

## **THE MINISTRIES Trial**

**The United States of America vs. Ernst von Weizsäcker et al.**

*US Military Tribunal Nuremberg, Judgment of 11 April 1949*

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## **B. JUDGMENT<sup>1</sup>**

### INTRODUCTION

On 18 November 1947,<sup>2</sup> an indictment against the above-named defendants was filed with the Secretary General of the United States Military Tribunals at Nuernberg. Generally stated, said indictment, consisting of eight counts, charged the defendants with having committed crimes against peace, war crimes, crimes against humanity, and with having participated in a common plan and conspiracy to commit crimes against peace, all as defined in Control Council Law No. 10, duly enacted by the Allied Control Council on 20 December 1945.

Several, but not all, of the defendants are charged under each of the counts of the indictment. The applicable provisions of Control Council Law No. 10 will hereinafter be referred to and set forth as they relate to each count of the indictment when such counts are reached for discussion and decision.

The indictment was served upon all of the defendants in the German language, more than 30 days before arraignment of the defendants thereunder. On 19 December 1947 the case was assigned to this Tribunal for trial by the Supervisory Committee of



Presiding Judges of the United States Military Tribunals in Germany, in conformity with Article V of Military Government Ordinance No. 7, as amended, this Tribunal theretofore having been duly established and constituted, pursuant to said Ordinance No. 7, which ordinance was promulgated by the United States Military Governor of the United States Occupation Zone of Germany on 18 October 1946. The arraignment of the defendants took place on 20 December 1947, at which time all defendants pleaded "Not Guilty" to the charges in the indictment.

Throughout the trial of this case, all of the defendants were represented by German counsel of their own choice. One defendant requested that he also be allowed to retain American counsel to represent him. The request was granted.

The presentation of evidence in the case was commenced on 7 January 1948. Final arguments before the Tribunal were concluded on 18 November 1948. The transcript record of the case consists of 28,085 pages. In addition thereto, the prosecution and

<sup>1</sup> The judgment was read in open Court on 11-18 April 1949 and is recorded in the mimeographed transcript, pages 28086-28803. Just before the reading of the judgment, Presiding Judge Christianson said "The Tribunal will file the original of such judgment with the Secretary General, and the original copy as filed shall constitute the official judgment record of this case." (Tr. p. 28086.) The judgment as reproduced herein is taken from the record copy filed with the Secretary General.

<sup>2</sup> The indictment was signed by the United States Chief of Counsel for War Crimes on 18 November 1947, but it was not filed until 18 November 1947.

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the defense together introduced in evidence 9,067 documentary exhibits, totaling over 39,000 pages. Generally accepted technical rules of evidence were not adhered to during the trial, and any evidence that, in the opinion of the Tribunal, had probative value was admitted when offered by either the prosecution or the defense. This practice was in accord with that followed by the International Military Tribunal, and as subsequently thereto provided in Article VII of the hereinbefore referred to Military Government Ordinance No. 7. In the interest of expedition the Tribunal, following the practice adopted by the International Military Tribunal, appointed court commissioners to assist in taking both oral and documentary evidence, but many of the principal witnesses and all of the defendants who testified were heard before the Tribunal itself.

In order that any relevant documentary defense evidence of which the defendants had knowledge or which they believed existed might be made available to the defense, the Tribunal in response to various defense motions uniformly ordered that the persons or agencies having possession or custody of such evidence make same available to the defense. This was even true with respect to documentary evidence in possession of the prosecution. Moreover, at the request of a number of the defendants, the Tribunal appointed a German research analyst, of the defendants' choice, for the purpose of making a search of files of the former Reich government, located in the Document Center in Berlin, under Allied control. Such research analyst spent many months in Berlin in this search for defense evidence. The same research expert was further authorized by this Tribunal to visit London for the purpose of research in behalf of the defendants and was, in fact, so engaged for a number of weeks with the cooperation of British authorities. Other representatives were likewise authorized to make search of former Reich government files in Berlin.

In arriving at the conclusions hereinafter reached with respect to the charges against the defendants as contained in the indictment, the Tribunal has undeviatingly adhered to the proposition that a defendant is presumed innocent until proved guilty beyond a reasonable doubt.

During the course of the trial, a motion was made in behalf of all defendants charged in count four of the indictment that said count be stricken. The motion was granted and a formal order in the matter made and filed by the Tribunal.\*

During the trial from time to time motions were also made in behalf of individual defendants to dismiss counts of the indict-

\* The defense motion, the argumentation on the motion, and the Tribunal's order are reproduced in section VIII, Volume XIII, this series,

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ment relating to them on the ground that the Tribunal was without jurisdiction to try the defendants on such counts and on the further ground that the evidence adduced by the prosecution was insufficient to sustain the charges. Such motions were denied without prejudice, except in three instances where charges in certain counts of the indictment were dismissed with respect to certain defendants because of a failure of proof. Specific attention to the charges thus dismissed and the defendants affected thereby will be given when the charges involved in such dismissals are reached in the ensuing discussion of the individual counts of the indictment. Like attention will be called to instances wherein the prosecution, during the trial, withdrew certain charges against certain of the defendants.

In the final arguments and briefs of the defendants, the contention that this Tribunal is without jurisdiction in this matter was renewed. In this connection, attention is directed to the fact that a number of United States Military Tribunals of precisely the same type and origin as this one have heretofore had their jurisdiction questioned on similar grounds in the course of their trial of cases involving offenses defined in Control Counsel Law No. 10. (Flick, et al., Case 5; List, et al., Case 7; and Ohlendorf, et al., Case 9.\*) The statements made in the judgments of such cases in the course of disposing of the attacks made on the jurisdiction of such Tribunals, we deem to be conclusive answers to the challenge here made to this Tribunal's jurisdiction, and we accordingly reject the contention of the defendants that these proceedings should be dismissed because of the Tribunal's lack of jurisdiction.

The record, including briefs of counsel all of which the Court has considered and examined, amounts to approximately 79,000 pages. The evidence of this case presents a factual story of practically every phase of activity of the Nazi Party and of the Third Reich, whether political, economic, industrial, financial, or military.

Hundreds of captured official documents were offered, received, and considered which were unavailable at the trial before the International Military Tribunal (sometimes herein referred to as the IMT), and which were not offered in any of the previous cases before United States Military Tribunals, and the record here presents, more fully and completely than in any other case, the story of the rise of the Nazi regime, its programs, and its acts.

The Tribunal has had the aid of and here desires to express its appreciation and gratitude for the skill, learning, and meticu-

\* Volumes VI, XI, and IV, respectively, this series.

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lous care with which counsel for the prosecution and defense have presented their case.

Notwithstanding the provisions in Article X of Ordinance No. 7, that the determination of the International Military Tribunal that invasions, aggressive acts, aggressive wars, crimes, atrocities, and inhumane acts were planned or occurred, shall be binding on the Tribunals established thereunder and cannot be questioned except insofar as the participation therein and knowledge thereof of any particular person may be concerned, we have permitted the defense to offer evidence upon all these matters. In so doing we have not considered this article to be a limitation on the right of the Tribunal to consider any evidence which may lead to a just determination of the facts. If in this we have erred, it is an error which we do not regret, as we are firmly convinced that courts of justice must always remain open to the ascertainment of the truth and that every defendant must be accorded an opportunity to present the facts. Before considering the questions of law and fact which are here involved, we deem it proper to state the nature of these trials, the basis on which they rest, and the standards by which these defendants should be judged.

These Tribunals were not organized and do not sit for the purpose of wreaking vengeance upon the conquered. Was such the purpose, the power existed to use the firing squad, the scaffold, or the prison camp without taking the time and putting forth labor which have been so freely expended on them, and the Allied Powers would have copied the methods which were too often used during the Third Reich. We may not, in justice, apply to these defendants because they are Germans standards of duty and responsibility which are not equally applicable to the officials of the Allied Powers and to those of all nations. Nor should Germans be convicted for acts or conducts which, if committed by Americans, British, French, or Russians would not subject them to legal trial and conviction. Both care and caution must be exercised not to prescribe or apply a yardstick to these defendants which cannot and should not be applied to others, irrespective of whether they are nationals of the victor or of the vanquished.

The defendants here are charged with violation of international law, and our task is: first, to ascertain and determine what it is; second, whether the defendants have infringed these principles.

International law is not statutory. It is in part defined by and described in treaties and covenants among the powers of the world. Nevertheless, much of it consists of practices, principles, and standards which have become developed over the years and have found general acceptance among the civilized powers of the

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world. It has grown and expanded as the concepts of international right and wrong have grown. It has never been suggested that it has been codified, or that its boundaries have been specifically defined, or that specific sanctions have been prescribed for violations of it. The various Hague and Geneva Conventions, the Constitution and the Charter of the League of Nations, and the Kellogg-Briand treaties have given definitive shape to limited fields of international law. It can be said that insofar as certain acts are prohibited or permitted by these treaties or covenants, a codification exists and specific rules of conduct prescribed. It does not follow however that they are exclusive, and assuredly it cannot be said that they cover or pretend to cover the entire field of international law.

In determining whether the action of a nation is in accordance with or violates international law, resort may be had not only to those treaties and covenants, but to

treatises on the subject and to the principles which lie beneath and back of these treaties, covenants, and learned treatises; and we need not hesitate, after having determined what they are, to apply them to new or different situations. It is by this very means that all legal codes, civil or criminal, have developed.

*Aggressive wars and invasions.*—The question, therefore, is whether or not the London Charter and Control Council Law No. 10 define new offenses or whether they are but definitive statements of preexisting international law. That monarchs and states, at least those who considered themselves civilized, have for centuries recognized that aggressive wars and invasions violated the law of nations is evident from the fact that invariably he who started his troops on the march or his fleets over the seas to wage war has endeavored to explain and justify the act by asserting that there was no desire or intent to infringe upon the lawful rights of the attacked nation or to engage in cold-blooded conquest, but on the contrary that the hostile acts became necessary because of the enemy's disregard of its obligations; that it had violated treaties; that it held provinces or cities which in fact belonged to the attacker; or that it had mistreated or discriminated against his peaceful citizens.

Often these justifications and excuses were offered with cynical disregard of the truth. Nevertheless, it was felt necessary that an excuse and justification be offered for the attack to the end the attacker might not be regarded by other nations as acting in wanton disregard of international duty and responsibility. From Caesar to Hitler the same practice has been followed. It was used by Napoleon, was adopted by Frederick the Great, by Philip II of Spain, by Edward I of England, by Louis XIV of

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France, and by the powers who seized lands which they desired to colonize and make their own. Every and all of the attackers followed the same time-worn practice. The white, the blue, the yellow, the black, and the red books had only one purpose, namely, to justify that which was otherwise unjustifiable.

But if aggressive invasions and wars were lawful and did not constitute a breach of international law and duty, why take the trouble to explain and justify? Why inform neutral nations that the war was inevitable and excusable and based on high notions of morality, if aggressive war was not essentially wrong and a breach of international law? The answer to this is obvious. The initiation of wars and invasions with their attendant horror and suffering has for centuries been universally recognized by all civilized nations as wrong, to be resorted to only as a last resort to remedy wrongs already or imminently to be inflicted. We hold that aggressive wars and invasions have, since time immemorial, been a violation of international law, even though specific sanctions were not provided.

The Kellogg-Briand Pact not only recognized that aggressive wars and invasions were in violation of international law, but proceeded to take the next step, namely, to condemn recourse to war (otherwise justifiable for the solution of international controversies), to renounce it as an instrumentality of national policy, and to provide for the settlement of all disputes or conflicts by pacific means. Thus war as a means of enforcing lawful claims and demands became unlawful. The right of self-defense, of course, was naturally preserved, but only because if resistance was not immediately offered, a nation would be overrun and conquered before it could obtain the judgment of any international authority that it was justified in resisting attack.

The preamble of the treaty [General Pact for the Renunciation of War] provides that the nations declare their conviction—

*"\* \* \* that any signatory power which shall hereafter seek to promote its national interests by resort to war should be denied the benefits furnished by this treaty."*

Quincy Wright, Professor of International Law, University of Chicago, in January 1933 (American Journal of International Law, vol. 21, No. 1, 23 January 1933), reviewed the Pact and the conclusions put upon, and the implications arising from, its provisions by the leading statesmen of that time. He quotes Secretary Stimson as follows:

*"Under the former concept of international law, when a conflict occurred it was usually deemed the concern only of the parties to the conflict \* \* \*. But now, under the covenant and*

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*the Kellogg-Briand Pact, the conflict becomes of legal concern to everybody connected with the treaty. All steps taken to enforce the treaty must be adjudged by this new situation. As was said by M. Briand, quoting the words of President Coolidge: 'An act of war in any part of the world is an act that injures the interests of my country.'*

*"The world has learned that great lesson and the execution of the Kellogg-Briand Treaty codified it."*

Professor Wright continues—

*"Furthermore, the suggestion that the obligation is not legal because it is unprovided with sanctions has carried no more weight. Many treaties have no specific sanctions but insofar as they create obligations under international law, those obligations are covered by the sanctions of all international law \* \* \*."*

*"In his exposition of the treaty, Secretary Kellogg pointed out 'there can be no question, as a matter of law, that the violation of a multilateral antiwar treaty through resort to war by one party thereto would automatically release the other parties from their obligations to the treaty-breaking states. Any express recognition of this principle of law is wholly unnecessary \* \* \*.'"*

*"These changes in international law consequent upon the existence of war, arise from the following propositions:*

*"1. A Party to the Pact responsible for initiating a state of war (a primary belligerent) will have violated the rights of all the parties to the Pact and will have lost all title to its benefits from non-participating states as well as from its enemies.*

*"2. A Party to the Pact involved in a state of war but not responsible for initiating it (a secondary belligerent) will not have violated the Pact and consequently will continue entitled to its benefits not only from nonparticipating states but also from its enemies.*

*"3. The other Parties to the Pact, nonparticipating in the war or 'partial,' while free to keep out of the war, will have suffered a legal injury through the outbreak of war, and though bound to extend the full benefits of the traditional international law of neutrality as well as the benefits of the Pact to the secondary belligerent will be free to deny these benefits to the primary belligerent."*

It is to be noted that these views were expressed long before the seizure of power by Hitler and the Nazi Party, and years before the occurrence of the acts of aggression here charged, and are contemporaneous conclusions regarding the intent, meaning, and scope of the Treaty.

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Is there personal responsibility for those who plan, prepare, and initiate aggressive wars and invasions? The defendants have ably and earnestly urged that heads of states and officials thereof cannot be held personally responsible for initiating or waging aggressive wars and invasions because no penalty had been previously prescribed for such acts. History, however, reveals that this view is fallacious. Frederick the Great was summoned by the Imperial Council to appear at Regensburg and answer, under threat of banishment, for his alleged breach of the public peace in invading Saxony.

When Napoleon, in alleged violation of his international agreement, sailed from Elba

to regain by force the Imperial Crown of France, the nations of Europe, including many German princes in solemn conclave, denounced him, outlawing him as an enemy and disturber of the peace, mustered their armies, and on the battlefield of Waterloo, enforced their decree, and applied the sentence by banishing him to St. Helena. By these actions they recognized and declared that personal punishment could be properly inflicted upon a head of state who violated an international agreement and resorted to aggressive war.

But even if history furnished no examples, we would have no hesitation in holding that those who prepare, plan, or initiate aggressive invasions, and wage aggressive wars; and those who knowingly participate therein are subject to trial, and if convicted, to punishment.

By the Kellogg-Briand Treaty, Germany as well as practically every other civilized country of the world, renounced war as an instrumentality of governmental policy. The treaty was entered into for the benefit of all. It recognized the fact that once war breaks out, no one can foresee how far or to what extent the flames will spread, and that in this rapidly shrinking world it affects the interest of all.

No one would question the right of any signatory to use its armed forces to halt the violator in his tracks and to rescue the country attacked. Nor would there be any question but that when this was successfully accomplished sanctions could be applied against the guilty nation. Why then can they not be applied to the individuals by whose decisions, cooperation, and implementation the unlawful war or invasion was initiated and waged? Must the punishment always fall on those who were not personally responsible? May the humble citizen who knew nothing of the reasons for his country's action, who may have been utterly deceived by its propaganda, be subject to death or wounds in battle, held as a prisoner of war, see his home destroyed by artillery or from the air, be compelled to see his wife and family suffer

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privations and hardships; may the owners and workers in industry see it destroyed, their merchant fleets sunk, the mariners drowned or interned; may indemnities result which must be derived from the taxes paid by the ignorant and the innocent; may all this occur and those who were actually responsible escape?

The only rationale which would sustain the concept that the responsible shall escape while the innocent public suffers, is a result of the old theory that "the King can do no wrong," and that "war is the sport of Kings."

We may point out further that the [Hague and] Geneva Conventions relating to rules of land warfare and the treatment of prisoners of war provide no punishment for the individuals who violate those rules, but it cannot be questioned that he who murders a prisoner of war is liable to punishment.

To permit such immunity is to shroud international law in a mist of unreality. We reject it and hold that those who plan, prepare, initiate, and wage aggressive wars and invasions, and those who knowingly, consciously, and responsibly participate therein violate international law and may be tried, convicted, and punished for their acts.

*The "Tu Quoque" Doctrine.*—The defendants have offered testimony and supported it by official documents which tend to establish that the Union of Soviet Socialist Republics entered into a treaty with Germany in August 1939, which contains secret clauses whereby not only did Russia consent to Hitler's invasion of Poland, but at least tacitly agreed to send its own armed forces against that nation, and by it could demand and obtain its share of the loot, and was given a free hand to swallow the

little Baltic states with whom it had then existing nonaggression treaties. The defense asserts that Russia, being itself an aggressor and an accomplice to Hitler's aggression, was a party and an accomplice to at least one of the aggressions charged in this indictment, namely, that against Poland, and therefore was legally inhibited from signing the London Charter and enacting Control Council Law No. 10, and consequently both the Charter and Law are invalid, and no prosecution can be maintained under them.

The justifications, if any, which the Soviet Union may claim to have had for its actions in this respect were not represented to this Tribunal. But if we assume, *arguendo*, that Russia's action was wholly untenable and its guilt as deep as that of the Third Reich, nevertheless, this cannot in law avail the defendants or lessen the guilt of those of the Third Reich who were themselves responsible. Neither the London Charter nor Control Council Law No. 10 did more than declare existing international law regarding aggressive wars and invasions. The Charter and

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Control Council Law No. 10 merely denned what offenses against international law should be the subject of judicial inquiry, formed the International Military Tribunal, and authorized the signatory powers to set up additional tribunals to try those charged with committing crimes against peace, war crimes, and crimes against humanity.

But even if it were true that the London Charter and Control Council Law No. 10 are legislative acts, making that a crime which before was not so recognized, would the defense argument be valid? It has never been suggested that a law duly passed becomes ineffective when it transpires that one of the legislators whose vote enacted it was himself guilty of the same practice or that he himself intended, in the future, to violate the law.

## **COUNT ONE—CRIMES AGAINST PEACE**

The defendants von Weizsaecker, Keppler, Bohle, Woermann, Ritter, von Erdmannsdorff, Veessenmayer, Lammers, Stuckart, Darré, Meissner, Dietrich, Berger, Schellenberg, Schwerin von Krosigk, Koerner, and Pleiger are charged with having participated in the initiation of invasions of other countries and wars of aggression, including but not limited to planning, preparation, initiation, and waging of wars of aggression in violation of international treaties, agreements, and assurances. The invasions and wars referred to and the dates of their initiation are alleged to have been as follows:

Austria ----- 2 March 1938  
Czechoslovakia-----1 October 1938 and 15 March 1939  
Poland -----1 September 1939  
United Kingdom and France-----3 September 1939  
Denmark and Norway-----9 April 1940  
Belgium, Netherlands, and Luxembourg-----10 May 1940  
Yugoslavia and Greece-----6 April 1941  
Union of Soviet Socialist Republics-----22 June 1941  
United States of America-----11 December 1941

The prosecution dismissed this count as to the defendants Bohle, von Erdmannsdorff, and Meissner,

Notwithstanding the fact that the International Military Tribunal and several of these Tribunals have decided that the Third Reich was guilty of aggressive wars and

invasions, we have reexamined this question because of the claim made by the defense that newly discovered evidence reveals that Germany was not the aggressor. It should be made clear, however, that this defense is not submitted by all of the defendants. For example, the defendant von Weizsaecker freely admits that these acts were aggressions.

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The argument is based on the alleged injustices and harsh terms of the Versailles Treaty, which it is claimed was imposed upon Germany by force; that agreements made under duress are not binding, and in attempting to rid itself of the bonds thus thrust upon it, Germany was compelled to use force and in so doing cannot be judged an aggressor. Unless the defense has sufficient legal merit necessitating our so doing, a review of the treaty and the reasons which underlie it and its terms, with a view to determining the accuracy of these claims, would expand our opinion beyond permissible limits. In our opinion, however, there is no substance to the defense, irrespective of the question whether the treaty was just or whether it was imposed by duress.

We deem it unnecessary to determine either the truth of these claims or whether one upon whom the victor by force of arms has imposed a treaty on unjust or unduly harsh terms may therefore reject the treaty and, by force of arms, attempt to regain that which it believes has been wrongfully wrested from it.

If, *arguendo*, both propositions were conceded, nevertheless, both are irrelevant to the question confronting us here. In any event the time must arrive when a given status, irrespective of the means whereby it came into being, must be considered as fixed, at least so far as a resort to an aggressive means of correction is concerned.

When Hitler solemnly informed the world that so far as territorial questions were concerned Germany had no claims, and by means of solemn treaty assured Austria, France, Czechoslovakia, and Poland that he had no territorial demands to be made upon them, and when he entered into treaties of peace and nonaggression with them, the status of repose and fixation was reached. These assurances were given and these treaties entered into when there could be no claim of existing compulsion. Thereafter aggressive acts against the territories of these nations became breaches of international law, prohibited by the provisions of the Kellogg-Briand Treaty to which Germany had become a voluntary signatory.

No German could thereafter look upon war or invasion to recover part or all of the territories of which Germany had been deprived by the Treaty of Versailles as other than aggressive. To excuse aggressive acts after these treaties and assurances took place is merely to assert that no treaty and no assurance by Germany is binding and that the pledged word of Germany is valueless. It is therefore particularly unfortunate both for the present and future of the German people that such a defense should be raised as it tends to create doubt when, if at all, the

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nations of the world can place reliance upon German international obligations.

*Czechoslovakia.*—On 16 October 1929, Germany entered into a treaty with Czechoslovakia, Article I of part 1 of which provides that all disputes of any kind between Germany and Czechoslovakia, which it may not be possible to settle amicably by normal means of diplomacy, should be submitted for decision either to



an arbitral tribunal or to a permanent court of international justice, and it was agreed that the disputes referred to include those mentioned in Article XIII of the Covenant of the League of Nations.

On 11 and 12 March 1938 the Hitler government reassured Czechoslovakia that the developments in Austria would in no way have any detrimental influence upon the relations of the German Reich and that state, emphasizing the continued earnest endeavor on the part of Germany to improve those mutual relations. The Czechs were so assured by Goering who gave his "word of honor" and by von Neurath, then Foreign Minister, who officially assured the Czech Minister Mastny, on behalf of Hitler, that Germany still considered herself bound by the German-Czech Arbitration Convention concluded at Locarno in October 1925. Von Mackensen of the Foreign Office gave further assurances that the clarification of the Austrian situation would tend to improve German-Czechoslovakian relations.

*Austria.*—On 21 May 1935, Germany assured Austria that it neither intended nor wished to intervene in the domestic affairs of that state, or annex, or attach that country to her. On 11 July 1936 Hitler entered into an agreement with Austria containing among other things the provision that the German Government recognized the full sovereignty of the Federal State of Austria and in the sense of the pronouncement of the German Leader and Chancellor of 21 May 1935.

By the Treaty of Versailles, Article 40, Germany acknowledged and agreed to respect strictly the independence of Austria within the boundaries which might be fixed in the treaty between the states and the principal Allied and Associated Powers, and further agreed that this independence should be inalienable except by the consent of the Council of the League of Nations.

*Poland.*—On 16 October 1925 Germany, at Locarno, entered into a treaty with Poland which recited that the contracting parties were equally resolved to maintain peace between them by assuring the peaceful settlement of differences which might arise between the two countries, and declared that respect for the rights established by treaty or resulting from the law of nations was obligatory for international tribunals, that the rights of a state

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could not be modified save with its consent, and that all disputes of every kind between Germany and Poland, which it was not possible to settle amicably by normal methods of diplomacy, should be submitted for decision either to an arbitral tribunal or to an international court of justice.

On 26 January 1934 Germany and Poland signed a nonaggression pact which provided, among other things, that under no circumstances would either party proceed to use force for the purpose of settling disputes.

On 7 March 1936 Hitler announced: "We have no territorial demands to make in Europe." On 20 February 1938 Hitler in a speech said (2357-PS):<sup>1</sup>

*"\* \* \* in our relations with the state with which we had had perhaps the greatest differences not only has there been a detente, but in the course of years there has been a constant improvement in relations \* \* \*. The Polish state respects the national conditions in this state and both the city of Danzig and Germany respect Polish rights. And so the way to an understanding has been successfully paved, an understanding which, beginning with Danzig, has today in spite of the attempts of many mischief-makers finally succeeded in taking the poison out of the relations of Germany and Poland and transforming them into a sincere and friendly cooperation." On 26 September 1938, Hitler said (TC-73 (42)):*<sup>2</sup>

*"In Poland there ruled not a democracy, but a man, and with him I succeeded in precisely 12 months in coming to an agreement which, for 10 years, to begin with, entirely removed the danger*

*of conflict. We are all convinced that this agreement will bring lasting pacification."*

On 24 November 1938 Keitel issued orders based on Hitler's instructions of 21 October that preparations be made to enable German troops to occupy the Free City of Danzig by surprise.

*Denmark and Norway.*—On 31 May 1939 Germany and Denmark entered into a nonaggression pact in which they agreed that (TC-24, Pros. Ex. 202) —

*"\* \* \* in no case \* \* \* [shall either country] resort to war or any other use of force, one against the other."*

On 28 August 1939 the defendant von Weizsaecker assured the Danish Minister of Germany's intention to abide by the terms of this pact.

<sup>1</sup> This document was introduced in evidence in the IMT trial as Exhibit GB-30. and the German text is reproduced in part in Trial of the Major War Criminals, op. cit., volume XXX, pages 285 and following.

<sup>2</sup> This document is reproduced in part in Nazi Conspiracy and Aggression (U.S. Government Printing Office, Washington, 1946), volume VIII, page 482.

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On 2 September 1939 Germany assured Norway that in view of the friendly relations existing between them, it would under no circumstances prejudice the inviolability or neutrality of Norway, and on 6 October 1939 Germany again assured Norway that it had never had any conflicts of interest or even points of controversy with the northern states, "and neither has she any today," and that Sweden and Norway had both been offered nonaggression pacts and refused them solely because they did not feel themselves threatened in any way.

*Belgium.*—On 13 January 1937 Hitler stated that Germany had "and here I repeat, solemnly" given assurances time and again that, for instance, between Germany and France there cannot be any humanly conceivable points of controversy; that the German Government had given the assurance to Belgium and Holland that it was prepared to recognize and guarantee the inviolability of those territories. This was reiterated on 26 August 1939 and was again renewed on 6 October of that year. At that very time, by Hitler's order, the chiefs of the German Army were engaged in planning and preparing the invasions of these countries.

*Yugoslavia.*—On 28 April 1938 the German Government, through the defendant von Weizsaecker, stated that having become reunited with Austria, it would consider the frontiers of Italy, Yugoslavia, Estonia, Lichtenstein, and Hungary as inviolable, and that the Yugoslavian Government had been informed by authoritative German circles that Germany policy had no aims beyond Austria, and that the Yugoslavian frontier would, in no case, be assaulted. When in September 1939 Heeren, Minister to Yugoslavia, reported that there was increased anxiety there over Germany's military intentions and requested that some kind of announcement be made to alleviate local fears, the defendant von Weizsaecker replied that in view of Hitler's recent speech declaring that Germany's boundaries to the west and south were final, it would not appear necessary to say more unless new occasions for reissuing reassuring communiques to Yugoslavia should arise.

On 6 October 1939 Hitler gave Yugoslavia the following assurance (TC-43, Pros. Ex. 262):

*"After the completion of the Anschluss I informed Yugoslavia that from now on the boundaries with this country would also be an inviolable one, and that we only desire to live in friendship and peace with her."*

What reliance could be placed on German pledges is revealed by the minutes of the Hitler-Ciano meeting of 12 August 1939 where Hitler stated (1871-PS, Pros. Ex. 260):

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*"Generally speaking, it would be best to liquidate the pseudoneutrals, one after another. This is fairly easily done if the Axis partner protects the rear of the other who is just finishing off one of the uncertain neutrals and vice versa. Italy might consider Yugoslavia such an uncertain neutral."*

*Russia.*—On 23 August 1939 Germany entered into a nonaggression treaty with Russia, providing for arbitral commissions in case of any dispute, and on the same day entered into a secret protocol with the Soviet Union that in the event of a territorial and political rearrangement in the areas belonging to Latvia, Estonia, and Lithuania, the northern boundaries of Lithuania should represent the boundaries of spheres of influence between Germany and Russia, and that the spheres of Germany and Russia in Poland should be bound by the rivers Narew, Vistula, and San, and declared Germany's complete political disinterest in the Soviet claims in Bessarabia.

On 28 September 1939 Germany and the Soviet Union entered into a boundary and friendship agreement which divided Poland between them and fixed their mutual boundaries, and on the same date entered in a secret supplementary protocol which amended that of 23 August putting the Lithuanian state within the sphere of Soviet influence and Lublin and parts of Warsaw in the German sphere.

On the same day the two nations entered into a further agreement declaring that Germany and Russia would direct their common efforts jointly, and with other friendly powers if occasion arises, toward putting an end to the war between Germany and England and France, and that if these efforts remained fruitless, this failure would demonstrate the fact that England and France were responsible for the conditions of the war, and Germany and Russia would engage in mutual consultations with regard to necessary measures.

Such were the treaties. Nevertheless, as was found by the International Military Tribunal, as early as the late summer of 1940 Germany began to make preparations for an attack on the Soviets in spite of the nonaggression pact.

The German Ambassador in Moscow reported that the Soviet Union would go to war only if attacked. Russia had fulfilled not only its obligations under the political treaty, but those arising out of the commercial treaty.

The claim now made that Russia intended to attack Germany is without foundation. It expressed concern over the large German troop concentrations in Rumania which were of such size that the German explanation that they were intended to prevent the British from establishing a Salonikian front was obviously

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false, but there is no substantial evidence that Russia intended to attack Germany; its concern was that it might become the attacked.

In addition to all speeches, assurances, and treaties Germany had signed the Kellogg-Briand Pact, which not only prescribed aggressive wars between nations, but abandoned war as an instrument of governmental policy and substituted conciliation and arbitration for it. One of its most important and far-reaching provisions was that it implicitly authorized the other nations of the world to take such measures as they might deem proper or necessary to punish the transgressor. In short, it placed the aggressor outside the society of nations. The Kellogg-Briand Pact, however, did not attempt to either prohibit or limit the right of self-defense, but it is implicit, both in its word and spirit, that he who violates the treaty is subject to disciplinary action on the part of the other signatories and that he who initiates aggressive war loses the right

to claim self-defense against those who seek to enforce the Treaty. This was merely the embodiment in international law of a long-established principle of criminal law ;\*"\*"\* there can be no self-defense against self-defense."

The indictment charges that German aggression started with the forcible annexation of Austria. It is not urged that this action arose because of any fear of aggression by that state, or that it had planned or proposed to join any other state in any aggressive action against Germany. That Hitler planned to seize both Austria and Czechoslovakia without regard to the wishes of those people is clear from his statements made at the famous secret conferences of 5 November 1937 and 23 November 1939.

The Austro-Hungarian Empire was dissolved at the end of the First World War, and by the Treaty of Versailles [St. Germain] Austria became an independent and sovereign state. At that time, and at least during most of the time of the Weimar Republic, there was a strong desire on the part of Austria to join Germany.

Notwithstanding attempts to conceal ultimate objectives and palpable deceptive disclaimers by official Germany and by the Nazi Party of any desire to interfere in Austrian affairs, it became obvious that by fair means or foul the Hitler regime intended and proceeded to subsidize, direct, and control the Austrian members of the Party, and that these efforts were directed toward the annexation of the country. No agreement was made which was not violated; none were made with any intention to

\* Wharton's Criminal Law (12th Edition, Lawyer's Cooperative Publishing Company, Rochester, N.Y., 1932), volume I, page 180.

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abide by them; and the same technique of propaganda, coercion, and violence was followed in Austria which had been successful in Germany. In the latter stages when it was felt that the plum was ripe and about to fall, and when the possible intervention of other powers still existed, a purported repudiation of Austrian radicals was put forth, not because of disapproval of what they were doing, but to camouflage the program.

While it is now asserted that an overwhelming majority of Austrians accepted and were enraptured by the Anschluss, neither Hitler nor his crew could contain themselves to await what they now term was the inevitable, nor run the hazard of a plebiscite, but Seyss-Inquart was forced on Schuschnigg and made Minister of the Interior where he could control the police, and finally an ultimatum was served on the Austrian Government, and the troops marched in. But before a German soldier crossed the border, armed bands of National Socialist SA and SS units under German control and orders and leaders had taken possession of the city of Vienna, seized the reins of government, and ousted the leaders of the Austrian state and placed them under guard.

In view of the size of the German Army, the disproportion in manpower and military resources, no hope of successful resistance existed. Austria fell without a struggle and the Anschluss was accomplished. It was followed by the proscription, persecution, and internement in concentration camps of those who had resisted the Nazi movement, and the policy there pursued was identical with those which had followed the seizure of power in Germany.

That the invasion was aggressive and that Hitler followed a campaign of deceit, threats, and coercion is beyond question. The whole story is one of duplicity and overwhelming force. It was a part of a program declared to his own circle, and was

the first step in the well-conceived and carefully planned campaign of aggression; Austria first, Czechoslovakia second, and Poland third, while visions of the further aggressive aggrandizement were dangled before the eyes of the German leaders. Neither these acts nor the invasion by German armed forces can be said to be pacific means or a peaceful and orderly process within the meaning of the preamble of the Kellogg-Briand Pact, and violated both its letter and spirit.

It must be borne in mind that the term "invasion" connotes and implies the use of force. In the instant cases the force used was military force. In the course of construction of this definition, we certainly may consider the word "invasion" in its usually accepted sense. We may assume that the enacting author-

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ities also used the term in a like sense. In Webster's Unabridged Dictionary, we find the following definition of invasion:

*"Invasion.—1. Act of invading, especially a warlike or hostile entrance into the possessions or domains of another; the incursion of an army for conquest or plunder."*

The evidence with respect to both Austria and Czechoslovakia indicates that the invasions were hostile and aggressive. An invasion of this character is clearly such an act of war as is tantamount to, and may be treated as, a declaration of war. It is not reasonable to assume that an act of war, in the nature of an invasion, whereby conquest and plunder are achieved without resistance, is to be given more favorable consideration than a similar invasion which may have met with some military resistance. The fact that the aggressor was here able to so overawe the invaded countries, does not detract in the slightest from the enormity of the aggression, in reality perpetrated. The invader here employed an act of war. This act of war was an instrument of national policy. Tribunal V in Case 12 (the High Command case)\* in the course of its judgment said:

*"As a preliminary to that we deem it necessary to give a brief consideration to the nature and characteristics of war. We need not attempt a definition that is all inclusive and all exclusive. It is sufficient to say that war is the exerting of violence by one state or politically organized body, against another.. In other words, it is the implementation of a political policy by means of violence. Wars are contests by force between political units but the policy that brings about their initiation is made and the actual waging of them is done by individuals. What we have said thus far is equally applicable to a just as to an unjust war, to the initiation of an aggressive and, therefore, criminal war, as to the waging of defensive and, therefore, legitimate war against criminal aggression. The point we stress is that war activity is the implementation of a predetermined national policy.*

*"Likewise, an invasion of one state by another is the implementation of the national policy of the invading state by force even though the invaded state, due to fear or a sense of the futility of resistance in the face of superior force, adopts a policy of non-resistance and thus prevents the occurrence of any actual combat." [Emphasis added.]*

We hold that the invasion of Austria was aggressive and a crime against peace within the meaning of Control Council Law No. 10.

\*United States vs. Wilhelm von Leeb, et al., Volumes X and XI. this series.

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We have already quoted Hitler's words as to his plans regarding the Czechoslovakian state. The objectives were fixed but the tactics of accomplishment were elastic and depended upon the necessities and conveniences of time and circumstance. This was no more than the distinction between military strategy and tactics. Strategy is the over-all plan which does not vary. Tactics are the techniques of action which adjust

themselves to the circumstances of weather, terrain, supply, and resistance. The Nazi plans to destroy the Czech state remained constant. But where, when, and how to strike depended upon circumstances as they arose.

The evidence establishes beyond all question or doubt that Germany, under Hitler, never made a promise which it intended to keep, that it promised anything and everything whenever it thought promises would lull suspicion, and promised peace on the eve of initiating war.

When in 1938 Germany invaded Austria it was in no danger from that state or its neighbors. When it had swallowed the Austrian Federal State, Germany moved against Czechoslovakia, using the question of the Sudeten Germans as a mere excuse for its demands at Munich. It completed its organization of and assumed even greater control over Henlein and his party, which it had secretly organized and subsidized, and directed him to reject any Czech efforts of composition and compromise and to constantly increase his demands.

At Munich it put forth demands for the annexation of the Sudetenland when theretofore it had not suggested it. Its Foreign Office had instructed its representatives to inform Lord Runciman that unless his report regarding the Sudeten question was favorable to the German wishes, dire international results would follow. After Munich it promised and declared that it had no further ideas of aggression against the remnants of the Czech state when, at the very moment, those plans were in existence, and were ready to be matured. It fomented, subsidized, and supported the Slovakian movement for independence in the face of its assurance of friendship with the Czechs. When Tiso seemed to hesitate, Hitler made it clear that unless this action was taken he would lose interest in the Slovaks. He summoned the aged and ill Hacha to Berlin and threatened his country with war and the destruction of its ancient capital, Prague, by aerial warfare. He started his armed forces on the march into Bohemia and Moravia before he had coerced Hacha into submission.

The announcement that its relations with Poland were excellent and that peace was assured came when plans for the invasion of Poland were already decided upon. It made nonaggression

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pacts, gave assurances to Denmark and Norway, at a time when the question of occupying these countries for the purpose of obtaining bases was being considered. It assured Holland, Belgium, and Luxembourg that it would respect their neutrality when it had already planned to violate it and only awaited a propitious moment so to do.

When Germany fomented and subsidized the Henlein Sudeten movement, it knew that Czechoslovakia desired peace and not war. It used the technique of agent provocateur, both in Czechoslovakia and again in Poland, to create incidents upon which it could seize as an excuse for military action.

Hitler's aggression against Russia was not induced by fear of attack, but because Russia had material resources for which Hitler hankered. How, at that time, any country could have had the slightest faith in Germany's word is beyond comprehension.

The record is one of abysmal duplicity which carried in its train death, suffering, and loss to practically every people in the world; it brought ruin to Germany and a world-wide distrust in the ability of its people to govern themselves as a peace-loving and useful nation. Because of this record the road back is long and arduous and beset

with difficulty.

The attempt, which had been made to create the fiction and fable that the Third Reich acted in self-defense and was justified in its acts toward its neighbors, has no foundation and is, in fact, a disservice to the German people. We believe it is an effort to lay the ground work for a resurgence of the ideology which brought untold suffering to the world and ruin to the German nation.

Until the seizure of power, the Western World, on the whole, looked with sympathy and satisfaction on the efforts of the German people to regain the place in the family of nations to which it was entitled, and which it had lost. They suspected, even if they did not know, that Germany, from the very day that it signed the Versailles Treaty, had secretly violated its terms as to disarmament. But while suspicion of Germany's good faith existed in some circles, a strong hope and faith prevailed that the German nation would achieve a free and prosperous society.

It was the Nazi regime and its ready acceptance by the German people which brought the world to arms in defense against an ideology and a dictator whose programs and aims knew no bounds.

After having relied upon Germany's pledge at Munich and found it worthless, having observed the increasing demands upon and its intransigence toward Poland, it is not surprising that France and England found it necessary to enter into a treaty

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of assistance with Poland, and there is neither fact nor substance to the contention that that treaty gave Poland a blank check. Germany was so informed by France and England, as were the Poles.

No justification can, or has been, offered for the invasion of Denmark, other than the pseudo one of military necessity. The Danes had maintained their neutrality and had given no offense to Germany. It was helpless and resistance hopeless as the gallant but futile resistance of the Palace Guards indicated. But as we shall hereafter discuss, military necessity is never available to an aggressor as a defense for invading the rights of a neutral.

*Norway.*—The defense insists that the invasion of Norway was justified because of French and British plans to land expeditionary forces there, in violation of Norwegian neutrality, and, therefore, Germany acted in self-defense. We may repeat the statement that having initiated aggressive wars, which brought England and France to the aid of the Poles, Germany forfeited the right to claim self-defense, but there are other and cogent facts which make this defense unavailable.

Long before the discovery of alleged British and French plans, and before any such plans existed, the Third Reich commenced to support and subsidize Quisling and his movement for the purpose of gaining control of the Norwegian Government and therefore of Norway. It made no inquiry whether Norway could or would protect its neutrality against Britain and France, and the German official documents disclose that it avoided such an approach and kept its plans secret because of the fear that the other neutral powers would intervene and institute discussions directed toward maintaining Norwegian neutrality and preventing that country from becoming a theatre of war. Finally the desirability of obtaining air and other bases in Norway was a motivating factor for the invasion and this was pointed out by Raeder and Doenitz as early as 3 October 1939.

We hold that the invasion of Norway was aggressive, that the war which Germany

initiated and waged there was without lawful justification or excuse and is a crime under international law and Control Council Law No. 10.

*Luxembourg.*—No justification or excuse is offered regarding the invasion of Luxembourg other than military convenience. No claim is made that Luxembourg had in any way violated its neutrality. In fact, it had not. The German invasion was aggressive, without legal justification or excuse.

*Belgium and the Netherlands.*—That both of these nations were pathetically eager to avoid being drawn into the holocaust is established beyond doubt. That they had every reason to be dis-

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trustful of Germany's word is equally clear. The testimony offered by the defense discloses that when the Third Reich assured the Low Countries that it intended to, and would, observe its treaty obligations and had no hostile intentions, the intention to invade had already been determined upon and was only awaiting a favorable moment.

An attempt has been made to assert that the invasion of Belgium was justified because of conversations between the French and Belgian military staffs. The Belgian Government had been apprehensive for many months that Germany would use its territory as a means to attack the French flank. German preparations to invade Belgium had been matured long since and were hardly a secret. Belgium was properly concerned regarding her defense and possible aid if she were invaded, and her conversations with the French and English were addressed to this alone. Hitler's attack was without justification or excuse and constituted a crime against peace. As to Holland, there is even less ground for justification and excuse.

*Yugoslavia and Greece.*—Germany's Axis partner, Italy, initiated an aggressive attack against Greece which the defense does not attempt to justify, but asserts that this was undertaken without previous consultations or agreement with Hitler. This appears to be true. But Germany had been advised by its representatives in Rome of the imminence of the attack and its Foreign Office knew of Greek apprehensions regarding the same, and it intentionally displayed alleged ignorance and refused to take any action to prevent it. The German excuse for the attack on Greece is that England had landed certain troop elements in aid of Greece's defense against Italy and that as a matter of self-defense Germany was compelled to intervene, but an aggressor may not loose the dogs of war and thereafter plead self-defense.

The only justification offered for the German invasion of Yugoslavia is the *coup d'etat* which overthrew the government which had signed the Anti-Comintern Pact, and the fear that Yugoslavia would remain neutral only until such time as it might join the ranks of Germany's enemies.

The unquestioned fact is that every country, and particularly those which lay along or near German boundaries, was fully aware that German actions in Austria, Czechoslovakia, and Poland were aggressive and unjustified, and that in attacking and invading, Hitler had broken not only the provisions of the Kellogg-Briand Pact, but the pledges which he had given to those countries; each fully disapproved of Germany's action and the question which lay in their minds was where the next blow would fall. We think there is no doubt whatsoever that every country in Europe, except

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its Axis partners, hoped for German defeat as the one insurance for its own safety, but such hopes cannot justify the German action against them.

The claim of self-defense is without merit. That doctrine is never available either to individuals or nations who are aggressors. The robber or the murderer cannot claim self-defense, in attacking the police to avoid arrest or those who, he fears, disapprove of his criminal conduct and hope that he will be apprehended and brought to justice.

The invasion of Austria, the invasion of Bohemia and Moravia, and the attack on Poland were in violation of international law and in each case, by resorting to armed force, Germany violated the Kellogg-Briand Pact. It thereby became an international outlaw and every peaceable nation had the right to oppose it without itself becoming an aggressor, to help the attacked and join with those who had previously come to the aid of the victim. The doctrine of self-defense and military necessity was never available to Germany as a matter of international law, in view of its prior violations of that law.

*United States of America.*—That the United States abandoned a neutral attitude toward Germany long before Germany declared war is without question. It hoped for Germany's defeat, gave aid and support to Great Britain and to the governments of the countries which Germany had overrun. Its entire course of conduct for over a year before 11 December 1941 was wholly inconsistent with neutrality and that it had no intention of permitting Germany's victory, even though this led to hostilities, became increasingly apparent. However, in so doing, the United States did not become an aggressor; it was acting within its international rights in hampering and hindering with the intention of insuring the defeat of the nation which had wrongfully, without excuse, and in violation of its treaties and obligations embarked on a coldly calculated program of aggression and war. But such intent, purpose, and action does not remove the aggressive character of the German declaration of war of 11 December 1941.

A nation which engages in aggressive war invites the other nations of the world to take measures, including force, to halt the invasion and to punish the aggressor, and if by reason thereof the aggressor declares war on a third nation, the original aggression carries over and gives the character of aggression to the second and succeeding wars.

We hold that the invasions and wars described in paragraph two of the indictment against Austria, Czechoslovakia, Poland, the United Kingdom and France, Denmark and Norway, Belgium, the Netherlands, and Luxembourg, Yugoslavia and Greece,

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the Union of Soviet Socialist Republics, and the United States of America were unlawful and aggressive, violated international law, and were crimes within the definition of the London Charter and Control Council Law No. 10.

Our task is to determine which, if any, of the defendants, knowing there was an intent to so initiate and wage aggressive war, consciously participated in either plans, preparations, initiations of those wars, or so knowing, participated or aided in carrying them on. Obviously, no man may be condemned for fighting in what he believes is the defense of his native land, even though his belief be mistaken. Nor can he be expected to undertake an independent investigation to determine whether or not the cause for which he fights is the result of an aggressive act of his own government.

One can be guilty only where knowledge of aggression in fact exists, and it is not sufficient that he have suspicions that the war is aggressive.

Any other test of guilt would involve a standard of conduct both impracticable and unjust.

*Criminal responsibility.*—Article. II, paragraph 2, of Control Council Law No. 10, provides that—

*"Any person without regard to nationality or the capacity in which he acted, is deemed to have committed a crime as defined in paragraph 1 of this Article, if he was (a) a principal or (b) was an accessory to the commission of any such crime or ordered or abetted the same or (c) took a consenting part therein \* \* \*."*

Therefore, all those who were either principals or accessories before or after the fact, are criminally responsible, although the degree of criminal responsibility may vary in accordance with the nature of his acts.

Under the provisions of paragraph 4(6), Article II—

*"The fact that any person acted pursuant to the order of his government or of a superior does not free him from responsibility for a crime, but may be considered in mitigation."*

In the realm of the ordinary criminal law, one who conceals the fact that a crime has been committed or gives false testimony as to the facts for the purpose of giving some advantage to the perpetrator, not on account of fear but for the sake of an advantage to the accused, is an accessory after the fact. Under English criminal law, one who destroys or suppresses evidence of a crime or manufactures evidence tending to prove the felon's innocence is likewise an accessory after the fact.\*

\* American Jurisprudence (Bancroft-Whitney Co., San Francisco, Calif., Lawyers' Cooperative Publishing Co., Rochester, N. Y., 1938), Criminal Law. volume 14, paragraphs 103 and 104, pages 837 and 838.

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Applying these principles to international criminal law, we hold that one who is under duty to speak the truth and who conceals the fact that a crime has been committed, or destroys, or suppresses evidence regarding it, or who manufactures evidence tending to prove his government's innocence, is an accessory within the meaning of paragraph 2, Article II, of Control Council Law No. 10.

It must be apparent to everyone that the many diverse, elaborate, and complex Nazi programs of aggression and exploitation were not self-executing, but their success was dependent in a large measure upon the devotion and skill of men holding positions of authority in the various departments of the Reich government charged with the administration or execution of such programs.

In discussing whether or not the Reich Cabinet was a criminal organization within the meaning of the London Charter, the International Military Tribunal said:<sup>1</sup>

*"The Tribunal is of the opinion that no declaration of criminality should be made with respect to the Reich Cabinet for two reasons:*

*"(1) Because it is not shown that after 1937 it ever really acted as a group or organization;*

*"(2) Because the group of persons here charged is so small that members could be conveniently tried in proper cases without resort to a declaration that the Cabinet of which they were members was criminal. \* \* \**

*"It will be remembered that when Hitler disclosed his aims of criminal aggression at the Hossbach Conference, the disclosure was not made before the Cabinet and that the Cabinet was not consulted with regard to it, but, on the contrary, it was made secretly to a small group upon whom Hitler would necessarily rely in carrying on the war.*

*"It does appear, however, that various laws authorizing acts which were criminal under the Charter were circulated among the members of the Reich Cabinet and issued under its authority signed by the members whose departments were concerned."*

The principles there stated are equally applicable to the defendants here who were

members of the Cabinet and to those defendants who occupied positions of responsibility and power in the various ministries.

We concur in and shall apply the following principles laid down by the International Military Tribunal:<sup>2</sup>

<sup>1</sup> Trial of the Major War Criminals, op. cit., volume I, pages 275 and 276..

<sup>2</sup> *Ibid.*, p. 226

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*"A plan in the execution of which a number of persons participate is still a plan, even though conceived by only one of them; and those who execute the plan do not avoid responsibility by showing that they acted under the direction of the man who conceived it. Hitler could not make aggressive war by himself. He had to have the cooperation of statesmen, military leaders, diplomats, and businessmen. When they, with knowledge of his aims, gave him their cooperation, they made themselves parties to the plan he had initiated. They are not to be deemed innocent because Hitler made use of them, if they knew what they were doing. That they were assigned to their tasks by a dictator does not absolve them from responsibility for their acts. The relation of leader and follower does not preclude responsibility here any more than it does in the comparable tyranny of organized domestic crime."*

While we hold that knowledge that Hitler's wars and invasions were aggressive is an essential element of guilt under count one of the indictment, a very different situation arises with respect to counts three, five, six, and seven, which deal with war crimes and crimes against humanity. He who knowingly joined or implemented, aided, or abetted in their commission as principal or accessory cannot be heard to say that he did not know the acts in question were criminal. Measures which result in murder, ill-treatment, enslavement, and other inhumane acts perpetrated on prisoners of war, deportation, extermination, enslavement, and persecution on political, racial, and religious grounds, and plunder and spoliation of public and private property are acts which shock the conscience of every decent man. These are criminals *per se*.

We have considered the claims made by certain of the defendants that they carried on certain activities because of coercion and duress, and that therefore they were forced to act as they did and could not resign or otherwise avoid compliance with the criminal program. It may be true that they could not have continued to hold office if they did not so comply, or that offers of resignation were not accepted, but, as the defendant Schwerin von Krosigk admits, there were other ways available to them by which they could have been relieved from continuing in their course. None of their superiors would have continued them in office had it constantly appeared that they disapproved of or objected to the commission of these criminal programs, and therefore displayed a lack of cooperation. The fact is, that for varying reasons each said as little as he could, and when he expressed dissent, did so in words which were as soft and innocuous as he could find.

We find that none of the defendants acted under coercion or duress.

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#### VON WEIZSAECKER

The defendant Ernst von Weizsaecker entered the Foreign Office in 1920 and after serving in various capacities there and abroad was appointed Ministerial Director of the Political Division in 1937, and State Secretary in April 1938, serving in that capacity until the spring of 1943, when he was appointed German Ambassador to the

Vatican.

As State Secretary he was second only to the Foreign Minister, von Ribbentrop. All divisions of the Foreign Office were subordinate to him. His relations to von Ribbentrop were never close, and gradually deteriorated. Through him and his office all the activities of the Foreign Office were channeled, and all divisions were bound to report to him and in theory and generally in practice received instructions from him. As his relations with von Ribbentrop cooled, occasions arose when the latter gave direct instructions to ministers and ambassadors abroad, and in some instances to divisions of the Foreign Office, without first consulting or informing him, but generally that was not the case.

Although the defendant von Weizsaecker was not present at the conferences where Hitler announced his plans of aggression, he became familiar with them from reliable sources, that is, von Ribbentrop, Canaris, leading generals of the Wehrmacht, and others who furnished him with accurate information. He was neither deceived nor misled concerning the program, although in certain instances he may not have been fully advised of the actually scheduled timetable. He makes no question about this. That to the outside world and to his chief, the Foreign Minister, he wore the face of a willing and earnest collaborator, or at least a consenting one in many instances, he likewise concedes. The documents which he signed or initialed, the conferences which he had with foreign diplomats, the directions which he gave to his subordinates and to the German diplomatic missions abroad, are more than sufficient, unless otherwise explained, not only to warrant, but to compel a judgment of guilty.

His defense is that, although appearing to collaborate, he was continuously engaged in endeavoring to sabotage it and was an active member of the resistance movement; that he never sympathized with, or approved of, the Party movement or of the Hitler program, and that when it became clear to him that the foreign policy of Hitler and von Ribbentrop entailed the danger of war, and that when he became informed that Hitler intended to use aggressive wars and invasions as a means to carry out his political plans, he became active in plots and plans to remove him from power by means of a Putsch to be engineered and executed by

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those chiefs of the army who held the same convictions as did he. That the men thus involved included, among others, Generals Beck and Haider, Admiral Canaris, Colonel Oster, and others; that he was convinced that the policies of Hitler and von Ribbentrop entailed, as they did in fact, death, disaster, and destruction to the German people and the ruin of his Fatherland; and that his loyalty to both required him to use these methods for the salvation of all that he felt dear.

The defense that things are not what they seem, and that one gave lip service but was secretly engaged in rendering even this service ineffective; that, in saying "yes," one meant "no," is a defense readily available to the most guilty and is not novel either here or in other jurisdictions. Such a defense must be regarded with suspicion and accepted with caution, and then only when fully corroborated. The exceeding caution observed by the defendant on cross-examination and his claims of lack of recollection of events of importance, which by no stretch of the imagination could be deemed routine, his insistence that he be confronted with documents before testifying about such incidents, were not calculated to create an impression of frankness and candor. His failure to suggest at his interrogations that he was a member of the resistance movement and therefore was opposed to aggression and to the Nazi

regime when it must have occurred to him, as it would to any innocent man, that such a statement, particularly if it was corroborated, would have disarmed those who might otherwise be in doubt of his guilt is difficult to understand.

However, these instances alone do not justify us in casting aside the defense. It must be carefully considered, even though this consideration be accompanied with caution and even suspicion. A man is presumed to intend the natural consequences of his own deliberate acts, but this presumption fails if the evidence establishes that the contrary is true.

We recognize that, in the Third Reich, conditions which surround individuals in a free and democratic society did not exist, and that he who plotted against the dictator could not wear his heart upon his sleeve nor leave a trail which could be readily followed. We therefore proceed to analyze the defendant's claims, check them against his acts, to evaluate the testimony offered upon his behalf in the hope thereby to unravel the tangled skein and ascertain the truth.

We reject the claim that good intentions render innocent that which is otherwise criminal, and which asserts that one may with impunity commit serious crimes, because he hopes thereby to prevent others, or that general benevolence toward individuals

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is a cloak or justification for participation in crimes against the unknown many.

Planning, preparing, initiating, or waging aggressive war with its attendant horror, suffering, and loss is a crime which stands at the pinnacle of criminality. For it there is no justification or excuse.

We shall deal with the charges of aggressive invasions and wars in the order set forth in the indictment.

*Austria.*—The prosecution relies upon the following evidence:

(1) That von Weizsaecker was chief of the German delegation to the mixed commission appointed on the basis of the German-Austrian Agreement of 11 July 1936.

(2) That the defendant Keppler maintained contact with the Foreign Office, hoping thereby to eliminate differences of opinion, and that von Weizsaecker, as chief of the Political Division, carried the responsibility for coordination of Foreign Office diplomatic activities with the general plans of aggression.

(3) That Keppler on several occasions talked with von Weizsaecker, his subordinate Altenburg, and von Neurath; that these conferences in particular cloaked a clandestine meeting between members of the German delegation and leaders of the Party in Austria, particularly Captain Leopold.

(3) That von Weizsaecker's section received Keppler's letter stating that Seyss-Inquart would not undertake any obligations relative to Austrian status without the previous contact and agreement with Hitler and the German Foreign Office.

(5) That von Weizsaecker's Referent, Altenburg, prepared a memorandum for von Ribbentrop, then the newly appointed Foreign Minister, in which it was said:

*"The primary requirements for a satisfactory result of the conference in progress should be the close cooperation between the men empowered by the Reich to carry on negotiations and the exponents of the movement in Austria in order to prevent Schuschnigg from playing off the Reich against the movement in Austria, and vice versa."*

(6) That the Foreign Office from October 1937 defrayed one-half of his monthly propaganda expenses incurred by Mergle of the NSDAP in Austria.

(7) That von Weizsaecker was aware in February 1938 that large quantities of National Socialist propaganda material were being shipped illegally into Austria from Germany.

(8) That von Weizsaecker knew of von Neurath's diplomatic justification for the invasion of Austria which was issued on or about 12 March 1938.

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(9) That von Weizsaecker wrote a preface to the Foreign Office Year Book for 1938 in which he stated that that year would always have a special rank in German history as the year of the reunion with Austria, and that it was good to remember that in politics nothing is accomplished by mere chance.

These claims however do not establish guilt. The offense is the planning, preparation, and initiation of aggressive invasions. That such an invasion took place as the result of planning, etc., is perfectly clear, but unless the defendant participated in them, he committed no offense under international law, and certainly not the one here charged.

In the absence of treaty obligations one may encourage political movements in another state, consort with the leaders of such movements, and give them financial or other support, all for the purpose of strengthening the movement which has an annexation as its ultimate purpose without violating international law. It is only when these things are done with knowledge that they are a part of a scheme to use force and to be followed, if necessary, by aggressive war or invasion that an offense cognizable by this Tribunal comes into being. There is no evidence that von Weizsaecker at the time knew that Hitler intended to invade Austria. We think it may be fairly said that until the latter stages of the incident Hitler felt that his objectives could be attained by means other than invasion by the German armed forces; his own statements clearly show that if he could not do so he fully intended to use force. If, however, this was not known to von Weizsaecker at the time he acted, he committed no offense irrespective of how one may view the morality of the remainder of the program. This Tribunal has jurisdiction over certain specified crimes, and has none over questions of morality not involved in those offenses.

The evidence does not establish von Weizsaecker's guilt in connection with the invasion of Austria.

*The Sudetenland, Munich.*—While the tactics pursued by Hitler and von Ribbentrop in the months before and during the Munich conference were those of the threatening bully and highwayman, they were effective, and England and France in an attempt to avoid a general European war supinely submitted. The pact was signed and Czechoslovakia was left helpless and therefore acquiesced in the resultant annexation of the Sudetenland. There was no invasion and no war. Germany's possession of the Sudetenland was the result of an international agreement. That Hitler had no intention to abide by it and that his assurances to England, France, and Czechoslovakia that this was the end of his territorial aims were false, there can be no doubt. This is estab-

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lished by his own words at the conference of 5 November 1937, recorded by Lieutenant Colonel Hossbach and reiterated at the meeting of 23 November 1939. But von Weizsaecker was not present at either of these conferences and there is no

evidence that he was presently informed of the plans announced by Hitler at the first of these meetings.

That he continuously discouraged von Ribbentrop's penchant for aggressive war, endeavored to dissuade him from embarking on a campaign which might involve aggressive war, is shown from the memorandum which he submitted on 21 July 1938 and again on 19 August of that year.

In the first, in answer to von Ribbentrop's boast that if necessary Germany would allow a major war with the Western Powers to break out and would win it, and that the French could be decisively crushed in a major engagement with Germany, that Germany was equipped with enough raw materials and that Goering was directing aircraft construction in such a way that Germany was superior to any enemy, von Weizsaecker said (*Weizsaecker 346, Weizsaecker Ex. 56*):

*"I remarked that to outsiders one must talk in such a manner as to convince them. I said that even when it was our task to fool foreign countries, it was our duty not to fool ourselves. I did not believe that we should win this war. It was a basic truth that one could only conquer a country if one either occupied it or starved it out. To want to do this with airplanes was a Utopian dream; so I did not understand how we could win the war, nor did I believe in our powers of endurance."*

In a memorandum of 13 August 1938, von Ribbentrop explained to von Weizsaecker that Hitler was firmly resolved to settle the Czech affair by force of arms and had said that on account of flying conditions the middle of October was the latest possible date, that the other powers would definitely do nothing about it, and if they did, Germany would take them on as well and win. Von Weizsaecker then records his views as follows (*Weizsaecker 346, Weizsaecker Ex. 56*):

*"I again opposed this whole theory and observed that we should have to await political developments until the English lost interest in the Czech matter and would tolerate our action before we could tackle the affair without undue risk. Mr. von Ribbentrop wanted to put the question of responsibility in such a way that I was responsible to him, he only to the Fuehrer, and the Fuehrer alone to the German nation, whereas I maintained that one's way of thinking had to be based on such an ideology in order to carry it out to the best advantage."*

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*Mr. von Ribbentrop said that the Fuehrer had not yet been wrong, and that his most difficult decisions and acts on behalf of the Rhineland were already behind him and one must believe in his genius as he, Ribbentrop, did from long years of experience. If I had not yet come to the point of blind faith in this matter \* \* \* he urged me amicably to do so. He said I would certainly regret it later, if I did not do so and if this fact were later to speak against me."*

At the end of August 1938, von Weizsaecker prepared a "strictly secret" report in which he said (*Weizsaecker 355, Weizsaecker Ex. 58*):

*"The next few weeks will see the growth of the Czechoslovakian question from a local crisis into a European one. The great European powers will then show their alignment more clearly in the diplomatic as well as the military spheres. Soon there won't be any more room for doubt that in case of an invasion of Czechoslovakia Germany would be faced with the Western Powers as opponents. In view of this situation, the leading lights of German policy have got to review their plans quickly. If they should fail to do so, a European war would develop after a short warming-up period following upon the German. Such a war would sooner or later end with a German capitulation. The coalition of western powers can, if they so desire, decide the war without a great sacrifice of lives, simply by blockading Germany. It is obvious what such a defeat would mean for Adolf Hitler's reconstruction program."*

On 1 September 1938 Kordt, in London, reported to von Weizsaecker (*Weizsaecker 356, Weizsaecker Ex. 59*):

*"In the course of yesterday the British Government received information according to which the Fuehrer intends to solve the Czech questions by force. These items of information chiefly originate from Churchill, Vansittart, and Christie. In yesterday's talk with Lord Halifax, Churchill pointed out the necessity for timely and energetic action on the part of the British Government if they still*

wanted to prevent the outbreak of a war.

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*"In the Foreign Office all non-German visitors are given to understand quite openly that Britain would not yield again this time, as the other time in the case of Italy. The policy of the year 1935 had produced the most severe consequences and Britain had to make up its mind to confront the Germans with*

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*a categorical 'stop' in conjunction with its allies, if need be by force of arms."*

On 16 September 1938, von Hassell made the following entry in his diary: \*

*"Friday, 16 September:*

*"Weizsaecker told me today that apparently Chamberlain did not make it sufficiently clear that England would go to war if Germany used force."*

We select these documents out of many because they are contemporaneous with the events under examination.

Von Hassell was a member of the resistance group and was executed by the Nazi regime in connection with the 20 July 1944 plot. The genuineness of his diary is not questioned.

This, with von Weizsaecker's own testimony, demonstrates not only that he was not engaged in planning or preparing an aggressive war, but that he was averse to it and that he expressed no thought that in the long run it would be successful, but on the contrary that it would involve disaster to Germany.

We pass now from the views which he expressed to his friend and collaborator, von Hassell, and to his chief, von Ribbentrop, to the efforts allegedly put forth to advise the French and English of Hitler's plans and the suggestions which he made for their frustration. Again we do not rely upon what his associates now say he thought and did, but upon what officials of foreign governments depose were his views and acts.

Lord Halifax, who was British Foreign Secretary from 1938 to 1940, deposed that although he never had any official contact with the defendant, he was frequently reported, by Halifax's advisers and the British Ambassador at Berlin, as being a convinced opponent of Nazi ideals and policy, and he used his official position in the Foreign Office to hinder as far as lay in his power the execution of von Ribbentrop's policies.

Lord Halifax gave his second affidavit in which he deposes that Theodor Kordt's letter of 29 July 1947 and his reply of 9 August 1947 state the facts. These letters on their face relate to the denazification proceedings of Erich Kordt, who was a witness before this Tribunal. Theodor Kordt wrote (*Weizsaecker 496, Weizsaecker Ex. 453*):

*"You will remember that the information I gave you and Sir Robert Vansittart on Hitler's plans and moves in these terrible years of crisis came all from my brother Erich who held a key position in the opposition group. My brother hap-*

\* Von Hassell, Ulrich, *The Von Hassell Diaries, 1938-1944* (Doubleday and Company, Inc., Garden City, New York), Ease 4 (Weizsaecker 292, Weizsaecker Ex. 60),

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*pened to be at that time in the Foreign Office in Berlin. His loyalty did not belong to this Nazi regime but to the German people and to the idea of European peace and international decency. May I recall that I informed you on 5 September 1938 of the impending attack on Czechoslovakia. In 1938 and 1939 I was in close (sometimes daily) contact with the Chief Diplomatic Adviser to H. M. Government, Sir Robert Vansittart. My brother came several times personally to London, notwithstanding the obvious risks for his safety, in order to inform Sir Robert personally of the impending danger on the international horizon. Sir Robert assured me that .he would pass this*



*information to you at once, for example, of Hitler's plans to come to an agreement with the Soviet Union, the negotiations between Hitler and Mussolini for an alliance, and the advice from the German opposition to put pressure on Mussolini in order to restrain his partner from the pursuance of his bellicose policy."*

Lord Halifax's reply contains the following statements (Weizsaecker 496, Weizsaecker Ex. 453):

*"Of course I remember very well the information that came to me through Lord Vansittart in these days before the war, and that he said reached him from your brother. You will no doubt have been in communication with Lord Vansittart direct.*

*"I cannot doubt that in so acting your brother took very great risks and in so doing gave very practical evidence of his active opposition to the criminal policy of Hitler."*

The Bishop of Chichester deposes as follows (Weizsaecker 497, Weizsaecker Ex. 454):

*"Information came to us in the United Kingdom that the State Secretary von Weizsaecker was opposed to Hitler, and von Ribbentrop, and the Nazi policies and was using his official position to avoid war. As this information went to our Secretary of State for Foreign Affairs, Lord Halifax, it was certainly known to the Undersecretary of State, Sir Robert Vansittart. Active steps were taken by, not only the brothers Kordt, but by the State Secretary, von Weizsaecker, contrary to Hitler's and von Ribbentrop's policies. Thus, through Bishop Berggrav of Oslo a proposal for peace was sent to Germany with the knowledge of the British Foreign Office. Church representatives in Germany refused even to accept this proposal. Bishop Berggrav then took it to von Weizsaecker, who not only accepted it for use as a possible means of peace talks, but also encouraged our efforts, all at great risk to himself. These facts were reported to the Foreign Office of the United Kingdom. Further,*

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*von Weizsaecker also cooperated with Bishop Berggrav in endeavoring to have a representative of Great Britain meet with a representative of Germany to initiate peace talks. These facts were also reported to the Foreign Office of the United Kingdom. They demonstrate opposition by von Weizsaecker to the policies of Hitler and Ribbentrop and, with other information coming to us in England, show he was not 'the chief executant of Ribbentrop's policy' as Lord Vansittart states.*

*"In conclusion, my information from private and official sources is that von Weizsaecker was opposed to Hitler and von Ribbentrop, was genuinely opposed to war, did all he could to prevent war,\* and used his office for this purpose and to bring about peace once hostilities commenced. I have a special interest in the German opposition to Hitler, having been closely connected with the opponents to Hitler who were active in the German church conflict from 1933 onwards, and in particular I was visited by a representative of the opposition (Pastor Dietrich Bonhoeffer) who came over from Berlin to see me in the summer of 1942 when I was in Stockholm. On that occasion Pastor Bonhoeffer brought me secret information about the plot against Hitler, for communication to the British Government, and told me the names of many of the leaders, including Goerdeler and Beck. He also told me of members of the opposition in the Foreign Office. I passed this information on in personal interviews with Mr. Anthony Eden and Ambassador Winant of the United States."*

The prosecution did not demand a production of any of these witnesses for cross-examination, nor did it file interrogatories to be used in lieu of their personal appearance before the Tribunal. The affiants are men of unquestioned probity, who were in a position to know the efforts made by the Foreign Office opposition to block and frustrate the plans of Hitler and von Ribbentrop for aggressive war. There can be no question whatever that both the Kordts were confidants and messengers of von Weizsaecker,

There are other affidavits from men prominent in the British and American diplomatic service which likewise tend to corroborate the testimony of both Erich and Theo Kordt.

We acquit the defendant von Weizsaecker under count one with respect to the Sudetenland.

*Bohemia and Moravia.*—The invasion and forcible incorporation of Bohemia and

Moravia as a Protectorate into the "greater German Reich," and the intrigues by which Slovakia was induced and compelled to declare its independence were not originated by the defendant von Weizsaecker. Nor do we believe that he looked

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upon the project with favor. However, this attitude does not constitute a defense if, notwithstanding his inner disapproval, he became a party, or aided or abetted or took a consenting part therein. He was connected with it, and this in no small way. Most, if not all, the conversations he had with the French, British, and Italian diplomats were conducted by von Weizsaecker in accordance with the custom of the Foreign Office. We shall advert to them hereinafter, but before discussing them we shall consider the evidence offered by the defense.

The defendant testifies that he was opposed to the invasion and in an attempt to prevent it, he directed Hencke of the German Legation in Prague to prepare a report which would demonstrate the willingness of the Czech Government to comply with the German wishes and to adjust the policy and legislation to German demands. This Hencke confirms and on 28 December 1938 rendered a report.

However, it is a Janus-faced affair. While on the one hand it delineates the attitude of the Czech Government as being cooperative, on the other it expresses distrust of some of its members and states that among the intelligentsia and many officials there existed a feeling that the then state of affairs was but transitory and they hoped for days of revenge; that it was not possible to judge whether the majority were for or against falling into line with Germany; that the preceding few weeks had led to a stiffening of the general attitude. He states that the former allies of Czechoslovakia, France and Russia, had been disinterested so far as foreign policy was concerned, and that during the decisive crisis in the nation, the French showed that they were not in any position to help Czechoslovakia; that relations with England were cool and that although, according to the opinion of the government, Britain would never help nor harm their country, they did not wish to sever relations with her completely. Hencke further spoke of the "recent improvement" of relations between the Czechs and Slovakia due to the visit of Hacha to Slovakia, and that the Slovakian Minister President, Tiso, had once again spoken of strengthening the bonds of "blood brotherhood," which had become very weak, and that the Slovakian population gave a remarkably favorable reception to Hacha during his visit; that in Czechoslovakia the enactment of the anti-Jewish and other legislation, following the German pattern, had aroused hostile feelings against Beran who had proposed and had them enacted.

We do not consider that this report in any way tended to help the situation or that it would do other than encourage any designs which Hitler may have had against the crippled Czech state. One does not calm a dictator who desires to crush a weaker state

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by pointing out the weaknesses of a well-intentioned government; the hostile feelings of the population toward the adoption of anti-Semitic and other legislation fathered by their powerful neighbor; or their coolness toward the only powers who could possibly come to their assistance; or by calling attention to the fact that the tension between an autonomous part of that state and the remainder was lessening. Such conditions

would be factors impelling the dictator to do what he actually did, namely, to invade and take over.

We may state in passing that it is not at all unlikely that this report of the approaching entente between the Czechs and Slovaks may well have been one of the reasons that brought about Keppler's mission to Tiso in March 1939. The second step which the defendant claims to have taken was in February 1938 about 4 weeks prior to the invasion in requesting von Kessel, who was about to go to Switzerland, to endeavor to persuade the British to send a leading figure on a special mission to Berlin who could show Hitler the power of the British nation and thereby could make an impression on him. Von Kessel testified that he contacted a Jewish banker, Erwin Schoeller, who had political connections in England, and urged him to talk to the British. Why, in view of his close relations with the British Ambassador and his other connections in London, the roundabout approach through a Jewish Austrian banker should have been adopted instead of a direct approach such as he had theretofore used is not explained.

The third thing which von Weizsaecker asserts that he did to avoid coming events was to make a significant gesture to Attolico, the Italian Ambassador, when the latter made an inquiry as to the Czech situation.

Compared with the measures which von Weizsaecker took prior to Munich, these steps were to say the least anemic. The defendant's statements that he did not know of Hitler's intentions until 10 March 1939, we do not believe to be accurate. The fact that 4 weeks before he gave von Kessel the mission hereinbefore referred to, and the conversations which he had with Coulondre, Henderson, and the Czech Minister long before that date are inconsistent with his testimony.

We now turn to what he did and said during the months before the invasion.

On 10 November 1938, von Weizsaecker dictated a memorandum which went to Woermann, Ritter, Altenburg, and von Richthofen that he received the Czech, Stoupal, and on the latter's inquiry told him that the German policy toward Czechoslovakia was one of good neighbor relationship insofar as Czechoslovakia's intentions for close cooperation with Germany were realized, but

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that there was still something missing in government circles such as the long-drawn-out course of economic negotiations; that he told Stoupal brutally that his government had made a bad mistake and must react positively to the solutions proposed by Germany and make arrangements for the treatment of employee contracts in order to oppose dismissals of national and racial Germans [Reichs- und Volksdeutscher], and that when Stoupal proposed a binational commission to handle such incidents, he replied that there should be no incidents and such commissions were out of place. He further stated that Stoupal did not express the wish to work together with any agencies of the NSDAP.

The defendant received from von Ribbentrop minutes of the latter's meeting of 11 October 1938 with Hitler, in which von Weizsaecker was directed to notify the Polish Ambassador that Germany was not interested in Oderberg, but in Morava-Ostrava and Vitkovice; that whether Morava-Ostrava and Vitkovice remained a part of Czechoslovakia depended on further developments; that with regard to Bratislava, the Hungarians were to be told that Germany was on principle sympathetic toward the Hungarian demands with respect to Czechoslovakia, but Germany would resort to arms only if German interests were at stake. For his personal information, von

Weizsaecker was informed that if Hungary would mobilize, it would not be Germany's intention to restrain her or advise moderation.

It is to be remembered that this took place within 2 weeks after the Munich Agreement.

On 22 December 1938 Coulondre, French Ambassador to Berlin, reported to the French Foreign Minister his conference with von Weizsaecker as follows (2943-PS, Pros. Ex. C-328):

*"With regard to the international guaranty envisaged in favor of Czechoslovakia, Baron von Weizsaecker was reticent. When I reminded him that in Paris Mr. von Ribbentrop had expressed his intention of reexamining the question, and asked whether there were any new developments, he answered in the negative. 'Could not this matter,' he asked with a smile, 'be forgotten? Since Germany's predominance in that area is a fact, would not the guaranty of the Reich be sufficient?' I did not fail to remark that obligations entered into cannot be forgotten and placed the matter in its true light. But I received the impression that my interlocutor had already made up his mind.*

*" 'Besides,' he concluded, 'it would be for Czechoslovakia to claim that guaranty. In any case, we are in no hurry to settle this question, and M. Chvalkovsky is not coming to Berlin until after the holidays.' Actually, the visit of the Czechoslovak Foreign Minister has already been postponed twice."*

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On 28 December 1938, von Weizsaecker reported to von Ribbentrop, with copy to Woermann, that he had talked with Magistrati, the Italian Charge d'Affaires; that the latter had again broached the subject of the guaranty for the integrity of Czechoslovakia, saying that he was directed by Count Ciano to state that the Italians wished to proceed in accord with the Germans. Von Weizsaecker states that he avoided going deeper into the subject, and told him that he had just recently explained to the French Ambassador, without any restraint, that Czechoslovakia depended exclusively on Germany, and that the guaranty of any other power was of no use; that the Czechoslovakia "of today" was different from that of the time when the guaranty was under discussion, and that he had already so informed Attolico.

On 8 February 1939 the British Government stated that it thought the time had arrived to settle the question of a guaranty of Czechoslovakia in accordance with the appendix of the Munich Pact, and in view of the statements made by the Italians in January the British desired the German opinion on the matter.

Von Weizsaecker prepared the answer to this, namely, that Germany did not think that the entry of England and France into such an obligatory guarantee would offer any security against the beginning or the aggravation of such disputes or conflicts which might arise as a result of it; that from past experience the Reich feared that declarations of guarantee on the part of the Western Powers in favor of Czechoslovakia would rather intensify the dispute between Germany and the surrounding states; that the attitude of the Czechoslovakian Government lay in the fact that in the past years the various Czech governments, as a result of the military guaranties given them by Western Powers, more or less seriously meant, believed that they could simply by-pass the inevitable demands of the ethnic minorities, and that the German Government was aware that in the last analysis the final development in this European area would come first and foremost within the sphere of the most vital interest of the German Reich.

On 22 February 1939 the Czechoslovakian Charge d'Affaires made an urgent request to confer with von Weizsaecker and during the interview gave him a note in which the question of the guaranty of the rest of Czechoslovakia was raised and connected with it a solemn pledge of neutrality and nonintervention on the part of that

country, and asked to be informed as soon as possible of the German point of view, and stated that like notes were about to be delivered to Rome, Paris, and London. Von Weizsaecker reports that he answered the Czech statement saying that whether the step taken in Berlin was one-half or an hour

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earlier or later did not seem to him to be relevant, and that it struck him that the Czech Government applied simultaneously to all the four Munich Powers in such questions without first entering into discussions with Germany alone.

On 3 March 1939 Mastny, the Czech Minister to Berlin, called on von Weizsaecker regarding the same matter, and von Weizsaecker called his attention to the answer already given to the French and British. Mastny stated that the guaranty would bring to an end the present state of uncertainty and give the Prague government a better chance to deal with those elements who disliked cooperation with Germany, and finally endeavored to persuade von Weizsaecker to see Masaryk, but von Weizsaecker turned this suggestion aside.

On 15 March the French Ambassador called on von Weizsaecker stating that Germany's march into Bohemia on the 14th gave reason to infer serious concern as to Germany's attitude toward the rest of Europe, and demanded information on these proceedings from German official quarters, stating that the entry into Czechoslovakia by German troops was in violation of the Munich Agreement. Von Weizsaecker reported that he treated Coulondre in a rather harsh manner telling him that he should not talk about the Munich Agreement being allegedly violated by Germany and should "abstain from giving us any lessons"; that the Munich Agreement contained two elements, namely, the preservation of peace and the French disinterest in eastern questions, and France should turn her eye toward the West and stop talking about things where its participation, as Germany knew from experience, did not promote peace; that the French Ambassador had realized that Germany would have been forced to establish order in Czechoslovakia on her own initiative, if the Czechoslovakian State President had not desired to call on Hitler and made the journey to Berlin, and that France should realize that this was not only a necessary action but also one agreed upon with the Czech Government.

All of these statements made to the French were, as von Weizsaecker then well knew, wholly false.

On 17 March 1939 von Weizsaecker reported that the British press—which had stated that the German Foreign Office had given both France and England assurances that Germany would take no drastic steps at the very moment when German troops had already crossed the Czech border—was wholly in error; that the French Ambassador had not inquired on the day in question, but rather, on Wednesday, and the British Ambassador had been told 5 hours before the German troops marched over the border; that the British Ambassador had been told otherwise,

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that Germany would attempt to realize its demands in a decent manner, and the invasion would take place in a like manner.

On 18 March 1939 the French Ambassador attempted to deliver a note protesting against German action. Von Weizsaecker refused to accept the note and advised

Coulondre to persuade his government to revise their opinions. When the Ambassador wished to go into the matter, describing it as a violation of the Munich Pact, von Weizsaecker stated that from the legal point of view there had been a statement agreed to between the Fuehrer and Hacha, and that the Czech President had come to Berlin at his own wish and had immediately and in advance declared to the Foreign Minister of the Reich that he wished to place the fate of his country in the hands of the Fuehrer; that he, von Weizsaecker, did not think that the French were holier than the Pope and wished to interfere in matters which had been agreed upon in an orderly fashion between Prague and Berlin.

Von Weizsaecker admits that these statements were not true. We find it difficult to reconcile the defendant's present protestations with the actions which we have just related. There is nothing to indicate that when Hitler's aggressive plans became imminent, as they had been for several months, he took any measures to encourage the British, French, or Italians to take any action to prevent Hitler from acting. His attitude was radically different from what it had been prior to Munich. The reason for that, we think, is obvious—before Munich he feared that France and England would take up arms in defense of Czechoslovakia, and that if they did so, Germany would suffer defeat. After Munich, he felt that this danger to Germany had vanished, and he looked with complacency, if not approval, on the future fate of Czechoslovakia.

