

5 MAY 1947

I N D E X
of
EXHIBITS

<u>Doc. No.</u>	<u>Def. No.</u>	<u>Pros. No.</u>	<u>Description</u>	<u>For Ident.</u>	<u>In Evidence</u>
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1094	2531		Reply of Japanese Government on 30 September 1937 re Bombing of Nanking		21390
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of
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(cont'd)

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Monday, 5 May 1947

- - -

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

The Tribunal met, pursuant to adjournment,
at 0930.

- - -

Appearances:

For the Tribunal, same as before with the
exception of: THE HONORABLE MR. JUSTICE NORTHCROFT,
now sitting.

For the Prosecution Section, same as before.

For the Defense Section, same as before.

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(English to Japanese and Japanese
to English interpretation was made by the
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: All the accused are present
4 except OKA, HIRANUMA, and TOGO who are represented by
5 counsel. The prison surgeon of Sugamo certifies that
6 the three named accused are unable to attend the trial
7 today on account of illness. The certificate will
8 be recorded and filed.

9 The certificate covers the case of HIRANUMA
10 and in the statement I read his name is included. I
11 understand now that he is present, but let that be
12 confirmed by the Clerk of the Court.

13 The name of HIRANUMA was included in the state-
14 ment placed before me. HIRANUMA is present. I under-
15 stand OKA is also present. I understand the same thing
16 occurred on Friday, that only TOGO was absent on Friday.

17 It is unfortunate that these corrections have
18 to be made on such simple matters. Due care must be
19 exercised in the future or else there will be trouble
20 for somebody.

21 Mr. Tavenner.

22 MR. TAVENNER: If it please the Tribunal, we
23 have received a communication from the Secretariat of
24 the Court pointing out the necessity of reducing the
25 number of copies of the transcript due to a critical

1 shortage of paper. This contemplated action would
2 hamper us very much, if it is carried out, and we have
3 given some thought to it and are of the opinion that
4 if both sides of the paper are printed that it would
5 prevent the necessity of cutting down the number of
6 transcripts.

7 THE PRESIDENT: I see no objection to printing
8 on both sides except as regards the Judges' copies.
9 I will consult my brothers about that.

10 I understand the Judges are also prepared
11 to receive copies printed on both sides.

12 MR. TAVENNER: Thank you very much.

13 THE PRESIDENT: Mr. Roberts.

14 MR. ROBERTS: Mr. President, we now call
15 the witness MINAMI, Teizo.

16 I understand the name is MITSUNAMI.
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MITSUNAMI

DIRECT

1 T E I Z O M I T S U N A M I, called as a witness
2 on behalf of the defense, being first duly sworn,
3 testified through Japanese interpreters as
4 follows:

DIRECT EXAMINATION

BY MR. ROBERTS:

7 Q Please give us your name and address.

8 A Name, MITSUNAMI, Teizo. Address, No. 3
9 Shinzaike, Ajio-mura, Mishima-gun, Osaka Prefecture.

10 Q May the witness be shown defense document
11 1221?

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

14 Q (Continuing) Please tell us if that is your
15 sworn affidavit.

16 A Yes, this is.

17 THE PRESIDENT: How did he sign it? MITSUNAMI
18 or MINAMI?

19 MR. ROBERTS: I understand in the Japanese
20 language it can be either.

21 I offer in evidence defense document 1221.

22 THE PRESIDENT: Admitted on the usual terms.

23 CLERK OF THE COURT: Defense document 1221
24 will be given exhibit No. 2530.

25 (Whereupon, the document above

1 referred to was marked defense exhibit
2 No. 2530 and received in evidence.)

3 MR. ROBERTS: I shall read exhibit No. 2530:

4 "I am an ex-rear-admiral of the Japanese Navy.
5 I served as the commander of the 2nd Combined Naval
6 Air Corps from 12 July 1937 (the 12th year of Showa)
7 to December of the same year. The following is a
8 statement of facts, with which I was directly concerned
9 while I served as the commander of the 2nd Combined
10 Naval Air Corps in the Shanghai area.

11 "We received information on 18 September 1937
12 (the 12th year of Showa) that the Chinese Air Force
13 was about to launch an attack on us. We planned to
14 counter-attack the enemy before they were prepared to
15 take actions against us. But due to the poor condition
16 of the air field we had no alternative but to postpone
17 our attempt until the following day, that is on 19
18 September.

19 "The Chinese Air Force, however, made a raid
20 upon our positions as we had expected on the 18th.
21 On the 19th our airplanes engaged in two air battles
22 with the enemy over Nanking. Our planes destroyed many
23 enemy planes in this battle, but we also lost three
24 of our planes. Consequently, we gained command of the
25

MITSUNAMI

DIRECT

air over Nanking area.

1 "On 20 September of the same year we carried
2 out an air raid and the targets being the offices of
3 the National Government, the General Staff Headquarters,
4 and Wireless Stations. On the 21st we cancelled our
5 raid due to rainy weather. On the 22nd our air force
6 made three raids on military installations such as the
7 Aviation Bureau, the Anti-Air Raid Committee Office,
8 the Central Party Headquarters, the Shi tsu shan Gun
9 Positions, etc.

10 "For guidance in these attacks, I summoned"
11 Commander -- there is an error upon which an errata
12 sheet is being issued, I understand. It should be
13 Commander instead of Lieutenant Colonel -- "NAKAHARA,
14 who had resided in Nanking for many years. Referring
15 to the map of the city of Nanking he orientated the air
16 crew on position of the targets so no mistakes could
17 be made and the conditions prevailing there. Again I
18 ordered the crew to carry out dive bombing, in spite
19 of the handicaps we would have to face in this particu-
20 lar operation.

21
22 "We paid particular attention to the rights
23 and interests of neutral countries. Giving one such
24 instance here, our Army in the attack of Chinkian de-
25 sired that we launch an air attack against the Chinese

MITSUNAMI

DIRECT

1 forces retreating on many boats on the Yangtze River,
2 but we did not because British merchant ships were
3 lying anchored in the neighbourhood.

4 "Again the Commander of the 3rd Fleet
5 notified beforehand the diplomats of the third powers
6 on 19 September that we were going to make an air-
7 raid on Nanking, and again on the 20th of the same
8 month, we notified beforehand the Chinese noncombatants
9 of our air-raids and warned them to take refuge.

10 "Next, I would like to mention the case of
11 the misbombing of the Panay.

12 "The Panay was bombed and sunk about 1:00
13 p.m. on 12 December. It was obviously a misbombing.
14 On the day it was sunk, we were not aware of the fact
15 that we had sunk the Panay. Until we were notified
16 on 13 December by the Headquarters of the United States
17 Fleet and then for the first time we learned of our
18 misbombing of the ship.

19 "Headquarters of the 3rd Fleet immediately
20 dispatched flying boats carrying medical officers,
21 medical supplies, and other things to the place of
22 refuge. Also ships were sent to attend to relief
23 of the men on board. Again we sent immediately the
24 Chief of Staff to the Headquarters of the United States
25 Fleet to express our regrets.

MITSUNAMI

DIRECT

1 "I, the Commander of the Naval Air Corps of
2 that time took sole responsibility for the incident
3 and submitted my informal resignation by telegraph
4 to the Minister of the Navy and the Chief of the Naval
5 General Staff. Consequently, I was 'admonished' and
6 ordered to return from the combat zone on 15 December
7 1937 (the 12th year of Showa) and given a position as
8 Commander of the 2nd" -- it should be Carrier Division
9 instead of Air Fleet, for which an errata sheet will
10 also be issued. "(Aircraft carriers Soryu and Ryujo).

11 "On 5 May 1938 (the 13th of Showa) the flag-
12 ship Soryu was ordered into combat, therefore, aircraft
13 carrier Ryujo was made the flagship and all head-
14 quarter personnel under me was ordered to remain. On
15 11 August 1938 (the 13th year of Showa) when the air-
16 craft carrier Ryujo was also ordered to proceed into
17 combat zone; I was the only one ordered to remain
18 behind and was assigned as observer for the Naval
19 General Staff.

20 "Until I was placed in First Reserve on
21 16 December 1940 (the 15th year of Showa) I never went
22 into the combat zone.

23 "I believe these actions, of not sending me
24 to the combat zone, were taken against me by my
25 superiors because of the Panay incident."

MITSUNAMI

1 You may cross-examine.

2 THE PRESIDENT: Mr. Tavenner.

3 MR. TAVENNER: If it please the Tribunal,
4 there will be no cross-examination of this witness
5 because the prosecution relies upon exhibit 955,
6 record 9,456; exhibit 956, record 9,458; and exhibit
7 957, record 9,460.

8 MR. ROBERTS: May the witness be excused
9 on the usual terms?

10 THE PRESIDENT: He is excused accordingly.

11 (Whereupon, the witness was excused.)
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1 MR. ROBERTS: We offer in evidence de-
2 fense document 1115. This is an official list of
3 the places bombed in and around Nanking, specific-
4 ally showing the objectives bombed and the verified
5 official report of the damage inflicted upon the
6 respective targets.

7 THE PRESIDENT: Brigadier Nolan.

8 BRIGADIER NOLAN: May it please the Tri-
9 bunal, it is difficult from the certificate to as-
10 certain the origin of this document or the informa-
11 tion upon which it is based. It appears to us to
12 be another press release and, as such, is subject
13 to the same objections as have been offered in re-
14 spect of similar documents.

15 MR. ROBERTS: It appears from the certifi-
16 cate not to be a press release as my good friend
17 has informed the Court. It is a document which,
18 ostensibly, is a compiled list of places bombed
19 and the results, which is to refute the statement
20 by the prosecution that the bombing was indiscrim-
21 inate. This will aid the Court in its efforts to
22 find whether or not Nanking had definite military
23 objectives which were being bombed at the time.
24

25 THE PRESIDENT: By a majority, the Court
upholds the objection and rejects the document.

1 MR. ROBERTS: We offer in evidence defense
2 document No. 1128 which is a document emanating from
3 the Foreign Office setting forth the specific date
4 upon which Japanese airplanes returned to their
5 bases without bombing the intended objectives for
6 the purpose of proving that said bombing was not
7 carried out in a careless and indiscriminate manner
8 as claimed by the prosecution.

9 THE PRESIDENT: , Brigadier Nolan.

10 BRIGADIER NOLAN: If it please the Tri-
11 bunal, there can be no manner of doubt as to the
12 nature of this document which is entitled "Press
13 Materiel Issued on the 4th of October by the Bu-
14 reau of Information." I object to the document
15 and would draw the attention of the Tribunal to
16 the fact that the year is not mentioned in the
17 title of the document, but the investigation is
18 stated to have been made on the 1st of October
19 1947.

20 MR. ROBERTS: May I inform the Court
21 there is an errata sheet correcting the date to
22 October 1, 1937 instead of 1947?

23 THE PRESIDENT: The Tribunal upholds the
24 objection and rejects the document.

25 MR. ROBERTS: I wanted to say a few words

1 in reference to this document, if your Honor please.

2 THE PRESIDENT: The decision is unanimous.

3 MR. ROBERTS: We offer in evidence defense
4 document No. 1094 which is the reply by the Japanese
5 Government to the American Ambassador, concerning the
6 bombing of Nanking, for the purpose of showing the
7 steps being taken to notify and protect the nation-
8 als of third powers.

9 THE PRESIDENT: Admitted on the usual terms.

10 CLERK OF THE COURT: Defense document 1094
11 will receive exhibit No. 2531.

12 (Whereupon, the document above re-
13 ferred to was marked defense exhibit No.
14 2531 and received in evidence.)

15 MR. ROBERTS: I shall read exhibit No. 2531:

16 "REPLY OF JAPANESE GOVERNMENT ON SEPTEMBER
17 30, 1937 CONCERNING BOMBING OF NANKING.

18 "September 30, 1937.

19 "Monsieur l'Ambassadeur:

20 "I beg hereby to inform Your Excellency that
21 we have read your letter, dated the 22nd of September,
22 concerning the bombing of Nanking by the Japanese
23 force.

24 "Since Nanking is, as Your Excellency is
25 fully aware, the central base of the Chinese military

1 operations with unparalleled strong defense, it is
2 unavoidable, for the purpose of attaining the mili-
3 tary aim of the Japanese forces, that the military
4 organs and establishments located in and around Nan-
5 king should be bombed. The bombing operations of the
6 Japanese forces are not carried on beyond the scope
7 above mentioned, it being unnecessary to say that
8 they are not directed indiscriminately at non-com-
9 batants. The warning issued in advance to non-combat-
10 ants serves as a testimony to the above statement.
11 It goes without saying that in carrying out the pre-
12 sent operations, there is no change in the policy
13 frequently enunciated of late by the Japanese Govern-
14 ment that they are earnestly solicitous of the safety
15 of the rights and interests as well as of the lives
16 and property of the nationals of third Powers which
17 it is their wish to respect to the greatest possible
18 extent. Our request to the effect that the officials
19 and civilians and vessels of Your Excellency's country
20 take refuge is due to no other thought than our earn-
21 est desire to prevent any untoward misfortune befall-
22 ing the nationals of third Powers, in spite of the
23 utmost caution taken by the Japanese forces.

24 "The Japanese Government hope that the
25 Government of the United States fully understanding

1 that the Japanese forces, although greatly handi-
2 capped in their operations by giving advance notice
3 requesting the nationals of third Powers to seek
4 refuge, will be good enough to cooperate with the
5 measures taken by the Japanese Government.

6 "As regards the damages suffered by the
7 nationals of third Powers as a result of the present
8 hostilities in China, the intention of the Japanese
9 Government remain the same as previously brought to
10 the knowledge of Your Excellency.

11 "I avail myself of this opportunity to renew
12 to Your Excellency the assurances of my highest
13 consideration."

14 We offer in evidence defense document 1116,
15 which is a statement emanating from the Foreign
16 Office concerning China's appeal to the League of
17 Nations for the purpose of setting forth the Japanese
18 version of the fact in direct contrast to the facts
19 alleged by China.

20 THE PRESIDENT: Brigadier Nolan.

21 BRIGADIER NOLAN: If it please the Tribunal,
22 this document, which is a press release, sets forth
23 the views of the Foreign Office on China's appeal to
24 the League of Nations. The views therein contained
25 are based on incomplete texts of the Chinese appeal,

1 and the expression of any definite opinion is avoided.
2 We submit that it is an attempt to answer China's
3 appeal through the press and should be rejected.

4 MR. ROBERTS: Again the certificate states
5 that this is a document -- an official document of
6 the Japanese Foreign Office. It has no reference to
7 any press release whatsoever. As my friend has
8 stated, they have avoided any opinions in this docu-
9 ment and have stated certain facts as a reply to
10 China's assertions to the League where now the defend-
11 ants would like to have this as part of their ex-
12 planation.

13 In so far as press releases are concerned,
14 I do not believe that this word alone should be
15 sufficient on behalf of the prosecution to have all
16 documents rejected. The prosecution flooded the
17 Court with press releases, and the Court accepted
18 them when they had probative value.

