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極東国際軍事裁判速記録

（英文）

第2,224頁から
第2,615頁まで

昭和21年7月10日から
昭和21年7月26日まで

法務大臣官房司法法制調査部

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日付頁索引（第7巻）

審理段階	検察側立証（満洲武力侵略 一部南京虐殺事件）	
年月日	午前	午後
21-7-10	2224～2284	
15	2285～2294	
22	2295～2341	2342～2363
23	2364～2390	2391～2418
24	2419～2445	2446～2476
25	2477～2506	2507～2541
26	2542～2579	2580～2615

備考
1．内容の索引については、各日速記録冒頭の Index を参照されたい。
2．証拠資料（却下資料等を含む。）の索引については、「極東国際軍事裁判記録目録」の英文速記録頁欄を参照されたい。

めくれず

Capt. Clark 21.7.10
July.10

Wednesday, 10 July, 1946

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

The Tribunal met, pursuant to adjournment, at 0930.

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Appearances:

For the Tribunal, same as before.

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.)

Abr/m & Morse

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

THE PRESIDENT: All the accused are present except OKAWA and HIRANUMA, who are represented by their counsel.

I have here a certificate from the prison medical officer, certifying that HIRANUMA is unable to attend the trial for the time being. Let it be recorded.

Does any counsel desire to mention any matter? Mr. Logan.

MR. LOGAN: If the Tribunal please, I wish to present a matter at this time on behalf of all of the accused, which we believe to be of vital importance in this case. This Tribunal has upon several occasions based its rulings on precedents which have been established at the Nuernberg Trials, and I wish to call your attention to a ruling which was made at the Nuernberg Trial with respect to the admission of interrogatories of the accused.

THE PRESIDENT: You are wrong in assuming we have been following Nuernberg slavishly. I have not read the decisions until the last day or two. We are always pleased to have their guidance, and I think in some matters we have followed them. I do

not remember any matter in which we have given a different ruling.

MR. LOGAN: If my recollection is correct, your Honor, I think it has been mentioned several times as to the rulings that have been made at Nuernberg and they have been followed here.

THE PRESIDENT: I will tell you one matter. Lord Patrick has reminded me several times that we are far more liberal to the defense than they are at Nuernberg.

MR. LOGAN: May I continue, if the Tribunal please? I think you will follow what I have --

THE PRESIDENT: We are not going to have any general discussion on Nuernberg rulings. If you are going to point out a ruling at Nuernberg which we have not followed, you had better wait until the point arises again. I am certainly not going back on any decision of mine because it may have been something different than given at Nuernberg. We are not slavishly following Nuernberg, which I do not think we should do.

MR. LOGAN: The point on which I am about to speak, if it please the Tribunal, is now before the Tribunal with respect to these interrogatories which are being read.

THE PRESIDENT: You may refer to it.

MR. LOGAN: At the close of the Court yesterday, the prosecution was reading excerpts from a statement which was purported to have been made by the accused ARAKI. Now, the Tribunal's decision on this matter is of extreme importance to all the accused, in view of the fact that many statements of practically all of them were taken while they were at Sugamo Prison, and in all probability the prosecution will offer them in evidence later in the trial and we feel that the decision by the Tribunal on this particular point will act as a precedent with respect to all these statements to be offered later.

This Tribunal has previously ruled that where excerpts from documents made by persons other than the accused have been read by the prosecution, that the accused may not read further excerpts from the same document until the defendants' case is reached. Now, with respect to the application of this same ruling to statements by the accused, we contend it should be different. It is sound law, and I believe universally recognized, that where part of a confession or declaration by the accused is offered by the prosecution that the balance of the document may be introduced and excerpts read by the

accused on the prosecution's case.

THE PRESIDENT: The balance may be tendered and part of an answer not read may be read, but not the whole of the answers. That is what you want to do. If you are right you can insist on the whole of the two interrogations of ARAKI being read immediately.

Talking about Nuernberg decisions, I want to remind you, for what it is worth, that there are four nations represented at Nuernberg; those four are represented here and seven other nations besides, and you are wrong if you think we are going to slavishly follow Nuernberg. We pay the greatest respect to their decisions.

MR. LOGAN: I am sorry, your Honor, but I think you misunderstood what I said. I specifically said that where part of a confession or declaration is offered by the prosecution, the balance of the document may be introduced and excerpts read by the accused on the prosecution's case. I did not contend that we should be permitted to read the entire document.

THE PRESIDENT: It is the duty of the prosecution to read the whole of the answer, if the whole should be read. Otherwise they may mislead the Court.

MR. LOGAN: I appreciate that, your Honor, but what we are contending for is this: that there may be some other portion of this declaration or statement which will explain away the portion that the prosecution has read. And that is what we are contending, that we should be permitted on the prosecution's case to read any other portion of that statement which explains away any excerpts that the prosecution has read; that we should not be required to wait until the prosecution's case is completed, so that then we could put it in on our case, because the decisions in the Nuernberg case, No. 81, 82, 83, that procedure was followed there and we contend that the same procedure should be followed here.

THE PRESIDENT: Pardon me a couple of minutes, Mr. Logan. Let us do something else.

Yes, Mr. Logan, go ahead; continue your argument.

MR. LOGAN: Well, as I said, there are three decisions in the Nuernberg Trial, which I would like to read to the Tribunal. No. 80 - (Reading;) "If the counsel for the prosecution reads a part of the interrogation and you wish to refer to another part of the interrogation, in order that the part that he read should not be

misleading, you will be at liberty to do so when he has read his part of the interrogation." 81 --

THE PRESIDENT: If you raise an issue when they read part of an answer the only way for us to decide it would be to hear the balance of the answer in that particular case. We might trust you to that extent, or perhaps distrust the prosecution to that extent, but that would not be departing from any decision that we have given. If that is all you want I do not think it will be difficult to accommodate you. If you charge suppression against the prosecution, it is a matter we should immediately investigate and deal with you if you make a wrong charge. Suppression of facts is a form of fraud and we have to deal with it if you raise it. I do not think you need any further decision than that, Mr. Logan.

MR. LOGAN: May I say this, if the Tribunal please: I am not making any charge of fraud; I am making no charge of suppression of evidence. What I am asking for is not that the balance of one particular answer be read by the defense. I am asking that some other part of that statement which the accused gave may be read by the defense in explanation of some statement that they read from an excerpt. That is all I am asking.

THE PRESIDENT: That will give you too much of an opportunity to intrude into the prosecution's case, but if you were charging suppression by them, then we would have to investigate it.

MR. LOGAN: If the Tribunal please, we of the defense really believe that this is a fundamental proposition of law. It is the same proposition that is followed in all our courts, that where a document in the nature of a confession of the accused is offered in evidence, in our courts we are permitted to ask that the entire document go into evidence, and that the defense is permitted to read any other excerpts in the prosecution's case. That to us is so fundamental, and that is what we are asking that this Tribunal follow.

THE PRESIDENT: Let us understand this. The balance goes into evidence as you require. The only question is how much you should be allowed to read. If you can say that the prosecution is suppressing a material part of an answer, then we will hear what the balance is, but you will be practically charging suppression of facts. I am supporting a decision already given by this Court.

MR. LOGAN: May all the defendants have an exception to your Honor's ruling on that?

THE PRESIDENT: My colleagues agree with me. You may take any exception you wish and that will be noted.

MR. HYDER: If the Court please, I should like to continue the reading of an excerpt of the interrogation of the accused ARAKI taken on February 8.

THE PRESIDENT: I think you should have the amplifier closer to you Mr. Hyder.

MR. HYDER: I begin on the second question from the bottom of page 4 of the excerpt which the Court has. (Reading:)

"Q General, why was this an extra-ordinary session?

"A It was really an emergency session, as expenditures were required which would ordinarily have to be passed by the Diet and the Diet was not in session at the time.

"Q What expenditures were required?

"A Expenditures for the pacification of the four provinces, comprising General Chang Hsueh-liang's territory. Matters at this time were very urgent and could be compared to a fire, conflagration. There was no time for discussions or arguments about the types of pumps to be used and so forth."

Continuing to the third question, page 6, of the excerpt which the Court has. (Reading:)

"Q But at this time, there was a cabinet meeting in which it was agreed?

"A I do not remember that there was a cabinet meeting, but I do remember that I consulted the Prime Minister who was comparatively the Foreign Minister, the Finance Minister, and the Secretary of the Cabinet.

"Q But the suggestion emanated from you?

"A Yes.

"Q At the preliminary meeting it was the unanimous agreement of all present that the appropriation should be made and that the four provinces under General CHANG should be pacified and occupied by Japanese tropps, was it not?

"A The main object of the preliminary meeting was the appropriation for the army. The policy of occupying and pacifying the four provinces followed as a matter of course but this was not stated as a definite policy.

"Q It was discussed, was it not?

"A This would have been discussed because unless this was supported to the satisfaction of all, the appropriation would not be granted.

"Q It was the unanimous agreement of all present?

"A It was the unanimous agreement of the Privy Council members present at the preliminary conference. And when the question is taken up in the Imperial Conference, the members who did not attend the preliminary council would be present and the matter would be discussed. Members of the cabinet would also be present, and the decision would have to be unanimous."

Whalen & Duda

"Q What was your answer in the preliminary meeting to their questions on the violation of the Nine-Power Treaty?

"A I do not think this matter was discussed at the preliminary meeting.

"Q It was discussed at the Imperial Conference, was it not?

"A No, it was not discussed. The only subjects discussed were the area of occupation and the object of the occupation. The violation of the Nine-Power Treaty might have been discussed at other Privy Council meetings but at this meeting the important question was the settlement of the affair.

"Q The area involved of which you speak being Kiorin, Mukden, Heilungking and Jehol, is that not true?

"A Yes. At the time a discussion arose as to whether it was three provinces or four provinces.

"Q They decided on four, did they not?

"A Yes, they decided on four provinces to keep Chang Hsueh-liang from retreating to Jehol and operating from there, it was also decided to include Jehol."

MR. McMANUS: At this time, Mr. President, may I inquire if the prosecution has these minutes

of the Privy Council meetings referred to in this statement, and if so, whether or not they intend to produce them later.

MR. HYDER: To my knowledge the prosecution does not have the minutes of that Privy Council meeting. ARAKI stated in his interrogation, and we found it quite true in most instances, that the records are destroyed at the end of ten years.

CAPTAIN KLEIMAN: May I address the Tribunal?

If it please the Tribunal, we have exhibit 83, which provides for the organization of the Privy Council. We have four records of the Privy Council meetings and the decisions which have been presented to the defense already by the prosecution, which contradicts the statement of the defendant ARAKI.

The reason why--

THE PRESIDENT: That is not a matter to be mentioned now. We will not hear you any further on this point.

CAPTAIN KLEIMAN: All right, sir.

THE PRESIDENT: We are not accepting all the prosecution tells us as correct. It is all subject to contradiction at the appropriate time by the defense.

MR. HYDER: We next introduce prosecution

exhibit No. 10002.

CLERK OF THE COURT: It will receive exhibit No. 188-D.

(Whereupon, the document above referred to was marked prosecution's exhibit No. 188-D for identification.)

MR. HYDER: These are the admissions of the accused ARAKI taken on February 8, 1946, at Sugamo Prison, page 6 of the interrogation.

THE PRESIDENT: Admitted on the usual terms.

(Whereupon, prosecution's exhibit No. 188-D was received in evidence.)

MR. HYDER: We offer this portion of the admission of the accused ARAKI to prove that ARAKI knew that the four provinces, being the Three Eastern Provinces in Manchuria and the province of Jehol, were part of China and the sovereign rights of the Chinese.

I should like to read:

"Q General, did every one at this extra-ordinary session know that these four provinces were of the territory of China?

"A Yes. A member of the Diet expressed surprise that four provinces were considered to be under Chang Hseuh-liang's jurisdiction. He thought Manchuria comprised only three provinces. He thought

these were called the Three Eastern Provinces from ancient times.

"Q So this demonstrates that they knew it?

"A Yes. The sovereign rights were Chinese, but at this time it was not definite whether these four provinces belonged to Chang Hsouh-liang or Chang Kai-shek, or to whom.

"Q That is the government you are speaking of?

"A Yes."

MR. HYDER: We next introduce prosecution exhibit No. 10004.

CLERK OF THE COURT: Marked exhibit 188-E.

(Whereupon, the document above referred to was marked prosecution's exhibit No. 188-E for identification.)

MR. HYDER: These are the admissions of ARAKI taken February 13, in the afternoon, page 2. We offer this portion as the admissions of the accused ARAKI, Sadao, to prove that the decision of pacification and occupation approved by the conference was embodied in ARAKI's order to General Headquarters, and they took the procedure of sending troops.

THE PRESIDENT: Admitted on the usual terms.

(Whereupon, prosecution's exhibit No. 188-E was received in evidence.)

MR. McMANUS: Mr. President, I do not like to be bothering the Court with objections all the time. But I think I should object again to these preliminary opening statements before the introduction of each document. The document speaks for itself. It is the prosecutor testifying. The opening statement has already been made. Does he have to call the Court's attention and put it in the record before the introduction of each document, an opening statement as to what it tends to prove? The document speaks for itself. It follows the opening statement of Mr. Darsey.

THE PRESIDENT: It serves your purposes to save time. What Mr. Hyder is doing now is allowed at Nuernberg, strangly enough. We shall allow the defense the same privilege. But it must be a very short explanation, Mr. Hyder, and only when necessary.

MR. HYDER: We submit it only to show what we believe to be the ultimate facts supported by the evidence.

THE PRESIDENT: Do not make an explanation unless it is absolutely necessary in your opinion, or highly desirable.

MR. HYDER: I should like to read:

"Q General, what I want to know now is -- after the decision of the Imperial Conference, how did you order the completion of the occupation of these four provinces?

"A We immediately decided to send the troops to Fengtien Province. The principal plan was made in the War Ministry's order to General Headquarters, and they took the procedure of sending the troops for operation.

"Q Who signed the order? Did you, General? The order to General Headquarters?

"A The principal plan approved by the conference as a matter of procedure I signed.

"Q General, can you recall what was in the order that you signed?

"A I don't remember.

"Q Would it be in the files of the War Ministry?

"A I don't know that. It was so long ago that I am not sure whether we could find the document or not.

"Q It was approved by the Emperor, was it not?

"A The Emperor knew about the plan, however the order was issued by the Advisor, and as to the written order a document as old as ten years they would usually destroy."

Judge McKenzie will continue for the prosecution, if the Court please.

THE PRESIDENT: Well, what is the next step?

MR. HYDER: Judge McKenzie continues, please.

THE PRESIDENT: Mr. McKenzie.

MR. McKENZIE: If the Tribunal please, I desire to offer three extracts from exhibit 58, one of the basic documents, which is already in evidence, the first one being document 219-C -- 219-B, I am sorry.

CLERK OF THE COURT: Document 219-B will receive exhibit No. 189.

(Whereupon, the document above referred to was marked prosecution's exhibit No. 189 for identification.)

MR. McKENZIE: These three excerpts are complete telegrams showing the three assurances given by the Japanese government to the United States.

THE PRESIDENT: Admitted on the usual terms.

(Whereupon, prosecution's exhibit No. 189 was received in evidence.)

MR. McKENZIE: "The Japanese Embassy to the Department of State. Statement issued after Extraordinary Cabinet Meeting September 24, 1931.

"The Japanese Government has constantly been

exercising honest endeavors in pursuance of its settled policy to foster friendly relations between Japan and China and to promote the common prosperity and well-being of the two countries. Unfortunately, the conduct of officials and individuals of China, for some years past, has been such that our national sentiment has frequently been irritated. In particular, unpleasant incidents have taken place one after another in regions of Manchuria and Mongolia in which Japan is interested in especial degree until an impression has gained strength in the minds of the Japanese people that Japan's fair and friendly attitude is not being reciprocated by China in like spirit. Amidst an atmosphere of perturbation and anxiety thus created a detachment of Chinese troops destroyed tracks of the South Manchurian Railway in the vicinity of Mukden and attacked our railway guards at midnight of September 18th. A clash between Japanese and Chinese troops then took place.

"The situation became critical as the number of Japanese guards stationed along the entire railway did not then exceed ten thousand four hundred while there were in juxtaposition some two hundred twenty thousand Chinese soldiers. Moreover, hundreds of thousands of Japanese residents were

placed in jeopardy. In order to forestall imminent disaster the Japanese army had to act swiftly. The Chinese soldiers, garrisoned in neighboring localities, were disarmed and the duty of maintaining peace and order was left in the hands of the local Chinese organizations under the supervision of the Japanese troops.

"These measures having been taken, our soldiers were mostly withdrawn within the railway zone. There still remain some detachments in Mukden and Kirin and small number of men in a few other places. But nowhere does a state of military occupation as such exist. Reports that Japanese authorities have seized customs or salt gabelle office in Yingkou or that they have taken control of Chinese railways between Supingkai and Chengchiatun or between Mukden and Sinmintun are entirely untrue, nor has the story of our troops having ever been sent north of Changchun or into Chientao any foundation in fact.

"The Japanese Government at a special cabinet meeting September 19th took decision that all possible efforts should be made to prevent aggravation of the situation and instructions to that effect were given to the commander of the Manchurian garrison.

It is true that a detachment was despatched from Changchun to Kirin September 21st, but it was not with a view to military occupation but only for the purpose of removing the menace of the South Manchurian Railway on flank. As soon as that object has been attained the bulk of our detachment will be withdrawn. It may be added that while a mixed brigade of four thousand men was sent from Korea to join the Manchurian garrison the total number of men in the garrison at the present still remains within the limit set by the treaty and that fact cannot therefore be regarded as having in any way added to the seriousness of the international situation.

"It may be superfluous to repeat that the Japanese Government harbors no territorial designs in Manchuria. What we desire is that Japanese subjects shall be enabled to safely engage in various peaceful pursuits and be given an opportunity for participating in the development of that land by means of capital and labor. It is the proper duty of a government to protect the rights and interests legitimately enjoyed by the nation or individuals. The endeavors of the Japanese Government to guard the South Manchurian Railway against wanton attacks would be viewed in no other light. The Japanese Government,

with the Chinese Government in order to prevent the present incident from developing into a disastrous situation between the two countries and to work out such constructive plans as will once for all eradicate causes for future friction. The Japanese Government would be more than gratified if the present difficulty could be brought to a solution which will give a new turn to mutual relations of the two countries."

Counsel has called my attention to the fact that I skipped one line, if the Tribunal please, inadvertently. "The Japanese Government, true to established policy, is prepared to cooperate with the Chinese Government . . ."

I desire, if the Court please, to offer IPS document 219-C, being the second assurance, given on November 24, 1931.

CLERK OF THE COURT: Exhibit No. 190.

THE PRESIDENT: Admitted subject to the usual terms.

CLERK OF THE COURT: 219-C received exhibit number 190.

(Whereupon, the document above referred to was marked prosecution's exhibit No. 190 for identification, and was received in evidence.)

THE PRESIDENT: Mr. McKenzie, will you see that the Judges have these documents before you start to read them.

MR. McKENZIE: Yes, your Honor. I laid them all on the Clerk's desk before I began.

THE PRESIDENT: Do not start to read until I tell you.

MR. McKENZIE: Shall I proceed, your Honor?

THE PRESIDENT: Yes.

MR. McKENZIE: 219-C, a telegram.

"The Ambassador in Japan (Forbes) to the Secretary of State. (Paraphrase) Tokyo, November 24, 1931, 10:00 p.m. (Received November 24, 11:45 a.m.)

"No. 234. With reference to the telegrams of the Department. At 6 o'clock this evening I conveyed the purport of your messages to Baron SHIDEHARA. The attitude of the Foreign Minister was wholly conciliatory and cordial. He made the statement that the Premier, the Secretary of War, the Chief of Staff, and he are agreed that towards Chinchow there shall be no hostile operations, and orders have been issued to that effect. The clause in the draft prohibiting hostilities he agrees to, but is insistent that Japanese citizens must be protected by Japanese troops

against marauding bandits which infest the country. In this respect the situation is extremely difficult as these men who are actually members of marauding bands claim to be soldiers one day and appear in citizens clothes the next. There will be no objection on the part of Japan, he states, if hostilities were defined as operations between national armies. The exact wording I have not undertaken to quote. The retention of troops at Tsitsihar he states has no political significance; and its purpose is merely for picking up the dead, collecting the frostbitten and wounded, and effecting evacuation. With the thermometer 30 degrees below zero, troops have operated over an extended area with great suffering. The necessity for collection and caring for the sufferers -- a matter of days -- is the reason for the delay; when pressed he could not give me the number of days but says he is also in complete agreement with the officers of the War Department in the policy of this evacuation; he claims that the fighting reported in progress today is not near Chinchow and is merely to drive off a force of bandits, not exceeding 2,000, threatening to cut the South Manchurian Railway."

After those assurances, if the Tribunal

please, I should like to refer again to the Lytton Report, on page 72, beginning with the second paragraph.

"The first--

THE PRESIDENT: You have already read that, have you? Do not read it again. Have you already read that?

MR. McKENZIE: No, sir, I have not.

THE PRESIDENT: If you have not read it before you may read it now.

MR. McKENZIE: "The first of these operations was the bombing, on October 8th, of Chinchow, to which place the Provincial Government of Liaoning Province had been transferred by Marshal Chang Hsueh-liang at the end of September. According to the Japanese account, the bombing was chiefly directed against the military barracks and the Communications University, where the offices of the Civil Government had been established."

Passing down further into the paragraph:

"According to Mr. Lewis, the military barracks were in fact not touched at all and a multitude of bombs fell everywhere in the town, even on the hospital, as well as on the University buildings."

Next the Nonni Bridge operations, the last two paragraphs of page 72.

"The next operation was that of the Nonni River Bridges, which started in the middle of October and ended on November 19th with the occupation of Tsitsihar by the Japanese troops. The justification for this given by the Japanese was that they were attacked while repairing the bridge over the Nonni River which had been destroyed by General Ma Chan-shan. But the story must be begun earlier and an explanation given of the destruction of the bridges.

"At the beginning of October, General Chang Hai-peng, the Garrison Commander at Taonan, who in former times had held the same rank as Ma Chan-shan and Wan Fu-lin, and had tried to become Governor of Heilungkiang Province in their place, started an advance movement along the Taonan-Angangchi Railway with the obvious object of seizing the Provincial Government by force. It is alleged in the Chinese Assessor's document No. 3, and this view is supported by information from neutral sources, that this offensive was instigated by the Japanese. In order to prevent the advance of Chang Haipeng's troops, General Ma Chan-shan ordered the destruction of the bridges over the Nonni river and both armies faced each other across the large and swampy valley of that river."

Pages 73, 74 and 75 cover the detailed reports of that expedition and the fighting at Nonni River Bridge. Then is described the Tientsin Incident, and reading the last sentence from the next to the last paragraph on page 75:

"There were two outbreaks, on November 8th and 26th, respectively, but the whole affair is extremely obscure."

Greenberg & Barton

Then follows a description of the "Outbreak of November 8th, Japanese Version." And then the Chinese Version" and the Outbreak of November 26th," and the "Conflicting Accounts." And, in view of the fact that no conclusion is stated, they will not be read.

The "Effect of the Tientsin disturbances on the situation in Manchuria."

I desire to read the last two sentences from the paragraph completed on page 77, and then the following paragraph:

"They also repeatedly threw bombs on Chinchow, but news of the improved situation at Tientsin soon deprived the expedition of its original objective and, on November 29th, to the great surprise of the Chinese, the Japanese forces were withdrawn to Hsinmin.

"Another consequence of the earlier disturbances at Tientsin was that the former Emperor, who had been living in the Japanese Concession there, sought a safer refuge at Port Arthur on November 13th, after a talk with Colonel Doihara.

"The districts evacuated by the Japanese were re-occupied by the Chinese troops, and this fact was widely advertised. Chinese morale was

slightly raised; and the activities of irregular forces and bandits increased. Profiting by the winter season, they crossed the frozen Liao River at many points and raided the country around Mukden. The Japanese military authorities realised that, even to maintain their existing positions, reinforcements would be necessary, and with these reinforcements they hoped to be able to get rid of the menace of the Chinese concentration at Chinchow.

"Meanwhile, the situation in Manchuria was a subject of further discussion in Geneva. When accepting the resolution on December 10th, the Japanese delegate stated that his acceptance 'was based on the understanding that this paragraph (No. 2) was not intended to preclude the Japanese forces from taking such action as might be necessary, to provide directly for the protection of the lives and property of Japanese subjects against the activity of bandits and lawless elements rampant in various parts of Manchuria.' Such action was admittedly 'an exceptional measure called for by the special situation prevailing in Manchuria,' and its necessity would end when normal conditions should be restored there.' To that the Chinese representative replied 'that the injunction to the parties not to

aggravate the situation should not be violated under the pretext of the existence of lawlessness caused by the state of affairs in Manchuria,' and several Council members taking part in the discussion admitted that 'circumstances might arise there causing danger to Japanese lives and property and in such an emergency it might be inevitable that Japanese forces in the neighbourhood should take action.' When this matter has been referred to by Japanese officers who have given evidence before the Commission, it has been usually asserted that the resolution of December 10th 'gave Japan the right to maintain her troops' in Manchuria, or made the Japanese Army responsible for the suppression of banditry there. In describing the subsequent operations, they assert that, while executing this right against the bandit forces near the Liao River, they incidentally came in conflict with the remaining Chinese forces near Chinchow, which were in consequence withdrawn within the Great Wall. The fact remains that, having made their reservation at Geneva, the Japanese continued to deal with the situation in Manchuria according to their plans."

I now desire, if the Tribunal please, to introduce IPS document 219 I, which I believe is

exhibit No. 191.

CLERK OF THE COURT: That's right. Document No. 219 I will receive exhibit No. 191.

(Whereupon, the document above referred to was marked prosecution's exhibit No. 191 for identification.)

MR. McKENZIE: (Reading)

"Telegram" to "The Ambassador In Japan (Forbes) To The Secretary Of State (Paraphrase) Tokyo, December 22, 1931 -- 2 p.m., (Received December 22 -- 5:43 a.m.")

May I call the Tribunal's attention to the fact that there had to be a correction in this. The word "noon" was left out after "after," and it occurs correctly on the copies served on the Tribunal and the Language Section but was not corrected in the one served on counsel.

THE PRESIDENT: I don't have it here.

MR. BROOKS: If the Tribunal please, I don't believe any of the defense counsel have this telegram. I have a complete list of all the documents that have been served to date in proper order, there on my desk, and I don't have that telegram.

MR. McKENZIE: They were supposed to have been served a week ago Saturday. They would not

accept service, and they were served early Monday morning, I believe. That was a report given to me when I checked on it, and I checked as late as this morning to see if distribution had been made.

MR. BROOKS: Correction, if your Honor please: It has been filed under "2191." The "I" is run in as a "1." You can't tell the difference. I apologize.

THE PRESIDENT: Proceed, Mr. McKenzie.

MR. McKENZIE: (Reading)

"Saturday afternoon Inukai called at the Embassy and I quoted the words of an observer who had told me that in Manchuria Japan was creating a situation which was fraught with the certainty of future war, for with the alienation of Manchurian sovereignty China would not rest a gun. I was assured by Inukai that never would Japan allow such a situation to arise and never would Chinese sovereignty be impaired. He reiterated that Japan merely desired the protection of Japanese persons and interests, and expressed the expectation that with the restoration of order and improvement in the means of transportation in Manchuria there would be greatly increased influx of Chinese inhabitants.

"In the meantime, active preparations are

continuing for further operations in Manchuria where a free hand seems to have been given to the military."

Now, if the Tribunal please, I should like to refer again to the Lytton Report at the bottom of page 77:

"The 2nd Division, with the exception of its garrison at Tsitsihar, was concentrated west of Mukden. Reinforcements soon began to arrive; the 4th Brigade of the 8th Division between December 10th and 15th. On December 27th, Imperial sanction was obtained for the despatch of the Staff of the 20th Division and another brigade from Korea. Changchun and Kirin were for the time being only protected by Independent Railway Guards."

And now on the bottom of the page, "All the statements here given concerning numbers of units and strength of the Japanese forces are based on official Japanese information."

Passing now to the "Attack on Chinchow" on page 78, first two paragraphs, first sentence of the following paragraph:

"The concentrated attack of the Japanese forces began on December 23rd, when the 19th Chinese Brigade was forced to give up its position. From that day, the advance continued with perfect regu-

larity and hardly met with any resistance at all, the Chinese Commander having given out a general order to retreat. Chinchow was occupied on the morning of January 3rd and the Japanese forces continued their advance right up to the Great Wall at Schanhaikwan, where they established a permanent contact with the Japanese garrison in that place.

"The complete evacuation of Manchuria by the troops of Marshal Chang Hsueh-liang, practically without striking a blow, was not unconnected with the internal conditions of China south of the Wall. Reference has been made in an earlier chapter to the feuds between rival Generals and it must be remembered these feuds had not ceased.

"The comparative ease with which the offensive down to Shanhaikwan was carried out enabled the Japanese to release some of their troops from their original positions and make them available for advances in other directions."

Next is "The occupation of Harbin," and reading from the first few lines of the last paragraph on page 78:

"The district which, at the beginning of this year, gave more trouble than any other was that north and east of Harbin, to which the remaining followers

of the two former Provincial Governments of Kirin and Heilungkiang had withdrawn. The Chinese Generals in this northern sector seemed to have maintained some contact with Headquarters at Peiping, whence they received some support from time to time. The advance on Harbin began, as that on Tsitsihar had done, by an encounter between two Chinese forces. General Hsi Hsia at the beginning of January prepared for an expedition to the North with the view to occupying Harbin."

And passing now to the first paragraph at the top of page 79:

"Colonel Doihara, now General, who, in this emergency, was sent to Harbin on the 26th in order to take over the office of the special Japanese service there, told the Commission that the fighting between the two Chinese forces around Harbin continued for about ten days, and that there was great anxiety for the 4,000 Japanese residents, who mostly lived in a menaced area, together with 1,600 Koreans in the Chinese suburb of Fuchiatien, who were exposed to the danger of massacre. In spite of the fact that the anti-Kirin forces held the town during ten days of continual fighting, the casualties among the Korean and Japanese residents were comparatively

few. The latter organised themselves into armed volunteer bands and helped their nationals to escape from the Chinese suburb. One Japanese and three Koreans are said to have been killed while trying to escape. In addition, one of the Japanese aeroplanes, sent to reconnoitre the threatening situation, was forced to land owing to engine trouble and its occupants are said to have been killed by Ting Chao's troops.

"These two incidents decided the Japanese military authorities to intervene."

And then occurs a further description of that proceeding.

Passing to the top of page 80, the last two sentences in the first paragraph:

"On the evening of the 4th, the Chinese position was partly taken by the Japanese troops, and by noon of the 5th a final decision was reached. Harbin was occupied on the afternoon of the same day, and the Chinese withdrew in the direction of Sanhsing."

Passing now to the middle of the page:

"The Japanese operations since the beginning of February may be summarised as follows:

"Towards the end of March, the main part of the 2nd Division left Harbin in the direction of

Fangcheng in order to suppress the anti-Kirin troops of Generals Ting Chao and Li Tu. The Division advanced as far as the region of Sanhsing and returned to Harbin in the earlier part of April. By that time, the 10th Division had arrived at Harbin and took over the sector from the 2nd Division."

First sentence in the following paragraph: "In the earlier part of May, the Japanese forces in the north of Manchuria were further reinforced by the 14th Division."

And then two-thirds of the way down in the next to the last paragraph, and completing the paragraph at the bottom of the page:

"The Japanese claim that, during the earlier part of August, the troops of General Ma Chan-shan were again effectively routed and that they have strong evidence that the General himself was killed. The Chinese assert that the General is still alive. In this action, cavalry newly arrived from Japan likewise took part.

"During the month of August, several minor engagements took place on the borders of Fengtien and Jehol Provinces, mainly near the Chinchow-Peipiao branch line (of the Peiping-Mukden Railway), which is the only means of access to Jehol by railway.

There are widespread fears in China that these events are only a prelude to larger military operations at an early date, aimed at the occupation of Jehol by the Japanese. The main lines of communication which still exist between China Proper and the Chinese forces in Manchuria run through Jehol, and the fear of a Japanese attack in this province, which is already claimed as part of the territory of 'Manchukuo,' is not unreasonable. Its imminence is freely discussed in the Japanese Press."

THE PRESIDENT: This will do for the time being. We would like maps to guide us, if you have them available, Mr. McKenzie.

We will recess now for fifteen minutes.

(Whereupon, at 1045, a recess was taken until 1100, after which the proceedings were resumed as follows:)

Wolf & Spratt

MARSHAL OF THE COURT: The Tribunal is now resumed.

THE PRESIDENT: Mr. McKenzie, before you proceed: The Judges have had a conference on the question of air-conditioning in this court. We are all finding the conditions of heat most oppressive. This is one of the gravest cases ever tried, and for its proper trial, of course, we should have reasonable comfort. We have not that at present. We have been promised air-conditioning for the last three, four, or five months. We were told that it would be ready as early as June; it is not ready yet, and we are seriously thinking of adjourning until air-conditioning is installed. One of the doctors has reported, and he supports our attitude. However, we know, without any doctor's report, how we feel and how the heat is interfering with the proper discharge of our duties.

MR. McKENZIE: All I can say, if the Tribunal please, is that I shall be very happy to report it to the authorities and see if anything can be done to facilitate the matter.

THE PRESIDENT: Well, I can assure you we are tired of promises that are being made to us about air-conditioning, and we really feel that if we adjourn

that will speed up the air-conditioning.

We propose to adjourn at twelve o'clock until Monday morning at 9:30, and then we will review the position. We take that step with the greatest regret, but only under the greatest provocation.

Yes, Mr. McKenzie.

MR. McKENZIE: With reference to the Tribunal's request for maps, I found, upon inquiring from the photostatic section, that I could probably obtain photostatic copies of the maps which were originally a part of the Lytton report, and deliver them to the Court by tomorrow morning, if your Honor thinks they would be helpful at that time.

THE PRESIDENT: Yes.

MR. McKENZIE: Passing now to the 5th paragraph on page 81 of the Lytton report (reading):

"The information given by the Japanese Assessor concludes by stating that, although the maintenance of order in Jehol is 'a matter of internal policy for Manchukuo, Japan cannot be indifferent to the situation in that region in view of the important role played by Japan in the maintenance of peace and order in Manchuria and Mongolia, and that any disorders in Jehol would immediately produce very serious repercussions throughout Manchuria and

Mongolia.' General Tang Yu-ling concludes his report by stating that all possible measures were being taken to offer effective resistance should the Japanese attacks be renewed.

"From these communications, it seems that an extension of the area of conflict in this region is a contingency which must be reckoned with.

"Although the main Chinese Army was withdrawn within the Great Wall at the end of 1931, the Japanese continued to meet with opposition of an irregular kind in different parts of Manchuria. There have been no further battles such as occurred on the Nonni River, but fighting has been constant and widely dispersed."

Then follows a description of the nature of the resistence offered by the Chinese; the remnants of the northeastern armies, the irregular forces, the volunteers and bandits.

Now, I would like to turn the matter over to Mr. Hyder.

MR. BROOKS: If the Tribunal please, I have listened to this dissertation on the affair as it is presented, and before making an objection as to the materiality, I would like for the prosecution to give us, as a point of information, whether this

matter, how it is related, so that I can properly understand whether an objection to the materiality would be proper at this time, the reason being that it is, as I understand this phase of the case, involves crimes against peace as charged in the Indictment, and the struggle being one between the Japanese army and the Chinese army. Now, as I understand the situation disclosed from the evidence being put in here, this is not the Chinese Army of Nanking, or as recognized by the Allies or this Court as being the Chinese Army that should be considered as the national army.

THE PRESIDENT: Your plain duty is to object, if you think that the evidence is not material. It is not for the prosecution to try to educate you on the point. You object now; that is your position. Give the grounds of your objection. But your attitude is most unusual. I have never known it to be taken before. Do you want to object or do you not?

MR. BROOKS: I wish to object, if the Court please, but I thought, in fairness to the prosecution -- I understand the prosecution has the duty of bringing out everything before the Court. It may be possible that they are bringing this phase in to be fair, in showing the extent, because the last remark

they said was these men were rebels, robbers, and bandits. If that is the purpose I would not object to their presenting, before the Court, for their information, but it, if it is to show aggressive acts, I question the materiality to show the aggressiveness of the Japanese if it is not against the national army of China, because the circumstances show, and it is shown today in this morning's paper, these same people are still fighting the nationalists in China.

THE PRESIDENT: We take it you are objecting. Now let us hear your grounds.

MR. BROOKS: The basis for the objection is that the prosecution, if it is placed to show an act of aggression -- that they have not connected it up -- they have entirely presented the matter of facts that occurred which are proper for defense, but the defense wishes to present its own case, if it please the Court, and at the proper time. But this matter as presented at this time does not show a war of aggression, or an aggressive act on the part of the Japanese against the duly constituted authorities of China, because these men, by the evidence read into the case, were bandits and rebels, acting as soldiers one day and citizens the next, and have,

therefore, not been recognized as the true authority of the national army as such, and their aggression is against the Japanese residents and people. There was something, as stated, that was provided for by treaty -- by the armed forces that were there. It is not in excess of the treaty rights, and, therefore, is immaterial to that part of the case, if it is presented for that part alone. If it is something else, I have failed to see where it is connected up.

THE PRESIDENT: If there is anything in this objection, it should have been taken days ago, when this line of evidence was opened up. We are all of opinion there is nothing in the objection, and it cannot be sustained.

MR. McKENZIE: If the Tribunal please, I have just been handed a note from Eugene Williams asking me to please advise the Court that the prosecution has those two witnesses from China, of whom they would like to have their testimony taken, if possible, before the Court adjourns, or some provision made for it.

THE PRESIDENT: We are adjourning on the grounds that the conditions of heat are such that we cannot discharge our tuties in the way we think we should; and that applies to Chinese evidence as

well as to any other.

MR. HYDER: The prosecution next introduces prosecution's document No. 1871. It is the summary of Japanese war crimes in China from September 18, 1931, to August 13, 1937.

CLERK OF THE COURT: That will be given exhibit No. 192.

MR. HYDER: It is a document prepared by and sealed with the official seal of the Ministry of Foreign Affairs, Republic of China. We ask that this exhibit number be for identification and future reference.

(Whereupon, the document above referred to was marked prosecution's exhibit No. 192, for identification.)

We next introduce document No. 1871 C. That is a portion of section 1, pages 3 to 4, of court exhibit No. 192.

CLERK OF THE COURT: That will be given No. 192 A.

(Whereupon, the document above referred to was marked prosecution's exhibit No. 192 A, for identification.)

MR. HYDER: I should like to read it. (Reading.)

"After the occupation of the three provinces Liaoning, Kirin, and Heilungkiang, the Japanese continued to carry out their plan of westward expansion. In the Spring of 1932, when the war in Shanghai was concluded, their Army in the Chinese Northeastern Provinces was reinforced. In the middle of July, 1932, on the pretext that a Japanese officer by the name of ISHIMOTO was missing, the Japanese started to invade Jehol. Two general offenses were launched in July and August respectively. They failed to gain ground on account of the Chinese garrison forces in the front and Chinese volunteers operating in their rear. Yet the Japanese issued the fantastic declaration that Jehol Province was the territory of 'Manchukuo'; a pretext for its eventual occupation. Meanwhile, more reinforcements were sent to prepare another invasion on a grand scale. For the remaining half of the year, besides occupying quite a number of Chinese key points, small scale attacks occurred from time to time. There was no peace. At the beginning of the year, 1933, the Battle of Yu-Kwan (Shanhaikwan) was started, the key points along the Great Wall, such as Shanhaikwan and Kiumenkou fell into Japanese hands, the strategical situation of Jehol became very critical. On 22 Feb-

ruary 1933, in the name of puppet 'Manchukuo,' the Japanese Army sent to the Chinese an ultimatum, stating that Jehol was not Chinese territory and demanding that Chinese forces in the Jehol Province be withdrawn within 24 hours. On 25 February 1933, war broke out. The Japanese Army, from their bases in Tungliao and Sui-Chung advanced in three columns and commenced the general offense. For both military and political reasons, the Province of Jehol eventually fell into Japanese hands on 2 March 1933."

I should like to point out that the accused, KOISO, Kuniaki, was Chief of Staff of the Kwantung Army from August, 1932, to March, 1934; and that the accused, ARAKI, was Minister of War during this time.

May Mrs. Llewellyn continue for the prosecution?

Goldberg & Yelden

MR. FURNESS: If the Court please, is this, as I understand it Exhibit No. 192, is not in evidence? It is just marked for identification. Is that correct?

MR. HYDER: That is correct.

