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Judicial Intelligence: Allied Signal Intelligence and the War Crimes Trials of Class "A" War Criminals at the International Military Tribunal for the Far East, 1946-1948

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JUDICIAL INTELLIGENCE:
ALLIED SIGNAL INTELLIGENCE AND THE WAR CRIMES TRIALS OF
CLASS "A" WAR CRIMINALS AT THE INTERNATIONAL
MILITARY TRIBUNAL FOR THE FAR EAST, 1946-1948

by

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A.B. May 1992, Ripon College

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ABSTRACT

JUDICIAL INTELLIGENCE: ALLIED SIGNAL INTELLIGENCE AND THE WAR CRIMES TRIALS OF CLASS "A" WAR CRIMINALS AT THE INTERNATIONAL MILITARY TRIBUNAL FOR THE FAR EAST, 1946-1948

**William Todd Baker
Old Dominion University, 1995
Director: Dr. Carl Boyd**

This thesis examines the use of Allied signal intelligence as evidence in the prosecution of Japanese military and political leaders accused of major war crimes before the International Military Tribunal for the Far East in 1946-1948. Allied signal intelligence helped illuminate Japan's participation in the Second World War. MAGIC signal intelligence, as part of a larger body of evidence presented by the prosecution, served also to aid in the convictions of Japanese military and political leaders accused as Class "A" war criminals. This study is based on documentary evidence from the thirty-nine reel microform collection of official *Court Papers*, two separate collections on the *Record of the Proceedings*, the edited twenty-seven volume *Complete Transcript*, and several works on the International Military Tribunal for the Far East and the occupation of Japan.

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LIST OF ABBREVIATIONS

IMTFE	International Military Tribunal for the Far East
MIS	.....	Military Intelligence Service
OP-20-G	.....	Navy Codebreaking Agency
SCAP	.....	Supreme Commander for the Allied Powers
SIS	.....	Signal Intelligence Service
SRH	.....	Special Research Histories
WDGS	.....	War Department General Staff

CHAPTER I

INTRODUCTION

At the end of the Second World War the world did not immediately return to status quo. The international political arena remained extremely volatile and unstable. Despite this uncertainty the international community carried out steps to shape politically the immediate postwar period. In a thorough work about international law in armed conflict, a leading scholar writes that "when the Nuremberg and Tokyo proceedings began, the new framework of world society . . . had been completed and the first steps taken towards the establishment of this post-1945 international order."¹ The proposed war crimes trials of the Axis leadership served as a part of this paradigm. Such efforts marked the beginning of significant changes in international law. The trials of Axis war criminals that commenced immediately following the war represented the initial steps of change. With these trials the Allied powers attempted to shape the new order yet to emerge.

The war crimes trials held in Nuremberg and later in Tokyo were historically unique in intent and scope. Following the previous wars punitive measures were considered unnecessary and unpalatable, because the victors, E. H. Carr writes,

¹Georg Schwarzenberger, *International Law*, vol. 2, *The Law of Armed Conflict* (London: Stevens & Sons, 1968), 524.

"however ruthless in their treatment of the defeated foe, had thought it superfluous to pronounce any moral condemnation."² The ultimate judgment was decided on the field of battle.

In the aftermath of the Second World War that notion no longer applied as a previously untested principle was implemented as international law. The decision to try the accused Japanese war criminals emerged earlier during the war at the Cairo Conference held in December 1943. Allied intentions were clearly stated in the Potsdam Declaration, tribunal charter, and the Supreme Commander for the Allied Powers (SCAP), Proclamation.³

The undeniable intent of the Allies to prosecute Japanese war criminals emerged prominently when China, Great Britain, and the United States signed the Potsdam Declaration on 26 July 1945. The Potsdam Declaration contained several key policies to be carried out following the surrender of Japan, including the demobilization of Japanese military forces, Allied occupation, elimination of the military clique, and trials for war criminals.⁴ With respect to the latter, the declaration promised that "stern justice would be meted out to Japanese war

²E. H. Carr, *International Relations between the Two World Wars, 1919-1939* (London: Macmillan, 1955), 45.

³See appendices A, B, and C for the Potsdam Declaration, the SCAP Proclamation creating the International Military Tribunal for the Far East, and the tribunal charter.

⁴International Military Tribunal for the Far East, *Court Papers, Journal, Exhibits, and the Judgments of the International Military Tribunal for the Far East, 1948-1948*, Exhibit no. 2 "Potsdam Declaration," (Old Dominion University Library; Washington, D.C.: United States Army, Signal Corps, Photo Division, 1948, microfilm), reel 8, 1-2 (hereafter cited as IMTFE, with appropriate filing designations).

criminals," and the Allied powers remained firm on that issue.⁵

Equally significant was the Instrument of Surrender influenced largely by the Potsdam Declaration. Precipitating the unconditional capitulation of Japan were the atomic bombs dropped on Hiroshima (6 August 1945) and Nagasaki (9 August 1945). On 15 August 1945 Emperor Hirohito intervened. In this almost unprecedented display of direct control, the emperor informed his people, after a heated imperial conference decision the previous day, of the decision to accept the provisions of the Potsdam Declaration *in toto*.

General Douglas MacArthur moved quickly to establish the guidelines by which the accused Japanese war criminals would be judged. On 19 January 1946, MacArthur issued an order formally creating the International Military Tribunal for the Far East (IMTFE). No specifics were provided about the IMTFE. In his carefully phrased statement, as recounted by co-authors Joseph Keenan (Chief Prosecutor, IMTFE) and Brendan Brown, MacArthur emphasized strongly that his purview limited his role to giving only vitality to an already existing legal precedent that he did not formulate.⁶ Having completed the creation of the IMTFE, the specifics of the process were outlined in the tribunal charter issued concurrently.

The Allies intended to cast their net widely to try the largest cross-section of the Japanese military and political leadership as possible. That intention caused great

⁵Ibid., 2; see appendices D and E for specific charges against and sentences received by Class "A" war criminals..

⁶Joseph Berry Keenan and Brendan F. Brown, *Crimes against International Law* (Washington, D.C.: Public Affairs Press, 1950), 37-38.

concern among the Japanese leaders because the definition of war crimes was virtually all-encompassing. This reference about what constituted war crimes implied not only a trial of those who had committed conventional war crimes, but also the policy-makers at the highest level of government.⁷

The charter and the procedural rules established for the tribunal gave the prosecutors maximum latitude in identifying which Japanese war criminals would stand trial.⁸ Important was the trial's scope and parameters set by the tribunal. The limits of the tribunal were expressly stated. Within the charter the tribunal existed only to fulfill its primary objective of a "just and prompt trial and punishment of the major war criminals in the Far East."⁹ This meant crimes previously defined broadly as crimes against peace and humanity as well as conventional war crimes.

The impetus to hold vanquished leaders responsible did not arise suddenly or on a whim. Their heinous acts of criminality besmirched the canvas of international relations and adversely influenced the existence and affected the life, limb, property or happiness of every human being.¹⁰ Through deliberate action by the Allied

⁷Arnold C. Brackman, *The Other Nuremberg: The Untold Story of the Tokyo War Crimes Trials* (New York: William Morrow, 1987), 34; MacArthur was instructed by his superiors not to take any action against the emperor as a war criminal; see R. John Pritchard and Sonia M. Zaide, eds., *The Tokyo War Crimes Trials: The Complete Transcript of the Proceedings of the International Military Tribunal for the Far East*, vol. 1, *Pre-trial Documents* (New York: Garland, 1981), xxi.

⁸See appendices F and G for the Rules of Procedure governing the Tokyo tribunal and list of tribunal justices and prosecutors.

⁹United States, Department of State, "Special proclamation by the Supreme Commander for the Allied Powers at Tokyo" 19 January 1946, TIAS no. 1589, *United States and Other International Agreements*, vol. 4, *Multilateral, 1946-1949*, 20.

¹⁰Keenan and Brown, *Crimes against International Law*, 138.

powers, the determination to punish war criminals evolved slowly during the war and it was neither borne out of some maligned sense of justice, nor wont to impugn indiscriminately. The aggressive actions of Germany and Japan demanded Allied attention. Both at Nuremberg and Tokyo "historical accuracy was important" to show the true malfeasance of the actions perpetrated, historian Richard Minear declared.¹¹ This decision to bring war criminals to justice originated from a profound and sincere concern for the future of international relations.

The American intelligence community was weak and suffered various constraints. During the interwar years the preference shifted to other modes of safeguarding international relations considered less disreputable. Clandestine activities between 1929-1939, particularly those associated signal intelligence, became loathed and viewed with suspicion in various government quarters. Demonstrative of these views was the statement made by Secretary of State Henry L. Stimson. When confronted with evidence of signal intelligence activity in 1929, Stimson bluntly declared that "Gentlemen do not read each other's mail."¹² Almost until the onset of the war, that view, besides limited funding, effectively curtailed any overt signal intelligence gathering activity by the United States.¹³

Signal intelligence had once proven itself immensely valuable in the 1920s and

¹¹Richard H. Minear, *Victors' Justice: The Tokyo War Crimes Trial* (Princeton: Princeton University Press, 1971), 126.

¹²Louis Kruh, "Stimson, the Black Chamber, and the 'Gentlemen's Mail' Quote," *Cryptologia* 12 (1988): 65.

¹³Active gathering was in fact illegal. The Radio Act of 1927 and the Federal Communications Act of 1934 prohibited the interception of messages.

it would do so yet again. Despite the setbacks encountered during the bleak 1930s, the negative stigma attached to clandestine activities ultimately was displaced in the years just before the Second World War. Signal intelligence was pragmatic. Signal intelligence clearly emerged as an integral part of national security. The dearth of intelligence activity during the interwar years and the boom of the 1939-1945 period illustrated the importance of signal intelligence.

A wealth of material covers the exploits and accomplishments of Allied signal intelligence activities during the war. However, in conspicuous contrast, little scholarly work attempts to address the continuing role or function of Allied signal intelligence after the war. The future of signal intelligence activities remained important and firmly secure in the postwar period. As used after the war, Allied signal intelligence, according to historian Bradley Smith, served the Allies due to necessity, self-interest, wartime precedent, and the never-ceasing force of external circumstance.¹⁴ The paucity of material is regrettable, and yet it is also promising if a postwar investigation is carefully designed. The broad playing field created by the amazingly rich and recently declassified material provides the historian with an opportunity to explore the use of Allied signal intelligence, as part of a larger body of evidence, presented by the prosecution against the Japanese military and political leaders accused of major war crimes at the IMFTE.

¹⁴Bradley F. Smith, *The Ultra-Magic Deals and the Most Secret Special Relationship, 1940-1946* (Novato, CA: Presidio Press, 1993), 226-27.

CHAPTER II

ALLIED SIGNAL INTELLIGENCE, JAPAN, AND CONSPIRACY TO WAGE AGGRESSIVE WAR

United in a singular purpose, the Allies minced neither words nor intentions. In trying those military and political leaders as Class "A" war criminals deemed responsible, the Allied powers intended to provide ample evidence of the aggressive and conspiratorial intentions of Japan. This evidence allowed for persons in public and private roles responsible for forming aggressive policies to face trial.¹ According to historian Christopher Thorne the central theme of this revision of the period between 1930-1945 by the Allies was that Japan's actions formed "part of a single, long-planned conspiracy."² As the IMTFE commenced on 3 May 1946, the Allies placed in the dock twenty-eight individuals indicted on fifty-seven counts of war crimes.³

Allied signal intelligence contributed significantly in developing the proof

¹United States, Department of State, *Occupation of Japan: Policy and Progress* (Washington, D.C.: United States Government Printing Office, 1946), 28.

²Christopher Thorne, *Allies of a Kind: The United States, Britain, and the War against Japan, 1941-1945* (New York: Oxford University Press, 1978), 32.

³See appendices D and E for specific charges against Class "A" war criminals and sentences received.

needed to prove the prosecution's charges of conspiracy and the waging of aggressive war against the United States. The ulterior motives and desires of the Japanese military and political leaders were uncovered without their knowledge. MAGIC intercepts, as part of a diverse body of evidence presented, served to dislodge in part the mask of concealment as Japan engaged in aggressive war thus abrogating many treaties, conventions, and the customs of war.⁴ The undeniable duplicity of the Japanese was easily characterized as conspiratorial and aggressive.

Conspiratorial Intentions of Japan

Japan's prewar negotiation with the United States was conducted with less than a good faith effort. Throughout the negotiations a multitude of examples emerged. Under false pretenses the Japanese negotiated only to simplify the ultimate achievement of their own objectives. During the negotiations with the United States the efforts made by Japan were disingenuous.

The Japanese firmly doubted an agreement that would maintain peaceful

⁴Brackman, *Other Nuremberg*, 146; MAGIC applied to all intelligence produced by American codebreaking efforts; similarly, ULTRA was produced by the British. MAGIC decrypts bore a series of key features that characterize them as emanating from Allied signal intelligence gathering activities. The most prominent was the code system identifier as usually indicated on the message. Examples of this code system identifier were Red, Purple, CA, PA-K2, J17K6, J18K8, J19K9. Another specific method to identify intercepted messages was ascertaining the decryption agency and date of origination. Early in the war the army and navy shared responsibility for the cryptanalytic process based on an even/odd day system. In this system designed to handle intelligence material (by date), army intelligence (MIS) handled all material that originated on even calendar days, and naval intelligence (OP-20-G) handled all material that originated on odd calendar days. This continued until early 1942 when the navy passed all responsibility to the army as it opted to concentrate its cryptanalytic capabilities on the Japanese naval code; see *Top Secret Studies on U.S. Communications Intelligence during World War II*, pt. 1, *The Pacific Theater*, SRH-154, "Signal Intelligence Disclosures on the Pearl Harbor Investigation" (Old Dominion University Library; Bethesda, MD: University Publications of America, 1979, microfilm), reel 14, p. 16, frs. 20; for an in-depth explanation of even/odd system of responsibility see Carl Boyd, *Hitler's Japanese Confidant: General Oshima Hiroshi and MAGIC Intelligence, 1941-1945* (Lawrence: University Press of Kansas, 1993), 10-16.

relations between Japan and the United States could ever be reached. Pessimism among the individuals involved in these negotiations became increasingly apparent. This pessimistic attitude was widespread among many Japanese. Indications of this emerged in the comments of Admiral Shimada Shigetarō.⁵ Admiral Shimada, as the former Navy Minister, seemed resigned as he testified that the negotiations were unlikely to prevail as "the overall question was whether or not peace through negotiations could be reached before hostilities commenced."⁶ Allied signal intelligence intercepts served to clarify this pessimistic attitude held by the Japanese. A decrypted MAGIC intercept dated 14 November 1941 revealed that although "the Imperial Government hopes for great things from the Japan-American negotiations, they do not permit optimism for the future" of those talks.⁷ Further evidence of this pervasive pessimism exhibited by the Japanese came in another decrypted MAGIC message of 26 November 1941 submitted as prosecution evidence that contained

⁵In this work Japanese proper names appear in the traditional Japanese order of family name followed by given name. However, Japanese names in the bibliography and notes appear as on the title page of the work in question.

