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Drawn Up by the Preparatory Committee

May It Please The Tribunal:

1. In its final reply the prosecution will not follow the traditional or orthodox pattern of dissecting and analyzing the final arguments of the defense in great detail. Such an approach would serve no useful purpose in this proceeding. To point out specifically item by item each misstatement of fact, each misquotation, each misleading summation of evidence, each untenable inference and to refute and answer them one by one would be of value to this Tribunal only if the contentions sought to be established through their use presented a valid defense to any issue now before the Tribunal. But they do not accomplish this purpose. If we should assume for purposes of argument that each of the errors, whether of fact or of inference, were true and valid, we would still be compelled to conclude that either they fail to establish the contentions sought to be established or that any contention established by their use is not a defense to the charges being considered by the Tribunal. Under such circumstances to attempt to make a detailed reply on all errors no matter how minute and no matter how insignificant would be an act of disservice to the Tribunal and would by beclouding the fundamental issues in this case unwarrantedly increase the already heavy burden of this Tribunal. Under these circumstances the prosecution at this time will limit itself solely to a consideration of the major contentions presented by the defense arguments.

~~for disarmament of the League of~~

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~~Land Combat~~ - - - 568

(24) Declaration Mutually Prohibiting

the Use of Bullets which would ^{easily} ~~unfold~~ _{spread}

or Flatten ^{Upon Entering the} ~~easily~~ in Human Body: - - - 568

(25) Treaty on the ^{Laws and Customs} ~~conventional regular~~

^{of Warfare}
~~Terms on Land Combat~~ - - - 569, 572

(26) Geneva Treaty of the 27 of July, 1929

on ^{Amelioration}
~~concerning the improvement~~ of the

Conditions of the Wounded and the

Sick at the Front. (^{Concerning} ~~concerning~~ of the

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"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 conversations, 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

Red Cross Agreement) 582

Neutrality 597

(27) Treaty on the Rights and Duties

of a Neutral Power in case of Naval ⁶⁹⁷ Wars

(28) Treaty on the Rights and Duties of

a Neutral Power and Neutral ^{Nationalities} personnel

in case of Land ^{Warfare} combat 604

General 610

(29) Treaty concerning the peaceful

Settlement of International ^{Disputes} complications 610

(30) Treaty on the ^{Limitation} of the Armed

Forces ^{are to} which can be used for the collection

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(32) Final Decision of the International

Peace Conference. 634

(33) Final Decision of the 2nd International

Peace Conference. 635

(34) Articles 10 to 17 (Inclusive) ^{Contained} of the
in the Covenant
Regulations of the League of Nations. 640

(35) Treaty on the Opening of Hostilities. 644

(36) Draft for the Regulations on the Wartime

Time Control of Wireless Communications,

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^{Warfare}
(No V) Table of Land Combat Regulations

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 d. T. 18,268

Murray -

This is the translation
from "Outline of International
Law and Regulations in Time
of War" published by the
Navy Ministry (1938) relative
to Hague III.

1 original Page 5/

(1) The opening of Hostilities

with a Declaration of War.

(a) No hostile action shall

be started between the

signatory nations of The

HAGUE Treaty on the Opening

of Hostilities (of which

JAPAN, BRITAIN, the UNITED

STATES, FRANCE, GERMANY,

15 Dec 1941

- Q. Should he have known?
- A. I cannot say that he should have known because everyone was in a position where he was either going to die or live and in a situation like that I could not positively state.
- Q. Did Iwabuchi have Navy officers under him?
- A. Yes.
- Q. Were reports made to him?
- A. I do not know. I presume that he received reports by the officers, but I cannot say.
- Q. In other words, you assume that reports should have been made?
- A. I figure that it would not be natural for anybody to report that he had killed another person and such as that. I believe that it would be natural for a person to try to hide and not report it if such a thing should happen. In Shanghai I have trained my men and have instructed them to be very careful to study whether a person should be killed as an enemy or not. I have told them if they could not determine whether a person should be killed they had weak character.
- Q. In the handling of civilians where it becomes necessary, in the opinion of the commanding officer, to kill hundreds of civilians at one time, would that be a decision such as the commanding officer would make?
- A. If a group of civilians were interned in one place and they had to be killed, then it would be a decision for the commanding officer. But I do not know the situation in Manila. I believe that what happened was done at various points and did not require it.
- Q. Where it would take a whole day to gather hundreds of civilians in one place by a ruse or by force, with the object in view to kill them after they had been gathered together, would that require the order of the commanding officer?
- A. By my common sense, I would say that it would be natural that if the battle was not so severe the commanding general should be conferred with, but I do not know what the situation was at that time and I cannot figure out what it was. Therefore, I cannot say for that certain case if it could have been done or not.
- Q. If I were to tell you that the incident described in the situation was one of many such incidents, would you say it was a part of the overall plan in the handling of the defense of Manila?
- A. I believe that there was no such plan in the defense of Manila. I say that with firm conviction.
- Q. If I were to tell you that the same thing was happening at the same time in many parts of Manila, would you say that it was a part of the over-all plan for the defense of Manila?
- A. I very much believe that there was no such thing as that planned in the defense of Manila.
- Q. Now if I were to tell you that many hundreds of civilians were herded together in one place at the same time in different parts of Manila, would you say that the order to herd these people together and kill them had come from a commanding officer?
- A. If that was done all at once, I should think that it could have been by an order.
- Q. If I were to tell you that at approximately the same time hundreds of civilians were herded together in Manila, in Luzon, in Davao, and in other parts of the Philippines and were killed, would you say that such plans had been made by a man in a position to issue orders to cover such large territory.

