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| 820-A | | 3268 | Views Concerning the Attitude of the Empire toward Arbitration or Intervention by America, European Powers or the League of Nations in the Sino-Japanese Incident | 29886 | |
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| 2148 | 3273 | | Affidavit of HIDAKA, Shinrokuro | | 29901 |
| 2538 | 3273-A | | Sworn Deposition of HAYASHI, Kaoru of the Foreign Office showing that the telegrams and official notes referred to in Defense Document 2148 were lost by fire | | 29914 |
| 2276 | 3274 | | Affidavit of OKAMOTO, Suemasa | | 29916 |
| 2027 | 3275 | | Telegram from Foreign Minister HIROTA to Consul-General OKAMOTO at Shanghai, dated 4 August 1937 | | 29916 |
| 2028 | 3276 | | Telegram from Foreign Minister HIROTA to Ambassador KAWAGOE in China, dated 7 August 1937 | | 29916 |

1 Thursday, 2 October 1947

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3
4 INTERNATIONAL MILITARY TRIBUNAL
5 FOR THE FAR EAST
6 Court House of the Tribunal
7 War Ministry Building
8 Tokyo, Japan

9 The Tribunal met, pursuant to adjournment,
10 at 0930.

11 Appearances:

12 For the Tribunal, all Members sitting, with
13 the exception of: HONORABLE JUSTICE HENRI BERNARD,
14 Member from the Republic of France, not sitting from
15 0930 to 1600 and HONORABLE JUSTICE R. B. PAL, Member
16 from India, not sitting from 1100 to 1200.

17 For the Prosecution Section, same as before.

18 For the Defense Section, same as before.

19
20 (English to Japanese and Japanese
21 to English interpretation was made by the
22 Language Section, IMTFE.)
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1 MARSHAL OF THE COURT: The International
2 Military Tribunal for the Far East is now in session.

3 THE PRESIDENT: Mr. Comyns Carr.

4 - - -

5 K E N S U K E H O R I N O U C H I, called as a
6 witness on behalf of the defense, resumed the
7 stand and testified through Japanese inter-
8 preters as follows:

9 CROSS-EXAMINATION

10 BY MR. COMYNS CARR (Continued):

11 Q Mr. HORINOUCI, in the last subparagraph of
12 paragraph 17 of your affidavit you refer to a letter
13 which the Foreign Minister received from Ambassador
14 Dirksen. Have you got it?

15 A No, I don't. I know that that letter was
16 actually received.

17 Q What has become of it?

18 A I do not know.

19 MR. COMYNS CARR: It is not in any way
20 accounted for, your Honor.

21 Q From whom did you receive the account of the
22 conversation between the Foreign Minister HIROTA and
23 the German Ambassador?

24 A From the Foreign Minister.

25 Q You were not present yourself?

1 A No.

2 Q In paragraph 18 you say that it was made
3 clear that both the army and the navy had no objection
4 to the peace terms of the August plan. Isn't it the
5 fact that at some time before in November or the first
6 week of December the army stole a telegram passing
7 between Dirksen, the German Ambassador in Tokyo, and
8 Trautmann, the German Ambassador in China?

9 A I do not know of that.

10 Q And discovered the terms which were being
11 offered and said that owing to the advance which the
12 Japanese armies had made since August those terms
13 would have to be stiffened?

14 A I did hear that there was a certain element
15 in the army which did hold such opinions.

16 Q And didn't HIROTA agree to stiffen them?

17 A No, he did not. Foreign Minister HIROTA
18 asked German Ambassador Dirksen to use his good
19 offices based on the conditions agreed upon between
20 the Foreign, War and Navy ministries. However, from
21 the beginning there was an element in the army opposed
22 to these peace terms especially some of the younger
23 officers in the General Staff, and they adopted a
24 strong attitude against the Foreign Minister and said
25 that his attitude should be firmly opposed. That is

1 what I heard.

2 Q A few days before the fall of Nanking on the
3 13th of December did not the Japanese cabinet decide
4 that when Nanking fell they would issue a statement
5 of nonrecognition of Chiang's government?

6 A I do not recollect such a thing.

7 Q You say in the second part of paragraph 18
8 that it was at a liaison conference on the 20th of
9 December that the four terms which you set out in
10 that paragraph were agreed upon. Isn't it the
11 truth that at a cabinet meeting on the 18th of
12 December it was HIROTA who brought up the terms which
13 he had submitted to Ambassador Dirksen and also a
14 considerably detailed proposal of terms of peace for
15 China?
16

17 A I do not remember whether those proposals
18 were presented to that cabinet conference or not.

19 Q Did not the General Staff at that date put
20 forward the view that the war in China must be stopped
21 at the earliest possible moment?

22 A That, too, I do not recollect.

23 Q Did they not give as their reason that it
24 was necessary to prepare for a war against Russia?

25 A That I do not know.

Q And did not they insist that the full terms

1 in detail which Japan was prepared to accept should
2 be put before the Chinese Government?

3 A That, too, I do not know.

4 Q How is it that you are able to tell us, or
5 profess to be able to tell us, in so much detail what
6 happened at some cabinet meetings and yet tell us that
7 you know nothing about what happened at others?

8 THE PRESIDENT: Mr. Yamaoka.

9 MR. YAMAOKA: If the Tribunal please, I
10 object to that question. This question is directed
11 to the witness' knowledge regarding matters within
12 the General Staff and he was a Foreign Office member.

13 THE PRESIDENT: It is directed to happenings
14 in cabinet, if I heard it rightly.

15 MR. COMYNS CARR: Yes.

16 THE PRESIDENT: Objection overruled.

17 A I shall reply.

18 I can tell you whatever the Foreign Minister
19 told me as far as I can remember.

20 Q Didn't HIROTA tell you anything about the
21 cabinet meeting of the 18th of December?

22 A I don't remember.

23 Q I thought you told us that it was his duty
24 to report to you, as you were his Vice-Minister, what
25 happened on these occasions, didn't you?

1 A I have never used the word "duty" heretofore.

2 Q What do you say then as to the manner in
3 which you got this information from HIROTA; was it
4 just gossip when he chose to give it to you or was it
5 received in your official capacity?

6 A It is necessary to divide this problem into
7 two parts when considering this matter. The first
8 is the question of whether the Foreign Minister
9 thought it necessary to tell me on every occasion of
10 all that had transpired. As regards this I cannot
11 say that the Foreign Minister told me -- I would not
12 go so far as to say that the Foreign Minister told
13 me on every occasion of all that he had on his mind.

14 The next question is whether I myself remember
15 all that the Foreign Minister told me. I do not re-
16 member every detail.

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1 Q Wasn't it necessary for you as Vice Minister
2 to know whether the terms which were to be presented
3 to China were the detailed terms of what Japan was
4 really going to insist upon was merely four vague general
5 principles?

6 A As regards this problem, I do remember that
7 the Foreign Minister told me of the Cabinet decision
8 in relation to the terms to be offered to China, and
9 not only did he give me these terms orally, but he
10 also made notes of the Cabinet decision and handed
11 them to me. However, I do not remember whether
12 the details of these conditions or terms were discussed
13 in the Cabinet meeting of 18th or 20th, that is to say,
14 at that Cabinet meeting.

15 Q Where are the notes that he gave you?

16 A I don't mean that he handed them to me, I
17 mean that he handed them to German Ambassador Dirksen.

18 Q And did he not tell you that the Cabinet,
19 at the instance chiefly of the accused KIDO, had
20 refused the General Staff's proposal that lenient and
21 detailed terms should be presented to China, and
22 had insisted that only these four vague terms should
23 be presented?

24 A No, he did not.

25 Q And did he not tell you that he had agreed

1 with that proposal?

2 A In relation to what proposal?

3 Q The proposal that no details should be given
4 to the Chinese, but only vague terms?

5 A No, he did not tell me anything of this.

6 Q Now, at this liaison conference of which you
7 speak in paragraph 18, were you present?

8 A No.

9 Q From whom did you get your information about
10 it?

11 A From the Foreign Minister.

12 Q Didn't he tell you that on that occasion
13 the General Staff had pressed strongly for immediate
14 peace with China, and for the full terms to be disclosed
15 at once, and to be of a lenient kind?

16 A No, I did not hear of this.

17 Q Nevertheless, had not HIKOTA, right up to the
18 2nd of December, continued to inform the German ambass-
19 dor that the same terms which he had offered before were
20 still open?
21

22 A Yes.

23 Q He had?

24 A Yes.

25 Q Was there another Cabinet meeting on the 21st
of December --

1 A I don't remember the date --

2 Q -- immediately after --

3 THE INTERPRETER: Witness says that the
4 reason for that is because --

5 A -- because of the serious turn events were
6 taking at that time, Cabinet meetings were held very
7 frequently so I do not remember the exact dates on
8 which each particular cabinet meeting was held.

9 Q Was there not, immediately after the liaison
10 conference of which you have spoken, a Cabinet meeting
11 at which the Cabinet settled the draft of the answer
12 to the German ambassador with regard to the negotiations
13 with China?

14 A Although I do not remember the exact date,
15 I do remember that new terms were presented to the
16 German ambassador and that his further good offices
17 were requested. It was decided to do this; that I
18 remember.

19 Q And were not the new terms those four general
20 principles, without any details?

21 A According to my recollection those were the
22 terms that were decided. However, I do remember that
23 it was also decided that if necessary additional
24 explanations could be given by the Foreign Minister,
25 and the points on which these explanations were to

1 be given were also decided then.

2 Q Now, I have to suggest to you that it is
3 quite untrue that any detailed explanations were
4 given to the German ambassador to be passed on to
5 the Chinese Government.

6 MR. YAMAOKA: If the Tribunal please, I
7 understood the witness to say that they were ready to
8 make explanations.

9 THE PRESIDENT: No. Paragraph 19.

10 Rather than suggest he is lying about that
11 I think he should be asked to say what the details
12 were.

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1 Q Did you hear the learned President's question?
2 What were the details which you say were given to
3 the German Ambassador?

4 A As I have already stated, what was presented
5 to the German Ambassador were these four terms.

6 Q Yes.

7 THE PRESIDENT: With a detailed explanation,
8 you say. What were the details?

9 THE WITNESS: Although I do not remember
10 all the details, some of them were, for instance,
11 in relation to unfortified zones, what the needed
12 areas were to be. Such and such areas in North China
13 were specified. And that such and such areas around
14 Shanghai should also be demilitarized.

15 THE PRESIDENT: What were the details about
16 reparations?

17 THE WITNESS: In relation to reparations,
18 explanations were made to the effect that reparations
19 would be asked for damage suffered by Japanese
20 nationals and also damage suffered by the Japanese
21 Government and by other public organizations. A
22 further explanation was made to the effect that these
23 were reparations that were being asked for, and not
24 indemnities.

25 THE PRESIDENT: What were the details about

1 the economic relations among Japan, Manchukuo and China?

2 THE WITNESS: These concerned the question
3 of import and export duties and of postal communications,
4 as I recall.

5 Q Now, do you say that those details or any
6 details were ever submitted to the Chinese Government?

7 A I have heard that the Foreign Minister re-
8 ceived a reply from the German Ambassador stating that
9 these proposals had been transmitted through the German
10 Ambassador in China, Herr Trautmann, to the Chinese
11 Government.

12 Q Which proposals?

13 A The four terms decided on at the cabinet
14 meeting and the liaison conference which you have just
15 mentioned, together with the additional oral explana-
16 tions which I have just mentioned.

17 Q I agree that the four terms were submitted.
18 But what I am suggesting to you is that it is quite
19 untrue that any details were ever submitted. What do
20 you say to that?

21 A What the Foreign Minister told me was that
22 they were transmitted just as I have stated in my
23 previous reply.

24 Q When did he tell you that?

25 A At that time.

1 MR. COMYNS CARR: Your Honor, with regard
2 to the cabinet meeting of December 21, I should have
3 referred the Tribunal to exhibit 2259, record page
4 16,222.

5 Q Now, was there a cabinet meeting on the 24th
6 of December, 1937, at which the cabinet decided the
7 outline of measures for the China Incident?

8 A I don't remember the exact date. I do remember
9 that sometime around then the outline of measures for
10 the China Incident which you have just mentioned were
11 decided on.

12 MR. COMYNS CARR: Now, may the witness see
13 the original of IPS document 820-C.

14 Q Is that the record preserved in the files of
15 the Foreign Office of the decisions of that cabinet
16 meeting on that subject?

17 A May I have some time to read this document,
18 please, in detail?

19 Q Cannot you tell me whether that is a record
20 from the files of the Foreign Office without reading
21 it in detail?

22 A This is not written on official Foreign Office
23 paper but is written on ordinary white paper such as we
24 use for typewriting drafts. Furthermore, there is no
25 signature or seal of any person on this document.

1 Q Do you notice that it has the very title which
2 you gave us just now of the document you were thinking
3 of?

4 A The title is as you say. However, in order
5 to ascertain whether the document really is what you
6 have said it is, I should have to read it in detail.

7 Q Well, then, you must do so.

8 THE PRESIDENT: That is a new test of authen-
9 ticity, reading the document. However, it is his,
10 so let him apply it.

11 Is this a very lengthy document, Mr. Carr.

12 MR. COMYNS CARR: It is quite lengthy, your
13 Honor, but it is an important one.

14 THE PRESIDENT: I have never yet heard a
15 witness say, let me read the letter through before I
16 tell you whether it is authentic or not.

17 MR. YAMAOKA: If the Tribunal please, the
18 witness has stated that it has no seal, it is not on
19 the official paper of the Foreign Office, it is just
20 on ordinary typewriting paper.

21 THE PRESIDENT: This man was Ambassador to
22 the United States. He ought to have enough intelli-
23 gence to answer for himself. He does not need any
24 prompting.

25 MR. YAMAOKA: Well, if your Honor please, with

1 great respect I submit that the witness has so answered
2 already when he was being questioned on this document.

3 THE PRESIDENT: He has stated certain things,
4 but he has suspended his judgment until he reads that
5 document. He said so.

6 Q Have you finished?

7 A I have finished reading.

8 Q Now, then, cannot you tell me whether that
9 is the correct copy filed in the Foreign Office records
10 of the decisions of that cabinet meeting?

11 A This is not in the original form as decided
12 at the cabinet. But I do recognize that it is a copy
13 of those decisions.

14 MR. COMYNS CARR: I ask that it be admitted
15 in evidence, your Honor.

16 THE PRESIDENT: Mr. Yamaoka.

17 MR. YAMAOKA: If your Honors please, I object
18 to this document's being a proper piece of evidence
19 in the case at this stage of the proceedings. I
20 respectfully submit that the prosecution has already
21 closed its case, and is not to test evidence in the
22 nature of impeachment of this witness' testimony.

23 THE PRESIDENT: You can always get in evidence
24 relevant to the issue or relevant to facts in issue
25 in this way in cross-examination of the witnesses for

1 the defense.

2 The objection is overruled and the document
3 admitted.

4 CLERK OF THE COURT: Prosecution document
5 820-C will receive exhibit No. 3263.

6 (Whereupon, the document above
7 referred to was marked prosecution exhibit
8 No. 3263 and received in evidence.)

9 MR. YAMAOKA: If your Honors please, with
10 great respect, I hadn't finished my statement and I
11 should be much obliged if I could have permission to
12 elaborate on the subject.

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1 THE PRESIDENT: We will never finish this case;
2 at the rate we are going we will be here to the end of
3 next year arguing about nothing.

