

Translated by
K. Horie

Checked by M. Watanabe

Outline of the International Law

and Regulations in Time of War

May, 1937

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| Nomaguchi collections |
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Secretariate of the Minister of Navy.

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| LANGUAGE DIVISION |
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| 9 Dec |

en vue d'operations militaires contre la Chine et a user de bases militaires et d'autres facilites, le 3 septembre 1940, Grew recut instructions de souligner le facheux effet qu'un tel ultimatum aurait sur les relations nippe-americanes. Le 19 septembre 1940, conformement aux ordres qu'il avait recus, Grew faisait remarquer a MATSUOKA que le statu quo d'un pays etait serieusement menace lorsqu'une des nations belligerantes, en vue d'attaquer un autre pays, demandait a une troisieme nation le droit de passage pour ses troupes et l'utilisation des bases aeriennes. Les avantages que le Japon venait ainsi d'obtenir sur l'Indochine etaient donc incompatibles avec l'obligation pour le Japon de maintenir le statu quo dans le Pacifique.

.....

G-58A. Les instructions de MATSUOKA a NOMURA soulignaient l'intention du Japon d'aller de l'avant dans son programme d'edification de la "Sphere de coprosperite de la plus Grande Asie Orientale" et qu'un accord ne pourrait etre atteint que sur cette base. Un document contemporain presente par l'accuse TOJO rendait ce fait plus net encore. Le 3 fevrier 1941, la "Conference de Liaison prenait une decision qui devait servir plus tard a MATSUOKA d'instructions ou de reference, dans ses negociations avec l'Allemagne, l'Italie et L'Union Sov'etique,

...

P. 1

Prefatory Remarks
~~Introductory Notes~~

By the Editor

In this book, we have ^{compiled matters} ~~collected~~ mainly

~~matters~~ concerning naval battles, ^{however, matters} ~~but provided~~

deemed to be essential by the Navy, such as ~~that the Navy deems them necessary,~~

~~those~~ ^{those} matters concerning land warfare, etc. ~~are~~ ^{have}

also been
included.

have endeavored to be very impartial
~~We tried to make the interpretations of the~~

in the manner in which we have interpreted any
~~ambiguities contained~~ ^{ambiguities contained} in the ~~Conventional International~~

and Customs,
~~Laws~~ ^{as} impartial as possible, taking into con

consideration at the same time, the situation of our

Empire.

As to ~~the~~ matters ^{not defined in the} ~~among the con~~

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~~Constitutional International Law~~ and Customs, ~~arbitrary decisions~~

have been ~~avoided~~ and ~~results of the discussions~~ only the ~~obtained through~~

at the international conferences concerned

were ~~principally~~ considered.

Treaties concerned, laws and ordinances,

and tables are appended at the end of the book.

In this book, ~~the minutes~~ there may be parts which ~~is not~~ may be found to be lacking in uniformity ~~all the same~~, and, ~~thus~~ ~~principally~~ ~~may be said to~~ ~~be mainly~~ ~~due to the nature of the matters concerned,~~ ~~still~~ ~~have to be~~

retouched

as the production of this book was ~~hastily done~~ ~~ask~~ ~~to ignore~~ ~~the defects~~

I hope the readers will ~~excuse~~ ~~the defects~~ ~~by the editor~~

le President envoyait le message a Grew avec la mention "Triple Priorite". Le message, quand il fut recu par Grew, indiquait-qu'il avait ete reellement recu a 12h a Tokyo. Cependant, le premier message adresse a Grew ne fut pas delivre avant 21h., et le message pour l'Empereur ne parvint pas a Grew avant 22h.30. Ce retard, selon le Chef du Service de la Censure au Ministere des Communications provenait des ordres du Chef d'Etat-major de retarder de dix a quinze heures la distribution de tous les telegrammes venant de l'etranger. De plus, ce temoin affirma que le contenu du message de Roosevelt fut connu dans son bureau a 18h. au plus tard. En raison du fait que le message fut annonce par radio a 15h., il ne peut faire de doute que son contenu fut connu des conspirateurs au Japon avant 18h. La seule explication donnee a ce delai est, que les conspirateurs pensaient que le telegramme viendrait directement a la Maison Imperiale.

G-139. Au recu du message, Grew demanda immediatement a TOGO d'avoir une conference avec lui a minuit. TOGO essaya de la remettre au lendemain, mais finalement fixa le rendez-vous. Le 8 decembre a 0h.15, des que le telegramme fut dechiffre, Grew le donna a TOGO et ce dernier accepta de le presenter a l'Empereur. Immediatement apres, TOGO s'entretint avec KIDO et TOJO au sujet de la presentation du document a l'Empereur. TOGO informa l'Empereur du contenu du telegramme, au moment meme ou l'attaque de "Pearl Harbor" se produisait. A la lumiere des evenements

The following ^{is a list of the chief works} ~~mainly~~ ~~chiefly~~ ~~used as~~

references ^{preparing} ~~in preparing~~ this book.

(1) ARIGA Nagao: Discourse on the International
governing
Law ~~in~~ the Sino-Japanese War.

(2) the same: Discourse on the International
governing
Law ~~in~~ the Land Warfare in
the Russo-Japanese War

(3) ENDŌ Gentoku: Discourse on the International
governing
Law ~~in~~ the Russo-Japanese War

Conference
(4) Records and Reports of the Debates at the
Conference.

(a) ~~The~~ 1st and 2nd ~~The~~ (Hague) Peace Conference at The Hague
(1899, 1907)

(b) London Conference on ~~the Law of Naval Warfare~~
~~Naval Warfare~~
(1909)

(c) Naval Arms Limitation Conference at Washington

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...

(1921)

(d) ^{The} Committee Meeting ^(at Hague for) ~~the~~ Revision of
the Maritime Regulations (1922)

(e) ^{Armaments} Naval Limitation Conference at London
(1930)

(d) ^{Armament} Geneva ~~Disarmament~~ Limitation and
Disarmament Conference (1932)

(5) The Secretariate of the Minister of Navy:
^{The Law of} ~~Ordinances concerning~~ Naval Warfare.

(6) TATSU Sakutarō Discourse on the ~~Wartime~~
International Law in Time
of War.

(7) N. Dentwich: Declaration of London

(8) J. W. Garner: International Law and The
World War

(9) J. A. Hall: International Law

lors de sa visite en Europe. Le document pre- voyait que le Japon aurait la direction politique des regions de la Sphere de coprosperite de la Plus Grande Asie Orientale et aurait la respon- sabilite d'y maintenir l'ordre. Les populations de ces regions devaient soit conserver soit acquerir leur independance. Mais les populations des regions possedees par la Grande-Bretagne, la France, le Portugal et la Hollande, incapables d'etre independantes auraient la permission d'avoir leur propre gouvernement, dans la mesure du possible, conformement avec leur aptitude et sous la direction du Japon. Le Japon aurait dans ces territoires un droit de preference sur les ressources necessaires a sa defense; mais, en ce qui concerne toutes les autres entreprises commerciales, il applique- rait le principe de la Porte Ouverte et de la concurrence libre et reciproque avec les autres blocs economiques. Le monde devait etre divise en quatre grands blocs:- le bloc de la Plus Grande Asie Orientale, le bloc europeen (y compris l'Afrique), le bloc americain, et le bloc sovietique (y compris les Indes et l'Iran).

.....

G-60. Le 14 fevrier 1941, NOMURA rencontra pour la premiere fois le President Roosevelt et le Secetaire d'etat Hull. Le President souli- gna que les relations entre les deux pays n'etaient pas bonnes et que les Etats-Unis

6.
(10) J. A. Hall: The Laws of Naval Warfare

(11) A. P. Higgins: The Hague Peace Conference

(12) C. C. Hyde: International Law chiefly
as Interpreted and Applied
by the United States

P.3

(13) J. B. Moore: International Law Digest

(14) Naval College, (U.S.A.); International Law
Topics and Discussions

(15) L. Oppenheim: International Law

(16) J. M. Spaight: Air Power and War Rights

(17) Wheaton's International Law

(18) Instructions on Naval Warfare of
United States of America, The Great Britain
Germany, France and Italy.

lors de sa visite en Europe. Le document pre- voyait que le Japon aurait la direction politique des regions de la Sphere de coprosperite de la Plus Grande Asie Orientale et aurait la respon- sabilite d'y maintenir l'ordre. Les populations de ces regions devaient soit conserver soit acquerir leur independance. Mais les populations des regions possedees par la Grande-Bretagne, la France, le Portugal et la Hollande, incapables d'etre independantes auraient la permission d'avoir leur propre gouvernement, dans la mesure du possible, conformement avec leur aptitude et sous la direction du Japon. Le Japon aurait dans ces territoires un droit de preference sur les ressources necessaires a sa defense; mais, en ce qui concerne toutes les autres entreprises commerciales, il applique- rait le principe de la Porte Ouverte et de la concurrence libre et reciproque avec les autres blocs economiques. Le monde devait etre divise en quatre grands blocs:- le bloc de la Plus Grande Asie Orientale, le bloc europeen (y compris l'Afrique), le bloc americain, et le bloc sovietique (y compris les Indes et l'Iran).

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Endox
P.V

Contents
~~Index~~

Part I. Contents (Principles)
~~Index~~: Elements of the
Rules of Naval Warfare

No. I. Wartime Regulations 1

(I) Wartime 1

(a) Beginning of Hostilities 1

(1) Beginning of Hostilities With a Declaration
of War 5

(2) Beginning of Hostilities Without a
Declaration of War 6

(b) Consequences of the Beginning of Hostilities 10

(1) Discontinuance of the Diplomatic

Relations Between the Belligerent Powers 10

either of these two items, why did it not offer them in its case in chief against Hata? If the Prosecution thought these items were true accounts, why did it now show these items to Yonai and ask him to testify in accordance therewith? As a matter of fact, the Prosecution had served upon us an affidavit by Yonai and had intended to use him as a witness until it must have realized that upon our cross-examination of Yonai, Hata would have been completely absolved of any responsibility for the wrecking of the Yonai Cabinet.

