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of

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47	2309		Protocol (B) of the afore- said Basic Treaty Between the USSR and Japan dated 20 January 1925		17350
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Wednesday, 26 February 1947

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INTERNATIONAL MILITARY TRIBUNAL
FOR THE FAR EAST
Court House of the Tribunal
War Ministry Building
Tokyo, Japan

The Tribunal met, pursuant to adjournment,
at 0930.

- - -

Appearances:

- For the Tribunal, same as before.
- For the Prosecution Section, same as before.
- For the Defense Section, same as before.

- - -

The Accused:

All present except OKAWA, Shumei, who is
represented by his counsel.

- - -

(English to Japanese and Japanese
to English interpretation was made by the
Language Section, IMTFE.)

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1 MARSHAL OF THE COURT: The International
2 Military Tribunal for the Far East is now in session.

3 THE PRESIDENT: Mr. Tavenner.

4 MR. TAVENNER: If it please the Tribunal,
5 yesterday the matter of cooperation by the prosecu-
6 tion in the processing of defense documents was
7 mentioned in court. I want to state in that regard
8 that we are doing everything we can to cooperate with
9 the defense in the processing of their documents. As
10 of yesterday we had processed two hundred of their
11 documents. I am informed there has been no instance
12 in which we have refused to accept one for processing
13 or for translation.

14 THE PRESIDENT: Mr. Logan.

15 MR. LOGAN: If the Tribunal please, the state-
16 ment as made by Mr. Smith was not in any criticism
17 of the facilities which were offered. It was just
18 the difficulties that are being encountered by the
19 processing department.

20 THE PRESIDENT: Mr. Howard.

21 MR. HOWARD: Mr. President and Members of
22 the Tribunal:

23 With the Court's permission we now read from
24 prosecution exhibit No. 37 which is a treaty between
25 Japan and Germany pertaining to cultural cooperation

1 for the purpose of establishing that it was purely a
2 cultural relation. It is exhibit 37 and I only wish
3 to read Articles I and II:

4 "The High Contracting Powers shall mutually
5 cooperate most closely in order to strive to establish
6 their cultural relations on a firm basis.

7 "Article II. The High Contracting Powers, in
8 order to achieve the object of the preceding article,
9 shall systematically promote the cultural relations
10 between the two countries in the fields of learning,
11 arts, music, literature, cinema, radio broadcasting,
12 youth movement, and sports."

13 Exhibit 38. We call the Tribunal's attention
14 to prosecution exhibit 38 which is an agreement on
15 cultural cooperation between Japan and Italy which
16 was consummated between these countries for the same
17 purpose as shown in exhibit 37.

18 Exhibit 39. The purpose of reading from
19 exhibit 39 is to show the economic conditions as they
20 existed in 1939 resulting from pressure from other
21 countries as will be shown by later evidence. I read
22 the first paragraph only:

23 "The Government of Japan and the Government
24 of Germany, in due consideration regarding the import
25 and export of both countries, have reached the following

1 agreement in the hope of promoting mutual trade and to
2 bring about its development for the benefit of both
3 countries so as to meet present economic conditions."

4 THE PRESIDENT: Well, you need not read all
5 that, Mr. Howard.

6 MR. HOWARD: No, that is all.

7 THE PRESIDENT: It would be sufficient per-
8 haps if you went through those exhibits and told us
9 just what use you propose to make of them without
10 reading them to any extent.

11 MR. HOWARD: Exhibit 43. We invite the
12 Tribunal's attention to prosecution exhibit 43 which
13 is the Tri-Partite Alliance between Japan, Germany
14 and Italy. We had intended to read the Preamble,
15 Articles 3 and 5 of exhibit 43 in view of the importance
16 the prosecution has apparently attached to this Pact.
17 It will be noted that it was defensive in nature and
18 did not contemplate any aggressive action against
19 Russia. Shall I read the parts that I made note of,
20 your Honor?

21 THE PRESIDENT: We are familiar with this
22 document. This is one of the documents with which
23 we are very familiar. It is helpful to be told just
24 what use you are going to make of the documents but
25 it doesn't help to read them to any extent.

1 MR. HOWARD: Exhibit 48. We now read from
2 prosecution exhibit 48 which is an announcement by the
3 Board of Information of November 25, 1941, with respect
4 to the extension of the Anti-Comintern Pact. We will
5 read the first two paragraphs which sets forth the
6 reasons why the Anti-Comintern Pact was extended.

7 "Since the conclusion on November 25, 1936
8 between Japan and Germany of the Agreement against the
9 Communist Internationale - the so-called Anti-Comintern
10 Pact - Italy adhered to it on November 6 of the follow-
11 ing year (1937), as original signatory, She was then
12 followed by Manchukuo, Hungary and Spain, bringing
13 the number of the participants to six countries, thus
14 displaying its effectiveness. As the five-year period
15 of the validity of the Agreement was about to expire,
16 the Signatory Powers consulted among themselves, which
17 resulted in an agreement of views to extend its valid-
18 ity for five more years. A new Protocol concerning
19 the extension of validity of the agreement was signed
20 today, November 25, at Berlin between the plenipoten-
21 tiaries of the six Powers, namely, Japan, Germany,
22 Italy, Manchukuo, Hungary and Spain.

23 "It requires no reiteration that the
24 Communist International, or the Comintern, with its
25 world-wide organization, is carrying on disruptive

1 machinations of communistic nature in all parts of
2 the world. Accordingly, defence against such machin-
3 ations must be of a world-wide scope. With the task
4 of establishing a new order in East Asia as the basis
5 of her national policy, Japan feels keenly the increas-
6 ing necessity of safeguarding against the Comintern.
7 That the Anti-Comintern Pact has accordingly been
8 renewed, and that participation of countries, which
9 will share similar intentions under the provisions of
10 the new Protocol, is envisaged, is a source of pro-
11 found congratulation."

12 THE MONITOR: Since the Language Section
13 does not have the Japanese text of the portion just
14 read it will now be translated from the English text.
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1 THE PRESIDENT: I suppose you have all these
2 documents in Japanese.

3 MR. HOWARD: I understood that we did have.
4 I am sorry that I did not know about that in advance.

5 THE PRESIDENT: If so, why is there not a
6 simultaneous translation? I suppose you have read
7 all of this document that you intend to read.

8 MR. HOWARD: That is right. I have been
9 asked to point out that the secret protocol attached
10 to the original Anti-Comintern Pact was not extended
11 by this agreement.

12 THE PRESIDENT: There is no evidence that it
13 was, and we must act on evidence.

14 MR. HOWARD: We now read from prosecution
15 exhibit 51 which is an announcement of the Board of
16 Information concerning the No Separate Peace Agree-
17 ment between Japan, Germany and Italy with respect to
18 the war against the United States and the British Em-
19 pire. We will read the second through the fifth
20 paragraphs of this agreement. It will be noted that
21 this agreement was not made until December 11, 1941,
22 after the commencement of the Pacific War. This
23 agreement is similar to agreements which were entered
24 into by the Allies prior to the commencement of the
25 Pacific War.

1 THE PRESIDENT: Do summarize those five
2 articles. The translators are not going to read from
3 the Japanese text. Actually, there is no need to
4 summarize them. We know what they contain.

5 MR. HOWARD: Exhibit 49. We next invite
6 the Tribunal's attention to prosecution exhibit 49
7 being the secret military agreement between Germany,
8 Italy and Japan. We will not read this exhibit, but
9 we call the Tribunal's attention to the date which is
10 significant, being 18 January 1942.

11 With the Court's permission, Mr. Lazarus
12 will proceed from this point.

13 THE PRESIDENT: Mr. Lazarus.

14 MR. LAZARUS: Prosecution exhibit 45, the
15 Neutrality Pact between the Union of Soviet Socialist
16 Republics and Japan. With the Tribunal's permission,
17 I respectfully ask to read a mere thirty lines includ-
18 ing the declaration and the dates of the ratification
19 of this pact which we consider most important in view
20 of the fact that a declaration of war was made later.

21 The first page, Article 1, 2 and 3 only:

22 "Article 1.

23 "Both contracting parties engage to maintain
24 peaceful and friendly relations between themselves and
25 mutually respect the territorial integrity and inviola-

1 bility of the other contracting party.

2 "Article II.

3 "In case one of the contracting parties be-
4 comes the object of military action from the part of
5 one or several other powers, the other contracting
6 party will maintain neutrality during the whole
7 period of the conflict.

8 "Article III.

9 "The present Pact will come into force from
10 the day of its ratification by both contracting
11 parties and will remain in force during five years.
12 If neither of the contracting parties denounces the
13 Pact a year before the Pact expires, it will be con-
14 sidered to automatically continue for the following
15 five years."

16 After the signatures in the middle of that
17 page, beginning "The Neutrality Pact."

18 "The Neutrality Pact between the U.S.S.R.
19 and Japan was ratified by the Presidium of the Supreme
20 Council of the U.S.S.R. on April 25, 1941.

21 "The exchange of ratification acts of the
22 Neutrality Pact between the U.S.S.R. and Japan was
23 done in Tokyo on May 20, 1941.

24 "DECLARATION.

25 "In accordance with the spirit of the

1 Neutrality Pact concluded on April 13, 1941 between
2 the U.S.S.R. and Japan, the government of the U.S.S.R.
3 and the government of Japan, in the interests of se-
4 curing peaceful and friendly relations between both
5 countries, solemnly declare that the U.S.S.R. engages
6 to respect the territorial integrity and inviolability
7 of Manchukuo, and Japan engages to respect the terri-
8 torial integrity and inviolability of the Mongolian
9 People's Republic."

10 Prosecution's exhibit 54. We call the
11 Tribunal's attention to the alleged denunciation by
12 the Soviet Union of the Soviet-Japanese Neutrality
13 Pact on the 5th of April, 1945 which was just read to
14 the Tribunal as prosecution exhibit 45. We point out
15 to the Tribunal that the Neutrality Pact was to re-
16 main in force until May, 1946; but notwithstanding,
17 the U.S.S.R. commenced hostilities against Japan in
18 August, 1945.

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1 Prosecution exhibit 54:

2 "On the Denunciation of the Soviet-Japanese
3 Neutrality Pact.

4 "On April 5 at 3 o'clock p.m., V. M. Molotov,
5 the People's Commissar for Foreign Affairs of the
6 USSR, received Mr. N. SATO, the Japanese Ambassador,
7 and on behalf of the Soviet Government made the fol-
8 lowing statement:

9 "The neutrality pact between the Soviet
10 Union and Japan had been concluded on April 13, 1941,
11 i.e., before Germany attacked the USSR and before the
12 war broke out between Japan on one side and Britain
13 and the United States on the other.

14 "From that time on the situation changed
15 completely. Germany attacked the USSR, and Japan,
16 the ally of Germany, helps the latter in her war against
17 the USSR. Besides Japan wages war against the USA and
18 Britain, the allies of the Soviet Union.

19 "Under these circumstances the neutrality
20 pact between Japan and the USSR lost its meaning, and
21 the prolongation of this pact has become impossible.

22 "In accordance with the above said, and
23 according to Article 3 of the said pact, which provides
24 for the right of denunciation, one year prior to the
25 expiration of the five-year term of the pact, the Soviet

1 Government informs herewith the Government of Japan
2 of the wish to denounce the pact of April 13, 1941."

3 Prosecution exhibit 64, the Declaration of
4 War by the Soviet Government against Japan. It will
5 be shown later that this declaration was delivered to
6 the Japanese Ambassador in Moscow almost simultaneously
7 with Russia's opening of hostilities and was not
8 delivered to the proper officials in Tokyo until after
9 the commencement of war. It will be proven later that
10 on 5 February 1945, at Yalta, Soviet Russia agreed with
11 the other Allied Powers, in exchange for territories
12 in China, to violate this Neutrality pact and to declare
13 war against Japan.

14 THE PRESIDENT: Why not use the Japanese
15 version of this to secure simultaneous translation,
16 and also a simultaneous translation of your remarks
17 furnished to them?

18 MR. LAZARUS: As soon as we can catch up with
19 them, Mr. President, within the next couple of days,
20 we will be doing that. We have tried desperately
21 to keep our remarks down to the barest minimum to avoid
22 as much delay as possible, sir.

23 (Reading) "On August 8, V. M. Molotov, the
24 People's Commissar for Foreign Affairs of the USSR,
25 received Mr. SATO, the Japanese Ambassador, and on

1 behalf of the Soviet Government made the following
2 statement to him to be communicated to the Government
3 of Japan:

4 "After the rout and capitulation of the
5 Hitlerite Germany, Japan is the only great power which
6 is still for the continuation of the war.

7 "The demand of the unconditional surrender
8 of the Japanese Armed Forces made by the Three Powers -
9 the United States of America, Great Britain and China -
10 on July 26, this year was declined by Japan. Thus
11 the proposal made by the Japanese Government to the
12 Soviet Union containing the request of mediation in
13 the war in the Far East loses all ground.

14 "Taking into consideration the fact that
15 Japan refused to surrender, the Allied Powers made a
16 proposal to the Soviet Government to join the war
17 against the Japanese aggression and thus to shorten
18 the period of time necessary to end the war, to reduce
19 the number of victims, and to contribute to the speedy
20 restoration of peace in the world. True to the allied
21 cause, the Soviet Government accepted the proposal made
22 by the Allied Powers and joined the declaration of the
23 Allied Powers made on July 26, this year.

24 "The Soviet Government believes that such a
25 policy of its is the only way to bring nearer the

1 advent of peace, to free the nations from further
2 sacrifices and sufferings, and to give a chance to the
3 Japanese people to avoid those dangers and damages,
4 which were suffered by Germany, after she had declined
5 the unconditional capitulation. On the basis of the
6 above said, the Soviet Government declares, that from
7 tomorrow, i.e., August 9, the Soviet Union will consider
8 herself to be in a state of war against Japan.'

9 "V. M. Molotov also told Mr. SATO that simul-
10 taneously the Soviet Ambassador in Tokyo, Y. A. Malik,
11 would hand the present declaration of the Soviet
12 Government to the Japanese Government."

13 Prosecution exhibit 40 is a treaty concerning
14 the basic relations between Japan and China. We will
15 only read Articles 1, 3, first paragraph of Article 4,
16 Article 5 and Article 7 of this agreement. This
17 agreement shows that the Wang-Ching-Wei Government was
18 not treated as a puppet government in view of the fact
19 that Japan agreed to relinquish extra-territorial
20 rights in China.

21 (Reading) "Article 1. The Governments of
22 the two countries shall, in order to maintain permanently
23 good neighbourly and amicable relations between the
24 two countries, mutually respect their sovereignty and
25 territories and at the same time take mutually helpful

1 and friendly measures, political, economic, and cultural
2 and otherwise.

3 "The Governments of the two countries agree
4 to eliminate, and to prohibit in the future, such
5 measures and causes as are destructive of the amity
6 between the two countries in politics, diplomacy,
7 education, propaganda and trade and commerce, and other
8 spheres.

9 * * * * *

10 "Article 3. The Governments of the two
11 countries agree to engage in joint defense against all
12 destructive operations of communistic nature that
13 jeopardize the peace and welfare of their countries.

