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OPENING STATEMENT OF

DIVISION I

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Division I of the Defense Case will produce evidence of a general nature showing that under the existing state of international law the charges in the Indictment must fall; that there was no conspiracy of the accused inter se, precluding any finding of guilt for the acts and conduct of these accused on the conspiracy counts and that Japan's domestic conditions, coupled with encirclement by the World Powers, forced her as a last resort to fight for her very existence.

This evidence will be presented in five parts:

I. Evidence of basic documents relating to the surrender, the creation of the Tribunal, treaties and the constitutional laws and regulations of Japan.

II. Evidence of the acts and declarations of other nations regarding treaties as creating international law; absence of individual responsibility; diplomatic immunity and nature of crimes charged.

III. Evidence of lack of conspiracy of the accused inter se including the Greater East Asia Co-Prosperity Sphere.

IV. Evidence of the national economy of Japan and the encirclement of Japan by the World Powers in the Pacific and Asia.

V. Evidence of the Japanese domestic conditions from educational, anti-communistic and propaganda standpoints.

The type of evidence and its subject matter to be produced in support of each of these five parts is as follows:

I. EVIDENCE OF BASIC DOCUMENTS RELATING TO THE SURRENDER, THE CREATION OF THE TRIBUNAL, TREATIES AND THE CONSTITUTION, LAWS AND REGULATIONS OF JAPAN.

We will read from treaties and basic documents relating to the surrender, the creation and jurisdiction of the Tribunal, treaties which the accused are charged with violating and the Japanese constitution, laws and regulations which the Prosecution introduced into evidence but did not read into the transcript. In addition, the Defense will present additional treaties and other basic documents.

These treaties, conventions and assurances will make clear in part Japan's position; how and why various actions and countermeasures were taken by her in past years and why she failed to act at times, explaining her position and the position of powerful countries in the family of nations. Her special interests in China and Manchuria will be shown to have been recognized and accepted by World Powers for many years.

The interests she was legally charged with protecting, the steps taken on her behalf by some to defend those interests, the misinterpretation of her intentions by some nations, and the recognition of her accomplishments by many nations will be portrayed.

It will be demonstrated that with respect to Manchuria and China, national policies were formed after, not before, the occurrence of those military incidents. Succeeding governments were thus forced to accept conditions as they found them and attempts were made to localize these incidents.

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II. EVIDENCE OF THE ACTS AND DECLARATIONS OF OTHER NATIONS REGARDING TREATIES AS CREATING INTERNATIONAL LAW; ABSENCE OF INDIVIDUAL RESPONSIBILITY: DIPLOMATIC IMMUNITY AND NATURE OF CRIMES CHARGED.

It will be shown that by their own acts and declarations, some of the prosecuting nations are estopped from endeavoring to enforce the terms and conditions of various treaties which they themselves have broken and disregarded. For example, evidence will be produced among others of Russian aggression against Finland, Russian expulsion from the League of Nations, Russian aggression against the Baltic States: Russian aggression against Manchuria and British-Russian occupation of Iran.

Evidence of official statements by representatives of various nations and minutes of committee meetings will be presented to dispel doubts as to the meaning and intentions of the powers concerning the effect and interpretation of certain treaties; their reasons and decisions set forth why certain provisions were adopted and others rejected in consonance with international law.

It will be further shown from the acts and statements of representatives of various prosecuting nations that there never was any intention or agreement among the powers to create individual responsibility for treaty violations or provide any individual punishment therefore. This will be shown by the Bucharest Articles which were carefully prepared but never adopted. The same prohibitions were demonstrated in the Submarine Warfare Treaty of 1922 and in the conference and

committee meetings incidental to the Versailles Treaty and by the Hague Convention IV, Article III, Chapter II.

It will be further shown that from time immemorial it has always been contemplated by nations that immunity be granted diplomats as evidenced by the Treaty of Aix-la-Chapelle, Treaty of Vienna and the Treaty of Westphalia.

Statements of representatives of various governments will be presented to assist the Tribunal on matters concerning the nature of the various alleged crimes charged in the Indictment. Especially that killing in warfare does not and never has constituted murder, whatever the circumstances of its inception. Examples and analogies will be presented in terse form in suppor of this. Evidence will be presented with respect to the Panay and Ladybird Incidents to demonstrate that nations contemplated indemnification as the remedy for alleged breaches of treaties and not individual responsibility to be judged by other nations.

It will be shown that attempts to define aggressive war at the Conference of 1933 were unsuccessful.

III. EVIDENCE OF LACK OF COMMON CONSPIRACY OF THE ACCUSED INTER SE INCLUDING THE GREATER EAST ASIA CO-PROSPERITY SPHERE.

The Prosecution's charge that these accused conspired to initiate, plan and wage aggressive wars; to murder and to mistreat prisoners of war and civilians will be disproven by irrefutable evidence. Further evidence on this, of necessity, will be offered throughout the trial.

