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CONFIDENTIAL

DEFENSE COUNSEL ONLY

DRAFT OF OPENING STATEMENT

BY

DR. KIYOSE, ICHIRO

61 P.P.

Mr. President and members of the "Tribunal".

1. On 16 May 1945 the accused unanimously in open session before this honorable court pleaded "not guilty" to all the 55 counts and charges of the Indictment.

While it is truee that some have been selected properly to formulate and execute the national policies of Japan during the period alluded to in the Indictment, it is not to be understood that the denials of these Defendants in any sense implies that they mean to evade their responsibilities toward His Majesty, the Emperor, and the entire Japanese nation. However, it is respectfully submitted that this court of justice is international in character and not a national court, before which the culpability of a state official should be challenged. This international court has jurisdiction only of matters that involve another nation or nations.

The Prosecution assumes that all military precautions adopted by the government of Japan during the years from 1928 to 1945 were criminal acts in themselves from the standpoint of International Law. It not only avers that the policies of Japan are criminal (see words of Chief of Counsel that the "Act of Japan" is on trial - R-420) but it is charged that as a nation initiates a criminal war, a so called war of aggression, or a war in violation of certain treaties, the individuals who happened to be in office at the time and participated in the decision to wage such a war are criminally responsible. That seems to be the position asserted by the Prosecution. In other words, the fundamental proposition

in this case is that Japan continuously committed alleged international crimes during the entire period of seventeen years.

All the accused deny that proposition emphatically. Counsel for the Defense also represent to your Honors, and respectfully point out that in 1928 or thereafter there was nowhere in existence a principle of international law that even tended to impute personal responsibility upon individuals as instrumentalities of the state while acting on behalf of the state in its sovereign capacity. Under this belief, therefore, it was not only reasonable but honestly justifiable that all these accused enter a complete denial and protest of every charge and allegation in the Indictment.

2. Therefore in this unusual proceeding the important issued seems to be whether or not the safety measures, military and naval preparedness, embraced by Japan since 1928 were "aggressive" in nature.

It is too fundamental to designate to the members of this court, that all preparedness of one nation is made in contemplation of the activities and apparent objectives of another or other nations. It is inconceivable to determine the scope of such preparedness apart from this vital consideration. It may well be, and no doubt has occurred in history, that a particular nation has doubled its standing army, and it has been assailed as an offensive act, whereas it has later been ascertained that a neighboring state trebled its standing army, and the act of the first nation is considered logical and sound.

In this case it is conceded by the defense that only Japanese military and naval preparedness is on trial - not that of other countries, some of whom are party complainants, but within the limit of determining the nature of the policies and measures of Japan we expect that we may be permitted to present briefly evidence concerning the activities and undertakings of other nations.

3. There are three important considerations which should be outlined in this opening statement in order to properly construe the exact nature of the internal and external policies of Japan during the period covered by the Indictment. These are not policies of any particular cabinets, of which there were several, nor are they principles of political parties. But they are national, long standing, and firm aspirations universally subscribed to and revered by the entire Japanese nation since the opening of the country in 1853.

The first of then national characteristics is the fervent wish of the Japanese people to preserve the nation as a perfect independent state. The treaty of "ANSEI", between Commodore Perry and Shogun, impaired the sovereignty of the nation extra-territorially, and with respect to Custom autonomy, and thereby was most deeply regretted by all Japanese.

The ultimate desire of foremost educators throughout Japan in the MEIJI period was to elevate and enhance the standing of the nation to a position of perfect independence. Since that purpose is a worthy one, consistent with the principles advocated by President Wilson

after World War I its justification and ideals must be recognized by this Tribunal. The defense hope to prove that this principle was the universal aspiration and expectation of the Japanese people.

The second point is the insistence for the abolition of racial discrimination. Racial discrimination affects those who are discriminated against much more keenly than those who discriminate. However, in order to eliminate racial discrimination the standards of culture and education for this nation must be raised. The government and the people of Japan were not blind to these necessary requisites. If morality and custom called for certain modifications and improvements they would willingly admit their necessity and adopt them. But the culture of the world is not singular but plural according to the number of nations concerned. Each nation has its own history and tradition, and culture is created and developed accordingly.

Since, therefore, East Asia has its own culture it has been the desire of the Japanese people to preserve and purify it so that an equal position may be maintained with all races and peoples in every respect and thus contribute to the progress of mankind everywhere. The aspiration for racial equality cannot be realized simply by raising the position of the Japanese to the standard of Europeans and Americans. From its own nature the standard of all the people in East Asia should be raised in order to attain the complete abolition of discrimination. It is true that some few authors might have referred to this idea in an extravagant

manner, but these writers were the exception. It is the universally held hope of the Japanese people to reach that standard attained by Europeans and Americans together with all other peoples in East Asia. It is expected that this point too will be proved by the Defense in order to clarify and avoid any misunderstanding.

We shall further develop that Dr. Sun-Yat-Sen, the father of the Chinese revolution, and other leaders in India and throughout East Asia expressed sympathy with this idea. Although the people of Japan had and have their cherished idea to preserve and develop traditional Oriental civilization there has been no such thing as the sense of national superiority. On the contrary they only wished cooperation with other peoples in East Asia to secure equal status in the world. If the true intention of the Japanese people in this respect is rightfully understood it would not create antagonism with the peoples of other countries.

The third fact to be referred to is what has been termed "the fundamental principles and doctrines of diplomacy". Since the Meiji Period the prevailing ideal held by the government and the people of Japan in respect to foreign relations was to maintain peace in East Asia and thereby contribute to the welfare of the whole world. This was called the cardinal principle of diplomacy in official documents and Imperial Rescripts, that is to say, the fundamental ideal of Japan in guiding its foreign policy. The war with China 1894 to 1895 and the war with Russia 1904 to 1905 were fought with that aim and consideration in view. That is clearly written in the Rescripts in the opening of these wars. In view of the actual conditions at that time Japan was the only country in the Far East which had adopted a western civilization and had all the qualifications of a modern state. Although China was a country of large area and abundant

resources she faced the danger of being partitioned by the Powers into spheres of influence. Most of the region in the south had already come under the domination of several Occidental Powers. Under such circumstances the Japanese people felt sincerely that Japan had a special mission as a stabilizing power in the East. This is not a peculiar notion held by the accused but it has been a fundamental principle held for at least two generations by the Japanese nation. It is understood that this principle has been recognized by the great powers, and we expect to prove that the Anglo-Japanese Alliance was concluded and renewed on the recognition of that principle. The Japanese people cannot forget the sympathy of the government and the people of the United States shown toward Japan at the time of the Russo-Japanese war, which was fought for the maintenance of that cardinal principle. That principle of stabilization was never of an aggressive nature. On the one hand it prevents East Asia from falling into political and economic confusion, and, on the other hand it promotes the common development of all Asiatic reaces and thus their contribution to the progress of manking. In the light of the foregoing idea only could the relations between Japan and her neighbors be fully understood. The government and the people of Japan have been especially sympathetic to the preservation and development of China. This is well expressed in official and unofficial documents since the Meiji Period.

The relations between Japan and the Celestial Empire has often been voiced by the proverb "Shin-Shi-Shoha" which means that "without teeth lips are exposed to coldness", "two wheels of a car help one another". Another saying is "doben doshu" meaning, that both countries use the same letters, represent the same Confucian Ethics and are of the same race. About 1900 Japan invited many students from China, President Chang Kai Shek being one of them. Since the revolution in 1911 the government and people of Japan extended sympathetic understanding to Doctor Sun Yat Sen's work. It is true that the Japanese Military Staff had annual military plans, as had been pointed out by the Prosecution, but it is also true that the military staff never made a hypothetical military over all plan against China. The presentation of evidence on these facts will, we believe, be helpful to the Tribunal in disproving several averments contained in the Indictment, and of testimony in the record.

5. The allegations in the Indictment are divided into 55 Counts. Many of them aver one and the same allegation concerning the same charges viewed from different angles, and seem to overlap. Some of the Counts refer to all the accused and others refer to but a few. If all the accused here produced evidence individually and separately on behalf of themselves one after another against these numerous and diverse Counts, a great repetition and confusion would be bound to arise. So the defendants and their counsel have come to an agreement that they will produce as far as possible, evidence in common when the Counts charged are in common. As the result of this agreement, the proof to be presented in common are divided into the following divisions and evidence will be produced accordingly.

Division 1. General problems.

Division 2. Matters concerning Manchuria and Manchoukuo.

Division 3. Matters concerning China.

Division 4. Matters concerning the Soviet Union.

Division 5. Matters concerning the Pacific War.

After the presentation of evidence in the above divisions, each accused will from his own individual standpoint offer evidence concerning himself. In that case some of the accused might, from their standpoint, demand exceptions to the facts and evidence as adduced in the above five divisions or may replenish on evidence from their individual interest. This phase may for the sake of convenience be called, "Division 6. "Individual cases or individual division".

6. I shall now point out a few important facts which will be dealt with under Division I, and explain the method of presenting evidence. Needless to say, the

matters to be pointed out here are but a part and not all of the matters to be dealt with in Division I, further remarks being reserved to be made at the opening of each Division. The same can be said with regard to other Divisions.