It will be noted that the Prosecution did not challenge the statements of Yonai and Arita that the Tripartite Pact was never discussed by the ministers at any of the cabinet meetings. Now, then, since Hata was War Minister in both the Abe and Yonai Cabinets which never discussed the Tripartite Pact on a cabinet level, can the Prosecution contend that Hata supported the Tripartite Pact? If, indeed, he were a supporter of the Pact, would he not have breached it at least once during the more than ten months he was War Minister in the two cabinets?

In the preceding Hiranuma Cabinet, where the Pact had adherents, it was constantly discussed. In the succeeding 2nd Konoye Cabinet, it was

(2) Enforcement of the ~~provisions concerning~~ ^{Agreements}

Wartime ~~provisions~~ ^{Agreements} - - - - - 10

(3) ~~Less or Suspension of the validity of~~ ^{Invalidation}

of Treaties Excepting ~~treaties concerning~~ ^{Those}
Wartime - - - - - 10

(4) Enemy nationals ~~in areas under~~ ^{Within}

Jurisdictional ~~areas~~ ^{Areas} - - - - - 11

(5) Transactions With the Enemy Nationals - 11

(6) The Rights of the Enemy Nationals to

Take Legal Proceedings - - - - - 11

(7) Enemy Properties - - - - - 11

(8) Dealing with the Enemy ~~Mar-~~

Merchant Ships at the Time ~~of the opening of~~ ^{When}

discussed and soon signed. How, in the face of this silence on the Pact in the two cabinets in which Hata was War Minister, can the Prosecution contend Hata supported the Pact? How can the Prosecution in one breath exculpate the Emperor but in the next breath state that the Emperor's own personal appointee as War Minister was a supporter of the Tripartite Pact? Finally, where is there even one quote from any statement by Hata before he became War Minister, while he was War Minister and after he was Minister to indicate his support of the Pact? The Prosecution relies only on inferences, conclusions, newspaper articles which it didn't dare offer in its case in chief, interrogations which Yonai on the stand and under oath stated did not contain his correct answers, diary excerpts based on hearsay. We rely not on negative evidence but on direct evidence of Sawada, Tanaka, Arita and Yonai and Okawa. The Prosecution produced not one witness against Hata in this entire trial, not one witness to accuse him of wrongful acts in the Yonai Cabinet. Surely, the Tribunal will note the difference in value of the testimony offered by the Prosecution and by the Defense with reference to Hata's part in the downfall of the Yonai Cabinet.

Hostilities Opened - - - - - 12

(a) General Rules - - - - - 12

Index /
P 2

(b) ^{Period of Grace}
~~Granting of ~~Temporary~~ Allowance~~
~~Allowance of a benefit period~~ - - - - - 12

(c) Disposal of Ships Unable to
Leave Within the Specified
Period - - - - - 16

(d) Disposal of Ships Which Had
Left the Last Port Before the Opening
of Hostilities and Which, When
Encountered at Sea, ~~without~~
~~encountered on the sea, have not~~
were ~~unaware~~ ^{unaware}, that
~~do not know~~ ^{ing} that War Had Begun. - - - 16

(e) Disposal of the Cargoes - - - - - 17

To continue with the Prosecution's Third Point, namely, that Hata was "a prime mover" in the downfall of the Yonai Cabinet, let us analyze the evidence offered on this point by both the Prosecution and the Defense and see whether Hata deliberately overthrew the Yonai Cabinet, or whether Hata himself was overthrown along with the Yonai Cabinet because he was a supporter of the Yonai Cabinet and not, as the Prosecution contends, a mortal enemy of the cabinet and its policies.

Here, again, we are faced with the fact that there is nowhere any official record produced by either side, of a speech or an address by Hata. We, therefore, must examine the circumstances surrounding the downfall of the Yonai Cabinet and the testimony under oath before the Tribunal, of the people who know best these circumstances because they were members of the cabinet itself, or held positions subordinate to or superior to Hata in the army and the War Ministry.

The Prosecution, as shown by Mr. Comyns-Carr's answer to our motion for dismissal, relies entirely (p. 16,830-1) on Prosecution Exhibit No. 532, a lengthy excerpt from Kido's Diary. As we shall see in a moment when we analyze this exhibit, all of

(f) The ~~Value~~ ^{Termination} of the Present Treaty 18

(c) The ~~end~~ ^{Termination} of War 19

(d) Peace Treaty 19

(II) Wartime Agreements 23

(a) ~~Agreements~~ ^{of} Capitulations 24

(b) ~~Agreement~~ ^{of} Armistices 29

(III) Cases of Quasi-War 35

(notes) (1) Right of Self-Defense, Reprisals, etc. 35

(2) ~~Operations~~ ^{Efforts} to prevent Tense

Situations 37

(IV) Application of War Regulations 39

(V) Anomaly of the Application of War

Kido's information contained in this exhibit is hearsay. On the other hand, the Defense evidence on this point contains no hearsay, but is encompassed in the direct testimony under oath before the Tribunal by the Prime Minister, and the Foreign Minister of that Cabinet, Yonai and Arita, Sawada Shigeru, Vice-Chief of the General Staff, and Tanaka, the Prosecution's star witness and a section chief in the War Ministry at that time.

Admiral Yonai stated (p. 28,918): -

"And so, as my cabinet opposed and excluded such a pact with Germany and also because it was not pro-German, a desire to overthrow my cabinet came into being. Those who opposed my cabinet were endeavoring to kill two birds with one stone; that is, to have General Hata, who was opposed to the Tri-Partite Pact, resign from the government and simultaneously to overthrow the cabinet. Eventually, their plan was carried out and their objective was obtained -- two birds killed with one stone. When General Hata resigned, I believed and felt that his resignation was not of his own free will, but that he was forced to resign by elements he was powerless to fight and today I am more convinced than ever that my beliefs then were correct."

Here is a positive unequivocal statement by the one man who should know whether Hata deliberately overthrew his cabinet. He and his cabinet as we have shown from quotes by Mr. Tavenor and Mr. Keenan, were praised both before and after Yonai's appearance

Regulations - - - - - 39

(a) Reprisals - - - - - 39

(b) Modification of the ^{Applicable} Regulations,

~~applicability~~ Inapplicability, etc. - - - - - 40

Index

P. 3

(VI) ~~Matters to be considered~~ ^{Precautions relating to} the Application of War

Regulations - - - - - 41

(VII) War Regulations to be Observed by the

Japanese Empire - - - - - 41

(VIII) Observance of the International Law - - - - - 45

(IX) Violation of the International Law and

Punishments Thereof - - - - - 49

(a) Outline - - - - - 49

itself has claimed directly involve the accused by his own acts.

General Hata is accused of having participated in the overall aggression of Japan in three different ways. (1) That he carried on aggressive war in China at two different periods of time as commander of various armies in China; (2) As Minister of War in the Abe and Yonai Cabinets, he helped determine the national policy and worked on plans and preparations for aggressive war during that period; and (3) That he was one of the prime movers in the overthrow of the Yonai Cabinet, thus giving new direction and expansion to the entire conspiracy. Lastly, the accused is charged with responsibility for the alleged atrocities committed by Japanese soldiers in China during the times that he commanded the several armies in China. This is the sum total of the evidence the Prosecution alleges it has adduced against the accused Hata and we will now show, point by point, that the Prosecution has completely and totally failed to prove these allegations.

Point 1. "That he carried on aggressive war in China at two different periods of time as commander of various armies in China". From his personnel record, the Tribunal, of course, knows the accused

(b) ^{Liable} Those to be Punished for War

Crimes 49

(c) Punishments 53

(X) Hostile Acts Against the Enemy
~~Hostilities~~ 54

(a) The ^{Scope} ~~extent~~ and Limits of Hostilities . . . 54

[note 1] ~~Injurious~~ ~~Against~~ Measures ^{to injure} the Enemy . . . 55

(1) The Aim of the Injurious Measures . . . 55

^{Injurious} ^{Against}
(2) Measures ~~taken~~ to injure the Enemy

Engaged in the Battle 56

^{Injurious} ^{Against}
(3) Measures ~~taken~~ to injure the Enemy

Not Directly Engaged in the Battle 58

^{Rever}
(4) ~~Clever~~ strategem 60

In the latter stages of the individual defense presentations before the Tribunal, ample evidence came out that the Emperor opposed the Tripartite Pact and was dismayed when Hatsuoka signed it in September of 1940. Here, by Arita's statement, which is unchallenged, Hata, then Chief Aide-de-Camp to the Emperor, told Arita that the Emperor opposed the Pact. Is it at all possible to believe that the Emperor would insist on making War Minister, in that critical period when the Tripartite Pact was being considered, a man who would be in favor of the Tripartite Pact when the Emperor himself opposed it? For Hata to know that the Emperor opposed the Pact, he and the Emperor must have discussed it, and the Emperor must have known that Hata also opposed the Pact and would carry out the Emperor's wishes in opposing the Pact as long as he was War Minister. It is inescapable that the Emperor, conclusively established as opposing the Pact from its beginning, would only appoint a War Minister who was also opposed to the Tripartite Pact. That Hata adhered to his anti-Tripartite position is proved conclusively by the following: - Not once during the Abe Cabinet, did the Tripartite Pact come up. No evidence has been introduced by either side that the Abe Cabinet

(5) ^{Searching for} ~~Spying out~~ Information 60

(a) ^{Reconnaissance} ~~Reconnoitering~~ of Enemy Situation

and ^{Terrain} ~~the lie of the ground~~ 60

(b) Spies 61

(c) Punishment of the Spies 62

Index
P. 4

(Note II) Kriegsraison 62

(b) ^{Areas} ~~Places~~ Where Hostile Activities May

~~Be~~ Carried ^{Out} ~~on~~ 63

(1) Neutral Countries 63

(Note) (1) Leased Territories 63

(2) Concessions 64

(3) Mandated Areas 65

over discussed the Tripartite Pact. Since it was the army that favored the Tripartite Pact, the support in the Cabinet for the Tripartite Pact would have come from the one man in the Cabinet to whom the army could give orders -- Hata, the War Minister. As we have just stated, the question of the Pact was never broached during this Cabinet.

