

INTERNATIONAL MILITARY TRIBUNAL

FOR THE FAR EAST

J. N. Freeman

4 February 1947

TO: Mr. George Yamaoka

FROM: J. N. Freeman

SUBJECT: Opening Statement

As a whole, the opening statement submitted by the committee for each defense attorney's comment is primarily ^a defense or justification of Japan's actions in the past fifty years. It can be said, at the outset, that Japan is not on trial; and if she were, the policies she pursued prior to the war are already condemned by the world and cannot be defended. Therefore, at the outset we must accept an absolute fact, that there is no defense for a philosophy that has already been absolutely condemned.

From this premise I am going to comment on this opening statement very brutally and frankly.

The first eleven pages may or may not be all right simply because I am unfamiliar with the Japanese words that the statement attempts to explain. But the idea of Japan being a peaceful nation is just not true. An illustration is the beginning of the second paragraph on page 12. The whole gist of this paragraph, which is taken from Prince KONOYE's declaration of November 3 and December 22, 1938, relative to "a new order in East Asia," is that Japan had no intention of monopolizing China economically, but wanted China and Manchukuo to do as Japan wanted them to do and thereby make the Sino-Japanese cooperation and co-working effective. This simply means to the Western mind that as long as Japan had its way in East Asia, and more particularly in China and Manchukuo,

they would not start trouble, which is an untenable position and cannot be defended.

Again, on page 13, the statement speaks of the Imperial Way as "benevolence, righteousness and courage," and attempts to show that the Imperial Way is more comparable to democracy than that of the totalism of Germany and Italy. This again is a position to me that cannot be sustained.

On page 14, the first paragraph, the statement attempts to say what the people of Japan felt relative to racial superiority. The objectionable line in this paragraph is the last sentence: "The same view is also shared by the accused." I think this sentence should be deleted.

In the second paragraph on page 14, line 11, beginning with the sentence, "This indeed....," this is simply an asinine statement and untrue. It is an insult to the Court to say "The terminology of 'leadership' is understood by us not to mean domination or control but only to take initiative as advanced among ourselves," which simply means to the Western mind that Japan moved when they desired to move.

On page 15, line 3, "The joint declaration consisting of five articles adopted at the Greater East Asia Conference at Tokyo in November 1943 briefly expresses the essence of the new order in Greater East Asia. It provides," and so forth. This entire page should be deleted because the people attending that conference were forced to attend by the Japanese Government and could have been nothing but collaborators, regardless of where they came from, and the Court would so construe it.

The last two lines of page 21 beginning with the words "In 1878,"

and the first four lines on page 22, ending with "love and benevolence," is plain bosh. It is ridiculous to say that the Japanese people were not a warlike people and that the Imperial Household has always been for peace, love and benevolence. If one completes the entire paragraph, it can be readily seen how inconsistent such a statement is. In one breath the statement speaks of love and benevolence and peace, and in the next breath admits that in 1929 Japan adopted a military system for all its schools.

In the second paragraph on page 22, it is probably unwise to refer to the Ottawa Agreement as "notorious."

The second paragraph on page 23: "Before the war freedom of speech was respected like other countries." This statement is so at variance with the facts that no one could contend it. The remainder of the paragraph admits that freedom of speech was abridged.

The second paragraph on page 24 says that the so-called reformation movement, Kakushin Undo, in 1930-31 was not aimed at expansion. The first question is, what evidence have we to show this? The second is, does not the remainder of the paragraph go ahead and justify expansion?

In the first paragraph on page 25, line 5, "Excepting China, against which Japan never proposed to come to an over-all conflict," simply means that they wanted to piecemeal destroy China, and the Court could interpret it in no other way. Here, again, the statement is begging the question and attempting to justify or defend armed conflict against China and say that it was not war, which is ridiculous.

Paragraph 16 on page 26 is again begging the question. The fact that the responsibilities of different government functions were different from other countries is not a defense.

