanted a military alliance with Germany "which would help to conclude the China Incident and (1) to clarify the Russian situation so that troops could be deployed else here, (2) to strengthen Japan's international position, and (3) to receive technological and economic aid from Germany."

(EX.487,  
A.6058)

A division of opinion developed in the Japanese government as to the extent to which Japan should be committed to participation in a German war against England, France and the United States. In April 1939 the conclusion was reached that a limited interpretation of the pact was necessary from Japan's standpoint for the reason that Japan "was at the moment not yet in a position to come forward openly as the opposer of the three democracies." Negotiations continued until the conclusion of a non-aggression treaty between Germany and the Soviet Union, the reaction from which caused the downfall of the Japanese Cabinet.

(EX.502,  
A.6100)

The expediency of quickly concluding the German-Russian non-aggression pact became apparent upon the dramatic German invasion of Poland on 1 September 1939. Notwithstanding the temporary setback to the conclusion of a Japanese-German-Italian military alliance, efforts were continued by the accused to develop closer Japanese-German relations with the view to ultimate conclusion of a tri-axite military alliance.

As the day of world conflagration approached the conduct and declarations of the accused, or their leaders, revealed more and more the common plan for the accomplishment of the so-called divine mission which they were preparing to impose upon East Asia and the world by resorting to aggressive warfare to the extent necessary for the accomplishment of their objectives.

In the southern areas French Indo-China occupied a strategic position of the highest importance over which Japanese control was necessary for any contemplated military operations against Malaya, Singapore and the Netherlands East Indies and the Philippines. In addition, Indo-China was rich in natural resources vitally needed by the Japanese economy for the continuance of war.

(EX.509,  
R.6136)

OSHIRA, timing his action with Hitler's initiation of war against Poland, advised military aggression in the southern areas of Greater East Asia and against Hongkong, for which he declared the Japanese navy was prepared.

(EX.615-11,  
R.6797)

(EX.522,  
R.6170)

Within two days after the German invasion of Belgium, Luxembourg, and the Netherlands on 9 May 1940, and within two days after the fall of France on 17 June, 1940, the accused asked German assurances of a free hand in the Netherlands East Indies and French Indo-China. This was followed by a Japanese ultimatum to French-Indo-China relative to transportation of materials to Chiang Kai-Shek. At the same time negotiations were renewed with Germany for the conclusion of the military alliance. So strong was the demand for conclusion of a military alliance that a joint conference of the Japanese Army, Navy and Foreign Office officials was held on 12 July 1940 for the purpose of intensifying efforts to procure such a pact. In this conference it was determined that "it is our object to realize the expansive purpose of the Japanese Empire and strengthen our international position by embodying an ultimate cooperative connection between our Empire, which is establishing a "new Order" in East Asia, and Germany, which is fighting for a "New Order" in Europe.

a unified policy based on the opinions of the Army and Navy was adopted in which it was determined that the area to be embraced within the "New Order in the Far East" should extend from Korea and the eastern part of India to New Zealand. From the fundamental principle of the coalition should be cooperation within the respective spheres intended to be established by the Axis Powers; that the Japanese conception of "political leadership" was considered to be "occupation" of the areas in question; and that necessity existed for immediate execution of their plans.

The Yonai Cabinet was considered too weak to carry out the foreign policy, so the accused forced its resignation and such men as KONOYE, MATSUOKA, TOJO, HIRANUMA, CHASHI, OSHIMA, and SHIRAMONI were put in responsible government positions. Thus the stage was set for the enactment of the final scene in carrying out that part of the conspiracy which was designed to secure axis help in accomplishing the objects thereof.

At a Four-Minister conference on 4 September 1940 it was determined that the time was ripe for speedy initiation of conversations for strengthening of collaboration among Japan, Germany and Italy. The basic principles for such conversations were declared to be

(Ex. 527  
R. 6191

(Ex. 528  
R. 6212

(Ex. 541  
R. 6271

the making of a fundamental agreement for mutual cooperation "by all possible means," which included "recourse to armed forces."