He was not a mere bystander, but acted affirmatively, and himself conducted the diplomatic negotiations both with the victim and the interested powers, doing this with full knowledge of the facts. Silent disapproval is not a defense to action. While we appreciate the fact that von Weizsaecker did not originate this invasion, and that his part was not a controlling one, we find that it was real and a necessary implementation of the program.

We are therefore compelled to hold him guilty under count one with respect to the invasion of Czechoslovakia.\*

*Poland.*—Von Weizsaecker's attitude with respect to Poland and the aggression against that state presents a difficult problem. The prosecution exhibits on this phase seem to indicate not only a spirit of intransigence but an attempt to induce the French and

\* The Tribunal, With Presiding Judge Christianson dissenting, set aside this conviction by an order of 12 December 1949. See section XVIII D 1.

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British to abandon or at least modify their Polish treaty to defend that country against Hitler's aggression. The claim that this treaty gave Poland a "blank check" is without merit. Neither the British nor the French so regarded it, and their representatives repeatedly so advised both the Polish and German Foreign Office. Its purpose was to make starkly clear to Hitler that the time for appeasement had gone by, and his oft-given assurances of a desire for peace and an absence of further territorial aims were regarded as being, what they actually were, wholly worthless. The defense suggests that this treaty of protection was a diplomatic error, particularly because the French and British commitments were made publicly, which tended to enrage Hitler and goad him to further action. Such an assumption, however, is based upon a speculation so tenuous that it is not worthy of consideration.

The methods of confidential approach and oral representations had been tried already and found futile. Hitler was immune to them. There was but one remedy left, namely, plainly and publicly to inform Germany that the next attempt at aggression

meant war. Of course, it enraged Hitler, but it made him hesitate even though it had no effect upon his plans or his intentions. He did not dare make the attack in the face of the British and French guaranties to Poland until he had secured his eastern boundaries from possible attack by Russia. This he did by means of the German-Soviet Treaty of 23 August 1939. There he not only protected himself; but apparently by giving the Soviets a free hand in the Baltic States and in Bessarabia and by agreeing to share the loot in Poland, he gained a partner. As long as the Polish state existed, it is sheer nonsense to talk about Hitler's fear that the Soviets might attack. Whatever may have been the attitude of Poland toward Germany, there can be no question that had the Russians attacked the Reich, Poland and the Baltic states for their own preservation would have been thrown to the side of Germany, and the suspicion which Poland felt toward Russia would have made a Polish-Russian alliance wholly unlikely. If a Russian offensive took place in the north it could only go through Poland, and if it took place in the south, Hungary and Rumania were bound to stand alongside the German forces. It is quite obvious that neither France nor England who, in the fond hope of maintaining peace had failed to come to the aid of Austria and Czechoslovakia, would have joined in or even promoted Russian aggression. The fact is clear that Hitler at no time had any intention to abandon his plan to destroy Poland, that he only awaited a favorable opportunity, and only fear would have prevented him from carrying out his plans.

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While giving full credit to the Poles and their magnificent battle to maintain their freedom, and without overlooking the desperate hazard of their position, far separated as they were from their allies, the fact remains that, at times, they did not realize the necessity of displaying caution and control in handling the situation and that their somewhat explosive attitude toward Hitler and the Nazi Party, who were bent on making incidents to justify an aggression, did not help the situation. That these mistakes irritated one who was trying to preserve peace is understandable, and that he should have expressed this irritation in talking with the French and British Ambassadors may well explain his desire that pressure be exerted upon the Poles to refrain from furnishing an excuse which could be seized by Hitler.

Von Weizsaecker had no part in the plan for Polish aggression; he was not in the confidence of either Hitler or von Ribbentrop. While his position was one of prominence and he was one of the principal cogs in the machinery which dealt with foreign policy, nevertheless as a rule, he was an implementor and not an originator. He could oppose and object, but he could not override. Therefore, we seek to ascertain what he did and whether he did all that lay in his power to frustrate a policy which outwardly he appeared to support. If in fact he so acted, we are not interested in his formal, official declarations, instructions, or interviews with foreign diplomats. In this respect we proceed with caution and reserve before accepting his defense that while apparently acting affirmatively he was in fact acting negatively.

In June 1935 a "visit" of a German naval squadron to the Port of Danzig was proposed, undoubtedly to make a display of force which, if carried out, might well have lit the flames of war. Von Weizsaecker fortified himself with the opinion from Referent Kampenhoevenner which called attention to the fact that by agreement between Poland and the Free City of Danzig, requests from foreign powers to bring men-of-war into that port were to be presented first to the Poles for consideration, and the diplomatic correspondence would be conducted by that country and not by

the city of Danzig, and that Germany had recognized and constantly observed this practice. Based on this memorandum, von Weizsaecker delayed the matter and on 19 July 1939 advised that while a warlike solution of the Danzig question would almost always be kept in mind, blame must be put on the Poles, whereas sending part of the fleet to Danzig would be internationally interpreted as an overture to the generally expected German-Polish conflict.

Early in July 1939 Keitel inquired as to the political advisability of publicly displaying certainly artillery which the Wehrmacht

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had smuggled into Danzig, and on 14 July von Weizsaecker instructed von Nostitz to inform Keitel that while artillery exercises were doubtlessly necessary, they should be carried on indoors, and it would be advisable to wait; that the Poles would certainly commit a new blunder which could be answered by a public appearance of the batteries. Notwithstanding certain phrases in these documents, the fact remains that his advice was that of caution that inflammatory incidents might be avoided, and was in opposition to the plans of Hitler and the Wehrmacht. The German-Russian treaty had not yet been negotiated, and that between the French, British, and the Soviets had not as yet failed.

As early as 16 August 1939, Henderson, the British Ambassador to Berlin, reports a conversation with von Weizsaecker. This is one of the documents upon which the prosecution strongly relies as it discloses not only an acrimonious discussion between the Ambassador and the State Secretary, but also von Weizsaecker's irritation over the Polish action and his attempt to persuade the British to at least modify the so-called "blank check" agreement. To us, however, even more significant is the fact that he plainly warns the British of the danger of war and of Hitler's attitude and before the Soviet Pact was signed (23 August 1939) informed Henderson that he believed that Russian assistance to the Poles would not only be entirely negligible, *but the U.S.S.R. would even in the end join in sharing the Polish spoils*. Thus, the British received explicit warning, and the door was open to them either to endeavor to block the execution of any pact between Germany and Russia, or if this were impracticable, otherwise to prepare themselves for the event. We do not believe that one who was in favor of the prospective aggression against Poland would reveal the likelihood and imminence of a German-Russian pact.

We do not rely upon the affidavits of the Swiss, Karl J. Burckhardt, who was then International Commissioner for Danzig, except insofar as they are corroborated from other sources, this for the reason that the witness did not appear for cross-examination, either because of his own reluctance or upon instructions from his government. We find it difficult to reconcile a willingness, personal or governmental, to permit an *ex parte* statement to be given and an unwillingness to permit inquiry as to the accuracy of the statement.

Turning now to the contemporaneous documents on 15 August 1939 von Weizsaecker had discussions with both Henderson and Coulondre, French Ambassador. These are official reports. While the conversations express an attitude on the part of von Weiz-

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saecker inconsistent with his present claim that he disagreed with the policies of



Hitler and von Ribbentrop, and are critical of Polish policy, and express the hope that the policy it was pursuing would lessen the bond between the Western Powers and Warsaw, it is also clear that he informed both ambassadors of the imminent danger and likelihood of war. Henderson says (*Weizsaecker 326, Weizsaecker Ex. 110*):

*"When last I saw him [State Secretary von Weizsaecker], he had regarded the position as less dangerous than last year; now he considered it no less dangerous and most urgent."*

Both ambassadors clearly warned von Weizsaecker that if the Poles were compelled by any act of Germany to resort to arms to defend themselves, there was not a shadow of a doubt that the Western Powers would give them support.

Coulondre went even further and stated (*Weizsaecker 27, Weizsaecker Ex. 108*):

*"I advised him not to lose himself in subtleties; the fact was that if any of the three Allies, France, England, and Poland, were attacked, the other two would automatically be at her side."*

Long prior to this, and when Hitler's plans for Polish aggression again became more clear, von Weizsaecker instructed Kordt in London to discuss the situation with Lord Halifax and others connected with the British Foreign Office, and to point out the necessity speedily to pursue their negotiations with the Soviet Union for a treaty of mutual assistance against German aggression. Kordt received assurances that these negotiations were certain to be successful.

On 17 August 1939 Coulondre reported to the Quai d'Orsay, and described not only his own views, but the comments of the British Ambassador after his discussion with the defendant. Coulondre says (*Weizsaecker 211, Weizsaecker Ex. III*):

*"In this connection I was extremely struck by the fact that on the same day the State Secretary had asked both my British colleague and myself the same question, namely, 'Would your government wage war on the side of Poland if the conflict had been provoked by the latter?' This question might have been asked either by order of higher authorities and because there was doubt on the subject, or because the State Secretary opposed to war and uneasy at the development of the situation would have liked to gain from our replies support for action in higher quarters. I am inclined toward the first hypothesis, but whichever of the alternatives is correct, the question strikes me*

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*as a particularly grave one, as it would seem to indicate that Hitler is still harboring illusions on the attitude of France and England in the event of a German-Polish conflict, or at least that attempts are still being made to delude him on the subject."*

Von Weizsaecker Exhibit 120 [Weizsaecker 157] is identified by Ellinor Greinert as being carbon copies of memoranda written by von Weizsaecker and given to her for safekeeping in 1939 by Dr. Viktor Bruns. They are dated 30 August, 31 August, 5 September, and 7 September 1939. The first states that the British Embassy which had been asked late on the night of 29 August to undertake the task of having Poland send a Plenipotentiary for negotiations at 4 o'clock in the morning, reported the technical difficulties in bringing the Plenipotentiary to Berlin before the end of 30 August, and at 11 a.m., pleaded for more time, and that the British Ambassador in the afternoon wrote von Ribbentrop to the same effect. Von Weizsaecker relates the midnight interview between Henderson and von Ribbentrop, at which the latter hastily read the German proposal, and refused to give Henderson a copy on the basis that it was outdated.

The memorandum of 31 August states that the whole day had been devoted to the question whether or not a connection between Warsaw and Berlin could be established and that he, von Weizsaecker, had suggested that the Polish Ambassador should be given an audience; that von Weizsaecker discussed this matter with von Ribbentrop who disagreed, and that von Weizsaecker thereupon offered to resign and "even more"; that he told von Ribbentrop that he, von Weizsaecker, would be a swine if he did not tell him what he thought.

As a result, Lipski was received but sent away with the formal excuse that he did not possess any authority to negotiate.

The memorandum of 5 September 1939 is a history of the efforts, beginning as early as April 1938, which he claims to have made to preserve peace and his hope that the Italians, on 2 September, would endeavor to bring about a truce.

The memorandum of 7 September recites that when all other attempts to bring a Polish Plenipotentiary to Berlin had failed by 12 o'clock on 31 August, the only remaining hope resided in German military circles, he informed Goering that it was high time he came, and asked him whether they were obliged to allow an insane adviser of Hitler to destroy the Reich; he said that von Ribbentrop would be the first one to hang, but others would follow; that Goering had implored the Fuehrer three times to give in, but Hitler only shouted at him and sent him away. He said (*Weizsaecker 157, Weizsaecker Ex. 120*):

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*"I told Brauchitsch that politics were at an end. I said that we were dealing not only with Poland, but also with England and France. That was certain. I said to him that the military, i.e., he, Brauchitsch, would have to bear the responsibility before history if we entered into this war, and I asked him if he wanted to take upon himself this responsibility just because Hitler had an insane adviser. All that Brauchitsch had to say was that the Fuehrer did not think that the English and French would participate in this war and that was what Brauchitsch would have to go by. When I asked him whether or not he was reading the newspapers, he only shrugged his shoulders. Thus, my last hope vanished."*

These documents, if genuine, are of utmost significance. We think that they are suspiciously "pat" and no reason appears for writing them unless one was attempting to speak to history. We would receive them only with the greatest caution unless they were corroborated. To a large extent they are. First, there are the entries in the von Hassell diaries, the genuineness of which is not questioned. Von Hassell was in early and continuous opposition to Hitler, an opposition which ended only with his execution after the unsuccessful Putsch of 20 July 1944. We quote: \*

31 August 1939.

*"This morning at 7:25 [o'clock] von Weizsaecker called me and asked me to meet him at 8:40 [o'clock]. He explained that he had to deal with the following situation: Since nothing had been heard so far from the Poles, von Eibbentrop had called for Henderson last night and had railed at him, exclaiming that these delaying tactics of the English and Poles were contemptible. The German Government had been prepared to make a very acceptable proposal which he read to Henderson. Essentially it contained the following points: Danzig to be ceded to the Reich, but demilitarized; Referendum in the main part of the Corridor, and depending upon the result either a German east-west traffic route or a Polish south-north route to Gdynia which would remain Polish, But these definitely modest terms were of course no longer open as no Polish negotiator had come. Therefore, there was nothing left for Germany but to take action to secure its rights.*

*"After this unfriendly interview, which did not constitute a complete break, Hitler made it known that the other side had now put itself clearly in the wrong, and that therefore an attack might begin this afternoon. Von Weizsaecker considers*

\* Von Hassell, op. cit., pages 68-72 (*Weizsaecker 297, Weizsaecker Ex. 117*).

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*the situation extremely serious; matters stand exactly where they were on Friday. Must we really be hurled into the abyss because of two madmen?*

*"Of course one can never be sure with Hitler; it is not entirely out of the question that he will recoil at the last moment. But we agreed that we could hardly expect this to happen since, after all, Hitler had really decided on war Friday and had given orders to that effect. Under the circumstances von*

Weizsaecker could see only one hope—that Henderson should immediately persuade the Polish Ambassador and his own government to urge Warsaw this very morning to send a Plenipotentiary at once, or at least to have Lipski announce this intention to von Ribbentrop before noon. Could I 'privately' influence Henderson to this end, and could I perhaps also warn Goering about the rash decision of Hitler? Goering should be made to understand that von Ribbentrop was digging the graves of the Reich and of national socialism. Karinhall would go up in flames! I said I was prepared to try my luck.

"My impression was that von Ribbentrop and Hitler are in a spirit of criminal recklessness. They are running the most fearful risks involving the whole German people merely to save their own prestige by some minor success; all this, of course, being only a temporary stopgap. So far as I am concerned the one vital thing is to avoid a world war.

"I found Henderson at breakfast; he had got to bed at 4 o'clock. He was, above all, shocked at von Ribbentrop's bad manners. Von Ribbentrop was evidently determined to play in this war the baneful role Berchtold had played in the last one. Henderson said von Ribbentrop had read him the German proposals very hurriedly, 'had gabbled them,' had not given him a copy because they were now 'water over the dam.' The peremptory character of our latest move was destroying all efforts to keep the peace. I explained the situation to him and emphasized that I came entirely as a private person and without orders and had only the desire to help in reaching a peaceful solution by making clear to him the stupendous significance of the next few hours.

"He said that during the night he had been in touch with London, as well as with Lipski, and that he would continue his efforts. The chief difficulty lay in our methods, particularly the way in which we expected the English to order the Poles around like stupid little boys. I told him that the persistent silence of the Poles was also objectionable. This Slavic behavior, with which he doubtlessly had become familiar in Petersburg, was dangerous. He said nostalgically, he wished

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those times would only come back—times, I countered with a poor attempt at jesting, in which he had almost strangled his ambassador. Now, it seemed to me, he was in a mood to strangle others. In conclusion, Henderson said it would be easy to reach an understanding between England and Germany if it were not for the calamitous von Ribbentrop. With him it would never be possible.

"About 9:30 I went to Olga Riegele, told her that the situation was terribly serious, and asked her to arrange a meeting between me and her brother, Hermann (Goering). Tearfully the good woman did so at once. She was successful in reaching him at his 'battle station,' as he later put it, and I had a long conversation with him. He asked at once whether I wanted to talk with him about the Italians. I said 'no,' but stated that I was a friend of Henderson who was doing all he could to keep the peace. Goering asked why in that case he had been so 'snooty' during the latest discussions. I answered I did not believe that was his intention, but possibly it was difficult for some people to get along.

"Goering said he liked Henderson but that he was too slow. I answered that naturally he was an Englishman and not a Latin, but he was doing his very best. Goering said he thought our proposal was really modest, to which I replied that it had been described as no longer valid. Goering thereupon became very animated and asked how Henderson could have reached this conclusion since the proposal would become invalid only if no Polish negotiator arrived. I answered that this point was most important, that I would tell Henderson at once and urge him to exert himself further in that direction.

"Goering: 'Yes, but he must come at once.'

"I [von Hassell]: That is technically impossible; it must suffice if the Poles declare they will send one.

"Goering: 'Yes, but he must come very quickly. Go tell the Foreign Minister immediately what you have heard from Henderson.'

"I [von Hassell]: I do not know whether I can do that, but in any case I will tell von Weizsaecker.

"My impression was that Goering really wants peace. Olga had previously told me, weeping, that recently he had put his arms about her and said, 'Now, you see, everybody is for war, only I, the soldier and field marshal, am not.'

"But why then does this man at this moment sit in Oranienburg? And Brauchitsch and Haider are flying about over the West Wall!

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"I went back to Henderson at once and told him what Goering had said. He was greatly interested and wrote down the most important parts. Then to von Weizsaecker, to whom I reported the steps I had taken.

"After an hour von Weizsaecker called for me again, Henderson had requested the text of our proposals in order to have something to show to the Poles. Officially von Weizsaecker was not permitted to give it to him. Did I think it possible to give Henderson a more detailed knowledge of the contents, which meant perhaps to put the paper itself into his hands? The document lay before me on the table.

"At that moment a telephone call came from von Ribbentrop, and immediately thereafter a second. The gist of both was that Henderson should not be given the proposals. He himself would call and tell him that the Poles had been plainly told they would get the proposals if they sent a Plenipotentiary. We agreed that under these conditions it was now impossible to give Henderson the document or any further details.

"Von Ribbentrop had forbidden von Weizsaecker to have any further dealings with Henderson and had added that Hitler had ordered all advances be rebuffed. That was proof for von Weizsaecker that Hitler and von Ribbentrop wanted war; they imagined their proposals had furnished them an alibi. This seems nonsensical to me if the proposals are not given to the Poles.

"Von Ribbentrop further stated that during the next half hour it would be decided whether the proposals should be made public. If this is really under discussion, it is altogether incomprehensible why the proposals should not be given to Henderson, unless they want war.

"Von Weizsaecker said Rome was making efforts to mediate in London. Mussolini is said to have declared that a *fait nouveau* had to be created and the best move would be for Poland to cede Danzig to Germany at once. Von Weizsaecker was very doubtful whether the Poles would do that. London, for its part, informed the Italians that the only question now was one of honor; whether we asked Lipski to call or whether he was to come of his own accord. With this in mind I discussed with von Weizsaecker whether I should go to Henderson once more to induce him to get Lipski out of his hole. But we agreed that Henderson knew the situation and would do all he could anyway. Perhaps I shall still go to see him.

"Afternoon.—I did go to call on Henderson and met him in front of the embassy. I told him everything depended on Lipski's putting in an appearance—not to ask questions, but to

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declare his readiness to negotiate—but at once. He wanted to support this suggestion immediately. I also told Henderson that Goering had arrived. Young von Kessel had just seen him drive in.

"At the Foreign Office I had met Moltke (Ambassador in Warsaw) and arranged to have lunch with him at the Adlon. As I arrived at the hotel von Kessel appeared in great alarm to tell me that Lipski had presented himself, but that there was a reluctance to receive him. Since Moltke had told me the same thing a few minutes before, I tried first by telephoning Olga Riegele to influence Hermann Goering, with the request that he give me a hearing if possible. I did not succeed however. Von Kessel declared the danger was extremely grave. Von Weizsaecker had told him the best thing would be to persuade Mussolini to telephone Hitler at once.

"Could I go to see Attolico? I was not very anxious to perform this mission, but in view of the situation I said I would. Attolico received me at once. He swore that once upon a time he had done everything possible for me! And I promised absolute silence concerning our conversation. He understood instantly what was at issue and promised to telephone Rome at once."

We also have the affidavit of the widow of Ambassador Attolico, which bears out von Weizsaecker's statement that he induced the Italian Ambassador to inform Rome of the impending danger and to persuade Mussolini to intervene. That this was done is apparent from the Ciano diaries. These entries begin with 19 July 1939, as follows (Weizsaecker 48, Weizsaecker Ex. 104):

"19 July 1939.

"I summon Magistrati to Rome on the matter of the meeting between Hitler and Mussolini, which is set for 4 August. I fear that it is due to Attolico's endemic crisis of fear. Nevertheless, we must prepare the meeting well in order to prevent its being futile. Perhaps, in view of the fact that for many reasons war plans must be delayed as long as possible, he could talk to the Fuehrer about launching a proposal for an international peace conference \* \* \*. But what are the real intentions of Hitler? Attolico is very much concerned and warns of the imminence of a new and perhaps fatal crisis." 20 July 1939.

*"The information sent by Attolico continues to be alarming. From what he says, the Germans are preparing to strike at Danzig by 14 August. And for the first time Caruso from Prague announces movements of forces on a vast scale. But is*

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*it possible that all this should take place without our knowing it, indeed, after so many protestations of peace made by our Axis comrades? We shall see \* \* \*.*

*"21 July 1939.*

*"Massimo (Count Magistrate Counsellor to the Italian Embassy in Berlin) is not so pessimistic about the situation and he confirms my suspicions that Attolico permitted himself to be carried away in a fit of panic without very good reasons \* \* \*.*

*"22 July 1939.*

*"I take Magistrati to the Duce, who has worked out a plan of welcome for the meeting at Brenner Pass. It is based on the proposal of an international conference. The Duce outlines at some length the reasons for our proposal. I am skeptical of the possibilities of such a conference actually taking place, but I agree on the utility of our move which will, above all, throw confusion and dissension into the camp of the opposition where many voices are already being heard against war.*

*"I insist on two points—(1) That the condition must be included that our proposal be considered valid only if the Germans do not previously decide to wage war, since, in that case, it would be useless to discuss anything; (2) that von Ribbentrop is interested in the question, I am doubtful, very doubtful, about Attolico's ability now. He has lost his head. I am sending a telegram to Magistrati ordering him to take part personally in all the negotiations.*

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*"26 July 1939.*

*"I talked by telephone with Magistrati about the conversation with von Ribbentrop. His reaction to the proposal of an international conference was unfavorable. He will talk about it to the Fuehrer, but it is now easy to see that nothing will come of it. In which case, it would seem to be a good idea to postpone the meeting of the two chiefs. In any event, before suggesting a decision to the Duce, I prefer to await the arrival of Attolico's message that is to be sent by airplane \* \* \*.*

*"27 July 1939.*

*"\* \* \* I receive Attolico's report, which I send to the Duce. The boner pulled by the Ambassador becomes more and more evident. Once again von Ribbentrop has affirmed the German determination to avoid war for a long time. The idea of postponing the useless meeting at the Brenner Pass takes hold of me more and more. However, I ask the Duce to read the report before he makes any decision \* \* \*.*

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*"28 July 1939.*

*"After reading the report, the Duce decided to postpone his meeting with Hitler and I think he did well. I telephone Attolico, who is still trying to kid us. This time Attolico missed the boat. He was frightened by his own shadow and probably with somebody in the German Foreign Ministry was trying to save his country from a nonexistent danger. It's too bad. This Ambassador has done good work, but now he permits himself to be taken in by the war panic. This may easily be explained by the fact that he is a rich man.*

*"It appears that von Ribbentrop has asked time to report to Hitler, who had expressed himself against the conference. Tomorrow we shall have a reply on the postponement.*

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*"2 August 1939.*

*"\* \* \* Attolico continues to harp on his favorite theme of the meeting of Hitler and Mussolini, still insisting on the bugbear of a sudden decision that will be made by Hitler for 15 August. The insistence of Attolico keeps me wondering. Either this Ambassador has lost his head or he sees and knows something which has completely escaped us. Appearances are in favor of the first alternative, but it is necessary to observe events carefully.*

*"3 August 1939.*

*"\* \* \* Massimo writes a private letter from which it appears that he is in disagreement with the*

Ambassador as to the danger of an approaching crisis. He advises us against asking the Germans for a clarification of their program. If Massimo notwithstanding his considerable—his very great—caution, has decided to take such a step, it means that he is sure of what he is doing. I have transmitted his letter to the Duce. Roatta, the new military attache on the other hand, informs us of the concentration of forces and movements on the Polish frontier. Who is right? I maybe mistaken, but I continue to feel optimistic.

"4 August 1939.

"\* \* \* Attolico's alarmist bombardment continues. The situation seems obscure to me. I am beginning to think of the possibility of a meeting with von Ribbentrop. The moment has come when we must really know how matters stand. The situation is too serious for us to view developments passively.

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"6 August 1939.

"\* \* \* We discussed the situation. We are in agreement in feeling that we must find some way out. By following the Germans we shall go to war and enter it under the most unfavorable conditions for the Axis, and especially for Italy. Our gold reserves are reduced to almost nothing as well as our stocks of metals, and we are far from having completed our autarchic and military preparations. If the crisis comes we shall fight if only to save our honor. But we must avoid war. I propose to the Duce the idea of my meeting with von Ribbentrop; a meeting which on the surface would have a private character, but during which I would attempt to continue discussion of Mussolini's project for a world peace conference. He is quite favorable. Tomorrow we shall discuss the matter further, but I am convinced that the Duce wants to move vigorously to avoid the crisis. And in so doing he is right.

"7 August 1939,

"\* \* \* The Duce has approved my meeting with von Ribbentrop, and I have therefore telephoned Attolico instructions on this point. Attolico himself had thought of something of the sort and was very glad \* \* \*.

"8 August 1939.

"\* \* \* Massimo writes in a rather soothing tone from Berlin. He does not foresee any immediate aggressive intentions on the part of Germany, even though the Danzig situation is grave and dangerous.

"9 August 1939.

"Von Ribbentrop has approved the idea of our meeting. I decided to leave tomorrow night in order to meet him at Salzburg. The Duce is anxious that I prove to the Germans, by documentary evidence, that the outbreak of war at this time would be folly. Our preparation is not such as to allow us to believe that victory will be certain. The probabilities are 50 percent, at least so the Duce thinks. On the other hand, within 3 years the probabilities will be 80 percent. Mussolini has always in mind the idea of an international peace conference. I believe the move would be excellent.

"10 August 1939.

"The Duce is more than ever convinced of the necessity of delaying the conflict. He himself has worked out the outline of a report concerning the meeting at Salzburg which ends with

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an allusion to international negotiations to settle the problems that so dangerously disturb European life.

"Before letting me go he recommends that I should frankly inform the Germans that we must avoid a conflict with Poland, since it will be impossible to localize it, and a general war would be disastrous for everybody. Never has the Duce spoken of the need for peace with so much warmth and without reserve. I agree with him 100 percent, and this conviction will lead me to redouble my efforts. But I am doubtful as to the results."

Hitler received Ciano and assured him that the war with Poland could be localized, and although Ciano expressed grave misgivings and pointed out Italy's inability to wage war, he fell under Hitler's spell and weakened.

On 7 August 1939 von Hassell records the following in his diary: \*

*"Most important event—10 or 12 days ago Attolico called on Ribbentrop (after having seen von Weizsaecker) and finally Hitler, with a message from the Duce to the following effect: the meeting of the Duce and the Fuehrer at the Brenner, set for 4 August, would be useful only if something tangible should come out of it. And, in view of the entire situation, this something could only be a decision to call a six-power conference (Italy, Germany, France, England, Spain, Poland) in order to solve the Italian-French as well as the German-Polish conflicts. If this were not done now, it would have to be done in 4 to 6 weeks' time. This message had the effect of a thunderbolt."*

On 20 August 1939 Noel, French Ambassador in Warsaw, wrote the French Foreign Minister as follows (*Weizsaecker 411, Weizsaecker Ex. 405*):

*"From a very reliable source I learned that Wilhelmstrasse circles were gravely concerned by the turn of events and believe that Mr. Hitler is determined to 'settle the Danzig question' before the first of September."*

This information could only have come from von Weizsaecker or one of his circle in the Foreign Office.

On 31 August 1939 Ciano recorded the following (*Weizsaecker 410, Weizsaecker Ex. 409*):

*"An ugly awakening. Attolico telegraphs at 9 [o'clock], saying that the situation is desperate and that unless something new comes up there will be war in a few hours. I go quickly to the Pallazzo Venezia. We must find a new solution. In*

\* Von Hassell, op. cit., page 54 (*Weizsaecker 448, Weizsaecker Ex. 407*).

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*agreement with the Duce I call Halifax by telephone to tell him that the Duce can intervene with Hitler only if he brings a fat prize: Danzig. Empty-handed he can do nothing. On his part, Lord Halifax asks me to bring pressure on Berlin so that certain procedural difficulties may be overcome and direct contacts established between Germany and Poland.*

*"I telephone this to Attolico who is more and more pessimistic. After a while, Halifax sends word that our proposal regarding Danzig cannot be adopted."*

These exhibits corroborate in almost every detail the oral testimony of the defendant and his witnesses. They are drawn from sources which are unimpeached.

We deem the fact to be established that instead of participating, planning, preparing, or initiating the war against Poland, the defendant used every means in his power to prevent the catastrophe. He was not master of the situation; he had no decisive voice, but he did not sit idly by and stolidly follow the dictates of either Hitler or von Ribbentrop, but by warnings to other powers, whom he knew would be involved in the war if Hitler's mad plan came to fruition, and by suggestions which he caused to be made to England to hasten the completion of its proposed pact with Russia, and by bringing all the pressure he could to cause the Italians to intervene, he sought to avert it. Although these efforts were futile, his lack of success is not the criteria. Personalities, hesitation, lack of vision, and the tide of events over which he had no control swept away his efforts. But for this he is not at fault.

We find that he is not guilty under count one respecting aggressive war against Poland.

*Denmark and Norway.*—On 16 March 1940 von Hassell records the following:\*

*"[von Weizsaecker] \* \* \* is alarmed because, on the occasion of Ribbentrop's visit to Rome \* \* \* on 10 and 11 March, Mussolini refrained from uttering a single word of protest against the offensive, but spoke of our 'brotherhood in destiny' and of his intention to enter the conflict. He had however made reservations regarding the date of his action.*

*"My explanation is this: Mussolini received the distinct impression that Hitler is determined to attack. This being so, he thinks it would be a tactical error to issue further warnings and now prefers to show himself sympathetic. If, contrary to expectation, things go well and if everything else looks favorable, he will come in on our side. Should matters go badly, he still has an alibi and can work out a way to extricate himself."*

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Some months before the invasion of Denmark and Norway, von Weizsaecker received information from Canaris that this matter was being considered but was unable to obtain details. It appears that on 6 April von Weizsaecker was present at a conference with the Wehrmacht, at which the Foreign Office was informed of the details of the plan and of the part it was expected to play on the diplomatic side. On the same day he had a conference with von Ribbentrop at which Gaus was present. It does not appear which conference was the earlier. Gaus made two statements about this matter: one which he confirmed on the witness stand, and one which he made to the interrogating officer some time in 1946. In the latter he states that von Weizsaecker seemed as surprised at the news as he himself was, and "both of us reacted to this sudden information by pointing out ineffectually that it would awaken a storm of resentment throughout the whole world."

In the later affidavit, which he confirmed on the witness stand, he deposed that von Weizsaecker did not seem to be surprised and made no protest. In view of these conflicting statements, we cannot say with the necessary degree of certainty where the truth lies, but in view of the fact that it was only on 3 April that Keitel informed von Ribbentrop of the plan, apologizing for the fact that the Foreign Office would have so little time to prepare its diplomatic tasks, it is unlikely that von Weizsaecker had precise information before 6 April.

We deem the precise date of von Weizsaecker's knowledge as immaterial. Hitler had already made his decision, the Wehrmacht had made its plans and was in fact on the move although acting with utmost secrecy. Nothing which von Weizsaecker could have done would have had any effect on the situation, and there was little or no time for maneuvering, and little and probably no opportunity to give warning. The part that the Foreign Office played in the matter of these two aggressions is insignificant and consisted in sending notes by courier to its representatives in Denmark and Norway, who were at a specified hour and day to communicate their contents to those governments. These notes were not prepared by von Weizsaecker and the most which can be said is that he either ordered or knew of the dispatch of the courier.

But even here there are some indications that the defendant was perturbed about the possibility of the war being further extended. In March 1940 Sumner Welles, then Under Secretary of State for the United States of America, visited Berlin. We quote from his book, *The Time for Decision*:\*

\* Extract from this book was introduced in evidence as Document Weizsaecker 268, Weizsaecker Exhibit 127.

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*"Ribbentrop has a completely closed mind. It struck me as also a very stupid mind. The man is saturated with hate for England to the exclusion of any other dominating mental influence. He is clearly without background in international affairs, and he was guilty of a hundred lies in his presentation of German policy during recent years.*

*"Late that same afternoon I went to see State Secretary von Weizsaecker in his office at the Foreign Office. In the German official hierarchy, the position of state secretary has corresponded since the days of Bismarck to that of Under Secretary of State in our own country.*

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*"I spoke with Mr. von Weizsaecker of my earlier conversation with Ribbentrop, and after hesitating a moment, Weizsaecker said: 'I am going to be quite frank with you. I have been strictly instructed not to discuss with you in any way any subject which relates directly or indirectly to the possibility*



of peace.'

"He then drew his chair toward the center of the room and motioned to me to do likewise. It was evident that the omnipresent German secret police dictaphones were installed in the walls rather than in the central lighting fixtures.

"We had for a while a desultory conversation. I then reverted again to my conversation with Ribbentrop, I said that if the feeling of the German Government as a whole was as decisive as that of Mr. von Ribbentrop that a war of devastation and of conquest was the only course for Germany to follow, I would be needlessly taking up the time of the German authorities by prolonging my stay.

"Mr. von Weizsaecker thought a good 3 minutes before replying. Then he leaned toward me and said: 'It is of the utmost importance that you say that personally to the Fuehrer when you see him tomorrow.'

"I waited a moment myself, and then asked him: Let me have your personal advice, for I am now asking an entirely personal question. Do you believe that any suggestions for peace conversations proffered by Mussolini would have any favorable reception here?

"This time Mr. von Weizsaecker again waited before answering. His reply when it came was: 'What I have already said about the Fuehrer answers a part of your question. But,' and here he motioned to the Foreign Office in which we were, 'here the relations between Germany and Italy have narrowed greatly.'

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*"The only interpretation which could be drawn from his statement was that in Weizsaecker's opinion, if the Duce were to approach Hitler directly and secretly, it might have some effect. If Ribbentrop knew of the approach he would do his utmost to block it."*

While it is not wholly clear that von Weizsaecker spoke with reference to Denmark and Norway, it is, we think, apparent that he was apprehensive of future action on the part of Hitler and was endeavoring to have pressure brought on Mussolini. We find von Weizsaecker not guilty under count one as to Denmark and Norway.

*The Low Countries.*—The plans for the aggressive invasions and wars against Holland, Belgium, and Luxembourg were prepared shortly after the beginning of the Polish war. Von Weizsaecker admits that he knew them as early as 12 October 1939 and verified that it was only a question of when they would be put in motion. For various reasons these invasions were postponed from time to time, but finally erupted on 10 May 1940.

The question for determination is not whether von Weizsaecker had prior knowledge, but what if anything he did either to implement or, on the other hand, to prevent and frustrate these invasions. We shall in particular deal with these in the reverse order.

It was obvious to the defendant that these invasions if carried out had but one purpose, namely, a flanking movement against France, thus avoiding the hazards of a direct attack against the Maginot Line. On 12 October, that is, immediately after he became aware of the plans, he furnished von Ribbentrop with a memorandum and followed it up by a discussion of 26 October. We quote from these memoranda because they are significant (*Weizsaecker 370, Weizsaecker Ex. 122*):

*"Without wanting to anticipate the proper military judgment, the following is an accomplished fact in my opinion:*

*"1. The submarine and surface commercial war, in consideration of the present number of warships, is not able to interfere with the British supplies from overseas to such an extent as to compel Great Britain to assume a conciliatory attitude even if enemy and neutral ships are sunk without warning. The German submarine building program will be able to meet the requirements only after a considerable time.*

*"2. The war in the air against British supplies from overseas likewise can not be conducted effectively this winter.*

*"3. Even a combination of points 1 and 2, meaning the intensified war on the sea and in the air against the British sea lanes,*

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would be inadequate today. Any such waging of the war must be undertaken with sufficient means and with lightning speed unless it peters out.

"4. In consideration of the structure of Great Britain, air raids on the vital targets on land would not give much hope for dealing a deadly blow to Great Britain.

"Apart from the military reasons, there are also political viewpoints which forbid the starting of the unlimited war by submarines and in the air in the near future. This manner of warfare would force the neutral seafaring states into the arms of Great Britain. The United States of America would presumably soon disrupt their relations with us. Psychological and material reverses similar to those of 1917-1918 would be unavoidable as a consequence of the unrestricted submarine war. For this reason we would make new enemies without being in the possession of arms which would force Great Britain to her knees.

"Ad b. For splitting off France from Great Britain by force and to induce her to conclude a separate peace, an offensive against France on land would be necessary. According to my information, the success of a frontal offensive along the border between Germany and France would come too costly. An offensive through Belgium would perhaps result in bringing this country into our hands, but would not open the road for an entry into France. We would only have a new, just as long, and only much weaker defense line than we have today. The extension of the war theater would benefit only France and not us. Both methods—the frontal and the flanking attack— will not lead to the military target and would only awaken the fighting spirit of the French citizen and soldier which is still dormant today. Whether the possession of Belgium would actually be indispensable and decisive in the war in the air against Great Britain, must be left open.

"From political viewpoints, the entry in Belgium would earn us only all the disadvantages with which we are sufficiently acquainted from the year of 1914.

"Obviously, our strength lies in the defense. It is nearly impregnable. It gives us the wanted military security. It saves our material. It helps us to keep the neutral groups intact.

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"If the enemy does not commit the grave error of violating the neutrality in a serious manner, then we can hope that the constant inactivity of a defense on both sides will slowly

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weaken the will to fight in France until it dies. And that would open the road to peace.

"The decision on whether we better remain on the defensive in the west or start an offensive after the conclusion of the Poland campaign is a matter of politics to a large extent.

"An offensive would be imperative if it is expedient to bring the war to a speedy end. But there is no promise for such a success. The risk and the political effects would not be in harmony with each other. It goes without saying that the defensive is also a test of our nerves as well. Nevertheless, with Poland we have a pawn in our hands, while the enemy still has to procure such a pawn.

"The offensive would be the beginning of the struggle for life or death, and the third parties would have the last laugh. The defensive still leaves us the possibility of a negotiated peace. Pending developments, I believe that the defensive should be maintained.

"Having received information that a general offensive with an invasion of Luxembourg, Belgium, and Holland was being prepared in the beginning or in the middle of November, I submitted a brief memorandum to Mr. von Ribbentrop on 12 October 1939 in which I discussed the military plans for the six winter months from the political viewpoints, and in particular advised against the invasion of the three neutral countries.

"On 12 October we had a conference on this matter during which Mr. von Ribbentrop briefly mentioned the reasons pro and con, but spoke dispassionately, saying that fate must not be provoked, or something to that effect. He also was of the opinion that the Chamberlain speech of 12 October offered a suitable starting point for further peace talks, until the Fuehrer, in the evening, gave vent to an opposite opinion.

"Since I had no discussions any more in the meantime, but received information about the plan of the offensive which became more and more definite, today in Dahlem in the house of the Minister I again led the conversation to this topic and emphasized my previous statements. But I soon found out that Mr. von Ribbentrop was not inclined to go deeper into this matter. He said that my memorandum was a concept which was similar to the terminology of the Anglo-French propaganda which if considered closely did not want us to strike before the spring of 1940, when the full war production of Great Britain would become effective on the Continent. The reproach of being a defeatist sounded again as in the fall of 1939. Mr. von Ribbentrop talked about his responsibility

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*which I had better leave to him, 'We will not discuss this matter any more.'*

*"I countered with the remark that I was sorry to hear this because I was in the possession of arguments which were important in my opinion but could not be discussed in such haste of course.*

*"Mr. von Ribbentrop concluded our conversation with a gesture which unmistakably expressed his desire not to be bothered any longer with this matter."*

On 9 January 1940 von Weizsaecker addressed another memorandum to von Ribbentrop regarding Mussolini's letter to Hitler in which he says (*Weizsaecker 371, Weizsaecker Ex. 124*):

*"The Duce does not believe in a victory in the West. Any attempt to force such a decision, in his opinion, will lead to Europe going Bolshevik. He therefore wants Germany not to look for military decisions in the West, but to mature her military aims \* \* \*.*

*"It goes without saying that the Duce's advice is motivated by Italian egotism, but nevertheless, it is the advice of a friend. If it is rejected the Duce will certainly have freedom of action and wants to have it. His futile warning will serve him then as an excuse with the Western Powers. The Duce's letter clearly indicates a parting of the roads. It must be taken seriously."*

In March 1940 he had the discussion with Sumner Welles to which we have already referred.

These documents do not evidence a desire to forward plans of aggressive war, but rather both a desire and a purpose to avert it. Such were his pacific professions, and we now turn to what is claimed to be his affirmative participation in these crimes against peace.

On 8 November 1939 von Weizsaecker and Attolico conferred, and von Weizsaecker reported thus (after referring to the offer of the Queen of Holland and the King of Belgium) (*NG-1727, Pros. Ex. 244*):

*"During the further course of the conversation I told the Italian that at present protests were being made to us by Belgium because of repeated transit flights over Belgian territory ; from all these complaints only a single one seemed in my opinion to be justified. On the other hand, however, I continued as instructed, we should complain about the repeated violation of Belgian sovereign territory by the Allied air activity. Belgium and Holland would have to consider preserving their neutrality not only with words but with deeds and oppose*

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*English pressure unless both countries want to gain the reputation of exclusively favoring our opponents." [Emphasis supplied.]*

Unless otherwise explained, this conference does not indicate an attitude either of helpfulness, understanding, or sympathy toward Belgium or Holland, or any hint to the Italians which they could use to prevent war from spreading to the Lowlands. The assertion by Buelow-Schwante and by the defendant that the former's and von Weizsaecker's influence became the exciting factor of the Dutch and Belgian offers for mediation fails after examination of the evidence.

The next incident is that arising from the inquiries of the Belgian government regarding the invasion documents found on a German airplane which grounded or crashed in Belgium on or about 10 January 1940. The Foreign Office, on von Ribbentrop's orders, tried to conceal the facts. But this action is of no particular significance unless it was a part of a plan to deceive the Low Countries as to Germany's aggressive intentions.

On 15 January 1940, von Weizsaecker reports a conversation with Count Davignon, the Belgian Ambassador to Berlin, in which the latter complained about the violation of Belgian neutrality by German planes; von Weizsaecker said he promised an early reply, not only as to current alleged violations of Belgian territorial rights, but

concerning previous complaints. He then proceeded to discuss a series of reports in the Belgian press, all of which he claimed showed a shocking state of excitement and of military activity, which was one-sidedly directed against Germany; that the Ambassador admitted this, but asserted that the military missions were merely preliminary safety measures such as already had been taken by Holland and Switzerland, and gave the reason therefor that everyone in Berlin was speaking of the German invasion of Belgium and Holland, and of the repeated flying of German planes over his country, and of the warnings which had come from Italy. Von Weizsaecker reported that he had replied that Brussels should not be influenced by gossip in the streets, and that English and French planes had been seen at the Belgian frontier and crossed in flight, and finally, "I could not recognize any particular cause for Belgian alarm,"

On 16 January 1940 Minister Spaak expressed his apprehensions to the German Minister Buelow-Schwante, in which he made clear that Belgium would resist any violation of its neutrality either by West or East.

On 17 January von Weizsaecker reported a second visit from the Belgian Ambassador in which the latter not only expressed his fears, but mentioned the military measures taken against

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Belgians and the military orders found in the airplane heretofore mentioned. Von Weizsaecker reports that he answered that he lacked a reason for such behavior which he considered unjustified and suspicious, and he stated further that as to the captured military documents, "I looked surprised and repeated my remark of the day before yesterday that I knew of this story only through the press."

On 22 January 1940 von Weizsaecker reported this conversation with Attolico, who showed him an article in "Le Temps" dealing with the emergency landing of a German plane near Mecheln, and remarked that this was an important event which von Weizsaecker had not mentioned on the occasion of Attolico's visit the previous week, but as he, von Weizsaecker, did not desire to enter into the subject, he merely said that the story was already making the rounds with the foreign press, and asked Attolico whether he could not tell him why it was that the Belgians were so alarmed a week ago. Von Weizsaecker further reported that he could not determine whether the Italians were informed on this whole question.

The defense submitted Exhibit 142, a certified declaration of the Belgian Ambassador, which contains the following (*Weizsaecker 204, Weizsaecker Ex. 142*):

*"Did the State Secretary attempt to prevent this invasion? It is difficult for the undersigned to make any statement on this subject. At all events, Mr. von Weizsaecker gave the impression that he hoped to play his part in an attempt to prevent an extension of the war in the West. On the other hand, he made no attempt to deceive the undersigned or to relax his vigilance by stating that an invasion of Belgium and the Low Countries was out of the question."*

This is an exceedingly cautious and uninformative statement. The prosecution exhibit to which we have referred was offered in evidence on 22 January 1948, and the affidavit of Count Davignon was authenticated on 23 March 1948. In view of the meticulous care with which the case of the defense was prepared, we deem it extremely unlikely that the attention of the Ambassador should not have been called to [NG-2893, Prosecution] Exhibit 247, and inquiry made as to whether he had not received confidential information as to the activities of the feared event and occurrence which had caused such great apprehension on the part of the Belgian Ambassador. It is to be remembered that both von Weizsaecker and Count Davignon

testified to the close personal friendship which they felt toward each other.

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When Davignon made his final call on the day the German troops initiated their invasion, von Weizsaecker repeatedly tried to convince the Belgian that his government should cease resistance, and gave an emphatic description of the annihilating consequences to Belgium if this was not done. The defendant did not explain his deceptive statements to the Ambassador that he knew nothing of Germany's intention to invade, and his explanations of this threat of dire consequences and annihilation are not only inadequate, but his purported lack of recollection of what he said is unimpressive.

During all this time, as he himself admits, he knew that the invasions were planned and prepared, and waited only the strategic moment for their execution. Were we to judge him only by these things alone we would be compelled to the conclusion that he was consciously, even though unwillingly, participating in the plans. But in determining matters of this kind we may not substitute the calm, undisturbed judgment derived from after knowledge, wholly divorced from the strain and emotions of the event, for that of the man who was in the midst of things, distracted by the impact of the conflagration and torn by conflicting emotions and his traditional feelings of nationality.

This much is clear, that von Weizsaecker advised against the invasions and gave cogent reasons why they should not be embarked upon. His advice was rejected, and this rejection was not the first he had suffered. He had before warned the Western Powers, and unfortunately his warnings were ineffective. He had made suggestions which were or could not be carried out. The course of events had made his prophecies of failure and disaster seem like those of Cassandra. Even a stout heart for a time might fail under these circumstances, and the lethargy of futility take its place. That his opposition revived and that he played a real part in the continuous underground opposition to and plots against Hitler and further forcible removal of that incubus from the scene of action, we have no doubt. Even heroes have their bad days, and while perhaps the defendant cannot be included in that category, he should not be held to a stricter test.

According to him the benefit of reasonable doubt, we are constrained to exonerate him. He did not originate the invasions and advised against them. He warned von Ribbentrop against the western offensives and the utilization of unrestricted submarine warfare. He may have failed to give the Belgians, Dutch, and Italians specific warnings of the coming events, but that seems to be the extent of his misdoing. Under these circumstances we find the defendant von Weizsaecker not guilty with respect to the invasion of the Low Countries.

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*Yugoslavia and Greece.*—On 27 October 1940 Mussolini delivered an ultimatum to the Greek Government and almost immediately thereafter initiated an aggressive war against Greece. This was done without previous consultation with the German Government, although it had strong suspicions amounting almost to a certainty that the invasion was in prospect. Hitler did not interfere, inasmuch as he himself had initiated the Danish and Norwegian aggressions without consulting Mussolini, and felt because of this he should not interfere with the proposed Italian incursion.

The defendants von Weizsaecker and Woermann were advised of Mussolini's prospective operation. The campaign broke down during the fall and winter, and military disaster became imminent. Late in the fall of 1940 Germany commenced to build up large forces in Rumania, first on the pretext that it was sending a military mission to that country in order to train the Rumanian army, and later because of the alleged necessity of protecting Rumania's oil fields and the danger that the British might establish a Salonika front.

From the record it appears that at first, Hitler's Rumanian adventure was part of his plan of aggression against Russia, and that his agreements with Rumania and the dispatch of troop units there was an actual desire on his part to protect his southern flank and his sources, not only of oil, but of food imports. However, as the Italian invasion not only lost impetus, but suffered severe military setbacks, he felt it necessary to come to their support. The alleged presence of British troop units in Greece was but an excuse and not the reason for his action. Reports of the German Military Attache and of the German Foreign Office representatives in Athens clearly disclose this.

But even had the British rendered substantial aid to Greece, this did not serve as an excuse for Hitler's invasion. Italy was the aggressor. It was a signatory to the Kellogg-Briand Pact, and Britain had the right to come to the aid of Greece while Germany, on the other hand, had no right to come to the aid of the Italian aggressor. Nor is the argument of self-defense available to Germany. No nation which initiates aggressive war can avail itself of the claim of self-defense against those who have taken up arms against the aggressor. The first aggression stigmatizes every other act, either in waging war against or extending it to other countries. The action of Germany in Greece was aggressive and in violation of its treaty obligations, was without justification and in violation of international law.

Von Weizsaecker, on 15 January 1941, informed Draganov of Bulgaria that Germany was in agreement with the Bulgarians'

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desire to obtain an outlet in the Aegean Sea approach between the Marica and Struma Rivers, but Bulgaria must declare itself unreservedly willing to sign the Three-Power Pact when requested so to do.

On 2 February 1941 von Weizsaecker informed the Turkish Ambassador that the decisions which the Reich government had taken concerning the safety of the Balkans were "irrefutable." On 10 March he informed von Ribbentrop that during the whole of Draganov's activities in Berlin, the latter never named any territorial aims but those approved by "us," that is, Germany.

Notwithstanding these acts, however, there is no evidence that von Weizsaecker planned, prepared for, or initiated the war, or that he took any substantial part in it. We find that he should be and is found not guilty with respect to the invasion of Greece.

As to Yugoslavia, the story is still shorter. An attempt was made to gain the adherence of Yugoslavia to the Tripartite Pact. Most of these negotiations were carried on by von Ribbentrop personally. The Yugoslavian Government finally agreed to become a signatory to that pact, but thereupon was overthrown by a *coup d'etat* and the new government which took its place rejected the proposed agreement and Hitler decided immediately on an invasion.

From that decision there was no wavering, and von Weizsaecker had no part in

making the decisions and no part in implementing them. He should be and is found not guilty with regard to the aggressive invasion of Yugoslavia.

*Russia.*—On 21 September 1940 von Weizsaecker was informed by Admiral Buerkner of the OKW of Keitel's memorandum of 20 September concerning the military mission to Rumania, which stated that the real tasks, which neither Rumania nor "our own troops" must be allowed to perceive, were—

- (a) To protect the oil fields against attack by a third power;
  - (b) To render the Rumanian forces capable of carrying out certain tasks in accordance with rigid plans developed in favor of German interests; and,
  - (c) To prepare for the employment of German and of Rumanian troops in the event that a war with Soviet Russia was being "*forced upon us.*" [Emphasis supplied]
- On 14 September von Weizsaecker issued a draft of instructions regarding the status of the German military mission to Rumania, and its subordination to the German Minister at Bucharest.

Later, toward Christmas 1940, he was informed by military circles of Hitler's intention to wage a war against the Soviet Union, although he asserts that he received no official information until the late spring of 1941. On 1 March 1941 von Weiz-

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saecker informed the Russian Ambassador, as per instructions, regarding the German troop transports to Rumania and of German information regarding British troop movements into Greece; that Turkey would doubtlessly lie low "as we would certainly not turn against her unless she provoked us. I was the more sure of this since our troops would withdraw when the British danger was prevented, of which the Soviet Government was previously informed in January."

Other than exhibits which disclose that von Weizsaecker had knowledge of Hitler's plans to invade Russia, and this he admits, there is no evidence that he took any affirmative action toward initiating, planning, or preparing for the aggression against that nation.

On the other hand, on 28 April 1941 the defendant wrote to von Ribbentrop advising against a German-Russian conflict. He said (*Weizsaecker* 227, *Weizsaecker Ex.* 156):

*"I can summarize in one sentence my views on a German-Russian conflict: If every Russian city reduced to ashes were as valuable to us as a sunken British warship, I should advocate the German-Russian war for this summer; but I believe that we would be victors over Russia only in a military sense, and would, on the other hand, lose in an economic sense.*

*"\* \* \* But the sole decisive factor is whether this project will hasten the fall of England.*

*"We must distinguish between two possibilities—*

*"(a.) England is close to collapse; if we accept this (assumption) , we shall encourage England by taking on a new opponent. Russia is no potential ally of the English. England can expect nothing good from Russia. Hope in Russia is not postponing England's collapse. With Russia we do not destroy any English hopes.*

*"(b) If we do not believe in the imminent collapse of England, then the thought might suggest itself that by the use of force we must feed ourselves from Soviet territory. I take it as a matter of course that we shall advance victoriously to Moscow and beyond that. I doubt very much, however, whether we shall be able to turn to account what we have won in the face of the well-known passive resistance of the Slavs. I do not see in the Russian state any effective opposition capable of succeeding the Communist system and uniting with us and being of service to us. We would therefore probably have to reckon with a continuation of the Stalin system in eastern Russia and in Siberia and with a renewed outbreak of hostilities in the spring of 1942. The window to the Pacific Ocean would remain shut.*

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*"A German attack on Russia would only give the British new moral strength. It would be interpreted there as German uncertainty as to the success of our fight against England. We would thereby not only be admitting that the war was going to last a long time yet, but we might actually prolong it in this way, instead of shortening it.*

Weizsaecker

*"This position is drafted in very brief form, since the Reich Foreign Minister wanted it within the shortest possible time.*

WEIZSAECKER"

Notwithstanding his arguments regarding the necessity of destroying England, his memorandum is a strong argument against the invasion of Soviet Russia. And it is his attitude with regard to this charge in which we are here interested, and not his attitude toward England. In view of the peculiar mentality of von Ribbentrop and the necessity of couching arguments in terms which he would both understand and appreciate, it is quite understandable why sound advice would be coupled with pyrotechnics against a third power, namely, Great Britain. The situation here is different from one where a man argues one way and acts in another. In this case von Weizsaecker not only did not act, but no action would have been effective, and even sound advice was futile.

We have already held that mere knowledge of aggressive war or of criminal acts is not sufficient, but it is suggested that von Weizsaecker should have told the Russian Ambassador that he was aware of Hitler's plans of aggressions against that country. For an abundance of reasons, this cannot be made the basis of a judgment of guilt. We mention but a few. First, he could not talk with the Ambassador except through an interpreter and the hazard that the interpreter might betray him was obviously imminent, and the fatal consequences clear; second, there still remained the possibility either that Hitler might change his mind or that circumstances might arise which would compel him to alter his plans; and third, the revelation of the actual situation to the Russian Ambassador, even if it remained secret, would not cause Hitler to change his plans but would necessarily entail death and suffering to thousands of German youth, themselves innocent of any part in the planning, preparation, and initiating of the aggression. The only course which we think he could follow or wisely attempt was the one he followed, namely, to submit the reasons why the proposed step was likely to be fatal to the German people. His advice was not followed and the failure to follow it brought disaster.

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The prosecution insists, however, that there is criminality in his assertion that he did not desire the defeat of his own country. The answer is: Who does? One may quarrel with, and oppose to the point of violence and assassination, a tyrant whose programs mean the ruin of one's country. But the time has not yet arrived when any man would view with satisfaction the ruin of his own people and the loss of its young manhood. To apply any other standard of conduct is to set up a test that has never yet been suggested as proper, and which, assuredly, we are not prepared to accept as either wise or good. We are not to be understood as holding that one who knows that a war of aggression has been initiated is to be relieved from criminal responsibility if he thereafter wages it, or if, with knowledge of its pendency, he does not exercise such



powers and functions as he possesses to prevent its taking place. But we are firmly convinced that the failure to advise a prospective enemy of the coming aggression in order that he may make military preparations which would be fatal to those who in good faith respond to the call of military duty does not constitute a crime.

The defendant von Weizsaecker should be, and we find him, not guilty with regard to the aggression against Russia.

*United States of America.*—On 15 May 1941 von Weizsaecker wrote a memorandum to von Ribbentrop which states as follows (NG-4622, Pros. Ex. 3590):

*"Any political treaty between Japan and the United States is undesirable at present. The text of the treaty, however, in its present form would mean that Japan withdraws from us. It would leave us alone on the battlefield against England and the United States. The Three-Power Pact would be discredited. In the concluding sentence of paragraph II the sanctioning of the United States to help England is plainly anti-German (in the English text even clearer than in the German).*

*"Since the text of the treaty is already in Washington it has already had a damaging effect. One should try to so obstruct it subsequently to such an extent that the treaty will not be concluded. (Definition of the Japanese treaty interpretations, provisions for effectiveness, dependence of the effectiveness of II, III, etc.)*

*"Should the treaty, despite this, still not be prevented, care must be taken that Japan in reality comes back again in the ranks. The minimum would be that Japan extends its assistance to Germany on the same principles as the United States its assistance toward England."*

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On 4 September 1941 von Weizsaecker reported his conversation with Oshima, Japanese Ambassador to Berlin. Oshima stated that he had made a report to Tokyo on the subject of relations of Japan-America. Von Weizsaecker states (NG-U370, Pros. Ex. 396):

*"This opinion of Oshima quite coincides with the one desired by us, so that I actually had little to add. Nevertheless, I have also on this occasion extensively used the ideas from the order cabled to Tokyo of 25 of last month—364 R—and at the end tried to encourage further the somewhat depressed ambassador by telling him I could not at all imagine that in the Japanese nation and in accordance with it also in Japanese politics, there should not, in the end, the military instincts gain the upper hand."*

In November 1941 von Weizsaecker prepared a memorandum which became the basis of a Foreign Office telegram to the German Ambassador in Tokyo. He states that the German Military Attache in Washington reported that (NG-4371, Pros. Ex. 408):

*"American war policy during the past few months based on the assumption that Japan could be kept out of the war. Only thus is to be explained the division of fleets and base on Iceland, which permanently ties up considerable parts of the fleet in the Atlantic. With every Japanese attack on Russia, China, Singapore, or Dutch Indies, America is immediately confronted with the dilemma of either pocketing an attack on its prestige or saving face by going to war. Dilemma becomes the more difficult as United States entry into war on two fronts impairs supply and possibility of aid to England and not only turns the Pacific but also the Atlantic into war theater, thereby necessitating the splitting up of American fighting forces as well as convoy protection to the Far East for indispensable raw material supply.*

*"Prior to an American entry into the war the following is to be assured:*

*"(1) An above-all attitude of Japan,*

*"(2) The unconditional obedience of Latin-American countries,*

*"(3) Conclusion of preparations for land and air warfare,*

*"(4) Complete gearing of war industries,*

*"(5) Possibility of being decisive in the war.*

*"Roosevelt's and Churchill's threats addressed to Japan must, as hitherto, not be evaluated as an expression of strength but as an expression of concern. One is of the opinion in America that Japan can be effectively intimidated, if it is threatened*

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*simultaneously from Singapore and Hawaii. American-English press campaign to this effect is in progress. At the same time it is impressed upon Japan that Japan as a friend of America and England will have entirely different prospects than as a friend of Germany. Fuehrer as master of the British Empire, the Netherlands, and Russia would be a much more dangerous opponent for Japan than the British Empire or the United States. As a matter of fact, England, the United States, and Russia, want nothing more than peace and friendship in the Pacific with full regard for Japanese interests. American tactics, as in the past 2 years, aim to deceive the opponent and to camouflage its own weakness.*

*"Please use foregoing report of military attache in connection with the above-mentioned cable."*

Thus, it will be seen that von Weizsaecker was anxious not only that Japan remain an active member of the Tripartite Pact, and that he favored Japan's expansion and aggression to the southeast, namely, toward Singapore, Burma, and the Dutch Indies, and also against Russia, but that he was aware that this might bring in its train intervention on the part of the United States. But this does not establish that he favored or recommended an aggressive war against the United States. Moreover, the record discloses that Japanese action was not induced by German prompting, but by its own evaluation of the situation and its own interests, and that the attack on Pearl Harbor and the Philippines was a surprise to Hitler, the Foreign Office, and to von Weizsaecker.

The German decision to declare war on the United States was not made by or on the advice of von Weizsaecker. Thus, the evidence does not establish von Weizsaecker's guilt, and we exonerate him and find him not guilty so far as aggressive war against the United States of America is concerned.

#### KEPPLER

The defendant, who was a manufacturer, became acquainted with and a follower of Hitler as early as 1927 and acted as the latter's economic adviser. He was a convinced Nazi and still retains a high degree of loyalty toward Hitler believing, as he says, that during the early years at least, Hitler's program was well-intentioned and was fraught with good for the German people, but as the years passed, Hitler, due to illness and strain, changed. When Goering became Plenipotentiary for the Four Year Plan, Keppler lost much, if not all, of his influence on eco-

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nomic matters, at least from a political standpoint, although he remained important in certain fields such as synthetics, fats, oils, and other materials.

In 1936 Keppler was given full authority over the direction of the Nazi Party's activities in Austria. From that time on he, as Hitler's direct representative, exercised these functions. The Austrian Anschluss had long been the subject of Hitler's plans of expansion. No secret was made of it. When the Nazi Party expanded into Austria and while outwardly independent of the Reich Nazi Party, it was in fact wholly its creature. Its members and officers took orders from Hitler and held office only so long as they obeyed Hitler. After the unsuccessful Putsch in 1934, in the course of which Dollfuss was murdered, the Party was outlawed in Austria and, as the defendant and his witnesses claim, its members were subjected to discrimination and at times to imprisonment. But it persisted as an underground movement with support, financial and otherwise, from the Nazi Party in Germany. A party which commences an armed revolt and assassinates a head of a state can hardly be regarded as a persecutee if the government thus assaulted takes measures to prevent similar occurrences in the

future, and that in this case a recurrence was reasonably to be expected there can be no doubt.

One of the leaders of the Austrian Nazi Party was Leopold, who was strongly of the opinion that forcible measures should be taken.

However, until Hitler felt sure that forcible action against Austria would not bring down upon him Italy as well as the other Western Powers, Leopold's attitude constituted a hazard. Keppler was appointed among other things to prevent the occurrence of that state of affairs. This he did, and Leopold was removed from the scene of action.

During 1937 the defendant Keppler and his assistant, the defendant Veessenmayer, made several trips to Austria, consulted with Party leaders, and directed the activities of the Party there. As a result of Schuschnigg's Berchtesgaden conference with Hitler of 12 February 1938, the Austrian Premier was compelled to appoint Seyss-Inquart a member of the Austrian Cabinet as Minister of the Interior and head of the Security Police, who with others bored from within, and continually increased pressure was brought by Germany and the Party on him and his government until on 9 March 1939 Schuschnigg determined to hold a plebiscite to determine the question of Austria's independence.

This to Hitler was a red flag, and events marched rapidly. Keppler was in Vienna on that date and was immediately called to Berlin, reaching there on 10 March. He there made a report

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to Hitler, and after this conference, on Hitler's order, he returned to Vienna. There is a dispute in the testimony as to the exact hour of his arrival and as to whether he delivered or reiterated the German ultimatum, namely, that Schuschnigg must resign and Seyss-Inquart be appointed in his place or the German Army would march in. President Miklas testified that Keppler delivered such an ultimatum to him, and Hornbostel of the Austrian Foreign Office testified that during that day he received reports not only of Keppler's and Veessenmayer's arrival at Vienna, but that Keppler had delivered an ultimatum to the Austrian President. We believe and find that he did so, although there is reasonable doubt whether this took place before or after General Muff, German Military Attache at Vienna, had delivered a like one. But we deem it immaterial which ultimatum was delivered first.

The defendant would have us believe that he acted in a vacuum in this matter and had neither knowledge of nor activity in the unwarranted interference in Austrian affairs. His story, however, is quite incredible. He returned to Berlin to report, and after that, as he was ordered, he flew back to Vienna. He was there during the crucial hours. He admits conferring with Miklas and in fact the record of his telephone conversation with Goering so states. Keppler was in Vienna to do Hitler's will, and it is beyond the realm of possibility that he was not informed before he left Berlin precisely what was to occur and what part he was to play.

Neither Hitler nor the Third Reich had the slightest justification or excuse to interfere in Austrian affairs, particularly in view of the provisions of the Treaty of Versailles and the agreements which the Third Reich entered into with the Austrian state. Hitler's actions became aggressive as soon as he felt that it was safe to do so and as soon as it became clear that there might be a plebiscite which possibly would upset his plans. Resistance by Austria was useless and hopeless, and therefore none was offered when the Wehrmacht poured over the borders and took possession of the Austrian state. But before the army marched in, armed bands of the SS and other

Nazi organizations under German direction took possession of the government, arrested its leading officers, and patrolled the streets. In the unlawful invasion of Austria Keppler played an important part, and we find him guilty under count one.

*Bohemia and Moravia.*—According to the defendant's statement, in December 1938—the exact date being uncertain—Hitler ordered Keppler, according to his statement, to take interest in Slovakian affairs. We think it quite likely that this was due to Hitler's fears that the tension between the Czechs and the Slo-

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vaks, which had apparently lessened as can be seen from Hencke's report of 28 December 1938, would disappear. Such a condition was highly unsatisfactory to Hitler's plans to destroy Czechoslovakia. On 7 March 1939 Keppler was present at the Goering conference with Tuka, Durcansky, and other Slovaks. On 11 March 1939 Keppler went to Pressburg, Bratislava, and negotiated with Sidor.

On 12 March Altenburg reported to von Ribbentrop that Keppler had telephoned that the situation in Slovakia was "in a mess," that Seyss-Inquart and Buerckel had been fooled by the people on the other side, and Sidor had apparently been bribed by the Czechs, and one couldn't do anything with him; that at present there was calm in Bratislava, and it would be rather difficult to find new starting points; and that Durcansky's proclamation had indiscreetly already reached foreign correspondents. On the night of 12-13 March 1939 Tiso was visited, and decided to fly to Berlin, and left Vienna at 1 o'clock in company with Keppler. He was received by Hitler at 1915 hours on 13 March, and in the course of that conference Hitler stated that he had been disappointed by the Slovakian attitude and had been faced with the difficult decision whether or not to permit Hungary to occupy it; that he sent Keppler as his Minister to Pressburg [Bratislava], to whom Sidor had declared that he was still a soldier of Prague and would oppose the separation of Slovakia from the Czechoslovakian nation. Hitler stated that he permitted Minister Tiso to come to Berlin in order to make the question clear in a very short time; that it was a matter of indifference to him what happened in Slovakia; and that the question was whether Slovakia wished to conduct her own affairs or not, but he, Hitler, did not wish anything from her; that it was not a question of days but of hours. Hitler stated that if Slovakia wished to make herself independent, he would support this endeavor and guarantee it, and he would stand by his word as long as Slovakia would make it clear that she wished her independence, but if she hesitated or did not wish to dissolve the connection with Prague, he would leave the destiny of Slovakia to the mercy of events for which he was no longer responsible. Tiso replied that Hitler could rely upon Slovakia, but he wished to be excused for the reason that under the impression made by Hitler he could not clearly express his opinion at that moment or could hardly make a decision; that he wished to withdraw with his friend and think the whole question over at his ease, but that they would show that they were worthy of Hitler's care and interest for their country.

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On 14 March 1939 Tiso flew back to Bratislava, and Slovakia declared her independence.

On 15 March Hitler summoned the aged and ailing Hacha, President of the Czechoslovakian Republic, to Berlin, and at an early hour of the morning, after

threats that Prague would be bombed, Hacha was forced to submit. But German troops had already marched into Czechoslovakia hours before Hacha succumbed to Hitler's threats. The German troops met with some resistance from Czechoslovakian forces, but the Czechs were speedily overcome and the remainder of the Czech state fell. Keppler was present at Hitler's headquarters during the Hacha conference, but claims that he was only there to listen.

The defendant professes to have known nothing about Hitler's plan, although in one of his statements he admits that he thought something of that nature might occur. We are unable to believe him. He played an important part in this matter. The separation of Slovakia from the Czechoslovakian state was an important and an integral part of Hitler's plan of aggression.

Nor did he go to Czechoslovakia merely as an observer. In his own affidavit he admitted that he was assigned in March 1939 to negotiate and conclude a treaty of friendship and defense with Slovakia. We find that the defendant had knowledge of Hitler's plan for aggression against Czechoslovakia, knew that it was indefensible, and that he willingly participated in it. We find him guilty under count one in connection with the aggression against Czechoslovakia.

#### WOERMANN

In addition to the general charges contained in count one, it is specifically alleged that the defendant Woermann and other defendants named "as high officials of the German Foreign Office played dominant roles in the diplomatic plans and preparations for invasions and wars of aggression, and later participated in the diplomatic phases of the waging of these wars." It is further specifically alleged that members of the German Foreign Office, including the defendants Woermann and von Weizsaecker, were secretly preparing the groundwork for aggression in Czechoslovakia by providing political, military, and financial assistance to the Sudeten German Party, under the leadership of one Konrad Henlein, and inciting that movement to lodge continual demands for the complete separation of the Sudetenland from the Czechoslovakian Republic.

It is further asserted that the defendant Woermann, together with other defendants, participated in a series of diplomatic and

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political moves against Poland whereby, in disregard of recent assurances and agreements, the return of Danzig and the Polish Corridor was demanded as a pretext for aggression. Polish counterproposals for the peaceful settlement of German claims were rejected, and an energetic program to mobilize potential allies in the German cause of aggression and to neutralize France and Great Britain as possible opponents was undertaken. It is asserted that the "political propaganda and diplomatic blueprint for this war of aggression was carefully designed" by Woermann and other defendants with a view to shifting the apparent responsibility for the war to the victim. It is apparent that border incidents were staged and alleged acts of terrorism committed by the Poles against German nationals and racial Germans were fabricated and publicized. It is further asserted that all attempts by France, Great Britain, the United States, and other nations to persuade the German Reich to agree to a peaceful settlement of the dispute with Poland were rejected. It is then asserted that in the early hours of 1 September 1939, Germany launched this war of aggression which later involved Great Britain, France, and a great part of the world.

It is further asserted that defendant Woermann and others also participated in the preparation of the aggressions against Norway, Denmark, the Netherlands, Belgium, and Luxembourg, and it is further asserted that defendant Woermann and others participated in the preparation and planning of the attack against the Union of Soviet Socialist Republics on 22 June 1941. It is asserted that Woermann and others, through diplomatic efforts, secured the military support of Rumania and Hungary for such venture. It is further alleged that Woermann and other members of the German Foreign Office, from early 1941, made continuous diplomatic efforts to induce Japan to attack British possessions in the Far East. It is further alleged that Woermann and other defendants, as leading officials of the German Foreign Office, participated in the political development and direction of the occupied territories, particularly those territories wherein puppet governments under the domination of the German Foreign Office had been installed. By the maintenance of continuous diplomatic pressure, intimidation, and coercion, the puppet and satellite governments were compelled to support Germany in the course of its wars of aggression. Further, they participated in the partitioning of certain of the occupied territories, including Yugoslavia, and in the evolution of plans for the final integration of the occupied countries into the orbit of the German Reich after the cessation of hostilities.

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Defendant Woermann was Ministerial Director and chief of the Political Division of the Foreign Office in Berlin with the title of Under State Secretary from April 1938 to April 1943.

This defendant testifying before the Tribunal on 6 July 1948 stated (*Tr. p. 11063*):

*"I also did and do consider myself responsible for what happened in the Political Division of which I was head even when I did not approve or did not know the individual cases."*

The defendant did seek to show that the office of chief of Political Division had decreased in significance so that during the time that he was head thereof it was an office of secondary importance. This however does not square with the facts. The record is replete with evidence of incidents showing that during the times in question Woermann was charged with and energetically carried out important duties and assignments which often involved the exercise of a wide discretion and had a bearing on the plans and policies which were being considered or were in the process of execution.

The defendant also sought to show that he was on unfriendly terms with his chief, von Ribbentrop, from 1938 to 1943, and in his testimony before this Tribunal on 6 July 1948 he alluded to various incidents to support such claim. This, however, is not especially significant for the fact remains that he actually stayed in office under von Ribbentrop from 1938 to 1943—five eventful and critical years. Apparently their differences were not so fundamental as to have prompted Woermann to obstruct the plans or wishes of von Ribbentrop or to cause Woermann to fail in satisfactorily complying with von Ribbentrop's wishes in connection with the carrying out of the aggressive plans and policies of the Nazi regime. That Woermann did actively participate in carrying out the criminal plans and policies of the Reich seems to be amply borne out by the testimony.

It appears that although von Ribbentrop, according to the statement of defendant, had indicated to the defendant that he did not desire to "receive any unsolicited advice" von Ribbentrop did, on 24 July 1941, send a secret wire to Woermann wherein he directed defendant Woermann to carry on a propaganda campaign "on an exact study of the weak spots of the American or English policy."

The evidence discloses that the political division which was under Woermann's charge, as above indicated, gave close attention to the carrying out of von Ribbentrop's wishes in this matter, for in November 1941, Woermann gave detailed instruction to officials in his department with respect to propaganda to be

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employed. Woermann also sent a secret code telegram to various German missions abroad which contained instructions for putting America in a bad light by means of propaganda therein suggested. The foregoing is of significance as indicating that wide discretionary power was in fact vested in Woermann's office and that he exercised the same to an extensive degree. Reference hereinafter made with respect to the charges against Woermann as they relate to the various countries involved further indicate the wide discretionary power vested in Woermann.

We come now to a consideration of the charges against Woermann with respect to aggressions against Czechoslovakia (Bohemia and Moravia). It appears that on 19 September 1938 Woermann made a series of suggestions with respect to the disposition to be made of the balance of Czechoslovakia after the Sudeten German question had been disposed of. It also appears that on 5 October 1938 Woermann submitted a memorandum to von Ribbentrop in which he made detailed suggestions with respect to forthcoming discussions between Hungary and Czechoslovakia. It further appears that on 12 November 1938, Woermann sent a memorandum to defendant von Weizsaecker with respect to the Carpatho-Ukrainian problem. In November 1938 we find Woermann attending a meeting of the Reich Defense Council at which time Goering stated that "it was the task of the Reich Defense Council to correlate all the forces of the nation for accelerated building up of the German armament." Woermann made a long memorandum relative to this meeting for von Ribbentrop. On 23 November 1938 we find the defendant submitting a report to von Ribbentrop relating to a conference which Woermann and General Keitel had had with respect to the reorganization of the Czech Army. It further appears that Woermann compiled lengthy notes for an anticipated conference relating to a proposed friendship pact between Germany and Czechoslovakia, which notes were submitted to von Ribbentrop. It appears that during this period Woermann was aware of the fact that the Reich was subsidizing elements in Czechoslovakia who were seeking help from Germany with a view to inducing Slovakia to break away from Czechoslovakia. It further appears that after the invasion of Prague, 15 March 1939, Woermann's division sent a wire to Ritter, who was then in Prague, instructing the seizure of the cipher office and all material belonging to it in the Czech Foreign Office. The foregoing evidence with respect to Woermann's activities in connection with Czechoslovakia substantiates the claim that his office was not without considerable authority and power in the shaping of policy in many matters. Such evidence does not adequately support the claim that with respect

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to the plans for aggression against Czechoslovakia the defendant did in fact play a significant role. The evidence would indicate that he was advised of what was transpiring. The evidence does not indicate, however, affirmative acts on his part or such contributions to the plan or the execution thereof as to justify finding him guilty with respect to the aggression against Czechoslovakia.

We come now to a consideration of the charges against Woermann with respect to the aggression against Poland. It is to be observed that on 4 May 1939 Woermann sent a secret telegram to the German Consulate in Bratislava, giving agenda for a military conference to be held between the Slovakian authorities and the Germans. This was obviously a preparation pointing toward Poland, and the defendant in his examination before this Tribunal, while not admitting it to be such, did admit that the Polish question had then come into the foreground. It appears that on 11 May 1939 Woermann transmitted a written order to the German Ambassador in London calling attention to the fact that the "persecution of all classes belonging to the German minorities in Poland, especially in the former Prussian provinces, has for some considerable time been on the increase." He requested in such communication that copies of certain reports inclosed by him, as to such anti-German measures and methods, and further reports of like nature which would in the future be submitted, should be made use of in contacts with the British Government.

On 8 July 1939, Woermann sent a telegram to a number of German foreign missions, requesting that they use certain language and representations with respect to Poland. On 22 August 1939 a memorandum was sent from the Political Division (Woermann's division) setting forth the policies to be followed with respect to England, France, and ten other countries, in case of a Polish-German conflict. The memorandum goes into comprehensive detail of the steps to be taken and representations to be made, as to those countries. In discussing this document during the course of examination before the Tribunal the defendant indicated that he could not remember it, but stated, "some of the things it contains, however, certainly came from the Political Division."

On 21 August 1939 Legation Councillor Heyden-Rynsch and a subordinate of Woermann submitted a memorandum to Woermann for his decision with respect to the measures which the High Command of the Armed Forces (OKW) would institute on the date preceding the invasion of Poland, such measures being news black-outs, closing of the frontier, etc. It appears that on 23 August 1939 Woermann took a very decisive and affirmative step with respect to the Polish aggression in that he sent a top secret telegram to the German Legation in Bratislava, advising

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the Slovak Government of reports to the effect that Polish operations against the Slovak border might be expected at any time, and that, therefore, to protect Slovakia against surprises, the German Government was requesting the Slovak Government to agree that the commander in chief of the German army might avail himself immediately of the Slovak Army, for the protection of Slovakia's northern border, and that the commander in chief of the German air force be permitted to use the Zipser-Neudorf airfield and, if necessary, that he be permitted to issue a general order to the Slovak air force, forbidding all aircraft to take off. In return for the above "cooperation" requested, the Germans would be willing, first, to safeguard the frontier against Hungary; second, to effect the return of the border territory ceded to Poland in the fall of 1938, in the event that Poland waged war against Germany; and third, to give assurances that, in case Poland waged war against Germany, the Slovak armed forces would not be used outside Slovakia. The wire stated:

*"I beg to arrange that the Slovak Government give its assent to above-mentioned measures immediately and without loss of time."*

Woermann, on the stand, stated that the document "shows that it was not a matter of offensive, but of defensive measure." In view of conditions then obtaining in Slovakia,



it was ridiculous to speak of Poland waging war against Germany, and Woermann's attempted explanation becomes farcical. On 28 August 1939, Woermann wrote a secret memorandum stating that Legation Councillor Hoffmann had, on 27 August, called from Bratislava, informing "us" that the Slovak Cabinet had accepted the German request to put all territory at German disposal for the deployment of German troops. The defendant Woermann, on examination on 9 July 1948, stated that when war did break out on 1 September 1939, German troops actually invaded Poland through Czechoslovakia.

It appears from the evidence that the so-called border incidents were being used by Woermann to put the responsibility for the outbreak of the war on Poland. It is significant that on 25 August 1939 defendant Woermann sent a circular telegram to German missions in England and France requesting that all Reich Germans be advised to leave the country by the fastest available means. It further appears that on 28 August 1939 the High Command of the German Navy arranged for the return of all German merchant vessels at foreign ports to home ports, which order was to be transmitted through a telegram bearing Woermann's signature and was to be sent to German missions

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abroad. It is noteworthy that when Germany finally issued the so-called White Book dealing, among other things, with the war on Poland, defendant Woermann transmitted such White Book to German missions abroad through a circular letter of 7 September 1939. Such letter is in evidence. This circular letter reveals the diplomatic tactics employed and in which Woermann participated in connection with the aggression against Poland. It may be noted therein that one of the methods was to blame England, and that efforts had been made to neutralize Great Britain and France with respect to the Polish matter. Defendant Woermann transmitted a telegram to the German Ambassador in Moscow on 3 September 1939, the contents of which also are significant in revealing the tactics used preparatory to the Polish invasion. It is obvious that defendant Woermann did not in fact believe the representations made in such communications. It also appears that he did not believe the representations which he was making prior to the launching of the invasion of Poland. In testifying before this Tribunal on 9 July 1948, he was asked the following question with respect to the war against Poland (*Tr. p. 11522*):

*"Q. In your opinion, at that time what nation or group of nations was responsible for the outbreak of this war?"*

The defendant answered:

*"According to my innermost conviction I held the opinion that a great part was to be attributed to Hitler, but not the exclusive responsibility."*

During said examination reference was also made to the following (*Tr. pp. 11522-11523*):

*"Q. In this telegram you stated that the full responsibility was on England for the outbreak of the war. Was this theme to serve more or less as official guidance for the Moscow Embassy in their official conversations?"*

To this question the defendant answered,

*"Yes."*

Further proof of the fact that defendant knew the criminal nature of the aims of the German aggression against Poland appears from a telegram sent by him to the German Embassy at the Vatican on 13 October 1939. In this telegram he states in part:

*"There is no question of a return to Poznan in the case of Cardinal Hlond, who is a fierce Polish*

*nationalist. Poznan will in the future undoubtedly form part of the German Reich."*

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Finally on 6 October 1939, and after Polish military resistance had effectually been crushed, Hitler made a gesture of a peace offer to the Western Powers. On 18 October 1939 defendant Woermann sent a circular telegram to a number of German missions abroad, wherein he instructed such missions as to the line to follow in discussions with respect to such peace offer. In this letter Woermann calls attention to the fact that when the Finnish Foreign Minister had requested the German Minister at Helsinki to inform him, before his departure for Stockholm, whether any other solution for ending the war could be suggested from the German side, the Legation at Helsinki had been given the telegram from the Reich Foreign Minister (NG-5479, Pros. Ex. 3667):

*"I request you to state in reply to the question of the Finnish Foreign Minister that Mr. Chamberlain has rejected in the most shameless manner the Fuehrer's generous peace offer, and that the matter is now closed as far as we are concerned. I request you not to give any further explanations in the matter. End of instructions to Helsinki. Request that if necessary, you use similar language there.*

Woermann"

The following postscript appeared on said telegram:

*"Berlin, 18 October 1939. Foreign Office. Pol. II 4064 Statement IV. I enclose for your information copy of instructions sent by wire to a number of German missions abroad."*

The foregoing references to the evidence adduced in this case, with respect to Poland, would seem to leave very little doubt as to the participation of Woermann in the diplomatic preparations for, and in the execution of the aggression against Poland.