19 THE PRESIDENT: By a majority, the Court up-
20 holds the objection and rejects the document.

21 MR. ROBERTS: We offer in evidence defense
22 document 726 which is an official statement of the
23 Japanese Government made at Geneva on September 30,
24 1937 for the purpose of setting forth the facts in
25 refutation of the resolution passed by the League

1 of Nations on September 28, 1937 and setting forth
2 specific reasons for the attacks as well as the
3 manner of their execution.

4 THE PRESIDENT: Brigadier Nolan.

5 BRIGADIER NOLAN: If it please the Tribunal,
6 I would draw the attention of the Tribunal to the
7 fact that this is a statement of the Japanese Govern-
8 ment made at Geneva. I am compelled to the view that
9 it is a press release at Geneva by the concluding
10 words of paragraph one of the document. We object
11 to its reception into evidence.

12 THE PRESIDENT: Mr. Roberts.

13 MR. ROBERTS: It is the contention of the
14 defense that the official statements made to the
15 League may be adopted by these defendants and be used
16 as their explanations.

17 THE PRESIDENT: I suppose it is not a state-
18 ment made to the League but a statement released in
19 Geneva.

20 MR. ROBERTS: It states, according to the
21 certificate, that it was a statement made at Geneva.

22 THE PRESIDENT: Well, as one of the judges
23 says, the way to prove that it is a statement made to
24 the League is by production of the League record.
25 When did Japan retire from the League? It was be-

fore this?

1 MR. ROBERTS: Prior to this.

2 THE PRESIDENT: Obviously a press release.
3 By a majority, the Court upholds the ob-
4 jection and rejects the document.

5 MR. ROBERTS: We offer in evidence defense
6 document No. 1127, which is a statement from the
7 Foreign Office dated October 9, 1937, setting forth
8 facts to refute declarations of the League of Nations
9 and the State Department of the United States, for
10 the purpose of proving that the action of the Japan-
11 ese forces was by no means premeditated but simply
12 defensive.

13 THE PRESIDENT: Brigadier Nolan.

14 BRIGADIER NOLAN: If it please the Tribunal,
15 this press release, emanating from the Foreign Office,
16 criticizes the findings of the League of Nations and
17 endeavors to fix the responsibility for the spread
18 of the affair in China. It is obviously, we submit,
19 an attempt to influence foreign public opinion and
20 should be rejected by the Tribunal.

21 MR. ROBERTS: We submit that this is an
22 official statement made at the time the events were
23 occurring and should be considered as part of the
24 res gestae.
25

1 THE PRESIDENT: By a majority, the objection
2 is upheld and the document rejected.

3 Have you many more of these documents which
4 must necessarily be rejected in view of the judgment
5 of the majority?

6 MR. ROBERTS: At present we shall call a
7 witness, but we may have further documents later.

8 We call the witness KOBAYASHI.

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KOBAYASHI

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1 Y O S H I T O K O B A Y A S H I, called as a witness
2 on behalf of the defense, being first duly
3 sworn, testified through Japanese interpreters
4 as follows:

D I R E C T E X A M I N A T I O N

B Y M R . R O B E R T S :

Q Please tell us your name and address.

A Name, KOBASHI, Yoshito; address, No.
5 Urago, 6-Chome, Yokoska.10 M R . R O B E R T S : May the witness be shown
11 defense document No. 1220?12 (Whereupon, a document was handed
13 to the witness.)14 Q Please examine this document and tell us
15 whether or not it is your sworn affidavit.16 A (Examining) This affidavit was written by
17 me.18 M R . R O B E R T S : I offer in evidence defense
19 document No. 1220.20 T H E P R E S I D E N T : Admitted on the usual
21 terms.22 C L E R K O F T H E C O U R T : Defense document
23 No. 1220 will receive exhibit No. 2532.24 (Whereupon, the document above
25 referred to was marked defense exhibit No. 2532

and received in evidence.)

1 MR. ROBERTS: I shall read exhibit 2532.

2 "1. From June 1924 (the 13th year of TAISHO)
3 I began to study in piloting aeroplanes chiefly
4 the fighter planes. In the summer of 1929 (the 4th
5 year of SHOWA) I went to England for the purpose
6 of studying aerial tactics, and during the period
7 from January to August 1930 (the 5th year of SHOWA),
8 I completed the Flying Instructor's Course at the
9 R.A.F. No. 5 Flying Training School, Sealand; and
10 after that, at the R.A.F. No. 111 Fighter Squadron,
11 Hornchurch. At the R.A.F. No. 1 Fighter Squadron,
12 Tangmere, I received further training in aerial
13 tactics, being attached to a service corps.
14

15 "2. In 1937 (the 12th year of SHOWA) when
16 the China Incident occurred. I was Lt-Commander and
17 was the air commander of the air-craft carrier
18 "RYUJO." From the beginning, I engaged in the
19 aerial operations, annihilated the enemy planes in
20 the SHANGHAI area and established the SHANGHAI A-
21 Base (KUNGTA). After handing over the said base
22 to the 2nd Combined Air Squadron, which had been a
23 land air corps, I was transferred to the Kwangtung
24 air operations.
25

"3. Now that the activities of the enemy

KOBAYASHI

DIRECT

1 planes in the SHANGHAI area had been completely
2 controlled, the aim of the Kwangtung air operations
3 was to annihilate the enemy fighter units which were
4 being trained and augmented in their strength with
5 Curtishawk and British gloucester fighters as the
6 main force in Kwangtung area. On September 13 in
7 the vicinity of the Wanshan islands, the "MYOKO"
8 was bombed by two enemy Northrop planes, and on
9 September 14 the "YUBARI" in the vicinity of Tachan
10 island was bombed by a total of 11 enemy Northrop
11 planes and 2 curtishawk planes, causing 5
12 casualties.

13 "Therefore the 3rd Squadron Command planned
14 for the annihilation of the enemy air forces in the
15 south China region with the 1st Air Fighting Unit
16 (comprising the aircraft-carriers "RYUJO" and
17 "HOSHO") and the 1st Combined Air Squadron.

18 "4. Account of the development of the
19 Kwangtung attack follows:-

20 "Sep. 18 - Consultation pertaining to
21 operations was conducted at the TAIHOKU base be-
22 tween the 1st Air Fighting Unit and the 1st Com-
23 bined Air Squadron.

24 "Sep. 21 - In the forenoon, the first
25 attack on Kwangtung by the 1st Air Fighting Unit

KOBAYASHI

DIRECT

was carried out.

1 "In the afternoon the second attack on
2 Kwangtung by the 1st Air Fighting Unit was carried
3 out.

4 "The objectives of the attack were the air-
5 fields of Tienho and Paiyun and the powder depot at
6 Tsengshe.

7 "Joint attack with the 1st Combined Air
8 Squadron was scheduled, but due to the inclement
9 weather, it was postponed.

10 "Sep. 22 - In the forenoon, the Third
11 Kwangtung attack by the 1st Air Fighting Unit was
12 carried out with its objectives as the airfields of
13 TIENHO and PAIYUN.

14 "In the afternoon the 4th attack on Kwang-
15 tung by the 1st Air Fighting Unit took place.

16 "A fighter unit participated in escorting
17 the medium-sized land-based bomber unit of the 1st
18 Combined Air Squadron. Three ship-board fighters
19 bombed the HUMEN airfield.

20 "Sep. 23 - In the forenoon, the 5th Kwang-
21 tung attack by the 1st Air Fighting Unit was carried
22 out, with its objectives as the powder depots at
23 CHATAO and TSENGSHE.

24 "In the afternoon, due to the changing of
25

KOBAYASHI

DIRECT

1 weather, the attack by the 1st Air Fighting Unit was
2 suspended.

3 "Sep. 24 - Due to the inclement weather,
4 the 1st Air Fighting Unit suspended its attacks.

5 "Sep. 25 - Due to the inclement weather,
6 the 1st Air Fighting Unit suspended its attacks.

7 "Sep. 26 - In the forenoon the 6th Kwang-
8 tung attack by the 1st Air Fighting Unit was conduc-
9 ted, with its objectives as the iron bridges near
10 CANTON city.

11 "In the afternoon, the 7th Kwangtung attack
12 was made by the 1st Air Fighting Unit with its
13 objectives s the same as in the forenoon. Here we
14 discontinued the Kwangtung attacks, and started for
15 the SSUCHIAOSHAN islands, in order to participate
16 in the aerial operations in the SHANGHAI area again.

17 "5. In the above-mentioned bombing missions,
18 any attacks on general civilians' houses or particu-
19 larly against the rights and interests of foreign
20 powers were prohibited, so that we, utilizing air
21 photography, took great pains in the confirmation
22 of the objectives, military installations or muni-
23 tions arsonals only. From the Central Headquarters
24 we had received a special warning order to pay full
25 respect to foreign rights and interests. Aviation

KOBAYASHI

~~DIRECT~~

1 maps and various intelligence data, showing the where-
2 abouts of foreign rights and interests, were handed to
3 us at the SSUCHIAOSHAN islands before starting for the
4 Kwantung attack. Detailed explanations were given to
5 the crew members so that the attacks would be executed
6 after confirmation on the military equipments.

7 "During the period of the afore-described
8 attacks, the Air Fighting Corps Command ordered aerial
9 attacks to be discontinued when confirmation of ob-
10 jectives was thought to be impossible due to adverse
11 weather. The crew members at that time were all of
12 superior ability and, in addition to this, they had
13 gained experience in their fighting in the SHANGHAI
14 area that military discipline in the air was strictly
15 observed by them."

16 MR. ROBERTS: You may cross-examine.

17 THE PRESIDENT: Mr. Tavenner.

18 MR. TAVENNER: If it please your Honor, there
19 will be no cross-examination for the same reasons ex-
20 pressed in connection with the witness MITSUNAMI.

21 MR. ROBERTS: May the witness be excused
22 on the usual terms?

23 THE PRESIDENT: He is excused accordingly.

24 ("whereupon, the witness was
25 excused.")

KOBAYASHI

DIRECT.

1 maps and various intelligence data, showing the where-
2 abouts of foreign rights and interests, were handed to
3 us at the SSUCHIAOSHAN islands before starting for the
4 Kwantung attack. Detailed explanations were given to
5 the crew members so that the attacks would be executed
6 after confirmation on the military equipments.

7 "During the period of the afore-described
8 attacks, the Air Fighting Corps Command ordered aerial
9 attacks to be discontinued when confirmation of ob-
10 jectives was thought to be impossible due to adverse
11 weather. The crew members at that time were all of
12 superior ability and, in addition to this, they had
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14 area that military discipline in the air was strictly
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2 whereabouts of foreign rights and interests, were
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4 starting for the Kwangtung attack. Detailed ex-
5 planations were given to the crew members so that
6 the attacks would be executed after confirmation
7 on the military equipments.

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9 attacks, the Air Fighting Corps Command ordered
10 aerial attacks to be discontinued when confirmation
11 of objectives was thought to be impossible due to
12 adverse weather. The crew members at that time
13 were all of superior ability and, in addition to
14 this, they had gained experience in their fighting
15 in the SHANGHAI area that military discipline in
16 the air was strictly observed by them."

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20 there will be no cross-examination for the same
21 reasons expressed in connection with the witness
22 MITSUNAMI.

23 MR. ROBERTS: May the witness be excused
24 on the usual terms?

25 THE PRESIDENT: He is excused accordingly.

1 MR. ROBERTS: We offer in evidence defense
2 document 1113, which is a document emanating from
3 the Foreign Office. It sets forth a compiled list
4 of objectives bombed and the verified official report
5 of the damage inflicted upon the respective tar-
6 gets.

7 THE PRESIDENT: Brigadier Nolan.

8 BRIGADIER NOLAN: If it please the Tribunal,
9 there is nothing that I can say in respect of this
10 document that I haven't already said in respect of
11 document 1115, from which this document cannot be
12 distinguished and which was rejected by the Tribunal
13 a few minutes ago.

14 THE PRESIDENT: This is clearly covered by
15 an earlier ruling.

16 The objection is upheld and the document
17 rejected.

18 MR. ROBERTS: We offer in evidence document
19 1114, which is a document emanating from the Foreign
20 Office, dated September 27, 1937, setting forth
21 facts concerning the precautions taken by the Japan-
22 ese Government prior to the bombing of Nanking and
23 Canton and also listing the military objectives
24 successfully raided in Canton.

25 THE PRESIDENT: Brigadier Nolan.

1 BRIGADIER NOLAN: If it please the Tribunal,
2 this document states that as far as detailed official
3 information regarding the result of the bombing is
4 concerned. it has not been received, but that never-
5 theless the reports which have emanated from Canton
6 are exaggerated.

7 In my submission it is in no stronger
8 position than earlier documents which have been
9 rejected by the Tribunal.

10 MR. ROBERTS: It states that a certain
11 Reuter report was exaggerated and was later correc-
12 ted by another London Reuter report.

13 THE PRESIDENT: The Tribunal unanimously
14 upholds the objection and rejects the document.

15 Mr. Roberts, to fully protect whatever
16 rights you may have in this matter, you could ten-
17 der a list showing the number of the defense docu-
18 ment and the nature of the document. Tender it
19 formally. It would be rejected, but you would get
20 it in the transcript and it would be part of the
21 record. Above all, it would save us precious time.

22 MR. ROBERTS: After the present document I
23 am about to offer there is a statement of the Foreign
24 Minister, and then I will take some of the following
25 documents out of order and prepare a statement as

1 your Honor suggests.

2 I now would like to offer defense document
3 No. 1284, which is a document emanating from the
4 director of the Information Bureau concerning the
5 bombing of Nanking and Canton for the purpose of
6 setting forth facts in refutation of the resolution
7 of the League of Nations alleging Nanking and Canton
8 to be open cities and setting forth the instructions
9 given to the Japanese Air Forces concerning objec-
10 tives to be attacked as well as precautions taken in
11 carrying out said attacks.

12 THE PRESIDENT: Brigadier Nolan.

13 BRIGADIER NOLAN: If it please the Tribunal,
14 we object to the document on the grounds we have
15 urged against earlier documents of a like character
16 that had been rejected by the Tribunal.

17 THE PRESIDENT: It is clearly covered by
18 earlier adverse decisions, Mr. Roberts. Do you
19 contest that?

20 MR. ROBERTS: We offer in evidence defense
21 document 1176 --

22 THE PRESIDENT: The objection is upheld
23 and the document rejected.

24 MR. ROBERTS (continuing): which is a
25 statement of Foreign Minister UGAKI, dated June 6,

1 1938. concerning the attitude of Japan towards the
2 property and interests of third powers, for the
3 purpose of refuting the contention of the prosecu-
4 tion concerning a systematic plan to drive out foreign
5 nations from China.

6 THE PRESIDENT: Brigadier Nolan.

7 BRIGADIER NOLAN: We object to this docu-
8 ment, may it please the Tribunal. It is a statement
9 of Foreign Minister UGAKI given to foreign corres-
10 pondents on the 6th of June 1938.

11 MR. ROBERTS: It is an official statement
12 of the Foreign Minister at that time, and for the
13 purpose of the contention of the defendants, it is
14 important that the Court have these facts.