Now we come to the critical Yonai Cabinet. The two men who could tell the Tribunal what was done about the Tripartite Pact in this Cabinet, Yonai and Arita, were not produced by the Prosecution, but by the Defense because, of course, while their testimony would help the Prosecution's over-all picture that the army wanted the Tripartite Pact, it would explode the Prosecution's contention that Hata also supported the Tripartite Pact and was responsible because of this feeling for the Tripartite Pact, for the wrecking of the Yonai Cabinet. Yonai stated:

(28,917):

"With respect to the Tripartite Pact with the Axis countries, my Cabinet was completely opposed to it and for this reason this question did not even once come up in our Cabinet conferences. Coming to this question and to General Hata who was my War Minister, he earnestly cooperated with my Cabinet's policy and, of course, naturally was opposed to the Pact."

Arita stated (23,945): -

"The Yonai Cabinet was opposed to

Open Areas Specifically.
(2) ~~was~~ specially prohibited by

International Treaties ----- 67

(3) Territorial Waters ----- 67

(Reference) (1) The limits of territorial
waters ----- 68

(2) Examples ^{on} concerning the

Limits of territorial waters ----- 68

(3) The Customs of Our Country ----- 72

(4) Individual Cases ----- 73

(1) Gulfs and Bays ----- 73

(2) Inland Seas ----- 73

(3) Straits ----- 74

the Tripartite Pact because we were opposed to any entanglements with Germany. Such being the case, the Tripartite Pact was never during the life of the Yonai Cabinet put on the agenda for discussion by the Ministers of the Cabinet. General Hata was the War Minister in the Yonai Cabinet and throughout his tenure of office he was in full accord with the policy of the Cabinet and cooperated fully with it."

The testimony of Arita was not challenged on this point, but the Prosecution did try to impeach Admiral Yonai through a newspaper article which purported to give a different version of the break-up of the Yonai Cabinet. We will not discourse on the value of newspaper articles. The Tribunal has on many occasions properly characterized their value as evidence. The Tribunal will not forget the persistence with which Admiral Yonai denied that the newspaper article gave a true account of the fall of the Yonai Cabinet. The Prosecution also sought to impeach Admiral Yonai by means of a certain interrogation taken by some Russian officer before this trial began. Again Admiral Yonai denied fully and completely that he ever gave the answers or made the statements imputed to him. Admiral Yonai was testifying before the Tribunal under oath and subject to cross-examination, whereas the newspaper article and the alleged interrogation had no such virtues. If the Prosecution placed any faith in

(5) The Starting Point of ^{reckoning} ~~deciding~~ the

the Limits of Territorial Waters 74

(4) Territorial Waters 74

Chapter II. Those Who Exercise the Rights

to Engage in Hostilities in ^{the} Case of Naval

War 76

index

P. 5

(I) Warships 76

(II) Boats ~~and~~ Carried on Warships 76

(III) Those Who Can Exercise the

Rights to Engage in Hostilities

Besides Warships (Irregular

Military Force) 76

opposition to the Tripartite Pact. Surely, the Prosecution after having used Tanaka for so much and so often to help them make out their own case will not try to impeach their star witness when he gives testimony on behalf of one of the accused, namely, Hata. It is highly significant that the Prosecution did not even attempt to cross-examine either Sawada or Tanaka on Hata's reduction of the Japanese troops in China by cutting the army budget appropriations for the China Incident. This was the only budget that Hata prepared during the ten months that he was War Minister in the Ibe and Yonai Cabinets. His actions, while War Minister, speak far more eloquently as to his position with reference to the China Incident than any speech he might have made publicly or any intentions he might have expressed privately.

The Prosecution, and the Tribunal, on occasion, have characterized as propaganda, speeches and writings offered as evidence by other accused when their actions, while in office belied those speeches or writings. Here, we have offered the best kind of evidence, namely, action taken by Hata while in office and the evidence given by two people who should know, namely Sawada, Vice-Chief of the General Staff at the time, and Tanaka,

(IV) ~~Ships~~ which are Recognized ~~as~~

Characteristics of Warships from the

Standpoint of International Law. 77

(V) Position of the Submarines. 77

Chap. No. III. Conversion of Merchant Ships To

Warships. 79

(I) Treaties ^{regarding} concerning the Matter. 79

(II) Necessary Conditions for the Conversion
of Merchant Ships to Warships. 80

(III) Procedures for the Usage thereof. 81

(IV) Places of Conversion. 81

Chap. No. IV. Hospital Ships. 84

Section Chief of the Military Service Bureau in the War Ministry at the time, and the testimony of both, we repeat, went absolutely unchallenged by the Prosecution. Surely, such action was not the action of a man who "worked on plans and preparations for aggressive war", while he was War Minister. As we revealed, while reviewing all the exhibits above which the Prosecution claims show that Hata "worked on plans and preparations for aggressive war" while War Minister, the Prosecution's evidence on this second point, are negative in nature; not one of them directly connects Hata as a member of any conspiracy, if indeed a conspiracy existed; not one of them showed that Hata in any wise forwarded the plans of any such alleged conspiracy; not one of them shows Hata as favoring any new aggressive war. It must be remembered, too, that at the time Hata was War Minister, the China Incident was already three years' old, and the Pacific War did not begin until the end of 1941. If, by saying that Hata "worked on plans and preparations for aggressive war" the Prosecution means the China Incident, Hata's actions in reducing the army budget, lay at rest that contention. Anything he may have said publicly in support of the policies of the Yonai Cabinet could not, by any

(I) Rescue of the Wounded and the Sick;

Army Medical Organs

~~Medical Functions in the Army and~~

Hospital Ships - - - - - 84

(II) The Outline of the Treaty concerning the

Application of the Principles of the

Geneva Treaty in Naval Warfare 85

(a) Hospital ships - - - - - 85

(1) ^{Types} ~~The kinds of hospital ships~~ - - - - - 85

(2) The Duties of Hospital Ships - - - - - 88

(3) The Rights of the Belligerent

^{Over} Powers concerning the Hospital

Ships - - - - - 88

stretch of the imagination, be called "working on plans and preparations for aggressive war" since, as we have shown by quotes from Mr. Tamm and Mr. Keenan, the Prosecution rightly believes the Yonai Cabinet a peace cabinet. If, by working on "plans and preparations for aggressive war" while War Minister, the Prosecution means the war which broke out later, namely the Pacific War, we again state that none of the exhibits above referred to even remotely connect Hata with any such plans and preparations. In this instance we can go one step further, and give positive evidence and again, as before, uncontroverted evidence that Hata unequivocally showed he was opposed to any war, or talk of war, with the western powers.

We refer the Tribunal to the testimony of Tanaka, Ryukichi (p. 29,410):

"A Yes, in 1939 when General Hata learned that a certain colonel made a speech in Sendai attacking the United States and England, saying, 'Down with those countries', he became indignant and ordered me to have that officer brought back to Tokyo. When I had him brought back to Tokyo, General Hata reprimanded him and then transferred him to an outlying post as punishment."

The witness, Oikawa (p. 29,004) who was Navy Minister in the Second and Third Konoye Cabinets testified:

"In or about September, 1941, Lieu-

Identification
4. ^{Identification} Marks of Hospital Ships - - - - 88

(b) The Sick-Bay on Warships - - - - 90

(c) ^{Confiscation} The ~~loss~~ of protection for Hospital

Ships and Sick-Bays on Warships - - 90

(d) Rescue by Warships and Private

Ships of the Neutral Powers - - - - 91

(e) Treatment of Chaplains, Surgeons

and Nurses ^{aboard} ~~on board~~ the Captured

Ships - - - - - 92

(f) Treatment of the Wounded and ~~the~~

Sick, Castaways and the Deceased - 92

Next. What Constitutes the Enemy - 96

tenant General Ushirogu, Chief of Staff of the China Expeditionary Forces, called upon me at the Navy Minister's office as a messenger dispatched from General Hata, Shunroku, the Commander in Chief of the China Expeditionary Forces, with the following message from General Hata:

"Recently, relations between America and Japan have been deteriorating. America is opposed to Japan's stationing her troops in China. I believe that in order to avoid a clash with America, we must withdraw all our troops from China. I heartily request you to do your utmost as Navy Minister to prevent a conflict between America and Japan."

There was no cross-examination by the Prosecution of this witness in this all-important testimony.

The witness Tanaka confirmed Oikawa's testimony on this point (p. 29,413):

"Q After General Hata became Commander of the Japanese Forces in China while you were still a Bureau Chief in the War Ministry, do you know of any statements made or any actions taken by General Hata with reference to the Pacific War?

A Yes. In September, 1941, when General Hata was Commander in China and when relations between America and Japan were steadily deteriorating, General Hata sent his Chief of Staff, Lt. General Ushirogu, to Tokyo to see me and tell me that he, Hata, wanted to withdraw all Japanese troops from China in order to avoid a war with America. Hata asked me to help pass this plan of his in the War Ministry.

Q Then what happened?

(I) Ships - - - - - 96

(a) Enemy Ships - - - - - 96

(b) The Transfer of the Nationality
of a Ship^a - - - - - 96

(1) Before the Opening of Hostilities - 96

(2) After the Opening of Hostilities - 97

(3) The Transfer of the Nationality of
a
of warship^a - - - - - 98

(II) Cargo^{aboard} on the Ships - - - - - 99

(III) Personnel (Judicial
judicial persons) - - - - - 99

(A) No. VII Disposal of Enemy Ships - - - - 100

(I) General Rules
Principles - - - - - 100

A After General Ushirogu had seen then, he came and told me the answers he received from each of these men, before he left for China again to report to General Hata."