MR. FURNESS: Then might I ask whether this excerpt is covered by an exception which the Court has allowed to rule 6 (b)?

MR. HYDER: This document is in Chinese, if the Court please, and was in the rule. May I read a portion of the rule applicable?

THE PRESIDENT: Has it been tendered yet?

MR. HYDER: Yes, the document has been tendered.

THE PRESIDENT: It is admitted subject to the usual terms.

(Whereupon, prosecution's exhibit No. 192 was received in evidence.)

MR. FURNESS: This is a long document and I understand under Rule 6 the entire document has to be served on us if excerpts are introduced unless the Court allows an exception to Rule 6 (b). All I am asking is whether that exception has been allowed.

MR. HYDER: May I read the portion of the rule which we believe governs?

THE PRESIDENT. Well, what is the position? Is it covered by any order of the Court?

MR. HYDER: No, it is not, your Honor. We believe that we came within the part of the rule which I should like to read, if I may.

"If the document is in a language other than English or Japanese" -- this document is in Chinese -- "it shall be sufficient for the purpose of this provision if a translation into English or Japanese, as the case may be, of such a document, is delivered to the prosecution or the accused concerned or his counsel, and to such officer."

THE PRESIDENT: You appear to have complied with the rule.

MR. HYDER: Mrs. Llewellyn will continue for the prosecution.

MRS. LLEWELLYN: Mr. President and Members of the Tribunal, the prosecution offers for identification document No. 1870.

CLERK OF THE COURT: Document 1870 will receive No. 193.

MRS. LLEWELLYN: Exhibit No. 193 is known as the Tangku Truce and is dated 31 May 1933. The prosecution offers this document to prove that a demilitarized zone was established in the northeastern

part of the Province of Hopei and that under its terms the Chinese National Army was forced to withdraw south and west of this zone.

THE PRESIDENT: Admitted subject to the usual terms.

(Whereupon, prosecution's exhibit No. 193 was received in evidence.)

MRS. LLEWELLYN: The attention of the Tribunal is invited particularly to Articles II and III. This is the Tangku Truce referred to in the testimony recently by General TANAKA.

"(I) The Chinese Army shall be immediately withdrawn to the West and to the South of the line running through Yen-Chin, Chan-ping, Kao-Li-Ying, Shun-Yi, Tungchow, Hsiang-Ho, Pao-Ti, Ling-Ting-Kou, Ning-Ho and Lu-Tai. The Chinese Army henceforth shall refrain from taking all acts of provocation or disturbance.

"(II) The Japanese Army, in order to ascertain the actual carrying out of the provisions in (I), may from time to time use aeroplanes and other means for observation. This shall be accorded due protection and various facilities by the Chinese side.

"(III) The Japanese Army, having ascertained the carrying out of the provisions in (I) by

"the Chinese Army, shall not cross the above defined line in pursuit and shall all voluntarily withdraw to the Great Wall line.

"(IV) The maintenance of order in the region South of the Great Wall and to the North and to the East of the above defined line shall be entrusted to the Chinese police force. The said police force shall not employ armed groups which might provoke the feelings of the Japanese.

"(V) This Truce shall come into effect immediately after being signed and sealed."

Mr. Hyder will continue with the documentary evidence.

MR. HYDER: The prosecution next introduces our document No. 1871-D.

THE CLERK OF THE COURT: Document No. 1871-D will receive Exhibit No. 194.

MR. HYDER: This is a portion of Section XIX, pages 105 to 107 of Court Exhibit No. 192.

THE PRESIDENT: Admitted subject to the usual terms.

(Whereupon, prosecution's exhibit No. 194 was received in evidence.)

MR. HYDER (Reading):

"In the middle of May 1935, two Chinese by

"the name of HU SU-PAO and PAI YU-HUNG were assassinated in the Japanese Concession at Tientsin. Seizing this opportunity and blaming the Chinese for these assassinations, the Japanese tried to develop a situation to their advantage. SAKAI, Ruy, Chief of Staff, Japanese Garrison Forces in North China and TAKAHASHI, Tan, Assistant Military Attache of the Japanese Embassy, called upon General HO YING-CHIN, Chairman of the Peiping Branch Council, National Military Council. They stated that the Japanese Army considered the assassinations of HU and PAI as Chinese acts of provocation against the Japanese Garrison Forces. If such actions, unfavorable to Japan and "Manchukuo", should continue to occur, then the Japanese Army would probably take drastic actions. They further demanded that General YU-HSUEH-CHUNG be voluntarily transferred to some other post, and the Third Battalion of Chinese Military Police, the provincial and the municipal Kuomintang Party offices in Hopei Province, Bureau of Political Training of the Branch Council, and the so-called "Blue Shirts" as alleged by the Japanese be withdrawn too. In order to maintain the peace and the diplomatic relation, the Chinese Government thereupon voluntarily ordered the dismissal of CHEN KUO-TSIN,

"Chief of the Bureau of Political Training, CHIANG HSIAO-SIEN, Commander of the Third Battalion of the Chinese Military Police, and TING CHAN, Vice Commander of the same battalion. Meanwhile, the National Government also decided to suspend the work of the Party office in Tientsin, and to transfer the Governor of Hopei Province to some other post, and to order local authorities to trace down the assassins. But the Japanese were still unsatisfied with all these changes and decisions. Soon after, the Japanese again demanded that all Party offices in Hopei Province be entirely abolished, the 51st Army, the 2nd Division and the 25th Division of the Central Army be withdrawn, and all anti-Japanese activities be banned. These demands, furthermore, should be acceded and put into effect at once, otherwise, the Japanese Army would take unrestricted actions. As the situation at that time was so serious and grave, the Chinese Government in great pain agreed to compromise for the sake of peace. All Party offices in Hopei Province were voluntarily closed, the 51st Army, and so forth, were respectively transferred to other areas, and the National Government reiterated the ban on anti-Japanese movements. The Incident of Hopei Province was thereby concluded."

The prosecution next introduces the prosecution document No. 1242.

CLERK OF THE COURT: Document No. 1242 will receive exhibit No. 195.

MR. HYDER: This is a letter from NISHIO, Chief of Staff of the Kwantung Army, dated December 9, 1935, to FURUSHO, Vice Minister of War, received December 12, 1935.

THE PRESIDENT: Admitted on the usual terms.

(Whereupon, prosecution's exhibit No. 195 was received in evidence.)

MR. HYDER: I should like to read excerpts of our offer, if I may.

(Reading): "Kwantung Army's Propaganda Plan Which Shall Be Carried Out in Parallel with its Military Activity in North China.

"I. General Principle. We start our propaganda to convince the whole world of our lawfulness, as soon as the advancement of the Kwantung Army into China Proper takes place. We shall launch out on a movement to estrange the inhabitants of North China from the central government, by fermenting anti-Kuomintang and anti-communism agitation among them."

"II. The program of propaganda." Paragraph 5. "It must be made clear that when we do dispatch

"our military force to China some time in the future, we do it for the purpose of punishing the Chinese military clique, and not the Chinese people at large."

Paragraph 8. "Our propaganda for Manchuria will be, that the appearance of the independent government in North China is nothing but a concrete manifestation of their longing for the fine administration of the Manchurian government, and it will brighten the future of Manchuria."

"III. Execution program."

"1. Propaganda shall be planned and carried out by the Army staff. The special service facilities in China and Inner Mongolia and also the expeditionary forces there shall also perform the duty.

"2. Prior to the advance of our military forces into China Proper, this propaganda shall be launched, chiefly to support from the side, the propaganda of the Japanese government and the Japanese forces stationed in China. After the advance of our forces into China proper, it shall be performed so as to facilitate our military activities.

"3. Propaganda within their sphere of activities shall be carried out in conformity with the above-mentioned plan by the dispatched Force. As a rule, personnel necessary for such propaganda shall be

"raised by the dispatched troops. But, if it is impossible for them to raise the necessary personnel, Army staff section will solicit them. Propaganda section will be dispatched directly from the Army, if necessary.

"4. A close connection with the Japanese forces and various Japanese agents in China shall be maintained in the execution of this plan."

The prosecution next introduces its document No. 1871A.

CLERK OF THE COURT: Document No. 1871A will receive exhibit number 196.

MR. HYDER: This is a portion, Section VI, pages 21 to 22 of Court Exhibit No. 192.

THE PRESIDENT: Admitted on the usual terms.

(Whereupon, prosecution's exhibit No. 196 was received in evidence.)

MR. BROOKS: If the Tribunal please, on this exhibit 195, it is apparent that this is a propaganda plan which was part of an administrative order of the Japanese Army, and I would like to request the prosecution, if possible, if they have it, to make available to the defense the balance of the administrative order so it can be studied to see what this discussion was in line with.

MR. HYDER: If we have the reply or request for this letter or report, we will be glad to furnish it.

THE PRESIDENT: If you have what?

MR. HYDER: This is a letter referred to, Court exhibit number 195. So far as our files indicate, it is the only document we have. We do not have the reply to it, if there was one, nor the request; but if we do, we shall furnish it.

MR. BROOKS: If the Court please, there were two parts delivered to the defense and the first document, 1242, which is a heading or the outside, states this is a report dated December 9, 1935, from NISHIO, Chief of Staff of the Kwantung Army to the Vice Minister of War. Now, I don't know what the paragraph number of that would be, of a propaganda plan, but I know that an administrative order would have such a plan -- it is not a letter, it is a report -- and that an administrative order has a propaganda plan along with the line of operations; and I think in the American Army, paragraph five, if we have a plan of propaganda that goes along that and that activity is taken care of, and I wanted to see what the rest of that document was, and in what relation, and if it was ever used. It would be very

relevant in this case.

MR. HYDER: On our document 1242 which is Court exhibit 195 now, originally, when this report or letter was mimeographed, they left off the title of what it was. It simply started out "Kwantung Army's Propaganda Plan" which was in re, or subject of the report, or letter as translated to us. I made the request myself for the information of the defense so that they would know -- have the complete report or letter to show them what it was. This document is complete in itself; and so far as I know, this is a complete translation in English.

MR. BROOKS: The defense problem on that is that since this heading is left off, we think the original should be made available so that we can find the administrative order and paragraph because it is customary in armed circles for a tentative plan to be presented to higher authorities. Now whether that was utilized or not, we do not know. There has not been any showing of that yet. If the prosecution does not show that, I want to at least have the opportunity of ascertaining what the document was, and if it was put in force, and by whom, because that would be relevant, who passed upon it, and whether it was in force in full or whether it was

altered or changed.

THE PRESIDENT: I think many of these differences could be solved if the defense referred to Mr. Darsey, the head of the section, in the first instance. It seems a pity to be coming to us until redress cannot be secured from Mr. Darsey. It seems to me to be a waste of time.

MR. BROOKS: My purpose was, in objecting to this, that it should not be allowed to go in unless there is a complete caption as was furnished us originally which was not put in on this part and shows the document itself, its numbers and so forth, so that such is before the Court and will be tied in when it is read so that later on when we are able to recover the balance of it, it will necessarily tie up, fit into the picture, and be explanatory of who was involved.

MR. HYDER: The original complete document is in evidence now as Court exhibit 195, the entire document.

THE PRESIDENT: Well, I don't see that any more is necessary.

MR. HYDER: The prosecution next introduces prosecution document number 724A.

CLERK OF THE COURT: Document number 724A

will receive exhibit number 197.

MR. HYDER: These are cables numbers 331:1, 331:2, being dispatched on October 2, 1935 by WAKASUGI, Secretary General to the Japanese Embassy in Peiping. It is addressed to the Foreign Minister HIROTA, Koki, an accused in this case.

THE PRESIDENT: Admitted on the usual terms.

(Whereupon, prosecution's exhibit No. 197 was received in evidence.)

MR. HYDER: I would like to read short excerpts from each telegram -- cable.

THE PRESIDENT: Yes.

MR. HYDER (Reading): "My observations of the recent situation in this area lead me to believe that the Army is intending to organize a combined self-government (practically an Independent State) out of the five provinces of North China free from the domination of the Nanking Government for the sake of national defence and of forming an economic bloc of Japan, Manchuria and North China, and ultimately for the sake of politics, finance and economy."

Cable 331:2, first paragraph. "In addition to the aforesaid, the Japanese Forces' Mongolian policy is making steady progress as I and the Consul at Changchiakou repeatedly reported to you. The

other day Maj. Gen. DOIHARA made a trip from Chiangchiakou to Chengte and back and saw the Governor of Chahar Province and Prince Te; his mission was no doubt to promote the Inner-Mongolian self-government. The Okura Gumi recently set up a subsidiary company, Tameng Co.(with its head office at Hsinching, and with Tuolun and Changchiakou as the centres of its activity)for the purpose of economic development in Inner Mongolia at the request of the Japanese Army. It is merely a help to the above policy.

"As stated above, the Japanese Army's farsighted scheme is under steady progress."

Prosecution next introduces document number 1871B --

THE PRESIDENT: We won't take any more documents today. We will adjourn now until nine-thirty on Monday next.

(Whereupon, at 1200, an adjournment was taken until Monday, 15 July, 1946, at 0930.)

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(Whereupon, at 1600, an adjournment was taken until Monday, 15 July, 1946, at 0930.)

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小幡氏（林氏分に補充するもの）

[illegible]

The Tribunal met, pursuant to adjournment, at 0930.

Appearances:

For the Tribunal, same as before.

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.)

Monday, 15 July, 1946

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

The Tribunal met, pursuant to adjournment, at 0930.

- - -

Appearances:

For the Tribunal, same as before.

For the Prosecution Section, same as before.

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- - -

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

Whalen & Duda

MARSHAL OF THE COURT: The International Military Tribunal for the Far East is now in session and ready to hear any matter brought before it.

THE PRESIDENT: All the accused are present except OKAWA and HIRANUMA, who are represented by counsel.

I have here a certificate from the prison medical officer at Sugamo Prison. He says:

"This is to certify that Kiichiro HIRANUMA was placed in the 361st Station Hospital on 12 July 1946 for medical observation and treatment."

Let that be recorded and filed.

Chief Justice Higgins, of the Massachusetts Superior Court, with the consent of the Supreme Commander, has withdrawn as a Member of the Tribunal. Since his arrival in Japan a few months ago his immediate successor in office died, and the present Acting Chief Justice is in advanced years and poor health and Chief Justice Higgins does not feel justified in placing the added burden of administering the affairs of a large court of thirty-one members upon him for the period of time it will take to try this case. I add my personal regrets at the retirement of Chief Justice Higgins.

We notice a change in the temperature of this

court this morning, due, I understand, not to the installation of air conditioning but to the operation of some other appliance. No Member of this court requested that air conditioning be installed. That was directed by the Supreme Commander, who had the advantage of medical reports. We are seeing that the Supreme Commander's directions are carried out.

Undoubtedly air conditioning is necessary in this building. This court is situated in the well of the building, ventilation is almost completely shut out, the court is usually crowded and for a considerable portion of the time we have a blaze of lights more profuse than anything outside Hollywood.

Does counsel desire to mention any matter?

MR. JUSTICE MANSFIELD: If the Tribunal please, the question of the affidavits and reports in connection with the prisoner-of-war phase of the case was to be reconsidered by the Court. I ask leave to bring the matter and some further facts before the Court this morning.

I point out that the affidavits were not prepared for use in this particular trial, but were prepared as part of an investigation over the whole of the areas in which prisoners of war were detained.

Most of the affidavits, therefore, deal with conditions in several areas or several camps. In most cases the excerpts which the prosecution desires to use in evidence are taken from those affidavits and relate to one and possibly two of the areas referred to. The contents of the affidavits as to other areas are to that extent not material to the matter which is being used in the affidavit by the prosecution.

As an example, I have two examples here. The first one is a report consisting of thirty-five pages out of which three pages referring to two camps the prosecution desires to use. The other one is an affidavit dealing with conditions in Hong Kong and Japan, and the prosecution merely desires to use three and a half out of fifteen pages, confining it to conditions at Hong Kong. The whole affidavit will, of course, be the evidence, the original evidence, and that, of course, will be lodged in court and will be available for the defense to peruse.

The number of pages of excerpts is approximately 1500. A hundred copies of those have to be made, and that will amount to 150,000 pages. If copies of the whole affidavits are put in the number of pages will amount to approximately 10,000, and if

a hundred copies have to be made of the whole of the affidavits, that will amount to approximately a million pages to be copied. Approximately 80,000 pages of copies were made before the rule came into force and they, of course, will be entirely useless if they cannot be used as excerpts.

With regard to other material, for example, the Allied Translation and Interpreters Section reports, ATIS reports, it is desired to use in evidence extracts from four of those reports. The reports run into, in some cases, one hundred pages in full, and only approximately one page from each is desired to be used. The extract is taken from a section of the report, which is different from other portions of the report, and the prosecution could, of course, copy the whole of the particular section from which the excerpt is made if it is excused from copying the whole of the report. The complete volume of the report will, of course, be the original document which will be introduced in evidence. There are other proceedings, such as the transcript proceedings of Japanese investigation into the massacre at Naha.

MR. McMANUS: Mr. President, if the Tribunal pleases, I ask that counsel be requested to refrain from characterizing, using such words as "massacre at

Naha." That is to be determined by the Court.

THE PRESIDENT: You are unduly sensitive. These terms are employed by the prosecution at times. It does not follow the Court accepts them.

MR. JUSTICE MANSFIELD: The proceedings relating to the alleged massacre run into a number of pages, and it is intended, or desired, by the prosecution to use only the evidence of two witnesses who were eyewitnesses of the events which form the substance of the alleged massacre; and it is, therefore, desired to be excused from copying the whole of the proceedings, and in place of that that the evidence of two witnesses, eyewitnesses, alone, the complete evidence, be copied so that they can be distributed to the defense. The complete transcript runs into over three hundred pages, and the number of pages to be used will be very much less than that.

I, therefore, ask the Tribunal grant the application of the prosecution with regard to the documents which I have mentioned and allow the prosecution to provide copies of the excerpts for the defense, and that the whole document will, of course, in the ordinary course be presented to the Secretariat and will be available for use by the defense.

Greenberg & Barton

THE PRESIDENT: Mr. McCormack.

MR. McCORMACK: If the Tribunal please, on July 3 last, it is my understanding that the Court, after taking some time during a recess, entered an order for the prosecution to introduce these excerpts, to file the originals, to lodge them with the Clerk of the Court, to give the defense counsel ample facilities to examine them; and then, in one month from July 3, copies of these documents were supposed to be furnished the defense; thirdly, that the defense was to be furnished the addresses of the affiants in these affidavits and reports to the extent to which they are available to the prosecution.

I might mention further that things the counsel says are unfamiliar to us. He steps up without any prior notice on our part and addresses the Court on this matter. It would seem to the defense more logical in a proper procedure if, before these matters are brought to the Tribunal, the defense were furnished copies of the excerpts that they intend to submit in evidence. Under those circumstances, we would have a better idea about what is going on, what is trying to be introduced, and better able to defend ourselves against this particular

motion.

MR. JUSTICE MANSFIELD: I've been informed that I said that the whole report would be in evidence. That is not correct. The whole report will be produced, of course, but only the particular part relied upon will be in evidence. I desire my previous statement to be corrected to that extent.

I would suggest, in reply to what has been stated, on the fifth of July the Court stated that it would reconsider the matter. Speaking from memory, it was either the fifth or sixth of July when the Court said it would reconsider the matter, and also no order was made in connection with ATIS and other reports by the Court; and, if the copies of excerpts are furnished to the defense as requested by the defense, then, of course, it will mean, in the event of the whole affidavit being put in, the work will have to be done twice, and instead of one million pages, there will probably be two million.

MR. FURNESS: If the Court please, the defense understands that this substantially has already been decided in open Court. Certain questions were raised, after that decision in the afternoon of the third, by Mr. Justice Mansfield. The Court took

those under consideration. We also remember that the Court considered the matters in Chambers and, at that time, reached no decision on those matters. I think I'm correct on that.

We ask the Court to adhere to its decision and, certainly, to give us the names and addresses of all persons making the affidavits, so far as they are available, the names and addresses of all persons making reports which have been mentioned, ATIS and otherwise.

THE PRESIDENT: Some modification on the decision appears to be necessary because the prosecution haven't copies of all the documents so that they may comply with the decision.

MR. FURNESS: My understanding is that the Court ordered them to make copies and that the difficulties are mechanical difficulties which could be solved, and those mechanical difficulties should not be taken advantage of in order not to comply with the Court's order.

THE PRESIDENT: The Court will reconsider the whole matter.

Mr. Darsey.

MR. DARSEY: Mr. President, I should like at this time to present some of the counsel in charge

of the China Aggression phase of the case who, at this time, pursuant to order of the Court, will present the testimony of some of the Chinese witnesses who have to return to China.

Colonel Thomas H. Morrow, member of the Ohio Bar, on leave from the Common Pleas Court of that State;

Kenneth N. Parkinson, member of the Court of the District of Columbia and the United States Supreme Court; and

Major James H. Brock of the Boston, Massachusetts Bar.

COLONEL MORROW: If the Tribunal please --

THE PRESIDENT: Before you commence, Major, we have just been informed that the temporary relief we got this morning from that blast of cold air is not likely to last because the water supply will not allow it. We are now about to experience the same severe heat that we did on Wednesday when we were forced to adjourn. We propose to adjourn now until we are advised that the air conditioning has been installed.

We will adjourn to a date to be fixed.

(Whereupon, at 1010, an adjournment was taken.)

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Capt. Clarke 21.7.[illegible]

22 July

Record of Proceedings

of the

INTERNATIONAL MILITARY TRIBUNAL FOR THE FAR EAST

Court House of the Tribunal
War Ministry Building
Tokyo, Japan

The United States of America, the Republic of China, the United Kingdom of Great Britain and Northern Ireland, the Union of Soviet Socialist Republics, the Commonwealth of Australia, Canada, the Republic of France, the Kingdom of the Netherlands, New Zealand, India, and the Commonwealth of the Philippine

-Against-

ARAKI, Sadao; DOHIHARA, Kenji; HASHIMOTO, Kingoro; HATA, Shunroku; HIRANUMA, Kiichiro; HIROTA, Koki; HOSHINO, Naoki; ITAGAKI, Seishiro; KAYA, Okinori; KIDO, Koichi; KIMURA, Heitaro; KOISO, Kuniaki; MATSUI, Iwane; MATSUOKA, Yosuke; MINAMI, Jiro; MUTO, Akira; NAGANO, Osami; OKA, Takasumi; OKAWA, Shumei; OSHIMA, Hiroshi; SATO, Kenryo; SHIGEMITSU, Mamoru; SHIMADA, Shigetaro; SHIRATORI, Toshio; SUZUKI, Teiichi; TOGO, Shigenori; TOJO, Hideki; UMEZU, Youshijiro;

-Accused-

Official Court Reporters

Jack Greenberg, Chief
Fred T. Abram
James F. Burton
Antoinette Duda
Samuel Goldberg
Robert E. Morse
John J. Smith
Daphne Spratt
Ruth Whalen
Julius Wolf
Israelite Yeklin

I N D E X
Of
WITNESSES

I N D E X
Of
EXHIBITS

I N D E X
Of
MOTIONS, ARGUMENTS, DECISIONS, OBJECTIONS IN OPEN COURT

- - - -

Monday, 22 July, 1946

- - -

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, same as before.

For the Prosecution Section, same as before.

For the Defense Section, same as before with the addition of MAJOR BEN BRUCE BLAKENEY as additional Counsel for Accused TOGO, Shigenori.

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

Abram & Morse

MARSHAL OF THE COURT: The International Military Tribunal for the Far East is now in session and ready to hear any matter brought before it.

THE PRESIDENT: All the accused are present except OKAWA and HIRANUMA, who are represented by counsel.

Does any counsel desire to mention any matter?

Mr. Yamaoka.

MR. YAMAOKA: If the Tribunal please, I desire to announce this morning the appearance of Major Ben Bruce Blakeney, who is already counsel for General UMEZU, as the additional American defense counsel for the accused TOGO, Shigenori. He has duly filed his appearance with the Secretariat.

THE PRESIDENT: Colonel Morrow.

COLONEL MORROW: If the Court please, I desire to call out of turn, pursuant to permission of this Court, a witness from the Republic of China, General Ching Teh-Chun.

THE PRESIDENT: The Tribunal has no objection. You may call the General.

COLONEL MORROW: And in connection therewith, if the Court please, I desire to present two affidavits, entitled document No. 2340 and document

No. 1750, which are statements made by the General, which we intend to submit as his testimony in chief.

CLERK OF THE COURT: Document No. 1750 will be marked exhibit 198. Document No. 2340 will be marked exhibit No. 199.

(Whereupon, the documents above referred to were marked prosecution's exhibits No. 198 and No. 199 for identification.)

THE PRESIDENT: This is not an affidavit, Colonel.

COLONEL MORROW: I see I probably inaccurately stated what it was. It is a statement.

THE PRESIDENT: Well, you have no order covering it.

COLONEL MORROW: I desire to submit these statements to the General for his scrutiny now.

MARSHAL OF THE COURT: Mr. President, the witness is now in court and will be sworn.

C H I N G T E H - C H U N, called as a witness, on behalf of the prosecution, being first duly sworn, testified as follows:

COLONEL MORROW: If the Court please, I understand that these statements were taken with the solemnity and in the manner that a truthful statement is submitted by a national of the Republic of China.

THE PRESIDENT: Is that the Chinese form?

COLONEL MORROW: I understand it is the Chinese form, yes, sir. The General's statements to be received according to his conscience as the truth.

THE PRESIDENT: We understand from the representative of China that this is a Chinese form. On that understanding, we will allow you to ask the witness whether the contents are true and to swear to their contents in the usual way as if it were an affidavit.

DIRECT EXAMINATION

BY COLONEL MORROW:

Q I will ask the General therefore, if he is General Ching Teh-chun, who has made the statements now in his hands, and if they are the truth, constitute the truth in accordance with his conscience?

A The facts therein stated are true except for the fact that there are two words which are in error. The first error is with respect to the July 7 Incident, paragraph 2, under "B. Stages of Japanese Aggressions," with reference to economic monopoly. In the Chinese text of the statement the name of the railroad is given in the text as the Tsang-shih Railway. The correct name for this railway is the Tsin-Shih Railway. In the last part of the statement the Chinese text gives my title as Commander of the 29th Army, when it should correctly read Deputy Commander of the 29th Army.

CAPTAIN BROOKS: If the Tribunal please, for a matter of the record, I don't know whether it has been observed or not whether the Chinese translators have been sworn or not. I would just like, as a point of information, to know whether they have.

THE PRESIDENT: I inquired and found that they were.

CAPTAIN BROOKS: Thank you.

MR. WARREN: If the Tribunal please, some of the defense counsel are under the impression, as I am, that the Chinese is being interpreted into Japanese and then from Japanese into English. This

question will arise from time to time. We feel that such a method gives for a very imperfect translation, and if that is the case we ask the Tribunal to rectify it so that the Chinese will be interpreted directly into English, instead of going from Chinese to Japanese and then to English.

COLONEL MORROW: That is not the case here, if the Court please. Did the Court make a ruling on that matter?

THE PRESIDENT: I want to know what is being done, Colonel. Can you tell me?

COLONEL MORROW: I don't know, sir, whether they are translating directly into Japanese or English. I understand what he refers to is the situation now and not the affidavits themselves, or the statements. They have been translated correctly from Chinese to English or vice versa.

LANGUAGE SECTION CHIEF: May it please the Tribunal, I think I can give some light on this. As it is at present, the English is being interpreted into Japanese and the Japanese is being interpreted into Chinese, and the witness' answer is being translated from Chinese into Japanese and into English. We have one Chinese monitor, who monitors the Chinese-Japanese translation, and we

have one Japanese-English monitor, who supervises the Japanese-English.

THE PRESIDENT: That appears to be in order. We understand that substantially the position is this: That the Chinese is being translated into English directly from the Chinese and not through the Japanese.

MR. WARREN: If the Tribunal please, that does not appear to be the case.

LANGUAGE SECTION CHIEF: May I clarify that point? The Chinese into Japanese, then Japanese into English. We do not have any one who speaks Chinese and English. We only have a Japanese-English interpreter and a Chinese-Japanese interpreter. No Chinese-English interpreter.

CAPTAIN BROOKS: If the Court please, I would like to enter an objection to proceeding out of turn on this witness until proper interpretation is provided. The transfer of the thought from Chinese to Japanese and then from Japanese to English, when the characters and ideologies are purely in the translator's hands, a double translation like that endangers a lot of time. The thoughts and expressions of the man's ideas as put before the Court involves a legal precept, because the play on the words and

ideas can mean various things. I think for a matter of expediency and fairness in the trial, all of those intervening factors that can be cut out should be done if possible. I believe it is possible to get proper translators.

Whalen & Duda

THE PRESIDENT: The Court is fully aware of all the matters stressed by Mr. Brooks and is keeping them in mind, and for these reasons the Court thinks the translation should be from Chinese into English direct if we have the translators to it. We think there must be translators in Tokyo today who can do this. We think if you made an effort to get them you would succeed.

JUDGE HSIANG: This problem was considered by the prosecution. Of course, the matter is to be decided by the Court. At first we were told that the members of the prosecution, Chinese members of the prosecution, perhaps would not be good parties to translate for the witness produced by the prosecution. That was why Chinese members, Chinese assistants, on the prosecution were not asked to translate. We did not offer that service.

Of course, this matter was for the Court to decide. If the Court thinks that the members, assistants, on the prosecution could do the translation work, that is different. So, in the absence of other members who could do the Chinese translation, this arrangement was made, I understand.

THE PRESIDENT: It will never do to have prosecution translators except perhaps in some great

extremity which I do not contemplate.

COLONEL MORROW: Well, if the Court please, we have been asking merely preliminary questions here. We have monitors whose sworn duty it is to accurately criticize what proceeds. And I am requesting, if the Court, please, or asking that we be allowed to read these affidavits, at all events, because this has been done as to the affidavits; namely, a translation direct from Chinese to English. So far the translations have been merely of preliminary questions.

THE PRESIDENT: If the difficulty is great now, it is going to be insuperable when you reach the stage of cross-examination. So you had better endeavor to get a Chinese who can translate from Chinese into English, or an Englishman, or somebody.

COLONEL MORROW: If the Court please, we have several young men here from China who can do this job. It may be that there is the possible disability that they have been from the prosecution, but we have a monitor and if there is no objection on the part of defense, we might go forward with the affidavits and when the time comes have these gentlemen do the translating.

I understand that Judge Mei has an assistant here, if the Court please, that may be used.

THE PRESIDENT: I think you should get a man from the Chinese Mission.

COLONEL MORROW: If the Court please, I understand that the translators here were chosen by the Court. That was not a function of the prosecution, and we are in the situation of having the criticism on the part of the defense of the facilities offered by the Court for conducting this trial.

THE PRESIDENT: The Court made appointments as necessity arose from time to time. You have not advised that this difficulty was going to arise, and we could not know except from you. But we do not want recriminations. We want this matter straightened out at once.

COLONEL MORROW: If the Court please, the prosecution notified the Secretary of the Court about this situation several weeks ago that we expected Chinese to be introduced as witnesses and asked about the translation and understood it was to be furnished. We had no way of anticipating this problem.

THE PRESIDENT: I understand that Justice Mei's secretary, who would be in an impartial position, would be able to make the necessary translations if there is no objection from the defense.

MR. WARREN: If the Tribunal please, I have

heard no objection voiced from any defense counsel, and there does not appear to be any objection. One defense counsel did suggest that perhaps we should reserve the right to a monitor. Personally I would not insist on that, but I am expressing the view of the other counsel as they have a right to be expressed. We think that that would be a convenient temporary arrangement until proper arrangement can be made to relieve the assistant, if he would be kind enough to assist us.

THE PRESIDENT: Yes. Justice Mei's secretary, Mr. Fang, is prepared to act and will now be sworn in as interpreter. This is a temporary arrangement only, of course, and we must take steps immediately to have translators provided.

MARSHAL OF THE COURT: The interpreter will now be sworn, Mr. President.

(Whereupon, Mr. W.F.S. Fang was sworn as Chinese-English and English-Chinese interpreter.)

THE PRESIDENT: You must begin again, Colonel Morrow.

COLONEL MORROW: I suggest, if the Court please, that I be allowed to proceed where we stopped, and if there is any question about these preliminary questions--

THE PRESIDENT: I said you must begin again.

COLONEL MORROW: Begin again?

BY COLONEL MORROW (Continuing):

Q I will ask the witness to look over the two statements which have been presented to him and state whether or not those are and constitute part of his sworn testimony in this case?

A I have read this over and they were my statements.

Q Are those statements true and correct?

A Yes, they are.

Q I also desire to present to the witness exhibits No. 2211 and 2212 and ask if he can identify the same and what they are?

A This is a bridge between Lukuochiao. Here is a railroad bridge which is Pinj-Han Railroad Bridge across the Yunting River. The second one is a bird's-eye view of Lukuochiao.

THE PRESIDENT: Those exhibits will be tendered? They are tendered for identification so far. Now they are finally tendered, are they?

COLONEL MORROW: I should have said documents instead of exhibits, if the Court please.

CLERK OF THE COURT: Document No. 2211 will be exhibit No. 200. Document No. 2212 will be exhibit No. 201.

(Whereupon, the documents above

referred to were marked prosecution's exhibits Nos. 200 and 201 for identification.)

THE PRESIDENT: Admitted.

(Whereupon, prosecution's exhibits Nos. 200 and 201 were received in evidence.)

COLONEL MORROW: Unless there is objection, if your Honor please, I want to read these documents or exhibits commencing with Document No. 2340 which are the testimony of the witness.

MR. BROOKS: If the Tribunal please, I do not believe the prosecution has shown any tie-up between the English translation here and the Japanese or Chinese, whichever it is, that was handed to the witness. It does not show that that has been checked in any way, that it is proper. At least we have not seen it.

The prosecutor hands me a certificate here by someone stating that this has been translated by him to the best of his ability and knowledge, and I do not know whether that will be considered as sufficient or not. The man evidently was not sworn in this Court. I do not know his name. I think it is Liu. I think there should be a further showing that this is accurate, and we should have it through the witness that it is accurate.

THE PRESIDENT: Unless the defense is prepared

to accept the certificate you must call the person responsible for the translation from the English to the Chinese.

COLONEL MORROW: If the Court please, the gentleman who did the translating is here. He has the certificate in his hands. And it seems to me we have made prima facie proof here that the translation is correct. If the Court desires him sworn he may be sworn as a preliminary witness here.

THE PRESIDENT: The Court has no particular desires except to do the right thing. It may be the defense will accept that certificate.

COLONEL MORROW: Unless the defense indicates a desire to waive their objection, I will ask this witness be sworn.

THE PRESIDENT: It might save time to swear him.

MR. BROOKS: If the Tribunal please, although this man is a part of the prosecution's staff, I think that defense will be satisfied if the corrections can be made at a later time. But we will have to have made available to us in some way some kind of a Chinese-English translator that could check this for accuracy, and if we can make corrections at a later time we will be willing to waive the aforementioned certificate.

I had not seen this certificate; I did not know what it was.

THE PRESIDENT: We refer the defense to the Language Section for any help they need. In the meantime we will make any necessary appointments of Chinese translators.

Proceed, Colonel Morrow.

COLONEL MORROW: If the Court please--

THE PRESIDENT: Better tender that certificate.

COLONEL MORROW: Very well. I will submit this certificate to the Clerk.

THE PRESIDENT: Admitted.

COLONEL MORROW: If the Court please, I desire to read now exhibit 199, which was document 2340.

"FACTS OF JAPANESE AGGRESSION
IN NORTH CHINA

"(I) NORTHERN CHAHAR INCIDENT

"In June 1935, two Japanese army officers and two Japanese soldiers came from Doran by motor car and passed through Chang Pei District en route to Kalgan. When they arrived at the north gate of the Chang Pei District, they did not submit themselves to the inspection of the guards, nor did they possess entry permits. (Regulation requires that Japanese entering the Province of Chahar should secure in advance through the Japanese Consul at Kalgan entry permits from the Chahar Provincial Government.) Under these circumstances, the commanding officer of the guards at the north gate of the Chang Pei District took these four men to the Headquarters of General CHAO Tang-yu, Commander of the 132nd Division, inside the city of Chang Pei. Commander CHAO asked by telephone for instructions from General SUNG Che-yuan, Commander of the 29th Army, at Kalgan, who permitted these Japanese to proceed to Kalgan through Chang Pei, stressing, however, that this should not be taken as a precedent and that hereafter those desiring to enter the Province must have entry permits with them as prescribed by regulations. These four

Japanese went on to Kalgan, and further proceeded to Peiping.

"After the departure of the said Japanese, HASHIMOTO, the Japanese Consul at Kalgan, suddenly protested, alleging that while the guards demanded to search these Japanese officers and men at the north gate of the Chang Pei District they aimed their rifles at them, and that they were detained for four or five hours after arriving at the Headquarters of the Division, and that such constituted insults to the Japanese army men. He demanded the punishment of responsible officers and apology from the Chinese authorities. He also demanded assurance against recurrence of similar nature. General SUNG ordered me to negotiate in the capacity of the Deputy Commander of the 29th Army. After several talks, HASHIMOTO suddenly announced that the situation of the incident became grave and it was beyond the power of the Consul to settle it. The matter was referred to the Headquarters of the Japanese Garrison Forces in Tientsin. Major General DOHIHARA was the representative of the Garrison Forces. Thereupon, I went to Peiping and DOHIHARA also arrived at Peiping, where we proceeded with our negotiations.

"The results of the negotiations were roughly as follows:

"(a) The Regiment Commander who was in charge of the garrison at the said gate should be dismissed and punished.

"(b) The Judge Advocate of the Headquarters of the 132nd Division who detained these Japanese officers should be dismissed and punished.

"(c) The units of the 29th army should be withdrawn from Paochang, Kangpao, Shangtu, Kuyuan and Huateh (Chia-pu-shih), these being Districts north of Chang Pei. The maintenance of peace and order there should be entrusted to the Peace Preservation Corps.

"(d) Chinese should henceforth refrain from migrating to and settling in the northern part of the Chahar Province.

"(e) Activities of the Kuomintang Party should be withdrawn from the Chahar Province.

"(f) Anti-Japanese institutions and anti-Japanese acts in the Chahar Province should be banned.

"The proceedings and the results of the said negotiations were telegraphically reported to the Central Government by General SUNG and myself asking for the Government's necessary approval. The Chinese

Government, in seeking for peace, did not refrain from making compromises one after another, yet the progress of the aggressions by Japanese militarists never ceased. During the said negotiations, although TAKAHASHI, Wataru, Military Attache of the Japanese Embassy in China, also participated, it was DOHIHARA, Kenji, who actually controlled the whole thing.

"(II) INDUCEMENT AND THREAT BOTH PRIOR TO AND AFTER THE ESTABLISHMENT OF THE HOPEI-CHAHAR POLITICAL COUNCIL

"When General SUNG Che-yuan was appointed as the Garrison Commander of the Peiping and Tientsin Area in September 1935, the Japanese sent DOHIHARA to Peiping many times to instigate attempting to form a North China Autonomous Government, to estrange the local government from the central government.

"The inducement tactics were:

"(a) To install General SUNG Che-Yuan as the leader of the North China Autonomous Government.

"(b) Japanese would extend every possible aid concerning military and economic affairs in North China.

"This was repeatedly expressed by DOHIHARA to Mr. SHIAO Cheng-Ying, ex-Mayor of Tientsin, but was refused on all occasions by the Chinese side.

Later, MATSUMURO, Koryo, the Chief of the Japanese Special Service Board in Peiping, and TAKAHASHI, Wataru, the Military Attache of the Japanese Embassy continued to make such demands from time to time. They failed altogether. The Central Government appointed General SUNG Che-yuan as the Chairman of the Hopei-Chahar Political Council, to be in charge of military and political affairs in Hopei and Chahar Provinces and in Peiping and Tientsin. General SUNG's measures in military and political affairs all conformed to the wishes of the Central Government, such as the election for the people's Congress, and the concentrated military training of college students, all to the disfavor of the Japanese, The Japanese then realized that their inducement tactics had failed.

"So the Japanese changed their inducement tactics into threatening actions, which were as follows:

"(a) Political

1. According to the Japanese demand General SUNG should announce by circular telegrams the establishment of a North China Autonomous Government.

2. The Central Government's personnel in change of publicity still remaining in North China should be withdrawn.

3. Public opinion in Peiping and Tientsin should be controlled and opposition to autonomy should not be permitted.

(The above three demands were directly presented by DOHIHARA and TAKAHASHI, Wataru, to Mr. SHIAO Cheng-ying)

"(b) Economic

1. A railway should be constructed between Tientsin and Shih-chia-chuan.

2. The custom tariffs at the Tientsin Maritime Customs should be so revised as to increase the tariff of European and American commodities, and to decrease that of Japanese commodities.