15 THE PRESIDENT: A press release by the
16 Foreign Minister.

17 By a majority the Court disallows the objec-
18 tion and admits the document.

19 CLERK OF THE COURT: Defense document 1176
20 will receive exhibit No. 2533.

21 (Whereupon, the document above referred
22 to was marked defense exhibit 2533 and received
23 in evidence.)
24
25

1 MR. ROBERTS: I shall read exhibit No. 2533;
2 statement of Foreign Minister UGAKI given to the
3 foreign correspondents on 6 June 1938:

4 "I am very glad of this opportunity of
5 meeting you representatives of the foreign press
6 for the first time since my assumption of the of-
7 fice of Foreign Minister. I earnestly hope for
8 your cooperation in the future.

9 "It is the immutable policy of Japan to
10 establish a permanent peace and promote prosperity
11 in East Asia and thereby to contribute to the cause
12 of world peace and welfare of mankind. Unfortu-
13 nately the China Affair broke out in July last year.
14 The Japanese Government, however, continued to main-
15 tain a calm attitude throughout the early period of
16 the conflict and did everything possible to urge
17 upon General Chiang Kai-shek to reconsider the policy
18 of his regime toward our country. General Chiang
19 not only failed to understand the real intention of
20 Japan, but he refused to alter his anti-Japanese
21 attitude by declaring his stand for the so-called
22 'prolonged welfare'. Japan was thus compelled to
23 embark upon an armed campaign in China. Our forces
24 have since carried on their operations steadily and
25 successfully, defeating the enemy on every front.

1 In the latter part of last month they captured
2 Hsuchow, which the Chinese had boasted to be im-
3 pregnable. Anking, the capitol of Anwei Province,
4 has also been taken, and our forces are now ad-
5 vancing farther into the interior. The greatest
6 interest of the Japanese people at present is con-
7 centred upon the prosecution of the hostilities
8 toward a successful conclusion.

9 "As regards the attitude of the other
10 Powers in connection with the present conflict,
11 we note that while there are some Powers which take
12 friendly measures toward Japan such as those of
13 prohibiting the exportation of arms and munitions
14 as well as the supply of war funds and military
15 advisers to China, there are some which are appa-
16 rently resorting to a policy of encouraging China
17 in her futile opposition to Japan, thereby causing
18 an unnecessary prolongation of the conflict and
19 untold losses of lives and property.

20 "This is to be profoundly regretted from
21 the standpoint of humanity, and any impairment in
22 the friendly relations between Japan and some such
23 Powers should be considered to be due to such action
24 of their part.

25 "However, I can definitely state that the

1 relations of our country with other powers are
2 as a whole satisfactory, and it is my intention
3 to put forth my utmost efforts towards their im-
4 provement."

5 I might state orally that the next four
6 documents perhaps come within the ruling of the
7 Court as to statements or press releases. I can
8 give the number.

9 THE PRESIDENT: Just give the number.

10 MR. ROBERTS: We next offer in evidence
11 defense documents 1193, 1189, 1186 and 1184.

12 THE PRESIDENT: Any objections?

13 There is no objection, apparently, Mr.
14 Roberts.

15 BRIGADIER NOLAN: We do object to the in-
16 troduction of these documents, which are objection-
17 able on the grounds that we have urged in the case
18 of other documents of a similar character.

19 THE PRESIDENT: The objection is upheld
20 in each case and the documents rejected.

21 MR. ROBERTS: We offer in evidence defense
22 document 1187, which is a statement by the Minister
23 of Foreign Affairs, dated December 19, 1938, con-
24 cerning the aims of Japan in setting up a Japan-
25 Manchoukuo-China economic block and is an inter-

pretation of the meaning of said phrase.

1 THE PRESIDENT: Brigadier Nolan.

2 BRIGADIER NOLAN: If it please the Tri-
3 bunal, we object to document 1187, which deals
4 with the desire of Japan for a new order and the
5 benefits that would flow therefrom. I am aware
6 that it is a statement of the Foreign Minister
7 and to that extent it resembles an earlier document
8 which was received by the Tribunal. Nevertheless,
9 we do submit that the document has no probative
10 value and is yet another attempt to influence
11 foreign public opinion.
12

13 MR. ROBERTS: It is our submission that
14 the facts contained in this statement are of pro-
15 bative value and they are facts upon which the de-
16 fendants rely to show that there was no conspiracy
17 as claimed by the prosecution.

18 THE PRESIDENT: By a majority the Court
19 disallows the objection and admits the document.

20 CLERK OF THE COURT: Defense document
21 No. 1187 will receive exhibit No. 2534.

22 (Whereupon, the document above
23 referred to was marked defense exhibit
24 No. 2534 and received in evidence.)

25 MR. ROBERTS: I shall read defense

exhibit 2534:

1 "Statement of the Foreign Minister, Mr.
2 ARITA HACHIRO, given to the foreign correspondents
3 on December 19, 1938.

4 "As has been made clear by the statement
5 of the Japanese Government on November 3rd, what
6 Japan desires is the establishment of a new order
7 which will ensure the permanent stability of East
8 Asia; or, in other words, the establishment of a
9 relationship of mutual helpfulness and co-ordina-
10 tion between Japan, Manchoukuo and China in poli-
11 tical, economic and cultural fields.

12 "That the formation of a closely co-
13 operative relationship between the three countries
14 is an imperious necessity could be explained by
15 the fact that it is, in its political aspect, a
16 measure of self defense against the Communist
17 menace and of safe-guarding the civilization and
18 culture of the Orient, and in its economic aspect
19 a measure of self-preservation in the presence of
20 the world-wide tendency to erect high customs
21 barriers and to employ economic measures for
22 political ends.

23
24 "It is not only of benefit to the Chinese
25 people themselves but to the whole of East Asia,

1 to lift China from its present semi-colonial
2 status to the position of a modern State. The
3 establishment of the new order, that is, of a re-
4 lationship of mutual aid and co-ordination between
5 Japan, Manchoukuo and China, simply signifies the
6 creation of solidarity between these three countries
7 for the common purpose of preserving the integrity
8 of East Asia, while enabling each nation to main-
9 tain its independence and fully develop its indi-
10 viduality.

11 "It is the firm conviction of Japan that
12 the establishment of such a new order will per-
13 fectly be in consonance with international justice
14 and will contribute toward the peace and tranqui-
15 lity of East Asia, and it is her inflexible resolu-
16 tion to carry out her policy in this regard.

17 "Leaving for a later occasion the political
18 and cultural phases of the proposed tripartite re-
19 lationship, I wish today to offer a few remarks on
20 its economic aspect.

21 "The economic aspect of the new order en-
22 visages a certain degree of economic cohesion and
23 co-ordination among Japan, Manchoukuo and China,
24 and the only purpose of forming such single economic
25 unit is to cope with, by strengthening its economic

1 unit, the similar units which already exist else-
2 where in the world and which are both powerful and
3 self-sufficing. Although the term 'bloc-economy'
4 is frequently applied to such an arrangement, the
5 proposed unit in East Asia is by no means to be a
6 system of closed trade. If by 'block-economy' is
7 meant the exclusion of all interests other than
8 those of the parties directly concerned, the em-
9 ployment of the term would be wholly improper in
10 the present case.

11 "At the present, not a few observers seem
12 inclined to feel as though Japan, by the inaugura-
13 tion of the so-called 'Japanese-Manchoukuo-China
14 Economic Bloc' were aiming at the exclusion from
15 East Asia of all enterprises, capital investments,
16 trade and other economic activities on the part of
17 foreign countries. It is quite regrettable that
18 some such idea is to be seen reflected in Europe
19 and America. Japan has long stoutly upheld before
20 all the world the principle of equality of commer-
21 cial opportunity -- though as a matter of fact, that
22 principle has received scant regard elsewhere, and
23 Japanese products of good quality and moderate price
24 have everywhere been subjected to discriminatory
25 treatment. Japan, nevertheless, still believes

1 that the way to bring about the prosperity of each
2 and every nation is to give effect to the principle
3 of equality of commercial opportunity, and she
4 upholds the freedom of economic activity in all
5 parts of the world as a matter of principle. It
6 is far from Japan's thought to aim at excluding
7 European and American economic activities from
8 East Asia and she believes that such a thing is
9 totally impossible.

10 "However, it is absolutely necessary from
11 the point of view of existence that Japan, being
12 poor in natural resources and without a large do-
13 mestic market, and China, still economically weak,
14 should work together in order to ensure the pro-
15 duction which is necessary to maintain their policy
16 of self-sufficiency for it must be admitted that
17 the economic activities of the countries which lie
18 outside the limits of East Asia would have to be
19 regulated. In other words, it is imperative that
20 the economic activities of other Powers should be
21 subject to certain restrictions dictated by the re-
22 quirements of the national defense and economic se-
23 curity of the countries grouped under the new order,
24 and that no political privileges should be attached
25 to those activities. The necessity of such re-

1 strictions is recognized by 'all modern states',
2 including, I am sure, the British Empire and the
3 United States. But even if these restrictions are
4 put in force there will still remain vast fields
5 of commercial and economic activity open to the
6 people of other Powers.

7 "The formation or existence of an economic
8 co-partnership of nations, such as is contemplated
9 for Japan, Manchoukuo and China, would by no means
10 entail any diminution of the trade between that
11 group and other countries. On the contrary, the
12 trade of other countries would also increase greatly
13 by such formation. In this connection, I might add
14 a few words regarding Manchoukuo. To say that the
15 new state has been closed to Powers other than
16 Japan is a gross mis-statement. Statistics show
17 plainly the progressive increase that has charac-
18 terized the foreign trade of Manchoukuo during the
19 past few years. The total value of foreign trade
20 of that country, which was 1,060,000,000 yuan in 1930,
21 the year before her independence, leaped to
22 1,530,000,000 yuan in 1937. As for the imports from
23 other countries during the same period, they wit-
24 nessed an increase of 35.3% during the same period,
25 98.9% for the United States and 332.2% for France.

1 Especially conspicuous was the increase in the im-
2 portation of machinery, tools, vehicles, hardware
3 and timber, the demand for which is expected to
4 expand further, with the progress of the work of
5 of economic construction in Manchoukuo. We should
6 also take into consideration the imports from
7 Western countries via Japan, though these are not
8 indicated in the statistics. Again, we should
9 take note of the trade of Manchoukuo with the
10 British and French colonies, which is fast develop-
11 ing with the years.

12 "In brief, the proposed new order for
13 East Asia, when established, will not only bring
14 permanent stability to this part of the globe but
15 will also serve, I am firmly convinced, to put the
16 economic activities of Occidental Powers in East
17 Asia upon a far more solid foundation than at
18 present."

19 THE PRESIDENT: We will recess for
20 fifteen minutes.

21 (Whereupon, at 1045, a recess
22 was taken until 1100, after which the
23 proceedings were resumed as follows:)
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25

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

3 THE PRESIDENT: Mr. Roberts.

4 MR. ROBERTS: We now offer in evidence defense
5 document 1178 which is a statement by Prime Minister
6 KONOYE made on December 22, 1938 concerning the Japan-
7 ese policy in China and the essential reasons for
8 Japanese action.

9 THE PRESIDENT: These things may become
10 repetitious.

11 Brigadier Nolan.

12 BRIGADIER NOLAN: This document, may it please
13 the Tribunal, 1178, may be described as mere about the
14 New Order. We object to its introduction into evidence.

15 THE PRESIDENT: It may be quite reasonable
16 to permit you to state through the Japanese Foreign
17 Minister the attitude of Japan towards China generally
18 and on particular occasions, but it is not necessary to
19 repeat that to any great extent.

20 MR. ROBERTS: We believe it is important to
21 show the statements of various officials in the govern-
22 ment concerning their policy in China for the purpose
23 of proving that there could not have been a common
24 plan or conspiracy on the part of these defendants to
25 carry out such aggression. One may confirm or corroborate

1 the other, but it certainly will prove beyond a shadow
2 of a doubt that there was no conspiracy as alleged by
3 the prosecution.

4 THE PRESIDENT: Well, the time may shortly
5 come when we will reject that kind of statement.

6 You tendered the document and it is objected
7 to. I will take the respective views of my colleagues.

8 Copies have not been distributed among the
9 judges.

10 MR. ROBERTS: May I simply add that the lives
11 of twenty-five men are at stake. It may be material
12 that the Court consider all the statements of officials
13 other than the defendants involved in this trial.

14 THE PRESIDENT: There might well be one hun-
15 dred such statements for each accused, and you would
16 not expect us to receive them all.

17 MR. ROBERTS: I agree that there should be a
18 limitation, and I believe that this may be the last
19 or next to the last such statement that I have to
20 offer.

21 THE PRESIDENT: Well, we have no copies upon
22 which to pass judgment. And the acting clerk says
23 that they do not have this document.

24 MR. ROBERTS: I understand there was an error
25 because of the fact that the number on the document is

1 illegible and looks as if it may be 1175. 1178 was
2 added to subdivision 5, I believe, and is on that
3 order of proof. It seems that because of the number
4 being illegible that the document may have been with-
5 held by the distribution. I would like to withhold
6 this until a later period.

7 We offer in evidence defense document 1194
8 which is a statement by the Vice-Minister of Foreign
9 Affairs, dated May 3, 1939, concerning Japan's inten-
10 tions in Shanghai for the purpose of showing the desire
11 for cooperation with foreign nationals.

12 THE PRESIDENT: Brigadier Nolan.

13 BRIGADIER NOLAN: May it please the Tribunal,
14 we object to document 1194. I am aware of the fact
15 that it purports to be a transcript of an oral repre-
16 sentation made by the Vice-Minister of Foreign Affairs
17 to the British and American ambassadors at Tokyo. An
18 examination of the document itself discloses that it
19 is almost wholly concerned with the administrative
20 structure and machinery of the International Settle-
21 ment at Shanghai. And we submit that the problem which
22 presents itself for determination, as to whether there
23 is any relevancy in this document to the matters before
24 the Tribunal, we submit that there is none.

25 MR. ROBERTS: The defense submits that the

1 proposal by the Vice-Minister for Foreign Affairs to
2 the British and American ambassadors for the purpose
3 of cooperating in Shanghai disproves the statement of
4 the prosecution that there was a systematic plan to
5 oust foreign nationals from Shanghai. For that purpose
6 it will be only necessary to read the first two pages.

7 THE PRESIDENT: By a majority, the objection
8 is upheld and the document rejected.

9 MR. ROBERTS: We offer in evidence defense
10 document 1053 which is an announcement of the Foreign
11 Office as a result of an Anglo-Japanese Conference on
12 July 24, 1939, concerning the acknowledgment by the
13 British Government of the actual conditions in China
14 and recognizing that Japan had special claims in China
15 in order to insure the safety and security of her
16 nationals.

17 THE PRESIDENT: Brigadier Nolan.

18 BRIGADIER NOLAN: May it please the Tribunal,
19 this document, 1053, purports to set out the contents
20 of an announcement by the British ambassador at Tokyo.
21 I have no volume from which I could check the accuracy
22 of this excerpt, but in any event it is submitted that
23 if it is intended to prove what the British ambassador
24 put in his announcement, the announcement itself is
25 the best evidence of that.

1 Mr. ROBERTS: The certificate certifies this
2 to be an official announcement of the Foreign Office,
3 and whether or not the announcement by the British
4 Foreign Minister was in writing or not we do not know.

5 THE PRESIDENT: By a majority, the Court
6 upholds the objection and rejects the document.
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1 MR. ROBERTS: I now have three documents
2 which, on their face, would come under the ruling of
3 the Court. I will read the numbers of the documents
4 so that we may have a ruling on the record.

