

JAPANESE WAR TRIALS

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THE subject upon which I propose to address you to-night is the trial of the Japanese major war criminals. I think I am right in saying that this trial and the Nuremberg trial were the first trials of the leaders of a defeated nation since the trial of Joan of Arc, but, of course, these trials differ in this respect—that in the case of Joan of Arc she was tried by the French people, whereas here we have the leaders of a defeated nation being tried by the victors.

On 19th January, 1946, General MacArthur, as Commander of the Allied Powers, by charter created the International Military Tribunal for the Far East. The Allies had given notice that such a tribunal was to be appointed by them under the Potsdam Declaration and the Instrument of Surrender which was sent by the Japanese in September 1945. This Tribunal was set up for the trial of what we know as major war criminals. A major war criminal is one who has committed a crime against peace, and the Charter defined crimes against peace as including the preparing, planning, initiating and waging of wars of aggression or wars in violation of international law, treaties, assurances and agreements.

The Tribunal was given jurisdiction to try major war criminals not merely for crimes against peace, but also for crimes against humanity and conventional war crimes, meaning violations of the laws and customs of war, and crimes against humanity including such things as murder, deportation, enslavement of peoples of nations whether during the course of a war or before the existence of a war, and whether this was permitted by the laws of the particular country or not.

The Tribunal consisted of eleven members, one nominated by each of the Signatory Powers of the Instrument of Surrender, also one nominated by the Philippines and one nominated by India. The President of the Tribunal was Sir William Webb, then Chief Justice of the Supreme Court of Queensland and

now of the High Court of Australia. Unlike Nuremberg, where the responsibility of the trial of the accused was divided between the four participating Allied nations, at Tokyo the prosecution or the final responsibility of the prosecution was in the hands of an American Chief Prosecutor, and each of the other participating nations supplied an Associate Prosecutor.

From shortly after the commencement of the occupation a team of lawyers and Allied Intelligence Officers had been investigating suspects. They had rounded up and lodged in Sugamo Prison somewhere over one hundred of these suspects. There should have been a few more, but unfortunately the American authorities, with typical American courtesy, had notified the suspects of the date of their apprehension some days beforehand, and as a result Prince Konoye, a former Premier, and General Sugiyamu, Chief of the General Staff at the time of the outbreak of war, and several others committed suicide. Tojo himself waited until the military police were at the door and then attempted to shoot himself in the heart, but missed, and he was finally indicted.

The selection of the accused to be tried was limited. The field was limited to 28 for the first trial because it was thought to try more at that trial would make the trial too unwieldy, and it was also confidently but mistakenly anticipated that there would be further trials and that this first trial would only last six months. In actual fact it lasted for about two years. The accused consisted of cabinet ministers, diplomats, civil servants and army and navy leaders, most of whom had held cabinet rank. The indictment was drafted by a King's Counsel, Mr. Comyns Carr, the United Kingdom associate prosecutor. It consisted of 55 counts, of which the first 36 related to crimes against peace, the next 16 to crimes against humanity, and the remaining three counts to conventional war crimes.

The substance of the first group was embraced in the first count. It was an overall count and charged the accused with having as leaders, organizers, instigators and accomplices conspired to have Japan, either alone or in combination with other nations, wage declared and undeclared wars of aggression and wars in violation of treaties, international law, assurances and agreements for the purpose of obtaining military, naval, political and economic domination of the East of Asia, the Pacific and Indian Oceans, and of the countries adjacent thereto and the islands therein.

The second group of counts, which relate to crimes against humanity, contain charges of murder, the basis of these charges being that the killing of men in the course of an undeclared war or in a war of aggression or a war against treaties is itself murder.

The remaining three counts charged the accused with having committed, authorized and failed to prevent the ill-treatment and wrongful treatment of prisoners of war. These were the conventional war crimes.

Now it is necessary to have some idea of what the position of Japan was, mainly in China at the time of the commencement of the conspiracy in 1928, and also some idea of the obligations by which Japan was bound at that time. Apart from her sovereignty over Korea, which she had annexed in 1910, Japan had taken over in 1905 the lease of the Kwantung Peninsula and of the South Manchurian Railway. This lease and these railways originally belonged to Russia, and it was part of the peace terms after the war with Russia that Japan got these leases. China consented to these leases being transferred. About 1915, when the other countries were more concerned with the fighting in Europe, Japan by duress compelled China to extend these leases for 99 years, and this in 1928 was causing a considerable amount of dissatisfaction among the Chinese and there was friction with the Japanese on that account.

