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Evidentiary Document No. 5429.

OPENING STATEMENT

COUNTS 53, 54, 55.

BREACHES OF THE LAWS AND CUSTOMS OF
WAR

OFFENCES AGAINST PRISONERS OF WAR, CIVILIAN INTERNELS
AND INMATELS OF OCCUPIED TERRITORIES.

Mr. Justice A. J. Mansfield (Australia)
Brig. H. G. Nolan (Canada)
✓ Mr. H. Oneto (France)
✓ Col. G. S. Woolworth (U.S.)
Capt. J. J. Robinson (U.S.N.H.)
Lt. Col. T. F. Lornane (Australia)
Lt. Col. J. S. S. Damste (Netherlands)
Lt. Cdr. C. T. Cole (U.S.)
Major H. Depo (France)
Major F. E. Mostyn (United Kingdom).

7A Inds. China

JAVA - Sumatra - Timor, Lesser Sundaes
Celebes, Dutch Borneo, Ambon
New Britain

This phase of the prosecution case covers offences under Article 5(b) of the Charter, that is violations of the laws and customs of war, and comprises evidence of atrocities against prisoners of war, civilian internees and inhabitants of occupied territories, and evidence showing the responsibility for such atrocities of the defendants named in Counts 53, 54 and 55 of the Indictment.

Evidence of atrocities in China and the Philippine Islands has already been presented. That which will now be presented will relate to other areas.

The phase has been divided into five parts, namely:-

- I. Evidence of Japanese assurances in relation to International Conventions.
- II. Evidence of the commission of atrocities by Japanese forces.
- III. Evidence of protests made to the Japanese Government and of the replies thereto.
- IV. Official reports concerning the treatment of prisoners of war made by the Japanese Government since 3 September 1945.
- V. Evidence of the acts of the said defendants and of their subordinates which demonstrate their responsibility for the breaches of the laws of war.

I. Evidence of Japanese assurances in relation to International Conventions.

Geneva Red Cross Convention of 27 July 1929.

Japan was a party to this Convention and duly ratified it. Furthermore, in a letter of 29 January 1942 signed by Togo, Shigenori, as Foreign Minister on behalf of Japan and addressed to the Swiss Minister in Tokyo, (Prosecution Document No. 1469-D), Japan agreed strictly to observe the Geneva Convention of 27 July 1929 relative to the Red Cross as a signatory of that Convention.

Geneva Prisoner of War Convention of 27 July 1929.

Japan signed but did not ratify this Convention. However, in the above-mentioned communication of 29 January 1942 it was also stated that, although not bound by the Convention relative to the treatment of prisoners of war, Japan would apply mutatis mutandis the provisions of that Convention to American prisoners of war.

In a letter of 13 February, 1942, signed by Togo as Foreign Minister and addressed to the Swiss Minister in Tokyo (Prosecution Document No. 1469-F), it was stated that the Japanese Government would apply for the duration of the war, under conditions of reciprocity, the provisions of the Convention relative to the treatment of prisoners of war of 27 July, 1929, to enemy civilian internees, in so far as they were applicable, and provided that they were not made to work without their consent. In a letter of 20 February, 1942, signed by the Swiss Minister on behalf of the Government of the United States of America and addressed to Togo, Shigenori, (Prosecution Document No. 1469-C) it was stated that the Government of the United States of America had been informed that the Japanese Government had agreed, as far as the treatment to be accorded to British prisoners of war, to take into consideration as to food and clothing the national and racial customs of the prisoners. The Government of the United States of America had requested the Swiss Government to bring to the notice of the Japanese Government that it would be bound by the same principle for prisoners of war as for Japanese civil internees in conformity with Articles 11 and 12 of the Geneva Convention.

This letter was replied to by Togo, Shigenori, on behalf of the Japanese Government on 2nd March, 1942, (Prosecution Document No. 1469-A). In this letter it was stated that the Imperial Government intended to take into consideration, with regard to provisions and clothing to be desired, the national and racial customs of American war prisoners and civil internees placed under Japan's power.

