PETITION TO THE
SUPREME COMMANDER
FOR THE
ALLIED POWERS

For Review of the Verdict and Sentence of the
International Military Tribunal for the Far East
In the Case of

TOSO SHIGENORI

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19 November 1948
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Petition on Behalf of

T. S. S. C.ейнгорт

I. INTRODUCTION

This petition is submitted to the Supreme Commander for the Allied Powers by counsel for T. S. S. Cейнгорт, with the request that in making his review of the verdict and sentence of the International Military Tribunal for the Far East in the case he set aside the conviction and sentence to twenty years' imprisonment passed upon T. S. S. Cейнгорт.

What is said by counsel on behalf of his client is necessarily in some degree suspect, for the counsel is a partisan. We therefore propose in this memorandum to confine our discussion to those things which are indisputable, undeniable, as being matters of public record or what involve consideration of the evidence in the case, relate solely to uncontested and uncontested evidence. Particularly, the debatable points in the case have been argued for and against both more and more authoritatively than we could argue them—in the form of a dissenting opinion in the case of T. S. S. Cейнгорт by a judge of the Tribunal.

Our discussion will be divided into four sections. The first will treat of some considerations suggested by the form and character of the Tribunal's judgment and verdict, findings, opinions and sentences. The second will consist of a statement, prepared by merely setting them out in their entirety of the Tribunal's verdict and dissenting opinion of T. S. S. Cейнгорт in the case of T. S. S. Cейнгорт. The third section will be devoted to some additional emphasis of a few points brought out by consideration of the two opinions, and the fourth to the conclusion.
II

SOME ASPECTS OF THE JUDGMENT

It is a commonplace of Anglo-American life—one of the
coldest anchors of our liberty, as we always think—that no
man is convicted of crime unless his guilt is proved beyond a
reasonable doubt. In the workings of American criminal law,
the meaning of "beyond a reasonable doubt" is simple, for it
is crystallized in our principle that we convict only on the
unanimous verdict of a jury. When the International Military
Tribunal for the Far East, with its majority of men most repre-
senting nations where the common law of England and America
prevails, undertook to decide guilt or innocence by the same
standard—proof beyond a reasonable doubt—the test to be ap-
plicable was made perfectly clear. On the face of the judgment,
then, if this principle may be regarded as controlling, Mr.
Togasaki has not been found guilty beyond a reasonable doubt
when of seven judges three, at least, are known to dissent from
his convictions (we have, of course, no way of knowing whether
others dissented; we are not to assume that each of the eight
judges who filed no dissenting opinion voted for the convic-
tion of every defendant).

There is much more, however, than this; there are factors
which, it is suggested, compel us to believe that the Tribunal
was very far from being free of reasonable doubts concerning
the case of Mr. Togasaki.

The sentence meted out to Mr. Togasaki—twenty years' impris-
onment—must be regarded as peculiar. The Tribunal cannot be
accused of having displayed any tendency toward leniency; in-
deed, its President took occasion to write a separate opinion
partly to comment upon the unexpected severity of the sen-
tences3. It is no doubt safe to say that there was general
surprise, in all quarters (not excluding several judges of the Tribunal), at the blanket conviction of all the defendants. Of the twenty-five defendants, all but two received sentences of death by hanging or imprisonment for life; and one judge, at least, thought this overly lenient, and in a separate opinion announced that he was "constrained to differ on a few only of the penalties to be imposed by the Tribunal--they are, in my judgment, too lenient, not exemplary and deterrent, and not commensurate with the gravity of the offense or offenses committed."

The deduction which naturally follows from these facts is that the majority of the tribunal stands committed to the view--for which certainly there is much to be said--that there should be no way-station, in trials of the crimes here charged, between acquittal and the death sentence upon conviction of atrocities, between acquittal and the death sentence upon conviction of atrocities, between acquittal and life imprisonment upon conviction of crimes against peace. Analysis of the sentences imposed upon the twenty-three defendants sentenced to death or life imprisonment gives general confirmation to this deduction: of those twenty-three, all but two of the defendants convicted of war crimes have been sentenced to death, (the guilt of the two is shown by the charge on which they were convicted to be relatively limited in degree); every defendant convicted only of crime against peace has been sentenced to imprisonment for life. The view that such should be the principle is clearly expressed by one of the very judges who has dissented from the conviction of hr. Yagüe and some others: "Imprisonment for life is, at this state, the appropriate punishment" for the crime of aggressive war, while those found guilty
of conventional war crimes "should have been punished with the supreme penalty", says Mr. Justice Raling. The same point is insisted by the President.

This being the Tribunal's approach to determination of its sentences—death for atrocities, life for aggressive war—how are we to account for a sentence of twenty years imposed upon conviction of crimes against peace? It is suggested that, tested by the Tribunal's own principle of decision, such a sentence is absurd. In only one situation—that where mitigating circumstances were found to exist—could such a sentence be imposed consistently with the logic of the Tribunal's own standard; no mention of mitigating circumstances influencing Mr. Thé's sentence is made in the verdict. That there is such mention in the case of the other defendant given a short sentence is proof that the Tribunal has no policy against considering circumstances in mitigation; but it must be proof also that the Tribunal found nothing which it considered to amount to mitigation in this case, or it would have stated it. Other defendants convicted of aggression, where no mitigating circumstances are mentioned, are sentenced for life, not for twenty years. How, then, is this sentence to be explained?

We contend that if our demonstration up to this point is correct—and it is submitted to be mathematically correct—there is one, and only one, explanation, an explanation which must result in rejection of this verdict of conviction.

There can be no other explanation than this. Some member or members of the Tribunal had so little faith in their votes for conviction of Mr. Thé that they were unwilling to agree to the conviction if the sentence which it would carry with it had to be the usual and normal one of life imprisonment. We know that not more than eight judges voted to convict, we
must be sure whether they were more than six; but we can
surmise—not surmise: deduce—that the movement for con-
viction had so little confidence, that the fight within the
Tri-

bunal's conference for this defendant's acquittal had such
strength and authority, that it was only by abandonment of
the principle upon which they were allotting sentences that
these judges determined to convict could gather the necessary
majority. We can visualize that scene in the conference almost
as if we had been present: the vote six to five for convic-
tion, one or more of the six rising, that vote only upon condi-
tion that Mr. They would receive a sentence greatly and strik-
ingly different from that of all others convicted on the same
charges (eight other defendants convicted on exactly the same
counts of the indictment were given life sentences). Will any
other explanation fit the circumstances?

This has only one meaning, plain and inescapable: the Tri-

bunal did not find Mr. They guilty beyond a reasonable doubt;
the Tribunal was distinguished from a bare majority of it did
not believe him guilty, and even some of that bare majority
had such scruples that they would raise, on refusal to impose the sentence which they had secured was in-

appropriate to the offence.

But was it possible for the Tribunal to disguise the cur-

ious sentence imposed upon Mr. They by attaching to the verdi-

cate a statement that mitigating circumstances were taken into ac-

count. For a very good reason: the matters which would have
had to be stated in mitigating away such an absolute determina-
tion of his innocence that a verdict of guilty in the face of
them would have been preposterous. To this point we shall re-

turn to say a word after seeing these "mitigating circumstances"
examined for what in fact they are, proof of innocence, in the
dissenting opinion of Mr. Justice Bailey, to which we will turn
presently after setting out the Tribunal's verdict in full.
One last comment on the Judgment before copying it out. There has been no opinion that the Supreme Commander has either no power or no intention of actually reviewing the verdicts of the International Military Tribunal. This opinion was at one time shared by some members of the Tribunal itself, they going so far as to make the invidious assertion that the Supreme Commander, author of the Charter of the Tribunal and appointer of its Judges, had only a "very limited power of review." Now, as evidenced in various degrees by the six separate opinions filed by various members of the Tribunal, they have not only come to the opposite conclusion, but frankly invite review. It is in fact noteworthy that the separate opinion of the President of the Tribunal--himself formerly the leading questioner of the Supreme Commander's power--reveals the plain expectation of review of sentences by the Supreme Commander; who, it is pointed out, "may review a sentence and reduce a heavy sentence to a light one: a sentence of death to, say, one of imprisonment for a brief period."