the SOVIET UNION, CHINA et al

are the Treaty Powers) without

an express and prior notifica-

tion in the form of a

reasoned declaration of war,

or of an ultimatum

containing a qualified

declaration of war (see

Article I of the above treaty).

(Note) JAPAN'S Ultimatum

against GERMANY, of 15 AUG

LS Dec 10 1927

- Q. Should he have known?
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- Q. Now if I were to tell you that many hundreds of civilians were herded together in one place at the same time in different parts of Manila, would you say that the order to herd these people together and kill them had come from a commanding officer?
A. If that was done all at once, I should think that it could have been by an order.
- Q. If I were to tell you that at approximately the same time hundreds of civilians were herded together in Manila, in Luzon, in Davao, and in other parts of the Philippines and were killed, would you say that such plans had been made by a man in a position to issue orders to cover such large territory.

1914 (See its Appendix
(No. 40))

(b) Form of the Notification :

This shall be done in writing.

(Note) This method

may be followed : delivery

of such a document from

one party of the States concerned

to the diplomatic mission, who

resides therein, of the other

party concerned, or presentation

that was used as an assembly camp by the Japanese. I went to Cabanatuan, Camp No. 1, where I was held from 29 June, 1942, until 26 October, 1942; then I was sent to Davao Penal Colony on the island of Mindanao where I was held from 11 November, 1942, until June, 1944. I was returned to Cabanatuan where I was held from June, 1944, until October, 1944. I was then at Bilibid Prison Hospital, Manila, from October, 1944, until December, 1944. I was then at Fukioko, No. 22, Kyushu, Japan, from January, 1945, until April, 1945. I was at Hoten Prison Camp, Mukden, Manchuria, from April, 1945, until liberation on 15 August, 1945.

Q. Describe your boat trip from Manila.

A. 1687 men, all Americans who had been gathered at Bilibid Prison Hospital at Manila, boarded the Japanese transport, Irioko Maru, at Manila, Pier 7, on 12 December, 1944. We were piled into two holds and we were so crowded that we were not all able to lie down at the same time. If one sat down, another had to stand up. The Japanese sent us a teabucket of water for 700 men. There were only two buckets in three days and each bucket contained only about six gallons of water. There were no sanitation facilities, not even buckets, and we were not permitted to go on deck even for sanitation purposes. The only ones who were permitted to go on deck were those who went for food. The air was particularly foul and between December 12th and December 14th, several hundred men died of suffocation or lack of water. We kept yelling for water and air. There was a Japanese guard at the top of the ladder and he would not even listen to us. There is no accurate account of how many died because we were bombed 14th December and on the morning of the 15th, and abandoned the boat that day.

Q. What occurred in connection with the bombing?

A. We were bombed on the 14th and the boat went aground. We were bombed again on the 15th. The Japanese took off then and later we took off. Approximately 1200 of the original group were able to get ashore.

Q. What happened then?

A. We were kept on the Island of Luzon at Alongopo. The 1200 were kept in an enclosed tennis court. There were no latrine facilities. We were fed four times during the seven days. Each time we received only 1½ spoonfuls of uncooked rice and we had no facilities with which to cook it. We were given some clothing. We had to remain at the macadem tennis court all day and all night, stark naked. Many of us suffered from cold. During this seven-day period, 100 American military personnel died from exposure, dysentery and starvation. The Japanese gathered their bodies once a day.

of such^d document from one
party to the Government of the
opposing party through the
former's own diplomatic mission
residing there.

When this ~~case~~ occurs
after the rupture of diplomatic
relations, such steps should
be taken to the diplomatic mission
of the neutral Power acting as
protecting Power for one party

that was used as an assembly camp by the Japanese. I went to Cabanatuan, Camp No. 1, where I was held from 29 June, 1942, until 26 October, 1942; then I was sent to Davao Penal Colony on the island of Mindanao where I was held from 11 November, 1942, until June, 1944. I was returned to Cabanatuan where I was held from June, 1944, until October, 1944. I was then at Bilibid Prison Hospital, Manila, from October, 1944, until December, 1944. I was then at Fulcioko, No. 22, Kyushu, Japan, from January, 1945, until April, 1945. I was at Hoten Prison Camp, Mukden, Manchuria, from April, 1945, until liberation on 15 August, 1945.

