

MR. LOGAN

In the preparation of the general opening statement the opening statements of the various divisions of the defense a serious effort has been made to state the facts to be proved to the satisfaction of all the accused and their counsel. They have been prepared so as to inform the Tribunal of the general trend of the evidence. Due to conflicts of interests, differences of opinion and the divergent official positions held by the accused, it must be apparent to the court that it is impossible to do so completely. Some of the accused necessarily take issue with some of the various statements of facts, reasonings, philosophies, inferences and complicities in the events as set forth in these opening statements. It is, therefore, necessary that the accused desire to reserve to themselves the right to present their different views of the facts in their individual opening statements and in the presentation of their individual cases.

First, I propose to make an opening statement on behalf of the defendants (DOHIHARA, HIRANUMA,) HIROTA, KAYA, MATSUI, MUTO, OKA, OSHIMA, SHIGEMITSU, SHIMADA, SHIRATORI, SUZUKI, TOGO and UMEZU. In the case of the ten defendants on whose behalf I propose to speak, this statement is in the nature of a supplement, which is deemed by them to be necessary to Dr. Kiyose's opening statement. It constitutes, so to speak, Part II of the same opening statement, but in the case of the defendants DOHIHARA, HIRANUMA, SHIGEMITSU and HIROTA, who declined to join Dr. Kiyose's opening statement, this part is the only opening statement to be made on their behalf.

My personal view in outlining the Opening Statement
Sino-Japanese Conflict

My primary intention of defense against charges on Sino-Japanese conflict is in clearing and removing, as much as possible, the misunderstanding and prejudice which the Allied Nations seem to harbor about Japan, and it is my further humble desire that by presenting to the whole world through this trial the true picture of what Japan really is, to contribute, to what small extent I could, to the reconstruction of future Japan. In view of this consideration, I cannot help placing the secondary importance on defense of each accused as well as on the question of saving, so to speak, the face of the old military authorities. The following is the index to the outline of the opening statement for this phase constructed upon this principle.

Part I: Submission of evidence and its explanation concerning
the motives and direct cause of military operation

1. Concerning the motives of military operation in China.

A. Motives based on the special domestic situation which threatened the existence of Japan.

1. The question of Japan's over population and the counter measures to cope with it. (This is divided into 7 items, which are again into 24 sub-items)

B. Special situation of China which threatened the existence of Japan.

This is composed of two phases: Anti-Japanese movement is the one and the invasion of Soviet Union into China is the other. It is

divided into 3 items, and again into 14 sub-items. These sub-items are also composed of still smaller headings.

2. Argument concerning the direct cause of expedition and its evidence.

This is divided into 3 items, 8 sub-items.

Part II: Argument and its testimony concerning the process of
development of military operations of both countries

This is set up in the order of charges in the Indictment.

Group 1. Refutation against the alleged "Crimes against Peace"

A. Refutation against the alleged "Aggressive War"

This concerns almost all the counts .

1. Denial of our aggressive intent

2. Economic aggression

3. Acquisition of political and militaristic domination

B. Concerning plan and preparation of war

C. Argument concerning execution of war

1. Refutation against alleged time of commencement of war

(Count 19 and 28)

This includes 4 sub-items

2. Explanation against allegation that Japan did not resort to

mediation or arbitration for the pacific settlement of the

This is not in dispute (Appendix A, Section 2)

Group 1. This includes 4 sub-items: "Crimes against Peace"

A. 13. Validity of the Nine Power Pact (App. A, 4-5 pages)

Group 2. Refutation and explanation concerning alleged "murder".

(Count 50, 37, 38)

A, Refutation against the alleged denunciation of the rights of
lawful belligerents (Counts 37, 38) Contains 3 sub-titles

B. Argument and refutation concerning the various alleged
"particulars of breaches."

Group 3. Refutation and explanation concerning the alleged "conventional
war crimes and crimes against humanity". (Counts 53-55, App. D)
(I pointed out here the problems which are the special features
of China)

A. Refutation and argument concerning Narcotics Problems
(App. D-1, Sec 9)

This contains 4 sub-titles

B. Problems concerning poisonous gas

I wondered whether any concluding remark might be needed for Group 3, but
considered it could do without it.

Part I: Argument and its supporting evidence concerning the motives and direct cause military operation in China

A. Argument and its supporting evidence concerning motives of military operation in China

1. The special domestic situation in Japan which threatened its existence

✓ a. Question of over-population

This is the problem which necessitated Japan to march into China continent. As this is the basic problem of the whole incident, I consider that the utmost importance should be put upon argument of this point. My intention is to quote, as many as possible, the statistical facts and articles and publications of occidental personnel so that they may give more effective impression to the Tribunal. Following are the principal items of argument in connection with this problem.

✓ (1) Evidence to testify the disastrous damage incurred on Japan's politics, economics and society as the result of overflowing population. Evidence will include the following:

✓ (a) Statistical study of Japan's population and estimated number of population in the future. I believe these data are available from the book by Mr. Teijiro UEDA and also from the Statistical Bureau of the Government and the Population Problem Research Institute.

should
(b) I like to prove to the court the meagreness of Japan's land by giving the comparison of property and land per each Japanese based on the estimated number of population in the future and that of the European and American countries. I trust the data for the same are available from the

former Census Board, Statistical Bureau of the Government. I remember having seen some useful materials in Dr. Ueda's book.

(c) I also wish to give another comparison of the standard of life in Japan and in European and American countries; that of Japan being based on the approximate producing capacity of the average land area.

This data is available from such place as the Population Problem Research Institute and also from Year Books and Almanacs of the European countries, which are provided the Imperial University Library.

B. My argument will tend to show that nothing is more tragic and distressing than the economic plight in which necessary requisites of life, that is, food, clothes and habitation are insufficient. I shall further intend to show that the settlement of the over-population problem was an absolute essentiality for the security and promotion of culture of the Japanese people. I shall quote the examples of over-population in Europe to support my argument.

I am not yet quite certain what data should be used for this purpose. I remember two books, "Population and World Peace" and "Population", written by American writers whose names I have forgotten. I once bought these books at the MARUZEN but they were burnt. I hope they are available at MATSUMURA, GANSHODO or ISSEIDO at Kanda, Tokyo.