Further, another Judge, author of the most temperate and reasoned opinion of all those filed, explains that the reason for the Netherlands' member of the I.M.T.P.E. to reserve, contrary to the practice under his domestic law, his reserved dissertation in regard to some of the findings of the majority judgment is to be found in the implications of the authority vested with the Supreme Commander, "who may at any time reduce or otherwise alter the sentence, except to increase its severity" (Charter, art. 17). Consequently, this dissertation will only be given as far as it could have any significance in relation with the above provision.

It may, then, not unreasonably be suggested that the sentences voted and imposed by the majority of the Tribunal were arrived at with the expectation that they would be reduced by the Supreme Commander. This expectation of mediative action might well have led members of the Tribunal, in close cases, to the suppression of a reasonable doubt.

Whatever the Tribunal may have thought or expected, however, the Supreme Commander has reserved to himself the power and the duty of review, and of course will exercise the power to reduce or alter the sentence to the extent that he considers the facts of each case to require it. We accordingly proceed to the showing that in the case of Mr. Höfler the only proper verdict for the Tribunal to find was one of "Not guilty," which we shall therefore ask the Supreme Commander to accept.
THE VERDICT

The accused Togo is indicted under Counts 1, 27, 29, 31, 32, 34, 54 and 55.

Togo's principal association with the crimes charged against him was as Foreign Minister in the 26th Cabinet from October 1941 until September 1943 when he resigned and later in the Yamashita Cabinet of 1945 in which he also acted as Foreign Minister. During the interval between his resignation and reappointment he played no part in public life.

From the date of his first appointment until the outbreak of the Pacific War he participated in the planning and preparations for the war, attended Cabinet meetings and conferences and concurred in all decisions adopted.

As Foreign Minister he played a leading role in the negotiations with the United States immediately preceding the outbreak of the war and lent himself to the plans of the proponents of war, the duplicity employed in these negotiations has been dealt with earlier.

After the outbreak of the Pacific War he collaborated with other members of the Cabinet in its conduct as well as in the waging of the war in China.

In addition to the defense common to all the accused of involvement in economic and strategic preparations of Japan, which has been dealt with elsewhere, Togo pleads specially that he joined the 26th Cabinet on the assurance that every effort would be made to bring the negotiations with the United States to a successful conclusion. He argues further that from the date of his taking office he opposed the war and was unsuccessful in obtaining from the concessions which enabled him to keep the negotiations alive. However, when the negotiations failed and war became inevitable, he abjured his position in protest and continued in office and supported the war. To do anything else he said would have been cowardly. However his later action completely nullifies this plea.

In September 1942 he resigned over a dispute in the Cabinet as to the treatment of occupied countries. We are disposed to judge his action and sincerity in the one case by the same considerations as in the other.

There is no proof of any criminal act on Togo's part as alleged in Count 30. His only act in relation to this count was to sign the post war agreement between the U.S. and Japan settling the boundary between Manchuria and Outer Mongolia.

THE CRIMES

Up to his resignation in 1942 Togo appears to have endeavored to come to the assurance of the rules of war. He issued no such proclamations as came to him for investigation and in several instances remedial measures were
 Taken, at the time of his resignation atrocities com-
mitted by the Japanese troops had not become so notorious
as to permit knowledge to be imparted to him.

In the spring of 1945 when he returned as Foreign
Minister there was then an accumulation of protests
which he passed on to the proper authorities. The
Triumph is of opinion that there is not sufficient proof
of YOOG's neglect of duty in connection with war crimes.

The Tribunal finds YOOG guilty on Counts 1, 27, 28,
31, and 32. He is not guilty on Counts 35, 36, and 37.
THE DISCRETION OF MR. JUSTICE BIRING

The Chief Prosecutor submitted to the Tribunal last, subject to the reservation containing the conclusion: first, the prosecution would continue its case, and secondly that the prosecution would be satisfied with the case as submitted in the Test Case. (P. 394). This conclusion, with its condition as submitted to the Tribunal in 1945, and without reference to the judgment of the Prosecution, was given in these words: "The Prosecution..." (P. 395). This is a regrettable omission and I am unable to see that the Prosecution has not been satisfied with the case as submitted in the Test Case. (P. 396).

However, it does not seem necessary to disregard the raised question. In the case of the Prosecution in the Test Case, it is not necessary to refer to the matter before the Tribunal. In this respect, the report submitted to the Tribunal was, in the middle of April 1945, that the Chief Prosecutor of the International Military Tribunal in Tokyo had submitted a statement in which he indicated that the case as submitted in the Test Case was not satisfactory to the Prosecution, as shown by the following note: "The Prosecution..." (P. 397). In this respect, in which it is not possible to consider the international situation as a whole, it is not appropriate to go back to the previous note, since it was still criticized by some sections in the International Tribunal, as the former note, which I will not reproduce, is not in accordance with the note as submitted in the Test Case. (P. 398).
he realized, too, that his endeavors might fail, and that, if they did, he would realize a distinct and considerable discrepancy to his country by resigning, for, by his resignation, it would be revealed that difference of opinion existed as to the inscrutability of war. Moreover, he would only enter the cabinet under different conditions. He understood, too, that the limit had been set for negotiations. He had to choose between remaining outside the cabinet and letting another less capable or less willing man conduct the negotiations, or of joining the cabinet in order to try. For years. However, if he failed, he would be Counseling to resign in that cabinet lest he be putting his country in its present, he resigned. In the cabinet, he still retained the opportunity to continue as his non for years.

Assuming that there was, for the first time, the realization that there was a crime has committed under domestic circumstances, or that the president has become involved with the situation under domestic control, it would be logical to resent the former condition, in view of the general nature of the crime committed, and of the special venue and conditions of the former situation, and in that given to the latter. To join a cabinet, as is common, to assume a function with the purpose of avoiding opportunity for peace is to inscrutably treat us, if we are especially qualified to do so. If it were to follow from the idea that a crime is committed by staying on in a war-minded cabinet, then that new would be inscrutably and irrevocably. It would affect the purpose, namely, the maintenance of condition of peace. The crime of peace cannot be assailed for the sake of peace. In the other extreme, the decisive element in the initiation of aggression. If, as the inevitable result of the operation, a position for the sake of prevailing peace, and in form to vote, for war, one cannot be accused of aggressive intent.

The fact that the problem is very difficult and complex. The President has purchased an instrument, in which the same, to the extent that demoralizes Japan's standpoint, namely, the result, the aggressiveness, justifying the actions (U.S., convention with Japan, Nov. 17, 1923, 22, 279), he explained to the war, after the war had started, in the way that was a justified war, One should, however, exercise a certain amount or manner than interventian while circumstances made by politicians. In politics, therefore, as much utilize 10-29 with unseasonable facts as those 10-30-105 with facts, even when faster. Even in the execution with the suspicion to my 15-surviving institutions or company its interests so clear.

The position of the role as a very difficult one indeed. In fact, he is to be matters or devise the conditions to be approved to the United States. His opinion, on the general conclusion, one of opinion among many circles has been that Japan, during the months before Japan, we considered it necessary to control him from the militarists the unable to dispose of (1923 279). The government in Tokyo decided that Japan should be able to move. In this case, the treaty was signed on conditions on this date, indeed, adding to the same results. His operation, as added to the United States, have turned down by the United States Government, not because they consider nothing, but because they were not considered domestic. Pallamtif certified that the proposal was
not resolved with much interest because he was continued.

Throughout several sessions, that the recognitions added to us... were not being made in good faith. (1991).

It is not necessary to discuss here all the content of those statements. Every session and every article contributed to this attitude. No doubt there was an element in the economic environment that was not discussed. It is even probable that those elements ultimately derived from circumstances that have since been proven. The point is, however, that the attempt to devise the United States.

As was later revealed to the press of the United States, the conditions that the statements would be carried on, and that the non-recognition of the cessions was to be the solution of the Chinese, and it is clearly asserted in the speech of the Foreign Office to be thus consummated. (1991).

At the time, the Foreign Office was about to announce the following statement on December 2, 1941, after considering for some days the situation and the economic and military attitude which the United States had formed. It was decided that the United States would adopt a conciliatory stand, namely, that the United States would not adopt a conciliatory stand, and would not adopt a conciliatory stand.