⁶International Military Tribunal for the Far East, *Record of the Proceedings, Tokyo, May 3, 1946- April 16, 1948* (Carlisle Barracks, PA: United States Army Military History Institute, n.d.), 34,664 (hereafter cited as IMTFE, *Proceedings*, with appropriate filing designations).

⁷IMTFE, Exhibit no. 803, "Pearl Harbor -- Intercepted Diplomatic Messages Sent by the Japanese Government between July 1 and December 8, 1941," reel 17, 126; Exhibit no. 803 was entered into the record for purposes of identification. Included in this larger body of evidence but without an exhibit number this MAGIC intercept originated on 14 November 1941 from Tokyo to Hongkong, code system PURPLE, SIS (Signal Intelligence Service) no. 25322, and notated as translated by army intelligence (MIS) on 26 November 1941; for the tendering of this MAGIC intercept as evidence see also International Military Tribunal for the Far East, *Record of the Proceedings of the International Military Tribunal of the Far East* (Rice University Library; Washington, D.C.: Library of Congress Photoduplication Service, n.d., microfilm), reel 6, 7,977 (hereafter cited as IMTFE, *Record*, with appropriate filing designations).

Ambassadors Nomura Kichisaburō and Kurusu Saburō acknowledgement of their perceived failure in negotiating with the United States. In this intercepted message the Japanese negotiators reported without reservation their apparent belief to Tokyo that "if we let the situation remain as tense as it is now, sorry as we are to say so, the negotiations will inevitably be ruptured, if indeed they may not already be called so."⁸ Such pessimism, perhaps concealing conspiratorial intentions, became increasingly apparent among those involved in negotiating with the United States.

In the sensitive negotiations with the United States obvious dissension arose among Japanese diplomats involved. This continued as the negotiations faltered and Japanese disenchantment appeared the order of the day. Those feelings were evident in the open lamentations of Nomura. In his capacity as ambassador to the United States, Nomura loathed the seemingly pointless task of negotiating with the United States. Evidence of his dissatisfaction with his current assignment came from intercepted messages dated 18 October 1941 and 22 October 1941. Nomura requested respectfully to be relieved and reassigned. These MAGIC decrypts entered as prosecution evidence illustrated the serious concerns Nomura held on the remote possibility of securing a successful resolution from the United States in the negotiations. Nomura considered his continued posting in the United States, after the fall of the Konoye cabinet, to be hypocritical, deceptive and potentially harmful as it

⁸IMTFE, Exhibit no. 1189, "Message from Washington to Tokyo, 26 November 1941," reel 18, 1; this MAGIC intercept originated on 26 November 1941 from Washington to Tokyo, code system PURPLE (extremely urgent), SIS no. 25435, and notated as translated by army intelligence (MIS) on 28 November 1941; for the tendering of this MAGIC intercept as evidence see IMTFE, *Record*, reel 8, 10,418-19.

might jeopardize the ongoing United States-Japan negotiations.⁹ However, Tokyo, and the new Prime Minister, Tōjō Hideki, thought differently. Ambassador Nomura's request was rebuffed abruptly. A MAGIC intercept message dated 5 November 1941 suggested that Nomura's efforts were necessary "to tackle the problem of saving the Japanese-U.S. relations from falling into a chaotic condition," and allowed the prosecution to introduce key evidence that convincingly showed that war with the United States was to begin shortly.¹⁰ The continuation of negotiations without disruption was crucial to Japan.

Japan's participation in the prewar negotiations with the United States was a ruse. The only purpose of continuing negotiations was to screen the true intentions of Japan as developed by the ruling militaristic clique. As proposed by the prosecution section the negotiations served only to obscure the Japanese plan to attack.¹¹ The Japanese could ill-afford to give the United States any suggestion that the negotiations were less than sincere because any indication otherwise might have tipped their hand.

⁹IMTFE, Exhibit no. 803, reel 17, 79; Exhibit no. 803 was entered into the record for purposes of identification. Included in this larger body of evidence but without an exhibit number this MAGIC intercept originated on 18 October 1941 from Washington to Tokyo, code system CA, SIS no. 23803, and notated as translated by army intelligence (MIS) on 22 October 1941; for the tendering of this MAGIC intercept as evidence see IMTFE, *Record*, reel 6, 7,977; IMTFE, Exhibit no. 1161 "Message from Washington to Tokyo, 22 October 1941," reel 18, 1; this MAGIC intercept originated on 22 October 1941 from Washington to Tokyo, code system unknown, SIS no. 23859, and notated as translated by army intelligence (MIS) on 23 October 1941; for the tendering of this MAGIC intercept as evidence see IMTFE, *Record*, reel 8, 10,312-13.

¹⁰IMTFE, Exhibit no. 1171, "Message from Tokyo to Washington, 5 November 1941," reel 17, 1; this MAGIC intercept originated on 5 November 1941 from Tokyo to Washington, code system PURPLE-CA, SIS no. 24373, and notated as translated by naval intelligence (OP-20-G) on 5 November 1941; for the tendering of this MAGIC intercept as evidence see IMTFE, *Record*, reel 8, 10,345-47.

¹¹IMTFE, *Proceedings*, 9,307.

To guard against the negotiations appearing nonchalant, the Japanese dispatched Kurusu to join Nomura, thus lending credence to the commitment of the Japanese government in seeking a successful resolution. The decision to send Kurusu came based on "the gravity of the present negotiations."¹² Another MAGIC intercept dated 1 December 1941 submitted by the prosecution contained the hidden Japanese intention not to reveal the actual status of the negotiations and their efforts to avoid the possibility that the United States "becoming unduly suspicious [of Japan's intentions]."¹³ In developing this guise the Japanese went to inordinate lengths to insure that the negotiations continued.

Exigencies of impending war sharply curtailed foreign ministry communications with outlying diplomatic posts. Japanese military and political leaders refused to take any undue risks that might compromise their carefully designed plan. The Japanese negotiators in Washington knew nothing about Tokyo's plans as related to the United States.¹⁴ Evidence of this emerged from a suggestion made by Foreign Minister Tōgō Shigenori that Nomura and Kurusu receive notification about the pending military action. His suggestion was dispatched

¹²IMTFE, Exhibit no. 1166, "Message from Tokyo to Washington, 4 November 1941," reel 18, 1; this MAGIC intercept originated on 4 November 1941 from Tokyo to Washington, code system unknown, SIS no. 24339, and notated as translated by army intelligence (MIS) on 4 November 1941; for the tendering of this MAGIC intercept as evidence see IMTFE, *Record*, reel 8, 10,328-30.

¹³IMTFE, Exhibit no. 1208, "Message from Tokyo to Washington, 1 December 1941," reel 18, 1; this MAGIC intercept originated on 1 December from Tokyo to Washington, code system PURPLE-CA, SIS no. 25605, and notated as translated by naval intelligence (OP-20-G) on 1 December 1941; for the tendering of this intercept as evidence see IMTFE, *Record*, reel 8, 10,516-17.

¹⁴The plan as mentioned refers to the pending attacks by Japan that would bring the Japanese into the war against the Allies.

summarily. The negotiations remained essential for Japan to guarantee that the military plan to attack the United States remained secret until the last moment, as a recent scholarly work declared.¹⁵ This lack of information was not an isolated occurrence.

None of the Japanese diplomats knew about the pending military hostilities planned by the ruling militaristic clique. Even those as trusted and experienced as Ōshima Hiroshi, Japanese ambassador to Germany, knew nothing of the plan to attack Pearl Harbor. A leading historian on MAGIC signal intelligence revealed this clear lack of knowledge as Ōshima remained uniformed by his government, despite his repeated requests for information about his government's intentions to wage war against the Western powers.¹⁶ Confirmation of his lack of knowledge came from an intercepted message dated 29 November 1941. Submitted by the prosecution this evidence not only showed the close alliance created by the Tripartite Pact, but also detailed a conversation between Reich Foreign Minister Joachim von Ribbentrop and Ōshima. In his reply to a question of Ribbentrop's concerning Japanese-American negotiations Ōshima acknowledged that "[he] had received no official word . . . [and] could make no definite statement as he [was not] aware of any concrete intentions of Japan."¹⁷ Thus, information about the start of war was obviously an Imperial secret

¹⁵Richard M. Ketchum, *The Borrowed Years, 1938-1941: America on the Way to War* (New York: Random House, 1989), 701.

¹⁶Boyd, *Hitler's Japanese Confidant*, 23.

¹⁷IMTFE, Exhibit no. 603-A, "Message from Berlin to Tokyo, 29 November 1941," reel 15, 1-2; this MAGIC intercept originated on 29 November 1941 from Berlin to Tokyo, code system unknown, SIS no. 25556, and notated as translated by naval intelligence (OP-20-G) on 1 December

of the highest order.

Allied signal intelligence was not infallible. The information the Allies derived from signal intelligence did not make them omniscient. David Kahn observed the limitations of MAGIC as it provided no more information than transmitted by the Japanese government to their diplomats and the information was sanitized to be purposefully incomplete.¹⁸ The Imperial government could not chance that the decision made to attack the United States be discovered.

The futility of the Japanese diplomatic negotiating position became obvious long before 7 December 1941. Any chance for a negotiated resolution between the United States and Japan had since evaporated. Japan's controlling clique became increasingly certain that the United States was unwilling to accede to its demands. Prophesying negatively in an intercepted message dated 31 July 41 the foreign minister defined the situation clearly by saying that "Japanese-American negotiations are more rapidly than ever treading the evil road [toward war]."¹⁹ Nevertheless, Japan carefully maintained its false pretenses all the way to the end.

In developing a course of action against the United States, Japanese military

1941 with a War Department General Staff (WDGS), Intelligence Division letter of authenticity (see Appendix J) dated 24 July 1946 ; for the tendering of this intercept as evidence see IMTFE, *Record*, reel 5, 6,643-50.

¹⁸Ernest R. May, ed., *Knowing One's Enemies: Intelligence Assessment before the Two World Wars* (Princeton: Princeton University Press, 1984), 485.

¹⁹IMTFE, Exhibit no. 808 "Message from Tokyo to Washington, 31 July 1941," reel 16, 2; this MAGIC intercept originated on 31 July 1941 from Tokyo to Washington, code system PURPLE (CA), SIS no. unknown, and notated as translated by army intelligence (MIS) on 4 August 1941 with a WDGS Intelligence Division letter of authenticity dated 24 July 1946; for the tendering of this intercept as evidence see IMTFE, *Record*, reel 6, 7,987-88.

and political leaders failed to allow for any flexibility. As the prewar negotiations deteriorated this rigidity became more apparent. Those narrow parameters were cumbersome. The Japanese recognized they had little room for diplomatic maneuvering.²⁰ In this increasingly critical situation Japan sought to mask its intentions. In an intercepted message dated 1 December 1941 reveals the method devised to prevent compromise of its negotiations by the ruling clique aimed "to advise the press and others that though there are some differences between Japan and the United States, the negotiations are continuing," in a blatantly deceptive move.²¹ However, the United States was not completely oblivious and eventually became suspicious of Japanese intentions. Unfortunately, from an American point of view this realization came only too late. Washington had suspected, as two provocative authors writing on the Pacific war have concluded, that Japan's military and political leaders pursued mutually exclusive goals of peace while planning aggressive military action against the United States.²² Japan's destiny had already been inalterably cast in stone.

The collective dissatisfaction of Japan's militaristic clique with the pace of the negotiations went much deeper than the reluctance of the United States to agree

²⁰Nobutaka Ike, trans. and ed, *Japan's Decision for War: Records of the 1941 Policy Conferences* (Stanford: Stanford University Press, 1967), 214.

²¹IMTFE, Exhibit no. 1208, "Message from Tokyo to Washington, 1 December 1941," reel 18, 1; this MAGIC intercept originated on 1 December from Tokyo to Washington, code system PURPLE-CA, SIS no. 25605, and notated as translated by naval intelligence (OP-20-G) on 1 December 1941; for the tendering of this intercept as evidence see IMTFE, *Record*, reel 8, 10,516-17.

²²Donald S. Detwiler and Charles B. Burdick, eds., *War in Asia and the Pacific, 1937-1949*, vol. 2, *Political Background of the War* (New York: Garland, 1980), 55.

readily to terms. Following the formation of the Tōjō cabinet on 18 October 1941, many liaison conferences convened. From evidence introduced by the prosecution in an intercept dated 2 November 1941, the foreign office characterized that this effort at reconciliation by the Japanese government would be Japan's "last effort to improve diplomatic relations [with the United States]."²³ Three days after this final effort, the military and political leaders convened an Imperial Conference on 5 November 1941. At this conference, the military and political leaders concluded that despite its special efforts to agree, they could not get the United States to reconsider.²⁴ Continuing this trend an intercepted message dated 11 November 1941 revealed the disturbing conduct of the negotiations as viewed by the Japanese government that revolved around the United States' perceived cavalier attitude. This evidence submitted defined Japan's muted dissatisfaction with Great Britain's interest in the negotiations, but moreover focused on the likelihood of aggressive Japanese military action. The Japanese government seemed perplexed at the diplomatic actions of the United States during the negotiations as "the United States Government is still under the impression that the negotiations are in the preliminary stages and that we are still merely exchanging opinions . . . [as] the United States takes this lazy and easy going attitude."²⁵ Tōjō

²³IMTFE, Exhibit no. 1263, "Message from Tokyo to Washington, 2 November 1941," reel 18, 1; this MAGIC intercept originated on 2 November 1941 from Tokyo to Washington, code system unknown, SIS no. 24292, and notated as translated by army intelligence (MIS) on 3 November 1941; for the tendering of this MAGIC intercept as evidence see IMTFE, *Record*, reel 8, 10,315-17.

