TRIALS
OF
WAR CRIMINALS
BEFORE THE
NUERNBERG MILITARY TRIBUNALS

VOLUME IX

"THE KRUPP CASE"

Germany (Territory under Allied occupation, 1945– U.S. Zone) Military Tribunals

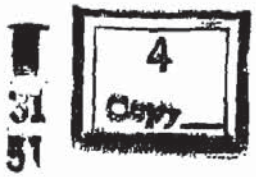
TRIALS
OF
WAR CRIMINALS
BEFORE THE
NUERNBERG MILITARY TRIBUNALS
UNDER
CONTROL COUNCIL LAW No. 10

NUERNBERG
OCTOBER 1946–APRIL 1949

VOLUME IX

UNITED STATES
GOVERNMENT PRINTING OFFICE
WASHINGTON : 1950

For sale by the Superintendent of Documents, U. S. Government Printing Office
Washington 25, D. C.



"The Krupp Case"

Case 10

Military Tribunal III

THE UNITED STATES OF AMERICA

—against—

ALFRIED FELIX ALWYN KRUPP VON BOHLEN UND HALBACH, owner and directing head, EWALD OSKAR LUDWIG LOESER, EDUARD HOUDREMONT, ERICH MUELLER, FRIEDRICH WILHELM JANSSEN, KARL HEINRICH PFIRSCH, MAX OTTO IHN, KARL ADOLF FERDINAND EBERHARDT, HEINRICH LEO KORSCHAN, FRIEDRICH VON BUELOW, WERNER WILHELM HEINRICH LEHMANN, and HANS ALBERT GUSTAV KUPKE, officials of the Krupp firm and family enterprise, *Defendants*

TRIALS OF WAR CRIMINALS BEFORE NUERNBERG MILITARY TRIBUNALS

Case	*United States of America against*	*Popular name*	*Volume*
1	Karl Brandt, et al.	Medical Case	I and II
2	Erhard Milch	Milch Case	II
3	Josef Altstoetter, et al.	Justice Case	III
4	Oswald Pohl, et al.	Pohl Case	V
5	Friedrich Flick, et al.	Flick Case	VI
6	Carl Krauch, et al.	I. G. Farben Case	VII and VIII
7	Wilhelm List, et al.	Hostage Case	XI
8	Ulrich Greifelt, et al.	RuSHA Case	IV and V
9	Otto Ohlendorf, et al.	Einsatzgruppen Case	IV
10	Alfried Krupp, et al.	Krupp Case	IX
11	Ernst von Weizsaecker, et al.	Ministries Case	XII, XIII, and XIV
12	Wilhelm von Leeb, et al.	High Command Case	X and XI
	Procedure		XV

ARRANGEMENT BY SUBJECT UNITS FOR PUBLICATION*

Case	*United States of America against*	*Popular name*	*Volume*
		MEDICAL	
1	Karl Brandt, et al.	Medical Case	I and II
2	Erhard Milch	Milch Case	II
		LEGAL	
3	Josef Altstoetter, et al.	Justice Case	III
	Procedure		XV
		ETHNOLOGICAL (Nazi racial policy)	
9	Otto Ohlendorf, et al.	Einsatzgruppen Case	IV
8	Ulrich Greifelt, et al.	RuSHA Case	IV and V
4	Oswald Pohl, et al.	Pohl Case	V
		ECONOMIC	
5	Friedrich Flick, et al.	Flick Case	VI
6	Carl Krauch, et al.	I. G. Farben Case	VII and VIII
10	Alfried Krupp, et al.	Krupp Case	IX
		MILITARY	
7	Wilhelm List, et al.	Hostage Case	XI
12	Wilhelm von Leeb, et al.	High Command Case	X and XI
		POLITICAL and GOVERNMENT	
11	Ernst von Weizsaecker, et al.	Ministries Case	XII, XIII, and XIV

* Although the subject materials in many of the cases overlap, it was believed that this arrangement of the cases by volumes would be most helpful to the reader and the most feasible for publication purposes.

CONTENTS

"The Krupp Case"

(Introductory material and basic directives under which the trials were conducted are printed in Volume VI, "The Flick Case", which is the first volume in the economic unit.)

XI. JUDGMENT

A. Opinion and Judgment of Military Tribunal III*

The opinion and judgment of Military Tribunal III in the matter of the United States of America against Alfried Krupp, et al., defendants, sitting at Nuernberg, Germany, 31 July 1948, the Honorable Hu C. Anderson, presiding.

JUDGE DALY: This Tribunal was established by and under an order issued by command of the United States Military Commander and Military Governor of Germany (U.S.), and the undersigned were designated as the members thereof. As thus constituted the Tribunal entered upon and completed the trial of the case. The indictment was filed with the Secretary General of Military Tribunals on 16 August 1947 and the case was assigned to this Tribunal for trial. A copy of the indictment in the German language was served upon each defendant on 18 August 1947. The defendants were arraigned on 17 November 1947, each defendant entering a plea of "not guilty" to all charges preferred against him. Thirty-four German counsels selected by the twelve defendants were approved and have represented the respective defendants. One defendant was represented by an American attorney, selected by him, in addition to German counsel.

The presentation of evidence by the prosecution in support of the charges was commenced on 9 December 1947, and was followed by evidence offered by the defendants. The taking of evidence was concluded on 9 June 1948. The Tribunal has heard the oral testimony of 117 witnesses presented by the prosecution and the defendants and 134 witnesses have been examined before commissioners appointed under the authority of Ordinance No. 7, of Military Government for Germany (U.S.) establishing the procedure for these trials. One thousand four hundred and seventy-one documents offered by the prosecution have been admitted in evidence as exhibits. One hundred and forty-five documents offered by the prosecution have been marked for identification. Two thousand eight hundred and twenty-nine documents offered by the defendants have been admitted in evidence as exhibits and 318 documents offered by the defendants have been marked for

* The dissenting opinion of Presiding Judge Anderson to the sentence is reproduced below in section XII. The dissenting opinion of Judge Wilkins to the dismissal of certain of the charges of spoliation is reproduced below in Section XIII.

The judgment of Tribunal III is recorded in mimeographed transcript, 31 July 1948, pp. 13231–13402.

identification. No document marked for identification has been considered unless it was one the contents of which justified us in taking judicial notice thereof.

Ordinance No. 7, referred to above, provides that affidavits shall be deemed admissible. Exercising its right to construe this ordinance, this Tribunal announced at the beginning of the trial that it would not consider any affidavit unless the affiant was made available for cross-examination or unless the presentation of the affiant for cross-examination had been waived, and this ruling has been strictly adhered to.

The Tribunal ruled to the effect that the contents of affidavits made by defendants would only be considered as evidence against the respective affiants and not as against any other defendant unless such affiant or affiants took the witness stand and became subject to cross-examination by the other defendants or their counsel. None of the defendants took the stand to testify upon the issues in this case, and hence such affidavits have only been considered in accordance with the ruling made.

The trial was conducted in two languages with simultaneous interpretations of German into English and English into German throughout the proceedings.

Final arguments of counsel have been concluded and briefs have been filed. Each defendant was given an opportunity to make a statement to the Tribunal in accordance with the provisions of Article XI of Ordinance No. 7 of the Military Government for Germany (U.S.). Two of the defendants availed themselves of it, one in behalf of himself and the other in behalf of himself and the other ten defendants, and their statements were heard by the Tribunal. The briefs and final pleas of defense counsel consist of more than 1,500 pages, and counsel for the defendants consumed 5 days in final arguments. The briefs and arguments covered every conceivable question of law and fact connected with the case. The closing arguments were made on 30 June 1948, and the case was then taken under consideration.

The following named persons, twelve in number, are the defendants:

Alfried Felix Alwyn Krupp von Bohlen und Halbach
Ewald Oskar Ludwig Loeser
Eduard Houdremont
Erich Mueller
Friedrich Wilhelm Janssen
Karl Heinrich Pfirsch
Max Otto Ihn
Karl Adolf Ferdinand Eberhardt
Heinrich Leo Korschan

Friedrich von Buelow
Werner Wilhelm Heinrich Lehmann
Hans Albert Gustav Kupke

The indictment contains four counts, which for convenience may be generally described as follows:

(1) Planning, preparation, initiation, and waging aggressive war.

(2) Plunder and spoliation.

(3) Crimes involving prisoner of war and slave labor.

(4) Common plan or conspiracy to commit crimes against peace.

On 24 February 1948, the prosecution announced that it had completed the presentation of its evidence and rested its case-in-chief. Thereafter, during the session of 5 April 1948, the Tribunal, through the President said, in part, as follows:[1]

> "On March 12 last, the defendants filed a joint motion for an acquittal on the charges of crimes against the peace. We construe this to be a motion for a judgment of not guilty on counts one and four of the indictment on the ground that the evidence is insufficient as a matter of law to warrant a judgment against them on those counts.
>
> "After a careful consideration of this motion, the prosecution's reply thereto, and the briefs and the evidence, we have come to the conclusion that the competent and relevant evidence in the case fails to show beyond a reasonable doubt that any of the defendants is guilty of the offenses charged in counts one and four. The motion accordingly is granted and for the reasons stated the defendants are acquitted and adjudged not guilty on Counts one and four of the indictment."

Following this ruling the Tribunal filed an opinion stating the reasons for its conclusion.

In taking the foregoing action with respect to counts one and four, the Tribunal was guided by the rule as stated in one of the most authoritative American texts. This is as follows:[2]

> "The defense is not required to take up any burden until the prosecution has established every essential element of crime charged beyond a reasonable doubt. When the prosecution has finished its case, the defendant is entitled to an acquittal if the case of the prosecution is not made out beyond a reasonable doubt. When this is done, then, but not before, can the defendant be called upon for his defense."

---

[1] This opinion is reproduced above in section VI, together with the separate concurring opinions of Presiding Judge Anderson and Judge Wilkins on the dismissal of the charges of crimes against peace.

[2] Wharton's Criminal Evidence (Lawyer's Coop. Publishing Co., Rochester, N. Y., 1935), volume I, 11th edition, section 200, pp. 220–221.

Consequently in this judgment only those charges which are contained in counts two and three of the indictment remain for consideration.

Following the unconditional surrender of Germany, the supreme legislative authority in that country has been exercised by the Allied Control Council composed of the authorized representatives of the Four Powers: The United States of America, the United Kingdom of Great Britain and Northern Ireland, the French Republic, and the Union of Soviet Socialist Republics. On 20 December 1945, that body enacted Control Council Law No. 10. The preamble to Control Council Law No. 10 is as follows:

> "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, the Control Council enacts as follows:"

Article 1 reads, in part, as follows:

> "The Moscow Declaration of 30 October 1943 'Concerning Responsibility of Hitlerites for Committed Atrocities' and the London Agreement of 8 August 1945 'Concerning Prosecution and Punishment of Major War Criminals of the European Axis' are made integral parts of this law."

In Article III it is provided that—

> "Each occupying authority, within its zone of occupation, shall have the right to cause persons within such zone suspected of having committed a crime, including those charged with crime by one of the United Nations, to be arrested * * * shall have the right to cause all persons so arrested and charged * * * to be brought to trial before an appropriate tribunal. * * * The tribunal by which persons charged with offenses hereunder shall be tried and the rules and procedure thereof, shall be determined or designated by each zone commander for his respective zone."

Pursuant to the foregoing authority, Ordinance No. 7 was enacted by the Military Governor for the United States Zone of Occupation. Article I provides:

> "The purpose of this Ordinance is to provide for the establishment of military tribunals which shall have power to try and punish persons charged with offenses recognized as crimes in Article II of Control Council Law No. 10, including con-

spiracies to commit any such crimes. Nothing herein shall prejudice the jurisdiction or the powers of other courts established or which may be established for the trial of any such offenses."

Article II provides, in part, as follows:

"Pursuant to the powers of the Military Governor for the United States Zone of Occupation within Germany and further pursuant to the powers conferred upon the zone commander by Control Council Law No. 10 and Articles 10 and 11 of the Charter of the International Military Tribunal annexed to the London Agreement of 8 August 1945 certain tribunals to be known as 'Military Tribunals' shall be established hereunder."

The Tribunals authorized by Ordinance 7 are dependent upon the substantive jurisdictional provisions of Control Council Law No. 10 and administer international law as it finds expression in that enactment and the London Charter which is made an integral part thereof. They are not bound by the general statutes of the United States or by those parts of its Constitution which relate to the courts of the United States.

This Tribunal has recognized and does recognize as binding upon it certain safeguards for persons charged with crime. These were recognized by the International Military Tribunal (IMT). This is not so because of their inclusion in the Constitution and statutes of the United States, but because they are understood as principles of a fair trial. These include the presumption of innocence, the rule that conviction is dependent upon proof of the crime charged beyond a reasonable doubt and the right of the accused to be advised and defended by counsel.

The Tribunal has not given and does not give any *ex post facto* application to Control Council Law No. 10. It is administered as a statement of international law which previously was at least partly uncodified. This Tribunal adjudges no act criminal which was not criminal under international law as it existed when the act was committed.

The original of this opinion and the judgment will be filed in the Office of the Secretary General. If there is any variation from the original in the reading of this opinion or in the mimeographed copies, the original shall constitute the official record of the opinion and judgment.

In examining the evidence in this case and in reaching our conclusions stated herein we have done so realizing that there can be no conviction without proof of personal guilt.

Our conclusions are based, in the main, upon written documents. It appears from the evidence that a great volume of docu-

ments from the files of the Krupp firm were burned by order of the defendant von Buelow and other Krupp officials, shortly before the entry of the Allied troops into Essen. The significance of the burning of these documents is not to be overlooked.

The Krupp concern, as it is frequently referred to, originated with the business known as Fried. Krupp, founded in 1812. This was changed into a corporation (A.G.) in 1903. It was then known as Fried. Krupp A.G. and was a private, limited liability company. Bertha Krupp, the mother of the defendant Alfried Krupp, owned all but a very few shares of this company. The shares not owned by her were held by others for the purpose of complying with legal requirements, and were kept under careful control. In December 1943 Fried. Krupp A.G. was dissolved and in accordance with provisions of the "Lex Krupp," a special Hitler decree, the defendant Alfried Krupp became the proprietor. Since December 1943, the unincorporated, privately-owned concern, owned and controlled directly, and through subsidiary holding companies, mines, steel, and armament plants, two subsidiary operating companies, the Germania Shipyards at Kiel, and the Grusonwerk machinery factory at Magdeburg. Many mines, collieries, development, research, and other enterprises were conducted by and through many of the subsidiaries.

In the charter of the Fried. Krupp A.G. we find the following (*NI–2850, Pros. Ex. 29*) :*

"Article 1

"The corporation bears the name 'Fried. Krupp Aktiengesellschaft.' It is located in Essen on the Ruhr.

"The life of the corporation is not limited to a definite time.

"Article 2

"The purpose of the enterprise is:

"a. The management of the cast steel factory in Essen formerly belonging to the Fried. Krupp firm in Essen, proprietress, Fraeulein [Miss] Bertha Krupp, and its branch establishments and subsidiary works (steelworks, shipyards, machine factories, blast furnaces, coal and iron ore mines, etc.) ;

"b. The production of steel and iron and other metals, as well as all raw and auxiliary materials requisite thereto, processing of steel and iron and other metals for consumer goods, and intermediate products of all kinds, especially the production of railroad and ship construction materials, of war materials, ships, and machines, as well as the marketing of all these products;

* Reproduced above in section V B.

"c. The acquisition, erection, and operation of new plants and the conclusion of all kinds of transactions which further the purpose named under a and b;

"d. The operation of other enterprises and the undertaking of all kinds of business which are considered as being in the interest of the corporation.

"Article 3

"The corporation is authorized to found branch establishments and take part in other enterprises."

The Gusstahlfabrik at Essen was the most important enterprise in the higher concern. It operated open hearth and electric steel furnaces, armor plate mills, large forge and press shops, iron and steel foundries, plate and spring shops, and many machine shops. It produced semifinished and finished iron and steel products, armaments, including armor plate, guns, tank hulls, tank turrets, shells, and parts for fortifications. The Fried. Krupp Grusonwerk A.G. was located in the interior of Germany; made finished guns, tanks, and shells. The Germaniawerft, a shipyard located at Kiel Harbor, designed and built ships of many types including submarines. The stock of both the Grusonwerk and Germaniawerft was completely held by the Fried. Krupp A.G. and its successor Fried. Krupp, except for a few shares owned by Bertha Krupp.

In practice the control of the whole Krupp concern was vested in the Vorstand of Fried. Krupp, A.G. The Aufsichtsrat of Fried. Krupp, A.G. appears to have had the power to review the activities of the Vorstand. However, it met only once a year, and its functions were purely formal.

Gustav Krupp, because of his wife's ownership of practically all of the stock of Fried. Krupp, A.G., and his position as chairman of the Aufsichtsrat, had a very great influence over the company. On 8 March 1941, Gustav Krupp as chairman of the Aufsichtsrat of Fried. Krupp A.G. issued a directive. It referred to the Direktorium as consisting of Goerens, and the defendants Loeser and Krupp, and to six deputy members, including the defendants Pfirsch, Janssen, Houdremont, Korschan, Erich Mueller, and in addition one Fritz Mueller. It also stated that Goerens and the defendants Loeser and Krupp formed the select Vorstand. It stated that next to the chairman of the Aufsichtsrat (*NIK–10497, Pros. Ex. 38*), "the select Vorstand is in charge of the management of the Fried. Krupp Aktiengesellschaft as well as of the Krupp concern. Its decisions are binding for the other Direktorium members and the Vorstaende of the companies of the concern. It also handled the business distribution."

The directive also provided that the select Vorstand had the leadership of the plant, and that the decisions for the select Vorstand in technical affairs "are made by Mr. Goerens, in commercial and administrative affairs by Mr. Loeser, and in matters pertaining to mining and armament by Mr. A. von Bohlen und Halbach. These persons must keep in close contact with each other and must confer and agree especially on matters which their respective spheres of activities have in common or which are of general or special importance.

"If the necessary close cooperation is maintained the select Vorstand should succeed in coming to a general agreement. Should there be differences of opinion nevertheless, each member of the select Vorstand is entitled to call for the decision of the chairman of the Aufsichtsrat.

"According to the work distribution carried out by the select Vorstand the following Dezernenten are responsible for the spheres of activity assigned to them: the deputy members of the Direktorium and, in as far as they are immediately subordinated to the Direktorium, the directors, department and workshop directors of the Fried. Krupp Aktiengesellschaft as well as the directors of the plants of the concern.

"In this sense the plants which have been conducted in the form of an independent body corporate as well as those which are merely considered departments of the Fried. Krupp Aktiengesellschaft are considered plants of the concern. The select Vorstand decides which plants belong to these groups.

"The management of these plants which are conducted as mere departments of the Fried. Krupp sign for their spheres, as the following example shows: Friedrich-Alfred-Huette der Fried. Krupp A.G. Die Direktion (The Management).

"The Dezernenten must manage their spheres of work in such a way as to take full responsibility for the results achieved by their departments. As heads of the spheres of activity assigned to them they must always bear in mind, that they are not conducting an individual business or plant, but part of a whole on the rise and fall of which also their own work depends. For this reason they must observe a collegiate and mutual basis of cooperation and information with these plants and departments with whom they share common interests in their respective spheres of activity. They must inform the select Vorstand briefly and comprehensively about the progress of work in their field, about new plans and important decisions before they are made final.

"Through the business distribution the select Vorstand appoints the Dezernenten who apart from their immediate sphere

of activities will assist the select Vorstand in its capacity as management of the concern. These Dezernenten must keep in contact with the directors of the concern plants and work together with them on a collegiate basis inasmuch as the unification of the concern requires. The directors of the concern plants are under the same obligation. In the case of differences of opinion between the directors of the concern plants and the Dezernenten, these must jointly be submitted to the select Vorstand for decision.

"Legal advisers to the firm and to the concern are at the present moment the gentlemen Ballas and Joeden. They have been entrusted, in collegiate collaboration with the Dezernenten * * *, to give legal advice.

"In order to make legal counsel effective the Dezernenten are not only bound to submit to the legal advisers all legal questions which have arisen, contracts to be drawn up etc., in good time, but also to keep in touch with the legal advisers to keep the latter informed about the various spheres of activities.

"Whatever has been said of the legal department under IV applies to the patent department accordingly."

The law on joint stock corporations and Joint Stock Corporations En Commandite, known as the Joint Stock Law became effective in Germany on 30 January 1937. A commentary on this law was written by Dr. Franz Schlegelberger, Staatssekretaer; Leo Quassowski, Ministerialdirektor; Gustav Herbig, Amtsgerichtsrat; Ernst Gessler, Landgerichtsrat; and Wolfgang Hofermehl, Landgerichtsrat. They were all in the Reich Ministry of Justice.

The Tribunal has taken judicial notice of this commentary. In it, it is said that the "Vorstand, with care of an honest and conscientious business manager * * * is to further the corporation to the best of his ability and to attend to the protection of its interests.

"If the Vorstand consists of one person, he alone is the leader of the enterprise, if the Vorstand consists of several persons, then, in the case of full representation (Gesamtvertretung) the several members together, in the case of single representation, every individual member is to be regarded as leader of the enterprise.

"Beyond this the Vorstand has * * * generally the duty, to use its influence to secure * * * a just pay policy of the corporation and to create healthy working conditions."

The words "Vorstand" and "Direktorium" were used interchangeably in documents in evidence. Both terms refer to the small group of men in the Krupp concern in whom management was centralized. "Direktorium" is the name given to that body after the reorganization in December 1943. There was, in fact, no difference in responsibility and activities within the concern.

In December 1943, pursuant to the provisions of the "Lex Krupp" as stated above, the Fried. Krupp Aktiengesellschaft was converted into the individually owned firm of Fried. Krupp with headquarters in Essen. On the same date 15 December 1943 simultaneously and on establishment of articles of incorporation of the Fried. Krupp, the firm was vested in the sole ownership of the defendant Alfried Krupp von Bohlen und Halbach. Upon registration in the commercial recording office the family enterprise had the name Fried. Krupp, and the branch enterprise Fried. Krupp, Aktiengesellschaft, Friedrich-Alfred-Huette and Krupp-Stahlbau, Fried. Krupp, Aktiengesellschaft thereafter had the trade names of Fried. Krupp, Friedrich-Alfred-Huette and Fried. Krupp, Stahlbau. Thereafter, the defendant Krupp had the name of Alfried Krupp von Bohlen und Halbach, whereas heretofore, his name had been Alfried von Bohlen und Halbach. After the conversion in December 1943 the owner of the family enterprise, Alfried Krupp von Bohlen und Halbach, had the full responsibility and direction of the entire enterprise. To assist him he appointed a business management with the name, "Das Direktorium." The regular and deputy members of the former Vorstand, with the exception of the defendant Loeser, who had resigned, continued to be the regular and deputy members of the Direktorium. Thereafter, they had authority to sign for the firm in place of the owner, and without mention of "Prokura."

The authority to sign for the individually owned firm by the others who were formerly the authorized agents of the Fried. Krupp Aktiengesellschaft was confirmed. No change was made with regard to the subsidiary companies which were continued to be managed as independent legal entities.

Control and management of the subsidiary companies was maintained in a number of ways. At least one member of the Vorstand was on the Aufsichtsrat of each of the principal subsidiary companies. The defendants Krupp, Loeser, and Janssen were members of the Aufsichtsrat at the Germaniawerft and the Grusonwerk, during various periods. The members of the Vorstand of the principal subsidiaries were required to and did submit regular reports of their activities to the parent company at Essen. Financial questions of consequence were decided by the Vorstand

of the parent company, including all capital investments in excess of 5,000 Reichsmarks.

The defendant Loeser entered the Krupp firm on 1 October 1937 as a member of the Vorstand. The defendant Krupp became a member of the Vorstand in 1938. The third member was Paul Goerens. In April 1943 the Vorstand was enlarged, and the defendants Erich Mueller, Houdremont, and Janssen also became members, as did one Fritz Mueller. Before that, these four had all been deputy directors, and then deputy Vorstand members. In 1937 the defendant Janssen became deputy director. In 1938 the defendants Eberhardt, Houdremont, Korschan, Ihn, and Erich Mueller became deputy directors. In 1941 Pfirsch who had been a deputy director since 1923 and the defendants Janssen, Korschan, and Mueller were made deputy Vorstand members. In 1943 the defendants Eberhardt and Ihn were made deputy Vorstand members. As previously stated, the regular and deputy members of the Vorstand with the exception of Loeser were made regular and deputy members of the Direktorium when Fried. Krupp A.G. became the private firm Fried. Krupp in 1943.

Until 1943 various phases of activities were divided among the three members of the Vorstand. One field was finance and administration which had been under the direction of the defendant Loeser, and was under the direction of the defendant Janssen after Loeser resigned. Production in the plants was under Goerens, and the design, sale, and development of war material had been under the direction of the defendant Alfried Krupp.

Although each member had his own sphere of activity, the management of the enterprise depended upon the coordinated efforts of the members. This has already been stated, as it was required by the charter of Fried. Krupp, A.G. The coordination of three departments was required on major enterprises.

When the Vorstand was enlarged in April 1943 Alfried Krupp became chairman of the Vorstand, and Goerens became deputy chairman. Houdremont was then put in charge of metallurgy and steel plants, and also in charge of machine plants after November 1943. From April 1943 on, Janssen was in charge of trade, finance, and administration. All of the foregoing were members of the enlarged Vorstand. These defendants continued in these activities when the Vorstand members became Direktorium members in December 1943 at the time Fried. Krupp A.G. became a private firm. The department directors were referred to as "Dezernenten." They had full responsibility for the results achieved by their departments, and apart from their immediate sphere of work, assisted the Vorstand in its capacity as manage-

ment of the concern. An order issued by the Vorstand, dated 31 January 1942, provided in part as follows:

> "The work of the Dezernenten with the plants outside the Gusstahlfabrik will generally be restricted to questions of a basic nature and decisions of considerable importance * * *. It is the plant manager's duty to get in touch with the respective Dezernenten when necessary, while on the other hand, the Dezernenten have to instruct the plant manager accordingly."

The defendants Houdremont, Mueller, Janssen, Pfirsch, Ihn, Eberhardt, and Korschan were all within this class at one time or another. The defendant von Buelow achieved a status which for all practicable purposes was the same as that of a department director.

Judge Wilkins will continue the reading.

COUNT TWO—PLUNDER AND SPOLIATION

JUDGE WILKINS: All of the defendants except the defendants Lehmann and Kupke are charged with war crimes and crimes against humanity under count two of the indictment. They are accused of having exploited, as principals or as accessories in consequence of a deliberate design and policy, territories occupied by German armed forces in a ruthless way, far beyond the needs of the army of occupation and in disregard of the needs of the local economy.

These acts are alleged to have taken place in France, Belgium, and the Netherlands, Austria, Yugoslavia, Greece, and the Soviet Union; to have been committed unlawfully, willfully, and knowingly; and to 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 pertinent portions of Articles 46–56 of the Hague Regulations* are—"Private property * * * must be respected" and "* * * cannot be confiscated" (Article 46); "Pillage is formally forbidden" (Article 47); an occupying army may make requisi-

* Annex to Hague Convention IV, 18 October 1907 (36 Stat. 2277; Treaty Series No. 539; Malloy Treaties, Vol. II, p. 2269), United States Army Technical Manual 27-251, Treaties Governing Land Warfare (United States Government Printing Office, Washington, 1944), Articles 46–56, pp. 31–35.

tions in kind only "for the needs of the army of occupation" and "They shall be in proportion to the resources of the country, and of such a nature as not to involve the inhabitants in the obligation of taking part in military operations against their own country" (Article 52). Article 53 provides in part—"An army of occupation can only take possession of cash, funds, and realizable securities which are strictly the property of the State, depots of arms, means of transport, stores and supplies, and, generally, all movable property belonging to the State which may be used for military operations." Article 55 reads: "The occupying State shall be regarded only as administrator and usufructuary of public buildings, real estate, forests, and agricultural estates belonging to the hostile State, and situated in the occupied country. It must safeguard the capital of these properties, and administer them in accordance with the rules of usufruct."

In its judgment, the International Military Tribunal made the following comment:[1]

> "These articles * * * make it clear that under the rules of war, the economy of an occupied country can only be required to bear the expense of the occupation, and these should not be greater than the economy of the country can reasonably be expected to bear."

We quote further from the IMT judgment:[2]

> "The evidence in this case has established, however, that the 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. There was in truth a systematic 'plunder of public or private property,' which was criminal under Article 6 (b) of the Charter.
>
> * * * * * * *
>
> "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 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

[1] Trial of the Major War Criminals, *op.cit.supra*, volume I, page 239.
[2] Ibid., p. 239.

closed altogether. Raw materials and the finished products alike were confiscated for the needs of the German industry."

In the general summary, the IMT found:[1]

> "* * * war crimes were committed on a vast scale, never before seen in the history of war. They were perpetrated in all the countries occupied by Germany * * *."

It has been urged by the defense that the provisions of the Hague Convention No. IV, and of the regulations annexed to it, do not apply in "total war."

This doctrine must be emphatically rejected. This Tribunal fully concurs with the judgment of the IMT that the Hague Convention No. IV of 1907 to which Germany was a party had, by 1939, become customary law and was, therefore, binding on Germany not only as treaty law but also as customary law.

With further reference to the contention that total war would authorize a belligerent to disregard the laws and customs of warfare, the IMT stated—and this Tribunal again fully concurs:[2]

> "There can be no doubt that the majority of them [war crimes] arose from the Nazi conception of 'total war'; with which the aggressive wars were waged. For in this conception of 'total war,' the moral ideas underlying the conventions which seek to make war more humane are no longer regarded as having force or validity. Everything is made subordinate to the overmastering dictates of war. Rules, regulations, assurances and treaties, all alike, are of no moment; and so, freed from the restraining influences of international law, the aggressive war is conducted by the Nazi leaders in the most barbaric way."

With particular reference to Articles 45, 50, 52, and 56 of the Hague Regulations, the IMT states:

> "* * * that violations of these provisions constituted crimes for which the guilty individuals were punishable is too well settled to admit of argument * * *."

It must also be pointed out that in the preamble to the Hague Convention No. IV, it is made abundantly clear that in cases not included in the Regulations, the inhabitants and the belligerents remain under the protection and the rule of the principles of the law of nations, as they result from the usages established among civilized peoples, from the laws of humanity, and dictates of the public conscience.

[1] Ibid., p. 226.
[2] Ibid., p. 227.

As the records of the Hague Peace Conference of 1899 which enacted the Hague Regulations show, great emphasis was placed by the participants on the protection of invaded territories and the preamble just cited, also known as "Mertens Clause," was inserted at the request of the Belgian delegate, Mertens, who was, as were others, not satisfied with the protection specifically guaranteed to belligerently occupied territory. Hence, not only the wording (which specifically mentions the "inhabitants" before it mentions the "belligerents") but also the discussions which took place at the time make it clear that it refers specifically to *belligerently occupied country.* The preamble is much more than a pious declaration. It is a general clause, making the usages established among civilized nations, the laws of humanity, and the dictates of public conscience into the legal yardstick to be applied if and when the specific provisions of the Convention and the Regulations annexed to it do not cover specific cases occurring in warfare, or concomitant to warfare.

However, it will hardly be necessary to refer to these more general rules. The Articles of the Hague Regulations, quoted above, are clear and unequivocal. Their essence is—if, as a result of war action, a belligerent occupies a territory of the adversary, he does *not,* thereby, acquire the right to dispose of property in that territory, except according to the strict rules laid down in the Regulations. The economy of the belligerently occupied territory is to be kept intact, except for the carefully defined permissions given to the occupying authority—permissions which all refer to the army of occupation. Just as the inhabitants of the occupied territory must not be forced to help the enemy in waging the war against their own country or their own country's allies, so must the economic assets of the occupied territory not be used in such a manner.

It is a matter of historic record that Germany violated these rules even during the First World War; and though she did it at that time on an immeasurably smaller scale than during the Second World War, her practices were generally condemned—condemned by the experts of international law, condemned in the peace treaties (in which Germany promised indemnification for those illegal acts) and condemned by right thinking Germans themselves. For example, in the sixth revised edition of International Law by Oppenheim, revised and edited by Lauterpacht (1944) it is stated:

"The rules regarding movable private property in enemy territory were systematically violated by the central powers during the World War * * *. Factories and workshops were dismantled and their machinery and materials carried away * * *. These are

but examples of the wholesale seizure of private property practiced by Germany and her allies in the countries which they occupied."

About immovable private enemy property, the same leading textbook writer states:

"Immovable private enemy property may under no circumstances or conditions be appropriated by an invading belligerent. Should he confiscate and sell private land or buildings the buyer would acquire no rights whatsoever to the property. Article 46 of the Hague Convention expressly enacts that 'private property' may not be confiscated, but confiscation differs from the temporary use of private land and buildings for all kinds of purposes demanded by the necessities of war.

"Private personal property which does not consist of war material or means of transport serviceable for military operations may not, as a rule, be seized. Article 46 and 47 of the Hague Regulations expressly stipulate that 'private property may not be confiscated' and 'pillage is formally prohibited'. But it must be emphasized that these rules have, in a sense, exceptions demanded and justified by the necessities of war. Men and horses must be fed; men must protect themselves against the weather. If there is no time for ordinary requisitions to provide food, forage, clothing, and fuel, or the inhabitants of a locality have fled, so that ordinary requisitions cannot be made, a belligerent must take these articles wherever he can get them, and he is justified in so doing. Moreover, quartering of soldiers (who, together with their horses, must be well fed by the inhabitants of the houses where they are quartered) is likewise lawful, although it may be ruinous to the private individuals upon whom they are quartered."

Spoliation of private property, then, is forbidden under two aspects: firstly, the individual private owner of property must not be deprived of it; secondly, the economic substance of the belligerently occupied territory must not be taken over by the occupant or put to the service of his war effort—always with the proviso that there are exemptions from this rule which are strictly limited to the needs of the army of occupation insofar as such needs do not exceed the economic strength of the occupied territory.

Article 43 of the Hague Regulations is as follows:*

> "The authority of the legitimate power having in fact passed into the hands of the occupant, the latter shall take all the measures in his power to restore, and ensure, as far as possible, public order and safety, while *respecting*, unless absolutely prevented, the *laws in force in the country*." [Emphasis added.]

* Annex to Hague Convention IV, *op.cit.supra*, Article 43, page 31.

This Article permits the occupying power to expropriate either public or private property in order to preserve and maintain public order and safety. However, the Article places limitations upon the activities of the occupant. This restriction is found in the clause which requires the occupant to respect, unless absolutely prevented, the laws in force in the occupied country. This provision reflects one of the basic standards of the Hague Regulations, that the personal and private rights of persons in the occupied territory shall not be interfered with except as justified by emergency conditions. The occupying power is forbidden from imposing any new concept of law upon the occupied territory unless such provision is justified by the requirements of public order and safety. An enactment by the German occupation authorities imposing Nazi racial theories can not be justified by the necessities of public order and safety.

In case 3,* Tribunal III, citing as authority the Preamble to the Hague Convention and Articles 23 (h), 43, and 46 of the Hague Regulations, stated:

> "The extension to and application in these territories of the discriminatory law against Poles and Jews was in furtherance of the avowed purpose of racial persecution and extermination. In the passing and enforcement of that law the occupying power in our opinion violated the provisions of the Hague Convention."

When discriminatory laws are passed which affect the property rights of private individuals, subsequent transactions based on those laws and involving such property will in themselves constitute violations of Article 46 of the Hague Regulations.

Beyond the strictly circumscribed exceptions, the invader must not utilize the economy of the invaded territory for his own needs within the territory occupied. We quote Garner's International Law and the World War, [New York, 1920], Volume II, pages 124–126, as follows:

> "Article 52 of the Hague Convention respecting the laws and customs of war expressly forbids requisitions in kind except 'for the needs of the army of occupation.'
>
> "It was clearly not the intention of the conference to authorize the taking away by a military occupant of live stock for the maintenance of his own industries at home or for the support of the civil population of his country. By no process of reasoning can requisitions for such purposes be construed to be for the 'needs of the army of occupation.'
>
> "A similar charge against the Germans was that of commit-

* United States *vs.* Josef Altstoetter, et al., Case 3, "Justice Case," Volume III.

ting spoliations upon Belgian manufacturing industries by dismantling factories and workshops and carrying away their machinery and tools to Germany.

"The Belgian Government addressed a protest to the governments of neutral countries against these acts as being contrary to Article 53 of the Hague Convention respecting the laws and customs of war, which, although it allows, subject to restoration and indemnity for its use, the seizure of war material belonging to private persons, does not authorize the seizure and exportation by the occupying belligerent of machinery and implements used in the industrial arts. The industrial establishments of northern France were similarly despoiled of their machinery, much of it being systematically destroyed.