Skeptical, they decided to part from the United States in that sense. (1991).

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This conclusion is borne out by the testimony of Gunther (V. 3,939), Holst (V. 3,955), and Grund (V. 3,967). The attitude is further shown by his speech to the Swiss press on 4 April 1945, a few days after he resumed office (speech of 4 April, V. 3,959), and through efforts, more or less instigated to a speech in Switzerland in the Soviet-occupied part of the country (speech of 4 May, V. 3,959, May 1945, V. 3,959). The Swiss government has taken a stance for talks with the German government, and though not achieved, the Swiss government has prepared the way for the possibility of such negotiations. On this basis, the German government has prepared the way for a speech in Switzerland on 4 May 1945 (speech of 4 May, V. 3,959). The attitude of the German government towards the liberation of the occupied territories is shown in a statement by the Foreign Minister (V. 3,959). He said:

"As has been discussed in the observation period, the situation is such that the German government cannot be expected to take any action that would be considered an international crime under existing circumstances. On the contrary, it is either filled with international law."

As has been also decided by the majority judgment, the case should be decided on principle 14 and 16.

For these reasons Töpflinger should be acquitted of all charges.
III
SOME ASPECTS OF THE FACTS

111 It is submitted that the dissenting opinion of Mr. Justice Roling is the unanswerable demonstration of Mr. Tojo's innocence, leaving little to be said after a reading of it. Justice Roling, of course, was not undertaking the refutation in detail of the Tribunal's verdict; nor do we undertake it—we wish only to emphasize the main points by reference to a few of the facts which the Tribunal has had to ignore to reach its verdict of 'Guilty'. Realizing that the Supreme Commander may not wish to undertake a complete review of the evidence, we shall in accordance with our promise made earlier avoid becoming involved in any disputed questions of fact, by discussing no evidence which can be considered conflicting.

The verdict of the Tribunal states that

Tojo's principal association with the crimes charged against him was as Foreign Minister in the 25th Cabinet from October 1941 until September 1942 when he resigned and later in the Suzuki Cabinet of 1943 in which he also acted as Foreign Minister. During the interval between his resignation and reappointment he played no part in public life.

In his dissenting opinion Mr. Justice Roling has pointed out that 'it does not seem correct to disregard the period preceding Tojo's assentence at the post of Foreign Minister in the 25th Cabinet', but the Tribunal does more than merely ignore it. The Tribunal speaks of Mr. Tojo's 'principal association with crime as beginning in 1931', subtly implying that he had of course at other times associations, although perhaps less telling ones, with conspiracy and aggression. It is less this calculated distortion of the truth than the reasons for it which we think will be illuminating.

112 The distortion of the truth is clear. If ever anything was put beyond the reasonable possibility of doubt by two years of evidence in this trial, it was that Mr. Tojo had been,
when he entered the Tōjō Cabinet, a life-long opponent of aggression, extremism, militarism and chauvinism. Recital of the evidence to this effect would be tedious—it will be found summarized in the appendix (pp. 75-123)—but in saying that the matter was put beyond doubt we mean just that: not that it was rendered debatable, not that the evidence preponderated in M. Tōjō’s favor, but that there was no evidence to the contrary. There were prosecution allegations, innuendos, to the contrary; not evidence. The defense evidence, demonstrating the utter lack of substance of these allegations, proved the affirmative defense for M. Tōjō that not only had he never made common cause with the advocates of aggression and the use of force, but he had been their sworn enemy throughout his career; that not only had he never joined with those who would oppose the democratic Western Powers, but he had at every opportunity urged the establishment of friendly relations and cooperation with them; that not only had he never been friendly to the German alliance which led Japan to ruin, but he had been the one energetic, unflinching and effective foe in Japan of that popular policy; that not only had he never been unfriendly to the U.S.S.R., but he had been precisely the one Japanese in public office consistently proclaiming the necessity of friendly relations, working for them, and achieving them— that he had, in fact, been publicly apostrophized by leading Soviet statesmen as a sincere and valuable friend of the U.S.S.R. and a distinguished diplomat, statesman and man.

All these were shown in the evidence, as a glance at the appendix will show. The defense could, if it had been material to the case, also have proved that M. Tōjō was a notorious anti-Nazi; that he fought ultra-nationalism and xenophobia on the domestic scene just as he fought them in international
affair; and that, regard his from any point one please, Dr. Tëgö never resembled the stuff from which are cut aggressors or criminals, national or international.

Let it be once more repeated: these things were not asserted merely, they were proved. It is worth mentioning, that none of the large number of witnesses testifying to these points was cross-examined concerning them. Let us just add the findings of the Member of the Tribunal from India, as expressed in his elaborate and reasoned dissenting opinion:

There is absolutely nothing against Tëgö showing him even as a sympathiser with the alleged conspiracy. The prosecution at one stage admitted that it did not charge the defendant with having joined any conspiracy before he joined the 9546 Cabinet in October 1941. ... There is nothing to connect Tëgö’s association with the conspiracy either as a participant or as a sympathiser. It could not even be suggested that he was in any way in the (and precise of the conspirators).

§13 The reasons for the Tribunal’s subtle distortion of these facts are not far to seek. The whole question of whether Dr. Tëgö, as Foreign Minister when the Pacific War commenced, was guilty of crime is a question of intent.

The simple fact of having been a member of the Government which decided for war, or which was in the process of waging war, is not sufficient. The intention with which one enters such a government is decisive.

Mr. Justice Halling, Can it be doubted? It is a commonplace of the criminal law, as well as of our every-day life, that the intent with which an act is done determines our attitude toward it; it fixes its character as guilty or innocent.

How is the intent to be known? It is an ancient maxim in our law that “The Devil himself knows not the mind of a man,” so must Mr. Tëgö’s intent by his acts before, during, and after the time in question. This is familiar common-sense, and is the law accepted by the Tribunal in this case as well as universally elsewhere. Dr. Tëgö’s whole life prior to his entry into the 9546 Cabinet negates any possible suspicion.
that he harbored a criminal intent, there we have the reason for the distortion of this part of the Tribunal’s history in the verdict of the Tribunal. For, knowing his history, we can assert his guilt only if we are ready to believe that, contrary to all probability and human experience, he, Tōgō, having throughout his career fought on the side of honesty and good faith in international dealings, of peaceful friendship among nations, having been the notorious and unrelenting foe of aggression, of double-dealing and chequemanship, on 17 October 1941 struck his colors—that, repudiating the principles of a lifetime, he ceased his fight against the forces of evil and joined the enemy, entering into a conspiracy with the sworn object of carrying out aggression, war and conquest. It is too incredible; we must deny the facts of his history, or acquit him.

§ 14. But to know Mr. Tōgō’s intent in 1941 we must examine his conduct not only before, but after, that time. Mr. Tōgō’s services as Foreign Minister in 1942 were rather ignored by the prosecution, whose position as stated several times was that since the war was in progress, it was not a crime, but simple, moral patriotism, to support it or serve in it (the Tribunal, disagreeing, has of course convicted not of “waging war” for doing no more. But when the defence made it affirmative proof—indisputable proof, as in the evidence summarised in the appendix, (pp. 34–35)—that Mr. Tōgō entered the Sunuki Cabinet with the specific purpose and on the express condition of ending the war, and was the one individual responsible for bringing it to an end when it did end, we were, incredibly, told by the prosecution that “even if it was true, it would prove nothing in his favor!” Leaving aside the silliness of the statement—the Supreme Commander could not be required that the ending of the war before the conclusion of
Japan had been invaded and the Allied forces casualties which it had been estimated might reach six million, not to speak of the far greater losses which Japan would incur--it is evident that it proves something concerning Mr. Tōgō's intent. It proves that when he could he waged, not war, but peace.

