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Centers

Wednesday, 8 January, 1947

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

PROCEEDINGS IN CHAMBERS

On

Paper No. 508 - Application of the
Defense in re: General Opening Statement,
Opening Statements for each phase of the
case, and for individual defendants; similar
Summations; and in re: Defense Witnesses.

Before:

HON. SIR WILLIAM WEBB,
President of the Tribunal and
Member from the Commonwealth
of Australia.

Reported by:

Floy Ing Eder
Court Reporter
IMTFE

Appearances:

FOR THE PROSECUTION SECTION:

MR. F. S. TAVENNER, Jr.

MR. SOLIS HORWITZ

FOR THE DEFENSE SECTION:

MR. BEN BRUCE BLAKENEY, Counsel for the
Accused TOGO, Shigenori, and UMEZU,
Yoshijiro

MR. MICHAEL LEVIN, Counsel for the
Accused KAYA, Okinori, and SUZUKI,
Teiichi

MR. WILLIAM LOGAN, Jr., Counsel for the
Accused KIDO, Koichi

MR. GEORGE YAMAOKA, Counsel for the
Accused TOGO, Shigenori

MR. OWEN CUNNINGHAM, Counsel for the
Accused OSHIMA, Hiroshi

MR. R. F. COLE, Counsel for the Accused
MUTO, Akira

MR. GEORGE BLEWETT, Counsel for the Accused
TOJO, Hideki

MR. L. P. McMANUS, Counsel for the Accused
ARAKI, Sadao

MR. G. C. WILLIAMS, Counsel for the Accused
HOSHINO, Naoki

MR. F. J. MATTICE, Counsel for the Accused
ITAGAKI, Seichiro, and MATSUI, Iwane

MR. E. R. HARRIS, Counsel for the Accused
HASHIMOTO, Kingoro, and SHIMADA, Shigetaro

MR. ICHIRO KIYOSE, Counsel for the Accused
TOJO, Hideki

MR. S. HOZUMI, Counsel for the Accused
KIDO, Koichi

MR. KIYOSHI ITO, Counsel for the Accused
MATSUI, Iwane

MR. SOMEI UZAWA, Chief Japanese Counsel

FOR THE OFFICE OF THE GENERAL SECRETARY, INTFE:

MR. CHARLES A. MANTZ, Clerk of the Court

MR. H. W. DELANEY, Deputy Clerk of the Court

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The Proceedings were begun at 0900.

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THE PRESIDENT: This is Motion 508 by the defendants for direction as regards opening statements of the defendants.

MR. HORWITZ: Mr. President, before we take that up, the defense and the prosecution have a matter that they wish to make of record that they have agreed upon.

As you will recall, the other day defense raised the question of waiving Rule 6b(1) with respect to preparation of defense documents. We have come to an agreement and prepared a form of order embodying that agreement which we ask the Court to enter, whereby the prosecution is taking over the burden for making application for additional material if necessary, rather than having the defense, in the first instance.

MR. LEVIN: In other words, it is a waiver of the rule. We have agreed upon it. It has been submitted to us, Mr. President, and we have approved the form of the order if it meets with the approval of the Court.

THE PRESIDENT: There is no reason why the Tribunal should not approve of that. We approve of the draft consent order, and will make it an order

of the Tribunal.

Who appears on the defense application in respect of opening statements?

MR. LOGAN: Mr. Blakeney.

MR. BLAKENEY: I appear for the defense, sir.

THE PRESIDENT: Mr. Tavenner for the prosecution?

MR. TAVENNER: Yes, and Mr. Horwitz.

THE PRESIDENT: Mr. Tavenner and Mr. Horwitz.

MR. BLAKENEY: This motion, you recall, has been presented in chambers before, some time ago, and the indication at that time was that some additional information was desired by the Tribunal. If that is correct, I should be glad to provide the information as far as possible.

THE PRESIDENT: Yes. Let's hear what you have to say, Mr. Blakeney.

MR. BLAKENEY: I can state that the defense have now agreed that our evidence shall be prepared and, if permitted, shall be tendered in the form of -- in six divisions of the case; the sixth being the individual defendant's own particular evidence, the other five being divisions of general interest somewhat analogous to the phases of the prosecution, with the exception that we have not followed their division of

the material exactly but have rearranged it for what seems to us to be a more expeditious treatment.