2. Principal items of my refutation concerning Japan's policies aiming at resolving the over-population problem.

(a) I desire to testify that Japan's agriculture had not sufficient capacity to absorb all the surplus population.

The record of investigation carried out by the Ministry of Agriculture and

and Forestry and also by the Tokyo Imperial University Agriculture Department concerning availability of further arable land in Japan, readjustment of rice fields, transmigration of rural people, result of nationalized management of agriculture, etc. will be used to support this argument.

ii) The policy of sending immigrants to overseas proved of little use in the way of disposing surplus population. I shall prove this by the following documents: Statistics made by the Foreign Office concerning Japanese immigrants, investigation by the same office of the condition in which Japanese immigrants were checked by South and North American countries, statistics made by the former Colonization Office on Japanese Immigrants to Manchuria, and etc.

iii) Birth control proved both fruitless and difficult to execute as means of checking the expanding populace. This will be explained partly by the fact that the general public, especially those in the remote places were totally ignorant of medical knowledge and were reluctant in familiarizing themselves with the method and partly by the particular Japanese moral which has prohibited this kind of practice. In the face of apparent lack of any authentic figures and other documents, I feel the above is the only way to testify this point. I wonder if any foreign material may be available, such as books by Mrs. _____.

iv) Evidence to show that industrialization of Japan was the only means left for Japan to dispose of the ever increasing population.

I consider the collection of following materials is necessary to testify this point.

a) Comparison of the numbers of people that Agriculture and Commerce could absorb to them and that of industry, to be shown by tables.

b) Table of ratio that the principal industries in the foreign countries could absorb the population. In case both a and b are unavailable, perhaps we can ask some one in the Bureau of Statistics who is fully conversant with this problem.

c) The extent of industries in Japan in the past as well as the maximum capacity that they could absorb the population to be shown in statistics.

3) Testimony to show the extent of industry that Japan needed to establish as means of disposing the surplus population.

i) Estimation of extent of industry that Japan needed in promoting the standard of living of Japanese people to the same level as that of American and British people.

This can be attained by showing on one hand the average living expense of British and American people, which could be obtained from Almanac and other statistics, and preparing on the other the table to show the ratio of increase of population in the past as well as the estimation of the same in the future. Of course the number of people which could be absorbed by agriculture and commerce in the future should be taken into consideration.

ii) Then the estimated extent of industry needed to maintain the living standard which is approximately lower by 20 per cent than that of American and British people. Obtainable in the same method as above.

iii) Classification of industries needed to be established or extended. What will come under this heading would be light industries, and so I shall pick up light industries first and then a few heavy industries to go with them. I believe the data are available from Ministry of Agriculture and Forestry and Ministry of Commerce and Industry.

4) Estimation of required quantity and particulars of raw materials for the industries thus promoted.

i) Approximate figures of raw materials required for the industries to be promoted and expanded in accordance with the above new plan. (This will hereinafter be abbreviated as 'Promoted Industries') Although the exact figures may not be available, similar figures may be available by studying the raw materials in the past for the existing industries, paying attention, at the same time, to an inevitable necessity of improvement of machineries and rationalized management of business end. We may be able to get some one from the Ministry of Commerce and Industry who is competent in this work.

ii) Calculation of transportation capacity and others to be promoted in accordance with the promoted industries. Calculation will be made under the same process as above.

5) Explanatory evidence with regard to the source of supply of the above raw materials.

i) Maximum extent in which they can be obtained within Japan

ii) Maximum extent of raw materials available from the foreign countries. Only thing we could do on these two items would be to get some engineers who are fully conversant with this type of work in the Ministry of Agriculture and Forestry and also the Ministry of Commerce and Industry, and let them estimate the figures.

6) Testimony to show the difficulties in the way of obtaining supply of the above required raw materials from the foreign countries and the circumstances in which Japan had to rely on China for this supply.

i) Explanation will be made on the so-called policies of nationalistic economy which every country, after World War I adopted. This is to show

the main difficulty which hampered the supply of raw materials to Japan. I believe there were a few books written by scholars on economic policies, whose names I cannot recollect just at this moment.

ii) Explanation will be made to the court how every foreign country boycotted Japanese merchandise. Materials for this are abundant with the Ministry of Foreign Affairs and Ministry of Commerce and Industry.

iii) Argument to show that under the circumstances as above, the only way left for Japan in the way of securing the raw materials for the industry expansion plan was to rely on China.

iv) Estimation of particulars and quantity of raw materials which were available for Japan from China. I do not believe any book on this subject is available.

✓ 7) Here I shall explain that economic cooperation between China and Japan was indispensable for the existence of Japan and shall further state how the cooperation was to be carried out.

Particulars of the plan of this cooperation are available, so I trust, from the Foreign Office and also from the former Planning Board.

Mention must be made on the following points, and also it must be repeatedly stressed that the cooperation was an absolute necessity for the existence of Japan.

a) What Japan did was not an economic aggression, although it may appear to be similar.

b) By the economic cooperation, Japan did not want to monopolize the resources of China, and it certainly did not intend to interfere with the trade between foreign countries and China.

c) Economic cooperation could only be realized by the deliberation between China and Japan. The quantity for export and import of the both countries was to be fixed annually or by certain periodical terms upon such deliberation.

d) The economic cooperation between China and Japan was not to give to Japan its priority in obtaining raw materials from China.

e) In carrying out this cooperation, it was necessary to improve and modify some of China's existing trade regulations which had been set out aiming at rejecting foreign goods from China. It will be necessary to show that this modification of regulation was not only for the good of Japan, but also for all the countries concerned.

f) I trust special mention must be made that the economic cooperation between Japan and China will materially contribute to the welfare of the Chinese people, and that it is also of vital importance to the existence of Japan.

i) Evidence to show that there existed in China the current thought of fearing and consequently rejecting aliens.

In this connection I desire to refer to the historical facts in olden times, and then to the anti-foreign thought which was remarkable at the time of China's opening to the foreign countries in 1842. Then I shall proceed to explain the circumstances in which the Opium War in 1842, the War against British-French Allied Force, the cause and process of the Yunnan Incident in 1876, scores of incidents of persecuting foreign missionaries by violence, anti-foreign and anti-imperialistic movements in 1926 and 1927, etc. took place. Following books may be useful for this explanation.