14 "The Governments of the two countries shall,
15 in order to accomplish the purpose mentioned in the
16 preceding paragraph, eliminate communistic elements and
17 organizations in their respective territories, and at
18 the same time cooperate closely concerning information
19 and propaganda with reference to the defense against
20 communistic activities.

21 "Japan shall, in order to carry out the
22 defense against communistic activities through colla-
23 borator of the two countries, station required forces
24 in specified areas of Meng-chiang and of North China
25 for the necessary duration, in accordance with the

terms to be agreed upon separately."

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Article 4, first paragraph only:

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"The Governments of the two countries undertake to cooperate closely for the maintenance of common peace and order until the Japanese forces sent to China complete their evacuation in accordance with the terms as provided for separately.

* * * * *

"Article 5. The Government of the Republic of China shall recognize that Japan may, in accordance with previous practices or in order to preserve the common interests of the two countries, station for a required duration its naval units and vessels in specified areas within the territory of the Republic of China, in accordance with the terms to be agreed upon separately between the two countries.

* * * * *

"Article 7. According to the development of the new relations between Japan and China under the present Treaty, the Government of Japan shall abolish extra-territorial rights possessed by Japan in China and render to the latter its concessions; and the Government of China shall open its territory for domicile and business of Japanese subjects."

THE PRESIDENT: That agreement was not with

Chungking but with Nanking.

1 MR. LAZARUS: That is correct, sir.

2 Prosecution exhibit 41. I just wish to read
3 Article 3. This is a treaty between Japan and
4 Thailand dated 12 June 1940.

5 "Article 3. In the event of one of the High
6 Contracting Parties suffering an attack from any third
7 Power or Powers, the other Party undertakes not to
8 give aid or assistance to the said Power or Powers
9 against the Party attacked."

10 THE PRESIDENT: Article 3, not Article 4.

11 MR. LAZARUS: I am sorry, sir. I meant
12 Article 3, yes, sir.

13 Prosecution exhibit 42 is an exchange of
14 letters dated 30 August 1940, between the French
15 Ambassador at Tokyo and the Japanese Minister of
16 Foreign Affairs.

17 I will read only the first five paragraphs
18 of the letter of the French Ambassador and the memoran-
19 dum of 23 December 1940 which embodies the agreement
20 that resulted from the exchange of letters. This is
21 read in order to show that Japanese troops landed in
22 French Indo-China pursuant to legal authorization in
23 accordance with this memorandum and not in violation
24 of any treaties.
25

1 THE PRESIDENT: Mr. Comyns Carr.

2 MR. COMYNS CARR: I have refrained from inter-
3 rupting with regard to these comments before. There
4 are one or two comments to which objection might have
5 been taken. With regard to the last one it overlooks
6 the fact which has been proved that the Japanese troops
7 were in French Indo-China before this letter was writ-
8 ten.

9 THE PRESIDENT: You rely on it as a ratifica-
10 tion, I suppose?

11 MR. LAZARUS: No, not only that, Mr. Presi-
12 dent. The prosecution evidence is in. The defense
13 evidence is not in. Then the whole story will be
14 known as to when troops did land.

15 THE PRESIDENT: Need you read any of this?

16 MR. LAZARUS: I read the memorandum then, if
17 the President please, the last page which is very short,
18 just a few lines.

19 "23 September 1940--"

20 THE MONITOR: Just a moment, Mr. Counsel, we
21 have no Japanese translation of that text again.

22 MR. LAZARUS: All right. Then I will not
23 read the memorandum, I will just state that it embodies
24 the agreement allowing the landing of Japanese forces
25 in French Indo-China in an amount not to exceed 25,000

1 men.

2 Prosecution Exhibit 44 is the truce between
3 French Indo-China and Thailand dated 31 January 1941.
4 I will read Articles 1 and 5.

5 "Article I. The armed forces of both French
6 Indo-China and Thailand will as a principle retreat ten
7 kilometres respectively from their actual position
8 as at 10 p.m. (local meridian time) 28th January 1941.
9 The troops of both nations will retreat to the follow-
10 ing lines or points: * * * * *

11 "Article V. In addition to the foregoing,
12 the troops of both countries shall stop all military
13 actions as might cause a recurrence of dispute."

14 Prosecution Exhibit 46 is the Franco-Japanese
15 Treaty of Residence and Navigation relative to French
16 Indo-China. I will read only the first three para-
17 graphs of Article 1, Article 15 and the second para-
18 graph on the last page.

19 "Article I. The nationals and native subjects,
20 /'ressortissants'/ of each of the two countries shall
21 have full liberty, with their families, to enter and
22 reside in all the expanse of the territories of the other.
23 Under the condition that they will conform to the laws
24 of the country, they shall enjoy the following rights:
25

"1. They shall, in all matters concerning

1 travel and residence, be treated in the same manner
2 as the nationals of the country;

3 "2. They shall, like the nationals, have the
4 right to carry on business and manufacturing industry
5 and to deal in all articles which are the objects of
6 lawful commerce, whether it be operated in person or
7 by agents, whether alone or in partnership with for-
8 eigners or with nationals;

9 "3. They shall be, in matters concerning the
10 engagement in industry, trade, or profession, and the
11 pursuit of studies or scientific investigations,
12 treated, in all respects, the same as the nationals
13 and native subjects of the most favored nation. * * * * *

14 "Article 15. The stipulations of the present
15 treaty is applicable to all the territories and pos-
16 sessions belonging to or under the jurisdiction of
17 Japan, and to all the territories constituting the
18 Government-General of French Indo-China."

19
20 Then just before the signatures, the last
21 paragraph:

22 "The present treaty replaces the declaration
23 of June 10, 1907, concerning French Indo-China, the
24 declaration of August 19, 1911, concerning French
25 Indo-China, and the protocol of August 30, 1927, pre-
scribing the system of residence and navigations

1 between Japan and Indo-China."

2 And my last document, if the Tribunal please,
3 prosecution Exhibit 47. This is the Peace Agreement
4 between France and Thailand dated May 23d, 1941. I
5 shall read from this Article 1, Article 10 and Para-
6 graphs 1 and 2 of the Protocol between France and
7 Japan concerning the guarantee and the political
8 understanding of this Treaty.

9 THE MONITOR: Mr. Lazarus, the Language
10 Section has the agreement but not the protocol.

11 MR. LAZARUS: I will skip reading the proto-
12 col.

13 Article 1 and Article 10 of the agreement:

14 "Article 1. Friendly relations shall be
15 re-established between France and Thailand on the funda-
16 mental basis of the Treaty of Friendship, Commerce
17 and Navigation of December 7, 1937.

18 "Accordingly, direct diplomatic negotiations
19 shall be entered into as soon as possible at Bangkok
20 for the settlement of all questions pending as a result
21 of the conflict.

22 "Article 10. Any conflict which may arise
23 between the two High Contracting Parties with regard
24 to the interpretation or the application of the pro-
25 visions of the present Agreement shall be settled

1 amicably through diplomatic channels.

2 If the conflict cannot be thus settled, it
3 shall be submitted to the mediation of the Government
4 of Japan."

5 With reference to the protocol, Mr. Presi-
6 dent, may I just say that Japan guaranteed the borders
7 of French Indo-China to France, and the French Gov-
8 ernment accepted this guarantee.

9 Mr. Yamaoka will continue, Mr. President.
10 Thank you, sir.

11 THE PRESIDENT: Mr. Yamaoka.

12 MR. YAMAOKA: If the Tribunal please, we
13 next invite the Tribunal's attention to prosecution
14 Exhibit 53, being an excerpt from Peace and War, page
15 475, for the purpose of showing that the Treaty of
16 Commerce and Navigation between Japan and the United
17 States of 1911 was denounced on July 26, 1939. By this
18 denunciation and the expiration of the Treaty, as will
19 be later shown, Japan was deprived of substantial com-
20 mercial rights which had been secured to her under
21 the said Treaty. This renunciation was the prelude
22 to the events immediately preceding the Pacific War.
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MR. YAMAOKA: With the Tribunal's permission I shall read this exhibit.

THE PRESIDENT: Is it necessary?

MR. YAMAOKA: We felt so, your Honor, for the reason it has never been part of the transcript. It has not been entered as such.

THE PRESIDENT: It is just a renunciation in diplomatic terms.

MR. YAMAOKA: We should like to set forth the reasons assigned in this document.

THE PRESIDENT: Read it.

MR. YAMAOKA: Then with the Tribunal's permission I shall read prosecution's exhibit 53:

"The Secretary of State to the Japanese Ambassador (HORINOUCHI)--Washington, July 26, 1939.

"Excellency: During recent years the Government of the United States has been examining the treaties of commerce and navigation in force between the United States and foreign countries with a view to determining what changes may need to be made toward better serving the purposes for which such treaties are concluded. In the course of this survey, the Government of the United States has come to the conclusion that the Treaty of Commerce and Navigation between the United States and Japan which

1 was signed at Washington on February 21, 1911,
2 contains provisions which need new consideration.
3 Toward preparing the way for such consideration and
4 with a view to better safeguarding and promoting
5 American interests as new developments may require,
6 the Government of the United States, acting in
7 accordance with the procedure prescribed in Article
8 XVII of the treaty under reference, gives notice
9 hereby of its desire that this treaty be terminated,
10 and, having thus given notice, will expect the treaty,
11 together with its accompanying protocol, to expire
12 six months from this date.

13 "Accept /etc/

14 "Cordell Hull."

15 We next invite the Tribunal's attention
16 to prosecution's exhibit 58, pages 30 and 31, being
17 the communications denouncing the Washington Naval
18 Treaties of 1922 by Japan for the purpose of showing
19 that Japan's denunciation was in accordance with the
20 provisions of the said treaties.

21 THE PRESIDENT: Mr. Comyns Carr.

22 MR. COMYNS CARR: Nobody has suggested the
23 contrary, your Honor. We fail to see the object of
24 taking up time in proving that which is already common
25 ground.

1 THE PRESIDENT: Mr. Yamaoka.

2 MR. YAMAOKA: If the Tribunal please, this
3 is a part of prosecution's exhibit 58 and was deemed
4 of sufficient probative value to the prosecution to
5 introduce it into evidence.

6 THE PRESIDENT: There is no contest about
7 it, as Mr. Carr says.

8 MR. YAMAOKA: That may be so, your Honor,
9 but the prosecution has attached certain motives to
10 this Japanese denunciation and we desire to set forth
11 for the purposes of the record the reasons why Japan
12 made these denunciations as set forth in this document.

13 THE PRESIDENT: You are familiar with the
14 reasons, Mr. Yamaoka. Just give them to us in a
15 few words, will you?

16 MR. YAMAOKA: Your Honor, I could do so
17 but this is so succinctly and aptly put in this one
18 letter here on pages 30 and 31 that I thought it might
19 be advisable to use the exact language.

20 THE PRESIDENT: Proceed to read then.
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1 MR. YAMAOKA: I refer to the letter from
2 the Japanese Ambassador SAITO to the Secretary of
3 State, entitled "Note Verbale."

4 (Reading): "Washington, December 29, 1934.

5 "I have been telegraphically instructed by
6 Mr. HIROTA to say to you, on the occasion of handing
7 you the written notice of the intention of the
8 Japanese Government to terminate the Washington
9 Naval Treaty of 1922, in the following sense with
10 suitable amplifications:

11 "As has already been made known to the
12 American Delegation in London, the basic policy
13 of the Japanese Government in the present disarmament
14 negotiations consists in the discontinuance of
15 the ratio system and the total abolition of the ut-
16 most limitation of aggressive war vessels. From that
17 point of view, the Japanese Government considers it
18 inadmissible to have the Treaty continue in force."

19 I am sorry. There is a misprint here in
20 my draft. That "of" should be "or."

21 "The Japanese Government entertains the
22 desire that the preliminary negotiations shall be
23 conducted in the friendliest spirit possible and, to
24 that end, wished that all Powers concerned would
25 conjointly make the notification of treaty termination.

1 The proposal has not been accepted by any of the
2 Powers, and the Japanese Government has been con-
3 strained to act singly in giving notice in accordance
4 with the provisions of Article 23 of the Treaty it-
5 self.

6 "It is, however, a matter of course that
7 the Japanese Government has no intention whatever
8 to proceed to naval aggrandisement or to disturb
9 international peace. It will continue in its sin-
10 cere endeavors to strengthen the relationships of
11 peace and amity among all Powers, by participating
12 as heretofore in the friendly negotiations with the
13 other Powers concerned in which it will strive for
14 the conclusion with them of a new agreement, just,
15 fair and adequate in conception and consonant with
16 the spirit of disarmament, to replace the Washington
17 Treaty."

18 We now read from prosecution exhibit 65,
19 which is Japan's notice of withdrawal from the League
20 of Nations on March 27, 1933, which sets forth her
21 reasons for such actions. With the Tribunal's per-
22 mission I shall read exhibit 65.

24 THE PRESIDENT: My colleague assures me
25 that the last three paragraphs of this document have
already been read into the transcript.

1 MR. YAMAOKA: I am aware of that, and if
2 I may be permitted I should like to read the first
3 two paragraphs in order to complete this document.

4 (Reading): "JAPAN'S NOTICE OF WITHDRAWAL
5 FROM LEAGUE 27 March 1933.

6 "The Japanese Government believe that the
7 national policy of Japan, which has for its aim to
8 insure the peace of the Orient and thereby to con-
9 tribute to the cause of peace throughout the world,
10 is identical in spirit with the mission of the League
11 of Nations, which is to achieve international peace
12 and security. It has always been with pleasure,
13 therefore, that this country has for thirteen years
14 past, as an original Member of the League, and a
15 permanent Member of its Council, extended a full
16 measure of cooperation with her fellow-Members towards
17 the attainment of its high purpose. It is indeed a
18 matter of historical fact that Japan has continuously
19 participated in the various activities of the League
20 with a zeal not inferior to that exhibited by any
21 other nation. At the same time, it is and has al-
22 ways been the conviction of the Japanese Government
23 that in order to render possible the maintenance of
24 peace in various regions of the world, it is necessary
25 in existing circumstances to allow the operation of

1 the Covenant of the League to vary in accordance
2 with the actual conditions prevailing in each of
3 those regions. Only by acting on this just and
4 equitable principle can the league fulfil its mission
5 and increase its influence.

6 "Acting on this conviction, the Japanese
7 Government, ever since the Sino-Japanese dispute
8 was, in September, 1931, submitted to the League,
9 have, at meetings of the League and on other occa-
10 sions continually set forward a consistent view.
11 This was, that if the League was to settle the
12 issue fairly and equitably, and to make a real
13 contribution to the promotion of peace in the Orient,
14 and thus enhance its prestige, it should acquire a
15 complete grasp of the actual conditions in this
16 quarter of the globe and apply the Covenant of the
17 League in accordance with these conditions. They
18 have repeatedly emphasized and insisted upon the
19 absolute necessity of taking into consideration the
20 fact that China is not an organized State -- that its
21 internal conditions and external relations are
22 characterized by extreme confusion and complexity,
23 and by many abnormal and exceptional features -- and
24 that, accordingly, the general principals and usages
25 of International Law which govern the ordinary

1 relations between nations are found to be considera-
2 bly modified in their operation so far as China is
3 concerned, resulting in the quite abnormal and unique
4 international practices which actually prevail in
5 that country."