(The above two items were demanded by DOHIHARA and MATSUI, the Chief of the Japanese Special Service Board in Peiping, through Mr. Chen Cho-sung, the Director of the Peiping and Liaoning Railway, to General SUNG and myself. These demands were refused by us.)

"(c) Military

In September 1936, the Fengtai Incident occured. A company of Japanese soldiers carried out maneuvers in Fengtai. They passed through the garrison line of the Chinese Army. Clash ensued when our patrols attempted to halt them. Although

it was immediately settled, the Japanese use this as a pretext for reinforcement of their troops which occupied Fengtai. It was a battalion, under the command of Major ICHINOGI, Kiyonao.

"Besides, there was another instance. MATSUI, Iwane, in the Autumn of 1935, came to Peiping. He was a General in retirement at that time, and advocated Greater Asiaism. He hoped to establish a branch of the Greater Asia Association in Peiping. Through the introduction of Mr. CHEN Cho-sung, Director of the Peiping and Liaoning Railway, he met General SUNG and myself. Both of us expressed our disfavor. MATSUI, in his conversation with me, advocated that Asia should be the Asia of the Asiatics, and that European and American influences should be expelled. I smiled and replied, saying that I was afraid that what he meant by Asia of the Asiatics was actually the Asia of the Japanese. Unless there were real equality and reciprocity, nothing could be discussed."

(Signed) "CHING Teh-chun

"Formerly, Deputy Commander of the 29th Army,

"At present, Vice-Minister, Ministry of National Defense.

"Dated: 10 June 1946, at Nanking."

And I have also an affidavit here -- a statement, if the Court please -- which is No. 118, entitled -- exhibit 198, not 118, if the Court please:

"A FACTUAL ACCOUNT OF JULY 7th INCIDENT. By General Ching Teh Chun.

"(Formerly Mayor of Peiping and concurrently Vice-Commander of the 29th Army. At present, Vice-Minister of Military Operations)

"1. PROLOGUE

"A. The Political and Military Conditions in Hopei and Chahar Provinces Prior to the War of Resistance.

"1. Political -- Before the Incident of July 7th, the Hopei-Chahar Political Council was the responsible institution in charge of political affairs in Hopei and Chahar Provinces. General Sun Che-Yuan was the Chairman of the said Council, being appointed by the National Government. The Council had jurisdiction over Hopei and Chahar Provinces and Peiping and Tientsin Municipalities. General Feng Chi-An and General Liu Ju-Ming were the Governor of Hopei Province and Chahar Province respectively. I, myself, was then Mayor of Peiping, while General Chang Chi-Chung, who later

fell gallantly for the country as Commander-in-Chief, was then Mayor of Tientsin.

"Since their costless invasion of the Chinese North-Eastern three Provinces, followed by the invasion of the Jehol Province, and the Battle of the Great Wall, the Chinese aggressors considered all these Provinces in North China as something that could be very easily taken over. Peiping and Tientsin, therefore, became the front line of national defense. However, all the policies of the local authorities in Hopei, Chahar, Peiping and Tientsin were formulated and carried out in conformity with instructions and laws proclaimed by the National Government. For example, the election of representatives of the People's Congress, the concentrated military training of all college students, were considered by the Japanese aggressors as measures inconsistent with the status of special area. Repeatedly, Japanese opened negotiations and interfered with such administration, but all the inducements and threats failed. Finally they resorted to the military aggression on July 7th, 1937.

"2. Military -- In North China, the 29th Army was the main force, which had its garrisons

all over Hopei, Chahar, Peiping and Tientsin. At the time of the Indicent, the 37th Division under the command of General Feng Chi-An was stationed in the suburbs of Peiping, namely, Nan-Yuan, Peip-Yuan, Si-Yuan, Lukuochiao (Marco Polo Bridge), Chan-Sin-Tien, and Paoting. The 38th Division under the command of General Chang Chi-Chung was stationed at Tientsin, Young-Chung, Langfang, Chuan-Liang, Chen, Taku, Tangku, and along the Tientsin-Pukow Railway such as Na-Chan and Tsang-chow. The 143rd Division under the command of General Liu-Ju-Ming was stationed in the Chahar Province, at Kalgan, Chang-Pei, Chai-Kuo-Pao, Yeng-Ching, Nankow, etc. The 132nd Division under the command of General Chao-Teng-Yu was spread over the southern part of Hopei Province, namely, Ta-Ming, Ho-Chien, Hsien-Hsien, Jen-Chiu, etc.

"Lukuochiao (Marco Polo Bridge), where the Incident of July 7th broke out, is situated about 20 Li southwest to the Chang-Yi Gate of Peiping City. The District Government of the Wan-Ping Hsien was at the east of the bridge. The city of Wan-Ping was not large. Both inside and outside of the city of Wan-Ping were guarded

by troops of the 37th Division. This place, being on the main communication line west of Peiping, was strategically very important. Japanese forces, stationed at Fengtai, had repeatedly demanded the withdrawal of the Chinese garrison from this place, and also from Chan-Sin-Tien. All these demands were refused by our side in unmistakeable terms. In the winter of 1936, Japanese intended to reinforce their garrison force, and planned to build barracks and airfield in the area between Fengtai and Lukuochiao (Marco Polo Bridge), in order to control completely North China. In spite of their efforts in repeated negotiations, we refused them in severe wordings. Thus frustrated, Japanese changed their tactics. They attempted to lay their hands on the local inhabitants by inducing and threatening them to lease or sell the lands voluntarily to the Japanese. But, according to the report of Commissioner Wang Leng-Chai, who governed that area, the local residents had no intentions to lease or to sell the lands belonging to them. The residents made sworn statements to that effect and authenticated these statements with their finger prints. One day, HASHIMOTO, the Chief of Staff of the Japanese Garrison Forces

in North China, Wachi, and some other Japanese officers called on me and again requested to buy these lands. They argued that the local inhabitants desired to lease or sell voluntarily, yet it could not be realized, apparently due to the opposition of the Government in North China. My reply was that, no right of land in any country could be freely leased or sold to foreigners. If we asked for a lease or purchase of land in the vicinity of Tokyo, could that be allowed by your Government. In the last minimum, landed properties owned by private persons who enjoy ownership of such properties could not be disposed of by the Government at will. Since you asserted that the residents were willing to sell their lands, what was the proof of this assertion. HASHIMOTO countered by demanding us to produce proof of the unwillingness to lease or sell their lands on the part of the residents. Upon this I produced the sworn statements of the residents authenticated with their finger prints and forwarded to me by Commissioner Wang, to the effect that they would not sell any land. HASHIMOTO and other Japanese officers, upon seeing these documents, could not say anything. This episode which brought dis-

grace and anger to them must have embittered them. From that time on, under the pretext of maneuvers they hoped to invade and occupy Wan-Ping City by catching us unprepared. This was the immediate cause leading to the outbreak of the Indicent.

"B. Stages of Japanese Aggressions

"1. Alienation and Estrangement -- The Japanese attempted to alienate and estrange the local authorities in North China from the Central Government by inducements and by threat hoping thereby to disintegrate and destroy separate areas one after another. The numerous attempts they made could be summed up as inducements by bribery and threat by force. All these attempts, however, were met with flat refusal from the local authorities. Their conspiracy could by no means be realized. This was the first stage of enemy aggression in North China, a period running roughly from the Autumn 1935 to the Summer 1936."

THE PRESIDENT: This is a convenient break, Colonel Morrow. We will adjourn now for fifteen minutes.

(Whereupon, at 1045, a recess was taken until 1100, after which the proceedings were resumed as follows).

Wolf & Sprat

MARSHAL OF THE COURT: The Tribunal is now resumed.

MR. McMANUS: If your Honor please, I would like to interpose an objection to the continuance of the reading of this document. It obviously contains the theories and opinions of the witness here, and does not confine itself to the statement of facts.

THE PRESIDENT: It certainly should not be in that form, but I am afraid we will have to receive it for what probative value it has, Mr. McManus.

COLONEL MORROW: May I proceed, if the Court please?

THE PRESIDENT: Yes.

COLONEL MORROW: (Reading continued) "Economic Monopoly--The Japanese hoped to attack economic monopoly under the mask of friendship and fraternization and the watchword, "equality and reciprocity. The concrete demands made by them were: a. To construct a Tsang-Shih Railway (between Tsangchow and Shih-Chia-Chwang, both in southern Hopei), b. To develop the Lung-Yen Iron Mines (in Chahar Province), and c. To revise Maritime Custom Tariffs at Tientsin, in such a way as to raise tariffs on European and American commodities, and to lower tariffs on Japanese commodities.

"All these demands, the acceptance of which would impair the sovereignty of China, were flatly refused. This was the second stage of Japanese aggression in north China. The period covered ran roughly from the Summer 1936 to the Spring 1937.

"Threat by Armed Forces--After realizing that alienation, estrangement, and attempts to attain economic monopoly had all failed, the Japanese finally decided upon threat by armed force. They hoped to reach their goal without fighting. At the beginning of the Lukuochiao (Marco Polo Bridge Incident), Japanese had no anticipation other than Chinese submission after a blow dealt to the Chinese by their comparatively superior forces. They anticipated that Hopei, Shansi, Shantung, Chahar, and Dueiyuen Provinces could thus be turned into a region of special status, thus realizing the second step in the plan of General TANAKA for the conquest of the whole world. They never thought that, at the call of our supreme leader, all Chinese would rise and take up the War of Resistance on all fronts. As to the drawn-out War of Resistance over long, long period, and the fact that we never wavered all the way through, was even more unexpected by the enemy.

II. FACTUAL ACCOUNT OF THE INCIDENT

"At 0010, in the evening of July 7th, 1937, I received a report from the Hopei-Chahar Foreign Affairs Commission, which stated that the said commission had received a telephone call from MATSUI, the Chief of the Japanese Special Service Board, saying: 'One company of Japanese troops, in night maneuver in the vicinity of Lukouchiao (Marco Polo Bridge) just a while ago, seemed to have heard a few gun shots fired by soldiers of the 37th Division of the 29th Army stationed in the city of Wan-Ping. The gun shots brought some confusion of the troops in maneuver. As a result of the roll call, one Japanese soldier was found to be missing. Japanese troops demanded to enter and search the city of Wan-Ping this very evening.' The said commission asked instructions by telephone as to how to deal with the situation. I immediately replied that Japanese troops, maneuvering in Chinese territory at their own will, were in violation of international law. Neither had they notified us in advance, nor had they obtained our permission. The Chinese Government has no responsibility whatsoever for the alleged missing soldier. Even if it is true that a soldier was really missing, we shall order the Chinese troops

stationed at Lukouchiao (Marco Polo Bridge) to conduct a search for the Japanese soldier on our own behalf in cooperation with local police forces. My instructions were transmitted to the Japanese by the Hopei-Chahar Foreign Affairs Commission. Soon thereafter, the said commission again telephoned me and reported that after transmission of the reply, both the Japanese Special Service Board and the Japanese troops were not satisified. The Japanese insisted on conducting a search in the city by force. If refused, they decided to encircle the walled city. I again immediately replied that in case of such unreasonableness on the part of Japanese, so violent and barbarious we, for the sake of self-defense, could only take the course of resolute resistance. Then I called on Regiment Commander Chi Sin-Wen over the telephone. At that time, one battalion of the regiment under his command was in charge of garrison duties at Lukuochiao, while other two battalions and his Regiment Headquarters were at Chan-Sin-Tien. I asked Commander Chi whether his regiment had maneuvered tonight. Chi replied in the negative. I asked him whether there were any Japanese troops maneuvering in the vicinity of Lukuochiao (Marco Polo Bridge). Chi replied that he had received no such information,

but that he would immediately send out his men to investigate. Thereupon, I informed him the negotiations between the Japanese and us, and ordered him to send at once able men to proceed toward the direction of Fengtai, to detect possible Japanese troop movements. On the other hand, I ordered by telephone Commissioner Wang Lun-Chai, who was concurrently the Magistrate of Wan-Ping Hsien, to investigate and to report on the maneuvering of Japanese troops and whether any Japanese soldier was missing. Soon, I received a telephone call from Commander Chi, who reported that, according to the report of the officer dispatched towards the direction of Fengtai, about a battalion of Japanese troops with six pieces of artillery, was now advancing from Fengtai to Lukuochiao (Marco Polo Bridge) and whether there was any reinforcements following this column had to await further detection. Thereupon, as the Vice-Commander of the 29th Army, I immediately ordered Regiment Commander Chi to well guard the city of Wan-Ping, that not a single Japanese soldier was to be allowed to come in, that not a single inch of territory was to be allowed to lose, that in virtue of our responsibility as soldiers, to guard our territory, the Wan-Ping city would be, in case

of necessity, the most precious and glorious graveyard of our ranks and files, that we should share the same fate with the city. If they did not open fire first, we should not first open fire upon them. If they should first open fire, we were sure to deal them fatal blows. After having my order, Chi sent another battalion to enforce the guard at Lukouchiao (Marco Polo Bridge), and he himself led the battalion there to reinforce the defense. At the same time, Commissioner Wang Lun-Chai came to Peiping to report in person the factual result of his investigation. So, I sent Commissioner Wang, together with Wei Tsung-Han, Commissioner of Foreign Affairs of Hopei-Chahar Provinces, Lin Ken-Yu, also a member under Commissioner Wei, and Chou Jun-Ye, Chief of Communication Section, of the Pacification Headquarters, to negotiate with MATSUI. At 0500 in the morning, successive reports informed me that Japanese troops had come to the edge of the city and demanded the entry of the city by force, that we had to prepare for the defense on the one hand and to try to stop their entry by negotiation on the other. The Japanese, realizing by that time that there was no hope for them to take the city of Wan-Ping without fighting, finally encircled it on three sides. Our forces put up defense

works on the walls. Around 0600, enemy machine gun fire began to attack the city, and enemy forces came towards it. This was the very beginning of the Sino-Japanese war, but the responsibility of the Incident was also definitely fixed (upon Japan).

"Hostilities on the 8th and 9th of July were heavy, and Japanese suffered many casualties. The railway bridge leading to Chan-Sin-Tien was occupied by Japanese in the morning of the 8th, and on the same night, two companies of Chinese troops, each soldier equipped with a pistol, a sword, and four hand grenades, moved up stealthily. They suddenly attacked, when they approached the bridge head. The enemy, about a company strong, was surprised and most of them were killed. Japanese, seeing that they were suffering setbacks, sent MATSUI and others to me on the following day, and asked for negotiation. I had foreseen their intention before they came, so I refused them. Soon thereafter, they came again and explained the intention of truce, adding that the missing soldier had already been found, so that a peaceful settlement would be feasible. We began to discuss and, as a result, decided on three conditions: (a) All military actions should cease on both sides, (b) Troops of both sides should return

to their original positions, and (c) the 37th Division which entertains more hostile feelings against Japan, should be replaced by some other unit of the 29th Army for the defense of Wan-Ping City. An understanding was also reached that both sides should refrain from developing henceforth incidents of similar nature. Yet, these conditions were nothing but Japanese tactics to delay and thus to gain time. Utilizing this breathing space, units of the Kwantung Army were sent to Peiping and Tientsin area for attack. We detected their conspiracy, and had to order hastily the Division under the command of General Chao stationed in Ta-ming and Ho-Chien in southern Hopei to proceed to Peiping. At that time, General Sung Che-Yuan was on leave of absence in his home town in Shantung. After my repeated telegrams asking for his return, he arrived in Peiping on the 12th of July. We discussed strategies and policies. War again broke out on the 14th, and more intensified than before. Every day, enemy shelled the Wan-Ping city by artillery, to cover the advance of their infantry, but were all repulsed by our army. On the 25th of July, enemy airplane, in reconnaissance over the Peiping-Taming highways discovered that our troops of large numbers were advancing

northward, and the spearhead had already arrived at Nanyuan. On the 26th of July, Japanese handed us an ultimatum to the effect that the 37th Division be withdrawn from the Peiping area within 24 hours, failing which they would attack us by large forces. To defend ourselves, we attacked immediately on the 27th enemy troops at Fengati and in the vicinity of Lukuochiao (Marco Polo Bridge). In the same evening, we killed quite a number of Japanese at Fentai, recaptured the west flank and the south flank of Fengtai, and pressed on near the enemy headquarters there. KATSUKI, Seiji, the Japanese Commander in Chief, ordered Japanese reinforcements from Tungchow and Tientsin, with strong equipment and more than 30 airplanes, to make an onslaught. In the early morning of the 28th, the enemy with the combined forces of the land and air, fiercely attacked Nan-yuen with all their strength. Large scale hostilities developed with heavy casualties unprecedented since the outbreak incident. Around 2 p.m., most regretfully, General Chao Tung-Yu, Division Commander, General Tung Ling-Kou, Vice Army Commander, were both killed in action. Casualties reached more than 5,000 including both dead and wounded among our officers and soldiers.

"Some time before this, repeated telegrams from our Supreme Commander (Generalissimo Chiang) ordered General Sung, Chairman of the Hopei-Chahar Political Council to proceed to Paoting (in southern Hopei) and to direct operations from there. General Sung now acted as directed by these orders. I myself went to Paoting with him in the night of 28th. Considerable success was scored by the Chinese forces in Tientsin, who made their attacks bravely on the 29th and 30th of July. Subsequently they also evacuated according to orders received. They fell back to the south of Tientsin along the Tientsin-Pukow Railway, while other troops were put up along the Peiping-Hankow Railway. In close collaboration between each other, they began to engage themselves in long-term Resistance against the enemy. This was what happened during the Lukouchiao (Marco Polo Bridge) Incident and the War of Resistance thereafter.

"Leading Japanese officers who instigated this Incident were:

KATSUKI, Seiji, Commander in Chief of the Japanese Garrison Forces in Tientsin

KAWABE, Seiso, Brigadier Commander

MUTAGUCHI, Renyam, Regiment Commander

SAKAI, Takashi, Ex Chief of Staff of the Japanese Garrison Forces in Tientsin

"But the instigator at the very beginning of Japanese aggression in north China was DOHIHARA, Kenji, the same man who instigated the Mukden Incident of 18 September 1931. All these men should be held responsible for the war of aggression. As to the narcotic policy and various atrocities committed in enemy occupied areas, which according to reports from all sides, were intensified as time went on. Much to my regret I could not produce definite and strong evidences for these activities and atrocities since I had left for operations along Peiping-Hankow, Peiping-Taming, and Tientsin-Pukow Railway lines."

(Signed) "CHING Teh-Chun
Formerly Mayor of Peiping and Concurrently
Vice-Commander of the 29th Army

At present, Vice-Minister, Ministry of Military Operations"

COLONEL MORROW: I assume I may waive the reading of the certificate, in view of the testimony.

That completes the affidavit, if your Honor please.

THE PRESIDENT: The defense may cross-examine now.

MR. OHTA: I am OHTA, Kinjiro, counsel for the defendant, DOHIHARA. I would like to ask a few questions to the witness, General CHING Teh-chun.

CROSS-EXAMINATION

BY MR. OHTA:

Q The witness stated that the two accounts had been taken by the prosecution upon oath. Were they really taken on oath?

A The first statement was a statement by me on the 2nd of April, which statement was a statement of conscience and factual accounts. I didn't write them under oath. The second statement was written on the 10th of June. The circumstances were the same. I wrote out of my conscience and according to facts, and was not under oath.

Q Then I repeat it again, it is not an affidavit, is it?

A This statement was firstly written and then as is proved correct, I gave my oath.

Q I have heard that in your country, that is, in China, there is a special formula for taking statement. Did you comply with that formula?

THE MONITOR: Correction? "what formula that you use."

A When the prosecutor asked me whether the statement I gave was true, I admitted that it was true and then I gave my oath. That is the form I adopted.

Q Is the witness acquainted with Mr. Chen Ko, the Mayor of Tientsin at the time of June 1935?

A Yes, I know.

Q Is the witness acquainted with Mr. Chen Chueh-shen, the President of the Peining (Peiping-Liaoning) Railway Company?

A Yes, I know.

Q Was the so-called "DOIHARA-Ching Teh-Chun agreement" made as a result through the good offices of Mr. Chen Chueh-Shen and Mr. Chen Ko?

A There was no so-called "Ching-DOIHARA agreement" in existence. With regard to the North Hopei

Affair, Ching, on the order of the Central Government, discussed the matter over with DOIHARA with a view to settle this matter temporarily. At the time, Chen Ko, the Mayor of Tientsin, and Chen Chueh-shen, Director of the Peining Army Railway Administration, were the people responsible for the interpretation.

Q Is the so-called "North Chapei Incident" -- North Chahar Incident -- the so-called "North Chahar Incident" -- are the facts concerning the North Chahar Incident like these? In July 1935 -- in June 1935, two officers and two men of the Japanese Army, when they were on their way to Kalgan via To Lun and Chang Peh Hsien riding in a motor car were fired upon by the Chinese garrison troops at the eastern gate of Chang Peh Hsien; and then they were beaten up by those Chinese guards and then they were taken, captured and detained at a military police station. Was that the cause of the Incident?

THE MONITOR: Correction: "Two Japanese officers and NCO's" instead of "soldiers". And another correction: "Northern gate" instead of "eastern gate" and "they were confined for four or five days."

A The facts are slightly different from what had occurred then. These are the facts. There were

then two Japanese officers and two NCO's travelling through Chang Peh Hsien at the Chang Peh Hsien gate, the gate of the country. They were demanded to produce their passports. These passports, according to the then regulations in force, would have to be presented by the Japanese Consulate with the understanding from the Chinese authorities. At that time the guards, the guard on duty at the gate asked the Japanese to produce their passports which the Japanese refused. As the Japanese refused to produce their passports, the guard, in order to carry out their duties, insisted on asking them to produce the passport. At that time they took the posture of aiming with their rifles they had on their hands at the Japanese but they never shot it. In the course of their quarreling a platoon leader came to the scene. Then this platoon leader took this Japanese to the inside of the city gate to the headquarters of 132nd Division. As soon as they got to the Division Headquarters' premises, the Japanese were given, were treated to a dinner and at the same time the platoon leader made a report to the authorities. As they were having their dinner there, and this report and so forth took some time of, say, three to four hours, they were never detained.

Q Were not those negotiations terminated amicably on the 23rd of June and confirmed by the Central Government representatives on the 27th of the same month?

A I cannot remember correctly the accurate date but I do remember it is around 20th of June when the settlement was brought forth. But, this settlement was a result of the concessions made by the Chinese Government with a view to secure peace.

Q In order to conclude those negotiations, did both the Japanese and the Chinese sides make considerable concessions in order to attain the peaceful conclusion of the treaty? Being motivated with a desire to conclude the negotiations peacefully, the Japanese side made considerable concessions as compared with the conditions put forward by them at the very outset of the negotiations, wasn't it true?

THE MONITOR: Correction: "It may be that Chinese side made concessions but isn't it true that Japanese also, out of their desire for peace, softened up their initial demands and was not the agreement reached out of concession on both sides?"

A The question was then temporarily settled.

But if you say that this was, the settlement was obtained through the repeated concessions made on the part of the Japanese, that is not true.

Q Was not the fact that the negotiations were concluded peacefully greatly welcomed by the Chinese side also?

A As I said just now, the Chinese Government, in order to secure peace, had under pains come to that settlement with the Japanese. It is not -- it was not an agreement out of the wish of the Chinese people.

Q In the document entitled "Facts of Japanese Aggression in North China" dated the tenth of June, 1946, you stated that aggression of the Japanese military clique did not cease until then, et cetera. However, were not these negotiations conducted peacefully with the hope to prevent the clash of the two parties?

A You said up to now the Japanese aggression has not been stopped. That is not the case. Up to now it is stopped but then it was not stopped. Will you please show me that paragraph?

(Whereupon, defense counsel brought the aforementioned document to interpreters' table.)

THE PRESIDENT: We will recess now until half past one.

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

Morse & Abram

AFTERNOON SESSION

The Tribunal met, pursuant to recess, at 1330, Hon. Myron C. Cramer, Major General, U. S. Army, sitting as Member from the United States of America.

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

THE PRESIDENT: Colonel Morrow.

COLONEL MORROW: If the Court please, I believe they desire to continue the cross-examination.

THE PRESIDENT: Yes. Well, unless you have something.

COLONEL MORROW: Nothing further.

MR. CUNNINGHAM: If the Court please, before we proceed with the cross-examination, if it please the Tribunal, we, without in any way casting a reflection at this time upon the ability, integrity, or other qualities or character of the Member challenged, may I present for the consideration of the Tribunal and for the record in the proceeding, a challenge for cause to show that the newly appointed Member, the Honorable Major General Myron C. Cramer, United States Army, the representative of the United States of America on the Tribunal, is not eligible to participate in the trial of this cause now pending, and

to state the reasons for this challenge for cause.

First, that there is no provision in the Charter for this additional appointment. The Charter provides: "The Tribunal shall consist of not less than six members nor more than eleven members, appointed by the Supreme Commander for the Allied Powers from the names submitted by the Signatories to the Instrument of Surrender, India, and the Commonwealth of the Philippines." In accordance with the provisions of the Charter, this Tribunal has been completely constituted with the maximum of the members eligible for appointment. The Member now challenged is the twelfth appointee to this Tribunal. This appointment is expressly prohibited by the Charter. From the reading of the pertinent provisions of the Charter, the express intent is that the Tribunal will be fully constituted with a minimum of six members thereof, and the appointment of members over and above the maximum of eleven would open the door to allowing new members to sit in judgment upon the accused at any and all periods during this trial. The exercise of the authority for the appointment of members in excess of eleven could have no limits, to the end that any member or members could sit at different times in this proceeding. This would result

in a ridiculous situation as far as a just trial for the accused is concerned, all contrary to the intents and purposes of the Charter.

Next, that the addition of another member of this Tribunal, if permitted, would cause this trial to proceed clouded with a substantial doubt as to the legality, fairness, and the impartiality of this whole proceeding. That not having been present in court when a substantial part of the vital testimony was given and after other important proceedings had been completed, the appearance now of a new member will involve an appreciable risk to the substantial rights of the accused, which risk cannot be avoided by a private reading of the lengthy record, which, of itself, only amounts to a review and does not constitute the requirements of a fair and impartial trial. This contemplates hearing the witnesses, listening to the arguments of counself, and taking part in the deliberations of the Tribunal of all stages of the proceeding.

Next, that having served as a high ranking general in the armed forces of one of the leading victorious accuser nations, impartiality is incompatible with this relationship and his part official duties. This fact alone presents a strong basis for a challenge for cause.

Four. The record in this case presents no evidence that the nomination of the challenged Member of this Tribunal has been made by a signatory to the Instrument of Surrender. Under the Charter, the nomination as well as evidence of appointment is essential to this record. There is no legal authority for the nomination and appointment or for the Charter under which the appointment is proposed.

Five. That the accused represented by this American counsel, elects to exercise this right of challenge for the reasons heretofore urged, and, therefore, moves that the newly designated Member of this Tribunal disqualify himself and decline to serve as a Member of this Tribunal.

In view of the recent resignation of the American representative on this Tribunal, Mr. Justice Higgins, and the acceptance or approval of the resignation by the Supreme Commander after the Court had been constituted and after it had begun hearing of the evidence and proceeded substantially with the trial of the issues involved and had completed two phases of the case and a major part of the third, it is moved that the Court declare this to be a mistrial, and that a new Tribunal be appointed under a valid Charter and in accordance therewith.

It is further urged that those challenges for cause be sustained by this Tribunal and we pray for such further relief as is equitable under these circumstances.

I feel there are perhaps some other members of the defense counsel who would like to argue upon this proposition if the Court permits.

I would like to have this record show that this challenge for cause is made by the American counsel for OSHIMA, Hiroshi.

COLONEL MORROW: If the Court please, the prosecution, at any rate this section of the presecution, knew nothing about the sitting of General Cramer, knew nothing about this motion, has not seen the motion, and it is respectfully suggested that this matter be deferred until the prosecution has an opportunity to look into the motion and reply, if necessary, unless the Court decides to proceed without hearing from the prosecution.

THE PRESIDENT: We will hear all you have to say today. If you want further time, probably you will get it, but I will have to consult my colleagues about that.

Mr. Smith.

MR. SMITH: If your Honor please, on behalf

of Mr. HIROTA, I would like to move briefly for a mistrial because of the substitution and the seating of an American judge. The ground is that where the Court sits as both judge and jury we think that up until this time, without exception, the practice has always been for the accused to be confronted by his judge on the trial of the facts from the start to the finish of the trial. There has been practically a month of testimony in this case. A great deal of it has been very helpful to the defense. Witness after witness has appeared on the stand who did not testify to the facts that the prosecution evidently expected, and the new judge has lost the benefit and the defendant has been deprived of the right of the American judge to see and hear the witnesses and to appraise their credibility.

THE PRESIDENT: Two questions arise here, Mr. Smith: First the question of the power to make the appointment, and second, the question of expediency. The first question, the question of the power, is the one which I think was dealt with by Mr. Cunningham. But you are on the second question, that of expediency. Is that so?

MR. SMITH: Yes, sir.

Whalen & Duda

THE PRESIDENT: On the question of power, I may remind you -- it will not help, of course -- that the French representative is the second appointment to this Court by his country, so that if your contention is correct, there has been a mistrial throughout.

MR. SMITH: If your Honor please, I have been here since the testimony began about a month ago and my recollection is that the French Justice has heard all the witnesses who have appeared.

Going back to your Honor's question, it is not only expediency but, as I understand it, one of the great cornerstones of the law which cannot be undone is that an accused is entitled in a trial to see and hear the witness who is against him. And it is hardly arguable otherwise.

THE PRESIDENT: I repeat there are two questions: The first one, the power to appoint; the second, the expediency of an appointment at this stage.

On the question of the power to appoint, I repeat the French Judge is the second appointment by his country.

MR. SMITH: I do not care to add anything more, your Honor, other than to observe that if this procedure could be followed after one month's testimony

is in, why couldn't it be done after six months' testimony is in?

Thank you very much.

THE PRESIDENT: The question of expediency is a question of fact. And to hold the American representative disqualified we must find as a fact that he cannot give a fair trial to the accused.

I am saying these things because I want them met. I cannot speak for the whole Court.

MR. WARREN: If the Tribunal please, I am the American counsel for General DOHIHARA and Admiral OKA. I have had no opportunity to personally speak with my clients, but I have talked with my associate Japanese counsel. We do not join in the motion.

CAPTAIN KLEIMAN: May it please the Tribunal--

THE PRESIDENT: Captain Kleiman.

CAPTAIN KLEIMAN: On behalf of the defendant HIRANUMA, I have consulted with my Japanese co-counsel. I know the background of General Cramer, his reputation for fairness, and I welcome him. I welcome the representative of the United States on the Tribunal.

THE PRESIDENT: Mr. Furness.

MR. FURNESS: May the Tribunal please, as American counsel for the accused SHIGEMITSU I wish to

join in the motion of Mr. Cunningham and the motion of Mr. Smith.

THE PRESIDENT: Mr. Logan.

MR. LOGAN: If it please the Tribunal, Japanese and American counsel for Marquis KIDO have no objection to Major General Cramer sitting in this case.

THE PRESIDENT: Does any other counsel desire to be heard?

JUDGE HSIANG: Mr. President and Members of the Tribunal: As the Chinese prosecutor I do not speak for the prosecution as a whole. I merely speak for China.

China welcomes the full representation of eleven nations represented in this Tribunal. China especially does not like to see the non-representation of the United States of America on the bench.

This is an international tribunal. The rules of procedure and the rules relating to the admissibility of evidence, for instance, and some other matters are different in some respects from national courts. The grounds presented by the defense counsel for the motion I think in some respects do not apply to this International Tribunal. A reasonable interpretation of the Tribunal regarding the appointment,

I think there could not be more than eleven appointments at one single time. If there is one resignation that resignation could be filled up by a new appointment. It is the belief of the Chinese prosecutor that a new member upon assumption of duties, if he studies the proceedings, can familiarize himself with proceedings hitherto. There is no legal disability for that Member to sit on the court.

For reasons stated above, China does not associate itself with the sentiments expressed in the motion.

MR. CUNNINGHAM: If the Court please, I only have two observations to make on what has been suggested.

Concerning the Member of the Tribunal from France, that matter was seriously considered and due to the fact that the second appointment was made before the Tribunal had been duly constituted and began listening to evidence, no objection was made.

On the second proposition of the resignation of one of the Members of the Tribunal, it is my thought that there is no provision in the Charter for such procedure. If the Charter or the framers of the Charter had contemplated such a situation, there is nothing which would have prevented them from including

that in the Charter; and due to the fact that it was not included we must assume that it was not intended.

On the matter of expediency, it is my thought that it would be much better for this trial to proceed with perhaps ten judges and not have the additional one, rather than have the proceedings clouded with the possibility of the illegality of the entire proceedings. Further on the matter of expediency, it is my thought that this is novel and new procedure. Very, very few precedents have ever been established on this proposition, including the matter of military tribunal practice and that this, a case of such importance, is, my thought, no place to begin establishing such precedents.

THE PRESIDENT: Mr. Warren.

MR. WARREN: If the Tribunal please, I do not like to be placed in the position of objecting to any defense motion, but for the interests of my two clients I do desire the presence of the new Member of this Tribunal.

I represent a military man and a naval man; and while we have one military man on the Tribunal, I should like another one who probably understands. In support of my position, I am bound to state that an additional member to a military tribunal or a military

court or courts-martial, as you will, is nothing unusual.

THE PRESIDENT: Have you looked at the German Charter, Mr. Warren?

MR. WARREN: Sir?

THE PRESIDENT: Have you looked at the German Charter?

MR. WARREN: Yes, sir, I have; and I have looked at this Charter, also, and I feel that under this Charter he can sit.

THE PRESIDENT: I understand that under the German Charter representation of a country is excluded after a certain time. There is no such provision in our Charter.

MR. WARREN: That is right, sir.

THE PRESIDENT: Our Charter appears to contemplate that so many nations will be represented. Would there not be an implied power to maintain that representation in the absence of anything to the contrary?

If my recollection of the German Charter is correct -- and it may not be -- then they saw fit there to preclude the very position which you say arises here without any provision.

MR. WARREN: I am sorry, your Honor.

Yes, your Honor, I cannot agree that this Charter follows the German Charter, the Nuernberg Charter. There are dissimilar things in them. This Charter may be amended and re-amended.

A Member of this Tribunal, for instance, may become ill and leave and be gone for a period of time and come back and resume his duties. And if a member is replaced and replaced with another, it is my position that it is inherent in a military tribunal to do that. Because of the exigencies that arise from time to time in the field, the removal of officers who sit on military courts from one jurisdiction to another--

As I stated, the necessity for removal of officers from time to time even from a military court, you must have a replacement. Otherwise many, many culprits would go unpunished.

THE PRESIDENT: Did I hear you say that vacancies have to be filled on military courts; otherwise offenses would go unpunished?

MR. WARREN: In this respect, your Honor: An American general courts-martial is comprised of not less than five members. It might be that those members would go below five, and if you could not replace a tribunal it might mean the starting of another case and continued operation until such time

as your witnesses in the passage of time with the witnesses' loss of memory or other documents or other things that it could well be that a culprit might not go punished. It is not unknown.

THE PRESIDENT: Suppose six members of this Court were killed in, say, a motor car accident or a plane accident, so that a quorum could not be obtained. Would that terminate the proceedings without a verdict?

MR. WARREN: Not necessarily. As I view military tribunals, and I think those who are familiar with at least American courts-martial, and Manual for Courts-martial would know that the Tribunal could be increased by appointment by qualification.

THE PRESIDENT: Why couldn't this Tribunal be increased by further appointments?

Greenberg & Barton

MR. WARREN: If the Supreme Allied Commander had the authority to draw up the Charter in the first place he has authority to amend it, and he can amend it and has amended it.

THE PRESIDENT: I don't know what the tenor of your argument is, but I suppose you are really admitting that if there is power to cancel there ought to be power to amend.

M . WARREN: That is right. Maybe I have not made myself plain. I am arguing in opposition to the motion. I thought I had made myself plain, and I thought the Tribunal understood me, but perhaps it didn't. Certainly, I am in favor of the new member sitting as a Member of this Tribunal, and think that the Supreme Allied Commander has every right to appoint him. And the only test, it appears to be, is, can the new Justice of this Tribunal familiarize himself enough with what has gone on in the past to be able to render a fair and impartial judgment in the case? My position is that he can read the record and can do that. That, of course, is a question of fact.

It is my further position that if the Supreme Allied Commander did not think that he could

he would not have appointed him.

There is only one further requisite that I am sure the Member himself is familiar with, being familiar with military law as he is, and that is, if in his own judgment he cannot sit and render a fair and impartial judgment in the case, he would himself disqualify, and I feel certain that he would do so. Having offered himself, I feel that he feels himself qualified.

Now, my argument does not necessarily mean that I agree with these principles of law, but they are law as I view them, as made so by the Charter and by military law as I understand it. And, in this particular instance, I would like the Tribunal to consider seriously what I have to say concerning the qualifications of the new Member of the Tribunal.

CAPTAIN KLEIMAN: I am sorry to disturb your Honor again. I wish to call the Tribunal's attention to Article 4c of the Charter which reads,

"Absence. If a member at any time is absent and afterwards is able to be present, he shall take part in all subsequent proceedings; unless he declares in open court that he is disqualified by reason of insufficient familiarity with the proceedings which took place in his absence."

Such provision, may it please your Honor, is not in accordance with the setting up and action on the part of Members of civil or military courts as I know them in the United States. I don't think it lends toward a fair trial. However, as long as this provision is allowed to remain in the Charter, I don't think any greater evil is accomplished by allowing a new Member to come in and acquaint himself with the proceedings, and I know that General Cramer has that ability and has that sense of fairness that, unless he can fully and completely acquaint himself with the facts in this case, he, himself, would disqualify himself; and I request, if the Tribunal decides in favor of the motion made by the American counsel, that the Tribunal ask of the Supreme Commander to amend the Charter to allow the representative of the United States to remain on the Tribunal.

THE PRESIDENT: The Court will treat Captain Kleiman's request as a submission.

MR. FURNESS: If the Court please, lest there be misunderstanding, I speak in favor of the challenge and in favor of the motion for a mistrial.

Colonel Warren has argued that under military law, procedure substitutions can be made. That is so in court martials. The reason it is so is be-

cause the Articles of War have the specific provision for it. It is also true of the military commissions trying cases in Yokohama and Manila. The reason it is true is because the order appointing those commissions has a specific provision for substitutions.

THE PRESIDENT: This is not incompatible for a fair trial with Americans, but you are submitting it is incompatible for a fair trial with Japanese.

MR. FURNESS: I am arguing, sir, that there is no provision in this Charter and that I believe the omission is intentional.

I also wish to point out that, under the Articles of War, if the number of men sitting is reduced below a certain amount, the case must begin again de novo.

As to the Nuernberg Charter, I would like to point out that, under that Charter, there is a specific provision for alternates who sit throughout the trial who hear exactly the same evidence as that heard by the Judges sitting; and, if he withdraws or is withdrawn, that they sit as Judge and act on their own knowledge. I believe that there is a specific provision in that Charter, too, that there

shall be no substitutions.

THE PRESIDENT: We will recess now for fifteen minutes.

We may or may not be in a position to give our decision. We understand we have heard all the arguments, and we reserve our decision.

(Whereupon, at 1445, a recess was taken until 1515, after which the proceedings were resumed as follows:)

Wolf & Spratt

MARSHAL OF THE COURT: The Tribunal is now resumed.

THE PRESIDENT: The Tribunal, by a majority, holds that General Cramer, the American representative, is eligible to sit as a Member of this Tribunal, and dismisses the motion. General Cramer took no part in the decision.

Mr. Smith.

MR. SMITH: If your Honor please, in order to save the record, and on behalf of all counsel who did object, I would like to ask your Honor to allow the usual exception.

THE PRESIDENT: The application for the exception is recorded.

Is there any further cross-examination of the witness?

MR. OHTA: I am counsel OHTA for the defendant, DOHIHARA.

CROSS-EXAMINATION (Continued)

BY MR. OHTA:

Q I should like to have the witness reply to a question addressed to him this morning.

A Prior to the recess the defense counsel was asking the question about the statement I made, that is, after the settlement of Chapei Affairs, the

Japanese aggression has never stopped. The opinion I gave in that statement was that the Chinese government, desiring to secure peace, had under terrible conditions, come to a settlement with the Japanese over the question of Chapei Affairs; but the military aggression undertaken on the part of the Japanese militarists had never ceased, even after the Chapei settlement was effected. By the statement, "has never stopped" -- the agression has never stopped," I meant to say that Japanese military aggression has never stopped after the agreement was signed. It is not that up until now the aggression has never stopped.