China Mission Year Book

Morse, International relations of the Chinese Empire

Smith, Chinese Characteristics

Middle Kingdom, writer's name unknown

United Kingdom and the Far East, writer unknown

Anti-Imperialistic Movement in China by HAGANO, Ro

ii) Evidence to testify the anti-Japanese movements carried out in China

a) History of anti-Japanese movements. Foreign Office has this material.

b) The process that the anti-Japanese movements were turned into riotous actions and its reasons.

The reasons enumerated in my argument on Special Situation in China will be almost sufficient to explain the above reasons, but I am desiring to add on it the explanatory remarks on guiding principles of anti-Japanese movement of Communist Parties and Communistic Troops in China, Collaboration of Kuomintang and Communist Parties immediately after the Si-an Incident and how the anti-Japanese movements were turned into riotous movements by the mobs and wriggling activities of troops.

c) Evidence to show the facts of anti-Japanese movements by force. I shall quote Dr. Kiyose's remarks in the opening statement on China's armed preparation against Japan, and will further testify the facts of riotous and violent anti-Japanese actions carried out under the collaboration of Nationalist and Communist Parties immediately after the so-called Si-An Incident.

This argument must be employed in such a way as will convince the court that

Japan's dispatchment of armed force was necessary to cope with the emergency situation prevailing in China in those days. Marco Polo Bridge Incident, Incident, Kwan-an-men Incident, Lt. OYAMA Incident, reinforcement of garrisons in Shanghai Truce Area may be quoted to explain this imminent situation in those days. All the materials which seem to have emanated from the military authorities are apt to interplete these incidents from the standpoint of necessity for the security of armed troops. (They are willing to admit that it was our side which started to attack first and endeavor to justify such actions by using the strategic expression of "initiative attack to control the situation". However, I am inclined to consider that the explanation of that kind is too militaristic, and desire to approach these matters from the standpoint of absolute necessity for the maintenance of Japan's right of existence.

(d) Evidence to show that it was China's anti-Japanese activities that necessitated Japan to resort to emergency measures.

It is absolutely imperative to impress the court with the emergency of the situation, inasmuch as it is only by doing so that our dispatchment of troops is justified. Emergency in this case means that the danger at that time was so imminent that Japan could not afford to resort to customary means such as asking for the mediation of the third nation. Evidence must be tendered to testify to this purpose.

X (3) Evidence to show that the Communistic activities in China seriously endangered the right of existence of Japan, exposed China to the peril of collapse and the rights and interests of the Powers in China were much disturbed. Together with China's anti-Japanese activities, this subject -

Chinese Communistic activities - constitutes two important reasons to justify
our dispatchment of troops to China, and so this must be studied and argued
from every possible angle. Following are those things which must not be over-
looked when doing so.

a) Menace of Communistic influence over Japan.

b) Historical description of Communistic activities in China -
available from "History of Communistic Activities in China" by the Foreign
Office.

c) Evidence to show that the Communistic activities in China were
carried out in cooperation with the Soviet Communists - in fact they are quite
identical.

Several declarations made by the Third Internationale after the Batum Confer-
ence in 1910 will be quite effective to this purpose. Also several documentary
materials to show the guiding principle of the Third Internationale toward the
Chinese Communistic Party, education undertaken by the Soviet to enhance
Communistic principles among Chinese, and identity of Soviet Communistic
activities and Chinese Communistic activities, are to be tendered.

These are available from the translations done by the Foreign Office of
"Colonial Principle of the Soviet Communistic Party", "History of Chinese
Communist Movements" and "History of Soviet Communistic Movements".

d) Evidence of imperialistic advance into China of Soviet
Communistic Party.

✓ i) I shall endeavor to explain in detail the aggression and its
method by the Soviet Union into China by giving full details of history of
Soviet invasion into Minor Asia, Caucasus, and Outer Mongolia, of Communistic
revolutions in various places, and of Soviet's armed assistance to such

...tion. (My publication "Soviet's invasion into the Far East" may be referred to)

ii) That Soviet gradually invaded into China proper shall be testified by describing the guidance that Soviet undertook over Communistic revolutions in China, the endeavor on the part of the Soviet in establishing so-called "Soviet" in various part of China and the assistance it administered in organizing Bolshevized farmers' associations. (Data available from the Foreign Office investigations) Mention must also be made on the People's Front Movement which was carried out shortly before the outbreak of the China Incident. Although I do not think of any definite materials to testify this point, I remember having read something about it in the North China Daily News at that time. Also I believe same is included in their report of the Japanese Consul General in Shanghai to the Foreign Office.

Another evidence in connection with this point is that the Soviet established a special department for Guidance of the Politics of Chinese Troops in an endeavor to Bolshevize China. (Available from the Foreign Office) Details of riotous actions in the British Concessions in 1926, 5, 30 Incident, and the Nanking Incident of the following year and their relations with the Communist Party will be the good evidence for this purpose.

(Materials are available from the Foreign Office, as well as from the investigations carried out by the South Manchuria Railway Company Shanghai Office) This testimony will cover as far as the People's Front Movement a few years before the outbreak of the China Incident. (Available from the North China Daily News and the report of Japanese Consul in Shanghai)

e) Historical description of development in which the Communistic movement in China was turned into national policy of China.

First, the collaboration of Kuomintang and the Communist Party in 1926(?) and its rupture in later years, declaration and policy of the Communist party after the rupture and the instructions of the Third Internationale.

(Available from the Foreign Office's "History of Communist Movement in China)

Subjugation campaign of Chiang kai-shek over the Communist troops, which developed gradually from suppression of Communists to compromise with them.