²⁴Ike, *Japan's Decision for War*, 211.

²⁵IMTFE, Exhibit no. 1174, "Message from Tokyo to Washington, 11 November 1941," reel 18, 2-3; this MAGIC intercept originated on 11 November 1941 from Tokyo to Washington, code system PURPLE, SIS no. unknown, and notated as translated by naval intelligence (OP-20-G) on date

reflected this mindset in recounting the fruitless span of negotiations. He believed that no other option existed except for Japan to commence hostilities.²⁶ This conclusion was put forth with unmistakable finality in a MAGIC intercept dated 30 November 1941. Not only did this prosecution evidence describe the destructive influence of the Tripartite Pact, it also served to define the status of the ongoing negotiations between the United States and Japan as inconclusive. As a result, it had become clear to the Imperial government that any continuation of negotiations with the United States would inevitably be detrimental to its cause.²⁷

Elements of this declining interest began to emerge as early the first week of November 1941. In two separate MAGIC intercepts dated 4 November 1941, Japanese authorities expressed to their delegation in Washington the rising timbre of domestic political pressure. As submitted by the prosecution these decrypts, considered separately, not only described the tension surrounding the negotiations, but defined the Japanese attitude at this stage of the negotiations. In the first intercepted message of 4 November 1941, the Japanese government defined the internal political situation and mentioned the importance of the negotiations on the political climate in Japan in that "the success or failure of the pending discussions will have an immense

not indicated; for the tendering of this intercept as evidence see IMTFE, *Record*, reel 8, 10,354-61.

²⁶Ketchum, *Borrowed Years*, 701.

²⁷IMTFE, Exhibit no. 1199, "Message from Tokyo to Berlin, 30 November 1941," reel 18, 1; this MAGIC intercept originated on 30 November 1941 from Tokyo to Berlin, code system PURPLE, SIS no. 25554, and notated as translated by army intelligence (MIS) on 1 December 1941; for the tendering of this intercept as evidence see IMTFE, *Record*, reel 8, 10,469-73.

effect on the destiny of the Empire of Japan."²⁸ In the second intercepted message sent on 4 November 1941, Japanese authorities reiterated the growing intensity of domestic pressure as the "internal situation also makes it impossible for us to make any further compromise [in the negotiations with the United States]."²⁹ Because of the internal political climate within Japan it became impossible either to procrastinate further or make any more compromises as "this is the Imperial Government's final step" in attempting to gain a solution through negotiations with the United States.³⁰ Intercepted communications between Tokyo and Washington tended to indicate clearly that diplomatic relations between Japan and the United States grew increasingly critical.

By late November and early December Japan's interest in negotiations with the United States waned and eventually vanished. Artificial time constraints put in place by the Japanese government created the situation that squelched continuing the negotiations with the United States. Evidence of this active discouragement from the

²⁸IMTFE, Exhibit no. 1164, "Message from Tokyo to Washington, 4 November 1941," reel 18, 1; this MAGIC intercept originated on 4 November 1941 from Tokyo to Washington, code system PURPLE (CA) (Urgent), SIS no. 24330, and notated as translated by army intelligence (MIS) on 4 November 1941; for the tendering of this intercept as evidence see IMTFE, *Record*, reel 8, 10,317-23.

²⁹IMTFE, Exhibit no. 1165, "Message from Tokyo to Washington, 4 November 1941," reel 4; this MAGIC intercept originated on 4 November 1941 from Tokyo to Washington, code system PURPLE (CA) (Urgent), SIS no. 24334, and notated as translated by army intelligence (MIS) on 4 November 1941 with a WDGS Intelligence Division letter of authenticity dated 24 July 1946; for the tendering of this intercept as evidence see IMTFE, *Record*, reel 8, 10,323-28.

³⁰IMTFE, Exhibit no. 1170, "Message from Tokyo to Washington, 5 November 1941," reel 18, 1; this MAGIC intercept originated on 5 November 1941 from Tokyo to Washington, code system (PURPLE-CA), SIS no. 24387, and notated as translated by naval intelligence (OP-20-G) on 5 November 1941; for the tendering of this intercept as evidence see IMTFE, *Record*, reel 8, 10,343-45.

Japanese government came in late November. A MAGIC intercept dated 22 November 1941 enumerated this trenchant position. Despite the acknowledged desire of the military and political leaders to prevent a severance of Japanese-American relations, the reality of the situation demanded "that the deadline [of 29 November 1941] absolutely cannot be changed. After that things are automatically going to happen."³¹ Following the passing of the deadline with no movement in the negotiations Japan began to carry out its plans. On the day following the deadline vague hints of the Japanese intentions emerged. A MAGIC intercept of 30 November 1941, revealed that the policy of the ruling militaristic clique had not been altered since before the departure of Foreign Minister Matsuoka Yōsuke in July 1941. Tokyo instructed Ōshima to inform the Germans that

in spite of the sincere efforts of the Imperial Government [the negotiations] now stand ruptured -- broken . . . [and] that there is extreme danger that war may suddenly break out between Anglo-Saxon nations and Japan through some clash of arms and add that the time of the breaking out of this war may come quicker than anyone dreams.³²

Demonstrative of the rapid pace of activity following the deadline, Foreign Minister

³¹IMTFE, Exhibit no. 1183, "Message from Tokyo to Washington, 22 November 1941," reel 18, 1; this MAGIC intercept originated on 22 November 1941 from Tokyo to Washington, code system PURPLE CA (Urgent), SIS no. 25138, and notated as translated by army intelligence (MIS) on 22 November 1941; for the tendering of this intercept as evidence see IMTFE, *Record*, reel 8, 10,399-401; for the revision of the original date of 25 November to 29 November 1941 see IMTFE, Exhibit no. 1171, "Message from Tokyo to Washington, 5 November 1941," reel 18, 1; this MAGIC intercept originated on 5 November 1941 from Tokyo to Washington, code system PURPLE-CA, SIS no. 24373, and notated as translated by naval intelligence (OP-20-G) on 5 November 1941; for the tendering of this MAGIC intercept as evidence see IMTFE, *Record*, reel 8, 10,345-47.

³²IMTFE, Exhibit no. 802, "Message from Tokyo to Berlin, 30 November 1941," reel 16, 1; this MAGIC intercept originated on 30 November 1941 from Tokyo to Berlin, code system PURPLE (CA), SIS no. 25552, and notated as translated by army intelligence (MIS) on 1 December 1941 with a WDGS Intelligence Division letter of authenticity dated 24 July 1946; for the tendering of this MAGIC intercept as evidence see IMTFE, *Record*, reel 6, 7,974-75.

Tōgō issued final instructions to various consulates in final preparation in the event of hostilities. A MAGIC intercept of 2 December 1941 submitted as prosecution evidence contained the traditional indicators that warned of a precipitous move toward hostilities. Intended to show the final preparatory steps to war, this decrypted message revealed that Japanese government authorities issued precise instructions detailing security procedures that called for the destruction of "all telegraph codes . . . [with the caution to be] especially careful not to arouse suspicion . . . [in preparation for] an emergency situation."³³ Finally, Tōgō ended the failed negotiations. He no longer saw any need to continue to negotiate with the United States.³⁴ A MAGIC intercept dated 7 December 1941, made this evident as "the earnest hope of the Japanese Government to adjust Japanese-American relations and to preserve and promote peace of the Pacific through cooperation with the American Government has finally been lost [*sic*]."³⁵ Thus the negotiations were abandoned.

The impending collapse of United States-Japan negotiations as foreshadowed by MAGIC intercepts generated concerns of a conspiracy by Japan in the higher echelons of the American government. As Japan's ally, Italy did little to stifle this

³³IMTFE, Exhibit no. 1211, "Message from Tokyo to Havana, 2 December 1941," reel 18, 1; this MAGIC intercept originated on 2 December 1941 from Tokyo to Havana, code system J19-K9, SIS no. 25879, and notated as translated by army intelligence (MIS) on 8 December 1941; for the tendering of this MAGIC intercept as evidence see IMTFE, *Record*, reel 8, 10,524-25.

³⁴Detwiler and Burdick, eds., *War in Asia and Pacific*, 78.

³⁵IMTFE, Exhibit no. 2966, "Excerpts from a book entitled *Pearl Harbor -- Intercepted Diplomatic Messages Sent by the Japanese Government between July 1 and December 8, 1941*," reel 28, 1; this MAGIC intercept used a defense document originated on 7 December 1941 from Tokyo to Washington, code system unknown, SIS no. 25843, and notated as translated by naval intelligence (OP-20-G) on 7 December 1941; for the tendering of this MAGIC intercept as evidence for the defense see IMTFE, *Record*, reel 20, 26,197-98.

growing contention of a conspiracy and the tense uncertainty of the situation.

Offering comment on the Japanese-American negotiations and their lack of success, Italian Premier Benito Mussolini suggested in a MAGIC intercept dated 3 December 1941 that he was

not at all surprised . . . [and] as a matter of fact, in view of the utter bullheadedness of the United States and the meddlesome nature of President Roosevelt, [he said] that the outcome was nothing but what should have been expected.³⁶

The actions of Japanese diplomats did not aid in quelling the perceived existence of a planned conspiracy by the Japanese government.

When the decision to cease negotiating with the United States was reached, Tokyo transmitted strict instructions issued that detailed precisely the procedure. American diplomatic authorities already knew the instructions from a MAGIC intercept dated and translated on 7 December 1941. According to those instructions Ambassadors Nomura and Kurusu were to "submit to the United States (if possible to the Secretary of State) our reply to the United States at 1:00 p.m. on the 7th, your time."³⁷ Intended by the prosecution to show the collusion and existing conspiracy between the timing of delivery as it related to the attack on Pearl Harbor, this

³⁶IMTFE, Exhibit no. 606, "Message from Rome to Tokyo, 3 December 1941," reel 15, 1; this MAGIC intercept originated on 3 December 1941 from Rome to Tokyo, code system (PURPLE-CA), SIS no. 25833, and notated as translated by naval intelligence (OP-20-G) on 6 December 1941; for the tendering of this MAGIC intercept as evidence see IMTFE, *Record*, reel 5, 6,656-59.

³⁷IMTFE, Exhibit no. 1218, "Message from Tokyo to Washington, 7 December 1941," reel 18, 1; this MAGIC intercept originated on 7 December 1941 from Tokyo to Washington, code system PURPLE (Urgent- Very Important), SIS no. 25850, and notated as translated by army intelligence (MIS) on 7 December 1941; for the tendering of this MAGIC intercept as evidence see IMTFE, *Record*, reel 8, 10,536-38.

intercepted message also uncovered a litany of difficulties that prevented the final portion of a fourteen-section message from being delivered at the prescribed time. As presented by the Japanese delegation to Secretary of State Cordell Hull, the note read that "the Japanese Government regrets to have to notify the American Government that in view of the attitude of the American Government it cannot but consider that it is impossible to reach an agreement through further negotiations."³⁸ The final note passed to the United States government by Japan only mentioned the severing of diplomatic relations with the United States was delivered after the prearranged time.³⁹ Newly released Japanese government documents relating to the immediate prewar period in 1941 clearly reveal that Japan acted conspiratorially by not only failing to notify the United States properly, but also by failing to break off diplomatic relations as well.⁴⁰ An affidavit taken in April 1946 from Secretary of State James F. Byrnes, supported this claim. Never before 7 December 1941, Byrnes stated, did Japan provide the United States with any warning, explicit or otherwise that clearly declared war or threat of an impending attack.⁴¹ Neither after the

³⁸IMTFE, Exhibit no. 2966, reel 28, 1; this MAGIC intercept used a defense document originated on 7 December 1941 from Tokyo to Washington, code system unknown, SIS no. 25843, and notated as translated by naval intelligence (OP-20-G) on 7 December 1941; for the tendering of this MAGIC intercept as evidence for the defense see IMTFE, *Record*, reel 20, 26,197-98.

³⁹The note was to be delivered in close conjunction with the attack on US military forces, but as a result of the delays it arrived post the attack on Pearl Harbor; Saburō Ienaga, *The Pacific War: World War II and the Japanese, 1931-1945* (New York: Pantheon Books, 1978), 190.

⁴⁰T.R. Reid, "Japan Apologized for Failure to End Talks before 1941 Attack," *Houston Chronicle*, 22 November 1994.

⁴¹United States, Department of State, *Foreign Relations of the United States 1946* (Washington, D.C.: United States Government Printing Office, 1971), 8: 428-29.

cessation of negotiations nor before the attack on Pearl Harbor did the Japanese government declare that a state of war existed between the United States and Japan.

The unprovoked attack without warning at Pearl Harbor clearly violated existing international law. The Japanese military and political leaders challenged strongly this characterization of their actions by the Allies. Tōjō testified to the IMTFE that "Japan was not bound by any treaty provisions with the attack on the United States."⁴² However, this was not so. A leading scholar on international law concluded that the Japanese violated international law because they attacked without warning. Specifically outlined in international law is the requirement that a prescribed period must be given and observed following a declaration of war or the presentation of an ultimatum and the beginning of open hostilities.⁴³ Furthermore, the Japanese declaration of war came only after the fact. The Imperial Rescript declaring war against the United States was not issued until 11:00 A.M., 8 December (Tokyo time) as it enumerated the reasons explaining why hostilities began.⁴⁴ Aggressive action seemed the only remaining option for Japan. Previously the Japanese government sought "to retrieve the situation [with the United States] in peace. But our adversaries, showing not the least spirit of conciliation, have unduly delayed a settlement . . . intensified the economic and military pressure."⁴⁵ By not providing

⁴²IMTFE, *Proceedings*, 10,504.

⁴³Schwarzenberger, *International Law*, vol. 2, 65-66.

⁴⁴Ienaga, *Pacific War*, 136.

⁴⁵For the complete text of the Imperial Rescript see Appendix H; IMTFE, Exhibit no. 1240, "Imperial Rescript, 8 December 1941" reel 19, 1.

any warning, Japan's military and political leaders failed to abide by the provisions of existing international law.