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of the States concerned or for
its opposing Power; or else such
diplomatic agent shall be
engaged to take ~~up~~ steps
tantamount to the foregoing.

(Original page 6)

(C) The hour which marks
the Opening of Hostilities.

There are no established
rules as to the length of time
which is to be allowed between

that was used as an assembly camp by the Japanese. I went to Cabanatuan, Camp No. 1, where I was held from 29 June, 1942; until 26 October, 1942; then I was sent to Davao Penal Colony on the island of Mindanao where I was held from 11 November, 1942, until June, 1944. I was returned to Cabanatuan where I was held from June, 1944, until October, 1944. I was then at Bilibid Prison Hospital, Manila, from October, 1944, until December, 1944. I was then at Fukioko, No. 22, Kyushu, Japan, from January, 1945, until April, 1945. I was at Hoten Prison Camp, Mukden, Manchuria, from April, 1945, until liberation on 15 August, 1945.

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the declaration of war. or
ultimatum and the opening
of hostile action. Therefore,
even if hostile action were started
almost at the same time as
the declaration of war or the
arrival of ultimatum, it
should not be defined as a treaty
violation of ~~treaty~~.

(Note)

(1) During the session

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of the Second Peace Conference

there were arguments raised

that an interval of 24

hours be allowed between

the prior notification and

the hostile action, but

these remain yet to be

adopted.

(2) When a Notification on

an unqualified Opening of

Hostilities ^{is} ~~was~~ delivered from

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A. 1687 men, all Americans who had been gathered at Bilibid Prison Hospital at Manila, boarded the Japanese transport, Irioko Maru, at Manila, Pier 7, on 12 December, 1944. We were piled into two holds and we were so crowded that we were not all able to lie down at the same time. If one sat down, another had to stand up. The Japanese sent us a teabucket of water for 700 men. There were only two buckets in three days and each bucket contained only about six gallons of water. There were no sanitation facilities, not even buckets, and we were not permitted to go on deck even for sanitation purposes. The only ones who were permitted to go on deck were those who went for food. The air was particularly foul and between December 12th and December 14th, several hundred men died of suffocation or lack of water. We kept yelling for water and air. There was a Japanese guard at the top of the ladder and he would not even listen to us. There is no accurate account of how many died because we were bombed 14th December and on the morning of the 15th, and abandoned the boat that day.

Q. What occurred in connection with the bombing?

A. We were bombed on the 14th and the boat went aground. We were bombed again on the 15th. The Japanese took off then and later we took off. Approximately 1200 of the original group were able to get ashore.

Q. What happened then?

A. We were kept on the Island of Luzon at Alangopo. We 1200 were kept in an enclosed tennis court. There were no latrine facilities. We were fed four times during the seven days. Each time we received only 1 1/2 spoonfuls of uncooked rice and we had no facilities with which to cook it. We were given some clothing. We had to remain in the tennis court all day and all night, stark naked. Many of us suffered from cold. During this seven-day period, 100 American military personnel died from exposure, dysentery and starvation. The Japanese gathered their bodies once a day.

one party of the States
concerned to the diplomatic
mission, who resides therein,
of the other party involved,
it would be considered reasonable
to allow ~~a~~ time for enabling
him to cable home as to
his receipt of such notification.

(d) Notification to Neutral

Powers:

Notification ^{concerning} a state of

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war shall be delivered
to them without any delay;
in no case war shall be
considered to assume its
validity ~~as~~ ^{far as} those nations are
concerned
until such notification has
been received by them.

It will be in order to
forward such notification by
cable ~~and~~ ; however
when it is more than probable

that a neutral Power
has, in effect, knowledge
as to the state of war, such
neutral power, on the grounds
that she has not been
served with notification thereof,
can raise no argument that
she is not liable to the
effect of war.

(2) The Opening of
Hostilities (or the Opening of

Evidentiary Document No. 5193.

- Q. Do you know the names of any Japanese personnel who were with you on the boat?
- A. Yes, I do. Lt. Murata who came to the group from Cabanatuan, Philippine Islands, and a Japanese civilian interpreter named Mr. Nada were directly responsible for these conditions. Their attitude was one of good intentions to our faces and of no concern once they were away from us. While we were in this tennis court, they continually said they were trying to arrange transportation and food for us. However, at the same time, they would be seen across the road with Japanese soldiers, talking, laughing, drinking beer and smoking cigarettes; and from what I understand, did nothing to mitigate the situation.

Q. What happened then?

- A. We were then taken to San Fernando, Philippine Islands, where we were kept in an old abandoned theater for three days. We were then loaded on a railroad car. One hundred of us were crowded into a box car. These cars were the small European size. The Japanese placed some of our personnel on top of the cars so the bombers wouldn't hit them. These men were given pillow cases and white flags for signaling.