In relation to British prisoners of war, on 3rd January, 1942, the Argentine Minister in Tokyo acting on behalf of the British Commonwealth of Nations (Prosecution Document No. 847-D) informed Togo, Shigenori, that the Governments of Great Britain and the Dominions of Canada, Australia and New Zealand would observe towards Japan the terms of the International Convention on the treatment of prisoners of war signed at Geneva on 27th July, 1929 and by letter of 5th January, 1942 (Prosecution Document No. 847-E), the Argentine Minister further informed Togo, Shigenori, that the British proposed under the application of Articles 11, and 12 of the said Convention relating to the provision of food and clothing to prisoners of both parties, to consider the national and racial customs of the prisoners.

In a letter of 29 January, 1942, from Togo, Shigenori on behalf of the Japanese Government to the Argentine

Minister (Prosecution Document 1465C) it was stated that the Imperial Government had not ratified the Convention relative to the treatment of prisoners of war of 27 July, 1929. It was therefore not bound by the said Convention. However, it would apply mutatis mutandis the provisions of the said Convention to English, Canadian, Australian and New Zealand prisoners of war in its hands. As to the provisions of food and clothing for prisoners of war, it would consider on conditions of reciprocity the national and racial customs of the prisoners.

Similar assurances were given by Japan as to the treatment which would be accorded to Netherlands prisoners of war and civilian internees.

The manner in which these assurances were observed by the Japanese Government will be seen by the evidence which will be produced.

11. Evidence of the Commission of Atrocities by Japanese Forces.

It will be impossible in any reasonable length of time to put before the Tribunal detailed evidence of all the offences committed by the Japanese against the recognised laws and customs of war, and therefore a method has been devised which will be relatively short and which will not omit any important matter. In order to present the evidence in a manner which may be easily followed, it has been classified by areas, and in each area it will be shown that the mistreatment of prisoners of war, civilian internees and native inhabitants was similar. This similarity of treatment throughout the territories occupied by the Japanese forces will, it is submitted, lead to the conclusion that such mistreatment was the result not of the independent acts of the individual Japanese Commanders and soldiers, but of the general policy of the Japanese forces and of the Japanese Government.

The areas into which the subject has been divided are as follows:-

1. Singapore and Malaya.
2. Burma and Thailand.
3. Hong Kong.
4. Formosa.
5. Hainan
6. Andamans and Nicobars.
7. Java.
8. Borneo
9. Sumatra and Banka Island
10. Celebes

11. Arbon
12. Timor
13. New Guinea
14. New Britain
15. Solomons, Gilberts, Nauru and Ocean Islands.
16. Other Pacific Islands.
17. Indo China
18. China other than Hong Kong
19. Sea Transportation.
20. Japan.
21. Atrocities at Sea.

The evidence will show that in every area the laws of war, in so far as they relate to prisoners of war, civilians, internees and native inhabitants of occupied countries, were entirely disregarded by the Japanese forces. This was in accordance with the policy which was declared on many occasions by the Japanese that the Japanese Government would treat prisoners of war according to their own code of "Bushido" and only apply such portions of the Geneva Convention as suited it to apply, and that prisoners of war had no rights whatever.

It will be shown that not only did the Japanese fail to carry out their assurance that in the matter of food and clothing they would take into consideration the national and racial customs of the prisoners, but also that they disregarded the elementary considerations of humanity.

It will be shown that prior to and at the time of the British capitulation at Singapore, in 1942, many massacres and murders in breach of the laws of war took place. Medical personnel and patients in hospitals were killed in cold blood; wounded men who had surrendered were executed; and unarmed prisoners of war were mercilessly shot, bayoneted or decapitated. It cannot be contended that the Japanese forces responsible for these outrages were out of the control of their superior officers. Many of the atrocities were committed either at the direction or with the knowledge of commanding officers.

The chronicle of murder and mistreatment in every area will indicate the pattern of warfare used by the Japanese Government and Army and will describe inter alia the massacre of 5,000 Chinese and the brutal ill-treatment of Europeans in Singapore; the indiscriminate killing of the native inhabitants of the occupied areas; the loss of the lives of 16,000 Allied prisoners of war, the deaths of over 100,000 coolies and the brutal ill-treatment of almost every man during the construction of the Burma-Siam Railway; the infamous death marches at Bataan and in Borneo;

the massacre of Australian nurses and other civilians at Banka Island; the Palawan massacre; the massacre at Tol Plantation in New Guinea; the massacre of 200 prisoners of war at Laha; the massacre of Europeans and natives at Long Nawan, Bandjermassin, Pontianak and Tarakan; the murders at Wake Island; the killing of survivors from ships which had been sunk; and the widespread extermination of prisoners of war and civilians.