Japan's Intention to Wage Aggressive War

Little was left to doubt that Japan intended to wage an aggressive war against the United States. This possibility became increasingly obvious to the United States as Japan's military and political leaders had no intention of keeping the peace when peace conflicted with launching a war of aggression.⁴⁶ Damning evidence of these conflicting goals came in a MAGIC intercept dated 25 November 1941, in particular, the segment that detailed the planned actions should the negotiations fail. The underlying presence of an obviously planned aggressive action drew attention as the Japanese legation overtly suggested that

Should, however, the negotiations not end in a success, since practically all preparations for the campaign have been completed, our forces shall be able to move within the day. Under these circumstances . . . [it would be necessary] to establish organs and conduct negotiations which will not conflict with the campaign.⁴⁷

Again, the history of Japan's actions leading up to 1941 was rewritten by the Allied powers and the IMTFE, as conspiratorial and aggressive. Hardly surprising, the Japanese failed to define their actions so harshly. From the perspective of the militaristic clique, they sought only to secure for themselves a place within the international community, but the means to achieve peace and security for Japan

⁴⁶Hosoya et al., *Tokyo War Crimes Trials*, 29.

⁴⁷IMTFE, Exhibit no. 1187, "Message from Hanoi to Tokyo, 25 November 1941," reel 18, 1; this MAGIC intercept originated on 25 November 1941 from Hanoi to Tokyo, code system unknown, SIS no. 25345, and notated as translated by naval intelligence (OP-20-G) on 26 December 1941; for the tendering of this MAGIC intercept as evidence see IMTFE, *Record*, reel 8, 10,411-14.

through aggressive military action was illegal.

War with the United States was a foregone conclusion by late November 1941. The military and political leaders were determined to wage aggressive war. Evidence of this stands out in sharp relief at a much earlier date. An intercepted MAGIC decrypt dated 14 July 1941 clearly outlined the sheer determination of the ruling militaristic clique. They plotted aggressive actions with the hope of gaining territorial expansion and the conquest of natural resources considered necessary for Japan by "end[ing] Anglo-American assistance in thwarting her natural expansion."⁴⁸ Aggressive war stood at the center of all Japanese actions. By December 1941, Japan was ready for that undertaking and it launched its attack against the United States at Pearl Harbor.⁴⁹

The sanctions levied by the United States were odious and provocative. Japan's military and political leaders considered the United States' economic sanctions paramount to a declaration of war. Detwiler and Burdick argued that economic sanctions restricting Japan's ability to obtain essential materials caused Japan to resort to arms.⁵⁰ The Japanese contended that these sanctions pushed them over the precipice. Mounting economic and military pressure by the United States forced

⁴⁸Saburō Shiroyama, *War Criminal: The Life and Death of Hirota Kōki*, trans. John Bester (Tokyo: Kodansha, 1977), 239; IMTFE, Exhibit no. 641, "Message from Canton to Tokyo, 14 July 1941," reel 15, 1; this MAGIC intercept originated on 14 July from Canton to Tokyo, code system PURPLE, SIS no. 19731, and notated as translated by army intelligence (MIS) on 19 July 1941; for the tendering of this MAGIC intercept as evidence see IMTFE, *Record*, reel 5, 7,041-44.

⁴⁹Ginn, *Sugamo Prison*, xii.

⁵⁰Detwiler and Burdick, eds., *War in Asia and Pacific*, 18.

Japan into a situation that it could no longer tolerate.⁵¹ In a MAGIC intercept dated 31 July 1941, the foreign minister detailed the increasing seriousness of the situation. Tōgō informed the Japanese diplomatic legation in Washington that Japan "cannot endure much longer . . . [and the] Empire must immediately take steps to break asunder this ever-strengthening chain of encirclement . . . [designed] by England and the United States, acting like a cunning dragon seemingly asleep."⁵² With the strain of economic pressure, the military and political leaders concluded that war with the United States remained their only choice.

Japan's desire to expand southward became an increasingly pervasive theme. Allied intelligence intercepts hinted vaguely that a southern drive (against the western powers) rather than a northern drive (against the USSR) as the route of Japanese military expansion. The earliest knowledge of the United States about the possibility of an aggressive southern advance came from an 11 November 1941 policy conference. From a captured Japanese document titled "Basic Principles for Rapid Conclusion of War against the United States, England, Netherlands, and the Chungking Regime," entered for the record at the IMTFE, Japan decided to "exhaust every effort to lure out at an opportune time the main naval force of the United States and destroy

⁵¹Ike, *Japan's Decision for War*, 263.

⁵²IMTFE, Exhibit no. 808, "Message from Tokyo to Washington, 31 July 1941," reel 16, 2; this MAGIC intercept originated on 31 July 1941 from Tokyo to Washington, code system PURPLE (CA), SIS no. unknown, and notated as translated by army intelligence (MIS) on 4 August 1941 with a WDGS Intelligence Division letter of authenticity dated 24 July 1946; for the tendering of this intercept as evidence see IMTFE, *Record*, reel 6, 7,987-88.

it."⁵³ Further evidence supporting the growing Japanese inclination for a southern attack was an intercept dated 14 November 1941. That decrypted MAGIC intercept contained the Japanese acknowledgement that any venture in a southerly direction meant that Japan would "have to fight England and the United States."⁵⁴

By late 1941 support for a southern military advance reached its zenith. Among other considerations Japan guarded against any attempt by the United States to take advantage of delaying tactics.⁵⁵ Two separate MAGIC intercepts dated respectively 11 November and 16 November 1941 cautioned Nomura that "Our domestic political situation will permit no further delays . . . [and he was] not to allow the United States to sidetrack us and delay the negotiations any further."⁵⁶ As War Minister (later Prime Minister) and suggestive of the degree of control held by the ruling militaristic clique, Tōjō, for example, was committed to action. In a 24 September 1941 meeting, he urged that a final verdict be rendered by 15 October

⁵³IMTFE, *Proceedings*, 9,262.

⁵⁴IMTFE, Exhibit no.1177, "Message from Washington to Tokyo, 14 November 1941," reel 18 , 2; this MAGIC intercept originated on 14 November 1941 from Washington to Tokyo, code system PURPLE, SIS no. 24877, and notated as translated by army intelligence (MIS) on 17 November 1941; for the tendering of this intercept as evidence see IMTFE, *Record*, reel 8, 10,376-80.

⁵⁵Detwiler and Burdick, eds., *War in Asia and Pacific*, 57.

⁵⁶IMTFE, Exhibits no. 1174, "Message from Tokyo to Washington, 11 November 1941," reel 18, 2; this MAGIC intercept originated on 11 November 1941 from Tokyo to Washington, code system PURPLE, SIS no.unknown, and notated as translated by naval intelligence (OP-20-G) on date not indicated; for the tendering of this intercept as evidence see IMTFE, *Record*, reel 8, 10,354-61; IMTFE, Exhibit no. 1178, "Message from Tokyo to Washington, 16 November 1941," reel 18, 1; this MAGIC intercept originated on 16 November 1941 from Tokyo to Washington, code system PURPLE (CA) (Urgent), SIS no. 24878, and notated as translated by army intelligence (MIS) on 17 November 1941; for the tendering of this intercept as evidence see IMTFE, *Record*, reel 8, 10,380-82.

about whether the attack would take place at Pearl Harbor.⁵⁷ Those wanting to attack southward prevailed. In late October or early November 1941, Admiral Nagano Osami, expanding on an earlier operations order issued by Admiral Yamamoto Isoroku, quickly approved Admiral Yamamoto's plan to attack Pearl Harbor. This plan called for combined fleet operations against the United States commencing in late October or early November 1941.⁵⁸ However, the attack was postponed at Yamamoto's request, but the hostile and aggressive intent of the Japanese was obvious.

The strategic suitability of Pearl Harbor as a forward bastion in the Pacific Ocean for the United States Navy proved its strongest, yet weakest feature. Pearl Harbor was poorly situated for security purposes. A sharp increase of Japanese interest in Pearl Harbor was not by chance. The Japanese government took an avid interest in the locations of all United States naval ships. To satisfy this need for specific tactical information the Japanese began surveillance of fleet activity in late September 1941, and possibly before. The reasoning behind the particular emphasis on Pearl Harbor was revealed by Admiral Toyoda Teijirō. A MAGIC intercept dated 24 September 1941 shed light on this seemingly benign request as Admiral Toyoda revealed that surveillance of the waters surrounding Pearl Harbor was required. In these reports the purpose was to develop vitally important tactical knowledge on the United States Navy by finding where the vessels were in harbor "with regard to

⁵⁷Ketchum, *Borrowed Years*, 692.

⁵⁸Admiral Nagano was the Navy Chief of Staff and Admiral Yamamoto the Commander-in-Chief, Combined Fleet, until his death in April 1943; IMTFE, *Proceedings*, 9,305; *ibid.*, 10,461.

warships and aircraft carriers at anchor, tied up at wharves, buoys, and in docks. In addition, mention the fact when there are two or more vessels along the same wharf [to maximize the destructive effect of an attack]."⁵⁹ In another MAGIC intercept dated 15 November 1941, Foreign Minister Tōgō reiterated the need for this crucial tactical information. He ordered that "as relations between Japan and the United States are most critical, make your 'ships in harbor report' irregular, but at a rate of twice a week. Although you already are no doubt aware, please take care to maintain secrecy."⁶⁰ The Japanese exploited this weakness of Pearl Harbor to its fullest extent.

Japanese surveillance of the United States Pacific Fleet proved invaluable. Key tactical information came from these detailed reports submitted to the consul general, Kita Nagao.⁶¹ A series of MAGIC intercepts details the precise tactical information contained within these reports. The first example came in a MAGIC message intercepted on 18 November 1941 entered by the prosecution that

⁵⁹Admiral Toyoda served as Foreign Minister until early October 1941 when the Konoye cabinet collapsed; he was replaced by Tōgō Shigenori; IMTFE, Exhibit no. 1254-A, "Message from Tokyo to Honolulu, 24 September 1941," reel 19, 1; this MAGIC intercept originated on 24 September 1941 from Tokyo to Honolulu, code system unknown, SIS no. 23260, and notated as translated by army intelligence (MIS) on 9 October 1941; for the tendering of this intercept as evidence see IMTFE, *Record*, reel 9, 11,205-8.

⁶⁰IMTFE, Exhibit no. 1256, "Message from Tokyo to Honolulu, 15 November 1941," reel 19, 1; this MAGIC intercept originated on 15 November 1941 from Tokyo to Honolulu, code system unknown, SIS no. 23644, and notated as translated by naval intelligence (OP-20-G) on 3 December 1941; for the tendering of this intercept as evidence see IMTFE, *Record*, reel 9, 11,209.

⁶¹Kita was not the source of the information, only the conduit. The information was gathered by a reserve officer, Yoshikawa Takeo, operating under diplomatic guise with the assumed name of Morimura Tadashi; for a more detailed sketch of the arrangements see Ketchum, *Borrowed Years*, 717-23; for a detailed explanation of the elaborate signal system employed see also IMTFE, Exhibit no. 1261, "Message from Honolulu to Tokyo, 3 December 1941," reel 19, 1-3; this MAGIC intercept originated on 3 December 1941 from Honolulu to Tokyo, code system PA-K2, SIS no. unknown, and notated as translated by naval intelligence (OP-20-G) on 11 December 1941; for the tendering of this intercept as evidence see IMTFE, *Record*, reel 9, 11,216-19.

characterized the nature of the information transmitted. In this transmission Kita reported the warships at anchor to be

a battleship of the *Oklahoma* class . . . three heavy cruisers . . . the *Enterprise* or some other vessel . . . two heavy cruisers of the *Chicago* class, one cruiser of the *Pensacola* class . . . and four merchant ships . . . [and] on the morning of the 17th, eight destroyers were observed entering the harbor.⁶²

The detailed information that the Japanese amassed about Pearl Harbor was extensive. Another example of this complete surveillance of United States naval operations came with two MAGIC messages intercepted during the first week of December. Dated 2 December 1941, this MAGIC intercept contained three critical questions and pointed to operational ties between the Japanese Foreign Office and the Navy. Tōgō characterized the military situation as extremely critical as he requested with an added sense of urgency that "the presence in port of warships, airplane carriers, and cruisers is of utmost importance."⁶³ Another MAGIC intercept dated 5 December 1941 related crucial tactical information to the Japanese as the report identified "three battleship [returned after being] at sea . . . the *Lexington* and five heavy cruiser left port . . . [and] in port on the afternoon of the 5th: eight battleships, three light

⁶²IMTFE, Exhibit no. 1257, "Message from Honolulu to Tokyo, 18 November 1941," reel 19, 1; this MAGIC intercept originated on 18 November 1941 from Honolulu to Tokyo, code system unknown, SIS no. 25817, and notated as translated by army intelligence (MIS) on 6 December 1941; for the tendering of this intercept as evidence see IMTFE, *Record*, reel 9, 11,210-11.

⁶³IMTFE, Exhibit no. 1258, "Message from Tokyo to Honolulu, 2 December 1941," reel 19, 1; this MAGIC intercept originated on 2 December 1941 from Tokyo to Honolulu, code system J-19, SIS no.27065, and notated as translated by army intelligence (MIS) on 30 December 1941; for the tendering of this intercept as evidence see IMTFE, *Record*, reel 9, 11,211-12.

cruisers, sixteen destroyers."⁶⁴ Lastly, a couple of MAGIC intercepts dated 6 December 1941, illustrated the breadth of Japanese surveillance possessed shortly before the attack. The prosecution incorporated these intercepts to show the continued requests for critical tactical information on the defensive preparations. The thorough analytic surveillance revealed vital tactical information on the United States Navy. Tendered as prosecution evidence these intercepts revealed direct evidence pointing to a Japanese surprise attack and a need for information concerning the status of military preparation near Pearl Harbor. Reporting on the defensive preparations Kita observed that

it appears that no air reconnaissance is being conducted by the fleet arm . . . in my opinion the battleships do not have torpedo nets . . . [and] that in all probability there is considerable opportunity left to take advantage for a surprise attack against these places.⁶⁵

For purposes of the IMTFE, it was immaterial that this information did not prevent the attack on Pearl Harbor.

Detailed tactical information as sought by the Japanese government on Pearl

⁶⁴IMTFE, Exhibit no. 1262, "Message from Honolulu to Tokyo, 5 December 1941," reel 19, 1; this MAGIC intercept originated on 5 December 1941 from Honolulu to Tokyo, code system PA-K2, SIS no. 26039, and notated as translated by naval intelligence (OP-20-G) on 10 December 1941; for the tendering of this intercept as evidence see IMTFE, *Record*, reel 9, 11,220-21.