To summarize Point Two, that Hata "as Minister of War in the Abe and Yonai Cabinets, he helped to determine the national policy and worked on plans and preparations for aggressive war during that period", the Prosecution's evidence which we have reviewed, utterly fails to sustain the Prosecution's contention. On the other hand, the Defense evidence offered by Yonai and Arita shows Hata opposed the Tripartite Pact from as far back as 1938, had supported the Yonai Cabinet and its policies, which cabinet and policies, as the quotes from Mr. Tavenner and Mr. Keenan show, the Prosecution has held up as pro-peace, pro-Anglo-American and Anti-Tripartite Pact. Over and beyond that, Hata took positive steps to bring about peace with China, and implemented and supported his peace overtures to China with a reduction in the Japanese army budget for the China Incident, bringing down the Japanese army strength in China from 900,000 to approximately 600,000, and this, as Tanaka and Sawada tell us, in the face of the strenuous opposition of the General Staff in Tokyo. Far from promoting plans for aggressive war in the Pacific, he censured and

Index
P. 7

(II) Exemption from Seizure - - - - - 101

(III) Disposal of Enemy Ships and
Cargoes - - - - - 102

(Reference) Chart ^{or} of the History Concerning
ing Captures at Sea. - - - - - 102-2

No. VII. Japanese ^{Vessels} ~~Ships~~ having
Trading ^{Nations} ~~intercourse~~ with Enemy ~~powers~~ - - - - - 103

(I) Prohibition of ^{Trade} ~~the intercourse~~ with the
Enemy - - - - - 103

(II) Japanese ^{Vessels} ~~ships~~ Trading
with the Enemy. - - - - - 104

(III) Cases of Japanese ^{Recognized} ~~ships~~ as not having

punished a Japanese colonel who had ranted against England and America, and even after he had left the War Ministry and was in China, far removed from the Tokyo scene and utterly without policy-making power, he had sent his Chief of Staff urging that, in order to avoid a war in the Pacific, Japan should withdraw all its troops from China. While War Minister he had advocated the withdrawal of all Japanese troops from China, so his position in this respect was consistent throughout. Surely these actions overwhelm any contention or inference which the Prosecution may seek to draw from the negative type of testimony on which it relies and which we have previously reviewed, to sustain its point that Hata "worked on plans and preparations for aggressive war" while War Minister.

We now turn our attention to the Prosecution's third point "that he was one of the prime movers in the overthrow of the Yonai Cabinet, thus giving new direction and expansion to the entire conspiracy". This third point pre-supposes that a conspiracy existed, and that the most certain thing in this entire trial, next to the unchallenged fact that a war did take place, is that the Prosecution has completely and totally failed to establish the existence of a conspiracy. Here there is no

~~Trading~~ ~~intercourse~~ ~~With Enemy~~ ~~powers~~ ^{ratione} - - - - - 105

(IV) Disposal - - - - - 105

No. VIII. ^{Bombardment} Bombarding of cities, Villages,

etc. by Naval Forces - - - - - 105

(I) Targets for Bombardment - - - - - 106

(II) Procedures to be Taken Before Bombardment

and Conditions thereof - - - - - 110

(a) General Rules - - - - - 110

(b) Cases of Bombarding Objects in

Undeclared Cities, etc. - - - - - 110

(III) Bombardment of Undeclared Cities,

etc., which ^{do} did not Respond to ^{Requisitioning} ~~Requisitioning~~ (111)

"Lein Kampf", no Fuhrer, no single party, no relentless direction, no pattern. The question of conspiracy is treated fully elsewhere in the Defense summations and we adopt that argument. Our interest in this particular summation is with the acts of Hata while War Minister. It is the only position of a policy-making level which Hata ever held, and it is the only opportunity Hata ever had of joining the conspiracy, if such ever existed, or showing that he knew a conspiracy existed and was a member of it. We maintain that all the evidence adduced under Point Two absolutely fail to show that Hata was a member consciously, or unconsciously of any conspiracy.

To begin with, Hata became War Minister, not because he belonged to, or was a member of any military clique, or member of any conspiracy. He did not become War Minister because any of the accused in the dock nominated him to be War Minister. He became War Minister in the Abe Cabinet in spite of, not because of, the actions of the Three Chiefs, who except in this instance, invariably nominate the new War Minister. When the Hiranuma Cabinet fell, and the Abe Cabinet came into being, the Three Chiefs named General Tada to be War Minister. The Emperor

(IV) Objects Which Must Not be Made

Targets of Bombardments - - - - - 112

No. IX ^{Use} ~~Laying~~ of Submarine Mines - - - 115

(2) ^{Types} ~~Kinds~~ of Mines and Construction

Thereof - - - - - 115

Index
P. 8

(II) The Object of Using ~~the~~ Mines - - - 116

(III) Measures to prevent Damages - - - 116

(IV) ^{Areas for} ~~Places to~~ Laying Submarine Mines - - - 118

(V) Laying of Submarine Mines by

the Neutral Powers - - - - - 120

(VI) ^{to be Taken} Measures ^{Termination of War} ~~After the war ends.~~ 120

Chap. No. X. Submarine Cables - - - - - 121

Prosecution seeks to make Hata's approval of Hato and Tojo to their respective positions in the War Ministry a criminal act or an act in furtherance of the conspiracy. If Hata's approval of this appointment of Tojo and Hato was the act of a conspirator because Tojo and Hato today stand accused before this Tribunal, then similarly the Prosecution must contend that the Emperor because of his intervention to make Hata, who today stands accused before this Tribunal, War Minister, also committed a criminal act or joined and furthered the alleged conspiracy. Since they do not contend that the Emperor, by making Hata War Minister, committed such a crime but on the contrary they exculpate him of complicity, the only conclusion is that Hata was not, and could not be stated to be, a member of the conspiracy.

Our contention that Hata opposed the Tripartite Pact now receives additional support when it is remembered that Arita stated (p. 28,945):

"In fact, I know General Hata opposed the Tripartite Pact from the days it was being first discussed in Japan. When I was Foreign Minister in the Hiranuma Cabinet, I had occasion to have an audience with the Emperor. While waiting to be received, I met General Hata, who was then Aide-de-Camp to His Majesty. We conversed informally and the subject of the Tripartite Pact came up. General Hata stated it appeared the Emperor objected to the proposed pact and that he himself was strongly opposed to it."

(I) Objects for Disposal. - - - - - 121

(II) Those which must not be Disposed of. 122

(III) Methods of Disposal - - - - - 122

(IV) Place of Disposal - - - - - 122

(V) Owners & Possessors of Cables - - - - - 122

Ch. No. XI. Blockade - - - - - 123

(I) Places which can be Blockaded - - - - - 124

(II) Necessary Conditions to Make Blockades

Effective. - - - - - 127

(III) Necessary Conditions for the Establishment of

Breach
of Blockade ~~running~~ - - - - - 132

(IV) Enforcement of Blockades - - - - - 134

8. CAGAYAN

Date: Up until Nov 6-7, 1944
Orders- Intelligence reports
Directed to: Air Sector Unit

9. CLARK

- Q. Did you ever have the occasion or need to issue orders to a subordinate unit within your own Air Sector Unit command?
- A. No. My orders were issued directly to the various sector commanders who in turn disseminated the proper order to the next lower unit in question.
- Q. State what lines of independent action or self-jurisdiction you undertook without having to consult with the Army or requesting approval for such freedom of movement?

-4-

Japanese characters and Han

- A. The details and method of carrying out 4th Air Army's orders were left up to self-judgment of the division commander.
- Q. Did you ever have the need for proposing or recommending to the Army certain lines of action which fell into your zone of responsibility or command and directly effect your command or 4th Air Army's sphere of control?
- A. No.
- Q. Did you ever take any action or assume any responsibility in areas outside of your assigned zone of responsibility?
- A. Yes.
- 1) Dec. 20, 1944 - on orders from General TAMINAGA, dispatched ten bombers to the Negros Area to stem off the attack of the U.S. fleet.
 - 2) After Palawan Island was removed from my jurisdiction, I attempted to investigate a reported atrocity which occurred. As a matter of fact, in the beginning of December 1944 my own situation was so critical that all I could do was to take care of and protect my own assigned zone of responsibility.
- Q. You stated that Palawan Island was removed from your command and jurisdiction. Indicate how this came about and the source of the orders with complete explanation thereof.
- A. 4th Air Army issued an order stating that the area north of Mindoro extending horizontally across the map would as of that date be under the command of the 4th Air Division, and all areas south would come under the command of the 2nd Air Division. This was a map order with an appropriate but brief explanation.