4 MR. YAMAOKA: A very fundamental issue ar-
5 rises, if your Honor please, as to how much evidence
6 is to be permitted to be admitted on the prosecution's
7 case in the defense case through defense witnesses.

8 THE PRESIDENT: Even applying the strict
9 technical rules of the national court, this document
10 is rightly tendered and I say rightly admitted, and
11 we are not bound by technical rules.

12 MR. YAMAOKA: I respectfully submit, if your
13 Honor pleases, that if the prosecution is permitted
14 to bring in its evidence in this manner after the close
15 of its case, and particularly when they had this evi-
16 dence available on their case, and particularly in the
17 light of the fact that this is not in the nature of
18 impeaching testimony nor even proper rebuttal testimony,
19 in our submission --

20 THE PRESIDENT: The principle is so elemental
21 that I am not going to state it. If in the course of
22 cross-examination a witness is handed a relevant and
23 material document and testifies to its authenticity, as
24 this man has done as far as contents go, it can be
25 tendered in evidence and received.

1 MR. YAMAOKA: If your Honor please, I re-
2 spectfully submit that, once they have closed their
3 case and if they are permitted to present their evi-
4 dence in this manner why the defense has no way to
5 meet it, and particularly when many of the accused
6 have already testified or their cases have already
7 closed. I respectfully submit --

8 THE PRESIDENT: At least four of my colleagues
9 tell me that they fully concur in what I have said to
10 you. If you like I will tell you what they have said.
11 And I have no dissent. I think the whole Tribunal is
12 against you, Mr. Yamaoka. I have no dissent; if I had
13 I would let you know.

14 MR. YAMAOKA: With great respect and deference,
15 if your Honor please --

16 THE PRESIDENT: It is useless to argue. It
17 is only a waste of time, and I am very much concerned
18 about the time that is being wasted.

19 MR. COMYNS CARR: I will read the document,
20 your Honor.

21 "OUTLINE OF MEASURES FOR THE CHINA INCIDENT

22 "DECISION OF THE CABINET COUNCIL on December
23 24, 1937.

24 "Outline of Measures for the Incident (A).

25 "Since the outbreak of the incident, the

1 Imperial Government earnestly hoped that the Nanking
2 Government would immediately abandon its anti-Japan-
3 ese pro-Communistic policy and would act in concert
4 with Japan and contribute to the stabilization of
5 East Asia. If that government will reconsider, we
6 shall strive with her to save the situation. However,
7 we must be prepared for the time when the government
8 will advocate further drawn out resistance, and show
9 not the slightest sign of reconsideration. On the
10 other hand, with the development of our military
11 activities, Japan's occupational area has become ex-
12 tensive, making it necessary to immediately carry out
13 its management. Taking these situations into consider-
14 ation, we shall not necessarily expect the conclusion
15 of the negotiations with the Nanking Government, but
16 while striving separately to save the situation we
17 will, as the military operations progress, in order to
18 cope with the drawn-out resistance by the Nanking
19 Government, take measures according to the following
20 policy in the North and Central China areas.
21

22 "This purport of the above policy shall be
23 declared to the whole world at a suitable occasion.

24 "I. Policy for the Management of North
25 China.

"In North China we shall aim at the

1 establishment of an anti-Communist pro-Japanese
2 and Manchurian regime politically and the creation
3 of an inseparable relation between Japan, Manchuria
4 and China economically. We shall promote the realiza-
5 tion of these objects and gradually expand and
6 strengthen this regime which shall be supervised to
7 become the leading power of reconstructed new China.

8 "However, in case the negotiation with the
9 Central Government is concluded, this new regime
10 shall be adjusted according to the peace conditions.

11 "A. Policy for Political Supervision.

12 "(1) It is of vital importance to create a
13 new North China Regime, capable of winning public
14 confidence not only in North China but also in Central
15 and South China. For this purpose:

16 "(a) the leaders of this regime shall be
17 comprised of characters having the confidence of all
18 China;

19 "(b) this regime shall have an organization
20 appropriate for the new era;

21 "(c) it shall maintain an outline of policy
22 worthy of being advocated to all China;

23 "(d) as regards our supervision of the said
24 regime, we shall do it in accordance with the policy
25 of not directing or interfering in the particulars of

1 administration by the disposition of Japanese offi-
2 cials, but restrict it to internal supervision by
3 Japanese advisors in regard to the main points.

4 "(2) The areas to be included by the new
5 North China Regime shall depend on the development
6 of the military operations; but mainly they shall
7 be the three provinces, Hopei, Shantung, Shanhsi,
8 and a part of Chahar Province. The Chitung self-
9 government shall be dissolved and absorbed by the
10 new regime. The self-government of Chanan and
11 Chinpei shall be absorbed by the new regime at a
12 suitable time. Moreover, close relations shall be
13 maintained with the self-government of Mongolia.

14 "(3) For the time being, we shall not con-
15 cern ourselves with the concessions in order to avoid
16 disputes with third countries. However, outside of
17 the concessions, we shall, even before the establish-
18 ment of the new regime, supervise things so as to
19 complete the administrative organs like postal,
20 electrical, tax and road administrations. With regard
21 to the customs, considerations shall be made separately.

22 "B. Policy for Economic Development.

23 "(1) The object of the economic development
24 in North China shall be to strengthen the synthetic
25 relation of Japanese and Manchuria economy, and to

1 establish the foundation for realizing co-prosperity
2 and coalition among Japan, Manchukuo, and China. For
3 this purpose, we shall develop and adjust every line
4 of economy, by closely combining Chinese capital on
5 the spot and our capital and technique, and thereby
6 strive for the maintenance of peace and stabiliza-
7 tion of public life and contribute to the develop-
8 ment and increase of production of necessary materials
9 for the national defense in a broader sense in Japan
10 and Manchukuo.

11 "In carrying out the developments, we shall
12 pay attention to the harmonization of international
13 revenues and disbursements of Japan, Manchuria, and
14 North China and the adjustment of supply and demand
15 of materials, and take steps as the occasion may de-
16 mand. We shall also do our best to put the Chinese
17 in the limelight in order that they will not get the
18 impression that economic pressure is being put upon
19 them; and we shall put emphasis on proper management
20 in line with the national policy so as not to betray
21 the expectation of our entire nation.
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1 "(2) A national policy company shall be
2 established for the development and control of econ-
3 omy in North China and it shall be organized so as to
4 actually realize the unity of the national spirit and
5 the industrial mobilization of our country.

6 "The above company shall be responsible for
7 the development, management and adjustment of the
8 important industries, such as the major transportation
9 enterprises, (including harbours and roads) the major
10 communication enterprises, the major electric power
11 generating and transmission enterprises, the major
12 mining enterprises, the salt industries and industries
13 utilizing salt.

14 "As to the management of the above company,
15 we shall always be careful to exercise the necessary
16 control according to the circumstances of our country,
17 and to comply with the important industrial plans of
18 both Japan and Manchuria. Enterprises other than the
19 above major industries shall not be put under any
20 special control except for special reasons.

21 "(3) In the economic development of North
22 China, we shall strive for the utilization of Chinese
23 capital and promote co-operation with Chinese enter-
24 prises.

25 "(4) Co-operative investment of funds by any

1 third country in the economic development of North
2 China shall be permitted.

3 "The existing economic rights and interests
4 of the Powers in North China shall be respected as
5 much as possible.

6 "(5) Close connection shall be kept in the
7 trade relation between Japan, Manchukuo, and North
8 China, and suitable adjustment shall be made in regard
9 to trade between North China and any third country.

10 "(6) The government on the spot shall be
11 called on to gradually establish necessary facilities
12 in regard to agricultural improvement, flood control,
13 irrigation, forestation, and co-operative enterprises.

14 "(7) Existing enterprises in North China in
15 connection with major industries shall be disposed of
16 or adjusted according to this policy.

17 "(8) Measures shall be taken to immediately
18 operate enterprises which are able to start at once
19 on condition that disposal or adjustment will be made
20 in the future according to this principle.

21 "(9) The Provisional Government of the
22 Republic of China, or the Public Peace Maintenance
23 Associations, or their federation, or the district
24 governments shall, for the time being, be the party we
25 shall deal with in the negotiations on the economic

1 development of North China.

2 "II. Policy for the Management of the
3 Shanghai Area.

4 "(1) We shall consider the establishment,
5 at a good opportunity, of a new government in areas
6 occupied by our troops, which will have connections
7 with the new regime in North China. However, for the
8 time being, the Public Peace Maintenance Associations,
9 and if necessary, their federation, shall be estab-
10 lished and they shall be charged with the maintenance
11 of peace.

12 "(2) The policies for the Concession and
13 for the areas around the Concession shall be estab-
14 lished separately.

15 "Policy for the Management of the Areas
16 Around the Concession

17 "(A) Administration

18 "As to the areas around the Concession, we
19 shall co-operate toward the development of those areas,
20 and consider the establishment of organizations for
21 the security of peace in the Concession. This shall
22 be managed according to the following outline:

23 "(1) The areas around the Concession, i.e.,
24 the areas under the jurisdiction of the Greater Shang-
25 hai City, excluding the Concession and the roads on its

1 boundary, shall be called the Special City.

2 "(2) The administration of the Special City
3 shall be conducted by a Chinese mayor. However, a
4 Japanese councillor shall be appointed for the Special
5 City in order to assist the mayor and to supervise the
6 general administration. The authority of the council-
7 lor shall be established separately.

8 "(3) A Special Police Department shall be
9 established in order to conduct the police admini-
10 stration of the Special City. The Chief of the Police
11 Department and all lower ranking police chiefs shall
12 be Chinese, but a reasonable number of Japanese Coun-
13 cillors shall be appointed in order to co-operate with
14 them. The authority of the councillors shall be estab-
15 lished separately. Furthermore, the employment of
16 foreign councillors shall also be considered, if
17 necessary.

18 "The number of Chinese police and their arma-
19 ments shall be established separately. The police
20 authority for Japanese residents in the Special City
21 shall come under the jurisdiction of the consulate
22 police.

23 "(4) The financial administration of the
24 Special City shall be maintained by various revenues
25 which will include the various kinds of taxes levied

1 in the old city of Shanghai, and will also be obtained
2 by taking over various organizations under direct con-
3 trol of the former Kuomintang Government, such as the
4 tax administration, the telephone and telegraph ad-
5 ministration, the postal administration, etc., in the
6 area of the Special City or by setting up new estab-
7 lishments.

8 "(5) In the future (in expectation of the
9 establishment of a new regime in Central China), the
10 entire Special City shall be an open port city; and
11 rights of residence, trade, ownership, or permanent
12 leases by foreigners shall be recognized (for the time
13 being the pending question relating to land possession
14 by Japanese is expected to be solved).

15 "(B) Policy for the Establishment of Japan's
16 Economic Rights and Interests.

17 "With the aim of establishing the foundation
18 for Japan's economic development in the areas of
19 Central China, with Shanghai as the base, the follow-
20 ing measures shall be taken as one of the concrete
21 policies:-
22

23 "(1) The areas around the Concession (area
24 under the jurisdiction of Greater Shanghai City exclud-
25 ing the Concession and the roads on the boundary) shall
be called the Special City; and a national policy

1 company shall be established in order to maintain
2 control of various kinds of business of public
3 character such as telephone, electric power, electric
4 light, water supply, gas, electric car, bus, and other
5 enterprises in the said Special City, and to manage
6 or adjust enterprises in connection with the following
7 clauses. As to the scale and the order of business
8 undertakings of the said national policy company, they
9 shall be determined separately by taking into consider-
10 ation the actual condition of our country and the
11 situation on the spot.

12 "The capital of the said national policy
13 company shall be provided from funds on the spot, in
14 so far as they are allowable for that purpose. Further-
15 more, the providing of capital to Japanese entrepreneurs
16 of small and medium scale in the Special City and in the
17 Concession, as well as for the acquirement of real
18 estate in the Concession by Japanese, shall be taken
19 into consideration separately as soon as possible.

20 "(2) All the official establishments, lands,
21 buildings, etc., in the Special City owned by the
22 former Chinese authorities shall be taken over by the
23 Japanese and shall be appropriately utilized. But
24 those which are required by the authorities of the
25 Special City for their administration shall be used

1 by them.

2 "(3) The area of the Special City shall be
3 utilized as much as possible as the base of connection
4 for communications, transportation, and airways between
5 the vicinity of Shanghai, and various districts of
6 Japan, North China and Manchuria; and the following
7 articles shall be carried out for the time being:

8 "(a) Some suitable steamship companies shall
9 make use of Chiukiang Pier and the Chaoshang Chu Pier.

10 "(b) Various facilities necessary for the
11 practical acquirement of cable and wireless (broadcast
12 inclusive) communication rights in the Shanghai area
13 in the future shall be controlled and managed.

14 "(c) Lunghwa Airfield shall be controlled
15 and managed as a connecting air base for the Shanghai-
16 Fukuoka Route. Furthermore, the right of administration
17 for both Hongjao and Yuantung air bases shall be ac-
18 quired and they shall be of service for the establish-
19 ment of practical rights for airways connection between
20 Japan and China in the future.

21 "(4) A large market shall be established in
22 the Special City area and it shall supply the Conces-
23 sion with necessities of life such as fish, meat,
24 vegetables, etc. (For the time being, the utilization
25 of the fish market in Shanghai City shall be taken

1 by them.

2 "(3) The area of the Special City shall be
3 utilized as much as possible as the base of connection
4 for communications, transportation, and airways between
5 the vicinity of Shanghai, and various districts of
6 Japan, North China and Manchuria; and the following
7 articles shall be carried out for the time being:

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9 make use of Chiukiang Pier and the Chaoshang Chu Pier.

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11 practical acquirement of cable and wireless (broadcast
12 inclusive) communication rights in the Shanghai area
13 in the future shall be controlled and managed.

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15 and managed as a connecting air base for the Shanghai-
16 Fukuoka Route. Furthermore, the right of administration
17 for both Hongjao and Yuantung air bases shall be ac-
18 quired and they shall be of service for the establish-
19 ment of practical rights for airways connection between
20 Japan and China in the future.

21 "(4) A large market shall be established in
22 the Special City area and it shall supply the Conces-
23 sion with necessities of life such as fish, meat,
24 vegetables, etc. (For the time being, the utilization
25 of the fish market in Shanghai City shall be taken

1 into consideration; and small crafts shall be per-
2 mitted to leave and enter the port freely.)

3 "(5) For the time being, as for business
4 which can be immediately started, measures shall be
5 taken to start them promptly, under the condition that
6 they shall be properly disposed of or adjusted at the
7 time of the establishment of the national policy
8 company.

9 "Policy B for the Management of North China
10 "The Public Peace Maintenance Committee or
11 the district governments shall, for the time being,
12 be dealt with in the negotiations for the establish-
13 ment of these economic rights.

14 "Policy B for the Management of North China
15 "Matters Agreed at the Cabinet Conference
16 relating to the Policy for Economic Development.

17 "1. As for major transportation enterprises
18 and major communication enterprises, unified manage-
19 ment by a single company in all of Manchuria and China
20 shall not be permitted.

21 "2. Efforts shall be made to strengthen the
22 finance of the North China Regime in order to promote
23 public enterprises and other development enterprises
24 in North China.