⁶⁵Ronald H. Worth, Jr., *Pearl Harbor: Selected Testimonies, Fully Indexed, from the Congressional Hearings (1945-1946) and Prior Investigations of the Events Leading Up to the Attack*, (Jefferson, NC: McFarland, 1993) 57; IMTFE, Exhibit no. 1263, "Message from Honolulu to Tokyo, 6 December 1941," reel 19, 1; this MAGIC intercept originated on 6 December 1941 from Honolulu to Tokyo, code system PA-K2, SIS no. 25377, and notated as translated by army intelligence (MIS) on 8 December 1941; for the tendering of this intercept as evidence see IMTFE, *Record*, reel 9, 11,221-23; IMTFE, Exhibit no. 1264, "Message from Honolulu to Tokyo, 6 December 194," reel 19, 1; this MAGIC intercept originated on 6 December 1941 from Honolulu to Tokyo, code system PA-K2, SIS no. 25874, and notated as translated by army intelligence (MIS) on 8 December 1941; for the tendering of this intercept as evidence see IMTFE, *Record*, reel 9, 11,224-25.

Harbor had but one use. The Japanese enjoyed many benefits from Kita's reports, but the most valuable aspect was that this information as relayed to Tokyo and Yamamoto's staff proved immensely advantageous for the Japanese adjusting the final plans for the attack.⁶⁶ As the Japanese fleet steamed secretly on 26 November 1941 toward the United States Navy base at Pearl Harbor, it received constantly updated intelligence on the positions of ships. This information on United States naval movement benefitted Japanese naval planners. Providing a synopsis on the evidence presented by the prosecution concerning the surprise attack against the United States, an unidentified witness said that the combined efforts of the Japanese Foreign Office and the Navy "in planning and conducting this consular espionage [served] as an aid to the Pearl Harbor attack," by giving them a complete picture from which to prepare the plan.⁶⁷

Summary

Allied signal intelligence contributed to the larger Allied effort to paint Japan's action during the war in a demonstrably negative light. Used as evidence at the IMTFE, the postwar utility of Allied signal intelligence bore strong similarities to the role it played during the war, according to Herbert Feis, as the virtual completeness of the picture provided by MAGIC intercepts outlining Japanese government

⁶⁶Ketchum, *Borrowed Years*, 721.

⁶⁷IMTFE, *Record*, reel 9, 11,225; Worth, *Pearl Harbor*, 59.

intentions was unparalleled.⁶⁸ MAGIC intercepts reinforced the prosecution's case as part of a larger body of evidence presented by the prosecution against the Japanese military and political leaders. Besides other evidence presented, the criminality of those accused as Class "A" war criminals, was based in part on their own words, ideas, and policies. Allied signal intelligence, when incorporated as evidence, aided in the prosecution of Class "A" war criminals as twenty-four of twenty-five defendants were convicted on Count 1 [conspiracy] and eighteen of twenty-five defendants were convicted on Count 29 [waging aggressive war against the United States].

⁶⁸See appendix I for selected examples MAGIC intercepts; Herbert Feis, *The Road to Pearl Harbor: The Coming of the War between the United States and Japan* (Princeton: Princeton University Press, 1950), 305.

CHAPTER III

CONCLUSIONS

The International Military Tribunal for the Far East and what it ultimately represented was timely and necessary. The war crimes trials of the Japanese military and political leaders, as one Japanese historian has concluded, addressed the disturbing fact that during "World War II atrocities [occurred] on an unprecedented scale, and they were [specifically] an infamous hallmark of the Japanese military."¹ Despite the legal foundation adopted by the Allied powers, the fact remained that the Tokyo tribunal was characterized by an unidentified participant, in the pre-trial documents of the IMTFE, as "the greatest inquisition of political [and military] leaders by their foreign enemies that we have seen this century: that is both its glory and its infamy."² The Tokyo tribunal sought to insure that such treacherous acts of inhumanity never occurred again.

When examining the Tokyo tribunal and the body of evidence presented by the prosecution, the role of Allied signal intelligence aided in serving to illuminate Japan's participation in the war. This is evident particularly as Allied signal

¹Ienaga, *Pacific War*, 181.

²Pritchard and Zaide, eds., *Complete Transcripts of the Proceedings*, 1.

intelligence, in concert with other form of evidence helped establish a convincing body of information that substantiated the prosecution's case in supporting the charges faced by the accused Japanese Class "A" war criminals. Nevertheless, the beneficial contributions of Allied signal intelligence incorporated as evidence used to prosecute major war criminals, must be qualified with care.

The value of Allied signal intelligence did not end with the cessation of hostilities, rather it gained consideration in a broader spectrum afterwards. Writing on the interrelationship between diplomacy and intelligence, Richard Langhorne observed that

good intelligence is not the specific information -- the products of spies, decrypts, and the like, so much associated with intelligence operations in the popular imagination -- but the paradigms or frameworks of assumptions into which the nuggets of information are set.³

Within the narrow parameters established for the IMTFE that was precisely the role signal intelligence fulfilled when used as evidence for the prosecution. In bringing the Japanese military and political leaders to justice, the prodigious wartime efforts of Allied codebreakers paid off in handsome dividends even after the war. The evidence derived from Allied signal intelligence activities fit the framework constructed specifically for the trials of Japanese war criminals. Allied signal intelligence, when incorporated as evidence, aided in fulfilling the Allies desire to bring Class "A" war criminals deemed responsible for war on the part of Japan to account.

³Richard Langhorne, ed., *Diplomacy and Intelligence during the Second World War: Essays in Honour of F. H. Hinsley* (Cambridge: Cambridge University Press, 1985), 160.

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Exhibit nos.

2	Potsdam Declaration
603-A	Message from Berlin to Tokyo, 29 November 1941.
606	Message from Rome to Tokyo, 3 December 1941
641	Message from Canton to Tokyo, 14 July 1941
802	Message from Tokyo to Berlin, 30 November 1941
803	Pearl Harbor -- Intercepted Diplomatic Messages Sent by the Japanese Between July 1 and December 8, 1941.
808	Message from Tokyo to Washington, 31 July 1941
1161	Message from Washington to Tokyo, 22 October 1941
1163	Message from Tokyo to Washington, 2 November 1941
1164	Message from Tokyo to Washington, 4 November 1941
1165	Message from Tokyo to Washington, 4 November 1941
1166	Message from Tokyo to Washington, 4 November 1941
1170	Message from Tokyo to Washington, 5 November 1941

- 1171 Message from Tokyo to Washington, 5 November 1941.
- 1174 Message from Tokyo to Washington, 11 November 1941
- 1177 Message from Washington to Tokyo, 14 November 1941
- 1178 Message from Tokyo to Washington, 16 November 1941
- 1183 Message Tokyo to Washington, 22 November 1941
- 1187 Message from Hanoi to Tokyo, 25 November 1941
- 1189 Message from Washington to Tokyo, 26 November 1941
- 1199 Message from Tokyo to Berlin, 30 November 1941.
- 1208 Message from Tokyo to Washington, 1 December 1941
- 1210 Message from Tokyo to Havana, 2 December 1941
- 1218 Message from Tokyo to Washington, 7 December 1941
- 1240 Imperial Rescript, 8 December 1941
- 1254-A Message from Tokyo to Honolulu, 24 September 1941.
- 1256 Message from Tokyo to Honolulu, 15 November 1941.
- 1257 Message from Honolulu to Tokyo, 18 November 1941.
- 1258 Message from Tokyo to Honolulu, 2 December 1941
- 1261 Message from Honolulu to Tokyo, 3 December 1941
- 1262 Message from Honolulu to Tokyo, 5 December 1941
- 1263 Message from Honolulu to Tokyo, 6 December 1941
- 1264 Message from Honolulu to Tokyo, 6 December 1941
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APPENDIX A

POTSDAM DECLARATION

(1) We -- the President of the United States, the President of the National Government of the Republic of China, and the Prime Minister of Great Britain, representing the hundreds of millions of our countrymen, have conferred and agreed that Japan shall be given an opportunity to end this war.

(2) The prodigious land, sea and air forces of the United States, the British Empire and of China, many times reinforced by their armies and air fleets from the west, are poised to strike the final blows upon Japan. This military power is sustained and inspired by the determination of all the Allied Nations to prosecute the war against Japan until she ceases to resist.

(3) The result of the futile and senseless German resistance to the might of the aroused free peoples of the world stand forth in awful clarity as an example to the people of Japan. The might that now converges on Japan is immeasurably great than that which, when applied to the resisting Nazis, necessarily laid waste to the lands, the industry and the method of life of the whole German people. The full application of our military power, backed by our resolve, will mean the inevitable and complete destruction of the Japanese armed forces and just as inevitably the utter destruction of the Japanese homeland.

(4) The time has come for Japan to decide whether she will continue to be controlled by those self-willed militaristic advisers whose unintelligent calculations have brought the Empire of Japan to the threshold of annihilation, or whether she will follow the path of reason.

(5) Following are our terms. We will not deviate from them. There are no alternatives. We shall brook no delay.

(6) These must be eliminated for all time the authority and influence of those who have deceived and misled the people of Japan into embarking on world conquest, for we insist that a new order of peace, security and justice will be impossible until irresponsible militarism is driven from the world.

(7) Until such a new order is established and until there is convincing proof that Japan's war-making power is destroyed, points in the Japanese territory to be designated by the Allies shall be occupied to secure the achievement of the basic objective we are here setting forth.

(8) The terms of the Cairo Conference shall be carried out and Japanese sovereignty shall be limited to the islands of Honshu, Hokkaido, Kyushu, Shikoku, and such minor islands as we determine.

(9) The Japanese military forces, after being completely disarmed, shall be permitted to return to their homes with the opportunity to lead peaceful and productive lives.

(10) We do not intend that the Japanese shall be enslaved as a race or destroyed as a nation, but stern justice shall be meted out to all war criminals, including those who have visited cruelties upon our prisoners. The Japanese Government shall remove all obstacles to the revival and strengthening of democratic tendencies among the Japanese people. Freedom of speech, of religion, and of thought, as well as respect for the fundamental human rights, shall be established.

(11) Japan shall be permitted to maintain such industries as will sustain her economy and permit the exaction of just reparations in kind, but not those which would enable her to re-arm for war. To this end, access to, as distinguished from control of, raw materials shall be permitted. Eventual Japanese participation in world trade relations shall be permitted.

(12) The occupying forces of the Allies shall be withdrawn from Japan as soon as these objective areas have been accomplished and there has been established in accordance with the freely expressed will of the Japanese people a peacefully inclined and responsible government.

(13) We call upon the government of Japan to proclaim now the unconditional surrender of all Japanese armed forces, and to provide proper and adequate assurances of their good faith in such action. The alternative for Japan is prompt and utter destruction.

Source: International Military Tribunal for the Far East, *Court Papers, Journal, Exhibits, and Judgments of the International Military Tribunal for the Far East, 1946-1948*, Exhibit no. 2 "Potsdam Declaration," (Old Dominion University Library; Washington, D.C.: United States Army, Signal Corps, Photo Division, 1948, microfilm), reel 8, 1-2.

APPENDIX B

SUPREME COMMANDER FOR THE ALLIED POWERS PROCLAMATION CREATING THE INTERNATIONAL MILITARY TRIBUNAL FOR THE FAR EAST

WHEREAS, the United States and the Nations allied therewith in opposing illegal war of aggression of the Axis Nations, have from time to time made declaration of their intentions that war criminals should be brought to justice;

WHEREAS, the Governments of the Allied Powers at war with Japan on the 26th July 1945 at Potsdam, declared as one of the terms of surrender that stern justice shall be meted out to all war criminals including those who have visited cruelty upon our prisoners;

WHEREAS, by the Instrument of Surrender of Japan executed at Tokyo Bay, Japan, on the 2nd September 1945, the signatories for Japan, by command and in behalf of the Emperor and the Japanese Government, accepted the terms set forth in such Declaration at Potsdam;

WHEREAS, the undersigned has been designated by the Allied Powers as Supreme Commander for the Allied Powers to carry into effect the general surrender of the Japanese armed forces;

WHEREAS, the Governments of the United States, Great Britain and Russia at the Moscow Conference, 26th December 1945, having considered the effectuation by Japan of the Terms of Surrender, with the concurrence of China have agreed that the Supreme Commander shall issue all Orders for the implementation of the Terms of Surrender.

NOW, THEREFORE, I, Douglas MacArthur, as Supreme Commander for the Allied Powers, by virtue of the authority so conferred upon me, in order to implement the Terms of Surrender which requires the meting out of stern justice to war criminals, do order and provide as follows:

Article 1. There shall be established an International Military Tribunal for the Far East, for the trial of those persons charged individually, or as members of organizations, or in both capacities, with offenses which include crimes against peace.

Article 2. The Constitution, jurisdiction, and functions of this Tribunal are those set forth in the Charter of the International Military Tribunal for the Far East, approved by me this day.

Article 3 Nothing in this Order shall prejudice the jurisdiction of any other international, national or occupation court, commission or other tribunal established or to be established in Japan or any territory of a United Nation with which Japan has been at war, for the trial of war criminals.

Given under my hand at Tokyo, this 19th day of January, 1946.

Douglas MacArthur
General of the Army, United States Army
Supreme Commander for the Allied Powers

Source: United States, Department of State, "Trial for Far Eastern War Criminals," Department of State *Bulletin* 14, no. 349 (10 March 1946): 361-64.

APPENDIX C

INTERNATIONAL MILITARY TRIBUNAL FOR THE FAR EAST CHARTER

Proclamation of the Supreme Commander for the Allied Powers, dated 19 January 1946, established an International Military Tribunal for the Far East. Charter of this Tribunal is as follows:

Section I

Constitution of Tribunal

ARTICLE 1. *Tribunal Established.* The International Military Tribunal for the Far East is hereby established for the just and prompt trial and punishment of the major war criminals in the Far East. The permanent seat of the Tribunal is in Tokyo.

ARTICLE 2. *Members.* The Tribunal shall consist of not less than [six] nor more than [eleven] Members, appointed by the Supreme Commander for the Allied Powers from the names submitted by the Signatories to the Instrument of Surrender, [India, and the Commonwealth of the Philippines.]

