

Aggressive War

14.03

(2)

First Draft

10 November 1945

TRIAL BRIEF

COLLABORATION WITH ITALY
AND JAPAN AND AGGRESSIVE
WAR AGAINST THE UNITED STATES

ROY H. STEYER
Lt. (j.g.) USNR
Section III

SECTION OF THE INDICTMENT

Count One - The Common Plan or Conspiracy

Paragraph IV, (F), 7 - Collaboration with Italy and Japan
and Aggressive War Against the
United States.

LEGAL REFERENCES

1. CHARTER OF THE INTERNATIONAL MILITARY TRIBUNAL

"Article 6. The Tribunal established by the Agreement referred to in Article 1 hereof for the trial and punishment of the major war criminals of the European Axis countries shall have the power to try and punish persons who, acting in the interests of the European Axis countries, whether as individuals or as members of organizations, committed any of the following crimes.

"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, planning, preparation, initiation or waging of a war of aggression, or a war in violation of international treaties, agreements or assurances, or participation in a common plan or conspiracy for the accomplishment of any of the foregoing. . .

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 persons in execution of such plan.

Article 7. The official position of defendants, whether as Heads of State or responsible officials in Government Departments, shall not be considered as freeing them from responsibility or mitigating punishment.

Article 8. The fact that the Defendant acted pursuant to order of his Government or of a superior shall not free him from responsibility, but may be considered in mitigation of punishment if the Tribunal determines that justice so requires."

2. HAGUE CONVENTION III RELATIVE TO THE OPENING OF HOSTILITIES,
SIGNED 18 OCTOBER 1907
3. KELLOGG-BRIAND PACT, SIGNED AT PARIS 27 AUGUST 1928

Collaboration with Japan
and War Against U.S.

(Section 3 - STEYER)

S T A T E M E N T O F E V I D E N C E

FORMAL GERMAN-ITALIAN-JAPANESE ALLIANCES

On 25 November 1936, the German and the Japanese Governments entered into an agreement which, on its face, was directed against the activities of the Communist International. This pact, known as the Anti-Comintern Pact, was subsequently adhered to by Italy on 6 November 1937. The defendant RIBBENTROP, who signed the Pact on behalf of Germany, has characterized this agreement as the result of a desire on the part of Germany to establish friendly relations with Japan.

(2508-PS, German-Japanese Agreement
Against the Communist International,
25 November 1936)

(2506-PS, Protocol of Adherence by Italy
to Anti-Comintern Pact, 6 November 1937).
(Transcript of Interrogation of Joachim
von RIBBENTROP, 20 September 1945 A.M.,
p. 3)

On 27 September 1940, about a year after the initiation of war in Europe, the German, Italian and Japanese Governments signed at Berlin a ten-year military-economic alliance. Pledging the three nations to support of, and cooperation with each other in the establishment of a "new order" in Europe and East Asia, the Tripartite Pact established Germany, Japan and Italy as full military partners in the accomplishment of this objective. This far reaching agreement stated, inter alia:

"The governments of Germany, Italy and Japan consider it as a condition precedent of a lasting peace, that each nation of the world be given its own proper place. They have therefore decided to stand together and to cooperate with one another in their efforts in Greater East Asia and in the regions of Europe, wherein it is their prime purpose to establish and maintain a new order of things calculated to promote the mutual prosperity and welfare of the peoples there. . . .

"Accordingly, the governments of Germany, Italy and Japan have agreed as follows:

ARTICLE 1

Japan recognizes and respects the leadership of Germany and Italy in the establishment of a new order in Europe.

ARTICLE 2

Germany and Italy recognize and respect the leadership of Japan in the establishment of a new order in Greater East

ARTICLE 3

Germany, Italy and Japan agree to cooperate in their efforts on the aforesaid basis. They further undertake to assist one another with all political, economic and military means, if one of the three contracting parties is attacked by a Power at present not involved in the European war or in the Chinese-Japanese conflict."

