

PART A
CHAPTER III
A SUMMARY

(To be read before the Tribunal in lieu of
the text of Chapter III, Part A.)

Chapter III of Part A of the Judgment will not be read. It contains a statement of the rights which Japan acquired in China prior to 1930, together with a statement of Japan's obligations to other Powers, so far as relevant to the Indictment. The principal obligations fall under the following descriptions and are witnessed by the documents listed under each description.

1. Obligations to preserve the territorial and administrative independence of China.

United States Declaration of 1901
Identic Notes of 1908
Nine-Power Treaty of 1922
Covenant of the League of Nations of 1920

2. Obligations to preserve for the world the principle of equal and impartial trade with all parts of China, the so-called "Open Door Policy."

United States Declaration of 1900 to 1901
Identic Notes of 1908
Nine-Power Treaty of 1922

3. Obligations to suppress the manufacture, traffic in, and use of opium and analogous drugs.

Opium Convention of 1912
League of Nations of 1925
Opium Convention of 1931

4. Obligations to respect the territory of Powers interested in the Pacific.

Four-Power Treaty of 1921
Notes to Netherlands and Portugal of 1926
Covenant of the League of Nations of 1920

5. Obligations to keep inviolate the territory of neutral Powers.

Hague V of 1907

6. Obligations to solve disputes between nations by diplomatic means, or mediation, or arbitration.

Identic Notes of 1908
Four-Power Treaty of 1921
Nine-Power Treaty of 1922
Hague of 1907
Pact of Paris of 1928

7. Obligations designed to ensure the pacific settlement of international disputes.

Hague of 1899
Hague of 1907
Pact of Paris of 1928

8. Obligation to give previous warning before commencing hostilities.

Hague III of 1907

9. Obligations relative to humane conduct in warfare.

Hague IV of 1907
Geneva Red Cross of 1929
Geneva P.O.W. of 1929

Many of these obligations are general. They relate to no single political or geographical unit. On the other hand, the rights which Japan had required by virtue of the documents considered in this Chapter were largely rights in relation to China. Japan's foothold in China at the beginning of the China war will be fully described in the forefront of the Chapter of the Judgment relating to China.

PART A

CHAPTER III

OBLIGATIONS ASSUMED AND RIGHTS ACQUIRED BY JAPAN

EVENTS PRIOR TO 1 JANUARY 1928

Before 1 January 1928, the beginning of the period covered by the Indictment, certain events had transpired and Japan had acquired **certain rights** and assumed certain obligations; an appreciation of these is necessary in order to understand and judge the actions of the Accused.

SINO-JAPANESE WAR OF 1894-5

The Sino-Japanese War of 1894-5, was concluded by the Treaty of Shimonoseki, whereby China ceded to Japan full sovereignty over the Liaotung Peninsula. However, Russia, Germany and France brought diplomatic pressure to bear upon Japan, thereby forcing her to renounce that cession. In 1896 Russia concluded an agreement with China authorizing Russia to extend the Trans-Siberian Railway across Manchuria and operate it for a period of eighty years, with certain rights of administration in the railway zone. This grant was extended by another agreement between Russia and China in 1898, whereby Russia was authorized to connect the Chinese Eastern Railway at Harbin with Port Arthur and was granted a lease for a period of twenty-five years of the southern part of the Liaotung Peninsula with the right to levy tariffs in the leased territory.

FIRST PEACE CONFERENCE AT THE HAGUE

The principal Powers of the World assembled at The Hague for the First Peace Conference in 1899. This Conference resulted in the conclusion of three Conventions and one Declaration.

The contribution of this First Peace Conference consisted less in the addition of new rules to the existing body of international law than in a restatement in more precise form of the rules of customary law and practice already recognized as established. The same observation applies to the Second Peace Conference at The Hague in 1907, as well as to the Conventions adopted at Geneva on 6 July 1906 and 27 July 1929.

The First Convention, that is to say the Convention for the Pacific Settlement of International Disputes (Annex No. B-1), was signed on 29 July 1899 and was ratified by, or on behalf of, Japan and each of the Powers bringing the Indictment, together with twenty other Powers, and was thereafter adhered to by seventeen additional Powers; so that a total of forty-four of the leading Powers acceded to the Convention. The Convention was, therefore, binding upon Japan before the beginning of the Russo-Japanese War on 10 February 1904 and at all relevant times mentioned in the Indictment, except in so far as it may have been superseded by the First Convention later adopted at The Hague on 18 October 1907.

By ratifying the First Convention concluded at The Hague on 29 July 1899, Japan agreed to use her best efforts to insure the pacific settlement of international disputes and, as far as circumstances would allow, to have recourse to the good offices or mediation of one or more friendly Powers before resorting to force of arms.

THE BOXER TROUBLES OF 1899-1901

The so-called Boxer Troubles in China of 1899-1901 were settled on 7 September 1901 by the signing of

the Final Protocol at Peking. (Annex No. B-2). That Protocol was signed by, or on behalf of, Japan and each of the Powers bringing the Indictment, as well as Germany, Austria-Hungary, Belgium and Italy. By this Protocol, China agreed to reserve the section of Peking occupied by foreign legations exclusively for such legations and to permit the maintenance of guards by the Powers to protect the legations there. She also conceded the right of the Powers to occupy certain points for the maintenance of open communications between Peking and the sea, these points being named in the Agreement.

By signing the Protocol, Japan agreed, along with the other Signatory Powers, to withdraw all troops from the Province of Chihli before 22 September following, except those stationed at the points mentioned under the Agreement.

RUSSO-JAPANESE WAR

Following the Anglo-Japanese Treaty of Alliance, which she concluded on 30 January 1902, Japan began negotiations with Russia in July 1903 concerning the maintenance of the Open Door Policy in China. These negotiations did not proceed as desired by the Japanese Government; and Japan, disregarding the provisions of the Convention for Pacific Settlement of International Disputes signed by her at The Hague on 29 July 1899, attacked Russia in February 1904. In the fighting that raged in Manchuria, Japan expended the lives of 100,000 Japanese soldiers and 2 billion gold Yen. The war ended with the signing of the Treaty of Portsmouth on 5 September 1905.

TREATY OF FORTSMOUTH

The Treaty of Portsmouth signed on 5 September 1905, terminated the Russo-Japanese War and was binding upon Japan at all relevant times mentioned in the Indictment. (Annex No. B-3). By ratifying this Treaty, Japan and Russia agreed to abstain from taking any military measures on the Russo-Korean frontier which might menace the security of Russian or Korean territory. However, Russia acknowledged the paramount interests of Japan in Korea. Russia also transferred to Japan, subject to the consent of China, her lease upon Port Arthur, Talien, and adjacent territory of the Liaotung Peninsula, together with all her rights, privileges, and concessions connected with or forming a part of the lease, as well as all public works and properties in the territory affected by the lease. This transfer was made upon the express engagement that Japan as well as Russia would evacuate and turn over to the administration of China completely and exclusively all of Manchuria, except the territory affected by the lease, and that Japan would perfectly respect the property rights of Russian subjects in the leased territory. In addition, Russia transferred to Japan, subject to the consent of China, the railway from Changchun to Port Arthur, together with all its branches and all rights, privileges, and properties appertaining thereto. This transfer was upon the engagement that Japan, as well as Russia, would exploit their respective railways exclusively for commercial purposes and in no wise for strategic purposes. Japan and Russia agreed to obtain the consent of China to these transfers and not to obstruct any general measures common to all countries

which China might take for the development of commerce and industry in Manchuria.

