TRIALS
OF
WAR CRIMINALS
BEFORE THE
NUERNBERG MILITARY TRIBUNALS

VOLUME VIII

"THE I. G. FARBEN CASE"

Germany (Territory under allied occupation), 1945- U.S. Zone- Military Tribunals

TRIALS

OF

WAR CRIMINALS

BEFORE THE

NUERNBERG MILITARY TRIBUNALS

UNDER

CONTROL COUNCIL LAW No. 10

NUERNBERG

OCTOBER 1946–APRIL 1949

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CONTENTS

"The Farben Case"

(Sections I through VII of the I. G. Farben Case are contained in volume VII. Introductory material and basic directives under which the trials were conducted are printed in the beginning of volume VI, "The Flick Case," which is the first volume in the economic unit of this series:)

XIII. DECISION AND JUDGMENT OF THE TRIBUNAL, STATEMENT BY JUDGE HEBERT, AND SENTENCES[1]

THE MARSHAL: The Honorable, the Judges of Military Tribunal VI.

Military Tribunal VI is now in session. God save the United States of America and this Honorable Tribunal.

There will be order in the Court.

THE PRESIDENT: You may report with respect to the attendance of the defendants, Mr. Marshal.

THE MARSHAL: May it please Your Honors, all defendants are present in the Court.

THE PRESIDENT: The Tribunal has received unofficial information of the terrible tragedy that occurred last evening at Ludwigshafen, and I am sure that I speak for the Tribunal, as well as for all who are assembled in this room, when we express our sympathy for the deceased and pay a tribute to their memory, as well as to the families of those who have suffered in this unfortunate incident.[2]

(The assemblage rose in silent tribute)

You may be seated.

Dr. Dix.

DR. DIX (counsel for defendant Schmitz): May I express to you and to this Tribunal our heartfelt thanks, and the most heartfelt thanks in the name of these men here, in the name of the defense, and in the name of the unfortunate sufferers.

THE PRESIDENT: Pursuant to an order of 6 July 1948 this Tribunal has been reconvened for the purpose of publicly announcing its judgment in Case 6, the United States of America *vs.* Carl Krauch, and others. Signed copies of the judgment have been deposited in the office of the Secretary General. If there are variances between the transcript of the proceedings and said filed copies of the judgment, the latter will prevail and the Tribunal hereby directs that the transcript shall be corrected accordingly.

Judge Hebert will begin the reading of the judgment.

JUDGE HEBERT: The United States of America, plaintiff, *vs.* Carl Krauch, *et al.*

OPINION AND JUDGMENT OF THE UNITED STATES MILITARY TRIBUNAL VI

Organization of the Tribunal

United States Military Tribunal VI was established pursuant to Ordinance No. 7, promulgated on 18 October 1946, by the Military Governor of the United States Zone of Occupation within Germany.

[1] Mimeographed transcript pages 15639–15834, 29 and 30 July 1948.

[2] The Presiding Judge refers to an explosion at the Ludwigshafen plant in the French Zone of Occupation in which a large number of persons lost their lives.

The members hereof were appointed by the President of the United States by his Executive Orders No. 9868, dated 24 June 1947 and No. 9882, dated 7 August 1947, respectively, and were designated as Tribunal VI and organized as such by Headquarters EUCOM, General Order No. 87 dated 9 August 1947 and effective 8 August 1947. On 12 August 1947 this case was assigned to the Tribunal for trial by the Supervisory Committee of Presiding Judges of the United States Military Tribunals in Germany, in conformity with Article V of said Ordinance No. 7, as amended 17 February 1947.

Jurisdiction

The Tribunal derives its basic authority from Control Council Law No. 10, promulgated by the responsible representatives of the occupation forces of the United States, Great Britain, France, and the Soviet Union in Germany on 20 December 1945. The purpose of said law was declared to be to establish a uniform legal basis for the prosecution of war criminals and other similar offenders, and to give effect to the Moscow Declaration of 30 October 1943, the London Agreement of 8 August 1945, and the Charter of the International Military Tribunal (hereinafter referred to as IMT) issued pursuant thereto.

The Indictment

This proceeding was begun by the filing of an indictment in the Office of the Secretary General by the duly appointed Chief of Counsel for War Crimes on 3 May 1947.

The indictment consists of five counts. It purports to be drawn under the provisions of Article II of Control Council Law No. 10. Count one charges the defendants with the commission of crimes against peace through the planning, preparation, initiation, and waging of wars of aggression and invasions of other countries. Count two charges that the defendants committed war crimes and crimes against humanity through participation in the plunder of public and private property in countries and territories which came under the belligerent occupation of Germany. Count three charges the commission of war crimes and crimes against humanity through participation in enslavement and forced labor of the civilian population of countries and territories occupied or controlled by Germany, the enslavement of concentration-camp inmates within Germany and the use of prisoners of war in operations and illegal labor. It also charges the mistreatment, terrorization, torture, and murder of enslaved persons. Count four charges the defendants Schneider, Buetefisch, and von der Heyde with membership in a criminal organization. Count five charges the participation by the defendants in a conspiracy to commit crimes against peace. The counts will be further set forth

as they are reached for discussion and determination in the course of this judgment.

The Issues

A copy of the indictment in the German language was served upon each defendant at least 30 days before the arraignment. All of the defendants, except Carl Wurster, Carl Lautenschlaeger, and Max Brueggemann, who were absent on account of illness, entered formal pleas of "Not Guilty" in open court on 14 August 1947. The defendants Wurster and Lautenschlaeger subsequently entered like pleas, and Brueggemann was severed from the case and ordered held subject to subsequent proceedings, upon a showing that he was physically unable to stand trial. The indictment and the pleas of "Not Guilty" to the charges contained therein constitute the issues upon which the case was tried.

The Trial

The trial opened 27 August 1947, and the evidence was closed on 12 May 1948. The case was prosecuted by a staff of 12 American attorneys, headed by the Chief of Counsel for War Crimes. Each defendant was represented by an approved chief counsel and assistant counsel of his own choice, all of whom were recognized and competent members of the German bar. In addition, the defendants, as a group, had the services of a specialist of their own selection in the field of international law, several expert accountants, and an administrative assistant to their chief counsel. The proceedings were conducted by simultaneous translation into the English and German languages and were electrically recorded and also stenographically reported. Daily transcripts, including copies of exhibits, in the appropriate language were provided for the use of the Tribunal and counsel. The following tabulation indicates the magnitude of the record:

	Prosecution	*Defense*	*Total*
Documents submitted (including affidavits)	2, 282	4, 102	6, 384
Affidavits submitted	419	2, 394	2, 813
Witnesses called (including those heard by commissioners)	87	102	189
Pages of the transcript (not including the judgment)	-----	-----	15, 638
Trial days consumed (not including hearings before commissioners)	-----	-----	152

Between 2 and 11 June 1948, the prosecution consumed 1 day and the defense 6½ days in oral argument. Each defendant was allotted 10 minutes in which to address the Court in his own behalf, free of the obligation of an oath, and fourteen availed themselves of this privilege. Exhaustive briefs were submitted on behalf of both sides.

Interlocutory Rulings

It is deemed appropriate to call attention to some of the more significant rulings made by the Tribunal during the progress of the trial.

(*a*) Article VII of Military Government Ordinance No. 7 provides that, "The Tribunals * * * shall admit any evidence which they deem to have probative value (such as) affidavits," and "shall afford the opposing party such opportunity to question the authenticity or probative value of such evidence as in the opinion of the Tribunal the ends of justice require." Among the guaranties for a fair trial accorded defendants by Article IV of said Ordinance is the right "to cross-examine any witness called by the prosecution." The Tribunal ruled, therefore, that it would receive affidavits in evidence, subject to the right of the opposing party to test the same by cross-examination, if production of the witnesses was requested and they could be produced for that purpose, and that in instances where the witnesses could not be made available the opposing party might procure counter affidavits from the affiants or submit interrogatories for them to answer, in lieu of cross-examination. In instances where the witnesses could not be cross-examined, counter affidavits procured, or answers to interrogatories obtained, the Tribunal, on motion, struck the affidavits from the evidence. Consistent with this ruling, the Tribunal also refused to admit, over objection, the affidavits of deceased persons.

(*b*) During the presentation of its case in chief, the prosecution offered a number of statements made by defendants prior to the filing of the indictment. These offers were objected to on the ground that such defendants would thereby be compelled to give evidence against themselves, in contravention of fundamental principles of enlightened criminal jurisprudence. The Tribunal ruled: (1) That, if voluntarily given, such statements were competent as admissions against interest; but (2) that if the defendants making such statements did not take the witness stand and thereby subject themselves to cross-examination, such statements would not be regarded as evidence against the other defendants, but that the Tribunal would limit its consideration thereof to the defendants making such statements. In one instance the Tribunal rejected the purported statement of a defendant upon a showing that the same was given while said defendant was under duress.

(*c*) In response to a motion filed by counsel for the defendants, the Tribunal ruled that, as a matter of law, a common plan or conspiracy does not exist as to war crimes and crimes against humanity, as those offenses are defined in Control Council Law No. 10. At the same time, the Tribunal held that the acts described in sections A and B, under count two of the indictment, would not, as a matter of law, constitute crimes against humanity, since they related wholly to alleged offenses against property; nor would said acts constitute war crimes, since they

pertained to incidents occurring in territory not under the belligerent occupation of Germany. This ruling will be further noticed under that part of the judgment devoted to count two of the indictment.

(*d*) During the trial the defendants were granted rights of access to the captured Farben papers in the Office of the Chief Counsel for War Crimes.

(*e*) The Tribunal refused to pass upon a number of motions raising questions of law and attacking the sufficiency of the evidence, since it felt that it would be in better position to determine such matters after it had had the benefit of the final arguments and briefs of counsel and a timely opportunity to review the large volume of evidence. These issues will be determined by this judgment.

Farben as an Instrumentality

Counts one, two, three, and five of the indictment each allege that "All of the defendants, acting through the instrumentality of Farben and otherwise with divers other persons," committed the acts charged therein. It is also stated in counts one, two, and three that said defendants "were members of organizations or groups, including Farben, which were connected with the commission of said crimes."

The designation, Farben, as used in the indictment, has reference to Interessen-Gemeinschaft Farbenindustrie Aktiengesellschaft, which is usually abbreviated to I. G. Farbenindustrie A. G., and which may be freely translated as meaning "Community of Interests of the Dyestuffs Industries, a Stock Corporation." The corporation is generally referred to as IG in the German transcript of the proceedings and as Farben in the English.

Farben came into being during 1925, when the firm of Badische Anilin- und Sodafabrik of Ludwigshafen changed its name to the present designation and merged with five of the other leading German chemical concerns. From 1904, however, some of these firms had been working under community of interest agreements, and in 1916 they had formed an association council to exercise a measure of joint control over production, marketing, and research and for the pooling of profits. By 1926 the merger had been effected with a capital structure of 1.1 billion reichsmarks, which exceeded by three times the aggregate capitalization of all the other chemical concerns of any consequence in Germany.

Under the leadership of Dr. Carl Duisberg, the first Chairman of the Aufsichtsrat, and of Dr. Carl Bosch, who succeeded to that position in 1935, Farben steadily expanded its production and its economic power. In 1926 the firm had a staff of 93,742 persons and an annual turnover of 1,209 million reichsmarks. By 1942 the staff had increased to 187,700 persons and the turnover to 2,904 million reichsmarks. At the peak of its activities the yearly turnover of the firm exceeded three billion reichsmarks.

Farben owned or held participating interests in 400 German firms and in about 500 firms in other countries. It also controlled some 40,000 valuable patent rights. The prosecution denominated the firm, "a state within a state."

Particularly outstanding were Farben's achievements in chemical research and in the practical utilization of its discoveries. Among the many pharmaceutical products which Farben developed and sponsored may be mentioned aspirin, atabrin, the salvarsans. Two of its trademarks, the "Bayer-Cross" in the pharmaceutical field and "Agfa" in photography, are well known throughout the world. In the industrial sphere Farben was a pioneer in the development of the intricate processes by virtue of which dyestuffs, methanol, the plastics, artificial fibres, and light metals are commercially produced on a large scale. The firm played an especially important role in the discovery and development of the processes for making buna rubber, nitrogen from the air, and gasoline and lubricants from coal. It is noteworthy that three Nobel prize winners have been Farben scientists, and that the firm's products won nine grand prizes at the Paris Exposition in 1937.

An enterprise of the magnitude and diversified interests of Farben necessarily required a comprehensive and intricate plan of corporate management. We shall here merely sketch the broad outlines of these, leaving details for further notice in connection with particular subjects and problems.

The *stockholders* of Farben numbered approximately a half million. There was an annual meeting, usually attended by financial representatives of groups of shareholders, at which reports were received and considered, capital increases and amendments to the charter were approved, and members of the Aufsichtsrat elected.

The *Aufsichtsrat* comprised 55 members at the time the merger was effected, but this number was reduced to 23 in 1938 and to 21 by 1940. This body was in the nature of a supervisory board, somewhat comparable, functionally, to those members of a board of directors of an American corporation who are not on the executive committee and who do not actively participate in the management of the business. Under German law the Aufsichstrat elected and removed members of the Vorstand, called special meetings of the stockholders, and had the right to examine and audit the books and accounts of the firm.

The *Vorstand*, somewhat like the executive committee of a board of directors, was charged with the actual responsibility for the management of the corporation and represented it in dealings with others. When the Farben merger took place in 1925–1926, its Vorstand consisted of 82 members and most of its functions were delegated to a working committee of 26 members. In 1938 the Vorstand was reduced to less than 30 members and the working committee was abolished.

There was also a central committee within the working committee, which survived the abolition of the latter. The Vorstand met, on the average, every 6 weeks and was presided over by a chairman, who, in some respects, was regarded as its executive head and in others merely as *primus inter pares.*

In addition to their joint responsibilities, the members of the Vorstand were assigned to positions of leadership in specific fields of activity, roughly grouped under technical and commercial categories. We shall very briefly call attention to these agencies.

The *Technical Committee* (TEA) was composed of the technical members of the Vorstand and the leading scientists and engineers of Farben. It dealt with questions of research, development of processes, expansion and consolidation of plant facilities, and credit requests for such purposes. Beneath it were 36 subcommittees in chemistry and 5 in engineering. The technical committee had a central administrative office in Berlin, called the TEA-Buero, and the 5 engineering subcommittees were grouped together as a Technical Commission (TEKO).

The *Commercial Committee* (KA), as distinguished from the technical committee, concerned itself primarily with financial, accounting, sales, purchasing, and economic political problems. The full committee consisted of about 20 members, including, in addition to Vorstand members, the heads of the Sales Combines and other administrative agencies.

Mixed Committees. Coordination between the technical and commercial committees was achieved through special groups that drew their personnel from both fields. The more important of these were the Chemicals Committee, the Dyestuffs Committee, and the Pharmaceuticals Main Conference.

The numerous Farben plants were operated on the so-called leadership principle. A major unit was usually under the personal supervision of an individual Vorstand member, though in some instances one member was responsible for more than one unit, while in others a division of responsibility prevailed within a plant, according to production. Unity in policies of management was achieved by grouping the plants geographically and also in accordance with the character of production.

The *Works Combines* constituted the basis for geographical coordination of the Farben plants. The four original combines were the Upper Rhine, the Main Valley, the Lower Rhine, and Central Germany. In 1929 a fifth, called Works Combine Berlin, was added. The works combines coordinated such matters as over-all administration, transportation, storage, et cetera, in their respective areas.

The *Sparten* constituted a means of coordinating Farben production activities on the basis of related products. Thus, Sparte I

included nitrogen, synthetic fuels, lubricants, and coal; Sparte II embraced dyestuffs and their intermediates, buna, light metals, chemicals, and pharmaceuticals; Sparte III, synthetic fibers, cellulose and cellophane, and photographic materials.

Sales Combines were established to handle the marketing of the four principal categories of Farben products. Each combine was headed by a Vorstand member, with deputies. These were the Sales Combine Dyestuffs, the Sales Combine Chemicals, the Sales Combine Pharmaceuticals, and the Sales Combine Agfa (photographic materials, artificial fibres, etc.).

The *Central Finance Administration* (ZEFI), was established in 1927, in connection with an office designated *Berlin NW 7*. To this was added the *Economic Research Department* (VOWI) in 1929, and the *Economic Policy Department* (WIPO) in 1933. In 1935, a central office for liaison with the armed forces, called *Vermittlungsstelle W*, was added. This office dealt with such matters as mobilization questions, military security, counterintelligence, secret patents, and research for the armed forces. Each Sparte was represented on its staff.

Unlike the antipathetic attitude of American law toward centralized control of affinitive business enterprises, German law, and to a large extent continental legal systems, encouraged combinations, sometimes rendering them mandatory. Illustrative of this attitude are the following examples:

A *Konzern* was a group of legally separate entities which were, functionally, under unified management. Farben was sometimes referred to as a Konzern, since it included a number of legally distinct enterprises.

A *Kartell* (cartel) was a contractual combination of independent business firms to eliminate competition and regulate markets. Most cartels were international in character and some of them were worldwide in the scope of their operations. Several American firms were affiliated with them and Farben was a party to a large number of such agreements.

A *Syndikat* (syndicate) was a more or less localized refinement of the cartel principle that maintained centralized control over production quotas and sales of certain specific products in Germany. Typical of these was the Stickstoff-Syndikat (Nitrogen Syndicate), of which Farben was a leading member.

We conclude this brief resumé of Farben by noting the principal positions held by the several defendants in the firm, together with their affiliations with various political, governmental, technical, and professional groups, to which we have added a showing of the periods of time during which they have been incarcerated in connection with the charges for which they have been on trial before this Tribunal.

AMBROS, OTTO—Born 19 May 1901, Weiden, Bavaria. Professor of Chemistry. 1938–45, member of Vorstand, Technical Committee, and Chemicals Committee; chairman of 3 Farben committees in the chemical field; plant manager of 8 of the most important plants, including Buna-Auschwitz; member of control bodies in several Farben units, including Francolor.

Member of Nazi Party and German Labor Front; Military Economy Leader; special consultant to chief of Research and Development Department, Four Year Plan; chief of Special Committee "C" (Chemical Warfare), Main Committee on Powder and Explosives, Armament Supply Office; chief of a number of units in the Economic Group Chemical Industry.

Detained in prison from 17 January to 1 May 1946 and from 13 December 1946 to date.

BUERGIN, ERNST—Born 31 July 1885, Wyhlen, Baden. Electrochemist. 1938–45, member of Vorstand; 1937–45, guest attendant and member of Technical Committee; chief of Works Combine Central Germany and member of Chemicals Committee during same periods; chief of the Bitterfeld and Wolfen plants; member of various Farben control groups in Germany, Norway, Switzerland, and Spain.

Member of Nazi Party and German Labor Front; Military Economy Leader; collaborator of Krauch in the Four Year Plan; chairman of technical committee for certain important products, Economic Group Chemical Industry.

Detained in prison from 23 June 1947 to date.

BUETEFISCH, HEINRICH—Born 24 February 1894, Hannover. Doctor of Engineering (physical-chemical). 1934–38, deputy member of Vorstand; 1938–45, full member of Vorstand; 1933–38, member of Working Committee; 1932–38, guest attendant in Technical Committee; 1938–45, member of Technical Committee; 1938–45, deputy chief of Sparte I (under Schneider); chief of the Leuna works; chairman or member of control groups of many Farben concerns in the fields of chemicals, explosives, mining, synthetics, et cetera, in Germany, Poland, Austria, Czechoslovakia, Yugoslavia, Roumania, and Hungary.

Member of Himmler Circle of Friends; member of Nazi Party and German Labor Front; Lieutenant Colonel of SS; member of NSKK and NSFK; member of National Socialist Bund of Technicians; collaborator of Krauch in the Four Year Plan; Production Commissioner for Oil, Ministry of Armaments; president of Technical Experts Committee, International Nitrogen Convention, et cetera.

Detained in prison from 11 May 1945 to date.

DUERRFELD, WALTER—Born 24 June 1899, Saarbruecken. Doctor of engineering. Not a member of the Vorstand nor of any committees;

1932–41 senior engineer of Leuna works; 1941–44, Prokurist of Farben (a position analogous to attorney-in-fact) and chief of construction and installation at the Auschwitz plant; 1944–45, director of Auschwitz plant.

1937–45, member of Nazi Party; 1934–45, member of German Labor Front; 1932–45, member of National Socialist Flying Corps (captain, 1943–45); 1944–45, district chairman for Upper Silesia, Economic Group Chemical Industry; 1918, received the Iron Cross, Class II; 1941, War Service Cross Class II; 1944, War Service Cross Class I.

Detained in prison from 9 June to 17 June 1945, and from 5 November 1945 to date.

GAJEWSKI, FRITZ—Born 13 October 1885, Pillau, East Prussia. Doctor of chemistry; 1931–34, deputy member of Vorstand; 1934–45, full member of Vorstand; 1929–38, member of Working Committee; 1933–45, member of Central Committee; 1929–45, member of Technical Committee (first deputy chairman 1933–45); 1929–45, chief of Sparte III; 1931–45, chief of Works Combine Berlin; manager of Agfa plants; member of board in numerous other subsidiaries and affiliates, including DAG.

Member of Nazi Party and German Labor Front; member of National Socialist Bund of German Technicians and of Reich Air-Raid Protection Bund; Military Economy Leader; member of several scientific and economic groups.

Detained in prison from 5 October 1945 to date.

GATTINEAU, HEINRICH—Born 6 January 1905, Bucharest, Rumania, of German parents. Lawyer. Not a member of the Vorstand but member of Vorstand Working Committee, 1932–35, and of Farben's Southeast Europe Committee, 1938–45; 1934–38, chief of Farben's Political Economy Department; officer or member of control groups in a dozen Farben units and subsidiaries in Germany and southeastern Europe.

1933–34, Colonel in the SA; 1935–45, member of Nazi Party; 1936–45, supporting member of National Socialist Motor Corps; 1934–45, member of German Labor Front and National Socialist Welfare Organization; member of Council for Propaganda of German Economy; member of Committee for Southeast Europe of the Economic Group Chemical Industry; holder of Cross for Distinguished Service, Class I and II.

Detained in prison from 11 October 1945 to 6 August 1946 and from 11 Ocotober 1946 to date.

HAEFLIGER, PAUL—A Swiss national, born 19 November 1886, Steffisburg, Canton Bern, Switzerland. Commercial school graduate. Retains his Swiss citizenship and served as honorary Swiss consul in Frankfurt from 1934–38; acquired German citizenship in 1941 and relinquished it in 1946; 1926–38, deputy member of Vorstand;

1938–45, full member of Vorstand; 1937–45, member of Commercial Committee; 1938–45, member of Chemicals Committee; 1944–45, vice-chairman and deputy chief for metals of Sales Combine Chemicals; member of Farben's Southeast Europe, East Asia, and East Committees. Chairman or member of control groups in several Farben units, including concerns in Germany, Austria, Czechoslovakia, Norway, and Italy.

Was not a member of the Nazi Party but was a member of the German Labor Front.

Detained in prison from 11 May to 30 September 1945 and from 3 May 1947 to date.

VON DER HEYDE, ERICH—Born 1 May 1900, Hong Kong, China, of German parents. Doctor in agriculture. Never a member of the Vorstand or any committees; 1939–45 "Handlungsbevollmaechtigter" with Farben (literally, a "person authorized to act" as distinguished from a "Prokurist" or general attorney-in-fact); 1936–40, attached to Farben's Economic Policy Department, Berlin NW 7; 1938–40, counterintelligence agent for Berlin NW 7, and for a short period deputy to Schneider as chief of Farben's Counterintelligence Branch, High Command of the Armed Forces.

1937–45, member of Nazi Party; 1934–45, member of German Labor Front and member of the Reiter (mounted) SS (captain 1940–45); 1942–45, attached to the Military Economy and Armament Office, German High Command.

Detained in prison from 28 April 1947 to date.

HOERLEIN, HEINRICH—Born 5 June 1883, Wendelsheim, Rhine Hesse. Professor of chemistry; 1926–31, deputy member of Vorstand; 1931–45, full member of Vorstand; 1931–38, member of Working Committee; 1933–45, member of Central Committee; 1931–45, member of Technical Committee (second deputy chairman 1933–45); 1930–45, chairman of Pharmaceutical Committee; manager of Elberfeld plant.

Member of Nazi Party, German Labor Front, National Socialist Bund of German Technicians; member of Reich Health Council; officer or member of several scientific bodies.

Detained in prison from 16 August 1945 to date.

ILGNER, MAX—Born 28 June 1899, Biebesheim, Hesse. Doctor of political science. 1934–38, deputy member of Vorstand; 1938–45, full member of Vorstand; 1933–38, member of Working Committee; 1937–45, member of Commercial Committee; 1926–45, chief of Farben's Berlin NW 7 office; chairman of Southeast Committee; manager of Schkopau buna works, deputy manager of Ammoniakwerk Merseburg; officer or member of control groups of 14 concerns in 7 countries, including American I. G. Chemical Corporation, New York.

1937, member of Nazi Party; member of German Labor Front, NSKK, National Socialist Reich Soldiers' Bund; Military Economy Leader; chairman or member of 7 advisory committees to the government; officer or member of 41 chambers of commerce and economic associations and of 21 societies and clubs in Germany and abroad; holder of a half-dozen decorations from World War I, including the Iron Cross and Hesse Medal for Bravery, and of orders of distinction from various other governments.

Detained in prison from 7 April 1945 to date.

JAEHNE, FRIEDRICH—Born 24 October 1879, Neuss, Germany. Dipl. engineer. 1934–38, deputy member of Vorstand; 1938–45, full member of Vorstand and member of Technical Committee (guest attendant since 1926); 1938–45, deputy chief of Works Combine Main Valley; chairman of the Farben Technical Commission; chief of engineering department of Hoechst plant; member of control boards of several Farben units.

Member of Nazi Party and German Labor Front; Military Economy Leader; member of Greater Advisory Council, Reich Group Industry; member of Praesidium of German Standardizing Committee; chief of Technical Committee, Trade Association of the Chemical Industry.

Detained in prison from 18 April 1947 to date.

VON KNIERIEM, AUGUST—Born 11 August 1887, Riga, Latvia. Lawyer. 1926–31, deputy member of Vorstand; 1931–45, full member of Vorstand and occasional guest attendant at meetings of Aufsichtsrat; 1931–38, member of Working Committee; 1938–45, member of Central Committee; 1931–45, guest attendant at meetings of Technical Committee; 1933–45, chairman of Legal Committee and Patent Commission; self-styled "principal attorney" of Farben; member of board in several Farben units and in two Dutch firms at The Hague.

Member of Nazi Party, German Labor Front, National Socialist Lawyers' Association; member of 4 committees and several subcommittees of Reich Group Industry dealing with law, patents, trademarks, market regulation, et cetera; member of a large number of professional associations.

Detained in prison from 7 April 1945 to date.

KRAUCH, CARL—Born 7 April 1887, Darmstadt, Germany. Doctor of natural science, professor of chemistry. Member of Vorstand and of its Central Committee; member and chairman of Aufsichtsrat, 1940–45; chief of Sparte I, 1929–38; chief of Berlin Liaison Office (Vermittlungsstelle W); member of the board in a number of major Farben subsidiaries and affiliates, including the Ford works at Cologne.

In April 1936, placed in charge of the Research and Development Department for Raw Materials and Foreign Currency on Goering's staff; October 1936, in charge of Research and Development Department in the Office of German Raw Materials and Synthetics, under the

Four Year Plan; July 1938–45, Plenipotentiary General for Special Questions of Chemical Production; December 1939, Commissioner for Economic Development under Four Year Plan; 1938–45, Military Economy Leader; member of Directorate, Reich Research Council.

1937, member of Nazi Party; member of NSFK; member of German Labor Front.

Detained in prison from 3 September 1946 to date.

KUEHNE, HANS—Born 3 June 1880, Magdeburg, Germany. Chemist. 1926–45, member of Vorstand and of Working Committee until 1938; 1925–45, member of Technical Committee; 1933–45, chief of Works Combine Lower Rhine; 1926–45, member of Chemicals Committee; plant leader of Leverkusen plant; officer or member of Aufsichtsrat in numerous Farben concerns within Germany and 8 in 5 other countries.

Became a member of the Nazi Party in 1933 but was expelled shortly thereafter and not reinstated until 1937; member of German Labor Front; member of groups in economic, commercial, and labor offices of the Reich and local governments.

Detained in prison from 29 April 1947 to date.

KUGLER, HANS—Born 4 December 1900, Frankfurt/Main. Doctor of political science. Not a member of the Vorstand; 1928–45, Prokurist (with title of "Director"); 1934–45, member of Commercial Committee; 1938–45, second vice-chairman of Dyestuffs Committee; 1937–45, member of Dyestuffs Steering Committee; 1943–45, member of Dyestuffs Application Committee; 1934–45, chief of Sales Department Dyestuffs for Hungary, Roumania, Yugoslavia, Czechoslovakia, Austria, Greece, Bulgaria, Turkey, the Near East, and Africa; 1939–45, member of Farben's Southeast Europe Committee; 1942–44, member of Commercial Committee of Francolor, Paris.

1939–45, member of Nazi Party; 1934–45, member of German Labor Front; 1938–39, Reich Economics Ministry commissioner for Aussig-Falkenau factories, Czechoslovakia, and manager of said plants and member of the Advisory Council of the Aufsichtsrat, 1939–45.

Detained in prison from 11 July to 6 October 1945 and from 18 April 1947 to date.

LAUTENSCHLAEGER, CARL—Born 27 February 1888, Karlsruhe, Baden. Doctor of medicine, doctor of chemical engineering, professor of pharmacy, honorary senator (regent) of the University of Marburg, formerly scientific assistant at the Physiological Institute of the University of Heidelberg and the Pharmacological Institute of the University of Freiburg im Breisgau. 1931–38, deputy member of Vorstand; 1938–45, full member of Vorstand, member of Technical Committee, and chief of Works Combine Main Valley; 1926–45, member of Pharmaceuticals Committee; plant leader of Hoechst plant;

participant in Pharmaceutical, Scientific, and Main Conferences of Farben.

1938–45, member of Nazi Party; 1934–45, member of German Labor Front; 1942–45, Military Economy Leader; member of various scientific and research organizations.

Detained in prison from 11 December 1946 to date.

MANN, WILHELM—Born 4 April 1894, Wuppertal-Elberfeld. Commercial school graduate. 1931–34, deputy member of Vorstand; 1934–45, full member of Vorstand; 1931–38, member of Working Committee; 1937–45, member of Commercial Committee; 1931–45, chief of Sales Combine Pharmaceuticals; 1926–45, member of Farben Pharmaceuticals Committee; chairman of East Asia Committee; official or member of numerous control groups in Farben concerns (including chairmanship in "DEGESCH").

Member of Nazi Party; member of SA with rank of lieutenant; member of German Labor Front; Reich Economic Judge; member of Greater Advisory Council, Reich Group Industry; member of many scientific organizations.

Detained in prison from 19 September to 16 October 1945 and from 26 March 1947 to date.

TER MEER, FRITZ—Born 4 July 1884, Uerdingen, Lower Rhine. Doctor of chemistry. 1926–45, member of Vorstand; 1926–38, member of Working Committee; 1933–45, member of Central Committee; 1925–45, member of Technical Committee (chairman, 1933–45); 1929–45, chief of Sparte II; 1936–45, technical representative on Dyestuffs Committee; officer or member of control groups of numerous Farben units, subsidiaries and affiliates, including Francolor, Paris, as well as concerns in Italy, Spain, Switzerland, and the United States.

Member of Nazi Party and German Labor Front; Military Economy Leader; member of National Socialist Bund of German Technicians; commissioner for Italy of the Reich Ministry for Armament and War Production; member of Economic Group Chemical Industry, holding several official positions and titles; member of numerous technical and scientific bodies.

Detained in prison from 7 June 1945 to date.

OSTER, HEINRICH—Born 9 May 1878, Strasbourg, Alsace-Lorraine. Doctor of philosophy (chemistry). 1928–31, deputy member of Vorstand; 1931–45 full member of Vorstand; 1929–38, member of Working Committee; 1937–45, member of Commercial Committee; 1930–45, manager of Nitrogen Syndicate; member of East Asia Committee and chief of Farben's sales organization for nitrogen and oil; member of several control groups in Germany, Austria, Norway, and Yugoslavia.

Member of Nazi Party; supporting member of SS Reitersturm (mounted unit); member of German Labor Front; chief or member of various sections of official or quasi-official bodies. During World War I, received the Iron Cross and several state decorations. During World War II, received the War Service Cross.

Detained in prison from 31 December 1946 to date.

SCHMITZ, HERMANN—Born 1 January 1881, Essen/Ruhr. Commercial college graduate, no degree. 1925–45, member of Vorstand; 1930–45, member of Central Committee; 1935–45, chairman of Vorstand and guest attendant at meetings of Aufsichtsrat; 1929–40, chairman of the board, I. G. Chemie, Basel, Switzerland; 1937–39, chairman of the board, American I. G. Chemical Corp., New York; chairman of Aufsichtsrat, DAG [Dynamit A. G.] (formerly Alfred Nobel & Co.); member of Aufsichtsrat, Friedrich Krupp A. G., Essen; chairman or member of control groups in several other subsidiary and affiliated Farben concerns.

1933, member of Reichstag; chairman of the Currency Committee of the Reichsbank; member of board of directors, Bank of International Settlements, Basel; member of Committee of Seven, German Gold Discount Bank, Berlin; member or chairman of control groups in several other financial institutions. Member of Committee of Experts on Raw Materials Questions; member of Select Advisory Council, Reich Group Industry; Military Economy Leader.

Detained in prison from 7 April 1945 to date.

SCHNEIDER, CHRISTIAN—Born 19 November 1887, Kulmbach, Bavaria. Chemist. 1928–37, deputy member of Vorstand; 1938–45, full member of Vorstand and of Central Committee; 1937–38, member of Working Committee; 1929–38, guest attendant at meetings of Technical Committee, full member 1938–45; 1938–45, chief of Sparte I; 1937–45, chief of plant leaders and chief counterintelligence agent of Vermittlungsstelle W; manager of Ammoniakwerk Merseburg; chief of Farben's Central Personnel Department; member of control bodies of several Farben units.

Member of Nazi Party; supporting member of SS; member of German Labor Front; member of Advisory Council, Economic Group Chemical Industry; member of Experts Committee, Reich Trustee of Labor.

Detained in prison from 6 February 1947 to date.

VON SCHNITZLER, GEORG—Born 28 October 1884, Cologne. Lawyer. 1926–45, member of Vorstand; 1926–38, member of Working Committee; 1930–45, member of Central Committee; 1929–45, guest attendant of Technical Committee; 1937–45, chairman of Commercial Committee; 1930–45, chief of Dyestuffs Sales Combine; various periods between 1926 and 1945, member of other Farben committees, etc.

Member of Nazi Party; Captain of SA ("Sturmabteilung" of the Nazi Party); member of German Labor Front; member of Nazi Automobile Association (part of the SA); Military Economy Leader; member of Greater Advisory Council, Reich Group Industry; deputy chairman, Economic Group Chemical Industry; vice-president, Court of Arbitration, International Chamber of Commerce; chairman, Council for Propaganda of German Economy; chairman of Aufsichtsrat, Chemische Werke Aussig-Falkenau, Aussig, Czechoslovakia; member of Aufsichtsrat, Francolor, Paris; officer or member of Aufsichtsrat of other Farben affiliates in Spain and Italy.

Detained in prison from 7 May 1945 to date.

WURSTER, CARL—Born 2 December 1900, Stuttgart. Doctor of chemistry. For a brief period assistant in the Institute for Inorganic Chemistry and Chemical Technology at Stuttgart Polytechnic. 1938–45, member of Vorstand, Technical Committee, and Chemicals Committee; 1940–45, chief of Works Combine Upper Rhine; chairman of Inorganics Committee and plant leader of the Oppau plant, Ludwigshafen; member of Aufsichtsrat in several Farben concerns.

Member of Nazi Party and German Labor Front; Military Economy Leader; collaborator of Krauch in the Four Year Plan, Office for German Raw Materials and Synthetics; acting vice-chairman of Praesidium, Economic Group Chemical Industry, and chief and chairman of its Technical Committee, Subgroup for Sulphur and Sulphur Compounds; holder of the Knight's Cross of the War Merit Cross.

Detained in prison from 25 April 1947 to date.

COUNTS ONE AND FIVE

Counts one and five of the indictment are predicated on the same facts and involve the same evidence. These two counts will, therefore, be considered together.

Count one consists of eighty-five paragraphs. The criminal charge is contained in paragraphs one, two, and eighty-five. The other paragraphs are in the nature of a bill of particulars. We quote the three charging paragraphs:

> "1. All of the defendants, acting through the instrumentality of Farben and otherwise, with divers other persons during a period of years preceding 8 May 1945, participated in the planning, preparation, initiation, and waging of wars of aggression and invasions of other countries, which wars of aggression and invasions were also in violation of international laws and treaties. All of the defendants held high positions in the financial, industrial and economic life of Germany and committed these crimes against peace, as defined by Article II of Control Council Law No. 10, in that they were principals in, accessories to, ordered, abetted, took a consent-

ing part in, were connected with plans and enterprises involving, and were members of organizations or groups, including Farben, which were connected with the commission of said crimes.

"2. The invasions and wars of aggression referred to in the preceding paragraph were as follows: Against Austria, 12 March 1938; against Czechoslovakia, 1 October 1938 and 15 March 1939; against Poland, 1 September 1939; against the United Kingdom and France, 3 September 1939; against Denmark and Norway, 9 April 1940; against Belgium, the Netherlands and Luxembourg, 10 May 1940; against Yugoslavia and Greece, 6 April 1941; against the U. S. S. R., 22 June 1941; and against the United States of America, 11 December 1941.

"85. The acts and conduct set forth in this count were committed by the defendants unlawfully, wilfully, and knowingly, and constitute violations of international laws, treaties, agreements, and assurances, and of Article II of Control Council Law No. 10."

Count five is predicated on the acts set forth in counts one, two, and three, and charges that:

"146. All the defendants, acting through the instrumentality of Farben and otherwise, with divers other persons, during a period of years preceding 8 May 1945, participated as leaders, organizers, instigators, and accomplices in the formulation and execution of a common plan or conspiracy to commit, or which involved the commission of crimes against peace, (including the acts constituting war crimes and crimes against humanity, which were committed as an integral part of such crimes against peace) as defined by Control Council Law No. 10, and are individually responsible for their own acts and for all acts committed by any persons in the execution of such common plan or conspiracy.

"147. The acts and conduct of the defendants set forth in counts one, two, and three of this indictment formed a part of said common plan or conspiracy and all of the allegations made in said counts are incorporated in this count."

At the close of the prosecution's evidence the defendants moved for a finding of Not Guilty with respect to the charges and particulars under counts one and five. This motion questioned the sufficiency of the evidence with respect to each of the criminal acts charged in the challenged counts. The Tribunal decided to withhold ruling on the motion until final judgment. This judgment, although embracing a consideration of all the evidence for both prosecution and defense, will effectively and automatically dispose of that motion.

Control Council Law No. 10, as stated in its preamble, was promulgated "In order to give effect to the terms of the Moscow Declaration of 30 October 1943 and the London Agreement of 8 August 1945,

and the Charter issued pursuant thereto and in order to establish a uniform legal basis in Germany for the prosecution of war criminals and other similar offenders, other than those dealt with by the International Military Tribunal." In Article 1, the Moscow Declaration and the London Agreement are made integral parts of the law. In keeping with the purpose thus expressed, we have determined that Control Council Law No. 10 cannot be made the basis of a determination of guilt for acts or conduct that would not have been criminal under the law as it existed at the time of the rendition of the judgment by the IMT in the case of United States of America *vs* Hermann Wilhelm Goering, *et al.* That well-considered judgment is basic and persuasive precedent as to all matters determined therein. In the IMT case, count two bears a marked similarity to count one in this case. Count one of that case is similar to our count five. Regarding these counts the IMT said:

> "Count one charges the common plan or conspiracy. Count two charges the planning and waging of war. The same evidence has been introduced to support both counts. We shall therefore discuss both counts together, as they are in substance the same.
>
> "But in the opinion of the Tribunal the conspiracy must be clearly outlined in its criminal purpose. It must not be too far removed from the time of decision and of action. The planning, to be criminal, must not rest merely on the declarations of a party program, such as are found in the twenty-five points of the Nazi Party, announced in 1920, or the political affirmations expressed in 'Mein Kampf' in later years. The Tribunal must examine whether a concrete plan to wage war existed, and determine the participants in that concrete plan.
>
> "It is immaterial to consider whether a single conspiracy to the extent and over the time set out in the indictment has been conclusively proved. Continued planning, with aggressive war as the objective, has been established beyond a doubt.
>
> "The Tribunal will therefore disregard the charges in count one that the defendants conspired to commit war crimes and crimes against humanity, and will consider only the common plan to prepare, initiate, and wage aggressive war." *

In passing judgment upon the several defendants with respect to the common plan or conspiracy charged by count one and the charges of planning and waging aggressive war as charged by count two, the IMT made these observations concerning:

KALTENBRUNNER—Indicted and found not guilty under count one.

> "The Anschluss, although it was an aggressive act, is not charged as an aggressive war, and the evidence against Kaltenbrunner under

*Trial of the Major War Criminals, volume I, pp. 224–226.

count one does not, in the opinion of the Tribunal, show his direct participation in any plan to wage such a war." [1]

FRANK—Indicted and found not guilty under count one.

"The evidence has not satisfied the Tribunal that Frank was sufficiently connected with the common plan to wage aggressive war to allow the Tribunal to convict him on count one." [2]

FRICK—Indicted under counts one and two. Found not guilty on count one, guilty on count two.

"Before the date of the Austrian aggression Frick was concerned only with domestic administration within the Reich. The evidence does not show that he participated in any of the conferences at which Hitler outlined his aggressive intentions. Consequently, the Tribunal takes the view that Frick was not a member of the common plan or conspiracy to wage aggressive war as defined in this Judgment * * * Performing his allotted duties, Frick devised an administrative organization in accordance with wartime standards. According to his own statement, this was actually put into operation after Germany decided to adopt a policy of war." [3]

STREICHER—Indicted and found not guilty under count one.

"There is no evidence to show that he was ever within Hitler's inner circle of advisers; nor during his career was he closely connected with the formulation of the policies which led to war. He was never present, for example, at any of the important conferences when Hitler explained his decisions to his leaders. Although he was a Gauleiter, there is no evidence to prove that he had knowledge of those policies. In the opinion of the Tribunal, the evidence fails to establish his connection with the conspiracy or common plan to wage aggressive war as that conspiracy has been elsewhere defined in this judgment." [4]

FUNK—Indicted under counts one and two. Found not guilty on count one; guilty on count two.

"Funk was not one of the leading figures in originating the Nazi plans for aggressive war. His activity in the economic sphere was under the supervision of Goering as Plenipotentiary General of the Four Year Plan. He did, however, participate in the economic preparation for certain of the aggressive wars, notably those against Poland and the Soviet Union, but his guilt can be adequately dealt with under count two of the indictment. In spite of the fact that he occupied important official positions, Funk was never a dominant

[1] *Ibid.*, p. 291.
[2] *Ibid.*, p. 296.
[3] *Ibid.*, p. 299.
[4] *Ibid.*, p. 302.

figure in the various programs in which he participated. This is a mitigating fact of which the Tribunal takes notice." [1]

SCHACHT—Indicted and found not guilty under counts one and two.

"It is clear that Schacht was a central figure in Germany's rearmament program, and the steps which he took, particularly in the early days of the Nazi regime, were responsible for Nazi Germany's rapid rise as a military power. But rearmament of itself is not criminal under the Charter. To be a crime against peace under article 6 of the Charter, it must be shown that Schacht carried out this rearmament as part of the Nazi plans to wage aggressive war. * * * Schacht was not involved in the planning of any of the specific wars of aggression charged in count two. His participation in the occupation of Austria and the Sudetenland (neither of which are charged as aggressive wars) was on such a limited basis that it does not amount to participation in the common plan charged in count one. He was clearly not one of the inner circle around Hitler, which was most closely involved with this common plan." [2]

DOENITZ—Indicted under counts one and two. Found not guilty on count one; guilty on count two.

"Although Doenitz built and trained the German U-boat arm, the evidence does not show he was privy to the conspiracy to wage aggressive wars or that he prepared and initiated such wars. He was a line officer performing strictly tactical duties. He was not present at the important conferences when plans for aggressive wars were announced, and there is no evidence he was informed about the decisions reached there * * *. In the view of the Tribunal, the evidence shows that Doenitz was active in waging agressive war." [3]

VON SCHIRACH—Indicted and found not guilty under count one.

"Despite the warlike nature of the activities of the Hitler Jugend, however, it does not appear that von Schirach was involved in the development of Hitler's plan for territorial expansion by means of aggressive war, or that he participated in the planning or preparation of any of the wars of aggression." [4]

SAUCKEL—Indicted and found not guilty under counts one and two.

"The evidence has not satisfied the Tribunal that Sauckel was sufficiently connected with the common plan to wage aggressive war or sufficiently involved in the planning or waging of the ag-

[1] *Ibid.*, pp. 305, 306.
[2] *Ibid.*, pp. 308–310.
[3] *Ibid.*, pp. 310, 311.
[4] *Ibid.*, p. 318.

gressive wars to allow the Tribunal to convict him on counts one or two." [1]

VON PAPEN—Indicted and found not guilty under counts one and two.

"There is no evidence that he was a party to the plans under which the occupation of Austria was a step in the direction of further aggressive action, or even that he participated in plans to occupy Austria by aggressive war if necessary. But it is not established beyond a reasonable doubt that this was the purpose of his activity, and therefore the Tribunal cannot hold that he was a party to the common plan charged in count one or participated in the planning of the aggressive wars charged under count two." [2]

SPEER—Indicted and found not guilty under counts one and two.

"The Tribunal is of the opinion that Speer's activities do not amount to initiating, planning, or preparing wars of aggression, or of conspiring to that end. He became the head of the armament industry well after all of the wars had been commenced and were under way. His activities in charge of German armament production were in aid of the war effort in the same way that other productive enterprises aid in the waging of war; but the Tribunal is not prepared to find that such activities involve engaging in the common plan to wage aggressive war as charged under count one or waging aggressive war as charged under count two." [3]

FRITZSCHE—Indicted and found not guilty under count one.

"Never did he achieve sufficient stature to attend the planning conferences which led to aggressive war; indeed according to his own uncontradicted testimony he never even had a conversation with Hitler. Nor is there any showing that he was informed of the decisions taken at these conferences. His activities cannot be said to be those which fall within the definition of the common plan to wage aggressive war as already set forth in this judgment * * *. It appears that Fritzsche sometimes made strong statements of a propagandistic nature in his broadcasts. But the Tribunal is not prepared to hold that they were intended to incite the German people to commit atrocities on conquered peoples, and he cannot be held to have been a participant in the crimes charged. His aim was rather to arouse popular sentiment in support of Hitler and the German war effort." [4]

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[1] *Ibid.*, p. 320.
[2] *Ibid.*, p. 327.
[3] *Ibid.*, pp. 330–331.
[4] *Ibid.*, pp. 337 and 338.

BORMANN—Indicted and found not guilty under count one.

"The evidence does not show that Bormann knew of Hitler's plans to prepare, initiate, or wage agressive wars. He attended none of the important conferences when Hitler revealed piece by piece those plans for aggression. Nor can knowledge be conclusively inferred from the positions he held. It was only when he became head of the Party Chancellory in 1941, and later in 1943 secretary to the Fuehrer when he attended many of Hitler's conferences, that his positions gave him the necessary access. Under the view stated elsewhere which the Tribunal has taken of the conspiracy to wage aggressive war, there is not sufficient evidence to bring Bormann within the scope of count one." *

From the foregoing it appears that the IMT approached a finding of guilty of any defendant under the charges of participation in a common plan or conspiracy or planning and waging aggressive war with great caution. It made findings of guilty under counts one and two only where the evidence of both knowledge and active participation was conclusive. No defendant was convicted under the charge of participating in the common plan or conspiracy unless he was, as was the defendant Hess, in such close relationship with Hitler that he must have been informed of Hitler's aggressive plans and took action to carry them out, or attended at least one of the four secret meetings at which Hitler disclosed his plans for aggressive war. The IMT judgment lists these meetings as having taken place on 5 November 1937, 23 May 1939, 22 August 1939, and 23 November 1939.

It is important to note here that Hitler's public utterances differed widely from his secret disclosures made at these meetings.

Common Knowledge

During the early stages of the trial, the prosecution spent considerable time in attempting to establish that, for some time prior to the outbreak of war, there existed in Germany public or common knowledge of Hitler's intention to wage aggressive war. It introduced in evidence excerpts from the program of the Nazi Party and from Hitler's book *Mein Kampf*.

Prosecution's Exhibit 4 is a summarization of the program of the NSDAP published in 1941 in the National Socialistic Year Book. This program was proclaimed on 25 February 1920 and remained unaltered down to 1941. The summarization consists of twenty-five points. We quote those dealing with military and foreign policy.

"1. We demand the unification of all Germans in the greater Germany on the basis of the right of self-determination of peoples.

*Ibid., p. 339.

"2. We demand equality of rights for the German people in respect to the other nations; abrogations of the peace treaties of Versailles and St. Germain.

"3. We demand land and territory (colonies) for the sustenance of our people, and colonization for our surplus population.

"12. In consideration of the monstrous sacrifice in property and blood that each war demands of the people, personal enrichment through a war must be designated as a crime against the people. Therefore we demand the total confiscation of all war profits.

"22. We demand abolition of the mercenary troops and formation of a national army."

Much more belligerent in tone are the excerpts from *Mein Kampf*, the basic theme of which was that the frontiers of the Reich should embrace all Germans. On this book the IMT said:

"*Mein Kampf* is not to be regarded as a mere literary exercise, nor as an inflexible policy or plan incapable of modification.

"Its importance lies in the unmistakable attitude of aggression revealed throughout its pages." *

This book had a circulation throughout Germany of over six million copies. We must bear in mind, however, that it was written by Hitler the politician, before his party came to power. It is consistent with statements that he made to his immediate circle of confidants and plotters, but it is entirely inconsistent with his many speeches and proclamations—made as head of the Reich—for public consumption. Some of these we will now consider.

Two thoughts permeated Hitler's public utterances from his seizure of power up until 1939. These were fear of communism and love of peace. On 17 May 1933, in addressing the German Reichstag, he stressed the futility of violence as a medium for improving the conditions of Germany and Europe and asserted that such violence would necessarily cause a collapse of the social and political order and would result in communism. He then said that Germany "is also entirely ready to renounce all offensive weapons of every sort if the armed nations, on their side, will destroy their offensive weapons within a specified period, and if their use is forbidden by an international convention * * * Germany is at all times prepared to renounce offensive weapons if the rest of the world does the same. Germany is prepared to agree to any solemn pact of non-aggression because she does not think of attacking but only of acquiring security."

On 14 October 1933, Hitler announced the withdrawal of Germany from the League of Nations in a radio speech filled with protestations of the friendly intentions of the Reich and his government's devotion to the cause of peace. Many similar passages are to be found in

*Ibid., p. 188.

his public utterances and proclamations down to and including the announcement of the Four Year Plan.

The Four Year Plan, according to the prosecution's version of the evidence, was designed to rearm and rebuild Germany, militarily and economically, for the purpose of waging aggressive war, and the part played by the defendants in the execution of that plan is relied upon as a strong circumstance tending to show their wilful participation in Hitler's plans for aggressive war. The Four Year Plan was announced to the German public and the world by Hitler's speech of 9 September 1936, delivered at a Nazi Party Rally at Nurnberg. He first reviewed in exaggerated fashion the accomplishments of Germany in the economic field since his rise to power. He then launched into an outline of an ambitious program to further rehabilitate and strengthen Germany in the ensuing four years. He reminded the people in demagogic style that he had already procured for them increased employment, better highways, more automobiles, stable currency, more constant food supply, and increased production in various fields through German skill and through the development of chemical, mining, and other industries. He justified the increase in Germany's armed forces upon the ground that this was necessary and in proportion to the increasing dangers surrounding Germany. He then said: "The German people, however, has no other wish than to live in peace and friendship with all those who want the peace and who do not interfere with us in our own country."

On 30 January 1937, Hitler made a speech in Berlin at the Kroll Opera House, in which he again discussed the Four Year Plan and announced a city-planning program of construction for Berlin, concerning which he said: "For the execution of that plan, a period of 20 years is provided. May the Almighty grant us peace, during which the gigantic task may be completed."

On 12 March 1938, Hitler issued a proclamation in extravagant terms attempting to justify the Austrian Anschluss. He attacked the Austrian Government under Chancellor Schuschnigg as an oppressor of the people that had proposed a fraudulent election which could only lead to civil war. This, Hitler sought to prevent.

On 18 March 1938, Cardinal Innitzer and the bishops of Austria issued, from Vienna, a solemn declaration in which they said: "We recognize with joy that the National Socialist movement has produced outstanding achievements in the spheres of national and economic reconstruction as well as in their welfare policy for the German Reich and people, and in particular for the poorest strata of the people. We are also convinced that through the activities of the National Socialist movement the danger of all-destroying godless bolshevism was averted." Thus it appears that even high ecclesiastical leaders were misled as to Hitler's ultimate purpose.

After securing Austria for the Reich, Hitler turned his attention to Czechoslovakia and applied increasing pressure upon that country under the pretext of rescuing the Sudeten Germans from claimed oppression by the Czech Government. This aggressive attitude on the part of Hitler culminated in the Munich Agreement of 29 September 1938, in which Germany and the United Kingdom, France, and Italy agreed to the occupation of the Sudeten area by German troops and the determination of its frontiers by an international commission. The following day, 30 September, Adolf Hitler and Neville Chamberlain signed the following accord:

> "We have had a further conversation today and we are agreed in recognizing that the question of German-English relations is of the highest importance for both countries and for Europe. We regard the Agreement which was signed last evening and the German-English Naval Agreement as symbolic of the wish of our two peoples never again to wage war against each other. We are determined to treat other questions which concern our two countries also through the method of consultation and further to endeavor to remove possible causes of difference of opinion in order thus to contribute towards assuring the peace of Europe."

On 6 December 1938, Georges Bonnet and Joachim von Ribbentrop signed, as foreign ministers for their respective countries, a Franco-German Declaration of pacific and neighborly relations. In making this Declaration public, von Ribbentrop emphasized its contribution to the peaceful relationship of the two countries.

In the light of history we now know that Hitler had no intention of stopping with the gains he had made through the Munich Agreement. He turned his attention to the liquidation of the remainder of Czechoslovakia. On 14 March 1939, the President and the Foreign Minister of the Czech Republic met with von Ribbentrop, Goering, and Keitel and other officials of the Reich. Under threat of invasion and destruction of their country the Czech officials signed an agreement for the incorporation of the remainder of Czechoslovakia into the German Reich, and on 16 March 1939 a decree was issued creating Bohemia and Moravia a Reich protectorate. In order to justify this move in the minds of the German people, Hitler carried on for some time systematic propaganda against the Czechs, the foundation of which was, as usual, the fear of Russia. The Czechs were accused of negotiating with Russia for the construction and use of airfields and bases on Czech soil. Even in the presence of these activities, Hitler continued to emphasize his love of peace and the necessity of providing for the defense of Germany.

In 1939, Hitler entered into nonaggression pacts with other European states, purporting to be in furtherance of the maintenance of peace. There followed the German-Italian mutual friendship and al-

liance pact of 22 May 1939; the German-Danish nonaggression pact of 31 May 1939; a nonaggression pact between the German Reich and the Republic of Estonia of 7 June 1939; and a similar pact with the Republic of Latvia on the same date. On 23 August 1939, Germany and the Union of Socialist Soviet Republics likewise entered into a nonaggression pact. These agreements were all made public and are of such a nature as to tend to conceal rather than expose an intention on the part of Hitler and his immediate circle to start an aggressive war.

But what of Poland? In April 1939, Hitler issued strict directives to the High Command to prepare for war against Poland. But, in a speech to the Reichstag, on 28 April 1939, he said:

> "I have regretted greatly this incomprehensible attitude of the Polish Government, but that alone is not the decisive fact; the worst is that now Poland like Czechoslovakia a year ago believes, under the pressure of a lying international campaign, that it must call up its troops, although Germany on her part has not called up a single man, and had not thought of proceeding in any way against Poland * * *. The intention to attack on the part of Germany which was merely invented by the international press * * *."

Thus he continued to mislead the public with reference to his true purpose. He led the public to believe that he still maintained the view that Poland and Germany could work together in harmony—a view which he had expressed to the Reichstag on 20 February 1938, in these words:

> "And so the way to a friendly understanding has been successfully paved, an understanding which, beginning with Danzig, has today, in spite of the attempts of certain mischief makers, succeeded in finally taking the poison out of the relations between Germany and Poland and transforming them into a sincere, friendly cooperation. Relying on her friendships, Germany will not leave a stone unturned to save that ideal which provides the foundation for the task which is ahead of us—peace."

While it is true that those with an insight into the evil machinations of power politics might have suspected Hitler was playing a cunning game of soothing restless Europe, the average citizen of Germany, be he professional man, farmer, or industrialist, could scarcely be charged by these events with knowledge that the rulers of the Reich were planning to plunge Germany into a war of aggression.

During this period, Hitler's subordinates occasionally gave expression to belligerent utterances. But, even these can only by remote inference, formed in retrospect, be connected with a plan for aggressive war. The point here is the common or general knowledge of Hitler's plans and purpose to wage aggressive war. He was the dictator.

It was natural that the people of Germany listened to and read his utterances in the belief that he spoke the truth.

It is argued that after the events in Austria and Czechoslovakia, men of reasonable minds must have known that Hitler intended to wage aggressive war, although they may not have known the country to be attacked or the time of initiation. This argument is not sound. Hitler's moves in Austria and Czechoslovakia were for the avowed purpose of reuniting the German people under one Reich. The purpose met general public approval. By a show of force but without war, Hitler had succeeded. In the eyes of his people he had scored great and just diplomatic successes without endangering the peace. This was affirmed in the common mind by the Munich Agreement and the various nonaggressive pacts and accords which followed. The statesmen of other nations, conceding Hitler's successes by the agreements they made with him, affirmed their belief in his word. Can we say the common man of Germany believed less?

We reach the conclusion that common knowledge of Hitler's plans did not prevail in Germany, either with respect to a general plan to wage aggressive war, or with respect to specific plans to attack individual countries, beginning with the invasion of Poland on 1 September 1939.

Personal Knowledge

It is a basic fact that a plan or conspiracy to wage wars of aggression did exist. It was primarily the plan of Hitler and was participated in, as to both its formation and execution, by a group of men having a particularly close and confidential relationship with the Dictator. It was a secret plan. At first, it was general in scope and, later, became more specific and detailed. This is established by unquestioned events. Its purpose was to make Germany the dominant military and economic power of Europe by militant diplomacy, and finally by conquest. It started more as an objective than as a plan complete in detail. From time to time it bore offsprings—the specific plans for conquest.

It is not clear when Hitler first conceived his general plan of aggression, or with whom he first discussed it. He made a definite disclosure at a secret meeting on 15 November 1937. The persons present were Lieutenant Colonel Hossbach, Hitler's personal adjutant; Goering, Commander in Chief of the Luftwaffe; von Neurath, Reich Foreign Minister; Raeder, Commander in Chief of the Navy; General von Blomberg, Minister of War; and General von Fritzsch, Commander in Chief of the Army. This meeting was followed by other secret meetings of special significance on 23 May 1939, 22 August 1939, and 23 November 1939. Thus three of the meetings preceded the invasion of Poland. None of the defendants attended any of these meetings.

If the defendants, or any of them, are to be held guilty under either count one or five or both on the ground that they participated in the planning, preparation, and initiation of wars of aggression or invasions, it must be shown that they were parties to the plan or conspiracy, or, knowing of the plan, furthered its purpose and objective by participating in the preparation for aggressive war. The solution of this problem requires a consideration of basic facts disclosed by the record. These facts include the positions, if any, held by the defendants with the state and their authority, responsibility, and activities thereunder, as well as their positions and activities with or in behalf of Farben.

In weighing the evidence and in determining the ultimate facts of guilt or innocence with respect to each defendant, we have sought to apply these fundamental principles of Anglo-American criminal law:

1. There can be no conviction without proof of personal guilt.
2. Guilt must be proved beyond a reasonable doubt.
3. Each defendant is presumed to be innocent, and that presumption abides with him throughout the trial.
4. The burden of proof is, at all times, upon the prosecution.
5. If from credible evidence two reasonable inferences may be drawn, one of guilt and the other of innocence, the latter must prevail. (United States *vs.* Friedrich Flick, *et al*, Case 5, American Military Tribunal IV, Nurnberg, Germany.)

In considering the many conflicts in the evidence and the multitude of circumstances from which inferences may be drawn, as disclosed by the voluminous record before us, we have endeavored to avoid the danger of viewing the conduct of the defendants wholly in retrospect. On the contrary, we have sought to determine their knowledge, their state of mind, and their motives from the situation as it appeared, or should have appeared, to them at the time.

The prosecution has designated as the number one defendant in this case Carl Krauch, who held positions of importance with both the government and Farben.

While the Farben organization, as a corporation, is not charged under the indictment with committing a crime and is not the subject of prosecution in this case, it is the theory of the prosecution that the defendants individually and collectively used the Farben organization as an instrument by and through which they committed the crimes enumerated in the indictment. All of the members of the Vorstand or governing body of Farben who were such at the time of the collapse of Germany were indicted and brought to trial. This Tribunal found that Max Brueggemann was not in a physical condition to warrant continuing him as a defendant in the case, and by an appropriate order separated him from this trial. All of the other Vorstand members are defendants in this case. The defend-

ants Duerrfeld, Gattineau, von der Heyde, and Kugler, were not members of the Vorstand but held places of importance with Farben.

If we emphasize the defendant Krauch in the discussion which follows, it is because the prosecution has done so throughout the trial and has apparently regarded him as the connecting link between Farben and the Reich on account of his official connections with both.

Krauch became a member of the Vorstand in 1933 and continued in that position until 1940, when he became a member of the Aufsichtsrat. From 1929 to 1938 he was Chief of Sparte I.

In 1934, Hitler turned his attention to the rearmament of Germany and sought to impress industry with the necessity of participating therein. It was then sought to encourage rearmament through an industrial organization of which Farben was a member, known as the Reich Group Industry. At that time the industries were asked to work out detailed plans for protecting their plants from the results of air raids. Krauch was later given duties in connection with the planning of air-raid protection, which resulted in a reprimand from Goering in Hitler's presence in 1944. He was accused by Goering with failure to properly plan and supervise air-raid protection for plants that were being severely bombed by Allied air forces. It may be noted that this is the only instance in which the defendant Krauch talked to Hitler. In 1934, it was decided to create a "War Economic Central Office of Farben for all matters of military economy and questions of military policy." Krauch was instrumental in organizing this agency, known as Vermittlungsstelle W, the purpose of which we have concluded to be to act as a clearing house for information concerning rearmament between the various plants and agencies of Farben and the Reich authorities in charge of the rearmament of Germany. It received and distributed information, but it was not an agency for determining policy or for the giving of orders regarding a policy that had already been determined. It did facilitate the cooperation of Farben with the rearmament program, but it was not a planning organization. It was a part of the program for rearmament, but neither its organization nor its operation gives any hint of plans for aggressive war.