5 We offer defense documents No. 1051, 1035 and
6 1325.

7 THE PRESIDENT: Brigadier Nolan.

8 BRIGADIER NOLAN: The prosecution, may it
9 please the Tribunal, objects to the three documents
10 which have just been mentioned by learned counsel for
11 the defense.

12 THE PRESIDENT: The Tribunal upholds the
13 objection in each case and rejects the documents.

14 MR. ROBERTS: We offer in evidence defense
15 document 982, which is a statement of the Foreign
16 Office taken from the Asahi Press and dated June 21,
17 1940, for the purpose of showing the recognition by
18 the French Government of conditions in China.

19 THE PRESIDENT: Brigadier Nolan.

20 BRIGADIER NOLAN: May it please the Tribunal,
21 this document, making due allowances for translation
22 differences, is the same as document 1053 of the 24th
23 of July, 1939, which has just been rejected, and with
24 the exception that the word "French" Government is
25 used instead of the word "British" Government, as was

1 in the earlier document.

2 THE PRESIDENT: The occasion covers it. The
3 Court upholds the objection and rejects the document.

4 MR. ROBERTS: At this time, I am informed,
5 Court copies of document 1178 are available, and I
6 now ask that it be marked in evidence.

7 THE PRESIDENT: We have not given our de-
8 cision on this yet.

9 MR. ROBERTS: As I stated previously, it is
10 a statement of Prince KONOYE concerning their in-
11 tentions in China and is for the purpose of disclaim-
12 ing any conspiracy or common plan on behalf of these
13 defendants.

14 THE PRESIDENT: By a majority, the Court dis-
15 allows the objection and admits the document on the
16 usual terms. But this may become repetitious very
17 shortly.

18 CLERK OF THE COURT: Defense document 1178
19 will receive exhibit No. 2535.

20 (Whereupon, the document above re-
21 ferred to was marked defense exhibit No.
22 2535 and received in evidence.)

23 MR. ROBERTS: I shall read exhibit No. 2535.

24 "Statement by the Prime Minister, Prince
25 Fumiraro KONOYE. December 22, 1938.

1 "The Japanese Government are resolved, as
2 has been clearly set forth in their two previous
3 statements issued this year, to carry on the mili-
4 tary operations for the complete extermination of
5 the anti-Japanese

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1 Kuomintang Government, and at the same time to proceed
2 with the work of establishing a new order in East Asia
3 together with those far-sighted Chinese who share in
4 our ideals and aspirations.

5 "The spirit of renaissance is now sweeping over
6 all parts of China and enthusiasm for reconstruction is
7 mounting ever higher. The Japanese Government desire
8 to make public their basic policy for adjusting the
9 relations between Japan and China, in order that their
10 intentions may be thoroughly understood both at home
11 and abroad.

12 "Japan, China and Manchoukuo will be united
13 by the common aim of establishing the new order in
14 East Asia and of realizing a relationship of neighbourly
15 amity, common defence against Communism, and economic
16 cooperation. For that purpose it is necessary first
17 of all that China should cast aside all narrow and
18 prejudiced views belonging to the past and do away with
19 the folly of anti-Japanism, and resentment regarding
20 Manchoukuo. In other words, Japan frankly desires
21 China to enter on her own will into complete diplomatic
22 relations with Manchoukuo.

23 "The existence of the Comintern influence
24 in East Asia cannot be tolerated. Japan therefore
25 considers it an essential condition of the adjustment

1 of the Sino-Japanese relations that there should be
2 concluded an anti-Comintern agreement between the two
3 countries in consonance with the spirit of the anti-
4 Comintern agreement between Japan, Germany and Italy.
5 And in order to ensure the full accomplishment of her
6 purpose, Japan demands, in view of the actual circum-
7 stances prevailing in China, that Japanese troops be
8 stationed, as anti-Communist measure, at specified
9 points during the time the said agreement is in force,
10 and also that the Inner Mongolian region be designated
11 as a special anti-Communist area.

12 "As regards economic relations between the two
13 countries, Japan does not intend to exercise economic
14 monopoly in China, nor does she intend to demand of
15 China to limit the interests of those third Powers,
16 who grasp the meaning of the new East Asia and are
17 willing to act accordingly. Japan only seeks to render
18 effective the cooperation and collaboration between
19 the two countries. That is to say, Japan demands that
20 China in accordance with the principle of equality
21 between the two countries, should recognize the freedom
22 of residence and trade on the part of Japanese subjects
23 in the interior of China, with a view to promoting the
24 economic interests of both peoples and that, in the
25 light of the historical and economic relations between

1 the two nations, China should extend to Japan facilities
2 for the development of China's natural resources,
3 especially in the regions of North China and Inner
4 Mongolia.

5 "The above gives the general lines of what
6 Japan demands of China. If the true object of Japan
7 in conducting the present vast military campaign be
8 fully understood, it will be plain that what she seeks
9 is neither territory nor indemnity for the costs of
10 military operations. Japan demands only the minimum
11 guarantee needed for the execution by China of her
12 function as a participant in the establishment of the
13 new order.

14 "Japan not only respects the sovereignty of
15 China, but she is prepared to give positive considera-
16 tion to the questions of the abolition of extra-
17 territoriality and of the rendition of concessions
18 and settlements-matters which are necessary for the
19 full independence of China."
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1 We now offer defense document No. 1056,
2 which upon the face thereof might seem to come with-
3 in the ruling of the Court as previously stated.
4 However, it is a statement of the damage, showing
5 the damages which were caused by unavoidable acci-
6 dents in carrying on military operations, and that
7 satisfactory adjustment was made in many instances,
8 and it should be accepted for what probative value
9 it may have.

10 THE PRESIDENT: Brigadier Nolan.

11 BRIGADIER NOLAN: May it please the
12 Tribunal, we submit that it is in no better position
13 than earlier press releases which have been rejected
14 by the Tribunal, and that if it is desired by the
15 defense to show ~~there~~ were disputes which arose and
16 were settled, this is not the proper method of
17 doing so.

18 MR. ROBERTS: In the first place, the
19 information comes from the official Foreign Office
20 and is a statement, as I have stated, of the damage
21 incurred in certain accidental cases and the fact
22 that said damages were amicably adjusted. It
23 clearly shows that Japan did not disregard foreign
24 interests and whenever damage was incurred it was
25 recognized and compensation was made.

1 THE PRESIDENT: By a majority the Tribunal
2 upholds the objection and rejects the document.

3 MR. ROBERTS: We offer in evidence docu-
4 ment No. 1050, an announcement of the Foreign
5 Office to the effect that France recognized the
6 actual situation in China.

7 THE PRESIDENT: Brigadier Nolan.

8 BRIGADIER NOLAN: If it please the
9 Tribunal, the prosecution does not appear to have
10 this document.

11 MR. ROBERTS: Evidently, in error it
12 has been put in part 5 of subdivision 4. You will
13 find it in that order of proof, top of the list,
14 part 5, subdivision 4.

15 BRIGADIER NOLAN: Looking at 1050, sir,
16 it seems to be the same as the document which has
17 just been rejected in that it purports to set out
18 an announcement by the Government of the Republic
19 of France. But, as my friend points out to me,
20 your Honor, the earlier one which was rejected was
21 an excerpt from a newspaper; this is an announce-
22 ment from the Foreign Office.

23 THE PRESIDENT: Is it covered by the
24 decision in the British and French cases?

25 MR. ROBERTS: It is somewhat similar, if

1 your Honor please.

2 THE PRESIDENT: The Tribunal upholds the
3 objection and rejects the document.

4 MR. ROBERTS: It was our intention to
5 call the witness HIRAMOTO, but I fear that the box
6 with this affidavit is still in the Clerk's office,
7 which is on top, also, of part 5, subdivision 4.

8 THE PRESIDENT: If you gave due notice
9 it should be in the courtroom, Mr. Roberts.

10 MR. ROBERTS: I was assured this morning
11 at 8:30 that it would be in court before court
12 opened this morning.

13 MR. TAVENNER: I would like to inquire
14 whether the defense proposes to omit section 4,
15 which is the next subsection. They have skipped
16 from three to five, apparently.

17 MR. ROBERTS: No, we are not skipping
18 section 4. We are simply taking the first two
19 documents which were placed on the top of five in
20 error.

21 THE PRESIDENT: The evidence you are
22 about to tender relates to four, does it, although
23 wrongly put under five in the order of proof?

24 MR. ROBERTS: If your Honor please, we
25 are talking about section 5 in subdivision 4. We

1 have divided subdivision 4 into five sections;
2 it all relates to the same subdivision, however.

3 THE PRESIDENT: The evidence you are about
4 to offer relates to four and not to five? That is
5 what I want to know.

6 MR. ROBERTS: That is correct.

7 In view of the fact that there is further
8 proof of subdivision 4, part 4, I can call this
9 witness at the conclusion of that part, and it will
10 still be in order.

11 THE PRESIDENT: Not only do these holdups
12 waste time, but the mere talking about and explaining
13 them waste time. That is what we object to. It is
14 bad enough to waste time on evidence that is re-
15 jected. Surely we can avoid these disorderly pro-
16 ceedings. I do not know who is to blame on this
17 matter, whether you or the court, court officials,
18 Mr. Roberts.

19 The court officials assure me that all
20 documents submitted to the Clerk's office are now
21 in the courtroom.

22 MR. ROBERTS: I now present Mr. ITO, who
23 will present further proof on this subdivision 4.

24 THE PRESIDENT: Mr. ITO.
25

1 MR. ITO: We herewith present defense
2 document No. 1077 for identification and will intro-
3 duce the excerpt thereof, No. 1077-A, as evidence.
4 This excerpt is a declaration of MATSUI, Iwane,
5 Commander of the Shanghai Expeditionary Army. By
6 this document we will prove the intention of the
7 army in the Shanghai affair.

8 THE PRESIDENT: Brigadier Nolan.

9 BRIGADIER NOLAN: May it please the Tribunal,
10 I am not sure, Sir, whether document No. 1077 has yet
11 been marked for identification.

12 THE PRESIDENT: It should be marked.

13 CLERK OF THE COURT: Defense document 1077
14 will be given exhibit No. 2536 for identification only.

15 (Whereupon, the document above
16 referred to was marked defense document No. 2536
17 for identification only.)

18 BRIGADIER NOLAN: Learned counsel for the
19 defense has tendered in evidence, Sir, document 1077-A,
20 being General MATSUI's statement. This statement is
21 an excerpt from a biography of General MATSUI and in
22 our submission is inadmissible and not the proper
23 method of proof of an announcement of this kind.

24 MR. ITO: Yes, it is necessary to tender the
25 facts in order to prove the matters contained in the

1 matter I am now presenting to this Tribunal but
2 upon inquiry of the First Demobilization Bureau we
3 have found that such documents had been lost and
4 therefore as the only alternative open to us we
5 have chosen this method to present the proof.

6 THE PRESIDENT: Lost or destroyed, which?

7 MR. ITO: I do not know whether they were
8 lost or they were burned or they were thrown away;
9 however, I have received confirmation from the First
10 Demobilization Board that it does not exist in their
11 files at present.

12 THE PRESIDENT: By a majority the Tribunal
13 upholds the objection and rejects the document.

14 MR. ITO: We will next produce in evidence
15 excerpt of defense document No. 1077 as "B" of the
16 same number.

17 THE PRESIDENT: Brigadier Nolan.

18 BRIGADIER NOLAN: May it please the
19 Tribunal, this excerpt 1077-B is open to exactly the
20 same objection that was made in respect to 1077-A.

21 THE PRESIDENT: The accused MATSUI can
22 give this evidence himself later. The objection is
23 upheld and the document rejected.

24 MR. ITO: Next we will produce defense
25 document No. 1075 in evidence. This document is the

1 text of the surrender recommendation distributed
2 in the name of the Commander, MATSUI, among the
3 Chinese garrison troops in Nanking on December 9,
4 1937. This testifies to the measures taken by the
5 Japanese forces to save Nanking from war disaster.

6 THE PRESIDENT: Brigadier Nolan.

7 BRIGADIER NOLAN: May it please the
8 Tribunal, this is an attempt to prove an advice to
9 surrender through the medium of a newspaper dispatch.
10 It is submitted that it should be proved by production
11 of the statement.

12 MR. ITO: In an effort to find this
13 original the defense inquired of the First Demobiliza-
14 tion Bureau and received from the said Bureau that
15 it at present does not have such a document.

16 THE PRESIDENT: The Tribunal by a majority
17 upholds the objection and rejects the document.

18 MR. ITO: We will next offer in evidence
19 defense document 1198, a talk made by the Chief of the
20 Information Section on December 1, 1937, to show the
21 destructive actions committed by Chinese soldiers in
22 the environs of Nanking and cultural protection measures
23 taken by Commander MATSUI by an article of the "Japan
24 Advertiser."
25

THE PRESIDENT: Brigadier Nolan.

1 BRIGADIER NOLAN: May it please the
2 Tribunal, defense document 1198 purports to be
3 dated the first of December 1937, but in the state-
4 ment itself appear to be incidents which occurred
5 on the 10th of December of that year. It is only
6 another press release and subject to the objection
7 that we have made to other documents of a like
8 nature.

9 THE PRESIDENT: Documents of this kind
10 are being repeatedly rejected. Time is wasted. I
11 suggest you list them all, tender them in a bunch,
12 have them objected to and rejected for record
13 purposes.

14 The objection is upheld and the document
15 rejected.

16 MR. ITO: Counsel Mattice will call a
17 witness.

18 THE PRESIDENT: Mr. Mattice.

19 MR. MATTICE: May it please the Tribunal,
20 we desire to call next the witness NAKAYAMA.
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NAKAYAMA

DIRECT

1 Y A S U T O N A K A Y A M A, called as a witness on
2 behalf of the defense, being first duly sworn,
3 testified through Japanese interpreters as follows:

4 DIRECT EXAMINATION

5 BY MR. MATTICE:

6 Q You may give your name to the Tribunal, please.

7 A NAKAYAMA, Yasuto.

8 Q Where is your place of residence?

9 A I reside at No. 537 Sekido, Tama-mura,
10 Minami-tama-gun, Tokyo.

11 MR. MATTICE: May the witness be shown
12 defense document 1345, please.

13 Q Will you examine the instrument which for
14 purposes of identification is marked defense exhibit
15 No. 1345 and tell this Tribunal whether that is your
16 affidavit?

17 A This is my affidavit.

18 Q Are the statements contained in that affidavit
19 true?

20 A Yes, the truth.

21 Q Is it correct in all respects?

22 A There is one correction I should like to make.

23 Q In what paragraph of the affidavit is the
24 correction?

25 A The sixteenth paragraph; paragraph 16.

NAKAYAMA

DIRECT

1 Q And what is the correction you desire
2 made there?

3 A The first sentence in paragraph 16 states:
4 "General MATSUI received, on December 14, the informa-
5 tion concerning the capture of Nanking." It should
6 read "December 13."

