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2790-E	3716-B		Affidavit of Ambassador Grew re Conversation between himself and Mr. HIROTA, Koki as Prime Minister on 1 September 1937		37005
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Thursday, 8 January 1948

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

The Tribunal met, pursuant to adjournment, at 0930.

Appearances:

For the Tribunal, all Members sitting, with the exception of: HONORABLE JUSTICE JARANILLA, Member from the Republic of the Philippines, not sitting from 1330 to 1600.

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.)

Greenberg & Spratt

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

THE PRESIDENT: Colonel Ivanov.

- - -

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

CROSS-EXAMINATION

BY COLONEL IVANOV (Continued):

Q May the witness be shown prosecution's document No. 1054(19)?

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

Mr. Witness, examine this document and tell us whether this document is a letter of the former Chief of Staff of the Kwantung Army, the accused KIMURA, Heitaro, to the Deputy Foreign Minister regarding the utilization of the Japanese in the Manchurian Army.

A This document purports to be a communication from the Chief of Staff of the Kwantung Army to the Vice-War Minister.

Q However, Mr. Witness, at that time General UMEZU was Commanding General of the Kwantung Army,

and General KIHURA, Heitaro, Chief of Staff, was his closest associate; isn't that so?

A Yes, as you say.

COLONEL IVANOV: Your Honor, I offer in evidence prosecution's document No. 1054(19) as an evidence of the fact that the accused UMEZU and KIMURA in November 1940, preparing for a large-scale war, took measures to replenish the Manchurian Army with the Japanese reservists.

THE PRESIDENT: Major Blakeney.

MR. BLAKENEY: The document seems to be dated in 1940, which is well before the period concerning which this witness testified, and therefore I submit that it is not proper cross-examination within the scope of his testimony and should be excluded.

COLONEL IVANOV: Your Honor, that is true. This document relates to December 1940, when the present witness was Staff Officer of the Kwantung Army.

Your Honor, I invite the attention of the Tribunal that the document which I am offering now and also the documents which I offered yesterday, all these documents refute the contention made by the present witness in item 4 of his affidavit. This

document shows that the Kwantung Army was not only preparing itself for a speedy commencement of hostilities against the U. S. S. R., but simultaneously was preparing for the same purpose the army of Manchukuo.

THE PRESIDENT: We cannot see the connection, Colonel. The objection is sustained and the document rejected.

COLONEL IVANOV: May this document be marked for identification.

CLERK OF THE COURT: Prosecution document 1054(19) will receive exhibit No. 3702 for identification only.

(Whereupon, the document above referred to was marked prosecution exhibit No. 3702 for identification.)

BY COLONEL IVANOV (Continued):

Q Mr. Witness, do you know that on December 8, 1941, the Chief of the Department of General Affairs of Manchukuo, at the request of UMEZU, made a public declaration on behalf of the government pointing out in that declaration the readiness of Manchukuo to assist Japan with resources, labor power, materials, and foodstuffs?

A I did know of that, but my work was not

directly concerned with contacting the Manchukuo Government.

Q Mr. Witness, isn't it true that the accused UMEZU in 1941 and 1942 welcomed the commencement of the Pacific War by Japan and the victories which were being gained by Japan in the first stage of that war?

A It is true that General UMEZU was against the Pacific War; that is, he did not like the idea of a Pacific War; but once the war had broken out he was convinced that it must be carried through to victory.

Q In such a way, isn't it clear from the replies which you have given to my last two questions that -- isn't it clear that the contention in your affidavit that the accused UMEZU was against the Pacific War is not true?

THE PRESIDENT: We do not want him to repeat what he has said already.

COLONEL IVANOV: That concludes my cross-examination, your Honor.

THE PRESIDENT: Major Blakeney.

REDIRECT EXAMINATION

BY MR. BLAKENEY:

Q Mr. Witness, you have been shown in the form of exhibits 3700 and 3701 some excerpts from speeches made in April and December, respectively, 1941 by the Chief of Staff of the Kwantung Army. You stated yesterday, I believe, that these excerpts were not representative of the entire speeches; is that correct?

A That is correct. The contents read yesterday constituted only a small portion of the speeches made by General UMEZU.

THE MONITOR: Strike that. Just a portion of the speeches selected.

A (Continuing) -- of the speeches; and unless you read the whole speeches, it will be impossible to understand how the Kwantung Army was bending every effort towards -- correction: in line with the Russo-Japanese Pact of Amity and how faithful General UMEZU was to his given duties in 1941.

THE MONITOR: Correction on the first part: unless the whole speeches and lectures were read or studied.

Q Well, I haven't got the whole speech, so I will ask you to state the gist of what was in the remainder of these two speeches, that is, if you

know, of course.

A The contents of the speech as a whole were as follows: General UMEZU in this speech showed his attitude to all the divisions under his command -- what the conduct of the Kwantung Army should be in order to maintain peace between Russia and Japan. But, in view of the task of defending Manchukuo, which was the main duty of the Kwantung Army, he also pointed out that the Army should always maintain a state of preparedness so that it would be prepared in the event any unseen circumstance, such as the sudden declaration of war by Russia on Japan and the subsequent invasion in August of 1945, should occur, as even in those days we were fearful of the possibilities of such an attack. Those were the main points of his speech.

Q By the way, who wrote these speeches?

A I drafted this speech -- these speeches.

MR. BLAKENEY: That is all.

THE PRESIDENT: Who made the digest?

THE WITNESS: May I ask what is meant by digest?

THE PRESIDENT: The summary of the speech tendered in evidence.

THE WITNESS: A staff officer in the Second

know, of course.

A The contents of the speech as a whole were as follows: General UMEZU in this speech showed his attitude to all the divisions under his command -- what the conduct of the Kwantung Army should be in order to maintain peace between Russia and Japan. But, in view of the task of defending Manchukuo, which was the main duty of the Kwantung Army, he also pointed out that the Army should always maintain a state of preparedness so that it would be prepared in the event any unseen circumstance, such as the sudden declaration of war by Russia on Japan and the subsequent invasion in August of 1945, should occur, as even in those days we were fearful of the possibilities of such an attack. Those were the main points of his speech.

Q By the way, who wrote these speeches?

A I drafted this speech -- these speeches.

MR. BLAKENEY: That is all.

THE PRESIDENT: Who made the digest?

THE WITNESS: May I ask what is meant by digest?

THE PRESIDENT: The summary of the speech tendered in evidence.

THE WITNESS: A staff officer in the Second

Section, namely, the Information Section or Intelligence Section.

MR. BLAKENEY: May the witness be excused?

THE PRESIDENT: He is excused -- Colonel Ivanov. Bring him back.

COLONEL IVANOV: I ask the permission of the Tribunal to ask this witness one or two questions.

THE PRESIDENT: On what ground, Colonel?

COLONEL IVANOV: I believe, your Honor, that I am entitled to ask these questions because they arise out of the cross-examination by defense counsel -- redirect examination by defense counsel.

THE PRESIDENT: Only if new matter is introduced could you cross-examine. He introduced no new matter.

COLONEL IVANOV: Your Honor, what I meant to say was that I wanted to clarify the attitude of the present witness to the drafting of the document -- the connection this witness had with the drafting of the document.

THE PRESIDENT: I do not think that is new matter. I did not raise any nor did Major Blakeney. If we make a concession to you, we have to make it to all counsel on demand. Therefore, we cannot afford to make any concessions. The witness is excused on

the usual terms.

COLONEL IVANOV: Yes, your Honor.

(Whereupon, the witness was excused.)

THE PRESIDENT: Major Blakeney.

MR. BLAKENEY: In connection with these two speeches, this is perhaps the appropriate time to make the formal request that the entirety of the documents be made available inasmuch as the parts tendered by the prosecution are excerpts only, and, of course, the originals have not been filed, as usually happens with excerpts. As I read the certificate attached, it appears, although it may be somewhat ambiguous, that the entire document must be in the possession of the prosecution.

THE PRESIDENT: Colonel Ivanov.

COLONEL IVANOV: Your Honor, the prosecution has submitted the documents in their entirety, and we have no other documents in our possession. This may be clearly seen from the certificate which is attached to any of these documents.

MR. BLAKENEY: Well, it is evident that the documents are not submitted in their entirety for, if you look at exhibit 3700, you find that it starts with section 4. If counsel means that he has sub-

mitted all that he has, that is another matter which I understand.

COLONEL IVANOV: Your Honor, in connection with the last remark of defense counsel, I would like to call the attention of the Tribunal to the fact that the responsibility for preserving the documents lay with the Japanese Government and with those accused who headed the government at that time. I once more repeat that we offered to the Tribunal all the documents that we had.

THE PRESIDENT: Well, we have to take your word for it. We are not questioning that.

Declassified and Released per E.O. 13526, Sec. 3(b) and 3(d) or (E) NNDG # 773 012

Lefler & Wolf

MR. BLAKENEY: I will proceed by subpoena in the usual way.

I now offer in evidence defense document No. 2963, this being the affidavit of the witness TANAKA, Ryukichi whose attendance for cross-examination I understand is not required.

THE PRESIDENT: Admitted on the usual terms.

CLERK OF THE COURT: Defense document 2963 will receive exhibit No. 3703.

(Whereupon, the document above referred to was marked defense exhibit No. 3703 and received in evidence.)

MR. BLAKENEY: I read the exhibit, which, omitting the formal parts, is as follows:

"I state chiefly about relations between General UMEZU and the Pacific War, as follows:

"1. Tokyo never consulted with the Commander-in-Chief of the Kwantung Army nor gave him advance information about the plan or decision for starting the Pacific War.

