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極東国際軍事裁判速記録

(英文)

第21,006頁から

第21,499頁まで

昭和22年4月30日から

昭和22年5月5日まで

国立公文書館

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分類	法務省 平成11年
排架番号	4 A 18 2286

法務大臣官房司法法制調査部

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審理 段階	弁護側立証 (支那関係)	
年月日	午 前	午 後
22-4-30	21.096~21.129	21.130~21.180
5-1	21.181~21.231	21.232~21.279
2	21.280~21.324	21.325~21.378
5	21.379~21.437	21.438~21.499
備 考	<p>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。</p> <p>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。</p>	

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30 April

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30 APRIL 1947

I N D E X

of

EXHIBITS

<u>Doc. No.</u>	<u>Def. No.</u>	<u>Pros. No.</u>	<u>Description</u>	<u>For Ident.</u>	<u>In Evidence</u>
1058	2514		The Note from Consul KAWAI at Shanghai to Foreign Minister ARITA, dated 24 December 1936		21104
			<u>MORNING RECESS</u>		21114
			<u>NOON RECESS</u>		21129
1137	2515		Affidavit of OKAMOTO, Suemasa		21145
1063	2516		Minutes of the Joint Commission held at Shanghai Municipal Council on 12 August 1937		21176
1064	2517		Corrected Minutes of a Meeting of the Joint Commission held at the Consulate-General for France on 23 June 1937		21177

30 APRIL 1947

I N D E X
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Direct by Mr. Roberts

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AFTERNOON RECESS

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Direct by Mr. Roberts (cont'd)

21154

1 Wednesday, 30 April 1947

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

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

11 - - -
12 Appearances:

13 For the Tribunal, same as before with the
14 exception of: THE HONORABLE MR. JUSTICE NORTHCROFT,
15 not sitting.

16 For the Prosecution Section, same as before.

17 For the Defense Section, same as before.

18 - - -
19 (English to Japanese and Japanese
20 to English interpretation was made by the
21 Language Section, IMTFE.)
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1 MARSHAL OF THE COURT: The International
2 Military Tribunal for the Far East is now in session.

3 THE PRESIDENT: All the accused are present
4 except OKA, HIFANUMA and TOGO who are represented
5 by counsel. The Prison Surgeon at Sugamo certifies
6 that the three named accused are too ill to attend
7 the trial today. The certificate will be recorded
8 and filed.

9 Mr. Cunningham.

10 MR. CUNNINGHAM: I now present defense
11 document No. 907. This is a government document
12 filed in the archives of the Japanese Foreign
13 Office under the heading of "Miscellaneous Matters
14 in Relation to Communist Bandits in Various Districts
15 in China," a telegram sent by Consul-general KAWAGOE
16 in Tientsin to Foreign Minister HIROTA, dated
17 July 23rd, 10th Year of Showa, that is 1937. It is
18 intended to show by this document the disastrous
19 conditions of Bolshevization in the northern part
20 of Shensi Province and its menace to Japan.

21 THE PRESIDENT: Brigadier Quilliam.

22 BRIGADIER QUILLIAM: May it please the
23 Tribunal, the prosecution object to the introduction
24 of this document. It is submitted that it comes
25 fully within the ruling given by the Tribunal yesterday

1 afternoon. It merely deals in a general way with
 2 Communistic activities and has no reference whatever
 3 to Japan.

4 MR. CUNNINGHAM: It seems reasonable to us,
 5 your Honors, that when one hundred thousand citizens
 6 of a neighboring country are killed in banditry
 7 and revolution that the whole world is concerned
 8 and is justified in taking an interest; that is,
 9 if the right of intervention for national security
 10 exists at all.

11 THE PRESIDENT: This is clearly within
 12 our rule. The objection is upheld and the document
 13 rejected. That is a majority decision.

14 MR. CUNNINGHAM: I now present defense
 15 document No. 906. This is a government document
 16 filed in the archives of the Japanese Foreign Office
 17 under the heading of "Miscellaneous Matters in
 18 Relation to Communist Bandits in Various Districts
 19 in China," a telegram sent by Secretary MUTO in
 20 Peiping to Foreign Minister HIROTA, dated the 31st
 21 of March, 1936. It is intended to show by this
 22 document the actual conditions surrounding the cam-
 23 paign by the Nanking Government against the Communist
 24 Army which invaded Shensi and the communist renace
 25 in North China.

1 THE PRESIDENT: Brigadier Quilliam.

2 BRIGADIER QUILLIAM: May it please the
3 Tribunal, the prosecution objects to this document
4 which, it is submitted, is on all fours with the
5 document which has just been rejected. It contains
6 no reference at all to Japan.

7 MR. CUNNINGHAM: Future documents will
8 show that these conditions affected Japanese interests
9 and policy. I call your attention to the accused
10 named in the document.

11 THE PRESIDENT: The accused HIBOTA. If
12 and when he gives evidence, this document may be
13 tendered by way of explanation. The objection is
14 upheld and the document rejected.

15 MR. CUNNINGHAM: I now offer defense docu-
16 ment 693 for the consideration of the Tribunal,
17 which is a chart which shows the organization of
18 the communist activities in North China and the
19 vast network which Japan was forced to combat.
20 This document shows forcefully the necessity for
21 Japanese resistance to the movement.

22 THE PRESIDENT: This document is 963,
23 although it appears as 693 on the exhibit. The
24 list may be wrong, of course.

25 MR. CUNNINGHAM: The list is wrong, but the

1 commentary was correct.

2 THE PRESIDENT: Brigadier Quilliam.

3 BRIGADIER QUILLIAM: May it please the
4 Tribunal, the prosecution object to this document
5 also on precisely the same ground as in respect
6 of the two previous documents. The document merely
7 purports to show the organization of the Communist
8 Party in North China and contains no reference
9 whatever to Japan.

10 MR. CUNNINGHAM: I suggest, your Honors,
11 that these documents are foundation documents for
12 use in the Russian phase of the case for the
13 explanation of the activities of the Japanese
14 Government in relation to the Anti-Comintern Pact
15 and will be referred to from time to time in the
16 other phases of the case; and certainly it is only
17 a matter of order of proof, a matter of orderly
18 presentation of the information, and we consider that
19 it is highly desirable to present the matter as
20 a general issue rather than have the individual
21 defendants give it piecemeal. And these documents
22 form a foundation for the general defense of several
23 of the defendants who are involved in this particular
24 issue.
25

THE PRESIDENT: The document is struck by the

1 Court's ruling by which you are bound. These protests
2 are out of order. I hope you will cease to make
3 them. The objection is upheld and the document
4 rejected.

5 I tell you for the third time: When the
6 individual accused are giving evidence, they may
7 well rely on documents of this kind. At least they
8 may tender them by way of explanation.

9 MR. CUNNINGHAM: Well, that was our purpose
10 in presenting them now, to avoid that duplication
11 of effort; and this will involve us going all through
12 these matters again and reorganizing our order of
13 proof.

14 THE PRESIDENT: You are still protesting.

15 MR. CUNNINGHAM: Well, I feel it is my duty
16 to point out the impracticability of the suggestion
17 that has been offered and I can't help but --

18 THE PRESIDENT: You are still protesting.
19 I hoped you would cease to protest.

20 MR. CUNNINGHAM: Now is it your suggestion
21 that I merely offer the documents now and not
22 urge their admission?

23 THE PRESIDENT: Nothing of the sort. I
24 ask you to tell us whether, in your opinion, any
25 particular document you tender is within or without

1 the rule we have laid down and leave it at that.

2 MR. CUNNINGHAM: Well, the best I can do,
3 your Honor, is read the recommendation of the party
4 who proposes the document for what they suggest it
5 relates to as a matter of probative value in the
6 case.

7 THE PRESIDENT: It is your clear duty
8 when you tender a document to express your view
9 as to whether it is or is not within the rule,
10 but not to protest against the rule.

11 MR. CUNNINGHAM: The defense document
12 No. 1213 is offered for the purpose of showing that
13 the activities of the Communist Party were continuous
14 and were directed towards the development of
15 communism in other countries than Russia and that
16 other nations besides Japan at that time were
17 resisting the action of the Seventh All-World Congress
18 of the Communist International. These are excerpts
19 of August 25th and 27th of 1936 of the year of the
20 signing of the Anti-Comintern Pact by Japan and
21 Germany.

22 MR. COMYNS CARR: Your Honor, from what
23 my friend has just said it is quite obvious that
24 this document is equally within the Court's ruling
25 with all the others that have been tendered.

1 THE PRESIDENT: It clearly is. The objection
2 is upheld and the document rejected.

3 MR. CUNNINGHAM: Defense document 1058, an
4 official communication of the Japanese Foreign Office
5 addressed to Foreign Minister ARITA by KAWAI at
6 Shanghai, is introduced to show the policy of the
7 communists towards the Japanese after the Sian
8 Incident and establishes the fact of a concerted
9 campaign against Japanese interests and nationals.

10 THE PRESIDENT: Mr. Comyns Carr.

11 MR. COMYNS CARR: If it please your Honor,
12 this document also, in my submission, is obviously
13 within the Court's ruling. It is true that it
14 mentions the proposed formation of an anti-Japanese
15 front to resist Japan through compromise with com-
16 munism; but the ruling of the Court was that it
17 would only consider documents which established as
18 facts positive action against Japanese, their
19 nationals or property. And this purports to do
20 nothing of the kind. It is further open to the
21 objection that it is based upon surmise and reports
22 from unnamed sources and consists mainly of a
23 quotation from a document which is neither produced
24 nor accounted for.
25

1 MR. CUNNINGHAM: I submit that this is a
2 document which contains the type of information
3 upon which the leaders of the Japanese Government
4 based their action and for which they are now being
5 charged in the indictment and by the evidence of the
6 prosecution.

7 THE PRESIDENT: By a majority the Court
8 overrules the objection and admits the document.

9 CLERK OF THE COURT: Defense document 1058
10 will receive exhibit No. 2514.

11 ("Thereupon, the document above referred
12 to was marked defense exhibit 2514 and received
13 in evidence.)

14 MR. CUNNINGHAM (reading): "TO: Foreign
15 Minister ARITA, Hachiro.

16 "FROM: Consul-General KAWAI, Tatsuo at
17 Shanghai.

18 "SUBJECT: Attitude of 'Save-the-Nation'
19 organizations towards the Sian Incident.

20 "Both the Chinese and foreigners are watch-
21 ing with deep concern the development of the Sian
22 Incident which broke out on December 12th. As
23 Chang 'sueh-liang and his followers' anti-Japanese
24 policy consists of 'resistance to Japan through
25 compromise with communism and union with Soviet

1 Russia', the attention of the people has also been
2 turned to the movements of the Federation of 'Save-
3 the-Nation' organizations throughout the country
4 and the 'Save-the-Nation' organizations under it,
5 which advocate the same policy and have been making
6 frantic efforts to organize an anti-Japanese united
7 front through the cooperation of political parties
8 and groups.

9 "But perhaps because the highest leaders
10 of the Federation of 'Save-the-Nation' organizations
11 throughout the country are under wholesale arrest
12 (top-secret document No. 1557, dated December 19)
13 no activities by such organizations have since been
14 apparent for several days. As the facts about the
15 Sian Incident became gradually clear, their attitude
16 seems to have been decided on, for they issued a
17 few days ago, under date of December 15, 'The
18 Emergency Declaration concerning the Present Situa-
19 tion', the translation of which is as attached here-
20 to.

21
22 "The main points of the opinion of the 'Save-
23 the-Nation' organizations concerning the Sian Inci-
24 dent are as follows:

- 25 "1. Cessation of civil strifes.
"2. Suspension of the drive against the

1 communists.

2 "3. Formation of a united anti-Japanese
3 front and putting an end to the Chiang-Chang
4 rivalry.

5 "4. Peaceful settlement of the Sian Inci-
6 dent.

7 "5. Strengthening of hostilities against
8 the Japanese forces in Suiyuan.

9 "And it seems to be their object in view
10 to put an end to civil strifes by carrying on hos-
11 tilities against the Japanese. While keeping a
12 vigilant watch over the movements of the 'Save-the-
13 Nation' organizations, we hasten to report on the
14 present situation as above."

15 The defense now offers defense document
16 902, which is a telegram directed to Foreign Minis-
17 ter ARITA from Ambassador KAWAGOE, dated 13 January
18 1937, showing that the Communist Party were enforc-
19 ing their policy by force of arms in carrying out
20 their anti-Japanese program. This is a Foreign
21 Office document and ties in with the events leading
22 up to the more serious conflicts between Chinese and
23 Japanese forces.

24 MR. COMYNS CARR: Your Honor, the prosecu-
25 tion objects to this document as being within the

1 ruling of yesterday, which covered not only docu-
2 ments dealing exclusively with communist activities
3 within China but also those which fell short of
4 offering proof of active hostilities.

5 My friend is wrong in describing this docu-
6 ment as proving hostility against anybody, still
7 less against the Japanese. In fact, it merely
8 refers to some movements of small bodies of troops
9 within Chinese territory; and it is further open to
10 the objection that it appears to be based upon an
11 unproduced newspaper report.

12 MR. CUNNINGHAM: I invite your attention to
13 paragraph 3, which seems to bear directly upon the
14 contents of the last document read and which forms
15 the basis for the documents to come which relate
16 to the resistance of the communists -- the activities
17 of the communists against the Japanese.

18 THE PRESIDENT: By a majority the objection
19 is upheld and the document rejected.

20 MR. CUNNINGHAM: I now offer defense docu-
21 ment 906, a telegram from Consul-General MURA to
22 Foreign Minister HAYASHI, dated 21 February 1937,
23 which shows the change in the attitude of the
24 Communist Party towards Chiang Kai-shek after the
25 Sian Incident. It also shows that the kidnapping

of Chiang Kai-shek was carried out according to instructions from the communists. The purpose of this document is to show the significance of Japanese relations on the conditions of Chiang Kai-shek's release.

THE PRESIDENT: Mr. Comyns Carr.

MR. CUNNINGHAM: And I want to call attention to "d" on page 3, which sets out that one of the conditions of the release of Chiang Kai-shek was that they carry out the anti-Japanese movement.

MR. COMYNS CARR: Your Honor, my friend seems to have forgotten the words of the ruling given by the Tribunal yesterday, on page 21,081 of the record, and I would just like to read them again.

THE PRESIDENT: He knows them, Mr. Carr; evidence of attack on Japanese persons or Japanese property.

MR. COMYNS CARR: In addition to that main objection to this document, your Honor, there is this one: It is entirely based upon surmise. Your Honor will observe the words "there is room to believe" in the third line of the document, and the surmise, in its turn, is based, as appears from the last two and a half lines on page 1, on a report

1 from an unnamed secret agent of the consulate of
2 something which the agent heard from an unnamed
3 member of the Communist Party.

4 MR. CUNNINGHAM: The strange part of this
5 matter is, your Honor, what has been expressed in
6 this document has been confirmed in history, and
7 the policy of the Japanese Government had to be
8 determined from the information received from
9 reporters on the spot, from the best information
10 available.

11 From the evidence which we offered yester-
12 day and the day before we described the activities
13 of the Chinese and the anti-Japanese movement, and
14 it was specifically an attack against Japanese
15 interests and Japanese nationals, and therefore we
16 must allow that "d" carries that strong implication.

17 THE PRESIDENT: By a majority the objec-
18 tion is upheld and the document rejected.

19 MR. CUNNINGHAM: Defense document 911, a
20 telegram from Ambassador KAWAGOE to Foreign Minister
21 SATO, on March 5, 1937, is introduced for the purpose
22 of showing that the communist wing openly asked for
23 war preparations against Japan at a time when both
24 nations were carrying on diplomatic relations. It
25 relates to the source of the troubles then and the

1 trouble now, not only in China but in many other
2 parts of the world.

3 THE PRESIDENT: Mr. Comyns Carr.
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THE PRESIDENT: Mr. Comyns Carr.

MR. COMYNS CARR: This document, your Honor, offends against two rulings of the Court. The first is that it consists almost entirely of a document which is not produced, nor is its absence accounted for.

The fifth line says that "The full text of the alleged document is as follows," and then proceeds to set out what is alleged to be the text of the document.

The second is that although it speaks of a united national front against Japan and completing speedily all preparations for war against Japan, it falls short of purporting to record any actual attack.

THE PRESIDENT: Mr. Comyns Carr.

MR. COMYNS CARR: Your Honor, I only desire to add this: My friend refers to preparations advocated by the Chinese communists or carried out, even carried out, as though they were something which could possibly justify a Japanese attack.

Having regard to the actions of Japan already proved in this case, in my submission preparations for defending themselves against further actions of the same kind are not only natural and proper, but cannot possibly be made the excuse for such further Japanese actions themselves.

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MR. CUNNINGHAM: I submit that the prosecutor has gone beyond the record in assuming matters proven that are only matters of evidence. But I suggest that if this document does not bear upon this subject, then it would be necessary to have some instructions on what type of evidence is to be introduced for the purpose of showing the basis upon which the Japanese Government based its policy towards Japan and creating the necessity of protecting their interests wherever they were.

1 THE PRESIDENT: Now, our ruling speaks of
2 attacks, but if you have documents showing threats
3 of attack on Japanese nationals and property you are
4 invited to tender them. As you know, the definition
5 of assault includes a threat of assault by a person
6 having a present ability to effect his purpose.

7 MR. CUNNINGHAM: I refer to No. 4 on page 3,
8 which says "to complete speedily all preparations for
9 war against Japan." We have been led to believe that
10 preparation for war is one of the vital elements con-
11 tested in this case, and it is just as much a defense
12 for the Japanese as it is a charge for any of the com-
13 plaining nations.

14 THE MONITOR: Mr. Cunningham, may I have a
15 little explanation? We are not sure as to the meaning
16 of the word "defense." Do you mean defense in the
17 sense that Japan acted in self-defense, or do you mean
18 defense in this trial?

19 MR. CUNNINGHAM: A contention of the defense.

20 THE PRESIDENT: The Court proposes to adjourn
21 for a few minutes to consider a certain point.

22 MR. COMYNS CLERK: Before the Court adjourns,
23 might I just, in view of my friend's remark, draw
24 attention to the opening paragraph of the alleged
25 telegram quoted, which states that the object of the

1 preparations is "to protect ourselves from foreign
2 invasions."

3 THE PRESIDENT: We will recess for some minutes.

4 (Whereupon, at 1020, a recess
5 was taken until 1100, after which the
6 proceedings were resumed as follows:)

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

3 THE PRESIDENT: In addition to the documents
4 which the Court indicated yesterday it would receive,
5 namely, documents which were evidence of actual attacks
6 by communists and others on Japanese nationals and
7 property, the Court has decided to receive evidence
8 of threatened attacks of that character, namely, where
9 the threat is of a serious nature, where it is immi-
10 nent, and where the persons making it have present
11 ability to give effect to it -- where they have the
12 ability to execute it.

13 The document last tendered is not of that
14 character nor does it contain evidence of any actual
15 threat--attack. The objection is upheld and the
16 document rejected. That is a decision of the majority.

17 MR. CUNNINGHAM: Defense document 913,
18 March 16, 1937, is a telegram to the Foreign Minister
19 SATO which shows the five points in the program of the
20 Chinese communist party. Future documents will show
21 the effect which these party principles had upon
22 Japanese-Chinese relations.

23 MR. COMYNS CARR: Your Honor, it is perfectly
24 obvious in our submission that this document could not
25 possibly come within the ruling just delivered by the

1 Court or the ruling delivered yesterday. It is a
2 report based on information from an unnamed source
3 and if your Honor looks at the paragraph numbered --
4 it says that certain people met together and then
5 decided upon the following future course for the
6 Chinese communist party; and if you look, paragraph
7 1 speaks of intention under the guise of an anti-
8 Japanese campaign to improve the organization of the
9 party. Then it refers to forming a popular front
10 which in paragraph 4 is said to be for the purpose
11 of realizing its demands in the interests of the
12 masses as a prerequisite for the anti-Japanese
13 mobilization; and in paragraph 5, that the object of
14 the organization is to be one to oppose Japanese
15 imperialism. In our respectful submission the tender-
16 ing of such a document immediately after the deliver-
17 ing of the Court's ruling shows a complete disregard
18 for it.

19
20 THE PRESIDENT: I suppose they want a record
21 of the documents they have tendered.

22 MR. CUNNINGHAM: Not only that, your Honor,
23 but I feel that the names of these leaders will become
24 more prominent as our evidence is revealed and that
25 each of these documents dovetails into the ones that
follow to show that the communist armed forces worked

1 out a program which developed in these conferences
 2 beforehand. I suggest that no one document can carry
 3 out and prove the picture which we wish to present to
 4 this Court as relating to the situation as it existed
 5 but by taking each document with the one before and
 6 the one after you will find that it makes a complete
 7 picture which shows one of the underlying causes which
 8 created the Sino-Japanese conflict.

9 THE PRESIDENT: By a majority the Court
 10 upholds the objection and rejects the document.

11 MR. CUNNINGHAM: Defense document 912 is
 12 a telegram from MIURA, the Consul-General, to the
 13 Foreign Minister SATO on the 13th of March 1937. It
 14 is now offered to show the anti-Japanese program of
 15 the Chinese communist group after the Sian Incident.
 16 This is an official document of the Japanese Foreign
 17 Office and relates to the underlying causes of
 18 Japanese-Chinese conflicts. Its probative value is
 19 augmented by the fact that it ties in with the docu-
 20 ments preceding and those to come and is part of a
 21 series of telegrams relating to the situation as it
 22 existed at the time.
 23
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1 MR. COMYNS CARR: Your Honor, we object.

2 THE PRESIDENT: Mr. Comyns Carr.

3 MR. COMYNS CARR: We fail to see how the
4 probative value of a document can be increased by
5 its tying in with one already rejected. There is
6 nothing whatever in it, in our submission, which
7 comes anywhere near the ruling of this Tribunal.
8 The nearest, perhaps, is the paragraph numbered
9 "c" which speaks of the reorganization of the
10 Red Army into the anti-Japanese. I mention that
11 to show how far away it is from the ruling of the
12 Tribunal.

13 We also desire to press the other ground
14 of the objection, which I have mentioned several
15 times; namely, that although included in a consular
16 report it is the merest gossip. The whole of it
17 is introduced by the words, "According to the in-
18 formation of the Communist Party at Sian, it seems."

19 MR. CUNNINGHAM: The suggestion that
20 page 3 has a direct bearing upon the situation
21 which has been described, "Establishment of the
22 Red Army bases," and so on, comes within this rule,
23 and (g) on page 3 seems to come within the classi-
24 fication of documents which have been suggested for
25 admission.

THE PRESIDENT: By a majority the Court

1 upholds the objection and rejects the document.

2 MR. CUNNINGHAM: Defense document 901 is
3 introduced for the purpose of showing that on
4 April 2, 1937, detailed reports were coming into the
5 Japanese Foreign Office concerning the rapid ex-
6 pansion of anti-Japanese allied armies against
7 which it was necessary for the Japanese to protect
8 themselves. This document forms part of the basis
9 upon which the policy of the Japanese Government
10 was based, which policy these defendants are charged
11 with enforcing. If the Japanese forces and interests
12 were in China under treaty rights, as we have shown,
13 any activity against them is a violation of inter-
14 national law if committed on foreign soil. That is
15 our contention.

16 THE PRESIDENT: Mr. Comyns Carr.

17 MR. COMYNS CARR: Your Honor, this document
18 is subject to both the objections of the previous one.
19 It is again mere gossip, and as to its subject matter
20 all it mentions is that certain Red armies have now
21 been incorporated in the National army as anti-
22 Japanese allied armies and will receive certain
23 military expenses.

24 As to the remarks with which my friend
25 introduced the document, we have long since realized

1 the Japanese contention that anybody who resisted
 2 Japanese aggression was guilty of an unlawful act,
 3 but that does not bring it within the ruling of the
 4 Tribunal.

5 MR. CUNNINGHAM: I ask the Tribunal to
 6 remember the remark of the prosecution that the
 7 diplomatic reports are mere gossip, because a great
 8 deal of their evidence that they are holding against
 9 these accused bears that classification.

10 THE PRESIDENT: By a majority the Court
 11 holds the objection and rejects the document.

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1 MR. CUNNINGHAM: Defense document 915,
2 some series as document No. 901, which verifies
3 and expands the reports previously offered, to show
4 the continued action of the Communist Party in the
5 anti-Japanese campaign.

6 THE PRESIDENT: Mr. Comyns Carr.

7 MR. COMYNS CARR: In the submission of
8 the prosecution, the document verifies nothing.
9 When I described the previous document and this one
10 as mere gossip, I did not mean, as my friend very
11 well knows, that that was because they were diplo-
12 matic reports.

13 THE PRESIDENT: We thoroughly understood
14 that.

15 MR. COMYNS CARR: This one begins with the
16 words, "An influential communist here delivered us
17 information which, he said, was obtained from" a
18 certain bureau. "According to it, it is reported,"
19 and so on. On the main question, Japan is not men-
20 tioned once in it. It deals exclusively with in-
21 ternal, political and military reorganization in
22 China.

23 MR. CUNNINGHAM: I submit that when the
24 Chinese conflict is described, it certainly should
25 be pertinent to show the military activity in China

THE PRESIDENT: By a majority, the Tribunal upholds the objection and rejects the document.

MR. CUNNINGHAM: I now present defense document 898 which is a top secret document, dated 10 April, 1935 -- It happens to be here a little out of order -- addressed to Foreign Minister HIROTA from the Consul-General at Hankow, describing the plot of the Third Internationale. This document bears on the existence of the anti-Japanese feeling and the aggravation of it by the communist activities.

THE PRESIDENT: Mr. Comyns Carr.

MR. COMYNS CARR: Your Honor, this document is subject to both the same objections as before; that is to say, it is described as "information received by the police station of this consulate."

With regard to the Tribunal's recent ruling, it deals entirely with secret attempts to spread communism by propoganda, or alleged attempts,

1 as well as the preperation in Japan and as counter-
 2 measures, and that this evidence should be admitted
 3 for the purpose of showing what the Hapanese had
 4 to corbat.

5 THE PRESIDENT: By a majority, the Tri-
 6 bunal upholds the objection and rejects the docu-
 7 ment.

8 MR. CUNNINGHAM: I now present defense
 9 document 898 which is a top secret document, dated
 10 10 April, 1935 -- It happens to be here a little
 11 out of order -- addressed to Foreign Minister
 12 HIROTA from the Consul-General at Hankow, describ-
 13 ing the plot of the Third Internationale. This
 14 document bears on the existence of the anti-
 15 Japanese feeling and the aggravation of it by the
 16 communist activities.

17 THE PRESIDENT: Mr. Comyns Carr.

18 MR. COMYNS CARR: Your Honor, this docu-
 19 ment is subject to both the same objections as
 20 before; that is to say, it is described as "inform-
 21 ation received by the police station of this con-
 22 sulate."
 23
 24 With regard to the Tribunal's recent
 25 ruling, it deals entirely with secret attempts to
 spread communism by propoganda, or alleged attempts,

1 and the only reference to Japan is that it is
2 alleged that one of the persons so engaged was a
3 Japanese.

4 THE PRESIDENT: By a majority, the Tri-
5 bunal upholds the objection and rejects the docu-
6 ment.

7 MR. CUNNINGHAM: I now present defense
8 document 899. It is a government document filed
9 in the archives of the Japanese Foreign Office
10 under the heading of Miscellaneous Matters in
11 relation to communist bandits in various districts
12 of China, January '35. It is intended to show by
13 this document that the Soviet Union also guides
14 the Chinese Communist Party and funds necessary
15 for its activities are also supplied by the Soviet
16 Embassy.

17 THE PRESIDENT: Mr. Comyns Carr.

18 MR. COMYNS CARR: This, again, is objection-
19 able on the ground that it contains what purports
20 to be a document, or the description and the con-
21 tents of a document, without any explanation as to
22 where the document is or what's become of it, and
23 there is no indication of the source either of the
24 document tendered itself or of the document quoted
25 in it. As to the contents, it is entirely within

1 The Tribunal's ruling, there being no mention of
2 Japan from start to finish.

3 Apparently, the sort of thing which it is
4 desired to bring to the attention of the Tribunal
5 is a statement at the bottom of page 4 that the
6 communist -- the activities of a communist forma-
7 tion are not different from those of bandits or
8 of the Chinese Army in general. In our submission,
9 the time of the Tribunal should not be wasted by
10 even tendering such matter.

11 MR. CUNNINGHAM: Perhaps it is a good thing
12 that Mr. Carr isn't presenting these defense docu-
13 ments then. But I want to merely call attention
14 to the fact that this document is offered in con-
15 nection with the chart which I introduced, document
16 No. 693.

17 THE PRESIDENT: As the chart was rejected,
18 you should be satisfied to formally tender this
19 document. By a majority, the Tribunal upholds the
20 objection and rejects the document.

21 MR. CUNNINGHAM: Defense document 91^P is
22 a telegram from Consul-General NAKAMURA to Foreign
23 Minister SATO on the night of April 19, 1937, which
24 describes some of the details in the relationship
25 between the communists and Chiang Kai-shek's forces
and their anti-Japanese campaign.

THE PRESIDENT: Mr. Comyns Carr.

MR. COMYNS CARR: Your Honor, this is triple hearsay of a kind frequently rejected by the Tribunal. It purports to be information presented to the Consul by a Mr. ABEND whose book the Tribunal has already declined to receive in evidence as to information received by him from an unnamed person.

As to the Tribunal's ruling on subject matter, the only reference to Japan is that it is alleged that Chiang Kai-shek rejected some proposal from the communists to start an anti-Japanese movement.

1 THE PRESIDENT: Mr. Comyns Carr.

2 MR. COMYNS CARR: Your Honor, this is

3 triple hearsay of a kind frequently rejected by

4 the Tribunal. It purports to be information pre-

5 sented to the Consul by a Mr. ABEND whose book

6 the Tribunal has already declined to receive in

7 evidence as to information received by him from

8 an unnamed person.

9 As to the Tribunal's ruling on subject

10 matter, the only reference to Japan is that it is

11 alleged that Chiang Kai-shek rejected some proposal

12 from the communists to start an anti-Japanese move-

13 ment.

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1 MR. CUNNINGHAM: I understood that of course
2 we did not have to be concerned with the hearsay rule,
3 second degree, third degree, or fourth degree, but this
4 document speaks for itself, I believe, and if you will
5 refer to the first paragraph you will see that it relates
6 to one of the key figures who took an important part
7 in the cause of the disruption of Japanese-Chinese
8 relations, and certainly anything pertaining to their
9 relations should be considered of probative value.

10 THE PRESIDENT: By a majority, the Tribunal
11 upholds the objection and rejects the document.

12 MR. CUNNINGHAM: Defense document 916 is a
13 report of the 28th of April, 1937, to Foreign Minister
14 SATO of the Japanese Foreign Office showing that the
15 Communist forces were using subterfuge to make them-
16 selves strong and accepting the propaganda against
17 the Japanese as a basis for their combined efforts
18 with the Central Government.

19 THE PRESIDENT: Mr. Comyns Carr.

20 MR. CUNNINGHAM: The document is offered.

21 MR. COMYNS CARR: Your Honor, it is subject
22 to both the same objections as before. It is based
23 upon information received from an unnamed communist,
24 and I would just like to say that although the Tribunal
25 is not bound by the hearsay rule there does come a

1 point when gossip ceases to have any probative value
2 of any kind. On the Tribunal's ruling of this morning,
3 there is nothing in the document. The only reference
4 to the word "Japan" is in paragraph 2, but there is
5 nothing which brings it remotely near anything within
6 the Tribunal's ruling.

7 THE PRESIDENT: The Tribunal, by a majority,
8 upholds the objection and rejects the document.

9 MR. CUNNINGHAM: In support of the allegations
10 in the opening statement concerning the agreement
11 between the Chiang Government and the communists, we
12 now offer defense document 917 which is an official
13 report of the Consul-General MIURA to Foreign Minister
14 SATO on conditions at Hankow on May 4, 1937. I wish
15 to say specifically at the bottom of page 1, No. 2,
16 that the paragraph there comes within this ruling
17 quite specifically.

18 THE PRESIDENT: Mr. Carr.

19 MR. COMYNS CARR: Your Honor, this document
20 is a most alarming example of gossip. The consul
21 reports that according to information from unnamed
22 communist sources it is said that somebody is said to
23 have talked privately to communist members and his
24 impression of what was said seems to be as follows.

25 In our submission, whatever the subject matter

1 of such a document, it could have no probative value,
2 but we also submit that there is nothing in the sub-
3 sequent remarks said to have been transmitted in that
4 manner which brings it anywhere near the Tribunal's
5 ruling.

6 MR. CUNNINGHAM: I might say that anyone
7 who understands the first principle of diplomacy appreci-
8 ates that the names of informants are not given in
9 official dispatches from the embassies.

10 THE PRESIDENT: That is an unfortunate leap
11 in the dark. Abend's name is disclosed.

12 MR. CUNNINGHAM: Well, I have read a lot of
13 ambassador's diaries and I have seen so many blanks
14 when that matter has been emphasized that I have
15 certainly been impressed with that one feature of
16 diplomatic dispatches and records.

17 THE PRESIDENT: By a majority, the Tribunal
18 upholds the objection and rejects the document.

19 MR. CUNNINGHAM: Defense document 909 is now
20 offered, which is a telegram from Consul-General
21 OKAMOTO, 22 June 1937, to Foreign Minister HIROTA,
22 emphasizing the compromise between the nationalists
23 and the communists and expending upon the Sian
24 Incident.

25 THE PRESIDENT: Mr. Comyns Carr.

1 MR. COMYNS CARR: Both the same objections,
2 your Honor. This information is from an unnamed man
3 who is said to have connections with the communists
4 and he told one of the staff of the consulate the
5 following confidential story. The story as told
6 contains nothing which could possibly be within the
7 Tribunal's ruling.

8 THE PRESIDENT: By a majority, the Tribunal
9 upholds the objection and rejects the document.

10 We will recess until half past one.

11 (Whereupon, at 1200, a recess was
12 taken.)
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AFTERNOON SESSION

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

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

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8 MR. CUNNINGHAM: I next present defense
9 defense document No. 908. This is a government
10 document filed in the archives of the Foreign
11 Office under the heading of "Miscellaneous Matters
12 in Relation to Communist Bandits in Various Districts
13 in China," a telegram sent by Secretary MUTO in
14 Peiping to Foreign Minister HIROTA, dated March 26,
15 1936. It is intended to show by this document
16 that the Keichai Political Council is trying to
17 prevent the spread of bolshevism and point out its
18 evils.

19 THE PRESIDENT: Mr. Comyns Carr.

20 MR. COMYNS CARR: In our submission this
21 document is equally obnoxious to the Tribunal's
22 ruling. This is a document which purports to
23 supply the gist of two propaganda leaflets not pro-
24 duced of an anti-communist character, alleged to
25 have been distributed by the Popei Chahar Political
Council. In my submission, even if they were authen-

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1 tic it merely shows internal political differences
2 of opinion in China and can have no conceivable
3 relevance to this trial. There is no reference to
4 Japan or any Japanese national or property.

5 We would also ask the Tribunal to enforce
6 its previous ruling against evidence purporting to
7 give the contents of documents not produced.

8 THE PRESIDENT: Mr. Cunningham.

9 MR. CUNNINGHAM: I have nothing further to
10 add on that document, your Honor.

11 THE PRESIDENT: By a majority the Tribunal
12 upholds the objection and rejects the document.

13 MR. CUNNINGHAM: We next offer defense docu-
14 ment 313, which is a recent report of an Allied
15 newspaper published in Japan, and shows the New
16 Years' message of Chiang Kai-shek, emphasizing
17 the disturbing influence of communism in China.
18 This article merely serves as an illustration of
19 the real underlying cause of disunity and lack of
20 stability in China.

21 MR. COMYNS CARR: Your Honor, we hope that
22 the offer of this document is intended as a joke
23 and not an insult; but in our submission, to suggest
24 that a controversy taking place at the present date
25 with regard to communism and anti-communism in

1 China or anywhere else is a thing which by no con-
2 ceivable stretch of the imagination could have any
3 relevance to this trial.

4 MR. CUNNINGHAM: It is suggested by this
5 document that the difficulty in China rested, not
6 with the Japanese infiltration and occupation of
7 its troops there under its treaties, but existed on
8 account of the internal conditions between the
9 communistic activities and the Chinese nationalist
10 forces.

11 THE PRESIDENT: The Tribunal upholds the
12 objection and rejects the document.

13 MR. CUNNINGHAM: As the last document in
14 this section we offer defense document 1156, which
15 is an excerpt from the report to President Truman
16 by General Marshall on the completion of his recent
17 mission to China, in which he emphasizes that com-
18 munist propoganda has been and is one of the under-
19 lying causes of the failure of the Chinese Govern-
20 ment to maintain peace and order.

21 THE PRESIDENT: Mr. Comyns Carr.

22 MR. COMYNS CARR: This document is open
23 to exactly the same objection as the last. I will
24 say no more.

25 THE PRESIDENT: The objection is upheld

1 and the document rejected.

2 MR. CUNNINGHAM: That completes the presen-
3 tation of Sub-division 2 of Phase III of the case
4 on boycott and anti-Japanese activities and commun-
5 istic activities in China.

6 I will now present Mr. Roberts, who will
7 present the next phase of the case.

8 THE PRESIDENT: Mr. Roberts.

9 MR. ROBERTS: Mr. President, we shall now
10 offer the proof through witnesses and documents
11 concerning the second Shanghai Incident where hos-
12 tilities began on August 13, 1937.

13 We call the attention of the Tribunal to
14 Exhibit 2419, formerly defense document No. 34,
15 which is an agreement for the cessation of hos-
16 tilities around Shanghai. Attention is called to
17 this document because of the fact that it will be
18 referred to by witnesses and other documents on
19 several occasions hereafter.

20 I shall read only Annex III on page 5,
21 which concerns itself with the duties of the Joint
22 Commission only.

23 "ANNEX III.

24 "The Joint Commission will be composed of
25 12 members, namely, one civilian and one military

1 representative of each of the following: The
2 Japanese and Chinese Governments, and the American,
3 British, French and Italian Heads of Mission in
4 China, being the representatives of the friendly
5 Powers assisting in the negotiations in accor-
6 dance with the Resolution of the Assembly of the
7 League of Nations of March 4th. The members of the
8 Joint Commission will employ such numbers of assis-
9 tants as they may from time to time find necessary
10 in accordance with the decisions of the Commission.

11 "All matters or procedure will be left to
12 the discretion of the Commission, whose decisions
13 will be taken by majority vote, the Chairman having
14 a casting vote. The Chairman will be elected by
15 the Commission from amongst the members representing
16 the participating friendly Powers.

17 "The Commission will in accordance with
18 its decisions watch in such manner as it deems
19 best the carrying out of Articles 1, 2, and 3 of
20 this Agreement, and is authorised to call attention
21 to any neglect in the carrying out of the provisions
22 of any of the three Articles mentioned above."

23 "We now offer in evidence defense document
24 No. 1110, which is an official statement by the
25 Foreign Office on August 10, 1937, on the murder of

1 Lieutenant OYAMA in Shanghai on August 9, 1937.

2 THE PRESIDENT: Mr. Comyns Carr.

3 MR. COMYNS CARR: If your Honor pleases,
4 we object to this document on two grounds, the first
5 of which applies to the whole of the rest of the
6 documents and affidavits in this section. The
7 section proposes to deal exclusively with the inci-
8 dents which took place at Shanghai in the summer of
9 1937.

10 THE MONITOR: Just a moment. All right.

1 MR. COMYPS CARR: I do not know what rule
2 this Tribunal will adopt, but the rule with which
3 I am familiar in our courts is this: If a witness
4 for the prosecution testifies with regard to a
5 particular subject matter and the defense has evi-
6 dence which it proposes to adduce relating to that
7 subject matter and likely to be within the knowledge
8 of that witness, they are bound to put the substance
9 of their evidence to that witness in cross-examina-
10 tion in order that he may have an opportunity of
11 dealing with it while the evidence is being given.
12 If that is not done, the defense evidence is not
13 allowed to be given without the special leave of
14 the Court which, as far as I know, is never given
15 unless it is possible to recall the prosecution
16 witness in order to give him the opportunity which
17 he ought to have had in the first instance. The
18 witness who gave evidence for the prosecution on
19 this incident was Mr. Powell at page 3253 and
20 following pages of the record. He also gave evidence
21 about a number of other matters as to which he was
22 cross-examined at length; but not a single question
23 was put to him by the defense about this matter.
24 Now, when death has unfortunately prevented us from
25 recalling Mr. Powell, who was present in Shanghai and

1 an eyewitness at most of these events, we are
 2 presented with a volume of evidence from the defense
 3 dealing with matters of detail about which he could
 4 have told the Tribunal. That objection will apply
 5 not only to this document but to the whole of the
 6 rest of the evidence in this subdivision.

7 THE PRESIDENT: In the absence of any
 8 explanation, the failure to cross-examine would be
 9 matter for comment and, perhaps, severe comment
 10 according to the circumstances; but I cannot say
 11 that in our jurisdictions we would go further than
 12 that. Perhaps a different rule prevails in the
 13 different countries, Mr. Comyns Carr.

14 MR. COMYNS CARR: In regard to this par-
 15 ticular document, your Honor, it is objectionable
 16 because it is an ex parte statement issued by the
 17 Foreign Office of a kind which the Tribunal has
 18 rejected over and over again. It proves that that
 19 is what the Japanese Government chose to say at
 20 this particular time; but it is no evidence whatever
 21 either that they believed it or that it was true.

22 THE PRESIDENT: Mr. Roberts.

23 MR. ROBERTS: This is a direct statement
 24 of the facts surrounding the murder of Lieutenant
 25 OYAMA on August 9, 1937. It is an official statement.

1 It states facts leading up to the cause of the
2 outbreak in Shanghai several days later and is
3 certainly, in addition to being part of the res
4 gestae, it is admissible under the Charter as
5 an official statement and has probative value.

6 THE MONITOR: Could you explain "res
7 gestae", Mr. Roberts?

8 MR. ROBERTS: R-e-s g-e-s-t-a-e.

9 THE MONITOR: In English, please.

10 MR. ROBERTS: It is a Latin expression.

11 THE MONITOR: We have no way of translating
12 that unless it is in English.

13 MR. ROBERTS: "as a part of the events
14 which occurred at the time."

15 THE PRESIDENT: I think the position I
16 put to you toward Mr. Carr is very succinctly stated
17 by a Member of the Tribunal in these terms: "This
18 trial covers a vast scope of events. The defense
19 necessarily acquires its information and assembles
20 its evidence over a long period of time. We are not
21 bound by technical rules of evidence. Therefore,
22 we do not reject the evidence because there was no
23 cross-examination in respect to it of Mr. Powell."

24 By a majority we have decided to overrule the
25 objection and to admit the document for what it is

1 worth.

2 CLERK OF THE COURT: Defense document 1110--

3 THE PRESIDENT: Just a minute. I have
4 misread something that occurs at the foot of this
5 note, and I have to recount the votes with a dif-
6 ferent result. The objection is upheld and the
7 document rejected by a majority.

8 MR. ROBERTS: Am I to assume that the
9 document was rejected not because of the objection
10 first stated by Mr. Comyns Carr?

11 THE PRESIDENT: The ground that there was
12 no cross-examination fails. It is rejected because
13 it has no probative value in the opinion of a
14 majority of the judges.

15 MR. ROBERTS: We now offer defense document
16 No. 1120, which is a declaration by the Director
17 of the Information Bureau dated August 14, 1937,
18 being an official document on file in the Japanese
19 Foreign Office. This is a statement concerning
20 the bombing of the Hung-jao area in Shanghai by
21 the Chinese which describes the indiscriminate
22 bombing of their own people. This is the beginning
23 of hostilities in Shanghai. I might add that it is
24 our intention to eliminate some of the material and
25 to read only the first two paragraphs and the last

1 two paragraphs.

2 THE PRESIDENT: Mr. Comyns Carr.

3 MR. COMYNS CARR: Your Honor, this document
4 is of exactly the same character as the last one
5 and open to exactly the same objection as the
6 second of the objections which I took to that.

7 Your Honor, I should also like to take
8 this opportunity to object to the making by counsel
9 of ex parte statements about the contents of the
10 document before the Tribunal has ruled upon its
11 admissibility. This is one of the matters on which,
12 when the true facts are ascertained or if Mr. Powell
13 had been cross-examined about it, in our view a
14 totally different complexion would have been put
15 upon the matter from that which counsel has mentioned.

16 THE PRESIDENT: In describing a document
17 or in endeavoring to justify its admission counsel
18 sometimes refer too fully to the contents. It is
19 very difficult to regulate. We must rely on the
20 good taste of counsel. More particularly, where
21 this red light prevents us from intervention at once,
22 we must listen here to things which we would not
23 lend our ears to in an ordinary court unfortunately.

24 MR. ROBERTS: I want to assure the Court
25 that the information given is only to describe the

1 nature of the document.

2 THE PRESIDENT: The Tribunal by a majority
3 upholds the objection and rejects the document.

4 MR. ROBERTS: We now offer in evidence
5 defense document No. 65, which is an official
6 statement of the Japanese Government dated August
7 15, 1937.

8 THE PRESIDENT: Mr. Comyns Carr.

9 MR. COMYNS CARR: This document is open
10 to exactly the same objection, your Honor. It is
11 simply an ex parte statement by the Japanese
12 Government.

13 MR. ROBERTS: We submit, if your Honor
14 please, that this is an official statement of the
15 government on the outbreak of hostilities in Shanghai
16 setting forth the causes of the Incident and the
17 steps to be taken to meet the acts of the Chinese
18 forces.

19 THE PRESIDENT: No objection?

20 MR. COMYNS CARR: I have stated my objection
21 to this document, your Honor, which is exactly the
22 same as to the last two.
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1 MR. ROBERTS: Needless to say, this official
2 statement from the government is made after investiga-
3 tion, and is a report of the facts leading up to the
4 outbreak of hostilities.

5 THE PRESIDENT: The Tribunal by a majority
6 upholds the objection and rejects the document.

7 MR. ROBERTS: We now offer defense document
8 No. 1121, which is an official document emanating from
9 the Foreign Office, dated August 16, 1937, concerning
10 the second Shanghai Incident. It is a statement of
11 the facts which required Japan to defend its nationals
12 in Shanghai.

13 THE PRESIDENT: Mr. Comyns Carr.

14 MR. COMYNS CARR: We object to this document
15 on exactly the same grounds which have already prevailed
16 in the case of the last three, your Honor.

17 THE PRESIDENT: Can you distinguish this from
18 the last document, Mr. Roberts?

19 MR. ROBERTS: No, I cannot, except to add that
20 it will be offered subject to connection by subsequent
21 witnesses.

22 THE PRESIDENT: The Tribunal upholds the
23 objection and rejects the document.

24 MR. ROBERTS: We now offer in evidence defense
25 document No. 206-D(5). This is an excerpt from the diary

1 of former United States Ambassador Grew concerning the
2 bombing of Shanghai on August 14 by the Chinese. It is
3 clearly a factual statement of the indiscriminate bombing
4 on the date aforementioned.

5 MR. COMYNS CARR: Your Honor, we object to
6 this document on the grounds which have been taken to
7 a number of similar extracts offered from this book.
8 It merely expresses Mr. Grew's opinion about something
9 which was, as far as he was concerned, a matter of
10 hearsay. It is important to know whether at the time
11 when Mr. Grew wrote this he had received the account
12 of only one side of the matter or of both.

13 THE PRESIDENT: It is no doubt hearsay, and
14 the source is not disclosed.

15 MR. ROBERTS: May we remind the Court that
16 Mr. Grew was at that time the American ambassador, and
17 it states in the last sentence there that they received
18 first-hand accounts from the refugees, which under the
19 Charter is admissible. It certainly has some probative
20 value and should be accepted by the Court for whatever it
21 may be worth.

22 THE PRESIDENT: Hearsay is, of course, admissible,
23 but we expect to know the person responsible for it.
24 We have given you permission to interrogate Mr. Grew,
25 of course.

Faint, mostly illegible text on the left page, possibly bleed-through from the reverse side.

1 By a majority, the Court upholds the objection
2 and rejects the document.

3 MR. ROBERTS: We now call the witness
4 OKAMOTO, Suemasa.

5 -----
6 S U E M A S A O K A M O T O, called as a witness
7 on behalf of the defense, being first duly
8 sworn, testified through Japanese interpreters
9 as follows:

10 DIRECT EXAMINATION

11 BY MR. ROBERTS:

12 Q Please state your name and address.

13 A My name is OKAMOTO, Suemasa. My present
14 address, No. 1123, 1-Chome, Kitazawa-machi, Setagaya-ku,
15 Tokyo.

16 Q May the witness be shown defense document
17 No. 1137. Please examine this document and tell us
18 whether or not it is your sworn affidavit.

19 A I acknowledge that this is my affidavit.

20 MR. ROBERTS: I offer defense document No. 1137
21 in evidence.

22 THE PRESIDENT: Mr. Comyns Carr.

23 MR. COMYNS CARR: Your Honor, we don't object
24 to the document as a whole, but there are certain parts
25 to which we object, to which I will call attention as

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1 soon as--

2 THE PRESIDENT: Admitted on the usual terms.

3 CLERK OF THE COURT: Defense document No. 1137
4 will receive exhibit No. 25155 (Whereupon, the document above
6 referred to was marked defense exhibit
7 No. 2515 and received in evidence.)8 MR. COMYNS CARR: Your Honor, would it be
9 convenient if I should go through it, indicating the
10 parts to which we object now, or take each of them
11 separately as my friend comes to them?12 THE PRESIDENT: I think you had better indicate
13 them now, Mr. Carr.