Q That is all I wish to know with respect to this point. Next, I should like to put a question with respect to the establishment of the Hopei-Chahar Political Council. According to your affidavit, Mr. Witness, the defendant, DOHIHARA, went to Peiping in September, 1935, and stayed there until the establishment of the Hopei-Chahar Political Council. There seems to be some error in that statement, and I wish to point out to you that, although he stayed in Peiping, he frequently went to Tientsin; is that not a fact?

A General DOHIHARA, it seems to me, was then living in the most eastern three provinces. He frequently came to Peiping, and frequently went to Tientsin.

Q Then, is it not a mistake to state that DOHIHARA went frequently to Peiping for purposes of his project in September, 1935?

A In 1936, June, I had negotiated with DOHIHARA in regard to matters pertaining to Chapei. Ever since September, 1935, up to February, 1936, I had frequently seen DOHIHARA.

THE PRESIDENT: This is a convenient break. We will adjourn now until 9:30 tomorrow morning.

(Whereupon, at 1600, an adjournment was taken until Tuesday, 23 July 1946, at 0930.)

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Capt. Clarke 21/7/23 3

23 July

23 JULY 1946

I N D E X
Of
WITNESSES

I N D E X
Of
EXHIBITS

- - - -

Tuesday, 23 July, 1946

- - -

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, same as before.

For the Prosecution Section, same as before.

For the Defense Section, same as before.

- - -

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

Whalen & Duda

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

THE PRESIDENT: All the accused are present except OKAWA and HIRANUMA, who are represented by counsel.

At the desire of the representative of the Netherlands, I wish to point out that the statement in the Nippon Times that he was affected by the heat is not correct.

I gave no interview to any pressmen. I told Captain Stickle, who is an officer in the army and attached, I understand, to General MacArthur's Headquarters, that Members representing countries with a cold climate were suffering severely from the heat. I did not mention names, nor did I mention countries. If I decided to mention names, I think that the representative of the Netherlands would not have been named. He has a power of endurance second only to that of the Supreme Commander. The Supreme Commander, of course, has had the advantage of being through a hundred battles in those green hills between Morotai, Port Moresby and Manila. And he has come through with unimpaired health and, as far as I can judge, without having added a day to his years. None of us desires to be compared with him.

Does any counsel desire to mention any matter?

COLONEL MORROW: No, sir.

THE PRESIDENT: Colonel Morrow.

COLONEL MORROW. I understand the defense will continue with cross-examination, if the Court please.

MR. OHTA: I am counsel OHTA, Kinjiro, representing the defendant DOHIHARA. I wish to be permitted to continue the cross-examination begun yesterday.

C H I N G T E H - C H U N, called as a witness on behalf of the prosecution, resumed the stand and testified as follows:

CROSS-EXAMINATION (Continued)

BY MR. OHTA:

Q Mr. Witness, is it not true that in connection with the Hopei-Chahar Political Council and the Autonomy Movement in North China, the Mayor of Tientsin, Hsiao-Chenying, and the President of the Peining Railway, Chen-Chuehsheng, agreed to and supported the movement which I have just mentioned?

A In regard to the establishment of Hopei-Chahar Political Council, Hsiao-Chenying and Chen-Chuehsheng had kept contact with DOHIHARA and had discussions with him. In regard to the matters of

autonomy, the Japanese Government had put up this proposition and relayed these propositions to the Chinese Government through Chen-Chuehsheng.

Q Did not General Sung-Cheyuan, Commander-in-Chief of the Peiping Defense Corps, also approve of this program?

THE MONITOR: Correction: Peiping-Tientsin area.

A General Sung-Cheyuan agreed to the establishment of Hopei-Chahar Political Council with the view to maintain peace and order in and around the area of Peiping-Tientsin. But he has never agreed to the Autonomous Movement in as far as that area is concerned.

Q However, is it not true that General Sung-Cheyuan, on the 17th of November, established the Council for the People's Guidance, and through this organ negotiated with the central government on this matter?

A Such Guidance Council as you said was never in existence.

Q Are you aware of the fact that General Sung-Cheyuan very greatly welcomed the establishment of the Hopei-Chahar Political Council and that he had given voice to the principle of respecting the will

of the people and the maintenance of harmony between Japan and China?

A Probably there was.

Q However, at this time are you not aware of the fact that not only General Sung-Cheyuan but all who participated in this program welcomed the project and expressed their gratitude to General DOHIHARA for the efforts he had made, and that General Sung, through Chen-Chuehsheng, expressed the desire that General DOHIHARA remain in that area in order to carry on liaison work between the Kwantung Army and the Tientsin Army?

A That I don't know. What I know is that at that time all of us were feeling the oppression of DOHIHARA, and to that oppression we felt very badly.

Q Then I wish to present to the witness a scroll which was sent by General Sung-Cheyuan to General DOHIHARA as a token of his gratitude. I wish to have the witness look at this scroll.

CLERK OF THE COURT: This scroll will be marked defense exhibit No. 202.

THE PRESIDENT: It was not tendered. I do not know whether he wants it tendered or not. Do not mark it yet.

CLERK OF THE COURT: Mark it for identification.

THE PRESIDENT: If he tenders that document, or whatever it is, it may have a serious effect on the course of the trial. I will see that he understands his position before it is offered.

MR. OHTA: Then, Mr. President, I should like to consider the presentation of this scroll as evidence at a later stage. But may I be permitted to show this scroll to the witness for identification?

THE PRESIDENT: Yes.

(Whereupon, a document was handed to the witness.)

THE PRESIDENT: In the Charter it will appear that the prosecution has the last word, in any event. At least that construction is open.

Greenberg & Barton

A This is the first time I have seen this scroll. This scroll was presented by General Sung Che-yuan to DOHIHARA, at the time he left China, as a souvenir. This presentation is rather common between the officials of the countries.

At that time General Sung Che-yuan was taking charge of affairs in that area. He not only presented scrolls or gifts of like nature to Japanese officials, but also he presented to other military attaches or other foreign officials having official functions in that area.

Q Next, Mr. Witness, I should like to inquire with respect to a statement by you in your affidavit with respect to the July 7 Incident. You speak of TANAKA's Second Plan of World Absorption, et cetera, on the fourth page of the affidavit. I should not consider this to be a fact. Is it not a mistake on your part?

A This statement of mine was based on the pamphlet which was then circulated throughout China. In that pamphlet it was stated that TANAKA had the plan to dominate the whole world.

That plan involves four stages: The first stage was that the Japanese would dominate and occupy Manchuria and Mongolia; the second stage was that of

domination over North China; the third and fourth stages were evidences by the fact, in 1940, when the Japanese started the Pearl Harbor adventure.

Q Who was the author of this pamphlet?

A That was printed in China, was known as the "TANAKA Memorandum."

Q On page 4 of your affidavit -- page 5 -- you say that Japanese troops maneuvered on Chinese territory at their own will. However, are you not aware of the fact that following the Boxer Uprising in the year 1900 a protocol known as the "Boxer Protocol" was concluded between China and other Allied countries and that the Japanese Army maneuvered on Chinese soil on the basis of treaty stipulations as provided for in the Boxer Protocol?

A Yes, I know. But, according to the practice then, it was that before any maneuver was taking place, a notice must be sent to the local government through which the inhabitants of that particular locality would be informed.

THE MONITOR: I would like to make a correction for English interpretation of defense counsel's question: "Not only our country, but other signatories to this protocol had the same right to maneuver on Chinese soil."

Q Are you also not aware of the fact that these proper steps were taken before these maneuvers were held?

A Many protests were made by the Chinese authorities to the Japanese military authorities on the ground that many of the maneuvers were not previously informed, and the inhabitants of the various localities were very much frightened. The maneuvers taking place at the time of the outbreak of Marco Polo Bridge Incident was never informed previously to the Chinese authorities.

Q Maneuvers were held in that area after permission had been secured from General Sung Che-yuan in accordance with the treaty stipulations in the Boxer Protocol; but were not even greater permission secured before these maneuvers were held?

Addition: Did not the Japanese Army authorities secure from General Sung Che-yuan permission even greater than that permitted by the Boxer Protocol?

A In the first point, as far as that Boxer Protocol is concerned, the foreign countries may put up maneuvers along the railway line, but they are not authorized to have -- to take any maneuvers in any further off places.

Q Shortly after the outbreak of the Lukuochiao Incident on 29 July, 1937, an incident called the Tung-Chow Incident occurred. Are you familiar with or aware of this Incident?

A I only heard of that after the Incident took place. At that time I was already not in Peiping.

Q The Tung-Chow Incident was started by Chinese instigators and was started against the East Hopei Anti-Communist regime by a part of the Pao-an-tsui or the Peace Preservation Corps in Tung-Chow. As a result of this attack, many of Japanese nationals resident there, including many women and children, were massacred. Even after this Incident, you must have received reports to the effect, is that not so?

A I only heard of this matter. At that time I -- General Sung Che-yuan and I both were in Pao-Ting.

Q Then, are you also not aware of the fact that Japanese troops in Peiping were fired on by Chinese troops on 26 July of the same year?

A The fighting started from July 8 when the hostilities at the Marco Polo Bridge broke out and that hostilities was never ended until somewhere in 1945.

Q In your affidavit you state that General DOHIHARA was responsible for the outbreak of the Incident of September 18, 1931. On what grounds do you make this charge against him?

A That statement was based on intelligence reports and documents received by the Chinese authorities.

Q Are you not aware of the fact that about the time of the September 18 Incident DOHIHARA had gone to Tokyo to report on the NAKAMURA, Shintaro Incident and that when the Incident broke out on September 18 he was en route back to Mukden after having made the report and was very much astonished when he heard of it, which was after the Incident broke out?

A That I don't know.

MR. OHTA: That concludes my cross-examination.

THE PRESIDENT: The scroll shown the witness should be marked for identification.

Call out the number.

CLERK OF THE COURT: It is marked 202 for identification.

(Whereupon, the document above referred to was marked defense exhibit No. 202 for identification.)

Wolf & Sprat

MR. ITO: I am counsel ITO, Kiyoshi, counsel for the defendant, MATSUI, Iwane.

Since the witness does not speak the official language of this Tribunal, and, naturally, it would increase the difficulties were he to speak in another language, I shall ask questions which it would be sufficient for the witness to reply with yes or no.

CROSS-EXAMINATION (Continued)

BY MR. ITO:

Q I should like to have the witness be careful not to stray outside of the point asked in my questions and that he stick to the point.

THE PRESIDENT: These admonitions are not called for. Please ask questions straight away.

THE CHINESE MONITOR: As the Chinese Monitor, I wish to state that there has been a mistake in translation, and that the original in Chinese reads, "the Japanese military clique," rather than, as the interrogator just said, "the Japanese aggressor."

Q In your affidavit, Mr. Witness, you mentioned a Japanese officer by the name of MATSUI in two places. At one point you speak of a MATSUI, Chief of the Special Service Section, who was in Peiping at the outbreak of the Marco Polo Incident on July 7, 1937. In another place you speak of a retired Japanese army

officer by the name of MATSUI having come to Peiping in the fall of 1935. May I ask whether these two MATSUIS are one and the same person or different persons?

A They are two different persons.

Q When this retired General MATSUI visited North China in 1935, he saw you, Mr. Witness, and he said that, in quoting the words of SUN Yat-Sen, if Japan and China would come together and join hands it would mean the salvation of Asia. That was the meaning of the Greater Asia Doctrine; is that not so?

A I don't recall that.

Q If you do not recall this fact, I shall refer to the Greater East Asia Annual, and, sir, will you try to recall this fact?

THE PRESIDENT: Continue with your question.

Q Do you not recall that on the 1st of December the leaders of North China gathered together at the Hsi-hu Hotel in Tientsin and created a Founders Committee for the China Greater Asia Association?

A I never participated in that meeting.

Q However, this record shows that General SUNG Che-yuan HAN-Fuchii, and yourself, CHING Teh-chun, and others, had participated in this gathering.

A As I said, I never participated in the meeting

of the so-called Friends of the Greater Asia Society in China. Whether somebody used my name or not, that I cannot tell. I heard that one man, CHI Hsieh-yuan, who is now being committed as a traitor in China, participated in that meeting.

Q Was there any other person in North China by the name of CHING Teh-chun?

A No. Was it CHENG Chueh-sheng who used my name to be put up in that record?

A In your affidavit you state that the Greater East Asia -- the Greater Asia Doctrine -- would be perfectly satisfactory if it were based on the spirit of reciprocity. However, Doctor SUN Yat-Sen's Greater Asia Doctrine -- with reference to Doctor SUN Yat-Sen's Greater Asia Doctrine, I should not think that leaders in North China would not approve of it; and so I am inclined to think that you were among those who approved it. Will you try to recall your position on that matter?

A When MATSUI was talking on the subject of establishing the French Office of Greater Asia Society, General SUNG and I both expressed disapproval of the project; but this project was approved by SUNG Che-yuan and CHI Hsieh yuan, as I told you. As I have said, the meeting was held in Tientsin, and that HUNG Fu-chu and

SUNG Che-yuan were both present at the meeting. But, as a matter of fact, HUNG Fu-chu was always stationed in Chen-tung, but he sometimes came to Tientsin. So I even doubt if that is true.

THE PRESIDENT: We will recess now for fifteen minutes.

(Whereupon, at 1046, a recess was taken until 1102, after which the proceedings were resumed as follows:)

Goldberg & Duda

MARSHAL OF THE COURT: The Tribunal is now resumed.

BY MR. ITO (Continuing):

Q Mr. Witness, I must say that you have said that many leaders in North China were unable to attend, even by airplane, the founders' meeting of the Greater Asia Society in Tientsin. But what I said is not that all or the many Chinese leaders in North China attended this founders' meeting, but what I did say was that a founders' meeting was held in Tientsin and that after that, many of the leaders in North China approved of this organization.

A As I said, I have never participated in that meeting. If I had ever been to that meeting, I would have signed the attendance book and if I had signed the attendance book, naturally I would recognize my own writing. If I had never attended and never signed the attendance book, then it is possible that somebody else just put my name on.

Q I did not say that you, Mr. Witness, attended this meeting in Tientsin. In your statement, Mr. Witness, you said, you speak of the Chinese Greater East Asia Association as being a branch of an organization with headquarters in Japan. But the record upon which I speak does not mention a branch but an entirely

independent Chinese organization founded upon the Greater East Asia doctrine. The resolution of the meeting of which I speak states that it has been a mistake for the peoples of Asia to quarrel among themselves and that, instead, the peoples of Asia, in the spirit of the fact that Asia is an area for the peoples of Asia, should resolve their quarrels and become friends and that China and Japan, most of all, should come together, collaborate as friends, and lay the basis for the emancipation of Asia. And this declaration further goes on to state that since a Greater Asia Association has been established in Japan, a similar organization independent unto itself should also be created in China in parallel with the organization in Japan. Do you not recall this?

A I am afraid that the defense lawyer had mixed up the purpose of the so-called "Great Asia Society" with the organization, with the actual doings of that society. The reason that I abstained from participating in this meeting is that --

Q If you have not approved of it, that is enough from you.

A No, I must give it further treatment.

Q I should like to ask questions on questions of greater import. That is not necessary. In your

affidavit you speak of an agreement between you and DOHIHARA; and in that agreement it is stated that the activities of the Kuomintang should be removed from the Chahar District. What do you mean by that?

A There was no stipulation to the effect that the Chinese troops should be withdrawn from Chahar but there was a stipulation that the troops stationed in the Sixth District North of Kalgan should be withdrawn and in its place the police guards should be sent forward.

Q You speak of the fact that in Chahar Province there was an anti-Japanese organ, there were measures for the control and enforcement of measures against the anti-Japanese organs as well as anti-Japanese activities in Chahar Province. Now what kind of organizations did exist in that area, what kind of anti-Japanese organizations existed in that area, may I ask?

A There was never any anti-Japanese associations or organizations in Chahar. The policy of the Central Government then was that unless there is no hope of peace, they will not give up the negotiations of peace and if there is no -- unless there is no hope of peace, they will not give up the hope of peace.

Local government then, in conformity with the

policy of the Central Government, tried their best to carry out this policy and there was not at all any anti-Japanese movement.

The Japanese militarists, with a view to push forward their aggressive plan and with the ultimate end of effecting autonomous movement in North China, they simply branded the headquarters, the Kuomintang Headquarters in the Chapei Province (northern part of Chahar Province) and other political organs as anti-Japanese organizations.

Q I should like to have you reply to my question.

A There was no anti-Japanese movement in China, I said that.

Q In other words, Mr. Witness, you mean to say there was no anti-Japanese organizations in Chahar at that time?

A The fact that there were many Japanese goods flooding the markets in Kalgan and north of Kalgan is a very good proof that there was no anti-Japanese sentiment existing then in that area. The Japanese just wanted to get rid of Chinese political organizations and other official organizations, got rid of them in those areas and branded these political official organizations as anti-Japanese organizations.

COL. MORROW: If the Court please, I ask that counsel be warned to allow the witness to finish his answer. There are several instances here where the witness here has been prevented from finishing his answer.

THE PRESIDENT: The red lights are not being effectively used and there should be a military policeman along at the lectern with counsel.

Abram & Morse

Q Then, Mr. Witness, you say in your statement that it was necessary to enforce measures against anti-Japanese organizations in Chahar. From this fact I must assume that there was an anti-Japanese movement. Will you clarify this point?

A That expression is an expression loaned from the demands made by the Japanese. At that time the Japanese took the party quarters in the local areas, the editorials published by papers against the Japanese theory of putting North China as an autonomous government, and students parades as gestures of anti-Japanese movements. The local government then, pursuant to an order received from the central government, which for the purpose of securing peace had ordered that all the party quarters in the various districts and some political organs were removed from these districts and the students and other people were admonished by the authorities not to hold any more parades.

Q What do you mean by youth demonstrations?

A There was never any students parades held in Chahar, but in Peiping there was a few parades held. The students held the parades simply because they felt that the Japanese aggression was endless; that the Japanese is pushing forward even

as far as Peiping then. At that time I, as mayor of Peiping, advised the students to go back to their schools and told them that if in the event of Japanese closing in on Peiping, we would get together and try to ward off this danger. Ever since that time I received the students en masse and gave them that piece of advice the students went back to their schools and they have never held any parades any more.

Q The anti-Japanese movement carried on by the Japanese youth, if you search into the causes of this movement, is it not correct to say that anti-foreign education, especially anti-Japanese education, was carried on in China long before the Manchurian Incident?

A This is nothing but a patriotic movement from the students. The students being oppressed by the Japanese aggression expressed themselves in such an act. This patriotic movement was seen only after September 18. Before that we had one movement also held by the students, called the "Five-Four Movement." That movement was only for cultural purposes.

Q I have here, Mr. Witness, a book, and it states that China after the opium war will fall victim to the aggression of Britain, France, Germany, Japan, and America, and that China must expel those

foreign powers and that this type of doctrine was written into the text books used in the schools of China in their geography books, in their history books, and in their language books, of which there are more than five hundred different kinds. Are you or are you not aware of this fact?

A That I do not know.

MR. ITO: That concludes my cross-examination, sir.

COLONEL MORROW: I would like to know the name of that book, if the Court please.

MR. WARREN: We have a copy. You can see it later.

I am Colonel Warren.

CROSS-EXAMINATION (Continued)

BY MR. WARREN:

Q In your statement which you adopted before this Tribunal as your evidence in chief you remarked under Prologue A-1, the political situation and you set out various members of the Chinese Government as holding various positions. Will you tell the Tribunal whether all of those men were appointed by the Central Government of China or the Nanking Government?

A They were all appointed by the Central Government.

Q Were they all members of the same political party?

A They were all members of the Kuomingtang.

Q As a matter of fact, the Kuomingtang, or the political party to which you refer, was the National Government at Nanking, is not that correct?

A Yes.

Q At that time how far did the control of the various provinces of China -- strike that. I will put it this way: how far did the governmental control of this political party extend in China at the time of the so-called Incident at the Marco Polo Bridge?

A With the exception of the northeastern three provinces, the Province of Jehol and the twenty-two districts east of Hopei Province, the Province of Hopei, Shangteng, Shangshi, Chahar, were all under the power and control of the Kuomingtang.

Q The provinces which you excepted then were the provinces which were in controversy between the Nanking Government and the Japanese Government. Is that not correct?

A Yes, they were.

Q Now, were not the provinces which you named under the control of the Nanking Government actually

under the control of the army, which belonged to the political party that you were a member of?

A Yes.

Q Is it not true that the Nanking Government had aggressive ideas of its own which were well known to Japan?

A I do not understand what you mean. The Nanking Government has never harbored any aggressive plans or ideas.

Q Do you mean to tell this Tribunal that the political party of which you are a member, which is, and was at that time the Central Government of China, never had any idea of expanding its sphere of influence by war or otherwise?

A No.

Q Now, in the following paragraph, or the second paragraph rather, under sub-paragraph A-1, you state that: "Since their costless invasion of the Chinese North-Eastern three Provinces, followed by the invasion of the Jehol Province, and the Battle of the Great Wall, the Japanese aggressors considered all these Provinces in North China as something that could be very easily taken over." Now, I should like to know where you got the authority for that statement. And, General, sir, I want facts, if you

have them; if you have no facts to back up that statement, will you so state?

INTERPRETER: Where is the Chinese copy?

MR. WARREN: I don't have the Chinese copy of this. Can you read the English and interpret it into Chinese? It is document 1750.

THE PRESIDENT: Well, I think this is a convenient time to recess, but before we do I would like the counsel for -- is it MATSUI, Iwane, to tender the book from which he read to the witness, to tender it for identification. What is the number?

CLERK OF THE COURT: Marked for identification No. 203.

(Whereupon, the document above referred to was marked defense exhibit No. 203 for identification.)

MR. WARREN: May we note our exception to the order of the Tribunal? Reference merely was made to it, and asked if he had knowledge of it, and if we decide to use this at a later time, which we probably will, it is forcing us to present our defense before we have had an opportunity to examine the evidence or to move for a finding of not guilty.

THE PRESIDENT: Counsel is not satisfied

merely to ask the witness whether he knew of the book, but he went further and read from it. Under those circumstances it should be in the custody of the Court. We will recess now until one thirty.

MR. WARREN: If your Honor please, I had forgotten that I did quote from the book, and I was wrong and may I withdraw my objection? I am sorry, sir.

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

Duda & Whalen

AFTERNOON SESSION

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

Mr. President, we have a Chinese-English interpreter who is now ready to be sworn.

THE PRESIDENT: Let him be sworn.

(Whereupon, Major M. N. Chien was sworn as Chinese to English and English to Chinese interpreter.)

- - -

C H I N G T E H - C H U N, called as a witness on behalf of the prosecution, resumed the stand and testified as follows:

THE PRESIDENT: Colonel Warren.

MR. WARREN: Would the translation section read back the question in English-Japanese and again to the witness in Chinese.

ACTING LANGUAGE SECTION CHIEF: The reporter has changed shifts and is not here to read it back to you.

MR. WARREN: I do not exactly remember the question.

THE PRESIDENT: You had better repeat it.

BY MR. WARREN (Continuing):

Q In your affidavit, second paragraph of

subparagraph 1A, you say that "since their costless invasion of the Chinese North-Eastern three Provinces, followed by the invasion of the Jehol Province, and the Battle of the Great Wall, the Japanese aggressors considered all these Provinces in North China as something that could be very easily taken over." Now, for the basis of -- we should like, rather, your authority for the basis of that statement and we desire facts, if you have facts, and if you do not have them we desire that you so state.

A Since the Mukden Incident Japanese took over Manchuria in their possession, and in 1933 the Jehol Incident, in the same year the Japanese Army marched in the Great Wall line, that is, the Ku-peikow Gate-- the Leng-kou, the Hsi-honkou, Ku-peikow. The above-mentioned gates along the Great Wall were all strategic points, and south of that Great Wall the terrain lies flat and is a plain and is very hard to defense. That is why we can draw the conclusion since the Japanese Army are marching from the north to the south and past our strategic points of defense, and evidently their aim is to take the North China into their possession, too.

Q General, sir, I asked you if you had facts, not conclusions. Do you have any facts other than any

conclusions that you drew?

A Since May of 1933 the Japanese forces had reached Tung-chou which is only forty mile from Peiping, the political center of North China, and along that line from Tung-chou to Tientsin. That is a very evident fact, that Japan was going to take over Peiping and Tientsin. By this fact there comes the May 31 Tang-ku Agreement. By this Tang-ku Agreement we were forced into, Chinese troops had to withdraw from the line mentioned above; that is, from Tung-chou to Tientsin -- had to withdraw all east from that line.

Q Just a minute. You are obviously not answering the question or you misunderstand what I mean. Now, how many Japanese troops, if you know, were in the Northern Provinces, in northern China, in July, 1937?

THE INTERPRETER: Is this question a continuation of your last question?

MR. WARREN: This question is not.

THE INTERPRETER: General Ching hasn't finished up his last answer yet.

MR. WARREN: I stated that I did not desire him to finish. He did not answer my question. I am proceeding.

A According to our knowledge, at the time when the Marco Polo Bridge Incident broke out, the Japanese

had a division in Peiping and Tientsin. That is about 15,000 men.

Q Then you do not know, and did not know at that time, how many troops were there, did you?

THE INTERPRETER: We just say that 15,000 men in Peiping and Tientsin--

MR. WARREN: Before you interpret that, I have not asked this witness a question. He answered my other and entirely to my satisfaction.

A We don't know the exact number.

MR. WARREN: Just a moment, please. I stated that I want to ask another question. He answered my question. I do not care for the voluntary statements of this witness. I want to proceed with my cross-examination.

COLONEL MORROW: I take it, if the Court please, that a witness can always make an answer and explain and expand.

THE PRESIDENT: Yes, undoubtedly.

MR. WARREN: Yes, your Honor. How is he going to explain or expand on the statement that there were 15,000 there according to their belief? That is all I asked him.

THE PRESIDENT: Well, we will hear his amplification.

MR. WARREN: Very well. I object to it, sir.

A (Continuing) We don't know the exact number. All over the North China, Japanese troops. But we know definitely that there is a garrison command in Tientsin, and a brigade in Peiping, totaling about a division, which has the strength of 15,000, and there are some more over other parts of China which we don't know the exact number.

Q Now, you state definitely that you know there were 15,000 at least. Will you go ahead and state whether or not those troops were in there illegally?

A According to the agreement drawn after the Opium War, Japanese, or Japan, was authorized to station troops only along the railway from Peiping to Ching-huang-tao to guard the safety of that railroad. Any amount excessive than the necessity is illegal.

Q In order that the witness will not later be confused, I am referring apecifically to a time in early July preceding July 7, which is on the date that the so-called Marco Polo Bridge Incident occurred. I ask him if he refers to the same period of time.

A What we have said is referred to the same time as what you asked; and after July 7, 1937, after the incident started, Japan massed more troops from Manchuria to North China.

Greenberg & Barton

Q On page 4 of the American version of document 1750, which is prosecution's exhibit 198, you refer to the incident when a soldier of a Japanese Army was alleged to have been lost on maneuvers and a search was demanded in Chinese territory by the Japanese. And, after having had that intelligence conveyed to you, you stated, "I immediately" -- I am reading now -- "replied that Japanese troops, maneuvering in Chinese territory at their own will, were in violation of international law."

Do you still maintain that they were in violation of international law?

A We have answered this question to you this morning.

Q Ask him to answer the question.

A According to the agreement drawn in 1900, after the Opium War, though it authorized the Japanese to station troops along the railroad in North China, and the necessary maneuver along the railroad -- but in case of that maneuver, has to be -- the Chinese Government has to be notified in advance so that all the residents along the railroad would be in turn notified, and to prevent any misunderstanding.

First, we have to make a correction here:

The agreement drawn in 1900 was after the Boxer -- so-called Boxer trouble which is now the Opium War. And also the place where the Japanese troops was authorized to carry out maneuver can be too far from where they were stationed. They cannot be stationed at Fengtai and maneuver near Nanking.

Q I will read to you from prosecution's exhibit 58 which has heretofore been introduced in evidence, and it refers to a report adopted by the League of Nations Assembly on October 6, 1937. It is on page 384 as mine is marked.

"At the beginning of July 1937, there were about 7,000 Japanese soldiers in Northern China. These troops were kept there on the basis of the Protocol of September 7th, 1901 (and its annexes), concluded between China and the Powers having legations at Peking. Under these Agreements, China recognized the right of each Power to maintain a permanent guard in the legations quarter at Peking and to occupy twelve specified points for the maintenance of open communication between the capital and the sea. Under the terms of a supplementary Agreement of July 15th-18, 1902, the foreign troops stationed at these points had 'the right of carrying on field exercises and rifle practice, etc., without

informing the Chinese authorities, except in the case of feux de guerre'."

(Whereupon, the witness began to speak in Chinese.)

Q (Continuing) I haven't asked any question yet.

Now, after having had this read to you, do you agree with that statement or do you disagree?

A We still hold that the statement is true because we had an agreement with the Japanese garrison commander that they should notify us in advance of any of their field exercises.

Q Now, that's the point that I want to get to, General, sir. Regardless of the international commitments of your nation, you felt, or your garrisons and your various generals felt that they could make agreements without the approval of their government; is that correct?

A It is not a remedy to the agreement; but, since the Japanese troops were carrying out maneuvers and field exercises so frequently, not like other foreign troops in that authorized area, we had to have some kind of agreement with them to prevent violence and misunderstanding to happen.

Beside me there would be another witness who

was a District Minister of Wan-Ping Hsien where the incident started. He can tell you that he had an agreement with the Japanese battalion commander stationed at Fengtai whose name is ICHINOKI, Kiyonao.

Q General, sir, I am not interested in the agreement that you say you had there. I'm interested in the statement you made to this Court as a factual account that you told your subordinates that the Japanese were acting in violation of international law.

The question is, why did you inform your subordinate officers that Japan acted in violation of international law when she did not act in violation of international law?

A The reason why I told my subordinates Japanese were violating the international law were because they didn't hold their promise. Maybe I didn't have sufficient reference at hand in that time in this literary term "international law."

Q General, sir, what made you believe that an oral agreement between two battalion commanders, or whatever their regimental rank was if they had any -- a sort of a gentlemen's agreement -- could anywhere broach international law and international agreements between two nations?

A A gentlemen's agreement between the chief of local government and the Japanese garrison commander was to maintain the peace and order of that area. It is not in contrary with the spirit of international law.

Why I said that this gentlemen's agreement is not in contrary to international law, because the Japanese troops were carrying out intensive field maneuvers and with actual firing. If they don't give us notice in advance, it would incur injury of the Chinese civilians and residents in that area and will cause violence and disorder which is in contrary of the spirit of international law or the agreement drawn in 1900 to maintain the peace and order along the railroad, to maintain the communication to the sea. If they didn't give us notice in advance, and carrying out their maneuver with actual light ammunition, it would result in disorder and violence.

Q Now, General, what were the Chinese troops doing all this time? What were they doing?

A At the moment when the incident was reported to me, I immediately called up the regimental commander of my troops stationed at Marco Polo Bridge and Wan-Ping Hsien and checked that our troops have all retired -- were all sleeping at that time.

Wolf & Sprat

Q General, you stated a few moments ago that Japan had more troops than any other nation in China at the time in accordance with the Protocol of September 7, 1901. Now, is it not true that Japan also suffered many more losses of life of her nationals and of destruction of property by undisciplined members of the armed forces of China, and by banditry than any other nation in China at that time?

A Since the 1901 agreement was drawn, there was not disorder in North China which caused any Japanese suffering of lives. It is because that Japan was preparing for an invasion and aggression, and using this reason like you stated to mass troops in North China. In fact, at a time around July 7, 1937, the order in North China, especially around Peiping, was well maintained. This is a known fact to all the foreign residents in Peiping, especially English and Americans. Japan did try to create disorder in North China, to use it as an alibi or excuse to concentrate more troops in that area. It happened in Chang-peh Hsien, where Japan hired rascals and so-called ronins to make trouble, but it was well taken care of by the local government, and order was restored.

Q General, sir, you are not answering my question. I am not interested in a speech. What I asked

you was: is it not a fact that the Japanese lost more nationals as a result of barbarity and banditry and undisciplined soldiers, and more property than any other nation in China under the Protocol Agreement? That can be answered very simply, yes or no.

A What I say meant no.

THE PRESIDENT: Colonel Warren, would you help us by stating just what you are trying to establish in referring to Chinese losses. I did not have the impression when you were reading from the Lytton report that your purpose is to show that what the Japanese did was justified under treaties about which no question arises -- those following the Boxer Rebellion. Where are we now?

MR. WARREN: I am speaking about Japanese losses, sir. Great stress has been laid on this report that I have.

THE PRESIDENT: Aggressors, or we will say invaders, can lose heavily.

MR. WARREN: Your Honor, I am not speaking about that.

THE PRESIDENT: Can they enforce agreements? It is quite irrelevant to show that if Japan was an aggressor, was an invader, we will say, that she was able to compel these people to make treaties with her,

and that she lost heavily. Those things are quite beside the question that arises here.

MR. WARREN: If your Honor please, I think you entirely misapprehend my questioning. The United States, Great Britain, and other powers had in China at the same time -- after the Boxer Rebellion we had our nationals there, our business interests that we were protecting, and so was Japan. So if great stress is laid on the fact, if it please your Honor, by the prosecution in their exhibits, that Japan had more soldiers than any other nation, by the same token I feel that I have a right to show, on cross-examination, in the face of this witness's explanation, which your Honor has required me to let him make, that Japan likewise had more nationals and owned more property interests than the other nations, and it took a greater police power to protect them than any other nation. That is all I am trying to show; that is all I am asking this witness. He knows it; he knows it very well.

THE PRESIDENT: So long as you can rest your cross-examination on treaties not in question here -- those made following the Boxer Rebellion -- well, you are within your rights.

Colonel Morrow.

COLONEL MORROW: If the Court please, I believe

the witness ought to be allowed to have translated to him in Chinese these remarks of counsel that he may follow the trend.

THE PRESIDENT: No, I do not agree with you.

This is a convenient break. We will reeess now for fifteen minutes.

(Whereupon, at 1445, a recess was taken until 1500, after which the proceedings were resumed as follows:)

THE PRESIDENT: Dr. KIYOSE.

DR. KIYOSE: Mr. President, after having been listening to the testimony made by the witness, I have noticed that there is a little difference in the translations. Among the defense counsel, there are a few of us who understand a little Chinese. And from this knowledge we can see that, here again, there is a slight difference in the translations. In the case of a letter being translated into Japanese, we have always had monitors to supervise the accuracy of the interpretation. However, unfortunately, in the case of the Chinese, we have not been favored with such a provision. Perhaps that is the reason why we are not entirely satisfied.

LANGUAGE SECTION CHIEF: Mr. President, we have a new setup here adding one more interpreter taking the question from the prosecution and taking the witness' answer, translating witness' answer into English. We have two interpreters here to improve the interpretation to be carried out and they will monitor each other.

THE PRESIDENT: Well, as I explained before, all this interpretation of every word is not required in the interests of justice. It is required in the interests of propaganda. That is the whole point.

This elaborate system of interpreting every word does not obtain in any national court. We try murderers there. We try men who cannot speak the English language, but we do not have all of this interpreting. I would like the Japanese to understand that. The Charter really is mostly concerned with the Japanese people understanding what is happening in this Court. It is not required in the interests of justice. However, we will do our best. We will try to carry out the Charter but at present it seems Dr. KIYOSE, that your objection is not well supported.

DR. KIYOSE: Mr. President, I respect your esteemed opinion. Unless there is a very great difference in the whole meaning, we do not wish to raise any objections. But, inasmuch as the present witness is a very important one, and his testimony will consequently have a very important bearing on the outcome of the trials, we are raising this point. If, however, we are reluctant and we shall not raise any points which we can consider to be minor in importance.

THE MONITOR: The one point to be added on this is that "We regret to have judges, Mr. President and the other judges, receive wrong impressions because of the translation. That is why we are raising

this problem. However, we will not quibble over words or usage of words. We would like the substantial meaning of the translation to be accurate. That is all."

MR. PRESIDENT: We appreciate your attitude, Dr. KIYOSE. We will do our best with the talent we have.

DR. KIYOSE: As it has occurred just now, even in the case of the Japanese interpretation we had to have it repeated before the real significance could be brought out. In the case of the Chinese it would be, -- this difference would become more marked.

THE MONITOR: "The danger of this procedure is that we do not have Chinese monitors. Therefore, if we do have monitors, I think it can be corrected.

THE PRESIDENT: I have never known monitors in any court but this.

Yes, Col. Warren.

MR. WARREN: If the Tribunal please, the only question that I have had raised with reference to the interpretation is that the new interpreter, I am sure he has no ulterior motives in mind at all, but on several occasions he has conferred with the witness either in further explanation of the question or some

other matter and some of the American counsel have objected. I would ask the Tribunal to caution him on that point. I realize he is doing the best he can for us but that might become an important factor in changing the meaning of an answer.

THE PRESIDENT: Now I have tried scores of cases with interpreters and my experience was and is that interpreters and witnesses frequently, if not invariably, question one another to a great extent, at great length.

And I would like that to go on record that I have noticed here today nothing unusual in the conduct of the interpreter and the witness.

MR. WARREN: I was expressing, your Honor, what had been conveyed to me and I will proceed with the cross-examination.

CROSS-EXAMINATION (Continued)

BY MR. WARREN:

Q General, sir, at the beginning of July, 1937, is it not true that in addition to Japan that the United States, Great Britain and France also had troops stationed in Northern China?

A Yes.

Q Is it not also true that they had trouble with Japanese -- I mean Chinese banditry as well as

the Japanese?

A No.

Q I can very well see where that question may have been confusing in the manner I put it. I will place it this way.

Is it not true that the French, English and Americans who were stationed in Northern Japan at that time had trouble with bandits? I mean North China.

A I have never heard of that.

Q Were you in the vicinity at that time?

A I was in Peiping.

Q And you never heard of trouble between the French, the Americans and the English with Japanese -- I mean Chinese bandits as a result of brigandage there?

A I have never heard of that; neither had I received any reports from any of these foreign consulates or embassies, Great Britain or American or French authorities.

Q Now with reference to the statement in the second part of paragraph A-1 of the Prologue of your Factual Account of July 7th Incident, you state in substance that all the policies of the local authorities in several different places were

formulated and carried out in conformity with instructions and laws proclaimed by the National Government and that they were interfered with by the Japanese and then you state: "For example, the election of representatives of the People's Congress, the concentrated military training of all college students, were considered by the Japanese aggressors as measures inconsistent with the status of special area."

In what manner were the Japanese aggressors at that time?

A Regarding the election of representatives to the People's Congress, Japanese by the name of TAKAHASHI from the Japanese Embassy had approached Mr. Hsiao-Chengying and myself to stop this election. At that time he induced us by saying that if we refrained from putting on the election and if we disobeyed the orders issued by the Central Government, the Japanese Government will be able to help the Hopei China Political Council politically and economically.

Q General, I am speaking -- General, sir, perhaps I misinterpret your use of the word "aggressors". Do you mean to convey that up until that time they were actively participating in an aggressive war

against you or were they aggressive in some other manner?

A Yes.

Q Is it not true that the Japanese objected to propaganda being taught in the schools against Japanese and other foreign persons and that they did object strenuously to the training, intensive and concentrated training, I mean, of students in the military arts along with the propaganda that was being given to them?

A The Japanese, on the pretext that this concentrated military training in the universities and colleges instils anti-Japanese ideas, demanded that these be abolished.

Addition, please. However, the military training we had given to our students was purely for self-defense reasons.

Morse & Abram

MR. WARREN: If the Tribunal please, I would like to request the Tribunal to respectfully request this witness to answer my questions without giving his conclusions that on a pretext of this kind or a pretext of the other, he can answer these questions without. I don't care for his conclusions, and your Honor, once an answer is in, does not permit us to strike it. I feel we should be at least afforded the protection of an admonishment to the witness not to state conclusions not based on facts, which he has given to the Tribunal. I feel that the Tribunal can well pass upon the question of whether it was a pretext or not. If he will just state the facts to the Tribunal, that is all I want him to do..

THE PRESIDENT: Well, the whole of his examination in chief consists of conclusions, if I recollect rightly. It is not the kind of evidence we would allow in chief if he gave his evidence from the box. But I will ask him to confine himself to simple answers to the questions, to make sure if he can that his answers do not extend beyond the questions.

THE WITNESS: I have never overstepped the bounds of the answer.

MR. WARREN: Thank you, General.

THE PRESIDENT: He may always explain an answer if he thinks fit.