Japan had obligations to China under a number of treaties, and these were really codified in the Nine Power Pact, in which her obligations and the obligations of the other signatories were set out to respect the sovereignty, independence and territorial administration of China. They also were bound by this treaty to maintain the principle of equal opportunity throughout China so far as commercial and trading opportunities were concerned.

With regard to the Pacific, Japan was bound by treaty to maintain the status quo with regard to the insular possessions of the other Signatory Powers, that is, Holland, the United States of America, France, Great Britain and Portugal. In addition, Japan was bound by a number of treaties, including the Pact of Paris, to renounce war as an instrument of aggression.

In 1928, the Japanese Prime Minister, Tanaka, was pursuing a policy of peaceful expansion in Manchuria, and for this purpose was using the Manchurian War Lord, Chan Tso-Lin, who was at that time in revolt against the central administration.

This policy of collaboration and peaceful penetration did not suit a clique of the officers in the Kwantung Army. The Kwantung Army was the name given to the Japanese Army which was on the Kwantung Peninsula. They decided by the use of force to occupy the whole of Manchuria, and they decided to bring that about. They thought they could bring it about by the murder of Chang Tso-Lin, so they wrecked the train in which he was travelling by blowing it up, and Chang Tso-Lin was killed. They thought then that Tanaka, being deprived of the services of his lieutenant in that respect, would have to cease the policy of peaceful penetration and would adopt the other policy, but Tanaka did not do this. He went to the Emperor and endeavoured to have the perpetrators of this outrage punished. But the Minister of War went to the Emperor and appealed for clemency. That was an unheard of thing in those days.

This was the first occasion on which the Minister of War had gone to the Emperor direct, and the Tanaka Cabinet decided to resign. It gave place to a cabinet formed by Hamaguchi. Hamaguchi in turn adopted a policy of friendship, that is, he limited his objectives there to the protection of Japanese rights in Manchuria, and it was during his term as Prime Minister that the London Naval Treaty of 1930 was signed. This treaty had to do with his limitation of naval armaments. I think it provided for a ratio of 12 : 12 : 8 between Great Britain, America and Japan. This aroused great indignation among the nationalist section in Tokyo, and Hamaguchi was shot on the Tokyo station. He was badly wounded and died a short time later. His assailant was sentenced to a short term of imprisonment and became a national hero. The Wakatsuki Cabinet succeeded the Hamaguchi Cabinet, and it was decided to follow out the friendship policy.

It was at this time that we met the first of our accused, and they were among those connected with the conspiracy. Colonel Hashimoto of the War Ministry and an ex-service man, a civilian propagandist named Okawa, who was more noted as a propagandist, conspired to arrange an attack on each of the political parties at their headquarters and on the Diet, to compel the Cabinet to resign, and to enforce the appointment of one of his nominees as Prime Minister. General Koiso of the War Ministry supplied the party with 3,000 bombs, and everything was in readiness for this uprising to take place in 1931, when the man

they intended to nominate got word of the project, and he immediately reported it to the authorities, who instructed Koiso to abandon the plan.

This plot was typical of quite a number of others which were to follow in the next five years, and in order to understand how such a plot could have any prospect of success one must have some idea of the manner in which a Japanese Prime Minister was appointed at that time. The practice was for him to be nominated to the Emperor by the Elder Statesmen, and Prince Saionji was the last of the Elder Statesmen. So if Hashimoto could murder the leading men of each of the opposing political parties and terrorize Koiso, there was a good chance of getting their man nominated. This plot was known as the March Incident.

The conspirators in Tokyo having failed to get rid of the Government, the next move was taken by the Kwantung Army. On 18th September, 1931, the Kwantung Army, on the pretext that the Chinese had blown up a part of their railway line, attacked the Chinese at Mukden and commenced fighting which lasted for two years and did not finish until they had taken the whole of Manchuria and an extra province. This was the famous Mukden Incident.

For some time prior to the Mukden Incident there had been rumours and gossip in Tokyo that the Kwantung Army was intending to do something of this nature, and a few days before the incident occurred those rumours were confirmed by the Consul at Mukden, who informed the Government that this incident was about to occur. The Government instructed Minami, the War Minister, to tell the general staff to have the Kwantung Army abandon the whole project. Minami was also one of the conspirators, and he arranged for General Tatekawa, another man who was sympathetic towards them, to go across to Manchuria and to order the abandonment of this particular outbreak. Tatekawa arrived early on the night of the 18th, before the incident had broken out. He was met by Colonel Itagaki, and they both steered clear of the nature of his mission, had a friendly chat, and decided they would discuss on the following day the mission he had been sent over on, without Itagaki ever allowing himself to be informed of what it was. Itagaki, I may say, was the prime mover in regard to this incident in Manchuria.