And of course, since we are searching for intent in 1901, we want to know what we can of his expressions and actions at that time--when he entered and served in the 25th Cabinet. To speak only of the undisputed evidence, there is again proof absolute. The Tribunal has ignored the undisputed evidence showing Mr. Tōgō's purpose in entering the 25th Cabinet, to conclude the pending negotiations with America and avoid war (appendix, pp. 31-34). But, far more significant than his words--for he might have lied concerning his motives--are his actions in that Cabinet: the Tribunal has had to ignore a most impressive body of evidence showing Mr. Tōgō's efforts to succeed in his stated objectives, by his unremitting fight against the militarists to keep diplomatic negotiations alive and to make them succeed (appendix, pp. 36-37). He has been convicted of conspiracy for war, specifically of conspiring with the militarists members of the 25th Cabinet in which he served. It can only be said that it is a curious sort of conspiracy which this body of evidence--all of it uncontroverted--discloses: how do we explain the Foreign Minister's long, bitter, single-handed fight against the militarists, the long days and nights through of servitudes, engendered by his insistence on avoiding war--how explain that the Emperor felt it necessary to order his life specially guarded from the invite militarists who wished to "dispose of" him? The evidence of what Foreign Minister Tōgō did, what he said, in these days
when the issue, war or peace, hung in the balance, is unequivocal and decisive proof of his intent for he fought for peace.

And when we know all this, that he opposed war in 1945, that he opposed it in 1941 and in the years intervening, when we know that he opposed war and a policy of war at every period of his life from his entry into the public service until 1941, what possible conclusion can we draw as concerning whether he was a conspirator in aggression, except that which Justice Boling arrived at, that "there is sufficient evidence to convince one to believe itag's submission": or, at the very least of it, must we not feel a reasonable doubt of which, though the Tribunal seems to have no qualms over it, the defendant must always be given the benefit

IV
CONCLUSION

§15 The matters which have just been discussed are those which we mentioned earlier as being such as on their face to carry such absolute conviction of Mr. Itag's non-guilt that no court would or could not draw a similar conclusion. As circumstances at mitigation, or a verdict of guilty. It is submitted that the Tribunal's attempt to ignore this, is treat them as if evidence of them did not exist, or—when mentioning them were unavailable—-to distort them, is an egregious example of how far the International Military Tribunal departed from granting a fair trial to the defendants before it. To refer to these instances only: there are many more, but these are important, and typical. As is well known, this view of the unfairness of the trial is not that of defence counsel alone; at least three of the judges of the Tribunal gave in their opinions from their positions.
instances of the unfairness of the proceedings. One of them

lately states that.

Though I am of opinion that the Charter permitted, grind-
ing to the accused guarantee sufficient for their defence, I

consider that actually these were not granted to them,

and cites examples[1] another points out that in its judgment

the Tribunal "has, though straining that it was bound by the Char-
ter, disregarded its provisions where it saw fit to do so"[2].

A judge of the majority hints, doubtless inadvertently, that a

fair trial was not his object: twice he quotes the Charter

provision that "The Tribunal shall have the power to try and

punish...", each time emphasizing the "punish"[3].

So much as to justice; we do not propose to discuss the

law, more than to say that it is apparent to all that something

other than law has entered into the making of this verdict. Mr.

Justice Bernier has made it perfectly clear that that is the

fact; not only that there has been no fair trial (which could

be demonstrated in a thousand instances), but, as he plainly

states, that the judges or the majority were not free from

outside influences; that four members of the Tribunal were

excluded from the deliberations on the judgment and the verdi-
sts on the individuals, which were never discussed among the en-
tire membership of the tribunal; and that he himself, a judge

of the Tribunal, is unable to affirm or deny that the evidence

and only the evidence was considered in drawing the verdict,
or even that the findings and verdict were in fact drawn by

the judges without the intervention of outsiders. Opinion can

be heard that the nature of these disclosures was unfortunate;

it is not the disclosure that is unfortunate, but the fact

that none on trial for their lives, their liberties and--which

is of most importance to some--their honor, should be hanged

or imprisoned by the action of a tribunal against which such
charges can be made by one of its members can be only a blot
on the records of our countries and of the international com-
unity as a whole.

116 Mr. M. S. said, in his testimony before the Tribunal, "I
have fought throughout my life for what I thought was right".
No one has ever questioned that, nor has anyone ever seriously
questioned that what he "thought was right" were those prin-
ciples which general morality, personal, public and interna-
tional, approves. The proceedings of the Tribunal demon-
strate, and history will record, that in his fighting life he won many
victories over the forces of evil. In a Japan dominated by
armed men he, a diplomat, had only one weapon with which to
fight, and with that weapon he won his victories—wi th force
of character. We suggest that that is the clue to the case of
Yogoro Shigemori. We can say that he was, certainly not the only
such, but one of few men of character and principle to have oc-
cupied important office in Japan in his generation. We can say,
specifically a period of the Pacific War—for his connection
with which he now stands convicted—a convict—that he was the
only man in office in Japan in the days leading to Armageddon
who fought for a peaceful solution. He was, we can say, the only
man in office in Japan who not only insisted from the first day
of the war on ending it, but made the necessary desperate and
dauntless effort which resulted in ending it. We can fairly
say that on the evidence in the case he was the only man in of-
fice in Japan who from 1938 to 1945 consistently and stubbornly
insisted on absolute observance of international good faith and
morality, fought aggression and militarism.

Since the end of the war everyone has become a "peace-
lover", everyone was anti-militarist and anti-aggression. The
difference in Mr. Y. S.'s case is that he is proved to have
...worked for peace and against the militarists. While Mr. Ōkō for fifteen years that are shown by evidence in the case, impeached peace, these others were idle bystanders, looking on while he fought the militarists, often single-handed. This fight was often literally at the risk of his life; he was in 1941 perhaps the unique example of a Japanese Foreign Minister under surveillance by the Army's secret police, simultaneously protected by the Gendarmerie; doubtless the courage which it required of a statesman to fight for peace in the Japan of 1945, still imbued with its militarist rulers' conception of surrender as the ultimate depth of degradation, to which death was infinitely to be preferred, will not be questioned. Peace meant enough to him to fight for it.

317 The Tribunal's verdict ignores all these considerations; they are not, and cannot be, denied or disapproved, but they are merely brushed aside. The Tribunal's view is that the man's character does not matter, his intentions are immaterial; he entered the Cabinet, in the end he voted for the war, and is now guilty of the crime against peace. We urge that the intention is tremendously and obviously material. Most important in this case, says Mr. Justice Koising, is the question whether every single member of the government, who votes for war after having entered the government with the purpose of maintaining peace, can be considered to have initiated the war. A similar problem arises in case of someone having entered the government during the war, similarly with the purpose of attempting to achieve peace as soon as possible. Decision on this point is of great moment for the future. The judgment must by all means avoid establishing such norms as would tend to create the consequence that individuals supporting peace would be forbidden to hold high office in a government which is inclined to aggressive war, or is in the process of waging an aggressive war. What would a peace-lover do, in such case, but just what Mr. Ōkō did—fight for peace so long as he could, stay on if there must be war, in order to continue working for peace? The al-
ternative offered by the prosecution and now picked up by the Tribunal, is, "he should resign". This seems the expression of a strange morality! The wretch, the coward who, seeing failure probable, drops duty and flees; all to save his pitiful life, we laud, and leave him with his precious life; we hang the statesman of courage to stay on and fight, accepting the crus if he fall. Our Tribunal has actually convicted Mr. Togo of the crime of not resigning his office to save himself.

If this sort of trial of leaders of a defeated nation is to become a consistent part of each successive war, and if the doctrines of this verdict are to prevail, any hope of ending war will have been seriously impaired. Will there indeed then be statesmen? Will men of vision and courage be able to risk acceptance of public office, knowing that the requisite of failure is death or imprisonment? Once the statesman discovers that the balance of the national policy inclines, be it ever so slightly, in favor of what he estimates may some day be adjudged aggression, must he abandon all effort to influence it for the better by staying on in office, and precipitately flee for his own safety, leaving the field uncontested to the advocates of crime? Such is the plain consequence of the Tribunal's verdict on Mr. Togo.

16 To this point we have spoken strictly as defense counsel. Now I wish to say a word as an American.

The result of the trial by the International Military Tribunal for the Far East has about it singularly the look of an act of vengeance. The conviction of all defendants, without exception, though with the writing of six separate opinions which disclose an almost total lack of agreement on the existence, nature and extent of the law being enforced; the remarkable severity of the sentences as a whole, exceeding, as the
President of the Tribunal has pointed out, those imposed upon the defendants at Nürnberg, where "The crimes were... were far more grievous, varied and extensive than those of the Japanese accused." The attainment of these results (and even the hanging of men) by the least possible majority of the Tribunal—perhaps, for ought we know, in some matters by less than a majority—these do not promise well for the future fate of this verdict with the American people, a people with a deep, instinctive love of law and fair play.