(2643-PS, Tripartite Pact between Germany, Japan and Italy, 27 September 1940, signed by RIBBENTROP for Germany)

POINT II

HAVING ESTABLISHED ECONOMIC AND MILITARY ALLIANCE WITH JAPAN, THE NAZI CONSPIRATORS EXHORTED THE JAPANESE TO AGGRESSION AGAINST THOSE NATIONS WITH WHOM THEY WERE AT WAR AND THOSE WITH WHOM THEY CONTEMPLATED WAR.

Upon the inclusion of Japan in their military bloc, the Nazi conspirators pursued a course strikingly parallel to that followed in their relationship with the other member of the European Axis. On 10 June 1940, in fulfillment of her alliance with Germany, Italy had carried out her "stab-in-the-back" by declaring war against France and Great Britain. The Nazi conspirators set about to induce similar action by Japan on the other side of the world.

As shown below, the nations against whom the German-Japanese collaboration was directly aimed at various times were the British Commonwealth of Nations, the Union of Soviet Socialist Republics, and the United States of America. At the time of the public formalizing of its economic and military alliance with Japan, Germany was at war with the British Commonwealth, and was already contemplating war with the U.S.S.R. and the United States.

Exhortations with Regard to the British Commonwealth of Nations.— On 5 March 1941 the authoritative Nazi policy on collaboration with Japan was promulgated as Basic Order No. 24. This document was classified Top Secret, signed by the defendant KEITEL as Chief of the OKW, and distributed to the OKH, OKM and OKL, and to the defendant JODL, as Chief of the Operations Department of the OKW, among others. The order stated:

"The Fuehrer has issued the following order regarding collaboration with Japan:

1. It must be the aim of the collaboration based on the Three Power Pact to induce Japan as soon as possible to take active measures in the Far East. Strong British forces will thereby be tied down, and the center of gravity of the interests of the United States of America will be diverted to the Pacific.

The sooner it intervenes, the greater will be the prospects of success for Japan in view of the still undeveloped preparedness for war on the part of its adversaries. The 'Barbarossa' operation will create particularly favorable political and military prerequisites for this." (As shown elsewhere, the "Barbarossa" operation was the contemplated, and later executed, plan for attack on the U.S.S.R.)

To prepare the way for the collaboration, it was stated to be "essential to strengthen the Japanese military potential with all means available", and the High Commands of the three branches of the Armed Forces were directed to comply in a "comprehensive and generous manner" with Japanese requests for information on German war and combat experience and for assistance in military economics and in technical matters.

The order then referred to the operational plans to be developed and established the following guiding principles:

a. The common aim of the conduct of war is to be stressed as forcing England to the ground quickly and thereby keeping the United States out of the war. Beyond this Germany has no political, military, or economic interests in the Far East which would give occasion for any reservations with regard to Japanese intentions.

b. The great successes achieved by Germany in mercantile warfare make it appear particularly suitable to employ strong Japanese forces for the same purpose. In this connection every opportunity to support German mercantile warfare must be exploited.

c. The raw material situation of the pact powers demands that Japan should acquire possession of those territories which it needs for the continuation of the war, especially if the United States intervenes. Rubber shipments must be carried out even after the entry of Japan into the war, since they are of vital importance to Germany.

d. The seizure of Singapore as the key British position in the Far East would mean a decisive success for the entire conduct of war of the Three Powers.

In addition, attacks on other systems of bases of British naval power--extending to those of American naval power only if the entry of the United States into the war cannot be prevented--will result in shattering the enemy's system of power in that region and also, just like the attack on sea communications, in tying down substantial forces of all kinds (Australia).

A date for the beginning of operational discussions cannot yet be fixed."

