

XIII. DISSENTING OPINION OF JUDGE WILKINS ON THE DISMISSAL OF CERTAIN OF THE CHARGES OF SPOILIATION¹

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

“* * * The negotiators Klaus von Bohlen-Halbach, Johannes Schroeder (finance director of the firm of Krupp, Essen), and Ing. Rusicka of the Krupp-Gruson-Plant in Magdeburg, sent by the Fried. Krupp A.G., Essen to negotiate shortly after Austria's Anschluss to Germany, made offers which were not even debatable; they also considered the evaluation of assets of the reconstruction balance of the Berndorfer Krupp A.G. much too high, and left no stone unturned in order to deprive the bank of this valuable share at as little financial cost as possible.

“When I broke off negotiations in May 1938 and reported to my principals at the bank (the board of directors—Vorstand) that I considered it unjustifiable to dispose of such a valuable enterprise for a mere token amount (Anerkennungsbetrag) Goering via Keppler, i.e., Olscher * * * intervened—as I was told by Herr Baurat Ing. Heller—and despite all remonstrances—I could not prevent the acquisition of this valuable enterprise by the Friedrich Krupp A.G. in Essen for a round sum of RM 8,424,000.”

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

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

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

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

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

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

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

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

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

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

* Trial of the Major War Criminals, *op. cit. supra*, page 198 and 194.

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

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

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

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

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

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

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

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

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

THE MONTBELLEUX MINE, FRANCE

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

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

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

In August 1942 the property was seized without notice to the owner of the concession and without the issuance of a requisition. A plan was put into operation by the Todt Organization under the technical direction of the Krupp firm whereby the mine would be producing within a year.

The business report of the Krupp Administration for Ore Mining for the years 1942–1943 states the following (*NIK-12908, Pros. Ex. 637*) :

“At the instigation of the Reich Minister for Armament and War Production and of the Reich Economics Minister, the draining of the Montbelleux Tungsten Ore Mine, shut down

since 1918, was begun by the Organization Todt in August 1942. In this connection our firm had a representative, even at that time, acting in an advising capacity. We shall take over the direct operational management of the mine on 1 April 1943, after a contracting firm (C. Deilmann, Dortmund) completes the installation of temporary surface equipment and the clearing out and expansion of the dilapidated main list shaft.

"Pursuant to a contract concluded with the Organization Todt the local operational management of the Krupp firm is acting as an independent construction unit within the framework of the Organization Todt in the performance of these tasks, and direct assistance is being given by the Organization Todt, especially in the carrying out of the necessary construction work and the supply of the needed replacements. As representatives of the sponsoring Ministries, the authorized agent of the Reich Minister for Armament and War Production and the Military Commander in France, Department of Mining, are competent in France."

The Brandt interests attempted further negotiations with the Krupp firm in order to obtain recognition to their rights in the property. Conferences took place between them and an agreement was prepared following these negotiations, but in September 1943 a letter from the Krupp firm advised Brandt that they had relinquished the management of Montbelleux for the benefit of a state organization within the framework of the Todt Organization.

Further attempts by Brandt and the French Government in his behalf for a recognition of his interests were of no avail and no payments of any kind were ever received by Brandt for ores extracted from his concession.

A contract was executed by Krupp and the Todt Organization under which Krupp assumed all responsibility for the underground workings, the obligation to provide the bulk of the machinery, the skilled workmen, necessary responsible management, personnel as well as technical supervision and office workers. The Todt Organization agreed to provide the buildings and installation on the surface, the French workmen, and assist in obtaining the necessary equipment. Krupp agreed to reimburse the Todt Organization for all expenses incurred by it and to handle the accounting, and the mining, delivery, and sale of the tungsten ore. The entire project was under the responsible management of the Krupp firm which in turn was responsible to the Commissioner for Mining of the Military Commander of France. The Todt Organization was not to intervene in the sphere of duties of Krupp except in case of impending danger.

The French Government had interceded in behalf of the owners of the surface rights of the mine property and steps were taken by the Montbelleux management to indemnify these owners for the use of their property. Brandt's concession covered only the underground rights. The following correspondence between the Krupp firm and the Montbelleux management is worthy of note (NIK-8068, *Pros. Ex. 729*) :

"We acknowledge the receipt of your above mentioned letter and agree with the way in which you are proceeding in this matter. However, we attach great importance to the fact that the firm of Krupp be completely left out in the negotiations with the owners, as well as when making payments to them. Therefore, everything pertaining to this matter must be done in the name of the Organization Todt."

The management replied (NIK-8066, *Pros. Ex. 731*)—

"We have taken note of the above communication and shall conduct all negotiations in accordance with your directives as it has been our practice so far."

Meantime the Krupp firm put the mine into operation. Necessary equipment and lumber for mine props were obtained by the Todt Organization from the local French economy. In the report of the Main Administration for Ore Mining appears the following (NIK-12908, *Pros. Ex. 637*) :

"An estimate of 50-60 tons of WO_3 is made for the ore found immediately after the draining of the mine. According to the plans made with the interested Reich offices (Reichsstellen), for the time being a daily output of 50 tons of raw ore was intended. An ore dressing plant built for an output of this volume, delivered by the Krupp-Grusonwerk, was installed in the meantime and put in operation in September 1943. A production of 5-7 tons of concentrates per month is expected from this plant after the initial period of getting operation started.

* * * * *

"In the business year in all over 3,000 meters of mine installations (shafts, galleries, tram-ways, overhead structure) were drained or newly built. The mining of the ore was commenced at the beginning of July. Since then about 1,800 tons of raw ore were turned out, most of which was placed on the ore dump, since the new ore dressing plant could not start regular operations until the end of September. In addition to a certain amount of concentrates which could be picked out in the mine itself by hand methods, one-half ton of bruddle concentrates was produced in the year of the report. In October 1943, how-

ever, it was possible to increase the production of concentrates by the ore dressing plant to about 4 tons. The number of personnel for the mine was 252 at the end of the year of the report."