Of course, the incident broke out on the following day and it was too late for Tatekawa to deliver his message. Cabinet

was opposed to the extension of the incident and gave instructions to Minami from day to day that the troops were to advance no further. Each day Minami assured them that the troops would go no further. Each night he would present them with reports of fresh advances. This continued and the Government continued to endeavour to check the advances of the army. Finally they threatened to have the Emperor order the army to halt.

The Kwantung Army's reply to that was if the Emperor interfered they would immediately establish a new and independent Japan in Manchuria. The conspirators in Tokyo who had failed in the March incident again endeavoured to get rid of this obstructionist Government by what they called the October Incident. Their programme on this occasion was to use divisions stationed in Tokyo to assassinate Cabinet members and to take over the newspapers and banks, to destroy police power, and proclaim martial law. The Emperor was to be taken off in a cruiser and at dagger point compelled to nominate their new appointee, who was at that time General Araki.

Well, the police got word of the coup and the military police arrested the conspirators a few days before the conspiracy could bear fruit, and after their being detained for twenty days they were released without any further punishment.

By this time the League of Nations had intervened in Manchuria. Wakatsuki, finding himself unable to control the Army, had resigned in December of 1931, so the new Government was appointed with Inukai as Prime Minister and Araki as War Minister. The new Government favoured the Kwantung Army policy but was a little bit alarmed on account of the fact that it was in violation of the Nine Power Treaty, so in order to get over that difficulty they adopted the plan which had already been put into force by the Kwantung Army.

Doihara, the Chief of the Japanese Intelligence in Manchuria, had approached various men in the four provinces which the Japanese were then in the course of taking over and by threats and cajolery and bribes had persuaded one from each of these provinces to take control of a nominal government. He then moved out of Tientsin, where he saw Henry Puyi and persuaded him to return to Manchuria. Puyi was the last of the Japanese Emperors and the last of the Manchu line of Emperors, and had been living in retirement since about 1912.

At all events, Puyi returned to Manchuria and took over the Regency of the country. Japan's argument then was that the Chinese had attacked them, that they had had to fight in self-defence, and that in the course of this fighting Manchuria had declared for her own independence and had set up a government of its own and therefore Japan had not interfered with Chinese sovereignty and had not broken the Nine Power Act.

The conspirators both in Tokyo and in the Kwantung Army were anxious that Manchuria should be recognized as an independent state. The Prime Minister, Inukai, did not think the time was ripe at that moment to do this, so the conspirators determined to get rid of him and he was murdered on 15th May, 1932. Puyi himself found that he was ruler of a puppet state. Although he was in name ruler, the Japanese had taken control of the whole of Manchuria through the Manchurian General Affairs Board, which is Japanese-controlled, and this General Affairs Board could only act on the advice and approval of the Kwantung Army.

On 15th September, 1932, Japan recognized Manchuria as a separate state and the Manchukan-Japanese agreement or protocols were entered into whereby Manchuria entrusted the whole of her defence to Japan and gave Japan the right to station troops throughout Manchuria. Economic agreements were entered into whereby basic industries were to be restricted by the demands of Japanese national defence and such enterprises were operated by Japanese companies.

Chinese were shorn of many of their rights. Savings laws were passed compelling them to invest a stipulated sum each year in the banks, but they were prohibited from borrowing any money from the banks. In addition, six million Japanese colonists were introduced into the country and the Chinese advised to make way for them.

The Kwantung Army created monopolies in opium, iron, steel, cotton, and endeavoured to increase the consumption of opium. By that means opium addiction was encouraged and they did increase the sale of narcotics from 300,000 yuan per year to 30,000,000.

The whole of the immense war potential of Manchuria had fallen into Japanese hands and the Japanese had prepared for themselves a springboard for attack on Russia or further aggression in China.

Now the truce of Tangku, by which the fighting in Manchuria had been terminated, provided for the demilitarization of Chinese provinces surrounding Manchuria and the next move by the Japanese some two or three years later—two years later, 1935—was with regard to these provinces.

Two of the accused, one of them former War Minister Minami, who was now Commander-in-Chief of the Kwantung Army, and General Umezu, Commander-in-Chief of the North China Army, planned to create autonomous areas in these regions and in Mongolia with a view to having the creation of self-governing states such as the Japanese had created in Manchuria, and to have the puppet states tied up themselves to Japan in the same manner as Manchuria had done.