In 1936, Krauch joined Goering's staff for Raw Materials and Foreign Currency which had just been set up, and was put in charge of the Research and Development Department. When this staff was absorbed into the Office of the Four Year Plan, headed by Goering, Krauch retained the same position in the Office for German Raw Materials and Synthetics. This office was later renamed the Reich Office for Economic Development when it was placed under the Reich Ministry of Economics.

Shortly after the announcement of the Four Year Plan, in September 1936, Hitler appointed Goering as commissioner to carry out the

plan. Goering appointed seven men to assist him and placed each in charge of a separate department, such as Labor Allocation, Agricultural Production, Price Control, et cetera. Colonel Loeb was placed in charge of the Office for German Raw Materials and Synthetics. Under Loeb were five departments, over four of which Loeb appointed subordinate executives. The fifth was retained under Loeb's direct control. The Defendant Krauch, being one of these four subordinates, was placed in charge of Research and Development. A visual picture of the structure of the Four Year Plan thus created may be obtained from a chart, Prosecution's Exhibit 425, which is reproduced herewith:

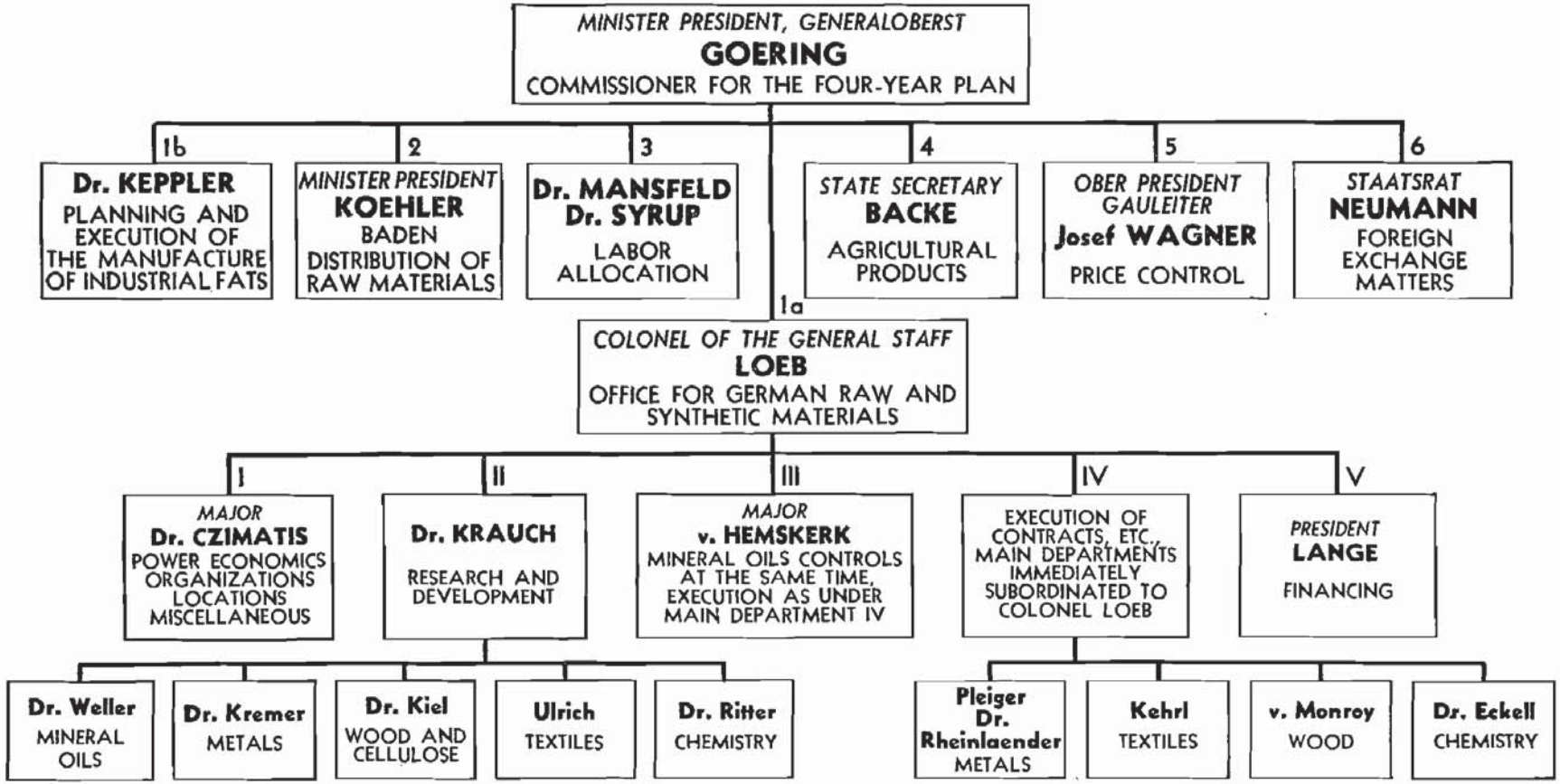
TRANSLATION OF DOCUMENT NI–4706
PROSECUTION EXHIBIT 425

CHART OF FOUR YEAR PLAN AND ITS MAIN DEPARTMENTS, 18 DECEMBER 1936

In 1938, Hitler and Goering decided to step up production under the Four Year Plan and, to accomplish this, appointed from time to time at least nine special plenipotentiaries with limited duties and authority. In July 1938, Krauch was appointed Plenipotentiary General for Special Questions of Chemical Production. Under this appointment it became his task to supervise as an expert the development of the chemical industry in furtherance of the Four Year Plan. However, the Army Ordnance Office and the Reich Ministry of Economics determined the requirements for individual chemical production. Later the Ministry of Armament assumed this authority. Plans for the expansion of existing plants or the setting up of new plants came within the province of Krauch. But even such plans could not be executed without first having been approved by the Plenipotentiary General for the Building Industry and the Plenipotentiary [General] for Labor [Allocation]. Krauch was not authorized to decide questions relating to current chemical production. Neither could he issue production orders or interfere with the allocation of production. Thus it appears his authority was limited largely to giving expert opinions on technical development, recommending plans for the expansion or erection of plants, and general technical advice in the chemical field.

Judge Morris will continue with the reading of the judgment.

JUDGE MORRIS: The evidence is clear that Krauch did not participate in the planning of aggressive wars. The plans were made by and within a closely guarded circle. The meetings were secret. The information exchanged was confidential. Krauch was far beneath membership in that circle. No opportunity was afforded to him to participate in the *planning*, either in a general way or with regard to any of the specific wars charged in count one.


MINISTER PRESIDENT, GENERALOBERST
GOERING
COMMISSIONER FOR THE FOUR-YEAR PLAN
1b
Dr. KEPPLER
PLANNING AND EXECUTION OF THE MANUFACTURE OF INDUSTRIAL FATS
2
MINISTER PRESIDENT
KOEHLER
BADEN
DISTRIBUTION OF RAW MATERIALS
3
Dr. MANSFELD
Dr. SYRUP
LABOR ALLOCATION
4
STATE SECRETARY
BACKE
AGRICULTURAL PRODUCTS
5
OBER PRESIDENT
GAULEITER
Josef WAGNER
PRICE CONTROL
6
STAATSRAT
NEUMANN
FOREIGN EXCHANGE MATTERS
1a
COLONEL OF THE GENERAL STAFF
LOEB
OFFICE FOR GERMAN RAW AND SYNTHETIC MATERIALS
I
MAJOR
Dr. CZIMATIS
POWER ECONOMICS
ORGANIZATIONS
LOCATIONS
MISCELLANEOUS
II
Dr. KRAUCH
RESEARCH AND DEVELOPMENT
III
MAJOR
v. HEMSKERK
MINERAL OILS CONTROLS AT THE SAME TIME, EXECUTION AS UNDER MAIN DEPARTMENT IV
IV
EXECUTION OF CONTRACTS, ETC., MAIN DEPARTMENTS IMMEDIATELY SUBORDINATED TO COLONEL LOEB
V
PRESIDENT
LANGE
FINANCING
Dr. Weller
MINERAL OILS
Dr. Kremer
METALS
Dr. Kiel
WOOD AND CELLULOSE
Ulrich
TEXTILES
Dr. Ritter
CHEMISTRY
Pleiger
Dr.
Rheinlaender
METALS
Kehrl
TEXTILES
v. Monroy
WOOD
Dr. Eckell
CHEMISTRY

The record is also clear that Krauch had no connection with the *initiation* of any of the specific wars of aggression or invasions in which Germany engaged. He was informed of neither the time nor method of initiation. The evidence that most nearly approaches Krauch is that pertaining to the *preparation* for aggressive war. After World War I, Germany was totally disarmed. She was stripped of war material and the means of producing it. Immediately upon the acquisition of power by the Nazis, they proceeded to rearm Germany, secretly and inconspicuously at first. As the rearmament program grew, so also did the boldness of Hitler with reference to rearmament. Rearmament took the course, not only of creating an army, a navy, and an air force, but also of coordinating and developing the industrial power of Germany so that its strength might be utilized in support of the military in event of war. The Four Year Plan, initiated in 1936, was a plan to strengthen Germany as both a military and an economic power, although, in its introduction to the German people, the military aspect was kept in the background.

In order to conceal Germany's growing military power, strict measures were undertaken to impose secrecy, not only regarding military matters, but also regarding Germany's growing industrial strength. This served two purposes: it tended to conceal the true facts from the world and from the German public; it also kept the people who were actually participating in rearmament from learning of the progress being made outside of their own specific fields of endeavor, and kept them in ignorance of the actual state of Germany's military strength. The dictatorial system was in full control. Even people in high places were kept in ignorance and were not permitted to disclose to each other the extent of their individual activities in behalf of the Reich. A striking example of this is Keitel's objection to Krauch's appointment as Plenipotentiary General for Special Questions of Chemical Production, on the ground that Krauch, as a man of industry and not of the military, should not obtain insight into the armament fields. He pointed out that anyone in that position might learn how many divisions were being set up in the army and what plans were being made for bomber squadrons. The evidence shows that, although Krauch was appointed over the objection of Keitel, he was never fully trusted by the military. His functions and authority were limited to fields bordering on military affairs. He could not act without the cooperation of the Army Ordnance Office. The evidence does not show that anyone told Krauch that Hitler had a plan or plans to plunge Germany into aggressive war. Moreover, the positions that Krauch held with reference to the government did not, necessarily, result in the acquisition by him of such knowledge.

The IMT stated that "Rearmament of itself is not criminal under the Charter." It is equally obvious that participation in the rearma-

ment of Germany was not a crime on the part of any of the defendants in this case, unless that rearmament was carried out, or participated in, with knowledge that it was a part of a plan or was intended to be used in waging aggressive war. Thus we come to the question which is decisive of the guilt or innocence of the defendants under counts one and five—the question of knowledge.

We have already discussed common knowledge. There was no such common knowledge in Germany that would apprise any of the defendants of the existence of Hitler's plans or ultimate purpose.

It is contended that the defendants must have known from events transpiring within the Reich that what they did in aid of rearmament was preparing for aggressive war. It is asserted that the magnitude of the rearmament effort was such as to convey that knowledge. Germany was rearming so rapidly and to such an extent that, when viewed in retrospect in the light of subsequent events, armament production might be said to impute knowledge that it was in excess of the requirements of defense. If we were trying military experts, and it was shown that they had knowledge of the extent of rearmament, such a conclusion might be justified. None of the defendants, however, were military experts. They were not military men at all. The field of their life work had been entirely within industry, and mostly within the narrower field of the chemical industry with its attendant sales branches. The evidence does not show that any of them knew the extent to which general rearmament had been planned, or how far it had progressed at any given time. There is likewise no proof of their knowledge as to the armament strength of neighboring nations. Effective armament is relative. Its efficacy depends upon the relative strength with respect to the armament of other nations against whom it may be used either offensively or defensively.

The fields in which Farben was active were those of synthetic rubber, gasoline, nitrogen, light metals, and, to some extent, through an affiliated company, explosives. The defendants contend that in the first three fields their primary purpose was to serve civilian needs. Hitler was building Autobahns and was encouraging the assembly-line production of small automobiles. A large increase in the demand for tires was taking place. The German Army was, of course, interested in more and better tires. It collaborated with Farben in expanding rubber production and in testing tires made from buna rubber. The production of gasoline likewise received military encouragement. Experimentation and production in the high-octane processes was particularly for the benefit of the Air Force.

Nitrogen is a product in great demand for agriculture in peacetime. The impoverished German soil required much fertilization in order to make it produce needed food for a country that was dependent to a substantial degree upon imports for the nourishment of its people.

Nitrogen also is a basic and indispensable element in the making of most explosives. Its production can readily be turned from the needs of peace to those of war. The Reich, therefore, encouraged Farben to greatly expand its facilities for producing nitrogen. Light metals had their peacetime uses. They were also war necessities, particularly in the production of airplanes. The defense, however, points out that the airplane itself is not always an instrument of war but is used as a medium of peacetime transportation.

The Luftwaffe, however, was not a peacetime organization. It utilized the coming war arm of modern nations. The defendants who participated in the expansion of light metal production capacity, in cooperation with Luftwaffe officials, of course knew that thereby they were strengthening Germany's war potential. Similar knowledge must be attributed to those who participated in the expansion of Farben's capacity to produce buna rubber, gasoline, and nitrogen. It was all a part of an over-all plan or program to strengthen Germany in the fields of economy and rearmament. To the extent that the activities of the defendants through the mediums just described contributed materially to the rearmament of Germany, the defendants must be charged with knowledge of the immediate result. The evidence is not so clear as to Farben's responsibility for the increase in production of explosives. The initiative in this field clearly lay with the Reich, but Farben aided the production by furnishing both experts and capital for the expansion of explosive enterprises, and, to that extent at least, participated in rearmament. The prosecution, however, is confronted with the difficulty of establishing knowledge on the part of the defendants not only of the rearmament of Germany, but also that the purpose of rearmament was to wage aggressive war. In this sphere the evidence degenerates from proof to mere conjecture. The defendants may have been, as some of them undoubtedly were, alarmed at the accelerated pace that armament was taking. Yet even Krauch, who participated in the Four Year Plan within the chemical field, undoubtedly did not realize that, in addition to strengthening Germany, he was participating in making the nation ready for a planned attack of an aggressive nature. Krauch did not figure in the planning of the production of any of the items that we have discussed until about the middle of the year 1938. Production planning was carried on by the planning department of the Reich Office for Economic Development, which was not subordinated to Krauch's supervision. Upon being informed by Loeb as to statistics with respect to production and the time required for accomplishment, Krauch reached the conclusion that the figures were to a large extent erroneous and misleading and so informed Goering, who asked for Krauch's comment. Krauch then produced what is known as the Karinhall Plan, which provided for an expansion of facilities and the

acceleration of production of mineral oils, buna rubber, and light metals. In the meantime, Keitel had furnished Goering with figures concerning powder, explosives, and certain raw products used in their production. The correctness of these figures, too, was questioned by Krauch, whereupon Goering called upon Krauch to collaborate with the Army Ordnance Office in preparing an accelerated and corrected plan for the production of powder, explosives, and pertinent raw products. The plan thus produced is known as the Schnell or Rush Plan. The evidence is conflicting as to whether Krauch or the Army Armament Office was dominant in determining the questions involved in preparing this plan.

We now reach the neat question of whether, from Krauch's activities in connection with the Four Year Plan, the Karinhall Plan, and the Schnell Plan, he may be said to have known that the ultimate objective of Hitler, Goering, and the other Nazi chiefs was to wage a war or wars of aggression. On 29 April 1939, Krauch rendered a report to his superior, Goering, and to the General Council [EC–282, Pros. Ex. 455], setting forth at length the goals to be reached in the spheres of mineral oil, rubber, light metals, as well as gunpowder, explosives, and chemical warfare agents under the Karinhall and Schnell plans. With respect to mineral oil, which he breaks down into gasoline, Diesel fuel, heating and lubricating oil, the final target is set for 1943. In his analysis he gives the peacetime requirements for 1943, which is scarcely an indication that he was aware of Hitler's already existing plan to attack Poland in the fall of 1939. The plans for buna rubber also include the year 1943. In the field of light metals, the temporary goal for aluminum would be reached in 1942, according to the plan, while a similar goal was set for magnesium. In justifying his production objectives, Krauch says:

"The German expansion target figures for mineral oils are about 13.8 million tons as compared with the French mobilization requirements of about 13 million tons, and the British mobilization requirements of about 30 million tons.

"The requirements for fuel oil for the British Navy alone amount to about 12 million tons, i. e., nearly as much as the entire German mobilization requirements.

"The rubber requirements of 120,000 tons per year are directly connected with the German motorization and thereby, again, with the mineral oil project. The consumption of crude rubber for England was, in 1938, already about 105,000 tons; for France about 60,000 tons.

"The light metals are of the greatest importance, not only for the mobilization of the Air Force, but also for peacetime requirements for the replacement of scarce metals. After completion, target figures for aluminum will reach 250,000 tons; this is half

of the present world production, and ten times the present British output. The output of magnesium will, after its completion, amount to thrice the present world production."

The production goal for powder and explosives was expected to be reached by the end of 1940; that of chemical warfare agents by mid-1942. He points out that the present production capacity of France and Great Britain already exceeds the final target of the Rush Plan. At the end of this report is a conclusion from which the prosecution has, with emphasis, quoted several passages as strong evidence of Krauch's knowledge of Hitler's intention to wage aggressive war. This conclusion is in the nature of a commentary on Germany's position of disadvantage with respect to her economic and military situation. The thoughts expressed are none too coherent and are, at times, somewhat inconsistent. It stresses the necessity and importance of strengthening Germany in the military and economic fields. There are some expressions that are consistent with a warlike intention, but to say that these statements impute to the maker a knowledge of impending aggressive war on the part of Germany, is to draw from them inferences that are not justified. He recommends the formation of a uniform major economic bloc consisting of the

"four European anticomintern partners, which Yugoslavia and Bulgaria will soon have to join. Within this bloc there must be a building up and direction of the military economic system from the point of view of defensive warfare by the coalition."

Further on he makes this statement, that is emphasized by the prosecution:

"It is essential for Germany to strengthen its own war potential as well as that of its allies to such an extent that the coalition is equal to the efforts of practically the rest of the world. This can be achieved only by new, strong, and combined efforts by all of the allies, and by expanding and improving the greater economic domain corresponding to the improved raw material basis of the coalition, peaceably at first, to the Balkans and Spain."

Considering the whole report, it seems that Krauch was recommending plans for the strengthening of Germany which, to his mind, was being encircled and threatened by strong foreign powers, and that this situation might and probably would at some time result in war. But it falls far short of being evidence of his knowledge of the existence of a plan on the part of the leaders of the German Reich to start an aggressive war against either a definite or a probable enemy.

Krauch testified at length in behalf of himself and his codefendants. He emphatically denied all knowledge of Hitler's purpose to wage aggressive war in general or to attack specific victims. He introduced

a large volume of evidence tending to support his position of lack of knowledge, to minimize the importance of his official connections with the Reich, and to relieve his codefendants of responsibility for his acts. To attempt to summarize all the evidence for and against Krauch under counts one and five would lengthen this judgment to unjustifiable proportions. We have examined the many exhibits in great detail and attempted to give to each proper weight and probative value. This labor has led to the definite conclusion that Krauch did not knowingly participate in the planning, preparation or initiation of an agressive war.

After the attack on Poland, Krauch stayed at his post and continued to function within those spheres of activity in which he was already engaged. It is contended that these activities amounted to participation in the waging of aggressive war. There is no doubt but that he contributed his efforts in much the same manner and measure as thousands of other Germans who occupied positions of importance below the level of the Nazi civil and military leaders who were tried and condemned by the IMT. We will treat the participation of all of the defendants, including Krauch, in the waging of aggressive war later on in this judgment.

With respect to the other defendants, all were further removed from the scene of Nazi governmental activity than was Krauch. Although he was a member of the Vorstand of Farben throughout the entire period of German rearmament and until 1940, he attended no meetings of the Vorstand after 1936 and made no reports either to that body or its subordinate sections or committees concerning his governmental activities. It is unnecessary and would be inappropriate to carry into this judgment a discussion in detail of the evidence for and against each defendant. But it is proper to comment, to a limited extent, with respect to Farben and some of the defendants who appear to have been dominant members of the Vorstand.

The defendant Schmitz was Chairman of the Vorstand from 1935 to 1945. He became Chairman of the Central Committee in 1935. He was actively in attendance at many of the meetings of the Technical Committee and the Commercial Committee. These subdivisions of the Vorstand dealt respectively with technical questions and commercial questions arising out of the over-all administration of the vast Farben organization. As Chairman of the Vorstand he had no special powers. He is frequently described in this record as *primus inter pares*, or, first among equals. His field as an expert was finance, and his opinion with respect to such matters carried great weight with his associates.

In 1933, after Hitler's seizure of power, the heads of many leading enterprises paid formal calls on Hitler. Among them was Bosch, the then chairman of the Vorstand, whom Schmitz later succeeded.

The position of industry at that time is described in the interrogation of Goering (Prosecution Exhibit 58):

"Q. Would Germany have ever entertained this large program of aggression if they had not had full support of the industrialists all the way through?

"A. The industrialists are Germans. They had to support their country.

"Q. Were they forced to do so, or did they do so voluntarily?

"A. They did it voluntarily, but if they would have refused the state would have stepped in.

"Q. Do you think the state would have been strong enough to have forced the big industry into war if it did not want war?

"A. When the call came for war, every industry followed without any difficulty from inner convictions."

On 17 December 1936, at a meeting attended by representatives of various firms, including Farben, Goering threatened industry with seizure by the state if it did not show better cooperation with the Four Year Plan [NI-051, Pros. Ex. 421].

There is a notable dearth of evidence as to important activities engaged in by Schmitz, particularly during the later years covered by the record. In an attempt to show an early alliance between Farben and Hitler, the prosecution points out that Farben made substantial donations to the Nazi Party. In February 1933, representatives of most of the leading industrial firms of Germany met in Goering's house in Berlin. Hitler was present. He had already been nominated Chancellor of the Reich. The purpose of the meeting was to secure the support of the industrialists in the coming Reichstag election. Both Hitler and Goering made speeches outlining Hitler's policies insofar as he disclosed them at that time. At the close of the speeches, Goering sought contributions. Von Schnitzler was the only representative of Farben present at this meeting. Most, if not all, of the firms there represented made substantial contributions to a campaign fund to be used in behalf of parties supporting Hitler. The parties that were to participate in the fund were the National Socialist, the Deutsch-Nationale Volkspartei, and the Deutsche Volkspartei. Farben's share was RM 400,000—one of the largest contributions made to the fund.

This contribution was made to a movement that had its basic origin in the unemployment and general financial chaos of a world-wide depression. This condition was at its worst in Germany. The masses had flocked to Hitler's standard, misled by his promises of more work, food, and shelter. Industry followed and contributed to the new movement. To say that this contribution indicates a sinister alliance, is to misread the facts as they then existed and to draw from

them inferences based upon Hitler's subsequent career. Schmitz, at the time of this meeting and up until 3 March 1933, was in Switzerland, and it does not appear that he had any personal connection with this contribution.

During the period of rearmament, Farben continued to contribute substantial sums to the Nazi Party and to its various allied philanthropic and charitable organizations. In the beginning, these contributions were, no doubt, voluntary. As Hitler's power grew and the Nazi Party became more arrogant, their complexion changed from contributions to exactions. Schmitz, as chairman of the Vorstand, did not display strong resistance to the demands of the Nazi leaders. Neither did he show enthusiasm for cooperation. He apparently heeded the requests and demands of the Reich when that seemed the politic thing to do, even to the extent of honoring suggestions for contributions to various Nazi programs in substantial amounts.

These circumstances, when applied to the defendant Schmitz individually, or to Farben in general, do not justify an inference of knowledge of Hitler's intention to wage aggressive war.

The defendant von Schnitzler was a leading personality in the commercial group of Vorstand members. In 1937, he became chairman of the Commercial Committee. One of the chief responsibilities of this committee was the general supervision of sales of Farben's commodities. This embraced not only matters of domestic sales and finance, but also exports, foreign exchange, and sales agencies in many countries. After German conquests were under way, the Commercial Committee in general and the defendant von Schnitzler in particular were active in expanding the Farben interests into conquered countries. He was the salesman and diplomat of Farben. Von Schnitzler has been in confinement since he was arrested on 7 May 1945. He was interrogated many times during the course of his imprisonment. His utterances, some of great length, appear in forty-five written statements, affidavits and interrogations, a number of which have been introduced in evidence. His counsel sought to have all of these statements stricken upon the ground that they were given under threats, duress, and coercion. He claimed that his client had been mistreated, insulted, and humiliated while in prison, and that this treatment resulted in his mental confusion to the extent that he eagerly cooperated with the interrogators in the hope of better treatment and with considerable disregard in many instances for actual facts. We do not think that the showing discloses such duress as would warrant us in excluding this evidence upon the ground that the statements were involuntary, although the circumstances under which they were given undoubtedly greatly depreciate their probative value. The statements themselves disclose that von Schnitzler was seriously disturbed

and no doubt somewhat mentally confused by the calamities that had befallen Germany, his firm of Farben, and himself personally. He was extremely voluble. He talked and gave statements in writing to his interrogators with seeming eagerness and in such detail as to both facts and conclusions that we regard selected passages that contain seemingly damaging recitals as having questionable evidentiary value. Some of his later statements change and purport to correct former ones. His eagerness to tell his interrogators what he thought they wanted to know and hear is apparent throughout; as, for instance, this statement which has been emphasized by the prosecution: "In June or July 1939, I. G. Farben and all heavy industries well knew that Hitler had decided to invade Poland if Poland would not accept his demands."

Von Schnitzler did not take the witness stand. Pursuant to a ruling of this Tribunal during the course of the trial, his statements are evidence only as to the maker and are excluded from consideration in determining the guilt or innocence of other defendants. Aside from these statements, the evidence against von Schnitzler does not approach that required to establish guilty knowledge. He, like other members of the Vorstand, played a part in Farben's cooperation along with other industries in connection with the Four Year Plan, although, being a specialist in the commercial field, he did not directly participate in the expansion of Farben production. He was particularly concerned with foreign currency and markets. After the outbreak of the war, he approved measures of cooperation between the Intelligence Department of the Army Ordnance Office and Farben agents abroad. We are unable to conclude that either his activities or those of the agents were of particular value in the waging of war. When we sum up all of von Schnitzler's activities, it appears that he was not even remotely connected with the planning, preparation, and initiation of any of Hitler's aggressive wars, and that his support of the war after it broke out did not exceed that of the normal, substantial German citizen and businessman.

Ter Meer was one of the dominant leaders of the Vorstand. His activities were chiefly in the technical field. He was chairman of the Technical Committee (TEA) from 1933 to 1945. He was chief of Sparte II from 1929 to 1945. His was probably the greatest influence of all the Vorstand members in the growth and expansion of Farben production during the 15 years that preceded the collapse of Germany in 1945. Most of Farben's cooperation with the Four Year Plan was technical and, therefore, came within the sphere of ter Meer's activities and influence.

In view of the emphasis that is laid upon participation in the rearmament program as being evidence tending to show knowledge of Hitler's aggressive war intentions, it is remarkable how few contacts

ter Meer had with the Nazi leaders. It would seem that if any member of the Farben Vorstand was permitted to learn of Hitler's intentions, ter Meer should have had access to the circle of power. Not only is there lack of proof that ter Meer had access to knowledge of Hitler's intentions with respect to aggressive war, but certain conduct of Farben in fields in which ter Meer was active are inconsistent with such knowledge. On 1 April 1938, Farben and the Imperial Chemical Industries, the dominant chemical firm of Great Britain, jointly founded a dyestuffs plant in Trafford Park, England. These two firms cooperated in the construction work of this plant until the last days of August 1939. Prior to the outbreak of the war, Farben had begun to build a plant of its own near Rouen, France, for the manufacture of textile auxiliary products. In July 1939, Farben decided to begin pharmaceutical production in France. The war intervened before active steps could be taken to carry out this decision. In 1938 and 1939 substantial amounts of nitrogen were delivered to a British firm in England.

It is asserted that the development of synthetic rubber, a product used by the Wehrmacht to facilitate its movement, was an important step in rearmament and an indication of the defendants' knowledge of Hitler's intentions to wage aggressive war. The value of synthetic rubber as a war potential may not be overlooked. But its value as evidence of criminal knowledge is brought into serious question when the failure of Farben to closely guard the secret of its process is considered. Buna products were exhibited at the Paris World's Fair in 1937. Scientific lectures on this product were given to the International Chemical Congress in Rome in 1938, before a Chemical Industrial Society in Paris in 1939, and also in the same year before the American Chemical Society in Baltimore, Maryland.

Farben arranged with an American firm for testing tires made of synthetic rubber. These tests were continued up until the outbreak of war. Ter Meer planned a trip to America in the fall of 1939 in connection with these tests. He was to be accompanied by the defendants von Knieriem and Ambros, as well as another Farben official. The outbreak of the war interfered with this trip.

In 1938 and subsequent years, Farben concluded sixteen license agreements with American firms. One of these agreements covered a product of war importance, namely, phosphorus. On 1 August 1939, representatives of a Canadian chemical firm were permitted to visit the Ludwigshafen plant of Farben in connection with negotiations for licenses and information concerning the production of ethylene from acetylene. In August 1939, two chemists of the American firm, Carbide & Carbon Chemical Company, were permitted to visit the Farben plant at Hoechst, the Metallgesellschaft, and the Degussa plant in Frankfurt/Main. This conduct on the part of ter Meer and

his associates is inconsistent with knowledge of approaching aggressive war on the part of men who are charged with participating in the preparation for such war.

The indictment charges that Farben, through its foreign economic policy, participated in weakening Germany's potential enemies and that Farben carried on propaganda intelligence and espionage activities for the benefit of the Reich. It is particularly emphasized that Farben entered into many contracts with major industrial concerns throughout the world dealing with various phases of experimentation, production, and markets in fields in which Farben found competition. All of these contracts are lumped under the much-abused term "cartels." Many of these agreements were essential licenses by which Farben permitted foreign firms to manufacture products that were protected by Farben patents. This appears to be a common practice among large business concerns throughout the world, and the fault, if any, would seem to lie with national and international patent law rather than with the firms that avail themselves of the protection which the law affords. Furthermore, we are unable to find the counterpart of the Sherman Anti-Trust Act either in international law or the national statutes of major European powers. It has not been pointed out that any contract made by Farben in and of itself constituted a crime. It is, nevertheless, argued that by virtue of these contracts Farben stifled the industrial development of foreign countries. Agreements between the Standard Oil Company of New Jersey and Farben regarding the development and production of buna rubber in the United States are pointed to as a specific example. The two companies agreed to exchange information regarding the results of their experiments in this field. Farben outstripped its competitors in experimentation and in methods of production. The Reich had financed Farben to a material extent in the development of buna and criticized the contracts which Farben had made. In reply to this criticism, Farben, through the defendant ter Meer, advised the Reich, in substance, that Farben was not complying with its contract in that it was not furnishing to the American concerns the results of its most recent and up-to-date experiments. Ter Meer testified that this communication to the Reich was false and was made for the purpose of avoiding criticism and interference by government officials, and that Farben did, in fact, carry out its contract in good faith. He is supported in the latter statement by the affidavits of two Standard Oil officials who testified as to the great value of the information given by Farben. The record shows no information that was not divulged. It is true that the development of the manufacture of synthetic rubber in the United States did not keep pace with that in Germany. Natural rubber was then available in the United States at a cost

below that of the production of synthetic rubber. We cannot assume, in the absence of more specific evidence, that the failure of the United States to develop the production of synthetic rubber was due to the withholding of information by Farben.

In the field of propaganda, intelligence, and espionage, we find that there was activity on the part of Farben's agents with reference to industrial and commercial matters. German industry and the superiority of German goods were advertised and extolled. Some praise of the German Government appeared from time to time, but we cannot reach the conclusion that the advertising campaigns of Farben were essentially for the purpose of emphasizing Nazi ideology. Neither do we give great significance to the fact that the agents were instructed to avoid advertising in journals hostile to Germany. Such advertising policy would seem compatible with business judgment and would be without political significance. The so-called espionage activities of the Farben agents were confined to commercial matters. These agents from time to time reported to Farben information obtained with regard to industrial and commercial development in fields of Farben business interests, particularly with regard to competitors. There is no evidence of reports concerning military or armament matters. Some of the information received by Farben from its agents was turned over to the Reich officials. The evidence clearly shows that Farben was constantly under pressure to gather and furnish to the Reich information concerning industrial developments and production in foreign countries. Farben's reluctance to comply, even to the full extent of information actually received, indicates a lack of cooperation which negatives participation in a conspiracy or knowledge of plans on the part of Hitler to wage aggressive war.

We have discussed the defendant Krauch, who held certain official positions with both Farben and the Reich; the defendant Schmitz, who was chairman of the Vorstand; the defendant von Schnitzler, who was the leading man in the commercial group of Farben; and the defendant ter Meer, who was the foremost technical expert and who also exerted considerable influence in the administration of affairs of the organization. In each instance we find that they, in more or less important degrees, participated in the rearmament of Germany by contributing to her economic strength and the production of certain basic materials of great importance in the waging of war. The evidence falls far short of establishing beyond a reasonable doubt that their endeavors and activities were undertaken and carried out with the knowledge that they were thereby preparing Germany for participation in an aggressive war or wars that had already been planned either generally or specifically by Adolf Hitler and his immediate circle of Nazi civil and military fanatics.

The remaining defendants, consisting of fifteen former members and four nonmembers of the Vorstand, occupied positions of lesser importance than the defendants we have mentioned. Their respective fields of operation were less extensive and their authority of a more subordinate nature. The evidence against them with respect to aggresssive war is weaker than that against those of the defendants to whom we have given special consideration. No good purpose would be served by undertaking a discussion in this judgment of each specific defendant with respect to his knowledge of Hitler's aggressive aims.

Waging Wars of Aggression

There remains the question as to whether the evidence establishes that any of the defendants are guilty of "waging a war of aggression" within the meaning of Article II, 1, (*a*) of Control Council Law No. 10. This calls for an interpretation of the quoted clause. Is it an offense under international law for a citizen of a state that has launched an aggressive attack on another country to support and aid such war efforts of his government, or is liability to be limited to those who are responsible for the formulation and execution of the policies that result in the carrying on of such a war?

It is to be noted in this connection that the express purpose of Control Council Law No. 10, as declared in its preamble, was to "give effect to the terms of the Moscow Declaration of 30 October 1943, and the London Agreement of 8 August 1945, and the charter issued pursuant thereto." The Moscow Declaration gave warning that the "German officers and men and members of the Nazi Party" who were responsible for "atrocities, massacres and cold-blooded mass executions" would be prosecuted for such offenses. Nothing was said in that declaration about criminal liability for waging a war of aggression. The London Agreement is entitled an agreement "for the Prosecution and Punishment of the Major War Criminals of the European Axis." There is nothing in that agreement or in the attached Charter to indicate that the words "waging a war of aggression," as used in Article II (*a*) of the latter, were intended to apply to any and all persons who aided, supported, or contributed to the carrying on of an aggressive war; and it may be added that the persons indicted and tried before the IMT may fairly be classified as "major war criminals" insofar as their activities were concerned. Consistent with the express purpose of the London Agreement to reach the "major war criminals," the judgment of the IMT declared that "mass punishments should be avoided."

To depart from the concept that only major war criminals—that is, those persons in the political, military, and industrial fields, for example, who were responsible for the formulation and execution of policies—may be held liable for waging wars of aggression, would lead far afield. Under such circumstances there could be no practical

limitation on criminal responsibility that would not include, on principle, the private soldier on the battlefield, the farmer who increased his production of foodstuffs to sustain the armed forces, or the housewife who conserved fats for the making of munitions. Under such a construction the entire manpower of Germany could, at the uncontrolled discretion of the indicting authorities, be held to answer for waging wars of aggression. That would, indeed, result in the possibility of mass punishments.

There is another aspect of this problem that may not be overlooked. It was urged before the IMT that international law had theretofore concerned itself with the actions of sovereign states and that to apply the Charter to individuals would amount to the application of *ex post facto* law. After observing that the offenses with which it was concerned had long been regarded as criminal by civilized peoples, the High Tribunal said: "Crimes against international law are committed by men, not by abstract entities, and only by punishing individuals who commit such crimes can the provisions of international law be enforced." The extension of punishment for crimes against peace by the IMT to the leaders of the Nazi military and government was, therefore, a logical step. The acts of a government and its military power are determined by the individuals who are in control and who fix the policies that result in those acts. To say that the government of Germany was guilty of waging aggressive war but not the men who were in fact the government and whose minds conceived the plan and perfected its execution would be an absurdity. The IMT, having accepted the principle that the individual could be punished, then proceeded to the more difficult task of deciding which of the defendants before it were responsible in fact.

In this case we are faced with the problem of determining the guilt or innocence with respect to the waging of aggressive war on the part of men of industry who were not makers of policy but who supported their government during its period of rearmament and who continued to serve that government in the waging of war, the initiation of which has been established as an act of aggression committed against a neighboring nation. Hitler launched his war against Poland on 1 September 1939. The following day France and Britain declared war on Germany. The IMT did not determine whether the latter were waged as aggressive wars on the part of Germany. Neither must we determine that question in this case. We seek only the answer to the ultimate question: Are the defendants guilty of crimes against peace by waging aggressive war or wars? Of necessity, the great majority of the population of Germany supported the waging of war in some degree. They contributed to Germany's power to resist, as well as to attack. Some reasonable standard must, therefore, be found by which to measure the degree of participation necessary to

constitute a crime against peace in the waging of aggressive war. The IMT fixed that standard of participation high among those who lead their country into war.

The defendants now before us were neither high public officials in the civil government nor high military officers. Their participation was that of followers and not leaders. If we lower the standard of participation to include them, it is difficult to find a logical place to draw the line between the guilty and the innocent among the great mass of German people. It is, of course, unthinkable that the majority of Germans should be condemned as guilty of committing crimes against peace. This would amount to a determination of collective guilt to which the corollary of mass punishment is the logical result for which there is no precedent in international law and no justification in human relations. We cannot say that a private citizen shall be placed in the position of being compelled to determine in the heat of war whether his government is right or wrong, or, if it starts right, when it turns wrong. We would not require the citizen, at the risk of becoming a criminal under the rules of international justice, to decide that his country has become an aggressor and that he must lay aside his patriotism, the loyalty to his homeland, and the defense of his own fireside at the risk of being adjudged guilty of crimes against peace on the one hand, or of becoming a traitor to his country on the other, if he makes an erroneous decision based upon facts of which he has but vague knowledge. To require this of him would be to assign to him a task of decision which the leading statesmen of the world and the learned men of international law have been unable to perform in their search for a precise definition of aggression.

Strive as we may, we are unable to find, once we have passed below those who have led a country into a war of aggression, a rational mark dividing the guilty from the innocent. Lest it be said that the difficulty of the task alone should not deter us from its performance, if justice should so require, here let it be said that the mark has already been set by that Honorable Tribunal in the trial of the international criminals. It was set below the planners and leaders, such as Goering, Hess, von Ribbentrop, Rosenberg, Keitel, Frick, Funk, Doenitz, Raeder, Jodl, Seyss-Inquart, and von Neurath, who were found guilty of waging aggressive war, and above those whose participation was less and whose activity took the form of neither planning nor guiding the nation in its aggressive ambitions. To find the defendants guilty of waging aggressive war would require us to move the mark without finding a firm place in which to reset it. We leave the mark where we find it, well satisfied that individuals who plan and lead a nation into and in an aggressive war should be held guilty of crimes against peace, but not those who merely follow the leaders and whose participations, like those of Speer, "were in aid of the war

effort in the same way that other productive enterprises aid in the waging of war." (IMT judgment, vol. 1, p. 330.)

Conspiracy

We will now give brief consideration to count five, which charges participation by the defendants in the common plan or conspiracy. We have accepted as a basic fact that a conspiracy did exist. The question here is whether the defendants or any of them became parties thereto.

It is appropriate here to quote from the IMT judgment:

> "The prosecution says, in effect, that any significant participation in the affairs of the Nazi Party or Government is evidence of a participation in a conspiracy that is in itself criminal. Conspiracy is not defined in the Charter. But in the opinion of the Tribunal the conspiracy must be clearly outlined in its criminal purpose. It must not be too far removed from the time of decision and of action. The planning, to be criminal, must not rest merely on the declarations of a party program, such as are found in the 25 points of the Nazi Party, announced in 1920, or the political affirmations expressed in '*Mein Kampf*' in later years. The Tribunal must examine whether a concrete plan to wage war existed, and determine the participants in that concrete plan." *

In order to be participants in a common plan or conspiracy, it is elementary that the accused must know of the plan or conspiracy. In this connection we quote from a case cited by both the prosecution and defense, Direct Sales Company *vs.* United States, 319 U. S. 703, 63 S. Ct. 1265. In discussing United States *vs.* Falcone, 311 U. S. 205, 61 S. Ct. 204, 85 L. ed. 128, the Supreme Court of the United States said:

> "That decision comes down merely to this, that one does not become a party to a conspiracy by aiding and abetting it, through sales of supplies or otherwise, unless he knows of the conspiracy; and the inference of such knowledge cannot be drawn merely from knowledge the buyer will use the goods illegally."

Further along in the opinion it is said with regard to the intent of a seller to promote and cooperate in the intended illegal use of goods by a buyer:

> "This intent, when given effect by overt act, is the gist of conspiracy. While it is not identical with mere knowledge that another purposes unlawful action, it is not unrelated to such knowledge. Without the knowledge, the intent cannot exist. (United States *vs.* Falcone, *supra.*) Furthermore, to establish the intent, the evidence of knowledge must be clear, not equivocal. (*Ibid.*)

*Trial of the Major War Criminals, volume I, p. 225.

This, because charges of conspiracy are not to be made out by piling inference upon inference, thus fashioning what, in that case, was called a dragnet to draw in all substantive crimes."

Count five charges that the acts and conduct of the defendants set forth in count one and all of the allegations made in count one are incorporated in count five. Since we have already reached the conclusion that none of the defendants participated in the planning or knowingly participated in the preparation and initiation or waging of a war or wars of aggression or invasions of other countries, it follows that they are not guilty of the charge of being parties to a common plan or conspiracy to do these same things.

We find that none of the defendants is guilty of the crimes set forth in counts one and five. They are, therefore, acquitted under said counts.

THE PRESIDENT: Judge Hebert will continue reading of the judgment.

COUNT TWO

JUDGE HEBERT: *Substance of the Charge*

Under count two of the indictment all of the defendants are charged with the commission of war crimes and crimes against humanity. It is alleged that war crimes and crimes against humanity, as defined by Control Council Law No. 10, were committed in that the defendants, during the period from 12 March 1938 to 8 May 1945, acting through the instrumentality of Farben, participated in the "plunder of public and private property, exploitation, spoliation, and other offenses against property, in countries and territories which came under the belligerent occupation of Germany in the course of its invasions and aggressive wars." The charge recites that the particulars set forth constitute "violations of the laws and customs of war, of international treaties and conventions, including Articles 46–56, inclusive, of the Hague Regulations of 1907, of the general principles of criminal law as derived from the criminal laws of all civilized nations, of the internal penal laws of the countries in which such crimes were committed, and of Article II of Control Council Law No. 10."

The indictment charges that the acts were committed unlawfully, wilfully, and knowingly, and that the defendants are criminally responsible "in that they were principals in, accessories to, ordered, abetted, took a consenting part in, were connected with plans and enterprises involving, and were members of organizations or groups, including Farben, which were connected with the commission of said crimes."

Proceeding from the general findings of the IMT on the subject of plunder and pillage, the indictment further charges:

"Farben marched with the Wehrmacht and played a major role in Germany's program for acquisition by conquest. It used its expert technical knowledge and resources to plunder and exploit the chemical and related industries of Europe, to enrich itself from unlawful acquisitions, to strengthen the German war machine and to assure the subjugation of the conquered countries to the German economy. To that end, it conceived, initiated, and prepared detailed plans for the acquisition by it, with the aid of German military force, of the chemical industries of Austria, Czechoslovakia, Poland, Norway, France, Russia, and other countries."

The particulars of the alleged acts of plunder and spoliation are enumerated in subparagraphs A through F of count two, and need not be repeated here.

The offenses alleged in count two are charged, not only as war crimes, but also as crimes against humanity. By a ruling entered on 22 April 1948, the Tribunal sustained a motion filed by the defense challenging the legal sufficiency of count two, subparagraphs A and B, of the indictment (pars. 90 to 96 inclusive), as applied to the charges of plunder and spoliation of properties located in Austria and in the Sudetenland of Czechoslovakia. The Tribunal ruled that the particulars referred to, even if fully established by the proof, would not constitute crimes against humanity, as the acts alleged related wholly to offenses against property. The immediate ruling of the Tribunal was limited to the Skoda-Wetzler and Aussig-Falkenau acquisitions then under consideration, but the reasoning upon which this portion of the ruling was based is equally applicable to count two of the indictment in its entirety insofar as crimes against humanity are charged.

The Control Council Law recognizes crimes against humanity as constituting criminal acts under the following definition:

"(*c*) *Crimes against Humanity.* Atrocities and offences, including but not limited to murder, extermination, enslavement, deportation, imprisonment, torture, rape, or other inhumane acts committed against any civilian population, or persecutions on political, racial or religious grounds whether or not in violation of the domestic laws of the country where perpetrated."

We adopt the interpretation expressed by Military Tribunal IV in its judgment in the case of the United States of America *vs.* Friedrich Flick, *et al.*, concerning the scope and application of the quoted provision in relation to offenses against property. That Tribunal said:

"* * * The 'atrocities and offenses' listed therein, 'murder, extermination,' et cetera, are all offenses against the person. Property is not mentioned. Under the doctrine of *ejusdem generis* the

catch-all words 'other persecutions' must be deemed to include only such as affect the life and liberty of the oppressed peoples. Compulsory taking of industrial property, however reprehensible, is not in that category. It may be added that the presence in this section of the words 'against any civilian population,' recently led Tribunal III to 'hold that crimes against humanity as defined in Control Council Law No. 10 must be strictly construed to exclude isolated cases of atrocity or persecution whether committed by private individuals or by governmental authority.' (U. S. A. *vs.* Altstoetter *et al*, decided 4 December 1947.) The transactions before us, if otherwise within the contemplation of Law 10 as crimes against humanity, would be excluded by this holding." (*Tr. p. 11013*)*

In accordance with this view, the other particulars of plunder, exploitation, and spoliation, as charged in paragraphs C, D, E, and F of count two of the indictment, will be considered only as charges alleging the commission of war crimes.

It is to be also observed that this Tribunal, in the above-mentioned ruling of 22 April 1948, further held that the particulars set forth in sections A and B of count two, as to property in Austria and the Sudetenland, would not constitute war crimes, as the incidents occurred in territory not under the belligerent occupation of Germany.

We held that, as a state of actual warfare had not been shown to exist as to Austria, incorporated into Germany by the Anschluss, or as to the Sudetenland, covered by the Munich Pact, the Hague Regulations never became applicable. In so ruling, we do not ignore the force of the argument that property situated in a weak nation which falls a victim to the aggressor because of incapacity to resist should receive a degree of protection equal to that in cases of belligerent occupation when actual warfare has existed. The Tribunal is required, however, to apply international law as we find it in the light of the jurisdiction which we have under Control Council Law No. 10. We may not reach out to assume jurisdiction. Unless the action may be said to constitute a war crime as a violation of the laws and customs of war, we are powerless to consider the charges under our interpretation of Control Council Law No. 10, regardless of how reprehensible conduct in regard to these property acquisitions may have been. The situation is not the same here in view of the limited jurisdiction of this Tribunal, as it would be if, for example, the criminal aspects of these transactions were being examined by an Austrian or other court with a broader jurisdiction.

In harmony with this ruling, the charges remaining to be disposed under count two involve a determination of whether or not the proof sustains the allegations of the commission of war crimes by any de-

*See volume VI, this series, pages 1215 and 1216.

fendant with reference to property located in Poland, France, Alsace-Lorraine, Norway, and Russia.

The Law Applicable to Plunder and Spoliation

The pertinent part of Control Council Law No. 10, binding upon this Tribunal as the express law applicable to the case, is Article II, paragraph (1), subsection (*b*), which reads as follows:

"Each of the following acts is recognized as a crime:

* * * * * * *

"(*b*) *War Crimes.* Atrocities or *offences against* persons or *property constituting violations of the laws or customs of war, including but not limited to*, murder, ill treatment or deportation to slave labour or for any other purpose, of civilian population from occupied territory, murder or ill treatment of prisoners of war or persons on the seas, killing of hostages, *plunder of public or private property*, wanton destruction of cities, towns or villages, or devastation not justified by military necessity." (Emphasis supplied.)

This quoted provision corresponds to Article 6, section (*b*) of the Charter of the IMT, concerning which that Tribunal held that the criminal offenses so defined were recognized as war crimes under international law even prior to the IMT Charter. There is consequently no violation of the legal maxim *nullum crimen sine lege* involved here. The offense of plunder of public and private property must be considered a well-recognized crime under international law. It is clear from the quoted provision of the Control Council Law that if this offense against property has been committed, or if the proof establishes beyond reasonable doubt the commission of other offenses against property constituting violations of the laws and customs of war, any defendant participating therein with the degree of criminal connection specified in the Control Council Law must be held guilty under this charge of the indictment.

Insofar as offenses against property are concerned, a principal codification of the laws and customs of war is to be found in the Hague Convention of 1907 and the annex thereto, known as the Hague Regulations.

The following provisions of the Hague Regulations are particularly pertinent to the charges being considered:

"Art. 46. Family honor and rights, individual lives and private property, as well as religious convictions and practice, must be respected. Private property cannnot be confiscated.

"Art. 47. Pillage is formally prohibited.

* * * * *

"Art. 52. Neither requisition in kind nor services can be demanded from communes or inhabitants except for the necessities of the

army of occupation. They must be in proportion to the resources of the country, and of such a nature as not to involve the population in the obligation of taking part in military operations against their own country.

"These requisitions and services shall only be demanded on the authority of the Commander in the locality occupied.

"The requisitions in kind shall, as far as possible, be paid for in ready money; if not, a receipt shall be given and the payment of the amount due shall be made as soon as possible.

"Art. 53. An army of occupation can only take possession of the cash, funds, and property liable to requisition belonging strictly to the State, depots of arms, means of transport, stores and supplies, and, generally, all movable property of the State which may be used for military operations.

"All appliances, whether on land, at sea, or in the air, adapted for the transmission of news, or for the transport of persons or things, apart from cases governed by maritime law, as well as depots of arms and, generally, all kinds of war material, even though belonging to Companies or to private persons, are likewise material which may serve for military individuals, but they must be restored at the conclusion of peace, and indemnities paid for them.

* * * * * * *

"Art. 55. The occupying State shall be regarded only as administrator and usufructuary of the public buildings, real estate, forests, and agricultural works belonging to the hostile State, and situated in the occupied country. It must protect the capital of these properties, and administer it according to the rules of usufruct."

The foregoing provisions of the Hague Regulations are broadly aimed at preserving the inviolability of property rights to both public and private property during military occupancy. They admit of exceptions of expropriation, use, and requisition, all of which are subject to well-defined limitations set forth in the Articles. Where private individuals, including juristic persons, proceed to exploit the military occupancy by acquiring private property against the will and consent of the former owner, such action, not being expressly justified by any applicable provision of the Hague Regulations, is in violation of international law. The payment of a price or other adequate consideration does not, under such circumstances, relieve the act of its unlawful character. Similarly where a private individual or a juristic person becomes a party to unlawful confiscation of public or private property by planning and executing a well-defined design to acquire such property permanently, acquisition under

such circumstances subsequent to the confiscation constitutes conduct in violation of the Hague Regulations.

These broad principles deduced from the Hague Regulations will, in general, suffice for a proper consideration of the acts charged as offenses against property under count two. But the following additional observations are also pertinent to an understanding of our application of the law to the facts established by the evidence.

Regarding terminology, the Hague Regulations do not specifically employ the term "spoliation," but we do not consider this matter to be one of any legal significance. As employed in the indictment, the term is used interchangeably with the words "plunder" and "exploitation." It may therefore be properly considered that the term "spoliation," which has been admittedly adopted as a term of convenience by the prosecution, applies to the widespread and systematized acts of dispossession and acquisition of property in violation of the rights of the owners, which took place in territories under the belligerent occupation or control of Nazi Germany during World War II. We consider that "spoliation" is synonymous with the word "plunder" as employed in Control Council Law No. 10, and that it embraces offenses against property in violation of the laws and customs of war of the general type charged in the indictment. In that sense we will adopt and employ the term spoliation in this opinion as descriptive of the offenses referred to.

It is a matter of history of which we may take judicial notice that the action of the Axis Powers, in carrying out looting and removal of property of all types from countries under their occupation, became so widespread and so varied in form and method, ranging from deliberate plunder to its equivalent in cleverly disguised transactions having the appearance of legality, that the Allies, on 5 January 1943, found it necessary to join in a declaration denouncing such acts. The Inter-Allied Declaration [*NI-11378, Pros. Ex. 1057*] was subscribed to by seventeen governments of the United Nations and the French National Committee. It expressed the determination of the signatory nations "to combat and defeat the plundering by the enemy powers of the territories which have been overrun or brought under enemy control." It pointed out that "systematic spoliation of occupied or controlled territory has followed immediately upon each fresh aggression." It recited that such spoliation:

> "* * * has taken every sort of form, from open looting to the most cunningly camouflaged financial penetration, and it has extended to every sort of property—from works of art to stocks of commodities, from bullion and bank-notes to stocks and shares in business and financial undertakings. But the object is always the same—to seize everything of value that can be put to the aggressors'

profit and then to bring the whole economy of the subjugated countries under control so that they must enslave to enrich and strengthen their oppressors."

The signatory governments deemed it important, as stated in the Declaration, "to leave no doubt whatsoever of their resolution not to accept or tolerate the misdeeds of their enemies in the field of property, however these may be cloaked, just as they have recently emphasized their determination to exact retribution from war criminals for their outrages against persons in the occupied territories." The Declaration significantly concluded that the nations making the declaration reserve all their rights:

> "* * * to declare invalid any transfers of, or dealings with, property, rights and interests of any description whatsoever which are, or have been, situated in the territories which have come under the occupation or control, direct or indirect, of the governments with which they are at war, or which belong, or have belonged, to persons (including juridical persons) resident in such territories. This warning applies whether such transfers or dealings have taken the form of open looting or plunder, or of transactions apparently legal in form, even when they purport to be voluntarily effected."

While the Inter-Allied Declaration does not constitute law and could not be given retroactive effect, even if it had attempted to include and express criminal sanctions for the acts referred to, it is illustrative of the view that offenses against property of the character described in the Declaration were considered by the signatory powers to constitute action in violation of existing international law.

In our view, the offenses against property defined in the Hague Regulations are broad in their phraseology and do not admit of any distinction between "plunder" in the restricted sense of acquisition of physical properties, which are the subject matter of the crime, and the plunder or spoliation resulting from acquisition of intangible property such as is involved in the acquisition of stock ownership, or of acquisition of ownership or control through any other means, even though apparently legal in form.

We deem it to be of the essence of the crime of plunder or spoliation that the owner be deprived of his property involuntarily and against his will. From the provisions of the Declaration which we have quoted, it becomes apparent that the invalidity or illegality of the transaction does not attach, even for purposes of rescission in a civil action, unless the transaction can be said to be involuntary in fact. It would be anomalous to attach criminal responsibility to an act of acquisition during belligerent occupancy when the transaction could not be set aside in an action for rescission and restitution.

It is the contention of the prosecution, however, that the offenses of plunder and spoliation alleged in the indictment have a double aspect. It is broadly asserted that the crime of spoliation is a "crime against the country concerned in that it disrupts the economy, alienates its industry from its inherent purpose, makes it subservient to the interest of the occupying power, and interferes with the natural connection between the spoliated industry and the local economy. As far as this aspect is concerned, the consent of the owner or owners, or their representatives, even if genuine, does not affect the criminal character of the act." In its other aspect it is asserted that the crime of spoliation is an offense "against the rightful owner or owners by taking away their property without regard to their will, 'confiscation,' or by obtaining their 'consent' by threats or pressure."

We cannot deduce from Articles 46 through 55 of the Hague Regulations any principle of the breadth of application such as is embraced in the first asserted aspect of the crime of plunder ad spoliation. Under the Hague Regulations, "Private property must be respected" (Art. 46, Par. 1); "Pillage is formally prohibited" (Art. 47); and, "Private property cannot be confiscated" (Art. 46, Par. 2). The right of requisition is limited to "the necessities of the army of occupation," must not be out of proportion to the resources of the country, and may not be of such a nature as to involve the inhabitants in the obligation to take part in military operations against their country. But with respect to private property, these provisions relate to plunder, confiscation, and requisition which, in turn, imply action in relation to property committed against the will and without the consent of the owner. We look in vain for any provision in the Hague Regulations which would justify the broad assertion that private citizens of the nation of the military occupant may not enter into agreements respecting property in occupied territories when consent of the owner is, in fact, freely given. This becomes important to the evaluation of the evidence as applied to individual action under the concept that guilt is personal and individual. If, in fact, there is no coercion present in an agreement relating to the purchase of industrial enterprises or interests equivalent thereto, even during time of military occupancy, and if, in fact, the owner's consent is voluntarily given, we do not find such action to be violation of the Hague Regulations. The contrary interpretation would make it difficult, if not impossible, for the occupying power in time of war to carry out other aspects of its obligations under international law, including restoration of order to the local economy in the interests of the local inhabitants. (Art. 43, Hague Regulations.) On the other hand, when action by the owner is not voluntary because his consent is obtained by threats, intimidation, pressure, or by exploiting the position and power of the military occupant under circumstances indicating that the owner is being

induced to part with his property against his will, it is clearly a violation of the Hague Regulations. The mere presence of the military occupant is not the exclusive indication of the assertion of pressure. Certainly where the action of private individuals, including juristic persons, is involved, the evidence must go further and must establish that a transaction, otherwise apparently legal in form, was not voluntarily entered into because of the employment of pressure. Furthermore, there must be a causal connection between the illegal means employed and the result brought about by employing such intimidation.

Under this view of the Hague Regulations, a crucial issue of fact to be determined in most of the alleged acts of spoliation charged in count two of the indictment is the determination of whether owners of property in occupied territory were induced to part with their property permanently under circumstances in which it can be said that consent was not voluntary. Commercial transactions entered into by private individuals which might be entirely permissible and legal in time of peace or nonbelligerent occupation may assume an entirely different aspect during belligerent occupation and should be closely scrutinized where acquisitions of property are involved, to determine whether or not the rights of property, protected by the Hague Regulations, have been adhered to. Application of these principles will become important in considering the responsibility of members of the Vorstand of Farben, who are sought to be charged under the indictment, and who did not personally participate in the negotiations or other action leading to the alleged act of spoliation except by virtue of such Vorstand membership.

It can no longer be questioned that the criminal sanctions of international law are applicable to private individuals. The judgment of Military Tribunal IV, United States *vs.* Flick (Case 5) held:

> "The question of the responsibility of individuals for such breaches of international law as constitute crimes has been widely discussed and is settled in part by the Judgment of IMT. It can not longer be successfully maintained that international law is concerned only with the actions of sovereign states and provides no punishment for individuals" (*Tr. p. 10980*).[1]

We quote further:

> "Acts adjudged criminal when done by an officer of the government are criminal also when done by a private individual. The guilt differs only in magnitude, not in quality. The offender in either case is charged with personal wrong and punishment falls on the offender in *propria persona.* The application of international law to individuals is no novelty" (*Tr. p. 10981*).[2]

[1] Volume VI, this series, page 1191.
[2] *Ibid.*, page 1192.

Similar views were expressed in the case of the United States *vs.* Ohlendorf (Case 9), decided by Military Tribunal II. (Cf. transcript of that judgment, pp. 6714–16.)

The IMT, in its judgment, found it unnecessary to decide whether, as a matter of law, the doctrine of "subjugation" by military conquest has application to subjugation resulting from the crime of aggressive war. The doctrine was held to be inapplicable where there are armies in the field still seeking to restore the occupied country to its rightful owners. The Hague Regulations do not become inapplicable because the German Reich "annexed" or "incorporated" parts of the occupied territory into Germany, as there were, within the holding of the IMT which we follow here, armies in the field attempting to restore the occupied countries to their true owners. We adopt this view. It will therefore become unnecessary, in considering the alleged acts of spoliation in Poland and Alsace-Lorraine, to consider this distinction which has been urged by the defense.

To the foregoing observations interpreting the applicable law, added mention should be made of the basic principle that no individual defendant may be held guilty of the war crimes, or any aspect thereof, charged under count two, unless the competent proof establishes beyond reasonable doubt that he knowingly participated in an act of plunder or spoliation because he was either (*a*) a principal, or (*b*) an accessory to the commission of any such crime, or ordered, or abetted the same, or (*c*) took a consenting part therein, or (*d*) was connected with plans or enterprises involving its commission, or (*e*) was a member of an organization or group connected with the commission of any such crime. (Art. II, par. 2, of Control Council Law No. 10.)

One of the general defenses advanced is the contention that private industrialists cannot be held criminally responsible for economic measures which they carry out in occupied territories at the direction of, or with the approval of, their government. As a corollary to this line of argument it is asserted that the principles of international law in existence at the time of the commission of the acts here charged do not clearly define the limits of permissible action. It is further said that the Hague Regulations are outmoded by the concept of total warfare; that literal application of the laws and customs of war as codified in the Hague Regulations is no longer possible; that the necessities of economic warfare qualify and extinguish the old rules and must be held to justify the acts charged in keeping with the new concept of total warfare. These contentions are unsound. It is obvious that acceptance of these arguments would set at naught any rule of international law and would place it within the power of each nation to be the exclusive judge of the applicability of international law. It is beyond the authority of any nation to authorize its citizens

to commit acts in contravention of international penal law. As custom is a source of international law, customs and practices may change and find such general acceptance in the community of civilized nations as to alter the substantive content of certain of its principles. But we are unable to find that there has been a change in the basic concept of respect for property rights during belligerent occupation of a character to give any legal protection to the widespread acts of plunder and spoliation committed by Nazi Germany during the course of World War II. It must be admitted that there exist many areas of grave uncertainty concerning the laws and customs of war, but these uncertainties have little application to the basic principles relating to the law of belligerent occupation set forth in the Hague Regulations. Technical advancement in the weapons and tactics used in the actual waging of war may have made obsolete, in some respects, or may have rendered inapplicable, some of the provisions of the Hague Regulations having to do with the actual conduct of hostilities and what is considered legitimate warfare. But these uncertainties relate principally to military and naval operations proper and the manner in which they shall be conducted. We cannot read obliterating uncertainty into those provisions and phases of international law having to do with the conduct of the military occupant toward inhabitants of occupied territory in time of war, regardless of how difficult may be the legal questions of interpretation and application to particular facts. That grave uncertainties may exist as to the status of the law dealing with such problems as bombings and reprisals and the like, does not lead to the conclusion that provisions of the Hague Regulations, protecting rights of public and private property, may be ignored. As a leading authority on international law has put it:

> "Moreover, it does not appear that the difficulties arising out of any uncertainty as to the existing law have a direct bearing upon those violations of the rules of war which have provided the impetus for the almost universal insistence on the punishment of war crimes. Acts with regard to which prosecution of individuals for war crimes may appear improper owing to the disputed nature of the rules in question arise largely in connection with military, naval and air operations proper. No such reasonable degree of uncertainty exists as a rule in the matter of misdeeds committed in the course of military occupation of enemy territory. Here the unchallenged authority of a ruthless invader offers opportunities for crimes the heinousness of which is not attenuated by any possible appeal to military necessity, to the uncertainty of the law, or to the operation of reprisals." (Lauterpacht, "The Law of Nations and The Punishment of War Crimes," *British Year Book of International Law*,

1944 [Oxford University Press: London, New York, Toronto], p. 75.)