(a) Military ^{Strength} ~~power~~ to Enforce Blockades ... 134

Index
P. 9

(b) Capture of Ships - - - - - 134

(c) Areas for Capturing Ships (^{Area of} Operations

~~Areas of Fleets~~) - - - - - 136

(d) Cases When Ships ^{are liable to} ~~may be captured~~ ... 137
capture

(e) Cases When Ships ^{are not liable to} ~~may not be captured~~ ... 137
capture

(f) Respect for Neutrality - - - - - 138

(g) Impartiality in the Enforcement of
Blockades - - - - - 139

(V) Disposal of Ships (Breaching Blockades) ... 139

(note) The Nature of ^{Breach of} blockade ~~running~~ ... 140

(Reference) Peace-Time Blockades - - - - - 141

8. CAGAYAN

Date: Up until Nov 6-7, 1944
Orders- Intelligence reports
Directed to: Air Sector Unit

9. CLARK

- Q. Did you ever have the occasion or need to issue orders to a subordinate unit within your own Air Sector Unit command?
- A. No. My orders were issued directly to the various sector commanders who in turn disseminated the proper order to the next lower unit in question.
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Japanese characters and Han

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- Q. Did you ever have the need for proposing or recommending to the Army certain lines of action which fell into your zone of responsibility or command and directly effect your command or 4th Air Army's sphere of control?
- A. No.
- Q. Did you ever take any action or assume any responsibility in areas outside of your assigned zone of responsibility?
- A. Yes.
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No. VII. Contraband~~s~~ of War - - - 144

(I) ^{Types} ~~Kind~~ of the ~~War~~time Contraband~~s~~ of War - - - 145

(II) List of the ~~War~~time Contraband~~s~~ of War - - - 146

(III) Transportation of ~~War~~time Contraband~~s~~ of War - 149

(a) Conditions Which Would be Regarded

as Transportation of ~~War~~time Contraband~~s~~ of War - 149

(note) Principle of ^{voyage} Continuous ~~navigation~~ system - 149

(b) Methods ^{of} ~~for~~ proving the ~~fact~~ ^{Part} of Destination

~~ination~~ - - - - - 151

(IV) ~~Measures to~~ ^{Disposal of} ~~the~~ ~~ships~~ ~~carrying~~ ~~war~~ ~~time~~ ~~Contraband~~s~~~~ ^{Carrying}

^{of War} and the Cargoes Thereof - - - 153

(a) General Rules - - - - - 153

8. CAGAYAN

Date: Up until Nov 6-7, 1944

Orders- Intelligence reports

Directed to: Air Sector Unit

9. CLARK

- Q. Did you ever have the occasion or need to issue orders to a subordinate unit within your own Air Sector Unit command?
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- Q. State what lines of independent action or self-jurisdiction you undertook without having to consult 4th Air Army or requesting approval for such freedom of movement?

-4-

Japanese characters and Han

- A. The details and method of carrying out 4th Air Army's orders were left up to self-judgment of the division commander.
- Q. Did you ever have the need for proposing or recommending to the Army certain lines of action which fell into your zone of responsibility or command and directly affect your command or 4th Air Army's sphere of control?
- A. No.
- Q. Did you ever take any action or assume any responsibility in areas outside of your assigned zone of responsibility?
- A. Yes.
- 1) Dec. 20, 1944 - on orders from General TAMINAGA, dispatched ten bombers to the Negros Area to stem off the attack of the U.S. fleet.
 - 2) After Palawan Island was removed from my jurisdiction, I attempted to investigate a reported atrocity which occurred. As a matter of fact, in the beginning of December 1944 my own situation was so critical that all I could do was to take care of and protect my own assigned zone of responsibility.
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ill at ease

Index
P. 10

(b) Place of Capturing the Ships - - - - - 153

and Times are liable to
(c) Cases when Ships may be captured and
Capture
the time of capture - - - - - 153

(d) Exemption from Capture - - - - - 154

(e) Disposal ^(taken towards) of the Ships which have
Proposed to Surrender the Contraband
proposed to hand over the war-time
of War
Contraband - - - - - 155

(f) Disposal of the Ships ^{Carrying} conveying the war-
time Contraband and the Cargoes thereof - - - - - 156

No. XIII Military Aid - - - - - 156

Minor
(I) Military Aid ~~of Light Buoys~~ - - - - - 157

(a) Neutral Ships ^{Liable to Capture} to be captured - - - - - 157

- Q. After receiving the above change of area command order, what were your immediate actions?
- A. I called together my sector unit commanders from Manila, Lipa and Clark, in the presence of my Chief of Staff SANTIAGO and staff officer [REDACTED], and announced to them the line of division which had taken place and our new zone of responsibility. At this time I issued a divisional order covering the following points:
1. Protect our shipping. Manila, Lipa and Clark to coordinate and participate in this.
 2. Divisional area assigned and explained.
 3. Fighter units will prepare for air defense.
 4. Air Sector Unit will continue to carry out their previous assignments.
 5. Those units formerly under my command, south of the newly assigned area, will come under the command of 2nd Air Division.

- Q. How many units did you lose on account of the November Army order?
- A. Four.

- Q. What action was taken to inform your former units of the new change in command?

- A. Wireless orders were sent to BACLOD, NAGA, CAGAYAN, and D.V.A., written orders were sent to BACLOD and NAGA.

- Q. Who was responsible for informing subordinate units under Sector's command of the Nov. Army order?

- A. The respective Air Sector Headquarters.

- Q. What were the results of this November Army order, generally speaking?

- A. 1) Divided command between the 2nd and 4th Air Divisions, both of which were jointly controlled by 4th Air Army.

-5-

Japanese characters and Han

- 2) Transferred command and control of planes to 4th Air Division which formerly was without for purpose of preparing for anticipated emergency and future enemy action.

- Q. Did you draw any personal conclusion as a result of this alleged change in area command?

- A. Yes. My opinion was twofold.
- 1) Increasing threat of enemy action
 - 2) Preparation for anticipated emergency

- Q. At the time of the November Army order or at a later date, were any orders issued pertaining to proposed line of action to be taken in view of an inevitable enemy landing?

- A. No.

- (4) Exemption from Capture 159
- (c) Disposal of Ships and Cargoes 160
- (II) ~~Hostile Assistance of a Person~~
Major Military Aid
~~Nature~~ 160
- (a) Neutral Ships ^{Liability to Capture} to be captured 160
- (b) Disposal of Ships and Cargoes 162
- (III) Disposal of Individual Passengers
~~Measures to be taken towards the~~
Who are Embodied in the Armed
Forces of the Enemy Found to be
~~enemy military personnel on Board~~
- Neutral Ships 163
- (IV) Disposal of
~~Measures to be taken towards Japanese~~
Ships (Allied Shipping) 166
- No. XIV. Wireless Telegraphy 167

- Q. After receiving the above change of area command order, what were your immediate actions?
- A. I called together my sector unit commanders from Manila, Lipa and Clark in the presence of my Chief of Staff S. MATARI, and Staff Officer MEJILA, and announced to them the line of division which had taken place and our new zone of responsibility. At this time I issued a divisional order covering the following points:
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 3. Fighter units will prepare for air defense
 4. Air Sector Unit will continue to carry out their previous assignments.
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- A. The respective Air Sector Headquarters.

- Q. What were the results of this November Army order, generally speaking?
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Japanese characters and Han

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- A. Yes. My opinion was twofold.
- 1) Increasing threat of enemy action
 - 2) Preparation for anticipated emergency

- Q. At the time of the November Army order or at a later date, were any orders issued pertaining to proposed line of action to be taken in view of an inevitable enemy landing?
- A. No.

(I) Control in Specific Areas. 168

Index

P. 11

(II) Control ~~in cases of~~ ^{while operating} Operations at Sea

or ~~in cases~~ when It is Advantageous

to Indicate the Operation Zones. 171

(III) ^{Period} ~~the~~ Disposal of Ships and

Aeroplanes Violating the ^{Prohibition or} ~~regulations~~ . . . 172
Limitation

(IV) ^{In Relation to} ~~Connection with~~ the **Military aid** . . . 172

(V) ^{Seizure} ~~Disposal of~~ (Wireless ^{Shore} ~~coast~~ Stations in

the Enemy ^{Territory} ~~land~~. 172

(VI) Rights and Duties of the Neutral Powers

in Connection with ~~the~~ Wireless Communications. . . 173

No. XV. ^{Vessels Under Convoy of Warships} ~~The conveying of ships by warships~~. . . 174

- Q. State the organic units under your control, thus indicating your zone of command and responsibility.
- A. Since a designated change in area command occurred November 1944, as directed by 4th Air Army, I will indicate the areas under my command before and after November 1944.

-2-

Japanese characters and Han

1. From early part of November 1944

- 1) TUGUEGARAO Sector Unit
Lt Col. WAKATSUKI
- 2) CLARK Sector Unit
?
- 3) MANILA Sector Unit
Lt Col. FUSHIMI
- 4) NAGA Sector Unit
?
- 5) LIPA Sector Unit
?
- 6) Flying Regiments 4 to 5
 - a. Clark
 - b. Manila
 - c. NABUA
 - d.

Zone of area of responsibility from November 1944

1. LUBANG
2. LUZON
3. MARINDUQUE
4. BURLAS

II. October 1944 - November 1944 - All of P.I.

- 1) NEGROS Sector Unit
- 2) LEYTE Sector Unit
- 3) CAGAYAN Sector Unit
- 4) DAVAO Sector Unit
- 5) Plus named ones (5)

Q. Were you responsible for the construction and/or maintenance of air fields outside of the island of Luzon?

A. Yes. My responsibility and assignments were also extended to Palawan and Mindoro.

Q. Relate the types of orders you received from 4th Air Army (Lt. Gen. TOMINAGA) which directly effected your command. If any unusual order or orders were received, indicate their subject matter and contents.

A. Briefly, I used to receive four different types of orders from the Army as indicated below:

- 1) Manner of employing suicide squadrons
- 2) Defense measures to be employed at Manila.
- 3) Protection of Jap convoys
- 4) Supply

Under the
(I) Convoy by Warships of the Neutral

Powers

175

(II) Measures to be taken when the Opinion
of the ~~Commander~~ ^{the belligerent} of ~~the~~ Warships
is at Variance with that of the
~~the convoy warships and the warships~~
~~Commander~~ of the Convoy in regard to
the ~~Orders~~ ~~are at Variance~~
of the belligerent country differ

177

~~Convoy~~

Under
(III) Convoy by the Enemy Warships

177

No. XVI. Ship's Papers

178

(I) The Value of the Ship's Papers

178

(II) The Nature of the Papers

179

(III) Papers to be Examined in ^{Special} Particular

Cases

~~occasions~~

181

(IV) Examination of ~~the~~ Ship's Papers

182

- Q. How often did you meet General TAMINAGA either on a social or war-waging or planning basis?
- A. Very often up until March 1945.
- Q. What conversations did you have with Generals KUMABE, YAMAGUCHI and Col. MATSUME?
- A. Up until March 1945, I used to have meetings or conferences with them fairly regularly. However, I haven't communicated with them since that date.