"2. Staff Officer of the Kwantung Army TAKEI told me as follows when he came up to Tokyo on business in November 1941:

"'General UMEZU, being told that the negotiations with the United States have come to a very critical

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condition, is in serious anxiety. He is of the opinion that a war with the United States should absolutely be avoided under any conditions.'

"Though this was only General UMEZU's private opinion, and not an expression of official opinion, I learned by this that General UMEZU did not favor starting a Pacific War."

I shall read a very short excerpt from prosecution exhibit No. 1922. The passage in question may be found on page 2 of the exhibit, paragraph numbered 2. In case some have not the document, I might say that this is the "Protocol Concerning Treatment of Allied Air Force Flight Personnel in the Central District," dated the 26th of December 1945.

Paragraph 2 of section V is as follows:

"Consequently, concerning the indictment and term of punishment, the 15th Area Army Commander (concurrently the Central Military District Commander) submitted a written report to the Minister of War, together with the opinion of the Prosecution Officer recommending the death penalty for both of them in about the middle of June, and indicted them upon receipt of approval in the latter part of June."

I call as a witness INOUE, Tadao who testifies by defense document No. 2955.

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T A D A O I N O U E, called as a witness on behalf of the defense, being first duly sworn, testified through Japanese interpreters as follows:

DIRECT EXAMINATION

BY MR. BLAKENEY:

Q. Please state your name, Mr. Witness.

A INOUE, Tadao.

MR. BLAKENEY: Please let him be handed defense documert No. 2955 please.

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

Q Please examine that document and state whether it is your affidavit, executed by you.

A It is.

Q And, are the contents thereof true and correct to the best of your knowledge?

A They are true.

MR. BLAKENEY: I offer in evidence the affidavit defense document No. 2955.

THE PRESIDENT: Admitted on the usual terms.

CLERK OF THE COURT: Defense document 2955 will receive exhibit No. 3704.

(Whereupon, the document above referred to was marked defense exhibit No. 3704 and received in evidence.)

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MR. BLAKENEY: I read exhibit No. 3704:

"1. I am a former lieutenant-colonel of the Japanese Army, residing in Tokyoto Sinagawa-ku Kami-Osaki 5-631.

"2. I was appointed as a staff officer of Imperial General Headquarters on 2 December 1944, and belonged to the General Affairs Section. My duty was to work as secretary for the Chief of the General Staff, in which capacity I handled all telegrams and other documents which were reported to him.

"3. From the end of 1944 into 1945, the condition of the war came to be unfavorable to our army, communications between the Imperial General Headquarters and the Southern Army or the China Expeditionary Army especially coming to be of the utmost difficulty owing to the activities of the United States air force and submarines. Accordingly, we found no way but to depend on radiograms for communication with the forces in the theaters. However, the quantity of communication by radiogram was naturally limited, and communications with the theaters were almost monopolized by such urgent matters as operations and reports of war conditions.

"4. In such circumstances, no reports about atrocities and other conditions at the front ever reached us. I have, therefore, never seen documents of

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such sort, nor handed them over to the Chief of the General Staff for his inspection. He also never gave directions to anybody relating to those matters.

"5. As for reports to the War Minister from the front relating to court-martial of B-29 pilots, I have neither handled them, nor handed them over to the Chief of the General Staff for his inspection.

"6. We first came to know about the illegal punishment of B-29 pilots after the surrender. No such subject appeared among my conversations with the Chief of the General Staff before that.

"7. The Imperial General Headquarters had no legal officer, nor had it either any organ to handle and investigate matters in respect to trials. Those were under the War Minister."

You may cross-examine.

THE PRESIDENT: Colonel Woolworth.

MR. WOOLWORTH: If the Tribunal please.

CROSS-EXAMINATION

BY MR. WOOLWORTH:

Q What duty were you on, Mr. Witness, prior to the time you became secretary to the Chief of the General Staff?

A I was a staff officer of the 6th Area Army in China.

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Q I didn't understand where that Army was located.

THE INTERPRETER: "In China."

Q What did you do with the copies of the protests from protecting powers which came from the Foreign Ministry and were sent to you protesting against the treatment of prisoners of war?

A I don't know.

Q Do you mean to say you didn't receive copies of those protests?

A It is not in my recollection.

Q Is your memory normal?

A It is normal.

Q The representatives of the Foreign Ministry Prisoner of War Information Bureau have testified that copies of these protests were sent to the Chief of Staff. Do you mean to contradict that testimony?

A I do not think there were any such documents among those I handled myself.

Q Well, who else in the office of the General Staff would handle such matters if they were addressed to the Chief of Staff?

A As documents are sent from office to office, occasions arise where some documents are disposed of before reaching the Chief of Staff and before he passes --

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Chief of the General Staff and before he passes his eyes over it -- without the Chief of the General Staff ever looking through it.

Q Would those document come into your hands necessarily?

A What do you mean by "necessarily"?

Q Well, you say you were the secretary to the Chief of the General Staff. Any documents addressed to him would necessarily go to your office, would they not?

A Not necessarily so.

Q The various witnesses have testified before this Tribunal that the War Minister, as such, had no responsibility for the conduct of the armies in the field, that the responsibility was with the Chief of the General Staff, is that true?

A My belief is that matters -- problems that may arise in armies in the field would be handled on the responsibility of the commanders of those armies.

Q And, they were responsible directly to the Chief of Staff, were they?

A They were not responsible directly to the Chief of Staff -- to the Chief of the General Staff.

Q Who issued orders to the armies in the field?

A I believe that the Chief of the General Staff has the responsibility of communicating orders emanating

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from the High Command.

THE MONITOR: Just a minute.

THE INTERPRETER: "High Command orders."

THE MONITOR: Just a moment. "I believe the Chief of the General Staff has the responsibility of transmitting or communicating orders that had to do with command problems or command of troops."

Q Then, he was merely the channel of communication?

A I believe that these matters have already been considered and studied, and I am not -- I do not possess full knowledge of the details of this matter.

MR. WOOLWORTH: No further examination.

MR. BLAKENEY: May the witness be released on the usual terms?

THE PRESIDENT: He is released accordingly.

(Whereupon, the witness was excused.)

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MR. BLAKENEY: I call as my next witness SHIMOMURA, Sadao, whose testimony is contained in his affidavit, defense document No. 2909.

While he is coming I might say that it appears that by an inadvertence the words, "in July and August of that year," have been omitted from page 1, paragraph 3, line 1, of the English translation. It should therefore read, ". . .in July and August of that year of

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American pilots. . ."

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S A D A O S H I M O M U R A, called as a witness on behalf of the defense, being first duly sworn, testified through Japanese interpreters as follows:

DIRECT EXAMINATION

BY MR. BLAKENEY:

Q State your name please, Mr. Witness.

A SHIMOMURA, Sadao.

Q Please examine defense document No. 2909, which has been handed to you, and state whether that is an affidavit executed by you.

A This is undoubtedly my affidavit.

Q Are the contents thereof true and correct?

A They are true and correct.

MR. BLAKENEY: The affidavit is offered in evidence.

THE PRESIDENT: Colonel Ivanov.

COLONEL IVANOV: Your Honor, the prosecution objects to the introduction of this document as this document deals with the events which took place after the surrender of Japan and is, in fact, a belated condemnation of the arbitrary actions of the Japanese military with regard to prisoners of war, and moreover it is an attempt at a belated reaction with regard to punishment

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of the guilty.

THE PRESIDENT: Major Blakeney.

MR. BLAKENEY: The testimony of the witness treats of a period included within the Indictment herein even if it is after the surrender of Japan, and I submit that it has a direct bearing not only on the attitude of this defendant towards the matters herein treated of but very clearly on the extent of his knowledge. I assume that this question of atrocities and related actions is one in which the bringing home of knowledge to the defendant is peculiarly important. I therefore --

THE PRESIDENT: What is the relevance of his hope and opinion?

MR. BLAKENEY: I am sorry. I didn't catch that, your Honor.

THE PRESIDENT: Have a look at the last paragraph expressing his hope and opinion.

MR. BLAKENEY: Some weeks ago I pressed a rather elaborate argument based on the premise that the opinions, which is another word for intentions, of defendants at any period is relevant as showing their conspiratorial frame of mind or otherwise. I therefore thought that this matter might be of interest to the Tribunal, but if the Tribunal is not interested in it,

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I don't care to press it.

THE PRISIDENT: By a majority the first two paragraphs are admitted and the paragraph last referred to rejected on the usual terms.

MR. BLAKENEY: I assume that shall be the first three, your Honor.

THE PRESIDENT: Well, "Having first duly sworn," that would go in, of course.

CLERK OF THE COURT: Defense document 2909 will receive exhibit No. 3705.

(Whereupon, the document above referred to was marked defense exhibit No. 3705 and received in evidence.)

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MR. BLAKENEY: I will read the exhibit as admitted, omitting the first formal paragraph:

"After General ANAMI, the then Minister of War, committed suicide with a sword on 15 August 1945, the Premier assumed the portfolio for a time and subsequently I was appointed as War Minister on 23 August and assumed office on that same day.

"I learned first after my appointment of the execution in July and August of that year of American pilots in Japan Proper, without trial or by sentence of the courts martial. I thought it my responsibility as Minister of War to punish these violations strictly, and so informed the Chief of the General Staff, General UMEZU. He was very much surprised, and agreed with my opinion, saying about as follows:

"'Until this moment I did not know of these facts at all. Even if these violations were the result of indignation over indiscriminate bombing by American planes, it is quite unjust to punish the pilots without legal processes. Therefore, it is unnecessary to await the instructions of the Allied forces in this matter, and we must voluntarily impose punishment strictly and fairly, after investigating the facts.'"