We come now to the question of the charges against Woermann with respect to the aggression against Denmark and Norway. It is the opinion of the Tribunal that the evidence with respect to the charges against Woermann in this connection is meager and unimpressive. It does not deem that the evidence with respect to these two countries would justify a finding of guilt against Woermann.

We come next to the charges with respect to the Netherlands, Luxembourg, and Belgium. It appears from the evidence that, early in November 1939, Woermann was the recipient of official information indicating German troop concentrations on the Belgian and Dutch frontiers. It also appears from the evidence that Woermann, during the same month of November, was advised of the violation of Holland's neutrality by German aircraft.

On 13 January 1940, Woermann submitted a memorandum to defendant von Weizsaecker, conveying the information that the

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Belgian Ambassador desired to call on the State Secretary in connection with the continued violations of Belgian territory by German aircraft. He alludes to the fact that the Belgian Ambassador had complained, but formal complaints had been unanswered. Woermann concludes this communication by stating, "the Luftwaffe operational staff has been requested to give us a plausible explanation for Belgian consumption." It should be noted in this connection that Belgium, at this time, was a neutral country. The defendant admitted in his examination that the Mecheln incident, which involved the landing of German aircraft near Mecheln in Belgium, and of which the defendant learned in January 1940, gave him a "pretty strong hint" that Germany

would attack France "and that this attack would be launched through Belgium and Dutch territory."

It appears that Woermann was advised about the Venlo incident. He admits that "it was, of course, somewhat remarkable that Ribbentrop gave instructions to the officials of the Foreign Office concerned, including myself, that inquiries from the Dutch Government were to be answered to the effect that the case had not yet been cleared up." It appears from the testimony that on 10 May 1940, the day of the beginning of the military operations against Belgium, Holland, and Luxembourg, Woermann was instructed to come to the Foreign Office at 5 o'clock in the morning, to be available for a conversation with the Luxembourg Charge d'Affaires. It was during this meeting that a copy of the German declaration of war was handed to such Charge d'Affaires by Woermann after the military operations had, in fact, been started.

A memorandum dated 16 May 1940 written by Woermann for the State Secretary states (NG-5473, Pros. Ex. 3669):

*"Today I told the Luxembourg Charge d'Affaires who had called upon me after previous announcement that we now considered Luxembourg an enemy country, and that therefore he would have to leave. The rest will be settled by the Protocol Division."*

While the evidence hereinbefore referred to would indicate that defendant Woermann was not without knowledge as to the criminal plans of the Reich with respect to Holland, Belgium, and Luxembourg, it does not appear that he took part in the initiation or assisted in the formulation of the plans or took any affirmative action for the consummation of such plans. We will not therefore predicate a finding of guilt against defendant Woermann on account of the alleged aggression against the Netherlands, Belgium, or Luxembourg.

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With respect to the charges against Woermann in connection with the aggression against Greece, it does not appear that the evidence sustains the charges. It appears from the evidence that Woermann had knowledge of the contemplated Italian invasion of Greece, and it appears that Woermann, upon the instructions of the Reich Minister for Foreign Affairs, avoided meeting the Greek Minister who apparently was seeking information with respect to said matter from the German Foreign Office. A consideration of all the evidence adduced with respect to the charges against Woermann in connection with the aggression against Greece does not satisfy the Tribunal beyond reasonable doubt that Woermann's acts in connection therewith constitute such participation as to render him criminally liable therefor.

The Tribunal considers the evidence with respect to the charges against defendant Woermann with respect to Yugoslavia as being entirely inadequate to sustain a finding of guilty. It does appear that Woermann was in the possession of information with respect to activities which would indicate that aggression against Yugoslavia was being contemplated. The evidence, however, does not show that Woermann either initiated or implemented the plans for such aggression.

We come now to the defendant's participation in the aggression against Russia. The Tribunal has examined the evidence with respect to these charges and does not believe that it justifies a finding of guilt against defendant thereunder. Many of the exhibits were of an informational character advising Woermann of what was transpiring. That the plans originated from him or were subsequently furthered or

implemented by him, or that he assisted materially in the carrying out of such plans has not adequately been proved to justify a finding of guilt against defendant on this charge.

On the evidence adduced with respect to the charges against Woermann in connection with the aggression against Poland, the Tribunal finds the defendant guilty under count one.\*

#### RITTER

The defendant Ritter joined the Foreign Office prior to 1911 and except for the period from 1914 to 1922 remained in that ministry. In 1937 he became Minister to Brazil and was recalled in 1938. He then received the title of Ambassador for Special Assignments. In October 1940 he was appointed liaison officer between the Foreign Office and Field Marshal Keitel of the Wehrmacht, which office he held until the fall of 1944.

\* The Tribunal, with presiding Judge Christiansen dissenting, set aside this conviction by an order of 12 December 1949. See section XVIII D 4.

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There is no evidence that he took part in or was informed of any of Hitler's plans of aggression. While his position as liaison officer between von Ribbentrop and Keitel was one of substantial importance, and his efforts undoubtedly contributed to the waging of these wars, there is no proof that he knew that they were aggressive. Such knowledge is an essential element of guilt. In its absence, he should be, and is acquitted under count one.

#### VEESENMAYER

The defendant Veessenmayer, until long after the last of Hitler's aggressions, occupied a minor position in the Keppler office, during which time, however, he received several assignments which dealt with foreign political developments. He accompanied the defendant Keppler to Austria on the latter's assignment to handle the Austrian situation up to the Austrian Anschluss, and was sent to Danzig prior to the invasion of Poland.

There is no evidence that he had any knowledge of Hitler's aggressive plans, and it is most unlikely that one holding such a minor position would have been informed of them.

He should be, and hereby is acquitted under count one.

#### LAMMERS

In addition to the general charges made against all defendants named in this count, many specific allegations are directed therein against the defendant Lammers. These are to the effect that Lammers, with other defendants, was an active participant in Hitler's seizure of power, in that they marshaled the financial, political, psychological, and propaganda support necessary for its success; that Lammers, with other defendants, cloaked the criminal activities of the NSDAP with a semblance of legality; that the defendant Lammers together with the defendant Dietrich coordinated a series of laws and decrees completely centralizing the control of the machinery of the German Government in the hands of the Third Reich; that he participated in the incorporation of conquered territories into the German Reich and in the administration of the incorporated and occupied territories; that he, in the furtherance of the planning

and preparation for aggressive war, coordinated at the highest level the total mobilization of the economic, financial, administrative, and military resources of the Third Reich; that he signed laws and decrees including, among others, the Reich Defense Law, decrees creating the Secret Cabinet Council and establishing the Ministerial Council for the Defense of the Reich, and the decree whereby Hitler assumed

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personal command of the Wehrmacht; that he further effected total mobilization by participation in meetings of the Reich Defense Council, the Reich Defense Committee, the General Council for the Four Year Plan, and the Ministerial Council for the Defense of the Reich whereby the military, economic, financial, agricultural, and rearmament phases of mobilization were accomplished; that he resolved jurisdictional problems and conflicts as to the respective spheres of competence in mobilization schemes of various supreme Reich authorities, and received reports regularly from the Plenipotentiary General for Economy, from the Plenipotentiary General for Administration, and the Plenipotentiary General for the Four Year Plan; that by virtue of the aforesaid activities and otherwise, the defendant Lammers synchronized the economic, financial, military, and administrative preparations with the general program of aggression; that Lammers, together with the defendants Meissner and Stuckart and others, accompanied Hitler to Prague when German troops marched into Bohemia and Moravia; that the defendant Lammers with others participated in the secret preparation for aggression against Norway; that a Fuehrer decree was signed by the defendant Lammers appointing Reichsleiter Rosenberg commissioner for the centralized control of problems relating to the Soviet Union and other eastern territories; that Lammers signed, among others, the laws uniting Austria, the Free State of Danzig, Memel, Eupen, Malmedy, and Moresnet with the German Reich, the decree appointing the Reich Commissioner for Austria, and legislation extending German civil administration to Austria, the Sudetenland, and the eastern territories (West Prussia and Poznan); that he was responsible for the overall coordination of the incorporation of these territories and participated in the appointment of administrators for the performance of the administrative tasks involved. He participated in the formulation of the law of 13 March 1938 which united Austria with the Reich; that in setting up German administration in Austria, he drafted and signed decrees which introduced German law and its enforcement by the Gestapo and SD, the Nuernberg Racial Decrees, and the Military Service Law; that he participated in the formulation of the laws incorporating into the Reich the Sudetenland, Memel, Danzig, the eastern territories (West Prussia and Poznan), and Eupen, Malmedy, and Moresnet, and in plans for the incorporation of French territory; that the defendant Lammers signed the legislation establishing the Protectorate of Bohemia and Moravia and the authority of the German Reich to legislate in the Protectorate; that he also signed laws extending German administration to the Government General and to the occupied eastern terri-

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tries, and signed legislation appointing administrators in the Protectorate, the Government General and other occupied territories, including the appointment of Goering as Plenipotentiary of the Four Year Plan in charge of the economic

exploitation of the U.S.S.R.; that he was further responsible for coordinating with the supreme authorities policies initiated in the occupied territories; and that he was actively engaged in the direction and administration of these territories.

There is much evidence in the record which clearly shows that the defendant Lammers, as Reich Minister and Chief of the Reich Chancellery, occupied a position of influence and authority through which he collaborated with and greatly helped Hitler and the Nazi hierarchy in their various plans of aggression and expansion. In our treatment of other counts herein, particularly count six, we have called attention to evidence which indicates that Lammers held and exercised wide discretionary powers. The evidence herein alluded to in our treatment of the charges against Lammers under count one also demonstrates the exercise of discretion and power by Lammers in the formulation and furtherance of Nazi plans and acts of criminal aggression.

It appears from Lammers' own testimony before this Tribunal on 9 September 1948 that as early as 1936 he was called in by Hitler and Goering in connection with the institution of the Four Year Plan. While he disclaims having drafted the provisions of the Four Year Plan, he admits "on the whole it was most comprehensive in its wording, and I edited the draft in some form or other outside of the conference that took place between the Fuehrer and Goering; that continued in conference." While he denies having contributed anything of decisive importance to this very important plan, the fact that he was called in by the principal architects of the scheme indicates graphically how dependent they were upon him for the proper formulation and efficient implementation of that and following schemes, and it appears that following this event, on countless occasions of great importance, he was instrumental in translating into decrees and ordinances the wishes and plans of Hitler and Goering in connection with the Nazi program pertaining to aggression against other countries.

It appears that on 22 October 1936 Goering issued a decree which was designated as "Decree on the Execution of the Four Year Plan." This decree created a committee of ministers who were designated as lesser council ministers, and who were to collaborate in the making of "fundamental decisions." On such committee were placed the Reich Ministers of War, Finance, Economics, Food, Prussian Minister of Finance, Reich Minister Kerl, Dr. Ing, Keppler, who was general expert for the general

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procurement of raw and synthetic materials, and *the State Secretary and Chief of the Reich Chancellery*, who was, of course, defendant Lammers. It appears that subsequently Lammers' subordinate, Willuhn, became a member of the General Council so that he could inform defendant Lammers "at any time of the measures we have introduced," From the evidence in the record it is clear that the General Council to which we have made reference became a very important and active agency for certain phases of planning in connection with subsequent invasions and other aggressions.

Under date of 4 September 1938 there was issued the so-called Reich Defense Law which was signed by Hitler, Goering, Hess, Frick, Walther Funk, von Ribbentrop, Keitel, and defendant Lammers. It is significant that in a note appended to the law on said date, which note was signed by Hitler, and Lammers as Reich Minister and Chief of the Reich Chancellery, it was provided that the publication of the so-called Reich Defense Law, which had been on said day signed, should be suspended. Lammers

on the witness stand could make no satisfactory explanation for the secrecy placed upon the decree thus made. It appears that the secrecy limitations on the said law were lifted by Hitler late in 1939. The defendant Lammers testifying before the Tribunal on 22 September 1948 professed to have learned this only from the minutes of a meeting in which Goering had announced that the secrecy no longer applied. It is significant that defendant Lammers played an active role in this defense council, in connection with other high representatives of the Reich. It appears that a Reich Defense Committee was set up for the purpose of preparing decisions for the Reich Defense Council and otherwise facilitating the work of the council and coordinating its work with the armed forces, the Party, and principal Reich authorities. Such Reich Defense Committee was composed of the High Command of the Armed Forces (OKW), the deputy of the Commissioner for the Four Year Plan, and the leading staffs of the Plenipotentiary for Reich Administration (GBV), and the Plenipotentiary for War Economy (GBW), and Reich defense officials. Lammers managed to have his ministerial director, Kritzinger, made a permanent representative on such Reich Defense Committee. The defendant's efforts to minimize the work of the Reich Defense Council is unworthy of consideration. It appears that at the first meeting of the Reich Defense Council, which was held 18 November 1938 and following the Pact of Munich, and at which, according to the memorandum relating to said meeting which is in evidence, "all Reich ministers and state secretaries, with a few exceptions, were present" as were also the com-

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manders in chief of the army, the navy, and the chiefs of the general staffs of the three branches of the armed forces, SS Gruppenfuehrer Heydrich, the president of the Reich Labor Office, and others. Goering, as chairman of the meeting, stated that the task of the Reich Defense Council was that of correlating "all the forces of the nation for accelerated building up of the German armament." The defendant Lammers, in the course of his testimony before the Tribunal on 22 September 1948, professed uncertainty as to whether or not he had attended such meeting. When asked as to whether, as a permanent member of the Reich Defense Council, he would have had a representative there if he himself was not present, he gave the ridiculous explanation, "I don't know because I never considered these meetings to be meetings of the Reich Defense Council." (*Tr. p. 22360,*)

A second meeting of the Reich Defense Council appears to have been held on 25 June 1939, a few weeks before the invasion of Poland. Lammers admits that he himself was present and took a part in this meeting. The minutes of said meeting state (3787-PS, *Pros. Ex. 553*):

*"Minister President, General Field Marshal Goering, emphasizes in a preamble, that according to the Fuehrer's wishes the Reich Defense Council was the determining body in the Reich for all questions for preparations for war."*

In the light of this statement by Goering, the efforts of Lammers in testifying before this Tribunal to minimize the significance of the Reich Defense Council or to intimate that it was nonexistent become doubly ludicrous. It is important to note also that Goering indicated in this meeting that the Reich Defense Council was to discuss only the most important questions of Reich defense as they would be worked out by the Reich Defense Committee. As hereinbefore indicated, Lammers had his representative, Kritzinger, on the Reich Defense Committee.

The minutes of this meeting also indicate the comprehensive nature of their war preparations. In evidence is a copy of what was known as the mobilization book for

civil administration issued by Keitel of the Armed Forces High Command and consists of general directions as to the measures to be taken in case of mobilization, and emphasizes the cooperation expected from the civilian authorities. It is significant that paragraph 14 thereof provides (1639a-PS, Pros. Ex. 554):

*"In order that any new measure should be included in a mobilization schedule for the civil administrative authorities application must be made to the Chief of the Reich Defense Committee \*  
\* \*"*

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The defendant in the course of his examination before this Tribunal on 22 September 1948 admitted that the Reich Defense Committee referred to in said paragraph 14 is the same Reich Defense Committee wherein he, Lammers, had a representative, and that such representative was Ministerial Director Kritzinger.

It is important to note that the memorandum relating to the first meeting of the Reich Defense Council on 18 November 1938 also states (3575-PS, Pros. Ex. 106):

*"Additional tasks of Reich Defense Council—new formulation of all wartime legislation."*

That the Reich Defense Council did play a significant role in the preparation of war laws and war decrees is further established by other evidence in the record.

A Hitler decree was issued on 30 August 1939, only 2 days before the invasion of Poland. This decree bears Hitler's, Goering's, and defendant Lammers' signatures. This decree purported to establish a so-called Ministerial Council for Reich Defense. The defendant in the course of his testimony before this Tribunal on 22 September 1948 admitted that such ordinance was "worked on" by him, and then it was submitted to other agencies, and then submitted to Hitler for his signature. The defendant stated that it had been drawn up in accordance with Hitler's instructions. During such examination before the Tribunal the defendant was asked with respect to this decree (Tr. p. 22367):

*"Well, then the date of the decree, 30 August 1939, wasn't merely coincidental was it, that it was issued 2 days before the beginning of the war?"*

To this question the defendant answered as follows:

*"No, the tension with Poland which prevailed was extraordinarily great at that time, and there was the threat of war."*

On the same day, in the course of his examination, the defendant was asked the further question with respect to this decree (Tr. pp. 22369-22370).

*"Well now, you were the administrative expert for Hitler. From what you say now, in view of that fact, was it you who suggested that they form the Ministerial Council for the Reich's Defense, or did Hitler, a man completely naive in matters of administration, dream that up himself?"*

To this the defendant answered:

*"I did not make that proposal. It emanated from Goering and from Hitler himself, who called me and said that now some*

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*such organization would have to be created in simplified form for swift and efficient legislation during the war."*

The examination continued as follows:

*"Q. Well now, Ribbentrop was not a member of the Ministerial Council, was he?"*

*"A. No."*

*"Q. And yet you informed Ribbentrop, did you not, that you would give him information concerning drafts of decrees which were to be passed by the Ministerial Council, didn't you?"*

*"A. That's correct. The Foreign Minister was deliberately not included in this Ministerial Council for the Defense of the Reich. It was of great importance to him to belong to it, and indeed, I presented that subject to the Fuehrer who declared that that was not necessary. I then consoled Ribbentrop*



*by telling him that I would inform him if matters came up affecting foreign policy."*

The foregoing indicates not only with certainty that the Ministerial Council for Reich Defense was created for the specific purpose of waging war against Poland, but also indicates the tremendously important role played by Lammers in the formulation of legislation pertaining to the aggressive plans of Hitler. It is significant in this connection that the defendant, at an earlier point in his examination on 22 September 1948, stated with respect to the Ministerial Council for Defense of the Reich as follows (*Tr. p. 22365*):

*"And I was the member in charge, the man who conducted the proceedings." The examination then proceeded as follows:*

*"Q. Now there were only six members on that council, isn't that right?"*

*"A. That is right."*

*"Q. And they were all higher Reich authorities, weren't they?"*

*"A. Yes, they were prominent Reich authorities, particularly since they represented many other departments also, the Plenipotentiary General for Administration, the Plenipotentiary General for Economy; I had no one to represent."*

*"Q. Now this ministerial council was a legislative body and could issue any legal decrees insofar as they were not explicitly left to the Reichstag or the Cabinet, isn't that right?"*

*"A. Its sole task was that of promulgating ordinances with the force of law."*

There would seem to be small need to discuss further the claim of the defendant Lammers to the effect that his role in the formation of legislation in implementation of Hitler's aggressive

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war program was a negligible one. His own admissions indicate the contrary. The record discloses a great number of wartime decrees and ordinances promulgated by this organization. It appears that the first meeting of this ministerial council met on 1 September 1939, and it appears that the defendant Lammers was present. At such meeting it appears that 14 separate decrees were ratified. Subsequent meetings held by the ministerial council likewise ratified many wartime decrees, many of them criminal in purpose.

The foregoing references indicate the great importance and influence of the defendant Lammers in the higher Nazi circles in the distinctly policy making sphere. It further indicates his great activity and contribution to the furtherance and implementation of the Nazi aggressions against other countries generally. We will now touch briefly upon his participation in the plans, preparations of, and execution of the specifically named invasions and wars of aggression involved in the charge.

It appears that Lammers became involved in the Austrian question at an early date. We find that on 30 September 1937 he wrote a letter to make arrangements for the presence of defendant Keppler at a meeting to be held between the Landesleiter of the Party for Austria, one Leopold, and Hitler. It appears from the defendant's testimony before this Tribunal given on 22 September 1948 that he knew the circumstances leading up to the invasion of Austria. (*Tr. p. 22372.*)

On 23 April 1938 subsequent to the so-called Anschluss, a Fuehrer decree was issued, cosigned by Lammers, appointing a Reich commissioner for the reunion of Austria with the German Reich. Under date of 14 April 1939 we find a Cabinet law issued for the administration of Austria, signed by Hitler, Frick, Hess, Goering, defendant Schwerin von Krosigk, and defendant Dr. Lammers. Subsequently on 15 March 1940 another Fuehrer decree, cosigned by Lammers, was issued which terminated the office of the Reich Commissioner in Austria, and on 18 June 1941 a decree signed by Lammers introduced Hitler Youth legislation into Austria, which

provided for Nazi control and indoctrination of Austrian youth.

While some of the foregoing events indicate knowledge of plans and preparations against Austria, they do not indicate that Lammers played an active role in the formulation or implementation of such plans. Acts of the defendant subsequent to the so-called Anschluss with reference to the administration of the seized territory are not of such character as to justify a finding of guilt against the defendant Lammers under the charges made against him with respect to Austria.

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We will now consider the charges and evidence with respect to Czechoslovakia. It appears that after the Munich Pact Lammers took an active part in the plans and preparations for the occupation of Bohemia and Moravia, and it appears that he was present with Hitler, Frank, Frick, the defendant Stuckart, Himmler, Heydrich, and others in the meeting with President Hacha of Czechoslovakia in Berlin on 15 March 1939, at which time according to the judgment of the International Military Tribunal\*—

*"The defendant Goering added the threat that he would destroy Prague completely from the air. Faced by this dreadful alternative, Hacha and his foreign minister put their signatures to the necessary agreement at 4:30 [o'clock] in the morning, and Hitler and Ribbentrop signed it on behalf of Germany."*

Immediately thereafter the defendant Lammers, with other prominent Nazis, proceeded to Prague to assist in carrying out the aggression against Czechoslovakia. Lammers, in his examination before this Tribunal, professed ignorance as to their objectives when the train in which he was traveling on 15 March 1939 proceeded toward Czechoslovakia. It is significant that immediately after arriving in Prague it was the defendant Lammers, acting with the defendant Stuckart, who drafted the decree establishing the Protectorate of Bohemia and Moravia. This decree is dated 16 March 1939. Such decree was signed by Hitler, Frick, von Ribbentrop, and Lammers. The terms of this decree indicate the utter callousness of the Nazi hierarchy in the carrying out of their aggressive plans against weaker nations. Professions were made therein to the effect that Bohemia and Moravia were being protected and that such Protectorate was autonomous and should govern itself. Subsequently, however, a decree was issued on 23 June 1939, signed by Hitler, Frick, and the defendant Lammers, which, among other things, provided (*NG-3204, Pros. Ex. 482*):

*"1. The Reich Protector is authorized to decree amendments of the autonomous law inasmuch as necessitated by common interests.*

*"2. In cases where delay proves dangerous, the Reich Protector may decree any kind of legal regulations." [Emphasis supplied.]*

Subsequently on 7 May 1942 another decree was issued, signed by Hitler and the defendant Lammers, which empowered the Reich Protector "to take appropriate measures as determined by that edict," meaning the decree establishing the Protectorate of 16 March 1939 in agreement with the Reich Minister of the

\* Trial of the Major War Criminals, op. cit., volume I, page 197.

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Interior in order to adapt the administration to the conditions prevailing in each case and to issue provisions necessary thereto. The foregoing references certainly indicate knowledge of and participation in the plans for the invasion of Czechoslovakia, that is, Bohemia and Moravia, and participation in the formulation

and carrying out of policies in Bohemia and Moravia after the invasion thereof. Turning now to the question of Lammers' participation in the aggression against Poland, it appears that as early as 15 June 1939 Lammers received from Schickedanz who was a lieutenant of Rosenberg's of the Foreign Affairs Office, a communication dealing with the Jewish question in Poland. Said communication commenced with the statement (1365-PS, Pros. Ex. 487):

*"I am enclosing the plan for the East."*

It is noteworthy that subsequently Schickedanz became Lammers' deputy with the Governor General for the occupied Polish territories. In testifying before this Tribunal on 22 September 1948 Lammers sought to minimize the significance of having Schickedanz as his representative with the Governor General for the occupied Polish territories by asserting (Tr. p. 22381):

*"He wasn't my representative either. I sent him there simply to give him a job and gave him the task of observing because questions in the Government General interested me."*

Such explanation appears to be sham and frivolous, and in this same category can be placed the greater part of his explanations and excuses as disclosed by the testimony with respect to Poland, the plans, preparations, and other activities in connection therewith which show defendant involved. We now call attention to the following significant exhibits in evidence: a decree signed by Hitler, Frick, Hess, Goering, von Ribbentrop, and defendant Lammers, dated 1 September 1939 which provides for the reincorporation with the Reich of the Free State of Danzig; a decree dated 8 October 1939, signed by Hitler, Goering, Frick, Hess, and defendant Lammers, and relating to the annexation of the eastern territories and incorporating the Polish territory into the Reich, and containing various provisions with respect to the administration thereof; a decree dated 12 October 1939, signed by Hitler and cosigned by a number of other high Nazi officials, including defendant Lammers, which decree appointed Dr. Frank as Governor General of the occupied Polish territories; a decree signed by Hitler, Frick, and Lammers, dated 20 October 1939 relating to the administration and organization of the eastern territories; a decree, dated 2 November 1939, signed by Hitler, Frick, and Lammers, relating to the administrative structure of the eastern

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territories by providing that the Reich Gau, West Prussia, should henceforth be called the Reich Gau Danzig, West Prussia; a decree dated 29 January 1940, signed by Hitler, Frick, and defendant Lammers, amending a decree of 8 October on the organization and administration of the eastern territories; and a decree dated 7 May 1942, signed by Hitler and defendant Lammers, relating to the establishment of the State Secretariat for Security Affairs in the Government General, and which contained, among other things, the provision (2539-PS, Pros. Ex. 496)—

*"The Reich Leader SS and Chief of the German Police is authorized to give the State Secretary for security affairs direct orders in the fields of security and the strengthening of the German nationality."*

And a further paragraph therein contains this significant provision :

*"In cases of disagreement between the Governor General and the Reich Leader SS and Chief of the German Police, my decision is to be obtained through the Reich Minister and Chief of the Reich Chancellery."*

From the foregoing it is obvious that the knowledge and participation of the defendant Lammers with respect to the aggression against Poland was far from being merely perfunctory. That the defendant Lammers continued to play an important role in the formulation of legislative matters pertaining to Poland appears from the following

prosecution exhibits: an exhibit containing a telegram from Governor General Frank to Lammers, which shows Lammers was being consulted with respect to important matters of policy pertaining to Poland and that he was making vital suggestions in the formulation of policy in respect thereto. Another prosecution exhibit is a decree of 7 May 1942, signed by Hitler and the defendant Lammers, pertaining to the administration of the Government General. This decree also indicates that in the event of differences between the Governor General and the Reich Leader SS and Chief of German Police a decision was to be obtained from Hitler through the Reich Minister and Chief of the Reich Chancellery who was defendant Lammers. Another significant prosecution exhibit is a decree dated 27 May 1942, signed by Hitler and defendant Lammers, relating to the appointment, transfer, and dismissal of civil servants within the area of the jurisdiction of the Government General. The criminal participation by defendant Lammers in the criminal aggression of the Reich against Poland we consider established beyond a reasonable doubt.

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We now come to a consideration of the evidence adduced in connection with the charges against defendant Lammers relative to the part he is alleged to have played in connection with the invasions of Denmark and Norway. The evidence reveals that Lammers, at an early date, had knowledge of and became involved in the plans and preparations for the invasion of Norway. It appears that as early as December 1939 Schickedanz wrote to Lammers, which communication contained notes on a lecture. Such notes made reference to a suggestion by Admiral Raeder on the importance of Norway in the war, and also related to a conference of 16 December 1939 which had been attended by Quisling, the Norwegian traitor. Said communication clearly indicates that there were plans afoot for taking action against Norway. Before leaving such communication we wish to call attention to the following paragraph contained therein (1369-PS, Pros. Ex. 503):

*"From the beginning planning of a political central agency which properly evaluates in advance the coming difficulties and the exceptional situation. Political head as near as possible to the decisive place to avoid any delays caused by the participation of several departments and possible to reach fast decisions. Therefore, best Reich Chancellery direct but completely camouflaged by respective measures. Exclusion of the Foreign Office from the case, only Reich Foreign Minister to be kept informed in order not to burden this office."*

Under date of 24 April 1940, and immediately following the invasion of Norway, a decree was issued, signed by Hitler, Goering, Keitel, Frick, and the defendant Lammers, which decree appointed Terboven Reich Commissioner of Norway and contained many provisions with respect to the government of invaded Norway. Article 8 of such decree is significant and reads as follows (NG-3223, Pros. Ex. 504):

*"Regulations for the implementation and supplementation for this decree will be issued in the civilian sector by the Reich Minister and Chief of the Reich Chancellery and in the military sector by the Chief of the Wehrmacht High Command on the basis of my directives."*

Again we must remind ourselves that the Reich Minister and the Chief of the Reich Chancellery there referred to is none other than the defendant Lammers. On 31 May 1940 Lammers directed a letter to care of Reichshauptamtsleiter Schickedanz, stating among other things as follows (NG-1442, Pros. Ex. 498):

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*"As reward for your activity as my Plenipotentiary with the Governor General of the occupied Polish territories and with the Reich Commissioner for the occupied Norwegian territories I allotted to you*

*for the period from 1 January to the end of May of this year a lump sum which, in view of the cuts in salaries, amounts to altogether 7,100 RM."*

It appears further that in June 1940 Lammers again wrote Schickedanz stating (NG-1443, Pros. Ex. 505):

*"As Reich Commissioner Terboven informs me he has now established the liaison office planned by him in Berlin. You will learn all details from the copy of my enclosed circular. May I express to you my gratitude for your activities as leader of the temporary liaison office at the Reich Chancellery."*

Further documentary evidence reveals Lammers' close connection and participation in the plans of the invasion of Norway both before and after same was commenced and in the occupation that followed. Among the exhibits that are of special significance is Terboven's report to Hitler as of 22 July 1940 which was submitted through Lammers. This report, among other things, shows the part that Quisling played in cooperation with the Germans leading up to the invasion of Norway. In evidence is a memorandum on a conference that took place between Hitler, Quisling, Martin Bormann, Reichsamtsleiter Scheidt, and the defendant Lammers on 16 August 1940. This exhibit establishes Lammers' knowledge and participation as to the aggression against Norway. Introduced in evidence is a letter from Terboven to defendant Lammers, dated 17 October 1940. This letter encloses a report on the activities of the Commissioner for the Norwegian occupied territories from April to the date of the communication. A decree dated 12 December 1941, signed by Lammers as Reich Minister and Chief of the Reich Chancellery, is in evidence, which decree established a central bureau for the occupied Norwegian territories and appointed defendant Stuckart as chief of such bureau. Also in evidence is a file note from defendant von Weizsaecker to defendant Woermann which enclosed a letter from Lammers to Quisling, dated 17 September 1942, which letter, among other things, states that Hitler had concluded to postpone final disposition of German-Norwegian relations until after the war and that in the meantime Norway's interests abroad were to be represented only by (NG-2177, Pros. Ex. 512) —

*"\* \* \* the competent authorities of the Reich, that is in relation to the Reich government through the Reich Commissioner; in the occupied territories through the chiefs of the German administration in these territories, and in countries on a*

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*friendly footing with us through the diplomatic Reich representatives maintained there or through the Foreign Office."*

He further states:

*"When Norwegian interests in the occupied territories and abroad are concerned, the Reich Commissioner wishes that the competent German authorities employ Norwegians, who are members of the NS or closely connected with it, as consultants. If matters have not hitherto been handled in this way, I shall arrange for the necessary steps to be taken in this direction."*

The foregoing evidence, as heretofore indicated, establishes beyond a reasonable doubt the criminal participation of Lammers in the preparations leading up to Norway's invasion, and in the subsequent administration of the occupied country.

There is very little evidence showing Lammers' participation in the invasion and subsequent administration of Denmark. There is one exhibit, which is a Reich Chancellery memorandum dealing with the position of the German Plenipotentiary in Denmark. Here defendant Lammers states that the new German Plenipotentiary in Denmark, while no longer a diplomatic representative, nevertheless belonged to the Foreign Office. He recommends that the Reich labor leader address a request he has in mind to the Reich Minister and Chief of the Reich Chancellery. This document by itself would not justify a finding against Lammers with respect to the invasion and

occupation of Denmark.

We come now to a discussion of the charges against Lammers with respect to Belgium, Holland, and Luxembourg. The record contains evidence to show that in January 1940 a Fuehrer decree was issued relating to "the preparation for the occupation of territories outside of Germany." It is significant that a handwritten footnote on this letter states that (*Tr. p. 22386*)—

*"The Fuehrer has approved the decree, but ordered that it is to be issued by the Chief of the Reich Chancellery. We are to receive copies for distribution as suggested above."*

It is also significant that a memorandum in said exhibit, from the Supreme Command of the Armed Forces, reads in part as follows (*NG-4307, Pros. Ex. 540*):

*"Memorandum concerning Fuehrer decree on maintenance  
of secrecy*

*"According to an announcement by Ministerialdirektor Kritzinger, the Fuehrer decree of 29 January 1940 has been forwarded in writing only to Field Marshal Goering, the Fuehrer's deputy, and the Reich Minister of the Interior. To the remain-*

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*ing ministers the decree was announced orally by Reich Minister Lammers."*

It should be noted that the foregoing exhibit contains evidence which clearly indicates that the countries which it was planned to occupy were the countries of Belgium, Holland, and Luxembourg.

It appears that on 31 January 1940 defendant Lammers forwarded to Keitel a photostat of the decree as approved by Hitler on 29 January. While the defendant in cross-examination before this Tribunal stated that the final decree was in absolute conformity with the draft, he admitted that he was not allowed to change the subject matter of the decree that had been approved by Hitler and that (*Tr. p. 22389*)—

*"Such a decree imposing the obligation to observe secrecy may have been enacted."*

It should be noted that the foregoing decree was issued more than 3 months prior to the invasion of the countries of Belgium, Holland, and Luxembourg. In the light of his obvious knowledge, and in view of the participation of Lammers in the handling of the foregoing decree, no time need be spent in consideration of Lammers' representations to the effect that contemplated military operations were not imparted to the civilian officials.

A decree was issued on 18 May 1940, following the invasion of Holland, Belgium, and Luxembourg, which invasion took place on 10 May 1940, which decree was signed by Hitler, Goering, Keitel, Frick, and the defendant Lammers. This decree provided for the execution of power by the government in the Lowlands. Paragraph 1 states in part (*1376-PS, Pros. Ex. 514*):

*"The occupied Dutch territories will be subordinated to the Reich Commissioner for the occupied Dutch territories."*

Paragraph 7 of such decree contains the following:

*"Regulations for the execution and completion of this decree will be issued according to my directives for the civilian sphere by the Reich Minister and Chief of the Reich Chancellery and for the military sphere by the Chief of the Supreme Command of the Armed Forces."*

Under date of 21 May 1940 Lammers transmitted to the Reich Minister a letter enclosing a decree of the Fuehrer signed by Hitler and Lammers (*EC-178, Pros. Ex. 516*) which announced the appointment of Dr. Seyss-Inquart as Reich Commissioner for the occupied Netherland territories and provided for the government of said territory. It specifically empowered Field Marshal Goering to issue directives within the limits of the duties

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incumbent upon him as Plenipotentiary for the Four Year Plan. It also provided that "this decree is not to be published."

The evidence above referred to, and evidence in the record, not specifically mentioned herein, indicates clearly that Lammers was a criminal participant in the plans and preparations for the invasion of and aggression against Belgium, Holland, and Luxembourg, and in the Reich's administration of said countries after their invasion.

We come now to the question of Lammers' participation in the plans and preparations for aggression against Russia. In testimony before this Tribunal the defendant was inclined to disclaim any real knowledge of the plans against Russia. He admitted, "To be sure every once in a while I had certain inner misgivings \* \* \*." (*Tr. p. 21064.*) and he indicated that he had discussed the matter with the Fuehrer, who had told him that he feared Russia was going to attack Germany. He claimed that he believed such statements. He admitted also that there had been talk of a German preventive war "but there was no single word said to me that such a preventive war was being planned and prepared for." (*Tr. p. 21056.*)

The defendant, in an examination before this Tribunal on 13 September 1948, stated (*Tr. p. 21058*):

*"I took part only in Rosenberg's preparation for the organizational side of the civilian administration to be set up in the event of the outbreak of war."*

On 20 April 1941 a decree, signed by Hitler and Lammers, appointed Rosenberg as Hitler's deputy "for the central control of questions connected with the eastern European region." It is significant that this document contains a note stating (*NG-3709, Pros. Ex. 541*):

*"The Fuehrer signed the above document at Fuehrer headquarters on his birthday, that is, 20 April 1941, after telephone communication with Dr. Lammers."*

A part of this prosecution exhibit is a letter of Lammers' dated 21 April 1941 to Funk, Reich Minister for Economy, enclosing the decree mentioned. In this letter the defendant states that (*NG-3709, Pros. Ex. 541*)—

*"\* \* \* Rosenberg has been asked to make all necessary preparations as soon as possible in case of a possible state of emergency. The Fuehrer has authorized Rosenberg to call on the supreme Reich authorities for their closest cooperation for this purpose, to obtain information from them, and also to summon the deputies of the supreme Reich authorities to meet-*

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*ings. In order to guarantee secrecy of the commission and of the necessary preparations in this state, only these supreme Reich authorities are to be informed. On this cooperation Reichsleiter Rosenberg has chiefly to rely. That is in accordance with the Fuehrer's wish, I should like to ask you to place yourself at the disposal of Reichsleiter Rosenberg for the execution of his task.*

*"In the interest of secrecy it would be advisable if you would appoint a deputy at your office who alone would communicate with the Reichsleiter's office and who alone, apart from your permanent deputy, should be informed of this letter."*

Such letter was signed by defendant Lammers.

It appears that on 21 April 1941 the defendant Lammers sent a letter of similar tenor to Field Marshal Keitel. Such letter states, among other things, that the particular individuals upon whom Reichsleiter Rosenberg will primarily depend are "the Commissioner for the Four Year Plan, the Reich Minister of Economics, and you, yourself." (*865-PS, Pros. Ex. 366.*)

From Rosenberg's files we have in evidence a memorandum that recites, among other things, that Lammers and Rosenberg had agreed to suggest to the Fuehrer that he name a Reich Minister and General Protector for the occupied eastern territories. It then states: "Herewith a proposal which has been drafted by Dr. Lammers and discussed with the undersigned." (1025-PS, Pros. Ex. 524.)

Other exhibits introduced in evidence further indicate defendant Lammers' active participation in the plan of aggression against Russia and in the carrying out thereof. Particular attention is called to a letter from von Ribbentrop to Lammers under date of 13 June 1941. It is significant that such letter states in part (NG-1691, Pros. Ex. 542):

*"It is evident that the impending events will bring about political movement all over the East. The territory occupied by German troops will border on most sides on foreign states which will very much affect their interest."*

This was only several days before the invasion of the Soviet territory. Three weeks after the invasion of Russia it appears that Lammers attended a conference at Hitler's field headquarters, together with Rosenberg, Goering, Keitel, and Bormann. This conference concerned the contemplated incorporation of all Baltic regions.

From the evidence adduced in support of the charges against the defendant Lammers under this count, with respect to the

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alleged acts of aggression against Czechoslovakia, Poland, Norway, Holland, Belgium, Luxembourg, and Russia, it is established beyond a reasonable doubt that the defendant Lammers was a criminal participant in the formulation, implementation and execution of the Reich's plans and preparations of aggression against those countries. We find the defendant Lammers guilty under count one.

#### STUCKART

Until Himmler was appointed Minister of the Interior in 1943, the defendant Stuckart was not a Secretary of State in that ministry, but was the responsible chief of one of its principal sections. During that period, however, he bore the honorary title of State Secretary, carried over from that position which he held in another ministry.

He was not present at any of the Hitler conferences in which plans for aggressive wars were proposed and discussed. After these aggressions took place he occupied many responsible positions in the administration of the occupied territories, and drafted or assisted in the preparation of decrees related to them, and of the treatment of their inhabitants, as well as anti-Semitic legislation which was adopted in the Reich, and extended to the occupied territories. He participated in the preparation of the Reich Defense Law of 4 September 1938, and as Frick's staff leader, acted as chairman of the meeting and explained the provisions of that law, and was himself a member of the Reich Defense Committee. In May 1939 he was present at a conference in which the economic use and exploitation of the territories which might be occupied as a result of war was discussed; he received and presumably was familiar with the general mobilization plans.

We have reviewed the evidence and the claim of the prosecution based thereon, but have been unable to find and our attention has not been directed to any evidence that he had knowledge of these aggressions or that he planned, prepared, initiated, or waged these wars. Whether what he did constituted war crimes or crimes against humanity will be discussed when we discuss those counts of the indictment, but we deem that his guilt under count one of the indictment is not proved beyond a reasonable doubt and we therefore acquit him under that count.



## DARRÉ

While the defendant Darré was the Reich Minister for Food and Agriculture and head of the Reich Food Estate from the seizure of power until his removal from office, and was therefore

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a member of the Reich Cabinet, he never attended any of the conferences at which Hitler disclosed his plans of aggression, and there is no evidence that he was informed of them, with the following exception, namely: A letter which he wrote to Goering early in October 1939 when he was engaged in a dispute with Himmler over the jurisdiction between his office and the Office for the Strengthening of Germandom, in which he stated that the plans for the resettlement of ethnic Germans in the east had been developed over a long period by himself and his organization. But from this fact it is necessary not only to infer that he knew that war was likely, but a second inference that he knew that it would be an aggressive war. The danger of setting inference upon inference, and from the second inference drawing a conclusion of guilt involves a degree of speculation in which the element or likelihood of mistake is too great.

We hold that proof is insufficient, and we therefore acquit Darré under count one.

## DIETRICH

The defendant Dietrich was Reich press chief and press chief of the Nazi Party during the entire period when the German aggressive wars were planned and initiated, and while he was in constant attendance at Hitler's headquarters as a member of his entourage, the only proof that he had knowledge of these plans is that he had control over the German and Party press which played the tune before and upon the initiation of each aggressive war, which aroused German sentiments in favor of them, and thus influenced German public opinion.

Although he attended none of the Hitler conferences to which we have adverted, we deem it entirely likely that he had at least a strong inkling of what was about to take place. But suspicion, no matter how well founded, does not take the place of proof. We therefore hold that proof of guilt has not been shown beyond a reasonable doubt, and the defendant Dietrich is acquitted under count one.

## BERGER

There is no evidence whatever that the defendant Berger had knowledge of Hitler's aggressions. While, without question, he vigorously engaged in waging wars, there is nothing to indicate that he knew that they were aggressive or in violation of international law.

He should be and is acquitted under count one.

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## SHELLENBERG

At the beginning of the wars described in the indictment, the defendant Schellenberg was a comparatively minor official in the SD. He took an active part in the Venlo incident in which two British agents, Stevens and Best, were kidnapped on Dutch soil and brought to Germany, and the Dutch army officer Klopff was killed. The

prosecution asserts that this incident was used by Hitler as an excuse for the invasion of the Low Countries, and therefore Schellenberg is criminally liable.

We have no doubt that he was responsible for the incident in question, and we cannot accept his defense that he did not know of and had no control over these kidnappings and the assassination of Klopff. The fact that after it had occurred he was sent to the Foreign Office to make a report, and that it was the intention of his superiors to use his report as proof that the Netherlands had violated its neutrality is not sufficient, as the record does not disclose that he had any knowledge as to the purpose for which the report was to be used.

While his part in the Venlo incident may subject him to trial and punishment under Dutch law, that is a matter over which this Tribunal has no jurisdiction. There is no evidence tending to prove that he took any part in planning, preparing, or initiating any of the wars described in count one, or that he had knowledge that they were aggressive, or that with such knowledge he engaged in waging war.

We therefore acquit the defendant Schellenberg under count one.

#### SCHWERIN VON KROSIGK

The defendant Schwerin von Krosigk, during the entire Hitler regime, was Reich Minister of Finance and a member of the Reich Cabinet. He was not present at any of the Hitler conferences at which the latter announced his plans, nor was he one of Hitler's confidants. That many of his activities and those of his department dealt with waging war cannot be questioned, but in the absence of proof that he knew these wars were aggressive and therefore without justification, no basis for a judgment of guilty exists.

We therefore acquit him under count one.

#### KOERNER

In addition to the general charges made against all the defendants named in this count, it is specifically charged that the defendant Koerner, as permanent deputy of Hermann Goering, played a

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leading role in the planning, coordination, and execution of an economic program to prepare the German Reich for the waging of aggressive war, and that he was further responsible for coordinating the economic exploitation of the occupied territories in furtherance of the waging of aggressive war. It is further specifically charged that he, together with Goering, the defendant Keppler and other persons, participated in the establishment of the Four Year Plan in 1936, and that thereafter he, as Goering's deputy, directed the office of the Four Year Plan which was charged with control over the essential economic activities of the German agencies preparing for war, exercised supreme authority in economic matters, was responsible for the development and stockpiling of critical war material which was designed to prepare the armed forces and the German economy for aggressive war within 4 years. It is further specifically asserted that between 1939 and 1942, Koerner served as chairman of the General Council of the Four Year Plan which was concerned with the problems of labor allocation and production in war economy. It is specifically alleged that Koerner, together with defendant Pleiger, participated with Goering and others in the creation of the Hermann Goering works in 1937, and that Koerner, as chairman of the Aufsichtsrat of said organization and holder of other high offices therein was

influential in determining the policies of this huge organization which was founded in furtherance of the planning, preparation, and waging of wars of aggression. It is further specifically alleged that as early as November 1940 the defendant Koerner was informed by Goering of the coming attack against the Soviet Union, and that thereafter Koerner attended and advised the conferences which were convened to consider the scope and method of German exploitation of the eastern economies.

It is proper that at the outset of our treatment of the charges against Koerner short reference is made to the high positions held by him in the government of the Third Reich extending over a period of 12 years, a period encompassing the rise of the Nazi power to its collapse in 1945. It appears that the defendant became acquainted with Hermann Goering in 1926. It appears that in 1930 Koerner gave up his private business, as he stated in his examination before this Tribunal, to "devote myself wholly to Goering." It appears that in 1931 he joined the SS. He became quite closely associated with Himmler, and subsequently collaborated with Himmler in placing high SS officials in governmental positions. It should be noted here that it was during this period that Goering was in charge of the Gestapo and Himmler was Goering's deputy. It appears that after the Nazis established

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themselves in power in 1933 Koerner became Goering's adjutant and co-worker, and to quote from his own testimony before this Tribunal (Tr. p. 140096):

*"Of course Goering discussed many things with me that he did not discuss with others because he had confidence in me."*

In 1936 Koerner became State Secretary for the Four Year Plan. He then became deputy chairman of the General Council in charge of the Four Year Plan. In 1937 he became chairman of the supervisory board of the Hermann Goering works. In 1940 he was Goering's deputy in the Economic Leadership Staff East, which was an organization created for the exploitation of Russia. In 1942 he became a member of the Central Planning Board.

The question whether defendant Koerner is guilty under this count revolves greatly around his position and activities as deputy to Goering as Plenipotentiary in charge of the Four Year Plan, as deputy chairman of the General Council, and as member of the Central Planning Board. The Four Year Plan was established in 1936, the establishment being announced at the Reich Party rally in Nuernberg on 9 September of that year. At such time Goering was appointed as Plenipotentiary in charge and was vested with extensive and sweeping authority to compel cooperation of all governmental and Party agencies. A ministers' council, referred to as the General Council, was created for the making of principal decisions in connection with the Four Year Plan and its work. Such council included, among others, the State Secretary and Chief of the Reich Chancellery, defendant Lammers, and defendant Keppler. Koerner was deputy chairman of such General Council for the Four Year Plan from 1939 to 1942. While only carrying the title of deputy chairman he was the virtual chairman thereof, as he regularly presided.

The Central Planning Board, of which he was a member, after 1942 was an official agency of the Four Year Plan. It was in fact the means through which the German war effort was directed from 1942 to 1945. Such Central Planning Board was composed of three members, Albert Speer, Erhard Milch, and defendant Koerner. The function of the Central Planning Board was planning for the distribution and allocation of raw materials necessary for war, and the allocation of manpower for the war economy. It seems that in 1943 Walter Funk was appointed as the fourth

member of the Central Planning Board.

That the real aim and purpose of the Four Year Plan was to prepare Germany for war becomes clear from the evidence. It is noteworthy that, on 14 October 1939, Reich Minister for Eco-

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nomics Funk, in discussing the tasks of the German war economy stated (3324-PS, Pros. Ex. 944):

*"It is known that the German war potential has been strengthened very considerably by the conquest of Poland. We owe it mainly to the Four Year Plan, that we could enter the war economically so strong and well prepared.*

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*"One can evaluate correctly what the Four Year Plan means for the economic preparation of war, only when one considers that the Four Year Plan does not include only the food and raw material economy, only the entire industrial economic life, but that it also includes foreign commerce, money, and foreignexchange economy and finance, so that the entire economic life and production in Germany is authoritatively determined and executed by this plan. Although all the economic and financial departments were harnessed in the tasks and work of the Four Year Plan under the leadership of Field Marshal Goering, the war economic preparation of Germany has also been advanced in secret in another sector for many years, namely, by means of the formation of a national guiding apparatus for the special war economic tasks, which had to be mastered at that moment when the condition of war became a fact."*

Further emphasizing the highly important role played by the Four Year Plan, there is in evidence a report of the Military Economic Staff of the OKW in May 1943; confidential report on "The History of the German War and Armament Economy" by General Thomas, head of the Military Economic Staff of the OKW; an address by State Secretary Neumann, "A Reorganization of the Four Year Plan," which speech was made on 24 April 1941; and an article by State Secretary Neumann and one Dr. Donner, "The Four Year Plan and its Organizational Questions."

That the Four Year Plan was an instrumentality for the planning and carrying on of aggressions is no longer a matter of dispute. The defendant Koerner, however, has sought to plead ignorance of the fact that the Four Year Plan was in fact instrumental in the planning, preparation, and waging of aggressive war. He has further sought to minimize his authority as Goering's deputy in directing the plans and programs of the Four Year Plan. Neither of such defenses can be successfully maintained in the face of the strong and positive evidence to the contrary. The truth of the matter is that in August 1936 Hitler privately gave Hermann Goering a memorandum concerning the tasks of the prospective Four Year Plan. It appears from the testimony that of the only three copies of this memorandum pre-

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pared Goering received one copy and another copy was presented to Albert Speer while the third copy apparently is unaccounted for. It is significant that this memorandum, a copy of which was introduced in this case, sets forth the tasks given Goering in the Four Year Plan. Noteworthy are the following (NI-4955, Pros. Ex. 939):

*"1. The German armed forces must be ready for combat within four years.*

*"2. The German economy must be mobilized for war within 4 years." The memorandum also stated:*

*"The extent and pace of the military exploitation of our strength cannot be too large or too rapid.*

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*"The definitive solution lies in the extension of our living space. That is an extension of the raw*

*materials and food bases of our nation. It is the task of the political leadership to solve this question at some future time."*

And further—

*"Much more important however is to prepare for the war during the peace."*

It appears that in a meeting of the Ministerial Council held on 4 September 1936, under the chairmanship of Goering, which meeting was attended by Koerner, Goering read the Hitler memorandum above referred to.

In testifying before this Tribunal on 4 August 1948 the defendant admitted that Goering had given him the memorandum to read and that he, the defendant, had read all of it. The memorandum referred to would indicate that Koerner had knowledge of the aggressive aims and purposes of the Four Year Plan at such an early date as 1936, and it is significant also that on 26 May 1936 Koerner with other defendants, and General Keitel, chief of the Wehrmacht, attended a top secret meeting of Goering's supervisory committee on raw materials. At such meeting there was considerable discussion relative to the great need for oil, rubber, and iron ore. The minutes disclose, among other things, the following (NI-5380, Pros. Ex. 9J.5):

*"With a thorough mobilization of the army and navy, the whole problem of conducting the war depends on this. All preparations must be made for the A-case so that the supplying of the wartime army is safeguarded."*

He testified before this Tribunal on 29 July 1948 and admitted that he knew that the Four Year Plan had military economic

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aims. The defendant Koerner, in his testimony on 30 July 1948, in discussing the last mentioned meeting presided over by Goering, stated with respect to "A-case" there mentioned, which apparently was a code term to indicate—in case of war (*Tr. p. 4127*):

*"We thought a lot of the A-case, but it never occurred to us that Germany would attack; we were anticipating an attack on Germany."*

In evidence is an exhibit consisting of the report of a speech of Hermann Goering on the execution of the Four Year Plan, dated 17 December 1936, where it is stated (NI-051, Pros. Ex. 964):

*"In closing, Goering demanded unrestricted utilization of all power in the whole economic field. All selfish interests must be put aside. Our whole nation is at stake. We live in a time when the final dispute is in sight. We are already on the threshold of mobilization and are at war. Only the guns are not yet being fired."*

In testifying before the Tribunal on 30 July 1948, upon being asked whether the foregoing statement and various other statements made by Goering calling for rapid and extensive mobilization of the economy of Germany for military purposes did not indicate to him that the Four Year Plan was designed to prepare Germany for war, and even to prepare Germany for an aggressive war, the defendant stated (*Tr. pp. 14130-14131*):

*"I do not deny that such statements or similar statements were made by Goering here and elsewhere. Of course, the document is not an official document but is a record drawn up subsequently by an economic group; therefore, it is not certain that Goering actually used the language given in the record. It is possible that he did. You can understand Goering's language only if you know the conditions that prevailed at the time. At that time, according to my opinion, it was definitely not we who were proposing to bring about any conflict with Russia or were designing to bring about any such conflict."*

On 22 October 1936 Goering appointed the defendant Koerner as his deputy. The order provided (NG-1221, Pros. Ex. 460):

*"In all current business concerning the Four Year Plan, I shall be represented by State Secretary Koerner."*

In this decree Goering also set up the council of ministers to collaborate with him, which has been hereinbefore referred to as the General Council. In his testimony before this Tribunal the defendant Koerner admitted that Goering, through the aforesaid

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grants of power to him by Hitler, had become well nigh all-powerful in the economic sphere, the defendant stating (Tr. p. 14160):

*"All rights which Hitler possessed himself could now, in the economic sphere, also be exercised by Goering."*

Thus, we now have Koerner as deputy to the most powerful man in the Reich in the economic field, the man who under the Four Year Plan had the task "to make Germany ready for war in 4 years." Koerner, as Goering's deputy, represented him from time to time at important meetings where policies were being formulated. That a man in such position could "be without knowledge as to the aggressive nature of the plans under consideration is impossible of belief.

The repeated assertions of Koerner to the effect that Goering was trying to avoid war and he was in fact a man of peace, is such a transparent effort to conceal his own knowledge and motives that we need not dwell thereon at length. It should not be forgotten, however, that this is the same Goering who was tried before the International Military Tribunal which stated in the course of its judgment: \*

*"From the moment he joined the Party in 1922 and took command of the street-fighting organization, the SA, Goering was the adviser, the active agent of Hitler, and one of the prime leaders of the Nazi movement. As Hitler's political deputy he was largely instrumental in bringing the National Socialists to power in 1933, and was charged with consolidating this power and expanding German armed might. He developed the Gestapo, and created the first concentration camps, relinquishing them to Himmler in 1934, conducted the Roehm purge in that year, and engineered the sordid proceedings which resulted in the removal of von Blomberg and von Fritsch from the army. In 1936 he became Plenipotentiary for the Four Year Plan, and in theory and in practice was the economic dictator of the Reich. Shortly after the Pact of Munich, he announced that he would embark on a five-fold expansion of the Luftwaffe, and speed rearmament with emphasis on offensive weapons. \* \* \**

*"The night before the invasion of Czechoslovakia and the absorption of Bohemia and Moravia, at a conference with Hitler and President Hacha, he threatened to bomb Prague if Hacha did not submit. This threat he admitted in his testimony.*

\* \* \* \* \*

\* Trial of the Major War Criminals, op. cit., volume I, pages 279-282.

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*"After his own admissions to this Tribunal, from the positions which he held, the conferences he attended, and the public words he uttered, there can remain no doubt that Goering was the moving force for aggressive war, second only to Hitler. He was the planner and prime mover in the military and diplomatic preparation for war which Germany pursued.*

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*"His guilt is unique in its enormity. The record discloses no excuses for this man."*

The further defense of Koerner to the effect that he had no real authority or discretionary power in the high positions he held is not supported by the evidence. On the contrary, the evidence amply establishes the wide scope of his authority and discretion in the positions he held, and which enabled him to shape policy and influence plans and preparations of aggression. We need not here discuss in detail the many and various items of evidence that convincingly establish his authority. We

will here only allude to statements made by him during his examination before the Tribunal. These bear directly upon the scope of his authority and discretion.

In testifying before this Tribunal on 30 July 1948 he stated (*Tr. p. 1460*):

*"I was Goering's deputy in all current affairs concerning the Four Year Plan."*

Then he stated further by way of explanation (*Tr. pp. 14160-14161*):

*"Current affairs includes everything connected with decisions already taken by Goering, in contrast to the decisions themselves. I myself had to see to it that questions on which decisions were to be made were submitted; that orders on issues which had been decided were prepared and published, and I also had to prepare Goering's decisions insofar as on the council of the Four Year Plan I was chairman, as deputy of Goering."*

In response to a question, "Had Goering issued any orders were you able to deputize for him?" he answered:

*"Yes, if a matter was already under way and Goering had already decided it, and subsequently individual orders became necessary, then I could. That was current business."*

Koerner's counsel later asked Koerner the following question (*Tr. p. 4166*):

*"If I understand you correctly, you, yourself, are of the opinion that the individual instructions which had to be given after*

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*Goering had made a fundamental decision could be issued by you, yourself?"*

The defendant answered,

*"Yes, naturally."*

Subsequently, on cross-examination before this Tribunal on 4 August 1948, when asked if it would be a fair summary of his position to say that he was "chief of the office of the Four Year Plan and in charge of the management and supervision of that office?" he answered (*Tr. p. 14703*):

*"Yes, with the management and supervision of the agency. That was entrusted to my care, yes."*

In his testimony before the Tribunal Koerner described his tasks on the General Council as follows (*Tr. p. 14169*):

*"Yes, it was my task to coordinate the various agencies insofar as this was possible without the special orders being issued. This adjusting position, as I think you might call it, I exercised in particular on the General Council of the Four Year Plan."*

Other testimony in the record indicates that it was the function of the General Council to investigate all measures for making the Four Year Plan work.

In the light of the foregoing and other evidence in the record not here specifically alluded to which establishes the wide scope of his authority and activities as Goering's deputy in the Four Year Plan; and his close association both socially and officially with Goering; and his long service as deputy chairman of the General Council at the meetings of which he, and not Goering, usually presided; his asserted ignorance of the role of the Four Year Plan in the plans, preparations, and execution of various Nazi aggressions here involved becomes incredible.

The foregoing observations have not dealt specifically with evidence bearing on the aggressions against any specifically named country. We will now touch briefly on some portions of the evidence dealing therewith. According to Koerner's own testimony before the Tribunal, he saw a change in Hitler's attitude after 1935 for he states (*Tr. p. 4635*):

*"In 1938 I had certain misgivings concerning the repercussions concerning such vehement actions and drive."*

Shortly before the invasion of Austria Hitler reorganized the Four Year Plan and in so doing placed the Ministry of Economic Affairs\* under Goering. Goering by a decree dated 5 February 1938 made certain specific provisions relating to such reorganization, among them the following (*NID-13629, Pros. Ex. 952*):

\* Generally referred to as the Reich Ministry of Economics.

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*"My permanent deputy in all matters concerning the Four Year Plan is State Secretary Koerner, as up to this time."*

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*"In order to secure in the future also the necessary cooperation in current affairs among the various departments concerned in the Four Year Plan, the Generalrat (General Council) will remain in existence. The General Council has to take care of the necessary connections and has to organize the tasks according to uniform points of view. In the General Council, the individual plans of the ministries will be put into accord with one another and then combined into a total plan."*

Only about a month after the issuance of this decree Austria was invaded by the Reich forces.

While there does not seem to be any direct evidence to show that Koerner knew of the exact date of the invasion of Austria, it is quite evident that he knew that such an invasion was in contemplation, for on 17 March 1937 Koerner was present at a meeting conducted by Goering with respect to production of iron and steel. The minutes of such meeting indicate that among other things Goering stressed (NI-090, Pros. Ex. 966)—

*"1. Present supply for the various native and foreign sources.*

*"2. Supply which may be anticipated at present and in A-case in the immediate future.*

*"3. Supply from native German soil to which in A-case receipts from Austria with all her possibilities are to be added.*

\* \* \* \* \*

*"Goering continues: Also in Austria there are still many deposits which must be taken care of."*

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*"Thereby he arrived at the critical question of German low-grade iron ores. The question of profitability must be entirely disregarded here, although industry is otherwise bound by [it. It is a proposition similar to that when] an armaments firm which by utilizing its capacity for a normal level of production cannot exceed a certain limit of production is nevertheless instructed to expand, although no economic results can be expected. Nevertheless, this must happen. He is purposely leaving aside the question of how far the iron industrialists can carry this out themselves and to what extent they must receive aid. If vital plants are involved of which the State cannot demand so much that the firms would be ruined, then the State*

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*must help, because these measures would have to be prepared for under all circumstances. It does not differ from the case of the production of explosives or guns where one can just as little inquire about profitability. The same point of view applies to low-grade iron ores.*

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*"In this respect it is important that the soil of Austria is reckoned as part of Germany in case of war. Such deposits as can be acquired in Austria must be attended to in order to increase our supply capacity. Austria is rich in ore." [Emphasis supplied.]*

That Koerner regarded such invasion of Austria as a proper act was subsequently admitted by him, for in October 1943 he stated:

*"I always considered the Austrian question as a problem which Hitler would solve as early as possible at a suitable moment. In the spring of 1938 the situation was ripe and we could march into Austria without large military preparations."*

Immediately following the invasion of Austria it appears that Koerner was instrumental in accelerating the production of munitions of war. It is claimed that this was for defensive purposes only, and he persists that Goering warned Hitler against actions that would lead to war. Meanwhile, however, Goering was urging the construction of bombers capable of carrying a bomb load of 5 tons to New York and then returning. Koerner admits that he knew of this activity of Goering's.



It appears on 14 October 1938 at a secret meeting of the air ministries at which Koerner was present, the notes indicate that Goering stated (1301-PS, Pros. Ex. 971):

*"The armament should not be curtailed by the export activity. He received the order from the Fuehrer to increase the armament to an abnormal extent, the air force having first priority. Within the shortest time the air force is to be increased fivefold, also the navy should get armed more rapidly, and the army should procure large amounts of offensive weapons at a faster rate particularly heavy artillery pieces and heavy tanks. Along with this manufactured armaments must go; especially fuel, powder, and explosives are moved into the foreground. It should be coupled with the accelerated construction of highways, canals, and particularly of the railroads.*

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

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

*It appears also that in February 1938 Koerner extended to the Fuehrer an unconditional pledge "that German economy will actually obtain her goal as set by him."*

With respect to the invasion of Czechoslovakia which took place on 15 March 1939, the evidence shows conclusively that Koerner was aware of the impending aggression sometime before it occurred. Here again he asserts it was Goering who told him that Hitler was going to occupy Prague, and that Goering was opposed to the contemplated action as he feared it would lead to war. In this connection it is again well to remember that the IMT findings are to the effect that Goering admitted that he had threatened to bomb Prague if President Hacha of Czechoslovakia did not submit.

In evidence is a note relative to a conference of 25 July 1939 conducted by Goering and in which Koerner was present. This shows that (R-133, Pros. Ex. 972)—

*"In a rather long statement the Field Marshal explained that the incorporation of Bohemia and Moravia into the German economy had taken place, among other reasons, to increase the German war potential by exploitation of the industry there."*

Koerner in his testimony before this Tribunal on 30 July 1948 admitted remembering that Goering had mentioned Bohemia and Moravia, but insisted that he did not understand the situation to be as indicated in the note. But Koerner, during such testimony, went on to admit (Tr. p. 14154):

*"For the rest, the situation was so threatening that it seemed a matter of course to us that the military potential of the Protectorate which we now had and which was not being exploited would have to be exploited."*

A short time after the invasion of Bohemia and Moravia, the General Council, at a meeting presided over by Koerner on 28 April 1939 received a report which, among other things, stated (EC-282, Pros. Ex. 957):

*"In other words, the economic area of greater Germany is too small to satisfy the military economic requirements as to mineral oil, and the newly and successfully taken up contact with southeastern Europe shows us the only and hopeful possibility to ensure supplies for the mineral oil economy completely*

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*for many years by securing this area by means of the Wehrmacht.*

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*"It is essential for Germany to strengthen its own war potential as well as that of its allies to such an extent that the coalition is equal to the efforts of practically the rest of the world. This can be*

achieved only by new, strong and combined efforts by all of the allies, and by expanding and improving the greater economic domain *corresponding to the improved raw material basis of the coalition*, peaceably at first, to the Balkans and Spain.

*"If action does not follow upon these thoughts with the greatest possible speed, all sacrifices of blood in the next war will not spare us the bitter end which already once before we have brought upon ourselves owing to lack of foresight and fixed purposes." [Emphasis supplied.]*

That the planning of the General Council was for aggression and not for defensive purposes seems clear from this exhibit. Testimony before this Tribunal on 30 July 1948 shows that the foregoing report was submitted to the General Council by one Dr. Krauch in his capacity as Plenipotentiary General for chemical production. In testifying with respect to such document the defendant Koerner indicated that he remember it, but claimed that it was not reported or read to the General Council in its present form. He claimed that the "political remarks which are contained in the draft" were not read by Krauch. In view of the fact that this particular report as introduced consists of approximately 50 legal-sized pages, this display of memory is nothing short of remarkable, especially in view of the fact that the witness in other phases of his testimony exhibited a not especially retentive memory. Illustrative of this lack of memory on details is the testimony as given on 4 August 1948 with respect to a meeting with the traitor Quisling. In the course of the [cross-] examination by counsel he was questioned with respect to the support which was being contemplated for Quisling, and he was asked the question (*Tr. p. 14697*):

*"What forms of assistance or support were discussed?"*

To this he answered:

*"Of course today I wouldn't be able to recollect the details any longer."*

In August 1939 Koerner admits he was told by Goering that Hitler then had decided to attack Poland, and again Goering is alleged to have indicated that he was opposed to the contemplated

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move. It appears, however, that the defendant's attitude as a witness is such that his assertions as to Goering's attitude cannot be accepted without reservation. The defendant has admitted that under certain conditions he will not as a witness tell the whole truth. We refer to his examination before this Tribunal with respect to his having been a witness before the International Military Tribunal when his former chief, Goering, was on trial. We quote from Koerner's testimony on said matter (*Tr. p. 14717*):

*"I think that I did give a certain clarification there. Of course I did so in a more cautious manner than now because at that time I was a witness on behalf of Goering and I had to take certain considerations into account in behalf of my old chief. I didn't defend him, but I gave certain statements which I believe were capable of exonerating him, so far as I was able to exonerate him. That's the way you have to look at these things."*

The evidence indicates that Koerner participated in the planning and preparation of the aggression against Russia. It appears from the evidence that actual planning against Russia commenced in the winter of 1940. General Thomas, former head of the military economic office and the armament office of the High Command of the Wehrmacht, in his "Basic Facts for History of German War and Armaments Economy," made the following entries (*2353-PS, Pros. Ex. 1049*):

*"In November 1940, the Chief of Wi. Rue, together with Secretaries of State Koerner, Neumann, Backe, and General von Hanneken were informed by the Reich Marshal of the action planned in the East.*

*"By reason of these directives the preliminary preparations for the action in the East were*

commenced by the Office of Wi. Rue at the end of 1940.

"The preliminary preparations for the action in the East included first of all the following tasks:

" (1) Obtaining of a detailed survey of the Russian armament industry, its location, its capacity, and its associate industries.

" (2) Investigation of the capacity of the different big armament centers and their dependency one on the other.

"(3) Determine the power and transport system for the industry of the Soviet Union.

"(4) Investigation of sources of raw materials and petroleum (crude oil).

"(5) Preparation of a survey of industries other than armament industries in the Soviet Union.

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"These points were concentrated in one big compilation of 'War Economy of the Soviet Union' and illustrated with detailed maps, etc.

"Furthermore a card index was made containing all the important factories in Soviet Russia and a lexicon of economy in the German-Russian language for the use of the German war economy organization.

"For the processing of these problems a task staff, Russia, was created, first in charge of Lieutenant Colonel Luther, and later on in charge of Brigadier General Schubert. The work was carried out according to the directives from the chief of the office, respectively the group of departments for foreign territories (Ausland) with the cooperation of all departments, economy offices, and any other persons possessing information on Russia. Through these intensive preparative activities an excellent collection of material was made, which proved of the utmost value later on for carrying out the operations and for administering the territories."

We should here remind ourself that the invasion of Russia commenced 22 June 1941.

One Gustav Schlotterer, who between 1941 and 1944 was a Ministerial Director in charge of the Eastern Department of the Ministry of Economics and as a deputy was a representative of such Ministry in the Economic Staff East, testified before the Tribunal on 12 February 1948 as follows (Tr. p. 1787):

"A. It must have been either in March or at the beginning of April 1941 when General von Hanneken asked me to come and see him. He told me that in a conference with State Secretary Koerner the formation of an economic staff, for the event of a possible occupation of eastern territories in Russia, was being decided upon. General Schubert was to be put in charge of that staff, whereas I, myself, was to represent the Reich Ministry of Economic Affairs on the staff. Would I therefore please contact General Schubert.

"Q. Under what name was the proposed organization to be?

"A. It was supposed to be called Economic Staff Oldenburg.

"Q. Was that the code name?

"A. Yes.

"Q. Was this code name kept secret?

"A. It was restricted to internal communications between governmental departments only inasfar as it was necessary to call in government departments at all."

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In testifying before the Tribunal on 30 July 1948 Koerner admitted that he had advance notice of the planned attack on Russia.

A memorandum of a conference of army officers in the office of General Thomas on 28 February 1941, which bears the heading, "Re Oldenburg," among other things, states (1317-PS, Pros. Ex. 1051):

"The general ordered that a broader plan of organization be drafted for the Reich Marshal. Essential points—

"(1) The whole organization to be subordinate to the Reich Marshal. Purpose—Support and extension of the measures of the Four Year Plan."

It appears that on 19 March 1941 General Thomas made a memorandum of a report to Goering relative to Organization Barbarossa, which was the code name for the

contemplated operations in Russia. Such memorandum states in part (1456-PS, Pros. Ex. 1050):

*"The following matters were the subject of the report:*

*"(1) Organization Barbarossa.*

*"The Reich Marshal fully agrees with the organization which was proposed to him. The following persons shall become members of the executive staff: Koerner, Backe, Hanneken, Alpers, and Thomas.*

*"The Economic Armament Office will be the executive office.*

*"The Reich Marshal considers it important that a uniform organization be created. He agrees that individual agencies will be under the leadership of officers, particularly General Schubert. The heads of the economic inspectorates, the Reich Marshal wants to see in person. Hanneken is asked to propose the best qualified personalities of industry and business.*

*"(2) The Reich Marshal approved of the regulations worked out in Economic Armament Office for destructive measures by the air force in case Barbarossa. A copy was given to Captain von Brauchitsch for forwarding it to the general staff of the air force."*

Bearing on Koerner's participation in the planned aggression against Russia is a report, dated 28 June 1941, "On the Preparatory Work in Eastern European Questions" and apparently emanating from Alfred Rosenberg, which report alludes to many conferences relative to the war economic intentions of the Economic Operational Staff East. The report states that in connection therewith "almost daily conferences were then held with Dr. Schlotterer \* \* \*. It also states (1039-PS, Pros. Ex. 367):

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*"In this connection I had conferences with General Thomas, State Secretary Koerner, State Secretary Backe, Ministerial Director Riecke, General Schubert, and others. Far-reaching agreement was reached in the eastern questions as regards direct technical work now and in the future."*

It is indeed significant that the minutes of a General Council meeting held on 24 June 1941, presided over by Koerner, recited that (NI-7474, Pros. Ex. 582):

*"State Secretary Koerner opened the meeting and stated that owing to preparations for the case of war with Russia (Eventualfall 'Russland'), the convocation of the General Council had to be omitted up to now. Since the fighting in Russia has now started, he was able to make the following statements about the work which has been done within the Economic Operations Staff East:*

*"The entire economic command in the newly occupied eastern territories is in the hands of the Reich Marshal as Plenipotentiary for the Four Year Plan. The Reich Marshal is to make use of the services of the Economic Operations Staff East, which consists of the representatives of the leading departments. The measures are to be carried out by the Economic Staff East under the leadership of Lieutenant General Schubert, who is supported for the industrial sector by Ministerialdirigent Dr. Schlotterer, and for the agricultural sector by Ministerialdirektor Riecke.*

*"The economic command in the newly occupied territories should direct its activities to extracting the maximum quantities of goods required for the war effort, particularly steel, mineral oil, and feed. All other points of view should take second place.*

*"The necessary organization is in existence and will be utilized in accordance with the progress of military operations."*

It should be noted that the above-mentioned meeting of the General Council was held just 2 days after the invasion of Russia.

We have specifically alluded to but a small portion of the voluminous evidence introduced with respect to these matters, but the foregoing and other evidence in the record satisfies the Tribunal beyond reasonable doubt that defendant Koerner participated in the plans, preparations, and execution of the Reich's aggression against Russia.

The defense sought to establish that the attack against Russia "was not an illegal aggression but a permissible defensive attack."

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Concerning such defense it is sufficient to call attention to the following statement of the IMT: \*

"It was contended for the defendants that the attack upon the U.S.S.R. was justified because the Soviet Union was contemplating an attack upon Germany and making preparations to that end. It is impossible to believe that this view was ever honestly entertained.

"The plans for the economic exploitation of the U.S.S.R. for the removal of masses of the population, for the murder of commissars and political leaders, were all part of the carefully prepared scheme launched on 22 June without warning of any kind, and without the shadow of legal excuse. It was plain aggression."

The Tribunal finds the defendant Koerner guilty under count one.

#### PLEIGER

There is no evidence which tends to assert that Pleiger had any knowledge of or took any part in the plans, initiating, or waging of aggressive war. His field of activities was wholly in the economic and industrial field. He of course had knowledge that Germany was rearming, and the development of the iron ore field at Salzgitter, and of the Hermann Goering Works there, which were organizations entirely the children of his brain and the result of his energy. But, as was determined by the International Military Tribunal, rearmament, in and of itself, is no offense against international law. It can only be so when it is undertaken with the intent and purpose to use the rearmament for aggressive war.

That proof is here lacking, and we therefore acquit the defendant Pleiger under count one.

### **COUNT TWO—COMMON PLAN AND CONSPIRACY**

The defendants von Weizsaecker, Keppler, Bohle, Woermann, Ritter, von Erdmannsdorff, Veessenmayer, Lammers, Stuckart, Darré, Meissner, Dietrich, Berger, Schellenberg, Schwerin von Krosigk, Koerner, and Pleiger are charged as leaders, organizers, instigators, and accomplices in a common plan and conspiracy to commit, and which involved the commission of crimes against peace, including war crimes and crimes against humanity.

On motion of the prosecution, the defendants Bohle, von Erdmannsdorff, and Meissner were dismissed from this count.

\* Trial of the Major War Criminals, op. cit., volume I, page 215.

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The Tribunal is of the opinion that no evidence has been offered to substantiate a conviction of the defendants in a common plan and conspiracy, and all the defendants charged therein are hereby acquitted.

### **COUNT THREE—WAR CRIMES, MURDER, AND ILL-TREATMENT OF BELLIGERENTS AND PRISONERS OF WAR**

Count three charges the defendants von Weizsaecker, Steengracht von Moyland, Ritter, Woermann, Lammers, Dietrich, and Berger with the commission of war crimes, in that they participated, were principals in, accessories to, ordered, abetted, and

took a consenting part, and were connected with plans and enterprises involving, and were members of organizations and groups connected with the commission of war crimes, particularly in atrocities and offenses against prisoners of war and members of the armed forces then at war with the Third Reich, or which were under belligerent control of or military occupation by Germany, including, murder, ill-treatment, enslavement, brutalities, cruelties, and other inhumane acts; that prisoners of war and belligerents were starved, lynched, branded, shackled, tortured, and murdered in flagrant violation of the laws and customs of war, and through diplomatic distortion, denial, and fabricated justification, the offenses and atrocities were concealed from the Protecting Powers; that included in the crimes thus mentioned were the following incidents:

- a. A policy whereby the civilian population of Germany was urged to lynch English, American, and other Allied fliers who had been forced by military operations to land in Germany, and that those not so lynched were upon capture to be classified as criminals and turned over to the SD for "special treatment," which meant execution, thus circumventing the intervention of Protecting Powers, and as a result of this policy American, English, and other Allied fliers were lynched by the German civilian population, or murdered by the SD;
- b. The murder of Allied commando units, even though they had surrendered, and informing the Protective Powers through diplomatic channels that these troops had been killed "in combat";
- c. The murder of 50 fliers of the British Royal Air Force who had been captured after escaping from a prisoner-of-war camp;
- d. The murder of the French General, Mesny, who was a prisoner of war;
- e. Forced marches of American and Allied prisoners of war in severe weather without adequate rest, shelter, food, clothing,

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and medical supplies, resulting in great privation and death to many thousands of prisoners.

On motion of the prosecution the defendant von Erdmannsdorff was dismissed from this count.

#### DIETRICH

The indictment charges that Dietrich issued a directive that all newspapers were to withhold from publication any mention of the lynching of Allied fliers who bailed out over Germany. The only evidence offered against him is a Tagesparole (daily press directive) issued by him as the Reich press chief on 28 December 1943 which reads as follows (*NG-3327, Pros. Ex. 1225*):

"(2) The further material on hand regarding the cynical utterances of our enemies on the air war is to be emphasized with full force, thus underlining once again England's responsibility for terror methods in the conduct of the war. In so doing, the case of the American Murder Corporation is to be brought up once again as proof.

"Explanation to (2) \* \* \*. In connection with the material already on hand on this subject—among other things a new congratulatory message of Churchill's for the Anglo-American terror fliers has been published—it must be established that the war criminal Churchill will one day receive his punishment for his historical guilt. *In commenting, it must furthermore be observed that nothing must be mentioned on the subject of reprisals on our part, or of retaliation.*" [Emphasis supplied.]

Whether or not the portion underlined [*italicized*] was a part of the Daily Parole, as ordered, suggested, or approved by Dietrich, or was appended by someone else is, in our opinion, immaterial. The phrase is open to several constructions.

(1) That public clamor was not to be aroused to demanding such reprisals and retaliations, or

(2) That although acts of reprisal and retaliation had occurred or were to be indulged in, the press should keep silent on the subject, or

(3) That a final decision had not been made whether or not such acts should be encouraged.

It is significant that although Himmler on 10 August 1943 ordered that the chiefs of the regular and security police and the Gauleiter be informed that "it is not the task of the police to interfere in clashes between Germans and English and American terror fliers who have bailed out," the program of lynching does not appear at that time to have been clearly defined, or to have

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received official encouragement, and that the latter did not occur until the early months of 1944.\* There is no evidence either that Dietrich had knowledge of Himmler's secret order, knowledge of any previous or prospective lynching of Allied fliers, or that the comment in the Daily Parole had any connection with it.

The evidence against Dietrich is insufficient and inconclusive, and he must be acquitted on count three.

#### RITTER

The defendant Ritter's alleged participation in the murder of bailed-out Allied fliers arises from his position as Foreign Office liaison representative with the Wehrmacht. He received Keitel's top secret letter of 15 June 1944, in which the latter stated that for the publication of those cases of capture by the armed forces or the police for special treatment, that is murder by the SD, it was necessary to clearly determine what facts should be regarded as evidence of the criminal action, and established the following, which was to serve also as an instruction to the commander of the reception camp for aviators at Oberursel, namely (730-PS, Pros. Ex. 1233) —

*"\* \* \* where an investigation disclosed that it would be indicated to separate the offender, \* \* \* or to hand him over to the SD:*

*"(1) Strafing civilians, either individuals or crowds;*

*"(2) Firing on German air crews while suspended in parachutes after having been shot down;*

*"(3) Strafing regular passenger trains;*

*"(4) Strafing military hospitals, hospitals, and hospital trains which are clearly marked with the Red Cross."*

Keitel stated that inasmuch as in drafting publications of such actions, protests on the part of the enemy were to be expected, and it was intended that in agreement with the Secret Police, the SD, and the Ob. d. L. (commander in chief, Luftwaffe) until further notice, prior to each publication, agreement should be reached between the OKL West, the Foreign Office, and the SD as to the facts, time, and form of announcement.