ARTICLE 3. *Officers and Secretariat.*

a. President. The Supreme Commander for the Allied Powers shall appoint a Member to be President of the Tribunal.

b. Secretariat.

(1) The Secretariat of the Tribunal shall be composed of a General Secretary to be appointed by the Supreme Commander for the Allied Powers and such assistant secretaries, clerks, interpreters, and other personnel as may be necessary.

(2) The General Secretary shall organize and direct the work of the Secretariat.

(3) The Secretariat shall receive all documents addressed to the Tribunal, maintain the records of the Tribunal, provide necessary clerical services to the Tribunal and its Members, and perform such other duties as may be designated by the Tribunal.

ARTICLE 4. *[Convening and] Quorum, Voting [, and Absence.]*

a. [Convening and] Quorum. [When as many as six members of the Tribunal are present, they may convene the Tribunal in formal session.] The presence of a majority of all Members shall be necessary to constitute a quorum.

b. Voting. All decisions and judgments of this Tribunal, including convictions and sentences, shall be by a majority vote of those Members of the Tribunal present. In case the votes are evenly divided, the vote of the President shall be decisive.

c. [Absence]. If a Member at any time is absent and afterwards is able to be present, he shall take part in all subsequent proceedings; unless he declares in open court that he is disqualified by reason of insufficient familiarity with the proceedings which took place in his absence.]

Section II

Jurisdiction and General Provisions

ARTICLE 5. *Jurisdiction Over Persons and Offenses*. The Tribunal shall have the power to try and punish Far Eastern war criminals who as individuals or as members of organizations are charged with offenses which include Crimes against Peace. The following acts, or any of them, are crimes coming within the jurisdiction of the Tribunal for which there shall be individual responsibility:

a. Crimes against Peace: Namely, the planning, preparation, initiation or waging of a declared or undeclared war of aggression, or a war in violation of international law, treaties, agreements or assurances, or participation in a common plan or conspiracy for the accomplishment of any of the foregoing;

b. Conventional War Crimes: Namely, violations of the laws or customs of war;

c. Crimes against Humanity: Namely, murder, extermination, enslavement, deportation, and other inhumane acts committed against any civilian population, before or during the war, or persecutions on political or racial grounds in execution of or in connection with any crime within the jurisdiction of the Tribunal, whether or not in violation of the domestic law of the country where perpetrated. Leaders, organizers, instigators, and accomplices participating in the formulation or execution of a common plan or conspiracy to commit any of the foregoing crimes are responsible for all acts performed by any person in execution of such plan.

ARTICLE 6. *Responsibility of the Accused.* Neither the official position, at any time, or an accused, nor the fact that an accused acted pursuant to order of his government or of a superior shall, of itself, be sufficient to free such accused from responsibility for any crime with which he is charged, but such circumstances may be considered in mitigation of punishment, if the Tribunal determines that justice so require.

ARTICLE 7. *Rules of Procedure.* The Tribunal may draft and amend rules of procedure consistent with the fundamental provisions of this Charter.

a. Chief of Counsel. The Chief of Counsel is designated by the Supreme Commander for the Allied Powers is responsible for the investigation and prosecution of charges against war criminals within the jurisdiction of this Tribunal, and will render such legal assistance to the Supreme Commander as is appropriate.

b. Associate Counsel. Any United Nation with which Japan has been at war may appoint an Associate Counsel to assist the Chief of Counsel.

Section III

Fair Trial for Accused

ARTICLE 9. *Procedure for Fair Trial.* In order to insure fair trial for the accused, the following procedure shall be followed:

a. Indictment. The indictment shall consist of a plain, concise and adequate statement of each offense charged. Each accused shall be furnished in adequate time for defense a copy of the indictment, including any amendment, and of this Charter, in a language understood by the accused.

b. Hearing. During the trial or any preliminary proceedings the accused shall have the right to give any explanation relevant to the charges made against him.

c. Language. The trial and related proceedings shall be conducted in English and in the language of the accused. Translations of documents and other papers shall be provided as needed and requested.

d. Counsel for Accused. Each accused shall be represented by counsel of his own selection, subject to disapproval of such counsel at any time by the Tribunal. The accused shall file with the General Secretary of the Tribunal the name of his counsel. [If an accused is not represented by counsel and in open court requests the appointment of counsel, the Tribunal shall designate counsel for him. In the absence of such request, the Tribunal may appoint counsel an accused if in its judgment such appointment is necessary to provide for a fair trial.]

e. Evidence for Defense. An accused shall have the right through himself or through his counsel [but not through both, to conduct his defense including the right] to examine any witness called by the prosecution, subject to such reasonable restrictions as the Tribunal may determine.

f. Production of Evidence for the Defense. An accused may apply in writing to the Tribunal for the production of witnesses or of documents. The application shall state where the witness or document is thought to be located. It shall also state the facts proposed to be proved by the witness or the document and the relevancy of such facts to the defense. If the Tribunal grants the application, the Tribunal shall be given such aid in obtaining production of the evidence as the circumstances require.

ARTICLE 10. *Applications and Motions before Trial*. All motions, applications or other requests addressed to the Tribunal prior to the commencement of trial shall be made in writing and filed with the General Secretary of the Tribunal for action by the Tribunal.

Section IV

Powers of Tribunal and Conduct of Trial

ARTICLE 11. *Powers*. The Tribunal shall have the power:

- a. To summon witnesses to the trial, to require them to attend and testify, and to question them.
- b. To interrogate each accused and to permit comment on his refusal to answer any question.
- c. To require the production of documents and other evidentiary material.
- d. To require of each witness an oath, affirmation, or such declaration as is customary in the country of the witness, and to administer oaths.
- e. To appoint officers for the carrying out of any task designated by the Tribunal, including the power to have evidence taken on commission.

ARTICLE 12. *Conduct of Trial*. The Tribunal shall:

- a. Confine the trial to strictly to an expeditious hearing of the issues raised by the charges.
- b. Take strict measures to prevent any action which could cause any unreasonable delay and rule out irrelevant issues and statements of any kind whatsoever.
- c. Provide for the maintenance of order at the trial and deal summarily with any contumacy, imposing appropriate punishment, including exclusion of any accused or his counsel from some or all further proceedings, but without prejudice to the determination of the charges.

d. Determine the mental and physical capacity of any accused to proceed to trial.

ARTICLE 13. *Evidence.*

a. Admissibility. The Tribunal shall not be bound by technical rules of evidence. It shall adopt and apply to the greatest possible extent expeditious and non-technical procedure, and shall admit any evidence which it deems to have probative value. All purported admissions or statements of the accused are admissible.

b. Relevance. The Tribunal may require to be informed of the nature of any evidence before it is offered in order to rule upon the relevance.

c. Specific evidence admissible. In particular, and without limiting in any way the scope of the forgoing general rules, the following evidence may be admitted:

(1) A document, regardless of its security classification and without proof of its issuance or signature, which appears to the Tribunal to have been signed or issued by any officer, department, agency or member of the armed forces of any government.

(2) A report which appears to the Tribunal to have been signed or issued by the International Red Cross or a member thereof, or by a doctor of medicine or any medical service personnel, or by an investigator or intelligence officer, or by any other person who appears to the Tribunal to have personal knowledge of the matters contained in the report.

(3) An affidavit, deposition, or other signed statement.

(4) A diary, letter or other document, including sworn or unsworn statements, which appear to the Tribunal to contain information relating to the charge.

(5) A copy of a document or other secondary evidence of its contents, if the original is not immediately available.

d. Judicial Notice. The Tribunal shall not require proof of facts of common knowledge, nor of the authenticity of official government documents and reports of any nation or of the proceedings, records and findings of military or other agencies of any of the United Nations.

e. Records, Exhibits and Documents. The transcript of the proceedings and exhibits and documents submitted to the Tribunal, will be filed with the General Secretary of the Tribunal and will constitute part of the Record.

ARTICLE 14. *Place of Trial*. The first trial will be held in Tokyo and any subsequent trials will be held at such places as the Tribunal decides.

ARTICLE 15. *Course of Trial Proceedings*. The trial proceedings at the Trial will take the following course:

a. The indictment will be read in court unless the reading is waived by all accused.

- b. The Tribunal will ask each accused whether he pleads "guilty" or "not guilty".
- c. The prosecution and each accused [by counsel only, if represented] may make a concise opening statement.
- d. The prosecution and defense may offer evidence and the admissibility of the same shall be determined by the Tribunal.
- e. The prosecution and counsel for the accused [by counsel only, if represented] may examine each witness and each accused who gives testimony.
- f. Accused [by counsel only, if represented] may address the Tribunal.
- g. The prosecution may address the Tribunal.
- h. The Tribunal will deliver judgment and pronounce sentence.

Section V

Judgment and Sentence

ARTICLE 16. *Penalty.* The Tribunal shall have the power to impose upon an accused, on conviction, death or such other punishment as shall be determined to by it to be just.

ARTICLE 17. *Judgment and Review.* The judgment will be announced in open court and will give the reasons on which it is based. The record of the trial will be transmitted directly to the Supreme Commander for the Allied Powers for his action thereon. A sentence will be carried out in accordance with the Order of the Supreme Commander for the Allied Powers, who may at any time reduce or otherwise alter the sentence except to increase its severity.

Source: United States, Department of State, "Special proclamation by the Supreme Commander for the Allied Powers at Tokyo" 19 January 1946, TIAS no. 1589, *United States and Other International Agreements*, vol. 4, *Multilateral, 1946-1949*, 20-32. On 26 April 1946, the charter was amended to effect certain changes in the document. All additions are denoted from the original by text placed within brackets [] to indicate revisions made.

APPENDIX D

CHARGES AGAINST CLASS "A" WAR CRIMINALS

Charges:

- Count 1: Leaders, organizers, instigators, or accomplices in the formation and execution of a common plan or conspiracy to wage wars of aggression, and war or wars in violation of international law.
- Count 27: Waging unprovoked war against China
- Count 29: Waging aggressive war against the United States
- Count 31: Waging aggressive war against the British Commonwealth
- Count 32: Waging aggressive war against the Netherlands
- Count 33: Waging aggressive war against France (Indochina)
- Count 35-36: Waging war against Russia
- Count 54: Ordered, authorized, and permitted inhumane treatment of prisoners of war and others
- Count 55: Having deliberately and recklessly disregarded their duty to take adequate steps to prevent atrocities.

Counts 2-26, 28, 30, 34, 37-53 were eliminated due to lack of evidence or redundancy.

Source: John L. Ginn, *Sugamo Prison, Tokyo: An Account of the Trial and Sentencing of Japanese War Criminals in 1948, by a U.S. Participant* (Jefferson, NC: McFarland, 1992), 10.

APPENDIX E

CLASS "A" WAR CRIMINALS AND SENTENCES RECEIVED

Araki, General Sadao. Convicted on Counts 1 and 27. Sentenced to life, paroled 1955.

Doihara, General Kenji. Convicted on Counts 1, 27, 29, 31, 32, 35, 36, 54.
Sentenced to death.

Hashimoto, Colonel Kingorō. Convicted on Counts 1 and 27. Sentenced to life, paroled in 1954.

Hata, Field Marshal Shunroku. Convicted on Counts 1, 27, 29, 31, 32, 55.
Sentenced to life, paroled in 1954.

Hiranuma, Baron Kiichirō. Convicted on Counts 1, 27, 29, 32, 36. Sentenced to life, paroled in 1955.

Hirota, Baron Kōki. Convicted on Counts 1, 27, 55. Sentenced to death.

Hoshino Naoki. Convicted on Counts 1, 27, 29, 31, 32. Sentenced to life, paroled in 1955.

Itagaki, General Seishirō. Convicted on Counts 1, 27, 29, 31, 32, 35, 36, 54.
Sentenced to death.

Kaya Okinori. Convicted on Counts 1, 27, 29, 32, 32. Sentenced to life, paroled in 1955.

Kido, Marquis Kōichi. Convicted on Counts 1, 27, 29, 31, 32. Sentenced to life, paroled in 1955.

Kimura, General Heitarō. Convicted on Counts 1, 27, 29, 31, 32, 54, 55. Sentenced to death.

Koiso, General Kuniaki. Convicted on Counts 1, 27, 29, 31, 32, 55. Sentenced to life.

Matsui, General Iwane. Convicted on Count 55. Sentenced to death.

Matsuoka Yōsuke. Died of tuberculosis early in the trial.

Minami, General Jirō. Convicted on Counts 1 and 27. Sentenced to life, paroled in 1954.

Mutō, General Akira. Convicted on Counts 1, 27, 29, 31, 32, 54. Sentenced to death.

Nagano, Admiral Osami. Died of natural causes during the trial.

Oka, Admiral Takazumi. Convicted on Counts 1, 27, 29, 31, 32. Sentenced to life, paroled in 1954.

Ōkawa Shūmei. Sent to psychiatric ward, released in 1948.

Ōshima, General Hiroshi. Convicted on Count 1. Sentenced to life, paroled in 1955.

Satō, General Kenryō. Convicted on Count 1. Sentenced to life, paroled in 1955.

Shigemitsu Mamoru. Convicted on Counts 27, 29, 31, 32, 33, 55. Sentenced to seven years, paroled in 1950.

Shimada, Admiral Shigetarō. Convicted on Counts 1, 27, 29, 31, 32. Sentenced to life, paroled in 1955.

Shiratori Toshio. Convicted on Count 1. Sentenced to life.

Suzuki, General Teiichi. Convicted on Counts 1, 27, 29, 31, 32. Sentenced to life, paroled in 1955.

Tōgō Shigenori. Convicted on Counts 1, 27, 29, 31, 32. Sentenced to twenty years.

Tōjō, General Hideki. Convicted on Counts 1, 27, 29, 31, 32, 33, 54. Sentenced to death.

Umezu, General Yoshijirō. Convicted on Counts 1, 27, 29, 31, 32. Sentenced to life.

Source: Arnold C. Brackman, *The Other Nuremberg: The Untold Story of the Tokyo War Crimes Trials* (New York: William Morrow, 1987), 406-13.

APPENDIX F
RULES OF PROCEDURE OF THE INTERNATIONAL MILITARY TRIBUNAL
FOR THE FAR EAST

The present rules of procedure of the International Military Tribunal for the Far East (hereinafter called the Tribunal) as established by the special proclamation of the 19th of January 1946 of the Supreme Commander for the Allied Powers and by the charter of the same date and the amendments thereto are hereby promulgated by the Tribunal in accordance with the provisions of Article 7 of the Charter, this 25th day of April 1946.