I now offer in evidence --

THE PRESIDENT: I have a question on this, if

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there is to be no cross-examination.

MR. BLAKENEY: I am sorry; I forgot the witness was here. I beg your pardon, your Honor.

BY THE PRESIDENT:

Q You say you thought it was your responsibility as War Minister to punish these violations strictly. How far did your responsibility as War Minister, as to these violations of the rules of warfare, go?

A Since I became War Minister after the conclusion of the war, I felt it my responsibility to investigate these facts which had occurred during the course of the war, and to punish violators with the means then at my disposal.

Q Did you impose any punishments?

A During my tenure of office no punishments were actually -- no sentences were actually pronounced. No punishments were actually executed or meted out.

Q How long were you Minister for War?

A From the 23rd of August 1945 to the 30th of November 1945.

Q And why did you not have punishments imposed during that period?

A During that period I devoted all my energies to investigations and I was unable to obtain a correct report on the results of these investigations before I

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resigned.

Q There were no prosecutions started?

A No, they were not yet started at that time.

MR. BLAKENEY: Do you wish to cross-examine?

COLONEL IVANOV: Your Honor, the prosecution does not desire to cross-examine.

MR. BLAKENEY: I ask that the witness be released on the usual terms.

THE PRESIDENT: He is released accordingly.

(Whereupon, the witness was excused.)

MR. BLAKENEY: I now offer in evidence the affidavit of the witness WAKAMATSU, Tadaichi, defense document No. 2953.

THE PRESIDENT: Admitted on the usual terms.

CLERK OF THE COURT: Defense document 2953 will receive exhibit No. 3706.

(Whereupon, the document above referred to was marked defense exhibit No. 3706 and received in evidence.)

MR. BLAKENEY: I read the exhibit, which, omitting the formal parts, is as follows:

"At the time of the surrender, I occupied the post of Vice-Minister of War.

"On 14 August 1945, Vice-Chief of the General

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Staff, Lieutenant-General KAWABE Torashiro, gave me a suggestion that an agreement be made in written form between the senior generals of the army so that the action of the army might be under complete control. He added that this was the intention of Chief of the General Staff UMEZU.

"On that day, by chance, Field Marshal HATA, Commander in Chief of the 2d General Army, was in Tokyo and I thought it a good idea to have the above agreement made on the occasion of a meeting which was to be held at noon of the same day, at which HATA, Field Marshal SUGIYAMA, the Commander in Chief of the 1st General Army, and the Big Three of the Army (War Minister ANAMI, Chief of the General Staff UMEZU, and Inspector-General of Military Education DOHIHARA) were to attend. So I drew up the document 'The Course of Action of the Army' (defense document No. 2906) and made a suggestion to that effect. No one objected to it, and all of them agreed and signed the paper.

"At this moment, Chief of the General Staff UMEZU called my attention to the necessity of getting the signature of Commander of the General Air Force, since the control of the conduct of the Air Force also was important. Therefore, after the meeting I went to General KAWABE, Masakazu, Commander of the General Air

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Force, with this paper and explained the circumstances, whereupon he also signed it.

"From that time this document has been in my custody."

The document, "The Course of Action of the Army," referred to in the testimony of General WAKAMATSU, is offered in evidence, defense document No. 2906.

THE PRESIDENT: Admitted on the usual terms.

CLERK OF THE COURT: Defense document 2906 will receive exhibit No. 3707.

(Whereupon, the document above referred to was marked defense exhibit No. 3707 and received in evidence.)

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MR. BLAKENEY: It is as follows:

"14:40 hours 14 August 1945. At the drawing-room of "ar Minister.

"The Imperial Army will conduct itself to the last according to the decision of the Emperor.

"War Minister

"Chief of General Staff

"Inspector-General of Military Education

"Commander-in-Chief of the 1st General Army

"Commander-in-Chief of the 2d General Army

"Commander-in-Chief of the General Air Force" with their seals.

I next call the witness IKEDA Sumihisa, whose testimony is embodied in his affidavit, defense document No. 2962.

I should mention that the last sentence of the affidavit, having been stricken from the original, should not appear in the English translation and therefore will not be offered.

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

DIRECT EXAMINATION

BY MR. BLAKENEY:

Q Please state your name and residence.

A My name is IKEDA Sumihisa. My address is 472 4-chome, Saginomiya, Nakano-ku, Tokyo.

MR. BLAKENEY: Let him be handed defense document 2962, please.

(Whereupon, a document was handed the witness.)

Q Examine that and state whether or not it is your affidavit, duly executed by you.

A This is my affidavit.

Q Are the contents true and correct?

A Yes, as you say.

MR. BLAKENEY: I offer in evidence the affidavit, defense document No. 2962, except, as previously mentioned, the last sentence thereof.

THE PRESIDENT: Admitted on the usual terms.

CLERK OF THE COURT: Defense document 2962 will receive exhibit No. 3708.

(Whereupon the document above referred to was marked defense exhibit No. 3708

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and received in evidence.)

MR. BLAKENEY: I read the affidavit, omitting the formal parts:

"1. I am a former lieutenant-general of the Japanese Army, and served under Commander-in-Chief of the Kwantung Army UMEZU as Vice-Chief of his staff from 1 July 1942 to 18 July 1944.

"On 17 July 1944, a telephone call came from Tokyo conveying an order for General UMEZU to come up to Tokyo as soon as possible, and which simultaneously conveyed an informal order for his appointment as Chief of the General Staff. At that moment, as it happened, I was calling on him on other business, and he consulted with me, saying as follows:

"'Since from the very beginning I have opposed the war against the United States, I hate to accept this appointment. Moreover, the war is now in a condition unfavorable to us; there are no more measures which I can take as Chief of the General Staff. In every way I do not like to accept it. Is there any way to refuse?'

"Then I replied: 'As the War Minister is one of the government officials, you can upon being consulted concerning appointment to that post give your opinion about accepting it, and if necessary you can refuse it. The Chief of the General Staff, however, is a military

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official, and not only is preliminary consultation never had, but also it is not permissible to refuse it after once an informal order has been given.

"He answered, quite displeased: 'You are right. I will go to Tokyo.'

"He added his further opinion as follows: 'The stage of the war is quite unfavorable to us. It is necessary to end this war as soon as possible. For that purpose diplomatic or other sorts of measures will be required.'

"2. After that, on 28 July 1945, I was appointed President of the Combined Planning Board of the Cabinet, serving under the SUZUKI Cabinet. Until the surrender I attended every cabinet meeting and also I attended the two Imperial Conferences; especially I served the part of liaison between the Army and the Government. In order to carry out this purpose I often met and talked with War Minister ANAMI and Chief of the General Staff UMEZU, and I was quite well informed about the opinion and the delicate circumstances of the Army concerning the surrender.

"Once General UMEZU told me: 'Of course I have no objection to ending the war; as for the terms of it, however, the country might fall into a most terrible situation, depending on them. Therefore, the

war should be brought to its conclusion on the best conditions possible.'

"When some of the military officers were anxious about the compromising attitude of the Cabinet and the Jushin, and advocated that the Army should continue the war, even by carrying out a coup d'etat, UMEZU told me as follows: 'Such conduct is not proper at all. The circumstances of today do not permit such conduct. The whole country should follow the determination of the Imperial Conference without fail.'"

You may cross-examine.

THE PRESIDENT: This is a convenient time to adjourn, but before we do there are some decisions of the Tribunal I desire to announce.

There will be no review of any decision rejecting a document in ARAKI's case or any other case.

All the accused will be deemed to be men of unblemished character except so far as the evidence indicates the contrary.

In ARAKI's case further evidence will be received in reply to the supplementary affidavit of the witness TAKEBE.

In HIROTA's case we will receive the evidence of those witnesses who were abroad when his individual case was being presented and whose testimony was not

then available.

In OSHIMA's case we will receive the two affidavits which Mr. Cunningham proposes to offer.

We will recess for fifteen minutes.

(Whereupon, at 1050, a recess was taken until 1110, after which the proceedings were resumed as follows:)

Greenberg & Yelden

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

THE PRESIDENT: Colonel Ivanov.

BY COLONEL IVANOV (Continued):

Q Mr. Witness, in paragraph 1 of your affidavit you say that you were on the staff of the Kwantung Army under UMEZU from July 1, 1942. Weren't you, Mr. Witness, from September 1941 to July 1942, with the rank of Major General, Chief of the Section of the Kwantung Army Headquarters engaged in the study of the occupation regime on Soviet, Mongolian and Manchurian territories?

A As you say.

Q This is the same section which formerly was the General Staff Commission which with your participation was engaged in studying the occupation regime on the Soviet territory, isn't that so?

A Yes, as you say.

Q Thus, Mr. Witness, when you were on the staff of the Kwantung Army from September 1941 to July 1944 you were under General UMEZU, isn't that so?

A Yes, as you say.

Q Did you enjoy General UMEZU's special confidence at that time and do you enjoy it now in your capacity as one of the counsel of the accused UMEZU?

A Whether or not I enjoy General UMEZU's confidence depends on General UMEZU's own state of mind and I cannot say anything on that point.

Q But General UMEZU asked you to become one of his counsel at this trial, isn't that so?

A Yes.

Q Isn't an example of the fact that UMEZU especially trusted you the discussion he had with you in 1944 of the question whether UMEZU should or should not accept the post of Chief of the General Staff, about which you write in your affidavit?