The Foreign Office was requested to confirm, before 18 June, its agreement with the definition and with the intended procedure.

On 18 June Ritter telephoned the office of the Supreme Command, stating that the opinion of the Foreign Office could not be made known before the night of the 19th, as Ritter would have to check with Berlin, On 25 June he submitted to the Supreme

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Command of the Armed Forces a draft of reply which had been submitted to but not yet approved by von Ribbentrop who would be absent for several days.

The draft stated that in spite of obvious objections founded on international law and foreign politics, the Foreign Office was in basic agreement with the proposed measure; that in the examination of the individual cases, a distinction must be made between cases of lynching and "special treatment" by the SD; that "in cases of lynch law" no Germany agency could be directly responsible, because death would have occurred before the agency was concerned in the matter, and the circumstances would be of such a general nature that it would not be difficult to present the case in a suitable manner when published; that as to "special treatment" by the SD, subsequent publications would be tenable if Germany took this opportunity to declare itself free from the obligations imposed by international agreement which it there still recognized; that when an enemy airman had been captured by the armed forces, or the police, and delivered to a prisoner-of-war camp, he thereby acquired the legal status of a prisoner of war, and the Geneva Prisoner-of-War Convention of 27 July 1929 applied; that any attempt to disguise an individual case by clever wording of publication would be hopeless; that the Foreign Office was unable to recommend a formal repudiation of the Geneva Convention; that an emergency solution would be to prevent the suspected fliers from ever attaining the status of prisoners of war by informing them immediately that they were not regarded as prisoners of war, but as criminals, and delivering them, not to the prisoner-of-war camp, but to authorities competent for the prosecution of criminal acts to be tried by special summary procedure established *ad hoc*; that if, during these proceedings, special circumstances are revealed disclosing that this procedure was not applicable to the particular airman, individual cases might be subsequently transferred to the legal status of prisoners of war and sent to the reception camp.

The memorandum further stated that naturally, even this expedient would not prevent Germany from being accused of violating treaties, nor constitute a safeguard against reprisals upon German prisoners of war, but the proposal would relieve Germany of openly renouncing international agreements or, in individual cases, making excuses which no one would believe; that the alleged offenses under items 2 and 3 of the proposed definition were not legally unobjectionable, but the Foreign Office would be willing to disregard the fact. Finally, the memorandum stated, that the main weight would have to be placed on lynchings and

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should the campaign be carried out to such an extent that the purpose of deterring enemy fliers was actually achieved, then the strafing attacks by enemy fliers must be exploited for propaganda purposes in a more definite manner than heretofore, if not for home publicity, then certainly for the propaganda effect abroad.

On 29 June Ritter advised General Warlimont of the OKW Operations Staff that the Minister of Foreign Affairs had approved the draft but ordered his liaison officer assigned to the Fuehrer headquarters to present to Hitler the Foreign Office's attitude before the letter was sent to the chief of the Supreme Command of the Armed Forces, and that Hitler's approval of the principles established by the Foreign Office must be obtained.



On 4 July Hitler issued a directive that notice be served by radio and the press that every enemy agent shot down while participating in attacks against small localities without war economic or military value was not entitled to treatment as a prisoner of war, but would be killed as soon as he falls into German hands, but that nothing was to be done at the moment, and the measures of this sort were only to be discussed with the legal section of the OKW and with the Foreign Office.

Tribunal V in Case 12,\* based on contemporaneous captured documents, found that this program was actually carried out and that the chief of the OKW issued an order stating that it had recently happened that soldiers had protected English and American terror fliers from the civilian population, thus causing justified resentment, and directing that soldiers should not counteract the civilian population in such cases by claiming that enemy fliers be handed over to them as prisoners of war and by protecting them; thus ostensibly siding with the enemy terror fliers.

We have considered Ritter's explanation that the letter from the OKW of 15 June should not have been channeled through him but should have been sent directly to the Foreign Office, and that he did not prepare the Foreign Office reply of 25 June which he transmitted to the chief of the OKW, and that his typewritten signature thereto was due to a mistake of his stenographer's which he corrected by striking a line through it and writing at the head of it the word, "draft." An examination of the document reveals that the typewritten signature is so erased and that the word "draft" is so inserted in longhand. The draft, however, discloses that it was prepared in his office, and bears one of his file numbers. The absence of any of the usual Foreign Office symbols indicating the section or Referat which prepared the draft is significant.

\* United States vs. Wilhelm von Leeb, et al., volumes X and XI, this series.

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Members of the armed forces of any nation who violate the rules of war are subject to trial and punishment by enemy military authorities either during or after hostilities. Here, however, both the procedures and methods proposed by the Wehrmacht and the Foreign Office were contrary to and in violation of the Hague Rules of Land Warfare. It was the duty of Germany to protect captured soldiers and airmen of the enemy against lynch law. Where a captured enemy is suspected or charged with violation of the rules of war, he has the right to be tried in accordance with those rules. The proposals of the Wehrmacht and of the Foreign Office violated these rights.

We do not regard Ritter as a mere messenger boy. He was selected to occupy a position of considerable delicacy, requiring knowledge and experience. While he did not originate this policy of murder, he implemented it, and although he played a comparatively minor part, it is one which involves criminal responsibility on his part.

We therefore find him guilty under count three with respect to this incident.

Having learned of the execution, near Egersund, Norway, of British fliers who had crash-landed in Norway, the British Government, through its Protecting Power, Switzerland, inquired as to whether or not the reports regarding the matter were true, and if so, whether such action on the part of the German armed forces was based on some order or instruction of the German High Command, calling attention to the fact that such an act would be in violation of the rights of prisoners of war under international law. Before the receipt of the Swiss inquiry, the Foreign Office learned that a protest was about to be made, having monitored a message from the British

Government to its Embassy in Switzerland. Ritter testifies that he was informed by von Ribbentrop that a representative of the OKW would visit him and give him written information with respect to the incident, discuss it with him, and that thereafter Ritter should report to von Ribbentrop.

Apparently, before Ritter discussed the matter with the OKW it had been submitted to Hitler. The memorandum of 10 May 1943 issued by the OKW Operations Staff, states (NG-2572, Pros. Ex. 1221):

*"In the event that a protest should be received by the German Government from the Protecting Power, the Fuehrer wishes the reply to be in the following sense."*

It was handed to Ritter personally on 11 May by Major Kipp, who had instructions to submit the document, together with certain

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secret orders of 18 and 19 October 1942 and a summary of the Egersund incident. This proposed reply was a clear evasion of the inquiry. It states: first, that enemy soldiers in uniform carrying out tasks of an obviously military nature would be treated in accordance with the Geneva Convention, and second, that enemy soldiers dropped behind German lines for "treacherous sabotage purposes" and who, judging from their appearance are not in regular uniform, or wear civilian clothing, or are equipped with treacherous weapons, will, as publicly announced, be slaughtered in combat without pardon.

Ritter made several suggested changes in the draft, the most important of which is as follows (NG-2572, Pros, Ex. 1221):

*"However, members of the enemy powers who infiltrate behind the fighting front in order to commit insidious sabotage acts and carry out such acts by using treacherously concealed weapons, or are in civilian clothes, or in any other unsoldierly manner, are not to be treated as soldiers, but slaughtered without pardon."*

Thus, the words "in combat" were deleted. He submitted this to the OKW on 17 May 1943, and General Warlimont suggested that the words "camouflage clothing" be used instead of "civilian clothing," and noted that the words "in combat" were missing. Ritter informed the OKW that in the event of its approval he intended to submit the draft to von Ribbentrop who was not yet informed of the reply planned by Ritter, and who would submit it to Hitler for his approval before dispatch. The OKW on 20 May informed Ritter that the omission of the words "in combat" might cause difficulties, and Ritter agreed to draw von Ribbentrop's special attention to this.

On 24 May Ritter informed the OKW that its request for amendment had been complied with, and furthermore that the words "in combat" had been added; that Hitler, after verbal report by von Ribbentrop, had approved the note as amended. On 25 May Ritter wrote the OKW enclosing a copy of the approved draft, and it was accordingly dispatched by the Foreign Office under teletype instructions given by Ritter in von Ribbentrop's name.

Ritter explains that when Major Kipp called on him with the Commando Order of 18 October 1942 he protested that it (the Commando Order) was a monstrosity and a violation of international law and of humanity; that Kipp agreed with him, stating that this was also the view of the OKW, but that nothing could be done because it was a Fuehrer order; that he, Ritter, deleted from

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the draft of the reply the words "in combat" because it was not the truth; that

inasmuch as in the Egersund case the British soldiers had surrendered, he assented to its reinsertion because the proposed reply did not answer the British inquiry as to whether the executions had taken place, but merely their second inquiry as to whether it had been an order or instruction of the German High Command. He further insists that when he reported to von Ribbentrop he urged him to endeavor to persuade Hitler to withdraw the Commando Order, and that von Ribbentrop agreed to talk to Hitler about it. He asserts that he did not know of the secret Commando Order itself until he received a copy of it from Major Kipp in May 1943, although he had probably heard the OKW radio announcement of 7 October 1942.

The prosecution does not contend that Ritter had any part in the issuance of the Commando Order or knew of its existence prior to May 1943. It clearly appears that the unfortunate British soldiers had been murdered in cold blood by the military command in Norway months before Ritter had any knowledge. It cannot be said that he had any connection with either the order or the incident. It is likewise clear that he endeavored to have the lying words "in combat" removed from the reply. The facts do not establish guilt, and he is acquitted with respect to this incident.

#### BERGER

The indictment charges that the defendant Berger received a copy of the Bormann circular of 30 May 1944 regarding Allied fliers heretofore mentioned. It is not alleged and there is no evidence that he took any action with respect to it. Knowledge that a crime is proposed is not sufficient. A defendant may only be convicted because of acts he has committed or his failure to act when it was his duty to have done so. The evidence does not disclose that Berger had any duty to perform with respect to such matters.

The defendant Berger is therefore acquitted as to the charge of being a participant in the murder of Allied fliers who had bailed out over Germany.

The indictment charges that between September 1944 and May 1945, hundreds of thousands of American and Allied prisoners of war were compelled to undertake forced marches in severe weather without adequate rest, shelter, food, clothing, and medical supplies; that such forced marches, conducted under the authority of the defendant Berger, chief of Prisoner-of-War Affairs, resulted in great privation and deaths to many thousands of prisoners.

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The preamble of the Geneva Prisoner-of-War Convention of 27 July 1929 recites:\*

*"\* \* \* recognizing that in extreme case of war it will be the duty of every power to diminish as far as possible the inevitable rigors thereof and to mitigate the state of prisoners of war \* \* \* have decided to conclude a Convention to that end \* \* \*." Article 2 of the Convention provides:*

*"They [prisoners of war] must at all times be humanely treated and protected, particularly against acts of violence, insults, and public curiosity. Measures of reprisal against them are prohibited." Article 7.*

*"Prisoners of war shall be evacuated within the shortest possible period after their capture, to depots located in a region far enough from the zone of combat for them to be out of danger. Only prisoners who, because of wounds or sickness, would run greater risks by being evacuated than by remaining where they are, may be temporarily kept in a dangerous zone.*

*\*\*\*\*\**

*"Evacuation of prisoners on foot may normally be effected only by stages of 20 kilometers daily unless the necessity of reaching water and food depots require longer stages."*

The right of a belligerent to evacuate prisoners to avoid their release by enemy troops is unquestioned; the duty to remove them from combat and dangerous zones is clear. The first involves the right of the capturing power, and the second its

obligation and responsibility toward the prisoners in order to mitigate their fate and to provide for their safety. However, the right to evacuate can only be exercised when it can be accomplished without subjecting evacuees to dangers and hardships substantially greater than would result if they were permitted to remain at the place of imprisonment, even if thus they might be rescued by the approaching enemy.

A belligerent may no more subject evacuees to mistreatment or hunger, or otherwise endanger their lives by means of forced marches, than he may rightfully do so under other circumstances. When such a situation is in prospect the right to evacuate ceases.

The duty to evacuate does not exist when the dangers from evacuation are greater than those to be apprehended if the evacuation does not take place. The Geneva Convention requires

\* Geneva (Prisoner of War) Convention of 27 July 1929; United States Army TM 27-261, Treaties Governing Land Warfare (United States Government Printing Office, Washington, D.C.), page 65.

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evacuation in order to insure the safety of the prisoners. Where this objective is not attainable the duty to evacuate ceases.

The only affidavit submitted with respect to the northern evacuations by any prisoner involved in the forced marches is an affidavit by Thurston Hunter, an English prisoner of war, who deposes that he, with 800 British prisoners of war, was marched from Stalag XX-A, evidently near Thorn [Torun], Poland, to Lehrte, near Hannover, in northwestern Germany. The privations suffered and the mistreatment inflicted, as described in this affidavit, were extreme. However, the affidavit was received on the condition that the affiant be produced for cross-examination. This was not done, and no reason or excuse has been offered for the prosecution's failure so to do. There is no corroboration of the affiant from any other source, and under these circumstances the Tribunal does not feel justified in finding guilt upon this unsupported affidavit.

The evidence with regard to the marches from Silesia through Bohemia and Moravia into Bavaria, involving some 100,000 men, rests upon the testimony of Meurer, von Steuben, and Detmering. From their testimony it appears these prisoners had been previously held in Silesia and were marched from the vicinity of Neisse and from the neighborhood of Ratibor. With minor exceptions the whole mass of men was marched across the mountains of the Protectorate in January and February, and thence into Bavaria, a distance of several hundred kilometers. The evacuations were occasioned by the rapid advance of the Russian armies. The original plan was to evacuate them in an orderly manner by rail toward the northwest. This became impractical inasmuch as one of the main rail lines was under enemy fire and the others were required for the passage of troops and supplies to the front. Protests against the march were made by General Detmering, prisoner-of-war commander for Military District VIII, because of the lack of means of transportation and accommodations, food, and the insufficiency of clothing in view of the below zero temperature.

Frank, the Governor of the Protectorate, together with the Plenipotentiary of the Wehrmacht in the Protectorate, and von Steuben, joined in this protest because of the fear of disturbances in the Czech population and the dangers of attempts to liberate the prisoners, and because there was not sufficient food supplies in the country through which they were to march. These protests were lodged with Colonel Meurer, Berger's chief of staff, and were communicated to the latter. Berger claims

that he protested to Hitler but that he was without power or authority to countermand or avoid the order, and had no facilities, even if

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he had the power, to attempt any negotiations with the commanders of the Russian Army. He also insists that the large proportion of the Russian prisoners did not desire to be turned back to the Russian armies because of fear that they would be punished as traitors. He cites two instances where it is claimed that injured and sick Russians left in a camp under charge of German medical orderlies were, with the medical orderlies, murdered by the advancing Russians, and that news of this increased the fears of the remainder of the prisoners.

We find it to be true that the prisoners on this march suffered severe privations, both from the cold and from the lack of food and other necessary accommodations. According to the testimony of the witness von Steuben, the death of 200 prisoners was reported at one time, and Meurer admits that he knew and reported to Berger that some of the Russian prisoners had died of exhaustion. There is, however, no satisfactory evidence as to the actual losses thus sustained. No prisoner who was compelled to make the march was called as a witness. The state of the record is, therefore, unsatisfactory. Substantial casualties on protracted marches are not unusual even among well fed troops, and would undoubtedly be larger where the march is undertaken by prisoners of war who have long been in confinement, even though properly cared for during that period.

Berger's actions are not to be judged by after-acquired knowledge, but by what he then knew or had reason to believe, and the conditions with which he was then faced. That a state of emergency existed is quite clear. German rail communications at that period of the war, and particularly in the East, were greatly disrupted. That the Russian advance was extraordinarily rapid, and that the German front in the East was rapidly dissolving is likewise well known. We find that he had a choice of two alternatives: either to leave the prisoners to the Russian Army, or to evacuate them by the march in question. If he left them, for a time at least, they were bound to be in a zone of active military operations and subjected to extreme danger.

We do not hold that they would have suffered if they fell in the hands of the Russian armed forces, although the prosecution has offered no evidence to the contrary. It is sufficient if Berger honestly believed, even though it may have been unfounded, that the prisoners were in as great, if not greater danger, if left in their camps as those to be encountered by marching. There is no evidence to contradict his testimony in this respect. The uncontradicted evidence is that, to the best of his ability, food, clothing, medical care were furnished the prisoners, inadequate though this was. We may have justified suspicion as to parts of his story,

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but suspicion does not take the place of evidence, and certainly does not constitute proof of guilt beyond reasonable doubt.

For the foregoing reasons we find that the charge against Berger in this respect is not proved, and he must, therefore be acquitted.

*The Mesny murder.*—On 19 January 1945 the French general, Mesny, in company with several other French general officers, was transferred from the prisoner-of-war

camp Koenigstein to another camp. While en route he was foully murdered, and information given to the French authorities that he had been killed while attempting to escape. The murder was according to a plan long discussed and matured. It was an act of revenge, practiced on a helpless prisoner of war for the alleged murder of a German general, Brodowski, by the French Maquis. It was not a true reprisal, inasmuch as every effort was made to prevent the world from knowing the facts of the case. It was a plain and outrageous violation of the laws of war, inasmuch as under the Geneva Convention prisoners of war may not be used as subjects of reprisal.

None of the defendants assert that it was either justifiable or excusable. Our sole task then is to ascertain what, if any, part they played in this disgraceful affair.

This murder originated in a Hitler order passed on by Keitel, who was himself enraged over the reported murder of General Brodowski by the French Maquis. According to Meurer, Berger's chief of staff, Keitel obtained a list of three French generals, from whom the victim was to be selected, either from or through the office of the Wehrmacht Inspector for Prisoner-of-War Affairs (General Westhoff's agency). General de Boisse, sometimes described in the testimony as General du Bois, was first selected.

Meurer testified that when Berger's office first learned of the preparatory measures which had taken place between Keitel and General Westhoff's office, and between the latter and the commandant of the Koenigstein camp, and that these had been discussed over the telephone, he called attention to the danger that the matter might leak out prematurely; that he called Berger's attention to this and the latter approved of Meurer's suggestion that Keitel be informed of the facts. This was done and the suggestion made to Keitel that someone else be named. Keitel agreed, and a new list was submitted from which General de Boisse's name was eliminated and that of General Mesny added.

Meurer asserts that he had informed Berger of this by mail and that his letter being returned without comment, he assumed that Berger had seen it. He discussed the matter with Berger on his return, and found that he had not received the communi-

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cation, but that he approved of Meurer's action, saying, "because after all, there are no possibilities left." He testifies, however, that Berger knew of the first phase of the matter and was horrified, saying that in no case would he agree to having this murder carried out; that the first orders were addressed to Himmler, as commander in chief of the replacement army, and to the RSHA, with copies to Berger's office and the Foreign Office for information.

The witness further testified that around 12 December 1944 Berger protested to Himmler and unsuccessfully tried to see Hitler, and informed Meurer that, "I hope Himmler will intervene and the whole thing will die"; that when Berger returned to his office early in January 1945, after his Christmas vacation, he felt very optimistic and thought that the whole matter would die out, but around 9 or 10 January, he called Meurer to him and in a highly excitable manner wanted to know whether the preparations originally proposed for the transfer of these prisoners to another camp had been made, from which Meurer knew that something new had come up.

Berger testified that he first heard of the Fuehrer or Keitel's order about 10 November, and this from Meurer, and told Meurer that "very well, if Marshal Keitel wants to shoot to death his imprisoned generals, let him do it alone without us" (*Tr. p.*

6334), that in the 2 weeks which followed he, Berger, was not in his office, having suffered a concussion after being buried in debris as a result of a bombing raid, and that he was ill at least up to 28 November, and that when he returned he discussed the matter with Meurer and said that he, Berger, would first talk to Kaltenbrunner, but that he was unsuccessful in this attempt; that he tried to see Himmler, but was likewise unsuccessful until 12 December when he met Himmler at Ulm; that Himmler reproached him about the matter, and read him a letter from Fegelein, Himmler's liaison officer between the Waffen SS and Hitler, in which Keitel was alleged to have said that he knew Berger would try to prevent the reprisal measure against Mesny, and that Himmler knew that Berger had sabotaged the matter.

Berger did not testify as to what he had done to sabotage it and the documents themselves clearly show that it had not been sabotaged, but that the matter was proceeding according to plan and was being delayed because of an inability to decide upon the manner in which the murder should be committed.

Berger further testified that Himmler left him abruptly, and that he hardly had an opportunity to mention the Mesny case, and that immediately thereafter he sent in his resignation; but on 18 December Himmler called him up and told him that he

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thought it over and perhaps Berger was right, and that he would talk to Hitler personally about it, and said that he was writing Berger a Christmas letter, and that he would hear the rest later and Berger would be very pleased; that the Christmas letter had reached Berger on 22 December and said that Himmler had talked to Kaltenbrunner and that the Mesny murder would be delayed and not carried out.

Berger further testified that on 2 January he returned from his Christmas leave, and between 7 and 9 January Fegelein called him on the telephone and said: "The Fuehrer is furious and deeply embittered because the reprisal had not been carried out in spite of his order;" that it had taken more than 3 months to get it carried out; that he had managed to cope with obstinate generals and that he could manage to cope with obstinate SS generals. He states that after this talk with Fegelein, he called up Meurer and told him that Keitel was making new efforts and would try to carry the matter to a finish, and that he, Berger, had to leave immediately to take over the German Volkssturm in Thuringia and attend to other matters, and told Meurer "to look very keenly and let me know"; that he first learned of Mesny's death on 25 or 26 January.

He further testified that while he did not select Mesny's name, nevertheless, when Meurer informed him about it, he was so sure that efforts to have the matter stopped would be unsuccessful that he said: "It does not matter at all whether it is one name or another."

The record does not bear out this claim of inactivity on the part of the defendant and, his agency as is shown in the official documents of the Foreign Office. Von Ribbentrop apparently learned of this plan and the part which the Foreign Office was to play in it about 11 November 1944. He, on that date, instructed the defendant Ritter to inform Wagner, chief of Department Inland II, to make sure that nothing happened in the Brodowski matter before Himmler and the SD had agreed with Wagner regarding the "modalities" and the possible later manner of reporting. These instructions Ritter passed on to Wagner on 12 November.

On 13 November Wagner instructed von Thadden to arrange a meeting between himself, Ritter, and Kaltenbrunner, which, however, did not take place. On 14

November Kaltenbrunner's adjutant informed von Thadden that the meeting was probably superfluous because Hitler's order had been annulled in the meantime. This von Thadden reported to Ritter, who stated that this could not be so because Marshal Jodl on the night of 13 November had informed him to the contrary. Von Thadden immediately in-

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formed Kaltenbrunner's adjutant that the information which his office had was erroneous, and that the adjutant stated that the Fuehrer order had not been submitted to Kaltenbrunner but to Berger. On the same day von Thadden called Berger's office, found that he was ill and that only Colonel Meurer knew of the matter. He left a message for Meurer to call him at once on the telephone, but as the latter did not do so, von Thadden himself called Meurer who said that strangely enough the orders had not been sent to Berger, but to Juettner, who had asked Berger to hold a French general, whose name was not known, in readiness for eventual measures of reprisal, but that on 13 November Juettner had informed Meurer that the Fuehrer order had been rescinded and that he considered the matter closed.

This information von Thadden immediately passed on to Ritter who asked to be connected with Kaltenbrunner's office. On 17 November Kaltenbrunner informed Wagner that he had just received the order and asked for a discussion as he had been instructed to contact the Foreign Office before taking action, but inasmuch as he was compelled to leave, he asked Wagner to take the matter up with SS Oberfuehrer Panzinger who had been assigned to the task.

On 18 November the proposed discussion took place in which it was agreed that Panzinger would submit the SD proposal to the Foreign Office for comment, as Himmler had ordered that no decision be made without approval of the Foreign Office; that the proposed execution would take place between 27 and 30 November ; the preliminary new proposal was to transfer five or six French generals from the Koenigstein camp to another camp, each to go in a separate automobile with an SS guard dressed in Wehrmacht uniform. General de Boisse's car would break down in order to separate it from the others, thus providing an opportunity of shooting the general in the back "while attempting to escape."

On 28 November Bobrick informed Wagner that Panzinger had stated various changes had been made in the program, but that he had spoken to Meurer again and would inform them immediately, and had promised the Foreign Office a plan for the elaboration of the project by the middle of that week.

On 6 December Bobrick wrote Wagner stating that Panzinger had reported in the presence of those concerned in the matter that he had had another detailed conference with Meurer, Berger's chief of staff, concerning requested modifications chiefly in connection with the car question, and that Panzinger would draft his final report before the end of the week and would so inform Himmler.

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On 13 December Wagner reported Panzinger's plan of action, viz: To have the senior ranking French general put in the last of the automobiles, as a mark of special attention due his rank; that the cars would bear Wehrmacht insignia but be driven by SS guards dressed in Wehrmacht uniform, and that in the course of the journey the murder would be effected in one of two ways— either during the drive the general's



car would be stopped at a suitable spot and he would be killed while "trying to escape" by well aimed shots from behind, or by using a special car which had already been constructed for the purpose, in which the General would sit alone in the back seat, the door would be locked to prevent his jumping out, the windows closed, and odorless monoxide gas introduced into the inner compartment, a few breaths of which would be sufficient to insure death; but that the cause of death would be recognizable because of the coloring of the skin resulting from the poison. Panzinger further said that his suggestions should be submitted to Himmler, and a copy of it sent to the Foreign Office.

On 16 December Bobrick reported to Brenner of von Ribbentrop's office, through Wagner, that the Fuehrer order explicitly permitted various methods of execution, and the only thing that had been fixed was the subsequent press announcement; that the report submitted to Himmler had been signed by the chief of the Prisoner-of-War Affairs (that is, the defendant Berger), and was before Kaltenbrunner for his cosignature, and then it would go to Himmler, and that Wagner's Inland II would receive a copy for von Ribbentrop's information.

On 30 December Kaltenbrunner reported to Himmler stating that the discussion with the chief of Prisoner-of-War Affairs and the Foreign Office had taken place as ordered, and led to the following proposals (giving those contained in Panzinger's report just mentioned): That provision had been made for subsequent proper attention to routine matters, such as reports, autopsy, death certificate, and burial, and the disguise of the SS men as soldiers of the Wehrmacht; that the press notice had been discussed with Wagner of von Ribbentrop's office; that von Ribbentrop desired to talk with Himmler about the matter and expressed the opinion that it must be coordinated in every respect; and finally, that it had been learned that the name of the man in question, the victim, had been mentioned in the course of various long-distance discussions between the Fuehrer headquarters and the chief of Prisoner-of-War Affairs, and the latter had proposed to use another man with the same qualifications, to which Kaltenbrunner had agreed, and intended to leave the choice of the name of the new victim with the chief of Prisoner-of-War Affairs.

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On 4 January 1945 Wagner reported to von Ribbentrop, transmitting a copy of Kaltenbrunner's report, stating that assurances had been given that von Ribbentrop would be informed of Himmler's reply prior to the execution of the plan.

On 6 January Schmidt, of the von Ribbentrop office, wrote Wagner that the Foreign Minister wanted to discuss the matter with Albrecht of the legal department, to ascertain what rights the Protecting Power would have in the matter, and to adjust the plan accordingly; and further that the minister thought that the announcement of the incident in the press should, as far as possible, be phrased in the same way as the notes of the occurrence which provoked the plan, so that responsible parties on the other side might clearly recognize the answer to their own move.

On 12 January Bobrick wrote Legation Councillor Krieger of the legal department, informing him of von Ribbentrop's request, and asked that after discussing the matter with Albrecht, the necessary information to the minister be drawn up; that allowance should be made, among other things, for the possible legal rights of General Bridoux's commission, or those of the International Red Cross and other authorities, relating, for example, to an exhumation, post mortem examination, notes to the army information office, report to Bridoux, filing of questionnaires for the International Red

Cross, forwarding of personal effects, etc.

On 18 January Krieger of the legal department sent a report to Bobrick on the questions involved. However, as Mesny was murdered on 19 January, it was entirely unlikely that it reached von Ribbentrop before the murder had occurred.

General Westhoff was called and testified that after 1 October 1944 Berger was the senior officer of the whole Prisoner-of-War Affairs, and Keitel and the OKW were negligible factors; that this was the purpose of handing the matter over to Berger; that the OKW for a long time had tried to prevent prisoner of war affairs from being handed over to Himmler; and that the only reason why Keitel insisted that discussions with the Protecting Power should be carried out with the Wehrmacht was because of his fear that those powers would not deal or negotiate with Himmler. The witness states that Berger had charge of all camps and asserts that the defendant had complete authority to issue orders and inflict punishments.

Berger stands in a very different position than the defendants Steengracht von Moyland and Ritter. He was chief of Prisoner-of-War Affairs. His jurisdiction over them was complete, and his responsibility toward them clear and unequivocal. He excuses himself by saying that the Koenigstein camp was not under his

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jurisdiction, but that of the Wehrmacht, and that therefore he is not responsible for what happened.

In view of the clear and unequivocal testimony of General Westhoff, who was in a position to know the facts, we do not accept Berger's story. But even if what he claims is true, his responsibility remains the same.

General Mesny was taken from that camp to be transported to another camp, and it is not claimed that from the time he left Koenigstein he was under any jurisdiction other than that of the chief of Prisoner-of-War Affairs. The transport column v/as in command of one of his own officers, and another of his officers was likewise present. His chief of staff was not only aware of what was planned, but he participated in it and the conferences regarding it. He consented to and approved of Meurer's furnishing Mesny's name to take the place of that of General de Boisse. He was informed by Meurer of the reason for the change. It clearly appears that, notwithstanding his alleged refusal to permit his department to have anything to do with the matter, that he did so, and he or his chief of staff attended the conferences between Kaltenbrunner's offices and the Foreign Office regarding same.

We do not credit his statement that he did not know of Kaltenbrunner's report or did not know what proposals were made, for on 16 December Kaltenbrunner reported to Wagner of Inland II that the report had already been signed by the chief of the Prisoner-of-War Affairs, and was then on Kaltenbrunner's desk awaiting his signature.

On 30 December Kaltenbrunner states (NG-037, Pros. Ex. 1249):

*"The discussions about the matter in question with the chief of the Prisoner-of-War Affairs and the Foreign Office have taken place as ordered, and have led to the following proposals \* \* \*", being those which we have heretofore discussed.*

*"In the meantime, it has been learned that the name of the man in question has been mentioned in the course of various long distance calls between the Fuehrer headquarters and the chief of Prisoner-of-War Affairs, and therefore the Chief of Prisoner-of-War Affairs now proposes the use of another man with the same qualifications. I agreed with this and proposed that the choice be left to the chief of Prisoner-of-War Affairs."*

There was no reason why Kaltenbrunner should make this up out of whole cloth. He did not thereby himself avoid any responsibility, inasmuch as he baldly describes the

plan, the alternative murder methods which could be adopted, the fact that men

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under his own command would commit the murder, that he agreed with Berger's suggestion that a substitute be made for the victim first proposed. No one suggests that Kaltenbrunner was thin-skinned or unduly sensitive about taking human life, and he could gain nothing by inserting a gratuitously false statement in his report.

But even if we were inclined to believe that Berger protested and attempted to obtain a rescission of the order, the fact is that his own testimony does not absolve him. When he learned early in January that the murder was to be carried out, his own instructions to Meurer were "to look very keenly and let me know." In order that no question of inaccuracy of translation can arise, we have had the sound track rerun and his exact language transcribed, and the translation thereof checked by two of the official interpreters. The transcript is accurate.

Conceding that Berger gave Meurer these instructions, and this, by the way, Meurer did not confirm, they are a far cry from refusing to carry out the measures proposed, or from ordering Meurer to refrain from carrying them out. Berger himself pictures Meurer as one by nature and training an automaton, and had Meurer received any orders from him, either not to permit or cooperate in this nefarious scheme, there can be no question that the latter would have unhesitatingly obeyed, particularly in view of the fact that his chief, Berger, was no underling, but a lieutenant general in the Waffen SS, whose authority over prisoners of war exceeded that of Keitel himself; that the actual carrying out of this callous murder was one in which Berger's agency took an active part is evidenced by the fact that it was his office which reported the matter to General Westhoff, saying that Mesny had been killed "while attempting to escape."

The fact that Mesny was not chosen until after 30 December 1944 and that this proposal came from the chief of Prisoner-of-War Affairs is shown from Kaltenbrunner's report, and disposes of the claim made by Berger and Meurer that it was not until some 10 days later that they learned that the project had been revived. If Berger had any qualms about this matter he stifled them, and not only permitted but actively engaged in the commission of this crime. We find him guilty.

#### RITTER

We think the official correspondence to a large measure substantiates Ritter's defense that his only function in this affair was to transmit von Ribbentrop's instructions to Wagner to see

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that nothing happened in the matter before Himmler and the SS and the SD had agreed with Wagner about the "modalities," and possible later manner of reporting the affairs, and that when Wagner tried to involve Ritter in it as being the responsible Foreign Office official conducting it, he refused to permit himself to be so involved. The fact remains that when he learned that Kaltenbrunner's office insisted that Hitler had withdrawn his order at a time when Jodl had just informed Ritter of the opposite, he insisted that Wagner not rely on Kaltenbrunner's assurances.

We think that Ritter so insisted because of the nature of von Ribbentrop's instructions which he had passed on to Wagner. Ritter insists that he protested to Steengracht

von Moyland against this matter as being in violation of international law, and finally received Steengracht von Moyland's assurances that *von Ribbentrop* had given his word of honor that this miserable murder would not take place. We believe that Ritter tells the truth.

Under the circumstances we do not see that there was anything more he could have done. He had no access to or influence over Hitler. He had the right to rely on what Steengracht von Moyland told him. He neither originated the plan nor implemented it.

#### STEENGRACHT VON MOYLAND

The defendant Steengracht von Moyland had and took no part in this matter, other than in a few and possibly one or two instances, being the channel through which some of the documents flowed. The very important Kaltenbrunner report to Himmler of 30 December did not pass through his hands.

He testified that when he learned of the plan to murder General Mesny he first talked to *von Ribbentrop* over the telephone, and later called upon him and protested violently against it, and finally convinced *von Ribbentrop* that it was not only unlawful but an act of folly, and obtained *von Ribbentrop*'s promise that he would take the matter up with Hitler and procure a rescission of the order. We believe him, and here again we cannot see that there was any further course of action which was open to him. In fact, a careful review of the documents and other evidence shows that the only persons in the Foreign Office, other than *von Ribbentrop* himself, who did other than attempt to delay the matter, were Wagner and perhaps von Thadden.

We find Steengracht von Moyland and Ritter not guilty in the matter of the Mesny murder.

*Sagan murders.*—The International Military Tribunal found: \*

\* Trial of the Major War Criminals, op. cit. supra, volume I, page 229.

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*"In March 1944 fifty officers of the British Royal Air Force who escaped from the camp at Sagan where they were confined as prisoners, were shot on recapture on direct orders of Hitler. Their bodies were immediately cremated, and the urns containing their ashes were returned to the camp. It is not contended by the defendants that this was other than plain murder, in complete violation of international law."*

Switzerland, the Protective Power, on 26 May 1944, made inquiry of the German Foreign Office in regard to the escape of these British officers from Stalag Luft III. On 6 June the defendant Steengracht von Moyland, for the Foreign Office, answered that a preliminary note was submitted to the Swiss Legation on 17 April concerning the escape which took place on 25 March, stating that according to the investigation nineteen of the eighty prisoners of war who had escaped were taken back to the camp; that the hunt still continued and investigations had not been concluded; that there were preliminary reports that thirty-seven British prisoners of war were shot down when they were brought to bay by the pursuing detachment and when they offered resistance or attempted escape anew after recapture; and thirteen other prisoners of war of non-British nationality were shot after having escaped from the same camp; "that the Foreign Office reserved the right to make a definite detailed statement after the conclusion of the investigation, and as soon as details were known, but that the following could be said: that mass escapes of prisoners of war occurred in March, amounting to several thousands; that they in part were systematically prepared by the general staffs in conjunction with agents abroad and pursued political and military aims; were an attack on the public security of Germany;

were intended to paralyze its administration, and in order to nip in the bud such ventures, especially severe orders were issued to the pursuit detachments not only for recapture but also for protection of the detachments themselves; and accordingly, pursuit detachments launched a relentless pursuit of escaped prisoners of war who disregarded a challenge while in flight or offered resistance, or attempted to re-escape after having been captured, and made use of their arms until the fugitives were deprived of the possibility of resistance or further flight; that arms had to be used against some prisoners of war, including the fifty prisoners of war from Stalag Luft III; that the ashes of twenty-nine British prisoners of war have been brought to the camp so far.

Apparently on 23 June the British Foreign Secretary made a declaration with respect to these murders. On 26 June the Swiss

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again made inquiry of the Foreign Office and received a reply dated 21 July that Germany emphatically rejected the British Foreign Secretary's declaration; that because of alleged bombings of civilian population and other alleged acts, Great Britain must be denied the moral right to take a stand in the matter of the escapees or to raise complaints against others, and the German Government declined to make further communications in the matter.

On 25 May Vogel on instructions from Ritter informed Legation Councillor Sethe that the Foreign Office had not yet received a copy of the communication of the OKW dated 29 April. On 4 June, Ritter informed the Foreign Office that the day before Keitel had agreed to the draft of the note to the Swiss Legation regarding British prisoners of war, and inquired why the Foreign Office wanted to inform the Protective Power of the funeral beforehand, as this information had not been requested. He also discussed the chaining of British officers who were being transported from one prison camp to another.

On 22 June von Thadden submitted a memorandum to the chief of Inland II that Anthony Eden had made a statement in the House of Commons that a decision would be made with respect to the shooting of British prisoners who escaped from prison camps, and that Albrecht, chief of the Foreign Office legal division, had advised him that the British had been informed via Switzerland that it had been found necessary to shoot several British and other officers in the course of such activities because of refusal to submit to orders when captured; that nineteen other officers who did not offer resistance were taken back to the camp, and that further details of the fifty cases of prisoners being shot would be submitted to the British.

On 17 July Brenner of the Foreign Office informed Ritter that Hitler agreed to the note to the Swiss delegation regarding the escapes from Stalag Luft III, and approved the drafting of a warning against attempts to escape and the publication of Germany's note to the Swiss Legation, and that this warning should be made public; that von Ribbentrop had ordered Ritter to transmit Germany's second reply to the Swiss envoy, and directed Ritter to cooperate with the OKW in composing the warning which was to be posted in the prisoner-of-war camps and to submit the same to von Ribbentrop for approval; that the warning could perhaps state that there were certain death zones where very special weapons were tested, and any person found in one of these zones would be shot on sight, and, as there are numerous such zones in Germany, escaping prisoners would expose themselves not only to the danger of being mistaken for spies, but of unwittingly entering one of the zones and being shot.

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Dr. Erich Albrecht, Ministerialdirigent in the Foreign Office, and head of its legal department, gave an affidavit relating to this matter, viz, deposing that around 25 May 1944 at von Ribbentrop's order he went to Salzburg and discussed the Sagan murders with von Ribbentrop and Ritter, at the conclusion of which he and Ritter were instructed to draft a reply note to the Swiss delegation on the basis of the material which had been made available by the RSHA; that later two officials of the criminal police appeared and submitted photostatic copies of teletype messages and reports from various police offices throughout Germany reporting that individuals or groups of prisoners of war from the Sagan camp had been shot while resisting recapture, or in renewed attempts to escape.

It was apparent to both Ritter and Albrecht that these teletype reports were fictitious—a fact which the police officials did not seriously dispute. Thereupon, according to Albrecht, after conference with Ritter he drafted a reply on the basis of this fictitious and false information, and Ritter submitted it to von Ribbentrop with the urgent advice, in which Albrecht concurred, that it be not sent.

Ritter confirmed this affidavit of Albrecht except to deny that he had anything to do with drafting or submitting the reply. However, Albrecht is Ritter's witness, for whom he vouches. Doubtless the affidavit was not prepared without thought or without conference with Ritter or his counsel before it was submitted to the Court, and the presence of this statement in the affidavit must represent Albrecht's recollection of the incident concerning the interview with the police officers and the conclusion that they had presented false reports, von Ribbentrop's instructions, and the action which Ritter took with respect thereto. The drafting of the reply and the conference with von Ribbentrop were important and dramatic incidents which would necessarily impress themselves upon one's memory, unless the Tribunal is to assume that the murder of prisoners of war was so commonplace an incident in the lives of both Albrecht and Ritter that no particular attention was paid to a single occurrence. This we do not believe to be the fact, and we accept and find the fact to be as the Albrecht affidavit deposes, viz, that after discussion with Ritter he composed the reply note, and they jointly submitted it to von Ribbentrop.

While it may be true that at an early stage Keitel had given orders not to inform the Foreign Office of the Sagan murders, and that the OKW's "provisional communication" of 29 April 1944 was not contemporaneously delivered to the Foreign Office, the fact remains that by 25 May 1944 Legation Councillor Sethe had

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examined and made a copy of it in the office of the High Command, so that when the note was drafted Ritter had full knowledge of the fact that escaped prisoners of war had been deliberately murdered by officers of the German Reich, in clear violation of international law and of the Geneva Convention.

Ritter joins in with Steengracht von Moyland in his statement that no answer was made to the Swiss Government. This is not the fact. It clearly appears that not one but two answers were made to the Swiss, and that the first (6 June 1944) at least was delivered to the Swiss Minister in Berlin by Steengracht von Moyland himself. It was this note which Albrecht drafted and Ritter presented to von Ribbentrop.

Ritter further claims that he had no recollection of taking part in drafting and never

saw the warning against the consequences of escape and the description of the so-called "death zone" where every unauthorized person would be shot on sight, which was to be posted in prisoner-of-war camps. This testimony of Ritter is obviously untrue.

Brenner's memorandum of 17 July relates to the second note and the warning, and states that Ritter had been directed by von Ribbentrop to cooperate with the OKW in composing the warning, and to submit it to the Foreign Minister for approval, and had made suggestions with respect to the wording of the "death zone" clause. It bears the notation, "Submitted, Ambassador Ritter."

On 5 August 1944 Ritter wrote to Albrecht that the "enclosed version of a warning has now been approved by the Reich Minister for Foreign Affairs and the OKW;" that the OKW was then engaged in translating it, and when completed it would be given to the prisoner-of-war sections of the OKW for distribution to the camps; that "the Foreign Office has not yet communicated the warning to the Swiss Government, which must coincide with the time of the posting of the warning in the camps; the draft of the note to the Swiss was to be submitted to Ribbentrop for approval in advance, so that it could be dispatched as soon as possible after the warning has been posted."

On 21 July 1944 the Foreign Office delivered to the Swiss Government a second note stating that the Foreign Office refused to further communicate about the matter on the pretense of Eden's speech of 23 June in the House of Commons. This was an infantile proceeding which, of course, deceived no one.

It does not appear, however, that the proposed note mentioned in Ritter's memo to Albrecht of 5 August was ever sent, and there is no evidence that the warnings were ever posted. It is a fair inference that the German Government concluded that its

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ostrich-like note of 21 July had enabled it to withdraw with what it hoped to be some shreds of dignity, from an unspeakable situation which it could not maintain, and which it could not afford to have bared to the civilized world; and therefore, the proposed note was not sent, the warnings remained unposted, and a veil was dropped over the whole matter.

While Steengracht von Moyland was not as close to the situation as Ritter, nevertheless it was he who, as the responsible leading official of the Foreign Office, second only to von Ribbentrop, delivered at least the first note to the Swiss delegation.

It is altogether likely that he delivered the second message, inasmuch as that was one of his admitted official functions. He testified he had had no "clear recollection" of the Foreign Office directors' meeting of 22 June 1944 at which was discussed both Eden's speech and Albrecht's statement that the British had been informed, through Switzerland, that several escaped British and ether fliers had been shot, and that further details respecting the fifty cases of shooting would be submitted to the British.

We note that the phrase "clear recollection" is used both in the question propounded by Steengracht von Moyland's counsel and in his answer. We believe that this indefinite phrase was used advisedly for the purpose of avoiding discussion of details, and that Steengracht von Moyland, while perhaps not having a mirror-like recollection, in fact remembered it in substantial detail.

In discussing Reinhardt's statement that "such occurrences as in camp Sagan in which fifty officers were shot after having made an attempt to escape are extremely

regrettable," Steengracht von Moyland said: "We all regretted this extremely, and it was a terrible crime."

In a matter as important as this, involving the inevitable repercussions in neutral as well as enemy nations, it is unbelievable that a state secretary would deliver a note so patently lame without making some inquiry about the matter, and it is extremely unlikely that Albrecht or Ritter would not have informed him not only that the justifications for the shooting were fictitious, but their misgivings about the terms of the note as well.

A man of ordinary intelligence would recognize that this was an attempt to cover up an incident which could not bear the light of day. We are convinced that Steengracht von Moyland delivered the note of 6 June 1944 to the Swiss Government, and that he was informed of the actual facts.

The murder of these unfortunate escapees was due to one of the savage outbursts of Hitler. That it was a crime of insensate horror and brutality, then not a novelty in the operations of the

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Nazi government, and that it violated every principle of the Geneva Convention, is unquestioned. No defendant does other than condemn it, and each disclaims any guilty connection with it.

Steengracht von Moyland had no part in either the issuance of the order or its execution. The murders were long-accomplished facts before he knew of them.

However, under the Geneva Convention and Hague Regulation (Art. 77, Geneva Convention [Prisoners of War], 1929, and Art. 14, Hague Regulation [Annex to Convention No. IV, Laws and Customs of War on Land], 1907), Germany was under the duty of truthfully reporting to the Protecting Power, the facts surrounding the treatment of prisoners of war, and of the circumstances relating to the deaths of such prisoners. To make a false report was a breach of its international agreement, and a breach of international law. The detaining powers' duty to report the facts was intended to prevent the very kind of savagery upon helpless prisoners which took place in the Sagan incident.

If a belligerent can starve, mistreat, or murder its prisoners of war in secret, or if it can, with impunity, give false information to the Protecting Power, the restraining influence which Protecting Powers can exercise in the interests of helpless unfortunates would be wholly eliminated. Thus, the duty to give honest and truthful reports in answer to inquiries such as were addressed by the Swiss Government is implicit.

The false reports which Ritter helped draft and which Steengracht von Moyland transmitted, stupid and inept as they were, were intended and calculated to deceive both the Protecting Power and Great Britain, and at least give a color of legality to what was beyond the pale of international law.

The inquiries from the Protecting Power regarding the treatment of and fate of prisoners of war, addressed to the German Government both by necessity and by diplomatic usage, were addressed to the Foreign Office. The reply of the German Government to the Protecting Power of necessity and by diplomatic usage came from the Foreign Office.

Steengracht von Moyland and Ritter must each be held guilty of the crime set forth in paragraph 28c of count three of the indictment.

*Allied commando murders.*—The record fails to disclose that Steengracht von



Moyland had either knowledge, part, or complicity in these murders other than possibly to receive and possibly to transmit to the Protecting Power of Switzerland the answering note already discussed with respect to the defendant Ritter. Steengracht von Moyland testified that he did not see the teletype in question or have anything to do with its transmission

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to the Swiss Legation. This was not an unimportant matter. It involved an official communication to a Protecting Power of at least a prospective clear violation of international law, and it would be strange if it had not been brought to the attention of the State Secretary.

But even if we felt impelled to reject his testimony, our conclusions with respect to his guilt would be the same. Steengracht von Moyland did not originate the Commando Order; he had nothing to do with the murders committed pursuant to it. There is no evidence indicating that he had earlier knowledge of their commission; he was not a party to nor did he have knowledge of either Ritter's or von Ribbentrop's activities concerning the formulation or drafting, or of the conference between Ritter and the Wehrmacht or von Ribbentrop and Hitler. He merely received his orders from von Ribbentrop through Ritter to transmit to the Swiss delegation a verbal note already prepared by others, stating the German Government's position and proposed action with respect to members of Allied commandos found within German lines under certain specified conditions. The note states no facts or does not refer to the Egersund incident.

Steengracht von Moyland should be and is acquitted of complicity in the crimes charged in paragraph 28b of count three.

#### LAMMERS

On 4 June 1944 the defendant Lammers, as Reich Minister and Chief of the Reich Chancellery, transmitted to the Minister of Justice, Thierack, a Bormann secret circular of 30 May, stating that no police measures or criminal proceedings were invoked against German civilians who participated in lynching of American and English aircraft crews who had bailed out.

Lammers informed Thierack that Himmler had given these instructions to his police leaders and asked Thierack to consider, "how far you want to instruct the courts and district attorneys with it." There is no substantial difference between [057-PS, Prosecution] Exhibit 1230 and [636-PS], Lammers Exhibit 55.

Lammers asserts that he thought that Bormann's circular dealt only with past events, and that he called the matter to the attention of the Minister of Justice in order to engage his interest and thus prevent further lynchings which might arise because of lack of prosecution, and left it to the discretion of the Minister as to what should be done.

While admitting that lynch law may not be tolerated by a civilized state, the defendant insists that in time of emergency, because of the indignation and consternation of the civilian population, official means failed and that the government had no reason

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and no right to sacrifice its own public executive officers in order to protect the lives of

murderers. He insists that he transmitted this circular to Thierack on Hitler's orders. We do not believe and do not accept either the explanation or the justification or excuse. If the defendant referred only to past events his letter would have no significance, because from Bormann's circular it is apparent that no proceedings had been taken, and therefore there was no reason to inform Thierack. That Thierack did not so regard Lammers' communication is apparent from his handwritten note thereon, that "such cases are to be submitted to me when they arise" for examination of the question of quashing.

We find that Lammers wrote Thierack in order to advise him of the policy which had been adopted, to assure him that it was officially authorized, and that he might accordingly conduct the policy of his department in the future.

Lammers was not a mere postman, but acted freely and without objection as a responsible Reich Minister carrying out the functions of his office. We find that Lammers knew of the policy, approved of it, and took an active, consenting, and implementing part in its execution. We find him guilty on count three in connection with this incident.

#### VON WEIZSAECKER AND WOERMANN

On 4 May 1940, von Weizsaecker received notice from Keitel informing him of the report from the commander of Norway that German forces had encountered many troop contingents consisting of Norwegians, Finns, Danes, and Swedes which had crossed the Swedish border on 1 May and were armed with heavy and light machine guns, and that by the Fuehrer's orders it was intended to treat non-Norwegians found in such units as guerrilla fighters and shoot them according to martial law; that the Swedish Government was to be informed of this intention, as manifestly this is a direct support of German enemies.

Keitel further mentioned certain Norwegians who had already been pushed back across the Swedish borders and later returned to Norway. Von Weizsaecker directed Woermann to wire instructions to Stockholm, Copenhagen, and Helsinki.

Von Weizsaecker attempts to defend these measures as justified by international law in that certain groups had abused the neutral borders of Sweden by crossing back and forth whenever they desired to indulge in hostilities.

In his brief he relies upon the provisions of Article 2 of the Hague Convention [No. V] of 1907 respecting the rights and duties of neutral powers and persons in case of war on land, which is to the effect that:

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*"Belligerents are forbidden to move troops or convoys of either munitions of war or supplies across the territory of a neutral power."*

This, however, constitutes no defense or justification for the murder of soldiers of a belligerent, whether they be of its own nationality or are volunteers from another country, or for depriving them of the status of prisoners of war and the protection afforded by the Geneva Convention.

It was the duty of Sweden to protect its neutrality, but it could not be compelled to perform that duty under German threat to murder prisoners of war who had crossed the Swedish borders into Norway.

Article 17 of the same Convention contains two pertinent provisions. First, that a neutral cannot avail himself of his neutrality if he commits hostile acts against a belligerent, particularly if he voluntarily enlists in the ranks of the armed forces of one of the parties; and second, that the neutral who thus loses that status in so doing

does not forfeit the right to be treated as a lawful belligerent. If captured, he is entitled to be treated as a prisoner of war.

The article continues:

*"In such a case the neutral shall not be more severely treated by the belligerent against whom he has abandoned his neutrality than a national of the other belligerent state could be for the same act."*

The assertion of the defense that Germany had the right to assume that the Norwegian Government, an occupied country, had not violated its obligations toward the friendly neutral Swedish Government, and therefore that these bands, regardless of whether or not they were composed of Norwegians or non-Norwegians, did not belong to the regular Norwegian Army is wholly gratuitous and without substance.

Neither Hitler, Keitel, nor apparently von Weizsaecker were at all concerned with this phase of the matter. The real purpose of the measures, as disclosed by the memoranda, was to "make the Swedes more compliant with regard to the question of transit of raw materials."

We do not hold that those engaging in guerrilla warfare are entitled to the protection of the Geneva Convention. It has been decided and we deem properly by Tribunal V in Case 7 (the Hostage case) \* that they are not. Nor do we suggest that Germany could not, with entire propriety, call attention to Sweden's

\*United States vs. Wilhelm List, et al., volume XI, this series.

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and Finland's alleged failure to protect their respective neutrality. However the German action here involved was not based on this principle of international law. Neither Hitler, the High Command, nor apparently the Foreign Office were interested in the question as to whether the men were actually guerrillas, but expressed the intention to arbitrarily class non-Norwegians as such without regard to the provisions of the Hague Convention of 1907, Articles 1 and 2. The only claim was that they had been found in armed units which had crossed the Swedish border into Norway.

There was and is no justification or excuse for the action in question, and the measure was clearly a violation of international law and of the Hague and Geneva Conventions.

As ordered by von Weizsaecker, the Foreign Office representatives in Finland and Sweden transmitted the message which von Weizsaecker had directed, and the replies of these governments are found in [Woermann 160], Woermann Exhibit 103, book 5-C.

The note of the Finnish Government merely dealt with the charge that it had failed to fulfill its duties as a neutral, and contains the somewhat sardonic statement that "to judge from the recent events in Norway, no one will have the desire any longer to expose himself [to] risk there."

The first reply note of the Swedish Government merely asserted its intention to investigate and to protect its neutrality. The second communication informed the Foreign Office that its investigation discloses that only ten persons had crossed the Swedish border on 1 March, and that further investigation and report would be made, and *urgently requested that the notified German measures be not carried out for the time being.*

These notes can hardly be said to be a recognition that the German action was in accordance with international law.

In the Woermann brief it is suggested that the non-Norwegians were irregular

volunteers, because the German Government had to assume that Sweden had fulfilled its duty as a neutral and had not permitted recruiting within the borders, and therefore, irrespective of whether these men carried weapons, openly wore insignia recognizable from a distance, or otherwise complied with the provisions of Article 1 of the Hague Rules of Land Warfare, they were guerrillas because they were not organized on the soil of Norway.

The Hague Convention imposes no such limitation, nor does it recognize any such exceptions. If a belligerent may grant or refuse prisoner-of-war status to members of enemy forces because in its judgment the prisoner had not been lawfully inducted into

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the enemy army, the very purpose of the provisions of the Hague Convention would be defeated.

It is to be remembered in this case that neither Woermann nor von Weizsaecker admits that the proposed action was unlawful, but each attempts to justify and excuse the same.

There is no proof, however, that these threats were actually carried out. Threats to commit unlawful acts do not, *per se*, constitute violations of international law.

Therefore, those actions of von Weizsaecker and Woermann cannot be the basis of a finding of guilt, but they may be considered in determining the weight to be given their protestations of lack of sympathy for and desire to sabotage other unlawful acts of the Nazi regime.

*Depriving French prisoners of war of a protecting power.*— On 1 November 1940, Ritter transmitted to the Foreign Office a memorandum stating that he had informed General Jodl of Hitler's determination to have the United States removed as the Protecting Power for French prisoners of war. This was initialed by von Weizsaecker. On 2 November, Albrecht, Chief of the Foreign Office Legal Department, wired the German embassy at Paris that the Fuehrer had issued instructions that in the future the French were themselves to act as the Protecting Power for French prisoners of war, and directed Abetz to take up discussions with Laval with the following objectives:

- (1) That the French take over protection of their own prisoners of war, and
- (2) That it explicitly state to the United States that its activities as a Protecting Power were finished, and finally,
- (3) That Laval be informed that Scapini would suit Germany as Plenipotentiary for prisoner-of-war matters, and that he be directed to visit Berlin for discussion of details.

This teletype was initialed by Ritter, von Weizsaecker, and Woermann.

On 3 November, Abetz wired the Foreign Office that Laval had been so informed and that the Vichy government was immediately informing the United States that it was no longer recognized as a Protecting Power for French prisoners of war, and further that Scapini had been requested to see Marshal Petain on Tuesday to be officially informed of his intended duties and to prepare for the journey to Berlin. This reply was received by von Weizsaecker.

Woermann asserts that "after direct relations have been taken up between Germany and France, a Protecting Power is no longer needed," and that these matters could be regulated between them

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and Scapini. He asserts that Scapini's appointment instead of leading to a deterioration of the conditions of the French prisoners of war, improved it. We greatly doubt that the French action was voluntary. Hitler had decided what they should do. The Foreign Office told Abetz to see that the French complied, and within 24 hours the matter was consummated.

Matters of such importance are not consummated with that degree of speed between foreign powers who are each free to act and consider. However, the prosecution has offered no evidence that by reason of the change the conditions and treatment of the French prisoners of war deteriorated, and in the absence of such proof, this incident cannot form the basis of a finding of guilt.

*Murder of captured British soldiers.*—On 14 February 1941 the United States as Protecting Power made inquiries as to the circumstances under which six British soldiers were captured and then shot in the forest of Dieppe.

A memo from the office of von Ribbentrop, initialed by von Weizsaecker, directs Legation Councillor Albrecht to ascertain the facts, stating that he was of the opinion that the note should be "rejected in the sharpest terms."

Albrecht made written inquiry of the Wehrmacht prisoner-of-war department. Here the record ends. Whether the Wehrmacht replied, and what response the Foreign Office made to the United States Government, whether the Foreign Office ever even acted on the facts, or rejected the note, are all wholly unknown.

Conviction cannot be based on such a record.

*Allied commando murders.*—Although the indictment charges von Weizsaecker and Woermann with informing the Protecting Power that members of the Allied commandos murdered after surrender had been killed "in combat," no evidence was offered in support of this specification. At the time each had assumed assignments as Ambassadors abroad.

These defendants should be and are acquitted of complicity in these crimes.

## **COUNT FIVE—WAR CRIMES AND CRIMES AGAINST HUMANITY; ATROCITIES AND OFFENSES COMMITTED AGAINST CIVILIAN POPULATIONS**

The indictment alleges that the defendants von Weizsaecker, Steengracht von Moyland, Keppler, Bohle, Woermann, Ritter, von Erdmannsdorff, Veesenmayer, Lammers, Stuckart, Darré, Meissner, Dietrich, Berger, Schellenberg, Schwerin von Krosigk, Rasche, Kehrl, and Puhl, from March 1938 to May 1945, committed war crimes and crimes against humanity in that they par-

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icipated in atrocities and offenses, including murder; extermination, enslavement, deportation, imprisonment, killing of hostages, torture, persecutions on political, racial, and religious grounds, and other inhumane and criminal acts against German nationals and members of the civilian populations of countries and territories under belligerent occupation of, or otherwise controlled by Germany, and in the plunder of public and private property, wanton destruction of cities, towns, and villages, and devastation not justified by military necessity.

It is alleged that the Third Reich embarked upon a systematic program of genocide

aimed at the destruction of nations and ethnic groups within the German sphere of influence in part by murderous extermination and in part by elimination and suppression of national characteristics with intent to strengthen the German nation and the so-called "Aryan" race at the expense of such other nations and groups by imposing Nazi and German characteristics upon individuals selected therefrom, and by the extermination of "undesirable racial elements"; that portions of the civilian populations of occupied countries, especially in Poland and the occupied eastern territories, were compelled by force to evacuate their homesteads which were sequestered and confiscated by the Reich and their properties, real and personal, were treated as revenue of the Reich, and the so-called "ethnic Germans" were resettled in such lands; that German racial registers were established and legislation enacted defining these classes of "ethnic Germans" and other nationals of occupied territories and the puppet and satellite governments eligible for Germanization; that subsequent acquisition, in some instances of German citizenship, was compelled, and individuals who were forced to accept such citizenship or upon whom such citizenship was conferred by decree became amenable to military conscription, service in the armed forces, and other obligations of citizenship; that failure to fulfill these obligations resulted in imprisonment or death, and the forced Germanization constituted the basis for such punishment; that those classes of persons deemed ineligible and those individuals who refused Germanization were deported to forced labor, confined in concentration camps, and in many instances liquidated; that in the occupied territories the use of judicial mechanisms was a powerful weapon for the suppression and extermination of all opponents of the Nazi occupation and for the persecution and extermination of "races"; special police tribunals and other summary courts were created in Germany and in the occupied territories, and subjected civilians of these occupied countries to criminal abuse, and denial of judicial and penal process; that special legislation was enacted providing summary

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trial by these special courts and invoking the death penalty or imprisonment in concentration camps for all members of the civilian population of the occupied territories suspected of opposing any of the policies of the German occupation authorities; that persons who committed offenses against the Reich or the German forces in the occupied territories were handed over to the police and taken secretly to Germany for trial and punishment, without notification to their relatives of the disposition of the case; that certain classes of civilians in the occupied territories deemed politically, racially, or religiously undesirable if suspected of having committed a crime were deprived of all legal remedy and turned over to the Gestapo for summary treatment, all for the purpose of creating a reign of judicial terror in the occupied countries in order to suppress all resistance and exterminate undesirable elements; that in the Reich program of "pacification" of the occupied territories through terrorism, the arrest, imprisonment, deportation, and murder of so-called hostages was effected, and Jews, alleged Communists, "asocials," and other innocent members of the civilian population not connected with any acts against the occupying power, were taken as hostages and, without the benefit of investigation or trial, were summarily deported, hanged, or shot; that they were executed or deported at arbitrarily established ratios for attacks by persons unknown on German installations and German personnel in the occupied territories; that through recruitment drives in the occupied territories and puppet and satellite governments,

SS units were organized and SS recruits obtained, often by compulsion from among prisoners of war and the nationals of those countries, and assigned to the Waffen SS military divisions, the administration of the SS concentration camp system, and specially constituted penal battalions; that these units engaged in the commission of atrocities and offenses against the civilian populations of occupied and satellite countries; that anti-Jewish activities with each aggression were extended to the incorporated, occupied, or otherwise controlled German-dominated countries; that Austrian, Czechoslovakian, Polish, and other nationals of Jewish extraction were deprived of their civil rights and their property confiscated, tens of thousands thrown into concentration camps and tortured, and many of them murdered; that these measures were followed by barbarous mass killings of people of Jewish extraction and other foreign nationals in the occupied territories in which hundreds of thousands of men, women, and children were exterminated ; that the early program for driving out the Jews as pauper *emigres* was supplanted in 1942 by a program for the evacuation of eleven million European Jews to camps in eastern Europe for

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ultimate extermination; that they were to be transported to these areas in huge labor gangs, and there the weak were to be killed immediately, and the able-bodied worked to death, and thus millions of people of Jewish extraction from Austria, Czechoslovakia, Poland, France, Belgium, the Netherlands, Denmark, Norway, Hungary, Bulgaria, Yugoslavia, Rumania, the Baltic states, the Soviet Union, Greece, Italy, and also from Germany were deported to the eastern extermination areas and murdered.

In addition to these general charges, the indictment alleges the commission of certain specific acts connected with the general program which, it is alleged, were committed by various of the defendants as principals, aiders, cooperators, or abettors. These we will deal with later.

*Persecution of the Jews.*—No chapters in the history of the world are more black and bloodstained than those which portray the fate of the Jews of Germany and of all Europe which came within the sphere of German domination. The story of all dictators is a selection of some nation, some class, some ideology upon whose shoulders all the woes, alleged and real, may be lodged. Invariably those selected are less able to combat the propaganda of hate. Promises of better conditions are never alone sufficient to arouse the masses to the necessary emotional pitch which will make them the willing subjects of the dictator's will. Not only must they become receptive to such ideas and themselves feel the flames of hate toward someone or some class, but the propaganda and incitement must ever blow the flames higher, whiter, and hotter.

It makes little difference whether the subject of mass hate be a political party, race, religion, class, or another nation. The technique is the same, the results are identical, and the hate thus engendered inevitably brings on resistance and in the end ruin upon those who start and participate in it.

Hitler made the Jewish persecution one of the primary subjects of his policy to gain and retain power. As the years went by the more intensely did he and his adherents throw fuel upon the fire. It was never permitted to die down. It infected the high and the low; it made itself felt in the minds and hearts of men who should and did know better. It would, of course, be a mistake to say that every German became a convert to this doctrine. The record is clear that many did not, but unfortunately they were

comparatively few and their voices were not heard or heeded. Some who knew better and who were not swept away by propaganda were alive to the possibilities of increasing their own fortunes and enhancing their position by taking advantage of this horrible persecution and calmly and callously gave lip

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service to these pogroms and sought to enrich themselves from the misfortunes of its victims.

The persecution of Jews went on steadily from step to step and finally to death in foul form. The Jews of Germany were first deprived of the rights of citizenship. They were then deprived of the right to teach, to practice professions, to obtain education, to engage in business enterprises; they were forbidden to marry except among themselves and those of their own religion; they were subject to arrest and confinement in concentration camps, to beatings, mutilation, and torture; their property was confiscated; they were herded into ghettos; they were forced to emigrate and to buy leave to do so; they were deported to the East, where they were worked to exhaustion and death; they became slave laborers; and finally over six million were murdered.

As country after country fell under German occupation or control, or was forced to do the will of the Third Reich, its Jewish citizens became subject to the same measures of horror. It is a record of shame and degradation to every German and to the German nation. These crimes were planned by Germans, ordered by Germans, committed by Germans under a government which the German people willingly chose and which, to a large degree, they enthusiastically supported—at least as long as it was crowned with success.

The property of which the Third Reich robbed the Jews was used, and was planned to be used, for the purpose of rearmament and aggression. When the rearmament program and the other financial measures had practically bankrupted the Third Reich, the start of a disastrous inflation was in sight, and Goering at a conference stated:

*"Physical tasks. The assignment is to raise the level of armament from a current index of 100 to one of 300.*

*"This goal is confronted by almost insuperable obstacles because already now there is a scarcity of labor, because factory capacity is fully utilized, because the tasks of last summer exhausted our reserves of foreign currency, and because the financial situation of the Reich is serious and even now shows a deficit. In spite of this, the problem must be solved.*

*"Finances. Very critical situation of the Reich Exchequer. Relief initially through the billion (milliarde) imposed on Jewry, and through profits accruing to the Reich in the Aryanization of Jewish enterprises."*

A mad race ensued in which people of every class of German society joined; farmers, bankers, big and little businessmen eagerly sought to pick up Jewish property at a fraction of its

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value. The German people looked on with general complacency upon all of these measures which finally ended in the deportation of the victims and their being herded into the camps of death. There is no excuse or justification for any man who took a conscious or consenting part in the measures which constituted these abominable and atrocious crimes, and it is immaterial whether they originated or executed them, or merely implemented them, justified them to the world, or gave aid and comfort to their perpetrators.



The very immensity of this mass murder staggers the imagination and tends to blunt a realization of its horror. But we can gain some idea of it from the fact that from the one camp of Auschwitz over 33 tons of gold from the teeth of the victims and rings from their fingers were sent to the Reich Bank.

*Foreign Office knowledge of the fate of the Jews in the East.*—With typical German thoroughness, not only was the campaign of murder and extermination of Jews in Poland and Russia carried on, but detailed reports were made of these horrible measures. The Foreign Office regularly received reports of the Einsatzgruppen operations in the occupied territories. Many of these were initialed by von Weizsaecker and Woermann. They revealed the clearing of entire areas of the Jewish population by mass murder, and the bloody butchery of the helpless and innocent; the shooting of hostages in numbers wholly disproportionate to the alleged offenses against German armed forces; the murder of captured Russian officials and a reign of terrorism carried on with calculated ferocity; all told in the crisp unimaginative language of military reports.

All this is described in detail in the judgment rendered in Case 9\*, and it is unnecessary to repeat it again. It suffices to say that many hundreds of thousands of innocent people were murdered without reason or excuse, without trial or opportunity to establish their innocence, and beyond question the Jewish population was the particular object of these murder campaigns.

The prosecution, however, does not contend that the defendants implemented or initiated the crimes committed by the Einsatzgruppen but that they had knowledge of them and they made no objections to their commission. Here the Foreign Office had no jurisdiction or power to intervene. They were in the most part carried on in an area which was still under the jurisdiction of the Wehrmacht. How a decent man could continue to hold office under a regime which carried out planned and wholesale barbarities of this kind is difficult to understand, but there is no evi-

\* United States vs. Otto Ohlendorf. et al., Einsatzgruppen case, volume IV, this series.

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dence of participation on the part of the defendants Woermann and von Weizsaecker.

What is of importance in this case, however, is that the facts disclosed by the records of these crimes disposes of the claim of ignorance of final solution and of the purpose of the deportation of the Jews to the East. Knowing as they did what happened to the Jews when they came under the control of the SS, Gestapo, and police, we find ourselves unable to believe that these defendants had any idea that these deportations ended in anything but the death of these deportees through exhaustion from overwork, starvation, or mistreatment, and by mass murder. The defendants are not men of only ordinary intelligence and understanding. They are educated and trained to official life and experienced in the evaluation of policy, and the motives and acts of parties, officialdom, and of nations, and wholly accustomed to read between the lines of restrained or apparently innocuous language, and from it extract the meaning lying behind the words.

The defendant von Weizsaecker's statement that he thought Auschwitz was merely a camp where laborers were interned, we believe, tells only part of what he knew and what he had good reason to believe. He had access to what was publicly broadcast by the outside world of what was going on there. He was kept informed by his contacts with the Wehrmacht, and the opposition, and with the office of Admiral

Canaris, and he knew what happened to the Jews of Poland, of the Baltic states, and of the occupied territories of Russia. Unless he thought that ravening wolves had overnight become meek lambs, he must have realized what the end would be.

It is possible, but we think unlikely, that he was not informed of the exquisite techniques of murder developed in this camp, but that he knew the deported were marked for slave labor and death we have no doubt. This is clearly indicated by the testimony of his own son, Karl von Weizsaecker, and by the testimony of a number of other of his own witnesses, and particularly among those of his Foreign Office associates who, with him, claim that they were members of the underground movement against the Hitler regime. We may mention von Schlabrendorff, Bruns, von Etzdorf, and von Bargaen.

Karl von Weizsaecker testified as follows (Tr. pp. 10028-10030):

*"Q. During the war did you also talk to your father about the deportation of Jews and other atrocities?"*

*"A. Yes, partly we talked about it generally and partly we discussed specific cases. "Q. Did you and your father know then that the Jews were being killed?"*

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*"A. Of course, one knew that. The big difficulty was that it was known that such things were happening but that one did not know where and how it happened.*

*\*\*\*\*\**

*"Q. Did your father never consider helping the Jews by open contradiction, that is, by protesting publicly against Hitler's anti-Semitic policy?"*

*"A. Well, we discussed that, too, and I can tell you exactly what my father's opinion was on that point. He said, 'If one did that, one would become a martyr, but one would certainly not help the Jews by doing it.' "*

An example of what happened to the Jews is graphically portrayed in the testimony of Jeanette Wolfe. Her husband was sent to Buchenwald, never again to be heard of. Of her children, the son was shot in the concentration camp Stutthof; her third daughter was sent to Ravensbrueck and vanished; her second daughter has survived, but with shattered health; her adopted daughter, a mere child, was one of a shipment of 2,000 children who in 1943 were loaded in open trucks in weather 40° below zero, never again to be heard of. In Auschwitz her brother, his wife, one daughter, two sons-in-law, and their three children, nine cousins, one uncle, and one aunt, were exterminated. Mrs. Wolfe's husband was first sent to a concentration camp after the Crystal Week pogrom in 1938, and she herself, with 1,350 other Jews from the Dortmund area, was deported to the East in the beginning of 1942, and with Jews from Latvia, Poland, Hungary, Czechoslovakia, and Byelo-Russia, was sent to a concentration camp at Riga. The food there was barely sufficient to maintain life, but not enough to enable the victims to work. If the sufferers became too weak for labor, they were sent away in "Ascension" squads, together with the old and the children. The men were worked to death in the stone quarries; the women were shorn of their hair, which was clipped from their heads and shipped away to be made, allegedly, into ropes.

The witness, Philipp Auerbach, a Jewish-German chemist, fled from Germany to Belgium in 1934, but when that country was overrun, fled to France. On its fall he was captured and sent by the Gestapo to Berlin, thence to various concentration camps, and finally in 1943 to Auschwitz. He testified that it was common knowledge that those who were transported there would be sent to the "ovens." This was known as early as 1941 in Berlin. He did not become a victim because of his chemical

knowledge, but was branded with the number 188869 and put to work in the camp combating vermin and delousing the buildings in the camp.

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This camp was used largely for foreign Jews, and the Hungarians commenced to arrive toward the end of 1943 and early 1944; of over 50,000 Jews deported from Greece, less than 100 survived; transports came from France, Belgium, Holland, and other countries wherever, to use his own language, the "German boot" was planted; on arrival the question was asked, "Which of you cannot work?"; those who said they could not were immediately thrown like cattle into trucks and hauled away to the gas chambers; that an SS Oberfuehrer took little children and dashed their brains out against the walls of the station. The victims' clothes were sent to the VoMi; the gold fillings in the teeth of the dead were extracted and sent to the Reich Bank; over 33 tons of gold teeth and rings in 4 years; those fit for work were employed as long as they lasted in the Buna works of the I. G. Farben and in the armament works. The workers left the camp at 5:00 in the morning and returned at 6:00 in the evening carrying their dead, who had died of exhaustion or been shot; once every 4 weeks there was a selection among the workers on a purely arbitrary basis and the selectees exterminated; that on arrival at the camp all Jews were compelled to disrobe and, as they passed the guards, were directed to go to the right or to the left; left meant to the ovens, and right meant to the slave-labor camps.

It is unnecessary to go further into detail. It suffices to say that nearly 6,000,000 European Jews were thus exterminated.

We have stated that the Foreign Office played an important part in these horrors. Through it the arrangements were made whereby the Vichy government of France and the governments of Hungary, Slovakia, Bulgaria, Rumania, and Croatia consented to the deportation of Jews in those territories. Consent was not necessary in occupied France, the Low Countries, Poland, the Baltic states, Denmark, and the occupied Russian territories. There the Jews were merely seized and sent to their deaths. But even here the Foreign Office played an essential part. Among its duties was to ignore, or attempt to quiet, or give evasive and often false answers to the protests or inquiries of other powers. All those who implemented, aided, assisted, or consciously participated in these things bear part of the responsibility for the criminal program.

#### VON WEIZSAECKER, WOERMANN, AND STEENGRACHT VON MOYLAND

The defendant Ernst von Weizsaecker, after service in the German Navy, entered the Foreign Office in 1920, and was thereafter transferred to the Consulate at Basel, Switzerland, and there-

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after to the German Legation at Copenhagen where he served until 1927 when he was transferred to Berlin as Senior Legation Councillor, and remained there until the summer of 1931. He was then appointed Minister to Norway and remained there until the summer of 1933 when he was appointed Minister to Switzerland, which post he held until the spring of 1937. From May 1937 until March 1938 he was director of the Political Division of the Foreign Office, and in April of that year was appointed State Secretary, which post he held until approximately 1 May 1943 when he was

appointed Ambassador to the Vatican, where he served until the collapse.

The defendant Ernst Woermann entered the Foreign Office in 1919, served as Secretary of Legation at the German Embassy in Paris from 1920 to 1923, was Councillor of Legation at Vienna from 1925 to 1929, was called back to the Foreign Office as Councillor of Legation First Class, and served as head of the International Law Division of the Legal Department until 1936 when he became head of the European section in the Political Department. He served there until he was appointed Councillor of Embassy—Minister First Class—in London where he served until 1938 when von Ribbentrop appointed him Ministerial Director with the title of Under Secretary of State and head of the Political Department. He served in that capacity until 1943 when he was named Ambassador in Nanking, China.

The defendant Gustav Adolf Steengracht von Moyland in 1936 was appointed Agricultural Attache with the German Embassy in London under von Ribbentrop who was then Ambassador. In September 1938 he was transferred to Berlin and appointed Legation Secretary and promoted to Legation Councillor in April 1939. In the middle of May 1940 von Ribbentrop entrusted him with the technical direction of his local headquarters, and he thus became a member of the Foreign Minister's personal staff. In 1941 he became von Ribbentrop's chief adjutant and served in that capacity until May 1943 when he was appointed State Secretary.

We now proceed to analyze the evidence in this case to determine what part, if any at all, the defendants von Weizsaecker, Woermann, and Steengracht von Moyland had in this program.

That the Foreign Office had an interest in this program of liquidating the Jews of Europe is conclusively shown by the documentary evidence. That von Ribbentrop, Luther (Under Secretary of State in charge of Department Deutschland), Abetz (German Ambassador to Paris), Rademacher (of Luther's department), and Wagner (of Inland II of the Foreign Office), as well as divers German diplomatic representatives, particularly in the

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satellite states, were deeply involved, is likewise clear. This is particularly true with respect to Luther and Rademacher.

It is insisted, on behalf of von Weizsaecker, that although Luther was normally subordinated to the State Secretary and in many activities should have been subordinated or at least have obtained the approval of the Under Secretary of State in charge of the Political Division, he was in fact a creature of von Ribbentrop's, and acted under his direct instructions, bypassing his nominal superiors in many important matters; and these defendants were, in many instances, kept in ignorance of the proposed action and either never learned of them or only after they had been completed. Von Ribbentrop and Luther are dead, and Rademacher was not called as a witness, either by the defense or the prosecution, which is quite understandable as his position was such that he could not testify without incriminating himself, and if called by the defense his natural tendency to avoid responsibility and cast it upon others—a tendency which the Tribunal has noted in many instances of this case—may well have impelled the defense to refrain from calling him.

The Tribunal is compelled, therefore, to unravel this tangled skein without the testimony of some of the principal actors. We are not unmindful of the temptation to a defendant to evade responsibility, place it on others, and deny his own knowledge and participation. There has been a notable reluctance to testify about, and a lack of

memory on the part of the defendants, with regard to matters which we find difficult to believe could have left no impression on their minds or memories, and an insistence that they could not testify unless the prosecution faced them with documents concerning the matter in question. Such a disposition deprives their testimony of much of its weight and we are therefore obliged to approach with caution denials of knowledge of matters which, in the ordinary course of business, should and would have come to their attention.

In October and November 1938 the British and American Ambassadors approached the defendants von Weizsaecker and Woermann, asking that Rublee, the American Chairman of the International Relief Committee, be permitted to travel to Berlin to confer on plans for the emigration of refugees from Germany. Von Weizsaecker was directed by von Ribbentrop on 21 October not to answer the British inquiries; but he had already informed the British Embassy on 18 October that in his opinion the plan was futile; that it was by no means clear which countries were prepared to accept the Jews and the committee's efforts had proved to be sterile, and his belief that it was its intention to prove its worth by entering into discussions with Germany which

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would result in the establishment of the fact that Germany, for obvious reasons, was unwilling to provide Jews with foreign currency, and thus the ultimate object would be reached, namely, to prove that it was again the German obstinacy which was responsible for the misery of the Jews; that merely for the act of making Germany the scapegoat he was unable to recommend Rublee's plan, but that he would pass the memorandum on to the competent office. In this memorandum he states that his answer to the American Ambassador was more placatory, but of the same tenor.

As stated, he was directed by von Ribbentrop to make no reply to the British memorandum. The British and Americans from time to time attempted to renew the matter, but von Weizsaecker and Woermann put them off with vague promises. The defendants claim that finally through their exclusive efforts, Rublee was permitted to visit Berlin and engaged in various conferences.

There can be no question whatsoever that here neither von Weizsaecker nor Woermann was in a position to control the matter. Their superior had given express orders as to the nature of the conversation they might conduct with the foreign representatives in question. They derived their powers only from and through him, and they merely repeated his decision. They did not execute or implement a policy of wrongdoing.

Wannsee conference and the part played by the Foreign Office.

The mass deportation of Jews to the East which resulted in the extermination of many millions of them found its expression in the celebrated Wannsee conference of 20 January 1942. The Foreign Office played an important part in these negotiations and in the actions thereafter taken to implement and assist the program. Von Weizsaecker or Woermann neither originated it, gave it enthusiastic support, nor in their hearts approved of it. The question is whether they knew of the program and whether in any substantial manner they aided, abetted, or implemented it. That both von Ribbentrop and Luther did, there can be no possible question.

On 8 December 1941 a memorandum was prepared by Luther's department "Deutschland" in preparation for a conference with Heydrich to set up the wishes and ideas of the Foreign Office concerning the "total solution" of the Jewish question in

Europe. The document does not show on its face that it was submitted to von Weizsaecker or Woermann, and ordinarily this would indicate that it was not. But on 4 December 1941 Luther prepared a memorandum which was submitted to von Weizsaecker and initialed by him regarding a proposal or suggestion made by Foreign Minister Popoff of

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Bulgaria, on or about 26 November of that year, regarding Bulgaria's attitude toward deportation of Bulgarian Jews, in which he suggested that the opportunity rendered by the war must be utilized to settle finally the Jewish question in Europe, and that the most practicable method would be that all European states introduce German legislation on Jews and agree that Jews, regardless of their nationality, should be subject to the measures taken by the country of residence, while their property would be at the "disposal" of the final solution; that a halfway consistent enactment of the German laws for Jews in European countries would break the back of all elements hostile to Germany, and particularly in Hungary; that whether the political situation, in view of the inner resistance of Hungary, Italy, and Spain, was already ripe for such a solution could not be judged from the viewpoint of Department Deutschland, and suggested that an agreement be reached between European powers allied by the Anti-Comintern Pact that Jews of the nationality of these countries are to fall under Jewish measures of the country of their residence, and that Jews of Norway, Luxembourg, Serbian, and Russian nationality, including those of the former Baltic states, would automatically fall under the settlement.