Food rations for prisoners of war everywhere were quite inadequate to sustain the strength of any man, especially those who were engaged on manual labour. Diseases of all kinds resulting from malnutrition and neglect were the cause of much unnecessary suffering and many deaths. When prisoners became sick, the already inadequate rations were reduced unless, in spite of illness, they went to work.

Hospital accommodation was in most cases non-existent and everywhere there was a lack of medical supplies and drugs for the treatment of the various diseases. That these latter were available will be shown by the amount of medical stores discovered in the possession of the Japanese after the Japanese capitulation. Sick men were forced to work and when they were unable to carry on and collapsed they were beaten. Hours of work were excessive and conditions of work were in almost every case extremely arduous.

Clothing and footwear were not supplied and men were forced to work bare-footed and clothed in lap-laps. This again contributed to the toll of illness and death.

Torture, mass punishments and beatings were widespread. Severe punishments were inflicted for trifling offences and even for no offence, and to attempt to escape was to incur execution. Men on working parties were beaten if they showed the slightest slackness, and, in fact, they were beaten lest they should show slackness.

In most of the areas there will be evidence of the plans to kill all prisoners of war in the event of there being a landing by allied troops in Japan or any attempt made to recapture them. In some of the areas these plans were in fact put into execution. Even in the absence of any direct order, from the fact that similar plans had been prepared in many areas, it may be deduced that such plans were part of the policy of those in control of prisoners of war.

These are some of the matters which will be proved by the evidence to be produced and for which the prosecution submits the accused named in Counts 53, 54, and 55 of the

Indictment are responsible.

III. Evidence of Protests made to the Japanese Government and of the Replies thereto.

The Swiss Minister in Tokyo on behalf of Great Britain and the United States and the Swedish Minister on behalf of the Netherlands made frequent protests in writing to the Japanese Foreign Minister throughout the period of hostilities, and these protests brought to the knowledge of the Japanese Government most of the cases of mistreatment of prisoners of war and civilian internees and other breaches of the laws of war which have been referred to above. There were, however, other cases which were unknown to the Allied Governments until after the Japanese capitulation, and which therefore were not contained in any protest. It was in many cases only by a miracle that any information was available as the Japanese endeavoured to eliminate the possibility of detection by attempting to destroy all evidence. One of the most important features of this part of the case is the fact that, with a few exceptions, visits by the representatives of the protecting powers and the International Red Cross to prison camps were systematically refused. In the few exceptional cases when visits to camps were permitted the conditions therein were very much better than in other camps, and in some cases the camps were specially dressed up for the occasion. Furthermore, the prisoners were forbidden under threats of punishment to say anything to the visitors except what had been previously approved by the camp commandant. Many requests were made to visit camps in Thailand; these were consistently denied. It may be deduced from the fact that visits were not allowed in most of the areas that the Japanese Government realised that the reports of any person who saw the camps would be most unfavourable.

Protests complaining of murders, starvation and ill-treatment were for the most part either not answered at all or not replied to for a long period. When any reply was made it was evasive, contained allegations that the protest was based on incorrect information or consisted of a simple denial. At no time before the capitulation was there any acknowledgment that bad conditions existed.

In view of the overwhelming evidence of widespread atrocities and breaches of the laws of war which will be presented, it is apparent that the Japanese Government, the members of which were charged with the responsibility of seeing that their forces complied with the rules of war, either knew of many of the breaches and neglected

to take any steps to prevent them, or failed to institute any proper enquiry to ascertain whether the allegations contained in the protests were founded on fact. In either case, it is submitted, the responsibility is the same.

Numerous applications were made for lists of prisoners of war and for the names of those who had died. No complete list was ever provided by the Japanese and it was not until the end of 1945 that the names of many of those who had perished in Thailand, Borneo and other areas were made known for the first time.

