PROSECUTION OPENING STATEMENT + BIOGRAPHY OF PROS. member

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OPENING STATEMENT OF THE PROSECUTION

Mr. President and members of the International Military Tribunal for the Far East:

As Chief of Counsel of the prosecution, it is now my responsibility under the Charter which created this honorable Tribunal, and which likewise provided for the appointment of Associate Prosecutors by the nations participating in this trial, to present to you an outline of our theory of the law under which we are proceeding and the facts which we intend to prove to show that each of the accused now before the Tribunal is guilty of the crimes with which he is charged in the indictment.

This may well be one of the important trials of history. It is important to the eleven nations here represented, constituting orderly governments of countries containing much more than one-half of the inhabitants of this earth. It is important to all other nations and to the unborn generations of every nation, because these proceedings could have a far reaching effect on the peace and security of the world.

At the very beginning of these proceedings it is essential that those directing the prosecution make clear their purpose. Our broad aim is the orderly administration of justice; our specific purpose is to contribute all we soundly can towards the end -- the prevention of the scourge of aggressive war.

Mr. President, this is no ordinary trial, for here we are waging a part of the determined battle of civilization to preserve the entire world from destruction. This threat of destruction comes not from the forces of nature, but from the deliberate planned efforts of individuals, as such and as members of groups, who seem willing to bring the world to a premature end in their mad ambition for domination. This is a strong statement, but the facts are such that we find ourselves unable to describe it in more moderate terms.

A very few throughout the world, including these accused, decided to take the law into their own hands and to force their individual will upon mankind. They declared war upon civilization. They made the rules and defined the issues. They were determined to destroy democracy and its essential basis -- freedom and respect of human personality; they were determined that the system of government of and by and for the people should be eradicated and what they called a "New Order" established instead. And to this end they joined hands with the Hitlerite group; they did it formally, by way of treaty, and were proud of their confederacy. Together they planned, prepared and initiated aggressive wars against the great democracies enumerated in the indictment. They willingly dealt with human beings as chattels and pawns. That it meant murder and the subjugation and enslavement of millions was of no moment to them. That it encompassed a plan or design for the murder in all parts of the world of children and aged, that it envisaged the entire obliteration of whole communities, was to them a matter of complete indifference. That it should cause the premature end of the very flower of the youth of the world -- their own included -- was entirely beside the point. Treaties, agreements and assurances were treated as mere words -- bits of paper -- in their minds, and constituted no deterring influence on their efforts. Their purpose was that force should be unloosed upon the world. They thought in terms of force and domination and entirely obscured the ends of justice. In this enterprise millions could die; the resources of nations could be destroyed. All of this was of no import in their mad scheme for domination and control of Eastern Asia, and as they advanced, ultimately the entire world. This was the purport of their conspiracy.

We are now confronted with this question: Is civilization, today sternly reminded that it is facing a critical phase of its existence,

compelled to stand idly by and permit these outrages without an attempt to deter such efforts?

No one needs even a slight reminder to realize that wars in our time are quite different from those of old. Today, and far more important still, tomorrow and forever hereafter, wars can be nothing other than total wars. Today and tomorrow all wars have no limit of space or territory. The victims will be the young and the old, the armed and unarmed, and hardly a home --from one in a great metropolis to that in a smallest village -- will be free from destruction. To say that wars of the future will literally threaten the existence, not alone of civilization but of all beings, has become such a truism that its reiteration here seems trite. This problem of peace, which has ever been the desire of the human race, has now reached a position of the crossroads. For the implements of destruction that we already know of, even in what might well be primitive development, have reached such proportions that only the human imagination at its highest development is fit to cope with the realities. Our question at the crossroads is now literally an answer: "To be or not to be."

The answer to this question will require infinite patience and tolerance, and a most earnest attempt to reach understandings and agreements. With only one part of the problem are we concerned. What can we do with the powers conferred upon us here in this courtroom to contribute in a just and efficient manner to the prevention of future wars?

Our purpose is one of prevention or deterrence. It has nothing whatsoever to do with the small meaner objects of vengeance or retaliation. But we do hope in these proceedings that it is neither impossible nor improbable that the branding of individuals who visit these scourges upon mankind as common felons, and punishing them accordingly, may have a deterring effect upon aggressive warlike activities of their prototypes of the future, should they arise.

Our specific purpose, therefore, in these trials is to confirm the already recognized rule that such individuals of a nation who, either in official positions or otherwise, plan aggressive warfare, especially in contravention of sound treaties, assurances and agreements of their nations to the contrary, are common felons and deserve and will receive the punishment for ages meted out in every land to murderers, brigands, pirates and plunderers.

We shall contend that it never was compatible with justice or law to initiate murders. We shall contend herein that it is no less an offense to plan and initiate the destruction of the lives of a million people than it is to plan and initiate the murder of a single individual.

We shall further contend that the having taken an oath to support the laws and institutions of a nation does not create immunity from punishment; nor does the device of describing wars, where millions of lives are taken, as "incidents" or "episodes"; nor the claim that they are justified as the furtherance of the national aspirations, as they are so interpreted by such individuals.

We shall claim that the facts and circumstances adduced and presented in evidence before this Tribunal will show breaches of valid laws and obligations of the nation of Japan by these individuals so accused, who controlled their government or influenced its action.

We shall further show beyond peradventure that these accused, and each of them, well knew that the wars which they were planning, and for which they were preparing, and which they initiated and waged, could result in nothing else than wholesale destruction of human lives, not alone on the field of battle, but in the homes, hospitals, and orphanages, in factories and fields; and the victims would be the young and the old, the well and the infirm -- men, women and children alike.

For many years back, sober-minded, patient and peaceful beings have

been puzzled in their search for the reason why transgressors in the high places of a nation, who bring about these international tragedies, remain unpunished. It is difficult for them to understand the logic and reasoning of those proponents of the principle of international law who conclude that such leaders are beyond the reach of the practical administration of justice. They have been puzzled to understand that method of precedent and logic, or concept of justice, which permits the lawful destruction of teen-aged youth on the field of battle, but denies the lawfulness of bringing to justice the enemies of peace and the war lords of foreign nations who are the real originators, planners, initiators and designers of the pattern of destruction which brings them to their untimely ends.

Mr. President, I have no inflammatory purpose in reminding this Tribunal that there was much bloodshed of the flower of our youth at Nanking, at Pearl Harbor, at Hong Kong, in Malaya, at Guadalcanal, at Iwo Jima, at Okinawa, on the island of Luzon in the Philippines, and in other parts of the world. There was the unloosening of cruel and inhuman forces in China and in other parts of Asia. It was all part of one grand pattern, and the vice of it consisted in the exhibition of utter contempt for the lives of blameless and helpless individuals all over the world.

Surely then, this is no mean challenge. If there is no justification for punishment of individuals who have already brought civilization to the brink of disaster, then justice itself is a mockery.

For it is to be recalled that already in these proceedings, each and every accused has lodged an objection to the validity of this trial, which we contend constitutes a clear challenge to the capacity of civilized nations to take effective steps to prevent the destruction of all civilization. For in effect and in essence, the accused have contended that there is no power presently on earth duly authorized to try them, and no just or legal right to mete out justice, stern justice, to these accused, even though it be adequately proved that they participated in a plan or

conspiracy, or in and of themselves acted to bring about this aggressive warfare, declared or undeclared, or warfare in violation of international law, treaties and assurances.

In Nuremberg today similar proceedings are taking place, with other accused in the dock. With those we have no concern, other than to indicate to this Tribunal that these accused were in accord with the designs of the accused at Nuremberg and were confederated with them in this effort to dominate the world.

Literally then, if our observations are sound, there is a vital decision to be made, and this decision may determine the continuance or the end of human life. If this be true -- and we doubt that any thinking person would believe it to be overstated -- we are certainly in a new and terrifyingly critical era. To those who demand precise, well-established precedents for action, we would point out that this is far from a novel idea. From the time of the prehistoric and primeval ages, and continuing through the medieval period right up to the present day, there has always been some process or other for the punishment of the originators of aggressive wars. This method of constituting an international legal tribunal and permitting such war criminals the privilege of defending themselves and asserting their innocence is but the culmination of the modern and civilized ideals of culture and tolerance which have become crystallized in concrete form.

With great humility but much earnestness, we approach our task to do our part this day. For no single just act can be left undone in aid of such an essential purpose. As we of the prosecution view it, a failure to make an earnest effort to contribute our part and a failure of the powers to do every sound thing to put an end to the forces that would destroy the world, would in and of itself constitute an unpardonable crime. Our sole fear is the lack of capacity or ability to perform our job well. For the obligation itself is a stern one.

The allegations contained in this indictment are necessarily so extensive, the period covered so long, the area involved so great, the accused so numerous, and the power they wielded so far-reaching, that an opening statement attempting to cover in detail every phase of the case would be unduly long and burdensome. Moreover, some details mentioned now might become obscure by the time we reach the point of presenting evidence thereon. Therefore, in a desire to proceed in an orderly manner which will be helpful to the Tribunal and fair to the accused, the Associate Prosecutors and Assistant Prosecutors responsible for the presentation of the evidence concerning the various phases will summarize at appropriate times the evidence which they propose to adduce in proof of the charges set forth in the indictment.

Let us briefly consider the Charter which established the authority and jurisdiction of this Tribunal and defines the crimes with which these accused are charged.