7 There are no other corrections to make.

8 MR. MATTICE: The defense now offers
9 defense document 1345 in evidence, if your Honor please.

10 THE PRESIDENT: Mr. Sutton.

11 MR. SUTTON: May it please the Tribunal,
12 the prosecution objects to and moves to strike those
13 portions of the affidavit which refer to documents
14 and purport to give their substance on the ground
15 that the document itself in each instance should be
16 produced or the failure to produce it accounted for
17 before the witness may testify as to its contents.
18 This objection applies specifically to the following
19 portions of the affidavit: First, the whole of
20 Section 11, pages 4, 5 and 6 of the affidavit, except
21 the first four sentences of that section. This section
22 refers to two written memoranda, one entitled "The Way
23 of Capturing the Walled City of Nanking," mentioned--
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25 THE PRESIDENT: Deal with these specific
points after lunch.

NAKAYAMA

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We will adjourn until half-past one.
(Whereupon, at 1200, a recess
was taken.)

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

3 THE PRESIDENT: Mr. Sutton.

4 MR. SUTTON: I will continue my statement of
5 the objections. Mentioned near the bottom of page 4
6 of the affidavit, and its contents are summarized on
7 page 5 of the affidavit; the other being instructions
8 entitled "All the Orders and Words of Advice Concern-
9 ing the Capture of and Entry into the Walled City of
10 Nanking," --

11 THE PRESIDENT: You have to take some shorter
12 way of describing your objections. Page so and so,
13 line so and so; page such and such, line such and such
14 from the word whatever it is to the word whatever it
15 is. That is the only way. Otherwise we will be here
16 all day.

17 MR. SUTTON: -- mentioned in paragraph No. 4
18 on page 5, the gist of which are given in the last
19 paragraph of page 5, and all of page 6 except the last
20 paragraph.

21 THE PRESIDENT: Take your objections in
22 general form, I suggest, and let us work them out.

23 MR. SUTTON: To state briefly, the first
24 objection is to the whole of Section 11, pages 4, 5
25 and 6 of the affidavit, except the first four sentences.

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1 The second objection is to all of Section 12, purport-
2 ing to give the answers received from consuls of
3 various countries in Shanghai, and the maps prepared
4 by the witness. Third, the first paragraph of
5 Section 13 relative to the disposition of orders and
6 instructions set out in Section 11, and the maps pre-
7 pared by the witness witness as set out in Section 12.
8 The same objection, namely, that it is an attempt
9 to introduce a document without first accounting for
10 its absence, applies to the notes of advice for
11 surrender described in this paragraph, Section 11.

12 THE PRESIDENT: The first paragraph of
13 Section 15 is a statement of fact. What is your
14 attitude on that?

15 MR. SUTTON: That if the documents themselves
16 are not admitted, then his statement as to the dis-
17 position of the documents would not be proper testi-
18 mony. We particularly objected to the notes of advice
19 for surrender mentioned in that Section 13.

20 THE PRESIDENT: I suggest you mean 13, not
21 15.

22 MR. SUTTON: 13. I beg your pardon.

23 THE PRESIDENT: This is the one court in
24 the world where you cannot afford to make even what
25 appears to be a trifling error. Too much time is

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1 wasted in correcting it.

2 MR. SUTTON: Fourth, the next to the last para-
3 graph on page 10 and the third sentence of the last
4 paragraph on page 10 as to the instructions trans-
5 mitted by the witness from General MATSUI. Fifth,
6 and lastly, the first two sentences of Section 20 as
7 to the orders given by General MATSUI to protect foreign
8 rights and interests.

9 THE PRESIDENT: All the objections are based
10 upon the rule dealing with the proof of documents or
11 their contents.

12 MR. SUTTON: That is right, sir. The prosecu-
13 tion moves to strike these several portions from the
14 affidavit as violative of that rule.

15 THE PRESIDENT: Mr. Mattice.

16 MR. MATTICE: If the Tribunal please, this
17 instrument was not proffered at the time I offered this
18 affidavit in evidence for the reason that we did not
19 have it then. During the noon hour the instrument
20 has been delivered, copies of it have been served,
21 and I now desire to offer in evidence in connection
22 with the exhibit about which we are talking defense
23 document 1356-A, which is an official document and is
24 the certificate of the Chief of the Document Section
25 of the First Demobilization Office of the Japanese

NAKAYAMA

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1 Government certifying concerning the existence of the
2 instruments mentioned in the objection.

3 THE PRESIDENT: Mr. Sutton.

4 R. SUTTON: May it please the Tribunal, I
5 haven't had an opportunity to see the document. My
6 friend says it was served today. That, of course,
7 does not bring it within the rule.

8 THE PRESIDENT: This document is not suffici-
9 ent to meet the requirements of the rule.

10 MR. MATTICE: I assumed that the Office of
11 Demobilization is the place where documents concern-
12 ing the campaign in China would be found. Whether
13 that is true or not, I personally do not know. This
14 certificate recites that they are not in the custody
15 of that office. If so, they are not in the place
16 where they ought to be found.

17 THE PRESIDENT: A Member of the Court puts
18 it this way: All this occurred in China where armies
19 were still operating at the end of the Pacific War.
20 The destruction of documents in Tokyo does not explain
21 the absence of these documents.

22 MR. SUTTON: We object to the introduction
23 of the document.

24 MR. MATTICE: It would naturally follow that
25 the records of the army, at least such of them as were

NAKAYAMA

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1 reserved, would, when the forces returned and were
2 being processed through the demobilization center, be
3 lodged in that office.

4 THE PRESIDENT: We are asked to guess too much,
5 Mr. Mattice. Somebody who knows should make an affidavit
6 covering all this, explaining where all these China
7 documents are or should be and what has happened to
8 them.

9 MR. MATTICE: I think, if the Tribunal please,
10 that in that situation we desire to ask that this
11 witness stand down and we will call another witness
12 and recall this witness later.

13 THE PRESIDENT: Yes. Well, this witness
14 will be stood down until you make that search. For
15 the time being he is released on the usual terms.

16 (Whereupon, the witness was excused.)
17

18 MR. MATTICE: The defense desires now to call
19 the witness HIDAKA.
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HIDAKA

DIRECT

1 S H I N R O K U R O H I D A K A, called as a witness
2 on behalf of the defense, being first duly sworn,
3 testified through Japanese interpreters as
4 follows:

DIRECT EXAMINATION

6 BY MR. MATTICE:

7 Q You may state your name and address, please.

8 A My name, HIDAKA, Shinrokuro. My address,
9 1630, 3-chome, Matsuzawa-machi, Setagaya-ku, Tokyo.10 THE MONITOR: 1030 instead of 1630, according
11 to the witness.12 Q I will ask you to look at the document which
13 is defense document 1165, which will be handed you,
14 and tell this Tribunal whether that is your affidavit.15 (Whereupon, the document was handed
16 to the witness.)

17 A This is my affidavit.

18 Q Are the statements contained in that affidavit
19 true?

20 A Yes.

21 Q And correct?

22 A Yes.

23 MR. MATTICE: I offer this document in
24 evidence.

25 THE PRESIDENT: Admitted on the usual terms.

HIDAKA

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CLERK OF THE COURT: Defense document 1165
will receive exhibit No. 2537.

(Whereupon, the document above
referred to was marked defense exhibit
No. 2537 and received in evidence.)

1 MR. MATTICE: Omitting the formal parts, I
2 will proceed to read this exhibit.

3 "I served the Japanese Embassy in Nanking
4 as councillor from April 30 to August 16, 1937, and
5 later I stayed in Shanghai from 29 August, 1937 to
6 3 March, 1938, holding the same position. On 17
7 March, 1938, I was appointed consul-general and was
8 in charge of the Consulate-General at Shanghai from
9 that day until 12 December 1938, when I was ordered
10 to return home.

11 "I went to Nanking four times during my stay
12 in Shanghai: the first time, 17 and 18 December 1937,
13 to attend the ceremonies of the triumphal entry to
14 the city and of acknowledgment to the service; the
15 second time, 25 and 26 December, 1938; the third time,
16 from 1 to 8 February, 1938; the last time, 27 and 28
17 March, 1938, to attend the ceremony marking the es-
18 tablishment of the Restoration Government.

19 "2. I have been acquainted with General MATSUI
20 for a pretty lone time. In particular, when he attended
21 at the Armament Reduction Conference held in Geneva
22 in 1932, as plenipotentiary, I lived with him as an
23 attendant of the Japanese Delegation.

24 "When General MATSUI arrived at Shanghai as
25 Commander-in-Chief, Shanghai Expeditionary Army, I

HIDAKA

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1 saw him for the first time on 10 September 1937 at
2 Woosung. I met him often during his stay there be-
3 fore he returned home in February 1938.

4 "3. (a) General MATSUI had long been a believer
5 in Sino-Japanese cooperation. He had an understanding
6 of Chinese culture and a deep affection for China and
7 her people. These facts were often expressed by him
8 when I talked with him."

9 THE PRESIDENT: Mr. Mattice, before you go
10 further, refer to page 1, the words "25 and 26 De-
11 cember 1938" in the second paragraph.

12 MR. MATTICE: Obviously, that year should
13 read "1937." It seems that that correction has been
14 made. I have not seen the errata sheet.

15 (Reading continued):

16 "On September 10, when I talked with him at
17 Woosung, stated the following intentions:

18 "(1) To treat POWs justly

19 "(2) To keep a fair attitude toward the in-
20 habitants in general.

21 "As regards this matter, he intended
22 to promulgate it in the name of the Army Commander-
23 in-Chief.

24 "(3) To pay reasonable prices for food and
25 other commodities requisitioned.

1 "He told of his various considerations
2 with regard to the method of payment in cases where
3 inhabitants had fled and no longer there, and stated
4 that the matter should be promulgated to the general
5 public to put them at their ease.

6 "Furthermore, I remember that when he
7 talked with me or with the personnel of the Embassy
8 or the Navy, he frequently expressed his concern for
9 the Chinese people.

10 "(c) He always paid special attention to
11 foreign relations and often asked for the opinion of
12 Consul-General OKAZAKI. Also, he took care to keep
13 in touch with foreign press men. He met several times
14 especially with Hallett Abend, a special correspond-
15 ent of the New York Times, and David Fraser of the
16 London Times.

17 "(d) I know that General MATSUI took the
18 following steps, with regard to the attack on Nanking.

19 "(1) He made many copies of the maps of
20 Nanking City on which foreign embassies and legations,
21 as well as other property involving foreign rights and
22 interests were distinctly marked. These maps were dis-
23 tributed to troops. The Japanese Embassy assisted in
24 making the maps, and I had a chance to see one thus
25 made up.

HIDAKA

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1 "(2) The Chungshan and Minshao Mausoleums on
2 the Map were surrounded by a red circle and it was
3 indicated that they were to be excluded, absolutely,
4 from destruction. This was made according to General
5 MATSUI's desires, so one of his staff officers of the
6 Army Command told me.

7 "(3) Near these places it was prohibited to
8 fire any gun. I heard this fact afterwards from Noda
9 Kongo himself, regimental commander who advanced on
10 the side of this area.

11 "(4) General MATSUI had told us in Shanghai
12 before the attack on Nanking was begun that he intended
13 to stop the forces outside of the city wall and induce
14 the Chinese commander to surrender, and that he would
15 dispatch only highly disciplined crack troops into
16 the city.

17 "(5) After he had started from Shanghai to
18 carry out the Nanking Attack, I met him again in Shang-
19 hai, January 1 next year, when he was sincerely grieved
20 to find for the first time that some of his subordin-
21 ates had done wrong. I was deeply impressed then to
22 find that he had not been aware of such facts until
23 that time. I was told directly by both himself and
24 his staff members that he gave strict warning and di-
25 rectives in the name of Commander-in-Chief accusing

HIDAKA

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1 those who had acted wrong.

2 "4. As regards dispositions made by the
3 staff and other responsible members of the Army HG,
4 the chief matters I happen to know are as follows:

5 "(a) The fair treatment of POWs was under
6 their consideration from various angles, and they
7 were holding consultations concerning the establish-
8 ment of suitable camps.

9 "(b) At the time when Nanking City was en-
10 tered, the attitude of the Japanese gendarmerie was
11 practically impartial. They were well spoken of by
12 both foreigners and the Chinese.

13 "At first they were few in number: only four-
14 teen including the commander. I heard on 17 December
15 that forty other provisional military police were to
16 be obtained in several days.

17 "(c) I neither heard nor saw of the Army
18 Staff's having directed rough treatment of foreigners
19 or misuse of foreign rights and interests or of Chi-
20 nese property.

21 "(d) It was the General's idea to set up
22 notices of no admittance on foreign Embassies and
23 legations and other property involving foreign rights
24 and interests in Shanghai and Nanking. We diplomatic
25 officials assisted in the work.

HIDAKA

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1 "(c) In particular the staff officers of the
2 Army in charge seriously did their best in investigat-
3 ing and settling cases involving foreign relations.
4 For example, a staff officer accompanied by a diplo-
5 matic official went to Wuhu where the American flag
6 incident had occurred, in order to investigate the
7 incident on the spot. When they found that the troops
8 concerned had already set off, they pursued the troops,
9 who were by that time engaged in battle, overtook
10 them at Hangchow, and spent two weeks completing the
11 investigation.

12 "5. (1) Up to this time, when there was any
13 civil war or riot in China, or any incident or battle
14 between China and any other country, Japanese diplo-
15 matic authorities had strived on the spot to protect
16 not only Japanese but also foreigners and their rights
17 and interests. We had also taken care to protect
18 Chinese and to handle their property fairly.

19 "During this incident also we worked under
20 this policy from the beginning as a matter of course,
21 even without special instructions from the government
22 to that effect.

23 "The Commander-in-Chief, General MATSUI, ap-
24 proved our proposals and opinions.

25 "(2) On the occasion of the Nanking Attack,

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1 more than ten men who had formerly been attached to
2 the Nanking General Consulate were sent at the time
3 of the Japanese Army's entry to cooperate with the
4 Japanese Army in working for the protection of for-
5 eign residents and foreign rights, and interests.
6 They were also instructed to strive to treat the
7 Chinese people fairly in order to preserve public
8 order. They all always did their best along these
9 lines. Examples are as follows:

10 "(a) At first communications from Nanking
11 were extremely difficult. Therefore, soon after
12 the entry to Nanking, they used a news correspond-
13 ent's radio to send reports about the welfare of
14 foreigners to Shanghai.

15 "(b) They promptly investigated foreign
16 rights and interests and other points requiring pro-
17 tection and, cooperating with the Army, had "no ad-
18 mittance" signboards set up.

19 "(c) They employed Consulate police men for
20 the protection and convenience of foreign residents.

21 "(d) They directed the Consulate-General
22 Staff to treat the Chinese people fairly and in
23 particular to protect civilians. These carried out
24 their duties with success, since they had all served
25 formerly in Nanking and had been well acquainted with

HIDAKA

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1 the conditions in the city in ordinary times. (They
2 sometimes posted lookouts at the entrances of such
3 refugee quarters as Kinling University.
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2 sometimes posted lookouts at the entrances of such
3 refugee quarters as Kinling University.
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1 "(e) Reports on anything wrong allegedly
2 done by Japanese soldiers were submitted to the
3 Consulate-General by foreign residents. Most of
4 those reports were based on hearsay, however, and
5 since the Consulate-General had not time enough to
6 investigate each of them the reports were sent to
7 the Foreign Ministry, Tokyo, (I read through some
8 of the copies in Shanghai) and to the Army in
9 Nanking. It seemed the Foreign Ministry in Tokyo
10 gave notice of these reports to the War Ministry.