Q Did the Japanese, or did they not, inform you that they felt that the intensive military training, together with the propaganda being disseminated to the students against the Japanese and other nationals foreign to China were inconsistent with the treaty commitments with China with reference to their status in the special areas?

THE PRESIDENT: Well, you assume the fact or beg the question, whatever way you like to put it, in that interrogation.

MR. WARREN: Well, your Honor, I thought maybe I could get a direct answer. I am sorry.

THE PRESIDENT: Well, let him try to answer.

INTERPRETER: The witness said that he didn't quite get the question.

Q I will reframe it. In your statement quoting you state repeatedly Japanese opened negotiations and interfered with such administration but all the inducements and threats failed. Is it not a fact that you were approached many, many times by the Japanese representatives to negotiate on matters that they considered objectionable to their special status under their treaty obligations and rights?

A According to the Ho-UMEZU Agreement, the Chinese troops -- part of the Chinese troops were withdrawn and some of the political workers attached in the army were also withdrawn. Other than that there is nothing that should be considered objectionable by the Japanese. Also the office of the political party were withdrawn by the agreement between General Ho and UMEZU.

MR. WARREN: It is obvious that there was a wrong interpretation of my question given to the witness.

(Whereupon, the last question was read by the official court reporter.)

INTERPRETER: The question will have to be re-translated.

The witness said that the Japanese fundamentally had never acquired any special rights or status. They were forcefully trying to get the autonomy of North China which General Sung Cheyuan refused.

Q Is it not true that the Chinese refused to negotiate or to cooperate with the Japanese on a single proposition that they came to the Chinese with prior to the Incident of July 7 or the Marco Polo Bridge Incident?

A The Chinese government has never refused to negotiate with the Japanese only on the main issue, that is, disintegration of North China from China proper. This issue we refused to talk.

THE PRESIDENT: I suggest, Colonel Warren, with respect that your questions are longer than they need be and are creating much of the difficulty.

MR. WARREN: You are probably right sir. I also feel that this witness is adopting a somewhat stubborn attitude in his answers also, but I will try to do better with the questions.

Q With reference to paragraph 3 of your prologue, you state that "the 29th Army was the main force, which had its garrisons all over Hopei, Chahar, Peiping and Tientsin. At the time of the Incident, the 37th Division under the command of General Feng Chi-An was stationed in the suburbs of Peiping." What was the exact date that -- Just a moment.

THE PRESIDENT: I don't know how the interpreters are going to pick up that.

MR. WARREN: They are not going to put up that, sir. I am trying to ask a question for somebody else, your Honor, and I have it messed up myself. He says he will ask his own question.

Q Now, General, sir, you go into great length

with reference to the Marco Polo Bridge Incident, stating the Japanese so-called aggression, and you also state that you ended with an agreement. What was the date of that agreement to cease hostilities?

A As far as I remember it was on the 10th of July.

Q Now later you state that hostilities were again resumed on the 14th of July but you do not go into detail. Why did you not go into detail with reference to the commencement of hostilities on the 14th, or the re-commencement?

A If I have gone into details of the re-commencement of hostilities you may think it will be rather uninteresting to you again.

Q The truth is, isn't it, General, sir, that hostilities were re-commenced by the Chinese and not the Japanese, that is, that the Chinese fired the first shots on July 14?

A It was the Japanese who fired the first shot.

Q You deny, then, that the resumption of hostilities was commenced by the Chinese and not the Japanese?

A Yes.

Q General, sir, is it not a fact that the Central Chinese Government had very little control

over the outlying provinces and garrisons and especially the one that had the trouble with the Japanese on July 7?

A All these places were listening to the orders of the central government.

Q I understand, General, sir, they were listening, but were they following them?

A Is there any difference between listening to and following? Can you give me a definition of what is listening to and what is following listening to?

MR. WARREN: Will the interpreters please do their job down there?

INTERPRETER: We are doing our job.

Q I will explain. General, sir, as your answer came to me it came to me that you were merely listening to orders and that does not mean necessarily that an order will be obeyed. What I want to know is were the orders issued by the central government being promptly obeyed by the officers in command of the various battalions or whatever regiments or troops you had out there?

A Probably the question you ask is due to the fact you don't understand the system of the military command.

MONITOR: Channel of command.

THE PRESIDENT: We will adjourn now until half past nine tomorrow morning.

(Whereupon, at 1600, an adjournment was taken until Wednesday, 24 July 1946, at 0930.)

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Corrected.

24 Jul 46

21.7.24

24 JULY 1946

INDEX
Of
WITNESSES

INDEX
Of
EXHIBITS

(no exhibits)

Wednesday, 24 July, 1946

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

The Tribunal met, pursuant to adjournment, at 0930.

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Appearances:

For the Tribunal, same as before.

For the Prosecution Section, same as before.

For the Defense Section, same as before.

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

Wolf & Sprat

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

THE PRESIDENT: All the accused are present except OKAWA, who is represented by counsel.

Does any counsel desire to mention any matter?

Colonel Warren. Colonel, yesterday I misapprended a question you put, and I made an adverse comment which was not warranted. I regret that.

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C H I N G T E H - C H U N, called as a witness on behalf of the prosecution, resumed the stand and testified as follows:

CROSS-EXAMINATION (Continued)

BY MR. WARREN:

Q I believe the witness was answering a question which he had not completed at our recess yesterday afternoon.

A Will you please repeat your last question of yesterday afternoon?

MR. WARREN: Will the reporter read the question back to the witness?

OFFICIAL COURT REPORTER: Mr. Warren, I am afraid we have not got the last question, as we assumed that the transcript was delivered to you by this morning.

Q Reading from the record, the question was:

"I will explain. General, sir, as your answer came to me it came to me that you were merely listening to orders and that does not mean necessarily that an order will be obeyed. What I want to know is were the orders issued by the central government being promptly obeyed by the officers in command of the various battalions or whatever regiments or troops you had out there?" You had started to answer in this manner: "Probably the question you asked is due to the fact you don't understand the system of the military command." And the monitor said: "Channel of command," at which time we adjourned.

A The central government order was surely and suddenly being listened to and followed by the local government. When I said that you don't understand -- when I said, when you put the question -- the question you put is probably due to the fact that you don't understand the channels of military command. Is that when you asked me whether one command -- one battalion command or regiment or troops you have ordered would probably obey the government?

Q I take it then, General, sir, that you mean to express that when Generalissimo Chiang Kai-shek issued an order to one of his subordinates that it was promptly obeyed and placed into effect?

A Yes, it is so. Of course, so far as procedure is concerned, it is not that the order will be given direct by the Generalissimo to the local command or regiment or battalion.

Q I am sorry that I confused you, General. I am very well aware of the chain of command, but on page 6 of your affidavit you made this statement: "Some time before this, repeated telegrams from our Supreme Commander," and then in parentheses, "Generalissimo Chiang," "ordered General Sung, Chairman of the Hopei-Chahar Political Council to proceed to Paoting (in southern Hopei) and to direct operations from there."

General, sir, Sung now acted as directed by these orders. Why was it necessary for Generalissimo Chiang Kai-shek to send repeated telegraphic orders to his subordinates before they were obeyed?

A The order the Generalissimo sent to us was exhortative in nature. It ordered us to leave Peiping and to proceed to Fu-ping at the opportune moment. The order is purely exhortative in nature and is not a strict command.

Q General, sir, is it not true that throughout the army of which you are a member, that the generals have a certain autonomy of their own, unknown to

military commands and channels in any other civilized nation?

A Do you mean to ask that the Chinese Army has its own peculiar characteristics, different from other armies of civilized nations -- armies of other civilized nations?

THE PRESIDENT: If he heard the question he should answer yes or no.

A The Chinese Army -- the nature and character of the Chinese Army is the same as any army of any other civilized nation. They don't have any autonomy character, as you said.

Q General, sir, are you acquainted with the Lytton Report?

A I don't know.

Q The Lytton Report is a report made by a commission of inquiry appointed by the League of Nations following the Manchurian Incident, which you have referred to on several occasions.

A It is not that I don't know of this Lytton Report. It is that that report concerns with the Manchurian Affairs only, which is not within the scope of which I am going to testify.

Q General, sir, I am going to read from page 16 of the Lytton Report, starting with the second sentence

in the last paragraph on that page, which refers to the commencement of your political party in China. Quoting: "The party was now ready to put into operation its schemes of political and economic reconstruction, but was prevented from doing so by internal dissensions, the periodical revolt of various Generals with personal armies, and the menace of Communism. In fact, the Central Government had repeatedly to fight for its very existence."

COLONEL MORROW: If the Court please, I should like to have the record show what date he refers to.

MR. WARREN: They introduced the Lytton Report, your Honor.

Q Now General, sir, do you know of any other nation that has generals with personal armies of their own?

A I don't think there is any nation whose generals have their own private troops or armies.

Goldberg & Berton

Q Now, General, sir, is it not true that from 1927, the date that the Lytton Report makes reference to on the quotation, to the very present time that Generalissimo Chiang Kai-shek has not been able to enforce his orders with his subordinate generals in many instances if they did not desire to obey those orders?

A I am feeling that the question you are putting to me is having very little relevancy to the question at issue.

THE PRESIDENT: The witness must answer.

A (Continuing): The orders issued by the Generalissimo will surely and naturally be thoroughly executed by the various departments and troops and commands.

Q General, sir, reading from page 19 of the Lytton Report, it is the last two sentences in the second paragraph on that page. I am quoting now. "The transfer of a commander from one army to another by order of the Central Government is, in many cases, impossible. The danger of civil war must continue to exist so long as the Central Government lacks the material means to make its authority swiftly and permanently felt all over the country."

General, sir, do you deny that such statement

made by the Lytton Commission to the League of Nations is not true?

A In principle, I agree with the report made by the Lytton Commission, but that report was compiled in 1931 while the incident to which I am testifying, that is, the July 7th Incident, happened in 1937, which was several years later.

THE PRESIDENT: I suppose you are testing his credibility on that report, Colonel Warren; subject to that, there is not much occasion to cross-examine extensively on it.

MR. WARREN: I had another matter in mind, but I am going to terminate this phase of my cross-examination in a very few questions, your Honor.

Q Is it not true, General, sir, that the same condition prevailed at the time of the incident about which you first testified and that it prevails to this very good day?

A Well, while the facts presented by the Lytton Report might be true, might be factually true, I would like to point out that during the time the July 7th Incident occurred, the peace and order in the area that was under the jurisdiction of Hopei-Chahar Political Council was well maintained and the Army were well under the Central Government's

control.

THE CHINESE MONITOR: And no Communism threatened either.

Q The fact still remains, General, sir, is it not true, that Japan had no single responsible government in China with which they could treat with reference to the safeguarding of their nationals and of their property rights which they had gained by treaty?

A That is not a fact. In so far as the protection of Japanese property and persons is concerned, the local government is taking full charge and has been taking full charge.

Q General, sir, that is precisely what I wish to clarify. Were the Japanese forced to treat with a local government or could they or did they have a responsible national government in China with which they could treat at that time?

A The Japanese was playing a multiple policy of diplomacy. They were on one hand negotiating with the local government while, on the other, they were negotiating with the Central Government in Nanking.

THE CHINESE MONITOR: "By their ambassador."

Q Is it not true that because of local autonomy

which existed in various parts of China that it was necessary for Japan or any other nation in China to do exactly as Japan did in order to protect her nationals?

A No. There was never anything like autonomy existing as you said but it is true that the Japanese, that Japan was trying to create some sort of autonomy out of the situation.

Do you want me to give you a factual example to illustrate that England, America or France has never done anything like what Japan did?

THE INTERPRETER: Correction, please. The witness put it in plain statement. It is not a question. He said he wants to give a factual example to illustrate that.

MR. WARREN: As far as I am personally concerned, I don't care to hear it. Does the Court desire to hear it?

THE PRESIDENT: He seemed to be making a statement and not a question to you. I may misapprehend what he said but he seemed to say, in effect, that England, France and the other countries did not do what Japan did.

A (Continuing): As far as when local government was then concerned, we had never had very much

diplomatic negotiations with either France or England or America.

THE CHINESE MONITOR: "Except with Japan."

MR. WARREN: Shall I proceed, your Honor?

THE PRESIDENT: Yes, proceed.

Abram & Morse

MR. WARREN: With reference to local autonomy, I desire to read to you General, sir, from the Lytton Report, on page 127, the first paragraph, which makes reference to the dispute over the Mukden Incident, to which you have referred. Quoting: "The dispute has arisen between two States, both Members of the League, concerning a territory the size of France and Germany combined, in which both claim to have rights and interests, only some of which are clearly defined by international law; a territory which, although legally an integral part of China, had a sufficiently autonomous character to carry on direct negotiations with Japan on the matters which lay at the root of this conflict."

MR. WARREN: Did he answer.

THE PRESIDENT: You did not complete your question.

MR. WARREN: Oh, I am sorry; I thought I had, your Honor.

Q (Continuing) Do you disagree with the Lytton Report, with reference to the power of local governments within their own autonomy?

A While I admit the Lytton Report, in broad principle, I want to remind you that that report, as I said, was compiled in 1931, and what I am testifying

to is the event that happened on July 7, 1937. The Pearl Harbor case happened in 1940, or 1941. Now it is 1946. You will have to pay some attention to the time element.

Now I think it is my turn to put you a question.

THE PRESIDENT: We do not want any questions from the witness. The witness may turn his question into a statement.

Q General, sir, I shall ask you in what manner the situation has changed with reference to the continuous autonomy of local governments in China from 1931 to July 24, 1946.

A Ever since September 18, 1931, up to 1932 winter, or spring of 1933, when Japan occupied the Province of Jehol, and until the establishment of the Hopei-Chahar Political Council, the local government was always listening to and following the orders of the Chinese National Government.

INTERPRETER: Correction: since the establishment of Hopei and Chahar Political Council, the North China Government, or the local government in North China, has been obeying and following the instructions and orders from the Central Government. There is no autonomy existing in North China.

Q Not even at the present date?

A The present situation is, of course, a little bit complex and complicated.

Q Was not the then present situation at the time of the Marco Polo Incident a little complex?

THE PRESIDENT: That expression, "a little complex," renders your question practically valueless.

MR. WARREN: Well, it may, your Honor, but the witness used the same term and I want him to explain. This witness has consistently avoided my questions.

THE PRESIDENT: At least, you should be specific and not follow bad examples.

MR. WARREN: That's right. I am going to get off of that subject at the present time and skip to another one, your Honor.

Q Yesterday, General, sir, in the cross-examination, I asked you if Japan had not suffered more loss as a result of lawlessness in Japan, both to her nationals and property, than any other nation. You eventually answered that she had not. Permit a correction, will you? I said China when I meant Japan, that Japan had lost more. Does that question make sense yet? I will repeat the question, your Honor. I have used the wrong word to correct it.

I don't know where I made it.

THE PRESIDENT: This is a convenient break. We will recess now for fifteen minutes.

(Whereupon, at 1045, a recess was taken until 1100, after which the proceedings were resumed as follows:)

Whalen & Duda

MARSHAL OF THE COURT: The Tribunal is now resumed.

THE PRESIDENT: Colonel Warren.

MR. WARREN: Thank you, sir.

BY MR. WARREN (Continuing):

Q General, sir, yesterday in answer to one of my interrogations you stated that Japan had not suffered more losses as a result of banditry in China than any other nation. I desire to read to you from the Lytton Report, on page 23, the third paragraph and the first sentence of the fourth paragraph.

"So far as Japan is China's nearest neighbour and largest customer, she has suffered more than any other Power from the lawless conditions described in this chapter. Over two-thirds of the foreign residents in China are Japanese, and the number of Koreans in Manchuria is estimated at about 800,000. She has more nationals, therefore, than any other Power, who would suffer if they were made amenable to Chinese law, justice and taxation under present conditions.

"Japan felt it impossible to satisfy Chinese aspirations so long as satisfactory safeguards to take the place of her Treaty rights could not be hoped for."

Do you now desire to change your answer to

the previous question, or do you wish to state that the Lytton Report on that question is inaccurate?

A I want neither to amend what I have said yesterday, because what I said yesterday was true; nor do I deny the Lytton Report, because the Lytton Report has its own time element involved. If there is no time element involved in the Lytton Report, then would you uphold the statement that Korea has about 800,000 Koreans inhabited in Manchuria then as now?

THE PRESIDENT: Do you propose to refer further to the Lytton Report, Colonel Warren?

MR. WARREN: There is very much on that same question, but that is the meat of it, your Honor. I see no necessity. He stated one thing yesterday; the Lytton Report is diametrically opposite to that. This is, as I understand it, his Government's official version, which he denied yesterday. I want to see now whether he is going to repudiate the official version of his Government, or whether he is going to change his answer.

THE PRESIDENT: Instead of reading long passages you may be able to paraphrase.

MR. WARREN: Oh, I am sorry, sir. I entirely misinterpreted your Honor's question. This

is the last question I will ask from the Lytton Report. I am through with it on this one.

But I should like to ask the Tribunal to require this witness to answer that question.

THE PRESIDENT: I think the answer is sufficient for our purposes.

MR. WARREN: Your Honor, he has never answered the question. He says, "I do not repudiate the Lytton Report, and I do not change my answer."

THE PRESIDENT: Well, that is his answer, you see. We cannot improve on that.

Q General, sir, in your affidavit, on the last page -- this is now prosecution exhibit No. 198 to which I am referring -- you make the statement:

"But the instigator at the very beginning of Japanese aggression in North China was DOHIHARA, Kenji, the same man who instigated the Mukden Incident of September 18, 1931."

Without supporting facts your statement stands as a conclusion. Will you give us the facts upon which you base that conclusion? If you have no facts, will you so state.

A This statement of mine was concerned mainly with what happened on July 7, 1937. This last paragraph is not the main theme of the statement.

As to DOHIHARA's responsibility for the outbreak of Mukden Incident, there was one important witness who had already given his statement testifying to that. And the fact that DOHIHARA was the responsible figure in Mukden Incident is practically known to every one of Chinese population.

Q General, sir, if you have a single fact to base up that conclusion -- I mean, to back up that conclusion, will you please state that one single fact to this Tribunal?

A I have already supplied you with the answer when the previous defense counsel was asking me the same question. That time I said that although DOHIHARA was then not in Mukden, but the fact that he was not in Mukden does not exonerate him from not being responsible for the incident.

Q General, sir, that is not a fact. That is a conclusion. Will you please tell this Tribunal, if you have facts, what they are. If you do not have them, please tell them you do not have the facts.

A I have many facts to support my statement. Do you want me to enumerate the facts one by one right here in this courtroom?

Q General, sir, I have asked for facts in the courtroom. I would like for you to state those facts

to the Tribunal here in the courtroom.

A DOHIHARA was a long resident in China, and had made a great number of friends, associates. A week prior to the happening of the September 18 incident many friends, mutual friends -- this means a few friends between the General and DOHIHARA -- many mutual friends had told General -- told me, that DOHIHARA is about going to Manchuria to embark on some big project.

Greenberg & Barton

Q General, sir, I have asked for facts. Will you state the names or some of the names of those friends of yours, where the conversation took place, at what time, and under what circumstances?

A There was a certain Mr. Chang and a Japanese by the name of SHIBAYAMA, five days before the happening of the Mukden Incident, held a conversation in a place known as Chungshan Park in Peiping.

Q Will you please state specifically what they told you?

A What they told me was the Air Marshal, Chang-Hsuehlian, could not cooperate with Japan; therefore, he should be thrown out.

Q Is that all they told you?

A Of course, they told me a little more. They said that the Japanese Government had an overall project and that DOHIHARA and his people are working on this project. I told them that since Chang-Hsuehlian is now following -- obeying the order of the Central Government, I could not very well do this -- I didn't approve the plan.

Q What is the full name of this one certain Mr. Chang and the Japanese by the name of SHIBAYAMA? What are their full names?

A I cannot recall their full names.

Q General, maybe we can shorten this by asking you this question: Do you have any personal knowledge of any facts that would lead you to make the statement that I questioned you about?

A Now, I can tell you that DOHIHARA was the responsible figure in effecting the outbreak of the July 7 Incident. I said that because I was personally in the scene and handling the negotiations with him. As to the outbreak of the Mukden Incident, I can tell you, on top of what I was told by that certain Mr. Chang and others, about that conversation I have just told you. I have learned it from other friends and from papers, too -- newspapers.

Q You have testified about the July 7 Incident, but then I take it that you have no personal knowledge of anything concerning the Mukden Incident, isn't that correct?

A As I have told you, I am here as a witness testifying to what happened on July 7, 1937. I am not testifying to what happened on September 18, 1931.

MR. WARREN: If the Tribunal please, I feel that this proceeding could be speeded up tremendously if the Tribunal would require this witness to answer questions. He refuses to do it.

THE PRESIDENT: The strict, technical

position is, if it applies here, that he must answer all questions relevant to the issue whether he testified to all these matters in chief or not. But, surely, you must be satisfied that he has told you all he knows.

MR. WARREN: Your Honor, this witness has attempted to evade every point upon which impeachment has been laid -- when he has learned that impeachment is about to be made. Every consistent statement he has refused to answer. If the Tribunal is satisfied, I am satisfied. I don't care to cross-examine him further. But, I do think these witnesses should be required to answer questions and not evade answers like they have been doing.

That's all, sir. Thank you very much, sir.

THE PRESIDENT: If the Tribunal thought for one moment that that witness was withholding facts within his knowledge, we would compel him to answer.

Major Blakeney.

CROSS-EXAMINATION (Continued)

BY MAJOR BLAKENEY:

Q Mr. Witness, I refer your attention to exhibit No. 199, being your statement on the Northern Chahar Incident. On the first page of the English version of this document you speak of the Changpeh

Incident.

After tracing the negotiations concerning this Incident, you say that the matter was referred to the headquarters of the Japanese garrison forces in Tientsin. On what date was it referred to that headquarters?

A I cannot recall the exact date, but it is somewhere around the third day after the happening of this matter. Originally, this matter should have been handled and settled by the Japanese Consulate at Kalgan; but, as the Japanese was trying to aggravate the matter, so they referred it to the garrison forces headquarters in Tientsin.

Q Did you, yourself, discuss the matter with the headquarters of the Japanese garrison in Tientsin?

A No. I never personally handled the matter with them. The headquarters -- the garrison headquarters in Tientsin sent DOHIHARA as their representative to Peiping to discuss the matter with me.

Q Then, when you said that the matter was referred to Japanese headquarters in Tientsin, you mean that it was referred to the Japanese headquarters represented by General DOHIHARA; is that correct?

A Yes.

Q And that was -- that headquarters represented

by General DOHIHARA was the headquarters of the Japanese North China garrison in Tientsin; is that correct?

A At that time DOHIHARA was assuming double personality: On one hand he was representing the Special Service Command of the Japanese Kwantung Army in Manchuria, and on the other hand he was also representing the garrison commander in Tientsin -- the Japanese garrison commander in Tientsin.

By "Special Service" is meant "Intelligence Service."

Q Are you as sure of that as you are of all the rest of your testimony?

THE PRESIDENT: Witness need not answer.

MAJOR BLAKENEY: That's all.

MR. HAYASHI: I am HAYASHI, Itsuro, counsel for the defendant HASHIMOTO, Kingoro.

CROSS-EXAMINATION (Continued)

BY MR. HAYASHI:

Q On July 7, 1937, at the time of the outbreak of the Lukuochiao Incident, what was the strength of the 37th Division under the command of General Feng-Chihan?

A Approximately fourteen or fifteen thousand men.

Q What was the strength of the 29th Army which was composed of the 37th Division, the 38th Division, the 143rd Division, and the 132nd Division?

A Approximately sixty thousand men.

Q Are you aware that the Chinese Government issued an order -- a mobilization order on the 9th of July, 1937?

A I never received any order like that.

Q Are you aware of the fact that on the 29th of July the Chinese Government -- China sent a large army composed of thirty divisions northwards?

A What do you mean by "from south"? From which point do you mean? Pao-Ting -- at Pao-Ting the Central Government had some troops.

Q Are you aware that, on the orders of Generalissimo Chiang Kai-shek' a large army was despatched toward Lukuochiao?

A There was no such an order.

Q Even if you, yourself, did not personally receive such an order, are you not aware that General Chiang did issue such an order?

THE MONITOR: I would like to make a correction here: Instead of "issued an order, do you know what General Chiang Kai-shek did"?

A Prior to 29 of July there was no movement

of troops on the part of China at all. But, after 29 of July, when the Japanese troops moved -- marched into and toward Peiping -- half occupied Peiping -- the Central Government had ordered the Chinese troops to move from Pao-Ting -- to establish defense north of Pao-Ting.

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

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

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Wolf & Spratt

AFTERNOON SESSION

The Tribunal met, pursuant to recess, at 1330.

MARSHAL OF THE COURT: The International Military Tribunal is now resumed.

MR. HAYASHI: I shall continue my cross-examination.

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C H I N G T E H - C H U N , called as a witness on behalf of the prosecution, resumed the stand and testified as follows:

BY MR. HAYASHI (Continued):

Q Do you know whether the Chinese Government on July 9, 1937, issued a mobilization order, or do you not know?

A I have never received any mobilization order at that time. I was then only at Lukuochiao.

Q I am not asking you whether you received the order or not. I am asking you whether or not you know whether such an order was issued?

A Most probably there wasn't, because if there was I should have received it.

Q Is Mr. Wanglong chai a man to be trusted -- a man of noble character, worthy to be trusted?

A He is one of my inferiors -- he is one of my

subordinates. I think he is trustworthy.

Q What position did Wanglong chai hold at the time of the Lukuochiao Incident?

A He was then a special commissioner in charge of three districts then, and concurrently he was the magistrate of Wangping District.

Q You have stated that an agreement was signed on July 19, 1937, whereby the -- whereby concerning the garrisoning of the Marco Polo Bridge and Wangping-Hsien it was agreed that the 37th Division of the 29th Army, which was rather hostile to Japan, should be moved to another area, and that some other division should be assigned to garrison the above-mentioned area. Is this correct?

THE MONITOR: Correction: Some other unit instead of division.

A It was not on the 19th. It most probably was the 9th of July there was such a matter.

Q Between who and who was this agreement signed?

A At that time parties to the negotiation were, on the part of China, myself and one General Chang Tzu Chung; and on the part of Japan, the one MATSUI, Commander of the Special Service Command, and another one whose name I don't quite remember. The agreement was signed by General Chang Tzu Chung and MATSUI.

THE MONITOR: That special service meant military intelligence command.

Q Was General DOHIHARA concerned in any way with the signing of this agreement?

A No.

Q Then, do you admit that the 37th Division was more hostile in feeling toward Japan than the other divisions?

A Speaking of the 29th Army as a whole, if Japan did not try to invade China, or did not invade China, the feeling will always be amiable. If Japan -- in the case of Japan's invasion, the feeling against the Japanese Army is always unfavorable. This is not the feeling of the 37th Division alone.

Q Does it not then follow that with the signing of this agreement on the 9th of July, the incident which had broken out at Lukuochiao was for the time being solved?

A It was our intent then to execute the agreement which was concluded and then consider as having the matter settled, but as of the 11th of July the Japanese Cabinet decided to send more troops and push forward their project, the fighting resumed.

THE MONITOR: Correction: Then the incident was not considered solved then, but just the agreement

was the first step to solve the incident, but later on Japan marched more troops and the fighting started all over again.

Q Our interpretation is, that with the signing of this treaty the Lukuochiao Incident was settled. What happened later we shall not consider at the present moment; but am I correct in my assumption that with the signing of this agreement this incident -- this particular incident was settled?

A The resumption of fighting was a continuation of what happened on July 7. At that time the Chinese authorities were willing to have the matter amiably settled, but as Japan pushed forward again the hostilities broke out.

Q Did not the Chinese decide immediately to carry out their withdrawal of the 37th Division in accordance with the provisions of this agreement?

A Yes. The Chinese Government then, following the agreement, ordered the transfer of the 37th Division to some other location.

Q Does it not then follow that by the very fact that the 37th Division was withdrawn in accordance with the agreement that the Lukuochiao Incident had been solved?

A That was but one of the terms and conditions

agreed. There were still other terms which both of the parties were obliged to carry out.

THE MONITOR: And remained unsolved.

THE INTERPRETER: And remained uncarried out.

Q Are you aware of the fact that on July 22, the Vice Chief of the Army General Staff, General Hsun-ping, suddenly arrived in Peiping?

A He was there in Peiping at that time, but whether it was on the 22nd or not, I cannot recall exactly.

Q Although the Chinese, in accordance with the above-mentioned agreement, had begun the withdrawal of the 37th Division, is it not true that with the sudden arrival of General Hsun-ping the Chinese suddenly changed their attitude?

A No. There was the difference of timing, I think.

Q Did the Japanese, in a very conciliatory attitude, ask for the transfer of the 37th Division on the 26th of July?

A It was not in a conciliatory attitude; it was made in the form of an ultimatum. We were demanded to have the 37th Division withdrawn within twenty-four hours from Peiping.

Q Were the Chinese very angry on receiving this

ultimatum?

A Yes.

Q Upon this, did the Chinese begin a vigorous offensive on all fronts and commence action against the Japanese at Feng-tai?

A There was a continuation of the previous hostilities started by the Japanese. We used three regiments -- we sent three regiments of troops to Feng-tai.

THE MONITOR: And it was only a tactic of war.

Goldberg & Abram

Q Who is the Commander of the troops who attacked, who shelled Feng-Tai?

A I cannot recall quite accurately but I think he is a Regiment Commander named Ho.

THE CHINESE MONITOR: "The force attacking Feng-Tai were formed by two regiments from 37th Division and one regiment from 38th Division and they were all under the command of Brigadier General Ho."

Q Who is the person who ordered this attack on Feng-Tai and the advance on all fronts?

A The fighting was in progress ever since July 7th. The order was given by General Sun-Cheyuan.

THE CHINESE MONITOR: "Attacking order was given by General Sung Che-yuan on July 26th."

Q Do you not consider that the Sino-Japanese hostilities began because, although the Japanese side had only communicated to the Chinese their desire that the provisions of the agreement of July 9th be carried out, the Chinese did not carry out these provisions and illegally opened an offensive against the Japanese?

A I think that was due to you not knowing the situation fully. The Japanese started offensive on the July 7th and on the July 9th there was some sort of negotiations and some result was obtained but, due to Japan not observing these agreements and increasing

their troops on the 14th, there was a constant continuation of hostilities on the 26th of July.

THE CHINESE MONITOR: "The fighting was resumed on the 14th of July, not on the 26th of July. The 26th of July, attacking order was only a technique of waging war."

Q If that is so, then when was the transferring of the 37th Division carried out, from what day of what month to what day of what month?

A The agreement made on the 9th of July was to the effect that only that portion of 37th Division Army stationed at Lukouchiao should be withdrawn. It was not to the effect that all 37th Division should be withdrawn from the area of Hopei. As far as that part of 37th Division stationed at Lukouchiao, the withdrawal was carried out on the tenth following the agreement made on the ninth.

Q Do you mean to say then that does not include the section of the 37th Division that was guarding Wanping?

A That part that was obliged to withdraw was that small number of troops stationed at the Wangping city under the regiment command of Regiment Commander Chi-Hsingwen.

Q If it is true that on July 10th the 37th

Division had already withdrawn from Wanping City and from Lukouchiao, there would be no need for the Chinese Army to be angry because of any demand made by the Japanese on July 26th for such a withdrawal?

A As regards to the agreed withdrawal of that small number of troops stationed at Lukouchiao, there was agreed by China with a view to secure peace and minimize any imminent threat of war. As to Japanese demand to have the whole 37th Division Army withdrawn to some other place, there was encroaching upon the sovereign rights of China. Of course, that cannot be accommodated for --

THE CHINESE MONITOR: "Cannot be compromised."

Q I shall question you on another point. On July 9th, at the time when the agreement was signed, did you consider that the Incident of July 7th constituted a war?

A At the time we signed that agreement on the 9th of July, it was my hope that these incidents would not be continued and would not be further aggravated --

THE CHINESE MONITOR: "Into war."

Q My question was: Did you consider that the Incident of July 7th was a war or was not a war?

A Prior to the Marco Polo Bridge Incident there were two minor incidents similar to what happened on

July 7th. One was Tengchatzu Incident. That was an incident that happened in the Province of Chahar. And another was an incident that happened in September, 1936 at Feng-Tai.

THE CHINESE MONITOR: "They were all solved by compromise."

A (Continuing): At the beginning I considered the Marco Polo Bridge Incident as a local affair, but, unfortunately, on the 11th of July, 1937, the Japanese Cabinet under the late KONOYE had passed a resolution to the effect that they will send forth a bigger number of Army --

THE CHINESE MONITOR: "to North China."

Q Since you insist on not answering my question, I shall withdraw this and turn to my next -- turn to the next phase.

On July 9th, at the very moment when the agreement was signed, did hostilities between Japan and China cease?

A For a moment it was ceased but the fighting ceased in daytime, resumed in nighttime.

THE CHINESE MONITOR: "The Japanese opened up gunfire in the nighttime," correction.

Q Are you aware of the fact that a strong attack having been launched on Feng-Tai by the Chinese and a

general advance on all fronts having been begun, General KASUKI, Commander of the Japanese forces, declared that all possible efforts having been in vain, we shall be obliged to take punitive measures?

A The hostilities started on the 7th of July and it was intensified on the 8th and on the 14th of July the fighting was again very much intensified. On the 26th of July we started attacking Feng-Tai --

THE CHINESE MONITOR: "27th."

A (Continuing): And on the 28th the Japanese Commander KATSUKI started attacking Nangyuan.

Q Was the first attack by a large force carried out by the Chinese Army on Feng-Tai and the attack on Nangyuan by the Japanese carried out later after that attack?

A Yes, it is true that the attack on Feng-Tai took place before the Japanese attack on Nangyuan. But, ever since July 7th, Japan has a much big number of troops in Hopei and started warlike actions.

THE CHINESE MONITOR: "And attacking in various places."

Q Then, does it not follow that instead of solving local problems by agreements, by local agreements but -- I shall repeat that question. Then, instead of solving local problems by local agreements

and, instead of doing this, starting a large-scale war as a state by moving large forces, was this not first carried out by the Chinese side and not by the Japanese?

A It was Japan who first started moving troops from Kwantung. It was Japan who first started moving Kwantung troops to Tientsin and then to Lukouchiao, and then to Feng-Tai. It was not China who started the all-offensive warfare.

Morse & Abram

Q My question was not concerned with troop movements. What I wanted to ask you was, was it not the Chinese side that first started a large scale attack using large forces?

A The time of the outbreak of the July 7th affair both sides were employing troops of a size more than a brigade.

MONITOR: Correction. Prior to the Chinese attack on Feng-tai, both sides were using troops greater than a brigade.

Q Was not the Chinese Army responsible for the fact that a large scale war finally did break out, if forces only approximating one brigade had been used up to then and if it had been possible up to then to solve these local problems by local agreements and especially by diplomatic negotiations?

MONITOR: Slight correction. Was it not the Chinese Army itself who brought the situation into an open hostility in spite of the fact that it would have been possible to settle the problem by means of diplomacy locally if forces involved were only the size of a brigade?

A It was Japan who first initiated the war. Naturally Japan should be responsible. It is my opinion that to decide who should be responsible for

the war is who fired the first shot, is not who used the bigger army. There is no such international difference, definition, in a bigger force or a smaller force. What is the difference between bigger forces and smaller forces, such as more than a thousand or less than a thousand?

Q Since that is not an answer to my question, I shall repeat my question.

A If you don't want to listen to my statements or answers, then you don't have to ask me to testify.

Q My question was, do you not consider that the Chinese Army, that the Chinese side, was responsible for first using large forces at a time when the Incident could have been settled locally by diplomacy -- when the problem was one that was easily solvable on the spot by diplomacy and at a time when it was easily solvable?

A This responsibility rests with Japan.

Q I shall terminate my questioning as you have only given statements which had nothing to do with my questions and did not give me any direct answers at all.

A You said that China should be responsible and I said that Japan should be responsible. That is my answer.

Q I shall question you on a completely different phase. You have spoken of having seen the TANAKA Memorial. In what language was this so-called memorial written?

A What I saw was the Chinese translation.

Q Have you ever ascertained whether there was a Japanese text of this so-called memorial?

A I have not seen the original Japanese version of the memorandum.

Q This next question will be rather long. In the contents of the TANAKA Memorial there are such phrases as "FUKUSHIMA, Yasumasa's daughter of high and noble birth became an adviser to a Mongolian prince," or that General YAMAGATA, Aritomo, who was already dead in 1920, participated in a conference concerning ways and means to cope with the Nine Power Treaty which was signed in 1922. Also that General TANAKA, Giichi was exposed to the danger of being assassinated by a bomb at the pier in Shanghai. All these so-called events are things which no Japanese can ever dream ever happened, but did'nt these points catch your attention?

MONITOR: Slight correction. In reference to General TANAKA, on his way back from Europe he was exposed to the danger of being assassinated.

A I do not know of this. It is surprising that they know much more than I do.

MONITOR: Correction. I respect you for having such a reach of common sense more than I do.

THE PRESIDENT: We will recess now for fifteen minutes.

(Whereupon, at 1445, a recess was taken until 1500, after which the proceedings were resumed as follows:)

Duda & Whalen

MARSHAL OF THE COURT: The Tribunal is now resumed.

THE PRESIDENT: Your questions are very concise and very clear. But, nevertheless, many of them have been put before and answered.

BY MR. HAYASHI (Continuing):

Q The fact that the TANAKA Memorial does not exist was made clear before this Tribunal by Admiral OKADA, Keisuke. Do you not feel that this so-called Memorial was cooked up for the purpose of instigating anti-Japanese feeling?

THE PRESIDENT: This is the first time that question has been put, Colonel.

COLONEL MORROW: Beg pardon?

THE PRESIDENT: I suppose you object to it?

COLONEL MORROW: I object to its materiality. We have gone into this subject considerably. I doubt the materiality of any further questioning about the TANAKA Memorial. I raise the question.

THE PRESIDENT: He is suggesting it was cooked for a certain purpose. I think we will take the answer. We know what it will be.

Better repeat the question.

THE WITNESS: The question is not clear.

Q The fact that the TANAKA Memorial does not

exist was made abundantly clear before this Tribunal by Admiral OKADA, Keisuke. Did you not feel that this book was cooked up for the purpose of instigating anti-Japanese feeling?

A It does not matter very much whether TANAKA Memorial ever existed or not. Even it may have been destroyed or it was not existed at all. But the fact that Japan occupied Manchuria and then North China and then greater part of China and then Pearl Harbor Incident still remain.

Q Your answer is very far off from what I asked you. My question was, did you not feel that this book was cooked up for the purpose of instigating anti-Japanese feeling in China?

A What I think is this, that the Chinese may not know some existing facts, but they certainly would not cook up some facts out of nothing.

THE PRESIDENT: Have you any new line of cross-examination?

MR. HAYASHI: Yes, I do.

Q Are you aware of the fact that at the conference on Eastern Affairs held in July, 1927, Prime Minister General TANAKA, Giichi, made clear his policy in a speech which runs as follows: "The stabilization of political conditions and the restoration of order within

China should be done by the Chinese people themselves. The stabilization of political conditions in the three northeastern provinces also should depend upon the efforts of these provinces themselves."

A I quite agree with that statement. The deplorable thing is that they have never followed this statement.

Q I shall question you on another line. When did the military training of students in North China begin?

A The central government order was received in the Spring of 1936. But prior to that some of the schools had already put up these courses by themselves. In 1937 there was some concentrated training.

Q You have stated that the chief of staff of the Japanese forces in China at the time, in North China at the time of the Lukuochiao Incident was a Colonel HASHIMOTO. Do you know his full name?

A The full name was HASHIMOTO, Gon.

Q You have stated also that the Japanese consul at Kalgan was also named HASHIMOTO. Do you know his full name?

A I am sorry, I forgot his full name. What I know is only HASHIMOTO.

Q Did you know Consul HASHIMOTO well?

A Yes, well.

Q Is this Consul HASHIMOTO among the twenty-five defendants sitting in the dock here?

A No, I don't know.

Q You think he is not there.

MR. HAYASHI: That is all I have to ask.

THE PRESIDENT: Captain Kleiman.

CROSS-EXAMINATION (Continued)

BY CAPTAIN KLEIMAN:

Q General, was there a treaty signed in the year 1924 between the Soviet Government and the Chinese Government?

A That time I was in the army. I couldn't remember that.

THE MONITOR: Correction: That time I was with troop duty and I can't remember it.

Q Well, do you remember any treaty that was signed around that time between the Soviet Government and the Chinese Government wherein it was agreed that the Chinese Eastern Railway was to be managed by directors of China and of the Soviet Government; that neither of the parties would permit propaganda by any of its organizations against the other party?