6 THE PRESIDENT: We will recess for fifteen
7 minutes.

8 (Whereupon, at 1045, a recess was
9 taken until 1100, after which the proceedings
10 were resumed as follows:)
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1 MARSHAL OF THE COURT: The International
2 Military Tribunal for the Far East is now resumed.

3 MR. YAMAOKA: If the Tribunal please,
4 we now read from Prosecution exhibit 67 concern-
5 ing the freezing of Japanese and Chinese assets in
6 the United States, dated July 25, 1941, as a further
7 step in the economic pressure applied to Japan.

8 THE PRESIDENT: We appreciate your tell-
9 ing us how you propose to use these documents, but
10 we still think that you are reading too much of them,
11 Mr. YAMAOKA.

12 MR. YAMAOKA: Well, then, in accordance
13 with the Tribunal's desire, may I read just the
14 second paragraph of this document? This is an ex-
15 tract from page 73, Department of State Bulletin 26,
16 July 1941. I read the second paragraph.

17 "This Executive order, just as the order
18 of June 14, 1941, is designed among other things to
19 prevent the use of the financial facilities of the
20 United States and trade between Japan and the United
21 States in ways harmful to national defense and Ameri-
22 can interests, to prevent the liquidation in the
23 United States of assets obtained by duress or conquest,
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1 and to curb subversive activities in the United
2 States."

3 May I state at this time, Mr. President and
4 Members of the Tribunal, that we had planned to present
5 additional documents, that is to say, read from prose-
6 cution documents, dealing with the Japanese constitu-
7 tion, various Imperial ordinances, and laws and
8 regulations setting up the various organs of the Jap-
9 anese Government, and also describing the functions
10 of the various departments and the powers and func-
11 tions of the various officers of the Japanese Govern-
12 ment. However, we deem it advisable, in the inter-
13 ests of orderly procedure, to defer this entire group
14 of prosecution exhibits until the end of our phase
15 of the defense case.

16 THE PRESIDENT: The Tribunal fully agree.

17 MR. YAMAOKA: And therefore, with the Trib-
18 unal's permission, we should like now to proceed to
19 the introduction of defense evidence.
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21 We now offer in evidence as a defense exhibit
22 defense document 74, being the Shimonoseki Treaty
23 of April 17, 1895, between China and Japan, concluding
24 the Sino-Japanese War, and by which treaty Japan
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1 secured, among other rights, territorial rights in
2 Manchuria as well as trade privileges in China.

3 THE PRESIDENT: Admitted on the usual terms.

4 CLERK OF THE COURT: Defense document No.
5 74 will receive exhibit number 2283.

6 (Whereupon, the document above
7 referred to was marked defense exhibit No.
8 2283 and received in evidence.)

9 MR. YAMAOKA: With the Tribunal's permission
10 we will now read defense exhibit 2283.

11 "Shimonoseki Treaty, signed at Shimonoseki,
12 April 17, 1895."

13 I shall omit the prefatory paragraphs on
14 this treaty and drop to Article I.

15 "ARTICLE I

16 "China recognizes definitely the full and
17 complete independence and autonomy of Corea, and in
18 consequence, the payment of tribute and the performance
19 of ceremonies and formalities by Corea to China
20 in derogation of such independence and autonomy,
21 shall wholly cease for the future.

22 "China cedes to Japan in perpetuity and full
23 sovereignty, the following territories together with
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1 all fortifications, arsenals and public property
2 thereon:

3 "a) The southern portion of the Province
4 of Feng-Tien within the following boundaries:"

5 I shall omit the description of the bounda-
6 ries and drop to the next paragraph.

7 "This cession also includes all Islands
8 appertaining or belonging to the Province of Feng-
9 Tien situated in the eastern portion of the Bay of
10 Liao-Tung and in the northern part of the Yellow Sea.

11 "b) The Island of Formosa together with all
12 Islands appertaining or belonging to the said Island
13 of Formosa.

14 "c) The Pescadores Group, that is to say,
15 all Islands lying between the 119th and 120th degrees
16 of longitude east of Greenwich and the 23rd and 24th
17 degrees of north latitude.

18 "ARTICLE 3.

19 "The alignments of the frontiers described
20 in the preceding Article and shown on the annexed Map
21 shall be subject to verification and demarcation on
22 the spot, by a Joint Commission of Delimitation, con-
23 sisting of two or more Japanese and two or more
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Chinese Delegates to be appointed immediately after the exchange of the ratifications of the Act. In case the boundaries laid down in this Act are found to be defective at any point, either on account of topography or in consideration of good administration, it shall also be the duty of the Delimitation Commission to rectify the same.

"The Delimitation Commission will enter upon its duties as soon as possible and will bring its labors to a conclusion within the period of one year after appointment.

"The alignments laid down in this Act shall, however, be maintained until the rectifications of the Delimitation Commission, if any are made, shall have received the approval of the Governments of Japan and China.

"ARTICLE 4.

"China agrees to pay to Japan as a war indemnity the sum of 200,000,000 Kuping Taels. The said sum to be paid in eight instalments. The first instalment of 50,000,000 taels, to be paid within six months, and the second instalment of 50,000,000 taels to be paid within twelve months, after the exchange

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1 of the ratifications of this Act. The remaining sum
2 to be paid in six equal annual instalments as follows:
3 The first of such equal annual instalments to be paid
4 within two years; the second within three years; the
5 third within four years; the fourth within five years;
6 the fifth within six years, and the sixth within seven
7 years, after the exchange of the ratifications of this
8 Act. Interest at the rate of 5 per centum per annum
9 shall begin to run on all unpaid portions of the said
10 indemnity from the date the first instalment falls
11 due."

12 THE PRESIDENT: Does anything turn on that
13 indemnity and the way it is to be paid or was to be
14 paid?

15 MR. YAMAOKA: I must frankly confess we are
16 not making an issue of this indemnity clause. There-
17 fore I shall omit the balance of this article.

18 I shall commence with Article V.

19 THE PRESIDENT: Is that relevant?

20 MR. YAMAOKA: Well, it provides for the rights
21 of the Japanese nationals to take up residence and is
22 a right under which the Japanese nationals entered the
23 region. I am sorry I didn't quite get the purport
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1 of this article. However, it does provide, as your
2 Honor has no doubt noted, that the residents of the
3 ceded territories are deemed to be Japanese subjects.

4 THE PRESIDENT: Those who elect to stay.

5 MR. YAMAOKA: I will, then, with that nota-
6 tion drop to Article VI.

7 (Reading) "All Treaties between Japan and
8 China having come to an end in consequence of war,
9 China engages, immediately upon the exchange of the
10 ratifications of this Act, to appoint Plenipotentiaries
11 to conclude with the Japanese Plenipotentiaries a
12 Treaty of Commerce and Navigation and a Convention to
13 regulate Frontier Intercourse and Trade. The Treaties,
14 Conventions and Regulations now subsisting between
15 China and European Powers shall serve as a basis for
16 the said Treaty and Convention between Japan and
17 China. From the date of the exchange of the ratifica-
18 tions of this Act until the said Treaty and Convention
19 are brought into actual operation, the Japanese Govern-
20 ment; its officials; commerce; navigation; frontier
21 intercourse and trade; industries; ships and subjects,
22 shall, in every respect, be accorded by China most
23 favored nation treatment.
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1 "China makes in addition the following con-
2 cessions, to take effect six months after the date of
3 the present Act:

4 "Ist: The following cities, towns and ports,
5 in addition to those already opened, shall be opened
6 to the trade residence, industries and manufactures of
7 Japanese subjects, under the same conditions and with
8 the same privileges and facilities as exist at the
9 present open cities, towns and ports of China:"

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1 MR. YAMAOKA: I shall omit the listing of
2 the cities here.

3 THE PRESIDENT: Hangchow is one.

4 MR. YAMAOKA: (Reading) "The Japanese
5 Government shall have the right to station Consuls at
6 any or all of the above-named places.

7 "2nd. Steam navigation for vessels under
8 the Japanese flag for the conveyance of passengers
9 and cargo, shall be extended to the following places:

10 "1. On the Upper Yangtze River, from Ichang
11 to Chung-King.

12 "2. On the Wcosung River and the Canal,
13 from Shanghai to Suchow and Hangchow.

14 "The Rules and Regulations which now govern
15 the navigation of the inland waters of China by
16 foreign vessels, shall, so far as applicable, be
17 enforced in respect of the above-named routes, until
18 new Rules and Regulations are conjointly agreed to.

19 "3rd. Japanese subjects purchasing goods
20 or produce in the interior of China or transporting
21 imported merchandise into the interior of China shall
22 have the right temporarily to rent or hire warehouses
23 for the storage of the articles so purchased or trans-
24 ported, without the payment of any taxes or exactions
25 whatever.

1 "4th. Japanese subjects shall be free to
2 engage in all kinds of manufacturing industries in
3 all the open cities, towns and ports of China and
4 shall be at liberty to import into China all kinds
5 of machinery, paying only the stipulated import duties
6 thereon.

7 "All articles manufactured by Japanese
8 subjects in China shall, in respect of inland transit
9 and internal taxes, duties, charges and exactions
10 of all kinds and also in respect of warehousing and
11 storage facilities in the interior of China, stand
12 upon the same footing and enjoy the same privileges
13 and exemptions as merchandise imported by Japanese
14 subjects into China.

15 "In the event additional Rules and Regula-
16 tions are necessary in connection with these concessions,
17 they shall be embodied in the Treaty of Commerce and
18 Navigation provided for by this Article.

19 "Article 7.

20 "Subject to the provisions of the next
21 succeeding Article, the evacuation of China by the
22 armies of Japan shall be completely effected within
23 three months after the exchange of the ratifications
24 of the present Act.

25 "Article 8.

1 "As a guarantee of the faithful performance
2 of the stipulations of this Act, China consents to
3 the temporary occupation by the military forces
4 of Japan of Wei-hai wei in the Province of Shantung.

5 "Upon the payment of the first two instal-
6 ments of the war indemnity herein stipulated for
7 and the exchange of the ratifications of the Treaty
8 of Commerce and Navigation, the said place shall
9 be evacuated by the Japanese forces, provided the
10 Chinese Government consents to pledge, under suitable
11 and sufficient arrangements, the Customs Revenue of
12 China as security for the payment of the principal
13 and interest of the remaining instalments of said
14 indemnity. In the event no such arrangements are
15 concluded, such evacuation shall only take place
16 upon the payment of the final instalment of said
17 indemnity.

18 "It is, however, expressly understood that
19 no such evacuation shall take place until after the
20 exchange of the ratifications of the Treaty of
21 Commerce and Navigation.

22 "Article 9.

23 "Immediately upon the exchange of the
24 ratifications of this Act, all prisoners of war then
25 held shall be restored and China undertakes not to

1 ill-treat or punish prisoners of war so restored to
2 her by Japan. China engages to at once release all
3 Japanese subjects accused of being military spies
4 or charged with any other military offences. China
5 further engages not to punish in any manner nor to
6 allow to be punished those Chinese subjects who
7 have in any manner been compromised in their relations
8 with the Japanese army during the war.

9 "Article 10.

10 "All offensive military operations shall
11 cease upon the exchange of the ratifications of
12 this Act.

13 "Article 11.

14 "The present Act shall be ratified by
15 Their Majesties the Emperor of Japan and the Emperor
16 of China, and the ratifications shall be exchanged
17 at Cheefoo, on the 8th day of the 5th month of the
18 28th year of Meiji, corresponding to the 14th day
19 of the 4th month of the 21st year of Kuang Hsu.

20 "In witness whereof, the respective Pleni-
21 potentiaries have signed the same, and have affixed
22 thereto the seal of their arms.

23 "Done at Shimneseiki, in duplicate, this
24 17th day of the 4th month of the 28th year of Meiji,
25 corresponding to the 23rd day of the 3rd month of the

1 21st year of Kuang Hsu."

2 I shall omit the signatures. It will be
3 noted that there is a certificate of source and
4 authenticity attached to this document.

5 We next offer in evidence defense document
6 78, being the separate articles of the Shimonoseki
7 Treaty dated April 17, 1895.

8 THE PRESIDENT: Admitted on the usual terms.

9 CLERK OF THE COURT: Defense document No. 78
10 will receive exhibit No. 2284.

11 (Whereupon, the document above
12 referred to was marked defense exhibit No.
13 2284 and received in evidence.)

14 THE PRESIDENT: Mr. Comyns Carr.

15 MR. CARR: Your Honor, in our submission
16 this document is entirely irrelevant to any issue
17 before this Tribunal. It consists of purely tempo-
18 rary clauses entered into in 1895 in connection with
19 the treaty which has just been read.

20 THE PRESIDENT: Mr. Yamaoka.

21 MR. YAMAOKA: If the Tribunal please, the
22 original of the previous exhibit, the Shimonoseki
23 Treaty of 1895, was the first treaty whereby Japan
24 acquired rights in Manchuria.

25 THE PRESIDENT: But it does not appear to

1 have any value.

2 MR. YAMAOKA: We shall later show that
3 these rights -- some of these rights, may I put it,
4 Japan was obliged to relinquish at the pressure
5 of certain powers.

6 THE PRESIDENT: Are you really pressing
7 this?

8 MR. YAMAOKA: I am sorry, your Honor. I
9 did not hear you.

10 THE PRESIDENT: Are you pressing this?

11 MR. YAMAOKA: The reason why we offer this
12 is in order that the complete document can be
13 presented to the Tribunal.

14 THE PRESIDENT: Had you put it in under
15 the first number, well, no question would have been
16 raised, I suppose; but you put it in as a separate
17 exhibit and the point is raised. The objection is
18 overruled.

19 MR. YAMAOKA: Then with the Tribunal's
20 permission I shall request that defense document
21 No. 78, being the separate articles of the Shimonoeki
22 Treaty, and the next document, defense document 196,
23 being the protocol attached to the said treaty, be
24 marked as further exhibits together with the previous
25 exhibit.

1 THE PRESIDENT: Admitted on the usual
2 terms, but they will be numbered separately as they
3 have been.

4 MR. YAMAOKA: Yes. I am sorry, your
5 Honor, I misunderstood the procedure here.

6 CLERK OF THE COURT: Defense document
7 No. 196 will receive exhibit No. 2285.

8 (Whereupon, the document above re-
9 ferred to was marked defense exhibit No. 2285
10 and received in evidence.)

11 THE PRESIDENT: You are not reading that
12 protocol, are you?

13 MR. YAMAOKA: No, your Honor. I am just
14 entering them.

15 We next offer in evidence defense document
16 No. 344. This is a telegram dispatched by the
17 Japanese Charge d'Affairs ONO at Berlin to the
18 Japanese Foreign Minister on December 5, 1923,
19 referring to a publication of the German Foreign
20 Office relating to the triple intervention of
21 Germany, France and Russia soon after the conclusion
22 of the Shimnoseki Treaty as a result of which Japan
23 was obliged under the threats of these three powers
24 to give up the right secured to her in the Liaotung
25 peninsula under the said treaty.

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THE PRESIDENT: Mr. Comyns Carr.

MR. COMYNS CARR: Your Honor, with respect, we are extremely reluctant to keep on objecting to these documents, but I am afraid of the fifty-six which they have served upon us there are only some eight which appear to us to have any bearing on any issue which we have raised or that could be raised, in answer to anything that we have raised in this trial. This particular one is a telegram between two Japanese officials in 1923 about the contents of a book not yet published in Germany, which book the writer of the telegram alleges when published will tell a story about what Germany did in 1895. Even if that were a proper way of proving what Germany did in 1895, in our submission the fact when proved could have no possible relevance in this trial.