-3-

Japanese characters and Han

- Q. State the various defense measures and orders you received from 4th Air Army which you disseminated to other commands, either within or without your zone of jurisdiction.
- A.
1. NAGA
 Date: January 1945
 Order: Actually intelligence report stating to watch for enemy convoy heading toward Lingayen from the Mindanao Sea Area.
 Directed to: Naga Air Sector Unit.
 2. BACOLOD
 Date: November 5-10, 1944
 Order: Reports (intelligence)-pertaining to Leyte-Campaign.
 Directed to: Air Sector Unit Commander.
 3. BACOLOD
 Dates: Oct 1944 - December 1944 (until US Landing)
 Orders: Exchange of intelligence information and reports.
 Directed to: 2nd Air Division
 4. LIPA
 Date: October 1944 - January 1945
 Order: Leyte intelligence reports.
 Directed to: Air Sector Unit
 5. MANILA
 Dates: October 1944 - January 1945
 Order: Intelligence reports re: Leyte campaign and convoy headed north.
 Orders re: Operation of suicide squadrons coordination with their units (middle of Nov 1944 - early January 1945)
 Situation was very critical and frequent orders were issued. My headquarters kept in close liaison with Col. Fushimi of the Manila Air Sector Unit throughout this critical period of time.
 6. TUGUEGARAO
 Date: Feb 1945 - June 1945
 Orders: Reports on Leyte Campaign
 Lingayen reports on enemy action
 Action to take against the enemy
 Directed to: Air Sector Unit
 7. DAVAO
 Date: Up until November 6-7, 1944
 Orders- Intelligence reports
 Directed to: Air Sector Unit

(V.) Measures to be Taken When the Ship's

Papers are Imperfects 182

(VI) Measures to be Taken When the Ship's

Papers are Not in Order 183

No. XVII. Postal Correspondence
Mails and Letters 184

Index
P. 12

(I) Inviolability of ^{Postal Correspondence} ~~mails and letters~~ 184

(II) Mail ~~ships~~ ^{ships} 186

(III) ^{Handling} Management of ~~mails and letters~~ ^{Postal Correspondence}

~~entitled to inviolability~~ ^{are}
~~Not Requiring Inviolability Handling~~ 186

No. XVIII. ^{Visit} ~~Inspection~~ Search & Capture 187

(I) General Rules 187

(a) The Rights of Official ^{Visit} ~~Inspection~~ 187

Q. How often did you meet General TOMINAGA either on a social or war-waging or planning basis?
A. Very often up until March 1945.

Q. What conversations did you have with Generals KUMABE, YAMAGUCHI and Col. MATSUME?
A. Up until March 1945, I used to have meetings or conferences with them fairly regularly. However, I haven't communicated with them since that date.

-3-

Japanese characters and Han

Q. State the various defense measures and orders you received from 4th Air Army which you disseminated to other commands, either within or without your zone of jurisdiction.

A. 1. NAGA

Date: January 1945

Order: Actually intelligence report stating to watch for enemy convoy heading toward Lingayen from the Mindanao Sea Area.

Directed to: Naga Air Sector Unit.

2. BACOLOD

Date: November 5-10, 1944

Order: Reports (intelligence) pertaining to Leyte Campaign.

Directed to: Air Sector Unit Commander.

3. BACOLOD

Dates: Oct 1944 - December 1944 (until US Landing)

Orders: Exchange of intelligence information and reports.

Directed to: 2nd Air Division

4. LIPA

Date: October 1944 - January 1945

Order: Leyte intelligence reports.

Directed to: Air Sector Unit

5. MANILA

Dates: October 1944 - January 1945

Order: Intelligence reports re: Leyte campaign and convoy headed north.

Orders re: Operation of suicide squadrons coordination with other units (middle of Nov 1944 - early January 1945)

Situation was very critical and frequent orders were issued. My headquarters kept in close liaison with Col. Fushimi of the Manila Air Sector Unit throughout this critical period of time.

6. TUGUEGARAO

Date: Feb 1945 - June 1945

Orders: Reports on Leyte Campaign
Lingayen reports on enemy action
Action to take against the enemy

Directed to: Air Sector Unit

7. DAVAO

Date: Up until November 6-7, 1944

Orders: Intelligence reports

Directed to: Air Sector Unit

Objects ^{may} visited
 (b) Ships which can be inspected - 188

~~(c) ^{to} visit~~ Place of Inspection 189

(c) The Object of ^{the} visit and

Search - - - - - 190

(II) Measures to be taken when ^{suspicious} doubtful

^{vessels} ships are found - - - - - 192

(a) Recording of the Situation - - - - - 192

(b) Orders to Stop - - - - - 192

(III) ^{Visit} Inspection - - - - - 195

(a) Dispatch of a Visiting Officer - - - 196

(b) ^{Position for} Place to stop the Warships ^{to stop} - - - 196

(c) Examination of the Ship's Papers - - - 197

8. CAGAYAN

Date: Up until Nov 6-7, 1944

Orders- Intelligence reports

Directed to: Air Sector Unit

9. CLARK

- Q. Did you ever have the occasion or need to issue orders to a subordinate unit within your own Air Sector Unit command?
- A. No. My orders were issued directly to the various sector commanders who in turn disseminated the proper order to the next lower unit in question.
- Q. State what lines of independent action or self-jurisdiction you undertook without having to consult 4th Air Army or requesting approval for such freedom of movement?

-4-

Japanese characters and Han

- A. The details and method of carrying out 4th Air Army's orders were left up to self-judgment of the division commander.
- Q. Did you ever have the need for proposing or recommending to the Army certain lines of action which fell into your zone of responsibility or command and directly effect your command or 4th Air Army's sphere of control?
- A. No.
- Q. Did you ever take any action or assume any responsibility in areas outside of your assigned zone of responsibility?
- A. Yes.
- 1) Dec. 20, 1944 - on orders from General TAMINAGA, dispatched ten bombers to the Negros Area to stem off the attack of the U.S. fleet.
 - 2) After Palawan Island was removed from my jurisdiction, I attempted to investigate a reported atrocity which occurred. As a matter of fact, in the beginning of December 1944 my own situation was so critical that all I could do was to take care of and protect my own assigned zone of responsibility.
- Q. You stated that Palawan Island was removed from your command and jurisdiction. Indicate how this came about and the source of the orders with complete explanation thereof.
- A. 4th Air Army issued an order stating that the area north of Mindoro extending horizontally across the map would as of that date be under the command of the 4th Air Division, and all areas south would come under the command of the 2nd Air Division. This was a map order with an appropriate but brief explanation.

(d) Prohibition ^{against} of Requesting the Ship

to be ^{visited} inspected to assist ^{in the} ~~inspection~~ ^{visit} 197

(IV) Search - - - - - 198

Index
P.13

(a) Cases when ^a search ^{is to be} should be made - - - 198

(b) Search Party - - - - - 198

(c) Search Methods - - - - - 199

(d) Discontinuance of the Search and

~~The Release~~ of the ship - - - - - 199

(e) Recording in the Log Book of the Ship - - - 200

(f) Matters to be noted in ^{the} search - - - 200

(V) Capture and ^{Detention} ~~Internment~~ - - - - - 200

(a) Cases when Capture ^{Detention} and ~~internment~~

16. Failing in their attack upon the prosecution's documentary evidence, the defense next turn their attack upon the prosecution witnesses. These attacks are not limited to discrepancies in the testimony or to contradictions or to matters to be found in the record. They are on the whole based on matters outside the record and in many instances they are made in complete disregard of the record. This entire process can be illustrated by the attacks on three of the principal prosecution witnesses.

17. The most interesting attack made upon a prosecution witness is that made on General TANAKA, Ryukichi. He is charged with being a professional witness, of having testified about too many things and with being biased. The inference is therefore that his testimony is a complete fabrication unworthy of belief. All of these charges made against TANAKA completely ignore the fact that he is just as much a defense witness as a prosecution witness. It ignores the fact ^a that he testified on three occasions for the prosecution and on five occasions for the defense ^b. It ignores the fact that he even appeared as a witness for the defense during the general phases and that only three of the defendants interposed ^c any objection to his being so called. The defense would like the court also to forget this fact. In many of the summations when they desire to use certain of his evidence which is thought to be favorable to one of the defendants, they have

-
- 17a. T. 1945-2177; T. 14,285-422; T. 15,853-951
 b. T. 22,713-58; T. 22,943-68; T. 29,030-64; T. 29,406-18;
 T. 36,924-5
 c. T. 22,713

~~any~~ or Detention is Necessary
should be enforced - - - - - 200

(b) Deciding whether to Capture or Detain
~~Judging the capture and internment~~ - - - - - 201

(c) Taking Possession
Occupation of the Ship - - - - - 201

(d) Disposal of the Captured ^{or Detained} Ship's

Papers, Cargo, etc. - - - - - 202

(e) Disposal of the Captured ^{or Detained} Ship's Crew - 202

(f) The Hoisting of ^{the Japanese Ensign} Japan's flag on the
on Board the Captured or Detained
captured Ship. - - - - - 205

(g) Release from Capture and ^{Detainment} ~~internment~~ - 206

(VII) Records and Reports concerning ^{visits,} inspection,

Search and Capture - - - - - 206.

(VIII) ~~Co-operative~~ Joint-Capture - - - - - 207

16. Failing in their attack upon the prosecution's documentary evidence, the defense next turn their attack upon the prosecution witnesses. These attacks are not limited to discrepancies in the testimony or to contradictions or to matters to be found in the record. They are on the whole based on matters outside the record and in many instances they are made in complete disregard of the record. This entire process can be illustrated by the attacks on three of the principal prosecution witnesses.