11 "(3) I went to Nanking several times during
12 that period and each time I went I heard reports
13 from the Nanking Consulate-General. I saw existing
14 conditions and talked with foreign residents. I
15 submitted a written report of those items to the
16 Foreign Ministry, and made the same report orally
17 to Foreign Minister HIROTA and other Foreign Minis-
18 try Staff members when I returned home for in-
19 structions at the end of January 1938. Then I
20 heard that whenever reports were submitted from the
21 officials on the spot the authorities in Tokyo
22 called the attention of the Army to them. It was
23 due to this fact, as I said before, that the Army
24 Central Headquarters sometimes gave directives
25 about this to Army officials on the scene. Further-

1 more, I knew that in early February Major General
2 HONMA, then chief of the General Staff Office Di-
3 vision, went to Nanking. He told me that, though
4 the purpose of his trip was chiefly concerned with
5 problems of foreign relations, there were other
6 matters concerning the Chinese people.

7 "(4) Soon after the collapse of Nanking
8 I sent Secretary OKUMURA to Nanking and Wuhu by
9 Navy plane. He returned from Wuhu bringing with
10 him an American correspondent who had been in a
11 hospital suffering from a wound, and the wounded
12 vice commander of the warship Ladybird. I also
13 took steps to permit several foreign correspondents
14 to go down the river to Shanghai at will.

15 "Just after the fall the entire city of
16 Nanking was confusion itself but ~~calm~~ was gradually
17 restored. Especially after the Self-Governing Com-
18 mittee was establish by Chinese citizens 1 January
19 1938 and began to govern the city, working as me-
20 diater between the Japanese Army and the general
21 public, mutual misunderstanding and doubt lessened.
22 After the end of March when the Restoration Govern-
23 ment was established to govern the downstream area
24 of the Yangtze River, the life of the general public
25 brightened considerably.

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1 "Before and after the Nanking fall there
2 were affairs such as the following:

3 "(1) In the battle around Shanghai the
4 resistance of the Chinese Army was far more severe
5 than the Japanese Army had expected, since anti-
6 Japanese feelings were very strong there.

7 "The Japanese troops despatched there for
8 the protection of Japanese residents and Japanese
9 rights and interests were far fewer than the
10 Chinese force in number. Hence, the battle was
11 very hard and the Japanese casualties were great.
12 This naturally enhanced the fighting spirit of
13 the Japanese soldiers. (Originally the antipathy
14 of Japanese soldiers toward the Chinese people
15 was not so strong.)

16 "(2) Accordingly, contrary to our ex-
17 pectations very few of the Chinese soldiers were
18 taken prisoner at first, (most of them either died
19 in the field of retreated).

20 "(3) In order to hinder the Japanese
21 Army the Chinese Army carried out from the begin-
22 ning the so-called 'scorched-earth policy', setting
23 fire to houses and munitions dumps and compelling
24 the inhabitants to evacuate. Hence at the beginning
25 of the battle the Japanese had few chances to con-

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1 tact inhabitants on peaceful terms, and it was na-
2 tural that both the Japanese troops and the Chinese
3 inhabitants had become more and more uneasy and
4 suspicious of each other.

5 "(4) It was due to the propaganda of the
6 Chinese Army and authorities that anti-Japanese
7 feelings were generally strong. Even the few old
8 men, women and children who had remained in the
9 occupied area acted as spies, sabotaged, or attacked
10 Japanese soldiers in the dark. By those acts the
11 activities of the Japanese Army were greatly ham-
12 pered. Japanese soldiers at first tried to treat
13 civilians with kindness, taking them as quite apart
14 from military men. As a matter of fact, however,
15 confronted with such an attitude on the part of the
16 inhabitants there arose among the Japanese soldiers
17 a feeling of hostility and an attitude of suspi-
18 cious watchfulness.

19 "(5) The Chinese Army made strong re-
20 sistance around Shanghai and the battle front came
21 to a standstill there. It was thought that if the
22 Chinese were defeated there they would make a stand
23 on the route between Shanghai and Soochow and resume
24 their opposition. Under these circumstances it was
25 necessary to destroy all the Chinese troops in

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1 order to set up security around Shanghai. For
2 this purpose Japan reinforced her Army in early
3 November with a new force which landed at Hangchow
4 Bay. Meanwhile the Chinese Army was defeated and
5 the Japanese Army, giving them no time to recover,
6 started to chase them and entered Nanking at once.
7 Hence, it was impossible for the Japanese Army
8 first to lay seige on Nanking and then to attack
9 and capture, as it had been foretold to us by
10 General MATSUI. And as a consequence, I believe,
11 confusion arose.

12 "It was due to the said circumstances
13 that along the road leading to Nanking, not only
14 had munitions, houses and fuel been taken away or
15 burned, but also Japanese supplies were late in
16 coming. It was very cold in December. Troops of
17 the Japanese Army individually took up things scat-
18 tered about on the field to use, or to eat, or to
19 burn as fuel.

20 "Even in Nanking military barracks and
21 other buildings that remained were without beds
22 and other facilities and it was extremely difficult
23 to quarter the Japanese Army there.

24 "At the time of the fall Nanking was en-
25 tirely without government. Directly after the

1 fall conditions I observed in the city were as
2 follows:

3 "(a) When the Chinese Commander of the
4 Nanking Guard retreated before the collapse all
5 official members of military and civil organs
6 absconded. There was no city government, no
7 police, no responsible men remaining. All re-
8 gisters of citizens, land and buildings necessary
9 for routine administration had been taken away.
10 The police force had disbanded. No policeman
11 was to be seen. Only two or three policemen em-
12 ployed in each foreign Embassy or Legation were
13 found to be in the premises. There were numerous
14 cases in other cities than Nanking, in which
15 some of the civil officials or permanent personages
16 of the place remained after the retreat of the
17 Chinese Army, working as mediators to make re-
18 lations smooth between the incoming Japanese Army
19 and the common public in the place.

20 "(b) Foreign Ambassadors, Ministers,
21 Consuls, and other officials of foreign nation-
22 ality, all went away from the city before its fall
23 and there was no person authorized to negotiate
24 formally with the Japanese Army for the protection
25 of the rights and interests of foreign residents

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and families.

1 "All the foreign correspondents were de-
2 sirable of getting out of Nanking to send telegrams
3 to their main offices. Within a few days after
4 the fall of Nanking they all went to Shanghai,
5 taking advantage of facilities offered by the
6 Japanese Army in Nanking. None were to be found
7 when I went there on December 17.

8 "(c) The population of Nanking was said
9 to be one million, but it had been reduced to two
10 hundred thousand at the time of the fall, most of
11 whom, belonging to the lower class, had moved to
12 the so-called 'Safety Zone'. The Chinese houses
13 outside of this zone were practically all vacant.
14 The organizing of refugees was in the hands of
15 some 20 private individuals of foreign nationality
16 who formed a committee.

17 "The Japanese Army did not official ap-
18 prove the above mentioned zone. The reasons were
19 (1) that the location was thought difficult to
20 safekeep, from a tactical point of view, in case of
21 a battle in the city, (2) that high ranking Chinese
22 officers and their staff lived there, (3) that the
23 committee did not have enough power to keep de-
24 feated Chinese soldiers and other undesirable
25

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1 persons out the zone and to maintain its 'neutrality',
2 (The 'Safety Zone' in Shanghai was considered to
3 differ on these points and was approved by the
4 Japanese Army.)

5 "The Japanese Army persisted in holding
6 to the doctrine that a place without any hostile
7 troops or military establishment should not be
8 attacked, and, actually, there was neither battle
9 nor casualty in the area when Nanking was cap-
10 tured.

11 "(d) When the Chinese Army retreated
12 at the time of the fall of the city many military
13 men audaciously took clothing from civilians (some
14 civilians were murdered), and, putting it on in-
15 stead of military uniform, entered the 'Safety
16 Zone' disguised as civilians. This fact was told
17 to me by Mac Daviels, AP reporter in Nanking and
18 Hallott Abend of the New York Times, then in
19 Shanghai. It was a matter of course that the
20 Japanese Army for this reason held suspicions and
21 doubts.

22 "8. The safety zone in Shanghai (so-
23 called Jaquinot Zone): When the battle around
24 Shanghai developed and the Chinese Army was ex-
25 pected to retreat, an international committee con-

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1 sisting of Britons, Americans, Frenchmen, etc, was
2 set up with Father Jaquinot as its leader. The
3 committee proposed to make a 'Safety Zone' in a
4 section of Nantao (Chinatown in the southern part
5 of Shanghai) under the approval of both Chinese
6 and Japanese. The purpose was to receive Chinese
7 if the battle reached that area. At first Father
8 Jaquinot, accompanied by Timperley, a Manchester
9 Guardian correspondent, came to me and told me of
10 this. I took steps, co-operating with Shanghai
11 Consul-General OKAMOTO and Consul General OKQZAKI,
12 to put this plan into practice. Army Commander-
13 in-Chief MATSUI and Navy Commander-in-Chief
14 HASEGAWA showed a favorable attitude toward it
15 from the beginning, and the plan was approved by
16 the two commanders and the Chinese as well. At
17 that time General MATSUI contributed ten thousand
18 yen to the committee to assist in financing the
19 plan. (Naval Commander HASEGAWA contributed money,
20 etc.)

21 "Furthermore, Foreign Minister HIROTA
22 sent a letter dated December 8 to Father Jaquinot
23 as a message of praise and respect of the Japanese
24 people felt toward such a humanistic work, with
25 best wishes for his success. The reasons for which

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1 the plan was approved by the Japanese authorities
2 was as follows:

3 "(1) The Area was purely a Chinese town
4 and it was clear that Father Jaquinot and the other
5 committee members were all impartial and disinter-
6 ested.

7 "(2) The committee would take in and
8 protect non-combatant Chinese when there was a
9 battle, and relief and protection would continue
10 for a little while after the battle was over, but
11 the committee would agree not to interfere in the
12 government and supervision of the area, which was
13 to be completely in the hands of the Japanese Army.

14 "(3) As the authorities of French con-
15 cession adjacent to the area willingly co-operated
16 the committee was thought to have enough actual
17 power to maintain 'neutrality'.

18 "(4) Judging from the location of the area
19 it was believed possible to maintain 'safety' in the
20 area despite there being a battle near here.

21 "In the final stages of the engagement in
22 Shanghai fighting spread to the boundary of the
23 area. However, no shells were dropped in the area.
24 The Chinese soldiers who retreated into the area
25 were all disarmed by the committee. The Japanese

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21,463

1 Army did not enter the area. Everything passed
2 off quietly. Thus several thousand houses and
3 250 thousand Chinese were rescued. The facts are
4 written in detail in a pamphlet by the committee."

5 You may cross-examine.
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1 MR. ITO: I should like to be permitted
2 to ask one question, a supplementary question.

3 THE PRESIDENT: For whom do you appear?

4 MR. ITO: I am representing the accused
5 MATSUI.

6 DIRECT EXAMINATION (Continued)

7 BY MR. ITO:

8 Q Concretely, what are the facts relating
9 to the incident involving the insult to the American
10 flag at Wuhu?

11 THE PRESIDENT: I don't think we need hear
12 more about that.

13 MR. SAEKI: I am counsel SAEKI, appearing
14 for the accused MUTO. I would like to ask one ques-
15 tion of the witness.

16 DIRECT EXAMINATION (Continued)

17 BY MR. SAEKI:

18 Q Did you meet MUTO, the then Vice-Chief of
19 Staff at Nanking?

20 A I met Vice Chief of Staff MUTO on several
21 occasions in Shanghai.

22 Q Do you remember anything with respect to
23 the attitude which MUTO, Vice Chief of Staff MUTO,
24 took in regard to the protection of foreign rights
25 and interests?

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1 A . I have had frequent talks with MUTO on
2 that subject and I know that he was extremely care-
3 ful in his consideration of that matter, giving me
4 quite a bit of convenience in the prosecution of
5 my own duties in that regard.

6 THE PRESIDENT: Mr. Tavenner.

7 MR. TAVENNER: If it please the Tribunal,
8 apart from certain admissions valuable to the
9 prosecution, the affidavit contains statements so
10 completely at variance with the mass of our oral
11 testimony and documentary evidence on the rape of
12 Nanking that we consider it would be a waste of time
13 to cross-examine on it or to refer the Tribunal
14 to the whole of that evidence.

15 We would, however, make particular refer-
16 ence to Exhibits 306 and 323, being daily reports by
17 Doctor Lewis C. Smythe, Secretary of the International
18 Committee in Nanking to Japanese embassy officials
19 there; the evidence of Doctor Wilson, record page
20 2,533; Mr. Fitch at page 4462; Doctor Bates at
21 page 2,644; the testimony of John G. Magee, pages
22 3,904 to 3,922.

23 I also make reference to a collection of
24 diplomatic correspondence on the subject, exhibit
25

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1 328. With regard to the protection of foreign
2 embassies, I refer to record 2,577.

3 THE PRESIDENT: Did you tender any interro-
4 gation of MATSUI or MUTO on this?

5 MR. TAVENNER: We tendered in evidence a
6 part of the interrogation of MATSUI, exhibit 257,
7 page 3,453 of the transcript, and a part of the in-
8 terrogation of MUTO, which is exhibit 255, page
9 3,433 of the transcript.

10 THE PRESIDENT: I have a question on
11 behalf of a member of the Tribunal.

12 On January 1, 1938, the witness was deeply
13 impressed to find that MATSUI had not been aware
14 of such facts, that is, misbehavior of the troops
15 in Nanking, until that time. At what time did the
16 witness hear about it and what did he hear?

17 THE WITNESS: On January 1 I went to
18 General MATSUI's place to express fecilitations on
19 the new year, and on that occasion, in accordance
20 with Japanese custom, proposed a toast to each
21 other. At that time we were carrying on an infor-
22 mal conversation. There were no questions put by
23 me to him, but in the course of the conversation
24 General MATSUI said there were some among his sub-
25 ordinates who did something very wrong and that

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1 it was extremely regrettable and unfortunate.

2 THE PRESIDENT: Did he specify what wrong
3 was done?

4 THE WITNESS: No, he did not.

5 MR. ITO: No redirect examination. May
6 the witness be excused on the usual terms?

7 THE PRESIDENT: He is excused on the usual
8 terms.

9 (Whereupon, the witness was excused.)

10 MR. ITO: Next the defense will read an
11 excerpt from exhibit 323, prosecution document 1744.

12 The purpose of reading this excerpt is to
13 prove that the Japanese army did not attack the
14 safety zone as alleged by the prosecution.

15 THE MONITOR: Mr. Counsel, we have not
16 received defense document 1744, nor do we have a
17 running commentary prepared for us.

18 THE PRESIDENT: That prosecution document
19 being exhibit 323, I believe.

20 MR. ITO: It is an excerpt from exhibit
21 323, prosecution document 1744.

22 This document evidently proves that in
23 assaulting Nanking the Japanese army did not attack
24 the safety zone there.

25 THE MONITOR: We have the running commen-

1 tary, but we don't have the document.