The mine was operated until June 1944 when the Germans were forced to evacuate due to the advance of the Allied forces. Before departing, however, the equipment was thoroughly and systematically destroyed and surface buildings set on fire. Dynamite was used to destroy much of the surface machinery.

During the period of exploitation of the mine approximately 50 tons of tungsten ore concentrates were removed and shipped to Germany, some of which reached the Krupp plants. The system of mining used—that of stripping—was designed to obtain the maximum quantity of ore within the shortest period of time and without regard to future mining operations. As a result, considerable exploratory work and reconstruction would be necessary before normal mining operations could be resumed by the French owners. This operation resulted in supplying Germany and the Krupp firm with at least 50 to 60 tons of a very valuable and very scarce metal which was taken from the French owner without authorization and for which he received no compensation. The operation of this mine was of such importance that the subject was discussed at a conference between Hitler and Speer in August 1942. Notes of the latter state:

"I reported to the Fuehrer on the development of the Wolfram-Mine Montbelleux. The development should be carried through completely."

I am satisfied from the credible evidence presented before us that the confiscation of this mine was a violation of Article 46 of the Hague Regulations. The removal of the ore concentrates to Germany and the systematic destruction of the machinery at the time of the evacuation were acts of spoliation in which the Krupp firm participated.

CHROMASSEO MINES, YUGOSLAVIA

On 10 October 1940 Johannes Schroeder, a direct subordinate to defendant Loeser in the finance department, submitted a very thorough and excellent intelligence report to his superiors in the Krupp firm on the then economic, political, and military conditions in Yugoslavia. Just 6 months thereafter (6 April 1941) the German Army invaded Yugoslavia and Greece. Defendant Loeser thought so well of the report that he set up the distribution list in his own handwriting, on the list being the names

of Alfried Krupp, von Buelow, and others, including Fritz Mueller who was at the time a member of the Vorstand but who is not to be confused with the defendant [Erich] Mueller. A few days later Fritz Mueller in a note to Schroeder acknowledged receipt of the report and made the following comment (*NIK-13222, Pros. Ex. 771*) :

“Attached the Yugoslavia report with many thanks returned. It is so interesting that I should like to ask you to let me have a copy for handing on. For foreign oil questions I am the representative of the Security Service of the SS and as such have already short-circuited (?) the Security Service with Mr. von Buelow. Your report I would send to the competent man at the Security Service in Berlin, SS Sturmbannfuehrer Bauhin, c/o Reichswerke Hermann Goering, Berlin * * *.” (The Security Service was declared a criminal organization by the IMT.)

As has been seen in the other countries which were previously overrun by the German Army, there was extremely close cooperation between the Krupp firm and the Reich governmental agencies immediately following the invasion. This team work is even more pronounced prior to and after the invasion of Yugoslavia. I quote at length from a very enlightening affidavit of George Ufer, a Krupp employee who was able to serve two masters, the Reich government and Krupp, during the occupation of Yugoslavia (*NIK-13330, Pros. Ex. 775*) :

“In May 1940, I was hired by the Krupp firm as assistant to the manager of Yugochem which was being founded at that time. The Yugochem was a foundation which was financed 50 percent by Krupp and 50 percent by the Hermann Goering Works. My task as a mining expert was to examine geologically chromium ore mines, the acquisition of which was possible, and to run those chromium ore mines in Yugoslavia that had been acquired.

“At the end of February 1941, about 5 weeks before the Germans marched into Yugoslavia, I was asked by the German consul general in Belgrade, at that time Neuhausen, to come to his office. There I was informed by the consul general, that I had to leave for Berlin immediately on a very urgent matter, and that I had to report to the economic and armament department of the Supreme Command of the Army (Oberkommando der Wehrmacht), Berlin, Kurfuerstenstrasse. Neuhausen told me that he had received instructions by wire from Berlin to inform me about this urgent trip to Berlin. Thereupon I took

the next train from Belgrade to Berlin, and informed the Yugoslav representative in my Belgrade office, a Mr. Marasim, giving some kind of excuse for my departure from Belgrade.

"After my arrival in Berlin, I reported to the office of the Supreme Command of the Army named by Neuhausen. There I was received by a high ranking officer, who was already expecting me. This high ranking officer, whose name I cannot recall, obviously knew who I was. Presumably my travel orders also originated from him. He administered an oath, according to which I had to observe strictest silence. Thereupon he revealed to me that the war against Greece was imminent, and that I should keep myself in readiness to act in the capacity of a war administration counsellor (Kriegsverwaltungsrat) in Greece.

"After that, I was sent back to Belgrade and continued my work as Krupp's representative. On 1 April, a few days before the German troops marched into Yugoslavia, I was evacuated from Belgrade together with the other Germans. After the occupation, about the end of April 1941, I returned to Belgrade, after having been appointed a war administration counsellor (Kriegsverwaltungsrat) on about 18 April 1941 by the same high ranking officer, who made the above-mentioned revelations to me at the end of February. I notified the Krupp firm, that is Dr. Janssen and several other gentlemen, whose names I now no longer recall, of my appointment.

"I started my work as war administration counsellor, not in Greece, but in Yugoslavia and served as war administration counsellor under Colonel Braumueller in Belgrade, who was chief of the Military Economic Staff (Wehrwirtschaftsstab) Southeast. Simultaneously, I continued my work as Krupp's representative for chromium ore mines in the Yugoslav territory. I continued my work for Krupp from the time of my appointment as war administration counsellor until June 1944 and during all this time was permanently in uniform * * *."

That the Krupp firm was intensely interested in exploiting the chrome mines of Yugoslavia, both before and during the occupation there can be no doubt. The new enterprise, Yugochem A.G. mentioned by the witness Ufer, 50 percent owned by the Krupp firm and 50 percent owned by the Hermann Goering Works, had been established and work had been commenced on an ore dressing plant. The initiative was taken by the Krupp firm as shown by Sohl, chief of Krupp's department of ore mining (*NIK-13383, Pros. Ex. 772*)—

"We may claim for us that in this one year we thoroughly investigated all chromium deposits in Yugoslavia at all within reach and not yet in firm hands.