(Historical description from Suey-chin time to Si-an time as well as Si-an Incident and the collaboration of Kuomintang and the Communist Party after the Si-an Incident will be given as prelude to the declaration of war against Japan by the Communist Troops. Then war expense of the National Army of China, official propaganda of anti-Japanese movements by the Nationalist Government will be explained. (I do not think there is any handy data to prove this, but one can set up convincing argument on materials available from the Foreign Office and former TOA DOBUN KAI. Military authority may keep some data)

f) Evidence will explain the relativity between the Communistic movement in China and the same movement in Japan. I believe data are available from the Home Office and Justice Office, but I am not positive about it.

g) Further evidence will show that the Communistic movement in China was to become a fatal blow to the fate of China. This can be testified from two different angles:

i) By tendering evidence that all the Communistic movements in China were directed by the Soviet, which had pulled strings behind the screen, it may be concluded that the movements themselves were manifestly representing the Soviet's intention of marching into China.

ii) Evidence to show that Soviet had established two routes in marching into China. One of them was from Siberia to Dairen and Port Arthur. The best indication to show that this is not my mere surmise would be the attitude of that country in Manchuria at the end of the present war. The other route was the one from Singking Province to Haichow of Kiangsu Province crossing the China mainland. This can be evidenced by the fact that the Communist Party in China, which is the counterpart of the Soviet Communist Party, removed its headquarters from Kiangsi Province to Si-an, that Singking Province had a Communist governor, whose name I have forgotten, and that the provinces where the Communistic activities were most active were SENSEI(?), KANSHUKU(?) Honan, the district along the Wang-ho River and northern part of Kiangsu Province, all of which, when geographically studied, constitute this second route.

Now my argument is that if Soviet had succeeded in invading into China through these routes, China would have been divided into two portions, and not only Manchuria, but also North China would have been reduced to the same position as Outer Mongolia, and it would have very much threatened the independent existence of that country. If once China's independence were threatened, the fate of Japan which has had closest relation with that country should have been at stake. I consider it would be very important to concrete this argument with more detailed evidence.

h) Evidence will show that Bolshevization of China or its split in the way as above, if it were carried out, was a fatal blow to Japan. This will be testified by the following:

i) Evidence to show it would have nullified the exertion of Sino-Japan economic cooperation.

X (ii) Argument and evidence to show that it would have been unavoidable for Japan to have Soviet marching into Korea from Manchuria, and then into Japan.

(iii) That if the Communistic activities in Japan were to be directed by the headquarters in Manchuria, it would have intensified the activities. The present movement of general strike now rampant in Japn, with Communist party at its back, may be used as an instance to testify this.

X i) Evidence to show the serious damage that would have incurred on the rights and interests of the European and American countries by the Communistic disunion of China.

i) The Soviet's principle of Status Quo Destructionism and its challenge to all the capitalistic nations will be testified. (Data are easy to get from Lenin's declaration)

(ii) If Soviet had succeeded in establishing the second route in coming out into China, its influence will firstly cover all the districts along the Yantszekiang River, then to South China and finally to India. I may not be able to obtain any material documents to testify this, but the argument and judgment by common sense will suffice to prove this.

No. 2: The direct cause of Japan's expedition to China.

What will come under this heading will be explanations of the circumstances which necessitated the expedition.

1. Detailed explanation will be made to convince the court with the circumstances in those days, in which Japan had to either invade into China or demand reconsideration of Chinese government by virtue of armed force. This attempt may easily be carried out by inducing the conclusion from the above

various arguments; following however are its main points.

a) China's anti-Japanese movements were turned into riotous and violent actions.

b) The Chinese Communist troops played the part of vanguard of all the anti-Japanese movements.

c) The Chinese National Army, under the instigation and intimidation of the Communist troops, turned into anti-Japanese party and finally the principle of anti-Japanese or resisting Japan became the national policy of that country.

d) Japan's important rights and interests in China were infringed by their armed force, and Japan was compelled to resort to the armed force to cope with the aggravated situation.

2. The menace upon our existence was getting more serious every day, and the situation did not allow Japan to overlook it any more. In order to explain this, it will be necessary to allude to the trend of resist-Japan policy of the Communist troops and of anti-Japanese policy of the National Army, and also to expansion and replenishment of armed preparation in China. Mention must also be made on the fierce anti-Japanese riots carried out by the general public. These materials have already been mentioned in the above.

By explaining the imminence of the situation at that time, it will be also necessary to make it quite clear that Japan could not afford to resort to the ordinary mediation of the third power to settle the situation.

3. Evidence to testify that the expedition executed under the circumstances as mentioned in the above was in no way infringing the provisions of international law, nor the specific customs of China.

i) Legal argument on right of self-defense as viewed from the standpoint of international law.

To justify the expedition and its operation, those books such as "Digest of International Law" published by the Department of State, U.S.A. and Wheaton's "International Law" as well as the Kellogg's declaration in 1928 will be quoted.

ii) There are several treaties concluded between China and foreign countries which, upon expectation of its necessity, provided in them the right of military operation for self defense. These will be quoted to support my argument.

a) The Peking Protocol in 1900 provides the right on the behalf of the Powers to station their garrison to assume security and communication between Peking and sea routes.

b) The Commercial Treaty which provided the right for the signatories to anchor their warships at any time at any port in the coast of China continent. (Both of the above are available from the "Collection of Chinese Treaties" by the Foreign Office and from Hartlets's "Collection of Treaties")

iii) Actual instances in which the Powers put in action their right of self defense. These will include: Opium War in 1842, War between China and the Anglo-French Allied Force in 1858 and also the same in 1860, Boxer's Trouble in 1900, the Wan-Hsien Incident in 1926(?), 5, 30 Incident in 1926, Nanking Incident in 1927, Tsinanfu Incident of the same year. Manchouli Incident caused by the Soviet in 192 ?

Part II: Argument and its supporting evidence on development of Military
Operations of both countries

I do not think we need to explain each stage in the development of this Incident. What I intend under this heading is a clause-by-clause refutation and explanation against our "illegal actions" as are alleged in the Indictment.

Group 1: Refutation and explanation against the alleged "Crimes
Against Peace"

The Prosecution charged in Counts 1, 2, 3, 5, 6, 19 and 28 of the Indictment, in connection with this Group, that Japan committed the following crimes:

1. Japan's expedition was an act of an aggressive war or a war infringing the provisions of the international law.
2. Japan planned, prepared and executed war or wars in China with the object of securing its military, political and economic domination by establishing a separate state or states under the control of Japan.
3. Each accused concerned participated as leaders, organizers, instigators, or accomplices in the formulation or execution of a common plan or conspiracy.

I shall now endeavor to refute against these charges under the following headings.