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 T. 36,924-5
 c. T. 22,713

(VIII) Recapture - - - - - 207

No. XIX. Resistance to ^{Search} ~~Inspection~~ - - - - - 208

Index

P. 14

(I) Measures ^{to be taken against} ~~towards~~ ships which resist

forcibly

~~to resist~~ Resist Search ~~inspection with force~~ - - - - - 208

(II) Disposal of ^{the} ^{mentioned} ~~above~~ ships - - - - - 209

No. XX. Destruction of Captured Ships and

Cargoes - - - - - 210

(I) Enemy ^{Prizes} ^{Their} ~~ships~~ and ~~Cargo~~ - - - - - 211

(a) When Destruction is ^{to be carried out} ~~possible~~ - - - - - 212

(b) Measures ^{to be taken} ~~Before~~ Destruction - - - - - 214

(c) Measures ^{to be taken} ~~After~~ Destruction - - - - - 214

(d) Matters concerning the Reparation of

16. Failing in their attack upon the prosecution's documentary evidence, the defense next turn their attack upon the prosecution witnesses. These attacks are not limited to discrepancies in the testimony or to contradictions or to matters to be found in the record. They are on the whole based on matters outside the record and in many instances they are made in complete disregard of the record. This entire process can be illustrated by the attacks on three of the principal prosecution witnesses.

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 T. 36,924-5
 c. T. 22,713

Ist Goods Which Should Not be Confiscated ... 214

(II) Neutral ^{Prizes} ~~Ships~~ ^{their} and Cargo ... 214

(a) General Rules ... 215

(b) Cases when Destruction is ^{to be Carried Out} impossible ... 215

(c) Measures ^{to be Taken} Before Destruction ... 217

(d) Measures ^{to be Taken} After Destruction ... 217

(III) Request for the Destruction or the Delivery

of Only the Cargo of the Neutral Ships ... 218

no. 12 XXI ^{Employment} ~~Using~~ of the Captured Enemy

^{Prizes} ~~Ships~~ and Cargo ... 219

^{Employment} (II) ~~Using~~ of Enemy ^{Prizes} ~~ships~~ ... 220

^{Utilization} (II) ~~Using~~ of the Cargo on the ^{of} Enemy ^{Prizes} ~~ships~~ ... 221

16. Failing in their attack upon the prosecution's documentary evidence, the defense next turn their attack upon the prosecution witnesses. These attacks are not limited to discrepancies in the testimony or to contradictions or to matters to be found in the record. They are on the whole based on matters outside the record and in many instances they are made in complete disregard of the record. This entire process can be illustrated by the attacks on three of the principal prosecution witnesses.

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 T. 36,924-5
 c. T. 22,713

Index
P. 15

Dec. XXII. Procedures for sending ^{forward} ~~the~~

Captured Ships - - - - - 222

(I) General Rules - - - - - 222

(II) Request for Help in Bringing a ^{Prize} ~~Ship~~

Home - - - - - 222

(III) Management of ~~the~~ Captured Ships 223

(IV) ^{Transfer} ~~Transferment~~ of ~~the~~ Crews of the Captured

Ships - - - - - 223

(V) Disposal of Cargo Unfit for Transfer; 224

(VI) Measures for ^{to be taken on} ~~the~~ Ships Unfit to be

Sent Home - - - - - 224.

(a) Investigation of the facts - - - - - 225

16. Failing in their attack upon the prosecution's documentary evidence, the defense next turn their attack upon the prosecution witnesses. These attacks are not limited to discrepancies in the testimony or to contradictions or to matters to be found in the record. They are on the whole based on matters outside the record and in many instances they are made in complete disregard of the record. This entire process can be illustrated by the attacks on three of the principal prosecution witnesses.

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 T. 36,924-5
 c. T. 22,713

(b) Measures 225

(c) Drawing Up of Records 225

(d) Steps at Neutral Ports 225

(iii) Duties of the ^{Prize} capture Officer 227

(a) Drawing Up of ^{an Inventory of} ~~a list of~~ fixtures,

~~stores, Furniture~~
~~utensils and Cargo~~ 227

(b) Drawing Up of a Transfer Diary 228

(c) ^{Control} ~~Superintendance~~ of the ^{Prize} ~~ship~~ and

~~Cargo~~ 228

(d) Request for ~~the~~ ~~ship~~

a Prize Court 228

(note) Procedures ^(a) ~~to be taken after~~



16. Failing in their attack upon the prosecution's documentary evidence, the defense next turn their attack upon the prosecution witnesses. These attacks are not limited to discrepancies in the testimony or to contradictions or to matters to be found in the record. They are on the whole based on matters outside the record and in many instances they are made in complete disregard of the record. This entire process can be illustrated by the attacks on three of the principal prosecution witnesses.

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 T. 36,924-5
 c. T. 22,713

Handing over to the Prize Court. 229

(2) The Nature of the ~~Prize Court~~ ^{Prize Court} 229

Index
P. 16

(VII) Report on the ~~Navigation~~ ^{Voyages} 230

(IX) Measures to be taken when ~~interned~~ ^{detained} 230

Part II ~~Contents of the US Constitution~~
~~Contents of the Essentials of the~~

Rights and Duties of a Neutral Powers

(The Rights and Duties of ~~the~~ Belligerent

Powers) Increase of ~~the~~ Naval Warfare

No. I. The Outline 231

(I) The Development of the Idea of

Neutrality 231

16. Failing in their attack upon the prosecution's documentary evidence, the defense next turn their attack upon the prosecution witnesses. These attacks are not limited to discrepancies in the testimony or to contradictions or to matters to be found in the record. They are on the whole based on matters outside the record and in many instances they are made in complete disregard of the record. This entire process can be illustrated by the attacks on three of the principal prosecution witnesses.

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 T. 36,924-5
 c. T. 22,713

(II) The Idea of Neutrality - - - - - 231

Changes

(III) ~~The~~ ~~Change~~ in the Ideas of Neutrality - - - 231

(IV) Declaration of Neutrality - - - - - 232

General obligations of

No. II. The ~~Rights~~ of ~~The~~ Belligerent Powers

~~in general~~ - - - - - 233

No. III. Prohibition of Hostile Activities in

the Neutral Territories and the Neutral

Waters - - - - -

234

No. IV. Prohibition of ~~Establishing~~ ^{the Establishment of} ~~prize~~

Courts in the Neutral Territories or Neutral

Waters - - - - -

237

No. V. Prohibition of ~~Establishing~~ ^{the Establishment of} ~~Operation~~ ^{Base of}

aircraft from the Japanese government which had been summarized
 in his direct testimony. As soon as this disclosure was made,
 the matter was dropped and no effort made to examine the paper.
 Notwithstanding this, Liebert is accused of not substantiating
 his aircraft figures. This entire attack is a belated thought.
 The defense never had any doubts as to the official character
 or the accuracy of Liebert's figures. They so stated in open
 court. During the direct-examination of the witness OWADA
 during a general phase, Mr. SHIOBARA, when invited by the
 President to have the witness deal with Mr. Liebert's figures,
 stated:

"Mr. Liebert's testimony was based mostly
 on the materials which he had obtained from
 the Japanese government, and as far as the
 figures are concerned they are mostly
 correct."d

19. The attack on the witness Ballantine is of a more
 insidious character. Although we might devote considerable
 time to examining the various unwarranted statements made in
 the defense summation on the diplomatic negotiations with the
 United States particularly in reference to Mr. Ballantine,
 one example will suffice since it is illustrative of the whole
 document. In the cross-examination of Ballantine on the
 question of equality of commercial opportunity, the following
 questions and answers appear:

"Q. Now, in view of those proposals and con-
 versations, did not the Department of
 State consider that there had been a meeting
 of minds on this point subject only to securing
 the authoritative, that is to say, the written
 provisions to that effect from the Japanese
 Government?"

18b. T. 8640-1
 c. (Defense Summation J, p. 30)
 d. T. 18,268

conversations with representatives of the Japanese army, one
 is based on a conversation with Yao Chen, one on a conversa-
 tion with Cheng Chui, the son of the puppet Prime Minister of
 Manchukuo, and one is an overall report based on a secret
 investigation made by KUWAJIMA, which he stated was supported
 by "unmistakable proof." With respect to the last item, since
 KUWAJIMA was well aware of the differences in value of sources
 of information, he can hardly be said to have meant rumors
 when he spoke of unmistakable proofs, especially in view of the
 fact that he was reporting officially to his superior on a serious
 matter. The documents themselves are thus much more specific
 as to the sources of information than KUWAJIMA's general
 statement. They are likewise much more accurate than
 KUWAJIMA's generalized and conclusional statement in response
 to the broad question of what methods he had employed in
 securing the information sixteen years earlier. KUWAJIMA had
 to admit this fact. When asked by the President if he had any
 reason to doubt the accuracy of his reports to Tokyo in Exhibit
 289 regarding his personal talk with DOHIHARA, the witness
 answered that he had no reason to doubt. After the prosecu-
 tion counsel read to him part of Exhibit 300 pertaining to his
 talks with DOHIHARA, he testified that he had nothing more to
 answer. The testimony of KUWAJIMA has therefore added nothing
 to what the Tribunal already knew with respect to each document
 from the documents themselves. His testimony has not advanced
 the case in any particular.

-
- 13e. Ex. 295, T. 4,381; Ex. 304, T. 4,402
 f. Ex. 287, T. 4,360
 g. Ex. 291, T. 4,373
 h. Ex. 300, T. 4,394
 i. T. 28,665
 j. T. 28,666

(III) ~~Freedom~~ Freedom to the Licensed Pilots: 245

No. IX. ^{24-Hour} ~~Twenty-four Hours~~ Regulations 246

(I) General Rules - - - - - 246

(II) Time of Application - - - - - 246

(III) Prolongation of ^{Stay in Port} ~~Stay~~ - - - - - 247

(IV) The ^{Correct procedure and interval} ~~Order~~ of Departure of the Warships

~~and the Interval between them~~ - 247

No. X. The Limit in the Number of Warships

Lying at Anchor. - - - - - 248

No. XI. ~~Matters~~ Damages Repairs - 248

~~Chap. XII. Prohibition of Increasing the~~

^{and} Fighting Power, Limitation in Supplying

firmed by uncontestable documentary evidence.