We find sufficient definiteness and meaning in the provision of the Hague Regulations and find that the provisions which we have considered are applicable and operate as prohibitory law establishing the limits beyond which the military occupant may not go.

The General Facts

The judgment of the International Military Tribunal clearly established that the Reich adopted and pursued a general policy of plunder of occupied territories in contravention of the provisions of the Hague Regulations with respect to both public and private property. The IMT found that there was a systematic plunder of public and private property. It found that territories occupied by Germany "were exploited for the German war effort in the most ruthless way, without consideration of the local economy, and in consequence of a deliberate design and policy." Such action was held to be criminal under Article 6 (*b*) of the Charter which, as we have already indicated, corresponds to Article II (1*b*) of Control Council Law No. 10.

Concerning the methods employed, the IMT stated:

> "The methods employed to exploit the resources of the occupied territories to the full varied from country to country. In some of the occupied countries in the East and the West, this exploitation was carried out within the framework of the existing economic structure. The local industries were put under German supervision, and the distribution of war materials was rigidly controlled. The industries thought to be of value to the German war effort were compelled to continue, and most of the rest were closed down altogether. Raw materials and the finished products alike were confiscated for the needs of the German industry. As early as 19 October 1939 the Defendant Goering had issued a directive giving detailed instructions for the administration of the occupied territories * * *"*

The Goering order, which we find unnecessary to quote, was carried out, according to the IMT, so that the resources were requisitioned in a manner out of all proportion to the economic resources of the occupied countries, and resulted in famine, inflation, and an active black market. The IMT further pointed out:

> "In many of the occupied countries of the East and the West, the authorities maintained the pretense of paying for all the property which they seized. This elaborate pretense of payment merely disguised the fact that the goods sent to Germany from these occupied countries were paid for by the occupied countries them-

**Trial of the Major War Criminals*, volume I, p. 329.

selves, either by the device of excessive occupation costs or by forced loans in return for a credit balance on a 'clearing account' which was an account merely in name." *

With reference to the charges in the present indictment concerning Farben's activities in Poland, Norway, Alsace-Lorraine, and France, we find that the proof establishes beyond a reasonable doubt that offenses against property as defined in Control Council Law No. 10 were committed by Farben, and that these offenses were connected with, and an inextricable part of the German policy for occupied countries as above described. In some instances, following confiscation by Reich authorities, Farben proceeded to acquire permanent title to the properties thus confiscated. In other instances involving "negotiations" with private owners, Farben proceeded permanently to acquire substantial or controlling interests in property contrary to the wishes of the owners. These activities were concluded by entering territory that had been overrun and occupied by the Wehrmacht, or was under its effective control. The action of Farben and its representatives, under these circumstances, cannot be differentiated from acts of plunder or pillage committed by officers, soldiers, or public officials of the German Reich. In these property acquisitions which followed confiscation by the Reich, the course of action of Farben clearly indicates a studied design to acquire such property. In most instances the initiative was Farben's. In those instances in which Farben dealt directly with the private owners, there was the ever-present threat of forceful seizure of the property by the Reich or other similar measures, such, for example, as withholding licenses, raw materials, the threat of uncertain drastic treatment in peace treaty negotiations, or other effective means of bending the will of the owners. The power of the military occupant was the ever-present threat in these transactions, and was clearly an important, if not a decisive, factor. The result was enrichment of Farben and the building of its greater chemical empire through the medium of the military occupancy at the expense of the former owners. Such action on the part of Farben constituted a violation of the Hague Regulations. It was in violation of rights of private property, protected by the laws and customs of war and, in the instance involving public property, the permanent acquisition was in violation of that provision of the Hague Regulations which limits the occupying power to a mere usufruct of real estate. The form of the transactions were varied and intricate, and were reflected in corporate agreements well calculated to create the illusion of legality. But the objective of pillage, plunder, and spoliation stands out, and there can be no uncertainty as to the actual result.

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*Ibid., page 240.

As a general defense, it has been urged on behalf of Farben that its action in acquiring a controlling interest in the plants, factories, and other interests in occupied territories was designed to, and did, contribute to the maintenance of the economy of those territories, and thus assisted in maintaining one of the objective aims envisaged by the Hague Regulations. In this regard it is said that the action was in conformity with the obligation of the occupying power to restore an orderly economy in the occupied territory. We are unable to accept this defense. The facts indicate that the acquisitions were not primarily for the purpose of restoring or maintaining the local economy, but were rather to enrich Farben as part of a general plan to dominate the industries involved, all as a part of Farben's asserted "claim to leadership." If management had taken over in a manner that indicated a mere temporary control or operation for the duration of the hostilities, there might be some merit to the defense. The evidence, however, shows that the interests which Farben proceeded to acquire, contrary to the wishes of the owners, were intended to be permanent. The evidence further establishes that the action of the owners was involuntary, and that the transfer was not necessary to the maintenance of the German army of occupation. As the action of Farben in proceeding to acquire permanently property interests in the manner generally outlined is in violation of the Hague Regulations, any individual who knowingly participated in any such act of plunder or spoliation with the degree of connection outlined in Article II, paragraph 2 of Control Council Law No. 10, is criminally responsible therefor.

We will now proceed briefly to record our conclusions as to the major aspects of individual acts of spoliation as established by the proof.

A. Spoliation of Public and Private Property in Poland

We find that the proof establishes beyond reasonable doubt that acts of spoliation and plunder, constituting offenses against property as defined in Control Council Law No. 10, were committed through Farben with respect to three properties located in Poland.

On 7 September 1939, following the invasion of Poland, the defendant von Schnitzler wired Director Krueger of Farben's Directorate in Berlin, requesting that the Reich Ministry of Economics be informed of the ownership status and other facts concerning four important Polish dyestuffs factories which, it was assumed, would fall into the hands of the Germans within a few days thereafter [*NI-8457, Pros. Ex. 1138*]. The plant facilities involved were those of Przemysl Chemiczny Boruta, S. A. Zgierz (Boruta), Chemiczna Fabryka Wola Krzysztoporska (Wola), and Zaklady Chemiczne Winnicy (Winnica). Boruta was the property of, and controlled by, the Polish State; Wola

was owned by a Jewish family by the name of Szpilfogel; and Winnica was ostensibly owned by French interests, but in reality there was a secret 50 percent ownership in IG Chemie of Basel. In actual effect, Farben controlled the latter half interest because of its relationship with the record owner and because it had option rights of purchase with IG Chemie. Farben's interest had been so cloaked at the time of the establishment of Winnica because of Polish restrictions on German capital investments. Farben's half ownership meant it had a legitimate interest to protect but gave no color of right to the dismantling of parts of the Winnica installations.

These three plants, with a fourth plant, Pabjanica (owned by Swiss interests and not here involved), accounted for more than one-half of the Polish dyestuff needs. Von Schnitzler pointed out that the Boruta and Wola were wholly owned by Polish interests and were members of the dyestuffs cartel. He called attention to the considerable and valuable stocks of preliminary, intermediate, and final products in the plants and stated: "Although not wanting to take a position on further operation, we consider it of primary importance that the above-mentioned stocks be used by experts in the interest of German national economy. Only IG is in a position to make experts available." A Farben representative was suggested as the appropriate person for the task.

Shortly thereafter, on 14 September 1939, von Schnitzler and Krueger addressed a letter to the Ministry of Economics confirming a conference of that same date [*NI–2749, Pros. Ex. 1139*]. The letter proposed that Farben be named as trustee to administer Boruta, Wola, and Winnica, to continue operating them, or to close them down, to utilize their supplies, intermediates, and final products. Two Farben employees were recommended as executives for the undertaking. Von Schnitzler affirmatively recommended that Wola be closed down permanently and that Boruta be declared to be of special value to the German war economy as most of the German dyestuffs plants were located in the Western Zone, so that Boruta had a "double value." Replying to von Schnitzler's letter, the Reich Ministry of Economics advised that it had decided to comply with Farben's suggestion and would place Boruta, Wola, and Winnica, located in former Polish territories, now occupied by German forces, under provisional management. The Reich Ministry of Economics was apparently under no illusions as to Farben's acquisitive desires in provoking the provisional administration. It agreed to name the Farben-recommended employees as provisional managers, but specified that such action created no priority rights of purchase for Farben. This exhibit indicates that the action of the Reich authorities in relation to these properties was directly instigated by Farben. Farben's nominees swung into action and took possession of the plants in early October of 1939.

Von Schnitzler next proposed to the Reich authorities by letter on 10 November 1939 that Boruta, on the verge of bankruptcy and without funds for adequate plant equipment, should be leased for 20 years to a Farben subsidiary to be created for that purpose. Wola was to be closed down and its equipment brought to Boruta. Von Schnitzler referred to the necessity for "a certain permanency of conditions," and added that, "if it should be in the interest of the Reich to re-privatize the plant during the 20-year term, Farben should be given priority rights as to purchase." [*NI-8380, Pros. Ex. 1141.*] This letter makes it plain that the purpose and interest of Farben from the outset was permanent acquisition and not temporary operation. Dismantling of certain Winnica equipment and its transfer to Boruta was also recommended. At the end of November 1939, von Schnitzler, by letter, submitted Farben's proposals again to Goering, in his capacity as Plenipotentiary for the Four Year Plan, requesting approval by the Main Trustee Office East of the earlier Farben recommendations. The recommended lease was not executed, and in June 1940 a decision was reached whereby Farben was allowed to purchase Boruta instead of executing a lease. Competition developed for the purchase of the property, and price negotiations were protracted. At the meeting of 4 December 1940, the Farben representatives, who were acting pursuant to von Schnitzler's directions, made it plain that the plant should be acquired by Farben in the interest of the German dyes producers, that the plant must continue operation, and that it must "because of the leadership claim recognized by all official agencies * * * be integrated into the sphere of IG dyestuffs production," an objective which could be achieved only through purchase. In April 1941, von Schnitzler was advised that the Reichsfuehrer SS had decided to allocate Boruta to Farben. The sales contract, signed by von Schnitzler, was finally concluded on 27 November 1941, with Farben acquiring the land, buildings, machinery, equipment, tools, furniture, and fixtures. It is significant that the sale was made operative as of 1 October 1939, the approximate date of the original seizure and operation by the Farben nominees.

The acquisition of the French interests, consisting of 1,006 shares of the stock of Winnica, was arrived at by agreement with the French coincident with the Francolor negotiations, to which reference will be later made. But we cannot find that the French interests were deprived of their ownership against their will and consent on the basis of the meager evidence before us concerning the Winnica stock transfer to Farben. The evidence on the basis of which the transfer of shares was declared invalid by the French court has not been introduced. It would be mere surmise on our part to conclude that the French did not agree to the Farben acquisition, particularly in view of the fact that Farben was already, in practical effect, half owner of the

total shares of Winnica. However, the evidence does establish that, on the recommendation of Farben, equipment from both Wola and Winnica was dismantled and shipped to Farben plants in Germany, which constitutes participation in spoliative activities in Poland.

The foregoing findings make it clear that the permanent acquisition by Farben of productive facilities or interest therein, and the dismantling of plant equipment, was exploitation of territories under belligerent occupation in violation of the Hague Regulations.

B. The Charge of Spoliation With Reference to Norway

We find that offenses against property within the meaning of Control Council Law No. 10 were committed in the acquisition by Farben of property interests in occupied Norway intended to be permanent and against the will and without the free consent of the owners. This finding relates to the Nordisk-Lettmetall project for expansion of the production of light metals in Norway, as a part of which the French shareholders were deprived of their majority stock interest in that company in favor of a German group, including Farben. The initiative in the Nordisk-Lettmetall project was in the Reich authorities, but it is clearly established that Farben joined in the project and that its representatives knew that the power of the Nazi government then occupying Norway was the dominant consideration forcing the French owners of Norsk-Hydro into the project.

The facts, briefly, are these: Following the aggression against and military occupation of Norway, Hitler decided that the Norwegian aluminum capacity should be reserved for the requirements of the Luftwaffe. Goering issued appropriate orders, pursuant to which special powers were entrusted to Dr. Koppenberg, who, in his capacity as trustee for aluminum, was given the task of expanding production of light metals in Norway. The plan was an ambitious one, calling for plant expansions and capital investments on a grandiose scale so as eventually to treble the Norwegian production of light metals. Norsk-Hydro Elektrisk Kvaelstofaktieselskabet (referred to simply as Norsk-Hydro) was one of Norway's most important industrial concerns operating in the chemical and related fields. Its facilities were required for the project, and certain of its plants were to be expanded and properties transferred to accomplish the German objectives. It is plain from the evidence that the immediate German objective was to harness the resources of Norway, including its water power and raw materials, to the ever-increasing demands of the German war machine, particularly for military aircraft. The decision to carry out this project was made at the highest governmental levels, and the entire power of the military occupant was clearly available to carry it out, as the properties of Norsk-Hydro were located in territory under military occupation.

Farben immediately entered into this large-scale planning and fought for as large a capital participation as possible. It may have accepted the Reich nominees as partners reluctantly, but its consenting participation in the project cannot be doubted.

In addition to the immediate purpose of obtaining light metals for the Luftwaffe, Farben's long-term objective was the establishment of permanent German domination of the light-metals industry of Norway, looking to the time when peace would be achieved through Nazi victory.

The controlling stock interest in Norsk-Hydro, amounting to approximately 64 percent of the capitalization, was owned by a group of French shareholders represented by the Banque de Paris et des Pays Bas (referred to as Banque de Paris). The plan finally evolved by the Reich Air Ministry, after numerous conferences in which Farben representatives participated, resulted in creation of a new corporation, Nordisk-Lettmetall, with one-third interest in the Reich Government and its designated agencies, one-third interest in Farben, and one-third interest in Norsk-Hydro. The French owners of Norsk-Hydro did not voluntarily enter the Nordisk-Lettmetall project, but its plant facilities were located in occupied Norway, and the evidence, although conflicting on this point, convinces us that pressure from the Nazi government and fear of compulsory measures affecting its Norwegian holdings were the dominating considerations. In this manner Norsk-Hydro was forced to join in the project, and its properties were heavily damaged in subsequent allied bombings. Norsk-Hydro sustained severe financial losses as a result of the entire project. After joining in the project, Farben was a major participant in its execution. Nordisk-Lettmetall used Norsk-Hydro's facilities in the project, and some of its valuable properties were utilized for plant expansions.

As a part of the over-all plan, the evidence establishes that the Reich authorities deliberately planned to execute the project in such a manner as to deprive Norsk-Hydro's French shareholders of their majority interest in that company. Farben joined too in this aspect of the plan. In order to carry out the wishes of the Nazi government that Norsk-Hydro participate in the Nordisk-Lettmetall project, it became necessary to increase the capitalization of Norsk-Hydro by 50,000,000 Norwegian Kroners. The French shareholders were not represented at the meeting of 30 June 1941, at which the increase in the capital stock and participation in Nordisk-Lettmetall was voted. They were not authorized by the occupying powers to attend. In carrying out the increase in capitalization pursuant to the decision reached at the meeting, the Banque de Paris had no means of effectively protecting the preemptive rights of the French shareholders, because licenses for the clearing of the foreign exchange necessary for participation in the increased capital stock could not be obtained from the Nazi government, France then being under military occupa-

tion. Under the compulsion of these circumstances, the representatives of the French majority of Norsk-Hydro were forced to permit purchase of the preemptive rights in the new Norsk-Hydro stock by the German interests, including Farben and the other nominees of the Reich. In this manner the French majority was converted into a minority interest. We have carefully weighed the conflicting evidence and the defenses of fact urged with respect to this matter. It is our conclusion that the French shareholders were deprived of their majority interest in Norsk-Hydro under compulsion resulting from the ever-present threat of seizure of the physical properties of Norsk-Hydro in occupied Norway and that their participation in Nordisk-Lettmetall was not voluntary. The action was in violation of the Hague Regulations, and those who knowingly became parties to the entire transaction must be held guilty under count two.

C. Plunder and Spoliation in France

1. *Alsace-Lorraine.* Paragraph 111 of the indictment recites:

> "The German Government annexed Alsace-Lorraine, and confiscated the plants located there which belonged to French nationals. Among the plants located in this area were the dyestuffs plant of Kuhlmann's Société des Matières Colorantes et Produits Chimiques de Mulhouse, the oxygen plants, the Oxygene Liquide Strassbourg-Schiltigheim (Alsace), and the factory of the Oxhydrique Francaise in Diedenhofen (Lorraine). Farben acquired these plants from the German Government without payment to or consent of the French owners."

Farben's action in occupied Alsace-Lorraine followed the pattern developed in Poland. The Mulhausen plant of the Société des Produits Chimiques et Matières Colorantes de Mulhouse, located in Alsace, was leased by the German chief of civil administration to Farben on 8 May 1941. The plant had been taken possession of pursuant to the general authorization by the Reich for the confiscation of French property. Farben went into possession even prior to the execution of a lease in its favor for the purpose of starting production again. It is clear from the terms of the lease agreement that temporary operation in the interest of the local economy was not contemplated, and that the lease was purely transitional to permanent acquisition by Farben. It contained express provisions obligating the lessor, the chief of the civil administration in Alsace, representing the Nazi government, to sell the plant and its facilities to Farben as soon as the general regulations and official decrees allowed it. Pursuant to this clause a formal governmental decree of seizure and confiscation, transferring the property to the German Reich, was entered on 23 June 1943. This was followed by the sale on 14 July 1943 to

Farben. It is unnecessary to comment upon the flagrant disregard of property rights established by these facts. The violation of the Hague Regulations is clear and Farben's participation therein amply proven.

In the case of the oxygen and acetylene plants, referred to as Strassbourg-Schiltigheim, similar action was taken by Farben. After first taking a lease, Farben proceeded to, and did, acquire permanent title to the plants following the governmental confiscation which was without any legal justification under international law. In none of these transactions were the rights of the owners considered.

In the case of the Diedenhofen plant, located in Lorraine, the plant was leased to Farben but permanent title was never acquired. Farben urged its claims to purchase upon the occupying authorities, but the German chief of civil administration refused to incorporate a provision for purchase in the lease agreement. For some reason not clear from the evidence, Farben met with difficulty here. The evidence indicates that the plant had been evacuated prior to the Farben operation. This fact, coupled with the attitude of the German authorities and the short term of the lease, leads us to the conclusion that, despite the intention to acquire permanently that was manifested by Farben, the proof does not adequately establish that the owner was deprived of the property permanently, or that its use was withheld contrary to the owner's wishes. We find the evidence insufficient upon which to predicate any criminal guilt with reference to the Diedenhofen plant.

2. *The Francolor Agreement.* Paragraphs 103 through 110 of the indictment charge the defendants with the plunder and spoliation of the principal dyestuffs industries of France by means of the so-called Francolor Agreement. The proof fully sustains the charges outlined in this portion of the indictment. In utter disregard of the rights of the French, Farben, acting principally through the defendants von Schnitzler, ter Meer, and Kugler, proceeded with methods of intimidation and coercion to acquire permanently for Farben a majority interest in a new corporation, "Francolor," which was organized to take over the assets of the French concerns. The facts may be briefly summarized as follows: Three of the major dyestuffs firms of France, prior to the war, were Compagnie Nationale de Matières Colorantes et Manufactures de Produits Chimiques du Nord Reunies Établissements Kuhlmann, Paris (referred to hereinafter as Kuhlmann); Société Anonyme des Matières Colorantes et Produits Chimiques de Saint Denis, Paris (referred to as Saint Denis); and Compagnie Francaise de Produits Chimiques et Matières Colorantes de Saint-Clair-du-Rhône, Paris (referred to as Saint-Clair-du-Rhône). These three firms had cartel agreements with Farben, including the so-called Franco-German Cartel Agreement, entered into

in 1927; the so-called Tri-Partite Agreement, or the Franco-German-Swiss Cartel, concluded in 1929; and the so-called Four-Party Agreement, to which German, French, Swiss, and English groups were parties, entered into in 1932. Under these agreements, a basis of cooperation between the more important producers of dyestuffs on the European Continent had been laid. But in planning for the New Order of the industry, Farben had contemplated and recommended complete reorganization of the industry under its leadership.

Immediately after the French armistice in 1940, Farben conferred with representatives of the occupying authorities and other governmental agencies and deliberately delayed negotiations with the French to make them more receptive to negotiations. In the meantime, Farben's influence with the German occupation authorities was used to prevent the issuance of licenses and to stop the flow of raw materials which would have permitted the French factories to resume their normal prewar production in keeping with the needs of the French economy. When the French plants were unable to resume production and their plight became sufficiently acute, they were forced to request the opening of negotiations. Farben indicated its willingness to confer. A conference was held on 21 November 1940 in Wiesbaden, at which representatives of Farben, the French industry, and the French and German Governments were in attendance. The meeting was under the official auspices of the Armistice Commission. Patently the French knew that they were forced to ascertain in the so-called negotiations what the future fate of the French dyestuffs industry, then at the mercy of the occupying Germans, might be. The meeting of 21 November 1940 was held in this atmosphere [*NI–6727, Pros. Ex. 1246*]. The defendants von Schnitzler, ter Meer, and Kugler were in attendance as principal representatives of Farben. At the outset of the conference the French industrialists were frankly informed that the prewar agreements between Farben and the French producers, which the French wished to use as a basis in the negotiations, must be considered as abrogated owing to the course of the war. Farben's historical claim to leadership, founded upon alleged wrongs traced back to World War I, was asserted as additional reason. In a most high-handed fashion, the German representatives informed the French that the course of events during the preceding year had put matters in an entirely different light, and that there must be an adjustment to the new conditions. A memorandum read by von Schnitzler was presented to the French representatives, in which Farben demanded a controlling interest in the French dyestuffs industry. The German demands, set forth in the Farben memorandum, were vigorously supported by Ambassador Hemmen, who pointed out the grave danger to the French dyestuffs industry if its future should be relegated to settlement by the peace treaty rather than through the medium of the

"negotiations." It is clear that this conference was in no real sense the opening of negotiations between parties free to deal with each other without compulsion. It was rather the perfect setting for the issuance of the German ultimatum to the French dyestuffs industry, which was to be subjected to Farben's control.

The French industry was faced with an unenviable alternative: It could pursue the path of collaboration and surrender, recognizing the plight created by the situation in the light of Farben's demands, or, if it chose to resist, it entailed the risk of perhaps more severe treatment at the hands of the occupying authorities or of future governmental commissions appointed for handling the matter in connection with the negotiation of a treaty of peace. The French feared the exercise of the power of German occupation either to take over the plants completely or to dismantle and cart them away to Germany, in keeping with the pattern that had been established for military occupation by policies of the Third Reich. Notwithstanding these dread alternatives, the French were outspoken and vigorous in their resistance to the German demands. They were, however, astute enough not to break off negotiations completely.

On the following day, 22 November 1940, a second conference was held between representatives of Farben—including von Schnitzler, ter Meer, Waibel and Kugler—and representatives of the French group, with no government officials in attendance. Farben's demands for majority participation and absorption of the French dyestuffs industry were forcefully made at this conference. The French continued their protests. They refused to accept the proposals, but still without breaking off negotiations. In view of the situation, they stated that they would report the matter to the French Government for counsel and advice. They were advised by their government not to break off negotiations because such a step might have serious repercussions. Postponement and delay in the negotiations was in complete harmony with Farben's plan to force the French group into submission. Subsequently a French counterproposal was presented to Farben representatives on 20 January 1941 at a meeting in Paris. This proposal represented the limits beyond which the French hoped not to be compelled to go. It was proposed that there be created a sales combine with a minority interest in Farben, the French holding the majority of the shares. This proposal was rejected by Farben. It did not satisfy the claim to leadership. It became increasingly clear, as the negotiations progressed, that this was a matter which would be settled entirely on Farben's terms. Farben's demand was for outright control of the French dyestuffs industry by 51 percent participation in the stock of a new corporation, Francolor, which was to be formed to take over all of the assets of Kuhlmann, Saint-Clair, and Saint-Denis. Reluctantly the French accepted in principle the German demand for consolidation

of French dyestuffs production in a new company with German participation, but they still protested against, and held out against, Farben's demand for the majority interest. The evidence establishes that, in this regard, they even received support from French governmental authorities. But the French industry's plight was too desperate.

Finally, on 10 March 1941, the Vichy government gave its approval to the plan for the creation of the Franco-German dyestuffs company, Francolor, in which Farben was to be permitted to acquire a controlling 51 percent stock interest. This decision of the Vichy government was announced by the defendant von Schnitzler to the French representatives at a conference on that date. After confirmation of the fact that the officials in charge of economic questions for the French Government supported the position taken by Farben, the French industry was forced to give in. Final agreement was reached at a subsequent conference on 12 March 1941, attended by representatives from the French and German industries involved and by representatives of Military Government in Occupied France.

The Francolor Convention was formally executed on 18 November 1941. It was signed by the defendants von Schnitzler and ter Meer on behalf of Farben. By this convention Farben permanently acquired the controlling interest in the French dyestuffs industry, and paid therefor in shares of IG's stock, which could not be realized upon by the French as they were prohibited by terms of the convention from transferring the shares except among themselves. A decree entered by a French court on 3 November 1945 declared the legal nullity of the transfer of the shares of stock in Francolor to Farben. The transaction, although apparently legal in form, was annulled by virtue of the Inter-Allied Declaration of 5 January 1943 and French decrees based thereon.

The defendants have contended that the Francolor Agreement was the product of free negotiations and that it proved beneficial in practice to the French interests. We have already indicated that overwhelming proof establishes the pressure and coercion employed to obtain the consent of the French to the Francolor Agreement. As consent was not freely given, it is of no legal significance that the agreement may have contained obligations on the part of Farben, the performance of which may have assisted in the rehabilitation of the French industries. Nor is the adequacy of consideration furnished for the French properties in the new corporation a valid defense. The essence of the offense is the use of the power resulting from the military occupation of France as the means of acquiring private property in utter disregard of the rights and wishes of the owner. We find the element of compulsion and coercion present in an aggravated degree in the Francolor transaction, and the violation of the Hague Regulations is clearly established.

Judge Morris will continue with the reading of the judgment.

3. *Rhône-Poulenc.*

JUDGE MORRIS:

There are two aspects of the charges of spoliation in the matter of Rhône-Poulenc. Prior to the war this firm was an important French producer of pharmaceuticals and related products. The first aspect relates to a licensing agreement entered into between Farben and Société des Usines Chimiques Rhône-Poulenc, Paris (referred to as Rhône-Poulenc), and the second aspect relates to the so-called Theraplix Agreement. Under the first agreement substantial sums of money were paid to Farben during the war years on products covered by the licensing agreement and manufactured by the French firm. Under the second agreement Farben eventually acquired a majority interest in a joint sales company operated in the joint interest of IG Bayer and Rhône-Poulenc. It is the contention of the prosecution that both agreements constitute spoliation in that they were entered into unwillingly by the French as a result of pressure applied by Farben during the military occupation of France and as part of Farben's plan to subject the French pharmaceutical industry to its claim to leadership.

The main physical properties involved in the Rhône-Poulenc transactions were situated in the unoccupied zone of France. We need not concern ourselves with the strict nature of these agreements with reference to the acquisition of an interest in physical property. The agreements, in any event, involved the proceeds arising from the production of physical plants located in unoccupied territory. Thus the productive facilities so located were the source of the valuable interests involved in the contracts.

The location of the physical property and plants are of decisive importance in determining whether a case of spoliation might arise from the transactions involved. It is clear that the location of these properties was not in territory under the occupation or immediate control of the Wehrmacht. Farben was not in a position to enlist the Wehrmacht in seizure of the plants, or to assert pressure upon the French under threat of seizure or confiscation by the military. This is disclosed by a report of discussions held in Wiesbaden between the defendant Mann as representative of Farben and officials of the Reich, wherein it is said: "Considerable difficulties will certainly arise from the fact that Rhône-Poulenc is situated in the unoccupied zone, as our chances of gaining control there are very slight. For this reason, Dr. Kolb suggests that we should endeavor to acquire direct influence both in the occupied and unoccupied zones by the exercise of control over the allocations of raw materials." Thus it appears that the pressure sought to be exercised in inducing the French to enter into the agreements involved in these transactions could not have been carried out by military seizure of physical properties. The pres-

sure consisted of a possible threat to strangle the enterprise by exercising control over necessary raw materials. It further appears that Farben asserted a claim for indemnity for alleged infringements of Farben's patents, well knowing that the products were not protected under the French patent law at the time of the infringement. This conduct of Farben's seems to have been wholly unconnected with seizure or threats of seizure, expressed or implied, and while it may be subject to condemnation from a moral point of view, it falls far short of being proof of plunder either in its ordinary concept or as set forth in the Hague Regulations, either directly or by implication.

D. Russia

There can be no doubt that the occupied territories of Russia were systematically plundered in consequence of the deliberate design and policy of the Nazi government. Farben made far-reaching plans to participate in this plunder and spoliation, but the plans laid by Farben did not reach the stage of completion, and we are unable to say from the record before us that any individual defendant has been sufficiently connected with completed acts of plunder in Russia within the meaning of the Control Council Law. Farben, acting through the defendant Ambros, did select and appoint experts to go to Russia to operate the buna rubber plants expected to fall into German hands and urged its priority rights to exploit the Russian processes in the Reich, but these plans did not materialize in any completed act of spoliation established by the proof. The proof leaves no doubt that Farben did not desire to be left out of the exploitation in the East. With this in mind, it participated in plans for the organization of the so-called eastern corporations which were to have an important part in reprivatizing Russian industry. Some of these companies came into existence, but the evidence of their activities is not sufficient to support any finding of guilt in connection therewith. Farben expected to acquire properties in Russia, but it is not shown that there was ever any such acquisition.

Special stress is placed by the prosecution on the activities of the Continental Oil Company,* which was founded prior to the invasion of Russia and in which Farben held a small stock interest. We are not satisfied that Farben ever directed or influenced the activities of the Continental Oil Company in any effective manner and cannot conclude that the mere membership of Krauch and Buetefisch on the Aufsichtsrat, which was not the managing board, in the absence of more complete proof of direct and active participation on their part, constitutes a sufficient degree of participation in the spoliative activities carried out by Continental Oil Company for a finding of guilt under Control Council Law No. 10.

*Kontinentale Oel A. G.

Individual Responsibility

We will now turn to the consideration of the individual responsibility of the defendants for the acts of spoliation which we have described in the above findings. It is appropriate here to mention that the corporate defendant, Farben, is not before the bar of this Tribunal and cannot be subjected to criminal penalties in these proceedings. We have used the term "Farben" as descriptive of the instrumentality of cohesion in the name of which the enumerated acts of spoliation were committed. But corporations act through individuals and, under the conception of personal individual guilt to which previous reference has been made, the prosecution, to discharge the burden imposed upon it in this case, must establish by competent proof beyond a reasonable doubt that an individual defendant was either a participant in the illegal act or that, being aware thereof, he authorized or approved it. Responsibility does not automatically attach to an act proved to be criminal merely by virtue of a defendant's membership in the Vorstand. Conversely, one may not utilize the corporate structure to achieve an immunity from criminal responsibility for illegal acts which he directs, counsels, aids, orders, or abets. But the evidence must establish action of the character we have indicated, with knowledge of the essential elements of the crime. In some instances, individuals performing these acts are not before this Tribunal. In other instances, the record has large gaps as to where or when the policy was set. In some instances, a policy is set without clear indication that essential factual elements required to make it criminal were disclosed. Difficulties of establishing such proof due to the destruction of records or other causes does not relieve the prosecution of its burden in this respect.

One cannot condone the activities of Farben in the field of spoliation. If not actually marching with the Wehrmacht, Farben at least was not far behind. But translating the criminal responsibility to personal and individual criminal acts is another matter. With these preliminary observations our findings as to individual defendants are as follows:

Krauch The evidence does not establish that Krauch was criminally connected with Farben's spoliative acts in Poland. Owing to his position with the government, he was not active in the administrative affairs of Farben after 1936, and he became further removed from the routine management with his appointment to the chairmanship of the Aufsichtsrat in 1940. There is no showing that he had any part in the establishment of the policy pursuant to which Farben acquired the properties in Poland.

With reference to the alleged removal of machine installations from the Simon Pit in Lorraine, it appears that Krauch wrote a letter to the

Military Economy and Armament Office requesting release of machine installations of the Simon Pit in Lorraine to be transferred to Gersthofen. The purpose of the recommendation was to expand electric power needed for the aluminum program, for which Krauch was responsible. This recommendation received Keitel's approval after consideration of the question of whether there was any violation of international law involved. Keitel's decision was communicated to Krauch in favor of the recommendation, and a subordinate of Krauch's was placed in charge of the work. But the evidence does not establish that the dismantling was actually carried out. Under these circumstances, Krauch must be found Not Guilty likewise on this aspect of count two.

In the case of spoliation in Norway, it appears that Krauch acted as a technical advisor after the plans for expansion of light metals production in Norway were under way. Prior to the initiation of the project he had a conference with the defendant Buergin, in which he merely requested that Farben indicate the extent of its desired participation in the project. It does not appear that he took a prominent part in the negotiations, with reference either to the establishment of Nordisk-Lettmetall or the increase in the capital stock of Norsk-Hydro. His connection with the Norway project, in the capacity of a technical expert and adviser to Koppenberg on the type of installations to be established, does not, in our opinion, constitute sufficient participation in the exploitation of the resources of Norway to warrant a finding of guilt.

The evidence is also insufficient to convict Krauch insofar as alleged spoliation in Russia is concerned. It does not appear that any plans to which he may have been a party were carried out at all, nor that he was active in the plunder and spoliation of Eastern Occupied Territory. His activity in connection with the Continental Oil Company is not shown in detail. It must have been on a limited basis, as he was only a member of the Aufsichtsrat, appointed to represent Farben's relatively small capital investment in that company. Under German law, membership on the Aufsichtsrat does not carry with it responsibility for the actual management of the affairs of the corporation.

We find also that the evidence establishes no connection between the charges of spoliation in France and the defendant Krauch. Krauch is acquitted of all charges under count two of the indictment.

Schmitz. The defendant Schmitz was chairman of the Vorstand, was *primus inter pares* of its members, and was the chief financial officer of Farben. His position necessitated that he be consulted on major matters of Farben policy in the interim between meetings of the Vorstand. It is certain that his responsibilities and his opportunities for knowledge went far beyond those of an ordinary Vor-

stand member. Nothwithstanding the position which he held, however, the evidence does not conclusively connect him by any individual personal action on his part with the acts of spoliation in Poland, Alsace-Lorraine, or Russia. It is true that he presided at meetings of the Vorstand and frequently attended other Farben meetings, including those of the Commercial Committee, at which discussions were held, reports were made, action was planned and approved. But examination of the minutes and reports of the meetings fails to disclose anything incriminating as against Schmitz with regard to the mentioned transactions. The evidence, in general, is similar to that relied upon with reference to the other members of the Vorstand. In this respect the evidence is equally consistent with inferences that the acquisitions might have been effected in a legal manner. We are not convinced beyond reasonable doubt of the guilt of the defendant Schmitz in connection with Farben's spoliative activities in Poland or Alsace-Lorraine.

In the matter of the Francolor acquisition, the evidence has been presented on a different basis. Schmitz received minutes of the Wiesbaden meetings, and the evidence further establishes that he was continuously advised of the course of negotiations throughout the various conferences. The information coming to his attention in this manner was sufficient to apprise him of the pressure tactics being employed to force the French to consent to Farben's majority participation in the French dyestuffs industry. He was in a position to influence policy and effectively to alter the course of events. We, therefore, find that Schmitz bore a responsibility for, and knew of, Farben's program to take part in the spoliation of the French dyestuffs industry and, with this knowledge, expressly and impliedly authorized and approved it. Schmitz must be held Guilty on this aspect of count two of the indictment.

In the case of spoliation in Norway, the evidence establishes that Schmitz, in his capacity as chairman of the Vorstand, had special knowledge of the entire project. He received a letter from the defendant Buergin recommending Farben's participation in the project, and such participation was later actually carried out. This could not have been done without his knowledge and approval. Possessing special knowledge of the project, he attended the meeting of the Vorstand on 5 February 1941, at which participation in the Nordisk-Lettmetall project was approved in principle. Reports of conferences with Reich authorities were made to Schmitz. He participated in at least one of these conferences at which there was discussion regarding the steps to be taken in the acquisition of the Norsk-Hydro shares by the German group. He served as a member of the Styre, or governing board, of Norsk-Hydro, both prior to and subsequent to the increase in capitalization. We conclude that Schmitz was fully

informed of the ramifications of the Nordisk-Lettmetall plan, and that his action in expressly or impliedly approving Farben's participation connects him criminally within the meaning of Control Council Law No. 10. Schmitz is found Guilty under count two of the indictment.

Von Schnitzler. Von Schnitzler bears a major responsibility for Farben's spoliative activities in Poland and in France. He was the leading figure responsible for the formulation of Farben's general policy designed to achieve domination of the dyestuffs and chemical industries of Europe. He took the initiative in developing plans for the acquisition of the Polish property. Only 6 days after the invasion of Poland, he recommended that the Reich authorities be approached concerning Farben's operation of Polish dyestuffs factories expected soon to fall into German hands. He urged the appointment of Farben or Farben nominees, as trustees for the Polish factories. He conducted or supervised all negotiations transitional to the final acquisition of Boruta, including transmitting personally the proposals for a long-term lease in favor of a Farben subsidiary to be created for this purpose. He personally signed the contract for the permanent acquisition of Boruta. He recommended that the Wola plant be closed down permanently, and recommended transferring equipment from both Wola and Winnica to Farben plants in Germany. In all these matters he aggressively incited the government to action. These facts are sufficient to demonstrate his guilt in regard to the Polish acquisitions.

The evidence does not establish von Schnitzler's criminal complicity in the acquisition by Farben of properties in Norway, nor is it sufficient to warrant conviction in connection with the charges of spoliation in Alsace-Lorraine.

In the Francolor acquisition, von Schnitzler also played the leading role. He was Farben's chief representative at the meeting with representatives of the French and German Governments and representatives of the French dyestuffs industry. At these meetings methods of intimidation were used as part of a plan to force the French to meet Farben's demands. Von Schnitzler was fully aware of the fact that competent governmental authorities in occupied France had been requested to withhold raw material from the French dyestuff factories, to prevent shipment of goods into the unoccupied zone, and to make things generally difficult for the French in order that they would be willing to negotiate. Von Schnitzler was a party to the plan to delay the opening of negotiations with the purpose of making the plight of the French more desperate in order that they would be receptive to Farben's demands. When negotiations were finally opened at Wiesbaden he was fully aware of the atmosphere of intimidation created by holding the meeting under the auspices of the Armistice Commission.

Thus, von Schnitzler and Kugler, in a letter to Farben representative Kramer, in Paris, said:

> "It is quite obvious that our tactical position towards the French is by far stronger if the first fundamental discussion takes place in Germany and, more particularly, at the site of the Armistice Delegation; and if our program, as outlined, will be presented, so to say, from official quarters." [*NI–15228, Pros. Ex. 2142.*]

He personally served the ultimatum containing Farben's demands, described by the French as a "dictate," on the representatives of the French dyestuffs industry. He subsequently supervised and was appraised of the conference and negotiations conducted by subordinate Farben employees. He personally signed the Francolor Convention, whereby the French dyestuffs industry, in opposition to its wishes, was forced to cede a 51 percent interest in the French industry to Farben. It is clear from this recital of the evidence that von Schnitzler was a party to the illegal acquisition by Farben of permanent property interests in France during belligerent occupation. This constitutes violation of the rights of private property protected by provisions of the Hague Regulations. Von Schnitzler is found Guilty under count two of the indictment.

Gajewski. The defendant Gajewski was not personally active in any of the specific acts of spoliation charged in the indictment. The prosecution's case against him under this count, therefore, depends entirely upon Gajewski's alleged participation in Farben's plunder and spoliation activities predicated upon his regular presence at meetings of the Vorstand, TEA, or other committee groups at which the various acquisitions in occupied countries came up for discussion, planning, information, or approval. It is contended that he knew of and approved such acquisitions constituting spoliative transactions. As we have heretofore indicated, a defendant can be held guilty only if the evidence clearly establishes some positive conduct on his part which constitutes ordering, approving, authorizing, or joining in the execution of a policy or act which is criminal in character. It is essential, in keeping with the concept of personal and individual criminal responsibility, that, when seeking to attach criminality to acts not personally carried out, the action of a corporate officer in authorizing illegal action be done with adequate knowledge of those essential elements of the authorized act which give it its criminal character. With regard to transactions apparently legal in form, this means positive knowledge that the owner is being deprived of his property against his will during military occupancy. We have carefully examined the minutes of the Vorstand and other Farben groups relied upon by the prosecution to establish Gajewski's criminal complicity in the crimes charged under count two, and we cannot find

that his action in approving these transactions constitutes sufficient conduct to warrant a finding of Guilty. The minutes of the Farben groups to which reference has been made are abbreviated in form and, in most instances, merely indicate that a report was made by the responsible Farben official charged with the execution of the project. The extent of the report is not shown. The reports made and distributed and the minutes reflecting discussion and action do not contain sufficient evidence from which it may be conclusively inferred that illegal methods would be used in the negotiations. Nor does it appear from the reports that the transactions were to be concluded without the full consent of the owners. With reference to acquisitions in Poland and Alsace-Lorraine which are connected with unlawful confiscations, the evidence of required knowledge of the facts is not found in the record. One may, in reviewing all this evidence, strongly suspect that much more of the details of the negotiations were actually reported and may have fully apprised Vorstand members that property was being illegally acquired in occupied territories, but suspicion alone does not amount to the requisite proof, as the minutes themselves would be equally consistent with action that would not import criminality. We cannot conclude that Gajewski's conduct in expressly or impliedly approving action reported at Vorstand or other meetings where the property acquisitions here considered were reported upon establishes his guilt under count two beyond a reasonable doubt.

It does not appear from the evidence that Gajewski's activity in the Kodak-Pathé matter resulted in any completed act of spoliation. His action here may have been laying the foundation for such an act, but it was not consummated.

He is acquitted of the charges under this count, as we do not consider that it is proved that he took a part in any criminal action charged in count two.

Hoerlein. There is no substantial evidence connecting the defendant Hoerlein with any of the acts of spoliation charged in the indictment, other than his activity as a member of the Vorstand and the Technical Committee. In this respect, what we have said in general terms in our consideration of the evidence relied upon in the case of the defendant Gajewski is applicable to this defendant. His principal connection under the evidence was in the Rhône-Poulenc transaction, in which it does appear that he had a degree of participation and knowledge which went beyond that of an ordinary Vorstand member. Under the view which we have expressed in our general findings of the facts, the Rhône-Poulenc transaction is not considered by the Tribunal as involving a war crime within its jurisdiction, regardless of how much the transaction might be condemned based on other considerations. We cannot impute criminal guilt to the defendant Hoerlein

from his membership in the Vorstand, and he is acquitted of all of the charges under count two of the indictment.

Von Knieriem. Von Knieriem was not only a member of Farben's Vorstand, he was also the first lawyer in Farben. But the evidence does not establish that he ever acted on any of the matters charged as spoliation in count two. Nowhere does it appear that he was consulted for legal advice in connection with these transactions or that he counselled or aided in their consummation. The one instance of evidence establishing that von Knieriem considered legal problems in occupied territories dealt with corporate problems of an entirely different character from the immediate acquisitions of property with which we are here concerned under the evidence. It is not established that von Knieriem knew of the methods being pursued by Farben in acquiring property against the will and consent of the owners in occupied territories, or that he was in any way a party to the acquisitions in Poland and Alsace-Lorraine. His action in a legal capacity in the establishment of the eastern corporations for possible operations in Russia is not connected with any completed act of spoliation. Von Knieriem is found Not Guilty under count two of the indictment.

Ter Meer. We find that the proof establishes the guilt of the defendant ter Meer under count two of the indictment beyond reasonable doubt. He was prominently connected with the activities of Farben in the acquisition of the Polish property and in the Francolor acquisition. The evidence establishes that ter Meer acted for Farben in the selection of the personnel to operate the plants. There can be no doubt that the initiative in acquiring the Polish property came from Farben, and that ter Meer, as chairman of the Technical Committee, was fully advised in regard to Farben's contemplated action and the course of the negotiations. He issued instructions in connection with the negotiations. He acted with the defendant von Schnitzler in applying for the license to purchase the Boruta plant. We have found no criminality in the Winnica stock acquisition, but the fact that this contract was signed by the defendant ter Meer is indicative of the extent to which he was apprised of, and connected with, the course of action of Farben in Poland. It is clear that ter Meer took a consenting part in Farben's acts of spoliation in Poland, and participated with von Schnitzler throughout this matter.

Ter Meer took a prominent part in the planning for contemplated spoliation in Soviet Russia, but, as we have heretofore indicated, this did not result in any completed spoliative act. Nor is the evidence sufficient in any way to connect the defendant ter Meer with spoliation in the case of Norsk-Hydro.

Ter Meer was a guilty participant in Farben's acquisition of the confiscated Mulhouse plant, as he knew of and tacitly approved the acquisition. He approved the Rhône-Poulenc license agreement,

but, as we have indicated, criminality cannot be predicated on that transaction.

Ter Meer was a leading participant in the Francolor negotiations. He attended the important Wiesbaden meetings at which the Farben demands were served on the French, and at which pressure was used to obtain the consent of the French. He received reports from Farben representatives that were sufficiently in detail fully to apprise him of the course of the negotiations and the tactics being employed. He signed the Francolor Convention. Ter Meer had intimate personal knowledge of the plight of the French industry and was fully aware of Farben's action in gaining the support of the Nazi authorities in making it difficult for the French industry to resume production. We cannot accept the defense that this was a normal business transaction between parties free to negotiate, regardless of mutual clauses contained in the Francolor Convention. Ter Meer's participation in this entire transaction was at the important level of policy-making. He was dictating the terms and acting, along with von Schnitzler, as the responsible Vorstand member handling the matter. He is criminally connected with the Francolor transaction.

We find the defendant ter Meer Guilty under count two of the indictment.

Schneider, Kuehne and Lautenschlaeger. The evidence to support the charges of participation in the spoliation alleged in count two of the indictment is substantially the same in the individual cases of the defendants Schneider, Kuehne, and Lautenschlaeger. It is the contention of the prosecution that these defendants are responsible for, knew of, and approved the program of Farben to acquire, with the aid of force and compulsion, property in occupied territories. It is contended that these defendants, as members of the Vorstand, attended Vorstand meetings, meetings of the Farben committees, and other policy-making groups, at which such action was authorized or approved. It is further contended that they received reports of a character to advise them of the contemplated action. We have carefully examined this evidence. What we have said with reference to the individual responsibility of the defendant Gajewski is applicable here. We do not consider that the evidence has sufficiently established the degree of affirmative action with knowledge of the details importing criminality to warrant a finding of guilt in the case of these three defendants. Each is, therefore, acquitted of the charges under count two of the indictment.

Ambros. The defendant Ambros was a member of Farben's Vorstand during the entire period of World War II. It is the contention of the prosecution that, in that capacity and as a member of the TEA, Ambros participated in planning the spoliation and plunder, and that he affirmatively approved and ratified all of the spolia-

tive acts committed by Farben. The proof as to the action of Ambros is not convincing, even though he was frequently present at the meetings referred to. We cannot find that the evidence connects him with the illegal acquisition of property by Farben. It is true that he was pressing the matter of the operation of the Russian buna plants by Farben experts and demanded that Farben be given exclusive rights with regard to the Russian plants and processes. However, as we have heretofore indicated, the evidence does not establish any completed act of spoliation in Russia in which these defendants were participants. The contemplated spoliation was prevented by the defeat of the German Army in Russia. He was willing to exploit and acquire the Russian plants for Farben, but these plans were not realized. We do not consider that his activities in furthering production in the Francolor plants, following their acquisition by Farben, warrant a finding of guilt.

Ambros is acquitted under count two of the indictment.

Buergin. The evidence establishes that the defendant Buergin was specifically informed concerning plans to have the Boruta plant in Poland taken over by a German corporation organized for that purpose, but he was not personally a participant in the acquisition by Farben of this plant. It is not clearly established that his trip to Poland was directly connected with any of the acts of Farben in acquiring Polish property. The evidence of his report to the Vorstand on the economic conditions and technical efficiency of the plants is not directly linked with subsequent action by Farben. We likewise find that the evidence is insufficient for a finding of guilty against Buergin on the particulars of the indictment charging spoliation in Russia, France, and Alsace-Lorraine.

In the case of Norway, however, Buergin bears special responsibility. He initiated the recommendation for Farben's participation in the aluminum project in Norway and has admitted that permanent participation and acquisition of interests in the Norwegian production of light metals was contemplated. Buergin wrote to Schmitz and ter Meer recommending participation on a large scale in the plan to exploit the Norwegian resources in the interest of light metals production for the Luftwaffe. The recited evidence establishes his guilt under count two. But it does not appear that he was in any way connected with the activities whereby the French shareholders were deprived of their majority interest in Norsk-Hydro. For his participation in the first aspect of spoliation in Norway we find that he is Guilty under count two of the indictment.

Buetefisch. The defendant Buetefisch was a member of Farben's Vorstand, and as such is charged in the indictment with participation in spoliation of the German-occupied territories of Poland, France, Norway, and Soviet Russia. The evidence to support these allega-

tions has been carefully examined. We deem it insufficient to establish that the defendant Buetefisch was directly connected with these spoliative activities, or that he was personally involved therein, within the meaning of Control Council Law No. 10.

Special stress is placed by the prosecution on Buetefisch's connection with the Continental Oil Company which, according to findings of the IMT, was engaged in spoliation activities in occupied territories in the East. Buetefisch was a member of the Aufsichtsrat of Continental Oil Company, but it does not appear from the evidence that he was particularly active in the management of the concern. Nor does it appear that he ordered, authorized, or directed the activities of Continental Oil Company which amounted to spoliation. The evidence does not establish beyond reasonable doubt that Buetefisch is guilty under count two by virtue of his activities in the Continental Oil Company, and he is, accordingly, acquitted of all the charges under this count.

Haefliger. It has been proved that Haefliger, a member of the Vorstand, knew of Farben's proposal that Farben be appointed as trustee for the Polish plants and that, at the suggestion of von Schnitzler, he approached the Ministry of Economics in a preliminary conference on the subject of the Polish plants. The conference was limited, however, to a discussion of the appointment of experts necessary for commercial and technical operations, and the preliminary reaction of the Ministry was unfavorable. Haefliger is not connected by the evidence with any subsequent action of Farben's for acquisition of the Polish plants. Haefliger has testified that he did not know at the time that the plan was to acquire these plants permanently for Farben. We cannot say that it has been proved beyond reasonable doubt that Haefliger was a party to the spoliation and plunder by Farben of the Polish factories. His subsequent action as a member of the Vorstand must be considered on the same basis as the evidence with reference to the other defendants, and would not warrant a finding of guilt.

Haefliger was, however, criminally connected with the plans for the spoliation of Norway. Haefliger reported to the Vorstand on the participation of Farben in the proposed exploitation of the Norwegian resources in the interest of the German war economy. He attended meetings at the Reich Air Ministry at which details of the project and participation therein were planned and discussed. He was fully aware of the nature of the project as an armament expansion program. He knew that the plan contemplated, as a subsidiary detail, the acquisition of the majority shares of the French shareholders. We are convinced beyond reasonable doubt that his activity in relation to this whole matter was on such a comprehensive basis that he knew that Norsk-Hydro was being forced to enter the project involving

use of its facilities during military occupancy in the interest of enemy armament against the will and consent of the owners, and that the French shareholders were not voluntarily parting with their majority interest in Norsk-Hydro. He approved and participated in this course of action.

For his connection with, and participation in the Norwegian enterprise, Haefliger is Guilty under count two of the indictment.

Ilgner. The defendant Ilgner was an active participant in the case of spoliation of Norway and must be held Guilty under count two of the indictment. He was the leading participant in arranging and supervising the various negotiations leading to the Norsk-Hydro agreement, whereby the French shareholders were deprived of their majority interest in favor of a German majority including Farben. He was fully informed concerning the scope of the planned exploitation of the Norwegian economy in the light metals program for the Luftwaffe and joined energetically in the plan. The plan contemplated permanent acquisition by Farben of a substantial interest in the light metals field in Norway. He was thus a participant and party to the plan to force the use of Norsk-Hydro's facilities in the expansion program for German needs, without regard to the needs of Norwegian economy. He was similarly a party to the scheme to utilize the oportunity to establish a German majority in the share ownership of Norsk-Hydro. Ilgner admits that the French were not represented at the meeting of 30 June 1941 at which Norsk-Hydro's participation in Nordisk-Lettmetall and the increase in Norsk-Hydro's capitalization was voted. The evidence establishes that Ilgner took the position that the presence of all the shareholders was not essential for the safeguarding of their rights. Although much conflicting evidence has been introduced on this point, we are convinced that the French shareholders in Norsk-Hydro were not fully advised of the full scope of the Nordisk-Lettmetall project; they never intended to lose the majority interest in Norsk-Hydro, and went along after the full plan developed solely because they feared confiscation of their plants in Norway during the military occupancy. Ilgner himself stated in an affidavit:

> "I do not know in detail the motives which guided the French bank when it agreed to the increase of the capital stock of Norsk-Hydro, by which procedure the French majority interest was reduced to a minority interest. I should say they chose this alternative as the lesser evil, * * * in the last analysis, I. G. Farben participated and advised the bank to agree * * *." [*NI-6348, Pros. Ex. 1209.*]

In our view the evidence establishes beyond reasonable doubt the defendant Ilgner's criminal complicity in the spoliation of Norsk-Hydro, and the defendant Ilgner is Guilty under count two.

We do not find that the evidence establishes beyond reasonable doubt any connection of the defendant Ilgner with the other particulars alleging acts of spoliation under count two.

Jaehne. It is the contention of the prosecution that Jaehne, as leader of Farben's Offenbach plant, participated in the acquisition of the dismantled equipment which was shipped from Wola to that plant. The evidence on this point is conflicting. Subordinate employees testified that Jaehne was not, in fact, informed of the purchase. We have concluded that there is doubt concerning his knowledge of this matter and, as this is the only connection of the defendant Jaehne with Farben's spoliative activities in Poland, he is acquitted on this particular of count two.

But the evidence does establish Jaehne's participation in certain of the negotiations with governmental authorities prior to the acquisition by Farben of the confiscated Alsace-Lorraine oxygen and acetylene plants, in which he obtained agreement in accordance with Farben's wishes. Jaehne was fully informed of, and took a consenting part in, Farben's acts of spoliation in the acquisition of these plants. That it was Farben's purpose from the outset to acquire the plants permanently is fully established by the evidence. The disruption of industry in Alsace-Lorraine may have made it necessary for the occupying authorities to reactivate the plants, but this defense is not available when it is shown clearly that Farben's purpose was the permanent acquisition of the plants and not their mere reactivation in the interest of the local economy. As the matter was stated by Mayer-Wegelin, an employee of Farben's who handled the major part of the negotiations with the Nazi governmental authorities:

> "No negotiations were conducted with these former owners, nor were their interests considered by us. We rather negotiated with the sequestrators appointed by the German Reich. We were indeed aware that the purchase of the real property and of the plants as far as they still existed might be attacked under international agreement. We, therefore, recognized the possibility that at a later time we might have to return the real property * * * In other words; in order to maintain our oxygen position we reached the result that we should assume the risk of having to return the property." [*NI–8581, Pros. Ex. 1238.*]

Jaehne's connection with this matter was such that he must be held criminally responsible under this aspect of count two of the indictment.

There is not sufficient evidence to warrant his conviction under any of the other particulars set forth in count two.

Mann. Mann's activities in relation to the spoliation of Norway and Russia have not been proven in sufficient detail to warrant a finding of criminal guilt on those particulars of count two. He was not

active in the Francolor matter, though the evidence does indicate that Farben's plans to acquire a majority interest in the French dyestuffs industry came to his attention during the course of his preliminary negotiations with the Nazi authorities in France prior to the Rhône-Poulenc transaction. It appears that his connection with the Francolor matter was only incidental to his major interest and activity in the Rhône-Poulenc matter. His other knowledge and his activity as a member of Farben's Commercial Committee and as a member of the Vorstand are likewise insufficient for a finding of guilt. What we have said in the case of the defendant Gajewski in this regard is equally applicable to the case of Mann. As the Rhône-Poulenc transactions, in which he was the leading actor, do not constitute a crime within the jurisdiction of this Tribunal, and as the evidence does not otherwise connect him with other acts declared to be criminal, Mann is acquitted under count two of the indictment.

Oster. The actions of Oster, with reference to the charges under this count as to Poland, Alsace-Lorraine, and France, cannot be differentiated from those of other members of the Vorstand, who, for lack of sufficient knowledge of the complete facts, cannot be considered as participating in ordering or authorizing a course of action known to be criminal. The prosecution, however, charges Oster with special responsibility for his activities in connection with the case of spoliation in Norway. It appears that Oster served as a member of the Aufsichtsrat of Norsk-Hydro after the Nordisk-Lettmetall project was inaugurated, and that from meetings of the Vorstand and other reports which he received he was informed of the general nature and purpose of the program for the expansion of light metals in Norway by the use of the facilities of Norsk-Hydro in the interest of production for the Luftwaffe. The evidence does not bear out the theory of the prosecution that the defendant Oster was personally a party to putting pressure on Norsk-Hydro, or even that he dealt with its officials with duplicity. In fact, Dr. Ericksen has given a testimonial of Oster's friendly attitude in the entire matter. However, the proof establishes that Oster knew that the project was being carried out against the wishes of Norsk-Hydro, and that Farben was acquiring permanent interests in properties of Norsk-Hydro through the Nordisk-Lettmetall project and as a result of the compulsion of the military occupancy. With his knowledge he approved Farben's participation in the project. He is guilty, therefore, under count two of the indictment.

Wurster. Immediately after the collapse of Poland, Wurster made a trip to Poland accompanied by an official of the Reich Office for Economic Development, for the purpose of inspecting Polish chemical plants. He submitted a memorandum report in a letter to the defendant Buergin, analyzing conclusions reached during the inspection trip.

The report expressed conclusions as to the future value of these plants to the German economy and for military purposes, recommending in some instances continued operation and in other cases dismantling of certain plant facilities. But it is not established that this report was the basis of official action taken either by the Reich authorities in the East or by Farben with respect to these properties. We are unable to say that this action, standing alone, supports a finding of guilty under count two in regard to the Polish properties.

With reference to Alsace-Lorraine, the evidence does establish that Wurster had conferences with various persons concerning the utilization of plant facilities in Alsace-Lorraine. Some of these plants were closed down and abandoned. The evidence is by no means clear that any activities of Wurster resulted in effecting the transfer of property to IG control or ownership. The evidence fails to prove that Wurster himself ever dealt with any of the authorities to promote Farben's acquisition of these plants. Here a reasonable doubt enters, and we cannot find that Wurster's approach to the authorities was with a view to purchasing those plants for Farben.

We find that Wurster is not substantially involved in any of the acts charged in this count.

The defendant Wurster is, therefore, Not Guilty under count two of the indictment.

Duerrfeld, Gattineau and von der Heyde. Four of the defendants—namely, Duerrfeld, Gattineau, von der Heyde, and Kugler—were not members of the Vorstand of I. G. Farben.

The evidence does not establish any connection between the activities of the defendant Duerrfeld and the offenses against property charged in this count. We, therefore, find that the defendant Duerrfeld is Not Guilty under count two of the indictment.

The defendant Gattineau is likewise Not Guilty. The acts of alleged spoliation with which he was intimately connected all related to his activities in the Austrian and Czechoslovakian acquisitions which, under the ruling of the Tribunal above referred to, were held not to constitute crimes against humanity or war crimes within the jurisdiction of this Tribunal. Gattineau's mere presence at Commercial Committee meetings, at which reports were made concerning the Rhône-Poulenc negotiations, and his other general activities in the commercial field as an employee of Farben's, are insufficient participation upon which to predicate a finding that he is guilty under the spoliation count.

In its final brief, the prosecution concedes that the evidence has not established beyond a reasonable doubt the guilt of the defendant von der Heyde under the charges in count two. We fail to find any substantial evidence of connecting von der Heyde with the charges. He is acquitted under count two.

Kugler. Although not a member of Farben's Vorstand, Kugler was a member of the Commercial Committee and was an active Farben leader in the dyestuffs field. We find that the proof does not establish beyond a reasonable doubt sufficient connection of the acts of the defendant Kugler with Farben's acts of spoliation in Poland and Alsace-Lorraine to justify a finding of guilt based on those particulars of the indictment. But Kugler was an active participant, as one of the representatives of Farben, in the negotiations and other steps leading to the Francolor Agreement. It is true that he did not act independently in this matter and was under the direction of two Vorstand members, von Schnitzler and ter Meer, both of whom had authority and policy-making functions far superior to those of Kugler. He participated in the preliminary discussions with the Armistice Commission and in the meetings at Wiesbaden in November 1940, at which the Farben demands were served on the French dyestuffs representatives and pressure was exerted to force the French to agree to Farben's desire for a 51 percent interest in the French industry. It was Kugler who arranged with the authorities during the military occupation that pressure should be applied, and who obtained support for the suggestion "that no alleviations are offered to production which might weaken the opponent's will to negotiate." Kugler was fully advised of all of the steps taken and knew that the Francolor Agreement was being imposed on the French against their will and without their free consent. He participated in the meeting at which the Francolor Agreement was reached and subsequently served on one of the important committees of Francolor. While he was not the dominant figure initiating the policies leading to the unlawful acquisitions, he was criminally connected with the execution of the entire enterprise and must be held Guilty under count two.

COUNT THREE

THE PRESIDENT: Count three charges the defendants, individually, collectively, and acting through the instrumentality of Farben, with the commission of war crimes and crimes against humanity as defined by Article II of Control Council Law No. 10. It is alleged that they participated in the enslavement and deportation to slave labor of the civilian population of territory under the belligerent occupation or otherwise controlled by Germany; the enslavement of concentration-camp inmates, including Germans; and the use of prisoners of war in war operations and work having a direct relation to war operations. It is further alleged that enslaved persons were mistreated, terrorized, tortured, and murdered.