Russia ceded to Japan that part of the Island of Sakhalin south of the 50th degree of north latitude, as well as all adjacent islands below that boundary. This cession was upon the engagement that Japan as well as Russia would not construct on the Island of Sakhalin or adjacent islands any fortifications or similar military works and would maintain free navigation of the Straits of La Perouse and Tataria.

In the Protocol annexed to the Treaty of Portsmouth, Russia and Japan as between themselves reserved the right to maintain railway guards not to exceed fifteen men per kilometer along their respective railways in Manchuria.

TREATY OF PEKING

By the Treaty of Peking of 1905, China approved the transfer by Russia to Japan of her rights and property in Manchuria, but she did not approve the provision for maintenance of railway guards. By an additional agreement executed by Japan and China on 22 December 1905, which was made an annex to the Treaty, Japan agreed in view of the "earnest desire" expressed by the Chinese Government to withdraw her railway guards as soon as possible, or when Russia agreed to do so, or at any rate when tranquility should be re-established in Manchuria.

SOUTH MANCHURIAN RAILWAY COMPANY

Japan organized the South Manchurian Railway Company in August 1906 as a corporation with its shareholders limited to the Japanese Government and its nationals. The Company was organized as a successor of

the former Chinese Eastern Railway Company in the area traversed by the railroad from Changchun to Port Arthur. It was authorized to, and did, administer the railways and enterprises appertaining thereto, which had been acquired from Russia, together with any new railroads and enterprises established in Manchuria by Japan. In addition, it was vested with certain administrative functions of government in the leased territory and in the railway zone. In short, it was created as an agency of the Japanese Government to administer the interests of that Government in Manchuria.

Contrary to the provisions of the Treaty of Portsmouth, the charter of this company provided that the Commander of the Japanese Army in the leased territory should have power to issue orders and directives to the company in connection with military affairs and in case of military necessity to issue orders involving the business affairs of the company.

OPEN DOOR POLICY IN CHINA

The Open Door Policy in China was first enunciated during the so-called Boxer Troubles of 1899-1901 by the Government of the United States of America in the following language:

"The policy of the Government of the United States is to seek a solution which may bring about permanent safety and peace in China, preserve Chinese territorial and administrative entity, protect all rights guaranteed to friendly Powers by treaty and international law, and safeguard for the World the principle of equal and impartial trade with all parts of the Chinese Empire."

The other Powers concerned, including Japan, assented to the policy thus announced; and this policy became the basis of the so-called Open Door Policy toward China. For more than twenty years thereafter, the Open Door Policy thus made rested upon the informal commitments by the various Powers; but it was destined to be crystallized into treaty form with the conclusion of the Nine-Power Treaty at Washington in 1922.

JAPANESE-AMERICAN IDENTIC NOTES OF 1908

Japan recognized this Open Door Policy in China and in the region of the Pacific Ocean when her Government exchanged Identic Notes on the subject with the Government on the United States of America on 30 November 1908. (Annex No. B-4). The provisions of these Notes were duly binding upon Japan and the United States of America at all relevant times mentioned in the Indictment. By this exchange of Notes, the two Powers agreed:

- (1) That the policy of their Governments for encouragement of free and peaceful commerce on the Pacific Ocean was uninfluenced by any aggressive tendencies, was directed to the maintenance of the existing status quo in the Pacific region and to the defense of the principle of equal opportunity for commerce and industry in China;
- (2) That they would reciprocally respect the territorial possessions of each other in that region;
- (3) That they were determined to preserve the common interest of all Powers in China by supporting by all pacific means the independence

and integrity of China and the principle of equal opportunity for commerce and industry of all nations in that Empire; and,

- (4) That should any event occur threatening the status quo they would communicate with each other as to what measures they might take.

ANNEXATION OF KOREA

Japan annexed Korea in 1910, thereby indirectly increasing Japanese rights in China, since Korean settlers in Manchuria thereby became subjects of the Japanese Empire. The number of Koreans in Manchuria by 1 January 1928 amounted to approximately 800 thousand people.

CONFLICTING CLAIMS BY CHINA AND JAPAN

As was to be expected, the exercise by Japan of extra-territorial rights in China, in connection with the operation of the South Manchurian Railway and the enjoyment of the lease of the Liaotung Peninsula, gave rise to constant friction between her and China. Japan claimed that she had succeeded to all the rights and privileges granted to Russia by China in the Treaty of 1896, as enlarged by the Treaty of 1898; that one of those rights was absolute and exclusive administration within the railway zone; and that within that zone she had broad administrative powers, such as control of police, taxation, education, and public utilities. China denied this interpretation of the Treaties. Japan also claimed the right to maintain railway guards in the railway zone, which right also China denied. The controversies which arose regarding the Japanese railway guards were not limited to their presence and activities within the railway zone. These guards were regular Japanese

soldiers, and they frequently carried on maneuvers outside the railway areas. These acts were particularly obnoxious to the Chinese, both officials and private persons alike, and were regarded as unjustifiable in law and provocative of unfortunate incidents. In addition, Japan claimed the right to maintain Consular Police in Manchuria. Such police were attached to the Japanese consulates and branch consulates in all Japanese consular districts in such cities as Harbin, Tsitsihar, and Manchouli, as well as in the so-called Chientao District, in which lived large numbers of Koreans. This right was claimed as a corollary to the right of extra-territoriality.

TWENTY-ONE DEMANDS, SINO-JAPANESE TREATY OF 1915

In 1915, Japan presented to China the notorious "Twenty-one Demands". The resulting Sino-Japanese Treaty of 1915 provided that Japanese subjects would be free to reside and travel in South Manchuria and engage in business and manufacture of any kind. This was an important and unusual right enjoyed in China by the subjects of no other Nation, outside the Treaty Ports, and was later to be so interpreted by Japan as to include most of Manchuria in the term, "South Manchuria". The Treaty further provided that Japanese subjects in South Manchuria might lease by negotiation the land necessary for erecting suitable buildings for trade, manufacturing and agricultural enterprises.

An exchange of Notes between the two Governments, at the time of the conclusion of the Treaty, defined the expression, "lease by negotiation". According to the Chinese version this definition implied a long-term lease of not more than thirty years with the right of

conditional renewal; but according to the Japanese version, it implied a long-term lease of not more than thirty years with the right of unconditional renewal.