2 THE PRESIDENT: Mr. ITO, what are you
3 going to do?

4 MR. ITO: Shall I read in Japanese and
5 have it translated into English?

6 THE PRESIDENT: Not unless it is a sentence
7 or two only. We won't listen to any long excerpt.

8 MR. ITO: They won't be very long.

9 THE PRESIDENT: We want simultaneous trans-
10 lation if the document is of any length. How many
11 sentences are there?

12 THE MONITOR: We found the document, sir.

13 MR. ITO: May I commence, sir?

14 THE PRESIDENT: Start reading, Mr. ITO.

15 MR. ITO (reading): "LETTER TO JAPANESE
16 COMMANDER OF NANKING.

17 "December 14, 1937.

18 "Honorable Sir:

19 "We come to thank you for the fine way your
20 artillery spared the Safety Zone and to establish
21 contact with you for future plans for care of Chinese
22 civilians in the Zone."

23 Skipping from the second to the last para-
24 graph on the same page:

25 "Yesterday afternoon an unforeseen situa-

1 tion developed when a number of Chinese soldiers
2 were trapped in the northern part of the city.
3 Some of them came to our office and pleaded in
4 the name of humanity that we save their lives.
5 Representatives of our Committee tried to find your
6 Headquarters but got no farther than a captain on
7 Han Chung Lu. So we disarmed all these soldiers
8 and put them into buildings in the Zone. We beg
9 your merciful permission to allow these men to return
10 to peaceful civilian life as is now their desire."

11 Skipping to page 4, the last paragraph:
12 "We will be glad to cooperate in any way
13 we can in caring for the civilian population of
14 this city.

15 "INTERNATIONAL COMMITTEE FOR NANKING
16 SAFETY ZONE.

17 "Most respectfully yours,
18 "JOHN H. D. RABE
19 "Chairman."

20 Then we shall read an excerpt from exhibit
21 309, prosecution No. 2466. Commencing the reading
22 from page 3 of document 2466:

23 "we have had some very pleasant Japanese
24 who have treated us with courtesy and respect.
25 Others have been very fierce and threatened us,

1 striking or slapping some. Mr. Riggs had suffered
2 most at their hands. Occasionally have I seen a
3 Japanese helping some Chinese, or picking up a
4 Chinese baby to play with it."

5 Skipping to the middle of page 4, approxi-
6 mately in the middle of the page:

7 "Today I saw crowds of people flocking
8 across Chung Shan Road out of the Zone. They came
9 back later carrying rice which was being distributed
10 by the Japanese from the Executive Yuan Examina-
11 tion Yuan."

12 That is December 31, 1937.

13 Then to the last paragraph on page 6:

14 "January 3, 1938

15 "Succeeded in getting half of the hospital
16 staff registered today. I must report a good deed
17 done by some Japanese. Recently several very nice
18 Japanese have visited the hospital. We told them of
19 our lack of food supplies for the patients. Today
20 they brought in 100 shing of beans along with some
21 beef. We have had no meat at the hospital for a
22 month and these gifts were mighty welcome. They
23 asked what else we would like to have."

24 That ends the reading of the document.
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THE PRESIDENT: We will recess for fifteen minutes.

(Whereupon, at 1445, a recess was taken until 1500, after which the proceedings were resumed as follows:)

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

3 THE PRESIDENT: Mr. ITO.

4 MR. ITO: Next we shall read an excerpt from
5 exhibit No. 328, prosecution document No. 1906. This
6 document, which is an official report from the Consul-
7 General at Shanghai to the Secretary of State of the
8 United States of America, offers proof of incendiarism
9 and pillage committed by the Chinese Army in Nanking,
10 the flight of the remnants into the safety zone there,
11 and the fact that Commander MATSUI issued an order that
12 military discipline and public morals be strictly main-
13 tained.

14 I commence reading on page 10 of the exhibit
15 under the paragraph entitled "Brief Account of the
16 Happenings to Nanking Since December 10th," the middle
17 of the page, second paragraph under that title.

18 "Therefore, when the Japanese armies marched
19 into the city they found it practically intact, four-
20 fifths of its population gone, with a large part of
21 the remaining inhabitants seeking refuge in the
22 so-called 'safety zone,' which the International Com-
23 mittee for Nanking was attempting to establish, and
24 instead of huge numbers of trapped Chinese troops only
25 a comparatively small number. The number of Chinese

1 soldiers that did remain is not known, but there must
2 have been some thousands of them who discarded their
3 military uniforms to put on civilian clothing and
4 mingle with the civilians or hide wherever they could
5 in the city."

6 Omitting the next paragraph:

7 "Mention should be made here, however, that
8 the Chinese themselves are not altogether exonerated of
9 depredations, at least to some extent, before the entry
10 of the Japanese. During the last few days some viola-
11 tions of people and property were undoubtedly committed
12 by them. Chinese soldiers in their mad rush to discard
13 their military uniforms and put on civilian clothes, in
14 a number of incidents, killed civilians to obtain their
15 clothing. Retreating soldiers and also civilians were
16 known to have carried on sporadic looting during that
17 period of disorder. The complete breakdown of the city
18 government with the stopping of the functioning of all
19 the public utilities and services and the utter con-
20 fusion and disorder that the city was thrown into by
21 the withdrawal of Chinese government and most of the
22 Chinese population left the city open to any act of
23 lawlessness. It should be brought out that there was
24 even a feeling of welcome by the remaining population
25 for the hoped-for restoration of order and control under

1 the Japanese."

2 We now skip to page 18, the last paragraph.

3 "During the first week of December the Inter-
4 national Committee set up the 'safety zone' - a map
5 of which is enclosed as enclosure No. 7 - to which the
6 remaining civilian population could come for refuge.
7 Telegrams were sent to the high Japanese Military Com-
8 mand in Shanghai requesting that the existence of the
9 zone be brought to the attention of the attacking
10 Japanese armies and that it be spared from attack as a
11 place of refuge. The Committee was informed, in reply,
12 that although the Japanese would not recognize the
13 Zone it would not be intentionally attacked if it
14 did not contain soldiers or military establishments."

15 THE INTERPRETER: This ends the reading of the
16 excerpts. Japanese counsel is still continuing.

17 THE PRESIDENT: Mr. Tavenner.

18 MR. TAVENNER: If your Honor please, I think
19 I should call to the Tribunal's attention that the
20 paragraph at the bottom of page 10 beginning with the
21 words "However, no sooner had the Japanese armies gotten
22 into Nanking. . ." was not read, and the same is true
23 as to succeeding paragraphs.

24 THE PRESIDENT: It is for Mr. ITO to say how
25 much he will read.

1 MR. ITO: I continue the reading, sir. The
2 Japanese reading has not been completed.

3 (Whereupon, Mr. ITO continued to
4 read in Japanese.)

5 MR. ITO: That is all, sir.

6 MR. TAVENNER: Your Honor, quite apparently
7 a document has been read that was not translated.

8 THE INTERPRETER: Mr. Tavenner, the English
9 reading finished far ahead of the Japanese.

10 THE PRESIDENT: That is what I thought.

11 Mr. Mattice.

12 MR. MATTICE: If the Tribunal please, we
13 next intended to call on behalf of the defense the
14 witness SUKAMOTO. This witness has been ill. We
15 have a certificate of his attending physicial which
16 is dated April 16th. However, he is recovering and
17 will be able to be here tomorrow, but he is not here
18 today. So, with the exception of that witness and
19 the matter of the witness who stood down, this par-
20 ticular subsection of this phase is concluded.

21 I think Mr. Roberts will proceed with the
22 next.

23 THE PRESIDENT: Mr. Roberts.

24 MR. ROBERTS: We call the witness HIRAMOTO,
25 Michitaka.

1 M I C H I T A K A H I R A M O T O, called as a wit-
2 ness on behalf of the defense, being first duly
3 sworn, testified through Japanese interpreters
4 as follows:

5 DIRECT EXAMINATION

6 BY Mr. ROBERTS:

7 Q Please state your name and address.

8 A No. 1307 Ohara-machi, Meguro-ku, Tokyo. My
9 name, HIRAMOTO, Michitaka.

10 Mr. ROBERTS: May the witness be shown defense
11 document No. 1344.

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

14 Q Please examine this document and tell us
15 whether or not it is your affidavit.

16 A This is my affidavit.

17 Mr. ROBERTS: I offer in evidence defense
18 document No. 1344.

19 THE PRESIDENT: It is admitted on the usual
20 terms.

21 CLERK OF THE COURT: Defense document 1344
22 will receive exhibit No. 2538.

23 (Whereupon, the document above re-
24 ferred to was marked defense exhibit No. 2538
25 and received in evidence.)

1 Mr. ROBERTS: I read exhibit No. 2538:

2 "1. I was formerly a Captain of the Japanese
3 Navy. On November 14, 1940, I became Commander.

4 "2. I was sent twice to China. Once, it was
5 from the 1st of May 1940 to the 5th of September of
6 the same year. Once, it was from the 20th of July
7 1941 to the 1st of September of the same year.

8 "3. When I was sent there for the first time,
9 I acted as the Air Chief Staff to the Officer in Com-
10 mand of the Combined Air Raid Detachment who held
11 concurrently the post of the Commander of the First
12 Combined Air Forces. This Officer in Command was
13 placed under the operation directions of the Commander
14 in Chief of the Fleet despatched to the Chinese waters.
15 When I was sent there for the second time, I acted as
16 the Air Chief Staff to the Commander in Chief of the
17 Eleventh Air Squadron in which was placed the operation
18 directions of the Commander in Chief of the Fleet
19 despatched to the Chinese waters.

20 "4. From the first of May 1940 to the 5th
21 of September of the same year, I assaulted the areas of
22 the Ssu Chuan Province, concentrating my attack on
23 Chung Ching. This was carried out in order to frustrate
24 the will of the Chinese forces to keep on fighting, to
25 shatter the Chinese central military organizations and

HIRAMOTO

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to put an end to the China Incident swiftly.

1 "The operations during this period were called
2 No. 101 operations which were carried out jointly by
3 the Army and Navy.
4

5 "5. Chung Ching is a rugged small town of
6 four or five square miles being situated at a junction
7 point of rivers. This town which forms a basin, is
8 almost ever covered by clouds, and the vested rights
9 and interests of third powers are scattered there-
10 abouts. It was a place which was the least fitted for
11 bombing.
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HIRAMOTO

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1 "Hence, the commander troubled himself a great
2 deal about the selection of the targets of attack.
3 It was on the occasion of the first Shanghai battle
4 that the Naval Air Forces took part for the first time
5 in the actual fighting since their organization. As
6 we were engaged from the outset in difficult fighting
7 at the small and narrow places where the vested rights
8 and interests of third powers were inextricably involved,
9 great care was taken in the selection of the targets of
10 attack and from the commander down to the rank and file,
11 all were ordered to follow, very strictly, instructions
12 given in this regard.

13 "6. Upon assaulting Chung Ching, we had
14 taken all necessary measures to bomb exclusively the
15 military targets to the exclusion of other things.

16 "(1) Every plane was instructed to carry the
17 map of Chung Ching's streets investigated and edited
18 by the Naval General Staff. Thus, we expected to
19 ascertain the targets therein indicated.

20 "(2) The Headquarters of the Air Raid Corps
21 endeavored to obtain by all means the latest news on
22 Chung Ching.

23 "Not to speak of the utilization of spies, we
24 approached particularly those Chinese leaders who
25 escaped from Chung Ching and joined the Nanking

1 Government, for the purpose of gathering the latest
2 news on Chung Ching and specifically those bearing on
3 its central military organizations. We inscribed this
4 information on the maps concerned with a view to
5 determining exactly the targets of our attack.

6 "(3) For the sake of absolute prudence we
7 availed ourselves of every opportunity to explain to
8 the crews the purport of instructions from the Central
9 Government, referring to 'the standard to be observed
10 in waging air war' and 'miscellaneous matters regarding
11 the bombing regulations.' Simultaneously, we have
12 striven thereby to heighten the fair and just spirit,
13 which has been traditional in our Navy.

14 "7. The central military organizations in
15 Chung Ching were mainly located in the west of the town.
16 But the Gendarmerie Headquarters and some others were
17 found scattered within the wall. The base for the
18 anti-aircraft battery seemed to be sufficiently well
19 equipped and the whole town presented the spectacle of
20 a fortress. Furthermore, we received information that
21 Chiang Kai-shek's fighting headquarters established at
22 several places inside and outside the town (they were
23 estimated at seven) were shifting according to the
24 requirements of the times. The information made us
25 presume that the shifting fighting headquarters in

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1 question were located in the following districts:

2 "(1) The western district of the city,

3 "(2) The western suburbs,

4 "(3) The western district within the city

5 wall,

6 "(4) The western opposite river side,

7 "(5) The suburbs located at the southern

8 river side,

9 "(6) The western suburbs located at the

10 southern river side, etc.

11 "8. While taking into consideration the afore-
12 mentioned circumstances, we carried out our air
13 assaults from the altitude of 2000 - 3000 meters
14 against the military equipment within the city, with
15 particular attention being paid to its western
16 district.

17 "On these occasions, we tried to aim exactly
18 at the targets in reliance upon our good judgment.

19 "9. Next, I participated in the operations
20 against the interior of the Ssu Chuan Province from
21 the 20th of July 1941 to the 1st of September of the
22 same year. At that time the operations were concen-
23 trated on attacking Chung Ching and this was the
24 second onslaught on the city. This campaign was
25 carried out in order to make up for the poor results

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1 of the action of the previous year. Regarding the
2 objective of attack, the plan of attack, as well as
3 its execution, we have followed the main lines of the
4 principle determined in the previous year.

5 "On this occasion, we took recourse before-
6 hand, by diplomatic means to request the transferring
7 of the people belonging to the third powers to the
8 southern river side so that their vested rights and
9 interests as well as their non-combatants might not
10 be jeopardized.

11 "In particular, in regard to the war vessels
12 and ships belonging to the third powers, we have
13 been constantly on the alert, lest stray bullets should
14 cause such a disaster as the sinking of the Panay.

15 "10. It happened, however, that in the
16 course of our attack on the military equipment east
17 of Chung Ching City, an air detachment which had
18 invaded from the northwestern direction was unable to
19 drop bombs in time, presumably on account of the
20 imperfection of their throwing appliances. A bomb
21 thrown with undue delay fell in the vicinity of the
22 American Gunboat 'Tutuila,' lying at anchor on the
23 river and caused damage to a boat being attached to her
24 stern.

25 "Fortunately, there was no damage done to

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1 the gunboat and we considered this event as a matter
2 of great regret, for we were so much concerned with
3 the avoidance of any sort of misfortune.

4 "11. We apologized for not having been able
5 to avert that accident, because of the fact that such
6 irregular bombing was beyond our control. Be that as
7 it may, the crew of that air detachment showed their
8 sincere penitence for misconduct.

9 "As for me, I was then despatched to Tokyo
10 and Shanghai for the explanation of the matter involved.
11 Both the Central Authorities and the Headquarters of
12 the Fleet operating on the Chinese waters expressed
13 their deep regret over the unhappy event, while I
14 was duly reprovved. I returned to my unit, after
15 having received instructions to the effect that more
16 precaution should be taken hereafter in the carrying
17 out of air raids and that the vested rights and
18 interests of the third powers should not be damaged
19 any more."