On 27 September 1940 the Tri-Partite Pact between Japan, Germany and Italy was concluded with unprecedented speed. By its provisions the Axis Powers attempted to apportion the world by establishing areas in which the leadership of the respective powers was recognized. Each pledged full cooperation in the establishment of leadership within the sphere of the others, and political, economic and military aid was pledged in the event of an attack against any one of the signatories by a nation not then involved in the European war or in the war with China. Letters were secretly exchanged providing for consultation among the signatories for the purpose of determining whether action or a chain of actions would constitute an attack within the meaning of the pact. This pact in its essence contained the ultimate development of the plot of the aggressive powers directed toward the division of the world and the establishment of the so-called New Order, which had for its purpose the extinguishment of democracy throughout the world and the subjugation of all the nations by the aggressive states.

It was the culmination of years of effort on the part of the accused or their leaders to form a military alliance in which the participating powers would by solemn agreement recognize Japan's so-called divine mission and agree to link their fate in the accomplishment of its objectives. Without this coalition the accused could not have risked the fate of the Japanese Empire in initiating the final phases of their plan to establish a New Order in East Asia and the South Seas. In the atmosphere of the Privy Council meetings held prior to the conclusion of the Pact and in the light of the declarations made by the accused and their co-conspirators in such meetings, there is no room left for doubt that the accused or their leaders had planned aggressive warfare and were seeking the political and military aid that such a treaty would afford.

Almost immediately after the conclusion of the Pact a rapprochement with Russia was suggested as a prerequisite for a Japanese advance in the regions south of China. The accused, or their leaders, seized the opportunity to mediate in the Indo-China-Thailand border dispute as a device by which both Powers could be placed under obligation to the Japanese Government. In

(ex. 561,  
R. 0427)

the spirit of the Tri-Partite Pact, Germany extended valuable and effective aid in coercing Indo-China to its submission to Japanese demands.

Close collaboration continued between the Axis Powers until the attack against American and British possessions on 7 December 1941. Foreign Minister MATSUOKA and Ambassador OSHIMA in conferences with Hitler, Ribbentrop, Goering and Funk discussed plans for an attack on Singapore, the coordination of operations in the Pacific with operations in Europe, the exchange of technical information, and information derived from military operations in the field, and cooperation required by the Axis Powers in all spheres after the completion of the war. General commissions and commissions of a technical character, one military and one economic, were formed under the provisions of the Tri-Partite Pact in order to effectuate full collaboration among the Axis Powers.

Acting in full collaboration with their Axis partners, the accused unified the Japanese Government and nation behind the Tri-Partite Pact, and by their declarations and conduct put into motion forces designed to accomplish the objects of the conspiracy.



On 13 November 1941, Germany was asked if she would consider herself at war with the United States if Japan initiated the attack and whether Germany would enter into an agreement not to conclude separately peace or an armistice in case of war with the United States and Germany without hesitation, and in accord with the spirit of the Tri-Partite Pact, replied favorably to both inquiries. On 28 November 1941, RIBBENTROP declared, "There never has been and probably never will be a time when closer cooperation under the Tri-Partite Pact is so important". He also stated, "Should Japan become engaged in a war against the United States, Germany of course would join the war immediately". Italy made the same commitments.

The efforts of the accused to obtain Axis assistance in the executions of their plans bore fruit. The Pearl Harbor attack occurred. Japan, Germany and Italy concluded a "No Separate Peace Pact" on 11 December 1941 to remain in force during the life of the Tri-Partite Pact. In this treaty the three powers also agreed after the termination of the war to "cooperate most closely for the purpose of realizing a righteous new order in the meaning of the Tri-Partite Pact". "A military agreement in the spirit of the Tri-Partite Pact" was

concluded by the three powers on 18 Jan. 1942, by which the world was divided into zones for military operations.

The conduct and declarations of the accused and their co-conspirators relating to the negotiations for the anti-Comintern Pact, the various trade and collateral agreements, the Tri-Partite Pact, the No Separate Peace Pact, and the Military Operational agreement between the Axis Powers and collaboration under the same, we submit, constitute indubitable proof of the existence of the conspiracy charged.