A. Refutation against the alleged "aggressive war".

This is the most important point at issue, inasmuch as it will incidentally tend to decide whether the present Pacific War was legal or illegal. The

whole matter started with the Japan's military operation in China, which was executed under the imminent necessity of self defense and then it developed into a greater war, and so the utmost importance should be placed on this point. It is difficult to determine the accurate definition of an "aggression" but it appears that the Indictment indicates the following two points, namely:

1. Attainment of military, and political domination (Counts 1-3)
2. Attainment of economic domination (Count 1, etc)

In accordance with the Indictment, it does not seem to make any difference whether the domination was to be attained directly or indirectly through the so-called puppet government. What is very significant in this connection is that the Indictment did not charge the action itself an act of territorial aggression, but charged in Appendix A, Section 92, "intended to resort to force to gain territories". The intention of the Prosecution may lie in assuming that above No. 1 clearly means territorial aggression, but I am inclined to consider that the reason why the Prosecution refrained from definitely saying so was because it intended to define Japan an aggressive country without referring to the non-annexation and non-reparation principle manifested in the KONOE's declaration, and this consideration steers my course of refutation.

In denying the intention of aggression, I trust we can do well by denying the alleged intention of military, political and economic domination, and this will easily be done, on account of the special situation of China. In fact, it is easier with China than with any other country, and it would certainly be difficult with Manchuria. It is fortunate that we can attribute our

military operation to the special situation of China.

Under these considerations, I intend to compose my refutation on our military operation with the following points.

a) Evidence to show that Japan had no intention of territorial aggression on China.

This will be evidenced by such official documents as KONOE's Declaration, HIROTA's three principles, Joint Declaration of Japan, Manchoukuo and China. In addition to this, the following may be used as collateral evidence.

i) Japan has never tried to invade into China, although she tried in several occasions to prevent the invasion of other countries into China. In both occasions of Russo-Japanese war and German-Japanese war, Japan saved China from the invasion of those two strong powers and thus secured China from the encroachment of the European countries. It was also from Japan's true intention of securing China's territorial integrity that Japan contributed toward establishment of the principle of equal opportunity in China.

ii) If Japan had an intention of territorial aggression, there were better and more adequate opportunities in the past than the China Incident. Japan never tried to take advantage in those opportunities, and this is where Japan is entirely different from some of the countries which demanded China either territories or some special rights on the slightest plea of their missionary's being killed or their exploring party being assaulted.

B. Evidence will be tendered to show that it was impossible to acquire in China the military domination.

i) In order to militarily dominate China, it will be necessary for Japan to constantly station in China a garrison of more than several millions of troops, and even then, it will be a very difficult task, and Japan had certainly no such power.

ii) The military system of China is very intricate. There are regular armies, collateral armies and irregular armies, and each of them has different principle and interests from the other. Centralization of power or established military system is alien to the condition of China. Above all, the irregular armies may be considered as private troops of their commanders, and same thing may be said of some of the collateral armies. These armies occupy certain part of districts as their own, and it is impossible even for Chiang Kai-shek to control all of them. That it is impossible for Chiang Kai-shek will be shown by the fact that he is now experiencing great difficulties in controlling the communist troops. If it is impossible for the central government of China, it should be more so with any of the foreign powers.

iii) The tendency of rejecting and despising aliens, which is a remarkable phenomenon among the Chinese people, is more clearly seen in the localities further from the central part. This spirit has deeply infiltrated into the troops in the localities and so it would easily be surmisable that the troops with such principles would not be dominated by the foreign troops.

C). Evidence to show that it is impossible to gain political domination of China. This includes the following:

i) China has never had any centralization of administration in its history. Its position is quite unique in that the local administrative authority is as strong as that of the

central government. It may look to the foreign countries that Chiang Kai-Shek is dominating all parts of China now, but the fact is that each local government is administering almost independent authority over its respective locality.

Under the circumstances, to dominate China means to control all these local authorities under the central organization and it is more than Japan could attempt to do.

- ii) China contains variegated races, and each race occupies certain districts of China and maintains its own customs and habits and languages. Furthermore, they are of a suspicious nature and disagree with others. When these variegated races are in the condition as above, it will be impossible for the greatest Chinese statesman to dominate them, to say nothing of the foreign statesmen.
- iii) Chinese people are apt to unite in accordance with the localities that they occupy and the people of one locality have different interests and ideals from the other.
- iv) Chinese people have a strong tendency of rejecting and despising the foreigners.

D. Evidence to show that the allegation of economic aggression is utterly absurd.

The Indictment gives the following three points, in Appendix A, Section 3, in charging Japan's action as economically aggressive, and so I shall try to refute each of those three points.

- i) Evidence to show that Japan never tried to "establish general superiority of rights in favour of her own nationals".
 - a) In order to acquire economic superiority, one needs three conditions. (1) Its economic power must excel all other nations. (2) It must have maintained close economic relations with China. (3) It must maintain enough economic power to dispose of all the results of this economic superiority, that is to say, it must offer enough market for the consumption of the imported Chinese goods. Now Japan had not any of these three conditions and on top of it, the relations between China and Japan was far from giving the latter any economic superiority.
 - b) It will be argued that economic superiority cannot be gained by the armed force. Our military operation was initiated with a view to save the emergent situation and it never even dreamed of acquiring with it the economic superiority.
- ii) Evidence to show that Japan never "effectively created monopolies in commercial, industrial and financial enterprises". This is only the matter of facts and so it will not be difficult to denounce this allegation by showing the facts. It is true that Japan collected several materials in China merely from strategic necessity. Japanese alone were first engaged in this work, but later Chinese

were employed and even the nationals of the third nations were used for this purpose. This was purely carried out from occupational point of view and should not be called acts of acquiring monopolies. This was a temporary phenomenon which was destined to be retrieved to the normal state as soon as the hostilities were over.

The Commercial Treaty and the Treaties concerning the Equal Opportunity made it impossible to administer any monopoly. Unless China abrogates all of these treaties, Japan would not be able, either on the face of treaties or de facto, to establish monopolizing position, and evidence will show that Japan never dreamed of abrogating these treaties.

- iii) Evidence to refute the alleged "exploitation of those regions to weaken the resistance of China, to exclude other Nations and nationals, and to provide funds and munitions for further aggression."

I believe the following argument will do to cope with this point.

- a) Exploitation of the occupied territories is within the authority of the occupying force as long as it does not interfere with the provisions of the international law, and what Japan did in China was within the scope of operational necessity of the occupying force.
- b) Japan occupied only a very small part of the vast Chinese area, and it was by far impossible to weaken the resistance of China by exploiting such small area as that.