Paragraph B on page 27 attempts to give Japan's interpretation of the expression "war crimes." First, what evidence do we have to show what the interpretation was? Secondly, is it wise to show it if we can; because it is axiomatic that the rest of the world will not take Japan's definition.

On page 30, paragraph 19, line 6, "legal war or otherwise" should be deleted.

Paragraph 21 on page 31 discusses the instruction given field commanders through the Battlefield Manual relative to the treatment of prisoners of war. The statement says that wherever violators were found they were tried by court-martial. Are we prepared to show by evidence, substantial evidence, that Japanese officers and soldiers committing atrocities were tried by court-martial and punished? If not, we are laboring the question.

Beginning with the last sentence on page 31 through to the thirteenth sentence ending in the words "Division 1," this is an open admission of guilt in atrocities and should be deleted in its entirety by all means.

On page 37, paragraph 28, in the middle of the paragraph beginning with the words "In September 1931," etc., can we produce positive evidence of the fact that the Minister of War instructed the Japanese officials in Manchuria not to participate in the establishment of a new state?

On page 38, beginning with the first line of the second paragraph, "The responsibility for the Marco Polo Incident lies on China. Moreover, if the incident had been settled locally, as was desired by Japan, it would not have been so aggravated as to be called a 'war.'" As I understand it, this is a plain misstatement of the facts and we are asking for the

worst by making such broad statements. Here, again, we are begging the question when we say that Japan desired the incident to be localized, admitting participation in one breath and in the next breath saying China was responsible for it. To me this is an absurdity.

On page 39, line 5, and I quote: "Japan still stuck to the policy of non-aggravation." Such statements will have an ill effect upon our case because the position is untenable.

Paragraph 31 on page 40 is subject to question, and unless we can produce positive evidence of these statements it is certain to backfire. The last sentence of that paragraph, and I quote: "In other words, it was China that aggravated the incident to such an extent as to be termed 'war.'" This statement, if not substantiated by evidence, can do nothing but injure our cause.

Paragraph 32 refers to the "China Incident and not as the China War." What difference does it make what title Japan gave the war? It was war, nevertheless.

Page 41 in its entirety attempts to justify Japan's action by saying this was an undeclared war. This is no defense. Unless we can produce evidence that it was not of Japan's making, we had better remain silent.

The last sentence of the first paragraph on page 42: "We submit we hope to introduce five items in support of this contention." This sentence means nothing to me.

In the second paragraph of page 42 reference is made to the fact that China was compiling textbooks for her public schools that expressed anti-Japanese sentiments. This can be no cause for making war on China.

China is supposed to be a sovereign state and can do as she pleases in regard to teaching in her schools. Countries today are doing the same thing and no one is making an attack upon their system of government.

On page 43, beginning with line 4, "Besides," etc., this statement is belaboring China for preparing to resist Japan by acquiring arms and implements of war in large quantities. Why shouldn't they resist Japan? This is pure tommy-rot, and not a defense.

Page 44, paragraph 34. Here again we refer to the Marco Polo Bridge affair and say that the China Incident was traceable to that. The question arises again, who started the Marco Polo Bridge affair? Who struck first in China? Can we prove that China started it?

Page 45, we beg the question relative to Japan's conduct in China relating to narcotics and opium by saying that Japan reduced opium consumption in Formosa. This is no evidence. What evidence have we to refute the allegation of the prosecution that Japan encouraged the use of opium in China?

On page 46, lines 2, 3 and 4 of the first paragraph referring to atrocities says, and I quote: "and if such deplorable facts come to their knowledge, due punishments would be meted out to the perpetrators of the crimes." Can we offer any evidence to substantiate this statement?

On page 49, middle of the page, beginning with line 17 with the words "In defending the menace of communism," etc., the statement says that Japan's interest was identical with Germany's. This is an untenable position and will in no wise be accepted by the Court as a defense for signing the Tri-Partite Pact.