Q. Where were you taken next?

- A. We were taken off the train at Linguien on the Island of Luzon. We spent part of the day in the school yard where we were given no sanitation facilities. We were then marched to the beach where we remained two days and one night. We were on the sand; had no shade; almost no water and that which we did have was measured by the spoonful. Two Officers, including one colonel, and also one enlisted man died from exposure. Incidentally, we were in fear of our lives because under the sand of the beach had been buried gasoline and ammunition.

Q. Were you again loaded on a boat?

- A. We were put on a horse transport. There were two holds and I was in the second one. I was grouped among horse remains, flies and corruption. Again, water was measured by the spoonful. We were supposed to have been fed two times a day but often we were only fed once a day. Our food generally consisted of three tablespoonfuls of hot water soup and the same amount of cooked rice, two times a day. Many of the men died either from accumulated weaknesses from former experiences, dysentery or malaria. The dead would average 25 a day mainly from starvation, dysentery or infection. We were so starved that we ate flies and some men even picked grain that was on the floor with the horse remains.

hostile action) without a
Declaration of War.

/Page 7/

(a) Between Non-signatory
States of The HAGUE Treaty
on the Opening of Hostilities,
or between a Signatory State
and a Non-signatory State.

Evidentiary Document No. 5193.

Q. Do you know the names of any Japanese personnel who were with you on the boat?

A. Yes, I do. Lt. Murata who came to the group from Cabanatuan, Philippine Islands; and a Japanese civilian interpreter named Mr. Wada were directly responsible for these conditions. Their attitude was one of good intentions to our faces and of no concern once they were away from us. While we were in this tennis court, they continually said they were trying to arrange transportation and food for us. However, at the same time, they would be seen across the road with Japanese soldiers, talking, laughing, drinking beer and smoking cigarettes; and from what I understand, did nothing to mitigate the situation.

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Hostile action, even when
instantly started without a
declaration of war or ultimatum,
will constitute no case of
violation of International Law;
but to take hostile action
abruptly when there exists
no conflicts or without,
even if these existed, taking any
step to negotiate with the
other party, or without

"Charge XVIII. Prisoners of war who were marched from Bataan to San Fernando in April 1942 were brutally treated by Japanese guards. The guards clubbed prisoners who tried to get water, and one prisoner was hit on the head with a club for helping a fellow prisoner who had been knocked down by a Japanese army truck. A colonel who pointed to a can of salmon by the side of the road and asked for food for the prisoners was struck on the side of his head with the can by a Japanese officer. The colonel's face was cut open. Another colonel who had found a sympathetic Filipino with a cart was horsewhipped in the face for trying to give transportation to persons unable to walk. At Lubao a Filipino who had been run through and gutted by the Japanese was hung over a barbed-wire fence. An American Lieutenant Colonel was killed by a Japanese as he broke ranks to get a drink at a stream.

"Japanese sentries used rifle butts and bayonets indiscriminately in forcing exhausted prisoners of war to keep moving on the march from the Cabanatuan railroad station to Camp No. 2 in late May 1942.

"At Cabanatuan Lieutenant Colonels Lloyd Biggs and Howard Breitung and Lieutenant R. D. Gilbert, attempting to escape during September 1942 were severely beaten about the legs and feet and then taken out to the camp and tied to posts, were stripped and were kept tied up for two days. Their hands were tied behind their backs to the posts so that they could not sit down. Passing Filipinos were forced to beat them in the face with clubs. No food or water was given to them. After two days of torture they were taken away and, according to the statements of Japanese guards, they were killed, one of them by decapitation. Other Americans were similarly tortured and shot without trial at Cabanatuan in June or July 1942 because they endeavored to bring food into the camp. After being tied to a fence post inside the camp for two days they were shot.

"At Cabanatuan during the summer of 1942 the following incidents occurred: A Japanese sentry beat a private as brutally with a shovel across the back and the thigh that it was necessary to send him to the hospital. Another American was crippled for months after his ankle was struck by a stone thrown by a Japanese. One Japanese sentry used the shaft of a golf club to beat American prisoners, and two Americans caught while obtaining food from Filipinos, were beaten unmercifully on the face and body. An officer was

ascertaining whether or not
it agrees to accept our demand,
will, in general, meet with
denunciation as an ignominious
deed.

(Note)

(1) At the outbreak of the
Russo-Japanese War, the Russian
Government denounced us, accusing
our war ships of abruptly
opening fire in CHEMULPO and

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PORT ARTHUR as an

unanimous act amounting to

a sheer disregard of the

provisions of international law.

Previous thereto, however,

there had been negotiations

carried ^{on} between JAPAN and

RUSSIA for half a year

over the question of withdrawal

of troops from MANCHURIA, in

conjunction with the issue

Evidentiary Document No. 5193.