- c) Japan never set up the principle of rejecting the third nations from the area. Japan restricted, to a certain extent, the conduct of the nationals of the third countries within the occupied territories, but it was done from strategic necessity, and I trust the provisions of the international law require this kind of tolerance to the people living within the occupied territories. The restriction was the kind which would be removed as soon as hostilities were over.
- d) There were few instances of having exploited the regions from the necessity of obtaining some type of munitions, for instance, gardening was carried out to gain fresh vegetables, but it was done from sheer necessity of operational viewpoint, and it is certainly too much to say that Japan provided funds and munitions for further aggression. It cannot be conceivable that gardening or so-called exploitation of a small area could provide any appreciable part of war funds and munitions.

This completes my refutation against allegation in the Indictment, but as some of the people of anti-Japanese principle had blamed Japan to be economically aggressive previously, I trust it would do good by alluding those points at this stage.

It can be clearly said that our economic activities in China in the past have never exceeded the limits of rights guaranteed by the provisions of the treaties. It is true that our economic

activities in China have recently been remarkably intensified but they were the results of development of ordinary commercial transactions and Japan never asked for any privilege or priority in executing the trade. While the Sino-Japanese economic cooperation was a very important method of disposing our surplus population, Japan had neither intended to monopolize the economy of China nor to gain economic domination. The purpose of the cooperation was to establish the general principle of economic cooperation to stop the violent actions of anti-Japanese movements, thereby to eliminate the disturbances imposed over the principle of reciprocity and mutual supply.

After explaining all of the above, allusion will be made to the China-Japan Economic Conference (I do not remember when it was held) and to the KONOE'S third declaration in which the policy of non-annexation and non-reparation was advocated, for which official documents are ready.

3. Evidence to show that Japan had no intention of "establishing a state or states".
 - i) One of the important national policies of Japan was to prevent China from being split into several states. This can be explained in the following way.
 - a) Split of China will no doubt cause weakening of that country. It will further mean that some powerful nation locates itself near our country and threatens our security.
 - b) Weakening of China will cause utter disturbance of law and order in that country, where it is always in the state of precariousness without having the country split. Dis-

turbance of law and order in that country will necessarily menace the safety of our country, and so it is the utmost concern of Japan that China should remain solid.

It may be mentioned at this stage that at the end of nineteenth century, there was a trend that China would be segmented by the Powers. Japan did its best to prevent from having this disastrous result and fought for this purpose the two wars against Russia and Germany. Furthermore, Japan, from her eagerness to maintain China's territorial integrity, became signatory of all the treaties and pacts resulting from the Washington Conference and Equal Opportunity Principles. Above all, Japan strongly objected to the plan of placing China under the joint control of the Powers.

- c) It is entirely wrong to consider the governments established in North China and in the Mongolian Border as independent local governments, because they are nothing more than the manifestation of the Chinese time-old customs of Decentralization of powers. There have been several local governments of this nature in China, and Japan supported the above two particular governments because it was necessary to do so in order to maintain peace and order in those localities while the war was going on.

It is true that Japan officially recognized the Wan Chinwei's government and concluded treaties with it. This action may have opened way for misunderstanding, but it does not necessarily follow that Japan established new state. In

fact, this is also no more than a local government as has been seen everywhere, and Japan's recognition of it means recognition of one of those numerous local governments.

There have been quite a number of instances in which powers concluded treaties with the local governments after 1842, the year when China was opened for foreign countries. (Vide my publication "Feature of Japan's operation in China" Page 24-27.)

It is contended, therefore, that the conclusion of treaties with the Wan Chingwei's government was not in any way an exceptional case, and the contents of the treaties will also show that they were of local nature.

4. Argument as to whether the war was an infringement of the international law, treaties, agreement or guarantee.

This question has been alleged everywhere in the counts, but the Prosecutor seems to point out in Group I the question of undeclared war.

1. Contention on undeclared war.

We cannot deny that an undeclared war is not an infringement of the treaties, but we have the following points to contend.

- a) The inception of the present war was a mere dispatchment of troops to cope with the imminent situation and it was purely an act of self-defense. This was gradually induced to a war and it is difficult to say since when the war really started. In short,

Japan lost chance of declaring war on the face of gradual expansion of the incident.

- b) Like Japan, China also refrained from declaring war for a long time, so Japan wanted to settle the hostility as one incident. Japan wanted to remain in a position to settle it as an incident, instead of being placed in limited position of a belligerent of a declared war.
- c) The circumstances at that time were more complicated by the European war, and there was such fear as would make both Japan and China impossible to settle the matter between them. It would have been much inconvenient if it were made the issue of the Powers, and so Japan wanted to keep it in the form of an Incident to prevent interference of other countries.
- d) If war should have been declared, there was the fear that China would go into military alliance with the Soviet and would involve all the Far Eastern regions into the theatre of operation. Japan wanted to keep away from this happening.
- e) Japan was also careful not to induce the United States into war so that it might develop into the World War.

After our declaration of war against the United

States of America and Britain, China, being the ally of those two countries, ran to the enemy side and went into hostile activities against us; that means to say that it was not necessary for us to make any declaration of war. Under the circumstances, it may be contended that the non-declaration of war on our part was not necessarily an infringement of the principle of the Non-Aggression Pact of 1907.

5. Refutation against alleged "participation in the formulation or execution of a common plan or conspiracy."

This question has been taken up by Dr. KIYOSE in his opening statement and I do not see any necessity of repeating it here.

I may, however, say, that the question has fully been covered by Dr. KIYOSE in his opening statement.

6. Contention on the Tri-Partite Treaty.

Although this problem was taken up in the Indictment under General Phase, it cannot help having some bearing on the China Incident, since the Prosecution defined this treaty to be an agreement of mutual assistance for executing aggressive wars.

That the allegation is wrong is fully explained in my statement concerning the Tripartite Treaty. I think this matter ought to be fully covered by Dr. KOYOSE's opening statement, but my allusion to it is considered necessary, I shall do so, briefly at this stage.

B) Contention on whether there was a plan preparation of a war of aggression. (Count 6 and others, also Appendix A, Sec.2).