THE PRESIDENT: Can you enlighten the Tribunal on the point you are hoping to make, Captain?

CAPTAIN KLEIMAN: Yes, your Honor. I wish to show the friction that existed between the Chinese Government and the Japanese Government between the year 1924 and the year 1929 when the alleged TANAKA Plan was supposed to have first been discovered. I wish to ask three questions to lead up to that question, if it please your Honor. It will expedite the trial. We may have to call witnesses from China for that purpose, and as I said once before, it helps in expediting the trial if we can ask the questions now.

COLONEL MORROW: If the Court please, there is a general rule, I take it, that the cross-examination should be limited to the matters brought forth in chief. I do not remember of any matters such as he refers to that have been brought out in chief.

THE PRESIDENT: It might be convenient to adopt such a rule, but I cannot say that it has been adopted yet. But I will take the views of my colleagues.

(Whereupon, the Members of the Tribunal conferred among themselves.)

THE PRESIDENT: Colonel Morrow, this is a matter in which there is a different practice in different countries. I think Australia and Britain have the same practice, and New Zealand. I think we do, of course, allow any question which is relevant to any issue arising in the trial at any stage, but I understand, in Canada and in the United States, it is different. We have come to no conclusion about this matter yet.

In all events, Captain Kleiman, you have failed to convince us, I think, that you should be permitted to ask this question which, as I understand it now, has no bearing on any issue. The relations between the Soviets and China do not seem to have any bearing on any point we have to decide. So, we will disallow that question.

CAPTAIN KLEIMAN: May it please the Tribunal, the TANAKA Plan is most definitely mentioned in this witness' affidavit on page 3 of exhibit 199, and may we not have an opportunity to bring out the circumstances under which the so-called discovery of this so-called Plan took place to show that this Plan is nothing more than a fake?

THE PRESIDENT: The question is disallowed at this stage. You may be able to renew it when you

have more to support it.

Q General, in the year 1927 did Chiang Kai-shek exclude from the Kuomintang Party Chinese communists?

COLONEL MORROW: Raise the question of materiality, if the Court please.

CAPTAIN KLEIMAN: With reference to the TANAKA Plan to show that it was a figment of the imagination of Chinese communists to divert the attention of propaganda activities of communists in China against the so-called aggression of Japanese in China and Manchuria.

THE PRESIDENT: I think we will resolve this on the narrow ground that the witness has told us all he knows about the TANAKA Plan. That is my understanding of his evidence. We will disallow the question.

Q General, in the year 1929 did Chinese police raid the Soviet Consulate at Harbin and find conclusive proof that communist propaganda organization was operating under the guise of consular activities?

THE PRESIDENT: That is too remote. The question itself suggests no association of any issue that I can discover. It is not even remote; I think it is wholly immaterial.

CAPTAIN KLEIMAN: Our purpose, if it please the Tribunal, is to show the propaganda activity of the communists in China at that time, to show the circumstances under which this TANAKA Plan was devised to show that this itself was a matter of propaganda on the part of Chinese communists aided by other communists.

THE PRESIDENT: The connection is still missing. You may be able to establish it when you call evidence.

CAPTAIN KLEIMAN: May I ask one question? I will say it is of the same nature --

THE PRESIDENT: If it is the same, you may not ask it.

CAPTAIN KLEIMAN: All right, your Honor. No further questions, may it please the Tribunal.

MR. T. OKAMOTO: I am counsel OKAMOTO. I wish to ask a few simple questions.

CROSS-EXAMINATION (Continued)

BY MR. T. OKAMOTO:

Q First, concerning the so-called Boxer Protocol, did this Protocol limit the number of troops to be stationed by each Allied country in North China?

COLONEL MORROW: If your Honor please, I

suggest the best evidence -- the Protocol is one of the basic documents. It has been a document in this case, in all events, and the document itself is the best evidence. He is referring to the Protocol -- the night of September 7, 1901.

MR. T. OKAMOTO: I am merely testing the witness' knowledge concerning the Boxer Protocol.

THE PRESIDENT: You can test his credibility, not his knowledge.

MR. T. OKAMOTO: I shall put another question then.

THE PRESIDENT: You can test his knowledge of facts which he has presumed to state here, of course.

Q In answer to a question put by Colonel Warren you stated that the Japanese Army had fifteen thousand men in China -- in North China at the time of the outbreak of the China Incident, is that correct?

A There was only -- there was estimated, from reports I gathered, that at that time the Japanese troop movements was so frequent between Manchuria and China proper that they frequently come and go.

Q Aside from this question of coming and going, do you admit that the strength of the Japan-

ese forces in China was the same as stipulated in the Boxer Protocol?

COLONEL MORROW: If the Court please, he is bringing in the Protocol again. If I remember distinctly, there is no provision as to number of troops except as to what they are intended to be used for.

THE PRESIDENT: The need for the troops may regulate the numbers, of course.

Why two counsel for defense at the lectern?

Q Concerning the remarks made by the prosecutor, I should like to hear the witness' own statement concerning the number of troops stationed in China.

THE MONITOR: Because I believe that the answer should be given by the witness, not by the prosecutor.

A The witness' answer to the counsel's question was: I am afraid that the number of Japanese troops stationed in North China then was over what was stipulated.

CHINESE MONITOR: Was in excess than what was necessary for this purpose.

Q Who determines what is the number of troops necessary?

A The demarcation lies in how big the necessity to station a certain number of troops to protect the railway line.

CHINESE MONITOR: From Peiping to the seaport -- maintain the peace and order along the communication line as stated in the treaty.

Q But, as the prosecutor himself stated, there is no provision in the Boxer Protocol limiting the number of troops to be stationed in that area. Who is to determine what is the minimum necessary requirements?

A I think the commanders -- I mean the British, American, French and Japanese commanders of troops stationed there will have to decide for themselves according to the factual necessity.

Q Then, do you mean to say that it is the commanders of the various Allied troops who decide for themselves what are the minimum necessary requirements?

A I think these commanders might have, pursuant to their governments' order, to decide the number of troops to be stationed there. But I want to point out that none of these powers had ever stationed any troop many times bigger than what is factually needed.

CHINESE MONITOR: Except Japan.

A (Continuing) except Japan.

Q You have excepted Japan, but do you not admit that the complex interests possessed by Japan in North China far exceed those of other nations there?

A Yes, I admit.

Q The facts are, and these facts can be sustained if we look up the records, that there are only seven thousand -- there were only seven thousand Japanese troops in China at the time. Do you agree with this?

A I think it does not matter very much if they had seven thousand or fifteen thousand men stationed there in North China. I don't remember that the Chinese Government ever said that the fifteen thousand Japanese troops there were in excess.

CHINESE MONITOR: Correction: The Chinese Government didn't at that time complain to the Japanese that their troops was too much then.

Q Then I shall ask you on another phase: You have stated that in 1937 there was no Communist Army in North China; is that so?

A At that time only some schools, the students

of which are somewhat left inclined -- but there was never any Communist troop.

Q Do you know a general called Shih-Yusan?

A Yes, I do.

Q Did This General Shih-Yusan have any connection with the Communist Army, or didn't he?

A In the year 1937 I believe that he did not have any connection with communists, but whether he had any connection with the communists after that I don't know.

Q There is a province called Shansi among the five provinces of Northern China. Was not that province occupied at the time by Communist armies?

A The province of Shansi was never occupied by Communist troops.

Q From what date to what date do you speak?

A The time I refer to is around July 7, 1937.

Q Before that, was that province ever occupied by communists?

A No. But there was once they did attempt to attack the province of Shansi, but they were repelled by Chinese National Government troops together with the local government armies.

Q When did the Communist Army invade Shansi -- attack Shansi?

A I cannot recall the exact date, but I think it is around 1934. But one thing I can assure you is that at the time when July 7 Incident -- 1937 Incident broke out, there was no communists in that province.

Q Did not communist influence in North China begin to expand after this attempt by communists to occupy Shansi province in 1934, and was that not one of the causes which led to the outbreak of the Sino-Japanese conflict?

A This was but a pretext put up by the Japanese militarists. As a matter of fact, at that time there was no communist activities at all in any of these provinces.

Q Then, when do you consider that the Chinese Communist Party, which has now so much influence in North China -- when do you consider that the Chinese Communist Party began to gain its influence -- its power?

A This, I should say, was taking place ever since the outbreak of July 7, 1937 Incident. The Japanese nurtured this movement.

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

(Whereupon, at 1600, an adjourn-

ment was taken until Thursday, 25 July, 1946, at 0930.)

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21.9.25
25 JUL 1956
corrected.

INDEX
Of
WITNESSES

INDEX
Of
EXHIBITS

Thursday, 25 July, 1946

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

The Tribunal met, pursuant to adjounrment, at 0930.

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Appearances:

For the Tribunal, same as before.

For the Prosecution Section, same as before.

For the Defense Section, same as before.

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

Goldberg & Mory

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

THE PRESIDENT: All the accused are present except OKAWA who is represented by counsel. Does any counsel desire to mention any matter?

The Chief Referee of the Language Section saw me today and complains that on account of the unnecessary length of some of the questions, it is most difficult for the interpreters to perform their duties. Some of the passages from the Lytton Report, if not the whole report, have already been translated into Japanese, and if the translation were made available to the interpreters, their duties would not be so difficult.

The interpreters are also having difficulty with questions which are in negative form, although they could be in affirmative form. I again urge counsel to make their questions short and clear, and to give due notice of any passage from a report or other document which they desire to be read to a witness.

Is there any further cross-examination?

MR. T. OKAMOTO: May I be permitted to continue my cross-examination of yesterday?

C H I N G T E H - C H U N, called as a witness on behalf of the prosecution, resumed the stand and testified as follows:

CROSS-EXAMINATION (Continued)

BY MR. T. OKAMOTO:

Q Since the reply to my last question yesterday was not clear, I should like to have it repeated.

A Yesterday I answered to the question by saying that it was because the Japanese occupation of Tientsin and Peiping that many of the Chinese students were Communists and compelled to join the Communist Party. So it can be said that it was the Japanese who indirectly nurtured the growth of the Communists.

Q Your present explanation does not seem to show any relationship between cause and effect. Could you explain it further?

A What I have told you is concrete fact. Students, because of the fact that Tientsin, Peiping and surrounding areas fell to the Japanese, were compelled to join the Chinese Communists. This fact is a concrete fact.

Q When was that?

A That is referring to some time after July 7th, 1937.

Q Then, do you mean to say that this was after

the outbreak of the Marco Polo Bridge Incident, or are you trying to explain a situation which existed prior to that Incident?

A Referring to the time after the outbreak of the July 7th Incident -- prior to the outbreak of the July 7th Incident -- some of the students may have been found to have some Left inclination, but there was never any Communist troops.

Q Then, are you aware of the fact that on the tenth of June, 1935, Generalissimo Chiang Kai-shek issued an executive order for friendly relations between two neighboring countries, namely, between China and Japan?

A Yes, I know.

Q Do you know the cause for the proclamation of such an order?

A The purpose was to maintain peace in China, and ultimately maintain the peace of Asia, and ultimately the peace of the world.

Q Was not this order issued to prevent the general anti-Japanese movement in China, especially in North China, as well as the anti-Japanese resistance movement carried on by the Communists in that northern area?

A At that time there was no anti-Japanese movement in North China. The purpose of the order was

to admonish the people as a whole, as well as the Chinese Army, to respect and be friends with neighbor countries.

Q Then, Mr. Witness, are you acquainted with General Shang-chen who was in North China about 1935?

THE MONITOR: Correction: "who was the Governor of Hopei Province."

A Yes, I know.

Q Are you aware of the fact that General Shang-chen issued an order to bring under control anti-Japanese terrorists?

A No, not that I ever heard of.

Q Then, Mr. Witness, are you aware of the fact that your superior, General Sung Cheyuan, issued an order declaring that very positive steps must be taken to bring under control the anti-Japanese secret societies in November, 1935?

A That order was given on the basis of an order received by General Sung from Generalissimo Chiang. There was a preventative order -- the order was preventative in nature.

Q Where is General Sung Cheyuan at the present moment?

A He is already dead now.

Q Then, are you aware of the Hsi-an Incident

of November, 1936?

A Yes, I know of that.

Q Was not this Incident one in which Marshal Chang Hsueh-liang in collaboration with the Chinese Communists kidnapped and placed under custody Generalissimo Chiang Kai-shek?

A That I don't know.

COL. MORROW: I raise the question of materiality and relevancy of this line of questioning, if the Court please.

MR. T. OKAMOTO: This incident has a very relevant connection with the present point.

THE PRESIDENT: I think it is as relevant as any of the other matters we have allowed cross-examination about. The whole purpose is to discover the state of China -- its disturbed state is suggested, and it is suggested, I suppose, that the Japanese took appropriate measures to protect their interests there, and it will be further suggested that they were acting within treaties. This is a suggestion that the country was so disturbed that its chief was imprisoned.

You may proceed.

Q Does the witness know what kind of change took place in the relationships between the Kuomintang and the Chinese Communist Party as a result of the

Hsi-an Incident?

A No, I don't know.

Q Where were you, Mr. Witness, at that time?

A I was in Peiping then.

Q What was your position at that time?

A Then, I was the Mayor of Peiping. What I know is this: that after the Incident at Hsi-an, the person responsible for that incident was Chang Hsueh-liang, became repentant, and then he sent Generalissimo back to Nanking and then the people all over the country were so overwhelmingly joyous that they showed the greatest sign of vindicating the Generalissimo, and the country was unified as a whole; and Japan, then, was so much jealous of that fact.

Q When you say that China had never been more unified than at that time, do you mean to say that peace and collaboration was established between the Kuomintang and the Chinese Communists?

A Yes, the feeling between the two parties were very good then.

Q Does that not mean, then, that the Kuomintang resolved jointly with the Chinese Communists to pursue a policy of anti-Japanese resistance?

A No, that was not the case. The two parties joined together to prepare themselves to guard against the further onslaught of the Japanese.

Abram & Morse

Q I take your present reply to be an endorsement of the statement included in my question. This fact, together with the fact that General Shang-Chen and General Sung Che-yuan successively issued orders to bring under control anti-Japanese terrorists and other like groups is a matter which could be reconciled with your present reply.

MONITOR: Correction: I take your answer to mean the confirmation of the statement contained in my question. Now I would like to ask another question on a different point, that is, in 1935, as I said before, Generalissimo Chiang Kai-shek issued an order for maintenance of friendly relations with his neighbors, and then that was followed later by orders from General Shang-Chen and General Sung Che-yuan for suppression and surveillance over terrorists and anti-Japanese secret societies. Now, how can these facts be reconciled with your present reply?

THE PRESIDENT: Counsel must not make statements to the witness. That in effect is largely a conversation with the witness. Counsel must confine himself to asking questions, and the questions should be reasonably brief and clear. I do not think the witness should be asked to answer that question. You had better make another attempt.

Q Then, may I inquire, Mr. Witness, whether the executive order issued by the Generalissimo for friendly relations between two neighboring countries, that is, China and Japan was effective even after the Hsi-an Incident?

A- Of course, it was conditional upon the fact that Japan should withhold her aggression.

Q Since the Hsi-an Incident was any order issued to you, Mr. Witness, from the central headquarters of the Kuomintang Party with respect to a policy of anti-Japanism?

A No.

Q At about the time of the outbreak of the Marco Polo Incident on July 7, 1937, where was General Shih Yu-sun?

A General Shih Yu-sun was first at Peiping and after the outbreak of the war against Japan he went with General Sung to Paoting.

Q Do you know of the fact that General Shih Yu-sun in the dark of the night of July the 7th fired both upon Japanese and Chinese Troops?

A What is the time you are referring to? Is it before the outbreak of the war of July 7th or after the outbreak of the war of July 7th?

Q Then I should like to ask you, did not the

Marco Polo Incident break out as a result of the fact that General Shih Yu-sun fired both on Japanese and Chinese forces?

A No. That is not the case. I will give you some further explanation. At the time the 37th Division was allegedly anti-Japanese was withdrawn from Lukuochiao they were replaced by the troops under General Shih Yu-sun, who was then considered as pro-Japanese.

Q When did you, Mr. Witness, become a member of the Kuomintang?

A I was a member of Kuomintang at the time the party was in its inceptive stage.

THE PRESIDENT: Captain Brooks.

MR. BROOKS: Brooks, for OKAWA.

CROSS-EXAMINATION (Continued)

BY MR. BROOKS:

Q Mr. Witness, was a declaration of war made by China or by Japan at the time of the July, 1937 Incident, or prior thereto?

THE PRESIDENT: That is a matter of which we can take judicial notice.

MR. BROOKS: If the Tribunal please, the witness states, on page 5, of exhibit 198, which is prosecution's document 1750, this was the very

beginning of the Sino-Japanese War. I wanted to find out what he had in reference at that time.

THE PRESIDENT: You can have war without having a declaration of it, unfortunately.

MR. BROOKS: May the witness answer, for the base of another question I have?

THE PRESIDENT: It is useless, but he may answer.

A On the part of China there was never any order like that, but on the part of the Japanese Government, I wonder if there is any order of what we call punitive war against China.

Q Now, on exhibit 199, which is prosecution's document No. 2340, you have stated in your discussion with MATSUI you advocated that Asia -- that he advocated that Asia, should be the Asia of the Asiatics, and that European and American influences should be expelled. I would like further information on the influences discussed that was considered necessary to be expelled. I would like further information on the influences discussed in this conversation that should be expelled.

A In brief, what he wanted is to expel the British and American interests out of Asia. The subsequent facts that happened at Pearl Harbor and

the attack on Manila and other places will be factual enough to prove that.

THE PRESIDENT: We have had that answer before.

Q I wish to enlarge upon the answer. Did not certain countries have powerful commercial interests in China which they were fostering.

COLONEL MORROW: If the Court please, counsel for General MATSUI went into this matter and I raise the question that this is repetition.

THE PRESIDENT: I think the question is objectionable on another ground entirely, that unless it can be shown that the action of other countries compelled the action taken by Japan, the whole thing is irrelevant.

MR. BROOKS: That is exactly what I am going to show, if the Court please.

COLONEL MORROW: I also raise the question of relevancy, if the Court please.

THE PRESIDENT: That is what I said to Captain Brooks.

MR. BROOKS: I would like to point out, if the Court please, that I read and laid the basis for this, that certain European and American influences should be expelled. I would like to correct my statement as to what I intend to prove. I do not

intend to show that certain nations caused these conditions which brought about this war. I do believe that certain powerful commercial interests, joining from various countries, brought about conditions which did bring this about, and I think with a little patience on the part of the Court I can bring that out, and I would like to get the information which this witness has bearing upon it, for later on I will have witnesses of my own to carry on.

THE PRESIDENT: If you are not merely fishinng, but have evidence as you suggest, your questions should be very specific. They should be based on that evidence, and your questions are not specific; they are very vague, and I propose to disallow your questions until they are made specific, because you now say you have evidence. You must put your questions on that evidence.

MR. BROOKS: If the Court please, I am now in the process of cross-examination. I am not presenting evidence on this phase, but I have a right to know how far to carry my evidence and what restriction is placed on the cross-examination on the statements made that a conversation was had about European and American influences. It doesn't say European and American nations; it says influences,

and I think that is very vital to this case. It is vital to know where China over all this period of years got the arms, the war materiel, the equipment, and the technical assistance and training necessary to prolong this strife, of which Japan was complaining because she was the recipient of this strife which was carried on over a long period of time.

THE PRESIDENT: Will you now state the nature of this evidence. You can refuse if you like, but at present so far as you have indicated it appears to be too remote.

MR. BROOKS: If the Court please, I will show by testimony, by affidavits, by certain records, of which I think possibly we will ask the Court to take judicial knowledge of certain facts, because they are of common knowledge, but I do not wish at this time to introduce evidence on this point or to expose to the prosecution the evidence that we are accumulating. However, I will make one specific reference to an American concern, I believe it was the Curtis-Wright concern, had a 30 million dollar aircraft plant that they were building in China at the time, a very critical time, and I think that will be shown later on in the testimony. If that is any indication, I would like to proceed.

Whalen & Duda

THE PRESIDENT: You have fallen back in this alleged evidence for your justification and we will fix you there. You have now made it transparently plain that this evidence that you propose to rely on is far too remote to be of any assistance. Therefore, I decline, on behalf of the Tribunal, to allow you to proceed with that line of cross-examination.

MR. BROOKS: I see I will have to disclose further evidence to make my point clear. I state that behind that, even, there was a growing apprehension which may or may not have been justified by the Japanese and by Asiatic peoples after a study of the economic aggression of the various countries of the world over a period of years far before this which may or may not have made them feel justified in taking certain defensive measures which they today state are defensive and which are and may be proven defensive in regard to the relations and activities of the various nations in regard to assisting and directing Chinese armies in the field during this period of time. Was the war started with Pearl Harbor, or was it started prior to 1931?

THE PRESIDENT: The mere economic developments of other countries could not justify the Japanese resort to war.

MR. BROOKS: That is true, if the Court please, unless a close study of diplomatic history for the last sixty years is made to show that not only economic development is followed -- is carried on by various countries, but political aggression follows closely in the footsteps and protective measures in various and sundry ways are fostered by certain powerful commercial interests which have been the cause of most of our wars in the past.

THE PRESIDENT: Well, it is clear that you wish to pursue an interminable inquiry going back sixty years, and for all we know, eighty years, going back perhaps to Japan's first contact with the outside world. We cannot allow that. This Court would never conclude its duties, would never finish its work, if we allowed you to go that far back. That is too remote. If we go back to first causes we may go back centuries. We have to take a reasonable view. We refuse to allow you to proceed with that line of cross-examination.

MR. BROOKS: If the Court please, in Section III of the Indictment there is a charge made of economic aggression in China and Greater East Asia. There is no limit on that period of time, as has been shown by the prosecution in their evidence produced thus far.

THE PRESIDENT: You are divorcing that from its context. Economic aggression is not a crime.

We have given our decision.

MR. BROOKS: In this instance, if the Court please, if economic aggression--

THE PRESIDENT: We refuse to hear you further on that. We have given our decision and our reasons for it and you are simply wasting time now in pursuing the matter.

MR. BROOKS: If I may, I would like to cross-examine on another point.

THE PRESIDENT: Permission to cross-examine on those points is refused.

MR. BROOKS: I say on another point, if your Honor please.

THE PRESIDENT: What is the other point?

MR. BROOKS: May I ask the question and have your Honor find out if it is proper?

BY MR. BROOKS (Continuing):

Q Did your government, during this long period of trouble, make any formal complaint in reference to any of the matters set out in your testimony to either the League of Nations, to the Japanese Government, or any other governments?

A I was then only an official in the particular

locality. Further, whether the central government foreign office had filed any official complaint with any of the governments or League of Nations, I cannot exactly tell. But there was some formal protest made to the League of Nations after September 18, 1931.

Q Did you, in your official capacity for this area, forward any material or reports as a basis for such complaints?

A I had reported to my central government about the several provocative acts and aggressive acts on the part of Japan. But whether the central government had reported same to the League of Nations, I don't know.

THE PRESIDENT: We will recess now for fifteen minutes.

(Whereupon, at 1045, a recess was taken until 1105, after which the proceedings were resumed as follows:)

Greenberg & Barton

MARSHAL OF THE COURT: The Tribunal is now resumed.

THE PRESIDENT: Captain Brooks.

Q On what dates were these reports that you have mentioned made?

A I cannot recall the exact dates. Whenever there is an incident occurred, the report was immediately made.

Q Can you recall the year in which any such reports were made?

A For instance, this Cha-Peh affair -- about the Cha-Peh Incident, a negotiation was made in June, 1935; and following every negotiation, I made reports. And I was negotiating on the instructions sent to me by the Central Government, and I have made my report to the Central Government on every negotiations I had.

Q This affair in 1935 that you refer to, did that have any connection with the kidnapping of Chiang Kai-shek?

A There is no relation.

Q I believe I recall that was in 1925, was it not?

A Which case do you refer to?

Q The kidnapping of Chiang Kai-shek.

A I think you have made a mistake of the year in which General Chiang Kai-shek was kidnapped.

Q What was your official position at the time this report was made in 1935?

A I was then the Deputy Commander of the 29th Army and concurrently the Special Commissioner of Civilian Affairs in the Cha-Peh Provincial Government. I was then stationed in Chahar.

Q To who and to what branch of the Central Government was such report directed?

A I was obliged to make reports separately to several organs. As the Deputy Commander of the 29th Army I was obliged to make reports to the Ministry of Military Affairs; and, as Special Commissioner of the Department of Civilian Affairs of the Chahar Provincial Government, I was obliged to make reports to the Executive Yuan.

Q What was contained in this report that you made in 1935? Do you remember the gist of the report?

A I think you had better refer to the statements I had already written in regard to the results of negotiations I had.

Q Do you show in such statement the contents of such report as you have testified to?

THE MONITOR: Will the reporter please read

that.

(Whereupon the last question was read by the official court reporter.)

A Do I understand you that you want me to make a complete report of the cables sent forth and back from the Central Government to me and from me to the Central Government, which is about two inches high?

Q I want a brief summary of the gist of the 1935 report which you testified you sent after that incident.

A The first major point in the report I made in 1935, June, is like this: I reported that there were two Japanese civilians and two Japanese military officers coming in from To-Lun by truck. They were then trying to force their entry into the North Gate of Chang-Peh district. At the gates they were stopped by the gate guard who asked them to produce their passports. They refused and quarrel ensued.

THE PRESIDENT: Do you really think it will help us to have this story over again? After all, you have to convince us, you know.

CAPTAIN BROOKS: I was asking of the reports with the purpose of ascertaining the dates they were made so that it might be obtained for defense

material; if there was any discrepancy or any other matter that might explain them, to see what action was taken by the Chinese Government upon them, and if they were considered important at that time; and I believe it will be relevant in this case.

THE PRESIDENT: I don't think it will help at all, Captain Brooks. I don't know what my colleagues think. I feel they agree with me.

Do keep in mind that we really want to hear the things that will help us to see the defense viewpoint. But these small things won't, particularly as we have heard them before, and more than once.

CAPTAIN BROOKS: If the Court please, what I am trying to show is the defense viewpoint on this thing that looks to me like it is being disallowed on cross-examination. I think that, where he has made a statement here, although what he is saying in the report is repetitious, we are getting that it was made in the report of June, 1935 by him as the Deputy Commander of the 29th Army, and it was made to the Central Government, to certain offices, where it might be examined for further information; and we would like to put the truth before the Court.

The truth in these matters should come out regardless of how it affects any party so that the

Court has it before it. It is often elusive to find the truth, and it is often hard to get it believed and to get the viewpoint of a certain group or individual seen.

THE MONITOR: Would the reporter kindly read that last statement?

(Whereupon the last paragraph was read by the official court reporter.)

CAPTAIN BROOKS: A misunderstanding of the intentions of certain parties often would even to mitigation -- if only to mitigation alone, should be allowed to be brought to the Court for the purpose of showing mitigating circumstances as the basis for certain actions. I think that the prosecution in this case has started this case with 1928 when the shooting started, but in any criminal case --

THE MONITOR: Would the reporter please read the last statement?

(Whereupon, the last statement was read by the official court reporter.)

THE PRESIDENT: I think we had better terminate this matter by the understanding that the Tribunal will give you every assistance to get that report if it will be released by the Chinese Government, or to have a Commission, if necessary, in

China if the matters in the report are really of importance to you. In the meantime, I think you had better cease cross-examining about that report.

CAPTAIN BROOKS: I will cease cross-examining on that report. I was glad to find out that there was a report so that we could discover it. Previous to this we did not know where it was or anything about it.

Q Now, in 1937, at the time of the Marco Polo Bridge Incident, what was your official position at that time?

THE PRESIDENT: Captain Brooks, I would ask your cooperation with the Court. You are asking things already obtained.

CAPTAIN BROOKS: I want to find out: Did you make a report in your official capacity as such?

THE PRESIDENT: Counsel owes a duty to the Tribunal. The position of American counsel is no different from that of British counsel; they are officers of the Court, and they must help the Court and not impede it.

Q Now, Mr. Witness, do you know what claim China had to sovereignty over the territory of Outer Mongolia and whether the orders of the Central Government were obeyed by the officials there up to the

year 1945?

THE PRESIDENT: That has been put and answered. That is repetition.

CAPTAIN BROOKS: I was asked by associate counsel to ask that question. I hadn't heard it myself, your Honor. I think you are thinking about Manchuria. We were talking about Outer Mongolia.

THE PRESIDENT: The question was put generally before on the control exercised by the Central Government over the troops in the outside areas.

Wolf & Spratt

Q General, where did you receive your training as a staff officer?

THE PRESIDENT: The answer cannot help us.

MR. BROOKS: If the Court please, I won't ask any further on cross-examination. I would like, as a matter of information now to know if on our defense we will be limited in showing the conditions previous to when the shooting began, involving the question of who supplied the weapons; the arms, the munitions and materials -- with which war was engaged with these various rebels and bandits -- were used to kill Japanese citizens and to violate their property rights. I believe it is very material.

THE PRESIDENT: We want to understand the defense fully, but this line of cross-examination is not helping us to understand the defense.

MR. BROOKS: If the Court please, in a criminal case you are allowed to go back into the motive as to who furnished the weapons, whether it was conspiracy and what was said before the shooting actually took place. This is a criminal case, and it is very important to know what large commercial interest and what other interests -- black markets or undercover agents or otherwise -- were furnishing arms of which Japan complained numerous times, not only to China,

but to other nations of the world. It is possible that this is not the proper time, on cross-examination, to ask that type of question. I understand I have been refused to cross-examine along those lines. However, the question for a point of information was: Is the defense proper in going ahead and preparing this as a matter of defense evidence along that line, to show the relationship between Japan and China, and the damage that was caused to Japan by these conditions that prevailed, and powerful commercial interests in their marketing various arms and supplies -- petroleum and war materials -- that was allowing this strife to continue over this long period of years -- fifteen years before 1931.

THE PRESIDENT: Well, put your questions, and I will say whether they will be allowed or disallowed. Put your question, and I will say whether it is allowed or not.

Q Mr. Witness, hasn't there been a constant growing or increase in tension and antipathy between the Chinese and Japanese since the year 1900, and a desire by the National Government or Central Government of China for the retrenchment of certain territories which it has lost previously?

THE PRESIDENT: I suppose "retrenchment" means

recovery.

MR. BROOKS: Recovery.

THE PRESIDENT: I think it somewhat remote, but I will not prevent the witness from answering.

A Ever since the Sino-Japanese War, it was but evident that the Chinese people as a whole were trying their best to live up to the standards of a modern world. It was not the desire of the Chinese people -- Chinese Government -- to recover their lost territory right then, but it was the desire of the Chinese Government to have the national strength consolidated, and put the nation on a modern basis. I said that the Chinese Government was realizing its feeble strength, but was not prepared to recovery the lost territory. This can be proved by the fact that while the Chinese not as a whole resented the imposing by the Japanese of the twenty-one demands on China, the Chinese Government has very, very reluctantly accepted it. Due to the fact that Japanese aggression knew no bounds, and the fact that the Chinese Government then was a very weak one, the Chinese people rose and put out this foreign expeditionary force, and had that Government thrown out.

Q The weakness of the Chinese Government, though, was not the only reason why foreign nations found it necessary to keep troops stationed in China; is that true?

A Only Japan took that advantage of stationing troops there; other nations didn't.

Q Mr. Witness, as a result of the Boxer Protocol, other nations had troops there, but even beside that reason and the activities of bandits and rebels being prevalent in China over this long period of years, weren't there still other reasons why foreign nations had troops stationed in China? If you know of them, I would like to have them stated.

THE PRESIDENT: You should suggest the reasons, if you know them, and not have him guessing. This cross-examination is most unenlightening.

MR. BROOKS: May he answer that question, if he knows?

THE PRESIDENT: I do not expect him to answer it. You suggest the reasons, and he may or may not adopt them. That is the correct way.

Q Mr. Witness, would it not be a reasonable apprehension, that could be entertained by the Japanese residents as a result of numerous incidents, that another Boxer uprising might be imminent?

THE PRESIDENT: The state of China from 1900 on is not relevant, and is too remote. What we want to discover is the state of China as of the times when the Japanese took action, when the Japanese armed forces

began to operate. The conditions then are the things that we want to know. You cannot go back forty years.

MR. BROOKS: In this case, the shooting started in '31 on a large scale, but since it is a criminal case I have considered -- the defense has considered -- it relevant to show the conditions giving rise to the mounting blood pressures in the various countries -- of nationals -- their apprehensions and fears, their conflicting commercial interests, and to show that hostilities, although not openly declared, started long before this period as shown by numerous incidents -- several hundred has been testified to by the prosecution's own witness here.

THE PRESIDENT: I would suggest to you, with all respect, I hate to say anything that may appear offensive to counsel, more particularly to American counsel who are practically strangers to me, that you frame your questions more carefully, and with a view to assisting the Court, keeping in mind that it is your duty to assist the Court.

We will recess now until thirty minutes past one.

(Whereupon, at 1200, a recess was taken until 1330, after which the proceedings were resumed as follows:)

Goldberg & Barton

AFTERNOON SESSION

The Tribunal met, pursuant to recess, at 1338.

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

C H I N G T E H - C H U N, called as a witness on behalf of the prosecution, resumed the stand and testified as follows:

BY MR. BROOKS (Continuing):

Q Mr. Witness, previous to 1937, did you, as a representative of China in that area ever request any assistance of Japanese, or even of Chinese troops, from other areas for the purpose of policing your area of responsibility and maintaining peace and order therein?

A I am not quite clear about the question you ask.

THE PRESIDENT: Witness, did you ever seek the assistance of the Japanese or other Chinese to maintain order in your particular district?

THE WITNESS: No.

Q Prior to 1937, Mr. Witness, do you know whether General Chiang Kai-shek or any other Chinese

officials requested financial or any other type of assistance to restore peace and order in China and in your area or North China?

A What do you mean? I don't quite understand your question. Do you mean the Generalissimo and other generals requested my assistance or requested the assistance from Japanese side?

Q The latter. Wasn't Japanese national assistance sought and wasn't Japanese troops requested to be given as policing troops for your areas as well as other nations consulted by your officials on reports made from your areas and various other areas in order to restore peace and order to the whole of China?

A (Interpreter): He is answering to the first of your question. He said: "There was no request made in regard to military troops but there was some dissension about economic collaboration. But, that is, economic collaboration was suggested by the Japanese side."

Q Did this economic collaboration that you speak of involve any dealings in war materials, arms, ammunition, to give assistance to any of the opposing factions in China on the part of an association of Japanese businessmen or any company or corporation of

Japan? If so, please name them.

A No.

THE PRESIDENT: Captain Brooks, it must be obvious to you from the trouble the interpreters are getting that your questions are far too long, to say the least.

MR. BROOKS: I will try to ask shorter ones, your Honor. I have made them fairly long so the complete idea would be expressed without a series of short questions that might not have any meaning to the Court.

Q During this period of trouble in China, in the civil war previous to 1937, did China have outside resources for war materials, weapons and equipment? Do you know what they were?

A I don't know anything about it.

Q Was the arms and ammunition used by you and your armies and by the opposing factions that you were in conflict with previous to 1937 all of Chinese make or manufacture?

THE PRESIDENT: What bearing on the issue has the origin of the Chinese war material?

MR. BROOKS: I have heard, if your Honor please, I know, and we will show in evidence what the Japanese opinion has been of the conditions prevailing

prior to this outbreak of war and of the various commercial interests involved there.

THE PRESIDENT: You have not answered my question. I want to know what bearing on the issue the origin of the Chinese war material has.

MR. BROOKS: It is difficult with this constant interruption from the interpretation, but I wanted to add further that I wanted to find from the Chinese side, from a hostile, evident hostile witness in this case to the defense, the interests that they said, if there were any of the members of the Zaibatsu of Japan not represented by these accused who were responsible for the conflict of commercial interests; and it has a bearing in this case. In Exhibit No. 199, prosecution paper 2340, in the discussion which was a current topic at that time among Asiatics, was whether European and American influences should be expelled and a discussion of what would take place, whether they would be Japanese or otherwise. It has been shown recently that the Civil War in China has been prolonged by furnishing materials. I think it will be shown that materials were furnished the Japanese that made this war possible, that these various interests in conflict created a situation that was causing the loss of lives of Japanese residents and

destruction of property of which Japan had through various negotiations in over three hundred instances by diplomatic measures, even going to the League of Nations, and finally withdrawing because she was not given any assistance, was forced to take action.

The defense feels that it has a responsibility to put forth these conditions and facts surrounding the charges, surrounding the conditions and actions taking place which might have influenced the defendants in making certain decisions and which will explain and cast, possibly, a different light on the acts taken by the various parties and tend to justify, mitigate or even shift the responsibility to others for what happened.

THE PRESIDENT: We don't permit you to indulge in these generalities. Your question must be directed to specific matters. No counsel ever attempts to do what you are trying to do. You are simply wasting time. Whenever I ask you for specific information, what your questions are directed to, what evidence you have to back them up, you indulge in a general address. That is not permitted to any counsel.

MR. BROOKS: The questions, if the Court please, that I am asking are not in relation to a

specific thing. They are in relation to general conditions which require a general answer to the Court's instruction as to what I am trying to show. I will go to another point.

THE PRESIDENT: Your attitude is so utterly unreasonable that it is difficult to control in the ordinary way. Counsel rarely puts a court in that situation.

MR. BROOKS: If I have offended the Court, I wish to apologize. It may be a difference in customs in presenting a case. In the cases that I have tried in American courts, the counsel is allowed uninterruptedly to present cross-examination in defense as long as he thinks it is material and later will try to connect it up; and if it is not material and not connected up, the Court at that time rules it out of order or strikes it for failure to tie it up. I wish to apologize.

Morse & Abram

Q Were there not, Mr. Witness, officers, in 1937, of the armies of other nations attached to these various Chinese units as observers, consultants, directors, and as active participants in the military action at that time and previous thereto?

COLONEL MORROW: We object on the ground of relevancy and immateriality, if your Honor please.

MR. BROOKS: If the Court please, I think it would be very relevant to show what officers, how many, and what their activities were previous to this time. I am asking about 1937, previous to 1937, and also previous to 1941. There has been, also, much discussion in the papers and in various diplomatic addresses about forcing Japan to commit the first overt act, and I think the first overt act, as the prosecution has presented it, has been as of 1941 in some cases against some nations, and 1931 in others, and I think this line of questioning may bring out certain other conditions that may very well be regarded as an overt act which led to an aggressive policy, against which Japan was finally forced to take defensive action.

THE PRESIDENT: The question is disallowed.

Q In your discussion with Mr. MATSUI, set out on page 4 of exhibit 199, when you discussed the

European and American influences that should be expelled and the Japanese attitude, was there any discussion as to the hold on Asia's markets and resources having anything to do with the Japanese attitude and expression "Asia for the Asiatics?" If so, state what it was.

I am going to reframe the question, if you please. I can make that shorter.

THE PRESIDENT: The Court will now recess in order to consider their position.

(Whereupon, at 1410, a recess was taken until 1430, after which the proceedings were resumed as follows:)

Duda & Whalen

DEPUTY MARSHAL OF THE COURT: The Tribunal is now resumed.

THE PRESIDENT: The Tribunal has decided that in the future all cross-examination shall be limited to matters arising in the examination in chief.

MR. BROOKS: If the Court please, I would only like to make one observation and that is on exhibit 199. There was a discussion by MATSUI referred to as to Asia should be the Asia of the Asiatics, and that European and American influences should be expelled. And my line of questioning has been in line with the witness' own affidavit in which a discussion was made of these vital factors of which Japan had complained, and which are the bases and the features of this world holocaust that should be pointed out and condemned by this Tribunal.

THE PRESIDENT: Is that the end of the cross-examination?

MR. BROOKS: No further cross-examination of this witness.

COLONEL MORROW: If your Honor please, we have no direct examination.

THE PRESIDENT: There is only one question I should ask of the witness.

Have you any reason to doubt the genuineness

of the TANAKA Memorial?

MR. FURNESS: Does that--

THE PRESIDENT: Now, let the witness answer.

THE WITNESS: I cannot prove that it is a true one, but at the same time I also have no means to disprove it. But as the development we have witnessed in the latter stages of Japanese aggression it seems to me that the author TANAKA had made himself a very good profit.

THE MONITOR: English supplements: If TANAKA Memorial was untrue, was cooked up, everything predicted in it has been carried out.

THE PRESIDENT: Major Furness.

MR. FURNESS: My objection, sir, was to the question put by the President, that it assumed that there had been any proof that such a memorial existed. As far as this case has gone I think there has been no such proof.

THE PRESIDENT: The question is put in the interests of the defense.