20 You may cross-examine.

21 THE PRESIDENT: Mr. Tavenner.

22 MR. TAVENNER: If it please your Honor.

23 CROSS-EXAMINATION

24 BY MR. TAVENNER:

25 Q Commander HIRAMOTO, you have testified

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1 regarding damage done to the American gunboat Tutuila
2 at some date after July 20, 1941. Are you aware of
3 a bombing damage to the United States Chancellery and
4 this same gunboat prior to June 16, 1941, on which
5 date a protest was made by the United States Govern-
6 ment regarding such damages?

7 A I do not recall in detail. However, whenever
8 foreign interests or interests of a third power are
9 involved or notification to that effect or any protests
10 were made in connection with damages inflicted upon
11 foreign interests, notification to that effect is
12 communicated to our air corps.

13 Q The Japanese Government gave the same excuse
14 and the same explanation on the occasion of the first
15 bombing that it did on the occasion of the second
16 bombing, did it not?

17 A As to what the government did about it,
18 operational units, especially those on the front lines,
19 are completely unfamiliar or unaware of.

20 MR. TAVENNER: I refer the Tribunal to
21 prosecution's exhibit 1088, page 9,996, regarding the
22 bombing of June -- June, 1941.

23 That is all.

24 THE PRESIDENT: Mr. Roberts.
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HIRAMOTO

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MR. ROBERTS: There will be no redirect. We ask that the witness be excused on the usual terms.

THE PRESIDENT: He is excused accordingly.

(Whereupon, the witness was excused.)

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1 MR. ROBERTS: We call the witness YAMAMOTO,
2 Yoshio.
3 Y O S H I O Y A M A M O T O, called as a witness on
4 behalf of the defense, being first duly sworn,
5 testified through Japanese interpreters as follows:

6 DIRECT EXAMINATION

7 BY MR. ROBERTS:

8 Q Please tell us your name and address.

9 A My name: YAMAMOTO, Yoshio. My address:
10 No. 443, 2-Chome, Koenji, Suginami-ku, Tokyo.11 MR. ROBERTS: May the witness be shown
12 defense document No. 1338.13 Q Please examine this document and tell us
14 whether or not it is your affidavit.

15 A This is my affidavit.

16 MR. ROBERTS: I offer in evidence defense
17 document No. 1338.

18 THE PRESIDENT: Admitted on the usual terms.

19 CLERK OF THE COURT: Defense document 1338
20 will receive exhibit No. 2539.21 (Whereupon, the document above referred
22 to was marked defense exhibit No. 2539 and received
23 in evidence.)
24

25 MR. ROBERTS: I shall read exhibit No. 2539:

"1. From the 25th of December 1939 to the

1 5th of February 1942, I served as a staff officer
2 of the China Seas Fleet. I was one of those officers
3 or their successors who were entrusted with the
4 execution of administrative measures concerning the
5 restriction of free navigation on the Yangtze River
6 and the Chu River, interception of communications
7 along the Chinese coastlines, the blockade of
8 specified harbors, the prohibition of entrance into
9 specified harbors, etc.

10 "2. Following the China Incident on
11 July 7, 1937, a Proclamation was issued by Admiral
12 HASEGAWA on August 25, 1937, blockading the China
13 Sea Coast. This notice was dispatched to all
14 countries by the Foreign Office.

15 "About September 1937 the Yangtze River
16 was blocked by the Chinese Forces at Chiang-Yin and
17 some other places on its upper stream by sinking of
18 a large steamer and other obstacles. We opened a
19 portion of these blockades only to the extent of
20 meeting the needs of operations, that is, so as to
21 enable our vessels to pass through. In this work, we
22 scarcely succeeded in opening the minimum navigable
23 passages in these blockades at the cost of the enormous
24 casualties and damages inflicted on us.

25 "Since there was a congestion of Japanese

1 warships and military requisitioned vessels which had
2 to pass there quickly for military requirements, there
3 was practically no spare passage for the free navigation
4 of the vessels of Third Powers. Consequently, it was
5 then very difficult for us to set about broadening
6 the navigable passages. In addition, military oper-
7 ations on a large scale were in progress in the upper
8 stream regions and under these conditions we were
9 afraid lest warships and other vessels of the Third
10 Powers should suffer unexpected accidents in the
11 course of their navigation. In fact, their naviga-
12 tion was likely to cause obstruction to the accomplish-
13 ment of our aims.

14 "The river coasts of the Yangtze River
15 were infested with Chinese partisans, doing much
16 harm to warships and other vessels sailing there.
17 Mines laid by the Chinese Forces continued to float
18 to the detriment of the security of navigation, and
19 their sweeping as well as the installation of the
20 beacon for a navigation line were not being undertaken
21 satisfactorily. Under these circumstances, the sinking
22 of a ship would lead eventually to the blockade of the
23 watercourse. For the aforementioned reasons, free
24 passage through the opened areas of the Chinese blocked
25 lines was subjected to restriction. Such a measure

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1 was rendered inevitable on account of the necessity
2 of military operations.

3 "We were deeply concerned with the preser-
4 vation of the vested rights and interests of the Third
5 Powers all the more so, because the Minister of the
6 Navy never failed to give us instructions to that
7 effect. I might mention here an instance which
8 testifies to our sincerity in this regard. American
9 and British ships wanted to navigate for the purpose
10 of transporting food and fuel and of shifting their
11 crews. When we got acquainted with these facts, we
12 did not restrict the transportation by English and
13 American warships, or the shifting of their crews and
14 the embarkation of the personnel of their consulates.
15 We occasionally put our Japanese vessels at their dis-
16 posal for transportation. I remember that we went
17 so far as to notify them of our preparedness to under-
18 take transportation by our own aeroplanes in case an
19 emergency should arise.

20 "Regarding the situation of the Chu River,
21 almost the same can be said. The restriction of free
22 navigation on that river was unavoidable in considera-
23 tion of the requirements of military operation. When
24 the necessity for maintaining this state of affairs
25 lessened, the river was given free passage in April,

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1 1940.

2 "3. The interception of communications
3 along the Chinese seacoasts was undertaken in order
4 to protect the lives and properties of Japanese
5 residents in China against the assaults of the
6 Chinese forces. This measure for our self-defense
7 was thus necessitated in order to frustrate the
8 Chinese fighting power and it was applied exclusively
9 to the Chinese warships and other vessels. Hence,
10 we did our utmost to respect peaceful trade carried
11 out by Third Powers and we made no attempt to inter-
12 fere therewith. To sum up, all our actions in con-
13 nection with the communication interception problem
14 were based upon international usage to be observed in
15 case of a pacific blockade and the inspection and
16 internment accompanying a pacific blockade were also
17 accomplished in accordance with traditional usage.

18 "Be that as it may, some vessels of Third
19 Powers which joined the Chinese Forces in fighting or
20 rendering military assistance to them, were interned,
21 because the navigation of such vessels could not be
22 considered as the carrying out of peaceful trade.

23 "Furthermore, vessels of Third Powers which
24 could not be distinguished clearly from Chinese vessels
25 in point of nationality were interned.

1 "As regards the vessels whose Chinese
2 nationality was changed after the declaration of
3 the blockade, we upheld the principle that such a
4 transfer would not be valid unless it was in accord-
5 ance with the law of the country concerned. Thus,
6 the vessels which navigated under the flags of Third
7 Powers were inspected with a view to examining whether
8 such a valid step was duly taken and any ship considered
9 as devoid of this capacity was taken into custody.
10 The ships 'Segles Lorita' and 'Dorera' belonged to
11 the first category, while the 'Sparta' belonged to
12 the second category.

13 "4. The blockade of harbors was applied to
14 those harbors which became the fighting areas or
15 which were likely to become so; this measure was
16 likewise taken to meet the military requirements. In
17 view of this absolutely necessity the measure was
18 interpreted not to be in conflict with Article II of
19 the Hague Convention concerning the laying of automatic
20 contact mines at the sea bottom. The blockade pre-
21 vented the enemy vessels from entering and leaving
22 the harbors in question. This state of affairs could
23 not but affect to some extent vessels belonging to
24 Third Powers. However, we clearly indicated the loca-
25 tion of dangerous objects in order that any unhappy

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1 contingency might not take place. Prior to the
2 application of the blockade, a certain period of
3 grace was given, so that vessels of Third Powers
4 anchored in the harbors concerned might safely set
5 out to sea.

6 "We did not apply a wartime blockade,
7 consequently, we did not intend to capture those ships
8 which ventured to enter and leave the harbors in
9 defiance of the terms of our declaration. But, it was
10 natural that Japan should have not assumed any responsi-
11 bility for such loss as may have resulted therefrom.

12 "5. The entrance prohibition at specified
13 harbors proved likewise a measure which was taken to
14 meet the military requirements. However, application
15 of this measure was confined to fighting areas and
16 before its application a certain period of grace was
17 fixed and Powers notified in order that the influence
18 which would be brought to bear upon the vessel of
19 Third Powers might be reduced to the minimum.

20 "For instance, we refrained from keeping
21 under detention even those ships which acted against
22 our measures, with the exception of some graver cases.
23 In principle, we limited ourselves to indicating a
24 modification of existing navigation routes.

25 "6. Although various problems arose in

YAMAMOTO

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1 connection with the above-mentioned matters, for the
2 most part they were solved or reached a state of
3 amicable settlement, so that our operations encountered
4 no serious impediments."

5 You may cross examine.

6 THE PRESIDENT: Mr. Tavenner.

7 MR. TAVENNER: There is no cross-examination.

8 THE PRESIDENT: Witness is excused on the
9 usual terms.

10 MR. ROBERTS: May the witness be excused on
11 the usual terms?

12 (Whereupon, the witness was excused.)
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1 MR. ROBERTS: We offer in evidence de-
2 fense document 1118, which is a statement of the
3 Foreign Office dated August 26, 1937, concerning
4 the establishment of a blockade on the China Sea
5 Coast and its application to the Third Powers.

6 THE PRESIDENT: Brigadier Nolan.

7 BRIGADIER NOLAN: May it please the
8 Tribunal, this is again a statement through the
9 press from the Foreign Office dealing with the
10 closing of the China Sea Coast and the reasons for
11 such action. It is, we submit, open to the same
12 objection as other documents of a like character
13 which have been rejected by the Tribunal.

14 MR. ROBERTS: If your Honor please, this
15 is a statement of the Foreign Office concerning
16 notice given to Third Powers of the establishment
17 of a blockade, which is exactly what the previous
18 witness has testified to. Its purpose is to show,
19 as the witness stated, regard for Third Powers and
20 to corroborate his statement that such a notice was
21 given.

22 THE PRESIDENT: By a majority the Tribunal
23 upholds the objection and rejects the document.

24 MR. ROBERTS: We offer in evidence defense
25 document 401(18), which is an excerpt from 'Peace

1 and War," an official publication of the Depart-
2 ment of State, U. S. Government, setting forth the
3 presidential statement of September 14, 1937, con-
4 cerning the restrictions against U. S. vessels
5 transporting arms to China or Japan.

6 THE PRESIDENT: Admitted on the usual
7 terms.

8 CLERK OF THE COURT: Defense document
9 401(18) will receive exhibit No. 2540.

10 (Whereupon, the document above
11 referred to was marked defense exhibit
12 No. 2540 and received in evidence.)

13 MR. ROBERTS: I read exhibit 2540.

14 "On September 14, 1937 the President
15 issued a statement to the effect that the question
16 of applying the Neutrality Act remained in statu
17 quo; that merchant vessels owned by the Government
18 of the United States would not be permitted to
19 transport to China or Japan any arms, ammunition,
20 or implements of war; and that any other merchant
21 vessel flying the American flag which attempted to
22 transport such articles to China or Japan would do
23 so at its own risk."

24 We offer in evidence defense document
25 1126, which is a document emanating from the

1 Foreign Office and being a statement dated October
2 4, 1937, setting forth certain incidents wherein
3 Chinese junks fired upon Japanese patrol vessels.

4 BRIGADIER NOLAN: May it please the
5 Tribunal, this document, 1126, purports to prove
6 instances of armed resistance by Chinese junks.
7 It is contained in another statement from a foreign
8 office spokesman and should, we submit, be rejected
9 on the same grounds as other statements of a like
10 kind and character.

11 MR. ROBERTS: There is contained in this
12 official statement a statement of five incidents
13 which would refute the charge of the prosecution
14 that the Japanese forces were attacking peaceful
15 merchant vessels on the Yangtze River. It is in-
16 tended to read only the account of such incidents
17 beginning at the bottom of the page with the words,
18 "September 4."
19

20 THE PRESIDENT: By a majority the
21 Tribunal upholds the objection and rejects the
22 document.

23 MR. ROBERTS: We call the witness,
24 ENOMOTO, Juji.
25

1 J U J I E N O M O T O, called as a witness on
2 behalf of the defense, being first duly
3 sworn, testified through Japanese inter-
4 preters as follows:

5 DIRECT EXAMINATION

6 BY MR. ROBERTS:

7 Q Please state your name and address.

8 A My name is ENOMOTO, Juji. My address
9 is No. 5 Shoto Machi, Shibuya-ku, Tokyo.

10 MR. ROBERTS: May the witness be shown
11 defense document No. 1330.

12 Q Please examine this document and tell
13 us whether or not it is your sworn affidavit.

14 A This is my affidavit.

15 MR. ROBERTS: I offer it in evidence.

16 THE PRESIDENT: Mr. Tavenner.

17 MR. TAVENNER: If your Honor please, the
18 prosecution desires to object to the reference on
19 page 2, at the top, to the pamphlet, "Criteria in
20 Air Fighting," being in the first line at the top
21 of page 2, as it is a document not presented or
22 otherwise its absence accounted for.

23 For the same reason the objection is
24 extended to the two succeeding paragraphs, which
25 are based upon that pamphlet.

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1 An objection based upon the same reason
2 is made to the paragraph in the middle of the page
3 beginning, "Subsequently on September 24," in that
4 it relates to a pamphlet entitled, "Miscellaneous
5 Observations on Aerial Bombing."

6 Now the two succeeding documents that
7 appear on the order list after this affidavit may
8 be the documents referred to here, but the docu-
9 ment 1219, if intended to be the order referred to
10 here, shows by its contents and by its certificate
11 that it was not an order in the true sense. The
12 same is true of document 1218, which may be in-
13 tended to be the second document referred to.
14 This document shows on its face that it was not --
15 that it was sent out by way of information, and
16 the character of being an order seems very doubtful.

17 The prosecution also desires to object
18 to the last paragraph beginning with the words,
19 "In addition, it was recognized by some powers,"
20 and so forth. Whether that paragraph states a
21 matter of law or a matter of fact we contend it
22 is equally objectionable. If it be a matter of
23 law it is not necessary to argue, I would take it.

24 THE PRESIDENT: Members of the Tribunal
25 have noted that feature, Mr. Tavenner.

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We will hear you in the morning, if
necessary, Mr. Roberts.

We will adjourn until half-past nine
tomorrow morning.

(Whereupon, at 1600, an adjourn-
ment was taken until Tuesday, 6 May 1947,
at 0930.)

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