"What was said above in regard to the illegality of the requisition of live stock and its transportation to Germany for the benefit of German industry and for the support of the civil population at home, must be said of the seizure and transportation for similar purposes of the machinery and equipment of Belgian and French factories and other manufacturing establishments. The materials thus taken were not for the needs of the army of occupation, and the carrying of them away was nothing more than pillage and spoliation under the disguise of requisitions."

In a footnote on page 126 of the same volume, we find the following pertinent comment:

"The authorities are all in agreement that the right of requisition as recognized by the Hague Convention is understood to embrace only such supplies as are needed by the army within the territory occupied and does not include the spoliation of the country and the transportation to the occupant's own country of raw materials and machinery for use in his home industries * * *. The Germans contended that the spoliation of Belgian and French industrial establishments and the transportation of their machinery to Germany was a lawful act of war under Article 23 (g) of the Hague Convention which allows a military occupant to appropriate enemy private property whenever it is 'imperatively demanded by the necessities of war.' In consequence of the Anglo-French blockade which threatened the very existence of Germany it was a military necessity that she should draw in part on the supply of raw materials and machinery available in occupied territory. But it is quite clear from the language and context of Article 23 (g) as well as the discussions on it in the Conference that it was never intended to authorize a military occupant to despoil

on an extensive scale the industrial establishments of occupied territory or to transfer their machinery to his home country for use in his home industries. What was intended merely was to authorize the seizure or destruction of private property only in exceptional cases when it was an imperative necessity for the conduct of military operations in the territory under occupation. This view is further strengthened by Article 46 which requires belligerents to respect enemy private property and which forbids confiscation, and by Article 47 which prohibits pillages."

Another erroneous contention put forth by the defense is that the laws and customs of war do not prohibit the seizure and exploitation of property in belligerently occupied territory, as long as no definite transfer of title was accomplished. The Hague Regulations are very clear on this point. Article 46 stipulates that "private property * * * must be respected." However, if, for example, a factory is being taken over in a manner which prevents the rightful owner from using it and deprives him from lawfully exercising his prerogative as owner, it cannot be said that his property "is respected" as it must be under Article 46.

The general rule contained in Article 46 is further developed in Articles 52 and 53. Article 52 speaks of the "requisitions in kind and services" which may be demanded from municipalities or inhabitants, and it provides that such requisitions and services "shall not be demanded except * * * for the needs of the army of occupation." As all authorities are agreed, the requisitions and services which are here contemplated and which alone are permissible, must refer to the needs of the army of occupation. It has never been contended that the Krupp firm belonged to the army of occupation. For this reason alone, the "requisitions in kind" by or on behalf of the Krupp firm were illegal. All authorities are again in agreement that the requisitions in kind and services referred to in Article 52, concern such matters as billets for the occupying troops and the occupation authorities, garages for their vehicles, stables for their horses, urgently needed equipment and supplies for the proper functioning of the occupation authorities, food for the army of occupation, and the like.

The situation which Article 52 has in mind is clearly described by the second paragraph of Article 52:*

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

The concept relied upon by the defendants—namely: that an aggressor may first over-run enemy territory, and then afterwards

* Annex to Hague Convention IV, *op.cit.supra*, page 33.

industrial firms from within the aggressor's country may swoop over the occupied territory and utilize property there—is utterly alien to the laws and customs of warfare as laid down in the Hague Regulations, and is clearly declared illegal by them because the Hague Regulations repeatedly and unequivocally point out that requisitions may be made only for the needs of, and on the authority of, the army of occupation.

There is one important exception, contained in Article 53:*

> "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, exclusive of cases governed by naval law, depots of arms, and generally, all kinds of ammunition of war, may be seized, even if they belong to private individuals, but must be restored and compensation fixed when peace is made."

The offense of spoliation is committed even if no definite alleged transfer of title was accomplished. The reason why the Hague Regulations do not permit the exploitation of economic assets (except to the limited extent outlined) for the war effort of the occupant, are clear and compelling. If an economic asset which, under the rules of warfare, is not subject to requisition, is nevertheless exploited during the period of hostilities for the benefit of the enemy, the very things result which the law wants to prevent, namely—

a. the owners and the economy as a whole as well as the population are deprived of the respective assets;

b. the war effort of the enemy is unfairly and illegally strengthened;

c. the products derived from the spoliation of the respective asset are being used, directly or indirectly, to inflict losses and damages to the peoples and property of the remaining (non-occupied) territory of the respective belligerent, or to the peoples and property of its allies.

The defendants cannot as a legal proposition successfully contend that, since the acts of spoliation of which they are charged were authorized and actively supported by certain German governmental and military agencies or persons, they escape liability for such acts. It is a general principle of criminal law that encouragement and support received from other wrongdoers is not excusable. It is still necessary to stress this point as it is essential to point out that acts forbidden by the laws and customs of warfare cannot become permissible through the use of complicated legal constructions. The defendants are charged with plunder on a large scale. Many of the acts of plunder were com-

* Ibid., pp. 33 and 34.

mitted in a most manifest and direct way, namely, through physical removal of machines and materials. Other acts were committed through changes of corporate property, contractual transfer of property rights, and the like. It is the results that count, and though the results in the latter case were achieved through "contracts" imposed upon others, the illegal results, namely, the deprivation of property, was achieved just as though materials had been physically shipped to Germany.

Finally, the defense has argued that the acts complained of were justified by the great emergency in which the German war economy found itself. With reference to this argument it must be said at the outset that a defendant has, of course, the right to avail himself of contradictory defense arguments. This Tribunal has the duty carefully to consider all of them; but the Tribunal cannot help observing that the defense, by putting forth such contradictory arguments, weakens its entire argument. The "emergency argument" implies clearly the admission that, in and of themselves, the acts of spoliation charged to the defendants were *illegal*, and were only made legal by the "emergency." This argument is bound to weaken the other argument of the defense, according to which the acts charged to them were legal, anyway.

However, quite apart from this consideration, the contention that the rules and customs of warfare can be violated if either party is hard pressed in war must be rejected on other grounds. War is by definition a risky and hazardous business. That is one of the reasons that the outcome of a war, once started, is unforeseeable and that, therefore, war is a basically unrational means of "settling" conflicts—why right thinking people all over the world repudiate and abhor aggressive war. It is an essence of war that one or the other side must lose, and the experienced generals and statesmen knew this when they drafted the rules and customs of land warfare. In short these rules and customs of warfare are designed specifically for all phases of war. They comprise the law for such emergency. To claim that they can be wantonly—and at the sole discretion of anyone belligerent—disregarded when he considers his own situation to be critical, means nothing more or less than to abrogate the laws and customs of war entirely.

We shall now discuss in appropriate sequence the proven facts relating to the alleged specific acts of spoliation as they appear from the credible evidence presented before us.

On 18 May 1940 the defendant Alfried Krupp and three other industrialists were gathered around a table intently studying a map while listening to a broadcast of German war news over the radio. The four men learned of the great advances of the German

Wehrmacht through Belgium and evidently concluded from what they heard that the situation in Holland had been so consolidated that there was a possibility that outstanding members of the economy now would be able to go there.

At the conclusion of the broadcast the four men talked excitedly and with great intensity. They pointed their fingers to certain places on the map indicating villages and factories. One said, "This one is yours, that one is yours, that one we will have arrested, he has two factories." They resembled, as the witness Ruemann put it, "vultures gathered around their booty." One of the men (Lipps) telephoned his office to contact the competent military authority to obtain passports to Holland for two of them for the following day.

We are satisfied that this incident occurred as portrayed by the witness Ruemann and that it clearly indicates the attitude of the defendant Alfried Krupp during the period of Germany's aggressions here under contemplation, as judged by this incident and his subsequent actions in the invaded territories which we shall hereinafter discuss at length.

THE AUSTIN PLANT AT LIANCOURT, FRANCE

The Austin factory located at Liancourt, France was founded in 1919. In 1939 the firm was purchased by Robert Rothschild who was a citizen of Yugoslavia and of Jewish extraction. The business of the firm was the production of agricultural tractors. Only during the months of May and June 1940 upon special instructions from the French army headquarters during the German offensive against France, Belgium, and Holland, did the Austin factory devote about 90 percent of its production to war materials and 10 percent to the production of agricultural tractors for civilian consumption. A department was set up for the manufacture of war materials separate and apart from Austin's regular peacetime industry. The machines were loaned to Austin by the French Government which also furnished the machine tools, raw materials, and workmen.

The owner, Robert Rothschild, was forced to flee from Liancourt with the general exodus upon the advance of the German Army. He went to live south of Lyon in the Department of Dauphine and because of his Jewish extraction he was unable to return to German occupied France so he sent his non-Jewish brother-in-law, Milos Celap, to take charge of the plant. The machines owned by the French Government were sequestered by

the German Army. The Austin plant immediately upon the occupation in June 1940 was taken over by the German Army. The German commander refused to turn over the plant to Celap because it was Jewish owned, but upon the German commander's advice Rothschild assigned his stock to Celap, whereupon the property was released to Celap on 19 October 1940. Celap remained in charge of the property until 28 December 1940 at which time he was dismissed under the provisions of the anti-Jewish decree issued by the chief of German military government for France on 18 October 1940.

This decree required the registration of Jewish enterprises and authorized the appointment of administrators for such properties. The decree further provided that any transfer of title to Jewish property after 23 May 1940 could be declared void by the military governor. After Celap's dismissal, a provisional administrator was appointed to operate the plant. The owner Rothschild, who remained in the unoccupied zone, opposed the appointment of the administrators and at all times took the position that such appointments were illegal.

In June 1942 an offer was made by the Krupp firm to Maurice Erhard, administrator of the property, for the purchase of the Austin plant for five million francs. Ten other companies, both French and German, were interested at the time in securing the property. Within a month after the offer was made by the Krupp firm, a subordinate in the office of the defendant Loeser reported that Erhard had been delaying negotiations. As a result thereof the German military authorities, after consulting with the Krupp firm, directed Erhard to give the Krupp firm a 3-year lease if he could not make up his mind to sell the property, and that failure on the part of Erhard to make the lease would result in his dismissal as administrator.

On 1 August 1942 Stein wrote from Paris (*NIK–13002, Pros. Ex. 686*) :*

> "Furthermore he declared that Mr. Erhard had also submitted other purchase offers after we had submitted our offer. It is therefore clearly and unmistakably proved that Mr. Erhard was trying to deceive us.
>
> "Thus, the road is open to start direct and final negotiations concerning the rent. Later, after it has been leased, one could work out quietly all the remaining details concerning the purchase."

Defendant Loeser's subordinate recommended that the lease should be signed purely as an opening wedge for the later acqui-

* Reproduced above in section VII D 2.

sition of the plant through a Krupp-owned French corporation.

At the time the lease was signed, the Krupp firm purchased all but thirty of the machines at a ridiculously low price according to Celap. The price for the stock of materials was to be fixed after inventory. Under the provisions of the sales contract the Krupp firm agreed to furnish spare parts and maintain repairs on the Austin agricultural tractors then in circulation.

The lease agreement was signed by Maurice Erhard as provisional administrator pursuant to the German decree for the sequestration of Jewish properties for a 3-year period, with right of renewal for an additional 3 years. The Krupp firm was authorized to make extensions, improvements, and modifications, and to install new machinery.

The machines of the assembly-line type for agricultural tractor production were sold or sent to other factories to be rebuilt for the Krupp firm production. Considerable machinery which was obtained in other parts of France was installed in the factory by the Krupp firm.

After the Krupp firm took possession of the Austin factory they manufactured parts for other Krupp factories in France and in Germany. These were used for war purposes. Only about 2.1 percent to 2.2 percent of the production was devoted to the manufacture of spare parts for agricultural tractors called for in the lease.

The Krupp firm continued its efforts to acquire the plant by purchase and it may be concluded that only the change in the military situation prevented the Krupp firm from finally obtaining title to the property.

The two men most active in the attempt to acquire the plant by purchase were Krupp employees named Stein and Schmidt who were representatives of the firm in France and received instructions from the Krupp firm at Essen.

In fact, in view of the acquisition of additional properties in France by the Krupp firm the defendants Krupp and Loeser discussed the advisability of establishing a French firm to supervise the various Krupp interests in France. Following subsequent discussions between Schroeder, defendant Loeser's chief subordinate, with defendant Krupp and later with defendant Eberhardt, a joint stock company known as "Krupp Société Anonyme Française" was formed. It had a capital stock authorization of 20,000 shares valued at 1,000 francs per share, 14,000 of which were held by Krupp Essen. The plan was to have this "French company" buy up the Austin plant at Liancourt.

Moreover, the Krupp firm selected a valuable property located in the heart of Paris: 141 Boulevard Haussmann, which was to

become its central office in France. This was to be accomplished by profiting again from the continental wide anti-Jewish policy of the Nazi regime. The property was owned by Société Bacri Frères, a Jewish firm, and had been sequestered by the commissioner for Jewish affairs. The Krupp firm's representative in Paris, Walter Stein, acting as attorney-in-fact for Krupp Essen, obtained a lease of the property with right to purchase it within 6 months after the date of the lease 1 January 1943 for 2,500,000 francs—not from the rightful owners of the premises but from the provisional administrator of the Société Bacri Frères by virtue of a decision of a commissariat for Jewish questions. This example of the Krupp firm's exploitation of the Nazi anti-Jewish policy is most objectionable because there was nothing to prevent the firm from honestly leasing or buying a building from a non-Jewish owner in Paris. The records show that on 16 September 1942 defendants Krupp and Loeser approved a loan in the sum of 1,250,000 RM for the establishment of, and loan to, Krupp S.A., Paris.

The correspondence between the Krupp firm and the Paris office shows the avidity of the firm to acquire the Austin factory and the Paris property. Stein, under instructions from Schroeder and defendant Eberhardt, had numerous conferences with German and French officials in an effort to effect the purchases. The French Finance Ministry delayed by raising objections and eventually the change in the military situation prevented the realization of those plans.

In a letter from Schroeder to Krupp employee, Stein, regarding the Paris property, he stated, in part:

> "* * * I myself welcome the acquisition, and I can tell you, that Dr. Loeser also approves of it on principle, provided that Dr. Beusch likewise favors the acquisition * * *."

When the strenuous efforts to purchase the property did not materialize and difficulties arose between Erhard and the Krupp firm, Erhard through the Krupp firm's influence was dismissed as the provisional administrator and was succeeded in that position by Richard Sandre who was a friend of Krupp employee, Schmidt, mentioned above.

About 6 February 1944 Sandre, the new administrator, called upon Rothschild, the owner, to obtain financial information in order to assess the valuation of the shares of stock of the company. Rothschild had taken along with him all the books of the company containing all the accounting data. Sandre said there was a buyer for the shares and Rothschild knew that the Krupp firm was to be the buyer and that they were already in possession of the property by lease and that they had bought the machines.

Rothschild refused to give the information and was threatened several times. He was told by Sandre: "If you don't want to give me that information, well, you can just imagine what will happen to you." Rothschild still refused.

On 21 February 1944 Rothschild was arrested and on 7 March was taken to Auschwitz from which concentration camp he has never returned. He sent a note through a friend to Celap, his brother-in-law, while being held in a transit camp in France* that he had exact information to the effect that the whole affair had been arranged by Sandre and Damour (Damour was the lawyer for the commissioner for Jewish properties at Lyon).

The Krupp workers evacuated the plant just a few days before the entry of the American troops. Eighteen machines which they had collected in France were dismantled and taken to Germany. Among these were two of the machines originally obtained from the Austin plant.

The lease and management of the plant, the purchase of the machinery, and the attempts to permanently acquire the property were carried on by the finance department of the Krupp firm which was headed by defendant Loeser until April 1943, thereafter by defendant Janssen. The contract for the purchase of the machinery and the lease for the plan were approved by defendants Krupp and Loeser on behalf of the Vorstand. The programs for production at the plant and decisions relating thereto were made by defendants Krupp, Janssen, and Eberhardt. In November 1943 defendant Alfried Krupp inspected the plant. He was pleased with its operation but suggested the production of Widia tools in order that the plant might be fully utilized. A subordinate in the finance department passed this recommendation on to defendants Janssen and Eberhardt suggesting a meeting at Essen. As a result the installation of Widia tool production at the Austin factory had been started by March 1944.

On 24 May 1941 a circular was issued by the Krupp Direktorium, signed by defendant Loeser, stating that the Krupp firm's interest as to acquiring other plants must be pursued as opportunities occur and that essential information must be communicated without delay to him so that the treatment of the matter can be decided within the small circle of the directorate. On the distribution list were defendants Krupp, Houdremont, Mueller, Janssen, Pfirsch, and Korschan.

We conclude from the credible evidence before us that the confiscation of the Austin plant based upon German inspired anti-Jewish laws and its subsequent detention by the Krupp firm

* This note is reproduced above in section VII D 1 as an enclosure to Document NIK-10590, Prosecution Exhibit 662.

constitute a violation of Article 43 of the Hague Regulations which requires that the laws in force in an occupied country be respected; that it was also a violation of Article 46 of the Hague Regulations which provides that private property must be respected; that the Krupp firm, through defendants Krupp, Loeser, Houdremont, Mueller, Janssen, and Eberhardt, voluntarily and without duress participated in these violations by purchasing and removing the machinery and leasing the property of the Austin plant and in leasing the Paris property; and that there was no justification for such action, either in the interest of public order and safety or the needs of the army of occupation.

THE ELMAG PLANT LOCATED AT MULHOUSE

For more than 125 years a French company known as S.A.C.M. (Alsacian Corporation for Mechanical Construction) had its principal place of business at Mulhouse, Alsace. The company owned eight plants, four of which were located in France, outside of Alsace, but the principal works of the four located in Alsace were at Mulhouse. At the outbreak of the war the principal product of the Mulhouse plant was textile machinery, and a portion of the plant was devoted to the manufacture of combustion engines, machines tools, and machinery for the fuel industry.

Upon the German occupation of Alsace in June 1940, a "Chief of civilian administration" was appointed by the Germans, and German law was introduced. A German administrator was appointed to take charge of the S.A.C.M. properties which we shall refer to hereinafter as ELMAG, an abbreviation of the German translation of the name of the firm, namely, Elsaessische Maschinenfabrik A.G. The reason for this seizure seems to have been that the majority of the stock of the company was owned by Frenchmen, living outside of Alsace. The company was referred to as "an Alsatian enterprise in which enemy interests predominate." The action was protested by the president and those of the directors who had remained with the company after the occupation.

In August 1940 when the German administrator took over the plant, ELMAG still used about one-half of the working hours for producing textile machinery but this figure rapidly decreased later in favor of direct and indirect production for the German armed forces.

As a result of damaging air raids on the Gusstahlfabrik-Essen plant in March 1943 it was decided to move the Krupp Krawa

factory (automotive works) to the ELMAG plant. On 27 March 1943, a meeting for that purpose was held in the Reich Armament Ministry in Berlin, there being present the defendants Janssen and Eberhardt as well as other Krupp officials, representatives of the Armament Ministry, of the German Civil Administration for Alsace, and of ELMAG. Minutes of the meeting were recorded by defendant Eberhardt and distributed to defendants Krupp, Mueller, and Pfirsch.

Strenuous opposition was raised by the administrators for Alsace and the ELMAG representatives to taking over the plants by the Krupp firm, but transfer of the automotive factory from Essen to the ELMAG plant had been decided upon and nothing could be done to alter the decision. The Krupp representatives obtained a statement by the Armament Ministry, to the effect that: "The entire plant at Mulhouse, Masmuenster, and Jungholz will be for the credit and debit of Krupp * * *." It was also determined that "the construction of signals and of machine tools will be abandoned by ELMAG; the construction of textile machinery is to be continued for the time being."

At a conference of Krupp officials in April 1943 attended, among others, by the defendants Krupp, Eberhardt, and Janssen it was decided to set up a new firm to operate the plant under lease from the old ELMAG company. Under the terms of the lease signed for the Krupp firm by defendant Eberhardt the management of the three plants in Mulhouse, Masmuenster, and Jungholz was turned over to the Krupp firm for the duration of the war. The machinery and fixed installations were to remain the property of ELMAG. Raw materials usable by the Krupp firm were to be inventoried and paid for. The Krupp firm was authorized to make such changes and modifications in the plants as were deemed necessary for operation. When the terms of this contract were learned by the administrator of the old ELMAG company he complained to the Armaments Ministry that ELMAG, for which he was speaking as administrator, "considers itself raped by the form of plant management contract chosen by the Krupp, A.G."

The new firm of ELMAG G.m.b.H. which was 90 percent Krupp owned was issued a permit to operate in Alsace, 27 April 1943. The civil administrator of Alsace notified the administrator of ELMAG of the ceding of the plant to the Krupp firm, effective 1 May 1943.

The program of war production initiated by the German administrators was greatly increased when the Krupp firm took over the plant. In addition to this heavy armament program the production of military tractors by Krupp Krawa was added. Extensive preparations were made for the production of 88

[mm.] antiaircraft guns. Productions not strictly in the armament field were geared to the war production requirements of Germany. Definite instructions called for continuous full production of military tractor parts and full utilization of local labor for this purpose. To carry out this task additional machinery was requisitioned by special searching missions.

That the Krupp firm desired ultimately to permanently acquire the ELMAG plant there can be little doubt. In the minutes prepared by the defendant Eberhardt of the Berlin meeting, 27 March 1943, and distributed to defendants Krupp, Mueller, and Janssen, there appears the following comment: "As regards Ministerialrat Sauer's suggestion for Krupp's purchasing ELMAG, this can be handled in negotiations; this must not, however, hold up the relocation." Eberhardt made the following notation of portions of a telephone conversation between himself and the civil administrator for Alsace on 6 April 1943; "I replied in the affirmative to the question whether the new company would come forward as a buyer if the works to be taken over and now in operation, would be sold."

Whatever the ultimate intention of the Krupp firm towards ELMAG might have been, the turn in the fortunes of war forced the Krupp firm to evacuate the ELMAG plants because of the advance of the Allied armies. In view of this situation, the exploitation of the ELMAG plants was substituted by outright physical looting.

The evacuation of the Krawa plant from Alsace was decided by Reich Minister Speer in early September 1944. The plant was hurriedly evacuated and re-established in Bavaria. The program for the acquisition of machinery was greatly accelerated. Machinery which was the property of the ELMAG plant, including machinery which was in the plant when it was seized by the German authorities, and machines acquired from other sources were evacuated along with Krupp's own machinery. Nine machines originally owned by the old S.A.C.M. company were included. The antiaircraft gun plant was moved to the Groeditz plant of Mitteldeutsche Stahlwerke. A total of 100 to 102 machines were shipped to this plant of which 31 were the property of the S.A.C.M. company and 55 the property of ELMAG A.G. In late September the antiaircraft gun plant was moved to central Germany. Special equipment designed at ELMAG was taken as well as regular machinery and tools belonging to the plant prior to the occupation. Additional machines would have been taken at the time of the evacuation except for the necessity of continued war production at ELMAG itself. Even after evacuation of the Krawa plant the production of military tractor parts,

which was given the same priority as the antiaircraft gun program, was turned over to the machine shops remaining in Alsace. The Krupp officials of the ELMAG plant left in such a hurry that they failed to pay 800,000 RM then owing to the workers.

In October 1944 a Krupp employee of ELMAG inspected the Peugeot Works in Sochaux, France and the ALSTHOM plant at Belfort, looking for machinery and equipment that would be usable in Krupp's plants. His report, initialed by defendant Houdremont, is in part as follows (NIK–13000, Pros. Ex. 1350.):

"Major Wetzke promised me to have this car sequestrated if it would be required by ELMAG. In general the subject of our discussion with Major Wetzke was that we have to come to an immediate decision regarding the machines and the PKW [automobile] afore-mentioned. Information by phone will be sufficient. Major Wetzke may be reached at any time from 8:00 o'clock in the morning to 7:00 o'clock in the evening. The settlement for the confiscated machines will be done over by the Ruestungskommando and by the purchasing office established for this purpose by the Reich. In order to carry out the transportation of the machines I propose the following:

"Senior foreman Luttenauer (father) and 2 workmen, expert in dismantling of machines, leave on Monday, accompanied by me, for Belfort, and Sochaux resp. Lodging for these 3 men will be provided at Belfort. Connection to Sochaux is secured by military transportation facilities."

After the Krupp Krawa plant had been transferred from Mulhouse to Bavaria, the company wrote to ELMAG as follows (NIK–13102, Pros. Ex. 1351.):

"Your file note of 26 October and that of Mr. Ziebeil of 27 October show that a considerable number of 'Bottleneck' machines (Engpassmaschinen) and above all of tempering equipment was chosen at the Peugeot works and transported to Mulhouse. Above all the tempering equipment which Mr. Ziebeil picked out must be sent here as soon as possible by express freight. You probably know that we have no gas in Kulmbach and that we can only depend on electric power. It would be irresponsible if in the future we should continue to rely only on the help of the High Command of the Army while on the other hand equipment and installations are procured and set up in Mulhouse which are not needed urgently. At your end the entire old ELMAG tempering installation is intact and apart from that there are still three gas furnaces which for the time being can also remain there in the Krawa tempering installation. Please make a special effort to this effect.

"In addition we are lacking for the program 'Bottleneck' machines, such as interior grinding machines, key ways, grinding machines and thread milling machines. As far as these machines are also available at Peugeot please get them for Kulmbach. As Mr. Hubert informs us a number of other installations such as Sicken machines, spot welding machines, rounding off machines, tube bending machines, and above all 12 Demag pulleys were procured. The latter must be sent here on quickest way together with the fuel if possible.

"Further I ask you to please exactly determine and make a list of the screw taps, rapid change chucks, rapid screw heads, rapid screw wedges [Gewindeschnellbacken], hard metal sheets, etc., in short everything necessary for production, as far as it is at all possible to foresee requirements for the production in Kulmbach and Nuernberg and in as much as you need the same for Mulhouse."

Defendants Janssen and Eberhardt attended the conference at Berlin when the decision was made to take over the plant. Janssen was Eberhardt's superior during the greater portion of the period in question, having succeeded Loeser as head of the finance department. Eberhardt was in charge of the negotiations for taking over the plant and signed the contracts. Defendant Krupp participated in the discussions with Janssen and Eberhardt as to methods to be employed to acquire the plant. Defendants Mueller and Pfirsch were advised of these discussions. The correspondence regarding the acquisition was conducted by defendant Krupp and brought to the attention of Eberhardt and Mueller. Defendant Eberhardt participated in the removal of the machinery and the plant to Germany and defendants Krupp, Houdremont, Mueller, and Janssen were kept informed concerning the evacuation of the machinery. Houdremont was informed concerning the acquisition of machines and equipment from other industrial firms in France for ELMAG. Defendant Mueller participated in directing the production progress at ELMAG. The management of the ELMAG plant was responsible to the Krupp Essen Vorstand which prior to April 1943 consisted of defendants Krupp, Loeser, and Goerens; and thereafter of defendants Krupp, Houdremont, Mueller, and Janssen; and Fritz Mueller, now deceased.

From a careful study of the credible evidence we conclude there was no justification under the Hague Regulations for the seizure of the ELMAG property and the removal of the machinery to Germany. This confiscation was based on the assumption of the incorporation of Alsace into the Reich and that property in

Alsace owned by Frenchmen living outside of Alsace could be treated in such a manner as to totally disregard the obligations owed by a belligerent occupant. This attempted incorporation of Alsace into the German Reich was a nullity under international law and consequently this interference with the rights of private property was a violation of Article 46 of the Hague Regulations.

MACHINES TAKEN FROM ALSTHOM FACTORY

The German Naval High Command instituted a new submarine building program in the early part of 1941 which was participated in by a Krupp subsidiary, Krupp Stahlbau in Rheinhausen. The plant manager of the steel and bridge construction department of Stahlbau was sent to France to find bending roll machines of greater dimensions than were available at the Krupp plants in order to fulfill its part in the submarine building program. This Krupp representative, accompanied by a naval officer of the Armament Inspectorate of the Navy High Command, proceeded to the ALSTHOM Plant in Belfort where they located two bending machines suitable for Krupp needs. Immediately they placed a "seized" sign upon the machines. The director of the ALSTHOM firm objected to the confiscation on the ground that the machines were the only ones on which the construction of boiler drums and high pressure tubes was based and that they were essential for this purpose. The machines were heavy machines, one weighing 380 tons and the other about 50 to 60 tons. Neither had been used for military purposes. Moreover, machines of this type, old or new, were not available on the market and could not be produced in less than 18 months at the minimum. Krupp Stahlbau, however, possessed a bending press which they could have used in case of urgent need. Dr. Goerens, now deceased but at that time a member of the Krupp Vorstand, was advised when the procuring of the machine became urgent and he approved of the acquisition after an estimate of the approximate price was given him.

The objections raised to the seizure were of no avail and shortly thereafter the machines were dismantled by Krupp workmen and carried off to Germany. They were installed at the Krupp-Stahlbau plant and were used in the submarine building program until the end of the war.

That the Krupp firm intended to permanently acquire these machines there can be little doubt. Repeated attempts were made by the Krupp firm to obtain title to the machines. It offered to

pay ALSTHOM 108,700 RM for the machines, a price fixed by a German official evaluation which included deductions for repair costs, transportation and installation charges from data furnished by the Krupp firm. When its efforts to purchase the machines failed, the Krupp firm enlisted the aid of the Navy High Command which advised that it could not order ALSTHOM to accept the price offered by the Krupp firm and that the matter could be settled only by negotiation. However the military intendant for France advised ALSTHOM that compensation was a matter for the German Army, that the Krupp firm should not be expected to handle the matter, and that the only basis for settlement was the price already fixed. From that time forward the firm's efforts to obtain title were directed through the military authorities so that the Krupp firm would not appear as a party to the negotiations.

The director of ALSTHOM not only objected to the seizure and removal of the machines but repeatedly demanded that the machines be returned. He testified that a decree or order of the French collaborationist government was to the effect that if the owner of a confiscated machine refused to negotiate with the German authorities, then, after a certain period, the owner lost all claim to indemnification. In consequence of this order the director of ALSTHOM continued to bargain with the Krupp firm and the German authorities as the correspondence reveals; but he pursued delaying tactics which in the end, and only because of the unsuccessful termination of the war for Germany, proved successful.

The Krupp firm was specifically advised of at least some of the illegal aspects of the seizure of these machines. On 21 July 1943 a file memorandum by a Krupp employee stated (*NIK–13450, Pros. Ex. 718*) :*

"1. According to information given by attorney-at-law Schuermann, the whole confiscation was carried out at the time in contravention to the rules of the Hague Convention for Land Warfare. This in itself, allows only seizure for the purpose of use, but not seizure with the intention of actual transfer of property.

"2. I have asked Mr. Sieber, once more to make representations at the Intendantur, asking them to interpose their authority and to settle the matter, as the sending of files back and forth would not lead to anything. Mr. Sieber is of the same opinion and wanted once more to approach the Intendantur of the military commander in this matter.

* Reproduced above in section VII F 1.

"3. Furthermore, I asked Mr. Borchers to contact Mr. Geneuss, once more for the same purpose and to point out to him that the guarantee by the army agency (Wehrmachtsdienststelle) exists now as before, so that it would be interested in seeing the matter settled as soon as possible."

The attorney Kurt Schuermann was a member of the Krupp legal department and was associated with Dr. Ballas and Dr. Joeden in that department until the end of the war. The legal department was directly subordinate to the Vorstand.

The military commandant in France renewed his efforts to force ALSTHOM to accept the price offered and threatened that unless such offer were accepted, payment by the German Reich would be refused. An increased offer of 190,000 RM was made after this threat failed but it too was refused.

Krupp-Stahlbau wrote to their liaison office in Paris as follows (NIK–13451, Pros. Ex. 719) :*

"The Intendant of the military commander has certain scruples about forcing the French to accept a compensation which would, for German conditions, be acceptable. Step by step he had gradually advanced the compensation offer to RM 190,000.

"We, on our part, are extremely interested in acquiring the machine finally at the estimated value of RM 190,000. But we decline direct negotiations and dealings with ALSTHOM, as we are of the opinion that the machine was confiscated by the German Ruestungsinspektion (Armament Inspectorate), and thus it devolves upon the German authorities to arrange the settlement with the French and that we, thereupon, shall then enter into clearing negotiations with the German authorities."

Upon the Allied occupation of Germany the machines were found at the Krupp-Stahlbau factory and identified by members of a French commission and thereafter they were returned to the ALSTHOM plant at Belfort.

Until December 1943 all disbursements for capital investments by subsidiary companies and the parent firm exceeding 5,000 RM had to bear the approval of the three members of the Vorstand who at that time were defendants Krupp, Loeser, and the deceased Goerens. For investments over 10,000 RM the approval of Gustav Krupp was necessary in addition to that of the three members. After December 1943, capital investments of more than 5,000 RM had to have approval of defendants Janssen, Houdremont, Mueller, and the deceased Fritz Mueller who was

* Reproduced above in section VII F 1.

also a member of the Vorstand. If the amount exceeded 10,000 RM the approval of defendant Alfried Krupp was also necessary.

The minutes of the Vorstand meeting for 4 September 1940 shows the approval of an appropriation of 186,000 RM for the purchase of a machine for the Friedrich-Alfred-Huette firm at Rheinhausen. Whether this appropriation was intended for the machines confiscated at the ALSTHOM plant in the early part of 1941 does not appear. It is apparent to us, however, from the credible evidence that the matter received the attention of the Vorstand at various times from the acquisition of the machine in 1941 until the liberation of Paris in June [August] 1944, and that defendants Krupp, Loeser, Houdremont, Mueller, and Janssen are responsible for this confiscation and detention of these machines.

We conclude from the credible evidence that the removal and detention of these machines was a clear violation of Article 46 of the Hague Regulations.

MACHINES TAKEN FROM OTHER FRENCH PLANTS

The Krupp firm not only took over certain French industrial enterprises. It also considered occupied France as a hunting ground for additional equipment which was either shipped to the French enterprises operated by the Krupp firm or directly sent to Krupp establishments in Germany. The Krupp firm obtained this machinery from the local French economy, partly through their own efforts, and partly through those of various government offices. Some French machines were obtained from booty depots. Some were directly requisitioned from French firms, with payment offered to the owners after the confiscation. Some were purchased by Krupp through its representatives in Paris, and some could only be obtained after negotiations conducted by Krupp officials had been adequately backed up through the intervention of German authorities.

ROGES [RAW MATERIALS TRADING COMPANY]

In December 1940 the Raw Materials Trading Company which had been referred to as ROGES was founded at the request of the German Army High Command, the Economic and Armaments Office and the Reich Ministry of Economics "whose desire it was to utilize the raw materials in the occupied countries of western Europe and to accelerate their use in the German war economy."

Goods were obtained by ROGES in cooperation with the German military and economic agencies which could be placed in two

categories, namely, (1) captured goods referred to as "Booty Goods", and (2) purchased goods (those secured through the black market by German official agencies).

Under a special Goering decree, the Office of Plenipotentiary for Special Tasks was created which supervised and directed the procuring of goods in occupied countries through the black market. These goods and booty goods obtained in occupied countries by the German Army Command were turned over to ROGES. These goods as a rule were gathered together in depots from which they were distributed to German firms under directions from the Central Planning Commission. Both the booty and the black market goods consisted of wares of all kinds, such as household goods, raw materials, textiles, machines, tools, shoes, scrap metal, and other materials and were obtained in all the countries occupied by Germany. There were many machines and machine tools included in the booty goods.

The booty goods were not paid for and cost ROGES only the cost of transportation from the occupied territories to Germany. These as a rule were confiscated by the German military agencies and turned over to the branch offices of ROGES for shipment to Germany. The black market goods were procured by buyers acting under orders of the German Economic Ministry and the Armaments Ministry. All purchases had to be approved by the competent military commander in the occupied area. Prices were fixed by the buyers and the owners were paid by ROGES in currency of the particular occupied country, which foreign currency was furnished by the Reich, which came out of occupation costs.

These goods were then distributed from the ROGES depots to the various firms as requested by the Reich agencies and the economic groups. A great portion of these booty and black market goods was distributed at the request of the Reich Association Iron (RVE), of which defendant Alfried Krupp was vice chairman, to its member firms. In many instances the goods were shipped by ROGES direct from the occupied country to the firms in Germany when those firms had placed their order for certain goods in advance. In other cases the booty goods were sent by ROGES to a special booty center where they were then allocated by the Reich agencies and sent to the respective business firms. As a rule the prices paid for these items were the prevailing domestic prices and lower than ROGES paid for the black market goods. As ROGES paid nothing for the booty goods, the surplus resulting was credited to the supreme command of the armed forces.

During the war, campaigns for the collection of scrap metal were conducted and Major Schuh carried on these drives in the

occupied territories. These accumulations of scrap metal from the occupied countries were placed by ROGES at the disposal of German industry. The Krupp firm regularly obtained large quantities of this scrap metal from ROGES.