It will not be practicable to put before the Tribunal all the protests that were made as they are so numerous, but from those which have been selected it will immediately become apparent that the representatives of the protecting powers made every effort to carry out their tasks, but that they were frustrated at almost every turn by the policy of silence and procrastination which was adopted by the Japanese Government and other officials.

One fact which will assist the Tribunal in determining the innocence or guilt of the accused lies in a comparison between the number of persons who died in captivity in Germany and Italy and the numbers who were killed or died in captivity in Japan. In Germany and Italy 142,319 British prisoners of war were reported captured and of those 7,310 or 5.1 per cent were killed or died in captivity. 50,016 British prisoners of war were in the power of the Japanese and of these 12,433 or 24.8 per cent were killed or died in captivity.

1V. Official Reports concerning
the Treatment of Prisoners of War made by
the Japanese Government since 3
September, 1945.

After the Japanese capitulation a body called the Central Committee of Investigation of Matters concerning Prisoners of War was set up by the Japanese Government to investigate and report upon the allegations of mistreatment of prisoners of war contained in some of the numerous protests which had been received during the war. Two of these reports have already been put before the Tribunal. The majority of the others refer to protests and state that the subject matter is being investigated and that further reports will be made at a later date. Although most of the original reports were made over 12 months ago, no supplementary reports have since been received.

From the fact that investigations were being pursued for the first time after the conclusion of

hostilities it can be inferred that the Japanese Government and the accused took no steps at the time the protests were received to carry out any form of enquiry.

Some of these reports contain matters of considerable importance. Among these the most striking, apart from the two already before the Tribunal relating to the Burma-Thailand Railway and the massacre of Chinese at Singapore, are those relating to the treatment of Allied Air Force personnel in Japan. These contain direct admissions that Allied aviators who had bombed the territory of Japan and were later captured were executed without any form of trial.

As was the case in the two reports tendered during the evidence of Colonel Wild, most of the other reports admit certain of the matters complained of in the protests, and seek to avoid any blame or responsibility by alleging that they were the result of the stress of circumstances. The evidence of eye-witnesses and victims will be sufficient to rebut the claim that the matters complained of were inevitable and that they were not the result of the intentional and deliberate actions of the Japanese.

V. Evidence of the Acts of the Defendants and of their Subordinates which demonstrate their Responsibility for the Breaches of the Laws of War.

Under the Hague Convention No. 4. Prisoners of War are in the power of the hostile Government, and not of the individuals or corps who capture them.

Apart from the responsibility which attaches to the various accused by virtue of the respective offices held by them, proof will be offered to the Tribunal that they are directly responsible for acts performed by them and their immediate subordinates contrary to the recognised rules of warfare.

With respect to Tojo, Hideki, there is at the outset an admission by him contained in his interrogation that he was personally responsible for the mistreatment of prisoners of war and civilians. In addition there will be proof of an announcement made by him that Japan would not observe the provisions of the Geneva Prisoner of War Convention of 1929. He personally gave instructions to the heads of the Prisoner of War Camps which violated the rules of war. As War Minister he had complete control of the activities of the various departments of the War Office such as Military Affairs Bureau, the Prisoner of War Information Bureau and the Prisoner of War Management Bureau. TOJO was also responsible for the policy adopted by the Japanese

Government towards prisoners of war and civilian internees.

KIMURA was Vice Minister of War from 1941 to 1944 and had control of the operations of the Ministry subject only to the direction of TOJO. KIMURA was responsible for the design of the Prisoner of War Punishment Act, the provisions of which were in direct contravention of the laws of war and the provisions of the Geneva Prisoner-of-War Conventions of 1929, and also for the law which prescribed the death penalty for captured members of the Allied Air Forces, under which members of that were executed without trial of any kind. KIMURA was also directly responsible for the public exhibition of prisoners of war in Korea and for sending of prisoners to work in munition factories in Manchuria and their use for "work having connection with the operations of war" in practically all areas.

MUTO and SATO in succession were chiefs of the Military Affairs Bureau which controlled the Prisoner of War Management Bureau and the Prisoner of War Information Bureau. These two bureaux administered all affairs relating to prisoners of war, subject to the approval of the Military Affairs Bureau.

