

abrogation would be realized in a friendly atmosphere.

In the face of these circumstances a proposal was presented by the British authorities as a step to break the deadlock. The gist of the proposal had suggestions as follows: i) each party would enjoy equal footing on the fact of the treaty stipulation; ii) all parties should confer with each other on their shipbuilding programs to be effective for the several years after 1936 and should make a unilateral announcement of each own program in the form of a voluntary statement. This suggestion, though taking into consideration our proposal, seemed to intend in reality to maintain the existing ratio almost intact, and therefore it was not one acceptable to us offhand. Sometime later on, the British representatives made another suggestion that they would not insist to bind the foregoing unilateral voluntary announcement on a contractual basis, and they furthermore repeatedly presented their desire for reaching some sort of an agreement in having the powers to show with each other their shipbuilding program of the several years to come. Proposing this way they went so far as to show us the shipbuilding plan of their own. According to this plan the size of the armament to be possessed by the British navy was roughly of one million and twenty hundred thousand tons or so, though it might differ a little depending on conditions. Here we could not see almost no difference between this figure and that of the existing treaty strength. Besides, the figures for light

cruisers and others were bigger than the ones so far admitted, Moreover it was insisted that the plan was for the absolute minimum requirement barely reducible. Such a proposal, far from the line of our contention aiming at a great reduction, could not be accepted by our own side.

The British delegation further suggested that it would be advisable to reach an agreement on a qualitative limitation at least, such as concerning the displacement of individual ships, the size of guns, etc., as a means to curb shipbuilding race in case a quantitative limitation would not be feasible. But this British plan would affect us very unfavorably in view of our plan to equip ourselves with such an armament as to give us a guarantee of national security at a smallest possible armament expenditure. Accordingly we rejected the proposal, too.

As for the United States, the British proposal seemed to have failed to attract any great attention from the delegation. The American representatives showing a firm attitude for the support of the existing treaties with their present ratio, insisted on the twenty per cent reduction from existing armament in a whole sale manner.

Such being the case any further progress seemed to be out of hope for the negotiation. Moreover, the American delegation made clear that it intended to return home temporarily from the necessity to confer with the government and reconsider all the

related problems at the fundamentals to prepare for the eventualities of the Japanese abrogation of the Washington Treaty. Therefore the representatives of the Three Powers came to an agreement that the meeting was to be adjourned for the time being that each power was to give a renewed consideration to its contentions, and that the British Government was to take an appropriate step as soon as possible when an atmosphere would become ripe for the reopening of the negotiation. The adjournment was made on December 20.

It is to be added in this connection that both France and Italy did not participate in the present preliminary negotiations and that they were placed in a position to be informed by the British Government from time to time of the progress of the Three Power negotiation.

Throughout the preliminary negotiation the representatives of all of the parties exchanged their opinion frankly and freely in a friendly atmosphere and made an earnest endeavour to find out some sort of basis on which an agreement could be reached. There could be seen no shadow of prejudice in which any two parties, conspiring between themselves, oppressed or alienated the other. As for the British side especially, perhaps partly due to its position as the party who called the meeting, its good officers were exerted in an enthusiastic manner throughout the negotiation for the smooth progress with the eager desire

for the conclusion of disarmament agreement. Moreover both British and American delegations listened to our contention most attentively to enable us to explain the principles of the Japanese Government at the fundamentals, while at the same time we could have the opportunity to know almost fully the British and American contentions. But due to the difference of their stands, the three delegations have so far failed in reaching an agreement.

It is really regretful that the Japanese representative has not succeeded to have our proposal accepted by the British and the United States sides. And it is believed that a further toilful exertion on our part is needed to attain our aim.

I feel highly honored in having been granted Your Majesty's audience throughout to my humble report.

February 19, 1935.

Def. Doc. #1904 Annex 16

CERTIFICATE OF SOURCE AND AUTHENTICITY

I, YOSHII, Michinori, who occupy the post of the Chief of the Archives of 2nd Demobilization Section of Demobilization Bureau, hereby certify that the document hereto attached, written in Japanese, consisting of 8 pages and entitled "Report by Vice Admiral Isoroku Yamamoto" is an exact and authorized excerpt from an official document in the custody of Japanese Government (2nd Demobilization Section of Demobilization Bureau)

certified at Tokyo,
on this 10 day of July, 1947

/S/ YOSHII, Michinori (seal)

I hereby certify that the above signature and seal were affixed hereto in the presence of the Witness.