During the period of the war the Krupp firm received wares and goods of all kinds from ROGES, a total valuation of 14,243,-000 RM. This amount comprised 3,458,000 RM for "booty" goods and 10,785,000 RM for goods purchased on the black market. We are satisfied from the credible evidence presented that the Krupp firm knew the source of these goods purchased from ROGES and that certain of these items such as machines and materials were confiscated in the occupied territories and were so-called booty goods. Invoices for goods purchased on the black market always accompanied the goods to the firm as ROGES billed the firm for exactly the amount paid for the goods by ROGES. In the case of the booty goods, however, ROGES did not know the value as they had not paid for these items, hence the goods were sent to the particular firm without an invoice and the price was later settled between the firm and the Reich agency, after which the invoice was sent to the firm. Thus, it will be seen that the firms knew when goods arrived without an invoice that they were booty goods as distinguished from the goods purchased through the governmental agencies on the black market.

An interesting item appears in the minutes of the meeting of the Vorstand of Fried. Krupp A.G., 18 September 1941, attended by defendants Krupp and Loeser, showing approval of an appropriation of 13,550 RM for purchase of machine tools through "Krupp-Reparatur-Werk in Paris—Krawa."

On 31 December 1940 defendant Mueller was reporting to some of his colleagues—including among others the defendant Eberhardt—on a meeting, copies of which were sent to defendants Krupp, Pfirsch, Eberhardt, and Korschan, include the following paragraph:

> "11. *New machines for machine construction 21*—Dr. Mueller suggested that the new machines for Mb [machine construction] 21 be set up in Mb 20, as far as space is still available, in order to avoid any inconveniences in MB 21. He said it would also be advisable to have someone accompany the shipments of machines from France, since that was the only way to insure the speedy arrival of the machines."

In a note to defendant Loeser, 26 August 1942, his subordinate, Schroeder stated:

> "We are just now considering the intimation by the Wehrmacht to move our 12-ton tractor to France. For this it is im-

perative that we purchase in Paris more machines etc., for our workshops necessitating an outlay of about 1.2 million RM. We request you to authorize the amount."

MACHINES AND MATERIALS REMOVED FROM HOLLAND

For several years prior to the outbreak of the war the Krupp firm owned subsidiary Dutch companies, among them being the following: (1) Fried Krupp's Reederij en Transportbedrijf N.V. (Krupp's Shipping and Transport Co.); (2) Krupp's Erts-Handel Maatschappij N.V. (Krupp's Ore Trading Co.); (3) N.V. Stuwadoors Maatschappij "Kruwal" (The Stevedores Co.); and (4) Devon Erts Maatschappij N.V. (The Devon Ore Co.). The first three maintained their principal places of business at Rotterdam and the latter at Amsterdam.

In addition, Krupp-Eisenhandel (Krupp Iron Trade Co.), a Krupp subsidiary located at Duesseldorf, Germany, had a branch office at Rotterdam.

Throughout the period of the German occupation the Netherlands industries were forced to produce for the German war economy. By 1942 the so-called Lager-Aktion program was underway, under which the produce of the Dutch firms was seized and held for shipment to Germany. This covered, in the main, the period from 1942 to September 1944 which may be referred to as the first phase of organized spoliation. The branch office at Rotterdam of Krupp-Eisenhandel had sold Krupp products for many years in Holland and knew where many of these materials were located. The German authorities were informed and seized these products which included goods owned by the Board of Works, the Municipal Gas Works of Dutch municipalities, and several private firms. (Article 52 of the Hague Regulations protect "municipalities" of belligerently occupied territories as much as "inhabitants." In addition, Article 56 of the Hague Regulations reiterates: "The property of municipalities * * * shall be treated as private property.") These municipal and private enterprises were compelled to deliver these confiscated materials to various depots in Holland from which they were transported by the Krupp Dutch subsidiary, Krupp's Shipping and Transport Company, and shipped to Germany. The prices for these goods were arbitrarily set by the German authorities without the consent or approval of the Dutch owners. During this phase of the spoliation policy the Krupp subsidiary Dutch company shipped to Germany about 16,000 tons of confiscated materials which

consisted largely of fire-tubes, iron for reinforced concrete and shaped iron, a considerable portion of which reached the Krupp firms.

The second phase covers the period of September and October 1944 when it was thought that the Allied troops would soon liberate the Netherlands and that therefore sufficient time would not be available for the complete removal of industrial machinery and materials. Hence, only valuable machines and first-class materials were taken.

The third phase lasted from November 1944 until May 1945 during which time the Allied armies were held by the German Army after only a small portion of the Netherlands had been liberated. During this period a systematic plunder of public and private property was carried out.

By the fall of 1944 the Ruhr district had suffered heavy damage by bombing from the air. As a result, at the instigation of the Speer Ministry, the Ruhr Aid project was set up for the purpose of rehabilitating the industries of the Ruhr area. Under the plan tradesmen and skilled workmen throughout the Reich were to be recruited for work on reconstruction in the Ruhr. Suitable material for reconstruction was sequestered in the Reich and sent to the Ruhr district.

By October 1944 the Gusstahlfabrik (Cast Steel Works) in Essen was badly damaged by air raids. Minister Speer came to Essen to inspect the damaged plants and held a meeting while there which was attended by several members of the technical staff, members of the Vorstand, and other Krupp officials. At that meeting Speer proposed that German firms should seize machines and materials from the Dutch to rehabilitate the factories of the Ruhr. This suggestion, without doubt, prompted the ruthless and systematic plunder of Dutch industries which followed and which continued until the complete liberation of the Netherlands.

As a result of Speer's proposal, two employees of Krupp's technical department named Koch and Hennig were appointed by Rosenbaum, defendant Houdremont's direct subordinate, to proceed to Holland for the purpose of selecting machines and materials suitable for the Krupp industries in Germany. Several of the machine factories and the technical department were under the supervision of defendant Houdremont. Before leaving they were furnished a list of such machines and materials. At The Hague, Koch and Hennig were joined by Rosenbaum, mentioned above, and Johannes Schroeder, defendant Janssen's chief assistant. Together they proceeded to the German government office where they obtained the addresses of its branch offices in Rotter-

dam, Amsterdam, and Utrecht. At the Rotterdam office of the German Ministry for Armament and War Production they obtained the names of shipyards and manufacturing enterprises in Rotterdam where they could inspect machines and materials for shipment to Germany. Koch and Hennig visited the Lips factory, which will hereinafter be referred to, where they selected machines that were suitable to their lists. Ten fitters were requested from Essen for the purpose of dismantling and shipping these machines to Essen. They also visited the factories of De Vries Robbé & Co. of the N.V. Nederlandsche Seintoestellen Fabriek in Hilversum which was a subsidiary of the Philips firm in Eindhoven, of the firm of Rademaker, and the scale factory of Berkel, as well as several idle shipyards; and at each of these plants they selected materials and equipment. At one idle shipyard, for example, they did not even neglect to designate ship toilets for removal—which appeared to be useful for the barracks at Essen. They also selected profile steel and iron bars. The following comment of Hennig is of interest:

> "At heart, I did not approve the confiscation of the machines from the Dutch owners, since I held the view that the forcible removal of the machines deprived the owners of the Dutch enterprises as well as the Dutch workers of the possibility to continue production. In my opinion, this action was to be condemned as an unjustifiable hardship for the Dutch."

We shall now discuss the evidence on the looting of three specific factories in the Netherlands which will illustrate the pattern followed during the period from September 1944 until the complete liberation of Holland in April and May 1945. Those factories are: (1) Metaalbedrijf Rademaker N.V., located at Rotterdam; (2) De Vries Robbé & Co., N.V., located at Gorinchem; and (3) Lips Brandkasten en Slotenfabrieken N.V., located at Dordrecht.

The firm of Rademaker was engaged in a very specialized business—the production of cogwheels. Prior to the war some competition existed between them and the Krupp firm in the Dutch market, hence Krupp was familiar with the factory installations and the type of machinery owned by Rademaker.

On 16 March 1944 Rademaker was advised by letter from the commissioner for the Netherlands of the Reich Ministry for Armaments and War Production that the Krupp firm at Essen was appointed the "sponsor firm" for Rademaker and that Krupp could delegate a firm commissioner who would exercise strict supervision over orders and deliveries and should be advised by Rademakers of everything relating to German orders and their execution.

In September 1944 a certain Gerosa, the head of the Rotterdam branch of the office of the Reich Ministry for War Production came to the Rademaker factory with a requisitioning order signed by himself, listing machines which were to be confiscated. He went through the factory and marked five very modern special grinding machines for confiscation. The following day he returned with twelve German workmen from the Krupp firm at Essen who proceeded to dismantle these machines and others which had been designated for dismantling in the meantime. Gerosa made the management responsible for the correct execution of his orders and threatened them if they failed to comply. At the beginning, only the best and newest machines were taken but a few weeks later they began taking everything that could be removed, including raw materials and tools. In all, there were twenty-one freight cars of machines and materials, all of which were sent to the Krupp firm at Essen.

Immediately upon the termination of the war the Rademaker firm instituted a search for the eighty-four machines which had been confiscated and were able to find all of them with the exception of three or four machines in a bombed-out Krupp shop at Essen. Fifty percent of the machines were damaged beyond repair.

In November 1944 the two representatives of the Krupp firm at Essen, Messrs. Koch and Hennig, visited the Rademaker factory. At that time practically all of the machines had been removed. They requested an inventory for all confiscated machines and tools which was refused.

The defense did not deny the fact that this valuable property of Rademaker was received by the Krupp firm, but asserted that Rademaker had voluntarily chosen the Krupp firm to receive it.

In answer to this position of the defense, we quote from the testimony of the Dutch witness, Hendrikus Esmeijer,* as follows:

> "On 29 September, Fliegerstabs-Ingenieur or Engineer Bauer, who worked there before, appeared with the motor factory man and stated that he would come again to take out all machines because they had to be shipped away. Bauer requested that I state an address in Germany where these machines would be shipped to. I said to Mr. Bauer, 'We do not want these machines taken away because it is a war regulation between Germany and Holland, and this was not in accordance with these regulations.' Consequently, Mr. Bauer said, 'If you do not want to give up these machines we will take them away by force,' and I said, well, do what you have to; and he again

* Complete testimony is recorded in the mimeographed transcript, 19 Feb. 1948, pp. 4414–4425.

requested that I give him an address in Germany. I refused that, but I said we have a sponsor firm in Germany, which is Friedrich Krupp. Let Krupp decide this. In answer, after that, machines were sent to Krupp Essen from Rademaker.

* * * * * * *

"Q. Witness, you mentioned something concerning asking the Krupp officials to safeguard the machines. Does this mean that you desired the machines removed from your factory to Germany?

* * * * * * *

"A. I absolutely refused to have these machines taken away to Germany because I felt that in September or October 1944 the machines were much safer in Holland than in Essen, Germany. I also told Messrs. Hennig and Koch that I have only one fear about the machines, that the Allied armies would advance through Essen and that our machines would be destroyed in the course of that advance."

In the case of De Vries Robbé and Company the system pursued followed closely that employed in the case of Rademaker.

A department of the Krupp firm, Stahlbau-Rheinhausen, manufactured the same products as were produced by the De Vries firm. Consequently, throughout the occupation of Holland by Germany the De Vries firm was required to produce for the Krupp firm at Rheinhausen. As early as September or October 1940, some Krupp Rheinhausen officials looked over the factory. In 1942 technical officials of Krupp Rheinhausen spoke to technical officials of the De Vries firm about Krupp's intention to buy or otherwise take over the factory, but for some time no further steps were taken in that direction.

On 21 April 1944 the De Vries firm was advised by the Netherlands Office of the Reich Ministry for Armament and War Production that it was placed under the sponsorship of the Krupp Rheinhausen firm. A letter of Krupp Rheinhausen, dated 5 June 1944, confirmed this, stating that Karl Breitung of the Dutch subsidiary firm Krupp-Eisenhandel had been appointed as Rheinhausen's delegate to the firm.

In October 1944 the same Captain Bauer of the German Air Force who carried out the confiscation of Rademaker's advised the De Vries firm that all their material would be confiscated. Immediately the German military authorities carried away large quantities of zinc wire, bolts, and nuts which were shipped to the Krupp firm at Rheinhausen. Thereafter the De Vries firm was informed that its machines would also be taken giving as a reason that the valuable machines and materials had to be protected and

placed with Krupp for safekeeping in view of a possible Allied invasion. Resistance to this seizure was impossible. In late November, Koch and Hennig of the Krupp Essen firm called at the factory and designated the machines and machine tools which were to be taken. As a result of this visit, a large shipload of material was sent to Krupp Rheinhausen in January 1945.

At first only the most valuable and modern machines were taken. Later on, everything that could be used and dismantled was carried away.

Practically all the material taken was sent to Krupp Rheinhausen. Its total weight, exclusive of the machines and tools taken, was 2,860 tons. Of the forty-eight machines sent to Rheinhausen, twenty were found and returned after the war ended. About 47 percent of the material dispatched to Rheinhausen was found and returned.

The same pattern was followed in the case of the Lips firm. This firm was engaged in the manufacture of safes, steel furniture, locks, and other related items. The factory was located at Dordrecht, but the company also operated branch stores in other cities of the Netherlands. In September and October 1944, members of the Field Economics Office came to the town of Dordrecht and proceeded to confiscate the goods of various firms of that city, including the Lips firm. Not only were the machines of the company confiscated but also implements, boxes, charcoal, tables, chairs, dining utensils, their entire stock of locks from the branch store at Utrecht—without opportunity to invoice them—and a number of locks from their stock at Dordrecht.

Representatives of the Krupp firm at Essen came to the factory in December 1944 to look over the machinery and in about a month thereafter the Krupp workmen participated actively in removing machines from the factory. They told the Lips workmen that if they did not work fast enough in assisting to remove the machines they would call in the Wehrmacht. A comment reported to have been made by two representatives of the Field Economic Office, namely, Boelke and Goetz is of interest. They advised the Lips firm that in their opinion enough machines had been removed from the factory and referred to the Krupp men as the "Robbers." The specific items which were forwarded to the Krupp firm at Essen consisted largely of machines and materials and are shown in (*Document NIK–7441*) Prosecution Exhibit 752.

The position taken by Lips was the same as that of the other firms. Active resistance was impossible and out of the question. They did not place any price on the seized machines and materials although the opportunity was extended to them because they did

not trade in these goods and they wanted to make it clear that the materials were taken from them by force and without any voluntary assistance or assent on their part.

There were other firms such as the Nederlandsche Seintoestellen Fabriek N.V., located at Hilversum and various shipyards which have been mentioned above from which machines, implements, and material were taken. Suffice to say that the system of confiscation and transportation of these goods followed the same pattern. After the war ended most of the machines sent to the Krupp Essen firm from Holland were found in machine construction shops 9 and 10.

We conclude that it has been clearly established by credible evidence that from 1942 onward illegal acts of spoliation and plunder were committed by, and in behalf of, the Krupp firm in the Netherlands on a large scale, and that particularly between about September 1944 and the spring of 1945, certain industries of the Netherlands were exploited and plundered 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."

Another example of the aggressive attitude of the Krupp firm and the reliance placed upon government officials to assist it in acquiring properties in the occupied territories is the attempted purchase of a shipyard in the Netherlands, owned by a Dutchman named Wortelboor. The Krupp firm wished to obtain a shipyard on the Rhine to be used in conjunction with the Krupp-Stahlbau plant at Rheinhausen. For this purpose Schroeder, defendant Loeser's chief assistant, journeyed to Holland in company with an official of the Krupp-Stahlbau plant and a Dr. Knobloch, to inspect, and appraise the Wortelboor shipyard.

Schroeder reported to defendant Loeser, his superior, that the shipyard would be suitable, but the Krupp firm's subsequent efforts to purchase the property were frustrated because Wortelboor decided not to sell. We quote from a portion of Schroeder's report, dated 11 June 1942 (*NIK–5997, Pros. Ex. 814*):

> "Mr. Wortelboor is a Dutchman. He plainly has no interest in furthering the plans of the German Navy.
>
> "A plan of working in cooperation with Wortelboor does not appear feasible to us * * *. We would be interested in buying the dockyard if it is to be had at a reasonable price. Dr. Knobloch will inform the navy of our way of looking at the matter, and will suggest that the navy exert a certain amount of pressure on Wortelboor * * *. Perhaps Wortelboor will then

* Trial of the Major War Criminals, *op. cit. supra*, volume I, page 239.

yield and agree to make a sale, for which he shows no interest at the moment."

The credible evidence discloses active participation in the acquisition of machines from France and Holland by defendants Krupp, Houdremont, Mueller, Janssen, and Eberhardt and from Holland by the same defendants with the exception of defendant Eberhardt. Defendant Loeser did not participate in the acquisition of machinery and materials subsequent to April 1943 but prior thereto as head of the finance department and member of the inner Vorstand he, together with defendant Krupp, approved a credit application for purchase of machinery at the Austin factory and an application for credit of 1.2 million RM for the purchase of machinery in France. The agenda for an Aufsichtsrat meeting in March 1943 sent out by defendant Krupp to defendants Loeser, Houdremont, Mueller, Janssen, Pfirsch, and Korschan included a large list of credits for new construction and acquisition of machines which includes an item of "800,000 RM for booty machines for machine construction 20 and 21." A report on the method of acquisition of machines in France was initialed by defendant Houdremont. Reference has already been made to the statement by defendant Mueller that someone should accompany the machines from France in order to assure their speedy arrival. Moreover, subsequent to April 1943 expenditures for machinery in excess of 5,000 RM needed the approval of defendants Houdremont, Mueller and Janssen, and if in excess of 10,000 RM the approval of defendant Krupp. As has been previously stated defendants Krupp and Loeser were members of the Vorstand of the Krupp firm until April 1943 at which time defendant Loeser retired from the firm and thereafter the Vorstand consisted of defendants Krupp, Houdremont, Mueller, and Janssen. Defendant Eberhardt was a deputy member and head of the commercial sales department. In the acquisition of machines and property in France he was the most active in the field of all defendants.

The defense have argued at length that the Krupp firm did not desire to participate in the spoliation of occupied countries but that whatever action was taken on their part in the acquiring of machines, materials, and other properties was solely upon the orders of the Reich government in the furtherance of war production. For example, the claim is made that the confiscation of the two large bending machines obtained from ALSTHOM—which we have discussed heretofore—was the direct responsibility of the Navy High Command, and that the Krupp firm had no alternative except to remove the machines and utilize them for

the duration in carrying out the submarine program. Another example is the claim that the Krupp firm did not desire to use confiscated machines from Holland although the record shows that their own men proceeded to Holland with a suggested list of essential machines and on the basis of this list selected machines which were confiscated and sent to Germany for use in Krupp plants. There are numerous other such examples, all of which make it clear to us that the initiative for the acquisition of properties, machines, and materials in the occupied countries was that of the Krupp firm and that it utilized the Reich government and Reich agencies whenever necessary to accomplish its purpose, preferring in some instances, as has been shown, to remain in the background while the negotiations were handled by the government agencies.

This "initiative" on the part of the Krupp firm is best shown by two letters admitted in evidence, both of which are signed by defendant Loeser's right-hand man, Johannes Schroeder. One is addressed to his colleague Dr. Buseman and the other to defendant Eberhardt. We quote them *in toto*—their purpose is clear:

"Mr. A. von Bohlen just asked me which steps we had undertaken to secure trusteeships of enterprises of interest to us in case American property would be confiscated as a retaliation against the Americans.

"I told him that you are slated to become a trustee for the National-Krupp Registrierkassen, G.m.b.H. (National-Krupp Cash Register, Ltd.).

"In my opinion, however, it is not sufficient if this is arranged with the company. There is rather required a consent from government authorities, probably from Ministerialdirektor Dr. Ernst.

"Mr. A. von Bohlen requests you to report to him briefly.

"Since I shall not be present tomorrow, and not having been able to reach you today, I inform you about this matter in writing."

The second letter is as follows:

"We were discussing the Duerkopp Works a few days ago. I have not done anything yet, since I wanted to await the return of Dr. Loeser.

"Would the 'Singer sewing machines' also be suitable for you. The Singer sewing machines are, to my knowledge, American property. The appointment of trustees as a retaliation against the Americans is to be reckoned with shortly. Maybe a man of Krupp could then become a trustee."

Thus, we see that 6 months prior to the attack on Pearl Harbor, the defendant Alfried Krupp was taking the initiative in acquiring American interests for the Krupp firm of which fact the defendants Loeser and Eberhardt were well aware.

With respect to the acquisition of the Berndorfer plant in Austria by the Krupp firm we are of the opinion that we do not have jurisdiction to which conclusion Judge Wilkins dissents.

Upon the facts hereinabove found we conclude beyond a reasonable doubt that the defendants Krupp, Loeser, Houdremont, Mueller, Janssen, and Eberhardt are guilty on count two of the indictment. The reasons upon which these findings of guilt are based have been set forth heretofore in the discussion of each specific act of spoliation.

The nature and extent of their participation was not the same in all cases and therefore these differences will be taken into consideration in the imposition of the sentences upon them.

The evidence presented against the defendants Karl Pfirsch, Heinrich Korschan, Max Ihn, and Friedrich von Buelow we deem insufficient to support the charge of spoliation against them as set forth in count two, and we, therefore, acquit Karl Pfirsch, Heinrich Korschan, Max Ihn, and Friedrich von Buelow of count two of the indictment.

The defendants Werner Lehmann and Hans Kupke were not charged with this offense.

Count three of the indictment charges all of the defendants of a violation of Article II, paragraphs 1 (*b*) and (*c*) of Control Council Law No. 10. These provisions are as follows:

> "(*b*) *War Crimes.* Atrocities of offenses 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 labor 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.
>
> "(*c*) *Crimes against Humanity.* Atrocities and offenses, 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 ground whether or not in violation of the domestic laws of the country where perpetrated."

It is also averred that the acts relied upon as constituting violations of these provisions were likewise violations of the laws and

customs of war, of the general principles of criminal law as derived from the criminal laws of all civilized nations and of international conventions, particularly of certain specified articles of the Hague Regulations of Land Warfare, 1907, and of the Prisoners of War Convention, Geneva, 1929.

All of the acts relied upon as constituting crimes against humanity occurred during and in connection with the war.

Civilians brought under compulsion from occupied territories and concentration camp inmates and prisoners of war were used in the German armament industry during the war on a vast scale. There is no contention to the contrary. Likewise, the undisputed evidence shows that the firm of Krupp participated extensively in this labor program. According to an analysis, introduced by the prosecution, of the documentary evidence, the whole enterprise consisting of about 81 separate plants within greater Germany employed, between 1940 and 1945, a total of 69,898 foreign civilian workers and 4,978 concentration camp inmates; the great majority were forcibly brought to Germany and detained under compulsion throughout the period of their service, as well as 23,076 prisoners of war.

The principal plant of the concern was the Gusstahlfabrik located in Essen, the headquarters of the enterprise. The Gusstahlfabrik is known in the record as the Cast Steel Factory, the name having been taken from the original factory with which became the nucleus of the Krupp enterprise. However, the name is misleading. It was not a factory but consisted of between 80 to 100 factories all located in Essen. We deem it necessary to deal in detail with this plant only, and for convenience we refer to it upon occasion as the Cast Steel Factory. With one or two exceptions, we need only refer in passing to the subsidiary companies located outside Essen.

It would serve no useful purpose to undertake to specify the number of prisoners of war and foreign civilian workers employed each year in the Cast Steel Factory. Taking, as the defense does, August 1943 as the key date, it is sufficient to say that at that time, of a total number of 70 to 76 thousand workers employed in Essen, 2,412 were prisoners of war and 11,557 were foreign civilian workers.

Under the Hague Regulations of Land Warfare, the employment of prisoners of war must be "according to their rank and aptitude." (Art. 6, para. 1.) Their "tasks shall not be excessive and shall have no connection with the operations of war." (Art. 6, par. 2.)

Article 29, of Geneva Convention, provides "no prisoner of war may be employed at labors for which he is physically unfit."

Article 30 stipulates that "the length of the day's work of prisoners of war, including therein the trip going and returning, shall not be excessive and must not, in any case, exceed that allowed for civilian workers in the region employed at the same work. Every prisoner shall be allowed a rest of 24 hours of every week, preferably on Sunday." Article 31, paragraph 1, provides that "labor furnished for prisoners of war shall have no direct relation with war operations. It is especially prohibited to use prisoners for manufacturing and transporting arms or munitions of any kind or for transporting material intended for combat units." By Article 32, it is forbidden to use prisoners of war at unhealthful or dangerous work, and the same article also provides that any aggravation of the conditions of labor by disciplinary measures is forbidden.

In a compilation by the Reich Minister of Labor of the laws governing employment of prisoners of war published in the Reich Labor Gazette, 25 July 1940 there was a provision that "the work to be performed by the prisoners of war must not be directly connected with the operations of war." So far as it appears, this law was never amended or repealed. Keitel seems to have been responsible for an order to the contrary. There is oral testimony of two or three witnesses to the effect that they thought the order was issued on oral instructions from Hitler.

The laws and customs of war are binding no less upon private individuals than upon government officials and military personnel. In case they are violated there may be a difference in the degree of guilt, depending upon the circumstances, but none in the fact of guilt.

Practically every one of the foregoing provisions were violated in the Krupp enterprises. In the early stages of the war, it was sought to evade the provisions of Article 31 of the Geneva Convention and the corresponding provisions of the Hague Regulations as well as the German law above quoted by an interpretation alleged to have been given by the commandant of the prisoner of war camp or some other military authorities. This appears from a memorandum of a Krupp representative who attended a conference of counterespionage employees of the armament industry of Wehrkreis 6, held at Essen on 5 December 1940. He reported to the officials of the Krupp firm as follows (D–198, Pros. Ex. 848) :*

> "According to international agreement PW's may not be employed in the manufacture and transportation of arms and war material. But if any material cannot be clearly recognized as being part of a weapon, it is permissible to get them to work on it. Responsible for this decision is not the intelligence branch (Abwehrstelle) but the commandant of the PW camp."

* Reproduced in section VIII G 1.

This brings to mind the German practices in the First World War in the use of poison gas. By the Hague Convention of 1907 and the Geneva Convention of 1907,[1] it was agreed that the signatories would not use "projectiles," the sole object of which is diffusing of noxious gas. The Germans sought to justify their use of gas by the insistence that in view of the explicit stipulation that "projectiles" are prohibited, the use of gas from "cylinders" was legal and this notwithstanding the effect upon the victim was much worse.

But in the recent conflict all pretense was in time abandoned and by the defense's own evidence, as well as that of the prosecution, it is conclusively shown that throughout German industry in general, and the firm of Krupp and its subsidiaries in particular, prisoners of war of several nations including French, Belgian, Dutch, Polish, Yugoslav, Russian, and Italian military internees were employed in armament production in violation of the laws and customs of war. It is equally clear that in many instances, including employment in the Krupp coal mines, prisoners of war were assigned to tasks without regard to their previous trainings, in work for which they were physically unfit and which was dangerous and unhealthy.

The practice began as early as August 1940. At that time, 185 Belgian and Dutch prisoners of war were employed at the Gusstahlfabrik in Essen. French prisoners of war were employed in armament production as early as 1941 and Russian prisoners of war beginning in March 1942. Polish prisoners of war were employed at ELMAG in 1944 and during the disastrous air raids in the fall of that year, more than 3,000 prisoners were employed in Essen. In the various subsidiaries the practice was likewise pursued. These included the Friedrich-Alfred-Huette, the Bergwerke Essen, the Grusonwerk, the Berthawerk, and the ELMAG. In the various enterprises 22,000 prisoners of war were employed in June 1944.

Russian prisoners of war were discriminated against in every material respect. It was shown before the International Military Tribunal, hereinafter referred to as the IMT, and shown here that prior to the attack on Russia, the high Nazi policy makers had determined not to observe international law in the treatment of Russian prisoners of war. The regulations on the subject were signed by General Reinecke on 8 September 1941. They brought a protest from Admiral Canaris.[2] He pointed out in substance that although Russia was not a party to the Geneva Convention,

[1] The words "Geneva Convention of 1907" appear to be a clerical error. The reference is evidently to the Hague Declaration No. XIV of 1907. The full title of this declaration is "Declaration Prohibiting the Discharge of Projectiles and Explosives from Balloons."

[2] Trial of the Major War Criminals, op. cit. supra, volume I, page 232.

the principles of general international law as to the treatment of prisoners of war were applicable. Continuing, he said:

> "Since the 18th century these have gradually been established along the lines that war captivity is neither revenge nor punishment, but solely protective custody, the only purpose of which is to prevent the prisoners of war from further participation in the war. This principle was developed in accordance with the view held by all armies that it is contrary to military tradition to kill or injure helpless people * * *. The decrees for the treatment of Soviet prisoners of war enclosed are based on a fundamentally different viewpoint."

The IMT held that this protest correctly stated the legal position. However, it was ignored entirely. The reason is indicated by a note by Keitel, chief of the High Command of the Armed Forces, made on the back of Admiral Canaris' protest. This is as follows:*

> "The objections arise from the military concept of chivalrous warfare. This is the destruction of an ideology. Therefore I approve and back the measures."

It is well enough to refer just here to the testimony of General Westhoff, who was introduced as a witness by the defendants. He had been a regimental commander on the eastern front, but in February 1943 returned to Germany to join the Armed Forces High Command for prisoners of war affairs. The actual decisions with respect to these matters, he testified, were made by the chief of the Armed Forces High Command. The office of Westhoff dealt with administrative tasks, particularly with the observance of the Geneva Convention. He said that the order relating to the treatment of Russian prisoners of war did not meet with the approval of armed forces in general, and after a struggle they succeeded in having it rescinded and that as a result after December 1942, Russian prisoners of war were treated according to the Geneva Convention. This may have been the official attitude of the competent authorities, but it is abundantly clear that it was not the attitude which prevailed in the Krupp enterprise.

But it is argued that since the employment of prisoners of war in the armament industry was authorized by directives of government officials or military authorities, the defendants had no reason to believe that it was wrong to do so and hence cannot be said to have had a criminal intent.

---

* Ibid.

We know of no system under which ignorance of the law excuses crime. As to the question of intent, counsel has failed to distinguish between a general intent and a specific intent. When the crime consists not merely in doing an act but in doing it with a specific intent, the existence of that intent is an essential element and is not to be presumed from the commission of the act but must be proved. Upon the other hand, when a person acting without justification or excuse commits an act prohibited as a crime, his intention to commit the act constitutes criminal intent. In such case the existence of the criminal intent is presumed from commission of the act on the ground that a person is presumed to intend his voluntary acts and their natural and probable consequences. The rule that every man is presumed to know the law necessarily carries with it as a corollary the proposition that some persons may be found guilty of a crime who do not know the law and consequently that they may have imputed to them criminal intent in cases of which they have no realization of the wrongfulness of the act, much less an actual intent to commit the crime. A general criminal intent is sufficient in all cases in which a specific or other particular intent or mental element is not required by the law defining the crime.*

But apart from the foregoing well established principles, the evidence in this case shows that at least with respect to the managers of the Krupp enterprise the argument has no factual basis. The prosecution introduced the affidavit of Schroedter who was also examined before the Tribunal. As a witness, he certainly was not hostile to the defendants, but on the contrary endeavored to do the best he could for them. This was quite obvious. From 1926 until September 1943, Schroedter was the commercial management member of the Vorstand of the Germaniawerft, the shipbuilding subsidiary located at Kiel. The defendants Alfried Krupp, Loeser, and Janssen were members of the Aufsichtsrat of the Germaniawerft at the particular time in question. On account of the drafts of German workers for war service, Schroedter was having difficulty in finding the labor necessary to meet quotas assigned to the Germaniawerft by the navy. He testified that he had been promised prisoners of war or other foreign workers as replacements. The Germaniawerft was engaged in building warships and Schroedter had some scruples about using prisoners of war. He therefore decided to go to Essen and discuss the matter with the top officials there. This was in 1941 and Schroedter said at that time the prisoners of war available were largely French, Belgian, and Dutch.

* Miller, J., Handbook on Criminal Law (West Publishing Co., St. Paul, Minn., 1934), section 16, pages 57 and 58.

Upon his arrival in Essen, Schroedter explained his difficulties to the defendants Loeser and Krupp and inquired how the Gusstahlfabrik and other firms of the enterprise were using prisoners of war on armament projects. The defendant Krupp told him nothing specific but instead put him in charge of a plant manager who showed him around the factories in Essen with a view of demonstrating how the matter was handled there. Schroedter said he was not given any directives on how to employ prisoners of war in armament projects but that the defendant Krupp told him,* "you come to see us on all these questions. We'll show you how to do it and then you can draw your own conclusions of how to arrange matters in Kiel where conditions are different." Why this evasive attitude rather than an honest and frank discussion is unexplained. The unfavorable inference is inescapable.

Schroedter testified that from what he saw at the Gusstahlfabrik, he did not gain the impression that any prisoners of war were being employed directly in armament production, but in other tasks and that that was the policy he pursued at the Germaniawerft for, he said, "it was quite out of the question as far as I was concerned to occupy a prisoner of war on immediate armament production." But he also testified that in 1943, of 11,000 employees at the Germaniawerft there were 1,500 prisoners of war, and that the maximum number employed there at any time was roughly 2,000, including 400 to 500 French, 200 Dutch, and the remainder Russian. At that time, as shown by the defense evidence, Speer in January 1943 had forbidden all peacetime production. The Germaniawerft was engaged in building warships for the navy, principally submarines.

In his affidavit, the witness deposed that the defendants Krupp, Loeser, and one Girod told him that "the legitimacy of employing foreign workers on war work was not to be discussed." He further deposed that he often received instructions from Essen which he did not himself approve; that he discussed with the officials there the legitimacy of employing prisoners of war in armament production and was told by Loeser that he was to be guided by the way in which the matter was handled in Essen and that the question of legitimacy was to be put aside. This testimony leaves no doubt that the officials in Essen were quite well aware of the fact that the employment of prisoners of war in the production of armament was a violation of the law, and none about the fact that they did not intend for the managers of subsidiaries to raise any troublesome questions about it.

Moreover, it demonstrates the close connection between the directorate in Essen and the subsidiaries having a separate corporate structure such as Germaniawerft.

* Extracts of Schroedter's testimony are reproduced above in section VIII B 2.

As already said, Schroedter did the best he could for the defendants. He tried to leave the impression that no prisoners of war were employed in armament production in Essen, or at least that he saw none.

In contrast is an affidavit introduced by the defense of Hans Jauch who beginning in June 1942 was the commander of Stalag VI-F, in Bocholt. This Stalag had jurisdiction over the employment of prisoners of war in the Essen area. He deposed as follows (*Lehmann 149, Def. Ex. 1006*) :[1]

> "At Krupp the assignment of workers to jobs was governed by principles of expediency, that is, they were put wherever they were needed. A clear separation of production for war purposes and peace purposes was in a firm like Krupp presumably impossible under the sign of total war. I am of the opinion that if one had wanted to adhere strictly to the letter of the Geneva Convention in this respect the OKW probably ought not have assigned any PW's at all to a firm like Krupp and all similar firms."

The fact that during a substantial part of the war years, Russian prisoners of war and Italian military internees were required to work in a semistarved condition is conclusively shown by documentary evidence taken from the Krupp files which had been secreted as herein above stated. The evidence on the subject is voluminous and within reasonable limits cannot be discussed in detail. The evidence from the secreted Krupp files is conclusive on the question.

Russian prisoners of war began to arrive early in 1942. Of all the military prisoners they fared the worst. The utter inadequacy of the food supplied them is conclusively shown by protests made by managers of several of the plants of the Cast Steel Factory to which they were assigned by Krupp officials for work. A few illustrations will suffice. On 25 February 1942 the locomotive works, one of the factories in Essen, forwarded to Hupe, a Krupp official, the following (*D–164, Pros. Ex. 896*) :[2]

> "On the 16th of this month, 23 Russian prisoners of war were allocated to the boiler construction works. These men came to work in the morning without bread or tools. During the two breaks, the prisoners approached the German workers seated in the vicinity and plaintively begged for bread, pointing out that they were hungry. (At lunchtime on the first day, the firm was able to distribute among the Russian PW's food

[1] Other parts of this affidavit are reproduced above in section VIII G 3.
[2] Reproduced above in section VIII G 1.

left over by the French PW's.) On 17 February, at the instigation of Mr. Theile, I went to the kitchen in Weidkamp to remedy this state of affairs and negotiated with the manager of the kitchen, Miss Block, about the issue of some lunch. Miss Block immediately promised me to issue some food and in addition lent me the 22 mess tins which I asked for. On this occasion I also asked Miss Block to let our Russian PW's have, until further notice, at lunchtime such food as might be left over by the 800 Dutch personnel fed there. Miss Block agreed to this too, and issued a pot of milk soup as additional food for the next lunch. On the following day again the lunch allocation was very small. Since some Russians had already collapsed and since from the second day onward the special allocation too had ceased, I tried again to ask Miss Block by telephone for a further issue of food. Since my phone call did not have the desired effect, I paid another personal visit to Miss Block. This time Miss Block refused any further special allocation of food in a very brusque manner.