7. In Count 5 of the Indictment, citing the whole of the particulars in Appendix A, and treaties and assurances in Appendix B and C, it is charged that the Japanese Government, in which the accused participated, had an intention to dominate the whole world in conjunction with Germany and Italy. There may be no greater misunderstanding than this. As to relations between Japan and Germany and Italy, my colleagues will present our case at the phase dealing with Anti-Comintern Pact and Tri-partite Pact. I should like here to treat the matter as a whole concerning ideals and aspirations of Japan on the one hand -- that of Germany and Italy on the other. All the confusion and misunderstandings are due to the interpretation of the idea of "Hokko ichiu", cited in the preamble of the Tri-partite Pact and in the Imperial Rescript, issued at the time of the conclusion of the Pact. It is customary that solemn classical words and phrases are fondly used in our official documents, giving some effect to make the document dignified but at the same time adding obscurity even to Japanese people themselves. So much with foreigners who have different languages. The Imperial Rescript issued on the conclusion of the Tri-partite Pact paraphrases "hokko ichiu" and says, "It is indeed a great teaching of our Imperial ancestors that the Great Cause shall be propagated all over the eight corners of the world and the whole humanity on earth shall be deemed to be in one family. To this august teaching we endeavor to adhere day and night." "The Great Cause"

here means "universal truth". To be "propagated" here means that the said idea be understood by and be accepted in all the world. "To be in one family" means that the whole mankind is to live together with the feeling of brothers and sisters in one household. As I said before, our culture is of a different origin from that of the West, and therefore the expression is necessarily very different or even quaint to the Europeans and Americans. But its true meaning is not different from the ideal of democracy, which is the foundation of the Atlantic Charter.

In the plan for the Japanese-American understanding, which was the basis of negotiation between Secretary Hull and Ambassador Nomura, "Hokko ichiu" is translated into English as "universal brotherhood". The Representative of Thailand at the Greater East Asia Conference in November 1943 translated it, "the union into one family on the basis of justice, righteousness and peace." These things might at first sight appear idle research of language. But the counsel for the defense are ready to produce authoritative evidence and witnesses to prove the correctness of what I have said because the proof seems necessary for the interests of the accused in this case. The preamble of the Tri-partite Pact should be interpreted in its proper meaning. Whatever was the idea held by Germany and Italy at the time of the conclusion of the treaty, concrete evidence will be produced to show that the Japanese Government had no intention to conquer the world in cooperation with Germany and Italy.

8. In Article 2 of the said Pact it is provided in effect that Germany and Italy respect and recognize the leading position of Japan in the establishment of a new order in Greater East Asia. No word is more subject to misunderstanding than the expression, "A new order in East Asia" or "Greater East Asia co-prosperity sphere." The chief of counsel for the prosecution went so far as to say that

"a new order" is an idea to destroy democracy and freedom and the respect for personality, which are the basis of democracy. (R. 385-447). Is it not a confusion of the ideal of the Japanese nation and that of other countries, or, at least, a product of association with other ideas that led the Chief of Counsel to such a misunderstanding? But the implication of the particular Japanese words as used at the period under consideration, and the nature of the Japanese idea itself alone are necessary for consideration here.

It was in the Konoe declaration of November 3rd and December 22nd, 1938, that the words "a new order in East Asia" were first officially used. As to the meaning of "a new order in East Asia" as used in the Konoe declaration, it is a document which speaks for itself; that Japan, Manchoukuo and China will cooperate on the basis of good neighborliness, common defense against communism, and economic cooperation. As to the relation with other countries, the declaration says, "With regard to the economic relations between Japan and China, Japan has no intention of monopolizing China economically. We are not demanding that China restrict the interests of the good intended countries who recognize the new East Asia and are willing to act accordingly. The only thing we expect is to make the Sino-Japanese cooperation and co-working effective." It did not exclude the principle of equal opportunity. We must, however, remember, as the Prosecution contends, that it was the period when large scale battles were taking place between the two countries involving more than a million soldiers. In such a period of large scale conflict it was inevitable that various restrictions were imposed upon foreigners as well as upon nationals of the conflicting states. In connection with this point, the joint declaration of Foreign Minister Arita and the British Ambassador Cragie in July 1939 will be presented as evidence. The declaration says in part that, "the

British Government fully recognizes the actual condition that a large scale warfare is going on in China, and the British Government recognizes that the Japanese Army has a special demand in order to secure its own safety and to maintain peace and order of the area under its control as long as the said condition continues to exist . . ."

Briefly speaking, the gist of the so-called new order advanced by Japan is on the one hand good neighborliness and cooperation, equality and reciprocity on the basis of virtue, and on the other hand restriction of the subversive activities of communists who aim at the destruction of the foundation of the present social order. It does not intend at all the disregard of personality or the destruction of freedom, as is misunderstood widely. The intrinsic content of the idea of the new order as used in Japan is the "Ko-do" or "Imperial Way", as it is sometimes translated. The gist of the "Imperial Way" is benevolence, righteousness and courage. It respects courtesy and honor. Its ideal is to let everyone have his or her own part, and fulfill his or her duty. It aims ruler and ruled to be of one mind and administered by the sincere aid of the whole people. It is just the opposite to the idea of militarism and despotism. It is extremely difficult to express such ideals in language other than Japanese. But as far as the respect for individual personality is concerned there is no fundamental difference between the "Imperial Way" and democracy. Confucianism, as well as the philosophy of India, had a great influence in the development of the "Ko-do". It is unusual that evidence is adduced to prove such abstract ideas in a court of justice. But we must do this in the instant case. We have a speech made by one of the accused at the Imperial Diet showing the difference between the "Imperial Way" and totalitarianism of Germany and Italy. Since the speech was delivered just at the midst of the negotiations with Germany and Italy, it can be said that the difference between the idea of our new order and Nazism

and Fascism had already been clearly understood among us at that time. We have also a reply of another accused in response to an interpellation of a member concerning "Ko-do". One outstanding difference between our idea and that of Germany's is that the totalitarianism of Germany tried to control the whole by force, while "Ko-do" tries to co-ordinate the whole by virtue. Another obvious distinction between the two is that there is no taint of racial superiority in Japan as is found in Germany. On the contrary, our people are always conscious of our own limitations and are anxious to reach the world standard with other peoples in East Asia. The same view is also shared by the accused.

However, the following point should be noted. In the Tri-partite Pact, Article I provides that Japan recognizes the position of Germany and Italy in the new order in Europe while Article II provides that Germany and Italy in exchange recognize the position of Japan in the new order in Greater East Asia. The language follows the ordinary formula of reciprocity of diplomatic documents. Besides the same words "a new order" are employed to signify entirely different ideas held by Germany and Japan, and the Pact places Germany and Italy on one hand and Japan on the other hand on an equal standing. This indeed, is the main cause of misunderstanding. The intention and activities of Germany and Italy were totally different from the new order in East Asia which Japan advocated at that time. Since our new order is to respect the independence of every country, it never implies the idea of world conquest and it is nothing to do with the restriction of individual freedom. The terminology of "leadership" is understood by us not to mean domination or control but only to take initiative as advanced among ourselves. Such fundamental national ideal can never be affected or changed by the erroneous wording of a treaty or treaties. Later on we have come to use the words "the new order in Greater East Asia" or "the Greater East Asia Co-

prosperity Sphere" including not only Manchuria and China but also other countries in East Asia. But the fundamental idea remains the same. 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:

1. "The countries of Greater East Asia through mutual cooperation will ensure the stability of their region and construct an order of common prosperity and well-being based upon Justice."

2. "The countries of Greater East Asia will ensure the fraternity of nations in their region by respecting one another's sovereignty and independence and practicing mutual assistance and amity."

3. "The countries of Greater East Asia by respecting one another's traditions and developing the creative faculties of each race, will enhance the culture and civilization of Greater East Asia."

4. "The countries of Greater East Asia will endeavor to accelerate their economic development through close cooperation upon a basis of reciprocity and to promote thereby the general prosperity of their region."

5. "The countries of Greater East Asia will cultivate friendly relations with all the countries of the world and work for the abolition of racial discrimination, the promotion of cultured intercourse and the opening of resources throughout the world, and contribute thereby to the progress of mankind."

The foregoing resolution together with the speeches made at the conference by the representatives of various countries will be presented as evidence. Although the resolution considers East Asia as one family of nations with regard to political life, it takes world wide view as far as the communication among countries, development of resources and the exchange of cultures are concerned. Article 5 of the

resolution is especially noteworthy. It was generally held at that time that this planet is too large as a political unit but too small economically if it is divided into various units. Thus it will be proved that the idea of new order among us has not been that of world conquest.

9. My duty is to explain facts to be presented to the Tribunal in brief form. Therefore, I will avoid legal arguments as far as possible. But as the Chief of Counsel for the Prosecution aptly indicated (Record 402), Conspiracy as the first crime in the Charter of this Tribunal is only referred to and not defined in the Charter. Apart from the legality of the Charter to punish conspiracy, we cannot without definition of conspiracy determine the facts which the Prosecution charges as criminal. Nor can the defendants know what kind of evidence they are called upon to disprove. The Chief of Counsel for the Prosecution cites the decisions of the United States' Courts in order to define conspiracy and seems to assert that it is indisputable. But this Tribunal is an international court. We submit respectfully that it is not proper to apply a particular legal theory which has developed in a certain country with its peculiar historical background at this Tribunal as if it were a general principle of law. The idea of Conspiracy is unique in the Anglo-American legal system and its counterpart cannot be found in the criminal code of the Roman Law. Even in countries which have adopted Anglo-American legal systems, it is impossible to apply particular decisions of England and America. In some countries when two or more persons clearly plot a particular crime they are punished as accomplices. In that case the object of the plot must be clearly illegal and it cannot be accomplished except by adopting an illegal method. In Japan it is rather exceptional to punish preparation of a crime and plot thereof before the commission of a criminal act. The kinds of crimes the preparation of which are punishable

are enumerated in the criminal code. The same as I understand it, could be said as to the criminal law of other countries which have adopted the Roman legal system. Moreover, in order to constitute a plot or conspiracy as an independent crime, the date and place of such plot or conspiracy must be specified to an intelligible extent. In countries which have not adopted the Anglo-American legal system, it is inconceivable that a plot could exist from January 1928 to September 2, 1945. What I wish to submit is that the said doctrine, to wit, the doctrine of conspiracy, as has been developed in England and America as one entity, cannot be deemed to constitute a part of international law. If the decisions cited by the Chief of Counsel for the Prosecution mean that those who join the conspiracy after the common plan was formulated are criminally responsible to the same extent as the original conspirators, it is not decidedly a commonly accepted legal principle and therefore cannot be applied at this International Tribunal as Precepts of International Law.