14 MR. COMYNS CARR: If your Honor pleases.

15 Page 1, down to the end of paragraph 2 on
16 page 2, we object to all of it after the third line
17 on page 1, the reason being this: The rest of the
18 affidavit, the actual statement of facts, is confined
19 to what happened in Shanghai in 1937.20 The long account of his subsequent career and
21 his claim to have been at a later date regarded as
22 pro-British and pro-American are, in our submission,
23 entirely irrelevant.24 Then, in paragraph 5 on page 2, the second and
25 third lines, we object to the words "breaking the

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1 Cease-Fire Agreement of May, 1933," on the ground that
2 the witness is there and in several subsequent passages
3 to which I should call attention, expressing his
4 opinion on the construction of the document.

5 One of the principal questions for the
6 Tribunal in this particular subdivision will be, what
7 is the true meaning of that document which my friend
8 referred to but which he did not read the parts rele-
9 vant to this question?

10 Then, your Honor, at the bottom of page 3,
11 the last four words, down to the end of paragraph 7
12 on page 4. We object to that because it purports,
13 contrary to the repeated rulings of the Tribunal, to
14 give the contents of a document not produced or accounted
15 for.

16 Then, your Honor, on pages 5 and 6, we object
17 to the whole of paragraph 9 because it is merely the
18 opinions and speculation of the witness as to the
19 future course of events.

20 Then in paragraph 12 -- also on page 6 --
21 we object to the reference in line 1 to instructions
22 from the home office, which must have been in writing
23 and are not produced; and also to the words in lines
24 4 and 5, "where it was prohibited to do so under the
25 Cease-Fire Agreement," for the same reason as before,

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1 that we dispute that construction of the agreement,
 2 which is a matter for the Tribunal.

3 Then on page 10, we object to paragraph 16
 4 as being the opinion reported to the witness by an
 5 unnamed foreigner.

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1 THE PRESIDENT: Mr. Roberts.

2 MR. ROBERTS: In regard to the objection to
3 page 1, may I state that this merely relates to the
4 history of the witness. This witness has very impor-
5 tant facts to relate, and I am sure the Court is inter-
6 ested in his background for the purpose of determining
7 the accuracy of his testimony.

8 Does your Honor wish me to go to the other
9 points?

10 THE PRESIDENT: Go on to the others, Mr.
11 Roberts. I don't think there is much difficulty about
12 that one. This is what the Japanese call curriculum
13 vitae. It is probably over-long, but nevertheless
14 it is not a substantial objection.

15 Of course, we won't allow any witness to
16 construe an agreement, which is a matter for us. And
17 the authority of an unnamed foreigner is no authority
18 at all.

19 MR. ROBERTS: As far as that matter is con-
20 cerned, that is a matter for cross-examination as to who
21 he got the information from. We must remember this
22 man was the consul-general in Shanghai at the time,
23 and received reports of events that were taking place
24 and spoke to many people from both sides.

25 We have the man here. If there is any question

1 concerning any statements, he can be cross-examined
 2 concerning the statements he makes in his affidavit.
 3 It is certainly quite different from a document where
 4 no cross-examination is possible.

5 THE PRESIDENT: I think some of my colleagues
 6 have the opinion that his personal history is really
 7 irrelevant. That may be correct, but, personally, I
 8 am inclined to be a little lenient in that regard.
 9 That is a matter of discretion. It is a Japanese
 10 weakness, I know.

11 I think the majority of the Bench are satisfied
 12 with the indications I gave you. So omit those matters.

13 MR. ROBERTS: Well, is your Honor referring
 14 to the--

15 THE PRESIDENT: We don't want what he thinks
 16 about the agreement, what its meaning is, and we don't
 17 want to know what the foreigner said unless he is iden-
 18 tified. And where documents are relied upon, we want
 19 them produced or their absence accounted for.

20 I will tell you what to omit if you are in any
 21 doubt as you proceed to read. Perhaps you won't insist
 22 on reading this long personal account unless you, in
 23 your good judgment, think it will help us.

24 MR. ROBERTS: I believe, because of the impor-
 25 tance of the matter, that it is important to know the

background of this man who is now testifying.

1 In so far as the information received from
2 a foreigner we may ask him later if he can identify
3 this person so that the information may be related.

4 I read exhibit 2515.

5 "I was the Chief of the American Bureau in the
6 Foreign Office until April 1937 (12th year of Showa).
7 I was the Consul General in Shanghai from May 1937
8 (the 12th year) until March 20th 1938 (the 13th year),
9 and was a Councillor at the Japanese Embassy in London
10 from June 1938 (the 13th year of the Showa era) until
11 September 1940. I received an order to return home in
12 August 1940 (the 15th year of the Showa era) at the
13 time when Mr. MATSUOKA was the Foreign Minister. I
14 resigned when I returned home in October 1940, and was
15 appointed as the Japanese Consul General at Singapore
16 in October 1941 (the 16th year of the Showa era). I
17 arrived at Singapore on October 5th of the same year,
18 and was interned on the 8th day of the same month due
19 to the outbreak of the war. I was transferred to India,
20 then sent to Lorenzo Marceiz (phonetic) due to the ex-
21 change of diplomats between Japan and England in
22 August 1942 (the 17th year of the Showa era). I was
23 ordered to go to Europe from the same place, and was
24 appointed as the Minister to Sweden in November 1942.
25

1 I took office there, and after the surrender of Japan,
2 departed there in January 1946 (of the 21st year of the
3 Showa era). I returned home in March and resigned
4 from the office in April.

5 "During my life as a diplomat I was in
6 England from the 9th year till the 11th year of the
7 Taisho era, again from the 13th year till the 15th
8 year of the Showa era, in America for six years from
9 the 14th year of the Taisho era till the 6th year of
10 the Showa era, and took office, in the home office,
11 as the Chief of a Section in the European and American
12 Bureau, and the Chief of the American Bureau. My rela-
13 tionship with England and America extended over a long
14 period of time, and I had so many friends among the
15 people of the both countries that, I think, I might be
16 regarded as one of the pro-British and pro-America
17 faction in the Foreign Office.

18 "Realizing the correctness of this principle,
19 I believed that Japan, England and America should not
20 conflict in any manner, at any time, and that, further,
21 they were not able to wage a decisive conflict, con-
22 sidering many conditions surrounding them, the only
23 way for them to get along was to bring about friendly
24 understanding between them."

25 THE PRESIDENT: That is a matter of opinion.

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1 "In Shanghai too I made a friendly acquaint-
2 tance with Mr. Yu Hung-chun, the then Mayor of Shanghai;
3 Mr. Gauss, the U.S.A. Consul General; Mr. J.W.O. Davidson,
4 the British Acting Consul General; and Mr. John Keswick,
5 an influential business man in Shanghai.

6 "At the time when I arrived at my post at
7 Shanghai, while there was the feeling of relief among
8 the Chinese people on the news that the Sian Incident
9 was settled and Generalissimo Chiang Kai-shek rescued,
10 there was a gloomy and uneasy foreboding about Sino-
11 Japanese relations even in Shanghai over stormy indica-
12 tions caused by the North China situation.

13 "When I investigated the affairs concerning
14 Japan and China on my arriving at my post at Shanghai,
15 I got the report that China..."

16 This is evidently a report, not his own testi-
17 mony.

18 THE PRESIDENT: "Was reinforcing--"

19 MR. ROBERTS: "Was reinforcing many Paoantui
20 (or Peace Preservation Corps) in the forbidden area,
21 mixing it with the regular army, and was constructing
22 trenches and wire-entanglements around the place,
23 and was reported to be reconstructing the Wusung For-
24 tress. When I received these reports, I did not want
25 to neglect them, though it was not long since my

1 assuming office, and recognizing the necessity of calling
2 them to attention of the authorities concerned, I
3 requested on the 23rd of June the calling of a meeting
4 of the joint committee based on the Cease Fire Agreement
5 of May 5, 1933. The navy, after consultation, approved
6 my idea."

7 THE PRESIDENT: He should state who reported
8 it.

9 Continue the reading of the affidavit.

10 MR. COMYNS CARR: Your Honor, I ought also
11 to have objected to the words which my friend has read,
12 and to which I did not object, "in the forbidden area,"
13 in the fifth line from the bottom. It is also in dis-
14 pute whether there was any such forbidden area under
15 this agreement.

16 THE PRESIDENT: What was forbidden depends
17 upon the meaning of the Cease Fire Agreement, which we
18 will construe.

19 MR. ROBERTS: That is correct.

20 THE PRESIDENT: We will recess for fifteen
21 minutes.

22 (Whereupon, at 1445, a recess was
23 taken until 1500, after which the proceedings
24 were resumed as follows:)
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1 MARSHAL OF THE COURT: The International
2 Military Tribunal for the Far East is now resumed.

3 THE PRESIDENT: Mr. Roberts.

4 MR. ROBERTS: (Reading)

5 "This Committee was organized with the
6 Consul-Generals and military and naval attaches of
7 Japan, Britain, U.S.A., France and Italy, and was to
8 meet from time to time. But it had not met for five
9 years.

10 "The Joint-Committee met at the French consulate-
11 general, and was chiefly concerned with the discussion
12 between Mayor Yu and myself.

13 "I proposed in substance as follows: 'I have
14 received information about the reinforcement of the
15 Paoantui, the construction of trenches, and the use of
16 light tanks and iron entanglements by the Chinese army
17 at the forbidden area. If this were true, it would
18 constitute a breach of the Cease Fire Agreement. And
19 I wish the Committee would take measures to investigate
20 whether the above facts are true or not.' Mayor Yu
21 made an objection to the proposal for investigation,
22 insisting that Japan was too nervous. And the third
23 party members present at the Committee seemed not too
24 pleased to intervene in the strife between Japan and
25 China. The meeting did not reach any specified

1 conclusion. But I believed that I should call the
2 attention of the Powers to the source of uneasiness
3 at Shanghai and that I drove a nail into the Chinese
4 policy.

5 "(6) On July 7, 1937 the Marco Polo Bridge
6 Incident broke out. It brought serious anxiety to the
7 Chinese and Foreigners at Shanghai.

8 "At that time, the FAYASHI Cabinet had already
9 fallen and Prince KOMOYE formed a Cabinet. The Foreign
10 Minister was Mr. HIROTA. A few days after the outbreak
11 of the Incident, I received instructions by telegraph
12 from the Government."

13 MR. COMYNS CARR: I understood this was one
14 of the passages which the Tribunal ruled should be
15 omitted.

16 THE PRESIDENT: To prove the contents of a
17 document if that be necessary you must produce the
18 document or account for its absence.

19 BY MR. ROBERTS:

20 Q Mr. OKAMOTO, referring to the telegraph that
21 you mention in your affidavit, is that telegraph,
22 telegram, now in your possession?

23 A It is not in my possession.

24 THE PRESIDENT: That is not enough.

25 Q Where was that telegram dispatched from?

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1 A That was a telegram addressed to me by
2 Foreign Minister HIROTA at that time in Tokyo.

3 THE PRESIDENT: What did you do with it?

4 THE WITNESS: I received that telegram as
5 Consul General in Shanghai and it is supposed to be
6 in the files of the Consulate General in that city.

7 THE PRESIDENT: You must produce it to prove
8 its contents.

9 BY MR. ROBERTS:

10 Q Do you know whether or not that telegram,
11 the original thereof, is still in existence?

12 A I think it is in the files of the Foreign
13 Office.

14 THE PRESIDENT: It must be produced. This
15 will not be accepted as evidence of its contents.

16 Q Are you able to recall the contents of that
17 telegram, Mr. OKAMOTO?

18 THE PRESIDENT: That has nothing to do with
19 it. That is irrelevant. The objection is upheld.

20 Q You further state in your affidavit you
21 received instructions bearing the same import on two
22 or three successive occasions--

23 THE PRESIDENT: They too must be produced or
24 their absence accounted for.

25 MR. ROBERTS: I would like to ask the witness

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1 the manner in which he received these instructions,
2 whether they were in writing or not.

3 THE PRESIDENT: It says they reached his
4 hands, not his ears. They must have been in writing.

5 Q Will you tell us, Mr. OKAMOTO, the type of
6 instructions that you refer to on the successive
7 occasions?

8 A They were all telegraphic instructions.

9 Q Do you know whether or not the later in-
10 structions are still in existence?

11 A I believe that the original of this telegram
12 is in the files of the Foreign Office -- the original
13 of these telegrams.

14 Q Have you had occasion to search the files or
15 have the files searched for these particular telegrams?

16 A I have never tried to make a search of the
17 telegrams myself.

18 THE PRESIDENT: He said he believes they are
19 in the Foreign Office. Apparently he has either made
20 a search and found them there or that is an assumption.

21 Q I would like to inquire further on that
22 point. Mr. OKAMOTO, are you keeping in mind that the
23 Foreign Office was burned during the war?

24 THE PRESIDENT: What was that question? I
25 did not hear it.

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

3 THE PRESIDENT: We have numerous documents
4 from the Foreign Office.

5 MR. ROBERTS: There are also many, if your
6 Honor please, that were destroyed in the fire.

7 THE PRESIDENT: This witness has said enough
8 to make it quite clear that he is not going to
9 depose the telegrams are not available.

10 MR. ROBERTS: In that case a search will be
11 made and they will be produced hereafter if available.

12 Is the rest of that paragraph within the
13 objection, if your Honor please?

14 THE PRESIDENT: Mr. Comyns Carr.

15 MR. COMYNS CARR: In my submission it is
16 equally objectionable even if the telegrams were
17 admitted. The fact that he explained them to a number
18 of unnamed persons would in my submission be inadmis-
19 sible and all the more so when the telegrams are not
20 admitted.

21 THE PRESIDENT: He could tell us what he
22 told others, not to prove what the instructions were
23 if it were relevant, but it is not relevant.

24 The objection is upheld.

25 MR. ROBERTS: If your Honor please, we want

1 to be heard on that particular paragraph which I
2 believe is a meeting of the commission and the various
3 consuls and to tell what took place is certainly
4 relevant and of extreme importance.

5 THE PRESIDENT: How could it be relevant?

6 MR. ROBERTS: It states exactly what took
7 place and in stating what he told the consuls and
8 what they said to him.

9 THE PRESIDENT: Without proof of what the
10 instructions were the whole paragraph is pointless,
11 and if you had proof of the instructions, the fact
12 that he passed them on to somebody else would be
13 irrelevant.

14 MR. ROBERTS: We believe it important to show
15 that the instructions which he received from HIROTA
16 he passed on to the consuls.

17 THE PRESIDENT: However, we do not reach that
18 because the instructions have not been proved as they
19 should be proved by production of the document.

20 MR. ROBERTS: He is not attempting to--

21 THE PRESIDENT: The objection is upheld.
22 Proceed to read paragraph 8.

23 MR. ROBERTS: We just wanted to remind the
24 Court this man is attempting to prevent an incident
25 and is trying to tell exactly what he did--

1 THE PRESIDENT: Please do not argue with me.
2 We know exactly what you are trying to get at but
3 you are not able to do it properly. The Court's
4 ruling has been given and you must observe it.

5 MR. ROBERTS (Reading):

6 "(8) On around July 15, I remember Mr.
7 Yu Hung-chun, the Mayor of Shanghai, invited me to
8 a tea party, requesting the military and naval
9 attaches to accompany me. So I presented myself at
10 the party with Major General KITA, Seichi (Army),
11 Rear Admiral HONDO, Tadao (Navy) and some of the
12 staff of the Consulate General. The party was held
13 at the Mayor's official residence and there was a
14 small group of Chinese, an influential man from
15 Shanghai, the Chief of Police, the Chief of the
16 Paoantui and the Secretary of the Mayor,-- Tu Yueh-
17 sheng, Yu Chia-ching, Wang Hsiao-hai, etc.

18 "The Mayor spoke in greeting as follows:

19 "The citizens of Shanghai do not want to
20 have another model of the incident which happened
21 five years ago. We wish, whatever may happen in
22 another district, to avoid a warfare between Japan
23 and China at Shanghai. I will do everything possible
24 and I hope the Japanese will cooperate with us in this
25 aim."

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"In reply, I said:

"Japan, too, does not intend that the incident shall spread to Shanghai. Especially, since I have been receiving from our Government the instructions which request us to take all possible means to prevent a clash between Japan and China at Shanghai, the policy of our Government being local solution and nonenlargement concerning the Marco Polo Bridge Incident. I am very pleased to hear the present proposal from China. Japan will naturally cooperate with China to prevent any clash between them at Shanghai. But we are afraid that China might invoke a crisis at Shanghai by terrorism and by the anti-Japan movement as was experienced by Japan five years ago, and we hope the Chinese authorities will be careful about controlling these matters."

1 THE PRESIDENT: Although he can tell
 2 us what he said to the Mayor of Shanghai, he cannot
 3 prove the contents of the document that way. That
 4 is no proof of the contents of the document..

5 MR. ROBERTS: May I remind the Court
 6 what it said at the time the defense interposed
 7 serious objections to opinions and statements of
 8 witnesses of the prosecution. The Court stated
 9 at that time it was not a jury, it was a Tribunal
 10 consisting of eleven judges and could properly pick
 11 out the statements which were facts and disregard
 12 those which were opinions.

13 THE PRESIDENT: This is the first attempt
 14 made in this court to settle questions of evidence
 15 by pointing out that we are not a jury. Frankly,
 16 I cannot understand what you are driving at, nor
 17 can any other Member of the Court.

18 MR. ROBERTS: I am merely repeating what
 19 the Court has said on previous occasions upon ob-
 20 jection by defense when witnesses were attempting
 21 to make statements which the defense thought were
 22 statements of opinion.

23 THE PRESIDENT: I have frequently said
 24 when inadmissible evidence was read to us that we,
 25 being judges, would know it was inadmissible and

1 we would discard it, and I have just told you that
2 now. I have allowed you to read that stuff I
3 have referred to, but I have also pointed out that
4 we are not going to be influenced by it because it
5 is not proper proof.

6 I do not see why we should have all this
7 inflicted upon us. We have very little time to
8 spare. I advise you to have a consultation with
9 your colleagues.

10 MR. ROBERTS: I merely reminded the Court
11 that it is not bound by technical rules of evidence.

12 THE PRESIDENT: We are bound by that rule
13 that the evidence must have probative value, and
14 this is the way to insure that it has probative
15 value: that if you refer to a document that you
16 produce it or account for its absence. How pre-
17 posterous it would be if there were lying in the
18 foreign office important documents and we were
19 satisfied to leave them there and allow witnesses
20 to tell us what was in them without producing them.
21 This evidence in these telegrams is of vital im-
22 portance, as you should know.

23 MR. ROBERTS: As I have said, an imme-
24 diate search will be made to ascertain whether or
25 not these telegrams are still in existence.

1 THE PRESIDENT: Well, why remind us
2 that we are not a jury and that we should throw
3 discretion to the wind in these matters and re-
4 ceive any old evidence at all tendered when the
5 evidence itself, the proper evidence, is probably
6 in Tokyo within a mile of us?

7 MR. ROBERTS: May I proceed to read,
8 your Honor?

9 THE PRESIDENT: You may.

10 MR. ROBERTS (Reading):

11 "We exchanged opinions in this manner,
12 and since then, we were very close with each other.
13 The Mayor would telephone me two or three times a day,
14 requesting us to restrain some acts on the part of
15 our marines, etc.

16 "9) While the situation in North China
17 was aggravated contrary to our expectations, and
18 as the phase developed" --

19 THE PRESIDENT: Mr. Colyns Carr.

20 MR. COLYNS CARR: Your Honor, paragraph 9
21 was one of those I objected to. I am not quite sure
22 whether the Tribunal ruled upon it. It is, in our
23 submission, merely opinions and speculations of this
24 witness.

25 THE PRESIDENT: We have repeatedly said

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1 that this type of opinion evidence will be dis-
2 regarded.
3 MR. ROBERTS: If your Honor please, if
4 you will refer to the second paragraph, second line,
5 he said, "I got the report," and next to the last
6 line he also said, "based upon a report." So it
7 cannot be his opinion if it is something based on
8 a report which he received.
9 THE PRESIDENT: He got a report that the
10 attitude of China seemed to gradually alter, did he?
11 MR. ROBERTS: I refer to the next paragraph,
12 if your Honor please, second line.
13 THE PRESIDENT: Proceed to read.
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MR. ROBERTS: "At first, I thought that China was earnestly wishing to prevent the warfare spreading to Shanghai. But by this time I got the report that it was the prevailing idea of young Chinese officers that if Japan would defy a military action which might develop in North China, China could give pain to Japan in Shanghai and China would be able to fight well in this area because the defense works were comparatively good there. There was the report, too, that the Paoantui had been reinforced in the prohibited area, that the regular gathered round Shanghai amounted to several divisions. All these matters indicated to us that something was being actively plotted by China.

"At the beginning of August, circumstances made us feel that something imminent would happen, and the Japanese residents evacuated from the Yantze Valley on board the gunboats and destroyers which were dispatched by the Japanese Navy along the Yantze River. These people gathered at Shanghai.

"Under these imminent circumstances, when I was exerting all of my best efforts with a view to avoiding a clash between Japan and China, there finally happened the incident of August 9, in which Sub-lieutenant OYAMA was killed by Chinese soldiers near Honchiao Airdrome, whereupon the situation suddenly

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1 assumed a serious turn.

2 "On August 11, I, foreseeing a crisis and part-
 3 ly under instructions from the home office, visited
 4 Mayor Yu at the City Government. I showed him the
 5 information about the reinforcement of the Paoantui,
 6 the construction of trenches and wire-entanglements
 7 at Wusung or in other places, and said, 'If you neglect
 8 these conditions, it may be very dangerous, and a clash
 9 between Japan and China may not be avoidable. If you
 10 truly desire to avoid such a clash, I hope you will
 11 make an effort to withdraw the Paoantui to a reasonable
 12 distance necessary to accomplish that end.' The Mayor
 13 did not easily accept my proposal stating that Japan
 14 was responsible for the aggravation of the incident
 15 by reinforcing the marines by war-ships. But after
 16 the four hour's talk at the City Government I received
 17 a promise that he would take every possible means to
 18 prevent a clash between Japan and China. I left the
 19 City Government a little past seven, and it was dark.
 20 My automobile was stopped on the way by Chinese soldiers
 21 with bayonets. They did not allow me to pass, at
 22 first even though I told them that I was the Japanese
 23 Consul-General. But I passed finally by ordering my
 24 chauffeur to tell them clearly to pass us as it was
 25 the Japanese Consul-General.

1 "On the next morning (12th of the month) the
2 87th and 88th divisions of the Chinese army advanced
3 to the Pehchan Station at Shanghai. Immediately, I
4 made a phone call to the City Government, but the
5 Mayor was absent. Then, finding him at his official
6 residence at the French Concession, I requested a
7 member of the staff of the Consulate-General to phone
8 him. That official reported to me that the Mayor said
9 that he could do nothing, when the situation got bad
10 like this. And in reply to the former's question as
11 to why the Mayor was not in the City Government office,
12 the Mayor said he would not go to the City Government
13 office because he was stopped several times late last
14 evening on his way home by the Paoantui, and they did
15 not allow him to pass, though he informed them many
16 times that he was the Mayor. This I heard from the
17 official.

18 "Then I considered that this was the time to
19 exert my final effort, and I requested a meeting of the
20 joint committee.

21 "The meeting was opened at the Shanghai
22 Municipal Council in the afternoon of the same day.

23 "The attendance there was Mayor Yu, American
24 and French Consul-Generals, British and French Consul-
25 Generals, British and Italian Acting Consul Generals,

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1 myself and Senior Staff Officer of the Marines TAKEDA
2 from Japan.

3 "At the beginning of the meeting, I told
4 them the imminence of the situation, and I said as
5 follows: 'Yesterday afternoon, I asked the Mayor to
6 force the Paontui to withdraw to a removable distance
7 to avoid a clash between Japan and China, and the
8 Mayor promised to exert every effort. Nevertheless,
9 the Chinese Regular Army advanced to the Pehchan
10 Station this morning and besieged the Japanese residents
11 in Honkou Area. Now the circumstances do not permit
12 any delay in adopting measures to stop a conflict.'
13 Then I requested the Joint Committee to investigate
14 China's breach of the Cease Fire Agreement, and to take
15 adequate measures to avoid a clash.

16 "Against this, Mayor Yu said that Japan could
17 not avail herself of the Joint Committee based upon
18 the Cease Fire Agreement, because Japan had broken
19 and voided this Agreement last year by the fact that
20 the Japanese marines advanced to Patsuchiao. (With
21 regard to this point, the commissioner of a third
22 power assailed him and inquired whether China had
23 filed a protest with the Joint Committee against Japan's
24 breach of the Agreement). He also said that the present
25 measures were taken by China as a means of self-defense

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1 the concentration of Japanese forces, and declined to
2 cooperate with Japan in order to avoid a clash.

3 "Then I asked further, 'What kind of measures
4 for this remedy does each power have?'

5 "The representative of Britain said: 'After
6 all it may need the power of the Marines of Shanghai,
7 but, as for Britain, we cannot do anything without
8 instructions from our home land.'

9 "The representative of United States of
10 America stated: 'It is impossible to use the American
11 Marines without the order of the Chief of the General
12 Staff.'

13 "Italy's representative stated: 'We can place
14 the Italian army between the Japanese and Chinese army
15 to avoid a clash, but this very army is now on the way
16 from the home land to Shanghai.'

17 "Being that no good ideas were produced at
18 the meeting other than the above, the meeting was
19 closed after we decided that Japan and China should
20 have never resorted to force, not to the extent that
21 they would be actually attacked by the other party.

22 "Under these circumstances, Staff Officer
23 TAKEEDA was very anxious saying that we were not then
24 prepared for defense, and if we delayed in taking up
25 some necessary measures, we would be driven into an

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1 irrevocable position. In reply to him, I said that
 2 in these grave circumstances, we had to claim all that
 3 was possible for us, and to exert every effort we could,
 4 lest we do not cause any trouble for Japan. And I
 5 stopped his taking any action.

6 "I believe I took every possible measure for
 7 the settlement of the incident, and exerted with the
 8 last moment, every effort possible.

9 "Incidentally, the meeting was closed at
 10 6 p.m.

11 "On August 13, the Chinese plain clothes
 12 soldiers began to fire from the building of the China
 13 Press and in the afternoon an exchange of shots took
 14 place at the Patsuchiao.

15 "In the evening of the same day, the American
 16 and British Consul-Generals made a proposal that if
 17 it was the desire of Japan to avoid a clash, they would
 18 use their good offices for it. The condition of the
 19 use of their good offices was to reduce the then situ-
 20 ation to the state as it existed at the date of the
 21 happening of the Captain OYAMA Affair in order to avoid
 22 a clash between Japan and China. We accepted this,
 23 and notified Mayor Yu. Then Mayor Yu managed to report
 24 to Nanking. But the proposal to use their good offices
 25 was too late, as the affair entered an irrevocable

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1 phase by the Chinese raiding of Japan's squadron and
2 on the Japanese residence area in Shanghai."

3 With respect to this paragraph 16, I would
4 like to ask the witness if he can identify the person
5 that made the remark that follows.

6 BY MR. ROBERTS:

7 Q Mr. OKAMOTO, in paragraph 16 of your affidavit
8 you state that at the beginning of the outbreak of
9 the incident you were given certain information by a
10 foreigner. Can you identify the person referred to
11 in this paragraph?

12 THE PRESIDENT: After all, it is only an
13 opinion and we wouldn't take his opinion. Why take
14 his informant's? Ask him.

15 Q (Continuing) Will you tell us, please?

16 A I believe it was Mr. Woodhead, editor of
17 the Oriental Affairs Magazine which was published in
18 Shanghai, who told me about this. However, I said
19 in my affidavit "a foreigner" because I couldn't say
20 very positively whether it was Mr. Woodhead or not
21 because of the fact that at that time I was so busily
22 preoccupied in the business affairs of the consulate
23 general in Shanghai, attending conferences of the
24 consulate general staff, conferences and interviews
25 with other consul-generals from other nations, meeting

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1 with the press, that my recollection isn't positive
2 enough to make a very definite statement that it was
3 Mr. Woodhead.

4 THE PRESIDENT: Well, the evidence is valu-
5 less even if it weren't an opinion. The opinion I
6 refer to is in the statement, "We know that Japan has
7 made every effort to prevent an incident," and in
8 the expression "tough elements" which involved another
9 opinion.

10 Well, proceed to read paragraph 17.

11 MR. ROBERTS: I shall proceed to read para-
12 graph 17:

13 "Moreover, the marine strength at the time
14 was 2,000, and to this was added 300 men evacuated from
15 Hankow, plus about 1000 reinforcements from Japan
16 making the total of 3300 against the Chinese forces
17 around the Shanghai area which was estimated between
18 50,000 to 100,000. The odds were so great it is
19 entirely unthinkable the Japanese would try to wage
20 war. I frequently explained these facts to the consular
21 corps and other interested parties and my explanation
22 was accepted. In fact the Japanese side was placed
23 in a very difficult position soon after the outbreak
24 of hostilities. In particular, on August 17, because
25 of the scarcity of Japanese forces in the Yang Tsze

Faint, illegible text on the left page, likely bleed-through from the reverse side.

1 Poo area, the Japanese position was almost destroyed.
 2 As a result we reached the conclusion that we must be
 3 prepared for the worst.

4 "My efforts in requesting the joint commis-
 5 sion on June 23rd, and August 12th, 1937, to investi-
 6 gate and attempt to settle the violation by the Chinese
 7 of the Truce agreement of May 1932, may be read in
 8 the minutes of the said commission."

9 You may cross-examine.

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THE PRESIDENT: Judge Nyi.

1 MR. ROBERTS: I'm sorry. May I first ask
2 the witness to identify the minutes that he has re-
3 ferred to because we intend to use them hereafter?

4 THE PRESIDENT: You may, Mr. Roberts.

5 MR. ROBERTS: May the witness be shown
6 defense document No. 1064 and 1063?

7 MARSHAL OF THE COURT: The first document,
8 Mr. Roberts, is defense document 1063 I am handing
9 the witness.

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

12 BY MR. ROBERTS (Continued):

13 Q Will you examine defense document No. 1063
14 and tell us if they are the minutes of the meeting
15 of the Joint Commission held on August 12 and re-
16 ferred to in your affidavit?

17 A Yes. This is the minutes of the Joint Com-
18 mission which conferred at the Shanghai Municipal
19 Council on the afternoon of August 12, 1937. These
20 minutes were taken down by the clerk of the Joint
21 Commission and, after they were prepared, received
22 the approval of the various representatives on the
23 Commission. The original should be in the custody
24 of a Mr. Long, who was the clerk in the Shanghai
25

1 Municipal Council, an American, who is also attached
2 to the Consular Courts.

3 THE PRESIDENT: Mr. Comyns Carr.

4 MR. COMYNS CARR: Your Honor, we are not
5 objecting to these. Therefore, there is no need to
6 go into detail as to that.

7 THE PRESIDENT: Are you going to tender
8 them, Mr. Roberts?

9 MR. ROBERTS: I offer in evidence defense
10 document No. 1063 at this time.

11 THE PRESIDENT: Admitted on the usual terms.

12 CLERK OF THE COURT: Defense document 1063
13 will be given exhibit No. 2516.

14 (Whereupon, the document above re-
15 ferred to was marked defense exhibit No.
16 2516 and received in evidence.)

17 MR. ROBERTS: I would now like to have the
18 witness examine defense document 1064 and tell us
19 whether or not that is a correct copy of the minutes
20 of the meeting held on June 23.

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

23 THE WITNESS: Yes.

24 MR. ROBERTS: I offer in evidence defense
25 document No. 1064.

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1 THE PRESIDENT: Admitted on the usual terms.
2 Why tender 1063 first, because it is a later date,
3 is it? Won't you read the second one first; if you
4 are going to read them? The minutes of August, 1937
5 have been tendered before the minutes of June, 1937.
6 If you are going to read these documents, I suggest
7 you read the June document first. There may be a
8 good reason for not doing so.

9 MR. ROBERTS: There is no reason for doing
10 so, and I intend to read the June document first.

11 CLERK OF THE COURT: Defense document 1064
12 will be given exhibit No. 2517.

13 (Whereupon, the document above re-
14 ferred to was marked defense exhibit No.
15 2517 and received in evidence.)

16 MR. ROBERTS: For the sake of saving time,
17 I have marked certain excerpts in these exhibits.
18 I will read the excerpts as marked. The names of
19 those present I will not read but will simply refer
20 the Court to the names as showing the members of
21 various nations present at the meeting.

22 THE PRESIDENT: French, Chinese, Japanese,
23 British and Italian.

24 MR. ROBERTS: That is correct.

25 I begin on page 1:

1 "The Chairman said he would like first of
2 all to thank the members of the Joint Commission for
3 electing him as its Chairman. He asked the meeting
4 to excuse him if owing to language difficulties he
5 did not at times make himself clear.

6 "He referred to the (circular (No. 232) con-
7 vening the meeting, which had been called at the re-
8 quest of the Japanese Civil Delegate and invited Mr.
9 OKAMOTO to proceed.

10 "Responding, Mr. OKAMOTO said, 'Mr. Chairman
11 and honorable members, I understand that it is quite
12 some time since the Joint Commission last met to-
13 gether, and I am very glad to have the present oppor-
14 tunity of meeting my colleagues. I am particularly
15 grateful to the Chairman for having kindly acceded to
16 my request to convene the present meeting.'

17 "Continuing, Mr. OKAMOTO remarked that the
18 subject which he wished to discuss was one in which
19 he was sure the Joint Commission was vitally inter-
20 ested. He had recently received information to the
21 effect that fortifications are being erected or were
22 about to be built in the Woosung area. This matter
23 being of no small concern, was one which the Joint
24 Commission could not connive at. The Commission was
25 aware that by virtue of Article II of the May 5th,

1 1932 Agreement, Chinese troops were not allowed to
2 pass through certain specified areas, including the
3 Woosung area 'pending later arrangements.' While it
4 may be argued that this article only provides that
5 movements of Chinese troops were to be restricted,
6 any attempt of the Chinese authorities to fortify
7 any part of the demilitarized area constituted in his
8 submission a hostile act and as such ran counter to
9 the spirit of the 1932 Agreement. Furthermore, he
10 was constrained to believe that the members (neutral?)
11 of the Joint Commission would agree that, if the for-
12 tifications had actually been built, they would be
13 regarded as serious menace to the integrity and
14 safety of the International Settlement and French
15 Concession. The May 5th, 1932 Agreement had thus far
16 proved an admirable instrument towards the maintenance
17 of peace in and around Shanghai and the building of
18 fortifications in the area mentioned would in his
19 submission render that instrument null and void. He
20 sincerely hoped that the report of fortifications,
21 actual or contemplated, at Woosung was untrue, but
22 he was anxious to have his Chinese colleagues dispel
23 Japanese suspicion in this regard. In order to dis-
24 prove or verify this report, he would like to re-
25 quest that the Chinese delegation be good enough to

1 allow an inspection at an early opportunity of the
2 Woosung area by the Japanese delegates. Should the
3 report prove to be correct he hoped that immediate
4 steps would be taken to end these warlike prepara-
5 tions. In conducting the proposed inspection he sug-
6 gested that the neutral members of the Commission
7 accompany the Japanese Delegation, should the Chinese
8 delegation so desire."

9 I skip to page 3, second paragraph.

10 THE PRESIDENT: That is a very lengthy
11 excerpt you are about to read, Mr. Roberts.

12 MR. ROBERTS: Yes, it is.

13 THE PRESIDENT: You would not get far with
14 it tonight. We will adjourn until half-past nine
15 tomorrow morning.

16 (Whereupon, at 1600, an adjourn-
17 ment was taken until Thursday, 1 May
18 1947, at 0930.)

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10 May 20

1 MAY 1947

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Thursday, 1 May 1947

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 with the
exception of: THE HONORABLE MR. JUSTICE NORTHCROFT,
not sitting.

For the Prosecution Section, same as before.

For the Defense Section, same as before.

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

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

3 THE PRESIDENT: All the accused are present
4 except OKA, HIRANUMA and TOGO who are represented by
5 counsel. The surgeon of the Sugamo Prison certifies
6 that the three named accused are too ill to attend the
7 trial today. His certificate will be recorded and
8 filed.

9 Mr. Roberts.

10 S U E M A S A O K A M O T O, called as a witness
11 on behalf of the defense, resumed the stand and
12 testified through Japanese interpreters as
13 follows:

14 DIRECT EXAMINATION

15 BY MR. ROBERTS (Continued):

16 MR. ROBERTS: Mr. President, I continue reading
17 exhibit No. 2517 on page 3, beginning with the second
18 paragraph.

19 "Continuing Mr. Yui said that in reply he
20 would first of all like to refer to the Agreement in
21 question (May 5th, 1932 Agreement). In his submission,
22 the Joint Commission which was created by virtue of
23 this Agreement could only function according to the
24 explicit provisions laid down therein. The representa-
25 tives of the Participating Friendly Powers had given

1 great help and advice in bringing about the cessation
2 of hostilities in 1932, and in framing the May 5th, 1932
3 Agreement they had envisaged the situation as it
4 existed at the time, i.e. in order to avoid a further
5 clash between the opposing forces, the Chinese troops
6 were to remain in the position they were in at the
7 time, and the Japanese troops were to be withdrawn to the
8 International Settlement and the extra-Settlement
9 roads in the Hongkew District. It was felt necessary
10 and advisable that there should be some supervision
11 of these conditions and so the Joint Commission was
12 set up for the purpose. Article I of the Agreement
13 said that as the Japanese and Chinese Authorities had
14 already ordered to cease fire, the cessation of hos-
15 tilities was to be made definite from May 5th, 1932,
16 and that the two sides were to cease every form of hos-
17 tile act. Article II provided that the Chinese troops
18 were to remain in the positions described in Annex I
19 of the Agreement, the intention being of course that
20 if they did not remain in those positions the Joint
21 Commission could interfere. Article III provided for
22 the withdrawal of the Japanese forces to the places
23 specified, the duty of the Joint Commission being to
24 see that this was done. Article IV provided for the
25 establishment of the Joint Commission to certify to

1 the mutual withdrawal and to collaborate in arranging
2 for the transfer from the evacuating Japanese forces
3 to the incoming Chinese police - a special constabulary.
4 Thus the functions and duties of the Joint Commission
5 were clearly defined and have been faithfully carried
6 out, for which the Chinese Authorities were and are
7 deeply grateful. The five intervening years had been
8 peaceful years, peace and good order had prevailed un-
9 disturbed, and the Chinese side could not be accused
10 of having violated any part of the Agreement. He
11 wished to repeat that in his submission, the Joint
12 Commission had been given specific duties which are
13 expressly mentioned in the Agreement for the cessation
14 of hostilities, and the Commission was not supposed
15 to be bothered with questions which go beyond the
16 scope of the Agreement. He contended that the ques-
17 tion of fortifications at Woosung, which was raised
18 by his Japanese Colleague, did in fact lie outside the
19 province of the Joint Commission, and he was sure
20 the members of the Joint Commission would agree with
21 him when he said that it was not the intention of the
22 Participating Friendly Powers to restrict the sover-
23 eignty of China in any way except as expressly provided
24 in the 1932 Agreement. In other words, although the
25 sovereignty of the area concerned around Shanghai had

1 remained to China, she had agreed not to exercise all
2 her sovereign rights in that area temporarily because
3 of the provisions of the 1932 Agreement."

4 I now skip to the next to the last paragraph
5 on page 4, beginning with the word "concluding."

6 "Concluding, Mr. Yui made a fervent appeal
7 for the removal of doubt and suspicion of China, and
8 reiterated his assertion that the points raised by his
9 Japanese colleague did not come within the purview
10 of the Joint Commission whose functions and duties were
11 expressly defined in the Agreement of May 5th, 1932."

12 MR. COMYNS CARR: Your Honor, at some stage
13 we shall have to read the remainder of Mr. Yui's re-
14 marks. I suggest it would be more convenient that
15 they be read now, but if my friend prefers to skip
16 them I cannot insist.

17 THE PRESIDENT: We leave it to you, Mr. Roberts.
18 Occasionally the prosecution obliged the defense by
19 reading more matter, but you need not be influenced by
20 that.

21 MR. ROBERTS: There is considerable repetition
22 in these minutes. I tried to read the explanation as
23 it applied to both sides to give a fair picture. If
24 there is any question about our intention, I have no
25 objection to reading the entire document.

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1 THE PRESIDENT: We don't urge you to do that.
2 Better read the parts marked and leave it at that.

3 MR. ROBERTS: I now proceed to page 5, the
4 third paragraph.

5 "The Japanese Government, as one of the most
6 interested parties, attached great importance to the
7 Agreement of 1932 and also to the continuance of the
8 Joint Commission. The importance and usefulness of
9 the Agreement is just as great at present as when the
10 Agreement was first brought into being some five years
11 ago. The Agreement for these reasons could not be al-
12 lowed to die a natural death, nor to be relinquished
13 unilaterally. It must also be in the interest of
14 those members of the Commission other than the Chinese
15 and Japanese delegates to see to it that the terms
16 of the Agreement were scrupulously observed at all
17 times by the parties concerned, for it must not be
18 forgotten that the strict enforcement of the Agreement
19 of 1932 is the only way to ensure peace and order in
20 Shanghai."

21 This is the rejoinder of Mr. OKAMOTO.

22 THE PRESIDENT: You have marked this to include
23 more than you read.

24 MR. ROBERTS: I have marked on my copy the
25 beginning on page 5, as I have stated, the third

1 paragraph, continuing to the top of page 6.

2 "The Agreement of 1932 stipulated in the
3 first place that the cessation of hostilities would be
4 rendered definite and that this cessation of hostili-
5 ties would be assured by preventing the Chinese forces
6 from moving into a certain district which is speci-
7 fied in its Annex I. In other words, the demilitar-
8 ized zone was thus created where neither of the parties
9 concerned could engage in hostilities in the future.
10 Moreover, the negotiations at the peace conference
11 in framing the Agreement undoubtedly envisaged the
12 cessation of hostilities as including the cessation of
13 various military preparations in the area concerned.

14 "The fortress at Woosung, now in question, was
15 destroyed by the Japanese forces during the Shanghai
16 Incident. Woosung was situated within the said de-
17 militarized area and any attempt on the part of Chinese
18 to restore the razed fortress, with possible replen-
19 ishment of its armament, could not but be construed
20 as a serious contravention of the Agreement of 1932.
21 He wished to emphasize particularly that such a project
22 would constitute a serious menace to peace and secur-
23 ity of the foreign controlled areas of Shenghai, and he
24 was sure the members of the Friendly Neutral Powers
25 would share his conviction."

1 I now go to page 9, the second paragraph.

2 "The Chinese and Japanese delegations having
3 withdrawn, the representatives of the Participating
4 Friendly Powers discussed the situation, resulting in
5 the following decision which was read by the Secretary
6 to the Chinese and Japanese delegations after they
7 had rejoined the meeting.

8 "The representatives of the Participating
9 Friendly Powers of the Joint Commission feel that they
10 are not in a position at the present time to express
11 an opinion on the conflicting interpretations of the
12 Chinese and Japanese delegations on the points raised
13 in the present issue.

14 "However, they would enquire whether or
15 not as a gesture of conciliation and good will, and
16 without prejudice to his stand, the Chinese Civil
17 Delegate would be prepared to make any voluntary de-
18 clarations as regards the composition and numbers of the
19 Peace Preservation Corps in the Shanghai area, and/or
20 on the question of any fortifications within the so-
21 called prohibited zone.'

22 "Responding, Mr. Yui said that speaking for
23 himself and the Chinese Military Delegate, he thanked
24 the Chairman and the neutral members for their kind-
25 ness in coming to the meeting, and for their consideration

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1 of the matters brought before it. As regards the
2 suggestion that he should make a voluntary statement
3 regarding the fortifications at Weesung, he regretted
4 to say that as his powers as the Chinese Civil Dele-
5 gate on the Joint Commission were limited, and as the
6 matter lies beyond the scope of the Joint Commission,
7 he could not say anything without the permission of
8 his government. However, this much he would say,
9 that nothing so far undertaken by the Chinese Authori-
10 ties (in the area concerned?) held behind it any hos-
11 tile intention or warlike preparation. He denied
12 that any warlike preparations had been made by the
13 Chinese Authorities as alleged by the Japanese Civil
14 Delegate and said he wished to repeat that the Chinese
15 authorities were second to none in their desire and
16 efforts to ensure lasting and permanent peace and good
17 order in Shanghai."

18 I now read excerpts from exhibit No. 2517.

19 THE PRESIDENT: That is the one you have just
20 read.

21 MR. ROBERTS: 2516, I beg your pardon. Be-
22 ginning on page 1:

23 "The Chairman observed that he had convened
24 the meeting at the request of the Japanese Civil Dele-
25 gate. It seemed unnecessary to say that all the

1 members of the Commission hoped that hostilities would
2 be kept away from Shanghai, and that a peaceful set-
3 tlement of the present difficulties between the Chinese
4 and Japanese sides would be come to.

5 "Mr. OKAMOTO said that in spite of the state-
6 ments of the Chinese Civil Delegate to the contrary,
7 he had received definite information to the effect
8 that units of the Peace Preservation Corps since last
9 evening had taken up various positions in areas quite
10 close to the International Settlement. Moreover,
11 troops of the 88th Division were not at a position
12 of Haskell Road near the North Station, with the result
13 that the position today had taken suddenly a turn for
14 the worse. This heavy concentration of Chinese armed
15 forces all over the territory covered by the Truce
16 agreement of 1932, to say nothing of various points
17 in close proximity to the International Settlement,
18 has caused grave anxiety and fear of an unfortunate
19 clash between the Sino-Japanese forces. In the face
20 of this sudden entrance of Chinese armed forces the
21 Japanese Naval Landing Party who up to the present
22 had confined their activities to the protection of
23 Japanese nationals, would be obliged to take up suitable
24 protective positions. In these circumstances he thought
25 the duty devolved on the Joint Commission of taking

1 immediate steps towards averting the grave danger
2 threatened, and with this object in view he suggested
3 that the Joint Commission form an investigation party
4 composed of members of the Neutral Friendly Powers,
5 accompanied by both Chinese and Japanese Delegates, to
6 look into the state of affairs now obtaining in the
7 area in question. He would like to add that this
8 was not a moment for discussion, rather a single moment
9 should not be lost. He would like to hear the views
10 of his esteemed colleague on the matter.

11 "Mr. Yui, addressing the Chairman and Honorable
12 Members of the Joint Commission said in reply; after
13 listening to the address of his Japanese colleague he
14 was constrained to state that the attempt of the Japanese
15 side to make the Joint Commission serve its own purpose
16 was unwarranted, unreasonable and highly improper. The
17 Japanese delegation must know that the Joint Commission
18 was organized for the specific purpose of maintaining
19 peace and order in Shanghai, and not for aiding and
20 abetting Japan in carrying out her national policy
21 vis-a-vis China. His Japanese colleague seemed to
22 think that the neutral members of the Commission,
23 however just and impartial, could be made to serve as
24 their tools, to be used whenever they so desired, and
25 relegated to the background or a dark corner whenever

1 it suited their purpose to do so. The Japan (when
2 she) stationed armed forces at Paitzechao (8 character
3 bridge), an area far beyond the railway, and in the
4 neighborhood thereof, yet according to the aforesaid
5 agreement, the Japanese forces were supposed to be
6 withdrawn from that area. That breach of the Agree-
7 ment alone would ipso facto render it null and void
8 and ineffective. Certainly no agreement could be
9 valid which was only observed by one party to it, no
10 matter how scrupulously observed by one side. The
11 Chinese delegates submit, therefore, that the Japanese
12 side having violated the Agreement, they no longer had
13 the right to invoke that instrument. Again with refer-
14 ence to recent developments in Shanghai in consequence
15 of the unfortunate Hungjao Incident, he would like to
16 call attention to one phase of the question. While
17 his Japanese colleague, in his capacity as Japanese
18 Consul-General, was informing him that the Japanese
19 Government was willing to have the issue settled through
20 normal diplomatic means, and while the investigation was
21 still under way, there suddenly eventuated a big Japan-
22 ese naval concentration at Shanghai, and the Japanese
23 armed forces ashore were greatly increased. Armaments
24 and war supplies of all kinds were being quickly landed,
25 and according to reliable reports, further reinforcements

1 were on the way. All these coercive measures could
 2 not fail to menace the peace and order of Shanghai,
 3 and constituted a serious threat to his country. In
 4 such circumstances China had the right and was entitled
 5 to adopt appropriate measures for self-defense,
 6 which accounted for the present disposition of the Chi-
 7 nese military units. He humbly submitted, therefore,
 8 that the present tense situation in Shanghai had been
 9 created because of the heavy Japanese naval concen-
 10 tration, and the augmentation of the Japanese armed
 11 forces ashore. China was acting only in self-defense
 12 and could not be held responsible in any way.

1 "Responding Mr. OKAMOTO said that he would
2 like to point out again that this was not the time
3 for heated discussions and that not a single moment
4 should be lost. No useful purpose could be served by
5 argument on which side was responsible, etc. The great
6 thing before the Commission was to consider means of
7 averting an unfortunate clash of arms which was
8 immediately threatening. He wondered whether or not
9 his Chinese Colleague really wanted to avoid the armed
10 clash that was menacing Shanghai. If his Chinese
11 Colleague sincerely entertained such a desire he
12 ought to agree on the necessity of searching at once
13 for a suitable way of accomplishing it. He recalled
14 that only the previous night the Chinese Civil Delegate
15 had promised him to do his best to withdraw the
16 Paoantui from places where Japanese residents were
17 living or from positions close to the Headquarters of
18 the Naval Landing Party, yet this morning not only had
19 the Paoantui not been withdrawn but units of the
20 regular Chinese army had entered the prohibited zone.
21 His Naval Landing Party had not yet done anything in
22 preparation (to resist an attack?) but he wanted to
23 know at once if anything could be devised to avoid an
24 armed clash. He would like to hear the views of his
25 Chinese Colleague on the subject."

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1 Then we go to page 6, second paragraph.