In addition to the foregoing, the Treaty provided for the extension of the term of Japanese possession of the Kwantung Leased Territory (Liaotung Peninsula) to ninety-nine years, and for prolongation of the period of Japanese possession of the South Manchurian Railway and the Antung-Mukden Railway to ninety-nine years.

The Chinese consistently claimed that the Treaty was without "fundamental validity". At the Paris Conference in 1919, China demanded the abrogation of the Treaty on the ground that it had been concluded "under coercion of the Japanese ultimatum threatening war". At the Washington Conference in 1921-2, the Chinese delegation raised the question "as to the equity and justice of the Treaty and its fundamental validity". Again in March 1923, shortly before the expiration of the original twenty-five year lease of the Kwantung Territory, China communicated to Japan a further request for the abrogation of the Treaty and stated that "the Treaties and Notes of 1915 have been consistently condemned by public opinion in China". Since the Chinese maintained that the Agreements of 1915 lacked "fundamental validity", they declined to carry out the provisions relating to Manchuria, except insofar as circumstances made it expedient so to do. The Japanese complained bitterly of the consequent violations by the Chinese of what they claimed were their treaty rights.

ALLIED INTERVENTION IN RUSSIA, 1917-20

The First World War gave Japan another opportunity to strengthen her position upon the Continent of Asia. The Russian Revolution broke out in 1917. In 1918 Japan entered into an inter-allied arrangement whereby forces, not exceeding above 7,000 by any one Power, were to be sent to Siberia to guard military stores which might be subsequently needed by Russian forces, to help the Russians in the organization of their own self-defense, and to aid the evacuating Czechoslovakian forces in Siberia.

RUSSO-JAPANESE CONVENTION OF PEKING, 1925

Russo-Japanese relations were eventually stabilized for a time by the conclusion of the Convention Embodying Basic Rules for Relations between Japan and the Union of Soviet Socialist Republics, which was signed at Peking on 20 January 1925. The Convention was binding upon Japan at all relevant times mentioned in the Indictment. (Annex No. B-5). By concluding this Convention, the parties solemnly affirmed:

- (1) That it was their desire and intention to live in peace and amity with each other, scrupulously to respect the undoubted right of a State to order its own life within its own jurisdiction in its own way, to refrain and restrain all persons in any governmental service for them, and all organizations in receipt of any financial assistance from them from any act overt or covert liable in any way whatever to endanger the order and security in any part of the other's territories;

- (2) That neither Contracting Party would permit the presence in the territories under its jurisdiction (a) of organizations or groups pretending to be the Government for any part of the territories of the other Party, or (b) of alien subjects or citizens who might be found to be actually carrying on political activities for such organizations or groups; and,
- (3) That the subjects or citizens of each Party would have the liberty to enter, travel, and reside in the territories of the other and enjoy constant and complete protection of their lives and property as well as the right and liberty to engage in commerce, navigation, industries and other peaceful pursuits while in such territories.

TREATY OF PEACE, 1919

World War I came to an end with the signing of the Treaty of Peace at Versailles on 28 June 1919 by the Allied and Associated Powers as one Party and Germany as the other Party. (Annex No. B-6). With the deposit of instruments of ratification by Germany on 10 January 1920, the Treaty came into force. The Allied and Associated Powers consisted of the Principal Allied and Associated Powers and 22 other Powers, among which were included China, Portugal and Thailand. The Principal Allied and Associated Powers were described in the Treaty as the United States of America, the British Empire, France, Italy and Japan. This Treaty was ratified by, or on behalf of, Japan and each of the Powers bringing the Indictment, except the United States of America, the

Union of Soviet Socialist Republics and the Netherlands.

The Versailles Treaty contains, among other things: (1) The Covenant of the League of Nations, which is Part I consisting of Articles 1 to 26 inclusive; (2) The renunciation by Germany in favor of the Principal Allied and Associated Powers of all her rights and titles over her oversea possessions, which is Article 119; (3) The mandate provisions for government of the former German possessions so renounced, which is Article 22; (4) The declaration prohibiting the use of asphyxiating, poisonous and other gases, which is Article 171; and (5) The ratification of the Opium Conventions signed at The Hague on 23 January 1912, together with provisions for general supervision by the League over agreements with regard to the traffic in opium and other dangerous drugs, which are Articles 295 and 23 respectively.

Japan was bound by all the provisions of the Treaty of Versailles at all relevant times mentioned in the Indictment, except in so far as she may have been released from her obligations thereunder by virtue of the notice given by her Government on 27 March 1933 of her intention to withdraw from the League of Nations in accordance with the provisions of Article I of the Covenant. Such withdrawal did not become effective before 27 March 1935 and did not affect the remaining provisions of the Treaty.

COVENANT OF THE LEAGUE OF NATIONS

By ratifying the Versailles Treaty, Japan ratified the Covenant of the League of Nations and became a Member of the League. Twenty-eight other Powers also became Members of the League by ratifying the Treaty, including among them all the Powers bringing the Indictment

except the United States of America, the Union of Soviet Socialist Republics and the Netherlands. However, the Netherlands and twelve other Powers, who had not signed the Treaty, originally acceded to the Covenant; and the Union of Soviet Socialist Republics later became a Member. At one time or another sixty-three Nations have been Members of the League after acceding to the Covenant.

Under the terms of the Covenant, Japan agreed, among other things:

- (1) That maintenance of peace requires the reduction of armaments to the lowest point consistent with national safety, and that she would cooperate in such reduction by interchange of full and frank information respecting armaments;
- (2) That she would respect and preserve the territorial integrity and then existing political independence of all Members of the League.
- (3) That in case of dispute with another Member of the League, she would submit the matter to the Council of the League or to arbitration and would not resort to war until three months after the award of the arbitrators or the report of the Council;
- (4) That if she resorted to war, contrary to the Covenant, she would ipso facto be deemed to have committed an act of war against all Members of the League; and
- (5) That all international agreements made by the Members of the League would have no effect until registered with the Secretariat of the League.

With respect to colonies and territories, which as a consequence of the war ceased to be under the sovereignty of the vanquished nations, and were not then able to govern themselves, Japan agreed:

- (1) That the well being and development of the inhabitants thereof formed a sacred trust;
- (2) That those colonies and territories should be placed under the tutelage of advanced Nations to be administered under a Mandate on behalf of the League;
- (3) That the establishment of fortifications or military and naval bases should be prohibited in the mandated territories; and,
- (4) That equal opportunities for trade and commerce of other Members of the League with the mandated territories should be secured.

MANDATE OF THE PACIFIC ISLANDS

Germany renounced in favor of the Powers described in the Versailles Treaty as the Principal Allied and Associated Powers, namely: the United States of America, the British Empire, France, Italy and Japan, all her rights and titles over her oversea possessions. Although the United States of America did not ratify that Treaty, all her rights respecting these former German possessions were confirmed in a Treaty between the United States of America and Germany, which was signed on 25 August 1921. The said four Powers: The British Empire, France, Italy and Japan agreed on 17 December 1920 to confer upon Japan, under the terms of the Covenant of the League of Nations, a Mandate to administer the groups of the former German Islands in the Pacific Ocean lying

north of the Equator in accordance with certain additional provisions. Some of those provisions were:

- (1) That Japan should see that the slave trade was prohibited and that no forced labor was permitted in the Mandated Islands; and,
- (2) That no military or naval bases would be established and no fortifications would be erected in the Islands.