Well, owing to the conciliatory attitude adopted by the Chinese, it was impossible for the Japanese to get any pretexts to invade these places so then they sought to stir up a movement for the autonomy of these particular provinces. While these things were going on, the Japanese Government itself had a secret plan to establish friendship and co-operation between themselves and China. Now had this plan been adopted, it would have destroyed the whole of the Kwantung Army conspiracy.

Hirota, who was Foreign Minister of the Cabinet at the time and who was one of the conspirators, decided to make this plan public and did so in an address to the Diet early in 1936. This, of course, was for the purpose of embarrassing his own Prime Minister. As a result of this plan being published, on the 26th February 22 officers and 1,400 men of a division stationed at Tokyo seized the Prime Minister's official residence, the police headquarters, the Diet, the Home and War Offices, and the General Staff Headquarters. They assassinated the Finance Minister and the Lord Keeper of the Privy Seal and attempted to assassinate the Premier, Okada, but they mistook Okada's secretary for Okada and the result was that Okada was enabled to escape in the guise of a mourner at his own funeral.

As a result of this Cabinet resigned and Hirota was appointed as the next Prime Minister. At the time of the formation of Cabinet, the Army made certain demands to which Hirota acceded and this resulted in the Army having control of the Cabinet from that time onwards.

In Japan, Cabinet must be unanimous in policy. If there is a minority in Cabinet, the minority must resign, or if they fail to resign, then the whole of Cabinet must resign. Now although

the Prime Minister chooses his own Cabinet, as regards the choice of the War Minister he is restricted. He is restricted to the choice of a serving officer of the rank of Lieutenant-General or higher and in practice this officer is nominated by a conference of three consisting of the Inspector-General of Military Education, the Chief of General Staff and the retiring War Minister. The effect of that was that the Army could prevent a War Minister from being elected or if the Army were opposed to a particular Cabinet, and they decided to get rid of it, they would instruct the War Minister to withdraw from the Cabinet and would refuse to make another War Minister available.

At this time they went further and provided that for all future occasions a War Minister must be a man on the active list. There was a danger, as far as they were concerned, that the Prime Minister could strike them by appointing a man from the retired list who would not be under Army control. However, all the Army demands that were met at that time really converted the policy of the Japanese Government for the first time to the same objects as the objects of the conspiracy.

A five-Minister conference was held, that is a conference of the five main Ministers of Japan, and they committed the country to the national policy that by diplomatic means and means of national defence Japan would secure its position in Manchuria and China and develop Japan towards the south seas and prepare for war against Russia, Britain and America.

When the Japanese refer to national defence, that is really a euphonism. With regard to Manchuria, they referred to the fighting there, which lasted for two years, as "the Manchurian incident". Later fighting which lasted for seven or eight years in China was not called a "war" but simply "the China affair" and in the same way the Japanese instead of referring to this as being "by means of war" referred to it as being "by means of national defence".

Plans were adopted to effect this policy and the whole of the Japanese economy and the people were geared for war. The immediate policy in North China was based on the plan that had previously been made by General Minami and General Umezu.

The Government itself fell shortly afterwards as a result of some internal dissension and Prince Konoye formed his first Cabinet.

Now in China the usual pretext of engineering some incident was followed. The usual thing of course was to claim that the

Chinese had shot some Japanese soldier or that a Japanese soldier could not be found, and as a result of that the Japanese would demand that the Chinese withdraw their forces, and the usual practice was for the Chinese to do this and having withdrawn their forces, the Japanese would take over, but on this occasion China, contrary to normal practice, did not give way.

The result was that fighting broke out in Peking and Shanghai. A too-enthusiastic Cabinet poured about 350,000 troops in the country so that by the end of September, 1937, Japan had reached the five provinces fronting the Yellow Sea and also the Chinese capital, Nanking. Nanking had been taken by an army under Matsui. After the surrender of Nanking, over 260,000 Chinese had been massacred by an army commanded by him in the space of about fifteen days.

The speed with which the area of fighting was extending and the momentum of the whole movement which was taking Japan deeper and deeper into the heart of China was presenting a serious problem to the Japanese Army. The action was going ahead too fast and it had got right out of control. They had wanted to stop after taking Peiping so as to consolidate their gains in North China and Manchuria but owing to the action of the Cabinet they had been unable to do so.