"After the Russian prisoners of war had been allocated to us by the labor allocation office on the 16th of this month, I immediately got in touch with Dr. Lehmann to settle the question of feeding them. I then learned that each prisoner receives 300 grams of bread between 0400 and 0500 hours. I pointed out that it was impossible to exist on this bread ration until 1800 hours, whereupon Dr. Lehmann told me that the Russian prisoners of war must not be allowed to get used to western European ways of feeding. I replied that the prisoners could not carry out the heavy labor required in the boiler construction shop on these rations and that it would not serve our purposes to keep the men at the works under these conditions. At the same time, however, I requested that if the Russians were to continue to be employed they should be given a hot midday meal and that, if possible, the bread ration should be divided, one-half being distributed early in the morning and the other half at the time of our breakfast break. This proposal of mine has already been put into effect by us with French prisoners of war and has proved effective and expedient.

"To my regret Dr. Lehmann did not agree to my proposal, however."

The Dr. Lehmann referred to in this communication is one of the defendants. On 26 March 1942, Theile, of the boiler construction shop, reported to Hupe that (*D–297, Pros. Ex. 901*)*—

"The Russian prisoners of war employed here are in a generally weak physical condition and can only partly be em-

* Reproduced above in section VIII G 1.

ployed on light fitting jobs, electric welding, and auxiliary jobs. Ten to 12 of the 32 Russians here are absent daily on account of illness.

"In March, for instance, 7 appeared for work only for a few days, 14 are nearly always ill, or come here in such a condition that they are not capable of even the lightest work. Therefore only 18 of the 32 remained who could be used only for the lightest jobs.

"The reason why the Russians are not capable of production is, in my opinion, that the food which they are given will never give them the strength for working which you hope for. The food one day, for instance, consisted of a watery soup with cabbage leaves and a few pieces of turnip."

This report was made 6 weeks after the first Russian prisoners of war had been employed in that factory. It was brought to the attention of Dr. Beusch and the defendant Ihn.

That the condition continued, nevertheless, is indicated by another document from the Krupp files. On 19 November 1942, Instrument Work Shop No. 11, another factory in Essen, reported to the labor allocation office as follows (*NIK–12358, Pros. Ex. 908*) :*

"During the last few days we have again and again discovered that the food for the Russian prisoners of war who in our plant are exclusively employed on heavy work is totally inadequate. We have already expressed this in our letter to Mr. Ihn, dated 30 October 1942. We discover again and again that people who live on this diet always break down at work after a short time and sometimes die. It is no help to us to get a few workers assigned to us after a long fight. For this heavy work (processing of airplane armor plates) we have to insist that the food is adequate enough to actually keep these workers with us."

That the conditions described in these documents were general and known by every agency of the firm employing Russian prisoners of war is shown by the defense documents as well as those of the prosecution.

On 30 October 1942, a report was made by Eickmeier to the defendant Lehmann. Eickmeier was an employee of the labor allocation from 1 September 1942 until March 1945 and acted as the liaison official with the army authorities having supervision of the prisoners of war camps. He described his duties as those of a "trouble shooter" to straighten out difficulties arising at

* Ibid.

numerous Krupp plants employing prisoners of war. He testified that he made frequent inspections of the conditions often in company with an army inspection officer from the Stalag, and also a representative from the German Labor Front; and that in at least one instance such inspection took place in the presence of the officials from the internal labor allocation office.

In his report of 30 October 1942 to the defendant Lehmann, Eickmeier stated the following (*NIK–12359, Pros. Ex. 906*) :*

> "The general state of health and nutrition in all Russian prisoner of war camps is very unfavorable and is obvious to anybody who has had an opportunity to observe those things. I have of course also attempted on the spot to find out the causes of this fact. In all Russian camps, members of the army (among them veterans of the Russian campaign who certainly cannot be classed as friends of the Bolshevists) explained to me, that the food as far as *quantity was concerned* was insufficient, furthermore that food ought to be more substantial. Members of the army who have already been for sometime on prisoner guard duty declared that they had on various occasions observed new transports of prisoners who on arrival were in the best of health and appeared sturdy and strong, but after only a few weeks were in an extraordinarily weakened condition. Army medical inspectors have also made remarks in the camps along these lines and stated that they had never met with such a bad general state of affairs in the case of the Russians as in the Krupp camps. In fact the prisoners returning from work make a completely worn-out and limp impression. Some prisoners just simply totter back into camp. It must be taken into consideration that the prisoners have to march a considerable way to and from work in addition to the normal working hours. In my opinion the food should be improved by additional delivery of potatoes. (I also happened to hear from the guards that the prisoners at Hoesch get 3 liters of food.) Furthermore, care should be taken that the prisoners receive their food from the plant at the start of the rest period and do not spend it waiting in a queue for the food to be given out."

A file note of 24 October 1942 made by Trockel, Krupp employee, to Lehmann, which was also brought to the attention of the defendant Ihn, reports a telephone conversation with the chief army physician of the Bocholt Stalag, Dr. Holstein. This Stalag had supervision of prisoners of war in the Essen area. The conversation was with reference to conditions at camp Raumerstrasse and came about through the efforts of Krupp to return to

* Ibid.

the Stalag some of the physically unfit Russian prisoners of war. The report recites that (*NIK–15375, Pros. Ex. 1536*)—

> "Dr. H. [Holstein] complained bitterly that the Raumerstrasse camp was the one among all the camps under their jurisdiction which always had the largest number of sick prisoners. He could only assume that this was due to the camp food, camp management, etc. It was true, that conditions in the camp had already improved but it still had the highest sick rate. * * * He asked us on our part to do our best to improve conditions particularly in connection with food at the Raumerstrasse camp."

In October 1942 Dr. Toppesser of the drop forge plant after observing that the Russian prisoners of war who came there for treatment "gave evidence of appalling poor nutrition," pointed out that in a mine in the vicinity, the "nutrition of the prisoners of war was evidently quite good, notwithstanding their heavy work underground," and that this was due to the fact that the "mine purchased huge quantities of Swedish turnips as additional raw food for them," which put them in good condition. This information was transmitted to the defendant Lehmann.

The Krupp employee Eickmeier, hereinabove referred to was introduced as a witness for the defense. His efforts to explain away his reports were unique. It seems that in an effort to bring about an improvement, Lehmann intended to present the deplorable situation to the top officials of the firm. Eickmeier testified that at Lehmann's request he intentionally exaggerated the facts so as to make more impressive Lehmann's presentation of the need for relief. In the same connection, he testified that "difficulties we could not deal with ourselves were taken by Lehmann to offices in the very top levels in the firm."

But Eickmeier's cross-examination developed that his attempted explanation of his reports was not trustworthy. He admitted "the food was very meager; seemed to be largely a liquid diet, and I wanted to get them more solid food."

He also testified that before the prisoners of war were sent to the Krupp firm, they were examined by an army doctor for the purpose of weeding out those physically unfit to work and that there was no further examination made after their arrival. He likewise confirmed a statement in his report of 30 October 1942 that (*NIK–12359, Pros. Ex. 906*)*—

> "Members of the army who have already been for some time on prisoner of war guard duty declared that they had on various

* Reproduced above in section VIII G 1.

occasions observed new transports of prisoners who, on arrival, were in the best of health and appeared sturdy and strong, but after only a few weeks were in an extraordinarily weakened condition."

Conditions at the Krupp prisoners of war camps at the time under consideration were so bad that they came to the attention of the Army High Command. A contemporaneous document from the Krupp files records a telephone call made on 14 October 1942 by the Office of the Chief of the Prisoner of War Department of the Supreme Command of the Armed Forces, to the Krupp firm. The call was to the defendant von Buelow but he seems to have not been available and apparently it was taken by his secretary who made a record of it communicating it to von Buelow. The record is as follows (NIK–12356, Pros. Ex. 904)*:

"Subject: Telephone call by Colonel Breyer of the High Command of the Armed Forces, Department of PW's, Berlin. Colonel Breyer who wanted to talk to Mr. von Buelow, requested me to pass on the following to Mr. von Buelow:

"The High Command of the Armed Forces has lately received from their own offices and recently also in anonymous letters from the German population a considerable number of complaints about the treatment of PW's at the firm Krupp (especially that they are being beaten, and furthermore that they do not receive the food and time off that is due them. Among other things the PW's are said not to have received any potatoes for 6 weeks.) All those things would no longer occur anywhere else in Germany, the High Command of the Armed Forces has already requested several times that full food rations should be issued to the prisoners. In addition if they have to perform heavy work, they must also get corresponding time off, the same as the German workers. Colonel Breyer also informed me that the conditions at Krupp would be looked into either by the Army District Command or by the High Command of the Armed Forces themselves. He had requested General von der Schulenburg on the occasion of a trip to call at Krupp in person concerning this matter; unfortunately this had not been possible. I told Colonel Breyer that I could not judge the conditions but would pass on his information to Mr. von Buelow immediately."

When the foregoing information was communicated to the defendant von Buelow he passed it on to the defendant Lehmann with the advice that he had just had a call from a captain from the General Command Muenster, and that in the course of the conversation,—

* Ibid.

"I mentioned the call from Colonel Breyer, and told him that these complaints were certainly not justified. Besides, I was not the proper authority but would pass on the matter to competent officers in our firm. May I request you to take care of everything further."

There were also complaints by army officers charged with the supervision of prisoners of war about conditions in the Krupp enterprise. In January 1943, they again told Eickmeier that the "Oedema cases only existed in Krupp camps."

In June 1943, the official vegetable rations for Russian prisoners of war were less than one-quarter pound per day. In view of this fact, it is quite understandable how the department under the charge of the defendant Kupke reported "that it is impossible to prepare two even moderately satisfying hot meals on one and a half liters out of this quantity."

In the light of the foregoing documents, it cannot be said that the Krupp firm was required by governmental directives to work prisoners of war who, in many instances, were bordering on starvation. The Cast Steel Factory at Essen (Gusstahlfabrik) had officially been declared a military plant exclusively at the disposal of the High Command of the Armed Forces and of the Wehrmacht departments under its command, "which will furnish the plant with detailed instructions." The official directive expressly stated that only these military departments will have authority over this plant.

This was confirmed by Jauch, commander of Stalag VI-F at Bocholt, whose affidavit introduced by the defense has already been referred to. He deposed that (*Lehmann 149, Def. Ex. 1006*)* "naturally there were directives for the employment and treatment of prisoners of war which were based on the Geneva Convention. The executory decrees were issued by the High Command of the Armed Forces immediately. Thus the Stalags were only the organs which had to see to it that these directives were obeyed and not violated."

But apart from this evidence it is conclusively shown that the allocation of prisoners of war and their supervision was by the military authorities and, moreover, that requests by a firm for prisoners of war were granted only on condition that those physically unfit would not be put to work until they had been gotten in shape by proper feeding, or whatever measures were necessary.

This is made clear not only by documentary evidence offered by the defense, but also by the defense witness Borchmeyer who, beginning early in 1943, was the office chief of counterintelligence

* Reproduced in part in section VIII G 3 above.

at the Stalag, charged with supervision of prisoners of war camps in that area. Borchmeyer did the best he could to exonerate the defendants and the Krupp firm, but in the light of the contemporaneous documents his efforts must be regarded as futile. He testified that in many instances, because of their poor physical condition, Russian prisoners of war had to be "fed up" and "treated very carefully in regard to food in order to bring them up to strength," and very often this was a long process. But he made it clear that in granting requests for allocation of prisoners of war the Wehrmacht did so with the distinct understanding that it was the obligation of the employer to see that they were in the proper physical condition before putting them to work. With respect to Russian prisoners of war in particular, he testified that "they should be pampered and treated like raw eggs" and he was emphatic in stating that if any prisoners of war were put to work in a physically unfit or undernourished condition it was not the fault of the Wehrmacht but in part at least the fault of the factory to which they had been allocated.

Moreover, he confirmed that the employment of prisoners of war in the Krupp enterprise, particularly in Essen, exposed them to great danger. Anticipating the alleged defense of necessity, hereinafter discussed, it is interesting to note that Borchmeyer testified that he had no fear of reprisals for the policy of "pampering" Russian prisoners of war.

There is much evidence by the defense as to the so-called "pampering" of Russian prisoners of war, by "feeding them up" with extra rations before they were put to work. Such measures seem to have been considered necessary at the most temporarily. The defense introduced a letter from the board of directors of Fried. Krupp, A. G., Essen, dated 26 September 1942, signed by the defendants Ihn and Lehmann, addressed to the Army High Command. In this letter it was pointed out that a recent shift of Russian prisoners of war allocated for essential war work were so weak and undernourished that even with the best intention they were unable to work, and that with the food due them they could not be strengthened enough to work in the near future. It was accordingly asked "whether it might be possible to authorize additional food necessary for a feeding-up campaign" of from 4 to 6 weeks, which would be necessary to get the prisoners of war in condition to work. The letter concluded that "as we are, under the circumstances described, very anxious to employ the Russian prisoners of war in the very near future, we should be most grateful if you would give us your opinion on this matter as soon as possible." (Lehmann 421, Def. Ex. 1186) *

A reply to this letter, dated 15 October 1942, was as follows:

* Reproduced in section VIII G 1.

"As from 19 October 1942 new food regulations will be in force for Soviet prisoners of war with notable improvement of food allocations for these prisoners of war both in quality and quantity. The procurement of these supplies will make it possible to feed the Soviet prisoners of war adequately and to reestablish the full working capacity of the prisoners. Further provisions for special feeding-up of prisoners should therefore no longer be necessary." (Lehmann 422, Def. Ex. 1187)*

Whatever may be said about the inadequacy of official rations prior to October 1942, and the efforts made by the Krupp firm to bring about an increase, there are two determinative facts which are established beyond doubt by contemporaneous documents taken from the Krupp files, some of which are quoted hereinabove. These are (1) that Russian prisoners of war were put to heavy work when, due to undernourishment, they were totally unfit physically, and (2) that not only was there no official requirement that this be done, but it was directly contrary to the orders of the competent officials.

It may be conceded that there was some improvement in the feeding of prisoners of war by the middle of 1943, but such as it was it did not prove to be permanent.

The testimony of defense witness Marquardt, Krupp employee, indicates what the situation was in the summer and fall of 1944 with respect to the noon meals served in the factories during the break in working hours. Marquardt's wife and father-in-law also worked in Rolling Mill 2. Upon one occasion they decided to eat their noon meal at the plant instead of at their home. Marquardt testified that they tried it, "but we didn't continue like that for long because the food wasn't very good and definitely not what it should have been."

Moreover, that the prisoners were required to work in highly dangerous areas is conceded. It is no answer to say that because of the bombing attacks and the military situation in general life for everyone in Essen, including Germans, had become dangerous and difficult. The prisoners of war, concentration camp inmates, and in a large part the foreign civilian workers were not in Essen by choice. They had been brought there to an enemy country against their will, and kept there in a state of involuntary servitude. They were utterly unable to help themselves and absolutely dependent upon the officials of the Krupp firm for protection and for their every need. They had no choice as to when, how or where they should work; or whether they should work at all. In no sense can it be said that they were in any way responsible for the conditions now pleaded as an excuse. If those conditions made

* Ibid.

it impossible to give them the proper care, food, and protection they should not have been required to work at all, especially in one of the most dangerous places in all Europe. Instead what was required of the workers, including the foreigners, is correctly described in the brief of the counsel for the defendant Krupp as follows:

> "The Cast Steel Factory was in the very center of this inexorable struggle, and was most severely affected by it. One workshop after the other went up in flames or was gutted. Every breathing space was used to repair the damage and to maintain production. The big raid of 5 March 1943, caused such extensive damage in the works, that the production wage hours fell by 50 percent, and continued to fall from that date onward almost without interruption. One third and more of the whole work was devoted to the removal of damages and reconstruction."

It is further said in the same brief that "until the middle of 1943 it was attempted, as a matter of principle, to reconstruct destroyed huts as quickly as possible. After that these efforts were limited to a few camps only, which subsequently experienced up to five consecutive destructions and reconstructions."

In this connection it is proper to state that the evidence affirmatively shows that the Krupp officials as well as the German workers at that time had become convinced that the struggle was hopeless and defeat for Germany was inevitable.

The rations for Italian military internees were the same as those for western prisoners of war, but their diet had very bad results. The evidence with respect to the status of these internees is not very satisfactory. From what there is of it, it appears that in the main they were Italian soldiers who surrendered with their arms to the Germans in northern Italy after the Badoglio government came into power but before it declared war on Germany. These Italians were first accorded the status of prisoners of war, but later were forced to accept the status of foreign workers. We do not regard it necessary for present purposes to resolve this question one way or the other. In either view, it is obvious that they were brought to Germany under compulsion and kept in a state of servitude while employed in the armament industry in connection with a war against their own country.

They were principally employed in four plants, two of them the Gusstahlfabrik, Essen and the Friedrich-Alfred-Huette at Rheinhausen. A report from the latter concern in February 1944, showed that a sickness rate of 11 percent including 70 cases of oedema and 100 [cases of] loss of weight. It is also stated

that of 765 camp inmates, 35 percent were unfit or only partly fit for work and that the number of undernourished persons and cases of stomach and bowel trouble shows the food unsuitable for most of the Italian military internees.

A report from the same source in March 1944, shows a further deterioration in the condition of the prisoners. It concludes that "the present weight of these people, most of whom are expected to do work involving considerable physical exertion, is too low. With regard to the food and subsequently the output of the Italian military internees there exists an acute emergency which could only be met by a generous release of suitable food stuffs." The sick rate was still abnormally high in June 1944, and had increased in August 1944 almost a year after their imprisonment. In addition, the report of that month recites that a large part of these prisoners "suffered many foot injuries due to poor footwear." A similar situation prevailed in Essen with respect to the food given Italian military internees and the resulting sick rate. This is reflected by reports from the department headed by the defendant Kupke in the spring and summer of 1944.

Italian military internees were converted into civilian workers on 1 September 1944. From that date, all the limitations resulting from their former status were abolished and they thereafter received the rations of free foreign workers. The documents show a substantial improvement thereafter.

The defense claims that the condition of the Italian military internees during the time they were treated as prisoners of war was due not to the insufficiency of the food but to the manner in which it was prepared and the fact that it was of a kind to which the Italians were not accustomed. It is also insisted that this condition was soon remedied by putting in charge Italian chefs. If this be true, it must be conceded that it took an extraordinarily long time to find and apply the remedy. Moreover, the fact that the trouble was not entirely that claimed by the defense is indicated by the report of Dr. Jaeger, Krupp's senior camp physician. On the day the change of status took place he reported that "the food is now good and sufficient. There have been no more complaints, in spite of the scarcity of potatoes. I have been able to ascertain during the past year that the susceptibility and the bad general physical condition of the Italians improved a little. They were in a very bad general physical condition even when they arrived and this was of course increased by long marches on the way here, and unaccustomed working and climatic conditions."

INADEQUACY OF AIR RAID PROTECTION

The principal prisoner of war camps in Essen were Kraemerplatz, Raumerstrasse, Bottroperstrasse, and Noeggerathstrasse. There is no substantial controversy with respect to the prosecution's description of the conditions prevailing in these camps as to air raid protection and it is fully supported by the evidence. Originally, the French prisoners of war were housed in Kraemerplatz. They were transferred to Bottroperstrasse in March 1942. That camp was destroyed in an air raid in 1943, and the prisoners were then moved to Noeggerathstrasse where they remained to the end of the war notwithstanding that the camp was hit at least six times in air raids, twice severely. Bottroperstrasse was in the area of the Cast Steel Factory, and Kraemerplatz was immediately adjoining. Noeggerathstrasse was some distance away but was close to the main line of a railroad. The proximity of these camps, particularly the first three, to the 80-odd Krupp factories in Essen, rendered them extremely dangerous. The responsibility for the selection of the camp sites and their equipment was upon the firm, subject to the approval of representatives of the Stalag. In September 1939 after the outbreak of war the Krupp officials immediately anticipated that the Krupp buildings would be bombed. This affirmatively appears from the testimony of Schroeder, a Krupp official.

Nevertheless, the prisoner of war camps were located in about as dangerous places as could be found. Presumably, the location was due in part at least to the fact that proximity to the factories would prevent loss of working time in going to and from the camps. However this may be, it is certain that the camps were located in an area that was subject to bombing attacks; that these became increasingly severe as the war progressed, and that never at any time were adequate shelters provided. In 1941, at Kraemerplatz, there existed air raid shelters in the form of slit trenches. The Stalag protested that these facilities offer shrapnel proof protection for 220–225 men at most, whereas the total complement of the camp at that time was 450. Correction of the situation was delayed by the firm because "of the possibility of moving the prisoner of war camp." The number of inmates had reached 600 by a year later and so far as appears from the credible evidence the request of Stalag had not been complied with.

A railway tunnel served as the air raid shelter at Noeggerathstrasse where between 1,200 and 1,500 prisoners lived. The tunnel was sufficient to accommodate about two-thirds of that

number. Noeggerathstrasse was practically destroyed by an air raid in 1944. Nevertheless the French prisoners of war remained there. On 12 June 1944 the medical officer in charge of the camp protested to Dr. Jaeger, senior camp physician, that there were 170 men living in a "damp railway tunnel not suitable for permanent accommodation of human beings." The medical treatment was given out of doors and those living in the plants were forced to go for sick call to [the toilet of] a burned out public house; that medical orderlies were sleeping in a men's lavatory, and that drugs and wound dressings were lacking. The same conditions existed 3 months later. On 2 September 1944, Dr. Jaeger wrote the defendants Ihn and Kupke, among others, that the camp "is in a terrible condition. The people live in ash bins, dog kennels, old baking ovens and self-made huts. The food is barely sufficient. Krupp is responsible for housing and feeding. The supply of medicine and bandages is so extremely bad that proper medical treatment was not possible in many cases. This fact is detrimental to the prisoner of war camp. It is astonishing that the number of sick is not higher than it is and it varies between 9 and 10 percent. It is also understandable that there is not much willingness to work when conditions are such as they are mentioned above. When complaints are made that many of the prisoners of war are absent from work for 1 or 2 days, the camp can be blamed to a great extent for having insufficient organization." (*D–339, Pros. Ex. 917.*)[1]

As a result, two barracks were built for the prisoners. There has been no substantial attempt on the part of the defense to deny that the accommodations at Noeggerathstrasse were not as described. The insistence is that the French prisoners of war themselves insisted upon remaining there because of the protection against air raids which the railroad tunnel afforded them, notwithstanding that another camp for their accommodation had been built at another location. The testimony of Borchmeyer,[2] the representative of the Stalag, a witness for the defendant, describes the situation and gives the results. He stated:

> "This camp was rebuilt several times. When, one day, it was again completely wiped off the map—and I think on the day of the air raid or at the latest the day after this air raid—I visited this camp together with Dr. Lehmann who I used to accompany through the camps in cases like this, and on this occasion Dr. Lehmann said he could not take the responsibility for rebuilding the camp which, if you are superstitious, you might say had its fate cut out for itself, that it was destroyed

[1] Reproduced above in section VIII G 1.

[2] Further testimony of defense witness Josef Borchmeyer appears in section VIII G 8 above.

again and again while the adjacent camp was hardly ever hit—he told me he could not take the responsibility for rebuilding this camp in the same place. Another camp was prepared, which I visited at that time, which from the point of view of space and in every other respect was without fault. When I told the prisoners of war that they would be transferred to this new camp the spokesman of the French prisoners of war came to me and requested me—I should even say, he entreated me—to leave his fellow prisoners in the camp in the Noeggerathstrasse, although the camp had been completely destroyed. And the unfortunate people lived in the most primitive possible conditions, and his reason was this: Immediately adjacent to the camp there was a railroad shelter with an extremely strong layer of cement on top, and in this railroad underpass which was not open to traffic any more, Krupp had set up a large straw depot, and there the prisoners of war found shelter. The best possible shelter was in this railroad underpass, and they could lie there during the whole night. And that was the reason the spokesman gave me for his fellow prisoners of war wanting to remain at the Noeggerathstrasse camp under those primitive conditions, rather than to move into a new and nicer camp. He told me literally, the 'railroad tunnel is our life insurance.' I repeated this to Dr. Lehmann, who immediately stated his willingness to let the prisoners of war stay in Noeggerathstrasse, and to rebuild the camp once more, I believe for the sixth time."

The witness further testified that the Frenchmen volunteered to rebuild the camp themselves and did so. The railway tunnel referred to could accommodate but approximately half the prisoners. The others lived in the plants of the Cast Steel Factory which was a target for increasingly severe air raids.

We do not think that the testimony of Borchmeyer presents a defense to the violation of the obligation of the Krupp firm to furnish adequate air raid protection to the prisoners of war. Quite apart from the fact that it was illegal to employ them at all for war work, and to employ them in so dangerous an area, it was the duty of the employers to see that these prisoners were properly housed and furnished with adequate air raid protection. They were helpless, and in a very real sense they were wards of their masters.

As before said, the Russian prisoners of war began to arrive in Essen in 1942. They were located in Raumerstrasse, Hafenstrasse, and Herderstrasse. A report by Eickmeier to the defendant Lehmann of an inspection of camp Herderstrasse on 13 October 1942 offered in evidence by the defense states among other things (*Lehmann 347, Defense Ex. 1146*):*

* Reproduced above in section VIII G 1.

"Air raid precaution implements are missing altogether. Air raid slit trench for both guards and prisoners is also missing."

With respect to Raumerstrasse, it was reported on 16 October that Stalag representatives had made an inspection and that they had found "there are no air raid installations for the guards or the prisoners of war. One could not help gaining the impression that the space needed for same was not considered in the planning." On 15 January 1943, the defendant Lehmann reported to the housing administration that "yesterday Captain Fiene of the local guard command called me and said that slit trenches for the protection against splinters would have to be provided as soon as possible in the prisoner of war camps." Hafenstrasse camp was completely destroyed in a raid in March 1943, and at that time still lacked even slit trenches as air raid protection.

In 11 January 1943, the defendant Lehmann reported as follows (*NIK–12361, Pros. Ex. 919*) :*

"On Saturday, 9 January at 2230 the officer of the guard, Captain Dahlmann, rang me up and told me that the guards in our prisoner of war camps in Raumerstrasse were barely able to suppress a revolt among the Russian prisoners of war on the occasion of the air raid on Essen. In the opinion of Captain Dahlmann the reason why the prisoners of war became restive is that in the Raumerstrasse camp there are no slit trenches. He urgently requests that such trenches be dug in order, among other things, not to disturb the surrounding civilian population in case of serious trouble."

A copy of this report was sent to the defendants Loeser, Krupp, Ihn, and Kupke, among others.

It further appears from a defense document that the prisoners lacked even enough sand to put out phosphorous bombs which fell around the camp.

The defense evidence was to the effect that there was available to the prisoners at Raumerstrasse "a passageway underneath the railroad tracks" which they used as an air raid shelter. At this camp, there were from 1,200 to 1,500 prisoners and the witness admitted that the passageway could not accommodate that number so that during an air raid the remainder had to stay in camp and use slit trenches which finally had been built as the result of the report of defendant Lehmann above set forth.

Discrimination in the matter of air raid protection is also shown by the testimony of the defense witness Marquardt who worked in one of the numerous factories in Essen, utilizing the labor of

* Reproduced above in section VIII G 1.

concentration camp inmates and French prisoners of war, as well as of other nationalities. In the summer and fall of 1944, air attacks had become increasingly frequent. The devastating effect had been fully demonstrated. As counsel for the defense says the factories of the Gusstahlfabrik had indeed become a battleground. Protection during working hours was no less essential than in the camps. Marquardt testified that at that time the German employees used a new air raid shelter which had been built for them. The concentration camp inmates used a "day room" in the factory, formerly used by the German employees, which had been reinforced with protective walls and a concrete ceiling. The French prisoners of war were compelled to use a tunnel which they had dug in a slag heap outside the camp.

ILLEGAL USE OF FRENCH PRISONERS OF WAR

By way of justifying the use of French prisoners of war in armament industry it is claimed that this was authorized by an agreement with the Vichy government made through the ambassador to Berlin. As to this, it first may be said that there was no credible evidence of any such agreement. No written treaty or agreement was produced. The most any witness said was he understood there had been such agreement with Laval, communicated to competent Reich authorities by the Vichy ambassador. If so, there is no trustworthy evidence that any of these defendants acted upon the strength of it or even personally knew of it.

Moreover, if there was any such agreement it was void under the law of nations. There was no treaty of peace between Germany and France but only an armistice, the validity of which for present purpose only may be assumed. It did not put an end to the war between those two countries but was only intended to suspend hostilities between them. This was not fully accomplished. In France's overseas possessions and on Allied soil, French armed forces fighting under the command of Free French authorities waged war against Germany. In occupied France more and more Frenchmen actively resisted the invader and the overwhelming majority of the population was in full sympathy with Germany's opponents. Under such circumstances we have no hesitancy in reaching the conclusion that if Laval or the Vichy ambassador to Berlin made any agreement such as that claimed with respect to the use of French prisoners of war in German armament production, it was manifestly *contra bonus mores* and hence void.

In view of this conclusion it is unnecessary to decide in this case whether the Vichy government was legally established according to the requirements of the French constitution.

FOREIGN CIVILIAN WORKERS AND CONCENTRATION CAMP INMATES

After weighing the evidence the Tribunal finds that the facts on this aspect of the case as summarized by the prosecution have, in essence, been proved.

During the war, Dutch, Belgian, and French workers employed in Germany were referred to as western workers. The Czechs in many ways were treated by the Krupp firm like western workers, although upon some occasions they were subjected to the same mistreatment as so-called eastern workers. Among the western workers, a distinction was made between "free" labor and "convict" labor. The "free" workers were treated better than all of the other classes of labor with which we are concerned here. They had better rations and more liberty. They were, however, not free to leave their work and were also otherwise deprived of many basic rights. The employment of those foreign workers who entered and stayed in the employ of the Krupp organization on a genuinely voluntary basis was, of course, not reprehensible. But an ever increasing majority of the "free workers" were compelled to sign contracts, and if they refused to do so, they were liable to be sent to penal camps. At the end of their contractural period of employment, the "contract" was unilaterally considered renewed. If one of them failed to report for work, he was treated as "slacking," and also deprived of the small and insufficient food rations. Often, they would be reported to the Gestapo. Those who left their employment with the Krupp firm were charged with "breach of contract" and frequently were sent to a punishment camp maintained by the Gestapo. In the punishment camps, they were treated very badly. Their rations there were the same as those given to eastern workers. They were confined behind barbed wire; their movements were severely restricted; they were beaten frequently; and the distances they were required to walk to and from work were long. They were mistreated in many other respects, such as being denied packages and letters, forbidden to attend religious services, and given no pay.

Until the spring of 1942, only certain groups of so-called western workers were actually compelled to go into Germany. At that time, Sauckel's Labor Mobilization Program became effective, and

compulsory labor laws were enacted in the occupied countries. As stated in the International Military Tribunal judgment, the following appears:[1]

> "Sauckel's instructions, too, were that foreign labor should be recruited on a voluntary basis, but also provided that 'where, however, in the occupied territories, the appeal for volunteers does not suffice, obligatory service and drafting must under all circumstances be resorted to.' Rules requiring labor service in Germany were published in all the occupied territories."

Wholesale man hunts were conducted and able-bodied men were shipped to Germany as "convicts" without having been charged or convicted of any offense. Many were confined in a penal camp for 3 months during which time they were required to work for industrial plants. If their conduct met with approval they were graduated to the status of so-called "free" labor. This was a misnomer as they were detained under compulsion. As applied to the Krupp firm particularly, the taking of slave labor to Dechenschule and Neerfeldschule penal camps will be discussed later, as well as their treatment while there and while employed by the Krupp firm. The western slave laborers employed by the Krupp firm were procured in various ways. Some had signed contracts under compulsion; some because of their special skills had been ordered to go to Germany, and others had been taken because they belonged to a particular age group. Some of those who had endeavored to evade compulsory service referred to as "convicts," with others picked up in manhunts, were required to go to Germany and work for the Krupp firm. Subordinates of the defendant Lehmann were sent to occupied countries to secure workers. Lehmann went to Paris in 1942 "to take part in the negotiations concerning group recruitments." In October 1942 Hennig, an employee of the Krupp firm, was sent to France to assist in "the selection of the drafted individuals for Krupp." The number of French workers employed by the Krupp firm in the Cast Steel Factory at Essen rose from 293 as of October 1942, to 5,811 in March 1943.

In a report made by the defendant Lehmann and dated 21 December 1942, concerning his recent trip to Paris for the purpose of obtaining French labor to be "recruited" he said (*D–196, Pros. Ex. 888*):[2]

> "All authorities concerned in Paris and in the rest of France repeatedly stressed the very great importance of good accom-

[1] Trial of the Major War Criminals, *op. cit. supra*, volume I, page 245.
[2] Reproduced in part above in section VIII B 1.

903432—51——90

modations for French workers. Letters in which the French workers complain about bad accommodations, treatment, food, and shortage of labor in the factories are very harmful to the German recruiting program and are used by the opposition as welcome propaganda. Factories against which such complaints are made may be excluded from future allotments of workers.

"Unfortunately such complaints have also been received concerning Krupp. Documentary proof will be produced. Immediately everything possible must be done to refute these complaints, and to insure that no justified grounds for complaints exist in the future."

This clearly indicates that the expressed desire to improve the living conditions of foreign workers was motivated by the fear that future allotments of workers might not be had if the existing conditions continued. It was not because of any sympathy for the workers.

The defendant Lehmann had a Krupp representative go to Holland in October 1942 who remained there for 2 years and reported regularly to Lehmann. The number of Dutch workers employed by the Krupp firm in Essen rose from 33 in June 1942 to almost 1,700 in March 1943. Likewise, a representative of the Krupp firm was sent to Belgium. He was in Liege from where Belgian workers were sent to Dechenschule.

In May 1941, a Dutch concern was required to transfer a group of its workers to work for the Krupp firm at the Germaniawerke at Kiel. The Krupp firm benefited by the program instituted to compel 30,000 workers skilled in the iron producing trade to go to Germany. On 24 April 1942 at the time of the announcement of the Sauckel operation, the Krupp firm filed a request for 1,300 skilled Dutch workers, and another request was filed for a smaller number of skilled workers. Some Dutch workers who refused to sign contracts and go to Germany were sent to a camp maintained by the Gestapo in Holland. From there, they were shipped to Germany under guard, and afterward many of them were employed as foreign labor by the Krupp firm.

Dutch workers who attempted to escape from compulsory service in the Krupp firm, were arrested, confined in the penal camp, and returned to the Krupp firm. In September 1942, the Krupp firm wrote to the Main Department of Social Administration at Amsterdam, complaining that a large number of Dutch workers had not returned from leave. It was pointed out that the service of these workers was to be secured by conscription, if necessary, and it was requested that the workers be returned to

Essen. Those Dutch workers who could be arrested were then sent back to the Krupp firm. They were confined in the penal camp, Neerfeldschule, until they had earned the status of so-called "free" workers.

Czech workers sent to Essen for training for work in the Bertha Works were required to sign contracts. They were recaptured at the firm's request and first sent to a labor education camp and while confined required to work for the Krupp firm.

At the Bertha Works, one of the many large plants owned and operated by the Krupp firm, the slave laborers were required to work 12 hours daily, and many had only every third Sunday off. A witness, Brandejs, was required at one time, during 3 weeks to work shifts of 36 hours each with 12 hours off between each shift. The food rations furnished to these workers by the Krupp firm at the Bertha Works were grossly inadequate and the workers had to help to sustain themselves as well as they could, by food received from their families' meager supplies at home. They were not afforded sufficient protection from air raids.

Brutal recruitment drives were conducted in Belgium in 1944, and many Belgians were treated as "convicts." When, after a usual period of 3 months of punishment, they became so-called "free" workers, they were given back their clothing, permitted greater freedom, and were paid wages. Some in this class were employed by the Krupp firm.

Penal camps were maintained by the Krupp firm at Grusonwerk, at Friedrich-Alfred-Huette and at Essen. Those at Essen were known as Dechenschule and Neerfeldschule. Slave laborers used by the Krupp firm who failed to work sufficiently hard, or who endeavored to leave their work, were reported to the Werkschutz [plant police] and their report was frequently forwarded to the Gestapo with the request that action be taken. Those arrested were usually sentenced to serve 56 days in labor discipline cases, and three months for violating so-called labor "contracts."