Japan accepted this Mandate, took possession of the Islands and proceeded to administer the Mandate, and thereby became bound, and was bound at all relevant times mentioned in the Indictment, to the terms of the Mandate contained in the Covenant of the League and the Agreement of 17 December 1920.

MANDATE CONVENTION, JAPAN & THE UNITED STATES, 1922

Since the United States had not agreed to this Mandate of Japan over the former German Islands, but possessed an interest therein, Japan and the United States of America began negotiations regarding the subject in Washington in 1922. A Convention was agreed upon and signed by both Powers on 11 February 1922. (Annex No. B-7). Ratifications were exchanged on 13 July 1922; and thereby, Japan, as well as the United States, was bound by this Convention at all times mentioned in the Indictment. After reciting the terms of the Mandate as granted by the said Principal Allied and Associated Powers, the Convention provided, among other things:

- (1) That the United States of America would have the benefits of Articles III, IV and V of that Mandate Agreement, notwithstanding that she was not a Member of the League;
- (2) That American property rights in the Islands would be respected;

- (3) That existing Treaties between Japan and the United States would apply to the Islands; and,
- (4) That Japan would furnish the United States a duplicate of the annual report of her administration of the Mandate to be made to the League.

In a Note delivered to the Government of the United States by the Government of Japan on the day of exchange of ratifications of the Convention, Japan assured the United States that the usual comity would be extended to the nationals and vessels of the United States visiting the harbors and waters of those Islands.

WASHINGTON CONFERENCE

A number of Treaties and Agreements were entered into at the Washington Conference in the Winter of 1921 and Spring of 1922. This Conference was essentially a Disarmament Conference, aimed to promote the responsibility of peace in the World, not only through the cessation of competition in naval armament, but also by solution of various other disturbing problems which threatened the peace, particularly in the Far East. These problems were all interrelated.

FOUR POWER TREATY OF 1921

The Four-Power Treaty between the United States, the British Empire, France and Japan relating to their insular possessions and insular dominions in the Pacific Ocean was one of the Treaties entered into at the Washington Conference. (Annex No. B-8). This Treaty was signed on 13 December 1921, and was duly ratified by Japan and the other Powers signatory thereto, and was binding on Japan at all times mentioned in the Indictment. In that Treaty, Japan agreed, among other things:

- (1) That she would respect the rights of the

other Powers in relation to their insular possessions and insular dominions in the region of the Pacific Ocean; and

- (2) That if a controversy should arise out of any Pacific question involving their rights, which could not be settled by diplomacy and was likely to affect the harmonious accord then existing between the Signatory Powers, she would invite the Contracting Parties to a joint conference to which the whole subject would be referred for consideration and adjustment.

The day this Treaty was signed, the Contracting Powers entered into a Joint Declaration to the effect that it was their intent and understanding that the Treaty applied to the Mandated Islands in the Pacific Ocean. (Annex No. B-8-a).

At the Washington Conference, the Powers Signatory to this Treaty concluded a supplementary treaty on 6 February 1922 (Annex No. B-8-b) in which it was provided as follows:

"The term 'insular possessions and insular dominions' used in the foresaid Treaty (The Four-Power Treaty) shall, in its application to Japan, include only the Southern portion of the Island of Sakhalin, Formosa and the Pescadores and the Islands under the Mandate of Japan."

FOUR-POWER ASSURANCES TO THE NETHERLANDS & PORTUGAL

Having concluded the Four-Power Treaty on 13 December 1921, the Powers Signatory, including Japan, being anxious to forestall any conclusions to the contrary, each sent identical Notes to the Government of the Netherlands (Annex No. B-8-c) and to the Government of

Portugal (Annex No. B-8-d) assuring those Governments that they would respect the rights of the Netherlands and Portugal in relation to their insular possessions in the region of the Pacific Ocean.

WASHINGTON NAVAL LIMITATIONS TREATY

Another of the interrelated treaties signed during the Washington Conference was the Treaty for Limitation of Naval Armament. (Annex No. B-9). This Treaty was signed on 6 February 1922 by the United States of America, the British Empire, France, Italy and Japan, and later was ratified by each of them. The Treaty was binding upon Japan at all relevant times mentioned in the Indictment prior to 31 December 1936 when she became no longer bound by virtue of the notice to terminate the Treaty given by her on 29 December 1934. It is stated in the Preamble to that Treaty: that "desiring to contribute to the maintenance of peace, and to reduce the burdens of competition in armament," the Signatory Powers had entered into the Treaty. However, as an inducement to the signing of this Treaty, certain collateral matters were agreed upon and those agreements were included in the Treaty. The United States, the British Empire and Japan agreed that the status quo at the time of the signing of the Treaty, with regard to fortifications and naval bases, should be maintained in their respective territories and possessions specified as follows: (1) The insular possessions which the United States then held or might thereafter acquire in the Pacific Ocean, except (a) those adjacent to the coast of the United States, Alaska and the Panama Canal Zone, not including the Aleutian Islands, and (b) the Hawaiian Islands; (2) Hongkong and the insular possessions which the British Empire then held or might thereafter acquire in the Pacific Ocean, east of the meridian 110 degrees east longitude, except (a) those

adjacent to the coast of Canada, (b) the Commonwealth of Australia and its territories, and (c) New Zealand; (3) The following insular possessions of Japan in the Pacific Ocean, to-wit: The Kurile Islands, the Bonin Islands, Amami-Oshima, the Loochoo Islands, Formosa and the Pescadores, and any insular possessions in the Pacific Ocean which Japan might thereafter acquire. The Treaty specified that the maintenance of the status quo implied that no new fortifications or naval bases would be established in the territories and possessions specified; that no measures would be taken to increase the existing naval facilities for the repair and maintenance of naval forces, and that no increase would be made in the coast defenses of the territories and possessions named.

The Signatory Powers agreed that they would retain only the capital ships named in the Treaty. The United States of America gave up its commanding lead in battleship construction; and both the United States and the British Empire agreed to scrap certain battleships named in the Treaty. Maximum limits in total capital ship replacement tonnage were set for each Signatory Power, which they agreed not to exceed. A similar limitation was placed on aircraft carriers. Guns to be carried by capital ships were not to exceed 16 inches, and those carried by aircraft carriers were not to exceed 8 inches in caliber, and no vessels of war of any of the Signatory Powers thereafter to be laid down, other than capital ships, was to carry guns in excess of 8 inches in caliber.