25 "3. In order to maintain and improve the
international revenues and disbursements between North

1 China and any third country, an effective and
2 appropriate policy shall be taken.

3 "4. The gold production industry in North
4 China shall be immediately undertaken from the view-
5 point of international revenues and disbursements of
6 our country, and these circumstances shall be taken
7 into consideration when making future adjustments.

8 "Policy B for the Management of Areas Around
9 Shanghai.

10 "Matters Relating to the Policy for the
11 Establishment of Japanese Economic Rights Agreed at
12 the Cabinet Conference

13 "The National Policy Company shall, if
14 necessary, be permitted to execute business in connec-
15 tion with the land under the control of the Japanese
16 Army and of the Japanese civilian authorities in the
17 Special City."
18

19 MR. LOGAN: If the Tribunal please --

20 THE PRESIDENT: Mr. Logan.

21 MR. LOGAN: By my silence, I don't want to
22 be understood as concurring in the decision of the
23 Tribunal in permitting the prosecution at this time
24 to continue its case.

25 THE PRESIDENT: You do not assent to the
Tribunal's decisions. You are bound by them, whether

1 you assent or not, so you are relieved of any handi-
2 cap that might otherwise result from your silence,
3 Mr. Logan. And, that applies to every other counsel.

4 MR. LOGAN: I just wanted to point out, if
5 the Tribunal please, that in addition to the fact
6 that I think the practice is contrary to any practice
7 we enjoy in the United States, and in addition to
8 that --

9 THE PRESIDENT: We cannot allow you to re-
10 argue the matter.

11 MR. LOGAN: But, I just wanted to also
12 point out, if the Tribunal please, that on the eve
13 of preparing the case for the accused KIDO, with
14 further evidence coming in like that, it is going to
15 be quite a handicap.

16 BY MR. COMYNS CARR (Continued):

17 Q Now, Mr. HORINOUCI, on the 8th of January,
18 1938, did Mr. HIROTA inform the German Ambassador that
19 if the Chinese wished to ask questions, in order to
20 understand the four points more fully, the Japanese
21 Government would answer them? And, did he ask the
22 German Ambassador to obtain them from the German
23 Ambassador in China?

24 A I don't recollect that. However, I do
25 recollect that Foreign Minister HIROTA gave quite

1 detailed explanations in regard to these four terms.

2 THE MONITOR: The I.B.M. is off, I think.

3 THE PRESIDENT: Well, I heard what he said.

4 Mine is all right.

5 MR. COMYNS CARR: Your Honor, the machine is
6 not out of order, but I didn't hear any translation
7 to the witness' last answer.

8 THE PRESIDENT: He said something in connec-
9 tion with the four terms. I heard that.

10 (Whereupon, the last answer of the
11 witness was read by the official court
12 reporter.)

13 Q You see, what I am suggesting to you is that
14 he gave no detailed explanations at all, but said that
15 he would welcome questions from the Chinese.

16 A My recollection is as I have just testified.

17 THE PRESIDENT: We will recess for fifteen
18 minutes.

19 (Whereupon, at 1045, a recess was
20 taken until 1100, after which the proceed-
21 ings were resumed as follows:)

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

3 MR. COMYNS CARR: May it please the Tribunal,
4 I gave a wrong date to the last question I put to the
5 witness. I said 8th of January; it should have been
6 6th of January.

7 BY MR. COMYNS CARR (Continued):

8 Q Mr. HORINOUCHI, did not HIROTA on the 6th of
9 January inform the German ambassador that he would wel-
10 come questions from the Chinese government to elucidate
11 the four main Japanese points?

12 A I do not remember.

13 Q And did he not on the same day tell him that
14 he expected either an answer or at least a query from
15 the Chinese government in the near future?

16 A I do not remember.

17 Q On the 10th of January did he not see the Ger-
18 man ambassador and state that the Japanese Government
19 was expecting an answer with the utmost speed?

20 A I don't remember whether he said that on that
21 date or not. However, I do recall that he told Ambassa-
22 dor Dirksen that he hoped that the Chinese government
23 would be urged to reply as quickly as possible -- to con-
24 vey to the Chinese government.

25 Q Did he say on that day with regard to a request

1 for clarification from the Chinese Government that
2 the military insisted upon immediate and clear answer?

3 A I do not remember.

4 MR. COMYNS CARR: That is exhibit 486-F, record
5 page 5993.

6 Q The truth was the exact opposite, wasn't it?

7 A I don't remember.

8 Q Wasn't the truth that the General Staff were
9 insisting that the terms should be clarified and the
10 cabinet were insisting that they should not?

11 A I don't recall that fact.

12 Q Now, in your account of these various negotia-
13 tions and internal discussions in Japan you have en-
14 tirely omitted the Imperial Conference that was held
15 on the 11th of January, 1938. Why?

16 A That is because I did not remember that.

17 Q Do you remember it now?

18 A Are you asking me as to whether the Imperial
19 Conference was or was not held?

20 Q Yes.

21 A Yes. I do.

22 Q And do you really say that you have forgotten
23 all about it?

24 A I do not say I have forgotten all about it.

25 Q Why didn't you mention it in your affidavit?

1 A At the time I was drawing up my affidavit I
2 had forgotten about the Imperial Conference.

3 Q Was the Imperial Conference held at the request
4 of the army?

5 A I don't recall who first called for the calling
6 of this conference.

7 Q And did Foreign Minister HIROTA say he didn't
8 see any need for it?

9 A I don't recall.

10 Q Did the army say that one reason why they want-
11 ed the conference was that Generals TERAUCHI and MATSUI
12 in China were expressing very strong opinions and urging
13 that the government should have nothing more to do with
14 Chiang Kai-shek?

15 A At the time I didn't hear anything of this nature.

16 Q Did they say that they wanted to suppress
17 those views of those two generals and to make an immedi-
18 ate peace?

19 THE MONITOR: Are you referring to the army
20 when you say "they"?

21 Q Did the General Staff say that they wanted to
22 suppress those opinions and make an immediate peace?

23 A That, too, I did not hear.

24 Q Do you know what happened at the Imperial Con-
25 ference?

1 A According to my recollection, the outline of
2 measures for the China Incident were recognized at
3 that Imperial Conference, and also a decision was
4 arrived at by which Japan would not recognize -- would
5 no longer recognize the Chinese government.

6 Q Now, I have to differ with you with regard to
7 that, and I ask you to look at IPS document 3090-A.

8 (Whereupon, a document was
9 handed to the witness.)

10 MR. COMYNS CARR: On this point also I refer
11 the Tribunal to exhibits 270 and 2235, which are the
12 same, that I gave the reference to yesterday, record
13 page 3610.

14 Q Is not that document which has just been handed
15 you the official record concerning the Imperial Confer-
16 ence?

17 A This is the first time I have seen this docu-
18 ment, but since it is written on Imperial Household
19 Ministry stationery, I suppose it may be a record of
20 the Imperial Conference.

21 Q Look at Annexes 1 and 2 and tell me whether
22 Annex 1 is not the official record of those who atten-
23 ted and Annex 2 the official record of the decision.

24 A I suppose it is so.

25 MR. COMYNS CARR: I ask that the document be

1 presented into evidence.

2 THE PRESIDENT: Admitted on the usual terms.

3 CLERK OF THE COURT: Prosecution document 3090-A
4 will receive exhibit No. 3264.

5 (Whereupon, the document above re-
6 ferred to was marked prosecution exhibit 3264
7 and received in evidence.)

8 MR. COMYNS CARR: I will read exhibit No. 3264.

9 "RECORDS CONCERNING THE IMPERIAL CONFERENCES

10 "On January 11, 1938, an Imperial Conference
11 was held with the purpose of deciding our national
12 policy toward China.

13 "Last autumn, when the China problem gradually
14 became serious, there appeared in all quarters argu-
15 ments insisting on the necessity of establishing a firm
16 national policy through holding an Imperial Conference.
17 But, under the ever varying situations, and that at
18 the time, when the Chinese intention was not clear,
19 it was a self-evident reason, that it was difficult
20 to decide our policy as simply as they say. Conse-
21 quently the Government did not realize it until today.
22 However, on the one hand, there has been previously
23 the German movement for mediation, while on the other,
24 the CHIANG Kai-shek Regime would not collapse easily
25 and yet it seemed not to reject mediation by Germany.

1 Considering these two cases, and supposing possible
2 situations that is, in case peace is made suddenlike,
3 and in case CHIANG's Regime is annihilated or denied,
4 etc., the government recognized the necessity of decid-
5 ing the principles of the counter-measures for them.
6 Thus it has come to pass that the government petitioned
7 the Emperor today for an Imperial Conference and for
8 the definite plan, held Liaison and Cabinet Conferences
9 extending to the 9th (Sunday) and the 10th. Prior to
10 this, His Imperial Highness Prince Chief of the Naval
11 General Staff made an offer that it was desirable that
12 His Majesty also ask a few questions or the like, be-
13 cause, according to his experience hitherto at the
14 Imperial Conferences, there was no one who dared to
15 speak and no word by His Majesty, so that the Confer-
16 ence was extremely difficult to conduct. However, as
17 Prince SAIONJI was long since so prudent about His
18 Majesty's speech, Lord Keeper of the Privy Seal told
19 Baron HARADA the above purport yesterday, the 10th, and
20 asked him to hear the opinion of the elder statesman
21 once. and added that he, the Lord Keeper, was of the
22 opinion that His Majesty's speech might be admissible
23 unless it would include a final decision. Therefore,
24 Baron HARADA left for Okitsu by train at 3 P. M. of the
25 same day, asked the elder statesman of his opinion and

1 answered by telephone on the night of the same day,
2 that the elder statesman was also of the same opinion
3 as Lord Keeper of the Privy Seal, that is, he meant
4 that he didn't want to fix responsibility upon His
5 Majesty and that he regarded other questions admissible.

6 "Premier KONOYE entered into the Imperial Palace
7 at 4:20 P. M. of the 10th day, was given an audience
8 by His Majesty and petitioned His Majesty on the mat-
9 ter of holding an Imperial Conference on the following
10 day, the 11th. On that occasion he met with the Lord
11 Keeper of the Privy Seal and told the latter to the
12 effect that, in proceeding with the Imperial Conference,
13 there would be no need of His Majesty's speech, since
14 he was going to bring a plan, whose most part was already
15 decided, only it would be formally decided before the
16 Throne.

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1 "On the other hand, Lord Keeper of the Privy
2 Seal also considered the proceedings of the Conference
3 and on the same day, the 10th, he was given an audi-
4 ence by the Emperor after withdrawal of the Premier.
5 He told the Emperor that he thought it proper for the
6 Premier to manage the procedure of the Conference
7 from the standpoint of responsibility and position,
8 since the coming Imperial Conference was for the pur-
9 pose of deciding our national policy. And it was
10 decided that His Majesty would grant permission to
11 this effect at the Conference the following day,
12 therefore the 11th.

13 "Next day, the 11th, at 2 P. M. the Emperor
14 was present in the East Room No. 1 in the Imperial
15 Palace where the council in the Imperial presence was
16 held in the seats shown as per Annex (1). The Presi-
17 dent of the Privy Council, HIRANUMA, participated by
18 a special order. Because of the Privy Council's
19 connection with diplomacy, treaties, etc., the Premier
20 privately requested and received Imperial sanction to
21 have the President take part in the council. It
22 seems that the Emperor made a special inquiry as to
23 the reason. In the council, the Premier stated that
24 with the Emperor's permission, he would manage the
25 council, and he had the Foreign Minister explain the

1 original draft as per Annex (2). (Originally the
2 Premier was expected to do it himself, but it was
3 changed later.)

4 "His Imperial Highness, the Chief of the
5 General Staff stated that exclusive of the concept
6 of victor versus vanquished nations, he approved the
7 original draft from the standpoint of permanent peace
8 in the Orient, and hoped that it would be executed.
9 Then His Imperial Highness the Chief of the Naval
10 General Staff expressed his approval. Next, HIRANUMA,
11 the President of the Privy Council, expressed his
12 approval and stated furthermore that if some agreement
13 were reached with the Chiang regime, consideration
14 must be given to offering full protection to those
15 hitherto in the pro-Japanese administration in North
16 China and elsewhere, so as not to act contrary to
17 their moral precepts. He requested the Home Minister
18 to give special thought to domestic public order.
19 Thus, the original draft was adopted and the Premier
20 informed /the Emperor/ that the council was adjourned.
21 The Emperor retired to the inner palace. It was then
22 2:55 P. M.
23

24 "The Emperor made not a single remark.

25 "APPENDIX: The various circumstances were
explained on the day before, the 10th, to the President

1 of the Privy Council, HIRANUMA, by the Chief Secretary
2 and the Vice-Minister of Foreign Affairs. The President
3 of the Privy Council seemed to be somewhat dissatis-
4 fied that such measures were taken for the first time
5 that day, but it was explained that even among Cabinet
6 members and Councillors things are decided suddenly,
7 and his consent was gained. However, on the day of
8 the council, the President of the Privy Council said
9 that he had a few questions to ask. Therefore, Cabinet
10 members met with him at 1:30 P. M. in the Imperial
11 Palace, prior to the council and replied to his ques-
12 tions; there were no questions asked at the meeting of
13 the council.

14 "The Government issued a statement at noon on
15 the 16th. However, in order to draw up that state-
16 ment, a Liaison Conference and a Cabinet Meeting were
17 convened from 9:30 A. M. to 8:30 P. M. of the 14th,
18 and from the morning to the afternoon of the 15th.
19 The matter had not been settled, principally because
20 of the General Staff Headquarters' insistence upon
21 efforts for reconciliation. At last, the Government
22 Plan was accepted, but the individual members /of the
23 General Staff Headquarters/, it appears, added that
24 they still believed the reconciliation doctrine (the
25 view of responding to the proposal of the Chinese

1 Central Government which wished to know concrete de-
2 tails) was satisfactory.

3 "A historically important statement to ex-
4 plain at home and abroad the Empire's firm policy
5 toward China was announced by the Cabinet at noon on
6 the 16th."

7 Then, I need not read the statement of the
8 Government because that is already in evidence.

9 And then (Reading):

10 "ANNEX (1). The Council in the Imperial
11 Presence, January 11, 1938."

12 There follows a plan of the table showing
13 where everybody sat and amongst those present were
14 "D -- The President of the Privy Council" and "E --
15 The Minister of Foreign Affairs." ***

16 "ANNEX (2). The Fundamental Policy for Dis-
17 position of the China Incident.

18 "(The subject of discussion in the Council
19 in the Imperial Presence).

20 "The inflexible policy of our Empire is to
21 form an axis for peace of the Orient in cooperation
22 with Manchukuo and China, and with this as the core,
23 contribute to world peace.

24 "In order to settle the China Incident in
25 accordance with this national policy, Japan and China

1 will sweep clean all the frictions of the past, re-
2 organize the mutual relationship upon a broad-minded
3 foundation, respect each other's sovereignty and
4 territorial integrity, and make it their ultimate aim
5 to bring about perfect harmony between them. There-
6 fore we make the following stipulations between the
7 two nations, as well as establish the necessary
8 guarantee to prevent recurrence of such an incident:

9 "(1) Japan, Manchukuo and China shall abolish
10 all such policies, education, trade and all other means
11 liable to ruin their mutual friendship, and they shall
12 also exterminate acts which may bring about such an
13 evil result as mentioned above.

14 "(2) Japan, Manchukuo and China shall be
15 united to realize their cultural coalition and anti-
16 Communism policy.