10. In Division 1, the Defendants are prepared to produce evidence to show that no such thing is to be called "criminalistic military clique" as referred to in Section 1 of the preamble of the Indictment nor has been existent in this country since 1928, and that no criminalistic organization among the accused and other divers persons has been formed through the said period. The method of selecting the head of the cabinet since 1928 was largely a matter of chance. If a cabinet falls for some reason or other, the Emperor asks through Lord Keeper of the Privy Seal, advice of elder statesmen (mostly ex-premiers) as to who is to succeed. As the elder statesmen themselves are not an organized group, those who happen to attend the meeting discuss the matter and select

extemporaneously a premier-designate after due consideration to the exigency at the time, and report the decision to the Throne. The Emperor accepts the report without exception. Hence there is no way to tell beforehand who will become the Premier until the moment the report of the elder statesmen is submitted to the Throne. Therefore, it is impossible in Japan that a certain organization party or clique monopolizes power for any duration of time, and continues a particular plan or conspiracy. The pertinent documents and witnesses will be produced to prove this point. The so-called "Tanaka Memorial" as was referred to by a certain prosecution witness, is a forgery and travesty. To us it looks rather ridiculous. Besides this there is no competent legal evidence to prove the aims, objects and organization of such a "criminalistic clique".

Section 2 of the preamble of the Indictment and paragraph 4, Section 6 of the Appendice of the Indictment seem to consider the Imperial Rule Assistance Association and the Imperial Rule Assistance Political Society as something like Nazis in Germany or Facists in Italy. Nothing can be a greater misunderstanding of Japanese politics than this. The former is a "public organization" to assist the administration of the Government; the meaning of a "public organization" will be proved later. The latter is a political organization created by statesmen at that period. Its purpose was to coordinate their action in the Diet. It is like the political parties in England and America in the sense that it takes independent views and holds its own political opinion apart from the Cabinet. Although this point has been partly proved by cross-examination of the witness produced by the Prosecution, we

think it necessary to prove more conclusively by authoritative documents and witnesses, and expect to do so.

The Chief of Counsel for the Prosecution refers to the Imperial Ordinance of 1936 to the effect that the Ministers of War and of the Navy must be selected from among generals and vice-generals or admirals and vice-admirals of the active list, and goes on to contend that the purpose of the Ordinance was for the army to control the government and that the army utilized the Ordinance for the plotting of armed expansion of Japan (R.441, 442). This is contrary to the real state of affairs. This Imperial Ordinance was promulgated after the February 26 Incident of 1936 (a rebellion in which Premier Okada and other elder statesmen were assaulted). It was feared at that time, that, if some generals in the reserve list had any connection with any group of men concerned in the February Incident, and one of them happened to be appointed War Minister, that would be a serious matter for the safety of this state. This Ordinance was created to prevent the occurrence of that kind of thing. In other words, the purpose of the said Ordinance was to make a thorough purification of the army possible. As a matter of fact, the Ordinance was successful. Its result was contrary to the Prosecution's charge to restrain those who insisted on using armed force illegitimately. On this point we are ready to present evidence. Briefly speaking, it is a misunderstanding of fact to think that there was an organization like a criminalistic military clique which controlled the Japanese Government during the period specified in the Indictment.

11. It is also necessary to disprove the charge of conspiracy among the accused for the conquest of the world in general (Count 45); domination of East Asia, the Pacific, Indian Ocean and regions adjacent thereto, (Count 1); or the control of China, (Count 3); or the control of Manchuria, (Count 2). There are differences of age, walks of life and environment among the accused. Some of them are army or navy officers, some are civil officers, some are diplomatic, and some are authors. They never had any chance to meet as a whole or in part with any special object in view. They never had any occasion to exchange their opinions on any such matter. If some of them as a group were in any way related with the Manchurian Affairs, the China Affairs or the Pacific War, it is due to the fact that they were prominent personages when these incidents or wars which demand concerted activities of the whole nation, took place. There is no such fact that the accused and certain divers persons, who are not indicted, created a conspiring organization and by some method or other made a common plan to conquer or dominate the world, East Asia, the Pacific Ocean, the Indian Ocean, China or Manchuria. We will produce evidence to disprove the existence of any such conspiracy of conquest or domination.

12. There is another point in this connection which the Defense are ready to prove. It is a mistake to think that there is one common and premeditated plan throughout the Manchurian Incident, the China Incident and the Pacific War. They are separate matters having separate causes. Persons who are concerned with one incident are different from the persons concerned with the others. There is no such fact that the former

officials passed on their premeditated plans to their successors The most obvious thing is the difference between the Manchurian Affair on the one hand and the China Incident and the Pacific War on the other. The Manchurian Incident came to an end in 1933 by Tanku Truce. After that officials of the Chiang Kai-Shek Government concluded agreements with Manchoukuo with regard to customs, postal service, telegraph and railroad. In 1935 Chiang Kai-Shek promulgated the Good Neighbor Ordinance toward Japan. Mr. Hirota, Foreign Minister of the Okada Cabinet, negotiated with China and formulated the "Hirota Three Principles" including the recognition of the status quo of Manchuria and North China and secured consent of the Chinese Government to discuss the details with these principles as its basis. The China Incident which took place four years after Janku Truce had been intentionally planned and executed by particular individuals. The necessary evidence to prove the above point will be produced.

13. In Division 1, various evidence will be produced in connection with Japan's internal politics. The Chief of Counsel alleges that for many years, even previous to Jan 1, 1928, the Japanese army taught a militaristic spirit to Japanese young men, and tried to cultivate an extreme nationalistic idea that the progress of Japan depends upon wars of conquest. The Chief of Counsel went on to say that the army enforced that educational policy in public schools, and he concludes that this fact is evidence of the existence of a conspiracy (R. 436). Nothing can be a greater mistake than such a view of Japanese education. The educational system in the public schools was based on the American system since 1872. The foundation of Japanese national ethics was since then the synthesis of Japan's ancient tradition and China's Confucian teachings with modification by Occidental ethics. In 1878, the Imperial Rescript concerning education was promulgated, in which certain virtues such as

loyalty, filial piety, universal love, justice, public spirit and the spirit of service were specified. It never included warlike spirit. The fundamental principle held by the Imperial Household has always been peace, love and benevolence. It excludes extravagance and encourages simplicity and vigor; but it is different from the encouragement of war. It is true that after 1929 following the example of the United States and Switzerland, Japan adopted military drill in schools with the aim in view of developing discipline of mind and body, and to advance the character of youth. This was done in connection with the reduction of armaments and is not an expression of aggressiveness. The foregoing principle is the fundamental educational policy and no Minister of Education had the power to modify it. There is nothing to prove that the Government or the army taught the people that the future of Japan depended on aggressive war.

As one of the inevitable economic consequences of the first World War, worldwide over-production occurred and trade was seriously restricted. Japan, which is lacking in natural resources and depends on the export of commodities produced by light industry, was faced with a grave difficulty. In July 1932, the notorious Ottawa Agreement of the British Empire was concluded. In Ottawa of the same year, the Malay Confederation raised its tariff 21 per cent ad valorem against Japan. In September 1933, the Chamber of Commerce of the Union of South Africa proposed the abrogation of the gentlemen's agreement with Japan. The trade negotiation between India and Japan which took place from the end of 1933 to January 1934 was discouraging and fruitless. In September 1935, the Government of

Egypt levied exchange insurance tax of 4 per cent and ad valorum against cotton goods and other Japanese commodities. In January 1936, the Union of South Africa imposed an exchange damping tax on Japanese cotton goods and artificial silk. These are only some examples of measures taken against Japanese commodities; general restriction of free trade became prevalent the world over and tendency to economic nationalism was rampant. Incidentally, every nation increased armament at this time as will be shown later on. In Japan where the natural resources are meager, and its production depends so much on light industry, there has been no means left but to reorganize finance and industry on the basis of planned economy for the security of our nation. Such being the circumstances under which Japan initiated a novel plan of reproduction, it will be clearly proved that the program had nothing to do with future war or aggression. On this point we are prepared to have some experts testify in this Tribunal.

Before the war freedom of speech was respected like other countries. However, it is a truism that the propaganda of communism has been prohibited by law since 1925. Japanese people wished to maintain the system of private property and they violently hated to have the Imperial Household, which has been the object of national reverence, disrespected. The communists deny the system of private property and they intended to destroy the Imperial Dynasty. Since 1920, the movement of the Communist Party became active in Japan and a subversive movement to destroy private property and the Imperial Dynasty began to take impetus throughout the country. It is only natural under such circumstances that a sovereign state prohibits such a movement.

It is neither a plan nor a preparation for war. This point can be easily proved by the fact that the Peace Preservation Law was proposed by the Coalition Government of the three parties which were regarded as liberals. The facts concerning the direction of thought and speech will have to be shown by producing evidences. It is needless to say that once war opens a certain amount of restriction becomes necessary for preventing espionage, which is introduced in every country without exception. There should be no confusion of thought on this point.