They were fearful that Russia might consider the time opportune to attack Manchuria and they also felt there was a grave danger of some incident breaking out in Shanghai, where there were American and British concessions. Actually they had already sunk the American gunboat *Panay*, and Hashimoti had commanded the battery which had shelled the British gunboat *Ladybird*.

So in those circumstances they were very anxious to come to some peace terms in China and they tried to persuade the Government to agree to this, but the Government, finding their policy so successful and seeing they were winning all along the line, first of all made the terms too vague, then had made them too harsh, and finally had refused to deal with the Chiang Kai-shek Government at all. A couple of years later, the fighting still continuing, they set up a government in occupied China under Wang Ching-Wei, who had formerly been a member of the Chinese Government. They set him up as a puppet and they negotiated a treaty with him, but, of course, without much effect because Chiang Kai-shek still kept fighting and other nations still recognized Chiang Kai-shek's Government. The

result was Japan was unable to get out of China, unable to disengage her forces until September, 1945, when she surrendered.

Now the whole of this amounts to a violation of the Nine Power Pact. On the credit side, Japan had been able to take over the immense war potential of China which was to help her in the future war against Britain and America. It was in 1937 that the first clear indication of this coming war was given, because in June of 1937 Japan started on the Industries Plans, the first of which was the five-year plan for the production of war materials and the other was a five-year plan for major industries.

The object of these plans was to harness the resources of Japan so that at the end of 1941 Japan would be producing war material at full war-time capacity. Similar plans were introduced in Manchuria and succeeding Japanese governments gave effect to these plans and passed the necessary ancillary legislation.

Early in 1937 the Privy Council also approved of the fortification of the Mandated Islands and the appointment of naval officers as administrators of these islands. Actually, of course, under the mandate under which Japan had these islands she undertook not to fortify them.

Another aspect of Japanese preparation for war was the entering into alliances with the Axis Powers to provide herself with allies who would aid her in the event of her requiring military or diplomatic aid in the course of her programme of expansion.

Since the decision of the Five Ministers' Conference in 1936, when the conspirators had accomplished their aim of making their conspiracy the national policy of Japan, there was no longer any important internal opposition to this policy. The only restraint which they had to watch was that which may be exercised by foreign powers. The most immediate danger was Russia. Japan was frightened to become too deeply involved in China until she had eliminated the threat which Russia offered to Manchuria. Therefore it was considered necessary to enter into an alliance with a third power so as to restrain Russia. Germany was the chosen partner.

Negotiations were begun with Ribbentrop by General Oshima, the Japanese military attache in Berlin, and resulted in the signing of the Japanese-German Anti-Comintern Pact. This pact on the surface was merely an agreement between the two parties to inform each other of Communist activities in their own areas,

but by means of a secret agreement, for which the pact was really a blind, the pact itself was converted into a military alliance. The Japanese, of course, contemplated using this pact for other purposes. It was to be used as a weapon to assist them in China.

It was to be used to prevent any German interference in China and eventually they did by virtue of it persuade Germany in 1938 to withdraw her technical instructors and experts from China and to cease supplying China with war materials. Of course, the Japanese justified this on the basis that she was really fighting Communism.

Now Germany's new policy towards German-Japanese relations included close economic and trade collaboration with Japan. Japan sought the investment of German capital and she sought also to give assistance in North China, and Ambassador Tojo offered to Ribbentrop a *pro memoria* undertaking to give preferential treatment to Japan in those areas. Well, Ribbentrop did not trust Japan. He pointed out that in the past Japan had ruthlessly suppressed all foreign powers in North China, including Germany. Japan on the other hand was unwilling to enter into any treaties because she knew that if the treaty became known an economic break would occur with America and Britain and they would cease to trade with her and supply her with those things she needed for the coming war. So eventually Germany had to accept *de facto* preference.

Japan, having become very deeply involved in China and the military leaders having found weaknesses in their defence system against the Russians in Manchuria, decided in 1938 to strengthen the Anti-Comintern Pact, and Oshima in Germany suggested to Ribbentrop that they should do this.

Russia countered with the proposal of a mutual aid pact between Germany and Japan against all countries. This proposal was submitted to Japan and a Five-Ministers' Conference decided that while they were willing to enter into this pact as against Russia they would not do it against America or Britain, but they were quite willing to have a secret agreement attached to the pact naming Britain and America. Of course these conditions did not suit Germany. Germany wanted this pact in order that she could go ahead with the Polish adventure and to prevent other countries from interfering because they would know that Japan and Germany were together and were both bound to fight if one were attacked, but Oshima, who became

one of the accused later, was very strongly in favour of it, so he did not tell the Germans of this condition that had been attached but he himself told them that Japan had agreed.