17 "(3) In accordance with the principle of
18 balancing merits and faults of each other, Japan,
19 Ma chukuo and China shall pledge cooperation and
20 mutual favoring with regard to industries, economics,
21 etc.

22 "Based upon the above policy, the Empire
23 should be determined to carry out properly the follow-
24 ing measures by applying the closely unified political
25 and military tactics.

1 "(1) If the present Chinese Central Govern-
2 ment shall reconsider at this juncture and sincerely
3 ask for reconciliation, we will negotiate with them
4 in accordance with the conditions of the Negotiations
5 for Peace Between Japan and China as indicated on the
6 attached sheet (A). If the Empire recognizes in the
7 future that China has carried out the conditions of
8 peace, she shall not only rescind the provisions of
9 guarantee indicated on the attached sheet (B), which
10 are included in the above conditions, but also shall
11 cooperate sincerely with China for her reconstruction
12 and development.

13 "(2) If the present Chinese Central Govern-
14 ment does not ask for reconciliation, the Empire will
15 not wholly depend upon the settlement of the Incident
16 by taking them as her opponent, but will assist the
17 formation of the new Chinese Government, with which to
18 negotiate on adjusting the mutual relationship, and
19 to cooperate to establish the regenerated New China.
20 As for the present Chinese Central Government, the
21 Empire shall be determined to annihilate them, or take
22 measures to absorb them under the new central govern-
23 ment.
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25 "(3) In order to thoroughly carry out the
above policy to dispose of this incident, with

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anticipation of some changes to take place in the international situation, we should promote the rapid cultivation and complete arrangements of total national strength, especially the national defense power, and maintain and improve the friendly relations with the third powers.

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1 "(4) We shall respect the rights and inter-
2 ests of the third powers and try to obtain the pro-
3 dominant position in the economic developments in
4 China only through free competition.

5 "(5) We shall guide the public opinion with
6 a view to make the people realize the fundamental
7 policy for settling the China Incident. The same should
8 apply to foreign peoples.

9 "Attached Sheet (A)

10 "Details of the Conditions of the Negotiations
11 for Peace Between Japan and China.

12 "(1) China shall grant formal recognition
13 to Manchukuo.

14 "(2) China shall renounce anti-Japanese and
15 anti-Manchukuo policy.

16 "(3) Establish non-armed zones in North China
17 and Inner Mongolia.

18 "(4) North China shall establish an organiza-
19 tion under the sovereignty of China suitable to realize
20 the co-prosperity of Japan, Manchuria and China, give
21 this organization comprehensive authorities and make
22 special efforts to bring about the economic coopera-
23 tion of Japan, Manchuria and China.

24 "(5) Establish an anti-Communistic self-
25 government in Inner Mongolia. Its international

1 position shall be similar to that of the present Outer
 2 Mongolian Government.

3 "(6) China shall establish an anti-Communis-
 4 tic policy and cooperate with Japan and Manchukuo in
 5 carrying out this policy.

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1 "(7) Establish non-armed zones in the occu-
2 pied areas in Central China, and as for the Greater
3 Shanghai District, Japan and China shall cooperate
4 to maintain its public order and to develop its
5 economic activities.

6 "(8) Japan, Manchukuo and China shall con-
7 clude a necessary agreement regarding the exploitation
8 of natural resources, customs, trade, aviation, trans-
9 portation, communication, and so forth.

10 "(9) China shall make due reparations to
11 the Empire.

12 "Addition:

13 "(1) Station Japanese troops in certain dis-
14 tricts of North China, Inner Mongolia and Central
15 China for the purpose of security, for the period of
16 time it is deemed necessary.

17 "(2) The talk on the armistice pact shall
18 commence after an agreement has been reached regarding
19 the above provisions between Japan and China.

20 "When the Chinese Government has carried out
21 each of the foregoing provisions sincerely and truly
22 cooperates with us to realize our ideals of the co-
23 operation and mutual held between Japan and China, the
24 Empire shall not only rescind the provisions of guar-
25 antee, but also offer to cooperate sincerely with China

1 for her recovery, national development and the realiza-
2 tion of the desires of her people.

3 "Attached Sheet (B)

4 "I The provisions of guarantee mentioned in
5 the Attached Sheet (A) are as follows:

6 "(1) Non-armed zones mentioned in Item (3).

7 "(2) Special rights and interests to be es-
8 tablished for the purpose of security at the negotia-
9 tion mentioned in Item (4), and necessary facilities
10 to be established in this connection.

11 "(3) Non-armed zones mentioned in Clause (7).

12 "(4) Rights and interests concerning the
13 control and expansion of important communications,
14 addition (1) and the accompanying military establish-
15 ments.

16 "II The pacts and agreements to be abolished
17 when peace is made.

18 "(1) The UMEZU-Ho-Ying-Chin Pact, the Tangku
19 Truce Pact, the DOIHARA-Chin To-chum Pact, The Shanghai
20 Truce Pact.

21 "(2) At the same time with the abolition of
22 the provisions of guarantee, the renunciation of the
23 special rights and interests in China (such as extra-
24 territoriality, settlements and the right to station
25 troops) which Japan has held up to now shall be

1 considered."

2 Q Now there is nothing there, Mr. HORINOUCI,
3 is there, about refusing to give China further infor-
4 mation beyond what the Chinese Government had received
5 already?

6 A I am sorry. I am unable to understand what
7 you mean.

8 Q Well, I won't pursue that because we can see
9 for ourselves. I will ask you another question.
10 When the Army General Staff was negotiating with the
11 Foreign Ministry about holding this Imperial Confer-
12 ence, did they say this: that the conditions of
13 truce were so aggressive that they might impair
14 future diplomatic relations between Japan and China?

15 A Who?

16 Q Did the representative of the General Staff,
17 probably the Vice-Chief, General TADA, say that to
18 the Foreign Minister?

19 A No, I have never heard that.

20 Q Did they say that they might impair future
21 diplomatic relations between Japan and China?

22 A I don't recall ever having heard of any
23 such thing.

24 Q Did they say that, therefore, it was neces-
25 sary to hold the conference in the presence of the

Emperor?

1
2 A I did not hear. I should like to make a
3 correction in regard to my statement relative to the
4 Imperial Conference. When I stated that the decision
5 not to deal further with the Chinese National Govern-
6 ment was arrived at at this Imperial Conference, I
7 was mistaken in my memory. I should have said that
8 such measures were considered in such an event.

9 Q Now will you answer my question: Did the
10 General Staff, when they were negotiating with you
11 preparatory to holding the Imperial Conference, say
12 that they thought, because the truce terms previously
13 proposed were so aggressive, that it was necessary
14 to establish the basic policy for the reconstruction
15 of Sino-Japanese relations by holding this Imperial
16 Conference?

17 A I don't recall. I should like to add that
18 when an Army opinion was conveyed to the Foreign
19 Office, whether that opinion be that of the General
20 Staff, it was the custom for a representative of the
21 Army to convey that opinion to the Foreign Office.

22 Q And I suggest to you that it was conveyed
23 at a meeting between the War, Navy and Foreign Min-
24 istries which the General Staff attended on January
25 10, 1938.

1 A I have no recollection of having attended
2 such a conference.

3 Q Did the General Staff say that it was neces-
4 sary to prepare a counter-policy against the domestic
5 tendency which was likely to become too aggressive?

6 A I heard nothing to that effect.

7 MR. YAMAOKA: Your Honor, I object to this
8 line of questioning. The witness said he did not
9 attend any such conference and does not recollect it.

10 MR. COMYNS CARR: Now may he see prosecution
11 document 820-E, please?

12 (Whereupon, a document was handed
13 to the witness.)

14 Q Mr. HORINOUCHI, I don't think it will take
15 you long to identify this one because your signature
16 is on the top of it, isn't it?

17 A Yes.

18 MR. COMYNS CARR: Then I ask that this docu-
19 ment be admitted in evidence, your Honor.

20 THE PRESIDENT: What is it, Mr. Carr?

21 MR. COMYNS CARR: It is a Foreign Office
22 record bearing the witness' signature and headed,
23 "Concerning the Basic Policy for Settling the Chinese
24 Incident (Subject Before a Council in the Presence
25 of the Emperor) (January 10, 1938 ...)"

1 MR. YAMAOKA: If your Honor please, the wit-
2 ness has not yet identified the document other than
3 to say that his signature was on it.

4 THE PRESIDENT: It has been described; he
5 heard the description; it is not contradicted; he
6 admits his signature. The document is admitted on
7 the usual terms.

8 MR. YAMAOKA: If the Tribunal please, it has
9 not been disclosed yet by my learned friend for what
10 purpose this evidence is being tendered, whether it
11 is in the nature of impeachment of this witness'
12 testimony or not.

13 THE PRESIDENT: On questions of probative
14 value it is the practice of the Court to hear argu-
15 ment. We are not obliged to hear any argument on
16 questions of this kind. We did hear argument in
17 any event. If you proceed to argue decisions with
18 me after they are given, Mr. Yamaoka, this will de-
19 velop into a very disorderly proceeding.

20 MR. YAMAOKA: Well, if the Tribunal please,
21 I only desire to inquire what the purpose was in ten-
22 dering this document. And, if it was not for the
23 purpose of impeachment, then I wish to state my
24 objection to it.

25 THE PRESIDENT: I allowed you to state your

1 objection, Mr. Yamaoka. You have done so. That is
2 all that was required. If you proceed to argue the
3 decision after it is given, that leads to disorderly
4 procedure which we must avoid.

5 MR. YAMAOKA: Well, if your Honor please,
6 that was not my purpose. I merely wanted to pro-
7 tect the record on the submission of this document;
8 that was all.

9 MR. COMYNS CARR: Your Honor, it will only
10 be necessary, as far as I am concerned, to read two
11 paragraphs of this document.

12 CLERK OF THE COURT: Prosecution document
13 820-E will receive exhibit No. 3265.

14 (Whereupon, the document above
15 referred to was marked prosecution exhibit
16 No. 3265 and received in evidence.)

17 MR. COMYNS CARR: Your Honor, the remainder
18 of the document is in substance repetitive of the
19 one I just read.

20 "Concerning the Basic Policy for Settling
21 the Chinese Incident (Subject Before a Council in
22 the Presence of the Emperor) (January 10, 1938, East
23 Asia)

24 "1" --

25 THE PRESIDENT: Mr. Carr, if it adds nothing
to the previous document, why read it?

1 MR. COMYNS CARR: Your Honor, that is the first
2 two paragraphs do and contradict a large number of the
3 answers the witness has given. It is the remainder that
4 adds nothing.

5 I have read the heading:

6 "(1) The Army proposed that its drafted plan
7 of the policy for the solution of the China Incident,
8 Appendix No. I, (December 1, 1937) should be decided at
9 a Council in the presence of the Emperor after discus-
10 sion among the three Ministries. But the relevant author-
11 ities of the Foreign and Navy Ministries left the Army's
12 proposal as it was, for the reason that it was not nec-
13 essary to make a new policy because they had already
14 prepared a main policy as a basic outline concerning the
15 disposal of the China Incident, and moreover, the main
16 policy for the incident (A) had been established in case
17 of both peace and war, and all investigations concerning
18 the conditions of a peaceful solution with Chaing Kai-
19 shek had been finished when the answer was given to the
20 German Ambassador in Tokyo.

21
22 "2. Meanwhile, the following opinions became
23 more and more influential among the General Staff after
24 the answer was given to the German Ambassador concerning
25 peace negotiations. That is, that the conditions of truce
were so aggressive that they might impair future diplo-

1 matic relations between Japan and China and, therefore,
2 it was not necessary, the General Staff thought, to es-
3 tablish the basic policy for the reconstruction of Sino-
4 Japanese relations by holding a meeting in the presence
5 of the Emperor, and to prepare a counter-policy against
6 the domestic tendency which was likely to become too
7 aggressive. The General Staff attended the conference
8 of the authorities of the three Ministries, namely, War,
9 Navy and Foreign Ministries, and explained the said
10 purport. Therefore, both the Foreign Office and the
11 Navy Department thought it a good thing that the Army
12 took such a broad view as indicated above, and in spite
13 of the aforesaid circumstances, they agreed that it might
14 be a good thing to discuss the subject at a meeting in
15 the presence of the Emperor just as it was proposed by
16 the General Staff, in order to keep the said spirit alive.
17 Consequently, the subject of discussion at the meeting in
18 the presence of the Emperor (Appendix II) was drafted be-
19 tween the relevant authorities of the three Ministries
20 and they got the approval from their superior officials
21 respectively."
22

23

24

25

BY MR. COMYNS CARR (Continued):

1 Q Was Mr. MATSUDAIRA the head of the East
2 Asia Bureau at that time?

3 A The Chief of the East Asia Bureau was Mr.
4 ISHII, Itaro.

5 Q Was Mr. MATSUDAIRA the Chief of the First
6 Section?

7 A I have no recollection that a person by the
8 name of MATSUDAIRA then held a position in the Foreign
9 Office.
10

11 MR. COMYNS CARR: Let the witness look at
12 prosecution document 820-G, please.

13 (Whereupon, a document was handed
14 to the witness.)

15 Q Mr. Witness, you see that document. Do
16 you recognize that as a Foreign Office record?

17 A I have no basis for so identifying this
18 document.

19 Q Then I won't press that one. Now, immedi-
20 ately after the Imperial Conference on January 13,
21 as you have told us, the reply from the Chinese
22 Government came through the Japanese Ambassador, did
23 it not, on the 14th of January -- through the German
24 Ambassador?

25 A That is my recollection.

1 MR. COMYNS CARR: That will be found in
2 exhibit 486-B, record page 5983.

3 Q When it came in, did HIROTA say this:

4 Language Section, I shall be reading from
5 document 32, fourth paragraph, line 6.

6 Did he say this: "China, through our Army
7 General Staff Headquarters as well as through the
8 German Military Attache, is in general well aware
9 of our concrete proposals, but despite this she
10 claims ignorance and is still insisting that the
11 proposals are not understandable. There is no hope
12 in that sort of a reply. Therefore, it has been
13 determined at the Council before his Imperial Maj-
14 esty that there is nothing else we could do but to
15 launch into our alternate plan. This is to transfer
16 the present hostilities into a long term warfare.
17 It is vital that we strengthen our determination to
18 this effect."

19 A Did you ask me a question?

20 Q I asked you whether HIROTA used those words
21 which I just read to you.

22 A I have no recollection that HIROTA ever said
23 that to me.

24 Q Did that represent the attitude that he
25 adopted when the request from the Chinese Government

1 for further details was received?

2 A I did hear that that was the atmosphere in
3 the Cabinet before the Cabinet meeting.

4 Q Did you hear that HIROTA was one of those
5 who agreed with that atmosphere?

6 A I didn't hear that HIROTA was especially
7 one of those.

8 Q Were you present on the 14th of January when
9 HIROTA had his meeting with Dirksen and the Chinese
10 reply was presented?

11 A No.

12 THE PRESIDENT: We will adjourn until half-
13 past one.

14 (Whereupon, at 1200, a recess was
15 taken.)

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AFTERNOON SESSION

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The Tribunal met, pursuant to recess, at 1330.

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

THE PRESIDENT: With the permission of the
Tribunal the accused SHIMADA will be absent from the
courtroom for the whole of the afternoon session con-
ferring with his counsel.

Mr. Comyns Carr.