There arose a so-called reformation movement (Kakushin Undo) in Japan in or about 1930-1931. This movement was not necessarily aiming at expansion. It must be remembered, however, that the Japanese population was increasing year after year and was almost on the point of reaching one hundred million. Natural resources were extremely limited. And as a result of worldwide economic depression, commerce and industry as well as agriculture were facing serious difficulties. Party politics existed at that time; and Seiyukai and Minsuto alternately formed the cabinet. But the method of political contest was unfair; and political corruptions were exposed day after day. Being excited and irritated by these facts and incidents, hot-headed young men and young officers appealed to direct action. The evidence to show the motive of this movement was partly destroyed to our regret. But the remaining part and witnesses will be produced to show that the movement did not aim at aggressive war. At this opportunity it is worthwhile to point out that some of the accused contributed to suppress this movement.

14. The Prosecution presents the national defense plans of Japan since 1937 as evidence of Japan's aggressive design. But armaments are always relative as has been said before. It is not

possible to determine whether the national defense plan of Japan was aggressive or not until and unless it is studied in comparison with the plans of other countries. In 1937 the neighboring military countries of Japan were China and the Soviet Union. Excepting China, against which Japan never proposed to come to an overall conflict, we shall prove the nature of Japan's military plan by presenting the second five-year plan, the third five-year plan and the position of the Far Eastern Army of the Soviet Union after 1936. The military or naval staff of every country makes annual plans in consideration of a potential enemy. It is needless to say that the existence of such plans do not indicate that the country has the will to make war against other nations. It is also possible to prove that the intention of Japan was not aggressive by contrasting Japan's naval plan after the London Naval Conference with that of the United States and the British Empire.

15. The nature and scope of the right of self-defense is a question of international law, and therefore no evidence is necessary. However, the question to what extent the right of self-defense is reserved in a particular treaty may be answered in the light of materials at the time of the conclusion of the treaty. The defendants are prepared to produce the materials concerning the negotiation of the Kellogg-Briand Pact, official declarations of the parties concerned and the reservations of the Governments at the time of the conclusion of the Pact, for they will help us to understand the limit of the right of self-defense in the Kellogg-Briand Pact. This issue of the interpretation of the right of self-defense was raised at the time of the negotiation between Secretary Hull and Ambassador Nomura in 1941. At that time the United States showed its own view as to the extent of the right of self-defense. The Defense are prepared to produce records concerning the United States' view on self-defense.

It is also said that "every nation is competent to decide whether circumstances require recourse to war in self-defense". The Defense will prove not only the circumstances constituting self-defense, but also the party invoking such right has bona fide believed existence of such right. The Defendants are prepared to produce evidence to show the truth of the facts under consideration.

16. It will be a difficult matter for foreigners to understand the relation between the high command and the authority of ordinary state affairs. It is, nevertheless, important to prove this relation in order to determine the responsibility of any act or omission in this case. This depends on the interpretation of the Constitution of Japan, especially Articles 11 and 12 and on established custom in this country. With regard to the military affairs the extent of the respective jurisdiction and responsibility of the military command (The Chief of the Military Staff and the Chief of the Naval Staff) and of the Minister of War or the Navy is an important issue. The jurisdiction of various other governmental organs are also to be considered in this connection. The defendants are prepared to produce a witness or witnesses to clarify this point. The nature of command and the duty of obedience in the Japanese Army are different from those of other countries. This will be considered separately with regard to peace-time and war-time.

17. There is concrete evidence w hich will be submitted to show the connection with the interpretation and application of the Potsdam Declaration and the Instrument of Surrender".

A. Japan accepted the Potsdam Declaration which was proposed by the Allies on July 26, 1945 and surrendered. This Tribunal was created in accordance with the Instrument of Surrender. Although it is a fact that Japan surrendered unconditionally in the sense that she accepted the Potsdam Declaration as a whole without asking any condition or modification, we cannot forget that the Potsdam Declaration itself is a condition which existed between the Allied Powers and Japan. Article 5 of the Potsdam Declaration provides: "The following are our terms. We will not deviate from these Articles." The words "unconditional surrender" are used in paragraph 2 of the Instrument of Surrender. In either case it refers to the surrender of the Japanese armed forces only. That is to say, the Japanese forces were ordered to surrender to the Allied forces without any condition or reservation. It cannot be said that the other parts of the Potsdam Declaration lose their binding power simply because of the words "unconditional surrender" used in connection with the armed forces.

B. The meaning of the words "war crimes" used in Article 10 of the said Declaration remains to be an important issue. We are ready to prove in what sense Japan, that is to say, Japanese responsible authority, understood the term in issue at the time of accepting the Declaration. Collaborating evidences also will be used to prove the general understanding of the term "war crimes" at the end of July or beginning of August 1940, in Japan as well as all over the civilized world. This seems to be necessary for supporting the position of the counsel for the Defense that this Tribunal had no jurisdiction on Counts invoking (a) and (c) of Article 5 of the Charter erecting this Tribunal.

C. By accepting the Potsdam Declaration, Japan surrendered with respect to the Pacific War, in which she had been engaged. She had no intention to surrender with respect to the Manchurian Incident, Khasan Lake Incident or Nomongham Incident. In order to prove these points, the documents showing that the Manchurian Incident had been settled by 1935, the documents showing that the Khasan Lake Incident or Nomongham Incident had been settled by their respective agreements, and the documents showing that a neutrality treaty was concluded between the Soviet Union and Japan in April 1941 will be presented. The appended declaration to the neutrality treaty is very important. It provides in part that "the Soviet Union respects the territorial integrity and inviolability of Manchoukuo."

D. Additional evidence will be produced with reference to the interpretation and application of the Potsdam declaration. This will be done for the following consideration:

When one party induces the other to surrender while employing certain tactics, it is conceivable that the former induces surrender assuming his own particular tactics to be legitimate. If a word "crime" happens to be used in such inducement to surrender, that word should not include tactics as is being used by that party while inducing surrender. This we take to be a correct method of interpretation of any inducement or declaration. Therefore, the tactics or measures which the Allied forces openly adopted from July 26 to August 10 against Japan (or tactics or measures of a similar nature in lesser extent) should be excluded from the "crimes" provided for in the Potsdam Declaration. This will determine the limit of war

crimes to be dealt with in this Tribunal. Records, photographs and many witnesses will be produced in order to show the tactics of the Allied Powers.

18. The Chief of Counsel for the Prosecution contends that aggressive war has been an international crime for a long time and gives a definition of aggression. In order to support his theory of aggression he goes on to cite various treaties and agreements. As John Basset Moore has said in his "Appeal to Reason", it is impossible to define what is aggression. We are not going into a legal argument now. We expect to have an opportunity to discuss legal problems later on. However I think it is appropriate at this moment to point out certain omissions in the facts which the Chief of Counsel for the Prosecution referred to. The Chief of Counsel for the Prosecution referred to. The Chief of Counsel for the prosecution first invokes the Hague Convention I of 1907. But this treaty does not make good offices and mediation as absolute duty. The contracting parties are expected to submit their disputes to good offices or mediation "as far as possible" or "as far as circumstances allow". The Chief of Counsel for the Prosecution in the next place refers to the draft treaty of Mutual Assistance, which was discussed at the fourth Assembly of the League of Nations in 1923. The said draft was dropped at the Fifth Assembly in 1924 and therefore has never become a treaty. Therefore it is not binding to any party. The Chief of Counsel for the Prosecution refers to the Geneva Protocol of 1924. This was signed by the delegates. But since Great Britain whithheld ratification, no state ratified it. Thus the Geneva Protocol has never become a treaty. This fact proves that it has been thought premature to determine aggressive war as an international crime. The Kellogg-Briand Pact of 1928 does not provide that aggressive war is an international crime. We

will refrain from advancing any argument on this point.

19. The Indictment in its Count 37 on provides for a group of crimes under the title, "murder", and charges crimes of murder against the defendants for the loss of lives due to the act of war. The Counsel for the Defense holds that the loss of lives due to the act of war, legal war or otherwise, does not constitute a murder. This, we believe, is an accepted theory of international law. This point seems too obvious to call any authority. The state of war comes into existence when the first shot has been fired. This is an accepted doctrine of international law. Therefore, we will produce evidence to show that the loss of lives referred to in Count 37 to Count 44 in the Indictment occured after the state of war existed.

The Chief of Counsel for the Prosecution asserts that in all cases of aggressive war, those who are in official position should be treated as common felons, that is murders, brigands, pirates and plunderers and should be punished as such. He goes on to say that such a generally recognized principle (R.389). Does he refer to the primitive age in which international law did not exist? Since international law came into existence there has always been a distinction between war as an act of sovereign states and acts of burglers or pirates. This seems to us the first principle of international law.

20. In case aggressive war or war in violation of a treaty or treaties is fought by the will of the state, it is an important question in international law whether individuals who are in official positions of the state are criminally responsible. The Allied Powers contend that this World War II was fought for the maintenance of international law. We take it, therefore, the

Allied Powers will have no objection to the strict interpret tion of international law. The Chief of Counsel for the Prosecution refers to this point several times in his opening statement, (R. 389, 459, 463). He sticks with and insists on this point although he is fully aware of the danger of proceeding without precedents. For our part, we are not yet convinced that international law as it existed 1928 - 1945 imparts responsibility on individuals in official positions for the act of the state. Therefore, we believe that the provisions concerning individual responsibility in the Charter something which the Potsdam Declaration did not expect, and ex post facto law. For this reason we will produce evidence to show that international law as it stood in the period indicated by the Indictment did not impute criminal responsibility on individuals for the act of the state.