Von Weizsaecker considered the matter very urgent and according to his own testimony likewise submitted it to the legal division for opinion.

On 23 December 1941 Albrecht of the legal division (which was indubitably subordinate to von Weizsaecker) submitted a memorandum which bears the legend, "submitted to the State Secretary," and which refers to some of the issues raised by the Luther memorandum just mentioned. It is to be remembered that the Wannsee conference took place on 20 January 1942. The legal opinion expressed two possibilities—

That the states which pursued Jewish policies similar to those of Germany agree on new bilateral treaties not to use the rights ensuing from the existing trade and residence treaties for the benefit of their Jewish citizens.

That the states in question also arrange a collective treaty, providing that their Jewish citizens in the territory of the other parties should be subject to their legislation on Jews without regard to existing regulations and treaties, but concluded that the suggestion of Department Deutschland to propose a collective treaty between the signatories of the Anti-Comintern Pact might meet with the obstacle that Italy, Spain, and Hungary would not agree at that time to be tied down by such an approach to the Jewish question, and therefore that the collective treaty must, for the time being, be confined to the smaller circle of such states as Slovakia, Rumania, Bulgaria, and possibly Croatia.

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The opinion emphasizes the fact that a collective treaty confining these states would not be an easy matter to accomplish, largely because of difficulties which had arisen primarily from economic conditions, and because the extent of the assets of Jewish

citizens of the individual potential parties to the collective treaty existing in the territories of other treaty partners was bound to be quite different, and the potential partners would fear to suffer loss by denouncing protection of the assets of their Jewish citizens because it might not be balanced by the assets of Jewish citizens residing in their own territories. Because of these difficulties the legal department thought that the question could be better solved by bilateral treaties. It is to be observed that this solution of bilateral treaties of agreement was the one which was actually employed.

The defendant von Weizsaecker suggests that the legal department, presumably at his insistence, sought to delay these deportations. If so, it was not only inept but its opinion is couched in language which is hardly reconcilable to the objectives sought. When one who seeks to kill a project gives one solution which it states is presently impractical, and recommends another solution having the same end and that solution is the one accepted, it is difficult to see how such a technique is one of sabotage or delay. It is true that the opinion warns against German action or that of satellite countries against Jews who are citizens of countries not parties to the agreement; nevertheless the only effect of this warning was to avoid foreign political difficulties which were patently inherent.

It is not without interest to note Luther's draft of the ideas and wishes of the Foreign Office, dated 8 December 1941, They are—

- (1) Deportation to the East of all Jews residing in the Reich, including those living in Croatia, Slovakia, and Rumania.
- (2) Deportation of all German Jews living in occupied territories who had lost their citizenship and were then stateless in accordance with the Reich Citizenship Law.
- (3) Deportation of all Serbian Jews.
- (4) Deportation of the Jews handed over to Germany by the Hungarian Government.
- (5) A declaration to the Rumanian, Slovakian, Croatian, Bulgarian, and Hungarian Governments of German readiness to deport to the East Jews living in those countries.
- (6) Influencing the Bulgarian and Hungarian Governments to issue laws similar to the Nuernberg Laws.
- (7) To exert influence on the remaining European governments to issue laws concerning Jews, and,

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- (8) The execution of these measures as hitherto in "voluntary cooperation" with the Gestapo.

This program was adopted and the puppet and satellite states, in some instances reluctantly, entered into bilateral agreements permitting Germany to deport their Jewish citizens to the East. The Foreign Office exerted its influence and pressure to achieve these agreements.

On 20 January 1942 the Wannsee Conference on the final solution of the Jewish problem was held and, in addition to Heydrich, the defendant Stuckart, representing the Ministry of Interior, Luther, representing the Foreign Office, and Kritzinger, representing the Reich Chancellery, were present. There also were representatives of the Government General, the Reich Ministry of Justice, Commissioner of the Four Year Plan, and the Ministry for the Occupied Eastern Territories. Heydrich addressed the meeting, reported his appointment by Goering to serve as "Commissioner for the

Preparation of the Final Solution of the European Jewish Problem," and stated that the problem of the conference was to clear up the fundamental problems; that the primary responsibility for the administrative handling of the final solution rested in Himmler, the Security Police and the SD, regardless of geographic boundaries. He reviewed the previous steps taken against the Jews and said that the early program had emigration for its object, notwithstanding certain inherent disadvantages such as financial difficulties, lack of shipping space, emigration taxes, limitations of emigration, and the like; that, nevertheless, over 360,000 Jews had thus been eliminated from Germany, and 147,000 from Austria, and 30,000 from the Protectorate of Bohemia and Moravia; that the financing of this emigration was accomplished by requiring Jews or Jewish political organizations to meet the bill and to provide, from abroad, the necessary foreign exchange, and that the "gifts" from foreign Jews up to 30 October 1941 amounted to approximately \$9,500,000, but the war had put a stop to this and that the emigration program was to be replaced by the evacuation of the Jews to the East in accordance with Hitler's authorization; that these actions were to be regarded only as a temporary substitute; that in the final solution of the European Jewish problem, approximately 11,000,000 Jews were involved, of whom only 131,800 were in original Reich territory, 43,700 in Austria, and 74,200 in the Protectorate of Bohemia and Moravia; that under the proper direction the Jews should now be brought to the East in the course of the final solution to be used as labor, and that in utilizing them in big gangs and with separation of the sexes; that a great part would fall out through natural diminution and the

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remainder finally able to survive *must be given treatment accordingly because if permitted to go free they would be a germ cell of new Jewish development*; that it was proposed that the Foreign Office should confer with competent specialists of the Security Police and SD in handling the final solution in the European areas occupied and influenced by Germany; that in Slovakia and Croatia the problem was no longer difficult, and Rumania had likewise appointed a commissioner for Jewish affairs, but, in Hungary it would be necessary, in the near future, to *force* upon that government acceptance of an adviser on Jewish problems. He discussed the question with regard to Italy and France.

Luther said there would be some difficulties in the northern countries and suggested that the evacuation there be postponed for the time being, but that the Foreign Office saw no difficulties for the southeast and west of Europe.

The conference then proceeded to discuss the treatment of Mischlings, that is, persons who were of mixed blood. A first degree Mischling was one who had two Jewish grandparents. A second degree Mischling was one having only one Jewish grandparent. A first degree Mischling was considered a Jew subject to all of the measures enacted by the Third Reich if he belonged to a Jewish religious community then or after the enactment of the Nuernberg Laws, or if he was married to a Jewish person at the time or after the enactment of the laws, or if he was the offspring of a marriage of a Jew after the enactment of those laws, or if he was an offspring of a Jew and born out of wedlock after 31 July 1936. Heydrich stated that a first degree Mischling was to be treated as a Jew, so far as the final solution was concerned, unless he was married to a person of German blood and had issue, or had been excepted, or was accepted by the highest authorities of Party and State. Nevertheless, these first degree Mischlings were to be sterilized (which sterilizations



would take place on a voluntary basis) in order to prevent offspring.

A second degree Mischling was to be treated as a person of German blood unless he was a bastard of parents both Mischlings, or if his appearance was unfavorable, that is, looked like a Jew, or if he had a bad police and political record showing that he felt and conducted himself like a Jew.

Hoffmann of the SS expressed the opinion that extensive use must be made of sterilization, since the Mischling, when confronted with the choice of evacuation or sterilization, would prefer the latter.

The defendant Stuckart stated that the practical execution discussed for settling mixed marriages and the Mischling prob-

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lem would entail an endless administrative task and recommended that compulsory sterilization be undertaken.

Buehler of the Government General welcomed the initiation of the final solution for his district because the transport problem played no important part and the Jews had to be removed, and of approximately two and one-half million Jews there *the majority were unfit for work*.

A second conference on the final solution was held on 6 March 1942. This was attended by Rademacher of Department Deutschland of the Foreign Office, and Feldscher of the Ministry of the Interior, and Boley of the Reich Chancellery. Also present were representatives of the Goebbels' Ministry, the Ministry of Justice, Ministry for the Eastern Territories, the Party Chancellery, the Government General, Commissioner for the Four Year Plan, and the Race and Settlement Main Office (RuSHA).

Much of the meeting was taken up with the question of sterilization and the dissolution of mixed marriages. Stuckart's representative, Feldscher, stated that Stuckart's recommendation for sterilization was intended only for first degree Mischlings. It was agreed that sterilization by law expressly or explicitly was untenable, and it was proposed to make legal provisions "to regulate the living conditions of Mischlings, but doubt was expressed as to whether this would suffice as a legal basis.

It was further agreed that even if sterilizations were practicable—which, by reason of the expense, the shortage of doctors and hospital beds seemed impossible—to permit these sterilized Mischlings to remain in the Reich was to raise constant administrative problems and that compulsory sterilizations would not solve the Mischling problem nor bring about administrative relief but rather increase the difficulties, and that should Hitler, nevertheless, for political reasons, consider general compulsory sterilization suitable, first degree Mischlings, even after sterilizations, must be brought in one place in a special city similar to the present treatment of the old Jews today (Theresienstadt).

Following this conference, Rademacher, on 11 June 1942, submitted a resume of the results of the conference of 20 January 1942 and that of 6 March to the defendant von Weizsaecker via Luther, Gaus, and Woermann, evidently transmitting also the letter of Schlegelberger, acting Minister of Justice, who concurred in Stuckart's idea with regard to sterilizations and was against the deportation of half-Jews, and a copy of Stuckart's letter of 16 March 1942 in which he pointed out both political and social objections to deporting half-Jews and again referred to the suggestion he made that Mischlings of the first degree not already sterile be sterilized.

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On 21 August 1942 Luther reported to von Ribbentrop giving a review of the anti-Jewish measures and the proposals for final solution. It stated that Hitler intended to evacuate all Jews from Europe and that this intention was known to him as early as August 1940. It continued with the detailed statement of the steps which had been taken in other countries, such as France, Netherlands, and Belgium, the protests made by foreign powers, including the United States, with regard to the measures in France; it mentioned the Wannsee Conference of 20 January 1942 and stated "State Secretary von Weizsaecker had been informed on the conference," but that von Ribbentrop had not because Heydrich had intended to call a later conference which was never held because of his appointment as Reich Protector of Bohemia and Moravia and his later death; that Heydrich had agreed that in all questions concerning questions outside Germany the Foreign Office must be first consulted. It recited the inquiries made of Slovakia, Croatia, and Rumania with regard to their Jewish nationals living in Germany, and that this was done upon agreement with von Weizsaecker, the State Secretary, and Woermann, the Under Secretary of State, before the instructions were dispatched to the German Embassies in those countries. It related the consent given by Rumania, Croatia, and Slovakia, and that the RSHA had been informed that Jewish nationals of those countries could be deported, and that the director of the political division and other divisions in the Foreign Office had cosigned the dispatches; that the Legation at Pressburg had been instructed by the State Secretary von Weizsaecker and Woermann, the Under Secretary of State, to ask the Slovak Government to make 20,000 young, strong, Slovak Jews from Slovakia available for deportation to the East and the favorable results from this request which followed; that thereafter Himmler proposed that the rest of the Slovakian Jews be deported to the East and Slovakia freed of them, and the German Legation was provided with proper instructions, the draft of which was signed by von Weizsaecker and after dispatch was submitted to the von Ribbentrop bureau and to Woermann; that difficulties had arisen because the Slovakian Episcopacy had raised objections, but that Minister President Tuka desired the removals continued and asked for support through diplomatic pressure from the Reich; and the Ambassador had been instructed to state to President Tiso that the exclusion of the 35,000 Jews was a surprise to Germany, and more so since the cooperation of Slovakia up to that time in the Jewish problem had been highly appreciated by Germany; that this instruction had been cosigned by Woermann and von Weizsaecker.

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Luther reviews the situation in Croatia and the difficulties had with the Italians over the removal of Croatian Jews in their military area and that von Weizsaecker had ordered the matter held up until inquiry could be made of the Embassy in Rome. He discusses the suggestion made by Popoff of Bulgaria to von Ribbentrop for the evacuation of Bulgarian Jews and other Jews in Bulgaria, and the fact that von Weizsaecker had asked for the opinion of the legal division with respect to this matter; that the German Legation in Sofia had been instructed that if the question of deportation came from the Bulgarian side as to whether Germany was ready to deport Bulgarian Jews to the East, that it should be answered in the affirmative but as to the time it should be answered evasively; that this was cosigned by von

Weizsaecker and Woermann; that the Legation had exchanged notes with the Bulgarian Government and ordered it to be prepared to sign an agreement as to the evacuation. He reviewed the situation in Hungary and stated that the status of Hungarian legislation at that time did not promise a sufficient success. He related the steps which had been taken in Rumania and the difficulties which had arisen there.

Throughout this document he refers to telegrams and communications originating in his department, and we have carefully checked these references to ascertain as far as possible their accuracy. Both Woermann and von Weizsaecker strenuously assert that they never saw this report and that the statements therein contained regarding their cooperation therewith are not true.

In rebuttal the prosecution offered [NG-2586, Prosecution] Exhibit 3601, which is a copy of the report, and has various markings in brown pencil which, according to previous evidence, was the color prescribed by von Ribbentrop to be used by von Weizsaecker. When faced with this the defendant filed a surrebuttal affidavit that this rule did not prevent these various colors being used for other purposes by other people, and he had come across many documents underlined or marked in colors including brown which did not originate with the official to whom the color had been assigned, and states that to the best of his recollection Luther did not bring this exhibit to his attention. His statement regarding the brown pencil is contradicted by the affidavit of Hans Schroeder.

We believe that the defendant is in error in his statement that he never saw this document, and we have been able to trace out many of the documents to which he refers in this exhibit. It is admitted that it was prepared by Luther for the purpose of justifying his activities to von Ribbentrop, and it is unlikely that a

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document prepared with such evident care would be submitted, and that references would be made to conferences and agreements with specified persons unless it was substantially accurate. The hazards of making such statements if not true would be such as to make even as reckless a person as Luther hesitate.

Woermann insists that Document 169 [Woermann Exhibit 113], demonstrates that he had no knowledge of the Wannsee Conference. It discloses that on 10 February 1942 Raderaacher informed Biefeld of the Political Division that the Madagascar Plan had been abandoned, and that Hitler planned to deport the Jews to the East, whereupon Woermann inquired into the source from which the statement was derived.

On 24 February Rademacher wrote Luther, his chief, requesting him to inform Woermann of the conference had with Heydrich. These documents establish that up to 24 February Woermann had not known, or at least seen, the minutes of the Wannsee Conference, and it is also clear that he was to be informed of it by Luther, and in view of what he himself terms the "importance of the decision," it is highly unlikely that if Luther did not voluntarily give full details he would have taken the necessary steps to ascertain precisely what had taken place. The question involved an entire change of policy and involved foreign political problems of first importance. Woermann had the right to know precisely what was involved and to examine the minutes, and there can be no doubt that von Weizsaecker would have given the necessary order that they be produced had Luther refused to do so. Unless we are to believe that an Under Secretary of State was unable to fulfill intelligently the functions of his office, we must assume that his request for information was complied with and

that he actually obtained it. Both von Weizsaecker and Woermann were advised and knew of the slaughter of the Jews by the Einsatzgruppen in Poland, the Baltic states, and in the East, and we do not believe that they thought these Jews had been killed in action in connection with the fighting there, or that several hundred thousand Jews thus murdered were killed by reason of either military operation or because of participation in partisan fighting. No man of even ordinary intelligence could have thought so.

On 7 March 1942 Rademacher wrote a memorandum on the conference of 6 March which, as he states, was to clarify the general directives of the Wannsee Conference of 20 January in which he describes that the proposal to sterilize the 70,000 first degree Mischlings had been found impracticable because of war conditions, and therefore, it had been suggested to postpone this action until after the war, and in the meantime to assemble these

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unfortunate people in a single city either in Germany or the Government General, and also that a simplified procedure for the deportation of German Mischlings had been agreed upon. This was submitted to Woermann.

Klingenfuss of the Foreign Office submitted a memorandum of the conference of 27 October 1942 which he had attended, wherein it is said that in view of the experience and knowledge gained in the field of sterilizations and the development of a simpler form and shorter procedure, it is agreed upon that first degree Mischlings should be sterilized on a "voluntary basis" as a prerequisite to their remaining in the Reich: *that they would have the choice of deportation, a severe measure in comparison with sterilization, and for this reason sterilization was to be considered a gracious favor.*

On 31 May 1938 von Weizsaecker wrote the Ministry of Economics. The prosecution insists that von Weizsaecker took part in an attempt to subject Jews of foreign nationality to the effects of the Registration and Utilization Decree of 26 April 1938 and those supplementary thereto. We think the contrary is true. He wrote the Ministry of Economics regarding protests made and to be apprehended from a number of foreign nations, saying

(NG-3802, Pros. Ex. 1757):

*"In the meantime further inquiries here of foreign representatives have confirmed us in the opinion that indiscriminatory implementation of the decree and its provisions in the case of foreign nationals would have serious political consequences disproportionate to any advantages gained, especially if Jewish property subject to compulsory registration should be used for the German economy in accordance with article 7 of the decree in question. The anti-German propaganda campaign abroad which has been caused by the decree would increase in vehemence and any sequestration of property belonging to Jews living abroad would bring grist to the mill of those responsible for the campaign.*

*"Diplomatic relations might become strained, export might suffer even more, countermeasures against German property abroad might perhaps be taken in consequence. Above all, the possibility would have to be reckoned with that Britain, America, and France particularly, in view of the trade and settlement agreements concluded with those countries, will not submit without voicing their objections to the treatment of their nationals of Jewish race in accordance with German laws contrary to those agreements.*

*"I can see no reason why foreign Jews should be exempted*

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*completely from the provisions of the decree dated 26 April 1938, especially since the decree stipulates in principle that foreign Jews, too, should be subject to registration. I should, however,*

*like to make the following suggestions designed to mitigate the effect of the probable repercussions abroad: \**

*"With regard to the use to be made later of property liable to registration belonging to foreign nationals, I suggest that no use be made in principle of property belonging to foreigners living abroad or in Germany."*

This is not the language of a man who supported or implemented a measure with which, by the way, he had no part in drafting or enacting. It clearly evidences not only disapproval but is a carefully worded attack designed to point out the dangers in it and his suggestion, or even an insistence, that in the field for which the Foreign Office was competent it should not be applied.

It is to be noted, however, that its recommendations are really limited to those foreign Jewish nationals of countries which were likely to object, which we will discuss later.

On 12 November 1938 Goering called a conference to which von Weizsaecker was invited, but which Woermann attended in his place. Exhibit 1441 [Document 1816-PS, prosecution exhibit] constitutes the minutes of this conference. It arises out of the Crystal Week riots in which Jewish stores were smashed and looted, synagogues burned, and Jews beaten, murdered, or thrown into concentration camps. These riots were organized by the Party. The conference disclosed that there was an intention to rob the Jews of their property rights and there is even mention here of the "final solution" in the event of war with foreign powers.

There can be no question that Woermann fully understood what had been done and what was proposed and that he informed von Weizsaecker about it. Nevertheless, so far as his part in the conference is concerned, it is likewise clear that he insisted that any action against Jews of foreign nations was a matter about which the Foreign Office must be consulted, and this, notwithstanding Goering's reluctance. Neither his position nor that of von Weizsaecker was of such a character that it could influence or control Goering or the other cabinet officials who were present. It is true that he reported to von Ribbentrop by telephone the results of the meeting and that he had thus announced the position of the Foreign Office, and also that "our starting point is that

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foreign nations are only to be taken into consideration if the prevailing interests of the Reich compel us to do so."

Assuredly, this is not a stand which discloses any decent moral concepts or any sympathy for the persecuted, but so far as his acts or advice are concerned, he spoke in behalf of those Jews over which his ministry had jurisdiction.

On 25 January 1939 Wiehl of the Foreign Office prepared a memorandum which was sent to all foreign missions and consulates. It states that the purpose of the 1938 legislation was to ascertain the influence of Jewry through an accurate survey of the number of Jewish enterprises, the amount of Jewish property, and to prevent Jews from increasing their property within the German economy, and to confiscate property in Jewish hands; that the setting up of registers and the threat of public characterization of them as Jews had as an aim to cause the Jews to dispose of their enterprises in a speedy way; that by April 1938 the registrations showed that 135,750 Jews of German nationality owned property valued at 7,000,000,000 RM; 9,567 foreign Jews owned property valued at 415,000,000 RM; and 2,269 stateless Jews owned property valued at 73,500,000 RM, and by these measures the expansion of the economic life of the Jews was prevented and their elimination from economic life initiated.

He then described the second group of measures instigated by the decree of 12 November 1938 which increased the number of activities forbidden to Jews. As to foreign Jews, his report recited that the Ministry of Economics on 30 December 1938 had directed Reich agencies to refrain provisionally from foreclosures of retail business's and craftsmen's workshops if owned by Jewish foreign nationals, but that an inventory of these businesses should be ordered and when carried out the Ministry of Economics would give further orders as to how the cases were to be dealt with; that all German stateless Jews were required to deposit their securities and forbidden to sell them without approval of the German Ministry of Economics; that Jewish sellers instead of receiving the payments fixed in the selling agreement would be ordered to receive Reich debentures, and that German economic life would be completely dejudafied in the year 1939.

The report concludes with the statement that the protests of foreign countries with respect to the Jewish nationals had not been met by a general assurance that their nationals would not be subjected to discriminatory treatment, but nevertheless, promises had been made that individual cases would be examined in the light of existing treaties.

On 25 January 1939 Schumberg of the Foreign Office, a defense witness, prepared a monograph entitled "The Jewish Question as

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a Factor in German Foreign Policy in 1938." This was distributed to all German diplomatic and consular representatives and discussed, among other things, the typical hysteria of Nazi Germany toward the Jews. It states that the influence of Jewry on Austrian economy had become so great under the Schuschnigg regime that immediate measures had to be taken to exclude the Jews from the economy and utilize Jewish property in the interest of the community; that the reprisal acts adopted because of the von Rath murder so accelerated this process that Jewish shops, with the exception of foreign businesses, had disappeared from the streets completely, and that limitations of the Jewish wholesale and manufacturing trades and of houses and real estate in the hands of the Jews would reach a point where, in a conceivable time, there would no longer be any talk of Jewish property in Germany; that Germany was interested in the dispersal of Jewry; the calculation that as a consequence boycott groups and anti-German centers would be formed all over the world disregards the fact already apparent that the influx of Jews in all parts of the world invokes the opposition of the native population and thereby forms the best propaganda for the German Jewish policy; that there is a visible increase in anti-Semitism and that it must be the task of the German foreign policy to increase this wave; that expectations have been confirmed that the criticism of anti-Jewish measures would only be temporary and would swing over the other way the moment the population learned of the Jewish danger, and that therefore the poorer and more burdensome the Jewish immigrant is to the country absorbing him, the stronger the country will react; that the object of this action should be the future international solution of the Jewish question dictated not by false compassion for the united religious Jewish minority, but by the full consciousness of all people of the danger which it represents to the racial composition of the nations. It further suggests the advisability and necessity of increasing this anti-Semitic feeling throughout the world.

On 31 January 1939 Hitler spoke to the Reichstag, the defendants Woermann, Meissner, Schwerin von Krosigk, Keppler, and Dietrich being present. Hitler there

said (2360-PS, Pros. Ex. 3906):

*"I believe that this problem will be solved—the sooner the better—for Europe cannot rest again before the Jewish problem has been eliminated.*

*"If international finance Jewry in and outside Europe should succeed in plunging the peoples of Europe into another world war, then the result will not be the Bolshevization of the world*

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*and a victory for world Jewry, but the annihilation of the Jewish race in Europe."*

Those are not idle words nor, in view of the brutal tactics which he had already adopted against opponents both real and fancied, could any of his listeners or readers have any reason to deem them to be mere rhetorical froth. He made similar public announcements during the subsequent years.

On 30 October 1940 the Foreign Office received a memorandum relating to the forced evacuation of the Jews from Baden and the Saar, 7,400 in number, to southern France. The victims were given only one-half to two hours' notice. They were allowed to take personal belongings up to 50 kilograms in weight, and money varying from 10 to 100 RM per person. Old people in homes for the aged were included, even where it was necessary to have them carried to the trains in stretchers. It was the intention then to have them shipped to Madagascar. Woermann received a copy of these reports, as did von Weizsaecker.

The French objected and informed Germany that they could not receive these refugees because of lack of food and accommodations. The Armistice Commission further reported that the German authorities in Lorraine had given the French-speaking inhabitants the choice of departing for unoccupied France or being transferred to Poland, and these people had been falsely informed that this was in compliance with an agreement between the Vichy and German governments. The Foreign Office was also advised of General von Stuelpnagel's request for directions as to what answer should be given the French.

On 21 November 1940 Rademacher of Department Deutschland of the Foreign Office wrote his chief, Luther, that in his opinion Abetz, the German Ambassador to the Vichy government, should be instructed to tell the French to settle the matter quietly and not mention it again in Wiesbaden (site of the Armistice Commission), and that the German commission should tell the French that the matter would be settled in Paris.

On 22 November von Ribbentrop's office gave instructions via von Weizsaecker and Woermann that the note of the French should be treated in a dilatory manner, and saying further, "these persons are not to be readmitted under any circumstances." Luther on 25 November asked Kramarz, of Political Division I, to instruct Hencke to inform General von Stuelpnagel of von Ribbentrop's decision, and that the operation was carried out with the approval of Hitler.

On the same date, by von Weizsaecker's order, Woermann prepared a memorandum for von Ribbentrop's use in a conference

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which the latter expected to hold with Laval of the Vichy government. It dealt with a number of suggestions, including the transfer of the two French departments from the command of the military commander in Brussels to the military commander in France, objections to the transfer of the site of the Vichy government from Vichy to Versailles or Paris, and the matter of the deportation of the Jews from Baden and the

Saar to southern France. With regard to this latter question, Woermann says (NG-4337, Pros. Ex. 3655):

*"Since the return of the Jews to Baden cannot take place, this question also should not be discussed. In any case, Mr. Laval should be informed that further transports of this nature are not to be expected, in which case, however, the Reich Leader SS is first to be consulted."*

Von Weizsaecker's explanation is that when he heard of the transportation of these Jews to France he first had the feeling that they might have a more lenient fate than they would have received in Germany, and then the reports came in about abuses they suffered in camps in the Pyrenees; that when he first heard about the transport to the East he thought they would be better off there than in the Pyrenees, because if they were used for labor they would be treated decently, but it finally turned out that the Jews would have been better off in France anyhow, and that with the modest means of Foreign Office influence within the scope of diplomatic possibilities, he was not absolutely able to determine where the lesser evil was and where he could best intervene.

Woermann's defense is that these measures were taken without his knowledge and the decision that these unfortunate people would not be permitted to return to Germany had already been decided by his superiors.

It is clear from the evidence that this brutal action was initiated by the local Gauleiter, not only without the knowledge of the Foreign Office, but without the knowledge of the Ministry of the Interior. No criminality therefore can be charged against the defendants von Weizsaecker and Woermann so far as the initiation of this deportation is concerned. The decision to refuse the French demand that they be returned was von Ribbentrop's.

Having neither originated nor implemented this crime, they should be and are acquitted with respect to it.

The defendant von Weizsaecker has referred to [NG-4893, Prosecution] Exhibit 1688 as evidencing his efforts to sabotage, or at least minimize, the effect of the anti-Jewish measures proposed in France. This correspondence started in August 1940 by a communication from Abetz, German Ambassador to the

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Vichy government, in which he requested approval to certain proposed anti-Jewish measures, which were (NG-4893, Pros. Ex. 1688):

- (1) A ban on the re-immigration of Jews into the occupied territory;
- (2) Registration of all Jews in the occupied portions of France;
- (3) Marking Jewish places of business; and,
- (4) Appointing of trustees for Jewish enterprises.

He ends with the statement—

*"These measures can be explained by reason of the fact that they lie within the interest of security for the occupying forces and are to be executed by the French authorities."*

Luther asked the SS for an opinion and Heydrich expressed no objection other than that the measures should be carried out by the Security Police in conjunction with the French. Luther then wrote Abetz and expressed the doubt as to whether or not the opposite of the desired effect might not result unless ideological preparations first took place, and that it would be desirable that the intended measures be first carried out by the Vichy government, which would then have to bear the responsibility in the event of failure.

On 9 October Schleier of the Embassy reported that the military commander in France had issued the necessary regulations which applied to all Jews of whatever



nationality, but that the field offices had been directed to exempt American Jews, and that a number of foreign nations had inquired as to the effect upon their nationals. Schleier asked for immediate instructions and especially as to how foreign Jews in the diplomatic and consular offices were to be treated. On 12 December Rademacher in a memorandum stated that inquiry had been made of Abetz as to whether all these measures would affect foreign Jewish diplomatic representatives and that the latter had replied that if Jews belong to the diplomatic corps they were exempt, but if they were employees of diplomatic representatives the contrary was true, and that State Secretary von Weizsaecker, at a conference in the Foreign Office directors' office, was in agreement with this ruling, particularly since the diplomatic representatives concerned were accredited to France and not to the German Reich. Almost immediately thereafter (19 December 1940) von Ribbentrop made a decision that the American notes of protest against measures affecting Jews of American nationality, if again submitted, should be answered by stating that the measures were adopted for reasons of security, and disapprove the German field commander's instructions to exempt American Jews from

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the application of the ordinances, and stated (NG-4893, *Pros. Ex. 1688*):

*"It would be a mistake to reject the protests of friendly nations, such as Spain and Hungary, and to show weakness, on the other hand, toward America."*

It is somewhat difficult to understand von Weizsaecker's claim that in this instance he had adopted an attitude favoring the Jews.

What then did von Weizsaecker's concurrence in Abetz's suggestion actually amount to? Without question, unless Germany in 1940 desired or intended to run the risk of a final break of relations with the United States, it was bound to accord to American diplomatic representatives the immunity to which, under international law, they were entitled. At that time, at least, this would have been catastrophic from the German political standpoint. Von Weizsaecker's position is merely a concurrence in the obvious. But it is to be noted that he did not either recognize or recommend that it should be extended to Jewish employees of American diplomatic representatives. It is a decision which was, at best, exceedingly doubtful. He concurred in limiting diplomatic immunity to Jewish members of the diplomatic corps. In addition, he offered as justification a pure sophistry, namely, that these diplomats were accredited to France and not to Germany.

It has never been claimed by the defense that Germany had annexed France or any part of it, other than Alsace-Lorraine. It merely had military possession of part of the country; the Reich had never suggested that the presence of foreign diplomats in occupied France was improper, nor had it asked for their recall. The German Embassy received and answered inquiries made by these diplomats with respect to the treatment of their own Jewish nationals. If these documents prove anything, then it was the fact that at the time the defendant von Weizsaecker was not attempting to help or mitigate the conditions of the Jews, so far as foreign nationals were concerned, but he was engaged in aggravating their lot. Had his intentions then been those which he now claims, and had he felt that any appeal to von Ribbentrop on humanitarian grounds was useless, the way was open to him to have used the very avenue of approach to which he complains he was so often compelled, namely, to call attention to the fact that the proposed action was contrary to the Hague

Convention, that it was extremely doubtful whether Germany had the right to abrogate the usual immunities to which the employees of diplomatic representatives were entitled, and also to point out the

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foreign political repercussions which would arise if they were not exempted from the proposed measures. He did nothing.

As early as 27 April 1937 the defendant von Weizsaecker laid down rules for the future handling of the Palestine question (*NG-4075, Pros. Ex. 2109*)—

*"1. A splitting-up of world Jewry is to be preferred to the establishment of a state in Palestine.*

*"2. If German foreign policy should become actively concerned with this question, direct pressure on the British mandatory power would, at least for the present, seem inadvisable.*

*"These rules, however, did not prevent the Foreign Office from informing the domestic German agencies of its attitude, so that in measures of domestic policy for Jewish emigration, consideration should be given to the fact that Jewish emigration to Palestine should not be encouraged at all costs, but rather that their emigration to any other place in the world is to be preferred \* \* \*."*

and that—

*"\* \* \* German authorities stationed abroad are to be given instructions concerning the attitude to be adopted by them toward the Palestine question."*

With respect to Luther's alleged independence of action, the defendant von Weizsaecker testified that at the end of August 1942 von Ribbentrop ordered Luther that in the event of further steps concerning the deportation of Jews and similar matters, it should be brought to the attention of State Secretary von Weizsaecker; that up to that time the rule had not been enforced. He further says that in this dreadful and tragic Jewish question he had to let many things "pass through my hands upon instruction from higher agencies that were objectionable to me. I admit that."

On 11 August 1942 Luther prepared a memorandum which was distributed to von Weizsaecker, Woermann, and von Erdmannsdorff relative to the discussions he had had with the Hungarian Minister regarding the treatment of Hungarian Jews in France, and the Minister's protest against this action.

On 6 October 1942 Luther again reported a conference with the Hungarian Minister about Hungarian Jews in the territories occupied by German troops, Hungarian Jews in the Reich, and the evacuation of all Jews from Hungary itself. This was sent to von Ribbentrop via von Weizsaecker and was distributed to and initialed by Woermann.

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On 14 October 1942 von Weizsaecker himself received the Hungarian Minister and discussed the Jewish problem with him and reminded him of von Ribbentrop's comment that the recent air raids on Budapest were evidence that the Jews there contributed to spreading panic and that the German Minister at Budapest would have carried out his instructions regarding the Jewish problem before the Hungarian Minister arrived there. A copy of this went to Woermann and at the bottom appears a note to make sure that the German Minister called on the Hungarian Foreign Minister as per his instructions prior to Sztojaj's arrival.

On 9 March 1942 Eichmann of the SS wrote the Foreign Office that it was intended to deport to Auschwitz 1,000 French and stateless Jews who had been arrested in France in 1941, asking if there was any objection.

On 11 March the SS again wrote the Foreign Office that it was desired to include 5,000 more Jews from France. On the same day Luther wired the German Embassy

in Paris, forwarding the request and asking for comment, and Paris replied, "No objection."

On 20 March Rademacher, by order, informed the SS that the Foreign Office had no objections to these 6,000 Jews being deported. This was initialed by Woermann and von Weizsaecker, and contains the latter's comment, "to be selected by the police."

There remains no shadow of doubt that both Woermann and von Weizsaecker were informed of this nefarious plan and that it received their official approval. There is nothing in the record to show that they questioned its propriety, objected to or protested against it, or availed themselves of the opportunity to suggest to von Ribbentrop that even from the viewpoint of German foreign policy its execution would be a catastrophic mistake in that it would not only alienate public sentiment in France, but would arouse a wave of horror and resentment throughout the world. Neither claims that there was any legal justification for this deportation or suggests it was other than a flagrant violation of international law and of the provisions of the Hague Convention.

Woermann's excuse is that he was not able to do anything and that his cosignature meant that he saw no valid political reason which could be urged against it and that the reason that the Foreign Office communication was signed by the State Secretary and by two other state secretaries, including himself, was that it was an important matter. However, his own witness, Lehmann, an old civil servant in the Foreign Office, called as an expert on Foreign Office practice, does not bear him out. He testified,

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somewhat reluctantly, that when a Foreign Office official initialed a draft he thereby outwardly approved it, even though he may have had mental reservations as to its propriety.

The defendant Woermann knew that there were cogent reasons of a political nature why the measure should be disapproved; he knew that it was in violation of every principle of international law and in direct contradiction of the Hague Convention.

Von Weizsaecker asserts that this occurred at a time of repeated attempted attacks on members of the Wehrmacht and Hitler had ordered frequent shootings of hostages in France; that these Jews were already interned and were in danger, and one could very easily come to the conclusion that the deportations to the East might involve less danger to them than remaining where they were; that the name Auschwitz did not mean anything to anybody at that time. He does not state that this was, in fact, his reason for not objecting, but that it was probably his reason. He further asserts that the Foreign Office did not instigate or execute these measures and its point of view or opinion could not prevent them. The latter contention, however, is hardly tenable, in view of the fact that Eichmann of the SS made specific inquiries as to whether the Foreign Office had objections.

While we are ready and anxious to accord to every defendant the benefit of any reasonable doubt to which he may be entitled, it is difficult to find any such doubt here, even though we assume that neither defendant, at that time, had knowledge that Auschwitz was a death camp. Nevertheless they knew and were well informed of the fate of any Jew who came into the tender hands of the SS and Gestapo; they knew what had been the fate of the Jews of Poland, the Baltic states, and Russia; they knew what had been the horrible fate of German Jews.

While admitting that many things passed over his desk and received his initials of

approval as to which he harbored mental reservations and objections, he states he remained in office for two reasons: first, that he might thereby continue to be at least a cohesive factor in the underground opposition to Hitler by occupying an important listening post, maintaining members of the opposition in strategic positions, distributing information between opposition groups in the Wehrmacht, the various governmental departments, and in civil life; and second, that he might be in a position to initiate or aid in attempts to negotiate peace. We believe him, but this, while it may and should be considered in mitigation, cannot constitute a defense to charges of war crimes or crimes against humanity. One cannot give consent to or implement the commission of murder because by so doing he hopes eventually to be able to rid society of the chief mur-

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derer. The first is a crime of imminent actuality while the second is but a future hope. When the SS inquired whether the Foreign Office had any objections, it was the defendant's duty to point them out. That is the function of a political department and a state secretary of a foreign office. It is not performed by saying or doing nothing. Even the defendant's witness, von Schlabrendorff, himself an active leader in the resistance movement, and a participant in the plot of 20 July 1944, testified that being a member of that movement did not justify one in becoming a party to the program of the murder of Jews. As to these and like instances, we find the defendants von Weizsaecker and Woermann guilty.

On 28 August 1942 a conference was held in the office of the RSHA at which were outlined the plans for the immediate evacuation of Jews from occupied and foreign countries to Auschwitz, in which it was said that only stateless Jews could be deported for the time being, in view of foreign protests, and that with regard to the foreign Jews, negotiations were still in progress with the Foreign Office and had not yet been concluded; that under no circumstances was it desirable to repatriate foreign Jews to their country, and the request of Switzerland for the return of Swiss Jews could not be granted.

It was not criminal for the defendants von Weizsaecker or Woermann to have been present at or to have received minutes of this meeting. But on 24 September 1942 Luther wrote von Weizsaecker that von Ribbentrop had given instructions to hurry as much as possible the evacuation of Jews from the various countries of Europe and that orders had been given to contact the governments of Bulgaria, Hungary, and Denmark with the object of starting the evacuation from those countries; that with respect to Italy, von Ribbentrop had reserved this for himself and it would be discussed either between Hitler and Mussolini or between von Ribbentrop and Ciano. Luther stated (NG-1517, Pros. Ex. 1457):

*"All steps taken by us will be submitted to you at the time for your approval."*

A copy of this communication went to Woermann.

On 20 October 1942 von Weizsaecker wrote to von Ribbentrop, with copy to Woermann and to Luther, that he had asked the Hungarian Minister, on his return from Hungary, to report on what the people of Budapest thought of the German proposals concerning the treatment of Jews. He also reported on the same date the result of a conversation which he had had with the

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Hungarian Minister in which he stated (NG-5728, Pros. Ex. S766):

*"The way Hungary treated the Jewish problem has, so far, not been in accordance with our principles."*

On 6 October Luther reported to von Ribbentrop, through von Weizsaecker (it was initialed by him), regarding a conference which he had had with the Hungarian Minister, in which he had informed Sztojaj that Hungary was either to take back its Jews or permit Germany to deport them to the East; that the latter had, in an attempt to avoid the matter, inquired whether Italy had agreed to like measures and was assured that it had; that Luther then brought up the matter of a settlement of the Jewish problem in Hungary which the Hungarian Minister attempted to avoid by the same technique. It was this memorandum which led to von Weizsaecker's conference heretofore mentioned.

The actual deportation of Hungarian Jews did not commence until the late spring of 1944 and von Weizsaecker took his post as Ambassador to the Vatican in May 1943, so he had no further connection with the Hungarian-Jewish question. While there can be no doubt that his conference with the Hungarian Minister in fall of 1942 was designed to implement Jewish persecution and deportation, it was abortive and the Hungarians could not be induced or compelled to adopt the German anti-Jewish campaign until in 1944; the German troops marched in; Veessenmayer took up his duties as German Minister and Plenipotentiary, overthrew the Kallay Cabinet, put in German puppets who cooperated in the concentration of and deportation of the Jews. Von Weizsaecker's connection with these deportations is so slight and insignificant that we acquit him with respect thereto. *Holland and Belgium.*—That both von Weizsaecker and Woermann had knowledge of the deportation and subsequent death of Dutch Jews deported to the Reich is beyond doubt. Nor do we find that either took any action or made any objection to the uselessly cruel procedure. Sweden as the Protecting Power for Holland called attention to the fact that of 600 Dutch Jews deported from Amsterdam to Mauthausen, 400 had died, and it appeared from the list that deaths occurred on specific days; that the prisoners in question were nearly all younger men; that the Swedish Legation had repeatedly applied to the Foreign Office for permission to visit Dutch Jews in the camps which applications had been refused.

Luther, in writing to the RSHA, recommended that when deaths occurred it should never appear that they occurred on fixed days. It is significant that Woermann, in reporting to

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von Weizsaecker and von Ribbentrop regarding the report given to him by Minister Bene at the Hague, stated (NG-2805, Pros. Ex. 1677):

*"As to results of the slaying of a WA man by an unidentified Jewish assassin, 400 Jews \* \* \* have been brought from the Netherlands to Germany to 'work here'." (The single quotation is by Woermann.)*

On 22 June 1942 Eichmann of the SS wrote Rademacher of the Foreign Office that provisions had been made to run daily trains, with a capacity of 1,000 persons each, starting in the middle of July, in order to deport to Auschwitz 40,000 Jews from occupied French territory, 400,000 from the Netherlands, and 10,000 from Belgium. This was to include able-bodied Jews not living in mixed marriages or not citizens of the British Empire, the United States, Mexico, the enemy states of Central South America, or of neutral and allied states. He requested that note be made of the proposals asking if there were any objections against the matter on the part of the

Foreign Office.

On 28 June Luther wired the Embassy in Paris, the Foreign Office representative at Brussels and Bene, transmitting the Eichmann message and requesting an early reply. This was submitted to von Weizsaecker and Woermann and section POL II before dispatch.

On 2 July Abetz replied that there was no objection providing the measure was carried out in such a manner as to add to the anti-Semitic sentiment, but that it should be first applied to foreign Jews and to French Jews only if there were not sufficient foreign Jews to fill the quota. On 10 July Luther wired Abetz it was not possible to give priority in deportation to foreign Jews; that further orders relating to expulsion of foreign Jews were pending; that the evacuation proposed was to be carried out without delay.

On or about 13 July Bene at the Hague reported that the first two trains, each containing 1,080 Jews, had left, and that the RSHA had suggested that the deported Jews should be deprived of Dutch nationality in order to avoid intervention by Sweden, the Protective Power; that as a result of a conference held that day, the Reich Commissioner was prepared to issue a decree depriving Dutch Jews of Dutch nationality on the ground that all Jews are enemies of Germany and if no objections were raised by the Foreign Office this deprivation of Dutch nationality would then apply to all Jews of Dutch nationality; and not only to those who had been deported, and asked for the Foreign Office's opinion.

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On 20 July Rademacher submitted a memorandum to von Weizsaecker and Woermann with the request for instructions, suggesting that Bene's proposal seemed too far-reaching, but the D-III of Department Deutschland considered it desirable that Dutch legislation concerning Jews be adjusted to that of the Reich so that immediately all Dutch Jews resident abroad, or who had transferred their residence abroad, would lose their nationality as had German Jews under the same circumstances through the Citizenship Law of 25 November 1941.

On 29 July Luther submitted to von Weizsaecker and Woermann a draft of a letter to Eichmann that the Foreign Office had no objection in principle to the deportation but in view of the psychological effect, requested that first stateless Jews be deported, thus including a large number of foreign Jews who had emigrated to the West, of whom there were nearly 25,000 in the Netherlands, and that for the same reasons Brussels would first select only Polish, Czech, Russian, and other Jews, but that Jews of Hungarian and Rumanian nationalities could be deported, but their property must be secured in each case.

D-III prepared a second memorandum concerning Bene's proposal that all Dutch Jews be deprived of Dutch nationality, stating that it was irrelevant whether Jews had left the country voluntarily or by deportation, and that where Jews were deported to eastern territories not incorporated into the Reich, the Protective Power was as little competent as to those areas and territories as it was in the Netherlands; that frequently it could not be determined whether residence outside the country was due to voluntary emigration or deportation, and on principle no information whatsoever would be given to the outside world by the police regarding persons who had been deported to eastern territories, and thus, visits to the camps, etc., were absolutely prohibited; that the deportations from the Netherlands were proceeding without incident; and the Christian Jews were being interned temporarily in Holland itself.

Von Weizsaecker submitted this memorandum to the legal division for opinion, which was rendered on 31 July 1942 and called attention to the fact that Sweden was still recognized as the Protective Power for the Netherlands because if her functions were withdrawn, the Dutch authorities in Dutch colonies would cease to recognize Switzerland as Protective Power for Germans residing in those places. He pointed out that Sweden's authority related to the German Reich and the occupied territories, and not to Holland directly, and therefore the Foreign Office had repeatedly suggested that, in case internment measures were taken against Dutch citizens, they should be undertaken in Hol-

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land in order to prevent the Swedish delegation from requesting permission to visit the internees; that if Jews were deported from Holland it could be assumed that international Jewish circles would endeavor to persuade Sweden to intervene on behalf of these Jews, and Germany could not reject such attempts on the ground that the Jews had been deprived of Dutch citizenship by German authority; therefore the regulations suggested by Bene would not achieve their purpose.

The opinion called attention to the fact that after several hundred Dutch Jews had been taken to Mauthausen the police had turned down Sweden's request to inspect the camp but had currently forwarded death certificates to the relatives of those Jews in the Netherlands from which it could be seen that "gradually" all had died; that if the deportation of Dutch Jews was to be carried out, it would be necessary to determine whether the police should continue to furnish interested parties with material from which they could authentically determine the result of the measures taken; that as long as Jewish internees were present in Mauthausen, the Swedish delegation made renewed requests to visit the camp whenever further death certificates arrived, and if the deportation of Dutch Jews was unavoidable, it would be expedient if the police would not allow any information to leak out with regard to the whereabouts or, in possible cases, death; and it would be presumably possible to turn down Sweden's request to visit the camp, but in that event it would be impossible to avoid the risk that Germans in Dutch colonies might experience worse' treatment because of the measures taken against Dutch Jews.

Von Weizsaecker referred this matter, on 1 August, to Department Deutschland for final opinion, and on 10 August it reported to von Weizsaecker and Woermann that it adhered to the proposals which had been made on 20 July, whereupon von Weizsaecker recommended that Bene be asked if the matter was still of importance and that the reasons stated by him at the time were not sufficient for the measures planned, and therefore they could be foregone altogether if no new motives were available.

It may well be, and we think it likely, that von Weizsaecker's request for the legality of the operation was designed to hamper and, if possible, to prevent these deportation measures, at least so far as Jews of Dutch nationality were concerned. It is significant, however, that no suggestion is made as to the illegality or impropriety of the deportation of foreign Jews living in Holland, and that the opinion of the legal department suggests the means whereby, if deportations were carried out, Sweden as the Protective Power would be unable to exercise its functions. No

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explanation is offered by the defendants von Weizsaecker or Woermann as to why these offensive suggestions were not eliminated from the legal division's opinion.

Nevertheless, the opinion served to prevent the proposed decree from being enacted, so we therefore hold that neither von Weizsaecker nor Woermann can be held criminally liable with respect to this incident.

On 17 December 1942 the Swedish Minister endeavored to open a conversation with von Weizsaecker on the matter of Sweden's willingness to accept Norwegian Jews, and was informed by him that he would not enter into any official discussion on the subject, and if the Swedish Minister was commissioned by his government to transmit this information, von Weizsaecker would predict failure from the outset.

Technically Sweden had no legal right to intervene, and undoubtedly von Weizsaecker's prediction of failure in the event it did so was accurate. Here he owed no official duty to do other than he did. We must, therefore, exonerate him with respect thereto.

*Von Weizsaecker and Woermann in France.*—On 15 September 1941 Rademacher reported to von Weizsaecker with request for directions, the request of the Swedish Legation in France, acting as Germany's Protecting Power, for the issuance of passports, police certificates, birth, marriage, and death certificates, and other identification papers for German Jews interned in unoccupied France so that the individuals involved could emigrate abroad. Rademacher states that in agreement with the Ministry of the Interior and the Chief of the Security Police, it was determined that the emigration was undesirable as it would thereby decrease the already small chance, in view of foreign immigration quotas, to get passage abroad for Reich Jews; that Department Deutschland intended to request the Swedish Legation, as representative to Germany, to refrain from accepting more applications of German Jews living in unoccupied France.

On 19 September 1941 he reported that in accordance with directions he had consulted Albrecht concerning this matter, who proposed that no decision be taken at the time, but that it be treated dilatorily and then resubmitted in 4 weeks, because in the meantime it was likely that German Consulates would be installed in the whole of France, in which case Sweden's functions as the Protective Power would become ineffectual.

All this occurred before the adoption of a definite program of deportation of Jews to the East, and the Reich was still toying with the idea of forcing all Reich Jews to emigrate. The discrimination here is only between Jews of German nationality

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residing in Germany and Jews of German nationality residing in France. We find no criminality in this transaction.

On 30 October 1941 Schleier of the Embassy in Paris requested directions from the Foreign Office regarding the disposition to be made of foreign Jews who had been arrested by the military commanders in France in connection with alleged participation in Communist and de Gaullist plots for the assassination of Wehrmacht members. He states that foreign consulates had requested the Embassy to assist in having their Jewish nationals so arrested, freed.

Von Weizsaecker, on 1 November, answered, stating that there were no objections against the arrest of Jews of European nationality and no diplomatic complications were expected, but the arrest of Jews of American nationality created a dangerous situation and it must be expected with certainty that the North American



governments, as well as those of the Spanish-American states, would make these arrests the object of diplomatic intervention, and if Germany refused to release Jews of American nationality, it was to be expected that the governments affected would take retaliatory measures against Reich citizens, and thereby Germany could get the worst of it; that it was intended to instruct the Embassy in Paris to request the military commander and the chief of the SD to release American Jews, provided they were not liable to criminal prosecution.

Von Ribbentrop approved this suggestion. Von Weizsaecker further stated that it should be considered as a matter of precaution, and it might be well to expel all Jews who were American citizens from occupied territories in order to eliminate friction. To this von Ribbentrop said, "No." It was, of course, as much a breach of international law to arrest Jews of European nationality as it was those of American nationality, and the reasons which von Weizsaecker gave for exempting American Jews from unlawful arrest are not based on any high moral plane. However, we are interested in what he advised, and not the reasons he gave, and we do not overlook the fact that he was not addressing his recommendations to a man who had any conception of international or other morals. We do not believe in this instance von Weizsaecker was subject to any criticism. He probably went as far as he thought was practicable.

On 19 May 1942 Woermann, on orders from von Weizsaecker to settle with Department Deutschland the question of whether American and British Jews in France should be exempted from anti-Jewish measures which were being taken there, reported that he had come to the conclusion that they should not be given any preferential treatment, and called attention to the fact that

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Bene had reported that in Holland all foreign Jews had been exempted; that he thought it expedient that a uniform policy should be followed in all occupied countries. He recommended that Abetz be requested to give his opinion as to the possibility of inducing the French Government to issue a simultaneous, adequate decree for both unoccupied and occupied France. It is quite apparent from this document that Woermann was making no attempt to accord to British and American Jews the rights to which they were entitled under international law.

*Italy.*—On 24 July 1942 Luther prepared notes for a report on the deportation of Jews. This was submitted to von Weizsaecker, who initialed it. Luther states that Ambassador Abetz had expressed disappointment that all foreign Jews had not been evacuated from France, and that if this could not be done at once, at least the Italians should be induced to call their Jews back from France, or at least agree to their evacuation to the East. Luther suggested that the Italian Government be approached on the subject.

On 27 November von Weizsaecker and Woermann cosigned with Luther a telegram sent to the Embassy at Rome directing that the suggestion be made to the Italian Government that, if it could not consent to the application to its own Jews in France of the measures proposed, it withdraw them from that country by the end of that year. The instruction was carried out and the matter was taken up on several occasions with the Italian Government.

Luther had complained that the attitude of the Italians toward the Jewish question was entirely unsatisfactory, and that it interfered abroad on behalf of Italian Jews; that a clear solution of this problem must be had because it was impossible that, in Germany and areas controlled by it, the Italian attitude should be followed or

permitted, and suggested a strong note be sent to Italy on the subject.

Thereafter von Ribbentrop instructed the German Ambassador in Rome to inform Foreign Minister Ciano that as a special favor Italian Jews could remain in German-controlled territories only until 31 March 1943, after which Germany reserved the right of free action against all Jews in Reich-occupied territories, and Italian Jews could not be excepted.

Luther ordered the Paris Embassy to instruct the military commander in France that in negotiating with the Italian commander to state that cooperation was absolutely necessary, and that Germany was surprised to learn from the Vichy government that the Italian Armistice Commission had made protests against the order. Both von Weizsaecker and Woermann saw and initialed these instructions before they were dispatched.

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In February 1943 the Foreign Office instructed its Ambassador at Rome to endeavor to persuade the Italian Government not to recognize as full-fledged Italian citizens those Jews who had obtained citizenship after a certain deadline; that the Italians should revoke citizenship granted to Jews who were not residing in territories under Italian sovereignty at the time of Italy's entrance into the war. This was submitted to and initialed by Woermann before dispatch. It is quite apparent from the documents that Italy, while free with promises, failed to fulfill them.

While it is clear that both von Weizsaecker and Woermann participated in this matter, the record does not disclose that their efforts ever reached fruition, or that the crime was consummated. Under these circumstances they must be and are exonerated.

*Croatia*,—In October 1941 Rademacher requested von Weizsaecker to decide whether Slovakian and Croatian Jews could be included in the deportations to the East, and stated that, in his opinion, no objections would be raised because the Slovakian and Croatian states had themselves taken measures of extremely severe nature against Jews, but it was suggested that, as a matter of diplomatic courtesy, the governments in question should be informed and strong suggestions made that they recall their Jewish nationals from Germany or that they permit Germany to deport them to the East.

Von Weizsaecker and Woermann initialed this, and the Legations in Pressburg, Agram, and Bucharest were so advised. It is clear that von Weizsaecker at least must have approved Rademacher's suggestion. However, there could be no crime in giving those countries an opportunity to repatriate their Jews and a failure to have done so would have been criminal. Here, therefore, von Weizsaecker and Woermann did precisely what should have been done, namely, left some opening for these Jews to escape deportation to the East.

[Prosecution] Exhibit 1715 [NG-3565] and the documents following relate to German efforts to deport all Croatian Jews and recite the difficulties encountered by the unwillingness of the Italians to cooperate. Kasche, German Minister, and the SS proposed to arrest Jews even in territories occupied by Italian troops, but von Weizsaecker insisted on waiting until the German Ambassador in Rome could be heard from. The matter was delayed over a considerable period and the Italians played a double game of agreeing in Rome that their troops would cooperate but, in the field, failing to give such cooperation.

After a long lapse some, but not complete, success was achieved, but we find nothing in the record to indicate that von Weizsaecker or Woermann aided the

campaign and, in fact,

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there are strong indications that tend to show the opposite. This was a matter in which not only Himmler and the SS, but also von Ribbentrop and Hitler, took a direct interest and part. Inasmuch as von Weizsaecker and Woermann did not substantially participate in the matter they should be and are exonerated with respect thereto.

*Serbia.*—While von Weizsaecker and Woermann were informed of the proposals to shoot all male Serbian Jews and to assemble the women, old people, and children in local concentration camps and the desire of Benzler and the defendant Veesenmayer to make a quick, Draconic disposition of the Serbian Jews, it is certain that von Weizsaecker endeavored to keep clear of this matter. He declared that because of the Hitler order the Foreign Office was competent to deal with the deportation of Serbian Jews to other countries, but that neither Benzler nor the Foreign Office had any competency to take an active part in the manner in which the competent military and internal authorities tackled the Jewish problem within the boundaries of Serbia; that those agencies received their instructions from other sources rather than the Foreign Office, he so advised Benzler.

To this Luther disagreed, calling attention to the fact that he had been authorized by von Ribbentrop to discuss the matter with Heydrich, but by this time it appeared that the military authorities in Serbia had shot the Jews in question, and thus, the matter had been settled; and von Weizsaecker said he was no longer interested in issuing any directions to Benzler. Under these facts neither von Weizsaecker nor Woermann can be held guilty of participation in the crimes in question, and as to them they should be and are exonerated.

*Bulgaria.*—The evidence does not disclose that von Weizsaecker or Woermann took any active part in the deportations from Bulgaria other than Luther's report which contains the statement that the Legation at Sofia was instructed by a note signed by von Weizsaecker, Woermann, and von Erdmannsdorff that "if the question is put from the Bulgarian side as to whether Germany is ready to deport Jews from Bulgaria to the East, the question should be answered in the affirmative; but in respect to the time of deportation, it should be answered evasively."

The measures against Bulgaria's Jews actually took place during Steengracht von Moyland's incumbency as State Secretary. While he was informed of the infamous things proposed and done, and while it is evident that Bulgaria's actions were in a measure encouraged by the Legation at Sofia, acting under orders, the record is not sufficiently clear, and it is not likely that Steengracht von Moyland participated in the matter.

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Von Ribbentrop's direct intervention in matters of this kind occurred so often that we cannot say with reasonable certainty that the actions of the Legation at Sofia can be charged to Steengracht von Moyland rather than to orders given by von Ribbentrop. There are also indications that the German Minister at Sofia endeavored to divert, or at least delay, the matter by suggesting that everything that could be done had been done and that in due course Bulgaria would take the action desired by the RSHA. In this respect Steengracht von Moyland should be and is exonerated.

*Rumania.*—With regard to the measures against Rumanian Jews, it does not appear

that, with the exception of a note to Rumania, which von Weizsaecker initialed and approved, giving it an opportunity to repatriate its Jewish nationals or to permit them to be deported to the East, he or Woermann took any part in the Rumanian deportations, although, of course, they were informed of its progress.

Exhibit 1781 [NG-3559, prosecution exhibit], however, clearly establishes that von Weizsaecker and Woermann knew of the murder of Rumanian Jews on arrival in the East.

On 19 August 1942 von Rintelen of von Ribbentrop's office wired the Foreign Office and reported that evacuation transports from Rumania would be started on 10 September, and the Jews would be removed to the Lublin Ghetto where those fit for work would be allocated for that purpose, and the remainder given "special treatment," and that arrangements had been made for the Jews to lose their nationality upon crossing the Rumanian border, that negotiations with the Rumanian Foreign Office had been under way for some time and could be considered entirely favorable. He ends by asking .approval to carry out the deportation.

This was a special telegram; and it is our opinion, and we so find that it came to von Weizsaecker's attention as, according to practice, the distribution of such telegrams was determined by his office.

"Special treatment," in the phraseology of the Third Reich, meant death.

On 20 August 1942 Klingenfuss of the Foreign Office wrote Eichmann of the RSHA that following protests from various Rumanian representatives in Germany against the inclusion of Rumanian Jews in the deportations, discussions had been had between the German Legation and the Rumanian Government which resulted in the Rumanian Minister of Foreign Affairs giving assurances that he would inform Rumanian authorities

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not only in the Protectorate, but generally, that his government would permit the Reich to submit Rumanian Jews to these measures; and consequently the Foreign Office had no doubt that the deportation, which to some extent had been interrupted, would be resumed, and Rumanian Jews in the Reich and in occupied territories would be included in these anti-Jewish measures.

This was submitted before dispatch to the political division, and it is a reasonable inference that both Woermann and his chief, von Weizsaecker, were informed of this development.

#### STEENGRACHT VON MOYLAND

Late in 1943 or early in 1944 Steengracht von Moyland organized, at von Ribbentrop's request, an "Office for Anti-Jewish Action Abroad," and in April a conference of specialists for the Jewish question was held at Krummhuebel, at which Dr. Six, Ambassador Schleier, von Thadden, Ballensiefen of the SS, and many others spoke. At the close of the speeches the following requests were made of the representatives of the missions:

- (1) To suppress all propaganda, even if camouflaged as anti-Jewish, *liable to slow down or handicap the German executive measures;*
- (2) To make preparations for a comprehension among all nations of the executive measures against Jewry;
- (3) To make repeated reports about the possibility of carrying out more severe measures against Jewry in the various countries by using diplomatic means; and,

finally

(4) That as to the details of the state of the executive measures in various countries, which are to be kept secret, it has been decided not to enter them in the minutes of the meeting.

On 25 July 1944 Schleier of the Foreign Office reported that an extensive card index, comprising 40,000 names of Jews of all times and all countries, had been made available for the anti-Jewish campaign abroad "so as to serve our purposes," and that these index cards of the most important living Jews of all countries would be available and that the information bureau would shortly be in a position to deal with inquiries as to the origin and kinfolk of Jews or persons suspected to be Jews.

Steengracht von Moyland insists that this whole scheme was a wild idea of von Ribbentrop's and that nothing of substance ever arose from it, and explains the card index as being a mechanism to prevent persons who were not Jews from being charged as such. We cannot accept either explanation. The record discloses that the Office for Anti-Jewish Action Abroad embarked upon and conducted these functions. It was organized by and was

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subordinated to Steengracht von Moyland. His explanation of the Jewish card index is without merit. It did not purport to be a list of all Jews and assuredly it was not a list of non-Jews. It is perfectly clear that its proposed use was to identify Jews and their kinfolk in order to carry out the purposes of the office which he organized.

On 1 June 1944 Steengracht von Moyland received a memorandum regarding the major action of deportation against the Jews of Budapest whose deportation up to that time had been delayed and defeated because of Admiral Horthy's attitude, in which it was said that this would arouse greater attention abroad and cause violent reaction; that Germany's enemies would cry out and talk of manhunts and by the use of atrocity reports try to stir up hatred at home and in neutral countries. It was therefore suggested that these untoward events could be averted by creating external provocations and reasons, such as the discovery of explosives in Jewish homes and synagogues, the unearthing of sabotage organizations, revolutionary plots, attacks on the police, and illegal transactions aimed at undermining the Hungarian monetary system, which could then become the occasion for the great raid.

Steengracht von Moyland requested that Veesenmayer be informed of these situations and his opinion obtained. This was done.

On 6 June Veesenmayer reported that this important Budapest action had been fixed and the date arranged; that he thought the propagandistic preparatory measures would be futile since it was well known that for weeks already Jewish community houses and synagogues had been under close observation, and that Jewish property had either been confiscated or blocked, and that the Jews were very much restricted in moving about.

That the proposed deportation finally took place is well known. There was nothing in Steengracht von Moyland's action to show disapproval or any attempt to stop, hamper, or mitigate any operation. He consciously participated in the program.

The activities which he displayed in the Krummhuebel anti-Jewish propaganda mission indicate a state of feeling and intention which does not coincide with his present protestations. Although he did not originate the measures, he used his official

position to implement them and carry them out, and we find him guilty with respect to the Hungarian deportation program.

On 4 October 1943 Steengracht von Moyland reported on an interview he had had with the Swedish Envoy concerning Sweden's willingness to receive the children of Danish Jews. The Swedish Envoy stated that he had learned from his government that the action against the Jews in Denmark had started and

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that large scale actions were being carried out in which children were bound to be included, and the Swedish Government was prepared to accept these little children; that this suggestion was made in order to limit, as far as possible, the psychological repercussions to be apprehended in view of the close connections between Sweden and Denmark.

Steengracht von Moyland stated that Sweden was not properly authorized to take care of Danish interests, and the Swedish Envoy replied that they made no such claim but that the step was taken in order to exclude everything which might possibly have a psychological effect on the public. Steengracht von Moyland states that he then sharply criticized the Swedish press and said that he could not imagine what further reactions could be possible in Sweden after the newspapers had taken such an unheard-of tone, an attitude which might force Germany to answer in an unmistakable manner.

Steengracht von Moyland's explanation is that this was the only method available to bring this matter to von Ribbentrop's attention and that his purpose was to inform the Foreign Minister of Swedish public opinion and its possible effect on German-Swedish relations. If this had been the fact, it is difficult to understand why some word or hint would not have been included to the effect that it might be to Germany's interest to accede to Sweden's desires and to improve such relations, even though Sweden was not the Protecting Power. Germany at that time was dependent on Sweden for most important raw materials, and, too, her military position was markedly on the decline.

We find it impossible to accord to this communication the objects which Steengracht von Moyland claims. The communication contains not the slightest semblance of sympathy for or any desire to accede to Sweden's wishes, or a suggestion that sound foreign policy should lead to a serious consideration of it.

Steengracht von Moyland took office on 5 May 1943, and he testifies that von Ribbentrop had told him his tasks included three things:

- (1) That he must handle contacts with the diplomats in Berlin;
- (2) That he must, in time, discipline the Foreign Office; and,
- (3) That he must protect with ruthless energy the competency of the Foreign Office against all agencies.

He says he told von Ribbentrop that he presumed that in political aspects he would have a voice, which von Ribbentrop rejected, saying that that had been the old battle with von Weizsaecker, who always tried to interfere in politics, which were exclusively the concern of Hitler and himself, and that the Foreign Office and Steengracht von Moyland as its State Secretary would simply carry out such orders as might be received.

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On 29 April 1943 von Thadden of Inland II prepared a memorandum regarding the deportation of Jews from the Southeast, and particularly in Salonika, which was approved by Steengracht von Moyland on 8 May. The memorandum states that on 29 April 1943 instructions were issued to the German Legations at Rome, Ankara, Madrid, Bern, Budapest, Sofia, and Lisbon to inform the respective governments there of the extension of general measures against the Jews in the Salonika zone, and suggesting that they be recalled by 15 June.

He recites the attempts made by the Italians to prevent these measures being taken against Jews of Italian citizenship, and those who had lost their citizenship, but who were attempting to be repatriated as Italians, and Italy demanded that it be left to Italian authorities to ascertain Italian citizenship; that Inland II considered it inadmissible to comply with the Italian request unless political reasons should necessitate it; that the Finns and Swedes were also trying to help some Jews in their endeavor to leave the German sphere of power by granting them citizenship, and the Swedes had been notified that by the end of March recently acquired citizenship would no longer be recognized. Therefore, compliance with the Italian request would establish a precedent to which other states might refer.

Inland II therefore proposed that the Italians be informed that the question of whether Jews who were presently in possession of Italian citizenship would, of course, be left to Italian authorities; but that, as a matter of principle and to avoid setting a precedent, those Jews could not be granted exemptions from the general measures against the Jews who at present did not possess Italian citizenship, even in cases where petitions for restoration of citizenship were pending.

Steengracht von Moyland, in defense, states that this is one of the first reports rendered to him and he assumes that at that time he based his action upon the decisions theretofore made, and that it was only subsequently, as he became better informed, that he attempted to take measures to alleviate this and similar situations.

This question is best resolved, however, by examining his subsequent attitude and acts.

The record contains correspondence running from early May 1943 to the end of May 1944. A proposal had been made that Rumania permit the emigration of 70,000 Jewish children up to the age of eight, to Palestine, and Marshal Antonescu asserted that he had been informed at the Fuehrer Headquarters that Germany agreed, in principle, to this emigration. Killinger, German Minister at Bucharest, requested a definite decision. Inland II stated that permitting this emigration would be con-

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trary to the policy strictly adhered to, that is, not to permit Jews to emigrate from any state under German control or those of her allies; that the political department considered such emigration objectionable in view of the Arabian policy, and therefore, Inland II suggested that von Ribbentrop instruct Killinger to point out that no fundamental approval had even been given, and that it was merely intended to investigate whether this emigration of Jewish children could be approved.

The matter was also submitted to Eichmann of the RSHA who answered that this emigration of Jewish children must be opposed on principle, but if, in spite of his views, the emigration of 5,000 Jews (children) from the occupied Eastern territories was to be permitted, they should be exchanged for Germans interned abroad at the rate of four to one; that Germany did not want 20,000 old people, but those capable of reproduction and under 40 years of age, and that these negotiations must be

concluded quickly since the time was approaching when, as a result "of our Jewish measures," the emigration of 5,000 Jewish children from the eastern territories would be technically impossible.

Eichmann's words "technically impossible" meant but one thing: that the unfortunate little ones shortly would be dead. In the latter part of May 1943 Swiss Minister Feldscher submitted to the head of the legal department, Albrecht, the hope of the British Government that Germany might agree to the emigration of 5,000 Jewish people, 85 percent children and 15 percent adults, from Poland, Lithuania, and Latvia to Palestine, and inquired about Germany's attitude on the emigration of Jewish children from Germany, Denmark, and the occupied territories of Holland, Belgium, Greece, and Serbia.

Wagner of Inland II stated this was obviously part of the plan reported in the press to allow 30,000 to 50,000 Jewish children to emigrate to Palestine, "thus saving them from the extermination with which they are allegedly threatened;" he further states that the Bulgarian Government had given approval for humanitarian reasons since refusal seemed impossible, but had informed the German Legation that it intended to comply with the German wish that Jewish emigration be not permitted and would frustrate the Jewish emigration by creating technical difficulties. He further refers to the Rumanian situation and to Himmler's statement that Germany could not agree to the emigration of Jewish children from the German sphere of power and from friendly states unless young, interned Germans be permitted to return to Germany at an exchange figure not yet arrived at, but suggested the ratio of one Jew to four Germans; that the legal department would be pleased if the British inquiry could be used

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to resume discussions about returning interned Germans from Palestine and Australia, and to arrange for the safe conduct from the neutral territories, such as the Portuguese colonies, Argentina, etc., and perhaps for the return of Ethnic and Reich Germans from Paraguay and Uruguay.

Wagner proceeds to state that Inland II is of the opinion that the emigration of Jewish children is out of the question and, in view of Germany's Arabian policy, approval of their transfer to Palestine could not be given; and suggests that a counterinquiry be propounded to the British as to whether its government would allow interned Germans to return under safe conduct in return for exchange of Jewish children; and if exchange negotiations occurred Germany would, at least formally, express the wish that the emigrating Jewish children be sent not to Palestine but elsewhere; that the British inquiries be answered by all of the Tripartite states in the same manner.

Von Thadden on 1 June prepared a note for an oral report on Killinger's wire that representatives of the International Red Cross had asked Antonescu whether the Rumanian Government would support the emigration of Jews from Transnistria on Red Cross ships; that Antonescu disapproved of the concentration of Jews there and absolutely wanted to get rid of them, but replied that it would be a new situation for him if the emigration would not be in Rumanian ships but those supplied by the Red Cross.

Inland II suggested that Killinger be asked to urge Rumania to prevent the emigration even if the Red Cross supplied the necessary space and that the willingness of Germany to take the unwanted Jews off Rumanian hands and put them to work in the East should be expressed.



On 27 June 1943 Sonnleithner of von Ribbentrop's office forwarded to Inland II, via Steengracht von Moyland, von Ribbentrop's request that the question of emigration of Jewish children to Argentina, together with other pending questions of emigration of Jews from Germany's sphere of power, be investigated and that suggestions be made to von Ribbentrop about the further handling of the matter.

On 25 June von Thadden prepared a memorandum which was signed by Wagner and contained a proposal, worthy of Machiavelli, whereby the emigration be prevented by imposing impossible conditions, viz, that England agree to take the Jews into England instead of Palestine, and such willingness should be evidenced by a resolution of the House of Commons; that it was to be expected that the British would not accept the demands, in which case the responsibility should lie on her shoulders, and if, contrary to expectations, she should comply, this suggestion should

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be made available for propagandistic uses and would give Germany an opportunity to suggest that Jews be exchanged for interned Germans.

Inland II prepared a proposed answer to the Swiss Legation carrying out this idea and asked for comment. The political department approved Wagner's suggestion regarding the propagandistic value of the proposed reply to the Swiss Legation, but one of its divisions suggested that the phrase "in accordance with democratic, parliamentary practice" contained in the reply be omitted, as its presence would betray Germany's purpose to utilize the matter for propaganda.

Minister Ruehle of the Press and Propaganda Section of the Foreign Office offered the comment that the matter must be treated very carefully so that the propaganda offices of Germany's enemies would not be given any opportunity of making the German proposal look like a brutal attempt to blackmail or a cynical maneuver by which it was attempting to obtain indemnification for further measures against Jews under German rule, and that it must be taken into consideration that many anti-Semites abroad are having considerable misgivings about harsh treatment of the Jews; and whether it would not be wise to refrain from insisting that the Jews be taken into England, but only that they should not be transferred to Palestine or any other Arabian territory; and finally, that a more favorable impression would be given abroad if the demand for a resolution by the House of Commons was abandoned in favor of a guarantee by the British Government.

On 10 July Albrecht of the legal division pointed out that the British should be obliged not only to grant these Jews an entrance permit into England, but grant them permanent residence, and that it would not do to demand the passage of a resolution by the House of Commons because the British Government would point out that the Home Department, and not the House of Commons, was authorized to deal with the matter, as it would then appear that Germany, in order to make the plan fail, had made the request knowing it could not be complied with according to English law, and thus the propagandistic effect which the Germans desired to achieve would be jeopardized.

On 21 July von Thadden prepared a note which was signed by Wagner and went to von Ribbentrop via Steengracht von Moyland, in which the entire situation was reviewed and the views of the various divisions of the Foreign Office noted, and the technique of handling the matter prescribed. There is also the statement that "although one must count on the British Government's refusing to comply with the German demands, the Reich Leader

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SS should be requested to state what barter objects might, under given circumstances, be required should they be evacuated to the eastern territories for the time being.

On 12 October Wagner submitted another memorandum regarding a renewed French inquiry concerning Germany's attitude regarding the Argentine suggestions to take over 1,000 Jewish children, comments on the situation in Rumania and Bulgaria, and requested the Foreign Minister's opinion with regard to the previous memorandum. This was submitted via Steengracht von Moyland and initialed by him. On 28 October Wagner submitted a further memorandum which included a proposed answer to Minister Feldscher, which was the result of a discussion with Steengracht von Moyland, and, finally, von Ribbentrop determined that Feldscher should be given an oral reply and not a written one; that, although the British had not made clear what it was prepared to offer in return, the Reich was not averse to entering into negotiations, but it could not "lend itself" to permit the noble and gallant Arabs to be pushed out of Palestine and, as a condition precedent to negotiations, the British must agree to take the Jews into Great Britain and guarantee them permanent residence there.

Steengracht von Moyland took an active part in the efforts to block these plans. He wired the Legation at Bucharest to inform Marshal Antonescu that the emigration of Jews to Palestine would greatly displease the friendly Arabs; that it was expedient for the Rumanian Government to conform to the attitude of the Reich on the question of the emigration of Jews, and asked that the permission which had been granted by the Rumanian Government be rescinded.

On 29 March 1944 von Thadden reports on Feldscher's answer, which was that the children were to be taken to England but that an exchange was out of the question since the British Government was of the opinion that Germans could only be exchanged against subjects of the British Empire. He commented that the British had only declared their readiness to accept these children without making any statements concerning the length of their stay; therefore, it must be assumed that England desired only a temporary acceptance and intended to send them to Palestine later, and it must be concluded that Britain had rejected the German offer and that Feldscher should be informed orally, among other things, that Germany considers the Jews as asocial elements and since the British are interested in these asocial elements, the Reich government could imagine a third offer in the following manner: an exchange of Jews against persons not of German nationality but in whom Germany is interested, such as

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Irish nationalists, Indians, Arabs, and Egyptians who were arrested in the British sphere of influence.

On 2 May 1944 Feldscher again approached the head of the legal department concerning the emigration of 5,000 Jewish children and stated that the British Government wants to receive these Jewish children within the British Empire, outside of Palestine and the Near East. Von Thadden comments that the German Government must decide whether they are ready to give up these children under any circumstances without any compensation; that Germany had demanded a reception

in England, in order, should the matter be settled in a positive way, to promote anti-Semitism in England as a result of the immigration of the Jews, and the RSHA had given confidential information that *the only place where 5,000 Jewish children considered for emigration can still be found is the ghetto of Litzmannstadt, but that this ghetto would soon be liquidated under Himmler's direction.* This memorandum went to von Eibbentrop via Steengracht von Moyland.

How any one reading this correspondence and having taken part in these conferences, and particularly being aware of the passages here just referred to, could have had any doubt that the Jews, as a race, were being exterminated, is beyond our comprehension.

Finally on 27 May 1944 von Ribbentrop ordered that at present nothing further be done in the Feldscher matter.

It would be difficult to conceive of more flagrant bad faith than that which was carried out in these negotiations. Here at least is one occasion where von Ribbentrop, as Foreign Minister, asked for advice of his Foreign Office; here was the opportunity for the Foreign Office and its State Secretary to give good advice instead of bad; to point out how the improvement in German foreign relations and its rehabilitation in the eyes of the world would be possible by at least permitting children to be saved from extermination. But every step which the Foreign Office took, every recommendation that it made, was directed to block efforts made by leading countries of the world, neutral as well as enemy states, to permit little children to come unto them and to defeat the efforts of the Good Samaritans and turn their offers into Nazi propaganda. Steengracht von Moyland was a party to this; he must bear the responsibility. He should be and is held guilty under count five. *Danish Jews.*—On 1 October 1943 Best, Minister and Plenipotentiary to Denmark, telegraphed the Foreign Office, for immediate transmittal to von Ribbentrop, that the Danish Jews would be evacuated and would be arrested on the nights of the first and

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second and sent to Germany. Upon receipt, this telegram was delivered to and initialed by Steengracht von Moyland. He had therefore been informed of the project. His defense takes two courses: first, that Best, in addition to being Minister to Copenhagen, was also Reich Plenipotentiary, and in that latter capacity he was not subject to the Foreign Office and his actions against the Jews were in his capacity as Reich Plenipotentiary; and, secondly, that Best himself opposed and endeavored to prevent the deportation from taking place.

Plenipotentiary powers, when attached to those holding diplomatic positions, are not unusual. They indicate that the diplomatic representative has direct power to bind his government and that his decisions do not require approval by his department before becoming effective.

The record does not disclose, other than by the claims of the defendants involved, that Best had split official powers and divided loyalties and responsibilities. He was not a Reich commissioner, that is, one who was the responsible governing head of the territory, such, for instance, as Rosenberg in the East or Frank in the Government General, and he had neither tactical nor operational command over the Wehrmacht, but he was theoretically the highest political voice in occupied Denmark.

Whether to strengthen his own position or cloak himself against attacks made on his policy, it was he who suggested and planned and executed the deportation of the Danish Jews. He kept the Foreign Office and Steengracht von Moyland advised, and

there is no objective proof that his superior, Steengracht von Moyland, disapproved or objected to the planned evacuation, notwithstanding the fact that the foreign political policy so involved was unquestionably one as to which valid and readily available objections, which might well have been apprehended and understood by Hitler, Himmler, and von Ribbentrop, clearly existed. That Best's heart was not in his work is evidenced by the fact that with his knowledge, and at least tacit consent, warnings were given by German officials to Danish governmental circles, and also to the Jews, and thus the vast majority of them escaped deportation.

Steengracht von Moyland's fault, if any, arises from the fact that it does not appear that he took any steps to prevent what was obviously a flagrant and unsupportable violation of international law. However, we are not prepared to say, in a situation as opaque as this, that he gave any affirmative support to the program, and it may be the fact that Best was acting on orders from Hitler and Himmler which Steengracht von Moyland could not overcome. This is not so unreasonable as to be rejected.

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Under these circumstances, he must be given the benefit of the doubt and as to this charge we find that his guilt is not proven beyond a reasonable doubt and therefore he must be and is exonerated.

*Slovakia.*—In July 1943 the defendant Veesenmayer was authorized, on his next trip to Pressburg [Bratislava], to discuss with Tiso Germany's interest in the final solution for the remaining Slovakian Jews. While Steengracht von Moyland saw this document and was directed by von Ribbentrop to inform Minister Ludin about Veesenmayer's proposed trip, it does not appear that he did anything more than transmit von Ribbentrop's message to the German Minister. He did not originate, implement, execute, or otherwise further the deportation of Slovakian Jews and should be and is exonerated with respect to this incident.

*Hungary.*—Steengracht von Moyland had nothing to do with Veesenmayer's appointment as Minister and Reich Plenipotentiary to Hungary, nor with his early assignment to make investigations and report on the political situation there. Of course, he knew what Veesenmayer's mission was and he knew of the terrible mass deportations which took place, but Veesenmayer was acting partly under von Ribbentrop's orders and, except insofar as Steengracht von Moyland took an affirmative part in the matter, he should not be held responsible.

There is, however, at least one instance where this occurred. On 29 June 1944 Veesenmayer requested instructions as to proposals made by the Swedish, Swiss, and American Governments that certain groups of Jews be permitted to emigrate. The first, covering 400 Jews, was the Swedish request to permit their emigration either to Sweden or Palestine. There was a Swiss request involving 10,000 children plus 10 percent adults to act as escorts, and three other requests involving smaller numbers. The American War Refugee Board requested that Jewish children under 10 years of age be permitted to emigrate to Palestine. Hungary desired to accept the American proposal. Inland II recommended that Veesenmayer request the Hungarian Government to reply to the Swiss and Americans that the emigration to Palestine could not be agreed to, since Palestine was in Arabian territory and Hungary could not be a party to pushing the Arabs from their own homes. It was further suggested that such a reply would delay the matter for 2 or 3 weeks, and by that time the Jewish action—that is the completion of the deportations from Hungary—would have been finished and intervention would thus be useless. Steengracht von Moyland saw and

initialed this, yet apparently made no effort to combat this cruel and unnecessary measure. The excuse, given from time to time, of Germany's fear of dis-

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pleasing the Arabs, was not made in good faith, but was a mere blind behind which the campaign of deportation, slave labor, and murder could be carried on. Swiss and Swedish proposals were made in August 1943, and again Inland II of the Foreign Office made the same recommendation which was submitted to Steengracht von Moyland, and then through him transmitted to von Ribbentrop.