"SECTION II

"JURISDICTION AND GENERAL PROVISIONS

"ARTICLE 5: Jurisdiction Over Persons and Offenses. The Tribunal shall have the power to try and punish Far Eastern war criminals who as individuals or as members of organizations are charged with offenses which include Crimes against Peace. The following acts, or any of them, are crimes coming within the jurisdiction of the Tribunal for which there shall be individual responsibility:

"a. Crimes against Peace: Namely, the planning, preparation, initiation or waging of a declared or undeclared war of aggression, or a war in violation of international law, treaties, agreements or assurances, or participation in a common plan or conspiracy for the accomplishment of any of the foregoing;

"b. Conventional War Crimes: Namely, violations of the laws or customs of war;

"c. Crimes against Humanity: Namely, murder, extermination, enslavement, deportation, and other inhumane acts committed before or during the war, or persecutions on political or racial grounds in execution of or in connection with any crime within the jurisdiction of the Tribunal, whether or not in violation of the domestic law of the country where perpetrated.

"Leaders, organizers, instigators and accomplices participating in the formulation or execution of a common plan or conspiracy to commit any of the foregoing crimes are responsible for all acts performed by any person in execution of such plan."

All of these offenses bring about the unlawful and intentional taking of human life so that, as we shall later point out at some length, this section of the Charter creates no new law. Quite to the contrary, it defines criminal offenses of the gravest nature which have long been recognized as illegal in the mind and public conscience of the world. Some of these offenses have been recognized in assemblies participated in by large groups of nations. Others have been outlawed by treaties, declarations and resolutions. Some of them have been in effect designated as criminal acts by assurances. However, by whatever form this state of international law was established or however it became crystallized, it was with the full realization that the dictates of humanity and the requirements of civilization demanded that these offenses be recognized as such and placed beyond the pale of civilized conduct. Indeed, as we believe it quite obvious, all during the period of time wherein the crimes charged in this indictment occurred, it was well recognized by all nations that the continued existence of civilization required that they come to an end.

The eleven prosecuting nations have stated in the indictment, in accordance with the provisions of the Charter, the offenses which they

charge that the accused have committed. Already in formal proceedings before this Tribunal in open court the indictment has been read in both English and Japanese in the presence of the accused, and prior thereto, in accordance with the requirements of the Charter, copies of the indictment, including all of the appendices, were translated into the Japanese language and duly served upon the accused.

The indictment consists of an introductory summary, the counts charging the war crimes, and appendices which are in the nature of Bills of Particulars. The offenses are charged in three groups, namely: Group One, Crimes against Peace; Group Two, Murder; and Group Three, Conventional War Crimes and Crimes against Humanity.

In Group One, Crimes against Peace as defined in the Charter are charged in thirty-six counts. In the first five counts the accused are charged with conspiracy to secure the military, naval, political and economic domination of certain areas, by the waging of declared or undeclared war or wars of aggression and of war or wars in violation of international law, treaties, agreements and assurances. Count 1 charges that the conspiracy was to secure domination of East Asia and of the Pacific and Indian Oceans; Count 2, domination of Manchuria; Count 3, domination of all China; Count 4, domination of the same areas named in Count 1, by waging such illegal wars against sixteen specified countries and peoples. In Count 5 the accused are charged with conspiring with Germany and Italy to secure the domination of the world by the waging of such illegal wars against any opposing countries. The prosecution charges in the next twelve counts (6 to 17) that all or certain accused planned and prepared such illegal wars against twelve nations or peoples, identifying in a separate count each nation or people attacked pursuant thereto. In the next nine counts (18 to 26) it is charged that all or certain accused initiated such

illegal wars against eight nations or peoples, identifying in a separate count each nation or people so attacked. In the next ten counts (27 to 36) it is charged that the accused waged such illegal wars against nine nations or peoples, identifying in a separate count each nation or people so warred upon.

In Group Two, murder or conspiracy to murder is charged in sixteen counts (37 to 52). It is charged, in Count 37, that certain accused conspired unlawfully to kill and murder people of the United States, the Philippines, the British Commonwealth, the Netherlands, and Thailand (Siam), by ordering, causing and permitting Japanese armed forces, in time of peace, to attack those people in violation of Hague Convention III, and in Count 38, in violation of numerous treaties other than Hague Convention III.

It is charged in the next five counts (39 to 43) that the accused unlawfully killed and murdered the persons indicated in Counts 37 and 38 by ordering, causing and permitting, in time of peace, armed attacks by Japanese armed forces, on December 7 and 8, 1941, at Pearl Harbor, Kota Bahru, Hong Kong, Shanghai and Davao. The accused are charged in the next count (44) with conspiracy to procure and permit the murder of prisoners of war, civilians and crews of torpedoed ships.

The charges in the last eight counts (45 to 52) of this group are that certain accused, by ordering, causing and permitting Japanese armed forces unlawfully to attack certain cities in China (Counts 45 to 50) and territory in Mongolia and of the Union of Soviet Socialist Republics (Counts 51 and 52), unlawfully killed and murdered large numbers of soldiers and civilians.

In Group Three, the final group of counts (53 to 55), other Conventional War Crimes and Crimes against Humanity, are charged. Certain specified accused are charged in Count 53 with having conspired

to order, authorize and permit Japanese commanders, War Ministry officials, police and subordinates to violate treaties and other laws by committing atrocities and other crimes against many thousands of prisoners of war and civilians belonging to the United States, the British Commonwealth, France, Netherlands, the Philippines, China, Portugal and the Union of Soviet Socialist Republics.

Certain specified accused are directly charged in Count 54 with having ordered, authorized and permitted the persons mentioned in Count 53 to commit offenses mentioned in that count. The same specified accused are charged in the final count (55) with having violated the laws of war by deliberately and recklessly disregarding their legal duty to take adequate steps to secure the observance of conventions, assurances and the laws of war for the protection of prisoners of war and civilians of the nations and peoples named in Count 53.

In the preparation of this criminal indictment against a large number of individuals who are accused of numerous offenses within the Tribunal's jurisdiction, where the prosecution is composed of eleven great peoples each having its national interests and policies to consider, it was inevitable that the indictment should contain numerous allegations. It is necessary to express the views of each nation and also to assure a conviction of each of the accused under whatever the Tribunal finds to be the true state of facts, provided they are found guilty. Allegations in such a case may appear repetitious and in some instances in the alternative. It is the decision of the Tribunal, however, which is important and which is final both as to the facts and law.

Summarized particulars in support of the counts in Group One are presented in Appendix A. Dates, places and other details are stated for instances of military aggression, beginning in Manchuria and expanding into many other areas and periods. In Appendix B are collected

articles of treaties violated by Japan as charged in the counts for Crimes against Peace and the crime of murder. In Appendix C are listed official assurances violated by Japan and incorporated in Group One, Crimes against Peace. Conventions and assurances concerning the laws and customs of war are discussed in Appendix D, and particulars of breaches of the laws and customs of war for which the accused are responsible are set forth therein. Individual responsibility for crimes set out in the indictment and official positions of responsibility held by each of the accused during the period with which the indictment is concerned are presented in Appendix E.

That, if the Tribunal please, is the gist of the crimes charged against these accused in this indictment. The next question to consider is the law upon which the indictment is based. In the first instance, what constitutes cognizable crimes by this Tribunal is defined by the Charter. These may be divided into several general classifications.

The first offense charged in the indictment is conspiracy. Since this offense is merely named and not defined, some definition must be made. This offense is known to and well recognized by most civilized nations, and the gist of it is so similar in all countries that the definition of it by a Federal Court of the United States may well be accepted as an adequate expression of the common conception of this offense:

In the case of Marino v. the United States, reported in 91 Fed. 2d, 691; 113 A.L.R. 975, the United States Circuit Court of Appeals for the Ninth Circuit, in discussing the law of conspiracy, said:

> "A conspiracy is 'a combination of two or more persons, by concerted action, to accomplish a criminal or unlawful purpose, or some purpose not in itself criminal or unlawful, by criminal or unlawful means.'" (Citing cases.) "It is partnership in criminal

purposes. The gist of the crime is the confederation or combination of minds.

"A conspiracy is constituted by an agreement; it is, however, the result of the agreement and not the agreement itself. No formal agreement between the parties is essential to the formation of the conspiracy, for the agreement may be shown 'if there be concert of action, all the parties working together understandingly, with a single design for the accomplishment of a common purpose.'" (Citing cases.)

"On the other hand, if the purpose is unlawful and is carried out either by lawful or unlawful means, the statute is violated." (Citing cases.)

"The purpose of the conspiracy may be continuous, that is, it may contemplate commission of several offenses, or overt acts.

"The crime is completed when an overt act to effect the object of the conspiracy is done by at least one of the conspirators. An overt act is something apart from the conspiracy, and is 'an act to effect the object of the conspiracy.'" (Citing cases.)

"It need be neither a criminal act, nor the very crime that is the object of the conspiracy. It must, however, accompany or follow the agreement, and must be done in furtherance of the object of it.

. . . .

"All of the conspirators need not join in the commission of an overt act, for, if one of the conspirators commits an overt act, it becomes the act of all the conspirators."

. . . .

"In the situation where a conspiracy has been formed, the joinder thereof by a new member does not create a new conspiracy,

does not change the status of the other conspirators, and the new member is as guilty as though he was an original conspirator. Where, after formation of a conspiracy one of the conspirators withdraws, such withdrawal neither creates a new conspiracy, nor changes the status of the remaining members."

The next offenses charged run through Counts 6 to 36 in various forms; but the same essential elements are contained in all, that is, "The planning, preparation, initiation or waging of a declared or undeclared war of aggression," or "the planning, preparation, initiation or waging of a war in violation of international law, treaties, agreements or assurances."

Taking the first section of this definition, the essential element here is "war of aggression." Is this a crime under international law, and has it been so understood during all the time referred to in the indictment? We claim that it is and has been. To reach this conclusion we must establish two things: first, that there is international law covering the subject, and second, that it is a crime under that law.