A I believe he also consulted the Chief of Staff -- his Chief of Staff -- besides consulting myself and, therefore, from that consultation alone you cannot judge whether or not General UMEZU placed confidence in me. As for myself, of course, I have continued my work in the belief that I am trusted by General UMEZU.

Q Mr. Witness, tell us, wasn't there an element of favoritism on the part of UMEZU when you were appointed Chief of the Cabinet Planning Board on July 28, 1944? In other words, immediately after General UMEZU arrived in Tokyo.

A May I have the date repeated?

Q In section two of your affidavit is mentioned

the date July 28, 1945 when you were appointed President of the Combined Planning Board of the Cabinet.

A I do not know whether it was because of General UMEZU's recommendation that I was appointed to that post.

Q In paragraph 1 of your affidavit you give UMEZU's statement made in July 1944 that he, that is to say, UMEZU, allegedly was against war with the United States of America from the very beginning, isn't that so?

A I wrote down what UMEZU had told me on that occasion and it was to that effect.

Q Mr. Witness, did UMEZU's statement also include England?

A The word America which you found there means, of course, the allied nations and among them England is included.

THE PRESIDENT: The word is the United States, by the way.

Q Mr. Witness, do you know whether UMEZU's objections to the entry and prosecution of war were made before the outbreak of the Pacific War or in the first year of that war?

A Before this period I had been Chief of the Special Service Detachment in Mukden, and, therefore, I had occasions later also to meet General UMEZU quite frequently. After joining the Kwantung Army, I also had frequent occasions to see General UMEZU, but he was basically opposed to the idea of a war against -- correction: of a Pacific War.

THE MONITOR: Strike out "but" and replace it with "and."

Q In what year did you begin your work as Chief of Mukden's Special Service Organ?

A In August, 1940 to July, 1941.

Q Were you under General UMEZU in his capacity as Commanding General of the Kwantung Army as far back as 1940?

A Yes.

Q Do I understand you correctly,, Mr. Witness, that you are unable to give any specific example of UMEZU's objections to the entry of Japan into the Pacific War or objections to the prosecution of that war by Japan?

A I have often heard him express such opinions in the course of general conversations.

Q Do you know, Mr. Witness, that UMEZU, from the very beginning of the Pacific War, took measures to mobilize all the resources of Manchukuo for the prosecution of that war?

A Until the very outbreak of the Pacific War, the Kwantung Army did not know that such a war was going to break out, and, therefore, the Kwantung Army never utilized the resources of Manchukuo for the purposes of preparing for the Pacific War.

Q I mean, in particular, the beginning of the Pacific War; I mean the first stage after the outbreak of the Pacific War.

A After the outbreak of the Pacific War, we, naturally, cooperated.

Q Mr. Witness, don't you know that in accordance with order issued by UMEZU, Commanding General of the Kwantung Army, on December 8, 1941, TAKEBE, Chief of the Department of General Affairs of Manchukuo, made public a declaration on behalf of the government pointing out in that declaration the inseparable relations with Japan and readiness to render all sorts of assistance to Japan in the prosecution of the Pacific War with all her resources?

A I know.

Q Do you confirm that this was exactly as I said?

A I replied to you that it was but natural because, since Manchukuo was an ally of Japan, those measures were steps which, naturally, Manchukuo should take.

Q Mr. Witness, was not that measure prepared by UMEZU beforehand as may be seen from the telegram received by him as testified by one of the witnesses at this trial who said that at the end of November UMEZU already knew that the war against the United States of America would soon begin?

A Since I was not then in a position of responsibility as vice-chief of staff of the Kwantung Army I cannot say for sure, but from what I was able to ascertain later the Manchukuo authorities were very much surprised to hear of the outbreak of the war -- correction: of Japan's participation in the war from a general broadcast made on the 8th of December and the declaration to be made by the Emperor of Manchukuo and other necessary preparations were rushed through during the night of December 8.

Correction: "Preparations" should be changed to "measures."

Q Are you aware, Mr. Witness, that in November 1941 UMEZU received a telegram from Tokyo informing him that the war would soon start?

MR. BLAKENEY: If the Tribunal please.

THE PRESIDENT: Major Blakeney.

MR. BLAKENEY: I suggest this is all wholly beyond the scope of the affidavit.

COLONEL IVANOV: Your Honor, in the affidavit is given UMEZU's statement that he, UMEZU, from the very beginning was against war with the United States of America. What I am doing is to try to test the credibility of the witness and the correctness of that statement in the affidavit, and from the replies given to my questions by the present witness I begin to question the correctness of the statement made in the affidavit. In such a way, your Honor, my questions have direct bearing upon Section 1 of the affidavit.

THE PRESIDENT: I can't see how the question objected to bears or what is said in the affidavit or in any way tests this man's credibility.

COLONEL IVANOV: Your Honor, I will pass over to some other question.

Q Mr. Witness, did not Manchuria supply Japan in the days of war with food stuffs and various strategic raw materials for munitions industry?

MR. BLAKENEY: To that question also and questions of similar nature I object as being beyond the scope of the affidavit.

COLONEL IVANOV: Your Honor, I am trying to clarify specific actions of the accused UMEZU in his contributing to the prosecution of the Pacific War.

THE PRESIDENT: Objection sustained. The question is disallowed.

Q Mr. Witness, did not UMEZU and TOJO in 1942 send you in your capacity of Chief of the 5th Section of the Kwantung Army to the south seas area for studying combat experience of the Japanese Army?

A I was unable to get the interpretation. Did you say the experiences in battle?

Q For studying combat experience of the Japanese Army:

A I did tour the southern areas but my object was different.

Q And what was the purpose of your trip which was arranged by TOJO and UMEZU?

A I toured the south on orders from the War Minister. The object of my trip was to inspect conditions of military administration in those areas.

Q Please give us the areas which you visited.

THE PRESIDENT: Oh, Colonel. They were all

soldiers engaged in operations and the particular operations don't interest us unless they bear on this affidavit and they don't appear to.

COLONEL IVANOV: Your Honor, I must respectfully invite the attention of the Tribunal to the fact that all these were specific measures on the part of UMEZU connected with his contributing to the prosecution of the Pacific War and to the further development of Japanese aggression on the continent in particular against the U.S.S.R.

THE PRESIDENT: Well, he was just a soldier in that war like other Japanese generals, including the witness. Do you suggest he could refuse to fight if he didn't believe in the war? I suppose he could.

COLONEL IVANOV: Your Honor, the present witness in 1942 was major general and he directly executed the orders given by TOJO and UMEZU, and the actions of these two accused are of interest to the Tribunal.

THE PRESIDENT: We know the witness and TOJO and UMEZU fought throughout the war. We don't want to know just how they fought and where. TOJO for part of it was War Minister and Prime Minister but he was taking part in the war nevertheless. We know that. We don't want to have the details gone into.

COLONEL IVANOV: I will pass over to the next question., your Honor.

Q Mr. Witness, aren't you aware that both UMEZU and TOJO were enraptured with the victories of Japanese armies at the first stage of the Pacific War and tried to utilize as soon as possible the combat experience of the Kwantung Army then on the offensive?

Correction: Of the Japanese Army then on the offensive.

A I don't know what the two generals may have thought because I never asked them, but it is only natural that once a war has broken out they thought that the fight must be carried on until victory was achieved. At least that is what I can suppose.

Q I will ask my last question. Mr. Witness, do you know that UMEZU in February, 1942, addressed the extraordinary congress of the Concordia Society in Hsinking with a speech containing directives as an admirer of the New Order in Asia, expressing his admiration for the victories of the Japanese Army and Navy over the armies of the U.S.A. and England?

MR. BLAKENEY: I object to that question as being beyond the scope of the affidavit.

COLONEL IVANOV: I believe, your Honor, that this question of mine meets the assertion that is --

directly meets the assertion that is made by the present witness in Section 1 of his affidavit.

THE PRESIDENT: The question should be allowed but I don't know that the answer will help. It is very difficult to say it isn't within the scope of the affidavit.

Q Will you please answer my question, Mr. Witness?

A I know that he made a speech before the Concordia Association but I do not know the contents of that speech.

COLONEL IVANOV: I invite the attention of the Tribunal to exhibit No. 731-A.

That concludes my examination of the present witness, you Honor.

THE PRESIDENT: Major Blakeney.

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REDIRECT EXAMINATION

BY MR. BLAKENEY:

Q Mr. Witness, was the president of the Cabinet Combined Planning Board appointed by the chief of the general staff?

A No.

Q By whom was he appointed?

A By the Prime Minister.

MR. BLAKENEY: May the witness be excused?

THE PRESIDENT: He is excused on the usual terms.

(Whereupon, the witness was excused.)

THE PRESIDENT: Have you any further material on this?

MR. BLAKENEY: Yes, sir, I have one further document remaining, the first on my order of proof. It is the affidavit of the witness KANEMITSU, Tsuneo, whose attendance for cross-examination I understand is not required. I offer it in evidence.

THE PRESIDENT: Admitted on the usual terms.

CLERK OF THE COURT: Defense document 2961 will receive exhibit No. 3709.

(Whereupon, the document above referred to was marked defense exhibit No. 3709 and received in evidence.)

MR. BLAKENEY: I read the exhibit which, omitting the formal parts, is as follows:

"1. I was Vice-Speaker of the House of Representatives from May 1937 to August 1939, after which I became Minister for Overseas Affairs and Welfare Minister. I was also a member of the Seiyukai party for a long period, and at one time held the position of director of that party. I have been associated with the accused UMEZU Yoshijiro since some time ago; especially while he held the office of Vice Minister of War, my position brought me into frequent contact with him. I am therefore very well acquainted with his

character and political opinions, concerning which I shall testify.