Americans in time to come are unlikely to be proud of this verdict. Yet this Tribunal, and its verdict—like SCAP itself, under the aegis of which it came into being—however international in fact, is identified in the eyes of the world at large with the United States. Inevitably, it is to the United States that will inure, in great measure, the credit or discredit which history will attach to the proceedings of the International Military Tribunal for the Far East—and not history only, but contemporary opinion. That this verdict should stand, without the efforts being made to correct its glaring inequities, would constitute but poor tribute to our statesmanship, our attachment to justice and, in the end, our service to peace.

BRUSSE BLAKEY
Counsel for Mr. Shigenori
NOTES

1. Statement by the President of the Tribunal, 3 May 1946, Transcript of Proceedings, p.22.
2. Dissenting Opinion of Justice Roling, p.117.
3. Separate Opinion of Justice Javanilla, p.34.
4. Separate Opinion of the President, p.120.
6. Separate Opinion of the President, p.120.
10. Separate Opinion of the President, p.120.
In General

Exhibit 3,626-A Report by Mr. Whitney to Foreign Minister.

Ir. 37,363 at 645.

Confidential. Report made by Mr. Whitney, as Director of the Bureau of European-American Affairs of the Foreign Ministry, upon the Foreign Minister's instruction to submit a proposed foreign policy for Japan, in April 1933. The numerous excerpts from the report, read into evidence at various times, are too long for quotation here; they may be found at pages 37,663-70, 37,664-6, 37,665-60, and 37,677-8 of the record. The document is considered in the dissenting opinion of Mr. Justice Butler, who says of it that "the entire report was written on the theory of international cooperation and peaceful development" (p. 29). The following quotations, especially pertinent here, may be noted.

"Since the Manchurian Incident, various European and American countries have charged Japan with having practically ignored her treaty obligations and harbored an aggressive policy. It is an undeniable fact that these accusations are offensive to Japan should engage in such actions whenever an opportunity is afforded. As a result, Japan has, since the year before last, so much lost international confidence as she has enhanced her military prestige.

In modern international society respect for armed forces is a matter of the utmost importance, especially since the great powers, and every possible effort should be made to avoid it. There are not a few instances in history of the unattainable use of armed forces resulting in failure. We should not reject acquisition in violation of principle, then an reliance on the principle insist upon retention of the gaes. Respect for truthfulness should be other among nations as among individuals, for it is manifest that when a nation forsakes international confidence it is ultimately the loser" (p.39,379-2).

"In the light of present international developments, a divergence of opinion is likely to occur on the need disarmament conference scheduled to be held in 1936. If efforts were left as they stand, agreement on disarmament would naturally fail to be reached, and as a result the agreement for the maintenance of the status quo with respect to Fortifications in the Pacific would be scrapped. The consequences which would ensue—more armaments race, leading to a passions-Faraday way—would ultimately bring about a world war. We unfavorable would be the results to Japan if already been pointed out. We can make much every effort to have the United States undertake her disarmament policy, at the same time, reconsider our own disarmament policy" (p.39,391).
EXHIBIT 5.468 Testimony of Tatsuhiko Maeda (not cross-examined)  
Mr. Maeda was Chief of the Personnel Section of the Foreign Ministry in 1946. After the war, he was a member of the foreign affairs subcommittee of the Diet, as well as a member of the House Committee on Foreign Affairs. He had been involved in the preparation of the peace treaty negotiations, and was a key figure in the formulation of Japan's post-war foreign policy. He also served as a member of the Japanese delegation to the United Nations.  

29
Japanese-German Relations

Exhibit 3,615 Testimony of Yamaiz Akira (not cross-examined) Tr. 37,407
Mr. Yamaiz is a former Minister to Bulgaria, now retired; he was a subordinate of Mr. Togó's in the Foreign Ministry in 1934-37. During that time the Anti-Comintern Pact was developed; Mr. Togó opposed the Pact, but had to manage the drafting of it; he succeeded in excusing the Army authori- ties that it was essential to undertake negotiations for agreement with Great Britain concurrently, to avoid damage to Japan's diplomatic relations with the democratic powers. Mr. Togó succeeded also in avoiding the original German draft in such a way as to weaken it considerably, and to have the se- cret agreement made to become operative only in the event of "an unprovoked attack" by the U.S.S.R.

Exhibit 3,610 Testimony of Shibusawa Yasuho (not cross-examined Tr. 15,439-45) by the prosecution.
Mr. Shibusawa was formerly commercial attaché in the Japanese Embassy in Germany, now private advisor to the Minister of Fi- nance. He served in the Embassy under Ambassador Togó in 1937-38; there were then two important problems of Japanese-German collaboration. First was the proposed Japanese-German-Italian Alliance; the Ambassador consistently opposed this, but the military attaché was negotiating directly with the Germans, ignoring the Ambassador. Mr. Togó's view was that an alliance with Germany should be avoided, as it would embroil Japan in the quarrels of Europe, and lead to a clash with Eng- land and the United States. The military and naval attachés of the Embassy demanded the Ambassador's recall, on the grounds that he was on bad terms with the German Foreign Minister and that German-Japanese cooperation should be promoted; and he was transferred to Moscow after only ten months' service in Germany. Later, when the witness visited Mr. Togó in Nisso, he was charged to report to influential circles in Japan his opposition to the tripartite alliance. The second important problem was that of economic cooperation in China between Ger- many and Japan; in this matter also Ambassador Togó was un- cooperative with the Germans, flying to their great disassist- ance by his refusal to approve any plan to permit their preferential treatment in China. No such agreement was reach- ed during Mr. Togó's ambassadorialship.

Exhibit 3,616 Testimony of Kusunara Yukio (not cross-examined Tr. 15,426-31) by the prosecution.
General Kusunara was formerly a Lieutenant-General of the Japa- nese Army, and in 1935 was stationed as a General Staff representative in Germany. The proposal for the German-Japanese-Italian Alliance was brought by Foreign Minister Bibbentrop to military attaché Gehlen; the witness remarked that it was strange that it was not shown to Ambassador Togó, and was told that it was at Bibbentrop's express desire, for he feared that Ambassador Togó would oppose the plan. The wit- ness brought the plan to Japan; by air, as a courier; in Tokyo he reported to the Foreign Minister the fact that the Ger- mans considered Ambassador Togó not cooperative with Nazi policies.
Exhibit 3,620 Testimony of Sekiya Tadashi (not cross-examined) 
Tr. 35,472-9
Mr. Sekiya is former Minister to Finland, now retired; he served in the Berlin Embassy under Ambassador Tōgō in 1937-39. He reported to the Ambassador that the German proposal for trilateral alliance had been taken to Japan by General Lasseldorff, the German Ambassador in Tokyo, and urged his opposition to the Foreign Ministry, saying that the establishment of any closer relations with Germany and Italy, or on the contrary, any bond of alliance with them, would lead Japan to disaster. The Foreign Minister answered that the Cabinet had already decided that negotiations should proceed. Ambassador Tōgō strongly urged reconsideration, as a result of which he was requested to consent to his being transferred to Moscow. He declined, but received further urging, and was finally transferred in October 1938.

Exhibit 3,621 Testimony of Itō Nobumichi (not cross-examined) 
Tr. 35,496-9
Mr. Itō in 1939 was a Minister, visiting Germany and Italy on the special mission of conveying instructions to the Ambassadors concerning the trilateral alliance. Mr. Tōgō, who was then Ambassador in London, visited Berlin, and urged his opinion that a trilateral alliance would increase the danger of a European war and Japanese involvement in it, and would not contribute to solution of the China Affair. Ambassador Tōgō urged the witness to return to Tokyo and endeavor to prevent conclusion of the alliance.