The establishment of these two things is, we believe, among the important questions before this Tribunal. For the first time in history, the Military Tribunal sitting in Nuremberg and this Military Tribunal for the Far East are being asked by the civilized nations of the world to recognize and state by judicial decision these two principles as an integral part of international law.

We believe this Tribunal, under Article 13. d. of the Charter, will take judicial notice of the fact that there is a large body of international law, known at different times and by different writers as the "common law" or "general law" or "natural law" of international law. That it is a living, growing body is well illustrated by the following authorities:

In 1934, Mr. Justice Cardozo, speaking for the United States Supreme Court in the case of New Jersey v. Delaware, 291 U. S. 361, at page 383, said:

"International law, or the law that governs between states, has at times, like the common law within states, a twilight existence during which it is hardly distinguishable from morality or justice till at length the imprimatur of a court attests its jural quality. The gradual consolidation of opinions and habits has been doing its quiet work."

Lord Wright, a well recognized authority on international law, says of this subject in his paper, "War Crimes Under International Law":

"It is important for those who approach the consideration of this topic to consider what are the nature, the sources and the sanctions of International Law. They must not expect to find that they are the same as exist in the case of systems of Municipal Law, whether the particular law is of the Anglo-American or Common Law type, or is of the Civil Law or the codified class. Either type has the feature that it is law enacted by a central law-making authority such as a Legislature or a Court, and the further feature that there is a standing judicial authority to expound it and a standing executive to give effect to it.

"International Law differs from these national systems because there is no central law-making authority. It may thus be described as the law of the international community. That community, however, consists of a number of independent sovereign nations, each with its own system of National or Municipal Law.

"The sources of International Law must, therefore, be sought elsewhere than in the acts of a national law-making authority. In my earlier essay I pleaded to have it recognized that International Law was the product, however imperfect, of that sense of right and wrong, of the instincts of justice and the humanity which are the common heritage of all civilized nations. This has been called for many ages 'Natural Law'; perhaps in modern days it is simpler and truer merely to refer to it as flowing from the instinctive sense of right and wrong possessed by all decent men, or to describe

it as derived from the principles common to all civilized nations. This is, or ought to be, the ultimate basis of all law.

"Just as civilized men (or perhaps any men) living together in society under the most complete system of individual freedom must necessarily suffer the restrictions inevitably imposed on each by the similar freedom enjoyed by their neighbours, so, in the community of nations, the sovereignty (i.e., the freedom and independence of each nation) must be conditioned by regard for the like freedom and independence of the neighbouring nations. Modern conditions have made increasingly apparent the mutual interdependence of nations and have led to the concept of the community of nations. Some day there may be a central law-making and law-enforcing body charged with settling the relations between the members of what would then become the community of nations in the full sense. But that time is not yet. International Law represents the imperfect endeavour to develop a body of rules and principles which will go towards establishing a rule of law among the nat ons, not dissimilar in character from the rule of law which is established in greater or lesser degree inside each separate sovereign nation."

. . . .

"Law consists of rules for determining conduct. There may be such rules without legislation, without Courts and without executives to give effect to them. There may be the customary or traditional rules which are so familiar that men obey them or act in accordance with them as a matter of ordinary course. The common lawyer is familiar with the idea of customs which develop into law and may eventually receive recognition from competent Courts and authorities. But the Court does not make the law, it merely declares it or decides that it exists, after hearing the rival contentions of those who assert and those who deny the law."

. . . .

"But International Law is progressive. The period of growth generally coincides with the period of world upheavals. The

pressure of necessity stimulates the impact of natural law and of moral ideas and converts them into rules of law deliberately and overtly recognized by the consensus of civilized mankind. The experience of two great world wars within a quarter of a century cannot fail to have deep repercussions on the senses of the peoples and their demand for an International Law which reflects international justice. I am convinced that International Law has progressed, as it is bound to progress if it is to be a living and operative force in these days of widening sense of humanity."

Sir Frederick Pollock in "The Sources of International Law" in 2 Columbia Law Review (1902), 511-512, in discussing customary law, said:

"It is, therefore, impracticable, with one exception to be mentioned, to make any general statement as to the value of treaties and similar instruments as evidence of the law of nations. The exceptional case, which is of increasing frequency and importance, is where an agreement or declaration is made not by two or three states as a matter of private business between themselves, but by a considerable proportion, in number and power, of civilized states at large, for the regulation of matters of general and permanent interest. Such acts have of late been the result of congresses or conferences held for that purpose, and they have been so framed as to admit of and invite the subsequent adhesion of Powers not originally parties to the proceedings. There is no doubt that, when all or most of the great Powers have deliberately agreed to certain rules of general application, the rules approved by them have very great weight in practice even among states which have never expressly consented to them. It is hardly too much to say that declarations of this kind may be expected, in the absence of

prompt and effective dissent by some Power of the first rank, to become part of the universally received law of nations within a moderate time. As among men, so among nations, the opinions and usage of the leading members in a community tend to form an authoritative example for the whole."

On July 26, 1934 the Judicial Committee of the British Privy Council, after considering numerous early views with respect to the law of piracy and in particular the case of R. v. Joseph Dawson (13 St. Tr. col. 451) which arose in 1696, through Viscount Sankey, L.C., stated:

"But over and above that we are not now in the year 1696, we are now in the year 1934. International law was not crystallised in the 17th century, but is a living and expanding code. In his treatise on international law, the English textbook writer Hall (1853-94) says at p. 25 of his preface to the third edition (1889) (1): 'Looking back over the last couple of centuries we see international law at the close of each fifty years in a more solid position than that which it occupied at the beginning of the period. Progressively it has taken firmer hold, it has extended its sphere of operation, it has ceased to trouble itself about trivial formalities, it has more and more dared to grapple in detail with the fundamental facts in the relations of States. The area within which it reigns beyond dispute has in that time been infinitely enlarged, and it has been greatly enlarged within the memory of living man.' Again another example may be given. A body of international law is growing up with regard to aerial warfare and aerial transport, of which Sir Charles Hedges in 1696 could have had no possible idea."

That international courts recognize a general body of international law is evidenced by the two following illustrations:

In the 1936 edition of the Statute of the Permanent Court of International Justice, there appears under Article 38 these provisions:

"The Court shall apply:

"1. International conventions, whether general or particular, establishing rules expressly recognised by the contesting States;

"2. International custom, as evidence of a general practice accepted as law;

"3. The general principles of law recognised by civilised nations;

"4. Subject to the provisions of Article 59, judicial decisions and the teachings of the most highly qualified publicists of the various nations, as subsidiary means for the determination of rules of law. This provision shall not prejudice the power of the Court to decide a case ex aequo et bono, if the parties agree thereto."

The Mixed Claims Commission, United States and Germany, established pursuant to the agreement of August 10, 1922, between the two countries, held in Administrative Decision No. II that in its adjudications the Commission would be controlled by the terms of the Treaty of Berlin but that where

"no applicable provision is found in that instrument, in determining the measure of damages the Commission may apply:

"(a) International conventions, whether general or particular, establishing rules expressly recognised by the United States and Germany;

"(b) International custom, as evidence of a general practice accepted as law;

"(c) Rules of law common to the United States and Germany established by either statute or judicial decisions;

"(d) The general principles of law recognised by civilised nations;

"(e) Judicial decisions and the teachings of the most highly qualified publicists of all nations, as subsidiary means for the determination of rules of law; but

"(f) The Commission will not be bound by any particular code or rules of law but shall be guided by justice, equity, and good faith."

Having shown the nature and growth of international law, and that when many civilized nations have acted in voluntary concert on a matter of general welfare it becomes recognized as a principle of international law, we shall show now that the question of aggressive war has been considered by so many nations and deliberately outlawed by them that their unanimous verdict rises to the dignity of a general principle of international law.

Long before the occurrence of the acts complained of in this indictment, aggressive warfare had been condemned as illegal. Beginning with the opening of the present century, the civilized world began to place restraints upon the waging of war. At the first Hague Convention, 1899, the nations of the world agreed to settle their disputes by pacific means whenever possible. At the Hague Convention No. III, in 1907, this same policy was reaffirmed, and all the nations involved in this indictment, including Japan, agreed that "the Contracting Parties recognize that hostilities between themselves must not commence without previous and explicit warning, in the form either of a reasoned declaration of war or of an ultimatum with conditional declaration of war." By that agreement undeclared wars and treacherous attacks were branded as international crimes.

In 1919 the victorious nations, including Japan, agreed that the violation of international treaties was a justiciable offense. The leading nations of the world, by successive agreements and treaties,

took another definite step in the evolution of international law, after the close of World War I, by specifically declaring: "A war of aggression constitutes an international crime." That statement was a part of the Geneva Protocol for the Pacific Settlement of International Disputes and was signed by the representatives of forty-eight nations. This was followed in the Eighth Assembly of the League of Nations in 1927 by a unanimous resolution in almost the same language. Japan was a signatory of both of these instruments.

The Sixth Pan-American Conference of 1928, meeting at Havana, Cuba, went a step further when it adopted a resolution on "aggression", the preamble of which specifically states that "war of aggression constitutes an international crime against the human species;" and the resolution then proceeded to declare: "All aggression is considered illicit and as such is declared prohibited."

By the Kellogg-Briand Pact, signed in Paris on August 27, 1928, the Contracting Parties, that is, practically the whole community of the civilized world, including Japan, condemned recourse to war for the solution of international controversies, and renounced war as an instrument of national policy in their relations with one another. Although the text of this Pact does not use the word "crime", it is clear that by renouncing war "as an instrument of national policy", they meant to put the system of aggressive war outside the law, to wit: make it illegal. These covenants and agreements cannot be waved aside with a light gesture. They are not, and have never been, mere scraps of paper.