21. The Prosecution frequently compares incidents which occurred during the Pacific War with acts of Germany during the Europena war. In page 450 of the Record they assert that terrorism and atrocities occurring during the Pacific War were of the same type that Germany committed, and in page 455 they go on to assert that these acts re not incidental errors on the part of the individuals but premeditated acts committed as a national policy. The Counsel for the Defense are prepared to show that the central government and high command strongly desired that the rules and customs of war be strictly observed and that civilians and even enemies who have given up arms, be treated with charity. For that purpose, "The Battlefield Manual" was issued in January 1943 and distributed to all soldiers. Whenever violators were found they were tried by Court Marshall. The Army and Navy Chiefs of Command at the front were always emphatic in stressing this point. We must admit, however, that at the later period of the

war when the communications with the home country were cut, battlefields isolated, orders from the commanding officers became impossible; food became scarce and the existence of the Japanese soldiers in itself precarious or when they met with cruel guerrila warfare by natives some inhuman acts might have been committed. This is a most deplorable thing, but the accused who stayed at home had no control over the situation. As to the treatment of war prisoners, the labor of non-commissioned officers and above was used with their voluntary will. On these matters we are prepared to produce evidences with reference to concrete facts in Division 1. In Japan there has never been an intentional violation of humanity as was alleged to have been committed against the Jews. On the contrary the elimination of the idea of racial prejudices has always been one of our national aspirations. On this point we are prepared to produce evidence to explain the difference between war crimes of Germany and the alleged acts of Japan.

22. So far I have dwelt on the main subjects of Division I. Division II concerns Manchuria and Manchoukuo. This Division is provided for the purpose of disproving criminality as alleged by the Prosecution. It relates to Count 2, Appendix A, Count 18 and Count 27. Count 44 also relates to this Division to some extent. There is ample evidence which the accused will present under this and other Divisions. But they will be all dealt with in each Division. I will point out only the main subjects which should be proved under this Division.

The evidence which the defendants will produce should be convincing.

The Lytton Report which the Prosecution presented says in part:

"... the issues involved in this conflict are not as simple as they are often represented to be. They are, on the contrary, exceedingly complicated, and only an intimate knowledge of all the facts, as well as of their historical background, should entitle anyone to express a definite opinion upon them."

23. In order to show the special conditions in Manchukuo Japan's special rights and interest in Manchuria and their legitimacy will be proved. Why did Japan acquire special rights and interests in Manchuria? Why did the Japanese go to Manchuria? Japan is a country of small area and a large population. As long as immigration was possible the problem was hoped to be partly solved by that. In 1908 Japan's immigration to the United States virtually stopped by the so-called "Gentleman's Agreement". At that time Mr. Jutaro Komura, our famous Foreign Minister, spoke at the Imperial Diet as follows: "In order to prevent our people from scattering around remote foreign territories it has become necessary to concentrate them to this district (Manchuria) and administer them with their joint co-operation------The Japanese government in consideration of these points will follow the established policy with regard to the immigration to the United States and Canada, and is faithfully enforcing the restriction of immigrants". This declaration has been taken in Japan as having previously been understood by the United States. With regard to Japan's relations with the United States an agreement was reached between Mr. Lansing, Secretary of State of the United States and Mr. Ishii, Japanese Ambassador, on 2 December 1917. It says in part: "The Governments of the United States and Japan recognize that territorial propinquity creates special relations between countries, and, consequently, the Government of the United States recognizes that Japan has special interests in China, particularly in the part to which her possessions are contiguous." The agreement was made

in the form of the exchange of notes. The agreement was cancelled later but before its nullification our people had done much in Manchuria. This achievement cannot be taken away by the nullification of the Lansing-Ishii Agreement. Thus Japan's legitimate activities in Manchuria has become remarkable since that time.

24. At that period the local authorities in Manchuria maintained their power in cooperation with Japan. Since 1925 the national rights recovering movement arose throughout China. The situation in Manchuria was vitally affected. In 1928 Chang Tso-Lin was killed and the Manchurian authorities adopted the Chinese Republic flag. As soon as the Kuo-min-tang (Chinese Nationalist Party) stepped into Manchuria Japanese Manchurian disputes continuously increased. We will show these facts by evidence. In 1931 there were more than three hundred pending problems.

25. Japan had a right to maintain the Kwantung Army in Manchuria in order to protect her rights and interests in Kwantung Peninsula and Manchuria. In 1936 the total of the Kwantung Army consisted of eight battalions of infantry, two companies of artillery and one independent garrison (six battalions of infantry) making 10,400 men in all. The forces under the control of Hsueh-Liang, on the other hand, consisted of 268,000 of the regular army and big hords of irregulars. The Kwantung Army was a small force of 10,000 encircled by more than 200,000 Chinese Army. Its duty was to protect the Soviet Manchurian Railways

which extended one thousand kilometres, and Japanese nationals of more than one million scattered all over the vast expanse of Manchuria. Under these circumstances in case of emergency it was necessary for the Kwantung Army to take measures of self-defense.

26. The prosecution contends that the destruction of the railway on September 18, 1931 was a planned action on the part of Japan, but no substantial evidence has been produced. The Defense will endeavor to produce the best evidence possible to prove the cause of the incident. In any case an armed conflict took place between them on that night. Once a comflict occurred, the Kwantung Army for its own self-defense and for the execution of its own duty, had to defeat the Chinese Forces. It is possible to show the details of the circumstance by producing the testament of General HONJO which he left when he committed suicide early last year. The Government of Japan wished to see the situation not aggravated and tried its best to stop the incident, but the situation became from bad to worse against its will. The truth of this circumstance and the attitude of the Council of the League of Nations and of the United States will be explained by producing pertinent documents.

While the Kwantung Army was fighting with the Chinese forces for self-defense, the inhabitants in Manchuria started a self rule movement for Manchuria with various motives; such as the consideration for the welfare of the peoples; anti-communism; the desire

of the Mongolian people for independence from the Chinese Republic; the discontentments of the various generals against Chang Hsueh Liang; and the desire to restore the Chin Dynasty. The outline of these activities will be explained and proved. In February 1932 the Administrative Committee of the North East provinces was created, and on 1 March the government of Manchukuo was inaugurated.

28. After the establishment of Manchukuo the Japanese were admitted to acquire Manchukuo nationality. It is true that some number of the Japanese nationals became officials, and directly participated in the development of the country. But these all were after the new State was created. With regard to the establishment of the new State itself Japanese officials either in Tokyo or in Manchuria refrained from participation. In September 1931 the Minister of Foreign Affairs and the Minister of War of Japan instructed the Japanese officials in Manchuria not to participate in the establishment of the new State. In other words the birth of Manchukuo was the result of a voluntary movement by the inhabitants of Manchuria. As this is an important point evidence will be produced to prove this fact.

29. The Manchurian incident was settled in May 1933. During 1935-36 China was inclined to recognize the de facto status of Manchuria. Other countries began to recognize Manchukuo. Especially the Soviet Union, which now sends prosecutors to this Tribunal, agreed to respect the territorial integrity and inviolability of Manchukuo in 1941.

30. The third division concerns China. The Counts relating to this division are Count 3, Count 6, Count 9, Count 27, Count 28, Count 36, Counts 45 to 50, and Counts 53 to 55.

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 aggravated as to be called a "war". Then there would not have been any question of aggressive war. Therefore, we will also prove that China was responsible for the aggravation of the Incident and that Japan throughout the whole Incident adhered to the policy of non-aggravation and tried its best to settle the question locally. On 13 July the Konoe Cabinet declared as follows: "Even now on the Army will adhere to the policy of no-aggravation and local settlement and will avoid to its utmost effort any action which might lead to a war. For this reason the Japanese Army has approved the conditions submitted by the representatives of the 29th Army and signed on 8 p.m. of the 11th, and will watch its execution." But China did not stop hostile acts. The assault at Lanfong, Kwan An Men Incident, the atrocities at Fungchow, etc. continuously occurred. China began to take on an organized war attitude. On 12 July, Generalissimo Chiang Kai Shek ordered a mobilization applicable to a large area. Meanwhile, the concentration of the Chinese forces in North China became increasingly intense. The Japanese forces in Fengtai were encir-

cled and violently attacked by the Chinese forces. On 27th July the Japanese forces in China decided to take up arms for self-defense. The circumstance of this period will be explained and proved by declarations of the Japanese Army in China and other witnesses. Japan still stuck to the policy of non-aggravation. Chiang Kai Shek strengthened his forces. On 15 August the Total Mobilization Order was issued. The General Headquarters was established. Chiang Kai Shek himself became the Commander-in-Chief of the Army, Navy and the Air forces. The whole country was divided into four war districts: First War District (Hopei-Chahar), Second War District (Chaohar-Shansi), Third War District (Shanghai), Fourth War District (South), for each of which respective forces were allocated, and total war attitude against Japan was completed. It can be said that an actual state of war commenced at this time although even then diplomatic relations between the two countries were continued. On 31 August Japan sent three divisions to North China. The name of the Japanese Army in China was changed to the "Japanese Forces in North China". The commander of the Japanese Forces in North China was instructed to secure the stabilization of Peiping-Tientsin Area and to break down the warlike intention of the enemy and thus to bring the conflict speedily to an end. Thus even at this period Japan demanded order and tranquility in North China and abeyance of anti-Japanese policy.

31. The Japanese government first designated this incident "the North China Incident" because it thought the extent of the incident could be limited to North China. But the incident spread to Middle China in August contrary to Japan's desire, cause of which will be explained later. China, ignoring the Shanghai Truce which was concluded in 1932 by the good office of British, American and other representatives, constructed military basis in an unfortified area, and concentrated forces of more than 50,000 while the Japanese Marines in that area were not more than 4,000. Incidentally Captain Oyama, Company Commander of the special marine of the Japanese Navy, was wantonly shot to death by the Chinese Army. On 15 August Japan decided to send troops to Shanghai for the protection of lives and property of Japanese residents. It was under such circumstances that the conflict in Middle China started. We will produce witnesses concerning these facts for the consideration of the Tribunal in determining the responsibility for the opening of this de facto war. In other words, it was China that aggravated the incident to such an extent as to be termed "war".