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of independence and
territorial integrity of KOREA.

RUSSIA, however, showed no
likelihood of sincerity; and
she, on the contrary, with
an increased strength of her
forces, tried to beat us
down to our knees.

~~Came to perceiving~~ that
there was no prospect for

Evidentiary Document No. 5193.

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a peaceful settlement,
JAPAN, ^{finally} after all, had ~~had~~
to send ~~forward~~ her Final
Note on 5 FEB, containing
a passage which reads as
follows:-

" The Imperial Japanese
Government will follow
the policy indicated below,
and at the same time
reserve the right to take

"Charge XVI. At Camp O'Donnell many of the men had to live without shelter during 1942. In one case twenty-three officers were assigned to a shack, fourteen by twenty feet in size. Drinking water was extremely scarce, it being necessary to stand in line six to ten hours to get a drink. Officers had no bath for the first thirty-five days in the camp and had but one gallon of water each in which to have their first baths after that delay. The kitchen equipment consisted of cauldrons and a fifty-five gallon drum. Canotes were cooked in the cauldrons, mashed with a piece of timber, and each man was served one spoonful as his ration.

"In late October 1942, approximately 970 prisoners of war transferred from the Manila area to the Davao Penal Colony on a transport vessel providing only twenty inches per man of sleeping space. Conditions on the vessel were so bad that two deaths occurred, and subsequently because of weakness some fifty percent of the prisoners fell by the roadside on the march from the water front at Lasang, Davao, to the Penal Colony.

"The places used by the Japanese authorities for the internment of American civilians in the Philippine Islands were inadequate for the number of persons interned. At the Brent School at Baguio, twenty to thirty civilians were assigned sleeping accommodations in a room which had been intended for the use of one person.

"At the Columbia Country Club at Shanghai the internees were obliged to spend CRB \$10,000 of their own funds to have a building deloused so that they might use it for a needed dormitory. At Weihsien no (repeat no) refrigeration equipment was furnished by the Japanese authorities and some of the few household refrigerators of the internees were taken from them and were used by the Japanese guards, with the result that food spoiled during the summer of 1943. The lack of sanitary facilities is reported from all of these camps.

"Charge XVII. American personnel have suffered death and imprisonment for participation in military operations. Death and long-term imprisonment have been imposed for attempts to escape for which the maximum penalty under the Geneva Convention is thirty days arrest. Neither the American Government nor its protecting Power has been informed in the manner provided by the Convention of these cases or of many other instances when Americans were subjected to illegal punishment. Specific instances are cited under the next charge.

whatever free action ~~which~~
~~may~~ ^{is} be considered to serve
best ~~for~~ the cause of
strengthening and defending
its position, which has
been encroached ^{upon}, and also
for the cause of safeguarding
the acquired rights and
the legitimate interests of
JAPAN. "

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/ Page 8/

It, therefore, ought to
be plain enough that the
action taken by our war ships
certainly cannot be termed
a surprise, sneak attack.

(In those days when the
Russo-Japanese War was fought
there was no treaty ⁱⁿ existence
to govern the Opening of
Hostilities.)

As for the customs obtained

L 5 Dec Mc 103. A

- Q. Didn't you have enough interest in the 20,000 men under Iwabuchi to make inquiry to see that they would be properly used by Yamashita?
- A. Yes, I thought quite a bit about my troops. I told Rear Admiral Iwabuchi to do his best under General Yamashita, but I did not tell him how to perform his duties under him.
- Q. Admiral, what I am trying to get at is that it was not a question of your interfering with the chain of command but a question of your satisfying yourselves that your troops were going to be used properly in an operation you had nothing to do with.
- A. Iwabuchi came to see me from time to time and there were informal talks and I would ask him how things were running and how the troops were and he would unofficially tell me of these things, but I would not say how the troops should act under Yamashita.
- Q. Did Iwabuchi come to Baguio?
- A. The situation did not permit such a thing.
- Q. When you said Iwabuchi would come from time to time, what did you mean?
- A. That was when I was still in Manila.
- Q. While you were still in Manila, Iwabuchi was still under your command, he had not been transferred to Yamashita. Isn't that correct?
- A. Yes.
- Q. Well now, what we have been discussing was that when Iwabuchi was supposed to have gone over under the command of Yamashita you stated that after that time Iwabuchi would come to see you from time to time. Do you wish to now qualify your answer to show that Iwabuchi would come to see you from time to time before he came under Yamashita's command?
- A. Yes, that is the way I wish to have it. All I have been saying is about things that have occurred before Iwabuchi was placed under the command of Yamashita.
- Q. Wouldn't it have been better for you, as commander of the Navy forces in Manila, to confer with the commander of the Army forces with regard to the defense of Manila rather than entrust that job to one of your subordinates?
- A. I believe that I as a Navy man should not interfere with the Army in the plans of land warfare. Since it was understood that Rear Admiral Iwabuchi was to be under the command of General Yamashita, it was natural that he conferred with General Yamashita about the defense, and I was a firm believer that the Navy should not interfere with the Army's plan and would not express my opinion on how land warfare should be waged. Looking back at the records of Army warfare, it seems that the Navy had interfered from time to time with Army operations and the results were not too good. Therefore, I thought it better that the Army's warfare should be left to the Army and not be interfered with by the Navy.
- Q. How often did you confer with General Yamashita prior to January 5, 1945?
- A. I believe I have met him over ten times.
- Q. How far were your headquarters from General Yamashita's headquarters?
- A. My headquarters were at the Navy club and his were at Fort McKinley. I don't know how far apart they are. It would be about fifteen or twenty miles ride I believe.

