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

THE MARSHAL: The Honorable, the Judges of Military Tribunal VI. Military Tribunal VI is now in session. God save the United States of America and this Honorable Tribunal.

There will he order in the Court.

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

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

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

(The assemblage rose in silent tribute)

You may be seated.

Dr. Dix.

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

THE PRESIDENT: Pursuant to an order of 6 July 1948 this Tribunal has been reconvened for the purpose of publicly

announcing its judgment in Case 6, the United States of America *vs*. Carl Krauch, and others. Signed copies of the judgment have been deposited in the office of the Secretary General. If there are variances between the transcript of the proceedings and said filed copies of the judgment, the latter will prevail and the Tribunal hereby directs that the transcript shall be corrected accordingly.

Judge Hebert will begin the reading of the judgment.

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

OPINION AND JUDGMENT OF THE UNITED STATES MILITARY TRIBUNAL VI

Organization of the Tribunal

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

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[1] Mimeographed transcript pages 15639-15834, 29 and 30 July 1949.
[2] The Presiding Judge refers to an explosion at the Ludwigshafen plant in the French Zone of Occupation in which a large number of persons lost their lives.

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The members hereof were appointed by the President of the United States by his Executive Orders No. 9868, dated 24 June 1911 and No. 9882, dated 7 August 1947, respectively, and were designated as Tribunal VI and organized as such by Headquarters EUCOM, General Order No. 87 dated 9 August

1947 and effective 8 August 1941. On 12 August 1947 this case was assigned to the Tribunal for trial by the Supervisory Committee of Presiding Judges of the United States Military Tribunals in Germany, in conformity with Article V of said Ordinance No. 7, as amended 17 February 1947.

Jurisdiction

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

The Indictment

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

The indictment consists of five counts. It purports to be drawn under the provisions of Article II of Control Council Law No. 10. Count one charges the defendants with the commission of crimes against peace through the planning, preparation, initiation, and waging of wars of aggression and invasions of other countries. Count two charges that the defendants committed war crimes and crimes against humanity through participation in the plunder of public and private property in countries and territories which came under the belligerent occupation of Germany. Count three charges the commission of war crimes and crimes against humanity through participation in enslavement and forced labor of the civilian

population of countries and territories occupied or controlled by Germany, the enslavement of concentration-camp inmates within Germany and the use of prisoners of war in operations and illegal labor. It also charges the mistreatment, terrorization, torture, and murder of enslaved persons. Count four charges the defendants Schneider, Buetefisch, and von der Heyde with membership in a criminal organization. Count five charges the participation by the defendants in a conspiracy to commit crimes against peace. The counts will be further set forth

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

The Issues

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

The Trial

The trial opened 27 August 1947, and the evidence was closed on 12 May 1948. The case was prosecuted by a staff of 12 American attorneys, headed by the Chief of Counsel for War Crimes. Each defendant was represented by an approved chief counsel and assistant counsel of his own choice, all of whom

were recognized and competent members of the German bar. In addition, the defendants, as a group, had the services of a specialist of their own selection in the field of international law, several expert accountants, and an administrative assistant to their chief counsel. The proceedings were conducted by simultaneous translation into the English and German languages and were electrically recorded and also stenographically reported. Daily transcripts, including copies of exhibits, in the appropriate language were provided for the use of the Tribunal and counsel. The following tabulation indicates the magnitude of the record:

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

Between 2 and 11 June 1948, the prosecution consumed 1 day and the defense 6 1/2 days in oral argument. Each defendant was allotted 10 minutes in which to address the Court in his own behalf, free of the obligation of an oath, and fourteen availed themselves of this privilege. Exhaustive briefs were submitted on behalf of both sides.

Interlocutory Rulings

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

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

(*b*) During the presentation of its case in chief, the prosecution offered a number of statements made by defendants prior to the filing of the indictment. These offers were objected to on the ground that such defendants would thereby be compelled to give evidence against themselves, in contravention of fundamental principles of enlightened criminal jurisprudence. The Tribunal ruled: (1) That, if voluntarily given, such statements were competent as admissions against interest; but (2) that if the defendants making such statements did not take the witness stand and thereby subject themselves to cross-

examination, such statements would not be regarded as evidence against the other defendants, but that the Tribunal would limit its consideration thereof to the defendants making such statements. In one instance the Tribunal rejected the purported statement of a defendant upon a showing that the same was given while said defendant was under duress.

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

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

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

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

Farben as an Instrumentality

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

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

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

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

activities the yearly turnover of the firm exceeded three billion reichsmarks.

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

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

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

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

the Aufsichtsrat elected.

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

The *Vorstand*, somewhat like the executive committee of a board of directors, was charged with the actual responsibility for the management of the corporation and represented it in dealings with others. When the Farben merger took place in 1925-1920, its Vorstand consisted of 82 members and most of its functions were delegated to a working committee of 20 members. In 1938 the Vorstand was reduced to less than 30 menders and the working committee was abolished.

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

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

The *Technical Committee* (TEA) was composed of the technical

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

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

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

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

The *Works Combines* constituted the basis for geographical coordination of the Farben plants. The four original combines were the Upper Rhine, the Main Valley, the Lower Rhine, and Central Germany. In 1929 a fifth, called Works Combine

Berlin, was added. The works combines coordinated such matters as over-all administration, transportation, storage, et cetera, in their respective areas.

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

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

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

The *Central Finance Administration* (ZEFI), was established in 1927, in connection with an office designated *Berlin NW 7*. To this was added the *Economic Research Department* (VOW1) in 1929, and the *Economic Policy Department* (WIPO) in 1933. In 1935, a central office for liaison with the armed forces, called *Vermittlungsstelle W*, was added. This office dealt with such matters as mobilization questions, military security, counterintelligence, secret patents, and research for the armed forces. Each Sparte was represented on its staff.

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

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

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

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

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

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

Member of Nazi Party and German Labor Front; Military Economy Leader; special consultant to chief of Research and

Development Department, Four Year Plan; chief of Special Committee "C" (Chemical Warfare), Main Committee on Powder and Explosives, Armament Supply Office; chief of a number of units in the Economic Group Chemical Industry.

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

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

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

Detained in prison from 23 June 1947 to date.

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

Member of Himmler Circle of Friends; member of Nazi Party and German Labor Front; Lieutenant Colonel of SS; member of NSKK and NSFK member of National Socialist Bund of

Technicians; collaborator of Krauch in the Four Year Plan; Production Commissioner for Oil, Ministry of Armaments; president of Technical Experts Committee, International Nitrogen Convention, et cetera.

Detained in prison from 11 May 1945 to date.

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

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

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

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

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

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

Detained in prison from 5 October 1945 to date.

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

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

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

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

1938-45, full member of Vorstand; 1981-45, member of Commercial Committee; 1938-45, member of Chemicals Committee; 1944-45, vice-chairman and deputy chief for

metals of Sales Combine Chemicals; member of Farben's Southeast Europe, East Asia, and East Committees. Chairman or member of control groups in several Farben units, including concerns in Germany, Austria, Czechoslovakia, Norway, and Italy.

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

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

VON DER HEYDE, ERICH — Born 1 May 1900, Hong Kong, China, of German parents. Doctor in agriculture. Never a member of the Vorstand or any committees; 1939-45 "Handlungsbevollmaechtigter" with Farben (literally, a "person authorized to act" as distinguished from a "Prokurist" or general attorney-in-fact) 1936-40, attached to Farben's Economic Policy Department, Berlin NW 7; 1988-40, counterintelligence agent for Berlin NW 7, and for a short period deputy to Schneider as chief of Farben's Counterintelligence Branch, High Command of the Armed Forces.

1937-45, member of Nazi Party; 1934-45, member of German Labor Front and member of the Reiter (mounted) SS (captain 194045) ; 1942-45, attached to the Military Economy and Armament Office, German High Command.

Detained in prison from 28 April 1947 to date.

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

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

Detained in prison from 16 August 1945 to date.

ILGNER, MAX — Born 20, June 1899, Biebesheim, Hesse. Doctor of Political science. 1934-38, deputy member of Vorstand; 1938-45, full member of Vorstand; 1933-38, member of Working Committee; 1937-45, member of Commercial Committee; 1926-45, chief of Farben's Berlin NW 7 office; chairman of Southeast Committee; manager of Schkopau buna works, deputy manager of Ammoniakwerk Merseburg; officer or member of control groups of 14 concerns in 7 countries, including American I. G. Chemical Corporation, New York.

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

Detained in prison from 7 April 1945 to date.

JAEHNE, FRIEDRICH — Born 24 October 1879, Neuss, Germany. Dipl. engineer. 1934-88, deputy member of Vorstand; 1938-45, full member of Vorstand and member of Technical Committee (guest attendant since 1926) ; 1938-45, deputy chief of Works Combine Main Valley; chairman of the Farben Technical Commission; chief of engineering department of Hoechst plant; member of control boards of

several Farben units.

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

Detained in prison from 18 April 1947 to date.

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

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

Detained in prison from 7 April 1945 to date.

KRAUCH, CARL — Born 7 April 1887, Darmstadt, Germany. Doctor of natural science, professor of chemistry. Member of Vorstand and of its Central Committee; member and chairman of Aufsichtsrat, 194045; chief of Sparte I, 1929-38; chief of Berlin Liaison Office (Vermittlungsstelle W); member of the board in a number of major Farben subsidiaries and affiliates, including the Ford works at Cologne.

In April 1936, placed in charge of the Research and Development Department for Raw Materials and Foreign

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

Four Year Plan; July l9385, Plenipotentiary General for Special Questions of Chemical Production; December 1939, Commissioner for Economic Development under Four Year Plan; 10385, Military Economy Leader; member of Directorate, Reich Research Council.

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

Detained in prison from 3 September 1946 to date.

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

Became a member of the Nazi Party in 1933 but was expelled shortly thereafter and not reinstated until 1037; member of German Labor Front; member of groups in economic, commercial, and labor offices if the Reich and local governments.

Detained in prison from 29 April 1947 to date.

KUGLER, HANS — Born 4 December 1900, Frankfurt/Main. Doctor of political science. Not a member of the Vorstand; 1928-45, Prokurist (with title of "Director"); 1935, member of Commercial Committee; 1938-45, second vice-chairman of Dyestuffs Committee; 1937-45, member of Dyestuffs Steering

Committee; 1943-45, member of Dyestuffs Application Committee; 1934-45, chief of Sales Department Dyestuffs for Hungary, Roumania, Yugoslavia, Czechoslovakia, Austria, Greece, Bulgaria, Turkey, the Near East, and Africa; 1939-45, member of Farben's Southeast Europe Committee; 1942-44, member of Commercial Committee of Francolor, Paris.

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

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

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

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

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

Detained in prison from 11 December 1946 to date.

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

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

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

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

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

Detained in prison from 7 June 1945 to date.

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

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

Detained in prison from 31 December 1946 to date.

SCHMITZ, HERMANN — Born 1 January 1881, Essen/Ruhr. Commercial college graduate, no degree. 19255, member of Vorstand; 1930-45, member of Central Committee; 1935-45, chairman of Vorstand and guest attendant at meetings of Aufsichtsrat; 1929-40, chairman of the board, I. G. Chemie, Basel, Switzerland; 1937-39, chairman of the board, American I. G. Chemical Corp., New York; chairman of Aufsichtsrat, DAG [Dynamit A. G.] (formerly Alfred Nobel & Co.) ; member of Aufsichtsrat, Friedrich Krupp A. G., Essen; chairman or member of control groups in several other subsidiary and affiliated Farben concerns.

1933, member of Reichstag; chairman of the Currency Committee of the Reichsbank; member of board of directors, Bank of International Settlements, Basel; member of Committee of Seven, German Gold Discount Bank, Berlin; member or chairman of control groups in several other

financial institutions. Member of Committee of Experts on Raw Materials Questions; member of Select Advisory Council, Reich Group Industry; Military Economy Leader.

Detained in prison from 7 April 1945 to date.

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

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

Detained in prison from 6 February 1947 to date.