"2. After the Manchuria Incident such occurrences as the 15 May 1932 Incident, the Army pamphlet problem and the assassination of Director of the Military Affairs Bureau NAGATA became rather frequent, giving much concern to us of the political world and the intelligent public in general. In these circumstances occurred the unprecedented, disgraceful incident of 26 February 1936, giving the political world a tremendous shock and making all leading men anxious over the future of the armed forces. It looked as if in such circumstances it would be most difficult to control the activities of the Army and restore it to its proper condition. The news of Lieutenant General UMEZU's appointment as Vice Minister was therefore welcomed by us.

"3. After his appointment as Vice Minister General UMEZU told me that he would effectively control and govern the Army by extinguishing factionalism and by suppressing and preventing 'young officers' movements and restoring the Army to its proper function and condition. Soon afterward, however, malicious rumors began to be spread, in the form of writings of unknown origin, many of them attacking the character and actions

of Vice Minister UMEZU. On seeing these pamphlets and hearing these rumors, I went to see General UMEZU, showed him the documents and advised him to look into the origin of the rumors and to protect himself against them. This was, I believe, in the spring of 1938. I was told by the Vice Minister that the rumors were entirely groundless, and that although the correction of the Army was no easy task, he intended to carry on no matter what charges might be made or ill things said of him.

"4. Concerning General UMEZU's political ideas I am well informed, having had several opportunities to discuss the matter with him. At the same period just referred to, writings appeared charging that the Army disapproved of political parties and desired their abolition. Some of these also I showed to Vice Minister UMEZU, and was told by him that no such idea was entertained by the high officials of the Army. So far as his personal ideas went, he told me they were that military officers should not meddle in political matters; that the Diet should be respected; and that as long as a parliament existed, the existence of political parties was necessary. So far as my contact with him was concerned, he was always cooperative toward political parties, and he never said to me a word

suggesting the disapproval of them or that the Army should participate in such questions."

I have remaining in my order of proof one witness who, however, is still unable to attend the Tribunal and whose testimony I shall, therefore, have to defer still further.

THE PRESIDENT: Why not tender his affidavit and then let us discover whether any cross-examination is desired?

MR. BLAKENEY: I am quite willing to follow that course, naturally.

COLONEL IVANOV: Your Honor, the prosecution insists that the witness be produced for cross-examination.

THE PRESIDENT: Well, that is the end of the matter.

MR. BLAKENEY: With that exception then I rest the case of General UMEZU.

THE PRESIDENT: There are some outstanding matters in the defense general phases as well as in the defense individual phases. Among other matters is one dealing with the economic phase. We will take that after lunch if the parties are ready.

MR. BLAKENEY: We also have, your Honor, a number of matters reserved in the Soviet phase, but,

with the Tribunal's leave, we had proposed putting in first the individual matters and then that general matter.

THE PRESIDENT: Well, we will take the economic matter immediately after lunch. I understand that is ready.

We will adjourn until half past one.

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

Reichers & Spratt

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.

THE PRESIDENT: Mr. Brannon.

MR. BRANNON: On December 19, if the Tribunal please, I requested that the accused SHIMADA be allowed to take the witness stand again for the purpose of answering certain statements made by the accused TOGO. The President said to me that "I think we should decide the question when it arises," and I am renewing my application at this time so that I might have proper time to serve it on the prosecution and interested parties.

I would like to add, if the President please, that the issue which is confronting me is not interpreted personally as being material to the case unless the statement of the accused TOGO is taken by the Tribunal as affecting credibility.

THE PRESIDENT: We cannot tell what effect we will attribute to any part of the evidence.

MR. BRANNON: I renew my application for the accused SHIMADA to take the stand in his proper

order at the time of reopening.

THE PRESIDENT: There is no opposition by the Tribunal to the recalling of SHIMADA so far as I am aware. But we would like for you to indicate what particular statement by TOGO you are referring to.

MR. BRANNON: It occurs on page 35,838 of the record.

THE PRESIDENT: Is that the evidence of the threat?

MR. BRANNON: Yes.

THE PRESIDENT: Mr. Logan.

MR. LOGAN: During the presentation of evidence in the economic section of the Pacific phase for the defendant, certain documents were offered and withdrawn upon the suggestion that the prosecution and defense endeavor to attempt to reach an agreement with respect to them. After due consideration, it was found that a complete summary of these documents would be a practical impossibility; so the defense and prosecution have agreed that they be offered in evidence and not read, subject, of course, to the approval of the Tribunal.

Defense document 500-E is a study of the trade of Japan proper including that with Korea and

Formosa prepared for the Foreign Economic Administration by members of the staff of the United States Tariff Commission in September 1945. The factual information and data contained in this document is offered in evidence and it is requested that any opinions contained therein be disregarded by the Tribunal. We ask that the document be marked for identification and re-offer the following pages in evidence:

Page	
1 and 2 with respect to	Rice
14	Fodder
15	Cattle
25	Sugar
43	Coal
55	Fertilizer
70	Soda ash and caustic soda
73	Salt
74	Dyes
84	Ethyl alcohol
99	Petroleum and petroleum products
105	Iron and Steel
107	Iron ore
123, 124	Lead

Page	
108	Pig iron
108	Iron and Steel scrap
110	Iron and Steel products
125	Tin
125	Zinc
127	Aluminum
131	Autos and parts
148	Pumps
155	Iron manufactures
156	Lumber
166	Wood Pulp
171	Raw cotton
220	Rubber footwear

THE PRESIDENT: Admitted on the usual terms.

CLERK OF THE COURT: Defense document 500-E will receive exhibit No. 3710 for identification only. The excerpt therefrom named by the defense attorney will receive exhibit No. 3710-A.

(Whereupon, the document above referred to was marked defense exhibit No. 3710 for identification; and the excerpt therefrom was marked defense exhibit 3710-A and received in evidence.)

MR. LOGAN: We ask that defense document 500-C be marked for identifification and offer in evidence only the marked portions thereof. A summary of the contents of this document and the purposes for which this document is offered are contained on pages 24,850, 24,851 of the record.

THE PRESIDENT: Admitted on the usual terms.

CLERK OF THE COURT: Defense document 500-C will receive exhibit No. 3711 for identification only; the marked portions thereof will receive exhibit No. 3711-A.

(Whereupon, the document above referred to was marked defense exhibit No. 3711 for identification; and the marked portions thereof were marked defense exhibit No. 3711-A and received in evidence.)

MR. LOGAN: We ask that defense document 500-F be marked for identification and offer in evidence only the marked portions thereof to be found on pages 1 to 3 inclusive, 6 to 15 inclusive, 18 to 22. A description of this document and its contents is set forth on page 24,901 of the record.

THE PRESIDENT: Admitted on the usual terms.

CLERK OF THE COURT: Defense document 500-F will receive exhibit No. 3712 for identification only;

and the marked portions thereof will receive exhibit No. 3712-A.

(Whereupon, the document above referred to was marked defense exhibit No. 3712 for identification; and the marked portions thereof was marked defense exhibit No. 3712-A and received in evidence.)

MR. LOGAN: We ask that defense document 500-A-D be marked for identification and offer in evidence the last sentence on page 7 thereof.

CLERK OF THE COURT: Defense document 500-A-D will receive exhibit No. 3713 for identification only; and the last sentence on page 7 thereof will receive exhibit No. 3713-A.

(Whereupon, the document above referred to was marked defense exhibit 3713 for identification; and the last sentence on page 7 thereof was marked defense exhibit No. 3713-A and received in evidence.)

MR. LOGAN: We re-offer in evidence defense document 500-A-1 to 500-A-37, summary of which is set forth on pages 24,837-8-9 of the record.

THE PRESIDENT: Admitted on the usual terms.

CLERK OF THE COURT: Defense document 500-A-1 to 500-A-37 will receive exhibit No. 3714.

(Whereupon, the document above referred to was marked defense exhibit No. 3714 and received in evidence.)

MR. LOGAN: I might state at this time that all opinions in those documents we are asking the Tribunal to disregard.

We ask the Tribunal to take judicial notice of the following facts as revealed in defense document 1873-A-B-C-L-E-F-G:

"1. That on May 5, 1911 a Treaty of Commerce and Navigation was entered into between Japan, the United Kingdom of Great Britain and Ireland, the British Dominions beyond the seas and India, providing for trade and commerce between these countries and giving either of the High Contracting parties the right to terminate it separately at any time upon the giving of twelve months' notice to that effect, which treaty was supplemented by agreement between the parties July 29, 1927; that the Treaty and supplement applied to approximately 45 British territories including Canada; that an agreement was entered into concerning commerce and trade between Japan and India signed July 12, 1934, and which provided for six months' notice of termination; that there was a Treaty of Commerce and Navigation between Japan and the Netherlands duly ratified on October 8, 1913, which treaty contains articles guaranteeing most favored nation treatment and the treaty was also applicable to the Dutch East Indies; that this treaty was to remain in force until the expiration of a year

after either of the High Contracting Parties gave notice to the other of its intention to terminate it; and that there was an exchange of notes for a commercial modus vivendi between Japan and New Zealand dated July 24, 1928, guaranteeing the most favored nation treatment in the matters of commerce, custom and navigation which was to remain in force for a period of three months after notification of abrogation.