before the Treaty on the
Opening of Hostilities came into
being, we see an extremely
limited number of examples
in which a declaration of
war was made, which are
these:

(a) During the period
of 171 years, ranging from
1700 to 1890, there were ten
wars started with a prior

L 2 Dec 11c 103. A

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- Q. How far were your headquarters from General Yamashita's headquarters?
- A. My headquarters were at the Navy club and his were at Fort McKinley. I don't know how far apart they are. It would be about fifteen or twenty miles ride I believe.

notification for opening
hostilities. Examples of
hostile action without a prior
notification waged by European
nations in EUROPE, as well
as on the soil of their oversea
possessions alone numbered as
many as 107. (There were
sixty during the period of 71
years from 1800 to 1870).

L 5 Dec Mc 103. A

- Q. Didn't you have enough interest in the 20,000 men under Iwabuchi to make inquiry to see that they would be properly used by Yamashita?
- A. Yes, I thought quite a bit about my troops. I told Rear Admiral Iwabuchi to do his best under General Yamashita, but I did not tell him how to perform his duties under him.
- Q. Admiral, what I am trying to get at is that it was not a question of your interfering with the chain of command but a question of your satisfying yourselves that your troops were going to be used properly in an operation you had nothing to do with.
- A. Iwabuchi came to see me from time to time and there were informal talks and I would ask him how things were running and how the troops were and he would unofficially tell me of these things, but I would not say how the troops should act under Yamashita.
- Q. Did Iwabuchi come to Baguio?
- A. The situation did not permit such a thing.
- Q. When you said Iwabuchi would come from time to time, what did you mean?
- A. That was when I was still in Manila.
- Q. While you were still in Manila, Iwabuchi was still under your command, he had not been transferred to Yamashita. Isn't that correct?
- A. Yes.
- Q. Well now, what we have been discussing was that when Iwabuchi was supposed to have gone over under the command of Yamashita you stated that after that time Iwabuchi would come to see you from time to time. Do you wish to now qualify your answer to show that Iwabuchi would come to see you from time to time before he came under Yamashita's command?
- A. Yes, that is the way I wish to have it. All I have been saying is about things that have occurred before Iwabuchi was placed under the command of Yamashita.
- Q. Wouldn't it have been better for you, as commander of the Navy forces in Manila, to confer with the commander of the Army forces with regard to the defense of Manila rather than entrust that job to one of your subordinates?
- A. I believe that I as a Navy man should not interfere with the Army in the plans of land warfare. Since it was understood that Rear Admiral Iwabuchi was to be under the command of General Yamashita, it was natural that he conferred with General Yamashita about the defense, and I was a firm believer that the Navy should not interfere with the Army's plan and would not express my opinion on how land warfare should be waged. Looking back at the records of Army warfare, it seems that the Navy had interfered from time to time with Army operations and the results were not too good. Therefore, I thought it better that the Army's warfare should be left to the Army and not be interfered with by the Navy.
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1800 to 1870.

(b) In the case of the Franco-Prussian War of 1870, a prior notification was served by France. Russia, for the Russo-Turkish War of 1877, officially declared war in advance.

(b) Between the High Contracting Powers of The HAGUE Treaty on the Opening of Hostilities:
Even between the High

"Charge XII. The condition of health of prisoners of war in the Philippine Islands is deplorable. At San Fernando in April 1942, American and Filipino prisoners were held in a barbed-wire enclosure so overcrowded that sleep and rest were impossible. So many of them were sick and so little care was given to the sick that human excrement covered the whole area. The enclosure at San Fernando was more than 100 kilometers from Bataan and the abominable treatment given to the prisoners there cannot be explained by battle conditions. The prisoners were forced to walk this distance in seven days under merciless driving. Many who were unable to keep up with the march were shot or bayoneted by the guards. During this journey, as well as at other times when prisoners of war were moved in the Philippine Islands, they were assembled in the open sun even when the detaining authorities could have allowed them to assemble in the shade. American and Filipino prisoners are known to have been buried alive along the roadside and persistent reports have been received of men who tried to rise from their graves but were beaten down with shovels and buried alive.