Exhibit 3,622 Testimony of Kurt Leissner (not cross-examined) 
Tr. 35,468-3
Mr. Leissner was a long-time non-official German resident in Japan, who had known Mr. Tōgō for 27 years as a personal friend. He had on various occasions heard Mr. Tōgō speak of his dislike of a rapprochement between Germany and Japan, and particularly of his objection to the anti-Communist pact, which he said represented a policy which would alienate The United States and Great Britain, as well as the U.S.S.R., and would have a bad effect on Japan's international position. As the power of the Nazi regime grew, Mr. Tōgō became cooler toward Germany; his opinions were always anti-Nazi, and he was on bad terms with the Nazi Foreign Minister when he was Ambassador in Berlin. (The Tribunal struck from the witness' affidavit the testimony that Mr. Togō was always regarded by the German colony in Japan as being anti-Nazi.)

Exhibit 3,623 Testimony of Hashimoto Shun'ichi (not cross-
Tr. 35,444-8 examined) 
Mr. Hashimoto was Director of the Treaty Bureau when Mr. Tōgō was Foreign Minister in 1941-42. When the anti-Communist pact expired in 1941, it was at the Foreign Minister's instance that on that occasion the abrogation of the secret agreement, which had caused the dissatisfaction of the U.S.S.R., was proposed to the German government and was accomplished.

Exhibit 3,627 Testimony of Tanigoshi Hitoshi 
Tr. 35,752-5
Mr. Tanigoshi is a member of the House of Representatives, and knew Mr. Tōgō as a fellow-countryperson. Soon after conclusion of the Tripartite Alliance, in 1940, the witness asked Mr. Tōgō's opinion of it, being told that he considered it not in the interest of the country.
Exhibit 3.614  Testimony of Mototsu Inutsugi
Tr. 15,106-99
Mr. Inutsugi served in the Berlin Embassy under Dr. Togo in
1939. Ambassador Togo was strongly opposed to the "strengthen-
ing" of the Anti-Comintern Pact, but as he had earlier been
opposed to the conclusion of the Pact, and upon learn-
ing of the negotiations designed to effect the "strengthen-
ing" he presented his objections to the Foreign Minister, say-
ing that such a policy would soon or later involve Japan in
the turmoil of Europe and of the world. His opposition to
the alliance, and his unresponsiveness to Gromn suggestions
of closer cooperation in economic matters relating to China,
led to deterioration of his relations with Foreign Minister
Kobayashi and to opposition from Togo's military circles,
which letter led to his transfer to Kureport.

Testimony of Ushikawa Tadakane (ex-foreign
minister)
Tr. 34,912

Diplomat Toyotomi was foreign minister in 1938; he received collo-
gnosis from Ambassadore Togo, in Berlin, opposing the Three-
Power Alliance. He was unresponsive, until an incident that
occurred during the discussion that the alliance might lead to.

Exhibit G,563  Entry from Isoroku Hito's Diary
Tr. 16,269
In August 1939, he recorded what he had heard from the Pres-
ident that Minister Hata had made a very important proposal to
Japan, Ambassador Togo being ignorant of it.

Exhibit S,494-1  Report by M. Nozoe to Foreign Minister

As to our relations with the Soviet Union, there are various
issues to be solved, some involving directly or indi-
directly fundamental of relationship, and are likely to ca-
use the feeling of a lack of understanding on the part of
the Soviet Union. We shall therefore make efforts in accordance with the general course of policy to pro-
curse friendly relations with her, and in so doing we may be
able to solve these pending issues" (75,53,364-4).

Exhibit S,494-2  Report by M. Nozoe to Foreign Minister

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issues to be solved, some involving directly or indi-
directly fundamental of relationship, and are likely to ca-
use the feeling of a lack of understanding on the part of
the Soviet Union. We shall therefore make efforts in accordance with the general course of policy to pro-
curse friendly relations with her, and in so doing we may be
able to solve these pending issues" (75,53,364-4).

Exhibit 3.417  Testimony of Enayama Suneo (not cross-examined)
Tr. 35,146-147

Enayama served in the Foreign Ministry under Mr. Togo from
1932 to 1937 and 1939 to 1945, concerned with Soviet af-
fairs. The Soviet-International Union Treaty of 1939, dealing
with the restoration of diplomatic relations between the coun-
tries, was brought to success by Mr. Togo, who brought about
the settlement of the very difficult problems which it involved.

Exhibit 3.418  Testimony of Enayama Suneo (not cross-examined)
Tr. 35,146-147

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1932 to 1937 and 1939 to 1945, concerned with Soviet af-
fairs. The Soviet-International Union Treaty of 1939, dealing
with the restoration of diplomatic relations between the coun-
tries, was brought to success by Mr. Togo, who brought about
the settlement of the very difficult problems which it involved.

Exhibit 3.419  Testimony of Enayama Suneo (not cross-examined)
Tr. 35,146-147

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with the restoration of diplomatic relations between the coun-
tries, was brought to success by Mr. Togo, who brought about
the settlement of the very difficult problems which it involved.

Exhibit 3.420  Testimony of Enayama Suneo (not cross-examined)
Tr. 35,146-147

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1932 to 1937 and 1939 to 1945, concerned with Soviet af-
fairs. The Soviet-International Union Treaty of 1939, dealing
with the restoration of diplomatic relations between the coun-
tries, was brought to success by Mr. Togo, who brought about
the settlement of the very difficult problems which it involved.
of the Chinese Eastern Railway, having to persever; 64 lonely
to persuade the Japanese military authorities to agree to
the sale. Thereafter, he worked hard to achieve the estab-
ishment of a committee to settle Soviet-Japanese boun-
dary disputes, though the negotiations finally failed; he
was also an eager advocate of a Soviet-Japanese non-aggra-
sation pact.

Exhibit 3.61 Testimony of Noguchi Yoshii (not cross-examined)
Tr. 59, 377-85
Mr. Noguchi served as secretary and interpreter in the For-
geen Ministry on various times from 1926 to 1947. He testi-
ifies in considerable detail to Mr. Togo's efforts, as ambas-
ador in Moscow, to improve Japanese-Soviet relations by
the settlement of various questions: The Harbin Incident, de-
scription of the Mongolia-Czechoslovak boundary, settlement
of final payment for the Chinese Eastern Railway, general
settlement of border disputes, the fisheries problem. At
Mr. Togo's initiative, a Soviet-Japanese neutrality treaty
was all but concluded at the time Mr. Togo, to the great dis-
satisfaction of the Soviet authorities, was recalled by For-
geen Minister Seikehiko; Mr. Togo stated at the time that he
had to establish a fundamentally peaceful relationship be-
tween the two countries, and that Japan should not seek to
move southward, either, which would bring about a clash with
the United States and Britain. Commissar Molotov expressed
his pleasure, on New Year's Day of 1940, that he had been able
to settle the Harbin Incident with Ambassador Togo's co-
operation, and said that thanks to the Ambassador, relations
would become more and more friendly. (The Tribunal strung
from the witness' affidavit his account of Mr. Molotov's
toast to Ambassador Togo, upon his recall, as a great states-
man and a great man.)

Exhibit 3.64 Testimony of Narita Katsunori
Tr. 19, 106-69
Mr. Narita served in the Foreign Ministry under Mr. Togo at
various times from 1934 to 1941. He testifies in detail to Mr.
Togo's management of Soviet affairs as Foreign Director:
there were numerous problems in those days, and Mr. Togo's
practice was to be equally stern in protecting Soviet diplo-
ma and in criticizing Japanese faults, and he often suggested to
the Foreign Ministry and the Foreign Army that they read their
own reports of Mr. Molotov, if they wished the Japanese position to be strong
when the U.S.S.R. was at fault.