- - -

KENSUKE HORINOUCHI, called as a
witness on behalf of the defense, resumed the
stand and testified through Japanese interpreters
as follows:

CROSS-EXAMINATION

BY MR. COMYNS CARR (Continued):

Q Mr. HORINOUCHI, I was asking you when the
Tribunal adjourned whether you were present on the
occasion when Ambassador Dirksen handed over the
Chinese reply to Mr. HIROTA?

A I was not present.

Q Did the Foreign Minister HIROTA inform you
that he had told the German Ambassador that he was
very angry at the Chinese declaration?

1 A What do you mean by the Chinese declaration?

2 Q The Chinese request for further particulars
3 of the terms of peace?

4 A I heard that the Foreign Minister said that
5 that reply was unsatisfactory.

6 Q And did he refuse to give the Chinese any
7 further particulars?

8 A I understand that the Foreign Minister
9 replied that since he had already given detailed
10 explanations there was no necessity for him to add
11 to them.

12 Q And did the German Ambassador tell him that
13 that was not true?

14 A That I did not hear.

15 MR. COMYNS CARR: I refer the Tribunal to
16 exhibit 486-C, record, page 5987.

17 Q On the 15th of January 1938, as you say, the
18 matter was discussed in the cabinet. When you refer
19 to a cabinet council do you mean a meeting of the
20 cabinet itself, not a meeting of the cabinet counsel-
21 lers or advisers?

22 A As you say.

23 Q Actually, on that occasion did the General
24 Staff repeat their demand that further particulars of
25 the terms should be sent to the Chinese?

1 A That I did not hear.

2 Q But did they finally give way, owing to a
3 threat that if they didn't either they or the
4 cabinet would have to resign?

5 A I never heard that the General Staff was
6 threatened. However, I did hear that the General
7 Staff expressed the opinion that they wished the
8 negotiations to continue. However, according to my
9 understanding the General Staff did not ask that the
10 negotiations be continued on the basis of ameliorating
11 the conditions but that the negotiations be continued
12 on the basis of the conditions and that the condi-
13 tions themselves remain.

14 Q Was not the cabinet meeting interrupted
15 for a time on that day while the General Staff
16 retired to consider what they should do about this
17 threat?

18 A I do not remember the circumstances -- I do
19 not remember such developments.

20 Q And finally, did not the General Staff
21 capitulate and agree to the cabinet's view that the
22 declaration refusing to have any further dealings
23 with Chiang Kai-shek should be issued?
24

25 A No, I do not know whether or not the General
Staff took such an attitude. I do know that the

1 cabinet at its meeting did arrive at such a decision.

2 Q That decision of the cabinet went entirely
3 beyond anything which had been determined at the
4 Imperial Conference, did it not?

5 A That is not my understanding.

6 MR. COMYNS CARR: In this connection I
7 refer the Tribunal to exhibits 2260, page 16,223,
8 KIDO's diary; 972-A, page 9505; 268, page 3563; 486-B,
9 which I have mentioned before; 486-G, page 5999; also
10 486-I, page 6016; and 972-G, page 9521.

11 Q On 21 January did the Premier, KONOYE, send
12 to Foreign Minister HIROTA a document containing the
13 general principles of national policy after that
14 declaration had been issued?

15 A I do not remember.

16 MR. COMYNS CARR: May the witness look at
17 IPS document 820-D, please?

18 Q Isn't that a copy from the Foreign Office
19 files of the document sent by the Prime Minister to
20 HIROTA?

21 A I do not recall.

22 Q Will you just glance through it and tell us
23 whether you don't remember this document very well?

24 A Just by looking at its contents it is diffi-
25 cult to confirm whether this was or was not a cabinet

decision.

1 Q Was it not of vital importance to you as
2 Vice-Minister for Foreign Affairs to know what was the
3 new national policy that had been laid down?
4

5 A It was important; however, I cannot confirm
6 whether this document itself is a copy of the cabinet
7 decision or not without some more exact foundation.

8 Q Can you suggest any reason why the Foreign
9 Office should file a copy of a communication from the
10 Prime Minister to the Foreign Minister if it was not
11 authentic?

12 A Generally speaking, official documents are
13 filed by the document section after first having been
14 looked over by the Foreign Minister, the Vice-Minister
15 or the Bureau chief concerned and such documents al-
16 ways bear the signature or the seal of the official
17 who looked over the document. Such documents are
18 called official. This document does not even bear
19 the filing number of the document section -- of the
20 archives section.
21

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1 Q You have told us that a number of Foreign
2 Office documents have been destroyed by fire. Was
3 it not the practice to make extra copies and file
4 them separately?

5 A This does not even have a certificate from
6 the chief of the Archives Section.

7 Q Answer the question.

8 A I do not say that copies were never made,
9 but in order to ascertain at a later date whether
10 any copies so made are or are not exact there must
11 be some definite and exact proof, whoever the person
12 may be, I think it is impossible to confirm it without
13 such proof.

14 Q You may take it there will be a certificate
15 when it is tendered in evidence if you continue to
16 deny it.

17 MR. YAMAOKA: If your Honor please, the
18 witness has not denied that this is not a copy. He
19 says he cannot tell from the document that is tendered
20 to him.

21 THE PRESIDENT: It is so.

22 Q I will just put to you one question on it,
23 and then if you say you don't recollect it I will pass
24 from it. Was it a part of the national policy decided
25 about January 21, 1938? Look at paragraph 3 of the

document.

1 I am going to read to the witness the
2 paragraph numbered 3:

3 "Military aims in the China Incident shall
4 be perfectly attained, and the status of general
5 mobilization completed according to the necessity
6 of national defense as well as making plans to
7 strengthen our military preparedness. Furthermore,
8 all measures shall be taken in response to the pro-
9 longed resistance of China."
10

11 Wasn't that part of the policy decided upon
12 at that time?

13 A I don't recall.

14 MR. COMYNS CARR: I will pass from it. Take
15 the document back from him, please.

16 Q Now, in February 1938 did Mr. HIROTA issue
17 instructions to the various representatives of the
18 Foreign Ministry in China as to methods of propaganda
19 to disintegrate the Chinese army?
20

21 A I don't recall.

22 MR. COMYNS CARR: May he look at IPS document
23 1841-8B7?

24 (Whereupon, a document was shown to the
25 witness.)

Q Is not that a document issued by the Chief of

1 the Information Section of the Foreign Office from
2 Minister HIROTA to various Foreign Office representa-
3 tives in China?

4 A I don't recall the contents of this document.

5 Q Do you recognize the document as being the
6 Foreign Office file copy of the instructions sent out?

7 A It may be a telegram sent out by the Chief
8 of the Information Bureau.

9 Q And do you observe that it is from Minister
10 HIROTA?

11 A It has always been a custom of the Foreign
12 Office that all outgoing telegrams are signed in the
13 Foreign Minister's name, even when actually sent by
14 the Chief of the Information Bureau.

15 Q Have you any real doubts in your mind that
16 it is a telegram sent by the Chief of the Information
17 Bureau?

18 A It is possible to suppose that it might have
19 been sent by the Chief of the Information Bureau.

20 Q Have you any doubt that it was?

21 A This does not bear either the signature of the
22 Chief of the Information Bureau nor that of the chief
23 of the competent section. This is indeed an unusual
24 practice for telegrams.

25 Q Now will you answer the question?

1 MR. YAMAOKA: If the Tribunal please, I
2 believe the last answer is sufficient.

3 THE PRESIDENT. He is asked a simple question.
4 He should answer it yes or no.

5 MR. YAMAOKA: Along this line, if the
6 Tribunal please, I respectfully submit that it would
7 be simple enough for my learned friend to get the
8 certificate from the Chief of the Archives Section
9 of the Foreign Office, as we have been doing.

10 THE PRESIDENT: You know why a certificate
11 would be no good to him at this stage. This is the
12 defense case, and cross-examination in that case.

13 Answer the question, Witness, if you can.

14 THE WITNESS: May I have the question repeated,
15 please?

16 (Whereupon, the question was read
17 by the official court reporter as follows:

18 "Q Have you any real doubts in your
19 mind that it is a telegram sent by the Chief
20 of the Information Bureau?")

21 A Since this telegram does not bear either the
22 signature of the Chief of the Information Bureau nor
23 that of the competent bureau, which in this case is
24 noted as the Third Section of the Information Bureau,
25 it is difficult to confirm the authenticity of this

1 telegram.

2 MR. COLYNS CARR: Take it back from him,
3 please.

4 Q Now, I am going to put to you a conversation
5 which I suggest you had personally with Baran HARADA
6 on the 14th of February, 1938. You knew Baran HARADA,
7 did you not?

8 A Yes, I knew him.

9 Q Did you meet him on that day and say, "Have
10 you heard about the Liaison Conference of February 14" --
11 Did you meet him on that day or a few days later and
12 say, "Have you heard about the Liaison Conference of
13 February 14"?

14 A I don't recall, but if you will tell me of
15 the contents of the conversation I may be able to do
16 so.

17 Q Did you tell him that at the conference --
18 I am summarizing -- that at the conference there had
19 been a dispute between the army and the navy as to
20 whether the army would advance in China as far as
21 Anking in order that the navy might use it as a bomb-
22 ing base?

23 A I don't quite recall.

24 Q Did you tell him that the reason of the
25 difficulty was that the army was making preparations

against Russia?

1 A I have no recollection whatsoever of ever
2 having made such a statement.

3 Q Did you tell him that the Emperor had asked
4 the Minister of War -- last sentence of document 35,
5 last paragraph, document 35, Language Division:

6 "Is it possible to put into effect a simul-
7 taneous plan for long-term hostilities, military
8 preparations against Russia, and the expansion of
9 the navy?"

10 A To whom did the Emperor make this question?

11 Q According to what I suggest you said to
12 Baran HARADA, he asked it of the Minister of War,
13 SUGIYAMA.

14 A I have no recollection on that point what-
15 soever.

16 Q Did you tell Baran HARADA that the War
17 Minister replied, "I shall discuss the matter with
18 the cabinet and take the proper action"?

19 A I have no such recollection.

20 Q Can you tell me, have you any recollection
21 of the matter being subsequently discussed in the
22 cabinet?

23 A I don't recall.

24 Q Would you look at IPS document 820-B. Do
25

1 you recognize that document as being a Foreign
2 Office record, kept in the East Asia Bureau, of
3 "Matters Regarding the Imperial General Headquarters
4 Council in the Imperial Presence," dated February 18,
5 1938?

6 A I confirm that the document is written on
7 Foreign Office stationery. However, as to its con-
8 tents I have never seen it, and so I cannot say with
9 confidence that it is a document in the custody of
10 the Foreign Office -- since the contents deal with
11 actions of the military.

12 Q Was it not your duty to see communications
13 which came -- regarding military and naval affairs
14 which came to the Foreign Office?

15 A The Vice-Minister did not have the duty of
16 reading all incoming documents.

17 Q Do you notice that the contents of this
18 document are not precisely but substantially to the
19 same effect as what I suggest you told Baran HARADA?

20 A There are similar points. However, as I
21 have already told you, I, myself, have no recollec-
22 tion of having had a conversation with Baran HARADA
23 along those lines; nor have I ever seen this document.

24 Q Do you notice that somebody has written in
25 pencil at the top of this document the words,

"Original copy at negotiation (materials)"?

1 A I did read that notation.

2 Q Whose writing is that?

3 A It is impossible for me to ascertain.

4 Q Was not this a document of such importance
5 that you must have seen it?

6 A This document is classified as "material
7 for research." There were many kinds of documents
8 so classified. Correction: "Reference data."
9 And since the Vice-Minister was very much occupied
10 with other matters, it may have been that I didn't
11 see this particular document.

12 Q Now, do you observe that in the fourth
13 paragraph of the document appear these words?

14 "To this statement, the navy insisted,
15 from a naval viewpoint, on the necessity of expand-
16 ing naval power for preparing against Great Britain
17 and America."

18 A Yes, I read it now.

19 Q If a document came into the Foreign Ministry
20 which disclosed that that was the intention of the
21 Navy Ministry, wouldn't it be essential for both you
22 and Mr. HIROTA to see it?

23 A I don't say that it was not important, but
24 I just want to tell you that I have no recollection of
25

1 over having seen this document.

2 Q Have you any doubts in your mind now that
3 that is an official record of the Foreign Office
4 or a copy of it?

5 A As I have told you before, since this
6 document merely purports to be a copy, I have no
7 proof that it actually is an official document.

8 Q Although you told me that it was on
9 Foreign Office paper?

10 A I do admit that.

11 Q Do I understand you won't admit it is a
12 Foreign Office document?

13 A In this form it is impossible for me to
14 state that this is an official document.

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Q I had better ask you quite specifically, do
you know whether the conference referred to in the
document took place?

A I have no recollection whatsoever of that
particular conference.

Q Now, only one other matter I want to ask
you about -- I beg your pardon. In paragraph 21 of
your affidavit, you refer to the -- it is the case

1 Q Do you draw a distinction between official
2 documents and other documents that are filed in the
3 Foreign Office?

4 A There is a distinction. For instance, news-
5 paper cuttings can hardly be regarded as official
6 documents. They are not so regarded.

7 Q This document is not a newspaper cutting, is
8 it?

9 A I did not say it was.

10 Q It purports, does it not, to be a record of
11 a matter of vital importance?

12 A I don't deny that it is important. I just
13 say that I don't have the basis for stating of my own
14 personal knowledge that it is an official Foreign
15 Office document.

16 MR. COMYNS CARR: Will you take it back from
17 him, please.

18 Q I had better ask you quite specifically, do
19 you know whether the conference referred to in the
20 document took place?

21 A I have no recollection whatsoever of that
22 particular conference.

23 Q Now, only one other matter I want to ask
24 you about -- I beg your pardon. In paragraph 21 of
25 your affidavit, you refer to the -- it is the same

1 matter -- you refer to the great steps which you say
2 HIROTA took to safeguard the interests of the third
3 powers in China.

4 THE PRESIDENT: Careful consideration, isn't it?

5 Q Yes, it is careful consideration. And goes on
6 to say, "actually exerted all his efforts in its favor."

7 Do you know that Ambassador Grow was conti-
8 nually making protests to Mr. HIROTA about breaches
9 of the Open Door Policy, attacks on American lives
10 and property, looting in American property, and so on?

11 A Yes, I do.

12 Q And that in spite of these protests, those
13 misdeeds continued without cessation or interruption?

14 A The Foreign Office -- the Foreign Minister,
15 on one hand, took pains to explain the real facts of
16 the situation and called for the Ambassador's under-
17 standing in regard to these matters; and on the other
18 hand, called the attention of the army, navy and other
19 authorities concerned to these protests and did his
20 best to protect the interests of third powers. Also,
21 he sent repeated instructions to our diplomatic
22 representatives in China to take all possible steps
23 to safeguard the interests of third powers.

24 Q Do you know that similar protests were
25 continuously received with the same want of result

from the British Ambassador?

1 A I recall that there were frequent protests
2 from the British Ambassador. However, I cannot give
3 a general statement to the effect that there was the
4 same lack of results.

5 MR. COMYNS CARR: I refer the Tribunal to
6 the following exhibits: 941, page 9413; 944,
7 page 9418; 954-C, page 9451; 955, page 9456; 968,
8 page 9493; 969, page 9497; and 973, page 9534.

9 Q Now, I will just take one example: the
10 Laaybird. You remember the incident, do you not?
11

12 A I do.

13 Q On the 30th of December, 1937, did HIROTA
14 send an official note to England stating that the
15 firing upon the British warship by the Japanese Army
16 was entirely due to a misunderstanding?