2 "Mr. OKAMOTO observed that he wished to
3 emphasize his willingness to cooperate with the Chinese
4 delegates or with the Joint Commission in devising some
5 way to avert the threatened clash which seemed imminent.
6 That was his earnest intention and he hoped he would not
7 be misunderstood. He had already telegraphed to his
8 colleague in Nanking (Counsellor of the Japanese
9 Embassy) asking for his assistance in approaching the
10 Chinese Government to do everything possible to avert a
11 serious clash in Shanghai. He was going to do his
12 utmost to that end and he hoped the Joint Commission
13 would do something to help. Of course he and his
14 Chinese Colleague must do everything possible to assist
15 their respective governments to work out a solution and
16 they could have talked between themselves on the subject,
17 but at the same time he hoped it was quite proper to
18 ask the members of the Joint Commission to help as he
19 thought they could make a valuable contribution to the
20 maintenance of peace in Shanghai."

21 We go to page 7, second paragraph.

22 "Mr. Yui said he would like to make a few
23 further remarks. As mayor he had always done his utmost
24 to preserve peace and order in Shanghai and would con-
25 tinue to do so but he would have to repeat his opinion

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1 that the present difficulty could be solved only
2 between China and Japan, although no doubt the govern-
3 ments represented by the Neutral Friendly Powers on
4 the Joint Commission would always be glad to do some-
5 thing along the line of advising China and Japan to
6 come to terms. So he thought it was futile for the Joint
7 Commission to waste its efforts. He reiterated that
8 the Joint Commission could only base any action it
9 took, on the instrument which was the foundation of its
10 activities. Since that agreement had been violated
11 through the action of the Japanese side in stationing
12 forces at the 'Eight Character' Bridge as had just been
13 admitted by the Japanese Civil Delegate, the Japanese
14 side had no right now to invoke the agreement. He
15 again assured the meeting that in his capacity as Mayor
16 he would do his utmost to ameliorate the existing
17 situation with a view to ensuring peace and good order
18 in Shanghai to the benefit of the citizens of China,
19 Japan and other friendly Powers."

20 I now go to page 8, second paragraph.

21 "Addressing Mr. Yui the Chairman recalled that
22 the Chinese Civil Delegate had said that the solution
23 of the present situation lay with the Governments of
24 China and Japan. Did he mean by that statement that he
25 would refuse the help of the Joint Commission even if

1 that Commission could do something to assist in avoid-
2 ing a clash?

3 "Replying Mr. Yui said he did not mean that.
4 He meant that as the Japanese side had violated the
5 1932 Agreement they did not now have the right to
6 invoke that compact.

7 "Mr. Gauss asked if Mr. Yui had made any
8 representations to the Joint Commission at the time
9 the alleged violation of the agreement took place last
10 year. Mr. Yui responded that he had made representa-
11 tions to the Japanese side at the time as he had
12 documents to prove. He submitted that under the agree-
13 ment there was no occasion to make representations to
14 the full commission unless there were 'doubts' arising.

15 "Mr. OKAMOTO asked if it was not a fact that
16 Mr. Yui did not object at the time. Mr. Yui replied
17 that he did not object at the time because he did not
18 want to disturb the friendly relations between China
19 and Japan which were then existing and also in the
20 interests of peace and good order. That was on record.

21 "Mr. OKAMOTO said that the Japanese navy owned
22 a piece of land in the vicinity of the 'Eight
23 Character' Bridge which he pointed out on a map.

24 "The Chairman remarked that at the last meeting
25 of the Joint Commission, Mr. Yui had disclaimed

1 any intention of regarding the Commission as defunct.
2 Would he therefore object to the good offices of the
3 Commission being exercised in the present instance?

4 "Mr. Yui observed that he only said he felt
5 such efforts would be futile.

6 "Mr. Davidson said it was apparent the situa-
7 tion was too serious for argument and so he would like
8 to know if anything could be done by the Joint Commission
9 or any of its members to assist in bringing about a
10 temporary settlement to last until a more permanent
11 settlement could be worked out by the parties concerned.
12 He would like to offer his services in any capacity
13 and he was sure his colleagues of the neutral Powers
14 would want to extend the same offer. A clash would be
15 against all their interests.

16 "Mr. Gauss said he would be glad to do anything
17 to assist either side.

18 "Mr. Yui remarked that he would welcome and
19 would be grateful for any efforts of the neutral Civil
20 members in their capacity as Consuls-General or they
21 could call them the 'Authorities concerned' and not
22 mention the Joint Commission.

23 "Mr. OKAMOTO said he wondered if it were
24 possible for the Commanders of the Neutral forces
25 stationed in Shanghai to meet together and as military

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1 officers work out some plan which they could recommend
2 to the Japanese and Chinese Commanders as a definite way
3 of avoiding a clash?"

4 I now turn to page 13, second paragraph.

5 "Mr. Gauss, after looking at the map asked
6 Mr. Yui if the Chinese detachment mentioned by Mr.
7 OKAMOTO could not be withdrawn to the other side of the
8 railway?"

9 "Mr. Yui replied that the Chinese detachment
10 had the right to be there. He suggested that the
11 Japanese side might make some move.

12 "Mr. OKAMOTO remarked that he was informed
13 the Chinese detachment mentioned was 'uncontrolled'
14 and therefore might start an attack. He suggested
15 that if Mr. Yui was unable or unwilling to get into
16 touch with the Chinese Commander, that the neutral Civil
17 Delegates (either as such or in their capacity as
18 Consuls-General) do so, with a view to having the
19 detachment withdrawn.

20 "At this stage Mr. Yui and Comdr. TAKEDA
21 withdrew.

22 "Mr. Marchiori suggested that as a temporary
23 measure and in order to avoid a clash which seems to
24 be imminent with the Chinese forces occupying a posi-
25 tion at Haskell Road, a detachment of neutral forces

1 might be sent to occupy the sections of the settlement
2 boundary opposite that position so as to avoid the
3 necessity which the Japanese claim, of sending their
4 forces there. Mr. OKAMOTO assured Mr. Marchiori that
5 if that could be done the Japanese side would be satis-
6 fied and would not send their forces to that section.

7 "The other neutral members felt that this
8 would be a matter for the Defense Commanders to decide.
9 The American and British Civil Delegates said they
10 would inform their respective Commanders of that sug-
11 gestion by telephone."

12 You may cross-examine.

13 THE PRESIDENT: Judge Nyi.

14 JUDGE NYI: May it please the Tribunal,
15 the present witness is a diplomat of long standing--

16 THE PRESIDENT: You cannot address us.

17 JUDGE NYI: --American countries.

18 THE PRESIDENT: Proceed to cross-examine.

19 JUDGE NYI: May I just say one word?

20 THE PRESIDENT: Don't tell us something we
21 know already.

22 JUDGE NYI: I am only requesting--

23 THE PRESIDENT: You are out of order in saying
24 any word unless you explain what you are about to put
25 to us. Do you want to raise a point of law?

1 JUDGE NYI: I want to--

2 THE PRESIDENT: Do you want to criticize the
3 witness?

4 JUDGE NYI: No, not at all.

5 THE PRESIDENT: What do you want to do?

6 JUDGE NYI: I am making this statement to
7 explain that if it would be possible and preferable,
8 that the witness be examined and be directed to answer
9 in English.

10 THE PRESIDENT: It is for the witness to
11 decide.

12 JUDGE NYI: May I make the request that the
13 Tribunal ask the witness if he would answer in English?

14 I think this was not without precedent in
15 regard to a previous witness, a Chinese witness.

16 THE PRESIDENT: We give the witness the
17 option. But I recollect that on one occasion when a
18 Japanese witness decided to speak in English we directed
19 him to speak in Japanese.

20 The witness may please himself. If he decides
21 to speak in English and we find it difficult to under-
22 stand him, we shall direct him to speak in Japanese.

23 JUDGE NYI: Thank you.
24
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CROSS EXAMINATION

1
2 BY JUDGE NYI:

3 Q Mr. Witness, on page 2 under paragraph 5 of
4 your affidavit you say you received a report that China
5 was reinforcing the Paoantui and constructing trenches
6 and barbed wire entanglements and reconstructing the
7 Woosung Fortress. Where did this report come from?

8 A I received this report following my arrival to
9 assume my post in Shanghai from the Japanese Naval
10 Landing Party.

11 Q Have you made any effort to confirm this
12 report?

13 A I requested the calling of the meeting of
14 the Joint Commission in order to confirm this report.

15 Q Oh, you suggested that you want to have this
16 report confirmed in the meeting of the Joint Commission?

17 A Yes.
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1 Q Why didn't you investigate yourself before
2 you convened the meeting of the joint commission?

3 A I could not very well go to the fortress at
4 Woosung to make investigations myself.

5 Q But you did not only confine to the fortress
6 at Woosung: you did mention the reenforcement of Paoan-
7 tui and also the construction of barbed wire entangle-
8 ments, is that right?

9 A Yes.

10 Q So you didn't make any investigation at all
11 with respect of these points, did you?

12 A As the Japanese Consul General I could not
13 very well myself enter this special district and to
14 investigate military facilities -- military installa-
15 tions.

16 Q In the minutes of the meeting of the joint
17 commission, June 23, 1937, you said you sincerely
18 hope that the report was untrue and it turned out
19 that the Chinese delegate did deny this report. Is
20 that the reason why the third party members present
21 seemed not too pleased to intervene as you stated?
22 So you did entertain some doubt about the truth of
23 this report, did you not?

24 A When I received this report I, of course,
25 hoped that it would not be true; however, at the

1 meeting of the joint commission on the 23d of June
 2 the committee members of the neutral powers did not
 3 wish to become deeply involved or to intervene because
 4 their interpretation of the efforts for a truce between
 5 the Chinese and Japanese forces was not--

6 THE MONITOR: The committee members from the
 7 neutral powers showed an attitude whereby they did
 8 not wish to intervene in regard to the problem of
 9 interpretation of the Cease Fire Agreement between
 10 Japan and China. I believe that they wished on this
 11 point to withhold any opinions at this juncture.

12 Viewed as a whole it was on this point that
 13 the joint commission, as stated in the minutes, with-
 14 held any opinion.

15 It seems that the translators are having
 16 difficulty. I shall repeat that statement once more.

17 The fact that I said that the representatives
 18 of the neutral powers did not seem to wish to inter-
 19 vene was not because, as the prosecutor just said now--

20 The fact that I said that the representatives
 21 of the neutral power did not seem to wish to intervene
 22 I did not mean that as the prosecution has just said
 23 or by taking into consideration the fact that I said
 24 that I hoped the report was not true--
 25

THE MONITOR: When I mentioned in my affidavit

1 that the representatives, representative, of the
 2 neutral country did not wish to intervene in the
 3 matter I did not mean that these representatives had
 4 considered what I said in the meeting; in other words,
 5 I had said that I wished the report was not true. I
 6 did not mean that the representative of the neutral
 7 country had considered these points and had replied
 8 that they did not wish to intervene.

9 I meant that viewed from the general results
 10 of the meeting held on that day the joint commission
 11 will withhold its opinion with regard to the argument
 12 which occurred between the Chinese and Japanese
 13 delegates regarding the interpretation of the Cease
 14 Fire Agreement. This appears in the minutes of that
 15 meeting.

16 That is what I meant to say.

17 THE PRESIDENT: If you desire, Witness, you
 18 may speak in English.

19 Q Did you take along with you some member of
 20 the Naval Landing Party when you went to the meeting?

21 A Commander TAKEDA who was then senior staff
 22 officer of the Naval Landing Party in Shanghai accompan-
 23 ied me to that meeting.

24 Q And this was the man from whom you got this
 25 report, is it?

1 A Yes.

2 Q And he didn't try to help you to substantiate
3 his report of the meeting, did he?

4 A Commander TAKEDA had no opportunity to make
5 any statements at that meeting.

6 Q Was he qualified to speak?

7 A Yes.

8 Q The commission has not met for five years
9 and you brought out a charge which was not substan-
10 tiated by fact; was that the reason of disappointment
11 at the meeting as expressed by the neutral members of
12 the meeting?

13 MR. ROBERTS: I submit that the question is
14 very complex; partly argumentative, partly question,
15 and partly I am not sure what it is.

16 THE PRESIDENT: He appeared to assume a fact.
17 It was objectionable in that way but he went on to put
18 to the witness whether that was the fact which he
19 assumed, if I understood him correctly.

20 Did the commission think that you made an
21 unfounded charge; is that what you are trying to ask?

22 Did they, Witness?

23 THE WITNESS: I could not understand the
24 President's question very well. I should like to have
25 it repeated once more.

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1 THE PRESIDENT: Do not repeat it. If I
 2 understand what the prosecutor is asking it is this:
 3 Did the commission think that you made an
 4 unfounded charge?

5 THE WITNESS: I do not think so.
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1 BY JUDGE NYI (Continued):

2 Q As you stated in your affidavit that they
3 were not too pleased, you doubtless suggested that
4 there was a sense of disappointment because you did
5 not substantiate your claim, allegation?

6 THE PRESIDENT: He has answered suffi-
7 ciently.

8 A I have not written such a fact in my
9 affidavit.

10 Q I did not say that you wrote about the
11 sense of disappointment, but you did say that
12 they were not too pleased. So I suggest --

13 MR. ROBERTS: I object, your Honor. As
14 your Honor suggests, the question has already
15 been answered sufficiently, I believe.

16 JUDGE NYI: I will not press it further.

17 Q Now on the same page, that is page 2,
18 under paragraph 5, the same paragraph, you men-
19 tioned the forbidden zone -- 6th line from the
20 bottom, page 2. Do you refer to any area as
21 provided in the Cease-Fire Agreement of May 5, 1932?

22 A Yes.

23 JUDGE NYI: Your Honor, this agreement of
24 May 5, 1932, is part of the exhibit, 2419. May I
25 have it shown to the witness so as to ascertain

1 whether this was the same agreement as he referred
2 to?

3 THE PRESIDENT: Show him that exhibit.

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

6 Q Have you seen it?

7 A Yes.

8 Q That is the agreement that you referred to?

9 A Yes, it is this.

10 JUDGE NYI: Your Honor, may the witness
11 also be shown the annexes, the maps, in order to
12 ascertain the locality of the troops?

13 THE PRESIDENT: You will have to refer to
14 an exhibit number.

15 JUDGE NYI: The same exhibit number.
16 They are annexes of the same exhibit, 2419.

17 THE PRESIDENT: He may have his attention
18 directed to any part of that exhibit or any annex
19 that etc.

20 MR. ROBERTS: I do not believe that the
21 maps that are referred to have been marked as a
22 part of this exhibit. However --

23 THE PRESIDENT: It is one whole exhibit.
24 There is no difficulty about that.

25 MR. ROBERTS: If they are to be marked I

1 have no objection.

2 THE PRESIDENT: The Judges haven't
3 copies of the map.

4 Q Mr. Witness, do the maps indicate
5 the right location where the troops ought to
6 be?

7 A I cannot say definitely; I do not know
8 definitely by just glancing or looking on this
9 map. In connection with this matter there are
10 military representatives in the joint commission,
11 and the Commander, TAKEDA, whom I mentioned,
12 was one of these military representatives, and
13 with regard to the military terms of this truce
14 agreement I consulted Commander TAKEDA of the
15 Naval Landing Party. I should like to add that
16 these special districts are not clearly marked on
17 the annex of the truce agreement.

18 THE MONITOR: Clearly indicated in
19 the annex to the Cease-Fire Agreement.

20 Q Have you seen those maps before?

21 A I have never before seen the maps which
22 were just shown to me.

23 Q Have you brought them over to the meeting
24 of the joint commission where you argued on the
25

1 violation of the Chinese authorities?

2 A No, I did not have any maps, but I be-
3 lieve that Commander TAKEDA had maps in his pos-
4 session.

5 Q But you say that TAKEDA didn't have a
6 chance to say anything at the meeting, didn't you?

7 A Yes.

8 THE PRESIDENT: Those maps are not
9 covered by the certificate attached to exhibit
10 2419.

11 JUDGE NYI: Excuse me, your Honor.

12 THE PRESIDENT: There is no evidence as
13 to their authenticity or accuracy at all.

14 JUDGE NYI: If we didn't put them in, if
15 the defense does not have an objection to having
16 them put in now, we will have them put in, and we
17 will complete the necessary procedure later.

18 THE PRESIDENT: Before we have a futile
19 discussion on that, let me read a memo from a col-
20 league.

21 "According to Mr. O. K. Yui, it was
22 quite true that due to the efforts of the partici-
23 pating friendly powers China and Japan had agreed
24 not to send their troops into the area concerned."

25 My colleague inquires: "Isn't that

1 enough?"

2 Q Mr. Witness --

3 THE PRESIDENT: That is addressed to
4 you, Judge Nyi.

5 JUDGE NYI: I am going to ask the wit-
6 ness on another point not related to the maps.

7 Q Was it a fact that previous to 1932 the
8 Chinese troops could move around freely provided
9 they did not enter the International Settlement
10 and French Concession?

11 A I doubt very much whether this question
12 just put to me has any relevance to what I stated
13 in my affidavit. However --

14 THE PRESIDENT: It is not for you to take
15 objections. You leave that to the defense counsel.
16 Answer the question, if you can.

17 A I arrived in Shanghai in May of 1937,
18 and I was stationed there until March of 1938. I
19 have stated so in my affidavit. Therefore, I regret
20 that I am unable to reply to questions concerning
21 matters prior to that time.

22 Q With respect to the area in question, do
23 you mean that it was a demilitarized zone?

24 A Yes.

25 Q Does the term "demilitarized zone" appear

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1 in the agreement?

2 THE PRESIDENT: You need n t ask him
3 that. You have the agreement, haven't you?

4 We will recess for fifteen minutes.

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

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

3 THE PRESIDENT: Judge Nyi.

4 BY JUDGE NYI (Continuing):

5 Q Mr. Witness, regarding the cease fire agree-
6 ment of May 5, 1932, do you know that a Chinese dele-
7 gate at the time of the negotiations has declared
8 that nothing in the agreement implies any permanent
9 restriction on the movement of Chinese troops in
10 Chinese territory?

11 THE PRESIDENT: Don't ask him that. Point
12 it out to us when you are summing up your evidence
13 or arguing the point.

14 Q Mr. Witness, where is the Paitzechao or
15 the Eight Character Brigade, or, to make it more
16 specific, was it in the zone under dispute?

17 A What do you mean by the zone under dispute?

18 THE PRESIDENT: A forbidden area, is it?

19 A (Continuing) I believe it was a forbidden
20 area with regard to the Japanese side. The Japanese
21 were not permitted to enter the zone.

22 Q Yes. My question was, was Paitzechao in
23 that area?

24 I Yes.

25 Q But you did admit that there was a detachment

1 of Japanese soldiers in Paitzecho before the
2 hostilities of 1937, did you?

3 A It is just as I have said according to the
4 minutes of the joint commission.

5 Q Why you did not like to dwell long on this
6 topic of the Eight Character Bridge in the meeting
7 of August the 12th?

8 THE PRESIDENT: The question is wholly objec-
9 tionable in that form.

10 Q In the minutes of August 12 it said, "He did
11 not want to say much about the Eight Character Bridge
12 beyond remarking that since last year the Japanese
13 Naval Landing Party had stationed a small detachment
14 there consequent on a murder case which had caused
15 Japanese residents in the area to be uneasy about
16 their persons and property."

17 THE MONITOR: Can you give us a copy of the
18 document you are reading from. It is impossible for
19 us to translate the reading --

20 JUDGE NYI: That was the bottom of page 6 of
21 exhibit 2516.

22 Q (Continuing) My question is, did you notify
23 the Chinese authorities or the joint commission before
24 you sent this detachment?

25 A The stationing of a small Japanese detachment --

1 the sending of a small Japanese detachment to Paitzechao
2 or the Eight Character Bridge happened before my
3 arrival in Shanghai. This took place in the year pre-
4 vious to my arrival in Shanghai and, accordingly, I
5 do not know what steps were taken or what arrangements
6 were made.

7 Q Are you aware that any such notice had been
8 given by the Japanese authorities?

9 A I do not know.

10 Q Article 3 of the cease fire agreement provided
11 that the Japanese troops should withdraw to their
12 original positions in the settlement and extra-
13 settlement roads. Now, where was the headquarters
14 of the Japanese naval landing party in Shanghai. In
15 which part of the city?

16 A It is located in Hongkew, an area of Shanghai
17 where numerous Japanese lived.

18 Q Was it on an outside road? What I mean is
19 extra-settlement road. That is quite a technical term.

20 A I do not remember very well such small
21 details.

22 Q This is quite an issue in Shanghai, was it,
23 between the authorities, Chinese authorities and the
24 foreign authorities, as to the right of building roads
25 on the Chinese area?

1 MR. ROBERTS: I object on the ground that
 2 I believe it is outside the scope of the examination.
 3 There was nothing brought up about the right of build-
 4 ing roads nor any question about the headquarters of
 5 the landing party at the time.

6 THE PRESIDENT: The objection is overruled.

7 Q Could you recall, Mr. Witness, whether it was
 8 or not?

9 THE MONITOR: Can you explain that "it" please,
 10 Judge Nyi? Do you mean --

11 JUDGE NYI: The headquarters of the naval
 12 landing force.

13 A Having been stationed in Shanghai, naturally
 14 I knew very well where the headquarters of the naval
 15 landing party were located, but I believe the point
 16 of the prosecutor's question was whether it was
 17 located in the extra-settlement road or not. This is
 18 a matter which I cannot answer with accuracy, and I
 19 have said that before.

20 Q Now, you have stated in the middle of page 5
 21 of your affidavit that a Chinese mayor phoned you
 22 two or three times a day requesting you to restrain
 23 some acts on the part of your marines. Can you tell
 24 us what are these acts of your marines which the
 25 Chinese mayor thought should be restrained?

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1 MR. ROBERTS: Can we have it indicated that
2 the sentence also has the word "and so forth" at the
3 end?

4 THE PRESIDENT: Not unless the prosecutor
5 wants it. The allegation is against the marines and
6 he can confine his cross-examination to that if he
7 wants to.

8 MR. ROBERTS: Well, I object on the ground
9 that he is only quoting part of a sentence.

10 THE PRESIDENT: You might object on the ground
11 that he isn't putting the whole of the document to him.

12 Q Will you please answer my question?

13 A It is a fact that the mayor cooperated whole
14 heartedly with me ever since the tea party which was
15 held on the 15th of July. It is also a fact that on
16 certain days he called me by telephone sometimes as
17 much as two or three times a day. The reason for his
18 calling me by telephone was with regard to the maneuvers
19 and actions of the Japanese naval landing party. The
20 mayor said that in view of the situation existing
21 that he desires to have such maneuvers and actions by
22 the Japanese forces stopped because it was feared that
23 such acts would irritate the Chinese masses.

24 Q Did you agree to that?

25 A Yes, I did agree.

1 Q Did you restrain these acts?

2 A I was of the same opinion as Mayor Yu and
3 each time that he called me by telephone I supported
4 his views and brought the matter up to the commander
5 of the naval landing party expressing or suggesting
6 that such maneuvers be restrained as much as possible.

7 Q Did the commander accept your suggestion?

8 A The commander of the naval landing party
9 entertained about the same opinion as we did and he
10 did all he could to restrain such acts.

11 Q You mention the maneuvers and other acts.
12 Now what are the other acts?

13 A There were many incidents which I recall
14 happened at that time, one in particular when a sailor
15 named MIYAZAKI had disappeared. Because of this
16 disappearance of the sailor and emergency guard patrol
17 was established. That is what I mean by other acts.

18 Q What does that disappearance have anything
19 to do with the acts which the Chinese would like to
20 restrain?

21 A As a result of the disappearance -- of this
22 incident, this disappearance incident -- emergency
23 measures were taken to guard against such things.
24 It was this measure of taking extraordinary measures
25 which the Chinese authorities wished restrained because

1 it would irritate the Chinese people.

2 Q Was MIYAZAKI afterwards discovered?

3 A Yes.

4 Q Was it also a fact that prior to the incident,
5 OYAMA incident which you mention, that parties of
6 Japanese had visited the neighborhood of the airdrome,
7 Hongchiao airdrome, and had been turned back by the
8 Chinese?

9 A I do not know of such fact.

10 Q Could you recall that written representations
11 had been presented to you by the city government against
12 such acts?

13 A I do not remember such a fact.

14 Q To refresh your mind further, did the mayor
15 also remind you of the fact right after the occurrence
16 of the OYAMA incident?

17 A The mayor did not say anything to me in
18 regard to such an occurrence.

19 Q Where was the Hongchiao airdrome? In what
20 part of the city?

21 A If I had a map here I could easily point this
22 out for you, but I believe it was either in some direc-
23 tion, that is, west or south of Shanghai. I know the
24 place very well but I cannot reply with accuracy just
25 where it was located, but I believe it was some where

It will be better to go to the
 headquarters of the
 landing party.
 I have no idea as to the distance between
 these two points.
 I believe it is about 10 miles.
 I have no idea as to the distance between
 these two points.
 I believe it is about 10 miles.
 I have no idea as to the distance between
 these two points.
 I believe it is about 10 miles.

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near the extra-settlement road.
 Q How far is it from the headquarters of your
 landing party?
 A I have no idea as to the distance between
 these two points.

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1 Q In what part of the city -- I mean in
2 which direction -- is the naval landing party?

3 A It will be sufficient to say it is
4 located in Hungjao.

5 Q That is not what I want. You have told us
6 that already. I want to know the direction.

7 A I don't know whether the direction is of
8 any importance or not; but assuming that the Bund
9 is located in the center of Shanghai, I would say
10 that it was in a northwesterly direction.

11 Q Is the Bund the center of Shanghai?

12 A I don't know whether it is the center or
13 not. I just said assuming that it were the center.

14 Q If I may refresh your mind, Hungjao is
15 on the southwest, as you have stated, and the
16 naval landing party was on the northeast, was it?

17 A I didn't say northeast. I thought I said
18 northwest.

19 Q They are very far away, are they? How
20 much time would it take on an automobile?

21 THE PRESIDENT: Traveling how many miles
22 an hour?

23 A As I have said before, I don't know exactly
24 the distance between the Hungjao and the naval --
25 I have no idea as to the distance between the

1 naval landing party and Hungjao, and I therefore
2 cannot state accurately any more than that.

3 Q What time, to be exact, did the OYAMA
4 Incident occur -- the time of the day?

5 A I know that the Incident occurred on the
6 9th of August -- on the afternoon of the 9th of
7 August, 1937, but I am not -- I don't know the
8 exact time, since I was not on the spot.

9 Q Can you tell me whether it was early in
10 the afternoon or late afternoon?

11 A I recall that I had received reports that
12 it occurred towards evening, but I am not certain
13 on this point also.

14 Q On what mission was OYAMA on that day at
15 that particular spot?

16 MR. ROBERTS: I object to it on the ground
17 that this is outside of the scope of the examina-
18 tion. I also want to advise the Court that a
19 later witness will be put on with respect to this
20 Incident.

21 THE PRESIDENT: Objection overruled.

22 A I don't know what the mission of OYAMA, who
23 was Lieutenant at that time -- I don't know what his
24 mission was.

25 THE MONITOR: Who was sub-Lieutenant at

that time. As a matter of fact, I don't know whether
 1 he had a mission or not.

2 Q You didn't make any inquiry afterwards?

3 A I didn't make any special investigations
 4 concerning this point.

5 Q What do you mean by special investiga-
 6 tion? Did you conduct an ordinary investigation?

7 A No, I didn't do that either.

8 Q Exactly where was he killed? Was he killed
 9 in the HUNGJAO area?

10 A Immediately after this incident occurred
 11 an examination was held on the spot, with the
 12 naval landing party and a member of the Japanese
 13 Consul General participating. Therefore, I be-
 14 lieve that there was a report of this investigation
 15 at that time.

16 THE MONITOR: There should have been a
 17 report.

18 A (Continuing) Of course I don't recall the
 19 small details of this report.

20 Q Could you recall that he was killed in an
 21 attempt to enter the area?

22 A According to my recollections, on that
 23 night, that is, the night of the 9th of August,
 24 Mayor Yui rushed over to my place and told me that
 25 sub-Lieutenant OYAMA and another seaman tried to force

1 their way into the Hungjao area, and in spite of
 2 the fact that they were stopped they killed a Chinese
 3 soldier with a revolver; and Mayor Yui further ex-
 4 plained that because of this, OYAMA and this other
 5 seaman were, on the contrary, that is, were -- they
 6 were shot at by the Chinese.

7 THE MONITOR: They were shot to death by
 8 the Chinese.

9 A (Continuing) But according to a report I
 10 received from the naval landing party after that,
 11 it was made clear that neither sub-Lieutenant OYAMA
 12 or the seaman possessed a revolver, and according
 13 to the information I received, the report of Mayor
 14 Yui was in error.

15 THE MONITOR: "According to the report I
 16 received" instead of "information."

17 A (Continuing) I should like to add that on
 18 this point Commander TAKEDA, who was the senior
 19 staff officer of the landing party at that time, is
 20 well informed and that no doubt he will, perhaps,
 21 be better able than I to explain these points, since
 22 I understand he is expected to take the stand later.

23 Q You mentioned on page 7 that the 87th and
 24 88th Divisions of the Chinese Army had arrived at
 25 Shanghai North Station. How did you know that they

OKAMOTO

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1 were the 87th and 88th Divisions?

2 A This also is information that I received
3 from the naval landing party and from the naval
4 authorities, and I believe that these reports are
5 accurate.

6 Q You stated on page 7 of your affidavit that
7 an official reported to you that the Mayor could do
8 nothing. Who was that official?

9 A This was KAWASAKI, who was consular attache
10 and who was working under me.

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Q Since you attach very much importance to the matter, why didn't you talk to the Mayor yourself?

A I was very busy on that day and on the morning I had many things to do. For instance --

THE MONITOR: The witness said: "For instance --".

A (Continuing): The Japanese workers at the Sino-Japanese mills -- textile mills in Woosung had to be reduced. Many important persons were constantly calling upon me and therefore, I, myself, could not answer the telephone personally. This was done by my secretary, KAWASAKI. I could not make the telephone calls personally myself. I had to leave this to my secretary, KAWASAKI.

Q Besides these things, is there anything more important than to contact the Chinese Mayor?

THE PRESIDENT: We do not want to hear any more about it. It is not incredible.

Q When the joint commission met in the afternoon, did you verify the report of the State official who quoted the Mayor saying, "Nothing could be done"?

A The meeting of the joint commission on that day was held in an atmosphere of tension, and

1 Q Since you attach very much importance to
 2 the matter, why didn't you talk to the Mayor your-
 3 self?
 4 A I was very busy on that day and on the
 5 morning I had many things to do. For instance --
 6 THE MONITOR: The witness said: "For
 7 instance --".
 8 A (Continuing): The Japanese workers at the
 9 Sino-Japanese mills -- textile mills in Woosung
 10 had to be reduced. Many important persons were
 11 constantly calling upon me and therefore, I, myself,
 12 could not answer the telephone personally. This
 13 was done by my secretary, KAWASAKI. I could not
 14 make the telephone calls personally myself. I
 15 had to leave this to my secretary, KAWASAKI.
 16 Q Besides these things, is there anything
 17 more important than to contact the Chinese Mayor?
 18 THE PRESIDENT: We do not want to hear
 19 any more about it. It is not incredible.
 20 Q When the joint commission met in the
 21 afternoon, did you verify the report of the State
 22 official who quoted the Mayor saying, "Nothing could
 23 be done"?
 24 A The meeting of the joint commission on
 25 that day was held in an atmosphere of tension, and

OKAMOTO

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1 I did not -- I could not verify -- I did not have
2 the opportunity to verify or confirm this report;
3 but it was my impression that Mayor Yui enter-
4 tained the attitude that since matters had come to
5 such a situation, there was nothing else to do.

6 THE MONITOR: Nothing else he could do.

7 A (Continuing) Therefore, I do not believe
8 it was necessary to confirm the report.

9 Q On page 9 of your affidavit you mention
10 the firing of the Chinese plainclothes soldiers
11 from the China Press Building and the exchange of
12 shots at Patsuchiao. Where was the China Press
13 Building?

14 A It was located comparatively near the
15 naval landing party.

16 Q Was it in the Settlement -- International
17 Settlement?

18 A Such questions have been put to me
19 frequently prior to this, but as I said before,
20 I am not able to state accurately just where in
21 Shanghai, which is so large, where a certain -- where
22 the boundary of the Settlement begins and where
23 it ends. Although I served in Shanghai as Consul-
24 general for one year, I am not -- I cannot state
25 with accuracy just where each of these were located.

1 JUDGE NYI: I thought that it was within
 2 your official duty and I thought your failure to
 3 recollect in one instance does not exclude the fact
 4 that you might remember in another instance.

5 However, I am not making a comment. I
 6 am merely saying why I put the question.

7 MR. ROBERTS: I submit that it is a
 8 comment, and I ask it be struck.

9 THE PRESIDENT: He could have said, "Didn't
 10 your duty require you to know?" and left it at
 11 that instead of going roundabout.

12 Q Now, on whom did they fire?

13 A I believe Commander TAKEDA would be better
 14 fit -- suited to answer this question, but as I
 15 recall, the plainclothes soldiers from the China
 16 Press fired on members of the naval landing party.
 17 This was the report I got at that time from the
 18 naval landing party.

19 A With regard to Patsuchiao, the Eight-
 20 Character Bridge, I recall not snipers but members
 21 of the regular army fired. I believe they fired
 22 cannons. That was the report I got from the naval
 23 landing party.

24 Q I have not asked you about Patsuchiao yet.
 25 Now was there any investigation into the

1 matter of the firing in the China Press Building?

2 A No such investigation was made by myself
3 as the Consul-general, but I believe that it was
4 so done by the naval landing party.

5 Q Was it done in collaboration with the
6 settlement authorities?

7 A I believe that at that time the Sino-
8 Japanese dispute -- clash was a large one and
9 chaos -- confusion resulted, and I believe that
10 no report -- investigation could have been made
11 under such circumstances with accuracy. Therefore,
12 there is no fact that either the naval landing
13 party or the Settlement authorities contacted me
14 with a view to conducting such an investigation.

15 Q But you say that the firing was done by
16 the Chinese plainclothes soldiers. How was it
17 established that the Chinese fired?

18 A I am stating that it was in accordance
19 with reports I had received from the naval landing
20 party.

21 Q Do you know how they got the report?

22 A I do not know where the naval landing party
23 got their reports, but I am sure that they have
24 their own organization structure, and the fact that
25 they would know immediately after they had been fired

1 upon who had fired upon them. I am stating that
 2 it was a fact that I had received a report from
 3 the naval landing party.

4 THE PRESIDENT: We will adjourn until
 5 half-past one.

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

S U E M A S A O K A M O T O, called as a witness on behalf of the defense, resumed the stand and testified through Japanese interpreters as follows:

CROSS-EXAMINATION

THE PRESIDENT: Judge Nyi.

BY JUDGE NYI (Continued):

Q Mr. Witness, you have narrated the China Press incident and the shooting of Paitzechao in one sentence on page 9. Do you suggest that there was any connection between these two?

A I have stated in my affidavit that the clash between the Chinese and the Japanese occurred, unfortunately, on the 13th, and in that sense I believe that these two incidents are related.

Q Exactly what hour of the day did the China Press happen?

A I do not know the exact time; I don't remember.

Q Do you recall the exact hour of the time the shooting at Paitzechao occurred?

1 A I don't know the exact time. It is that on
 2 the 13th, that is, the afternoon of the 13th, shots
 3 were fired on the naval landing party from the di-
 4 rection of Paitzechao, the Eight Character Bridge.

5 Q Could you explain to me what is the relation
 6 between the two? How are they related?

7 A The only connection is that in the morning
 8 plain-clothes men fired from the China Press building,
 9 and in the afternoon full-scale shooting took place
 10 from the direction of Paitzechao; that is, the firing
 11 was from cannons against the naval landing party.
 12 In this connection only is there any relation.

13 Q Was there anything which happened in between
 14 so that you can see where the connection comes around?

15 A No, not particularly.

16 Q Then, I am to take it that you could not give
 17 me an exact picture as to the connection between the
 18 two?

19 A I do not understand the gist of the question
 20 very well. But on that day I was working under a very
 21 tense atmosphere, and I was in receipt of reports from
 22 the naval landing party hourly. It is true that I
 23 received a report from the naval landing party that
 24 firing from the China Press building had actually taken
 25 place. In the afternoon firing, cannon fire, came

1 from the direction of Paitzechao. That is what I am
2 saying; that, and only that.

3 Q This morning you told us that you did not
4 know how OYAMA happened to be around the Hungjao dis-
5 trict. Was it a fact that you had contacted the
6 Chinese mayor right after the incident?

7 A Yes, it is a fact. I did not request the
8 mayor to call me, but he rushed to my office on that
9 evening late, it was very late in the evening, and
10 explained to me the details of the incident.

11 Q Was it also a fact that someone on the Chinese
12 side also called at the Japanese Naval Attache in an
13 attempt to settle the incident satisfactorily?

14 A That I do not know.

15 Q Was it a fact that you expressed surprise
16 to the mayor because no officer or man of the naval
17 landing party had been given order to go out on that
18 day?

19 THE MONITOR: Judge Nyi, when you say "go out,"
20 go out to the airfield or just go out of the barracks?

21 JUDGE NYI: Go out of the barracks generally.

22 A I do not recall this point also.

23 Q So the question how OYAMA was around this
24 district had never occurred to you, is that right?

25 A I recall what happened at that time very

1 clearly. On the afternoon of the 9th, I believe it
2 was towards evening, the Japanese detachment stationed
3 at Lunghua telephoned to my consulate-general. This
4 telephone call informed me that the Japanese and
5 Chinese forces were firing against each other at
6 Hungjao.

7 Immediately after receiving this report I
8 telephoned to the senior staff officer of the naval
9 landing party, TAKEDA, and requested that he rush to
10 the scene to find out just what was taking place.

11 At this time I telephoned to the naval landing
12 party at least twice, and as a result the naval landing
13 party at first stated they did not believe what I had
14 reported, saying that such a thing could not occur.
15 Due to the fact that I called more than once, that is,
16 repeatedly, the naval landing party finally sent a
17 person to the spot and thus found out of the incident
18 for the first time.

19 What I have stated is the truth of this
20 incident.

21 Q So it was a surprise to the Japanese naval
22 landing party authorities?

23 A I believe so. At least when I telephoned
24 to the naval landing party headquarters they expressed
25 surprise, saying that such an incident could not have

1 occurred. That is a fact that they said so.

2 Q On page 2 of your affidavit under paragraph
3 4 you stated: "There was a gloomy and uneasy fore-
4 boding about Sino-Japanese relations even in Shanghai
5 over stormy indications caused by the North China
6 situation." That was before the Marco Polo Bridge,
7 is it?

8 A Yes.

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1 Q What were these stormy indications?

2 A I arrived at my post in Shanghai on the 8th
3 of May. It was an important task of mine as consul-
4 general to seek to maintain relations of harmony
5 between China and Japan in the area around Shanghai.
6 In the Shanghai area there was a Japanese population
7 of about 30,000. Economically, there were various
8 enterprises and various interests which were of con-
9 siderable importance. Accordingly, from my deep sense
10 of responsibility I felt it was my duty to somehow
11 improve Sino-Japanese relations in and around Shanghai.

12 But the situation in North China did not
13 permit of any optimism as to its future. Therefore,
14 if by any chance Shanghai also would become the scene
15 of strife, that was my greatest anxiety. It is my
16 true feeling that I should be determined to exert my
17 sincere and earnest efforts to prevent the occurrence
18 of any untoward incidents in Shanghai.

19 THE PRESIDENT: Haven't we heard enough of
20 this?

21 Q I was about to ask that thus far you haven't
22 answered my question. What were the indications, stormy
23 indications, in North China?

24 A Are you asking about the stormy indications
25 in North China?

1 THE PRESIDENT: You have been asked twice
2 about them.

3 Q Shall I ask the third time?

4 THE PRESIDENT: You use the expression your-
5 self in your affidavit. Perhaps you have forgotten.

6 THE WITNESS: What I said was that the stormy
7 indications in North China might spread to Shanghai,
8 and I was greatly concerned about it.

9 THE PRESIDENT: What do you mean by "stormy
10 indications"?

11 THE WITNESS: The term "stormy indications"
12 in the English translation of my affidavit perhaps may
13 not be an accurate English translation of what I meant
14 to say in the original. However, what I felt, what
15 I meant to say was this situation of uncertainty
16 which was prevalent in North China, a situation of
17 restlessness and uncertainty which prevailed in North
18 China, a situation in which anything might happen.

19 Q You say that you came in May of 1937. And
20 was there any oral instruction given to you in regard
21 to the policy to meet the situation in China?

22 A No, not especially.

23 Q There was a general instruction?

24 A No, there were no general instructions, either.

25 Q Now, after your arrival, or during your term

1 of office as consul-general in Shanghai, have you
 2 received any dispatch from the Foreign Office with
 3 regard to the policy to be followed in China?

4 A No, I did not receive any instructions con-
 5 cerning general policies. However, after the outbreak
 6 of the Marco Polo Incident I received telegraphic dis-
 7 patch from the then Foreign Minister HIROTA instructing
 8 me that--

9 THE PRESIDENT: No, you can't give that. You
 10 weren't asked for that. At least I understood you
 11 were not asked for that.

12 Q At this juncture--

13 THE PRESIDENT: You can let in by cross-
 14 examination things you can have excluded in examination
 15 in chief.

16 Please repeat the question put by counsel
 17 immediately before I made that observation; the court
 18 reporter, please.

19 (Whereupon, the question was read by
 20 the official court reporter as follows:

21 "Q Now, after your arrival, or
 22 during your term of office as consul-general
 23 in Shanghai, have you received any dispatch
 24 from the Foreign Office with regard to the
 25 policy to be followed in China?"

1 THE PRESIDENT: He wasn't asked for contents.
2 If he were, I would let him answer.

3 JUDGE NYI: I do like to know what are the
4 contents.

5 THE MONITOR: Contents of the instruction?

6 JUDGE NYI: Yes, which he got in China.

7 THE WITNESS: I replied that there were no
8 instructions as to general policy.

9 THE PRESIDENT: You said there were after
10 the Marco Polo Bridge Incident. You are asked to
11 tell the contents of that. I am not going to stop you.

12 Q Do you know that at a meeting of the four
13 ministers on the 16th of April, 1937, policies were
14 decided with regard to North China?

15 MR. ROBERTS: If your Honor please, the
16 witness hasn't been given an opportunity to answer
17 the last question.

18 THE PRESIDENT: If he doesn't want the answer
19 he needn't get it.

20 We don't forget the attitude of the prosecu-
21 tion during the examination in chief; but we are not
22 particularly concerned whether that attitude has
23 changed during the cross-examination, except that it
24 calls for comment. The Tribunal's time is wasted
25 during examination in chief on having a certain point

1 sustained, only to be abandoned in cross-examination,
2 and we resent being treated in that way.

3 MR. ROBERTS: I merely wanted to point out
4 that there was a question which was unanswered and
5 which was not withdrawn.

6 THE PRESIDENT: It is for counsel cross-
7 examining to say whether he wants his question answered
8 or not.

9 Q I will withdraw the former question, but I
10 do want you to answer the last.

11 A I know nothing about the Four Ministers'
12 Conference which took place on the 16th of April.

13 JUDGE NYI: That concludes my cross-examination.
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THE PRESIDENT: Mr. Roberts.

REDIRECT EXAMINATION

BY MR. ROBERTS:

Q Mr. OKAMOTO, when you stated that the Chinese troops were to remain in their present position were you referring to any particular article in the May 5 agreement?

A In what event? In what instance?

Q You testified and I believe also stated in the minutes of the joint meeting that the Chinese troops were to remain in their present position.

A Yes, it was in accordance with the Cease Fire Truce signed on the 5th of May 1932 that the Japanese be restricted to the areas specified.

THE MONITOR: "Japanese" is omitted there; "that the troops remain in this district specified."

Q I ask were you referring to any particular article in that agreement?

A I am referring to article 2 of the Cease Fire Truce.

Q Now, in the minutes of the meeting held on August 23 on page 8 you mention the fact that the Japanese Navy owned a piece of land in the vicinity of the 8th Character Bridge.

THE MONITOR: Mr. Roberts, are you sure it is

1 23 of August? I have the 12th of August and 23d of
2 July.

3 MR. ROBERTS: I beg your pardon; 12th of
4 August.

5 A Yes.

6 Q And is that the vicinity where the small
7 detachment of marines was stationed?

8 A Yes.

9 Q Do you know how many men were in that
10 detachment, Mr. OKAMOTO?

11 A I have heard that there were only five or
12 six; merely several in that small detachment -- several
13 men.

14 MR. ROBERTS: That is all. May the witness
15 be excused on the usual terms?

16 THE PRESIDENT: You want this witness released
17 on the usual terms. He is at liberty accordingly.

18 (Whereupon, the witness was excused.)

19 MR. COMYNS CARR: Your Honor, would it be
20 convenient before we leave the minutes which were
21 introduced during the evidence of this witness that
22 we should read those omitted parts which we think
23 ought to be read?

24 THE PRESIDENT: When the defense asked for
25 that concession we did not give it. You can give

TAKEDA DIRECT

1 those in rebuttal perhaps. We are going to treat
2 you both alike.

3 Mr. Roberts.

4 MR. ROBERTS: We now call the witness
5 TAKEDA, Isamu.

6 - - - -

7 I S A M U T A K E D A, called as a witness on
8 behalf of the defense, being first duly sworn,
9 testified through Japanese interpreters as follows:

10 DIRECT EXAMINATION

11 BY MR. ROBERTS:

12 Q May we have your name and address, please?

13 A My name is TAKEDA, Isamu. My address is
14 Kanagawa Prefecture, Katose-machi, Minamihama No. 2932.

15 MR. ROBERTS: May the witness be shown defense
16 document No. 1136.

17 Q Please examine this document and tell us
18 whether or not it is your sworn affidavit.

19 A There is no mistake. This is my affidavit.

20 MR. ROBERTS: I offer in evidence No. 1136.

21 THE PRESIDENT: Mr. Comyns Carr.

22 MR. COMYNS CARR: Your Honor, we do not pro-
23 pose to object to this affidavit as a whole. There
24 are a number of passages in it which are objectionable
25 on the same grounds on which I objected to passages

in the affidavit of Mr. OKAMOTO.

1 THE PRESIDENT: You had better indicate
2 them as the affidavit is read.

3 MR. COMYNS CARR: Your Honor, I was going
4 to suggest it would take longer to object to them
5 than to read them and I am quite content to leave it
6 to the Tribunal to reject them for itself; but there
7 are two whole paragraphs, No. 4 and No. 12, in which
8 this witness gives a version of the two meetings of
9 the joint commission of which we have already had
10 the minutes, and I submit that those are mere repe-
11 tition and should not be read.

12 MR. ROBERTS: I submit that they are short,
13 concise statements that he was there and practically
14 a summary of what happened in a few sentences.

15 THE PRESIDENT: Yes, proceed to read. We
16 will give our decision as you come to them.

17 The document is admitted on the usual terms.

18 CLERK OF THE COURT: Defense document 1136
19 will receive exhibit No. 2518.

20 (Whereupon, the document above
21 referred to was marked defense exhibit
22 No. 2518 and received in evidence.)

23 MR. ROBERTS: I shall read exhibit No. 2518
24 but I first want to point out several typographical
25

1 errors pursuant to an errata sheet issued thereafter:

2 On page 1, line 13, "12th Showa" should be
3 "11th Showa," and "13th Showa" should be "12th Showa";
4 same page, line 15, "14th Showa" should be "13th Showa."
5 On page 8, line 5 should be changed from "77th" to
6 "87th" division and "78th" should be "88th" division;
7 and in the same paragraph on the last line between
8 the words "following" and "defense" the word "the"
9 has been inserted.

10 (Reading): "(1) I am a former rear-admiral.
11 From December 1936 (11th Showa) till December 1937
12 (12th Showa) I was senior staff officer of the
13 Shanghai special landing force and continued in
14 office from that date till December 1938 (13th Showa)
15 as chief of staff."

16 THE PRESIDENT: I suppose the witness con-
17 firms those amendments which you have just asked us
18 to make?

19 MR. ROBERTS: He called them to our attention
20 before the corrections were made.

21 (Reading continued): "(2) As I was senior
22 staff officer at the time of the Sino-Japanese clash
23 in Shanghai on August 13th I was informed of the
24 causes of the outbreak of the incident and of its
25 progress. I did my utmost to prevent an incident

1 occurring in Shanghai, but the repeated efforts of
 2 the Japanese proved of no avail and despite the
 3 prayer of third party nationals and Chinese residents
 4 in Shanghai external pressure caused war to break out.

5 "(3) The prime causes of this incident are
 6 the Chinese violation of the Sino-Japanese agreement
 7 of May 5, 1932, in the increase of forces, consolidation
 8 of defenses and construction of military installations
 9 in the prohibited zone and their boast to wipe out
 10 at one blow the Japanese landing force and Japanese
 11 residents, the gradual encirclement of the Japanese
 12 landing force and Japanese residents, the gradual en-
 13 circlement of the Japanese sector, their general
 14 attitude of defiance and challenge. The force of the
 15 Peace Preservation Corps had been determined by the
 16 armistice agreement at 2,000 and at first had been
 17 despatched from Peiping to be stationed at Shanghai.
 18 But from about 1936 onwards the force of the Peace
 19 Preservation Corps was gradually increased in violation
 20 of the armistice agreement till they were equipped
 21 with small cannons, this again in violation of the
 22 agreement, before the outbreak of the Marco Polo Bridge
 23 Incident on 7th July 1937." --

24 THE PRESIDENT: Mr. Comyns Carr.

25 MR. COMYNS CARR: Your Honor, I think I should

1 point out that contrary to the witness' statement
2 there is not a word in the agreement about either
3 the size of the Peace Preservation Corps or their
4 armament.