Insofar as the conspiracy included plans to prepare for, initiate and wage wars of aggression against the Soviet Union, ample evidence has been offered to show that at all times included in this case it was the intention of the conspirators to attack Russia and to seize and permanently hold parts of her territory lying in East Asia (particularly Siberia). The only differences which existed among the conspirators were as to when this should be done -- whether the advance should first be north or south. It has already been shown that the decision was to go south. This did not involve any abandonment of the plans to attack Russia -- it merely delayed their execution.

Through<sup>out</sup> the period of the conspiracy many things were done in the planning of the aggressions against Russia. Within the limits of this presentation it is not possible or even desirable to make an exhaustive analysis of the evidence. It is sufficient to state that the evidence clearly shows that in the course of this conspiracy the following things were done:

(Ex. 66-839)  
R. 7302-8177)

During the period of 1928-1945 propaganda for war of aggression against the Soviet Union was spread.

The seizure of Manchuria and turning it into a military base for an attack either on the Soviet Union or China in violation of the Portsmouth Treaty and the Peking Convention of 1925.

The establishment of a military base for an attack on the USSR in Korea in violation of the Portsmouth Treaty and the Peking Convention.

The preparation of the population of Manchuria for war against the USSR, including the formation of the "Kyo-wa-kai" Society. Subversive activities of the Japanese military and the employment of White Russian emigrants against the USSR in violation of the Peking Convention.

Sabotage activities of the Japanese on the Chinese Eastern Railroad.

Systematic violations of the state frontier of the USSR.

An undeclared war of aggression against the USSR in the Lake Khassan area during July and August of 1938.

An undeclared war of aggression against the USSR and the Mongolian Peoples Republic in the Nomongham area in May-September 1939.

Refusal to accept Russia's proposal to conclude

a non-aggression pact as a manifestation of hostile aggressive policy of Japan against the USSR.

The conclusion of the anti-Comintern Pact.

The conclusion of the Tri-Partite Pact.

As the day drew near for the offensive which she believed would remove the last obstacles from the path of her conquest and control of Greater East Asia, Japan's preparations for war mounted to huge proportions, entailing a complete reorganization and greater control and centralization of her entire industrial, economic and financial structure and the closer integration of her political and economic systems with those of Manchuria and China. These preparations included over-all mobilization of all of Japan's manpower.

In carrying out her plans Japan, in 1933, withdrew from the League of Nations; in 1934 she gave notice of Washington Naval Treaty; she withdrew from the her withdrawal from the 1936 Naval Conference; she refused to adhere to the Fourteen-Gun Limitation which had been agreed to by Britain, France and the United States.

Military and naval plans not only required the mobilization, training and arming of vastly increased numbers of soldiers and sailors, acquisition of war ships,

(LX.840,841,  
842,  
(R.8260-8567)

(LX.58, pp 9-34,  
55+57  
(K.9189-9217,  
9226-9233

(A.684  
R.8791-9075

carriers, aircraft, tanks, artillery and the countless impedimenta of modern war, but demanded the accumulation of vast stores of material and long range plans for the acquisition of replacements as these were used.

(R.9232-9262)

(R.11,178)

The Mandated Islands were fortified and otherwise prepared for tactical and strategic use in war. This was in direct violation of the mandate and of Japan's treaty obligations with the United States.

(R.9158-81,  
R.11,196-11,202  
Ex.23,29

The proposed wars being of an aggressive character, involving the invasion of other countries, military currency to be used in such other countries in denominations of dollars, pesos and guilders was ordered printed and held for use.

(Ex.852,  
R.8446-8470.

The true scope of the grand design of the conspirators to achieve political, military and economic control of the Asiatic continent and adjacent areas was fully developed in the evidence presented during the phase which covered the relations of Japan with the United States and Great Britain during the period of the indictment.

This evidence showed that apart from the resistance of the Chinese and other peoples of Asia, these two powerful nations were the great and formidable obstacles

to the successful achievement of all that the conspirators planned. They were obstacles not only because of the vast financial and economic interests which they or their nationals possessed in China and the rest of Asia, which had to be expelled or limited and subordinated to those of Japan if the conspiratorial plan was to be successful, but also because through solemn treaty and agreement Japan stood firmly bound with them to forego the aims and ends of the conspiracy and to forbear from any and all of the actions required to effectuate it.