Acting in conformance with the demands of the public conscience of the world, by 1928 all the civilized nations of the world had by solemn commitments and agreements recognized and pronounced wars of aggression to be international crimes and had thus established the illegality of war as a positive rule of international law.

That our conclusion meets with the approval of students of international law is shown by the following quotation from Lord Wright's article on "War Crimes Under International Law":

> "Every nation has the inalienable right to self defence. But a war of aggression falls outside that justification. War is an evil thing. It is no hyperbole to describe the war of 1939 to be one of the greatest calamities that ever befell the human race. To initiate a war of aggression is thus not only a crime, but the chief of war crimes. It differs in its universal scope from the specific offences which are included in the breaches of the particular laws of war. It is the accumulated evil of the whole. If it were possible to conceive of a war conducted on the most chivalrous and humane methods possible, the initiation of the war, if it were an unjust war, would still be a crime. It would be a crime against peace."

Having shown that the law of nations outlaws aggressive war, we must next determine what is an aggressive war. An act of aggression is defined in Webster's New International Dictionary, Second Edition, Unabridged, 1943, as:

> "A first or unprovoked attack, or act of hostility; the first act of injury or first act leading to a war or a controversy; an assault; also the practice of attack or encroachment; as, a war of aggression."

> "A nation that refuses to arbitrate or to accept an arbitration award, or any other peaceful method, in the settlement of a dispute but threatens to use force or to resort to war."

James T. Shotwell, in his book, "War As An Instrument of National Policy", page 58, defines it thus: "The aggressor being that state which goes to war in violation of its pledge to submit the matter of dispute to peaceful settlement, having already agreed to do so."

The next division of Crimes against Peace has to do with the planning, preparation, initiation or waging of a war in violation of international law, treaties, agreements or assurances. Here the law is well defined and has been enforced for generations. When two or more nations enter into a solemn covenant or agreement, and especially when it reaches the dignity of a treaty, each nation has always been held to be bound by its terms. Unless that be true, there would be no reason whatsoever for their enactment. To contend otherwise would mean that international conduct has reached so low a level that their sole purpose is one of guile and deceit; that the nations affix their names thereto with the purpose of cheating one another. However, this absurd contention has been time and again rejected and international courts have recognized a general body of international law.

We now come to the point where we shall show the acts of Japan to be among the most treacherous and perfidious of all time. In 1904, Japan opened the Russo-Japanese War with an attack on the Russian fleet at Port Arthur without notice or warning. The civilized nations of the world recognized that a continuance of this practice would be intolerable. Under such conditions, every nation would have to be fully armed and on the alert at all times with a consequent stupendous and burdensome expense that would stifle the peaceful, commercial life of its people.

The direct result of Japan's treachery in this case was the Hague Convention III in 1907, "Relative to the Opening of Hostilities" in which every nation bringing the charges in this indictment, as well as Japan, united in saying in Article I: (as has previously been quoted for another illustration)

"The Contracting Powers recognize that hostilities between themselves must not commence without previous and explicit warning,

in the form either of a reasoned declaration of war or of an ultimatum with conditional declaration of war."

Under this agreement, which remained in full force and effect, were the attacks without notice or warning on Mukden, Changchun and Kirin on September 18, 1931, and the subsequent, similar attacks on Nanking on December 12, 1937, and on Pearl Harbor, Manila, Davao and Hong Kong on December 7 and 8, 1941, lawful acts? We contend they were not; and we shall show by the undisputed evidence in this case that each and every attack was made without previous and explicit warning or an ultimatum of any kind; that as a matter of fact at the very moment the attack was made on Pearl Harbor, the Japanese representatives were treacherously negotiating with the United States Government in Washington in an attempt to build up a false sense of security.

We shall show that each and every one of the aforementioned attacks, and the many others not mentioned at this time, constituted illegal acts, both as acts of aggressive warfare and attacks without warning in violation of treaties. We shall further show that each and every one of the accused named in this indictment played an important part in these unlawful proceedings; that they acted with full knowledge of Japan's treaty obligations and of the fact that their acts were criminal.

Do these accused contend that these are mere empty promises, and if so, upon what logic do they base this assumption? To put it otherwise, can nations expect to get on one with another and trust each other without keeping solemnly enacted pledges any more than their nationals could expect to live in orderly existence one with another within the confines of their own country without respecting the agreements which they make? Could such procedure lead to anything else than

world anarchy? And can such world anarchy be longer tolerated in this day and age? These are real pertinent inquiries. We have little doubt as to their answer.

It is the well recognized law of every civilized community that one who engages in a criminal act is fully and personally responsible for the natural and probable consequences of that act. Can the accused deny that the waging of war means the taking of human lives? The taking of human life without legal justification is, and has been recognized from the dawn of history, as murder. We shall show, therefore, that these accused, and each and every one of them, are guilty of the charge of murder as contained in this indictment.

Even under the laws of their own land, these accused are guilty. In the Criminal Code of Japan, Chapter XXVI, Article 199 (Sebald), page 148, the crime is defined in more general terms and reads:

> "Every person who has killed another person shall be condemned to death or punished with penal servitude for life or not less than three years."

Article 203 of the same Code makes the attempt to kill a person punishable; and Article 201 creates a crime out of the mere preparation with intent to commit murder, even though only one person is concerned in it and there are none of the usual elements of conspiracy present, and even though the preparations never reached the stage of an attempt. Since the usual definition of murder in civilized countries is the intentional killing of a human being without legal justification, we should perhaps see what constitutes "legal justification". This justification is usually limited to the defense of one's person or property or, perhaps, in the case of an executioner, that he was merely carrying out the order of a properly constituted court.

In the case before us, the deaths all occurred as a result of belligerency or war, and since the war was illegal, all the natural and normal results flowing from the original act are also illegal. This is true even under Japanese law.

In addition to the reasons already given, the military and naval forces of Japan were bound by "the laws and customs of war" as established partly by the practice of civilized nations and partly by treaties, conventions and assurances which were either directly binding upon them or evidence of the established and recognized rules. As evidence of these customs, the Hague Convention IV in October, 1907, to which Japan was a party, provides:

> "According to the views of the High Contracting Parties, these provisions, the drafting of which has been inspired by the desire to diminish the evils of war, so far as military requirements permit, are intended to serve as a general rule of conduct for the belligerents in their relations with the inhabitants.
>
> "It has not, however, been found possible at present to concert stipulations covering all the circumstances which arise in practice;
>
> "On the other hand, the High Contracting Parties clearly do not intend that unforeseen cases should, in default of written agreement, be left to the arbitrary opinion of military commanders.
>
> "Until a more complete code of the laws of war can be drawn up, the High Contracting Parties deem it expedient to declare that, in cases not covered by the rules adopted by them, the inhabitants and the belligerents remain under the protection and governance of the principles of the law of nations, derived from the usages established among civilized peoples, from the laws of humanity, and from the dictates of the public conscience."

In Section I, Chapter I, Article I of the Annex to the Convention, it provides in part at follows:

"The laws, rights, and duties of war apply not only to armies, but also to militia and volunteer corps fulfilling the following conditions:

"1. To be commanded by a person responsible for his subordinates;

. . . .

"4. To conduct their operations in accordance with the laws and customs of war."

Then follow other provisions with reference to the treatment of prisoners of war and the sick and wounded which will be specifically referred to subsequently when the evidence on Conventional War Crimes is presented. In Article XXIII, it provides in part:

"In addition to the prohibitions provided by special Conventions, it is especially forbidden:

. . . .

"(b) To kill or wound treacherously individuals belonging to the hostile nation or army;"

Therefore, an attack without warning upon another nation with which Japan was at peace constituted treachery of the worst type, and under the provisions of the Hague Convention the killing of any human being during such attack became murder.

In order to show the full effects of a war of aggression and a war in violation of international law, treaties, agreements and assurances, we have referred incidentally to the law covering Conventional War Crimes. These are charged in Group Three in the indictment, but perhaps the aforesaid reference is sufficient as the law covering these crimes is well set forth in the Annex to Hague Convention IV already referred to,

There remains at least one phase of the law to be considered -- perhaps the most important. That is the law pertaining to the individual liability of these accused.

The Supreme Court of the United States, during the period of this war, has expressed itself on the question of individual liability of those accused of offenses occurring during war. In Ex parte Quirin, 317 U.S. 1, it extensively reviewed the prevailing international law and referred to various authorities in its opinion. It states specifically:

> "It is no objection that Congress in providing for the trial of such offenses has not itself undertaken to codify that branch of international law or to mark its precise boundaries, or to enumerate or define by statute all the acts which that law condemns. An Act of Congress punishing 'the crime of piracy, as defined by the law of nations' is an appropriate exercise of its constitutional authority, Art. I, Section 8, cl. 10, 'to define and punish' the offense since it has adopted by reference the sufficiently precise definition of international law. United States v. Smith, 5 Wheat. 153; see The Marianna Flora, 11 Wheat. 1, 40-41; United States v. Brig Malek Adhel, 2 How, 210, 232; The Ambrose Light, 25 Fed. 408, 423-28; 18 U. S. C. Section 481. Similarly by the reference in the 15th Article of War to 'offenders or offenses that . . . by the law of war may be triable by such military commissions', Congress has incorporated by reference, as within the jurisdiction of military commissions, all offenses which are defined as such by the law of war (compare Dynes v. Hoover, 20 How. 65, 82), and which may constitutionally be included within that jurisdiction. Congress had the choice of crystallizing in permanent form and in minute detail every offense against the

law of war, or of adopting the system of common law applied by military tribunals so far as it should be recognized and deemed applicable by the courts. It chose the latter course."