At the same place, on this same date

Witness /S/ OKUYAMA, Hachiro (seal)

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DIRECT EXAMINATION OF ENOKI TO, Juji
by Mr. Roberts

21,497
21,502

The witness stated * he lived in Tokyo and identified Exhibit 2541 as his affidavit. He identified Exhibit 2542 * as an official document of the Navy Ministry, which was distributed to the headquarters mentioned in the certificate. He identified Exhibit 2543 as an official document of the Navy Ministry * distributed to various headquarters mentioned. He identified Exhibit 2544 as an official document published by the Navy Ministry. He identified Exhibit 2545 as an official document of * the Navy Ministry distributed to the Chief of Staff of the China Seas Fleet and the Chief of Staff of the Fourth Fleet.

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Exhibit 2541 stated that the witness in 1915 entered the Navy Ministry as a legal advisor and remained there until 1945 and has since been with the 2nd Demobilization Ministry and Bureau. In 1921 he attended the Washington Naval Disarmament Conference and in 1922 the commission of jurists to amend the Laws of War at The Hague. He also attended the Disarmament Conferences at Geneva and London.

His principal duty in the Ministry was to examine drafts of laws and regulations prior to enactment or revision and to give his opinion to the Minister or Vice Minister.

21,508

On July 27, 1937 "Criteria in Air Fighting" was issued to the Naval General Staff and Navy Ministry and distributed * to the sections mentioned.

21,509

In view of the lack of any recognized rules at the time of the incident of July 7, 1937, it was decided that the rules of aerial conduct should be clarified to avoid unnecessary damage or conflict with third powers. While complaints were received that the rules were placing too severe restrictions on operations, they were given the force of an order. On September 24, 1937 a supplementary guide was distributed entitled, "Miscellaneous Observations on Aerial Bombing." This was issued through Vice Admiral YAMAMOTO because of reports received indicating the need for further clarification to assure strict observance of regulations. * One of the reports stated that a pilot had bombed a seeming military target. The Admiral felt this a dangerous situation since it would lead to bombing without definite ascertainment of its military character. The further rules were published to prevent any laxity in application.

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In November 1937 further rules of conduct on the visit and seizure of shipping were published because of the non-existence of any definite international rules. A careful check was kept on daily reports to verify that the rules were being adhered to and to prevent unnecessary damage to non-military property, especially of third powers.

21,510

In general a pacific blockade is approved since it may make resort to war less probable and limit the range of force. In applying a pacific blockade * visits to third power vessels were carried out only when in doubt of the nationality of the ship. In case of doubt they were detained for a longer period of time to make certain. In other cases they were detained only when clearly used to lend direct military assistance to China.

In handling third power protests, they usually took the report on the incident and sent it to the commander for investigation. In some cases there were difficulties in carrying our investigation because the area was under Chinese control. It was recognized by certain powers, including the United States, that third state vessels could be prohibited from entering any port before which a pacific blockade was being maintained.

21,511

With respect to the Hague rules, the rules were drafted at a commission to revise the regulations of war in accordance with the Washington Conference resolution and was signed by the United States, England, France, Italy, Netherlands and Japan and were passed by the representatives of almost every country without exception. For some reason they were not ratified and they never came into force as a treaty. However, since they were the only provisions concerning aerial warfare in international law, although not of legal force, since * they were drafted after long discussions between representatives of the six powers, Japan considered them as authoritative and decided she would govern her conduct in accordance with them. They hoped to make an announcement if there was an occasion, but since the occasion did not arise, it was only passed to the various units in the form of instructions.

21,512

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21,513 He had taught international law in various places and always taught his students to observe these rules and had written about them. The book was not secret but was meant only for use within the Navy, but was distributed to persons * outside the Navy and to naval attaches. He had one of the reports of the Hague Conference and he also had a copy of the rules, but he also had the original report.

21,515 With respect to America's views on the pacific blockade, his idea was taken from the 1932 edition of the American Naval War College International Law Situation, page 94.

Exhibit 2542, Criteria in Air Fighting, stated that international rules and usages on air fighting were not fixed. The writer had made criteria by studying existing rules and had tried to choose the golden mean. The criteria is only a standard of judgment and there is much room for choice in accordance with circumstances of each particular case.

21,517 With respect to bombing, irrespective of whether a place is defended or undefended, one may bomb * warships, transports, tankers and military special duty vessels; armed forces except where only a few soldiers are scattered; military works of all kinds; military establishments such as camps, barracks, etc.; supply depots, including those belonging to civilians if feared they may be used for military purposes; factories manufacturing arms, etc., including civilian factories except a small plant manufacturing parts; * lines of communication and transportation. In bombing these care should be taken not to cause damage to things belonging to third powers or their nationals.