(C-75, Basic Order No. 24
regarding collaboration with
Japan, 5 March 1941, KEITEL's
signature)

(Section 3 - STEYER)

The authenticity of this order has been verified by the defendants KEITEL and JODL. (Transcript of Interrogation Wilhelm KEITEL, 4 September 1945 A.M., p. 12; Transcript of Interrogation Alfred JODL, 8 October 1945 P.M., p. 12)

Even before Basic Policy No. 24—with its cardinal operational principle the inducement of Japan to aggression against Singapore and other British Far Eastern bases—was handed down by the OKW, the Nazi conspirators were urging the Japanese to enter the war against England. On 23 February 1941 the defendant RIBBENTROP, in a meeting with Oshima, the Japanese Ambassador in Berlin, urged that Japan's entry into the war as soon as possible would destroy England's position in the Far East and secure the Japanese position there. He suggested that the Japanese make a "surprise attack", i.e., without previous warning or declaration of war. He argued that it would be in Japan's interest to get during the war the positions she wanted to have in the future "new order" in Asia. Toward the end of the discussion, the conferees discussed a division of the economic resources of Europe and Asia between themselves. (1834-PS, Minutes of discussion RIBBENTROP-Oshima, 23 February 1941)

About two weeks after the issuance of Basic Order No. 24, at a meeting with Hitler attended by the defendants KEITEL and JODL, the defendant RAEDER again stressed the strategic desirability of a Japanese seizure of Singapore, urged the need for spurring Japan on to such action, and noted that conferences on this subject had already been held with Japanese officers. RAEDER'S statements were set down as follows:

"Japan must take steps to seize Singapore as soon as possible, since the opportunity will never again be as favourable (whole English Fleet contained: Unpreparedness of U.S.A. for war against Japan; inferiority of U.S. Fleet vis-a-vis the Japanese). Japan is indeed making preparations for this action, but according to all declarations made by Japanese officers she will only carry it out if Germany proceeds to land in England. Germany must therefore concentrate all her efforts on spurring Japan to act immediately. If Japan has Singapore all other East Asiatic questions regarding the U.S.A. and England are thereby solved. (Guam, Phillipines, Borneo, Dutch East Indies).

"Japan wishes if possible to avoid war against U.S.A. She can do so if she determinedly takes Singapore as soon as possible. . . ."

(C-152, Meeting of Hitler, Raeder and others on 18 March 1941)

(Section 3 - STEYER)

Further indications of German consultations with regard to the development of Japanese plans for assault on British possessions in the Far East appear from two available documents. A report from the German Military Attache in Tokyo to the Intelligence Division of OKW on 24 May 1941 stated that the sudden attack on Singapore continued to be prepared. (1538-PS, Report from German M.A. in Tokyo to Amt Ausl./Abw., 24 May 1941, signed Schmid). On 4 August 1941 the Japanese Military Attache in Berlin, at a conference with representatives of the General Staff of the Supreme Command of the German Army, referred to the "assault on Singapore — desired by Germany". (DE 462/DIS 202, 5 August 1941)

Exhortations with Regard to the U.S.S.R.—For some months prior to the issuance of Basic Order No. 24 regarding collaboration with Japan, the Nazi conspirators had been preparing "Fall Barbarossa", the plan for attack on the Soviet Union, although the non-aggression pact of 23 August 1939 was still in force and Germany was at peace with the U.S.S.R. (See Brief on Aggression against U.S.S.R., p.). Basic Order No. 24 decreed, however, that the Japanese "must not be given any intimation of the Barbarossa operation". (C-75, cited supra)

Soon after the Nazi conspirators launched their aggression against the Soviet Union in June 1941, the defendant RIBBENTROP once again called upon the Japanese ally for an attack in the rear. On 10 July 1941 he despatched a telegram to Ott, the German Ambassador in Tokyo, requesting him to do his utmost to get Japan to declare war on the U.S.S.R. (F.O. File Serial 32 MMS 1, 24953). Ott replied on 14 July that he was trying his very best to bring this about. (F.O. File Serial 32 MMS 1, 24961). On subsequent occasions, including July of 1942 and February, March and April 1943, RIBBENTROP continued to urge Japanese participation in aggression against the U.S.S.R. (F.O. File No. J/54, J/60, J/62, J/64)