The prosecution, representative of these eleven nations, contends that these holdings are in accord with the laws enforced domestically in all of their nations. It is quite interesting to observe that even in the interpretation of domestic law, or, as sometimes referred to, municipal law, where legislatures and courts have long been established and operated in a lawful and precise manner, there is still the recognition of the existence of a definite living and growing body of international common law.

So we observe that in Ex parte Quirin, and in the Yamashita case, also recently decided by the same Tribunal, as well as in many earlier cases, there is definite authority of the highest court of a great nation to support our contention that individuals may be punished by a military tribunal for violations of international law, which, even though never codified by an international legislative body, have been sufficiently developed and crystallized to make them cognizable by courts of justice.

Under the usual law of conspiracy heretofore defined, it is always held that every member of the conspiracy is equally liable for every act committed by any other member of the conspiracy in the furtherance of the common plan. When we add to this general rule the additional rule that every person is liable for the natural and probable consequences of his criminal acts, we find that these men, who held positions of power and influence in the Japanese Government and by virtue of their positions conspired to, and planned, prepared, initiated and waged illegal wars, are responsible for every single criminal act resulting therefrom.

Aside from the usual rule in conspiracy cases, we find another rule of liability common to all legal systems, which is similar to the conspiracy rule, that all who participated in the formulation or execution of a criminal plan involving multiple crimes are liable for each of the offenses committed and for the acts of each other. All are liable who incited, ordered, procured or counselled the commission of such acts or have taken a consenting part therein.

It is the contention of the prosecution that the positions held by these accused is no bar to their being considered as ordinary criminals and felons if the evidence presented to this Tribunal proves beyond a reasonable doubt that they have been parties to crimes for which they should be punished. All governments are operated by human agents, and all crimes are committed by human beings. A man's official position cannot rob him of his identify as an individual nor relieve him from responsibility for his individual offenses. The personal liability of these high ranking civil officials is one of the most important, and perhaps the only new question under international law, to be presented to this Tribunal. That question is being squarely presented. It will become necessary for this Tribunal to determine whether it will proceed, as other tribunals and courts in the past have done, to recognize as law a principle that follows the needs of civilization and is a clear expression of the public conscience.

Let us now consider the facts. The indictment charges that the accused participated in the formulation or execution of a common plan or conspiracy to wage declared or undeclared war or wars of aggression and war or wars in violation of international law, treaties, agreements and assurances against any country or countries which might oppose them, with the object of securing military, naval, political and economic domination of East Asia and of the Pacific and Indian Oceans, and all countries bordering thereon and islands therein and ultimately the domination of the world.

There are two issues involved: (1) the fact of conspiracy; and (2) who were parties to it. The fact of conspiracy will be proved by direct and circumstantial evidence, including the conduct and declarations of the accused and their accomplices. The evidence relied upon to establish the fact of conspiracy, together with additional testimony proposed to be introduced, will demonstrate the connection of each accused with the conspiracy charged.

As to the first issue, "the fact of conspiracy," the prosecution is not required to prove the specific date of its inception so long as the proof establishes as a fact that the conspiracy charged existed within the dates specified in the indictment. We propose to prove that for years prior to 1 January 1928 the military in Japan had sponsored, organized and put into effect in the public school system of Japan a program designed to instill a militaristic spirit in the youth of Japan and to cultivate the ultra-nationalistic concept that the future progress of Japan was dependent upon wars of conquest; that as a result of her previous aggressive policy, Japan had acquired vast interests and special privileges in China, particularly in that part known as Manchuria; and that by special treaties Japan had acquired large areas in Manchuria in which she exercised extra-territorial powers.

In 1927 the Japanese Government formulated a positive policy toward China which resulted in sending troops to China in May 1927 and in April 1928. Political writers and speakers advocated public support of military action in Manchuria. A plan was developed, it will be shown, which anticipated the creation of an "incident" in Manchuria as a basis for military aggression and included the exertion of coercive methods in bringing the Japanese Government into accord with military aims and purposes in Manchuria.

On September 18, 1931 a provocative occurrence, which has come to be known historically as the "Mukden Incident," was planned and executed. It was no accident, as the evidence will show. It was followed by immediate military aggression, implemented by more than forty thousand armed troops, well prepared and on the alert for the occasion, resulting in the occupation of the three northeastern provinces of China and ultimately the setting up of a puppet regime (at all times responsive to the strings pulled from Japan, and formally given the dignity of "recognition" as the so-called State of Manchukuo), and military occupation of the province of Jehol.

The real purpose of the invasion, namely, the proprietary interest of Japanese in Manchuria, will be shown by the financial, economic and political development which followed. Force of circumstances halted the military aggression temporarily at the Great Wall of China, but the designs of these conspirators were partially accomplished. The Tangku Truce was ultimately effected whereby a demilitarized zone was established in the eastern province of Hopei. But the evidence will clearly disclose that Japan, through these accused, again proceeded to effect the purposes of the conspiracy, this time by means of deceit, bribery and intrigue, and by the use of political and economic means, and whenever necessary, military pressure was always at hand to supplement the foregoing.

Thus the conspiracy proceeded, by the means and methods of Divide and Conquer, to establish separate autonomous states in Mongolia and North China. The purpose of these maneuvers was to make secure the territory already seized, and to form the basis for a strengthening and extension of Japanese domination and control of all China until such time as the Japanese should be ready and prepared to develop further the larger scheme, to wit, her Greater East Asia policy.

Throughout all of this period the pattern and design conforms to a simple plan; the details vary from time to time. Military incursions were made into the provinces of North China and Mongolia, and Manchukuoan-Siberian border "incidents" occurred. The similarity of methods employed and the repeated use of the word "incidents" to describe the killing of thousands upon thousands of individuals ought to be noted.

The westward advance into Outer Mongolia was checked by the Mutual Assistance Pact of 31 March 1936 between Outer Mongolia and the Soviet Union. Unsuccessful in her various attempts to unite the provinces of Inner Mongolia and North China in so-called autonomous regimes, Japan was compelled to be satisfied with the conversion of the demilitarized zone into the Japanese dominated and controlled Eastern Hopei Anti-Comintern Autonomous Council. Japan, having temporarily been frustrated in her program of expansion, provoked the notorious Marco Polo Bridge Incident on 7 July 1937. This "incident" was patterned after the Mukden affair, and, as was the case in Manchuria, it served as the occasion for large scale Japanese military aggression on many fronts. Major campaigns were conducted, resulting in the occupation of Shanghai in August 1937 after two months of bitter resistance on the part of Chinese troops. The occupation of Nanking was characterized by systematic, merciless slaughter, rape and torture of tens of thousands of prisoners of war,

civilians, women and children, and the wanton and wholesale destruction of homes and property utterly beyond any possible military requirements. This action, commonly called the Rape on Nanking, is without parallel in modern warfare.

Nanking was only one of the many Chinese cities in which the Japanese sought, as a part of their plan of aggression, to destroy the will of the people to fight by the commission of atrocities of almost unbelievable severity, both as to their character and extent. The evidence will disclose that this inhumane type of warfare was of so general a character, both with respect to geographic distribution and as to time of commission, as to demonstrate the existence of a pattern or plan of warfare which in fact characterized the Japanese military aggression wherever waged. The evidence will also disclose that opium was used as a military weapon to break the morale of the people and to destroy their will to fight as well as a means of revenue to finance Japan's armies. The attack on the Panay, Ladybird, and other vessels of neutral powers will be shown as further evidence of wanton and reckless disregard for life and property and also as a demonstration to the Chinese people of the power and efficacy of Japanese arms.

The waging of aggressive warfare against China in that part known as Manchuria, as well as in the northern provinces of China, and subsequently in the rest of China, was aided and facilitated by military groups acting in concert with civilians in securing control of governmental departments and agencies. This control was acquired by various means.

The Imperial Ordinance of 1936 provided that the Minister of War must be a General or Lieutenant General on the active list and that the Minister of the Navy must be an Admiral or Vice Admiral on the active list. As it was also provided by an Imperial Ordinance that the Cabinet must include the Minister of War and the Minister of the Navy, no Cabinet

could be formed without approval of its membership by the War and Navy Ministers, and a Cabinet once formed could not stand unless its policies were in accord with the views of the Army and Navy. This power, the evidence will show, was used by the Army in obtaining domination and control of the government and promoting Japan's policy of expansion by force.

Through the express provisions of the Japanese Constitution, there has been a sharp distinction made between matters of general affairs of state and matters pertaining to the supreme command under the Army and Navy. Throughout the life of this conspiracy, the evidence will show, there was a constant tendency to enlarge the scope of matters contained within the concept of supreme command at the expense of matters belonging to general affairs of state.

The evidence will also show that militaristic cliques and ultra-nationalistic secret societies resorted to rule by assassination and thereby exercised great influence in favor of military aggression. Assassinations and threats of revolt enabled the military br nch more and more to dominate the civil government and to appoint new persons favorable to them and their policies. This tendency became stronger and more entrenched until on 18 October 1941 the military assumed complete and full control of all branches of the government, both civilian and military.