Complaints of mistreatment of prisoners of war and civilian internees were forwarded by the Swiss Legation, as Protecting Power, to the Japanese Foreign Ministry, which in turn transmitted the complaints to the War Ministry, where in the usual course of procedure they passed from the Secretariat of the War Ministry through the Office of the Vice Minister of War to the Chief of the Military Affairs Bureau and then in turn to the Prisoner of War Information Bureau or the Prisoner of War Management Bureau, the office of the Chief of the last named bureau being held concurrently by the same person. The Chief of the two last named bureaux formulated a reply when considered advisable, after consultation with the Chief of the Military Affairs Bureau, after which the proposed reply was forwarded by the Vice Minister of War to the Foreign Ministry, and practically without exception, the reply prepared in the Prisoner of War Information Bureau or the Prisoner of War Management Bureau was the reply made by the Foreign Minister to the Swiss Legation.

The same course was followed in the denials of the privilege of visiting prisoner of war camps when such applications were made either by the Swiss Legation as Protecting Power, or by the representatives of the International Red Cross. Of those indicted, the following occupied the position of Foreign Minister for Japan between the years 1941 and 1945, inclusive: TOGO, Shigenori; TOJO, Hideki; and SHIGEMITSU, Mamoru.

Under the regulations for the employment of prisoners of war by private industry, most of which industries were engaged in "work having connection with the operations of war", applications to have such prisoners assigned went from the Prefectural Governor to the Home Ministry and thence to the War Ministry for approval, following the same course within the war Ministry as complaints in regard to the treatment of prisoners of war. The only person indicted who occupied the position of Home Minister during the war period was TOJO, Hideki, which position he occupied concurrently while Premier. TOJO also for a short time was concurrently Prime Minister and Foreign Minister during the war period.

Copies of complaints lodged by the Swiss Legation as Protecting Power in behalf of the United States, Great Britain, Australia, Canada and New Zealand, were transmitted by the Foreign Ministry not only to the War Ministry, but also copies were sent, as a usual thing, to the Navy Ministry and to the Home Ministry. So, again, it appears that the responsibility for such treatment lies with the defendants SHIMADA, who was Navy Minister under TOJO, and later Chief of the Naval General Staff; with OKA, who was Chief of the General and Military Affairs Bureau of the Navy from October, 1940, to August, 1944, and NAGANO, who was Chief of the Naval General Staff from April, 1941 to February, 1944; and SUZUKI, Teiichi, who was Minister without Portfolio as well as President of the Planning Board. As such, he was a member of TOJO's cabinet and is charged with knowledge of the complaints in regard to the maltreatment of prisoners of war and violations of treaties in connection therewith.

During the time that TOJO was Premier, he was concurrently Minister of War, but was seldom in his office in the War Ministry. KIMURA, as Vice Minister of War, made many of the decisions ordinarily made by the Minister. On August, 30, 1944, KIMURA was assigned as Commander in Chief of the Japanese Armed Forces in the Burma area, and as such was directly responsible for the mistreatment of prisoners of war in that area occurring after that date.

The decision to employ prisoner of war labour on the Burma-Thailand Railroad was made in 1942 by the Imperial General Staff, which included the then Chief of Staff of the Army, SUGIYAMA (deceased), the Chief of the Naval General Staff, then the defendant NAGANO; the Navy Minister, SHIMADA, and War Minister TOJO, and the responsibility for the violations of the treaties and assurances in connection with such employment on "work having connection with the operations of war" and the ensuing maltreatment and resulting deaths of such prisoners

of war so engaged, must rest in large part with those above named. For the employment of prisoners of war in Manchukuo on "work having connection with the operations of war", in violation of treaties and assurances, and the mistreatment of the prisoners in that region, the responsibility must be placed in part upon the defendant UMEZU, who was Commander of the Kwantung Army and Ambassador to Manchukuo concurrently from 1939 to 1944.

The defendant ITAGAKI was Commander of the 7th Area Army in Singapore from April, 1945, to the end of the war, and upon him rests some responsibility for the breaches of the laws of war in and about Singapore during the period he was in command.