MR. FURNESS: Thank you, sir.

CAPTAIN KLEIMAN: May it please the Tribunal, in the interest of the defense, may I ask this witness just one question concerning the TANAKA Memorial?

THE PRESIDENT: No. We were told there was no

further cross-examination.

CAPTAIN KLEIMAN: All right, your Honor.

THE PRESIDENT: We will keep to that.

Now, there is another question that I-- Which of the two HASHIMOTOS, if either, is the accused? The witness referred to two in his examination in chief.

THE WITNESS: Neither of them, of the HASHIMOTOS I mentioned in the written statement, can be identified with the HASHIMOTO accused in this case.

MR. BROOKS: Your Honor, I was going to point out he previously testified that neither of them them were this man.

THE PRESIDENT: Is there any further re-examination?

Mr. Smith.

MR. SMITH: Your Honor, evidently the Court came back unexpectedly and most of the Japanese counsel were out of the room when you made the ruling. Could we have the reporter read that back for their benefit?

THE PRESIDENT: Counsel who were in the room are quite capable of advising those who were not.

COLONEL MORROW: I understand this witness may be dismissed, if the Court please?

THE PRESIDENT: The witness may go.

DEPUTY MARSHAL OF THE COURT: The witness will sign this oath: "I swear that the testimony I have given is a true statement."

(Whereupon, a document was signed by the witness.)

THE PRESIDENT: The Representative of China advises me that that is the Chinese form.

(Whereupon, the witness was excused.)

COLONEL MORROW: If the Court please, pursuant to a permission of this Court to take certain witnesses out of turn from the Republic of China, I desire to present for that purpose further, Mr. David Nelson Sutton of the bar of West Point, Virginia, and of the bar of the Supreme Court of the United States, a member of the prosecution staff, who will present certain witnesses from China out of order, with the permission of this Court.

THE PRESIDENT: For the information of other Members of the Tribunal you might explain what you mean by out of order.

MR. SUTTON: May it please the Tribunal, the witnesses are presented without at this time presenting certain documents which would normally have been presented. The witnesses are presented one after the other. The evidence will be connected up later.

THE PRESIDENT: I understand these witnesses will deal with matters which ordinarily would have been presented at later stages, but I had no idea you were going to dispense with documents.

MR. SUTTON: We are not presenting any documents except the affidavits of the witnesses.

THE PRESIDENT: That microphone is in a bad position. We have the greatest difficulty hearing counsel at that lectern.

MR. SUTTON: The statement which I made was that we are not at this time presenting any documents except the statement of the witness.

THE PRESIDENT: Well, proceed.

MR. FURNESS: If the Court please, my recollection of the Court's order was that because certain witnesses were here in Japan and wanted to return to China, that the testimony of those witnesses could be put on out of order. That is, they could interrupt the phase on which they were offering proof and put in the evidence of other witnesses who might not be available here in Japan.

My recollection further is that the names of those three witnesses were General Ching, who has just testified, and Mr. Dorrance, and Mr. Fitch, and that those are the only three witnesses to whom that order

applied.

MR. SUTTON: May it please the Court, these witnesses whom we are offering at this time have been here in response to summons issued by this Court since the 12th of June. One, the next witness, was brought from the United States of America, the rest from the Republic of China. Their own circumstances are such that they cannot remain longer without great embarrassment. They testify with regard to certain phases of the war in China as to which the Court has been hearing testimony for the last several days.

MR. FURNESS: The Court has been hearing the testimony of one witness to whom the order of the Court applied. I say with that reservation that the testimony of the witnesses of whom Mr. Sutton now speaks was not the subject of the Court's order. It applied to two other witnesses. We are not prepared on these witnesses which he plans to call now.

MR. SUTTON: Not only were the statements of these witnesses distributed to defense counsel, but the defense counsel were given the names of the particular witnesses who will be next called, these names having been furnished to them the first of this week at the time General Ching was called.

THE PRESIDENT: The defense will not be taken

by surprise, Major Furness.

MR. FURNESS: I do object to his statement that these witnesses are being put on pursuant to a Court order. They are not. And I wish the prosecution would admit that.

I think Colonel Warren wants to say something.

MR. WARREN: Let the record show it is Mr. Warren.

If the Tribunal please, in a sense, yes, we are caught unprepared. The mere presentation of an affidavit to us has no indication as to when that witness will be called. Your Honor realizes, and as I know all the Members of the Tribunal do realize, that because of the exigencies of time that has existed throughout, we have had to prepare our case as the case progressed.

Ordinarily there would be no objection to taking a witness out of turn if we were notified in time so that we may proceed ahead of ourselves in preparing that particular phase of the case. We cannot understand how any witness can be embarrassed by being required to wait a few days on one of the highest tribunals that the world has ever known. It seems strange to us that the prosecution did not inform this Tribunal at the time that they asked for the other witnesses to be taken out of turn in order that the defense could be prepared.

We can take no other view except that they are trying to take advantage of a situation. That is our unalterable view, sir.

THE PRESIDENT: The only question is whether you are prepared to cross-examine. You have not stressed the fact that you are not.

MR. WARREN: Sir, we are not.

THE PRESIDENT: Dr. KIYOSE.

DR. KIYOSE: May I speak a few words on behalf of the Japanese counsel?

Actually speaking, this Tribunal is now undertaking a review of the Manchurian phase of the question. However, as Major Furness has already pointed out, three witnesses have been called from China, one of whom is an important official, and others have very important business waiting for them in China to the extent that the Tribunal has said that a master commissioner would be asked -- to the extent that prosecution asked for a master commissioner. To this request the Court, instead of nominating a master commissioner, has made a ruling of reviewing the case, actually, at this time here and it is according to that that the present trial is now in progress.

One of these three witnesses, namely General Ching Teh-chun, has already been cross-examined.

Following that we have been expecting Mr. Fitch and Mr. Dorrance to appear on the witness stand and have been preparing for them ever since this morning. We would like to know, Mr. President, what shall we do about taking evidence from Messrs. Fitch and Dorrance?

One other point which I wish to present to the Court is that one of the causes for the confusion here is that witnesses are introduced out of order. If witnesses are to be examined with respect to the China Incident, then if an opening statement on the China Incident would be presented by the prosecution at the outset, then it would very greatly clarify the position and attitude of the prosecution and enabling us, the members of the defense counsel, to prepare and carry on our case.

Greenberg & Barton

In connection with the China Incident, the charges made are with respect to military aggression, economic aggression, to the use of narcotics, and other harmful drugs as well as atrocities. Unless some clarification is made by the prosecution on how they are going to handle these charges and produce their witnesses out of order, it puts us into a very difficult position and creates confusion in this Court.

As the honorable Mr. President has already stated -- asked of us, we are indeed most anxious to cooperate with this Tribunal. From the standpoint of our own responsibility in the handling of the cases on hand, we should like to ask the Tribunal to establish a fixed system in order that the proceedings of this Court may progress smoothly. It is regretful that since yesterday the proceedings have not been going on smoothly.

Japanese counsel respectfully asks the Tribunal to make an appropriate ruling in order to assure smoothness in the proceedings. The carrying out of our responsibility -- our desire to carry out our responsibility is also with respect -- also should be taken as our responsibility to the people of Japan.

THE PRESIDENT: The case is divided into sections by order of the Court, and the Court may

modify its order. Instead of having this evidence taken by Commission, the Court has decided to take it itself. Nothing more than that has happened. There has been no confusion, and there will be none on that account. The real question is whether the defense are in position to examine the witnesses that will now be called, and it appears they have had ample notice.

Is this witness from the United States a long witness?

MR. SUTTON: He is, sir, on direct examination, a very short witness. His statement is contained on three pages.

THE PRESIDENT: We will hear his evidence in chief this afternoon, and, if necessary, we will postpone his cross-examination until tomorrow. That ought to meet the position of the defense.

MR. WARREN: If the Tribunal please, I would like to correct one impression -- I think wrong impression -- the Tribunal has. We were not notified that they intended to call these witnesses. They serve us with affidavits, and maybe it would be weeks -- I mean a document, and maybe it would be weeks before they come up in Court. So much for that phase.

We should not have objected had we been told. However, we are in Court without these affidavits, and we are forced at this time to ask the Tribunal to give us a ten minute recess to go pick up these statements from our office.

MR. SUTTON: May it please the Tribunal, I called the administrative office of defense counsel myself on Tuesday afternoon, talked to Commander Harris, and told him at that time, pursuant to a request made by Mr. Logan of defense counsel to Mr. Carlisle Higgins, Acting Chief of Counsel for the prosecution, on the morning of that day -- told Commander Harris that the witness whom the prosecution would offer, following the testimony of General Ching, was Dr. Robert O. Wilson. I gave him the document number of Dr. Wilson's affidavit and also told him the name of the other witnesses who would be offered following Dr. Wilson.

THE PRESIDENT: The defense cannot be prejudiced if the examination in chief is taken this afternoon. We will take the examination in chief this afternoon.

MR. WARREN: There is no controversy on that, sir. We just want a ten minute recess to run and get our documents. May we have that, sir?

THE PRESIDENT: Yes, proceed. Call the witness.

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R O B E R T O. W I L S O N, called as a witness on behalf of the prosecution, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. SUTTON:

Q Are you Dr. Robert O. Wilson of Arcadia, California?

A I am.

Q I hand you a statement marked IPS document No. 2246 and ask if you signed it and made affidavit to that.

A This is my affidavit, and I signed it.

MR. SUTTON: We ask that this be filed as an exhibit.

CLERK OF THE COURT: Prosecution's document 2246 is given exhibit No. 204.

(Whereupon, the document above referred to was marked prosecution's exhibit No. 204 for identification.)

MR. LEVIN: Mr. President, we would like to object to the use of this affidavit as an exhibit in this case or as the testimony of this witness.

We believe that none of the reasons assigned by the Court for permitting the use of affidavits in this case are applicable to this witness. The witness is a graduate of Princeton and Harvard Universities and a well educated man and speaks English as well as anyone in this courtroom.

When the Court announced -- when the President announced the decision of the Court to permit affidavits, it stated that it did so with grave misgivings. We have no situation with this witness that is applicable to any of the other witnesses who have appeared -- that is, those who spoke either Chinese or Japanese. Under these circumstances we believe that the witness should be directed -- that the testimony of the witness should be offered by question and answer.

THE PRESIDENT: There is no need for you to say any more. We will hear what you have to say, Mr. Sutton. We see no reason why this man's evidence in chief should not be taken in the ordinary way. There is nothing we can think of to justify this departure except the mere fact that you have prepared an affidavit.

You can treat that as the proof of his evidence and examine him from it. The objection is

sustained.

MR. SUTTON: We had understood, may it please the Tribunal, that we should in each case offer the affidavit of the witness in order to shorten the proceedings and then offer the witness for cross-examination.

THE PRESIDENT: It was offered in evidence, there was no objection, and the Court couldn't reject it. But it is desirable that the witness should now be examined in chief as though his affidavit was a mere proof of his evidence.

MR. LEVIN: Mr. President, my objection to the affidavit -- I offered it as an objection to the affidavit. I assumed that that was the proper time to make the objection, when it was offered in evidence.

THE PRESIDENT: It was already in evidence and marked when you objected, but we may be prepared to sustain the objection and reject the affidavit. We can always do that.

MR. LEVIN: If the Court please, my objection was based according to practice to which I am accustomed. In our practice, when the exhibit is offered it is not considered in evidence. At the time it was offered I thought I made my proper

objection to it. I now object to it. I thought I had objected to it, and I ask that the Court sustain our objection to the use of this affidavit.

THE PRESIDENT: We can treat your objection as made nunc pro tunc and uphold it. We will reject the affidavit.

The Page had better collect the affidavits from the judges.

MR. SUTTON: Shall I proceed with the examination, if the Tribunal please?

THE PRESIDENT: Yes.

BY MR. SUTTON (Continued):

Q Dr. Wilson, when and where were you born?

A I was born in Nanking, China, October 5, 1906.

Q What is your profession, and where did you receive your education?

A I am a surgeon. I received my education at Princeton University and Harvard Medical School.

Q Following your graduation in medicine, did you return to China, and, if so, during what period did you practice medicine in the Republic of China?

A I returned to China in January, 1936 and practiced medicine at the University Hospital in Nanking, China from that time until August of 1940.

Q Were you connected with the University Hospital in Nanking, and, if so, in what capacity?

A I was an Associate in Surgery at the University Hospital in Nanking.

Q Did the Chinese doctors and nurses on the staff of the hospital leave the hospital in the Fall of 1937 and, if so, when?

MR. McMANUS: If your Honor please, for the record, I object to that question -- to the form of the question, and also on the grounds it is very leading, and request that the President shall instruct the counsel to conduct his examination not by asking leading questions and asking them in the proper form.

THE PRESIDENT: These are merely introductory matters upon which he may well be permitted to lead.

A Late in November, 1937, after the fall of Shanghai, when the Japanese Army was approaching Nanking, the nurses and doctors of our staff came to us with the request that they be allowed to proceed up-river and not remain in Nanking when the city was taken by the Japanese soldiers. Their reason for doing this was because of the stories that they heard about the happenings in the cities between Shanghai

and Nanking. These cities were specifically Su-Chou, Wu-Hsi, Chen-Kiang, Tang-Yang, among others.

Our staff feared for their lives and wished to leave, and we attempted to calm their fears by saying that under martial law they would have nothing to fear in Nanking after the city fell. We were unable to convince them, however, and they left to up-river, leaving the hospital with Dr. Trimmer, another American doctor, and myself, five nurses who elected to remain behind, and some of the servant class who elected to stay with us. They left the city about the first of December. All together, about twenty Chinese doctors and some forty or fifty nurses and student nurses left.

Q To what number had the patients in the hospital been reduced immediately prior to the fall of the city of Nanking?

A When our staff left we were forced to reduce the number of patients to the irreducible limit and sent home all who could possibly go home, leaving about fifty patients in the hospital who either had no place to go or were too sick to move.

Wolf & Spratt

Q Did the situation change following December 13, 1937; and if so, in what manner?

A The Japanese soldiers entered the city on the morning of the 13th of December, all resistance having ceased on the night of the 12th. Within a very days the hospital filled up rapidly with many,many cases of injury to men, women and children of all ages, and of all degrees.

MR. BROOKS: If the Court please, I think it is objectionable. I think the Court--

THE PRESIDENT: I cannot hear you. Talk through the microphone.

MR. BROOKS: If the Court please, I think this line of questioning is objectionable, and I think it is made for the possibility of influencing the Members of the Court and that the Court can very well take judicial notice, and I think the defense would be willing to agree that in any war there will be casualties among civilians -- women, children and others-- otherwise, if such purpose is not shown, I move it should be stricken from the record.

THE PRESIDENT: The objection is overruled. Proceed.

MR. BROOKS: I would like to enter a further objection, on the ground of immateriality and irrel-

evancy to the issue they are trying to show -- who caused the war. If this had anything to do with it, I don't see where it is material.

THE PRESIDENT: The objection is overruled.

Q Doctor, will you give specific instances of the types of injuries which had been received by the persons whom you treated at the hospital?

A I can say the few instances of patients that I treated during the time immediately following the fall of Nanking, but I will not be able to give their names, except in the case of two, who are here as witnesses.

One case that comes to my mind is that of a woman of forty, who was brought to the hospital with the back of her neck having a laceration severing all the muscles of the neck, and leaving the head very precariously balanced. From direct questioning of the patient, and from those who brought her in, there was no --

MR. MATTICE: I would like to interrupt this witness to object; first, for the reason that, obviously, what the witness is about to say is heresay; secondly, it is not in response to the question which was asked him. He was asked to describe the wounds which he saw and he now undertakes to tell what the woman told him.

THE PRESIDENT: The objection is overruled. The objection to heresay has been overruled repeatedly.

A (Continuing) Upon direct questioning of the woman, and from the story of those who brought her in, there was no doubt in our minds that the work was that of a Japanese soldier.

THE PRESIDENT: He ought to say what the woman told him.

A (Continuing) A young boy of eight was brought in with a deep penetrating wound of the abdomen, which pierced his stomach.

MR. WARREN: If your Honor please, I was about to object on the same grounds that your Honor called to the attention of the witness; that he should state what the patient is alleged to have told him, instead of his conclusions, and let the Court draw the conclusion. We respectfully request the Tribunal to request the witness to state, as near as he recalls, the conversations he had with these patients.

THE PRESIDENT: The objections are sustained.

(Addressing Mr. Sutton) I do not think you are hearing me. You will not hear me unless you wear those headphones.

I said the witness must state what con-

versations he had with those wounded people.

A (Continuing) A man was admitted with a wound through the right shoulder, obviously a bullet wound, and --

THE WITNESS: If the Court pleases, I can tell his story as he told it to me then. Is that what I understand? --

A (Continuing) He was one -- the only survivor of a large group of men who were taken to the river bank of the Yangtze River and individually shot. The bodies were pushed into the river, and hence the actual number cannot be ascertained. But he feigned death, crept away in the darkness, and came to the hospital. This man's name was Liang.

Another man was a Chinese policeman and was brought to the hospital with a very deep laceration across the middle of his back. He was the only survivor of a large group taken outside the city wall, who were also first machine-gunned and the wounded were then pierced with bayonets to be sure that they were dead. That man's name was Wu Chang-teh.

One noon I was having lunch in my house, when the neighbors rushed in and told us, at the table, that some Japanese soldiers were raping the women in their house.

MR. WARREN: If your Honor please, that

obviously is not an answer to the question that was propounded to this witness and we request that he be required to answer the question and undoubtedly the prosecution will bring those out in further questioning.

THE PRESIDENT: He should confine his answers to the questions, but I do not think he infringed very seriously. These are all related matters. The objection is overruled.

A (Continuing) We rushed out of the house to accompany the men back to their own house, and the people in the courtyard pointed to the closed door of the gate-house. Three Japanese soldiers stood about in the courtyard with their bayonets. We pushed in the door of the gate-house, and found two Japanese soldiers in the act of raping two Chinese women. We took the women to the University of Nanking Refugee -- the campus where there was a large group of refugees, under the supervision of the International Refugee Committee.

A man came into the hospital with a bullet through his jaw, barely able to talk. About two-thirds of his body was very badly burned. His story, as nearly as we could make it out, was that he had been seized by Japanese soldiers, shot, covered with gasoline, and set afire. He died two days later.

Another man was admitted with a very severe

burn covering his entire head and shoulders. While still able to talk, he told us that he was the only survivor of a large group who had been bound together, had gasoline sprayed over them, and were set afire.

We have pictures of these particular cases, that I have mentioned so far.

An old man of sixty was admitted with a bayonet wound in his chest. His story was that he had gone from the refugee zone back into the other part of the city to look for a relative. He met a Japanese soldier who bayoneted him in the chest and threw him in the gutter for dead. He recovered six hours later -- he recovered consciousness six hours later and was able to get to the hospital.

Cases like this continued to come in for a matter of some six or seven weeks following the fall of the city on December 13, 1937. The capacity of the hospital was normally one hundred and eighty beds, and this was kept full to overflowing during this entire period.

Q Doctor, were any children brought in with wounds during this period?

A I mentioned the eight year old boy. There are two other cases that come to my mind:

One was that of a little girl of seven or

eight, who had a very serious wound of the elbow, with the elbow joint exposed. Her story to me was that Japanese soldiers had killed her father and mother in front of her eyes, and given her this wound.

A girl of fifteen was brought into the hospital by the Reverend John Magee, with the story that she had been raped. A medical examination confirmed this. About two months later this girl came again into the hospital with a secondary rash of syphilis.

Q Did these patients report to you from whom they had received the wounds?

A They merely stated that they received the wounds at the hands -- without exception they reported that the wounds were received at the hands of Japanese soldiers.

Q Doctor, are these two patients.-- Captain Liang and Wu-Chang-teh -- in Tokyo?

A The man you refer to as Captain Liang -- at the time I knew him, he was a stretcher-bearer in the Chinese Army. He is here in Tokyo, and Wu-Chang-teh, the policeman also mentioned previously, also is in Tokyo.

THE PRESIDENT: Colonel Morrow, apparently he has not heard the witness finish his answer.

Q Doctor, was there any change in the matter of the sale of opium in the City of Nanking following the

occupation of that city by the Japanese in December, 1937?

MR. WARREN: If the Tribunal please, patently that does not tend to prove or disprove any of the issues in this case, and we ask that the witness not be permitted to answer, and that this line of cross-examination -- of direct examination -- be abandoned.

THE PRESIDENT: It is certainly objectionable as leading in a very important matter, but what about this question of relevancy? I will hear you on that. The question is leading, and leading in a very important matter, but it is also objected to as being irrelevant. I would like to hear you on that.

(Addressing Mr. Warren) I would like to hear him, Mr. Warren.

MR. SUTTON: May it please the Tribunal, it is the purpose of the testimony to show whether or not there was an increase in the open sale of opium and narcotics in the City of Nanking following the occupation; and if so, something of the extent of that increase.

THE PRESIDENT: There is a count in the Indictment covering narcotics, but I forget the exact terms.

MR. SUTTON: It is to this charge in the Indictment that this portion of the evidence is directed.

THE PRESIDENT: Well, read the charge.

MR. SUTTON: Will your Honor excuse me for a moment while I find the proper place in the Indictment?

THE PRESIDENT: Well, this is a convenient time to adjourn. We will recess now until half past nine tomorrow morning.

(Whereupon, at 1600, an adjournment was taken until Friday, 26 July 1946, at 0930.)

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I N D E X
Of
WITNESSES

I N D E X
Of
EXHIBITS

Friday, 26 July, 1946

- - -

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, same as before.

For the Prosecution Section, same as before.

For the Defense Section, same as before.

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

Abram & Morse

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

THE PRESIDENT: Except OKAWA, who is represented by counsel, all the accused are present.

Does counsel desire to mention any matter? Mr. Warren.

MR. WARREN: If the Tribunal please, there was no particular time yesterday for me to say what I am going to. When this witness took the stand I stated that the defense had not been notified. I find that our section was notified, and in the manner the prosecution had told the Tribunal, however, that information did not get to us because we are all very skimpy on help; it did not get to us and I want to apologize to the prosecution and to the Tribunal for having made a remark which was not true.

THE PRESIDENT: Mr. Sutton.

MR. SUTTON: May it please the Tribunal, in answer to the inquiry propounded by the Court just before adjournment on yesterday, with regard to the relevancy of evidence on the subject of opium and narcotics, I desire to call the Court's attention to the fact that in counts 1, 3, 4, 5, 6, 27 and 38 of the Indictment there is the charge of waging aggressive war. In each of these counts reference is specifically

made to Appendix "B" -- I beg pardon, to Appendix "A", Section 4. This section, Section "A", of Appendix 4, reads as follows: "METHODS OF CORRUPTION AND COERCION IN CHINA AND OTHER OCCUPIED TERRITORIES: During the whole period covered by this Indicement, successive Japanese Governments, through their military and naval commanders and civilian agents in China and other territories which they had occupied or designed to occupy, pursued a systematic policy of weakening the native inhabitants will to resist by atrocities and cruelties, by force and threats of force, by bribery and corruption, by intrigue amongst local politicians and generals, by directly and indirectly encouraging increased production and importation of opium and other narcotics and by promoting the sale and consumption of such drugs among such people."

MR. McMANUS: If your Honor pleases, I think the Court knows and we know what the Indictment reads, and the appendices thereto. I don't see any reason to read it into the record. It is there; the Court knows. Just why couldn't counsel make reference to it rather than reading it? We all know what it is.

THE PRESIDENT: The defense raised the objection and it is for you to establish it, and

you may go further than making mere reference. Personally I am glad you read that.

MR. SUTTON: The position taken by the defense today is quite inconsistent with the position which they took on yesterday.

THE PRESIDENT: I think you have read enough. You had better keep those headphones on or I will have to repeat myself.

MR. SUTTON: May it please the Tribunal, I should like to refer to the fact that in the opening address of the chief of counsel this statement was made. I will read from page 35 of that document one sentence: "The evidence will also disclose that opium was used as a military weapon to break the morale of the people and to destroy their will to fight, as well as a means of revenue to finance Japan's armies." That is all we wish to say on this point.

THE PRESIDENT: The objection is overruled.

MR. WARREN: Your Honor, may I be heard on that before I am overruled?

THE PRESIDENT: Oh, no, it is obviously a matter upon which evidence can be received. We have heard enough, Mr. Warren.

MR. WARREN: On another point, then, your

Honor, we should like to object to it, on the ground that his questions are, as you pointed out, entirely leading.

THE PRESIDENT: I doubt whether I was right. I looked at the record, and unfortunately I do not hear everything that is said at that lecturn, because counsel sometimes turn away from the microphone.

MR. WARREN: And, in addition, your Honor, it assumes a fact that was not in evidence. I made the same type of previous objection.

THE PRESIDENT: Surely you can assume the fact that narcotics are used in Nanking.

R O B E R T O. W I L S O N, called as a witness on behalf of the prosecution, resumed the stand and testified as follows:

DIRECT EXAMINATION (Continued)

BY MR. SUTTON:

MR. SUTTON: Will the question be read back to the witness?

(Whereupon, the last question was read by the President from the Official transcript of Thursday, 25 July 1946, as follows:

"Q Was there any change in the sale of opium in Nanking following the occupation of the city by the Japanese in December, 1937?")

A Prior to the Japanese occupation, I had never seen an opium den with a sign on the outside showing that the sale of opium was going on in that place. It was a capital offense to be found selling opium. About one year after the occupation, in the Spring of 1939, I was bicycling down one of the main streets of the city. In the space of about one mile on Shengjao Road, between Kiang Tang Chieh Methodist Church and Chung Ji-leu, I counted twenty-one opium dens openly -- twenty-one places openly selling opium. These places all had the Chinese characters "Kwang To" prominently displayed in front

of the place.

Q Doctor, what is the meaning of the Chinese character "Kwang To"?

A That is one of the terms used for opium and means "official earth."

MR. SUTTON: The defense may cross-examine the witness.

THE PRESIDENT: Mr. Warren.

MR. WARREN: Apparently there is no cross-examination, your Honor.

THE PRESIDENT: No cross-examination?

MR. SUTTON: We desire to call as the next witness Dr. Hsu Chuan-wing.

THE PRESIDENT: I understand a Japanese counsel wants to say something.

(Whereupon, the witness left the box).

MR. McMANUS: If the President pleases, we are undetermined at this time, at least, we thought there would be no cross-examination concerning this witness. We understand from Dr. KIYOSE that there might be one Japanese counsel who might like to ask a few questions.

THE PRESIDENT: We will give permission to cross-examine the witness, who will be recalled for that purpose. Bring the doctor back. The doctor

may have gotten away. I think you had better go on with the next witness.

MR. KEENAN: May it please the Court --

THE PRESIDENT: Mr. Chief Prosecutor.

MR. KEENAN: Yesterday the Court, as I understand it, made the ruling that when a witness spoke in the English language the practice of permitting the offering of the affidavit would not be countenanced.

THE PRESIDENT: Put it this way: when he is a European, born in America, and educated there up to university standard.

MR. KEENAN: With great respect, I want to suggest two matters to the Court. First of all, the Charter itself, in setting forth the admissibility of affidavits, specifically makes no distinction as to the language, either in the original affidavit as filed, or the language of any witness who would testify as to germane subjects. And secondly, in the best estimate of counsel, such a ruling would prolong the length of this trial a matter perhaps between four and five weeks. With great respect, we want to inform the Court of our views and our estimates of time upon that subject, so that if there is a profound reason for the distinction, we do not care to urge the

matter any further, but if it is compatible with orderly trial, we greatly request the Court's reconsideration of that ruling to determine if we are within the provisions of the Charter in offering the evidence in affidavit form, as already I understand has been the practice during the proceedings in this Court. We think that in fairness to the Court, we ought to apprise the Court of our intention in future, from the time element, so that that might be given whatever consideration it deserves in the minds of this Tribunal.

THE PRESIDENT: Obviously, the Charter does not deprive us of the discretion which we exercised yesterday, that is, to insist upon the examination in chief being conducted orally and not by affidavit. No time was lost in following the normal course. The oral examination was conducted as speedily as the affidavit could have been read. In receiving affidavits we have exercised more liberality than has been displayed at Nuernberg. The Court will continue to exercise its judgment in each case.

(Whereupon, Dr. Robert O. Wilson returned to the witness box).

Whalen & Duda

MR. S. OKAMOTO: I am OKAMOTO, Shoichi, counsel for the defendant MUTO, Akira.

THE PRESIDENT: Doctor, you are still on your former oath.

MR. S. OKAMOTO: I also believe so. In line with the Court's views, I will be quite pleased if the oath should be re-administered -- should be administered again.

THE PRESIDENT: There is no need for that. Please put your questions or retire from the lectern.

CROSS-EXAMINATION

BY MR. S. OKAMOTO:

Q You have testified that the doctors and nurses at your hospital ran away before the fall of Nanking. Does that not also apply to the inhabitants of the adjacent districts?

A The population of Nanking before the war was slightly over one million. At the time that the Japanese took the city a majority of the inhabitants had left and the population was less than half a million.

Q I did not hear the time. When was that that it decreased to that number?

A During the month of November and the first two weeks in December.

Q Then you are aware that before the fall of Nanking a great number of the people had already fled?

A That is true.

Q Is it correct that you had 170 beds in your hospital?

A The number is usually given as 180.

Q And you say that these beds immediately became full -- became full immediately after the fall of Nanking. When was this?

A Within the first week after the fall of Nanking. Many patients were turned away because we had not enough beds.

Q About how many patients did you turn away? Do you remember the general figures, the approximate figures?

A I would have no way of telling that, principally because my work was in the operating room and I was there busy most of the time day and night for a few weeks after the occupation. The others handled the out patients and had to turn away patients when there were no beds.

Q You have stated that many of your patients, these patients that you treated, had wounds. But as the translation was incorrect, I would like to point out one example. For instance, you say that a woman

of about forty had a wound in her neck and that the muscles were cut and were hanging loose. But what was this caused by?

A A Japanese sword.

Q Were not many of the other wounds due to fragments of shells?

A Not at that time. During the fall in October and September when we were under many air raids we received numerous wound fragments. But at the time that we are referring to, after the fall of Nanking, there was no fighting.

MR. S. OKAMOTO: That is all I have to say.

CAPTAIN KLEIMAN: May I?

THE PRESIDENT: The Japanese counsel who has just cross-examined was under misapprehension, but you are not. We will not allow you to cross-examine.

CAPTAIN KLEIMAN: If it please your Honor, I sit in a far corner of the Tribunal and the head table did not consult me as to whether I wished to cross-examine.

THE PRESIDENT: You have a voice and you could have used it from there.

CAPTAIN KLEIMAN: I just had two questions in mind, very short.

THE PRESIDENT: Well, he was not recalled

for cross-examination by you, Captain Kleiman, but for cross-examination by Japanese counsel.

MR. ITO: I am ITO, Kiyoshi, counsel for the defendant MATSUI, Iwane.

CROSS-EXAMINATION (Continued)

BY MR. ITO:

Q As I was unable to get your testimony very well yesterday, being unable to understand English, I would like to just ask you this question.

You say that a Chinese woman was raped by a Japanese soldier and that two months later she showed signs of being in the second stage of syphilis. Was that correct?

A That is true.

Q Thank you. According to my observations -- of course I am an amateur so they may not be correct -- manifestations of the second stage of syphilis are not usually until after over three months have passed after infection. But is that correct?

A That is the third stage.

Q Is that a difference in theory? The book that I have here says three months.

A I am sure I don't know what that book is. My observations are that any time from six weeks to three months the secondary rash may appear.

Q Well, anyway, according to this book I cannot but conclude that since it takes over three months for the second stage to appear, that this woman could not have been infected by a Japanese soldier two months previously.

A You are entitled to your opinion and I am entitled to mine.

THE PRESIDENT: You must take the witness' answer. You can call evidence later to contradict him if you wish.

MR. ITO: I shall do so later.

THE PRESIDENT: Yes. That will do, doctor.

(Whereupon, the witness was excused.)

MR. SUTTON: The prosecution desires to call as its next witness Hsu Chuan-Ying, of the Republic of China.

HSU CHUAN-YING, called as a witness on behalf of the prosecution, being first duly sworn, testified as follows:

DIRECT EXAMINATION

MR. SUTTON: If it please the Court, we desire to present International Prosecution Section document 1734.

THE PRESIDENT: Exhibit number, Mr. Sutton, please.

DEPUTY CLERK OF THE COURT: Document No. 1734 will be given exhibit No. 205.

. . . (Whereupon, the document above referred to was marked prosecution's exhibit No. 205 for identification.)

MR. McMANUS: If your Honor pleases, I would like now to have made the same objection that Mr. Levin made yesterday. This man is a graduate of a university, he can speak the English language, and he is evidently an intelligent man, and definitely we object to any affidavit of his being introduced and request the Court should take direct testimony from him.

THE PRESIDENT: I would like to know a little more about him, Mr. McManus. We have not heard much from him yet.

You had better open your examination,

Mr. Sutton, so that we might have something on which to form a judgment.

MR. McMANUS: Is your Honor accepting the document?

THE PRESIDENT: Well, not yet. I have not said "accepted" yet.

MR. McMANUS: Well, the Clerk announced it was marked in evidence, if the Court pleases.

THE PRESIDENT: No; for identification.

BY MR. SUTTON:

Q Where were you born, and when?

A I was born in Nanking sixty-two years ago.

Q Where have you lived throughout your life?

A I lived in Nanking since 1928.

THE PRESIDENT: Is he a university graduate?

MR. SUTTON: Yes, sir.

THE WITNESS: I have a B.A. from the University of Nanking, and also a Ph.D. from the University of Illinois.

THE PRESIDENT: I think you had better examine him orally, and if you strike any real difficulty we may be able at that stage to accept his affidavit.

Q Dr. Hsu, where were you educated?

THE PRESIDENT: Well, he told you.

A I was educated in Nanking and in the University

of Illinois when I was only thirteen years old.

Q Following your education, what occupation did you pursue?

A After I graduated from the University of Nanking I taught for about ten years, and after that I went to the States to study further.

Q What occupation did you follow when you returned to China?

A I joined the railway service. At first I was in the Tientsin-Pukow Railway, and later on I joined the Ministry of Railways in different positions. Later on I was always on the line, either on the line or in the Ministry.

Q During what period have you lived in the city of Nanking?

A Well, when the government removed to Nanking in 1928, I was in the Ministry of Railways. So I made my home in Nanking and have houses over there.

Q Have you continued to make your residence in the city of Nanking since 1928?

A Yes, I do.

Q When was Nanking occupied by the Japanese Army?

A December 13, 1937.

Q Was there any resistance on the part of Chinese forces of any nature in the city of Nanking

after December 13, 1937?

A On the day of 13 December 1937, there was no resistance at all in the city. Before that date there was some resistance outside of the city, and on that day all the soldiers left Nanking.

Q Was there any resistance on the part of Chinese soldiers or any organized force after December 13, 1937?

A No, absolutely none.

Q Were you connected with the International Committee for the Nanking Safety Zone?

A I was connected with the International Committee where, as a Housing -- as the chief of the Housing Commission.

Q How many camps did you have under your jurisdiction?

A My duty was to look after the accommodations for those who have houses and also those who have not houses in the safety zone. Now, there were people who have relatives or friends in the safety zone, they have houses, they go there. They are there themselves and they took their necessary things with them. For those who do not have friends or relatives now we find -- it is my duty to find houses for them and put them together. So this number of people amounts to quite a

large number. Finally we have twenty-five camps different places for them. These twenty-five camps are under my supervision, and these houses I assigned to them, some are public buildings, some are private houses.

Greenberg & Barton

Q How many citizens of China were in the safety zone?

A Generally speaking -- of course, we have no official figures; but, generally speaking, there are over two hundred thousand -- comes pretty nearly to three hundred thousand people in the safety zone.

Q Were you, in December, 1937, connected with the Red Swastika Society, and, if so, in what capacity?

A Swastika Society was invited by the International Committee to cooperate with them because they do not have English speaking persons with them, so I was invited by them to represent them in order to cooperate with the International Committee, and I was at that time the Vice-Chairman of the Swastika Society.

Q From which direction did the Japanese soldiers enter the city of Nanking?

A From the south side of the city.

Q What was the action of the Japanese soldiers toward the civilians as they came into the city?

MR. McMANUS: If your Honor pleases, I am compelled to object at this time. I don't think that this question should be permitted, and the questions have been leading, and the answers have been not

responsive. I ask your Honor to entertain my objection at this time.

THE PRESIDENT: There has been no substantial infringement of the rule against leading, assuming we have to apply it strictly here. I see nothing wrong in the method of examination in chief.

Please continue, Mr. Sutton.

MR. SUTTON: Will the reporter read the question back to the witness.

(Whereupon, the last question was read by the official court reporter as follows:)

"Q What was the action of the Japanese soldiers toward the civilians as they came into the city?"

A The Japanese soldiers, when they entered the city -- they were very very rough, and they were very barbarious: They shoot at everyone in sight. Anybody who runs away, or on the street, or hanging around somewhere, or peeking through the door, they shoot them -- instant death.

Q Did you witness murders committed by Japanese soldiers, and, if so, will you give specific instances?

MR. BROOKS: I object to that question. It

is assuming that there was a murder. He is asking about soldiers. It is up to the Court to determine whether this was murder or not.

THE PRESIDENT: Objection is overruled.

Q (Continuing) The witness will answer.

A On the third day I had the chance of the permission of the Japanese military officers to go around the city -- all the cities. I had one Japanese going along with me on the car. The purpose of that is to estimate the number of people lying dead on the street and in all the houses. I saw the dead bodies lying everywhere, and some of the bodies are very badly mutilated. Some of dead bodies are lying there as they were, shot or killed, some kneeling, some bending, some on their sides, and some just with their legs and arms wide open. It shows that these been done by the Japanese, and I saw several Japanese were doing that at that very moment.

One main street I even started try to count the number of corpses lying on both sides of the street, and I started to counting more than five hundred myself. I say it was no use counting them; I can never do that.

I was at that time on the same car and another Chinese with me. He was educated in Japan,

and he speaks Japanese. And he -- we together went to his home, and he found that his brother was also shot in that house and on the step -- on the door-step, not take him away yet.

The same condition was found in the south city, in the northern part of the city, on the east and on the west, and many many people killed, still lying there, and all -- no Japanese -- no Japanese soldiers acted any -- showed any courtesy to any people. I was fortunate because I had on the car a Japanese -- a Chinese who can speak Japanese, and many times I was interrupted, and they try to drag me out of the car, and I -- the Japanese on the car help me out because we had permits from them.

All these corpses, not a single one I find in uniform -- not a single soldier; they are all civilians, both old and young, and women and children, too. All the soldiers -- we do not see any Chinese soldier around in the whole city.

Q Did the Japanese soldiers enter the safety zone and remove Chinese citizens therefrom?

A The Safety Zone Committee -- the International Committee has made a rule, no armed soldier or any soldiers -- military people -- are supposed to be in the military -- in the zone, and they would

never allow -- admit anybody in uniform.

On the second day -- that is, December 14 -- in the morning, a high military Japanese soldier came into our -- the headquarter of our International Committee office -- headquarter, and I was the one happened to be there early in the morning, about eight o'clock. There his purpose is want to get permission or talk over -- want to make a search of the safety zone. He accused us that there were -- are Chinese soldiers hidden in the safety zone. We all said there were no soldiers -- no armed soldiers in the Chinese -- in the safety zone, and Mr. Raabe said so, Mr. Fitch, our Director, said so, and we all said so, but the Japanese insist on searching, and they never get our consent of searching the safety zone.

On the following days, with these Japanese military officers -- they came with their own will, and go into the camps and also the houses and try to get -- to drag people out from our camp and from the houses and accusing them as they are soldiers.

THE PRESIDENT: We will recess now for fifteen minutes.

(Whereupon, at 1045, a recess was taken until 1100, after which the proceedings were resumed as follows:)

Wolf & Spratt

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

THE PRESIDENT: Mr. Sutton.

BY MR. SUTTON (Continued)

Q You may proceed with your answer.

A The Japanese soldiers came into the safety zone and searched and took away large number of Chinese civilians in the different camps, in different places.