In 1943 it became apparent that slave laborers reported to the Gestapo for punishment were not always sent back at the expiration of their sentences. In October of that year the defendant von Buelow made plans and laid down the conditions for the operation of a penal camp of its own by the Krupp Firm at the Gusstahlfabrik. It was planned at first entirely for Krupp workers, and to be operated as long as convenient to the firm. These regulations for the operation of the camp by the defendant von Buelow emphasized the fact that the camp was primarily for disciplinary purpose. In January 1944, construction of the camp was under way. Von Buelow took it upon himself to make sure

that iron bars were installed in the windows, that locks were put on the doors, and that an air raid shelter was provided for the guards. The camp was in operation in March 1944. After its establishment, it was used as a place of detention and punishment for western slave laborers, particularly Belgians who were sent to Germany as draft evaders. About 90 percent of the inmates were Belgians, the remainder being French, Italian, Polish, Yugoslavian, Bulgarian, Chinese, and Algerian. On some occasions eastern workers were committed to the camp by the Werkschutz of the Krupp firm as punishment.

Many of the so-called Belgian "convicts" were able-bodied young men who were useful as labor. Others were those who sought to escape slavery in Germany. In a memorandum from the defendant von Beulow appears the following (*NIK–12987, Pros. Ex. 1365*) :[1]

> "I would like to point out that workers from the special camp may be employed only with my permission—and I have to get previous permission from the secret police in charge of the camp. It must be remembered that primary requisite in the special camp is to 'educate' the men, the urgency of the work is only secondary."

Dechenschule was surrounded by barbed wire and patroled by a guard. The inmates were guarded at all times, even while at work in the Krupp plants. Upon their arrival, they were told that they were prisoners, and their heads were shaved. They were issued convict clothing, blue suits striped with yellow. They could not leave the camp without such suits. They were given wooden shoes which produced sores. One of the inmates of the camp, a Catholic priest, testified as follows:[2]

> "At 4:30 o'clock in the morning the guard would open the rooms, unlock and shout 'Aufstehen' which means 'get up'. He would come in with a piece of rubber hose which he would use for those who were not quick enough for his tastes. Between 5:00 and 5:10 a.m. there would be the first morning gathering. I wouldn't call it a roll call because we didn't have any names and any numbers at that time yet; it was therefore only a gathering and would not last long. It was simply that so and so many what they called 'Stuecke', so and so many pieces of human material would be numbered, pointed out for certain detachments and as soon as there were sufficient persons for that detachment, the guard would have them form ranks and then would march them to the factory section in question in silence.

[1] Reproduced above in section VIII C 1.

[2] Extracts from Father Come's testimony are reproduced above in section VIII D 2.

"The work started at 6:00 a.m. There was an interval between 9:00 and 9:15 and—that is a.m.—another interval between 1:00 and 1:30 p.m. and the work would stop according to the various detachments between 5:30 p.m. and 6:00 p.m. after which the detachment would be brought back by the guards also in ranks and also in silence, back to the camps.

"Again, there was only a gathering and only the numbers were called up, that is, not the numbers of the prisoners, but they were simply counted to see that the same number came back from the detachment as had gone to the detachment. Then, between 6:00 and 6:30 p.m. before that, first the first soup distribution and then between 6:00 and 6:30 p.m. when all the detachments had come back from work there would be the evening roll call, very long, sometimes even endless and only after that there was the distribution of the second ladle of soup and also of the bread ration which had to last until the next evening. Then at 7:30–8:00 p.m. one could go out within the limits of the camp or else go and wash to the room, but all that lasted until only 8:30 because at 8:30, as I stated before, the guard would come and put lock and chain on the door and lock us in."

The inmates were deliberately assigned to heavy and dirty work in plants of the Krupp firm. The food, consisting of liquid and little else, at night was inadequate for men performing the labor required by the inmates. On occasions the earlier arrivals in the evening would consume the soup which was often sour, and nothing was left for the others upon their arrival. A witness who had been confined in the Neerfeldschule penal camp, testified that inmates ate the mice that infested the camp. Because of the improper nourishment, at least fifteen died on account of illness and malnutrition. Mistreatment in the camp was a daily occurrence. Beatings were a part of the life at Dechenschule. They were usually administered in the camp cellar. A witness called by the defense, who admitted that he beat inmates said he did so on the order of the camp commander and deputy camp leader. They were beaten with a four-edge leather truncheon, three-quarters of an inch thick. It was furnished by the deputy camp leader. The beaten men were denied medical assistance. In fact no real medical facilities were available to the prisoners. The so-called dispensary was a dirty room and was described by a witness as follows:

"Besides that, the dispensary was in the barracks, arranged over another room where inmates also slept, and the dust, the dirt, and even the excrements contained in the containers for human necessities would go through the floor and through the

wooden planks into the other room, and, therefore, the inmates had great reason to complain."

The problem of the medical care of these men was discussed at the time with the defendant Lehmann. They were denied religious consolation. As an air raid shelter, they were allowed to use only a trench, although adequate air raid protection was available nearby. In consequence, 61 of them lost their lives when the trench was hit in an air raid and medical assistance was not made available for more than 24 hours. After the destruction of Dechenschule, the penal camp was transferred to Neerfeldschule. There the conditions were worse than at Dechenschule. For example, the credible testimony of a former inmate was to the effect that the inmates fought for a dry spot on which to sleep at night, and that those who lost were forced to stand on their feet all night.

Both the Dechenschule and the Neerfeldschule camps belonged to the Krupp firm. The inadequate and limited facilities that existed there were provided by the firm's officials. The firm was responsible for supplying adequate air raid shelters. The food was provided by it. The guards were members of the Krupp Werkschutz. The inmates worked in Krupp plants to which they were assigned by officials of the firm. Their clothes were provided by the firm. Medical treatment was also the responsibility of the firm. The prisoners were beaten by guards in its employ.

The defendant von Buelow arranged for the confinement in Dechenschule of foreign workers who had been reported to the head of the Werkschutz for lack of discipline or other reasons. Although the defendants' defenses are discussed elsewhere, it seems advisable to point out here that in connection with the claim made for the defendants by their lawyers that the defendants did not act voluntarily, but under necessity, that the defendant von Buelow, who was Krupp's chief counterintelligence officer as well as head of the plant police, wrote the minutes of a meeting with the Gestapo on 14 March 1944 concerning Dechenschule. In the minutes he noted that he had "pointed out to Kriminalrat Nohles that the question of labor allocation is decisive for us, and that we would like to secure these valuable French workers for ourselves for this reason." *(NIK–15383, Pros. Ex. 1599)**

The responsibility for the Dechenschule camp is not limited to the defendant von Buelow. Each of the defendants, except Loeser, Pfirsch, and Korschan, participated in the establishment and maintenance of the camp. The defendants Janssen, Houdremont, Erich Mueller, and Alfried Krupp, as members of the Vorstand, had to approve the expenditures made for it. The evi-

* Reproduced above in section VIII D 1.

dence indicates that von Buelow discussed its establishment with the directorate. Moreover the conclusion is inescapable that the then members knew of and approved of the project. The defendants Ihn and Eberhardt received copies of the minutes of a meeting of the special labor allocation officers, in which the establishment of the camp was announced.

Food and medical treatment in the camp were the responsibility of the Main Camp Administration headed by the defendant Kupke. The camp leader of Dechenschule, Fritz Fuehrer, regularly attended defendant Kupke's weekly conferences. The medical care was discussed by Dr. Jaeger with the defendant Lehmann. Transports of workers from Belgium were arranged by the labor allocation office under the defendant Lehmann. Kupke and Lehmann were both responsible to Ihn, who received copies of such papers as the medical agreement covering the workers. The conference held on 14 March 1944, in connection with the treatment and employment of the inmates at Dechenschule, was attended by representatives of Kupke's department, the Main Camp Administration, Lehmann's department, Labor Allocation A and one of Houdremont's departments, as well as by von Buelow. Representatives of the same departments attended another conference on the employment of Dechenschule inmates one week later.

The allocation of all foreign workers, including the inmates of Dechenschule, was the function of Labor Allocation I, which was responsible to the defendant Houdremont from the time it was established. Men from the camp worked in the furnace plant, at Rolling Mill I, at the sheet iron rolling mill, at the boiler plant, and other plants within the Gusstahlfabrik. Some of them worked in the main administration building where were the offices of the defendants Krupp, Janssen, Houdremont, Ihn, Lehmann, Kupke, and von Buelow. The defendants Janssen, Eberhardt, Houdremont, von Buelow, Ihn, Mueller, Kupke, and Lehmann necessarily saw the inmates either at their work or on their way to and from the camp.

Fritz Fuehrer, the camp leader at Dechenschule, complained to the defendant von Buelow that air raid shelters in the camp were not sufficient in number and quality adequately to protect all of the inmates, and that for four weeks no protection from bombing attacks had been provided for them as they were not allowed to leave their camps during the raids. The defendant von Buelow was responsible for administrative matters connected with the camp Dechenschule, subject to the supervision and control of the Gestapo.

As early as September 1942, plans had been made "to provide a special arrest barracks where the punished detainees will be centrally lodged."

Fritz Fuehrer, who was appointed camp leader of Dechenschule in February 1944 by defendant Kupke, complained to Kupke about the poor quality and insufficiency of the food.

On 12 January 1944, a discussion was had by the special labor allocation officers. The defendant von Buelow gave a lecture during this discussion. He said in part as follows (*NIK–9803, Pros. Ex. 1095*) :*

> "Foreigners must be treated with greater severity for strictness. For them, punishment away from work is especially suitable. Dechenschule will become a penal camp for eastern workers and Poles, under the supervision of the Gestapo. They are to be cared for by the main administration for the workers camps and plant police."

He invited special labor allocation officers "to enumerate especially difficult and dirty work for which these foreigners may be used in groups of 50–60." Reports were to be made to the defendant von Buelow. He also said, "an application for special leave from Italian civilians is *prima facie* untrustworthy."

Civilians from Poland and Russia were first brought to Essen in large numbers in 1942. In January 1942, the Gusstahlfabrik employed five Russians and sixty-seven Poles. In April 1942, 319 Russians and 462 Poles were employed. By the end of the year, the Gusstahlfabrik employed 5,787 Russians and 1,046 Poles. In October 1944, 3,535 Russians and 1,210 Polish workers were employed. The decline in the number of eastern workers from 1943 until the end of the war was caused particularly by the evacuation of sections of the Gusstahlfabrik, and the workers were taken to other plants of the Krupp firm. Eastern workers were also employed in the Krupp plants ELMAG, Suedwerke, Bertha Works at the Friedrich-Alfred-Huette, and at the Germaniawerft.

On 1 July 1942, the Krupp firm had pending a request for 8,819 workers, although it had received 6,844 workers including 3,439 Russians during the preceding 2 months. In requesting these workers, the firm advised the labor allocation authorities that there were no "substantial difficulties concerning billeting," and complained that the allocations to them had been insufficient. In consequence, Sauckel, the Plenipotentiary for Labor Allocation, was directed "to allocate to firm Krupp 3 to 4 thousand more workers in entire convoys from those Russian civilian workers

* Ibid.

presently arriving in Army District Command VI." Upon their arrival at Essen workers were assigned to different shops and factories of Gusstahlfabrik. They were employed in the foundries, rolling mills and forges which, as part of the "Steel Plants" were at that time subordinate to the defendant Korschan, the "Machine Plants" and general machine construction where finished armaments were made and the locomotive plant. The latter shops, as part of the "machinery plant" were subordinate to the defendant Erich Mueller after the reorganization of the Vorstand in March 1943. At that time, the defendant Houdremont, who had previously been Korschan's deputy, took over the foundries, including the "steel plants," formerly under the supervision of Korschan. Eastern workers continued to be employed in the Gusstahlfabrik until the occupation by the Allied troops. The Krupp firm sent an employee to Poland to select workers who should be recruited for Krupp service.

The eastern workers and the Russian prisoners of war were treated worse than all other classes of foreign workers, with the exception of concentration camp victims and the inmates of "labor education camps." Upon arrival, they were put under guard behind barbed wire in very bad camps; they were brought back and forth to work under guard. On alternate Sundays, particularly deserving eastern workers were allowed to take walks under the supervision of a German guard. They were compelled to wear distinguishing badges. The food was of very poor quality and not sufficient in amount. They were required to work very hard and received very little compensation. Some of these conditions improved as time went on; others did not improve but, on the contrary, became worse. The treatment of the eastern workers was inhumane.

The status of eastern workers was declared to be that of prisoners. The defendant Ihn, in a memorandum to the works managers, dated 13 March 1942, stated, "the Russian civilian workers are to be treated in the same way as prisoners of war. Any sympathy is false pity, which the courts will not accept as an excuse." (*NIK–6115, Pros. Ex. 1228*)* Again, on 29 November 1943, the defendant Ihn advised the plant managers that "eastern workers and Poles are subject to obligatory service for an unlimited period." (*NIK–10671, Pros. Ex. 950*)

At first only a very few were permitted to leave the camp on alternate Sundays under guard. In 1943 this was changed, and eastern workers who could obtain passes from the camp management were allowed to be out until dusk. Later this privilege was restricted or revoked. In October 1943, over a year after the

* Reproduced in section VIII G 1.

eastern workers arrived, the defendant Ihn sent a circular to the plants advising that eastern workers should be escorted to and from work by guards, except when trustworthy eastern workers appointed "troop leaders" are available. He pointed out that the number of such workers and the name of the "troop leader" must be indicated upon a written application made out in triplicate. On 26 May 1944, the defendant von Buelow gave substantially the same instructions to a Krupp employee.

As further indication of the direct control had by the Krupp firm over the activities of the eastern workers, reference is made to a memorandum by the defendant Ihn in September 1942 in which he said:

> "Eastern workers, whose conduct and output in the plant are good and whose behavior in the camp is blameless may be allowed once in a while to go out under supervision. If possible they shall be led out every second Sunday.
>
> "Only reliable members of the working force * * * may be chosen as escorts. Further instructions are laid down in a directive which will be issued to the escorts by the plant police."

The defendant von Buelow voluntarily aided in the restrictions placed upon these unfortunate people. This is shown by a memorandum from him to the defendants Lehmann and Kupke, dated 22 October 1943 in which he said, "It is indeed very deplorable that the general order which prohibits visits to German stores by eastern workers is being violated so frequently. In any case we should hold to the rule that on their way to and from work the detachments remain in closed ranks and that then visits to stores cannot be made." (*NIK–9206, Pros. Ex. 969*)*

The Reich Group Industry on 4 June 1942, by letter forwarded to the District Group Northwest of the Economic Group Iron Producing Industry to its members, said: "Camps will not be fenced in with barbed wire. Where barbed wire has been used it will be removed." Notwithstanding this, on 4 August 1942, the defendant von Buelow sent to the Krupp housing administration through the defendant Lehmann, after an inspection of the eastern workers camp at Spenléstrasse, instructions that, "the barbed wire fence should be made much stronger." A month later, Dr. Beusch, a subordinate of the defendant Loeser, recognized the official instructions in the following words, "the fencing in of the eastern workers' barracks with barbed wire is inadmissable. Same must be dispensed with in the future so that no objections will be raised. The removal of the existing barbed wire fences will be discussed at the next meeting."

* Reproduced above in section VIII C 1.

The defendant von Buelow, however, continued to oppose the removal of the barbed wire fences. Even Hitler expressed his surprise that "the civilian Russians are kept behind barbed wire fences like prisoners of war."

On 25 April 1942 a decree was issued by Himmler, Chief of the Gestapo and the SS, in which it was stated that the camps must not be enclosed with barbed wire, and that barbed wire already in use for this purpose must be removed unless no other wire can be procured. As late as March 1943, the eastern workers' camps under the Main Camp Administration of the Krupp firm were still surrounded by barbed wire fences.

The camps in which the eastern workers were confined were overcrowded, very dirty, and inadequate in many ways. Although the Krupp firm represented to the labor allocation authorities in July 1942 that there were no "substantial difficulties concerning billeting," it was not prepared in the fall of that year to take care of the foreign workers brought to Essen at its own request. Long before the damage caused by the Allied air raids on Essen, the housing of the slave laborers by the Krupp firm of Essen was totally inadequate.

On one occasion, the Ministry of Armament and Munitions was advised by the Krupp firm that the latter could billet 8,000 workers requested. The day after this, the department of the Krupp firm responsible for housing the workers informed the building office that "the miserable conditions at camp Spenléstrasse have reached a stage which could hardly be surpassed." This condition was due to the fact that eastern workers were put into the camps before the camps were finished, and while they lacked toilets, washrooms, and other essentials. As noted by the defendant von Buelow in August 1942, at Amalienstrasse, "for approximately 150 in the camp there is just one latrine and one toilet available." The washing and lavatory facilities for the women's camps were still incomplete, after the eastern workers had moved into the Spenléstrasse camp and which then housed over 1,400 people. More workers were placed in the camps than they could accommodate. Some of the eastern workers employed by the Krupp firm were housed in tents, notwithstanding the cold weather, and others were in huts without any heat.

The lives of the workers were constantly in jeopardy. Although one camp was destroyed four times between March 1944 and the end of the war, the eastern workers were kept in it during that time because the plant management desired that foreign workers be at their working places for the duration of all shifts. This lack of protection against air raids resulted, of course, in the death of many of the eastern workers, and, in fact, certain statistics concerning these deaths were made by the Krupp firm.

In June 1944, approximately one thousand of the eastern workers lived in a Krupp camp referred to as Voerde. An equal number lived at Luescherhofstrasse, a Krupp camp within the premises of Gusstahlfabrik, and in Krupp camps attached directly to the plants in which they worked, such as, Machine Construction 10, Mechanical Workshop 2, and Armor Construction 4. Another thousand lived at Rabenhorst and Frintroperstrasse Ost, also run by the Krupp firm and both within the city limits of Essen. These eastern workers were moved closer to the area of danger from air raids and were made part of the target for the increasingly frequent and severe air raids.

The food furnished to the eastern workers employed by Krupp was deplorable. It was the same as they gave to the Russian prisoners of war and resulted in oedema, disease, and death of eastern workers in the winter of 1942–1943. The plant managers frequently complained of the inadequacy of the food furnished to eastern workers. In 1942, Krupp employees protested against the inadequate food made available to the Russian civilians. The defendant Ihn received memoranda pointing out that the food was insufficient to preserve the strength of the Russian workers. Hassel, a subordinate of the defendant von Buelow said when Krupp employees protested on behalf of the Russian civilians that "one was dealing with Bolsheviks and they ought to have beatings substituted for food." The head of the Krupp firm's hospitals reported to the defendants Ihn and Loeser that "the food supplied to the eastern workers has been and still is insufficient. The plant managers often need two Russians to do the work of one strong normal worker." It was reported to the defendants Ihn and von Buelow that several eastern workers suffered from hunger oedema. As shown by a survey made on 7 May 1943, four-fifths of the eastern workers who had died at a Krupp hospital died of tuberculosis and malnutrition.

Mothers were separated from their children. At camp Voerde, babies of eastern women were housed. Vivid descriptions have been given by defense witnesses of the pitiable condition of these most innocent victims of the cruel slave-labor program. A large number of these babies died because of malnutrition. As of January 1943, 132 infants had been received at Camp Voerde. Of these 132 infants, 98 died, including 88 between August 1944 and March 1945.

Eastern workers were mistreated in many other ways. According to the defendant Ihn, from the time of the arrival of Russians, towards the end of 1941, until about 1943, they were deprived of writing or receiving letters. In 1943, they were permitted to write letters for delivery within the Reich and to send form

post cards to Russia twice a month. As late as 1944, unknown to the workers, part of their outgoing and incoming mail was destroyed.

Russian workers were compelled at all times to wear a badge "Ost" ("east") and the Polish workers were compelled to wear a badge "P," in order that they might be distinguished. Failure to wear these was a cause for punishment. Even when the regulations were relayed and the eastern workers were permitted to go out under guard, they were not allowed to enter inns, shops, moving picture theaters, or associate with Germans or even with other foreign workers. It was the rule that escaping Russians must be shot. Those who escaped and were captured were sent to a concentration camp. They were required to work excessively long hours, and granted very few rest days. The net pay received by the eastern workers was very little.

These workers included old men and women, children, and pregnant women. One hundred and fifty boys of 14 years of age, were among the first eastern workers to arrive to work in the Krupp plant at Essen. In 1943, some of the eastern children employed by the Krupp firm were from 12 to 17 years of age. In 1944, children as young as 6 years of age were assigned for work.

Eastern workers were beaten as part of their daily routine. The beatings took place in the Krupp plants and in the camps. The victims were beaten by the camp leaders, by the auxiliary guards, by the Werkschutz and by ordinary workers. Weapons with which they were beaten were distributed by the Krupp firm. Although all foreign workers were subjected to mistreatment, the most severe and inhumane was that suffered by the Russian prisoners of war and the eastern civilian labor.

A so-called "cage" was put into operation in one of the Krupp buildings. The Werkschutz and its affiliates, the auxiliary guards, Enlarged Werkschutz I and Enlarged Werkschutz II, were primarily responsible for the systematic abuse of the eastern workers. The Werkschutz was responsible for guarding the workers in the plants and on their way to and from the camps. It administered the eastern workers' camps until 1943 and supplied the camp leaders. It undertook the punishment of the workers within the plant and reported to the Gestapo all workers whom it considered required incarceration in a labor education camp or concentration camp. Its two auxiliary organizations, the so-called Enlarged Werkschutz I and Enlarged Werkschutz II, assisted it. The Enlarged Werkschutz I was given rooms in the main administration building, just below offices belonging to the Werkschutz and in which von Buelow and his sadist subordinate, Hassel, worked. Its members lived in barracks and were given semi-

military training. Its purported purpose was to quell unrest among the foreigners.

Enlarged Werkschutz II was organized in 1943. Eight persons in each shift in each plant were appointed to it. Its ostensible purpose, likewise, was to suppress riots, but the weapons furnished to it, leather truncheons, were much more suitable for flogging. Its functions were performed within the plants. As bad as the beatings were, women confined in the "cage" begged for beatings rather than to have to undergo the torture of being in the "cage."

Illustrations of just what these unfortunate eastern workers were exposed to during the time they were forced to work for the Krupp firm are given in the records of a case decided by the Denazification Board of Kulmbach on 30 October 1947, and admitted in evidence in the present case. There one Ernst Wirtz a former Krupp guard was found guilty of "violation of international law with regard to foreign civilian workers and prisoners of war" and was sentenced to 8 years imprisonment. The following acts of brutality were established: beating eastern workers, male and female, with a wooden board, a rubber hose, his fists; waking eastern workers with a water hose; throwing a French civilian down a stairway; and ruthlessly beating a Russian prisoner of war with a four-edged piece of wood resulting in death from head injuries. Many of his victims required medical treatment as a result of his brutalities. Wirtz's criminal conduct lasted for 4 years. He testified before the denazification board that he was asked by the plant management to beat people, and named several others who participated in the mistreatment, including an employee of the Krupp firm named Balz. One of the others involved by Wirtz testified that "it was general knowledge in the plant that the management tried to keep up with the work discipline by the most incisive measures, that is, even with physical maltreatment." He also testified that Balz who was "in charge" of the "plant" of the motor vehicle department and immediately subordinate to its head Roth who reported directly to the Vorstand did not do the beating himself, but he "instigated" others, including one Arens, to do so, and that if it hadn't been permitted, no one would have beaten the victims so brutally and that the plant managers would have done something about it. He also testified that the plant leaders sometimes watched while the people were being beaten. Wirtz, one of the many brutal employees, started in 1941 as a guard to bring the workers back and forth from work. He became a deputy commander of a Krupp camp in 1944. Direct knowledge of the indescribably savage treatment of these poor unfortunate workers was had by the defendants von Buelow, Ihn, and Lehmann.

In Repair Workshop 2, a Russian prisoner of war was killed in such a manner as to cause acute agony. The same person upon another occasion attempted to hang a Russian whose life was saved only through the intervention of the plant manager. No action was taken against the culprit. In Foundry 5, a Russian prisoner of war was beaten to death. At the boiler construction plant, a man who was in charge of guarding the Russian prisoners of war and the eastern workers, regularly abused them from the time of their arrival in 1942. Notwithstanding this, he remained in his position until shortly before the end of the war when he was transferred for his own protection because it was feared that the Russians might take revenge. The number of atrocities committed in the plants of the Krupp firm was such that it was a matter of common knowledge there. The defendants exposed persons to these conditions who had been illegally deported in the first place, who were kept in illegal servitude, and whom they themselves forced to manufacture the weapons to be used against their very brothers and sisters. One of the violently brutal employees of the Krupp firm was Hassel. He has been referred to before. His mistreatment of the eastern workers extended over the entire period of time during which they were employed at Essen. The beatings administered by him were carried out while performing his official duties. The defense has attempted to place the blame for the beating of the eastern workers on Hassel, and have claimed that he was retained out of fear of his political connections. This claim, made upon behalf of persons as prominent and influential as many of these defendants were, is not worthy of serious consideration. But Hassel was not alone involved in the inhumane conduct, constant terrorization of thousands of workers requires more than one man. The proof is clear that the defendant von Buelow, far from seeking to discharge Hassel, secured a raise in pay for him in 1943 and said, "in these recent months, Mr. Hassel was especially efficient." The beatings in the cellar were known to the members of the Werkschutz and the Enlarged Werkschutz II who brought the workers in for "instruction." They were known to secretaries who were employed in the building. Could they have been unknown to these defendants whose offices were in the same building?

The defendant von Buelow was the liaison man between the Krupp firm and the Gestapo. He witnessed beatings of prisoners of war in the guard room at the Krupp plant, and did not interfere. After an Italian prisoner of war was beaten in the cellar of the main administration building, he was taken to von Buelow's office.

The horrors of the concentration camp are well known. The Krupp firm was the beneficiary of these camps. The judgment of

the IMT described the use of concentration camp inmates for work as involving conditions "which made labor and death almost synonymous terms."

The utilization of concentration camp labor for the armament program was at first restricted to employment in armament plants by the SS, itself, within its camps. The first change in this system was inaugurated on 16 March 1942 on the basis of conferences at Hitler's headquarters, when it was announced that concentration camps [inmates] were to be used to a greater extent but only within the concentration camp themselves. Shortly thereafter, on 14 April, the defendant Erich Mueller made a proposal to Hitler for the setting up of a plant to produce automatic AA guns in a concentration camp, and the Krupp Auschwitz project was a part of this program. In September 1942, through the intercession of Hitler the employment of concentration camp labor in factories outside of cities was permitted, thus releasing other forms of labor for use inside the cities. The SS was offered a percentage share in the armament sales so that it would not sustain a loss by making its prisoners available. This program was not very successful, and very few concentration camp inmates were released for work in this way. It was finally provided that the SS should furnish information to the labor allocation authorities and armament offices concerning the allotment of concentration camp labor assigned to private firms, to avoid overlapping allocations which had previously occurred when firms obtained labor from the two agencies independently. In the early summer of 1944, the SS offered a large group of concentration camp inmates to the armament industry through the Speer Ministry. Approximately 50,000 to 60,000 so-called "Hungarian Jewesses" were made available. This labor was merely offered to industry, not allocated to it. It was not a matter of refusing to accept an allocation; it was up to the enterprises to put in requests. Many armament firms refused to request concentration camp labor for employment. The Krupp firm sought concentration camp labor because of the scarcity of manpower then prevailing in Germany.

The first efforts of the Krupp firm in 1942 directed at obtaining skilled labor through the concentration camps show clearly that the use of concentration camp labor was desired and not imposed by "necessity." The defense of necessity is otherwise dealt with. However, as the activities of the Krupp firm in procuring concentration camp labor are being dealt with here, these matters are now discussed.

On 17 September 1942, a message was sent to the Krupp firm at Essen, for the attention of the defendant Mueller, from a spe-

cial committee of the Speer Ministry, requesting information as to whether or not the Krupp firm could use skilled, foreign, Jewish labor, and whether it was in a position to erect a concentration camp to house them. A reply was sent by one Koettgen, acting for the Krupp firm, which stated that the employment of Jews in ammunition production was not possible, because of the requirement that Jews should work in a department by themselves, and also because cooperation of German workers with the Jews could not be expected. This reply was called to the attention of the defendants Mueller, Eberhardt, Korschan, Ihn, and Lehmann, and immediately thereafter a countermanding teletype message went out to the effect that 1,050 to 1,100 Jewish workers could be used if they were really skilled. The significant addition was made that, "after it is finally settled whether the employment is approved by the highest authority, we shall undertake to increase this number considerably." Notice of this was also sent to the defendants Mueller, Eberhardt, Korschan, Ihn, and Lehmann. Later efforts by the Krupp firm to obtain concentration camp labor were not qualified by the requirement that such labor must be skilled.

In 1942, the defendant Erich Mueller discussed the employment of concentration camp inmates with Hitler. The report of the AK–KM Departments for 1941–1942, signed by defendants Mueller, Eberhardt, and Pfirsch reads (*NIK–11504, Pros. Ex. 524*):*

> "The second conference on 14 April 1942 took place in order to present to the Fuehrer new models, including the Krupp antitank gun 41 developed on the basis of experiences in the Russian campaign of 1941.
>
> "At the same conference, Dr. Mueller, on the basis of growing needs, referred to the Krupp firm's interest in starting shell production on a large scale in the Ukraine. This suggestion was gratefully accepted. Krupp is also interested in manufacturing automatic weapons in connection with a concentration camp in the Sudetengau. This project, too, has been taken up in the meantime by the technical office."

The week after, the defendant Mueller sent a teletype to Reiff who was employed by the Krupp firm in a responsible position, directing him to tell Colonel Leyers of the Army Ordnance Office that, in his opinion, a factory for the manufacture of 3.7 cm. antiaircraft guns should be set up in a concentration camp. The message reads as follows:

> "I should earnestly recommend to Colonel Leyers, as mentioned before, to take up the question of manufacture by Krupp

* Reproduced in part in section VIII B 1, above.

in the KZ in the Sudetengau and that also for the production of the automatons."

The efforts by the defendant Mueller to obtain the use of concentration camp labor were successful. However, instead of production taking place in a concentration camp in the Sudetengau, it was to be at Auschwitz in the Government General [Poland]. In July 1942, the Krupp firm was asked by the Main Committee Armament to indicate what machine tools it would need to erect a plant to build "replacement parts for 3.7 cm. antiaircraft guns at the Auschwitz concentration camp." On 9 September 1942 the formal request to the Vorstand for approval of the necessary funds was drawn up. It stated that while the automatic weapons developed by Krupp AK Department were a complete success, "we could not carry out mass production of the 3.7 cm. weapon developed by us" for lack of space, equipment, and manpower.

Another firm was accordingly entrusted with mass production. The Krupp firm, in order to retain some part in the production and in order to gain practical experience had accepted an order for supply and spare parts. In the application to the Krupp Vorstand it was also said, "we aim in this way at being able at some future date to take over the manufacture of the complete 3.7 cm. automatic weapon, as automatic weapons are the weapons of the future * * *." In order to ensure completion of this contract a factory was to be erected at Auschwitz. The same application to the Krupp Vorstand explicitly stated that, "the concentration camp at Auschwitz will place the required manpower at our disposal."

The proposal was for an allowance of two million marks; this was approved by the defendants Loeser and Krupp, and the approval of it was signed by them. A conference was held in December 1942, and additional plans were made to prepare for production. The defendant Eberhardt was to prepare an agreement with the SS. The buildings which were to be constructed by the SS at Auschwitz were expected to be ready by March 1943. On 5 March 1943, Essen was very heavily bombed and it was necessary to evacuate large portions of the plant. At a conference on 8 March 1943 concerning evacuation plans, attended by defendants Loeser, Alfried Krupp, Houdremont, Korschan, Erich Mueller, and Pfirsch, the following decision was made with regard to Auschwitz (*NIK–1157, Pros. Ex. 1181*):

"Auschwitz—The production of 3.7 cm. flak parts has apparently been dropped. A workshop building will soon be available there with a floor space of 14,000 square meters without cranes. This building is to be planned for the production of (a) aircraft

fittings and (b) a new fuse workshop, to replace the fuse shop in Essen that was burned out."

Minutes of the meeting were distributed to the defendant Eberhardt as well as those attending the meeting.

A special conference was held on 11 March 1943 to discuss the extent of the damage done to the fuse plant by bombing. This conference was attended by the defendants Houdremont, Korschan, Mueller, Eberhardt, and several of their subordinates from the technical office, KM Department, and fuse production departments. After discussing the possibility of salvaging some equipment of the bombed fuse plant, the plan to resume production on a large scale at Auschwitz was discussed and Reiff was authorized to submit this plan to the competent government officials. This was communicated to the latter by the Krupp Berlin office.

The plan was approved, and a confirmation of it in the form of a government order for 100,000 fuses was sent to the defendant Janssen in Berlin by the Army Ordnance Office. Later on, plans were made for the transfer of skilled, inmate labor to the fuse production program. In the meantime, it was not possible to start production immediately. The transportation and repair of machines took time, and when it was suggested to a Krupp employee by an army official that for several reasons only German workers should be used in the initial stages of production, the Krupp employee protested "that the main purpose of evacuating the plant to Auschwitz had been to employ the people there." This employee, Weinhold, feeling that the Krupp firm might lose some of the advantages to be had by operating a plant at Auschwitz, wrote a file note to his superior, the defendant Korschan. Notice of this was sent to the defendants Mueller and Eberhardt. In the file note Weinhold said,

"Up to now it was always supposed that the supply of workers in Auschwitz is unlimited as regards quality and quantity. It might therefore happen in case of a belated start of production that the whole reason why we accepted the unusual difficulties which are present at Auschwitz, namely the free disposal over workers will no longer exist * * *."

In June 1943, the Krupp firm started to employ concentration camp inmates at Auschwitz. By the end of the month approximately 160 were actually working for the firm there. By the middle of July, 50 persons were engaged in the manufacture of equipment and tools, and another 150 on repairs and installation of machinery.

In September, 270 persons were employed, and it was contemplated that by the end of the year 600 to 650 people could be used.

These persons were of many nationalities, including Poles, Frenchmen, Czechs, and Dutchmen. The majority were of the Jewish religion. Many were in very poor physical condition. They were beaten and otherwise punished by SS guards and "Kapos," fellow inmates charged by the SS with the responsibility for disciplining them. The food furnished to them was meager, insufficient in both volume and nutrition value. Some of the German workers attempted surreptitiously to give them a little food.

The failure of the Krupp firm to obtain the necessary machinery to start full scale production caused incriminations on the part of the SS. They advised the Krupp firm that unless the necessary machinery was brought in, the shops would have to be turned over to other firms. The Krupp firm promised and endeavored to obtain the necessary machinery. The complaints about the firm's inability to get production started were brought to the attention of the defendant Houdremont. Assurances were given that production was imminent, and that full scale production, employing between 600 and 650 persons could be expected by the end of the year. The defendant Krupp wrote a letter to the Army Ordnance Office assuring that, despite many obstacles, satisfactory production of fuses could be expected to commence within a short time.

Before full scale production could be had, however, the offensive of the Russian Army had made unexpected progress. Reiff wrote to his superiors, the defendants Korschan, Mueller, and Eberhardt, that in his conversation with a representative of the Army High Command, "I immediately discarded any thought of giving up Auschwitz; I reserved any further decision until I could think things over." The Krupp firm, however, was forced to give up the plant at Auschwitz, and the machinery was shipped westward to the Bertha Works, where production was finally accomplished. The facts connected with Auschwitz clearly show not only the use of concentration camp labor, but also the desire to do so. They permit no opportunity for the conclusion that this labor was forced upon the Krupp firm.

The facts connected with the Bertha Works lead only to the same conclusion. Here again, it was not only known that concentration camp labor would necessarily be required to fulfill the program, but the fact of availability of such labor was used as a means for expansion. Among the projects for which compulsory labor camps were set up was the construction of the Krupp Bertha Works plant at Markstaedt, near Breslau.

In July 1942, when the effort by government agencies and

industry representatives for discontinuance of the Markstaedt project for light field howitzers had become formidable, Reiff prepared a memorandum for leading Krupp officials, including the defendants Krupp, Mueller, and Eberhardt, describing the discussions of this problem at a meeting presided over by Saur. Attached was an appendix containing the arguments in favor of continuing the project. It contained the following (*NIK–7445, Pros. Ex. 1111*) :*

> "The construction job is being carried out in particularly favorable conditions. The majority of the construction workers are prison inmates and Jews in punitive detention; 1,200 men have already been gathered in one camp there. The camp capacity is approximately 2,000 men. In addition an adequate number of construction workers will be made available by the SS so that the construction will be carried out with the greatest possible speed."

In September 1942 after Hitler had prevented the abandonment of the Markstaedt project, the defendant Mueller attempted to induce the navy to approve the inclusion of a large navy expansion project at Markstaedt for the furnishing of heavy naval guns and armor plate. In this connection, he used the following argument:

> "In this respect it appears to me propitious that presently a partial construction project for the army is already under way which might be completed in the next spring as far as mere construction goes. It is advisable to leave the building details of organization Todt on the spot which are now carrying out these constructions and to start then right away with building the navy shops. This will presumably be facilitated by the fact that the manpower employed on the present building job is not a domestic one (mostly Jews) thus precluding the freezing of valuable German manpower."

