

JUDGMENT

INTERNATIONAL MILITARY TRIBUNAL FOR THE FAR EAST

PART C

CHAPTER IX

FINDINGS ON COUNTS OF THE INDICTMENT

CHAPTER X

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## PART C

## CHAPTER IX

FINDINGS ON COUNTS OF THE INDICTMENT

In Count I of the Indictment it is charged that all the defendants together with other persons participated in the formulation or execution of a common plan or conspiracy. The object of that common plan is alleged to have been that Japan should secure the military, naval, political and economic domination of East Asia and of the Pacific and Indian Oceans, and of all countries and islands therein or bordering thereon, and for that purpose should, alone or in combination with other countries having similar objects, wage a war or wars of aggression against any country or countries which might oppose that purpose.

There are undoubtedly declarations by some of those who are alleged to have participated in the conspiracy which coincide with the above grandiose statement, but in our opinion it has not been proved that these were ever more than declarations of the aspirations of individuals. Thus, for example, we do not think the conspirators ever seriously resolved to attempt to secure the domination of North and South America. So far as the wishes of the conspirators crystallised into a concrete common plan we are of opinion that the territory they had resolved that Japan should dominate was confined to East Asia, the Western and South Western Pacific Ocean and the Indian Ocean, and certain of the islands in these oceans. We shall accordingly treat Count I as if the charge had been limited to the above object.

We shall consider in the first place whether a conspiracy with the above object has been proved to have existed.

Already prior to 1928 Okawa, one of the original defendants, who has been discharged from this trial on account of his present mental state, was publicly advocating that Japan should extend her territory on the Continent of Asia by the threat or, if necessary, by use of military force. He also advocated that Japan should seek to dominate Eastern Siberia and the South Sea Islands. He predicted that the course he advocated must result in a war between the East and the West, in which Japan would be the champion of the East. He was encouraged and aided in his advocacy of this plan by the Japanese General Staff. The object of this plan as stated was substantially the object of the conspiracy, as we have defined it. In our review of the facts we have noticed many subsequent declarations of the conspirators as to the object of the conspiracy. These do not vary in any material respect from this early declaration by Okawa.

Already when Tanaka was premier, from 1927 to 1929, a party of military men, with Okawa and other civilian supporters, was advocating this policy of Okawa's that Japan should expand by the use of force. The conspiracy was now in being. It remained in being until Japan's defeat in 1945. The immediate question when Tanaka was premier was whether Japan should attempt to expand her influence on the continent - beginning with Manchuria - by peaceful penetration, as Tanaka and the members of his Cabinet wished, or whether that expansion should be accomplished by the use of force if necessary, as the conspirators advocated. It was essential that the conspirators should have the support and control of the nation. This was the beginning of the long struggle between the conspirators, who advocated the

attainment of their object by force, and those politicians and latterly those bureaucrats, who advocated Japan's expansion by peaceful measures or at least by a more discreet choice of the occasions on which force should be employed. This struggle culminated in the conspirators obtaining control of the organs of government of Japan and preparing and regimenting the nation's mind and material resources for wars of aggression designed to achieve the object of the conspiracy. In overcoming the opposition the conspirators employed methods which were entirely unconstitutional and at times wholly ruthless. Propaganda and persuasion won many to their side, but military action abroad without Cabinet sanction or in defiance of Cabinet veto, assassination of opposing leaders, plots to overthrow by force of arms Cabinets which refused to cooperate with them, and even a military revolt which seized the capital and attempted to overthrow the government were part of the tactics whereby the conspirators came ultimately to dominate the Japanese polity.

As and when they felt strong enough to overcome opposition at home and latterly when they had finally overcome all such opposition the conspirators carried out in succession the attacks necessary to effect their ultimate object, that Japan should dominate the Far East. In 1931 they launched a war of aggression against China and conquered Manchuria and Jehol. By 1934 they had commenced to infiltrate into North China, garrisoning the land and setting up puppet governments designed to serve their purposes. From 1937 onwards they continued their aggressive war against China on a vast scale, overrunning and occupying much of the country,

setting up puppet governments on the above model, and exploiting China's economy and natural resources to feed the Japanese military and civilian needs.

In the meantime they had long been planning and preparing a war of aggression which they proposed to launch against the U.S.S.R. The intention was to seize that country's Eastern territories when a favourable opportunity occurred. They had also long recognized that their exploitation of East Asia and their designs on the islands in the Western and South-Western Pacific would bring them into conflict with the United States of America, Britain, France and the Netherlands who would defend their threatened interests and territories. They planned and prepared for war against these countries also.

The conspirators brought about Japan's alliance with Germany and Italy, whose policies were as aggressive as their own, and whose support they desired both in the diplomatic and military fields, for their aggressive actions in China had drawn on Japan the condemnation of the League of Nations and left her friendless in the councils of the world.

Their proposed attack on the U.S.S.R. was postponed from time to time for various reasons, among which were (1) Japan's preoccupation with the war in China, which was absorbing unexpectedly large military resources, and (2) Germany's pact of non-aggression with the U.S.S.R. in 1939, which for the time freed the U.S.S.R. from threat of attack on her Western frontier, and might have allowed her to devote the bulk of her strength to the defence of her Eastern territories if Japan had attacked her.