“* * * I therefore hold the view that in this one year during which Yugochrom has done practical work, we really did everything possible to carry out the task which, after all, we had set ourselves, for it must be emphasized that *there was no other agency in Germany which made efforts for a more intense exploitation of Yugoslav chromium ore, when we took this matter in hand in fall, 1939.*” [Emphasis added.]

In September 1940 Sohl reported to defendants Krupp, Loeser, and Janssen his conversations with Mr. Neuhausen, the then German consul general in Belgrade, who was to return to Yugoslavia after the German invasion as Plenipotentiary General for Business and Economy in Yugoslavia (*NIK-13243, Pros. Ex. 773*)—

“With regard to the chrome ore business, I also called Mr. Neuhausen’s attention to the fact that a broader chrome ore basis for Germany in Yugoslavia could only be established if the existing large chrome ore companies could be placed in German hands. * * * Mr. Neuhausen told me that he had already given serious consideration to this question, too, and that he would immediately exploit every opportunity for a German participation of interests in order to then give Yugochrom the opportunity to take over.”

All mining properties in Yugoslavia were expropriated by the German occupation authorities immediately following the invasion.

The CHROMASSEO chromium ore mining company, a Yugoslav corporation with a total of 8,000 shares of capital stock of a par value of 1,000 dinars each, owned a number of Yugoslav mining properties. The major ore reserves were in the vicinity of Jeserina, a section of Yugoslavia allocated to Bulgaria by Hitler-Germany under the illegal partition of Yugoslavia. The other properties were located in sections awarded to Albania which were under Italian occupation. The Krupp firm purchased 2,007 shares of CHROMASSEO stock from Rudolph Voegeli, a Swiss residing in Yugoslavia. An additional 1,000 shares which were owned by the Asseo family, but which were in Voegeli’s possession as a security for a debt of the deceased owner Moses Asseo, were confiscated by the German Delegate General for Economy for Serbia and sold to the Krupp firm. The witness Ufer stated (*NIK-13156, Pros. Ex. 799*) :

“These 1,000 shares, as I knew, had been confiscated by the Delegate General for Economy in Serbia, as being Jewish property, and the firm of Krupp A.G. now acquired through me the confiscated property of the Yugoslavian Jew, Moses Asseo. The firm of Krupp, as well as I, was aware of the fact that confiscated property of the Jew Moses Asseo was involved. At

no time, however, did I receive instructions of any kind from the firm of Krupp not to acquire the confiscated Jewish property."

In fact, the Krupp firm made strenuous efforts to obtain the remaining 4,993 shares of CHROMASSEO Mines Stock. The stock certificates had been placed in the custody of the Yugoslav Probate Court, under Guardianship Proceedings, because Moses Asseo had bequeathed them to his heirs of minor age. However, an Italian corporation, the Azienda Italiana Minerali Metallici, known as AMMI, had in some manner transferred them to Italian territory. The Krupp firm assumed the position that the fact the certificates had mysteriously shown up in Italian hands must have involved an illegality since they had been placed in the custody of the probate court. The Krupp firm initiated legal action in the Bulgarian Probate Court for a revocation of the stock transfer. This controversy became a subject of official negotiations on a high level between the German and Italian Governments and through government intervention the Krupp firm and AMMI settled their differences. Dr. Ballas, chief of Krupp's legal counsel and one of the defense counsel in this case, and Krupp employee Kyllmann, who succeeded Sohl as head of the department of ore mining, participated in the negotiations at Rome. Dr. Ballas' reports on that conference and other reports on the CHROMASSEO Mines are in evidence before us. One of these reports on the Rome negotiations marked "confidential" was distributed to defendants Krupp and Loeser, among others.

Meanwhile the Jeserina properties had been leased by the Krupp firm "at favorable terms" from the German military authorities who had seized all Yugoslavian mining properties. Under the provisions of the agreement reached at Rome, the interest of AMMI in the 4,993 shares and that of the Krupp firm in 3,007 shares were acknowledged and the Jeserina property was leased to Krupp until 30 October 1944. All stocks of chromium ore from Jeserina were put at the disposal of the Krupp firm for the duration of the war. The facilities of the Jeserina mine were expanded and the chromium ore extracted was shipped to Germany. The Jeserina plant was managed and supervised by the Krupp firm although the operating company was the Deutsch-Bulgarische Chromerzbergbau A.G. (German-Bulgarian Chromium Ore Mining Co.) in which the Krupp firm and the Hermann Goering Works each held a 50 percent interest.

In October 1942 a controversy arose over payment of the 1,000 shares of stock which had been purchased by the Krupp firm at the price of 1,700 dinars each, from Mr. Neuburger, the German

Delegate General for Economy. Attached to the stock certificates were dividend coupons numbered 1 to 4 inclusive which were due for the years 1938, 1939, 1940, and 1941. It was established that the price which the Krupp firm paid for the shares did not cover the coupons which were due.

The witness Hiep relates (*NIK-13159, Pros. Ex. 793*)—

“The Delegate General for Economy demanded payment on all these coupons from the firm of Krupp who held the shares. The purchase of the stock occurred at the end of 1941. I had no authority to sanction this transaction. It was a matter for the competent Krupp organs, i.e., of the main administration of ore mining, the legal department, and of the Krupp Vorstand. If I remember correctly, negotiations were initiated by Georg Ufer who at that time was the Balkan representative of the firm of Krupp for such matters.”

In order to help the administrator out of his predicament, the Krupp firm offered to pay 400 dinars per share additional to the German Delegate General for the past due coupons and application was made by the Krupp firm to the German Foreign Funds Control for permission to make this payment.

In April 1943 the Plenipotentiary was still demanding payment although a special stockholders' meeting of the company revoked the previously declared dividend of 400 dinars on coupons numbered 1 to 3, invalidated coupons number 1 to 4 inclusive, and declared a dividend of 525 dinars per share on coupon number 5 for 1942 and the preceding years.