THE PRESIDENT: Well, materiality and relevance are the tests; however, it does not appear to possess either.

We will hear you, Mr. Yamaoka.

MR. YAMAOKA: If the Tribunal please, the previous exhibits just admitted reveal that under these treaties -- under this treaty, that is to say, Japan first acquired a right in the Liaotung

1 peninsula, as well as in China. These rights were
2 lawfully obtained under valid treaties. Thereafter
3 under the threat of the triple intervention Japan
4 was forced to give up the rights lawfully secured
5 to her under this treaty. And, as later evidence
6 will show in the defense case, the principal Powers
7 -- European Powers -- actually sought to take over
8 that which they obliged Japan to disgorge.

9 It seems to us, if the Tribunal please, that
10 this outlines the course of history in Manchuria
11 particularly, and that unless this background is
12 fully presented to the Tribunal we feel that a com-
13 plete picture may not be obtained. Moreover, I
14 believe the Tribunal will recall that statements
15 have been made by the -- during the course of the
16 prosecution's case, that the war -- Sino-Japanese
17 war, was, I believe, aggressively undertaken by
18 Japan, and that she had designs from even that period,
19 of aggressive intentions on the Asiatic continent.

20 It will also be recalled that on many
21 occasions when these early exhibits were sought to be
22 entered into evidence by the prosecution, that is some
23 of the early treaties going beyond the scope of the
24 period covered by the Indictment, the defense objected
25 to them. But notwithstanding, upon the assertion by

1 the prosecution that the documents did have probative
2 value and would be subject to connection later dur-
3 ing the course of the prosecution's case, this
4 Tribunal admitted those documents into evidence.

5 THE PRESIDENT: But in that case the pro-
6 secution showed the importance of the particular
7 document. Your remarks are very interesting but
8 they are not related to this particular document
9 objected to now.

10 MR. YAMAOKA: Well --

11 THE PRESIDENT: Why tender this document?

12 MR. YAMAOKA: With specific reference to
13 this document, if the Tribunal please, this is being
14 tendered by the defense for the purpose of showing
15 what transpired in Manchuria in respect to Japanese
16 rights, and will explain Japan's later actions in
17 that region, particularly under the Portsmouth
18 treaty and other evidence to follow.

19 THE PRESIDENT: Is there a reply? Are you
20 tendering the reply from the Foreign Affairs Minister?

21 MR. YAMAOKA: No, your Honor. We will at
22 later stages of the case.

23 THE PRESIDENT: This is just some German
24 viewpoint that is being put now and we don't know what
25 the Japanese viewpoint is. You are not tendering

1 the Japanese reply, and if Japan was obliged to
2 disgorge any territory or acquisitions, as I am
3 reminded, that can be proved from history. It will
4 be judicially noticed, probably.

5 MR. YAMAOKA: With great respect, your
6 Honor, may I state this: that the reason why we are
7 tendering this is not to show Japan's reason for
8 her compliance with this request, but to show the
9 fact of such request and the reasons why she was
10 compelled to comply with the request.

11 I might add also that, as I stated before,
12 this is being tendered to show the actions of the
13 other Powers in the Orient as of that time, which
14 will --

15 THE PRESIDENT: The objection is upheld.

16 MR. YAMAOKA: May I respectfully note an
17 exception?

18 THE PRESIDENT: You have that.

19 MR. YAMAOKA: I should like, with the
20 Tribunal's permission, to make an offer of proof as
21 in accordance with this document however, and that
22 to be noted on the record.

23 The next defense exhibit --

24 MR. BROOKS: If your Honor please, I
25 strenuously object to this document being used in

1 Division I because there are seven other documents
2 that are to be introduced in Division II, of which
3 this is the eighth, and they explain the significance
4 and relevancy of the document that has just been
5 rejected, and I ask if in preparing that part of
6 our phase if we show the relevance of this document
7 at that time may it be re-offered?

8 THE PRESIDENT: If at any later stage you
9 show that any document that has been rejected is
10 relevant, material and has probative matter, it will
11 be admitted.
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1 MR. YAMOAKA: Yes, your Honor.

2 We should next desire to offer in evidence
3 defense document 216, which also deals with the same
4 subject matter, the triple intervention, and also the
5 following document which is defense document 163, but
6 in the light of the Tribunal's ruling I shall request
7 that we are making a tender of proof of these documents
8 at this time.

9 THE PRESIDENT: There is no objection?

10 Mr. Carr.

11 MR. COMYNS CARR: Yes, your Honor. In our
12 submission, the whole of this subject matter is irrelevant.
13 The only thing which is relevant is what were Japan's
14 actual rights in 1931. As far as that is concerned,
15 Japan's own case as to those rights is fully stated
16 and accepted in the Lytton Report.

17 THE PRESIDENT: This is cumulative, actually.

18 MR. COMYNS CARR: Your Honor, it is worse than
19 that. In my submission, it is an attempt to show why
20 Japan didn't have more rights than she actually had,
21 because certain powers deprived her of them in 1895.
22 In our submission, that is an irrelevant question.

23 THE PRESIDENT: Yes, Mr. Yamaoka.

24 MR. YAMAOKA: In reply to the learned prosecutor,
25 might I state, if the Tribunal please, that the Lytton

1 Report to which he refers does contain reference to
2 treaties and the Sino-Japanese War way back as far as
3 1895, and that is already in evidence on the prosecution's
4 behalf. If they deem it of sufficient importance and
5 of probative value to them in their case it would
6 seem to us that on behalf of the defense we should be
7 permitted to introduce into evidence other acts of the
8 Allied Powers -- excuse me -- of the European Powers
9 dealing with this subject and which forms the background
10 and the reasons for many of Japan's actions subsequent
11 to this date, and that far from Japan's seeking
12 to acquire additional rights I might point out that
13 these rights were lawfully obtained under treaties and
14 further, that when these rights were sought to be
15 relieved from Japan, thereafter these powers instead
16 endeavored to take over those rights.

17 THE PRESIDENT: Defense documents 216, being
18 a telegram from Foreign Minister MUTSU to Ambassador
19 NISHI is admitted on the usual terms. The objection
20 is overruled.

21 CLERK OF THE COURT: Defense document No.
22 216 will receive exhibit No. 2286.

23 (Whereupon, the document above
24 referred to was marked defense exhibit
25 No. 2286 and received in evidence.)

1 MR. YAMAOKA: Then, with the Tribunal's
2 permission, I shall read defense exhibit 2286:

3 "Telegram despatched from MUTSU, Foreign
4 Minister to Ambassador to Russia, NISHI, May 5, 1895
5 "Kyoto, May 5th, 1895.

6 "Addressed to Ambassador NISHI in Russia by
7 Foreign Minister MUTSU.

8 "Translate the following memorandum into
9 French and submit it to the Russian Government:

10 "The Imperial Japanese Government promises to
11 abandon permanent occupation of the Mukden Peninsula
12 on the friendly advice of the Russian, French and
13 German Government.

14 "In submitting the above memorandum, state as
15 follows: --

16 "It is due to the desire to bring the present
17 situation promptly to an end that the Japanese Government
18 thus faithfully follows the advice of the Three Powers.

19 "Submit both or either of the following two
20 items if you believe that there is no fear of these
21 proposals arousing protests by the Russian Government:

22 "I. The Japanese Government will hold the
23 right to claim compensation from China for the territory
24 which Japan has abandoned.

25 "II. The Japanese Government will hold the

1 right to occupy the afore-mentioned Peninsula for a
2 length of time as a security for China's fulfilment of
3 her treaty obligations to Japan."

4 I desire to call the attention of the Tribunal
5 to the certificate of source and authenticity attached
6 to this document.

7 We next offer in evidence defense document
8 163, also dealing with this subject of triple inter-
9 vention.

10 THE PRESIDENT: That bears an earlier date
11 than the last document admitted.

12 MR. YAMAOKA: Yes, your Honor. Probably this
13 should have been offered prior to the last exhibit.

14 THE PRESIDENT: Admitted on the usual terms.

15 CLERK OF THE COURT: Defense document No. 163
16 will receive exhibit No. 2287.

17 (Whereupon, the document above
18 referred to was marked defense exhibit
19 No. 2287 and received in evidence.)

20 MR. YAMAOKA: With the Tribunal's permission
21 I will read defense exhibit 2287:

22 "Telegram despatched from NISHI, Minister at
23 Saint Petersburg, to MUTSU, Foreign Minister, May 3,
24 1895.

25 "On the 1st of this month I submitted our

1 memorandum to the Russian Government and tried stren-
2 uously to persuade the Government to agree to our
3 proposal.

4 "On the 3rd of this month the Foreign Minister
5 of Russia declared that the Russian Government was
6 dissatisfied with our memorandum, and furthermore in
7 the preceding day's council, the Cabinet had decided
8 unanimously to persist in the first advice and not to
9 change their position for fear that there should be
10 an obstruction in case Japan takes possession of the
11 harbor of Port Arthur. Also, he told me that this
12 decision had been sanctioned by the Russian Emperor.

13 "I deeply regret that in spite of all my
14 efforts in negotiating with the Russian Foreign Minister,
15 I was unable to persuade the Russian Government to
16 propose another plan for disposition of this matter."

17 THE PRESIDENT: The last document would appear
18 to be later than the preceding exhibit. That is all
19 we can say though. There is internal evidence that it
20 should bear a later date.

21 We will adjourn until half-past one.

22 (Whereupon, at 1200, a recess was taken.)
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1 AFTERNOON SESSION

2
3 The Tribunal met, pursuant to recess, at
4 1330.

5 MARSHAL OF THE COURT: The International
6 Military Tribunal for the Far East is now resumed.

7 THE PRESIDENT: Mr. Yamaoka.

8 MR. YAMAOKA: May it please the Tribunal,
9 almost simultaneously with the signing of the Shimon-
10 oseki Treaty in 1895 or soon thereafter, China and
11 Russia entered into a secret alliance in May, 1896
12 known as the Li-Lobanov Treaty. As will be later
13 shown, this treaty was not brought to light until
14 after World War 1. Had Japan known of its existence
15 prior to that time, she may have reacted differently
16 to the conditions surrounding her in East Asia. This
17 treaty is set forth in defense document 162, which we
18 now offer in evidence.

19
20 THE PRESIDENT: Mr. Comyns Carr.

21 MR. COMYNS CARR: May it please the Tribunal,
22 we object to the admission of this document; and I
23 should like to say that with a few exceptions our
24 objections are based upon the same ground: that, al-
25 though these documents are perfectly harmless from
our point of view, they are, in our submission,

1 entirely irrelevant and unnecessarily widen the scope
2 of this inquiry.

3 This particular document purports to be a
4 note from an unidentified source alleging that on some
5 unspecified date a London newspaper published what
6 purported to be the text of a secret treaty between
7 China and Russia entered into in 1896 and expiring
8 in 1911. Even if this were a proper way of proving
9 the treaty, in our submission the treaty itself has
10 nothing to do with the charges which this Tribunal
11 is investigating.

12 THE PRESIDENT: In an inquiry of this magni-
13 tude, the relations of Japan, China and Russia over
14 the last fifty years may be a matter that we should
15 take into consideration. However, these things can
16 have no probative value unless we know their source.

17 MR. YAMAOKA: If the Tribunal please, through
18 inadvertence, the certificate was not attached to the
19 copies distributed to the prosecution and probably
20 were omitted from the copies distributed to the Tri-
21 bunal.

22 THE PRESIDENT: The document was found in the
23 Japanese Foreign Office; but who is the author of it?

24 MR. YAMAOKA: However, the original certifi-
25 cate, that is, the certificate of the Japanese Foreign

1 Office as to statement of ~~source~~ and authenticity,
2 is attached to the original.

3 THE PRESIDENT: The Japanese Foreign Office
4 may be interested in keeping a record even of rumors.
5 This may be nothing but a rumor.

6 MR. YAMAOKA: I might first mention, if
7 your Honors please, that this treaty, the secret
8 treaty, has already been mentioned on page 33 of the
9 Lytton Report which I believe is prosecution exhibit
10 58.

11 THE PRESIDENT: Are you tendering this by
12 way of defense or by way of mitigation?

13 MR. YAMAOKA: By way of defense, your Honor.
14 I might add that this treaty between Russia and
15 China vitally affects the later events that follow.

16 THE PRESIDENT: Does the Lytton Report
17 treat this treaty as a fact or just as a rumor?

18 MR. YAMAOKA: I believe, if my recollection
19 serves me right, your Honor, it deals with it as a
20 fact.

21 THE PRESIDENT: Does it set it out?

22 MR. YAMAOKA: No, I believe not, your Honor.

23 THE PRESIDENT: Then you had better read it.
24 Objection overruled.

25 CLERK OF THE COURT: Defense document No.

1 162 will receive exhibit No. 2288.

2 (Whereupon, the document above re-
3 ferred to was marked defense exhibit No.
4 2288 and received in evidence.)

5 MR. YAMAOKA: I will now read defense ex-
6 hibit 2288:

7 "TREATY OF ALLIANCE BETWEEN CHINA AND RUSSIA,
8 MAY, 1896

9 "concluded May, 1896.

10 "Note: This secret treaty was concluded in May 1896
11 at Saint Petersburg, Capital of Russia, between Prince
12 Robabov" -- I believe there is a misspelling there;
13 it should be: L-o-b-a-n-o-v --"and Li Kuei-chang who
14 attended the coronation ceremony of the Czar.

15 "Later, after the expiration of its term of
16 validity, it was published in the 'Daily Telegraph'
17 in London by the then Chinese Minister to Britain,
18 Li Ching-mei, the son of Li Kuei-chang. As for the
19 detailed circumstances, refer to notes attached to the
20 foreign versions.

21 "Art I. Any act of aggression on the part
22 of Japan, whether it be contemplated against Russian
23 territories in East Asia, China, or Korea, shall not
24 fail to call forth a prompt application of this
25 treaty.

1 "In the above case, the two Signatory Powers
2 have agreed to support one another with their whole
3 military and naval forces available at that time and
4 to afford to one another the greatest possible assist-
5 ance in the way of supplying provisions for the above
6 forces.

7 "Art II. After the two Powers have taken
8 joint actions, neither of them shall be permitted to
9 conclude any peace treaty separately with the enemy
10 without the consent of the other.

11 "Art III. In the course of military actions,
12 all the ports in China shall be, if necessary, open
13 to Russian warships, which will be furnished there
14 with all necessary assistance by the Chinese Govern-
15 ment.

16 "Art IV. The Chinese Government has agreed
17 to construct a railway towards Vladivostok, travers-
18 ing the two Chinese Districts of Amur (Heilungkiang)
19 and Kilin" -- I believe there is a misspelling there;
20 instead of K-i-l-i-n, it should be K-i-r-i-n -- "with
21 a view to facilitating the approach of the Russian
22 Army to areas which are likely to be attacked and to
23 securing the means by which to resist such attacks.
24 The junction of the above railway to the Russian rail-
25 way shall not be used as a pretext for infringing the

1 integrity of the Chinese Empire or the dignity of the
2 Chinese Emperor. The construction and administration
3 of the above railway shall be entrusted to the Russo-
4 Chinese Bank. The stipulations in contracts to be
5 concluded for the above purposes shall be negotiated
6 between the Chinese Minister to Russia and the Russo-
7 Chinese Bank.