The prosecution contends, and it will introduce evidence to prove, that the government, dominated and controlled by militaristic cliques and civilians committed to the policy of war of aggression, resorted to the subterfuge and device of setting up and maintaining a puppet regime in Manchuria, the prototype of many others to follow, in an effort to evade world condemnation and responsibility for violation of specific treaty obligations in the waging of aggressive warfare, and

in an effort to deceive those subjects of Japan who advocated peaceful solution of the Manchurian issues. As evidence of determination on the part of those responsible for Japanese policy to continue the program of expansion by force, Japan withdrew from the League of Nations, decided formally not to adhere to the London Naval Treaty or furnish information regarding its building program pursuant to the provisions thereof, refused to attend the Nine Power Treaty Conference at Brussels, and fortified the Mandated Islands in violation of the trust under which she obtained them.

Before committing herself to extensive military aggression against China in 1937, Japan sought and obtained an alliance with Germany which was concluded on 25 November 1936 and is known as the Anti-Comintern Pact, and on the same day concluded a secret treaty with Germany. The evidence will show that Japan proclaimed to the world that the Japanese-German agreement simply provided for cooperation between the two countries against the Communist Internationale and was not directed toward any particular country, when in truth and in fact a secret agreement had converted the pact into a military alliance against the Soviet Union, and that this pact, being a prelude to their joint aggression, was directed not only against the Soviet Union, but against all democratic nations. The evidence will demonstrate that the purpose of this pact was of a two-fold character: first, by the strength of the alliance, to check the Soviet Union on the north, thereby giving Japan freedom of action to the south; second, the pact, in being directed on its face against the Communist Internationale, could be and was used as a pretext and blind for continued military, economic and political penetration into China. The military provisions were placed in the secret treaty, for the reason that knowledge of them would likely complicate and delay negotiations being conducted between Japan and

the Soviet Union regarding certain proposed fishing treaties, but it was intended that danger of war between Japan and the Soviet Union resulting from military aggression in China could be averted by putting forth the secret treaty at the proper time.

It will be shown that Japan expected to break the resistance of China within a few months after the Marco Polo Bridge Incident, but failing in this, Japan was forced to conclude on 16 January 1938 that a major war must of necessity be waged against China if she continued in her program of expansion by force.

Beginning in January 1938, Japan and Germany worked for a closer military alliance, which was to become another stage in their plot against democratic countries, Germany desiring an alliance against the world and Japan desiring a stronger alliance, primarily against Russia and secondarily against other countries. Japan desired alignment with Germany and Italy, two rising aggressive powers in Europe which had adopted the policy of "talking peace while preparing for war," in order to secure for themselves their share in the division of the world which they were going to effect, and in order to create, in the nearest future, conditions enabling their realization of the aggression they had initiated in the Far East and assist in bringing the Chinese war of aggression to a successful conclusion. The negotiations for such an alliance were suspended upon the conclusion of a non-aggression pact on 23 August 1939 between Germany and Russia.

Japan had increased her efforts to bring to a successful conclusion the war of aggression against China in order that she would be free to expand by force into the areas south of China. Aggressive aims against the Dutch, French and other South Sea territories had also been formulated. Her plans, it will be shown, also included war against the British Commonwealth, and if necessary, the United States. Under such circumstances,

negotiations for a military alliance with Germany and Italy were renewed and with unprecedented speed culminated in the conclusion of the Tri-Partite Pact on 27 September 1940. This pact in its essence contained the ultimate development of the plot of the aggressive powers directed towards the division of the world and the establishment of the so-called "New Order," which had for its purpose the extinguishment of democracy throughout the world and the subjugation of all nations by the aggressive states.

To accomplish this result, the military hierarchy caused the down-fall of the Yonai Cabinet in July 1940, and the posts of Foreign Minister and War Minister in the succeeding cabinet were filled by Matsuoka and Tojo respectively, both of whom were committed to the military alliance with Germany and Italy as the capstone of Japan's foreign policy.

The evidence will disclose that from the early days of the conspiracy Japan had determined to wage war against the United States for the purpose of executing her Great East Asia policy. By "Great East Asia," as used in the pact, was meant French Indo-China, Siam, Burma, the Straits Settlements, and the Oceania group ranging from the Dutch East Indies down to New Guinea and New Caledonia, with a view to a gradual expansion designed in time to include Australia, New Zealand, India and Eastern Siberia.

By the military alliance with Germany and Italy, it was sought to create a new world order in which Japan was recognized as the leader in Greater East Asia, and Germany and Italy as the leaders in Europe. By secret understandings it was contemplated that the signatories, by consultation, had the right to determine whether action, or a chain of actions, by the United States would be regarded as constituting an "attack" within the meaning of the pact, and in the event a decision favorable to an attack were reached, the provisions for military and other aid became automatic.

These eleven prosecuting nations and peoples will show that in 1940 and during the first eleven months of 1941 the accused conspirators advanced their plans and preparations with increasing rapidity toward the initiation of war. Evidence will be presented to show that during the four years beginning in November 1941 and continuing to September 1945, these accused brought war in its most ruthless and frightful details by land, sea and air to their neighboring peoples of the continents and islands in the Pacific and Indian Ocean areas, on a stage extending more than ten thousand miles from east to west and more than five thousand miles from north to south. As the conspirators moved from their ten years of planning and preparation into the period of initiating and waging of lawless, aggressive war the pattern of the conspiracy became increasingly clear in its details. The conspiracy definitely entered the phase of an all-out alliance with Hitlerite Germany and Fascist Italy for the domination of the world. It will be shown, as one instance, that on March 2, 1941, the accused Oshima and the German Foreign Minister Ribbentrop agreed on a division of spoils of conquest between their respective countries; and in later understandings Italy came in for its share of the prospective loot and spoils of war. It will be shown that Japan, Germany and Italy established and maintained close affiliation and understandings with respect to diplomatic relations and military and naval operations.

These prosecuting nations will show the unlawful initiation or commencement of hostilities, by stealth, deception and treachery on December 7 and 8, 1941, against the United States of America at Pearl Harbor, against the British Commonwealth of Nations at Kota Bahru, Hong Kong and Shanghai, and against the Commonwealth of the Philippines at Davao. The deliberately criminal intent in this phase of the conspiracy will be observed in its faithful copying of the attack without

declaration of war by Italy against Abyssinia in 1935, by Japan against China in 1937 and by Hitlerite Germany in its "blitzkrieg" attacks against Poland and other nations in 1939, 1940 and 1941. The evidence will further show that Hitler, on December 10, 1941, expressed to the accused Oshima his "joy" because of the Japanese attack, and that Hitler added that the Japanese did the right thing by attacking without a declaration of war and that he himself had done the same thing before and would do so in the future. It will further be shown that in these criminal attacks more than five thousand nationals of the prosecuting nations were unlawfully killed and murdered.

The prosecution will present evidence to show that the pattern adopted or accepted by the accused leaders in waging the war was the same pattern as that followed by their fellow conspirators, the Nazi Germans, in their habitual tactics of terrorism, ruthlessness and savage brutality, especially against helpless prisoners of war, civilians and survivors of ships destroyed at sea by submarines. It will be shown that the accused likewise received from Hitler and his associates the gift of two submarines and plans based upon German experience in machine-gunning and otherwise destroying survivors of torpedoed ships.

It is respectfully submitted that the occurrences and events described, when properly and adequately developed by the evidence, will clearly demonstrate and prove the existence of a continuing conspiracy to wage war or wars of aggression and war or wars in violation of international law, treaties, agreements and assurances for the expanding purposes of acquiring dominion and control in successive stages, with only such delays as consolidation of seized territories and preparation for further aggressions required; of Manchuria, the provinces of Inner Mongolia, North China and the rest of China, French Indo-China, Siam,

Burma, Malaya, the Pacific and Indian Oceans, and all countries and islands therein and bordering thereon, and ultimately the domination of the world.

If the Tribunal concludes that the evidence proposed to be introduced establishes "the fact of conspiracy," the only remaining issue is "who are parties to it." To recite in this opening statement the manner in which each accused participated, in his official and individual capacity, as a leader, organizer, instigator or accomplice in the formulation or the execution of the common plan or conspiracy, would require a statement in detail of the entire evidence in the case. Such would be a task beyond the purpose of this preliminary opening statement, and consequently we submit for the present that the proof relating to the fact of conspiracy and the matters and things set forth in the various appendices to the indictment, when supported by evidence proposed to be introduced, will establish that these accused participated with others in the common plan and conspiracy and were the major leaders responsible for the formulation and execution of the conspiracy charged.

Evidence will be introduced to prove each of the accused guilty, directly, or as responsible military or government officials, or as leaders, organizers, instigators or accomplices in the formulation or execution of a common plan or conspiracy, of violation of practically all of the recognized rules and customs of war, or "laws of war," as they are frequently termed -- the Conventional War Crimes of Article 5b of the Charter.

In the military occupation of Manchuria, of China, of the Philippines, of the Dutch East Indies, of French Indo-China, of Burma, of Guam, of Wake and of other enemy territory occupied by Japan, the evidence will show a repeated and widespread disregard of the responsibility of some of the accused to secure observance of these

principles of law. This evidence includes facts concerning atrocities already known to the world -- the mass destruction of prisoners of war employed in constructing and operating the Burma-Thailand Railway; the Bataan death march in the Philippines; the Sandakan-Ranay march in Borneo where there were six survivors of an original two thousand soldiers; the massacre of Australian nurses on Bangka Island off Sumatra; and the execution of the B-29 pilots. It includes evidence of other lesser known but equally infamous crimes -- at Balikpapan, Borneo, where in January, 1942, the entire white population was killed when they refused to surrender oil fields undamaged; at Langson, Indo-China, where 450 prisoners of war were machine-gunned in the legs and then executed with bayonets and pick axes; at Lipa in the Philippines where out of 45,000 of its inhabitants 18,000 were executed in February, 1945, and practically the entire male population of several villages exterminated; at the village of Hsiang-Kuo-Chuang in Hopei Province, China, of over four hundred families, destroyed in the Spring of 1943, except for one house and twenty inhabitants; in Liaoning Province, Manchuria, where in February 1942, three thousand Chinese civilians were forced to serve as coolies in constructing military defense works and were then slaughtered to guard the secrecy.