The evidence has shown that so long as the provisions of the various treaties remained in full force, so long as the parties signatory to them felt themselves firmly bound to respect them both in letter and in spirit, the conspiracy to dominate the East Asiatic and Pacific worlds could not be fully carried out. The object of the conspiracy could be successfully accomplished only if the formidable obstacles of the United States and Great Britain could be removed, and this could be accomplished only if these treaty provisions and their co-relative duties and obligations could be evaded, abrogated, altered, redefined, or broken.

The evidence in this part of the case from the period from 1931 on told the story of the efforts of the conspirators to rid Japan of the duty of carrying out the various obligations which they had voluntarily undertaken of respecting the rights of others in the Asiatic-Pacific world and of the resistance of the United States and Great Britain to such efforts. To free Japan of her duties and obligations under these treaties so as to eliminate Britain and the United States from the Asiatic world or to subordinate their rights there to those of Japan within the limits allowed by Japan, the evidence shows that the conspirators resorted to every known or conceivable method to evade, alter, abrogate or redefine the treaties.

They used intimidation, fraud, artifice and chicanery, subtle redefinition of terminology, negotiation, and when all else failed they resorted to the use of armed force in an aggressive war against these two western powers.

The evidence showed that by the beginning of the year 1941 the situation had reached a critical stage and at this juncture the conspirators decided to finally accomplish their purpose of dominating the Asiatic-Pacific world and remove the obstacles to that project presented by Great Britain and the



United States. To accomplish this they adopted a two-fold policy; on the one hand they negotiated with Britain and the United States on certain specific outstanding problems in accordance with certain proposals which, if accepted, would have left Japan the master of the Asiatic-Pacific world, with Britain and the United States relegated to whatever position Japan might allow; on the other hand they actively prepared for war with these countries with the same objectives and results. Both programs had the same objectives, and while some felt that they could accomplish the objectives of the conspiracy through negotiation, others viewed them as impossible from the beginning and regarded them only as useful camouflage for active war preparations, to lull the United States and Britain into a false feeling of security. To this latter group the negotiations were an integral part of the preparation for war.

(See Ex. 920 to 1299)

(R. 9264 to 11393)

Perhaps we who are Americans or British are inclined to regard the sudden and unprovoked attacks on Pearl Harbor, Kotabahru, Hong Kong, and Davao as the culmination of this conspiracy. This is not true. The attacks on Britain and the United States were but steps in the grand design to become the masters of all East Asia. This was the true objective - the end and purpose of every act of the conspirators at home and abroad.

The machinations, the threats, the pressure, the military action, all under cover of misleading and false explanations, by which Japan forced large armies first into northern and later into southern Indo-China were but steps in the plans to acquire the complete control of that rich territory.

(Ex.612-665  
R. 6731-7194

The attempts to force concessions, the subversive activities, the spreading of propaganda, the military invasion of the Netherlands East Indies, the forcing of Japan's political structure, of Japanese education, of Japanese propaganda, and the cultivation of Japanese inspired political movements within that country were but part and parcel of the objective to become its masters.

(Ex.1284-1354,  
R.11669-12342

In the course of the overall conspiracy which I have been discussing which is pleaded in Count 1 of

the indictment, the lesser conspiracies alleged in Counts 2, 3, 4 and 5 were involved. They were but part and parcel of the overall plan. The preparations for war alleged in Counts 6 to 17 inclusive, the initiation of the wars alleged in Counts 18 to 26 inclusive, the waging of the wars set forth in Counts 27 to 36 inclusive were all crimes committed within the scope and course of the overall conspiracy pleaded in Count 1 and concerning which I have been addressing the Tribunal.

The charges of murder set forth in Counts 37 to 52 inclusive, were perpetrated in the course and as a part of the carrying out of the conspiracy. Each of these murders and countless tens of thousands not pleaded were but the ordinary, customary, expected and foreseen results of the wars of aggression contemplated by the conspirators.

The conventional war crimes and crimes against humanity set forth in Counts 53 to 55 inclusive were but the obvious, necessary and intended results of the kind of warfare planned and intended by these conspirators.