We ask the Tribunal to take judicial notice of the following facts as revealed in defense document 1733, 1708, 1707, 1712, 1732A, 1732B:

1. That on July 26, 1941 the Honorable British Ambassador in Japan delivered a note to Japanese Foreign Minister TOYODA signifying the intention of the United Kingdom of Great Britain, the British Dominions and the Government of India to abrogate the Treaty of Commerce and Navigation of April 3, 1911, and the agreements concerning Commerce and Trade between Japan and India, and Japan and Burma, signed respectively July 12, 1937 and June 7, 1937, and indicating that the aforesaid agreements would continue in force for a further period of six months from July 26, 1941.

2. That on July 26, 1941 a statement was issued by the British Exchequer that on and after that date banks were prohibited from engaging in business

transactions of gold and bonds connected with Japan without permission from the Exchequer; that relevant measures were being taken in the various areas of the British Empire, and that the Dutch Government authorities were discussing plans for similar measures.

3. That on the same day, July 26, 1941, Foreign Minister TOYODA was informed by KAMIMURA, Japanese Charge d'Affaires in England that the British Government had announced a freezing order against Japan's funds.

4. That on July 29, 1941 the Honorable Craigie, British Ambassador to Japan, informed Foreign Minister TOYODA of the abrogation of the supplementary treaty between Japan and Great Britain signed July 30, 1935, effective upon the expiration of a one-year term.

5. That on July 30, 1941 Counsel General ISHIZAWA informed Foreign Minister TOYODA of a decree proclaimed in the Netherlands Indies on July 28, 1941, controlling financial transactions of foreign residents.

The Tribunal will also recall that during the presentation of the economic section certain documents were admitted tentatively due to the fact that there was not a full representation on the Bench

at that time. The learned prosecutor, Mr. Brown, wishes to say a few words with respect to those documents.

THE PRESILENT: Mr. Brown.

MR. BROWN: If it please the Tribunal, the prosecution desires to take a practical view of these documents which have been tentatively admitted in evidence. We objected to their introduction in evidence at the time they were tendered for lack of relevancy and in some instances as containing opinion evidence. As these documents were read into the record, the opportunity for saving the time of the Tribunal by decision is lost. To go back now at this late date in the trial and reargue the matters of relevancy would, in the opinion of the prosecution, unnecessarily consume the Tribunal's time. The matters of law connected therewith will be argued in a comprehensive manner in the near future, and for that reason the prosecution is willing to and does withdraw its objections and suggests that the documents be admitted for whatever value they have, and that the Tribunal disregard opinion evidence. At the proper time in the course of the legal argument contained therein, the weight and effect of these documents will be discussed.

THE PRESIDENT: Mr. Logan.

MR. LOGAN: There is one other matter, if the Tribunal please, which was inadvertently omitted in the

original opening of the defense case. We ask the Tribunal to take judicial notice of the fact that under the Japanese Criminal Code as it existed during the period covered in the Indictment there is no provision for a crime of conspiracy, as recognized in the Anglo-American law, but that there is a crime of "imbo" (i.e. secret plot), which is comparable to that of "complot" in European Continental Law. That under the Japanese Criminal Code there are three provisions for this type of crime: (1) "imbo" for rebellion (Article 78); (2) "imbo" for crimes against the external security of the state (Art. 88); and (3) "imbo" for private warfare with a foreign state (Art. 93). In these provisions by "imbo" is meant a combination of two or more persons with intent to commit a crime, and when the intended principal crime is perpetrated the "imbo" is absorbed into it and not punishable independently. That the punishment for the aforesaid crimes is imprisonment for not less than one year and not more than ten years.

During the war the Wartime Special Criminal Law added Article 7, prescribing as punishable any "imbo" with intent to change or disturb the government of the nation, which law was abolished after the war.

THE PRESILENT: Well, without admitting the

relevancy or materiality of any of these matters of which you desire the Tribunal to take judicial notice, the prosecution could admit that they are facts, if they be facts. You need not worry about the judicial notice under those circumstances.

MR. BROWN: Your Honor, let me say first of all that the prosecution does not object to the treaties referred to previously by Mr. Logan being taken judicial notice of, although we do dispute their relevancy to this case.

THE PRESILENT: What about the Japanese conspiracy law?

Wolf & Leffler

MR. BROWN: As to that, your Honor, we object to that being taken judicial notice of on the ground that, with all respect, this Court should not take judicial notice in this case, in our submission, of the existing law in any national jurisduction. These are matters, in our submission, that will arise in legal argument, and counsel will be free, of course, to cite legal references at the proper time from any national jurisdiction.

THE PRESIDENT: Well, you admit the Treaties without admitting their relevance or materiality.

MR. BROWN: Yes, your Honor.

THE PRESIDENT: You withdraw your objections to the documents tentatively admitted.

MR. BROWN: Yes, your Honor.

THE PRESIDENT: But preserve your right to contest their probative value or their relevance or their materiality in the course of your summation.

MR. BROWN: That is so, your Honor.

THE PRESIDENT: You make no admission about the Japanese law of conspiracy.

MR. BROWN: No, your Honor; and submit that it is irrelevant also.

MR. LOGAN: On the question of Japanese law, if the Tribunal please, we contend that it is highly

relevant and material, as it was in the Nuernberg case; by that I mean, as the general conspiracy as it existed in Germany was in that case. And it is my recollection that the Tribunal were greatly impressed with the fact that there was no law of conspiracy in Germany, such as is recognized in Anglo-American law, in view of the fact that none of the accused were aware in their own country that such a law existed outside and that they acted accordingly.

THE PRESIDENT: You can know international law as part of their own system.

MR. LOGAN: The defense contention is, of course, that there was no such crime of conspiracy under international law, but we don't have to go into that at this particular time. But this is a question of whether or not there was such a crime of conspiracy under Japanese law which I presume they would presume to have known at the time of these acts which they are alleged to have committed.

For that reason, we are asking the Tribunal to take judicial notice of that law. I might --

THE PRESIDENT: We will consider that matter, Mr. Logan.

MR. LOGAN: I might also say that we have approached this problem of proving this law by asking the

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Tribunal to take judicial notice of it to obviate the necessity of calling a witness to prove it.

THE PRESIDENT: You can produce the sections of the Japanese code that are relevant. That would be your method of proof, wouldn't it, with some certificate from the Japanese office?

MR. LOGAN: Our method of proof would be to call a witness, introduce the criminal code in evidence, have the witness testify that there is no section comparable to the Anglo-American crime of conspiracy, and to show from the sections I have quoted that those are the only sections in the criminal code referring to "imbo" or secret plot.

THE PRESIDENT: Probably there will be no contest about what the criminal law of Japan provides. The prosecution are not disclosing their hand on that yet.

MR. LOGAN: I might say that closes the economic phase.

THE PRESIDENT: Mr. McManus.

MR. McMANUS: Mr. President.

In view of your Honor's decision this morning, Mr. President, granting the application to reopen the case of ARAKI because of the submission of the supplemental affidavit, exhibit 3371, by the prosecution of the witness TAKEBE to his original affidavit, exhibit

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670, I now offer defense document 2960 which is an interrogatory of KOSAKA, Yasumasu, a prefectural governor who attended this meeting and which interrogatory will directly contradict the assertions of TAKEBE made in said supplemental affidavit wherein he stated that the accused ARAKI made an aggressive speech at the prefectural governor's meeting held at the Toyama Military School in 1933.

THE PRESIDENT: Mr. Brown.

MR. BROWN: Your Honor, the prosecution objects to the admission of this document and the calling of this witness. On the first occasion when the evidence about this conference was given, the essential fact was stated that ARAKI had made a speech at this conference. In our submission, exhibit 3371, to which this purports to be an answer, is merely an elaboration of exhibit No. 670, and for that reason we see no reason for this witness being called. In our submission, he could have been called in reply to the evidence as disclosed in exhibit 670 previously.

THE PRESIDENT: If you invite us to disregard the supplementary affidavit to that extent, it will make the position easy, Mr. Brown, but if you rely on it, there must be the right to reply to it.

MR. BROWN: Your Honor, in order to clarify the

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position, I may say the prosecution wishes to adhere to the evidence contained in the supplementary affidavit.

THE PRESIDENT: Then, there must be the right to reply to it as a matter of course.

The objection is overruled and the document admitted on the usual terms.

CLERK OF THE COURT: Defense document 2960 will receive exhibit No. 3715.

(Whereupon, the document above referred to was marked defense exhibit No. 3715 and received in evidence.)

MR. McMANUS: I shall now read exhibit No. 3715:

"Q. Will you state your career as a prefectural governor?

"A. I became the Governor of Fukushima Prefecture in 1923, and then governors of Ehime, Okayama, and Aichi Prefectures, after which I became the Governor of Tokyo Prefecture in 1932 and stayed in that position until 1935."

Can your Honor bear with me a moment? The prosecution would like to know something about this witness.

THE PRESIDENT: Mr. Brown.

MR. BROWN: Your Honor, this is the first intimation we had that the witness was not in court. We

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imagined that when the document was admitted that the witness would take the witness stand.

THE PRESIDENT: They never tender the affidavit for the witness to be called until he is in the box.

You should decide later whether you want to cross-examine him, after you have heard the answers to the questions. Then, we may direct him to be called for cross-examination.

MR. BROWN: If your Honor pleases.

MR. McMANUS: (Reading continued)

"Q. Did you attend the Prefectural Governors' Conference in 1933?

"A. Yes, I did.

"Q. How many prefectural Governors' Conferences were there in 1933, and where were they held and when?

"A. There was only one in 1933, as was the usual practice, and it was held in April in Tokyo.

