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INTERNATIONAL PROSECUTION SECTION

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TITLE: Question of peace time blockade according to the
International Law regarding the China Affair. By the
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INTERNATIONAL PROSECUTION SECTION

Doc. No. 1827

Date: 22 May 1946

ANALYSIS OF DOCUMENTARY EVIDENCE

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SUMMARY OF RELEVANT POINTS (with page references):

- I. Precedents of peace time blockade and its legal theory.
- II. Blockade of Chinese Harbors from the standpoint of law.
 - A. Sino-Japanese hostilities are not a war from the point of international law.
 1. Under present situations, it is admitted to be proper according to international law that Japan undertake peace time blockade for Chinese harbors.
- III. Investigation of peace time blockade and interception of traffic, by TACHI.
- IV. Legal points of our naval treatment for the passage of the Third Power in the blockade area regarding the blockade of lower part of the Yangtse and Chen-chan Rivers by the Chinese.
The Chinese blockade cannot legally be a reason for Japan's interference of the Third Power's ship.
- V. Dealing with a Third Power's Cargo on Chinese Vessels.
 - A. Munitions and other materials corresponding to war-time materials can be interned with the ships.

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- X. Views on the future guarantee of the interest of the Third Power.
- XI. The right of self preservation of a state for its people's interest within the territory of a foreign state, by Prof. TACHI.
- XII. Interest and loss caused by the War with formal declaration, and the actual war without formal declaration.
- XIII. Main points of declaration of war problems.

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of peacetime blockade
This is a collection of questions of the international law regarding the China Affairs, made by the Treaty Bureau.

1. Precedents of peacetime blockade, and its legal theory.

It was in 1727 that a peacetime blockade was done, ^{at first,} since then it has been done about 20 times.

For example;

A. As the interference for the independence of Greece in 1727, Britain, France and Russia blockaded the greek coasts which had been occupied by the Turkish forces. This is the first example.

B. To get the relief of Portugal for the damages which France suffered, France did blockade the estuary of Tagas River and its districts to take revenge in 1831. etc.

A. In view of these examples;

1. It was almost done as a means of revenge.

2. sometimes as a means of interference.

3. There may be a case that A's friendly country B blockades to pacify A's rebellious districts as a means of pacification of rebellion, or

Country A blockades to set a international police at country B's region where B's legal right have not been kept.

B. As a legislative argument, ^{whether or not} there is a room for discussion to acknowledge peacetime blockade or not, but it seems that it can not be denied ^{fact} fact that the system of peacetime blockade is established on the international law.

C. There must be a question about the relation between peacetime blockade and anti-war pact, ETC.

II Blockade of Chinese Harbours ~~viewed~~ from the ^{view} points of law.

The Sino-Japanese hostility is not a war from the point of the international law, accordingly it must be ~~called to~~ ^{called to} attention that the Japanese forces blockaded Chinese harbours (of Shanghai, Amoy etc.) as a peacetime blockade.

A. It is admitted to be proper ^{according to} ~~on~~ the international law that Japan ^{undertakes} does peacetime blockade for Chinese harbours under the present situations.

1. Before the 19th century, it was done only at war-time, but from the 19th to the 20th, it was done many times. At present it can't be denied on the international law that the system of peacetime blockade has been established.

2. There is no reason why the aims of peacetime blockade is only for a revenge or interference. The peacetime blockade whose aim is self-defence can't be regarded as illegality.

At present ³ ~~is~~ ^{started} ~~point~~ ^{of} ~~inter~~ ^{with} ~~law~~ ^{carry out} the so called - peacetime blockade of various Chinese harbours as a defensive measure against ~~the~~ ^{China's} illegal actions of China, is acknowledged as legal, although there may be certain points & issues brought about by this measure diplomatically & politically.

It is ~~not~~ ^{illegal} ~~bad~~ ^{according to} the international law that Chinese harbours ~~are~~ ^{alone}, so-called "peacetime blockade" is a measure ^{of} ~~the~~ Japanese self-defence ^{from Japan} for the Chinese illegal ~~Chi~~ ^{measures} under ~~the~~ present situation.