No one of the accused can disassociate himself from his participation in the overall criminal conspiracy

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alleged and proved. No reasonable contention that any of the specific crimes charged was not within the scope, purpose or intent of that conspiracy can be made. It follows that each of the defendants is criminally liable for each act committed during the course of the criminal conspiracy.

(Charter,  
II,6)

It is no defense that the position of any accused was "subordinate", or that he but obeyed orders.-- neither under common law, nor the charter, is such claim a defense, and who can say in a conspiracy of this magnitude, what role was "subordinate"?

As we come now to a consideration of the evidence showing the connection of the several defendants with the over-all conspiracy and their individual guilt, it is well to bear in mind that the object of the plan or conspiracy upon which these defendants and others entered, was that Japan should secure and hold the military, naval, political and economic domination of all East Asia and the Pacific and Indian Oceans and all countries and islands therein and bordering thereon, and at the same time drive the "whites" out; that this object should be effected by means of declared or

undeclared wars of aggression and in violation of International law, treaties, agreements and assurances, against any country or countries, including the countries sought to be seized, which might oppose that purpose.

The conspiracy envisaged and required the preparation of the people of Japan by means of propaganda and censorship to accept and join in the program intended. It involved the economic and political renovation, coordination and integration of Japan itself. It involved the keying of the Japanese economical and financial system to the expanded requirements of aggressive war, and the integration of that system with those of conquered territories. It involved vast preparation by acquisition, manufacture and storing of arms, munitions and military and naval equipment. It involved the training of soldiers and sailors in vast numbers, and the mobilization for agriculture and industry of the man and woman power of Japan. It involved the organization and use of the communication and transportation system of Japan and all conquered territories. It involved the organization and use of the man power of conquered territories

for the benefit of Japanese military and civilian industrial and economic requirements. It involved the over-all integration of all of the people, the territory, the men and material of Japan and her conquered territories for the single purpose of further military aggression and domination, while at the same time it required that in her International relations Japan should on the one hand conceal her true purpose and her war-like preparations and on the other hand seek by means of diplomacy to lull the other nations of the world into a sense of security and at the same time to obtain from them any and all concessions which would enable Japan to proceed with her grand objective.

To accomplish this purpose there were required not only military men such as ARAI, IINAMI, TOJO, and others, but naval officers such as NAGANO, SHIMADA and OKA, and propagandists such as OKAWA, HASHIMOTO, ARAKI and SHIRATORI; politicians such as KIDO and MATSUOKA; industrial and economic experts such as HOSHINO; financial experts such as IWAYA; diplomats such as HIROTA, TOGO, SHIGEMITSU, OSHIMA; makers of puppets, such as DONIHARA and ITAGAKI; and countless others.

The efforts of all these men in their many and varied fields were required in order that their grand objective might be attained, and while the roles of some were more spectacular and dramatic than those of others, each in his place and at the times required performed his part and contributed effectively to the development of the plans, strategy and the action of the conspiracy.

My brother, Mr. A.S. Comyns-Carr, associate prosecutor from the United Kingdom, will now present to the Tribunal an analysis of the evidence showing the connection of each of the individual accused with the conspiracies here alleged and their criminal responsibility for each of the specific crimes charged.

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(Charter:  
IV, 15)

Under the Charter, it would seem not timely, or even proper, at this stage of the trial, for the Prosecution formally to sum up, or fully to analyze the evidence. We have, therefore, made no effort to present our full views in respect of all of the evidence so far offered. This presentation and that to follow are intended simply and only to show:

(1) That there is sufficient evidence, if uncontradicted or unexplained, to prove the existence of the conspiracies and the commission of the substantive crimes alleged in the Indictment;

(2) That each of the accused was a responsible member of the conspiracy and as such criminally answerable as a conspirator and also for the substantive crimes committed, whether in the course of the conspiracies or otherwise.

If more than this is required we submit that under the express provisions of the charter the time to do so is after all evidence from the defense, as well as the prosecution, has been heard.

At any rate, it should be borne in mind that in considering a motion to dismiss at the end of the prosecution case, it is the duty of the Court to take

as true all evidence and to draw all inferences therefrom favorable to the prosecution; and at the same time to disregard all conflicts, whether of evidence or inference.

The arguments made by the defense have obviously disregarded this fundamental rule.