8 "Art V. In time of war, Russia shall be
9 entitled to utilize without restriction the railway
10 prescribed in Art I., for the purpose of transporting
11 her army forces and provision for the above forces in
12 accordance to Art 1. In time of peace, Russia shall
13 possess the same right for the purpose of transport-
14 ing her army forces and munitions, on condition that
15 the trains do not stop on the way except for necessi-
16 ties of transportation business.

17 "Art VI. This Treaty shall take effect from
18 the day on which the Chinese Empire ratifies the con-
19 tracts prescribed in Art IV, and shall be valid for
20 fifteen years beginning with the above date. More
21 than six months prior to the expiration of the term
22 the two Powers shall hold a negotiation regarding the
23 revision of this Treaty."
24
25

1 THE PRESIDENT: We have admitted this document
2 not without some doubt. We reserve the question of
3 relevancy. We will reject it if we find it has no
4 probative value.

5 MR. YAMAOKA: If your Honor please, the
6 defense proposes to connect it in divisions 2 and 3
7 dealing with Manchuria and China.

8 We next offer in evidence defense document
9 473 being the exchange of notes between Japan and the
10 United States concerning the protection of commercial
11 rights in China and setting forth the principles of
12 the open door policy in December, 1899. 17,293

13 THE PRESIDENT: Admitted on the usual terms.

14 CLERK OF THE COURT: Defense document No. 473
15 will receive exhibit No. 2289.

16 (Whereupon, the document above
17 referred to was marked defense exhibit No.
18 2289 and received in evidence.)

19 MR. YAMAOKA: With the Tribunal's permission
20 we now read defense exhibit 2289:

21 "Exchange of Notes Between Japan and the
22 United States Concerning the Protection of Commercial
23 Rights in China.
24

25 "Dated at Tokio, December 20 and 26, 1899

(32 year of Meiji).

1 "December 20, 1899.

2 "His Excellency, Viscount Aoki Shuzo, His
3 Imperial Japanese Majesty's Minister for Foreign
4 Affairs.

5 "Sir:-

6 "Referring to our recent conversation, in
7 which I informed Your Excellency that I had received
8 telegraphic information from my Government that, on
9 the 13th ultimo, there had been mailed to me a communi-
10 cation for the information of Your Excellency's Govern-
11 ment, containing the representations of the United
12 States in respect to their commercial interests in
13 China, as presented in notes to Russia, Germany and
14 Great Britain, which information Your Excellency had
15 expressed a desire to obtain, I have the honor to
16 inform Your Excellency that I have now received the
17 communication containing the information desired, which
18 I am instructed to submit to Your Excellency's Govern-
19 ment, and which reads as follows:-

20
21 "'This' (The United States) 'Government,
22 animated with a sincere desire to insure to the commerce
23 and industry of the United States and of all other
24 nations perfect equality of treatment within the limits
25 of the Chinese Empire for their trade and navigation,
especially within the so-called "spheres of influence

1 or interest" claimed by certain European Powers in
2 China, has deemed the present and opportune moment to
3 make representations in this direction to Germany,
4 Great Britain and Russia.

5 "To attain the object it has in view and to
6 remove possible causes of international irritation
7 and reestablish confidence so essential to commerce,
8 it has seemed to this Government highly desirable that
9 the various Powers claiming 'spheres of interest or
10 influence' in China should give formal assurances
11 that:-

12 "1st. They will in no way interfere with
13 any treaty port or any vested interest within any so-
14 called 'sphere of interest' or leased territory they
15 may have in China.

16 "2nd. The Chinese treaty tariff of the time
17 being shall apply to all merchandise landed or
18 shipped to all such ports as are within said 'sphere
19 of interest' unless they be 'free ports', no matter
20 to what nationality it may belong, and that duties so
21 leviable shall be collected by the Chinese Government.

22 "3rd. They will levy no higher harbor dues
23 on vessels of another nationality frequenting any
24 port in such 'sphere' than shall be levied on vessels
25 of their own nationality, and no higher railroad charges

1 over lines built, controlled or operated within its
2 'sphere' on merchandise belonging to citizens or sub-
3 jects of other nationalities transported through such
4 'sphere' than shall be levied on similar merchandise
5 belonging to their own nationals transported over equal
6 distances.

7 "The policy pursued by His Imperial German
8 Majesty in declaring Tsing-tao (Kiao-Chao) a free port
9 and in aiding the Chinese Government in establishing
10 there a custom house, and the Ukase of His Imperial
11 Russian Majesty of August 11th last in erecting a free
12 port at Dalny (Ta-lien-wan) are thought to be proof
13 that these Powers are not disposed to view unfavorably
14 the proposition to recognize that they contemplate
15 nothing which will interfere in any way with the en-
16 joyment by the commerce of all nations of the rights
17 and privileges guaranteed to them by existing treaties
18 with China.

19 "Repeated assurances from the British Govern-
20 ment of its fixed policy to maintain throughout China
21 freedom of trade for the whole world, insure, it is
22 believed, the ready assent of that Power to our pro-
23 posals. It is no less confidently believed that the
24 commercial interests of Japan would be greatly served
25 by the above mentioned declarations, which harmonize

1 with the assurance conveyed to this Government at
2 various times by His Imperial Japanese Majesty's
3 Diplomatic Representative at this capital.

4 "You are therefore instructed to submit to
5 His Imperial Japanese Majesty's Government the above
6 considerations, and to invite their early attention
7 to them, and to express the earnest hope of your
8 Government that they will accept them and aid in secur-
9 ing their acceptance by the other interested Powers.

10 "Hoping to receive a favorable response from
11 Your Excellency's Government, I avail myself of the
12 occasion to extend to Your Excellency the assurances
13 of my highest consideration."

14 Signed: "A. E. BUCK.

15 "Tokio, 26th December 1899.

16 "His Excellency A. E. Buck, etc., etc., etc.

17 "Monsieur le Ministre:

18 "I have the honor to acknowledge the receipt
19 of the note No. 176 of the 20th instant, in which,
20 pursuing the instructions of the United States Govern-
21 ment, Your Excellency was so good as to communicate
22 to the Imperial Government the representations of the
23 United States as presented in notes to Russia, Germany
24 and Great Britain on the subject of commercial interests
25 of the United States in China.

1 "I have the happy duty of assuring Your
2 Excellency that the Imperial Government will have no
3 hesitation to give their assent to so just and fair
4 a proposal of the United States, provided that all the
5 other Powers concerned shall accept the same.

6 "I avail myself, etc.

7 Signed: "Viscount AOKI SHUZO. Minister for
8 Foreign Affairs."

9 We next offer for identification only a book
10 by John B. Powell entitled "My Twenty-five Years in
11 China" and we offer in evidence defense document
12 202-D-1 being an excerpt therefrom.

13 THE PRESIDENT: Brigadier Nolan.

14 BRIGADIER NOLAN: Mr. President, Members of
15 the Tribunal:

16 This document 202-D-1 purports to be an
17 account published in a book of a conversation between
18 a certain Mr. Cochran and John B. Powell, the author,
19 relating to the Open Door Policy. The prosecution
20 objects to the introduction of this document into
21 evidence on several grounds. In the first place, we
22 are not aware that there has been compliance with
23 Rule 6(b)1 and an order made thereunder permitting
24 the use of this excerpt. If no such order was made,
25 the prosecution has not been afforded the protection

1 of that rule. In the second place, it will be remembered
2 by the Members of the Tribunal that Mr. Powell was a
3 witness in this case, and I am informed by the attorney
4 in charge of the particular phase in which Mr. Powell
5 appeared as a witness that no evidence was given either
6 in examination in chief or on cross-examination regard-
7 ing the question of the Open Door Policy. It is the
8 submission of the prosecution that the views of
9 journalists on matters of governmental policy, how-
10 ever entertaining they may be to their readers, have
11 no probative value and cannot be of assistance to this
12 Tribunal in coming to a conclusion upon the issues
13 before it. Put it in another way: What Mr. Powell
14 said in a private conversation with Cochran cannot
15 possibly be an element in determining the guilt or
16 innocence of the accused. It is what the accused them-
17 selves and those in association with them said and
18 did which really matters, as the President of this
19 Tribunal took occasion to say when the prosecution
20 attempted to introduce into evidence the biography of
21 the Accused MINAMI. To permit the introduction of
22 evidence of this nature would, in the opinion of the
23 prosecution, create a dangerous precedent, a precedent
24 which would tend to confuse and to obscure the real
25 issues before the Tribunal and would, if I may borrow

1 a phrase, open the door to journalistic efforts of
2 every kind and character.

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THE PRESIDENT: Mr. Logan.

MR. LOGAN: If the Tribunal please, since this is set forth as perhaps a precedent for other evidence the defense may offer, I would like to answer the Brigadier in full. First, with respect to Rule 6(b)1, apparently he is not familiar with the fact that an order has been entered dispensing with our compliance with that rule provided we file the original book and give the prosecution notice. That has been done. The notice was served on the 20th, your Honor. I believe today is the 26th. We may be one day shy of that.

But aside from that technicality, unless I had heard it I would not have believed that the prosecution would contend that we are not permitted to produce articles which were written by one of their witnesses. The fact that the question as to whether or not Powell testified to an Open Door Policy on their behalf is not material, or it is not a proper objection to the evidence we are offering of the statements made by him in his book. The rigorous test of cross-examination which was applied does not apply here. I know of no rule of law which says that the defense is restricted in the introduction of their evidence to what testimony a man has produced for the prosecution.

As far as a dangerous precedent is concerned,

1 after reading for months of all the various newspaper
2 articles by unknown authors which were offered by the
3 prosecution, and statements, and hearsay, which is per-
4 missible under the Charter, to come here at this stage
5 and say that we are not permitted to offer a document
6 which has been written by one of their own witnesses,
7 it is something that I just cannot understand.

8 I might also add this, if the Tribunal please,
9 if we are to be held on technicalities, I would like
10 to remind the prosecution of the many occasions when
11 I personally waived this rule of filing documents for
12 them. They probably did not appreciate it at that
13 time.

14 THE PRESIDENT: Well, the last ground taken
15 by the prosecution is the really substantial ground,
16 that the evidence offered here is merely the opinion
17 of a journalist, or something like it. Powell was
18 called here, but not to give opinions: To testify as
19 to what he witnessed in China. Powell's opinions in
20 this regard have no probative value, and the objection
21 is upheld.

22 MR. YAMAOKA: If the Tribunal please, may I
23 point out that this proposed offer of this document
24 contains a report of conversations.

25 THE PRESIDENT: The opinions of others that

1 Powell interviewed or that interviewed Powell, it does
2 not matter which, it is opinion evidence.

3 MR. YAMAOKA: And contains actually statements
4 of facts which we intend to tie in later in the later
5 phases of the defense case.

6 May the record show that we have offered it?

7 THE PRESIDENT: It does.

8 MR. YAMAOKA: For the purposes of clarifying
9 the record, may the book be marked for identification,
10 your Honor?

11 THE PRESIDENT: It is supposed to be in any
12 event. The thing that you attempted to put in as an
13 excerpt, the book should have been tendered for iden-
14 tification in the first place.

15 CLERK OF THE COURT: Defense document No. 202
16 will receive Exhibit No. 2290 for identification only.

17 (Whereupon, the document above re-
18 ferred to was marked defense Exhibit No. 2290
19 for identification.)

20 MR. YAMAOKA: We next offer in evidence
21 defense document No. 29, commonly known as the Boxer
22 Protocol, under which the foreign powers secured the
23 right to maintain troops in the area extending from
24 Peking to the sea. Under this Protocol Japan lawfully
25 maintained troops in this area when the China Incident

1 broke out in July 1937.

2 THE PRESIDENT: Admitted on the usual terms.

3 CLERK OF THE COURT: Defense document No. 29
4 will receive Exhibit No. 2291.

5 (Whereupon, the document above re-
6 ferred to was marked defense Exhibit No. 2291,
7 and was received in evidence.)

8 MR. YAMAOKA: We shall read excerpts from
9 this exhibit. Article 7 on page 6:

10 "The Chinese Government has agreed that the
11 quarter occupied by the Legations shall be considered
12 as a quarter specially reserved to their usage and
13 placed under their exclusive police, where the Chinese
14 shall not have the right to reside, and which may be
15 put into a state of defence. The limits of the quarter
16 have been thus fixed on the plan annexed (annex No. 14)"

17 I shall omit the next few lines.

18 "By the protocol annexed to the letter of
19 16th January, 1901, China has recognised that each
20 Power has the right to retain a permanent guard in
21 the said quarter for the defence of its Legation.

22 * * * * *

23 "Dispositions have been taken to this effect.

24 "Article 9. The Chinese Government has
25 recognised that the Powers, by the protocol annexed

1 to the letter of the 16th January, 1901, have the right
2 to occupy certain points to be determined by agreement
3 between them, in order to maintain free communication
4 between the capital and the sea."

5 We next offer in evidence defense document
6 41, being the Anglo-Japanese Alliance of 1902 in which,
7 among other things, both parties recognized their
8 respective special interests, particularly in China.

9 THE PRESIDENT: Admitted on the usual terms.

10 CLERK OF THE COURT: Defense document 41
11 will receive Exhibit No. 2292,

12 (Whereupon, the document above re-
13 ferred to was marked defense Exhibit No. 2292,
14 and was received in evidence.)

15 THE PRESIDENT: Mr. Comyns Carr.

16 MR. COMYNS CARR: Your Honor, there are a
17 large number of documents which are subject to the
18 same objection from the prosecution, that they are
19 very wide of any issue in this case. We have no other
20 objection to them, and I do not propose to repeat the
21 objection to each one in view of the views expressed
22 by the Tribunal, and this and many others will be sub-
23 ject to the same objection,

24 THE PRESIDENT: The Tribunal has doubts as
25 to the relevancy of some of these documents which go

1 back fifty years. We are admitting them, reserving
2 the question of relevancy.

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1 MR. YAMAOKA: Yes, your Honor. I might point
2 out, your Honors, that one of the reasons why we are
3 presenting these documents at this time is to show
4 that these interests which Japan acquired in China
5 which are charged in the Indictment to have been unlaw-
6 fully obtained, or pursuant to aggressive design, were
7 particularly recognized by the United Kingdom -- Great
8 Britain, that is to say, which has great interests in
9 China; that is to say, that they recognized those rights.

10 With the Tribunal's permission, I shall read
11 defense -- has the exhibit been numbered?

12 CLERK OF THE COURT: 2292.

13 MR. YAMAOKA: Defense exhibit 2292.

14 "Agreement of Alliance of 1902 between Japan
15 and Great Britain.

16 "Signed at London, in English, January 30, 1902
17 (35th year of Meiji).

18 - "Published February 12, 1902.