Rule 1. Notice to accused.

a. Each individual accused in custody shall receive no less than 14 days before the Tribunal begins to take evidence a copy, translated into a language which he understands,

- (1) of the indictment
- (2) of the charter
- (3) of any other document lodged with the indictment

b. Any individual accuse not in custody shall be informed of the indictment against him and of his right to receive the documents specified in sub-paragraph a above by notice in such form and manner as the Tribunal may prescribe.

c. Only one counsel shall be heard at the trial for any accused unless by special permission of the Tribunal.

Rule 2. Service of additional documents.

a. If before the Tribunal commences to take evidence, the Chief Prosecutor offers amendments or additions to the indictment, such amendments or additions, including any accompanying documents, shall be lodged with the Tribunal and copies of the same translated into a language which they understand shall be furnished to the accused in custody as soon as practicable and notice given in accordance with Rule 1b to those not in custody.

b. Upon application to the General Secretary, an accused shall be furnished with a copy translated into a language which he understands of all documents referred to in the indictment so far as they may be made available by the Chief Prosecutor, and shall be allowed to inspect copies of any such documents as are not so made available.

Rule 3. Order at the trial.

In conformity with the provisions of Article 12 of the Charter, and the disciplinary powers therein set out, the Tribunal, acting through its President, shall provide for the maintenance of order at the trial. Any accused or any other person may be excluded from open session of the Tribunal for failure to observe and respect the directives or dignity of the Tribunal.

Rule 4. Witnesses.

a. Prior to testifying before the Tribunal, each witness shall make such oath or declaration or affirmation as is customary in his own country.

b. Witnesses, while not giving evidence, shall not be present in court without the permission of the Tribunal. The President shall direct, as circumstances demand, that witnesses shall not confer among themselves before giving evidence.

Rule 5. Applications and motions before the taking of evidence by the Tribunal and rulings during the trial.

a. Any motion, application or other request addressed in the Tribunal prior to the commencement of the taking of evidence by the Tribunal, shall be communicated by the General Secretary to the Chief Prosecutor or to the accused concerned, or his counsel, as the case may be, and, if no objection be made, the President may make the appropriate order on behalf of the Tribunal. If any objection be made, the President may call a special session of the Tribunal for the determination of the question raised.

b. The Tribunal, acting through the President, will rule upon all questions raising during the trial, including questions of admissibility of evidence, as to recesses and upon motions, and before so ruling the Tribunal may, when necessary, order the closing or clearing of the court and take any other steps which to the Tribunal seem just.

Rule 6. Rules, exhibits and documents.

a. A record shall be maintained of all oral proceedings. Exhibits will be suitably identified and marked with consecutive numbers. So much of the record and of the proceedings may be translated into Japanese as the Tribunal considers desirable in the interest of justice and for the information of the public.

b. As far as practicable, a copy of every document intended to be adduced in evidence by the prosecution or the defense will be delivered to the accused concerned or his counsel or to the prosecution, as the case may be, and also to the officer in charge of the Language Section of the Secretariat of the Tribunal, not less than twenty-four hours before such document is to be tendered in evidence. Every such copy shall have plainly marked thereon the part or parts upon which the prosecution or the defense, as the case may be, intends to rely, and every such copy shall be accompanied by a translation thereof into English or into Japanese, as the case may be, of the said part or parts. If the document is in a language other than English or Japanese, it shall be sufficient for the purpose of this provision if a translation into English or Japanese, as the case may be, of such document, or such part or parts, is delivered to the prosecution or the accused concerned or his counsel, and to such officer.

c. If during the trial counsel for the prosecution or any accused or his counsel receives or is apprised of any additional document which he intends to use at the trial, he will at once notify the opposing counsel concerned, or the accused concerned, as the case may be, and furnish him with a copy thereof as soon as practicable.

d. All exhibits and transcripts of proceedings, all documents lodged with or produced to the Tribunal, and all official acts and documents may, with the consent of the Tribunal, be certified by the General Secretary to any government or to any other Tribunal or whenever it is appropriate that copies or representations to such acts should be supplied upon a proper request.

e. In cases where original documents are submitted by the prosecution or the defense in evidence, and upon showing

(1) that because of historical interest or for any other reason one of the signatories to the Instrument of Surrender of Japan or any other government which has received the consent of all the said signatories desires to withdraw from the records of the Tribunal and preserve any particular original documents, and

(2) that no substantial injustice will result.

the Tribunal shall permit photostatic copies of the said original documents certified by the General Secretary, to be submitted for the originals in the records of the court, and shall deliver the said original documents to the applicants.

Rule 7. Seal.

a. The Tribunal shall have a seal which shall be affixed to all summonses and certificates and to such other documents as the President from time to time directs.

b. The Seal shall be kept in the custody of the General Secretary and shall be in a form approved by the President.

Rule 8. Forms of oath and affirmation.

a. The General Secretary and all personnel of the Secretariat of the Tribunal, and secretaries, stenographers, interpreters, and other such persons in attendance on the members of the Tribunal, shall sign and lodge with the Tribunal an affirmation in the following form to the like effect:

" (name and designation) will not disclose or discover any matter coming to my knowledge in the course of my employment in connection with the International Military Tribunal for the Far East, except to another person entitled to be informed of any such matter or to a member of such Tribunal."

b. Every official Court reporter and Interpreter shall, before commencing his duties, take an oath or make an affirmation according to the forms hereunder set out:

(1) Reporter's Form of Oath (other than Japanese):

"I swear that I will faithfully perform the duties of reporter to this Tribunal."

(2) Reporter's Form of Affirmation (other than Japanese):

"I affirm that I will faithfully perform the duties of reporter to this Tribunal."

(3) Interpreter's Forms of Oath (other than Japanese):

"I swear that I will truly interpret in the case now in hearing."

(4) Interpreter's Form of Affirmation (other than Japanese):

"I affirm that I will truly interpret in the case now in hearing."

(5) Japanese Reporters.

"I swear according to my conscience that I will faithfully perform the duties of reporter to this Tribunal."

(6) Japanese Interpreters.

"I swear according to my conscience that I will truly interpret in the case now in hearing."

Rule 9. Effective date and powers of amendment and addition.

Nothing here in contained shall be construed to prevent the Tribunal at any time, in the interest of a fair and expeditious trial, from departing from, amending or adding to these rules, either by general rules or special order for any particular case in such form and upon such notice as may appear just to the Tribunal.

Source: SCAP, Occupation Staff Sections: I.P.S., "International Military Tribunal for the Far East, Rules of Procedure," Box 118, folder 16, pp. 1-5, Record Group 5, *Records of General Headquarters, Supreme Commander for the Allied Powers (SCAP), 1945-1951*, MacArthur Memorial Archives, Norfolk, VA.

APPENDIX G

TRIBUNAL JUSTICES AND CHIEF PROSECUTORS

Australia:	Sir William F. Webb, presiding judge A. J. Mansfield
Canada:	E. Stuart MacDougall H. G. Nolan
China:	Ju-Ao Mei Che-chun Hsiang
France:	Henri Bernard Robert Oneto
Phillipines:	Delfin Jaranilla Pedro Lopez
Netherlands:	Bernard Victor A. Roling W. G. F. Boeferhoff Mulder
New Zealand:	Erima Harvey Northcroft R. H. Quilliam
Russia:	I. M. Zaryanov S. A. Golunsky
Great Britain:	Lord Patrick Arthur S. Comyns-Carr
United States:	Major General Myron C. Cramer Joseph B. Keenan
India:	R. M. Pal Govinda Menon

Source: John L. Ginn, *Sugamo Prison, Tokyo: An Account of the Trial and Sentencing of Japanese War Criminals in 1948, by a U.S. Participant* (Jefferson, NC: McFarland, 1992), 41-42.

APPENDIX H

IMPERIAL RESCRIPT, 8 DECEMBER 1941

WE, by grace of harken, Emperor of Japan, seated on the Throne of the line unbroken for ages eternal, enjoin upon ye, Our loyal and brave subjects:

We hereby declare war on the United States of America and the British Empire. The men and officers of Our army and navy shall do their utmost in prosecuting the war, Our public servants of various departments shall perform faithfully and diligently their appointed tasks, and all other subjects of Ours shall pursue their respective duties; the entire nation with a united will shall mobilize their total strength so that nothing will miscarry in the attainment of our war aims.

To insure stability of East Asia and to contribute to world peace is the far-sighted policy which was formulated by Our Great Illustrious Imperial Grandsire and Our Great Imperial Sire succeeding Him, and which We lay constantly at heart. To cultivate friendship among nations and to enjoy prosperity in common with all nations has always been the guiding principle of Our Empire's foreign policy. It has been truly unavoidable and far from Our wished that Our Empire has now been brought to cross swords with America and Britain. More than four years have passed since the government of the Chinese Republic, failing to comprehend the true intentions of Our Empire, and recklessly courting trouble, disturbed the peace of East Asia and compelled Our Empire to take up arms. Although there has been re-established the National Government of China, with which Japan has effected neighbourly intercourse and co-operation, the regime which has survived at Chungking, relying upon America and British protection, still continues its fratricidal opposition. Eager for the realization of their inordinate ambition to dominate the Orient, both America and Britain, giving support to the remaining /T. N. Chungking/ regime, have, under false name of peace, aggravated the disturbances in East Asia. Moreover, these two Powers, inducing other countries to follow suit, increased military preparations on all sides of Our Empire to challenge us. They have obstructed by every means our peaceful commerce, and finally resorted to a direct severance of economic relations, menacing gravely the existence of Our Empire.

Patiently have We waited and long have We endured, in the hope that Our Government might retrieve the situation in peace. But our adversaries, showing not the least spirit of conciliation, have unduly delayed a settlement; and in the meantime,

they have intensified the economic and military pressure to compel thereby Our Empire to submission. This trend of affairs would, if left unchecked, not only nullify Our Empire's efforts of many years for the sake of the stabilization of East Asia, but also endanger the very existence of Our nation. The situation being such as it is, Our Empire for its existence and self-defence has not other recourse but to appeal to arms and to crush every obstacle in its path.

The hallowed spirits of Our Imperial Ancestors guarding Us from above, We rely upon the loyalty and courage of Our subjects in Our confident expectation that the task bequeathed by Our Forefathers will be carried forward, and that the sources of evil will be speedily eradicated and an enduring peace immutably established in East Asia, preserving thereby the glory of Our Empire.

The 8th day of the 12th month of the 16th year of Showa.

Source: International Military Tribunal for the Far East, *Court Papers, Journal, Exhibits, and Judgments of the International Military Tribunal for the Far East, 1946-1948*, Exhibit no. 1240, "Imperial Rescript, 8 December 1941," (Old Dominion University Library; Washington, D.C.: United States Army, Signal Corps, Photo Division, 1948, microfilm), reel 19, 1-2.

APPENDIX I

SELECTED EXAMPLES OF MAGIC INTERCEPTS

EXHIBIT NO. 802

From: Berlin
To: Tokyo
30 November 1941
Purple. (CA)

#985 (Part 1 of 3)^a

Re my Circular #2387^b

1. The conversation begun between Tokyo and Washington last April during the administration of the former cabinet, in spite of the sincere efforts of the Imperial Government, now stand ruptured -- broken. (I am sending you an outline of developments in separate message #986^c.) In the face of this, our Empire faces a grave situation and must act with determination. Will you Honor, therefore, immediately interview Chancellor HITLER and Foreign Minister RIBBENTROP and confidentially communicate to them a summary of the developments. Say to them that lately England and the United States have taken a provocative attitude, both of them. Say that they are planning to move military forces into various places in East Asia and that we will inevitably have to counter by also moving troops. Say very secretly to them that there is extreme danger that war may suddenly break out between some clash of arms and add that the time of the breaking out of this war may come quicker than anyone dreams.

a -- Part 2 not available. For Part 3 see S.I.S #25553

b -- Not available

c -- See S.I.S. #25554 and #25555

25552
JD 6943

SECRET

Trans. 12-2-41 (NR)

EXHIBIT NO. 641

From: Canton
 To: Tokyo
 July 14, 1941
 Purple

#255

To be kept secret within the Department
 Re my #253^a

Subsequent Information from military officials to the Attaches is as follows:

1. The recent general mobilization order expressed the irrevocable resolution of Japan to put an end Anglo-American assistance in thwarting her natural expansion and her indomitable intention to carry this out, if possible, with the backing of the Axis but, if necessary, alone. Formalities, such as dining the expeditionary forces and saying farewell to them, have been dispensed with. That is because we did not wish to arouse greatly the feelings of the Japanese populace and because we wished to face this new war with a calm and cool attitude.
2. The immediate object of our occupation of French Indo-China will be to achieve our purposes there. Secondly, its purpose is, when the international situation is suitable, to launch therefrom a rapid attack. This venture will carry out in spite of any difficulties which may arise. We will endeavor to the last to occupy French Indo-China peacefully but, if resistance is offered, we will crush it by force, occupy the country and set up martial law. After the occupation of French Indo-China, next on our schedule is the sending of an ultimatum to the Netherlands Indies. In the seizing of Singapore the Navy will play the principal part. As for the Army, in seizing Singapore it will need only one division and in seizing the Netherlands Indies, only two. In the main, through the activities of our air arm (in your city, the Spratly Islands, Parao, Thaiese Singore, Portuguese Timor and French Indo-China) and our submarine fleet (in the South Seas mandate islands, Hainan Island, and French Indo-China) we will once and for all crush the Anglo-American military power and their ability to assist in any scheme against us.
3. The troops soon to occupy French Indo-China will be organized as the 25th Army Corps (one Army Corps consists of four divisions) and also the 30th Army Corps, consisting of the South China forces, which will be assigned to special duties with airplanes, tanks, and howitzers. General IIDA (the IIDA Army mentioned in preceding communications has been changed to the Nishimura detachment) will be placed in command and general military headquarters will be set up in Saigon. All preparations have been made. The ship fees have been paid and the expedition will soon proceed from here.

a -- Not available

ARMY 19731

SECRET

Trans. 7-19-41 (5)

EXHIBIT NO. 1174

From: Tokyo
To: Washington
11 November 1941
(Purple)

#764 (In # parts, complete)

1. On the 11th, the British Ambassador, while calling on me on some other business, brought up the subject of the conversations. He advised my that he reported my talks of the other day (see contents of 2 of my message #723*) to his home government, to which his government replied along the following he said:

The British Government is not aware of the details of the conversations being conducted in Washington. Since its success would be of interest of Britain and Japan, it is fervently hoping for the success thereof. However, unless the basis of discussion is first settled upon, it would be useless to go ahead and enter into negotiations of the details. The British Government feels that discussions as to the basic principles could safely be left up to the U.S. Government. However, as soon as the real negotiations begin, the United States is to confer with Great Britain according to the arrangement. Therefore, when that time arrives, negotiations will be carried on jointly with the United States and Japan.