The general charge is followed by a statement of particulars, consisting of twenty-two numbered paragraphs. From these it appears that, to sustain this count of the indictment, the prosecution relies

upon four groups of alleged facts characterized as follows: (*a*) the role of Farben in the slave-labor program of the Third Reich; (*b*) the use of poison gas, supplied by Farben, in the extermination of inmates of concentration camps; (*c*) the supplying of Farben drugs for criminal medical experimentation upon enslaved persons, and (*d*) the unlawful and inhumane practices of the defendants in connection with Farben's plant at Auschwitz. These aspects of the case will be given due consideration in the course of this subdivision of the judgment, but not in the order stated.

Poison Gas

The indictment charges in paragraph 131 that "Poison gases * * * manufactured by Farben and supplied by Farben to officials of the SS, were used in * * * the extermination of enslaved persons in concentration camps throughout Europe." In substantiation of this charge the prosecution established that Cyclon-B gas was supplied to concentration camps in large quantities for extermination purposes by Deutsche Gesellschaft fuer Schaedlingsbekaempfung, commonly called Degesch, in which Farben had a 42.5 percent interest, and that said firm had an administrative committee or supervisory board consisting of 11 members, including the defendants Mann, Hoerlein, and Wurster. The connection of the defendants with these transactions will, therefore, bear more careful scrutiny.

Cyclon-B, which had wide use as an insecticide long before the war, was invented by Dr. Walter Heerdt, who appeared before the Tribunal as a witness. The proprietary rights to Cyclon-B belonged to the firm of Deutsche Gold- und-Silberscheideanstalt, commonly called Degussa, but actual manufacture was performed for it by two independent concerns. Degussa was a competitor of Farben's and of the Th. Goldschmidt A. G. in the production and sale of insecticides. Degussa had, for a long time, sold Cyclon-B through the instrumentality of Degesch, which it dominated and controlled. Degussa, Goldschmidt and Farben, therefore, entered into an arrangement with Degesch whereby it became the sales outlet for insecticides and related products for all three concerns. As already pointed out, Farben took a 42.5 percent interest in Degesch. The remaining shares in the concern were divided, 42.5 percent to Degussa and 15 percent to Goldschmidt. The management of Degesch was the direct responsibility of Dr. Gerhard Peters, but the firm had an executive board of 11 members—5 from the Farben Vorstand (the defendants Mann, Hoerlein, and Wurster, together with Brueggemann, who was severed from this trial, and Weber-Andreae, deceased), 4 from Degussa, 1 from Goldschmidt, and Dr. Heerdt, who was connected with a Degesch subsidiary. The defendant Mann was the chairman of the board. Degesch had originally been organized as an outlet for Degussa prod-

ucts exclusively. Even after Farben and Goldschmidt acquired participating interests in the firm it continued to maintain its headquarters in the Degussa building. Its office staff was recruited from and compensated on the same basis as Degussa personnel.

The evidence does not warrant the conclusion that the executive board or the defendants Mann, Hoerlein, or Wurster, as members thereof, had any persuasive influence on the management policies of Degesch or any significant knowledge as to the uses to which its production was being put. Meetings of the board were infrequent and the reports submitted to the members thereof were not very enlightening. It seems fair to conclude that the board's principal function was to recognize the financial investments of the participating stockholders and that operational policies were largely left to Dr. Peters, subject only to the general supervision of Degussa's executives with whom he was in close contact.

The proof is quite convincing that large quantities of Cyclon-B were supplied to the SS by Degesch and that it was used in the mass extermination of inmates of concentration camps, including Auschwitz. But neither the volume of production nor the fact that large shipments were destined to concentration camps would alone be sufficient to lead us to conclude that those who knew of such facts must also have had knowledge of the criminal purposes to which this substance was being put. Any such conclusion is refuted by the well-known need for insecticides wherever large numbers of displaced persons, brought in from widely scattered regions, are confined in congested quarters lacking adequate sanitary facilities.

The testimony of Dr. Peters is highly important on the issue of the defendants' guilty knowledge. He related the details of a conference that he had in the summer of 1943 with one Gerstein, introduced by Professor Mrugowsky, director of the health institute of the notorious Waffen SS. After swearing Dr. Peters to absolute secrecy under penalty of death, Gerstein revealed the Nazi extermination program which he said emanated from Hitler through Himmler. There followed a long conference concerning the efficacy of different methods of extermination, including the use of Cyclon-B for that purpose. Dr. Peters stated emphatically that he was thereafter extremely careful to observe the admonition to treat this conference as Top Secret, and he negatived the assumption that any of the defendants had any knowledge whatever that an improper use was being made of Cyclon-B.

We are of the opinion that the evidence falls short of establishing the guilt of any of the defendants on this aspect of count three.

Medical Experiments

It is further charged under count three (subsec. B of par. 131) of the indictment that "* * * various deadly pharmaceuticals manu-

factured by Farben and supplied by Farben to officials of the SS were used in experimentations upon * * * enslaved persons in concentration camps throughout Europe. Experiments on human beings (including concentration-camp inmates) without their consent were conducted by Farben to determine the effect of * * * vaccines and related products."

The prosecution asserts, and it asks us to find, that the defendants Lautenschlaeger, Mann, and Hoerlein each participated in supplying Farben pharmaceuticals and vaccines to the SS for the purpose of having them tested, knowing that the tests would be conducted by medical experimentations upon concentration-camp inmates without their consent; that each of said defendants took the initiative in getting Farben products tested by the SS through the means of criminal medical experiments; and that these criminal medical experiments resulted in bodily harm and death to a number of persons.

We may say, without further elaboration, that the evidence has convinced us that healthy inmates of concentration camps were deliberately infected with typhus against their will and that drugs produced by Farben, which were thought to have curative value in combating said disease, were administered to such persons by way of medical experimentation, as a result of which many of such persons died. That such practices are criminal and a violation of international law was conclusively determined by United States Military Tribunal I in the case of the United States *vs.* Brandt, *et al.* Our problem is, therefore, that of saying whether the evidence establishes beyond a reasonable doubt that the defendants, or any of them, "were principals in, accessories to, ordered, abetted, took a consenting part in, were connected with plans and enterprises involving, (or) were members of organizations or groups, including Farben, which were connected with, the commission of said crimes," as charged in the indictment.

We deduce from the evidence that typhus or spotted fever is communicated to a human being by the bite of a louse. There is always danger of an epidemic of this disease where a large number of persons are thrown together amid unsanitary conditions, such as are frequently found on army fronts and in concentration camps. Typhus first made its appearance on the Eastern Front during the war, and the responsible officials of Germany were very apprehensive that it would spread to the civilian population. Desperate efforts were made, therefore, to find a remedy that would cure the disease or at least immunize against it. At the time this problem became acute, the generally recognized method of producing an efficient typhus immunization vaccine was the so-called Weigl process. This vaccine was developed from the intestines of infected lice, and a skilled scientist could only produce in 1 day enough of it to treat ten persons.

There was, consequently, an urgent need for finding a way to greatly expand the production of this substance.

For several years previously Farben's Behring-Werke, among others, had been experimenting with the possibility of breeding typhus baccilli in chicken eggs, and a process based on that idea had been developed, whereby a trained technician could in a single day produce enough vaccine to treat 15,000 persons. This vaccine lacked scientific verification and acceptance by the medical profession, however, and Farben was extremely anxious to win this recognition for its product. To that end it participated in conferences with governmental health agencies and urged that its product be tested and accepted.

Through the years Farben had developed a more or less routine method for testing the efficacy of its pharmaceutical discoveries after these had passed the research stage. If it was believed that a new drug had probable medicinal value and that it could be used without harmful results, samples were sent to recognized physicians for testing on patients afflicted with the particular disease with which the remedy was designed to cope. These physicians, in turn, submitted detailed reports covering their experiences with the drug, after which Farben scientists assembled and studied this data and concluded therefrom whether the firm would sponsor the product and place it on the market. The prosecution does not deny that this was the procedure generally followed by Farben. It asserts, however, that the circumstances surrounding the testing of Farben's vaccine, as well as with respect to its acridine, rutenol, and methylene blue, in combating typhus discloses that the defendants Hoerlein, Lautenschlaeger, and Mann, in particular, well knew that concentration-camp inmates were being criminally infected with the typhus virus by SS doctors for the deliberate purpose of conducting experiments with these Farben products.

The facts and circumstances principally relied upon by the prosecution to establish guilty knowledge on the part of said defendants may be summarized as follows: (1) criminal experiments were admittedly conducted by SS physicians on concentration-camp inmates; (2) said experiments were performed for the specific purpose of testing Farben products; (3) some of said experiments were conducted by physicians to whom Farben had entrusted the responsibility of testing the efficacy of its drugs; (4) the reports made by said physicians were calculated to indicate that illegal experiments had been conducted; and (5) drugs were shipped by Farben directly to concentration camps in such quantities as to indicate that these were to be used for illegitimate purposes.

Without going into detail to justify a negative factual conclusion, we may say that the evidence falls short of establishing the guilt of said defendants on this issue beyond a reasonable doubt. The infer-

ence that the defendants connived with SS doctors in their criminal practices is dispelled by the fact that Farben discontinued forwarding drugs to these physicians as soon as their improper conduct was suspected. We find nothing culpable in the circumstances under which quantities of vaccines were shipped by Farben to concentration camps, since it was reasonable to suppose that there was a legitimate need for such drugs in these institutions. The question as to whether the reports submitted to Farben by its testing physicians disclosed that illegal uses were being made of such drugs revolves around a controversy as to the proper translation of the German word "Versuch" found in such reports and in the documents pertaining thereto. The prosecution says that "Versuch" means "experiment" and that the use of this word in said reports was notice to the defendants that testing physicians were indulging in unlawful practices with such drugs. The defendants contend, however, that "Versuch," as used in the context, means "test" and that the testing of new drugs on sick persons under the reasonable precautions that Farben exercised was not only permissible but proper. Applying the rule that where from credible evidence two reasonable inferences may be drawn, one of guilt and the other of innocence, the latter must prevail, we must conclude that the prosecution has failed to establish that part of the charge here under consideration.

Farben and the Slave-Labor Program

The prosecution does not contend that Farben instituted a slave-labor program of its own. On the contrary, it is the theory of the prosecution that the defendants, through the instrumentality of Farben and otherwise, embraced, adopted, and executed the forced-labor policies of the Third Reich, thereby becoming accessories to and taking a consenting part in the commission of war crimes and crimes against humanity in violation of Article II of Control Council Law No. 10. This, therefore, calls for a brief resumé of the slave-labor program of the Reich Government during the war years. For this purpose we may rely upon the judgment of the IMT, since Article X of Military Government Ordinance No. 7 provides that, before these Tribunals, the "statements by the International Military Tribunal in the judgment in Case No. 1 constitute proof of the facts stated, in the absence of substantial new evidence to the contrary." The findings of the IMT with respect to the criminal character of the slave-labor program of the Third Reich were not challenged in this trial.

From the judgment of the IMT, we may deduce that by the end of 1941 Germany had achieved effective dominion over territories with an aggregate population of 350,000,000 people. In the early stages of the war an effort was made to obtain, on a voluntary basis, sufficient foreign workers for German industry and agriculture to replace those who were drafted into military service, but by 1940

this system had failed to produce enough workers to maintain the volume of production deemed necessary for the prosecution of the war. The compulsory deportation of laborers to Germany was then begun and, on 21 March 1942, Fritz Sauckel was appointed Plenipotentiary General for the Utilization [Allocation] of Labor, with authority over "all available manpower, including that of workers recruited abroad, and of prisoners of war." From that time on, the Nazi slave-labor program was prosecuted with unrelenting cruelty and persistence. The IMT said that "Manhunts took place in the streets, at motion picture houses, even at churches and at night in private houses" [1] of occupied countries, to meet the ever-increasing demands of the Reich for human labor. At least 5,000,000 persons were forcibly deported from the occupied territories to Germany to support its war efforts.

The vast reservoir of slave laborers utilized by the Nazis included involuntary foreign workers, concentration-camp inmates, and prisoners of war. Many of these were used in activities connected with military operations against their own countries, in direct violation of express international law, as well as in general industry and in agricultural pursuits. The plan under which this comprehensive scheme was implemented and administered is disclosed by the following quotation from the IMT judgment:

> "A Sauckel decree dated 6 April 1942, appointed the Gauleiters as Plenipotentiaries for Labor Mobilization for their Gaue [districts] with authority to coordinate all agencies dealing with labor questions in their Gaue, with specific authority over the employment of foreign workers, including their conditions of work, feeding, and housing. Under this authority the Gauleiters assumed control over the allocation of labor in their Gaue, including the forced laborers from foreign countries. In carrying out this task the Gauleiters used many party offices within their Gaue, including subordinate political leaders." [2]

On 20 April 1942 Sauckel issued the following instructions concerning the treatment of laborers:

> "All the men must be fed, sheltered and treated in such a way as to exploit them to the highest possible extent at the lowest conceivable degree of expenditure." [3]

During the course of the war the main Farben plants, in common with German industry generally, suffered a serious labor depletion, on account of demands of the military for men to serve in the armed forces. Charged with the responsibility of meeting fixed production quotas, Farben yielded to the pressure of the Reich Labor Office and

[1] *Trial of the Major War Criminals*, volume I, page 259.
[2] *Ibid.*
[3] *Ibid.*, page 245.

utilized involuntary foreign workers in many of its plants. It is enough to say here that the utilization of forced labor, unless done under such circumstances as to relieve the employer of responsibility, constitutes a violation of that part of Article II of Control Council Law No. 10 which recognizes as war crimes and crimes against humanity the enslavement, deportation, or imprisonment of the civilian population of other countries. What we have said about the employment of involuntary foreign laborers is equally applicable to prisoners of war and inmates of concentration camps.

The Defense of Necessity

The defendants here on trial have invoked what has been termed the defense of necessity. They say that the utilization of slave labor in Farben plants was the necessary result of compulsory production quotas imposed upon them by the government agencies, on the one hand, and the equally obligatory measures requiring them to use slave labor to achieve such production, on the other. Numerous decrees, orders, and directives of the Labor Office have been brought to our attention, from which it appears that said agency assumed dictatorial control over the commitment, allotment, and supervision of all available labor within the Reich. Strict regulations prescribed almost every aspect of the relationship between employers and employees. Industries were prohibited from employing or discharging laborers without the approval of the agency. Heavy penalties, including commitment to concentration camps and even death, were set forth for violation of these regulations. The defendants who were involved in the utilization of slave labor have testified that they were under such oppressive coercion and compulsion that they cannot be said to have acted with that intent which is a necessary ingredient of every criminal offense.

The existence of the stringent regulations of the Reich labor authorities must be conceded; and this requires us to inquire what opportunity, if any, the defendants had of evading them and what the consequences would have been if they should have attempted to do so. Again, we turn to the judgment of the IMT for the facts. A few of the ultimate conclusions stated therein will serve our purpose. We quote the following brief excerpts from that judgment:

> "According to the principle (the leadership principle of the NSDAP), each Fuehrer has the right to govern, administer, or decree, subject to no control of any kind and at his complete discretion, subject only to the orders he received from above." *
>
> * * * * * * *

*Ibid., page 176.

(The Reichstag fire of 28 February 1933) "was used by Hitler and his Cabinet as a pretext for * * * suspending the constitutional guarantees of freedom." [1]

* * * * * * *

"* * * a series of laws and decrees were passed which reduced the powers of regional and local governments throughout Germany, transforming them into subordinate divisions of the Government of the Reich." [2]

* * * * * * *

"* * * the judiciary was subjected to control * * * Persons were arrested by the SS for political reasons, and detained in prisons and concentration camps * * * the judges were without power to intervene in any way." [3]

* * * * * * *

"Independent judgment, based on freedom of thought, was * * * quite impossible." [4]

* * * * * * *

"Germany had accepted the dictatorship with all its methods of terror, and its cynical and open denial of the rule of law." [5]

* * * * * * *

"Hostile criticism, indeed criticism of any kind, was forbidden, and the severest penalties were imposed on those who indulged in it." [6]

* * * * * * *

"The opportunity was taken to murder a large number of people who at one time or another had opposed Hitler." [7]

In view of these indisputable facts, established by the highest authority, this Tribunal is not prepared to say that these defendants did not speak the truth when they asserted that in conforming to the slave-labor program they had no other choice than to comply with the mandates of the Hitler government. There can be but little doubt that the defiant refusal of a Farben executive to carry out the Reich production schedule or to use slave labor to achieve that end would have been treated as treasonous sabotage and would have resulted in prompt and drastic retaliation. Indeed, there was credible evidence that Hitler would have welcomed the opportunity to make an example of a Farben leader.

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[1] *Ibid.*, page 178.
[2] *Id.*
[3] *Ibid.*, page 179.
[4] *Ibid.*, page 182.
[5] *Ibid.*, page 181.
[6] *Ibid.*, page 182.
Ibid., page 181.

The question remains as to the availability of the defense of necessity in a case of this kind. The IMT dealt with an aspect of that subject when it considered the effect of Article 8 of its Charter, which provides:

"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 * * *"

Concerning the above provision the IMT said:

"That a soldier was ordered to kill or torture in violation of the international law of war has never been recognized as a defense to such acts of brutality, though, as the Charter here provides, the order may be urged in mitigation of the punishment. *The true test, which is found in varying degrees in the criminal law of most nations, is not the existence of the order, but whether moral choice was in fact possible.*"* [Emphasis supplied.]

Thus the IMT recognized that while an order emanating from a superior officer or from the government is not, of itself, a justification for the violation of an international law (though it may be considered in mitigation), nevertheless, such an order is a complete defense where it is given under such circumstances as to afford the one receiving it of no other moral choice than to comply therewith. As applied to the facts here, we do not think there can be much uncertainty as to what the words "moral choice" mean. The quoted passages from the IMT judgment as to the conditions that prevailed in Germany during the Nazi era would seem to suggest a sufficient answer insofar as this case is concerned. Nor are we without persuasive precedents as to the proper application of the rule of necessity in the field of the law with which we are here concerned.

The case of the United States *vs.* Flick, *et al.* (Case 5), tried before Tribunal IV, involved the dominant figure in the German steel and coal industry and five of his business associates. They were charged, among other things, with having been active participants in the slave-labor program of the Third Reich. The judgment of the Tribunal reviewed the facts and concluded that four of these defendants were entitled to the benefit of the defense of necessity. We quote from that judgment because the facts therein disclosed are strikingly similar to those developed in the trial of this case:

"The evidence with respect to this count clearly establishes that laborers procured under Reich regulations, including voluntary and involuntary foreign civilian workers, prisoners of war and concentration-camp inmates, were employed in some of the plants of the Flick Konzern * * * It further appears that in some

*Ibid., page 224.

of the Flick enterprises prisoners of war were engaged in work bearing a direct relation to war operations.

"The evidence indicates that the defendants had no actual control of the administration of such program even where it affected their own plants. On the contrary, the evidence shows that the program thus created by the state was rigorously detailed and supervised by the state, its supervision even extending into prisoner-of-war labor camps and concentration-camp inmate labor camps established and maintained near the plants to which such prisoners of war and concentration-camp inmates had been allocated. Such prisoner-of-war camps were in charge of the Wehrmacht (Army), and the concentration-camp inmates labor camps were under the control and supervision of the SS. Foreign civilian labor camps were under camp guards appointed by the plant management subject to the approval of state police officials. The evidence shows that the managers of the plants here involved did not have free access to the prisoner-of-war labor camps or the concentration labor camps connected with their plants, but were allowed to visit them only at the pleasure of those in charge."[1]

* * * * * * *

"Workers were allocated to the plants needing labor through the governmental labor offices. No plant management could effectively object to such allocation. Quotas for production were set for industry by the Reich authorities. Without labor, quotas could not be filled. Penalties were provided for those who failed to meet such quotas. Notification by the plant management to the effect that labor was needed resulted in the allocation of workers to such plants by the governmental authorities. This was the only way workers could be procured."[2]

* * * * * * *

"Under such compulsion, despite the misgivings which it appears were entertained by some of the defendants with respect to the matter, they submitted to the program and, as a result, foreign workers, prisoners of war, or concentration-camp inmates became employed in some of the plants of the Flick Konzern and in Siemag. Such written reports and other documents as from time to time may have been signed or initialed by the defendants in connection with the employment of foreign slave labor and prisoners of war in their plants were for the most part obligatory and necessary to a compliance with the rigid and harsh Reich regulations relative to the administration of its program."[3]

* * * * * * *

[1] U. S. *v.* Friedrich Flick, *et al.*, volume VI, this series, pages 1196 and 1197.
[2] *Ibid.*, page 1197.
[3] *Ibid.*, page 1198.

"The defendants lived within the Reich. The Reich, through its hordes of enforcement officials and secret police, was always 'present,' ready to go into instant action and to mete out savage and immediate punishment against anyone doing anything that could be construed as obstructing or hindering the carrying out of governmental regulations or decrees." [1]

* * * * * * *

"In this case, in our opinion, the testimony establishes a factual situation which makes clearly applicable the defense of necessity as urged on behalf of the defendants Steinbrinck, Burkart, Kaletsch, and Terberger." [2]

Tribunal IV convicted two defendants (Weiss and Flick), however, under the slave-labor count. The basis for these convictions was the active solicitation of Weiss, with the knowledge and approval of Flick, of an increase in their firm's freight-car production, beyond the requirements of the government's quota, and the initiative of Weiss in securing an allocation of Russian prisoners of war for use in the work of manufacturing such increased quotas. With respect to these activities the Tribunal concluded that Weiss and Flick had deprived themselves of the defense of necessity, saying:

"The war effort required all persons involved to use all facilities to bring the war production to its fullest capacity. The steps taken in this instance, however, were initiated not in governmental circles but in the plant management. They were not taken as a result of compulsion or fear, but admittedly for the purpose of keeping the plant as near capacity production as possible."

We have also reviewed the judgment of the General Tribunal of the Military Government of the French Zone of Occupation in Germany, dated 30 June 1948, in which Hermann Roechling was convicted of participation in the slave-labor program. That judgment [3] recites that said Roechling was "present at several secret conferences with Goering in 1936 and 1937;" that in 1940 he "accepted the positions of plenipotentiary general for the steel plants of the departments of the Moselle and of Meurthe-et-Moselle Sud;" that, "stepping out of his role of industrialist, after having demanded high administrative and leading positions concerning the steel exploitation of the Reich," he became "dictator for iron and steel in Germany and the occupied countries;" that in 1943 said Roechling also "lavished advice on the Nazi government in order to utilize the inhabitants of occupied countries for the war effort of the Reich;" that he "sent to the Nazi leaders

[1] *Ibid.*, page 1201.

[2] *Ibid.*, page 1202.

[3] See U. S. *v.* Ernst von Weizsaecker, *et al.*, volume XIV, this series (Appendix B—"The Roechling Case"), pages 1061–1097.

in Berlin a memorandum requesting that he obtain the utilization of Belgian labor in order to develop German industry; that he suggested in this connection that youths of 18 to 25 should be drafted to obligatory work under German command—which would mean the utilization of approximately 200,000 persons;" that he also "requested that negotiations be started immediately in order to obtain a considerable number of Russian youths of about 16 years of age for labor in the iron industry;" that he "requested the taking of a general census of French, Belgian, and Dutch youths in order to force them to work in war plants or to draft them into the Wehrmacht, together with the promulgation of a law which would make work obligatory in the occupied countries;" and that he also "incited the Reich authorities in the most insidious manner to employ inhabitants of occupied countries and POW's in armament work, with complete disregard of human dignity and the terms of the Hague Convention." Two defendants were acquitted and two others convicted by the French Tribunal. The latter—von Gemmingen and Rodenhauser—were found guilty as coauthors and accomplices to the above-described illegal employment of prisoners of war and deportees by Hermann Roechling, and to his encouragement of illegal punishments meted out to said involuntary laborers. Said illegal punishments were imposed by a summary court organized, in agreement with the Gestapo, by von Gemmingen and Rodenhauser in the Roechling plant, of which they were both directors. It is thus made clear that the defense of necessity could not have been successfully invoked on behalf of either of said named defendants. Concerning the acquitted defendants, Ernst Roechling and Albert Maier, the high Tribunal expressly said that the evidence did not establish that either of them exercised *initiative* in connection with the slave-labor program.

It is plain, therefore, that Hermann Roechling, von Gemmingen, and Rodenhauser, like Weiss and Flick, were not moved by a lack of moral choice, but, on the contrary, embraced the opportunity to take full advantage of the slave-labor program. Indeed, it might be said that they were, to a very substantial degree, responsible for broadening the scope of that reprehensible system.

From a consideration of the IMT, Flick, and Roechling judgments, we deduce that an order of a superior officer or a law or governmental decree will not justify the defense of necessity unless, in its operation, it is of a character to deprive the one to whom it is directed of a moral choice as to his course of action. It follows that the defense of necessity is not available where the party seeking to invoke it was, himself, responsible for the existence or execution of such order or decree, or where his participation went beyond the requirements thereof, or was the result of his own initiative.

Auschwitz and Fuerstengrube

As early as 1938, the erection of a plant for the production of buna rubber in the eastern part of Germany was discussed between ter Meer and the Reich Economics Ministry. A site was considered in Upper Silesia and another in the northern part of Sudetenland. Later, at the time the site at Auschwitz was selected, Norway was also considered.

At a conference in the Reich Ministry of Economics on 6 February 1941 [*NI–11112, Pros. Ex. 1413*], the planning of the expansion of buna production was discussed. Ambros and ter Meer were present. It was reported that at a previous meeting held on 2 November 1940, the Reich Ministry of Economics had approved such expansion and Farben was instructed to choose an appropriate site in Silesia for a fourth buna plant. It appears that, pursuant to this instruction and upon the recommendation of the defendant Ambros, the site at Auschwitz was chosen.

It was estimated that the new buna plant would have a production capacity of 30,000 tons per year. It was planned to combine the buna factory with a new fuel-producing plant on the same site, but buna was to be given preference. A number of considerations entered into the selection of Auschwitz: they included an ideal topographical location which was not vulnerable to air attacks from the west, the proximity to important raw materials, an abundant supply of coal and water, and the availability of labor. The labor situation embraced two factors: the comparatively dense population of the area and the nearby concentration camp Auschwitz, from which forced labor could be obtained. The evidence is sharply conflicting as to the importance of the concentration camp in deciding upon the location of the plant. We are satisfied after a thorough consideration of the evidence, that while the camp may not have been the determining factor in selecting the location, it was an important one and, from the beginning, it was planned to use concentration-camp labor to supplement the supply of workers.

The three Farben officials most directly responsible for construction at Auschwitz were Ambros, Buetefisch, and Duerrfeld.

Ambros was the technical expert with respect to buna. He was a member of the planning committee, whose meetings he attended regularly. Buetefisch was the expert in regard to fuels and dealt with the planning and erection of the fuel-producing plant. His headquarters were at Leuna, a Farben plant devoted mainly to important fuel production. According to his own testimony, he went to Auschwitz about twice a year and informed himself about the progress of the construction project. He visited the site and the various workshops and saw the concentration-camp inmates at work. He visited the main concentration camp at Auschwitz in the winter of 1941–1942 in company with

some thirty important visitors, among whom was Dr. Ambros. On this visit he saw no abuse of inmates and thought that the camp was well conducted. He never visited the labor camp of Monowitz. The defendant Duerrfeld, as chief engineer and later as manager of the construction work at Auschwitz, had general supervision over the work. Numerous witnesses have testified as to his presence on the site on different occasions. He made frequent inspection trips during which he observed the laborers at work. He also visited the adjoining labor camp of Monowitz, over which the SS had supervision.

Duerrfeld reported that Hoess, the camp commander of the concentration camp, was very willing to support the construction management to the best of his ability and that he would furnish for 1941 about 1,000 unskilled laborers. In 1942 this number could be raised to 3,000 or 4,000. Farben was to assist in erecting barracks by supplying wood and also some iron. The prisoners were to be utilized in groups of about twenty, supervised by kapos.

On 4 March 1941, a circular was issued from the office of the Plenipotentiary for the Four Year Plan in Berlin [*NI–11086, Pros. Ex. 1422*], directed to Ambros and containing certain information regarding Auschwitz. This letter advised that the Inspector of Concentration Camps and the Chief of the Main Economic and Administration Office had been ordered to get in touch with the construction manager of the buna works and to aid the construction project by means of concentration-camp prisoners. The chief of Himmler's personal staff, Gruppenfuehrer Wolff, was to be appointed liaison officer between the SS and the Auschwitz works. Copies of this letter were distributed to ter Meer, Buetefisch, and Duerrfeld. Shortly thereafter, Duerrfeld and Buetefisch had a conference with Wolff in Berlin, at which the utilization of concentration-camp workers was discussed. The parties were in general accord on the assistance to be rendered by the concentration camp. Wolff made no definite promises and left matters of detail to be arranged by negotiations between Duerrfeld and Hoess, who was the camp commander at Auschwitz.

The first building conference with respect to Auschwitz construction was held on 24 March 1941 in Ludwigshafen [*NI–11115, Pros. Ex. 1426*]. Nine persons were present. They were officials and engineers of Farben. The only two who have been made defendants in this case are Ambros and Duerrfeld. At this meeting it was decided to hold building conferences at weekly intervals for the present. The purpose of the conferences was to allot fields of work to the individual conference members with a view to avoid overlapping of activities. The members of the conference made reports on performance of their respective duties. Ambros reported that the general planning of the Auschwitz plant lay at present in the hands of engineers Santo, Duerrfeld, and Mach. Duerrfeld reported on a discussion with Wolff of

the head office of the Reichsfuehrung SS, and stated that it had been promised that 700 prisoners of the Auschwitz concentration camp would be assigned to the building site for labor and that an attempt would be made by the head office to procure an exchange with other concentration camps so that skilled workers might be transferred to Auschwitz. All available free labor in Auschwitz was also to be utilized.

On 7 April 1941, a founders' meeting was held at Kattowitz [Katowice] to commemorate the founding of the plant at Auschwitz [*NI–11117, Pros. Ex. 1430*]. Reich officials of the Office of Industrial Planning and the Office of Economic Planning were apparently in charge of the meeting. They called for plans and reports regarding Auschwitz. Ambros was present with information concerning the buna plant. Buetefisch, whose functions in connection with Auschwitz dealt with fuels, including gasoline, reported that the Fuerstengrube mines would furnish coal supplies for Auschwitz. The report also states:

> "By order of the Reichsfuehrer SS extensive assistance from the Auschwitz concentration camp had been promised for the building period. The camp commandant, Sturmbannfuehrer Hoess, had already made arrangements for the employment of his men. The concentration camp would supply prisoners for preliminary work and craftsmen for carpentry and fitting; it would also assist the plant in the feeding of the building workers and would supply the building site with gravel and other materials."

The construction of the Auschwitz plant began in 1941. The Jewish population of the area was evacuated, as were many of the resident Poles [*NI–1240, Pros. Ex. 1417*]. Their houses were utilized as quarters for construction workers. Farben did not handle the construction work directly but made contracts with construction firms. These firms, however, called upon Farben to assist in procuring labor. Labor procurement was a Farben responsibility. Free workers were not available in sufficient numbers to cover the requirements of the construction firms.

On 23 October 1941, at a meeting of the Plastics and Rubber Committee attended by ter Meer and Ambros, the recorder of the committee reported on the state of construction work at Auschwitz. With respect to labor he said:

> "At present 2,700 men are working on the building site. The support given by the concentration camp Auschwitz is very valuable. This camp made available 1,300 men and all of its workshops."

By the end of 1941, the construction at Auschwitz was not proceeding satisfactorily. At the fourteenth building conference, held on 16 December 1941 [*NI–11130, Pros. Ex. 1445*], bottlenecks at the con-

struction site were discussed. Among other things, it was reported that the concentration camp could not give the expected help since it was under orders to set up accommodations for 120,000 captured Russians as fast as possible. Other possible sources of labor were considered. These do not appear to include either forced foreign labor or prisoners of war.

In the report of the 19th construction conference, on 30 June 1942 [*NI-11137, Pros. Ex. 1447*], reference is made for the first time to the employment of forced labor other than that from the concentration camp. It appears that 680 Polish forced laborers had been employed recently and therefore no evaluation was as yet possible as to whether or not they were satisfactory. The report also stated that women from the Ukraine were well fitted for excavation work, but the voluntary status of these women workers is not disclosed. At the 20th construction conference, on 8 September 1942, Duerrfeld, Ambros, and Buetefisch were present [*NI-11138, Pros. Ex. 1448*]. Duerrfeld reported that the intended sharp increase of labor requirements would continue to strain the provisions for workers and that certain auxiliary supply sources for labor were available, among them being recruitments of Poles, which would provide 1,000 workers. Two thousand Russian workers were to be sent to Auschwitz by order of Sauckel, but no definite promises were at hand. This statement would imply that the Auschwitz construction management was seeking these workers. This report also states that Sauckel promised 5,000 prisoners of war for the building sites in Upper Silesia and that 2,000 of these were intended for Auschwitz while the remainder went to other firms.

Reports of subsequent construction conferences show that forced workers and prisoners of war continued to be employed at Auschwitz in construction work. Auschwitz was financed and owned by Farben. While its purpose was the production of buna and motor fuels which would be of immediate use to the Armed Forces of Germany, the plant was being built on a permanent basis with the ultimate object of operating it in peacetime private industry. The use of prisoners of war in the type of construction disclosed by this record does not appear to be in contravention of the prohibition of the Geneva Convention, and unless their treatment was such as to violate international law it does not appear that a crime was committed in their utilization. The prisoners of war were treated better than other types of workers in every respect. The housing, the food, and the type of work they were required to perform would indicate that they were the favored laborers of the plant site. There may have been isolated instances of ill-treatment, but they cannot be attributed to any over-all policy of Farben or to acts with which any of the defendants may be charged directly or indirectly. It therefore appears that we need

give no further consideration to the employment of prisoners of war at Auschwitz.

The construction workers obtained from the Auschwitz concentration camp were prisoners of the SS. They were housed, fed, guarded, and otherwise supervised by the SS. In the summer of 1942, a fence was built around the plant site. SS guards were thereafter not permitted within the enclosure, but they still had charge of the prisoners at all times except when they were actually in the enclosed area. The Auschwitz concentration camp was located about 7 kilometers from the plant site. The prisoners were marched to and from that site under SS guard.

The plight of the camp workers in the winter of 1941–1942 was that of extreme hardship and suffering. With inadequate food and clothing, large numbers of them were unable to stand the heavy labor incident to construction work. Many of those who became too ill or weak to work were transferred by the SS to Birkenau and exterminated in the gas chambers.

In 1942, at the instigation of Farben, a separate labor camp known as Monowitz was built adjacent to and across the road from the plant site [*NI–14524, Pros. Ex. 2126*]. This camp was some improvement as to its physical aspects over the Auschwitz concentration camp. The workers, however, were still under the control and supervision of the SS at all times when they were not on the construction site. Those who became unable to work or who were not amenable to discipline were sent back to the Auschwitz concentration camp or, as was more often the case, to Birkenau for extermination in the gas chambers. Even at Monowitz, the housing was at times insufficient to reasonably accommodate the large number of workers crowded into the barrack-like facilities. The food was inadequate, as was also the clothing, especially in the winter.

The plant site was not entirely without inhumane incidents. Occasionally beatings occurred by the plant police and supervisors who were in charge of the prisoners while they were at work. Sometimes workers collapsed. No doubt a condition of undernourishment and exhaustion from long hours of heavy labor was the primary cause of these incidents. Rumors of the selections made for gassing from among those who were unable to work were prevalent. Fear of this fate no doubt prompted many of the workers, especially Jews, to continue working until they collapsed. In camp Monowitz, the SS maintained a hospital and medical service. The adequacy of this service is a point of sharp conflict in the evidence. Regardless of the merits of the opposing contentions on this point, it is clear that many of the workers were deterred from seeking medical assistance by the fear that if they did so they would be selected by the SS for transfer to Birkenau. The Auschwitz construction workers furnished by the concentration camp lived and labored under the shadow of extermination.

The defense has stressed, not wholly without merit, that the concentration-camp workers lived under the control of the SS and worked under the immediate employment and direction of the construction contractors (some 200 or more) who were engaged in preparing the site and building the plant. It is clear that Farben did not deliberately pursue or encourage an inhumane policy with respect to the workers. In fact, some steps were taken by Farben to alleviate the situation. It voluntarily and at its own expense provided hot soup for the workers on the site at noon. This was in addition to the regular rations. Clothing was also supplemented by special issues from Farben. Despite this, however, it is evident that the defendants most closely connected with the Auschwitz construction project bear great responsibility with respect to the workers. They applied to the Reich Labor Office for labor. They received and accepted concentration-camp workers, who were placed at the disposal of the construction contractors working for Farben. The chief engineer, Duerrfeld, with the advice of other defendants, had a definite responsibility regarding the project in the over-all supervision of and authority over the construction work. Responsibility for taking the initiative in the unlawful employment was theirs and, to some extent at least, they must share the responsibility for mistreatment of the workers with the SS and the construction contractors.

Concentration-camp workers by no means constituted all of the laborers on the plant site. Free workers were employed in large numbers. Foreign workers made their appearance there in 1941. Many, if not all, of these were at first voluntary workers, that is, foreigners who had contracted to come to Germany for a stated amount of pay. They consisted chiefly of Poles, Ukrainians, Italians, Slavs, French, and Belgians. Some experts and technicians were also recruited on a similar basis. After Sauckel's program of forced labor became effective, workers of this type began to appear at Auschwitz in increasing numbers. The defendants contend that, the recruitment of labor being under direct control of the Reich, they did not know the conditions under which the recruitment took place and, since the foreign workers at first were procured on a voluntary basis, the defendants were unaware later that the method had been changed and that many of the subsequent workers had been procured through a system of forced-labor recruitment. This contention cannot be successfully maintained. The labor for Auschwitz was procured through the Reich Labor Office at Farben's request. Forced labor was used for a period of approximately 3 years, from 1942 until the end of the war. It is clear that Farben did not prefer either the employment of concentration-camp workers or those foreign nationals who had been compelled against their will to enter German labor

service. On the other hand, it is equally evident that Farben accepted the situation that was presented to it through the Labor Office of the Reich and that when free workers, either German or foreigners, were unobtainable they sought the employment and utilization of people who came to them through the services of the concentration camp Auschwitz and Sauckel's forced-labor program.

THE PRESIDENT: Judge Morris will continue with the reading of the judgment.

JUDGE MORRIS: Closely associated with Auschwitz was a project for the control by Farben of the output of certain coal mines. At the Founders' Day meeting [*NI–11117, Pros. Ex. 1430*], the defendant Buetefisch reported that a new company had been founded for the purpose of securing, from the Fuerstengrube Mine, coal supplies for the Auschwitz plant. In this new company Farben controlled 51 percent of the stock and was, therefore, in a position to determine the destination of the output of the mine. Later, through this same company, Farben acquired the controlling interest in another mine known as Janina. Buetefisch became the chairman of the Aufsichtsrat of the new company, Fuerstengrube G. m. b. H. In this capacity he fitted into the general program of Auschwitz as an expert on fuels. He and the defendant Ambros were important factors in the acquisition of the control of the Janina mine in 1942. These mines were important in the plans of Farben, for it was intended that their production would be utilized in connection with the manufacture of gasoline from coal in the fuels plant at Auschwitz.

It seems clear from this record that Polish laborers were used by Fuerstengrube in mining operations in 1943. This was long after the conquest of Poland and the impressment of the Poles into the ranks of German labor. British prisoners of war were also employed by Fuerstengrube, particularly in the Janina mine. These prisoners offered considerable resistance to their employers, with the result that they were withdrawn from labor in the mines in the latter part of 1943. They were replaced by concentration-camp workers. A file note discloses that Hoess and Duerrfeld inspected the Janina and Fuerstengrube mines on 16 July 1943 [*NI–12019, Pros. Ex. 1544*]. It was then agreed that British prisoners of war should be replaced by concentration-camp inmates. It was estimated by the SS that 300 camp inmates could be accommodated at Janina where 150 British prisoners of war were housed. At the Fuerstengrube mine, 600 inmates could be accommodated, and the fencing-in of the camp would be started at once. Another camp was also to be taken over, and it was estimated that altogether it would be possible to use 1,200 or 1,300 inmates at Fuerstengrube.

As we recapitulate the record of Auschwitz and Fuerstengrube, we find that these were wholly private projects operated by Farben,

with considerable freedom and opportunity for initiative on the part of Farben officials connected therewith. The evidence does not show that the choice of the Auschwitz site and the erection of a buna and fuels plant thereon were matters of compulsion, although favored by the Reich authorities, who were anxious that a fourth buna plant be put into operation. The site was chosen after a survey of many factors, including the availability of concentration-camp labor for construction work. As an adjunct of Auschwitz, the controlling interest in the Fuerstengrube and Janina mines was acquired under circumstances that impute knowledge of the fact that they could not be operated successfully by voluntary labor. Involuntary labor was used: first, Poles and prisoners of war and, later, concentration-camp inmates. The use of prisoners of war in coal mines in the manner and under the conditions disclosed by this record, we find to be a violation of the regulations of the Geneva Convention and, therefore, a war crime. The use of concentration-camp labor and forced foreign workers at Auschwitz with the initiative displayed by the officials of Farben in the procurement and utilization of such labor, is a crime against humanity and, to the extent that non-German nationals were involved, also a war crime, to which the slave-labor program of the Reich will not warrant the defense of necessity. It also appears that the employment of concentration-camp labor was had with knowledge of the abuse and inhumane treatment meted out to the inmates by the SS, and that the employment of these inmates on the Auschwitz site aggravated the misery of these unfortunates and contributed to their distress.

Our consideration of Auschwitz and Fuerstengrube has impressed upon us the direct responsibility of the defendants Duerrfeld, Ambros, and Buetefisch. It will be unnecessary to discuss these defendants further in this connection, as the events for which they are responsible establish their guilt under count three beyond a reasonable doubt. These defendants are not the only ones connected with the Auschwitz project. The connection of others will be considered when we approach their respective cases.

Krauch: As we further appraise the responsibility of the respective defendants, we find that Krauch, as Plenipotentiary General for Special Questions of Chemical Production, dealt with the distribution of labor that had been allocated to the chemical sector by Sauckel. It was Krauch's responsibility to pass upon the applications for workers made by the individual plants of the chemical industry and, in so doing, he took into account the demands that military service had made upon the plants as well as the labor requirements that resulted from expansion. It seems that Krauch is inextricably involved in the allocation of labor to Auschwitz in a manner that negatives his lack of knowledge of the employment of concentration-camp inmates and

forced foreign labor on the Auschwitz construction project. On 25 February 1941, Krauch wrote a letter to Ambros in which he referred to Goering's order emphasizing the urgency of the project and advising Ambros of the priority of Auschwitz in the procurement of labor [*NI-11938, Pros. Ex. 2199*]. Later Krauch himself visited the construction site.

On 7 January 1943, Krauch addressed a letter to Duerrfeld in which he complimented Duerrfeld, as Krauch's commissary, in setting up the Poelitz installation [*NI-11085, Pros. Ex. 1500*]. He then ordered Duerrfeld to continue as commissary for the setting up of the whole Auschwitz plant, and states: "I wish to assure you of my personal support in every way in your carrying out of this task."

The minutes of a meeting of the Central Planning Board on 2 July 1943, with Krauch present as one of the board members, discloses that Ambros gave a review of damage, apparently from Allied bombing, at the Huels plant of Farben, in which he discussed the labor requirements for reconstruction which involved the procurement of men from the compulsory service of the Reich. The Planning Board promised the fulfillment of Ambros' requests in this respect. It also discussed the labor situation at Auschwitz and the need for more workers, including additional inmates from the Auschwitz concentration camp. With respect to the latter request, it is stated that Reichsfuehrer Himmler should be contacted immediately.

On 13 January 1944, Krauch addressed a letter to President Kehrl of the Central Planning Board, in which he discussed the allocation of labor. It appears that there had been in the past some misunderstanding between Krauch's office and the Armaments Office. Krauch maintained his position by saying:

> "May I be allowed to point out, however, that the efforts of my office in such matters as the procurement of foreign labor within the restrictions set out on the initiative of the individual employer by the Plenipotentiary General for the Provision of Manpower [Allocation of Labor], and the employment of certain classes of manpower (prisoners of war, inmates of concentration camps, prisoners, units of the Military Pioneer Corps, etc.) have had an effect upon the speed of progress of chemical production, and upon that production itself, which must not be underestimated. I consider that the initiative displayed by my staff in the procurement of labor, a virtue which has proved its worth in the past, must not be repressed in the future." [*NI-7569, Pros. Ex. 477.*]

Krauch vigorously challenges the charges that he participated in the recruitment of slave labor. His agents were active in voluntary recruitment prior to the initiation of the Sauckel program. Some of these agents continued to seek skilled workers for some time thereafter. To what extent, if any, these skilled workers were forced to emigrate

to Germany does not appear. The evidence does not convince us that Krauch was either a moving party or an important participant in the initial enslavement of workers in foreign countries. Nevertheless, he did, and we think knowingly, participate in the allocation of forced labor to Auschwitz and other places where such labor was utilized within the chemical field. The evidence does not show that he had knowledge of, or participated in, mistreatment of workers at their points of employment. In view of what he clearly must have known about the procurement of forced labor and the part he voluntarily played in its distribution and allocation, his activities were such that they impel us to hold that he was a willing participant in the crime of enslavement.

The use of prisoners of war in war operations and in work having a direct relation to such operations was prohibited by the Geneva Convention. Under count three the defendants are charged with violations of this prohibition. To attempt a general statement in definition or clarification of the term "direct relation to war operations" would be to enter a field that the writers and students of international law have found highly controversial. We therefore limit our observations to the particular facts presented by this record.

On 31 October 1941, Keitel, who was then Chief of the High Command of the Armed Forces of Germany, issued a secret order [*EC–194, Pros. Ex. 1287*], the subject of which was "Use of Prisoners of War in the War Industry," wherein he stated that the Fuehrer had ordered that the working power of Russian prisoners of war should be utilized to a large extent to meet requirements of the war industry. He listed examples of the type of work for which these prisoners might be suitable, which included construction work for both the Armed Forces and the Armament industry. Other important activities so listed were armament factories, mining, railroad construction, agriculture, and forestry. The distribution list of this order does not include Krauch or his immediate superior, Colonel Loeb. The fact that Krauch had given favorable consideration to the use of Russian prisoners of war in the armament industry is disclosed by a letter of Kirschner, a subordinate of Krauch, who wrote to General Thomas, Chief of the Office of Military Economy and Armament, on 20 October 1941, that he had discussed the matter with Krauch [*EC–489, Pros. Ex. 473*]. Kirschner reports that Krauch had developed an idea concerning the employment of Russian prisoners of war and enclosed a note of Krauch's intentions with his letter. We do not have the benefit of the contents of this note, but we are, nevertheless, satisfied that Krauch was in accord with the use of prisoners of war in the war industry. But that, in itself, is not sufficient to warrant a finding of Guilty for the commission of war crimes under count three. Keitel's order gives no authority to the Plenipotentiary General for Special

Questions of Chemical Production in the allocation of prisoners of war to the various plants and industries. This authority is left with the Reich Ministry for Armament and Munitions in agreement with the Reich Ministry for Labor and Supreme Commander of the Armed Forces. The deputies of the Reich Ministry for Armament and Munitions were given authority to enter prisoner-of-war camps to assist in the selection of skilled workers. We are unable to find in the record any instance of the allocation of prisoners of war by Krauch for purposes prohibited by the Geneva Convention. We reach the ultimate conclusion that Krauch, by his activities in connection with the allocation of concentration-camp inmates and forced foreign laborers, is Guilty under count three.

Ter Meer. The defendant ter Meer, as the technical leader of Farben as well as head of Sparte II and chairman of the Technical Committee, had general supervision of matters pertaining to production and new construction. He discussed the expansion of buna production with the Reich Ministry of Economics on several occasions. On 2 November 1940, that Ministry approved the expansion and advised Farben through ter Meer and Ambros to choose an appropriate site in Silesia on which to erect a plant. Ter Meer was Ambros' immediate superior, and to that superior Ambros reported on numerous occasions. Ter Meer states,

> "I believe that most of the information I had on the building of the Auschwitz plant came either through correspondence or through conversations with Ambros, and Ambros has in very long conversations shown me all the things which I call good industrial conditions. I know that he brought me a map and that he showed me everything, but according to the best of my recollection he did not draw special attention to the existence of the concentration camp. Ambros himself, in the TEA, developed, with the help of a map of the site of Auschwitz, the general conditions, the size, and also the way the factory should be built. I do not recall that he at that time discussed that some of the labor would be drawn from the nearby concentration camp, but I would say that Ambros, who in his reports of this kind was very exact, probably mentioned it, but I am not positive."

That the concentration camp figured in the early plans with respect to Auschwitz is disclosed in the documents referred to in our general discussion of that project. There are other documents and reports of a similar nature. For instance, on 16 January 1941, at a discussion in Ludwigshafen between representatives of Farben and Schlesien-Benzin [*NI–11784, Pros. Ex. 1411*], at which Ambros was present, a report was given by a director of the latter firm regarding the desirability of the Auschwitz site. It was reported that the inhabitants

of Auschwitz consisted of 2,000 Germans, 4,000 Jews, and 7,000 Poles. The Jews and Poles were to be turned out so that the town would be available for the staff of the factory. The report then states: "A concentration camp will be built in the immediate neighborhood of Auschwitz for the Jews and Poles."

At a regional planning meeting on 31 January 1941 [*NI–11785, Pros. Ex. 1412*], attended by Chief Engineer Santo of the Ludwigshafen plant, who later became a member of the Auschwitz Planning Committee, the labor problems of Auschwitz were again discussed, and it is stated in the report that "The concentration camp already existing with approximately 7,000 prisoners is to be expanded. Employment of prisoners for the building project possible after negotiations with the Reichsfuehrer SS."

We have already referred to the meeting of the Plastics and Rubber Committtee attended by ter Meer and Ambros on 23 October 1941, at which reference was made to the valuable support given by the Auschwitz concentration camp.

Ter Meer personally visited the Auschwitz site in October 1941. He was accompanied on this inspection by Hoess, the camp commandant. He says: "Hoess was in no way favorable to sending concentration-camp inmates to the Auschwitz works. He wanted them to work for the factory in the camp itself."

Ter Meer again visited the Auschwitz site in November 1942 and also the Monowitz labor camp, in which the concentration-camp inmates who were working on the building site were housed.

The evidence clearly establishes that one of the chief problems of Farben in connection with the building of the Auschwitz plant was the procurement of labor for the construction work. Thousands of unskilled laborers were required, whose work was of course only temporary and who would not become permanent employees. It was the type of labor that could be procured through the concentration camp and the Sauckel program. The captured documents to which we have referred established beyond question that the availability of concentration-camp labor figured in the planning of the Auschwitz construction. Ambros played a major role in this planning. His immediate superior with whom he had frequent contact and to whom he made detailed reports was ter Meer. The over-all field of new construction was one in which ter Meer was both active and dominant. It is indeed unreasonable to conclude that, when Ambros sought the advice of and reported in detail to ter Meer, the conferences were confined to such matters as transportation, water supply, and the availability of construction materials and excluded that important construction factor, labor, in which the concentration camp played so prominent a part. Ter Meer's visits to Auschwitz were no doubt as revealing to him as they are to this Tribunal. Hoess was reluctant

to have his inmates work on the plant site. He preferred to keep them within the camp. These workers were not forced upon Farben. The inference is strong that Farben officials subordinate to ter Meer took the initiative in securing the services of these inmates on the plant site. This inference is further supported by the fact that Farben at its own expense and with its own funds appropriated by the TEA, of which ter Meer was chairman, built Camp Monowitz for the specific purpose of housing its concentration-camp workers. We are convinced beyond a reasonable doubt that the officials in charge of Farben construction went beyond the necessity created by the pressure of governmental officials and may be justly charged with taking the initiative in planning for and availing themselves of the use of concentration-camp labor. Of these officials ter Meer had greatest authority. We cannot say that he countenanced or participated in abuse of the workers. But that alone does not excuse his otherwise well-established Guilt under count three.

Other Members of the TEA and the Plant Leaders. In addition to the defendants ter Meer and Ambros, the defendants Gajewski, Hoerlein, Buergin, Jaehne, Kuehne, Lautenschlaeger, Schneider, and Wurster were also members of the Technical Committee. These defendants were plant leaders or managers of one or more of the important plants of Farben. These plants were integrated into the war economy of the Reich by order of governmental authority. In a Hitler decree regarding the protection of armament economy, dated 21 March 1942 [*PS-1666, Pros. Ex. 1290*], war-essential requirements were given absolute priority in the allocation of available manpower. Plant leaders were ordered to consider the necessities of the Reich in war economy as if they were their own. "All considerations, arising from personal interests or from the desire for peace, must be discarded * * * Whoever disregards this trust and offends against the conduct expected of a plant leader, will be subjected to unrelenting, most severe punishment * * *"

This decree was supplemented by others issued by Hitler and by proclamations of his subordinate officials, dealing with production quotas, allocations of labor, priorities for raw materials, and other measures looking toward coordination within the field of armament economy. These were further supplemented by orders prescribing in still more detail measures to be taken and restrictions to be imposed. For instance, in the matter of labor, these orders covered hours of work, food, clothing, and housing, and made distinctions in the treatment of various kinds of workers. The eastern workers generally were to be treated with greater severity than the other classes.

A system of armament inspectorates was set up which covered plants connected with the armament industry. The inspectors learned every detail about the factories within their respective districts and the con-

ditions therein with regard to production orders and manpower. They were directed to supervise the allocation of labor and the proper consumption of raw materials on quota, plant maintenance, coal, et cetera, in the plants of which they were in charge. Thus it appears that the plant leaders were given little opportunity to exercise initiative in matters pertaining to production. They were all well informed of and knew that compulsory foreign workers, prisoners of war, and concentration-camp inmates were being employed in the Farben plants and they acquiesced in this practice under the pressure of conditions as they then existed in the Reich. We are not convinced from the proof that any of these defendants exercised initiative in obtaining forced labor under such circumstances as would deprive them of the defense of necessity. Ambros made a report at a meeting of the TEA on 21 April 1941 in which he specifically mentioned that concentration-camp inmates were being utilized in construction work at the buna plant Auschwitz, but the extent of his disclosures is not revealed by the evidence. It is not established that the members of the TEA were informed of or that they knew of the initiative being exercised by the defendants Ambros, Buetefisch, and Duerrfeld in obtaining workers for the Auschwitz project, or that the availability of such labor was one of the determining factors in the location of the Auschwitz site. The affiant Struss, Director of the Office of the Technical Committee testified:

> "The members of the TEA certainly knew that IG employed concentration-camp inmates and forced laborers. That was common knowledge in Germany but the TEA never discussed these things. TEA approved credits for barracks for 160,000 foreign workers for IG."

The members of the TEA, with the exception of the chairman ter Meer, were plant leaders. Under the decentralized system of the Farben enterprise each leader was primarily responsible for his own plant and was generally uninformed as to the details of operations at other plants and projects. Membership in the TEA does not import knowledge of these details. As plant leader, each was subject to the orders and supervision of the Reich authorities with respect to the operation of his own plant. He was not required to assume that governmental orders and decrees were being exceeded or that other members were taking criminal initiative in the field of employment. There is a dearth of evidence regarding information made available to the members of the TEA, other than Ambros, about conditions at Auschwitz. We cannot assume that the general membership of the committee knew of the initiative displayed by Ambros in planning for or obtaining the use of concentration-camp workers or forced laborers on the construction project. On this state of the record we are not prepared to

find that the members of the TEA, by voting appropriations for construction and housing at Auschwitz and other Farben plants, can be considered as knowingly authorizing and approving the course of criminal conduct which we have found to be present in the cases of the individual defendants whose guilt we have already found to be established.

Concerning the charges of mistreatment of forced foreign workers and prisoners of war in the Farben plants of the various works combines, much conflicting evidence has been presented. Its evaluation impels us to find that as a general policy Farben attempted to carry out humane practices in the treatment of its workers and that these individual defendants did what was possible under then existing conditions to alleviate the miseries inherent in the system of slave labor. Huge sums were expended for housing and a variety of welfare purposes. There were many isolated abuses of individual workers but it has not been shown that such acts were countenanced by any of these defendants nor can it be said that they went beyond what the regulations required in the treatment or discipline of the workers. Here again it must be recalled that the Gestapo was ever on hand to enforce compliance by an employer with what the system demanded. At the Landsberg plant, one of the units under the jurisdiction of the defendant Gajewski, a number of prisoners of war died during the course of their work. We do not consider that the proof establishes that this resulted from mistreatment by Farben officials. The military authorities were largely responsible for the food, treatment and allocation to duties of prisoners of war. The proof presented on this matter is consistent with the inference that the prisoners of war were in a poor state of health when they arrived and that this was the cause of their deaths rather than work or ill-treatment. Nor may we, in justice, hold the defendant Buergin responsible for the two criminal atrocities occurring at the Bitterfeld plant. On one occasion a Russian prisoner was shot attempting to escape confinement. There is no showing that Buergin had any connection with the incident or that he countenanced or approved any such action. Buergin was not at the Bitterfeld plant on the occasion when the Gestapo publicly hanged five Russians at one of the camps to intimidate the other workers. The record shows that the plant management protested the contemplated action of the Gestapo and withheld, at no little risk, its cooperation. The evidence relied upon by the prosecution to establish initiative on the part of individual plant leaders in obtaining and using compulsory labor has been carefully considered by the Tribunal. Without reviewing each item of evidence in detail it is our conclusion that the action of the defendants in this regard has not been established beyond reasonable doubt.

It is contended that Schneider, as the Chief Plant Leader of Farben, bears special responsibility in the field of labor within Farben and that he may be held criminally liable for the employment and mistreatment of workers. As we analyze the position of Schneider it is our conclusion that his functions did not supersede the authority of the local plant leaders. He was a general coordinator in the field of housing and welfare matters affecting more than one plant, but there is not sufficient evidence to establish that he exercised initiative in the procurement or allocation of labor within Farben. We have considered evidence as to the Leuna plant, of which Schneider was also the leader, and cannot conclude that it proves initiative of a character to deprive him of the defense of necessity which has otherwise been established.

It is our conclusion and we hereby find and adjudge that the defendants Gajewski, Hoerlein, Buergin, Jaehne, Kuehne, Lautenschlaeger, Schneider, and Wurster are Not Guilty under count three of the indictment.

Remaining Defendants. There can be no doubt that the defendant Schmitz, Chairman of the Vorstand, and the other Vorstand members not previously mentioned, namely, the defendants von Schnitzler, von Knieriem, Haefliger, Ilgner, Mann, and Oster, all knew that slave labor was being employed on an extensive scale under the forced labor program of the Third Reich. Schmitz twice reported to the Aufsichtsrat on the manpower problems of Farben pointing out that it had become necessary to make up for the shortage of workers by employment of foreigners and prisoners of war. This evidence does not establish that Farben was taking the initiative in the illegal employment of prisoners of war. Neither Schmitz nor any of the members of the Vorstand here under discussion were shown to have ever exercised functions in the allocation or recruitment of compulsory labor. We cannot say that it has been proved that initiative in the procurement of concentration-camp inmates was ever exercised by these defendants. The proof does not establish to our satisfaction that, in approving the Auschwitz project, the Vorstand considered the employment of concentration-camp inmates to be one of the factors entering into the decision for the location of the Auschwitz plant. It is not even clearly established that they knew inmates would be so used at the time of giving such approval. Their knowledge was necessarily less than that of members of TEA as to whom we have likewise indicated, we consider the proof to be insufficient. What we have said in general on the subject of mistreatment of workers in the Farben plants applies equally to these defendants. We cannot hold that they are responsible criminally for the occasional acts of mistreatment of labor employed in the various Farben plants nor do we

consider these defendants to be responsible for the occurrences at the Auschwitz construction site.

On the record before us we find and adjudge that the defendants Schmitz, von Schnitzler, von Knieriem, Haefliger, Ilgner, Mann, and Oster are Not Guilty under count three.

The defendants Gattineau, von der Heyde, and Kugler were not members of Farben's Vorstand, nor were they members of the Technical Committee. No substantial evidence of an incriminating character connects them with any of the charges in count three in a manner sufficient to establish their guilt. Each of these three defendants is, therefore, acquitted of all charges under this count.

COUNT FOUR

THE PRESIDENT: Count Four. This count charges that:

"The defendants Schneider, Buetefisch, and von der Heyde are charged with membership, subsequent to 1 September 1939, in Die Schutzstaffeln der Nationalsozialistischen Deutschen Arbeiterpartei (commonly known as the 'SS'), declared to be criminal by the International Military Tribunal, and Paragraph 1 (*d*) of Article II of Control Council Law No. 10."

It is a matter of history that the organization referred to in the indictment as the "SS" was established by Hitler in 1925 and that membership therein was entirely voluntary until 1940, when conscription was also inaugurated. The SS was composed of several units, many of which were utilized in the perpetuation of some of the most reprehensible atrocities committeed during the Nazi regime.

Article II 1 (*d*) of Control Council Law No. 10 provides that:

"1. Each of the following acts is recognized as a crime: * * *

"(*d*) Membership in categories of a criminal group or organization declared criminal by the International Military Tribunal."

Article 10 of the Charter of the IMT provides:

"In cases where a group or organization is declared criminal by the Tribunal, the competent national authority of any Signatory shall have the right to bring individuals to trial for membership therein before national military or occupation courts. In any such case, the criminal nature of the group or organization is considered proved and shall not be questioned."

In dealing with the SS the IMT treated as included therein all persons who had been officially accepted as members of any of the branches of said organization, except its so-called riding units. The Tribunal declared to be criminal those groups of said organizations which were composed of members who had become or remained such with knowledge that such groups were being used for the commission

of war crimes or crimes against humanity connected with the war, or who had been personally implicated as members of said organization in the commission of such crimes. Specifically excluded from the classes of members to which the Tribunal imputed criminality, however, were those persons who were drafted into membership by the state in such a way as to give them no choice in the matter and who had committed no such crimes, and those persons who had ceased to belong to any of said organizations prior to 1 September 1939.

The IMT said:

"A criminal organization is analogous to a criminal conspiracy in that the essence of both is cooperation for criminal purposes. There must be a group bound together and organized for a common purpose. The group must be formed or used in connection with the commission of crimes denounced by the Charter. Since the declaration with respect to the organizations and groups will, as has been pointed out, fix the criminality of its members, that definition should exclude persons who had no knowledge of the criminal purposes or acts of the organization and those who were drafted by the State for membership, unless they were personally implicated in the commission of acts declared criminal by Article 6 of the Charter as members of the organization. Membership alone is not enough to come within the scope of these declarations." [1]

Finally, the IMT made certain recommendations, from which we quote:

"Since declarations of criminality which the Tribunal makes will be used by other courts in the trial of persons on account of their membership in the organizations found to be criminal, the Tribunal feels it appropriate to make the following recommendations:

* * * * * * *

"2. Law No. 10, to which reference has already been made, leaves punishment entirely in the discretion of the trial court even to the extent of inflicting the death penalty.