19 "The Governments of Japan and Great Britain,
20 actuated solely by a desire to maintain the status quo
21 and general peace in the Extreme East, being moreover
22 specially interested in maintaining the independence
23 and territorial integrity of the Empire of China and
24 the Empire of Corea, and in securing equal opportunities
25 in those countries for the commerce and industry of all

1 nations hereby agree as follows:

2 "Article I. The High Contracting Parties
3 having mutually recognized the independence of China and
4 of Korea declare themselves to be entirely uninfluenced
5 by any aggressive tendencies in either country. Having
6 in view, however, to their special interests, of which
7 those of Great Britain relate principally to China,
8 while Japan in addition to the interests which she
9 possesses in China is interested in a peculiar degree,
10 politically as well as commercially and industrially,
11 in Korea, the High Contracting Parties recognize that
12 it will be admissible for either of them to take such
13 measures as may be indispensable in order to safeguard
14 those interests, if threatened either by the aggressive
15 action of any other Power or by disturbances arising
16 in China or Korea and necessitating the intervention
17 of either of the High Contracting Parties for the
18 protection of the lives and property of its Subjects.

19 "Article II. If either Japan or Great
20 Britain, in the defence of their respective interests
21 as above described, should become involved in war
22 with another Power, the other High Contracting Party
23 will maintain a strict neutrality and use its efforts
24 to prevent other Powers from joining in hostilities
25 against its Ally.

1 "Article III. If in the above event any
2 other Power or Powers should join in hostilities
3 against that Ally, the other High Contracting Party
4 will come to its assistance and will conduct the war
5 in common and make peace in mutual agreement with it.

6 "Article IV. The High Contracting Parties
7 agree that neither of them will, without consulting the
8 other, enter into separate arrangement with another
9 Power to the prejudice of the interests above described.

10 "Article V. Whenever, in the opinion of either
11 Japan or Great Britain, the above mentioned interests
12 are in jeopardy, the two Governments will communicate
13 with one another fully and frankly.

14 "Article VI. The present Agreement shall
15 come into effect immediately after the date of its
16 signature and remain in force for five years from
17 that date. In case neither of the High Contracting
18 Parties should have notified twelve months before the
19 expiration of the said five years the intention of
20 terminating it, it shall remain binding until the
21 expiration of one year from the day on which either
22 of the High Contracting Parties shall have denounced
23 it, but if when the date fixed for its expiration
24 arrives either Ally is actually engaged in war the
25 Alliance shall, ipso facto, continue until peace is

1 concluded."

2 We next offer in evidence defense document 55,
3 being the second Anglo-Japanese Alliance of 1905,
4 replacing the original alliance of 1902.

5 THE PRESIDENT: Admitted on the usual terms.

6 CLERK OF THE COURT: Defense document No. 55
7 will receive exhibit No. 2293.

8 (Whereupon, the document above
9 referred to was marked defense exhibit No. 2293
10 and received in evidence.)

11 MR. YAMAOKA: This exhibit, as your Honors
12 will notice, is similar to the previous exhibit and,
13 therefore, I shall not burden the Tribunal with the
14 reading of it. However, I do desire to invite the
15 Tribunal's attention to the special interests referred
16 to in the said treaty.

17 We next offer in evidence defense document 56,
18 being the further renewal of the Anglo-Japanese Alliance
19 in 1911.

20 THE PRESIDENT: Admitted on the usual terms.

21 CLERK OF THE COURT: Defense document 56
22 will receive exhibit No. 2294.

23 (Whereupon, the document above
24 referred to was marked defense exhibit
25 No. 2294 and received in evidence.)

1 MR. YAMAOKA: I shall likewise not read this
2 exhibit, since it is similar to the previous exhibit.
3 But I do also desire to invite the Tribunal's attention
4 to the special interests mentioned therein.

5 We next offer in evidence document 80, being
6 the ultimatum delivered by Japan against Germany during
7 World War I pursuant to the Anglo-Japanese Alliance, in
8 order to safeguard her interests in Eastern Asia.

9 THE PRESIDENT: Admitted on the usual terms.

10 CLERK OF THE COURT: Defense document 80 will
11 receive exhibit No. 2296.

12 Correction: That is 2295.

13 (Whereupon, the document above
14 referred to was marked defense exhibit
15 No. 2295 and received in evidence.)

16 MR. YAMAOKA: As the document is clear on
17 its face, we shall dispense with the reading of this
18 exhibit.
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1 We next offer in evidence document 232,
2 being the Imperial Rescript declaring war on
3 Germany in August 1914 as a result of the non-
4 compliance by Germany with the terms of the
5 Japanese ultimatum, the previous exhibit.

6 THE PRESIDENT: Admitted on the usual
7 terms.

8 CLERK OF THE COURT: Defense document
9 No. 232 will receive exhibit No. 2296.

10 (Whereupon, the document above
11 referred to was marked defense exhibit
12 No. 2296 and received in evidence.)

13 MR. YAMAOKA: We next offer in evidence
14 defense document 132, being the Anglo-Japanese
15 declaration to the League of Nations relative to
16 the Anglo-Japanese Alliance of 1911, which in effect
17 amounted to an abrogation of said alliance.

18 THE PRESIDENT: Admitted on the usual terms.

19 CLERK OF THE COURT: Defense document No.
20 132 will receive exhibit No. 2297.

21 (Whereupon, the document above
22 referred to was marked defense exhibit
23 No. 2297 and received in evidence.)

24 MR. YAMAOKA: With the Tribunal's per-
25 mission I shall read this exhibit.

1 "ANGLO-JAPANESE DECLARATION TO THE
2 LEAGUE OF NATIONS, RELATIVE TO THE ANGLO-JAPANESE
3 AGREEMENT OF JULY 13th, 1911.

4 "Dated at Spa July 8, 1920 (9th year of
5 Taisho). Published July 29, 1920.

6 "The Governments of Japan and Great
7 Britain have come to the conclusion that the Anglo-
8 Japanese Agreement of July 13th, 1911, now existing
9 between the two countries, though in harmony with
10 the spirit of the Covenant of the League of Nations,
11 is not entirely consistent with the letter of that
12 Covenant, which both Governments earnestly desire
13 to respect. They accordingly have the honour
14 jointly to inform the League that they recognize
15 the principle that if the said Agreement be con-
16 tinued after July 1921, it must be in a form which
17 is not inconsistent with that Covenant.

18 "Signed, CHINDA.

19 "Signed, CURZON OF KEDLESTON.

20 "Spa, July 8, 1920."

21
22 Although the prosecution introduced in
23 evidence the Portsmouth Treaty of September 5,
24 1905, which was received in evidence as prosecution
25 exhibit No. 21, the additional articles forming a
part thereof and specifying, among other things, the

1 right of the contracting parties to maintain rail-
2 way guards not to exceed fifteen per kilometer along
3 the railway lines in Manchuria and establishing a
4 boundary commission, were omitted. Consequently,
5 we tender in evidence defense document 59, being the
6 aforesaid articles.

7 THE PRESIDENT: Admitted on the usual terms.

8 CLERK OF THE COURT: Defense document No. 59
9 will receive exhibit No. 2298.

10 (Whereupon, the document above
11 referred to was marked defense exhibit
12 No. 2298 and received in evidence.)

13 MR. YAMAOKA: We will now read excerpts
14 from this exhibit. The third paragraph on -- the
15 fourth paragraph on page 1:

16 (Reading): "The High Contracting Parties
17 reserve to themselves the right to maintain guards
18 to protect their respective railway lines in Man-
19 churia. The number of such guards shall not exceed
20 fifteen per kilometer and within that maximum num-
21 ber, the commanders of the Japanese and Russian
22 Armies shall, by common accord, fix the number of
23 such guards to be employed, as small as possible
24 having in view the actual requirements."
25

I shall next read "11. To Articles 9," page 2.

1 "As soon as possible after the present
2 Treaty comes into force, a Commission for Delimita-
3 tion, composed of an equal number of members to be
4 appointed respectively by the two High Contracting
5 Parties, shall on the spot, mark in a permanent
6 manner the exact boundary between the Japanese
7 and Russian possessions on the Island of Saghaline.
8 The Commission shall be bound, so far as topo-
9 graphical considerations permit, to follow the
10 fiftieth parallel of north latitude as the boundary
11 line, and in case any deflections from that line at
12 any points are found to be necessary, compensation
13 will also be the duty of the said Commission to
14 prepare a list and description of the adjacent
15 islands included in the cession, and finally the
16 Commission shall prepare and sign maps showing the
17 boundaries of the ceded territory. The work of
18 the Commission shall be subject to approval of the
19 High Contracting Parties.
20

21 "The foregoing additional Articles are to
22 be considered as ratified with the ratification of
23 the Treaty of Peace to which they are annexed."

24 We next offer in evidence document 134,
25 being the convention between Japan and Korea of
November 17, 1905, by which Korea came under the

1 protectorate of Japan. This document is offered
2 for the purpose, among others, of showing the source
3 of Japanese rights in Korea which Japan lawfully
4 obtained but which the prosecution charges was
5 illegal and in pursuance of a scheme of Japanese
6 aggression on the continent of Asia. We also
7 introduce this document to show the Japanese rights
8 and interests which Japan undertook to protect
9 vis-a-vis Russia, thus explaining some of her
10 actions which are charged as being aggressive.

11 THE PRESIDENT: Admitted on the usual
12 terms.

13 CLERK OF THE COURT: Defense document
14 No. 134 will receive exhibit No. 2299.

15 (Whereupon, the document above
16 referred to was marked defense exhibit
17 No. 2299 and received in evidence.)

18 MR. YAMAOKA: We next offer in evidence
19 defense document 135, being the declaration issued
20 by Japan regarding the annexation of Korea in 1910,
21 which is offered for the same purpose as the previous
22 exhibit.

23 THE PRESIDENT: Admitted on the usual
24 terms.

25 CLERK OF THE COURT: Defense document 135

1 will receive exhibit No. 2300.

2 (Whereupon, the document above
3 referred to was marked defense exhibit
4 No. 2300 and received in evidence.)

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1 MR. YAMAOKA: I shall only read certain
2 portions of this exhibit.

3 (Reading): "Declarations as to the Annexa-
4 tion of Korea to the Empire of Japan. Published
5 August 29, 1910 (43d year of Meiji).

6 "Declaration to Germany, the United States
7 of America, Austria-Hungary, Belgium, China, Denmark,
8 France, Great Britain, Italy and Russia, which have
9 had treaties with Korea or have been enjoying the
10 Most-Favored-Nation Treatment in Korea.

11 "Notwithstanding the earnest and laborious
12 work of reforms in the administration of Korea, in
13 which the Governments of Japan and Korea have been
14 engaged for more than four years since the conclusion
15 of the Agreement of 1905, the existing system of
16 government in that country has not proved entirely
17 equal to the duty of preserving public order and
18 tranquillity, and in addition a spirit of suspicion
19 and misgiving dominates the whole Peninsula. In order
20 to maintain peace and stability in Korea, to promote
21 the prosperity and welfare of Koreans, and at the
22 same time to ensure the safety and repose of foreign
23 residents, it has been made abundantly clear that
24 fundamental changes in the actual regime of government
25 are absolutely essential.

1 "The Governments of Japan and Korea, being
2 convinced of the urgent necessity of introducing
3 reforms responsive to the requirements of the situa-
4 tion, and of furnishing sufficient guarantees for
5 the future, have, with the approval of His Majesty
6 the Emperor of Japan and His Majesty the Emperor of
7 Korea, concluded, through their respective Pleni-
8 potentiaries, a treaty providing for the complete
9 annexation of Korea to the Empire of Japan."

10 May I state, if the Tribunal please, that
11 this has already been entered, I understand, as
12 prosecution exhibit 283 and we shall refrain from
13 further reading of this document.

14 THE PRESIDENT: If it is already in, it
15 should not go in again.

16 MR. YAMAOKA: I was not aware of that,
17 your Honor, until Mr. Brooks--

18 MR. BROCKS: I have a note on it, your Honor.
19 I just caught that when the document hit my desk; I
20 happened to recall that something like that had been
21 entered in court that day and I checked back on it in
22 the index and found it. I just had it penciled on my
23 copy and just forgot telling the boys about it until
24 last night. I was with them last night but didn't
25 tell them about it then.

1 MR. YAMAOKA: We next offer in evidence
2 defense document 42, being a treaty of annexation
3 of Korea to the Empire of Japan of 1910, for the
4 same purpose as previously outlined. We will not
5 read this exhibit, if your Honor please.

6 THE PRESIDENT: It will save time to let
7 that exhibit 2300 stand.

8 The last exhibit is admitted on the usual
9 terms.

10 CLERK OF THE COURT: Defense document
11 No. 42 will receive exhibit No. 2301.

12 (Whereupon, the document above
13 referred to was marked defense exhibit
14 No. 2301 and received in evidence.)

15 MR. YAMAOKA: With the Tribunal's permission
16 Mr. Lazarus will continue for the defense.

17 THE PRESIDENT: Mr. Lazarus.

18 MR. LAZARUS: There has been a slight change
19 and I will go to No. 120 in the lineal list of defense
20 documents, which would be defense document 472 --
21 No. 120 serially.

22 We next offer in evidence defense document
23 472.

24 THE INTERPRETER: Mr. Lazarus, the language
25 section does not have such a document.

1 MR. LAZARUS: It is No. 120 on our list.

2 THE INTERPRETER: Mr. Lazarus, we have
3 located it.

4 THE PRESIDENT: Admitted on the usual terms.

5 CLERK OF THE COURT: Defense document No. 472
6 will receive exhibit No. 2302.

7 (Whereupon, the document above
8 referred to was marked defense exhibit
9 No. 2302 and received in evidence.)

10 MR. LAZARUS: This document is the secret
11 convention of July 1907 between Russia and Japan
12 wherein and whereby the parties delineated their
13 respective spheres of influence in Manchuria, Korea
14 and Outer Mongolia.

15 (Reading): "The Government of His Majesty
16 the Emperor of All the Russias and the Government
17 of His Majesty the Emperor of Japan, desiring to
18 obviate for the future all causes of friction or
19 misunderstanding with respect to certain questions
20 relating to Manchuria, Korea and Mongolia, have
21 agreed upon the following provisions:

22 "Article I" --

23 THE PRESIDENT: Are you going to read them
24 all?
25

MR. LAZARUS: It is very short, sir. We

1 propose to, sir.

2 THE PRESIDENT: We will recess for fifteen
3 minutes.

4 (Whereupon, at 1445, a recess was
5 taken until 1500, after which the proceedings
6 were resumed as follows:)

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1 MARSHAL OF THE COURT: The International
2 Military Tribunal for the Far East is now resumed.

3 THE PRESIDENT: Mr. Lazarus.

4 MR. LAZARUS: (Continuing)

5 "ARTICLE I

6 "Having in view the natural gravitation of
7 interests and of political and economic activity in
8 Manchuria, and desiring to avoid all complications
9 which might arise from competition, Japan under-
10 takes not to seek to obtain on its own account, or
11 for the benefit of Japanese or other subjects, any
12 concession in the way of railways or telegraphs
13 in Manchuria to the north of a line defined in the
14 Additional Article of the present Convention, and not
15 to obstruct, either directly or indirectly, any
16 initiatives supported by the Russian Government with
17 a view to concessions of that sort in those regions;
18 and Russia, on its part, inspired by the same pacific
19 motive, undertakes not to seek to obtain on its own
20 account, or for the benefit of Russian or other sub-
21 jects, any concession in the way of railways or tele-
22 graphs in Manchuria to the south of the above-mentioned
23 line, and not to obstruct, either directly or indirect-
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1 ly, any initiatives supported by the Japanese
2 Government with a view to concessions of that sort in
3 those regions.