"Q. What was the ordinary procedure of the Conference when you were the prefectural governor?

"A. The Conference was always held at the official residence of the Prime Minister. The conference was usually initiated by an address of the Prime Minister to be followed by the addresses of the State Ministers who had under their jurisdiction matters related

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to the Prefectural Governors.

"Q. Did the War Minister make any address?

"A. The War Minister usually made a brief address about the matters under his jurisdiction such as conscription, especially about the health of adults for conscription.

"Q. At the occasion of the Prefectural Governors' Conference in April, 1933, was there any address, either by the Prime Minister or by other State Ministers, concerning the government policies, especially concerning the Soviet Union and Manchukuo?

"A. There were speeches by the Prime Minister and the Foreign Minister concerning the official recognition of Manchukuo and withdrawal from the League of Nations.

"Q. Did the War Minister make any address?

"A. The War Minister made a speech concerning aid of the families of soldiers, especially of bereaved soldiers as well as, as was usual, the health of adults for conscription. He also said that at the recent combats in Manchuria an unexpected number of soldiers had suffered from frost bite and that the soldiers at the interior of Manchuria were experiencing hardship on account of shortage of supply.

"Q. Was there any occasion in 1933 when a

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Prefectural Governors' Conference was held at the Toyama Army School?

"A. Absolutely not.

"Q. Well, if it were not the formal Prefectural Governors' Conference, perhaps some other meeting where the Prefectural Governors met?

"A. Yes. There was an occasion when the Prefectural Governors, during the recess of the Prefectural Governors' Conference, were invited by the War Minister to a lunch at Toyama Army School.

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"Q. What was the purport of the invitation?

"A. It was to express the War Minister's thanks to the activities of the Soldiers' Relief Association.

"Q. What was the Soldiers' Relief Association?

"A. It was an association organized with civilians to take care of the poor and needy families of the soldiers, and the prefectural-governors invariably held the position of being advisers to the Association.

"Q. Was there any speech made by War Minister ARAKI on the occasion of that lunch party?

"A. While we were at the lunch table, the War Minister expressed his thanks to the activities of the prefectural governors in connection with the Soldiers Relief Association. It was more of the nature of a greeting than a speech.

"Q. Was Mr. Rokuzo TAKEBE present at that party?

"A. Yes, he was.

"Q. I will now show you exhibit No. 670 and exhibit No. 3371. Will you please state if such matter as is contained in those documents was spoken by the War Minister?

"A. No. There was no reference to such

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matter as this. Only I recollect that there was hanging in the waiting room a map of Manchoukuo, on which was marked the disposition of bandits.

"Q. On that occasion of the lunch party, either before or after the lunch, did the War Minister tell the prefectural governors secretly anything about the Soviet Union or Manchoukuo?

"A. No. Immediately after we were given lunch, we were shown a new style gymnastic performed by the students of the Toyama Army School and then the party was broken up, and we had no such chance.

"Q. Was defendant SUZUKI present at the lunch party?

"A. I do not recall whether he was there or not. I only remember about a dozen of Army officers were there.

"Q. Did anyone, besides the War Minister, give lecture?

"A. There was no lecture by anyone except a greeting by the War Minister at the lunch."

THE PRESIDENT: Mr. Brown.

MR. BROWN: Your Honor, the prosecution has decided that it does not require the presence of this witness for cross-examination. That of course, your Honor, does not mean that we accept this evidence.

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THE PRESIDENT: Mr. McManus.

MR. McMANUS: Mr. President, in view of your Honor's further ruling this morning denying the accused ARAKI's motion to reconsider a number of rejected documents, I shall not argue this matter here in court as the matter has been fully discussed in the chambers hearing of yesterday, January 7, 1948. But I do request the Court to permit a notation of this chambers proceeding to be entered in the record so this chambers proceeding may become a part of the transcript.

THE PRESIDENT: What you have said is sufficient.

MR. McMANUS: Now, at this time, if the Court please, I should like to clear up for the record a matter concerning the witness IWAMATSU, Goro which the Court and the prosecution requested me so to do.

When IWAMATSU first testified on March 18, 1947 during his cross-examination, Page 18,571 of the record, he was asked to produce the real document of 1938 which referred to a revision of rules and regulations by the Ministry of Education in 1935 for the inspection of Military Drill and Youth Schools. He stated then that he did not have the copy with him. He was then asked to produce the document later, page 18,571 of the record.

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When IWAMATSU was recalled to the stand on the 16th of September 1947, page 28,531 of the record, Mr. Carr commented that the document had not as yet been produced. The President stated "Not to produce this further document may possibly be to suppress evidence of lack of credibility." The President further stated on page 28,532 of the record "If his credibility was questioned by the prosecution, that document should settle one way or the other, and it has not been produced. Now he is in the box."

I then stated to this Tribunal that the document would be produced as expeditiously as possible.

I should like to call to the attention of the Tribunal that the document in question, with 16 supplements was submitted to Mr. Brown and Mr. Carr shortly after the presentation of ARAKI's case. And I am sure at this time that Mr. Brown will bear out the truth of IWAMATSU's statement concerning this document.

THE PRESIDENT: Mr. Brown.

MR. BROWN: Your Honor, I should say that when I heard these last remarks of Mr. McManus, it was the first intimation I had that this particular matter was going to be raised just now and therefore what I

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say is subject to correction. But our recollection is that when this document was produced by the witness IWAMATSU it proved to be irrelevant. However, if any further information is desired about it I should like to make a statement later when we have had time to look into the matter a little.

MR. McMANUS: It is agreeable to the defense.

Now there is just one other point, if the Tribunal please, that I would like to clear up in fairness to the accused ARAKI. I would like to call the Court's attention to one other matter and then I shall conclude my presentation of the reopening evidence.

I feel it is incumbent upon me at this time to call to the Tribunal's attention the fact that on page 28,243 that two defense documents, to wit, 674 and 2487 were submitted to the Tribunal which were voluntary statements of ARAKI to Mr. Hyder of the prosecution as one exhibit and one was rejected, to wit, 674 and the other accepted, 2487, receiving exhibit No. 3162. It is my purpose at this time in fairness to the accused ARAKI to direct the Court's careful scrutiny to this admitted document so that it will observe that the Nanking Incident referred to in this document was not the same Nanking Incident

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concerning which prosecutor Sutton has endeavored to bring out the perpetration of many atrocities.

That concludes my presentation at this time.

Kaplan & Knapp

THE PRESIDENT: What is the next matter?

Mr. Yamaoka.

MR. YAMAOKA: May it please the Tribunal, in accordance with the ruling of the Tribunal this morning I respectfully beg leave to present at this time the additional evidence of foreign witnesses in the case of the accused HIROTA, Koki.

I offer in evidence defense document 2790, being the affidavit of former Ambassador Joseph C. Grew, which states the facts concerning his relationship with Mr. HIROTA during his official career, and which has been brought into issue by the prosecution.

THE PRESIDENT: Mr. Comyns Carr.

MR. COMYNS CARR: May it please the Tribunal, in our submission there is no justification for bringing this and eight other affidavits by Mr. Grew which have been served upon us this morning into evidence at this stage. I understand that Mr. Grew is not here, and there was nothing to prevent these affidavits from being offered at the time when HIROTA's case was present.

I have not had time to check the matter fully, but my recollection is that one or more affidavits by Mr. Grew were tendered and rejected during the presentation of that case.

With regard to the first affidavit now tendered,

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in our submission it is either repetitious, particularly with regard to the introductory paragraph and paragraph 3, or consists merely of expressions of opinion. That applies to the whole of paragraph 4 except the first sub-paragraph.

With regard to the first sub-paragraph of paragraph 4, my recollection is that an affidavit by Mr. Romer, the Polish Ambassador, who is the informant whose conversation Mr. Grew is repeating in that sub-paragraph, was in fact tendered in Mr. HIROTA's case, and I think admitted into evidence. In our submission, therefore, there is no excuse for offering this document now and no value in it if offered.

THE PRESIDENT: Mr. Yamaoka.

MR. YAMAOKA: May it please the Tribunal, I wish to state that we did have a former affidavit from Ambassador Grew. It was originally tendered in the case of Baron HIRANUMA. That affidavit contained references in favor of the accused SHIGEMITSU as well as the accused HIROTA. It was, upon objection by the prosecution, rejected at record 29,235-39. Upon the rejection of this former affidavit, counsel for SHIGEMITSU and counsel for this accused made reservations notwithstanding for the tender of the same affidavit in the individual cases of the respective accused.

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Thereafter, upon presentation during the case of the accused HIROTA, it was again rejected. This was at record 29,376. But at that time counsel made the reservation or request for permission to submit a proper affidavit at a later stage of the trial..

About the same time that the HIROTA case was being presented, which was in late September and October of 1947, steps had already been taken to procure these affidavits which are now offered before this Tribunal, and I respectfully invite the Tribunal's attention to the fact that the jurats on these affidavits are dated October 15, 1947, and that they were subscribed to in Washington, D. C., and therefore were not available to us during the presentation of the HIROTA case.

Specifically with regard to the objections, we respectfully submit that while the first introductory paragraph may contain repetitious matters, nevertheless it was necessary to qualify Mr. Grew's subsequent statements contained in this affidavit, and whatever it is, it only consists of a few lines.

As to paragraph numbered 3, the only document that I am aware of at the moment which might be analagous to the data referred to in this paragraph is exhibit 3285, record 29,963-5 --

I understand from my learned friend Mr. Carr

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that there are two other exhibits similar to the data referred to in this paragraph, but I do not recall that the last part of this paragraph numbered 3 is covered by any previous exhibit.