5 THE PRESIDENT: We will decide whether the
6 agreement is in conformity with that evidence or not.

7 MR. ROBERTS: (Reading continued) "Meanwhile
8 military installations such as pillboxes and barbed
9 wire entanglements were constructed inside the pro-
10 hibited zone. The barbed wire entanglements were so
11 set up as to encircle the Japanese area and vicinity,
12 while the pillboxes were erected at various points
13 inside the prohibited zone. A typical example of an
14 open-typed pillbox was the one built on the western
15 edge of Kiangwan Chin and representative models of
16 the camouflaged regular type were those built in the
17 vicinity of Hungjao aerodrome and those found at
18 various points constructed by utilizing farm houses.
19 Complete pillboxes were being gradually constructed.

20 "However peaceful conditions still prevailed
21 at this time and when we met the Peace Preservation
22 Corps units on the road greetings were mutually exchanged
23 and officers of the two forces were on a footing where
24 they would joke and drink together.

25 "(4) On 23d June 1937, (12th Showa), at the

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1 request of Consul General OKAMOTO a committee meeting
 2 based on the Armistice Agreement concluded on May 5,
 3 1932 (7th Showa), was convened at the French Consulate
 4 General. I attended the same meeting in the capacity
 5 of military committee member for the Japanese side.
 6 The object of this committee meeting was the investi-
 7 gation of the facts of the construction of military
 8 installations especially of the alterations and repair
 9 of Woosung Fort and the increase of troops. However
 10 no conclusions was arrived at, and the investigations
 11 proved fruitless.

12 " (5) With the outbreak of the Marco Polo
 13 Bridge Incident on 7th July in Northern China, things
 14 began to take on a new aspect.

15 "That is, from about this time, the 87th and
 16 88th divisions consisting of 30,000 men and considered
 17 crack troops of the Nanking Government began to occupy
 18 the prohibited zone fitted out in dark blue uniforms.
 19 At that time the uniform of the regular army was of
 20 khaki color, these of the Peace Preservation Corps
 21 being light yellow, but these troops now began to
 22 filter in specially fitted out in dark blue. These
 23 divisions were thoroughly instructed in Japanese
 24 resistance and anti-Japanese education, very strong in
 25 their combat consciousness and ready for combat with

TAKEDA

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1 the Japanese. Simultaneously with the moving in of
2 the above troops the Chinese began hurried construction
3 of installations and positions around the Settlements.

4 "(6) Shortly thereafter a new phase was
5 entered upon which was radically different from the
6 situation in the early days of August and may be
7 characterized as an outgrowth of the Kuling Conference
8 held by the Chinese High Command at that time. Namely,
9 the papers in one voice reported, 'China has arrived
10 at the last pass. She will have to meet the situation
11 with extraordinary resolution,' and began to assume a
12 tone as though they had determined on a fight with
13 Japan. Especially the anti-Japanese newspapers and
14 the Commander of the Woosung-Shanghai defense garrisons
15 Lieutenant General Yang Hu expressed full confidence
16 in such bombastic language as the following: 'If
17 hostilities are once opened we will overwhelmingly
18 rout the entire Japanese population into the Whang-Ho
19 inside two days.'

20
21 "From about this period Chinese planes began
22 to be stationed at Hungjao aerodrome and other places
23 within the prohibited area fixed by the armistice agree-
24 ment. They began to fly occasionally over the landing
25 party in intimidation flights. In actual fact the
strength of the landing party at this time as a standing

1 force of 2,000 plus 300 troops which had accompanied
 2 Japanese civilian evacuees down the Yangtze from the
 3 Hangkow area, a total of 2,300 (to which 1,000 were
 4 added after the OYAMA incident to bring a total up
 5 to 3,330). Opposed to this an estimated 60,000 crack
 6 Chinese troops lay in preparedness in the close
 7 vicinity at Shanghai. Hence their full confidence
 8 in their strength was justifiable under the circum-
 9 stances.

10 "The increase of troops from about this time
 11 was conducted openly, units dressed in regular army
 12 uniforms being sent in as reinforcement. The situation
 13 had become such that Japanese military and civilian and
 14 third party national strength could no longer cope
 15 with this outside pressure and it hourly began to take
 16 on the aspects of a quasi-state of war. Civilian
 17 Chinese living on the outskirts of the settlements
 18 began to feel misgiving for the occupation and construc-
 19 tion of positions by the Chinese regular troops and
 20 following the directives of the officials began evac-
 21 uation starting a stampede for the settlements. In
 22 the first place, third party nationals and civilian
 23 Chinese, not to mention Japanese residents in Shanghai,
 24 had learnt their lesson from the tragedy of the first
 25 Shanghai incident of five years ago, so that it was

1 their mutual prayer that no other incident take place,
 2 not at least in Shanghai. We too, following the
 3 policy of nonextension of hostilities of the Central
 4 Command did our utmost absolutely to prevent an inci-
 5 dent breaking out in Shanghai.
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1 "(7) In the afternoon of August 9th the
2 following incident took place. Lieut. J. G. OYAMA,
3 defense commander of the western sector while passing
4 through the sector under his command in an automo-
5 bile was shot by machine-gun fire on Monument Road
6 in the Extension by Chinese regular troops, to-
7 gether with his driver, First Class Seaman SAITO,
8 and cut to death by Chinese soldiers.

9 "(8) It was decided to settle this
10 incident through diplomatic negotiations, following
11 the policy of nonextension of hostilities of the
12 central command. Consul General OKAMOTO undertook
13 the diplomatic negotiations in general and for the
14 moment an on-the-spot investigation was conducted
15 and the corpses received.

16 "As the result of the above investigation
17 which was made by Japanese and Chinese interested
18 parties together with third party national news-
19 paper men, it was made evident that Lieut. J. G.
20 OYAMA and his driver were suddenly fired upon by
21 Chinese regular troops with machine guns and cut
22 to death with Chinese swords; the whole constituting
23 an illegal act. The chief of staff admitted this
24 fact and extended an apology.

25 "(9) Mayor Yu called on Consul General

1 OKAMOTO and deplored that the situation was entirely
2 out of his control. The Chinese headquarters which
3 was at Lung Hwa immediately moved to Chen Lu Chin
4 and prepared to assume the duties of a combat command,
5 trucks and civilian ships in the vicinity of Shanghai
6 were mobilized as were railways and all manner of
7 other transportation facilities for the quick ad-
8 vance of the 200,000 troops laying in wait outside
9 the boundary fixed by the armistice, to the out-
10 skirts of the settlements.

11 "(10) The landing party in the midst of
12 this commotion conducted the funeral rites of Lieut.
13 J. G. OYAMA and First Class Seaman SAITO from 1:00
14 p. m. of the 12th in the inner grounds of the land-
15 ing party headquarters.

16 "(11) The rush of Chinese regular troops
17 to the outskirts of the settlements reached its
18 high-water mark on the 12th. On the morning of the
19 12th, the 87th and 88th divisions passing through
20 North Station had advanced to the western sector of
21 North Szechuan Road, and in the course of the morn-
22 ing a Kempei soldier was killed and a civilian ab-
23 ducted. Third party nations too, to meet the situa-
24 tion, began to take up defense positions in their
25 several sections according to the Shanghai Defense

1 plan, which had been agreed upon and was in exis-
2 tence since 1927 (2nd Show). The defense of
3 Toyodo Textile factory was delegated to the
4 British garrison following defense plan agreed upon.

5 "(12) In the middle of the funeral
6 ceremony of Lieut. J. G. OYAMA there was a telephone
7 message from Consul General OKAMOTO to the effect:
8 'As I have requested a meeting of the joint com-
9 mittee of the settlements to impeach the illegal
10 action of the Chinese, I would like you to attend at
11 all costs. I attended the joint committee meeting
12 held at the Municipal Council after the funeral
13 rites were concluded. The Chinese then already be-
14 ing unable to contact the military, there were no
15 officers present, only Mayor Yu attending.

16 "The conference attended on the Japanese
17 side by Consul General OKAMOTO and myself, by Mayor
18 Yu on the Chinese side, and by Consul General" --

19 THE PRESIDENT: "Well, you fully proved
20 that, and there is no contest about what occurred.
21 The prosecution accepts your proof of that.

22 MR. ROBERTS: In view of the fact that
23 they accept it, I will proceed with paragraph 13.

24 "(13) Nothing occurred during the night
25 of the 12th but around 9 o'clock of the morning of

1 the 13th, the settlement garrison of the Japanese
2 landing party was fired upon from the building of
3 the Commercial Press Warehouse.

4 "At 1 p. m. the commander of the landing
5 party called an emergency meeting of all officers
6 above the rank of Battalion Commander and gave them
7 among others the following instructions, again
8 stressing the policy of nonextension of hostili-
9 ties: 'All efforts to be made to prevent spreading
10 of hostilities to Shanghai. Unless attacked by
11 Chinese, absolutely to refrain from fighting.'
12 From after 4 p. m., the Chinese opened artillery
13 fire on the landing party from the direction of
14 Pa Tsu Chiao (8th Charater Bridge).

15 "Up to this time every possible effort
16 was made and everything was patiently endured, but
17 the landing party could no longer calmly look on
18 without endangering the lives and properties of the
19 Japanese community; and further, as there was danger
20 of the landing party itself falling into a critical
21 condition, the order, 'All hands on the alert,' was
22 given. The time was 4:30 p. m., August 13th. The
23 troops of Japan and other countries then assumed
24 their positions. There were about 3,000 British
25 Troops, 2,000 American Marines, and 2,000 French

1 Troops. The Chinese strength of the first line
2 alone at this time was estimated at 200,000. The
3 Japanese landing party was a weak force of 3,300.
4 The fighting reached its peak on the 16th of
5 August, when the landing party was in a critical
6 position and the whole Japanese community resigned
7 itself to the worst.

8 "(14) The situation in Shanghai being
9 of such a critical tenor, a section of the army
10 forces was dispatched by warships. These units
11 which arrived August 23rd were troops hastily
12 mobilized in the emergency and their equipment was
13 of an extremely make-shift nature and they arrived
14 without sufficient munitions and military stores.
15 Thereafter, further reinforcements arrived to
16 equalize the situation."

17 You may cross-examine.

18 THE PRESIDENT: Mr. Comyns Carr.

19 CROSS-EXAMINATION

20 BY MR. COMYNS CARR:

21 Q You arrived, Witness, in 1936 in Shanghai,
22 I understand. Is that right?

23 A Yes.

24 Q When you got there did you find that there
25 was a newly constructed headquarters of your landing

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1 party?

2 A It was built previously. It was standing
3 there.

4 Q Yes. Do you know that it had been built
5 since the agreement of May, 1932?

6 A I recall that an old building was reno-
7 vated since that time.

8 Q How big was the building? Was it as large
9 as this building in which we are assembled? I do
10 not mean this room but the whole building.

11 A No, it was not as large as this.

12 Q Was it nearly as large?

13 A I believe it was not even half of this
14 building, the size of this building.

15 Q Had the renovztion consisted of strengthen-
16 ing and fortifying it?

17 A No, this is not so. It was built for
18 people for living in, troops to billet.

19 Q Did you say it was not in any sense forti-
20 fied?

21 A It was definitely not fortified. It was
22 an ordinary building.

23 Q Was it built with its entrance on one of
24 what are called the extra-settlement roads?

25 A Both the front and the rear were on the

1 extra-settlement, faced the extra-settlement road.

2 Q You mean they both faced the same road?

3 A The building faced the North Szechuan
4 Road on one side and Wanla Road on the other side.
5 Both roads were within the extra-settlement. This
6 building was situated between these two roads, and
7 these two roads were part of the extension road.

8 Q And it stretched right away from the one
9 to the other, did it?

10 A It was in a u-shaped form with the build-
11 ing being located between the two roads. One road
12 was a small road which was merely an extension of
13 the North Szechuan Road.

14 THE PRESIDENT: In a hairpin bend, I sup-
15 pose.

16 Q Did you find that your marines had es-
17 tablished this post at the 8th Character Bridge, the
18 post that we have heard about?

19 THE PRESIDENT: Mr. Carr, while you are on
20 that, a map is referred to in that agreement.

21 MR. COMYNS CARR: Yes.

22 THE PRESIDENT: But I understand the map is
23 not being tendered. Without a map we cannot decide
24 what was the prohibited area.

25 MR. COMYNS CARR: Your Honor, the map will

1 be helpful. I should like to tender the set of
2 maps -- I think there are four of them which form
3 part of the agreement -- now.

4 THE PRESIDENT: Well, you can tender
5 nothing the witness does not acknowledge.

6 MR. COLYNS CARR: Yes. Will you show them
7 to the witness?

8 Are those the maps which were attached
9 to the agreement and which you produced at the
10 committee meeting or copies of them?

11 MR. COLYNS CARR: Did I understand from
12 your Honor that the Members of the Tribunal have
13 copies of the maps attached to exhibit 2419?

14 THE PRESIDENT: No, we have not, and I
15 understand that there is no map covered by a certifi-
16 cate in the possession of the Clerk of the Court.

17 MR. ROBERTS: I understand that was the
18 difficulty in our offering them as well.

19 THE PRESIDENT: Who could be more qualified
20 than this Rear Admiral, who knows the agreement and
21 knows the locality, and who played a leading part in
22 the transaction, and whose duty it was to know the
23 prohibited area?

24 Q Are those the maps, Mr. Witness?

25 A I believe that these are the maps which

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are annexed to the Cease-Fire Agreement.

THE PRESIDENT: His belief is sufficient.

MR. COMYNS CARR: Yes, but I am afraid we are not at this stage provided with copies, your Honor. We will have them made.

THE PRESIDENT: We will first recess for fifteen minutes.

(Whereupon, at 1450, a recess was taken until 1507, after which the proceedings were resumed as follows, Honorable Henri Bernard, Member from the Republic of France, not sitting:)

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

3 THE PRESIDENT: Mr. Comyns Carr.

4 MR. COMYNS CARR: Your Honor, during
5 the recess we have been together, both sides,
6 looking at these maps, and there are five of them
7 which were annexed to the agreement, but it is
8 common ground between us that only one of them
9 would be of any assistance to the Tribunal for the
10 present purpose; and we suggest that that one should
11 have the same number as the agreement, namely,
12 2419, and be treated as part of the agreement. The
13 others could be marked under that number, A, B, C
14 and D, which happen to be the markings existing on
15 them at the present time, in case anybody should
16 want to refer to them hereafter.

17 THE PRESIDENT: Those maps are admitted on
18 the usual terms and will be numbered and lettered
19 accordingly.

20 (To the Clerk of the Court) You needn't
21 call out anything.

22 (Whereupon, the maps above re-
23 ferred to were marked prosecution ex-
24 hibits 2419 and 2419A through D, in-
25 clusive, respectively and received in

evidence.)

1
2 MR. COMYNS CARR: Your Honor, to link them
3 up with the agreement, the one with the number
4 2419 is the one referred to in Annex I of the
5 agreement. With regard to the question of getting
6 them reproduced, I understand there are consider-
7 able difficulties in that, and I would ask that
8 the Tribunal, having looked at that one which we
9 think may be of some help, should tell us whether
10 they think it will be of sufficient help to justify
11 those difficulties being, if possible, overcome.

12 THE PRESIDENT: Well, could you agree
13 upon some kind of sketch showing boundaries and
14 localities in question?

15 MR. ROBERTS: I am very hopeful that that
16 can be done.

17 MR. COMYNS CARR: So am I, your Honor.
18 Now, if your Honor will look at it --

19 THE PRESIDENT: Eleven of us must look
20 at it, Mr. Carr.

21 MR. COMYNS CARR: Yes. I am afraid it is
22 not possible that you shall all look at it at the
23 same time. The red line is the line to the west of
24 which the Chinese troops were at the time of the
25 truce.

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1 Your Honor will observe that it ends in
2 space, so to speak. It extends from the river
3 bank for a certain distance and then no further.
4 It extends to the village called Antung, which is
5 mentioned in the Annex, or it may be Anting; I am
6 not quite sure.

7 THE PRESIDENT: "Anting" in the map.

8 MR. COMYNS CARR: "Anting."

9 MR. ROBERTS: It may be that the witness
10 can give us valuable information as to the posi-
11 tions and indicate them on the map.

12 THE PRESIDENT: Well, if Mr. Carr wants
13 the witness to indicate on the map the places in
14 question, he is at liberty to get him to do so.
15 Whether the judges will require copies of that map
16 or will be satisfied with something of the kind
17 they indicated must be decided by the judges in
18 conference.

19 (Whereupon, the map above re-
20 ferred to was handed to the witness.)

21 BY MR. COMYNS CARR (Continued):

22 Q Mr. Witness, on that map is shown the city
23 of Shanghai and a railway running due north from
24 it to the mouth of the river. Do you see that?

25 A Yes, I see it.

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Q Is it right that the International Settlement and the extra-settlement roads that have been referred to were all in the area to the north of the city and to the east of the railway?

A I don't understand the gist of the question very well. May I have it repeated, please?

Q Is it right that the International Settlement and also the extra-settlement roads were all in the area appearing on that map as to the north of the city itself and to the east of the railway line?

A Yes, the International Settlement occupies part of the portion east of the railway and also west of this railway.

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1 Q Do you say it extended on both sides of the
2 railway?

3 A Yes, of course.

4 Q Or was that only some of the extra-settlement
5 roads that were on the west of the railway?

6 A The International Settlement, the greater part
7 of the International Settlement is on the west -- to
8 the west of the railway line.

9 Q Where was your naval headquarters?

10 A Approximately at the end of North Szechuan
11 Road.

12 Q Can you mark with a pencil on that map where
13 you say it was?

14 THE PRESIDENT: Put a circle about one-
15 eighth of an inch in diameter and the letter A along-
16 side the spot.

17 A Yes, I can do so but the scale of the map
18 is so small that it is difficult, but I can do so
19 approximately. On the railway line which extends
20 eastward to Kiangwan and westward to the city of
21 Shanghai it is located approximately in the middle of
22 these two points but a little bit towards the south.

23 THE PRESIDENT: It is pointed out to me by
24 a Member of the Tribunal that the boundary does not
25 appear to end in space but according to the 1932

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1 agreement it starts on the Soochow Creek south of
2 Anting Village and runs north to end on the Yangtze
3 River.

4 MR. COMYNS CARR: Yes, your Honor, but what
5 I meant as ending in space, as one can see by looking
6 at the map, is that it does not deal with anything --
7 does not provide any line south of Anting Village or
8 at least south of Soochow Creek.

9 Have you marked the place where your head-
10 quarters were on the map? May we see it, please?

11 (Whereupon the map was handed to

12 Mr. Comyns Carr.)

13 MR. COMYNS CARR: Your Honor, we can agree
14 that the witness' mark has been approximately correct
15 and perhaps I will get him to mark one other place
16 before handing it up to the Tribunal. Hand it back
17 to the witness, please.

18 (Whereupon, the map was returned to

19 the witness.)

20 Q Now will you mark with a green pencil, which
21 is going to be handed to you, the place where you
22 say the Hungchiao Airdrome was?

23 Your Honor, I am informed that we could now --
24 we have discovered we could reproduce this map if
25 desired, but I think the Tribunal would find an agreed
sketch map more helpful.

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1 Before he parts with it, would you also mark
2 the place where you say the Eight Character Bridge was?

3 A I have indicated with a triangle the location
4 of the Eight Character Bridge, Paitzechoo.

5 MR. COMYNS CARR: Now hand it up to the
6 Tribunal, would you?

7 THE PRESIDENT: Mr. Carr, a Member of the
8 Tribunal would like to have the Commercial Press Ware-
9 house located on the map by the witness.

10 (Whereupon, the witness marked the
11 said location on the map.)

12 (Whereupon, the map was handed to the
13 Tribunal.)

14 MR. COMYNS CARR: Your Honor, I am instructed
15 that we can agree to those as being approximately
16 correct with this exception, that according to our
17 view he has got the three places, other than the air-
18 drome, too close together. They should be each a
19 little further away, that is, away from the city, other
20 than the Commercial Press.

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1 MR. ROBERTS: I believe we should permit
2 the witness to indicate as to position and any
3 agreement that is reached should be between defense
4 counsel and prosecution, not only prosecution.

5 MR. COMYNS CARR: I think so.

6 THE PRESIDENT: The prosecution should
7 assume any burdens attached to it, I think.

8 MR. COMYNS CARR: Yes.

9 THE PRESIDENT: I don't see what they
10 can be. There will be no rights affected.

11 MR. COMYNS CARR: Oh, no, your Honor.
12 I was merely indicating how far we were in a
13 position to accept the witness' markings and I
14 don't think the differences are important.

15 Mr. Witness, the only point on which we
16 seem to disagree seriously with you is that I
17 suggest to you that the whole of the International
18 Settlement is to the east of the railway.

19 Your Honor, I do not propose to take up
20 more time by discussing it now. We will try to
21 produce an agreed sketch map in due course.

22 MR. ROBERTS: I think that would be a much
23 better course.

24 MR. COMYNS CARR: Your Honor, I should, of
25 course, make clear that we are not accepting the

1 position that on the true construction of this
2 agreement there was in 1937 any prohibited zone
3 at all.

4 MR. ROBERTS: We understood that was a
5 point for the Court to decide.

6 MR. COMYNS CARR: Yes, of course. I
7 just wanted to make clear I am not accepting it.

8 THE PRESIDENT: I understood that to be
9 the prosecution's contention.

10 MR. COMYNS CARR: Now just a few questions
11 about your affidavit, Mr. Witness.

12 Q On page 5, at the top, you refer to a
13 statement by General Yanghu. Did you hear him
14 make that statement?

15 A At that time all Chinese newspapers ran
16 large photographs of General Yanghu and ran stories
17 in the form of question-and-answer that he had with
18 the press. All the papers referred to his words
19 at that time generally as I have stated in my
20 affidavit. We saw these articles ourselves personally
21 in the paper.

22 THE PRESIDENT: Yes, Mr. Carr.

23 MR. COMYNS CARR: Your Honor, the affi-
24 davit would make it appear that this is the witness'
25 personal testimony. He now says it is merely from

1 a newspaper which is not produced. And I would
2 ask the Tribunal to disregard it.

3 Q Now in paragraph 7 on page 6 you refer to
4 the death of Lieutenant OYAMA and his companion.
5 Was there not also a Chinese guard whose body
6 was found with those two Japanese bodies?

7 A I should like to relate the truth of
8 this situation in detail. May I do so?

9 Q No, please answer the question first.

10 THE PRESIDENT: You may add any explanation
11 after your answer you answer the question "yes" or "no".

12 A No.

13 THE PRESIDENT: No explanation is necessary.

14 Q Now would you mind telling me --

15 A (Continuing): Just a moment. I think --
16 I believe that that present point is very important
17 and requires a brief explanation.

18 Q Well, give it.

19 A (Continuing) On the evening of the 9th
20 of August, having learned that Lieutenant OYAMA
21 had been killed and that trouble had arisen, the
22 Japanese authorities and the interested Chinese
23 parties went to the spot to conduct investigations.
24 Responsible Chinese authorities went to the spot to
25 conduct investigations.

1 About a hundred meters beyond the entrance
2 of the entrance to Hungjao Aerodrome on the right
3 side of the road we found the body of -- an auto-
4 mobile was found in the ditch to the right of the
5 road.

6 THE MONITOR: And wrecked.

7 A (Continuing) This was just at a curb
8 in the road. And beside the automobile was found
9 the body of Lieutenant OYAMA who had received many
10 machine gun bullet wounds and in addition his head
11 had been split in two by a sword -- a Chinese sword.
12 And the driver in the driver's seat was found dead
13 with numerous bullets in his body. Having learned
14 of this, it resulted in the Chinese and Japanese
15 as well as the representatives of the neutral
16 press conducting an investigation. Then, as a
17 result of this investigation we found this: The
18 three parties found that alongside of the car there
19 was the body of a Chinese soldier who had been shot
20 in the head; and we learned that the -- and the
21 body of the driver SAITO was found at a village
22 about five hundred yards away from the automobile.
23 We found that the body of the driver SAITO had been
24 dragged to a village five hundred yards away. There-
25 fore, discovering a corps which had not been there

1 the first time, we asked of the Chinese authorities
2 what had happened. But the Chinese officer who
3 was stationed there stated that the Japanese officer,
4 Lieutenant OYAMA, had shot this Chinese soldier to
5 death with a pistol and that, therefore, because
6 of this the Chinese counterattacked against the
7 Japanese OYAMA. Therefore, because of the fact
8 that this body was found, which was not there the
9 first time, it was requested that the body be taken
10 to a hospital and dissected to ascertain whether
11 the bullet was a revolver bullet or not. Lieutenant
12 OYAMA did not possess a revolver at that time --
13 did not carry a revolver at that time. The driver
14 carried a revolver. It was in a holster slung from
15 his shoulder. He was found dead with the revolver
16 in its holster. With medical officers from both
17 the Japanese and Chinese forces participating, the
18 body was dissected at the hospital of the Chenju
19 University and it was discovered that the bullet
20 was a rifle bullet. Accordingly, the trickery of
21 the Chinese in trying to make a put-up job of
22 this incident became very clear -- was exposed.
23 That is all.

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1 Q So you thought yourself justified in say-
2 ing that no body of a Chinese guard was found, just
3 now, did you?

4 A Yes.

5 THE PRESIDENT: Mr. Roberts,

6 MR. ROBERTS: I object because he is
7 assuming a state of facts which was not proven. He
8 asked in particular of the witness before if they
9 were not found together with Lieutenant OYAMA,

10 MR. COMYNS CARR: I didn't ask anything
11 of that sort.

12 THE MONITOR: Will the court reporter please
13 read the statement of Mr. Roberts?

14 (Whereupon, the statement of Mr.
15 Roberts was read by the official reporter.)

16 MR. COMYNS CARR: That is not what Mr.
17 Roberts said.

18 THE MONITOR: We will have to forego the
19 translation, because we did not hear Mr. Roberts'
20 entire words. He spoke against the red light,

21 MR. ROBERTS: That is exactly the remark
22 I made, if your Honor please,

23 BY MR. COMYNS CARR:

24 Q Were you a member of the first party that
25 went out to examine?

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1 A My assistant staff officer was the one who
2 went on the first investigation.

3 Q And the answer is no, you were not there?

4 A My assistant staff officer went in place
5 of me.

6 Q Were you a member of the second party that
7 went out?

8 A The second time also the second ranking
9 staff officer went, whose duty it was.

10 Q When did you first take any personal part
11 in this story you have told us so fully?

12 A The fighting began immediately following.
13 I went to this spot after the fighting had ceased.

14 Q On what day?

15 A That was after the enemy had retreated.
16 Therefore it should be about the latter part of Novem-
17 ber.

18 Q Now, you say at the end of paragraph 8 of
19 your affidavit that the Chief of Staff, meaning the
20 Chinese Chief of Staff apparently, admitted your
21 story and extended an apology. Do you mean the
22 Chinese Chief of Staff, and if so, what was his name?

23 A I believe it was the senior adjutant. I
24 don't recall his name.

25 Q Were you there when he extended the apology?

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1 A At the time the two corpses were recovered
2 and the wreckage of the automobile brought to the
3 naval landing party, the senior adjutant of the
4 Chinese forces came at the same time, and in the
5 presence of the commander of the Japanese landing
6 forces and of ourselves, he expressed his regret over
7 the incident.

8 Q Is that what you mean when you say that
9 he admitted the facts as alleged by you and extended
10 an apology?

11 A It wasn't an explanation on my part. At
12 that time the Chinese only expressed his regrets --
13 apologized.

14 Q Well, which do you mean?

15 THE MONITOR: Just a minute, sir; it is not
16 complete yet.

17 A (Continuing) And the fact is that the
18 three member -- rather, the three-party investiga-
19 tion -- party consisting of -- investigation party
20 consisting of three parties, that is, Chinese, Japan-
21 ese, and the neutral press, did go to the scene and
22 did ascertain the facts, and those facts are true.

23 Q Now, perhaps, you will answer the question
24 I was asking you about your assertion that the Chief
25 of Staff admitted the fact as you have related it

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1 and extended an apology. Did he?

2 A Yes.

3 Q When?

4 A Yes, at the time the corpses which were
5 recovered and the wreckage of the automobile were
6 brought to the naval landing party headquarters the
7 Chinese side apologized -- extended their apology
8 in front of us.

9 Q But that was before this alleged investi-
10 gation that you have told us about had taken place,
11 wasn't it?

12 A No, it was after it, after the corpses had
13 been recovered.

14 Q No, no. Listen to the question and try to
15 answer it.

16 Was not the occasion you have spoken of
17 when the corpses were brought back, as you say, be-
18 fore the investigation which you have told us about
19 had taken place?

20 A No, that is not -- that is not so at all.
21 The corpses were left at the spot and the investiga-
22 tion was conducted.

23 Q When do you say that this apology was ex-
24 tended?

25 A I believe that it was in the afternoon of

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1 the day following the work on the spot of recover-
 2 ing the corpses, which took all night and which
 3 were brought back to the naval landing party.

4 THE MONITOR: In short, the recovering of
 5 the body and bringing the body and the car back
 6 to the naval landing headquarters took all night
 7 and the work was completed in the afternoon of the
 8 following day.

9 Q The funeral, you tell us in paragraph 10,
 10 took place on the 12th and the shooting on the 9th.
 11 How long before the funeral were the bodies brought
 12 back?

13 A I think the bodies were recovered on the
 14 afternoon of the 10th.

15 Q And are you saying that this investigation
 16 you have told us about had then already taken place?

17 A As I have said before, the bodies were
 18 recovered after investigations had been conducted.

19 Q Then, on which day do you say this inves-
 20 tigation by the three parties happened?

21 A This was done just after midnight of the 9th
 22 and extended to the morning of the 10th.

23 Q And when do you say that the body of the
 24 Chinese guard was taken to the hospital and dissec-
 25 ted?

TAKEDA

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A The morning of the 10th.

Q Who do you say was the newspaper man or men -- you spoke of several -- who took part in the investigation?

A I don't know their names, but they were the reporters from all the important papers in Shanghai.

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

(Whereupon, at 1600, a recess was taken until Friday, May 2, at 0930.)

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2 MAY 1947

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401(21)	2525		"Panay" Incident		21360
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Friday, 2 May 1947

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 with the
exception of: THE HONORABLE MR. JUSTICE NORTHCROFT,
not sitting.

For the Prosecution Section, same as before.

For the Defense Section, same as before.

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

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

3 THE PRESIDENT: All the accused are present
4 except the accused TOGO who is represented by counsel.
5 The prison surgeon at Sugamo certifies that the
6 accused TOGO is too ill to attend the trial today.
7 The certificate will be recorded and filed.

8 It is requested on behalf of the Language
9 Division that all documents, including running com-
10 mentaries of counsel, be presented to the Language
11 Division forty-eight hours in advance in order to
12 insure simultaneous interpretation, and that the
13 Language Division be notified in advance of any
14 deviations from the planned order or presentation.

15 The court reporting section requires from
16 the defense a copy of running commentary of counsel
17 and an accurate order of proof for each subdivision
18 of their case twenty-four hours prior to use in court.
19 Both the Clerk of the Court and the Marshal require an
20 accurate order of proof for each subdivision of the
21 case twenty-four hours in advance of presentation in
22 court. In addition thereto they require to be fur-
23 nished at the same time with a complete list of
24 witnesses with the document number of their affidavit
25 opposite their names.

TAKEDA

CROSS

1 The Clerk of the Court also requires where
2 a defense document is to be presented as an excerpt
3 from a basic document which is on deposit in the
4 Clerk's office but not yet marked for identification
5 that the number of the said basic document be indi-
6 cated on the order of proof. In lieu thereof this
7 data may be supplied to the Clerk on a separate
8 memorandum.

9 The Member from China has drawn my attention
10 to an article in the Stars and Stripes headed "China
11 Negligence Brought War." He complains that the
12 article contains a number of sweeping and inaccurate
13 statements against the Chinese not warranted by the
14 evidence. This appears to be so as a reference to
15 the record will show.

16 Mr. Comyns Carr.

17 - - - - -
18
19 I S A M U T A K E D A, called as a witness on
20 behalf of the defense, resumed the stand and
21 testified through Japanese interpreters as follows:

22 CROSS-EXAMINATION

23 BY MR. COMYNS CARR (Continued):

24 Q Mr. Witness, last evening I was asking you
25 about the account you gave of this alleged murder of
Lieutenant OYAMA. Let me be sure if I have got your

1 story right. Do you say that on the evening of the
2 9th of August your subordinate officer went to the
3 aerodrome and found on his first visit two Japanese
4 bodies and no other?

5 A Yes, that is so.

6 Q And that he then paid a second visit. Was
7 that on the same evening?

8 A Because of the crying need for preparations
9 and for assembling the responsible persons from both
10 the concerned powers as well as the journalists from
11 third powers some time elapsed and the second visit
12 took place at about midnight of the same evening--
13 after midnight.

14 THE MONITOR: I believe it was after midnight
15 when they finally went there the second time.

16 Q Do you say then that on that second visit
17 representatives of China and Japan and of the news-
18 papers went with him?

19 A The second in command, YAMANOUCHI --
20 assistant staff officer YAMANOUCHI; yes, that is so.

21 Q And that they then found only two bodies,
22 one of them being that of OTAMA and the other being
23 that of a Chinese guard?

24 A Yes, that is so; and in addition the body
25 of the chauffeur was found about five hundred yards

TAKEDA

CROSS

1 away at the entrance to the village.

2 Q Is it your suggestion that meanwhile the
3 Chinese guards had shot one of their number and put
4 him by the side of Lieutenant OYAMA?

5 A Yes, that is so.

6 Q And as I understood you to say yesterday
7 that they had shot him with a rifle in order to
8 prove that Lieutenant OYAMA had shot him with a
9 revolver?

10 THE PRESIDENT: Mr. Roberts.

11 MR. ROBERTS: I object because it is assuming
12 a state of facts which were not stated in that manner.

13 THE PRESIDENT: The witness may not have
14 said it but he did suggest it.

15 MR. ROBERTS: The record will show he said
16 as a result of an autopsy it was revealed that he was
17 shot by a rifle bullet.

18 Q Is that your suggestion that they had shot
19 him with a rifle in order to prove that Lieutenant
20 OYAMA had shot him with a revolver?

21 A I don't understand the translation of that
22 question -- I don't understand the question because
23 of the translation.

24 MR. COMYNS CARR: Will the Language Division
25 try again--

1 THE PRESIDENT: How does he know it is the
2 translation that is at fault? You cannot know that
3 a question is wrongly translated unless you know the
4 question.

5 MR. ROBERTS: I would like to add that I
6 do not believe the question in English is clear.

7 THE PRESIDENT: I do not think your view
8 is shared by anybody on the Bench, Mr. Roberts.

9 The Japanese reporter had better repeat the
10 question to see what results.

11 Are you still in doubt, Witness?

12 THE WITNESS: May I repeat what I said
13 yesterday?

14 THE PRESIDENT: Answer the question if you
15 can, if you understand it. If you do not, say so.

16 THE WITNESS: I do not understand, clearly
17 understand, the purport of the question. I don't
18 know what the prosecutor is trying -- is driving at;
19 what answer he expects of me.

20 THE PRESIDENT: As long as you understand
21 the question you are not concerned with what he is
22 driving at or what he expects.

23 THE WITNESS: I do not have such a feeling.
24 I do not feel that way.

25 THE PRESIDENT: I think the English reporter

1 had better repeat the question, please, so that it
 2 may be translated again.

3 (Whereupon, the last question was
 4 read by the official court reporter as follows:)

5 Q Is that your suggestion that they had shot
 6 him with a rifle in order to prove that Lieutenant
 7 OYAMA had shot him with a revolver?

8 A The Chinese trick became clear after this
 9 event, after the autopsy.

10 THE PRESIDENT: That is enough, Mr. Carr.
 11 He said it was a Chinese trick.

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TAKEDA

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1 Q When did the autopsy take place?

2 A In the morning or about noon the follow-
3 ing day.

4 Q When did you get the report of it?

5 A The military surgeon immediately brought
6 the report to me after the autopsy.

7 Q Who did?

8 A The military surgeon, the surgeon of the --
9 medical officer of the naval landing party.

10 Q I see. So the autopsy was conducted by
11 the naval landing party, was it?

12 A The autopsy took place at Chenju University
13 in the presence of medical officers both from the
14 Chinese side and from the Japanese naval landing
15 party.

16 Q And do you still say that the Chinese ad-
17 mitted that this story of yours is true?

18 A Yes, I still believe so.

19 Q Who on behalf of the Chinese?

20 A The medical officers who took part in the
21 autopsy discovered that it was not so; that there was
22 a discrepancy in the bullets.

23 Q Yes, but you know that is not what I was
24 asking you. What you swore in your affidavit was
25 that the Chinese Chief of Staff admitted this fact,

TAKEDA

CROSS

1 that is, the whole story about the shooting of
2 OYAMA?

3 THE MONITOR: Mr. Carr, was that in
4 paragraph eight, sir, end of paragraph 8 or 9?

5 MR. COMYNS CARR: End of eight.

6 A Yes, that is so.

7 Q Did you say that the Chief of Staff did
8 admit it?

9 A Yes.

10 Q You know that you told me yesterday that
11 it wasn't the Chief of Staff but some minor officer,
12 and that all he said was that when he brought the
13 bodies of the two men and delivered them to you he
14 expressed his regret. Which is true?

15 A They are all true. If necessary I shall
16 explain my statement.

17 Q I asked you yesterday who was the Chief of
18 Staff. You said you couldn't tell me. Then I asked
19 you who made this statement, and you said it was the
20 junior officer who brought the bodies. You described
21 him as the senior adjutant. He would be junior to
22 the Chief of Staff, would he not?

23 A Yes, that is, of course, so. The Chief
24 of Staff was at the time a Major General, and the
25 Chinese representative who handled this case and who

1 was constantly in touch with Staff Officer YAMA-
2 NOUCHI was a Lieutenant Colonel and the Senior
3 Adjutant.

4 Q Now then, you state that the investiga-
5 tion was also conducted by third party national
6 newspaper men.

7 A Since this was a very important matter
8 we thought it would be a good thing to take along
9 neutral representatives.

10 Q Yes. And I was asking you whether one
11 of them was the representative of the North China
12 Daily News?

13 A Since I do not understand European
14 languages very well I am not aware of the names of
15 the various foreign papers, but I do know that
16 representatives of all the most important foreign
17 newspapers were there.

18 Q Don't you know that the North China
19 Daily News is one of the most important, if not
20 the most important, foreign newspaper in Shanghai?

21 A Yes, I would think it was an important
22 newspaper, the ones the names of which I knew.

23 Q And was their representative there?

24 A A newspaper man? You mean newspaper man,
25 a reporter?

TAKEDA

CROSS

Q A newspaper man from the newspaper?

1 A Yesterday I was looking over old news-
2 papers, and I saw a photograph showing foreign news-
3 paper men standing on the spot.
4

5 Q Do you mind answering my question? Was
6 the representative of the North China Daily News
7 there?

8 A Yes, I think, of course, a representa-
9 tive of that paper was there.

10 Q Do you suggest that they agreed to the
11 truth of the story you have been telling us?

12 A Yes, as a matter of fact they did agree,
13 all of them did agree.

14 Q Do you know that Mr. John B. Powell,
15 who gave evidence before this Tribunal, was the
16 editor of that newspaper?

17 A No, I am not aware of that -- no, I did
18 not know.
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Q I suggest to you that all that was ever established with regard to this matter was this: that evening an officer and a sailor of the Japanese Navy were shot and killed as they were trying to enter the Chinese airdrome at Hungjao.

THE PRESIDENT: Mr. Roberts.

MR. ROBERTS: Might I object to the giving of testimony by the prosecutor as to his version of what happened?

THE PRESIDENT: He is entitled to put his evidence to the witness. If he intended to make a mere statement he was wrong in so doing. But was he? Did he so intend? He didn't finish what he was going to say when you interrupted.

Will the English reporter please repeat what Mr. Conyns Carr said?

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

MR. ROBERTS: It appeared to me that the prosecutor was reading from a document of which we do not know the nature and that he was attempting to make this a part of the proof.

THE PRESIDENT: He can put his evidence to the witness whether he reads it or not as you know and as the defense frequently do. It isn't evidence

TAKEDA

CROSS

1 unless it has been already established or is established
2 or is accepted by the witness. We know this. We know
3 that Mr. Carr doesn't give evidence. Please don't
4 remind us so often.

5 MR. ROBERTS: The remarks did not have the
6 form of a question. It seemed to me to be more in the
7 form of a narration.

8 MR. COMYNS CARR: I am surprised that my
9 learned friend should say that I was reading from a
10 document of which he does not know the nature because
11 the document which was in front of him was one served
12 upon us by the defense themselves but which they haven't,
13 so far, seen fit to offer in evidence.

14 MR. ROBERTS: Perhaps the reason why we felt
15 we could not offer it was a good reason, and there
16 is not justification for the prosecution offering it
17 in any event.

18 MR. COMYNS CARR: I will now complete my
19 question. Language Division, I read down to the words
20 "on the outskirts of Shanghai."

21 THE MONITOR: What document is this, sir?

22 MR. COMYNS CARR: Shall I begin again or will
23 you carry on from there?

24 THE MONITOR: What document.

25 MR. COMYNS CARR: It isn't any document which

1 you have, but I was framing a question. Shall I begin
2 again?

3 THE MONITOR: No, sir; it isn't necessary.

4 Q (Continuing) I spoke down to the words
5 "airdrome at Hungjao on the outskirts of Shanghai,
6 and the Chinese guard at the airdrome was also killed."

7 Is it not the fact that that was all that was
8 ever established about this matter?

9 A No, that isn't so.

10 Q Now did you tell this story that you have
11 told us to Mr. OKAMOTO, the consul-general?

12 A Yes, of course I told the consul-general.
13 From that time I have always kept in constant -- I
14 have been in contact with him constantly.

15 Q You were present at the meeting of the joint
16 committee on the 12th of August, were you not?

17 A Yes. Is that all concerning the OYAMA case
18 because I should like to add something to my statement.

19 Q Were you surprised to find that Mr. OKAMOTO
20 did not say a word about these admissions having been
21 made or this story of yours at all at that meeting?

22 THE MONITOR: Mr. Carr, "these admissions
23 having been made." You mean admissions by the Chinese?

24 MR. COMYNS CARR: Yes.

25 A No, I wasn't surprised.

TAKEDA

CROSS

1 THE MONITOR: I wasn't surprised particularly.

2 Q Did you say anything about it yourself?

3 A No. The committee had to handle far more
4 important matters than the OYAMA matter -- OYAMA case.

5 THE MONITOR: Far more important and imminent
6 matters.

7 Q But the OYAMA case, according to you, and so
8 for we can agree, was the foundation of the whole of
9 this outbreak in Shanghai, was not it?

10 A There are other fundamental causes of this
11 outbreak.

12 THE MONITOR: The fundamental cause or the
13 cause of this outbreak lies elsewhere in something
14 more fundamental. The cause of the outbreak lies
15 elsewhere in something more fundamental.

16 Q Now would you mind telling me what right or
17 business Lieutenant OYAMA had to be anywhere near
18 this airdrome on this night?

19 A Let me explain so that it can be well under-
20 stood. The guarding of the eastern -- of the western
21 side of Shanghai was the responsibility of the English
22 troops -- British troops. However, in this sector
23 there were many Japanese interests, for instance,
24 the Naigai Cotton Spinning Mill and other Japanese
25 enterprises, as well as a great number of Japanese

TANEDA

CROSS

1 residents. In accordance with the agreement made at
2 the defense council -- at the defense committee --
3 Shanghai defense committee, a Japanese naval landing
4 party consisting of about a hundred members were dis-
5 patched -- were stationed in this western sector. There
6 were Japanese interests along the driveway, along the
7 Extension Road.
8

9 THE MONITOR: There were many Japanese
10 interests along the driveway of this Extension Road
11 upon which this incident occurred.

12 A (Continuing) Lieutenant OYAMA, being command-
13 ing officer of this unit, was responsible for seeing
14 that all -- responsible for being on guard and knowing
15 what was going on in his section. Especially at that
16 time there were acts of terrorism at various places,
17 and the commanding officer of the Japanese naval
18 landing force -- landing unit -- had an extremely
19 important responsibility of protecting the Japanese
20 residents.

21 THE MONITOR: "The commander of the Japanese
22 naval landing parties" corrected to "the commander
23 of the unit." In other words, Lieutenant OYAMA.

24 A (Continuing) So that Lieutenant OYAMA was
25 merely conducting an inspection of the sector allotted
to him.

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THE MONITOR: Just as he always did.
THE PRESIDENT: It seems to me the monitor is telling the interpreter what to say. The monitor's duty is to correct the interpreter if he goes wrong. We might as well have no interpreter but just the monitor. We might save time if we had that arrangement, too.

TAKEDA

CROSS

1 Q Is not this airdrome in what you call the
2 prohibited zone?

3 A The airdrome was situated at the place --
4 on the other side of the Soochow River; and so,
5 according to the wording of it -- according to the
6 actual wording of the agreement, it cannot be said
7 to be actually in the prohibited zone. However, in
8 order to avoid fighting around -- in and around
9 Shanghai, the Chinese had stationed troops in this
10 area; and until about July 1932 there were hardly
11 any Chinese troops in this area at all.

12 Q But what business had Japanese armed men
13 there?

14 A There were no Japanese troops in that
15 area at that spot.

16 Q What was Lieutenant OYAMA?

17 A Lieutenant OYAMA was conducting an in-
18 spection of the sector allotted to him.

19 Q But what do you mean allotting to him a
20 sector of what you've called the prohibited zone?

21 A Lieutenant OYAMA did not go outside of
22 the Extension Road. He kept to the Extension Road.

23 Q Well, now, you have referred to the foreign
24 press. Did you see this account in the North China
25 Daily News on the 10th of August?

1 I No; I did not read the paper, so I did not
2 know.

3 Q Then let me put my question another way.
4 Was this a fact: When the parties, as you've de-
5 scribed, were out there at midnight on the 9th,
6 did the foreign residents in the neighborhood of
7 the shooting state that the two Japanese were in
8 uniform and the chauffeur was wearing a steel
9 helmet? Was that a fact?

10 THE MONITOR: Mr. Carr, when you say
11 "two Japanese were in uniform and the chauffeur
12 was wearing a steel helmet," are we to take it that
13 there were three altogether, or do you mean one of
14 them was a chauffeur?

15 MR. COMYNS CARR: Two. One of them was
16 the chauffeur with the steel helmet.

17 A Yes. What they wore at that time was
18 probably so.

19 Q Is it a fact that on previous days parties
20 of Japanese had visited the air-drome and been
21 turned back by the Chinese?

22 A No, that is not so, and nothing like that
23 could have happened.

24 Q So much so that the Chinese had to send
25 up an airplane to spot them as they were hiding in

the fields nearby?

A No, that is not so; that is absolutely not so.

Q And, although you were interested in the foreign press, you didn't read anything about that in the North China Daily News?

A No. The reason why we took representatives of the foreign power press was because we thought it would be better if they were shown -- shown what had taken place, and because we considered that it was an important thing to do. So, the representatives of all the more important papers were taken along.

Q But you didn't trouble to find out what they said after they had been shown, did you?

A The staff officer in charge of press affairs actually must have read the article. But, since I was so busy, I had no time to read the foreign press.

Q Now, when the first report came in of this shooting, before you sent out your assistant, did it come to you from the Japanese naval attaché?

A Although it may take some time, I should like to explain the actual circumstances.

Q Answer the question first.

1 the fields nearby?

2 A No, that is not so; that is absolutely not

3 so.

4 Q And, although you were interested in the

5 foreign press, you didn't read anything about that

6 in the North China Daily News?

7 A No. The reason why we took representa-

8 tives of the foreign power press was because we

9 thought it would be better if they were shown --

10 shown what had taken place, and because we con-

11 sidered that it was an important thing to do.

12 So, the representatives of all the more important

13 papers were taken along.

14 Q But you didn't trouble to find out what

15 they said after they had been shown, did you?

16 A The staff officer in charge of press

17 affairs actually must have read the article. But,

18 since I was so busy, I had no time to read the

19 foreign press.

20 Q Now, when the first report came in of

21 this shooting, before you sent out your assistant,

22 did it come to you from the Japanese naval attaché?

23 A Although it may take some time, I should

24 like to explain the actual circumstances.

25 Q Answer the question first.

1 A The first report we had of this affair
2 came from the Chinese side. The mayor of the city
3 telephoned to Consul-General OKAMOTO. That is what
4 I believe. The telephone call said that west of
5 Shanghai there was fighting going on between Chi-
6 nese and Japanese troops, and the mayor asked that
7 the hostilities be suspended -- be stopped.

8 Consul-General OKAMOTO passed this informa-
9 tion on to me. To this I answered that another
10 big demonstration had probably started -- that
11 another rumor had been started, so, therefore,
12 that nothing like that could have happened and to
13 ignore the telephone call.

14 Q Is that what you said in fact: that
15 nothing of the kind could have happened because
16 no officer or man of the naval landing party had
17 any orders to go out on that evening?

18 A No, that isn't so. No. What I said was
19 that there was no fighting going on between Chi-
20 nese and Japanese troops; that there were no Japen-
21 ese troops in that area. There was a second call
22 from Consul-General OKAMOTO to the same effect.
23 I again told Consul-General OKAMOTO that he should
24 not be fooled by such a rumor.
25

 Upon being called by telephone for the

TAKEDA

CROSS

1 third time, I then told Consul-General OKAMOTO
 2 that "If you are so worried about the case, then
 3 let us go and make an investigation on the spot --
 4 that both Japanese and Chinese representatives
 5 should go to the spot for investigation." Contact
 6 was made with the Chinese forces, and a staff
 7 officer was sent out to the spot. That was when
 8 we first were -- became aware of the incident.
 9 Staff officers from both sides were sent out to
 10 the spot.