21,518 Certain objects may not be bombed, so it is necessary that they be marked by signs so they will be easily distinguished. In case of no signs, they cannot protest even if they are bombed. Since there might be a great public controversy, one must take care not to carry out such bombing in any case. They may be bombed if they are used by the enemy armed forces as a base or for military action.

21,519 The places that can not be bombed * are places of public worship; buildings used for arts and science; buildings dedicated to charitable purposes, including hospitals and

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hospital ships; and establishments of historical importance, monuments, tombs, etc.

21,520

With respect to the bombing of cities, the bombing of objects within the city are governed by the criteria in the former paragraph. In a case where a whole city may not be made the target, individual objects may be bombed. Bombing is permissible when large armed forces are concentrated in a city close to the area of operations. Civilian population * may unavoidably be exposed to danger, but every effort should be made to minimize this. Bombing is not permissible when its purpose is to intimidate the civilian population, to destroy an object of no military character, or to cause injury to non-combatants. It is not permissible when a small force is scattered or encamped in a place; and it is not permissible on the ground that a requisition, order or levy had been refused.

No notice is necessary in the case of bombing, unlike naval or land warfare. Bombing is to be restricted to areas under Chinese jurisdiction and it is not to extend to International Settlements and extra-settlement areas where third nationals have close connections.

21,521

This was sent to Combined 2nd and 3rd Fleets; 1st, 2nd and 3rd Naval Air Forces; 1st and 2nd Combined Naval Air Groups; 5th, 8th and 12th Naval Units; 1st and 2nd Destroyer Flotillas; 1st and 2nd Submarine Flotillas; and 22nd and 23rd Naval Air Groups.

21,522

Exhibit 2543 stated that bombing which has no direct military value and is intended merely to terrorize the enemy is prohibited. It is not legitimate to bomb any objects other than military objectives located in places far removed from areas of land fighting. * Bombing must always be aimed at military objectives. Unavoidable damage may be caused through error, but it must be excused as an unavoidable concomitant of war. The question of responsibility can not arise when, notwithstanding accuracy, damage is caused to other things as a natural consequence.

It is illegitimate to drop bombs over any area on the assumption that the military objective is probably around the place or the objective is not clearly distinguishable.

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21,523 Reasonable care will be the test to determine responsibility in the cases where bombing is carried out on the erroneous belief that the selected object was a military objective and it turns out not to be. * The answer will depend on all the circumstances of the case and if it is found to have been done under reasonable care, the bomber will not be held responsible.

21,524 There may be non-combatants and non-military objects in the fighting zone, but if it is impossible to distinguish them from combatants and military objects, general or uniform bombing is inevitable. Effort should be made to afford every protection to hospitals, non-military schools and libraries and to avoid any * deliberate increase of damage to non-combatants.

Strips adjoining railways transporting troops and supplies, and areas near combat zones, may be treated as battlefields. Trains in stations for military transportation are military targets and areas adjacent to them will become military targets. Targets must be confined to military objectives, and destruction of ordinary government offices and the economic structure must be avoided, except in special circumstances.

21,525 When bombing any target mentioned, every effort should be made not to cause damage to non-combatants, and objects entitled to special protection should be watched. If an object or legitimate military objective is not of great importance and it is feared that its bombing will cause great damage to non-combatants and non-military objects, it is better that the bombing be not carried out. However, one must not allow sentiment to cause one to hesitate, but the demands of humanity must be strictly complied with. Even in the European war there were cases of flyers, who, unsuccessful in search of military targets, returned with their bombs because of fear that blind bombing would cause death and injury to non-combatants.

21,528 Exhibit 2544, from the Chief of the Military Affairs Bureau of the Navy to the Chief of Staff, Third Fleet, stated * in view of present international relations, when dealing with Chinese P.C.'s special attention must be paid to invite no