The evidence to be presented will conclusively establish that the situation in Japan was entirely different than in Germany. Judicial notice will be asked to be taken of the fact that there Hitler and his small group of followers started in 1919 and first using the 25 points of the German Labor Party and later in 1925 using "Mein Kampf" as their Bible, with a definite plan in view unaltered throughout, overcame all opposition until they seized control of the government of Germany and continued in power as its government until the termination of the war.

The expressed program of Hitler and his cohorts was adjudged to be ominous including among other points an anti-Jewish provision, planned territorial expansion and premeditated disregard of treaties. It will be shown that no such provisions or ones even remotely resembling those were ever a national policy conspired or planned by these accused. Hitler was the dominating factor throughout the conspiracy. Such a personage is absent here. Throughout, he had a close group of arch co-conspirators. Such was not the case here. It will be shown

that instead of a common conspiracy in Japan, the converse is true. The military were divided; the Army opposed the Navy; the diplomats disagreed with the Army and Navy; the Cabinets were divided and fell with great frequency; the Diet was independent of Governmental policies or influence of the military; military and non-military governmental officials often violently disagreed with one another and some stayed in office whenever possible to fight with vigor for what they thought was right even though their opinions did not always prevail - the latter a commendable deed, and lauded by representatives of the prosecuting powers. It will be shown that these accused were never close enough to one another in time of holding office to form or continue any common plan or conspiracy for the purpose of expanding the power of Japan by aggressive war. Internal dissension in Japan precluded the formation or execution of any common conspiracy or plan as charged.

Furthermore it will be shown that the composition of the cabinets of the government of Japan was a continuously changing constituency. Since 1928, fifteen different cabinets rose and fell in Japan. Cabinets fell because of crises brought about by various events and differences of opinion between some of these very accused and between them and other officials. No two cabinets fell because of identical reasons.

Many of them fell because of purely domestic reasons, unrelated to any international situation. Among the reasons for their termination are the following: The TANAKA Cabinet fell on July 1, 1929 because of internal dissension in the cabinet. The HAMAGUCHI Cabinet's fall on April 13, 1931 was due to the

illness of the Prime Minister. The 2nd WAKATSUKI Cabinet fell on December 12, 1931 because of a difference of opinion between WAKATSUKI and ADACHI, Minister of Home Affairs, with regard to whether or not the Cabinet should be a coalition form of government. The INUKAI Cabinet fell on May 25, 1932 when INUKAI was assassinated by some young officers over a domestic politic issue. The SAITO Cabinet fell on July 7, 1934 because of a public scandal which compromised some of the ministers and high officers of the government. The OKADA Cabinet's fall on March 8, 1936 was the result of the February 26th Incident. The fall of the HIROTA Cabinet on February 1, 1937 was occasioned by a difference of opinion between HIROTA and TERAUCHI, Minister of War, on the issue of whether the House of Representatives should be dissolved. The HAYASHI Cabinet fell on June 3, 1937 when HAYASHI dissolved the Diet. The new Diet which was elected was opposed to HAYASHI's domestic policies. The 1st KONOYE Cabinet fell on January 4th, 1939 due to a difference of opinic among Cabinet members with regard to the anti-Comintern Pact. The HIRANUMA Cabinet's fall on August 29th, 1939 was due to internal dissension and the sudden and unexpected conclusion of the non-aggression pact between Germany and Russia. The ABE Cabinet fell on January 15, 1940 because of the domestic price commodity policy and the question of whether or not the Trade Ministry should be established. The YONAI Cabinet fell on July 21, 1940 because of differences of opinion concerning the formation of a new political party. The 2nd KONOYE Cabinet fall on July 17, 1941 was brought about by KONOYE's difference of opinio

With MATSUOKA, Minister of Foreign Affairs, as to foreign negotiations. The 3rd KONOYE Cabinet fell on October 16, 1941 because of KONOYE's differences with TOJO with respect to American policy. The TOJO Cabinet fell on July 17, 1944 because of the trend of the war. The KOISO Cabinet's fall on April 7, 1945 was due to a difference of opinion with the Army. The SUZUKI Cabinet's fall on August 16, 1945 came upon the completion of its duty in connection with the surrender. The HIGASHIKUNI Cabinet fell on October 6, 1945 because of post war conditions.

Unlike Hitler, no one in Japan was in a continuous position of control in these cabinets or in the military durin the period of time covered in the Indictment. In three of these cabinets -- the TANAKA Cabinet April 20, 1927 to July 1, 1929; the HAMAGUCHI Cabinet, July 2, 1929 to April 1[illegible] 1931 and the HAYASHI Cabinet, February 2, 1937 to June 3, 193[illegible] -- not one of the accused was in a position to control, lead or direct any conspiracy as not one of them was even a member of these cabinets, nor was any of them Chief of the Army General Staff or Navy General Staff during those times.