NINE-POWER TREATY

One further Treaty signed at the Washington Conference which cannot be disregarded without disturbing the general understanding and equilibrium which were intended to be accomplished and effected by the group of agreements arrived at in their entirety. Desiring to adopt a policy designed to stabilize conditions in the Far East, to safeguard the rights and interests of China, and to promote intercourse between China and the other Powers upon the basis of equality of opportunity, nine of the Powers at the Conference entered into a Treaty, which taken together with the other Treaties concluded at the Conference, was designed to accomplish that object. This Treaty was signed on 6 February 1922 and later ratified by the following Powers: The United States of America, the British Empire, Belgium, China, France, Italy, Japan, the Netherlands, and Portugal. (Annex No. B-10). This Treaty was binding upon Japan at all relevant times mentioned in the Indictment.

By concluding this Treaty, Japan as well as the other Signatory Powers, agreed, among other things, as follows:

- (1) To respect the sovereignty, the independence, and the territorial and administrative integrity of China;
- (2) To provide the fullest and most unembarrassed opportunity to China to develop and maintain for herself an effective and stable government;
- (3) To use her influence for the purpose of effectually establishing and maintaining the principle of equal opportunity for the commerce and industry of all

- nations throughout the territory of China;
- (4) To refrain from taking advantage of conditions in China in order to seek special rights or privileges which would abridge the rights of subjects or citizens of friendly States, and from countenancing action inimical to the security of such States.
 - (5) To refrain from entering into any treaty, agreement, arrangement, or understanding with any Power or Powers, which would infringe or impair the foregoing principles;
 - (6) To refrain from seeking, or supporting her nationals in seeking any arrangement which might purport to establish in favor of her interests any general superiority of rights with respect to commercial or economic development in any designated region of China any such monopoly or preference as would deprive the nationals of any other Power of the right of undertaking any legitimate trade or industry in China or of participating with the Chinese Government or any local authority in any public enterprise or which would be calculated to frustrate the practical application of the principle of equal opportunity;
 - (7) To refrain from supporting her nationals in any agreement among themselves designed to create Spheres of Influence or to provide for mutually exclusive

- opportunities in designated parts of China;
- (8) To respect the neutrality of China; and
 - (9) To enter into full and frank communication with the other Contracting Powers whenever any situation should arise which in the opinion of any one of them involved the application of the stipulations of the Treaty.

Thus the Powers agreed in formal and solemn Treaty to enforce the Open Door Policy in China. Japan not only agreed to, signed and ratified this Treaty, but her Plenipotentiary at the Washington Conference declared that Japan was enthusiastically in accord with the principles therein laid down. He used the following words:

"No one denies to China her sacred right to govern herself. No one stands in the way of China to work out her own great national destiny."

OPIMUM CONVENTION OF 1912

Another important Agreement entered into by Japan, which is relevant to the issues, and which particularly applies to Japan's relations with China, is the Convention and Final Protocol for the Suppression of the Abuse of Opium and Other Drugs, which was signed on 23 January 1912 at the International Opium Conference at The Hague. (Annex No. B-11). This Convention was signed and ratified by, or on behalf of, Japan and each of the Powers bringing the Indictment, except the Union of Soviet Socialist Republics, and was binding upon Japan at all relevant times mentioned in the Indictment. Forty-six other Powers also signed and ratified the

Convention, and six additional Powers later adhered to it. Being resolved to pursue progressive suppression of the abuse of opium, morphine, and cocaine, as well as drugs prepared or derived from these substances giving rise or which might give rise to analogous abuse, the Powers concluded the Convention. Japan, together with the other Contracting Powers, agreed:

- (1) That she would take measures for the gradual and efficacious suppression of the manufacture, traffic in, and use of these drugs;
- (2) That she would prohibit the exportation of these drugs to the countries which prohibited the importation of them; and that she would limit and control the exportation of the drugs to countries, which limited the entry of them to their territories;
- (3) That she would take measures to prevent the smuggling of these drugs into China or into her leased territories, settlements and concessions in China;
- (4) That she would take measures for the suppression, *pari passu* with the Chinese Government, of the traffic in and abuse of these drugs in her leased territories, settlements and concessions in China; and,
- (5) That she would cooperate in the enforcement of the pharmacy laws promulgated by the Chinese Government for the regulation of the sale and distribution of these drugs by applying them to her nationals in China.

SECOND OPIUM CONFERENCE OF THE LEAGUE

The Second Opium Conference of the League of Nations further implemented and reinforced the Opium Convention of 1912 by the signing of a Convention on 19 February 1925 (Annex No. B-12), which represented a comprehensive effort on behalf of the Signatory Powers to suppress the contraband trade in and abuse of opium, cocaine, morphine, and other harmful drugs. This Convention was signed and ratified by, or on behalf of, Japan and each of the Powers bringing this Indictment, except the United States of America, the Philippines and China. The Convention was also definitely acceded to by forty-six additional Powers. The Allied and Associated Powers had provided in Article 295 of the Versailles Treaty that the ratification of that Treaty would be deemed to be ratification of the Opium Convention of 23 January 1912. The Covenant of the League of Nations, which is found in Part I of the Versailles Treaty, provided in Article 23 thereof that the Members of the League would thereafter entrust the League with the general supervision over the execution of agreements with regard to the traffic in opium and other dangerous drugs. The Second Opium Conference was in response to these obligations; and the Convention of 19 February 1925 provided for the organization and functioning of a Permanent Central Board of the League for the Suppression of the Abuse of Opium and Other Drugs. In addition, Japan, as well as the other Signatory Powers, agreed among other things to the following:

- (1) That she would enact laws to ensure effective control of the production, distribution and export of opium and limit

exclusively to medical and scientific purposes the manufacture, import, sale, distribution, export and use of opium and the other drugs named in the Convention; and,

- (2) That she would send annually to the Central Board of the League as complete and accurate statistics as possible relative to the preceding year showing: production, manufacture, stocks, consumption, confiscations, imports and exports, government consumption, etc., of the drugs named in the Convention.

The Privy Council of Japan decided on 2 November 1938 to terminate further cooperation with this Central Board of the League. The reason assigned for this action was that the League had authorized its Members to invoke sanctions against Japan under the Covenant in an effort to terminate what the League had denounced as Japan's aggressive war against China. Notice of this decision was communicated to the Secretary General of the League on the same day.

OPIUM CONVENTION OF 1931

A third Convention, which is known as the Convention for Limiting the Manufacture and Regulating the Distribution of Narcotic Drugs was signed at Geneva on 13 July 1931. (Annex No. B-13). This Convention was signed and ratified, or acceded to, by, or on behalf of, Japan and each of the Powers bringing the Indictment, as well as fifty-nine additional Powers. This Convention was supplementary to and intended to

make more effective the Opium Conventions of 1912 and 1925 mentioned above. Japan, together with the other Contracting Powers, agreed:

- (1) That she would furnish annually, for each of the drugs covered by the Convention in respect to each of her territories to which the Convention applied, an estimate, which was to be forwarded to the Central Board of the League, showing the quantity of the drugs necessary for medical and scientific use and for export authorized under the Conventions;
- (2) That she would not allow to be manufactured in any such territory in any one year a quantity of any of the drugs greater than the quantity set forth in such estimate; and,
- (3) That no import into, or export from, the territories of any of the Contracting Powers of any of the drugs would take place, except in accordance with the provisions of the Convention.