The attitude of the Krupp firm toward the Asseo family is demonstrated in the letter of Krupp employee Hiep in a memorandum to the finance department then headed by defendant Janssen (*NIK-13158, Pros. Ex. 792*)—

“* * * Neither can we understand why G.B.W. (the Delegate General for Economy) a German official agency after all is insisting so emphatically on the payment of 400,000 dinars by us for the benefit of Jewish property.

“* * * In view of these circumstances we would deem it proper for you to make another application to the foreign exchange control office in connection with the 400,000 dinars, and at the same time inform them confidentially of the above facts to induce them to reject this application again.

“* * * It might also be that settlement in our favor could be reached if the foreign control office inquired from G.B.W. - - why it attaches so much value to the retroactive payment in favor of the Jewish Asseo estate * * *.”

Finally, because these dividend coupons had been declared invalid, the German Delegate General decided to forego any retro-active payments thereon.

The Krupp firm also desired to obtain 334 shares of stock of the Ljuboten Mines. German officials were unwilling to take any immediate action in the matter because of the plans being made to divide Yugoslavia among Germany, Bulgaria, and Italy. A letter signed by Scheibe and Kyllmann on behalf of the Direktorium of Friedrich Krupp A.G. and addressed to the Delegate General for Economy in Serbia, copy of which was sent to Ufer, states, in part:

“* * * In this case it is purely private share holding of the Yugoslav state in a mining company established according to company law and to be judged on these grounds. Two-thirds of its shares are in private hands and one-third in the hands of the state * * * . The property of the former Yugoslav state, insofar as we are concerned here, consists merely of a share in a private company formed according to company law, for which in our opinion a provisional administrator could and should be appointed without any further ado to facilitate acquisition of these shares. The distribution of Yugoslav state property among the successor states will not be affected in any way by such measures because the sale to us of these shares representing enemy property through a provisional administrator would not reduce the capital of the former Yugoslav state.”

“May we ask you in view of the foregoing points to investigate once again the legal aspects of the matter which is of paramount importance to us.”

Although the Krupp firm's efforts were unsuccessful in this instance, the facts are relevant in this case because they again reveal the intensity of the spoliative designs of the Krupp firm, as well as the initiative and pressure upon German government agencies which it exercised.

Finally, in all, up to September 1944 the Krupp firm produced and sent to Germany 108,000 tons of Yugoslavian chrome ore.

An appropriation of 957,500 RM was approved by defendants Krupp and Loeser, 20 September 1941, for chrome mining in the Skoplje area and the foundation of the German-Bulgarian Chrome Mining Co. at Sofia with participation of the Hermann Goering Works and Friedrich Krupp A.G. each 50 percent.

Again on 11 July 1942 an appropriation of 1 million RM was approved for the German-Bulgarian Chrome Mining Co. by the same two defendants.

Defendant Krupp was the Vorstand member in charge of the

ore mining department at the time of the acquisition of these mining properties in France and Yugoslavia. In fact, this department worked closely with the finance department on all matters relating to the acquisition and exploitation of mineral resources. Reports on the activities of the Krupp firm in this field were distributed to defendants Houdremont, Mueller, and Janssen. After April 1943 Fritz Mueller, who is now deceased, was the Vorstand member directly in charge of ore mining, but matters of policy and acquisition of properties required the approval of the other members of the inner Vorstand; namely, defendants Krupp, Houdremont, Mueller, and Janssen.

The activities of the Krupp firm in Yugoslavia which I have just reviewed clearly violated the laws and customs of war and more particularly Articles 43 and 46 of the Hague Regulations. The expropriation of mines in Yugoslavia was not supported by any concern for the needs of public order and safety or by the needs of the occupation. The Krupp firm took the initiative in seeking to participate in the exploitation of the seized property, even urging the government to expropriate properties. It leased the Jeserina mine from the government authorities with knowledge of their illegal expropriation. The seizure of the Asseo shares based upon the anti-Jewish laws was illegal and subsequent dealings by the Krupp firm with knowledge of the illegality was likewise illegal.

RUSSIA

At the time of the attack on Soviet Russia on 22 June 1941 the Reich government issued a directive concerning the administration of the territories to be occupied which stated, in part:

“The regulations of the Hague Convention on Land Warfare which concern the administration of a country occupied by a foreign belligerent power are not applicable, since the U.S.S.R. is to be considered dissolved, and therefore the Reich has the obligation of exercising all governmental and other sovereign functions in the interest of the country's inhabitants. Therefore, any measures are permitted which the German administration deems necessary and suitable for the execution of this comprehensive plan.”

This policy, that the Hague Conventions were not applicable at all in Russia, was openly proclaimed and there was no attempt to keep it secret nor to comply with the requirements of international law.

A decree was issued for the clarification of doubtful questions which arose “in connection with the discovery, seizure, securing,

sequestration, removal, and utilization of raw materials and materials important for the conduct of the war belonging to the new Occupied Eastern Territories * * *." The property already sequestered or still to be sequestered was "to be treated as the marshaled property of the Reich."

The IMT judgment referred to a decree issued by Goering, 19 October 1939. This decree established different occupation policies for different countries; in the one group the policy was—

"* * * safeguarding of all their production facilities and supplies must be aimed at, as well as a complete incorporation into the greater German economic system at the earliest possible time."¹

In the other group the policy was the removal of—

"* * * all raw materials, scrap materials, machines, etc., which are of use for the German war economy. Enterprises which are not absolutely necessary for the meager maintenance of the naked existence of the population must be transferred to Germany * * *."²

The IMT commented:

"In many of the occupied countries of the East and the West, the authorities maintained the pretense of paying for all the property which they seized.* * * In most of the occupied countries of the East even this pretense was not maintained; economic exploitation became deliberate plunder.* * * The occupation of the U.S.S.R. was characterized by premeditated and systematic looting. Before the attack on the U.S.S.R. an economic staff—Oldenburg—was organized to ensure the most efficient exploitation of Soviet territories. The German armies were to be fed out of Soviet territory, even if 'many millions of people will be starved to death.'"³

Following the invasion of Russia, the Reich government formed various quasi-governmental monopoly organizations in order to carry out its policy of exploitation of the Soviet economy. One of these organizations was the "Berg- und Huettenwerk Ost" which we shall refer to as BHO. It was founded upon the orders of Goering by the following partners:

- (1) The Reich, represented by the Minister of Economics.
- (2) The Economic Group Mining Industry.
- (3) The Economic Group Iron Producing Industry, and,
- (4) The Economic Group Wholesale, Import and Export Trade.