The labor used for the construction of the Krupp owned Bertha Works consisted almost entirely of imprisoned Jewish labor, deported from the so-called Government General in Poland. They were guarded by the Wehrmacht. They worked for building contracting firms under the supervision of the Plenipotentiary for Building Construction in the Speer Ministry. About 4,000 of them were assigned to the construction of the Krupp plant by July 1943. Because of the needs for this labor on the construction work, it was decided that the labor could not be transferred to production at that time.

---

* Reproduced above in section VIII B 1.

The monthly report of Bertha Works A.G. to its supervisory board in Essen for November 1943 reported that, "serious labor losses are threatened for the building sector owing to the withdrawal of the Jews." In the report for the following month it was possible to report that *(NIK–7247, Pros. Ex. 1124)*—

> "As a result of negotiations with the [SS] Security Main Office (Sicherheitshauptamt) approval was obtained for continuing to keep the Jews in the building sector for the time being, without transferring them to concentration camps as originally had been proposed for the Jews of the building sector."

The Direktorium of Fried. Krupp in Essen applied to the Reich Association Iron [RVE] for approval of a plan for the starting of construction on a steel works at Markstaedt. In the application it was stated, in referring to the sources of manpower available—"before long 3,300 Jews who are working on the spot as building workers can be released for the above-mentioned work."

In the monthly report of Bertha Works A.G. to the Aufsichtsrat in Essen for the month of March 1944, the following appears *(NIK–12338, Pros. Rebuttal Ex. 1582)*:

> *"Armament Development Speer.*
>
> "In spite of our urgent remonstrances Mr. Ewald of the Armament Development [Ruestungsaubau] Speer declared that no partial accounts on the work of the armament development already completed could be given due to lack of personnel. In order to prevent a transfer of the Jews who work with the Speer Building Management the Bertha Works negotiated for having the Jews put in the concentration camp Fuenfteichen. Thereby a better supervision of the allocation of labor (of the Jews) can be achieved in future. Construction work outside of the plant compound was temporarily endangered by these measures. However, by internal plant regulations and through negotiations with the Building Management Speer, the question could essentially be cleared up."

In this report it was stated that interruption in the construction of a hospital was reported "because some of the Jews employed as building laborers were, as mentioned above, transferred to the concentration camp." This hospital was built and construction labor was supervised by the Krupp firm itself and not by the Speer Ministry construction staff.

Again, in the monthly report of the Bertha Works for July 1944, reference is made to negotiations which took place with the armament command concerning the use of 500 Jews for track laying on the firing range. The defendant Korschan attended a

conference at which the urgent need for labor was discussed. In a memorandum to the defendant Mueller, Reiff stated, "in advising that the Army Ordnance Office did not make labor available for the Krupp light field howitzer program," but that he was confident that he could obtain the necessary labor. He said, "a concentration camp for 4,000 inmates is being constructed. The completion of this camp and the procurement of the inmates should be speeded up particularly * * *."

At a discussion with Mueller, the need for a decision as to "whether possibly Jews from the building sector and, in general, concentration camp inmates, should be employed in greater numbers in the workshops," was discussed. At a meeting on 26 August 1944 at Berthawerk, attended by the defendants Mueller and Korschan, the question of labor for production was discussed, and it was suggested that a certain reserve should be observed in putting concentration camp inmates at the disposal of the plant. The defendant Mueller urgently recommended the use of this possibility. Minutes of this meeting were distributed to defendants Pfirsch, Eberhardt, and Ihn.

In a letter, dated 31 August 1944 from Berthawerk to the Krupp Vorstand in Essen, the labor problem was presented to the Vorstand. The labor needs were listed, and it was stated that approximately 6,000 workers would have to be furnished from the regional labor office and from concentration camps. In the letter, the necessity of acting quickly was emphasized, because of the possibility that if work shops were not fully utilized, visiting officials "might conceive the idea of bringing outside firms into our workshops." The letter was signed by defendant Korschan and also by Reiff. It was addressed to defendant Krupp, chairman of the Vorstand, through defendant Mueller, and was circularized to defendants Janssen, Houdremont, and Ihn before a discussion of the Vorstand meeting. Defendant Mueller promised to give the views expressed extensive support. When the Vorstand gave its approval to the utilization of concentration camp labor, Reiff contacted the WVHA (the SS Economic and Administrative Main Office) to negotiate for the allocation of concentration camp labor. The matter was referred to the concentration camp "Gross-Rosen." At a conference at Berthawerk with SS representatives of this concentration camp, plans were made to equip the branch camp at Fuenfteichen for the inmates as rapidly as possible so as to accommodate 800 by 10 October 1943, 2,300 by 15 October, and 4,000 including guards by 1 December 1943. The work was to be performed by inmates of the camp. Minutes of this meeting were distributed to defendants Korschan, Houdremont, Mueller, and Ihn.

The desire for a large project at Markstaedt was so great that the Krupp firm was willing to, and did spend, up to 30 November 1943, 69,400,000 RM as shown by the monthly report of the Berthawerk, A.G. for the month of November 1943. This report was signed by the defendant Korschan, was marked "confidential" and was sent to the defendant Krupp. Copies were also sent to the defendants Mueller, Houdremont, Janssen, Eberhardt, and Ihn. The report contained the following:

	Expenditure up to 31 October 1943	Expenditure in November	Expenditure up to 30 November 1943
Real estate	2.0 million	0.2 million	2.2 million
Payments in advance.			
Organization Speer	25.0 million		25.0 million
Machines and inventory.			
a. payment	14.7 million	1.1 million	15.8 million
b. payment down	3.2 million	1.0 million	4.2 million
Starting and operating costs.	19.5 million	2.7 million	22.2 million
	64.4 million	5.0 million	69.4 million

This expenditure was covered as follows:

Use of that part of the share capital at present paid in to the amount of	RM 28,750 million
Part payment made from credit granted by Heeresruestungskredit A.G. to the amount of was likewise completely used up;	RM 20,000 million
The balance of the amount needed was covered by means of a deposit loan with Fried. Krupp A.G.; the balance which our account owes Fried. Krupp A.G.—according to the vouchers which reached us—amounts to approximately	RM 20,650 million
	RM 69,400 million

In a letter written by the defendant Krupp, on or about 18 January 1944, he stated that thereafter the defendant Korschan would be chairman of the Berthawerk Vorstand.

By the end of October, there were almost 600 concentration camp inmates in the production labor force. In November the number increased to 685 and to 890 by December. In its application to a government agency, dated 2 February 1944 for the construction of a steel factory at Markstaedt, the Krupp firm gave as one of the reasons for approving the new construction the following (*NIK–12342, Pros. Ex. 1125*):

> "The chief thing is that there is a concentration camp ready to receive 4,000 to 5,000 concentration camp internees. At present this is occupied by only 1,200 men."

It was pointed out that the use of concentration camp labor is feasible because of the outlying position of the steel works and that operations could be started within 1 year after permission was granted. It was pointed out also that these things could not be done "unless, in addition to the building workers available at Markstaedt, concentration camp internees to the extent of about 1,000 men are provided." A companion application filed the same day for construction of a rolling mill referred to the availability of concentration camp labor "as mentioned in connection with the steel works."

In April 1944, when the Krupp firm had regained control over all phases of production, 1,668 concentration camp inmates were employed at Bertha Works. By July of that year, the number had increased to 2,610. In October of that year, Bernhard Weiss of the Flick firm estimated on his visit to Bertha Works, that approximately one-half of the total labor force of 12,000 consisted of concentration camp inmates.

After the SS commandant at Gross-Rosen complained because of Krupp's failure to cooperate fully, the defendant Houdremont agreed to make a trip to Bertha Works in the near future to clear up the matter, and he instructed a member of the Bertha Works staff to keep in very close touch with the SS so that difficulties would be straightened out as they arose. The defendant Korschan, at the request of the defendant Houdremont, investigated the differences of opinion between the Bertha Works staff and the SS concentration camp administration at Fuenfteichen, and reported in detail to the defendant Houdremont on these matters a few days later.

The first group of concentration camp inmates used in the production program at Bertha Works were inspected at the camp Gross-Rosen before being sent to the special camp at Fuenfteichen by Krupp employees of the firm's labor allocation department. They were in a bad state of health, and some of them could not walk at all without aid, so that when going to and from work,

they had to be supported by fellow workers. It took them 50 minutes to walk from the camp to work in the Bertha Works shops in the footgear furnished by the SS, consisting of either broken wooden clogs, or rags wrapped around the feet. The inmates worked without any morning meal, and for 12 hours with only one bowl of soup which they received at noon. Their food was so poor that they sought remains of food and begged for scraps of food. They fought each other for the left-over soup, which the other foreign workers had left or rejected despite the limited amount of food made available to them. A doctor employed by the Krupp firm who observed the poor appearance of the concentration camp inmates employed, reported that:

"In spite of all efforts we could not change in detail the system of the work to be done by the concentration camp detainees, which was really responsible for the bad state of the detainees."

Notwithstanding the very poor health and the weakness of the concentration camp inmates, they had to continue to work and to produce armaments for the Krupp firm. An illustration of the mistreatment of these unfortunate concentration camp inmates while working in the Bertha Works is contained in the testimony of a Czech worker. This, in part, is as follows:

"Q. Can you say who beat these people, who beat these Jews and for what reasons?

"A. Yes, I can say that. For instance, at lunch time when soup was distributed during lunch to the Jews, the Jews pressed forward with their cups. The person who distributed the soup pushed the Jews back or beat them, or he told the guard who stood there to beat the Jews. That soldier then hit the Jews with the butt of his rifle."

The inmates were also beaten because they did not properly perform the work to which they were assigned, as a result of not knowing how to work the machines. The beatings administered to them by the supervisors was with a whip made of iron with rubber. Conferences were had between the competent plant managers and the members of the SS during which the matter of punishing the concentration camp inmates was discussed.

The housing furnished to the concentration camp inmates was most inadequate, and the lives of the inmates were in danger as the plant was not furnished with proper air raid shelters for the workers. During air raids, the concentration camp inmates had to remain in the plant while other employees were permitted to leave it.

The situation at the Berthawerk again leads to the conclusion that the Krupp firm planned its own program upon its desire to use concentration camp labor.

After the production of fuses at Auschwitz had been taken away from the Krupp firm, immediate efforts were made to select a new site for the production of fuses by the firm. The advantage of having allotted to it the use of a concentration camp near Lublin because of the immediate availability of labor was considered. At a conference of Krupp personnel in the artillery development office attended by the defendants Houdremont and Eberhardt, the possibility of locating the fuse production plant at Wuestegiersdorf in Silesia was discussed and considered. Production of fuses there was taken up and approximately 200 female concentration camp workers were assigned in the summer of 1944. All of these concentration camp inmates were Jewish. They were of Hungarian or Yugoslavian nationality. These women were not allocated by the local labor office; they were procured as a result of negotiations carried on by Weinhold and other plant leaders of the Krupp firm with the SS.

The work shops used for the production of mining machinery at the Gusstahlfabrik in Essen were destroyed in 1943, and thereafter a transferred plant was established at Geisenheim on the Rhine. Later, the production of breeches for antiaircraft guns was also transferred to this plant. In the summer of 1944, the management of the Geisenheim plant had advised the defendant Eberhardt who was responsible for its supervision, that they desired concentration camp labor as such workers were then being made available by the SS to the armament industry. The defendant Eberhardt consulted with the defendant Janssen, his superior, on this matter, and thereafter approved an application for such allocation by the Geisenheim management.

On 5 July 1944, a conference was held in the office of the defendant Ihn concerning the use of concentration camp labor. Concentration camp workers consisting of Hungarian and Polish women of the Jewish faith were employed at the Krupp Geisenheim plant until March 1945, when they were taken to the interior of Germany, in view of the advance of the Allied troops into that area.

Despite the shortage of labor at the ELMAG plant, as a result of which difficulty was had in meeting production schedules for military tractors, efforts were unsuccessfully made to obtain orders for the production of Tatra motors, designed by another firm. The competent government official indicated that he preferred to give orders to firms who had labor available, rather

than to a plant where a great many workers were still needed. A Krupp representative at Berlin sent a teletype to ELMAG that he had succeeded in obtaining the approval of one of the members of the Main Committee Motors, for the production of T-motors by the ELMAG plant. The teletype was transmitted to the defendant Eberhardt. It was as follows:

> "So Mr. Schnieders asks us to treat the whole matter but above all his discussion with Mr. Vorwig as confidential in order not to annoy the Main Committee. The labor question connected with the motor problem was also mentioned. Mr. Schnieders has contacted Oranienburg concerning concentration camp inmates and he will give more detailed information tomorrow."

Two days later, defendant Eberhardt received another teletype from ELMAG on the machinery needs and the labor requirements for the production of T-motors. The labor needs were estimated at 1,250 workers, to be furnished by the use of concentration camp inmates. Some concentration camp inmates did arrive at ELMAG. They were to construct a concentration camp within the plant grounds to accommodate over 1,000 workers. These concentration camp inmates did not remain long at ELMAG. The monthly report for August 1944, sent to defendant Eberhardt and copies of which were sent to defendants Krupp, Houdremont, Mueller, and Janssen noted that, "for security reasons the first contingent of KZ inmates allotted to us was again removed from the factory. The KZ operation has been stopped." At that time, the Allied troops were approaching the city.

Two months later, the plant known as Krupp Krawa was evacuated from Alsace to Germany and reestablished in Nuernberg and Kulmbach as the Suedwerke. On 14 December 1944, defendant Eberhardt made a record in his notes of a meeting with the management of Suedwerke that "the Suedwerke hoped to be allocated 1,250 concentration camp prisoners." A month later, the director of Suedwerke, Hupe, was arranging for billeting the SS guards for concentration camp inmates at Kulmbach. In the summer of 1944, defendant Ihn, after consulting with the Direktorium, sent defendant Lehmann to the offices of the WVHA (the SS Economic and Administrative Main Office) at Oranienburg, to arrange for the allocation of concentration camp inmates to the Krupp firm in Essen. Lehmann reported that at Oranienburg he was informed that concentration camp Buchenwald was the camp to which they should apply, and that they should get in touch with that camp.

The defendants Ihn and Lehmann started negotiations imme-

diately with the commander of the Buchenwald concentration camp. They were joined at various times at conferences by the defendant Houdremont during the course of these negotiations. The defendants Krupp, Houdremont, Janssen, Mueller, and Eberhardt were informed of the progress of the subsequent negotiations.

Pister, the commander of the Buchenwald concentration camp, visited the Krupp firm at Essen on 4 and 5 July 1944, to discuss the request for 2,000 concentration camp inmates made by the Krupp firm. He advised the Krupp representatives that he could allocate 2,000 female concentration camp inmates to them. They discussed the question of getting 2,000 male concentration camp inmates. Pister approved the selection by the Krupp firm of the camp at Humboldtstrasse which was then being used for the confinement of Italian military internees, upon the condition that Krupp would provide the inmates with street car transportation to and from the place of work because of the very poor footwear of the inmates. Krupp's firm was to pay the sum of 4 RM per day to the SS for the use of this labor—it must be added here that concentration camp workers received no pay at all—and was to furnish blankets, eating utensils, and work clothes for dirty labor. Also it was agreed between Pister and the defendant Kupke that the Main Camp Administration of the Krupp firm assumed the responsibility for furnishing food and food preparation, whereas the guard personnel, administrative staff, and medical personnel was to be furnished by the SS.

Shortly thereafter, the SS advised the Krupp firm that only female concentration camp inmates could be furnished. One Trockel, a subordinate of defendant Lehmann in Labor Allocation A was dispatched by defendant Ihn to a factory at Gelsenberg, where 2000 female concentration camp inmates were employed, to look over the workers. Trockel reported thereafter that, in his judgment, the women were unsuitable since they appeared too frail and weak for heavy work. On 26 July 1944, Schwarz, a representative of the commander of the Buchenwald concentration camp, visited the Krupp firm at Essen to discuss the employing of female concentration camp inmates. Schwarz stated that the camp was too spacious, and for security reasons only five barracks and a few slit trenches should be wired off to form the camp. He also inspected the plants in which the Krupp firm had planned to use concentration camp labor, and approved only Rolling Mill II and the electrode shop as meeting the standards of the SS for segregation of the foreign workers. As not less than 500 women would be assigned by the SS, the Krupp firm agreed to take this number. Steps were taken within the Krupp administration to use them in accordance with security requirement of

the SS. As part of the agreement, the Krupp firm was to furnish the names of German women who would be sworn in to the SS and given 3 weeks' training at the women's concentration camp at Ravensbrueck and then assigned as guards for these concentration camp inmates. The Krupp firm recruited these guards within its own organization. Some difficulty was encountered and the plants were circularized to obtain the full quota. The names were finally obtained through recruitment in the Krupp plants and as a result of the efforts of the Krupp personnel office. These women were to have special training in the diabolical methods of the SS.

Krupp employees, including one from Labor Allocation A and plant leaders of the shops in which the concentration camp inmates were to be employed, went to Gelsenberg and selected 520 women from the 2,000 available there for employment at Krupp. Final negotiations for the allocation of this labor and transportation to Essen were made by the defendant Lehmann and his subordinates.

The 520 female concentration camp inmates ranged in age from 15 to 25 years. Some of them were students. They were members of the Jewish faith and because of their religion had been selected and forcibly removed in May 1944, together with their families, from their homes in Czechoslovakia, Rumania, and Hungary and transported to the infamous Auschwitz concentration camp in Poland. The Czechs, about 50 percent of the total of 520, had lived in the area of Czechoslovakia which was turned over to Hungary by Germany after its occupation of Czechoslovakia. At Auschwitz, they were stripped of all their possessions and their clothing was replaced by a single issue of sack-like grey garments made of burlap and wooden clogs with fabric tops. Parts of their heads were shaved. Many of their family members were gassed in Auschwitz. From Auschwitz, the women were shipped to a camp at Gelsenberg, a short distance from Essen, which was under the control of the commander of the Buchenwald concentration camp. Here the Krupp officials selected the 520 inmates shipped to Essen. They were referred to as "Hungarian Jewesses."

The camp at Humboldtstrasse used for housing these concentration camp inmates consisted of four sleeping barracks and a building referred to as the kitchen in which food was served and eaten by the inmates. The camp also included an air raid trench which was designed to protect the inhabitants against fragments and splinters but was completely without value as a protection against heavy bombs. The camp was surrounded by barbed wire, and guarded by guard towers manned by members of the SS, to prevent the inmates from escaping.

The barracks were burned down in an air raid on 25 October 1944. The former kitchen building was patched, and the entire population was then crowded into this building where they lived, notwithstanding the fact that rain leaked in. The inmates slept upon a little straw on the floor. The washroom facilities were destroyed and not replaced. During another air raid on 31 December 1944, this building was hit, and thereafter the entire population lived in the cellar of this bombed out building where it was damp and cold and ventilation was poor. Stoves could not be used. The inmates carried planks to the cellar and spread insufficient straw on the planks. They did not have two blankets per person as prescribed by the SS. Only one blanket was furnished by the Krupp firm. This the girls had to use not only as their sole item of bedding, but also to protect them against the cold and rain during the long marches to and from the plant and while at work. Washing facilities were no longer available, and practically no sanitary facilities were available at the camp. These conditions continued until March 1945, when the girls were evacuated from Essen. Although these conditions were known to all responsible parties, no efforts were made to provide other accommodations or to rebuild any of the buildings within the camp.

Only one meal was served each day at the camp. It was served to the day shift after they returned to the plant, and to the night shift before their departure to the plant. The meal consisted of soup and bread, supplemented with margarine or marmalade. On one occasion the authorities at the Buchenwald concentration camp instituted an inquiry as to the failure of the Krupp firm to furnish the sugar which it should have provided to the prisoners. A plant meal, called "bunker soup" was given at about noon time to the day shift workers during the first few weeks. After the heavy air raids in October 1944, plant meals were no longer furnished. No supplementary ration was ever given to the night shift workers. Some of the German employees, out of pity for the "Hungarian Jewesses" because of the insufficiency of food, surreptitiously gave some to them.

The SS furnished coats with distinguishing colored patches to the girls. Torn pieces of blankets were wrapped around the feet and legs of some of the girls. Inmates were required at times to walk barefooted, as many of them possessed neither stockings nor foot rags, and there were numerous cases of frozen feet and chilblains. Some of these girls were required to carry bricks and metal sheets without gloves or other protection.

Because of the requirements prescribed by the SS in permitting the employment of concentration camp inmates by the Krupp firm,

the latter arranged with the Essen street railway company for open "summer" cars for transportation between the camp and the plants. This transportation was furnished until 23 October 1944 when the particular line used was destroyed in an air raid. After that, the inmates marched to work under guard through the streets of Essen. The largest number of girls were employed in Rolling Mill II. This was at least a mile and a half from the camp. The girls were awakened at 4 o'clock in the morning. A roll call was had at 4:30 a.m. They started work at 6:00 a.m. and the working hours were long for both the day shift and the night shift. On Sunday the working hours were shorter.

After production in many of the Krupp plants at Essen was prevented because of air raids, the concentration camp inmates were put to work in moving rubble and carrying building material for the reconstruction of the plant. The principle task was the carrying of bricks and iron roofing sheets. The women SS "supervisors" slapped and kicked the girls if they slowed down in their work. They were deprived of food as punishment, and their hair was closely cropped or shaved in the form of a cross. The selection of work, the amount of work and the supervision of it was decided by the Krupp firm. The plant leaders and foremen fixed the work tasks. Work discipline was enforced by Krupp supervisors and by their giving instruction for punishment to the SS "supervisors." The mistreatment of these girls was a matter of common knowledge in the firm.

At Rolling Mill II, where many of them were employed, a room was made available to them as an air raid shelter. They were not permitted to use the shelter to which all German personnel went during air raids, except on a few occasions at night when the size of the staff was reduced.

In February 1945, a subordinate of the defendant Lehmann in Labor Allocation A learned that the SS did not plan to permit the concentration camp inmates to remain alive and thus be liberated by the advancing American troops. He advised his superior, the defendant Lehmann of this plan, and also the members of the Direktorium. After a discussion of this matter by the Direktorium, defendant Janssen advised defendants Ihn and Lehmann of the decision of the members of that body to have these concentration camp prisoners removed from Essen. Defendant Ihn then directed defendant Lehmann to arrange for their shipment back to Buchenwald. Lehmann ordered a member of his staff to assist in providing a train for the shipment of these girls back to Buchenwald. On 17 March 1945, the girls were marched to Bochum. There a train was made up for them and 1,500 male concentration camp inmates. They were shipped eastward under

SS guards. With the exception of a few who had escaped shortly before—and two of them, the Roth sisters, were able to appear as witnesses before this Tribunal—nothing further has been discovered about the fate of the young "Hungarian Jewesses" of the Krupp firm.

LAW ON THE DEPORTATION AND EMPLOYMENT OF FOREIGN CIVILIAN WORKERS AND CONCENTRATION CAMP INMATES

It is contended that the forcible deportation of civilians from occupied territory was perfectly lawful. The argument made in this connection by the ostensible leader of defense counsel needs an answer, if for no reason other than to indicate the nature of the principal defenses upon this phase of the case.

The substance of the argument is as follows: "There exists in the Hague Rules of Land Warfare no provision explicitly prohibiting the use of manpower from occupied territories for the purpose of war economy. Article 48 is certainly not conclusive * * * . Reference to international common law is not more conclusive. For the only case in modern history, the conscription of Belgian labor during the First World War has remained a completely open question as regards its admissibility under international law."

It is, therefore, insisted that the prosecution's position with respect to wholesale deportation on a compulsory basis of members of a civilian population of occupied territories "is based on a fundamental misconception of the first rule of war, viz, that measures necessary for achieving the purpose of war are permissible unless they are expressly prohibited, and that methods required for achieving the purpose of war are determined by the development of war into total war, especially in the field of economic warfare."

In principle this is the same argument made in connection with the asserted proposition that the concept of total war operated to abrogate the Hague Rules of Land Warfare. But the reference to the deportation of Belgian labor to Germany during the First World War requires an additional answer, if for no other reason than to keep the record straight.[1] That the crime, on the part of imperial Germany, caused world wide indignation.

The deportations began after the German Supreme Command had issued its notorious order of 3 October 1916,[2] "concerning

[1] Oppenheim (Lauterpacht), International Law, 5th Edition (London, 1935), page 353.
[2] American Journal of International Law (April, 1946), volume 40, page 309.

restrictions of public relief." Shortly prior thereto the Reich Chancellery had declared in an expert opinion that " 'under the law of nations, the intended deportation (Ausschiebung) of idle (arbeitsscheue) Belgians to Germany for compulsory labor can be justified if (*a*) idle persons became a charge of public relief; (*b*) work cannot be found in Belgium; (*c*) forced labor is not carried on in connection with operations of war. Hence, their employment in the actual production of munitions should be avoided.' "

The obvious subterfuge lies in the fact that the measure was ostensibly directed against vagrants to combat unemployment in Belgium as an economic measure. But no one was deceived by this pretense and it was soon abandoned in a manner which indicated an awareness of the illegality of the procedure.

The protests were so wide spread and vigorous that the Kaiser was forced to retreat. These protests were based upon either the general principles of international law and humanity or specifically upon the Hague Regulations. For instance, the United States Department of State protests "against this action which is in contravention of all precedent and of those humane principles of international practice which have long been accepted and followed by civilized nations in their treatment of noncombatants in conquered territory."[1]

The protest of the Netherlands Government pointed out the incompatibility of the deportations with the precise stipulations of Article 52 of the Hague Regulations. It was pointed out by Professor James W. Garner, scholar and author of high repute, that if "a belligerent were allowed to deport civilians from occupied territory, in order to force them to work in his war industries and thereby to free his own workers for military service, this would make illusory the prohibition to compel enemy citizens to participate in operations of war against their own country. 'The measure must be pronounced as an act of tyranny, contrary to all notions of humanity, and one entirely without precedent in the history of civilized warfare.' "[2]

Negotiations through diplomatic and church channels to repatriate the deportees and stop the practice were partially successful. From February 1917, Belgians were no longer deported from the Belgian "Government General" and the Kaiser promised that by 1 June 1917, deportees who would not volunteer to remain in Germany would be repatriated.

Nevertheless, long after the end of the First World War, the unsuccessful effort of the Kaiser's government was to an extent

[1] Hackworth, G. H., Digest of International Law (United States Government Printing Office, Washington, D. C., 1943), volume VI, page 399.

[2] American Journal of International Law (January, 1917) volume XI, page 106.

upheld in Germany. A parliamentary commission created by the German Constituent Assembly to investigate charges made against that nation of having violated international law during the war by a majority report[1] submitted 2 July 1926, stating that the deportations had been in conformity with the law of nations and, more particularly, with the Hague Regulations. The report proceeded upon the theory that "the workers in question did not find sufficient opportunity to work in Belgium and that the measure was indispensable for reestablishing or maintaining order and public life in the occupied territory." The Belgian Minister of Foreign Affairs expressed the sentiment of the civilized world when he declared that his country had erred in its belief "that at least on this point, the war policy of the Kaiser's government would no longer find defenders."[2] And it should be noted in this connection that even a minority of the German parliamentary commission above-mentioned found no justification for the practice and upon the other hand, squarely condemned it.

It is apparent, therefore, that learned counsel's contention that "the conscription of Belgian labor during the First World War has remained a completely open question as regards its admissibility under international law," is based upon the fact that a majority of a committee appointed by the parliamentary body of Republican Germany found it to be in accord with the law of nations. We think it must be conceded that this is at least rather thin ground upon which to establish a negation of international customary law. However this may be, it is certain that this action by the majority of the committee of the German body did not operate to repeal the applicable Hague Rules of Land Warfare, particularly Article 52, which in the present case was shown beyond doubt to have been violated. Deportees were not only used in armament production in the Krupp enterprise, but in the latter years of the war the production of armament on a substantial scale reached could not have been carried on without their labor.

This was not only a violation of the Hague Rule of Land Warfare but was directly contrary to the expert opinion of the Reich Chancellery hereinabove referred to which preceded the order of the German Supreme Command of 3 October 1916, for the deportation of Belgians. As above indicated, that opinion, though providing a subterfuge for the illegal conduct, did annex as one of the conditions "that forced labor is not carried on in connection with operations of war * * *. Hence their employment in the actual production of munitions should be avoided."

[1] American Journal of International Law (April, 1946) volume 40, page 312.

[2] Belgian Chamber of Representatives, session 14 July 1927. Documents Legislatifs, Chambre des Representants, No. 336. Passelecq, pages 416–433.

The law with respect to the deportation from occupied territory is dealt with by Judge Phillips in his concurring opinion in the United States of America *vs.* Milch decided by Tribunal II.* We regard Judge Phillips' statement of the applicable law as sound and accordingly adopt it. It is as follows:

"Displacement of groups of persons from one country to another is the proper concern of international law in as far as it affects the community of nations. International law has enunciated certain conditions under which the fact of deportation of civilians from one nation to another during times of war becomes a crime. If the transfer is carried out without a legal title, as in the case where people are deported from a country occupied by an invader while the occupied enemy still has an army in the field and is still resisting, the deportation is contrary to international law. The rationale of this rule lies in the supposition that the occupying power has temporarily prevented the rightful sovereign from exercising its power over its citizens. Articles 43, 46, 49, 52, 55, and 56, Hague Regulations which limit the rights of the belligerent occupant, do not expressly specify as crime the deportation of civilians from an occupied territory. Article 52 states the following provisions and conditions under which services may be demanded from the inhabitants of occupied countries.

"1. They must be for the needs of the army of occupation.

"2. They must be in proportion to the resources of the country.

"3. They must be of such a nature as not to involve the inhabitants in the obligation to take part in military operations against their own country.

"Insofar as this section limits the conscription of labor to that required for the needs of the army of occupation, it is manifestly clear that the use of labor from occupied territories outside of the area of occupation is forbidden by the Hague Regulations.

"The second condition under which deportation becomes a crime occurs when the purpose of the displacement is illegal, such as deportation for the purpose of compelling the deportees to manufacture weapons for use against their homeland or to be assimilated in the working economy of the occupying country.

* * * * * * *

"The third and final condition under which deportation becomes illegal occurs whenever generally recognized standards of decency and humanity are disregarded. This flows from

* United States *vs.* Erhard Milch, Case 2, Volume II, pages 865 and 866.

the established principle of law that an otherwise permissible act becomes a crime when carried out in a criminal manner. A close study of the pertinent parts of Control Council Law No. 10 strengthens the conclusions of the foregoing statements that deportation of the population is criminal whenever there is no title in the deporting authority or whenever the purpose of the displacement is illegal or whenever the deportation is characterized by inhumane or illegal methods.

* * * * * * *

"Article II, paragraph 1(*c*) of Control Council Law No. 10 specifies certain crimes against humanity. Among these is listed the deportation of any civilian population. The general language of this subjection as applied to deportation indicates that Control Council Law No. 10 has unconditionally contended as a crime against humanity every instance of the deportation of civilians. Article II, paragraph 1(*b*) names deportation to slave labor as a war crime. Article II, paragraph 1(*c*) states that the enslavement of any civilian population is a crime against humanity. This Law No. 10 treats as separate crimes and different types of crime 'deportation' to slave labor and 'enslavement.' The Tribunal holds that the deportation, the transportation, the retention, the unlawful use and the inhumane treatment of civilian populations by an occupying power are crimes against humanity."

In connection with the subject of deportation of civilians from occupied territory, it is interesting to note that as shown by a document introduced by the defense, General Thoenissen was dismissed from the service by the High Command during World War II because of his "refusal to violate" the laws of war and to deport French workers to Germany.

The deportation of Belgians to Germany also was over the vigorous protests of the military commander in Belgium, General von Falkenhausen. With reference to Sauckel's order introducing a compulsory labor service for the Belgians, he deposed that "this was done against my explicit and constant protest for I had various objections against a compulsory labor allocation and considered it more important to keep the indigenous economy in motion."

That the employment of concentration camp inmates under the circumstances disclosed by the record was a crime there can be no doubt. The conclusion is inescapable that they were mostly Jews uprooted from their homes in occupied territories and no less deportees than many of the other foreign workers who were forcibly brought to Germany. The only difference was that they

had to go through all of the horrors of a concentration camp under the supervision of the SS before they finally landed at the firm of Krupp. That these persecutees had been arrested and confined without trial for no reason other than that they were Jews is common knowledge and in fact not controverted. The subject is dealt with exhaustively by the judgment of the IMT and there is no need to add anything to what is there said to show the unspeakable horrors to which these unfortunate people were subjected. However, in the present connection, one or two excerpts from the judgment are pertinent. It is there recited that "the Nazi persecution of Jews in Germany before the war, severe and repressive as it was, cannot compare, however, with the policy pursued during the war in the occupied territories."[1]

After referring to the fact that in the summer of 1941, however, plans were made for the "final solution" of the Jewish question in all Europe, the judgment[2] continues: "Part of the 'final solution' was the gathering of Jews from all German occupied Europe in concentration camps. Their physical condition was the test of life and death. All who were fit to work were used as slave laborers in the concentration camps * * *." The "final solution" meant extermination.

Under the facts of this case it is obvious from what has been said as to the law that the employment of these concentration camp inmates was also a violation of international law in several different particulars.

In this connection it is argued that the defendants had scant knowledge of the persecution of the Jews by Nazi leaders. This can be justly characterized as no more than a gesture. The fact was common knowledge not only in Germany but throughout the civilized world. Whether this was true in all the horrifying and gruesome details is immaterial to the legal question.

Moreover, apart from the fact that the Krupp activities at Auschwitz hereinabove detailed gave ample opportunity to know the true situation, there is evidence introduced by the defendants which directly refutes the contention that the officials of the firm lacked knowledge of the persecution of the Jews on racial grounds. Among other items is the affidavit of Mickenschreiber. It was offered along with other documents to show that the officials of the firm were not in accord with the attitude of the Nazi regime toward Jews. But it shows also that without doubt they knew of that abominable policy as early as 1936. The affidavit shows this so conclusively that it is worthwhile to quote from at some length.

[1] Trial of the Major War Criminals, op. cit. supra, volume I, page 249.
[2] Ibid., p. 251.

After deposing that one Robert Waller had been in the service of the firm as an electrical engineer for 20 years, the affiant continues (*Ihn 51, Def. Ex. 2767*):

"From 1936 on, his working associates brought pressure to bear on the firm, because of his non-Aryan descent (Mr. Waller is Jewish) with the aim of having Waller dismissed. Mr. Ihn did not yield to the demands of the employees, however. At his behest Mr. Waller was given protection by designated persons, who always intervened on his behalf, shielded him in the campaign of persecution against him, and later provided him with a special place of work apart from the other workers. Furthermore, thorough-going efforts were made to find a position abroad for him. On 9 November 1938, the day of the general persecution of the Jews in Germany, the employees as well as the Vertrauensrat [*Employees' Council*] at the time categorically demanded the immediate dismissal without notice of Mr. Waller. According to this there was no longer any possibility of retaining Mr. Waller. However, without the persons in power knowing of it, by order of Mr. Ihn, Mr. Waller was paid a lump sum, corresponding to his salary which he would have received had he been given regular notice (about 8 months' salary), in order to enable him to emigrate, as he was contemplating doing. Moreover, after the war the personnel manager made amends to Mr. Waller, in a manner which met his satisfaction, for the wrong done to him at the instigation of working associates."

NECESSITY AS A DEFENSE

The real defense in this case particularly as to count three, is that known as necessity. It is contended that this arose primarily from the fact that production quotas were fixed by the Speer Ministry; that it was obligatory to meet the quotas and that in order to do so it was necessary to employ prisoners of war, forced labor, and concentration camp inmates made available by government agencies because no other labor was available in sufficient quantities and, that had the defendants refused to do so, they would have suffered dire consequences at the hands of the government authorities who exercised rigid supervision over their activities in every respect.

The defense of necessity was held partially available to the defendants in the case of the United States of America *vs.* Flick, et al., decided by Tribunal IV.* There, as here, the defendants were industrialists employing prisoners of war, forced labor, and

* United States *vs.* Friedrich Flick, et al., Case 5, Volume VI, judgment, this series.

concentration camp inmates in the production of armament in aid of the war effort. Flick and one of his codefendants were nevertheless found guilty on the charge presently under consideration. This was by way of an exception to the holding that the defense of necessity was applicable. The basis of this aspect of the decision appears from the following quoted from the opinion:

> "The active steps taken by Weiss with the knowledge and approval of Flick to procure for the Linke-Hofmann Werke increased production quota of freight cars which constitute military equipment within the contemplation of the Hague Convention, and Weiss' part in the procurement of a large number of Russian prisoners of war for work in the manufacture of such equipment deprive the defendants Flick and Weiss of the complete defense of necessity. In judging the conduct of Weiss in this transaction, we must, however, remember that obtaining more materials than necessary was forbidden by the authorities just as falling short in filling orders was forbidden. 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."