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B. ~~Denying~~^{out} the peacetime blockade, it is ^{good} that ^{to} the declaration of ~~the~~ Japanese naval commander, ^{stated,} these ^{and} the ^{notification} information to China ^{and} to ^{the} Third Powers ^{are} ~~acknowledged~~^{about it} ~~previously done~~ ^{acknowledged} ^{to} let a third power ^{previously know about it.}

C. It is ~~necessity~~^{to} that the effect of ^{the} blockade must not ~~utterly~~^{be} ~~influential~~^{known} to the ships of Third Powers ^{and} except official inspections ~~for the purpose of~~ ships' nationality. etc.

III Investigation of peace-time blockade and interception of traffic, by Doctor TACHI

IV Legal points of view of Our Naval treatment for the passage of the Third Powers ~~and~~ the blockade district regarding the blockade of the down streams of Yang Tzu-chian and ^{the} Chen chan ~~done~~ by the Chinese Side

In the light of the pressing situations, the Chinese Government blockaded the down streams of Yang Tzu-chian and Chen chan, and all the passages in that region was stopped. Regarding the questions that

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Japanese Navy can touch or can not ^{touch} the Third Powers' ships which pass through that ^{the} region, investigations were done from the standpoints of the international law.

A. Japanese navy has already intercepted the passages of Chinese ships at ~~the~~ fixed region of the Chinese coasts. But that was not a war-time blockade, so, the Third Powers' ships can not be influenced except ^{by} the inspection of ^{the} ships' nationality.

B. The Chinese blockade can not ^{legally be} make a reason why Japan's interference ~~to~~ ~~the~~ Third Powers' ships there is done lawfully.

V. Dealing with a Third Powers' ^T goods on Chinese Vessels.

A. It is natural that munitions and other materials corresponding to the war-time controlled materials can be interned with the ships.

B. It should be regarded as proper

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that the Third Powers' goods not corresponding to the war-time controlled materials can not be interned.

C. Although there is ^{legally} no reason why special treatment should be taken for ships if they are the Chinese ships in case they have capitalistic relations with the Third Powers or their high class crews are the Third Powers' persons, the proper measures can be taken in reality according to the circumstances.

VI Nationality of Chinese Ships During Blockade of Traffic.

It is ^{the} a first question, ^{under what conditions} the removal of ship nationality should be regarded as perfectly on legality by what conditions. And it is a second question, ^{is} whether necessary measures, such as inspection and detention, can be taken or not when the removal is doubtful.

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as the Sino-Japanese affair is not a war
~~on~~ the international law, of course the
war-time laws and regulations can
not be applied as they are. The Japan's
deed of the traffic blockade is
of peace-time one. The treatments
for the Chinese and Third powers' ships
ought to be done within the limits
of peace-time blockade from the
point of the international law.

VII Lawful View of the ^{British} Ambassador's
wound By Japanese Airplane.
The ~~wound~~ ^{In the case of} case of the British Ambassa-
dor, Hugessen, ^{the} must be managed chiefly
by the governmental consideration rather
than by the legal ~~one~~ ^{proceedings}.

A. The place where the ~~case~~ ^{incident} arose can not
become a direct reason which can decide
whether the attack is legal or not, so far
as there is no reason ~~if~~ ^{if} the so-called
"attacks without distinction" is justi-
fied. ~~at the region where the~~

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fighting is going on.

It is natural that a non-combatant cannot but suffer unavoidable damage ~~caused~~ ^{caused} by the fighting, so far as he is ~~at~~ ⁱⁿ ~~the~~ ^{a combat area} place where the fighting is going on. But theoretically speaking, a direct or willful attack must be avoided for a non-combatant.

The so-called attack without distinction should not be illegal, ~~only~~ ^{except} in ~~the~~ case it is impossible ^{to distinguish} ~~actually~~ by the situations to ~~attacks~~ combatants ~~distinguishing~~ from non-combatants.

VIII Compensation Problem of the China Affair, By Doctor TACHI.

In this China Affair, both countries have been fighting, but there has not been a war declaration or an ~~ultimatum~~ ultimatum with a conditional war declaration. And there has not been an expression of their intentions for the war beginning or a severance of their diplomatic relations.

Although a validity of some treaties between both of them could not be admitted to be extinguished, from the view point of the international law, we can't deny that a war has already broke out between them. Namely we can say there is de facto war between them. It is generally admitted by everybody that according to the law and regulation of war, in the war situation of the international law, the Third Power's person who is in either belligerent country, has the same position as the people of the belligerent country and can not but suffer indirect damage which ^{is brought} ~~bring~~ about by the legal ^{actions} ~~deed~~ of war.