LAWS OF BELLIGERENCY

The law governing the entrance of States into, as well as their conduct while in, belligerency received further restatement during the two decades immediately preceding the period covered by the Indictment and during the years 1928 and 1929. In 1907, the second Peace Conference at The Hague produced thirteen Conventions and one Declaration, all signed on 18 October 1907. The Kellogg-Briand Pact (Pact of Paris) condemning

aggressive war was signed at Paris on 27 August 1928. Then on 27 July 1929, two important Conventions were signed at Geneva, namely: the Convention Relative to the Treatment of Prisoners of War, and the Convention for the Amelioration of the Condition of the Wounded and Sick of Armies in the Field. These Agreements not only impose direct treaty obligations upon the Contracting Powers, but also delineate more precisely the customary law. The effectiveness of some of the Conventions signed at The Hague on 18 October 1907 as direct treaty obligations was considerably impaired by the incorporation of a so-called "general participation clause" in them, providing that the Convention would be binding only if all the Belligerents were parties to it. The effect of this clause is, in strict law, to deprive some of the Conventions of their binding force as direct treaty obligations, either from the very beginning of a war or in the course of it as soon as a non-signatory Power, however insignificant, joins the ranks of the Belligerents. Although the obligation to observe the provisions of the Convention as a binding treaty may be swept away by operation of the "general participation clause", or otherwise, the Convention remains as good evidence of the customary law of nations, to be considered by the Tribunal along with all other available evidence in determining the customary law to be applied in any given situation.

FIRST HAGUE CONVENTION

The First Convention agreed upon by the Conference at The Hague in 1907 was the Convention for the Pacific Settlement of International Disputes. (Annex No. B-14). The Convention was signed by, or on behalf of,

Japan and each of the Powers bringing the Indictment, and ratified by, or on behalf of, all of them, except Great Britain, Australia, Canada, India and New Zealand. Twenty-one other Powers also signed and ratified the Convention, and five additional Powers later acceded to it. The Powers bringing the Indictment, who did not ratify this Convention, remained bound, in so far as their relations with Japan were concerned, by the Convention for the Pacific Settlement of International Disputes signed at The Hague on 29 July 1899; since that Convention was signed and ratified by, or on behalf of, Japan and each of these Powers. Neither of the Conventions mentioned under this title contained a "general participation clause"; they were, therefore, binding upon Japan as direct treaty obligations at all relevant times mentioned in the Indictment. Japan, as well as the other Contracting Powers, among other things agreed:

- (1) That, in order to obviate as far as possible recourse to force in her relations with other States, she would use her best efforts to insure the pacific settlement of international differences; and,
- (2) That in case of serious disagreement or dispute, before an appeal to arms, she would have recourse to the good offices or mediation of one or more friendly Powers.

KELLOGG-BRIAND PACT

The Kellogg-Briand Pact or Pact of Paris, which was signed at Paris on 27 August 1928, condemned aggressive war and restated the law evidenced by the

First Hague Convention of 18 October 1907 for the Pacific Settlement of International Disputes. (Annex No. B-15). The Treaty was signed and ratified by, or on behalf of, Japan and each of the Powers bringing the Indictment, except the Union of Soviet Socialist Republics, China and the Netherlands. Japan ratified the Treaty on 24 July 1929, and China adhered to the Treaty on 8 May 1929. The Netherlands adhered to the Treaty on 12 July 1929, and the Union of Soviet Socialist Republics adhered on 27 September 1928. Therefore, Japan and each of the Powers bringing the Indictment had definitely acceded to the Treaty by 24 July 1929; in addition, eight other Powers had signed and ratified the Treaty; and forty-five additional Powers, at one time or another, adhered to it. The Treaty was binding upon Japan at all relevant times mentioned in the Indictment.

The Contracting Powers, including Japan, declared that they condemn recourse to war for the solution of international controversies, and renounce it as an instrument of national policy in their relations with one another.

The Contracting Powers then agreed that the settlement or solution of all disputes or conflicts of whatever nature or of whatever origin they may be, which might arise among them, would never be sought except by pacific means.

Prior to ratification of the Pact, some of the Signatory Powers made declarations reserving the right to wage war in self-defence including the right to judge for themselves whether a situation requires such action. Any law, international or municipal, which prohibits recourse to force, is necessarily

limited by the right of self-defence. The right of self-defence involves the right of the State threatened with impending attack to judge for itself in the first instance whether it is justified in resorting to force. Under the most liberal interpretation of the Kellogg-Briand Pact, the right of self-defence does not confer upon the State resorting to war the authority to make a final determination upon the justification for its action. Any other interpretation would nullify the Pact; and this Tribunal does not believe that the Powers in concluding the Pact intended to make an empty gesture.

THIRD HAGUE CONVENTION

The Third Convention concluded by the Powers in Conference at The Hague in 1907 was the Convention Relative to the Opening of Hostilities. (Annex No. B-16). The Convention was signed and ratified by, or on behalf of, Japan and each of the Powers bringing the Indictment, except China; but China adhered to the Convention in 1910. A total of twenty-five Powers signed and ratified the Convention, including Portugal and Thailand, and six Powers later adhered to it. This Convention does not contain a "general participation clause". It provides that it shall take effect in case of war between two or more of the Contracting Powers, it was binding upon Japan at all relevant times mentioned in the Indictment. By ratifying this Convention, Japan agreed, among other things:

That hostilities between her and any other Contracting Power must not commence without previous and explicit warning, in the form either of a declaration of war, giving reasons, or of an ultimatum with conditional declaration of war.

FIFTH HAGUE CONVENTION

The Fifth Hague Convention of 1907 was the Convention Respecting the Rights and Duties of Neutral Powers and Persons in War on Land. (Annex No. B-17). The Convention was signed and ratified by, or on behalf of, Japan and each of the Powers bringing the Indictment, except Great Britain, Australia, Canada, New Zealand, India and China. However, China adhered to the Convention in 1910. A total of twenty-five Powers signed and ratified the Convention, including Thailand and Portugal; and three Powers later adhered to it. Great Britain and sixteen other Powers, who signed the Convention, have not ratified it.

This is one of the Hague Conventions which contains a "general participation clause"; although it ceased to be applicable in the recent war as a direct treaty obligation of Japan upon the entry of Great Britain into the war on 8 December 1941, it remained as good evidence of the customary law of nations to be considered along with all other available evidence in determining the customary law to be applied in any given situation, to which the principles stated in the Convention might be applicable.

By this Convention, Japan agreed, among other things:

- (1) That the territory of neutral Powers is inviolable;
- (2) That Belligerents are forbidden to move troops or convoys of either munitions of war or supplies across the territory of a neutral Power; and,
- (3) That a neutral Power is not called upon to

prevent the export or transport, on behalf of one or other of the Belligerents, of arms, munitions of war, or, in general of anything which can be of use to an army or a fleet.