2. I replied that in the matters being discussed between Japan and the United States there were some phases which greatly affected Great Britain. In the event of an agreement between Japan and the United States, Japan will simultaneously seek Britain's agreement. I wish to arrange matters so that the two agreements may be signed at exactly the same time. In view of the fact that to do the above is necessary, we have already requested the United States to give their approval to the terms, I said to the British Ambassador.

The British Ambassador said that, he was not aware as to how much progress had been made between the United States and Japan, but he assumed that they were still in the preliminary stages.

I, therefore, replied that his assumption may have fitted in the past, but that at present they had already entered into the realm of the actual negotiations. Moreover, the Imperial Government has already submitted its final proposal, thus bringing the negotiations to the final phase. We have made this fact absolutely clear to the United States, I added.

I went on to say that I hear that the British Prime Minister made a speech at a luncheon given by the Mayor of London in which he stated that though he did not know the developments in the U.S.-Japanese negotiations, he would issue a warning to Japan. Would it not more to the point, I challenged, if, instead of making threats without knowing of what he spoke, he were to try to more clearly understand the issues and to cooperate in an effort to clear them up? However, I said, with the U.S.-Japanese talks in the phase they are today, and in view of the fact that I realized that there were certain relationships between the United States and Great Britain. I have no intention of urging or opposing British participation in

these talks at this time.

The Imperial Government had made the maximum concessions she can in drawing up its final proposal, I explained. We are of the opinion that the United States will find no objectionable points in it. I believe that it will be possible to sign the agreement within a week to ten days, I said. If, unfortunately, the United States refuses to accept those terms, it would be useless to continue the negotiations. Our domestic political situation will permit no further delays in reaching a decision.

I am making superhuman efforts at this time, I pointed out, in the attempt to ride out the crisis in the U.S.-Japanese and the British-Japanese relations. There are factions in the country which insist that there is no need for negotiating and point out the uselessness of doing so. The negotiations are being continued only after these factions were checked.

For these reasons, it is absolutely impossible that there be any further delays.

A speedy settlement can be made depending entirely upon the attitude of Britain and the United States, I said, and suggested that his country give serious consideration to this, and cooperate in bringing about an agreement.

In the above manner, I pointed out the criticalness of the situation. The Ambassador listened to what I said very attentively, giving indications that he was realizing for the first time how critical the situation was. He advised me that he would send his government a report of the above conversation and that he himself would do his best to bring about a speedy settlement.

3. Thus, there are indications that the United States Government is still under the impression that the negotiations are in the preliminary stages and that we are still merely exchanging opinions. This is further supported by the words of President Roosevelt reported to you in your message #1070 ** (that part in which he says that he hopes that those preliminary discussions will lead to the basis of the real negotiations, etc.)

That the United States takes this lazy and easy going attitude in spite of the fact that as far as we are concerned, this is the final phase, is exceedingly unfortunate. Therefore, it is my fervent hope that Your Excellency will do everything to make them realize this fact and bring about an agreement at the earliest possible moment.

*JD-1: 6228. (SIS #24293-94)

**Not available.

EXHIBIT NO. 1178

From: Tokyo
To: Washington
November 16, 1941
Purple (Ca) (Urgent)

#---

For your Honor's own information.

1. I have read your #1090^a, and you may be sure that you have all my gratitude for the efforts you have put forth, but the fate of our Empire hangs be the slender thread of a few days, so please fight harder than you ever did before.

2. What you say in the last paragraph of your message is, of course, so and I have given it already the fullest consideration, but I have only to refer you to the fundamental policy laid down in my #725.^b Will you please try to realize what that means. In your opinion we ought to wait and see what turn the war takes and remain patient. However, I am awfully sorry to say that the situation renders this out of the question. I set the deadline for the solution of these negotiations in my #736,^c and there will be no change. Please try to understand that. You see how short the time is; therefore, do not allow the United States to sidetrack us an delay the negotiations any further. Press them for a solution on the basis of our proposals, and do your best to bring about an immediate solution.

a -- See JD-:6553 in which NOMURA gives his views on the general situation. Part 3 not available.

b -- S.I.S. #24330 in which TOGO says that conditions both within and without the Japanese Empire will not permit any further delay in reaching a settlement with the United States.

c -- S.I.S. #24373 in which TOGO says that it is absolutely necessary that all arrangements be made for the signing of this agreement be completed by the 25th of this month.

ARMY 24878 JD-1: 6638 SECRET Trans. 11/17/41 (S)

TOP SECRET

EXHIBIT NO. 1183

From: Tokyo
To: Washington
November 22, 1941
Purple CA (Urgent)

#812

To both you Ambassadors.

It is awfully hard for us to consider changing the date we set in my #736,^a as you know. However, I know we are working hard. The Imperial Government is maintaining its fixed policy and doing its very best, sparing no efforts to try to bring about the solution we desire. We desire by all means to prevent a breakdown^b in Japanese-American relations, but if within the next three or four days you can finish your conversations with the Americans; if the signing can be completed by the 29th;^c if we can get an understanding with Great Britain and the Netherlands through the exchange of notes and so forth; and in short if everything can be finished, despite difficulties unbelievably great, we (will?) make arrangements to wait until that date. This time we mean it, that the deadline absolutely cannot be changed. After that things will automatically go on to happen. Please take this into your careful consideration and work as hard as you have in the past. This is for the information of you two Ambassadors alone.

a -- See S.I.S #24373. Tokyo wires Washington that because of the various circumstances it is absolutely necessary that arrangements for the signing of the agreement be completed by the 25th of this month.

b -- HAKYOKU. c -- Date repeated in code text for emphasis.

ARMY 25138

JD 6710

Trans. 11/22/41 (S)

TOP SECRET

EXHIBIT NO. 1199

From: Tokyo
To: Berlin
November 30, 1941
Purple

#986 (Strictly Secret) (To be handled in Government Code) (Part 1 of 2)
(Secret outside the Department)

1. Japan-American negotiations were commenced the middle of April of this year. Over a period of half a year they have been continued. Within that period the Imperial Government adamantly stuck to the Tri-partite Alliance as the cornerstone of its national policy regardless of the vicissitudes of the international situation. In the adjustment of diplomatic relations between Japan and the United States, she has based her hopes for a solution definitely within the scope of the alliance. With the intent of restraining the United States from participating in the war, she boldly assumed the attitude of carrying through these negotiations.

2. Therefore, the present cabinet, in line with your message, with the view of defending the Empire's existence and integrity on a just and equitable basis, has continued the negotiations carried on in the past. However, their views and ours on the question of the evacuation of troops, upon which the negotiations rested, (they demanded the evacuation of Imperial troops from China and French Indo-China), were completely in opposition to each other.

Judging from the course of the negotiation that have been going on, we first came to loggerheads when the United States, in keeping with its traditional ideological tendency of managing international relations, re-emphasized her fundamental reliance upon this traditional policy in the conversations carried out between the United States and England in the Atlantic Ocean. The motive of the United States in all this was brought out by her desire to prevent the establishment of a new order by Japan, Germany, and Italy in Europe and in the Far East, that is to say, the aims of the Tri-Partite Alliance. As long as the Empire of Japan was in alliance with Germany and Italy, there could be no maintenance of friendly relations between Japan and the United States was the stand they took. From this point of view, they began to demonstrate a tendency to demand the divorce of the Imperial Government from the Tri-Partite Alliance. This was brought out at the last meeting. That is to say that it has only been in the negotiations of the last few days that it has become gradually more and more clear that the Imperial Government could no longer continue negotiations with the United States. It became clear, too, that a continuation of negotiations would inevitably be detrimental to our cause.

ARMY

6944

25554

SECRET

Trans. 12/1/41 (NR)

TOP SECRET

From: Tokyo
To: Berlin
November 30, 1941
Purple

#986 (Part 2 of 2)

3. The proposal presented by the United States on the 26th made this attitude of theirs clearer than ever. In it there is one insulting clause which says that no matter what treaty either party enters into with a third power it will not be interpreted as having any bearing upon the basic object of this treaty, namely the maintenance of peace in the Pacific. This means specifically the Three-Power Pact. It means that in case the United States enters the European war at any time the Japanese Empire will not be allowed to give assistance to Germany and Italy. It is clearly a trick. This clause alone, let alone others, makes it impossible to find any basis in the American proposal for negotiations. What is more, before the United States brought forth this plan, they conferred with England, Australia, the Netherlands, and China -- they do so repeatedly. Therefore, it is clear that the United States is now in collusion with those nations and had decided to regard Japan, along with Germany and Italy, as an enemy.

ARMY

6944

25555

SECRET

Trans. 12-2-41 (NR)

TOP SECRET

EXHIBIT NO. 1254-A

From: Tokyo (Toyoda)
To: Honolulu
September 24, 1941

#83

Strictly Secret.

Henceforth, we would like to have you make reports concerning vessels along the following lines insofar as possible:

1. The waters (of Pearl Harbor) are to be divided roughly into five sub-areas. (We have no objections to your abbreviating as much as you like.)

Area A. Waters between Ford Island and the Arsenal.

Area B. Waters adjacent to the Island south and west of Ford Island. (This area is on the opposite of the Island from Area A.)

Area C. East Loch.

Area D. Middle Loch.

Area E. West Loch and the communicating water routes.

2. With regard to warships and aircraft carriers, we would like to have you report on those at anchor, (those are not so important) tied up at wharves, buoys and in docks. (Designate types and classes briefly. If possible we would like to have you make mention of the fact when there are two or more vessels along side the same wharf.)

ARMY

23260

Trans. 10/9/41 (S)

EXHIBIT NO. 1257

From: Honolulu (Kita)

To: Tokyo

November 18, 1941

#222

1. The warships at anchor in the Harbor on the 15th were as I told you in my #219^a on that day.

Area A^b -- A battleship of the Oklahoma class entered and one tanker left port.

Area C^c -- 3 warships of the heavy cruiser class were at anchor.

2. On the 17th the Saratoga was not in the Harbor. The carrier, Enterprise, or some other vessel was in Area C. Two heavy cruisers of the Chicago class, one of the Pensacola class were tied up at docks "KS". 4 merchant vessels were at anchor in Area D^d.

3. At 10:00 a.m. on the morning of the 17th, 8 destroyers were observed entering the Harbor. Their course was as follows: In a single file at a distance of 1,000 meters apart at a speed of 3 knots per hour, they moved into Pearl Harbor. From the entrance of the Harbor through Area B to the buoys in Area C, to which they moored, they changed course 5 times each time roughly 30 degrees. The elapsed time was one hour, however, one of these destroyers entered Area A after passing the water reservoir on the Eastern side.

Relayed to _____

a -- Available, dated November 14. Code under study.

b -- Waters between Ford Island and the Arsenal

c -- East Loch

d -- Middle Loch

ARMY 25817

Trans. 12/6/41 (2)

EXHIBIT NO. 1263

From: Honolulu
To: Tokyo
December 6, 1941

#253 Re the last part of your 123^a.

1. On the American continent in October the Army began training barrage balloon troops at Camp Davis, North Carolina. Not only have they ordered four or five hundred balloons, but it is understood that they are considering the use of these balloons in the defense of Hawaii and Panama. In so far as Hawaii is concerned, though investigations have been made in the neighborhood of Pearl Harbor, they have not set up mooring equipment, nor have they selected the troops to man them. Furthermore, there is no indication that any training for the maintenance of balloons is being undertaken. As the present time there are no signs of barrage balloon equipment. In addition, it is difficult to imagine that they have actually any. However, even though they have actually made preparations, because they must control the air over the water and land runways of the airports in the vicinity of Pearl Harbor, Hickam, Ford and Ewa^b? there are limits to the balloon defense of Pearl Harbor. I imagine that in all probability there is considerable opportunity left to take advantage for a surprise attack against these places.

2. In my opinion the battleships do not have torpedo nets. The details are not known. I will report the results of my investigation.

a -- not available

b -- Kana spelling

ARMY 25877

Trans. 12/8/41 (2-TT)

EXHIBIT NO. 2966

From: Tokyo
To: Washington
7 December 1941
No. 902 Part 14 of 14

(Note -- In the forwarding instructions to the radio station handling this part, appeared the plain English phrase "VERY IMPORTANT")

7. Obviously it is the intention of the American Government to conspire with Great Britain and other countries to obstruct Japan's efforts toward the establishment of peace through the creation of a New Order in East Asia, and especially to preserve the Anglo-American rights and interests by keeping Japan and China at war. This intention has been revealed clearly during the course of the present negotiations. Thus, the earnest hops of the Japanese Government to adjust Japanese-American relations and to preserve and promote the peace of the Pacific through cooperation with the American Government has finally been lots.

The Japanese Government regrets to have to notify hereby the American Government that in view of the attitude of the American Government it cannot but consider that it is impossible to reach an agreement through further negotiations.

25843
JD-1: 7143

(M) Navy trans. 7 Dec. 1941 (S-TT)

APPENDIX J

WAR DEPARTMENT GENERAL STAFF, INTELLIGENCE DIVISION

LETTER OF AUTHENTICITY

**WAR DEPARTMENT
WAR DEPARTMENT GENERAL STAFF
INTELLIGENCE DIVISION
WASHINGTON, 25, D.C.**

I hereby certify that the attached photostats of Japanese messages have been intercepted by electric or physical means, decrypted, and translated by trained personnel of the War and Navy Departments, and are accurate and authentic to the best of my knowledge and belief insofar as it is humanly possible for an occidental accurately to translate Japanese script.

/s/ Carter W. Clarke

Carter W. Clarke
Colonel, G.S.C.