IX. Responsibility of State.

- A. Damage done by War-actions.
- B. Damage suffered by Foreigners.

X Views on the future guaranty of the interest of a third state.

In the Sino-Japanese hostility, the fighting deeds have been done

without a war declaration. According to the international law this must not be a war. Although there ~~are~~ ^{are not} any war situations due to the international law, in fact, the fighting has been done on a large scale. So, it is not only practical but also admitted by the Third Powers, that a certain part of the war-time law is applied to this actual war. This has also been the Japan's intention. According to the legal point of view of the Japanese government, it is most suitable to take the point of view that although there is not a war of the international law, the war-time law must be originally applied in this incident.

XI The right of self-preservation of a state for its people's interest within the territory of the foreign state, by Doctor TACHI.

XII. Interest and loss caused by the War
with formal declaration and the actual
war without formal declaration.

A. The loss of right and interest on
treaty of Japan for China.

When the war ~~of the international~~
~~law~~ breaks out ^{according to I.LAW} with the declaration,
the treaties, except special ones,
between the belligerent countries
are almost invalidated. Accordingly
when Japan and China entered into
the war ^{in 1937} of the international law,
with the war declaration, the
so-called unequal treaties, such
as extraterritoriality and settlement,
between both countries are almost
nullified. But the rights and interests
of the above treaties are naturally not
nullified in the case of the actual
war not of the international law.

B. The nullification of the relation of
the right and interest on treaty.

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When Japan and China entered into the war of ^{the} international law with the war declaration, treaties between both countries especially regarding the rights of monopolization and priority are nullified as the above influence. But there is no influence to the relation on treaty. in case it is an actual war, not of the international law.

C. Prevention of the China's import of arms.

When the war of the international law breaks out, the transportation of the war-time controlled materials can be prevented, and the blockade, which is influential to the Third Powers, can be ^{undertaken} done. And the Third Powers can not assist China.

D. the profitable point of an actual war

In the case of an actual war there is no influence to the right on treaty and the relation of treaty,

and the relations of an anti-war pact and a contract of the League of Nations' are out of the question.

E. The unprofitable point of an actual war.

So far as an actual war continues without the war declaration, the imports of arms to China can not be restrained as the legal measure.

F. From the point of the international law and the treaties, the war with the declaration can not be said to be always profitable to Japan. Accordingly it is better to avoid our voluntary declaration of war so far as it is not absolutely necessary from the ^{political} point of view.

XIII Main points of the war-declaration problems.
Investigating the loss and interest from the all direction and judging from the synthetic point of view it goes ^{to decide} without saying ^{to decide} that it is profitable or unprofitable that Japan declares war on China.

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A. It is necessary that the declaration problem is investigated chiefly from the three directions:

1. Military
2. Financial
3. Political

B. main points of the declaration of war from the military point of view are as follows:

1. It is ^{the} first problem whether or not the war declaration ^{gives} brings positive profit directly in the attainment of the military aims.
2. It is the second problem to be taken into consideration that there will arise a dispute between Japan and the Third Powers by the Japanese ^{navy's} interference to the Third Powers' commerce after the declaration.

C. The declaration problem from the financial and economical point of view is very complicated.

We can't imagine that the declaration is more profitable economically, and it is a grave problem whether ~~or not~~ there is an obstacle or not with the war declaration.

D. The declaration problem from the political points of view is very complicated in the relation with our country, the Nanking Government and the Third Powers.

1. For ourselves

We can easily imagine if we enter into the nominal war as well as the actual war, the level of efficiency for prosecuting the war will be raised both in words and deed.

2. For the Nanking government

If we declare war, the indication of our decision will give much influence mentally to the Nanking Government, and at the same time, the Chungking

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Regime will unite tightly more and more. And if we declare war, both countries become true enemies with each other, and we must compel China to their last resistance. In ^{the} result, China must do ^{their} long-time resistance.

It is absolutely necessary to attack China until they come to reconsider. It is doubtful that it is a ^{national} grand plan to expel any compromise until Japan ^{falls} down with China completely.

3. For the Third Powers.

It must depend much upon the actual policy of Japan towards China rather than the war declaration done or undone, that the political relations between Japan and the Third Powers will change. But we can easily imagine, ^{that} if we declare war it will ^{have} much influence upon America and Britain. And it is ^{very} interesting.

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question what attitude they will take
as the echo given to them. Before
they decide their attitude they will
examine our true intention.

by KOIZUMI
Junji.