That there could not have been a continuing common conspiracy to initiate or wage aggressive war will be shown by the fact that not one of the accused was a member of any two of the cabinets which were in office at the time of the outbreak of the Manchurian Incident in September, 1931, the commencement of the China Affair in July, 1937, and the outbreak of the Pacific War in December, 1941. Only one accused was in the cabinet at the time of the commencement of the Manchurian Incident and none was Chief of the Army or Navy General Staff. Only two were in the cabinet at the time of commencement of the China Incident and none was Chief

of the Army or Navy General Staff. Only four were in the cabinet at the time of Pearl Harbor and the Chief of Naval General Staff was a former accused. The evidence will show that the alleged conspiracy had no core due to the absence of a leader who would necessarily appear in a position of dominant control in at least two out of these three significant and important periods of time - that situation is absent. During the entire period of time covered in the Indictment the national policy constantly changed, thus disproving a common continuous conspiracy.

Furthermore, it will be significantly demonstrated by evidence that with respect to the charge of conspiracy to plan aggressive wars, where ample time is necessary to make preparations, none of the accused was in the HAMAGUCHI Cabinet which fell five months before the commencement of the Manchurian Incident nor was any of them Chief of the Army or Navy General Staffs during the time of that cabinet. Likewise none of the accused was in the HAYASHI Cabinet which fell one month before the commencement of the China Incident nor was any of them Chief of the Army or Navy General Staff during that time. And only one of the accused was in the 3rd KONOYE Cabinet which fell less than two months before the commencement of the Pacific War, and a former accused was Chief of Naval General Staff during that time.

There was an absence of any agreement whatsoever among the accused even remotely pointing to any common plan or conspiracy. The evidence will show that true to sound principles of constitutional government, there was no planning, scheming

or plotting to propose a new Prime Minister who would further any such common plan or conspiracy as is charged, or any other common conspiracy at all. The reasons why these Cabinets fell and new ones rose will definitely establish that no such common conspiracy among these accused existed.

The evidence will further show that among the accused during the period charged in the Indictment there was never any single group of them in a position of power and influence over any extended period of time. The absence of such a group holding important political offices or military posts of control prevented any cooperation to carry out any plan or plans for any common conspiracy or purpose as charged in the Indictment during the terms of office held by these accused.

Individually it will be shown that they acted in no way different than would be expected or normally anticipated of the officials of any other country under similar circumstances. Evidence will be produced to show that the Prosecution by the use of certain labels has magnified, distorted and misconstrued the true meaning and intent of the innocuous phrases - New Order in East Asia, Hakko Ichiu and Greater East Asia Co-Prosperity Sphere. It will be shown, contrary to the Prosecution contention, that these phrases had no malicious or criminal implication and did not contemplate military aggression; that they are just as innocent and innocuous as the phrases or implications contained within the "Good Neighbor Policy" and Wendell Wilkie's "One World."

The Prosecution's charge that all these accused and others

were part and parcel of a common plan or conspiracy to cause cabinets to fall and prevent cabinets from being formed is contrary to the facts. Its contention is based on the assumption that the accused conspired to and used the Imperial Ordinance of 1905, as amended in 1912, and the Imperial Ordinance of 19[illegible] for this purpose.

Military influence for individual rather than political reasons occasionally played a part in the selection of a new Prime Minister, but it was not pursuant to any organized common plan or conspiracy by these accused. It will be shown with respect to this there never was, or could be any such a common conspiracy among all these accused, due in part to the fact they held different offices at various periods of time. Some at various times expressed different ideas on this controversial issue and some were not in positions to act either affirmatively or negatively on the choice of a Prime Minister, and most of them had no voice in the selection.

The evidence showing lack of conspiracy will be presented from charts, various speeches made by some of the accused and others at the time of the fall of the cabinets; by evidence of prominent Japanese statesmen; by governmental proceedings; by unimpeachable records; by publications; diary entries; speakers of the House of Representatives; interrogations of the accused; newspaper reports and proceedings of the Liaison Council and Imperial Conferences.

IV. EVIDENCE OF THE NATIONAL ECONOMY OF JAPAN AND THE ENCIRCLEMENT OF JAPN BY THE WORLD POWERS IN THE PACIFIC AND ASIA.

We will also demonstrate in a conclusive way that there was no economic preparation by Japan for any wars in Manchuria, China, against the Soviet Union, nor in the Pacific. In the last few months before December, 1941 when it became apparent that the Pacific War was probable and later inevitable, defensive measures were taken. The economy of Japan, being an economy of scarcity, perhaps in its totality and to a greater extent than many other countries, the true economic condition will be shown by impartial studies and reports. The economic condition of various basic industries such as shipping, coal, food, textiles, rubber, oil, electricity, etc. will be offered to demonstrate positively that there was no economic preparation for war or any conspiracy in regard thereto. The enactment in 1932 of a Capital Flight Prevention Law and in 1933 of Foreign Exchange Control Legislation were natural phenomena forced on Japan by the world wide depression and dislocation of foreign trade which was particularly acute in Japan because of progressively higher tariff walls and other trade barriers erected against her throughout most of the world.