"At Camp O'Donnell conditions were so bad that 2,200 Americans and more than 20,000 Filipinos are reliably reported to have died in the first few months of their detention. There is no doubt that a large number of these deaths could have been prevented had the Japanese authorities provided minimum medical care for the prisoners. The so-called hospital there was absolutely inadequate to meet the situation. Prisoners of war lay sick and naked on the floor, receiving no attention and too sick to move from their own excrement. The hospital was so overcrowded that Americans were laid on the ground outside in the heat of the blazing sun. The American doctors in the camp were given no medicine, and even had no water to wash the human waste from the bodies of the patients. Eventually, when quinine was issued, there was only enough properly to take care of ten cases of malaria, while thousands of prisoners were suffering from the disease. Over two hundred out of the three hundred prisoners from Camp O'Donnell died while they were on a work detail at Batangas.

"At Cabanatuan there was no medicine for the treatment of malaria until after the prisoners had been in the camp for five months. The first shipment of medicines from the Philippine Red Cross was held up by the camp authorities on the pretext that they must make an inventory of the shipment. This they were so dilatory in doing that many deaths occurred before the medicine was released. Because of lack

Contracting Powers of the above
Treaty, there may be instances
of hostile action without a
declaration of war or ultimatum
in such cases as those
indicated below:

1. When either of the party
concerned, in defiance of the
treaty, has opened a hostile
action.

2. When a conflict ~~was~~ started
between two opposing armed forces

L 3 Dec 1945 103. A

- Q. Didn't you have enough interest in the 20,000 men under Iwabuchi to make inquiry to see that they would be properly used by Yamashita?
- A. Yes, I thought quite a bit about my troops. I told Rear Admiral Iwabuchi to do his best under General Yamashita, but I did not tell him how to perform his duties under him.
- Q. Admiral, what I am trying to get at is that it was not a question of your interfering with the chain of command but a question of your satisfying yourselves that your troops were going to be used properly in an operation you had nothing to do with.
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and in consequence of which
the nations, to which they belong,
~~were~~^{are} induced to taking
recourse to force, amounting
to an open war.

/Page 9/

3. When, against an
action taken in peace time
by one party as a forceful
measure for its self-defence
or as a forceful action toward

Q. Do you know the names of any Japanese personnel who were with you on the boat?

A. Yes, I do. Lt. Murata who came to the group from Cabanatuan, Philippine Islands, and a Japanese civilian interpreter named Mr. Noda were directly responsible for these conditions. Their attitude was one of good intentions to our faces and of no concern once they were away from us. While we were in this tennis court, they continually said they were trying to arrange transportation and food for us. However, at the same time, they would be seen across the road with Japanese soldiers, talking, laughing, drinking beer and smoking cigarettes; and from what I understand, did nothing to mitigate the situation.

Q. What happened then?

A. We were then taken to San Fernando, Philippine Islands, where we were kept in an old abandoned theater for three days. We were then loaded on a railroad car. One hundred of us were crowded into a box car. These cars were the small European size. The Japanese placed some of our personnel on top of the cars so the bombers wouldn't hit them. These men were given pillow cases and white flags for signaling.

Q. Where were you taken next?

A. We were taken off the train at Linguien on the Island of Luzon. We spent part of the day in the school yard where we were given no sanitation facilities. We were then marched to the beach where we remained two days and one night. We were on the sand; had no shade; almost no water and that which we did have was measured by the spoonful. Two Officers, including one colonel, and also one enlisted man died from exposure. Incidentally, we were in fear of our lives because under the sand of the beach had been buried gasoline and ammunition.

Q. Were you again loaded on a boat?

A. We were put on a horse transport. There were two holds and I was in the second one. I was grouped among horse remains, flies and corruption. Again, water was measured by the spoonful. We were supposed to have been fed two times a day but often we were only fed once a day. Our food generally consisted of three tablespoonfuls of hot water soup and the same amount of cooked rice, two times a day. Many of the men died either from accumulated weaknesses from former experiences, dysentery or malaria. The dead would average 25 a day mainly from starvation, dysentery or infection. We were so starved that we ate flies and some men even picked grain that was on the floor with the horse remains.

a settlement of conflicts
(incl. peace-time blockade,
guarantee occupation, bombard-
ments, etc.) The other party
has taken counter-measures
by force, thereby leading to
an open war between them.

4. When there occurred
a state of emergency, for which
no time ~~was~~^{is} to be lost and
there ~~was~~^{is} no alternative other

Evidentiary Document No. 5193.

We were crazed with hunger. On the 2nd, or 3rd, of January, we were torpedoed twice. The rudder and propeller of the boat were damaged but there were no casualties. We were on this horse transport about thirteen days all told and on January 9th in Tacaw Harbor, Formosa, we were hit by a Navy Bomb Diver.