The defense of necessity in municipal law is variously termed as "necessity," "compulsion," "force and compulsion," and "coercion and compulsory duress." Usually, it has arisen out of coercion on the part of an individual or a group of individuals rather than that exercised by a government.

The rule finds recognition in the systems of various nations. The German Criminal Code, Section 52, states it to be as follows:

> "A crime has not been committed if the defendant was coerced to do the act by irresistible force or by a threat which is connected with a present danger for life and limb of the defendant or his relatives, which danger could not be otherwise eliminated."

The Anglo-American rule as deduced from modern authorities* has been stated in this manner:

> "Necessity is a defense when it is shown that the act charged was done to avoid an evil both serious and irreparable; that there was no other adequate means of escape; and that the remedy was not disproportioned to the evil. Homicide through

* Wharton's Criminal Law (Lawyer's Coop. Publishing Co., Rochester, N. Y., 1932), volume I, 12th edition, section 126, page 177.

necessity i.e., when the life of one person can be saved only by the sacrifice of another, will be discussed in a subsequent chapter. The issue, it should be observed, is not simply whether a particular life is to be sacrificed in case of necessity, but whether it is right for a person to commit a crime in order to save his life. The canon law prescribes that a person whose life is dependent on immediate relief may set up such necessity as a defense to a prosecution for illegally seizing such relief. To the same general effect speak high English and American authorities. Life, however, can usually only be taken, under the plea of necessity, when necessary for the preservation of the life of the party setting up the plea, or the preservation of the lives of relatives in the first degree."

As the prosecution says, most of the cases where this defense has been under consideration involved such situations as two shipwrecked persons endeavoring to support themselves on a floating object large enough to support only one; the throwing of passengers out of an overloaded life boat; or the participation in crime under the immediate or present threat of death or great bodily harm. So far as we have been able to ascertain with the limited facilities at hand, the application to a factual situation such as that presented in the Nuernberg trials of industrialists is novel.

The plea of necessity is one in the nature of confession and avoidance. While the burden of proof is upon the prosecution throughout, it does not have to anticipate and negative affirmative defenses. The applicable rule is that the prosecution is compelled to establish every essential element of the crime charged beyond a reasonable doubt in the first instance. However, if the accused's defense "is exclusively one of admission and avoidance, or if he pleads some substantive or independent matter as a defense which does not constitute an element of the crime charged, the burden of proving such defense devolves upon him. As a general rule, in matters of defense, mitigations, excuse, or justification, the accused is required to prove such circumstances by evidence sufficient to prove only a reasonable doubt of his guilt. And if the circumstances relied upon are supported by such proof as produces a reasonable doubt as to the truth of the charge against the accused when the whole evidence is considered by the jury, there must be an acquittal".* The question then is whether, upon a consideration of the whole evidence, it can be justly said that there is such a doubt.

The defense of necessity is not identical with that of self-defense. The principal distinction lies in the legal principle in-

* Wharton's Criminal Evidence, op. cit. supra, section 211, pages 236 and 237.

volved.[1] Self-defense excuses the repulse of a wrong whereas the rule of necessity justifies the invasion of a right.

In the view of German writers the law of necessity involves not the assertion of right against right, but of privilege against privilege. But from the standpoint of the present case, the rule of necessity and that of self-defense has, among others, one characteristic in common which is of determinative significance. This is that the question is to be determined from the standpoint of the honest belief of the particular accused in question. Thus, with respect to the law of self-defense, Mr. Wharton quotes Berner, an authoritative German jurist:

> "Whether the defendant actually transcended the limits of self-defense can never be determined without reference to his individual character. An abstract and universal standard is here impracticable. The defendant should be held guiltless (of malicious homicide) if he only defended himself to the extent to which, according to his honest convictions as affected by his particular individuality, defense under the circumstances appeared to be necessary."[2]

Wharton himself says "that the danger of the attack is to be tested, * * * from the standpoint of the party attacked, not from that of the jury or of an ideal person."[3]

We have no doubt that the same thing is true of the law of necessity. The effect of the alleged compulsion is to be determined not by objective but by subjective standards. Moreover, as in the case of self-defense, the mere fact that such danger was present is not sufficient. There must be an actual bona fide belief in danger by the particular individual.

The evidence of the prosecution with respect to particular defendants was sufficient to discharge the burden resting upon it in the first instance. Thereupon the burden shifted to the defendants of going forward with the evidence to show all of the essential elements of the defense of necessity to an extent sufficient to raise a reasonable doubt in the minds of the Tribunal upon a consideration of the whole of the evidence. In this respect the evidence falls short in a vital particular.

Assuming for present purposes the existence of the tyrannical and oppressive regime of the Third Reich which is relied upon as a basis for the application of the rule of necessity, the competent and credible evidence leaves no doubt that in committing the acts here charged as crimes, the guilty individuals were not acting under compulsion or coercion exerted by the Reich authorities within the meaning of the law of necessity.

---

[1] Wharton's Criminal Law, op. cit. supra, volume I, section 128, page 179.
[2] Ibid., section 623, page 850.
[3] Ibid., section 134, page 185.

Under the rule of necessity, the contemplated compulsion must actually operate upon the will of the accused to the extent he is thereby compelled to do what otherwise he would not have done. Thus, as Lord Mansfield said in the case cited in the Flick opinion as giving the underlying principle of the rule invoked:

> "Necessity forcing man to do an act justifies him, because no man can be guilty of a crime without the will and intent in his mind. When a man is absolutely, by natural necessity, forced, his will does not go along with the act."[1]

Here we are not dealing with necessity brought about by circumstances independent of human agencies or by circumstances due to accident or misadventure. Upon the contrary, the alleged compulsion relied upon is said to have been exclusively due to the certainty of loss or injury at the hands of an individual or individuals if their orders were not obeyed. In such cases, if, in the execution of the illegal act, the will of the accused be not thereby overpowered but instead coincides with the will of those from whom the alleged compulsion emanates, there is no necessity justifying the illegal conduct. That is this case.

Hence the Flick Case[2] is distinguishable upon the facts. For instance, a determinative factor in that case is indicated by the following from the opinion: "With the specific exception above alluded to and as hereinafter discussed, it appears that the defendants here involved were not desirous of employing foreign labor or prisoners of war."

In the present case the evidence leaves no doubt that just the contrary was true. For instance, we have hereinabove referred to a letter from the board of directors of Fried. Krupp, A.G., Essen, dated 26 September 1942, addressed to the Army High Command, which as noted, concludes as follows (*Lehmann 421, Def. Ex. 1186*):[3]

> "As we are, under the circumstances described, very anxious to employ Russian prisoners of war in the very near future, we should be grateful if you would give us your opinion on this matter as soon as possible."

The minutes of a meeting at the penal camp Dechenschule, 14 March 1944, prepared by the defendant von Buelow, furnish another illustration. After reciting that most of the inmates to be confined in that camp would be people guilty of breach of labor contracts who had been apprehended in France by the military authorities, von Buelow concludes, "finally I pointed out to Krimi-

[1] Stratton's Case, 21 How. St. Tr. (Eng.) 1046–1223.
[2] United States *vs.* Friedrich Flick, et al., Case 5, Volume VI, judgment.
[3] Reproduced above in section VIII G 1.

nalrat Nohles (of the State Police) that the question of labor allocation is decisive for us and that we would like to secure these valuable French workers for ourselves for this reason."

A letter of 18 September 1943, addressed to the employment office in Essen indicates the attitude of the Krupp officials toward the Reich policy of conscription of foreign labor. It is as follows (*NIK–15402, Pros. Ex. 1574*) :[1]

> "The 1-year contracts of a great number of our French, Belgian, and Dutch workers of the Cast Steel Works will expire within the next 2 months. Since these people are not prepared to renew their contracts we intend to have them conscripted. With reference to the conversation with your Mr. Dieckmann we ask you to consider how the necessary formalities may be best carried out. This applies to about 200 persons."

But long before this the Krupp firm had manifested not only its willingness but its ardent desire to employ forced labor.

In December 1942 and prior thereto the Krupp firm maintained a labor recruiting office in Paris. Their representative was a Mr. Hennig, said to have "the best connections to all German and French departments." Learning that a new draft of about 265,000 workers was to be made in occupied France during the month of January, the defendant Lehmann made a trip to Paris with a view of seeing that the Krupp firm got a larger share of these workers than was then to be expected. He had Dr. Servatius, Oberregierungsrat of the Regional Land Office [Land Labor Office] Rhineland, go with him. In reporting the result of his efforts, Lehmann said, among other things, "With our aid, our requests were then distributed properly to the various district commanders [Bezirkschefs] and [regional military] field headquarters [Feldkommandaturen]. As much as possible, the selection of the drafted individuals is then also to be undertaken with the help of one of our representatives."

Referring to the possibility of getting skilled workers from unoccupied France, Lehmann, in the same report, stated as follows (*D–196, Pros. Ex. 888*) :[2]

> "Because of the new political situation in the so far unoccupied part of France, the French government agencies will from now on act energetically at the draft of workers in this region. As one of the first measures, the French railways will transfer to Germany approximately 460 skilled workers. That will be 60 percent of the skilled workers who have been promised to us for some time, but who could not be persuaded to sign the

[1] Reproduced above in section VIII B 1.

[2] Parts of this document are reproduced above in subsection VIII B 1.

contracts and to leave. The workers will be sent during the first week in January from the various factories to Lyon, where they can be received by our representative and will be conducted to Essen.

"In the beginning of January, Mr. Hennig will also try immediately to start on their way to Essen the 210 skilled workers allotted to us from the locomotive factory Fougat, Beziers. On our part we shall try to achieve that these workers will not be considered as part of our January quota since they have been promised to us for some time."

The willing attitude of the Krupp officials toward the employment of concentration camp inmates is indicated by the minutes of a conference held on 5 June 1944 in the office of Ihn. This conference was attended by the defendant Krupp among others. The defendant Ihn prepared the minutes. The following quotation refers to the Friedrich-Alfred-Huette at Geisenheim. It is as follows:

"Mr. Vorwerk, F.A.H., will examine the question as to whether there is any possibility for the F.A.H., to employ any prisoners and convicts. If necessary the Cast Steel Works will try to include this requirement in their request.

"Messrs. Guenther, Graefe, and Geisenheim, are negotiating with the concentration camp in their zone. Although no result has been reached in these negotiations so far, Geisenheim will continue to deal with the question on their own. Only if no result is reached will the Cast Steel Works take a hand in the matter."

A copy of the minutes was distributed to the defendants Krupp, Houdremont, Janssen, Mueller, von Buelow, and Kupke, among others.

The efforts of the Krupp concern to expand during the war years also negatives the idea that they were acting under compulsion.

The evidence already referred to in connection with the employment of concentration camp inmates demonstrates this fact. An additional incident reflects the firm's attitude. On 17 July 1943, there was a meeting of the Directorate of ELMAG, then located at Mulhouse. It was attended by the defendants Eberhardt, Ihn, and Janssen. Among other things, the minutes reflect the following:

"Next spring Krawa is to reach an output of 100 Zgkw [Zugkraftwagen] or tractors per month. It is said, however, that lately the special committee cut down the tank program and

only 80 or a still lower Zgkw figure per month by ELMAG is proposed. Mr. Eberhardt recommends to Mr. Zimmermann who is expected to be in Berlin to attend the meeting of the special committee on 23 July 1943, to talk to Mr. Dinckelacker, with a view rather to increase the program than to cut it down.

"To assure the firm's reputation as motor manufacturer also for the future, an attempt should be made to obtain orders for motor construction. In this respect, too, Mr. Zimmermann should take appropriate steps. Mr. Eberhardt also points out that the allocation of additional labor is to benefit not only the prime-mover manufacture and its spare parts, but also the manufacture of spare parts in Tann."

The testimony of Flick,* a competitor of the Krupp firm, also indicates that the Krupp firm was endeavoring to expand its activities. Flick was introduced as a witness of the defense. His evasive answers on cross-examination leave much to be desired. But the following is clear: Properties known as Vairogs had belonged to Flick. The Krupp firm was in negotiation with the army ordnance to be allowed to take over and manage the property. In this connection, Flick was asked and answered as follows:

"Q. Is it not a fact that you objected violently to the attempts of the Krupp firm to expand into areas where they had never been before?

"A. Yes, in that case, whether this would have been a final expansion policy of Krupp was an open question. In my trial, I stated that for us it was a question of prestige. Vairogs had belonged to us in 1936, and we would have to relinquish it to another firm and have it managed by another firm. It was my opinion that it was an insult to us if we weren't given the task of managing this firm."

The officials of the Krupp firm well knew that any expansion of its facilities and activities would require the employment of forced labor, brought from occupied territories, prisoners of war and concentration camp inmates.

Other illustrations indicating the firms entire willingness to cooperate in the use of these several types of labor could be given, but the foregoing are ample to show that the law of necessity cannot be held a good defense under the facts of this particular case.

While we regard the foregoing as conclusive, before leaving this

* Friedrich Flick was a defendant in the case United States *vs.* Friedrich Flick, et al., Case 5, Volume VI, this series. He was also a defense witness in the Krupp Case. His testimony is recorded in mimeographed transcript, 2 and 19 April 1948, pages 5409–5424, 5444–5488.

phase of the case we deem it not inexpedient to briefly examine the nature of the evidence offered by the defendants to establish the existence of the compulsion or coercion under which they claim to have acted. They introduced several witnesses who testified in general terms that because of the attitude of the Reich authorities, the officials of the Krupp firm had "no possibility of refusing a production quota."

Whatever may have been true with respect to Flick and other industrialists, the witnesses for the defense in the present case made it clear that the defendants acted not from necessity within the meaning of the rule invoked but from what they conceived to be a sense of duty. If it were permissible, as the defense seems to think, to show the subjective attitude of one person by the testimony of another, then that of the defense witness Schieber is typical. Schieber* was an SS Brigadefuehrer and high official in the Speer Ministry, which was in charge of the allocation or the fixing of production quotas and seeing that they were met. He was examined about the nature of the coercion upon industrialists. He testified that "what is decisive is the nature in which public opinion was directed. The defamation of such a man who opposed the State. This defamation was so severe that I believe any reasonable man would have seen to it that he avoided it." Asked how "this defamation (would) express itself" he answered, "it would hardly be possible for me to list all these defamations one by one. In general, it was not defamation from above, but from the man's neighborhood, or from the man on the street, the block leader, or the children, for example. You know how difficult from 1943 on, or how severe the leadership of the people, and of industry in the whole State became after 1943." He further testified that "I believe that for the vast majority of German plant managers, the moral coercion, namely the duty stood in the absolute foreground." And again, "a refusal to meet production programs does not occur in an orderly state which is at war. I am further of the view that when you speak of coercion to production that you might just as well call it a self-evident duty or task to produce." Asked about the Krupp firm in particular, he stated that "it regarded it as a patriotic duty to do what it could in aid of the war effort by meeting these production schedules."

This brings forward another aspect of the rule of necessity which as applied to the facts of this case needs consideration. It will be observed that it is essential that the "act charged was done to avoid an evil both serious and irreparable," and "that the remedy was not disproportioned to the evil." What was the evil which confronted the defendants and what was the remedy that

* Extracts of testimony are reproduced above in section VIII B 4.

they adopted to avoid it? The evidence leaves no doubt on either score. As said, Speer was the top official in charge of the allocation of production quotas and the ultimate arbiter concerning penalties in case they were not met. He testified as a witness for the defense in the Flick Case. Although he was available he was not offered as a witness in this case. However, under the liberal rules followed in these trials, short excerpts of his testimony in the Flick trial were allowed to be introduced in evidence by the defendants. The excerpts reflect that he was examined with respect to what would have happened to an industrialist prior to the implementation of an order of 6 September 1943, giving the main committee the legal basis for issuing directives to industrial plants. In dealing with the question presently under consideration we need not be concerned with the possibilities after September 1943, because many of the acts charged in the indictment were committed prior to that date, and moreover, so far as appears there were no changes in the attitude of the defendants. So far as the present question is concerned it was the same throughout.

From the excerpts introduced, it appears that Speer was asked and answered as follows:

> "Q. Now, if an industrialist should have said, before the promulgation of this law, 'The main committee has no legal basis, I shall do what I please.' What would have happened then?
>
> * * * * * * *
>
> "A. The industrialist would have lost his plant. He would have lost every possibility of exerting any influence on his plant. Such cases did occur, but not because of a refusal by the industrialist, but merely brought about by the fact that a plant regularly failed to achieve the production required of it. As an example I might mention the replacement of the plant manager of Krupp-Markstaedt, whose position was filled against Krupp's wishes by a Hamburg plant manager."

In the present case, the possibility of "losing a plant" did not exist for any of the defendants except Alfried Krupp and not for him prior to December 1943 when he became owner of the enterprise. None of them had any property interest in the business. The most that any of them had at stake was a job.

So accepting Speer's testimony, the question from the standpoint of the individual defendants resolves itself into this proposition: To avoid losing my job or the control of my property, I am warranted in employing thousands of civilian deportees, prisoners of war, and concentration camp inmates; keeping them in a state of involuntary servitude; exposing them daily to death or great bodily harm, under conditions which did in fact result in

the deaths of many of them; and working them in an undernourished condition in the production of armament intended for use against the people who would liberate them and indeed even against the people of their homelands.

If we may assume that as a result of opposition to Reich policies, Krupp would have lost control of his plant and the officials their positions, it is difficult to conclude that the law of necessity justified a choice favorable to themselves and against the unfortunate victims who had no choice at all in the matter. Or, in the language of the rule, that the remedy was not disproportioned to the evil. In this connection it should be pointed out that there is a very respectable authority* for the view that the fear of the loss of property will not make the defense of duress available.

But the extreme possibility hinted at, was that Gustav Krupp and his officials would not only have lost control of the plant but would have been put in a concentration camp had they refused to adopt the illegal measures necessary to meet the production quotas. Considering Gustav Krupp's influence and friendship with Hitler and the influence in Germany of the firm in general, it is difficult to conceive of this possibility. The fate of minor industrialists hardly can be regarded as evidence of what would have happened to the officials of the Krupp firm in similar circumstances. Rohland, a witness for the defense, correctly described the situation. He was an industrialist whom Speer made deputy chairman of the Reich Association Iron, one of the most important nationwide economic groups in the war economy of Germany. He became involved in a serious controversy with Sauckel and Ley and the latter threatened him with dire consequences. But he testified that "Speer covered for me completely," and that whether "one who was in serious opposition with the Reich authorities was sent to a concentration camp as a consequence depended very much on the person and on the question of whether the person concerned was directly in touch with someone like Speer."

The firm of Krupp was even better protected than Rohland. It was not only a vital factor in the war effort, but the head of it, Gustav Krupp, was a personal friend of Hitler. Gustav Krupp, not only had contributed large sums of money to the Nazi Party in the campaign which resulted in their rise to power, but played a leading part in bringing to Hitler's support other influential industrialists. Throughout the war years he and the Krupp firm continued to be regarded by Hitler with high favor. If nothing else appeared, this is conclusively shown by the "Lex Krupp," a special decree of Hitler whereby of all industrial firms in Nazi

* Wharton's Criminal Law, op. cit. supra, volume 1, section 384, footnote 1, page 515.

903432—51——93

Germany that of Krupp alone was enabled to continue as a family enterprise free from the manifold burdens of a corporate structure. All of the officials of the firm were important in industrial life in Germany and far from lacking influential friends.

Moreover, in all fairness it must be said that in any view of the evidence the defendants, in a concentration camp, would not have been in a worse plight than the thousands of helpless victims whom they daily exposed to danger of death, great bodily harm from starvation, and the relentless air raids upon the armament plants; to say nothing of involuntary servitude and the other indignities which they suffered. The disparity in the number of the actual and potential victims is also thought provoking.

This phase of the case must not be left without reference to the fact that there is a flat contradiction running throughout the defense of necessity. Upon the one hand it is said that the acts of omission and commission were required by the multitude of directives issued by state authorities which the defendants were bound to obey under penalty of grievous injury. Upon the other hand, it is said that they risked grave danger by violating such directives and even defying the Gestapo in order to mitigate the plight of the victims. There are numerous examples of this for which there is neither time nor space. The record speaks for itself. Three instances, however, may be referred to. The Gestapo issued an order that pregnancy of eastern workers should be interfered with. This was contrary to the law and the ethics of the medical profession. The Krupp doctor did not want to obey the directive, but was afraid to take a stand without the backing of the officials of the firm. The defense claims that he was given this backing unqualifiedly, notwithstanding that throughout this case the power and influence of the Gestapo is held out as being one of the factors which hung over the heads of the defendants.

As a preface to the second instance, we quote from the final plea made by counsel for defendants Krupp and Ihn. After referring to the establishment of the Central Planning Board, and the so-called "tapeworm decree," he states (*Tr. p. 12571*) :

> "There is only one sentence which is quite clear in this decree. Only one man has the sole responsibility of meeting the requirements of war production, and that man is Speer, and he is also the man who issues very clear instructions prohibiting any considerations of private economy in industry.
>
> "It is self-evident that no factory is any longer authorized to engage in peacetime production. But even any planning for peacetime conditions is strictly prohibited. Ruthless action is taken against any managers who disregard this prohibition,

the conversion to exclusive war production is enforced by very robust methods."

Yet, the testimony of defense witness Kraus indicates that, whatever may have been true with respect to other industrialists, the officials of the Gusstahlfabrik were not intimidated by the situation described by counsel. During the war, Kraus was a "group chairman" and in December 1944 was appointed a plant director in the Gusstahlfabrik. After having testified that a "considerable peacetime production" was carried on during the early years of the war, he was then examined about such production during the later years. On this topic and with reference to the later years of the war, he was asked and answered as follows:

"Q. Please tell us another few branches of peacetime production.

"A. Well, we had our appliances production Nos. 1 and 2; we produced chemical containers. We even produced milk cans. Incidentally, whenever these investigation committees came they always objected to that, and we always had great arguments when we had to show what a number of different products we were manufacturing in the Gusstahlfabrik. We were even blamed for producing locomotives, and that was quite a considerable part of our total production.

"Q. What about motor vehicles?

"A. Yes, we made them too. I know that one of the inspecting commissions tried to close down some of the peacetime production in order to release the workers for war production."

Whatever may be said with respect to the relation to wartime production of the specific items mentioned by the witness, the fact nevertheless remains that it appears from his testimony that the Gusstahlfabrik in the later years of the war was engaged in what the witness said the "investigating committees" considered peacetime production and, so far as appears, nothing was done about it even though the "committees" objected thereto.

The third instance relates to the sale of Reich bonds by the Krupp firm. It was related by Schroeder, head of Krupp's accounting department and a witness for the defense. From his testimony it appears that in 1943 the Krupp officials became convinced that the war was lost and it was necessary to adopt a new policy looking to the post war period. At that time, the firm had accumulated government bonds in the amount of 200 million Reichsmarks, Schroeder said that "we started to sell these gradually so that when the war was nearly over we had only 68 million Reichsmarks in bonds. We did not on purpose sell all of them because that would have been too noticeable and it would have

smelled too much of defeatism; therefore, we had to retain a certain amount of bonds." The witness further testified that this was very dangerous and hence was done with great secrecy. He justified the policy upon the theory that the firm had a responsibility toward the workers whose livelihood depended upon them.

Whatever the reason, the sale of these bonds amounted to treason under the laws of the Reich for which the penalty was death. It was the very type of thing which the dread Gestapo, of which so much is said in this case, was supposed to detect and prevent.

It is true that the sale of the bonds was not openly made but if it be conceded that in the case of individuals so influential and important as the owners and officials of the Krupp firm that the risk was great, it must also be conceded that it was readily incurred whenever they thought there was involved interest of sufficient importance to justify such a course.

LAW AS TO INDIVIDUAL RESPONSIBILITY

As already said, we hold that guilt must be personal. The mere fact without more that a defendant was a member of the Krupp Directorate or an official of the firm is not sufficient. The rule which we adopt and apply is stated in an authoritative American text as follows:

> "Officers, directors, or agents of a corporation participating in a violation of law in the conduct of the company's business may be held criminally liable individually therefor. So, although they are ordinarily not criminally liable for corporate acts performed by other officers of agents, and at least where the crime charged involves guilty knowledge or criminal intent, it is essential to criminal liability on his part that he actually and personally do the acts which constitute the offense or that they be done by his direction or permission. He is liable where his scienter or authority is established, or where he is the actual present and efficient actor. When the corporation itself is forbidden to do an act, the prohibition extends to the board of directors and to each director, separately and individually."*

Under the circumstances as to the set up of the Krupp enterprise after it became a private firm in December 1943, the same principle applies. Moreover, the essential facts may be shown by circumstantial as well as direct evidence, if sufficiently strong in probative value to convince the tribunal beyond a reasonable doubt and to the exclusion of every other reasonable hypothesis.

* Corpus Juris Secundum (American Law Book Co., Brooklyn, N. Y., 1940), volume 19, pages 363 and 364.

Upon the facts hereinabove found, we conclude beyond a reasonable doubt that the defendants Krupp, Loeser, Houdremont, Mueller, Janssen, Ihn, Eberhardt, Korschan, von Buelow, Lehmann, and Kupke are guilty on count three of the indictment. The reasons upon which these findings of guilt are based have been set forth heretofore in the discussion of the facts under count three.

The nature and extent of their participation was not the same in all cases and therefore these differences will be taken into consideration in the imposition of the sentences upon them. The evidence presented against the defendant Karl Pfirsch we deem insufficient to support the charges against him set out in count three, and we therefore acquit the defendant Karl Pfirsch on count three of the indictment. The defendant Karl Pfirsch having been acquitted upon all counts upon which he was charged, shall be discharged by the Marshal when the Tribunal presently adjourns.

I have signed the judgment subject to reservations made of record in the proceedings of 31 July 1948.[1]

[Signed] HU C. ANDERSON, Presiding Judge
EDWARD J. DALY, Judge

I concur with the judgment in all respects except as appears in my dissenting opinion which follows.[2]

[Signed] WILLIAM J. WILKINS, Judge

Dated at Nuernberg, Germany, this 31st day of July 1948

B. Sentences

PRESIDING JUDGE ANDERSON: The Tribunal will now proceed to pronounce sentences on those of the defendants who have been found guilty, and since I am in respectful disagreement with my colleagues about that phase of the matter,[3] I will ask them to perform that task. Judge Daly.

JUDGE DALY: The defendant ALFRIED FELIX ALWYN KRUPP VON BOHLEN UND HALBACH will arise.

On the counts of the indictment on which you have been convicted, the Tribunal sentences you to imprisonment for twelve

[1] Presiding Judge Anderson's reservations were directed to the sentences imposed by the Tribunal and are found in his dissenting opinion which is reproduced below in section XII.

[2] Judge Wilkins' dissenting opinion to the dismissal of certain of the charges of spoliation appear below in section XIII.

[3] Presiding Judge Anderson's dissenting opinion as to the punishment of all the defendants, except for the defendant Kupke, is reproduced below in section XII.

years and orders forfeiture of all of your property, both real and personal. The same shall be delivered to the Control Council for Germany and disposed of in accordance with the provisions of Article II, paragraph 3 of Control Council Law No. 10. The period already spent by you in confinement before and during the trial is to be credited on the term already stated, and to this end the term of your imprisonment, as now adjudged, shall be deemed to begin on the 11th day of April 1945.

You may be seated.

The defendant EWALD OSKAR LOESER is not present. He has asked to be excused because of his condition of health, and his request has been granted. The defendant Ewald Oskar Ludwig Loeser, on the counts of the indictment on which he has been convicted, is sentenced by the Tribunal to imprisonment for seven years. The period already spent by him in confinement before and during the trial is to be credited on the term already stated, and to this end the term of imprisonment, as now adjudged, shall be deemed to begin on the 13th day of July 1947.

The defendant EDUARD HOUDREMONT will arise.

On the counts of the indictment on which you have [been] convicted, the Tribunal sentences you to imprisonment for ten years. The period already spent by you in confinement before and during the trial is to be credited on the term already stated, and to this end the term of your imprisonment, as now adjudged, shall be deemed to begin on the 10th day of September 1945.

The defendant ERICH MUELLER will arise.

On the counts of the indictment on which you have been convicted, the Tribunal sentences you to imprisonment for twelve years. The period already spent by you in confinement before and during the trial is to be credited on the term already stated, and to this end the term of your imprisonment, as now adjudged, shall be deemed to begin on the 10th day of September 1945.

You may be seated.

The defendant FRIEDRICH WILHELM JANSSEN will arise.

On the counts of the indictment on which you have been convicted, the Tribunal sentences you to imprisonment for ten years. The period already spent by you in confinement before and during the trial is to be credited on the term already stated, and to this end the term of your imprisonment, as now adjudged, shall be deemed to begin on the 10th day of September 1945.

You may be seated.

JUDGE WILKINS: The defendant MAX OTTO IHN will arise.

On the count of the indictment on which you have been convicted, the Tribunal sentences you to imprisonment for nine years. The period already spent by you in confinement before and dur-

ing the trial is to be credited on the term already stated, and to this end the term of your imprisonment, as now adjudged, shall be deemed to begin on the 10th day of September 1945.

The defendant KARL ADOLF FERDINAND EBERHARDT will arise.

On the counts of the indictment on which you have been convicted, the Tribunal sentences you to imprisonment for nine years. The period already spent by you in confinement before and during the trial is to be credited on the term already stated, and to this end the term of your imprisonment, as now adjudged, shall be deemed to begin on the 10th day of September 1945.

The defendant HEINRICH LEO KORSCHAN will arise.

On the count of the indictment on which you have been convicted, the Tribunal sentences you to imprisonment for six years. The period already spent by you in confinement before and during the trial is to be credited on the term already stated, and to this end the term of your imprisonment, as now adjudged, shall be deemed to begin on the 22d day of April 1947.

The defendant FRIEDRICH VON BUELOW will arise.

On the count of the indictment on which you have been convicted, the Tribunal sentences you to imprisonment for twelve years. The period already spent by you in confinement before and during the trial is to be credited on the term already stated, and to this end the term of your imprisonment, as now adjudged, shall be deemed [to begin] on the 10th day of September 1945.

You may be seated.

The defendant WERNER WILHELM HEINRICH LEHMANN will arise.

On the count of the indictment on which you have been convicted, the Tribunal sentences you to imprisonment for six years. The period already spent by you in confinement before and during the trial is to be credited on the term already stated, and to this end the term of your imprisonment, as now adjudged, shall be deemed to begin on the 24th day of September 1945.

You may be seated.

The defendant HANS ALBERT GUSTAV KUPKE will arise.

On the count of the indictment on which you have been convicted, the Tribunal sentences you to imprisonment for two years, ten months, and nineteen days. The period already spent by you in confinement before and during the trial is to be credited on the term already stated, and to this end the term of your imprisonment as now adjudged shall be deemed to begin on the 10th day of September 1945, and it shall end today. If there is any variance between the number of days between the dates, in any event you are to be released this evening.

You may be seated.

JUDGE DALY: During the trial of this case the defendants Loeser, Houdremont, and Korschan have been excused from attendance at Court on different occasions because of their health. The record indicated that the defendant Loeser is not present today because of his present condition.

The above-named defendants have just been sentenced to imprisonment. We believe that they should not be exposed by incarceration to dangerous consequences to their health. However, we are not in a position to determine whether the present condition of health of any of these defendants is of such a nature that imprisonment will cause fatal or other extremely serious consequences.

Accordingly, we are writing to General Lucius D. Clay, the U.S. Military Governor of the United States Zone in Germany, calling his attention to this with the suggestion that examinations be made for the purpose stated above. If he concludes that such examinations are indicated, and is of the opinion thereafter that because of the condition of health of any of the defendants in question, sentence or sentences of any of them should be altered, he has the authority to do so under Article XVII of Ordinance No. 7 of the Military Government for Germany, United States Zone.*

I, Hu C. Anderson, Presiding Judge, sign the foregoing subject to the written dissent filed and made a part of the record.

[Signed] HU C. ANDERSON
Presiding Judge
EDWARD J. DALY
Judge
WILLIAM J. WILKINS
Judge

Nuernberg, Germany
[Dated] 31 July 1948

* At this point Presiding Judge Anderson read into the record his dissent concerning the sentences, reproduced below in section XII.

XII. DISSENTING OPINION OF PRESIDING JUDGE ANDERSON ON THE SENTENCES IMPOSED BY THE TRIBUNAL[1]

The following is submitted pursuant to reservations made by me at the time I signed the judgment.

Upon the question of the guilt or innocence of the defendants under counts two and three of the indictment, I concur in the result reached by the Tribunal. As to the punishment, I concur in that fixed for the defendant Kupke. As to the defendant Alfried Krupp, I concur in the length of the prison sentence, but dissent from the order confiscating his property.

As to all other defendants, I feel bound to disagree with respect to the length of the respective sentences imposed.[2] In general, the basis of my disagreement is this: Having in mind that the defendants were heretofore acquitted of crimes against the peace, I think there are many circumstances in mitigation not mentioned in the judgment which should be given more weight.

In my view, the evidence as to the defendant Loeser presents a special case. Apart from the fact that during the war he resigned his position with the Krupp firm due to a disagreement with respect to certain policies and apart from other circumstances which seem to me proper to be considered in mitigation, I am convinced that before he joined the Krupp firm in 1937, and continuously thereafter, Dr. Loeser was identified with the underground movement to overthrow Hitler and the Nazi Regime, and that having been arrested by the Gestapo in connection with the plot of 20 July 1944, he escaped the death penalty meted out to others similarly involved only through a delay in his trial as a result of which he was liberated by the Allied troops.

Were I not convinced as a matter of principle that a finding of guilt or innocence by a court or tribunal enforcing criminal laws is not a discretionary matter, I would vote to acquit Dr. Loeser.

---

[1] Dissenting opinion of Presiding Judge Anderson is recorded in the mimeographed transcript, 31 July 1948, pp. 13451–13452.

[2] After judgment had been rendered on 31 July 1948, Presiding Judge Anderson made and filed with the Secretary General of the Tribunals a memorandum concerning his dissent, as follows:

"Since the judgment was rendered, some question appears to have arisen as to the nature and extent of my dissent from that portion of the judgment dealing with the guilt or innocence of the respective defendants under counts two and three of the indictment, as distinguished from that portion dealing with the punishment.

"Although it seems to me that there should be no question about the matter, in order to remove any doubt about it, this statement is made by way of clarification: I fully concur in the acquittal of the defendant Pfirsch, and also in the reasons assigned therefor in the judgment. As to the remaining defendants, I fully concur in the result only.

"In my judicial and professional experience, the qualification indicated by a concurrence limited to the result is a well understood and established practice."

But even though I feel obliged as a matter of principle to concur in the conclusion as to the fact of his guilt, I think, when all circumstances which, from my viewpoint, should be considered in mitigation are weighed, the period for which he has already been confined in prison is ample punishment.

[Signed] HU C. ANDERSON
Presiding Judge

XIII. DISSENTING OPINION OF JUDGE WILKINS ON THE DISMISSAL OF CERTAIN OF THE CHARGES OF SPOLIATION[1]

The majority of the Tribunal are of the opinion that the Tribunal has no jurisdiction over the acquisition in 1938 of the Berndorfer Plant in Austria.

With due deference to my colleagues, I feel compelled to dissent from this finding and to the failure of the Tribunal to find that acts of spoliation were committed by these six defendants in three other instances; namely, (1) the confiscation of the Montbelleux mining property in France, (2) the illegal acquisition of the CHROMASSEO mining properties in Yugoslavia, and (3) the participation by the Krupp firm in the spoliation of the occupied Soviet territories.[2]

The facts relating to the acquisition of the Berndorfer Plant are as follows:

AUSTRIA

The Berndorfer Metallwarenfabrik Arthur Krupp, A.G., a very important metals factory located near Vienna, had been established in 1843 by a Viennese industrialist named von Schoeller. In a history of "Alfried Krupp and His Family" published in 1943 it was stated, "The Anschluss of the Ostmark to the German Reich in March 1938 had the gratifying result as far as the Krupp firm was concerned that an old plant established in 1843 by the Krupp brothers and the house of Schoeller, the Berndorfer Metallwarenfabrik, could be incorporated in the parent firm of Krupp in Essen." In any event Arthur Krupp, a grand uncle of Bertha Krupp, took over the property from his father in 1879 and succeeded in building it into one of Europe's leading industrial enterprises.

During the economic crisis of 1931–1932 the Berndorfer Company was forced to undergo a financial reorganization as a result of which the Creditanstalt Bank of Austria became the owner of a majority of the Berndorfer stock. From the time of the refinancing of the company and until the invasion of Austria in March 1938 the Krupp firm at Essen tried continuously to obtain ownership of Berndorfer but their offers were always rejected

[1] Read in part by Judge Wilkins after the Tribunal had rendered its judgment on 31 July 1948. However, the mimeographed transcript contains the dissent in full, 31 July 1948, pp. 13403–13445.