Then in the year 1940 came Germany's great military successes on the continent of Europe. For the time being Great Britain, France and the Netherlands were powerless to afford adequate protection to their interests and territories in the Far East. The military preparations of the United States were in the initial stages. It seemed to the conspirators that no such favourable opportunity could readily recur of realising that part of their objective which sought Japan's domination of South-West Asia and the islands in the Western and South Western Pacific and Indian Oceans. After prolonged negotiations with the United States of America, in which they refused to disgorge any substantial part of the fruits they had seized as the result of their war of aggression against China, on 7th December 1941 the conspirators launched a war of aggression against the United States and the British Commonwealth. They had already issued orders declaring that a state of war existed between Japan and the Netherlands as from 00.00 hours on 7th December 1941. They had previously secured a jumping-off place for their attacks on the Philippines, Malaya and the Netherlands East Indies by forcing their troops into French Indo-China under threat of military action if this facility was refused to them. Recognising the existence of a state of war and faced by the imminent threat of invasion of her Far Eastern territories, which the conspirators had long planned and were now about to execute, the Netherlands in self-defence declared war on Japan.

These far-reaching plans for waging wars of aggression, and the prolonged and intricate preparation for and waging of these wars of aggression were not the

work of one man. They were the work of many leaders acting in pursuance of a common plan for the achievement of a common object. That common object, that they should secure Japan's domination by preparing and waging wars of aggression, was a criminal object. Indeed no more grave crimes can be conceived of than a conspiracy to wage a war of aggression or the waging of a war of aggression, for the conspiracy threatens the security of the peoples of the world, and the waging disrupts it. The probable result of such a conspiracy, and the inevitable result of its execution is that death and suffering will be inflicted on countless human beings.

The Tribunal does not find it necessary to consider whether there was a conspiracy to wage wars in violation of the treaties, agreements and assurances specified in the particulars annexed to Count I. The conspiracy to wage wars of aggression was already criminal in the highest degree.

The Tribunal finds that the existence of the criminal conspiracy to wage wars of aggression as alleged in Count I, with the limitation as to object already mentioned, has been proved.

The question whether the defendants or any of them participated in that conspiracy will be considered when we deal with the individual cases.

The conspiracy existed for and its execution occupied a period of many years. Not all of the conspirators were parties to it at the beginning, and some of those who were parties to it had ceased to be active in its execution before the end. All of those who at any time were parties to the criminal conspiracy or who at any time with guilty knowledge played a part

in its execution are guilty of the charge contained in Count I.

In view of our finding on Count I it is unnecessary to deal with Counts 2 and 3, which charge the formulation or execution of conspiracies with objects more limited than that which we have found proved under Count I, or with Count 4, which charges the same conspiracy as Count I but with more specification.

Count 5 charges a conspiracy wider in extent and with even more grandiose objects than that charged in Count I. We are of opinion that although some of the conspirators clearly desired the achievement of these grandiose objects nevertheless there is not sufficient evidence to justify a finding that the conspiracy charged in Count 5 has been proved.

For the reasons given in an earlier part of this judgment we consider it unnecessary to make any pronouncement on Counts 6 to 26 and 37 to 53. There remain therefore only Counts 27 to 36 and 54 and 55, in respect of which we now give our findings.

Counts 27 to 36 charge the crime of waging wars of aggression and wars in violation of international law, treaties, agreements and assurances against the countries named in those counts.

In the statement of facts just concluded we have found that wars of aggression were waged against all those countries with the exception of the Commonwealth of the Philippines (Count 30) and the Kingdom of Thailand (Count 34). With reference to the Philippines, as we have heretofore stated, that Commonwealth during the period of the war was not a completely

sovereign State and so far as international relations were concerned it was a part of the United States of America. We further stated that it is beyond doubt that a war of aggression was waged in the Philippines, but for the sake of technical accuracy we consider the aggressive war in the Philippines as being a part of the war of aggression waged against the United States of America.

Count 28 charges the waging of a war of aggression against the Republic of China over a lesser period of time than that charged in Count 27. Since we hold that the fuller charge contained in Count 27 has been proved we shall make no pronouncement on Count 28.

Wars of aggression having been proved, it is unnecessary to consider whether they were also wars otherwise in violation of international law or in violation of treaties, agreements and assurances. The Tribunal finds therefore that it has been proved that wars of aggression were waged as alleged in Counts 27, 29, 31, 32, 33, 35 and 36.

Count 54 charges ordering, authorising and permitting the commission of Conventional War Crimes. Count 55 charges failure to take adequate steps to secure the observance and prevent breaches of conventions and laws of war in respect of prisoners of war and civilian internees. We find that there have been cases in which crimes under both these Counts have been proved.

Consequent upon the foregoing findings, we propose to consider the charges against individual defendants in respect only of the following Counts: Numbers 1, 27, 29, 31, 32, 33, 35, 36, 54 and 55.