FOURTH HAGUE CONVENTION

The Fourth Hague Convention of 1907 is the Convention Respecting the Laws and Customs of War on Land. (Annex No. B-18). Regulations Respecting the Laws and Customs of War on Land were annexed to and made a part of this Convention. (Annex No. B-19). The Convention was signed and ratified by, or on behalf of, Japan and each of the Powers bringing the Indictment, except China. Nineteen additional Powers, including Thailand and Portugal, also signed and ratified this Convention; and two other Powers later adhered to it.

This is another of the Hague Conventions which contains a "general participation clause". What we have said respecting this clause applies equally well here.

As stated in the Preamble to this Convention, the Contracting Powers were animated by the desire, even in the extreme case, to serve the interests of humanity and the needs of civilization by diminishing the evils of war and adopted the Convention and the Regulations thereunder which were intended to serve as a general rule of conduct for Belligerents. Realizing that it was not possible at the time to concert regulations covering all circumstances that might arise in practice, the Powers declared that they did not intend that unforeseen cases should be left to the arbitrary judgment of military commanders; and that until a more complete code should be issued, they declared that in cases not included in the Regulations the inhabitants and belligerents remained under the protection and principles of the

laws of nations as they resulted from the usages of civilized peoples, the laws of humanity, and the dictate of the public conscience.

By this Convention, Japan agreed, among other things:

- (1) That prisoners of war are in the power of the hostile Government, but not of the individuals or corps who capture them; that they must be humanely treated; and all their personal belongings, except arms, horses, and military papers, remain their property;
- (2) That in case of capture of any of the armed forces of a Belligerent, whether they consisted of combatants or non-combatants, they would be treated as prisoners of war.
- (3) That although she might utilize the labor of prisoners of war, officers excepted, the task would not be excessive and would not be connected with the operation of war; and that she would pay to the prisoners compensation for all work done by them;
- (4) That as regards board, lodging, and clothing, in the absence of a special agreement between the Belligerents, she would treat prisoners of war on the same footing as the troops who captured them;
- (5) That prisoners of war in her power would be subject to the laws governing her own army and entitled to the benefits thereof;
- (6) That she would institute at the commencement of hostilities an inquiry office. That it would be the function of this office to reply to all inquiries about the prisoners and to keep

up to date an individual return for each prisoner of war in which would be recorded all necessary vital statistics and other useful information pertaining to such prisoner.

- (7) That relief societies for prisoners of war would receive every facility from her for the efficient performance of their humane task and their agents would be admitted to places of internment for the purpose of administering relief, etc.;
- (8) That it was forbidden: (a) to employ poison or poisoned weapons; (b) To kill or wound treacherously individuals belonging to the hostile Nation or Army; (c) To kill or wound an enemy, who having laid down his arms, or having no longer means of defence, has surrendered at discretion; (d) To declare that no quarter will be given; (e) To make improper use of a flag of truce, of the national flag or of the military insignia and uniform of the enemy, or of the distinctive badges of the Geneva Convention; or (f) To destroy or seize the enemy's property, unless such destruction or seizure be imperatively demanded by the necessities of war;
- (9) That in sieges and bombardments all necessary steps would be taken by her to spare buildings dedicated to religion, art, science and charitable purpose, historic monuments and hospitals and places where the sick and wounded are collected;

- (10) That the pillage of a town or other place, even when taken by assault was prohibited; and,
- (11) That family honor and rights, the lives of persons, and private property, as well as religious convictions and practice would be respected by her during war.

GENEVA PRISONER OF WAR CONVENTION

The Convention Relative to the Treatment of Prisoners of War was signed at Geneva on 27 July 1929. (Annex No. B-20). Forty-seven Powers signed the Convention; and thirty-four Powers either ratified it or adhered to it. Excepting Australia, China and the Union of Soviet Socialist Republics, the Convention was signed and ratified by, or on behalf of, each of the Powers bringing the Indictment.

Japan sent plenipotentiaries, who participated in the Conference and signed the Convention; but Japan did not formally ratify the Convention before the opening of hostilities on 7 December 1941. However, early in 1942 the United States, Great Britain and other Powers informed Japan that they proposed to abide by the Convention and sought assurances from Japan as to her attitude towards the Convention. Japan acting through her Foreign Minister, who was the Accused TOGO, declared and assured the Powers concerned that, while she was not formally bound by the Convention, she would apply the Convention, "mutatis mutandis", toward American, British, Canadian, Australian and New Zealand prisoners of war. Under this assurance Japan was bound to comply with the Convention save where its provisions could not be

literally complied with owing to special conditions known to the parties to exist at the time the assurance was given, in which case Japan was obliged to apply the nearest possible equivalent to literal compliance. The effect of this assurance will be more fully considered at a later point in this judgment.

This Convention is the "more complete code" of the laws of war contemplated by the Powers signatory to the Hague Convention Respecting the Laws and Customs of War concluded on 18 October 1907; and the Convention provides by its terms that it will be considered to be Chapter II of the Regulations annexed to that Hague Convention. The Convention does not contain a "general participation clause"; but it does contain a provision that it shall remain in force as between the Belligerents who are parties to it even though one of the Belligerents is not a Contracting Power.

The Convention provides, among other things:

- (1) That prisoners of war are in the power of the hostile Power, but not of the individuals or corps who have captured them; that they must be humanely treated and protected, particularly against acts of violence, insults and public curiosity; that they have the right to have their person and honor respected; that women shall be treated with all regard to their sex; and that all prisoners of war must be maintained by the detaining Power;
- (2) That prisoners of war shall be evacuated as quickly as possible to depots removed from

the zone of combat; but that the evacuation, if on foot, shall only be effected by stages of 20 kilometers a day, unless the necessity of reaching water and food requires longer stages;

- (3) That prisoners of war may be interned; but they may not be confined or imprisoned, except as an indispensable measure of safety or sanitation; that if captured in unhealthy regions or climates, they will be transported to a more favorable region; that all sanitary measures will be taken to insure cleanliness and healthfulness of camps; that medical inspections shall be arranged at least once a month to ensure the general health of the prisoners; that collective disciplinary measures affecting food are prohibited; that the food ration shall be equal in quantity and quality to that of troops in base camp; that prisoners shall be furnished facilities together with a sufficiency of potable water for preparing additional food for themselves; that they shall be furnished clothing, linen and footwear as well as work clothes for those who labor; and that every camp shall have an infirmary, where prisoners of war shall receive every kind of attention needed;
- (4) That although prisoners of war are required to salute all officers of the Detaining Power, officers who are prisoners are bound to salute only officers of a higher or equal rank of that Power;