[2] At this point, in reading parts of his dissent, Judge Wilkins said: "May I just interpolate by saying that the six defendants referred to, of course, were the six who were found guilty of the crime of spoliation under count two."

by the Creditanstalt Bank. Because of the relentless pressure against Austria by Germany, relations between these two countries were poor prior to 1938 and neither the Austrian Creditanstalt Bank nor the Austrian State wanted foreigners to obtain any shares of Berndorfer.

As early as February 1937, more than a year before the seizure of Austria, Gustav Krupp's brother-in-law, Mr. von Wilmowsky, wrote a letter to Gustav stating that Lammers, State Secretary in Hitler's Reich Chancellery, had been advised of Gustav's desire for an interview with Hitler about the possibility of acquiring Austrian shares. The request was made that the audience take place as soon as possible as Gustav was anxious to have the matter settled and that the Fuehrer had promised to see him.

On 12 March 1938 German troops invaded Austria, and on the 13th a law was passed for the absorption of Austria within the German Reich. On 19 March 1938 a decree was issued by the Reich Minister of Economics prohibiting, under threat of fine and imprisonment, any German business concern from establishing subsidiary companies in Austria or acquiring by purchase Austrian business concerns except by special exception by the Reich Ministry of Economics. It may be said that this decree was issued, not in order to prevent the infiltration of the Austrian economy by Germany but to channelize that infiltration in a manner commensurate with the wishes of the Nazi government.

Three other German concerns were endeavoring to obtain an interest in the Berndorfer plant but their efforts brought no success as Goering had promised Gustav Krupp that the Krupp concern could have the exclusive right to purchase the Bank's controlling interest in Berndorfer.

I quote from another letter addressed to Gustav Krupp by his brother-in-law, Mr. von Wilmowsky, dated 19 April 1938. Mr. von Wilmowsky was a member of the Aufsichtsrat of the Krupp firm. His letter is particularly enlightening as it illustrates, I think, the political manœuverings to which the Krupp firm resorted in this instance to accomplish its purpose (*NI–770, Pros. Ex. 1278*):

"I arrived in Vienna this morning and am leaving for Berndorf tonight * * *. I heard the following:

"Mr. Hamburger's dismissal is definite. At the instigation of the Creditanstalt, a university lecturer Schmied from Danzig, an Austrian, has been appointed provisional supervisor in addition to the Betriebsfuehrer (plant manager) Kern. Mr. Kern had, hitherto, been in charge of commercial problems, however, he lacks insight where the management of the entire plant is concerned and does not possess the necessary authority.

"A Baurat Heller, hitherto consultant for the industrial transactions of the Creditanstalt, is now the president of the Direktion. Joham is a member of the Vorstand. Mr. Friedel and Dr. Pfeiffer have further been added as new members of the Vorstand. The latter gentleman is a confidential agent (Vertrauensmann) of the party and is well known to Mayor Neubacher.

"Mr. Heller has been described to me as an intelligent person with a pleasing personality, who, however, has no full authority and is little inclined to part with blocks of shares. Also with regard to the personnel problems in Berndorf, he will hardly be able to exercise sufficient authority. I heard it rumored that Direktor Abs was to take over the Creditanstalt, this is, however, nothing but a rumor.

"I also spoke to the former Berlin ambassador, his Excellency Riedl, whom I used to know well, and who is at present Staatssekretaer under Minister of Trade Fischboeck. He had not yet been informed of your plans regarding Berndorf. I gave him the information. He is absolutely reliable.

"It seems to me that the whole situation, as it is, urgently demands that Mr. Joeden should get in touch with Direktor Abs as soon as possible, since, in my opinion, he will be the most suitable person through whom the Creditanstalt can be contacted.

"Finally, I have just had breakfast with Mayor Neubacher with whom I have been well acquainted for many years. I informed him also. Mr. Neubacher is friendly with Mr. Raffelsberger, who, at the present moment, is the commissioner for all questions related to industrial economy, especially personnel questions. Mr. Neubacher described the sale of certain blocks of shares through the banks as highly desirable, since large building projects are imminent in Vienna, in particular the construction of a fair ground and the building of a Danube harbor.

"I also sent a copy of this letter to Dr. Joeden. I hope that you agree with the steps I have taken. I shall give you a more detailed report on O.A.'s condition from Berndorf."

Obviously the preliminary work done by Gustav Krupp through his close Nazi governmental ties paid off as the Creditanstalt Bank received directions shortly after the Anschluss that only a sale to Krupp of the Berndorfer stock was to be considered. Through coercion and Nazi political pressure by Goering, Keppler, Hitler's personal economic advisor, and other top Nazi officials the Creditanstalt Bank was forced to sell the Berndorfer works to Krupp-Essen, contrary to its own desires.

Under these circumstances the Bank, although it did not want to sell its interest in Berndorfer, had no other alternative than to come to an agreement with the Krupp firm on the purchase price. In the discussions preliminary to the sale with subordinates in the office of the defendant Loeser the bank officials concluded that the Krupp firm desired to acquire the plant for a nominal sum but on no account to pay its actual value.

Following the financial reorganization of the company all assets were evaluated at a very low rate which estimation of assets, according to an official of the Austrian Credit Bank, as given in the reconstruction balance could never be considered the basis for serious sales negotiations. This same official states, in an affidavit admitted in evidence:

> "* * * The negotiators Klaus von Bohlen-Halbach, Johannes Schroeder (finance director of the firm of Krupp, Essen), and Ing. Rusicka of the Krupp-Gruson-Plant in Magdeburg, sent by the Fried. Krupp A.G., Essen to negotiate shortly after Austria's Anschluss to Germany, made offers which were not even debatable; they also considered the evaluation of assets of the reconstruction balance of the Berndorfer Krupp A.G. much too high, and left no stone unturned in order to deprive the bank of this valuable share at as little financial cost as possible.
>
> "When I broke off negotiations in May 1938 and reported to my principals at the bank (the board of directors—Vorstand) that I considered it unjustifiable to dispose of such a valuable enterprise for a mere token amount (Anerkennungsbetrag) Goering via Keppler, i.e., Olscher * * * intervened—as I was told by Herr Baurat Ing. Heller— and despite all remonstrances —I could not prevent the acquisition of this valuable enterprise by the Friedrich Krupp A.G. in Essen for a round sum of RM 8,424,000."

The firm of Krupp accomplished its aim. Within a year after the purchase, Krupp's balance sheet, after allowing for payment of liabilities, shows the estimated value of assets to be more than three times the amount Krupp paid for the firm.

In October 1938 a letter from the Berndorfer works to Krupp indicates that "at a conservative estimate the net profits including depreciation will amount to 1,000,000 RM for the second half of 1938 and 1,000,000 RM for each half of 1939."

Thus, we see that immediately after the first aggressive act by the German Wehrmacht, Hitler, and the Nazi government were only too eager to commence paying off their indebtedness to the firm of Krupp. They knew only too well the value of the secret development work which the Krupp firm did prior to 1933 and

which made it possible upon Hitler's rise to power to start immediately the largescale production of tanks, artillery, and submarines of the most advanced and modern types. They knew that without this secret designing of armament by Krupp in conjunction with the German army and navy, the Anschluss and the subsequent wars of aggression could not have taken place or, in any event, would have been considerably delayed. Gustav Krupp and the Krupp firm correctly forecast and gambled that Germany would again "fight to rise" and as a part of the winning stakes they were able to obtain the Berndorfer works through Nazi political pressure.

A highway robber enters a bank and at the point of a pistol forces officials of the bank to part unwillingly with assets of the bank. Here the means of coercion was not one pistol but the entire armed and police might which had invaded Austria. That the facts, as proved, constitute extortion there can be no doubt. The question to be determined is whether they constitute a war crime under Article II, paragraph 1(*b*) of Control Council Law No. 10 and under the General Laws and Customs of War. To answer this question, reference must be made to the finding of the IMT:*

> "The invasion of Austria was a premeditated aggressive step * * * the facts plainly prove that the methods employed * * * were those of an aggressor. The ultimate factor was the armed might of Germany ready to be used if any resistance was encountered * * *."

Concerning Czechoslovakia, the IMT found that Bohemia and Moravia were also seized by Germany, under the threat "That German troops had already received orders to march and that any resistance would be broken with physical force * * *."

The IMT also found that, concerning Bohemia and Moravia, the laws and customs of war applied. Said the IMT:

> "The occupation of Bohemia and Moravia must * * * be considered a military occupation covered by the rules of warfare."

Such ruling was not made by the IMT concerning Austria because there was no reason to make such a ruling: war crimes concerning Austria were not charged in the case before it. It is difficult to conceive of any real difference between the seizure of Austria and the seizure of Bohemia and Moravia. If anything, the seizure of Austria was a more flagrant act of military aggression because in the case of Bohemia and Moravia, the Czechoslovakian President and Foreign Minister had—although under pressure—con-

* Trial of the Major War Criminals, *op. cit. supra*, page 193 and 194.

sented to the German step. No actual hostilities evolved in either case; but it would be illogical to construe that the rules and customs of war should apply to the case of Bohemia and Moravia but not to the case of Austria. The rightful Austrian Government which emerged after the Germans left Austria, in fact, considered those who collaborated with the invaders as traitors, i.e., as persons acting for the benefit of the enemy.

In the case of both Austria and Czechoslovakia, war was used, in the words of the Kellogg Pact, as "an instrument of policy" and it was used so successfully, owing to the overwhelming war strength of Germany, that no resistance was encountered. It was, so to speak, in either case a unilateral war. It would be paradoxical, indeed, to claim that a lawful belligerent who had to spend blood and treasure in order to occupy a territory belligerently, is bound by the restrictions of the Hague Convention whereas an aggressor who invades a weak neighbor by a mere threat of war is not even bound by the Hague Regulations. The proven facts show conclusively that spoliation was performed, due to the physical supremacy enjoyed by the invader.

Professor Quincy Wright wrote in the American Journal of International Law (January, 1947), volume 41, page 61:

> "The law of war has been held to apply to interventions, invasions, aggressions, and other uses of armed force in foreign territories even when there is no state of war * * *."

To supplement his view, he referred to Professor Wilson's treatise on International Law, third edition, and to the illustrations given by the group of experts on international law, known as the Harvard Research on International Law, article 14 of Resolutions on Aggression, published in the American Journal of International Law (1939), volume 33, supplement page 905.

Professor Wright expressed the same view in 1926. (American Journal of International Law (1926), Vol. 20, p. 270.) Quoting various authorities and many precedents he stated:

> "Publicists generally agree that insurgents are entitled to the privileges of the laws of war in their relations with the armed forces of the *de jure* government."

I am of the opinion that the Berndorfer plant was acquired by coercion on the part of Krupp and with the active assistance of the German Reich, and that this acquisition was an act of spoliation within the purview of the Hague Regulations and authorities above cited.

The defendants Krupp and Loeser took active and leading parts in the acquisition of this plant, and, in my opinion, are guilty of spoliation with respect thereto.

THE MONTBELLEUX MINE, FRANCE

The tungsten ore mine located at Montbelleux in northern France had been operated during the years 1916–1918, following which the mine was abandoned. The ore was of rather low grade and could be mined economically only when prices were inflated due to increased demands for the metal. In 1936 the French Government issued a decree of forfeiture against the lessees of the mining concession. At that time nothing was left of the old installations; the timbers had rotted, the mouth of the shaft had caved in, and the property generally was quite inaccessible. Under French law all mineral rights are owned by the State but the extracted ores become the property of the individual to whom the government grants a lease or concession for the purpose of exploiting a mine.

In 1938 the French Ministry of Public Works leased the concession to one Edgar Brandt in order to develop the production of tungsten in France. During the war years, tungsten which is a very important metal alloy was very scarce in Europe and especially in France and Germany.

No immediate steps were taken by the Brandt concern to reopen the mine which had been closed for so many years but upon learning that the Germans were evincing some interest in the mining concession a study was made in August 1941 with the view toward a renewed exploitation of the mine. In the beginning of 1942 conferences took place between the German authorities and Brandt representatives. Engineers from the Krupp firm and the Todt Organization were present at these conferences. The German authorities offered to requisition materials and equipment necessary to reopen the mine, provided that a certain fixed percentage of the production would be sent to Germany. Some time thereafter the Brandt representatives stated that they were unable to accept the conditions laid down by the German authorities and the negotiations were temporarily suspended.

In August 1942 the property was seized without notice to the owner of the concession and without the issuance of a requisition. A plan was put into operation by the Todt Organization under the technical direction of the Krupp firm whereby the mine would be producing within a year.

The business report of the Krupp Administration for Ore Mining for the years 1942–1943 states the following (*NIK–12908, Pros. Ex. 637*):

> "At the instigation of the Reich Minister for Armament and War Production and of the Reich Economics Minister, the draining of the Montbelleux Tungsten Ore Mine, shut down

903432—51——94

since 1918, was begun by the Organization Todt in August 1942. In this connection our firm had a representative, even at that time, acting in an advising capacity. We shall take over the direct operational management of the mine on 1 April 1943, after a contracting firm (C. Deilmann, Dortmund) completes the installation of temporary surface equipment and the clearing out and expansion of the dilapidated main list shaft.

"Pursuant to a contract concluded with the Organization Todt the local operational management of the Krupp firm is acting as an independent construction unit within the framework of the Organization Todt in the performance of these tasks, and direct assistance is being given by the Organization Todt, especially in the carrying out of the necessary construction work and the supply of the needed replacements. As representatives of the sponsoring Ministries, the authorized agent of the Reich Minister for Armament and War Production and the Military Commander in France, Department of Mining, are competent in France."

The Brandt interests attempted further negotiations with the Krupp firm in order to obtain recognition to their rights in the property. Conferences took place between them and an agreement was prepared following these negotiations, but in September 1943 a letter from the Krupp firm advised Brandt that they had relinquished the management of Montbelleux for the benefit of a state organization within the framework of the Todt Organization.

Further attempts by Brandt and the French Government in his behalf for a recognition of his interests were of no avail and no payments of any kind were ever received by Brandt for ores extracted from his concession.

A contract was executed by Krupp and the Todt Organization under which Krupp assumed all responsibility for the underground workings, the obligation to provide the bulk of the machinery, the skilled workmen, necessary responsible management, personnel as well as technical supervision and office workers. The Todt Organization agreed to provide the buildings and installation on the surface, the French workmen, and assist in obtaining the necessary equipment. Krupp agreed to reimburse the Todt Organization for all expenses incurred by it and to handle the accounting, and the mining, delivery, and sale of the tungsten ore. The entire project was under the responsible management of the Krupp firm which in turn was responsible to the Commissioner for Mining of the Military Commander of France. The Todt Organization was not to intervene in the sphere of duties of Krupp except in case of impending danger.

The French Government had interceded in behalf of the owners of the surface rights of the mine property and steps were taken by the Montbelleux management to indemnify these owners for the use of their property. Brandt's concession covered only the underground rights. The following correspondence between the Krupp firm and the Montbelleux management is worthy of note (*NIK–8068, Pros. Ex. 729*) :

"We acknowledge the receipt of your above mentioned letter and agree with the way in which you are proceeding in this matter. However, we attach great importance to the fact that the firm of Krupp be completely left out in the negotiations with the owners, as well as when making payments to them. Therefore, everything pertaining to this matter must be done in the name of the Organization Todt."

The management replied (*NIK–8066, Pros. Ex. 731*)—

"We have taken note of the above communication and shall conduct all negotiations in accordance with your directives as it has been our practice so far."

Meantime the Krupp firm put the mine into operation. Necessary equipment and lumber for mine props were obtained by the Todt Organization from the local French economy. In the report of the Main Administration for Ore Mining appears the following (*NIK–12908, Pros. Ex. 637*) :

"An estimate of 50–60 tons of WO_3 is made for the ore found immediately after the draining of the mine. According to the plans made with the interested Reich offices (Reichsstellen), for the time being a daily output of 50 tons of raw ore was intended. An ore dressing plant built for an output of this volume, delivered by the Krupp-Grusonwerk, was installed in the meantime and put in operation in September 1943. A production of 5–7 tons of concentrates per month is expected from this plant after the initial period of getting operation started.

* * * * * * *

"In the business year in all over 3,000 meters of mine installations (shafts, galleries, tram-ways, overhead structure) were drained or newly built. The mining of the ore was commenced at the beginning of July. Since then about 1,800 tons of raw ore were turned out, most of which was placed on the ore dump, since the new ore dressing plant could not start regular operations until the end of September. In addition to a certain amount of concentrates which could be picked out in the mine itself by hand methods, one-half ton of bruddle concentrates was produced in the year of the report. In October 1943, how-

ever, it was possible to increase the production of concentrates by the ore dressing plant to about 4 tons. The number of personnel for the mine was 252 at the end of the year of the report."

The mine was operated until June 1944 when the Germans were forced to evacuate due to the advance of the Allied forces. Before departing, however, the equipment was thoroughly and systematically destroyed and surface buildings set on fire. Dynamite was used to destroy much of the surface machinery.

During the period of exploitation of the mine approximately 50 tons of tungsten ore concentrates were removed and shipped to Germany, some of which reached the Krupp plants. The system of mining used—that of stripping—was designed to obtain the maximum quantity of ore within the shortest period of time and without regard to future mining operations. As a result, considerable exploratory work and reconstruction would be necessary before normal mining operations could be resumed by the French owners. This operation resulted in supplying Germany and the Krupp firm with at least 50 to 60 tons of a very valuable and very scarce metal which was taken from the French owner without authorization and for which he received no compensation. The operation of this mine was of such importance that the subject was discussed at a conference between Hitler and Speer in August 1942. Notes of the latter state:

"I reported to the Fuehrer on the development of the Wolfram-Mine Montbelleux. The development should be carried through completely."

I am satisfied from the credible evidence presented before us that the confiscation of this mine was a violation of Article 46 of the Hague Regulations. The removal of the ore concentrates to Germany and the systematic destruction of the machinery at the time of the evacuation were acts of spoliation in which the Krupp firm participated.

CHROMASSEO MINES, YUGOSLAVIA

On 10 October 1940 Johannes Schroeder, a direct subordinate to defendant Loeser in the finance department, submitted a very thorough and excellent intelligence report to his superiors in the Krupp firm on the then economic, political, and military conditions in Yugoslavia. Just 6 months thereafter (6 April 1941) the German Army invaded Yugoslavia and Greece. Defendant Loeser thought so well of the report that he set up the distribution list in his own handwriting, on the list being the names

of Alfried Krupp, von Buelow, and others, including Fritz Mueller who was at the time a member of the Vorstand but who is not to be confused with the defendant [Erich] Mueller. A few days later Fritz Mueller in a note to Schroeder acknowledged receipt of the report and made the following comment (*NIK–13222, Pros. Ex. 771*):

"Attached the Yugoslavia report with many thanks returned. It is so interesting that I should like to ask you to let me have a copy for handing on. For foreign oil questions I am the representative of the Security Service of the SS and as such have already short-circuited (?) the Security Service with Mr. von Buelow. Your report I would send to the competent man at the Security Service in Berlin, SS Sturmbannfuehrer Baubin, c/o Reichswerke Hermann Goering, Berlin * * *." (The Security Service was declared a criminal organization by the IMT.)

As has been seen in the other countries which were previously overrun by the German Army, there was extremely close cooperation between the Krupp firm and the Reich governmental agencies immediately following the invasion. This team work is even more pronounced prior to and after the invasion of Yugoslavia. I quote at length from a very enlightening affidavit of George Ufer, a Krupp employee who was able to serve two masters, the Reich government and Krupp, during the occupation of Yugoslavia (*NIK–13330, Pros. Ex. 775*):

"In May 1940, I was hired by the Krupp firm as assistant to the manager of Yugochrom which was being founded at that time. The Yugochrom was a foundation which was financed 50 percent by Krupp and 50 percent by the Hermann Goering Works. My task as a mining expert was to examine geologically chromium ore mines, the acquisition of which was possible, and to run those chromium ore mines in Yugoslavia that had been acquired.

"At the end of February 1941, about 5 weeks before the Germans marched into Yugoslavia, I was asked by the German consul general in Belgrade, at that time Neuhausen, to come to his office. There I was informed by the consul general, that I had to leave for Berlin immediately on a very urgent matter and that I had to report to the economic and armament department of the Supreme Command of the Army (Oberkommando der Wehrmacht), Berlin, Kurfuerstenstrasse. Neuhausen told me that he had received instructions by wire from Berlin to inform me about this urgent trip to Berlin. Thereupon I took

the next train from Belgrade to Berlin, and informed the Yugoslav representative in my Belgrade office, a Mr. Marasim, giving some kind of excuse for my departure from Belgrade.

"After my arrival in Berlin, I reported to the office of the Supreme Command of the Army named by Neuhausen. There I was received by a high ranking officer, who was already expecting me. This high ranking officer, whose name I cannot recall, obviously knew who I was. Presumably my travel orders also originated from him. He administered an oath, according to which I had to observe strictest silence. Thereupon he revealed to me that the war against Greece was imminent, and that I should keep myself in readiness to act in the capacity of a war administration counsellor (Kriegsverwaltungsrat) in Greece.

"After that, I was sent back to Belgrade and continued my work as Krupp's representative. On 1 April, a few days before the German troops marched into Yugoslavia, I was evacuated from Belgrade together with the other Germans. After the occupation, about the end of April 1941, I returned to Belgrade, after having been appointed a war administration counsellor (Kriegsverwaltungsrat) on about 18 April 1941 by the same high ranking officer, who made the above-mentioned revelations to me at the end of February. I notified the Krupp firm, that is Dr. Janssen and several other gentlemen, whose names I now no longer recall, of my appointment.

"I started my work as war administration counsellor, not in Greece, but in Yugoslavia and served as war administration counsellor under Colonel Braumueller in Belgrade, who was chief of the Military Economic Staff (Wehrwirtschaftsstab) Southeast. Simultaneously, I continued my work as Krupp's representative for chromium ore mines in the Yugoslav territory. I continued my work for Krupp from the time of my appointment as war administration counsellor until June 1944 and during all this time was permanently in uniform * * *."

That the Krupp firm was intensely interested in exploiting the chrome mines of Yugoslavia, both before and during the occupation there can be no doubt. The new enterprise, Yugochrom A.G. mentioned by the witness Ufer, 50 percent owned by the Krupp firm and 50 percent owned by the Hermann Goering Works, had been established and work had been commenced on an ore dressing plant. The initiative was taken by the Krupp firm as shown by Sohl, chief of Krupp's department of ore mining (*NIK–13383, Pros. Ex. 772*)—

"We may claim for us that in this one year we thoroughly investigated all chromium deposits in Yugoslavia at all within reach and not yet in firm hands.

"* * * I therefore hold the view that in this one year during which Yugochrom has done practical work, we really did everything possible to carry out the task which, after all, we had set ourselves, for it must be emphasized that *there was no other agency in Germany which made efforts for a more intense exploitation of Yugoslav chromium ore, when we took this matter in hand in fall, 1939.*" [Emphasis added.]

In September 1940 Sohl reported to defendants Krupp, Loeser, and Janssen his conversations with Mr. Neuhausen, the then German consul general in Belgrade, who was to return to Yugoslavia after the German invasion as Plenipotentiary General for Business and Economy in Yugoslavia (*NIK–13243, Pros. Ex. 773*)—

"With regard to the chrome ore business, I also called Mr. Neuhausen's attention to the fact that a broader chrome ore basis for Germany in Yugoslavia could only be established if the existing large chrome ore companies could be placed in German hands. * * * Mr. Neuhausen told me that he had already given serious consideration to this question, too, and that he would immediately exploit every opportunity for a German participation of interests in order to then give Yugochrom the opportunity to take over."

All mining properties in Yugoslavia were expropriated by the German occupation authorities immediately following the invasion.

The CHROMASSEO chromium ore mining company, a Yugoslav corporation with a total of 8,000 shares of capital stock of a par value of 1,000 dinars each, owned a number of Yugoslav mining properties. The major ore reserves were in the vicinity of Jeserina, a section of Yugoslavia allocated to Bulgaria by Hitler-Germany under the illegal partition of Yugoslavia. The other properties were located in sections awarded to Albania which were under Italian occupation. The Krupp firm purchased 2,007 shares of CHROMASSEO stock from Rudolph Voegeli, a Swiss residing in Yugoslavia. An additional 1,000 shares which were owned by the Asseo family, but which were in Voegeli's possession as a security for a debt of the deceased owner Moses Asseo, were confiscated by the German Delegate General for Economy for Serbia and sold to the Krupp firm. The witness Ufer stated (*NIK–13156, Pros. Ex. 799*):

"These 1,000 shares, as I knew, had been confiscated by the Delegate General for Economy in Serbia, as being Jewish property, and the firm of Krupp A.G. now acquired through me the confiscated property of the Yugoslavian Jew, Moses Asseo. The firm of Krupp, as well as I, was aware of the fact that confiscated property of the Jew Moses Asseo was involved. At

no time, however, did I receive instructions of any kind from the firm of Krupp not to acquire the confiscated Jewish property."

In fact, the Krupp firm made strenuous efforts to obtain the remaining 4,993 shares of CHROMASSEO Mines Stock. The stock certificates had been placed in the custody of the Yugoslav Probate Court, under Guardianship Proceedings, because Moses Asseo had bequeathed them to his heirs of minor age. However, an Italian corporation, the Azienda Italiana Minerali Metallici, known as AMMI, had in some manner transferred them to Italian territory. The Krupp firm assumed the position that the fact the certificates had mysteriously shown up in Italian hands must have involved an illegality since they had been placed in the custody of the probate court. The Krupp firm initiated legal action in the Bulgarian Probate Court for a revocation of the stock transfer. This controversy became a subject of official negotiations on a high level between the German and Italian Governments and through government intervention the Krupp firm and AMMI settled their differences. Dr. Ballas, chief of Krupp's legal counsel and one of the defense counsel in this case, and Krupp employee Kyllmann, who succeeded Sohl as head of the department of ore mining, participated in the negotiations at Rome. Dr. Ballas' reports on that conference and other reports on the CHROMASSEO Mines are in evidence before us. One of these reports on the Rome negotiations marked "confidential" was distributed to defendants Krupp and Loeser, among others.

Meanwhile the Jeserina properties had been leased by the Krupp firm "at favorable terms" from the German military authorities who had seized all Yugoslavian mining properties. Under the provisions of the agreement reached at Rome, the interest of AMMI in the 4,993 shares and that of the Krupp firm in 3,007 shares were acknowledged and the Jeserina property was leased to Krupp until 30 October 1944. All stocks of chromium ore from Jeserina were put at the disposal of the Krupp firm for the duration of the war. The facilities of the Jeserina mine were expanded and the chromium ore extracted was shipped to Germany. The Jeserina plant was managed and supervised by the Krupp firm although the operating company was the Deutsch-Bulgarische Chromerzbergbau A.G. (German-Bulgarian Chromium Ore Mining Co.) in which the Krupp firm and the Hermann Goering Works each held a 50 percent interest.

In October 1942 a controversy arose over payment of the 1,000 shares of stock which had been purchased by the Krupp firm at the price of 1,700 dinars each, from Mr. Neuburger, the German

Delegate General for Economy. Attached to the stock certificates were dividend coupons numbered 1 to 4 inclusive which were due for the years 1938, 1939, 1940, and 1941. It was established that the price which the Krupp firm paid for the shares did not cover the coupons which were due.

The witness Hiep relates (*NIK–13159, Pros. Ex. 793*)—

"The Delegate General for Economy demanded payment on all these coupons from the firm of Krupp who held the shares. The purchase of the stock occurred at the end of 1941. I had no authority to sanction this transaction. It was a matter for the competent Krupp organs, i.e., of the main administration of ore mining, the legal department, and of the Krupp Vorstand. If I remember correctly, negotiations were initiated by Georg Ufer who at that time was the Balkan representative of the firm of Krupp for such matters."

In order to help the administrator out of his predicament, the Krupp firm offered to pay 400 dinars per share additional to the German Delegate General for the past due coupons and application was made by the Krupp firm to the German Foreign Funds Control for permission to make this payment.

In April 1943 the Plenipotentiary was still demanding payment although a special stockholders' meeting of the company revoked the previously declared dividend of 400 dinars on coupons numbered 1 to 3, invalidated coupons number 1 to 4 inclusive, and declared a dividend of 525 dinars per share on coupon number 5 for 1942 and the preceding years.

The attitude of the Krupp firm toward the Asseo family is demonstrated in the letter of Krupp employee Hiep in a memorandum to the finance department then headed by defendant Janssen (*NIK–13158, Pros. Ex. 792*)—

"* * * Neither can we understand why G.B.W. (the Delegate General for Economy) a German official agency after all is insisting so emphatically on the payment of 400,000 dinars by us for the benefit of Jewish property.

"* * * In view of these circumstances we would deem it proper for you to make another application to the foreign exchange control office in connection with the 400,000 dinars, and at the same time inform them confidentially of the above facts to induce them to reject this application again.

"* * * It might also be that settlement in our favor could be reached if the foreign control office inquired from G.B.W. - - why it attaches so much value to the retroactive payment in favor of the Jewish Asseo estate * * *."

Finally, because these dividend coupons had been declared invalid, the German Delegate General decided to forego any retroactive payments thereon.

The Krupp firm also desired to obtain 334 shares of stock of the Ljuboten Mines. German officials were unwilling to take any immediate action in the matter because of the plans being made to divide Yugoslavia among Germany, Bulgaria, and Italy. A letter signed by Scheibe and Kyllmann on behalf of the Direktorium of Friedrich Krupp A.G. and addressed to the Delegate General for Economy in Serbia, copy of which was sent to Ufer, states, in part:

> "* * * In this case it is purely private share holding of the Yugoslav state in a mining company established according to company law and to be judged on these grounds. Two-thirds of its shares are in private hands and one-third in the hands of the state * * *. The property of the former Yugoslav state, insofar as we are concerned here, consists merely of a share in a private company formed according to company law, for which in our opinion a provisional administrator could and should be appointed without any further ado to facilitate acquisition of these shares. The distribution of Yugoslav state property among the successor states will not be affected in any way by such measures because the sale to us of these shares representing enemy property through a provisional administrator would not reduce the capital of the former Yugoslav state."
>
> "May we ask you in view of the foregoing points to investigate once again the legal aspects of the matter which is of paramount importance to us."

Although the Krupp firm's efforts were unsuccessful in this instance, the facts are relevant in this case because they again reveal the intensity of the spoliative designs of the Krupp firm, as well as the initiative and pressure upon German government agencies which it exercised.

Finally, in all, up to September 1944 the Krupp firm produced and sent to Germany 108,000 tons of Yugoslavian chrome ore.

An appropriation of 957,500 RM was approved by defendants Krupp and Loeser, 20 September 1941, for chrome mining in the Skoplje area and the foundation of the German-Bulgarian Chrome Mining Co. at Sofia with participation of the Hermann Goering Works and Friedrich Krupp A.G. each 50 percent.

Again on 11 July 1942 an appropriation of 1 million RM was approved for the German-Bulgarian Chrome Mining Co. by the same two defendants.

Defendant Krupp was the Vorstand member in charge of the

ore mining department at the time of the acquisition of these mining properties in France and Yugoslavia. In fact, this department worked closely with the finance department on all matters relating to the acquisition and exploitation of mineral resources. Reports on the activities of the Krupp firm in this field were distributed to defendants Houdremont, Mueller, and Janssen. After April 1943 Fritz Mueller, who is now deceased, was the Vorstand member directly in charge of ore mining, but matters of policy and acquisition of properties required the approval of the other members of the inner Vorstand; namely, defendants Krupp, Houdremont, Mueller, and Janssen.

The activities of the Krupp firm in Yugoslavia which I have just reviewed clearly violated the laws and customs of war and more particularly Articles 43 and 46 of the Hague Regulations. The expropriation of mines in Yugolavia was not supported by any concern for the needs of public order and safety or by the needs of the occupation. The Krupp firm took the initiative in seeking to participate in the exploitation of the seized property, even urging the government to expropriate properties. It leased the Jeserina mine from the government authorities with knowledge of their illegal expropriation. The seizure of the Asseo shares based upon the anti-Jewish laws was illegal and subsequent dealings by the Krupp firm with knowledge of the illegality was likewise illegal.

RUSSIA

At the time of the attack on Soviet Russia on 22 June 1941 the Reich government issued a directive concerning the administration of the territories to be occupied which stated, in part:

> "The regulations of the Hague Convention on Land Warfare which concern the administration of a country occupied by a foreign belligerent power are not applicable, since the U.S.S.R. is to be considered dissolved, and therefore the Reich has the obligation of exercising all governmental and other sovereign functions in the interest of the country's inhabitants. Therefore, any measures are permitted which the German administration decrees necessary and suitable for the execution of this comprehensive plan."

This policy, that the Hague Conventions were not applicable at all in Russia, was openly proclaimed and there was no attempt to keep it secret nor to comply with the requirements of international law.

A decree was issued for the clarification of doubtful questions which arose "in connection with the discovery, seizure, securing,

sequestration, removal, and utilization of raw materials and materials important for the conduct of the war belonging to the new Occupied Eastern Territories * * *." The property already sequestered or still to be sequestered was "to be treated as the marshaled property of the Reich."

The IMT judgment referred to a decree issued by Goering, 19 October 1939. This decree established different occupation policies for different countries; in the one group the policy was—

> "* * * safeguarding of all their production facilities and supplies must be aimed at, as well as a complete incorporation into the greater German economic system at the earliest possible time."[1]

In the other group the policy was the removal of—

> "* * * all raw materials, scrap materials, machines, etc., which are of use for the German war economy. Enterprises which are not absolutely necessary for the meager maintenance of the naked existence of the population must be transferred to Germany * * *."[2]

The IMT commented:

> "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.* * * In most of the occupied countries of the East even this pretense was not maintained; economic exploitation became deliberate plunder.* * * The occupation of the U.S.S.R. was characterized by premeditated and systematic looting. Before the attack on the U.S.S.R. an economic staff—Oldenburg—was organized to ensure the most efficient exploitation of Soviet territories. The German armies were to be fed out of Soviet territory, even if 'many millions of people will be starved to death.' "[3]

Following the invasion of Russia, the Reich government formed various quasi-governmental monopoly organizations in order to carry out its policy of exploitation of the Soviet economy. One of these organizations was the "Berg- und Huettenwerk Ost" which we shall refer to as BHO. It was founded upon the orders of Goering by the following partners:

(1) The Reich, represented by the Minister of Economics.
(2) The Economic Group Mining Industry.
(3) The Economic Group Iron Producing Industry, and,
(4) The Economic Group Wholesale, Import and Export Trade.

The Plenipotentiary for the Four Year Plan (Goering) was to nominate the chairman, vice chairman, and members of the Ver-

[1] Trial of the Major War Criminals, *op. cit. supra*, pp. 289 and 240.
[2] Ibid., p. 240.
[3] Ibid., pp. 240 and 241.

waltungsrat. Defendant Alfried Krupp was appointed a member of the latter, Paul Pleiger was appointed the company's manager. It was formed for the purpose of enabling the coal and iron and iron producing plants and foundries which still existed in Russia to be utilized and operated through this agency of the Reich. It was authorized to shut down plants under its control, lease them or hand them over to other enterprises.

The Krupp firm was desirous of participating in the spoliation of the eastern territories and negotiations toward that end took place between defendant Alfried Krupp and Pleiger, BHO's manager, which are described by the former as follows (*NIK–11669, Pros. Ex. 1405*):

> "After the occupation of the Ukraine, a Berlin government office—I have forgotten which one it was—suggested to the Krupp firm (sometime in the spring of 1942) that it declare itself ready for participation in the resumption of operations in the Ukrainian iron and steel industry. The object should be to supply the combat troops and rear echelons, to repair the communication system and installations and to deliver supplies for the coal mines of the Donets district.
>
> * * * * * * *
>
> "Due to my acquaintance with Pleiger and the necessity for cooperation with the Reich Associations 'Iron' and 'Coal' (RVE and RVK) I drew the assignment for conducting the first Krupp negotiations with Pleiger. In agreement with * * *, I made assent of the Krupp firm dependent on the question which of the works would be operated by Krupp and in what form this was to be done.
>
> "* * * Following an inspection trip in company with Mr. Pleiger to several works (at and near Stalino, Mariupol, and Kramatorskaya) in June 1942, I proposed to my colleagues, that we take over the sponsorship for the following works: the machine factory in Kramatorsk, Kramatorskaya, the steel works Asov and the steel works Ilyitch in Mariupol."

A meeting was held in defendant Loeser's office in August 1942, attended by defendants Loeser and Krupp for the purpose of discussing the problems arising in connection with the operation of factories in the Ukraine. It was decided at this meeting that the defendant Korschan would be the chief manager of the machine factory at Kramatorsk. It was understood that the BHO would not interfere with the management of the plant and it was also agreed that Pleiger should be urged to effect the assignment of the sponsorships as soon as possible. A few days thereafter,