The Plenipotentiary for the Four Year Plan (Goering) was to nominate the chairman, vice chairman, and members of the Ver-

¹ Trial of the Major War Criminals, *op. cit. supra*, pp. 239 and 240.

² *Ibid.*, p. 240.

³ *Ibid.*, pp. 240 and 241.

waltungsrat. Defendant Alfried Krupp was appointed a member of the latter, Paul Pleiger was appointed the company's manager. It was formed for the purpose of enabling the coal and iron and iron producing plants and foundries which still existed in Russia to be utilized and operated through this agency of the Reich. It was authorized to shut down plants under its control, lease them or hand them over to other enterprises.

The Krupp firm was desirous of participating in the spoliation of the eastern territories and negotiations toward that end took place between defendant Alfried Krupp and Pleiger, BHO's manager, which are described by the former as follows (*NIK-11669, Pros. Ex. 1405*) :

"After the occupation of the Ukraine, a Berlin government office—I have forgotten which one it was—suggested to the Krupp firm (sometime in the spring of 1942) that it declare itself ready for participation in the resumption of operations in the Ukrainian iron and steel industry. The object should be to supply the combat troops and rear echelons, to repair the communication system and installations and to deliver supplies for the coal mines of the Donets district.

* * * * *

"Due to my acquaintance with Pleiger and the necessity for cooperation with the Reich Associations 'Iron' and 'Coal' (RVE and RVK) I drew the assignment for conducting the first Krupp negotiations with Pleiger. In agreement with * * *, I made assent of the Krupp firm dependent on the question which of the works would be operated by Krupp and in what form this was to be done.

"* * * Following an inspection trip in company with Mr. Pleiger to several works (at and near Stalino, Mariupol, and Kramatorskaya) in June 1942, I proposed to my colleagues, that we take over the sponsorship for the following works: the machine factory in Kramatorsk, Kramatorskaya, the steel works Asov and the steel works Ilyitch in Mariupol."

A meeting was held in defendant Loeser's office in August 1942, attended by defendants Loeser and Krupp for the purpose of discussing the problems arising in connection with the operation of factories in the Ukraine. It was decided at this meeting that the defendant Korschan would be the chief manager of the machine factory at Kramatorsk. It was understood that the BHO would not interfere with the management of the plant and it was also agreed that Pleiger should be urged to effect the assignment of the sponsorships as soon as possible. A few days thereafter,

Pleiger agreed that the Krupp firm should be the sponsoring firm for the three plants mentioned above, and advised Krupp to commence all measures necessary for the taking over of the management of those plants.

The initiative and interest displayed by the Krupp firm in the acquisition of sponsorships in the Ukraine is also evidenced by statements contained in the confidential report of a Krupp employee to defendant Janssen—regarding the taking over of the Molotov Works near Dnepropetrovsk by Krupp-Stahlbau—

“I was confidentially informed in Berlin of the following: A general opinion seems to prevail, that for the reconstruction of the raw materials industry, such as coal mines, power plants, and foundries, one prerequisite must be set forth, i.e., the establishment of assembly and repair installations which under German management and with Russian workers would carry out this work * * * lease contracts will be concluded, and the German firms themselves are to bear the necessary costs of investment. This apparently differs from the foundries, where the German Reich is bearing the repair cost. *If later the lease contract should not lead to ownership*, the cost of investment will be repaid. Therefore greatest speed seems to be advisable now. After a discussion with Dr. Loeser and Dr. Janssen on 19 August in Berlin, Dr. Engelking and a member of our plant, perhaps Mr. Muth, will be sent immediately to Russia with the object of securing from the military authorities of the occupied territory the appointment of Krupp-Stahlbau in larger steel construction factory, *by which measure this would become an established fact, when the plants are to be allocated later on*. This procedure was also discussed yesterday with Dr. Celert who had no objections, but who advised us not to talk about the matter to outsiders.

“*We are interested*, in the first place, in the Molotov plant which according to the descriptions given by members of our firm, would be suitable; large halls, situated near a large, navigable river, output about 5,000 tons. At Dnepropetrovsk itself we have two large construction sites, East Bridge and West Bridge. Some members of our firm are already working there who have placed large orders with the Molotov plant. In short, a small starting point is already existent.” [Emphasis added.]

I quote from another report of an employee which was a subject for discussion between defendants Krupp and Loeser (NIK-3895, Pros. Ex. 1386):

“* * * The steel construction plants belonging to the Krupp concern, by virtue of their organization, their production capacity

and above all due to their recently completed conversion will be able to favorably influence the Molotov plant in every respect and to reach the target set by the customers.

"These statements could not be contradicted and also the gentlemen from the Berghuette Ost could not raise any objections regarding the taking over by Krupp. The matter now shall be submitted to Dr. Schlotterer for his decision."

In a letter to defendant Janssen, Krupp employee, Hermann, in discussing the Molotov Works stated: "It is necessary that we should get in touch with the office of Dr. Kenna as soon as possible so that we will have his support."

From the documents admitted in evidence, and almost too numerous to mention, it is obvious that the Krupp firm's goal was the permanent acquisition of plants in Russia. I refrain from referring to other documents, except as may be mentioned hereinafter, so as not to unnecessarily and unduly prolong this opinion.