Exhibit 3.69 Testimony of Ota Seitaro
Tr. 61, 490-104
Mr. Ota served in the Embassy in Moscow under Mr. Togo in
1936-40. He testifies in great detail to the circumstances
of the settlement of the Harbin Incident, a settlement
brought about upon the initiative of Ambassador Togo.
Mr. Ota claims both his own government and the U.S.S.R., and
the subsequent demarcation of borders by the Togo-Molotov Agree-
ment. Mr. Togo had also taken the initiative in obtaining
permission from his government—after some persuasion—to
negotiate for a non-aggression pact, which had been agreed
in general with Commissar Molotov when Mr. Togo was recalled.
American and British Relations

Exhibit 3, 609-A Report by Mr. Togo to Foreign Minister
Tr. 35, 475-83

"Therefore, from our viewpoint, a Japanese-American war should by all means be avoided. . . . In short, any idea of trying to monopolize the Pacific is equally unrealistic. Whether considered from the American or the Japanese standpoint. . . . In other words, the basis of our policy toward the United States should be to avoid war and to have that country reconsider and revise its Far Eastern Policy. Japanese-American relations should be thoroughly studied from all angles and any measures which would contribute to the prevention of this basic policy should be carried out to the end that unnecessary conflicts may be avoided and any obstacles in the way of better feeling may be removed, thus to restore stability in the Pacific area. This must be the urgent task of Japanese diplomacy and to it our full efforts must be devoted." (Tr. 35, 476-4). Among our international relationships, that with Great Britain constitutes one of the most important. . . . In the past, the development of Japanese-British relationship has seemed to have a close connection with our national fortunes and will continue so in future as well. . . . She is the first country with whom cooperation is to be expected, in view of her position in the Far East as well as of our past relationships. . . . It would be reasonable and proper to endeavor to make Great Britain understand thoroughly the fundamental lines of our Neutrality policy; to respect Britain's rights and interests in China, thereby eliminating cause of conflict; to cultivate an atmosphere which would be conducive to Anglo-Japanese cooperation; and on the other hand to urge her to help us in improving our relations with the United States" (Tr. 35, 478-9). "In order to promote friendly relations with France. . . . we must first improve our relationship with Britain and America" (Tr. 35, 480). "It is highly advisable that our government endeavor to promote unity with the Dutch by clearing away all misunderstandings, and at the same time declare to the world our sincere desire and intention of maintaining peace in the Pacific, of keeping it always quiet and free to its own ends. . . . It is therefore only proper we appropriate the facts which by our actions eradicate the misunderstandings of the Dutch and promote our economic relations with them. . . . If the Netherlands should propose the conclusion of a treaty similar in nature to the Four-Power Pact concerning the status quo in the Pacific, . . . we should respond readily to her offer, since it would be helpful in eliminating Dutch suspicions and in making clear to the world our desire for peace in the Pacific" (Tr. 35, 481-2). ". . . the basic policy toward the United States should be to obtain reconsideration of their Far Eastern Policy and to prevent war. . . . the interests of the two countries would be adjusted if the principle of the Open Door and equal opportunity were realized in the Far East. . . . In China Proper, we should cooperate to the development of the United States and Great Britain" (Tr. 35, 483).
Asiatic Relations

Exhibit 3,600-A Report by Mr. Tojo to Foreign Ministry
Tr.31,170-3

"It is most inopportune to launch on a reckless venture—not only military, but economic, financial, or otherwise—without prospect. It is only natural that forty-two nations in concert opposed Japan in June, should warn Japan to proceed with caution. It is likely that these nations would in concert deal with Japan. It is essential that Japan be ready for any event to come, while we are striving for the successful development of Manchuria, we should avoid conflict with other countries, unless trouble is forced upon us. As regards China, where we are now confronted with armed resistance, we may be obliged to cope with it, but we should not try to offend itself immediately lay down our policy for the speedy restoration of good will, and strictly abide by it and prove our good faith to the world."

Exhibit 3,624 Testimony of Norishige Morio (not cross-examined)
Tr.35,245-93

Mr. Morishige on various occasions from 1939-1937 served as a colleague of Mr. Tojo's in the Foreign Ministry. Mr. Morishige, when Director of the Eastern-American Bureau, interested himself greatly in China problems (despite their being no contact of his bureau) because of their close connection with Japanese relations with Britain and the United States. It was through Mr. Morishige's efforts that the government was persuaded in 1937 to undertake to negotiate with China a settlement of conflicting problems. In order to promote Japanese-British understanding, Mr. Tojo especially won over the military authorities, and the negotiations were not ready to commence when the Kuma River Bridge Incident occurred, frustrating the hope of settlement.

Exhibit 3,626 Testimony of Horinouchi Keszuke
Tr.38,469-9

Mr. Horinouchi was formerly Ambassador to the United States; in July 1937 he was Vice-Minister for Foreign Affairs. When the Kuma River Bridge incident occurred, the Army proposed the taking of measures for mobilization of troops; the Foreign Ministry called a meeting of Ministers, Vice-Minister and two bureau directors including Mr. Morishige to debate the proposal, it being desired by the meeting to oppose it. The Cabinet, however, overruled the Foreign Ministry objection and approved mobilization.

Exhibit 3,145 Testimony of Yuzawa Ichio (not cross-examined)
Tr.15,974-8

Mr. Yuzawa was Home Minister in the Tojo Cabinet in 1941-43, when Mr. Tojo was Foreign Minister. Foreign Minister Tojo was bitterly opposed to the plan for creation of the Greater East Asia Ministry in 1941, stating three grounds for his opposition: that division of Japanese diplomacy between two ministries would destroy its unity; that the countries of Asia would judge Japan's true motives, and their protest of respect for their independence would be infringed by the creation of a special ministry to deal with them; and that the new ministry would continue the old, offensive way
of dealing with Asiatic countries of the East. Mr. Tōgō resigned as a result of his inability to accept the plan, and as well to agree with Premier Tōjō on the fundamentals of guidance of the war.

Exhibit 3,677 Testimony of Tōnyōshi Eiji
Tr.75,521-6

Mr. Tōnyōshi testified that Mr. Tōgō told him, after his resignation as Foreign Minister in 1943, that the reason his resignation was that the idea of the greater East Asia Ministry was contradictory to the principle of treating the East Asiatic countries as fully independent states.

Summary of the Evidence Showing Mr. Tōgō's Intention in entering the Tōjō Cabinet

Exhibit 2,912 Testimony of Yamamoto Kuniochi
Tr. at 95,919

Mr. Yamamoto was Director of the Bureau of European-American Affairs of the Foreign Ministry, in charge of the Japanese-American negotiations of 1941. When Mr. Tōgō became Foreign Minister, he told the witness that he had first rejected the portfolio on the ground that so long as the Army clung to its stand the successful conclusion of the Japanese-American negotiations was hopeless, and it would be meaningless for him to become Foreign Minister. He had at last accepted upon Premier Tōjō's assurance that his cabinet would, in obedience to the Imperial command, strive for successful conclusion of the negotiations by undertaking reconsideration of the various questions involved.

Exhibit 3,628 Testimony of Tanaka Toyōichi (not cross-
Tr.35,660 examined)

General Tanaka testified that Mr. Tōgō told him in October 1941 that he had accepted his appointment as Foreign Minister on the condition that General Tōjō would do his best else to bring the Japanese-American negotiations to success. His strong stand in the London Conference aroused such hostility of the military against him that the witness informed the commander of the Gendarmerie to guard the Foreign Minister's person. Later Mr. Tōgō intimated to the witness his intention to resign office, on the ground that he was strongly against war with the United States.

Exhibit 3,628 Testimony of Suzuki Tōmin (on cross-examination)
Tr.12,34-5

Mr. Suzuki, a newspaperman, testified that when Mr. Tōgō was appointed Foreign Minister by Premier Tōjō, he was authorized—having always believed Mr. Tōgō to be an exponent of peace—and asked him for explanation. He was then told that the Foreign Minister had received definite assurance from the Premier that Mr. Tōgō's foreign policy of bringing about a peaceful settlement with the United States would be fully supported by the Premier.
Exhibit 3,642-a  Testimony of Suzuki Kuniaki
Tr. 37,590-1 (not cross-examined)

Admiral Suzuki was Precord of Japan from April to August, 1945. He personally made the selection of Mr. Togo as Foreign Minister of his cabinet because of his feeling that Mr. Togo opposed the war from the beginning and had opposed also 1938's militarist and high-handed policies. Understanding his selection as Premier to be for the purpose of ending the war, he worked as Foreign Minister to remove known to have opposed the war, Mr. Togo at first declined the post, because the witness had felt unable to speak to him openly of the purpose of ending the war; but it was accepted on the understanding that that was to be his task. Foreign Minister Togo then took the lead in insisting that the war be ended. The witness was to be approached to add his name to it, finally that the Japanese declaration of immediate surrender was no statement of acceptance, but when the letter was presented to the Emperor the Emperor agreed to accept the Foreign Minister's proposal and ordered it carried out.