The question that Japan had no preparation or plan of war against China and that our armament was merely expanded in correspondence to the armament of other nations are to be covered by Dr. KIOSE's opening statement, and so I shall leave this subject to Dr. KIOSE and shall only mention to that effect when addressing the court.

C) Contention of execution of war. (Counts 19, 28 and App. A, Sec. 2). Prosecution charged three points with regard to this subject, viz, initiation of war, neglecting the duty of pacific settlement through mediation and the validity of the Nine Power Treaty. My refutation will be made in accordance with this order.

1. With regard to time of commencement of war.

Count No. 19 and 28 charged that "on or about 7th July 1927, initiated a war of aggression against the Republic of China", and by this statement, the Prosecution interpreted the skirmishes between our marines and the Chinese troops in Shanghai as the initiation of the war. It is quite apparent

that the Prosecution intends to ignore our right of self-defense which was carried out at an emergency case to cope with the situation. This definition is no doubt quite harmful on our part, but at the same time, I trust this leaves much room for arbitration. Because the whole trouble started with a mere act of self-defense, we can contend that the act of self-defense was gradually induced to a war on account of the persistent resistance of Chinese troops. It may not be too much to say that the whole matter, under the circumstances, hinges upon this single point, on which we must concentrate our utmost efforts. I have planned out my argument in the following way:

- a) I like to stress the legality of dispatching troops for self-defense on an emergency case. My argument on this point has been given in PART I, and I shall stick to this contention.
- b) I shall point out several instances in which dispatchment of troops for self-defense was not considered wars. They are:

Boxers Trouble

Wan Hsien Incident

Shameen Incident

5.30 Incident

Nanking Incident

Manchouli Incident

These were the incidents carried out by United States, Britain or the Soviet Union and they were not considered wars. I shall draw the attention of the court to the illogicality of our case, which is no more than any of the above, being considered war.

- c) China did not declare war for a long time. This is an evidence to show that China did not consider it a war.
- d) It was only when Japan was compelled to consider that the hostility would take a long time and when China made a preparation for a lengthy war upon same consideration that the trouble bore the feature of war, and as this took place upon occupation of Nanking, I consider and shall insist that the fall of Nanking should be deemed to be the time of initiation of war. (Vide my book "Feature of Japan's military operation in China" page 47-49).

The evidence that Japan did not expect any of the prolonged war can be testified with the Military Budget at that time, extent of military mobilization and by the speeches of war and navy ministers at the diet.

2. Contention on why "Japan did not try to resort to mediation or arbitration for pacific settlement".(App. A Sec.2)

I have fully covered this subject in my book "Feature of Japan's military operation in China" page 135-152. My contention is that it may have been an act of violating the treaties, but it has much room for contention, namely:

- a) The whole matter occurred through unexpected incident, and Japan had no time to resort to mediation before adopting an urgent method of self-defense.
- b) If Japan had an obligation of resorting to mediation, same thing could be said of China, but China never tried to resort to mediation and so Japan did not do either.
- c) The incident was considered a local problem which could be settled between China and Japan alone. Chiang Kai-Shek had no intention of fighting against Japan, but he was only made to resist Japan upon instigation of the communist part, and so he himself considered the matter could be settled somehow between China and Japan.
- d) From the attitude of U.S.A. and Britain, which were definitely of pro-Chinese and anti-Japanese, Japan could not expect a fair mediation of either of these countries.

The Appendix A accused that Japan, on 25th September 1937, refused to participate in the Enquiry Committee of the League of Nations for the Far East and also refused attendance to the meeting of the League of Nations for mediation

of tjos cpmf;oct, but as Japan had withdrew from the League of Nations before then, the refusals were quite appropriate. I shall contend this problem from this angle.

3. Argument on validity of the Nine Power Treaty (Appendix A, Page 4 - 5).

Japan's declaration that "Nine-Power Treaty was obsolete" was taken up by the prosecution. In regard to this matter, my personal opinion is that we should not emphasize this declaration, because time will come when Japan, in the face of denunciation of war in the Constitution, will have to resort to treaties for her defense in the future, and it would not be a wise policy to support the declaration which openly denied observation of the signed treaties. In the opening statement Dr. KIYOSE seems to point out five principal changes of situation as the reason for Japan's not sticking to this treaty. However, this treaty stipulates independence of China's sovereignty, respect of territorial integrity and establishment of equal opportunity, and our intention of over all denial of these stipulations would lead to the conclusion that Japan had aggressive intention. Taking this point into consideration, I should like to deploy my argument in the following way.

Japan did not advocate over all invalidity of the Treaty. It recognized that the Treaty existed, but

when a nation was compelled to carry out emergent operation, the existing treaty would have to be given such limitation as would be absolutely necessary from operational viewpoint. Since the right of self-defense is recognized as being legal, this much of limit on the treaty should also be recognized. International law provides for the third nations the "Duty of Tolerance" in war time, and so in view of the principle of this provision, the signatory of a treaty should at least be given the right of limiting the validity of the treaty to such an extent as would be absolutely necessary for the execution of war.

There is one defect in this argument, that is, if above was the case, why Japan had to refuse attendance to the conference of signatories of this Treaty which was held in Brussels for discussion of application of this Treaty. (App. A - Pg. 4) My answer to this is that it was entirely Japan's fault that she refused the attendance. I do not consider that this frank admittance of fault will bring any material effect on the trial.

Group 2: Refutation against the alleged "murder".

(Counts 42, 44-50, 37, 38)

1. Refutation against the allegation that Japan disqualified in the right of lawful belligerents.

Counts 37 and 38 define that in view of the apparent violation, on the part of Japan, of Non-Aggression Pact (Count 37), of Agreement effected by exchange of notes between the United States and Japan, signed 30 November 1908, declaring their policy in the Far East (concerning maintenance of status quo in the East, mutual respect of territories, and protection of the principle of equal opportunity), Four Nation Treaty of Britain, France, U.S.A. and Japan of 1921 and Kellogg-Briand Pact of 1928, Japan could not acquire the rights of lawful belligerents, and based on this definition, charged Japan of having committed murder. If the Tribunal is fully convinced that the above allegation of the Prosecution was not sufficiently grounded, then the greater part of the charge of "murder" should be dispersed.