Nazi Preparations and Collaboration with the Japanese against the United States.—The Nazi conspirators' intentions against the United States must be viewed in the focus of both their over-all plan and their immediate commitments elsewhere. That their over-all plan involved ultimate aggressive war against the United States was intimated in a secret speech by the defendant GOERING on 8 July 1938, when the Nazi conspirators had

already forcibly annexed Austria and were perfecting their plans for occupation of Czechoslovakia. Calling upon representatives of the German aircraft industry for increased production and inventiveness in preparation for the coming war, GOERING said:

"I still miss very much that bomber which flies with five tons of explosives as far as New York and back. I should be extremely happy to have such a bomber so that I would at last be able to stop somewhat the mouth of the arrogant people over there."

(R-140, Secret Letter from Goering's Adjutant Major Conrath, 11 July 1938, enclosing transcript of GOERING'S speech)

The meaning of GOERING'S fervent hope was made more clear in a meeting of Hitler with personalities from the Army, economic circles and the Nazi Party on 8 March 1939, one week before the Wehrmacht marched into Czechoslovakia. The Fuehrer, after outlining plans for aggression which would give him complete mastery of Czechoslovakia, Poland and Western Europe, stated that Germany would then undertake "the greatest operation in history: with British and French possessions in America as a base, we will then settle accounts with the Jews of the dollar (dollar Juden) in the United States. We will exterminate this Jewish democracy and Jewish blood will mix itself with the dollars. Even today Americans can insult our people, but the day will come when, too late, they will bitterly regret every word they said against us."

(Quoted from L-133, Telegram No. 2050 from Bullitt to Secretary of State, 19 September 1939)

During the period of their preparation for and waging of aggressive war in Europe, up through the launching of the campaign against the U.S.S.R., it is only reasonable to believe that the Nazi conspirators were not disposed to involve the United States in war--at that time. Nevertheless, although the German policy was stated in March 1941 in Basic Order No. 24 as "forcing England to the ground and thereby keeping the United States out of war", the Nazi conspirators clearly contemplated within the framework of that policy the possibility of the United States' entry into the projected Far Eastern conflict. This could result from an attack by Japan on United States' possessions practically simultaneously with the assault on the British Empire (as actually happened), or from continued aggression by the Japanese in the Pacific-Far East which would present a clear threat to

United States' interests and require preventive action or justify United States' intervention on the side of the victims of Japanese aggression.

Thus, Basic Order No. 24 stated:

"3. The raw material situation of the pact powers demands that Japan should acquire possession of those territories which it needs for the continuation of the war, especially if the United States intervenes. Rubber shipments must be carried out even after the entry of Japan in the war since they are of vital importance to Germany.

* * *

"In addition, attacks on other bases of British naval power--extending to those of American naval power only if the entry of the United States into the war cannot be prevented--will result in shattering the enemy's system of power in that region and also, just like the attack on sea communications, in tying down substantial forces of all kinds (Australia)."

(C-75, cited supra)

The vital threat to United States' interests if Japan were to capture Singapore was clearly envisaged by the defendant RAEDER in the meeting on 18 March 1941, where he said:

"Japan must take immediate steps to seize Singapore as soon as possible, since the situation will never again be as favorable (whole English Fleet contained: unpreparedness of U.S.A. for war against Japan; inferiority of U.S. Fleet vis-a-vis the Japanese). If Japan has Singapore all other East Asiatic questions regarding the United States of America and England are thereby solved (Guam, Phillipines, Borneo, Dutch East Indies). (Underlining Supplied)

"Japan wishes if possible to avoid war against United States. She can do so if she determinedly takes Singapore as soon as possible."