Q. Were any efforts made to stop this condition?

A. Lt. Col. Olsen made many efforts at the risk of his own personal safety to improve our lot. Lt. Murata and Mr. Wada would not do anything and would not listen.

Q. What happened on January 9th?

A. We were hit by several bombs along the water line and three of the bombs exploded in the forward hold where 600 to 700 men were lined up in squads waiting for breakfast. At that time, we had one G.I. cup of tea for 24 men. These three bombs killed about 500 of the 700 men quartered there and about 200 in the afterhold were wounded. We had all been in a weakened condition because we were ravaged by starvation, exposure and zero weather. The holds were uncovered and we had no blankets. Most of us had no clothing. We had absolutely no medical attention and as we neared Formosa, we had food but once a day, no water and we scraped the floor covered with horse remains for snow that filtered down through the hold. At the time we were bombed, approximately 40 men a day were dying from starvation and privation.

Q. What happened after you were bombed?

A. Those of us who survived were transferred to a small inter-island steamer and moved to Japan. The death rate was high but I am unable to estimate it. We arrived at Moji on the island of Kyushu approximately January 28th or 29th. Many of the men were beaten by guards when they attempted to scrape snow off the canvas to get needed liquids. Conditions again were poor. Approximately 225 of the original 1687 disembarked at Moji and 105 of that group were sick and wounded and were taken to a hospital. At this time Lt. Murata and Mr. Wada left the group.

Q. What happened then?

A. This hospital was a bare shed. There were no doctors and we had to lay on the floor. We did not have any medical aid for several days and we received only a small quantity of food. We were fed twice a day but that was mainly thin rice gruel. We remained here until February 20th. The death rate at this time was very high and we had about 10 to 17 dead a day and on February 20th, all that remained of the 105 were 27 men.

(Signed) Harold J. Whitcomb
1st. Lt., M.F.

than an immediate hostile
action in order to escape from
such status, and also for the
interest of self-defence.

(c) Examples of hostile
action with which a war can
be started (it is required
to seek its cause in an
intention of opening hostilities).

1. Invasion of the other party's
territory, and attacks on its
war ships, military aircraft

Evidentiary Document No. 5193.

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(Signed) Harold J. Whitcomb
1st. Lt., U.S.F.

and troops.

2. Capture of government vessels other than war ships.

3. Capture of merchant ships belonging to the other party.

When vessels which, on account of their construction, can be converted to war ships or which, on account of a special arrangement with the

"Charge IV. On one occasion during the summer of 1943 all of the persons held at the Columbia Country Club, Shanghai, were punished by cancellation of dental appointments because complaints were made to representatives of the Swiss Consulate General. During the same period, at Camp B. Yangchow, the entire camp was deprived of a meal by the Camp Commandant because complaints had been made concerning the delivery of spoiled food.

"There are cited under Section XVIII below, cases of prisoners of war being struck because they asked for food or water.

"Charge V. Civilian internees at Hong Kong have gone without footwear and civilian internees at Kobe have suffered from lack of warm clothing. In 1942 and 1943, American and Filipino prisoners of war in the Philippines and civilian internees at Baguio were forced to labor without shoes and clad only in loin cloths.

"Charge VI. This is reported to have been the case at the following camps: prisoner of war camps in the Philippine Islands; prisoner of war enclosures at Mariveles Bay, Philippine Island; civilian internment camps at Baguio, Canton, Chafco, Peking, Manila, Tsingtao, Weihsen, and Yangchow, and at the Ash Camp, Chapoi Camp, Lungwa Camp, and Pootung Camp, in or near Shanghai. The articles most needed by the prisoners and internees have been taken. For example, Japanese soldiers took the shoes from an American officer prisoner of war who was forced to walk unshod from Bataan to San Fernando during the march which began about April 10, 1942. Although the prisoners constantly suffered from lack of drinking water canteens were taken from prisoners during this march; one of these victims was Lieutenant Colonel William E. Dvess.

"At Corregidor a Japanese soldier was seen by Lieutenant Commander Melvyn H. McCoy with one arm covered from elbow to wrist and the other arm half covered with wrist watches taken from American and Filipino prisoners of war.

"Charge VII. American prisoners of war in Manila were forced by Japanese soldiers to allow themselves to be photographed operating captured American military equipment in connection with the production of the Japanese propaganda film "Rip down the Stars and Stripes."

"Prisoners of war from Corregidor being taken to Manila were not landed at the port of Manila but were unloaded outside the city and were forced to march through the entire city to Bilibid Prison about May 23, 1942.

government, can be
immediately placed to war-
time military purposes, were
captured this night form a
cause for opening hostilities.

Such action ^{such as} ~~like~~ the
capture of merchant ships
carrying troops will plainly
constitute a cause for
opening hostilities.

The foregoing merely represent