Moreover, we will show that between 1928 and 1935 the vast majority of the trading nations of the world enacted identical or similar legislation and that such legislation as Japan enacted had no relation whatsoever to preparations by Japan for war. Japan, being a nation which must import in large quantities in order to live, was particularly injured in her foreign trade by

the Ottawa Conference decision of 1932 to grant "Empire preference" in tariff treatment, a decision which was roundly condemned by the United States and practically every trading nation in the world outside of the United Kingdom. The evidence relating to the economics of Japan including Korea, will show persuasively the absence of any manipulation, regimentation or control for any such purpose as is alleged by the Prosecution. We will show that prior to the Pacific War, 80% of the foreign trade of Japan was conducted with the United Kingdom, Netherlands and the United States. From this the Tribunal will be able to gauge the terrific impact of the embargo and freezing regulations of the ABCD bloc upon the economy of Japan particularly with respect to the imminent threat it offered in attempting to force a capitulation in China.

The evidence will indicate the economic encirclement to which Japan was subjected. The situation in Japan and the disastrous result of such restrictions and sanctions on Japanese economy will be shown. The evidence will further point to the lack of any economic aggression preparatory to waging any alleged aggressive wars by these accused or any conspiracy by them in regard thereto. It will also be shown by maps and charts how Japan had been gradually encircled economically and territorially by world powers leading up to a critical situation.

V. EVIDENCE OF THE JAPANESE DOMESTIC CONDITIONS FROM EDUCATIONAL, ANTI-COMMUNISTIC AND PROPAGANDA STANDPOINT.

Evidence will be introduced to show that the Prosecution has exaggerated the importance of military education in the Japanese school system. Military education as practiced in Japan was less objectionable than that of other prosecuting nations. This evidence will be presented in the form of curricula, statements and testimony.

It will be shown that there was no common conspiracy among these accused to prepare the children of Japan for alleged aggressive wars by training, drills, maneuvers or exercises, using the school system as a nefarious vehicle. There were no textbooks devised or used for such purposes. Teachers and educators were never indoctrinated with any militaristic or ultra-nationalistic philosophy or required to teach such ideas in support of any such alleged plan, scheme or common conspiracy. The evidence will further show that military education played only a minor part in the Japanese school system since 1902; that it was never intended to, nor did it dominate school life, or teachings of the children. Furthermore, it will be shown that in 1929 when the military budget of Japan was cut, and the size of the Army reduced, an election was offered to the students of military instruction in the schools or limited service in the Army after graduation.

It will be shown that even when Japan was engaged in hostilities with China, commencing in 1937, her universities were

not turned into military schools as claimed, which has been the practice of other nations during times of war. There never was any common conspiracy among these accused to regiment the youth of Japan through the school system and to inculcate them with a spirit of totalitarianism or aggression.

The Peace Preservation Law was enacted and enforced for the purpose of combating the rightists and the menace of Communism. It will be shown that the effect of the three Russian 5 year plans, the resolutions of the 7th Conference of the Internationale in 1935, and the activities of the Communists in Japan caused real anxiety among the Japanese people and the government. The government was charged with the responsibility of maintaining law and order in Japan, and subversive activities of the Communists warranted the steps taken for their control. It was entirely unrelated to any alleged preparations for aggressive war.

These accused are charged with using, propaganda, censorship, press, radio and moving pictures for the purpose of furthering the alleged plan or conspiracy for aggressive war. It will be shown that no such use was made of these means of communications for such purposes during peace time and it will be further shown that during times of war the uses made of these means of communications were no different than those which could reasonably be expected to be used and were used by other countries during war times. This use was totally unrelated to any alleged common conspiracy among these accused.

It will be shown by witnesses, publications and official documents that there was no propaganda as charged by the

Prosecution to bring about any wars or criminal acts. The evidence will show that there is no foundation for stamping these various measures taken by Japan and some of these accused in the normal operation of the government with the label of aggressive war. The enactment and execution of laws and measures were not for ulterior purposes as claimed but for sound and proper reasons and in the promotion of good government, unrelated to the charges in the Indictment.

With respect to the evidence to be presented in this division, as is pointed out in the general opening statement, individual accused may, in the presentation of their defenses, differ with certain items of evidence, the inferences to be drawn therefrom and their involvement therein.

Mr. George Yamaoka will now present the evidence of basic documents relating to the surrender, the creation of the Tribunal, treaties and the constitutional laws and regulations of Japan.