11 Q Now, is it true that within thirty-six
 12 hours of this incident happening, thirty addition-
 13 al Japanese warships appeared in the river off
 14 Shanghai?

15 A No, I am not aware of that.

16 Q How many do you say?

17 A Since I was in the landing party, I was --
 18 I did not know very much about what was happening
 19 on sea.

20 Q Did you know that, on the settlement water-
 21 front on the 11th of August, there were a large
 22 party, approximately four thousand men, being landed
 23 from ships which had just arrived in the harbor?

24 A After the OYAMA incident, about one
 25

TAKEDA

CROSS

1 thousand members of the landing party were sent
 2 from Japan to Shanghai. But that took place on
 3 the day following the incident or, perhaps, the
 4 day after that.

5 Q Do you know that by noon on August the
 6 11th, the cruiser IZUMO, two destroyers and nine
 7 gunboats, and twenty-eight ships in all, were tied
 8 up -- Japanese warships -- were tied up at buoys
 9 and wharves in the river?

10 A Since the IZUMO was the flagship, and
 11 there were other Japanese naval vessels in the
 12 Yangtze, that may have been so. But I am not sure
 13 of the number.

14 THE PRESIDENT: We will recess for fifteen
 15 minutes.

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

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

3 THE PRESIDENT: Mr. Comyns Carr.

4 CROSS-EXAMINATION (Continued)

5 BY MR. COMYNS CARR:

6 Q Mr. Witness, was the Izumo the flagship
7 of the Japanese Third Fleet?

8 A Yes.

9 Q On the afternoon of the 10th of August
10 were there four cruisers and two destroyers which
11 arrived in the harbor? I can give you the names
12 of the cruisers, if you like.

13 A Since I was connected with the naval land-
14 ing party, I was not -- I did not know very much of
15 what happened at sea.

16 Q You mean that you can't answer whether
17 these ships -- I will give the names: Sendai,
18 Natori, Yura, and the Kinu.

19 Are you telling us that you don't know
20 whether they arrived or whether they didn't?

21 A Yes, that is so. Since I was in the naval
22 landing party, I didn't know.

23 Q Did five more ships arrive in the harbor
24 on the night of the 10th?

25 A I don't know.

Q Did an aircraft carrier and more warships anchor off Woosung that night?
A For the same reasons, I don't know very well.
Q On the afternoon of the 11th did you go to the O.S.K. Vangtzeppoo wharf?
A No, I don't think I went to such a place at such a time.
Q Were you interested in the reinforcements and ammunition which were coming for your landing party?
A I did know that there were one thousand reinforcements, but as senior staff officer I did not go -- A senior staff officer does not go to the wharf every time to see what is happening.
Q Did you see the lorries arriving at your landing party headquarters continuously to and from the wharf all that afternoon with ammunition?
A No, I am not aware of such minor details.
Q But where were you if you weren't at the headquarters or at the wharf or anywhere where you could see either the lorries or the fleet?
A I was in the headquarters.
Q And you didn't see the lorries coming in?
A No, I don't know how many trucks came,

1 Q Did an aircraft carrier and more warships
2 anchor off Woosung that night?
3 A For the same reasons, I don't know very
4 well.
5 Q On the afternoon of the 11th did you go to
6 the O.S.K. Vangtzeppoo wharf?
7 A No, I don't think I went to such a place
8 at such a time.
9 Q Were you interested in the reinforcements
10 and ammunition which were coming for your landing
11 party?
12 A I did know that there were one thousand re-
13 inforcements, but as senior staff officer I did not
14 go -- A senior staff officer does not go to the
15 wharf every time to see what is happening.
16 Q Did you see the lorries arriving at your
17 landing party headquarters continuously to and fro
18 from the wharf all that afternoon with ammunition?
19 A No, I am not aware of such minor details.
20 Q But where were you if you weren't at the
21 headquarters or at the wharf or anywhere where you
22 could see either the lorries or the fleet?
23 A I was in the headquarters.
24 Q And you didn't see the lorries coming in?
25 A No, I don't know how many trucks came,

TAKEDA

CROSS

1 because I was always on the move.

2 Q On the morning --

3 THE MONITOR: Hold it.

4 Since a great many lorries were going to
5 and fro, I could not keep account of them.

6 THE PRESIDENT: It isn't what he saw that
7 matters but what he knew or did not know. You would
8 think that he, as chief of staff, would know all
9 those things, although he might not see lorries or
10 ammunition or reinforcements, that is to say, if
11 those things happened, and we make no assumption
12 from the cross-examination apart from admissions by
13 the witness.

14 THE WITNESS: Out of one thousand reinforce-
15 ments five hundred were sent to the Shanghai East
16 End Kunda Textile Mill, and the other five hundred
17 were sent to the North Primary School.

18 Q Would it be correct to describe the assem-
19 bly of Japanese warships in the harbor at Shanghai
20 on the afternoon of the 11th of August as one of the
21 most imposing displays of naval might Shanghai has
22 ever seen?

23 A You are at liberty to describe it as you
24 will, but according to my recollection, there was
25 no such great assembly of Japanese vessels.

TANEDA

CROSS

1 THE PRESIDENT: I suppose, Mr. Carr,
2 we can assume that you will prove, or attempt to
3 prove, these things you are putting to the witness
4 so far as they are not already in evidence and so
5 far as they are not admitted by him.

6 MR. COMYNS CARR: Yes, your Honor.

7 THE PRESIDENT: I refer merely to the
8 concentration of men, materiel, and ships at Shang-
9 hai at the time.

10 MR. COMYNS CARR: Yes, your Honor.

11 Q On the morning of the 12th of August did
12 your press officer inform you that all the matters
13 I have been putting to you about ships, reinforce-
14 ments, and ammunition had appeared in the North
15 China Daily News that morning and purported to be
16 the actual observation, in the main, of one of their
17 staff?

18 A No, I have no recollection of that.

19 Q Tell me, when were the orders given for the
20 additional fleet to come to Shanghai?

21 A I don't know.

22 Q Did you ask for them to be sent?

23 A No, I did not.

24 Q Did your commanding officer or did the
25 naval attache in Shanghai ask for them to be sent?

TAKEDA

CROSS

1 A No, the commanding officer did not do so,
2 and the naval attache did not have any such authority.

3 Q So, according to you, they arrived just on
4 their own idea, did they?

5 A I don't know whether such a great fleet
6 came or not, but in any case, the movements of a
7 fleet would be on instruction from superiors and we
8 would know nothing of such affairs.

9 Q But you tell us definitely that the naval
10 authorities in Shanghai did not ask for it to be
11 sent?

12 A That was that? Concerning the movements
13 of the fleet, being in the naval landing party, we
14 knew nothing about it.

15 Q Now, you were present at the meeting of the
16 Commission on the 12th of August?

17 A Yes.

18 Q Did you hear Mr. Yui, the Mayor, say this?
19 I am going to read from exhibit 2516, defense docu-
20 ment 1063, the last paragraph on page 4 and part of
21 page 5.

22 THE MONITOR: Just a minute. Is that from
23 "rejoining Mr. Yui"?

24 MR. COMYNS CARR: That is right. It is
25 the reply of Mr. Yui to a speech of Mr. OKAMOTO,

TAKEDA

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1 which has already been read.

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1 (Reading): "Rejoining Mr. Yui stated that
2 the Chinese delegates were not a whit behind their
3 Japanese friends in their desire to maintain peace
4 and good order in Shanghai, but he submitted that
5 peace and good order could be maintained only through
6 sincere cooperation on the part both of China and
7 of Japan. He would like to clarify one point raised
8 by his Japanese colleague, who had just mentioned
9 that the Chinese delegate had assured him only last
10 night that the Paoantui would be withdrawn from
11 areas close to Japanese residents. He would point
12 out that the Chinese Civil Delegate had not made
13 such a statement, but that he, as Mayor of Greater
14 Shanghai had an interview with the Japanese Consul-
15 General last night, when the latter had asked for
16 the withdrawal of the Paoantui.

17 "He (the Mayor) had then raised the question
18 of the reported arrival of heavy Japanese naval
19 reinforcements outside Woosung, whereupon the
20 Japanese Consul-General had expressed surprise and
21 uttered the remark that he didn't know anything about
22 it. He (the Mayor) then said that if there was no
23 truth in that report he would agree to withdraw
24 certain of the Paoantui. However, no sooner had the
25 Consul-General for Japan departed when reports began

TAKEDA

CROSS

1 pouring into the Mayor's office substantiating the
2 earlier reports of the arrival of Japanese rein-
3 forcements. Thus the Chinese side was compelled to
4 adopt measures of self-defense."

5 Q Do you remember those things being said by
6 Mr. Yui?

7 A If it appears in the record, he must
8 have said so.

9 Q Did either you or Mr. OKAMOTO make the
10 slightest attempt to deny them?

11 A Denial of what?

12 Q To deny the statements about the arrival
13 of the Japanese naval reinforcements?

14 A I didn't think it was necessary to deny
15 that. Mr. Consul-General OKAMOTO spoke with Mayor
16 Yui in English, but at necessary parts -- at
17 necessary junctons I took part in the conversation
18 and asked questions.

19 Q Why wasn't it necessary to deny it if it
20 wasn't true?

21 A I believe that Consul-General OKAMOTO did
22 deny the statement -- such rumours.

23 THE PRESIDENT: Mr. Roberts.

24 MR. ROBERTS: I believe the minutes as just
25 read stated that he didn't know anything about it.

TAKEDA

CROSS

1 MR. COMYNS CARR: The minutes as just read
2 stated that he said on the evening of the 11th in
3 the interview with Mayor Yui that he didn't know
4 anything about it; but when the statement was
5 repeated on the afternoon of the 12th I can trace
6 no attempt at a denial in the minutes.

7 MR. ROBERTS: I assume that this is a
8 report at the meeting on the 12th and that the
9 reply was made at that time.

10 MR. COMYNS CARR: In my submission that
11 is not a proper interruption in cross-examination.

12 THE PRESIDENT: The minutes are clear,
13 and they were tendered by the defense.

14 BY MR. COMYNS CARR:

15 Q Now did you hear this further discussion
16 at the meeting?

17 MR. COMYNS CARR: Language Division, I
18 shall be reading the whole of page 11 except the
19 first two lines and part of page 12:

20 (Reading) "Mr. OKAWOTO reminded the meeting
21 that the danger of a clash was imminent, which caused
22 Mr. Gauss to remark that apparently nothing could
23 be done tonight.

24 "Mr. Yui observed that if the Chinese side
25 was not encroached upon, nothing would happen tonight,

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1 tomorrow night or any other night.

2 "Mr. Gauss enquired if Mr. Yui had anything

3 to suggest which the Foreign Powers might attempt

4 to do to alleviate the situation and which would

5 be acceptable to the Chinese side.

6 "Mr. OKAMOTO interjected that some of the

7 Japanese warships had left Shanghai this afternoon,

8 whereupon Mr. Yui remarked that others may be

9 coming.

10 "Mr. Davidson asked if it were possible

11 to get an assurance from both sides not to make

12 an attack within say 24 or 48 hours to see if some-

13 thing could be done in the meantime?

14 "Mr. Yui replied that he could give an

15 assurance that if the Chinese side were not attacked,

16 they would not attack, whether in 24 hours, 24 days

17 or 24 years. The Chinese side were always on the

18 defensive.

19 "Mr. OKAMOTO remarked that his side did

20 not want to make any trouble so long as they were

21 not provoked or challenged. That he could say

22 with authority.

23 "Mr. Yui asked how Mr. OKAMOTO understood

24 provocation. Mr. OKAMOTO replied that if the Japanese

25 side were threatened they would attack.

1 "Mr. Yui observed that the Chinese side
2 would not attack but would defend themselves.

3 "Mr. OKAMOTO stated that a Japanese news-
4 paper man had been arrested that morning at the
5 North Station by Chinese troops stationed there.
6 He was trying to find out where he was. That was
7 provocation.

8 Mr. Yui related how the Commissioner of
9 Public Utilities had been dragged out of his car
10 last year and searched by Japanese Marines. Mr.
11 OKAMOTO said it was useless to pursue those mutual
12 recriminations.

13 "Mr. Davidson enquired if there were any
14 independent Chinese Military units in the areas
15 adjacent to the Japanese positions.

16 "Mr. Yui replied that he could give assurances
17 that there were no independent units in those areas."

18 Q Did you agree with Mr. OKAMOTO when the
19 Chinese said they would not attack unless they were
20 attacked -- that the Japanese would attack if they
21 were provoked or challenged?

22 A It was always said that, unless we were
23 attacked, we would not take the offensive.

24 Q Well, you see, that is the exact opposite
25 of what Mr. OKAMOTO, according to the minutes, said.

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1 A I don't think it is the opposite.

2 MR. ROBERTS: May I ask at this point

3 whether or not the part just read by the prosecutor

4 was actually read to the witness because he may

5 have been on a different circuit. May I be

6 informed by the IBM Operator on that? Or perhaps

7 the witness can inform us whether it was read to

8 him.

9 THE MONITOR: The IBM Operator informs

10 me that the witness did listen to the Japanese

11 version.

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1 Q Well, now, on page 9 of your affidavit you
2 say in the third and fourth lines of paragraph 13
3 that the Japanese on the morning of the 13th were
4 fired upon from the building of the Commercial Press
5 Warehouse. Where is that in Shanghai?

6 A At a distance of five or six hundred yards from
7 the naval landing party.

8 Q Is it the same place as the China Press Build-
9 ing?

10 A No, it isn't in the same place. It is in the
11 middle of the Chepei District.

12 Q Mr. OKAMOTO told us yesterday that the firing
13 was from the China Press Building. Which of you is
14 right?

15 A I think that must have been some mistake.

16 Q Were you there?

17 A Yes, I was in the headquarters of the naval
18 landing party.

19 THE PRESIDENT: Is that the same as the
20 Commercial Press Building?

21 A The same with what? I don't know what is
22 meant by China Press Building.

23 THE PRESIDENT: In another part of the docu-
24 ment the expression is "Commercial Press Building."

25 MR. COMYNS CARR: That is the witness' account.

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1 THE PRESIDENT: General Cramer and I dis-
 2 cussed that yesterday afternoon.

3 MR. COMYNS CARH: Perhaps we are not referring
 4 to the same document, your Honor. Does your Honor
 5 mean in Mr. OKAMOTO's affidavit he refers to two dif-
 6 ferent buildings in two different parts?

7 THE PRESIDENT: During his evidence.

8 Q By that time, whoever actually fired the first
 9 shot, the position had got to the point when your
 10 forces were taking so strong a position there was
 11 bound to be an outbreak, hadn't it?

12 A We were following the principle of non-
 13 extension, and so if only one shot was fired the com-
 14 manding officer was determined not to move his troops.

15 Q What I am suggesting to you is this: That
 16 nobody will ever know who fired the first shot, but
 17 the bringing up of huge reinforcements made an out-
 18 break inevitable.

19 MR. ROBERTS: I object to the question as
 20 being argumentative.

21 THE PRESIDENT: It could be looked at that
 22 way.

23 Q Do you say that from the naval headquarters
 24 you could, yourself, know where the shot came from?

25 A Yes. That came from the reports from officers

and soldiers, and also from lookouts.

1 Q Yes. But that means you can't say you,
2 yourself, know anything about it, can you?

3 A Of course, I was in the operation room or
4 else in the staff officers' room, so I wasn't upstairs
5 on the lookout post so I could not have seen what hap-
6 pened.

7 Q I suggest to you that nobody from the naval
8 landing party building could see either of the two
9 buildings that have been referred to at all.

10 A To which buildings do you refer?

11 Q Either the one which you mentioned, the
12 Commercial Press Building, or the one -- the Commercial
13 Press Warehouse, or the one which Mr. OKAMOTO mentioned,
14 the China Press Building.

15 A I don't know what the China Press refers to,
16 but the Commercial Press--

17 THE MONITOR: I do not know whether China
18 Press is the English translation of the word which is
19 commonly translated as the Commercial Press Building --
20 Shomuin Shokan.

21 MR. COMYNS CARR: No. I thought we had agreed
22 that they are too entirely different buildings in two
23 different parts of the city.

24 MR. ROBERTS: Perhaps the prosecutor has agreed
25

but I don't think the witness has agreed.

1 MR. COMYNS CARR: That is what the witness
2 said.

3 MR. ROBERTS: I believe the Court will recall
4 that he said he wasn't familiar with the China Press
5 Building and didn't know what the prosecutor was talk-
6 ing about.

7 MR. COMYNS CARR: Well, let's get it quite
8 clear.

9 Q Do you agree that the Commercial Press Ware-
10 house and the China Press Building are two entirely
11 different buildings in different parts of Shanghai?

12 A I don't know what is referred to by the China
13 Press Building.

14 Q Is not the China Press Building a newspaper
15 office, and is not the Commercial Press Warehouse a
16 publisher's warehouse?

17 A Yes, the Commercial Press Building is a book
18 store.

19 Q Well, let's confine my question to that. I
20 suggest to you that nobody from any part of the naval
21 landing headquarters could see whether shots were coming
22 from the Commercial Press Warehouse or not.

23 A It can clearly be seen. The Commercial Press
24 Warehouse is a four or five story large building, and
25

1 anyone on top of that building can overlook the whole
 2 of Shanghai.

3 Q Are not the landing headquarters and the Com-
 4 mercial Press Warehouse in quite different roads?

5 A In entirely different -- on different roads,
 6 that is to say the Commercial Press warehouse is in
 7 the Chapei District and the headquarters of the Japanese
 8 naval landing party is at the end of Extension Road.

9 Mr. COMYNS CARR: Yes. I leave it there,
 10 your Honor.

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TAKEDA

REDIRECT

1 THE PRESIDENT: Before you re-examine,
2 Mr. Roberts, I have the following questions to put to
3 the witness on behalf of a Member of the Court:

4 Did the reinforcements arrive in Shanghai
5 without any previous notice to the Japanese naval
6 landing party?

7 THE WITNESS: We received notification of
8 the arrival of 1,000 reinforcements.

9 THE PRESIDENT: On what day and at what hour
10 did you receive that notice?

11 THE WITNESS: I do not know the time, but it
12 was after the OYAMA Incident.

13 THE PRESIDENT: Mr. Roberts.

14 REDIRECT EXAMINATION

15 BY MR. ROBERTS:

16 Q Mr. TAKEDA, on the reading of your testimony,
17 a question was raised concerning your statement that
18 the Peace Preservation Corps had been fixed at 2,000
19 and for the exclusion of cannon as means of arms. I
20 want to read to you from the minutes of the Joint
21 Meeting and ask you if that is the agreement that you
22 referred to.

23 MR. COMYNS CARR: Your Honor, I object to
24 this question. It does not arise out of cross-
25 examination. During the reading I pointed out instead

TAKEDA

REDIRECT

1 of objecting to the witness' expressing opinions about
 2 the meaning of the Cease-Fire Agreement, I pointed
 3 out that the Cease-Fire Agreement did not contain any
 4 reference to either of those matters. As the
 5 construction of the agreement is a matter for the Court,
 6 I did not cross-examine about it at all.

7 If my friend after cross-examination wanted
 8 to refer to some other agreement, he could have done
 9 so by supplementary question after the reading of
 10 the affidavit. But it does not arise out of anything
 11 asked in cross-examination.

12 MR. ROBERTS: The prosecutor has specifically
 13 called the attention of the Court to the fact that
 14 the 2,000 mentioned in the affidavit was not understood
 15 as having come under this agreement. He likewise
 16 made the same reference to the statement of the wit-
 17 ness that they were not supposed to have cannons and
 18 that the cannons they had was in contravention of the
 19 understanding.

20 We would like to show from the Chinese repre-
 21 sentative himself, exactly what the understanding was
 22 so that this Court may be clear.

23 THE PRESIDENT: The cross-examination has
 24 left nothing in doubt to be cleared up in this respect.
 25 All we have to consider is the examination in chief,

TAKEDA

REDIRECT

1 page 2, and the agreement itself.

2 MR. ROBERTS: If your Honor please, there
3 seems to be some misunderstanding. There seems to have
4 been another agreement as to the number of troops
5 which would be stationed there, Peace Preservation
6 troops.

7 THE PRESIDENT: We can always give permission
8 to open new matter under certain circumstances.

9 MR. ROBERTS: I would like your permission to
10 do that.

11 THE PRESIDENT: I think the Court is quite
12 prepared to give you permission to refer to this new
13 matter, to open this new matter.

14 MR. ROBERTS: Thank you, your Honor.

15 Q The minutes read as follows:

16 "Mr. OKAMOTO rejoined by saying that follow-
17 ing upon the signing of the 1932 Agreement the City
18 Government of Greater Shanghai decided to establish
19 the Peace Preservation Corps in Chapel beginning
20 July 1st that year. As the Japanese side was not
21 without apprehension lest this body, the Pae-An Tui
22 as it is known in Chinese, should be something akin to
23 a regular armed force, the Japanese delegate at the
24 time, acting under instructions from his Government,
25 asked Mr. O. K. Yui for information regarding the real

1 nature of the Pao-An Tui. Mr. Yui explained that the
 2 object in creating this body was no other than the
 3 maintenance of peace and order in Chapei; that the
 4 Pao-An Tui was so-called in order to distinguish it from
 5 the existing police force of the Public Safety Bureau
 6 and that the body was to be 2000 strong, which would
 7 be divided into two regiments, each regiment being sub-
 8 divided into three battalions. Mr. Yui further declared
 9 that although revolvers, guns and machine guns would
 10 be supplied to the Pao-An Tui, tanks, armoured-cars
 11 and bomb-guns, etc., would not form parts of their
 12 equipment, and that soldiers of the regular army would
 13 on no account be incorporated into the said organiza-
 14 tion, whose members would be composed exclusively of a
 15 portion of the Peiping Pao-An Tui, constables of the
 16 Public Safety Bureau, and some ex-gendarmes. These
 17 statements of Mr. O. K. Yui at the time were recorded
 18 at his Consulate-General."

19
 20 MR. COMYNS GARR: Your Honor, that does not
 21 purport to be, as suggested by my friend, anything said
 22 by Mr. Yui in the meeting. It purports to be some-
 23 thing alleged by Mr. OKAMOTO in the meeting to have
 24 been said by Mr. Yui, not even to Mr. OKAMOTO himself
 25 but to some other Japanese official. And if you will
 follow down the middle of page 8 of the minutes, you

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1 will see Mr. Yui inquired of the chairman whether or
 2 not he should reply to Mr. OKAMOTO's remarks about
 3 the Peace Preservation Corps, but the chairman went
 4 on to a different subject, so the allegation was
 5 never replied to by Mr. Yui.

6 THE PRESIDENT: We will adjourn until
 7 half-past one.

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

10 - - -

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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.

I S A M U T A K E D A, called as a witness on behalf of the defense, resumed the stand and testified through Japanese interpreters as follows:

THE PRESIDENT: Mr. Comyns Carr.

MR. COMYNS CARR: Your Honor, there is one small correction I should like to make. I am told that I was mistaken in suggesting to the witness this morning that Mr. Powell was the editor of the North China Daily News. Mr. Powell's paper was the China Weekly. It does not affect the point of my question because the witness told me that the representative of the North China Daily News was one of those taking part in the inquiry of which he spoke.

THE PRESIDENT: Until the defense ask us to accept Mr. Powell as a reliable reporter of events.

Mr. Roberts.

MR. ROBERTS: As far as I recall the prosecutor mentioned that Mr. Powell had testified something to the contrary from that stated by the witness; wasn't

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1 that so?

2 MR. COMYNS CARR: No.

3 MR. ROBERTS: I take it that the Court will
4 disregard the reference made to Mr. Powell previously
5 then as the editor of the China Daily News. Might we
6 further assume that if the Court does not accept the
7 statements and the book of Mr. Powell that it will
8 not accept statements from the prosecution as well.
9 I refer to statements from the book, of course.

10 THE PRESIDENT: The best way to treat your
11 observations is with contemptuous silence. You are
12 warning us against accepting his evidence, something
13 which we know is not evidence.

14 MR. ROBERTS: I was simply trying to clarify
15 the situation, if your Honor please, so that it will
16 be clear in my own mind.

17 REDIRECT EXAMINATION

18 BY MR. ROBERTS (Continued):

19 Q Referring to the statement in your affidavit
20 on page 2, Mr. TAKEDA, concerning the force of the
21 Peace Preservation Corps having been determined at
22 2000 and the equipment that they were to have, can you
23 tell us when and how this agreement was arrived at?

24 THE PRESIDENT: Mr. Comyns Carr.

25 MR. COMYNS CARR: Your Honor, obviously he

1 cannot, With my friend having already read the allega-
 2 tion of Mr. OKAMOTO that it was an agreement supposed
 3 to have been arrived at between Mr. Yui and another
 4 unnamed Foreign Office official how can this gentleman
 5 possibly know about it?

6 MR. ROBERTS: That is exactly the point. We
 7 want to find out with whom the agreement was made and
 8 who participated.

9 THE PRESIDENT: Does he know?

10 MR. ROBERTS: I believe he does, if your Honor
 11 please.

12 THE PRESIDENT: Ask him.

13 Q Do you know, Mr. TAKEDA, of the agreement
 14 that you refer to on page 2 of the affidavit concerning
 15 the number of troops in the Peace Preservation Corps
 16 and the type of armaments they were supposed to carry?

17 A Yes.

18 Q Can you tell us if this arose out of the
 19 agreement of May 5, 1932?

20 A Yes.

21 MR. COMYNS CARR: Your Honor, ought not the
 22 witness first to be asked whether he was present when
 23 the alleged agreement was made and if it was alleged
 24 to be in writing where the documents are?

25 MR. ROBERTS: I believe this will all be

1 brought out in the course of the witness' testimony.

2 THE PRESIDENT: You should know because he
3 is your witness and you know what he can say.

4 MR. ROBERTS: That is correct.

5 Q Now, will you tell us how this agreement
6 came to be drawn and under what circumstances?

7 A In accordance with the provisions of the
8 main text of the truce agreement there is a provision
9 that after the conclusion of the agreement the Japanese
10 forces were to withdraw into the International Settle-
11 ment and that their place -- that the place or the
12 functions performed by the Japanese forces were to
13 be taken over by the Chinese police. Being desirous
14 of knowing some concrete details of what was to take
15 place after the withdrawal of the Japanese forces the
16 Japanese side, in accordance with the instructions
17 from the Japanese Government, inquired of the Chinese
18 municipal government what type of arrangement they were
19 going to create thereafter --

20 MR. COMYNS CARR: Your Honor, I object. The
21 witness was not here, was not in Shanghai according
22 to his affidavit, until December 1936 and he is now
23 purporting to tell us something that happened in 1932.

24 THE INTERPRETER: "I was there in 1932," said
25 the witness.

1 THE PRESIDENT: He can contradict himself.
2 We cannot stop him. His last word may be as good
3 if not better than his first.

4 Q Will you proceed to tell us about the
5 agreement, Mr. TAKEDA?

6 A The reply of the municipal government to
7 the Japanese inquiry came in an official document. The
8 contents were as follows:--

9 THE PRESIDENT: Mr. Carr, you have to observe
10 that red light. General paralysis will set in if
11 you don't do that. After all, we are not a jury
12 and we can afford to hear these things which prove
13 to be inadmissible.

14 MR. COMYNS CARR: Your Honor--

15 THE PRESIDENT: I know it is very provoking
16 but still we all have to suffer.

17 MR. COMYNS CARR: Your Honor, I reminded
18 my friend that he should first ask whether the docu-
19 ment was in writing and if so where it is. Now after
20 all these questions it appears that there is alleged
21 to be a document and the document is not produced.
22 Your Honor will remember at the beginning of this
23 particular section I pointed out that owing to the
24 failure to cross-examine our witness about this Shanghai
25 matter we had no proper notice of what was intended to

1 be alleged. Under those circumstances in my submission
 2 it is proper for us to endeavor to be strict as to
 3 the type of material put before the Tribunal as
 4 evidence.

5 THE PRESIDENT: These matters are of vital
 6 importance and adequate proof should be offered. The
 7 only way to prove a document adequately is to produce
 8 it or account for its absence.

9 MR. ROBERTS: I believe the witness will show
 10 that it is not our document; that it was drawn by
 11 another authority, the municipal council, and that
 12 we have no means of obtaining that or of having it in
 13 our control. The witness will bring that out.

14 THE PRESIDENT: My colleagues are in grave
 15 doubt whether you understand the rule which I have
 16 laid down repeatedly that if you want to prove the
 17 contents of a document you must produce it or account
 18 for its absence in such a way that you must be excused
 19 from producing it. There is no requirement that I
 20 have stated more frequently and my colleagues are at
 21 a loss to know why counsel does not understand what I
 22 am saying about it.

23 MR. ROBERTS: We are not particularly
 24 interested in proving the contents of that document
 25 or any particular document except to have this witness

1 explain the figure of 2000 and the limitation of
2 arms which he claims comes under the original
3 armistice terms.

4 THE PRESIDENT: If the proof rests on the
5 contents of an agreement the agreement must be pro-
6 duced or its absence accounted for. You cannot talk
7 us out of that.

8 Q Mr. TAKEDA, do you know who drew the
9 original agreement that you refer to?

10 A This was received from the Chinese side
11 and the Naval Landing Party had a copy of it.

12 Q Do you know who drew the original?

13 A This was drawn up by the municipal govern-
14 ment of the Chinese side and was sent by the mayor,
15 the Chinese mayor, as an official document.

16 Q Do you know whether the original document
17 is in existence today or not?

18 A I should think that they would be at the
19 Japanese Consulate General.

20 Q Are you speaking about the original document,
21 Mr. TAKEDA?

22 THE PRESIDENT: He is; he said so. He said
23 the original was sent somewhere.

24 MR. ROBERTS: I didn't think it was clear.
25 I thought he said a copy was sent there.

THE PRESIDENT: You must hear the evidence as we hear it and if you appreciate it you would not misunderstand it.

THE WITNESS: Mr. Roberts, may I say a word? The original text was sent to the Consulate General and a copy thereof came to the Japanese Naval Landing Party headquarters.

THE PRESIDENT: The original is with the Consulate General as far as we know; now get it.

MR. ROBERTS: We shall make a search and if it is there I assure you we shall produce it.

Q Mr. TAKEDA, will you please tell us the distance from the Commercial Press Warehouse to the naval headquarters?

A About 500 to 600 yards.

MR. ROBERTS: May I state with reference to the agreement referred to that in view of the fact that Shanghai is now in the hands of the Chinese, perhaps we might call upon the prosecution to aid us in attempting to procure that document if it is possible.

THE PRESIDENT: There is no need to discuss ways and means here. You know that the correct thing is to apply in Chambers to me. The Charter fully deals with this situation.

Q Mr. TAKEDA, will you describe to us what you

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TAKEDA

REDIRECT

1 call the prohibited zone in Shanghai.

2 THE PRESIDENT: This is really new matter
3 which is not covered by our permission but--

4 MR. ROBERTS: It is leading into the question
5 of the Extension Road where the incident of Lieutenant
6 OYAMA occurred.

7 THE PRESIDENT: Go ahead.

8 A Whether it be the forces, the armed forces,
9 or the civilians of any country the Settlement Roads
10 and the Extra-Settlement Roads or Extension Roads were
11 used as -- they acted on the Extension Roads as they
12 did within the Settlement.

13 Q In other words the Extension Roads were
14 regarded in the same manner as the Settlement itself?

15 A Exactly, yes.

16 Q Do you recall about the time that evacuees
17 and refugees were brought from Shanghai to Hankow and
18 other parts of China?

19 A Yes.

20 Q Will you tell us when that occurred?

21 A Japanese residents of Hankow evacuated the
22 city and were brought to Shanghai on gunboats, destroyers
23 and steamships arriving at Shanghai on the 10th of
24 August the day after the killing of Lieutenant OYAMA.

25 Q Did this occasion considerable activity in

1 Shanghai at that time?

2 A The fact that they came to Shanghai did not
3 create -- did not become any particular stimulus.

4 Q Now, you refer to a trick as you character-
5 ized it on the part of the Chinese with reference to
6 the shooting of the Chinese soldier. Were you refer-
7 ring to the shooting of the soldier or the placing
8 of the body as a trick?

9 MR. COMYNS CARR: Your Honor, he made it
10 quite clear that he meant both.

11 THE PRESIDENT: What do you wish to clarify,
12 Mr. Roberts?

13 MR. ROBERTS: That there is some misunder-
14 standing that the Chinese soldier may have been regarded
15 as having been shot deliberately by the Chinese and
16 having his body placed there as a trick.

17 MR. COMYNS CARR: And that is precisely what
18 the witness said and any question designed to get him
19 to alter his testimony is in my submission improper.

20 THE PRESIDENT: My colleagues agree with your
21 version and one has made a note; so your question is
22 not directed to explain anything that has been left
23 obscure and is not re-examination in the proper sense.
24 The objection is allowed.

25 Q Mr. TAKEDA, are you familiar with the detachment

TAKEDA

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1 of merines that was placed near the 8th Character
2 Bridge?

3 A Yes.

4 Q How many men were in that detachment?

5 A A few with an NCO as its chief.

6 Q Were there any Japanese properties or
7 residents in that area?

8 A Yes.

9 Q Tell us what type of property, please?

10 A The place just mentioned by you was about
11 300 meters distant from the Naval Landing Party head-
12 quarters. At that point the Naval Landing Party had
13 some land, some lots. In this vicinity there were
14 Japanese temples, Japanese cemetery, glass manufacturing
15 company and saki breweries, and around these establish-
16 ments there were a large number of Japanese residents
17 there. The famous Rokusankaen Japanese restaurant was
18 also located in this district.

19 Q Did this detachment operate in concert with
20 the special municipal police and the Chinese police?

21 A Yes.

22 MR. ROBERTS: That completes the redirect
23 examination. May the witness be excused on the usual
24 terms?

25 THE PRESIDENT: He is excused accordingly.

(Whereupon, the witness was excused.)

1 MR. ROBERTS: We shall now present proof
 2 of the facts surrounding certain incidents which
 3 occurred in and around Shanghai and Nanking in Aug-
 4 ust and December, 1937 for the purpose of showing
 5 this Tribunal that the incidents were not a delib-
 6 erate or systematic plan to conquer China or to
 7 drive out all American and British from China as
 8 claimed by the prosecution. On the contrary, we
 9 shall prove to this Tribunal that Japan took ex-
 10 treme measures to prevent any undue hardships to
 11 foreign nations and their properties; and, where
 12 accidental damage or injury occurred due to exist-
 13 ing conditions, they pursued a course of settlement
 14 and adjustment to the complete satisfaction of
 15 those affected. It will further be shown that
 16 Japan meted out swift punishment to those respon-
 17 sible for carelessness or disregard of the regula-
 18 tions.

19 It is the contention of the defense that
 20 some incidents such as the Panay case and the Lady-
 21 bird case, having been amicably adjusted, should be
 22 regarded as closed incidents.

23 I now present Mr. SOMIYA who will offer
 24 some of the proof aforementioned.

25 THE PRESIDENT: Counsellor SOMIYA.

1 MR. SOMIYA: The documents will give proof
2 of the so-called Hugessen case.

3 First I offer in evidence defense document
4 No. 71, which is the reply of the Foreign Minister
5 addressed to the British Ambassador to Japan, dated
6 September 6, 1937, relative to the Ambassador
7 Hugessen injury case.

8 THE PRESIDENT: Admitted on the usual terms.

9 CLERK OF THE COURT: Defense document No.
10 71 will be given exhibit No. 2519.

11 (Whereupon, the document above re-
12 ferred to was marked defense exhibit No.
13 2519 and received in evidence.)

14 MR. SOMIYA: I shall read exhibit No. 2519:

15 "REPLY OF THE MINISTER FOR FOREIGN AFFAIRS
16 TO THE BRITISH AMBASSADOR, SEPTEMBER 9.

17 "Monsieur l'Ambassadeur:

18 "I have the honour to acknowledge the re-
19 ceipt of the note, No. 125, under the date of Aug-
20 ust 29, addressed to me by Mr. J. L. Dodds, then
21 Charge d'Affaires of the British Embassy, concern-
22 ing the incident in which Sir Hughe Knatchbull-
23 Hugessen was wounded.

24 "The Japanese Government, on receiving the
25 news of the event in question, took a grave view

1 of the incident, and hastened to convey expres-
 2 sions of profound sympathy to His Britannic Maj-
 3 esty's Government and to Sir Hughe through myself
 4 and the Ambassadors to the Court of St. James and
 5 to Chimo respectively and, at the same time, they
 6 sent urgent instructions to the authorities on
 7 the spot to investigate the case thoroughly. Al-
 8 though the results of these investigations have so
 9 far failed to produce any evidence to establish
 10 that the shooting was done by a Japanese aero-
 11 plane, the Japanese Government is taking measures
 12 for further investigations by the authorities on
 13 the spot in order to spare no efforts to ascertain
 14 the facts of the case.

15 "In these circumstances, it is still im-
 16 possible to determine whether or not the responsi-
 17 bility for the incident rests with Japan. Neverthe-
 18 less, in view of the traditional ties of friend-
 19 ship which bind Japan and Great Britain, the Japan-
 20 est Government express their profound regret that
 21 Sir Hughe should have met with such a misfortune
 22 incidental to the hostilities that were actually
 23 in progress in the region of Taitasang on that par-
 24 ticular day.

25 "In this connection, I wish to assure

1 Your Excellency that the Japanese forces always
2 take the fullest precautions against causing injur-
3 ies to non-combatants, and it is certainly very
4 far from the desire of the Japanese Government that
5 such an unfortunate event should ever occur in fu-
6 ture through any fault of their own. Fresh instruc-
7 tions have consequently been sent to their authori-
8 ties on the spot to exercise the strictest caution
9 in this regard. I earnestly hope, therefore, that
10 the British authorities will, on their part, kind-
11 ly cooperate with the Japanese authorities with
12 a view to forestalling the recurrence of a similar
13 event by taking such necessary measures as giving
14 notice in advance to the Japanese authorities on
15 the spot when entering a zone of danger.

17 "In making the above ad interim reply, I
18 avail myself of this opportunity to renew to Your
19 Excellency the assurances of my highest considera-
20 tion.

21 "Sir Robert Craigie

22 "His Britannic Majesty's Ambassador to Japan."
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1 Secondly, I would like to call the atten-
2 tion of the Court to exhibit No. 265 which was al-
3 ready introduced by the prosecution section. This
4 is a document entitled "Our Final Reply on the
5 Injury Case of the British Ambassador to China,"
6 addressed to the British Ambassador to Japan from
7 the Foreign Minister, dated September 21, 1937.
8 This document will prove that, should the said
9 accident be attributable to the Japanese Army, it
10 is due to their having mistaken the Ambassador
11 Hugessen's automobile for either a military bus
12 or auto-truck and not an intentional act.

13 I next offer defense document No. 73, which
14 is the letter under the date of September 23, 1937,
15 addressed to the Foreign Minister by the British
16 Ambassador to Japan. It proves that this case
17 was settled between both countries concerned.

18 THE PRESIDENT: Admitted on the usual terms.

19 CLERK OF THE COURT: Defense document No.
20 73 will be given exhibit No. 2520.

21 (Whereupon, the document above re-
22 ferred to was marked defense exhibit No.
23 2520 and received in evidence.)

24 MR. SOMIYA: I shall read exhibit No.
25 2520.

1 "NOTE OF THE BRITISH AMBASSADOR TO THE
2 MINISTER FOR FOREIGN AFFAIRS.

3 "British Embassy

4 "Tokyo

5 "23rd September, 1937.

6 "No. 148.

7 "Monsieur le Ministre,

8 "I have the honour to inform Your Excellency
9 cy that I duly communicated to His Majesty's Govern-
10 ment in the United Kingdom the terms of the Note
11 which Your Excellency addressed to me on the 21st
12 September in regard to the attack on His Majesty's
13 Ambassador in China by two aeroplanes in the neigh-
14 borhood of Shanghai on 26th August last.

15 "2. I have now received instructions from
16 His Majesty's Government to state that they have
17 received this communication with satisfaction and
18 regard the incident as closed.

19 "I avail myself of this opportunity to re-
20 new to Your Excellency the assurance of my highest
21 consideration."
22

23 Signed: "R. L. Craigie."

24 To: "His Excellency

25 "Mr. Koki HIROTA

"H. I. J. M. Minister for Foreign Affairs."

1 I next offer defense document No. 1076,
2 being the excerpt from the article in the ASAHI
3 dated November 24, 1937.

4 THE PRESIDENT: Brigadier Nolan.

5 BRIGADIER NOLAN: May it please the Tri-
6 bunal, defense document No. 1076 is a press re-
7 lease appearing in a Japanese newspaper. It pur-
8 ports to set out selected excerpts from what was
9 said during question time in the British House of
10 Commons. This document, we submit, is subject to
11 the same objections as has been made in respect
12 of other press releases and possesses no probative
13 value.

14 MR. SOMIYA: The portions I am intending
15 to read are those pertaining to this incident --

16 THE MONITOR: Excerpts from this document.

17 MR. SOMIYA: (Continuing) This report was
18 based upon telegrams sent by the Domei News Agency
19 from London relating to a debate in the British
20 House of Commons. I feel that the reading of this
21 document should be permitted inasmuch as the con-
22 tents of this document are of a public character.

23 THE PRESIDENT: By a majority, the Court
24 upholds the objection and rejects the document.

25 MR. SOMIYA: We shall offer proof next

1 regarding the so-called Penay Incident by documents
2 and witnesses.

3 Now we shall offer defense document No.
4 136. This document was what was addressed by the
5 Foreign Minister to the American Ambassador to
6 Japan on December 14, 1937. It was evidence that
7 this incident was entirely due to mis-borbing.

8 THE PRESIDENT: Brigadier Nolan.

9 BRIGADIER NOLAN: May it please the Tri-
10 bunal, this document is also a press release and,
11 as such, would be objectionable. It does, however,
12 contain the note of the Japanese Government to the
13 Government of the United States, dated 14 December,
14 1937, and really nothing but the note. The prose-
15 cution is satisfied that this document is a true
16 copy of the original note in question; and, in
17 order to obviate any unnecessary delay, we feel
18 that this might be a convenient ranner in bringing
19 it to the attention of the Tribunal.
20

21 THE PRESIDENT: Well, Brigadier, you are
22 somewhat inconsistent, aren't you? As much could
23 have been said for the document just rejected. If
24 that press release, purporting to contain a ques-
25 tion and an answer in the House of Commons, is at
all relevent, and you did not take the ground that

1 it was irrelevant, you probably do not question
2 the reliability of the newspaper account.

3 You see, we have to be satisfied of that
4 probative value. You are telling us that the docu-
5 ment now tendered has probative value because you
6 are satisfied it is a correct statement of the
7 Japanese Foreign Minister's despatch. But you
8 withhold your imprimatur from the document just
9 rejected. You are entitled to do so, but it seems
10 to me to be a matter for comment.

11 BRIGADIER NOLAN: May it please the Tri-
12 bunal, this document, on its face, is open to
13 precisely the same objection as the document we
14 have just dealt with. What I am endeavoring to do
15 is to explain to the Tribunal that this document,
16 containing as it does a true copy of the note it-
17 self, might afford a convenient method in bringing
18 the contents of that note before the Tribunal. I
19 am well aware of the fact that the proper way to
20 prove the note is to produce it. Thus, it would
21 have been proper to prove what took place in the
22 House of Commons by offering a copy of the tran-
23 script to the Tribunal. I was merely trying to
24 save time. And if it should appear that I'm being
25 inconsistent, I object to the document.

1 MR. SOMIYA: The document I am about to
2 tender to the Court is not an excerpt or an ex-
3 tract from a newspaper. It is an official docu-
4 ment sent by the Foreign Minister of Japan to the
5 United States Ambassador, and the certificate
6 makes clear that the text of this document is true
7 and correct, and I believe that this document
8 should be admitted.

9 THE PRESIDENT: By a majority, the Court
10 admits the document on the usual terms.

11 CLERK OF THE COURT: Defense document
12 No. 136 will be given exhibit No. 2521.

13 (Whereupon, the document above re-
14 ferred to was marked defense exhibit No.
15 2521 and received in evidence.)
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1 MR. SOMIYA: I shall now read exhibit 2521:

2 "Note of the Japanese Government to the U.S.
3 Government dated December 14, 1937.

4 "Text of the Note.

5 "December 14, 1937.

6 "Monsieur l'Ambassadeur:

7 "Regarding the incident of the 12th December
8 in which the United States gunboat Panay and three
9 steamers belonging to the Standard Oil Company were
10 sunk by the bombing of the Japanese naval aircraft
11 on the Yangtze River at a point about twenty-six miles
12 above Nanking, I had the honour, as soon as unofficial
13 information of the incident was brought to my knowledge,
14 to request Your Excellency to transmit to the Govern-
15 ment of the United States the apologies of the Japanese
16 Government. From the reports subsequently received
17 from our representatives in China, it has been estab-
18 lished that the Japanese naval air force, acting upon
19 information that the Chinese troops fleeing from
20 Nanking were going up the river in steamers, took off
21 to pursue them, and discovered such vessels at the
22 above mentioned point. Owing to poor visibility, how-
23 ever, the aircraft, although they descended to fairly
24 low altitudes, were unable to discern any mark to show
25 that any one of them was an American ship or man-of-war.

The Japanese Government is deeply
 sorry to hear that the United States
 gunboat Panay and the vessels of the
 Standard Oil Company, being taken for
 Chinese vessels carrying fleeing Chinese
 troops, were bombed and sunk.
 While it is clear, in the light of the
 above circumstances, that the present
 incident was entirely due to a mistake,
 the Japanese Government regret most
 profoundly that it has caused damages
 to the United States man-of-war and
 ships and casualties among those on
 board, and desire to present hereby
 sincere apologies. The Japanese
 Government will make indemnification
 for all the losses and deal
 appropriately with those responsible
 for the incident. Furthermore, they
 have already issued strict orders to
 the authorities on the spot with a
 view to preventing the recurrence of
 a similar incident.
 The Japanese Government in the
 fervent hope that the friendly
 relations between Japan and the
 United States will not be affected
 by this unfortunate affair, have
 frankly stated as above their sincere
 attitude, which I beg Your
 Excellency to make known to your
 Government.
 I avail myself of this opportunity
 to renew to Your Excellency the
 expression of my highest consideration.

Consequently the United States gunboat Panay and the
 vessels of the Standard Oil Company, being taken for
 Chinese vessels carrying fleeing Chinese troops, were
 bombed and sunk.
 While it is clear, in the light of the above
 circumstances, that the present incident was entirely
 due to a mistake, the Japanese Government regret most
 profoundly that it has caused damages to the United
 States man-of-war and ships and casualties among those
 on board, and desire to present hereby sincere apologies.
 The Japanese Government will make indemnification for
 all the losses and deal appropriately with those
 responsible for the incident. Furthermore, they have
 already issued strict orders to the authorities on the
 spot with a view to preventing the recurrence of a
 similar incident.
 The Japanese Government in the fervent hope
 that the friendly relations between Japan and the
 United States will not be affected by this unfortunate
 affair, have frankly stated as above their sincere
 attitude, which I beg Your Excellency to make known
 to your Government.
 I avail myself of this opportunity to renew
 to Your Excellency the expression of my highest consider-
 ation.

1 "Signed: Koki HIROTA.

2 "His Excellency, Mr. Joseph C. Grew,
3 Ambassador of the United States to Japan."

4 Now we shall offer defense document No. 330.
5 This is a statement made by the military section of
6 General Headquarters on December 22, 1947. It will
7 evidence the fact that the Japanese armed troops
8 stationed near the scene immediately relieved the
9 injured and tried to stop the bombing and the fact that
10 no machinegun was fired.

11 THE PRESIDENT: Brigadier Nolan.

12 BRIGADIER NOLAN: May it please the Tribunal,
13 we object to this document No. 330. It is a press
14 release emanating not from the War Ministry, as one
15 might suppose, but from the Foreign Office. On several
16 occasions the Tribunal has indicated that if a report
17 were from a formation in the field it might be adduced
18 in evidence. An examination of this report will make
19 it clear that it is not a report from a formation in
20 the field but it is something that has been dressed
21 up, as the last paragraph will make abundantly clear.

22 THE PRESIDENT: Mr. SOMIYA.

23 MR. SOMIYA: This is a release or announce-
24 ment made by the Army Department of the Imperial General
25 Headquarters, and there is a certificate from the Foreign

1 Office attached. In my understanding this is an announce-
2 ment of the Imperial General Headquarters in the files
3 of the Foreign Office, and I believe that this certifi-
4 cate is correct and accurate. As regards the document,
5 the contents of the document, this is -- they are a
6 result of an investigation. Even in the case of the
7 prosecution during its presentation of evidence, it
8 has offered in evidence which was not carried out on
9 the spot and has been admitted.

10 THE INTERPRETER: Even during the prosecu-
11 tion's presentation of evidence, reports of investiga-
12 tions not carried out in the field or on the spot have
13 been accepted by this Court.

14 MR. SOMIYA: The Court has also admitted a
15 report of the United States inquiry commission on the
16 Panay Incident, and in view of that fact I believe that
17 this document should also be accepted into evidence.

18 THE PRESIDENT: By a majority the Tribunal
19 upholds the objection and rejects the document.

20 MR. SOMIYA: Next I shall offer in evidence
21 defense document No. 82, the statement of the Foreign
22 Office issued on December 24, 1937, concerning this
23 incident by which I shall establish that in view of
24 this incident the Japanese Government took such
25 prudential measures as to further send an instruction

1 to units on the spot to especially respect the rights
2 and interests of third nations.

3 THE PRESIDENT: Admitted on the usual terms.

4 CLERK OF THE COURT: Defense document 82
5 will be given exhibit No. 2522.

6 (Whereupon, the document above
7 referred to was marked defense exhibit
8 No. 2522 and received in evidence.)