Inland II was subordinated to Steengracht von Moyland. When, without comment or objection, he transmitted this to von Ribbentrop he thereby adopted these recommendations. He is responsible, therefore, for its actions which implemented the deportation and extermination of the Hungarian Jews. As to this matter, he must be and is found guilty.

*Catholic Church.*—That the Nazi regime early embarked on a campaign of persecution of the Catholic Church, its dignitaries, priests, nuns, and communicants is established beyond a doubt. It did not consist of isolated acts of individual citizens, but was a definite governmental plan. Its purpose so far as German Catholics were concerned was to separate the worshippers from the Church and its priests, destroy its leadership, to the end that communicants should become subservient to Nazi principles and obedient only to the commands of Hitler, as is shown by Bormann's decree of June 1940.

In the occupied territories the plan had an additional feature, namely, that of removing priests and thus depriving them of any opportunity to give any religious comfort and teaching to the peoples of those countries. A general statement of what occurred is to be found in the announcement of the Pope made in 1945 (3268-PS, Pros. Ex. 2115):

*"\* \* \* there was the dissolution of Catholic organizations; the gradual suppression of the flourishing Catholic schools, both public and private; the enforced weaning of youth from family and church; the pressure brought to bear on the conscience of citizens, and especially of civil servants; the systematic defamation by means of a clever, closely-organized propaganda of the Church, the clergy, the faithful, the Church's institutions, teaching, and history; the closing, dissolution, confiscation of religious houses and other ecclesiastical institutions; the complete suppression of the Catholic press and publishing houses.*

*"\* \* \* the Holy See itself multiplied its representations and protests to governing authorities in Germany, reminding them in clear and energetic language of their duty to respect and fulfill the obligations of the natural law itself that were confirmed by the concordat."*

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A more graphic picture is found in the testimony of Father Siudzinski, a Polish priest, and of Father Thoma, a German priest. No attempt was made by the defense to question the accuracy of their testimony.

Father Siudzinski lived and performed his priestly functions at Bromberg in the Warthegau. On 2 November 1939 he was called to the regional council office where he and 30 other priests were arrested and taken to the concentration camp at Stutthof. No charges were preferred against them, and they were never told the reason for their arrest.

In April 1940 he was transferred to the concentration camp Sachsenhausen, and in December 1942 to that of Dachau. At the latter place from 1,500 to 1,600 priests

were confined, of whom 850 or 860 died; during the time he was in Sachsenhausen 80 to 100 died, partly by reason of brutal treatment administered by the guards, while some 300 were exterminated in the gas chambers and the furnaces which were used for the purpose of extermination.

In 1942 throughout the 10 days of the Easter Church Holy Days they were subjected to punitive exercises, and those who were physically unable to continue this torture were beaten and many died. In these camps were Roman Catholic priests, not only from Germany and Poland, but from France, Belgium, Holland, Luxembourg, Yugoslavia, and Czechoslovakia.

Father Thoma was a German priest who, because he permitted several Polish agricultural workers to attend divine services, was arrested in 1941 and thrown into the Dachau concentration camp where there were already confined many Catholic and Protestant priests.

Early in this Party program the Poles deported to or working in the Reich were permitted to attend religious services. Later they were only permitted to occupy certain benches in the church, and finally not permitted to enter the church at all. These Poles were not voluntary workers but had been sent to the Reich and distributed all over the country.

About 2,500 priests were interned at Dachau between the date of Thoma's entrance in 1941 and the end of the war. Approximately 300 died of starvation, and the witness himself lost 65 pounds in weight; 300 more were exterminated in the gas chambers, and many priests who became old and sickly were loaded into the "Ascention" transports and never heard from again; 400 more died of diseases, deprivations, and mistreatment. At least 40 percent of the priests in the camp lost their lives. In addition to Poles and Germans, there were French, Dutch, Belgian, Luxembourg, Hungarian, Italian, Swiss, Danish, and Yugo-

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slav priests. The Austrian priests were brought there as early as March 1938 and were most atrociously and abominably treated, and so terrified were they that, whenever an order came from the SS, they would suffer complete physical collapse. He was told by a Polish priest in the camp that within a few weeks of the war over 2,000 Polish priests were executed in Poland.

Even if there were no Hague Convention, we would have no question in declaring that the persecution of churches and clergy constitute a crime against humanity; but Articles 46 and 56 of the Hague Convention of 1907 [Annex to Convention No. IV], Laws and Customs of War on Land, specifically provides:

*"Family honor and the rights, the lives of persons, and private property, as well as religious convictions and practices, must be respected. Private property cannot be confiscated.*

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*"The property of municipalities, that of institutions dedicated to religion, charity, and education, the arts and sciences, even when State property, shall be treated as private property.*

*"All seizure of, destruction or willful damage done to institutions of this character, historic monuments, works of arts and science, is forbidden, and should be made the subject of legal proceedings."*

We hold that crimes against humanity were committed on a large scale, that they were planned and were a part of the program adopted as a matter of policy by the Third Reich.

The real question involved is whether, and if so to what extent, these defendants were a party to, aided or abetted, or took a consenting part therein, or were connected in the plans or enterprises involving their commission.

On 23 July 1938 Kerrl, Minister for Ecclesiastical Affairs, wrote the defendant Meissner that Sproll, Archbishop of Rottenburg, was the only German bishop who did not take part in the plebiscite of 10 April; that he had delivered a series of "damaging" sermons by reason of which demonstrations were made in front of his palace; and the government of Wuerttemberg concluded that the bishop could no longer remain in office, desired him to leave the Gau, and would see to it that all personal and official contacts between him and the State, Party offices, and the armed forces would be denied; that Kerrl had taken the matter up with the Foreign Office which, on 18 May, had directed the German Embassy at the Vatican to urge the Holy See to persuade the bishop to resign; that no answer had yet been received and the bishop had returned to his palace, and accordingly a great demonstration had been made against him.

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In passing it may be remarked that these demonstrations were staged by the Nazi Party and were greatly resented by the people of Rottenburg.

Kerrl further stated that, if the Vatican refused to consent to the bishop's resignation, he would have to be exiled or suffer a complete boycott.

Rome did not react favorably, and the Party then organized a mob which sacked the bishop's palace and mistakenly laid violent hands on Bishop Grober who, with Bishop Sproll, was engaged in religious services in the chapel. The inhabitants of Rottenburg were quite hostile, and the governor proposed taking measures to prevent any demonstrations of loyalty to the bishop.

On 15 August Woermann reported to von Ribbentrop, via von Weizsaecker, the results of a conference had with Minister Kerrl and others regarding the matter, in which it was unanimously agreed to have the Gestapo expel the bishop from Wuerttemberg if he did not voluntarily withdraw. Woermann requested that von Ribbentrop, if he did not agree to this procedure, should confer with Kerrl.

On 27 October Woermann filed a memorandum regarding the position and functions of the Germany Embassy to the Vatican, mentioning the Sproll case, and said (NG-6610, Pros. Ex. 2119):

*"It has not yet been decided by what method the untenable situation resulting from the continued existence of the Reich Concordat and of the Laender Concordat, with their stipulations which are, to a large extent, unsuitable to National Socialist Germany, is to be alleviated. This problem will have to be solved sooner or later. It will involve important duties for the German Ambassador to the Vatican even though the concordats are set aside and an autonomous German solution is substituted. Had the Ambassador taken part in Mr. von Papen's negotiations in connection with the concordat it is certain that fewer concessions would have been made."*

After the outbreak of the war three Polish bishops, including Cardinal Hlond, left Poland, and when the Church requested that they be permitted to be returned, Woermann informed the German Embassy at Rome that the authorities could not possibly permit any of them to return because of their anti-German attitude, or to permit them again to fulfill the position of a bishop.

The German Ambassador transmitted this message to the Vatican, which asked for reconsideration.

On 22 October 1939 von Weizsaecker wired the Ambassador to the Vatican that the return of the cardinal was out of the question even at a later date, nor could the former Nuncio Cortezi again

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take up his charitable work, or Bishop Radkowsky be returned to his diocese.

On 29 November 1939 Woermann submitted to von Weizsaecker a memorandum of his conversation with the nuncio who had given information regarding atrocities in Poland. Woermann advised him not to go to high-ranking German personalities who would not perhaps listen to him as calmly as he, Woermann, had, and further informed him that as nuncio he had no official right to discuss such matters. He further stated that he had informed the nuncio that he believed the reports to be false which the latter contested by emphasizing his caution in evaluating reports, and requested Woermann to consult with von Weizsaecker.

On 11 December 1939 Bergen, German Ambassador to the Vatican, reported the criticisms being made of the German church policy and mentioned the reports of persecutions of clergymen in Poland and the prohibitions of the ceremony of the Mass and the difficulties of the churches in Poland. Von Weizsaecker received a copy.

On 6 June 1940 von Ribbentrop asked Woermann to report and thereafter confer with him on the present state of GermanVatican relations. The latter reported on 6 January that secretly "we" regard the Reich Concordat and the Laender Concordat as antiquated; that many of the fundamental principles are fundamentally opposed to the basic principles of national socialism, such as schooling and other education, and that the Laender Concordat, which conformed with the Reich Concordat, was incompatible with the German political structure, since the Laender had lost their sovereignty and both the Reich and Laender Concordats could no longer be regarded as the legal norm in domestic policy, but that an explicit declaration of "our" attitude to them had not as yet been given to the Vatican; that the reincorporated territories, such as Danzig, the Sudetenland, and the Warthegau were without a concordat, and in these areas "we" were not bound to the Vatican and "we" decline an extension of the validity of the concordat to these territories; that the Vatican has submitted the following complaints: alleged violation of the concordats, especially on the question of education; procedure on the appointment of bishops and apostolic administrators; the case of individual bishops such as Sproll; actions against the churches of Austria; compulsory evacuations; closure of church institutions; arrest of priests and members of orders; and, since the occupation of Poland, representations against the arrests and sentencing of Church dignitaries.

Woermann's final conclusions were that the upshot would probably be breaking off the concordat and regulating the legal posi-

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tion of the Catholic Church in Germany, but that as long as the war continued the time was not ripe; that a certain degree of compromise, at least for the duration of the war, should be made for reasons of foreign policy and that the radical policy against the Church, particularly in Austria, should be stopped; that measures against the clergy in Poland were unavoidable because leading members of the clergy, as well as other leading personalities in the former Poland, must be eliminated, but that they could be moderated in form; that the Vatican's contribution must consist in changing the attitude of the Vatican press and refraining from encouraging Catholic clergy in Germany in their negative attitude toward national socialism, banning provocative statements by the clergy abroad, and the adoption of a different tone in the Vatican's



statements, especially in connection with Poland.

On 25 January 1940 von Weizsaecker wrote Bergen concerning improving relations with the Vatican and, as his personal opinion, said "no general agreement" could be reached at present; that this applied, in particular, to all questions governed by the concordats; that proceedings against the Polish clergy could not be changed in essence, but might be brought to some kind of conclusion and that the former procedure could certainly be improved; that the only present task was to avoid creating any points of friction and gradually to improve relations by attending to certain individual complaints. He complained about the "stinging" tone used by the Vatican and its members.

On 15 February 1940, Woermann reported to von Weizsaecker regarding a conference with the Nuncio, to whom he had given information concerning the Bishops of Plock and Leslau (Wloclawek), and that he told the nuncio in a general way that, in accordance with the wishes of the Security Police and SD, the fulfillment of his wishes to have the Bishop of Leslau restored to his position would meet with difficulties so long as Cardinal Hlond acted as Archbishop of Poland to Rome and displayed an attitude hostile to Germany.

On 4 March 1940 von Weizsaecker reported that the nuncio had spoken of the large number of priests in the Sachsenhausen concentration camp and his desire to speak and visit with them and the request that he be permitted to bring them prayerbooks and hold Mass in the camp.

On 3 July 1940 von Weizsaecker reported that the Nuncio inquired as to the reasons for imprisoning the suffragan of Lublin in a concentration camp and asked if he could not be interned elsewhere and also inquired as to the fate of the 80-year-old Bishop of Plock.

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These are examples of the complaints of the Catholic Church and of the actions of the Foreign Office with regard to them.

We have referred to the persecution of Bishop Sproll of Rottenburg. These incidents occurred in 1938. The Bishop was persecuted on both religious and political grounds. It is our opinion that the persecution of Catholics, laymen and priests, was a part and in aid of Hitler's program of aggression, as by persecutions of this kind he expected to be able to crush all resistance and to unite all Germans in an unwavering and uncritical obedience to his wishes and thereby enable him to carry out his planned aggressions freed from internal resistance.

The only connection which von Weizsaecker and Woermann had with the matter arose from the fact that the Minister of Ecclesiastical Affairs requested the Foreign Office to ask the Vatican to influence the bishop to resign. This it did, but the Vatican quite properly refused so to do, and thereupon a conference was had in the Office of the Minister for Ecclesiastical Affairs, in which Woermann took part and reported that it was the unanimous opinion of those present that if he did not resign he should be removed from his diocese by force, if necessary. This report was signed and initialed by von Weizsaecker.

It is clear, however, that the Foreign Office was neither the originator nor were they concerned as actors, aiders, or abettors in this program. It was faced with a *fait accompli*. The persecution, outrageous as it was, was started and carried out by Party leaders over whom none of the Foreign Office defendants had any control. In

fact, the whole matter lay outside their official competency, and. was that of the Minister for Ecclesiastical Affairs and the local authorities. It is only so far as the problem dealt with relations of Germany with the Vatican that they could speak. They could not provide protection for the bishop.

It is apparent that even those responsible for this outrage felt that they had succeeded in getting themselves in an inextricable position where they could not proceed with their plan without encountering insurmountable difficulties and where they could not afford to recant. The solution which was agreed upon, while far from being either good or wise, was perhaps the only one which, under the circumstances, was open under Nazi policy; that if the bishop did not resign he was to be requested to leave and, if necessary, removed from his diocese by force but not placed under arrest.

To this solution Woermann agreed. It would, of course, have been a preferable and more admirable thing to have condemned what had taken place and insisted that, as a matter of foreign policy, the bishop be permitted to remain in his diocese. Never-

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theless, when we appreciate the realities of the situation and from what is disclosed, not only by testimony of representatives of the Vatican but from contemporaneous, official documents regarding the actual policy and the action taken by the defendants of the Foreign Office, we are convinced that at the time they did the best, perhaps the most, they could to prevent the persecution of the Church, its priests, and its communicants. It is quite true that in one or more cases Woermann suggested that the concordats were no longer practicable in view of the political situation, but he did not recommend that they be abrogated, but that such action be postponed. His recommendation evidently was approved, and the concordats remained in effect, although without question other agencies of the Nazi government paid little or no attention to their terms. That this is the fact is shown by numerous documents offered on behalf of the defendant von Weizsaecker and the affidavit of Father Gehrman who, from 1925 to 1945, was secretary of the Apostolic Nuncio in Berlin. This is also shown by the Woermann memorandum of 22 November 1939 and his memorandum of 21 April 1942 which ended with the words (*Woermann 149, Woermann Ex. 90*):

*"For these reasons I consider it necessary that all such measures directed against the Church be suspended or discontinued until the end of the war."*

See also the memorandum of du Moulin of 9 March 1939; that of von Weizsaecker of 16 August 1941; the memorandum of Woermann and Haidlen of 24 May 1939 and 4 March 1940; the Haidlen and von Weizsaecker memoranda of 10 December 1940, 17 January 1941, and 5 February 1941; the Haidlen memoranda of 11 February and 6 March 1941; and the Hoffmann memorandum with Woermann's note of 16 September 1942.

It is clear that the Foreign Office defendants were not engaged in a program of persecution, but whenever and wherever possible they sought to modify, gain as many exceptions as they could, and mitigate those which could not be changed or modified.

We must not forget that guilt is a personal matter; that men are to be judged not by theoretical, but by practical standards; that we are here to define a standard of conduct of responsibility, not only for Germans as the vanquished in war, not only with regard to past and present events, but those which in the future can be reasonably and properly applied to men and officials of every state and nation, those of the victors as well as those of the vanquished. Any other approach would make a

mockery of international law and would result in wrongs quite as serious and fatal as those which were sought to be remedied.

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Where, as in this case, the defendants charged were not the originators of the unlawful policy, where they had no power in themselves to change it, where they had no part in implementing it or executing it, and were both in principle and in deed against it, no conclusion of guilt may be properly reached.

The defendants von Weizsaecker and Woermann should be and are found not guilty of charges in count five relating to persecution of the Church.

There is no evidence that the defendant Steengracht von Moyland participated in the persecution of the Church, its priests, or communicants. He is therefore exonerated in that matter.

### BERGER

Berger became Chief of the Main Office SS (SSHA) on 1 April 1940. In 1938 he established the Replacement Office of the General SS in the SS Main Office (SSHA). On 1 October 1939 he became chief of this replacement bureau. On 1 January 1940 the replacement office was transferred to the replacement office of the Waffen SS.

Although Berger, in his interrogations prior to trial, said he began with the SSHA on 1 January 1940, he claims that this was an error, and he actually became head of it on 1 April 1940, and we accept his statement with respect thereto.

In July 1942 he became Himmler's liaison officer for the Ministry for Eastern Territories and, although he was slated to become state secretary for that Ministry, this never materialized, but he became chief of its political directing staff. There is a dispute as to how long he held this position; he contends that he only gave it part time attention, signed no orders, and was not responsible for any dispositions made by that office.

On 1 October 1944 he was appointed Chief of Prisoner-of-War Affairs but not of the transient camps or those in operational areas or in Norway. Transient camps are those in which enemy soldiers taken prisoners are temporarily confined until they can be transferred to permanent prisoner-of-war camps in the rear. He was appointed Commander of Military Operations in Slovakia on 31 August 1944, stayed there for 2 weeks crushing the revolt which had broken out in Slovakia, was then recalled to the field command staff of Himmler and returned to Slovakia for 5 or 6 days, and was then transferred back to Berlin.

Berger's attitude toward Jews is shown in the agreement which he made, acting for Himmler, with the Minister of the Eastern Territories in March 1943 (NO-1818, Pros. Ex. 2328):

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*"The aim of this indoctrination is to convert the non-German members of the Indigenous Security Units to convinced cofighters against bolshevism and for the all-European New Order. Special attention is to be paid to the following points:*

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*"2. Tying up with the strong instinctive anti-Semitism of the eastern nations; the Jewish face of bolshevism; Jewry as motive power behind bolshevism, as well as the capitalism of the Western Powers; Jewish aims for world domination and the various ways toward it; world revolution and capitalism; the nationalist disguises of Jewish bolshevism; Stalin's army as a power instrument to gain Jewish world domination with the blood of other peoples \* \* \*.*

"3. *The Reich's and its Fuehrer's fight against world Jewry*

"4. *Realization of the new European community of nations under the Reich as the leading, protecting, and marshalling power; the common work and fight of the European nations against the Jewish aims for world domination; causes, meaning, and underlying reasons of the war; Jewry as the instigator of the First and Second World Wars; Germany and Europe's allies in a common front in fight against Jewish-capitalist and the Jewish-Bolshevist powers; the hard necessities of the war; common work, common sacrifices, and common fight for the new Europe.*"

As Chief of the SS Main Office, Berger prepared and distributed "guidance pamphlets" to be used by the SS organizations. Some of them discussed anti-Semitism, both specifically and in connection with other problems. The following is a sample (NO—2819 (a), *Pros. Ex. 2350; NO-2501, Pros. Ex. 2353*):

*"We National Socialists believe the Fuehrer when he says that the annihilation of Jewry in Europe stands at the end of the fight instigated by the Jewish world parasite against us as his strongest enemy. But until this annihilation is completed, we must always remember that the Jew is our absolute enemy, stopping at nothing, who, with respect to us, has only one goal, our Complete annihilation.*

*"It is our task not to Germanize the East in the old sense, that is, to bring the German language and German laws to the people living there, but to take care that only people of genuine Germanic blood are living in the East." [From the SS Main Office pamphlet, *Safeguarding Europe.*]*

The SS also printed and published a pamphlet called "The Subhuman," from which the following is a quote (NO-1805, *Pros. Ex. 2357*):

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*"The subhuman, this apparently fully equal creation of nature, when seen from a biological viewpoint with hands, feet, and a sort of brain, with eyes and a mouth, nevertheless is quite different, a dreadful creature, is only an imitation of man with man-resembling features, but inferior to any animal as regards intellect and soul. In its interior, this being is a cruel chaos of wild, unrestricted passions with a nameless will to destruction, with a most primitive lust, and of unmasked depravity \* \* \*. Now here they come again, the Huns, caricatures of human faces, nightmares that have come true, a blow in the face of everything good, allied with jungle nature and the scum of the whole world, but the suitable tools in the hand of the wandering Jew, that master of organized mass murder. Only for the dumb are they camouflaged in the dress of the bourgeois \* \* \*. This time the Jew wanted to be fully certain. He appointed himself as officer, as commissar, as decisive leader of the subhumans \* \* \*. The beasts in human form, the true leaders of the underworld, sowed by Ahasuerus who originates from the dark, stinking ghettos of eastern cities."*

Berger asserts that he did not like this pamphlet, and that it was thrust upon him by Himmler, and that he did not father its distribution. However, on 31 March 1942 he wrote Himmler reporting a visit to Reich Party Treasurer Schwarz, where he showed him this pamphlet and asked for his support, stating that Schwarz liked it very much and said that every German family should have it, and he would support its circulation.

The following is an extract from a pamphlet prepared by the SS Main Office at Berger's orders for distribution to Wehrmacht units in the East (NO-2818, *Pros. Ex. 2349*):

*"This war is the Jewish world fight against the liberation of mankind from the spiritual and material servility (sic—servitude) of all Jewry, while on Germany's side, it has become the fight for the liberation and maintenance of mankind against all attempts of Jewish world domination.*

*"For us there exists only one decision: fight against bolshevism and fight against the plutocracies. Our victory over both means the annihilation of Jewry and therefore the pacification of the nations and securing a new world order."*

Another example of the kind of material which was found in this ideological training material is a letter of an SS Untersturmfuehrer to his wife (NO-4404, *Pros. Ex. 3504*):

*"Together with three other soldiers I received an order tonight to shoot two members of the Red Army so that they*

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*cannot be of danger to us any more. They were ragged and apathetic, just like animals. I give a spade to each of them, and they begin to dig their own graves, and I light a cigarette in order to calm down. There is no sound—Russians have no souls, they are animals, they became animals during the past years. They don't beg for their lives, they don't laugh, they don't cry. Three guns are pointed at them. All of a sudden one of them starts to run, but he does not get far, 20 meters, he is dead. The other does not move; he steps into his hole, and then he is dead, too. Two minutes later, the earth covers everything—we light another cigarette."*

Berger admits that this is an extract from one of his pamphlets.

The witness von dem Bach-Zelewski was called by the prosecution and testified that he was a Higher SS and Police leader assigned to Russia Center in 1941, and he held that position up to 1942. Early in 1943 he became a commander of First Motorized SS Brigade and chief of the anti-partisan units. This position he held during the year 1943,

He testified to having heard Himmler's infamous Poznan speech in 1943, and that Berger was there and that [1919-PS, Prosecution] Exhibit 2368 is that speech.

With regard to the Dirlwanger unit, he testified that it was subordinated to him in 1942, and that a regiment of the brigade was assigned to him in 1944 for approximately 6 weeks; that Dirlwanger had an authorization from Himmler which made him the competent judicial officer over his men, and that there were special legal provisions in force for this one battalion, and Dirlwanger could himself pass the death sentence which other SS officers in other SS units could not do; that Dirlwanger had an identity card and a Wehrmacht pass showing that he was a member of the SS Main Office and that his competent judicial officer was Berger; that the Dirlwanger unit came to Russia fully equipped with equipment from the SS Main Office of Berger; that Dirlwanger reported to the witness whenever he went to see the Chief of the SS Main Office (Berger) and showed him the correspondence between Berger and Dirlwanger, and also reported the results of the conferences and of the arrival of shipments of equipment and supplies; that Dirlwanger was a close friend of Berger's who had procured his position; that the official connections between the two were of an intimate nature. He testifies that after the notorious Kaminsky was executed a deputy of Berger's from the SSHA came and reorganized his brigade, which was subordinate to Berger; that Dirlwanger called Berger

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by his first name, which was most unusual; that the witness and other SS officers looked upon Berger as Himmler's mouthpiece, and that Berger was the power behind the throne so far as Himmler was concerned; that the Dirlwanger unit and other anti-partisan units were under the witness's tactical command; that in 1943 continual complaints were made about Dirlwanger's behavior and that Lieutenant General Schwarznecker made complaints that Dirlwanger had shot a large number of people in reprisal measures.

He states that Kube's staff preferred more serious complaints against Dirlwanger, which the witness reported to Berger. He admitted that the subordination of Dirlwanger to Berger only referred to recruiting, equipping, arming, and supplying everything that the troops needed, except munitions which they got from the Wehrmacht and that so far as combat was concerned, Berger never had anything

whatsoever to do with it.

With regard to Himmler's Poznan speech, he does not think that the word "extermination" was used with regard to Jews. He testifies that the Kaminsky brigade was subordinate to the SSHA in the same manner as the Dirlwanger brigade, but that Berger was not responsible for the assignment of the brigade to Warsaw, out of which arose the affair which led to his arresting Kaminsky, having him court-martialed, and shot.

Defense witness Walter Hennings testified that Berger was the competent judicial authority for offenses against the general penal code and against the military penal code for the SS and the Waffen SS, but he was not superior to the Higher SS and Police Leaders, who had their own judicial authority, but in these matters their jurisdiction overlapped; that both before and after 1943 the SSHA chief was merely competent as judicial authority over the members of the office who were in that office, and not those located in other places, such as for instance, at the front. He admits that the Dirlwanger unit was composed not only of poachers, but also of purely criminal offenders, and if Dirlwanger had committed any atrocities it was Berger's duty to have him investigated and conduct proceedings against him.

On 10 October 1943 the RSHA issued orders that in all matters concerning "mainly the East," the Chief of the SSHA, SS Gruppenfuehrer (Lieutenant General) of the Waffen SS Berger (who was appointed by Himmler as liaison officer to the Ministry for the Eastern Territories), should receive a draft or be informed in an appropriate way.

On 17 July 1942 Berger reported to Himmler that after discussions with Gauleiter Meyer he had been promised that he, Berger, would receive all files of the Eastern Ministry for the

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personal, confidential information of Himmler. It thus appears that Berger had obtained an informer in Rosenberg's confidential staff.

On 14 August 1943 Berger received from Himmler, with the request that he confidentially inform Rosenberg concerning the same, the report of Obersturmbannfuehrer Strauch of 20 July, concerning Reich Commissioner Kube who had strongly objected to Strauch's arrest of Jews employed by Kube, asserting that it was a serious violation of his jurisdiction, and that neither Himmler nor von dem Bach-Zelewski had authority to interfere with that jurisdiction, and while Kube could not by force prevent the SD from carrying out the arrests, he would, in the future, refuse to cooperate and would no longer permit the Secret Police to enter his official building. In this conference Kube called attention to the mistreatment of three White Ruthenian women in a sadistic way by SS Officer Stark who, he claimed, had unlawfully taken away a suitcase of jewels and valuables. Strauch informed Kube that he had investigated the matter and that there was no reason to instigate any proceedings against Stark who had acted on Himmler's orders; that Kube protested that Himmler had no right to order them to take any valuables away.

Strauch even complained that Kube had raised objections because expert physicians had removed, in a proper way, the gold teeth fillings from the mouths of the Jews who had been designated for special treatment, and stated that this was "unworthy of a German man of the Germany of Kant and Goethe," and that the reputation of Germany was being ruined in the whole world. Strauch virtuously objected that "we," in addition to having to perform this nasty job, "were also the targets of mud slinging."

(NO-4317, Pros. Ex. 2373.)

The second of these reports, dated 25 July, from Strauch to von dem Bach-Zelewski regarding Kube's attitude states, namely, that the latter had displayed an absolutely impossible attitude toward the Jewish question and was hostilely disposed to the SS; that his area commissioner, Hachmann, on the same question was impossible, and he was being retained by the Gauleiter despite all warning voices; that he had complained about a Wachtmeister who had supposedly shot Jews as "swine."

Strauch proceeds to give a number of examples, and states that Kube had gone so far as to thank a Jew who, at the risk of his life, had gone into a burning garage and saved the latter's car; that when an action was planned against the Jews in Minsk Ghetto (of which Kube had been previously informed), and which was to be accomplished by telling the Council of Elders that 5,000 Jews of that area were to be resettled, Kube disclosed the actual

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intention of the Secret Police, and it was an established fact that he had used his knowledge to attempt to rescue the Jews; that therefore they had to be taken by force and the use of firearms, at which point of the operation Kube appeared and overwhelmed the commander with abuse concerning the unheard-of-happenings which allegedly occurred when the Jews were herded together; that the Gauleiter used very rough language which considerably hurt the sensitive feelings of the commander; that Kube was said to have gone so far as to distribute candy to Jewish children; and that on 4 March 1942 he had threatened to accuse SS Obersturmfuehrer Burckhardt of theft because the latter had taken two typewriters from the ghetto without a regular receipt; that Kube had evidently complained to Rosenberg about mistreatment of Jews in Minsk; that, while Kube made anti-Jewish speeches, his actions belied his words and were only made with the intention to cover himself for later days.

Strauch stated that apparently Kube assured the German Jews, who had arrived at the ghetto before Strauch's time, that their lives and health would be preserved; that he had praised the works of the Jewish poet Schmueckle, and the music of Mendelssohn and Offenbach; that he had reprimanded a police officer who struck a Jew in the face who was in possession of the Iron Cross; that in the course of a large-scale action in the ghetto, it had been learned that the security service of the German Jews, consisting mainly of former participants in the war, were willing to oppose the action by force of arms, and to avoid the shedding of German blood it was explained to them that a fire had broken out in the city and they (the Jews) were needed for fire-fighting activity, and thus were loaded on trucks and given "special treatment," and when this came to Kube's ears he became excited, saying it was brutal to annihilate front-line soldiers and that the manner of execution was unheard of. This was the report of Strauch.

To a person who held the views that Berger now claims to have held, and who knew nothing of persecutions or mass murders, these reports by a leading Nazi Party man and a Gauleiter would apparently have been a shock and would have brought about investigation and action. But on 18 August Berger returned the files to Brandt, Hitler's adjutant, with the calm statement that after reporting to Rosenberg he was assured that the latter would, in the next few days, send Gauleiter Meyer to Minsk and give Kube a serious warning. The letter further stated that Rosenberg had approved Himmler's proposal that in order to settle the Latvians *en bloc* in Lettgallen [Latgalia]

the former owners would be evacuated.

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It is to be remembered that Berger testified that he did not know anything about plans for destroying Jews, and that he first heard of the "final solution" after his arrest and when he was in Nuernberg and Dachau. Nevertheless, as appears in his letter of 19 April 1943 to Himmler, where he discussed the formation of the proposed "European Confederation," he commented upon the Hungarian situation and stated (NO-628, Pros. Ex. 2383):

*"In Hungarian Government circles there exists a ivett-founded fear that the accession to the confederation will be tied up w'ith compulsion to liquidate the Jews." [Emphasis supplied.]*

In view of these documents it seems impossible to believe Berger's testimony that he knew nothing about plans to destroy Jews or that he never heard about the "final solution" until after the war.

He makes no attempt to explain [NO-4315, Prosecution] Exhibit 2375, nor why Kube, who had taken a manly stand for the protection of German Jews at least, and who had attempted to save 5,000 German Jews in the Minsk ghetto from murder, and who had indignantly denounced the treacherous slaughter of Jews who had served in the front lines for Germany, should be given a "serious warning," and this quite evidently at Berger's own suggestion. He attempts to explain the statements found in [NO-628, Prosecution] Exhibit 2383, by saying that he was merely reporting what Hungarian Government circles said and not any opinion of his own. This explanation must be rejected as well. Undoubtedly the Hungarians expressed fears that their entry into the European Confederation would be followed by compulsion to liquidate Jews, but it was Berger, the German, who was enthusiastic for this plan of confederation which would give Germany the hegemony of Europe and who further said that these Hungarian fears were "well founded."

It was his opinion and it was based on his knowledge of the plan with respect to the Jews.

Berger reported on 14 July 1943 to Himmler regarding a conference with Koch, Sauckel, Kube, Meyer, and Koerner, in which he said among other things (NO-3370, Pros. Ex. 2376):

*"After the partisan activity had again been broached, I rejected all accusations most strongly and once and for all stated I would not tolerate any interference with the jurisdiction of the Reich Leader SS by people who don't understand a thing, and who furthermore—and this, I said, was the saddest thing I experienced—are deceived by any atrocity tale from any savage native and would put it before the Reich East Min-*

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*istry with suitable quotations and added frills. Koch supported me and pointed out that it was quite ridiculous to speak so much of partisans.*

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*"In the following points I ask for a decision of the Reich Leader SS:*

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*"3. By order of the Reich Leader SS the Jews in Minsk must either be resettled or turned over to a concentration camp. Now, Kube has in his district a large Panje cart factory with 4,000 Jews and says that he would have to close down this factory immediately if the Jews were taken away. I suggested to him to contact the Reich Leader SS via the Higher SS and Police Leader and perhaps to convert this factory into a concentration camp. This would mean, however, that he would lose them but since, as he says, only cart production is concerned, this would not mean a sacrifice for him."*



On 20 August 1943 Brandt informed Berger of Himmler's answer (NO-3304, Pros. Ex. 2377)—

*"Reference No. 3. This decision is that by order of the Reich Leader SS the Jews are to be taken out of Minsk and to Lublin or to another place. The present production can be transferred to a concentration camp."*

Berger knew what that meant. As early as 28 July 1942 Himmler wrote him (NO-626, Pros. Ex. 2378):

*"I urgently request that no ordinance regarding the definition of the word 'Jew' be issued. We are only tying our own hands by establishing these foolish definitions. The occupied territories will be purged of Jews. The Fuehrer has charged me with the execution of this very hard order. No one can release me from this responsibility in any case, and I strongly resent all interference. You will receive memorandum from Lammers in a short time."*

The Jews of Germany were being deported to the East and now the East was to be "purged" of Jews. When Himmler speaks of the Fuehrer order as being a very hard one, it takes no imagination to know what was intended—they were to be done away with. The world knows, to its horror, that the program was carried out and helpless men, women, and children by the millions were slaughtered in cold blood. While Berger was not in one of the extermination camps, he played an important part

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in crushing the complaints of even highly placed officials like Kube and Rosenberg so that the ghastly scheme should proceed according to plan. He was present when Himmler delivered his Poznan speech on 4 October 1943 at a meeting of the SS Gruppenfuehrers. He there spoke of the Russian prisoners of war (1919-PS, Pros. Ex. 2368):

*"At that time we did not value the mass of humanity as we value it today, as raw material, as labor. What, after all, thinking in terms of generations, is not to be regretted, but is now deplorable by reason of the loss of labor, is that the prisoners died in tens and hundreds of thousands of exhaustion and hunger,*

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*"One basic principle must be the absolute rule for the SS men: We must be honest, decent, loyal, and comradely to members of our own blood and to nobody else. What happens to a Russian, to a Czech, does not interest me in the slightest. What the nations can offer in the way of good blood of our type we will take, if necessary by kidnapping their children and raising them here with us. Whether nations live in prosperity or starve to death interests me only in so far as we need them as slaves for our Kultur; otherwise, it is of no interest to me. Whether 10,000 Russian females fall down from exhaustion while digging an anti-tank ditch interests me only in so far as the anti-tank ditch for Germany is finished.*

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*"The other side doesn't make life easy for us. And you must not forget that the fortunate position in which we are placed, by occupying large parts of Europe, carries with it also the disadvantage that in this way we have among ourselves, and thus against us, millions of people and dozens of foreign nationalities. Automatically we have against us all those who are convinced Communists; we have against us every Free Mason, every democrat, every convinced Christian. These are the ideological enemies whom we have against us all over Europe and whom the enemy has totally for himself.*

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*"I also want to talk to you, quite frankly, on a very grave matter. Among ourselves it should be mentioned quite frankly, and yet we will never speak of it publicly. Just as we did not hesitate on 30 June 1934 to do the duty we were bidden and stand comrades who had lapsed up against the wall and shoot them, so we have never spoken about it and will never speak*

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*of it. It was that tact which is a matter of course, and which, I am glad to say, is inherent in us, that*

*made us never discuss it among ourselves, never speak of it. It appalled everyone, and yet everyone was certain that he would do it the next time if such orders are issued, and if it is necessary.*

*"I mean the evacuation of the Jews, the extermination of the Jewish race. It's one of these things which is easy to talk about. 'The Jewish race is being exterminated,' says one Party member. 'That's quite clear, it's in our program—elimination of the Jews—and we're doing it, exterminating them.' And then they come, 80,000,000 worthy Germans, and each one has his decent Jew. Of course the others are vermin, but this one is an A-I Jew. Not one of all those who talk this way has witnessed it; not one of them has been through it. Most of you must know what it means when 100 corpses are lying side by side, or 500, or 1,000. To have stuck it out and at the same time—apart from exception caused by human weakness—to have remained decent fellows, that is what has made us hard. This is the page of glory in our history which has never been written and is never to be written \* \* \*."*

Berger was present at this meeting, he heard this speech, but he denies that anything was said about the extermination of the Jews, and in this he is corroborated by von Woysch. The captured phonographic text of the speech was played to Berger, and somewhat grudgingly he admitted that it sounded like Himmler's voice.

Von Woysch joined the SS in 1930. He states that after 1933 it was considered a combat unit against Bolsheviks and Communists. He was in command of motorized police in the Polish campaign, but he denies that he was involved in cleaning out any Poles; denies that he encountered any opposition from the Polish insurgents and from the Polish Army, and that everywhere the public turned to him for help. He also denies that Himmler said anything about extermination of Jews in his Poznan speech. But if his recollection of what Himmler said in this speech is as faulty as his recollection of his own actions and those of his command in the Polish campaign, little credence can be given to his testimony.

In September 1939 Lieutenant Colonel Lahousen rendered a report of an inspection trip on 20 September 1939 to Poland. Regarding von Woysch he stated (*PS-3047, Pros. Ex. C-202*):

"1215-1400, Conference at Rzeszow with G-2 (IC-Maj. Dehmel); G-2 (Maj. Schmidt-Richtberg).

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*"Explain situation as well as military action.*

*"Hand LWOW for G-2 further reports about unrests in that army area arising from partly illegal measures taken by Special Purpose Group (Einsatzgruppen) of Brigadier General [Senior Colonel] (Oberfuehrer) Woysch (mass shootings—especially of Jews). It was annoying to the troops that young men, instead of fighting at the front, were testing their courage on defenseless people."*

This was an official report made contemporaneously with the affairs which it described. There is no reason to doubt its accuracy, and shortly after it was written von Woysch ceased to function in command of this unit. In view of this report we are unable to give any weight to his assertion that he and the other Gruppenfuehrer would have objected if Himmler had mentioned the extermination of the Jews.

The transcript itself, which is a captured document, and the phonograph records made of the speech leave little or no doubt that it was rendered substantially in the form claimed by the prosecution.

The spontaneous corroboration of the contents of the Poznan speech was given by the witness Hildebrandt, who was himself convicted before one of these Tribunals and who received a 25year sentence. On cross-examination he was asked about a letter written by Himmler in August 1944 in which it was proposed to make him the Higher SS and Police Leader for Transylvania, and which concluded with the comment (*Tr. p. 7042*):

"In case Hildebrandt is not there, send the most brutal man available to that region." He admitted receiving the letter, but said (*Tr. p. 7060*):

*"The letter is quite beside the point. It has no practical background and it never had any practical results. Himmler's phraseology is nothing new. I didn't get excited about it and I didn't take it seriously. After this Poznan speech nothing could surprise me any more." [Emphasis supplied.]*

The weight to be given the defendant Berger's assertion that the persecution of Jews was abhorrent to him can be gained from the following [Prosecution] Exhibits: 2381 and 2382 [Documents NO-2550 and NO-2408, respectively].

On 23 July 1942 Berger wrote Gruppenfuehrer Mueller of the RSHA, an organization and person for whom he now expresses great contempt, that recruiting in Hungary was purely a question of producing family allowances; that negotiations with the Hungarian Economic Office led to nothing for the time being; that the

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Hungarians said that if Hitler wanted anything more he must occupy the country; that a certain Baron Collas proposed to get hold somehow of the property situated in Hungary belonging to the German Jews, which he estimated to be worth many millions pengos. Berger asked to be informed as soon as possible if this means was practicable.

On 19 August an order was issued based on a report of 13 August, but these documents were not among the captured documents.

On 24 November 1942, the Office of the Chief of Security Police and SD reported to Himmler that due to certain circumstances, it was not possible, at least in the near future, to realize pengos for Berger's purposes from this property, but that permits to emigrate could be sold to Slovakian Jews, as had been done in the case of Dutch Jews, for approximately 100,000 Swiss francs per head, and thus Berger could realize the required 30,000,000 pengos for the recruitment of volunteers for the Waffen SS in Hungary.

Berger insists that this came too late, and he obtained the necessary funds in another manner. Unfortunately, there are apparently no other records available to disclose the final history of this happy plan. But even if the suggestion came too late, the correspondence clearly discloses Berger's thoughts and intentions and dissipates his present claim that he was not imbued with any spirit of persecution.

Gabor Vanja, a former Hungarian Minister of the Interior under the Szalasi government (since executed for his own part in these matters) gave an affidavit on 28 August 1945. He deposes that on order of Szalasi he visited Himmler at his headquarters and discussed with him and Berger, who, he assumed, was to be Himmler's deputy, the deportation to Germany of the remaining Hungarian Jews.

We will discuss the sad history of these Jews in our considerations in the case of Veessenmayer.

He further deposes that Himmler ordered that the details of the evacuation be discussed the following day with Berger and Kaltenbrunner in Berlin; that this conference took place in Berlin on 16 December 1944, and Berger confirmed Himmler's request and ordered Kaltenbrunner to negotiate the details, and they were agreed upon; that Kaltenbrunner forced the immediate and energetic delivery and said that Winkelmann and Eichmann, especially the latter, would supervise the action; that Eichmann wanted to deport even the women, children, and old men from Budapest, and when Vanja protested, stated that Germany would deport the Jews herself.

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There is no question but that the deportations were carried out and that the majority of these unfortunate people met their deaths in German extermination camps or in the slave-labor enterprises conducted by the SS.

Although the defendant, by reason of Vanja's execution, could not cross-examine this affiant, there is no reason to believe that his affidavit is not substantially correct. If the case against Berger rested upon the affidavit alone we would not feel justified in finding him guilty, but it is corroborated by evidence given by Berger himself, and which already establishes that he was an active party in the program of the persecution, enslavement, and murder of the Jews.

*Slovakian Jews.*—While the witness Kastner [Kasztner] testified that it was on Berger's recommendation to Himmler that the remaining Jews in Slovakia were deported to extermination camps, Kastner's testimony rests solely upon hearsay. The source of this hearsay, Becher, was not produced as a witness, nor any reason given for the failure to do so.

We therefore hold that this charge has not been proved beyond a reasonable doubt, and with regard to Slovakian Jews Berger must be and is exonerated.

*Danish Jews.*—The prosecution relies upon a letter from Keitel to the German Army Commander in Denmark, stating, among other things, that SS Obergruppenfuehrer Berger, would be in charge of the deportation of the Danish Jews. This, however, is the only evidence on this phase of the matter. Berger insists that Keitel was in error and the operation was in charge of someone else. There is no evidence other than Keitel's.

We hold that proof of guilt beyond a reasonable doubt has not been established and we exonerate Berger of guilt as to this particular charge.

*Special Commando—Dirlewanger.*—Dirlewanger was an old comrade of Berger's from the First World War, and while a savage and skillful fighter, was a man of unsavory character in many respects, which Berger himself admits. Dirlewanger had been convicted of sexual crimes against a minor, but Berger asserts that he was of the opinion that the conviction was the result of a personal quarrel which Dirlewanger had with one of the Nazi officials; that he obtained Dirlewanger's release and had him sent to Spain as a member of the German Condor Legion, where he fought on behalf of Franco; that on his return he succeeded in having Dirlewanger reinstated in the SS as Obersturmbannfuehrer.

It was Berger's idea that for partisan fighting in the East, a battalion of poachers be organized. Himmler approved this sug-

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gestion and Berger's recommendation that Dirlewanger train and command this battalion.

It was assigned to the East and immediately started on a career of savagery, plunder, and corruption, which brought it to the unfavorable attention of German officials who had an opportunity to learn of its conduct.

The prosecution called Konrad Morgen, who had been conscripted into the SS, and in October 1940 sent to the SS Main Court as a judge. He was with the SS Police Court VI at Krakow; in May 1942 was relieved of his duties and demoted because of an acquittal he had granted and sent to the front as an ordinary soldier; he was

recalled to the police courts in June 1942 and was in charge of investigations at concentration camps. In passing, it may be stated that it was he who was originally responsible for the investigation, trial, and subsequent execution of the notorious Koch who was commandant of the Buchenwald concentration camp.

As judge, his task was to investigate and prepare criminal cases and, when not in charge of investigations, he acted as presiding judge. His jurisdiction covered all members of the Waffen SS and police troops on active duty, but not members of the Wehrmacht.

In the beginning of 1942 he noticed that there had been many convictions of the members of the Dirlewanger unit for plundering and mistreatment of the civilian population. He discovered that all the members of this battalion had been previously convicted of offenses. There were also complaints against Dirlewanger. This unit was not a part of the Waffen SS but was a supplementary police unit. At that time it consisted purely of poachers with previous convictions, but later on inmates of concentration camps and other criminals were transferred to the unit. It finally reached the strength of a division.

His investigation at Lublin among German agencies and the Security Police revealed that this unit was a pest and a terror to the population; that Dirlewanger on repeated occasions plundered the ghettos in Lublin, would arrest Jews on the charge of ritual murder, exact blackmail up to 15,000 zlotys, and if the money was not forthcoming have the victim shot. It was charged that he arrested young Jewesses, called in a small circle of friends, stripped the women of their clothes, beat them, and finally gave them an injection of strychnine and watched them die; that the testimony concerning these incidents was obtained by witnesses and the criminal police.

The witness deemed it urgent to arrest Dirlewanger and to investigate these frightful crimes. He reported to Obergruppen-

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fuehrer Krueger at Krakow and asked for an order of arrest. Krueger reported that there was nothing he could do because he was not competent and that the detachment was subordinate exclusively to the orders of Berger. Krueger immediately phoned Berger at Berlin, and after denouncing Dirlewanger, informed Berger that unless "this bunch of criminals disappeared from the Government General within a week I will go myself and lock them up." Berger finally promised to do everything he could, and in approximately 2 weeks the unit was transferred but not, as the witness thought, to the Reich and Dirlewanger punished, but to his surprise, it was sent to Central Russia, to Mogilev. However, the witness sent the files with the report to the commander and the supreme judicial authority concerned, but nothing was done and Dirlewanger was promoted.

While Berger violently attacks the testimony and credibility of the witness, nevertheless his own report to Himmler of 22 June 1942 corroborates it in part (NO-2455, Pros. Ex. 2391):

*"Now it is peculiar that the surprise attacks by partisans started all of a sudden when Dr. Dirlewanger's Sonderkommando was removed from the district by more or less fair means.*

*"Perhaps this is also now a warning that a savage country cannot be governed in a 'decent manner' and that the Sonderkommando's policy 'to rather shoot two Poles too many than one too few' was right.*

*"Considering the weakness of this commando and referring to the following data, I request permission to again comb the penal institutions in close collaboration with SS Gruppenfuehrer Mueller, and after thoroughly examining them, to train all men sentenced for poaching and to use them for reinforcing the old Sonderkommando, and for forming a new second one."*

It was the practice of the Dirlewanger brigade to seize villages, shut the inhabitants in barns, set them afire, and shoot down the living torches when they tried to escape, and to clear roads of mines with serried ranks of peasants who would walk down the roads, thus exploding the mines with the result that thousands were thus blown to pieces.

On 23 June 1943 von dem Bach-Zelewski rendered an official report on Operation Cottbus, in which he stated that two to three thousand local people lost their lives in cleaning up mines, 3,709 were liquidated, and 599 wounded; 4,900 men and 600 women were assigned for labor, with German losses of only 83 killed, and 473 wounded, and non-German auxiliary losses of 39 killed, 152 wounded, and 14 missing.

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The disproportion in losses between the partisans and the German troops indicates not warfare but massacre.

Further corroboration as to the true nature of Dirlewanger's activities can be seen from the recitation of his merits when, in August 1943 he was awarded the German Cross of Gold; that his battalion had wiped out 15,000 guerrillas at a loss to itself of 92 dead, 218 wounded, and 8 missing.

In July 1943 defense witness Braeutigam submitted to Berger a series of reports of murder and outrages committed against the helpless inhabitants of White Ruthenia which, as the Reich Commissioner for that territory stated, "supplies the answer to the puzzle why even after large-scale operations the number of partisans would not decrease, but actually increase, and why food supplies for the home front and the front line from the embattled areas grew scantier instead of going up. Furthermore, reports show that any propaganda moves after such operations have ended, operations which are terminated by mass shootings of the entire population, are completely useless," and "if the treatment of the indigenous population in the occupied eastern territories is continued in the same manner which has been used up to now, not only by the police but also by the OT (Organization Todt), then in the coming winter we may expect not partisans but the revolt of the whole country. \* \* \*

The regiment Dirlewanger is particularly prominent in that type of operation. It is composed almost exclusively of previously convicted criminals of Germany."

Berger's reaction is shown by his letter of 13 July 1943, where he says (NO-3028, Pros. Ex. 2392):

*"I deeply regret that reports of this sort are being relayed unchecked, that much confusion is being stirred up, and above all things, that the confidence in close cooperation is being destroyed. In the case at hand it is my opinion that it would have been the duty of Commissioner General Kube to ascertain the accuracy of the reports to his satisfaction on the spot and then to get in touch with the competent SS and Police Leader, SS Brigadefuehrer von Gottberg, or with the chief in charge of fighting partisans, SS Obergruppenfuehrer von dem Bach [-Zelewski]. We can alter nothing here in any case, for you cannot give orders to a troop without personally having exact insight into the situation. Moreover, perhaps Mr. Kube's attention can still be called to the fact that for the most part these 'criminals' are former Party members who were formerly punished for poaching, or for some stupid action, are now taken out and allowed to prove themselves, and this they do with an incredible percentage of bloody losses."*

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On 16 July 1943 Berger received an order from Himmler to inform the Reich Minister

for the East [eastern occupied territories] that the campaign against the partisans was going quite according to schedule and Volhynia and Podolia would be the next on the list.

On 4 May 1944 Berger wrote Brandt, head of Himmler's personal staff (NO-5884, Pros. Ex. 2396):

*"In the case of the Dirlwanger regiment and the whipping scene at Minsk, a letter from Reichsleiter Rosenberg was sent to the Reich Leader SS. Since the Reich Leader SS has not yet approached me on this subject I assume that you have kept this letter back for the time being. Like other letters, it did not go through my hands, or I would have changed it." (Italics ours.)*

*"As is well known, there are a number of people in the East Ministry who do not want to act as I do and are pleased when conflicts arise. Kindly suggest to the Reich Leader SS to address the following or a similar letter to Reichsleiter Rosenberg:*

*"Dear Party Member Rosenberg:*

*"On principle I share your view, and I am not at all pleased when an incident such as one in Minsk occurs. However, I am convinced that you can fully understand it if I cannot at present involve SS Standartenfuehrer Dr. Dirlwanger in an investigation, as I need him most badly for the safeguarding of that area'."*

The manner in which these operations against partisans were conducted is clearly disclosed by [NO-1128, Prosecution] Exhibit 2370, in which it appears that in the 4-month period of August, September, October, and November 1942, 1,337 bandits were counted dead after engagements, 737 prisoners immediately executed, 7,828 executed after questioning; and that of accomplices and guerrilla suspects, 14,257 were executed, and 363,211 Jews were executed.

Berger's personal interest and sense of proprietorship in Dirlwanger and his brigade is shown by his communication of 19 October 1943, wherein he stated (NO-621, Pros. Ex. 2394):

*"This change of opinion is probably due to the unqualified conduct of my special unit Dr. Dirlwanger who, so far as I can ascertain, has behaved in a most unsatisfactory manner in every respect."*

While in the field the unit was not under his tactical direction, it was organized by him, trained by the man whom he selected, the idea was his, he kept it and its commander under his protec-

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tion, he was repeatedly informed of its savage and uncivilized behavior, which he not only permitted to continue, but attempted to justify; he fought every effort to have it transferred or dispersed, recommended its commander for promotion and covered him with the mantle of his protection. That one of the purposes for which the brigade was organized was to commit crimes against humanity, and that it did so to an extent which horrified and shocked even Nazi commissioners and Rosenberg's Ministry for the Eastern Territories, who can hardly be justly accused of leniency toward the Jews, and people of the eastern territories, is shown beyond a doubt. Berger's responsibility is quite as clear.

He is guilty with respect to the matters charged against him regarding the actions of the Dirlwanger unit, and we so find.

*Special treatment of foreign nationals.*—The term "special treatment" had a well-recognized meaning in Nazi Germany. It meant execution or at best confinement in a concentration camp, the latter being, in most instances, the substitution of a lingering death for a quick one. We will consider what, if any, part Berger and the SSHA played in the treatment of foreign nationals.

Himmler was infected with the idea that German blood must not be contaminated by being mingled with that of what he termed to be inferior peoples, and that those who

violated his decree on this subject should and would be subject to "special treatment" unless it was shown that they were of suitable Aryan groups or outstanding individuals whose blood might be valuable to Germany.

Hildebrandt, one of Berger's witnesses and head of the SS Race and Settlement Main Office, having engaged in one of the usual jurisdictional disputes with the head of the Security Police office, reached an agreement, under the date of 20 August 1943, that the task of negatively eliminating the undesirables was that of the Security Police and that of selecting those racially qualified belonged to the Race and Settlement Main Office (RuSHA).

The prosecution alleges that examiners of Berger's SS Main Office undertook to make racial examinations in cases of this kind and that he bears criminal responsibility therefor. That these examiners made such examinations is established by the evidence, but there is serious doubt whether Berger or his main office are responsible for their actions. The examiners were detailed to Berger by the RuSHA to conduct physical examinations of recruits for the Waffen SS. The weight of the evidence is, however, that in making the so-called racial examination, these men were not subject to Berger's control, but to that of the bureau from which they were detailed. We have no doubt that Berger's office knew of the latter activity, but there is a reasonable doubt that

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when acting in that capacity he had jurisdiction over them. Therefore, we find him not guilty with respect thereto.

*Recruiting of concentration camp guards.*—It is unnecessary for us to elaborate what has long since been established regarding German concentration camps. They were conceived in sin and born in iniquity, and the subsequent consequences were the natural result of both their parentage and environment.

Although it is claimed they were first used for the imprisonment of Communists and convicted criminals, it is clear beyond question that from the beginning they were utilized for the imprisonment of those who disagreed with Nazi policy or became the objects of Nazi persecution. In time their inmates included those persecuted for religious beliefs, such as Catholic priests, Protestant pastors, as well as political opponents, Jews, and foreigners who rebelled against their lot or who transgressed against the cruel conditions under which they were compelled to work. Peoples of every country who fell under German domination and control were numbered among the victims of this system. It is one of the main insignia of German terrorism. Although in this case every defendant disclaims knowledge of what actually went on in them, each looked upon them as places of horror from which he sought to protect those in whom he had an interest.

After the outbreak of the war and during its progress they were the means of terror used to keep both German and other populations under control.

Berger does not deny that he and his agency recruited the guards of these camps at least until 1942. Many of these guards were recruited from the SS. There are strong indications that this was likewise true as late as 1944, but it is immaterial whether his activities ended in 1942 or continued thereafter. His defense is that his recruits were only used as exterior guards and had nothing to do with what went on in the interior of the camps.

The evidence shows that among the records in this case there are exhibits showing he furnished guards for Buchenwald, Auschwitz, and Oranienburg, and for camps



holding Jews working as slave laborers for Organization Todt.

Berger claims that it seems incredible that a man holding the high rank in the SS that he did not know of the atrocities committed in these camps, but that nevertheless he did not know. We do not believe him. His close official and personal relations with Himmler, the high positions which he held under Himmler, the fact that he was present and heard Himmler's Poznan speech, preclude the claim of ignorance which he now makes.

Nor are we impressed with the defense that these recruits were used for exterior guard duty only, and therefore were not respori-

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sible for the atrocities committed within the camps. On direct examination he testified (Tr. p. 6170):

*"Q. Now, of course, it may be possible to say 'all right', but still there is a possibility that these guards took part in the maltreatment of inmates which were perpetrated outside the concentration camp.*

*"A. The innumerable Dachau trials prove that such things did actually occur. But let me continue. It was only the most insignificant part of these atrocities that were committed by members of the SS. That was done by people whom I had assigned to that job at one time or another, but over 90 percent was perpetrated by the so-called members of the Landeschuetzen Battalions who were assigned after 1942 by Pohl from the army, from the Luftwaffe, and the navy, for guard purposes in the camps."*

If we are to assume that his statements were true, nevertheless he is not thereby relieved of responsibility. These camps were an integral part of the Nazi program of oppression, slave labor, terrorism, and extermination. They were the means whereby the Nazi Party maintained its power over the German people and over the peoples of nations occupied or controlled by it. To maintain and administer them obviously required both interior and exterior guards. The defendant furnished the exterior guards and if, as we find to be the fact, these camps were of the character just described and the defendant knew of it, which we also find to be the fact, he participated in the crime.

The fact, if it be a fact, that neither he nor the guards participated in shootings, beatings, starvations, and other maltreatment can only be considered, if at all, in mitigation of the offense. We find the defendant Berger guilty of the crimes against humanity as a conscious participant in the concentration camp program.

*Conscription of nationals of other countries.*—Berger, in 1938, set up the recruiting office of the Waffen SS and on 1 July 1939 he became the official chief of that office, a position which he retained until 31 December 1939. Upon the reorganization of the SS Main Office on 1 January 1940 he became its chief and was thereafter responsible for the recruitment of the Waffen SS until the close of the war.

In the early part of the war there were undoubtedly a large number of foreign volunteers to the Waffen SS. Such recruitment is, of course, perfectly legal. The prosecution alleged, however, that during the war large numbers of foreign nationals were conscripted into the Waffen SS contrary to the principles of international law, and that these crimes constitute a crime

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against humanity. If, as has been often held, it is a crime to conscript foreign nationals to slave labor, it is a crime of equal rank to conscript them into the army to fight, bleed, and die.

As the war progressed Germany suffered severe losses of manpower. It adopted conscription as to its own nationals and in many instances of foreign nationals living within its borders. We hold that it is not illegal to recruit prisoners of war who volunteer to fight against their own country, but pressure or coercion to compel such persons to enter into the armed services obviously violates international law.

On 24 January 1945 Berger, as Commander of the Reserve Army [Chief of Staff of the Volkssturm] and Chief of Prisoner-of-War Affairs, issued an order which, after reciting that many applications had been received from Russian prisoners of war to join General Wlassow's army of liberation, added that as a result negative elements among the Russian prisoners had become more active; that in order to remove these unfavorable influences and to insure the success of further recruiting, it was ordered that prisoners of war who were known to be ringleaders for subversive propaganda were to be immediately removed from the labor unit and transferred to the SD, and those subversive elements who were not active ringleaders were to be listed for removal at a moment's notice; that the isolation of these subversive elements was not possible at the time because of the work to be done.

It is unnecessary to again explain what was meant by "transfer to the SD." In most instances it meant death. Such an order clearly violates the rules of war, and that its issuance had a marked stimulation of recruitment of Russian prisoners of war requires no proof. The safe way to avoid being classified as an active or positive subversive element would be to volunteer. A prisoner of war who endeavored to persuade his comrades not to fight against his brothers thereby violated no rule of war and such conduct would, under no possibility, subject him to legal punishment, or would justify his being turned over to the SD.

That these measures were effective and that in many cases the so-called Russian "volunteers" were in fact conscripted, is clear. Fegelein reported to Himmler, apparently in February 1945, that the volunteers "had stated that they would on no account fight against their compatriots." (NO-1720, Pros. Ex. C-209.) His report further stated:

"2. A large number had already deserted to the other side.

"3. Several members of the German leader personnel had already been killed by the volunteers, and finally that the leader

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*personnel are afraid of being killed by the volunteers in contact with the enemy and are anxious as to how they can get away."*

While we do not overlook the possibility that Russian prisoners of war may have volunteered with the express intention of deserting at the earliest practicable moment, nevertheless when Fegelein's report is considered in connection with Berger's order above referred to, the conclusion is inescapable that more than ordinary persuasion was used by Berger's office to induce Russian prisoners of war to enter the Wlassow Army of Liberation.

On 8 September 1944 Greiser wrote Himmler relative to the conscription of all able-bodied Germans from Russia, including those not yet naturalized, and asked that certain exemptions be granted covering certain organizations of his own. He stated that Berger, some months previously, had agreed to this reservation. The persons thus to be considered were not German nationals but were people of German blood who were citizens of Russia. The action was wholly without sanction of law and in patent violation of international law.

On 16 June 1943 Berger wrote Brandt, Himmler's adjutant, with regard to recruitment

of the Prinz Eugen Division in Croatia (NO-5901, Pros. Ex. 3272):

*"The Reich Leader SS has proclaimed general compulsory military service for the ethnic group in the Serbian territory, that is, Dr. Janko. The Serbian territory is under German sovereignty, since it is occupied by Germany. From the point of public law there can be no objection, leaving apart the question that really nobody cares what we do down there with our ethnic Germans.*

\* \* \* \* \*

*"To proclaim compulsory service for Croatia and Serbia is impossible under public law. And it is not at all necessary either, for when an ethnic group is under moderately good leadership, everybody volunteers, and those who do not volunteer get their houses broken to pieces. (Such cases have occurred in the Rumanian Banat during the last few days.)"*

The SS Legal Main Office, on 12 January 1943, wrote to Berger's Main Office that the Prinz Eugen Division was no longer an organization of volunteers, but that on the contrary, the ethnic Germans from the Serbian Banat were drafted, to a large extent, under threat of punishment by the local German leadership, and later by the replacement agencies (Berger's).

Kasche of the Foreign Office, in his report of 25 June 1943, likewise complained of the ruthless recruiting methods used in Croatia.

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The defense that these measures were taken under agreement between Germany and the sovereign state of Croatia is without merit. Croatia was a puppet created by Germany, existed under and only so long as it was backed up by German arms. It was neither sovereign nor a state. The so-called internal agreements were suggested and imposed by Germany and accepted by Croatia because it was without power to do anything else, and its government existed only when backed up by German bayonets. Nor is there any substance to the contention that those drafted and conscripted were ethnic Germans and therefore subject to German law of conscription. The German Government had no more jurisdiction over ethnic Germans in Europe than it had over ethnic Germans in the United States. They are not German nationals, but citizens of their respective nations.

Under the Himmler decree (R-112, Pros. Ex. 1355)—

*"\* \* \* persons of Germanic origin who do not apply for \* \* \* repatriation are to be turned over to the German State Police, and if they do not change their minds within 8 days are taken into protective custody for transfer into concentration camps."*

An act of naturalization under such circumstances is not voluntary.

The program carried out in Serbia, Croatia, and the Protectorate was likewise carried out in Latvia, Lithuania, Poland, Russia, Luxembourg, Alsace, and Lorraine. Beyond question of doubt, the defendant Berger is guilty of a crime against humanity when he and his agencies took part in a program which subjected citizens of those countries, by forced Germanization or other ways, to be conscripted into the German armed forces.

The defense has attempted to picture Berger as a man of humane and kindly instincts, averse to persecutions of any kind. But this picture fades in the face of a letter found in the Party files in Stuttgart, written on 4 May 1933. This was after the seizure of power, and he said (NO-5915, Pros. Ex. 3489):

*"The special commissioners [SonderKommissare] are to be instructed that they now have to discontinue arrests and that applications for release are to be considered favorably. A balance has to remain on the Heuberg. Everything unnecessary only eats up our money, and we will afterward have nothing left for the training. Let them out, and if they resist shoot them down. A much simpler solution and one which is more favorable to us.*

*It would be hard to conceive of a more callous and brutal policy aimed at that time, apparently, to save SA funds so that they*

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*could be used for training purposes. Berger explains that he does not remember or recognize the letter, but it came from the Wuerttemberg Party files of Stuttgart, and it bears the typed signature "Chief of Branch Group Wuerttemberg," signed, "G. BERGER, Oberfuehrer."*

We have no doubt as to its genuineness, and it is significant to note that he does not deny that he wrote it.

We find the defendant Berger guilty under count five of the indictment.

During the concluding months of the war, the record shows that the defendant Berger was the means of saving the lives of American, British, and Allied officers and men whose safety was gravely imperiled by orders of Hitler that they be liquidated or held as hostages. Berger disobeyed orders and intervened on their behalf, and in so doing placed himself in a position of hazard. These are matters of extenuation which the Tribunal will take into consideration in fixing his sentence.

#### BOHLE

The defendant Ernst Wilhelm Bohle joined the Nazi Party on 1 March 1932, received the Golden Party Badge in 1937, and also received the Golden Hitler Youth Badge. On 8 May 1933, he became chief of the Party's Auslands Organization (AO) which had jurisdiction over German nationals living outside Germany. He held this latter office until 1 May 1945. Bohle became the Gauleiter of the AO in October 1933. On 30 January 1937 Bohle became chief of AO in the Foreign Office, and in December of that year he received the rank of State Secretary. He remained in the Foreign Office until 14 November 1941, but kept his title without pay until the collapse.

Bohle was a protege of Hess, or at least was looked upon as such, and when the latter fled to England in 1941 Bohle fell from power and was relieved of his duty and responsibility in the Foreign Office.

Although a Gauleiter, he had no governmental powers over any territory, but his organization was the sole agency competent for the entire activity of the Party abroad, insofar as German nationals residing abroad were concerned, and he had the same jurisdiction over them as the Gauleiters, in their territorial sovereignty had over the populations of their territories or Gaue.

In October 1940 the Foreign Office received a telegram from Abetz, German Ambassador to the Vichy government, in which he suggested a collective expatriation procedure for Jews in the occupied portions of France as shown by lists made in an agree-

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ment by Abetz with the high Party leaders. This proposed procedure included Austrian Jews who had not changed their Austrian passports for German passports before 31 December 1938 and Reich German Jews who had not registered before 3 February 1938. Bohle was on the distribution list, but our attention has not been directed to any document or other evidence indicating whether he or any of his representatives were among the "high Party leaders" to whom Abetz made reference. In attempting to connect Bohle with the offenses charged in count five, the prosecution relies on Bohle's speech on 7 or 8 November 1938 on the occasion of the funeral services of von Rath, a Foreign Office official attached to the German Embassy in Paris, assassinated by Gruenspan, a Jew, in which Bohle speaks of von Rath as the eighth victim of Jewish-Bolshevist murder schemes and that the Jew

wanted, according to Gruenspan's testimony, to hit Germany. But we find nothing in this speech sufficiently concrete and explicit to connect Bohle with any of the offenses charged in count five.

In the early part of 1937 and continuously at least until March 1938 the defendant Bohle and the AO urged the cancellation of the [informal, so-called] Haavara [transfer] agreement by which Jews desiring to emigrate to Palestine, or who had emigrated to that land, were enabled to realize their German assets, in whole or in part, by making purchases of German commodities for shipment there, and having the amount thereof charged against their blocked credits in the Reich. After much correspondence and several conferences, and after considerable opposition from other departments or sections in the Foreign Office and from the Ministry of Economics, apparently they succeeded. The object, however, was not to prevent the emigration of Jews, but to prevent their emigrating to Palestine and setting up a Jewish state there, and that by these transactions German commodities were transported without Germany receiving foreign exchange in return, and third, that thereby Jews were being enabled to take their assets out of the country.

We are unable to see, however, that these transactions which started in 1937, and were concluded about March 1938, were so connected with the aggressive war and crimes against peace as to render it reasonably certain that the measures had this in view. It is, of course, a part of the unholy program of oppression of the Jews by the Nazi Party, but however much such measures may shock one's moral sense, it is not an offense which comes within the jurisdiction of the Court unless the proof clearly shows that it was connected with crimes against peace. That link is missing.

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In August 1943 the AO endeavored to compel the discharge of Jews employed in Rumania by German firms, but this took place long after Bohle's activity in public office.

The prosecution asserts that the Foreign Office correspondence regarding its plans to have Bohle testify in the Gruenspan trial indicates Bohle's criminal responsibility under count five. The trial never took place; of course, Bohle did not testify; and such facts do not constitute a basis for conviction.

In support of its contention that Bohle was a guilty participant in the so-called resettlement of Germans on lands confiscated from Poles and Jews in the incorporated eastern territories and Government General, the prosecution cites Himmler's decree which implemented Hitler's decree of 7 October 1939, by which he was constituted Reich Commissioner of Germandom. The Himmler decree charged the AO and VoMi with the task of bringing in the Germans and the ethnic Germans for purposes of resettlement. Various other duties were assigned to other departments and agencies of the Reich.

The defendant Keppler appointed one George Christians, one of Bohle's subordinates, as a member of the Aufsichtsrat of the DUT (German Resettlement Trusteeship, Ltd., Liability Company) , which nomination was approved by Himmler. Christians thereafter acted in that capacity. But here the evidence stops. There is no evidence that Christians in this capacity acted for Bohle and no evidence of Christians' activity in the DUT. The DUT was a part of the infamous plot for depriving Poles and Jews of their property and turning it over for resettlement to Reich and ethnic Germans. However, our attention has not been called to, and we have been unable to find, any evidence that Bohle's organization took any part in the so-called

Germanization or resettlement program. He must therefore be exonerated with respect to this phase of the case.

Bohle's acts and those of his department in persuading German business firms to discharge Jewish employees working for them abroad, while reprehensible from a moral standpoint, do not come within the scope of either count five of the indictment or of the crimes defined by the London Charter and Control Council Law No. 10. The same is true with respect to his efforts to have the Haavara Agreement abrogated. We therefore acquit him under count five.

#### DARRÉ

Darré as early as August 1930 became Hitler's adviser on agricultural questions. He became a member of the Party in the same

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year and of the SS in 1931, and was a Reichsleiter for Agrarian Policy from 1933 until he was deprived of official functions in 1942. He was a member of the SS and became a Sturmbannführer and through intermediate promotions rose to the grade of Obergruppenführer in November 1934. He was elected to the Reichstag in 1932 and was Reich Minister for Food and Agriculture, and Reich Peasant Leader from 1933 to 1945, but was relieved of his duties from 12 May 1942. He was Chief of the Race and Settlement Office from 1931 to 1938 and received the Golden Party Badge in 1936. He also held other offices, all of which were connected with agricultural affairs. He had interested himself in problems of agriculture, hereditary land ownership, and "blood and soil," which activities probably first attracted Hitler's attention, and he [Hitler] utilized Darré in the Party's drive to interest farmers and agricultural workers in the Nazi Party.

Some of his ideas were novel and somewhat bizarre, but it is not a crime to evolve and advocate new or even unsound social and economic theories. This Tribunal is only interested in what he did and what he advocated which comes within the scope of the indictment, the London Charter, and Control Council Law No. 10.

*Anti-Semitism.*—A careful examination of Darré's speeches found largely in [Document] books 102 and 103, reveal a strong anti-Jewish feeling. His statements are intolerant, prejudiced, and disclose a profound ignorance of history, economics, and religious philosophy. Thus, for example, is his theory that the foundations of democratic government are solely the product of Semitic philosophy which, of course, altogether overlooks the fact that one of the earliest forms of complete democracy was the political organization of the early Germanic tribes where the chief was elected by the members of the tribe, held office only so long as the tribe or council approved of his actions, whose office was not hereditary, and where the laws were enacted not by him but by the tribal council—all of this before the Germanic tribes had been converted to Christianity and in a country where a Jew was as unknown as the dodo.

Darré's speeches attack the Jews and democracy, but he also attacked the Prussians and Prussianism. But this is a phenomenon known to all societies and nations. Individuals and groups are prone to blame ills in the body politic and economy to groups—bankers, capitalists, labor unions, conservatives and radicals—all depending upon the individual point of view. Such criticism is often the result of ignorance and instability; but, except in an authoritarian state, it has not yet been suggested, as a matter of law, that to hold and express such views is criminal.

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It is true that in one of his speeches he expressed approval of the Nuernberg Laws, but a fair perusal of his speeches and written articles reveals that they seek to glorify the peasant and agriculture and, as window dressing, refer to Prussians, Jews, and Jewish ideas. We do not find in them any attempt to incite or justify murder, or exterminations, and believe they are the expressions of one obsessed with an *idée fixe*.

*Utilization of Jewish agricultural property.*—The prosecution rely upon the decree of 26 April 1938 requiring all Jews to register their property, which was signed by Goering as Plenipotentiary for the Four Year Plan and Frick as Minister of the Interior, and the decree of 3 December 1938, signed by Funk and Frick of the Ministries of Economy and the Interior, concerning the utilization of Jewish property. One of the provisions of the last-named decree provided that a Jew may be ordered to sell his agricultural or forest enterprises or properties in whole or in part within a definite time.

On 23 December 1938 Willikens, as Darré's deputy, issued a decree implementing the decree of 3 December 1938 which provided, among other things, that the price to be paid to Jews for their agricultural property should not exceed the settlement utilization value, and even if the property is not used for settlement, the Jew is only to receive from the purchaser the price corresponding to the so-called settlement utilization value. In such a case in accordance with section 15, paragraph 1 of the decree, the buyer was required to pay over to the Reich the difference between the settlement utilization value and the adequate market value. It recommended that, in administration, trustees be appointed in all cases where difficulties were expected to arise and that they could be appointed as soon as the Jew had received his notification without waiting for the result thereof. It further provided that in all cases where 65 hectares [1 hectare=2.471 acres] or more of land was thus to be sold, Darré was to be informed prior to the sale.

This program was carried out under Darré's orders by agencies organized and controlled by him. For instance, on 16 February 1939 the Bavarian Ministry of Economy, Department of Agriculture, issued a decree implementing Darré's decree, and the report of the Bavarian Peasant Settlement Company, Ltd., of 12 December 1940 discloses that in Franconia the agricultural property of 276 Jews, amounting to 606,345 hectares (approximately 1,500,000 acres) had been thus Aryanized.

It is clear from the first of the decrees that it was intended not only to bar Jews from agriculture, but also to rob them of a large part of the value of their property. These decrees were enacted

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at about the same time as the infamous Crystal Week and the levy of a billion mark fine against Jews for alleged complicity in the assassination of von Rath.

Unquestionably the proceeds of the Aryanization of farms and other Jewish property were in aid of and utilized in the program of rearmament and subsequent aggression. An instance of how the law was administered is detailed by Justin Steinhauser, a Jewish cattle dealer and farmer. On 8 March 1939 he received an order to sell his farm buildings, inventory, and livestock, at a price of 10,400 RM; he was told, in this order, that noncompliance would be punished, and that if he did not obey the order a

trustee would be appointed to bring about a sale to the Bavarian Peasant Settlement Company, Ltd., permission to sell elsewhere was denied. Five thousand two hundred seventy-five RM of the purchase price was deducted as his share of the billion mark fine, and after minor property deductions, the net of 4>418.20 RM was placed in a blocked account to be disposed of only with the permission of the Finance President of the Foreign Exchange Office, Nuernberg. He was permitted to draw from this balance 300 RM per month. The property was, at the time of the sale, insured by the Bavarian State Insurance Administration for 23,230 RM, and without doubt, the enforced purchase price was less than half of what the property was actually worth.

At the time these decrees were issued and while they were being enforced, Darré was Minister of Food and Agriculture, and while he may never have originated the plan to thus rob German Jews, he fully implemented and enforced it without objection and without attempt to modify or otherwise alleviate its unjust provisions. We hold that he was a knowing and conscious participant in this plan. This was only a few months before the commencement of the war, and was of undoubted assistance in financing aggressive plans, and constitutes a violation of international law within the jurisdiction of this Tribunal.

*Discrimination against Jews in food rationing.*—Between December 1939 and 11 March 1940 Darré's department issued several decrees depriving Jews of special rations of food to which other German citizens were entitled.

Nevertheless, the Jews were insured the normal rations; the sick, invalid, pregnant women, nursing mothers and women in child bed, and Jews employed in heavy labor were given the same special rations allowed German citizens.

The prosecution concedes that these decrees were not in themselves so severe or their effects so harsh as to cause sickness or exposure to sickness and death, but asserts that they led to

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the more drastic cuts which finally led to the denial of foodstuffs necessary in life, such as wheat, fat, and eggs. However, no testimony or documents tending to prove this assertion have been cited, and the Court has been able to find none.

While these decrees show rank discrimination between Jews and others and evidence a callous social sense, the evidence does not substantiate that they are acts which come within the crimes charged in count five, and the defendant is exonerated respecting them.

*Resettlement.*—Several years prior to 1939 a race and settlement office had been set up in the SS under the jurisdiction primarily of Himmler, and Darré had undertaken, in addition to his other duties, to act as its chief. At that time and until the beginning of the war its functions consisted of procuring lands for and furnishing financial support, machinery, and other facilities to those Germans, either national or ethnic, who were displaced either by reason of treaties, such as that made with Italy, whereby Germanic inhabitants were compelled to leave their homes within areas such as had belonged to the Austro-Hungarian Empire prior to the Treaty of Versailles, and had been ceded to Italy, or because of the condemnation and appropriation by the Reich of agricultural lands for airfields, drill grounds, roads, and other public works. Except insofar as the lands used for resettlement were unjustly and illegally expropriated from Jews, the exercise of these functions, of course, do not constitute any breach of international law and then only insofar as they are in execution of or in connection



with the planning, preparation, initiation and waging of aggressive wars.

We cannot say that it has been proved beyond a reasonable doubt that during that period acts of the defendant as Chief of the Race and Settlement Office were such as to constitute a crime within our jurisdiction.

One of the main purposes of the aggressive wars waged by the Nazi government against Poland and later against Russia was to gain Lebensraum for Germany; it was proposed and planned to confiscate their land and property from Poles and Jews, and property which was State-owned, and to utilize the same for resettlement of Reich Germans and ethnic Germans from the Baltic states who might be compelled to leave their farms in compliance with the agreement of the Russian Treaty of 23 August 1939. Later it included ethnic Germans from other countries.

Shortly prior to 4 October 1939 Himmler and Darré fell out, and the former obtained a draft decree from Hitler by which the Reich Leader SS and the SS was entrusted with the settlement of the German peasantry in the "newly acquired (or) occupied

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eastern territories" (wording to depend on date decree issued) which at that time included that part of Poland. This aroused Darré's ire, and he wrote first to Lammers, then to Himmler, and finally on 27 October 1939 to Goering. In the first communication he stated *inter alia* (NG-1759, Pros. Ex. 1654):

*"The settling of German peasants in the conquered Polish territories, or special parts of these territories can, as it is certain, only be a question of the re-Germanization of these territories, i.e., the safeguarding of these territories by populating them with volunteer German settlers or industrious peasants. I suppose I may take it for granted that the Germanization of the Polish population is not intended, only the Germanization of the newly acquired soil."*

He referred to the fact that the requirements of the West Wall caused much property which would otherwise have been used for resettlement, to be devoted to defense projects and industrial purposes; that, bound up with the settlement of the eastern territories, was the question of the possible reparation of damages occasioned by the Polish agrarian reforms, and stated that dealing with this difficult problem presupposed an extensive knowledge of the Polish agrarian legislation and settlement activities (NG-1759, Pros. Ex. 1654)—

*"All these are tasks for which the necessary planning and preliminary work were done carefully a long time ago in my Ministry and in close cooperation with the Reich Food Estate, and for which, besides the officials of my Ministry, I have at my disposal my settlement and land economy authorities with their trained staffs of officials, likewise the settlement companies subordinated to me."*

It is difficult to reconcile the statement underlined [italicized], namely, that these plans had been prepared a "long time ago" with Darré's testimony that he had no knowledge and took no part with any plans for aggressive war, and particularly that against Poland, for this letter was written on 4 October 1939, within 35 days after the invasion of Poland. It is wholly unlikely that a man, in writing a letter on 4 October 1939, would speak of plans prepared a "long time ago" if they had in fact been prepared between 1 September and 4 October 1939.

After claiming that these matters of resettlement called for technical knowledge and experience, he said (NG-1759, Pros. Ex. 1654):

*"Therefore, in the interest of the great settlement task, it is my urgent desire that this, my very own task from the outset,*

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*should not be hampered by special orders or given any other authority. Of course, in selecting*

*settlers, applicants from the armed forces, the SS, and the SA will be considered in addition to the applicants from the ranks of the farmers, second and subsequent to agricultural workers, farmers displaced by public projects, and ethnic German refugees.*

*"The very variety of these applicants should prohibit the transfer of the problem of settling the eastern territories to an organization only in charge of one of these groups of applicants, especially since this organization is materially not in a position to perform this task."*

In closing, he requested Lammers to pass his report to Hitler with these additional statements of the competent Reich Minister (Darré).

His letter of 5 October to Himmler, although addressed to "Dear Heini," said that it was one of the greatest disappointments of Darré's life to be officially informed that the task of the new settlement of German peasantry in Poland was to be taken away from him and handed over to the SS; he complained that Himmler had not answered his various communications on the subject and that he had been kept in ignorance of Himmler's Polish plans.