The sponsorship of the Molotov Works by Krupp-Stahlbau was approved by the Ostministerium (East Ministry) and granted on 8 October 1942. Later Speer decided that the Ostministerium had exceeded its authority in granting the sponsorship to the Krupp firm and because of a previous commitment he found it necessary to revoke the order of appointment. His office was endeavoring however to find a solution that would be "satisfactory to the Krupp firm."

Another enterprise in which the Krupp firm was interested was the so-called Ivan project which concerned the building and operation of an ammunition plant for the Army High Command. At Krupp's suggestion, it was agreed that a new company should be established which would be completely independent of BHO. As a result, the Sartana Company was organized at Essen and an agreement was entered into between the Army High Command and Sartana whereby the Sartana Company would carry out the Ivan project concerning the building and operation of the ammunition plant in the Ukraine. The production was to be based on the Asov Works in Mariupol, over which the Krupp firm held the sponsorship. The program was to be financed entirely by the Army High Command and the remuneration to the Krupp firm was to be an "adequate" one. In a report by defendant Eberhardt who was in charge of the negotiations—copies of which were sent to defendants Krupp, Loeser, Mueller, Pfirsch, and Korschan—the plan is discussed in detail. He reported that the Army High Command wanted to deal only with the Krupp firm and it was left with them to decide their relationship with other firms. The most important feature to the Krupp firm was that a promise would be obtained for the acquisition of the plant at a

later date. In the contract it was provided that the Army High Command would use its influence to ensure to Sartana "a share * * * in the ultimate redistribution of the industrial property of those regions."

On the advisory council (Beirat) of Sartana besides two army ordnance officers were, among other Krupp officials, the defendants Mueller and Eberhardt. The defendant Korschan who was later appointed to the advisory council was appointed vice chairman. The commercial manager (Fugmann) was appointed by the Direktorium in Essen and was directly subordinate to the commercial member of the Vorstand who was defendant Loeser until April 1943, and defendant Janssen thereafter.

The theory of the defense regarding participation in the Ukraine as I understand it is that they did not desire to participate and did so only under pressure of the Reich; that the Krupp firm had little or no say in the management of the enterprises, and gained nothing from their participation. The record seems to be quite to the contrary. It is apparent to me from the credible evidence in the case that competition among the various German firms in taking over plants and materials in the Ukraine was intense. They watched each other closely and vied with each other for sponsorships from these quasi-governmental agencies. Strenuous efforts were exerted by directors and employees of the Krupp firm and its subsidiaries to obtain sponsorships.

When the sponsorships of certain plants in Russia by the Krupp firm were approved, the activities of the firm and its subsidiaries were greatly accelerated. Krupp personnel was sent to Russia to assist in the management of plants. The defendants Krupp and Korschan with the other Krupp officials went to Russia to inspect the plants. Rosenbaum, defendant Houdremont's chief assistant—who was also a member of the advisory board of Sartana—made three trips there. Defendant Houdremont recommended to defendants Krupp and Loeser that a "Secretariat Russia" be established in Berlin and that Dr. Gerlach be placed at the disposal of defendant Janssen in Berlin as Dr. Gerlach had dealt with similar tasks in the "restarting of plants and negotiations with authorities when the Polish iron industry was restarted."

Defendants Loeser and Janssen decided to establish at the Gusstahlfabrik (Cast Steel Plant) a Main Office Ukraine through which sales and distribution agencies of all Krupp plants would be controlled. All subsidiaries and agencies were advised by the Direktorium to give active support to Krupp representatives who were responsible for the operations in Russia and to channel all important correspondence to the particular office designated at

Essen. In a report made by defendant Eberhardt of a conference with the BHO, copies of which were sent to defendants Krupp, Loeser, Mueller, Pfirsch, and Korschan, among others, pertaining to the method of setting up the sponsorships, the independence of these sponsorships from the Reich agencies is patent. I quote:

“The minister wishes the sponsor firms to carry out this trusteeship *on their own responsibility*. * * * Thus, it will be a question * * * as we already assumed—of a ‘Krupp- Department’ within the Berghuette Ost. Yet Flottmann (BHO official) confirmed expressly that this department was *fully independent* * * *.” [Emphasis added.]

In a communication from the Friedrich-Alfred-Huette plant, addressed to defendant Alfried Krupp, it is stated:

“Our commercial group is very interested in this plan. In the Ostland, as well as in the Ukraine, we have already founded companies and—at least as far as the Ostland is concerned—we have also started operations with great success; our personnel is scheduled to depart for the Ukraine next week.

“As Dr. Vaillant informs me the plan has not been submitted previously either to the Verwaltungsrat, nor to the Central Committee for Commerce (Zentralausschuss Handel). Our question at this time is whether with your help we might be given occasion to examine the plan, to enable us to protest in good time should the operations plan (Einsatzplan) treat our competitors in the East—the Vereinigte Stahlwerke, Mannesmann or the independent business man—more favorably than us. In the Ostland as well as also in the Ukraine we introduced ourselves very early—in the Ukraine our firm appears as Number 1 in the commercial register—and we therefore do not wish to lose again the territory where we have established ourselves.”

In another communication, dated 22 March 1943, from a Krupp employee in the Ukraine—which was brought to defendant Mueller’s attention—great disappointment is expressed because the factory for agricultural machines at Essen is closing down. This employee refers to the fact that there is no financial risk to the Krupp firm in the operation of the Berdyansk plant in the Ukraine and suggests steps be taken toward obtaining permanent ownership of the plant. I quote (NIK-13971, Pros. Ex. 1416):

“* * * But as we now have finished the bulk of our preliminary work and are in the middle of building up, I should like to ask you to try to keep this factory working for us. It would

be very regrettable if we had taken all the trouble and done all the work for another firm. On the other hand, the firm Krupp would not have any financial or other obligations in taking over the trusteeship over our enterprise except the salaries for the German employees. In exchange it would, after the war, have the opportunity to use this plant (Berdiansk) as the foundation stone of a new agricultural machine factory. I am firmly convinced that any different action would be regretted in Essen after the war. All the machinery and materials procured for this plant will be credited to the Krupp firm or be paid. We have to manage with these financial means put at our disposal by the State through the Economic Bank Ukraine (Wirtschaftsbank Ukraine). The Krupp firm, thus, does neither run any risk nor does it take any greater financial burden."