VON SCHNITZLER, GEORG — Born 28 October 1884, Cologne. Lawyer. 192645, member of Vorstand; 1926-38, member of Working Committee; 1930-45, member of Central Committee; 1929-45, guest attendant of Technical Committee; 1937-45, chairman of Commercial Committee; 1930-45, chief of Dyestuffs Sales Combine; various periods between 1926 and 1945, member of other Farben committees, etc.

Member of Nazi Party; Captain of SA ("Sturmabteilung" of the Nazi Party) ; member of German Labor Front; member of Nazi Automobile Association (part of the SA) ; Military Economy Leader; member of Greater Advisory Council, Reich Group

Industry; deputy chairman, Economic Group Chemical Industry; vice-president, Court of Arbitration, International Chamber of Commerce; chairman, Council for Propaganda of German Economy; chairman of Aufsichtsrat, Chemische Werke Aussig-Falkenau, Aussig, Czechoslovakia member of Aufsichtsrat, Francolor, Paris; officer or member of Aufsichtsrat of other Farben affiliates in Spain and Italy.

Detained in prison from 7 May 1945 to date.

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

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

Detained in prison from 25 April 1947 to date.

COUNTS ONE AND FIVE

Counts one and five of the indictment are predicated on the same facts and involve the same evidence. These two counts will, therefore, be considered together. Count one consists of eighty-five paragraphs. The criminal charge is contained in paragraphs one, two, and eighty-five. The other paragraphs are in the nature of a bill of particulars. We quote the three charging paragraphs:

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

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

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

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

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

> “146. All the defendants, acting through the instrumentality of Farben and otherwise, with divers other persons, during a period of years preceding 8 May 1945, participated as leaders, organizers, instigators, and accomplices in the formulation and execution of a common plan or conspiracy to commit, or which involved the commission of crimes against peace, (including the acts constituting war crimes and crimes against humanity, which were committed as an integral part of such crimes against peace) as defined by Control Council Law No. 10, and are individually responsible for their own acts and for all acts committed by any persons in the execution of such common plan or conspiracy.
>
> “147. The acts and conduct of the defendants set forth in counts one, two, and three of this indictment formed a part of said common plan or conspiracy and all of the allegations made in said counts are incorporated in this count.”

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

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

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

> “Count one charges the common plan or conspiracy. Count two charges the planning and waging of war. The same evidence has been introduced to support both counts. We shall therefore discuss both counts together, as they are in substance the same.
>
> “'But in the opinion of the Tribunal the conspiracy must be clearly outlined in its criminal purpose. It must not be too far removed from the time of decision and of action. The planning, to be criminal, must not rest merely on the declarations of a party program, such as are found in the twenty-five points of the Nazi Party, announced in 1920, or the political affirmations expressed in ‘Mein Kampf’ in later years. The Tribunal must examine whether a concrete plan to wage war existed, and determine the participants in that concrete plan.

> "'It is immaterial to consider whether a single conspiracy to the extent and over the time set out in the indictment has been conclusively proved. Continued planning, with aggressive war as the objective, has been established beyond a doubt.
>
> "The Tribunal will therefore disregard the charges in count one that the defendants conspired to commit war crimes and crimes against humanity, and will consider only the common plan to prepare, initiate, and wage aggressive war." *

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

KALTENBRUNNER — Indicted and found not guilty under count one.

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

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

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

FRANK — Indicted and found not guilty under count one.

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

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

on count one, guilty on count two.

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

STREICHER — Indicted and found not guilty under count one.

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

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

“Funk was not one of the leading figures in originating the Nazi plans for aggressive war. His activity in the economic sphere was under the supervision of Goering as

Plenipotentiary General of the Four Year Plan. He did, however, participate in the economic preparation for certain of the aggressive wars, notably those against Poland and the Soviet Union, but his guilt can be adequately dealt with under count two of the indictment. In spite of the fact that he occupied important official positions, Funk was never a dominant

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

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

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

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

one. He was clearly not one of the inner circle around Hitler, which was most closely involved with this common plan.[2]”

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

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

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

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

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

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

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[1] *Ibid.*, pp. 305, 306.

[2] *Ibid.*, pp. 308-310.
[3] *Ibid.*, pp. 310, 311.
[4] *Ibid.*, p. 318.

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

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

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

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

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

FRITZSCHE — Indicted and found not guilty under count one.

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

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

BORMANN — Indicted and found not guilty under count one.

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

Bormann within the scope of count one."*

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

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

Common Knowledge

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

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

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

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* *Ibid.*, p. 339.

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

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

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

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

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

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

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

This book had a circulation throughout Germany of over six million copies. We must bear in mind, however, that it was written by Hitler the politician, before his party came to

power. It is consistent with statements that he made to his immediate circle of confidants and plotters, but it is entirely inconsistent with his many speeches and proclamations — made as head of the Reich — for public consumption. Some of these we will now consider.

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

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

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* *Ibid.*, p. 188.

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

The Four Year Plan, according to the prosecution's version of

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

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

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

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

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

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

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

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

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

[al...] liance lice pact o f 22 May 1939; the German-Danish nonaggression pact of 31 May 1939; a nonaggression pact between the German Reich and the Republic of Estonia of 7

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

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

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

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

> "And so the way to a friendly understanding has been successfully paved, an understanding which, beginning with Danzig, has today, in spite of the attempts of certain mischief makers, succeeded in finally taking the poison out of the relations between Germany and Poland and transforming them into a sincere, friendly cooperation. Relying on

her friendships, Germany will not leave a stone unturned to save that ideal which provides the foundation for the task which is ahead of us — peace.”

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

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

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

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

with him, affirmed their belief in his word. Can we say the common man of Germany believed less?

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

Personal Knowledge

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

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

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

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

1. There can be no conviction without proof of personal guilt.

2. Guilt must be proved beyond a reasonable doubt.

3. Each defendant is presumed to be innocent, and that presumption abides with him throughout the trial.

4. The burden of proof is, at all times, upon the prosecution.

5. If from credible evidence two reasonable inferences may be drawn, one of guilt and the other of innocence, the latter must prevail. (United States *vs*. Friedrich Flick, *et al*, Case 5, American Military Tribunal IV, Nurnberg, Germany.)

In considering the many conflicts in the evidence and the multitude of circumstances from which inferences may be drawn, as disclosed by the voluminous record before us, we have endeavored to avoid the danger of viewing the conduct of

the defendants wholly in retrospect. On the contrary, we have sought to determine their knowledge, their state of mind, and their motives from the situation as it appeared, or should have appeared, to them at the time.

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

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

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

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

Krauch became a member of the Vorstand in 1933 and continued in that position until 1940, when he became a

member of the Aufsichtsrat. From 1929 to 1938 he was Chief of Sparte I.

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

In 1936, Krauch joined Goering’s staff for Raw Materials and Foreign Currency which had just been set up, and was put in charge of the Research and Development Department. When this staff was absorbed into the Office of the Four Year Plan, headed by Goering, Krauch retained the same position in the Office for German Raw Materials and Synthetics. This office

was later renamed the Reich Office for Economic Development when it was placed under the Reich Ministry of Economics.

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

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

TRANSLATION OF
DOCUMENT NI-4706
PROSECUTION EXHIBIT 425

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

In 1938, Hitler and Goering decided to step up production under the Four Year Plan and, to accomplish this, appointed from time to time at least nine special plenipotentiaries with limited duties and authority. In July 1938, Krauch was appointed Plenipotentiary General for Special Questions of Chemical Production. Under this appointment it became his task to supervise as an expert the development of the chemical industry in furtherance of the Four Year Plan. However, the

Army Ordnance Office and the Reich Ministry of Economics determined the requirements for individual chemical production. Later the Ministry of Armament assumed this authority. Plans for the expansion of existing plants or the setting up of new plants came within the province of Krauch. But even such plans could not be executed without first having been approved by the Plenipotentiary General for the Building Industry and the Plenipotentiary [General] for Labor [Allocation]. Krauch was not authorized to decide questions relating to current chemical production. Neither could he issue production orders or interfere with the allocation of production. Thus it appears his authority was limited largely to giving expert opinions on technical development, recommending plans for the expansion or erection of plants, and general technical advice in the chemical field.

Judge Morris will continue with the reading of the judgment.

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

This page contains the chart and is omitted.

The record is also clear that Krauch had no connection with the *initiation* of any of the specific wars of aggression or invasions in which Germany engaged. He was informed of neither the time nor method of initiation. The evidence that most nearly approaches Krauch is that pertaining to the

preparation for aggressive war. After World War I, Germany was totally disarmed. She was stripped of war material and the means of producing it. Immediately upon the acquisition of power by the Nazis, they proceeded to rearm Germany many, secretly and inconspicuously at first. As the rearmament program grew, so also did the boldness of Hitler with reference to rearmament. Rearmament took the course, not only of creating an army, a navy, and an air force, but also of coordinating and developing the industrial power of Germany so that its strength might be utilized in support of the military in event of war. The Four Year Plan, initiated in 1936, was a plan to strengthen Germany as both a military and an economic power, although, in its introduction to the German people, the military aspect was kept in the background.

In order to conceal Germany’s growing military power, strict measures were undertaken to impose secrecy, not only regarding military matters, but also regarding Germany's growing industrial strength. This served two purposes: it tended to conceal the true facts from the world and from the German public; it also kept the people who were actually participating in rearmament from learning of the progress being made outside of their own specific fields of endeavor, and kept them in ignorance of the actual state of Germany's military strength. The dictatorial system was in full control. Even people in high places were kept in ignorance and were not permitted to disclose close to each other the extent of their individual activities in behalf of the Reich. A striking example of this is Keitel's objection to Krauch’s appointment as Plenipotentiary General for Special Questions of Chemical Production, on the ground that Krauch, as a man of industry and not of the military, should not obtain insight into the armament fields. He pointed out that anyone in that position might learn how many divisions were being set up in the army and what plans were being made for bomber squadrons. The evidence shows that, although Krauch was appointed over the objection of Keitel, he was never fully trusted by the military. His functions and authority were limited to fields bordering on

military affairs. He could not act without the cooperation of the Army Ordnance Office. The evidence does not show that anyone told Krauch that Hitler had a plan or plans to plunge Germany into aggressive war. Moreover, the positions that Krauch held with reference to the government did not, necessarily, result in the acquisition by him of such knowledge.

The IMT stated that “Rearmament of itself is not criminal under the Charter.” It is equally obvious that participation in the rearma- […ment]

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

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

It is contended that the defendants must have known from events transpiring within the Reich that what they did in aid of rearmament was preparing for aggressive war. It is asserted that the magnitude of the rearmament effort was such as to convey that knowledge. Germany many was rearming so rapidly and to such an extent that, when viewed in retrospect in the light of subsequent events, armament production might be said to impute knowledge that it was in excess of the requirements of defense. If we were trying military experts, and it was shown that they had knowledge of the extent of rearmament, such a conclusion might be justified. None of the defendants, however, were military experts. They were not

military men at all. The field of their life work had been entirely within industry, and mostly within the narrower field of the chemical industry with its attendant sales branches. The evidence does not show that any of them knew the extent to which general rearmament had been planned, or how far it had progressed at any given time. There is likewise no proof of their knowledge as to the armament strength of neighboring nations. Effective armament is relative. Its efficacy depends upon the relative strength with respect to the armament of other nations against whom it may be used either offensively or defensively.

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

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

Nitrogen also is a basic and indispensable element in the making of most explosives. Its production can readily be turned from the needs of peace to those of war. The Reich,

therefore, encouraged Farben to greatly expand its facilities for producing nitrogen. Light metals had their peacetime uses. They were also war necessities, particularly in the production of airplanes. The defense, however, points out that the airplane itself is not always an instrument of war but is used as a medium of peacetime transportation.