17 A That is my recollection.

18 Q And did you make a similar explanation with
19 regard to the attack upon the Panay?

20 A That is my recollection.

21 Q You knew it was untrue, didn't you?

22 A That is absolutely not so.

23 Q On the 14th of December, just a fortnight
24 before the note was sent, did you see Baron HARADA
25 at the Foreign Ministry?

1 A I don't remember whether or not I saw him
2 on that day, on that particular day.

3 Q I will remind you of the conversation --
4 Language Division, document 25 -- with regard to the
5 Ladybird.

6 Did you say to Baron HARADA, "The naval air
7 force bombed and sank an American merchantship. At
8 just about that time, an English warship was shelled
9 at Nanking from the hills, and men were wounded. This
10 is really distressing. The English warship was, of
11 course, a small warship for use on rivers. However,
12 it was twenty-six miles upstream from Nanking. The
13 regiment of which HASHIMOTO, Kingoro, was commander
14 fired on it at the order of HASHIMOTO."

15 A I may not have used the -- I don't remember
16 whether I used the exact language that you have quoted
17 to me. I know that I did use words of a similar nature.
18 However, I do not recall ever once having used the word
19 "deliberately."

20 Q If it was fired on at the order of HASHIMOTO
21 and you knew it, how can it have been true to say that
22 it was entirely due to misunderstanding?

23 A Even if the firing was carried out under the
24 order of Lieutenant Colonel HASHIMOTO, it is possible
25 that he may have mistaken the ship for a merchantman;

1 and I never at any time suggested that HASHIMOTO
 2 deliberately gave order to fire on a British warship
 3 knowing that it was a British warship.

4 MR. COMYNS CARR: That completes my cross-
 5 examination.

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1 THE PRESIDENT: Mr. Yamaoka.
2 MR. YAMAOKA: If the Tribunal please, as this
3 witness has been cross-examined at great length by my
4 learned friend on some documents about which there is
5 some dispute as to authenticity, I respectfully request
6 that the documents so tendered to this witness and
7 not identified by him and subsequently admitted into
8 evidence, that is, those which the prosecution has
9 withdrawn, be submitted for identification.

10 MR. COMYNS CARR: In my submission, the defense
11 cannot have it both ways. They cannot both have the
12 document excluded from evidence, because their witness
13 won't identify them, and at the same time have them
14 marked for identification. This point was discussed
15 a long time ago in this Tribunal and the Tribunal ruled
16 the other way.

17 THE PRESIDENT: Although we do not do this in
18 a national court, at least not in my court in Australia,
19 I think we have been doing something of the kind here.
20 I am not sure about it. I am subject to correction.

21 MR. COMYNS CARR: Your Honor, in this precise
22 form I do not think it has arisen before.

23 THE PRESIDENT: They are not received into
24 evidence by being marked for identification. If it is
25 any comfort to the defense I think we would prefer that

1 they be marked for identification, but they are not
2 to be received in evidence.

3 MR. COMYNS CARR: I have no strong objection,
4 your Honor. The only result of marking them for
5 identification is that the defense, although having
6 succeeded in getting them excluded at this stage from
7 evidence, have the opportunity of reading them before
8 they are tendered again.

9 What the Tribunal ruled previously was this:
10 In certain cases where questions were put based upon
11 documents, which, because the witness couldn't have
12 identified them, are not actually shown to him, this
13 application was made that they should be marked for
14 identification and that application was refused.

15 THE PRESIDENT: I recollect the defense putting
16 questions to prosecution's witnesses on documents and
17 being required to tender the documents for identificatio
18 That would not be done in a national court, in any that
19 I have been connected with, but it was done here.

20 MR. COMYNS CARR: If your Honor please, we have
21 no objection if the Tribunal think it proper.

22 MR. YAMAOKA: I respectfully ask the Tribunal's
23 direction that it be so done and I might add that it is
24 the practice to which I have been accustomed.

25 THE PRESIDENT: Will you be prejudiced in any

1 way, Mr. Comyns Carr?

2 MR. COMYNS CARR: No, your Honor. We have
3 no objection if the Tribunal wishes it.

4 THE PRESIDENT: Mark them for identification.

5 MR. COMYNS CARR: I am not quite sure now
6 that I know which were -- Could we do it at the time
7 of recess, your Honor? It would take up considerable
8 time now.

9 THE PRESIDENT: Yes, do it then.

10 Mr. Yamaoka.

11 MR. YAMAOKA: If the Tribunal please, I should
12 also desire to request that exhibits 3262, 3263, 3264
13 and 3265, which have been identified by this witness
14 and tendered as prosecution exhibits, be submitted to
15 the Language Section to check the translation.

16 MR. COMYNS CARR: We have no objection to that,
17 your Honor.

18 THE PRESIDENT: They are referred accordingly.

19 MR. YAMAOKA: There will be no redirect
20 examination of this witness, your Honor. May I request
21 that he be released on the usual terms?
22

23 THE PRESIDENT: He is released accordingly.

24 (Whereupon, the witness was excused.)

25

1 MR. YAMAOKA: May it please the Tribunal, we
2 offer in evidence defense document 2582, being an
3 affidavit of HAYASHI, Kaoru, of the Foreign Office,
4 certifying to the correctness of defense document
5 1423, the next document on the order of proof, and
6 showing how the same came into the possession of the
7 Foreign Office. This affidavit shows that the docu-
8 ment was lost by fire during the war.

9 THE PRESIDENT: Admitted on the usual terms.

10 CLERK OF THE COURT: Defense document 2582
11 will receive exhibit No. 3266.

12 (Whereupon, the document above
13 referred to was marked defense exhibit
14 No. 3266 and received in evidence.)

15 MR. YAMAOKA: I do not propose to read this
16 exhibit.

17 We next offer in evidence defense document
18 1423. This is an official document of the Japanese
19 Foreign Office and shows the considerations enter-
20 tained by the Japanese Foreign Office on the problem
21 of the conclusion of a Japanese-German political con-
22 vention and is dated July 24, 1936.

23 THE PRESIDENT: Mr. Brown.

24 MR. BROWN: Your Honor, the prosecution ob-
25 jects to this document. I should, perhaps, inform

1 the Tribunal that it was previously tendered to the
2 Tribunal and rejected on page 22,477.

3 I point out that the writer is not dis-
4 closed.

5 The article refers to the necessity to make
6 common cause with some such power as Germany, in view
7 of Soviet reference to Japan and her backing of
8 Communist activities in China.

9 It is submitted, your Honor, that the material
10 contains the opinions of an individual.

11 Your Honor, I suggest that it might become
12 admissible if Mr. ARITA, who is on the order of proof
13 of witnesses, is going to give evidence identifying it.

14 THE PRESIDENT: Mr. YAMAOKA.

15 MR. YAMAOKA: May it please the Tribunal, I
16 beg to point out that this document is referred to in
17 the previous document, 3266. I did not read that ex-
18 hibit, but I believe the letter from Mr. ARITA to Mr.
19 HAYASHI, Chief of the Archives Section of the Foreign
20 Office, clearly shows the source of this document.

21 MR. BROWN: Your Honor --

22 THE PRESIDENT: Mr. Brown.

23 MR. BROWN: The prosecution wishes to with-
24 draw its objection at this time.

25 THE PRESIDENT: It is admitted on the usual

terms.

1 CLERK OF THE COURT: Defense document 1423
2 will receive exhibit No. 3267.

3 (Whereupon, the document above
4 referred to was marked defense exhibit
5 No. 3267 and received in evidence.)

6 THE PRESIDENT: Read it after the recess,
7
8 Mr. Yamaoka.

9 We will recess for fifteen minutes.

10 (Whereupon, at 1445, a recess was
11 taken until 1500, after which the proceed-
12 ings were resumed as follows:)

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

3 THE PRESIDENT: Mr. Yamaoka.

4 MR. YAMAOKA: May it please the Tribunal, I
5 will read exhibit 3267. I understand that the docu-
6 ments which were tendered by the prosecution will be
7 marked for identification first.

8 CLERK OF THE COURT: Prosecution document 820-A
9 will receive exhibit No. 3268 for identification only;
10 prosecution document 820-G will receive exhibit No.
11 3269 for identification only; prosecution document 820-D
12 will receive exhibit No. 3270 for identification only;
13 prosecution document 1841-8B7 will receive exhibit No.
14 3271 for identification only; prosecution document
15 820-B will receive exhibit 3272 for identification only.

16 (Whereupon, the documents above
17 referred to were marked, respectively, prosecution
18 exhibits 3268 to 3272 for identification.)

19 MR. YAMAOKA: I shall now read exhibit 3267.

20 "The Problem of the Conclusion of a Japanese-
21 German Political Convention (Dated July 24, 1936)

22 "The Soviet Union, with her colossal armaments
23 in the Far East, is menacing Japan. Meanwhile, she has
24 solidified her standpoint by concluding treaties of
25 mutual aid with France, Czechoslovakia and Outer Mon-

1 polia respectively and by backing the Communist activi-
2 ties in China, where through increasing the menace to
3 Japan. Union are comparatively simple. Japan's rela-
4 tions with "Therefore, in order to ensure the existence of
5 Japan and smoothly carry out our policy towards the
6 continent, it is urgently necessary to make common
7 cause with some other nation to check the Soviet Union.
8 And it is considered proper as well as easy to choose
9 Germany as the object of our approaches for the present,
10 for both Japan and Germany stand on similar standpoints
11 as regards their respective international situations --
12 above all, as regards their respective relations with
13 the Soviet Union. Moreover, their reciprocal rela-
14 tions have taken, recently, an extremely favourable
15 turn. Their national feelings are now so enhanced that
16 some concrete step or other to decide their mutual con-
17 nection must be taken. Chinese problems and the economic

18 "However, there are two points which demand our
19 precaution in realizing the coalition between Japan and
20 Germany. the friendship of Britain, at least not to

21 "(1) It is needless to say that the coali-
22 tion should be so designed as to obtain the greatest
23 possible effect in checking the Soviet Union. Whereas
24 it is simultaneously requested that the coalition should
25 not stimulate the Soviet Union unduly, and that the

1 efforts in realizing it should not lead up to a war
2 against her. Though Germany's relations with the
3 Soviet Union are comparatively simple, Japan's rela-
4 tions with her are, far from being simple, much com-
5 plicated and delicate. Japan borders directly on the
6 Soviet Union, and holds many concessions in the latter's
7 territories. Besides, there are multitudinous ques-
8 tions pending between the two nations. Accordingly,
9 it would cause not a little disadvantage, direct or
10 indirect, on the part of Japan, if she unduly stimula-
11 ted the Soviet Union.

12 "(2) The second point to be fully cautious of
13 is that the Japanese-German coalition should not un-
14 duly set the Western Powers, especially Britain, at un-
15 rest. The Anglo-Japanese relations are by no means
16 friendly at present, owing to the existing discrepancy
17 of views concerning the Chinese problems and the economi-
18 cal questions. However, it is quite necessary, in order
19 to improve the international situation of Japan, to
20 cultivate the friendship of Britain, at least not to
21 clash head on with her, who holds involved interests
22 and great influence all over the world. And such is,
23 indeed, the keynote of the Japanese foreign policy for
24 the present.

25 "In view of the Russian menace with her colossal

1 armaments in the Far East, the unsatisfactory progress
2 of the Anglo-Japanese conversations and the present
3 stage of the Berlin negotiations for a Japanese-German
4 coalition, Japan must be very cautious lest the im-
5 port of the political agreement which she is going to
6 conclude with Germany should stimulate Britain unduly.
7 Meanwhile, we are requested to take positive steps
8 toward the readjustment of the Anglo-Japanese relations,
9 through making an agreement with Britain that Japan
10 and Britain should have a frank consultation with each
11 other with the object of cooperating as far as possible
12 in settling important problems common to both countries.

13 "Unofficial conversations were made, recently,
14 at Berlin, in absolute secrecy, among the Japanese
15 Ambassador to Germany, a military attache to the Jap-
16 anese Embassy at Berlin, and German Ambassador without
17 portfolio Joachim von Ribbentrop, in an attempt to
18 realize the political coalition between Japan and Ger-
19 many. In accordance with the result of these conver-
20 sations, Germany has submitted to the Japanese Govern-
21 ment a tentative plan of an anti-Comintern pact and a
22 secret political agreement which is to be annexed to
23 it. Our criticism of the submitted plan, from the Jap-
24 anese point of view, especially from the above referred
25 standpoint is as follows:

"I. The Anti-Comintern Pact.

1
2 "If we conclude this kind of pact exclusively
3 between Japan and Germany, in such a form as was sug-
4 gested by the German Government the substance of the
5 pact, when disclosed, would naturally stimulate the
6 Soviet Union. Moreover, there is a danger that it
7 might be used as the material of some malignant propa-
8 ganda, resulting in serious disadvantage on the part of
9 Japan.

10 "Accordingly, it is essential strictly to limit
11 the scope of the agreement within such substantial
12 necessity that Japan and Germany exchange information
13 of the Communist activities and opinions about the
14 counter-measures of each other.

15 "II. Annexed Political Agreement.

16 "a. Article 1.

17 "The first article declares that both Japan and
18 Germany will not take any such measure as would place
19 the Soviet Union in an advantageous situation. It is,
20 therefore, simply of negative import, and does not, in
21 itself, put much restraint on either of the two partici-
22 pant nations. However, its accompanying influence
23 needs to be taken into due consideration.

24 "Accordingly, it would be proper to change the
25 original conditional 'in case either of the two nations

1 be subjected to a menace or an attack,' which covers
2 too wide a scope, as 'in case either ... be subjected
3 to, or menaced with, an unprovoked attack.'

4 "Besides, it is not desirable that this provision
5 plainly name the Soviet Union. It would be safer, in
6 order to observe secrecy as well, to alter it as 'a
7 third state', with an understanding that 'a third state'
8 means the Soviet Union.
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"Further, it is hoped that the provision:
1 'In the above-stated case, the Governments of the
2 both participant states should hold a frank con-
3 sultation with each other' be inserted as the second
4 item of the first article.

5 "b. Article II.

6 "The second article of the original draft is
7 hoped to be struck out. It is necessary to give suf-
8 ficient explanation concerning the problems now pend-
9 ing between Japan and the Soviet Union in order to
10 convince the German Government how it is impossible
11 to deal with the matter uniformly as the German
12 draft suggests. And it is necessary again to make
13 sure of the German intentions to handle the Rapallo
14 Treaty and the Berlin Neutrality Treaty so as to
15 accord with the spirit of the present pact, by way of
16 precaution lest disproportion of obligation should be
17 caused in the future between Japan and Germany.

18 "While thus proceeding with the negotiations
19 with Germany along the lines so far expounded, Japan
20 should start negotiations with Britain as well. It
21 is desired to conclude the negotiations as soon as
22 possible, beginning with whichever is better under
23 way.
24

25 "The plan on which the negotiations with

1 Britain should be based is expounded below. Once
2 the agreement is reached, a firm resolution on the
3 part of Japan will be demanded, not only to abstain
4 from such acts as are against the spirit of the
5 agreement, but to give assurance to Britain at the
6 least that her concessions in China will be respected
7 and that the pledge will be observed.