- (5) That Belligerents may utilize the labor of able prisoners of war, officers excepted, and provided that non-commissioned officers are used only for supervisory work; that no prisoner may be employed at labors for which he is physically unfit; that the length of the day's work shall not be excessive, and every prisoner shall be allowed a rest of twenty-four consecutive hours each week; that prisoners shall not be used at unhealthful or dangerous work, and labor detachments must be conducted similar to prisoner-of-war camps, particularly with regard to sanitary conditions, food, medical attention, etc.; that prisoners must be paid wages for their labor; and that the labor of prisoners of war shall have no direct relation with war operations, particularly the manufacture and transportation of munitions, or the transportation of material for combat units;
- (6) That prisoners of war must be allowed to receive parcels by mail intended to supply them with food and clothing; and that relief societies for prisoners of war shall receive from the detaining Power every facility for the efficient performance of their humane tasks;
- (7) That prisoners of war have the right to make requests and register complaints regarding the conditions of their captivity; that in every place where there are prisoners of war they have the right to appoint agents to

represent them directly with the military authorities of the detaining Power; and that such agent shall not be transferred without giving him time to inform his successors about affairs under consideration;

- (8) That although prisoners of war are subject to the laws, regulations, and orders in force in the armies of the detaining Power, punishments other than those provided for the same acts for soldiers of the armies of the detaining Power may not be imposed upon them; and that corporal punishment, imprisonment in quarters without daylight, and in general any form of cruelty, is forbidden, as well as collective punishment for individual acts or omissions;
- (9) That escaped prisoners of war who are retaken shall be liable only to disciplinary punishment; and that the comrades who assisted his escape may incur only disciplinary punishment;
- (10) That at the opening of judicial proceedings against a prisoner of war, the detaining Power shall advise the representative of the protecting Power thereof at least before the opening of the trial; that no prisoner shall be sentenced without having an opportunity to defend himself, and shall not be required to admit himself guilty of the act charged; that the representative of the protecting Power shall be entitled to attend the trial; that no sentence shall be pronounced against a prisoner except by the same courts and according to the same pro-

cedure as in the case of trial of persons belonging to the armed forces of the detaining Power, that the sentence pronounced shall be immediately communicated to the protecting Power; and that in the case of death sentences, the sentence must not be executed before the expiration of three months after such communication;

- (11) That Belligerents are bound to send back to their own country, regardless of rank or number, seriously sick and seriously injured prisoners of war, after having brought them to a condition where they can be transported;
- (12) That Belligerents shall see that prisoners of war dying in captivity are honorably buried and that their graves bear all due information and are respected and maintained;
- (13) That upon outbreak of hostilities each Belligerent shall institute a prisoner of war information bureau, which shall prepare and preserve an individual return upon each prisoner showing certain vital information prescribed, and which shall furnish such information as soon as possible to the interested Power.

Japan also assured the Belligerents that she would apply this Convention to civilian internees and that in applying the Convention she would take into consideration the national and racial manners and customs of prisoners of war and civilian internees under reciprocal conditions when supplying clothing and provisions to them.

GENEVA RED CROSS CONVENTION

The Geneva Red Cross Convention for the Amelioration of the Condition of the Wounded and Sick of Armies in the Field was also signed on 27 July 1929. (Annex No. B-21). The Convention was signed and ratified by, or on behalf of, Japan and each of the Powers bringing the Indictment as well as thirty-two other Powers. It was binding upon Japan and her subjects at all relevant times mentioned in the Indictment, as a direct treaty obligation. The Convention contains a provision to the effect that it must be respected by the Contracting Powers under all circumstances; and if in time of war, one of the Belligerents is not a party to the Convention, its provisions shall remain in force between the Belligerents who are parties to it.

By signing and ratifying the Convention, Japan, as well as the other Signatory Powers, agreed, among other things:

- (1) That officers, soldiers, and other persons officially attached to the armies, who are wounded or sick shall be respected and protected in all circumstances; and that they shall be humanely treated and cared for without distinction of nationality by the Belligerent in whose power they are;
- (2) That after every engagement, the Belligerent who remains in possession of the field of battle shall search for the wounded and dead and protect them from robbery and ill-treatment; and that those wounded and sick who fall into the power of the enemy shall

become prisoners of war to whom the general rules of international law respecting prisoners of war shall be applicable;

- (3) That all personnel charged exclusively with the removal, transportation, and treatment of the wounded and sick, including administration personnel of sanitary formations and establishments and chaplains, shall be respected and protected, and when they fall into the hands of the enemy they shall not be treated as prisoners of war, and shall not be detained, but will be returned as soon as possible to their own army along with their arms and equipment;
- (4) That mobile sanitary formations, and fixed sanitary establishments shall be respected and protected; and if they fall into the hands of the enemy, they shall not be deprived of their buildings, transport and other equipment which may be needed for the treatment of the sick and wounded;
- (5) That only those personnel, formations and establishments entitled to respect and protection under the Convention shall display the distinctive emblem of the Geneva Convention; and,
- (6) That it is the duty of commanders-in-chief of belligerent armies to provide for the details of execution of the provisions of the Convention, as well as unforeseen cases conformable to the general principles of the Convention.

TENTH HAGUE CONVENTION

The Tenth Convention agreed upon at the Conference at The Hague and signed on 18 October 1907 was the Convention for the Adaption to Naval War of the Principles of the Geneva Convention of 6 July 1906. (Annex No. B-22). The Convention was signed and ratified by, or on behalf of, Japan and each of the Powers bringing the Indictment, except Great Britain, Australia, Canada, India and New Zealand. The Convention was signed and ratified by twenty-seven Powers and later five other Powers adhered to it. The Indicting Powers who did not ratify this Convention and also Japan are parties to the Convention which was signed at The Hague on 29 July 1899; and, therefore, as between them, they are bound by the Convention of 1899, which contains most of the provisions found in the later Convention of 1907.

This, also, is one of the Hague Conventions, which contains a "general participation clause", and, therefore, it ceased to be applicable upon Japan as a direct treaty obligation when a non-signatory Power joined the ranks of the Belligerents. What we have said regarding this clause applies equally well here.

The Convention provides, among other things;

- (1) That after every engagement the Belligerents shall take steps to look for the shipwrecked, sick and wounded, and protect them and the dead from pillage and ill treatment; those falling into the power of the enemy shall become prisoners of war; the detaining Power shall send to their country as soon as possible a description of those picked up by him, and shall treat the sick and wounded and bury the dead;

- (2) That hospital ships shall be respected and cannot be captured; but these ships may not be used for military purposes and shall be distinguished by markings and flags displaying the emblem of the Geneva Convention; and that the distinguishing markings prescribed for hospital ships shall not be used for protecting any ships other than those entitled to protection under the Convention.

JAPAN WAS A MEMBER OF THE FAMILY OF NATIONS

Thus for many years prior to the year 1930, Japan had claimed a place among the civilized communities of the world and had voluntarily incurred the above obligations designed to further the cause of peace, to outlaw aggressive war, and to mitigate the horrors of war. It is against that background of obligations that the actions of the Accused must be viewed and judged.