"The de-Nazification Law of 5 March 1946, however, passed for Bavaria, Greater-Hesse, and Wurttemberg-Baden, provides definite sentences for punishment in each type of offense. The Tribunal recommends that in no case should punishment imposed under Law No. 10 upon any members of an organization or group declared by the Tribunal to be criminal exceed the punishment fixed by the de-Nazification Law. No person should be punished under both laws." [2]

For having actively engaged in the National Socialistic tyranny in the SS, the de-Nazification Law of 5 March 1946, for Bavaria, Greater-

[1] *Trial of the Major War Criminals*, volume I, page 256.
[2] *Ibid.*, pages 256 and 257.

Hesse and Wurttemberg-Baden, fixes a maximum penalty of internment in a labor camp for a period of not less than 2 nor more than 10 years in order to perform reparations and reconstruction work, against which political internment after 8 May 1945 may be taken into account. There are also provisions for confiscation of property and deprivation of civil rights.

In its Preliminary Brief the prosecution says that "it seems totally unnecessary to anticipate any contention that intelligent Germans, and in particular persons who were SS members for a long period of years, did not know that the SS was being used for the commission of acts 'amounting to war crimes and crimes against humanity * * *'" This assumption is not, in our judgment, a sound basis for shifting the burden of proof to a defendant or for relieving the prosecution from the obligation of establishing all of the essential ingredients of the crime. Proof of the requisite knowledge need not, of course, be direct, but may be inferred from circumstances duly established.

Tribunal II in passing upon the question of the guilt of the defendant Scheide on a charge of membership in the SS in the case of the United States *v.* Pohl, *et al* (Case 4), said:

> "The defendant admits membership in the SS, an organization declared to be criminal by the judgment of the International Military Tribunal, but the prosecution has offered no evidence that the defendant had knowledge of the criminal activities of the SS, or that he remained in the organization after September 1939 with such knowledge, or that he engaged in criminal activities while a member of such organization.
>
> "Therefore, the Tribunal finds and adjudges that the defendant Rudolf Scheide is not guilty as charged in count four of the indictment." [1]

The defendant Schneider was a sponsoring member of the SS from 1933 until 1945. As such member his only direct contact with said organization arose out of the payment of dues.

After quoting from that part of the IMT judgment in which the matter of criminal responsibility for membership in the SS was discussed, Tribunal III in the case of the United States *v.* Altstoetter, *et al.*, (Case 3), transcript page 10906, in the course of its opinion said: "It is not believed by this Tribunal that a sponsoring membership is included in this definition." [2] We are not disposed to disagree with that conclusion.

The membership records of the SS show that the defendant Buetefisch became an Ehrenfuehrer (honorary leader) of that organization

[1] U. S. *vs.* Pohl, *et al.*, volume V, this series, page 1018.
[2] Cf. volume III, this series, page 1158.

on 20 April 1939; that contemporaneously therewith he was promoted to the rank of Hauptsturmfuehrer (Captain); that on 30 January 1941 he was made a Sturmbannfuehrer (Major); and that he became an Obersturmbannfuehrer (Lt. Colonel) on 5 March 1943. The same records disclose that said defendant was assigned initially to the Upper Sector Elbe, from 1 May to 1 November 1941 to the Personnel Branch of the Main Office, and after the last mentioned date to the SS Main Office proper.

In explanation of his connections with the SS, the defendant detailed the following:

Soon after he became deputy manager of the Leuna plant of Farben in 1934 he came into contact with one Kranefuss, the executive secretary of the Himmler Circle of Friends and the chairman of the Vorstand of BRABAG (the abbreviation for a corporation producing gasoline from lignite), whom the defendant had first come to know when they were schoolmates. During the years following the renewal of their contacts, the defendant made frequent use of his personal relationship to Kranefuss and the latter's good offices in connection with business matters and, particularly, for the protection of certain Jews and other oppressed persons in the welfare of whom the defendant had become interested. Early in 1939 Kranefuss suggested to the defendant that intervention on behalf of politically oppressed persons would be much easier if the defendant should affiliate himself with the SS. To this the defendant replied that on account of his professional and personal convictions he could not subscribe to the membership oath, submit to the SS authority of command, attend its functions, or wear its uniform. The defendant says that he believed that this would put an end to the suggestion that he should affiliate himself with the organization but that, much to his surprise, Kranefuss advised him soon thereafter that he might be made an honorary member, with the reservations enumerated above. The defendant says that he thereby found himself confronted with an alternative which he did not anticipate, namely, that of losing the friendship of Kranefuss, which he had found most helpful in aiding the oppressed persons who were the direct objects of SS intolerance, or of accepting honorary membership, conditioned as aforesaid. He chose the latter course, and says that to the end he never took the SS oath, submitted to its authority of command, attended any of its functions, or owned or wore a uniform. When, after he became an honorary member, it was suggested to the defendant that he should procure a uniform for use on special occasions, Buetefisch pointed to the conditions that he had attached to his acceptance of membership and stood adamant. This resulted in a controversy with Kranefuss, in the course of which the defendant asked that his name be deleted from the list of SS rank holders. The defendant says, also, that his

promotions and assignments were perfunctory and automatic and made without instigation on his part. The record contains corroboration of the defendant's statements, and none of these are directly refuted by the prosecution.

In the appraisal of the defendant's status in the SS, the prosecution attaches much significance to his intimate relationship to Kranefuss and the latter's close affiliation with Himmler and his Circle of Friends. It appears that the defendant became a member of this Circle about the same time that he was made an honorary leader of the SS and that he was a regular attendant at the meetings of the Circle, including one occasion when the entire membership was the guest of Himmler at his field headquarters in East Prussia. Concerning these meetings of the Himmler Circle, Tribunal IV in Case 5 (U. S. *v.* Flick, *et al.*,), after fully considering the character and activities of that group, including the part played by Kranefuss therein, said:

> "We do not find in the meetings themselves the sinister purposes ascribed to them by the prosecution * * *. So far we see nothing criminal or immoral in the defendant's attendance at these meetings. As a group (it could hardly be called an organization) it played no part in formulating any of the policies of the Third Reich."*

The prosecution calls attention to the fact, however, that the Circle of Friends contributed more than a million reichsmarks annually to the SS during each of the years 1941, 1942, and 1943, and that 100,000 of each of these gifts came from Farben, through the defendants Schmitz and Buetefisch. These facts, if established, would only be material to the charge here under consideration as tending to show, in connection with other facts, that Buetefisch had knowledge of the criminal purposes or acts of the SS at the time he became or during the period that he remained a member—if he was, in fact, a member. In other words, it is first necessary for us to determine whether the defendant was a member of the SS in the sense contemplated by the IMT when it held such membership to be criminal. Unless and until it is first ascertained that the defendant was a member in the accepted sense, we are unconcerned with the question as to whether he had knowledge of the criminal activities of the organization.

The exhaustive opinion of the Supreme Spruchkammer Court of Hamm, rendered in affirming the case in which Baron von Schroeder was convicted for honorary membership in the SS, has been cited and relied upon by the prosecution. The factual distinction between the case with which we are presently concerned and that of von Schroeder is clearly disclosed by the opinion above referred to. In noticing the

*See volume VI, this series, page 1218.

character of von Schroeder's relationship to the SS, the Supreme Spruchkammer Court said:

"At the Reich Party meeting in 1936 he (von Schroeder) was told orally by Himmler that he had been accepted as an honorary member with the rank of Standartenfuehrer by the Allgemeine (General) SS.

* * * * * * *

"The defendant after his acceptance into the Allgemeine SS as an honorary member received, as is admitted by the appellant, a membership number, paid regularly his membership dues, was promoted to SS Oberfuehrer in 1939 and SS Brigadefuehrer in 1941, showed up at special occasions wearing the uniform of his rank, although he never participated in any SS duties and was not assigned to any definite SS unit, but was registered with the Staff as an assigned leader."

As distinguished from von Schroeder, who appeared at special occasions in the uniform of his rank, the defendant Buetefisch consistently refused to procure a uniform in the face of positive demands that he do so. This circumstance, when coupled with the other significant reservations which the defendant imposed and consistently maintained when and after he accepted honorary membership, would seem to place him in an entirely different category from that of von Schroeder.

We do not attach any special significance to the fact that the defendant was classified as an "honorary member," but we are of the opinion that the defendant's status in the organization must be determined by a consideration of his actual relationship to it and its relationship to him. Membership in an organization ordinarily involves, reciprocally, rights, privileges, and benefits accruing to the member from the organization and corresponding duties, obligations, and responsibilities flowing to the organization from the member. One of the advantages to be gained by an organization from having so-called honorary members is the added prestige accruing to it from having prominent personages identified with it. This point was emphasized by the Supreme Spruchkammer in dealing with von Schroeder, but even that benefit is negatived here by the showing of the refusal of Buetefisch to attend the organization's functions or wear its insignia.

We are constrained to hold that the evidence does not establish beyond a reasonable doubt that the defendant Buetefisch was a member of an organization declared to be criminal by the judgment of the IMT.

The defendant von der Heyde is the last person named in count four of the indictment. He became a member of the Reitersturm (Riding Unit) of the SS in Mannheim in 1933, his serial number

being 200,180. This is the group within the SS that the IMT declared not to be a criminal organization.

In 1936 the defendant moved to Berlin to become a member of the Economic Policy Department (WIPO) of Farben's NW–7 Office. The prosecution contends that while he was in Berlin the defendant was an active member of the Allgemeine (General) SS, and it sought to establish that fact by documentary proof as follows:

1. An SS personnel file, indicating the defendant's number in that organization as 200,180 and entries to the effect that he was promoted to 2d Lieutenant on 30 January 1938, to 1st Lieutenant on 10 September 1939, and to Captain on 30 January 1941. Opposite the entry of the defendant's promotion to 2d Lieutenant in 1938 is a notation to the effect that he was a "Fuehrer in the SD."

2. An SS Racial and Settlement questionnaire, filled out by the defendant, likewise giving his SS number as 200,180, his rank as a 2d Lieutenant, his unit as "SD—Main Office," and his activity as "Honorary Collaborator of SD—Main Office."

3. The defendant's written application for permission to marry (required of all members of the SS and also of the Wehrmacht) addressed to the Reich Chief of the SS on 6 May 1939. On this printed form were listed four classes of SS memberships (not including the Riding Unit), and that of the General SS had been underscored, indicating, so the prosecution says, that the defendant at the time regarded himself as a member of that group. This document also gave the defendant's membership number as 200,180, his unit as "SD—Main Office," and his superior as Colonel Six, a Department Chief in that office.

The defendant testified that when he left Mannheim for Berlin in 1936, he was placed on a leave status by the SS Riding Unit. He further said that he never thereafter paid dues to the Riding Unit, although he did pay Party dues at Berlin, a part of which may have been diverted to the SS by party officials without his knowledge. He emphatically denied that he had ever affiliated, either directly or indirectly, with any SS group, other than said Riding Unit.

No responsibility is assumed by the defendant for the data shown on his SS personnel file produced by the prosecution. He testified specifically that there was no basis in fact for the memoranda thereon showing that on 30 January 1938 he was a "Fuehrer in the SD," and he ascribes this entry to an error or a false assumption on the part of the clerk who made or kept said record.

The defendant said that his progressive promotions from 2d Lieutenant to Captain were automatic and customary in all branches of the SS, including the Riding Units, and that no inference of membership in a criminal organization can be drawn therefrom. Significance is attached to the circumstance that in all the documents relating to

the defendant's SS affiliation his membership number is given as 200,-180, that being the number originally assigned to him on his first Riding Unit membership card, issued at Mannheim early in 1934.

The defendant further stated on the witness stand that when, in the middle of the year 1939, he decided to marry, he made application for permission so to do through the Berlin office of the SS, rather than that at Mannheim, for two reasons, first, because he was then residing in Berlin and, secondly, because he believed that the granting of such permission would be delayed if he went through Mannheim. His counsel points out that this conclusion was justified, as is shown by the fact that it required approximately 6 months for him to obtain clearance through Berlin, even though he resided there and personally made application through that office.

By way of explaining how he came to give the SD—Main Office as his organization unit, Honorary Collaborator of SD—Main Office as his SS activity, and Colonel Six as his superior, on his R and S questionnaire and in his formal application for permission to marry, the defendant has said that these constituted the SS offices, agencies, and persons with which he came in contact through his NW 7 activities at Berlin, and that he made use of this data in the hope that it would expedite approval of his marriage application. In any event, the defendant asserts that this memoranda is not inconsistent with his Riding Unit membership; nor does it support an inference that he was a member of the SD, since it has been made to appear that a Riding Unit could well have been accredited to and an honorary assistant of an SD—Main Office. This was corroborated by the testimony of the witness Ohlendorf, Chief of the SD, who, though he was convicted by it, was complimented by Tribunal II for his truthfulness on the witness stand.

In dealing with the SD, the IMT included "all local representatives and agents, honorary or otherwise, whether they were technically members of the SS or not," and concluded that said organization was criminal. In this case, however, von der Heyde is charged, specifically, with membership in the SS, not the SD, and the burden is on the prosecution to establish that fact. There was no showing that membership in the SS was a necessary prerequisite to membership in the SD. The judgment of the IMT indicates otherwise and treats these groups as separate, though related, organizations.

Taking into account that the only definitely established affiliation of the defendant was with the nonculpable Riding Unit of the SS and that the evidence tending to show that he subsequently became a member of the General SS arises wholly out of the innocuous incidents connected with his efforts to obtain a marriage license, we must conclude that the guilt of the defendant von der Heyde under count four has not been satisfactorily established.

The defendants Schneider, Buetefisch, and von der Heyde are acquitted of the charges contained in count four of the indictment.

By numerous objections and formal motions made during the course of the trial and in their final arguments and closing briefs, several of the attorneys for defendants have questioned the validity of the laws, orders, and directives by virtue of which this Tribunal was created and under which it has functioned. We have again given careful consideration to these matters and have satisfied ourselves that this Tribunal was lawfully organized and constituted, that it has jurisdiction over the subject matter of this proceeding and over the persons of the defendants before it, and that it is fully authorized and competent to render this judgment.

The President now recognizes Judge Hebert who wishes to make a statement for the record.

STATEMENT OF JUDGE HEBERT

JUDGE HEBERT: I concur in the result reached by the majority under counts one and five of the indictment acquitting all of the defendants of crimes against peace, but I wish to indicate the following: The judgment contains many statements with which I do not agree and in a number of respects is at variance with my reasons for reaching the result of acquittal. I reserve the right, therefore, to file a separate concurring opinion on counts one and five.

As to count three of the indictment, I respectfully dissent from that portion of the judgment which recognizes the defense of necessity as applicable to the facts proven in this case. It is my opinion, based on the evidence, that the defendants have not established the defense of necessity. I conclude from the record that Farben, as a matter of policy, with the approval of the TEA and the members of the Vorstand, willingly cooperated in the slave-labor program, including utilization of forced foreign workers, prisoners of war, and concentration-camp inmates, because there was no other solution to the manpower problems. As one of the defendants put it in his testimony, Farben did not object because "we simply did not have enough workers any longer." It was generally known by the defendants that slave labor was being used on a large scale in the Farben plants, and the policy was tacitly approved. It was known that concentration-camp inmates were being used in construction at the Auschwitz buna plant, and no objection was raised. Admittedly, Farben would have preferred German workers rather than to pursue the policy of utilization of slave labor. Despite this fact, and despite the existence of a reign of terror in the Reich, I am, nevertheless, convinced that compulsion to the degree of depriving the defendants of moral choice did not in fact operate as the conclusive cause of the defendants' actions, because their will coincided with the governmental solution of the situation,

and the labor was accepted out of desire for, and the only means of, maintaining war production.

Having accepted large-scale participation in the program and, in many instances, having exercised initiative in obtaining workers, Farben became inevitably connected with its operation, with all the discriminations and human misery which the system of detaining workers in a state of servitude entailed. The cruel and inhuman regulations of the system had to be enforced and applied in the working of slave labor. The system demanded it. Efforts to ameliorate the condition of the workers may properly be considered in mitigation, but I cannot accept the view that persons in the positions of power and influence of these defendants should have gone along with the slave-labor program.

Those who knowingly participated in and approved the utilization of slave labor within the Farben organization should bear a serious responsibility as being connected with and taking a consenting part in war crimes and crimes against humanity, as recognized in Control Council Law No. 10.

I concur in the conviction of those defendants who have been found guilty under count three, but the responsibility for the utilization of slave labor and all incidental toleration of mistreatment of the workers should go much further and should, in my opinion, lead to the conclusion that all of the defendants in this case are guilty under count three, with the exception of the defendants von der Heyde, Gattineau, and Kugler, who were not members of the Vorstand. I, therefore, dissent as to this aspect of count three, and reserve the right to file a dissenting opinion with respect to that part of the judgment devoted to count three.

I have signed the judgment with these reservations, and I hand a copy of this express to the Secretary General for the record.*

PRESIDING JUDGE SHAKE: The Tribunal is about to render its formal judgment and impose its sentences. Before doing so, may I ask that the defendants who are convicted each arise as his name is called, face the Tribunal, and remain standing in the dock until the sentence has been imposed. The defendants who have been acquitted need not arise when their names are called.

FORMAL JUDGMENT AND SENTENCES

United States Military Tribunal VI having heard the evidence, the arguments of counsel, and the statements of the defendants, and having considered the briefs submitted by the parties, now renders judgment and imposes sentences in Case No. 6, the United States of

*The concurring opinion of Judge Hebert on crimes against peace (counts one and five) and his dissenting opinion on slave labor (count three) are reproduced below in the next following sections.

America *vs.* Carl Krauch, *et al.* It is accordingly considered, adjudged, and decreed as follows, to wit:

DEFENDANT KRAUCH

The defendant CARL KRAUCH is found Guilty under count three and Not Guilty under counts one, two, and five of the indictment. For the offense of which he has been found Guilty, the Tribunal sentences said defendant to imprisonment for 6 years. He shall, however, be allowed credit on said sentence for the period of time that he has already been in custody, to wit: from 3 September 1946 to the date of this judgment, inclusive.

DEFENDANT SCHMITZ

The defendant HERMANN SCHMITZ is found Guilty under count two, and Not Guilty under counts one, three, and five of the indictment. For the offense of which he has been found Guilty, the Tribunal sentences said defendant to imprisonment for 4 years. He shall, however, be allowed credit on said sentence for the period of time that he has already been in custody, to wit: from 7 April 1945 to the date of this judgment, inclusive.

DEFENDANT VON SCHNITZLER

The defendant GEORG VON SCHNITZLER is found Guilty under count two, and Not Guilty under counts one, three, and five of the indictment. For the offense of which he has been found Guilty, the Tribunal sentences said defendant to imprisonment for 5 years. He shall, however, be allowed credit on said sentence for the period of time that he has already been in custody, to wit: from 7 May 1945 to the date of this judgment, inclusive.

DEFENDANT TER MEER

The defendant FRITZ TER MEER is found Guilty under counts two and three, and Not Guilty under counts one and five of the indictment. For the offenses of which he has been found Guilty, the Tribunal sentences said defendant to imprisonment for 7 years. He shall, however, be allowed credit on said sentence for the period of time that he has already been in custody, to wit: from 7 June 1945 to the date of this judgment, inclusive.

DEFENDANT AMBROS

The defendant OTTO AMBROS is found Guilty under count three, and Not Guilty under counts one, two, and five of the indictment. For the offense of which he has been found Guilty, the Tribunal sentences

said defendant to imprisonment for 8 years. He shall, however, be allowed credit on said sentence for the period of time that he has already been in custody, to wit: from 17 January 1946 to 1 May 1946, and from 13 December 1946 to the date of this judgment, both inclusive.

DEFENDANT BUERGIN

The defendant ERNST BUERGIN is found Guilty under count two, and Not Guilty under counts one, three, and five of the indictment. For the offense of which he has been found Guilty, the Tribunal sentences said defendant to imprisonment for 2 years. He shall, however, be allowed credit on said sentence for the period of time that he has already been in custody, to wit: from 23 June 1947 to the date of this judgment, inclusive.

DEFENDANT BUETEFISCH

The defendant HEINRICH BUETEFISCH is found Guilty under count three, and Not Guilty under counts one, two, four, and five of the indictment. For the offenses of which he has been found Guilty, the Tribunal sentences said defendant to imprisonment for 6 years. He shall, however, be allowed credit on said sentence for the period of time that he has already been in custody, to wit: from 11 May 1945 to the date of this judgment, inclusive.

DEFENDANT HAEFLIGER

The defendant PAUL HAEFLIGER is found Guilty under count two, and Not Guilty under counts one, three, and five of the indictment. For the offense of which he has been found Guilty, the Tribunal sentences said defendant to imprisonment for 2 years. He shall, however, be allowed credit on said sentence for the period of time that he has already spent in custody, to wit: from 11 May 1945 to 30 September 1945 and from 3 May 1947 to the date of this judgment, both inclusive.

DEFENDANT ILGNER

The defendant MAX ILGNER is found Guilty under count two, and Not Guilty under counts one, three, and five of the indictment. For the offense of which he has been found Guilty, the Tribunal sentences said defendant to imprisonment for 3 years. He shall, however, be allowed credit on said sentence for the period of time that he has already been in custody, to wit: from 7 April 1945 to the date of this judgment, inclusive. Since said defendant has already been in prison for a period of time in excess of the penalty herein imposed, it is ordered that he be discharged upon the final adjournment of the Tribunal.

DEFENDANT JAEHNE

The defendant FRIEDRICH JAEHNE is found Guilty under count two, and Not Guilty under counts one, three, and five of the indictment. For the offense of which he has been found Guilty, the Tribunal sentences said defendant to imprisonment for 1½ years. He shall, however, be allowed credit on said sentence for the period of time that he has already been in custody, to wit: from 18 April 1947 to the date of this judgment, inclusive.

DEFENDANT OSTER

The defendant HEINRICH OSTER is found Guilty under count two, and Not Guilty under counts one, three, and five of the indictment. For the offense of which he has been found Guilty, the Tribunal sentences said defendant to imprisonment for 2 years. He shall, however, be allowed credit on said sentence for the period of time that he has already been in custody, to wit: from 31 December 1946 to the date of this judgment, inclusive.

DEFENDANT DUERRFELD

The defendant WALTER DUERRFELD is found Guilty under count three, and Not Guilty under counts one, two and five of the indictment. For the offense of which he has been found Guilty, the Tribunal sentences said defendant to imprisonment for 8 years. He shall, however, be allowed credit on said sentence for the period of time that he has already been in custody, to wit: from 9 June 1945 to 17 June 1945, and from 5 November 1945 to the date of this judgment, both inclusive.

DEFENDANT KUGLER

The defendant HANS KUGLER is found Guilty under count two, and Not Guilty under counts one, three, and five of the indictment. For the offense of which he has been found Guilty, the Tribunal sentences said defendant to imprisonment for 1½ years. He shall, however, be allowed credit on said sentence for the period of time that he has already been in custody, to wit: from 11 July 1945 to 6 October 1945, and from 18 April 1947 to the date of this judgment, both inclusive. Since said defendant has already been in prison for a period of time in excess of the penalty herein imposed, it is ordered that he be discharged upon the final adjournment of the Tribunal.

The sentences imposed by virtue of this judgment shall be served at such prison or prisons, or other appropriate place or places of confinement, as shall be determined by competent authority.

The defendants Fritz Gajewski, Heinrich Hoerlein, August von Knieriem, Christian Schneider, Hans Kuehne, Carl Lautenschlaeger,

Wilhelm Mann, Karl Wurster, Heinrich Gattineau, and Erich von der Heyde are each acquitted of all the charges in the indictment. They will each be discharged from custody upon the final adjournment of the Tribunal.

The Tribunal now recognizes Dr. Dix, who desires to present something to the Tribunal.

DR. DIX (counsel for defendant Schmitz): May it please the Tribunal, on behalf of the defendants Krauch, Schmitz, von Schnitzler, ter Meer, Ambros, Buergin, Buetefisch, Haefliger, Ilgner, Jaehne, Oster, Duerrfeld and Kugler, I should like to ask for permission, speaking also on behalf of the defense counsel of the gentlemen mentioned, to read a motion into the record which I am now handing to the Secretary General in the number of copies prescribed. At the same time I should like to state that in the written text the name Ambros had been stricken out by me because I have only now been able to make contact with his defense counsel Dr. Hoffmann. I should like to state now that this motion is also made on behalf of Ambros.

I shall now read it. I shall read the motion in the language in which it was drafted, the English language.

The defendants Krauch, Schmitz, von Schnitzler, ter Meer, Ambros, Buergin, Buetefisch, Haefliger, Ilgner, Jaehne, Oster, Duerrfeld, Kugler, and their defense counsel, each for himself, through me as speaker, move to set aside the decision and judgment of conviction, on the ground that the said decision and judgment is contrary to the facts, contrary to law, and against the weight of the evidence; on the ground that this Court had no jurisdiction to hear and determine the alleged charges; and on the further ground that the facts alleged and the facts found do not constitute an offense against the law of nations or against the laws of the sovereign power of the United States.

And the said defendants and their defense counsel, each for himself, move to set aside the decision and judgment of this Court, on the ground that the rulings made and the procedure followed throughout the course of this trial denied to the said defendant due process of law and was violative of the Constitution and laws of the United States, international law, and the rules of law generally applicable to the trial of criminal cases in all civilized nations.

And the defendants and their defense counsel, each for himself, move to set aside and vacate the decision and judgment of this Court, on the ground that the individual justices thereof were without power to act and the Tribunal, as a whole, was never legally established and its said decision and judgment constitute an arbitrary exercise of military power over each of the said defendants, in violation of the laws of nations and agreements made by the belligerent powers and other countries appertaining thereto; and each of the defendants and their

defense counsel move for such other further and equitable relief as the circumstances warrant and as may be just and proper.

THE PRESIDENT: May I say to you and your associate counsel, and to the defendants for whom you speak, that the matters set forth in the motion have been considered by the Tribunal, as is reflected by the concluding paragraph of the judgment of the Tribunal proper. The Tribunal now overrules said motion, and the record may so show.

And now I officially declare United States Military Tribunal VI finally adjourned.

XIV. CONCURRING OPINION OF JUDGE HEBERT ON THE CHARGES OF CRIMES AGAINST PEACE

CONCURRING OPINION ON COUNTS ONE AND FIVE OF THE INDICTMENT*

Filed
28 December 1948
Secretary General
for Military Tribunals
Nuernberg, Germany

At the rendition of final judgment in this case on 29 and 30 July 1948, I expressed concurrence in the result reached by the Tribunal in acquitting all defendants under count one and five of the indictment (the aggressive war counts) but reserved the right to file a separate opinion because the judgment on these counts contains conclusions of fact and statements with which I do not agree and, in numerous respects, is at variance with my own approach in reaching the result of acquittal. This opinion is filed pursuant to such reservation.

In this proceeding involving the trial of twenty-three individuals indicted as major war criminals, it is important not only to pass judgment upon the guilt or innocence of the accused, but also to set forth an accurate record of the more essential facts established by the proof. The size of the record makes the latter difficult of achievement. As applied to the aggressive war counts, while concurring in the acquittals, I cannot express agreement with factual conclusions of the Tribunal which, in my opinion, misread the record in the direction of a too complete exoneration and an exculpation even of moral guilt to a degree which I consider unwarranted. The record of I. G. Farbenindustrie, A. G., during the period under examination in this lengthy trial, has been shown to have been an ugly record which went, in its sympathy and identity with the Nazi regime, far beyond the activities of the normal business the defendants assert such action to have been. Action of the character in which most of the defendants, the responsible leadership of Farben, were engaged during the period of preparation for and during the subsequent waging of the aggressive wars of Nazi Germany cannot be condoned nor should its relationship to the crimes against peace committed by the Nazi regime be mini-

*Pursuant to reservations made by Judge Hebert at the time of the Tribunal's decision and judgment (section XIII above), this concurring opinion was filed in writing with the Secretary General of the Tribunals on 28 December 1948, nearly 5 months after the judgment of the Tribunal.

mized. I reach the conclusion, however, that the individual defendants, under proof, are not guilty of the crime against peace denounced by Control Council Law No. 10, regardless of how strongly the support and encouragement given by Farben and its influential leaders of the Nazi regime contributed, first, to making the war possible from the viewpoint of production and, secondly, to prolonging the war after it had been launched by Hitler's aggression against Poland.

An important factor in my concurrence in the result reached is that I feel the necessity for bowing to such weighty precedents as the acquittal by the International Military Tribunal of Schacht and Speer of the charges of crimes against peace; of the acquittal by Military Tribunal III of the leading officials of the Krupp firm on similar charges; and, the more recent precedent established by an International Military Tribunal in the French occupied zone in acquitting officials of the Roechling concern of the charges of participation in the planning and preparation of aggressive war. Such precedents, coupled with a most liberal application of the rule of "reasonable doubt" in favor of the defendants and added to a reluctance, because of the novelty of the crime against peace, to draw inferences unfavorable to a defendant in the all-important area of knowledge of the aim of aggressive war and specific intent to further such aim, lead to the result of acquittal. I am concurring though realizing that on the vast volume of credible evidence presented to the Tribunal, if the issues here involved were truly questions of first impression, a contrary result might as easily be reached by other triers of the facts more inclined to draw inferences of the character usually warranted in ordinary criminal cases. I do not agree with the majority's conclusion that the evidence presented in this case falls so far short of sufficiency as the Tribunal's opinion would seem to indicate. The issues of fact are truly so close as to cause genuine concern as to whether or not justice has actually been done because of the enormous and indispensible role these defendants were shown to have played in the building of the war machine which made Hitler's aggressions possible. The destruction of important Farben records at the direction of certain of the defendants has probably deprived the prosecution of essential links in its chain of incriminating evidence and leaves one with the feeling that a different result might possibly be called for if the complete Farben files were now available to the war crimes prosecutors.

On the all-important element of criminal intent or state of mind acompanying the acts and actions of the defendants, I have felt constrained to agree upon acquittal predicated upon the doubt as to whether the defendants actually knew and believed that their contributions to the armament of Germany constituted the crime of participating in the planning and preparation for initiation of a

war which was to be aggressive in character. Beyond that I follow the implications of the acquittal of Speer as a precedent for the acquittal of the defendants of the charge of "waging aggressive war." That the defendants knew they were preparing for a possible war is certain. That their actions in this regard were not the normal activities of businessmen is equally clear. Farben participated in a complete transformation of the economic structure into one of military economy. The possibility of war was ever before them. But clear unequivocal proof of exact knowledge of the decision of the regime to initiate and wage wars of aggression is not established beyond reasonable doubt. Farben, under the leadership of these defendants, pursued a course of action which was proved to be in fact adverse to the cause of international peace in numerous respects; a course evidencing cavalier disregard of possible and probable consequences of their acts. Such conduct, carried out in a warlike atmosphere for a dictator who had manifested his warlike intentions in many ways, despite contradictory protestations of peace, is sufficiently reprehensible in its relation to the resulting holocast of war as to cause me to feel that international law should be broadened so as to devise standards defining the criminality of action of the character carried out by these defendants. However, I conclude that what has been proved is sympathy and support of the Nazi regime and participation in armament on a gigantic scale with reckless disregard of the consequences, under circumstances strongly suspicious of individual knowledge of Hitler's ultimate aim to wage aggressive war, but the proof does not meet the extraordinary standard exacted by the mentioned precedents, including the judgment of the International Military Tribunal.

Count five charges the defendants with participation in a common plan or conspiracy to commit crimes against peace. In my view it has not been established beyond reasonable doubt that there existed a well-defined conspiracy on the part of these defendants to commit crimes against peace as here alleged. The proof rather shows individual action by the defendants who utilized the instrumentality of Farben in the performance of acts and actions in their individual spheres within Farben, but the character of the proof is such as to make it impossible to determine when, if ever, the defendants agreed on a common decision for concerted action to join an enterprise constituting crimes against peace, or when the defendants may be said to have joined such an alleged conspiracy. While there are broader concepts of the law of conspiracy that might be utilized to cover the action of certain of the defendants, we are met here with the fact that in this new field of international law the judgment of the International Military Tribunal dealt most conservatively with the concept of conspiracy in relation to the crimes against peace. While its view in this regard

has been subjected to some criticism, it would seem to be applicable to the facts proven in this case as to the existence of any separate Farben conspiracy to commit crimes against peace. In my view, the proof likewise does not establish participation in the common plan for the initiation of wars of aggression as defined and limited in the judgment of the International Military Tribunal. This concurring opinion will, therefore, disregard the allegations of count five except to the extent that such allegations are necessarily included as a part of the allegations in count one of the indictment.

Count one charges that the defendants, acting through the instrumentality of Farben, participated in the planning, preparation, initiation and waging of wars of aggression. Under the proof, the acts of these defendants could only fall in the sphere of preparation for and waging of aggressive war. The preparation for aggressive war with which these defendants are charged necessarily constituted part of Hitler's master planning for aggressive war. It has not been shown that any defendant was in any way a party to the decision for the initiation of any war of aggression. If any defendant is to be held criminally responsible it must, therefore, be because his acts constituted participation in the preparation or waging of aggressive war. It may be noted in passing that the term "aggressive war," as used in this concurring opinion, includes wars in violation of international treaties, agreements and assurances in accordance with the definition of Control Council Law No. 10; and, further, that the determination by the IMT that aggressive acts and aggressive wars were planned, and did occur, are binding on this Tribunal. (U. S. Military Government Ordinance No. 7, 18 October 1946, Article X.)

The record abundantly establishes a substantial participation by certain of the individual defendants who were members of the Vorstand of Farben, in the action of Farben in furthering the armament activities which constituted preparation for the aggressive wars launched by Hitler. The corporate defendant is not under indictment before this Tribunal. If a single individual had combined the knowledge attributable to the corporate entity and had engaged in the course of action under the same circumstances as that attributable to the corporate entity, it is extremely doubtful that a judgment of acquittal could properly be entered. Recognizing this central fact there is considerable logic in the argument that, as Farben did not run itself, someone should be held responsible for what Farben did.

Farben was not an enterprise dominated by a single influential leader. Its responsible managers were the members of its Vorstand. Farben was the instrumentality through which they acted in achieving a major part of the rearmament of Germany. Farben's contributions to the German war effort can hardly be overstated. After the advent and rise of Hitler and the consolidation of the National Socialist

power, a vast reorganization in the economic life of Germany took place. With the cooperation of industry, the economic structure rapidly moved into a program of autarchy which by 1936 began to be almost completely ruled by considerations of military economy. The world sat by in fear as Germany, in disregard of the Treaty of Versailles which Hitler repudiated publicly, amassed the greatest striking military power ever assembled by an aggressor nation during time of peace. I. G. Farbenindustrie, A. G., a great chemical combine, with tremendous resources, staffed with skilled scientists and technicians of superlative ability, during the period from 1933 to 1939, underwent an ominous transition from a giant institution serving the cause of peace to an even more powerful instrumentality to serve the rapidly developing cause of war. As will be shown in more detail, Farben was integrated in the governmental planning and preparation for war and became one of Hitler's greatest assets in the carrying out of his plan of aggressive war. The accomplishments of Farben were a substantial prerequisite for Hitler to proceed with his notorious policies of force and aggression.

The substantial acts of participation by Farben in the preparation of Nazi Germany for war cannot be successfully denied. All armament is preparedness for war, and Farben was preeminent in the program of armament. Rearmament, of itself, is not a crime and whether this preparation or planning was known to have been for aggressive war is the main issue. The proof establishes that, with initiative and great efficiency, Farben participated in the planning and preparation of Germany's armament program in the all important chemical sector and in related fields of indispensable raw materials. It furthermore engaged systematically in numerous activities showing sympathy with and furthering the objectives and ideology of the Nazi regime.

The aims of conquest and suppression of other nations which animated the Hitler regime have been established by the IMT judgment, as have been the inhumane and criminal policies carried out by that regime in many victimized countries during the war and the determination of the regime to perpetuate the domination and suppression of other nations after the war. Farben's substantial role in creating Germany's tremendous war potential was a decisive factor in making possible the tactical and policy decisions of aggression whereby Hitler plunged the world into war; Farben actively and substantially participated in reaping the fruits of aggression by illegal participation in the spoliation of occupied countries; and Farben, owing to its special position, exercised its own initiative in making as early as June 1940, concrete plans for the permanent economic exploitation of countries to be placed under Nazi domination after the anticipated victorious conclusion of the wars of aggression.

Farben knowingly participated in the secret armament program which was designed to achieve a degree of military might which would make Germany invincible. Farben largely created the broad raw material basis without which the policy makers could not have even seriously considered waging aggressive war. Farben developed, planned, and operated huge plant expansions, stand-by plants and facilities for the synthetic production of strategic and critical war materials, including such all important products as synthetic gasoline, oil, buna rubber, nitrogen and light metals, predominantly as part of the military economy and as definite preparation for the possibility or "case of war." All this was done in closest cooperation with the top governmental and military agencies immediately charged with carrying out the program of preparation for aggression as established by the judgment of the IMT.

Farben's importance to the German war effort is perhaps best summed up in a statement attributed to Funk, Minister of Economics and Plenipotentiary General for War Economy and Schacht's successor in office. Funk was convicted of crimes against peace by the IMT. The defendant Kuehne reported to the defendant Schmitz concerning a meeting held in October of 1941 in the presence of a number of military and government dignitaries [*NI–15027, Pros. Ex. 2064*]. According to Kuehne:

> "At the conclusion of his long lengthy statement, regarding which I hope I will once more be able to report to you in person, Herr Funk said the following: He felt compelled yet to refer to the remarks made by Herr Pleiger* and by me. Naturally, coal, iron, guns and procurement of materials were necessary for waging war and the importance of the industries must not be underestimated. However, one thing he must establish, *without the German IG and its achievements, it would not have been possible to wage this war. You can imagine I was overjoyed and expressed to Herr Funk my thanks in the name of the whole IG.*"

The fact that the defendants knew that the program they were undertaking was part of Hitler's armament program, including many of its secret aspects, is too well established to admit of any controversy. The universal defense is advanced, however, that, as rearmament may be for defensive purposes, or for other legitimate aims in harmony with international law, as well as for purposes of aggression, the actions of the defendants do not constitute crimes against peace as defined in Control Council Law No. 10 and in the London Charter. Each defendant contends that, for lack of knowledge of Hitler's aggressive aims and intentions, he cannot be held responsible for his conduct because the *state of mind* required to accompany his action was not present.

*Reich Coal Commissioner and member of Vorstand of Hermann Goering Works.

The defendants affirmatively assert that they thought they were expanding the military might of Germany on this vast scale for defensive purposes; that they did not actually believe that Hitler would make war, though they feared it; that they thought Hitler was only "bluffing" and would find peaceful solutions for the territorial demands he so loudly proclaimed prior to the initial acts of aggression. They assert that they were misled by the contradictory nature of the Nazi propaganda.

We are thus brought to the central issue of the charges insofar as the aggressive war charges are concerned. Acts of substantial participation by certain defendants are established by overwhelming proof. The only real issue of fact is whether it was accompanied by the state of mind requisite in law to establish individual and personal guilt. Does the evidence in this case establish beyond reasonable doubt that the acts of the defendants in preparing Germany for war were done with knowledge of Hitler's aggressive aims and with the criminal purpose of furthering such aims.

In every criminal case the presence or absence of criminal knowledge or intent can only be established by weighing the sum total of the evidence: on this basis it may be found to have existed although the defendant denies it, or it may be found not to have existed although the defendant asserts it. Knowledge, hence, must be proven by direct evidence or by circumstances warranting the conclusion that the defendant was informed or had knowledge that the authorities with whom he was cooperating were planning aggressive war. It is fundamental that knowledge may be imputed from acts, from positions held, from opportunities and channels of information available to individuals. But the sum total of the evidence must be convincing to the trier of fact to warrant the conclusion that proof beyond reasonable doubt is present. Furthermore, the knowledge required in crimes against peace is analogous to specific intent and great care must be exercised before finding that it exists beyond reasonable doubt with respect to any defendant.

After these preliminary statements, it will be of value to review, in summary first, some of the more significant items in the evidence relied upon by the prosecution bearing upon the question of the state of mind, and later to review in more detail the comprehensive course of action in which the defendants, through the instrumentality of Farben, were engaged during the period under consideration.

The Criminal Intent or State of Mind

The extent of Farben's complete integration into a system of governmental planning and preparation for war, as will be later shown, and the extent of participation by certain defendants in formulating and executing policies on these matters with the Nazi regime, present a picture of coordinated and sustained activity. From this general

evidence alone, the prosecution contends, it could be properly concluded that the defendants, leading officials of Farben, were fully apprised of, and believed that Germany would ultimately wage aggressive war, if necessary, and that their activities were directed toward that end. However, in addition to a volume of evidence bearing upon the nature, scope, character and timing of Farben's activities, the evidence provides a number of particularly significant specific indications relied upon by the prosecution to show the state of mind of Farben's leadership. This specific evidence includes admissions, statements, letters, reports of conferences and other action which, taken together and joined with the general evidence, it is contended, should serve to dispel any reasonable doubt concerning the existence of a guilty state of mind or criminal intent.

The following matters are deemed worthy of note. They by no means constitute a complete review of the evidence on the subject of knowledge.

a. On 26 May 1936, after he had been appointed coordinator for raw materials and foreign exchange by Hitler, Goering held a top secret meeting with his advisory committee of experts. Defendant Schmitz attended as representative of Farben. It was a meeting at the highest level, composed of selected representatives of industry and of such top ranking officials as Keitel, Chief of Staff to the Minister of War; Under State Secretary Koerner of the Four Year Plan and Keppler, Hitler's economic advisor.

In opening the meeting, Goering emphasized the confidential and secret nature of the data to be discussed. He expressly declared that the figures about to be disclosed were to be treated as a state secret. He warned the participants that they were to see that notes did not fall into the wrong hands. A lengthy discussion of ways and means of improving the raw material situation ensued. It was frankly stated that the increased consumption of materials was due to the requirements of the Wehrmacht, including demands of the Navy. The importance of having an adequate supply of oil on hand for the case of war (A-Fall) was emphasized as was the necessity of developing synthetic production of oils. The report of the meeting states [*NI–5380, Pros. Ex. 400*]:

> "*Min. Pres. Goering:* Emphasizes that in the A-case (A-Fall) we would not, under certain circumstances, get a drop of oil from abroad. With the thorough motorization of army and navy the whole problem of conducting a war depends on this. All preparations must be made for the A-case so that the supply of the wartime army is safeguarded."

The discussion moved to factories under construction and to the use of American processes. The report states:

"*Gen. Dir. Dr. Schmitz:* Agrees to this, method adopted after thorough discussion in order to utilize experience in enlarging factories."

"*Min. Pres. Goering:* Indicates serious import reductions in the A-case (A-Fall) through which price probably unimportant. Rubber is our weakest point."

The serious tone of the meeting further appears:

"*Min. Pres. Goering:* After everybody has been given this survey the gentlemen are asked to cooperate in the work of * * *

"The situation is not to be regarded as something fixed and unchangeable, but as a starting point for new measures to be taken, at the head of which is export. Proposals in all branches are expected from those present. Questions concerning domestic raw materials and substitute materials are emphasized again. *It is emphasized that at any moment we might be confronted with a situation of unparalleled seriousness, which we must be in position to deal with.*

"*Everything has to be regarded from these points of view. The speed of armament must under no circumstances be impaired, on the contrary, even the interests of the factories themselves should be relegated to the background. An appeal is made to the idealism of industry. If perhaps great risks have to be taken now, nevertheless there is reason to expect that they will also some day have correspondingly great results. The establishment of Germany's liberty to rearm comes before all else. The fate of the individual plant is immaterial just now. After overcoming the present difficulties, ways and means will also be found to save the individual plants from collapse. In conclusion, those present are asked if anybody still wished to make a statement.*" (Emphasis supplied)

The repeated reference to the case of war could hardly have failed to impress the hearers with the fact that the program under discussion was in deadly earnest, with war a distinct possibility. The report states further with reference to ores:

"*Min. Pres. Goering:* Agrees with this. The important thing is to make it possible to convert to domestic production and smelting in the event of 'Case-A' (Fall-A) * * *"

"*Min. Pres. Goering: A program lasting several years is of no use for the Case 'A'.* The fall in the currency of our ore suppliers has made the prices about 30 percent cheaper as against peace. What is necessary in connection with our ores is not to confine ourselves to small experiments but to pass over to large-scale operations, *otherwise we will not have any production reserves in the event of 'Case A' (A-Fall).*" (Emphasis supplied).

That Farben was being called upon to continue its participation in preparation of Germany for possible war under this program has been overwhelmingly proved. The defense rightly asserts that, at that time, Farben still devoted a large part of its activity to the normal peacetime production and that considerations of autarchy were also present in their raw materials planning. However, the demands of armament and military economy were even now being given a major emphasis. Farben, through Bosch, chairman of the Aufsichtsrat at that time, made the defendant Krauch available to Goering to assist in the performance of these tasks as outlined by Goering. The defense contends that this evidence covering this and other similar conferences and meetings is consistent with preparation for a possible defensive or legal war and that there was, in fact, no disclosure of any firm decision to launch or wage aggressive war.

b. On 17 December 1936, Goering delivered a speech on the execution of the Four Year Plan before a group of leading industralists [*NI–051, Pros. Ex. 42.*] Goering had received and was in the course of executing Hitler's order that the German Army must be ready for combat in 4 years. Among those present there were no fewer than three top Farben leaders, Dr. Bosch, and the defendants Krauch and von Schnitzler. The importance of complete mobilization for armament in disregard of "the old laws of economics" was the theme. The necessity of becoming self-sufficient in food supplies and raw materials was stressed. A warlike tone persisted throughout the address. Among other things, Goering said:

> "* * * *The struggle which we are approaching demands a colossal measure of productive ability. No end of the re-armament can be in sight.* The only deciding point in this case is: victory or destruction. If we win, then the economy will be sufficiently compensated. Profits cannot be considered here according to bookkeepers' accounts, but only according to the necessities of policy. Calculations must not be made as to the cost. I demand that you do all to prove that part of the national wealth is entrusted to you. It is entirely immaterial whether in every case new investments can be written off. *We are now playing for the highest stake. What would pay better than the orders for re-armament?*" (Emphasis supplied).

In closing, Goering stated:

> "* * * Our whole nation is at stake. We live in a time when the final dispute is in sight. We are already on the threshold of mobilization and are at war, only the guns are not yet being fired."

Krauch denies that he saw any indication of aggressive war in this speech. The prosecution, on the other hand, contends that this evidence indicates the intention of the regime, when its strength would

permit, to wage war if this should become necessary to achieve the policies of conquest and territorial aggrandizement being advocated by Hitler. A circumstance of no little importance in relation to this evidence is that, immediately after Goering's address, Hitler spoke, but his remarks on this occasion are not in evidence. The extent to which he may have revealed his ultimate aims to this group of industrialists on this occasion is thus not proven.

c. On 22 December 1936, 5 days later, the defendant von Schnitzler at a meeting of Farben's Enlarged Dyestuff Committee, made a "highly confidential" report [*NI–4192, Pros. Ex. 423*] concerning the statements made by the Fuehrer and Goering of the tasks of German economy in the execution of the Four Year Plan. The defendant ter Meer was present. The defense attempted to minimize the significance of this evidence, and argues that no significant disclosures were made by von Schnitzler to those in attendance. It is, however, indicative of the manner in which information relating to governmental policy was quickly disseminated within Farben, even below the level of Vorstand members.

In appraising the statements of Goering to outstanding German industrialists, the political events and governmental conduct as outlined by the IMT should be borne in mind. Military conscription had been in effect more than a year; over a year previously the Nazi government had openly repudiated the disarmament clauses of the Versailles Treaty; "on 7 March 1936, in defiance of that Treaty, the demilitarized zone of the Rhineland was entered by German troops." In the light of those events, these statements by Goering must have been considered more than bombastic utterances not to be taken seriously. Intelligent and well-informed industrialists, including the Farben representatives, must have considered the import of those words to be serious in view of the prevailing atmosphere in Germany, but it cannot be positively asserted the documentary evidence covering this meeting proves conclusively that plans for a war of an aggressive character were disclosed and discussed. Armamant activities in such a political setting raise the highest suspicion of knowledge of the ultimate aim of aggressive war but under a most rigid standard of proof the benefit of doubt as to the inference to be drawn may be accorded to the defendants.

d. Emphasis on speed appears to have been ever-present. On 15 June 1937, the defendant Krauch was present at a conference in Goering's office. He heard Goering state: "The Four Year Plan will do its share to create a foundation upon which preparation for war may be accelerated."

In the course of discussion, mention was made of the undesirability of shipping iron "* * * to so-called enemy countries like England, France, Belgium, Russia and Czechoslovakia."

The naming of these five countries is significant. France and Russia had aid pacts with Czechoslovakia. The classical German invasion road into France is through Belgium, and England's help to France was to be assumed.

Important events occurred during 1938 bearing upon the state of mind of the defendants.

e. The IMT characterized the action against Austria by holding that Austria "was occupied pursuant to a common plan of aggression" and "* * * the methods employed to achieve the object were those of an aggressor. The ultimate factor was the armed might of Germany ready to be used if any resistance was encountered." * The march into Austria on 12 March 1938 meant that Farben was now openly apprised that threats of aggression were being translated into deeds. The evidence goes beyond this to show that certain defendants were under no illusion but that a "short thrust" into Czechoslovakia was a distinct possibility on the agenda of Nazi aggression. The day before the thrust into Austria, on 11 March 1938, Farben's Commercial Committee met with the defendants Schmitz, von Schnitzler, Haefliger, Ilgner and Mann in attendance. As was usual before Farben's committee in those days, the mobilization question (M-question) was discussed. The defendant Haefliger reported on this meeting as follows:

> "First item on the agenda of the meeting of the Commercial Committee of 11 March of this year was the 'M-question.'
>
> "Let us call to mind for a moment the atmosphere in which this meeting took place. Already at 0930 the first alarming messages had reached us. Dr. Fischer returned excited from a telephone conversation and reported that the Gasolin had received instruction to supply all gas stations (Benzinstellen) in Bavaria and in other parts of Southern Germany towards the Czech border. A quarter of an hour later there came a telephone call from Burghausen according to which quite a number of workers had already been called to arms and the mobilization in Bavaria was in full swing. *In the absence of official information, which was made known only in the evening, we were uncertain, whether simultaneously with the march into Austria which to us was already an established fact, there would not also take place the 'short thrust' into Czechoslovakia with all the international complications which would be kindled by it.* The first thing I did was to ask at once for a connection with Paris to cancel my trip to Cannes (Molybedenum negotiations). At the same time, I suggested to Mr. Meyer-Kuester, who was already in Paris and to whom I talked by telephone, to watch developments closely, and to depart too early

**Trial of the Major War Criminals,* volume I, page 194.

rather than too late. Furthermore, I requested him to induce Mr. Mayer-Wegelin, who also had already arrived in Paris to return the same evening.

"Under these circumstances of course the conference on M-matters took on highly significant features. We realized suddenly that—like a stroke of lightning from a clear sky—a matter which one had once treated more or less theoretically could become deadly serious, and furthermore, it became clear to us that the preparations which we had made up to now for the Grueneburg had to be considered rather defective after all. As I had up to now not sworn an oath on the M-matter, I heard only later, after I had sworn such an oath on 12 March in the Reich Economic Ministry, in greater detail about steps we had taken, which of course I cannot discuss here in detail." (Emphasis supplied.)

The Haefliger report states that a certain building construction project in Frankfurt had to be revised recognizing:

"* * * That the location Frankfurt, of course, would be from the beginning in the utmost danger does not need to be emphasized here. All present were aware of the seriousness of the situation, and also of the fact that if the event happened Frankfurt could not be held in an organizational respect" [*NI–5621, Pros. Ex. 893.*]

Farben's other acts during this period show that Farben not only considered that the "short thrust" into Czechoslovakia might possibly occur, but that Farben based significant preparations of its own upon this possibility. The proof establishes that Farben planned to participate in plant operations in Czechoslovakia in the event of its absorption after the pattern of Austria.

f. In April 1938, 5 months prior to the Munich Pact and immediately after the invasion of Austria, defendant Haefliger, during a visit to the aforementioned Keppler, one of Hitler's close economic advisors, took occasion "to sound him on the attitude of German authorities as to exerting influence on enterprises in Sudeten-Czechoslovakia." At that time, the Nazi-directed agitation over the Sudetenland was being heightened. Haefliger significantly notes:

"We also heard in Vienna from different sources that Czech enterprises are already beginning to dispose of some of their holdings in Sudeten-Czechoslovakia." [*NI–3981, Pros. Ex. 1072.*]

The prospective victims saw the next move rather clearly. Farben was willing to participate in subjecting Czechoslovakian enterprises to Nazi pressure.

g. During the summer of 1938, when the world became increasingly fearful lest Germany would start war, Farben was extremely active in preparing its own program for the Sudetenland—a program predi-

cated on their assumption that this territory would soon be annexed. On 16 September 1938, there was a discussion at the Vorstand meeting concerning acquisition of plants in the Sudetenland. A letter from the office of Farben's Commercial Committee to all Vorstand members, dated 21 September 1938 [*NI-10725, Pros. Ex. 1043*], transmitted a preliminary statement [*NI-10408, Pros. Ex. 1042*] on the "Location of the Major Chemical Plants in Czechoslovakia." This report had been prepared by Farben's Political Economy Department and was furnished by Krueger of Farben to the Vorstand members because it related to discussions held at the meeting of the Vorstand of 16 September 1938.

h. That these plans had been laid for some time is further shown by the fact that as early as May 1938 Farben developed plans for the training of personnel for future use in Czechoslovakia. On 17 May 1938 a conference of Farben officials made plans for the Nazification of the Sudetenland in case of its possible "Anschluss" or of its becoming "autonomous" and for preparing "a gradual financial strengthening of the Sudeten-German newspapers by advertising." The minutes and a summarizing report of this conference were submitted to the Commerical Committee at a meeting in which the defendants Gattineau, Haefliger, Ilgner, Kugler, Schmitz, and von Schnitzler participated. [*NI-6221, Pros. Ex. 833.*]

i. On 23 September 1938, still before the Munich Pact, the defendant Kuehne wrote a letter to the defendants ter Meer and von Schnitzler acknowledging the "pleasant news" that the addressees (ter Meer and von Schnitzler) had succeeded in making the authorities appreciate the interest of Farben in the Aussig Plant, situated in the Sudetenland of Czechoslovakia, and noting that "you have already suggested commissars to the authorities." [*NI-3721, Pros. Ex. 1044.*] The Commissars were the defendants Wurster and Kugler.

j. On 29 September 1938, the defendant von Schnitzler addressed a memorandum to the defendants ter Meer, Kuehne, Ilgner, and Wurster. He referred to successful negotiations with Keppler with reference to the Sudetenland. Von Schnitzler states that "* * * all parties acknowledged that as soon as the German Sudetenland comes under German jurisdiction all the works situated in this zone and belonging to the Aussig-Union" must be managed by commissars for the account of whom it may concern. The Aussig-Union was an important Czechoslovakian enterprise. The reference is to conferences which had taken place in the preceding week. Von Schnitzler also refers to proposing Wurster and Kugler as Commissars. This exhibit makes it clear that certain defendants were contemplating a participation in the fruits of the absorption of Czechoslovakia.

k. On 11 October 1938, after the Sudetenland had been taken over, the defendant ter Meer, in a letter to the Reich Economics Ministry

concerning the location of Buna Plant No. 3, stated that the location should not be predominantly influenced by military considerations "now that immediate danger of war has been removed." He then refers to the possible location of Buna Plant No. 3 in Upper Silesia which "*could not be considered until now* because this area was considered as a troop concentration area against Czechoslovakia." [*NI–4717, Pros. Ex. 563.*] (Emphasis supplied.) That Farben was apprised of the possibility of the use of force thus is certain.

The defense has placed considerable emphasis upon the importance of attendance at one of these-called planning conferences referred to by the IMT, at which Hitler announced his intentions to a group of his closest collaborators. Raeder, who attended Hitler's conference on 5 November 1937, contended before the IMT that he did not believe Hitler actually meant war. The IMT dismissed this contention based upon its ultimate conclusion of fact:

> "The Tribunal is satisfied that Lieutenant Colonel Hossbach's account of the meeting is substantially correct, and that those present knew that Austria and Czechoslovakia would be annexed by Germany at the first possible opportunity." *

From the fact that Farben was making such detailed plans, even to the point of selection of the specific personnel to run the Czechoslovakian chemical factories, it might be inferred that the Farben representatives participating in such plans knew of Hitler's decision to wage aggressive war against Czechoslovakia if it would not yield to Nazi threats of force. However, such conclusion cannot be said to be clearly established by the proof. Moreover, the defense strenuously maintains that Farben was preparing for the possibility of a successful diplomatic coup to be achieved by Hitler under conditions falling short of aggressive war and that, as in the case of Austria, war did not in fact result from the Czechoslovakian crisis which ended in the Munich pact. According the benefit of a liberal construction of reasonable doubt to the defendants, it must be concluded that it is not proved that they, in fact, knew of Hitler's decision to wage aggressive war against Czechoslovakia as those present at the Hossbach Conference referred to by the IMT had been so specifically informed.

l. In June of 1938, defendant Krauch, who had been loaned by Farben for a key position in Goering's office, went to Koerner of the Four Year Plan and to Goering and warned them both that the production figures and planning of Colonel Loeb, who was then Krauch's superior in Goering's Four Year Plan organization, were based upon wrong data [*NI–6768, Pros. Ex. 437*]. To give such a warning may merely show Krauch's solicitude. But he further warned

*Ibid., page 192.

that it would be dangerous to plan for war on that basis. How impressed Goering was can be seen from the subsequent developments. An interrogation of Krauch, which is in evidence [*NI–10386, Pros. Ex. 402*], is as follows:

"Q. Didn't it become apparent to you first in 1935, when the Wehrmacht exhibited great interest in your buna, and later after you assumed your job with the Four Year Plan in 1936, to increase the chemical capacity of Germany, that the Nazi government was on the road to war?

"A. I had the feeling that they were going to war, as Dr. Bosch told me in June 1938, and that was when I went with the wrong figures of Loeb to Goering and said to him we can't go to war because the figures are all wrong. We will lose the war on this basis.

"Q. When the wrong figures which you submitted to Goering were corrected to the extent where they reached the level that Keitel earlier believed they were, then you must have believed that they were going to war?

"A. I must say today, yes."

Krauch, however, in his testimony before the Tribunal strenuously denied any actual knowledge or belief of plans for the waging of an aggressive war.

m. Krauch's visit to Goering resulted in his views being accepted by Goering. Thereafter Krauch submitted to Goering his proposals concerning the authority that he (Krauch) should have to carry out his plans to expand facilities for production. On the basis of Krauch's recommendations he was eventually appointed General Plenipotentiary for Special Problems of Chemical Production. Field Marshal Keitel objected to Krauch's taking charge of expanding production of gunpowder and explosives, one ground being that the holder of the position would have accurate knowledge of Germany's military strength, as planned strength was a simple calculation from information such person would receive. This difficulty was smoothed out in conferences with representatives of the Wehrmacht following Krauch's assurances of industry's cooperation. Facility expansion for the entire field of gunpowder, explosives, intermediary and preliminary products was entrusted to Krauch. He drew up the "Military Economic New Production Plan" of 12 July 1938 [*NI–8800, Pros. Ex. 442*] and the subsequent Rush Plan of 13 August 1938 [*NI–8797, Pros. Ex. 449*]. He participated in their execution thereafter during the period of preparation and throughout the war. I cannot agree with the implications of the majority view that the position held by Krauch was relatively unimportant and at a low level. He was a top scientist of Farben. One who could challenge the correct-

ness of production achievements upon which Keitel relied and have his view sustained by Goering did not hold an unimportant position. The entire record of Krauch's activities leads me to the conclusion that the action of Farben in making him available to Goering was one of Farben's greatest contributions to the Nazi armament effort, to the mutual advantage of the Reich and Farben. One may participate in the preparation for aggressive war in collaboration with a Goering as well as with a Hitler. From Krauch's position and close association with Goering, it may be strongly suspected that he may have received much detailed information concerning the plans that were under way, but it cannot be said that Krauch's knowledge of positive decisions of the regime to wage aggressive war has been shown by convincing proof beyond reasonable doubt though the contrary inferences from the evidence are exceptionally strong.

n. Shortly after the acquisition of the Sudetenland, when the regime found it politic to make public utterances of peace, Krauch, on 14 October 1938, attended a conference in the Reich Air Ministry at which Goering addressed his collaborators in the armament program. The report states:

"General Field Marshal Goering opened the session by declaring that he intended to give directives about the work for the next months. Everybody knows from the press what the world situation looks like and therefore the Fuehrer has issued an order to him *to carry out a gigantic program compared to which previous achievements are insignificant.* There are difficulties in the way which he will overcome with utmost energy and ruthlessness.

"The amount of foreign exchange has completely dwindled *on account of the preparation for the Czech Enterprise* and this makes it necessary that it should be strongly increased immediately. Furthermore, the foreign credits have been greatly overdrawn and thus the strongest export activity—stronger than up to now—is in the foreground. For the next weeks an increased export was first priority in order to improve the foreign exchange situation. The Reich Ministry for Economy should make a plan raising the export activity by pushing aside the current difficulties which prevent export.

"These gains made through the export are to be used for *increased armament.* The armament should not be curtailed by the export activity. He received the order from the Fuehrer *to increase the armament to an abnormal extent, the air force having first priority. Within the shortest time the air force is to be increased five fold, also the navy should get armed more rapidly and the army should procure large amounts of offensive weapons at a faster rate,* particularly heavy artillery pieces and heavy tanks. Along with this manufactured armaments must go; *especially*

fuel, rubber, powder and explosives are moved to the foreground. It should be coupled with the accelerated construction of highways, canals, and particularly of the railroads.

"To this comes the Four Year Plan which is to be reorganized according to 2 points of view.

"In the Four Year Plan in first place *all the construction which are in the service of armament are to be promoted* and in second place all the installations are to be created which really spare foreign exchange.

* * * * * * *

"The Sudetenland has to be exploited with all the means. General Field Marshal Goering counts upon a complete industrial assimilation of Slovakia. Czech and Slovakia would become German dominions." (Emphasis supplied.) [*PS–1301, Pros. Ex. 401.*]

Such unequivocal evidence of a vastly increased armament program tended to belie the public utterances of peace made by Hitler after Munich, but again it cannot be said that the extent of the armament here involved shows actual knowledge of plans for aggressive war.

o. While strong inferences unfavorable to the defendants may also be drawn from the voluminous evidence showing knowledge of the great intensification of the armament program during 1939, again, the standard of proof beyond reasonable doubt is not met. Out of this evidence two examples may be quoted. There is in evidence an official report covering an inspection trip by Army Ordnance in February of 1939 [*NI–8790, Pros. Ex. 609*], which was found among Krauch's office files and could not have escaped his attention at the time, for it deals with the goal of his own Rush Plan in relation to the requirements of the Wehrmacht. Those requirements are estimated in great detail, including gunpowder needs of the Army; gunpowder requirements for machine guns and other guns on the West Wall; requirements for the Armored Corps or Panzer Units; requirements for the fighter and bomber aircraft of the Luftwaffe, requirements for the Navy. The whole tone of this report is consistent only with continuance of the objective of preparation for the eventuality of Hitler's policies leading to war. The report indicates that the requirements were for twenty to thirty corps of fighting troops. or an army of between 1,200,000 and 1,800,000 men.