4 "It is fully understood that all the rights
5 and privileges belonging to the Chinese Eastern Rail-
6 way Company by virtue of the contracts for the con-
7 struction of this railway, dated August 16/28, 1896,
8 and June 13/25, 1898, will remain in force on the
9 section of the railway lying to the south of the line
10 of demarcation defined in the Additional Article.

11 "ARTICLE II

12 "Russia, recognizing the relations of
13 political solidarity between Japan and Korea result-
14 ing from the conventions and arrangements at present
15 in force between them, copies of which have been
16 communicated to the Russian Government by the Japan-
17 ese Government, undertakes not to interfere with nor
18 to place any obstacle in the way of the further
19 development of those relations; and Japan, on its
20 part, undertakes to extend in all respects most-favored
21 nation treatment to the Russian Government, consular
22 officers, subjects, commerce, industry and naviga-
23 tion in Korea, pending the conclusion of a definitive
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1 treaty.

2 "ARTICLE III

3 "The Imperial Government of Japan, recogniz-
4 ing the special interests of Russia in Outer Mongolia,
5 undertakes to refrain from any interference which
6 might prejudice those interests.

7 "ARTICLE IV

8 "The present Convention shall be strictly
9 confidential between the two High Contracting Par-
10 ties."

11 We next offer in evidence document 183,
12 being the Tri-Partite agreement between Russia,
13 Outer Mongolia, and China, dated 7 June 1915, for
14 the purpose of showing the political status of Outer
15 Mongolia, which, as we shall later show, did not
16 possess the attribute of sovereignty necessary in
17 order to claim that war was waged against it by
18 Japan as contended by the prosecution.

19 THE PRESIDENT: Admitted on the usual terms.

20 CLERK OF THE COURT: Defense document No.
21 183 will receive exhibit No. 2303.

22 (Whereupon, the paper above referred
23 to was marked defense exhibit No. 2303 and re-
24 ceived in evidence.)
25

1 MR. LAZARUS: I shall read some of the
2 articles, beginning with Article I at the bottom
3 of page 1.

4 "Outer Mongolia recognizes the Sino-Russian
5 Declaration and the Notes exchanged between China
6 and Russia of the 5th day of the 11th month of the
7 2nd year of the Republic of China (23 October 1913).

8 "ARTICLE II - Outer Mongolia recognizes
9 China's suzerainty, China and Russia recognize the
10 autonomy of Outer Mongolia forming part of Chinese
11 territory.

12 "ARTICLE III - Autonomous Mongolia has no
13 right to conclude international treaties with foreign
14 powers respecting political and territorial ques-
15 tions.

16 "As respects questions of a political and
17 territorial nature in Outer Mongolia, the Chinese
18 Government engages to conform to Article II of the
19 Note exchanged between China and Russia on the 5th
20 day of the 11th month of the 2nd Year of the Republic
21 of China. (23rd October 1913)."

22 We skip the next article.

23 "ARTICLE V. - China and Russia, conformably
24 to Articles II and III of the Sino-Russia Declara-
25

1 tion of the 5th day of the 11th month of the 2nd
2 year of the Republic of China (23rd October 1913),
3 recognize the exclusive right of the Autonomous
4 Government of Outer Mongolia to attend to all the
5 affairs of its internal administration and to con-
6 clude with foreign powers international treaties and
7 agreements respecting all questions of a commercial
8 and industrial nature concerning autonomous Mongolia.

9 "ARTICLE VI. - Conformably to the same
10 Article III of the Declaration, China and Russia
11 engage not to interfere in the system of autonomous
12 internal administration existing in Outer Mongolia.

13 "ARTICLE IX - On all ceremonial or official
14 occasions the first place of honor is due to the
15 Chinese Dignitary. He has the right, if necessary,
16 to present himself in private audience with His
17 Holiness" -- it is a name I cannot pronounce --
18 "Pogdo Chaptsun Damba Kut'ukht'u of Outer Mongolia.

19 "The Imperial representative of Russia en-
20 joys the same right of private audience.

21 "ARTICLE XI - Conformably to Article IV
22 of the Notes exchanged between China and Russia on
23 the 5th day of the 11th month of the 2nd Year of the
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1 Republic of China (23rd October 1913), the terri-
2 tory of the autonomous Outer Mongolia comprises the
3 regions which were under the jurisdiction of the
4 Chinese Amban at Urga, of the Tartar-General at
5 Uliassutai and of the Chinese Amban at Kobdo"; and it
6 gives the boundaries there, which I shall not read.

7 "ARTICLE XVII. - Since a section of the
8 Kiachta-Urga Kalgan telegraph line lies in the
9 territory of Autonomous Outer Mongolia, it is agreed
10 that the said section of the said telegraph line
11 constitutes the complete property of the Autonomous
12 Government of Outer Mongolia.

13 "The details respecting the establishment
14 on the borders of that country and Inner Mongolia
15 of a station to be administered by Chinese and Mon-
16 golian employees for the transmission of telegrams,
17 as well as the questions of the tariff for telegrams
18 transmitted and of the apportionment of the receipts,
19 et cetera, are to be examined and settled by a special
20 commission of technical delegates of China, Russia
21 and Autonomous Outer Mongolia."

22 That concludes the reading from that docu-
23 ment, if your Honor please.
24
25

1 We next offer in evidence defense document
2 173, being the agreement between the U.S.S.R in
3 Outer Mongolia of 5 November 1921. It will be noted
4 that this treaty is in contravention of the terms
5 of the previous exhibit.

6 THE PRESIDENT: Admitted on the usual
7 terms.

8 CLERK OF THE COURT: Defense document 173
9 will receive exhibit No. 2304.

10 (Whereupon, the document above referred
11 to was marked defense ~~exhibit~~ 2304 and received
12 in evidence.)

13 MR. LAZARUS: I read as follows:
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1 MR. LAZARUS: (Reading) "Signed at Moscow
2 November 5, 1921. In force from November 5, 1921.

3 "Whereas all former treaties and agreements
4 concluded between the Tsarist Government of Russia
5 and the former Autonomous Government of Mongolia
6 compelled thereto by the insidious and encroaching
7 policy of the above mentioned Government of Russia,
8 have as a result of the new situation created in
9 both countries lost their validity, now therefore
10 the Popular Government of Mongolia on the one part,
11 and the Government of the Russian Socialistic Federa-
12 tive Soviet Republic on the other part, moved by
13 sincere aspirations towards free friendship and
14 collaboration between the two neighbouring peoples,
15 have with this aim resolved to enter into negotiations
16 and for that purpose appointed their plenipotentiaries:"

17 Article I on page 2, if the Tribunal please:

18 "The Government of the Russian Socialistic Federa-
19 tive Soviet Republic recognizes the Popular Govern-
20 ment of Mongolia as the sole lawful Government of
21 Mongolia.

22 "Article 2. The Popular Government of
23 Mongolia recognizes the Government of the Russian
24 Socialistic Federative Soviet Republic as the sole
25 lawful authority of Russia.

1 "Article 3. The two contracting parties
2 mutually bind themselves:

3 "1. Not to allow on their territory the
4 formation or residence of governments, organizations,
5 groups or individual persons aiming at struggling
6 against the other party or overthrowing its govern-
7 ment or governments of its allied states, neither
8 to allow on their territory the mobilization or free
9 recruiting, either of its own citizens or citizens
10 of other states, into an army hostile to the other
11 party.

12 "2. To forbid and to take all measures
13 for preventing, the importation into points within
14 each one's territory and into territories of states
15 in alliance with them, or the transportation through
16 such territories, of arms belonging to or destined
17 for any organization directly or indirectly struggling
18 against one of the parties and likely to be used for
19 such struggle.

20
21 "Article 4. The Government of the Russian
22 Socialistic Federative Soviet Republic sends its
23 Plenipotentiary Representative to the Capital of
24 Mongolia and its Consuls to the cities."

25 I skip the rest of that. I skip Article 5.

"Article 6. The state boundary between

1 Russia and Mongolia is to be determined by a Special
2 Commission to be appointed by special Agreement
3 between the Government of the Russian Socialistic
4 Federative Soviet Republic and the Popular Govern-
5 ment of Mongolia, such agreement to be concluded
6 within the nearest possible future.

7 "Article 8. The judicial authority of
8 each of the contracting parties shall extend, in
9 civil as well as in criminal matters, over the
10 citizens of the other contracting party residing
11 in its territory, and the parties, guided by the
12 high principles of civilization and humanity, renounce
13 the application by their judicial, inquiring and
14 other organs of any punitive or inquiring measures
15 causing physical pain or degrading moral human state."
16

17 Article 11 on page 5:

18 "In consideration of the paramount importance
19 of regulating the questions of postal and telegraphic
20 relations between Russia and Mongolia, as well as
21 transmission of telegraphic correspondence in transit
22 through Mongolia, with the aim of strengthening the
23 cultural and economic mutual relations springing up
24 between the peoples of both countries, the Parties
25 agree that there will be concluded on this subject a
special agreement within the soonest possible time."

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The twelfth article and last:

"The Popular Government of Mongolia declares to recognize in regard to Russian citizens owning lands or buildings in Mongolia, the same rights of ownership, lease and occupation of lots for buildings, and to apply the same means of collecting taxes,"

I skip the rest -- no, I am sorry --
"rents and other payments, as are recognized and applied, or shall be recognized and applied in regard to the citizens of the most favoured state."

1 MR. LAZARUS: We next offer in evidence de-
2 fense document 348, being the Immigration Act of
3 1924 of the United States popularly known as the
4 Japanese Exclusion Act. The remarks for the term
5 "alien ineligible for citizenship" employed in the
6 foregoing Act means Japanese nationals among others.

7 THE PRESIDENT: Admitted on the usual terms.

8 CLERK OF THE COURT: Defense document 348
9 will receive exhibit No. 2305.

10 (Whereupon, the document above re-
11 ferred to was marked defense exhibit No. 2305
12 and received in evidence.)

13 MR. LAZARUS: I will read a very small
14 portion of this.

15 Section 3 on pages 2 and 3:

16 "Definition of 'Immigrant'. When used in
17 this act the term 'immigrant' means any alien
18 departing from any place outside the United States
19 destined for the United States, except (1) a Govern-
20 ment official, his family, attendants, servants, and
21 employees, (2) an alien visiting the United States
22 temporarily as a tourist or temporarily for business
23 or pleasures, (3) an alien in continuous transit
24 through the United States (4) an alien lawfully
25 admitted to the United States who later goes in

1 transit from one part of the United States to another
2 through foreign contiguous territory, (5) a bona fide
3 alien seaman serving as such on a vessel arriving
4 at a port of the United States and seeking to enter
5 temporarily the United States solely in the pursuit
6 of his calling as a seaman, and (6) an alien entitled
7 to enter the United States solely to carry on trade
8 under and in pursuance of the provisions of a present
9 existing treaty of commerce and navigation."

10
11 Sections 13 (a) and (c) on page 13:

12 "No alien ineligible to citizenship shall
13 be admitted to the United States unless such alien
14 (1) is admissible as a non-quota immigrant under
15 the provisions of subdivisions (b), (d), or (e) of
16 section 4, or (2) is the wife, or the unmarried
17 child under 18 years of age, of an immigrant admissible
18 under such subdivision (d), and is accompanying or
19 following to join him, or (3) is not an immigrant as
20 defined in section 3."

21 And lastly, Section 14 on page 14:

22 "Deportation. Section 14. Any alien who at
23 any time after entering the United States is found
24 to have been at the time of entry not entitled under
25 this act to enter the United States, or to have remained
therein for a longer time than permitted under this

1 act or regulations made thereunder, shall be taken
2 into custody and deported in the same manner, as pro-
3 vided for in sections 19 and 20 of the immigration
4 act of 1917: Provided, that the Secretary of Labor
5 may, under such conditions and restrictions as to
6 support and care as he may deem necessary, permit
7 permanently to remain in the United States, any alien
8 child who, when under 16 years of age was heretofore
9 temporarily admitted to the United States and who is
10 now within the United States and either of whose
11 parents is a citizen of the United States."

12 That concludes that document, if the Tribunal
13 please.

14 We next offer for identification only the
15 book entitled "Ten Years in Japan" by Joseph C. Grew,
16 former United States Ambassador to Tokyo, and as a
17 defense document, 206-B(30), an excerpt from that
18 book in evidence.

19 THE PRESIDENT: Mr. Comyns Carr.

20 MR. CARR: In our submission, your Honor,
21 the excerpt is subject to the same objection as in
22 the case of Mr. Powell. Of course an ambassador and
23 a journalist are not the same thing, but the expression
24 of an ambassador's personal opinions which he may
25 choose to publish in a book are, in my submission,

1 equally objectionable for the same reasons as the
2 Tribunal gave in the case of Mr. Powell's book.
3 As the extract shows, at the time when the book
4 was published Mr. Grew was no longer ambassador.
5 He was a former ambassador and, as a private citizen,
6 publishing this book as any other private citizen
7 might do. It is true that the book in part appears
8 to be extracts from a diary, but, in my submission,
9 that doesn't render under the section of the Charter
10 those extracts admissible in evidence to show the
11 opinions of the writer.

12 MR. LAZARUS: Mr. President, this excerpt
13 is specifically taken from the diary while Mr. Grew
14 was ambassador to the United States. These are
15 his observations and his opinions on what was going
16 on around him at that time, and he acted on those.
17 These are statements of facts that Mr. Grew quotes
18 in his diary from other people, also ambassadors, for
19 instance, Walter Edge; and it will be tied in directly
20 with the previously read document on the question
21 of the Exclusion Act.

22 THE MONITOR: What was the name of the
23 ambassador, please?

24 MR. LAZARUS: Walter Edge.

25 Surely the findings of fact of a man who

1 was ambassador from the United States to Japan
2 during these ten most crucial years are important
3 to this Tribunal. And his findings of fact most
4 certainly constitute evidence that the defense may
5 adduce.

6 THE PRESIDENT: When Mr. Ballantine was
7 giving evidence, we refused to allow him to express
8 opinions. He succeeded in expressing some in
9 an affidavit. We said we would disregard them.
10 We did so on the objection of the defense. If
11 Mr. Grew were here, we would not allow him to express
12 opinions. It follows we would not take his opinions
13 from his books. No doubt Mr. Grew would be a very
14 valuable witness. We thought he was going to be
15 called to testify as to happenings, not to give
16 opinions. He could give evidence in affidavit or
17 he could answer interrogatories.

18 MR. SMITH: Your Honor, in view of the fact
19 that these excerpts from Mr. Grew's diary are
20 matters of general importance, I would like to be heard
21 because it is a matter that will probably recur.

22 THE PRESIDENT: Mr. Carr has said they were
23 opinions and Captain Lazarus did not contest that.
24 We have not seen the excerpt or the book.

25 MR. SMITH: Well, your Honor, there is

1 apparently a misunderstanding. There have been a
2 hundred and forty excerpts altogether taken out
3 of Mr. Grew's diary. They are not matters of
4 opinion as Mr. Grew expresses in his book. Although
5 the book was published after the beginning of the
6 war, this diary was kept contemporaneously.