Evidence will be introduced of mistreatment of prisoners of war even within Japan, in fact within the city of Tokyo, indicating a deliberate and reckless disregard of the duty of certain of the accused to take preventive measures within their powers. There will be evidence also of the destruction of prisoners of war by taking them in crowded and unmarked, but armed, Japanese prison ships, in spite of their protests, into active combat zones. Lawless attacks upon marked hospital ships will likewise be shown, with the resulting deaths not only of wounded soldiers and sailors, but also of surgeons and nurses engaged in relieving their suffering. Evidence of other similar but less well-

known atrocities will be introduced to show that in each area of the Pacific and the Indian Oceans occupied by Japan there was a pattern of mistreatment of prisoners of war and of other violations of the laws of war which prove a policy planned, initiated, or carried out by certain of the accused involving violations of the laws of war.

As further examples of this well-planned design, which show that these atrocities were not merely accidental or isolated individual misbehaviors, but were the planned results of this national policy, we will show a pattern of murder and mistreatment of civilians, as at Nanking, Hankow and Manila, and of illegal attacks and murder of civilians and military personnel as at Pearl Harbor, Hong Kong and Kota Bahru, and other less known incidents. Evidence will be presented to show the circumstances of the massacres by Japanese armed forces of prisoners of war by burning to death as at Palawan, by stabbing to death or beheading as in the case of prisoners taken from the British ship Behar, and by drowning or disposition by some still undiscovered method as in the case of the American Liberty ship Jean Nicollet. Further proof of this established policy will be developed by evidence that identical measures were constantly employed throughout the areas of Japanese occupation to torture prisoners of war and civilians, such as the "water-cure", "electric shock treatment", hanging upside down, prying finger-nails, and body beatings.

Moreover, we shall show that instances of flagrant violations of the rules of war repeatedly were called to the attention of the Japanese officials, including some of the accused, by the complaining nations through the Protecting Power.

Evidence will be introduced of direct orders from certain of the accused in violation of the rules and customs of war, such as the employment of prisoners of war on work directly connected with the war effort, on the Burma-Thailand Railway. Other evidence will be offered

to show that some of the accused directly violated the rules of war by the establishment of puppet governments in the Philippines, in China, and elsewhere, and in the violation of other rights of sovereignty of countries temporarily occupied by military forces and in the deprivation of personal and political rights of the inhabitants thereof, for example, in the Philippines and the Dutch East Indies. Other evidence will be offered to show that certain of the accused conspired to assimilate all of the Far East nations and individuals into a Greater Japan in violation of the rules and customs of war.

Evidence to be offered under Charter Article 5a, Crimes against Peace, and 5b, Conventional War Crimes, has now been outlined. It remains to discuss briefly evidence to be presented with particular reference to Article 5c, Crimes against Humanity. It will be observed that the same evidence may constitute an offense under both class A and class B, or even under classes A, B and C.

These prosecuting nations and peoples will offer evidence to show that the accused and their subordinates and accomplices conducted the conquest and occupation of conquered nations by criminal violence, unlawful belligerency, and lawless usurpation of sovereignty. It will be shown that there was actual realization of the objects of the conspiracy, namely, the theft by armed force of territory, food, oil, ships, factories and other property of the neighboring peoples and nations in East Asia and the Pacific and Indian Ocean areas. The unfortunate countries and peoples conquered and overrun by Japanese armed forces under the command and government of the accused and their associates were treated not in accordance with their rights under international law, but as the loot, booty and spoils of criminal aggressive war. In this respect, again the pattern followed by the Japanese leaders was the same pattern as the one developed and followed by their fellow conspirators in Germany and Italy.

Ample evidence will be offered to show that the accused, in their official positions or places of responsibility, exercised their authority over Japanese army and navy forces and over Japanese government bureaus and agencies in such a manner that many members of these armed forces and government agencies committed these offenses as an accepted standard or habitual operating procedure, and that honorable and law-respecting Japanese who courageously opposed such practices were themselves terrorized or punished.

It will be shown further that the protests, the pleas and the threats of eventual prosecution as war criminals, which were dispatched to these accused and their subordinates by the nations participating in this prosecution, were not answered or were evaded or generally disregarded by the accused and their subordinates.

We shall call particular attention to the fact that by Hague Convention IV of 1907, Article 4, Section 1, as set out in Appendix D of the indictment, direct responsibility for prisoners of war is placed upon the governments who are parties to that Convention, including Japan, and every official member of the Japanese Government therefore was and is responsible for these notorious, continuous and protested violations of this Treaty.

This Tribunal will have noted the necessity in this opening statement of referring to details of the indictment and other particulars that may have seemed tedious and even at times repetitious. They have been, as we view it, necessary because of the fact that individuals are being brought to the bar of justice for the first time in history to answer personally for offenses that they have committed while acting in official capacities as chiefs of state. We freely concede that these trials are in that sense without precedent. And we are keenly conscious of the dangers of proceeding in the absence of precedent, for tradition crystallized into precedent is always a safe guide. However, it is essential to realize that if we waited for precedent and held ourselves in a straightjacket by reason of lack thereof, grave consequences could ensue without warrant or justification. So we believe that our observations will be better understood if it is realized that today we are faced with stark realities involving in a certain sense the very existence of civilization. "It is a condition and not a theory which confronts us," as a great American leader once said. It is no longer a theory but a fact, as has been so well demonstrated by recent scientific developments, that another war <u>will</u> mean the destruction of civilization. We are conscious of our obligations. Civilization without justice would be a paradox.

To those who observe and note these proceedings, we can say only that we shall proceed without thought of criticism or commendation. We have a single obligation. That obligation is that our proceedings shall be in full conformity with the dictates of justice itself. This is a real challenge. We have attempted to demonstrate in our previous remarks that the acts of these accused were in definite and clear violation of the requirements of human existence as those requirements have been crystallized, imperfectly we admit, in pronouncements of various treaties, conventions and assurances. In these proceedings, we can no more expect

absolute accuracy or freedom from error than could have been expected in that voyage of the great mariner who once sailed from the shores of Europe to find a way to Cathay. That a more direct route or a more precise employment of the art of navigation could have saved many weeks is a matter of history. The inspiration and the impulses of his time dictated the necessities of proceeding across uncharted waters, and to a certain extent we bear that same handicap. But the necessities demanding the embarkation upon that project were far different. Today we must realize that no sound, reasonable step to bring about world peace can be avoided. The development of the art of destruction has proceeded to such a stage that the world cannot wait upon the debating of legal trivialities. The plain reason is that the world itself may be destroyed while these niceties are being debated, developed and decided upon.

We suppose that the first universally recognized doctrine is that self-preservation is the first law of nature. Therefore, the eleven nations represented in these proceedings are being asked to do their part to uphold that law. We realize the limitations of deterring influences. It may well be in the future that, regardless of the findings of this Tribunal and its conclusions of law, others, similar to these twenty-six accused in the dock, with madness and zealousness may concoct, bring forth and even put into effect plans and efforts leading to the destruction of the entire world. This is madness. We are attempting to act with sanity and logic. So we seek the support of the world in our efforts to deal with this problem in a realistic manner.

To hold authoritatively that the planning, the preparation, the initiating or the waging of a war of aggression are crimes and further to establish as a matter of law that those human agents who bring such destruction upon mankind are common, ordinary felons, might fall far short of the deterring influence which we desire. But, with great

respect, we point out to this Tribunal that such a finding may well prevent such individuals as these accused or their prototypes or followers from gaining seats of authority or positions of influence in their own community. This is of no small import.

It may be observed that in this discourse we have refrained from emphatic reference to each or any of these accused except in the rarest instance. We have done so with a view of the dignity within which these proceedings should be confined. We have no particular interest in any individual or his punishment. They are representative in a certain sense of a class and group. They are being prosecuted because they were converts to the rule of the tooth and claw. We cannot be concerned with their individual concepts, their alleged justification on the ground of achievement of national ambitions, or their alleged patriotic endeavors. We need only to take a few steps to the top of this building to see what they have brought upon their own people. The events speak more eloquently than any human individual could achieve by way of description.

The accused have asserted, through their counsel, and still assert, we assume, that they are immune from punishment by reason of the offices they held. That is to say, the accused now claim that having set in motion deliberately and with design, aggressive warfare which envisaged the loss of countless human lives, as they of course fully understood at the time, it is lawful and proper for the humbler members of their community, subject to their will, to have lost their lives and their properties, while they, the perpetrators, the designers and the architects of this plan of world destruction, when finally brought to bay, should remain free solely by reason of the offices they held. This is an utterly repulsive theory. The Charter holds it untenable, and we submit that all of the moral and logic of human experience denounce it. The evidence will show in this case that at the last moment, with a large part of the

municipalities of Japan already destroyed, with no prospect left but guerilla warfare and utter destruction of their homes, many of the accused still adhered to the view that before capitulation more and more human lives must be destroyed.

One of the colleagues of the accused is reported to have said to an American officer many years before the launching of the attack upon the United States of America at Pearl Harbor: "We are willing to spend the lives of 10 millions of Japanese. How many lives are you willing to spend?" That is their philosophy. The lives of human beings were held utterly valueless. The purport of this prosecution is that the life of a single individual is of the gravest moment and deserving of all reasonable efforts for its protection. The life of an individual is a matter of sanctity and can never be lawfully sacrificed for immoral purposes.