So the pact then moved from the military level to the diplomatic level, and by that time Oshima himself had been appointed Minister to Germany. He still endeavoured to get the Japanese Government to agree to the pact but they were adamant and would not agree and the result was that in April, 1939, Ribbentrop told Oshima that unless the negotiations were speeded up Germany would enter into a non-aggression pact with Russia, and in August of 1939 she did enter into this non-aggression pact.

Well, the result of this non-aggression pact being signed with Russia was that the Cabinet in Japan fell because they had not been able to get this pact with Germany, or had failed. Some of the conspirators were still working on this mutual aid programme but up to 1940 they had not achieved any success.

At that time there were indications that the then Prime Minister, Admiral Yonai, was going to seek an understanding with Britain and America. To avoid this, Oshima and Shiratori, two of the conspirators, arranged with the German Minister to Japan that he should announce that Germany had no interest in the Netherlands East Indies. Of course, the Japanese people took this as meaning that Germany would give them *carte blanche* to do what they liked in the Netherlands. At this time Holland had already been overrun and was unable to offer any resistance there.

Shortly after that France had asked for an armistice, and on 17th June, 1940, Koiso, the Overseas Minister to the Yonai Cabinet, had pointed out to Germany Japan's special interest in Indo-China and requested that Japan should be given a free hand there. Indo-China was very important then to Japan because, firstly, it enabled them to cut off supplies going to Chiang Kai-shek and, secondly, it gave them a jumping off place for any attack on the Indies or Malaya.

The German reply, which was also made as a result of collaboration between the German Minister and the conspirators, was that Germany would have no objection to Japan going to Indo-China, provided that she undertook, in the event of America entering the war, to keep America pinned down in the Pacific by way of attacking the Philippines. The Army and the Navy immediately conferred on this proposal. They both agreed

with it, but they knew there was no chance of getting it through while the Yonai Cabinet was in power, so they instructed Hata, their War Minister, to withdraw from the Cabinet. He withdrew, and as he had withdrawn, the Army refused to make any Minister available. They refused, and the second Konoye Cabinet was formed on 22nd July, 1940.

Immediately it was formed it established the policy of a new order of Greater East Asia, having Japan, China and Manchuria as its core. It was decided to commence negotiations with Germany and Italy for a military pact which would lay down the spheres within which each country was to establish its new order and the obligations each was to assume. Japan's sphere was to include the Mandated Islands, French Indo-China, the Pacific Islands, Thailand, British Malaya, British Borneo, the Netherlands East Indies, Burma, Australia, New Zealand and India. Provision was also to be made for Japan to co-operate in the German-Italian war by eliminating British interests in East Asia by means of anti-British demonstrations and by means of supporting independent movements in those countries in the British colonies.

It was also agreed that if America entered the war Japan would join in the attack on Britain and America as soon as she could, having regard to the position of the Chinese incident. These negotiations resulted, in September, 1940, in the forming of the Tripartite Pact.

Japan had decided in 1936, when adopting her national policy, firstly, that she would endeavour to achieve it by diplomatic means. In pursuance of that policy, she had Germany exert pressure on France to agree to the stationing of Japanese troops in Indo-China and making aerodromes available for them.

She also set out to do the same thing in regard to the Netherlands East Indies. A military and economic delegation went to the Netherlands East Indies and at Batavia saw the Dutch Governor-General. They made demands there for preferential treatment for the Japanese, for the open door policy to be adopted towards the Japanese, and also for them to be allowed to develop certain natural resources and industries.

The Dutch Governor-General apparently was of stronger stuff than the French Minister, and he refused to be intimidated by the blackmailing tactics adopted by the Japanese and finally after nine months, in June, 1941, he told them that the Netherlands would not accede to the Japanese demands.

In regard to Great Britain and America, Japan decided it was now time to eliminate them as obstacles to the achievement

of their Greater East Asia Prosperity Sphere. To do that, she decided first of all to negotiate with them on certain outstanding problems, knowing that if they accepted her demands she would be left in mastery of the whole of the East Asiatic Pacific, and if not, in the meantime Japan would be preparing for war.