9 MR. SOMIYA: I shall read a part of exhibit
10 No. 2522. The middle of page 2:

11 "With reference to the first two items of the
12 requests mentioned in Your Excellency's Note, namely,
13 a recorded expression of regret, and indemnifications,
14 no word needs to be added to what I have said in my
15 aforementioned Note. As regards the guarantee for
16 the future, I wish to inform Your Excellency that the
17 Japanese Navy issued without delay strict orders to
18 'exercise the greatest caution in every area where
19 warships and other vessels of America or any other third
20 Power are present, in order to avoid a recurrence of
21 a similar mistake'. Furthermore, rigid orders have
22 been issued to the military, naval, and foreign office
23 authorities to pay, in the light of the present un-
24 toward incident, greater attention than hitherto to
25 observance of the instructions that have been repeatedly

1 given against infringement of the rights and interests
 2 of the United States and other third Powers. And the
 3 Japanese Government are studying carefully every
 4 possible means of achieving more effectively the above-
 5 stated aims, while they have already taken steps to
 6 ascertain, in still closer contact with American
 7 authorities in China, the whereabouts of American
 8 interests and nationals, and to improve the means of
 9 communicating intelligence thereof speedily and effec-
 10 tively to the authorities on the spot.

11 "Although the attack on the man-of-war and
 12 other vessels of the United States was due to a mis-
 13 take as has been stated above, those who were concerned
 14 with the attack have been duly dealt with, on the
 15 ground of a failure to take the fullest measures of
 16 precaution. The Japanese Government are thus endeavour-
 17 ing to preclude absolutely all possibility of the
 18 recurrence of incidents of a similar character. It
 19 is my fervent hope that the fact will be fully appreci-
 20 ated by the Government of the United States that this
 21 drastic step has been taken solely because of the
 22 sincere desire of the Japanese Government to safe-
 23 guard the rights and interests of the United States
 24 and other third Powers.

25 "I avail myself of this opportunity to renew

1 to Your Excellency the assurances of my highest
2 consideration."

3 I should add the title: "From Foreign Office
4 announcement concerning the Panay Incident. Foreign
5 Minister HIROTA requested U.S. Ambassadors to Japan
6 Grew to call on him on 24 December 1937 and handed
7 him a reply concerning the Panay Incident."

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

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

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

3 THE PRESIDENT: Mr. SOMIYA.

4 MR. SOMIYA: Next I shall offer in evidence
5 defense document No. 81, a communication from the
6 American Ambassador under date of December 26, 1937,
7 by which I shall give proof of the American
8 Government's satisfaction with the measures taken
9 by the Japanese Government.

10 THE PRESIDENT: Admitted on the usual
11 terms.

12 CLERK OF THE COURT: Defense document
13 No. 81 will receive exhibit No. 2523.

14 (Whereupon, the document above re-
15 ferred to was marked defense exhibit No. 2523
16 and received in evidence.)

17 MR. SOMIYA: I shall read Court exhibit
18 2523.

19 (Reading): "NOTE OF THE GOVERNMENT OF THE
20 UNITED STATES TO THE JAPANESE GOVERNMENT, DATED
21 DECEMBER 26, 1937, REGARDING THE PANAY INCIDENT.

22 "Embassy of the United States of America

23 "Tokyo, December 26, 1937.

24 "Excellency:

25 "I have the honor, by the direction of my

1 Government, to address to Your Excellency the
2 following note:

3 "The Government of the United States refers
4 to its note of December 14, the Japanese Government's
5 note of December 14 and the Japanese Government's
6 note of December 24 in regard to the attack by
7 Japanese armed forces upon the U.S.S. PANAY and
8 three American merchant ships.

9 "In this Government's note of December 14
10 it was stated that "The Government of the United
11 States requests and expects of the Japanese Govern-
12 ment a formally recorded expression of regret,
13 an understanding to make complete and comprehensive
14 indemnifications, and an assurance that definite
15 and specific steps have been taken which will ensure
16 that hereafter American nationals, interests and
17 property in China will not be subjected to attack
18 by Japanese armed forces or unlawful interference by
19 any Japanese authorities or forces whatsoever."

20 "In regard to the first two items of the
21 request made by the Government of the United States,
22 the Japanese Government's note of December 24 reaffirms
23 statements made in the Japanese Government's note of
24 December 14 which read "The Japanese Government
25 regret most profoundly that it (the present incident)

1 has caused damages to the United States' man-of-war
2 and ships and casualties among those on board, and
3 desire to present hereby sincere apologies. The
4 Japanese Government will make indemnifications for
5 all the losses and will deal appropriately with
6 those responsible for the incident." In regard
7 to the third item of the request made by the United
8 States, the Japanese Government's note of December 24
9 recites certain definite and specific steps which
10 the Japanese Government has taken to ensure, in
11 words of that note, "against infringement of, or
12 unwarranted interference with, the rights and
13 interests of the United States and other third
14 Powers" and states that "The Japanese Government
15 are thus endeavoring to preclude absolutely all
16 possibility of the recurrence of incidents of a
17 similar character."

18 "The Government of the United States
19 observed with satisfaction the promptness with
20 which the Japanese Government in its note of
21 December 14 admitted responsibility, expressed
22 regret, and offered amends.

23 "The Government of the United States regards
24 the Japanese Government's account, as set forth in
25 the Japanese Government's note of December 24, of

1 action taken by it as responsive to the request
2 made by the Government of the United States in this
3 Government's note of December 14.

4 "With regard to the facts of the origins,
5 causes and circumstances of the incident, the
6 Japanese Government indicates in its note of
7 December 24 the conclusion at which the Japanese
8 Government, as a result of its investigation,
9 has arrived. With regard to these same matters,
10 the Government of the United States relies on the
11 report of findings of the court of inquiry of the
12 United States Navy, a copy of which has been com-
13 municated officially to the Japanese Government.

14 "It is the earnest hope of the Government
15 of the United States that the steps which the
16 Japanese Government has taken will prove effective
17 toward preventing any further attacks or unlawful
18 interference by Japanese authorities or forces with
19 American nationals, interests or property in China."
20

21 "I avail myself of this opportunity to renew
22 to Your Excellency the assurances of my highest
23 consideration.

24 "Signed: Joseph C. Grew.

25 "His Excellency, Mr. Koki HINOKI, His Imperial
Japanese Majesty's Minister for Foreign Affairs."

1 I next offer in evidence defense document
2 No. 1196, the statement of the Foreign Office issued
3 on March 23, 1938, by which I wish to establish the
4 amount of indemnity claimed by the American Govern-
5 ment.

6 THE PRESIDENT: Brigadier Nolan.

7 BRIGADIER NOLAN: May it please the Tribunal,
8 this document No. 1196 is a press release from the
9 Foreign Office. It is open to the objection that
10 it purports to prove the contents of the diplomatic
11 note and we submit the proper proof of the note
12 should be production of the document itself.

13 THE PRESIDENT: In a matter of this im-
14 portance undoubtedly that is so.

15 MR. SOMIYA: The Foreign Office certificate
16 does not certify to any press release or newspaper
17 story. The contents of this document carries the
18 note of the United States Ambassador. The entire
19 contents of this document is of an official character.

20 THE PRESIDENT: The certificate is not as to
21 the dispatch itself, but as to the statement of the
22 Foreign Office which includes the note or purports
23 to do so.

24 I have been asked by at least two Members
25 of the Tribunal to inquire whether the prosecution

1 contest the accuracy of the dispatch mentioned in
2 the statement of the Foreign Office.

3 BRIGADIER NOLAN: May it please your Honor,
4 the dispatch as contained in document 1196 has
5 proven after investigation to be a true and accurate
6 copy of the original document.

7 THE PRESIDENT: By a majority the Tribunal
8 overrules the objection and admits the document.

9 CLERK OF THE COURT: Deferse document
10 No. 1196 will receive exhibit No. 2524.

11 (Whereupon, the document above re-
12 ferred to was marked defense exhibit No. 2524
13 and received in evidence.)
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1 MR. SOMIYA: I shall read exhibit 2524.

2 MR. ROBERTS: There is obviously an error
3 in reading the English copy. The date was read as
4 March 23, 1933; it should be 1938.

5 THE PRESIDENT: It is 1938 in the Judges'
6 copies.

7 MR. SOMIYA: I next offer in evidence
8 defense document No. 401-21, to show that repara-
9 tions have already been made.

10 THE PRESIDENT: Brigadier Nolan.

11 BRIGADIER NOLAN: If it please the
12 Tribunal, the prosecution objects to document 401-21
13 on the ground that it does not add anything to what
14 we already know. It is, we submit, merely receiptu-
15 lation of the diplomatic steps which were taken in
16 this matter, proof of which is already in evidence.

17 MR. SOMIYA: I intend to read only the last
18 two lines of this document, that is, with respect
19 to the indemnification in accordance with the Ameri-
20 can request --

21 THE MONITOR: Completion of indemnification.

22 THE PRESIDENT: How is it relevant or mater-
23 ial?

24 MR. SOMIYA: I think it is relevant to show
25 that the indemnification with regard to the PANAY

1 had been paid by the Japanese Government.

2 THE PRESIDENT: Is that in your evidence,
3 in the prosecution's, that the indemnity was paid?

4 MR. TAVENNER: No, sir, the fact that
5 indemnity was paid does not appear in the prosecu-
6 tion's evidence.

7 MR. SOMIYA: Furthermore, this document is
8 an official document of the United States Department
9 of State.

10 THE PRESIDENT: It is the last two lines
11 of the first page that state the indemnity was paid.

12 MR. SOMIYA: In the Japanese text it is the
13 last fourth and fifth lines of the last page; in the
14 English copy the last two lines of the first page.

15 THE PRESIDENT: That is right.

16 The objection is overruled and the document
17 admitted to that extent, that is to say, the extent
18 of the last two lines on the first page.

19 CLERK OF THE COURT: Defense document
20 401-21 will receive exhibit No. 2525.

21 (Thereupon, the document above referred
22 to was marked defense exhibit 2525 and received
23 in evidence.)

24 MR. SOMIYA: I shall read exhibit 2525, the
25 last two lines.

1 "The Japanese Government later made full
2 indemnification in accordance with the request of
3 the United States."

4 MR. SOMIYA: I next offer in evidence defense
5 document No. 206-D-19, being excerpts from the diary
6 of former United States Ambassador Grew. I intend
7 only to read a portion of this document.

8 THE PRESIDENT: Brigadier Nolan.

9 BRIGADIER NOLAN: May it please the Tribunal,
10 the prosecution object to the introduction of this
11 document. It is another excerpt from the diary of
12 former United States Ambassador Grew. The first
13 paragraph is clearly irrelevant, as it only purports
14 to give us the opinion of Mr. Grew on the American
15 political situation. The remainder of the document
16 deals with what took place at a conference and what
17 the Ambassador said and what he subsequently did in
18 respect of the exchange of notes.

19 It is also submitted by the prosecution
20 that, having regard to the importance of evidence
21 of this kind, another method of proof should be uti-
22 lized by the defense.

23 MR. SOMIYA: I intend only to read the second
24 paragraph of this document. This is a note with
25 respect to an official conference which took place

AOKI

DIRECT

1 in the official residence of Ambassador Crew. The
2 contents therein recorded are facts and therefore I
3 believe that it should be admitted as evidence.

4 THE PRESIDENT: By a majority the Court
5 upholds the objection and rejects the document.

6 MR. SOMIYA: Defense counsel Roberts will
7 next ask to call a witness, AOKI, Takeshi.

8 THE PRESIDENT: Mr. Roberts.

9 MR. ROBERTS: We call the witness AOKI,
10 Takeshi.

11 THE PRESIDENT: Did you say you were recall-
12 ing him?

13 MR. ROBERTS: We are calling him.

14 - - -

15 T A K E S H I A O K I, called as a witness on
16 behalf of the defense, being first sworn,
17 testified through Japanese interpreters as
18 follows:

19 DIRECT EXAMINATION

20 BY MR. ROBERTS:

21 Q Please state your name and address.

22 A Name, AOKI, Takeshi; my address, No. 761
23 Horiuchi, Hayama, Kanagawa-Ken Prefecture.

24 MR. ROBERTS: May the witness be shown
25 defense document No. 1291?

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

C Please examine this document and tell us whether or not it is your sworn affidavit.

A (Examining) This is my affidavit.

MR. ROBERTS: I offer it in evidence.

THE PRESIDENT: Admitted on the usual terms.

CLERK OF THE COURT: Defense document 1291 will receive exhibit No. 2526.

(Whereupon, the document above referred to was marked defense exhibit 2526 and received in evidence.)

AOKI

DIRECT

1 MR. ROBERTS: I read exhibit No. 2526.

2 "I was the Liaison Officer between the
3 Second Combined Air Corps and the Expeditionary
4 Forces in China. I arrived in Shanghai in mid-
5 September 1937. I was a staff officer of the Third
6 Fleet and concurrently a staff officer of the Shanghai
7 Expeditionary Forces.

8 "My duties were to supply information to
9 the Naval forces and to send requests from the Army
10 to the Navy. I was also a Naval expert within the
11 Army and in order to maintain liaison I made
12 periodic flights to and from the airfield and the Head-
13 quarters of the Third Fleet.

14 "On December 12, 1937 requests were
15 received from the Army to bomb Chinese ships in which
16 Chinese soldiers were fleeing from Nanking. It was
17 reported that seven or eight large Chinese merchants
18 ships filled with Chinese troops were fleeing up the
19 Yangtze River and they requested assistance from the
20 Naval Air Squadron in preventing this movement. I
21 transmitted this request to the Air Corps by telephone.
22 The Air Corps consented and sent several planes on
23 the requested mission.

24 "At that time, according to the Army reports,
25 there were no foreign ships in the vicinity of

1 Nanking. It was later reported that the mission was
2 carried out with excellent results.

3 "On December 14, 1937, I heard for the first
4 time the bombing of the SS 'Panay.' The first report
5 stated that a foreign ship might have been bombed and
6 I became aware of the facts when I reached Shanghai to
7 investigate the facts in connection with this report.
8 At Shanghai I discovered that the 'Panay' had been
9 bombed in error, having been mistaken for one of the
10 Chinese vessels attempting to flee from Nanking. The
11 subsequent report of the pilot stated that the bombing
12 of the 'Panay' was clearly an error on his part and
13 that he had no intention of bombing a foreign vessel.
14 It was his belief that the 'Panay' was one of the
15 Chinese vessels fleeing from Nanking.

16 "In so far as the reported machine gunning of
17 the crew is concerned, the report of the pilot denied
18 that such machine gunning had taken place. It was
19 not the practice of the pilots in such bombing missions
20 to machine gun their targets.

21 "Very strict orders had been issued by the
22 Commander of the Third Fleet and the Commander of the
23 Air Corps that care should be taken not to bomb
24 foreign ships and this incident was regarded with
25 extreme regret. For that reason, those who were

1 regarded as being guilty of carelessness or possible
2 negligence were punished."

3 You may cross-examine.

4 THE PRESIDENT: Mr. Sutton.

5 MR. SUTTON: If it please the Tribunal,
6 the prosecution does not desire to cross-examine
7 for the reason that its evidence with regard to the
8 Panay Incident appears in the report of the U. S.
9 Navy Board of Inquiry, exhibit 263, pages 3517 to
10 3530 of the transcript of proceedings, and in excerpts
11 from the interrogation of HASHIMOTO which appear as
12 exhibit 258 at page 3466 and exhibit 2188 at page
13 15678 of the transcript of proceedings.

14 THE PRESIDENT: Mr. Roberts.

15 MR. ROBERTS: I now present Mr. Harris,
16 who will present further proof -- I ask that the
17 witness be excused on the usual terms.

18 THE PRESIDENT: He is excused accordingly.

19 (Whereupon, the witness was excused.)

20 THE PRESIDENT: Mr. Harris.

21 MR. HARRIS: Mr. President, we shall now
22 offer proof through three brief documents concerning
23 the incident which occurred on 12 December 1937 when
24 the British vessel, Ladybird, was shelled at Wuhu
25 because of mistaken identity.

10-2(1)

1 We now offer in evidence defense document
2 No. 1039, which is the official note of the Japanese
3 Government which the Foreign Minister, HIROTA, Koki,
4 sent to Sir Robert Craigie on December 14, 1937,
5 regarding the incident of the shelling of the Ladybird.

6 THE PRESIDENT: Admitted on the usual terms.

7 CLERK OF THE COURT: Defense document 1039
8 will receive exhibit No. 2527.

9 (Thereupon, the document above
10 referred to was marked defense exhibit
11 No. 2527 and received in evidence.)

12 MR. HARRIS: I shall now read exhibit No. 2527.

13 "The Official Note of the Japanese Government
14 which the Foreign Minister, HIROTA, Koki, Sent to
15 Sir Robert Craigie (December 14, 1937).

16 "Monsieur l'Ambassadeur:

17 "I have the honour to state that the
18 Japanese Government regret profoundly the incidents
19 of the 12th instant, in which British men-of-war, the
20 Ladybird, the Bee, the Cricket and the Scarab, were
21 subjected by mistake to gunfire and aerial bombing
22 by Japanese forces in the vicinities of Wuhu and Nan-
23 king, and to express herewith to Your Excellency on
24 behalf of my Government their sincere apologies. I
25 desire to inform Your Excellency that the Japanese

1 Government have immediately taken the necessary steps
2 to prevent the recurrence of an incident of such
3 character, and to add that they will, upon the com-
4 pletion of investigations, deal appropriately with
5 those responsible for the incidents, and also that
6 they are prepared to make the necessary indemnification
7 for the losses sustained by the British.

8 "It is, let me say in conclusion, the fervent
9 hope of the Japanese Government that the traditional
10 friendship between Japan and Great Britain will not
11 be affected by these unfortunate incidents.

12 "I avail myself of this opportunity of
13 renewing to Your Excellency the assurances of my
14 high considerations.

15 "(signed) Koki, HIROTA.

16 "His Excellency, The Right Honourable
17 Sir Robert Craigie."

18 We now offer in evidence defense document
19 No. 170, which is an official statement made on
20 30 December 1937 by the Japanese Foreign Office
21 regarding the incident of the shelling of the Lady-
22 bird.

23 THE PRESIDENT: Brigadier Nolan.

24 BRIGADIER NOLAN: May it please the
25 Tribunal, we object to document 170 as being a press

1 release emanating from the Foreign Office.

2 While I have made no investigation as to
3 the Japanese note contained in the document, I would
4 like to draw the attention of the Tribunal to the
5 statement contained in the document that it is only
6 the essential contents of the note that are being
7 reproduced.

8 MR. HARRIS: It is true that this is a state-
9 ment of the Foreign Office regarding the incident, but
10 it is maintained that the contents of the Japanese
11 note are contained in the passage which appears below
12 the first paragraph.

13 The certificate indicates that this is an
14 exact and true copy of the official translation of
15 the Japanese Foreign Office.

16 THE PRESIDENT: Can't you get the full text?

17 MR. HARRIS: I might add, Mr. President, that
18 an attempt was made to get the original note but the
19 reply to our request was received too late for us to
20 process it and have it available. I would further
21 like to state, Mr. President, that we have the state-
22 ment of the Foreign Office to the effect that the
23 original note is not available after a search of the
24 records.

25 THE PRESIDENT: Well, London will have the

Faint, illegible text on the left page, possibly bleed-through from the reverse side.

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original, of course.

MR. HARRIS: It is our intention to take the necessary steps to try to secure that, sir.

THE PRESIDENT: Whether these are the essential contents we don't know. That apparently is the opinion of the person who drafted this.

MR. HARRIS: Of course, I assumed, when we requested the Foreign Office official document setting forth the contents of the note of the 28th of December and we received this, that this was the official note.

THE PRESIDENT: By a majority the Court upholds the objection and rejects the document.

1 MR. HARRIS: We now offer in evidence
2 defense document No. 1013 which is a certified
3 statement from the British Foreign Office acknowl-
4 edging the payment by the Japanese Government of
5 the British Government's claim for damages to the
6 "Ladybird."

7 THE PRESIDENT: Admitted on the usual terms.

8 CLERK OF THE COURT: Defense document 1013
9 will receive exhibit No. 2528.

10 (Whereupon, the document above re-
11 ferred to was marked defense exhibit No. 2528
12 and received in evidence.)

13 MR. HARRIS: I shall now read exhibit No. 2528.

14 "United Kingdom Liaison Mission in Japan,
15 British Embassy, Tokyo.

16 "Certificate

17 "His Majesty's Ship LADYBIRD was damaged by
18 Japanese artillery fire at Wuhu on December 12th,
19 1937. Damage was originally assessed at 3,830 pounds
20 but this figure was later reduced to 2,942 pounds.
21 A claim for 2,942 pounds was presented to the Japanese
22 Government on August 18th, 1938, and a cheque for
23 this amount was paid to His Majesty's Ambassador,
24 Tokyo, on August 31st, 1938.

25 "(Signed) A. D. F. Gascoigne. His Britannic

1 Majesty's Political Representative and Head of the
2 United Kingdom Liaison Mission in Japan. P

3 "20th March, 1947."

4 This concludes for the present the list of
5 documents to be introduced by me in relation to the
6 "Ladybird" Incident.

7 Mr. Roberts will now proceed with the presenta-
8 tion of further evidence.

9 THE PRESIDENT: Mr. Roberts.

10 MR. ROBERTS: We call the witness TOTSUKA,
11 Michitaro.

TOTSUKA

DIRECT

1 M I C H I T A R O T O T S U K A, called as a witness
2 on behalf of the defense, being first duly sworn,
3 testified through Japanese interpreters as follows:

DIRECT EXAMINATION

BY MR. ROBERTS:

6 Q Please state your name and address.

7 A My name, TOTSUKA, Michitaro, No. 17 Naka-
8 machi, Nakano-ku, Tokyo.

9 MR. ROBERTS: May the witness be shown de-
10 fense document No. 1276.

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

13 Q Please examine this document and tell us
14 whether or not it is your sworn affidavit.

15 A This is my affidavit.

16 MR. ROBERTS: I offer it in evidence.

17 THE PRESIDENT: Admitted on the usual terms.

18 CLERK OF THE COURT: Defense document 1276
19 will receive exhibit No. 2529.

20 (Whereupon, the document above re-
21 ferred to was marked defense exhibit No. 2529
22 and received in evidence.)

23 MR. ROBERTS: There is one correction on
24 line 3: "The Third Combined Air Corps" should be
25 "First Combined Air Corps."

1 I read exhibit 2529.

2 "I was appointed Commander of the First
3 Combined Air Corps in July 1937. The above mentioned
4 air corps was stationed in Taihoku, Formosa, and
5 Quelpart Island.

6 "On August 14, 1937, the Chinese Air Corps
7 carried out an attack on the cruiser 'Izumo' in
8 Shanghai Harbor as well as the Marine Headquarters.
9 In retaliation, we bombed the Chinese Air Base in
10 Nanking on August 15, 1937. In the early part of
11 September 1937, the Chinese air strength was trans-
12 ferred southward to Canton and they bombed the cruiser
13 'Yubari' on the South China coast. We therefore
14 bombed the Air Base in Canton in an attempt to wipe
15 out the Chinese Air Force.

16 "Subsequently we undertook the destruction
17 of railways and communications after receiving reports
18 that the Chinese Army was moving northward.

19 "We received instruction and orders from the
20 Third Fleet as to the objectives to be bombed. Those
21 instructions were to bomb only airfields, arsenals,
22 military installations, munition dumps, military
23 schools, and other military targets. At no time did
24 we bomb any city or town indiscriminately without a
25 military objective in view.

1 "The air corps had reconnaissance planes bring-
2 ing in reports and we consulted our maps for objec-
3 tives to be bombed. We made use of aerial photographs
4 in an effort to bomb accurately.

5 "Of course, on occasion we did not succeed
6 in scoring a direct hit on our targets and some unavoid-
7 able accidents occurred. At times the Chinese anti-
8 aircraft was extremely effective and we were forced
9 to fly at high altitudes over our objectives. As
10 soon as we bombed, we took photographs and studied
11 the results of our bombing for the purpose of achiev-
12 ing greater accuracy. We never at any time inten-
13 tionally bombed non-military objectives or installa-
14 tions. On any occasion when we failed to achieve
15 accurate bombing and damaged some non-military installa-
16 tions, we were warned by the General Staff to exercise
17 more care. I constantly instructed the pilots and
18 commander to exercise caution in their bombing missions.
19 On some occasions, even though we suspected the Chinese
20 of displaying the flag of a third power, we refrained
21 from bombing in order to be doubly sure. Giving an
22 example here, in August 1938 when the Chinese soldiers
23 were fleeing up the Yangtze river from Hankow, and just
24 as our planes were about to bomb, a French flag was
25 hoisted on the ship which we knew for sure they were

on, therefore our planes returned without bombing.
1 There were other cases similar in nature and although
2 we knew the Chinese were hiding behind a foreign flag,
3 our men were instructed to refrain from bombing be-
4 cause of the possibility of being mistaken.
5

6 "In some instances of our bombing missions,
7 we would not use the bomb sight, and resorted to the
8 hand-operated device and a stop watch in order to make
9 certain of our target before releasing the bombs.

10 "The pilots were initially furnished maps
11 by the General Staff for the purpose of determining
12 military objectives and showing general location
13 of the third power installation. Maps indicating
14 installations of the third powers based on information
15 furnished directly by the third powers were distributed
16 later for our guidance. Therefore, it greatly aided
17 us in directing our attacks on enemy positions and
18 installations only."

19 You may cross-examine.

20 THE PRESIDENT: Mr. Tavenner.

21 MR. TAVENNER: If it please the Tribunal,
22 there will be no cross-examination.

23 THE PRESIDENT: Do you want the witness
24 excused?

25 MR. ROBERTS: May the witness be excused

1 on the usual terms?

2 THE PRESIDENT: He is excused accordingly.

3 (Whereupon the witness was excused.)

4 MR. ROBERTS: We offer in evidence defense
5 document 1131, which is a statement emanating from
6 the Foreign Office concerning the attempt on the
7 part of Chinese censors to manipulate dispatches of
8 foreign correspondents and is intended to correct
9 the distortion of facts by the Chinese censors.

10 THE PRESIDENT: Brigadier Nolan.

11 BRIGADIER NOLAN: May it please the Tribunal,
12 we object to document 1131. It is, we submit, a
13 press dispatch of a kind that has been rejected on
14 numerous occasions by the Tribunal. It purports to
15 say what was in a dispatch and how it was altered by
16 the censors.

17 MR. ROBERTS: I think this press dispatch
18 objection is being slightly overused by the prosecu-
19 tion.
20

21 THE PRESIDENT: Press release.

22 MR. ROBERTS: Press release.

23 The certificate states it to be an exact
24 and true copy of an official document of the Japanese
25 Foreign Office, and it states certain facts with
reference to bombing of the Sincere Department Store.

1 THE PRESIDENT: By a majority, the Tribunal
2 upholds the objection and rejects the document.

3 It is too late now to take any other business
4 today.

5 "We will adjourn now until half past nine
6 Monday next.

7 (Whereupon, at 1555, an adjournment was
8 taken until Monday, 5 May 1947, at 0930.)
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The first part of the document
 describes the general situation
 of the country at the time
 of the discovery of the
 gold fields. It mentions
 the names of the discoverers
 and the date of the discovery.
 The second part of the document
 describes the progress of the
 gold mining industry in
 the country. It mentions
 the names of the principal
 mining companies and the
 amount of gold produced.
 The third part of the document
 describes the social and
 economic conditions of the
 country at the time. It
 mentions the names of the
 principal cities and the
 amount of population.
 The fourth part of the document
 describes the political
 conditions of the country
 at the time. It mentions
 the names of the principal
 political parties and the
 names of the principal
 political leaders.

5 May

22-5-5

5 MAY 1947

I N D E X

Of

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<u>Doc. No.</u>	<u>Def. No.</u>	<u>Pros. No.</u>	<u>Description</u>	<u>For Ident.</u>	<u>In Evidence</u>
1221	2530		Affidavit of MITSUNAMI, Teizo		21382
1094	2531		Reply of Japanese Government on 30 September 1937 re Bombing of Nanking		21390
1220	2532		Affidavit of KOBAYASHI, Yoshito		21397
1176	2533		Statement of Foreign UGAKI given to Foreign Correspondents on 6 June 1938		21406
1187	2534		Statement of the Foreign Minister Mr. ARITA, Hachiro given to the Foreign Correspondents on 19 December 1938		21410
			<u>MORNING RECESS</u>		21416
1178	2535		Statement by Prime Minister, Prince KONOYE, dated 22 December 1938		21423
1077	2536		Declaration of MATSUI, Iwane	21431	
1165	2537		Affidavit of HIDAKA, Shinrokuro		21444

5 MAY 1947

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Of
EXHIBITS
(cont'd)

<u>Doc.</u> <u>No.</u>	<u>Def.</u> <u>No.</u>	<u>Pros.</u> <u>No.</u>	<u>Description</u>	<u>For</u> <u>Ident.</u>	<u>In</u> <u>Evidence</u>
1344	2538		Affidavit of HIRAMOTO, Michitaka		21476
1338	2539		Affidavit of YAMAMOTO, Yoshio		21486
401(18)	2540		Excerpt from "Peace and War", Official Publication, Depart- ment of State, U.S.A. (pp. 47 and 48)		21495

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1 Monday, 5 May 1947

2 - - -

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

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

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12 Appearances:

13 For the Tribunal, same as before with the
14 exception of: THE HONORABLE MR. JUSTICE NORTHCROFT,
15 now sitting.

16 For the Prosecution Section, same as before.

17 For the Defense Section, same as before.

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19 (English to Japanese and Japanese
20 to English interpretation was made by the
21 Language Section, IMTFE.)
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MARSHAL OF THE COURT: The International Military Tribunal for the Far East is now in session.

THE PRESIDENT: All the accused are present except OKA, HIRANUMA, and TOGO who are represented by counsel. The prison surgeon of Sugamo certifies that the three named accused are unable to attend the trial today on account of illness. The certificate will be recorded and filed.

The certificate covers the case of HIRANUMA and in the statement I read his name is included. I understand now that he is present, but let that be confirmed by the Clerk of the Court.

The name of HIRANUMA was included in the statement placed before me. HIRANUMA is present. I understand OKA is also present. I understand the same thing occurred on Friday, that only TOGO was absent on Friday.

It is unfortunate that these corrections have to be made on such simple matters. Due care must be exercised in the future or else there will be trouble for somebody.

Mr. Tavenner.

MR. TAVENNER: If it please the Tribunal, we have received a communication from the Secretariat of the Court pointing out the necessity of reducing the number of copies of the transcript due to a critical

1 shortage of paper. This contemplated action would
 2 hamper us very much, if it is carried out, and we have
 3 given some thought to it and are of the opinion that
 4 if both sides of the paper are printed that it would
 5 prevent the necessity of cutting down the number of
 6 transcripts.

7 THE PRESIDENT: I see no objection to printing
 8 on both sides except as regards the Judges' copies.
 9 I will consult my brothers about that.

10 I understand the Judges are also prepared
 11 to receive copies printed on both sides.

12 MR. TAVENNER: Thank you very much.

13 THE PRESIDENT: Mr. Roberts.

14 MR. ROBERTS: Mr. President, we now call
 15 the witness MINAMI Teizo.

16 I understand the name is MITSUNAMI.
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MITSUNAMI

DIRECT

1 T E I Z O M I T S U N A M I, called as a witness
2 on behalf of the defense, being first duly sworn,
3 testified through Japanese interpreters as
4 follows:

DIRECT EXAMINATION

BY MR. ROBERTS:

7 Q Please give us your name and address.

8 A Name, MITSUNAMI, Teizo. Address, No. 3
9 Shinzaike, Ajio-mura, Hishimo-gun, Osaka Prefecture.

10 Q May the witness be shown defense document
11 1221?

12 (Whereupon, the document was handed to
13 the witness.)

14 Q (Continuing) Please tell us if that is your
15 sworn affidavit.

16 A Yes, this is.

17 THE PRESIDENT: How did he sign it? MITSUNAMI
18 or MINAMI?

19 MR. ROBERTS: I understand in the Japanese
20 language it can be either.

21 I offer in evidence defense document 1221.

22 THE PRESIDENT: Admitted on the usual terms.

23 CLERK OF THE COURT: Defense document 1221
24 will be given exhibit No. 2530.

25 (Whereupon, the document above

1 referred to was marked defense exhibit

2 No. 2530 and received in evidence.)

3 MR. ROBERTS: I shall read exhibit No. 2530:

4 "I am an ex-rear-admiral of the Japanese Navy.
5 I served as the commander of the 2nd Combined Naval
6 Air Corps from 12 July 1937 (the 12th year of Showa)
7 to December of the same year. The following is a
8 statement of facts, with which I was directly concerned
9 while I served as the commander of the 2nd Combined
10 Naval Air Corps in the Shanghai area.

11 "We received information on 18 September 1937
12 (the 12th year of Showa) that the Chinese Air Force
13 was about to launch an attack on us. We planned to
14 counter-attack the enemy before they were prepared to
15 take actions against us. But due to the poor condition
16 of the air field we had no alternative but to postpone
17 our attempt until the following day, that is on 19
18 September.

19 "The Chinese Air Force, however, made a raid
20 upon our positions as we had expected on the 18th.
21 On the 19th our airplanes engaged in two air battles
22 with the enemy over Nanking. Our planes destroyed many
23 enemy planes in this battle, but we also lost three
24 of our planes. Consequently, we gained command of the
25

air over Nanking area.

1 "On 20 September of the same year we carried
2 out an air raid and the targets being the offices of
3 the National Government, the General Staff Headquarters,
4 and Wireless Stations. On the 21st we cancelled our
5 raid due to rainy weather. On the 22nd our air force
6 made three raids on military installations such as the
7 Aviation Bureau, the Anti-Air Raid Committee Office,
8 the Central Party Headquarters, the Shi tsu shan Gun
9 Positions, etc.

10 "For guidance in these attacks, I summoned"
11 Commander -- there is an error upon which an errata
12 sheet is being issued, I understand. It should be
13 Commander instead of Lieutenant Colonel -- "NAKAHARA,
14 who had resided in Nanking for many years. Referring
15 to the map of the city of Nanking he orientated the air
16 crew on position of the targets so no mistakes could
17 be made and the conditions prevailing there. Again I
18 ordered the crew to carry out dive bombing, in spite
19 of the handicaps we would have to face in this particu-
20 lar operation.

21 "We paid particular attention to the rights
22 and interests of neutral countries. Giving one such
23 instance here, our Army in the attack of Chinkien de-
24 sired that we launch an air attack against the Chinese
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1 forces retreating on many boats on the Yangtze River,
2 but we did not because British merchant ships were
3 lying anchored in the neighbourhood.

4 "Again the Commander of the 3rd Fleet
5 notified beforehand the diplomats of the third powers
6 on 19 September that we were going to make an air-
7 raid on Nanking, and again on the 20th of the same
8 month, we notified beforehand the Chinese noncombatants
9 of our air-raids and urged them to take refuge.

10 "Next, I would like to mention the case of
11 the misbombing of the Panay.

12 "The Panay was bombed and sunk about 1:00
13 p.m. on 12 December. It was obviously a misbombing.
14 On the day it was sunk, we were not aware of the fact
15 that we had sunk the Panay. Until we were notified
16 on 13 December by the Headquarters of the United States
17 Fleet and then for the first time we learned of our
18 misbombing of the ship.

19 "Headquarters of the 3rd Fleet immediately
20 dispatched flying boats carrying medical officers,
21 medical supplies, and other things to the place of
22 refuge. Also ships were sent to attend to relief
23 of the men on board. Again we sent immediately the
24 Chief of Staff to the Headquarters of the United States
25 Fleet to express our regrets.

1 "I, the Commander of the Naval Air Corps of
2 that time took sole responsibility for the incident
3 and submitted my informal resignation by telegraph
4 to the Minister of the Navy and the Chief of the Naval
5 General Staff. Consequently, I was 'admonished' and
6 ordered to return from the combat zone on 15 December
7 1937 (the 12th year of Showa) and given a position as
8 Commander of the 2nd" -- it should be Carrier Division
9 instead of Air Fleet, for which an errata sheet will
10 also be issued. "(Aircraft carriers Soryu and Ryujo).

11 "On 5 May 1938 (the 13th of Showa) the flag-
12 ship Soryu was ordered into combat, therefore, aircraft
13 carrier Ryujo was made the flagship and all head-
14 quarter personnel under me was ordered to remain. On
15 11 August 1938 (the 13th year of Showa) when the air-
16 craft carrier Ryujo was also ordered to proceed into
17 combat zone; I was the only one ordered to remain
18 behind and was assigned as observer for the Naval
19 General Staff.

20 "Until I was placed in First Reserve on
21 16 December 1940 (the 15th year of Showa) I never went
22 into the combat zone.

23 "I believe these actions, of not sending me
24 to the combat zone, were taken against me by my
25 superiors because of the Pansy incident."

"I, the undersigned, do hereby certify that the following is a true and correct copy of the original as shown to me by the witness, Mitsunami, on the 12th day of March, 1946, at the hearing of the Tribunal at Tokyo, Japan, in the case of the Government of the United States of America against Mitsunami, a Japanese national, who was arrested on the 12th day of March, 1946, and is now being held in custody at the Federal House of Detention, New York, New York, under the authority of the War Relocation Authority, United States of America.

Witness my hand and the seal of the Tribunal at Tokyo, Japan, this 12th day of March, 1946.

General Staff,

United States of America.

12 March 1946 (12th day of March, 1946) I have read the above copy and find it to be a true and correct copy of the original as shown to me by the witness, Mitsunami, on the 12th day of March, 1946, at the hearing of the Tribunal at Tokyo, Japan, in the case of the Government of the United States of America against Mitsunami, a Japanese national, who was arrested on the 12th day of March, 1946, and is now being held in custody at the Federal House of Detention, New York, New York, under the authority of the War Relocation Authority, United States of America.

"I believe these entries, as they appear in the original, are true and correct copies of the original as shown to me by the witness, Mitsunami, on the 12th day of March, 1946, at the hearing of the Tribunal at Tokyo, Japan, in the case of the Government of the United States of America against Mitsunami, a Japanese national, who was arrested on the 12th day of March, 1946, and is now being held in custody at the Federal House of Detention, New York, New York, under the authority of the War Relocation Authority, United States of America.

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You may cross-examine.

THE PRESIDENT: Mr. Tavenner.

MR. TAVENNER: If it please the Tribunal, there will be no cross-examination of this witness because the prosecution relies upon exhibit 955, record 9,456; exhibit 956, record 9,458; and exhibit 957, record 9,460.

MR. ROBERTS: May the witness be excused on the usual terms?

THE PRESIDENT: He is excused accordingly.

(Whereupon, the witness was excused.)

1 MR. ROBERTS: We offer in evidence de-
2 fense document 1115. This is an official list of
3 the places bombed in and around Nanking, specific-
4 ally showing the objectives bombed and the verified
5 official report of the damage inflicted upon the
6 respective targets.

7 THE PRESIDENT: Brigadier Nolan.

8 BRIGADIER NOLAN: May it please the Tri-
9 bunal, it is difficult from the certificate to as-
10 certain the origin of this document or the informa-
11 tion upon which it is based. It appears to us to
12 be another press release and, as such, is subject
13 to the same objections as have been offered in re-
14 spect of similar documents.

15 MR. ROBERTS: It appears from the certifi-
16 cate not to be a press release as my good friend
17 has informed the Court. It is a document which,
18 ostensibly, is a compiled list of places bombed
19 and the results, which is to refute the statement
20 by the prosecution that the bombing was indiscrim-
21 inate. This will aid the Court in its efforts to
22 find whether or not Nanking had definite military
23 objectives which were being bombed at the time.

24 THE PRESIDENT: By a majority, the Court
25 upholds the objection and rejects the document.

1 MR. ROBERTS: We offer in evidence defense
 2 document No. 1128 which is a document emanating from
 3 the Foreign Office setting forth the specific date
 4 upon which Japanese airplanes returned to their
 5 bases without bombing the intended objectives for
 6 the purpose of proving that said bombing was not
 7 carried out in a careless and indiscriminate manner
 8 as claimed by the prosecution.

9 THE PRESIDENT: , Brigadier Nolan.

10 BRIGADIER NOLAN: If it please the Tri-
 11 bunal, there can be no manner of doubt as to the
 12 nature of this document which is entitled "Press
 13 Materiel Issued on the 4th of October by the Bu-
 14 reau of Information." I object to the document
 15 and would draw the attention of the Tribunal to
 16 the fact that the year is not mentioned in the
 17 title of the document, but the investigation is
 18 stated to have been made on the 1st of October
 19 1947.

20 MR. ROBERTS: May I inform the Court
 21 there is an errata sheet correcting the date to
 22 October 1, 1937 instead of 1947?

23 THE PRESIDENT: The Tribunal upholds the
 24 objection and rejects the document.

25 MR. ROBERTS: I wanted to say a few words

1 in reference to this document, if your Honor please.

2 THE PRESIDENT: The decision is unanimous.

3 MR. ROBERTS: We offer in evidence defense
4 document No. 1094 which is the reply by the Japanese
5 Government to the American Ambassador, concerning the
6 bombing of Nanking, for the purpose of showing the
7 steps being taken to notify and protect the nation-
8 als of third powers.

9 THE PRESIDENT: Admitted on the usual terms.

10 CLERK OF THE COURT: Defense document 1094
11 will receive exhibit No. 2531.

12 (Whereupon, the document above re-
13 ferred to was marked defense exhibit No.
14 2531 and received in evidence.)

15 MR. ROBERTS: I shall read exhibit No. 2531:

16 "REPLY OF JAPANESE GOVERNMENT ON SEPTEMBER
17 30, 1937 CONCERNING BOMBING OF NANKING.

18 "September 30, 1937.

19 "Monsieur l'Ambassadeur:

20 "I beg hereby to inform Your Excellency that
21 we have read your letter, dated the 22nd of September,
22 concerning the bombing of Nanking by the Japanese
23 force.
24

25 "Since Nanking is, as Your Excellency is
fully aware, the central base of the Chinese military

1 operations with unparalleled strong defense, it is
2 unavoidable, for the purpose of attaining the mili-
3 tary aim of the Japanese forces, that the military
4 organs and establishments located in and around Nan-
5 king should be bombed. The bombing operations of the
6 Japanese forces are not carried on beyond the scope
7 above mentioned, it being unnecessary to say that
8 they are not directed indiscriminately at non-com-
9 batants. The warning issued in advance to non-combat-
10 ants serves as a testimony to the above statement.
11 It goes without saying that in carrying out the pre-
12 sent operations, there is no change in the policy
13 frequently enunciated of late by the Japanese Govern-
14 ment that they are earnestly solicitous of the safety
15 of the rights and interests as well as of the lives
16 and property of the nationals of third Powers which
17 it is their wish to respect to the greatest possible
18 extent. Our request to the effect that the officials
19 and civilians and vessels of Your Excellency's country
20 take refuge is due to no other thought than our earn-
21 est desire to prevent any untoward misfortune befall-
22 ing the nationals of third Powers, in spite of the
23 utmost caution taken by the Japanese forces.

24 "The Japanese Government hope that the
25 Government of the United States fully understanding

1 that the Japanese forces, although greatly handi-
2 capped in their operations by giving advance notice
3 requesting the nationals of third Powers to seek
4 refuge, will be good enough to cooperate with the
5 measures taken by the Japanese Government.

6 "As regards the damages suffered by the
7 nationals of third Powers as a result of the present
8 hostilities in China, the intention of the Japanese
9 Government remain the same as previously brought to
10 the knowledge of Your Excellency.

11 "I avail myself of this opportunity to renew
12 to Your Excellency the assurances of my highest
13 consideration."

14 We offer in evidence defense document 1116,
15 which is a statement emanating from the Foreign
16 Office concerning China's appeal to the League of
17 Nations for the purpose of setting forth the Japanese
18 version of the fact in direct contrast to the facts
19 alleged by China.

20 THE PRESIDENT: Brigadier Nolan.

21 BRIGADIER NOLAN: If it please the Tribunal,
22 this document, which is a press release, sets forth
23 the views of the Foreign Office on China's appeal to
24 the League of Nations. The views therein contained
25 are based on incomplete texts of the Chinese appeal,

1 and the expression of any definite opinion is avoided.
 2 We submit that it is an attempt to answer China's
 3 appeal through the press and should be rejected.

4 MR. ROBERTS: Again the certificate states
 5 that this is a document -- an official document of
 6 the Japanese Foreign Office. It has no reference to
 7 any press release whatsoever. As my friend has
 8 stated, they have avoided any opinions in this docu-
 9 ment and have stated certain facts as a reply to
 10 China's assertions to the League where now the defend-
 11 ants would like to have this as part of their ex-
 12 planation.

13 In so far as press releases are concerned,
 14 I do not believe that this word alone should be
 15 sufficient on behalf of the prosecution to have all
 16 documents rejected. The prosecution flooded the
 17 Court with press releases, and the Court accepted
 18 them when they had probative value.

19 THE PRESIDENT: By a majority, the Court up-
 20 holds the objection and rejects the document.

21 MR. ROBERTS: We offer in evidence defense
 22 document 726 which is an official statement of the
 23 Japanese Government made at Geneva on September 30,
 24 1937 for the purpose of setting forth the facts in
 25 refutation of the resolution passed by the League

1 of Nations on September 28, 1937 and setting forth
2 specific reasons for the attacks as well as the
3 manner of their execution.

4 THE PRESIDENT: Brigadier Nolan.

5 BRIGADIER NOLAN: If it please the Tribunal,
6 I would draw the attention of the Tribunal to the
7 fact that this is a statement of the Japanese Govern-
8 ment made at Geneva. I am compelled to the view that
9 it is a press release at Geneva by the concluding
10 words of paragraph one of the document. We object
11 to its reception into evidence.

12 THE PRESIDENT: Mr. Roberts.

13 MR. ROBERTS: It is the contention of the
14 defense that the official statements made to the
15 League may be adopted by these defendants and be used
16 as their explanations.

17 THE PRESIDENT: I suppose it is not a state-
18 ment made to the League but a statement released in
19 Geneva.

20 MR. ROBERTS: It states, according to the
21 certificate, that it was a statement made at Geneva.

22 THE PRESIDENT: Well, as one of the judges
23 says, the way to prove that it is a statement made to
24 the League is by production of the League record.
25 When did Japan retire from the League? It was be-

fore this?

1 MR. ROBERTS: Prior to this.

2 THE PRESIDENT: Obviously a press release.
3 By a majority, the Court upholds the ob-
4 jection and rejects the document.

5 MR. ROBERTS: We offer in evidence defense
6 document No. 1127, which is a statement from the
7 Foreign Office dated October 9, 1937, setting forth
8 facts to refute declarations of the League of Nations
9 and the State Department of the United States, for
10 the purpose of proving that the action of the Japan-
11 ese forces was by no means premeditated but simply
12 defensive.

13 THE PRESIDENT: Brigadier Nolan.

14 BRIGADIER NOLAN: If it please the Tribunal,
15 this press release, emanating from the Foreign Office,
16 criticizes the findings of the League of Nations and
17 endeavors to fix the responsibility for the spread
18 of the affair in China. It is obviously, we submit,
19 an attempt to influence foreign public opinion and
20 should be rejected by the Tribunal.

21 MR. ROBERTS: We submit that this is an
22 official statement made at the time the events were
23 occurring and should be considered as part of the
24 res gestae.
25

1 THE PRESIDENT: By a majority, the objection
2 is upheld and the document rejected.

3 Have you many more of these documents which
4 must necessarily be rejected in view of the judgment
5 of the majority?

6 MR. ROBERTS: At present we shall call a
7 witness, but we may have further documents later.

8 We call the witness KOBAYASHI.

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1 Y O S H I T O K O B A Y A S H I, called as a witness
2 on behalf of the defense, being first duly
3 sworn, testified through Japanese interpreters
4 as follows:

5 DIRECT EXAMINATION

6 BY MR. ROBERTS:

7 Q Please tell us your name and address.

8 A Name, KOBASHI, Yoshito; address, No.
9 5 Urago, 6-Chome, Yokoska.

10 MR. ROBERTS: May the witness be shown
11 defense document No. 1220?

12 (Thereupon, a document was handed
13 to the witness.)

14 Q Please examine this document and tell us
15 whether or not it is your sworn affidavit.

16 A (Examining) This affidavit was written by
17 me.

18 MR. ROBERTS: I offer in evidence defense
19 document No. 1220.

20 THE PRESIDANT: Admitted on the usual
21 terms.

22 CLERK OF THE COURT: Defense document
23 No. 1220 will receive exhibit No. 2532.

24 (Whereupon, the document above
25 referred to was marked defense exhibit No. 2532

and received in evidence.)

MR. ROBERTS: I shall read exhibit 2532.

"1. From June 1924 (the 13th year of TAISHO) I began to study in piloting aeroplanes chiefly the fighter planes. In the summer of 1929 (the 4th year of SHOWA) I went to England for the purpose of studying aerial tactics, and during the period from January to August 1930 (the 5th year of SHOWA), I completed the Flying Instructor's Course at the R.A.F. No. 5 Flying Training School, Sealand; and after that, at the R.A.F. No. 111 Fighter Squadron, Farnchurch. At the R.A.F. No. 1 Fighter Squadron, Tangmere, I received further training in aerial tactics, being attached to a service corps.

"2. In 1937 (the 12th year of SHOWA) when the China Incident occurred, I was Lt-Commander and was the air commander of the air-craft carrier "RYUJO." From the beginning, I engaged in the aerial operations, annihilated the enemy planes in the SHANGHAI area and established the SHANGHAI A-Base (KUNGTA). After handing over the said base to the 2nd Combined Air Squadron, which had been a land air corps, I was transferred to the Kwangtung air operations.