8 "In short, the undesirable effect that these
9 pacts may have on Britain in case we be compelled to
10 disclose the substance of the pacts, could be pre-
11 vented, provided that the draft be properly amended
12 and some positive steps be taken to readjust the
13 relations with Britain, in view of the recent tense
14 situation of the Russo-Japanese relations and the
15 peculiarity of the relations between Japan and
16 Britain. If so, the Russo-Japanese relations also
17 will sustain little damage, and the international
18 status of Japan will be ensured.

19 "The Government of the Japanese Empire and
20 the Government of the British Empire, desiring to
21 strengthen the friendly relations subsisting between
22 the two countries and thereby contribute to the
23 establishment of the world peace, have made an agree-
24 ment as below:

25 "(1) The Government of the Japanese Empire

1 and the Government of the British Empire should
2 carry on frank deliberation with each other with the
3 object of cooperating with regard to important
4 problems common to both countries.

5 "(2) This document shall remain in force
6 for the period of five years from the day of signing."

7 I shall skip the last two paragraphs on
8 that page.

9 We now offer in evidence a corrected copy of
10 defense document 1425. This is an official document
11 of the Japanese Foreign Office and is an extract from
12 "The Annual Report of the Official Business for the
13 Year 1936," published by the Bureau of the European-
14 Asiatic Affairs on December 1, 1936. This document
15 deals with the efforts on the part of the Japanese
16 Foreign Office toward improving Anglo-Japanese rela-
17 tions.

18 I might state that I do not intend to read
19 this document.

20 THE PRESIDENT: Mr. Brown.

21 MR. BROWN: Your Honor, the prosecution ob-
22 jects to this document which, in our opinion, has no
23 real probative value. The first three paragraphs
24 contain merely the opinion of an unknown writer.
25 The last paragraph is merely repetitive of the

1 exhibit which has just been read, and the date of it
2 shows that it was at a time when the accused HIROTA
3 was not Foreign Minister.

4 THE PRESIDENT: Mr. Yamaoka.

5 MR. YAMAOKA: May it please the Tribunal,
6 we have offered this document in evidence for the
7 purpose of supporting the evidence on behalf of the
8 accused HIROTA to the effect that he did endeavor,
9 and that the Foreign Office endeavored to cement the
10 relations between Britain and Japan.

11 As for authorship, I submit that this is an
12 official document of the Japanese Foreign Office.
13 There is a certificate attached, and I believe that
14 is sufficient for the purpose of competency.

15 THE PRESIDENT: By a majority the objection
16 is sustained and the document rejected.

17 MR. YAMAOKA: We now offer in evidence
18 defense document 1424. This is an official publica-
19 tion of the Japanese Foreign Office and shows an
20 extract from "The Annual Report of Official Business
21 for the Year 1936," published on December 1, 1936
22 by the Bureau of the European-Asiatic Affairs. This
23 document shows the progress of the preliminary conver-
24 sations for a Japanese-Dutch anti-Comintern pact.
25 This document was previously offered in evidence but

1 rejected. As it is an official report of the Foreign
2 Office during the tenure of Mr. HIROTA as Premier,
3 the document is re-offered into evidence as a piece
4 of evidence indispensable to the defense of Mr.
5 HIROTA. The purpose of the offer is to show that
6 adherents to the Anti-Comintern Pact were not sought
7 solely from among totalitarian states.

8 I do not propose to read this document.

9 THE PRESIDENT: Mr. Brown.

10 MR. BROWN: Your Honor, the prosecution ob-
11 jects to this document. As my learned friend has just
12 stated, this document has been previously tendered
13 to the Tribunal. It was, in fact, on page 22,503.
14 It was then objected to by the prosecution on the
15 ground that it had no relevancy nor probative value,
16 and that the source of the information was not given.
17 On the following page the Court upheld the objection
18 and rejected the document.

19 THE PRESIDENT: Mr. Yamaoka.

20 MR. YAMAOKA: If it please the Tribunal, the
21 Anti-Comintern Pact was brought into issue by the
22 prosecution itself, and the purport of it, as I under-
23 stand it, is that the Axis Powers together with Japan
24 conspired by this means to dominate East Asia and the
25 world, and more particularly that it was specifically

aimed as an aggressive pact vis-a-vis the Soviet Union.

This evidence is being tendered for the purpose of showing that the Anti-Comintern Pact, as such, was not confined to the Axis Powers alone, and that she sought similar pacts with other countries in order to meet the threat which she thought confronted her.

THE PRESIDENT: By a majority the objection is sustained and the document again rejected.

MR. YAMAOKA: We next call the witness HIDAKA Shinrokuro.

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1 S H I N R O K U R O H I D A K A, recalled as a
2 witness on behalf of the defense, having been previ-
3 ously sworn, testified through Japanese interpreters
4 as follows:

5 THE PRESIDENT: Has he been sworn already?
6 If so, he is still on his former oath.

7 MR. YAMAOKA: I understand he has been.
8 He has testified previously before this Tribunal.

9 THE PRESIDENT: You are still on your former
10 oath.

11 DIRECT EXAMINATION

12 BY MR. YAMAOKA:

13 Q Will you kindly state your name and address?

14 A My name is HIDAKA, Shinrokuro. Address,
15 1030 Matsubara-cho, 3-Chome, Setagaya-ku, Tokyo.

16 MR. YAMAOKA: May the witness be shown de-
17 fense document 2148?

18 (Whereupon, a document was handed
19 to the witness.)

20 Q Is that your affidavit?

21 A Yes.

22 Q Is it in all respects true and correct?

23 A Yes.

24 MR. YAMAOKA: I offer defense document 2148
25 in evidence.

1 S H I N R O K U R O H I D A K A, recalled as a
2 witness on behalf of the defense, having been previ-
3 ously sworn, testified through Japanese interpreters
4 as follows:

5 THE PRESIDENT: Has he been sworn already?
6 If so, he is still on his former oath.

7 MR. YAMAOKA: I understand he has been.
8 He has testified previously before this Tribunal.

9 THE PRESIDENT: You are still on your former
10 oath.

11 DIRECT EXAMINATION

12 BY MR. YAMAOKA:

13 Q Will you kindly state your name and address?

14 A My name is HIDAKA, Shinrokuro. Address,
15 1030 Matsubara-cho, 3-Chome, Setagaya-ku, Tokyo.

16 MR. YAMAOKA: May the witness be shown de-
17 fense document 2148?

18 (Whereupon, a document was handed
19 to the witness.)

20 Q Is that your affidavit?

21 A Yes.

22 Q Is it in all respects true and correct?

23 A Yes.

24 MR. YAMAOKA: I offer defense document 2148
25 in evidence.

THE PRESIDENT: Mr. Comyns Carr.

1 MR. COMYNS CARR: May it please the Tribunal,
2 the prosecution objects to certain paragraphs of this
3 affidavit:
4

5 Paragraph 2 on the ground that it is merely
6 opinion and gossip and irrelevant matter relating to
7 a period during most of which HIROTA was not holding
8 any office. It describes the witness' impressions
9 of the state of affairs and prospects in China from
10 April 1937 until the time of the outbreak of the Marco
11 Polo Bridge Incident and says that nobody expected any
12 such Incident and all the important Chinese officials
13 were on holiday when it happened.

14 The last part of it gives the witness'
15 opinion about Chinese military and internal affairs
16 at that date.

17 Then, we object to the first half of paragraph
18 4 on page 4, down to the middle of the paragraph, the
19 words "and the Chinese authorities outside the Foreign
20 Department were all reluctant to meet me." All of
21 that, in our submission, is mere opinion of the wit-
22 ness, and gossip.

23 Then, we object to the first sentence in
24 paragraph 6, which is merely the witness' opinion;
25 the first four lines and one word, down to "Japan."

1 THE PRESIDENT: Mr. Yamaoka.

2 MR. YAMAOKA: May it please the Tribunal,
3 it is true that Mr. HIROTA was not in office from
4 February to June 1937, but I submit that this is only
5 a brief period of a few months. Thereafter he con-
6 tinued in office until 1938, in May, during the First
7 KONOYE Cabinet. During his absence from office things
8 did transpire in China, and unless that story is
9 told, we respectfully submit, a true picture -- that
10 is, a satisfactory picture -- cannot be evolved.

11 The testimony of this witness is primarily
12 concerned with conditions in China; not in Tokyo
13 but in China, as of that period. I respectfully
14 submit that the events which there occurred did
15 affect the actions of the Japanese Government, and
16 particularly the accused HIROTA.

17 Now, in respect to paragraph 4, I do not
18 believe that this is mere gossip. The witness clearly
19 states that he was told by persons living there the
20 situation there.
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1 THE PRESIDENT: By a majority, the objections
2 are sustained and the document rejected to that ex-
3 tent. The unrejected parts are admitted on the usual
4 terms.

5 CLERK OF THE COURT: Defense document 2148
6 will receive exhibit No. 3273.

7 (Whereupon, the document above
8 referred to was marked defense exhibit
9 No. 3273 and received in evidence.)

10 MR. YAMAOKA: I shall now read exhibit 3273
11 as admitted. Omitting the formal parts,

12 "(1) I entered the diplomatic service in 1919,
13 and, after serving in Europe and in Tokyo, was in the
14 office of Consul-General at Nanking for about ten
15 months, from 1933 to the beginning of 1934. Then I re-
16 turned to the Foreign Office where I held the post of
17 the Chief of the Personnel Section for about three
18 years. I was then in the office of the Councillor
19 of the Embassy at Nanking from April 30, 1937, to
20 August 16 of the same year, and afterwards at Shanghai
21 from August 29, 1937, to March 3, 1939. I returned to
22 Tokyo after I had served as Consul-General at Shanghai
23 from March 17 to December 12, 1938.

24 "In April 1940 I was again appointed Coun-
25 cillor of the Embassy at Nanking and held that post

1 till November 1942. Then I was Ambassador to Italy,
2 arriving at Rome in April 1943 and returning home in
3 March 1946. I was relieved from post in May 1946.

4 "(3) I was first informed of the outbreak
5 of the Marco Polo Bridge incident by an official
6 telegram of July 8 despatched from Peiping. I re-
7 ceived also a telephone call from Chief of the Japa-
8 nese Section Tung in this connection in the evening
9 of the same day. He said he hoped that the Japanese
10 Army would exercise prudence and caution so that the
11 matter might not assume more serious proportions. I
12 told him in reply that Japan had no intention to ag-
13 gravate the situation on purpose, and requested the
14 self-restraint on the part of the Chinese.

15 "On the 10th I received from the Chinese
16 Foreign Department an official note, the import of
17 which could be reduced to the following two points,
18 namely (1) that the Japanese troops which caused the
19 incident should be withdrawn to the place where they
20 were originally stationed, and wait for a judicial
21 settlement; and (2) that the Chinese Foreign Depart-
22 ment would reserve all the judicial demands in con-
23 nection with the present matter. The Japanese side
24 replied to the effect (1) that it was by the treaty
25 right that the Japanese troops were stationed in North

1 China and went through maneuvers there; (2) that it
2 was by the provocative conduct of the Chinese side
3 that the Japanese side was compelled to take the steps
4 for self-defense; (3) that the Chinese side was re-
5 sponsible for the outbreak of the incident; and (4)
6 that, accordingly, the Japanese Government could not
7 accept the claim of the Chinese Foreign Department
8 to reserve all the judicial demands in this con-
9 nection.

10 "On the 11th I received telegraphic in-
11 structions from the Japanese Foreign Office, ordering
12 me to convey the intention of the Japanese Government
13 to settle the matter locally and to request the Nan-
14 king Government not to obstruct the Japanese efforts
15 to save the situation promptly. I lost no time in
16 conveying the import of the instructions to the
17 Chinese Vice-Minister for Foreign Affairs, and then
18 officially to the Chinese Foreign Minister, who,
19 however, demanded in reply that the Japanese troops
20 then stationed in the places of disturbance should
21 be withdrawn to the places where they were originally
22 stationed, and that no reinforcements should be sent
23 from Manchuria, Korea and the home land of Japan. I
24 then asked him if I was right in believing that, in
25 case an agreement to stop hostile activities was

1 reached in connection with the present incident between
2 the Japanese and Chinese authorities on the spot, the
3 Nanking Government had no intention to deny or to
4 destroy it. The Foreign Minister did not show any in-
5 tention to deny it, though, in the evening, the For-
6 eign Department sent to me an official note to the
7 effect that any local understanding or agreement which
8 had already been concluded or was to be concluded
9 thereafter, would take effect upon confirmation by the
10 Central Government. On the occasion of the interview,
11 I also asked the Chinese Foreign Minister if the in-
12 formation reporting the mobilization or the north-
13 ward movement of Chinese troops was true, he did not
14 deny it.

15 "On the 16th I received again an official note
16 from the Chinese Foreign Department demanding (1) that
17 all the Japanese reinforcements despatched on the oc-
18 casion of the present incident should instantly be
19 withdrawn; (2) that the Japanese troops responsible
20 for the outbreak of the incident should be withdrawn
21 to the places where they had originally been stationed;
22 and (3) that the Chinese Government would reserve all
23 the claim in connection with the incident.

24 "On the following 17th I received telegraphic
25 instructions from the Japanese Foreign Office, which

1 reached in connection with the present incident between
2 the Japanese and Chinese authorities on the spot, the
3 Nanking Government had no intention to deny or to
4 destroy it. The Foreign Minister did not show any in-
5 tention to deny it, though, in the evening, the For-
6 eign Department sent to me an official note to the
7 effect that any local understanding or agreement which
8 had already been concluded or was to be concluded
9 thereafter, would take effect upon confirmation by the
10 Central Government. On the occasion of the interview,
11 I also asked the Chinese Foreign Minister if the in-
12 formation reporting the mobilization or the north-
13 ward movement of Chinese troops was true, he did not
14 deny it.

15 "On the 16th I received again an official note
16 from the Chinese Foreign Department demanding (1) that
17 all the Japanese reinforcements despatched on the oc-
18 casion of the present incident should instantly be
19 withdrawn; (2) that the Japanese troops responsible
20 for the outbreak of the incident should be withdrawn
21 to the places where they had originally been stationed;
22 and (3) that the Chinese Government would reserve all
23 the claim in connection with the incident.

24 "On the following 17th I received telegraphic
25 instructions from the Japanese Foreign Office, which

1 urgently ordered me to demand (1) that the Nanking
2 Government should not obstruct the execution of the
3 terms of the settlement about which an agreement had
4 been reached between the Japanese and the Chinese
5 Military authorities on the spot on July 11; and (2)
6 that the said Government should stop all the provo-
7 cative speeches and actions in order to carry out the
8 policy of preventing the further development of the
9 conflict; specially requesting me to strive for the
10 realization of the purport of the instructions.

11 Thereupon, I called on the Chinese Foreign Minister
12 in the very evening to hand to him an official note
13 conveying the above two points, and earnestly per-
14 suaded him that the most urgent step which should
15 be taken in order to maintain peace between Japan
16 and China was to prevent the further aggravation of
17 the situation through the faithful execution of the
18 agreement of July 11. Further, I pointed out the
19 fact that the Japanese force in North China was in-
20 ferior beyond comparison to the Chinese force there,
21 and reinforcements were being eagerly waited for,
22 even for the safety of the stationary force, not to
23 speak of the Japanese residents there. I emphasized
24 the urgent necessity of carrying through the agree-
25 ment of July 11 to alleviate the strained situation

1 in North China, called the attention of the Foreign
2 Minister to the danger that the further despatch of
3 reinforcements to North China by the Nanking Government
4 might be the surest cause of the aggravation of the sit-
5 uation, and requested that he should take some prompt
6 measures to stem the advance of the Chinese Central
7 Force which was then actually moving northward. To this
8 the Chinese Foreign Minister promised to make a reply
9 on the next Monday, the 19th. The official note I left
10 in the hands of the Chinese Foreign Minister was trans-
11 lated in English and sent to the British and American
12 Ambassadors at Nanking for reference.