One day I was with the other member, distributing Chinese bread and cakes to those refugees in one of the buildings. When we nearly finish, all of a sudden Japanese soldiers came. Two of them guarded the gate. Several soldiers went in and used ropes and tied the refugee people -- the civilians -- all civilians -- hand in hand -- some by some several tens, fifteens, and they took them away. I was standing there and astonished what was the meaning of it. In that compound, in the building, there are about fifteen hundred civilians -- refugees -- and they are took away in such a manner. They even tried to take some of our Swastika members, but after explanation they seemed to let us go. I, at that time, asked for somebody to report immediately to the International Committee -- Mr. Raabe. Mr. Raabe and Mr. Fitch came at my request, but these people -- these civilians -- were already taken away

by the Japanese soldiers. When, after a little talk, Mr. Raabe, Mr. Fitch, and myself, and another Chinese, who speaks Japanese -- we all went immediately to the Special Service Headquarter --- the Japanese Special Service Headquarter. Mr. Raabe made the protest. He asked them first why they entered into the safety zone and took the civilians -- the refugees -- away; and second, what do they took them for, where they are now, and also demanded immediate release. The answer we get is they do not know -- the Japanese head office, special -- head of the Special Service Organization said they don't know. So we waited there and waited there an hour for them -- to enable them to find out where these people go and who took them. We could not find out anything from them. They do not give us any satisfactory answer, and they even promised to give a definite answer before the morning, but they didn't.

On the following day, about seven and eight o'clock, we hear machine gun. Now, around that place -- around the headquarters of the International Committee and also the Swastika Society, we immediately sent people spying around, and we know those -- we then, at that time we saw those people were machine-gunned and their corpses were pushed into the pond. Later on, we got those corpses up, and also we recognized a few of

them.

After this, we had trouble in every camp. Every day the Japanese soldiers came into the camp and looked for Chinese soldiers in the different camps, sometimes a few tenants, sometimes several tenants, and sometimes hundreds of these refugees -- civilians -- took away by these Japanese soldiers; and later on we were sure that they were all shot. Their excuse is that these men are soldiers, and also sometimes they simply, by listening to some others say so and so, are soldiers, but in reality they are all civilians, and not a single one even in uniform or armed.

Q Who was Mr. Raabe, and what, if any, was his connection with the International Committee for the Nanking safety zone?

A Mr. Raabe is a German, and he is the head of the Seamen's Company at Nanking, and he is the Chairman of the International Committee.

Q How were the women in the City of Nanking treated by the Japanese soldiers, following their entry into that city?

A The action of the Japanese soldiers toward women are even worse, and we can never dream of in this civilized world. The Japanese soldiers -- they are so fond of raping -- so fond of women -- that one cannot

believe.

THE PRESIDENT: Witness, you must be satisfied simply to tell us how the Japanese treated the women in Nanking, if you know.

A I know many cases, because in the safety zone in the camps, any Japanese soldier would go in and would try to get a woman or to rape them, I would know about it; they would come to me. So many times I go with a Mr.Sperling, or another foreigner go with me, and get another soldier.

In one of the camp, the Japanese soldier came with three trucks in one day, and wanted to take all the girls from that camp, and took them to a place where they can rape them. I went -- tried to stop them, but no effect. Now these girls, these women, ranges from thirteen years old up to forty years old. I see with my very eyes the Japanese soldier raping a woman in a bath room, and his clothes outside, and then afterwards we discovered the bathroom door, and found a woman naked and also weeping and downcast. Once I went with Mr. FUKUDA. At that time he was vice-consul of the Japanese Embassy, now the secretary of the new cabinet in Tokyo. Now we went to the camp to try to get -- to catch two japanese who were reported to be living there. At the time we reached

there we saw one Japanese still sitting there, with a woman on the corner and weeping. I told FUKUDA, "This is the man who did the raping," and that man was sitting there with his head low there, and FUKUDA began to ask, "Why did you do that -- what business have you here?"

MR. McMANUS: At this time, if the Tribunal please, I would like to object, and I am objecting on the ground of relevancy. In what way has any of these things that this man has testified about -- in what way is it connected up with any of the defendants? I am making the objection on the ground of relevancy, concerning the connection with these defendants.

THE PRESIDENT: There is no doubt at all about the relevancy of this. It shows the type of war conducted by the Japanese, if it be the truth. It is clearly relevant. The objection is overruled.

(Mr. McManus again approaches lectern.)

I have dealt with your grounds. You cannot add to them now.

A (Continued) Mr. FUKUDA rebuked him, it evidently seems the Japanese soldier there, and also then tried to push the man away, and that Japanese soldier left and afterwards,then, Mr. FUKUDA had a little smile on his face, and then, at that time,

this is the first time I thought -- I have the plan -- I asked him to write in Chinese. I said, "Your pushing him away is of no use; he may come back again." I said, "Put up a notice prohibiting these soldiers to come in these camps for women." He did write that notice, and we pasted it on that camp, but such notice is of no use. I can repeat instances of this same thing again. Later on we have a puppet government. Now, the head of that Chief of Police I happened to know very well, because he was in the safety zone. So every time I reported something he would do it. Once we caught a Japanese raping, and he was naked. He was sleeping, because then we tied him and we got him to that police office. All we hear about their soldiers raping is that where this soldier had been sent to the Japanese headquarter.

Q Were any of the victims killed after they had been attacked by the Japanese soldiers?

THE PRESIDENT: You mean any of the women that had been raped; had any of the women been killed after being raped, is that what you mean?

MR. SUTTON: Yes, sir.

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A Sin Kai Road, No. 7, on the South Gate, inside of the South Gate there was a family. I went there myself with Mr. Magee. In that house there were eleven killed -- three raped and two -- there were two of the three, one is fourteen and one is seventeen. After raping, they put foreign stuff into the vagina and the grandmother showed me the stuff. The young girl was raped on the table; and while I was there the blood spilled on the table not all dry yet. And we also see the corpses because they were took away, not far away, only a few yards from that house, all the corpses there. Of those corpses Mr. Magee and I took pictures of them because they were naked and shows the crimes there.

I know another case where because of the boatman, he happens to be a member of the Swastika Society, he told me this: where he saw that too on his boat, it happened on his boat.

THE PRESIDENT: The Court will have to consider seriously how far it will have to accept this second-hand hearsay.

MR. SUTTON: Shall he proceed?

THE PRESIDENT: Go ahead.

A (Continuing): There was a family of respectable people tried to cross the river on that

boat. Now, in the middle of the water of the river, two Japanese soldiers came. They found -- they want to inspect that boat; where, on seeing the young women there, the young women and girls there, two of them, so they began, started raping right in the eyes of their parents and one of their husbands.

After raping, the Japanese asked the old man in that family: "Isn't that good?" Where his son, the husband of one of the young women, he got so angry so he began to beat the Japanese soldier. The old man cannot stand such a thing so he knows that they were all in trouble so he immediately jumped into the river. Then his wife, old wife, the mother of that young man, she began to weep and came out and also followed her husband. I forgot to say that when the Japanese asked the older man whether it is good or not, he wanted the old man to rape that young girl so all the girls -- now I saw this -- they all jumped into the river. So the whole family jumped into the river and all drowned. This is not second-hand story. This is a real, real and genuine, and we have, we know that, the boatman has been with us for a long time.

Q Did the Red Swastika Society engage in the burial of the civilian dead in the City of Nanking?

A The Red Swastika has made it as a philanthropic work to bury the dead who are really not able to be buried. Now, at this time, there are so many dead bodies on the street, nobody to look after. The Japanese also came, Japanese soldiers, Japanese military men came to ask our help, say: "Well, you have been doing this kind of work, why can't you do it for us?" After we get their permission to do this, they gave us a permit and passports and some facilities to travel in the city, so we started burying them.

We have on our regular staff around two hundred laborers doing this kind of work. We buried over forty-three thousand where the number is really too small. The reason is we are not allowed to give a true number of the people we buried. Where, at first, we do not dare to give a number, to keep any records, and later on we just kept private records. This number represents only what we have buried. These are all civilians and not soldiers. We have nothing to do with the soldiers.

Q Were there other organizations engaged in the burial of civilian dead in Nanking?

A Yes, there are other organizations were chiefly philanthropic organizations. Swastika is

only one of them.

Q Where were these bodies found that were buried by the Red Swastika Society?

A These dead bodies are found either by ourselves or reported by the people in the surrounding places or some -- many times the Japanese came around, Japanese officers, soldiers would come around; where there were too many dead bodies around a certain place, they would report to us. The reason is they are very afraid of epidemics so they like to keep these dead boies away, especially in February and January and March. These dead boies are first get out of their places where, if they are in ponds, get them out of the water; if, in buildings also, they will be get out. Now when they are get out, we find they are, most of them, nearly all of them are tied, tied hand in hand. Now, sometimes they use rope, sometimes they use wire. It is our sacred practice to have a dead body all unloosed if it is tied. We want to unloose everything, and bury them one by one. But with these wires, now it is almost impossible to do that. In many cases these bodies already decayed so we would not be able to bury them one by one. All we can do is simply to bury them in groups.

THE PRESIDENT: You need not go into all those details. The method of disposal of the bodies is hardly helpful.

A (Continuing) In other case we have found them all burned, the corpses.

Q You refer to the work of this society in burying the dead in Nanking in January, February and March. What year was that?

A 1937 to 1938.

Q What was the action of the Japanese soldiers following their entry into the City of Nanking with regard to the personal property of the citizens of Nanking?

A Japanese soldiers do not respect any property rights or any personal possessions. They enter every house and take away everything they like. They burn the houses and they damage the houses. They destroy the houses.

MR. MCMANUS: Concerning this latter testimony, Mr. President, may I ask whether the witness is testifying from his own knowledge or whether he is just drawing these conclusions and offering them here as evidence and if so, I request the Court to instruct him to please confine himself to the facts and what he knows.

THE PRESIDENT: I think he is speaking in the historical present. Most of his evidence has been. The subject matter lends itself to that. I think he is telling us the facts as he understands them, but he is using the present tense in that way.

THE WITNESS: My own house has been entered many times and a piano and a disabled motor car been taken away --in addition to all the valuables and the useful stuff that have been taken away.

Q Did you see any buildings destroyed by the Japanese soldiers following their occupation of the city?

A Japanese soldiers started burning the Russian Legation Embassy where I saw they poured kerosene oil on that and started the fire. That was on January 1, 1938, at twelve o'clock. Other institutions like Y. M. C. A., educational buildings and prominent citizens' residences have all been burned.

Q Were these buildings burned after the occupation of the city by the Japanese?

A Yes, this all wanton destruction all done after the Japanese been in the city many days.

Q What did the Japanese soldiers require the civilians to do as they met the Japanese soldiers on the street?

A The Japanese soldiers, especially the guards, they demand bow down to the Japanese very courteously at every place where they are stationed. This is required of everyone. I, myself, am included. I went, whenever I met a Japanese guard at any place, either at a gate, at a city gate or at certain quarter, and I have to bow. 1940, my nephew, for the first time he came to see me. As he get down from the train he had his hat on his head and forget, does not know the necessity of bowing to the guard. The Japanese guard hit him on the face. He does not know. He still walks on but he is driving back and give him another harder kick. Because of this hit, his hat was fell off on the ground. He unload himself down and pick that hat again and tried to put it on his head again. The passerby, the man behind him said: "Well, you have to take off your hat and bow him. Otherwise you get always in trouble."

THE PRESIDENT: Perhaps you should omit this face-slapping evidence.

Q How long did the conduct of the Japanese soldiers toward the civilians in Nanking, in the manner which you have described, continue following the fall of that city?

A I did not get your question.

MR. SUTTON: Will the reporter read the question back to the witness?

(Whereupon, the official court reporter read the last question.)

A This same thing continued to the end of the war.

Q Do you know of the conduct of the Japanese soldiers toward other cities in the vicinity of Nanking? I beg your pardon. Do you know of the conduct of Japanese soldiers towards civilians in other cities in the vicinity of Nanking?

A This same type of conduct exists in all the cities I visited. That is to say, about two hundred lis as far as Nanking and Anhueh cities, all the same cities occupied.

I should like to correct that "li" for miles because "li" and "mile" in Chinese is the same.

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

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

Abram & Morse

AFTERNOON SESSION

The Tribunal met, pursuant to recess, at 1330.

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

H S U C H U A N - Y I N G, called as a witness on behalf of the prosecution, resumed the stand and testified as follows:

DIRECT EXAMINATION (Continued)

BY MR. SUTTON:

Q What cities did you visit?

A I visited two cities, Kuehchou in 1939 and I visited also Nanking in 1942. I was also in my native city, Kweichi, 1942.

Q Are these the cities referred to in the answer to the last question asked you at the morning session?

A The same type of conducting the war and also the same kind of attitude of the Japanese soldiers toward the civilians and women all the same, and in smaller cities like Kweichi, my native city, they are worse.

Q Were restrictions placed by the Japanese soldiers upon Chinese civilians in the conduct of

private business?

A I didn't quite get your question.

Q Will the reporter kindly read the question back to the witness?

(Whereupon, the question was read by the official court reporter as above recorded.)

Q The question is: were restrictions placed by the Japanese soldiers upon Chinese civilians in the conduct of private business?

A The restrictions on Chinese civilians in conducting business were severe. I, myself, were trying to bring out to Nanking the charcoal of about eight hundred pounds of charcoal to Nanking by Chinese boat. Now, my -- the secret service men, the Chinese secret service men on the Japanese side, they are good enough to get a permit for me because I offer a partnership with them.

THE PRESIDENT: Having regard to the number and the magnitude of the issues here, is it worth while to spend any time on that sort of thing, restrictions on business?

MR. SUTTON: The evidence is offered in connection with counts 1 to 6 and 18 and 19 of the Indictment which refer for particulars to Appendix A.

The charge is included in section 3, Appendix A. It is simply one small portion of evidence in connection with that charge.

THE PRESIDENT: Well, it may lead to something bigger but it is a trifle. We trust you to put before us only things that matter.

Q Was opium openly sold in Nanking prior to the Japanese occupation of that city in December, 1937?

A Before December, 1937, opium was not allowed to sell in public, when we have already succeeded more or less at that time, 1937 -- before that time, 1937, opium was wiped out.

Q Was opium openly sold in Nanking after the city was occupied by the Japanese troops?

THE PRESIDENT: You have forgotten that he said it was. He said there were twenty shops on the main street.

MR. SUTTON: If you Honor please, that was Doctor Wilson's testimony.

THE PRESIDENT: I am sorry. Yes, you are right, quite right.

A Opium was publicly open on sale after December, 1937, and there are many opium dens near the city, near the street, where I live and once in a while I just stroll into those open opium dens

and found there are no police, even no police were interfere with them. In addition heroin is very easy to get and I have seen people smoking heroin and much more openly than ever before, and also there are cigarettes with heroin in it and I have picked out one or two brands of cigarettes myself. Heroin cigarettes has been offered to me many times and heroin cigarettes has been offered to the Chinese laborers, so-called "coolies." These laborers, sometimes their age is just over ten and others around thirty. Now, the general method used to get around good with these laborer coolies is to offer them these cigarettes after their work. Cigarettes are sold by the Japanese, make special effort to sell more cigarettes. They are not easy to get other necessities of life, but cigarettes is always ready. But in Nanking, Wu-Hu, An-Ching, An-Hueh they open special shops, give special facilities to sell these cigarettes.

MR. SUTTON: The defense may cross-examine the witness.

MR. KANZAKI: I am KANZAKI, Masayushi counsel for the defendant HATA.

CROSS-EXAMINATION

BY MR. KANZAKI:

Q In answer to a question put by the prosecution

you answered that the atrocities committed by Japanese soldiers continued until the end -- until the conclusion of the war. Is that correct?

A That is not quite correct. If I remember correctly, my statement is this: where it was the worst about the first few months, especially three months, and later on it gradually diminished more or less. It diminished more or less not because of the Japanese soldiers, because of the efforts made on both sides to get rid of these worst atrocities. You see, there is whore houses and geisha houses have been opened and there are women and girls like prostitutes. Now they are given a chance for the Japanese to go there.

Q Then may I understand that atrocities of the Japanese soldiers continued for a few months, is that so?

A No. It didn't continue only for a few months. It is only on a wider scale and less conspicuous. For instance, as late as 1942 one member of my own tribe was raped to death. And also I know another case in Tien-Wang-Su, that is 1943. Two or three Japanese soldiers went to that village and tried to get chickens and meat. It happened in one family they found a very beautiful young woman and they raped her, and

when the husband came back they killed two of the three Japanese soldiers. And afterwards the Japanese got angry at that and the next day -- let me finish. On the following day the Japanese came --

Q No, that is sufficient.

MR. SUTTON: May it please the Court --

THE PRESIDENT: He does not understand. Continue with your answer.

A On the following day, then, the Japanese came on the pretention that they will give work to some of the men in that village. So by this way they get most of the men out of that village and take them to work and shoot them, machinegun them, and after that the Japanese gave the fire and burned that whole village out.

Q Mr. Witness, you stated earlier that the Japanese soldiers set fire to the Russian Legation. When did this take place?

A 1942.

Q What month and what date?

A Well, it is in the I can't remember the date now.

Q You stated earlier that you witnessed this fire. By what method was this fire started?

A Well, the fire was started by setting it

burning. All storehouses, very easy to set on fire.

Q Mr. Witness, you stated earlier that the fire was set by pouring kerosene. You say that you witnessed the fire. Did you or did you not witness this fire?

A You are twisting the facts. What I said in the morning is kerosene, that is the burning of the Russian Legation. That Legation, the houses were very near to the place I lived; that is near Nanking. This is Tien-Wang-Su, about twenty li from Nanking.

Duda & Whalen

Q We are asking about the Russian Legation.

A All right. What do you want to ask about the Russian Legation?

Q I am talking about the Russian Legation. Will you please tell the Court the state and circumstances of the fire concerning the Russian Legation.

A Well, the Russian Legation is only about, well, I shall say a few blocks where maybe I shall say several hundred yards from the place where I lived. Now, when they were there where I was, near that place on the road -- because my habit is usually taking a walk in the private places. That's about at noontime I was walking on there. As I walked there I see a number of soldiers, Japanese soldiers there. Of course, at first sight I don't know what was going on. Later on I see so many so I try not to see too much, not walk too near to them. But I still far enough to see that they are doing -- pouring some of the kerosenes on those--- in those places. After a little while then I see big smoke burning there.

Q You said you were taking a walk. What time was this, in the morning, or in the afternoon, or in the evening?

A It was about noontime, twelve.

Q Was the building burned down totally, completely?

A From the effects -- from the aftereffects of

course it is burned down, but in the burning I tried to get away from them places. I didn't try to find out how much was burned. That is none my business.

Q In regard to the necessity of seeing it, that is beside the point. Could you tell us what the soldiers were doing?

THE MONITOR: Could you tell us what you saw when you were there.

A I saw the soldiers were pouring this oil on them, and the fire was started. After the burning, of course, I don't like to -- I didn't try even to stop the fire nor to have anything to do with that.

Q I am not asking whether you had any interest in it. I am just asking what you actually saw.

A I told you what I saw already. Is that not clear? What is not clear?

Q This morning you said that the building was totally burned. Now you state that you do not know whether it was completely burned down or not. You just said that you saw some smoke rising. Which is true?

A Well, you are misunderstood me. Where I said you were -- I understand you were asking me whether I watched that fire and how much was burned. You are asking me now that question. This morning I told the whole instance. Now, after I didn't watch for the whole

burning of that, but I can see because so near to my home it totally burned v. .

Q But, Mr. Witness, this Russian Legation was not burned. Are you dreaming in regard to this, or are you telling a lie?

A Well, I don't know what you mean; the Russian Legation in Nanking not burned?

THE PRESIDENT: Counsel must accept the witness' answer.

MR. KANZAKI: I understand.

Q When the Japanese forces entered the city, that embassy or legation was used by Japanese staff officers. Are you aware of this fact?

A No. I wonder whether we are talking the same thing. I am talking the burning on January 1 of 1938. That German Legation -- that Russian Legation were at the back, or near the lake but inside of the city.

THE PRESIDENT: We cannot afford to spend any more time on this matter. Get on to something else.

MR. KANZAKI: I am through.

MR. ITO: I am ITO, counsel for defendant MATSUI.

CROSS-EXAMINATION (Continued)

BY MR. ITO:

Q Mr. Witness, do you know that before the fall

of Nanking the Japanese Commander, that is on December 8, 1937, distributed pamphlets from airplanes to the Nanking Army which stated that the Chinese should -- advising the Chinese to surrender the city of Nanking in a peaceful state. Are you aware of this?

THE MONITOR: Correction: The date is the 9th of December instead of the 8th.

A Well, I know nothing of this kind. Also I live in Nanking, and I have two buildings covering about two miles, but nothing of that kind of pamphlet fell on my compound. I mean two acres -- if I said any wrong words.

THE PRESIDENT: Now, this is on mitigation I suppose, not on justification.

Q Then, Mr. Witness, do you know of this fact with respect to the advice to surrender which was sent to the Nanking Army and received by them and stated that if the Nanking Army would come to a specified place to negotiate the city of Nanking could be surrendered peacefully; but they did not accept this and the clash occurred, and this started a clash -- and the clash started a few days later?

THE MONITOR: Correction: The fighting broke out as the result of failure by the Chinese to comply with the Japanese advice, and the fighting ensued for several days after that.

A Well, even though there is such a fact, I don't know. But that doesn't come into with the atrocities. The city was taken and no resistance and there was all these atrocities happened. And also I understand that the safety zone, they have already negotiations on both sides, Japan and China, and also these atrocities happened in the city as well as in the safety zone.

Q When was this safety zone established?

A Well, the safety zone was established -- well, the exact date I don't know because I was not the original member of that. I was only invited and made member on the fourth of December, 1937.

Q With regard to the safety zone, wasn't this established by the foreign nationals who feared that Chinese soldiers would plunder and cause devastation in their retreat from Nanking?

THE MONITOR: Correction: Was not this safety zone established for the foreigners who feared that prior to the entrance of Japanese forces -- I correct myself. Was this not established for the foreign nationals prior to the entrance of Japanese forces into the city because there was a fear that Chinese soldiers as they were fleeing from Nanking might indulge in pillage and various atrocious acts?

A No, nothing of that kind at all. Where you are

1 just accusing these good foreign members, well, that is
2 too bad. Well, you see they out of humanity formed a
3 safety zone. That is concerned by the Chinese and also
4 by the Japanese, the same word, although I understand you
5 haven't given a public announcement, acknowledgment. Now,
6 simply because if you want fighting outside of the safety
7 zone, not in the safety zone, that is all what they
8 wished. And also this is simply an act out of humanity.
9 And also you have to understand this also: There are not
10 very many foreign members, foreign friends, in the city
11 at a time when -- on December. And also another thing,
12 the safety zone, the area of it, is very small, it is
13 not very big. Now, they are not supposed to guard against
14 any outrages of the Chinese because they know that the
15 Chinese -- Nanking is a big city, they can get out of
16 the city, and also get in a certain part of the city
17 without coming into the zone.
18 Q Do you know that when the Chinese troops capture
19 a city or flee from a city they usually cause wanton
20 destruction, pillage and set fires?
21 THE MONITOR: Correction: Do you know that
22 Chinese troops, when they flee, they occupy a city, ~~er~~
23 when they are fleeing from a city after defeat, indulge
24 in arson, or setting of fires, raping and pillage?
25 A Well, I have not known any soldiers, Chinese

soldiers, doing that in time of peace when there is no resistance. And the Chinese soldiers were in the city before the Japanese came in and we all lived peacefully and quietly and no atrocities has been reported on such a large scale. And what I told in the morning is that the Japanese after conquering the city, taking the city, and there is no resistance whatever, the city is in their hands and the peoples are under their control; then at that time, only at that time, there is atrocities going on.

Q You are stating things which are extraneous to the question. For example, like in the second year of Showa, or 1927, with respect to the so-called Nanking Incident, Chinese troops attacked buildings belonging to the British, the Americans and the Japanese, and assaulted them, and they also pillaged and raped. But do you not know of the Chinese custom whereby Chinese troops when they occupy a city, or flee from a city, they usually indulge in pillage and rape?

A Well, what you have just said does not correspond to the actual situation in Nanking. Well, I admit maybe only a few instances in time of trouble, but what I am driving at, you say with the Chinese soldiers in the city they do the same thing. But the Chinese soldiers were in the city before the Japanese came in. That is

one thing. There is no atrocities of that kind in the city at that time.

Then, after the Japanese came into the city and took the city, the Japanese did all those atrocities and the Japanese authorities did not try to stop them although the city was taken after a few days and severa weeks. Not a single proclamation, not a single public notice put on the street to stop all these atrocities. Also we in the International Committee, and also the Chinese, repeatedly complained to your consulate, to the head of the Special Service, and later on when the local self-government was formed again we repeated these things through our local self-government to your embassy and to the commander-in-chief's office, but not a single proclamation has been made prohibiting the Japanese from raping, looting and killing, and also do all sorts of things.

In 1937 -- I haven't finished yet -- in 1937, and again in 1938, and in 1939 Japan has sent special men to go into China and find out, investigate these atrocities, whether they are real; whether they are true, and how far, and I have complained at least to one bishop, and one national YMCA leader, and one parliament member, and several pastors, and I told them the same thing.

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THE PRESIDENT: Put the light up. Don't be so slow, please.

A (Continuing) And no effective measures have been taken to prevent them.

THE PRESIDENT: You must exercise closer supervision over the witnesses. The witness must endeavor to keep calm and be satisfied to answer the questions.

MR. ITO: Mr. President, I am asking this witness about the behavior of the Chinese soldiers. The witness is replying with respect to only Japanese soldiers.

THE PRESIDENT: Translate that.

THE INTERPRETER: Mr. President, I am asking the witness with respect to the behavior of the Chinese soldiers. The witness is answering with respect to the Japanese soldiers.

THE PRESIDENT: Yes. I must remind you that rape and the murder of women could never be just reprisals. You are assuming that, if the Japanese did the things said to be done by the witness, they were just reprisals. Rape and the murder of women and such like things could never be just reprisals, and it is useless to continue your cross-examination along those lines.

Q Mr. Witness, you stated this morning that there were no Chinese soldiers in refugee camp; is this true?

A Yes, no armed soldiers. I also made the statement that the rule of the International Committee is not to let armed soldiers -- armed military men to get into the zone. If they want to get into the zone, they have to disarm.

Q Do you know that when the Chinese soldiers are defeated in battle and flee they usually hide and take off their clothes and become ordinary civilians, and when there is the chance, they become plain clothes soldiers?

THE MONITOR: Correction: Are you aware of the fact that Chinese soldiers, when they are defeated in battle, try to flee, and, when they cannot find way of fleeing, they hide their arms, and so on, and so forth?

THE PRESIDENT: A better way to put the question would be: Is it a fact? However, that is a trifle.

Q Are there any such facts?

A There might be; but, still, you see, we consider them as civilians before they gather themselves together in open resistance. If they are not, they

are civilians same as we are here now.

Q Then, with respect to the refugee camp which you were in charge of, were there not many plain clothes soldiers like that?

A No, we do not have many, and we could not have plain clothes soldiers. As soon as they have thrown down their arms, we don't consider they are soldiers.

MR. ITO: As far as my competency is concerned, I cannot get the facts or the truth from this witness, and so I regret that I'll have to terminate here.

THE PRESIDENT: You must not reflect on the witness. We may have to deal with you if you do.

Is there any further cross-examination?

MR. WARREN: There is not, your Honor.

(Whereupon, the witness was excused.)

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THE PRESIDENT: I think this is a convenient break. We will recess now for fifteen minutes.

(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 Tribunal is now resumed.

THE PRESIDENT: Mr. Sutton.

MR. SUTTON: If it please the Tribunal, the prosecution desires to call as its next witness Shang Teh Yi, a citizen of the Republic of China, who does not speak the English language.

MARSHAL OF THE COURT: Mr. President, the witness is in court and will now be sworn.

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S H A N G T E H Y I , called as a witness on behalf of the prosecution, being first duly sworn, testified as follows:

MR. SUTTON: May it please the Tribunal, we desire to offer in evidence International Prosecution Section document No. 1735, and ask that it be given an exhibit number in this case.

CLERK OF THE COURT: Document 1735, Exhibit No. 206.

THE PRESIDENT: Admitted.

(Whereupon, prosecution's Exhibit No. 206 was received in evidence.)

DIRECT EXAMINATION

BY MR. SUTTON:

Q What is your name?

A Shang Teh Yi.

Q And where do you live?

A No. 6 Wu-Chien Road, Nanking.

Q Did you sign the paper which you have before you, which is now marked Exhibit No. 206 in this case?

A Yes.

Q Are the facts stated therein true and correct?

A Yes, they are true.

MR. SUTTON: I now ask permission to read the statement to the Court. (Reading)

"NAME: Shang Teh Yi
Address: No. 6 Wu-Chien-Ting, Tsai-Chieh-Kia, Sun-Chow-Lu, West City, Nanking.

Age: 32
Native: Nanking
Profession: Retail Trade
Factual Account:

"I lived at No. 1 Hua-Sin-Hsiang, Shanghai Road (in the Refugees' Zone) in 1937. At about 11 a.m., 16 December of that year, I was arrested by Japanese soldiers (presumbly of the NAKASHIMA Unit). Arrested at the same time were my elder brother, Teh Jen, formerly secretary at Kiashang Airfield Station, my cousin Teh Kin, formerly in the silk trade, and five other neighbors whose names were unknown to me. Each two of us were bound together by a rope fastening our hands, and sent to Shiakwan, on the bank of the Yangtze River. More than 1,000 male civilians were there and were all ordered to sit down, facing more than ten machine-guns about 40 or 50 yards in front of us. We sat there for more than an hour. At about 4 o'clock, a Japanese Army Officer came by motor car, and he ordered the Japanese soldiers to start machine-gunning us.

"We were ordered to stand up before they did the shooting. I slumped to the ground just before the firing started, and immediately I was covered with

corpses and fainted.

"After approximately 9 p.m., I climbed out from the piles of corpses and managed to escape and go back to my house."

(Signed) "Shang Teh Yi"
Date: 7 April 1946

MR. SUTTON: May it please the Tribunal, the witness is offered for cross-examination.

MR. BROOKS: No cross-examination on the part of the defense.

MR. SUTTON: May it please the Tribunal, the prosecution desires to call as its next witness, Wu Chang Teh, a citizen of the Republic of China, who does not speak the English language.

THE PRESIDENT: The witness now in the box may go.

(Whereupon, the witness was excused.)

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W U C H A N G T E H , called as a witness on behalf of the prosecution, being first duly sworn, testified as follows:

MR. SUTTON: I offer in evidence, and ask that it be marked as an exhibit, International Prosecution Section document No. 2119.

CLERK OF THE COURT: Prosecution document No. 2119 received as Exhibit No. 207.

THE PRESIDENT: Admitted.

(Whereupon, prosecution's Exhibit No. 207 was received in evidence.)

DIRECT EXAMINATION

BY MR. SUTTON:

Q What is your name?

A My full name is Wu Chang Teh.

Q And where do you live?

A No. 98 A Tan-fen chow, Nanking.

MR. SUTTON: May I ask the Tribunal -- I failed to make a note of it -- the exhibit number assigned to document No. 2119?

CLERK OF THE COURT: No. 207.

MR. SUTTON: Thank you.

Q You have before you a paper marked Exhibit 207 in this case. Will you please state whether or not that is your signature to that paper?

A Yes, it is my signature.

Q Are the facts stated in that paper -- marked Exhibit 207 in this case -- true and correct?

A Yes, they were true.

MR. SUTTON: I now ask permission to read the document into the evidence.

THE PRESIDENT: Yes.

MR. SUTTON: (Reading)

"I, Wu Chang Teh, do certify as follows:

"I am 38 years old and am a food merchant in the city of Nanking, China. In December 1937 and for a number of years prior to that time I was a policeman in the city of Nanking. I was never a member of the Chinese Army. After the fall of the city of Nanking I along with some three hundred other policemen was at the Judicial Yuan. We were not armed as all of our arms had been turned over to the International Committee for the Nanking Safety Zone. The Judicial Yuan was a refugee camp and there were many civilians there in addition to the policemen. On Dec. 15, 1937 the Japanese soldiers came to the Judicial Yuan and ordered all the men there to go with them. Two members of the International Committee told the Japanese that we were not former soldiers but they ordered these two men away and forced us to march to the main west gate of the city.

"When we got there we were ordered to sit down just inside the gate. Machine guns were set up by the Japanese soldiers just outside of and on either side of the gate. There is a canal outside this gate and a steep slope leading down to it. There is a bridge across the canal but it is not directly opposite the gate.

"These persons in groups of over one hundred at a time were forced to go through the gate at the point of bayonets. As they went outside they were shot with machine guns and their bodies fell along the slope and into the canal. Those who were not killed by the machine gun fire were stabbed with bayonets by the Japanese soldiers. About sixteen groups each containing more than 100 persons had been forced through the gate ahead of me and these persons were killed.

"When my group of something over 100 was ordered to go through the gate I ran as fast as I could and fell forward just before the machine guns opened fire, and was not hit by machine gun bullets and a Japanese soldier came and stabbed the bayonet in my back. I lay still as if dead. The Japanese threw some gasoline on some of the bodies and set them afire and left. It was then beginning to get dark. The bodies scattered along the bank and no gasoline was

thrown on me. When I saw the Japanese soldiers had left I climbed out from among the dead bodies and went into a vacant house where I stayed for 10 days. Some one near there sent me a bowl of porridge each day. I then made my way into the city and went to the University Hospital. Dr. Wilson attended me. I stayed in the hospital for more than 50 days and when I got out I went to my native home in Northern Kiangsu. On the occasion I have described around two thousand persons former policemen and civilians were killed.

"The foregoing statement is true and I make affidavit to it this 18th day of June 1946 and hereto affix my signature.

"Signed in Chinese characters by Wu Chang Te."

Q I would like to ask the witness if he will exhibit to the Court the wound in his back, which the affidavit states he received at the hands of a Japanese soldier?

MR. LOGAN: If the Tribunal please, the defense objects to any such exhibition.

THE PRESIDENT: The defense is not really concerned. We do not wish to see the wounds, unless the defense questions their existence.

MR. SUTTON: The defense may cross-examine the witness.

MR. BROOKS: No questions, your Honor.

THE PRESIDENT: That will do, witness.

(Whereupon, the witness was excused.)

MR. SUTTON: Colonel Morrow will present the next witness on behalf of the prosecution.

THE PRESIDENT: Colonel Morrow.

COLONEL MORROW: Has the witness been sworn?

MARSHAL OF THE COURT: No, sir, he has not, Colonel Morrow. Have you called him officially as yet?

COLONEL MORROW: I will ask for Chen Fu Pao.

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C H E N F U P A O , called as a witness on behalf of the prosecution, being first duly sworn, testified as follows:

COLONEL MORROW: I desire to present the document No. 1742, if the Court please.

CLERK OF THE COURT: Prosecution's document No. 1742, received as Exhibit No. 208.

THE PRESIDENT: Admitted.

(Whereupon, prosecution's Exhibit No. 208 was received in evidence.)

DIRECT EXAMINATION

BY COLONEL MORROW:

Q I will ask the witness to give us his name.

A Chen Fu Pao.

Q What is your residence and where?

A No. 22 Pai Sha Road, Nanking.

Q I desire to hand to the witness an exhibit, being a statement in the Chinese language, and ask that he look over the same. I will ask the witness --

A This is a statement of mine.

Q Is that statement correct?

A Yes, it is correct.

COLONEL MORROW: I ask if I may read this statement, if the Court please, in the English language.

THE PRESIDENT: Yes.

COLONEL MORROW: (Reading)

"Statement of Chen Fu Pao.

"On the second day the Japanese were in Nanking, 14 December, they took thirty-nine from the Refugee Area. They were civilian men. They examined them, and those that had a hat mark on the forehead, or a callous spot on hands caused by handling a gun, were brought to a little pond, and taken out on the other side. I and another were put to one side, and the Japanese used light machine guns to kill the rest. There were thirty-seven who were killed in this way, and I saw this. Most of the people were civilians. I am a resident of Nanking and knew a number of these people to be civilians in Nanking. I know one in particular, was a policeman in Nanking. I was 18 at the time, and lived in Nanking. They were buried by the Red Swastika Society four months later and in the meantime the bodies were in a pond where they had been thrown. I helped throw the bodies in the pond; by order of the Japanese. This happened in the day time in the morning near the American Embassy.

"This was translated to me by Colonel Tu of the Chinese Army and is correct. The same day in the afternoon I saw three Japanese rape a dumb girl, 16 years of age, in a school house, in my presence.

"On 16th of December I was taken by Japanese

soldiers again, and also a lot of healthy young men and they put them in a crowd and Japanese soldiers wrestled with them and those that the Japanese could not defeat wrestling, they killed with the bayonet. I saw them kill one man for this reason. On the same day in the afternoon I was taken to Tai Ping road and saw three Japanese soldiers set a fire to two buildings, which were: one, a hotel, the other, a store or furniture shop. The names of the Japanese soldiers who set the fire are:

"UMAYAHARA and MURAKAMI of the Kuwata Regiment of the Mukai Unit.

"I saw another raping case by one Japanese soldier. The husband of the woman is a photographer. This happened in daytime, in Nanking, the 3rd after the Japanese entered Nanking. At that time I lived in the same house with this lady and a Japanese soldier came in, and drove all the men out of the apartment, there being four in the house, including the husband. I saw the Japanese soldier then go into a room with the lady, and close the door. I was in an adjoining apartment, and saw this. The lady was pregnant at the time. The soldier left in about ten minutes. I saw the woman leave the room at that time and she was weeping."

The statement is signed.

I will ask if there is any cross-examination, if the Court please.

MR. ITO: I am ITO, Kiyoshi, counsel for the defendant, MATSUI, Iwane.

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CROSS-EXAMINATION

BY MR. ITO:

Q In the third line of the Japanese text you say that thirty-nine men were dragged out and you say that they were all civilians. Then in the tenth line of the Japanese text you say that most of the people were civilians and then in the eleventh line you say that "I know that a number of these people were civilians." In the English version they are lines two, ten and eleven.

And then in the following line you say: "I know one in particular was a policeman in Nanking." In this way, concerning whether all these people were civilians or not, you have made four different statements. Which of these is true?

A The policeman I referred to was the policeman who was on duty before the occupation. Later he was a plain-clothes man civilian.

Q No, that is not the point. You have stated first that thirty-nine people were taken from the refugee area and that they were all civilians and then you say that most of them were civilians and then you say that some of them were civilians and then you say one you know in particular was a policeman. But which of these statements is true?

A They were all civilians in the refugees, all of these people. They were all civilians.

Q I cannot understand your answer. Did you get my question?

THE PRESIDENT: The answer is plain. He said they were all civilians. You must accept it.

Q Then when you say "most of them," or when you say "a number of them," are these phrases incorrect?

A Shall I repeat the story from the beginning?

THE PRESIDENT: No, we don't want that. I think you had better leave it at that. You can invite us to consider his affidavit and compare it with his evidence here.

Q In the third paragraph of the affidavit you state that Japanese soldiers set fire to some buildings and you have even given the names of the Japanese soldiers who did this. But do you know whether they did this because they were afraid of epidemics and were doing it as a measure to prevent the spread of epidemics?

A I don't know of that.

Q Next, you have stated that in the last part of your affidavit, that of a raping case by a

Japanese soldier, that the husband of the woman was a photographer, and that a Japanese soldier came in with the lady and that the lady was pregnant.

THE PRESIDENT: Can't you put a short question without a long introductory statement?

Q How did you know that she was pregnant at the time?

A We were living in the same house. After the Japanese left, the lady was weeping there so we, as neighbors, went in to console her.

Q Since it is natural that a woman with a husband should be pregnant, I shall not question you on this point further.

Turning to another point. In the middle of your affidavit you say "This was translated to me by Colonel TU of the Chinese Army and is correct." By this Colonel TU do you mean Colonel Tu Ying-Kuang?

A No. When I was relating the story to Colonel Morrow, this Colonel TU of the Seventh -- is that War Service Corps?

THE PRESIDENT: We have no time to waste on those things.

A When I was relating the story to Colonel Morrow, Colonel TU was our interpreter.

Q Since, according to the Japanese text, we

will have to interpret it in the following manner. That you, that Colonel TU explained this to you and that, therefore, you heard it from Colonel TU?

A No. As I told you, when I was relating the story to Colonel Morrow, this Colonel TU was interpreting for us. That statement, dated 7th of April, is in the office. You can look into that statement. I have given the name of the Japanese military company and the Japanese officer responsible for it.

THE PRESIDENT: Now we have heard enough about that.

MR. ITO: I conclude my cross-examination.

MR. BROOKS: No further cross-examining.

MR. SUTTON: May it please the Tribunal, we find ourselves in the position of having run out of witnesses. At the beginning of the afternoon session there were four witnesses in reserve. The others have been sent for but have not yet arrived at the witness room.

THE PRESIDENT: Well, in the circumstances, we will adjourn now until half past nine on Monday morning.

(Whereupon, at 1548, an adjournment was taken until Monday, 29 July, 1946 at 0930.)