7 THE PRESIDENT: We might do in this case
8 what we have done in others, admit the excerpt
9 but undertake to reject any opinions. There may
10 be wedged in among the opinions statements of fact
11 of importance.

12 MR. LAZARUS: Mr. President, may I make
13 one observation? Then if the Tribunal were to
14 think these were opinions, although I thought I
15 had stated they were findings of fact by the ambassa-
16 dor, nevertheless wouldn't the opinions be of an expert,
17 an ambassador for ten years is certainly an expert
18 on the question of what is the subject matter and
19 contentions between his country and the country
20 he represents?
21

22 THE PRESIDENT: It was decided to admit the
23 excerpts, Captain Lazarus.

24 MR. LAZARUS: Thank you, sir.

25 THE PRESIDENT: The objection is overruled.

CLERK OF THE COURT: Defense document

1 No. 206, to wit, the diary of Joseph Grew, will
2 receive exhibit No. 2306 for identification only,
3 and the excerpt therefrom bearing the defense docu-
4 ment number 206-B(30) will receive exhibit No. 2306-A.

5 (Whereupon, the documents above re-
6 ferred to were respectively marked defense
7 exhibit No. 2306 for identification only and
8 defense exhibit No. 2306-A in evidence.)
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MR. LAZARUS: (Reading):

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"WHY AMERICA SHOULD NOT REPEAL THE EXCLUSION
ACT

"January 27, 1935

"The Bishop Reifsniders, just returned from America, and the Walter Edges, on their way around the world, came to tea. Reifsnider told me of his talks with Hull, Castle, and others, chiefly with regard to a repeal of the discriminatory provisions of the Exclusion Act of 1924. He tried to see Hearst in California to ascertain his attitude, but Hearst was ill and couldn't see him. I do not think that this is the time to approach the question; of course the Act always rankles and always will, but to repeal the discriminatory provisions now would be interpreted by many as an indication of weakness and as a desire to placate the martial spirit of Japan, and while lovely editorials would be written about our graceful action in recognizing Japan as an equal, it would not in the slightest degree alter Japanese policy or tone down the military propaganda. On the contrary I can see some Japanese writers arguing that having recognized Japan as an equal on the immigration issue, it would now be all the more appropriate and logical for us to recognize her as an equal on the naval issue. Besides,

1 who can ever predict with certainty that any bill will
2 pass the Senate? We thought our Lausanne Treaty with
3 Turkey secure, and, as far as I am aware, the admin-
4 istration thought the World Court Protocol would pass,
5 yet both were defeated. To bring up the repeal of the
6 discriminatory provisions of the Exclusion Act and to
7 have the effort fail would be disastrous. Better let
8 things lie for the present."

9 THE PRESIDENT: There is not much value in
10 that.

11 MR. COMYNS CARR: Your Honor, now that the
12 extract has been read my submission is that there is
13 no single statement of fact in it except that somebody
14 came to tea. The whole of the rest of it is opinion
15 and although the opinion doesn't hurt us in the slightest
16 degree we object to it in principle.

17 THE PRESIDENT: We advise you to look through
18 those 140 excerpts, Captain Lazarus. If they are all
19 like that they are hardly worth reading.

20 MR. LAZARUS: No, they are not all like that,
21 Mr. President. We think it is important, Mr. President,
22 because it shows the motivation for Mr. Grew's acts
23 as Ambassador during this critical period. However,
24 sir, we shall recheck the remaining documents.

25 THE PRESIDENT: Pick out your best. You must

1 know what they are, Captain, and read them first.

2 MR. LAZARUS: Certainly, sir.

3 Prosecution exhibit 31 contains the basic
4 treaty dated 20 January 1925 between the USSR and
5 Japan, but it omits the exchange of notes and other
6 documents attached thereto. The defense therefore
7 offers in evidence these missing documents at this time.
8 We offer now in evidence defense document 45, being the
9 exchange of notes, dated 20 January 1925 between the
10 USSR Ambassador and the Japanese Minister at Peking
11 on the occasion of the conclusion of this basic treaty
12 between the USSR and Japan. (Reading):

13 "Peking, January 20th" --

14 THE PRESIDENT: Mr. Carr may object. He says
15 he hadn't an opportunity to read that.

16 MR. LAZARUS: Oh, I am sorry.

17 MR. COMYNS CARR: I don't object.

18 MR. LAZARUS: Mr. Carr informs me there will
19 be no objection, sir.

20 THE PRESIDENT: Admitted on the usual terms.

21 MR. LAZARUS: This is the exchange of notes --

22 CLERK OF THE COURT: Defense document 45 will
23 receive exhibit 2307.

24 (Whereupon, the document above re-
25 ferred to was marked defense exhibit No. 2307

1 and received in evidence.)

2 MR. LAZARUS: (Reading)

3 "Monsieur le Ministre" --

4 MR. COMYNS CARR: I shall, of course, object
5 to it on the general ground of irrelavancy which I
6 apply to all these documents, but I don't make any other
7 objection.

8 THE PRESIDENT: As I said twice already, we
9 reserve the question of relevancy.

10 MR. LAZARUS: Yes, sir. (Reading):

11 "I have the honour on behalf of my Government
12 to declare that the Government of the Union of Soviet
13 Socialist Republics agrees that the work which is now
14 being carried on by the Japanese in Northern Saghalien
15 both in the oil and the coal fields, as stated in the
16 Memorandum handed to the Plenipotentiary of the Union
17 of Soviet Socialist Republics by the Japanese Plenipo-
18 tentiary on August 29th, 1924, be continued until the
19 conclusion of the Concession Contracts to be effected
20 within five months from the date of the complete
21 evacuation of Northern Saghalien by the Japanese troops,
22 provided the following conditions be abided by by the
23 Japanese:

24 "1) The work must be continued in strict
25 accordance with the data of the said Memorandum of

1 August 29th, 1924, as regards the area, the number of
2 workers and experts employed, the machinery and other
3 conditions provided in the Memorandum.

4 "2) The produce such as oil and coal cannot
5 be exported or sold and may only be applied to the use
6 of the staff and equipment connected with the said work.

7 "3) The permission granted by the Government
8 of the Union of Soviet Socialist Republics for the
9 continuation of the work shall in no way affect the
10 stipulations of the future concession contract.

11 "4) The question of operation of the Japanese
12 wireless stations in Northern Saghalien is reserved for
13 future arrangement, and will be adjusted in a manner
14 consistent with the existing laws of the Union of
15 Soviet Socialist Republics prohibiting private and
16 foreign establishment of the wireless stations."

17 The next letter:

18 "I have the honour to acknowledge the receipt
19 of the following Note from your Excellency, under this
20 date:

21 "'Monsieur le Ministre,

22 "'I have the honour on behalf of my Government
23 to declare that the Government of the Union of Soviet
24 Socialist Republics agrees '" --

25 Sorry, I thought we had the

1 second letter. Apparently I have identical letters
2 attached. Sorry, I will read on page 4 the last 2
3 paragraphs, which are really the essence of that letter,

4 "On behalf of my Government, I have the
5 honour to state that the Japanese Imperial Government
6 agrees entirely with the said Note.

7 "I avail myself" --

8 THE PRESIDENT: Omit those forms.

9 MR. LAZARUS: Yes, sir.
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1 MR. LAZARUS: We next offer in evidence
2 defense document 46, being Protocol (A) of the basic
3 treaty between the USSR and Japan, prosecution ex-
4 hibit 31.

5 THE PRESIDENT: Admitted on the usual terms.

6 CLERK OF THE COURT: Defense document 46 will
7 receive exhibit No. 2308.

8 (Whereupon, the document above
9 referred to was marked prosecution exhibit
10 No. 2308 and received in evidence.)

11 MR. LAZARUS: (Reading) "Protocol (A).
12 Signed at Peking, January 20, 1925."

13 I begin with Article 2, if the Tribunal
14 please.

15 (Reading) "It is agreed that all questions
16 of the debts due to the Government or subjects of
17 Japan on account of public loans and treasury bills
18 issued by the former Russian Governments, to wit by
19 the Imperial Governments of Russia and the provision-
20 al Government which succeeded it, are reserved for
21 adjustment at subsequent negotiations between the
22 Government of Japan and the Government of the Union
23 of Soviet Socialist Republics.

24 "Provided that in the adjustment of such
25 questions, the Government or subjects of Japan shall

1 not, all other conditions being equal, be placed in
2 any position less favourable than that which the
3 Government of the Union of Soviet Socialist Repub-
4 lics may accord to the Government or nationals of
5 any other country on similar questions.

6 "It is also agreed that all questions
7 relating to claims of the Government of either Party
8 to the Government of the other, or of the nationals
9 of either Party to the Government of the other,
10 are reserved for adjustment at subsequent negotia-
11 tions between the Government of Japan and the Govern-
12 ment of the Union of Soviet Socialist Republics.

13 "ARTICLE 3.

14 "In view of climatic conditions in North-
15 ern Saghalien preventing the immediate homeward
16 transportation of Japanese troops now stationed
17 there, these troops shall be completely withdrawn
18 from the said region by May 15, 1925.

19 "Such withdrawal shall be commenced as soon
20 as climatic conditions will permit it and any and
21 all districts in Northern Saghalien so evacuated by
22 Japanese troops shall immediately thereupon be
23 restored in full sovereignty to the proper authorities
24 of the Union of Soviet Socialist Republics.

25 "The detail, pertaining to the transfer of

1 administration and to the termination of the occupa-
2 tion shall be arranged at Alexandrovsk between the
3 Commander of the Japanese Occupation Army and the
4 Representatives of the Union of Soviet Socialist
5 Republics.

6 "ARTICLE 4.

7 "The High Contracting Parties mutually
8 declare that there actually exists no treaty or
9 agreement of military alliance nor any other secret
10 agreement which either of them has entered into with
11 any third party and which constitutes an infringement
12 upon, or a menace to, the sovereignty, territorial
13 rights or national safety of the other Contracting
14 Party.

15 "ARTICLE 5."

16 Just the first paragraph.

17 "The present Protocol is to be considered
18 as ratified with the ratification of the Convention
19 embodying Basic Rules of the Relations between Japan
20 and the Union of Soviet Socialist Republics, signed
21 under the same date."

22 We next offer in evidence defense document
23 47, being Protocol (B) of the aforesaid basic treaty
24 between the USSR and Japan, which was prosecution
25 exhibit 31.

1 THE PRESIDENT: Admitted on the usual terms.

2 CLERK OF THE COURT: Defense document 47
3 will receive exhibit No. 2309.

4 (Whereupon, the document above
5 referred to was marked prosecution exhibit
6 No. 2309 and received in evidence.)

7 MR. LAZARUS: (Reading) "The High Con-
8 tracting Parties have agreed upon the following as
9 the basis for the Concession Contracts to be con-
10 cluded within five months from the date of the complete
11 evacuation of Northern Saghalien by Japanese troops,
12 as provided for in Article 3 of Protocol (A) signed
13 this day between the Plenipotentiaries of Japan and
14 of the Union of Soviet Socialist Republics.

15 "1. The Government of the Union of Soviet
16 Socialist Republics agrees to grant to Japanese
17 concerns recommended by the Government of Japan
18 the concession for the exploitation of 50% in area,
19 of each of the oil fields in Northern Saghalien
20 which are mentioned in the Memorandum submitted to
21 the Representative of the Union by the Japanese
22 Representative on August 29th, 1924. For the pur-
23 pose of determining the area to be leased to the
24 Japanese concerns for such exploitation, each of the
25 said oil fields shall be divided into checker-board

1 squares of from fifteen to forty dessiatines each,
2 and a number of these squares representing 50% of
3 the whole area shall be allotted to the Japanese,
4 it being understood that the squares to be so
5 leased to the Japanese are, as a rule, to be non-
6 contiguous to one another, but shall include all
7 the wells now being drilled or worked by the
8 Japanese. With regard to the remaining unleased
9 lots of the oil fields mentioned in the said Memo-
10 randum, it is agreed that should the Government of
11 the Union of Soviet Socialist Republics decide to
12 offer such lots, wholly or in part, for foreign con-
13 cession, Japanese concerns shall be afforded equal
14 opportunity in the matter of such concession.

15 "2. The Government of the Union of Soviet
16 Socialist Republics also agrees to authorize Japanese
17 concerns recommended by the Government of Japan
18 to prospect oil fields, for a period of from five
19 to ten years, on the Eastern coast of Northern Sag-
20 halien over an area of one thousand square versts
21 to be selected within one year after the conclusion
22 of Concession Contracts, and in case oil fields shall
23 have been established in consequence of such prospect-
24 ing by the Japanese, the Concession for the
25 exploitation of 50%, in area, of the oil fields so

1 established shall be granted to the Japanese.

2 "3. The Government of the Union of Soviet
3 Socialist Republics agrees to grant to Japanese
4 concerns recommended by the Government of Japan the
5 concession for the exploitation of coal fields on
6 the Western coast of Northern Saghalien over a
7 specific area which shall be determined in the Con-
8 cession Contracts. The Government of the Union of
9 Soviet Socialist Republics further agrees to grant to
10 such Japanese concerns the concession regarding coal
11 fields in the Doue district over a specific area to
12 be determined in the Concession Contracts. With
13 regard to the coal fields outside the specific area
14 mentioned in the preceding two paragraphs, it is
15 also agreed that should the Government of the Union
16 of Soviet Socialist Republics decide to offer them
17 for foreign concession, Japanese concerns shall
18 be afforded equal opportunity in the matter of such
19 concession.

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21 "4. The period of the concession for the
22 exploitation of oil and coal fields stipulated in
23 the preceding paragraphs shall be from forty to
24 fifty years."

25 Paragraph six.

THE PRESIDENT: Well, the details of this

concession do not matter.

1 MR. LAZARUS: All right, sir, I will skip
2 the rest of that.

3 We next offer in evidence defense document
4 49, being a declaration annexed to prosecution
5 exhibit 31.

6 THE PRESIDENT: Admitted on the usual terms.

7 CLERK OF THE COURT: Prosecution document
8 49 will receive exhibit No. 2310.

9 (Whereupon, the document above
10 referred to was marked prosecution's
11 exhibit No. 2310 and received in evidence.)

12 MR. LAZARUS: (Reading)

13 "DECLARATION

14 "Dated at Peking, January 20, 1925.

15 "In proceeding this day to the signature
16 of the Convention embodying the Basic Rules of the
17 Relations between the Union of Soviet Socialist
18 Republics and Japan, the undersigned Plenipotentiary
19 of the Union of Soviet Socialist Republics has the
20 honour to declare that the recognition by his Govern-
21 ment of the validity of the Treaty of Portsmouth of
22 September 5, 1905, does not in any way signify that
23 the Government of the Union shares with the former
24 Tsarist Government the Political responsibility for
25

1 the conclusion of the said Treaty."

2 We next offer in evidence defense document
3 50, being a note annexed to prosecution exhibit 31.

4 CLERK OF THE COURT: We haven't that.

5 MR. LAZARUS: Mr. President, apparently our
6 document section has gotten just this far and we
7 respectfully ask that the eight minutes be let go.
8 Thank you, sir.

9 THE PRESIDENT: We will adjourn until half
10 past nine tomorrow morning.

11 (Whereupon, at 1555, an
12 adjournment was taken until Thursday,
13 27 February 1947, at 0930.)

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