THE PRESIDENT: Could you reveal what that rearrangement is?

MR. BLAKENEY: Yes, sir. The first division is general, in that sense very similar to the first phase of the prosecution. Then follows a Manchuria phase, in which we hope to treat of all matters pertaining to Manchuria and Manchukuo. Then a China phase, which again should treat of everything on that subject. A Russia phase, where we will assemble all evidence bearing on the Russian question. And finally, a Pacific War phase, which will treat of all the various branches of the Pacific War question; that is, America, Britain, Netherlands, Indo-China, and the rest. Those general phases, as I say, would then be followed by the evidence to be adduced on behalf of the accused individually, and the evidence will be of no interest to anyone except the individual.

We therefore would propose, under the motion in question, that we be permitted to make a general opening statement, to make a substatement for each of the five phases, and then, of course, to make an opening for each defendant individually.

I might add that so far as our thoughts on

the subject up to now go, these openings will be extremely concise as compared with the opening statements made by the prosecution in their various phases.

I do not know whether there is any other information I can give or that is desired, but that is the general outline.

THE PRESIDENT: It is obvious that you contemplate calling and recalling the accused, as did the prosecution call and recall some of their witnesses.

MR. BLAKENEY: Yes. We have, of course, included in this motion a leave to do just that, recall witnesses in various stages.

THE PRESIDENT: Will that right, which must be conceded, be exercised to any great extent?

MR. BLAKENEY: Well, that is very difficult to say, sir, because our evidence is in such a nebulous state yet. I rather think it is the intention in many instances to do that or to prepare affidavits of the witnesses as the prosecution did and request leave only to read various portions of them in the various phases, as was also done by the prosecution. I shouldn't say we consider that a very vital matter, but I do think we all consider it a matter which will greatly expedite the proceedings and make for a logical organization of the evidence.

THE PRESIDENT: I hope that the accused will commit as much as they can to writing in order to assure simultaneous translations. I suppose you really intend to do that, Major?

MR. BLAKENEY: As far as I know, we are all working with that in mind. I cannot make any commitment as to what will be done because I do not know. I do know that in my own individual cases, I am and have been preparing affidavits and hope to be able to have it ready for simultaneous translation in almost every instance.

THE PRESIDENT: I won't come to any decision on this. I will discuss with my colleagues what you have told us today.

MR. LEVIN: Mr. President, I might call the attention of the Tribunal to the fact that at Nurnberg the Tribunal announced that the various witnesses or even the defendants might be called by various of the defendants to support their contention or to offer evidence which they might see fit to offer, and, from the announcement of the rule as I read it, that they might have been called or recalled a number of times.

When I say recalled, I mean called by others than those who originally called them.

THE PRESIDENT: Have you any idea of the number

of witnesses you will have, apart from the accused?

MR. BLAKENEY: No, sir, I haven't. I have in my individual cases, but I cannot speak for anyone else at all.

THE PRESIDENT: Have you any idea of the length of time involved in putting the accused's case?

MR. BLAKENEY: I haven't any idea. Anything I could suggest would be only the rankest guess, and I do not believe it would be of any value.

MR. YAMAOKA: I believe, Mr. President, that in orders already granted by your Honor for subpoenas, I believe **there are about** two hundred or a little more witnesses already in those orders.

THE PRESIDENT: I have not granted subpoenas for two hundred, Mr. Yamaoka. I have directed the interrogation of quite a number of the two hundred.

MR. YAMAOKA: Yes, facilities for interrogation.

THE PRESIDENT: Yes.

I suppose the evidence of those witnesses will be reduced to an affidavit and a synopsis if they are lengthy?

MR. YAMAOKA: In many instances that is being done. I do not know that that will be so in each instance, but I believe that plan is generally being followed.

THE PRESIDENT: The prosecution may not insist on the cross-examination of all witnesses to any great extent as you did in the cross-examination of theirs. But that is a matter of determination for them.

MR. YAMAOKA: Yes.

THE PRESIDENT: After all, they are supposed to rest on their own evidence.

Well, the Court will consider this matter.

The conference is closed.

(Whereupon, at 0915, the proceedings were concluded.)

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