The Luftwaffe, however, was not a peacetime organization. It utilized the coming war arm of modern nations. The defendants who participated in the expansion of light metal production capacity, in cooperation with Luftwaffe officials, of course knew that thereby they were strengthening Germany's war potential. Similar knowledge must be attributed to those who participated in the expansion of Farben's capacity to produce buna rubber, gasoline, and nitrogen. It was all a part of an over-all plan or program to strengthen Germany in the fields of economy and rearmament. To the extent that the activities of the defendants through the mediums just described contributed materially to the rearmament of Germany, the defendants must be charged with knowledge of the immediate result. The evidence is not so clear as to Farben's responsibility for the increase in production of explosives. The initiative in this field clearly lay with the Reich, but Farben aided the production by furnishing both experts and capital for the expansion of explosive enterprises, and, to that extent at least, participated in rearmament. The prosecution, however, is confronted with the difficulty of establishing knowledge on the part of the defendants not only of the rearmament of Germany, but also that the purpose of rearmament was to wage aggressive war. In this sphere the evidence degenerates from proof to mere conjecture. The defendants may have been, as some of them undoubtedly were alarmed at the accelerated pace that armament was taking. Yet even Krauch, who participated in the Four Year Plan within the chemical field, undoubtedly did not realize that, in addition to strengthening Germany, he was participating in making the nation ready for a planned attack of an aggressive nature. Krauch did not figure in the planning of the production of any

of the items that we have discussed until about the middle of the year 1988. Production planning was carried on by the planning department of the Reich Office for Economic Development, which was not subordinated to Krauch's supervision. Upon being informed by Loeb as to statistics with respect to production and the time required for accomplishment, Krauch reached the conclusion that the figures were to a large extent erroneous and misleading and so informed Goering, who asked for Krauch’s comment. Krauch then produced what is known as the Karinhall Plan, which provided for an expansion of facilities and the

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

We how reach the neat question of whether, from Krauch’s activities in connection with the Four Year Plan, the Karinhall Plan, and the Schnell Plan, he may be said to have known that the ultimate objective of Hitler, Goering, and the other Nazi chiefs was to wage a war or wars of aggression. On 29 April 1939, Krauch rendered a report to his superior, Goering, and to the General Council [EC-282, Pros. Ex. 455], setting forth at length the goals to be reached in the spheres of mineral oil, rubber, light metals, as well as gunpowder, explosives, and chemical warfare agents under the Karinhall and Schnell plans. With respect to mineral oil, which he breaks down into gasoline, Diesel fuel, heating and lubricating oil, the final

target is set for 1943. In his analysis he gives the peacetime requirements for 1943, which is scarcely an indication that he was aware of Hitler's already existing plan to attack Poland in the fall of 1939. The plans for buna rubber also include the year 1943. In the field of light metals, the temporary goal for aluminum would be reached in 1942, according to the plan, while a similar goal was set for magnesium. In justifying his production objectives, Krauch says:

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

“The requirements for fuel oil for the British Navy alone amount to about 1,2 million tons, i. e., nearly as much as the entire German mobilization requirements.

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

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

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

The production goal for powder and explosives was expected to be reached by the end of 1940; that of chemical warfare

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

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

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

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

Considering the whole report, it seems that Krauch was recommending plans for the strengthening of Germany which,

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

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

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

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

With respect to the other defendants, all were further removed from the scene of Nazi governmental activity than was Krauch. Although he was a member of the Vorstand of Farben throughout the entire period of German rearmament and until 1940, he attended no meetings of the Vorstand after 1938 and made no reports either to that body or its subordinate sections or committees concerning his governmental activities. It is unnecessary and would be inappropriate to carry into this judgment a discussion in detail of the evidence for and against each defendant. But it is proper to comment, to a limited extent, with respect to Farben and some of the defendants who appear to have been dominant members of the Vorstand.

The defendant Schmitz was Chairman of the Vorstand from 1935 to 1915. He became Chairman of the Central Committee in 1935. He was actively in attendance at many of the meetings of the Technical Committee and the Commercial Committee. These subdivisions of the Vorstand dealt respectively with technical questions and commercial questions arising out of the over-all administration of the vast Farben organization. As Chairman of the Vorstand he had no special powers. He is frequently described in this record as *primus inter pares*, or, first among equals. His field as an expert was finance, and his opinion with respect to such matters carried great weight with his associates.

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

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

“Q. Would Germany have ever entertained this large program of aggression if they had not had full support of the

industrialists all the way through?

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

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

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

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

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

On 17 December 1936, at a meeting attended by representatives of various firms, including Farben, Goering threatened industry with seizure by the state if it did not show better cooperation with the Four Year Plan [NI-051, Pros. Ex. 421]. There is a notable dearth of evidence as to important activities engaged in by Schmitz, particularly during the later years covered by the record. In an attempt to show an early alliance between Farben and Hitler, the prosecution points out that Farben made substantial donations to the Nazi Party. In February 1933, representatives of most of the leading industrial firms of Germany met in Goering's house in Berlin. Hitler was present. He had already been nominated Chancellor of the Reich. The purpose of the meeting was to secure the support of the industrialists in the coming Reichstag election. Both Hitler and Goering made speeches outlining Hitler’s policies insofar as he disclosed them at that time. At the close of the speeches, Goering sought contributions. Von Schnitzler was the only representative of Farben present at this meeting. Most, if not all, of the firms there represented made substantial contributions to a campaign fund to be used in behalf of parties supporting Hitler. The parties that were to participate in the fund were the National Socialist, the

Deutsch-Nationale Volkspartei, and the Deutsche Volkspartei. Farben's share was RM 400,000 — one of the largest contributions made to the fund.

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

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

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

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

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

and no doubt somewhat mentally confused by the calamities that had befallen Germany, his firm of Farben, and himself personally. He was extremely voluble. He talked and gave statements in writing to his interrogators with seeming eagerness and in such detail as to both facts and conclusions

that we regard selected passages that contain seemingly damaging recitals as having questionable evidentiary value. Some of his later statements change and purport to correct former ones. His eagerness to tell his interrogators what he thought they wanted to know and hear is apparent throughout; as, for instance, this statement which has been emphasized by the prosecution: “In June or July 1939, I. G. Farben and all heavy industries well knew that Hitler had decided to invade Poland if Poland would not accept his demands.”

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

Ter Meer was one of the dominant leaders of the Vorstand. His activities were chiefly in the technical field. He was chairman of the Technical Committee (TEA) from 1933 to 1945. He was chief of Sparte II from 1929 to 1945. His was probably the greatest influence of all the Vorstand members in the growth

and expansion of Farben production during the 15 years that preceded the collapse of Germany in 1945. Most of Farben's cooperation with the Four Year Plan was technical and, therefore, came within the sphere of ter Meer's activities and influence.

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

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

It is asserted that the development of synthetic rubber, a product used by the Wehrmacht to facilitate its movement, was an important step in rearmament and an indication of the defendants' knowledge of Hitler's intentions to wage aggressive war. The value of synthetic rubber as a war

potential may not be overlooked. But its value as evidence of criminal knowledge is brought into serious question when the failure of Farben to closely guard the secret of its process is considered. Buna products were exhibited at the Paris World's Fair in 1937. Scientific lectures on this product were given to the International Chemical Congress in Rome in 1938, before a Chemical Industrial Society in Paris in 1939, and also in the same year before the American Chemical Society in Baltimore, Maryland.

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

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

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

The indictment charges that Farben, through its foreign

economic policy, participated in weakening Germany's potential enemies and that Farben carried on propaganda intelligence and espionage activities for the benefit of the Reich. It is particularly emphasized that Farben entered into many contracts with major industrial concerns throughout the world dealing with various phases of experimentation, production, and markets in fields in which Farben found competition. All of these contracts are lumped under the much-abused term "cartels." Many of these agreements were essential licenses by which Farben permitted foreign firms to manufacture products that were protected by Farben patents. This appears to be a common practice among large business concerns throughout the world, and the fault, if any, would seem to lie with national and international patent law rather than with the firms that avail themselves of the protection which the law affords. Furthermore, we are unable to find the counterpart of the Sherman Anti-Trust Act either in international law or the national statutes of major European powers. It has not been pointed out that any contract made by Farben in and of itself constituted a crime. It is, nevertheless. argued that by virtue of these contracts Farben stifled the industrial development of foreign countries. Agreements between the Standard Oil Company of New Jersey and Farben regarding the development and production of buna rubber in the United States are pointed to as a specific example. The two companies agreed to exchange information regarding the results of their experiments in this field. Farben outstripped its competitors in experimentation and in methods of production. The Reich had financed Farben to a material extent in the development of buna and criticized time contracts which Farben had made. In reply to this criticism, Farben, through the defendant ter Meer, advised the Reich, in substance, that Farben was not complying with its contract in that it was not furnishing to the American concerns the results of its most recent and up-to-date experiments. Ter Meer testified that this communication to the Reich was false and was made for the purpose of avoiding criticism and interference by government officials, and that Farben did, in fact, carry out its contract in

good faith. He is supported in the latter statement by the affidavits of two Standard Oil officials who testified as to the great value of the information given by Farben. The record shows no information that was not divulged. It is true that the development of the manufacture of synthetic rubber in the United States did not keep pace with that in Germany. Natural rubber was then available in the United States at a cost

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

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

information concerning industrial developments and production in foreign countries. Farben's reluctance to comply, even to the full extent of information actually received, indicates a lack of cooperation which negatives participation in a conspiracy or knowledge of plans on the part of Hitler to wage aggressive war.

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

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

aggressive aims.

Waging Wars of Aggression

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

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

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

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

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

and perfected its execution would be an absurdity. The IMT, having accepted the principle that the individual could be punished, then proceeded to the more difficult task of deciding which of the defendants before it were responsible in fact.

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

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

The defendants now before us were neither high public officials in the civil government nor high military officers. Their participation was that of followers and, not leaders. If we lower the standard of participation to include them, it is difficult to find a logical place to draw the line between the guilty and the innocent among the great mass of German people. It is, of course, unthinkable that the majority of Germans should be condemned as guilty of committing crimes

against peace. This would amount to a determination of collective guilt to which the corollary of mass punishment is the logical result for which there is no precedent in international law and no justification in human relations. We cannot say that a private citizen shall be placed in the position of being compelled to determine in the heat of war whether his government is right or wrong, or, if it starts right, when it turns wrong. We would not require the citizen, at the risk of becoming a criminal under the rules of international justice, to decide that his country has become an aggressor and that he must lay aside his patriotism, the loyalty to his homeland, and the defense of his own fireside at the risk of being adjudged guilty of crimes against peace on the one hand, or of becoming a traitor to his country on the other, if he makes an erroneous decision based upon facts of which he has but vague knowledge. To require this of him would be to assign to him a task of decision which the leading statesmen of the world and the learned men of international law have been unable to perform in their search for a precise definition of aggression.

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

but not those who merely follow the leaders and whose participations, like those of Speer. “were in aid of the war

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

Conspiracy

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

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

In order to be participants in a common plan or conspiracy, it is elementary that the accused must know of the plan or conspiracy. In this connection we quote from a case cited by both the prosecution and defense, Direct Sales Company *vs*. United States, 319 U. 5. 703, 63 5. Ct. 1265. In discussing United States *vs*. Falcone, 311 U. S. 205, 61 S. Ct. 204, 85 L. ed. 128, the Supreme Court of the United States said:

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

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

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

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

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

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

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

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

COUNT TWO

JUDGE HEBERT: *Substance of the Charge*

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

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

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

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

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

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

insofar as crimes against humanity are charged.

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

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

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

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

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

humanity, would be excluded by this holding." (*Tr. p. 11013*)*

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

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

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

In harmony with this ruling, the charges remaining to be disposed under count two involve a determination of whether

or not the proof sustains the allegations of the commission of war crimes by any de- [...fendant]

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

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

The Law Applicable to Plunder and Spoliation

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

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

This quoted provision corresponds to Article G, section (b) of the Charter of the IMT, concerning which that Tribunal held that the criminal offenses so defined were recognized as war crimes under international law even prior to the IMT Charter.

There is consequently no violation of the legal maxim *nullum crimen sine lege* involved here. The offense of plunder of public and private property must be considered a well-recognized crime under international law. It is clear from the quoted provision of the Control Council Law that if this offense against property has been committed, or if the proof establishes beyond reasonable doubt the commission of other offenses against property constituting violations of the laws and customs of war, any defendant participating therein with the degree of criminal connection specified in the Control Council Law must be held guilty under this charge of the indictment.