32. Our conflict with the Republic of China was designated as the China Incident and not as the China War. Nor did Generalissimo Chiang Kai shek declare war upon Japan until the Pacific War broke out in 1941. This should appear, we presume, rather strange to the occidental mind. The objective of this conflict was on our part to induce the Chinese leaders then in power to reconsider their stand against Japan, thus restoring to a natural and proper state the disturbed Sino-Japanese relations. It was, however, the attitude assumed by

the Communist Party of China that actually gave rise to a decided anti-Japanese movement in the greater part of the Republic. Moreover, Generalissimo Chiang Kai shek had come to countenance various activities of the communists ever since the Sian Incident in which his sensational kidnapping was successfully carried out. The Japanese Government regarded this new step on the part of the Generalissimo as a lamentable deviation more or less short-lived. At the inception there were neither diplomatic rupture nor disrupted treaty relations between Japan and China. Members of the Chinese army who surrendered themselves to our hands were all released and those nationals of the Republic of China residing in Japan at that time were not treated as enemy persons but were allowed to pursue their own occupations unmolested. One of our aims in not declaring war with the Chinese Republic was not to restrict the right and interest by the application of rules of war. Nevertheless the hostilities, against our will, spreading far and wide, those nationals of neutral Powers who were found to live in the Japanese occupied territories should suffer therefrom to some extent was quite unavoidable. Hence the conclusion of an agreement known as Arita-Craigie Agreement between Japan and the United Kingdom.

33. Had there been waged a war declared the question to apply the Nine-Power Treaty to the situation would never have been raised for, treaties would cease to be in force automatically or at least be suspended so far as China and Japan were concerned. As a matter of fact, however, declaration of war was not resorted to in this connection, neither by the Republic of China nor by the Empire of Japan, thus leading to a contradictory situation wherein the question of application of the said treaty came to a head. The Counsel for

defense, however, hold that crime is not necessarily constituted if the treaty in question were not literally adhered to in this particular case as far as the spirit of the said treaty was respected. We submit we hope to introduce five items in support of this contention.

There had occurred in the oriental region very extraordinary happenings within a duration of fifteen years between 1922, when the Nine-Power Treaty was concluded, and 1937 when China Incident broke out. The first of the five items is this: The Republic of China, after the conclusion of the Nine-Power Treaty, made it a national policy to oppose Japan and insult her in every way possible, and boycott of Japanese goods was resorted to generally. China went all the length of compiling text books for her public schools so that anti-Japanese sentiments were disseminated widely among the younger generation. Any one will admit that when a Power should openly make it her national policy to reject and insult another friendly power and its nationals it must be said a matter of very extraordinary nature. The second is: Communist International determined its new strategy against Japan during these years, and the Communist Party of China acted in conformity to the directives of the former. Whereupon the Chang Kai-Shek regime acquiesed in the latter's behavior. The third is, the resolutions reducing the Chinese forces adopted in connection with the Nine Power Treat were not only

not carried out but, on the contrary, war lords and military cliques in China raised and maintained a huge body of troops many times greater than those existing before. Besides, they made extensive preparations for a war of resisting Japan by acquiring innovated arms and implements of war in large quantities. The fourth is: the National power of U.S.S.R. was expanded tremendously in those days. The Union of Soviet Socialist Republic, being not party to the Nine-Power Treaty, and never under the commitment of the said treaty, made its pressure felt along the entire Sino-Soviet boundaries extending no less than 3,000 miles. In fact, a very wide area comprising Outer Mongolia has been put under the sway of U.S.S.R. The fifth is: the world economy, since the conclusion of the Nine-Power Treaty, was seen to veer from economic internationalism to national protecionism. The Nine-Power Treaty is, it must be noted, a treaty without the provision of expiration. At least these five happenings of an extraordinary nature took place in the situation contemplated under the treaty which has no time limit. What kind of tales these five happenings may tell will be clarified later; documental evidence presented in due course of time will speak for itself. Here it must be added, however, that under these circumstances the Nine-Power Treaty had become so obsolete that its strict application to the situation was found impossible. A certain kind of state tantamount to that of war existed then, though neither China nor Japan declared war upon the other. Consequently in the territory of the Republic of China, whether it was under Japanese occupation or not,

to carry out the provisions of the said treaty to its very letter was beyond question. The defendants hold that in this case failure of adhering to the treaty in the given circumstances does not necessarily consistute a crime. Upon that foundation the defendants are going to prove that the five points above stated are indisputable facts.

34. The Prosecution has made it a point to charge the accused responsible for an economic aggression. An aggression in the economic sense is not itself a crime. It will constitute a crime only when the said aggression was undertaken in conjunction with an aggressive war. As previously stated the China Incident was traceable to an outbreak of the Marco Polo Bridge affair, which precipitated the situation into the state of war so to speak. Why ? The reason is a flagrant war preparation and provocations steadily and systematically made by the authorities of the Republic of China. This must be considered a very extraordinary condition of things. We cannot be held responsible to the Incident by calling that incident an aggressive war.

Still less, economic development was undertaken for the sake of happiness and prosperity of China as well as Japan. On this point also we are going to produce relevant evidence.

35. Now about the assertion of the Prosecution concerning narcotic drugs. The Prosecution avers that Japan made an inroad of narcotics into China and by this means they wanted to crush the war efforts of the Chinese on the one hand and turn the proceeds from the sales of the drug into their war chest on the other hand. In this way they carried on their war of aggression

the Prosecution insisted. With your permission, let us call the notice of the Tribunal to the fact that, here in Japan, we have a special experience in the gradual reduction of opium eaters still existing in Formosa. In Formosa a monopoly of the said drug was exercised throughout the years when the Island was under our government. Now we made it our policy there to put an end to illicit traffic in opium and through these means reduce by degrees the number of addits still existing. Opium eaters in the Republic of China are estimated at around a million at present. The Chinese population being put at 400,000,000. There can be no ground to suppose that if opium eaters were on the increase or otherwise through the steps supposely taken by the Japanese, the result would affect in any way the fighting capacity of Chinese. Again, the annual proceeds from the sale of opium in China was not great in proportion according to the evidence available. Still less Japan never put the sum of money from that source into expenditure of war. Concrete facts and figures in this connection will be given in support of the argument that proceeds from the sale of opium in China was not utilized by us as part of war expenditures.

36. Atrocities perpetrated by Japan in several parts of the Chinese Republic are very exaggerated and in some degree fabricated. We shall endeavor to make these situations clear and show the true conditions. Alleged atrocities laid at our door, if they were well founded, are the thing really detested by the Japanese Government as well as such commanders as were in control of the forces there. Our government and those

responsible commanders have made it their rule that preventive steps should be exhausted, and if such deplorable facts come to their knowledge, due punishments would be meted out to the perpetrators of the crimes. Maintenance of friendly relations with the Chinese Republic was one of the crucial points in our national policy. It is quite unthinkable that the accused, some of whom were holding key positions in the Tokyo government or entrusted in expeditional forces abroad with important status, should commit or disregard such misconducts light-heartedly. These charges laid upon some of the accused are, we believe, without foundation and we would leave no means unused in order to prove that there was not a single fact that any of the accused has ever ordered, authorized, permitted or deliberately and recklessly disregarded his legal duty.

37. With regard to the matters related to the Soviet Union the indictment refers to Counts 17, 25, 26, 35, 36, 51 and 52. That these are out of the pale of this tribunal has been already pointed out in previous remarks. Especially the Changkufeng Affair, as well as the Nomoghan Incident, are a closed issue between the Powers concerned. This is proved beyond doubt by the existence of the treaty of neutrality concluded between Japan and USSR. Both the Changkufeng Affair and the Nomonghan Incident resulted from an ambiguity concerning the boundaries between Manchuria and USSR. Needless to say these do not fall under the category of an aggressive war. The Frontiers between Manchukuo and the Soviet Union once defined, the matters were settled then and there. That the boundaries Japan insisted upon were ultimately right can be verified by the evidence on that point. It may be added here that these disputes had nothing to do

with programs made by the Tokyo Government or by the Kwantung army at that time. Reality of the circumstances of our mobilization is sure to tell its own tale. So much so, the stand we took towards USSR was remembered as the "absolute Pacific Policy".

38. We noted that the honored prosecutors representing Soviet Union were trying very hard to establish an aggressive intention on the part of Japan. In this connection they pointed out an annual program of the General Staff, prepared in 1941. They also pointed out our reinforcement in Manchuria during the summer months of the same year. But the said program was not to be put into execution if the theoretical war, for which the program was made, did not come true. To our mind, any other Power may be provided with such programs without arousing suspicion of others. This is purely a matter the fighting services, as duty bound to do, in determining where an imaginary battle field is, to be put, the enemy's country or one's own territory. Therefore, we can never conclude from such a program ominous intention in any other government. As stated in my earlier remarks, military preparations themselves will not prove the existence or non-existence of an aggressive intention unless they are compared with other Powers similar preparations. We understand that USSR had a plan of operation in 1936, by which simultaneous attacks upon Germany and Japan was contemplated. After 1939

when the Nomonghan Incident occurred, the Soviet armed forces operating east of Lake Baikal were to be doubled over those maintained by us in Manchuria and Korea. Japan kept some forces in Manchuria in or after 1941. That is quite true. However, these forces were meant solely for our defense. For this assertion there will be no better evidence than the above stated reinforcement of USSR together with the manoeuvering by that army along the borders of Manchuria and USSR. Special mention should be made here that tremendous forces of the Soviet Union trespassed across the borders from the south of Hutung. It was in the early part of August, 1945 and actual invasion was made into Manchuria. These undertakings were clearly in violation of the neutrality treaty still in force between USSR and Japan. That our defensive measures adopted at that time in Manchuria was right will be amply proved by these circumstances.