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- 21,529 pretext for censure on grounds of unlawful and cruel treatment. It is important that Japan's attitude prove fairness and justice in the light of international law. POW's are to be dealt with in accordance with the following instructions: * the names and units of POW's, including those killed, are to be notified to the Chinese; attention is to be given to the sick or wounded; the personal belongings of a deceased POW are to be delivered to the Chinese and any necessary information shall be given to the Chinese. The communication will be carried out through the Consul-General.
- 21,530 Exhibit 2545, instructions concerning the visit and capture of vessels * stated that all vessels belonging to the Chinese entering, leaving, or cruising in the blockade zone shall be captured, irrespective of crew, passengers and cargo, and taken to certain designated places, excepting small boats engaged exclusively in coastal fishing or other local business.
- 21,531 When it is difficult to take a captured ship to the designated place, important vessels shall be disposed of * in accordance with instructions from Tokyo; small boats, if there is a base other than the ones designated where an observation ship can be posted, the ship will be taken to such base. Where it is impossible to make this disposition, any military supplies shall be seized, but goods not suitable for seizure shall be disposed of. Goods other than military, if deemed to be of considerable value, may if necessary be disposed of as military supplies.
- 21,532 Military supplies belonging to third power nationals found in the cargo shall be detained. In case of cargo being transferred from third power vessels to Chinese boats off Haikow and Fukien, * if it is certain that such cargo contains military supplies it shall be examined after its transfer is completed and military supplies detained. Upon completion the vessel shall be prevented from reaching its destination. Reports shall be made as soon as possible.

Where measures are taken to overcome resistance of a Chinese vessel, destruction may be inevitable; otherwise such vessels are not to be destroyed. Where a vessel is destroyed all persons will be rescued except in case of military necessity.

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21,532

Chinese boats of Hongkong registry shall be treated * as Chinese vessels, but care shall be taken not to raise unnecessary controversy with the British. Crews and passengers shall be sent to the nearest locality, with the exception of persons necessary to detain. Certain vessels of certain companies are to be treated as Japanese-owned vessels under Chinese registry, and they shall not be captured but given every protection. Vessels owned by third power nationals under Chinese registry shall be captured and taken to a designated place. Where difficult to take them they shall be treated * as though vessels belonging to Chinese nationals.

21,534

Vessels which are clearly third power vessels shall not be stopped or visited and searched. When there is good ground for suspecting that such vessel is a Chinese vessel, it will be subjected to search and its nationality examined. If it turns out to be a Chinese vessel it shall be treated as such; otherwise released.

21,535

With regard to vessels whose registry has been changed to that of another country after August 25th under circumstances warranting suspicion that transfer was fictitious, they shall be detained temporarily * and final disposition made on instructions from Tokyo. If a transfer has been made to any nation except Britain, United States, France, Germany or Italy, if there is any doubt as to the transfer, the vessel shall be captured for investigation, report being made to Tokyo.

Whenever third power vessels or one flying its flag has been stopped, visited and searched, report will be made to the Commander-in-Chief, China Seas Fleet and to Tokyo. It will be entered on the log of the ship if demanded by its captain.

21,536

If, in case there is need of subjecting a vessel of British or Canadian registry to search, there is a British vessel in the neighborhood, visit and search will not be carried out, but the British naval vessel will be asked to * examine its nationality.

Articles 139 to 141 of the Rules of Naval Warfare shall apply mutatis mutandis to the visiting and searching of vessels. The number of board officers will be kept small, with not more than three for visiting British and Canadian ships.

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Inspection will be confined to necessary ships papers, it being better to refrain from searching the vessel. This is not binding if there is suspicion that the vessel is a Chinese one.

CROSS-EXAMINATION by Mr. Tavenner

21,537

The witness stated that Exhibit 2543 was compiled by him in accordance with orders from the Vice Minister of the Navy and distributed to the various headquarters, and has the same force as an order. He wrote the document in order to insure that there would be no mistake in carrying out instructions embodied in the Criteria and he wrote it in plainer language. They were distributed more in the nature of instructions than information. He also knew of his personal knowledge that these orders were actually distributed to personnel of the Navy. This form of information in the nature of an order was customary in the Navy.

21,539

In peace time a general order that international laws and customs must be strictly observed and that the principles of international law must be observed, was strictly observed. Once a document defining the specific provisions was issued, that document would have the same effect as an order. It would be an * order by reference.

21,540

When asked whether the policy with regard to China was applied generally in the Pacific, the witness stated that these rules were also applied in the Pacific. That was a war in every respect legal and under such conditions * the rules of naval warfare would naturally be applied and international law would be observed. Rules of naval warfare included land, sea and air.

21,541

Exhibit 2546, note from the British Ambassador to the Japanese Foreign Minister, December 31, 1937, stated * that they had received the Japanese note of December 28th in connection with the attacks on British warships on December 12th and learned with satisfaction that the statements in the note of December 14 applied to merchant vessels as well as warships. Britain's information with respect to the circumstances of the attack differs from that of Japan.