18. The charges made against the witness Liebert are in direct contradiction to the record. He is charged with having given opinions and conclusions and with having made up his figures out of his head. The charge with respect to conclusions and opinions is of little consequence. The Tribunal has repeatedly stated that it would not consider such matters. However, it should be noted that despite the Tribunal's statement, the defense made Liebert's conclusions a definite part of the case. The record of the three days cross-examination of this witness was practically entirely devoted to questions about his conclusions and opinions. The charge that Liebert's figures were unsubstantiated and were made up by him shows a completely negligent disregard of the record. Most of Liebert's important figures were graphically illustrated and the graphs were introduced into evidence as part of his direct testimony. The graphs themselves were reproduced as part of the transcript.^a Each and every graph shows on its face the exact source of the figures used. Each of the sources was either a government organ or a government controlled organ. Little attempt was made to cross-examine Liebert on the source of his figures although Liebert was willing and prepared to answer any specific question. In one instance on being cross-examined as to aircraft production, Liebert stated that he had with him a document with some very exact figures on

18a. T. 8282, 8286, 8333, 8335, 8338, 8356, 8357, 8518,
8556, 8641.

Munitions - - - - - 250

(I) Prohibition of Increasing the fighting

power - - - - - 250

(II) Limitation in Supplying provisions

and fuel - - - - - 250

(a) Peace-Time Limitation in the
The limits in the peace time

Supply of Provisions - - - - - 250

(b) Supplying of fuel Necessary to Reach

the Nearest Home port - - - - - 250

~~Special case when the lay days~~
(c) ~~The system of supplying fuel are~~
~~are the subject of supply of fuel~~
Regulations regarding complete
re-fuelling.
~~such as the fuel tank is full~~ - - - - - 257

Index
P.18

Special Case when stay in port
~~The system of supplying fuel~~
(d) Special case in prolonging the lay-

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8556, 8641.

is prolonged in consequence of supplying fuel 43

~~a week by the Great Tank~~
~~days due to the supplying of fuel~~ - - - - - 251

~~Can't Hold~~
a second time

(e) Re-fueling in the same Neutral

Country - - - - - 252

Chapter No. XIII. Taking a Captured Ship Into

Custody in a Neutral Port. - - - - - 253.

(I) Cases when a Captured Ship May
be Brought Into a Neutral Port

(II) Conditions - - - - - 253

(III) Measures to be taken ^{with respect to} ~~against~~ ~~towards~~

~~Ships which are~~

~~Brought In~~
~~custody without proper reasons~~ - - - - - 253.

Chapter No. XIV. Custody ^{Pending} ~~Until~~ Examination ^{by a} ~~of the~~

Prize Court. - - - - - 254

~~Part II~~

~~Detainment~~
Internment

No. XV. The ~~Detainment~~ Internment of a Warship ... 255

No. XVI. Duties to Prevent Violations ... 258

No. XVII. The Nature of the Rights of a

Neutral Power ... 259

No. XVIII. Notification of the Ordinance

concerning the Treatment of the Warships

of the Belligerent Powers ... 259

No. XIX. Application of the Treaties concerning

the Rights and Duties of a Neutral Power

in ~~Case~~ of Naval War ... 259

Contents of

Part III. ~~Contents of~~ Summary of

firmed by uncontestable documentary evidence.

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8556, 8641.

~~Regulations~~ ^{on} ~~for Aerial Combat~~ ^{Warfare}

No. I. The Present State of the Regulations

^{on} ~~for Aerial Combat~~ ^{Warfare} - 261

No. II. Air Forces - 261

(I) Regular Air Forces - 261

Index

P. 19

(a) Japan's Regular Air Forces - 262

(b) The characteristics of a Military

Plane, and the Necessary Conditions

of a Military Plane - 263

(II) Irregular Forces - 266

(III) Planes Which Can Be Used for

Combat Against the Enemy
Hostile Activities - 266

firmed by uncontestable documentary evidence.

18. The charges made against the witness Liebert are in direct contradiction to the record. He is charged with having given opinions and conclusions and with having made up his figures out of his head. The charge with respect to conclusions and opinions is of little consequence. The Tribunal has repeatedly stated that it would not consider such matters. However, it should be noted that despite the Tribunal's statement, the defense made Liebert's conclusions a definite part of the case. The record of the three days cross-examination of this witness was practically entirely devoted to questions about his conclusions and opinions. The charge that Liebert's figures were unsubstantiated and were made up by him shows a completely negligent disregard of the record. Most of Liebert's important figures were graphically illustrated and the graphs were introduced into evidence as part of his direct testimony. The graphs themselves were reproduced as part of the transcript.^a Each and every graph shows on its face the exact source of the figures used. Each of the sources was either a government organ or a government controlled organ. Little attempt was made to cross-examine Liebert on the source of his figures although Liebert was willing and prepared to answer any specific question. In one instance on being cross-examined as to aircraft production, Liebert stated that he had with him a document with some very exact figures on

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8556, 8641.

No. IV Planes for the Rescue of the Wounded

and the Sick - - - - - 267

^{Operations against}
No. IV Hostilities: (~~Exempting~~)
(Excluding bombing)

(~~Harassment~~) - - - - - 268

(I) Use
Use of Traces and Incendiaries;

etc. - - - - - 268

(II) Prohibition ^{against the use of} ~~of~~ ^{using} false external

Markings - - - - - 269

(III) Protection of ~~the wounded~~ ~~and the sick~~ ~~and the wounded~~ ~~and the sick~~ ~~and the wounded~~ ~~and the sick~~
those seeking safety by baling out.

(IV) Spreading of Propaganda - - - 270

No. V ~~Standard~~ ~~concerning~~ ~~Bombing~~ ~~in~~ ~~connection~~ ~~with~~
Bombing 271

(I) The Targets of ~~Bombing~~ - - - 272

firmed by uncontestable documentary evidence.

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18a. T. 8282, 8286, 8333, 8335, 8338, 8356, 8357, 8518,
8556, 8641.

(II) Bombing of Cities, Towns and

Villages - - - - - 274

(III) Previous Notices ~~of~~ ^{regard to} Bombing - - - - - 275

(IV) A Special Case in ^{regard to} China - - - - - 275

(V) Special System ^{relating to} ~~of~~ ^{Protection} for the protection of

of Historical Monuments and Buildings - - - - - 275

No. VI. Military Rights ^{Over} ~~concerning the~~

Enemy and the Neutral Planes - - - - - 278

Index
P. 20

(I) Planes Belonging to Neutral Powers - - - - - 278

(a) Indication of Routes or Prohibition of

Passage ~~of~~ - - - - - 278

(b) Requisition of ^{Private} Neutral ~~private~~ Planes - - - - - 279

firmed by uncontestable documentary evidence.

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8556, 8641.

(c) Neutral Planes ^{flying over} ~~passing through~~ Areas

Controlled by the Belligerent Powers: - 279

II. Planes Belonging to Belligerent Powers - - - 280

(a) Non-Military Planes of ~~the~~^a Belligerent

^{flying over} Power ~~passing through~~ Areas Controlled

by One's ^{Country} ~~Native Land~~ - - - - - 280

(b) Non-Military Planes of the Belligerent

Power ~~which can be constantly~~
summarily fired upon

~~at~~ - - - - - 280

(c) Confiscation of Official Planes of

Enemy Countries - - - - - 280

No. VII. Military rights Over ^{Crews} ~~the~~ Flight Personnel

firmed by uncontestable documentary evidence.

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8556, 8641.

of the Enemy and Neutral Planes - - - 281

(I) Enemy Planes - - - 281

(II) Neutral Planes - - - 282

No. VIII. ^{Visit} ~~Inspection~~ and Search; Capture

and Confiscation - - - 283

(1) Rights of the Military Planes of the

Belligerent powers to ^{visit,} ~~inspect~~, to Search,

etc. - - - 283

(II) ^{Visit} ~~Inspection~~, Search, etc of Ships - - - 284

(III) ^{Procedures for Visit} ~~Methods of inspection~~ and Search - - - 285

(IV) Treatment of Neutral Planes - - - 286

(V) Treatment of Enemy Planes - - - 289

firmed by uncontestable documentary evidence.

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18a. T. 8282, 8286, 8333, 8335, 8338, 8356, 8357, 8518,
8556, 8641.

Index
P. 21

No. IX. Planis Papers - - - - - 289

(I) Planis Papers - - - - - 290

(II) Defective Papers - - - - - 291

No. X. Examination by Prize Court - - - - - 291

No. XI. Cases When the Plane and Cargo

^{are}
~~is~~ Confiscated - - - - - 292

No. XII. Destruction of the Captured Planes - - - - - 293

(I) Destruction of the Enemy Planes - - - - - 293

(II) Destruction of ^{Private} Neutral ~~private~~ Planes - - - - - 293

(a) Conditions for Destruction - - - - - 293

(b) Measures concerning Destruction - - - - - 294

No. XIII. Delivery and Destruction of ^{Contraband of War} ~~War-time~~ Contrabands - - - - - 294

firmed by uncontestable documentary evidence.

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8556, 8641.

(I) Cases of Delivery and Destruction . . . 294

(II) Measures 295

(III) Examination ~~of~~ ^{by} prize Court, Explanations

~~and~~, etc. 295

Contents of ~~Contents~~
Part IV. Index of the Summary of the

Rights and Duties of a Neutral Power

(The Rights and Duties of ~~a~~ Belligerent

Powers) in case of Aerial ^{Warfare} Combats

Index
P. 22

No. I The Outline 297

No. II ^{general} The Duties of the Planes of the Belligerent

Powers ~~in general~~ 297