"3. Now that the activities of the enemy

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1 planes in the SHANGHAI area had been completely
 2 controlled, the aim of the Kwangtung air operations
 3 was to annihilate the enemy fighter units which were
 4 being trained and augmented in their strength with
 5 Curtishawk and British gloucester fighters as the
 6 main force in Kwangtung area. On September 13 in
 7 the vicinity of the "anshan islands, the "MYOKO"
 8 was bombed by two enemy Northrop planes, and on
 9 September 14 the "YUBARI" in the vicinity of Tachen
 10 island was bombed by a total of 11 enemy Northrop
 11 planes and 2 curtishawk planes, causing 5
 12 casualties.

13 "Therefore the 3rd Squadron Command planned
 14 for the annihilation of the enemy air forces in the
 15 south China region with the 1st Air Fighting Unit
 16 (comprising the aircraft-carriers "RYUJO" and
 17 "HOSHO") and the 1st Combined Air Squadron.

18 "4. Account of the development of the
 19 Kwangtung attack follows:-

20 "Sep. 18 - Consultation pertaining to
 21 operations was conducted at the TAIHOKU base be-
 22 tween the 1st Air Fighting Unit and the 1st Com-
 23 bined Air Squadron.

24 "Sep. 21 - In the forenoon, the first
 25 attack on Kwangtung by the 1st Air Fighting Unit

was carried out.

1 "In the afternoon the second attack on
2 Kwangtung by the 1st Air Fighting Unit was carried
3 out.

4 "The objectives of the attack were the air-
5 fields of Tienho and Paiyun and the powder depot at
6 Tsengshe.

7 "Joint attack with the 1st Combined Air
8 Squadron was scheduled, but due to the inclement
9 weather, it was postponed.

10 "Sep. 22 - In the forenoon, the Third
11 Kwangtung attack by the 1st Air Fighting Unit was
12 carried out with its objectives as the airfields of
13 TIENHO and PAIYUN.

14 "In the afternoon the 4th attack on Kwang-
15 tung by the 1st Air Fighting Unit took place.

16 "A fighter unit participated in escorting
17 the medium-sized land-based bomber unit of the 1st
18 Combined Air Squadron. Three ship-board fighters
19 bombed the HUMEN airfield.

20 "Sep. 23 - In the forenoon, the 5th Kwang-
21 tung attack by the 1st Air Fighting Unit was carried
22 out, with its objectives as the powder depots at
23 CHATAO and TSENGSHE.

24 "In the afternoon, due to the changing of
25

1 weather, the attack by the 1st Air Fighting Unit was
2 suspended.

3 "Sep. 24 - Due to the inclement weather,
4 the 1st Air Fighting Unit suspended its attacks.

5 "Sep. 25 - Due to the inclement weather,
6 the 1st Air Fighting Unit suspended its attacks.

7 "Sep. 26 - In the forenoon the 6th Kwang-
8 tung attack by the 1st Air Fighting Unit was conduc-
9 ted, with its objectives as the iron bridges near
10 CANTON city.

11 "In the afternoon, the 7th Kwangtung attack
12 was made by the 1st Air Fighting Unit with its
13 objectives as the same as in the forenoon. Here we
14 discontinued the Kwangtung attacks, and started for
15 the SSUCHIAOSHAN islands, in order to participate
16 in the aerial operations in the SHANGHAI area again.

17 "5. In the above-mentioned bombing missions,
18 any attacks on general civilians' houses or particu-
19 larly against the rights and interests of foreign
20 powers were prohibited, so that we, utilizing air
21 photography, took great pains in the confirmation
22 of the objectives, military installations or muni-
23 tions arsenals only. From the Central Headquarters
24 we had received a special warning order to pay full
25 respect to foreign rights and interests. Aviation

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1 maps and various intelligence data, showing the where-
2 abouts of foreign rights and interests, were handed to
3 us at the SSUCHIAOSHAN islands before starting for the
4 Kwantung attack. Detailed explanations were given to
5 the crew members so that the attacks would be executed
6 after confirmation on the military equipments.

7 "During the period of the afore-described
8 attacks, the Air Fighting Corps Command ordered aerial
9 attacks to be discontinued when confirmation of ob-
10 jectives was thought to be impossible due to adverse
11 weather. The crew members at that time were all of
12 superior ability and, in addition to this, they had
13 gained experience in their fighting in the SHANGHAI
14 area that military discipline in the air was strictly
15 observed by them."

16 MR. ROBERTS: You may cross-examine.

17 THE PRESIDENT: Mr. Tavenner.

18 MR. TAVENNER: If it please your Honor, there
19 will be no cross-examination for the same reasons ex-
20 pressed in connection with the witness MITSUMAMI.

21 MR. ROBERTS: May the witness be excused
22 on the usual terms?

23 THE PRESIDENT: He is excused accordingly.

24 (Whereupon, the witness was
25 excused.)

1 MR. ROBERTS: We offer in evidence defense
2 document 1113, which is a document emanating from
3 the Foreign Office. It sets forth a compiled list
4 of objectives bombed and the verified official report
5 of the damage inflicted upon the respective tar-
6 gets.

7 THE PRESIDENT: Brigadier Nolan.

8 BRIGADIER NOLAN: If it please the Tribunal,
9 there is nothing that I can say in respect of this
10 document that I haven't already said in respect of
11 document 1115, from which this document cannot be
12 distinguished and which was rejected by the Tribunal
13 a few minutes ago.

14 THE PRESIDENT: This is clearly covered by
15 an earlier ruling.

16 The objection is upheld and the document
17 rejected.

18 MR. ROBERTS: We offer in evidence document
19 1114, which is a document emanating from the Foreign
20 Office, dated September 27, 1937, setting forth
21 facts concerning the precautions taken by the Japan-
22 ese Government prior to the bombing of Nanking and
23 Canton and also listing the military objectives
24 successfully raided in Canton.

25 THE PRESIDENT: Brigadier Nolan.

1 BRIGADIER NOLAN: If it please the Tribunal,
 2 this document states that as far as detailed official
 3 information regarding the result of the bombing is
 4 concerned, it has not been received, but that never-
 5 theless the reports which have emanated from Canton
 6 are exaggerated.

7 In my submission it is in no stronger
 8 position than earlier documents which have been
 9 rejected by the Tribunal.

10 MR. ROBERTS: It states that a certain
 11 Reuter report was exaggerated and was later correc-
 12 ted by another London Reuter report.

13 THE PRESIDENT: The Tribunal unanimously
 14 upholds the objection and rejects the document.

15 Mr. Roberts, to fully protect whatever
 16 rights you may have in this matter, you could ten-
 17 der a list showing the number of the defense docu-
 18 ment and the nature of the document. Tender it
 19 formally. It would be rejected, but you would get
 20 it in the transcript and it would be part of the
 21 record. Above all, it would save us precious time.

22 MR. ROBERTS: After the present document I
 23 am about to offer there is a statement of the Foreign
 24 Minister, and then I will take some of the following
 25 documents out of order and prepare a statement as

your Honor suggests.

1 I now would like to offer defense document
2 No. 1284, which is a document emanating from the
3 director of the Information Bureau concerning the
4 bombing of Nanking and Canton for the purpose of
5 setting forth facts in refutation of the resolution
6 of the League of Nations alleging Nanking and Canton
7 to be open cities and setting forth the instructions
8 given to the Japanese Air Forces concerning objec-
9 tives to be attacked as well as precautions taken in
10 carrying out said attacks.

11 THE PRESIDENT: Brigadier Nolan.

12 BRIGADIER NOLAN: If it please the Tribunal,
13 we object to the document on the grounds we have
14 urged against earlier documents of a like character
15 that had been rejected by the Tribunal.

16 THE PRESIDENT: It is clearly covered by
17 earlier adverse decisions, Mr. Roberts. Do you
18 contest that?

19 MR. ROBERTS: We offer in evidence defense
20 document 1176 --

21 THE PRESIDENT: The objection is upheld
22 and the document rejected.

23 MR. ROBERTS (continuing): which is a
24 statement of Foreign Minister UGAKI, dated June 6,
25

1 1938, concerning the attitude of Japan towards the
2 property and interests of third powers, for the
3 purpose of refuting the contention of the prosecu-
4 tion concerning a systematic plan to drive out foreign
5 nations from China.

6 THE PRESIDENT: Brigadier Nolan.

7 BRIGADIER NOLAN: We object to this docu-
8 ment, may it please the Tribunal. It is a statement
9 of Foreign Minister UGAKI given to foreign corres-
10 pondents on the 6th of June 1938.

11 MR. ROBERTS: It is an official statement
12 of the Foreign Minister at that time, and for the
13 purpose of the contention of the defendants, it is
14 important that the Court have these facts.

15 THE PRESIDENT: A press release by the
16 Foreign Minister.

17 By a majority the Court disallows the objec-
18 tion and admits the document.

19 CLERK OF THE COURT: Defense document 1176
20 will receive exhibit No. 2533.

21 (Whereupon, the document above referred
22 to was marked defense exhibit 2533 and received
23 in evidence.)
24
25

1 MR. ROBERTS: I shall read exhibit No. 2533:
2 statement of Foreign Minister UGAKI given to the
3 foreign correspondents on 6 June 1938:

4 "I am very glad of this opportunity of
5 meeting you representatives of the foreign press
6 for the first time since my assumption of the of-
7 fice of Foreign Minister. I earnestly hope for
8 your cooperation in the future.

9 "It is the immutable policy of Japan to
10 establish a permanent peace and promote prosperity
11 in East Asia and thereby to contribute to the cause
12 of world peace and welfare of mankind. Unfortu-
13 nately the China Affair broke out in July last year.
14 The Japanese Government, however, continued to main-
15 tain a calm attitude throughout the early period of
16 the conflict and did everything possible to urge
17 upon General Chiang Kai-shek to reconsider the policy
18 of his regime toward our country. General Chiang
19 not only failed to understand the real intention of
20 Japan, but he refused to alter his anti-Japanese
21 attitude by declaring his stand for the so-called
22 'prolonged warfare'. Japan was thus compelled to
23 embark upon an armed campaign in China. Our forces
24 have since carried on their operations steadily and
25 successfully, defeating the enemy on every front.

1 In the latter part of last month they captured
2 Hsuehow, which the Chinese had boasted to be in-
3 pregnable. Anking, the capital of Anwei Province,
4 has also been taken, and our forces are now ad-
5 vancing farther into the interior. The greatest
6 interest of the Japanese people at present is con-
7 centrated upon the prosecution of the hostilities
8 toward a successful conclusion.

9 "As regards the attitude of the other
10 Powers in connection with the present conflict,
11 we note that while there are some Powers which take
12 friendly measures toward Japan such as those of
13 prohibiting the exportation of arms and munitions
14 as well as the supply of war funds and military
15 advisers to China, there are some which are appa-
16 rently resorting to a policy of encouraging China
17 in her futile opposition to Japan, thereby causing
18 an unnecessary prolongation of the conflict and
19 untold losses of lives and property.

20 "This is to be profoundly regretted from
21 the standpoint of humanity, and any impairment in
22 the friendly relations between Japan and some such
23 Powers should be considered to be due to such action
24 of their part.

25 "However, I can definitely state that the

1 relations of our country with other powers are
2 as a whole satisfactory, and it is my intention
3 to put forth my utmost efforts towards their im-
4 provement."

5 I might state orally that the next four
6 documents perhaps come within the ruling of the
7 Court as to statements or press releases. I can
8 give the number.

9 THE PRESIDENT: Just give the number.

10 MR. ROBERTS: We next offer in evidence
11 defense documents 1193, 1189, 1186 and 1184.

12 THE PRESIDENT: Any objections?

13 There is no objection, apparently, Mr.
14 Roberts.

15 BRIGADIER NOLAN: We do object to the in-
16 troduction of these documents, which are objection-
17 able on the grounds that we have urged in the case
18 of other documents of a similar character.

19 THE PRESIDENT: The objection is upheld
20 in each case and the documents rejected.

21 MR. ROBERTS: We offer in evidence defense
22 document 1187, which is a statement by the Minister
23 of Foreign Affairs, dated December 19, 1938, con-
24 cerning the aims of Japan in setting up a Japan-
25 Manchukuo-China economic block and is an inter-

pretation of the meaning of said phrase.

1 THE PRESIDENT: Brigadier Nolan.

2 BRIGADIER NOLAN: If it please the Tri-
3 bunal, we object to document 1187, which deals
4 with the desire of Japan for a new order and the
5 benefits that would flow therefrom. I am aware
6 that it is a statement of the Foreign Minister
7 and to that extent it resembles an earlier document
8 which was received by the Tribunal. Nevertheless,
9 we do submit that the document has no probative
10 value and is yet another attempt to influence
11 foreign public opinion.
12

13 MR. ROBERTS: It is our submission that
14 the facts contained in this statement are of pro-
15 bative value and they are facts upon which the de-
16 fendants rely to show that there was no conspiracy
17 as claimed by the prosecution.

18 THE PRESIDENT: By a majority the Court
19 disallows the objection and admits the document.

20 CLERK OF THE COURT: Defense document
21 No. 1187 will receive exhibit No. 2534.

22 (Whereupon, the document above
23 referred to was marked defense exhibit
24 No. 2534 and received in evidence.)

25 MR. ROBERTS: I shall read defense

exhibit 2534:

1 "Statement of the Foreign Minister, Mr.
2 ARITA HACHIRO, given to the foreign correspondents
3 on December 19, 1938.

4 "As has been made clear by the statement
5 of the Japanese Government on November 3rd, what
6 Japan desires is the establishment of a new order
7 which will ensure the permanent stability of East
8 Asia; or, in other words, the establishment of a
9 relationship of mutual helpfulness and co-ordina-
10 tion between Japan, Manchoukuo and China in poli-
11 tical, economic and cultural fields.

12 "That the formation of a closely co-
13 operative relationship between the three countries
14 is an imperious necessity could be explained by
15 the fact that it is, in its political aspect, a
16 measure of self defense against the Communist
17 menace and of safe-guarding the civilization and
18 culture of the Orient, and in its economic aspect
19 a measure of self-preservation in the presence of
20 the world-wide tendency to erect high customs
21 barriers and to employ economic measures for
22 political ends.

23 "It is not only of benefit to the Chinese
24 people themselves but to the whole of East Asia,
25

1 to lift China from its present semi-colonial
 2 status to the position of a modern State. The
 3 establishment of the new order, that is, of a re-
 4 lationship of mutual aid and co-ordination between
 5 Japan, Manchoukuo and China, simply signifies the
 6 creation of solidarity between these three countries
 7 for the common purpose of preserving the integrity
 8 of East Asia, while enabling each nation to main-
 9 tain its independence and fully develop its indi-
 10 viduality.

11 "It is the firm conviction of Japan that
 12 the establishment of such a new order will per-
 13 fectly be in consonance with international justice
 14 and will contribute toward the peace and tranquil-
 15 lity of East Asia, and it is her inflexible resolu-
 16 tion to carry out her policy in this regard.

17 "Leaving for a later occasion the political
 18 and cultural phases of the proposed tripartite re-
 19 lationship, I wish today to offer a few remarks on
 20 its economic aspect.

21 "The economic aspect of the new order en-
 22 visages a certain degree of economic cohesion and
 23 co-ordination among Japan, Manchoukuo and China,
 24 and the only purpose of forming such single economic
 25 unit is to cope with, by strengthening its economic

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1 unit, the similar units which already exist else-
 2 where in the world and which are both powerful and
 3 self-sufficing. Although the term 'bloc-economy'
 4 is frequently applied to such an arrangement, the
 5 proposed unit in East Asia is by no means to be a
 6 system of closed trade. If by 'block-economy' is
 7 meant the exclusion of all interests other than
 8 those of the parties directly concerned, the em-
 9 ployment of the term would be wholly improper in
 10 the present case.

11 "At the present, not a few observers seem
 12 inclined to feel as though Japan, by the inaugura-
 13 tion of the so-called 'Japanese-Manchoukuo-China
 14 Economic Bloc' were aiming at the exclusion from
 15 East Asia of all enterprises, capital investments,
 16 trade and other economic activities on the part of
 17 foreign countries. It is quite regrettable that
 18 some such idea is to be seen reflected in Europe
 19 and America. Japan has long stoutly upheld before
 20 all the world the principle of equality of commar-
 21 cial opportunity -- though as a matter of fact, that
 22 principle has received scant regard elsewhere, and
 23 Japanese products of good quality and moderate price
 24 have everywhere been subjected to discriminatory
 25 treatment. Japan, nevertheless, still believes

1 that the way to bring about the prosperity of each
 2 and every nation is to give effect to the principle
 3 of equality of commercial opportunity, and she
 4 upholds the freedom of economic activity in all
 5 parts of the world as a matter of principle. It
 6 is far from Japan's thought to aim at excluding
 7 European and American economic activities from
 8 East Asia and she believes that such a thing is
 9 totally impossible.

10 "However, it is absolutely necessary from
 11 the point of view of existence that Japan, being
 12 poor in natural resources and without a large do-
 13 mestic market, and China, still economically weak,
 14 should work together in order to ensure the pro-
 15 duction which is necessary to maintain their policy
 16 of self-sufficiency for it must be admitted that
 17 the economic activities of the countries which lie
 18 outside the limits of East Asia would have to be
 19 regulated. In other words, it is imperative that
 20 the economic activities of other Powers should be
 21 subject to certain restrictions dictated by the re-
 22 quirements of the national defense and economic se-
 23 curity of the countries grouped under the new order,
 24 and that no political privileges should be attached
 25 to those activities. The necessity of such re-

1 restrictions is recognized by 'all modern states',
 2 including, I am sure, the British Empire and the
 3 United States. But even if these restrictions are
 4 put in force there will still remain vast fields
 5 of commercial and economic activity open to the
 6 people of other Powers.

7 "The formation or existence of an economic
 8 co-partnership of nations, such as is contemplated
 9 for Japan, Manchoukuo and China, would by no means
 10 entail any diminution of the trade between that
 11 group and other countries. On the contrary, the
 12 trade of other countries would also increase greatly
 13 by such formation. In this connection, I might add
 14 a few words regarding Manchoukuo. To say that the
 15 new state has been closed to Powers other than
 16 Japan is a gross mis-statement. Statistics show
 17 plainly the progressive increase that has charac-
 18 terized the foreign trade of Manchoukuo during the
 19 past few years. The total value of foreign trade
 20 of that country, which was 1,060,000,000 yuan in 1930,
 21 the year before her independence, leaped to
 22 1,530,000,000 yuan in 1937. As for the imports from
 23 other countries during the same period, they wit-
 24 nessed an increase of 35.3% during the same period,
 25 98.9% for the United States and 332.2% for France.

1 Especially conspicuous was the increase in the im-
 2 portation of machinery, tools, vehicles, hardware
 3 and timber, the demand for which is expected to
 4 expand further, with the progress of the work of
 5 economic construction in Manchoukuo. We should
 6 also take into consideration the imports from
 7 Western countries via Japan, though these are not
 8 indicated in the statistics. Again, we should
 9 take note of the trade of Manchoukuo with the
 10 British and French colonies, which is fast devel-
 11 oping with the years.

12 "In brief, the proposed new order for
 13 East Asia, when established, will not only bring
 14 permanent stability to this part of the globe but
 15 will also serve, I am firmly convinced, to put the
 16 economic activities of Occidental Powers in East
 17 Asia upon a far more solid foundation than at
 18 present."

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

21 (Whereupon, at 1045, a recess
 22 was taken until 1100, after which the
 23 proceedings were resumed as follows:)
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1 MARSHAL OF THE COURT: The International
2 Military Tribunal for the Far East is now resumed.

3 THE PRESIDENT: Mr. Roberts.

4 MR. ROBERTS: We now offer in evidence defense
5 document 1178 which is a statement by Prime Minister
6 KONOYE made on December 22, 1938 concerning the Japan-
7 ese policy in China and the essential reasons for
8 Japanese action.

9 THE PRESIDENT: These things may become
10 repetitious.

11 Brigadier Nolan.

12 BRIGADIER NOLAN: This document, may it please
13 the Tribunal, 1178, may be described as more about the
14 New Order. We object to its introduction into evidence.

15 THE PRESIDENT: It may be quite reasonable
16 to permit you to state through the Japanese Foreign
17 Minister the attitude of Japan towards China generally
18 and on particular occasions, but it is not necessary to
19 repeat that to any great extent.

20 MR. ROBERTS: We believe it is important to
21 show the statements of various officials in the govern-
22 ment concerning their policy in China for the purpose
23 of proving that there could not have been a common
24 plan or conspiracy on the part of these defendants to
25 carry out such aggression. One may confirm or corroborate

1 the other, but it certainly will prove beyond a shadow
2 of a doubt that there was no conspiracy as alleged by
3 the prosecution.

4 THE PRESIDENT: Well, the time may shortly
5 come when we will reject that kind of statement.

6 You tendered the document and it is objected
7 to. I will take the respective views of my colleagues.

8 Copies have not been distributed among the
9 judges.

10 MR. ROBERTS: May I simply add that the lives
11 of twenty-five men are at stake. It may be material
12 that the Court consider all the statements of officials
13 other than the defendants involved in this trial.

14 THE PRESIDENT: There might well be one hun-
15 dred such statements for each accused, and you would
16 not expect us to receive them all.

17 MR. ROBERTS: I agree that there should be a
18 limitation, and I believe that this may be the last
19 or next to the last such statement that I have to
20 offer.

21 THE PRESIDENT: Well, we have no copies upon
22 which to pass judgment. And the acting clerk says
23 that they do not have this document.

24 MR. ROBERTS: I understand there was an error
25 because of the fact that the number on the document is

1 illegible and looks as if it may be 1175. 1178 was
 2 added to subdivision 5, I believe, and is on that
 3 order of proof. It seems that because of the number
 4 being illegible that the document may have been with-
 5 held by the distribution. I would like to withhold
 6 this until a later period.

7 We offer in evidence defense document 1194
 8 which is a statement by the Vice-Minister of Foreign
 9 Affairs, dated May 3, 1939, concerning Japan's inten-
 10 tions in Shanghai for the purpose of showing the desire
 11 for cooperation with foreign nationals.

12 THE PRESIDENT: Brigadier Nolan.

13 BRIGADIER NOLAN: May it please the Tribunal,
 14 we object to document 1194. I am aware of the fact
 15 that it purports to be a transcript of an oral repre-
 16 sentation made by the Vice-Minister of Foreign Affairs
 17 to the British and American ambassadors at Tokyo. An
 18 examination of the document itself discloses that it
 19 is almost wholly concerned with the administrative
 20 structure and machinery of the International Settle-
 21 ment at Shanghai. And we submit that the problem which
 22 presents itself for determination, as to whether there
 23 is any relevancy in this document to the matters before
 24 the Tribunal, we submit that there is none.

25 MR. ROBERTS: The defense submits that the

1 proposal by the Vice-Minister for Foreign Affairs to
 2 the British and American ambassadors for the purpose
 3 of cooperating in Shanghai disproves the statement of
 4 the prosecution that there was a systematic plan to
 5 oust foreign nationals from Shanghai. For that purpose
 6 it will be only necessary to read the first two pages.

7 THE PRESIDENT: By a majority, the objection
 8 is upheld and the document rejected.

9 MR. ROBERTS: We offer in evidence defense
 10 document 1053 which is an announcement of the Foreign
 11 Office as a result of an Anglo-Japanese Conference on
 12 July 24, 1939, concerning the acknowledgment by the
 13 British Government of the actual conditions in China
 14 and recognizing that Japan had special claims in China
 15 in order to insure the safety and security of her
 16 nationals.

17 THE PRESIDENT: Brigadier Nolan.

18 BRIGADIER NOLAN: May it please the Tribunal,
 19 this document, 1053, purports to set out the contents
 20 of an announcement by the British ambassador at Tokyo.
 21 I have no volume from which I could check the accuracy
 22 of this excerpt, but in any event it is submitted that
 23 if it is intended to prove what the British ambassador
 24 put in his announcement, the announcement itself is
 25 the best evidence of that.

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1 Mr. ROBERTS: The certificate certifies this
 2 to be an official announcement of the Foreign Office,
 3 and whether or not the announcement by the British
 4 Foreign Minister was in writing or not we do not know.
 5 THE PRESIDENT: By a majority, the Court
 6 upholds the objection and rejects the document.
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1 MR. ROBERTS: I now have three documents
2 which, on their face, would come under the ruling of
3 the Court. I will read the numbers of the documents
4 so that we may have a ruling on the record.

5 We offer defense documents No. 1051, 1035 and
6 1325.

7 THE PRESIDENT: Brigadier Nolan.

8 BRIGADIER NOLAN: The prosecution, may it
9 please the Tribunal, objects to the three documents
10 which have just been mentioned by learned counsel for
11 the defense.

12 THE PRESIDENT: The Tribunal upholds the
13 objection in each case and rejects the documents.

14 MR. ROBERTS: We offer in evidence defense
15 document 982, which is a statement of the Foreign
16 Office taken from the Asahi Press and dated June 21,
17 1940, for the purpose of showing the recognition by
18 the French Government of conditions in China.

19 THE PRESIDENT: Brigadier Nolan.

20 BRIGADIER NOLAN: May it please the Tribunal,
21 this document, making due allowances for translation
22 differences, is the same as document 1053 of the 24th
23 of July, 1939, which has just been rejected, and with
24 the exception that the word "French" Government is
25 used instead of the word "British" Government, as was

1 in the earlier document.

2 THE PRESIDENT: The occasion covers it. The
3 Court upholds the objection and rejects the document.

4 MR. ROBERTS: At this time, I am informed,
5 Court copies of document 1178 are available, and I
6 now ask that it be marked in evidence.

7 THE PRESIDENT: We have not given our de-
8 cision on this yet.

9 MR. ROBERTS: As I stated previously, it is
10 a statement of Prince KONOYE concerning their in-
11 tentions in China and is for the purpose of disclaim-
12 ing any conspiracy or common plan on behalf of these
13 defendants.

14 THE PRESIDENT: By a majority, the Court dis-
15 allows the objection and admits the document on the
16 usual terms. But this may become repetitious very
17 shortly.

18 CLERK OF THE COURT: Defense document 1178
19 will receive exhibit No. 2535.

20 (Whereupon, the document above re-
21 ferred to was marked defense exhibit No.
22 2535 and received in evidence.)

23 MR. ROBERTS: I shall read exhibit No. 2535.

24 "Statement by the Prime Minister, Prince
25 Fumimaro KONOYE. December 22, 1938.

1 "The Japanese Government are resolved, as
 2 has been clearly set forth in their two previous
 3 statements issued this year, to carry on the mili-
 4 tary operations for the complete extermination of
 5 the anti-Japanese

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1 Kuomintang Government, and at the same time to proceed
2 with the work of establishing a new order in East Asia
3 together with those far-sighted Chinese who share in
4 our ideals and aspirations.

5 "The spirit of renaissance is now sweeping over
6 all parts of China and enthusiasm for reconstruction is
7 mounting ever higher. The Japanese Government desire
8 to make public their basic policy for adjusting the
9 relations between Japan and China, in order that their
10 intentions may be thoroughly understood both at home
11 and abroad.

12 "Japan, China and Manchoukuo will be united
13 by the common aim of establishing the new order in
14 East Asia and of realizing a relationship of neighbourly
15 amity, common defence against Communism, and economic
16 cooperation. For that purpose it is necessary first
17 of all that China should cast aside all narrow and
18 prejudiced views belonging to the past and do away with
19 the folly of anti-Japanism, and resentment regarding
20 Manchoukuo. In other words, Japan frankly desires
21 China to enter on her own will into complete diplomatic
22 relations with Manchoukuo.

23 "The existence of the Comintern influence
24 in East Asia cannot be tolerated. Japan therefore
25 considers it an essential condition of the adjustment

1 of the Sino-Japanese relations that there should be
2 concluded an anti-Comintern agreement between the two
3 countries in consonance with the spirit of the anti-
4 Comintern agreement between Japan, Germany and Italy.
5 And in order to ensure the full accomplishment of her
6 purpose, Japan demands, in view of the actual circum-
7 stances prevailing in China, that Japanese troops be
8 stationed, as anti-Communist measure, at specified
9 points during the time the said agreement is in force,
10 and also that the Inner Mongolian region be designated
11 as a special anti-Communist area.

12 "As regards economic relations between the two
13 countries, Japan does not intend to exercise economic
14 monopoly in China, nor does she intend to demand of
15 China to limit the interests of those third Powers,
16 who grasp the meaning of the new East Asia and are
17 willing to act accordingly. Japan only seeks to render
18 effective the cooperation and collaboration between
19 the two countries. That is to say, Japan demands that
20 China in accordance with the principle of equality
21 between the two countries, should recognize the freedom
22 of residence and trade on the part of Japanese subjects
23 in the interior of China, with a view to promoting the
24 economic interests of both peoples and that, in the
25 light of the historical and economic relations between

1 the two nations, China should extend to Japan facilities
 2 for the development of China's natural resources,
 3 especially in the regions of North China and Inner
 4 Mongolia.

5 "The above gives the general lines of what
 6 Japan demands of China. If the true object of Japan
 7 in conducting the present vast military campaign be
 8 fully understood, it will be plain that what she seeks
 9 is neither territory nor indemnity for the costs of
 10 military operations. Japan demands only the minimum
 11 guarantee needed for the execution by China of her
 12 function as a participant in the establishment of the
 13 new order.

14 "Japan not only respects the sovereignty of
 15 China, but she is prepared to give positive considera-
 16 tion to the questions of the abolition of extra-
 17 territoriality and of the rendition of concessions
 18 and settlements-matters which are necessary for the
 19 full independence of China."
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1 We now offer defense document No. 1056,
2 which upon the face thereof might seem to come with-
3 in the ruling of the Court as previously stated.
4 However, it is a statement of the damage, showing
5 the damages which were caused by unavoidable acci-
6 dents in carrying on military operations, and that
7 satisfactory adjustment was made in many instances,
8 and it should be accepted for what probative value
9 it may have.

10 THE PRESIDENT: Brigadier Nolan.

11 BRIGADIER NOLAN: May it please the
12 Tribunal, we submit that it is in no better position
13 than earlier press releases which have been rejected
14 by the Tribunal, and that if it is desired by the
15 defense to show there were disputes which arose and
16 were settled, this is not the proper method of
17 doing so.

18 MR. ROBERTS: In the first place, the
19 information comes from the official Foreign Office
20 and is a statement, as I have stated, of the damage
21 incurred in certain accidental cases and the fact
22 that said damages were amicably adjusted. It
23 clearly shows that Japan did not disregard foreign
24 interests and whenever damage was incurred it was
25 recognized and compensation was made.

1 THE PRESIDENT: By a majority the Tribunal
2 upholds the objection and rejects the document.

3 MR. ROBERTS: We offer in evidence docu-
4 ment No. 1050, an announcement of the Foreign
5 Office to the effect that France recognized the
6 actual situation in China.

7 THE PRESIDENT: Brigadier Nolan.

8 BRIGADIER NOLAN: If it please the
9 Tribunal, the prosecution does not appear to have
10 this document.

11 MR. ROBERTS: Evidently, in error it
12 has been put in part 5 of subdivision 4. You will
13 find it in that order of proof, top of the list,
14 part 5, subdivision 4.

15 BRIGADIER NOLAN: Looking at 1050, sir,
16 it seems to be the same as the document which has
17 just been rejected in that it purports to set out
18 an announcement by the Government of the Republic
19 of France. But, as my friend points out to me,
20 your Honor, the earlier one which was rejected was
21 an excerpt from a newspaper; this is an announce-
22 ment from the Foreign Office.

23 THE PRESIDENT: Is it covered by the
24 decision in the British and French cases?

25 MR. ROBERTS: It is somewhat similar, if

1 your Honor please.

2 THE PRESIDENT: The Tribunal upholds the
3 objection and rejects the document.

4 MR. ROBERTS: It was our intention to
5 call the witness HIRAMOTO, but I fear that the box
6 with this affidavit is still in the Clerk's office,
7 which is on top, also, of part 5, subdivision 4.

8 THE PRESIDENT: If you gave due notice
9 it should be in the courtroom, Mr. Roberts.

10 MR. ROBERTS: I was assured this morning
11 at 8:30 that it would be in court before court
12 opened this morning.

13 MR. TAVENNER: I would like to inquire
14 whether the defense proposes to omit section 4,
15 which is the next subsection. They have skipped
16 from three to five, apparently.

17 MR. ROBERTS: No, we are not skipping
18 section 4. We are simply taking the first two
19 documents which were placed on the top of five in
20 error.

21 THE PRESIDENT: The evidence you are
22 about to tender relates to four, does it, although
23 wrongly put under five in the order of proof?

24 MR. ROBERTS: If your Honor please, we
25 are talking about section 5 in subdivision 4. We

1 have divided subdivision 4 into five sections;
2 it all relates to the same subdivision, however.

3 THE PRESIDENT: The evidence you are about
4 to offer relates to four and not to five? That is
5 what I want to know.

6 MR. ROBERTS: That is correct.

7 In view of the fact that there is further
8 proof of subdivision 4, part 4, I can call this
9 witness at the conclusion of that part, and it will
10 still be in order.

11 THE PRESIDENT: Not only do these holdups
12 waste time, but the mere talking about and explaining
13 them waste time. That is what we object to. It is
14 bad enough to waste time on evidence that is re-
15 jected. Surely we can avoid these disorderly pro-
16 ceedings. I do not know who is to blame on this
17 matter, whether you or the court, court officials,
18 Mr. Roberts.

19 The court officials assure us that all
20 documents submitted to the Clerk's office are now
21 in the courtroom.

22 MR. ROBERTS: I now present Mr. ITO, who
23 will present further proof on this subdivision 4.

24 THE PRESIDENT: Mr. ITO.
25

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1 MR. ITO: We herewith present defense
 2 document No. 1077 for identification and will intro-
 3 duce the excerpt thereof, No. 1077-A, as evidence.
 4 This excerpt is a declaration of MATSUI, Iwane,
 5 Commander of the Shanghai Expeditionary Army. By
 6 this document we will prove the intention of the
 7 army in the Shanghai affair.

8 THE PRESIDENT: Brigadier Nolan.

9 BRIGADIER NOLAN: May it please the Tribunal,
 10 I am not sure, Sir, whether document No. 1077 has yet
 11 been marked for identification.

12 THE PRESIDENT: It should be marked.

13 CLERK OF THE COURT: Defense document 1077
 14 will be given exhibit No. 2536 for identification only.
 15 (Whereupon, the document above
 16 referred to was marked defense document No. 2536
 17 for identification only.)

18 BRIGADIER NOLAN: Learned counsel for the
 19 defense has tendered in evidence, Sir, document 1077-A,
 20 being General MATSUI's statement. This statement is
 21 an excerpt from a biography of General MATSUI and in
 22 our submission is inadmissible and not the proper
 23 method of proof of an announcement of this kind.

24 MR. ITO: Yes, it is necessary to tender the
 25 facts in order to prove the matters contained in the

1 matter I am now presenting to this Tribunal but
 2 upon inquiry of the First Demobilization Bureau we
 3 have found that such documents had been lost and
 4 therefore as the only alternative open to us we
 5 have chosen this method to present the proof.

6 THE PRESIDENT: Lost or destroyed, which?

7 MR. ITO: I do not know whether they were
 8 lost or they were burned or they were thrown away;
 9 however, I have received confirmation from the First
 10 Demobilization Board that it does not exist in their
 11 files at present.

12 THE PRESIDENT: By a majority the Tribunal
 13 upholds the objection and rejects the document.

14 MR. ITO: We will next produce in evidence
 15 excerpt of defense document No. 1077 as "B" of the
 16 same number.

17 THE PRESIDENT: Brigadier Nolan.

18 BRIGADIER NOLAN: May it please the
 19 Tribunal, this excerpt 1077-B is open to exactly the
 20 same objection that was made in respect to 1077-A.

21 THE PRESIDENT: The accused MATSUI can
 22 give this evidence himself later. The objection is
 23 upheld and the document rejected.

24 MR. ITO: Next we will produce defense
 25 document No. 1075 in evidence. This document is the

1 text of the surrender recommendation distributed
2 in the name of the Commander, MATSUI, among the
3 Chinese garrison troops in Nanking on December 9,
4 1937. This testifies to the measures taken by the
5 Japanese forces to save Nanking from war disaster.

6 THE PRESIDENT: Brigadier Nolan.

7 BRIGADIER NOLAN: May it please the
8 Tribunal, this is an attempt to prove an advice to
9 surrender through the medium of a newspaper dispatch.
10 It is submitted that it should be proved by production
11 of the statement.

12 MR. ITO: In an effort to find this
13 original the defense inquired of the First Demobilize-
14 tion Bureau and received from the said Bureau that
15 it at present does not have such a document.

16 THE PRESIDENT: The Tribunal by a majority
17 upholds the objection and rejects the document.

18 MR. ITO: We will next offer in evidence
19 defense document 1198, a talk made by the Chief of the
20 Information Section on December 1, 1937, to show the
21 destructive actions committed by Chinese soldiers in
22 the environs of Nanking and cultural protection measures
23 taken by Commander MATSUI by an article of the "Japan
24 Advertiser."
25

THE PRESIDENT: Brigadier Nolan.

1 BRIGADIER NOLAN: May it please the
2 Tribunal, defense document 1108 purports to be
3 dated the first of December 1937, but in the state-
4 ment itself appear to be incidents which occurred
5 on the 10th of December of that year. It is only
6 another press release and subject to the objection
7 that we have made to other documents of a like
8 nature.

9 THE PRESIDENT: Documents of this kind
10 are being repeatedly rejected. Time is wasted. I
11 suggest you list them all, tender them in a bunch,
12 have them objected to and rejected for record
13 purposes.

14 The objection is upheld and the document
15 rejected.

16 MR. ITO: Counsel Mattice will call a
17 witness.

18 THE PRESIDENT: Mr. Mattice.

19 MR. MATTICE: May it please the Tribunal,
20 we desire to call next the witness WAKAYAMA.
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22
23
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25

NAKAYAMA

DIRECT

1 Y A S U T O N A K A Y A M A, called as a witness on
2 behalf of the defense, being first duly sworn,
3 testified through Japanese interpreters as follows:

DIRECT EXAMINATION

BY MR. MATTICE:

6 Q You may give your name to the Tribunal, please.

7 A NAKAYAMA, Yasuto.

8 Q Where is your place of residence?

9 A I reside at No. 537 Sekido, Tama-mura,
10 Minami-tama-gun, Tokyo.

11 MR. MATTICE: May the witness be shown
12 defense document 1345, please.

13 Q Will you examine the instrument which for
14 purposes of identification is marked defense exhibit
15 No. 1345 and tell this Tribunal whether that is your
16 affidavit?

17 A This is my affidavit.

18 Q Are the statements contained in that affidavit
19 true?

20 A Yes, the truth.

21 Q Is it correct in all respects?

22 A There is one correction I should like to make.

23 Q In what paragraph of the affidavit is the
24 correction?

25 A The sixteenth paragraph; paragraph 16.

1 Q And what is the correction you desire
2 made there?

3 A The first sentence in paragraph 16 states:
4 "General MATSUI received, on December 14, the informa-
5 tion concerning the capture of Nanking." It should
6 read "December 13."

7 There are no other corrections to make.

8 MR. MATTICE: The defense now offers
9 defense document 1345 in evidence, if your Honor please.

10 THE PRESIDENT: Mr. Sutton.

11 MR. SUTTON: May it please the Tribunal,
12 the prosecution objects to and moves to strike those
13 portions of the affidavit which refer to documents
14 and purport to give their substance on the ground
15 that the document itself in each instance should be
16 produced or the failure to produce it accounted for
17 before the witness may testify as to its contents.
18 This objection applies specifically to the following
19 portions of the affidavit: First, the whole of
20 Section 11, pages 4, 5 and 6 of the affidavit, except
21 the first four sentences of that section. This section
22 refers to two written memoranda, one entitled "The Way
23 of Capturing the Walled City of Nanking," mentioned--

24 THE PRESIDENT: Deal with these specific
25 points after lunch.

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We will adjourn until half-past one.
(Whereupon, at 1200, a recess
was taken.)

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

3 THE PRESIDENT: Mr. Sutton.

4 MR. SUTTON: I will continue my statement of
5 the objections. Mentioned near the bottom of page 4
6 of the affidavit, and its contents are summarized on
7 page 5 of the affidavit; the other being instructions
8 entitled "All the Orders and Words of Advice Concern-
9 ing the Capture of and Entry into the Walled City of
10 Nanking," --

11 THE PRESIDENT: You have to take some shorter
12 way of describing your objections. Page so and so,
13 line so and so; page such and such, line such and such
14 from the word whatever it is to the word whatever it
15 is. That is the only way. Otherwise we will be here
16 all day.

17 MR. SUTTON: -- mentioned in paragraph No. 4
18 on page 5, the gist of which are given in the last
19 paragraph of page 5, and all of page 6 except the last
20 paragraph.

21 THE PRESIDENT: Take your objections in
22 general form, I suggest, and let us work them out.

23 MR. SUTTON: To state briefly, the first
24 objection is to the whole of Section 11, pages 4, 5
25 and 6 of the affidavit, except the first four sentences.

1 The second objection is to all of Section 12, purport-
 2 ing to give the answers received from consuls of
 3 various countries in Shanghai, and the maps prepared
 4 by the witness. Third, the first paragraph of
 5 Section 13 relative to the disposition of orders and
 6 instructions set out in Section 11, and the maps pre-
 7 pared by the witness witness as set out in Section 12.
 8 The same objection, namely, that it is an attempt
 9 to introduce a document without first accounting for
 10 its absence, applies to the notes of advice for
 11 surrender described in this paragraph, Section 11.

12 THE PRESIDENT: The first paragraph of
 13 Section 15 is a statement of fact. What is your
 14 attitude on that?

15 MR. SUTTON: That if the documents themselves
 16 are not admitted, then his statement as to the dis-
 17 position of the documents would not be proper testi-
 18 mony. We particularly objected to the notes of advice
 19 for surrender mentioned in that Section 13.

20 THE PRESIDENT: I suggest you mean 13, not
 21 15.

22 MR. SUTTON: 13. I beg your pardon.

23 THE PRESIDENT: This is the one court in
 24 the world where you cannot afford to make even what
 25 appears to be a trifling error. Too much time is

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1 wasted in correcting it.

2 MR. SUTTON: Fourth, the next to the last para-
3 graph on page 10 and the third sentence of the last
4 paragraph on page 10 as to the instructions trans-
5 mitted by the witness from General MATSUI. Fifth,
6 and lastly, the first two sentences of Section 20 as
7 to the orders given by General MATSUI to protect foreign
8 rights and interests.

9 THE PRESIDENT: All the objections are based
10 upon the rule dealing with the proof of documents or
11 their contents.

12 MR. SUTTON: That is right, sir. The prosecu-
13 tion moves to strike these several portions from the
14 affidavit as violative of that rule.

15 THE PRESIDENT: Mr. Mattice.

16 MR. MATTICE: If the Tribunal please, this
17 instrument was not proffered at the time I offered this
18 affidavit in evidence for the reason that we did not
19 have it then. During the noon hour the instrument
20 has been delivered, copies of it have been served,
21 and I now desire to offer in evidence in connection
22 with the exhibit about which we are talking defense
23 document 1356-A, which is an official document and is
24 the certificate of the Chief of the Document Section
25 of the First Demobilization Office of the Japanese

Government certifying concerning the existence of the instruments mentioned in the objection.

THE PRESIDENT: Mr. Sutton.

MR. SUTTON: May it please the Tribunal, I haven't had an opportunity to see the document. My friend says it was served today. That, of course, does not bring it within the rule.

THE PRESIDENT: This document is not sufficient to meet the requirements of the rule.

MR. MATTICE: I assumed that the Office of Demobilization is the place where documents concerning the campaign in China would be found. Whether that is true or not, I personally do not know. This certificate recites that they are not in the custody of that office. If so, they are not in the place where they ought to be found.

THE PRESIDENT: A Member of the Court puts it this way: All this occurred in China where armies were still operating at the end of the Pacific War. The destruction of documents in Tokyo does not explain the absence of these documents.

MR. SUTTON: The object to the introduction of the document.

MR. MATTICE: It would naturally follow that the records of the army, at least such of them as were

1 Government certifying concerning the existence of the
 2 instruments mentioned in the objection.
 3 THE PRESIDENT: Mr. Sutton.
 4 MR. SUTTON: May it please the Tribunal, I
 5 haven't had an opportunity to see the document. My
 6 friend says it was served today. That, of course,
 7 does not bring it within the rule.
 8 THE PRESIDENT: This document is not suffici-
 9 ent to meet the requirements of the rule.
 10 MR. MATTICE: I assumed that the Office of
 11 Demobilization is the place where documents concern-
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 13 that is true or not, I personally do not know. This
 14 certificate recites that they are not in the custody
 15 of that office. If so, they are not in the place
 16 where they ought to be found.
 17 THE PRESIDENT: A Member of the Court puts
 18 it this way: All this occurred in China where armies
 19 were still operating at the end of the Pacific War.
 20 The destruction of documents in Tokyo does not explain
 21 the absence of these documents.
 22 MR. SUTTON: The object to the introduction
 23 of the document.
 24 MR. MATTICE: It would naturally follow that
 25 the records of the army, at least such of them as were

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1 -reserved, would, when the forces returned and were
2 being processed through the demobilization center, be
3 lodged in that office.

4 THE PRESIDENT: We are asked to guess too much,
5 Mr. Mattice. Somebody who knows should make an affidavit
6 covering all this, explaining where all these China
7 documents are or should be and what has happened to
8 them.

9 MR. MATTICE: I think, if the Tribunal please,
10 that in that situation we desire to ask that this
11 witness stand down and we will call another witness
12 and recall this witness later.

13 THE PRESIDENT: Yes. Well, this witness
14 will be stood down until you make that search. For
15 the time being he is released on the usual terms.

16 (Whereupon, the witness was excused.)

17
18 MR. MATTICE: The defense desires now to call
19 the witness HIDAKA.

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1 S H I N R O K U R O ^{TA} H I D A K A, called as a witness
 2 on behalf of the defense, being first duly sworn,
 3 testified through Japanese interpreters as
 4 follows:

DIRECT EXAMINATION

BY MR. MATTICE:

7 Q You may state your name and address, please.

8 A My name, HIDAKA, Shinrokuro. My address,
 9 1630, 3-chome, Matsuzawa-machi, Setagaya-ku, Tokyo.

10 THE MONITOR: 1030 instead of 1630, according
 11 to the witness.

12 Q I will ask you to look at the document which
 13 is defense document 1165, which will be handed you,
 14 and tell this Tribunal whether that is your affidavit.

15 (Whereupon, the document was handed
 16 to the witness.)

17 A This is my affidavit.

18 Q Are the statements contained in that affidavit
 19 true?

20 A Yes.

21 Q And correct?

22 A Yes.

23 MR. MATTICE: I offer this document in
 24 evidence.

25 THE PRESIDENT: Admitted on the usual terms.

HIDAKA

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CLERK OF THE COURT: Defense document 1165
will receive exhibit No. 2537.

(Whereupon, the document above
referred to was marked defense exhibit
No. 2537 and received in evidence.)

1 MR. MATTICE: Omitting the formal parts, I
2 will proceed to read this exhibit.

3 "I served the Japanese Embassy in Nanking
4 as councillor from April 30 to August 16, 1937, and
5 later I stayed in Shanghai from 29 August, 1937 to
6 3 March, 1938, holding the same position. On 17
7 March, 1938, I was appointed consul-general and was
8 in charge of the Consulate-General at Shanghai from
9 that day until 12 December 1938, when I was ordered
10 to return home.

11 "I went to Nanking four times during my stay
12 in Shanghai: the first time, 17 and 18 December 1937,
13 to attend the ceremonies of the triumphal entry to
14 the city and of acknowledgment to the service; the
15 second time, 25 and 26 December, 1938; the third time,
16 from 1 to 8 February, 1938; the last time, 27 and 28
17 March, 1938, to attend the ceremony marking the es-
18 tablishment of the Restoration Government.

19 "2. I have been acquainted with General MATSUI
20 for a pretty long time. In particular, when he attended
21 at the Armament Reduction Conference held in Geneva
22 in 1932, as plenipotentiary, I lived with him as an
23 attendant of the Japanese Delegation.

24 "When General MATSUI arrived at Shanghai as
25 Commander-in-Chief, Shanghai Expeditionary Army, I

1 saw him for the first time on 10 September 1937 at
2 Woosung. I met him often during his stay there be-
3 fore he returned home in February 1938.

4 "3. (a) General MATSUI had long been a believer
5 in Sino-Japanese cooperation. He had an understanding
6 of Chinese culture and a deep affection for China and
7 her people. These facts were often expressed by him
8 when I talked with him."

9 THE PRESIDENT: Mr. Mattice, before you go
10 further, refer to page 1, the words "25 and 26 De-
11 cember 1938" in the second paragraph.

12 MR. MATTICE: Obviously, that year should
13 read "1937." It seems that that correction has been
14 made. I have not seen the errata sheet.

15 (Reading continued):

16 "On September 10, when I talked with him at
17 Woosung, stated the following intentions:

18 "(1) To treat POWs justly

19 "(2) To keep a fair attitude toward the in-
20 habitants in general.

21 "As regards this matter, he intended
22 to promulgate it in the name of the Army Commander-
23 in-Chief.

24 "(3) To pay reasonable prices for food and
25 other commodities requisitioned.

1 "He told of his various considerations
2 with regard to the method of payment in cases where
3 inhabitants had fled and no longer there, and stated
4 that the matter should be promulgated to the general
5 public to put them at their ease.

6 "Furthermore, I remember that when he
7 talked with me or with the personnel of the Embassy
8 or the Navy, he frequently expressed his concern for
9 the Chinese people.

10 "(c) He always paid special attention to
11 foreign relations and often asked for the opinion of
12 Consul-General OKAZAKI. Also, he took care to keep
13 in touch with foreign press men. He met several times
14 especially with Hallett Abend, a special correspond-
15 ent of the New York Times, and David Fraser of the
16 London Times.

17 "(d) I know that General MATSUI took the
18 following steps, with regard to the attack on Nanking.