On 31 January 1939 a report was submitted to Goering from the High Command of the Army with copies to defendants Krauch and Schneider, outlining the necessity of "*obtaining of an immediate decision by the highest authority to give the mineral oil expansion top priority in the rearmament program as regards materials and financing.*" [*NI–7471, Pros. Ex. 538.*]

The mineral oil expansion plan referred to had also been drawn up by Krauch and provided for expansion in the total increase of mineral oil from 2,800,000 tons per year to 11,300,000 tons per year.

p. Unrestricted collaboration between Farben and the Reich in the most detailed matters has been shown, and there are many instances supporting inferences unfavorable to the defense. For instance, a letter of May 1939, from Farben's Vermittlungsstelle W to the Military Economic Staff, gives information concerning the location and production capacity of English stand-by plants for the production of nitrogen. The accompanying report gives the production capacity of the English plants and the letter significantly states that they should "if the above estimate of capacity is correct, probably be able to cover the entire requirements of primary nitrogen of the British plants for the production of highly concentrated nitric acid, *even should the Billingham Plant be put out of action.*" (Emphasis supplied.)

This was in May of 1939, after the invasion of Bohemia and Moravia and during sped-up preparation preceding the invasion of Poland. A copy of the letter went to the defendant Krauch.

q. The defendant von Schnitzler's pretrial affidavits and interrogations, contain some of the most damaging evidence on the subject of state of mind of the defendants.

Under a ruling of the Tribunal, in which the undersigned did not concur, the effect of von Schnitzler's pretrial statements is limited to von Schnitzler himself as he did not take the stand to testify. Von Schnitzler said:

> "Q. When was the order putting the plans into action issued?
>
> "A. All the German industries were mobilized in summer 1939, and in summer 1939 the Wirtschaftsgruppe Chemie issued an order that the plans for war were in action. In June or July 1939 IG and all heavy industries all well knew that Hitler had decided to invade Poland if Poland would not accept his demand. Of this we were absolutely certain and in June or July 1939 German industry was completely mobilized for the invasion of Poland."

The defendant von Schnitzler has also testified in an early affidavit that in about July 1939 the competent Reich authorities had directed that the Ludwigshafen/Oppau Plant would have to be closed down because of its proximity to the French border. This direction by Dr. Ungewitter, of the Economic Group Chemical Industry, by itself was ample indication of the imminence of war in July of 1939. Among the defenses is the contention that aggression from the East was feared, yet here is evidence of directions issued in July of 1939 (following Hitler's decision on specific plans against Poland) to move an important part of production from the west danger zone. The prosecution argues, not without reason, that plans for a "defensive war" stressed by the defendants must have contemplated the situation

which would result if western nations should take the field to stop Hitler's aggression. Von Schnitzler further stated in one of his early affidavits that Ungewitter had actually informed him of Hitler's determination to attack Poland. However, in a later affidavit, von Schnitzler (who was subjected to unmerciful pressure to the point of ostracism by his colleagues following his earlier statements) said:

"* * * I am now doubtful if Dr. Ungewitter actually said that Hitler was determined to attack Poland. He could not have known this then. However, since he was the link between the government and the chemical industry, I knew he was speaking on behalf of the Four Year Plan concerning the closing down of Ludwigshafen/Oppau Plant, and I was very impressed by the manner in which he spoke. When he additionally expressed himself to the effect that the international situation was grave and that it was quite possible there could be a war with Poland, which would involve France and England, I probably read into his statement that he said Hitler was determined to attack Poland." [*NI–5196, Pros. Ex. 40.*]

One may surmise that much knowledge was acquired by persons in the positions of these defendants without their being specifically told. Certainly the defendant von Schnitzler, if his statements are to be believed, in July 1939 thought that Hitler would possibly attack Poland. His attempted explanation is based upon his expectation that a threat of force would be effective against Poland as it had been against Austria and Czechoslovakia. According to von Schnitzler's own words:

"* * * Moreover, I thought Hitler's foreign policy of bluff backed by the strong fist would probably cause Poland to give in to his demands. However, I was a very worried man, particularly after the invasion of Prague [March 1939], since I felt that England, France and America were bound to take a stiffer attitude to Hitler's words and actions, and that ultimately Hitler's policy would bring Europe to war and ruin." [*NI–5106, Pros. Ex. 40.*] (Date added for identification.)

Concerning the manner in which mobilization was carried out in the summer of 1939, von Schnitzler has stated:

"Since the peaceful invasion into Austria the whole German country practically was on the verge of mobilization.

"This state of things became even more accentuated, when Hitler had entered into Prague and preparations for a campaign against Poland were started. Since July 1939 many of our employees and particularly the officers of the reserve of the so-called new army, were called to their regiments and lined up on the Polish frontier.

"Simultaneously the industry was mobilized. Mobilization plans, what in the case of war was allowed or ordered to be produced, had a long time ago been prepared.

"These plans—which beginning with 1934, had been made up by individual firms in close team-work with Wirtschaftsgruppe Chemie and the competent ministries—became effective in such a way that Wigru returned them to the individual firm with his [its] approval stamped on them." [*NI–5106, Pros. Ex. 40.*]

In a subsequent statement he supplements this merely as follows:

"* * * The mobilization (in the German 'Mobilmachung') had been prepared, both personnel and war materials being mobilized in a certain sense, but the order placing the mobilization plans in final effect was not given until war broke out, *as I have been informed* since 1945 * * *" (Emphasis supplied)

The affidavit of the witness Ehrmann states:

"The main topic in the conversation of the responsible persons of the Economic Group Chemistry used to be, in the course of the summer 1939, the tension in the international situation * * *

"I remember that during these conferences several meetings took place between Dr. Ungewitter and Herr von Schnitzler. In connection with the discussions about the imminent war, Dr. Ungewitter also made the remark that the war with Poland will most probably not begin before the harvest has been collected i. e. not till September 1939." [*NI–4954, Pros. Ex. 500.*]

At another point von Schnitzler stated:

"Even without being directly informed that the government intended to wage war, it was impossible for officials of IG or any other industrialists to believe that the enormous production of armaments and preparation for war—starting from the coming into power of Hitler accelerated in 1936 and reaching unbelievable proportions in 1938—could have any other meaning but that Hitler and the Nazi government intended to wage war come what may. In view of the enormous concentration on military production and of the intensive military preparation, no person of IG or any other industrial leader could believe that this was being done for defensive purposes. We of IG were well aware of this fact as were all German industrialists, and on a commercial side, shortly after the Anschluss in 1938, IG took measures to protect its foreign assets in France and the British Empire." [*NI–5196, Pros. Ex. 40.*]

The majority opinion concludes that von Schnitzler's affidavits are not entitled to great weight because he was mentally upset and after numerous interrogations, in the view of the majority, was saying what his interrogators obviously wanted to hear. The case was tried on the

theory that von Schnitzler's affidavits would be evidence only against him if he should refuse to testify in his own behalf. The ruling of the Tribunal in this regard was tantamount to an open invitation to him to exercise his privilege of not testifying in the interest of his co-defendants. Its result was to deprive the Tribunal of the opportunity through the examination of von Schnitzler in open court to determine his credibility and to judge more intelligently what weight should be attached to these pretrial statements. I disagree with this erroneous procedural ruling of the Tribunal and have previously expressed my dissent therefrom based on the provisions of Military Government Ordinance No. 7. But the ruling was made early in the presentation of the evidence for the defense, and the defendants, relying on the ruling, may possibly have been led into not presenting additional counterevidence. Justice requires, therefore, that the ruling be respected for the purposes of final judgment, as the strategy of the case was fashioned on that theory. There remains the question of the weight to be attached to von Schnitzler's statements as evidence against von Schnitzler himself. Being deprived of the benefit of any examination of this defendant in open court and faced with his attempts at correction and retraction, I conclude that the incriminating statements made by von Schnitzler should not be accorded weight sufficient for a conviction in his case. I reach this conclusion not without misgivings. In all pretrial interrogations von Schnitzler apparently talked so willingly, and his statements, obviously not under duress, were so complete as to raise question as to the extent to which he would retract or repudiate them upon final exhaustive examination by counsel before the Tribunal. But in the present state of the record, I do not feel warranted in expressing dissent as to the acquittal of von Schnitzler on the basis of his affidavits and interrogations.

r. Following the invasion of the remainder of Czechoslovakia in March 1939, Hitler's premeditated policy of aggression had become a proven reality. The defendant ter Meer has stated:

> "The first time I really had the feeling that our foreign policy was in no way in order was when German military forces were used to occupy Czechoslovakia in March 1939. This shocked me deeply, the more so as the question of the Sudetenland had been solved at Munich. I felt the NSDAP had now started Germany on a very dangerous road. I felt this was a breach of an international agreement, the Munich Pact, and an aggressive act against a country in whose affairs we had no right to interfere. This shocked me, especially since the story brought out in the German newspapers concerning the visit of the Czechoslovak President Hacha with Hitler did not look altogether natural to me." [*Ter Meer 2, Ter Meer Def. Ex. 9.*]

Ter Meer has further stated:

"I considered at that time the foreign policy of the Nazis from this time on to be gambling and a clear course of criminal speculation * * *" [*Ibid.*]

But ter Meer maintains that he was nevertheless relieved at information coming to him from other sources that Hitler would not go to war and would accept a reasonable solution of the Polish Corridor question. When considered in the light of the sum total of the evidence, it seems clear that ter Meer believed Hitler would be able to dictate a solution without the necessity of fighting for it. But Farben did not slacken its activities in preparing the military might which would make such aggression possible. The defendants cast their lots with Hitler no doubt fearing that the continuation of Hitler's policies of conquest again manifested in the seizure of Bohemia and Moravia might eventually lead to war. There was no unwillingness to gamble on the outcome though the probability of war was becoming clearer with each aggressive act.

s. Krauch has given indication of his state of mind. In a report of the General Council of the Four Year Plan, dated 28 April 1939, Krauch concluded:

"When on 30 June 1938 the objectives or the increased production in the spheres of work discussed here were given by the Field Marshal [Goering], it seemed as if the political leadership could determine independently the timing and extent of the political revolution in Europe and could avoid a rupture with a group of powers under the leadership of Great Britain. Since March of this year there is no longer any doubt that this hypothesis does not exist any more * * *

"It is essential for Germany to strengthen its own war potential as well as that of its allies to such an extent that the coalition is equal to the efforts of practically the rest of the world. *This can be achieved only by new, strong and combined efforts by all of the allies, and by expanding and improving the greater economic domain* corresponding to the improved raw material basis of the coalition, *peaceably at first, to the Balkans and Spain.*

"*If action does not follow upon these thoughts with the greatest possible speed, all sacrifices of blood in the next war will not spare us the bitter end which already once before we have brought upon ourselves owing to lack of foresight and fixed purposes.*" [*EC-282, Pros. Ex. 455.*]

By 1939 Hitler's aggression and Hitler's obvious preparations for further aggression, which Krauch calls "political revolution," had lead to an icreasing realization by various countries of the imminent

danger in which they were, and at last to a growing movement to stop the aggressor. Krauch, in keeping with the Hitler propaganda line, referred to this as Germany's being encircled. Such distortion of the historical truth cannot be accepted but the cited evidence does not clearly establish a positive knowledge of plans to wage aggressive war.

Krauch testified that in the summer of 1939, following the invasion of Bohemia and Moravia, he was invited to visit Goering on the Island of Sylt.[1] He states that he told Goering that he was under the impression that the Munich Pact was not being kept since Germany had invaded Czechoslovakia and that from foreign sources Krauch had gained the impression that foreign countries would not countenance any "further political entanglements" and that "they would make war on us." Krauch further stated that the motto "stop the aggressor" could be seen in all the newspapers. Krauch told Goering that if Germany had a war with Poland and Russia, France and England would fight on the side of those countries. Krauch testified that Goering said, "you don't have to worry about a war; there won't be any war." This testimony is further revealing in that it indicates the defense's conception of a "defensive war." What is referred to as defensive war, are "the political entanglements" which would result from further German acts of aggression; but it is not positively shown that it was known that such additional acts of aggression would be pushed to the point of aggressive war if resistance were encountered.

t. Of no little signifiance is the fact, as the evidence conclusively shows, that Farben in the summer of 1939, took careful steps on its own initiative to cloak its assets abroad in anticipation of war.[2] It also prepared a list of the most important chemical plants in Poland.[3] It is possible, as the defense argues, that the cloaking of assets abroad was a business precaution not based upon definite knowledge that the decision had been made to wage aggressive war. It is also possible that the listing of the chemical plants in Poland was without such specific knowledge of plans for aggressive war. The doubt on these matters, despite the inferences of knowledge of further possible acts of aggression which they evidence, is resolved in favor of the defendants.

u. A credible witness, Hans Wagner, employed in Farben's Military Liaison Office (Vermittlungsstelle W) summarizes the knowledge which he, a subordinate employee, had, as follows:

"Owing to these preparations I was in no doubt in the middle of 1939 that Germany would wage an aggressive war. I believe I

[1] Mimeographed transcript, pages 5141 and 5142. See also extracts from Krauch's testimony, reproduced earlier in subsection VII G 7*a*, volume VII, this series.

[2] See Document NI–2796, Prosecution Exhibit 1020, "Protection of IG assets abroad." and Document NI–6121, Prosecution Exhibit 1026, "Camouflage of German private assets abroad."

[3] Extracts from the VOWI Report No. 3609, "The Most Important Chemical Firms in Poland," are contained in Documents NI–9151, NI–9154, NI–9155, Prosecution Exhibits 1135, 1136, 1137.

can say that all my colleagues at the Vermittlungsstelle W were of the same opinion. Several facts caused me to reach this conclusion:

"The fact that several of my acquaintances were suddenly inducted; the fact that other acquaintances were not discharged after the usual period of service, but remained with their units, putting into operation the mobilization plans of the individual plants, especially, as already mentioned before, of Ludwigshafen, the commencement of operation of the stabilizer plant in Wolfen at the end of 1938/begining of 1939; increase in the production of diglycol which was being used for explosives, the interest which was being shown by the Wehrmacht in direct mustard gas (Direkt-Lost), to be produced in Gendorf.

"Judging by the over-all political situation, I could not assume that war would be declared on us by other countries in the year 1939. I received that impression through occasional discussions with officers, and officials of the German Wehrmacht on the subject of patent and license questions; I was given various intimations on the armaments situation in non-German countries. This always occurred when we had an opportunity of discussing the possibility of German patents being released for publication. One could conclude from this that no special preparations for war were being made in foreign countries.

"Furthermore, in the Vermittlungsstelle W, I was able to read foreign newspapers which were banned in Germany, and which were made available to the Counterintelligence Officer of the Vermittlungsstelle W, Dr. Diekmann, by the Gestapo and the Security Service of the SS, and which had to be returned to them. From these newspapers I gathered that foreign countries did not consider waging war at that time.

"Through my acquaintanceship with various officers of the Wehrmacht, which was not based on personal friendship, but rather on purely professional collaboration, I learned about troop movements to the East and the West before the outbreak of war. I also considered this an indication for aggressive war, as well as the experiments and development work of the IG with the Wehrmacht." [*NI–8925, Pros. Ex. 247.*]

In his testimony before the Tribunal Wagner explained the existence of the circumstances causing him to reach that conclusion:

"I would like to give you some more detailed information as to what led me to this assumption. Because of my activities in the Vermittlungsstelle W in the field of development work, which was carried on by the Wehrmacht in collaboration with the IG, and also in connection with my work on patent questions, I had repeated occasion to discuss matters with officials and officers of the Wehr-

macht. These discussions generally took place in the offices of the Wehrmacht, not in my offices. It frequently happened that in addition to the actual subject of the discussion other matters were talked about which did not directly belong to my professional activities. This was done confidentially. Very often I could not avoid being a witness in the conversations carried on by numbers of officers or that I was present during telephone conversations, which these gentlemen carried on on these occasions. In the course of a number of weeks I learned that certain troop movements were going on, but I could not clearly learn their exact plan. I could not learn what their exact aim was. Furthermore, I learned about more of these troop movements on the basis of certain development work which was carried on by the Wehrmacht in collaboration with IG. Certain tests were to be carried out with IG products, but they had to be postponed because the formations which were necessary for the carrying out of these tests had changed their home station for unexplained reasons.

"Beyond that, I also recall that tests of smoke buoys for the Navy had to be postponed because of the fact that the units were transferred. I think it is necessary for me to add that to my affidavit." [*Tr. p. 572.*]

No substantial qualification was made on cross-examination. From testimony of this character, there is the strong suspicion that the sources of confidential knowledge and information available to and relied upon by persons holding the elevated positions of Vorstand members gave them at the very least the same amount of knowledge as could be acquired by the witness Wagner. Farben—and that means in the first place the members of the Farben Vorstand—had at their disposal their own far-flung intelligence system, employed for and capable of judging the course of events in many sections of the globe; it is difficult to believe that such smoothly operating intelligence work could have failed to detect the meaning of events within Germany in the summer of 1939.

However, the proof does not positively establish that members of the Vorstand of Farben actually knew that aggressive war would be waged, though its possibility must have been a constant consideration with them.

The prosecution has never advanced the contention in this case that there existed common knowledge throughout Germany of Hitler's plans for the waging of aggressive war. On the contrary, the prosecution has explicitly denied any such contention relying rather upon allegations to the effect that these defendants, by virtue of their positions within Farben and by virtue of the special knowledge which they possessed arising out of the tasks with which they were charged,

were in a far better position than the ordinary German citizen to appraise and determine the significance of the course of action in which they were engaged. Political events which were matters of common knowledge in Germany, including the promulgation of the program of the Nazi Party, and successive aggressive acts, were relied upon, not for the purpose of showing that this evidence of itself established the necessary criminal intent, but rather as the basis for proper evaluation of the significance of the special knowledge which the defendants are alleged to have had. Affidavits, statements, and testimony from several defendants refute the assertions developed at length in the judgment of the Tribunal indicating that these defendants seriously believed in the public protestations made by Hitler expressing a love for peace. The defendants became increasingly skeptical concerning Hitler's ultimate aims. The evidence rather strongly indicates that all defendants feared the possibility of war, and important action of the corporate instrumentality, Farben, was based upon the possibility of war. The nonaggression pacts, emphasized in the Tribunal's judgment, constitute separate moves in the establishment of the European Axis, and rather than being indicative of an intention to maintain peace, intensified the prospect of war, and must have been so considered by the defendants. For example, the nonaggression pact of 23 August 1939 between Germany and Russia was widely accepted as increasing the possibility for further aggression leading to aggressive war. The position of these defendants in regard to political events in Germany prior to the invasion of Poland is in no sense the same as that of the average citizen of Germany, professional man, farmer, or industrialist, as referred to in the judgment of the Tribunal. But the evidence is sufficiently close that, despite the positions of the defendants which meant they were more able to appraise the true meaning of the events, the doubt is to be resolved in their favor.

II

The foregoing résumé of certain specific items of evidence bearing upon knowledge and criminal intent, selected from the vast amount of evidence presented to the Tribunal by the prosecution, by no means does justice to the voluminous record. It is important to review in more detail a variety of the activities of Farben showing its participation in and identity with the rearmament and war preparation of the Nazi regime. The indictment alleges that the individuals acted through the instrumentality of Farben in committing the crimes as alleged. The development and corporate characteristics of Farben as disclosed by the record are presented as the bases of better appraising the positions of the defendants within Farben.

Origin and Development of Farben

The history of Farben is virtually the developmental record of the chemical industry in Europe. In 1904, the first move toward combination of several German enterprises occurred with the formation of two "Interessen-Gemeinschaften" (communities of interests), one including Bayer, Aktiengesellschaft fuer Anilinfabrikation and Badische Anilin-und Sodafabrik, the other Casella and Meister, Lucius & Bruning.

On 9 December 1925, Badische changed its name to the present designation of "Interessen-Gemeinschaft Farbenindustrie Aktiengesellschaft," and, with five other leading chemical firms of Germany, merged into a new corporation (Farben) under that title. In September 1926, the consolidation emerged with a combined capital structure of 1.1 billion reichsmarks, more than three times the aggregate capital of all other chemical concerns of any consequence in Germany, and assumed a position of undisputed predominance in the field of German chemistry.

From these beginnings, Farben steadily expanded its plants, the scope of its production, and its economic influence. By 1940, it owned or held participating interests in more than four hundred firms in Germany and about five hundred abroad (of which forty-eight were located in the United States), and it controlled a great number of patents (twenty-eight thousand foreign registrations) in all important spheres of chemical production throughout the world.

At the peak of its activities, Farben and its subsidiaries, including Dynamit A. G., showed an annual turnover of four billion marks. Concerning the internal corporate structure and functioning of Farben, the following should be noted:

The Aktiengesellschaft—("A. G.") similar to an American Stock Corporation—has two governing bodies, one charged with general supervision, the other with actual management. One is called the "*Aufsichtsrat*" (often translated as "Supervisory Board of Directors"), the other the "*Vorstand*" (often translated as "Managing Board of Directors"). Taken together, the two boards exercise the ordinary functions of a Board of Directors.

"*Interessen-Gemeinschaft*" (IG) means, in literal translation, a "community of interests," usually crystallized in a formal agreement between two or more business firms, providing for mutual adherence to its provisions governing such matters as pooling and sharing of profits, division of markets, control of prices, coordination of production and distribution, research, patent practices, et cetera, et cetera. An outstanding example was the combine, between 1916 and 1925, of eight major German chemical firms, often referred to as the "old IG," which eventuated in the formal merger of I. G. Farben A. G. on 9 December 1925.

Farben's Managerial Organization and Delegations

The Aufsichtsrat: The period of Farben's corporate existence with which this inquiry is concerned was characterized by (*a*) a decrease in the numerical composition of its governing boards, and (*b*) an increase in the number and variety of subordinate groups within those bodies, to which great measures of discretionary authority and executive duties were delegated.

All or a great number of the leading personalities of its predecessor firms were placed on one or the other of the boards, as a result whereof the first Aufsichtsrat comprised fifty-five members and the Vorstand eighty-two. As these bodies were too cumbersome for effective supervision and management of the new corporation, smaller select groups were constituted from each board to perform most of the duties with which each was charged.

The Vorstand

Original Vorstand Working Committee (Arbeitsauschuss). The Vorstand in 1926 comprised over eighty members. From its membership a "Working Committee" of twenty-six was selected, pursuant to the bylaws, to undertake the actual management of the corporation, and continued to function as its responsible management until 7 April 1938, when it was abolished in conformity with the statutory reform of 1937, which did not sanction such delegation of authority and function by the Vorstand.

The following defendants were members of the Working Committee, to wit: Krauch (1929–38); Schmitz (1926–38); von Schnitzler (1926–38); Gajewski (1929–38); Hoerlein (1931–38); von Knieriem (1931–38); ter Meer (1926–38); Schneider (1937–38); Buetefisch (1933–38); Ilgner (1933–38); Kuehne (1926–38); Mann (1931–38); Oster (1929–38); Wurster (1938); Gattineau (1932–35).

The Reorganized Vorstand (1938). With the passing of the Working Committee, the position of deputy Vorstand member was abolished; the numerical composition of the Vorstand was reduced to less than thirty, and membership restricted to persons actively participating in the management and direction of Farben. The roster of the new Vorstand was made up largely of the old Working Committee, the fifteen defendants listed above, except Gattineau, and five other defendants, to wit: Ambros, Buergin, Haefliger, Jaehne and Lautenschlaeger, all of whom served until 1945. Schmitz was chairman from 1926 to 1945.

Vorstand Duties and Responsibilities. The revised articles of incorporation adopted by Farben in 1938 provided (Art. III, par. 11 (1)) that the Vorstand "shall conduct on its own responsibility the business of the Corporation in such manner as the welfare of the enterprise and of its employees as well as the general utility of the

people and of the nation demand it". Defendant Krauch summarized the managerial structure of Farben as follows:

> "After 1937, the Aufsichtsrat played no part in the management of IG affairs. I know of no one instance in which the Aufsichtsrat disapproved of or disputed Vorstand activities. The Vorstand was in complete command of and entirely responsible for all IG business."

From the above, it appears that the Vorstand of Farben possessed plenary powers in its corporate management.

The mechanics of operating some four hundred business enterprises within Germany and five hundred foreign adjuncts required decentralization of the Vorstand functions. This was accomplished by the creation of a pyramid of Committees, Works Combines, "Sparten," Commissions and Conferences with the "Central Committee" at the apex. The latter occupied a position comparable to the executive committee of an American corporation.

Special Assignments of Vorstand Members. In addition to the over-all responsibility imposed upon all members of the Vorstand by German law, Farben's charter, and the Vorstand bylaws, each member in practice was assigned a specific field of major activity in which he was charged with special responsibilities on behalf of the entire body. These assignments, generally speaking, fell in either the "Technical" or "commercial" categories and qualified the member as a "leader" in his field. A brief summary of these specialized activities will aid in tracing the personal activities of each defendant in relation to the respective charges.

The "Central (Executive) Committee," from 1930 to 1935 was the active wheel within a wheel of the "Working Committee" in the Vorstand. With the death of Carl Duisberg in 1935, defendant Schmitz succeeded to the dual capacity of chairman of the Vorstand and the Central Committee. Thenceforth, the Central Committee dealt principally with personnel, particularly selection of "Prokuristen" and higher officials (persons possessing general power of attorney, a practice quite general in German business administration). This committee survived the abolition of the Working Committee in early 1938, until the collapse in 1945. The following defendants were members during the time indicated, to wit: Krauch (1933–40); Schmitz (1930–45); von Schnitzler (1930–45); Gajewski (1933–45); Hoerlein (1933–45); von Knieriem (1938–45); ter Meer (1933–45); Schneider (1938–45).

Technical Committee (TEA) and Subordinates. The principal delegations of authority and original responsibility reposed in the Technical Committee. As the name implies, it was comprised of the technical members of the Vorstand and other important technical

personnel (scientists, engineers, plant managers) who were not Vorstand members. Formed immediately after the 1926 merger, it dealt until 1945 with all technical questions of research and production, expansion of plant facilities and consolidation and recommendation of credit requests. It had a centralized administrative office, the TEA-Buero in Berlin, managed by one Dr. Ernst Struss. Twelve of the defendants were regular members during the period indicated, to wit: Krauch (1929–40); Gajewski (1929–45); Hoerlein (1931–45); ter Meer (1925–45); Schneider (1938–45); Ambros (1938–45); Buergin (1938–45); Buetefisch (1938–45); Jaehne (1938–45); Kuehne (1925–45); Lautenschlaeger (1938–45); Wurster (1938–45); and, the following defendants were frequent visitors or guests during the year indicated; to wit: Schmitz (1925–45); von Schnitzler (1929–45); von Knieriem (1931–45); Schneider (1929–38); Buergin (1937–38); Buetefisch (1932–38); Jaehne (1926–38). Defendant ter Meer was chairman from 1933 to 1945.

This TEA had subservient committees to originate, consider, and recommend plans for production and exchange of information on research, development and application, plus opinions on appropriations for new construction. These subcommittees numbered thirty-six in chemistry, five in engineering, the latter grouped under a "Technical Commission (TEKO)," with defendant Jaehne as chairman, 1932–45.

Commercial Committee (KA). As distinguished from the "Technical," the counterbalance of managerial power was represented by the "Commercial Committee" of the Vorstand.

The Commercial Committee was formed shortly after the 1926 merger to assist the Vorstand in directing and coordinating the commercial affairs of Farben, that is, sales, publicity, commercial personnel, both domestic and foreign, economic problems affecting Farben interests, et cetera. It gradually lapsed into inactivity by 1933, but was reconstituted in August 1937 under the leadership of defendant von Schnitzler, and thereafter until 1945 was a very active and important group in the Vorstand. Besides von Schnitzler, defendants Haefliger, Ilgner, Mann and Oster served from 1937, and defendant Kugler from 1940 until the collapse of Germany. The full membership numbered about twenty, comprising the heads of the Sales Combines and their immediate associates and the heads of the "central departments," financial, accounting, purchasing, economic-political. Defendant Schmitz was a regular guest and defendants Gajewski, von Knieriem and ter Meer occasional guests at meetings of this committee. Approval by the Vorstand was required for all KA resolutions.

"Mixed Committees." Coordination between the technical and commercial chiefs of Farben was established initially at the Vorstand level, where the preeminent leaders met to hear and discuss reports of the individual members on matters where they had special responsi-

bilities, and to pass upon general policy. However, preliminary screening of such matters was frequently accomplished by so-called "Mixed" Committees, the principal ones being the Chemicals Committee (chief, von Schnitzler after 1943), Dyestuffs Committee (chief, von Schnitzler) and Pharmaceuticals Main Conference (chief, Hoerlein). Each of these committees included important technical and commercial leaders. The committee chiefs reported directly to the Vorstand.

Farben's Industrial Chain of Command. The implementation of policies and plans formulated by the instrumentalities outlined above was accomplished by a system of "decentralized centralization" of production and distribution. After the consolidation, groups of plants were organized primarily according to geographical location in "Works Combines."

"*Works Combines.*" The four original combines were called Upper Rhine, Main Valley, Lower Rhine, and Central Germany. In 1929, a fifth, called "Works Combine Berlin" was established, although its plants were widely scattered. The plants [Works] Combines coordinated such matters as over-all administration, research, transportation, storage, et cetera, in their respective areas, including major technical problems affecting their plants until 1929. Defendants who were in charge of these Combines were: Upper Rhine, Krauch (1938–40); Wurster (1940–45); Main Valley, Lautenschlaeger (1938–45); Jaehne, Deputy, same period; Lower Rhine, Kuehne (1933–45); Central Germany, Buergin (1938–45); Berlin, Gajewski (1929–45).

The "Sparten" (Main Groups). In 1929 three main directional groups, each known as a Sparte, were established in the interests of efficiency in research and production and improved coordination of the individual plants. Jurisdiction was determined by products rather than by plants or geographical location, hence some plants producing several products came under the supervision and direction of more than one Sparte.

Sparte I included nitrogen, synthetic fuels and lubricants, and coal. Krauch was its chief from 1929 until 1938; thereafter, Schneider was chief and Buetefish, deputy chief. Sparte II included dyestuffs and intermediate dyestuffs products; various chemicals, pharmaceuticals, buna; light metals, chemical warfare agents. Defendant ter Meer headed Sparte II from 1929 until 1945. The smallest, Sparte III, included photographic materials, synthetic fibres, cellulose products, explosives, cellophane, and ozalid. Gajewski was chief from 1929 to 1945.

The Plants. Under the complicated organizational superstructure outlined above, the ultimate development, manufacture, and distribution of Farben's many and diversified products were accomplished at the "Plant" levels. Each major plant was usually under the per-

sonal direction of a Vorstand member, with his main office in the plant. In some cases one member had direct supervision of more than one plant; in others a division of management prevailed according to production.

The following defendants were responsible for the direction, as plant leaders, of the plants listed in connection with the manufacture of the products indicated:

Gajewski was plant leader of Wolfen Film Plant and manager of "AGFA" Plants located at Wolfen Filmfabrik, Berlin-Lichtenberg, Premnitz, Landsberg, Munich-Camerawerk, Bobingen, Rottweil, 1931–45, which produced photographic materials, artificial silk, synthetic fibers, cellulose wool, cellulose, all kinds of cellulose products and ozalid.

Hoerlein was plant leader of the Elberfeld Plant, 1933–41 and manager of the Elberfeld Plant, 1931–41, which produced pharmaceuticals, organic intermediates, insecticides, biologicals, and research in pharmaceutical and chemicals for plant protection and pest destruction.

Schneider was plant leader of Ammoniakwerk, Merseburg (Leuna), 1936–38; full manager of Ammoniakwerk, Merseburg (Leuna), 1938–45; deputy manager, Ammoniakwerk, Merseburg, and manager of Leuna Plant, 1928–36; these plants produced inorganics and nitrogen, organic intermediates solvents, plasticisers, methanol, dyeing and printing auxiliaries, detergent raw materials, gasoline, and lubricating oils.

Ambros was manager of the following plants: Schkopau (buna I), 1935–45; Ludwigshafen-Oppau (organic, intermediates and dyestuffs plants and laboratories), 1938–45; Huels (buna II), 1938–45; Ludwigshafen (buna III), 1941–45; Auschwitz (buna IV), 1941–45; Gendorf (inorganic), 1941–45; Dyhernfurt, 1941–45; Falkenhagen, 1942–45; which produced synthetic rubber, inorganics and nitrogen, organic intermediates, solvents, plasticisers, methanol, plastics, accelerators, dyestuffs, dyeing and printing auxiliaries, detergent raw materials, poisonous gas and intermediates.

Buergin was plant leader of Bitterfeld-Wolfen Plants, 1938–45, which produced inorganics and nitrogen, organic intermediates, plastics, magnesium, and aluminum, dyestuffs, dyeing and printing auxiliaries, detergent raw materials, insecticides, light metals.

Buetefish was technical chief of Leuna Works, Merseburg, 1931–45; deputy manager, Ammoniakwerk, Merseburg, 1934–45 and chief (syn. gasoline), Auschwitz, 1941–45, which produced nitrogen gasoline, lubricating oil, methanol, mersol, organic intermediates and suet acid.

Kuehne was plant leader of Leverkusen, 1933–43, which produced inorganics, organic intermediates, buna, plastics, pharmaceuticals, insecticides, acetylcellulose, synthetic fibres.

Lautenschlager was plant leader at Hoechst Plant, 1938–45, which produced inorganics, solvents, organic intermediates, plastics, pharmaceuticals, compressed gases, welding and cutting equipment and oxygen.

Wurster was plant leader at Ludwigshafen-Oppau "during World War II," and technical director of Ludwigshafen-Oppau, 1938–45, which produced inorganics, organics, organic intermediates, buna, plastics, solvents, synthetic rubber, tanning extracts, dyestuffs, detergent raw materials and ethylene oxide.

Where the local manager of a plant was not a Vorstand member, he received orders and information from his Sparte head, the head of his Works Combine, or some other means of coordination and supervision by the Vorstand existed. It is abundantly clear that all lines led to the Vorstand.

Administrative Coordination. In 1927 the first of a number of central administrative agencies was set up in Berlin, NW 7, in charge of defendant Ilgner. This was the *Central Finance Administration* (ZEFI). It was followed in 1929 by an *Economic Research Department* (VOWI) and a *Political-Economic Policy Department* in 1933. The function of the latter was to assure close cooperation between the commercial departments of Farben and government agencies. In 1935 a central office for liaison with Armed Forces called "*Vermittlungsstelle W*" was added, which eventually dealt with such matters as mobilization questions and plans, military security, counterintelligence, secret patents, research for the Armed Forces, et cetera. Its activities were of sufficient importance to have each Sparte designate a chief and collaborators to its staff. Defendant von der Heyde was in charge of its counterintelligence activities, under the over-all supervision of defendant Schneider.

Sales Combines to handle the four principal categories of Farben products were established, each headed by a Vorstand member. Chief of the "Sales Combine Dyestuffs" was defendant von Schnitzler, who also became chief of "Sales Combine Chemicals" in 1943. Defendant Haefliger was one of his three deputies. Defendant Mann was chief of "Sales Combine Pharmaceuticals."

Nitrogen was sold exclusively through the *German Nitrogen Syndicate* (Stickstoff Syndikat G. m. b. H.) which was managed by defendant Oster.

Most of the plants and all of the Sales Combines of Farben had legal departments, and all of the larger plants had patent departments. The work of these departments was coordinated by two Vorstand committees, the "Legal Committee" and the "Patent Commission." Defendant von Knieriem was chairman of both bodies, and was also head of the legal and patents departments of the Ludwigshafen plant which

served as a central clearing office for all major legal and patent questions of general interests.

The foregoing constitutes a description of the instrumentality of Farben and a factual recital of the manner of its functioning. Farben, for decades, has been a pioneer in the world of chemical research. It was with pride that defense counsel pointed to these pioneer achievements: the discovery of "dyestuffs, the synthesis of nitrogen from the air, the methanol synthesis, artificial fibres, light metals, buna, the plastics, the processes of refining coal as a source of power by means of gasoline and lubricant synthesis, numerous chemicotherapeutic agents of vital importance." During that period Farben had achieved a dominant position not only in Germany but one of leadership in the world. Defendant von Schnitzler referred to a phrase most aptly characterizing Farben as "a state within a state." As to the important position of Farben in German industrial, commercial and political life, there can be no controversy.

Activities of Farben in the Rearmament of Germany

The indictment had divided the activities of Farben into particular categories: (*a*) support of Hitler and the Nazi Party; (*b*) cooperation with the Wehrmacht; (*c*) Four Year Plan and economic mobilization of Germany for war; (*d*) activities in creating and equipping the Nazi military machine; (*e*) procuring and stockpiling of critical war materials; (*f*) activities in the weakening of Germany's potential enemies; (*g*) the carrying on of propaganda, intelligence and espionage activities; (*h*) the cloaking of Farben's assets abroad for war purposes and in anticipation of hostilities; (*i*) the activities of Farben in acquiring control of the chemical industry in occupied countries. In its excellent preliminary brief the prosecution has marshalled the more significant evidence under similar headings. For reasons of convenience the same major categories will be utilized in discussing Farben's activities. The following facts have been proved beyond any possibility of doubt by competent evidence found in abundance in the record. Captured documents, official reports, statements, affidavits, interrogations, letters, and direct testimony of many witnesses all combine to make it certain that the following facts are true:

a. Support of Hitler and the Nazi Party. In the critical election of March 1933, Farben supported Hitler and his coalition with a financial contribution of 400,000 reichsmarks, being its share of a fund of more than 2,000,000 reichsmarks contributed by industries represented at the meeting in Goering's home on 20 February 1933 [*D-203, Pros. Ex. 37*], addressed by Hitler and Goering and attended by the defendant von Schnitzler. The action of Farben along with other industrialists in rallying to the support of Hitler at that time was undoubtedly a factor contributing to the seizure and consolidation of power by Hitler.

Thereafter Farben made numerous financial contributions to Hitler and the Nazi Party ranging over a period from 1933 to 1944 and reaching a total of 40,000,000 reichsmarks including those required contributions which were based on rates fixed for industrial organizations in German economy. As a matter of general procedure in Farben, all contributions had to be reported to and approved by the Central Committee which, prior to 1938, in turn reported to the Working Committee of the Vorstand and after 1938 reported direct to the Vorstand. It is clear that Farben was a generous and regular contributor to a wide variety of Nazi causes and to some of its leading personalities.

b. Cooperation with the Wehrmacht. It is stated in the International Military Tribunal Judgment:

> "During the years immediately following Hitler's appointment as Chancellor, the Nazi government set about reorganizing the economic life of Germany, and in particular the armament industry. This was done on a vast scale and with extreme thoroughness.
>
> "* * * In this reorganization of the economic life of Germany for military purposes, the Nazi government found the German armament industry quite willing to cooperate, and to play its part in the rearmament program." [1]

Farben was pre-eminent in chemical research and development and willingly cooperated with the Nazi regime in making its technique available. The evidence establishes a continuous record of collaboration and cooperation between Farben and the Wehrmacht in these important fields. Farben cooperated in the planning of stand-by plants or state-owned shadow factories; as early as 1933, Farben made preparations for air-raid protection of its plants [*NI–8461, Pros. Ex. 170*] and through the subsequent years conducted "map exercises" or "war games," testing how important plants could be protected against bombing.[2] The chief and officials of the Military Economic Staff personally attended such exercises in March 1936. An extensive program of stockpiling of essential war materials was pursued by Farben. An official German governmental report on "The Program of Work for Economic Mobilization on 30 September 1934" showed that [*EC–128, Pros. Ex. 716*] : "It was possible to start in June of this year at Doeberitz," a plant for making a sufficient quantity of highly concentrated nitric acid available for production of explosives and ammunition. (This was a Farben plant and required approximately 2.7 million reichsmarks for construction.) Of the ferrous alloys (ferrous chromium, ferrous wolfram, ferrous molybdenum, ferrous vanadium) necessary for the production of high grade steels, Farben, at

[1] *Trial of the Major War Criminals*, volume I, pages 182 and 183.

[2] See Document NI–4624, Prosecution Exhibit 185; NI–8637, Prosecution Exhibit 29; NI–5881, Prosecution Exhibit 183.

the requests of the government, transferred a "part of the production of ferrous wolfram, heretofore exclusively located in the danger zone near Aix-la-Chapelle, to central Germany," and built a "reserve plant of considerable size"; extended "its installation for the production of ferrous molybdenum"; and completed the stockpiling of an additional amount of pyrites, "the basic raw material of sulphuric acid, which is an indispensable chemical intermediate product" and which in Germany "can only be produced in the danger zone." In that report, after the following comment as to the importance of gasoline,

> "The extraordinary significance of motor fuel supplies is a result of the increasing motorization of the Wehrmacht, the growing importance of the German Air Forces, almost unlimited in its future development, and finally of the ever-increasing motorization of the whole civilian transport system which would be endangered most seriously by a motor fuel shortage,"

it is pointed out that:

> "Among all the raw materials under consideration, motor fuel furthermore holds a distinctive position, because it needs to be immediately available for the conduct of war."
>
> "So far the increase in production at Leuna" (a Farben plant) "from hitherto 100,000 tons to a total of 300,000 tons in the future has actually been realized." [*EC–128, Pros. Ex. 716.*]

In 1933 Germany had withdrawn from the League of Nations, and in 1935, as stated by the International Military Tribunal, "the Nazi government decided to take the first open steps to free itself from its obligations under the Treaty of Versailles"; and on 10 March 1935, "Goering announced that Germany was building a military air force," and 6 days later compulsory military service was instituted.

While those significant political events occurred, Farben continued its energetic cooperation. That cooperation between Farben and the government in the rearmament of Germany became so extensive that in the latter part of 1935 Farben found it necessary to establish a Military Liaison Office in Berlin. The defendant Krauch was active in the establishment of this office, known as the Vermittlungsstelle W. Its purpose was to serve as an office of Farben for all questions of military economy, of military policy, and of military technical nature in connection with the planned development of the military economy. A Farben report prepared by Dr. Ritter, representative of Sparte I in Vermittlungsstelle W, dated 31 December 1935 [*NI–2638, Pros. Ex. 140*], states the aim to be "The building up of a tight organization for armament in the IG which could be inserted without difficulty in the existing organization of IG and the individual plants." The ex-

isting basis of cooperation between Farben and the Reich Ministries of War and Economy is reflected in the significant further statement in the report:

> "In case of war, IG will be treated by the authorities concerned with armament questions as one big plant which in its tasks for the armament, as far as it is possible to do so from the technical point of view, will regulate itself without any organizational influence from the outside."

Each of the three Farben Sparten established offices in the Vermittlungsstelle W, and these offices were responsible to the respective Sparte Head, to wit: to the defendants Krauch and Schneider (after 1938) for Sparte I; to the defendant ter Meer for Sparte II; and to the defendant Gajewski for Sparte III [*NI–8923, Pros. Ex. 142*]. Thereafter, during the entire period of mobilization and preparation for Germany's aggressive wars, the Vermittlungsstelle W functioned as an important liaison office on many major matters incident to the economic mobilization and rearmament. The significance of the office is not lessened by the fact that it was largely a liaison office. By the year 1939, of the military problems with which the Vermittlungsstelle W was occupied and which were discussed with the Wehrmacht, many projects originated with Farben itself as distinguished from matters resulting from the direct request of the Wehrmacht. The office retained considerable importance despite the fact that some of its original broad functions were taken over by Krauch when he was appointed to the Office of German Raw and Basic Materials, to which office he took several persons from the Farben office. It should be noted that Krauch remained nominally in charge of Vermittlungsstelle W. Under Krauch the Vermittlungsstelle W established a special security section and issued detailed directives for counterintelligence, in keeping with existing decrees and directives surrounding the matter of secrecy, with certain exceptions applicable only to Farben. In a communication to the directors of Farben plants, including several of the defendants, Vermittlungsstelle W stated that "in view of the future war economy, Section A" (being the special security section established within Vermittlungsstelle W) "is at the disposal of all IG plants and IG agencies for any information in counterintelligence and security matters, and will take care if necessary that information be exchanged."

By 1936 the problems incident to mobilization and production for the case of war continuously engaged the attention of Farben personnel. [*NI–5880, Pros. Ex. 191; NI–7475, Pros. Ex. 192.*] These activities continued during 1937 and 1938. Mobilization plans were drafted in detail, including the production tasks to be assigned to the various Farben plants and subsidiaries. These plans were arrived at, based on comprehensive discussions with representatives of the

Reich War Ministry, the Reich Ministry of Economics and the Reichstelle Chemistry. [*NI–8883, Pros. Ex. 201; NI–8881, Pros. Ex. 203; NI–8504, Pros. Ex. 204; NI–8886, Pros. Ex. 206; NI–8890, Pros. Ex. 207; NI–8780, Pros. Ex. 208.*]

These plans for mobilization within Farben were repeatedly discussed in such important Farben Committees as the Technical Committee and the Commercial Committee. They were known to the responsible "technical" members of Farben's Vorstand and to the leading "commercial" members of the Vorstand. [*NI–8777, Pros. Ex. 198; NI–8776, Pros. Ex. 199; NI–9051, Pros. Ex. 200.*]

Immediately prior to the invasion of Poland, Farben's Leverkusen plant was notified on 26 August 1939 by secret letter from the Military Economics Department, Duesseldorf [*NI–4635, Pros. Ex. 260*] that personnel in military important plants had to remain on the job and instructions were issued "for the duration of military measures." Vermittlungsstelle W issued notification and instructions to Farben's plants on 28 August 1939 that it could be reached on a 24-hour basis [*NI–8778, Pros. Ex. 262*]. The Hoechst plant of Farben received on 30 August 1939 the necessary shipment papers for the first 14 days of the mobilization from the Military Economics Department, Kassel. [*NI–7382, Pros. Ex. 263.*]

So complete was Farben's cooperation and planning that Farben's plants all had their assigned war production tasks which became operative when Germany attacked Poland in September of 1939. Vermittlungsstelle W merely had to advise the TEA office of Farben on 3 September 1939 [*NI–2765, Pros. Ex. 264*] that it was necessary for "* * * all IG plants to switch at once to the production outlined in the mobilization program." Subsequently on 6 September 1939, the Vermittlungsstelle W informed the various Farben plants that the war delivery contracts, some of which had been concluded in 1938, became effective immediately. [*NI–8882, Pros. Ex. 266.*]

c. The Four Year Plan and Economic Mobilization of Germany for War. Germany's planning of measures of rearmament and reorganization of the economic life of Germany "was done on a vast scale and with extreme thoroughness." The following facts found by the IMT are pertinent here:

> "It was necessary to lay a secure financial foundation for the building of armaments, and in April 1936 the Defendant Goering was appointed coordinator for raw materials and foreign exchange, and empowered to supervise all State and Party activities in these fields. In this capacity he brought together the War Minister, the Minister of Economics, the Reich Finance Minister, the President of the Reichsbank, and the Prussian Finance Minister to discuss problems connected with war mobilization, and on 27 May 1936, in addressing these men, Goering opposed any financial limitation of

war production and added that 'all measures are to be considered from the standpoint of an assured waging of war.' At the Party Rally in Nuremberg in 1936, Hitler announced the establishment of the Four Year Plan and the appointment of Goering as the Plenipotentiary in charge. Goering was already engaged in building a strong air force and on 8 July 1938 he announced to a number of leading German aircraft manufacturers that the German Air Force was already superior in quality and quantity to the English. On 14 October 1938, at another conference, Goering announced that Hitler had instructed him to organize a gigantic armament program which would make insignificant all previous achievements. He said that he had been ordered to build as rapidly as possible an air force five times as large as originally planned, to increase the speed of the rearmament of the navy and army, and to concentrate on offensive weapons, principally heavy artillery and heavy tanks. He then laid down a specific program designed to accomplish these ends. The extent to which rearmament had been accomplished was stated by Hitler in his memorandum of 9 October 1939, after the campaign in Poland. He said:

'The military application of our people's strength has been carried through to such an extent that within a short time at any rate it cannot be markedly improved upon by any manner of effort. * * *

'The warlike equipment of the German people is at present larger in quantity and better in quality for a greater number of German divisions than in the year 1914. The weapons themselves, taking a substantial cross-section, are more modern than is the case of any other country in the world at this time. They have just proved their supreme war worthiness in their victorious campaign. * * * There is no evidence available to show that any country in the world disposes of a better total ammunition stock than the Reich * * *.'"*

There was an enormous program of planning and preparation behind these accomplishments and Farben was a major factor contributing to the results achieved. The record abundantly shows the integration of Farben with this program. The meeting of the Experts Committee on Raw Materials Questions on 26 May 1936, presided over by Goering and attended by defendant Schmitz [*NI–5380, Pros. Ex. 400*], has already been discussed in this opinion. In that same month Farben through Bosch, the chairman of the Vorstand at that time, placed the defendant Krauch at the disposal of Goering. Krauch, who was one of Farben's most capable scientists and administrators, was put in charge of the sector for Research and Development [*NI–4703, Pros. Ex. 426*]. Important personnel from the Ver-

*Trial of the Major War Criminals, volume I, pages 182 and 183.

mittlungsstelle W (Dr. Ritter and Dr. Eckell) went over with Krauch to assist in the performance of the tasks assigned to Krauch [*NI-5911, Pros Ex. 407*]. These tasks were to help in preparing for war with reference to raw materials essential to the waging of war. Hitler had already advised Goering in the summer of 1936:

"The German Army must be ready for combat within 4 years. The German economy must be mobilized for war within 4 years."

and Hitler told Goering further:

"The German motor fuel production must now be developed with the utmost speed and brought to definitive completion within 18 months. This task must be handled and executed with the same determination as the waging of war. * * * The mass production of synthetic rubber must be also organized and secured with the same rapidity. The affirmation that the procedure might not be quite determined and similar excuses must not be heard from now on." [*NI-4955, Pros. Ex. 411.*]

The Office of Raw Materials and Foreign Exchange was rapidly succeeded by the Office of the Four Year Plan following the announcement of that plan by Hitler at the Nurnberg Party Rally in 1936. Krauch continued under Goering in the Four Year Plan in charge of facility expansions for strategic raw materials and synthetics. In a speech delivered to the Reich Chamber of Labor on 24 November 1936 [*EC-373 Pros. Ex. 416*], General Thomas, Chief of the Military Economic Staff of the Office of the Wehrmacht, described the Four Year Plan as "military economy at its purest." Krauch was Farben's main liaison with the over-all planning of the German armament, but other defendants were extremely active in their respective spheres of responsibility. On 6 and 7 August 1936, defendant Buetefisch attended a conference on the government oil program in Berlin with members of the Raw Materials Staff in which the government oil program under the Four Year Plan was discussed [*NI-4471, Pros. Ex. 414*]. It was explained by Fischer, head of the Economic Group Motor Fuels, that "the total plan is not adjusted to meeting peacetime requirements, but to the requirements in case of mobilization." Buetefisch stated that a second stage of development is planned regarding which there would be information 8 days later, "with a total of 24 months allowed for construction work." A few days later, on 12 October 1936, defendants Jaehne and Lautenschlaeger attended a meeting of the Technical Management at Frankfurt/a. M., Hoechst, in which the urgent requirements of Farben for the production of gasoline, rubber and artificial fibres under the Four Year Plan were discussed [*NI-5909, Pros. Ex. 529*]. Increase in artificial fibers to 85,000 tons per annum by the end of the year was noted as well as "significant increase" of "manufacture of metals." On 17 October

1936, defendant Schmitz reported to the Aufsichtsrat of Farben on "the great tasks which our firm has with regard to raw materials in the Four Year Plan as announced by the Fuehrer in Nurnberg." Only for the purpose of chronological presentation and logical consideration, the address by Goering delivered on 17 December 1936 to a group of about one hundred leading industrialists is referred to here [*NI-051, Pros. Ex. 421*]. Its significance on the question of knowledge by several of the defendants, including Krauch and von Schnitzler, has already been discussed in this opinion.

The year 1937 was an important period in the expansion program of Farben in preparing to meet the requirements of the Four Year Plan. A tremendous outlay of capital was involved, some of which was furnished by Farben but much of which was supplied by the government. On 6 January 1937, a conference was scheduled by Krauch's Office for Raw Materials and Synthetics with representatives of the Office of Military Economy, Reich Air Ministry and of the Navy for the discussion of a broad scope of subjects [*NI-7823, Pros. Ex. 717*] including: (1) plants to be set up for the production of gunpowder and explosives and stockpiling of these materials; (2) plants to be set up for the production of chemical warfare agents and stockpiling of such products; (3) decisions on production (stand-by) plants for calcium hypoclorite or losantin and stockpiling that product; (4) plan for stockpiling many important items including preliminary products and organic basic materials, such as nitration paper, diglycol, to meet requirements for 1 year; (5) sites for stock storage dumps or stockpiling of diglycol, ammonia and other chemical products vital for the making of explosives including thiodiglycol and dichloridethylsulphide. In March 1937, Hitler in a speech on the Four Year Plan said [*NI-6627, Pros. Ex. 531; NI-7276, Pros. Ex. 21*]: "In 2 or 3 years we will be free of requirements of fuel and rubber from abroad, * * *" On 27 May 1937, Goering approved "the plan of the Four Year Plan for those projects which will be carried out by the Office for German Raw and Industrial Materials, * * *" being a comprehensive survey in great detail covering plans for production, including chemicals, during the 4-year period. [*EC-281, Pros. Ex. 427.*]

The projects set out in the survey were checked by Krauch, especially the sectors coming within the Farben area, and Krauch discussed the planning in these specialized fields with Farben.

The significance of the Four Year Plan was explained by Krauch in a speech delivered by him and published in the Four Year Plan in August 1937. He said [*NI-6628, Pros. Ex. 22*]:

> "The German people are forced to live in much too restricted a space. Exclusion from the possession of the world's sources of raw materials compels us to produce the materials necessary for her

national security by chemical means from her own resources—from coal, salts, lime, and other materials, as well as from air and water. That is the purport of the Four Year Plan, as described by the Fuehrer in the words: 'I present this today as the new Four Year Program. In 4 years, Germany must be completely independent, as far as concerns all those materials from abroad which it is in any way possible for German skill to produce through our chemical and engineering industries and through our mining industry itself.

* * * * * * *

"The economic progress achieved by the National Socialist leadership and rearmament has absorbed for practical ends all that was available in the field of technical and chemical training * * *

"The following measures seem important:

"I. The clarification of public opinion on the importance of science and engineering to our nation and particularly on the following points:

"1. The exploitation of valuable scientific and technical achievements is indispensable to the realization of our political aim."

There can be no doubt concerning Krauch's sympathy with the political aims and objectives of the National Socialist leadership and his eminent standing as industrial scientist meant that he fully understood and appreciated the tremendous contribution Farben could make in achieving independence for Germany in the important raw materials essential for the waging of war.

In explaining the military importance of chemical products including those of Farben, Dr. Elias, a witness, produced by the prosecution, testified:*

"German chemical industry was one built on coal, air and water. Supplies of petroleum in Germany are very meager. The maximum production of petroleum in all of Germany from its own oil wells has always represented only a small fraction of its total requirements. Coal, however, is plentifully available and brown coal, which is a sort of lignite, is available in huge quantities and easily accessible to large scale mining. With coal as a basic material and with the aid of air and water, indefinite numbers of organic compounds composed of carbon, nitrogen, hydrogen and oxygen can be made. 84½ percent of Germany's aviation fuel, 85 percent of her motor gasoline, all but a fraction of 1 percent of her rubber, 100 percent of the concentrated nitric acid, basic component of all explosives, and 99 percent of her equally important methonol, were synthesized from these three fundamental raw materials—coal, air, and water.

* * * * * * *

*See mimeographed transcript for 30 September and 1 October, pages 1342–1462.

"The military significance of oil is best explained by the fact that in the closing months of the war, after the British and American Air Forces had concentrated on German synthetic oil targets, Germany's large reserve in military aircraft stayed on the ground with empty tanks: armored vehicles were moved to the front by oxen and every motor trip exceeding 60 miles had to be approved by the commanding general. Without nitrogen, not a single ton of military explosives or propellant powder could have been made. Certain military explosives were entirely dependent on synthetic methanol as well as ammonia. Without rubber, of course, the war machine could not have rolled.

* * * * * * *

"The element which is common to the synthesis of liquid fuels, ammonia (from which nitric acid is made), and methanol, is hydrogen. Pure hydrogen is needed to fix the nitrogen of the air: it is needed to reduce the coal tar or coal to liquid fuels: and it is needed to reduce the carbon monoxide made from coal to methanol. It is also needed in certain stages in the production of butadiene for the manufacture of synthetic rubber. Because of this fact several products were manufactured from hydrogen in the same unit in the various IG plants. In plants such as Leuna we find not only ammonia being produced but also gasoline, lubricating oil, methanol, and other products. At Ludwigshafen we find synthetic ammonia, menthol, organic intermediates and synthetic rubber. At Waldenburg and Hydebreck there is ammonia and methanol and ethylene. In other words, it was found to be more economical to build several operations which consumed hydrogen around the central hydrogen production so that as the demand for any of the individual products fluctuated, the hydrogen production could be shifted for use to one of the other products and thus kept going.

* * * * * * *

"Well, in summarizing I have indicated the sources of synthetic and by-product ammonia, synthetic methanol, synthetic liquid fuels, synthetic rubber, acetylene, ethylene, benzol and toluene. The actual structure of important intermediates and finished products is built on this skeleton of raw materials; so that starting with coal, air and water, Farben was able to supply Germany with most of its liquid fuels and lubricants, practically all of its rubber, all of its methanol, most of its ammonia, and therefore, its nitric acid and its raw materials for the production of dyestuffs, pharmaceuticals, explosives and poison gases."*

*Ibid.

In a letter to Goering dated 15 June 1937 [*NI-4711, Pros. Ex. 557*], defendant ter Meer, after referring to the contract concluded with the Reich about the establishment of a large scale buna plant in Schkopau, said:

> "We are willing also to sign contracts of license, each for the period of 10 years, with further buna plants to be established within the Four Year Plan. * * *
>
> "This consent to put our patents and 'Know-how' at the disposal of the new plants referred to, by renouncing profit, can only be justified from the point of view of the Four Year Plan, * * *"

In this plan for economic mobilization within the chemical field, excluding mineral oil, Farben was assigned a major proportion. In the mineral oil sector, including the plants which were Reich-owned but operated by Farben or its licensees, the allocation was 90 percent; for synthetic rubber the allocation was 100 percent; for preliminary products for explosives and chemical warfare agents, 100 percent; for the important preliminary products such as diglycol, and thiodiglycol, it was 100 percent; for methanol, ammonia (nitrogen), 100 percent. An analysis of the plan showed that of the total projected investments to be made under the Four Year Plan, 91.5 percent were for chemical production of which the Farben share of products amounted to 72.7 percent, and that of the total to be spent on the Four Year Plan for the entire German industry, 66.5 percent was to be used for projects making Farben products.

It was during the years 1936 and 1937 that Schacht gradually lost his influence and important standing in the German economy. As was stated by the IMT, Schacht opposed the greatly expanded program for the production of synthetic raw materials, as well as the announcement of the Four Year Plan with the task of putting "the entire economy in a state of readiness for war" within four years and Goering's appointment to head it. The IMT stated: "It is clear that Hitler's action represented a decision that Schacht's economic policies were too conservative for the drastic rearmament policy which Hitler wanted to put into effect." Schacht's disagreement with Goering and the policy being pursued resulted in his "eventual dismissal from all power of economic significance in Germany." Schacht contended, as stated by the IMT, "that when he discovered that the Nazis were rearming for aggressive purposes, he attempted to slow down the speed of rearmament; and that * * * he participated in plans to get rid of Hitler, first by deposing him and later by assassination * * *. Had the policies advocated by him been put into effect, Germany would not have been prepared for a general

European war. Insistence on his policies led to his eventual dismissal from all positions of economic significance in Germany." *

While the activities of Schacht were diminished, those of the defendants Krauch and Farben were increased. During the years 1938 and 1939 their intensity can hardly be exaggerated. During that period of time, as found by the IMT, in March 1938 occurred the invasion of Austria—characterized by the IMT as "a premeditated aggressive step in furthering the plan to wage aggressive wars against other countries."

Within a month after the invasion of Austria, Krauch's office prepared a report entitled "Assuring of Mobilization Provisioning by Stockpiling" [*NI–7848, Pros. Ex. 718*], a copy of which Krauch personally received. Among other things, the report included:

> "A. additional stockpiling for assuring the *1st mobilization year*, taking into account the stocks already on hand.
>
> "B. additional stockpiling for assuring the *2d mobilization year*, (supplies on hand have already been used up in the first mobilization year, a possible increase of domestic production has been taken into account)."

Referring to the invasion of Austria, it said:

> "The additional mobilization requirements because of the Anschluss of Austria have not been taken particularly into account * * *.
>
> "The effects on domestic production because of the inclusion of the Austrian economic area have been taken into account in connection with the considerations."

Concerning rubber, it said:

> "*5. Rubber.* Here the latest mobilization requirement of 65,000 tons per year has been taken into account. The requirement of approximately 102,000 tons per year, which was mentioned recently, has now been abandoned. Starting with the second year of mobilization, calculated from today, the production of buna will come very much into the picture * * *"

By the summer of 1938 following the march into Austria and in the period of "crises" prior to the Munich Pact, there was considerable concern within Germany over the possibility of war. Bosch of Farben sought to obtain an interview with Goering to dissuade him, but did not succeed in having such interview. Krauch testified, by way of answer to interrogatories [*NI–6768, Pros. Ex. 437*], that in June 1938:

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*Trial of the Major War Criminals, volume I, pages 308 and 309.

"* * * Dr. Bosch was asking me in Berlin if he could see Goering. He said to me there is a great big talk about war. If they are going to war, Germany is lost."

Krauch further said:

"* * * I told Koerner that I had knowledge now of the figures that are given to the government about building up of the production in the Four Year Plan. Figures about the production of gasoline, of buna, of artificial products, et cetera, which show what we are going to do in 1938 and 1939. I know that these figures are wrong. I was talking a week before with Major Loeb about these figures and I told him that there is great danger in giving at this time wrong figures to the government. It may be possible if one deciding man knows about those wrong figures and he is thinking about war, he would decide against it. If he knows we are not independent in the war he would decide against war. That is a great danger in the wrong figures question. Then Koerner told this to Goering. Goering said to me the next day: 'You have given other figures than we have in hand?' I told him the same thing I had told Koerner that it is a great danger to give out wrong figures, and I know quite well the production of all the plants of IG. The production is not so high as the Four Year Plan man has given to Goering. * * *

"Goering said: 'I will talk with Keitel about the figures, and the next day, you will have to come over and we will talk again.' The next day, he said: 'I have talked with Keitel who said that our figures are right. Much work has been done in the building up of the plants.' He said he was calling for production of explosives for 2 years so high, and now they had the production so high. I said to Goering that those figures are wrong. I know the production of nitrogen and other raw materials for the plants that make explosives. And I can say they can only make so much explosives. And then Goering said to me: 'Now, I have confidence in your figures.' Then maybe 3 or 4 days later, I had to come to Goering's place and he said to me: 'Now, you will have to make a survey of all the production for the future. If I want to know about the figures I will call on you. In order that you can have the figures from the industry or from OKW, I nominate you to General Bevollmaechtigter fuer Chemische Industrie.'"