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

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

> “Art. 46. Family honor and rights, individual lives and private property, as well as religious convictions and practice, must be respected. Private property cannot be confiscated.
>
> “ Art. 47. Pillage is formally prohibited.
>
> * * * * * * * * * * *

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

army of occupation. They must be in proportion to the resources of the country, and of such a nature as not to involve

the population in the obligation of taking part in military operations against their own country.

> “These requisitions and services shall only be demanded on the authority of the Commander in the locality occupied.
>
> “The requisitions in kind shall, as far as possible, be paid for in ready money; if not, a receipt shall be given and the payment of the amount due shall be made as soon as possible.
>
> “Art. 53. An army of occupation can only take possession of the cash, funds, and property liable to requisition belonging strictly to the State, depots of arms, means of transport, stores and supplies, and, generally, all movable property of the State which may be used for military operations.
>
> “All appliances, whether on land, at sea, or in the air, adapted for the transmission of news, or for the transport of persons or things, apart from cases governed by maritime law, as well as depots of arms and, generally, all kinds of war material, even though belonging to Companies or to private persons, are likewise material which may serve for military individuals, but they must be restored at the conclusion of peace, and indemnities paid for them.
>
> * * * * * * * * * *
>
> “Art. 55. The occupying State shall be regarded only as administrator and usufructuary of the public buildings, real estate, forests, and agricultural works belonging to the hostile State, and situated in the occupied country. It must protect the capital of these properties, and administer it according to the rules of usafruct.”

The foregoing provisions of the Hague Regulations are broadly

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

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

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

Regarding terminology, the Hague Regulations do not specifically employ the term “spoliation,” but we do not consider this matter to be one of any legal significance. As employed in the indictment, the term is used interchangeably with the words “plunder” and “exploitation.” It may therefore be properly considered that the term “spoliation," which has been admittedly adopted as a term of convenience by the prosecution, applies to the widespread and systematized acts of dispossession and acquisition of property in violation of the

rights! of the owners, which took place in territories under the belligerent occupation or control of Nazi Germany during World Mar II. We consider that "spoliation" is synonymous with the word "plunder" as employed in Control Council Law No. 10, and that it embraces offenses against property in violation of the laws and customs of war of time general type charged in the indictment. In that sense we will adopt and employ the term spoliation in this opinion as descriptive of the offenses referred to.

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

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

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

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

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

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

In our view, the offenses against property defined in the Hague Regulations are broad in their phraseology and do not admit of any distinction between "plunder" in the restricted sense of

acquisition of physical properties, which are the subject matter of the crime, and the plunder or spoliation resulting from acquisition of intangible property such as is involved in the acquisition of stock ownership, or of acquisition of ownership or control through any other means, even though apparently legal in form.

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

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

We cannot deduce from Articles 46 through 55 of the Hague Regulations any principle of the breadth of application such as

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

induced to part with his property against his will, it is clearly a

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

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

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

"The question of the responsibility of individuals for

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

We quote further:

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

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

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

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

this view. It will therefore become unnecessary, in considering the alleged acts of spoliation in Poland and Alsace-Lorraine, to consider this distinction which has been urged by the defense.

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

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

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

“Moreover, it does not appear that the difficulties arising out of any uncertainty as to the existing law have a direct bearing

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

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

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

The General Facts

The judgment of the International Military Tribunal clearly established that the Reich adopted and pursued a general policy of plunder of occupied territories in contravention of the provisions of the Hague Regulations with respect to both public and private property. The IMT found that there was a systematic plunder of public and private property. It found that territories occupied by Germany "were exploited for the German war effort in the most ruthless way, without consideration of the local economy, and in consequence of a

deliberate design and policy." Such action was held to be criminal under Article 6 (b) of the Charter which, as we have already indicated, corresponds to Article II (lb) of Control Council Law No. 10. Concerning the methods employed, the IMT stated:

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

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

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

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

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

With reference to the charges in the present indictment concerning Farben's activities in Poland, Norway, Alsace-Lorraine, and France, we find that the proof establishes beyond a reasonable doubt that offenses against property as defined in Control Council Law No. 10 were committed by Farben, and that these offenses were connected with, and an inextricable part of the German policy for occupied countries as above described. In some instances, following confiscation by Reich authorities, Farben proceeded to acquire permanent title to the properties thus confiscated. In other instances involving "negotiations" with private owners, Farben proceeded permanently to acquire substantial or controlling interests in property contrary to the wishes of the owners. These activities were concluded by entering territory that had been overrun and occupied by the Wehrmacht, or was under its effective control. The action of Farben and its representatives, under these circumstances, cannot be differentiated from acts of plunder or pillage committed by officers, soldiers, or public officials of the German Reich. In these property acquisitions which followed confiscation by the Reich, the course of action of Farben clearly indicates a studied design to acquire such property. In most instances the initiative was Farben's. In those instances in which Farben dealt directly with the private owners, there was the ever-present threat of forceful seizure of the property by the Reich or other similar measures, such, for example, as withholding licenses, raw materials, the threat of uncertain drastic treatment in peace treaty negotiations, or other effective means of bending the will of the owners. The power of the military occupant was the ever-present threat in these transactions, and was clearly an important, if not a decisive,

factor. The result was enrichment of Farben and the building of its greater chemical empire through the medium of the military occupancy at the expense of the former owners. Such action on the part of Farben constituted a violation of the Hague Regulations. It was in violation of rights of private property, protected by the laws and customs of war and, in the instance involving public property, the permanent acquisition was in violation of that provision of the Hague Regulations which limits the occupying power to a mere usufruct of real estate. The form of the transactions were varied and intricate, and were reflected in corporate agreements well calculated to create the illusion of legality. But the objective of pillage, plunder, and spoliation stands out, and there can be no uncertainty as to the actual result.

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* Ibid., page 240.

As a general defense, it has been urged on behalf of Farben that its action in acquiring a controlling interest in the plants, factories, and other interests in occupied territories was designed to, and did, contribute to the maintenance of the economy of those territories, and was assisted in maintaining one of the objective aims envisaged by the Hague Regulations. In this regard it is said that the action was in conformity with the obligation of the occupying power to restore an orderly economy in the occupied territory. We are unable to accept this defense. The facts indicate that the acquisitions were not primarily for the purpose of restoring or maintaining the local economy, but were rather to enrich Farben as part of a general plan to dominate the industries involved, all as a part of Farben's asserted "claim to leadership." If management had taken over in a manner that indicated a mere temporary control or operation for the duration of the hostilities, there might be some merit to the defense. The evidence, however, shows that the interests which Farben proceeded to acquire,

contrary to the wishes of the owners, were intended to be permanent. The evidence farther establishes that the action of the owners was involuntary, and that the transfer was not necessary to the maintenance of the German army of occupation. As the action of Farben in proceeding to acquire permanently property interests in the manner generally outlined is in violation of the Hague Regulations, any individual who knowingly participated in any such act of plunder or spoliation with the degree of connection outlined in Article II, paragraph 2 of Control Council Law No. 10, is criminally responsible therefor.

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

A. Spoliation of Public and Private Property in Poland

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

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

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

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

Shortly thereafter, on 14 September 1939, von Schnitzler and Krueger addressed a letter to the Ministry of Economics confirming a conference of that same date [*NI-2749, Pros. Ex. 1139*]. The letter proposed that Farben be named as trustee to administer Boruta, Wola, and Winnica, to continue operating them, or to close them down, to utilize their supplies, intermediates, and final products. Two Farben employees were recommended as executives for the undertaking. Von Schnitzler affirmatively recommended that Wola be closed down permanently and that Boruta be declared to be of special value to the German war economy as most of the German dyestuffs plants were located in the Western Zone, so that.

Boruta had a “double value.” Replying to von Schnitzler’s letter, the Reich Ministry of Economics advised that it had decided to comply with Farben’s suggestion and would place Boruta, Wola, and Winnica, located in former Polish territories, now occupied by German forces, under provisional management. The Reich Ministry of Economics was apparently under no illusions as to Farben’s acquisitive desires in provoking the provisional administration. It agreed to name the Farben-recommended employees as provisional managers, but specified that such action created no priority rights of purchase for Farben. This exhibit indicates that the action of the Reich authorities in relation to these properties was directly instigated by Farben. Farben’s nominees swung into action and took possession of the plants in early October of 1939.

Von Schnitzler next proposed to the Reich authorities by letter on 10 November 1939 that Boruta, on the verge of bankruptcy and without funds for adequate plant equipment, should be leased for 20 years to a Farben subsidiary to be created for that purpose. Wola was to be closed down and its equipment brought to Boruta. Von Schnitzler referred to the necessity for “a certain permanency of conditions,” and added that, “if it should be in the interest of the Reich to re-privatize the plant during the 20-year term, Farben should be given priority rights as to purchase.” [*NI-8380, Pros. Ex. 1141*.] This letter makes it plain that the purpose and interest of Farben from the outset was permanent acquisition and not temporary operation. Dismantling of certain Winnica equipment and its transfer to Boruta was also recommended. At the end of November 1939, von Schnitzler, by letter, submitted Farben’s proposals again to Goering, in his capacity as Plenipotentiary for the Four Year Plan, requesting approval by the Main Trustee Office East of the earlier Farben recommendations. The recommended lease was not executed, and in June 1940 a decision was reached whereby Farben was allowed to purchase Boruta instead of

executing a lease. Competition developed for the purchase of the property, and price negotiations were protracted. At the meeting of 4 December 1940, the Farben representatives, who were acting pursuant to von Schnitzler's directions, made it plain that the plant should be acquired by Farben in the interest of the German dyes producers, that the plant must continue operation, and that it must "because of the leadership claim recognized by all official agencies * * * be integrated into the sphere of IG dyestuffs production," an objective which could be achieved only through purchase. In April 1941, von Schnitzler was advised that the Reichsfuehrer SS had decided to allocate Boruta to Farben. The sales contract, signed by von Schnitzler, was finally concluded on 27 November 1941, with Farben acquiring the land, buildings, machinery, equipment, tools, furniture, and fixtures. It is significant that the sale was made operative as of 1 October 1939, the approximate date of the original seizure and operation by the Farben nominees.

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

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

spoliative activities in Poland.

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

B. The Charge of Spoliation With Reference to Norway

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

The facts, briefly, are these: Following the aggression against and military occupation of Norway, Hitler decided that the Norwegian aluminum capacity should be reserved for the requirements of the Luftwaffe. Goering issued appropriate orders, pursuant to which special powers were entrusted to Dr. Koppenberg, who, in his capacity as trustee for aluminum, was given the task of expanding production of light metals in Norway. The plan was an ambitious one, calling for plant expansions and capital investments on a grandiose scale so as eventually to treble the Norwegian production of light metals. Norsk-Hydro Elektrisk Kvaelstofaktieselskahet (referred to simply as Norsk-Hydro) was one of Norway’s most important

industrial concerns operating in the chemical and related fields. Its facilities were required for the project, and certain of its plants were to be expanded and properties transferred to accomplish the German objectives. It is plain from the evidence that the immediate German objective was to harness the resources of Norway, including its water power and raw materials, to the ever-increasing demands of the German war machine, particularly for military aircraft. The decision to carry out this project was made at the highest governmental levels, and the entire power of the military occupant was clearly available to carry it out, as the properties of Norsk-Hydro were located in territory under military occupation.

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

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

The controlling stock interest in Norsk-Hydro, amounting to approximately 64 percent of the capitalization, was owned by a group of French shareholders represented by the Banque de Paris et des Pays Bas (referred to as Banque de Paris). The plan finally evolved by the Reich Air Ministry, after numerous conferences in which Farben representatives participated, resulted in creation of a new corporation, Nordisk-Lettmetall, with one-third interest in the Reich Government and its designated agencies, one-third interest in Farben, and one-third interest in Norsk-Hydro. The French owners of Norsk-Hydro did not voluntarily enter the Nordisk-Lettmetall project, but its plant facilities were located in occupied Norway, and

the evidence, although conflicting on this point, convinces us that pressure from the Nazi government and fear of compulsory measures affecting its Norwegian holdings were the dominating considerations. In this manner Norsk-Hydro was forced to join in the project, and its properties were heavily damaged in subsequent allied bombings. Norsk-Hydro sustained severe financial losses as a result of the entire project. After joining in the project, Farben was a major participant in its execution. Nordisk-Lettmetall used Norsk-Hydro's facilities in the project, and some of its valuable properties were utilized for plant expansions.