On 7 October Hitler's decree was issued putting Himmler in charge of the scheme (paragraph III of which defined Darré's duties), and on 27 October Darré wrote Goering enclosing copies of two express letters to Lammers describing meetings at which the draft of the 7 October decree was discussed with Lammers and Himmler where he produced the draft decree and demanded to know whether, by virtue of his rights as Food and Agriculture Minister, he was still permitted to settle on the basis of a "gracious decree" of Himmler's. He stated that Himmler finally agreed to concede the carrying out of this settlement to the Ministry of Food and Agriculture and that thereupon Ministerial Director Harmening, who was present at the conference, formulated this concession which was newly incorporated in the proposed decree, without which Darré's department would never have had the right to utilize the experienced machinery of the Ministry unless Darré earned the good will of Himmler and was permitted to do so as a special favor.

Harmening deposes that he attended the conference of 7 October to which Darré had made reference in his letter to Goering, and that Darré there obtained the insertion of article III in the decree which the deponent formulated at the conference, as a result of which Darré, for his department and settlement agencies, obtained jurisdiction over the new settlement of German peasantry in the Incorporated Eastern Territories.

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On 24 November 1939, Himmler decreed that the employment of agricultural managers for all confiscated land and property in the eastern territories was to be handled exclusively by Darré and that no such persons were to be directly appointed through the Office of the Commissioner for the Strengthening of Germandom (Himmler himself).

On 17 January 1940, Darré, through his deputy Willikens, issued orders addressed to some 24 officials and groups of officers (apparently to everyone who had any interest in the matter of resettlement), reciting the situation arising from the decree of 7 October 1939, and that he had been commissioned with carrying out the new settlement or formation of German peasantry under the general instructions of Himmler; that he would make use of the settlement agencies and settlement companies to be newly established; that the "Central Land Office, Inc.," in the future, would get hold of and assess the entire Polish and Jewish agricultural property at the disposal of the Reich Commissioner, and later issue transfers, etc.; that the SS Race and Settlement Office would participate in the selection of settlers and work with the Reich Food Estate.

On 12 February 1940 Goering decreed that all agricultural and forest enterprises and property in the Incorporated Eastern Territories which on 1 September 1939, were not in the possession of ethnic Germans would be placed under public management, which also applied to such enterprises and properties which were requisitioned by the Reich Commissioner for the Strengthening of Germandom; that for carrying out this public management the defendant Darré, as Minister of Food and Agriculture, would appoint an administrator general who would be bound by Darré's directives; that all administrative authorities and courts were ordered to supply official help to the Ministry of Food and Agriculture and his agencies; and that the defendant, in accord with Himmler, would issue directives to carry out the provisions of Goering's decree, and Darré could decide, by administrative measures, any questions of doubt in individual cases.

On 28 February 1940 Darré, through his deputy Backe, set up the East German Land Management Company, Ltd., and appointed an administrator general for agricultural and forest enterprises which were to be placed under public management in accordance with the provisions of Goering's decree.

On 9 May 1940 Darré announced the location of the head and branch offices of this company.

On 10 November 1940 the Minister of Food and Agriculture promulgated regulations for the selection of Polish farms for purposes of resettlement by ethnic German farm owners and

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German owners of farms in the Reich; that when these applications had been approved, the Polish property was to be taken out of the hands of the public administrator and, if necessary, out of the hands of its then owners and the applicant could move in. Such was the organizational form of the so-called resettlement of Polish farms.

In the latter part of November 1940 Himmler prepared a memorandum entitled, "Reflections on the Treatment of People of Alien Races in the East." He proposed that they be split up into as many individual ethnic groups as possible; that Germany was not interested in unifying, but in breaking them up into as many parts and fragments as possible; that only by dissolving the fifteen millions of people in the Government General and the eight millions of people in the eastern provinces, could Germany carry out the racial sifting necessary to select individual and racially valuable elements and bring them into Germany and there assimilate them; that no schools higher than elementary fourth grade would be permitted, and that they must be taught that it is a divine law to obey the Germans, and to be honest and industrious; that reading should not be required; that if a parent desired his children to receive better schooling, and they were considered racially perfect, they should be sent to school in Germany and remain there permanently; that cruel and tragic as this might be, it was still the best method if one accepted as un-German and impossible the Bolshevik method of physical extermination of the people.

Himmler said that this practice might discourage people of good blood from producing any more children, which, however, would be advantageous; that there would be an annual sifting of children, of 4 to 10 years, of whom the racially valuable would be sent permanently to Germany; that the remaining population would be used as people of labor without leaders and would be at Germany's disposal and furnish it annually with migrant workers, and those fitted for heavy work would be called upon

to help work on the everlasting cultural tasks of the German people.

On 28 March 1940 Himmler made a file note or memorandum that on the 25th he had handed in his report on the "Treatment of Peoples of Alien Races in the East" to Hitler, who considered it "very good and correct," but ordered that only a very few copies should be issued, and that it should be treated with the utmost secrecy and be regarded as a Hitler directive. Among those to whom Hitler directed it should be distributed was Darré.

The defense denies that [NO-1880, Prosecution] Exhibit 1314, is the report mentioned in [NO-1881, Prosecution] Exhibit 1313, and further denies that Darré ever received it. The proof is not conclusive on this subject, but we believe that even if the report

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submitted to Hitler was not precisely identical with Exhibit 1314, it no doubt followed the same line.

On 7 June 1940 Director Hugo Berger, Ministerialrat in the Ministry of Food and Agriculture and who, incidentally, had been appointed by Darré as deputy minister of the East German Land Company, published an article in the National Socialist Landpost [Nationalsozialistische Landpost] describing what had taken place in Poland, and how immediately behind the advancing army the entire occupied area became dotted with farmers from the Reich after their applications and qualifications had been approved and determined in Berlin; that in the Warthegau and the district of Kattowitz and the area constituting the Government General, they were directly supplied with agricultural workers from the Reich by the Reich Food Ministry; that they were furnished with tractors, steam plows, threshing implements, etc.; that these thousands of German farmers were settled in the Incorporated Eastern Territories on the lands of nearly 5,000 large Polish farms and hundreds of thousands of small Polish farms covering an area of nearly one-fifth of the agricultural area of Germany as it was up to December 1937.

Darré's defense is that his department and agencies had nothing to do with the matter other than to furnish agricultural machinery, supplies, and equipment; that he had no knowledge of the criminal nature of Hitler's plans and actions; and finally, that the East German Land Company, Inc., acted as a trustee for the expropriated Polish lands for the benefit of future owners, and that it was merely an agency of economic supervision.

It is further urged that Darré's settlement companies did not themselves confiscate land, but that this was done by the Main Trustee Office East, and they only administered the lands so confiscated; that whatever Darré did was only as the executive organ of Hitler.

This defense overlooks, however, the fact that all of these organizations were integral parts of the common plan to unlawfully deprive Jews and Poles of their land and reduce them to serfdom, and to settle it with Germans, and finally, to turn the title thereto over to these new settlers. Darré and his agencies played an essential part in this unlawful and cruel scheme.

While it is true that Himmler was the chief of the so-called resettlement and was Darré's superior, in most particulars, the fact remains that Darré strongly endeavored to get complete authority for himself and that he fought for and kept as much power as he was able, while, on the other hand, Himmler sought for and kept all the power he could and surrendered as little to Darré as he was compelled to. Under these

circumstances Darré cannot be considered a mere automaton,

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Notwithstanding the assertions of the defense, trusteeships were not for the benefit of the Polish and Jewish landowners. Their function was to insure an orderly administration and division of expropriated land for the benefit of Germany and Germans, and not of Poles or Jews. Darré knew what the plan was, and in his letters to Lammers he speaks of having "long ago" prepared it; his objections were not to the scheme itself, but to the fact that Himmler and not Darré was to be put in charge of it. When he failed to get complete control, nevertheless by repeated objections and remonstrances, he succeeded in having the proposed decree changed, giving him a large measure of authority, although Himmler was the over-all head; Darré selected those who were to become settlers, subject, of course, to the right of Himmler and the SS to pass upon the political and racial acceptability of the applicant; his administration furnished a large percentage of the new settlers.

The struggle between himself and Himmler was one for power and authority, and not one of difference in ideology or plan. This particular contest was symptomatic of the Nazi government. Each little Hitler was jealous of his prerogatives and each, to the best of his ability and influence, attempted to increase his jurisdiction, generally at the expense of one or another of his associates. That, in this instance, Himmler succeeded and Darré in part failed, does not redound to the latter's credit, but merely demonstrates that Himmler was closer to the source of power and was best able to assert his claims. These expropriations and resettlements took place while Poland and her allies were still valiantly fighting in the field to regain her occupied territories. The acts here outlined violated the provisions of The Hague Convention [Annex to Convention No. IV] (Art. 46) and were a plain and outrageous breach of international law.

Darré was a conscious and willing participant in robbing hundreds of thousands of Polish and Jewish farmers of their property which subjected them to serfdom and finally consigned them to slave labor either in Poland or Germany.

We do not believe the defendant Darré to have been an unimaginable monster like Himmler, but his own letters show him to have been cruelly callous of the rights of others and utterly indifferent to the human suffering which the measures in which he willingly participated inflicted upon the unfortunate people of Poland.

Von dem Bach-Zelewski, called for the defense, testified among other things, that Darré was one of the leading anti-Semites in Germany, but not comparable with Streicher and his associates; that he was responsible for the anti-Semitism in agriculture, and

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as a result of his methods all Jews were removed from the Reich Food Estate and as handlers of food and of food enterprises; that agriculture was the first section in which the elimination of the Jew was attempted; that it was Darré's theory that Jews were never to own landed property, and, as head of the Race and Settlement Main Office until 1938, he carried out this concept by prohibiting ownership of property by Jews; that in the newly annexed territories, resettlement took place by force and racial matters, although later on the execution of these plans was not placed in his hands.

In the particulars heretofore stated, Darré must be and is found guilty under count

five.

## DIETRICH

Dietrich held various important positions in the Party and in the Third Reich. On 1 August 1931 Hitler appointed him director of the press office of the Party.

On 28 February 1934 he appointed Dietrich Reich press chief of the NSDAP with the following powers (*NG-3477, Pros. Ex. 815*):

*"He directs in my name [in meinem Auftrage] the guiding principles for the entire editorial work of the Party press. In addition, as my press chief, he is the highest authority for all the press publications of the Party and of all its agencies."*

The defendant insists that the proper translation of the term "in meinem Auftrage" is "by my order" rather than "in my name." Apparently, however, either translation is proper. In view of the facts shown by the evidence it makes no substantial difference which translation is adopted.

In 1933 he was appointed one of the Reichsleiters (Reich Leaders), a small group which constituted the leaders of the Party ranking next to Hitler himself.

In November 1937 he was appointed press chief of the Reich government, taking office at the beginning of 1938 as State Secretary of the Ministry of Public Enlightenment and Propaganda, under Goebbels, and remained in this position until 30 March 1945, a few weeks before the final collapse. He was a "convinced Nazi" and was one of Hitler's trusted lieutenants in the fight for power; his own witnesses describe him as being "moderately" anti-Semitic. No effort was made to satisfactorily define what was meant by this term other than that he was not a "radical" anti-Semite. The degree of his moderation is shown by his speeches and by his press directives which will be hereafter alluded to.

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As Reich press chief he had at least the ostensible control over the press so far as to what it should and should not publish. There was a continual rivalry and contest between Goebbels and himself. The former attempted to seize and exert power while Dietrich strenuously resisted these attempts. The contest did not end until 30 March 1945 when Goebbels succeeded in having Dietrich dismissed from office. Dietrich was, during all the important years of the Nazi regime, a member of Hitler's personal entourage and spent most of his time at the Fuehrer headquarters. He supervised and determined what material of foreign and political news should be submitted to Hitler and used his position and presence in Hitler's entourage to maintain his position and powers. While he was unsuccessful in his efforts to separate the Reich press office from the Ministry of Propaganda, nevertheless, Goebbels was unsuccessful until the very end in seriously disturbing Dietrich's status and control over the press.

In view of the attempts made by the defense to minimize his influence and his power and authority, we quote from the diary of Goebbels' personal Referent, Semmler, where, under date of 28 November 1943, the following is found (*Dietrich 16 A, Dietrich Ex.164*):

*"The endless quarrel between Goebbels and the Reich press chief has been dormant for a while, only to flare up again and rage the fiercer. Their struggle to dictate the tone of the press has begun again. It was a trifle that started it, but Goebbels is raging, as much because of his powerlessness to control Dietrich as because of the issue at stake. [Emphasis supplied.]*

*"Although Dietrich is State Secretary in the Propaganda Ministry he refuses to take*

orders or advice from Goebbels. He shelters himself safely behind Hitler, whose chief press officer he is.

*"The press section in the Ministry, which took over the functions of the former press department of the Reich government, is formally not under Goebbels at all, but under Dietrich as press director of the Reich government. [Emphasis supplied.] The headquarters of this department is the famous room 24, which is staffed day and night. From here are issued all political directives to the German press, all requests passed down from above, from Hitler, from Goebbels, from the Foreign Office, and from the Chancellery have to go through his office.*

*"I myself pass to room 24 the press instructions which I receive, dictated by Goebbels, so that they can be passed from there to the newspapers.*

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*"Now if there is some important news material, like a speech by Churchill, it can happen—or rather it is the rule—that at least three or four different pages of policy directives are produced. They are supposed to assist our editors in their work. But it is the obvious to me that they deprive writers of the last vestiges of intellectual independence. These directives often contradict one another sometimes only on a few points, but more often completely and utterly. In such cases there are only two courses of action open to the wretched official in room 24, who is almost continually talking on two telephones at once. Either he can forbid any mention or discussion of the Churchill speech for 24 hours—in which case the British newspapers say the speech has given the Germans such a shock that they don't know what to say—or he will take directive points from the Hitler-Dietrich document and ignore the suggestions of Goebbels and Ribbentrop.*

*"Then on the next day Goebbels is furious when he reads the newspaper and finds that no attention has been paid to his instructions. Often I am suspected of not having passed them on, and I can only save myself by producing the original copy of the directives.*

*"Oddly enough, Dietrich's authority extends only to the press, while Goebbels has exclusive control over the radio and over its news services." [Emphasis supplied.]*

Entry of 30 November 1943—

*"One result of the latest quarrel with Dietrich is that Goebbels has decided to intensify the political use of the radio. He is going to give special attention to the development of its news services."*

Again on 13 March 1943 Semmler noted:

*"Of course he [Goebbels] controls public opinion with his powers over radio, films, and to a certain extent over the press. I say to a certain extent because he has to share at least half the work with the Reich press director (as spokesman of the Fuehrer's headquarters), with the Foreign Office and with the High Command. Many of the directives which I pass to the press in Goebbels' name are useless because at the same moment the Fuehrer's headquarters (that is to say Dietrich) is putting out the opposite directive on the same theme. And in cases of doubt anything that comes from the Fuehrer's headquarters has Hitler's personal authority and takes priority, however trivial the matter."*

Goebbels told Fritzsche in November 1942 (Tr. pp. 8976-8977):

*"I shall never be able to take the press from Dr. Dietrich, and Hitler will never permit me that the press will be completely eliminated from the Ministry of Propaganda."*

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These statements agree with the oral testimony of the witness Karl Paul Schmidt of the Foreign Office and of Werner Stephen, Heinz Lorenz, and Fritzsche. We believe that the statements made in these affidavits lie closer to the facts than the attempts made in the oral testimony of the affiants to minimize Dietrich's power and authority. Dietrich established the so-called "Tagesparole" which were daily instructions to the press. This step was to prevent either Goebbels or other ministers or agencies from exercising control over the press releases. Dietrich appointed his own subordinates who had immediate charge of these releases, and his personal approval was required for each release including the directives and statements of policy desired to be issued by other agencies, including Goebbels himself, the Foreign Office, the

OKW.

It is true that the views, opinions, and desires of many of the ministers were quite generally included in the releases, but the final authority lay in Dietrich. Each morning before the Tagesparole was issued to the press conference, the Foreign Office and other ministries and agencies, including the Ministry of Propaganda, furnished material for the press releases. Here again Goebbels interfered and to some degree was successful, until the advent of Sundermann. From that time on Dietrich regained control.

The press department also issued weekly directives and various kinds of material for periodicals and magazines. The defense has offered testimony that Dietrich had no control over this material; that Bade, who was chief of the periodical division, was Goebbels' man and not Dietrich's. This, however, is denied by the witness Gensert who was employed in a responsible position in that division and who was a member of the opposition to the Nazi Party and was himself finally arrested by the Gestapo; also by the affidavit of Lorenz.

Lorenz there deposes that between Dietrich and Bade, chief of the periodical press department, there was a close personal relationship; that Dietrich protected Bade strongly and brought about his promotion to Ministerial Dirigent; that Bade deputized for Stephan in his capacity as personal expert (personal Referent) and that Dietrich asked Bade frequently to visit him in the Fuehrer's headquarters, where the latter assisted him in drafting his speeches and articles; that upon Dietrich's suggestion Bade had been appointed to the department as chief where previously he had only been in charge of one main section of the department.

In view of Dietrich's determination to have and maintain power and authority, in view of the powers conferred upon him as press chief of the Nazi Party and press chief of the Reich government,

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and the fact that when any member of his department followed Goebbels' wishes rather than those of Dietrich, he was disciplined or removed; we have no doubt that whenever Goebbels' desires or those of any other minister differed from the press policy which Dietrich wished, Dietrich's policy prevailed.

Press propaganda was one of the bases of Hitler's rise to power and one of the supports to his continuation in power. He so states in Mein Kampf (NG-3552, Pros. Ex. 811):

*"The whole art consists in doing this so skillfully that everyone will be convinced that the fact is real, the process necessary, the necessity correct, etc. But since propaganda is not and cannot be the necessity in itself, since its function like the poster consists in attracting the attention of the crowd and not in educating those who are already educated or who are striving after education and knowledge, its effect for the most part must be aimed at the emotions and only to a very limited degree at the so-called intellect \* \* \* .*

*"But if, as in propaganda for sticking out a war, the aim is to influence a whole people, we must avoid excessive intellectual demands on our public, and too much caution cannot be exerted in this direction.*

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*"The receptivity of the great masses is very limited, their intelligence is small, but their power of forgetting is enormous. In consequence of these facts, all effective propaganda must be limited to a very few points and must harp on these in slogans until the last member of the public understands what you want him to understand by your slogan.*

\* \* \* \* \*

*"Its task is not to make an objective study of the truth, insofar as it favors the enemy, and then set it before the masses with academic fairness; its task is to serve our own right, always and*



unflinchingly.

"The purpose of propaganda is not to provide interesting distraction for blase young gentlemen, but to convince, and what I mean is to convince the masses. But the masses are slow moving, and they always require a certain time before they are ready even to notice a thing, and only after the simplest ideas are repeated thousands of times will the masses finally remember them."

Point 23 of the Party program states (1708-PS, Pros. Ex. 812):

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"(a) All writers and employees of the newspapers appearing in the German language be members of the race.

"(b) Non-German newspapers be required to have the express permission of the State to be published. They may not be printed in the German language.

"(c) Non-Germans are forbidden by law, any financial interest in German publications, or any influence on them, and as punishment for such violations the closing of such a publication as well as the immediate expulsion from the Reich of the non-German concerned. Publications which are counter to the general good are to be forbidden. We demand legal prosecution of artistic and literary forms which exert a destructive influence on our national life, and the closure of organizations opposing the above-made demands."

In the National Socialist Year Book for 1938 the following is said with respect to Dietrich as Reich press chief of the NSDAP:

"The Reich press chief of the NSDAP is, in addition to being the Fuehrer's personal press chief, the competent Reichsleiter for all Party agencies entrusted with political-journalistic tasks which are subordinated to him professionally and politically without prejudice to their organizational subordination. The most important of these are the Pressamtsleiter and Referents of all offices of the Reichsleitung, the editors in chief of the Party press, the Gau press offices of the NSDAP, as well as all the rest of the press political organizations of the NSDAP.

"The mouthpiece of the Party as far as the whole of the press is concerned is the National Socialist Party News Service, under the direction of the Chief of the Press Political Office.

"\* \* \* The entire press at home and abroad obtains all its information regarding the NSDAP from the offices of the Reich press chief in Berlin and in Munich."

In September 1935 Dietrich delivered a speech at the Party rally in Nuernberg, stating, among other things (NG-3536, Pros. Ex. 821):

"The liberalistic age boasted of the press as a seventh power. A power, therefore, which was not of the people, but which aspired to govern them. In the National Socialistic State the press constitutes the public conscience of the nation. A power destined to serve, but not govern the people \* \* \*.

"Since the press reflects the course of events daily, even hourly, it is natural that its purification which was in the nature of an introduction to the revolution, had to manifest itself as one of its first and most decisive operations.

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"In National Socialist Germany that kind of press was eliminated with lightning speed by the arm of the law! A fate which it deserved a thousandfold overtook it on the first day of the revolution.

"The same article of our Party program further adds: 'Newspapers violating the community interests are to be prohibited!'

"And, dear Party members, we did our full duty by our program in this respect also. In National Socialist Germany, enemies of the State and the people are not tolerated in the press; they are exterminated.

"The program continues: 'In order to facilitate the creation of a German press, we demand that all editors and co-workers of newspapers published in German must be Volksgenossen.'

"In this respect also we can ascertain that a complete job has been done. The National Socialist Press Decree has eliminated all parasites from German journalism. Today there are no more Jews in the German press!"

The speech abounds with phrases such as the following:

"The Jewish liberal-profiteering press.

\*\*\*\*\*

"We have eliminated the Jew from the press, and since then, dear Party members, we do indeed

*feel freer and better in this field.*

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*"We have cleaned the Jews out of the German press, and therefore it is more than others the target of their hatred."*

On 4 October 1933 the Editorial Control Law was issued which limited editors to those who possessed German citizenship, had not lost their civic rights, and qualified for a tenure of public offices, were of Aryan descent, and not married to a person of non-Aryan descent, etc.

Not only were the German newspapers under strict control, but as the program of expansion and aggression moved forward, it was made applicable to the new territories; the Saar, Austria, Sudetenland, Danzig, the occupied eastern territories, Poland, Netherlands, Bohemia, and Moravia.

On 9 October 1934, Dietrich officially informed the editorial staff of the National Socialist press that he made the district press leaders of the Party responsible to the Reich press office for all the news in the papers in the districts dealing with the Party, even if the papers were not Party papers.

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On 9 March 1939 Sundermann, Dietrich's chief of staff, informed the Party press offices and Referents that daily directives would thereafter be sent to the Party press offices in order to efficiently control and guide the press in forwarding its wishes in publication questions immediately to the whole German press in the same manner as used by the press divisions of the governments.

*Jewish problem.*—The record is replete with press and periodical directives of a general anti-Semitic nature. We relate only a few of those which were directed toward Jewish persecution and the "final solution."

On 15 February 1940 the Tagesparole issued the following directive (NG-4698, Pros. Ex. 1258):

*"The foreign press declares that 1,000 German Jews have been transported to the Government General. The report is correct but is to be treated as confidential."*

On 21 August 1941, as part of the secret information in the Tagesparole, the press was informed (NG-4702, Pros. Ex. 1259):

*"It is to our interests that all Jewish statements against Germany or the authoritarian states should be well noted. The reason for this wish is that measures of an inner political nature may be expected."*

On 26 September 1941 this information in the Tagesparole is to be found (NG-4701, Pros. Ex. 1261):

*"With reference to the marking of Jewry, the opportunity is offered to handle this theme in the most varied ways, in order to make clear to the German people the necessity for these measures, and especially to indicate the noxiousness of the Jews. From tomorrow on the special delivery service will provide material to be used as proof of the injuries which Jewry has inflicted upon Germany, and the destiny it has envisaged for her, past and present. This material is recommended."*

On 3 February 1944, the Tagesparole announced that (NG3408, Pros. Ex. 1275):

*"The change in the diplomatic status of the Soviet Republics' \* \* \* and the applause with which it is greeted by the Jewish press throughout the world, reveals a gigantic international Jewish conspiracy, \* \* \*"*

and that:

*"\* \* \*the German press now has the task of energetically taking up this theme of the change in the diplomatic status of the Soviet Republics,' and to brand this clumsy Jewish trick*

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*with convincing words \* \* \*. It can be seen that this whole maneuver is a Jewish trick of gigantic*

proportions. The fact that the Jewish newspapers throughout the world welcome this development clearly indicates that this is a gigantic conspiracy of Judaism, a Jewish conspiracy of international proportions, \* \* \*".

and that:

"In these problems also we can recognize the truth that the Jewish question is the key to the history of the world."

On 2 March 1944 it is said (NG-3410, Pros. Ex. 1277):

"The anti-Semitic campaign must be emphasized still more than up till now as an important propagandistic factor in the world struggle. Therefore, at all possible occasions world Judaism has to be stigmatized as the one whose cunning machinations are even opposed to the interests of its hostess nations. On top of all that these voices are to be recorded which show clearly the real Jewish intentions of destruction and to make them the subject of convincing exposure. In this respect German journalism has to aim at keeping awake in the German people the feeling that Judaism constitutes a world danger on the one hand, and on the other, above all, to carry the discussions abroad."

On 27 April 1944, the Tagesparole stated (NG-3412, Pros. Ex. 1279):

"One of the fundamental topics of the German press will remain the anti-Semitic campaign. In this respect very useful material has come to hand from Hungary. When utilizing the reports on the measures taken there against the Jews it has to be kept in mind that they will not be reproduced without extensive statements on the crimes committed by the Jews, which caused these measures.

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"When, in treating the first point of the Tagesparole, the newspapers will arrive at the general tendency of their commentaries—Judaism's guilt—then just the second point of today's Tagesparole must be the cause, taking Hungary as the pretext, to start again on a large scale the anti-Semitic campaign. This one principal topic of the German press, on account of the present reports from Hungary, must be principally reopened once more. However, not only the mere reports on the measures taken by the new Hungarian Government against the Jews must be published, moreover the present

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judaification of Hungary has to be shown up, which has led to such measures \* \* \*. When this Jewish guilt has been extensively treated by the press, then the new anti-Semitic measures of the Hungarian Government can be mentioned."

On 1 June 1944 a confidential information to the Tagesparole contained the following statement (NG-4706, Pros. Ex. 1281):

"The treatment by the press of the war aims, the combat methods, and the reign of terror, etc., of our enemies is incomplete and ineffective if, in every case, and in the leading articles of the newspapers, Germany's determination to oppose this Jewish chaos and to fight for German victory with bold resolution is not expressed."

We now come to the articles appearing in the periodical directives. Under the heading "If the Jew Comes into Power," it is said (NG-4715, Pros. Ex. 1264):

"The Zeitschriften-Dienst (Periodical Service) has already referred several times to the necessity for rousing all power to resist in the German people. The Deutsche Wochendienst (German Weekly Report) shows what has happened to those nations which have become the victims of Judaism. In this connection reference can be made to Hitler's words that at the end of this war there will be only survivors and annihilated. In pointing to the firm intention of Judaism to destroy all Germans, the will for self-assertion must be strengthened."

Under the heading "Europe Protects Herself Against the Jews," it is said (NG-4715, Pros. Ex. 1264):

"The declaration of war by the Jews against the European nations resulted in energetic measures being taken against the Jews, not only in Germany but also in many other European states. The Deutsche Wochendienst recommends the periodicals to issue comprehensive descriptions, and in this connection furnishes material and suggestions for subject matter. It must be pointed out that in the articles, as a result of their racial composition, the Jews are hostile to anything constructive and

*any peaceful community life. For reasons of self-preservation, the nations must protect themselves against the Jewish destructive forces \* \* \*.*

*"Let us avoid any criticism of the measures taken against the Jews by individual countries, and comment on their suitability and the extent to which they can be put into practical effect."*

On 2 April 1943, it is said (NG-4710, Pros. Ex. 1266):

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*"Of equal value with our anti-Bolshevist propaganda is that against Jewry. It must be a matter for irrefutable certainty to every member of our people that the Jews are the inexorable enemies of our nation and are behind bolshevism as well as behind the plutocracies. \* \* \* The treatment of this subject belongs in the framework of the rousing of feelings of hatred recently described here as necessary.*

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*"In the works for which the Deutsche Wochendienst brings numerous suggestions and subject proposals, it must be emphasized that with Jewry it is not the same as with other peoples, that there are individual criminals, but that Jewry as a whole springs from criminal roots and is criminal by disposition. The Jews are not a nation like other nations, but bearers of a hereditary criminality. The criminal class of all lands speaks a specialized language, of which the most important elements are Hebraic. The annihilation of Jewry is no loss to humanity, but as useful to the peoples of the earth as capital punishment or security custody for criminal offenders."*

On 22 April 1943 the Periodical Service stated (NG-4711, Pros. Ex. 1268) that the Jews were responsible for the Katyn mass murder of Polish officers, and that the Jews wanted to murder the peoples of Europe, and that the Katyn incident was not alone a hateful outbreak of Jews against Poles, but rather a hateful policy of Jews against all non-Jews.

Under "Manner of Treatment" is found (NG-4716, Pros. Ex. 1272):

*"Emphasize: Every individual Jew, wherever he may be, and whatever he may do, shares the guilt. There is no such thing as a 'decent Jew' but only a more or less cleverly designed camouflage. The Jew is a notorious criminal."*

It is thus clear that a well thought-out, oft-repeated, persistent campaign to *arouse the hatred* of the German people against Jews was fostered and directed by the press department and its press chief, Dietrich. That part or much of this may have been inspired by Goebbels is undoubtedly true, but Dietrich approved and authorized every release, as his own witnesses admit.

The only reason for this campaign was to blunt the sensibilities of the people regarding the campaign of persecution and murder which was being carried out.

Hitler, on 30 January 1942, in a widely published speech, said:

*"On 1 September 1939 I already declared in the German*

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*Reichstag—and I am careful about rash prophecies—that this war will not end as the Jews imagine, namely with the destruction of the European Aryan people, but rather that the result of this war will be the destruction of Jewry. For the first time other nations will not bleed away, but rather for the first time the old Jewish law will be applied; an eye for an eye, and a tooth for a tooth.*

*"The longer this war will continue, the more world Jewry might just as well know this; anti-Semitism will spread. It will find encouragement in every prison camp, in every family which will come to know the real cause for their sacrifices. And the hour will come when the most evil world enemy of all times will have, at least for a thousand years, played out his role."*

These press and periodical directives were not mere political polemics, they were not aimless expressions of anti-Semitism, and they were not designed only to unite the German people in the war effort.

Their clear and expressed purpose was to enrage Germans against the Jews, to justify the measures taken and to be taken against them, and to subdue any doubts

which might arise as to the justice of measures of racial persecution to which Jews were to be subjected.

By them Dietrich consciously implemented, and by furnishing the excuses and justifications, participated in, the crimes against humanity regarding Jews charged in count five.

He is, and we find him guilty.

#### VON ERDMANNSDORFF

Von Erdmannsdorff joined the Foreign Office in 1918 and by 1928 had risen to the position of Embassy Councillor (Botschaftsrat) in China. After Hitler's rise to power in 1933 he was recalled to the Foreign Office and became chief of the East Asia group. In 1937 he was sent to Budapest as German Minister. He was recalled in June 1941 and became deputy chief (Ministerial Dirigent) of the Political Division of the Foreign Office.

Until 1943 he was subordinate to Woermann and thereafter to the latter's successor, Hencke.

*The facts.*—The defendant did not take the witness stand and offered no evidence in his behalf. It was stipulated by the prosecution and the defense, and thereon the Tribunal ruled, that only such evidence as had been admitted up to the time the defendant rested his case, that is, 16 July 1948, should be considered against

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him. In its brief the prosecution has referred to documents or exhibits and oral testimony received subsequent to 16 July. In most instances this evidence was offered against other defendants and apparently the prosecution, due to a lapse of time and the size of the record of this case, overlooked its stipulation and the order the Tribunal previously adverted to. We shall not consider such exhibits or testimony. The Political Division, except insofar as it was interfered with or bypassed by the Foreign Minister von Ribbentrop (a situation which quite often arose, not only with regard to political but other divisions of the Foreign Office), had the duty to become thoroughly informed of the political situation in foreign countries. This, of course, involved obtaining both general and confidential information which might facilitate a correct evaluation of foreign political situations.

The Political Department, or Division, had various subdivisions, headed by a staff of Referents and other employees, who specialized on a particular nation or group of nations. In theory, and quite generally in practice, instructions on political matters and policy, and the attitude to be taken by the German diplomatic corps abroad were given by the Political Division.

The Foreign Minister was entitled to refer to and obtain the opinion of the division on matters of foreign policy. In principle, the functions and duties of this division differed little from like departments in the Foreign Office of other states, the heads of which, of necessity, rely largely upon the advice of men who have long experience in and expert knowledge of political and other conditions in a particular country or specialized area.

Von Ribbentrop, however, motivated in part by a tremendous egotism and vanity, and also burdened by a subconscious realization of his inadequacies and ignorance which his vanity forced him to conceal, resented and often ignored or bypassed the experts of his political department or directed them to transmit orders to his German representatives abroad without having considered their opinions. It would have been

difficult to imagine a man less fitted by native ability, experience, knowledge, or temperament to guide the foreign policy and advise the head of any major state, and it is not to be doubted that many of the fatal mistakes and crimes of the Nazi foreign policy are directly attributable to these factors, plus his pride and slavish adherence to Hitler.

That von Erdmannsdorff had knowledge of the crimes against humanity committed against the Jews, and the persecution of the churches, we have no doubt. But a careful examination of the evidence reveals little or nothing more. It is far from enough

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to justify a conviction. The deputy chief of the Political Division, particularly under the von Ribbentrop regime, had little or no influence. He was subordinated to the Under Secretary of State of the Foreign Office, and he was little more than a chief clerk.

We find von Erdmannsdorff not guilty under count five, and the prosecution having dismissed all other charges against him, it is ordered that on the adjournment of the Tribunal he be discharged from custody.

#### KEPPLER

The defendant Keppler in 1932 became the special adviser for economic affairs in the Party. In 1933 he became a member of the Reichstag. After the rise to power he became Hitler's Plenipotentiary for Economic Questions, and after the death of von Hindenburg his title was changed to that of Plenipotentiary for Economic Questions to the Fuehrer and Reich Chancellor. When Goering became Plenipotentiary for the Four Year Plan Keppler lost much of his power, although he remained one of its directors in charge of the Office for Soil Research, Oils, and Fats.

In the summer of 1937 he was directed to take part in Austrian problems and sent to Vienna to handle matters relating to the prospective Anschluss, and upon its accomplishment he, for a time, acted as Reich deputy for Austria. In the spring of 1938 he became president of the Reich Office for Soil Research in the Ministry of Economics. When the DUT was organized, he became chairman of its Aufsichtsrat and he also served in the Aufsichtsrat of the Continental Oil Company.

Shortly after the inauguration of the Hitler regime the "Office for the Repatriation of Racial Germans" was organized, which had, among other things, the function of bringing into Germany and resettling within its borders so-called ethnic Germans (citizens of other states), who might desire, or by persecution, or by force of other treaties or other agreements with other states, were required to leave the countries of which they were nationals and enter the Reich. We do not question that these functions were quite within the bounds of international law. There are, however, indications of certain other functions of a different character, but as to them the defendant Keppler is not involved and it is not necessary to discuss them.

Early in October 1939 a little more than 1 month after the invasion of Poland, Hitler appointed Himmler Reich Commissioner of the Office for the Strengthening of Germandom, which was directed by Hitler—

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(1) To bring back those German citizens and racial Germans abroad who were eligible for permanent return to the Reich;

(2) To eliminate the harmful influence of such alien parts of the population as constituted a danger to the Reich and to other German communities; and,

(3) To create new German settlement areas, especially by resettlement of German citizens and racial Germans coming back to the Reich.

It was intended at first to use for that purpose those portions of Poland which were attempted to be incorporated into the Reich, and which became known as the Incorporated Eastern Territories. Later Alsace and other territories which were occupied by Germany were utilized in this program.

No attention was paid to the property rights of those whose property was confiscated or who were either evacuated for labor services into the Reich or who were used as serfs in the territories where they had formerly lived and had their farms and property. In Poland not only were the lands of the Polish State confiscated, but privately owned farms, estates, or businesses as well. The property thus involved was not only the property of the Jews but that of Poles as well.

On 7 June 1940 Dr. Hugo Berger, a member of the Aufsichtsrat of the DUT (Deutsche Umsiedlungs-Treuhandgesellschaft), and who had been appointed to this post upon the recommendation of the defendant Keppler, published an article in the NS Landpost that nearly 5,000 large farms and hundreds of thousands of small Polish farms had been confiscated and brought into the resettlement program; that the total area thus involved amounted to almost one-fifth of the agricultural area of the whole Reich. These confiscations, evacuations, and deportations were carried out with coldly planned and calculated brutality. They were contemporaneously described by Frank, Governor of the Government General, who was tried and sentenced to death by the International Military Tribunal and thereafter executed.

In a communication addressed to Hitler in 1943 he wrote (NO-2202, Pros. Ex. 1328):

*"If I may say so, the starting point for my opinion in this question is the consciousness that it is one of the most honorable and most urgent tasks of the German leadership to create a home in the eastern territories, conquered by the German sword and blood, for the ethnic Germans who had been withdrawn from the spaces formerly under alien domination. But to me it seems necessary to weigh carefully the question whether this aim should be realized in the middle of the fight for the*

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*existence of the German people \* \* \* or whether it would not be more expedient to postpone the execution of these measures to a date when it will be possible to carry out the necessary, basic preparations for the introduction of ethnic German settlers without being hindered by difficulties caused by the war and without the loss of important economic contributions to be made by the territory envisaged for resettlement, to the detriment of the German war effort.*

*"I refrain from discussing in detail smaller settlement and resettlement measures, such as have been planned and carried out several times without sufficient contact with the offices of the general administration; I shall limit myself to describe the attempts, planned and carried out on a larger scale in the district of Zamosc since the end of the last year, to settle ethnic Germans in this territory; these measures have been carried out by the offices of the Reich Commissioner for Strengthening of Germanism. \* \* \**

*"According to my own conviction, the reason for the complete destruction of public order is to be found exclusively in the fact that the expelled persons were in some cases given only 10 minutes, in no cases more than 2 hours to scrape together their most necessary belongings to take with them. Men, women, children, and old people were brought into mass camps, frequently without any clothing or equipment; there they were sorted into groups of people fit for work, less fit for work, and unfit for work (especially children and aged persons), without regard to possible family ties. All connections between the members of families were thus severed, so that the fate of one group remained unknown to the other. It will be understood that these measures caused an indescribable panic among the population affected by the expulsion, and led to it that approximately half of the population, earmarked for expulsion, fled. They fled in their despair from the expulsion district and have thus contributed considerably to the increase of the groups of*

*bandits which have existed for some time in the Lublin district and which act with continuously increasing audacity and force. This movement has extended, like waves in a pond, also to the inhabitants of those rural districts which were not—in any case not yet—intended for expulsion. In the course of these events it has even happened that the newly settled ethnic Germans, forced by casualties inflicted on them by bandit actions, frequently banded together into armed troops and procured for themselves from the surrounding villages, with alien population, on their own initiative and by force of arms the necessary implements for their farms.*

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*"This chaotic situation was further aggravated by retaliatory measures by the constabulary in the Lublin district to forestall additional attacks on ethnic German villages. These retaliatory measures consisted, among others, in mass shootings of innocent persons, especially of women and children, and also of aged persons, between the ages of 2 to 80 and over. Experience taught that these measures have only a slight deterrent effect on these bandits who are frequently under Bolshevik leadership. But they increase the exasperation and the hatred of those innocently affected, including those parts of the population which are frightened that in future they might be affected by similar measures, and thus now active followers for the resistance movement led by the Polish intelligentsia, and ample propaganda material for the extremely active Bolshevik agitation is played into their hands.*

*"The consequences of this semi-rebellious state of affairs, caused by the expulsion measures in the Lublin district, especially in the Zamosc area and vicinity, made themselves felt throughout the whole of the territory entrusted to me. I am proud of the fact that in 3 years of German administration of this territory under my authoritative influence, hardly any sacrifices of German lives had to be made, in spite of the necessity to carry out numerous measures necessitated by circumstances. In the short period from the beginning of the expulsions, carried out against my will, considerable and deplorable casualties have occurred among the German people settled here, among the police and the Wehrmacht, as well as among the civil administration personnel. \* \* \**

*"\* \* \* I want to stress here only the single fact that none of the foreign workers employed for Germany's final victory have reached nearly as low a nutritional level as the alien workers used here. \* \* \**

*"In connection with the execution of the resettlement plan described by me, the point of view has often been maintained that all humanitarian considerations must be completely neglected. May I give the assurance that I, too, share this view utterly and completely."*

After the close of the western campaign there were wholesale expulsions from Alsace, and as found by the International Military Tribunal, "between July and December 1940, 105,000 Alsatians were either deported from their homes or prevented from returning to them."

The entire resettlement-repatriation program was essentially an SS enterprise. Himmler was its chief, and in carrying it out

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the various Reich agencies were subordinated to him and he had the right to call upon them for the necessary assistance and cooperation. It involved many phases—

(1) The confiscation and evacuation of lands so that they might be made available for resettlement;

(2) The selection of those ethnic Germans who were deemed fit for settlement in the East and other occupied territories (this fitness was determined in part by their political reliability);

(3) The selection of those who could not be trusted in the border zones but were to be settled in the Reich where they could be re-educated in the German spirit;

(4) The rejection and assignment to labor or concentration camps of those politically unreliable and those who failed to show willingness to give up their citizenship and become citizens of the Reich or otherwise displayed an anti-German



attitude;

(5) The registration and classification of the so-called ethnic Germans into various groups;

(6) Their transport either into the Reich or the newly occupied territories, or to labor services or to concentration camps, according to their classification;

(7) The custody, control, and disposition of their old homes, farms, businesses, property, and funds;

(8) The allocation and assignment of new homes, farms, and businesses in the area in which they resettled; and,

(9) Financing and supporting them until such time as they became self-supporting, and making available to them the necessary furniture, equipment, machinery, and the like to enable them to carry out their part of the program.

These phases of the program were divided among a number of agencies: the Main Staff Office of the Reich Commissar for the Strengthening of Germandom; the Volksdeutsche Mittelstelle (VoMi); the Main Race and Settlement Office (RuSHA); the German Racial Registration Office (DVL); and the German Settlement Trust Company (DUT).

It is of the latter that we are immediately concerned because of Keppler's connection with it. It became immediately apparent to Himmler that the financial problem involved in this gigantic uprooting of peoples and shifting them from old homes to new, financing them and settling them in new homes, providing furniture, equipment, livestock; and above all, taking custody, and keeping an account of the value of the old property, and charging against the same the funds advanced in order to put them into new surroundings and to finance them until they were self-supporting, was of prime importance to the program and complicated in nature.

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The defendant Schwerin von Krosigk, Reich Minister of Finance, had suggested to Himmler that this be done through an official office which could be set up. Himmler approached Keppler, who had acted as Hitler's economic adviser, and asked his advice as to the advisability of following Schwerin von Krosigk's proposal.

The intricate problems involved not only skill in handling but often immediate decisions. Keppler objected to the bureaucratic idea, feeling that it would involve too much red tape and proposed that a trust company be set up to handle these problems. At Himmler's request he consulted Schwerin von Krosigk who recognized the merits of Keppler's proposal and agreed to it. It was under these circumstances that the German Settlement Trust Company (Deutsche Umsiedlungs-Treuhandgesellschaft) was formed. Keppler became chairman of its Aufsichtsrat and nominated the other members of the board as well as the members of the Vorstand—these Himmler confirmed.

Keppler remained in that position until some time in 1943 when, because of his membership in the Reichstag, it became necessary for him to retire. While the DUT was, in form, a private, limited liability corporation, it was in fact a governmental agency. It was formed for and engaged solely in carrying out its prescribed part of the program of resettlement. The Aufsichtsrat, or supervisory board, included representatives from the Ministry of Finance, the Foreign Trade Office of the Foreign Organization of the Party, a member of Himmler's personal staff (Greifelt), the defendant Kehrl of the Ministry of Economics, a member of the Foreign Office, a director of the Reich Bank, a director of the SS liaison office for ethnic Germans, and

a Vorstand member of the Official German Auditing Company, together with two ethnic German leaders. This was done because, as Keppler himself says, he desired the various Reich offices affected by the problem to have representatives on the board.

The concept of forming corporations under general corporate laws and utilizing them to carry out governmental functions was not a new one; it had been used in other countries as well as in Germany. This form of organization is adopted as a matter of convenience, as it is more elastic and therefore more efficient than formal, governmental agencies. Irrespective of form, such corporations are, in fact, arms of the government carrying out governmental functions. If these functions and the manner in which they are administered constitute a violation of international law, those responsible for and connected with it are guilty. The defendant Keppler and the defendant Kehrl assert that the actual executive and administrative duties of the DUT were inde-

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pendently carried out by its Vorstand, and if criminal responsibility exists it is those men who are responsible and not the members of the Aufsichtsrat.

The internal organization of German corporations is somewhat different from that of incorporated companies in the United States or Great Britain. The Vorstand is composed of those who have direct charge and control of executive and administrative matters. It may be said that it is comparable with those members of the board of directors of an American or English company who are the executive officials of the company, while the Aufsichtsrat is composed of the directors who hold no such position. The DUT Aufsichtsrat had a working committee composed of Keppler, the defendant Kehrl, and Greifelt of Himmler's Main Staff Office for the Strengthening of Germandom. This working committee may be likened to the executive committee of the board of directors of an American corporation. That the Aufsichtsrat of the DUT was not composed of mere figureheads without power or influence is evident from the care which was used by Keppler in selecting its members, and the interest he took in himself selecting its executive staff. Neither may we overlook the fact that this was, in fact, a governmental corporation charged with the performance of basic, governmental tasks. It was Keppler's idea; its Aufsichtsrat and Vorstand as well as the more important members of its executive and administrative staff were chosen by him. He knew its functions and he knew what part it played in the general scheme of resettlement. If the DUT had an important part in a crime cognizable by this Tribunal, he bears a part in the criminal responsibility thereto.

The resettlement of ethnic Germans took place at least in the following territories: in the Warthegau, a part of Poland, in Bessarabia, Bucovina, White Russia, the Dobruja, Southern Tyrol, and Alsace. By the end of 1942 it had opened offices in Danzig, Innsbruck, Katowice, Marburg, Poznan, Strassburg, Agram, Bolzano, Bucharest, Paris, Belgrade, Bialystok, Lemberg [Lwow], Lublin, Reval, Riga, Vienna, Fulnek, Kauen, Klagenfurt, Litzmannstadt [Lodz], Luxembourg, Metz, Rann, Zamosc, Zichenau, Krakow, and Prague. The tremendous scope of its activities is evidenced by the fact that it carried 250,000 accounts on its books dealing with individual property transactions, that is those relating to the amounts realized from the property taken from ethnic Germans who became settlers on farms and other property made available to them in the newly occupied territory; its daily mail amounted to 6,000 pieces; and its employees reached 1,800 in number.

The defendant Keppler insists that the DUT had no functions

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and took no part either in confiscations and evacuations, or did it have anything to do with the selection of lands and properties in which the new settlers were to be placed. Nevertheless, we find in a report of 19 January 1944, addressed to Rasche by the Allgemeine Waren Finanz Gesellschaft, a statement that the DUT had already assigned 600 parcels of real estate to Baltics resettled in Poznan.

That the DUT and its officials knew of the forced nature of these resettlements, and contemporaneously worked with it, is evident from the testimony of Ludwig Metzger, head of its legal department at Luxembourg, who was present at and had personal knowledge of the details of the forced evacuation and resettlement of the people of Alsace to which we have heretofore referred. These unfortunate people were rounded up by other agencies, who were a part of this program, and the evening before they were deported the DUT obtained their names and interviewed them; on the next morning they saw that the property was listed and that the movable goods in their homes were registered. He states: "There is no doubt that they did not go voluntarily."

Their homes and businesses were taken over by ethnic Germans selected from other portions of areas occupied by the German Government.

That Keppler himself kept in close touch and was intimately acquainted with the major steps taken by the DUT is shown by his testimony. He says (Tr. p. 19550):

*"First of all, I had to reform the firm, and I had to select the Vorstand members and the Main Staff for the most important positions. Then, I helped organize the firm; I was informed of all major steps, but of course I was not informed about details."*

It may well be true that the DUT neither confiscated the property of the victims in order to give living room to ethnic Germans, nor took any physical part in the forced emigration of those who were selected for resettlement, but we deem this wholly immaterial. Beyond question the DUT was an essential part of the criminal scheme and without it the crime could not be carried into successful execution.

The defendant Keppler asserts that so far as his activities in the DUT are concerned, the indictment is insufficient and indefinite in its charges against him, and that he offered testimony regarding the matter under the impression that the evidence offered by the prosecution under the same was addressed to count eight of the indictment—membership in criminal organizations. The documents were offered and received under count five, and the prosecution document books plainly so state.

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Certain paragraphs of this count state in general terms the crimes with which the defendants are charged, while subsequent paragraphs deal with specific incidents involved in the general charge.

The allegations of the indictment follow the same plan and pattern disclosed in the indictment in the International Military Tribunal and in those of other indictments before these tribunals. Many of the defendants, including Keppler and Kehrl, shortly after arraignment, filed motions against the indictment on the ground of insufficiency and indefiniteness. On 5 January 1948 we overruled this motion, and we refer to the memorandum filed with our order. The question of the insufficiency of indictments of this kind was considered by Military Tribunal III, Case 3 (the Justice Case),\* and a like conclusion was reached.

In accordance with our order of 5 January, we therefore received evidence of particular acts alleged to have been committed by the several defendants which came within the general allegations of the indictment, although not among those specifically mentioned in the paragraphs which followed.

The only purpose of specific allegations is to enable the defendant to prepare his defense. Ample opportunity has been afforded to the defendants so to do. The prosecution closed its case on 27 March 1948, and at the time every defendant had been advised, not only of the specific acts upon which conviction was sought, but of the evidence offered in support thereof. The Court recessed until 4 May 1948, in order to permit the defendants to prepare their defense. The defendant Keppler did not present his defense until 16 July 1948, and the defendant Kehrl not until 11 August. Each had more than ample time within which to prepare his case. No defendant suffered, or could have suffered, any surprise or disadvantage. There is no merit in the claims which they now urge.

There is no doubt, and we so find, that the defendant Keppler knew the plan, knew what it entailed, and was one of the prime factors in its [DUT] successful organization and operation.

We find him guilty under count five.

#### KEHRL

From 1933 to 1938 the defendant Kehrl acted as economic adviser to the Gau Brandenburg; from November 1934 to October 1936 he was a consultant for textiles and cellulose in the Keppler office then dealing with German raw materials; from October 1936 until January 1938 he was head of Main Office IV-2 in the

\* United States vs. Josef Altstoetter, et al., judgment, Volume III, this series.

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Raw and Working Materials Department of the Four Year Plan; from 1 February 1938 until November 1942 he was head of the Textile Division of the Reich Ministry for Economics, and also acted as general Referent for special tasks in that Ministry, and was then promoted as the head of its Main Department II; from November 1943 to about May 1945 he was Chief of the Raw and Basic Material Office in the Reich Ministry for Armament and War Production, and was director of the Central Planning Office. He was also officer in chief of the textile organizations which exploited textile industries and resources in the occupied territories, as well as those in France, and became a member of the Aufsichtsrat and one of the three members of the working committee of the DUT.

It is alleged that early in 1942 Kehrl became a member of the Circle of Friends of Himmler and actively participated thereafter in the meetings of that circle; that the activities of the SS during this period included participation in schemes for Germanization of occupied territories according to the racial principles of the Nazi Party, the deportation of Jews and other foreign nationals, and widespread murder and ill-treatment of the civilian populations of occupied territories.

It is not alleged that the Circle of Friends, as a body or organization, participated in any such crimes. Kehrl was a member of the Circle of Friends, but no evidence has been offered which tends to establish that the circle, as such, had anything to do with any crimes charged in count five, and guilt cannot be predicated because of his membership in or attendance at the meetings of the Circle of Friends.

Kehrl was, however, a member of the Aufsichtsrat of the DUT, representing the

Ministry of Economy and, with Keppler and Greifelt, was a member of the working committee of that body. It is unnecessary to here repeat what we have heretofore said regarding the DUT, its functions, and the part it played in the Germanization and resettlement program. Kehrl admits that he knew its basic purpose, but denies that as a member of the Aufsichtsrat or working committee he was "complete informed" of the activities of the DUT; that there may have been five or six meetings of the board which he attended and the activities were rather large, but he was by no means informed about all of them.

The defendant was both guarded and reticent in describing what he knew and what he did, which is itself of some significance. Kehrl is possessed of an active and inquisitive mind and a very high degree of executive ability. It is apparent from his testimony regarding other matters that he has a memory of

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extraordinary capacity. His membership on the board was not an accident, but he was chosen by Keppler because of his capabilities and the fact that he would there represent the Ministry of Economy, which was itself intensely interested not only in economic development of the Reich but the occupied territories as well.

We are quite convinced that he was thoroughly aware of what the DXJT was expected to do, what its policies were, and what it in fact did. As one of the responsible officers of the company he was responsible for its action. It was an important component in the scheme of German resettlement and in the crimes charged in count five relating to it, and we have already found the defendant Keppler guilty under count five with regard to the charges above stated.

We find Kehrl guilty under count five in view of his activities in the DUT and the resettlement program.

On 24 January 1940, by order of Funk, Minister of Economy, a directive was issued regarding the sale of clothing to Jews and of the issuance of clothing rations to them. This directive stated that the serious state of supply in the field of textiles and shoes— in connection with the over-available supply in Jewish families made it necessary, as in the field of food, to issue the following regulations (*NID-14890, Pros. Ex. 2032*):

1. Jews shall not receive a clothing ration card.
2. Jews, on principle, shall not receive any permit for textiles, shoes, and sole material.
3. Jews are reduced to self-help and must make application to the Reich Association of Jews in Germany for the purchase of second-hand material which was open to them without purchase permits.
4. The issuing agencies are authorized to give Jews purchase permits if they perform manual labor and the lack of work clothing and shoes would jeopardize their use for labor, and they cannot get them any other way, and in an emergency where help from the Reich Association for Jews is not possible in time.

In defense Kehrl states that he did not sign this directive of his own initiative, but that the Minister of Propaganda, together with Hitler's deputy, had decided after the beginning of the war that the Jews were not to get any clothing cards, and this was passed on to the provincial economic officials by teletype on 24 November 1939, and that finally this directive averted hardships in that by agreement with the Reich Association of Jews some clothing could be acquired, and that in certain instances ration coupons were to be issued.

While we are not satisfied that this explanation is accurate, and in fact, the regulation shows upon its face that this was not its

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purpose, nevertheless we do not overlook the fact that in this instance Kehrl was no more than a conduit transmitting his superior's orders and had no voice in the matter. The document shows on its face that he signed it by order of his Minister. Here guilt is not proved beyond a reasonable doubt and Kehrl should be and is acquitted in connection with this transaction.

#### LAMMERS

The seizure of power found the defendant Lammers employed as a legal expert in the Ministry of the Interior. He had joined the Nazi Party in February 1932. On 30 January 1933 Hitler appointed him Secretary of State [Staatssekretaer] in the Reich Chancellery, and in August 1934 he was appointed its chief. On 26 November of the same year he was made a Reich Minister without portfolio with the title "Reich Minister and Chief of the Reich Chancellery." On 14 February 1938, he was appointed as executive member of the Secret Reich Cabinet Council, but this council never functioned. On 30 November 1939, 2 months after the Polish invasion, the Ministerial Council for Defense of the Reich was created with Goering as its chairman, and Lammers became one of its executive members.

Among his duties was to present matters to Hitler, sometimes with and sometimes without his own recommendations; to transmit Hitler's decisions on these and other matters to the appropriate Reich Ministries and agencies; to cooperate with the members of the Reich Cabinet and other agencies of the government and the Party; to coordinate and, if possible, reconcile the views and proposals of other ministries with respect to legislation, and to examine, and at times to prepare laws, decrees, and regulations which were under consideration; to ascertain the views and opinions of other ministers in such matters; and to investigate and report and recommend action regarding disputes which might arise between ministers, agencies, and officials.

Although as Reich Minister he had no particular executive functions in the usual sense, both his responsibilities and powers were substantial. Among the reasons which impelled Hitler to raise him to Cabinet rank was that he might become one of the highest Reich authorities possessing the prestige and authority incident thereto, and thereby relieve Hitler of many details and decisions. He was and continued to be one of the most important figures in the Reich government.

On 2 May 1939 Stuckart wrote Lammers reporting the situation in the Protectorate and included a copy of Frank's report from which it was apparent that even more radical measures of re-

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prisals were to be used and elections postponed due to the weakness of the racial German elements in that territory.

On 15 September 1942 the Reich Protector of Bohemia and Moravia reported to Lammers that between 1 May and 1 September 3,188 Czechs had been arrested, 1,357 shot under courts-martial proceedings, and informed him of the infamous

massacres at and the razing of the villages of Lidice and Lazeky, and of the fear of the populace that they were to be decimated by police measures, and the proposal that Czechs be put into the Reich Labor Service; that Czech police battalions under German command be organized; and that the personnel at the Skoda and Bruenner Munitions works be assigned to man their aircraft defense.

Lammers cosigned the decree of 1 September 1939, which established in Bohemia and Moravia an administration under a Reich Protector, and introduced the German Security Police into that territory, giving them authority to investigate and combat all action inimical or dangerous to the state and public, thus subjecting the people to the mercies of the Security Police.

The invasion of Bohemia and Moravia and their incorporation into a Protectorate, and the attempt to make them a part of the greater German Reich were acts of aggression and were crimes against peace, and the acts of terrorism and the imposition and subjection of the inhabitants to the jurisdiction of the Security Police were wholly unlawful.

*Poland.*—On 12 October 1939, Hitler issued a decree cosigned by Lammers, the defendant Schwerin von Krosigk, and six others, declaring that that unincorporated portion of Poland occupied by German troops should be formed into the Government General, and appointing Frank as head of the government. The decree gave the Council for Reich Defense, the Commissioner of the Four Year Plan, and the Governor General the right to legislate by decree, and gave to various supreme Reich agencies power to make arrangements necessary "for the planning of German life and the German economic sphere" in these territories, and that all administrative decrees required for implementing and supplementing the Fuehrer decree would be issued by the Minister of the Interior.

Frank issued a number of decrees, based on the authority thus given him, which established the secret police in those territories, extended forced labor to Polish youth between 14 and 18 years of age, ordered all Jews to be concentrated into forced labor troops, required Jews of both sexes to wear the yellow star of Zion on their clothing, required all Jewish businesses to be plainly marked as such, and forbade Jews to use German names, and

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authorized the Higher SS and Police Leaders to supervise and enforce these measures.

On 7 May 1942, Lammers cosigned with Hitler a decree giving Himmler jurisdiction in Poland, not only as Reich Leader SS but as Reich Commissioner for the Strengthening of Germandom, and providing that where a disagreement arose between the Governor General and Himmler, Hitler's decision should be obtained through Lammers.

In Frank's diary for 19 July 1941, he states that during a discussion with SS Obergruppenfuehrer Krueger and others, he wired Lammers stating that in accordance with Lammers's communication of the previous day he had started preparations to take over the whole civil administration in the occupied Polish territories designated by Lammers and proposed to start a gigantic rehabilitation program with Polish and other labor forces at his disposal. It has been established by the evidence in this case, and by the judgment of others of these Tribunals, that the population of Poland was regarded and treated as slaves and compelled to work as and where the government of that territory determined.

During the year 1942 a bitter quarrel broke out between Frank, on the one hand, and Himmler and Higher SS and Police Leader Krueger, who had been assigned to the Government General, on the other. Each preferred charges against the other. That both the Governor General and Himmler's SS and Police Leaders had committed gross and continued outrages upon the population is beyond question, as has been adjudicated not only by the IMT, but by various others of these Tribunals. Lammers was instructed to investigate and report to Hitler.

He evidently came to the conclusion that it was best to cooperate with Himmler and opposed Frank for reasons which we think had little or nothing to do with the merits of the controversy, but which may be accounted for inasmuch as at that time Himmler's star was in the ascendant and Frank's position had deteriorated. On 17 April 1943 he forwarded to Himmler a proposed mutual report to be submitted to Hitler. Based on material submitted by Krueger, Lammers prepared his report, and it was submitted to Krueger and his approval obtained before sending it to Himmler. In view of the defendant's protest that he was uninformed of mistreatment, brutality, slave labor, and spoliation of the occupied territory, and of the mistreatment of the Jews therein, this report is illuminating. It states that the tasks of the Government General were as follows (2220-PS, Pros. Ex. 2256):

*"(1) For the purpose of securing food for the German people, to increase agricultural production and utilize it to the*

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*greatest extent; to allot sufficient rations to the native population engaged in war work and to deliver the rest to the armed forces and the homeland.*

*"(2) To employ the manpower of the native population only for the immediate war purposes and to put at the homeland's disposal such manpower which is not needed for the last-named purpose.*

*"(3) To consolidated German folkdom in the Government General and by means of resettlement to create German strongholds in the eastern border districts by means of colonization by racial Germans transferred from other places.*

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*"(5) To obtain troops as far as possible out of the native population for the fight against bolshevism."*

The report then criticized the Frank administration for its failures to perform these tasks in that it had failed to deliver the prescribed quota of agricultural products, had failed to stop all trade enterprises not essential to the war, that although 750,000 metric tons of grain were to be delivered to the Wehrmacht, only 690,000 tons were actually delivered, and that only 510,000 tons remained out of the harvest to feed the population of 16,000,000; that the bread ration was cut to 1,050 grams per week compared to 1,675 grams in the Protectorate, and 2,600 grams in the annexed eastern territories; that as a result, black marketing had become prevalent and the prices had risen three to four hundred percent; that if proper coordination had been accomplished, it would have been possible to provide the population, *working in the interests of Germany*, with a minimum of food and other needed commodities, which would thus prevent the creation of a black market and would result in the voluntary return of reserves of manpower to employment; because of these failures the utilization of manpower met with greatest difficulties; these difficulties were increased by the *elimination of Jewish manpower*, but that such elimination was not the cause of the difficulties and had proper management of manpower been afforded, the elimination of Jewish manpower would not have caused difficulties worth mentioning, but as things were, *manpower could only be obtained by more or less forceful*



*methods, such as catching church and movie goers and transporting them into the Reich; that instead of being strict and severe where necessary, but otherwise acting in a big-hearted manner, granting certain liberties, the Governor General inaugurated a promotion of cultural life on the part of the Polish population which knew no bounds in itself; that under the prevailing circumstances, and particularly in view of Ger-*

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many's military situation, such measures could only be explained as a weakness and thus brought results directly opposite to those sought.

From this report several things become clear. First, that the sole interest of Lammers and Himmler was that *only* those inhabitants who were working in the interest of the German war effort should receive food; second, that the Governor General had stripped Poland of its food supplies leaving a great mass of the population to starve; and third, that Lammers then knew that Jews were being eliminated. His statement that this term only referred to them being eliminated from labor shipments to the Reich is not borne out by the document, and we believe, is wholly without foundation. The report speaks for itself and contains no reference to Jews in connection with the labor which was to be sent to work in the Reich. Lammers asserts that he was in no position to ascertain the facts regarding the charges made by Rosenberg against Krueger and the SS, or the charges made by Himmler and the SS against Frank, although he was satisfied that serious abuses existed in Frank's administration, particularly on the part of members of his family—the relatives whom he had appointed to office.

In view of his position and the fact that he had been directed to investigate and report to Hitler, we deem his explanation without factual merit.

Frank's diary entry of 5 August 1944 states that he sent a telegram to Lammers that the city of Warsaw was in flames; that the burning down of the buildings was the best means to prevent the insurgents from using them as shelters; and that after the suppression of the revolt the city would meet its deserving fate and be completely destroyed or afterward flattened out. In the IMT trial the defendant testified that he knew this report came to him and was immediately transmitted to Hitler and in all probability he passed it on to the chief of the OKW as well. On further questioning he again reiterated that the report was received. In this case he flatly denies that the telegram ever reached the Reich Chancellery, and based his denial on an alleged conversation with one of Frank's subordinates and on inquiries which he had made of officials of his own chancellery. Frank's diary was a contemporaneous record of events and there he had no reason to make a false or erroneous statement about the telegram. Evidently it was an event which at the time he thought important, and therefore included it in his diary. If there had been any doubt in Lammers' mind, or he had any difficulty in recollecting whether he received and transmitted it,

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we have no doubt he would have so stated when testifying before the IMT. He not only remembered it, but also the disposition which he made of it, and when pressed for an answer as to how in fact he could say that he had no knowledge of the atrocities committed in Poland, he again testified that he remembered the telegram. We do not credit his present denial that he ever saw it. On 9 May 1944 Liebel of the Central Office Ministry for Armaments and War Production wrote Lammers regarding

wood supplies from Norway, wherein he states (NG-2835, Pros. Ex. 2630):

*"I regret, dear Reich Minister Lammers, that you, the highest authority on matters pertaining to Norway, as Reich Minister and chief of the Reich Chancellery, had not been consulted about this matter at the very beginning."*

While this statement may have been an exaggeration, it is clear that a leading responsible official in one of the most important ministries of the Reich deemed that the defendant's position was one of high importance and authority and it is apparent from the evidence in this case that such was the fact. In the matter in question, Terboven having asserted that he did not have the necessary manpower in Norway to procure this wood, arrangements were made through Lammers to ship some 15,000 Russian prisoners of war to Norway for that purpose. It is interesting to note that Sauckel, in his report on the matter, states that 4,050 Russian prisoners were already on their way, but that the additional 11,000 made available were in such a state of health that they could not be employed for another 3 or 4 weeks, and he would therefore advance 5,000 men from the civilian sector and was negotiating with Speer regarding the matter,

*Russia.*—On 16 July 1941 a conference was held at Hitler's headquarters, attended by Rosenberg, Keitel, Lammers, Goering, and an amanuensis. Hitler said there that it was superfluous for Germany to announce its aims; that where it had the power it could do everything, and where it was lacking power, it could do nothing; that it should emphasize that it was forced to occupy, administer, and seize certain areas in the interest of the inhabitants to provide order, food, transportation, etc. *Thus, no one would recognize that it initiates a final settlement*, but that this need not prevent Germany from taking all necessary measures—shooting, desettling, etc.—and it would take them; that Germany did not want to make any people enemies prematurely and unnecessarily, but, *"we must know clearly that we shall never leave those countries."* Therefore, the plan must be—(1) to do nothing which must obstruct the final settlement, but prepare for it in

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secret; (2) to emphasize that Germans are liberators. In particular the Crimea must be evacuated of all foreigners and be settled by Germans only, and in the same way part of Galicia would become Reich territory; that while present relations with Rumania were good, nobody knew what they would be in the future, and that this must be considered, and German frontiers drawn accordingly; that the task was to cut the giant cake in order, first, to dominate it, second, to administer it, and third, to exploit it; that the fact that Russia had ordered partisan warfare behind the German lines had the advantage that it would enable Germany to eradicate everyone who opposed it; that there never again must be the possibility to create a military power west of the Urals; that the entire Baltic countries, as well as the Crimea, must be incorporated into Germany, with a large hinterland, together with the Volga Colony, while the Baku must become a German military colony; that the Kola Peninsula in Finland must be taken because of the large nickel mines there.

At this conference the matter of the appointment of governors for the Baltic countries was discussed, and Goering emphasized that these appointments must be based on securing food supplies and, so far as necessary, trade and communications. Rosenberg emphasized his opinion that a different treatment of the population was desirable in every district, and that in the Ukraine Germany should start with a cultural administration, awake the historical consciousness of the Ukrainians, and establish a university at Kiev; but Goering countered by stating that the first requisite

was to secure the German food situation and everything else could come later. Goering insisted that this gigantic area be pacified as quickly as possible, and stated that the best solution was to shoot anybody who looked sideways, while Keitel insisted that the inhabitants themselves ought to be made responsible because it was impossible to put a sentry at every shed and railway station, and if anyone did not perform his duties properly, he should be shot.

This conference clearly disclosed what German plans were. Lammers admits having been present but states that he was absent during portions of the conference preparing drafts of decrees which were to be signed, this, notwithstanding the fact that when testifying before the International Military Tribunal he stated that he assumed that he stayed there until the end. But whether he absented himself during part of the time is quite immaterial, as we are convinced that he was either there personally or was fully informed of what took place.

Lammers prepared and cosigned with Keitel a Fuehrer decree of 17 July 1941 establishing the government for the newly occu-

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ried eastern territories, appointing Rosenberg as Minister for this area, which included the Baltic states. He was given broad legislative powers, subject only to the competency of the Wehrmacht and the Reich authorities responsible for military operations for the functioning of railroads and the postal service. The necessary implementing ordinances were to be issued by Rosenberg in agreement with Lammers and the chief of the OKW. Lammers testifies that these latter provisions were put in the decree so that the other ministries could participate, and that it would be possible to ask Hitler to intervene. In view of the fact, however, that Rosenberg was the only one at the conference who had evidenced the slightest degree of interest in the native population in the proposed East Ministry, and that he had further indicated that the notorious Koch was inclined to go his own way without regard to Rosenberg's orders, the explanation given by the defendant does not ring true. As cynical and callous as Rosenberg proved himself to be, there can be no doubt that the fate of the indigenous population would have been happier under him if he had full and complete power, than it was with a division of powers between himself and other agencies.

On 17 July 1941 Lammers cosigned with Keitel the Hitler decree conferring on Himmler authority to give directions concerning police security matters to the Reich commissioners in eastern territories, and to assign SS Police Leaders to them for the purpose of guaranteeing police security.

On 20 August 1941 Lammers cosigned the Hitler decree appointing Gauleiter Koch, Reich Commissioner for the Ukraine. It is universally conceded by all parties to this case that his regime resulted in an unparalleled orgy of brutality, oppressions, spoliation, and murder.

Lammers was not only informed of Koch's publicly expressed sentiment that "whoever believes to find gratitude with the Slavs for kind treatment has not made his political experiences in the NSDAP while in the East, but in some clubs of the intelligentsia; the Slavs will always interpret kindness for weakness," but he was also informed of Koch's crimes.

Lammers states that he reported this to Hitler and first asserts that he supported Rosenberg against Koch, but later testifies that it was his official duty to act as an intermediary between the two officers and Hitler and gave such support to one or the

other as he could, and he always attempted to remain neutral in the whole affair, and was neutral. We agree with his statement that he had no power to dislodge either Rosenberg or Koch, and that when he reported the mutual incriminations which each made regarding the other, the matter was thereafter wholly in the hands of Hitler.

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*Night and Fog (Nacht und Nebel) Decree.*—It is alleged that Lammers supervised, prepared, or cosigned the notorious Nacht und Nebel Decree, but the record does not substantiate this. Without question he knew of it and of its ultimate implications, but knowledge is not enough.

*Germanization.*—The Germanization and resettlement program, at least insofar as it involved any crimes cognizable by this Tribunal, was initiated by the decree of 7 October 1939, which Lammers cosigned. He admits that it was redrafted under his directions, making various modifications in a proposed form of decree submitted by Himmler. The defendant asserts that at the time he had no intent to authorize the commission of any crime or that he knew that any crimes were committed under it. He stated when the proposal first came up he concurred in its advisability, but suggested to Hitler that the project be postponed until after the war, but Hitler refused to take his advice. One of the earlier drafts contains the recital that (*NG-1467, Pros. Ex. 1304*):

*"The Poland established at Versailles has ceased to exist. The opportunity, therefore, arises for the Greater German Reich to receive and settle in its area German men and women who had to live abroad up to now and to eliminate those of foreign nationality or race."*

The pertinent recital in the decree as issued states (*NO-3075, Pros. Ex. 1305*):

*"The consequences which Versailles had on Europe have been removed. As a result the Greater German Reich is able to accept and settle within its space German people, who, up to the present, had to live in foreign lands, and to arrange the settlement of national groups within its spheres of interest in such a way that better dividing lines between them are attained."*

Lammers insisted that he was responsible for this change, and we do not doubt it. It is merely using less blunt language than did the first draft. The defendant does not suggest that the program expressed in the first draft was changed or modified by the final draft, and, of course, it was not. We place no credence on his statement that he did not know that the crime of driving the Poles from their homes and confiscating their property was intended. We are convinced that he was fully advised as to the precise nature of the program and consciously and willingly participated in it.

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Lammers received a copy of Himmler's notorious memorandum "On the Treatment of Peoples of Alien Races in the East," which was submitted to Hitler in May 1940, wherein he proposed that no education higher than the fourth elementary school grade should be given the indigenous population. The children of valuable blood should be taken away from their parents and sent to the Reich, never to return, and that the peoples of the East should be reduced to a position of uneducated ignorant serfs of the Germans without culture or leadership.

In October 1943 Lammers distributed to the Ministry for the Eastern Territories, the OKW, the Party Chancellery, and to Himmler, the Hitler Decree of 11 October which provided that the racially valuable children born out of wedlock in the occupied territories, whose fathers were Germans and mothers of the local population, should be taken from their mothers and put into the custody of the Reich. He directed the

agencies mentioned to acknowledge the decree and take the necessary steps.

On 19 May 1943 the defendant cosigned with Keitel a Fuehrer decree automatically conferring German citizenship on foreigners of German origin who were then members of the Wehrmacht, the Waffen SS, the German police, or the Todt Organization, and providing that like foreigners thereafter joining any of these organizations should automatically become German citizens on the date of their admission. In view of the forced recruitment of ethnic Germans who were nationals of other countries, it is apparent that this was a part of a general plan to gain absolute control and jurisdiction of such persons. It was without legal justification or right. One who is unlawfully conscripted into the armed forces of a nation, other than his own, cannot be compelled to accept citizenship and be subjected to laws of a country other than that of his choice.

On 28 March 1940 the defendant Lammers wrote Himmler, transmitting a photostatic copy of an article entitled, "Deportation is Being Continued—Death March from Lublin—Deaths from Freezing." This article was allegedly based on findings of the Polish-Jewish Service Committee which was cooperating with the American Friends Organization as well as with delegates of the Red Cross. It stated that in spite of the objections of the Government General, deportation of German Jews to eastern Poland was being continued at the order of Himmler. It recites how the deported persons had to abandon all their property and were not even allowed to take a suitcase, and the women compelled to give up their handbags; that those who had overcoats were deprived of them; that they were not allowed to take any cash, food, beds, or household articles; and all arrived at Lublin

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with only the clothing they wore; that men, women, and children were compelled to march from Lublin to the villages where they were to be quartered, over roads deep with snow and at temperatures of 22° Centigrade; that many froze to death, and others, including children, were so badly frozen that it was necessary to amputate their limbs; that on arrival at their destination the survivors were lodged in stables and sheds with no food other than black bread; and that up to 12 March 230 Jews from Stettin had perished.

On 3 December 1940, Lammers wrote von Schirach, Reich Governor for Austria, that Hitler had decided in view of von Shirach's reports that the 60,000 Jews residing in Vienna should be deported rapidly to the Government General because of the housing shortage in that city, and that he and Lammers had informed the Government General in Krakow, as well as Himmler, about this decision.

On 13 December Stuckart forwarded to Lammers and to the highest Reich agencies a memorandum regarding the 10th Ordinance implementing the Reich Citizenship Law, stating that it was drawn with the following in mind: that, in connection with the population of the Incorporated Eastern Territories, it was necessary on principle to exclude part-Jews of alien stock, and that only the portion found capable of Germanization, after careful selection, would be permitted German citizenship; that the remainder would be placed in the position of protectees which would be dependent upon their residence in the Reich, which would be lost when that residence was abandoned; that the protectees, under the regulations to be adopted, would receive only a minimum of rights; that the Jews would be included in this new regulation; that those Jews who were stateless would remain so, even if living in the Reich; that Reich Jews living abroad would lose citizenship and become stateless;

that the confiscation of property might restrict Jewish emigration, but after the war a solution of the Jewish problem could be found which would not depend on the voluntary action of other countries.

To this memorandum Lammers interposed several objections: first, that it made Jews in the Reich protectees; secondly, he inquired, in view of the fact that Jews in the near future would be deported from Germany, whether it was worth while to create a special status for them; that in any event they were not Reich citizens; that as to Jews who lost their Reich domicile by emigration or expulsion, only an amendment to the citizenship law was needed. Lammers discussed the matter with Hitler, who refused to permit Jews to be called "protectees."

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The defendant denies any knowledge prior to 1945 of the "mass extermination" of Jews, but admits that he heard reports, and received intimations and anonymous communications regarding the same, and admits that he was aware that many Jews were being murdered. He denies that he was a violent or radical anti-Semite.

We are unable to give his statement any credence. He had intimate knowledge of and participated in drafting and cosigning many, if not most, of the anti-Jewish laws, ordinances, and regulations. According to his own statement he was the official channel through which information came to and decisions issued from Hitler, and he was the Reich Minister charged with coordinating the views of the various ministries upon this and other matters of legislation, ordinances, and decrees, and consulted with them and their agencies regarding them.

His own views on the subject were expressed in an article which was published in 1944 in which he said (NG-1633, Pros. Ex. 3905):

*"The first product of a constructive and organic structure on the European Continent had hardly begun when it already faced its most severe and most decisive test. In the life and death struggle against the plutocratic and Bolshevistic views led by world Jewry this test has lasted almost 5 years."*

While on the stand, but before he was faced with this article, he testified (Tr. p. 22633):

*"This question is one with which I dealt frequently in my reading at the time, but I was never able to come to any final conclusion. I do, however, realize that the Jews bear a considerable part in the guilt in all the wars of the world."*

Lammers heard Hitler's speeches in which he spoke of the extermination and annihilation of the Jews, and admits that he heard the word "extermination" which was one which Hitler often used in various speeches but said, "the question was what he meant by it." We are convinced that Lammers was under no illusions as to Hitler's meaning.

He was advised of the application of the German anti-Jewish laws to Luxembourg; enactments which were, without question, in violation of international law and the Hague Convention.

On 30 January 1941 there was submitted to his chancellery the proposal that all Jews of German citizenship, irrespective of their emigration, be declared stateless, and their property confiscated to the Reich, and he thereupon stated there could be no

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scruples against the suggestion thus made by the Minister of the Interior.

Various proposals were offered which finally resulted in the decree of 4 December 1941 which Lammers cosigned, whereby the Poles and Jews in the Incorporated Eastern Territory became bound to conduct themselves according to German law and the regulations introduced for them by the German authorities; to abstain from conduct liable to prejudice the German sovereignty or the prestige of the German people; made them subject to the death penalty for manifesting anti-German sentiments, or for possible conduct which lowered or prejudiced the prestige or well-being of the Reich, or the German people; which subjected them to trial by special court, by the district judge, or the police courts; deprived them of any right of appeal and "the right to challenge a judge on account of partiality"; permitted arrests or detention on suspicion, and subjected them to other coercive measures, forbade them to be sworn as witnesses; deprived them of the right to act either as prosecutors or in a subsidiary capacity; subjected them to courts martial at the whim of the Ministry of the Interior, the Ministry of Justice, or the Reich Governor ; conferred on courts martial the right to impose the death sentence or to turn the victim over to the Gestapo.

This decree was also made applicable to Poles and Jews within the Reich if, prior to 1 September 1939, they were domiciled in Poland. That there was no legal authority to subject the inhabitants of Poland, whether Poles or Polish Jews, to German law, cannot be questioned, and these measures were adopted solely to repress and persecute Poles and Polish Jews.

*Final solution.*—We have heretofore discussed the notorious Wannsee conference of 20 January 1942, in which the "final solution" of the Jewish question was discussed in the presence of representatives of practically all of the highest Reich agencies. Kritzinger of the defendant's Reich Chancellery was present. Lammers insists he did not know that Kritzinger was to be there, and that he did not instruct him to be present, and that Kritzinger did not there represent him. This we do not believe.

Shortly after the conference Schlegelberger, acting Minister of Justice, wrote to Lammers of certain objections, none of which, however, related to the final solution, but rather to the technical details of compulsory or simplified divorce of Germans from Jewish spouses. At the conference of 6 March, Boley, one of Lammers's ministerial counsellors, appeared representing the Reich Chancellery. It appears in the minutes of the meeting (*NG-2586, Pros. Ex. 1453*):

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*"According to information given by the representative of the Party Chancellery, one of the very highest authorities expresses the opinion, in connection with the discussion on the question of persons of mixed blood in the Wehrmacht, that it would be necessary to divide up the persons of mixed blood into Jews and Germans, and that it was unwarrantable under all circumstances to have the persons of mixed blood permanently existing as a third small race. This requirement would not be met by means of sterilizing all persons of mixed blood and permitting them to remain in the Reich territory."*

In July 1942 Lammers wrote to all the highest Reich agencies informing them of Rosenberg's appointment as commissioner to conduct the spiritual battle against Jews and Free Masons, and requested these agencies to support Rosenberg in the fulfillment of his task.

The record contains a number of documentary exhibits which show that Lammers was familiar with and took part in discussions relating to measures against Jews. On 20 July 1942 he stated that Hitler had repeatedly expressed the opinion that applications by part-Jews for status equal to that of Germans had been treated too generously, and in the future they should be allowed only if there were special

reasons for exceptional treatment, that is, positive achievements, such as work for the Party in the early days. Lammers requested that future action should be based on Hitler's attitude.

Notwithstanding Lammers' denials, we believe and find that he was informed and knew that the extermination of the Jews was proposed, and that he consciously and willingly participated in measures which were intended for and adapted to that purpose.