At another time, while being interrogated, defendant Krauch said:

"Q. At that point, what steps were taken by IG similar to the one which Dr. Bosch attempted to take in June 1938, when he went to see Goering, to try to halt the Nazis from going to war?

"A. I have answered this question before. We did nothing officially, but unofficially various people of the IG were talking to different men of the government. I was talking every month and saying that this is an impossible thing. * * *" [*NI–6768, Pros. Ex. 437.*]

There is in the evidence a comprehensive report dated 27 June 1938 concerning the "program for the manufacture of chemical warfare agents and explosives in Germany" [*NI–5687, Pros. Ex. 438*] and with particular reference to the Farben production, made in compliance with the request from Krauch. Krauch, on 30 June 1938, submitted to Goering an "accelerated plan for explosives, gunpowder, intermediates and chemical warfare agents." This plan [*NI–8839, Pros. Ex. 439*] was adopted by Goering but was soon supplanted by a plan drafted by Krauch, dated 12 July 1938, called the Military Economic New Production Plan [*NI–8800, Pros. Ex. 442*], also called the Krauch Plan or the Karinhall Plan, according to the goal for the new production plan "set by the Generalfeldmarschall on 30 June 1938 in Karinhall."

This plan covered mineral oil, rubber (Buna) and light metals in addition to gunpowder, explosives and chemical warfare agents. The utmost acceleration of building and production projects keyed to definite mobilization targets was provided in these plans. At a conference between Goering and OKW at Karinhall on 18 July 1938 [*1436–PS, Pros. Ex. 445*], Goering said that the Four Year Plan's function consists in preparing the German economy for total war in four years; he also said that "In the event of '*X-Fall*' and during the War, 'FYP' will be continued with special emphasis on projects essential to the War effort (production of buna, ore, fuels, explosives, etc.)."

A document bearing that same date, to wit, 18 July 1938, entitled "Measures in accordance with order dated 15 July 1938 for the execution of the new military economic production plan" lists nine different commissions given to Farben plants for the production of chemical warfare agents and diglycol. [*NI–7424, Pros. Ex. 444.*]

On 22 July 1938, defendant Krauch wrote a letter to State Secretary Koerner [*NI–8840, Pros. Ex. 448*] stressing that industry was willing to take upon itself greater responsibilities in the field of rearmament. In that letter, Krauch said:

"* * * the development of the processing and creation of these materials [intermediate products for gunpowder and explosives] is the concern of the industry * * * *The fertilizer nitrogen basis becomes at once, by its export decline in the case of mobilization, the backbone of the whole of the nitric acids and of ammonium nitrate* * * * This applies particularly to the whole of the ethylene chemistry which is inextricably bound up through

diglycol for gunpowder and the chemical warfare agents with the entire industry of the coking plants and mineral oil syntheses * * * as far back as the end of 1936, [I] repeatedly directed the attention of the Wehrmacht to the urgent necessity of stockpiling. Already at that time, for example, I requested that considerable quantities of toluene be stocked up for existing explosives factories * * *

"The firms concerned are willingly prepared to assume the responsibility themselves for the quickest possible rush execution. * * * *The industry has already undertaken to devote its best abilities to the carrying out of the task I should set them* * * * the production of gunpowder, explosives and chemical warfare agents are chemical processes. They cannot therefore be treated as distinct from the rest of the chemical industry. I should, of course act in the closest cooperation with the HWA [Army Ordnance]." (Emphasis supplied.)

Subsequently, on 13 August 1938, Krauch prepared the so-called "Rush Plan" [*N1-8797, Pros. Ex. 449*], and laid the basis for its expeditious execution in agreement with the High Command of Army Ordnance (General Becker) and the Office of Military Economy (General Thomas).

After Goering appointed Krauch as Plenipotentiary General for Special Problems of Chemical Production in the Four Year Plan on 22 August 1938, the supervision of the Rush Plan was entrusted to Krauch. A document dated 22 August 1938 entitled "Order for carrying into effect the New Military Economics Production Plan and the Rush Plan" [*N1-8917, Pros. Ex. 453*] states:

"1. The carrying into effect of the Military Economics new Production Plan and of the Rush Plan ordered for the expansion of the plants producing powder, explosives and K-agents (chemical warfare agents) and their primary products is entirely entrusted to Dr. Krauch. He, therefore, is fully responsible for the execution of the program within the time set, and for procuring the means required incidental thereto (money, steel, building materials, labor, etc.).

"2. * * *

"*a. Program and planning: Dr. Krauch*

"In setting up the program and the planning, the military points of view for which the Wehrmacht is responsible are to serve as a basis, and its chemical and technical demands made by it are to be considered in largest measure. * * *

"3. To assure the closest possible cooperation between Dr. Krauch and the OKH (Wa A) the following measures are to be carried through:

"*a.* Creation by Dr. Krauch of a Building Staff for which OKH (Wa A) delegates a permanent representative.

"*b.* Assignment of a permanent representative of Dr. Krauch to OKH (Wa A).

"*c.* Creation by Dr. Krauch of control agents (authoritative specialists) who, together with Dr. Krauch, are also at the disposal of OKH (Wa A) for control purposes."

Leading Farben personnel were frequently called upon by Krauch as advisers in the execution of projects of the Four Year Plan. Farben and its subsidiaries supported the execution of the plan and a large percentage of the total expenditures under the plan was allocated for Farben projects. [*NI–9656, Pros. Ex. 682; NI–9945, Pros. Ex. 700; NI–10036, Pros. Ex. 429; NI–10035, Pros. Ex. 428.*]

Farben's plant investments rapidly rose as a result of the Four Year Plan. In the execution of the "new military economic plan," immediate instructions and commissions were issued to Farben to increase production facilities for chemical warfare agents and diglycol, an essential intermediate for explosive production. [*NI–7424, Pros. Ex. 444.*]

Krauch remained with the Four Year Plan throughout this period of intensive acceleration of rearmament.

After referring to an implementation survey in August of 1939 shortly before the outbreak of the war with particular emphasis upon the case of war in the fields of mineral oil, buna, chemistry, light metals, and the "rapid plan" for powder, explosives, and chemical warfare agents, Krauch, following the outbreak of the war, proposed further plans for increased production [*NI–8796, Pros. Ex. 459*] in September 1939.

Krauch during the war participated in meetings of the General Council of the Four Year Plan where he occupied a position of dominating importance in the planning for and supplying of the fighting forces with munitions and war materials. He remained in that position throughout the war.

Krauch continued as a member of the Farben Vorstand until 1940, although often his work in the Four Year Plan prevented his attending its meetings. In that year he was elevated to the position of Chairman of the Aufsichtsrat of I. G. Farben.

d. Creating and Equipping the Nazi Military Machine. The activities of the defendants through Farben as an instrumentality for the production of vital chemical war products included:

Explosives. Farben had large responsibilities and carried out a tremendous program of activities in the production of explosives.

A large planned expansion in military explosives began in 1934. Generally a Reich-owned corporation—Montan—built the plants and leased them to private explosives companies, which were predominantly Farben subsidiaries for the manufacture of explosives. By 1939, a large stockpile of powder had been built, totalling about 187,000 tons. Consumption of powder by the German forces averaged 3,000 tons per month in 1940 and 5,000 tons per month in 1941. Germany was dependent almost exclusively upon Farben for raw materials and intermediates necessary to make explosives and gunpowder. In the evidence is a chart from the records of the Reich Office for Economic Development entitled "Interlocking of Raw Materials of the Production of Powder, Explosives and Preliminary Products." Defendant Ambros testified concerning this chart, "This presentation is chemically correct." It shows that for the production of explosives and powder and chemical warfare agents those raw materials and intermediates are necessary which were produced predominantly by Farben.

The production outlined in that chart has been made possible by the development during the First World War of the Haber-Bosch process for the production of synthetic nitrogen by Farben. As a result of that development, Farben enabled Germany to produce explosives without relying upon the imports of Chilean nitrates. [*NI-7743, Pros. Ex. 592; NI-8313, Pros. Ex. 1325; NI-11252, Pros. Ex. 1051.*]

Farben planned facilities for production of nitric acid solely for the Wehrmacht in the event of war; Farben stockpiled pyrites, the basic raw material for sulphuric acid essential for the process of nitration [*NI-9409, Pros. Ex. 593*]; Farben increased Germany's production capabilities for nitric acid many times prior to the outbreak of the war in 1939 [*NI-9409, Pros. Ex. 593*].

Farben manufactured all of Germany's diglycol, an intermediate product for the manufacture of gunpowder. It was developed as a substitute for nitroglycerine. By the middle of 1937, Farben had planned an enormous expansion of diglycol production at Wolfen with the entire amount to go to the explosive manufacturers of Dynamit A. G. and Wasag [*NI-5763, Pros. Ex. 121*]. According to a report dated 9 February 1939 by the Army Ordnance Office [*NI-8700, Pros. Ex. 609*], at that time the production capacity for diglycol at the I. G. Farben plants in Ludwigshafen, Wolfen, Schkopau, Huels and Trostberg was sufficient to produce 50,000 tons of gunpowder per month.

Second only in importance in nitrogen was the production of methanol, which is an essential product in the making of the most effective explosives—hexogen and nitropenta [*NI-10580, Pros. Ex. 616; NI-6239, Pros. Ex. 591*]. Farben produced all of the methanol in Germany. The report of the Army Ordnance Office of February 1939 showed the planning of additional facilities for the production of hexogen by Farben at that time [*NI-8790, Pros. Ex. 609*]. As

early as 1935 Farben developed hexogen and an experimental factory to gain manufacturing experience [*NI–6144, Pros. Ex. 110*]. This was in close collaboration with Dynamit A. G. and Army Ordnance [*NI–6498, Pros. Ex. 111*]. Hexogen has no substantial peacetime use.

Farben produced all of the stabilizers in Germany [*NI–10008, Pros. Ex. 612; NI–10010, Pros. Ex. 615*]. These products are essential to preventing premature explosion of gunpowder. The construction of stand-by plants for stabilizers was planned by Farben in conjunction with the Army Ordnance department of the Wehrmacht as early as 1935 [*NI–5762, Pros. Ex. 108; NI–4488, Pros. Ex. 115*]. The production planned even at that early date has been estimated as sufficient to sustain production of 11,875 tons of gunpowder per month.

Much conflicting evidence has been presented as to whether Farben and its subsidiaries produced most of the high explosives and gunpowder used by the German forces. The evidence shows that Dynamit A. G., Wasagchemie, Verwertchemie and Deutsche Sprengchemie produced most of the high explosives and gunpowder from raw material and intermediate products of Farben. Heinrich Schindler, a defense witness who was chief engineer in the Dynamit A. G., testified that based upon detailed compilations made by him, subsidiaries of Farben produced 92 percent of all explosives used by Germany from 1930 to 1944 and 86.5 percent of all gunpowder during the same period. For the year 1938, they produced 82.5 percent of all explosives and 100 percent of gunpowder.

It was seriously contended, however, that Dynamit A. G., the largest producer of explosives, was an independent enterprise for which Farben was in no way responsible. I have carefully reviewed the evidence and concluded that the control of Dynamit A. G. rested with Farben [*NI–8313, Pros. Ex. 325*] and it cannot escape responsibility for the direct production of explosives in the war program. The elements of control of Dynamit A. G. by Farben included (1) financial, through its holding of 60.5 percent of total preferred and common stock and a contract dated 17 September 1926; (2) "organizationally," through being grouped in Sparte 3 under defendant Gajewski, who was a member of the Aufsichtsrat of the Dynamit A. G. (1936–1945), and through defendant Schmitz, who was a member of the Aufsichtsrat (1926–1945) and chairman of the Aufsichtsrat of Dynamit A. G. from 1938 on, and Paul Mueller, director General of Dynamit A. G. being a member of TEA of Farben; (3) economic through its dependence upon Farben plants for their intermediates for the production of explosives and gunpowder and the requirements that Dynamit A. G. had to get approval of Farben for expansion or construction of new plants and

replacement of machinery; and, (4) other devices of control.* As to the relationship of Farben and Dynamit A. G., the evidence compels the conclusion that for all practical purposes Dynamit A. G. was a subsidiary of Farben under its effective control. It should be noted that Dynamit A. G. controlled still other enterprises in the explosive field, including Verwertchemie, admitted by the defense to be "a 100 percent subsidiary company to DAG," and described by defense as "the center of the armament production of the DAG-Konzern."

Synthetic Gasoline. Farben had expended enormous sums of money on the development in the experimental stage of its process for the production of synthetic gasoline. Prior to Hitler's seizure of power, the synthetic oil program was under attack in the Nazi press. The defendants Buetefisch and Gattineau in 1932 went to see Hitler and received assurances that the attacks would cease and that the program would receive his support [*NI–8788, Pros. Ex. 28; NI–8637, Pros. Ex. 29; NI–6765, Pros. Ex. 31*].

Following the accession of Hitler to power, an agreement was entered into on 14 December 1933 between Farben and the Reich Ministry of Economics under which Farben received a guarantee both as to price and volume of sales in connection with the production of synthetic gasoline [*NI–881, Pros. Ex. 92; NI–319, Pros. Ex. 93*]. The agreement was of such importance that it had to be submitted to the personal attention of Hitler [*NI–320, Pros. Ex. 94*]. Farben started large-scale expansion in the production of synthetic gasoline and the Leuna plant in the spring of 1933. The defendant Buetefisch has stated:

> "I do not forget the day of the year 1933" * * * "when I could accept from the Reich Government in Berlin the order now to proceed and expand with all possible energy the production of benzine, which for reasons inherent in political economy could not be fully developed prior to the taking-over of power. From that day on we find ourselves in this invariably great experience of expanding our industry, in a measure heretofore unknown." [*NI–6530, Pros. Ex. 514.*]

While it is undoubtedly true that considerable peacetime expansion in gasoline production was warranted in connection with increased motorization of Germany and the autobahn construction, it is also true that the military considerations were inextricably connected with the synthetic oil program and the military importance rapidly became the predominating consideration. As early as 11 October 1934 General Bockelberg, Chief of the Army Ordnance Office, conferred

*See affidavit of Dr. Struss, Document NI–8313, Prosecution Exhibit 325. Also Document NI–12740, Prosecution Exhibit 1816 (affidavit of Otto Heilbrunn).

with Farben representatives Krauch, Schneider, and Buetefisch regarding measures to be taken in the fuels field in the event of war [*NI–3975, Pros. Ex. 517*]. To expand the basis of production Farben became a co-founder of the BRABAG and issued licenses to that company under its hydrogenation patents [*NI–7669, Pros. Ex. 518*]. Farben developed high-grade aviation gasoline for the Luftwaffe. Further Reich subsidies were obtained. The military significance of the synthetic oil program was stressed by Goering at the meeting of 26 May 1936, attended by the defendant Schmitz, already referred to above.

The Military Economic Staff of OKW in a report of January 1939 [*NI–7471, Pros. Ex. 538*] observed that "* * * *mineral oil is just as important* for modern warfare as *airplanes, armored vehicles, ships, weapons and munitions* * * *" An official report prepared by the Enemy Oil Committee for the Fuels and Lubricants Division Office of The Quartermaster General of the United States Army in March 1945 on Petroleum Facilities of Germany [*NI–10507, Pros. Ex. 544*] correctly summarizes Farben's contribution in the field of synthetic gasoline and lubricating oils as follows:

> "The outstanding feature of German oil economy during the past 10 years has been the spectacular development of her synthetic oil plants for the production of oil from coal. This attempt at complete oil autarchy, made without regard to cost or orthodox financial considerations, has no parallel elsewhere and is a striking example of the character of the German master plan for world domination which called for the production, within her own boundaries, of all the resources essential to modern warfare."

Synthetic Rubber. Equally effective in the equipping of the Nazi military machine was Farben's activity in the field of synthetic rubber production from coal. Following development of the experimental process, numerous conferences were held between Farben representatives and such Reich agencies as the Army Ordnance Office and the Reich Ministry of Economics during 1933 to 1935 [*See NI–8326, Pros. Ex. 95; NI–6930, Pros. Ex. 545; NI–7472, Pros. Ex. 562*]. As a result of these negotiations an intensive program to produce synthetic rubber in large quantities was developed [*NI–7241, Pros. Ex. 547*] and was subsequently expanded during 1936 and 1937 with the aid of various Reich subsidies as the possible military needs became more numerous and urgent [*NI–7625, Pros. Ex. 549*]. The volume of planned production in this field was far beyond the needs of peacetime economy. The huge costs involved were consistent only with military considerations in which the need for self-sufficiency without regard to the cost was decisive. Military and political considerations were controlling in the development of this program. The truth of

the matter is stated by the witness Elias* when he testifid that the German Army "placed practically their entire dependence on Farben's synthetic rubber." There can be no doubt that Farben's production of synthetic rubber made it possible for the Reich to carry on the war independently of foreign supplies, an accomplishment which would have been impossible without Farben's synthetic rubber development. The defendants Krauch, ter Meer, and Ambros were particularly active in the development of this phase of Farben's contribution to preparing Germany for war.

Light Metals. As early as 1933 the Reich Air Ministry was giving consideration to the requirements of material for fighter aircraft, and State Secretary Milch, at a discussion in the Air Ministry on 15 September 1933,

> "* * * expressed his agreement with the proposals to bring in new firms for the manufacture and *especially approved the installation of a new tube rolling mill, of the enlargement of production at Bitterfeld and of a new electron metal-finishing plant* on the basis of magnesium-chloride. This applied also to the manufacturing preparations for thermite which would become necessary. When it was pointed out the high costs which would be incurred for manufacturing preparations, State Secretary Milch declared that the necessary means would be made available.
>
> "With regard to the very high *replenishment* requirements in electron metal bombs, it was pointed out on the part of Wa A that the manufacturing preparations would presumably necessitate the erection of a *number* of new electron metal works and probably even new *electric power plants* which could not be maintained by peacetime orders." [*NI–7123, Pros. Ex. 90.*]

In that same year the cooperation of Farben with the Reich Air Ministry began. Dr. Ernst Struss, Secretary of the Technical Committee of the Vorstand of Farben, who appeared as a witness both for the prosecution and defense, said: [*NI–8317, Pros. Ex. 98*].

> "In 1933, IG received from the Luftwaffe the order to build a magnesium plant with the capacity of 12,000 tons a year. The Luftwaffe selected the site in Aken. The plant was partly completed in 1934 when production started. The plant and its production was to be kept secret by order of the Luftwaffe.
>
> "The negotiations for the construction of the plant by IG were carried on between the Luftwaffe and Dr. Pistor of Bitterfeld. Subsequently Dr. Pistor received from Schmitz a kind of blank approval to carry on with the negotiations. This procedure was not usual at that time. The financial arrangement with the Luft-

*See mimeographed transcript, 30 September, 1 October 1947, pages 1342–1462.

waffe had already been made before the project was submitted to the TEA. * * *

"The total investment for magnesium and aluminium in Aken amounted to about 46,000,000 marks; and for magnesium alone it amounted to about 40,000,000 marks. IG furthermore obtained a special concession from the Ministry of Finance authorizing IG to provide for an annual 20 percent depreciation on machinery in the plant. The normal depreciation was 10 percent and so IG obtained a considerable advantage.

"Before the plant was actually built, the Luftwaffe carried out a number of tests from the air in order to ascertain how the plant itself could best be camouflaged. In accordance with the result of these tests in which Bitterfeld's chief engineer, von der Bey, participated, the plans for the plant were repeatedly changed until the Luftwaffe was satisfied that the plant was well hid from the air. Dr. Pistor subsequently stated in the TEA that considerable additional costs had to be incurred by IG on account of the camouflage requirements.

* * * * * * *

"Also by order of the Luftwaffe, IG started planning in 1934 another magnesium factory, for which the Luftwaffe selected Stassfurth as its site. Construction of the plant started in 1935 and it was completed in 1938. * * * The production capacity for magnesium was 13,000 tons a year since 1942. The total investment amounted to 50,000,000 marks. The Luftwaffe financed the construction by granting a credit of 44,000,000 marks. Here again the Ministry of Finance agreed to increased depreciation at the rate of 20 percent yearly.

"For Aken as well as Stassfurth, IG was permitted to charge to the Luftwaffe an increased amount over the cost price and the normal profit in order to be able to repay the credits out of the accrued extra profits."

While on the witness stand, Dr. Struss stated that the credit of 44,000,000 reichsmarks referred to from the Luftwaffe was for both the Aken and Stassfurth plants. At another time, Dr. Struss said [*NI-4832, Pros. Ex. 744*]:

"3. * * * Shortly after start of production in Aken, probably in the summer of 1935, I visited Aken as well as Bitterfeld and noticed that without doubt practically the entire production was stored there in the form of tubes and packed into cases. These tubes had a diameter of 8 cm, a 1 cm wall and a length of 20 cm. Without doubt these tubes were parts for incendiary bombs. These tubes were packed into standardized boxes and were called 'Textile Shells' (Textilhuelsen). Everybody laughed, whenever somebody

spoke about, or mentioned, 'Textile Shells' (Textilhuelsen). The meaning was common knowledge, and therefore everybody grinned whenever 'Textile Shells' (Textilhuelsen) were transported through the plant.

"4. Aken as well as Stassfurth had been built with loans made by the Air Force (Luftwaffe); and the I. G. Farben was given 5 years for the repayment of the loans and special amortization privileges. The Air Force (Luftwaffe) also paid much more than the cost price for magnesium and took the entire production of the plants. During the first 2 years' existence of Aken, at least 90 percent of the magnesium produced in Aken and Bitterfeld were made into these tubes and shipped out. * * *"

In 1938, arrangements were made between Farben and the Reich Air Ministry for "a second milling plant for Bi IV/1-powder." Bi IV/1-powder is explained as a powder consisting of aluminum and magnesium half and half used in flares and incendiary bombs. In a letter from the Reich Ministry of Aviation and Commander in Chief of the Luftwaffe to Farben, dated 7 September 1938 [*NI-6483, Pros. Ex. 581*], it was stated:

"* * * It is to be planned for a monthly production of 75 tons of Bi IV/1-powder under the mobilization program. It must be expressly confirmed by you that the total production in the event of mobilization will amount to 150 tons monthly in both plants.

"II. Implementation of your Plan

"In enlarging your Bitterfeld plant to the size necessary for the above-mentioned task, all measures necessary to ensure the quickest possible commencement of production are to be taken."

With reference to the quantity of production of magnesium and aluminum by Farben, Dr. Struss said [*NI-8317, Pros. Ex. 98*]:

"In 1930 the magnesium production of I. G. Farben amounted to 600 tons. In 1942 the production was 25,100 tons. Farben had thus increased its magnesium production by over 4,000 percent.

"Farben's share in the aluminum production in 1930 was 1,750 tons and in 1942 it was 24,000 tons. The increase in Farben's aluminum production was therefore just over 1,300 percent."

The report of Dr. Eberhard Neukirch on the "Development of Light Metals Industry within the Four Year Plan" [*NI-7562, Pros. Ex. 590*] dedicated to the defendant Dr. Krauch, shows that by 1939 the Farben plants of Bitterfeld, Aken, and Stassfurth had reached a capacity of 17,100 tons per year of magnesium and that expansion plans were already projected for increasing the existing plants by 16,900 tons per year and the erection of an additional plant at Gerst-

hofen by Farben with a capacity of 6,000 tons per year. In 1932 Farben produced 1,400 tons of aluminum; in 1939, 16,500 tons and in 1943, 24,000 tons. Thus, it appears that the capacity of Farben plants for the production of light metals increased manifold during that period.

As is pointed out by Dr. Neukirch in his report, with the conquest of Norway, Farben undertook to carry out additional plans for increased production of light metals in Norway through the exploitation and use of facilities of Norsk Hydro.

Chemical Warfare Agents. While so far as is known poison gas was never used in World War II, Farben participated extensively in experiments and in preparing for and producing poison gas during the years immediately preceding and during the war. The defendant Ambros may be credited with having participated in dissuading Hitler from the use of poison gas.

There was a close relationship and interlocking of preliminary products needed for the manufacture of explosives, gunpowder and chemical warfare agents. Farben's contribution to the preparation for chemical warfare included research, development and production of mustard gas, tear gas, nitrogen mustard gas, adamsite (throat irritant) and phosgene. The development and production of chemical warfare agents were closely related to and were coordinated with the production and development of other chemical war material. The contract between Farben and Orgacid, dated 22 July 1935, for the production of Ethyl-oxide from alcohol and the production of polyglycol M from Ethyl-oxide [*NI-5681, Pros. Ex. 351*], under which Farben was "to give all chemical technical advice * * * including the experimental work which may become necessary," is a typical example. In 1936 and 1937 there was continued planning with reference to research and production of chemical warfare agents. There is in evidence a detailed "accelerated plan" dated 30 June 1938 outlining an acceleration of the expansion program for the production of many chemical products including chemical warfare agents [*NI-8839, Pros. Ex. 439*]. Following his appointment by Goering as "his Plenipotentiary in this field of work," Krauch in a communication to the Ludwigshafen plant of Farben dated 26 August 1938 [*NI-7428, Pros. Ex. 217*] urged the early completion of building projects for several chemical products, including mustard gas, "for which no postponement of the deadline set for their completion can be tolerated."

The capacity of planned poison gas plants on 1 September 1939 for which Farben was responsible, was over 75 percent of total capacity, and by December 1942, Farben's share was estimated by the Krauch office to be 90 percent. [*NI-12678, Pros. Ex. 1820; NI-12724, Pros. Ex. 1818.*]

The evidence in the record makes it abundantly clear that the predominant responsibility for research and production in the field of chemical warfare agents immediately preceding and during the war was that of Farben.

Expansion of Plant Facilities. The rearmament program required an enormous outlay of capital for expansion of plant and production facilities. To meet those demands, special financial arrangements were made by Farben with the Reich taking into consideration the nature of the plants and their equipment, their purposes and the amount of capital required [*NI–10540, Pros. Ex. 669; NI–9193, Pros. Ex. 698*]. The records of Farben show, generally speaking, that three different plans were used: (1) Contract plants for which loans were obtained from the Reich or a Reich agency chiefly for the construction of new plants under arrangements whereby the loan was paid off over a period of years by the allowance of depreciation write-offs at an accelerated pace and rate [*NI–7237, Pros. Ex. 696; NI–7242, Pros. Ex. 697*]. Under this plan, the loan was actually paid off through the increased price paid for the products of the plant. Among the expansions so financed were plants at Bitterfeld, Aken, Rottweil and in the Leuna Works; (2) four-year plants, built with Farben funds on order from the Reich under arrangements whereby either: (*a*) the Reich agencies refunded to Farben the cost of construction by the payment of annual installments under a redemption plan fixed by contract, or (*b*) Farben was permitted by the contract to include increased rates of depreciation in the calculation of prices until the cost of installation had been absorbed. Expansions under this plan were not independent plants but were extensions of existing Farben plants; (3) other forms of governmental financial aid to Farben including: (*a*) subventions paid to Farben for carrying out special building projects, (*b*) proceeds tax, as from Buna sales, which could be used in construction of other plants as was the case of the Auschwitz Buna plant, or (*c*) tax concessions for new products, as for cellulose at Wolfen and for Buna at Schkopau and Huels, and (*d*) East Relief Tax Decree allowing liberal exemptions from appraisal of investments.

The agencies used by the Nazi government in carrying out arrangements for expansion of plants and production facilities included the Reich-owned companies of "Montan" and "Wifo". Often the contracts for construction and operation of such plants by Farben included Wifo or Montan as a party. Of the 37 Montan chemical works, 36 were built and operated by Farben and its subsidiaries [*NI–9193, Pros. Ex. 698, NI–7377, Pros. Ex. 645*]. Witness Zeidelhack* estimated that the capital value of those works alone totalled 1.2 billion

*See Zeidelhack testimony, tr. pages 2339–2349.

reichsmarks. He also said that "of a total of 76 chemical projects of the Army Ordnance Office, no less than 75 were executed by the IG and either operated, or controlled by them."

Zeidelhack further said that in the development of the expansion program, Farben "disclosed a particularly pronounced initiative in finding building sites and in the drawing up of specific plans. Without the intensive co-operation of the IG, including the DAG, and its experience and initiative, the carrying out of the chemical projects of the Army would have been impossible."

While Wifo was predominately a Reich company, Farben owned one-fourth of the "foundation capital." Wifo had to do primarily with production and storage of critical war material, such as sulphuric acid and nitric acid, and the establishment of stand-by plants, commonly called shadow plants, which were to be put in extensive production only in the event of war.

In the minutes of the TEA meeting held in Berlin on 30 June 1943 is a review of the condition of Farben plants on account of destruction by bombing. It shows such a possibility had been contemplated in working out the expansion program since 1933. It is said in those minutes [*NI–10947, Pros. Ex. 1506*]:

> "* * * The increase in existing production which has been going on since 1933, and the assimilation of new manufactures, gave early cause for the basic decision to be made to set up new large plants for this purpose, which, apart from new manufactures, should take over also products which had already been manufactured in the old I. G. Farben plants. In the field of organic-chemical goods, Schkopau was founded in 1935, where, together with buna production, large-scale manufacturing of phtalic acid, acetic acid anhydride, vinyl chloride, and Igelit was planned, in order to cut out further increases in western production. The foundation of the major plants
>
> 1938 Landsberg
> 1938 Huels
> 1938 Moosbierbaum
> 1939 Heydebreck
> 1941 Auschwitz
>
> followed, whose location and production program were chosen from the outset in such a way that they would take over such manufactures as already existed in other, principally western, plants."

With reference to financing of new plants, witness Dencker said that Farben "took the position that the total facilities available at that time [1934] were sufficient to cover the peacetime needs." As a consequence, Wifo was formed "to expand the production of nitric acid, for which IG was not prepared to furnish its own means." All these plants, however, were operated by Farben.

It is evident that no consistent policy was followed by the Reich and Farben with reference to the financial arrangements made for the expansion program. Generally when the expansion was outside of, or exceeded, the peacetime requirements of Farben, some special financial arrangements were made to lighten the financial burden on Farben and make the program financially attractive.

The minutes of the Vorstand of Farben for 25 September 1941 show that Farben expended for new construction for the period from 1932 to 1941 two billion reichsmarks.

The evidence shows that of the many Farben diverse produts, the following were strategically important war materials: nitrogen (ammonia N), diglycol explosives gunpowder, synthetic gasoline, tetraethyl-lead, synthetic rubber, magnesium, aluminum, poison gas, sulphuric acid, chlorine caustic soda and potash, calcium carbide, sodium cyanide, stabilizers, methanol, other solvents. Farben's records show an enormous expansion of its production facilities for those materials in the years from 1932 to 1944. In 1932, Farben's investments for production of those materials was 4,901,000 reichsmarks; in 1933, it was 12,215,000 reichsmarks (almost three times as much); in 1938, it was 225,238,000 reichsmarks (about 45 times as much); and, in 1943, it was 421,500,000 reichsmarks (more than 86 times the 1932 investment).

From a maze of statistical and detailed information in the record in this case emerges a picture of gigantic proportions depicting feverish activity by Farben in a warlike atmosphere of emergency and crisis to rearm Germany in disregard of economic considerations and in complete sympathy with any demands made upon it by the Nazi regime. There is nothing in this record to suggest that Farben and these defendants ever withheld any energy or initiative that was calculated to help Hitler in plans to build a Germany that would be strong enough militarily to master the world.

e. Stockpiling of Critical War Materials. In this summary of Farben's cooperation in the rearmament of Germany, reference has repeatedly been made to the stockpiling of critical war materials. As early as 1934 Farben began stockpiling war materials in cooperation with the government's program of economic preparation for war. From that time on, Farben pursued and increased its program of stockpiling of strategic materials. Beginning in 1935, periodic reports of stockpiling of "iron pyrites" were made by Farben to the authorities [*NI-8843, Pros. Ex. 749*]; beginning in the summer of 1935, tubes for incendiary bombs were stored at Aken under the guise of textile shells [*NI-4832, Pros. Ex. 744*]; from an inspection report dated 11 September 1935, entitled "Nickel Factory Oppau," copy of which went to defendants Krauch, Haefliger, and Gattineau, plans for "a

large supply of nickel-copper-ore for stockpiling" were reported [*NI–9549, Pros. Ex. 720*].

The defendant Haefliger was especially active in obtaining import of nickel by exploiting Farben's international cartel arrangements. Farben had a contract with the Mond Nickel Company Limited of England [*NI–10389, Pros. Ex. 723*] for delivery to Farben of a quantity of nickel each year. The minutes of a conference at Ludwigshafen, attended by defendant Haefliger, concerning the stock of nickel, on 5 April 1939 [*NI–7564, Pros. Ex. 724*] comments that the reports to the English company as to the consumption of nickel in Germany "should no longer be made in the hitherto detailed form" as "Berlin is very much against such reports"; the minutes refer to "tendency in Berlin to import into Germany * * * nickel raw materials from another source, the import of which is not linked up with such suspicious conditions from a military economic point of view." In a memorandum by defendant Haefliger, dated 19 October 1939 [*NI–9636, Pros. Ex. 725*] is set out a contract with the International Nickel Company of Canada, which the memorandum states controlled approximately 85 percent of the world's production of nickel, whereby "IG succeeded in persuading the trust to store a very considerable supply of nickel concentrate * * * in Germany at its own expense, for the benefit of IG"; in that memorandum Haefliger commented that up to the last days before the outbreak of the war, the International Nickel Company had taken no "steps to eliminate the risk, to the tune of several million marks, involved in storing such quantities."

In 1935, Farben undertook the construction of a bomb-proof gasoline depot for the storage of gasoline [*NI–7566, Pros. Ex. 747*], and in 1936, at the request of the German Government, Farben, taking advantage of its close relationship with Standard Oil Company, arranged to buy twenty million dollars worth of gasoline, the funds for which were furnished by the government in order to build up its stock of gasoline [*NI–4690, Pros. Ex. 731*]. In July 1938, tetrathyl lead also was obtained from America [*NI–4922, Pros. Ex.732*]. In regard to that transaction, Witness Henze of Farben said [*NI–4831, Pros. Ex. 733*]:

> "* * * At the request of the Air Ministry and on direct order of Goering, I. G. Farben procured in 1938, 500 tons of tetraethyl lead from the Ethyl Export Corporation, of the United States. The Air Ministry needed this lead because it is indispensable to the manufacture of high octane aviation gasoline and because they wanted to store up the lead in Germany to tide the Air Ministry over until such time as the plant in Germany could manufacture sufficient quantities. We were producing sufficient quantities of tetraethyl-lead for ordinary purposes but the storage of the 500 tons of tetraethyl-lead was undertaken because in case of war Germany

did not have enough tetraethyl-lead to wage war, for which reason the German Reich pursued a stockpiling policy.

"* * * Finally, it was decided to procure the tetraethyl-lead on a loan basis. All the gentlemen were very bewildered as Goering demanded a report by noon the next day. It was commonly known that tetraethyl-lead was needed as the German production in tetraethyl-lead while sufficient for peacetime purposes, was not sufficient to wage war, and we had to obtain it immediately for aviation gasoline."

In November 1938, Vermittlungsstelle W sent circular letters to various plants of Farben notifying them of the requirements of the Reich Economic Ministry that insofar as possible 3-weeks' stocks are to be stored in addition to the normal stocks "so that in the event of mobilization production can be continued as a result of accumulation of stocks." [*NI–documents: 8367, 8365, 8366, 7211, 7209, 8364, Pros. Ex. 737–742 inclusive.*]

It is clear from the evidence in the record that, in cooperation with the Reich agencies, Farben carried out through the years preceding the war an extensive program of stockpiling of strategic and critical war materials in anticipation of the requirements if war should come. Farben utilized its international connections in carrying out such stockpiling often concealing the true objectives of the transactions.

f. Use of International Agreements to Weaken Germany's Potential Enemies. In the conduct of its world-wide enterprises, Farben had numerous contacts and arrangements with business concerns of other countries. Through cartel agreements, plans for sharing of patent rights, association of interests and many other reciprocal arrangements with business enterprises throughout the world, Farben was in a strategic position to serve the expanding purposes of the Nazi government.

Among these international agreements was a contract between Farben and the Standard Oil Company of New Jersey under which Standard Oil Company acknowledged Farben's supremacy or priority all over the world in the chemical field and Farben deferred to Standard Oil's leadership in oil everywhere except in Germany. [*NI–10550, Pros. Ex. 942; NI–10430, Pros. Ex. 943.*]

In a letter dated 9 November 1929, Mr. Teagle, President of Standard Oil, referring to the agreement of that date, set out an understanding of the intentions of each party "to hold itself willing to take care of any future eventualities in a spirit of mutual helpfulness" and more particularly he said:

"In the event the performance of these agreements or of any material provisions thereof by either party should be hereafter restrained or prevented by operation of any existing or future law, or the beneficial interest of either party be alienated to a substantial degree by operation of law or governmental authority, the parties

should enter into new negotiations in the spirit of the present agreements and endeavor to adapt their relations to the changed conditions which have so arisen."

This agreement of 1929 was followed in 1930 by another agreement, the purpose of which was stated to be "the desire and intention of the parties to develop and exploit their new chemical processes jointly on the basis of equality (50–50)." [*NI–10433, Pros. Ex. 945.*] A jointly owned corporation called Jasco was organized to develop any processes turned over to it either by Standard Oil Company or Farben. It was agreed by the parties to the contract that the development of synthetic rubber processes, as well as the developments in the synthetic rubber field, should be turned over to Jasco. [*NI–documents 10433, 10431, 10434, 10450, 11249, 10576, 10565, Pros. Exs. 945–951 inclusive.*]

Early in the Nazi regime, indications of limitations imposed upon the relationship of German enterprises with those abroad began to appear. However, Farben continued its policy of negotiating and making international agreements within their field of interest. On 9 March 1934, Farben wrote Chemnyco, its subsidiary in New York, in connection with the view which the "German Government takes of international agreements about technical collaboration" that "we should * * * not allow foreign industry to gain the impression that in this respect we are not free to negotiate." [*NI–10547, Pros. Ex. 952.*]

In a memorandum dated 24 June 1935, concerning a conference held on 21 June 1935 between Farben and the Army Ordnance Branch at Ludwigshafen-Oppau [*NI–5931, Pros. Ex. 523*], it was said:

"The IG is bound by contract to an extensive exchange of experience with Standard. This position seems untenable as far as developmental work which is being carried out for the Reich Air Ministry is concerned.

"Therefore the Reich Air Ministry will soon conduct an extensive examination of applications for patents of the IG.

"Furthermore, the IG will suggest the necessary security measures to the Reich Air Ministry under special consideration of the situation."

Even though the conflict between the obligation of Farben under its agreements with Standard Oil and the requirements of the German authorities was thus early realized by Farben, nothing was done by Farben frankly to inform Standard Oil of its situation and to "enter into any negotiations in the spirit of the present agreement and endeavor to adapt them relative to the changed conditions which had so arisen." Rather Farben pursued a policy, in cooperation with the Nazi government, calculated to mislead the Standard Oil Company. Howard, of Standard Oil, had occasion to express the understanding of

his company concerning these contracts with Farben in a letter dated 27 July 1936 in which he said: "The arrangement is one which necessarily requires good will on both sides."

On 14 July 1937, there was a meeting at the Wehrmacht office [*NI–10437, Pros. Ex. 954*] on "maintaining secrecy on improvements of IG processes in the production of motor fuel and lubricants which are of importance to national defense" attended by Farben representatives. A report of that meeting said:

"* * * Since the production of this oil is expensive, there has so far been no interest in this process, particularly since the special quality advantages cannot be seen from the registrations. By keeping the work being done towards the large scale exploitation secret, it is possible to ensure that Germany has advantage.

"* * * With regard to iso-octane too, it is desirable that the establishment of installations in Germany is kept secret. On the part of I. G. Farbenindustrie it was mentioned in this connection that as soon as certain products are ready for delivery in larger quantities (as will be the case with ethylene-lubricant as well with iso-octane in the near future) the existence of production plants can hardly be kept secret. If it does become known it would however lead to unpleasant international relations in view of I. G. Farbenindustrie's obligations to exchange know-how.

"The state of knowledge for the production of aviation gasoline, iso-octane and ethylene-lubricant on 1 July 1937 is being fixed in cooperation between the Reich Air Ministry and I. G. Farbenindustrie.

"IG will make no additional statements about the quality of the oils (aviation oil quality) which can be reached with regard to the ethylene-lubricant patent, which has actually been released, in order to justify its capacity for being patented.

"In consideration of its exchange of know-how agreements I. G. Farbenindustrie is permitted to inform its partners in the agreements in a cautious way shortly before the start of large-scale production that it intends to start a certain production of iso-octane and ethylene-lubricant. The impression is however to be conveyed that this is a matter of large-scale experiments. Under no circumstances may statements on capacity be made."

Following a conference with General Thomas, defendant Buetefisch submitted a memorandum agreed upon with General Thomas dated 25 January 1940. [*NI–10447, Pros. Ex. 958.*] In it, defendant Buetefisch said:

"This exchange of know-how which is still being handled in the usual way by the neutral countries abroad even now, and which is transmitted to us via Holland and Italy, firstly gives us an insight into the development work and production plans of the companies

and/or their countries and at the same time informs us about the stand of technical development with regard to oil. In these know-how reports, drawings and technical details about the most varied subjects are passed to us. The contractual obligations mean that we too must make our experiences with regard to oil available abroad within the framework of the agreement. Up to now we have carried this exchange of know-how out in such a way that from our side we have only sent reports which seemed unobjectionable to us after consultation with the OKW and Reich Ministry of Economy and which contained only such technical data as concerned facts which are known or out-of-date according to the latest stand. In this way we have managed the handling of the agreements so that in general the German economy remained at an advantage.

"In order to maintain the contact with neutral countries abroad and/or the oil companies located there, we consider it expedient to continue this exchange of know-how in the form drawn up, retaining on our part the guiding principle that under no circumstances must any know-how of military or military-political importance get abroad in this way. In all cases of doubt contact with the Reich offices concerned must therefore be made * * *."

The record shows that this memorandum was initialled by General Thomas and signed by Goering under notation reading: "Director Dr. Buetefisch bears responsibility that nothing of importance to military or defense policy gets out." And in a letter dated 6 February 1940 from General Thomas to "Dr. Buetefisch, Vorstand member of I. G. Farbenindustrie A. G.," it said:

"It is however necessary that you yourself in your capacity as head of the Economic Group Motor Fuel Industry as well as Vorstand member of I. G. Farbenindustrie A. G. take over the responsibility for seeing that matters be kept secret in the interests of national defense and do not become known abroad."

On 15 January 1942, defendant ter Meer wrote a letter to defendant Krauch giving "data on action taken by us in the United States regarding buna." Ter Meer said [*NI–10455, Pros. Ex. 960*]:

"In conclusion I should like to state that except for the license agreement concluded with our ally, Italy, processes and experiences on the production of Butadiene and the manufacture of buna S and N, were never made available abroad."

In that letter ter Meer enclosed several memoranda of conferences held with the German authorities before the outbreak of war. In a memorandum concerning a conference held at the Reich Economics Ministry on 18 March 1938, attended by defendant ter Meer, it is said:

"* * * Germany's going in for large scale manufacture of buna S, the realization abroad, especially in the United States of America that buna S is a suitable tire rubber and, finally, the possibility—as it presented itself to the United States of America—to produce buna S at prices approximately equal to the average price of natural rubber created an extraordinarily great interest in America for the whole problem. Conferences which up to now had the sole object of easing the minds of American interested parties and to prevent as much as possible an initiative on their own part within the frame of Butadiene rubber were held with Standard, Goodrich, and Goodyear. We are under the impression that one cannot stem things in the United States of America for much longer without taking the risk of being faced all of a sudden by an unpleasant situation and lest we be unable to reap the full value of our work and our rights.

"The patent situation in the United States of America was described in brief outline. Our patents covering the agent for mixed polymerization (buna S and N) are very strong and do not expire until 1950 and 1951, respectively. We have, furthermore, the tire patents for butadiene rubber. Therefore, as long as American experiments—which as we know very well are being carefully carried out by such important firms as Goodyear and Dow—remain within the above-mentioned patent sphere, there is danger. * * *

"The American Patent law does not make licensing mandatory. It would nevertheless be conceivable that because of the extraordinarily great importance of the rubber problem for the United States of America and because tendencies for restoring military power are very strong there too, considering the decrease in unemployment, et cetera, a bill for a corresponding law might be submitted to Washington. We, therefore, treat the license requests of the American firms in a dilatory way so as not to push them into taking unpleasant measures. * * *

"Pursuant to the above, the possibility was discussed in detail, through strict reserve on our part to put the breaks on for developments in the United States of America, especially with a view to preserving secrecy in regard to other countries."

It appears from the evidence that Farben, especially the defendant ter Meer, did go through the motions of seeking permission from the German authorities to divulge the buna process. It was in a dilatory manner, however, not in keeping with the professed relationship of good will and confidence between Farben and its foreign associates. In April 1938, defendant ter Meer wrote Howard of the Standard Oil Company as follows:

"In accordance with our arrangements in Berlin, I have meanwhile taken up negotiations with the competent authorities in order to obtain the necessary freedom of action in the United States of America with regard to rubber-like products. As anticipated, those negotiations have proved to be rather difficult and the respective discussions are expected to take several months before the desired result is obtained. I will not fail to inform you about the result in due course." [*NI-10505, Pros. Ex. 966.*] .

On 20 April 1938, Howard wrote to ter Meer urging speed and said:

"My view is that we cannot safely delay the definite steps looking toward the organization of our business in the United States with the cooperation of the people here who would be the strongest allies, beyond next fall—and even to obtain this much delay may not be too easy."

In October 1938, the minutes of the Ministry of Economics [*NI-10459, Pros. Ex. 967*] showed that use of patented buna processes and know-how abroad was permitted with certain restrictions including obtaining consent for passing it abroad "Should fundamental new knowledge with regard to buna be obtained * * *" In a letter from Ringer, a Farben executive to the defendant von Knieriem dated 28 September 1939, referring to a pending conference with Howard of Standard Oil at The Hague, it was said: "Dr. ter Meer thinks it is necessary to point out specifically that there will be no exchange of experience with respect to buna; * * *" [*NI-10466, Pros. Ex. 974*].

A commentary, dated 6 June 1944 [*NI-10551, Pros. Ex. 994*] forwarded by defendant von Knieriem to several persons in Farben, including defendants Schmitz, Ambros, Buetefisch and Schneider, is particularly significant. It refers to an article which appeared in America in the "Petroleum Times," written by Professor Haslam, declaring "that the Americans received processes from IG which were vitally important for the conduct of war." In the commentary it stated:

"In summary, it can thus be said concerning the production of aviation fuels, that we had to use methods which differed in principle from those of the Americans. The Americans have crude oil at their disposal and naturally rely on the products that are created in the processing of crude oil. In Germany, we started out on a coal basis and from there proceeded to utilize the hydrogenation of coal for the production of aviation fuel. As mentioned above, however, specialized information was not turned over to the Americans. Therefore, in contrast to Professor Haslam's assertions, hydrogenation proper was used in Germany, though not in America, for the

production of aviation fuels. Beyond that it must be noted that particularly in the case of the production of aviation gasoline on an Iso-octane basis, hardly anything was given to the Americans, while we gained a lot.

"The conditions in the buna field are such that we never gave technical information to the Americans, nor did technical cooperation in the buna field take place.

"A further fact must be taken into account, which for obvious reasons did not appear in Haslam's article. As a consequence of our contracts with the Americans we received from them above and beyond the agreement many very valuable contributions for the synthesis and improvement of motor fuels and lubricating oils, which just now during the war are most useful to us, and we also received other advantages from them.

"Primarily, the following may be mentioned:

"(1) Above all, improvement of fuels through the addition of lead-tetraethyl and the manufacture of this product. It need not be especially mentioned that without lead-tetraethyl the present method of warfare would be unthinkable. The fact that since the beginning of the war we could produce lead-tetraethyl is entirely due to the circumstances that, shortly before, the Americans had presented us with the production plans complete with experimental knowledge. Thus the difficult work of development (one need only recall the poisonous property of lead-tetraethyl, which caused many deaths in the U. S. A.) was spared us, since we could take up the manufacture of this product together with all the experience that the Americans had gathered over long years.

* * * * * * *

"(3) In the field of *lubricating* oils as well, Germany, through the contracts with America, learned of experiences that are extraordinarily important for present day warfare."

The defense seeks to characterize this evidence as "window dressing" deliberately planned to mislead the Nazi government. In my opinion, it is an accurate appraisal of the evidence as to Farben's conduct with reference to its foreign associates in cartel agreements during the rearmament period and prior to the war with the United States to say that Farben, on the one hand, gave the appearance of adhering to the agreements with its associates, and, on the other hand, cooperated with the German authorities in withholding information as to experience and know-how coming within those agreements; that Farben often went through the motions of seeking permission from the authorities to comply with the agreements but with such dilatory tactics that delay resulted to the great disadvantage of the other powers and with resulting advantage to Germany. The contemporaneous documents of Farben and the German governmental authorities in

evidence reveal a record of conduct on the part of Farben characterized by duplicity and lack of that candor and frankness contemplated by the relationship with Farben's foreign associates. Such conduct must have been expressly designed to delay the rearmament of Germany's enemies in preparation to meet and resist any Nazi aggression and, to some degree, undoubtedly contributed to this result.

g. *Propaganda, Intelligence and Espionage Activities.* The far-flung organization of Farben was an ideal vehicle for carrying Nazi propaganda throughout the world. Soon after the Nazi rise to power in 1933, officials of Farben took the initiative in launching an extensive program. Defendant Ilgner organized a Circle of Economy Leaders, which cooperated with the Propaganda Ministry. This organization undertook to see that "the situation in 'new Germany' " would appear in a more favorable light abroad. Defendant Gattineau said with reference to its activities [*NI–4833, Pros. Ex. 26*]:

"* * * It also was the task of the Circle of the Economy Leaders to prevent awkward actions of the Ministry of Propaganda and to substitute for them more suitable ones. The Circle of Economy Leaders was well qualified for this because its members knew the situation abroad well; they had good connections abroad and were acquainted with the mentality of the respective countries. The development of events in Germany had greatly disturbed the expert policy and the representatives of industry were now wishing to counteract this unfavorable development by appropriate propaganda. One tried to shift the attention from political questions to cultural ones. To the Propaganda Ministry this development was very desirable because in that manner the connections which industry had abroad could be used for its purposes. Besides, it was an advantage to use people not known to be paid propagandists. This propaganda activity was financed not by the Propaganda Ministry but by the firms of the respective subdepartment chiefs. In that manner I handled Scandinavia, and Dr. Max Ilgner North America. Among other things also trips by foreign newspapermen to Germany were financed. The negotiations with and the payment to the propagandist Ivy Lee also occurred during that period. Payments made for such purposes were accounted for by Dr. Ilgner with the Zentral-Finanzverwaltung of IG and Geheimrat Schmitz was informed about them. Dr. Ilgner's Office was used as the business office of the Circle of Economy Leaders. Other propaganda organizations which had been established upon Ilgner's initiative are the Association of Karl Schurz and the Mitteleuropaeische Wirtschaftstag. This activity of Dr. Ilgner's also was an expression of his efforts to make himself useful to the new man in power, thus to obtain a prominent position for himself. He was in a position to do this because as head of the NW 7 organization of IG he had an insight

into all of IG's affairs and he thus could be of service to other people and authorities * * *."

Several of the defendants were appointed to positions in the propaganda organizations. The appointment of defendants Mann, von Schnitzler and Gattineau to the Publicity Board of the German Economy was announced at a meeting held at the Propaganda Ministry on 30 October 1933 [*NI–1105, Pros. Ex. 62*] which was attended by Nazi officials and prominent representatives of the Party and industry. The meeting was addressed by Funk, who had assumed the chairmanship of the Board, and Goebbels who urged the participants to "go ahead in the spirit of National Socialist vigor and conviction." In 1934 defendant von Schnitzler was selected a member of the Aufsichtsrat of ALA [*NI–880, Pros. Ex. 778*], an advertising agency set up under State and Party supervision.

In carrying out the propaganda program, defendant Mann sent a circular letter to all of the Bayer representatives abroad describing the achievement of the Nazi regime since its rise to power, and the "miracle of the birth of the German nation" [*NI–10267, Pros. Ex. 782*]; in this circular appear the following statements:

"In view of the boycott propaganda abroad, which is still noticeable, although it has lost considerably in intensity, we are particularly desirous of describing to you in detail the actual conditions as they prevail under the new National Socialist government in Germany. We wish to express the hope that this report will supply you with important data, enabling you to continue to assist us in our *struggle for the German conception of law.* We ask you expressly, in connection with your collaborators and your personnel, to make use of these data in a manner which appears appropriate to you, to the end that all coworkers of our pharmaceutical business become familiar with these general economic and political conceptions."

It was by such means that Farben undertook to direct its agencies and personnel abroad to influence opinion favorably towards the Nazi regime and thus help and support the furthering of the objectives of the Nazi program.

At a meeting of the Commercial Committee of Farben on 10 September 1937 [*NI–4959, Pros. Ex. 363*], attended by defendants Schmitz, von Schnitzler, Haefliger, Ilgner, Mann and Oster, the organization of Germans abroad (A. O.) was discussed. Minutes of that meeting state:

"It is generally agreed that under no circumstances should anybody be assigned to our agencies abroad, who is not a member of the German Labor Front and whose positive attitude towards the new era has not been established beyond any doubt. Gentlemen who are

sent abroad should be made to realize that it is their special duty to represent National Socialist Germany. They are particularly reminded that, as soon as they arrive, they are to contact the local or regional group (of Germans abroad) respectively, and are expected to attend regularly at their meetings as well as at those of the Labor Front. The Sales Combines are also requested to see to it that their agents are adequately supplied with National Socialist literature.

"Collaboration with the A. O. (Organization of Germans abroad) must become more organized. * * *"

At a meeting of the Bayer Board of Directors held at Leverkusen on 16 February 1938 [*NI-8428, Pros. Ex. 803*] presided over by defendant Mann, he affirmed the favorable attitude. The minutes of the meeting state:

"The chairman points out our incontestable being in line with the National Socialist attitude in the association of the entire 'Bayer' pharmaceutica and insecticides; beyond that, he requests the heads of the offices abroad to regard it as their self-evident duty to collaborate in a fine and understanding manner with the functionaries of the Party, with the DAF (German Workers' Front), et cetera. Orders to that effect again are to be given to the leading German gentlemen so that there may be no misunderstanding in their execution."

Pursuant to such instructions, representatives of Farben abroad cooperated actively with the foreign organizations of the Nazi Party. Reports were made by those representatives to Farben of the various schemes and projects undertaken, which were approved and ratified.

During a trip to South America in 1936, defendant Ilgner was especially effective in developing a program of "Defense Against Fostering of Anti-German Sentiments in Latin America," as reported by a representative in a letter dated 27 January 1937 [*NI-070, Pros. Ex. 790*]. The program included the distribution of propaganda material through Latin America Chambers of Commerce, branches of German banks and other representatives of German economy. Other devices contemplated were the use of film, propaganda schools, and radio, the exchange of students, business men, scientists and artists, all as a means of carrying on "important propaganda work towards Germany." Farben gave financial support to schools and cultural institutes abroad as well as chambers of commerce promoting the propaganda program.

The activities of Farben with reference to affairs in Czechoslovakia in 1938 are particularly significant as revealed by the minutes of the Conference on Czechoslovakia held on 17 May 1938 at Unter den Linden 82. In the minutes of that meeting [*NI-6221, Pros. Ex. 833*], it is said:

"Seebohm gave an introductory report; he stated that after the incorporation of Austria in the Reich, tension had increased in the Sudeten-German parts of the country and that in all sectors of the population the political and industrial organizations were being reconstructed according to German pattern and to the tenets of National Socialism." * * *

"It seemed expedient to begin immediately and with the greatest possible speed, to employ Sudeten-Germans for the purpose of training them with IG in order to build up reserves to be employed later in Czechoslovakia." * * *

"The Information Office (Nachrichtenstelle) had for some time been endeavouring to publish articles of general and particular interest in Sudeten-German newspapers and to this end was making use of the 'Wirtschafts- und Zeitungsdienst G. m. b. H.,' a company sponsored by the German authorities. These articles were intended to serve as a preparation for a gradual financial strengthening of the Sudeten-German newspapers by advertisements."

"*Proposed action:* The Information Office, in collaboration with the sales combines, would specify the newspapers which were to be sponsored, inasmuch as they were suitable for advertising our marketable products. The papers were then to be supplied with articles by the Information Office and given advertisements for insertion in order to support them financially."

"Furthermore, those newspapers which had political importance, and periodicals which published articles and reports with a general bias in favour of IG without actually giving publicity to our products, were to be supported by being given items for publication as regularly as possible."

A report of this conference was given to the members of the Commercial Committee at a meeting of that Committee on 24 May 1938 [*NI-6703, Pros. Ex. 1612*] attended by defendants Schmitz, von Schnitzler, Haefliger, Ilgner, Gattineau, and Kugler, and at the same time the minutes of that conference were distributed to the members of the Commercial Committee. These minutes indicate a knowledge of possible Nazi intentions with reference to Czechoslovakia and show that Farben used its financial power in an effort to influence public opinion in that country in complete harmony with the Nazi-sponsored agitation.

Thus it appears that Farben, through the energetic use of its foreign representatives and contacts and the power of its financial backing, was an active instrument in furthering the Nazi propaganda program in a wide variety of directions and willingly cooperated in various forms of Nazi intrigue.

Of even greater importance to the Nazi program was the energetic initiative of Farben through the use of its foreign connections in

intelligence and espionage activities. Farben worked closely with the intelligence of the Wehrmacht, called the Abwehr, and financed institutions abroad in the service of that agency. Both before and during the war, Farben was zealous in its efforts to obtain and furnish the Wehrmacht militarily important information. The Central Finance Administration (ZEFI), commonly called "Berlin NW 7," had been organized by the defendant Ilgner in 1927 and was gradually enlarged to include the Economic Research Department (VOWI), the Political Economic Policy Department (WIPO) headed by defendant Gattineau, and the Bureau of the Commercial Committee (BdKA) [*NI–10702, Pros. Ex. 839*]. This organization, through its incomparable sources of information all over the world, collected and compiled detailed information in various countries concerning the most important branches of industry and particular enterprises, including the purposes of the undertaking, the financial structure, products, capacity and location. The material thus assembled probably surpassed that of any other institution in Germany in extent and quality, and was made available to several agencies of the government regularly [*NI–6544, Pros. Ex. 377; NI–8414, Pros. Ex. 851*]. Often VOWI, at the request of the Military Economic and Armament Staff, made thorough investigations abroad. Witness Bannert said [*NI–8149, Pros. Ex. 850*]:

"* * * As an example of this, I would mention the investigations that were made in the autumn of 1939 concerning the Toluol capacities in England and France, and the study at the beginning of 1940 on the effect of the stoppage of fodder imports on Danish agriculture. We were also asked at this time for pictures and maps of the industrial plant in enemy countries. As we did not possess these, we had to limit ourselves to making photostatic copies from the rarely published drawings and photos in the different technical publications and placing these at the disposal of the Military Economic and Armaments Staff. I remember that once during the war we were asked to explain, with the aid of an air photograph, the lay-out of the Clifton Magnesium Works in England, in preparation for a bombing attack. We passed on the advice of a gentleman from Bitterfeld, who was familiar with the works lay-out."

Concerning Farben as a source of information, General Huehnermann said:

"Another of our sources of information was the Economics Department of the I. G. Farbenindustrie A. G. (Volkswirtschaftliche Abteilung) * * * The Economics Department of the IG cooperated with us by putting their work, such as reports on countries, detailed reports on raw materials, developmental prospects, at our disposal. Since the Economics Department of the IG had

an excellent and highly qualified staff of collaborators we also addressed to this office inquiries on subjects about which we assumed they were informed. (Inquiries during the war about America's nitrogen production, etc.)" [*NI–9827, Pros. Ex. 853*].

The furnishing of information by Farben to the Wehrmacht during the months preceding the premeditated attack on Poland is significant. In the weekly report to the Office of Military Economy appear these items: [*NI–7493, Pros. Ex. 860; NI–8469, Pros. Ex. 861; NI–4875, Pros. Ex. 843; NI–8149, Pros. Ex. 850.*]

"6–7 March: Discussion with Dr. Fernau of the I. G. Farben, on the English and French oil supplies.

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"14 April: * * * Inception of I. G. Farben study 'Rumanian Mineral Oil' and 'Greater Germany and the Economic Spheres of the Bohemia-Moravia protectorate and of Czechoslovakia.'"

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"14 June: Discussion with Dr. Fernau of I. G. Farben. Submission of the essay on Cyprus and discussion on the utilization and exploitation of the I. G. Farben records and library. In accordance with Fernau's statement, the records and library are at the disposal of the WStb at any time.

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"24 August: * * * Discussion with the Leader of the Economics Department of the I. G. Farbenindustrie Aktiengesellschaft, Doctor Reithinger, as well as Doctors John and Fernau of the IG, on the closer cooperation envisaged.

"The IG made all their archives and printed material available for exploitation, and furthermore declared themselves prepared to answer questions put to them, which must be kept as brief and concise as possible. Written questions are to be sent through the Office of Military Economy Group VIII to the office controlling the scope of the IG's activities.

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"26 August: * * * Discussion with Dr. von der Heyde, Commissioner for Abwehr of the I. G. Farbenindustrie Aktiengesellschaft, Berlin, on the sphere of activities of Dr. Krueger, Betriebsfuehrer of the I. G. Farbenindustrie Aktiengesellschaft, Berlin, who came to the WStb for the reinforcement of mobilization.

"25 August: * * * Discussion at the Office of Military Economy, Group VIII, Captain Dose, Dr. Holzhauer, with Dr. Reithinger, Dr. John. Dr. Fernau's suggestion of using the Economics Department, together with archives, of the I. G. Farbenindustrie for the WStb's purposes was accepted by Captain Dose. Request

for brief description of Poland's situation with regard to raw material stocks and a description of the Reich's increased security against blockade through the Berlin-Moscow nonaggression pact. (Descriptions are promised.)"

From the minutes of the meeting of the Commercial Committee of Farben on 12 November 1940, attended by defendants Schmitz, von Schnitzler, Haefliger, von der Heyde, Ilgner, von Knieriem, Kugler, Mann, ter Meer and Oster, it appears that von Schnitzler made a report of the "work recently prepared by the National Economics Department for various government and military offices." The minutes state [*NI-6162, Pros. Ex. 866*]:

"* * * During the discussion following this the Commercial Committee repeated its wish that the National Economics Department should prepare this work in close cooperation with the sales combines and other IG Offices concerned."