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

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

C. Plunder and Spoilation in France

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

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

Farben's action in occupied Alsace-Lorraine followed the pattern developed in Poland. The Mulhausen plant of the Société (les Produits Chimiques et Matières Colorantes de Mulhouse, located in Alsace, was leased by the German chief

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

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

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

In the case of the Diedenhofen plant, located in Lorraine, the plant was leased to Farben but permanent title was never acquired. Farben urged its claims to purchase upon the occupying authorities, but the German chief of civil administration refused to incorporate a provision for purchase

in the lease agreement. For some reason not clear from the evidence, Farben met with difficulty here. The evidence indicates that the plant had been evacuated prior to the Farben operation. This fact, coupled with the attitude of the German authorities and time short term of the lease, leads us to the conclusion that, despite the intention to acquire permanently that was manifested by Farben, the proof does not adequately establish that the owner was deprived of the property permanently, or that its use was withheld contrary to the owner's wishes. We find the evidence insufficient upon which to predicate any criminal guilt with reference to the Diedenhofen plant.

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

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

Immediately after the French armistice in 1940, Farben conferred with representatives of the occupying authorities and other governmental agencies and deliberately delayed negotiations with the French to make them more receptive to negotiations. In the meantime, Farben's influence with the German occupation authorities was used to prevent the issuance of licenses and to stop the flow of raw materials which would have permitted the French factories to resume their normal prewar production in keeping with the needs of the French economy. When the French plants were unable to resume production and their plight became sufficiently acute, they were forced to request the opening of negotiations. Farben indicated its willingness to confer. A conference was held on 21 November 1940 in Wiesbaden, at which representatives of Farben, the French industry, and the French and German Governments were in attendance. The meeting was under the official auspices of the Armistice Commission. Patently the French knew that they were forced to ascertain in the so-called negotiations what the future fate of the French dyestuffs industry, then at the mercy of the occupying Germans, might be. The meeting of 21 November 1940 was held in this atmosphere [*NI-6727, Pros. Ex. 1246*]. The defendants von Schnitzler, ter Meer, and Kugler were in attendance as principal representatives of Farben. At the outset of the conference the French industrialists were frankly informed that the prewar agreements between Farben and the French producers which the French wished to use as a basis in the negotiations, must be considered as abrogated owing to

the course of the war. Farben’s historical claim to leadership, founded upon alleged wrongs traced back to World War I, was asserted as additional reason. In a most high-handed fashion, the German representatives informed the French that the course of events during the preceding year had put matters in an entirely different light, and that there must be an adjustment to the new conditions. A memorandum read by von Schnitzler was presented to the French representatives, in which Farben demanded a controlling interest in the French dyestuffs industry. The German demands, set forth in the Farben memorandum, were vigorously supported by Ambassador Hemmen, who pointed out the grave danger to the French dyestuffs industry if its future should be relegated to settlement by the peace treaty rather than through the medium of the

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

The French industry was faced with an unenviable alternative: It could pursue the path of collaboration and surrender, recognizing the plight created by the situation in the light of Farben's demands, or, if it chose to resist, it entailed the risk of perhaps more severe treatment at the hands of the occupying authorities or of future governmental commissions appointed for handling the matter in connection with the negotiation of a treaty of peace. The French feared the exercise of the power of German occupation either to take over the plants completely or to dismantle and cart them away to Germany, in keeping with the pattern that had been established for military occupation by policies of the Third Reich. Notwithstanding these dread alternatives, the French were outspoken and

vigorous in their resistance to the German demands. They were, however, astute enough not to break off negotiations completely.

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

of French dyestuffs production in a new company with German

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

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

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

The defendants have contended that the Francolor Agreement was the product of free negotiations and that it proved

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

Judge Morris will continue with the reading of the judgment.

3. *Rhône-Poulenc*.

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

entered into unwillingly by the French as a result of pressure applied by Farben during the military occupation of France and as part of Farben's plan to subject the French pharmaceutical industry to its claim to leadership.

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

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

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

D. Russia

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

but it is not shown that there. was ever any such acquisition.

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

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* Kontinentale Oel A. G.

Individual Responsibility

We will now turn to the consideration of the individual responsibility of the defendants for the acts of spoliation which we have described in the above findings. It is appropriate here to mention that the corporate defendant, Farben, is not before the bar of this Tribunal and cannot be subjected to criminal penalties in these proceedings. We have used the term "Farben" as descriptive of the instrumentality of cohesion in the name of which the enumerated acts of spoliation were committed. But corporations act through individuals and, under the conception of personal individual guilt to which previous reference has been made, the prosecution, to discharge the burden imposed upon it in this case, must establish by competent proof beyond a reasonable doubt that an individual defendant was either a participant in the illegal act or that, being aware thereof, he authorized or approved it. Responsibility does not automatically attach to an act proved

to be criminal merely by virtue of a defendant's membership in the Vorstand. Conversely, one may not utilize the corporate structure to achieve an immunity from criminal responsibility for illegal acts which he directs, counsels, aids, orders, or abets. But the evidence must establish action of the character we have indicated, with knowledge of the essential elements of the crime. In some instances, individuals performing these acts are not before this Tribunal. In other instances, the record has large gaps as to where or when the policy was set. In some instances, a policy is set without clear indication that essential factual elements required to make it criminal were disclosed. Difficulties of establishing such proof due to the destruction of records or other causes does not relieve the prosecution of its burden in this respect.

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

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

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

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

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

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

membership on the Aufsichtsrat does not carry with it responsibility for the actual management of the affairs of the corporation.

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

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

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

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

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

informed of the ramifications of the Nordisk-Lettmetall plan,

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

Von Schnitzler. Von Schnitzler bears a major responsibility for Farben's spoliative activities in Poland and in France. He was the leading figure responsible for the formulation of Farben's general policy designed to achieve domination of the dyestuffs and chemical industries of Europe. He took the initiative in developing plans for the acquisition of the Polish property. Only 8 days after the invasion of Poland, he recommended that the Reich authorities be approached concerning Farben's operation of Polish dyestuffs factories expected soon to fall into German hands. He urged the appointment of Farben or Farben nominees, as trustees for the Polish factories. He conducted or supervised all negotiations transitional to the final acquisition of Boruta, including transmitting personally the proposals for a long-term lease in favor of a Farben subsidiary to be created for this purpose. He personally signed the contract for the permanent acquisition of Boruta. He recommended that the Wola plant be closed down permanently, and recommended transferring equipment from both Wola and Winnica to Farben plants in Germany. In all these matters he aggressively incited the government to action. These facts are sufficient to demonstrate his guilt in regard to the Polish acquisitions.

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

In the Francolor acquisition, von Schnitzler also played the leading role. He was Farben's chief representative at the meeting with representatives of the French and German Governments and representatives of the French dyestuffs industry. At these meetings methods of intimidation were used

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

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

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

He personally served the ultimatum containing Farben's demands, described by the French as a "dictate," on the representatives of the French dyestuffs industry. He subsequently supervised and was appraised of the conference and negotiations conducted by subordinate Farben employees. He personally signed the Francolor Convention, whereby the French dyestuffs industry, in opposition to its wishes, was forced to cede a 51 percent interest in the French industry to Farben. It is clear from this recital of the evidence that von Schnitzler was a party to the illegal acquisition by Farben of permanent property interests in France during belligerent

occupation. This constitutes violation of the rights of private property protected by provisions of the Hague Regulations. Von Schnitzler is found Guilty under count two of the indictment.

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

that his action in approving these transactions constitutes sufficient conduct to warrant a finding of Guilty. The minutes of the Farben groups to which reference has been made are

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

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

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

Hoerlein. There is no substantial evidence connecting the defendant Hoerlein with any of the acts of spoliation charged in the indictment, other than his activity as a member of the Vorstand and the Technical Committee. In this respect, what we have said in general terms in our consideration of the

evidence relied upon in the case of the defendant Gajewski is applicable to this defendant. His principal connection under the evidence was in the Rhône-Poulenc transaction, in which it does appear that he had a degree of participation and knowledge which went beyond that of an ordinary Vorstand member. Under the view which we have expressed in our general findings of the facts, the Rhône-Poulenc transaction is not considered by the Tribunal as involving a war crime within its jurisdiction, regardless of how much the transaction might be condemned based on other considerations. We cannot impute criminal guilt to the defendant Hoerlein

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

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

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

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

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

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

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

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

Schneider, Kuehne and Lautenschlaeger. The evidence to support the charges of participation in the spoliation alleged in count two of the indictment is substantially the same in the individual cases of the defendants Schneider, Kuehne, and Lautenschlaeger. It is the contention of the prosecution that these defendants are responsible for, knew of, and approved the program of Farben to acquire, with the aid of force and compulsion, property in occupied territories. It is contended that these defendants, as members of the Vorstand, attended Vorstand meetings, meetings of the Farben committees, and other policy-making groups, at which such action was authorized or approved. It is further contended that they received reports of a character to advise them of the contemplated action. We have carefully examined this evidence. What we have said with reference to the individual

responsibility of the defendant Gajewski is applicable here. We do not consider that the evidence has sufficiently established the degree of affirmative action with knowledge of the details importing criminality to warrant a finding of guilt in the case of these three defendants. Each is, therefore, acquitted of the charges under count two of the indictment.

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

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

Ambros is acquitted under count two of the indictment.

Buergin. The evidence establishes that the defendant Buergin was specifically informed concerning plans to have the Boruta

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

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

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

[allega...] tions has been carefully examined. We deem it insufficient to establish that the defendant Buetefisch was

directly connected with these spoliative activities, or that he was personally involved therein, within the meaning of Control Council Law No. 10.

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

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

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

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

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

Ilgner. The defendant Ilgner was an active participant in the case of spoliation of Norway and must be held Guilty under count two of the indictment. He was the leading participant in arranging and supervising the various negotiations leading to the Norsk-Hydro agreement, whereby the French shareholders were deprived of their majority interest in favor of a German majority including Farben. He was fully informed concerning the scope of the planned exploitation of the Norwegian economy in the light metals program for the Luftwaffe and joined energetically in the plan. The plan contemplated permanent acquisition by Farben of a substantial interest in

the light metals field in Norway. He was thus a participant and party to the plan to force the use of Norsk-Hydro's facilities in the expansion program for German needs, without regard to the needs of Norwegian economy. He was similarly a party to the scheme to utilize the opportunity to establish a German majority in the share ownership of Norsk-Hydro. Ilgner admits that the French were not represented at the meeting of 30 June 1941 at which Norsk-Hydro's participation in Nordisk-Lettmetall and the increase in Norsk-Hydro's capitalization was voted. The evidence establishes that Ilgner took the position that the presence of all the shareholders was not essential for the safeguarding of their rights. Although much conflicting evidence has been introduced on this point, we are convinced that the French shareholders in Norsk-Hydro were not fully advised of the fall scope of the Nordisk-Lettmetall project; they never intended to lose the majority interest in Norsk-Hydro, and went along after the full plan developed solely because they feared confiscation of their plants in Norway during the military occupancy. Ilgner himself stated in an affidavit:

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

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

We do not find that the evidence establishes beyond reasonable doubt any connection of the defendant Ilgner with

the other particulars alleging acts of spoliation under count two.

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

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

"No negotiations were conducted with these former owners, nor were their interests considered by us. We rather negotiated with the sequestrators appointed by the German Reich. We were indeed aware that the purchase of the real property and of the plants as far as they still existed might be attacked under international agreement. We, therefore,

recognized the possibility that at a later time we might have to return the real property * * * In other words; in order to maintain our oxygen position we reached the result that we should assume the risk of having to return the property." [*NI-8581, Pros. Ex. 1238*.]