Japan started with Churchill and got very short shift there. He told them that Britain did not approve of what they were doing in China, French Indio-China and Thailand, and that as soon as Britain had a free hand she would do something about the matter. In America negotiations continued for much longer. I think it was realized that Britain had her hands full with the European war and that the main negotiations remained with America. That continued until July, 1941, when America decided that Japan was not sincere, partly owing to the fact that Japan at that time had entered into a forced military union with French Indo-China and as an outcome of the original agreement now had the run of the whole country, and also because the Americans had deciphered the Japanese code and were getting Japanese diplomatic messages, and they had at that time intercepted a message from Japan providing for the attack on Singapore. So America realized that while Japan was negotiating, she was at the same time preparing for war.

In the meantime Matsuoka, who was then Foreign Minister, had visited Germany in March, 1941. Germany was trying to persuade him to get Japan to attack Singapore, and they were remonstrating with him on account of the negotiations with America. Matsuoka explained that the American negotiations were merely a blind for their preparations and agreed to endeavour to get the Emperor of Japan to join in the war against England. He then went on to Russia where, in April, 1941, he signed a neutrality pact with Russia. He was no sooner home than he received word that Ribbentrop had said that Germany intended to attack Russia.

Matsuoka then, together with Oshima and Shiratori, endeavoured to persuade the Japanese Government to agree to attack Russia too. Kido, Konoye and Hiranuma opposed it, and, getting to the Emperor through Kido, who was Lord Keeper of the Privy Seal, persuaded him to order Matsuoka not to do anything without Konoye's consent. Disappointed with this, Matsuoka then determined to immediately project Japan into a war with America and, contrary to Konoye's instructions, wired the Japanese ambassador in America to break off negotiations with America. This riled Konoye, and he endeavoured to cause

the Cabinet crisis, as a result of which the Government resigned and was replaced by a third Konoye Government, from which Matsuoka was excluded.

The troubles of the Japanese conspirators were not over even then, because on the 31st July, 1941, Nagano, the Chief of the Naval General Staff, saw the Emperor and told him that the supply of oil in Japan was not sufficient for their purpose, the supply being so low that if Japan commenced a war the navy would have to take the initiative and the result would be that Japan would have a very slim chance of winning a war. Konoye and Kido agreed with Nagano, or at least, having accepted his word about the oil position, they were very much opposed to the war going on. Kido suggested a ten years postponement and that in the meantime they should establish friendly relations with America, and in ten years' time the country would be better prepared for the war.

Konoye, on the other hand, wanted to open negotiations with America again and suggested to Tojo, who was then War Minister, that he should arrange a meeting with President Roosevelt. President Roosevelt agreed to attend this meeting, provided that preliminary negotiations suggested it would be successful. So the preliminary negotiations were in the meantime being conducted, but one of the main points from which America would not budge was that Japan had to withdraw her troops from Indo-China and China. Tojo would not accede to this condition, and as a result the Konoye Cabinet resigned. After the collapse of the Konoye Cabinet, a new Cabinet was formed, and Tojo was appointed Prime Minister of this new Cabinet somewhere about October of 1941.

Negotiations with America were opened by Tojo, but merely for the purpose of enabling them to effect a surprise attack. The final war games had been held at the Tokyo Naval College. Details of the plan for the sneak attack on Pearl Harbour had already been worked out, and the schedule of operations for attacking Pearl Harbour, Malaya, Burma, the Netherlands East Indies, the Philippines and the Solomons were also laid down.

On the 7th November all of the Japanese plans were timed for the war to start on the 8th December. They knew on the 7th November the exact date on which they proposed to attack. On the 1st December an Imperial Conference was held, and the decision for war was taken by this Imperial Conference. A few days earlier, on the 25th November, the task fleet had moved

out from Japan to a rendezvous point where it refuelled until the 3rd December, and then turned south and made its way to launch the surprise attack.

A note breaking off negotiations between Japan and America was drafted, and the Japanese ambassador in America was told to expect this note and that he was not to deliver it until 3 a.m. on the 8th December—that is, 3 a.m. Tokyo time, which meant that it would be delivered about half an hour before the attack on Pearl Harbour. The Emperor at the Imperial Conference had been very insistent about this, that this note should be delivered before the attack, so apparently he was very distrustful of Tojo, and told him several times not to forget about it. Probably he was thinking that he himself had attacked Russia in the Russo-Japanese War without a note.

So the Japanese Government sent out this telegram to the American Government. It was supposed to have a very high priority, but then they sent out the last part with a very low priority, even allowing a number of greeting messages to go before it. As a result it arrived very late in America. It took some time to de-code, and as a result it was not actually delivered until after the Pearl Harbour attack. A final appeal had been made by Roosevelt to the Japanese Emperor. Notification of the coming of this appeal had been published and also given over the wireless. It appealed to the Emperor to avert war, but it was held up by the Japanese authorities for twelve hours, so it did not reach the Emperor until the war had actually started. Shanghai, Kota Baru, Guam, Hong Kong and Pearl Harbour were all attacked before the declaration of war.