19 "(1) He made many copies of the maps of
20 Nanking City on which foreign embassies and legations,
21 as well as other property involving foreign rights and
22 interests were distinctly marked. These maps were dis-
23 tributed to troops. The Japanese Embassy assisted in
24 making the maps, and I had a chance to see one thus
25 made up.

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1 "(2) The Chungshan and Minshao Mausoleums on
2 the Map were surrounded by a red circle and it was
3 indicated that they were to be excluded, absolutely,
4 from destruction. This was made according to General
5 MATSUI's desires, so one of his staff officers of the
6 Army Command told me.

7 "(3) Near these places it was prohibited to
8 fire any gun. I heard this fact afterwards from Noda
9 Kongo himself, regimental commander who advanced on
10 the side of this area.

11 "(4) General MATSUI had told us in Shanghai
12 before the attack on Nanking was begun that he intended
13 to stop the forces outside of the city wall and induce
14 the Chinese commander to surrender, and that he would
15 dispatch only highly disciplined crack troops into
16 the city.

17 "(5) After he had started from Shanghai to
18 carry out the Nanking Attack, I met him again in Shang-
19 hai, January 1 next year, when he was sincerely grieved
20 to find for the first time that some of his subordin-
21 ates had done wrong. I was deeply impressed then to
22 find that he had not been aware of such facts until
23 that time. I was told directly by both himself and
24 his staff members that he gave strict warning and di-
25 rectives in the name of Commander-in-Chief accusing

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1 those who had acted wrong.

2 "4. As regards dispositions made by the
3 staff and other responsible members of the Army HG,
4 the chief matters I happen to know are as follows:

5 "(a) The fair treatment of POWs was under
6 their consideration from various angles, and they
7 were holding consultations concerning the establish-
8 ment of suitable camps.

9 "(b) At the time when Nanking City was en-
10 tered, the attitude of the Japanese gendarmerie was
11 practically impartial. They were well spoken of by
12 both foreigners and the Chinese.

13 "At first they were few in number: only four-
14 teen including the commander. I heard on 17 December
15 that forty other provisional military police were to
16 be obtained in several days.

17 "(c) I neither heard nor saw of the Army
18 Staff's having directed rough treatment of foreigners
19 or misuse of foreign rights and interests or of Chi-
20 nese property.

21 "(d) It was the General's idea to set up
22 notices of no admittance on foreign Embassies and
23 legations and other property involving foreign rights
24 and interests in Shanghai and Nanking. We diplomatic
25 officials assisted in the work.

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1 "(c) In particular the staff officers of the
2 Army in charge seriously did their best in investigat-
3 ing and settling cases involving foreign relations.
4 For example, a staff officer accompanied by a diplo-
5 matic official went to Wuhu where the American flag
6 incident had occurred, in order to investigate the
7 incident on the spot. When they found that the troops
8 concerned had already set off, they pursued the troops,
9 who were by that time engaged in battle, overtook
10 them at Hangchow, and spent two weeks completing the
11 investigation.

12 "5. (1) Up to this time, when there was any
13 civil war or riot in China, or any incident or battle
14 between China and any other country, Japanese diplo-
15 matic authorities had strived on the spot to protect
16 not only Japanese but also foreigners and their rights
17 and interests. We had also taken care to protect
18 Chinese and to handle their property fairly.

19 "During this incident also we worked under
20 this policy from the beginning as a matter of course,
21 even without special instructions from the government
22 to that effect.

23 "The Commander-in-Chief, General MATSUI, ap-
24 proved our proposals and opinions.

25 "(2) On the occasion of the Nanking Attack,

HIDAKA

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1 more than ten men who had formerly been attached to
2 the Nanking General Consulate were sent at the time
3 of the Japanese Army's entry to cooperate with the
4 Japanese Army in working for the protection of for-
5 eign residents and foreign rights, and interests.
6 They were also instructed to strive to treat the
7 Chinese people fairly in order to preserve public
8 order. They all always did their best along these
9 lines. Examples are as follows:

10 "(a) At first communications from Nanking
11 were extremely difficult. Therefore, soon after
12 the entry to Nanking, they used a news correspond-
13 ent's radio to send reports about the welfare of
14 foreigners to Shanghai.

15 "(b) They promptly investigated foreign
16 rights and interests and other points requiring pro-
17 tection and, cooperating with the Army, had "no ad-
18 mittance" signboards set up.

19 "(c) They employed Consulate police men for
20 the protection and convenience of foreign residents.

21 "(d) They directed the Consulate-General
22 Staff to treat the Chinese people fairly and in
23 particular to protect civilians. These carried out
24 their duties with success, since they had all served
25 formerly in Nanking and had been well acquainted with

the conditions in the city in ordinary times. (They
 sometimes posted lookouts at the entrances of such
 refugee quarters as Kinling University.

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the conditions in the city in ordinary times. (They
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1 "(e) Reports on anything wrong allegedly
2 done by Japanese soldiers were submitted to the
3 Consulate-General by foreign residents. Most of
4 those reports were based on hearsay, however, and
5 since the Consulate-General had not time enough to
6 investigate each of them the reports were sent to
7 the Foreign Ministry, Tokyo, (I read through some
8 of the copies in Shanghai) and to the Army in
9 Nanking. It seemed the Foreign Ministry in Tokyo
10 gave notice of these reports to the War Ministry.

11 "(3) I went to Nanking several times during
12 that period and each time I went I heard reports
13 from the Nanking Consulate-General. I saw existing
14 conditions and talked with foreign residents. I
15 submitted a written report of those items to the
16 Foreign Ministry, and made the same report orally
17 to Foreign Minister HIROTA and other Foreign Minis-
18 try Staff members when I returned home for in-
19 structions at the end of January 1938. Then I
20 heard that whenever reports were submitted from the
21 officials on the spot the authorities in Tokyo
22 called the attention of the Army to them. It was
23 due to this fact, as I said before, that the Army
24 Central Headquarters sometimes gave directives
25 about this to Army officials on the scene. Further-

1 here, I knew that in early February Major General
2 HONMA, then chief of the General Staff Office Di-
3 vision, went to Nanking. He told me that, though
4 the purpose of his trip was chiefly concerned with
5 problems of foreign relations, there were other
6 matters concerning the Chinese people.

7 (4) Soon after the collapse of Nanking
8 I sent Secretary OKUMURA to Nanking and Wuhu by
9 Navy plane. He returned from Wuhu bringing with
10 him an American correspondent who had been in a
11 hospital suffering from a wound, and the wounded
12 vice commander of the warship Ladybird. I also
13 took steps to permit several foreign correspondents
14 to go down the river to Shanghai at will.

15 "Just after the fall the entire city of
16 Nanking was confusion itself but calmed gradually
17 restored. Especially after the Self-Governing Com-
18 mittee was established by Chinese citizens 1 January
19 1938 and began to govern the city, working as me-
20 diator between the Japanese Army and the general
21 public, mutual misunderstanding and doubt lessened.
22 After the end of March when the Restoration Govern-
23 ment was established to govern the downstream area
24 of the Yangtze River, the life of the general public
25 brightened considerably.

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1 "Before and after the Nanking fall there
 2 were affairs such as the following:
 3
 4 "(1) In the battle around Shanghai the
 5 resistance of the Chinese Army was far more severe
 6 than the Japanese Army had expected, since anti-
 7 Japanese feelings were very strong there.
 8
 9 "The Japanese troops despatched there for
 10 the protection of Japanese residents and Japanese
 11 rights and interests were far fewer than the
 12 Chinese force in number. Hence, the battle was
 13 very hard and the Japanese casualties were great.
 14 This naturally enhanced the fighting spirit of
 15 the Japanese soldiers. (Originally the antipathy
 16 of Japanese soldiers toward the Chinese people
 17 was not so strong.)
 18
 19 "(2) Accordingly, contrary to our ex-
 20 pectations very few of the Chinese soldiers were
 21 taken prisoner at first, (most of them either died
 22 in the field of retreated),
 23
 24 "(3) In order to hinder the Japanese
 25 Army the Chinese Army carried out from the begin-
 ning the so-called 'scorched-earth policy', setting
 fire to houses and munitions dumps and compelling
 the inhabitants to evacuate. Hence at the beginning
 of the battle the Japanese had few chances to con-

1 tact inhabitants on peaceful terms, and it was na-
 2 tural that both the Japanese troops and the Chinese
 3 inhabitants had become more and more uneasy and
 4 suspicious of each other.

5 "(4) It was due to the propaganda of the
 6 Chinese Army and authorities that anti-Japanese
 7 feelings were generally strong. Even the few old
 8 men, women and children who had remained in the
 9 occupied area acted as spies, sabotaged, or attacked
 10 Japanese soldiers in the dark. By those acts the
 11 activities of the Japanese Army were greatly han-
 12 pered. Japanese soldiers at first tried to treat
 13 civilians with kindness, taking them as quite apart
 14 from military men. As a matter of fact, however,
 15 confronted with such an attitude on the part of the
 16 inhabitants there arose among the Japanese soldiers
 17 a feeling of hostility and an attitude of suspi-
 18 cious watchfulness.

19 "(5) The Chinese Army made strong re-
 20 sistance around Shanghai and the battle front came
 21 to a standstill there. It was thought that if the
 22 Chinese were defeated there they would make a stand
 23 on the route between Shanghai and Soochow and resume
 24 their opposition. Under these circumstances it was
 25 necessary to destroy all the Chinese troops in

1 order to set up security around Shanghai. For
 2 this purpose Japan reinforced her Army in early
 3 November with a new force which landed at Hangchow
 4 Bay. Meanwhile the Chinese Army was defeated and
 5 the Japanese Army, giving them no time to recover,
 6 started to chase them and entered Nanking at once.
 7 Hence, it was impossible for the Japanese Army
 8 first to lay siege on Nanking and then to attack
 9 and capture, as it had been foretold to us by
 10 General MATSUI. And as a consequence, I believe,
 11 confusion arose.

12 "It was due to the said circumstances
 13 that along the road leading to Nanking, not only
 14 had runnitions, houses and fuel been taken away or
 15 burned, but also Japanese supplies were late in
 16 coming. It was very cold in December. Troops of
 17 the Japanese Army individually took up things scat-
 18 tered about on the field to use, or to eat, or to
 19 burn as fuel.

20 "Even in Nanking military barracks and
 21 other buildings that remained were without beds
 22 and other facilities and it was extremely difficult
 23 to quarter the Japanese Army there.

24 "At the time of the fall Nanking was en-
 25 tirely without government. Directly after the

1 fall conditions I observed in the city were as
2 follows:

3 "(a) When the Chinese Comrander of the
4 Nanking Guard retreated before the collapse all
5 official members of military and civil organs
6 absconded. There was no city government, no
7 police, no responsible men remaining. All re-
8 gisters of citizens, land and buildings necessary
9 for routine administration had been taken away.
10 The police force had disbanded. No policeman
11 was to be seen. Only two or three policemen em-
12 ployed in each foreign Embassy or Legation were
13 found to be in the premises. There were numerous
14 cases in other cities than Nanking, in which
15 some of the civil officials or permanent personages
16 of the place remained after the retreat of the
17 Chinese Army, working as mediators to make re-
18 lations smooth between the incoming Japanese Army
19 and the common public in the place.

20 "(b) Foreign Ambassadors, Ministers,
21 Consuls, and other officials of foreign nation-
22 ality, all went away from the city before its fall
23 and there was no person authorized to negotiate
24 formally with the Japanese Army for the protection
25 of the rights and interests of foreign residents

and families.

1 "All the foreign correspondents were de-
 2 sirable of getting out of Nanking to send telegrams
 3 to their main offices. Within a few days after
 4 the fall of Nanking they all went to Shanghai,
 5 taking advantage of facilities offered by the
 6 Japanese Army in Nanking. None were to be found
 7 when I went there on December 17.

8 "(c) The population of Nanking was said
 9 to be one million, but it had been reduced to two
 10 hundred thousand at the time of the fall, most of
 11 whom, belonging to the lower class, had moved to
 12 the so-called 'Safety Zone'. The Chinese houses
 13 outside of this zone were practically all vacant.
 14 The organizing of refugees was in the hands of
 15 some 20 private individuals of foreign nationality
 16 who formed a committee.

17 "The Japanese Army did not official ap-
 18 prove the above mentioned zone. The reasons were
 19 (1) that the location was thought difficult to
 20 safekeep, from a tactical point of view, in case of
 21 a battle in the city, (2) that high ranking Chinese
 22 officers and their staff lived there, (3) that the
 23 committee did not have enough power to keep de-
 24 feated Chinese soldiers and other undesirable
 25

1 persons out the zone and to maintain its 'neutrality'.
 2 (The 'Safety Zone' in Shanghai was considered to
 3 differ on these points and was approved by the
 4 Japanese Army.)

5 "The Japanese Army persisted in holding
 6 to the doctrine that a place without any hostile
 7 troops or military establishment should not be
 8 attacked, and, actually, there was neither battle
 9 nor casualty in the area when Nanking was cap-
 10 tured.

11 "(d) When the Chinese Army retreated
 12 at the time of the fall of the city many military
 13 men audaciously took clothing from civilians (some
 14 civilians were murdered), and, putting it on in-
 15 stead of military uniform, entered the 'Safety
 16 Zone' disguised as civilians. This fact was told
 17 to me by Mac Daviels, AP reporter in Nanking and
 18 Hallott Abend of the New York Times, then in
 19 Shanghai. It was a matter of course that the
 20 Japanese Army for this reason held suspicions and
 21 doubts.

22 "8. The safety zone in Shanghai (so-
 23 called Jaquinot Zone): When the battle around
 24 Shanghai developed and the Chinese Army was ex-
 25 pected to retreat, an international committee con-

1 sisting of Britons, Americans, Frenchmen, etc, was
 2 set up with Father Jaquinot as its leader. The
 3 committee proposed to make a 'Safety Zone' in a
 4 section of Nantao (Chinatown in the southern part
 5 of Shanghai) under the approval of both Chinese
 6 and Japanese. The purpose was to receive Chinese
 7 if the battle reached that area. At first Father
 8 Jaquinot, accompanied by Timperley, a Manchester
 9 Guardian correspondent, came to me and told me of
 10 this. I took steps, co-operating with Shanghai
 11 Consul-General OKAMOTO and Consul General OKAZAKI,
 12 to put this plan into practice. Army Commander-
 13 in-Chief MATSUI and Navy Commander-in-Chief
 14 HASEGAWA showed a favorable attitude toward it
 15 from the beginning, and the plan was approved by
 16 the two commanders and the Chinese as well. At
 17 that time General MATSUI contributed ten thousand
 18 yen to the committee to assist in financing the
 19 plan. (Naval Commander HASEGAWA contributed money,
 20 etc.)

21 "Furthermore, Foreign Minister HIROTA
 22 sent a letter dated December 8 to Father Jaquinot
 23 as a message of praise and respect of the Japanese
 24 people felt toward such a humanistic work, with
 25 best wishes for his success. The reasons for which

1 the plan was approved by the Japanese authorities
2 was as follows:

3 "(1) The Area was purely a Chinese town
4 and it was clear that Father Jaquinot and the other
5 committee members were all impartial and disinter-
6 ested.

7 "(2) The committee would take in and
8 protect non-combatant Chinese when there was a
9 battle, and relief and protection would continue
10 for a little while after the battle was over, but
11 the committee would agree not to interfere in the
12 government and supervision of the area, which was
13 to be completely in the hands of the Japanese Army.

14 "(3) As the authorities of French con-
15 cession adjacent to the area willingly co-operated
16 the committee was thought to have enough actual
17 power to maintain 'neutrality'.

18 "(4) Judging from the location of the area
19 it was believed possible to maintain 'safety' in the
20 area despite there being a battle near here.

21 "In the final stages of the engagement in
22 Shanghai fighting spread to the boundary of the
23 area. However, no shells were dropped in the area.
24 The Chinese soldiers who retreated into the area
25 were all disarmed by the committee. The Japanese

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Army did not enter the area. Everything passed
off quietly. Thus several thousand houses and
250 thousand Chinese were rescued. The facts are
written in detail in a pamphlet by the committee."

You may cross-examine.

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1 MR. ITO: I should like to be permitted
2 to ask one question, a supplementary question.
3 THE PRESIDENT: For whom do you appear?
4 MR. ITO: I am representing the accused
5 MATSUI.
6 DIRECT EXAMINATION (Continued)
7 BY MR. ITO:
8 Q Concretely, what are the facts relating
9 to the incident involving the insult to the American
10 flag at Wuhu?
11 THE PRESIDENT: I don't think we need hear
12 more about that.
13 MR. SAEKI: I am counsel SAEKI, appearing
14 for the accused MUTO. I would like to ask one ques-
15 tion of the witness.
16 DIRECT EXAMINATION (Continued)
17 BY MR. SAEKI:
18 Q Did you meet MUTO, the then Vice-Chief of
19 Staff at Nanking?
20 A I met Vice Chief of Staff MUTO on several
21 occasions in Shanghai.
22 Q Do you remember anything with respect to
23 the attitude which MUTO, Vice Chief of Staff MUTO,
24 took in regard to the protection of foreign rights
25 and interests?

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DIRECT

1 A I have had frequent talks with MUTO on
2 that subject and I know that he was extremely care-
3 ful in his consideration of that matter, giving me
4 quite a bit of convenience in the prosecution of
5 my own duties in that regard.

6 THE PRESIDENT: Mr. Tavenner.

7 MR. TAVENNER: If it please the Tribunal,
8 apart from certain admissions valuable to the
9 prosecution, the affidavit contains statements so
10 completely at variance with the mass of our oral
11 testimony and documentary evidence on the rape of
12 Nanking that we consider it would be a waste of time
13 to cross-examine on it or to refer the Tribunal
14 to the whole of that evidence.

15 We would, however, make particular refer-
16 ence to Exhibits 306 and 323, being daily reports by
17 Doctor Lewis C. Smythe, Secretary of the International
18 Committee in Nanking to Japanese embassy officials
19 there; the evidence of Doctor Wilson, record page
20 2,533; Mr. Fitch at page 4462; Doctor Bates at
21 page 2,644; the testimony of John G. Magee, pages
22 3,904 to 3,922.

23 I also make reference to a collection of
24 diplomatic correspondence on the subject, exhibit
25

1 328. With regard to the protection of foreign
2 embassies, I refer to record 2,577.

3 THE PRESIDENT: Did you tender any interro-
4 gation of MATSUI or MUTO on this?

5 MR. TAVENNER: We tendered in evidence a
6 part of the interrogation of MATSUI, exhibit 257,
7 page 3,453 of the transcript, and a part of the in-
8 terrogation of MUTO, which is exhibit 255, page
9 3,433 of the transcript.

10 THE PRESIDENT: I have a question on
11 behalf of a member of the Tribunal.

12 On January 1, 1938, the witness was deeply
13 impressed to find that MATSUI had not been aware
14 of such facts, that is, misbehavior of the troops
15 in Nanking, until that time. At what time did the
16 witness hear about it and what did he hear?

17 THE WITNESS: On January 1 I went to
18 General MATSUI's place to express felicitations on
19 the new year, and on that occasion, in accordance
20 with Japanese custom, proposed a toast to each
21 other. At that time we were carrying on an infor-
22 mal conversation. There were no questions put by
23 me to him, but in the course of the conversation
24 General MATSUI said there were some among his sub-
25 ordinates who did something very wrong and that

HIDAKA

DIRECT

1 it was extremely regrettable and unfortunate.

2 THE PRESIDENT: Did he specify what wrong
3 was done?

4 THE WITNESS: No, he did not.

5 MR. ITO: No redirect examination. May
6 the witness be excused on the usual terms?

7 THE PRESIDENT: He is excused on the usual
8 terms.

9 (Whereupon, the witness was excused.)

10 MR. ITO: Next the defense will read an
11 excerpt from exhibit 323, prosecution document 1744.

12 The purpose of reading this excerpt is to
13 prove that the Japanese army did not attack the
14 safety zone as alleged by the prosecution.

15 THE MONITOR: Mr. Counsel, we have not
16 received defense document 1744, nor do we have a
17 running commentary prepared for us.

18 THE PRESIDENT: That prosecution document
19 being exhibit 323, I believe.

20 MR. ITO: It is an excerpt from exhibit
21 323, prosecution document 1744.

22 This document evidently proves that in
23 assaulting Nanking the Japanese army did not attack
24 the safety zone there.

25 THE MONITOR: We have the running commen-

1 tary, but we don't have the document.

2 THE PRESIDENT: Mr. ITO, what are you
3 going to do?

4 MR. ITO: Shall I read in Japanese and
5 have it translated into English?

6 THE PRESIDENT: Not unless it is a sentence
7 or two only. We won't listen to any long excerpt.

8 MR. ITO: They won't be very long.

9 THE PRESIDENT: We want simultaneous trans-
10 lation if the document is of any length. How many
11 sentences are there?

12 THE MONITOR: We found the document, sir.

13 MR. ITO: May I commence, sir?

14 THE PRESIDENT: Start reading, Mr. ITO.

15 MR. ITO (reading): "LETTER TO JAPANESE
16 COMMANDER OF NANKING.

17 "December 14, 1937.

18 "Honorable Sir:

19 "We come to thank you for the fine way your
20 artillery spared the Safety Zone and to establish
21 contact with you for future plans for care of Chinese
22 civilians in the Zone."

23 Skipping from the second to the last para-
24 graph on the same page:

25 "Yesterday afternoon an unforeseen situa-

1 tion developed when a number of Chinese soldiers
 2 were trapped in the northern part of the city.
 3 Some of them came to our office and pleaded in
 4 the name of humanity that we save their lives.
 5 Representatives of our Committee tried to find your
 6 Headquarters but got no farther than a captain on
 7 Han Chung Lu. So we disarmed all these soldiers
 8 and put them into buildings in the Zone. We beg
 9 your merciful permission to allow these men to return
 10 to peaceful civilian life as is now their desire."

11 Skipping to page 4, the last paragraph:

12 "We will be glad to cooperate in any way
 13 we can in caring for the civilian population of
 14 this city.

15 "INTERNATIONAL COMMITTEE FOR NANKING
 16 SAFETY ZONE.

17 "Most respectfully yours,

18 "JOHN H. D. RABE

19 "Chairman."

20 Then we shall read an excerpt from exhibit
 21 309, prosecution No. 2466. Commencing the reading
 22 from page 3 of document 2466:

23 "We have had some very pleasant Japanese
 24 who have treated us with courtesy and respect.
 25 Others have been very fierce and threatened us,

striking or slapping some. Mr. Riggs had suffered most at their hands. Occasionally have I seen a Japanese helping some Chinese, or picking up a Chinese baby to play with it."

Skipping to the middle of page 4, approximately in the middle of the page:

"Today I saw crowds of people flocking across Chung Shan Road out of the Zone. They came back later carrying rice which was being distributed by the Japanese from the Executive Yuan Examination Yuan."

That is December 31, 1937.

Then to the last paragraph on page 6:

"January 3, 1938

"Succeeded in getting half of the hospital staff registered today. I must report a good deed done by some Japanese. Recently several very nice Japanese have visited the hospital. We told them of our lack of food supplies for the patients. Today they brought in 100 shing of beans along with some beef. We have had no meat at the hospital for a month and these gifts were mighty welcome. They asked what else we would like to have."

That ends the reading of the document.

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THE PRESIDENT: We will recess for fifteen minutes.

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

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

3 THE PRESIDENT: Mr. ITO.

4 MR. ITO: Next we shall read an excerpt from
5 exhibit No. 328, prosecution document No. 1906. This
6 document, which is an official report from the Consul-
7 General at Shanghai to the Secretary of State of the
8 United States of America, offers proof of incendiarism
9 and pillage committed by the Chinese Army in Nanking,
10 the flight of the remnants into the safety zone there,
11 and the fact that Commander MATSUI issued an order that
12 military discipline and public morals be strictly main-
13 tained.

14 I commence reading on page 10 of the exhibit
15 under the paragraph entitled "Brief Account of the
16 Happenings to Nanking Since December 10th," the middle
17 of the page, second paragraph under that title.

18 "Therefore, when the Japanese armies marched
19 into the city they found it practically intact, four-
20 fifths of its population gone, with a large part of
21 the remaining inhabitants seeking refuge in the
22 so-called 'safety zone,' which the International Com-
23 mittee for Nanking was attempting to establish, and
24 instead of huge numbers of trapped Chinese troops only
25 a comparatively small number. The number of Chinese

soldiers that did remain is not known, but there must have been some thousands of them who discarded their military uniforms to put on civilian clothing and mingle with the civilians or hide wherever they could in the city."

Omitting the next paragraph:

"Mention should be made here, however, that the Chinese themselves are not altogether exonerated of depredations, at least to some extent, before the entry of the Japanese. During the last few days some violations of people and property were undoubtedly committed by them. Chinese soldiers in their mad rush to discard their military uniforms and put on civilian clothes, in a number of incidents, killed civilians to obtain their clothing. Retreating soldiers and also civilians were known to have carried on sporadic looting during that period of disorder. The complete breakdown of the city government with the stopping of the functioning of all the public utilities and services and the utter confusion and disorder that the city was thrown into by the withdrawal of Chinese government and most of the Chinese population left the city open to any act of lawlessness. It should be brought out that there was even a feeling of welcome by the remaining population for the hoped-for restoration of order and control under

the Japanese."

We now skip to page 18, the last paragraph.

"During the first week of December the International Committee set up the 'safety zone' - a map of which is enclosed as enclosure No. 7 - to which the remaining civilian population could come for refuge. Telegrams were sent to the high Japanese Military Command in Shanghai requesting that the existence of the zone be brought to the attention of the attacking Japanese armies and that it be spared from attack as a place of refuge. The Committee was informed, in reply, that although the Japanese would not recognize the Zone it would not be intentionally attacked if it did not contain soldiers or military establishments."

THE INTERPRETER: This ends the reading of the excerpts. Japanese counsel is still continuing.

THE PRESIDENT: Mr. Tavenner.

MR. TAVENNER: If your Honor please, I think I should call to the Tribunal's attention that the paragraph at the bottom of page 10 beginning with the words "However, no sooner had the Japanese armies gotten into Nanking. . ." was not read, and the same is true as to succeeding paragraphs.

THE PRESIDENT: It is for Mr. ITO to say how much he will read.

1 MR. ITO: I continue the reading, sir. The
Japanese reading has not been completed.

2 (Whereupon, Mr. ITO continued to
3 read in Japanese.)

4 MR. ITO: That is all, sir.

5 MR. TAVENNER: Your Honor, quite apparently
6 a document has been read that was not translated.

7 THE INTERPRETER: Mr. Tavenner, the English
8 reading finished far ahead of the Japanese.

9 THE PRESIDENT: That is what I thought.

10 Mr. Mattice.

11 MR. MATTICE: If the Tribunal please, we
12 next intended to call on behalf of the defense the
13 witness SUKAMOTO. This witness has been ill. We
14 have a certificate of his attending physician which
15 is dated April 16th. However, he is recovering and
16 will be able to be here tomorrow, but he is not here
17 today. So, with the exception of that witness and
18 the matter of the witness who stood down, this par-
19 ticular subsection of this phase is concluded.

20 I think Mr. Roberts will proceed with the
21 next.

22 THE PRESIDENT: Mr. Roberts.

23 MR. ROBERTS: We call the witness HIRAMOTO,
24 Michitaka.
25

1 M I C H I T A K A H I R A M O T O, called as a wit-
2 ness on behalf of the defense, being first duly
3 sworn, testified through Japanese interpreters
4 as follows:

5 DIRECT EXAMINATION

6 BY MR. ROBERTS:

7 Q Please state your name and address.

8 A No. 1307 Ohara-nachi, Meguro-ku, Tokyo. My
9 name, HIRAMOTO, Michitaka.10 MR. ROBERTS: May the witness be shown defense
11 document No. 1344.12 (Whereupon, a document was handed
13 to the witness.)14 Q Please examine this document and tell us
15 whether or not it is your affidavit.

16 A This is my affidavit.

17 MR. ROBERTS: I offer in evidence defense
18 document No. 1344.19 THE PRESIDENT: It is admitted on the usual
20 terms.21 CLERK OF THE COURT: Defense document 1344
22 will receive exhibit No. 2538.23 (Whereupon, the document above re-
24 ferred to was marked defense exhibit No. 2538
25 and received in evidence.)

1 Mr. ROBERTS: I read exhibit No. 2538.

2 "1. I was formerly a Captain of the Japanese
3 Navy. On November 14, 1940, I became Commander.

4 "2. I was sent twice to China. Once, it was
5 from the 1st of May 1940 to the 5th of September of
6 the same year. Once, it was from the 20th of July
7 1941 to the 1st of September of the same year.

8 "3. When I was sent there for the first time,
9 I acted as the Air Chief Staff to the Officer in Com-
10 mand of the Combined Air Raid Detachment who held
11 concurrently the post of the Commander of the First
12 Combined Air Forces. This Officer in Command was
13 placed under the operation directions of the Commander
14 in Chief of the Fleet despatched to the Chinese waters.
15 When I was sent there for the second time, I acted as
16 the Air Chief Staff to the Commander in Chief of the
17 Eleventh Air Squadron in which was placed the operation
18 directions of the Commander in Chief of the Fleet
19 despatched to the Chinese waters.

20 "4. From the first of May 1940 to the 5th
21 of September of the same year, I assaulted the areas of
22 the Ssu Chuan Province, concentrating my attack on
23 Chung Ching. This was carried out in order to frustrate
24 the will of the Chinese forces to keep on fighting, to
25 shatter the Chinese central military organizations and

[Faint, illegible text on the left page]

to put an end to the China Incident swiftly.

"The operations during this period were called No. 101 operations which were carried out jointly by the Army and Navy.

"5. Chung Ching is a rugged small town of four or five square miles being situated at a junction point of rivers. This town which forms a basin, is almost ever covered by clouds, and the vested rights and interests of third powers are scattered thereabouts. It was a place which was the least fitted for bombing.

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1 "Hence, the commander troubled himself a great
2 deal about the selection of the targets of attack.
3 It was on the occasion of the first Shanghai battle
4 that the Naval Air Forces took part for the first time
5 in the actual fighting since their organization. As
6 we were engaged from the outset in difficult fighting
7 at the small and narrow places where the vested rights
8 and interests of third powers were inextricably involved,
9 great care was taken in the selection of the targets of
10 attack and from the commander down to the rank and file,
11 all were ordered to follow, very strictly, instructions
12 given in this regard.

13 "6. Upon assaulting Chung Ching, we had
14 taken all necessary measures to bomb exclusively the
15 military targets to the exclusion of other things.

16 "(1) Every plane was instructed to carry the
17 map of Chung Ching's streets investigated and edited
18 by the Naval General Staff. Thus, we expected to
19 ascertain the targets therein indicated.

20 "(2) The Headquarters of the Air Raid Corps
21 endeavored to obtain by all means the latest news on
22 Chung Ching.

23 "Not to speak of the utilization of spies, we
24 approached particularly those Chinese leaders who
25 escaped from Chung Ching and joined the Nanking

1 Government, for the purpose of gathering the latest
 2 news on Chung Ching and specifically those bearing on
 3 its central military organizations. We inscribed this
 4 information on the maps concerned with a view to
 5 determining exactly the targets of our attack.

6 "(3) For the sake of absolute prudence we
 7 availed ourselves of every opportunity to explain to
 8 the crews the purport of instructions from the Central
 9 Government, referring to 'the standard to be observed
 10 in waging air war' and 'miscellaneous matters regarding
 11 the bombing regulations.' Simultaneously, we have
 12 striven thereby to heighten the fair and just spirit,
 13 which has been traditional in our Navy.

14 "7. The central military organizations in
 15 Chung Ching were mainly located in the west of the town.
 16 But the Gendarmerie Headquarters and some others were
 17 found scattered within the wall. The base for the
 18 anti-aircraft battery seemed to be sufficiently well
 19 equipped and the whole town presented the spectacle of
 20 a fortress. Furthermore, we received information that
 21 Chiang Kai-shek's fighting headquarters established at
 22 several places inside and outside the town (they were
 23 estimated at seven) were shifting according to the
 24 requirements of the times. The information made us
 25 presume that the shifting fighting headquarters in

HIRAMOTO

DIRECT

1 question were located in the following districts:

2 "(1) The western district of the city,

3 "(2) The western suburbs,

4 "(3) The western district within the city
5 wall,

6 "(4) The western opposite river side,

7 "(5) The suburbs located at the southern
8 river side,

9 "(6) The western suburbs located at the
10 southern river side, etc.

11 "8. While taking into consideration the afore-
12 mentioned circumstances, we carried out our air
13 assaults from the altitude of 2000 - 3000 meters
14 against the military equipment within the city, with
15 particular attention being paid to its western
16 district.

17 "On these occasions, we tried to aim exactly
18 at the targets in reliance upon our good judgment.

19 "9. Next, I participated in the operations
20 against the interior of the Ssu Chuan Province from
21 the 20th of July 1941 to the 1st of September of the
22 same year. At that time the operations were concen-
23 trated on attacking Chung Ching and this was the
24 second onslaught on the city. This campaign was
25 carried out in order to make up for the poor results

1 of the action of the previous year. Regarding the
2 objective of attack, the plan of attack, as well as
3 its execution, we have followed the main lines of the
4 principle determined in the previous year.

5 "On this occasion, we took recourse before-
6 hand, by diplomatic means to request the transferring
7 of the people belonging to the third powers to the
8 southern river side so that their vested rights and
9 interests as well as their non-combatants might not
10 be jeopardized.

11 "In particular, in regard to the war vessels
12 and ships belonging to the third powers, we have
13 been constantly on the alert, lest stray bullets should
14 cause such a disaster as the sinking of the Panay.

15 "10. It happened, however, that in the
16 course of our attack on the military equipment east
17 of Chung Ching City, an air detachment which had
18 invaded from the northwestern direction was unable to
19 drop bombs in time, presumably on account of the
20 imperfection of their throwing appliances. A bomb
21 thrown with undue delay fell in the vicinity of the
22 American Gunboat 'Tutuila,' lying at anchor on the
23 river and caused damage to a boat being attached to her
24 stern.
25

"Fortunately, there was no damage done to

1 the gunboat and we considered this event as a matter
 2 of great regret, for we were so much concerned with
 3 the avoidance of any sort of misfortune.

4 "11. We apologized for not having been able
 5 to avert that accident, because of the fact that such
 6 irregular bombing was beyond our control. Be that as
 7 it may, the crew of that air detachment showed their
 8 sincere penitence for misconduct.

9 "As for me, I was then despatched to Tokyo
 10 and Shanghai for the explanation of the matter involved.
 11 Both the Central Authorities and the Headquarters of
 12 the Fleet operating on the Chinese waters expressed
 13 their deep regret over the unhappy event, while I
 14 was duly reproved. I returned to my unit, after
 15 having received instructions to the effect that more
 16 precaution should be taken hereafter in the carrying
 17 out of air raids and that the vested rights and
 18 interests of the third powers should not be damaged
 19 any more."

20 You may cross-examine.

21 THE PRESIDENT: Mr. Tavenner.

22 MR. TAVENNER: If it please your Honor.

23 CROSS-EXAMINATION

24 BY MR. TAVENNER:

25 Q Commander HIRAMOTO, you have testified

HIRAMOTO

CROSS

1 regarding damage done to the American gunboat Tutuila
 2 at some date after July 20, 1941. Are you aware of
 3 a bombing damage to the United States Chancellery and
 4 this same gunboat prior to June 16, 1941, on which
 5 date a protest was made by the United States Govern-
 6 ment regarding such damages?

7 A I do not recall in detail. However, whenever
 8 foreign interests or interests of a third power are
 9 involved or notification to that effect or any protests
 10 were made in connection with damages inflicted upon
 11 foreign interests, notification to that effect is
 12 communicated to our air corps.

13 Q The Japanese Government gave the same excuse
 14 and the same explanation on the occasion of the first
 15 bombing that it did on the occasion of the second
 16 bombing, did it not?

17 A As to what the government did about it,
 18 operational units, especially those on the front lines,
 19 are completely unfamiliar or unaware of.

20 MR. TAVENNER: I refer the Tribunal to
 21 prosecution's exhibit 1088, page 9,996, regarding the
 22 bombing of June -- June, 1941.

23 That is all.

24 THE PRESIDENT: Mr. Roberts.
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MR. ROBERTS: There will be no redirect. We ask that the witness be excused on the usual terms.
THE PRESIDENT: He is excused accordingly.
(Whereupon, the witness was excused.)

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1 MR. ROBERTS: We call the witness YAMAMOTO,
2 Yoshio.

3 Y O S H I O Y A M A M O T O, called as a witness on
4 behalf of the defense, being first duly sworn,
5 testified through Japanese interpreters as follows:

DIRECT EXAMINATION

BY MR. ROBERTS:

7 Q Please tell us your name and address.
8

9 A My name: YAMAMOTO, Yoshio. My address:
10 No. 443, 2-Chome, Koenji, Suginami-ku, Tokyo.

11 MR. ROBERTS: May the witness be shown
12 defense document No. 1338.

13 Q Please examine this document and tell us
14 whether or not it is your affidavit.

15 A This is my affidavit.

16 MR. ROBERTS: I offer in evidence defense
17 document No. 1338.

18 THE PRESIDENT: Admitted on the usual terms.

19 CLERK OF THE COURT: Defense document 1338
20 will receive exhibit No. 2539.

21 (Whereupon, the document above referred
22 to was marked defense exhibit No. 2539 and received
23 in evidence.)

24 MR. ROBERTS: I shall read exhibit No. 2539:

25 "1. From the 25th of December 1939 to the

1 5th of February 1942, I served as a staff officer
 2 of the China Seas Fleet. I was one of those officers
 3 or their successors who were entrusted with the
 4 execution of administrative measures concerning the
 5 restriction of free navigation on the Yangtze River
 6 and the Chu River, interception of communications
 7 along the Chinese coastlines, the blockade of
 8 specified harbors, the prohibition of entrance into
 9 specified harbors, etc.

10 "2. Following the China Incident on
 11 July 7, 1937, a Proclamation was issued by Admiral
 12 HASEGAWA on August 25, 1937, blockading the China
 13 Sea Coast. This notice was dispatched to all
 14 countries by the Foreign Office.

15 "About September 1937 the Yangtze River
 16 was blocked by the Chinese Forces at Chiang-Yin and
 17 some other places on its upper stream by sinking of
 18 a large steamer and other obstacles. We opened a
 19 portion of these blockades only to the extent of
 20 meeting the needs of operations, that is, so as to
 21 enable our vessels to pass through. In this work, we
 22 scarcely succeeded in opening the minimum navigable
 23 passages in these blockades at the cost of the enormous
 24 casualties and damages inflicted on us.

25 "Since there was a congestion of Japanese

1 warships and military requisitioned vessels which had
 2 to pass there quickly for military requirements, there
 3 was practically no spare passage for the free navigation
 4 of the vessels of Third Powers. Consequently, it was
 5 then very difficult for us to set about broadening
 6 the navigable passages. In addition, military oper-
 7 ations on a large scale were in progress in the upper
 8 stream regions and under these conditions we were
 9 afraid lest warships and other vessels of the Third
 10 Powers should suffer unexpected accidents in the
 11 course of their navigation. In fact, their naviga-
 12 tion was likely to cause obstruction to the accomplish-
 13 ment of our aims.

14 "The river coasts of the Yangtze River
 15 were infested with Chinese partisans, doing much
 16 harm to warships and other vessels sailing there.
 17 Mines laid by the Chinese Forces continued to float
 18 to the detriment of the security of navigation, and
 19 their sweeping as well as the installation of the
 20 beacon for a navigation line were not being undertaken
 21 satisfactorily. Under these circumstances, the sinking
 22 of a ship would lead eventually to the blockade of the
 23 watercourse. For the aforementioned reasons, free
 24 passage through the opened areas of the Chinese blocked
 25 lines was subjected to restriction. Such a measure

1 was rendered inevitable on account of the necessity
2 of military operations.

3 "We were deeply concerned with the preser-
4 vation of the vested rights and interests of the Third
5 Powers all the more so, because the Minister of the
6 Navy never failed to give us instructions to that
7 effect. I might mention here an instance which
8 testifies to our sincerity in this regard. American
9 and British ships wanted to navigate for the purpose
10 of transporting food and fuel and of shifting their
11 crews. When we got acquainted with these facts, we
12 did not restrict the transportation by English and
13 American warships, or the shifting of their crews and
14 the embarkation of the personnel of their consulates.
15 We occasionally put our Japanese vessels at their dis-
16 posal for transportation. I remember that we went
17 so far as to notify them of our preparedness to under-
18 take transportation by our own aeroplanes in case an
19 emergency should arise.

20 "Regarding the situation of the Chu River,
21 almost the same can be said. The restriction of free
22 navigation on that river was unavoidable in considera-
23 tion of the requirements of military operation. When
24 the necessity for maintaining this state of affairs
25 lessened, the river was given free passage in April,

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2 "3. The interception of communications

3 along the Chinese seacoasts was undertaken in order

4 to protect the lives and properties of Japanese

5 residents in China against the assaults of the

6 Chinese forces. This measure for our self-defense

7 was thus necessitated in order to frustrate the

8 Chinese fighting power and it was applied exclusively

9 to the Chinese warships and other vessels. Hence,

10 we did our utmost to respect peaceful trade carried

11 out by Third Powers and we made no attempt to inter-

12 fere therewith. To sum up, all our actions in con-

13 nection with the communication interception problem

14 were based upon international usage to be observed in

15 case of a pacific blockade and the inspection and

16 internment accompanying a pacific blockade were also

17 accomplished in accordance with traditional usage.

18 "Be that as it may, some vessels of Third

19 Powers which joined the Chinese Forces in fighting or

20 rendering military assistance to them, were interned,

21 because the navigation of such vessels could not be

22 considered as the carrying out of peaceful trade.

23 "Furthermore, vessels of Third Powers which

24 could not be distinguished clearly from Chinese vessels

25 in point of nationality were interned.

1 "As regards the vessels whose Chinese
2 nationality was changed after the declaration of
3 the blockade, we upheld the principle that such a
4 transfer would not be valid unless it was in accord-
5 ance with the law of the country concerned. Thus,
6 the vessels which navigated under the flags of Third
7 Powers were inspected with a view to examining whether
8 such a valid step was duly taken and any ship considered
9 as devoid of this capacity was taken into custody.
10 The ships 'Segles Lorita' and 'Dorera' belonged to
11 the first category, while the 'Sparta' belonged to
12 the second category.

13 "4. The blockade of harbors was applied to
14 those harbors which became the fighting areas or
15 which were likely to become so; this measure was
16 likewise taken to meet the military requirements. In
17 view of this absolute necessity the measure was
18 interpreted not to be in conflict with Article II of
19 the Hague Convention concerning the laying of automatic
20 contact mines at the sea bottom. The blockade pre-
21 vented the enemy vessels from entering and leaving
22 the harbors in question. This state of affairs could
23 not but affect to some extent vessels belonging to
24 Third Powers. However, we clearly indicated the loca-
25 tion of dangerous objects in order that any unhappy

1 contingency might not take place. Prior to the
2 application of the blockade, a certain period of
3 grace was given, so that vessels of Third Powers
4 anchored in the harbors concerned might safely set
5 out to sea.

6 "We did not apply a wartime blockade,
7 consequently, we did not intend to capture those ships
8 which ventured to enter and leave the harbors in
9 defiance of the terms of our declaration. But, it was
10 natural that Japan should have not assumed any responsi-
11 bility for such loss as may have resulted therefrom.

12 "5. The entrance prohibition at specified
13 harbors proved likewise a measure which was taken to
14 meet the military requirements. However, application
15 of this measure was confined to fighting areas and
16 before its application a certain period of grace was
17 fixed and Powers notified in order that the influence
18 which would be brought to bear upon the vessel of
19 Third Powers might be reduced to the minimum.

20 "For instance, we refrained from keeping
21 under detention even those ships which acted against
22 our measures, with the exception of some graver cases.
23 In principle, we limited ourselves to indicating a
24 modification of existing navigation routes.

25 "6. Although various problems arose in

YAMAMOTO

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1 connection with the above-mentioned matters, for the
2 most part they were solved or reached a state of
3 amicable settlement, so that our operations encountered
4 no serious impediments."

5 You may cross examine.

6 THE PRESIDENT: Mr. Taverner.

7 MR. TAVENNER: There is no cross-examination.

8 THE PRESIDENT: Witness is excused on the
9 usual terms.

10 MR. ROBERTS: May the witness be excused on
11 the usual terms?

12 (Whereupon, the witness was excused.)
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1 MR. ROBERTS: We offer in evidence de-
2 fense document 1118, which is a statement of the
3 Foreign Office dated August 26, 1937, concerning
4 the establishment of a blockade on the China Sea
5 Coast and its application to the Third Powers.

6 THE PRESIDENT: Brigadier Nolan.

7 BRIGADIER NOLAN: May it please the
8 Tribunal, this is again a statement through the
9 press from the Foreign Office dealing with the
10 closing of the China Sea Coast and the reasons for
11 such action. It is, we submit, open to the same
12 objection as other documents of a like character
13 which have been rejected by the Tribunal.

14 MR. ROBERTS: If your Honor please, this
15 is a statement of the Foreign Office concerning
16 notice given to Third Powers of the establishment
17 of a blockade, which is exactly what the previous
18 witness has testified to. Its purpose is to show,
19 as the witness stated, regard for Third Powers and
20 to corroborate his statement that such a notice was
21 given.

22 THE PRESIDENT: By a majority the Tribunal
23 upholds the objection and rejects the document.

24 MR. ROBERTS: We offer in evidence defense
25 document 401(18), which is an excerpt from "Peace

1 and War," an official publication of the Depart-
 2 ment of State, U. S. Government, setting forth the
 3 presidential statement of September 14, 1937, con-
 4 cerning the restrictions against U. S. vessels
 5 transporting arms to China or Japan.

6 THE PRESIDENT: Admitted on the usual
 7 terms.

8 CLERK OF THE COURT: Defense document
 9 401(18) will receive exhibit No. 2540.

10 (Whereupon, the document above
 11 referred to was marked defense exhibit
 12 No. 2540 and received in evidence.)

13 MR. ROBERTS: I read exhibit 2540.

14 "On September 14, 1937 the President
 15 issued a statement to the effect that the question
 16 of applying the Neutrality Act remained in statu
 17 quo; that merchant vessels owned by the Government
 18 of the United States would not be permitted to
 19 transport to China or Japan any arms, ammunition,
 20 or implements of war; and that any other merchant
 21 vessel flying the American flag which attempted to
 22 transport such articles to China or Japan would do
 23 so at its own risk."

24 We offer in evidence defense document
 25 1126, which is a document emanating from the

1 Foreign Office and being a statement dated October
2 4, 1937, setting forth certain incidents wherein
3 Chinese junks fired upon Japanese patrol vessels.

4 BRIGADIER NOLAN: May it please the
5 Tribunal, this document, 1126, purports to prove
6 instances of armed resistance by Chinese junks.
7 It is contained in another statement from a foreign
8 office spokesman and should, we submit, be rejected
9 on the same grounds as other statements of a like
10 kind and character.

11 MR. ROBERTS: There is contained in this
12 official statement a statement of five incidents
13 which would refute the charge of the prosecution
14 that the Japanese forces were attacking peaceful
15 merchant vessels on the Yangtze River. It is in-
16 tended to read only the account of such incidents
17 beginning at the bottom of the page with the words,
18 "September 4."

19 THE PRESIDENT: By a majority the
20 Tribunal upholds the objection and rejects the
21 document.

22 MR. ROBERTS: We call the witness,
23 ENOMOTO, Juji.
24
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1 J U J I E N O M O T O, called as a witness on
2 behalf of the defense, being first duly
3 sworn, testified through Japanese inter-
4 preters as follows:

DIRECT EXAMINATION

BY MR. ROBERTS:

Q Please state your name and address.

A My name is ENOMOTO, Juji. My address
9 is No. 5 Shoto Kachi, Shibuya-ku, Tokyo.10 MR. ROBERTS: May the witness be shown
11 defense document No. 1330.12 Q Please examine this document and tell
13 us whether or not it is your sworn affidavit.

14 A This is my affidavit.

15 MR. ROBERTS: I offer it in evidence.

16 THE PRESIDENT: Mr. Tavenner.

17 MR. TAVENNER: If your Honor please, the
18 prosecution desires to object to the reference on
19 page 2, at the top, to the pamphlet, "Criteria in
20 Air Fighting," being in the first line at the top
21 of page 2, as it is a document not presented or
22 otherwise its absence accounted for.23 For the same reason the objection is
24 extended to the two succeeding paragraphs, which
25 are based upon that pamphlet.

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1 An objection based upon the same reason
2 is made to the paragraph in the middle of the page
3 beginning, "Subsequently on September 24," in that
4 it relates to a pamphlet entitled, "Miscellaneous
5 Observations on Aerial Bombing."

6 Now the two succeeding documents that
7 appear on the order list after this affidavit may
8 be the documents referred to here, but the docu-
9 ment 1219, if intended to be the order referred to
10 here, shows by its contents and by its certificate
11 that it was not an order in the true sense. The
12 same is true of document 1218, which may be in-
13 tended to be the second document referred to.
14 This document shows on its face that it was not --
15 that it was sent out by way of information, and
16 the character of being an order seems very doubtful.

17 The prosecution also desires to object
18 to the last paragraph beginning with the words,
19 "In addition, it was recognized by some powers,"
20 and so forth. Whether that paragraph states a
21 matter of law or a matter of fact we contend it
22 is equally objectionable. If it be a matter of
23 law it is not necessary to argue, I would take it.

24 THE PRESIDENT: Members of the Tribunal
25 have noted that feature, Mr. Tavenner.

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We will hear you in the morning, if
necessary, Mr. Roberts.
We will adjourn until half-past nine
tomorrow morning.
(Whereupon, at 1600, an adjourn-
ment was taken until Tuesday, 6 May 1947,
at 0930.)

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