13 "On the 19th, Chief of the Japanese Section
14 Tung called on me and handed to me an official note
15 which was to the following effect: 'Japan is despatch-
16 ing a large body of corps to Hopei Province, and does
17 not stop despatching even now. Under such circumstances
18 China cannot but make proper preparations for self-
19 defense. The Chinese Government hereby proposes that
20 both Japan and China should simultaneously stop the move-
21 ment of their respective forces, and withdraw the troops
22 which have already been despatched to the places where
23 they were originally stationed. Any settlement of local
24 nature reached on the spot ought to be confirmed by the
25 Central Government.' I asked Tung if this was the reply

1 on the part of the Chinese Government to our official
2 note of July 17, but the only answer I could obtain
3 was as vague as that which he carried to me by order of
4 the Foreign Minister. On the following 20th I called
5 on the Chinese Foreign Minister, and ascertained that
6 the Chinese official note of July 19 was intended to
7 be the reply to our note of the 17th. It was, however,
8 far from the practical necessity to alleviate the tense
9 situation in North China as early as possible. And I
10 really consider that, if we wasted time in this way in
11 such a roundabout negotiation, the situation would get
12 all the more aggravated. From such viewpoint, I
13 earnestly persuaded the Chinese Foreign Minister, but
14 he only repeated his usual, abstract argument.

15 "It was by mere chance that I had a talk with
16 Kao Tsung-wu, the Chief of the Asiatic Bureau, Foreign
17 Department, who had a direct connection with Chiang
18 Kai-shek, on the 25th, on some business apart from the
19 negotiation in question, and was given a hint that Chiang
20 Kai-shek himself intended to seek a prompt and practical
21 settlement of the matter. Encouraged by this, I managed
22 to have a conversation with Chang Chun, the Governor of
23 Szechwan Province, who was one of those eminent states-
24 men most trusted by Generalissimo Chiang. I met him
25 twice or three times during the period from July 25

1 or 26 to July 27, and he negotiated with me always in
2 close connection with Chiang Kai-shek. He declared,
3 in the course of the negotiation, that the Chinese Gov-
4 ernment had no objection to the agreement of July 11.
5 The negotiation, hereupon, took a practical turn, and
6 eventually it was agreed that, as soon as the execution
7 of the agreement of July 11 was guaranteed, the Japanese
8 force would make a voluntary statement to withdraw, and
9 that actually the Chinese Central Force would first move
10 southwards, directly followed by the withdrawal of the
11 Japanese troops. I was glad to think that the Marco
12 Polo Bridge incident was at last settled. Nevertheless,
13 the Langfang incident of July 25 and the Kwangan incident
14 of July 26 had already occurred by that time, and further-
15 more, from the 28th onward, the collision between the
16 Japanese and Chinese forces went on getting all the
17 more serious. Thus, the agreement reached between Chang
18 Chun and myself proved fruitless.

19 "I may add by the way that I informed, as oc-
20 casion called, of the progress of the negotiation with
21 the Chinese Government to the representatives of Britian,
22 the United States, Germany, France and Italy, and I kept
23 close contact especially with British Ambassador Sir
24 Natchball Huggessen.
25

1 "(5) After the outbreak of the Marco Polo
2 Bridge Incident, Shanghai was comparatively calm. It
3 was at the end of July or the beginning of August
4 that the situation there began to grow threatening.
5 We could plainly perceive, at Nanking, that many
6 troops from various districts were being concentrated,
7 and that troops and munitions were being transported
8 from Nanking to Shanghai. On August 8, British Am-
9 bassador Huggessen presented to me his opinion con-
10 cerning the maintenance of peace in and around Shang-
11 hai. Being well aware, through the successive tele-
12 grams from the Japanese Foreign Office, that the
13 Japanese Government, holding fast to the policy of
14 local settlement, earnestly desired to avert colli-
15 sions between Japan and China in Shanghai, I promptly
16 reported the British Ambassador's opinion to the
17 Japanese Foreign Office. Indeed in Shanghai, the
18 Japanese authorities, including those of the Navy,
19 had not the slightest intention to make the matter
20 serious. I was actually told by Captain Risaburo
21 FUJITA, the Vice-Chief of the Staff of the Landing
22 Forces, who had arrived at his post in Shanghai short-
23 ly before the outbreak of collision between the Japan-
24 ese and Chinese forces there, that he had received
25 a special secret order from the Naval General Staff

1 on leaving Tokyo to the effect that collision must
2 be averted at all hazards in Shanghai. On the 11th,
3 the British Ambassador, on behalf of the Representa-
4 tives of Britain, the United States, Germany, Italy
5 and France, offered to our Ambassador KAWAGOYE, who
6 had returned to Shanghai on August 7 from his travel
7 in North China, in writing, that the representatives
8 of Japan and China as well as of the above five powers
9 should cooperate to maintain peace and order in Shang-
10 hai and its vicinity. I immediately reported the
11 offer to the Foreign Office. And on the following
12 12th, I received a telegram to the effect that the
13 Japanese Government would accept the joint offer of
14 the representatives of the five powers on condition
15 that the Chinese Government should observe the truce
16 agreement of 1932. I conveyed this, through British
17 Ambassador Huggessen, to the representatives of the
18 said five powers and Chiang Kai-shek. In this way,
19 the joint committee consisting of the representatives
20 of Japan, China and the said five powers, was held
21 on the 12th in Shanghai, and Consul-General OKAMOTO
22 attended the committee as the Japanese delegate. On
23 the same day, I received a telegram from Consul-
24 General OKAMOTO asking me to request the Nanking
25 Government to withdraw the Chinese peace preservation

1 corps stationed near the foreign settlements in
2 Shanghai and to remove the military equipment and
3 constructions around the settlement. I called on
4 Vice-Minister for Foreign Affairs Chen in the after-
5 noon of the same day and made the request. On the
6 following 13th, I again received a telegram from the
7 Japanese Foreign Office which was to the same effect.
8 I called on Foreign Minister Wang, and repeated the
9 request. The Foreign Minister, however, argued the
10 validity of the truce agreement, repeating abstract
11 and formal discussion, and the request obtained no
12 effectual result.

13 "There is a telegram I received from Acting-
14 Consul TAKAI at Changsha at the end of July, which
15 endorses this impression of mine. According to the
16 telegram, a staff officer of Ho Chien, the Governor
17 of Hunan Province, told TAKAI that the Nanking
18 Government had given a secret order to Ho Chien to
19 open fire at Japanese warship off the coast of Chang-
20 sha in case collision took place between the Japanese
21 and Chinese forces in Shanghai, and asked TAKAI to
22 use his influence to withdraw the Japanese warship
23 lying at anchor at Changsha before some accident might
24 happen. Mr. TAKAI in person made a verbal report of
25 the above facts in detail when he stopped at Nanking,

1 retiring from Changsha, on August 10 or thereabouts.

2 "(7) I left Nanking by order of the Japan-
3 ese Foreign Office on August 16 and returned to Tokyo.
4 When I had a chance to talk with the Foreign Minister
5 HIROTA on the 21st. I told him that I was to make
6 a verbal report to His Majesty the Emperor a few
7 days later and asked for his advice in this connect-
8 ion. The Foreign Minister advised me that the cir-
9 cumstances in China should be reported to His Majesty
10 so as to suggest that there was still some hope of
11 peaceful settlement. Further I met War Minister
12 SUGIYAMA at that time. He said he feared that
13 Japan's proposal of peace might be rejected by the
14 Chinese Government, and asked for my opinion about
15 that. I replied that I considered there was still a
16 ray of hope for peace.

17 "(8) The telegrams and documents referred
18 to in the above statement have been lost in fire and
19 cannot be found in the files of the Foreign Office."
20
21
22
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1 If the Tribunal please, I've been requested
2 to ask one additional question of this witness.

3 BY MR. YAMAOKA (Continued):

4 Q Do you know what office Chang Chun, whom
5 you mention in your affidavit, now holds in the Chi-
6 nese Government?

7 MR. COMYNS CARR: In my submission it is
8 irrelevant what office the gentleman now holds in
9 the Chinese Government. I object.

10 THE PRESIDENT: Objection upheld.

11 MR. YAMAOKA: You may cross-examine.

12 THE PRESIDENT: Mr. Comyns Carr.

13 MR. COMYNS CARR: If it please the Tribunal,
14 the prosecution does not propose to cross-examine
15 this witness.

16 MR. YAMAOKA: May the witness be released
17 on the usual terms?

18 THE PRESIDENT: He is released accordingly.

19 (Whereupon, the witness was ex-
20 cused.)

21 MR. YAMAOKA: We next offer in evidence
22 defense document 2538, being the affidavit of HAYASHI,
23 Kaoru of the Foreign Office showing that the telegrams
24 and official notes referred to in defense document
25 2148, the affidavit of witness HIDAKA, were lost by

1 fir during the war and are not in the files of the
2 Foreign Office. I shall not read this exhibit.

3 THE PRESIDENT: Admitted on the usual terms.

4 CLERK OF THE COURT: Defense document 2538
5 will receive exhibit No. 3273A.

6 (Whereupon, the document above
7 referred to was marked defense exhibit
8 No. 3273A and received in evidence.)

9 MR. YAMAOKA: We next call the witness
10 OKAMOTO, Suemasa.

11 - - -

12 S U E M A S A O K A M O T O, recalled as a witness
13 on behalf of the defense, having previously
14 been sworn, testified through Japanese interp-
15 reters as follows:

16 THE PRESIDENT: You are still on your former
17 oath.

18 DIRECT EXAMINATION

19 BY MR. YAMAOKA:

20 Q Will you kindly state your name and address.

21 A Name, OKAMOTO, Suemasa; address, 1123 1-chome
22 Kitagawa, Setagaya-ku, Tokyo.

23 MR. YAMAOKA: May the witness be shown de-
24 fense document 2276?

25 (Whereupon, a document was handed

to the witness.)

1 Q Is that your affidavit?

2 A Yes.

3 Q Is it in all respects true and correct?

4 A Yes.

5 MR. YAMAOKA: I offer in evidence defense
6 document 2276.

7 THE PRESIDENT: Mr. Comyns Carr.

8 MR. COMYNS CARR: May it please the Tribunal,
9 prosecution objects to the whole of the second para-
10 graph of paragraph 2, which is contained in inverted
11 commas, on the ground that it is merely repetition
12 of the actual telegram therein referred to which is
13 defense document No. 2027, I understand, about to
14 be tendered and to which we shall not object.
15

16 THE PRESIDENT: For our convenience, why not
17 admit the affidavit on condition that Mr. Yamaoka
18 doesn't tender the telegram itself later?

19 MR. YAMAOKA: If the Tribunal please, I
20 should like to offer the telegram to the witness or
21 read the telegram itself in view of the summariza-
22 tion by this witness.

23 THE PRESIDENT: That will preserve logical
24 sequence. It is admitted on the usual terms.

25 MR. YAMAOKA: I offer in evidence defense

1 document 2027. This is a telegram from Foreign Min-
2 ister HIROTA to Consul-General OKAMOTO at Shanghai,
3 dated August 4, 1937.

4 THE PRESIDENT: Admitted on the usual terms.

5 CLERK OF THE COURT: Defense document 2027
6 will receive exhibit No. 3274.

7 MR. YAMAOKA: We next offer in evidence de-
8 fense document --

9 THE PRESIDENT: The affidavit is exhibit
10 No. 3274 and the last document is exhibit No. 3275.

11 (Whereupon, documents 2276 and
12 2027 were marked defense exhibits 3274 and
13 3275, respectively, and received in evi-
14 dence.)

15 MR. YAMAOKA: We next offer, if the Tribunal
16 please, defense document 2028 in evidence. This is
17 a telegram from Foreign Minister HIROTA to Ambassa-
18 dor KAWAGOE in China, dated August 7, 1937. The
19 document contains further evidence of the extended
20 efforts of Mr. HIROTA to terminate the fighting in
21 China immediately.

22 THE PRESIDENT: Admitted on the usual terms.

23 CLERK OF THE COURT: Defense document 2028
24 will receive exhibit No. 3276.

25 (Whereupon, the document above

1 referred to was marked defense exhibit
2 No. 3276 and received in evidence.)

3 MR. YAMAOKA: I shall now read exhibit 3274,
4 omitting the formal parts:

5 "(1) I entered the Diplomatic Service in
6 October, 1917. After serving at posts in Britain,
7 the United States and China, as well as in the For-
8 eign Office at Tokyo, I was appointed Minister to
9 Sweden in November, 1942, remaining there till Janu-
10 ary, 1946. I retired from the service soon after
11 return to Japan in March, 1946.

12 "I was consul-general at Shanghai from May
13 8, 1937 to March 21, 1938.

14 "(2) The Marco Polo Bridge incident broke
15 out on July 7, at the time I was consul-general at
16 Shanghai. I was doing my best, acting upon instruc-
17 tions given to me by Mr. HIROTA, the Minister for
18 Foreign Affairs, to maintain in close cooperation
19 with the Chinese authorities, peace in Shanghai and
20 its vicinity, when I received, on August 6, several
21 important telegraphic instructions from the Foreign
22 Minister to the following effect."

23 With the permission of the Tribunal, I
24 shall now read at this point exhibit 3275:
25

1 "FROM: FOREIGN MINISTER HIROTA
2 "TO: CONSUL-GENERAL OKAMOTO (SHANGHAI)
3 "DISPATCHED: AUGUST 4, 1937.
4 "No. CODE (MACHINE)
5 "(STRICTLY SECRET. EXCLUSIVE CODE FOR CHIEF OF
6 MISSION)

7 "FUNAZU is expected to arrive in Shanghai on
8 the 7th on the NAGASAKI MARU, and it is necessary
9 that he hold a secret meeting with Kao Tsung-Wu
10 immediately. However, since it might attract atten-
11 tion if FUNAZU were to proceed to Nanking immediately,
12 you are requested to have arrangements made so that
13 he can meet Kao in Shanghai on the 7th without creat-
14 ing the impression that the Consulate or other author-
15 ities are conducting liaison. For this purpose, one
16 plan would be to dispatch TSUTSUMI of the Cotton Mill
17 Owners' Association at once to Nanking to have him
18 contact Kao personally and ask him to go to Shanghai
19 by the evening of the 7th as if by a telegraphic re-
20 quest received from FUNAZU (FUNAZU is informed of
21 this point).

22 "This matter being of the utmost secrecy,
23 you are requested to exercise the greatest caution so
24 that there will be no leakage and also to see to it
25 that Kao is made to understand that the meeting with

1 FUNAZU will be kept in absolute secrecy."

2 There is a certificate which I shall not
3 read.

4 At this point also I shall read exhibit 3276.

5 THE PRESIDENT: This is not a lengthy affi-
6 davit, so we will now adjourn until half-past nine
7 tomorrow morning.

8 (Whereupon, at 1600, an adjourn-
9 ment was taken until Friday, 3 October,
10 1947, at 0930.)

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