As to the paragraph numbered 4, the first sub-paragraph, we respectfully submit that the statement of Mr. Grew substantiates and confirms Mr. Romer's affidavit which is exhibit 3293.

As to the balance of this numbered paragraph, in our respectful submission the sources of Mr. Grew's statements and the sources of his knowledge and information are fully set forth for the information of the Tribunal and give an added tenor of authority to the statements contained therein.

THE PRESIDENT: The objection is sustained as to paragraph 4; otherwise it is overruled. The balance is admitted on the usual terms.

CLERK OF THE COURT: Defense document 2790 will receive exhibit No. 3716.

(Whereupon, the document above referred to was marked defense exhibit No. 3716 and received in evidence.)

THE PRESIDENT: That was a majority decision. We will recess for fifteen minutes.

(Whereupon, at 1445, a recess

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was taken until 1500, after which the proceedings were resumed as follows:)

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Greenberg & Yelden

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

THE PRESIDENT: Captain Kraft.

LANGUAGE ARBITER (Captain Kraft): If the Tribunal please, the following language corrections are submitted. Your Honor, it is desired that these corrections be included in the record without further reading.

THE PRESIDENT: It is so desired. Thank you, Captain Kraft.

(The language corrections are copied as follows:)

"Reference: Record page 30,615, line 20, and exhibit No. 3331, page 5, line 6. Delete 'August' and substitute 'September.'

"Reference: Record page 30,635, line 17, and exhibit No. 3337, page 1, line 22. Delete 'Section Chief' and substitute 'Chief of the Accounts Section.'

"Reference: Record page 30,638, line 15 and exhibit No. 3337, page 3, line 3. Delete 'Military budgets' and substitute 'Budget of the War Ministry.'

"Reference: Record page 30,639, line 3, and exhibit No. 3337, page 3, line 12. Delete 'had no connection with the Cabinet' and substitute 'was not a member of the Cabinet.'

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"Reference: Record page 30,640, line 2, and exhibit No. 3337, page 4, line 1. Insert 'the lives and property of Japanese nationals, Japanese legal rights and' between 'protect' and 'the small.'

"Reference: Record page 30,640, line 17, and exhibit No. 3337, page 4, line 11. Delete 'battles' and substitute 'military operations.'

"Reference: Record page 30,641, line 9, and exhibit No. 3337, page 4, line 23. Delete 'North.'

"Reference: Record page 30,645, line 20, and exhibit No. 3337, page 7, line 1. Insert 'only' between 'section' and 'on.'

"Reference: Record page 30,648, line 24, and exhibit No. 3337, page 9, line 6. Insert 'maintaining peace' between 'and' and 'and.'

"Reference: Record page 30,651, line 7, and exhibit No. 3337, page 10, line 24. Insert 'south' between 'the' and 'western.'

"Reference: Record page 30,654, line 14, and exhibit No. 3337, page 12, line 20. Insert 'for there will not be sufficient time for preparation' after 'national defense.'

"Reference: Record page 30,656 and exhibit No. 3337, page 13, line 24. Insert: 'on the ground that he was against war, there would arise the

possibility of adding greater difficulties to the already difficult situation' following 'had resigned.'

"Reference: Record page 35,654, last line, and exhibit No. 3646, section 29, second line. Delete 'Germany'; insert 'China.'"

THE PRESIDENT: Mr. Yamaoka.

MR. YAMAOKA: May it please the Tribunal, I shall read exhibit 3716 as admitted:

"I, Joseph C. Grew, being first duly sworn, make oath and say that during my service of ten years as Ambassador of the United States to Japan from 1932 to 1941 I was from time to time in close official and personal contact with Mr. Koki HIROTA whose official service during that period was successively as follows:

"Foreign Minister, September 14, 1933, until appointed Prime Minister, March 19, 1936, until appointed Foreign Minister, June 4, 1947," -- I am sure that is a typographical error. It should be 1937 -- "until approximately May 26, 1938.

"During my association with Mr. HIROTA he said to me on several occasions that good relations with the United States were the 'cornerstone' of his policy. In various ways, notably as follows, he implemented that policy in action.

"1. My representations to the Japanese Foreign Office received far prompter and more considerate attention than had been the case before Mr. HIROTA took office, and in many instances results favorable to American interests emerged.

"2. One such result was the marked toning-down of aggressive anti-American comment in the Japanese press which was reflected in the press in the United States and tended to exacerbate international relations. I knew that this improvement was directly due to Mr. HIROTA's efforts as a result of my representations to him.

"3. On receiving news of the bombing and sinking of USS Panay by Japanese military or naval planes and the subsequent machine-gunning of her officers, passengers and crew by Japanese army launches in December 1937, Mr. HIROTA, as Minister for Foreign Affairs, broke precedents by immediately calling in person on me at the American Chancery and by expressing 'the profound apologies and regrets' of the Japanese Government. He said to me with obvious emotion: 'I can't tell you how badly we feel about this.' This immediate official apology, conveyed in person, went far to ameliorate the gravity of the situation. Mr. HIROTA subsequently took steps to make

practical amends for that ruthless attack on our ship and its occupants, notably in conveying to us a written apology and in promptly meeting our demands for a suitable indemnity."

I shall omit the balance of the affidavit.

I next offer in evidence defense document 2790-A, being a further affidavit of Ambassador Grew concerning conversations between him and Mr. HIROTA as Foreign Minister on October 27, 1933.

THE PRESIDENT: Mr. Comyns Carr.

MR. COMYNS CARR: May it please the Tribunal, in our submission this document is irrelevant and adds nothing of any substance to what is already in evidence. It is part of our case against Mr. HIROTA that it was his business to give smooth assurances to representatives of other nations, which we claim to have proved to be insincere in contrast with statements and actions of his which were not made known to those nations. Many of such instances are already in evidence and it adds nothing to the case on either side to multiply small instances of them.

THE PRESIDENT: Mr. Yamaoka.

MR. YAMAOKA: If the Tribunal please, I do not believe that the record will bear out the statement that "smooth assurances" had been made by Mr. HIROTA

and that thereafter he acted in a manner inconsistent with such assurances. As a matter of fact, in our submission, the record is replete with instances directly to the contrary and this is one of them; and if that is the contention of the prosecution, that statement in itself is sufficient to qualify this affidavit as having very high probative value in the case. We respectfully submit that this affidavit has a bearing on the Nine-Power Treaty, the question of the Open Door, and the status of Manchukuo.

THE PRESIDENT: By a majority the objection is overruled and the document admitted on the usual terms.

CLERK OF THE COURT: Defense document 2790-A will receive exhibit No. 3716-A.

(Whereupon, the document above referred to was marked defense exhibit No. 3716-A and received in evidence.)

MR. YAMAOKA: With the Tribunal's permission I shall read exhibit 3716-A:

"I, Joseph C. Grew, being first duly sworn, make oath and say that in a conversation with Mr. Koki HIROTA, Minister for Foreign Affairs of Japan, on October 27, 1933, the Minister said that he hoped I would always tell him if suggestions occurred to me

by which our relations could be improved. I replied that since Mr. HIROTA had asked me for suggestions I thought it wise to bring to his attention, in reply to his inquiry, the importance of giving practical effect to the Japanese assurances of maintaining the Open Door in Manchuria. Mr. HIROTA observed that certain French interests had sent representatives to explore the opportunities for business in 'Manchukuo' and he thought it would be well if American merchants should do likewise."

I shall omit the balance of the affidavit.

I next offer in evidence defense document 2790-B, being another affidavit of former Ambassador Grew reporting a conversation with Mr. HIROTA as Prime Minister on August 25, 1936.

THE PRESIDENT: Mr. Comyns Carr.

MR. COMYNS CARR: May it please the Tribunal, we again submit that this document is repetitious and irrelevant. There are already in evidence a large number of assurances by Mr. HIROTA to the same effect as the first paragraph of the document. With regard to the last paragraph, it is merely an exchange of opinions between Ambassador Grew and Mr. HIROTA about the effects in Japan of the February 26th Incident and Mr. HIROTA's opinion about bolshevism in China which has been stated over and over again.

MR. YAMAOKA: If the Tribunal please, I do not believe that there is any exhibit in the case referring to the assurances given by Mr. HIROTA to Mr. Grew. It is quite true that he has made similar statements in public addresses before the Imperial Diet and before the various committees of the Diet.

THE PRESIDENT: By a majority, the objection is sustained and the document rejected.

MR. YAMAOKA: I next offer in evidence defense document 2790-C, being a further affidavit of

former Ambassador Grew reporting another conversation with Mr. HIROTA as Prime Minister on November 30, 1936.

THE PRESIDENT: Mr. Comyns Carr.

MR. COMYNS CARR: May it please the Tribunal, we make a similar objection to this document. It merely reiterates to Mr. Grew the explanation given as to the Anti-Comintern Pact to the world in general in exhibit 2371, record page 18,398.

MR. YAMAOKA: If the Tribunal please, I do not believe that it would be necessary for me to remind the Tribunal that during the presentation of the China phase there was considerable evidence relating to the activities of the Communist group not only in China but in East Asia and that much of that evidence was rejected. However, the Tribunal did, in effect, state during the argument on the admissibility of some of those documents that, if any of the accused, whether rightly or wrongly, acted upon the belief that the existence of such conditions menaced Japan and her interests, then evidence to that effect could be tendered later.

THE PRESIDENT: By a majority, the objection is sustained and the document rejected.

MR. YAMAOKA: I next offer in evidence