It will be observed too, from the following, the manner in which considerable machines and materials were obtained for this plant (*NIK-13971, Pros. Ex. 1416*) :

"* * * After long negotiations with the Commissariat, I succeeded today in getting a fair number of partly good, and partly serviceable machines from other plants over here. In the course of the next two weeks these will be transferred to our plant. I had considerable difficulties with the man of the Commissariat who is in charge of machinery plants. He declared that I wanted to rob all his factories whereas I only requested those machines which were not fully used or not used at all in other plants. I got all the machines I wanted.

"In a factory over here, the 49th Works, a tool factory, which had been thoroughly demolished by the Bolsheviks, I discovered in the last few days some hauling and transmission machinery which might still be used, and also tool steel in sheets. I obtained the Commissariat's permission to take from there what I considered to be of any use to us.

"In the course of a week, I shall drive to Mariupol and Taganrog, together with a gentleman of the Commissariat in order to obtain some more tool machinery as well as steel and coke * * *."

Evidently this letter bore results as the Krupp firm was advised within less than a month that the Fried. Krupp factory for agricultural machinery at Essen was appointed the sponsoring firm for the agricultural machinery factory at Berdiansk. Defendants Janssen, Mueller, and Korschan took note of this appointment.

The Krupp firm's desire to retain sponsorship of a plant in the Ukraine is shown by the exchange of correspondence between the

defendant Alfried Krupp and Pleiger, manager of BHO. Pleiger writes (*NIK-13994, Pros. Ex. 1419*) :

“* * * I am therefore obliged to withdraw the sponsorship of this plant in the present form from the Krupp firm. After my return I shall be available for a discussion of this matter at the beginning of next week.”

Defendant Krupp's letter in reply is as follows (*NIK-13228, Pros. Ex. 1420*) :

“* * * As long as these questions were not clarified, it was impossible for the Krupp firm to start work at Kramatorsk. Notwithstanding, five Krupp gentlemen arrived at Kramatorsk in the meantime.

“Direktor Dr. Korschan will be at your disposal at any time in order to discuss this question with you. I would be grateful to you for giving him an appointment as soon as possible. I myself will be in Berlin only next week.”

This letter is initialed by defendant Loeser, and a copy thereof is sent to defendant Korschan. Defendant Krupp's efforts were successful and the sponsorship of the machine factory at Kramatorsk was reinstated.

During the winter of 1942 the German Army suffered reverses which resulted in the recapture of the Kramatorsk plant by the Russians. With the spring drive, however, the factory was again recaptured and within a very short period of time was again producing largely for the German Army.

The machine factory at Kramatorsk was not damaged by the Russians in their retreat but the German troops had removed truckloads of tools and materials to the railroad repair shops within the first week after the recapture. Considerable of these tools were returned to the plant. Many machines were found which for the most part were in good condition. Within a very short period the plants sponsored by the Krupp firm were in production.

Cylinder boring and grinding sets were produced for the Wehrmacht which were described as the top equipment of the Donets area. Sixty-ton bridges were built and delivered and were described by the customers as “very good” in contrast with products of other firms in the area. A tank repair shop was opened at Kramatorsk in which up to 50 tanks a month could be repaired. Due to the importance of this task all other projects had to be abandoned for the time being. Plans were made for the manufacture of caterpillar tracks to supplement the production in Germany. Tens of thousands of small implements such as spades, shovels, hammers, wheelboxes, etc., were produced and repairs

to guns and vehicles were being carried out continuously due to the proximity of the front.

The Kramatorsk factory obtained 80 carloads of iron construction parts from an idle factory in Debaltsevo and trucked iron, sheet metal, and other materials from other idle plants. Machine tools were obtained from the BHO. Numerous rebuilding operations were in progress. In fact, the plant at Kramatorsk produced so well that Pleiger, manager of BHO, on an inspection tour of the factory expressed his appreciation of the work done so far. Thereafter the BHO suggested that the Krupp firm apply for sponsorship of the Boltov Works in Drushkovka, too. The employee who wrote such glowing reports of the accomplishments of the plant at Kramatorsk to defendant Mueller suggested that the supervision of the Boltov Works should be assigned to Kramatorsk and for tactical reasons Hedstueck should be appointed plant manager there in addition to his functions at Kramatorsk, stating (*NI-2959, Pros. Ex. 1400*) :

“Thus, we could show BHO that we have two separate works with two works managers and thus establish separate claims for both works. * * * After the transfer of the Boltov Works we plan to add a wire drawing plant, a nail factory, and an electrode factory to the existing screw factory. Some of the machines for these purposes have already been bought * * *.”

This report which also contained the statement that if in the spring, Kramatorsk was still being held by the German forces, “our ownership of the works would undoubtedly be assured for the future,” was of such great interest to defendant Mueller that he sent it to defendant Alfried Krupp who had requested it. Defendant Mueller suggested that all departments be requested to give all possible assistance to the Kramatorsk plant and added, “I also should like you to apply to Mr. Pleiger for the transfer of the sponsorship for the Boltov Works in Drushkovka.” A copy of this report was also sent to defendant Korschan.

The change in the military situation in the fall of 1943 prevented the Krupp firm from carrying out the large program which it had set for itself in Russia. The extent of the firm’s progress at Mariupol is shown by the items ordered evacuated. Great quantities of Ivan machines were removed. The Schu “scrap metal” organization was to remove 10,000 tons of steel alloy. The Krupp firm was ordered to remove a turbine and 8,000 tons of chrome nickel steel. Great pains were taken to destroy the plant because of its significance to the Russians.

The Krupp firm requisitioned 280 freight cars to evacuate machines and materials from the Kramatorsk plant. The lack of

available freight cars and manpower prevented the stripping of the plant as planned. One hundred freight cars were allocated by the military economy staff to remove machinery and material from the Kramatorsk plant. Extensive demolition work was carried out to render the plant and equipment completely useless.