(C-152, cited above)

The Nazi conspirators not only envisaged United States participation in the Far Eastern conflict resulting from Japanese aggression--they accepted the risk and promised Japan that Germany would step in on the side of Japan in the event of a U.S.-Japanese embroilment. On 4 April 1941, at a meeting with Hitler and the defendant RIBBENTROP, the Japanese Foreign Minister Matsuoka declared that the Japanese Navy and Army had to include preparations for a war against the United States in their plans for an attack on Singapore. Hitler answered that in the event of war between Japan and United States, Germany would declare war on the United States. (1881-PS, Record of conference Hitler-Matsuoka in presence of RIBBENTROP, 4 April 1941)

The Nazi awareness of at least part of Japan's operational plans against the United States is indicated by a telegram from the German military attache in Tokyo to the Intelligence Division of the OKW, which was to be shown to KEITEL, as head of the OKW, and others. In his report the military attache noted that the sudden attack on Singapore and Manila continued to be prepared. (1538-PS, cited supra).

In addition to their knowledge, acceptance and abetment of Japan's aggressive intentions toward the United States--which they recognized to be a concomitant of the operational aggression against the British Empire they were urging on their Japanese cohorts--the Nazi conspirators also made provisions for their own ultimate attack on the United States as part of their over-all plan of world domination. Even in the fall of 1940, the "prosecution of war against America at a later date" was on the military agenda.

In a memorandum of 29 October 1940 from a Major Falkenstein, identified by the defendant GOERING as the Luftwaffe Liaison Officer with the Operations Department of the OKW (Transcript of Interrogation Hermann GOERING, 27 August 1945, p. 3), the following was stated:

"5). The Fuehrer is at present occupied with the question of the occupation of the Atlantic Islands with the view to prosecution of war against America at a later date. Deliberations on this subject are being embarked upon here. Essential conditions are at the present:

- a). No other operational commitment.
- b). Portuguese neutrality.
- c). Support of France and Spain.

"A brief assessment of the possibility of seizing and holding air bases and of the question of supply is needed from the GAF."

(376-PS, Top Secret Memorandum signed Falkenstein, 29 October 1940)

Again in July 1941, in his first flush of confidence resulting from early gains in the aggression against the U.S.S.R., the Fuehrer made preliminary preparations for the opening attack on the United States. In an order referring to his intentions for further warfare, he transmitted the following instructions with regard to personnel and material armament:

(Section 3 - STEYER)

"1). General rules:

Our military dominations of Europe after the defeat of Russia will enable us in the near future to reduce the size of the Army to a considerable extent. Within the framework of an overall reduction of the Army, the Armored Force will be increased considerably.

The naval armament will be restricted to those measures which will be of immediate use in the war against England, and should the case arise, America.

The focus of the armament program will be shifted to the Air Force which will be increased by a large amount."

(C-74, Top Secret Order signed
by Hitler, 14 July 1941)

POINT III

JAPANESE AGGRESSION AGAINST THE UNITED STATES AND THE BRITISH COMMONWEALTH OF NATIONS.

On Sunday, 7 December 1941, Japan without previous warning or declaration of war commenced an attack against the United States at Pearl Harbor, and against the British Commonwealth of Nations in the Southwest Pacific.

POINT IV

GERMAN DECLARATION OF WAR ON THE UNITED STATES

On the morning of 11 December 1941, four days after the Japanese assault in the Pacific, the German government declared war on the United States (). The same day, the Congress of the United States resolved that "the state of war between the United States and the Government of Germany which has thus been thrust upon the United States is hereby formally declared". ()

A R G U M E N T A N D C O N C L U S I O N

The Tripartite Pact of 27 September 1940 was a bold announcement to the world that the fascist leaders of Germany, Japan and Italy had cemented a full military alliance to achieve world domination and to establish the "new order" presaged by the Japanese invasion of Manchukuo in 1931, the Italian conquest of Ethiopia in 1935, and the Nazi overflow into Austria early in 1938. Cordell Hull, United States Secretary of State, said of the new pact that "it does not, in the view of the United States, substantially alter a situation which has existed for several years. Announcement of the new alliance merely makes clear to all a relationship that has long existed in effect and to which this Government has repeatedly called attention . . ."