To show what their philosophy meant when translated into action, we shall offer in evidence the following compiled by the Army Information Section of the Imperial Headquarters of the Japanese Army:

"COMPREHENSIVE RESULTS OF THE JAPANESE MILITARY OPERATIONS IN CHINA
During July 1937-June 1941

(Report of the Army Information Section, the Imperial Headquarters)

1.	Estimated number of Chinese killed	2,015,000
	The loss of Chinese forces, including death, the wounded, captives, etc.	3,800,000
	The booty:	
	Arms	482,257
	Tanks, cars, motor-trucks	1,475
	Trains, engines, carriages	2,449
	Warships and vessels	410
2.	Results of Air Forces' Activities, including Nomonhan Incident:	
	Enemy warplanes brought down	1,744
	Destroyed on the ground	233
	Total loss of the enemy	1,977
3.	Losses of the Imperial Army, including Nomonhan Incident:	
	Killed	109,250
	Lost warplanes	203

CHRONICLE OF THE SINO-JAPANESE HOSTILITIES,
July 1937-May 1941

1937

July 7 — North China Incident occurred at Marco Polo Bridge.

July 15 — The Japanese Government decided to dispatch Japanese troops to North China.

July 25 — Hostilities began at Langfang.

July 28 — Commander Katsuki notified the Chinese authorities of the Imperial Army's decision to take free action.

July 29 — Japanese troops began operations against the Chinese 29th Army.

August 8 — Japanese troops entered Peking. Japanese residents in the cities on the Yangtze completed evacuation.

August 9 — The Oyama Incident occurred in Shanghai.

August 13 — Hostilities began in Shanghai.

August 14 — Commander Hasegawa of the Third Fleet of the Imperial Navy, declared the intention of the Imperial Navy to attack the Chinese forces.

The air force of the Imperial Navy made their first attacks on Chinese military centers in Central China, flying over the China Seas from Japan.

. . . .

September 5 — The entire coast of China was blockaded by the Imperial Navy.

September 8 — The Imperial Army entered Inner Mongolia.

. . . .

December 10 — General attack on Nanking by Japanese forces began.

December 13 — Fall of Nanking.

. . . .

1938

May 28 — Air forces of Imperial Navy began attacks on Canton which were repeated for weeks following.

. .

October 21 — Occupation of Canton."

For the sake of brevity, we shall not complete the recitation, but, with great respect, remind the Tribunal that this was a report prepared under the authority of the Imperial Army Headquarters and contains a resume of each step in the bloody aggression in China from 1937 to 1941.

But these accused, in spite of this recitation, contend that these were neither aggressive wars nor wars at all, and they dismissed them from such categories by the terminology of "incidents", that is to say,

that the estimated number of Chinese killed -- 2,015,000; the dead, wounded and captives, etc. -- 3,800,000 -- does not constitute war. The next heading is extremely interesting because it is entitled "the booty." Therein lies the real truth.

The complete recitation of these cruelties on a mass scale would require more time than this Tribunal and these proceedings would permit. But, as we have attempted to stress in this prosecution, it is our contention that the taking of a single life intentionally without the sanction of law constitutes murder. Therefore, that these perverted, fanatical, malicious leaders should have brought about murder on a vast scale and under the aegis of official position can constitute no defense. To concede the existence of such principles would mean that the enforcement of the law was the enforcement of the shadow and the avoidance of the substances.

As stated in the Potsdam Declaration, there never was, and is not now, an intent to enslave the Japanese people or to destroy Japan as a nation. We must reach the conclusion that the Japanese people themselves were utterly within the power and force of these accused, and to such extent were its victims. With the permission of the Tribunal, we would point out that the forces of occupation, who have the full power under the terms of surrender to implement its terms in such manner as they should see fit, have given full opportunity to the Japanese people and to the world to observe the fair manner in which the occupation has been conducted.

The Potsdam Declaration stated, as did the Cairo Declaration, that stern justice should be meted out to war criminals. And in the last analysis in this case we come to the question of what constitutes such war criminals. Could it mean that the war criminals were only the soldiers who obeyed the orders of their lieutenants and grand marshals, or must it in justice and reality mean the leaders who were really

responsible for what occurred? The accused in the dock are no contrite penitents. If we are to believe their claims as already asserted in this trial, they acknowled e no wrong and imply that if they were set free they would repeat their aggressions again and again. So that from the sheer necessity for security they should be forever restrained.

This requires us in turn to say a few words of general principle and not of detail about the individual accused. Among its other duties, the prosecution has had the particularly heavy task of selecting from the large number of persons who might properly have been charged in this indictment those whose responsibility for the crimes set forth in the Charter appeared from the available evidence to be the greatest. In order that these proceedings would not become impossibly unwieldy, it was necessary to limit the number of the accused in the indictment now before this Tribunal. This is not, and will not be, the only trial of Japanese war criminals. It is obvious that a substantial share of the responsibility rested upon persons now dead or in such a state of health that they cannot be brought to trial. It may well be that if all the facts were now known to us, there are persons not now on trial whom we might have charged in preference to some of the accused. That is, of course, no defense to any of these accused nor even a relevant subject of inquiry in this proceeding. The only question in the case of each one of these accused is whether the case against him as an individual is proved.

Although we charge that each of these accused was party to the progressive conspiracy alleged in this indictment and that they were acting together to commit the other offenses alleged, the evidence will not show that they were a united band who were in agreement with one another, as was the case among the German conspirators. On the contrary, there appear to have been sharp differences of opinion between them and fierce rivalries, upon matters some of which are, and some of which may

not be, relevant to these charges. The evidence will show, we believe, that they were all agreed in a determination to expand by aggressive war or threats of aggressive war, the power of Japan in every possible direction. They differed often as to how far it was possible or prudent to go in their aggressive action against any particular country, and as to which country it would be wise to attack first. Some directed their venom primarily against China, some against the Union of Soviet Socialist Republics, some against the British Commonwealth, some against the United States; some advocated the meaner but more prudent course of imitating Hitler's example and attacking the weaker countries first, or of attacking those nations which, because they were already involved in the European war, would be hampered in their capacity to resist. Some, who ultimately prevailed, were bold as well as aggressive and were prepared to fight the greater part of the peace-loving world at one time; others were opposed for a time at least to war against certain countries, particularly the United States, not because of any moral scruples but because they thought Japan would be beaten. All, of course, realized that they were breaking treaties wholesale, and some, even perhaps among these accused, did have a moral sensibility about the iniquity of what they were planning, as well as fears of the result; but they did it. In our submission all are equally guilty, and from a moral point of view it may be said with a good deal of force that those who had scruples, if there were any, and yet joined in the commission of the crime, are even more to blame than those who were whole-hearted enthusiasts for the aggression.

There was another cause of dissension among some of these accused, namely, a three-cornered struggle for power within Japan between the Army, the Navy and the civilians; each group being further divided by factions and rivalries within itself. In our submission it is no defense for any of those who were in general committed to a policy of illegal aggression, to show that at a particular time they resisted a particular

act of aggression merely because they did not wish its advocates to become too powerful in the government of Japan.

It will be the duty and the endeavor of the prosecution to put before the Tribunal as fully and fairly as possible the relevant facts with regard to the conduct of each accused. But when we do so we ask the Tribunal to bear in mind the considerations which I have stated.

It is necessary to emphasize again and again that nations as such do not break treaties, nor do they engage in open and aggressive warfare. The responsibility always rests upon human agents, the individuals who have voluntarily sought and achieved by one method or another the power either to enforce such treaties and agreements to maintain the peace, or to break them. Since they have voluntarily achieved and assumed this authority, they themselves, by the dictates of common ordinary justice, must be brought to individual punishment for their acts.

We of the prosecution are deeply conscious of the importance of these proceedings. We believe that we are following well established principles of law, binding not alone upon these Japanese accused but upon all.

There remains finally a recapitulation of the thoughts and notions with reference to the injustice of ex post facto operations. To this we believe there is a short answer. Such wholesome provisions long established in the course of justice of many nations should never be undermined. But this principle of law means simply that a person would not, and should not, be punished for an act which was not a crime at the time when it was committed. It was never intended to mean that a person should not be punished for an act which was clearly recognized as a crime by the law to which he was subject. Every offense charged against these accused was well recognized as a crime in international law long before the dates stated in the indictment.

Again we state that the offenses of these accused resulted in the unlawful or unjustifiable taking of human lives, which constituted murder, the oldest of all crimes, and the punishment that we ask to be inflicted is punishment commensurate with such offense.

If in the past there have been instances where such conduct has remained unpunished, and even though a maimed and mangled world permitted this failure of justice, our answer today is that no such neglect can longer be tolerated.

A great American four score years ago made a plea on a battlefield to his own people that government of and for and by the people should not perish from the earth. Today, we of the prosecution voice to this Tribunal a like sentiment, but the developments of our times require that we request this Tribunal to take such action, within the confines of justice, toward these individuals as will establish a principle which may in some degree serve to prevent not only government but civilization itself from perishing.

As a final word to the Tribunal, we reiterate the words of the Supreme Commander for the Allied Powers at the time of the surrender proceedings in Tokyo Bay:

> "It is not for us here to meet, representing as we do a majority of the people of the earth, in a spirit of distrust, malice or hatred. But rather it is for us, both victor and vanquished, to rise to that higher integrity which alone benefits the sacred purpose we are about to serve, committing all of our people unreservedly to the faithful compliance with the understanding they are here formally to assume."

We have attempted and will continue in our effort to act in strict conformity with this pronouncement.