Exhibit 3,643  Testimony of Natori Sadao (not cross-
Tr. 37,595-2 (not cross-examined)

Natori Sadao was Private Secretary to the Lord Keeper of the Privy Seal from 1934 to 1945. When Admiral Suzuki offered Mr. Togo the Foreign Ministry the witness urged him to accept, telling him that Admiral Suzuki's opinion was the same as Mr. Natori's, that the war must end. The witness' reason was that he felt that the war could not then be terminated without a Foreign Minister who had unusual sincerity and the determination to risk his life.

Exhibit 3,644  Testimony of Saito Hisayasu
Tr. 37,600-1 (not cross-examined)

Mr. Saito was Chief Secretary of the Suzuki Cabinet in 1939, and participated in the selection of the cabinet ministers. Mr. Togo resigned as Chief Secretary of the Cabinet. Mr. Togo had signed a new proposal for military action, and, in the Department of Foreign Affairs, the matter was brought to the attention of the Cabinet, at which the question of military action was considered. Mr. Togo was then returned to the cabinet. Mr. Togo was first to
lost the most earnest advocates of peace in the Suzuki Cabinet; he urged it at meetings of the Big Six, he worked for the mediation of the U.S.S.R. When the Potsdam Declaration was issued, he objected to the Government's decision to state that it ignored the Declaration; thereafter he led the fight to have the Declaration accepted, and to keep the acceptance free of conditions. Then the Emperor broke a deadlock among the Big Six by approving the Foreign Minister's opinion.

Exhibit 2,695 Testimony of Satō Naetake (not cross-examined) Tr.33,977-98
Mr. Satō testified that, in July and August 1945, he, as Ambassador in Moscow, undertook, at the direction of Foreign Minister Tōgō, to secure the mediation of the Government of the U.S.S.R. between Japan and the Allied Nations. The telegrams between Foreign Minister Tōgō and Ambassador Satō (Ex. 5699-700, Tr.23,956-957), give the details of the Japanese effort to obtain this mediation.

Exhibit 3,611 Testimony of Noguchi Yoshiio (not cross-examined) Tr.35,374-384
Mr. Noguchi served as interpreter of conversations between former Premier Hirota and Soviet Ambassador Vilin, from June 1945, which Foreign Minister Tōgō had initiated with a view to ending the war through Soviet mediation. The negotiations, however, failed, the situation having too far deteriorated.

Exhibit 3,620 Testimony of Sakaie Tōnashi (not cross-examined) Tr.35,421-47
Mr. Sakaie acted as intermediary, in April 1945, between Foreign Minister Tōgō and Swedish Minister Bagge, who had offered to procure the good offices of his Government to bring about peace between Japan and the Allies. Mr. Tōgō, being informed of the matter, expressed his eagerness to bring about peace, and requested that Minister Bagge carry out his plan.

Exhibit 3,598 Testimony of Widén Berg (not cross-examined) Tr.34,559-64
Mr. Berg was Swedish Minister to Japan from 1937 to 1945. From September 1944 he was working at trying to bring about peace, and both Foreign Minister Shigemitsu and Foreign Minister Tōgō, successively, urged him to use his own and his Government's good offices by way of intermediation to bring about an end of the war. After his return to Sweden he was advised that peace efforts were being made in another direction, viz., through the U.S.S.R.
Exhibit 3.445  Testimony of Yasuichi Onishi
Tr. at 59, 59-60
Mr. Toribela testified that from the beginning of the Lisbon Conference in October, 1941, the Army General Staff in particular opposed the making of any peace-American negotiations; only after hot discussions did Foreign Minister Kido obtain agreement.Various details in connec-
tion with the stationing of troops in China were still strongly insisted on. There were strong objections from the General Staff to the offering of proposed "B." There were violent discussions in the Lisbon Conference over the policy to be adopted in case Proposal "A" and "B" failed of acceptance by the United States; the Foreign Minister strongly urged patience and deferring from war. The High Command strongly opposed his opinion.

Exhibit 3.446  Testimony of Togo Shigemori
Tr. at 5, 54-101
This is the only instance in which we have testified Mr. Togo's testimony in the summary of the evidence; the matter is one of which he has such popular knowledge, and having been testified to in open court was one on which he could have been cross-examined by our defendant who disclaimed it seems proper to quote his testimony for this purpose.)

At the first meeting of the Lisbon Conference, 29 October 1941, the Chief and Vice-Chief of the Army General Staff stated that the Japanese-American negotiations were hopeless and that war should be commenced at once; Mr. Togo opposed vigorously, insisting that all terms of breaking the deadlock must be tried; debates of this nature continued every day, and many nights, throughout October. Mr. Togo said to fight unreasonably against the majority of the Lisbon Con-
ference without the consent of China; that seemed, there were still strong opinions concerning the term for which troops would remain; only after a struggle did the Foreign Minister secure a reasonable limita-
tions of troops-stationing. In connection with China, only after prevailing over strong opposition did he persuade the army to make concessions in presence of the object of avoiding war. Army and Navy sides took a strong stand toward negotiations in October; Mr. Togo resisted the intervention of Admiral Chih to ease the Navy's stand. In the discussions of the policy to be pursued, if negoti-
tiations failed, Mr. Togo engaged in a heated discussion, insisting with all possible force on avoiding war. Even if negotiations failed, he said, we need not follow the call-
time game that Japan must fight alone or later the Foreign Minister attempted to find a solution to the problem of the Chinese. If negotiations should be broken, that to him was the most dangerous thing in war. Mr. Togo said that he knew the determination not spirit of the American and British people, and that it would be imprudent to go to war with them. The High Command meanwhile forced the Lisbon Conference decision that if negotiations failed, they would decide upon war.

After the beginning of November the High Command indicated
more urgently that the success or failure of the negotiations must be assessed even, and some in 12-
posing a time limit on the negotiations. On cross-
questioning Mr. Togo mentioned the names of those, includ-
ing some of his co-defendants, who opposed his fight for
peace (no co-defendant denied the truth of his evidence).

Exhibit 3,464 Testimony of Oshika Keisuke
Mr. Togo, who testified to the occurrence of Mr. Togo's
urging him, toward the end of October 1941, to use his
influence to moderate the stand of the Army, as it was
likely that a Japanese-American war would show if things
were left as they were. The witness did attempt to do so.

Exhibit 3,465 Testimony of Masuda Akiho
Mr. Togo testified that the General Staff was strongly
opposed to the adoption of Proposal "A" and "B", particu-
larly Proposal "B", which the Foreign Minister proposed.

Exhibit 3,466 Testimony of Masuda Akiho
Mr. Akiho testified that Foreign Minister Togo introduced his
Proposal "B" at the Lisbon Conference of 1 November with-
out previous consultation with the Army and Navy High
Council. There was a heated discussion between the Chief of
the General Staff and Foreign Minister Togo, and the sit-
uation became very serious. The General Staff finally
accepted the proposal.

Exhibit 3,467 Testimony of Suzuki Tsunehiko
Mr. Suzuki testified that the government, especially the Foreign
Minister, was put
up a stiff fight against the complaints of the High
Council.

Exhibit 3,468 Testimony of Tomoe Ryōkichi
Mr. Tomoe testified that Mr. Togo's opposition to the
classification of the Lisbon Conference, and particularly
his insistence that failure of the Japanese-American
negotiations need not necessarily mean a war, provoked great
discussion in military circles. It was even declared by a colonel in the army that it was an encouragement upon
the resignation of the High Council for a Foreign Minister
to utter such declarations. They declared, threateningly that
the Foreign Minister should be "dismissed off." The witness
requested the commander of the committee to protect the
person of Mr. Togo. Then the Foreign Minister came immedi-
ately to the witness, that he should have to resign office
because he was so much opposed to war with the United
States, the witness dissuaded him, pointing out that no
one else would be so resolute to check the army and pre-
vent war. By August 1942 Foreign Minister Togo was under
the surveillance of the army's secret police.