38. We proceed to division V, the Pacific War. The matters really extensive in scope, are related to Counts 1, 4, 7 and 16, Counts from 20 - 24 inclusive; Counts from 29 to 34 inclusive; Counts from 37 to 43 inclusive; and Counts from 53 to 55 inclusive. There are still other counts concerned, which we shall allude to hereafter in more specific detail.

39. There existed before the war close relations between the three Powers of Germany, Italy and Japan. This relation was by no means made in anticipation of the Pacific War. We shall submit adequate evidence in order to prove this point. It came to the knowledge of our Government that the seventh Congress of Communist International placed its destructive objectives in Germany

and Japan and Germany must try to cope with this situation for their self protection. Especially for Japan these was a development really alarming. Communism was invading our neighbor state, China, instigating national revolution. Assistance was extended from the Soviet Union in the shape of Russian technique of revolution as well as personal emissaries. These activities were in progress ever since 1923 (January 1923 China Year Book 1926 R 863 of The Chinese Revolution by H. O. Chapman) when Dr. Sun Yat-sen and M. Joffe issued a joint declaration expressing mutual sympathy between the two parties. It was extremely dangerous for defense of the Empire. Hence joint defense against communism first with Germany and with Italy afterwards was apparent. This policy of joint defenseof China and Japan against communistic activities was enunciated in three principles of Mr. Hirota, then Foreign Minister. The same principle was pronounced later in the Konoye statement. In defending the menace of communism, interests were also identical with Germany and Japan. The two Powers concluded an agreement on November 25th 1936 known as the Anti-Comintern Pact. Needless to say that this document too was not made in anticipation of the Pacific War. In Article 2, the Pact stipulates that, "The High Contracting Parties will jointly invite third States whose internal peace is threatened by the subversive activities of the Communist International to adopt defensive measures in the spirit of this agreement to take part in the present agreement." Against, the so-called secret understanding attached to this instrument never aimed at an aggression against any third party. The understanding merely provides that one of the parties will not take such measures as may lighten the burden of USSR if and when one of the parties gets into conflict with it. It is entirely negative in nature. The Tri-Partite Agreement between

Japan, Germany and Italy was given wide publicity, but its stipulations are quite simple. Japan's war with America was never made its object. This will be proved also by other evidence than the agreement itself. It was the very avoidance of war between America and Japan that was contemplated in the agreement.

42. Our recent economic measures or military preparation did not anticipate the Pacific War. There were also no purpose of aggressive nature in our naval preparations. When compared with those of America and Great Britain, our navy's situation will be proved of itself. Besides, our annual program formed by the naval command was never offensive. The concrete facts to be indicated will make this point clear. The Prosecution holds that the Japanese Navy turned the mandated territories into so-called fortresses and established bases of operations throughout the region. But this too, we assert, is without foundation. A fortress must be provided with specific defensive facilities against attacks from land, sea or out of the air while a base of operation will be incomplete unless it is equipped with supply facilities for providing the fleet in action. What were installed then were either communication facilities of peaceful nature or temporary establishments for naval manoeuvers. That these were not taken for fortresses or bases of operations will be made clear.

43. Atrocities and cruelties allegedly committed by our forces against prisoners of war did not come to the knowledge of the accused till they were disclosed in this Tribunal. We shall be able, we represent, to show this by competent testimony

Evidence will show that there was neither the opportunity nor available means to stop them before the crimes were committed. Upon this point, too, we shall submit adequate evidence no defendant ever formulated a common plan, ordered, or authorized or permitted atrocities or deliberately and recklessly disregarded his legal duty to take steps to prevent observance of the law and customs of war in this respect.

45. Now we come to a situation which demands our utmost efforts. Here we must definitely prove that the Pacific War ensued as the necessity for the self defense of Japan. With your permission let me remind the Honorable Tribunal that since 1937 this country was unwittingly involved in a sort of hostility with China, which was in progress on a large scale. In a certain period of time this state of belligerency developed further into a state tantamount to that of war. In those days we were expecting that the third Powers appreciation of this peculiar situation was perhaps forthcoming. In fact, Great Britain gave it in the joint declaration with the Japanese Government dated 22 July 1939 as a result of the Tientsin Incident and declared that His Majesty's Government fully recognize the actual situation in China where hostilities on a large scale are in progress. In what way the Washington Government looked upon this situation we were not sure but suddenly an abrogation was received on 26 July 1939 of the Treaty of Commerce and Navigation, a firm basis of the trade relation between the two countries since 1911. Misunderstanding began to grow. From that time on the United States placed upon Japan every kind of pressure and intimidation. The first was the economic pressure. The second was the help extended to the Chiang Kai-shek regime with which we were in a life and death struggle. The third was the formation of encirclement by the United States, Great Britain and the Dutch East Indies. In concert with China a ring was thrown and tightened around Japan. These three steps were since 1939, adopted one by one, only added their intensity as time went on. A typical example of economic pressure thus brought to bear upon us Japanese will be recited here. In

December 1939 the moral embargo was extended, and in addition aircraft and its equipment, instruments and machinery for construction of aircraft and refining gasoline were added to the prohibited list . During July 1940 the Washington Government put an embargo on scrap iron. Considering the system of iron production then prevailed in Japan, scrap iron was an item of crucial importance. A heavy blow was dealt to this key industry of Japan. In August of the same year, the United States further put a restriction on the export of gasoline used in aviation. Upon the whole, Japan's yearly need of oil was at 5,000,000 tons, the minimum for the nation's life including her national defense. Whereas its annual home production of this fuel was not only not more than 30,000 tons. This deficit must be made good with products from abroad. The only available source was the Dutch East Indies. Accordingly a mission headed by Mr. I. Kobayashi, Minister for Commerce and Industry, was sent there and later, Ambassador Yoshizawa was ordered to take up the thread of negotiations with the Dutch East Indies authorities at Batavia. But all legitimate efforts came to nothing, because leaders of the Dutch Indies had been in close concert with America and Great Britain. The same kind of obstacles were also put in our way by the authorities of French Indo China and Siam. Our imports of rice and India rubber were thus hampered.

Now about the second point, an assistance extended to the Chiang Kai-shek regime. The United States granted on November 20th, 1940 an additional loan of $50,000,000 to the Chungking Government, apparently in retaliation to the treaty between Japan and the Wang Ching Wey regime which was concluded the same day. Moreover, the United States authorities made it known that a further sum of $50,000,000 was contemplated to be offered as to stabilize Fapi or the Chinese currency. Following this step, the London Government also made it known that a grant of £1,000,000 would be forthcoming. These are but a few of the examples, to say nothing of continuous supply of materials to Chungking by the

London Government. As soon as the rainy season came to a close that year, Great Britain reopened the Burma Road for traffic and directly forwarded arms and munitions to the Chiang regime. In 1941 application of the Lend Lease Loan was extended to China. Particulars on these situations will be clarified by direct evidence we shall produce.

Here we come to the third point; an iron ring of encirclement thrown up by several powers. In December 1940, the flower of the American Pacific Fleet was concentrated in the Hawaiian area, and anti-Japanese demonstration was the result. The London Government on November 13 of the same year established at Singapore headquarters of the Far Eastern Command, all the Malays, Burma as well as Hongkong coming under its orbit. That government also began to undertake a formidable military expansion, a system organizing British possessions in East Asia in a close contact with Austral-Asia. Conferences participated in by representatives of America, Great Britain, the Dutch East Indies and Chiang Kai-shek Regime took place in rapid succession during those days. A parley in Manila, held in April 1941 amond the British Commander-in-Chief in the Far East, the United States High Commissioner in the Philippines, the United States High Commander of the Asiatic Fleet and the Dutch Foreign Minister attracted our attention. Further military councils were held between the delegates of Great Britain and Generalissimo Chiang Kai-shek at Singapore about the middle of June. Particulars of this parley will be revealed by evidence. Impressed by these numerous manifestations, our government hastened to take steps in order to avoid the imminent calamities. Our ambassador at Washington was requested since the spring of that year to do his best so that the deplorable tension might be ended, relations between America and Japan smoothed out. Parleys between the United States Chief Executive and our Ambassador, negotiations with Secretary of State and Japanese ambassador were incessantly held; sessions reaching several scores in number. The Tokyo government made a

stringent effort in order to effect a compromise. The Japanese Premier offered to keep direct meeting somewhere in the midst of the Pacific to settle the matter once for all. Another envoy was dispatched to Washington for this end. Ministerial-change en bloc, had been made in the middle of July to carry through Japan-American negotiation. This is the last step for an independent sovereign state to take for the purpose of diplomacy. However, all of these efforts were of no avail. The Government at Washington took steps to freeze our whole assets within the United States. This was on July 27, 1941. This came from misconstruction of Japan's peaceful sending of troops to French East Indies. Britain and Dutch East Indies also followed this step a day later, while at the time treaties of commerce and navigation were still in force between Japan and Great Britain and the Netherlands. So that the freezing of Japan's assets by Great Britain and the Netherlands were in violation of the treaties. With your permission, let us again remind the Honorable Tribunal that Japan was quite unable to keep its population alive by those products raised within the Empire only. Japan must get necessary commodities by foreign trade. By freezing of assets of USA, Britain and the Dutch East Indies, more than half of Japan's foreign trade was gone; commercial activities of eighty years standing were wiped out. These were the results of the steps legally or illegally taken by America, Great Britain and the Netherlands in the shape of assets freezing. The inalienable right to live was deprived from the Japanese people. Just about that time, America at last put an embargo upon oil, and the executive order was issued on August 1st, making good the notification given to Ambassador Nomura on July 24th. Japan's navy was to lose mobility after her oil in stock was exhausted. Solution of the China Incident was made practically impossible. Our defense was emasculated. The Japanese were to be deprived of the means of livelihood. Hereupon the question of self defense presented itself before the whole nation as a cold and hard fact.