Jaehne's connection with this matter was such that he must be held criminally responsible under this aspect of count two of the indictment. There is not sufficient evidence to warrant his conviction under any of the other particulars set forth in count two.

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

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

Oster. The actions of Oster, with reference to the charges

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

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

The report expressed conclusions as to the future value of

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

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

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

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

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

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

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

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

Kugler. Although not a member of Farben's Vorstand, Kugler was a member of the Commercial Committee and was an active Farben leader in the dyestuffs field. We find that the proof does not establish beyond a reasonable doubt sufficient connection of the acts of the defendant Kugler with Farben's acts of spoliation in Poland and Alsace-Lorraine to justify a finding of guilt based on those particulars of the indictment. But Kugler was an active participant, as one of the representatives of Farben, in the negotiations and other steps leading to the Francolor Agreement. It is true that he did not act independently in this matter and was under the direction of two Vorstand members, von Schnitzler and ter Meer, both of whom had authority and policy-making functions far superior to those of Kugler. He participated in the preliminary discussions with the Armistice Commission and in the meetings at Wiesbaden in November 1940, at which the Farben demands were served on the French dyestuffs

representatives and pressure was exerted to force the French to agree to Farben's desire for a 51 percent interest in the French industry. It was Kugler who arranged with the authorities during the military occupation that pressure should be applied, and who obtained support for the suggestion “that no alleviations are offered to production which might weaken the opponent’s will to negotiate.” Kugler was fully advised of all of the steps taken and knew that the Francolor Agreement was being imposed on the French against their will and without their free consent. He participated in the meeting at which the Francolor Agreement was reached and subsequently served on one of the important committees of Francolor. While he was not the dominant figure initiating the policies leading to the unlawful acquisitions, he was criminally connected with the execution of the entire enterprise and must be held Guilty under count two.

COUNT THREE

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

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

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

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

Cyclon-B, which had wide use as an insecticide long before the war, was invented by Dr. Walter Heerdt, who appeared before the Tribunal as a witness. The proprietary rights to Cyclon-B belonged to the firm of Deutsche Gold- und-Silberscheideanstalt, commonly called Degussa, but actual manufacture was performed for it by two independent concerns. Degussa was a competitor of Farben's and of the Th. Goldschmidt A. G. in the production and sale of insecticides. Degussa had, for a long time, sold Cyclon-B through the instrumentality of Degesch, which it dominated and controlled. Degussa, Goldschmidt and Farben, therefore, entered into an

arrangement with Degesch whereby it became the sales outlet for insecticides and related products for all three concerns. As already pointed out, Farben took a 42.5 percent interest in Degesch. The remaining shares in the concern were divided, 42.5 percent to Degussa and 15 percent to Goldschmidt. The management of Degesch was the direct responsibility of Dr. Gerhard Peters, but the firm had an executive board of 11 members — 5 from the Farben Vorstand (the defendants Mann, Hoerlein, and Wurster, together with Brueggemann, who was severed from this trial, and Weber-Andreae, deceased), 4 from Degussa, 1 from Goldschmidt, and Dr. Heerdt, who was connected with a Degesch subsidiary. The defendant Mann was the chairman of the board. Degesch had originally been organized as an outlet for Degussa prod-
[...ucts]

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

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

The proof is quite convincing that large quantities of Cyclon-B

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

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

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

[manu...] factured by Farben and supplied by Farben to officials of the SS were used in experimentations upon * * *

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

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

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

We deduce from the evidence that typhus or spotted fever is communicated to a human being by the bite of a louse. There is always danger of an epidemic of this disease where a large

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

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

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

Through the years Farben had developed a more or less routine method for testing the efficacy of its pharmaceutical discoveries after these had passed the research stage. If it was believed that a new drug had probable medicinal value and that it could be used without harmful results, samples were sent to recognized physicians for testing on patients afflicted with the particular disease with which the remedy was

designed to cope. These physicians, in turn, submitted detailed reports covering their experiences with the drug, after which Farben scientists assembled and studied this data and concluded therefrom whether the firm would sponsor the product and place it on the market. The prosecution does not deny that this was the procedure generally followed by Farben. It asserts, however, that the circumstances surrounding the testing of Farben's vaccine, as well as with respect to its acridine, rutenol, and methylene blue, in combating typhus discloses that the defendants Hoerlein, Lautenschlaeger, and Mann, in particular, well knew that concentration-camp inmates were being criminally infected with the typhus virus by SS doctors for the deliberate purpose of conducting experiments with these Farben products.

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

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

[infer...] ence that the defendants connived with SS doctors in

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

Farben and the Slave-Labor Program

The prosecution does not contend that Farben instituted a slave-labor program of its own. On the contrary, it is the theory of the prosecution that the defendants, through the instrumentality of Farben and otherwise, embraced, adopted, and executed the forced-labor policies of the Third Reich, thereby becoming accessories to and taking a consenting part in the commission of war crimes and crimes against humanity in violation of Article II of Control Council Law No. 10. This, therefore, calls for a brief resumé of the slave-labor program of the Reich Government during the war years. For this purpose we may rely upon the judgment of the IMT, since

Article X of Military Government Ordinance No. 7 provides that, before these Tribunals, the “statements by the International Military Tribunal in the judgment in Case No. 1 constitute proof of the facts stated, in the absence of substantial new evidence to the contrary.” The findings of the IMT with respect to the criminal character of the slave-labor program of the Third Reich were not challenged in this trial.

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

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

The vast reservoir of slave laborers utilized by the Nazis included involuntary foreign workers, concentration-camp inmates, and prisoners of war. Many of these were used in activities connected with military operations against their own

countries, in direct violation of express international law, as well as in general industry and in agricultural pursuits. The plan under which this comprehensive scheme was implemented and administered is disclosed by the following quotation from the IMT judgment:

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

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

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

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

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

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

The Defense of Necessity

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

The existence of the stringent regulations of the Reich labor authorities must be conceded and this requires us to inquire what opportunity, if any, the defendants had of evading them

and what the consequences would have been if they should have attempted to do so. Again, we turn to the judgment of the IMT for the facts. A few of the ultimate conclusions stated therein will serve our purpose. We quote the following brief excerpts from that judgment:

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

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* *Ibid.*, page 176

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

* * * * * * * * * * *

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

* * * * * * * * * * *

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

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> "Independent judgment, based on freedom of thought, was * * * quite impossible."[4]
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> * * * * * * * * * * *
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> "Germany had accepted the dictatorship with all its methods of terror, and its cynical and open denial of the rule of law."[5]
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> * * * * * * * * * * *
>
> "Hostile criticism, indeed criticism of any kind, was forbidden, and the severest penalties were imposed on those who indulged in it."[6]
>
> * * * * * * * * * * *
>
> "The opportunity was taken to murder a large number of people who at one time or another had opposed Hitler."[7]

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

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[1] *Ibid.*, page 178

[2] *Id.*

[3] *Ibid.*, page 179

[4] *Ibid.*, page 182

[5] *Ibid.*, page 181

[6] *Ibid.*, page 182

[7] *Ibid.*, page 181

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

> "The fact that the defendant acted pursuant to order of his government or of a superior shall not free him from responsibility, but may be considered in mitigation of punishment * * *"

Concerning the above provision the IMT said:

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

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

the rule of necessity in the field of the law with which we are here concerned.

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

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

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* *Ibid*., page 224

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

"The evidence indicates that the defendants had no actual control of the administration of such program even where it affected their own plants. On the contrary, the evidence shows that the program thus created by the state was rigorously detailed and supervised by the state, its supervision even extending into prisoner-of-war labor camps and concentration-camp inmate labor camps established and maintained near the plants to which such prisoners of war and concentration-camp inmates had been allocated. Such prisoner-of-war camps were

in charge of the Wehrmacht (Army), and the concentration-camp inmates labor camps were under the control and supervision of the SS. Foreign civilian labor camps were under camp guards appointed by the plant management subject to the approval of state police officials. The evidence shows that the managers of the plants here involved did not have free access to the prisoner-of-war labor camps or the concentration labor camps connected with their plants, but were allowed to visit them only at the pleasure of those in charge.[1]”

* * * * * * * * * * "

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

* * * * * * * * * *

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

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

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

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

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

“The war effort required all persons involved to use all facilities to bring the war production to its fullest capacity. The steps taken in this instance, however, were initiated not in

governmental circles but in the plant management. They were not taken as a result of compulsion or fear, but admittedly for the purpose of keeping the plant as near capacity production as possible."

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

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[1] Ibid., page 1201.
[2] Ibid., page 1202.
[3] See U. S. *vs.* Ernst von Weizsaecker *et al.*, volume XIV, this series (Appendix B - "The Roechling Case"), page., 1061-1197.

in Berlin a memorandum requesting that he obtain the utilization of Belgian labor in order to develop German industry; that he suggested in this connection that youths of 18 to 25 should be drafted to obligatory work under German command — which would mean the utilization of approximately 200,000 persons;" that he also "requested that negotiations be started immediately in order to obtain a considerable number of Russian youths of about 16 years of age for labor in the iron industry;" that he "requested the

taking of a general census of French, Belgian, and Dutch youths in order to force them to work in war plants or to draft them into the Wehrmacht, together with the promulgation of a law which would make work obligatory in the occupied countries;" and that he also "incited the Reich authorities in the most insidious manner to employ inhabitants of occupied countries and POW's in armament work, with complete disregard of human dignity and the terms of the Hague Convention." Two defendants were acquitted and two others convicted by the French Tribunal. The latter — von Gemmingen and Rodenhauser — were found guilty as co-authors and accomplices to the above-described illegal employment of prisoners of war and deportees by Hermann Roechling, and to his encouragement of illegal punishments meted out to said involuntary laborers. Said illegal punishments were imposed by a summary court organized, in agreement with the Gestapo, by von Gemmingen and Rodenhauser in the Roechling plant, of which they were both directors. It is thus made clear that the defense of necessity could not have been successfully invoked on behalf of either of said named defendants. Concerning the acquitted defendants, Ernst Roechling and Albert Maier, the high Tribunal expressly said that the evidence did not establish that either of them exercised *initiative* in connection with the slave-labor program.

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

From a consideration of the IMT, Flick, and Roechling judgments, we deduce that an order of a superior officer or a law or governmental decree will not justify the defense of necessity unless, in its operation, it is of a character to deprive

the one to whom it is directed of a moral choice as to his course of action. It follows that the defense of necessity is not available where the party seeking to invoke it was, himself, responsible for the existence or execution of such order or decree, or where his participation went beyond the requirements thereof, or was the result of his own initiative.

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Auschwitz and Fuerstengrube

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

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

It was estimated that the new buna plant would have a production capacity of 30,000 tons per year. It was planned to combine the buna factory with a new fuel-producing plant on the same site, but buna was to be given preference. A number of considerations entered into the selection of Auschwitz: they included an ideal topographical location which was not vulnerable to air attacks from the west, the proximity to important raw materials, an abundant supply of coal und

water, and the availability of labor. The labor situation embraced two factors: the comparatively dense population of the area and the nearby concentration camp Auschwitz, from which forced labor could he obtained. The evidence is sharply conflicting as to the importance of the concentration camp in deciding upon the location of the plant. We are satisfied after a thorough consideration of the evidence, that while the camp may not have been the determining factor in selecting the location, it was an important one and, from the beginning, it was planned to use concentration-camp labor to supplement the supply of workers.

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

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

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

He made frequent inspection trips during which lie observed the laborers at work. He also visited the adjoining labor camp of Monowitz, over which the SS had supervision.