Page 50, paragraph 43, I quote: "Atrocities and cruelties allegedly

Feb. 21, 1947

To all American Counsel:

Japanese defense counsel held a general meeting at noon to-day and discussed on the draft of the opening speech and reached at the following decisions:

- (1) to add preliminary remarks;
- (2) to withdraw the expression that some accused feel political responsibility toward the Emperor and Japanese nation;
- (3) to eliminate the particular word "Clique";
- (4) to preserve the paragraph concerning "Hako-ichiu", "New order in East Asia", and also to preserve and to insert the decision of East Asia Conference of Nov. 5, 1943.

The meeting has also finally decided that the counsel to deliver above statement should be Dr. Ichiro Kiyose.

Dr. S. Uzawa (Signed)
Chief of Japanese Counsel

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21 February 1947

OPENING STATEMENT OF DIVISION I.

I have the following objections to make to the draft of the Opening Statement.

Page 1, starting 7th line, "Coupled with encirclement by the Western Powers, forced her as a last resort to fight for her very existence."

Paragraph numbered IV, "the encirclement of Japan by the Western Powers in the Pacific and Asia."

Page 14, last two sentences, "It will also be shown by maps and charts how Japan has been gradually encircled economically and territorially by world powers leading up to a point where her very existence was threatened. Conditions had reached such a state that it became absolutely imperative, from sheer necessity to make a momentous decision -- fight or starve."

I lump all of these statements together since they are closely related and are subject to the same objections. They seem to me to repeat and stress the discredited arguments of the militarists in Japan. I realize that some of the accused must make this defense but it certainly does not fit all of them. There are some among them who opposed war, felt that it was not inevitable and that Japan should not have attacked. Such statements in a general defense would make them appear unpatriotic, almost traitors. "Encirclement" is a journalistic word. "Fight or starve" is for a headline. They are much too strong, do not seem to me to conform with the truth, and certainly do not fit the defenses which will be

presented by several of the accused.

PART II

Page 8, 4th full sentence, "TERAUCHI's contention that it (the cabinet) should be dissolved was based on anti-militaristic statements of certain members of the Diet which contention was opposed by HIROTA." I suppose HIROTA's counsel will take care of this but it is obvious that the idea is not clearly expressed.

Page 8, 8th full sentence, "The HIRANUMA Cabinet's fall on August 29, 1939, was due to his sense of responsibility on the sudden and unexpected conclusion of the non-aggression pact between Germany and Russia." Here against I suppose Hiranuma's counsel will take care of it but again it is not clear and I am not certain that it conforms with the facts.

Page 9, the first two sentences, 2nd full paragraph. These sentences do not seem to me clear. The first sentence refers to two cabinets at the outbreak of the Manchurian Incident and the commencement of the China Affair and the outbreak of the Pacific War. Later it refers to one cabinet at the commencement of the Manchurian Incident.

I believe that you will find among the accused one or more who was a member of more than one cabinet at the time of the outbreak of the Manchurian Incident September 18, 1931; commencement of the China Affair July 7, 1937; and the outbreak of the Pacific War December 7, 1941.

Page 12, 1st line - "personal reasons" seems to me the wrong word for defining a motive for selection of a Prime Minister.

Page 14, end of 1st paragraph "particularly with respect to the imminent threst it offered in attempting to force a humiliating capitulation in China." I don't think that such an attempt can be proved. Withdrawal of troops from China is not necessarily a "humiliating capitulation" and several of the accused advised it. I believe that this should be omitted.

I believe that a general statement should be made at the end to the effect that individual defendants in presenting their own cases will introduce evidence inconsistent with this opening statement, that this is inevitable in a multiple trial and is further proof that there was no conspiracy. I think that the fact that there will be individual defenses, diverse and conflicting, should be stressed. If such statements bring comment or a ruling from the Court we will know where we stand.