- a) My contention is that even in the undeclared war, the laws and customs of war are applied. The usages and customs of landwarfare signed in the Hague in 1906 and other regulations and laws concerning war do not provide any clause to differentiate their application whether the war was a declared one or not. In my opinion, the Non-Aggression Pact merely defined the procedures of commencing the war, and the declaration of war is not an essential factor of constituting a war.
- b) If there were any actions on the part of Japan of violating the laws and regulations of war, Japan should of course be

responsible for it, but it is entirely a different matter that Japan can enjoy the rights provided in such laws and regulations. Since the Indictment determined the war as that of aggression, the Prosecution might have set up such illogical argument as above in order to bring about punishment to the accused, but even the Prosecution has no right of ignoring the international law, and as long as the existing international laws go, without being modified, Japan has both rights and obligations due to the lawful belligerents. As the Prosecution is not entitled to create the international law of his own, he has no right of charging the accused with the theories which are not included in the law. In my opinion, the allegation of the Prosecution itself is illegal. Furthermore, it had been clearly emphasized in the KONOE's Declaration and in the repeated guarantees given to the allied force that Japan had no aggressive intention. Even if, hypothetically, we admit the war was an aggressive one, there is no law to determine it as a crime, inasmuch as the League of Nations had two conferences on this subject and on each occasion, they did not reach any definite conclusion. Moreover, may we draw the attention of the court that it was Britain who first refused to ratify the Peace Protocol?

- c) It may also be contended that if the non-declared war was to deny the rights of being lawful belligerents, China will also have to lose the same rights and she will have to undertake responsibilities of having killed Japanese soldiers and other personnel. It would be definitely unfair to charge Japan only with this allegation.

2. Evidence to refute the charges of individual crimes.

The Indictment includes the following:

Attack of H.M.S. PETREL (Count 42)

Wholesale murder in the occupied territories (Count 44)

Attack of City of Nanking and murder of civilians
(Count 45)

Attack of City of Canton and murder of civilians (Count 4)

Attack of City of Hankow and murder of civilians (Count 4)

Attack of City of Changsha and murder of civilians
(Count 48)

Attack of Hongyang and murder of civilians (Count 49)

Attack of Kweillin and Liuchow and murder of civilians
(Count 50)

If our refutation in No. 1 on the question of rights of lawful belligerents is duly established, then these charges will have to be automatically dispersed. However, Japan will have to be responsible for the murder which was not supported with the operational necessity. Defense for such action will have to be carried out in various manners in accordance with the nature of the action and it will be difficult to mention here all the arguments for defense. However, the following may be said as over all defense.

- a) Japan will not undertake any criminal responsibility for the damages caused by bombardment, air raid and other lawful means of warfare. (Quotation from War regulations)
- b) Evidence must be given to show that Japan observed all rules and regulations concerning warfare. Quotation will be made from the proclamations made by the commanders-in-chief on the spot, military acts, instructions of the commanders to

- ... subordinates and other appropriate materials.
- c) Evidence to show that murder of Chinese nationals was executed by Chinese troops.
 - d) There may be many who were killed in the role of innocent bystanders. I may say that this is inevitable in the execution of war.
 - e) Japan will undertake responsibility for unlawful killing as viewed from the standpoint of the lawful belligerents rights.

Group 3: Refutation against "conventional war crimes
and crimes against humanity" (Counts 53-55, App.D)

This problem is to be treated as a general matter in the closing address, and accordingly Dr. KIYOSE's opening address should cover this subject. In fact, as I believe Dr. KIYOSE is fully covering this subject, I shall not go much further in this problem. I shall, however, mention here two very special problems which are specific features of China, as being relevant to the China Incident and our military operation. These are the question of narcotics (Appendix A, Sec. 4; Appendix B, 10) and the use of poison gas (Appendix D 1, Sec. 9)

1. Refutation against narcotics.

- a) In accordance with the provisions of the international law, the occupying force has the right of governing the occupied territories. The international law concerning the extent of administration of the occupied territories requests the occupied force to respect as much as possible the existing laws

of the occupied territories, but this is about all the restrictions that it provides and it does not exclude opium from the right of administration of the occupied force (vide: rules and regulations on land warfare, signed in The Hague.)

- b) Evidence to testify that administration of opium within the occupied territories does not interfere with the regulations concerning prohibition of opium trade. This contention is based on the following arguments. In view of the great success of the policy which Japan administered in Formosa, Japan decided to adopt the same policy to the occupied territories in China. This policy was to aim at the gradual decrease of the number of opium addicts by way of gradual restriction and to aim at the extermination of addicts in the long run. Japan never encouraged sale and consumption of opium as was alleged in Appendix A, Section 4, and certainly never expected weakening of the resistance of the inhabitants by opium. Evidence to support the above argument will include:

Report on Investigation of the result of Opium System
in Formosa - available from Home Ministry.

Numbers to show decrease or increase of Opium addicts
within the occupied territories - may not be available
unless military authorities have made it.

Military laws and other regulations established by the
occupying force concerning the trade system of opium -
I think this is available from army.

- c) Legal contention to show that Japan is fully entitled to spend the profits gained from the opium trade within the occupied territories. Laws and regulations on land warfare of The Hague do not provide any clause to the contrary, and that will be the evidence to support this contention.
- d) Evidence to show that the profits from opium trade were scheduled to be spent for maintenance of law and order within the occupied territories. In this respect, we may have some weak points, but my opinion is that we should frankly admit what was wrong with us. Evidence for submission will include the specification of profits from opium trade and their expenditure, which, I trust, is available from the army, but without it we may have no ground for contention.

This problem could be discussed very much more in detail if we want to, but my opinion is that we should cover it in a general way and should not go into detail.

2. Poison Gas.

We must strongly insist that the charge is groundless. Japan may have used some of it to a certain extent, but we will overlook it and will stick to our insistence that Japan never used it. This charge was presented by China, but China herself is not in a position to say much about it. (_____ No. 9, Sec.2) There is collateral evidence to support this insistence. Japan had never used poison gas against Britain and U.S. who are the far more influential enemy than China. Japan was never complained by U.S. and Britain of having resorted to gas usage,

and so there is no reason why Japan should have used it against China.

It may be possible for us to approach this question from the point of view of treaties, but as we seem to have several weak points in this connection, my opinion is that we had better not touch it too closely.