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

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

The first building conference with respect to Auschwitz construction was held on 24 March 1941 in Ludwigshafen [*NI-11115, Pros. Ex. 1426*]. Nine persons were present. They were officials and engineers of Farben. The only two who have been made defendants in this case are Ambros and Duerrfeld. At

this meeting it was decided to hold building conferences at weekly intervals for the present. The purpose of the conferences was to allot fields of work to the individual conference members with a view to avoid overlapping of activities. The members of the conference made reports on performance of their respective duties. Ambros reported that the general planning of the Auschwitz plant lay at present in the hands of engineers Santo, Duerrfeld, and Mach. Duerrfeld reported on a discussion with Wolff of

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

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

> “By order of the Reichsfuehrer SS extensive assistance from the Auschwitz concentration camp had been promised for the building period. The camp commandant, Sturmbannfuehrer Hoess, had already made arrangements for the employment of his men. The concentration camp would supply

> prisoners for preliminary work and craftsmen for carpentry and fitting; it would also assist the plant in the feeding of the building workers and would supply the building site with gravel and other materials."

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

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

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

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

[con...] struction site were discussed. Among other things, it was reported that the concentration camp could not give the expected help since it was under orders to set up accommodations for 120,000 captured Russians as fast as possible. Other possible sources of labor were considered.

These do not appear to include either forced foreign labor or prisoners of war.

In the report of the 19th construction conference, on 30 June 1942 [*NI-11137, Pros. Ex. 1147*], reference is made for the first time to the employment of forced labor other than that from the concentration camp. It appears that 680 Polish forced laborers had been employed recently and therefore no evaluation was as yet possible as to whether or not they were satisfactory. The report also stated that women from the Ukraine were well fitted for excavation work, but the voluntary status of these women workers is not disclosed. At the 20th construction conference, on 8 September 1942, Duerrfeld, Ambros, and Buetefisch were present [*NI-11138, Pros. Ex. 1448*]. Duerrfeld reported that the intended sharp increase of labor requirements would continue to strain the provisions for workers and that certain auxiliary supply sources for labor were available, among them being recruitments of Poles, which would provide 1,000 workers. Two thousand Russian workers were to be sent to Auschwitz by order of Sauckel, but no definite promises were at hand. This statement would imply that the Auschwitz construction management was seeking these workers. This report also states that Sauckel promised 5,000 prisoners of war for the building sites in Upper Silesia and that 2,000 of these were intended for Auschwitz while the remainder went to other firms.

Reports of subsequent construction conferences show that forced workers and prisoners of war continued to be employed at Auschwitz in construction work. Auschwitz was financed and owned by Farben. While its purpose was the production of buna and motor fuels which would be of immediate use to the Armed Forces of Germany, the plant was being built on a permanent basis with the ultimate object of operating it in peacetime private industry. The use of prisoners of war in the type of construction disclosed by this record does not appear to be in contravention of the prohibition of the Geneva Convention, and unless their treatment was such as to violate

international law it does not appear that a crime was committed in their utilization. The prisoners of war were treated better than other types of workers in every respect. The housing, the food, and the type of work they were required to perform would indicate that they were the favored laborers of the plant site. There may have been isolated instances of ill-treatment, but they cannot be attributed to any over-all policy of Farben or to acts with which any of the defendants may be charged directly or indirectly. It therefore appears that we need

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

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

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

In 1942, at the instigation of Farben, a separate labor camp known as Monowitz was built adjacent to and across the road from the plant site [*NI-14524, Pros. Ex. 2126*]. This camp was some improvement as to its physical aspects over the

Auschwitz concentration camp. The workers, however, were still under the control and supervision of the SS at all times when they were not on the construction site. Those who became unable to work or who were not amenable to discipline were sent back to the Auschwitz concentration camp or, as was more often the case, to Birkenau for extermination in the gas chambers. Even at Monowitz, the housing was at times insufficient to reasonably accommodate the large number of workers crowded into the barrack-like facilities. The food was inadequate, as was also the clothing, especially in the winter.

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

The defense has stressed, not wholly without merit, that the concentration-camp workers lived under the control of the SS and worked under the immediate employment and direction of the construction contractors (some 200 or more) who were

engaged in preparing the site and building the plant. It is clear that Farben did not deliberately pursue or encourage an inhumane policy with respect to the workers. In fact, some steps were taken by Farben to alleviate the situation. It voluntarily and at its own expense provided hot soup for the workers on the site at noon. This was in addition to the regular rations. Clothing was also supplemented by special issues from Farben. Despite this, however, it is evident that the defendants most closely connected with the Auschwitz construction project bear great responsibility with respect to the workers. They applied to the Reich Labor Office for labor. They received and accepted concentration-camp workers, who were placed at the disposal of the construction contractors working for Farben. The chief engineer, Duerrfeld, with the advice of other defendants, had a definite responsibility regarding the project in the over-all supervision of and authority over the construction work. Responsibility for taking the initiative in the unlawful employment was theirs and, to some extent at least, they must share the responsibility for mistreatment of the workers with the SS and the construction contractors.

Concentration-camp workers by no means constituted all of the laborers on the plant site. Free workers were employed in large numbers. Foreign workers made their appearance there in 1941. Many, if not all, of these were at first voluntary workers, that is, foreigners who had contracted to come to Germany for a stated amount of pay. They consisted chiefly of Poles, Ukrainians, Italians, Slavs, French, and Belgians. Some experts and technicians were also recruited on a similar basis. After Sauckel’s program of forced labor became effective, workers of this type began to appear at Auschwitz in increasing numbers. The defendants contend that, the recruitment of labor being under direct control of the Reich, they did not know the conditions under which the recruitment took place and, since the foreign workers at first were procured on a voluntary basis, the defendants were unaware later that the method had been changed and that many of the subsequent workers had been procured through a system of

forced-labor recruitment. This contention cannot be successfully maintained. The labor for Auschwitz was procured through the Reich Labor Office at Farben's request. Forced labor was used for a period of approximately 3 years, from 1942 until the end of the war. It is clear that Farben did not prefer either the employment of concentration-camp workers or those foreign nationals who had been compelled against their will to enter German labor

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

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

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

Farben, for it was intended that their production would be utilized in connection with the manufacture of gasoline from coal in the fuels plant at Auschwitz.

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

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

with considerable freedom and opportunity for initiative on the part of Farben officials connected therewith. The evidence does not show that the choice of the Auschwitz site and the erection of a buna and fuels plant thereon were matters of compulsion, although favored by the Reich authorities, who were anxious that a fourth buna plant be put into operation. The site was chosen after a survey of many factors, including

the availability of concentration-camp labor for construction work. As an adjunct of Auschwitz, the controlling interest in the Fuerstengrube and Janina mines was acquired under circumstances that impute knowledge of the fact that they could not be operated successfully by voluntary labor. Involuntary labor was used: first, Poles and prisoners of war and, later, concentration-camp inmates. The use of prisoners of war in coal mines in the manner and under the conditions disclosed by this record, we find to be a violation of the regulations of the Geneva Convention and, therefore, a war crime. The use of concentration-camp labor and forced foreign workers at Auschwitz with the initiative displayed by the officials of Farben in the procurement and utilization of such labor, is a crime against humanity and, to the extent that non-German nationals were involved, also a war crime, to which the slave-labor program of the Reich will not warrant the defense of necessity. It also appears that the employment of concentration-camp labor was had with knowledge, of the abuse and inhumane treatment meted out to the inmates by the SS, and that the employment of these inmates on the Auschwitz site aggravated the misery of these unfortunates and contributed to their distress.

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

Krauch: As we further appraise the responsibility of the respective defendants, we find that Krauch, as Plenipotentiary General for Special Questions of Chemical Production, dealt with the distribution of labor that had been allocated to the chemical sector by Sauckel. It was Krauch’s responsibility to

pass upon the applications for workers made by the individual plants of the chemical industry and, in so doing, he took into account the demands that military service had made upon the plants as well as the labor requirements that resulted from expansion. It seems that Krauch is inextricably involved in the allocation of labor to Auschwitz in a manner that negatives his lack of knowledge of the employment of concentration-camp inmates and

forced foreign labor on the Auschwitz construction project. On 25 February 1941, Krauch wrote a letter to Ambros in which he referred to Goering's order emphasizing the urgency of the project and advising Ambros of the priority of Auschwitz in the procurement of labor [*NI-11938, Pros. Ex. 2199*]. Later Krauch himself visited the construction site. On 17 January 1943, Krauch addressed a letter to Duerrfeld in which he complimented Duerrfeld, as Krauch's commissary, in setting up the Poelitz installation [*NI-11085, Pros. Ex. 1500*]. He then ordered Duerrfeld to continue as commissary for the setting up of the whole Auschwitz plant, and states: “I wish to assure you of my personal support in every way in your carrying out of this task.” The minutes of a meeting of the Central Planning Board on 2 July 1943, with Krauch present as one of the board members, discloses that Ambros gave a review of damage, apparently from Allied bombing, at the Huels plant of Farben, in which he discussed the labor requirements for reconstruction which involved the procurement of men from the compulsory service of the Reich. The Planning Board promised the fulfillment of Ambros’ requests in this respect. It also discussed the labor situation at Auschwitz and the need for more workers, including additional inmates from the Auschwitz concentration camp. With respect to the latter request, it is stated that Reichsfuehrer Himmler should be contacted immediately. On 13 January 1944, Krauch addressed a letter to President Kehrl of the Central Planning Board, in which he discussed the allocation of labor. It appears that

there had been in the past some misunderstanding between Krauch's office and the Armaments Office. Krauch maintained his position by saying:

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

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

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

activities were such that they impel us to hold that he was a willing participant in the crime of enslavement.

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

On 31 October 1941, Keitel, who was then Chief of the High Command of the Armed Forces of Germany, issued a secret order [*EC-194, Pros. Ex. 1287*], the subject of which was "Use of Prisoners of War in the War Industry," wherein he stated that the Fuehrer had ordered that the working power of Russian prisoners of war should be utilized to a large extent to meet requirements of the war industry. He listed examples of the type of work for which these prisoners might be suitable, which included construction work for both the Armed Forces and the Armament industry. Other important activities so listed were armament factories, mining, railroad construction, agriculture, and forestry. The distribution list of this order does not include Krauch or his immediate superior, Colonel Loeb. The fact that Krauch had given favorable consideration to the use of Russian prisoners of war in the armament industry is disclosed by a letter of Kirschner, a subordinate of Krauch, who wrote to General Thomas, Chief of the Office of Military Economy and Armament, on 20 October 1941, that he had discussed the matter with Krauch [*EC-489, Pros. Ex. 473*]. Kirschner reports that Krauch had developed an idea concerning the employment of Russian prisoners of war and enclosed a note of Krauch's intentions with his letter. We do not have the benefit of the contents of this note, but we are, nevertheless, satisfied that Krauch was in accord with the use of prisoners of war in the war industry. But that, in itself, is not

sufficient to warrant a finding of Guilty for the commission of war crimes under count three. Keitel's order gives no authority to the Plenipotentiary General for Special

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

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

"I believe that most of the information I had on the building of the Auschwitz plant came either through correspondence or through conversations with Ambros, and Ambros has in very long conversations shown me all the things which I call good industrial conditions. I know that he brought me a map and that he showed me everything, but according to the best of my

recollection he did not draw special attention to the existence of the concentration camp. Ambros himself, in the TEA, developed, with the help of a map of the site of Auschwitz, the general conditions, the size, and also the way the factory should be built. I do not recall that he at that time discussed that some of the labor would be drawn from the nearby concentration camp, but I would say that Ambros, who in his reports of this kind was very exact, probably mentioned it, but I am not positive."

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

of Auschwitz consisted of 2,000 Germans, 1,000 Jews, and 7,000 Poles. The Jews and Poles were to be turned out so that the town would be available for the staff of the factory. The report then states: "A concentration camp will be built in the immediate neighborhood of Auschwitz for the Jews and Poles."

At a regional planning meeting on 31 January 1941 [*NI-11785*, *Pros. Ex. 1419*], attended by Chief Engineer Santo of the Ludwigshafen plant, who later became a member of the Auschwitz Planning Committee, the labor problems of Auschwitz were again discussed, and it is stated in the report that "The concentration camp already existing with approximately 7,000 prisoners is to be expanded. Employment of prisoners for the building project possible after negotiations with the Reichsfuehrer SS."