(Statement by the Secretary of State,
27 September 1940, "Peace and War",
No. 184)

Whatever the beginning and the course of development of the fascist Triplice, the Nazi leaders undertook at least as early as 23 February 1941 (on the basis of available documents) to exploit their alliance with Japan by exhortations to commit aggression against England. The defendant RIBBENTROP on that date suggested to the Japanese Ambassador in Berlin that the Japanese open hostilities with the time-tested Nazi practice of a "surprise" attack. The defendant KEITEL subsequently promulgated the Nazi policy of inducing Japan to attack the British Empire as Basic Order No. 24 to the highest commands of the Army, Navy and Air Force, and to the defendant JODL. The defendant RAEDER expressed his agreement with, and urged implementation of, the policies of Basic Order No. 24, indicating at the meeting of 18 March 1941 that conferences had already been held to discuss the activation of Japanese military support against the British. A staff conference in July 1941 is also documented.

With the unleashing of the German aggressive war against the Soviet Union in June 1941, the defendant RIBBENTROP again called upon the Eastern co-architect of the "new order" to attack in the rear.

In the case of the United States, the Nazi conspirators were, within time limitations, pursuing two similar lines to the same end. On the one

hand, their over-all plan for world domination included the subjugation of the United States. Although their scheme of things and press of commitments elsewhere dictated a strategy of keeping the United States out of war for the time being, they were nevertheless making preliminary studies of their own for attack, as indicated in the "Atlantic Islands" document, and were shaping their equipment for possible use against the United States, as indicated by the defendant GOERING'S call for a plane capable of bombing New York and the Fuehrer's order regarding naval armament for use against the United States.

On the other hand, the Nazi conspirators, in the course of their repeated representations to the Japanese to undertake an assault on British possessions in the Pacific-Far East, again considered war against the United States. While maintaining their preference that the United States not be involved in that conflict at the time, they nevertheless foresaw the distinct possibility of such involvement as a result of the actions they were encouraging, were aware that Japanese had prepared plans for attack against the possessions of the United States, and accepted the consequences by assuring the Japanese that they would declare war on the United States should a U.S.-Japanese conflict result.

Thus the Nazi conspirators incited and kept in motion a force reasonably calculated to result in an attack on the United States. In dealing with captured documents of the enemy, the completeness of the plan is necessarily obscured. But those documents which have been discovered show that the Japanese attack on the United States was the proximate and foreseeable consequence of their collaboration policy, and that their exhortations and encouragement to the Japanese as surely led to Pearl Harbor as though Pearl Harbor itself had been mentioned.

On 7 December 1941, the Japanese aggression against the United States and the British Commonwealth of Nations was launched. Four days later, the Nazi government of Germany declared war on the United States.

The plans which the Nazi conspirators encouraged and developed had achieved fruition.

The foregoing evidence therefore establishes that the defendants committed crimes against peace within the terms of Article 6 (a) of the Charter of the International Military Tribunal by their participation in the following plans and conspiracies--and particularly through the actions of certain defendants and conspirators in furtherance thereof:

1) The common plan and conspiracy to plan, prepare, and initiate a war of aggression by the Japanese against the British Commonwealth of Nations.

2) The common plan and conspiracy to plan, prepare and initiate a war of aggression by the Japanese against the United States.

3) The common over-all plan and conspiracy, apart from the conspiracy with the Japanese, to plan, prepare, and ultimately to initiate and wage a war of aggression against the United States.

4) The common plan and conspiracy to plan, prepare and initiate a war of aggression by the Japanese against the U.S.S.R.

It is further concluded that the plans and conspiracies enumerated in (1), (2), (3) and (4), above, also involved the accomplishment of wars in violation of, among other treaties, the Kellogg-Briand Pact of 1928, to which both Germany and Japan were signatories; and that the common plans and conspiracies enumerated in (1) and (2), above, involved in addition the accomplishment of wars in violation of Hague Convention III of October 1907 relative to the opening of hostilities, to which both Germany and Japan were signatories.