On 2 March 1940, VOWI made a report to the Military Economy Office [*NI-7850, Pros. Ex. 657*] setting out technological information concerning explosives and chemical warfare agents, including an estimate of production facilities of the United States.

The American company, Chemnyco, Inc., a company controlled by Farben personnel, was used extensively as a source of valuable information. The United States Department of Justice had occasion to investigate the activities of the Chemnyco Company during the war and made an official report of its findings. In that report [*NI-10577, Pros. Ex. 875*], it is said:

"The simplicity, efficiency and totality of German methods of gathering economic intelligence data are exemplified by Chemnyco, Inc., the American economic intelligence arm of I. G. Farbenindustrie. Chemnyco is an excellent example of the uses to which a country with a war economy may put an ordinary commercial enterprise. * * *"

There can be no doubt that Farben used its world-wide connections as a means of obtaining information of military value and furnished such information to the Wehrmacht to an ever increasing extent. Farben in that regard gave enormous help to the preparation for and the waging of aggressive wars conducted by Germany.

h. Steps Taken in Anticipation of War for Protection of Farben's Foreign Holdings by Camouflage and Projection of Plans for Economic Domination of Europe in the Chemical Field. In July or August of 1938 officials of Farben took up for serious consideration the matter of safeguarding their assets abroad in the event of war. [*NI-4923, Pros. Ex. 1022.*] According to Witness Kuepper, who was a member of the legal staff of Farben, that was "when the dark clouds called Sudeten

crisis already appeared over the horizon." Several significant events had already occurred by that time which were consistent with the publicly proclaimed program of Hitler revealing what the IMT characterized as "the unmistakable attitude of aggression." The Treaty of Versailles had been repudiated by the Nazi government; the building of a military air force had been announced by Goering over 3 years before; for more than 3 years an army had been in the making since the enactment of compulsory military service in 1935; in defiance of the Versailles Treaty, the demilitarized zone of the Rhineland was entered by German troops in 1936; as was stated by the IMT, "At daybreak on 12 March 1938 German troops marched into Austria." Witness Kuepper said:

> "* * * There was no question of an aggressive war; there was a general feeling of the darkening of the general political situation, and the general talk not only was in Farben, but in the whole German public, about the possibility of war; the kind of war, that was not discussed." [*Mim. Tr. p. 2908.*]

The talk of war by the German public at that time was natural in view of the public events during the recent years as above reviewed. Of course, it was not specifically discussed whether it was to be an aggressive war or a defensive war. The "possibility of war" was present in view of repeated aggressive acts committed by the Nazi government. Reasonable men were only being logical when they realized the prospect of war as a consequence of the policy being followed and began prudently to do what they could to protect their foreign assets in the event of war. Such a course of conduct was in keeping with the far-sighted intelligence always exhibited by Farben officials in managing and directing the Farben enterprise. Of course such conduct was not in itself the commission of the crime against peace, but it is significant as indicating the seriousness of the situation in the state of mind of officials of Farben when they undertook to map out the policy for the protection of the concern's foreign holdings. It shows a realistic appraisal of the foreign policy of Germany and an understanding of the imminent possibility of war.

Within 2 days after German troops had occupied Bohemia and Moravia, contrary to the agreements made at Munich in September 1938, the Legal Committee of Farben, presided over by defendant von Knieriem, met in Berlin on 17 March 1939 to consider the problem of protecting Farben assets in foreign countries "in the event of war." [*NI–2796, Pros. Ex. 1020.*] The minutes of that meeting show that this Legal Committee made specific recommendations as to legal steps necessary to camouflage Farben assets abroad to prevent seizure in the event of war. In the minutes [*NI–2796, Pros. Ex. 1020*] it is said:

* * * * * * *

"*ee.* If the shares or similar interests are actually held by a neutral who resides in a neutral country, enemy economic warfare measures are ineffective; even an option in favor of IG will remain unaffected. A sole exception arises if the neutral is placed on the 'blacklist,' since then the liquidation of the shares or similar interest may also be ordered. The English during the war made very sparing use of the authority to liquidate assets in the United Kingdom of a 'blacklisted' neutral, inasmuch as such procedure invariably resulted in controversies with the government of the neutral involved, controversies which frequently were out of all proportion to the results obtained by such liquidation.

"This survey shows that the risk of seizure of the sales organizations in the event of war is minimized if the holders of shares or similar interests are neutrals residing in neutral countries. Such a distribution of holdings of shares or other interests has the further advantage of forestalling any conflicts troubling the conscience of an enemy national who will inevitably be caught between his patriotic feelings and his loyalty to IG. A further advantage is that the neutral, in case of war, generally retains his freedom of movement, while enemy nationals are frequently called into the service of their country, in various capacities, and therefore can no longer take care of business matters.

* * * * * * *

"However, as far as possible with due regard to the other interests which call for our consideration, neutral influences should be strengthened in our agencies abroad by the transfer of shares or similar interests to neutral holders. If this is not possible, it seems advisable to transfer the shares or similar interests to parties who are nationals of the particular country and to provide for options on these shares or similar interests, not in favor of IG directly but running to some neutral party with an ultimate option in IG's favor."

* * * * * * *

"The adoption of these measures would offer protection against seizure in the event of war, although this protection may not be a complete one."

This indicates careful and thorough consideration by Farben of the whole problem of protecting foreign holdings in the event of war so as to reduce the hazard of loss to a minimum.

A summary of the minutes of that meeting was, on 8 June 1939, sent to several executives of Farben, including defendants von Schnitzler, ter Meer and Kugler. In the evidence is a memorandum, dated 22 July 1939 [*NI-4923, Pros. Ex. 1022*] entitled "*Safeguarding measures for the case of war*," which refers specifically to Farben's holdings in Belgium, France, Egypt, England, United States of America, Canada,

Australia and New Zealand. This was a memorandum of the Legal Department Dyestuffs.

During the summer months in 1939, preceding the invasion of Poland by Germany, Farben carried on an extensive correspondence with the Reich Ministry of Economics concerning the method of camouflage of foreign assets. In a letter dated 24 July 1939 written by Farben to the Reich Ministry of Economics [*NI–8496, Pros. Ex. 1024*] appear these significant statements:

"The continuous watch which we have kept on the legal structure of our sales system abroad, and the necessity—in view of political tensions—of paying special attention to the protection of our interests in case of a conflict with other powers, have convinced us that even the structure did no longer offer the necessary protection in these countries which were especially exposed to danger, among them particularly the British Empire.

"For these reasons we have come to the conclusion that real protection of our foreign sales companies against the danger of sequestration in wartime can only be obtained by our renouncing all legal ties of a direct or indirect nature between the stockholders and ourselves—which at present give us the *right* of access to the stocks of our sales companies—and replacing these legal relations by transferring the right of access to these assets to such neutral agencies as by virtue of their personal connections with us of many years standing, in some cases even covering decades, will give us the absolute guarantee that in spite of their complete independence and neutrality they will never dispose of these assets otherwise than in a manner entirely in accordance with our interests. This guarantee continues to exist even in the case of unforeseen technical or political complications rendering a discussion with us temporarily impossible, a discussion which in view of our friendly relations, would normally be a matter of course. The experiences we made during the war have made it much easier for us to decide on this step. As an example, for the fact that the only effective protection of our interests lies in the personal trustworthiness of our business friends abroad and not in legal obligations whatsoever, we shall only quote the following incident:

"After the entry of the United States into the World War, all the assets of our constituent companies in the United States were sequestrated and were, in the majority of cases, sold to competitors by the American authorities; only this action provided the basis for the development of the American chemical industry of today. This was the situation when the representative of the Hoechster Farbwerke, General M. A. Metz, while fully observing his duties as an American citizen, staked his entire private property—without being asked to and without any legal obligation—in order to buy

the assets, in particular the patents belonging to the Hoechster Farbwerke, from the American sequestrator, and after the end of the war, in return for his expenses, placed them again at the disposal of our constituent Company. Personality alone was the decisive factor in that situation, when, according to English and American laws of war, all contractual relations with the enemy were automatically severed by entry into the war."

In a communication dated 26 September 1940 [*NI-2746, Pros. Ex. 1035*] to the Reich Ministry of Economics, Farben reported:

"* * * Only during recent years since about 1937, when the danger of a new conflict became more and more apparent, did we take pains to improve our camouflage measures, especially in the endangered countries, in such a way that they should prove adequate even in the case of an armed conflict and at least prevent immediate seizure."

That letter was written by the Central Finance Department of Farben in Berlin following discussions to improve the system of camouflaging various sales companies of Farben in Latin America, concerning which defendants von Schnitzler and Ilgner were generally informed.

While there were other considerations prompting camouflage of holdings in foreign countries, the evidence clearly shows that a controlling reason, particularly in the years 1938 and 1939, was the prospect of war. Thus, in a memorandum dated 2 October 1940, Kuepper of the Farben Legal Staff, who testified personally before this Tribunal, said:

"After the victorious end of the war a long lasting political appeasement can be expected. But distinct possibilities cannot be a reason for camouflage any longer in view of the reasons against it, especially of a political nature." [*NI-8646, Pros. Ex. 1038.*]

Pursuant to the policy of camouflaging its assets abroad, Farben resorted to sham transactions to accomplish such purpose. An excellent example of the technique employed is set forth in the opinions filed in *Standard Oil Co.* v. *Markham*, 64 F. Suppl. 656 (District Court, S. D. New York), and *Standard Oil Company* v. *Clark*, 163 F. (2d) 917 (Circuit Court of Appeals, Second Circuit, September 22, 1947) wherein these important Federal Courts of the United States held that the transactions reached at the Hague Conference in September of 1939, between representatives of Farben and representatives of the Standard Oil (referred to as the Jersey group) were "sham transactions designed to create an appearance of Jersey ownership of property interests which, nevertheless, continued to be regarded by the parties as IG owned." The United States courts referred to specifically found:

"The parties intended that after the completion of the war and the resulting disappearance of the danger of United States Government controls the properties would be formally returned to IG and the prewar relationship resumed."

i. The Activities of Farben in Acquiring Control of the Chemical Industry in Occupied Countries. The evidence discussed in the Tribunal's judgment in connection with count two shows in detail the activities of Farben in the exploitation and spoliation of the chemical industry of occupied countries. Farben's New Order for the Chemical industry is indicative of the initiative shown by Farben in planning to acquire control of the key industries as additional territory came under the Nazi yoke.

In July 1938, the Political Economy Department of Farben (VOWI) completed a very full report on Aussiger-Verein of Bohemia. On 21 September 1938, the office of the Commercial Committee of Farben wrote to all Vorstand members of Farben referring to the discussion at the Vorstand meeting on 16 September 1938 in Frankfurt [*NI-10725, Pros. Ex. 1043*] and enclosed a preliminary statement on "location of the chemical industry in Czechoslovakia," and called attention to the report completed in July "which may be obtained from the Political Economy Department on direct request." On 23 September 1938, defendant Kuehne wrote to defendant ter Meer and defendant von Schnitzler saying [*NI-3721, Pros. Ex. 1044*]:

"I learned from our telephone conversation this morning the pleasant news that you have succeeded in making the competent authorities appreciate our interest in Aussig and that you have already suggested Commissaries to the authorities—viz. Drs. Wurster and Kugler."

In a letter dated 29 September 1938, defendant von Schnitzler wrote defendants ter Meer, Kuehne, Ilgner, and Wurster, saying [*NI-3722, Pros. Ex. 1045*]:

"You are informed about the general principles of the discussion which I have had at the end of last week with the Ministry of Economics; with Mr. Keppler, Secretary of State, and with the German Economic Board of the Sudeten area, as to the situation of the Aussig-Union. The negotiations have been successful insofar as all parties acknowledged that as soon as the German Sudetenland comes under German jurisdiction all the works situated in this zone and belonging to the Aussig-Union, irrespective of the future settlement of accounts with the head office in Prague, must be managed by trustees (commissioners) 'for account of whom it may concern.' I pointed out that, in the first place the works Aussig and Falkenau are involved, and that at least the firm Aussig, but suitably [possibly] also Falkenau, should be run exclusively by IG,

and that therefore IG already now, would lay claim to the acquisition of both works * * *. Before coming to an understanding in regard to ownership, it would be necessary to maintain the technical and commercial activity by expert commissioners, and these commissioners can only be furnished by IG. In accordance with ter Meer I proposed Dr. Carl Wurster for the technical part and Dr. Hans Kugler for the commercial part. This program was accepted by both the Ministry of Economics and the Foreign Organization of the NSDAP on behalf of which Mr. Schlotterer himself (Ministry of Economics) could act."

The Munich Pact was signed 29 September 1938, and Germany occupied the Sudetenland pursuant to that pact. Farben's sympathy with the government's policy at this time is evidenced by a telegram from defendant Schmitz to Hitler [*NI–2795, Pros. Ex. 1046*] reading:

"Profoundly impressed by the return of Sudeten-Germany to the Reich which you, my Fuehrer, have achieved, the I. G. Farbenindustrie A. G. puts an amount of half a million reichsmark at your disposal for use in the Sudeten-German territory."

There is in evidence a memorandum of the "Management Division Farben" entitled "*Preparations for the reshaping of the economic relations in postwar Europe*," dated 19 June 1940. In that memorandum it is said:

"* * * The Examining Board of the chemical industry was commissioned by Mr. Schlotterer to submit to him as soon as possible a survey of the chemical industry in the following countries: France, Switzerland, England, Holland, Belgium, Denmark, Norway. * * *

"If Farben had any special suggestions to make with regard to the lines on which the manufacture of dyestuffs was to be organized in future in the countries in question, it would be useful if they would bring them forward on this occasion. (It was stated in conference that Herr U. remarked during the conference with Herr B. that European dyestuff production after the war would probably be under the management of Farben). * * *"

On 24 June 1940, defendant von Schnitzler wrote to several officials of Farben, including defendants ter Meer and von Knieriem, especially asking them to attend the meeting of the Commercial Committee to be held on 28 and 29 June in Frankfurt-on-Main, in which he said:

"* * * I include a copy of the invitation for those gentlemen who, although not members of the Commercial Committee are herewith cordially invited to be also present on 28 June. The main topic of our conference, described under No. 1 of the agenda as 'Report on Economic Policy' (Wirtschaftspolitischer Bericht) is the discussion of the problems of economic policy that were made

pertinent through the speedy development of the events of the war in the West. A specific inquiry has been received from the Reich government requesting that in the shortest possible time a program be developed outlining a system to be established by, and based on, the impending peace treaty, and covering the entire European interests in the field of chemistry. * * *"

The minutes of that meeting, held on 28 and 29 June 1940 at Frankfurt, show that of the defendants in this case the following were present: von Schnitzler, Gattineau, Ilgner, von Knieriem, Kugler, Mann, ter Meer, and Oster. The minutes further show that a comprehensive and broad discussion was had concerning the future of the chemical industry in many countries and that it was determined that all offices of the IG and Konzern companies are to be asked for suggestions on all matters pertaining to economy reorganization of the following countries, to wit: (*a*) France, (*b*) Belgium and Luxembourg, (*c*) Holland, (*d*) Norway, (*e*) Denmark, (*f*) Poland, (*g*) the Protectorate, (*h*) England and The Empire.

A memorandum dated 20 July 1940 was transmitted by order of defendant von Knieriem concerning: "1. *Suggestions for the Peace Treaty as regards the protection of industrial rights*" and, "2. *Position of the German Reich patent in a European economic sphere under German control.*" Under the second item the memorandum said:

"*The position of the German Reich Patent in a European economic sphere under German control.*

"The peace treaty will cause far-reaching changes in the political and economic structure of large parts of Europe. One can perhaps assume that under German leadership a Greater European Area (Europaeischer Grossraum) will be established, which besides Greater Germany will include a number of additional states each retaining its own government. This Greater European Area will represent an economic unit, and possibly will later have a uniform system of customs duties and currency. One could not possibly retain this diversity of laws for the protection of industrial rights in such an economically unified area * * *

"The most complete solution which could be regarded as ideal would be to create one uniform patent for the entire European area under German control by regulating the formal and material patent right by a single law, the development of which would be reserved to the German legislator, and the Reich Patent Office would remain in existence as the only patent authority.

"1. Of course the idea is to extend the German patent over the entire area * * *

"4. * * * In order to ensure uniformity of decision, only the Reich Supreme Court should act as the court authorized to handle

appeals with respect to legal issues; suits for nullification and perhaps, following the Austrian example, also problems concerning dependency, should be judged only by the Reich Patent Office and by the Reich Supreme Court * * *

On 3 August 1940, Farben transmitted to the Reich Economic Ministry its "New Order Plans," in a letter signed by defendant von Schnitzler. It is a comprehensive report dealing generally with "the situation of the world economic forces which may be expected in the new order of the international chemical market," in which it was said:

"2. * * * This major continental sphere will, upon conclusion of the war, have the task of organizing the exchange of goods with other major spheres and of competing with the productive forces of other major spheres in competitive markets—a task which includes more particularly the recovery and securing of world respect of the German chemical industry. * * *

"The part which is arranged according to countries, includes primarily those countries with which negotiations concerning a fundamental new order may, in keeping with the military and political developments, be expected within a reasonable period of time under the armistice or peace terms, to wit: (*a*) France, (*b*) Holland, (*c*) Belgium/Luxembourg, (*d*) Norway, (*e*) Denmark, (*f*) England and Empire."

The same report contains a more detailed discussion about "the position of I. G. Farbenindustrie concerning the question resulting from the Franco-German relationship in the chemical field in regard to production and sales." In the course of the discussion of the New Order with reference to France is the following significant language:

"* * * It will, however, appear all the more justifiable in planning a major European spherical economy, again to reserve a leading position for German chemical industry commensurate with its technical, economic, and scientific rank. The decisive factor, however, in all planning relative to this European sphere will be the necessity of securing determined and effective leadership in the discussions which must necessarily be conducted with the other major spherical economics outside of Europe, the contours of which are already distinctly drawn at this time.

"In order to guarantee that the chemical industry of Greater Germany and the European Continent can assert itself in such discussions, it is urgently required clearly to appreciate the forces which, in the world market, will be of decisive importance after the war.

"* * * As a matter of basic principle, therefore, we are of the opinion that the French chemical industry should retain its own

existence in the coming new order, but that the artificial barriers which have been erected against German imports by means of excessive import duties, quotas and the like, should be removed. It will likewise be necessary to base ourselves on the premise that, in general, exports of the French chemical industry should be maintained only by way of exception and insofar as they had already formally been established, i. e. prior to the beginning of the world economic crises, and that French activities should consequently be restricted to the French domestic market! * * *

"The preceding survey on the development and situation of the individual branches of the French chemical industry plainly shows that the chief obstacle blocking German interests in the French market was to be found in the field of commercial policy. If, therefore, participation in the French market—the remaining colonies, protectorates and possible mandated territories included—corresponding to the importance of the German chemical industry is to be built up and maintained, then this aim can be achieved only by a fundamental change in the forms and media of French commercial policy in favor of German imports.

* * * * * * *

"III. CONCRETE PROPOSALS WITH REGARD TO CERTAIN FIELDS OF PRODUCTION

"1. DYESTUFFS.—In order to achieve a New Order as planned and to compensate in part for damages suffered in and because of France, the best solution seems to be to bring about such regulation of French production and its marketing for all time to come by the participation of the German dyestuffs industry in the French dyestuffs industry, as to prevent further encroachment on German export interests. To this end concrete proposals could be made as for example, IG might be allowed to acquire 50 percent of the capital of the French dyestuffs industry from the Reich.

* * * * * * *

"*a.* The German-French dyestuffs company or companies only shall be permitted to establish in France new plants for the production of dyestuffs (including lac dyes) or their intermediate products, or introduce new products into the plants already existing or to expand the latter. In addition the French Government is to issue a decree prohibiting the establishing of plants for the manufacture of dyestuffs and intermediate products.

"*b.* As a general rule the output of the German-French company shall be intended for the French domestic and colonial markets only.

* * * * * * *

"* * * we have written to the Reich Ministry of Economics under date of 13 July 1940, that we have placed a trustee for these companies at its disposal.

* * * * * * *

"*b*. Enforcement of a French quota and licensing system in favor of Germany which will have as its purposes that French demands for imports be supplied by Germany only.

* * * * * * *

"The granting of preference tariffs to Germany is not only a means of compensating the German chemical industry for damages suffered in consequence of the Versailles Treaty and of the trade policy based upon it; it is rather a necessary political instrument to be used in relation with non-European countries which, through a depreciation of their money and through other measures might be able to disturb the commercial agreements to be concluded with France. It must therefore be stressed particularly that the basic tariffs between France and other countries can be lowered only with German approval.

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"*Licenses for the construction of new plants and for the expansion of existing facilities* are imperative in regard to products which are important to the armament industry. We hope that the requiring of licenses for the production of these articles will be supplemented by rigid control of the production itself.

* * * * * * *

"The cooperation between German and French industry, which is the necessary basis for a sound and planned economy, can best be achieved—while continuing already existing agreements—by the creation of *long-term international syndicate agreements*, which would have to be preceded by the creation of French national syndicates. In contrast to previous arrangements between the German and French chemical industries, these syndicates should be under a unified and strong leadership, which because of the greater importance of the German chemical industry should be in German hands and should have its administration headquarters in Germany. The export of French chemicals would be handled exclusively by these syndicates, except for territories to which the French industry may freely export the products in question or except in other cases to be defined precisely. The French chemical industry, limited now to supplying the domestic markets, may be asked to make compensations within the framework of the syndicate for possible export deficits."

In a letter to the members of the Commercial Committee dated 22 October 1940, defendant von Schnitzler with reference to the attitude

of German officials towards Farben's suggested plans for the "New Order" said:

> "* * * It is evident that our program for France was received very favorably by the official agencies. * * * It is obvious that a similar program is desired for England before the end of the hostilities with her. * * *"

In August 1940, there followed detailed reports and recommendations for the "New Order" for Holland, Denmark and Belgium in the chemical field, following generally the pattern set out for the "New Order" of France, all in keeping with Germany's contemplated "leadership" and domination by Farben of the chemical field in Europe.

Thus we see unfolded Farben's carefully conceived plans to reap in full the industrial fruits of Hitler's policy of aggression. These plans for Farben and German "leadership" closely paralleled the plans of aggression and domination of the Nazi government in the political and military fields. Germany was to dominate Europe, and eventually the world, financially, politically and economically, and Farben was to participate in the spoils on a permanent basis when peace should be established.

In summary, facts in the record abundantly support the assertions made by the prosecution that Farben and these defendants (members of the Vorstand), acting through the corporate instrumentality, furnished Hitler with substantial financial support which aided him in seizing power and contributed to keeping him in power; that they worked in close cooperation with the Wehrmacht in organizing and preparing mobilization plans for the eventuality of war; that they participated in the economic mobilization of Germany for war including the performance of a major role in the Four Year Plan; that they carried out activities indispensable to creating and equipping the Nazi war machine; that they participated in the stockpiling of critical war materials; that they engaged in vital propaganda, intelligence and espionage activities; that they used their business connections and cartels to strengthen Germany and to weaken the war potential of other countries; that they camouflaged and utilized assets abroad for war purposes; that they planned to take over the chemical industry of Europe and participated in plunder and spoliation of occupied countries; and, that they participated in the utilization of slave labor on a vast scale to strengthen the German war machine. The ultimate conclusions reached in this opinion make it unnecessary to discuss in further detail the varying degrees of individual connection and responsibility for the particular acts of Farben with which the defendants who were members of the Vorstand were more particularly identified.

From the foregoing résumé of the evidence, it can be said that I. G. Farben, in its substantial achievements constituting participation in the rearmament of Germany and in a variety of related activities, became integrated into the Nazi regime and made enormous contributions to the German war effort. The record bears abundant proof of the enthusiasm with which Farben undertook its portion of the task which was to make Germany into an armed camp exceeding the strength of all its neighbors. Despite the numerous decrees and regulations reflecting the regimentation of the economy now relied upon as a defense, it is clear that Farben continued to enjoy much freedom of action and initiative in its spheres of responsibility. In the economic structure of the Nazi regime, Farben's position was one of top leadership. The record bears out the degree to which its activities became inextricably intertwined with activities of the political and military leadership. Farben collaborated in the economic regimentation without reserve. It is equally clear that in return it expected the support of, and rewards from, the regime. These circumstances tend to refute the defense of duress and governmental coercion impliedly accepted as a defense in the judgment of the Tribunal. This defense argument made insistently at the trial is at variance with the true facts as revealed by overwhelming evidence showing sustained and continued initiative by Farben in the armament field, and is further at variance with numerous instances of Farben's ability to influence the course of events where such action was deemed to be in the interest either of Farben or of the government program as a whole.

The irresponsible character of the Nazi regime, its constant emphasis upon violence, and its oppressive policies as the regime gained in strength, did not serve to deter the top leadership of Farben in supporting the regime, and these factors indicate how reprehensible was the course of action in which Farben, through the acts of these principal defendants, was engaged. Such action, however, is not criminal as constituting the crime against peace unless it can be said to have been in violation of international law as recognized in Control Council Law No. 10, the basic legal provision from which this Tribunal draws its jurisdiction.

III

Article II of Control Council Law No. 10, in pertinent part reads as follows:

"1. Each of the following acts is recognized as a crime:

"(*a*) *Crimes Against Peace.* Initiation of invasions of other countries and wars of aggression in violation of international laws and treaties, including but not limited to planning, preparation, initiation or waging a war of aggression, or a war of violation of

international treaties, agreements or assurances, or participation in a common plan or conspiracy for the accomplishment of any of the foregoing."

This provision of the Control Council Law, like the Charter of the International Military Tribunal, is declaratory of pre-existing international law. It is not *ex post facto* legislation but reflects a further recognition of the development of an international custom pursuant to which aggressive war has come to be regarded as illegal. Participation in the acts covered in the quoted law constitutes a crime. This is the plain meaning of the London Agreement, of the Charter and the judgment of the IMT. Control Council Law No. 10, like the Charter of the IMT, recognizes that an individual may be held criminally responsible for the commission of crimes against peace. As a necessary corollary no distinction is to be drawn between a private citizen and public officials such as the political, diplomatic or military leaders of the State. Criminal responsibility is personal and individual under this conception.

Paragraph 2 of Article II of Control Council Law No. 10 provides:

"2. Any person without regard to nationality or the capacity in which he acted, is deemed to have committed a crime as defined in paragraph 1 of this Article if he was (*a*) a principal or (*b*) was an accessory to the commission of any such crime or ordered or abetted the same or (*c*) took a consenting part therein, or (*d*) was connected with plans or enterprises involving its commission or (*e*) was a member of any organization or group connected with the commission of any such crime or (*f*) with reference to paragraph 1 (*a*), if he held a high political, civil or military (including General Staff) position in Germany or in one of its Allies, cobelligerents or satellites or held high position in the financial, industrial or economic life in any such country."

Literally construed, Control Council Law No. 10, paragraph 2 (*f*), which is applicable only to crimes against peace, might be held to mean that the holders of high political, civil or military positions in Germany, or holders of high positions in the financial or economic life of Germany, are deemed, *ipso facto*, to have committed crimes against peace. The prosecution in this case disclaims any such literal construction and recognizes that criminal guilt does not attach automatically to all holders of high positions. No such literal interpretation could be permitted. Paragraph 2 (*f*) merely requires that the fact that a person held such a high position to be taken into consideration with all of the other evidence in determining the extent of individual knowledge and participation in crimes against peace. The provision does, however, serve to refute the contention that private businessmen or industrialists are excluded from the possibility of com-

plicity in "crimes against peace" as a matter of law. Paragraph 2 (*f*) does not shift the burden of proof which remains at all times with the prosecution. Neither does it change the presumption of innocence. It merely emphasizes an evidentiary fact to be weighed along with the sum total of the evidence.

Article X of Military Government Ordinance No. 7, under which this Tribunal is established, provides:

> "The determination of the International Military Tribunal in the judgment in Case No. 1 that invasions, aggressive acts, aggressive wars, crimes, atrocities or inhumane acts were planned or occurred, shall be binding on the tribunals established hereunder and shall not be questioned except insofar as the participation therein or knowledge thereof by any particular person may be concerned. Statements of the International Military Tribunal in the judgment in Case No. 1 constitute proof of the facts stated, in the absence of substantial new evidence to the contrary."

Under the quoted provision, pertinent findings of the IMT in regard to aggressive wars and aggressive acts binding on the Tribunal for the purposes of the crimes against peace charged in the indictment in this case include: That aggressive wars were planned and waged by Nazi Germany against Poland on 1 September 1939; against Denmark and Norway, 9 April 1940; against Belgium, Holland and Luxembourg, 10 May 1940; against Greece and Yugoslavia, 6 April 1941; against the Soviet Socialist Republics, 22 June 1941; and against the United States of America, 11 December 1941.

It was further stated by the IMT in regard to the Anschluss that Austria "was occupied pursuant to a common plan of aggression," and,

> "* * * the methods employed to achieve the object were those of an aggressor. The ultimate factor was the armed might of Germany ready to be used if any resistance was encountered."

The provisions of the Control Council Law require the same basic elements for the commission of the crime against peace as are required under elementary principles applicable to criminal law. There must be an act of substantial participation and there must be the accompanying criminal intent or state of mind. Under Control Council Law No. 10, the building of armament or the development of the "war potential" in the form of planning production of, or planning facilities for the production of, raw materials essential to the waging of war may constitute a sufficient act of participation to warrant affixing criminal responsibility to the act as planning and preparation for aggressive war. Such action must, however, be combined with the necessary intention to further the aim of aggressive war and, as contended by the prosecution, must constitute a substantial participation. As to the

character of the knowledge required to constitute a state of mind amounting in law to criminal intent in relation to the crime against peace, with great ability, the prosecution has argued:

"In dealing with the *act*, we have stated that anyone who bears a substantial responsibility for conducting activities which are vital to furthering the military power of a country *participates* in the crime. With respect to the *state of mind*, this is the *knowledge* that such military power will be used or is being used for the purpose of carrying out a national policy of aggrandizement to take from the peoples of other countries their land, their property or their personal freedoms.

"It is the position of the prosecution that in connection with the charges of preparation and planning and the charge of conspiracy it is sufficient if there exists the belief that although actual force will be resorted to if necessary, such purpose will be accomplished by using the military power merely as a threat; and that it is not essential that the defendants know precisely which country will be the first victim or the exact time that the property rights or the personal freedoms of the peoples of any country will be under attack.

"10. A separate question which need not be discussed here concerns what type and quantum evidence is necessary to establish beyond a reasonable doubt that any particular defendant knew at any particular time that Germany's military power would be used for the purpose of carrying out a national policy of aggrandizement to take from the peoples of other countries their land, their property and their personal freedoms. It is sufficient to note here that the prosecution does not contend that the wide publicity given to the program and aims of the Hitler movement over a period of years is enough in itself to establish beyond a reasonable doubt that the average person within Germany had the required knowledge. And the evidence must establish more than knowledge of the aggressive program and aims of the Nazi government and belief that there was a possibility that force would be used to carry out the policy of aggrandizement. It must establish beyond a reasonable doubt that the defendants believed that actual force would be employed if necessary to achieve such policy."

The test of guilty participation in the crimes against peace for which the Nazi government was responsible was stated in the judgment of the International Military Tribunal as follows:

"The argument that such common planning cannot exist where there is complete dictatorship is unsound. A plan in the execution of which a number of persons participate is still a plan, even though conceived by only one of them; and those who execute the plan do not avoid responsibility by showing that they acted under the di-

rection of the man who conceived it. Hitler could not make aggressive war by himself. He had to have the co-operation of statesmen, military leaders, diplomats, and business men. When they, with knowledge of his aims, gave him their co-operation, they made themselves parties to the plan he initiated. They are not to be deemed innocent because Hitler made use of them, if they knew what they were doing. That they were assigned to their tasks by a dictator does not absolve them from responsibility for their acts. The relation of leader and follower does not preclude responsibility here any more than it does in the comparable tyranny of organized domestic crime."

This broad test of participation in the common plan or conspiracy is, in my opinion, equally applicable to the charges of participation in the planning and preparation of aggressive war. The inquiry must be whether there is knowledge of the "aims" of Hitler. In this regard participation in the policies, planning and purposes of the Nazi regime, as such, does not of itself constitute the crime against peace. There must be participation after concrete plans for the waging of aggressive war have been arrived at and there must be in the mind of the individual sought to be charged a positive knowledge of the intention to resort to aggressive war. It is not necessary, as contended by the defense, that there be knowledge of specific plans for aggressive war against specific countries as of a certain time. Nor is it necessary that an exact knowledge of the order of the victims of aggressive war be shown. It will suffice if the ultimate aim to resort to aggressive war is known or believed at the time of substantial participation but such knowledge or state of mind must be established by convincing proof beyond reasonable doubt. Furthermore, in this stage of the development of international law denouncing the crime against peace it is preferable for a Tribunal to err on the side of liberality in the application of the rule of reasonable doubt.

Analyzing the contention advanced by the prosecution, I conclude that, however desirable such a legal conception of the requisite of knowledge might be as a matter of policy in international law, the proposition advanced in this definition of state of mind is too broad and goes beyond the provisions of Control Council Law No. 10. The relationship between acts of aggression, backed by threats of force, and the evil of aggressive war is sufficiently immediate to warrant serious consideration of the standard proposed in the further delineation of legal aspects of the crimes against peace. I cannot conclude, however, that because the individual defendants knew that the German policy of territorial aggrandizement, backed by military power, was being carried out in the absorption of Austria and Czechoslovakia that such knowledge constituted the state of mind or the criminal intent required for the commission of the crime against peace. I

agree with the prosecution's contention that the evidence in this case does establish that most, if not all, of the defendants knew or believed that military power would be used as a threat to force territorial concessions from Czechoslovakia, Poland, and other nations in favor of Germany. The evidence does not, however, establish beyond reasonable doubt that the defendants actually knew or believed that force to the point of aggressive war would actually be resorted to if necessary. The argument of the prosecution, carried to its logical conclusion, would mean that, in the cases of Austria and Czechoslovakia, these defendants might have been held guilty of the crime against peace even though actual aggressive war did not result from these aggressive acts. It is true that in the case of the defendant Raeder the International Military Tribunal dismissed the contention that Raeder did not have the requisite guilty knowledge because he contended that he believed Hitler would obtain a political solution to Germany's problems without the necessity for actual warfare because of the overwhelming might of Germany. But it must be borne in mind that Raeder, through attendance at a conference at which Hitler specifically announced his plans to wage aggressive war if necessary, had actual knowledge that the then head of the state had decided to embark upon a program of aggression and to pursue it even to the point of engaging in actual warfare to achieve the objective of territorial aggrandizement. In the case of the Farben defendants, while they knew that acts of aggression had been and were being carried out in connection with Austria and Czechoslovakia, and, in fact, the defendants participated in acquiring industries resulting from the acts of aggression mentioned, it cannot be concluded that such action necessarily amounts to the requisite knowledge or state of mind constituting plans to wage aggressive war. Activities of the defendants in this case, conceding that they were of material aid in bringing about territorial aggrandizement by use of threats of force, do not under the circumstances of this case constitute the crime against peace. It is incumbent upon the prosecution to go further with its evidence and to prove by specific evidence that the individual defendant sought to be charged was aware of a plan to resort to aggressive war if necessary to achieve the objective of territorial aggrandizement. Similar conclusions must be advanced with reference to the invasion of Poland, the aggressive act immediately resulting in World War II. Here, the evidence is not conclusive to the effect that the defendants actually knew of a decision to absorb Poland by force, which would be actively pushed to the point of war, if necessary, to achieve the objective of territorial aggrandizement. As the Polish crisis developed, the defendants certainly knew or were charged with knowledge of the fact that methods of aggression were being employed. There were threats of force to their knowledge. But there existed the possibility that with stiffening

resistance war might not result because the aggressor would not continue the policy to the point of open warfare. The evidence does not otherwise conclusively connect the individual defendants with the planning and preparation of any of the other aggressive wars waged by Germany with specific knowledge of the decision to initiate such aggressive wars.

Accepting as sound that portion of the IMT judgment which specifically holds that rearmament of itself is not a crime unless carried out as part of a plan to wage aggressive war, I aslo conclude that the action of the defendants constitutes participation in armament under circumstances not proved beyond reasonable doubt to have been with actual knowledge of Hitler's ultimate aim to wage aggressive war. Despite strong inferences to be drawn from much of the evidence as applied to some of the individual defendants, as to intent and knowledge, the extraordinary standard of proof which probably should be exacted in this stage of the development of the crime against peace is not clearly met and, for this reason, I concur in the acquittals under count one to charges of planning and preparation of aggressive war. Criminal connection with the decisions of the Nazi regime to initiate aggressive wars has likewise not been established.

There remains only the question of whether any defendant is to be held guilty of "waging" aggressive war. This is the portion of the prosecution's case which is the most difficult for the defendants to meet. From the time of the invasion of Poland the defendants knew or were chargeable with knowledge that the wars being waged by Germany were aggressive wars and the substantial contribution of the defendants to the conduct of those wars cannot be successfully denied. The prosecution, not without considerable logic and weight of argument, relies upon the activities of the defendants in connection with both spoliation and slave labor as constituting an integral part of the waging of aggressive war. In the latter connection there is some analogy between the activities of certain of the defendants in the field of spoliation and slave labor and those of Hermann Roechling, convicted under Control Council Law No. 10, by an International Military Tribunal in the French Zone of Occupation under charges of "waging" aggressive war. (Judgment rendered 30 June 1948 by the General Tribunal of the Military Government of the French Zone of Occupation in Germany in the case against Hermann Roechling et al.)* In that case Hermann Roechling was held not guilty of the charges of preparation of wars of aggression. The evidence against him established that he had attended several secret conferences of Goering in 1936 and 1937 and had pushed the utilization of low grade ore which did not pay commercially in the important steel industries under his direction. The Tribunal held that the act of preparing armament

*See volume XIV, this series, Appendix B, "The Roechling Case," pages 1061–1096.

did not necessarily imply, as the IMT held, that the purpose was to launch a war of aggression. It concluded on the facts that it had not been shown by the proof that Hermann Roechling was ever informed that wars of aggression would be undertaken, and that there was no showing that he had ever participated in the preparation of wars of aggression. However, the Tribunal held that he was guilty of waging wars of aggression for the following reasons:

> "After the invasion of Poland in 1939, of Denmark, Norway, Belgium, Luxembourg and the Netherlands in 1940, of Jugoslavia, Greece and Russia in 1941, none could any longer have any doubts concerning the purpose of the wars unleashed by the Government of the Reich, that the aggressive character of these wars has, moreover, been recognized by the aforesaid judgment of the International Military Tribunal."

The Tribunal held that Roechling had stepped out of his role of industrialist, demanded and accepted high administrative positions in order to develop the German ferrous production. The facts then recited are that he became Plenipotentiary General for the steel plants of the Departments of the Moselle and Meurthe-et-Moselle Sud; that he seized industries having steel production of nine million tons and employing more than two hundred thousand people; that after allocation by Goering of the seized plants he endeavored to increase production of these plants for the war effort of the Reich; he made proposals to Reich authorities concerning increased production of iron; that he was later placed in charge of the Reich Association Iron, charged with intensifying the German ferrous production and exploiting such production in the occupied countries; that exercising his powers he demanded of industry in occupied countries that they work in order to increase the armament of a power at war with their own country. He was held guilty of crimes against peace because by his actions he "contributed in a large measure to the continuation of aggressive wars during 3 years." The Roechling decision is, therefore, an authority for the view that participation in the exploitation of occupied countries in the interest of the German war effort under the circumstances referred to does constitute a crime against peace. However, I conclude that facts in evidence against the present defendants present a difference of degree sufficient to distinguish the cases. I do not feel warranted in expressing dissent as to the acquittal of the present defendants of the charge of waging of aggressive war based solely upon the Roechling case.

It is impossible, in my view, to harmonize those aspects of the judgment of the International Military Tribunal dealing with the waging of aggressive war so as to draw therefrom a consistent principle governing the waging of aggressive war as used in the Charter

and the Control Council Law. In dealing with the case of Doenitz, the IMT, after concluding that there was no evidence establishing that Doenitz was informed of decisions to wage aggressive war, nevertheless, held Doenitz guilty of waging aggressive war by virtue of participation in submarine warfare immediately upon the outbreak of war. In contrast, Speer's activities as head of the armament industry after aggressive war was well under way did not result in conviction. Said the IMT as to Speer:

> "His activities in charge of German armament production were in aid of the war effort in the same way that other productive enterprises aid in the waging of war; but the Tribunal is not prepared to find that such activities involve engaging in the common plan to wage aggressive war as charged in count one or waging aggressive war as charged in count two."

It may seem illogical that a high naval officer, performing the duties of the branch of the armed service which he heads, should be found guilty of the waging of aggressive war and the Minister of Munitions and Armament held not responsible for activities which in most cases are even more vital to the waging of war than the tactical decisions required of the military commander. The compulsion of military discipline in a nation at war was certainly more real and less the object of choice in the case of the naval officer than in the case of the civilian Armament Minister. But in default of sufficient evidence to warrant conviction under the charge of planning and preparation of aggressive war, it would not be logical in this case to convict any or all of the Farben defendants of the waging of aggressive war in the face of the positive pronouncement by the International Military Tribunal that war production activities of the character headed by Speer do not constitute the "waging" of aggressive war. Nor is there a valid answer in extent and the indispensability of the Farben contribution to the German war effort. Speer's acquittal when considered in the light of Schacht's acquittal poses insuperable obstacles to the conviction of these defendants. The factual differences which may be drawn based upon Farben's substantial and sustained contribution to the German war effort do not, in my opinion, lead to a difference in result unless this Tribunal refuses to follow the implications of Speer's acquittal. Despite the cogent arguments based upon other portions of the IMT judgment, I reach the conclusion that the precedent in the case of Speer should be followed here and that the defendants should not be convicted solely of the crime of waging of aggressive war.

For the reasons stated I concur in the acquittal of all defendants under counts one and five of the indictment.

[Signed] PAUL M. HEBERT
Judge, Military Tribunal VI

XV. DISSENTING OPINION OF JUDGE HEBERT ON THE CHARGES OF SLAVE LABOR

DISSENTING OPINION ON COUNT THREE OF THE INDICTMENT*

Filed
28 December 1948
Secretary General
to Military Tribunals
Nuernberg, Germany

This dissenting opinion is filed pursuant to reservations made at the time of the rendition of the final judgment by Military Tribunal VI in this case. Under count three of the indictment, all defendants are charged with having committed war crimes and crimes against humanity as defined in Article II of Control Council Law No. 10. It is alleged in the indictment that the defendants participated in the enslavement and deportation to slave labor on a gigantic scale of members of the civilian population of countries and territories under the belligerent occupation of, or otherwise controlled by, Germany; that the defendants participated in the enslavement of concentration-camp inmates, including German nationals; that the defendants participated in the use of prisoners of war in war operations and work having a direct relation to war operations, including the manufacture and transportation of war material and equipment; and, that the defendants participated in the mistreatment, terrorization, torture, and murder of enslaved persons. It is alleged that all defendants committed war crimes and crimes against humanity as enumerated, in that they were principals in, accessories to, ordered, abetted, took a consenting part in, were connected with plans and enterprises involving, and were members of organizations or groups including Farben, which were connected with the commission of said crimes. There are general allegations that the defendants acted through the corporate instrumentality, I. G. Farbenindustrie, A. G. in the commission of said crimes.

The Tribunal convicted the defendants Krauch, ter Meer, Ambros, Buetefisch, and Duerrfeld under this count principally for initiative shown in the procurement of slave labor for the construction of Farben's buna plant at Auschwitz. The eighteen remaining defendants were all acquitted of the charges under count three. Included in the group of acquitted defendants were fifteen members of the Vorstand, or principal governing corporate board of Farben. The acquitted Vorstand members included: Schmitz, von Schnitzler,

*Pursuant to reservations made by Judge Hebert at the time of the Tribunal's decision and judgment (section XIII, above), this dissenting opinion was filed in writing with the Secretary General of the Tribunals on 28 December 1948, nearly 5 months after the judgment of the Tribunal.

Buergin, Haefliger, Ilgner, Jaehne, Oster, Gajewski, Hoerlein, von Knieriem, Schneider, Kuehne, Lautenschlaeger, Mann, and Wurster. The majority opinion concedes, and, in fact, it is not seriously controverted in this case, that slave labor, i. e., compulsory foreign workers, concentration-camp inmates and prisoners of war, were employed and utilized on a wide scale throughout numerous plants of the vast Farben organization and that such utilization was known by the defendants. The majority reached the conclusion that, except in the case of Auschwitz where initiative constituting willing cooperation by Farben with the slave-labor program was held to have been proved, no criminal responsibility resulted for participation in the utilization of slave labor. Basically, the majority opinion under count three concluded that, in order to meet fixed production quotas set by the Reich, "Farben yielded to the pressure of the Reich labor office and utilized involuntary foreign workers in many of its plants." The majority assert that "The utilization of forced labor, unless done under such circumstances as to relieve the employer of responsibility, constitutes a violation of that part of Article II of Control Council Law No. 10, which recognizes as war crimes and crimes against humanity the enslavement, deportation, or imprisonment of the civilian population of other countries." But the majority fully accepts the defense contention that the utilization of slave labor by Farben (except in the case of Auschwitz) was the result of the compulsory production quotas and other obligatory governmental decrees and regulations directing the use of slave labor. The asserted defense of "necessity" is held to have been sustained because of the reign of terror within the Reich and because of possible dire consequences to the defendants had they pursued any other policy than that of compliance with the slave-labor system of the Third Reich.

I concur in the conviction of the five defendants found guilty by the Tribunal, but I am of the opinion that the criminal responsibility goes much further than merely embracing the five defendants most immediately connected with the construction of Farben's Auschwitz plant. In my view all the members of the Farben Vorstand should be held guilty under count three of the indictment, not only for the participation by Farben in the crime of enslavement at Auschwitz, but also for Farben's widespread participation and willing cooperation with the slave-labor system in the other Farben plants, where utilization of forced labor in violation of the well-settled principles of international law recognized in Control Council Law No. 10 has been so conclusively shown. I disagree with the conclusion that the defense of necessity is applicable to the facts proved in this case.

While it is true that there were numerous governmental decrees under which complete control of the manpower supply was assumed by the Reich Government, existence of such controls does not, in my

opinion, establish the defense of necessity even under the conditions which existed in Nazi Germany. Recognition of such a defense is, in my view, utterly inconsistent with the provisions of Control Council Law No. 10 which indicate quite clearly that governmental compulsion is merely a matter to be considered in mitigation and does not establish a defense to the fact of guilt. Thus Section 4 (*b*) of Article II of Control Council Law No. 10 provides:

> "The fact that any person acted pursuant to the order of his government or of a superior does not free him from responsibility for a crime, but may be considered in mitigation."

Under the evidence it is clear that the defendants in utilizing slave labor which is conceded to be a war crime (in the case of non-German nationals) and a crime against humanity, did not, as they assert, in fact, act exclusively because of the compulsion and coercion of the existing governmental regulations and policies. The record does not establish by any substantial credible proof that any of the defendants were actually opposed to the governmental solution of the manpower problems reflected in these regulations. On the contrary, the record shows that Farben willingly cooperated and gladly utilized each new source of manpower as it developed. Disregard of basic human rights did not deter these defendants. At times they expressed concern over the inefficiency of compulsory labor but they willingly co-operated in the tyrannical system. Far from establishing that the defendants acted under "necessity" or "coercion" in this regard, I conclude from the record that Farben accepted and frequently sought the forced workers, including compulsory foreign workers, concentration-camp inmates and prisoners of war for armament work because there was no other solution to the manpower needs. Farben and these defendants wanted to meet production quotas in aid of the German war effort. In fact, the production quotas of Farben were largely fixed by Farben itself because Farben was completely integrated with the entire German program of war production. Farben's planners, led by defendant Krauch, geared Farben's potentialities to actual war needs. It is totally irrelevant that the defendants might have preferred German workers. That they would have preferred not to commit a crime is no defense to its commission. The important fact is that Farben's Vorstand willingly cooperated in utilizing forced labor. They were not forced to do so. I cannot agree that there was an absence of a moral choice. In utilizing slave labor within Farben the will of the actors coincided with the will of those controlling the government and who had directed or ordered the doing of criminal acts. Under these circumstances the defense of necessity is certainly not admissible.

I am convinced that persons in the positions of power and influence of these defendants might in numberless ways have avoided the widespread participation in the slave-labor utilization that was prevalent

throughout the Farben organization. I cannot agree with the assertion that these defendants had no other choice than to comply with the mandates of the Hitler government. Had there been any real will to resist such comprehensive participation in the crime of enslavement, the defendants, possessing superior knowledge in their respective complicated technical fields, could no doubt have avoided such participation through a variety of devices of such imperceptible nature as to avoid the drastic results now portrayed in the posing of this defense. In reality, the defense is an after-thought, the validity of which is belied by Farben's entire course of action. To assert that Hitler would have "welcomed the opportunity to make an example of a Farben leader" is, in my opinion, pure speculation and does not establish the defense of necessity on the facts here involved.

The defense of necessity as accepted by the majority would, in my opinion, lead logically to the conclusion that Hitler alone was responsible for the major war crimes and crimes against humanity committed during the Nazi regime. If the defense of superior orders or coercion, as directed in the Charter of the IMT, was not recognized in the case of the principal defendants tried by that Tribunal as applied to defendants who were subject to strict military discipline and subject to the most severe penalties for failure to carry out the criminal plans decreed and evolved by Hitler, it becomes difficult to ascertain how any such defense can be admitted in the case of the present defendants. The IMT judgment embraces no doctrinal defense of necessity by governmental coercion. That decision, it seems to me, constitutes complete negation of any such theory. Nor do I consider the precedent established by Military Tribunal No. IV in the case of the United States. *v.* Flick *et al.*, (Case 5) persuasive in its recognition of the defense of "necessity." * Such a doctrine constitutes, in my opinion, unbridled license for the commission of war crimes and crimes against humanity on the broadest possible scale through the simple expediency of the issuance of compulsory governmental regulations combined with the terrorism of the totalitarian or police state. The essence of a truly effective system of international penal law lies in its applicability to the acts of individuals who are not privileged to disregard the overriding commands of international law when they come in conflict with the contrary policies or directives of a state not desiring to abide by the principles of international law. For these reasons, I have no hesitancy in rejecting the conclusions reached in the Flick case on this asserted defense and cannot agree with the majority in its application to the facts here proven.

In effect the majority opinion holds that, regardless of the extent of Farben's participation in the slave-labor program, unless a particular defendant can be shown to have (*a*) exercised unusual initia-

*Volume VI, this series, pages 1187–1223.

tive to bring about participation in the utilization of slave labor, no crime has been committed; or, (*b*) unless a defendant in the course of the administration of his particular role in the slave-labor program shows an initiative going beyond the requirements of the cruel regulations, no crime has been committed. Under this construction Farben's complete integration into production planning, which virtually meant that it set its own production quotas, is not considered as "exercising initiative." Even the Flick case did not go so far. Action by a defendant in requesting the allocation of labor, knowing that compulsory foreign workers would be assigned, is considered by the majority to be done pursuant to and under "necessity" and does not result in criminal liability. Under the majority view a defendant who is a plant manager may willingly cooperate in the execution of cruel and inhumane regulations, such, for example, as putting into effect the required discriminations as to food and clothing in the case of the eastern workers, or putting the miserable workers beyond barbed wire fences; this was no more than complying with the requirements of the governmental regulations and, according to the majority opinion, does not result in criminal responsibility. Similarly, where the evidence establishes that a defendant was responsible for the erection of a disciplinary camp at a Farben plant, or participated in the initiation of disciplinary measures against unruly compulsory workers—there is no criminal responsibility, the action is protected by the defense of "necessity" as the defendant did no more than that which the cruel and inhumane regulations required. Slave laborers might be reported to the Gestapo for punishment as this was required by the regulations, and the defendant is not considered responsible. It cannot be successfully contended that this was not done in the Farben plants employing slave labor. I cannot concur in such results. The coercion exercised by a totalitarian police state in the form of commands to its citizens should not be permitted to operate as a complete negation of the opposing command of international penal law which has erected standards for the protection of basic human rights. Accessories and those taking a consenting part in the crime of enslavement should not be afforded such easy means of purging themselves of the fact of guilt. On the facts proven in this record, I am convinced that the defendants who were members of the Vorstand were accessories to and took a consenting part in the commission of war crimes and crimes against humanity as alleged in count three of the indictment.

Conceding *arguendo* the admissibility of the defense of necessity, as a matter of law, it is clearly not here admissible to result in acquittal of all defendants in the light of the finding of the majority as to Farben's initiative at Auschwitz. All defendants who were members of the Vorstand should share in the responsibility for the

exercise of such initiative. The majority concedes such initiative to have existed at Auschwitz, as it was planned from the inception of the Farben Auschwitz buna plant to use concentration-camp labor on the project. I consider it unreasonable to conclude that these plans were not known by all Vorstand members. The majority opinion recognizes that Duerrfeld, Ambros, Krauch, ter Meer, and Buetefisch must bear responsibility for taking the initiative in the unlawful employment of forced workers at Auschwitz, and that they, to some extent at least, must share the responsibility for the mistreatment of the workers with the SS and the construction contractors. The criminal responsibility so found should embrace all Vorstand members for the occurrences at Auschwitz. With regard to the numerous other plants in which slave labor was employed by Farben, no substantial factual distinction exists from that prevailing at Auschwitz, in the matter of Farben's cooperative attitude.

As to the employment of forced workers at Auschwitz after the Sauckel program of forced labor became effective, the majority opinion states:

> "The defendants contend that, the recruitment of labor being under direct control of the Reich, they did not know the conditions under which the recruitment took place, and since the foreign workers at first were procured on a voluntary basis, the defendants were unaware later that the method had been changed and that many of the subsequent workers had been procured through a system of forced-labor recruitment. This contention cannot be successfully maintained. The labor for Auschwitz was procured through the Reich Labor Office at Farben's request. Forced labor was used for a period of approximately 3 years, from 1942 until the end of the war. It is clear that Farben did not prefer either the employment of concentration-camp workers or those foreign nationals who had been compelled against their will to enter German labor service. On the other hand, it is equally evident that Farben accepted the situation that was presented to it through the Labor Office of the Reich and that when free workers, either German or foreigners, were unobtainable, they sought the employment and utilization of people who came to them through the services of the concentration camp Auschwitz and Sauckel's forced-labor program."

The foregoing analysis of the responsibility for utilization of forced labor at Auschwitz is equally applicable to slave-labor utilization at the other Farben plants where the situation was identical in fact. Willing cooperation with the slave-labor utilization of the Third Reich was a matter of corporate policy that permeated the whole Farben organization. The Vorstand was responsible for the policy. For this reason, criminal responsibility goes beyond the actual immediate

participants at Auschwitz. It includes other Farben Vorstand plant managers and embraces all who knowingly participated in the shaping of the corporate policy. I find on the evidence that all Vorstand members must share the responsibility for the approval of the policy despite the fact that there were varying degrees of immediate connection among various defendants. The "freedom and opportunity for initiative" found to exist at Auschwitz was, in my opinion, equally present at the other plants. I find it hard to understand why the majority can conclude that construction and production at Auschwitz was not under Reich compulsion when the Reich wanted the plant for war production and directed its erection, and production involving utilization of slave labor in other plants was "under compulsion." The answer, it seems to me, lies in the fact that the freedom was as real in all the Farben plants and the similar attitude of willing cooperation was present—differing at Auschwitz only in the matter of degree. The majority opinion concludes that the defendant Krauch was a willing participant in the crime of enslavement. With that conclusion I agree, but the mere fact that Krauch was a governmental official operating at a high policy level is insufficient, in my opinion, to distinguish his willing participation in the crime of enslavement from other degrees of willing participation exhibited by the other defendants according to their respective roles within Farben.

Criminal liability is not to be imputed to the officer of a corporation merely by virtue of his occupancy of his office. Generally a corporate officer is not criminally liable for the corporate acts performed by other agents or officers of a corporation. But the action of an officer of a corporation may result in criminal liability where, by virtue of the officer's individual act, he may be said to have authorized, ordered, abetted, or otherwise has actually participated in a course of action which is criminal in character. The criminal intent required as a prerequisite to guilt under the charges of war crimes, and crimes against humanity alleged in count three of the instant indictment is present if the corporate officer knowingly authorizes the corporate participation in action of a criminal character. On this score the evidence is more than sufficient. From the time of the participation by Farben in the Auschwitz project, the corporation was actively engaged in continuing criminal offenses which constituted participation in war crimes and crimes against humanity on a broad scale and under circumstances such as to make it impossible for the corporate officers not to know the character of the activities being carried on by Farben at Auschwitz. From the outset of the project it was known that slave labor, including the use of concentration-camp inmates, would be a principal source of the labor supply for the project. Utilization of such labor was approved as a matter of corporate policy. To permit the corporate instrumentality to be used as a cloak to

insulate the principle corporate officers who approved and authorized this course of action from any criminal responsibility therefor is a leniency in the application of principles of criminal responsibility which, in my opinion, is without any sound precedent under the most elementary concepts of criminal law. It represents a doctrine which should not be permitted to gain a foothold in the application of criminal sanctions to the acts of individuals who are charged with such serious infractions of international penal law. The law does not require the degree of personal participations in the execution of crimes against international law that I understand the majority opinion to require. It matters not that, under the division of labor employed by I. G. Farben, supervision of the Auschwitz project fell in the sphere of immediate activity of certain of the defendants; that is, ter Meer, Ambros, Buetefisch, and Duerrfeld. In my view, the Auschwitz project would not have been carried out had it not have been authorized and approved by the other defendants, who participated in the corporate approval of the project knowing that concentration-camp inmates and other slave labor would be employed in the construction and other work.

We do not have in this case a situation of complete delegation of authority to subordinates without knowledge of the criminal character of the action to be undertaken by those granting the authority for corporate action. We do not here have the situation of subordinates committing offenses against criminal law on their own initiative without the knowledge of the corporate officers. Decisions in Anglo-American law which decline to impose a vacarious criminal liability in such situations are not, therefore, strictly in point. There is, however, respectable authority for the imposition of criminal responsibility where the defendant was in a position to know and should have known of the illegal action carried out by a corporation through an agent. An analogy in Anglo-American law may be found in decisions dealing with the employment of child labor. For example, in the case of Overland Cotton Mill Co. *et al v.* People, 32 Colorado 263, 75 Pac. 924 (1904) the conviction of an assistant plant superintendent for violation of the child-labor laws was sustained by the court despite the fact that he was not shown to have personally participated in the hiring of the minor. In discussing the liability of this officer, the court said:

> "* * * An agent of a corporation is presumed to have that knowledge of its affairs particularly under his control and management which, by the exercise of due diligence, he would have ascertained * * * He [the assistant superintendent] was engaged at the mill, and, in the performance of his duties, had the authority to hire and discharge employees. It thus appears from the testimony that by reason of his relationship to the company, and the

performance of his duties he either knew, or, by the exercise of due diligence upon his part, should have known, that a minor under the prohibited age was in the employ of the company. For this reason he must be held as having violated the statute, for it was within his power, by virtue of the relationship he bore to the company, to have prevented the employment. An officer of a corporation, through whose act the corporation commits an offense against the laws of the state, is himself also guilty of the same offense."

In this case, offenses against international law (to which the defense of necessity is not applicable) were committed by Farben, the corporate instrumentality through which the individual defendants acted in consummating such criminal acts. The defendants who were members of the Vorstand of Farben and who were plant managers certainly knew of and were active participants in the slave-labor utilization. At the very least, they took a consenting part in war crimes and crimes against humanity as defined in Control Council Law No. 10. These plant managers not only knew of the action but they participated in executing and formulating the policies within Farben under which such action was taken. There is no sound reason, under the evidence, to render a judgment of exculpation in the cases of the defendants who were plant managers at Farben plants employing slave labor. The other defendants, who were not plant managers but were members of the Vorstand, were likewise apprised of and took a consenting part in approving and directing the policies under which Farben participated in the slave-labor program on such a broad scale. They, too, should be held criminally liable. Essentially, we have action by a corporate board, participated in by its members, authorizing the violation of international law by other subordinate agents of the corporation.

Under the evidence presented there can be no doubt that the Farben Vorstand was responsible for general employment policies as well as the welfare of its workers. This responsibility was recognized in the law regulating national labor and by the action of the Vorstand of Farben taken under the law to discharge its responsibilities in this regard. The appointment of the defendant Schneider as the main plant leader of Farben was pursuant to this responsibility of the Vorstand and was in conformity with the mentioned law. Schneider frequently reported to members of the Vorstand and its committees on matters of labor policy.

The evidence shows Farben's willing cooperation in the utilization of forced foreign workers, prisoners of war and concentration-camp inmates as a matter of conscious corporate policy. For example, in a report made by the defendant Schmitz, as chairman of the Vorstand,

to the Aufsichtsrat (supervisory board) on 11 July 1941 [*NI–6099, Pros. Ex. 1312*], Schmitz stated:

> "The factories have to make all efforts to get the necessary workers; by utilizing foreign workers and prisoners of war the demand could be generally met."

This report was after the 1939 German decree introducing labor in Poland. The evidence shows that Farben took the initiative to obtain Polish workers and that such workers were actually employed as early as 1940. In the light of the historical facts establishing the compulsory nature of the slave-labor program of Nazi Germany, it is impossible to avoid the conclusion that the Polish workers included large numbers of enslaved persons. It is further certain that of the voluntary foreign workers originally employed many were later prohibited from leaving their employment had they chosen to do so. This also constituted enslavement. The subsequent retention of such workers in a state of servitude constituted war crimes and crimes against humanity in violation of Control Council Law No. 10.

Farben's willing cooperation with the slave-labor program continued even after its inhumane character became more evident with the appointment of Sauckel as Plenipotentiary General for the Utilization [Allocation] of Labor. On 30 May 1942, the defendant Schmitz again reported to the Aufsichtsrat that the lack of workers had to be compensated by the employment of foreigners and prisoners of war. A credible witness, Struss, stated that practically everybody in Germany knew that Russian workers were forced to come to Germany after the battle of Kiev. The members of Farben's Vorstand, therefore, necessarily knew that such forced workers were being employed by Farben and they approved and cooperated in the execution of such a labor policy. It is highly unrealistic to say, as important as labor procurement was to the vital matter of German war production, that persons occupying the positions of influence and responsibility of a Vorstand member of Farben were not well informed concerning the policies of the compulsory-labor program in which Farben participated on such a large scale. It is not necessary for the evidence to establish that each defendant was informed of all of the details of each major instance of such employment and personally exercised initiative. There is an abundance of evidence from which knowledge of the widespread participation by Farben as a matter of official corporate policy, sanctioned and approved by the individual Vorstand members, is conclusively to be inferred. For example, the Vorstand and its subsidiary committees had to approve the allocation of funds for the housing of compulsory workers. This meant that members of the Vorstand had to know the extent of Farben's willing cooperation in participating in the slave-labor program and had to take an individual personal part in furthering the program.