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

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

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

The evidence clearly establishes that one of the chief problems of Farben in connection with the building of the Auschwitz plant was the procurement of labor for the construction work. Thousands of unskilled laborers were required, whose work was of course only temporary and who would not become permanent employees. It was the type of labor that could be procured through the concentration camp and the Sauckel program. The captured documents to which we have referred established beyond question that the availability of concentration-camp labor figured in the planning of the Auschwitz construction. Ambros played a major role in this planning. His immediate superior with whom he had frequent contact and to whom he made detailed reports was ter Meer. The over-all field of new construction was one in which ter Meer was both active and dominant. It is indeed unreasonable to conclude that, when Ambros sought the advice of and reported in detail to ter Meer, the conferences were confined to such mutters as transportation, water supply, and the availability of construction materials and excluded that important construction factor, labor, in which the concentration camp played so prominent a part. Ter Meer’s

visits to Auschwitz were no doubt as revealing to him as they are to this Tribunal. Hoess was reluctant

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

Other Members of the TEA and the Plant Leaders. In addition to the defendants ter Meer and Ambros, the defendants Gajewski, Hoerlein, Buergin, Jaehne, Kuehne, Lautenschlaeger, Schneider, and Wurster were also members of the Technical Committee. These defendants were plant leaders or managers of one or more of the important plants of Farben. These plants were integrated into the war economy of the Reich by order of governmental authority. In a Hitler decree regarding the protection of armament economy, dated 21 March 1942 [*PS-1666, Pros. Ex. 1290*], war-essential requirements were given absolute priority in the allocation of available manpower. Plant leaders were ordered to consider the necessities of the Reich in war economy as if they were their own. “All considerations, arising from personal interests

or from the desire for peace, must be discarded * * * Whoever disregards this trust and offends against the conduct expected of a plant leader, will be subjected to unrelenting, most severe punishment * * *”

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

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

[con...] ditions therein with regard to production orders and manpower. They were directed to supervise the allocation of labor and the proper consumption of raw materials on quota, plant maintenance, coal, et cetera, in the plants of which they were in charge. Thus it appears that the plant leaders were given little opportunity to exercise initiative in matters pertaining to production. They were all well informed of and knew that compulsory foreign workers, prisoners of war, and concentration-camp inmates were being employed in the Farben plants and they acquiesced in this practice under the pressure of conditions as they then existed in the Reich. We are not convinced from the proof that any of these defendants exercised initiative in obtaining forced labor under such

circumstances as would deprive them of the defense of necessity. Ambros made a report at a meeting of the TEA on 21 April 1941 in which he specifically mentioned that concentration-camp inmates were being utilized in construction work at the buna plant Auschwitz, but the extent of his disclosures is not revealed by the evidence. It is not established that the members of the TEA were informed of or that they knew of the initiative being exercised by the defendants Ambros, Buetefisch, and Duerrfeld in obtaining workers for the Auschwitz project, or that the availability of such labor was one of the determining factors in the location of the Auschwitz site. The affiant Struss, Director of the Office of the Technical Committee testified:

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

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

prepared to

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

Concerning the charges of mistreatment of forced foreign workers and prisoners of war in the Farben plants of the various works combines, much conflicting evidence has been presented. Its evaluation impels us to find that as a general policy Farben attempted to carry out humane practices in the treatment of its workers and that these individual defendants did what was possible under then existing conditions to alleviate the miseries inherent in the system of slave labor. Huge sums were expended for housing and a variety of welfare purposes. There were many isolated abuses of individual workers but it has not been shown that such acts were countenanced by any of these defendants nor can it be said that they went beyond what the regulations required in the treatment or discipline of the workers. Here again it must be recalled that the Gestapo was ever on hand to enforce compliance by an employer with what the system demanded. At the Landsberg plant, one of the units under the jurisdiction of the defendant Gajewski, a number of prisoners of war died during the course of their work. We do not consider that the proof establishes that this resulted from mistreatment by Farben officials. The military authorities were largely responsible for the food, treatment and allocation to duties of prisoners of war. The proof presented on this matter is consistent with the inference that the prisoners of war were in a poor state of health when they arrived and that this was the

cause of their deaths rather than work or ill-treatment. Nor may we, in justice, hold the defendant Buergin responsible for the two criminal atrocities occurring at the Bitterfeld plant. On one occasion a Russian prisoner was shot attempting to escape confinement. There is no showing that Buergin had any connection with the incident or that he countenanced or approved any such action. Buergin was not at the Bitterfeld plant on the occasion when the Gestapo publicly hanged five Russians at one of the camps to intimidate the other workers. The record shows that the plant management protested the contemplated action of the Gestapo and withheld, at no little risk, its cooperation. The evidence relied upon by the prosecution to establish initiative on the part of individual plant leaders in obtaining and using compulsory labor has been carefully considered by the Tribunal. Without reviewing each item of evidence in detail it is our conclusion that the action of the defendants in this regard has not been established beyond reasonable doubt.

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

It is our conclusion and we hereby find and adjudge that the defendants Gajewski, Hoerlein, Buergin, Jaehne, Kuehne,

Lautenschlaeger, Schneider, and Wurster are Not Guilty under count three of the indictment.

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

consider these defendants to be responsible for the

occurrences at the Auschwitz construction site.

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

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

COUNT FOUR

THE PRESIDENT: Count Four. This count charges that:

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

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

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

> "1. Each of the following acts is recognized as a

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

Article 10 of the Charter of the IMT provides:

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

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

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

The IMT said:

> "A criminal organization is analogous to a criminal conspiracy in that the essence of both is cooperation

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

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

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

* * * * * * * * * * *

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

"The de-Nazification Law of 5 March 1946, however, passed for Bavaria, Greater-Hesse, and Wurttemberg-Baden, provides definite sentences for punishment in each type of offense. The Tribunal recommends that in no case should punishment imposed under Law No. 10 upon any members of an

organization or group declared by the Tribunal to be criminal exceed the punishment fixed by the de-Nazification Law. No person should be punished under both laws."[3]

For having actively engaged in the National Socialistic tyranny in the SS, the de-Nazification Law of 5 March 1046, for Bavaria. Greater- [Hesse]

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

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

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

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

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

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

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

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

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

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on 20 April 1939; that contemporaneously therewith he was promoted to the rank of Hauptsturmfuehrer (Captain); that on 30 January 1941 he was made a Sturmbannfuehrer (Major);

and that he became an Obersturmbannfuehrer (Lt. Colonel) on 5 March 1943. The same records disclose that said defendant was assigned initially to the Upper Sector Elbe, from 1 May to 1 November 1941 to the Personnel Branch of the Main Office, and after the last mentioned date to the SS Main Office proper.

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

Soon after he became deputy manager of the Leuna plant of Farben in 1934 he came into contact with one Kranefuss, the executive secretary of the Himmler Circle of Friends and the chairman of the Vorstand of BRABAG (the abbreviation for a corporation producing gasoline from lignite), whom the defendant had first come to know when they were schoolmates. During the years following the renewal of their contacts, the defendant made frequent use of his personal relationship to Kranefuss and the latter's good offices in connection with business matters and, particularly, for the protection of certain Jews and other oppressed persons in the welfare of whom the defendant had become interested. Early in 1939 Krunefuss suggested to the defendant that intervention on behalf of politically oppressed persons would be much easier if the defendant should affiliate himself with the SS. To this the defendant replied that on account of his professional and personal convictions he could not subscribe to the membership oath, submit to the SS authority of command, attend its functions, or wear its uniform. The defendant says that he believed that this would put an end to the suggestion that he should affiliate himself with the organization but that, much to his surprise, Kranefuss advised him soon thereafter that he might be made an honorary member, with the reservations enumerated above. The defendant says that he thereby found himself confronted with an alternative which he did not anticipate, namely, that of losing the friendship of Kranefuss, which he had found most helpful in aiding the oppressed persons who were the direct objects of SS intolerance, or of accepting honorary

membership, conditioned as aforesaid. He chose the latter course, and says that to the end he never took the SS oath, submitted to its authority of command, attended any of its functions, or owned or wore a uniform. When, after he became an honorary member, it was suggested to the defendant that he should procure a uniform for use on special occasions, Buetefisch pointed to the conditions that he had attached to his acceptance of membership and stood adamant. This resulted in a controversy with Kranefuss, in the course of which the defendant asked that his name be deleted from the list of SS rank holders. The defendant says, also, that his

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

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

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

policies of the Third Reich."*

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

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

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* See volume VI, this series, page 1218.

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

> "At the Reich Party meeting in 1986 he (von Schroeder) was told orally by Himmler that he had

been accepted as an honorary member with the rank of Standartenfuehrer by the Allgemeine (General) SS.

* * * * * * * * * * *

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

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

We do not attach any special significance to the fact that the defendant was classified as an "honorary member," but we are of the opinion that the defendant's status in the organization must be determined by a consideration of his actual relationship to it and its relationship to him. Membership in an organization ordinarily involves, reciprocally, rights, privileges, and benefits accruing to the member from the organization and corresponding duties, obligations, and responsibilities flowing to the organization from the member. One of the advantages to be gained by an organization from having so-called honorary members is the added prestige accruing to it

from having prominent personages identified with it. This point was emphasized by the Supreme Spruchkammer in dealing with von Schroeder, but even that benefit is negatived here by the showing of the refusal of Buetefisch to attend the organization's functions or wear its insignia.

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

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

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

In 1936 the defendant moved to Berlin to become a member of the Economic Policy Department (WIPO) of Farben's NW-7 Office. The prosecution contends that while he was in Berlin the defendant was an active member of the Allgemeine (General) 55, and it sought to establish that fact by documentary proof as follows:

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

2. An SS Racial and Settlement questionnaire, filled out by the defendant, likewise giving his SS number as 200,180, his rank as a 2d Lieutenant, his unit as “SD-Main Office,” and his

activity as “Honorary Collaborator of SD-Main Office.”

3. The defendant’s written application for permission to marry (required of all members of the 55 and also of the Wehrmacht) addressed to the Reich Chief of the SS on 6 May 1939. On this printed form were listed four classes of SS memberships (not including the Riding Unit), and that of the General SS had been underscored, indicating, so the prosecution says, that the defendant at the time regarded himself as a member of that group. This document also gave the defendant’s membership number as 200,180, his unit as “SD-Main Office,” and his superior as Colonel Six, a Department Chief in that office.

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

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

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

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

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

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

In dealing with the SD, the IMT included "all local

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

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

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

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

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

STATEMENT OF JUDGE HEBERT JUDGE HEBERT

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

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

governmental solution of the situation,

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

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

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

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

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

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

FORMAL JUDGMENT AND SENTENCES

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

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

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

DEFENDANT KRAUCH

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

DEFENDANT SCHMITZ

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

DEFENDANT VON SCHNITZLER

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

DEFENDANT TER MEER

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

DEFENDANT AMBROS

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

the Tribunal sentences

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

DEFENDANT BUERGIN

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

DEFENDANT BUETEFISCH

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

DEFENDANT HAEFLIGER

The defendant PAUL HAEFLIGER is found Guilty under count two, and Not Guilty under counts one, three, and five of the indictment. For the offense of which he has been found Guilty, the Tribunal sentences said defendant to imprisonment for 2 years. He shall, however, be allowed credit on said sentence

for the period of time that he has already spent in custody, to wit: from 11 May 1915 to 30 September 1945 and from 3 May 1947 to the date of this judgment, both inclusive.

DEFENDANT ILGNER

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

DEFENDANT JAEHNE

The defendant FRIEDRICH JAEHNE is found Guilty wider count two, and Not Guilty under counts one, three, and five of the indictment. For the offense of which he has been found Guilty, the Tribunal sentences said defendant to imprisonment for 11/2 years. He shall, however, be allowed credit on said sentence for the period of time that he has already been in custody, to wit: from 18 April 1947 to the date of this judgment, inclusive.

DEFENDANT OSTER

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

inclusive.

DEFENDANT DUERRFELD

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

DEFENDANT KUGLER

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

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

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

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

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

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

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

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

And the said defendants and their defense counsel, each for

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

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

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

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

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