This demanded a speedy solution. In short, fundamental factors contributing to the exercise of the right of self defense were entirely complete for the Japanese in those days. As is evident, Japan did not exercise this right at that time. On the contrary, it was still willing to bear what was unbearable, restraining herself with such a consideration and care that any factors turning into causus b lli be somehow eliminated. Its strenuous efforts on this account are fully to be proved by evidence, at once strong and convincing. Japan's will to peace, Japan's sincere efforts to get settlement were not forthcoming. America's note on November 26, 1941 made it definitely clear that every single factor constituting causus belli was impossible to avert. Thereupon, the Japanese government, threshing the opinions and observations of various departments of executive, and after utmost care and deliberation, had necessarily at last resolved to have recourse to the right of self defense. This was on December 1. However, even after the actual date on which to use this right was decided the order in this sense was provided with a certain clause canceling all naval operations if a compromise should be effected between Japan and the United States. In that case, the combined fleet was to come back to home waters.

45. The prosecution is of the opinion Japan was defective in communicating her intention to fight and this must constitute a crime. The defense counsel maintains the following facts. In the first place, due explanation will be developed concerning the time in which the Japanese note was handed to the United States, together with particulars about this diplomatic procedure. At the end of November 1941 a confidential dispatch was already sent to the embassy at Washington to the effect that owing to a sudden change of attitude in connection with the China problems observed in contact with the American authorities, negotiation of seven months standing between the two countries would inevitably end in rupture. Again on 6 December 1941, Washington time, our Foreign Ministry sent a dispatch to the Ambassador at Washington

intimating that a note written in English to be addressed to the State Department was ready, and that the said note being a very lengthy one, they might be unable to receive the whole of it before tomorrow, that is 7 December. Though the time in which the note in question was to be presented would be some time after, they should be careful in arrangement of the document and be always in readiness to handle any matters in this connection, the dispatch instructed. (These telegrams were intercepted by the United States.) Now that note comprised fourteen parts in all. Our embassy at Washington was in receipt of thirteen parts in the evening of 6 December (the United States intercepted that part of the dispatch at 9:30 PM, 6 December and the President gave it a personal perusal). It was past 7 AM December 7th that the last part, that is the fourteenth, was received by Japanese Embassy (this also was intercepted nearly at the same time). About the time when the said part was received, another dispatch arrived at the Embassy indicating the time at which the important note should be delivered; that time was one o'clock in the afternoon of the same day. Whereupon Ambassador Nomura hastened to make an engagement with Secretary of State, Mr. Cordell Hull to meet him at one o'clock PM. Had the note been delivered as was intended at one o'clock PM the delivery would have preceded attacks at Pearl Harbor (which took place at 25 minutes past 1:00 PM, Washington time). But the embassy's deciphering and typing took so long time that, as the prosecution pointed out, Ambassador Nómura could arrive at the State Department at 2:00 PM and handed the note at 2:20 PM. If the Ambassador could have delivered the note on his arrival at the State Department, the time of delivery would have been 35 minutes after the attacks at Pearl Harbor, whereas the ambassador was kept waiting for 20 minutes, the delivery of the note was 55 minutes behind time. The Tokyo Government, however, sent the greater part of the dispatch the night before, and the remaining part was sent to be received early in

the morning in order that the note delivery should safely be made previous to 1:00 PM December 7th (that is half an hour before the time prearranged for the naval attack). If the routine business in this point were smoothly progressed, notification would have been made as was anticipated, sometime before the attack. But owing to the circumstances uncontrollable at Tokyo, the delivery of the note was delayed as herein stated. The above stated facts counsel for defense will prove accordingly.

46. Besides, I shall also try to prove the following facts with a view to providing the Honorable Tribunal with materials hoped to be useful for its decision whether the attack on Pearl Harbor was a surprise attack or not. The State Department authorities considered that our note to the United States dated 20 November 1941 as the last one and that after 26 November the whole matter was devolved into fighting services. On the morning of 27 November 1941 the highest official of the State Department expressed that the matter with Japan was in the hands of the Army and Navy. On the same day the Chief of Naval Operations sent a war warning to the Commander-in-Chief, Pacific Fleet, which read in part, "The negotiation with Japan in an effort to stabilize conditions in the Pacific have ended. Japan is expected to make an aggressive move within the next few days", while Chief of Staff sent radio to the Commanding General, Hawaiian Department, saying "Negotiations with the Japanese appear to be terminated to all practical purposes with only barest possibilities that the Japanese Government might come back and offer to continue. Japanese future action unpredictable but hostile action possible at any moment. If hostilities cannot be avoided US desires that Japan commit the first overt act." Moreover, the American authorities deciphered the Japanese note, excepting the last part, and this last part was also deciphered December 7th early in the morning. The President being in receipt of it at about 10 o'clock AM the same day.

On the other hand, the United States Department of War and of Navy were both in possession of intelligence suggesting that diplomatic rupture was at hand, and by conjecture, an imminent attack was to be anticipated. These facts will also be amply proved. On the other hand, the Hawaiian Department was also in possession of an instruction that the policy to induce Japan to commit the first overt act should not be construed as restricting the Department to a course of action that might jeopartize its defense. Also it was directed to undertake reconnaissance prior to Japanese hostile action.

48. It is contended by the prosecution that the note in question does not come under the stipulation of a declaration of war with the reasons assigned which is the first article laid down in the Third of the Hague treaties. In interpreting a document, circumstances giving rise to it must be weighed carefully to say nothing of its letters in which it is written. Moreover, a document of this nature must be studied always as a whole, not being judged by its wording and sentences. In the political atmosphere prevailing at that time, some of the American responsible authorities observed, as was stated before, that after November 26th, matters were devolved into the hands of the fighting services. The Japanese note is a diplomatic document of considerable length consisting of not less than 2,400 words, which must be treated as a whole. We find in the Japanese note the following passages wherein the American stand toward Japan is criticized and making

it clear that there is no means left for Japan but to resort to arms. After confessing the difficulty the Japanese Government experienced in understanding the American attitude, the note observes; (1) "The peace of the world may be brought about only by discovering a mutually acceptable formula through recognition of the reality of the situation and mutual appreciation of one another's position. An attitude such as ignores realities and imposes one's selfish views upon others will scarcely serve the purpose of facilitating the consummation of negotiations." II "The American Government, obsessed with its own views and opinions, may be said to be scheming for the extension of the War." III "Whereas the American Government, under the principles it rigidly upholds, objects to settling international issues through military pressure, it is exercising in conjunction with Gr. Britain and other nations pressure by economic powers. Recourse to such pressure as a means of dealing with international relations should be condemned as it is at times more inhuman than military pressure." (IV) All the items demanded of Japan by the American Government....ignore the actual conditions of China, and are calculated to destroy Japan's position as the stabilizing factor in East Asia and the intention of the American government to obstruct the restorations of normal relations between Japan and China and the return of peace to East Asia." In short, the above parts of the note makes it clear the position of the Imperial Government, being deprived the hope of further negotiation, forced to have recourse to the last step for the very sake of its self defense. In the evening of 6 December 1941, the greater part of the Japanese note was in the hands of the President of the United States.

Upon reading that note the President said, "This means war". At the end of the note it was pointed out that "the earnest hope of the Japanese Government to adjust Japanese-American relations and to preserve and promote the peace of the Pacific through cooperation with the American Government has fully been lost. The Japanese Government regrets to have to notify hereby the American Government that in view of the attitude of the American Government, it cannot but consider that it is impossible to reach an agreement through further negotiations", and the severance of the diplomatic relations was notified. It is clear that Japan in despatching this note regarded it as a notification of the intention of the opening of war.

49. About matters related to all of the accused some of the most important points were touched upon in my present statement, though there are still more numerous things later to be referred to in the remarks at the inception of several divisions of the defense case. Mr. President and members of this tribunal: I hereby beg your permission to express my sentiment of profound thanks for your generosity and patience with which you have given a fair hearing to the lengthy remarks I made on behalf of the accused. Among those evidences cited by the Prosecution with regard to the origin of the war, no few of them shall be believed to be to the origin of the war, no few of them shall be believed to be creditable. But we also put forward evidence of importance in great numbers. It is my firm belief that the best part of them are entirely worthy of your esteemed credence. It will be proved that the truth of the matter is not that one party is entirely right and the other absolutely wrong. In other words, that what Japan has done is not

aggressive and will be so proved. Why then a war occurs between a right party against another no less right one? There must be some deeper cause that prompted modern global war. The way to prevent war must naturally be to eradicate this deeper vice underlying the present world, and the first step to be done for that purpose will necessarily be to find such cause of war. We are not able to say whether such cause of modern war might be racial prejudice or unequal distribution of natural resources or more misunderstanding between governments concerned.

By finding the ture and deeper cause or causes of this war or incidents during the period indicated by the prosecution the guilt or innocence of the accused could be fairly determined, serving at the same time to enable the present generation in what direction the endeavor for peace should be directed and concentrated.