Defendant Mueller reported to defendants Houdremont, Janssen, Eberhardt and Korschan regarding a telephone conversation with a Krupp employee at the Auschwitz plant. Defendant Mueller was advised that several railway cars containing presses and machines marked Ivan (ammunition project), without K or H, arrived at Auschwitz from Russia. Defendant Mueller told his associates on the Vorstand that he had agreed to "let those cars roll on to Markstaedt in order that the machines may be secured for us in any event."

The BHO, of which defendant Krupp was a member of the Verwaltungsrat, in its first business report, speaking of its activities in Russia, states (*NI-4332, Pros. Ex. 648*) :

"* * * Up to 30 November 1942, the following material from the Russian area was available for the German metal industry and the chemical industry for use in connection with the war economy :

Iron ore -----	325,751 tons
Chromium ore -----	6,906 tons
Manganese ore -----	20,145 tons (1941)
Manganese ore -----	417,886 tons (1942)"

And, among other metals, there were listed 52,156 tons of scrap.

The mining of manganese ore was given a high priority because of the urgent need for this ore in the conduct of the war. The business report for 1942-1943 of the Dezernat for raw material procurement and exchange, states (*NIK-12848, Pros. Ex. 638*) :

"The delivery of manganese ores from Nikopol developed very favorably in the current business year, so that by 30 September, at the present rate of consumption, sufficient manganese ore for one year was available. * * * The very considerable receipts give rise to difficulties in storing the material."

Other reports set forth in detail the operations of ore mines by the Krupp firm in Greece, the Sudeten region of Czechoslovakia, Norway, Yugoslavia, and France. The ore mining operations of the Krupp firm of metals used in steel alloys primarily for war uses included molybdenum, nickel, tungsten, tin, and chromium. Over-all allocations by the Reich to the Krupp firm of metal ores from the occupied areas approximated 12-14 percent of the total receipts of all German users.

From Articles 48, 49, 52, 53, 55, and 56 of the Hague Regulations, the International Military Tribunal deducted—

“* * * that under the rules of war, the economy of an occupied country can only be required to bear the expense of the occupation, and these should not be greater than the economy of the country can reasonably be expected to bear.”*

This is sound construction, in accordance with the obvious intentions of the parties to that international treaty. In 1899 and 1907, when the Hague Regulations were drafted, state property only embraced a comparatively small section of the wealth of the respective countries. But the rationale of the various articles dealing with the authority of the military occupant particularly if viewed as they must be in the light of the preamble of the Convention is clearly that the treaty generally condemns the exploitation and stripping of belligerently occupied territory beyond the extent which the economy of the country can reasonably be expected to bear for the expense of the occupation.

The basic decrees pursuant to which the Reich authorities confiscated and administered Russian industrial property called for the unrestricted exploitation of such property for German war production and without regard to the needs of the occupation or the ability of the country to bear this drain on its resources. The same directives asserted the title of the Reich to all industrial property in Russia and the complete power of disposition of such property. The disposal of this property to private German firms as a means of integrating the Russian economy into the German economic program for Europe was the ultimate goal. This assertion of title completely ignored the obligation of an occupying power to administer public property only as an usufructuary. I am convinced from the credible evidence before us that the Krupp firm, with knowledge of the basic facts which made the seizure by the Reich unlawful, sought and obtained sponsorship over and exploitation of Russian industrial plants which were so seized. The extent and nature of the activities of the Krupp firm did constitute the type of illegal exploitation which Goering had outlined. By virtue of these acts the Krupp firm contributed to and participated in violations of the laws and customs of war which restrict the use of public industrial property to the needs of the army of occupation in proportion to the resources of the occupied country and to administration of such property only as an usufructuary.

It is asserted by the defense that whatever acts were committed by the defendants in the exploitation of Russia were not illegal

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

in view of the decision of the Tribunal in *United States vs. Friedrich Flick, et al.* With this contention I cannot agree. The factual situation of the Flick Case and of that before us is at great variance.

The Flick judgment found that, as far as Flick's management of a certain French plant was concerned, "it was, no doubt, Goering's intention to exploit it to the fullest extent for the German war effort. I do not believe that this intent was shared by Flick. Certainly, what was done by his company in the course of its management falls far short of such exploitation." And, again, "We find no exploitation * * * to fulfill the aims of Goering. Adopting the method used by the IMT—namely, specifically the limitation that the exploitation of the occupied country should not be greater than the economy of the country can reasonably be expected to bear"—the Flick Tribunal, on the basis of the evidence of its own case, found that "the source of the raw materials (used by Flick in the Russian railway car plant) is not shown except that iron and steel were bought from German firms," and also considered it relevant to establish that the manufacture of armament by Flick in Russia was not proved. The Flick Tribunal decided that "when the German civilians departed, all plants were undamaged." Furthermore, according to the evidence received by the Flick Tribunal, there were other basic differences; they were paid from government funds and responsible only to Reich officials. At one of the two Russian enterprises operated by Flick, "the plants barely got into production." In short, the facts in the Flick Case were substantially different.

Prior to the evacuation of the plants at Kramatorsk and Mariupol as stated above, the Krupp firm aided in stripping these plants of machinery and raw materials. The property removed did not fall into any category of movable public property which the occupant is authorized to seize under the Hague Regulations and the participation of the Krupp firm in the removal of such materials and machinery was a direct violation of the laws of land warfare. The participation of the Krupp firm in the demolition of these plants was also a violation of the requirements of the Hague Regulations that the capital of such properties be safeguarded and administered in accordance with the laws of usufruct.

I am of the opinion that the Krupp firm abetted the Reich government and its various agencies in the utter and complete spoliation of the Russian occupied territories, took a consenting part in, and was connected with plans and enterprises involving the commission of those crimes.

For the reasons above stated I dissent only to the extent indicated. In all other respects I concur in the judgment of the Tribunal.

[Signed] WILLIAM J. WILKINS
Judge