That covers the main parts of the conspiracy. I have not made any separate mention of the Russian case, because it consisted mainly of allegations that Japan had prepared plans for war against Russia and also complaints that on two occasions the Japanese had violated the Russian-Manchurian border, but in the course of the trial it was impossible to tell where the Manchurian border was. The Russians said one thing and the Japanese said another, and suddenly the Chinese prosecutor woke up to the fact that China was heir to Manchuria and that it was to his interest to put the Manchurian border as far as possible into Russia, so it was a bit too mixed for me to follow.

As well as covering crimes against peace, that also covers crimes against humanity in so far as they were related to undeclared wars or wars against violations of treaties or violations

of international law. The only other crimes to be considered are those against the ill-treatment or wrong treatment of prisoners of war. Evidence in these charges was mass evidence. It was almost completely uncontradicted. It applied to other territory besides Japan, but it applied a lot to Japan itself. I notice here to-night that we have one of our star witnesses in this phase of the case—that is, Colonel Coates, who gave evidence regarding the charge of ill-treatment of prisoners of war on the Burma-Thailand railway. He will be able to tell you something about that, but as the ill-treatment of the prisoners of war is so well known I do not propose to deal with it in its general nature.

The other main points which it was sought to establish in this phase of the case were the nature of Japan's duties towards prisoners of war, and that failure to comply with these duties was due to definite Government policy. The prosecution submitted that Japan's duties with regard to the treatment of prisoners of war were laid down in the 1925 Hague Convention and the 1929 Geneva Convention. The defence said that although Japan had signed the 1929 Convention, it had not ratified it and was not bound by it, and that is technically correct, but the prosecutor said that Japan was bound by it.

The prosecutor said that Japan had ratified the Hague Convention, and the Geneva Convention only made explicit what was implicit in the Hague Convention and what was existing international law. It was also claimed on behalf of the prosecution that at the outbreak of war America and Britain had agreed to abide by the Geneva Convention and had asked Japan what were her intentions in that regard. Japan had replied assuring the Allies that she would abide by the Convention as far as possible, and from time to time throughout the war had assured the protecting power that she was abiding by it, and the prosecution submitted that Japan was therefore estopped from denying that she was bound by it as she had taken benefits under it from the Allies as a result of her undertaking to observe it.

When the question was raised in Japan of abiding by the Convention, Tojo in support of it had pointed out there were hundreds of thousands of Japanese civilians in Allied territories and it was for their need they should agree to abide by it.

Also, we had got possession of a Japanese censorship instruction issued by the War Office in 1943 in which Japanese units were instructed to censor reports of cruel treatment such as

prisoners being punished or made to work without clothing because, as the report said, they might bring harm to their own interned brothers, so it is quite obvious Japan was quite willing to take the benefits of the Convention by agreeing to apply it.

In support of the views of massacre and ill-treatment of prisoners as a matter of Government policy, the following points have been made:

First, that the attention of the Japanese Government had been drawn to the ill-treatment of P.O.W.s time and again throughout the war by protests lodged by the protecting power and also by radio broadcasts from Cabinet Ministers. We had found recordings of these broadcasts in Japan and evidence that they had been circulated amongst the various Government departments, and the Japanese Government had done nothing with regard to these protests.

There was also evidence that War Office instructions frequently directed the employment of P.O.W.s on prohibited work and laid down a policy that those who were too sick and did not work should not be fed or were to have their rations cut down at all events.

Then again reports coming from P.O.W. camps to the War Office showed a very high rate of mortality and illness amongst the P.O.W.s and nothing was done about that.

The Government had introduced legislation authorizing the infliction of severer punishment upon P.O.W.s than that permitted under the Convention.

The Naval General Staff had given instructions to Japanese submarine commanders that when they sank merchant ships they were also to destroy crews because, so they said, "America can build more ships every day but once they find we are killing the crews they won't get the men to sail them." And finally, immediately prior to the surrender the Japanese War Office had issued instructions that Japanese who had ill-treated P.O.W.s were to be allowed to absent themselves from the internment and P.O.W. camps so that they would be able to get away and leave no trace which could be discovered by the Allied authorities.

Now, as regards law generally on the matter, it followed really the precedent laid down in the Nuremberg trial and there would be no point in my adverting to that. So that is all I propose to say generally.