*Judicial persecution and murder.*—The orderly process of the courts and the comparative leniency of the sentences imposed by them irked Hitler, and this fact was conveyed to the Ministry of Justice. Lammers and Schlegelberger conferred, and on 10 March 1941 the latter wrote Lammers enclosing his letter to Hitler. Schlegelberger asked that it be transmitted to Hitler immediately and enclosed a draft of a proposed decree which would enable the public prosecutor to intervene in civil cases, and enable him to file application for the reopening of proceedings if he was of the opinion that new proceedings and a new judgment were necessary in cases deemed of special importance to the national community.

The letter to Hitler is one of cringing servility, in which the writer expressed his earnest intention to install justice with all its branches more and more firmly within the National Socialist

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State; that there were still judgments which did not entirely comply with the necessary requirements, and in such cases he proposed to take the necessary steps. He calls attention to the fact that Hitler had created the extraordinary plea for nullification of criminal cases, and states that it is desirable to educate the judges more and more to a correct way of thinking, conscious of national destiny, and for this purpose it would be invaluable if Hitler could let Schlegelberger know if a verdict did not meet his approval, inasmuch as the judges were directly responsible to the Fuehrer, and were conscious of their duties, and firmly resolved to discharge them accordingly. Lammers was consulted by Schlegelberger regarding this decree.

On 21 March 1942 after Lammers had consulted with Schlegelberger and Bormann, he suggested to Hitler the issuance of a decree for the alleged simplification of the administration of the law and with Hitler cosigned it. Some of the changes made in the original draft which appear in the final decree were made by Lammers himself. Under it the Minister of Justice, in agreement with Lammers and the Chief of the Party Chancellery, was authorized to implement the decree to take the necessary administrative measures, and in cases of doubt, to decide matters administratively.

Schlegelberger made a suggestion for a decree giving the Ministry of Justice confirmatory rights over every judgment passed, stating that this was a sure way to become master of the insufficient penal measures and legal judgments. Lammers and Bormann consulted and, feeling that Schlegelberger's proposal was insufficient, they determined to hold the matter over until a new Minister of Justice was appointed. It is perfectly clear that both Bormann and Lammers favored the destruction of the independence of courts, particularly in criminal cases, and that the sentences to be imposed should rest on the uncritical and arbitrary whim of Hitler. The sorry history of this corruption of the judicial process has been set forth in detail in the opinion in the Justice Case,\* and it is unnecessary to repeat it here. It is sufficient to say that, after examination of the documents and the testimony offered before this Tribunal, we find that those conclusions are fully substantiated, and we agree with the findings therein



made.

On 20 August 1942 the defendant cosigned with Hitler a decree reading as follows (1964-PS, Pros. Ex. 1587):'

*"A strong administration of justice is necessary for the fulfillment of tasks of the great German Reich. Therefore, I com-*

<sup>†</sup> United States vs. Josef Altstoetter, et al.. Case 3, Volume III, this series.

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*mission and empower the Reich Minister of Justice to establish a National Socialist administration of justice and to take all necessary measures in accordance with my directives and instructions made in agreement with the Reich Minister and Chief of the Reich Chancellery, and the Leader of the Party Chancellery. He can hereby deviate from any existing law."*

Thierack became the new Minister of Justice, and on 27 August 1942 Bormann issued a circular announcing Thierack's appointment, and also that the latter had been appointed Chief of the National Socialist Jurisprudence League and President of the Academy for German Law; and that by these appointments Hitler had united the highest offices in the field of judicial administration of Party and state in the hands of Thierack, and by special decree had empowered the new Minister, in agreement with Lammers and himself, to build up a new [National] Socialist administration of justice in accordance with the guiding rules and directions of the Fuehrer; that the task assigned to Party Member Dr. Thierack was, first of all, a political one, and consisted in bringing justice and the judiciary to the National Socialist idea which could only be attained by closest cooperation with the Party; that should there be complaints by the Party members as to the way justice was administered, they should be presented to Bormann so that he could clear up the situation by confidential negotiations with the Ministry of Justice; and if, on discussion, it would seem absolutely necessary that the problem be brought to the Fuehrer, this would be done by Lammers and himself.

Late in 1942 Thierack was given power to remove recalcitrant judges, and this received Lammers's approval, although it appears that he did so with some misgivings and attempted to impose certain limitations on Thierack's authority.

It was by means of this corruption of the courts of justice that Jews and other enemies and opponents of national socialism were deprived of the ordinary and commonly recognized rights to fair trial and received sentences, including that of death, shockingly disproportionate to the offenses committed.

Lammers was a responsible Reich Minister. He was neither a glorified messenger boy nor a notary public certifying the acts of others. We believe Hitler's reason in raising the head of the Reich Chancellery from the position of State Secretary to that of Reich Minister was to relieve himself of much detail work and many decisions, and to place these functions in the hands of the defendant who, as Reich Minister and Chief of the Reich Chancellery, possessed sufficient rank to interpose and exercise judgment and power.

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We are not unmindful of the fact, which we have discussed before, that there was a constant, bitter, and persistent contest between the various chiefs of the Nazi regime to maintain what power they had and to increase it as far as they could, and it is likewise clear that at times the star of one man would rise and that of another would sink, perhaps only to rise again. Dictators have few friends and are notoriously fickle

in their ways, but Lammers climbed to power, sought power, and maintained power as long as he could; and he exercised that power to implement Hitler's designs and to maintain himself in Hitler's good graces.

Defendant is, and we find him, guilty under count five of the indictment.

#### MEISSNER

From 1923 on the defendant Meissner was State Secretary and Chief of the Office of the Reich President. In 1934 a change in name occurred and he was thereafter known as Chief of the Presidential Chancellery. In 1937 he received the title of State Minister with the rank of a Reich Minister. He was never a member of the Party. One of his functions was to deal with petitions and pleas for clemency and present them to Hitler.

Paragraph 41 of the indictment contains allegations of a specific nature against Meissner, namely, his handling of pleas of clemency to be submitted to Hitler. The evidence deals with this subject and also the transfer of persons convicted in the German criminal courts and under sentence, or whose cases were pending trial, to the Gestapo, where they were murdered.

The documents offered against him are to be largely found in books 74 and 74-A of the prosecution, the latter being a rebuttal book.

On 3 May 1940 von Neurath reported (*NG-3279, Pros. Ex. 1834.*) that a Czech national, presumably a member of the resistance movement, in attempting to avoid arrest while engaged in putting up posters, shot and killed a German and fired at three German soldiers who pursued him; that he had been tried before a Special Court, that a death sentence was expected, and requested that Hitler waive the right of pardon.

Meissner transmitted the letter to Hitler through Bormann with the statement that if he did not receive any other instructions by 8 May 1940 he would inform von Neurath that the right of pardon had been waived. Bormann returned von Neurath's telegram with the notation that "the Fuehrer agrees."

The prosecution does not suggest that the statements made in von Neurath's telegram are not true. If so, the acts, under any

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system of law, would be punishable, and it cannot be said that a death penalty would be unjustified.

While it is unusual for an executive to refuse to receive and consider pleas for pardon and clemency, he is not legally bound to so do. In the absence, thereof, of other evidence that the man was not guilty of an offense punishable by death, it cannot be said that Meissner's failure to recommend to Hitler that von Neurath's request be denied constitutes a crime against humanity within the meaning of Control Council Law No. 10.

*Weiske affair (The Tiergarten-Tattersall [Hippodrome]).*—The prosecution offered evidence that Meissner, for the purpose of obtaining Weiske's interest in the Berlin Hippodrome and its facilities, and to turn it over to one Esche or a corporation in which both Meissner and Esche became interested, caused Weiske to be arrested by the Gestapo and threatened with imprisonment in a concentration camp unless he should consent to the transaction and that, by reason of this arrest and these threats, Weiske, under duress, disposed of his property at a price far below its actual value.

There is no evidence, however, that the alleged conduct was in furtherance of or in connection with crimes against peace or war crimes. The transaction, whatever it may have been, was purely personal, between Meissner and Esche on the one hand, and Weiske on the other. It is therefore not a crime cognizable by this Tribunal. If Meissner was wrong, or if Meissner committed any crime in the matter, the case is one for the German courts. We make no finding and express no opinion as to the merits of the charge, as to do so might possibly prejudice a proper determination by the court having proper jurisdiction.

*Luftglas (sometimes referred to as Luftgas)\*.*—On 20 October 1941 a Berlin newspaper contained an item that a Polish Jew, Luftgas, had been sentenced to 2 1/2 years in prison for having hoarded 65,000 eggs.

On 25 October Lammers wrote to Schlegelberger, acting as Minister of Justice, that Hitler wished the defendant Luftgas *sentenced to death*, requesting him to see to it and to notify Lammers when this had been done so that he might inform Hitler. He also wrote Schwab, Hitler's adjutant, informing him of the communication to Schlegelberger. On 29 October Schlegelberger replied that in accordance with the Fuehrer order of 24 October, transmitted to him by the State Minister and Chief of the Presi-

\* For further information concerning this incident see Document NG-287, Prosecution Exhibit 88 reproduced in section V C 2 of the Justice case (United States vs. Josef Altstoetter, et al.), Volume III, this series.

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dential Chancellery (Meissner), he had handed Luftgas over to the Gestapo *for the purpose of execution*.

Schlegelberger testified in the Justice Case that the Fuehrer order was given to him on 24 October through the usual channels of the Presidential Chancellery.

On 24 March 1948 he gave an affidavit on behalf of Meissner that he could not "exclude the possibility that the information with respect to this transfer was not given by Dr. Meissner, as stated in the letter of 29 October 1941, but was given by another office."

On 28 April 1948 he gave an affidavit on behalf of Lammers and said (*Lammers 75, Lammers Ex. 38*):

*"After further investigation, I cannot entirely exclude the possibility that the order was not delivered by Dr. Meissner, but by another office, that is, the office of the Fuehrer's adjutant."*

The witness Flicker, called on behalf of Lammers, testified that inasmuch as Schlegelberger's letter, in the usual office routine, went through several departments including the legal department and that of the State Secretary, it was highly improbable that the mistake would be made of confusing the Presidential Chancellery with the Reich Chancellery or with Hitler's adjutant.

Meissner denies having had any knowledge or taking any part in this affair. The extremely guarded statements of Schlegelberger do not actually contradict his letter or his testimony which he gave in the Justice Case, and Ave deem it more likely that as stated in his letter to Lammers and his testimony, he received the Fuehrer order from Meissner rather than from the Fuehrer's adjutant. The Fuehrer order was based on a newspaper article, and without the slightest investigation by either Hitler or Meissner, and in the face of a substantial sentence given by a court which had tried the case and presumably had knowledge of the facts, handing the victims over to the Gestapo to be murdered was in clear violation of all law.

*Other transfers to the Gestapo.*—The record is clear, moreover, that in a large

number of other cases certain persons who had been imprisoned for offenses or whose cases were pending trial before the courts, were transferred by the Ministry of Justice to the Gestapo. These cases occurred when Hitler, quite evidently without any investigation of the facts and based almost entirely upon what he read in the newspapers, concluded that a sentence was too light or that a trial before the courts would be too slow. In some cases the order included, and in others omitted, the words "to be shot" or "for execution."

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That Meissner knew that these transfers meant the death of these persons concerned, we have no doubt. It is clear that he did not protest such orders or object to transmitting them. His excuse was that it would have done no good.

Some of the victims were Poles or Jews, and others were German nationals. All these cases arose during the war and some involved merely critical remarks of Hitler and his Nazi regime or offenses said to be aggravated because of war conditions.

Meissner knew that the Ministry of Justice had control of the custody of these persons, and only it had authority to transfer them to any other agency. That he also knew that these transfers meant death, we have no doubt whatsoever. He took a consenting, even though a minor, part in these crimes.

*Blitz executions.*—Meissner's part in the so-called Blitz executions consists of the following: The only instance as to which there is any evidence occurred in December 1938 and involved a man who, while an inmate of the Buchenwald concentration camp, had killed an SS man. There is no evidence to indicate that this case had anything to do with the preparation, planning, or initiating of aggressive war. This Tribunal therefore has no jurisdiction over any crime arising from this incident.

*Nacht und Nebel (night and fog) terror system.*—Meissner's only participation in this matter is a draft of a letter dated 14 June 1944 which Thierack proposed to send to Bormann but which was never transmitted. Therein, he stated that Meissner in submitting Hitler's order granting reprieve to certain women prisoners from occupied countries sentenced under Nacht und Nebel decrees, had instructed Thierack, who was then Minister of Justice, that Hitler's decision was not to be made public, thus leaving the condemned persons in suspense for an indefinite period as to whether or not the death sentence would be carried out. Meissner does not deny that he gave Thierack Hitler's instruction as above set forth. To permit one sentenced to death to remain for months or even years without knowledge of his reprieve and under the intolerable anxiety and mental stress of not knowing whether the next day would be his last day on earth is a trait typical of the sadism of the Nazi regime, and if anything could be considered a crime against humanity, such a practice is.

*Meissner's defense and facts in mitigation.*—Meissner was never a member of the Party, and up to the last moment he opposed Hitler's being made Chancellor. The von Papen affidavit that Meissner made his peace with Hitler, via Goering, because of financial scandals in which he was involved, is based on hearsay and without proof. His main functions as Chief of the Presidential Chancellery were those of protocol, taking care of honorary

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awards, making arrangements for and acting as escort for visiting foreign dignitaries, and matters relating to executive clemency. He was not a policy maker and had little

or no executive power. He never enjoyed the favor of the Party and was looked upon with grave suspicion and dislike by its heads. He was kept in office by Hitler because of his ready knowledge of protocol and ceremony, of which the latter was wholly ignorant, and his long acquaintance with leading domestic and foreign personalities. It is clearly established that insofar and as often as he could, he used his position to prevent or to soften the harsh measures of the man he served, sometimes at considerable risk to himself. He may have remained in office under Hitler because of vanity, weakness, and for financial security. There is no evidence that he originated or implemented any crimes against humanity, beyond what has been heretofore termed as such, and even there his part was hardly more than that of a messenger. While in so doing he played an unenviable role and one which a stronger character more alive to higher values would have rejected, it is doubtful that it constitutes criminality.

We find the defendant Meissner not guilty.

#### PUHL

The defendant Puhl, as the leading executive official of the Reich Bank, is charged with having directed and supervised the execution of an agreement between Funk and Himmler for the receipt, classification, deposit, conversion, and disposal of properties taken by the SS from victims exterminated in concentration camps. These properties, totaling millions of reichsmarks in value, included, among other things, gold teeth and fillings, spectacle frames, rings, jewelry, and watches. To insure secrecy, the deliveries from the SS were credited to a fictitious account and the transaction was given a code name. The proceeds were credited to the account of the Reich Treasury under the defendant Schwerin von Krosigk.

Puhl's entire career has been that of a banker. He was first employed in the Reich Bank in 1913, and, except for service in the army during the First World War, he remained in that organization. He became a director in 1929 and was a senior director in 1932; he was appointed as vice president on 8 August 1940 and remained so until the German surrender in 1945. From 1935 to 1945 he was a member of the Aufsichtsrat (which is, roughly, the supervising board as distinguished from the executive board) of the German Gold Discount Bank. He joined the Nazi Party as early as 1938 although his membership record gives the year

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as 1937. The defendant asserts that his membership record was antedated.

He served under Schacht, who was acquitted, as well as Funk, who was convicted by the first International Military Tribunal, during their respective periods as president of the bank.

The primary function of the Reich Bank was that of issuing notes; it also had the power to regulate the movement of currency and money transactions, internally as well as abroad, and to insure that the available funds of the German economic system were utilized for the common good and in the interest of national economy; it was under the direct authority of the Fuehrer; it was a public corporate body under corporate law which had a capital of 150,000,000 reichsmarks; and its presidents and directors were under the supervision and control of Hitler, who appointed and could, at will, discharge them. Such was the legal position of the bank under the Reich Bank Law of 1939, which covers the period with which we are here concerned.

On 11 February 1939 Puhl was appointed Funk's deputy for all business in the

latter's absence, with the same power to make decisions which Funk possessed under the Reich Bank Law, a position which was superior to that of any other official of the bank. He was the managing vice president, while Lange, the other vice president, was in charge of personnel matters and of safeguarding National Socialist principles in the bank.

Puhl had the comparative rank of a state secretary. In addition to being a member of the Aufsichtsrat of the Gold Discount Bank, in 1944 he became deputy president. This bank was owned and wholly controlled by the Reich Bank.

*Action Reinhardt.*—No chapter in the law and record of crimes committed during the history of the Nazi regime is so revolting and horrible as the coldly calculated extermination of Jews. Not content with depriving them of the opportunity inherent in all human beings to study, to practice professions, to engage in business in accordance with the individual's nature and talents, they were deprived of their rights of citizenship, subject to senseless degradations, humiliations, and insults, their property in many instances destroyed by Party organized mobs, and finally stolen from them under the euphonious term of "confiscations"; they were deported to the Gause in the East and finally to extermination camps where they were slaughtered by the million through starvation, shooting, and finally by mass extermination in the gas chambers of Auschwitz and Maidenek, where men and women, girls and youths, the tottering grandfather and the babe in arms, met the same fate. But the Nazi government was not content with this. There were large financial gains to be derived from

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wholesale murder which could be and were used to wage Germany's wars of aggression. Currency, coins, securities, jewelry, gold watches, gold spectacles, clothing from their bodies, were carefully and systematically collected; the hair was shorn from the heads of the women; and finally the gold from the teeth of the corpses was meticulously removed. The best of the clothing was used to cover the bodies of the members of the master race, the hair for mattresses on which to lay their heads, and the coins, bank notes, jewelry, and gold stored in vaults of the Reich Bank, sold through Berlin pawn shops by the Reich Bank, or sent by the Reich Bank to be melted into bullion.

The defendant contends that stealing the personal property of Jews and other concentration camp inmates is not a crime against humanity. But under the circumstances which we have here related, this plea must be and is rejected. What was done was done pursuant to a governmental policy, and the thefts were part of a program of extermination and were one of its objectives. It would be a strange doctrine indeed, if, where part of the plan and one of the objectives of murder was to obtain the property of the victim, even to the extent of using the hair from his head and the gold of his mouth, he who knowingly took part in disposing of the loot must be exonerated and held not guilty as a participant in the murder plan. Without doubt all such acts are crimes against humanity and he who participates or plays a consenting part therein is guilty of a crime against humanity. The only question we have to decide is whether the defendant Puhl was such a consenting participant as to render him liable to conviction and punishment.

As early as 26 September 1942 Frank, SS Brigadefuehrer and Brigadier General in the Waffen SS, by order of Himmler (SS WVHA), issued instructions to the Chief of the SS garrison administration at Lublin and the chief of the administration at the

Auschwitz concentration camp, prescribing procedure for the disposition of property of executed Jews (NO-724, Pros. Ex. 1908)—

a. German Reich Bank notes were to be deposited with the Reich Bank to the credit of the SS Economic and Administrative Main Office.

b. Foreign Exchange, coined and uncoined, rare metals, jewelry, precious and semiprecious stones, pearls, *gold from the teeth*, and scrap gold to be delivered to the Main Office and by it immediately to the Reich Bank.

\* \* \* \* \*

h. Gold frames of spectacles to be handed in with the rare metals.

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Albert Thorns, an employee of the Reich Bank, deposed and later testified that, by a decree of 21 February 1939, all Jews were required to deliver personal property to the governmental authorities, and coins and gold bars resulting therefrom were to be delivered to the Reich Bank; that in the summer of 1942 he was called into the department of Director Frommknecht and informed that the bank was going to handle a special transaction of which the latter knew little, but that all the details of which were familiar to Puhl, who wanted to see the witness; that he went to Puhl's office who explained that the bank was going to act as custodian of the SS for the reception and disposition of deposits which would include not only gold, silver, and foreign currency with which the bank usually dealt, but other kinds of property, such as jewelry, and that a way must be found to dispose of them; that he suggested to Puhl that the latter items be transmitted to the Reichshauptkasse (pawn shop) [Official Pawn Office] or that they be given by Himmler directly to the pawn shop in order that the bank would have nothing to do with the matter; that Puhl said this was out of the question and that the bank must arrange for a procedure in order to *keep the whole thing secret*. This conversation was within 2 weeks of the first delivery which was made in August 1942.

Thorns was further instructed by Puhl not to discuss the matter with anybody, that it was highly secret, and it was forbidden to speak about it. He was further instructed to get in touch with Brigadefuehrer Frank and Obergruppenfuehrer Wolff (the same Wolff who appears in this case so often as an affiant in behalf of the defense), for information; that he telephoned Frank and was told that the deliveries were to be made by truck and that they would be in charge of an SS man, Melmer; that after discussions it was agreed that Melmer should not appear in SS uniform but in civilian clothes, and that he was to receive a conditional receipt for the property; that Thorns would be later informed of the account to which the proceeds of the items were to be accredited; that although Melmer appeared in civilian clothes, there were two SS men on guard and most of the people in the pawn shops and in Thorns' office and in the bank knew about the SS deliveries. He says that the goods were sorted, handled, and disposed of in the appropriate departments of the bank—stocks, securities, and bonds to one department, and coins, gold, and jewelry to the precious metal department. On delivery a short statement of the goods was made and signed by the bank. Later the contents were itemized in detail and a final receipt given in detail; that on the occasion of the first delivery Melmer told him to credit the proceeds of the account to Max Heiliger; that he confirmed this

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with an official of the Ministry of Finance; that a few months later Puhl inquired how the Melmer deliveries were coming along and suggested that they might soon be over, but that he informed Puhl that it seemed as though they were growing larger.

The source of these items was known from the fact that the register stamp "Lublin" appeared on packages of some of the bills and some items carried the stamp of Auschwitz, both sites of concentration camps. This was early in 1943.

In November 1942, being the tenth delivery made, dental gold appeared and eventually this item became unusually great. The Berlin pawn shop [office] disposed of the jewelry for the bank, and the proceeds were credited to "Max Heiliger." The witness did not know how the savings books were cashed in, the first of which was delivered on 24 April 1943.

Thorns was called as a witness in the International Military Tribunal, confirmed his affidavit, and further testified that he kept Puhl advised of these transactions and of the kinds of items, including dental gold and wedding rings that the bank was receiving; that four or five people were employed at the bank to sort and classify the material, which action was carried on in the corridor of the vaults and much of the material lay quite openly on the table; that all persons involved were under strict instructions that this secret matter must not be talked about even with one's own colleagues, and that this secrecy was not ordinary secrecy that attended bank transactions; that he had seen the material shown in evidence and it was typical of the Melmer deliveries. The witness further testified that there were more than seventy deliveries made by the SS to the bank.

On cross-examination he testified that the name Melmer was given for this deposit, because of the specific direction from Puhl that the matter was a particularly secret affair; that the gold teeth were sent to the Prussian State Mint where they were melted down into gold, and the bullion delivered to the Reich Bank. He further testified that when the articles were sorted and classified at the bank they were put in bags with the word "Reichsbank" printed on same.

On 3 May 1946 the defendant himself was interrogated and made an affidavit that in the summer of 1942 Funk had a conversation with him and Friedrich Wilhelm, another member of the board of directors, and said that he had made an arrangement with Himmler to have the [Reich] Bank receive on safe deposit gold and jewels for the SS, and that Funk directed him to work out the arrangements with Pohl, head of the economic section of the SS in charge of the economic aspects of the concentration camp program; that he inquired of Funk the source of the gold,

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jewelry, and bank notes that were to be turned over and Funk replied that it was confiscated property from the Eastern Occupied Territory and told him to ask no further questions; that he protested against the Reich Bank handling the material but was told to go ahead and to keep the matter absolutely secret.

He thereupon made arrangements with one of the officials in the cash and vault department to receive the material, and himself reported the matter to the board of directors of the bank at its next meeting; that Pohl, on the day of the defendant's conversation with Funk, telephoned him and asked if he had been informed of the transaction, but Puhl refused to discuss the matter over the telephone, whereupon Pohl came to see him and said that the SS had some jewelry to deliver to the bank for safekeeping and arrangements had been made for delivery, starting sometime in August 1942, and continuing over the following years; that the material deposited by



the SS included jewelry, watches, eyeglass frames, dental gold, and other gold items in great abundance from Jews, concentration camp victims, and other persons; that this was brought to his knowledge by SS personnel who attempted to convert this material into cash and who obtained, in this connection, the assistance of the bank personnel with Funk's approval and knowledge; that he had been informed by Funk that Himmler and Schwerin von Krosigk, the Minister of Finance, had reached an agreement that the gold and similar material was to be deposited for the account of the Reich, and that the proceeds resulting from their sale should be credited to the Reich Treasury; that from time to time he visited the vaults in the bank and observed what was in storage.

Puhl explains this affidavit on the ground that he was ill at the time and confused, and offered as corroboration the testimony of Binswanger, who was then one of the internment camp physicians. The latter's testimony should be received with great caution as it is clear that he did not tell the truth with respect to his rank in connection with the SS. Moreover, his statements as to the physical findings from his examination of Puhl do not reveal any facts which would affect either Puhl's mind or memory. The defendant is a man of vast business experience, wide culture, and high intelligence. There is no evidence that he was under duress, other than the fact that he was then confined in an internment camp. It is not claimed that he was threatened by the interrogators, and the evidence clearly shows that he was not. The affidavit is replete with details which only he could have known and which could not have been supplied by anyone else. We believe that the affidavit relates the facts.

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In the bank's files is a memorandum dated 31 March 1944 which recites that, in accordance with an oral, confidential agreement between Puhl and the chief of one of Berlin's public offices, the Reich Bank took over the selling of local and foreign currencies, gold and silver coins, precious metals, securities, jewels, watches, diamonds, and other objects which were to be processed under the code name Melmer; that a large number had been turned over to the Municipal Pawn Shop for utilization; that on 29 March 1944 the pawn shop refused further acceptance and declined to process items already in their possession; that the question of uniform utilization was important, not only because the bank should be given the opportunity to sell unprocessed jewels, etc., from the Melmer deliveries as it had been before, but also because its equivalent belonged to the Reich and if the pawn shop sold the articles above the world-wide gross price the surplus went to the benefit of the Reich; that through sales to foreign countries a considerable amount of foreign currency must be acquired, and that among the good still in the possession of the pawn shop were diamonds to the amount of 35,000 carats, and small rose diamonds of very high value.

There is another communication in this document of 14 September 1943 from the Berlin Municipal Pawn Shop to the Reich Bank likewise dealing with the utilization of this property.

Karl Wilhelm, a former director of the bank, gave an affidavit (*NID-14462, Pros. Ex. 1916*) that in 1942 Puhl told him that SS Obergruppenfuehrer Pohl had visited him and stated that he desired that the gold and jewelry deposits then in the cellar of an SS barracks should be put under the care of the Reich Bank; that Wilhelm told Puhl that those things didn't concern him and warned Puhl against taking such deposits, with the words, "They will kick back against the Reich Bank some day," whereupon

Puhl replied "You are right, it is none of your business. I just wanted to inform you of these deposits. I will deal with this matter alone." Puhl showed no reluctance but approved the project.

Puhl denies the matters deposed by Wilhelm, but on the second day of November 1946 he gave a statement that he considered Wilhelm to be thoroughly reliable and that complete faith could be put into the statements he made, and that he never considered Wilhelm was sympathetic to the Nazi program.

Walter Bayrhofer gave an affidavit (*NID-14444, Pros. Ex. 1918*) in which he stated that he was a director of the Reich Bank and a member of the Aufsichtsrat of the Gold Discount Bank; that at the end of 1942 Frommknecht told him that, without his knowledge or that of the affiant, jewels and valuables of the SS

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had been deposited with the bank; that Frommknecht was somewhat annoyed that these deposits had been handled by Puhl, since cash transactions were actually the responsibility of Bayrhofer's department; that Frommknecht informed him that the matter was classified as secret and top secret; and that he himself had misgivings about the transaction because it seemed to be outside the competency of the bank.

On 15 July 1946 Oswald Pohl, Chief of the Economic and Administration Main Office of the SS (WVHA), gave an affidavit deposing, among other things, that in the year 1941 or 1942—after larger quantities of articles of value such as jewelry, gold rings, gold fillings, spectacles, etc., had been collected in the extermination camps—Himmler ordered him to deliver these things to the Reich Bank, explaining that he had already entered into the negotiations concerning the matter with the bank and Funk; that as a result of this agreement he discussed the manner of delivery with the defendant Puhl and in this conversation no doubt remained that the objects to be delivered were the jewelry and valuables of concentration camp inmates, especially Jews who had been killed in extermination camps. There was a gigantic quantity of valuables thereafter delivered which continued for months and years. He further stated that he saw a part of these valuables when Funk and Puhl invited him to inspect the vaults, and thereafter to dinner (this took place in 1941 or 1942), and then that Puhl took them to the vaults of the Reich Bank, showed them gold bars and also various trunks of objects, taken from concentration camps, were opened.

Pohl gave a subsequent affidavit on 2 April 1947 which substantiates many of the details heretofore mentioned.

Pohl was called as a witness in this case for cross-examination, and in a measure attempted to repudiate the affidavits which he had given, an analysis of which will be hereafter made. Likewise both Wilhelm and Thorns were called for cross-examination and their testimony will be similarly treated.

When Puhl testified before the International Military Tribunal, he confirmed the statements of his affidavit of 3 May 1946, stating specifically that the statements in the affidavit were correct. Thereafter he recanted, stating that he did not know that there was dental gold or gold spectacle frames in the loot. August Frank of the SS heretofore mentioned testified in the Pohl case\* that the conferences between Pohl and the defendant Puhl took place in July 1942, having been preceded by a conference between Himmler and Funk<sup>1</sup> and between Himmler and the defendant Schwerin von Krosigk; that these deposits were not deposits of

\* United States vs. Oswald Pohl, et al., Case 4, Volume V, this series.

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the SS and for its benefit, but were for the benefit of the Reich; that the foreign exchange was immediately utilized by the Reich Bank and its countervalue credited by the bank to a special account with the Reich Minister of Finance. This account was called the Max Heiliger account.

On 26 May 1948 Albert Thorns gave an affidavit in which he testified that there were seventy-six separate deliveries by the SS to the Reich Bank which were listed under the name "Melmer"; that of these a part was not utilized but evacuated to the salt mines in Merkers because of war conditions. He identified the receipt book of the Metal Purchasing Office of the Reich Bank, which is the record of the smelting of the gold. The remaining Melmer deliveries in 207 containers in which were stored gold, foreign exchange, jewelry and precious stones, pearls, and dental gold, were likewise sent to Merkers. Attached to his affidavit are photostats of pages 14 and 15 of the Reich Bank receipt book, and they relate to 21 deliveries which commenced with the fortieth and ended with the seventy-sixth.

Page 15 relates to eleven deliveries of which the twenty-sixth was the first and the seventy-second the last. Also, as a part of this exhibit, is a memorandum of 24 November 1944 from the Reich Bank to the mint, directing it to melt down something over 100,000 kilograms of silver and gold (1 kilogram is the approximate equivalent of 2 pounds), a substantial portion of which was dental gold.

While we have little doubt that the articles shown in the film (*US-845 IMT, Pros. Ex. 1919*) were delivered by the [United States] Army to the Reich Bank branch in Frankfurt and were part of the loot which the Reich Bank had stored in the salt mines at Merkers, the chain of proof is not entirely complete. We shall therefore disregard the film, but the facts are proved independently by the evidence which we have heretofore outlined.

The defendant Puhl asserts that the Reich Bank was by law compelled to accept this loot, particularly with respect to the gold, silver, and currency, and quotes article 15 of the Reich Bank Law (*NO. 45, Ex. No. 45*) of 15 June 1939.

There is nothing in this section which can be construed to require the bank so to do. Article 15 merely provides that the bank must effect all banking operations for the government "*insofar as they are within its competence in accordance with the provisions of the present law*"; it is also required to act as intermediary for all payments by the financial establishments of the Reich, the Gaue, the provinces and the communes, and the association of communes. The receipt, realization, and disposition of stolen goods can hardly constitute a banking operation, nor is it

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to be presumed that when the law was drafted it had reference to any transaction such as we are here discussing.

Article 14 of the same law contains the clause that the bank is required to purchase bar gold at its Berlin headquarters at a fixed rate. This, however, only means that if and when the bank purchases gold it must do so at the specified rate.

The legal opinion of Hans-Joachim Caesar, a jurist for the Reich Bank, cites both articles and the "pertinent provisions of the foreign currency laws," and "according to these provisions all the gold and foreign currency had to be turned over to the Reich Bank," and as a result the Reich Bank could not reject gold and foreign currency confiscated by order of the Reich.

We reject this contention. If it had been the purpose of the law to include therein property stolen from the inhabitants of occupied territories or from those of German nationals, pursuant to an execution of aggressive war, it was void as a breach of international law and affords no defense. We do not assume and we do not believe that any such purpose existed at the time the Reich Bank Law or the Foreign Currency Regulations were promulgated. That this was not looked upon as an ordinary transaction within the scope of its corporate purposes or official functions by the Reich Bank officials, including Puhl, is evidenced by the extreme secrecy with which the transaction was handled, the fact that the account was credited in the first instance to a fictitious name, Max Heiliger, and the contemporaneous misgivings expressed by officials and employees of the bank at the time.

Our views are confirmed by the testimony of Karl Friedrich Wilhelm, namely, that the bank was under no obligation to accept gold or foreign currency, but it was the duty of holders to offer it. Nor was it bound to accept and dispose of jewels or unrefined gold or act in the capacity of a second-hand or antique dealer.

Puhl testifies that he first learned of the transactions in question from Funk, in accordance with an agreement made between Himmler and Funk. This was in the summer of 1942. He further testifies that Funk told him that Himmler intended to deliver incoming gold and foreign currency into the bank because of the legal provisions requiring such delivery, and asked him to inform the competent departments to be helpful in fulfilling the formalities concerning the delivery of the stuff. Funk mentioned not only foreign currency and gold, but also some articles of jewelry, but said nothing of gold teeth, gold teeth fillings, spectacle frames, etc.; that Funk stated that these things had been seized or given up in the East and he, Puhl, did not assume that the seizure was in violation of international law; that there was no mention of concentration camps or Jews. Funk told him not

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to ask any more questions; that his protests about the Reich Bank taking over the property were not because he thought they were illegally acquired objects, but because he did not desire to have any dealings with the SS. He remembers the call which Pohl made and states that it was very short and that all Pohl told him was that he was the delivering agency for gold and silver currency collected within the framework of the SS scheme, and emphasized that this was property belonging to the Reich.

Pohl did, however, mention that there might be some jewelry and asked the Reich Bank to pass it on to the competent pawnbroker's agency; that as a result of his conversation with Pohl, he informed Frommknecht. He denies that he gave Thorns the instructions or heard the conversation mentioned in the latter's affidavit, but merely said so far as property other than gold and other foreign currency was concerned, it should be passed on to the competent pawnbroker's house. He admitted that he may have said that the matter should be treated in a confidential way, but that applied to all banking transactions, and that Pohl had talked of secrecy and made a lot of fuss about everything, and he may have told Thorns something to that extent.

He denies, however, that the matter was to be treated as a top secret matter. He denies Wilhelm's affidavit and testimony that he had informed the latter that he (Puhl), would handle the matter himself. He claims that these matters were never discussed in the meetings of the directors, and that he never received a report from

the subordinates in connection with these deposits; that he had never made any inquiry of Thorns as to the status or progress of the Melmer deliveries, and that he was never notified that gold teeth were supposed to have shown up in connection with the deposits or savings bank books, or 12 kilograms of pearls; that if Thorns had ever mentioned these matters he certainly would have done something against it; that he never saw, in the Reich Bank vaults, items such as were shown in the film and that he never knew that that class of items were ever turned in by the SS, and does not believe it possible that they could have been turned in to the Reich Bank.

However, the testimony of Thorns and the records of the bank to which he heretofore referred show that the defendant' is entirely mistaken with respect to this last statement. He remembers only one visit of Pohl to the bank vaults, namely, on 27 May 1941, before these deposits were being made, and remembers one luncheon with Pohl immediately after he visited the vaults.

He claims that at the time his affidavit was taken, he was and had been ill; that he was at that time still bedridden and unable to grasp the sense of the individual statements.

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The witness Oswald Pohl was administration chief of the SS from 1934 to 1945. He was tried and condemned to death. He was called for cross-examination with respect to [Prosecution] Exhibits 3477, 2826, 2862, 2827, 2865 [Documents 4045-PS, NI-399, NI-470, NI-382, NID-14605 respectively]. He says that while a prisoner of the British he was badly mistreated, although he makes no claim that he was mistreated while in Nuernberg, either before, during, or after his interrogations here. He attempted to state that he did not know that the material came from concentration camps, or from extermination camps and dead Jews, or that it contained such items as gold rings, gold fillings, glasses, and gold watches.

August Frank testified, in the Oswald Pohl case, that as early as 8 October 1942 he had informed Himmler about this dental gold and suggested that further collections be sent to the Reich Bank, and further, that he knew that much of it came from concentration camps. We deem it highly unlikely that Pohl would not have at least as much definite information as his deputy, Frank.

We have carefully reviewed Pohl's testimony before a commission of this Tribunal. It is our opinion that he gave false oral testimony in an attempt to exonerate himself as well as defendant Puhl. Certainly Pohl's cross-examination shows that he would go to any lengths, wholly without regard to the facts, in order to avoid the effect of the affidavits which he had given.

From the records we draw and make the following findings of fact:

That Puhl was the managing director and vice president of the Bank, and that in Funk's absence he exercised all the powers of Funk;

That Funk was seldom in the bank and comparatively seldom exercised his powers as president;

That Puhl, at the time he received the direction from Funk and after he talked to Pohl, knew that what was to be received and disposed of was stolen property and loot taken from the inmates of concentration camps.

We do not believe that at that time he was informed that the grisly dental gold and wedding rings were part of it. However, we think it is fairly established by the record that long before the deliveries were completed he was informed of this. His part in this transaction was not that of a mere messenger or businessman. He went beyond

the ordinary range of his duties to give directions that the matter be handled secretly by the appropriate departments of the bank. It is to be said in his favor that he neither originated the matter and that it was probably repugnant

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to him. He had no part in the actual extermination of Jews and other concentration camp inmates, and we have no doubt that he would not, even under orders, have participated in that part of the program.

But without doubt he was a consenting participant in part of the execution of the entire plan, although his participation was not a major one.

We find him guilty under count five.

#### RASCHE

The defendant Rasche is a banker by profession, and after many years of banking experience in the Rhineland he joined the Dresdner Bank, became a member and finally the spokesman for its Vorstand. He was one of the most able and active executive officers of the bank.

The evidence clearly establishes that the Dresdner Bank loaned very large sums of money to various SS enterprises which employed large numbers of inmates of concentration camps, and also to Reich enterprises and agencies engaged in the so-called resettlement programs.

It is unnecessary to recapitulate the evidence in this case or the findings of others of these Tribunals to the unlawful nature of these enterprises.

Prosecution Exhibit 2825 [Document NI-10120] is a draft of a letter of recommendation which Rasche prepared or caused to be prepared for the signature of SS Gruppenfuehrer Pohl, which contains the statement:

*"Dr. Rasche is an old fighter for the Baltikum, and as a member of the delegation of the Reich Leader SS (Himmler) he also participated in the decisive measures concerning resettlement."*

The defense that Pohl did not sign this letter and that it was never used is of no materiality, as they are Rasche's own words praising himself and not those of Pohl.

The record, however, does not disclose that Rasche was ever a member of any delegation of the Reich Leader SS, nor what the delegation did, if it ever existed, or what the decisive measures consisted of; nor are we able, from other evidence, to determine any relationship with Himmler or the SS from which any conclusive inference can be drawn.

Rasche was a member of Himmler's Circle of Friends, and the [Dresdner] Bank, with his knowledge, acquiescence, and approval, even in part at his insistence, made large annual contributions to

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a fund placed at Himmler's personal disposal. There is no evidence, however, that matters relating to the resettlement program were ever discussed or acted upon in the meetings of this circle, or that it was in any way a policy-making body. Nor is there any evidence that Rasche knew that any part of the fund to which the bank made contributions was intended to be or was ever used by Himmler for any unlawful purposes.

His participation in the loans made by the Dresdner Bank to various SS enterprises

which employed slave labor and to those engaged in the resettlement program presents a more difficult problem.

The defendant is a banker and businessman of long experience and is possessed of a keen and active mind. Bankers do not approve or make loans in the number and amount made by the Dresdner Bank without ascertaining, having, or obtaining information or knowledge as to the purpose for which the loan is sought, and how it is to be used. It is inconceivable to us that the defendant did not possess that knowledge, and we find that he did.

The real question is, is it a crime to make a loan, knowing or having good reason to believe that the borrower will use the funds in financing enterprises which are employed in using labor in violation of either national or international law? Does he stand in any different position than one who sells supplies or raw materials to a builder building a house, knowing that the structure will be used for an unlawful purpose? A bank sells money or credit in the same manner as the merchandiser of any other commodity. It does not become a partner in enterprise, and the interest charged is merely the gross profit which the bank realizes from the transaction, out of which it must deduct its business costs, and from which it hopes to realize a net profit. Loans or sale of commodities to be used in an unlawful enterprise may well be condemned from a moral standpoint and reflect no credit on the part of the lender or seller in either case, but the transaction can hardly be said to be a crime. Our duty is to try and punish those guilty of violating international law, and we are not prepared to state that such loans constitute a violation of that law, nor has our attention been drawn to any ruling to the contrary.

The defendant Rasche should be and is found not guilty under count five.

#### RITTER

The defendant Ritter, now in his 66th year, entered the Foreign Office in 1922 after a career as a civil servant in various

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other governmental agencies, which commenced in 1909. He was a recognized expert in matters of commerce and economics, and represented the Weimar Republic in negotiating and drafting many commercial agreements, and in questions of reparations and economic matters arising within the League of Nations. In these capacities he exerted a significant political influence. He became Chief of the Commercial Policy Division of the Foreign Office and remained there until 1937 when he was appointed Ambassador to Brazil.

As Ambassador he received a greatly increased compensation and thereby became entitled to the rank of State Secretary. Prior to his appointment he claims that he was less and less consulted by von Neurath, then head of the Foreign Office, and that his appointment to Brazil was not a promotion but rather a means of "putting him on the shelf."

In 1938 while Ambassador to Brazil he received an unsolicited invitation to join the Party and testifies that he was faced with the dilemma of so doing or falling into complete disfavor which might result in his inability to return to Germany, and in any event would have injured his career. He thereupon joined the Party.

Ritter was recalled in 1938 and on his return attempted to retire, but was put off by von Ribbentrop until the outbreak of the war, notwithstanding the fact that von Neurath had promised him that he might do so. He received only occasional

assignments in the Foreign Office upon his return from Brazil, among which were the negotiations leading up to the commercial agreement with Russia after the conclusion, in August 1939, of the nonaggression pact between Germany and that country.

In October 1940 he was appointed by von Ribbentrop as liaison officer between the Foreign Office and the OKW (which corresponds to the General Staff of the German Armed Forces), a position which he retained until the end of January 1945, when he became ill.

While an attempt has been made to minimize the importance of his functions and the influence which he could exert, we cannot accept this *in toto*. The functions of a liaison official or agent between two such important departments of a government as the Foreign Office and the General Staff are too well known and recognized, and among them is the duty to inform himself of the purposes, plans, and activities of the department to which he is assigned, report them to his superior, give advice with respect thereto, negotiate on the latter's behalf with the agencies to which he is assigned, adjust differences which may arise, and generally implement policies determined by his chief. These are

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not the duties of an errand boy or a messenger. They require a high degree of perspicacity, industry, intelligence, tact, and adroitness; and the evidence, including that of the defendant himself, indicates that he possessed and utilized these qualities and performed these functions, hampered, it may be, by the almost psychopathic peculiarities of his chief, von Ribbentrop.

With regard to the fate of the Jews who were deported to the East, and with respect to the policy of the Nazi government toward them, he was under no illusions, although it was quite likely that he had no direct knowledge of the extent, technique, or manner in which the Jewish exterminations were carried out. We shall consider the documents and the testimony which the prosecution contends proves his guilt.

On 24 September 1942 Ritter wrote and signed a memo to be used by Hitler in dealing with Mussolini on varied questions, including that of the Croatian Jews, but here he was only transmitting von Ribbentrop's ideas and did not purport to express his own. Our attention has not been called to any instance where he had any responsibility or took any action respecting this matter.

*Danish Jews.*—The prosecution contends that Ritter coordinated military and civilian measures for the persecution of Danish Jews, when the civilian forces complained that they could not carry out the deportation without military help. We have examined the exhibits cited in the brief, but while Ritter received information that such measures were under consideration and that the military commander in Denmark objected thereto, and while he was on the distribution list of certain of the documents, the only evidence which the prosecution has presented to show that he took any action with respect to the same is a quotation from his cross-examination, wherein he had denied that he had anything to do with the Jews being taken from Denmark. He was asked the following question (Tr. p. 12466):

"Q. Do you remember that you had to mediate because the official agencies allegedly did not want to support Best properly with intended deportations?"

"A. I don't remember such a general activity of mediation, but I remember one particular case—

"Q. That is quite sufficient."

For some reason the prosecution did not see fit, and in fact stopped the defendant from testifying as to what activity was involved in the particular case which he



remembered, and the matter was not again discussed. The Tribunal is not informed as to what he did, and the term "mediation" is entirely too indefinite

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and subject to too many shades of meaning to be used as evidence of guilt. It might include an attempt to ameliorate rather than to implement the action.

With respect to Denmark the prosecution has failed to prove its case.

*Jews in France.*—The record discloses that Ritter was informed of the actions against Jews in France and Rumania, but there is no evidence that he participated in them. Knowledge that a crime has been or is about to be committed is not sufficient to warrant a conviction except in those instances where an affirmative duty exists to prevent or object to a course of action. In this instance he had no such duty and he is therefore acquitted with respect to them.

*Hungary.*—During the course of Germany's persecution of the Jews, several hundred thousand emigrated to Hungary where, although subject to certain restrictive laws, they found, what was to them, a haven of refuge.

While there was a vigorous anti-Semitic movement in Hungary, neither the Regent, Admiral Horthy, nor the Cabinet then in power, showed any desire to follow the pattern laid down by the Nazi government.

To the Third Reich it was, of course, unbearable that Jews in any country within reach of its power or influence, should live the life of free men. Constant effort and pressure were put forth to destroy all opportunity for even a meager existence outside of concentration and slave-labor camps. And this is what they finally brought about in Hungary.

As early as 1943 Hitler had become dissatisfied, not only with the military efforts of the Hungarians and with their lack of vigor in enacting and enforcing anti-Semitic legislation, but became suspicious that Hungary was war weary and desired to make peace. It was determined to obtain the control of the Hungarian Government. Thereupon German Envoy von Jagow was replaced and Veesenmayer, who had no previous diplomatic experience, was put in his place.

Von Ribbentrop detailed Ritter to take charge of Hungarian affairs, and included Veesenmayer's activities at Budapest.

Veesenmayer became Minister and Reich Plenipotentiary to Hungary on or about 19 March 1944. On that day Ritter telephone him giving the following instructions, viz, that on the same day von Jagow should inform Horthy, the Hungarian Regent, that he had been recalled, and would take leave the same morning, then introduce Veesenmayer as the new Minister and Reich Plenipotentiary; that Veesenmayer was to introduce himself and inform Horthy of the new Hitler order concerning Imredy and

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others, whom Veesenmayer would name, and whom thereafter he should immediately contact; that none of the Hungarians who were in Klessheim (where conferences between Horthy and Hitler had taken place) were to be arrested, not even Kallay; that in accordance with von Ribbentrop's order, Veesenmayer, until further notice, was to direct all information for von Ribbentrop to Ritter.

On 4 March 1944 Ritter instructed Legation Councillor Vogel to rush-wire all top agencies concerned that Hitler's written authority to Veesenmayer provided "civilian German agencies of any kind which should be activated in Hungary are only to be

established with the consent of the Reich Plenipotentiary; that they were subordinate to him and would operate under his directions"; that the establishment of German civilian agencies in Hungary was not intended; and that all proposals pertaining to trips of officials of top Reich agencies with a view of attending to current war efforts in Hungary must be addressed to the Foreign Office, attention Legation Councillor Krieger.

On 19 March 1944 Grote made a memorandum with regard to Operation Margarethe (the seizure of Hungary by German troops), which contains the following language (NG-5525, Pros. Ex. C-437):

*"After consultation with Ambassador Ritter, it is superfluous to inform the Rumanian, Croatian, and Slovakian Governments regarding diplomats or submit a request to them."*

On 20 March Ritter, by teletype to the Embassy at Budapest, stated that von Ribbentrop requested Veesebmayer to discuss the Kallay affair with Kaltenbrunner, and to arrange to have all exits to the castle watched by the German Security Police with instructions to arrest Kallay if he attempted to leave the castle.

On 23 March 1944 Veesebmayer reported to von Ribbentrop, via Ritter, regarding his instructions to the Security Police to take the necessary steps to arrest Kallay when he left the sanctuary of the Turkish Ministry.

On 25 March 1944 Veesebmayer reported to von Ribbentrop through Ritter, of a conference with Sztojaj and members of the Hungarian Cabinet, stating that, among other things, the Jewish question was being tackled energetically and that he had left them in no doubt that the Reich government was at present still skeptical and could only be convinced by practical deeds, and the more quickly and energetically and thoroughly reforms were carried out the better was Veesebmayer's chance to convince the Reich that the new government was beginning to get ready for an alliance.

Veesebmayer, on 2 April 1944, reported to von Ribbentrop, through Ritter, that Winkelmann's subordination (to Veesebmayer)

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mayer) had been carried out in every respect thus far and the cooperation was functioning smoothly in a comradelike manner.

On 3 April 1944 Veesebmayer reported to von Ribbentrop, through Ritter, that after the next air attack on Budapest he would have no scruples against having 10 suitable Jews shot for every Hungarian killed, and inquired, in view of von Ribbentrop's suggestion to Hitler to offer all Jews as a present to Roosevelt and Churchill, whether this idea was being followed up, or whether he might, after the next attack, start with the retaliatory measures described. This was distributed to Steengracht von Moyland.

On 5 April 1944 Veesebmayer reported to von Ribbentrop, through Ritter, respecting his conference with Szalasi, head of the Arrow Cross Movement, and a subsequent one with Sztojaj, the puppet head of the Hungarian Cabinet. He said of Szalasi:

*"On the whole I was disappointed in Szalasi. I consider him insincere, a clever technician, and not particularly intelligent. How far I can use him for my political purposes depends on further developments."*

Veesebmayer, on 14 April 1944, reported to von Ribbentrop, through Ritter, that Sztojaj had given a binding promise that by the end of April 40,000 Jews fit to work would be placed at the disposal of the Reich, that a drive had been started by the SD and Hungarian police, and all Jews between the ages of 38 and 45 hitherto not liable to the labor service would be registered and drafted, thus providing another 50,000 during the month of May, and had promised to increase the number of Jews

organized in labor battalions in Hungary to 100,000 or 150,000 at the same time.

On 14 April 1944 Veessenmayer reported to von Ribbentrop, via Ritter, that he had urged Sztojay to see to it that the Hungarian press and radio offer much stronger opposition to Kallay and his party.

On 15 April 1944 Veessenmayer reported that, upon his demand, the Minister President, Sztojay, had agreed to place at Germany's disposal 50,000 Jews by the end of the month, that he would receive 5,000 forthwith and thereafter 5,000 every 3 or 4 days until the number of 50,000 was reached.

On 23 April 1944 Veessenmayer reported to the Foreign Office, and also to Ritter, that 150,000 Jews had already been put into ghettos, and that when the action was completed the number would approximate 300,000; that an additional 250,000 to 300,000 were yet to be dealt with; that negotiations for transportation had been started and that the shipment of 3,000 a day would begin on 15 May; and that Auschwitz had been designated as the receiving station.

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On 27 April 1944 Ritter, from Salzburg, wired the German Legation in Budapest that the Chief of the Security Police and Security Service stated that the deportation of 50,000 Hungarian Jews, on an open labor assignment to plants in Germany, was out of the question because it would make "illusory" the complete evacuation of Jews from Reich territory and the effected exclusion of Jews from the plants in the Reich, but that there was no objection to bringing Hungarian Jews in to Reich labor camps under the complete control of Himmler; that the SD would issue a separate directive concerning their transportation. Ritter further suggested that in case of further delay in transportation the Embassy at Budapest, in its telegraphic reports, make clear that the German Embassy had done everything possible and necessary to carry out the operations as quickly as possible, and that the delay in deportation was due to the fact that the authorities in charge of deportation and placement of Jews did not make the necessary arrangements.

The term "labor camp under the control of the Reich Leader SS" was a euphemism for the extermination camp.

On 28 April 1944 Veessenmayer, as per Ritter's earlier instructions, reported to von Ribbentrop through Ritter concerning the successful efforts to remove 19 of the Hungarian district presidents, stating that he would shortly demand the withdrawal of more; that the successors to those already removed represented a substantially better category and that increased opposition from Horthy was to be expected.

Veessenmayer, on 30 April, reported to Ritter relative to the arrest of Jews and the proposed persecutions of Catholic priests for making anti-German remarks.

On 2 May 1944 Veessenmayer reported to von Ribbentrop, through Ritter, that in accordance with Horthy's wishes SS Obergruppenfuehrer Winkelmann and Gruppenfuehrer Keppler (not the defendant Keppler) were presented; that Horthy insisted on the integrity of Kallay and the other Ministers; and that Hitler's reproaches in 1943 were unjust, but that Veessenmayer left not a single point unanswered, as the result of which Horthy said it would be better to talk about the weather.

On 5 May 1944 Veessenmayer reported to the Foreign Office and also to Ritter that in Zone I, in the Carpathian territory, approximately 200,000 Jews had been placed in ten camps and ghettos; and in Zone II the work of placing an additional 110,000 Jews in concentration camps had begun, and that their evacuation to Germany was to start on May 15 at the rate of 3,000 per day.

On 8 May 1944 Veesenmayer wired Ritter that Count Bethlen and Dr. Janos-Schilling disapproved of the action against the

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Jews which was under way in a certain district, and that they had both gone on sick leave, and that Bethlen had declared that he would not and did not want to become a mass murderer and would rather resign. Veesenmayer stated: "I shall demand that Count Bethlen and Dr. Schilling be called back." Subsequently both Count Bethlen and Schilling were removed from office.

On 10 May 1944 Veesenmayer relayed reports to von Ribbentrop, through Ritter, that the purge of Hungarian provincial administration was proceeding satisfactorily, and that 41 of the 62 governors had been dismissed and that 38 new ones had been appointed.

On 26 May 1944 von Thadden of the Foreign Office submitted a report, a copy of which went to Ritter, regarding the situation of the Jews in Hungary. He stated that the estimated number of Jews in Hungary was 900,000 to 1,000,000, 350,000 of whom lived in Budapest, and that, except for those who were concentrated in ghettos, an action was planned to start in Budapest between the middle and end of July to be a "tremendous 1-day action"; that according to present information, *about one-third of the Jews so far deported were able to work* and on arrival in concentration camps would be distributed to the agencies of Sauckel, Organization Todt, etc.

Veeseamayer made periodic reports of the number of Jews who had been deported to the Reich or to the East, most of which went to Ritter or to von Ribbentrop via Ritter.

On 3 July 1944 von Ribbentrop instructed Veeseamayer to tell the Hungarian Government that it was not opportune to take up the various offers from abroad on behalf of the Hungarian Jews. Veeseamayer, on 6 July 1944, reported to von Ribbentrop, through Ritter, on the Jewish question in Hungary and the appeals made by the King of Sweden and the Pope on behalf of the Jews; that the Hungarian counterintelligence had deciphered code messages from the American and British Governments to their Ministers at Berne which contained detailed descriptions of what had been happening to Jews from Hungary; that 1,000,000 had already been exterminated and that a majority of the deported Jews were suffering the same fate.

On 6 July 1944 Veeseamayer reported to von Ribbentrop, through Ritter, regarding the conference with the Hungarian Regent, Horthy, in which the latter urgently requested that Hitler speedily close down the Gestapo, in order to restore Hungarian sovereignty, and spoke of the protests he was daily receiving from the Vatican and the King of Sweden, also from Switzerland and the Red Cross and others, concerning the Jewish question, together with the determination to intercede in favor of the Chris-

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tian Jews; he stated he told the Regent that, as long as Hungary did not totally disassociate herself from the treacherous policies of Kallay, the SS and SD agencies could not be discontinued; that the solution of the Jewish problem could not have been completed without Germany's support; that the Hungarian people increasingly recognized the burdens which the Jews made for Hungary. Veeseamayer also

demanded the removal of the Hungarian Minister Csatay and his deputy, Ruzkicay-Ruediger.

On 20 July 1944 von Ribbentrop's office wired Veeseumayer asking for a report (NG-2994, Pros. Ex. 1825) on the British radio charge that "Germany wants to transact business with Jewish blood" and that two Hungarian delegates had appeared in Turkey to submit an offer from the Gestapo and the Hungarian Government that all Hungarian Jews in Hungary would receive exit permits on the condition that British and Americans supply Hungary with a certain amount of medicaments and transportation.

On 22 July Veeseumayer reported to von Ribbentrop, through Ritter, that from some confidential information given him the British report was correct, and was the result of a secret order of Himmler.

On 24 October 1944 Veeseumayer reported to von Ribbentrop, a copy of which was distributed to Ritter, that he had handed a note to the Hungarian Foreign Minister regarding the Jewish situation and the Regent's decision not to permit any Hungarian Jews to be deported to the Reich, and that it was only after 16 October, under the advisory cooperation of German agencies, that new negotiations were started with the aim to find a final solution for the Jewish question in Hungary.

An examination of the alleged incriminating documents with respect to Hungarian Jewish affairs under count five presents a somewhat puzzling picture. Except in the very early days of Veeseumayer's incumbency as Minister and Plenipotentiary, there is nothing to indicate that Ritter took any action, gave any advice or any directives. It appears that, for a number of months, Veeseumayer almost invariably sent his reports to von Ribbentrop through Ritter, or made reports bearing the marginal note, "Also for Mr. Ritter." But that is as far as the record goes.

No witness has testified that Ritter took any action whatsoever with respect to these reports. A plausible and, we are inclined to believe, the truthful explanation of the situation is given by the defendant. At the time Veeseumayer was sent to Budapest, there was in contemplation and thereafter put into execution a plan for the German armed forces to invade Hungary, intern its armed forces, and secure the country against any attempt on the

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part of its Regent or government to conclude an armistice or peace. Insofar as Hungary became an operational area, Veeseumayer, as Reich Plenipotentiary, had no jurisdiction, under the Fuehrer decree, to interfere with or direct military operations. During that stage of proceedings, however, involving as it did the invasion of the lands of an ally, the Foreign Office was deeply interested inasmuch as it intended to use this invasion to force the Horthy government to appoint a pro-German cabinet. Therefore, the need of close liaison between the German Minister in Budapest, the Foreign Minister, and the Chief of the Wehrmacht, was imperative.

Ritter was the liaison officer, and, under the circumstances, it was entirely natural that von Ribbentrop should have instructed him to give attention to Hungarian affairs so that the work of the Wehrmacht and the policy of the Foreign Office might be coordinated and work toward the objectives in view. This would account for von Ribbentrop's instructions to Ritter, and it also accounts for the fact that apparently Ritter ceased to interest himself in the situation after the Wehrmacht withdrew in April 1944. A realization on the part of von Ribbentrop that cooperation, thus compelled, was not likely to be wholly satisfactory, and that the Hungarians might attempt to

regain sovereign power and pursue their own foreign policy and thus the use of the Wehrmacht might again become necessary, readily explains why the instructions given to Veesenmayer to report to the Foreign Minister through or via Ritter were not rescinded.

Ritter's knowledge of the situation, from the receipt of Veesenmayer's reports, may be reasonably inferred, but Ritter is not to be convicted because of what he knew. He can only be found guilty for what he did.

The evidence is not sufficient to warrant his conviction under count five so far as Hungary is concerned, and he must be and is, exonerated, and found not guilty with respect thereto.

## STUCKART

Stuckart was born in 1902. He studied at the Universities of Munich and Frankfurt and passed his State law examination in 1930. He joined the Party in 1922 and remained a member until it was dissolved by decree during the life of the Weimar republic. When arrested by the French in 1923 or 1924, his membership was taken from him. Nevertheless, from 1926 to 1931 he acted as legal officer to the Party organization in Wiesbaden and formally reentered the Party in August 1930. He occupied a judicial position and from March 1931 until February 1932 was a trial judge

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in the local and district court at Wiesbaden. Because of continued official difficulties resulting from his work for the Party he resigned and entered the practice of law at Stettin. He took over the Gau law office in Pomerania and was Gau Fuehrer of the NSRB.

In April 1933, shortly after the seizure of power, he was appointed the provisional mayor and state commissioner of Stettin and was elected to the Pomeranian Provincial Assembly on 17 July 1934. Von Hindenburg appointed him Under Secretary of the Reich Ministry for Science and Education. In 1935 he was appointed by Hitler to the Ministry of the Interior and placed in charge of Division I. At that time, although holding the nominal rank of State Secretary, which he carried over from his appointment in the Ministry of Science and Education, he did not hold the position of State Secretary in the Ministry of the Interior until Himmler succeeded Frick. He was officially appointed State Secretary in 1943, when Frick left the Ministry and Pfundtner, who had been the sole State Secretary, resigned.

Division I was divided into appropriate sections and had jurisdiction over constitutional and organizational law, legislation and administrative law, citizenship and race, new organization in the Southeast, the Protectorate of Bohemia and Moravia, new organization in the East, new organization in the West, Reich defense, military defense statute and defense law, and war damage.

Frick appointed him staff leader for the Plenipotentiary of Reich Administration. As Hitler's aggressive campaigns proceeded, the defendant Stuckart became head of the central office for the following countries: Austria, the Sudetenland, Bohemia and Moravia, Alsace-Lorraine, Norway, the southeastern territories—Yugoslavia and Greece, and Bialystok. The function of these central offices was to coordinate and implement all measures deemed necessary to complete the details of their incorporation into the Reich, or to the needs and aims of Germany therein.

On 7 December 1939, Goering appointed Stuckart, the defendant Koerner, and

various other state secretaries as members of the General Council for the Four Year Plan.

As its name implies, the Ministry of the Interior had jurisdiction over practically all matters relating to public order and security of the Reich and in all areas which were attempted to be incorporated therein, and in the occupied territories, as well as practically all other legislation (except in very limited fields) which affected the daily life of the people.

In theory, at least, all police affairs were a part of and subordinate to the Ministry. Until he himself became Minister of the Interior, Himmler, as Chief of Police, ordinary, secret, and

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special, was the Minister's subordinate, but in practice he became almost completely independent. When Frick left the Ministry in 1943, Himmler succeeded him and thus made himself supreme in all matters for which the Ministry was competent. Throughout the Nazi regime, few of the measures, administrative or executive, and almost none of the laws or regulations, which formed the foundations of Nazi persecution, were undertaken without the consent, advice, and affirmative action of this Ministry. The so-called Germanization program was one in which the Ministry of Interior was deeply involved. We shall not repeat what has already been said regarding it. That this scheme of mass deportation, evacuation, and forced settlement was a flagrant breach of international law and a crime against humanity has been established beyond question of doubt. Our only task is to determine what part, if any, Stuckart played therein, and the degree of criminal responsibility attaching to him.

On 8 December 1939, the Ministry of Interior issued a decree (*NO-2526, Pros. Ex. 1307*) addressed to the Reich Governors of Danzig, Poznan, Koenigsberg, and Breslau, giving detailed instructions concerning the authority of Himmler as Commissioner for the Strengthening of Germandom, stating that his appointment made no changes in the competency of the intermediate and lower authorities, except that they were to fulfill Himmler's directives. This decree merely implemented and clarified the Fuehrer decree creating the Office for Germanization, in order that the governors and other lower echelons might clearly understand their duties and responsibilities. It was prepared in Stuckart's Department I, East.

On 12 November 1942 Himmler issued a general order (*NO-2562, Pros. Ex. 1326*) designating the Zamosc area in occupied Poland as a settlement area. A copy of this was sent to Stuckart's subordinate, Ministerialrat Duckart.

Exhibits 1329 to 1333 [Documents NO-4004, NO-4005, NO4006, NG-3310, and NG-3008, respectively] consist of correspondence in the spring of 1944 concerning the return of Germans who had been settled in the Government General to the Reich. The prosecution contends that this was a part of the Germanization and resettlement program, but we do not so view it. By that time the rapid advance of the Russian armies necessitated abandoning that area, and we think that Stuckart's recommendations and suggestions as to the place where the refugees could be accommodated, namely, East and West Prussia, were brought about because of the necessity of providing some place for these people to live either permanently or until such time as they could return to their domicile in the Government General. That the majority

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of the people so concerned had been resettled in the Government General contrary to international law and that the circumstances of their settlement and evacuation of Polish nationals was a crime against humanity, we have no doubt, but the instances in question do not constitute a part of the crime.

On 17 August 1942 Stuckart attended a conference at the Fuehrer Headquarters at which the defendant Berger, Lorenz, Pruetzmann, and Greifelt of the SS were present (NO-2703, Pros. Ex. 1340). The mistreatment of 45,000 ethnic Germans, who had been settled in the Ukraine, and the suitability of the Latvians and Lithuanians, was also discussed. It was then determined that the Lettgallen [Latgallians]\* must be evacuated from Latvia, that the Lithuanians could not be considered for Germanization because of alleged mental slowness and their strain of Slavic blood. It was said that no difficulty should be encountered in White Ruthenia, as the population there was not intellectual and had no political ambitions; that the Crimea should be resettled at strong points so that towns of 15,000 to 20,000 inhabitants would grow up there and around them a completely German agricultural population resettled. It was also suggested that it must be kept in mind that that part of a nation which was valuable from a racial viewpoint could not be won over if they have been previously systematically robbed, as had occurred in Estonia, where the so-called German business managers were receiving 1,500 marks or more a month, while the previous Estonian owners, who looked after the business, received a salary of 300 marks, and that it was disastrous if slogans like the following should be coined (NO-2703, Pros. Ex. 1340):

*"Stealing is called mania with the little people, kleptomania with the distinguished people, and Germanism with the Germans."*

It is evident that those present at that meeting were adequately informed of the nature of the Germanization and resettlement program, if they were not theretofore intimately acquainted with it, but it is also clear that one of the purposes of the meeting was to cure abuses suffered by German resettlers, such as had occurred in the Ukraine. Not only were strong criticisms expressed, but plans were made to correct conditions. The conference discloses indignation concerning the strong criticism of the administration in the Ukraine, so far as the resettlements were concerned, but did not concern itself with respect to the wrongs and persecutions which had been imposed on the native population.

\* Inhabitants of Latgalia, easternmost province of Latvia.

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On 26 November 1942 (NO-4133, Pros. Ex. 1346), portions of Serbia were selected for resettlement, and on 8 December 1942 (NO-4131, Pros. Ex. 1347), measures for the resettlement of Bosnian ethnic Germans were determined upon. Copies of these communications were sent to Stuckart's subordinate, Duckart.

On 29 March 1939 Stuckart's Division I prepared, and Pfundtner, State Secretary, signed, a directive (NG-295, Pros. Ex. 1348) to the Regional Governors and Reich Commissioners for the Saar, Sudetenland, and Austria, and to the chief of the civil administration in the Protectorate, giving definitions of the terms, "members of the German people," and "ethnic Germans," and how and in what manner members of these groups became eligible for Reich citizenship and which were to be excluded from such classification.

On 30 May 1942, Stuckart, deputizing for Frick, with Bormann of the Party



Chancellery and Himmler, signed a second decree on the German people's lists (*NO-4618, Pros. Ex. 1352*) and German citizenship in the Incorporated Eastern Territories. Among other things, it excluded Jews and gypsies from the status of "protectees."

In this connection Stuckart insists that his original draft provided that Jews should have the status of protectees, and there is evidence substantiating this statement. We have, however, carefully examined the documents, and we do not believe that their rights or status as protectees were intended to be greater than if not given that appellation.

On 30 May 1942 Stuckart also signed, as a deputy, a decree (*NO-4686, Pros. Ex. 1353*) prepared at Himmler's request, establishing a supreme court for ethnic classifications in the eastern territories.

Stuckart was informed in February 1942 of directions (*R-112, Pros. Ex. 1355*) regarding the classification and subsequent treatment of certain classes of people included in the ethnic German list or register. They ordered that those who might be placed in class IV should be deported into the Reich and resettled there, or if they were asocial, of inferior heredity, or of bad political record, they were turned over to the police to be imprisoned in concentration camps; that where a wife also had a bad political record she was to receive the same treatment, and the children, in that event, taken from her and resettled in the Reich; that persons who had previously practiced professions involving leadership were to be "reeducated" for other professions, not involving leadership; that the children were to be compelled to join the Hitler Youth, but not allowed to attend local secondary schools or universities unless they had been attending a German boarding

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school for at least 3 years, and had been designated by that for university attendance; that the property of those who were not sent to the concentration camps was to remain in custody of the SS organization, and they were to be permitted to receive such installments of their own property as the SS determined in order that they might support themselves and pay necessary expenses; that those who were to be resettled in the Reich were obliged to immediately join an organization associated with the Party, and the children to join the Hitler Youth Movement; they were forbidden to change their domicile during the first 5 years, to marry, or to start university studies without police consent. The Higher SS and Police Leaders were enjoined to take particular care that the re-Germanization of the children was not adversely influenced by their parents, and, if necessary, to separate them from their people and place them with families of proven political and ideological opinion.

In July 1943 Ehrensberger of Stuckart's division issued orders (*NG-4639, Pros. Ex. 1025*), addressed to the Reich governors in the East and the heads of the Central Offices for German Registration in East Prussia and Upper Silesia and to many regional offices, with copies to the various supreme Reich authorities, regarding the classification of step, foster, and illegitimate children in the eastern territories. Among other things it described many circumstances under which children were to be taken away from their parents and sent away to the Reich or put in German families or treated as Polish orphans.

On 23 May 1944 Stuckart's division prepared a decree (*NO-3738, Pros. Ex. 1367*) addressed to the citizenship authorities in the Reich territory, directing that care be taken that ethnic Germans and Germanized persons did not avoid registration and

recognition of their German citizenship in order to avoid military service; that should ethnic Germans and foreign nationals, regarded as completely Germanized, refuse to submit an application for recognition of this German citizenship after having been instructed so to do, they should be reported to the SD, which would then take action. Under the Himmler decree of 16 February 1942, it stated that the RSHA would apply this decree to ethnic Germans residing outside the Incorporated Eastern Territories who refused to make this application. This simply meant that such persons would be subjected to police measures, including the concentration camp.

It is to be remembered that this applied not only to ethnic Germans and Germanized foreigners who came voluntarily into the Reich, but included those who had been brought there involuntarily and upon whom German citizenship had been conferred

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without their willingness or consent. While conscription laws may be applied to all those who voluntarily take up their domicile in a country, it can hardly be said that the citizens of other nations who have, against their will and without expressing any desire to move, been deported can then be made subject either to involuntary citizenship or to conscription laws.

A decree prepared by Section I of Stuckart's division on 13 March 1941 became the basis of various Himmler orders and directives relating to the Germanization lists; and arbitrarily conferred citizenship on inhabitants of various occupied territories.

On 4 May 1942 Stuckart signed two orders (*NO-4620, Pros. Ex. 1363; NO-4621, Pros. Ex. 1364*), with copies to the highest Reich authorities, the Party Chancellery, etc., giving directions to the various naturalization agencies as to the means, methods, and procedure to be followed and extending the measures to former Polish or Danzig citizens.

On 15 January 1945 Stuckart wrote the OKW (*NG-3773, Pros. Ex. 1368*) forwarding certain changes in definitions of those who were subject to Germanization, distinguishing between "members of the German people," "German nationals," "German nationals whose nationality may be rejected," "Germans abroad," "ethnic Germans," etc.

As early as 11 February 1942, Stuckart informed the defendant Von Weizsaecker about the recruiting of male Alsations for service in the army brought about by the application of German law. Von Weizsaecker in reply (*NG-3446, Pros. Ex. 1021*) told Stuckart that although in principle he could not relinquish his point of view, he was prepared to waive his protest as "our actions in Alsace-Lorraine had far surpassed and overshadowed the incident referred to here."

On 5 August 1942 Stuckart wrote Himmler enclosing a draft of a decree conferring citizenship in Alsace-Lorraine and a draft of the implementing regulations. He plainly states that Hitler a short time before had given orders for the introduction of compulsory military service there. Stuckart not only made no objection but gave reasons for the approval of these measures. There is no question whatsoever that a large number of these conscriptees not only had no desire to serve in the German Army, but were particularly averse to the compulsory change in their nationality.

On 15 April 1944 Himmler issued a directive (*NG-1450, Pros. Ex. 1422*), prepared by Stuckart's Section I, regarding the treatment of mixed marriages between Poles and Germans, which provided, among other things, that if, upon examination, it was found that

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both spouses were unsuitable from a political, biological, ideological, or social point of view, they should be placed in classes III and IV, and if the German partner was already in that class, his name would be stricken from the register and, if necessary, his citizenship revoked and the family broken up.

On 5 August 1944 the RSHA issued a directive (*NO-3592, Pros. Ex. 1423*) stating that under the decree of 5 April 1943, which was prepared by Stuckart's Section I, a male Pole could not marry before reaching the age of 28 years or a female before 25 years. The purpose of this regulation was to reduce the birth rate among the Poles.

*Stuckart's anti-Semitism.*—The evidence clearly establishes that Stuckart held strong anti-Semitic views, and that while in office, both before and during the war, he used his official position to carry them out.

Stuckart asserts that his position in the Ministry of Interior was minor during Frick's tenure, and he was but a glorified clerk under Himmler. We do not believe this to be the fact. He was too often chosen by Frick to act in capacities requiring both knowledge, ability, experience, and strength of character. From the record itself and from the defendant's own demeanor on the stand it is quite apparent that he possessed these qualifications. His advice was asked and given. Many of the original decrees and most of the implementing decrees relating to anti-Jewish measures were drafted by him, or in his department under his supervision. When Hitler decided to enact the Nuernberg Laws, which was the first step in the long-continued campaign of persecution of Jews, Stuckart was called to aid in drafting them and did so.

The following laws and decrees were prepared by him or by his department under his direction, and some were even signed or initialed by him: \*

The Reich Citizenship Law of 15 September 1935.

The First Decree supplementary thereto on 14 November 1935.

The Ninth Supplementary Decree of 5 May 1939.

The Tenth Supplementary Decree of 4 July 1939.

The Eleventh Supplementary Decree of 25 November 1941.

The Law for the Protection of German Blood and German Honor on 15 September 1935.

The First Decree supplementing that law on 14 November 1935.

The Second Supplementary Decree of 31 May 1941.

\* Many of the laws and decrees mentioned herein are reproduced in the Justice case. United States vs. Josef Altstoetter, et al., Case 8. Volume III, this series.

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The Third Supplementary Decree of 5 July 1941.

The law of 5 January 1938, concerning family and Christian names.

The memorandum of 18 August 1938, requiring Jews to use a Jewish first name.

The Second Decree of 17 August 1938, regarding change in name or Christian names.

The Decree of 20 July 1941, denying war damage to Jews.

The Second Decree supplementing the memorandum concerning the revocation of nationality and deprivation of German nationality.

In addition, the Minister of the Interior signed or cosigned the following decrees:

The Third, Fifth, and Sixth Supplementary Decrees to the Reich Citizenship Law, dated 14 June 1938, 27 September 1938, and 31 October 1938, respectively.

The Law of 28 March 1938.

The First and Second Supplementary Decrees concerning the status of Jewish religious congregations.

The Decree and Order of 12 November 1938, eliminating Jews from German economic life.

The Decree of 14 November 1940, relating to the examination and checking of businesses from which Jews had been purged.

The Fourth Decree of 27 December 1940, concerning the utilization of Jewish property.

The Decree of 26 April 1938, concerning the registration of Jewish property.

The Decree of 14 December 1938, for the elimination of Jews from German commercial life.

The Second Decree of 18 January 1940, concerning the use of Jewish property.

The Fifth Decree of 25 April 1941, relating to the same subject.

The police regulations of 1 September 1941, concerning the marking of Jews.

The Sixth Decree of 22 August 1942, concerning the utilization of Jewish property.

The Decrees of 3 December 1938, 16 June 1939, and 5 December 1939, concerning this same matter.

With respect to the decrees last named, it should be said that most of them were prepared by another Ministry, because the subject matter was primarily within the jurisdiction of that Ministry,

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and submitted to the Minister of the Interior for examination, and, if approved, for cosignature. These drafts went to Stuckart's division for examination and report to the Minister.

The following decrees were prepared by the Ministry of the Interior but not in Stuckart's department, but he became one of the joint cosigners as chief of the "participating department": Second Supplement to the Reich Citizenship Law of 2 December 1935; Fourth Supplement of 25 July 1938; Seventh Supplement of 5 December 1938; the Eighth Supplement of January 1939.

All the decrees in these three classes were identified by the witness Bernhard Loesner, who was one of Stuckart's Referenten, and in charge of the section regarding racial and Jewish matters.

He states that on Stuckart's appointment as Chief of Division I, a change took place in the Ministry; that Stuckart was active, able, and ambitious and seized hold of the reins and to an increasing extent became the real Minister of the Interior, due to

Frick's weakness and lack of interest in his work; and the fact that Pfundtner, who was not a convinced National Socialist, had no Party backing and was not particularly fitted for the position.

Pfundtner vanished when Frick resigned and Himmler became Minister of the Interior. Loesner states that at least up to the time when Stuckart joined the SS, which was on 13 September 1936, he fought a valiant fight on behalf of the Jewish Mischlinge,\* but thereafter it became more difficult for the witness to approach him on this subject, and that in the year 1941 the final solution aimed at Jewish annihilation was effected by the Party, and that by the end of 1941 no doubt could exist on the part of anyone who had to deal with these problems; that on 21 December 1941 he demanded and obtained an appointment with Stuckart, and reported to him the description given to him by Dr. Feldscher, of the fate of the German Jews who had been deported to Riga; how they had been compelled to dig mass graves, to strip themselves of their clothes, lie down naked in the grave where they were shot by SS men, and then the next group was compelled to disrobe, descend, and lie down on the bodies of those first murdered to meet the same fate; that he told Stuckart he could no longer act as Referent on Jewish matters, and asked to be released; that the defendant told him, "Mr. Loesener, do you not know that all this takes place by the highest order?" to which Loesener replied, "I have a judge within myself who tells me what to do," whereupon Stuckart said that if Loesener could no longer be reconciled to his own conscience he would consider how he was to be further employed, and the witness thereupon requested to be transferred from the Ministry to the Reich Adminis-

\* Persons of mixed race.

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trative Court; that his request was not complied with for many months and the relations between himself and Stuckart became more or less strained, although he had the impression that up to the time he left the Ministry in 1943 Stuckart did not reject Loesener's views about half-Jews and mixed marriages.

With regard to Germanization, the witness reports a conversation with Stuckart in 1938 regarding the German naturalization of Transylvania physicians; that he expressed misgivings about this program, but Stuckart replied brusquely, "It doesn't matter. In the event of war we cannot have enough physicians and technicians." Loesener gave this affidavit on 24 February 1948 (*NG-1944A, Pros. Ex. 2500*). He himself became a victim of Nazi persecution and was finally confined in a concentration camp and not released until after the collapse. He was called to the stand and testified he had reexamined his affidavit, and with the exception of one or two minor corrections, which related only to the laws and decrees mentioned in the appendices to [*Document NG-1944A, Prosecution*] Exhibit 2500, confirmed it and its contents.

On cross-examination, (*Tr. pp. 7617-7664*), without repudiating any part of the affidavit he had just confirmed, he was quite prolific in his efforts, both on behalf of Stuckart and Lammers, and testified in a manner inconsistent with the conversations mentioned in his affidavit relating to the treatment of Jews.

It is quite apparent, as has happened on a number of other occasions in this case, that between the time the affidavit had been made and the witness testified, he had been subjected to influence.

This Tribunal is not unaware of the fact that there has grown up in Germany a

campaign of propaganda to discourage and dissuade Germans from appearing to testify against fellow Germans who have been charged with crimes against international law. That this campaign has been successful is equally clear, and it has made more difficult the task of ascertaining the facts. We do not suggest, however, that in this instance either counsel or defendant were other than beneficiaries of this campaign. Nevertheless, the statements contained in Loesener's affidavit are obviously spontaneous and relate to matters which could not have been suggested to him by the interrogator. We are not here to blindly accept testimony but to weigh it. We believe, and so hold, that the statements made by the affiant Loesener in his affidavit, and confirmed by him under oath before this Tribunal, are substantially true. In justice to the defendant it should be said that we are convinced that for a long time he courageously fought the measures against the Mischlings and attempted to intervene in favor of mixed marriages.

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The draft of the letter to Himmler prepared in September 1942 evidences his inner convictions even though it is not entirely clear that it was in fact sent. It is true that this letter again reiterates the suggestion made by Stuckart in the Wannsee conference for sterilization of Mischlings, but there the story is not clear whether it was seriously meant or whether it was thrown out as a solution when Stuckart knew that it was a program which could not be carried out because of a shortage of surgeons and beds for the thousands who would be subjected to it, and that Stuckart felt that by making this suggestion he would delay and avoid more stringent measures and the plan would finally be dropped. Not being satisfied as to the fact, we must and do give Stuckart the benefit of the doubt. However, one thing is clear, that no one would suggest sterilization as a procedure of amelioration unless he was wholly convinced that deportation meant a worse fate, namely, death.

The extermination of the Jews was no secret in the Ministry of the Interior. The witness Globke, one of Stuckart's ministerial counselors, whom he called as a witness, testified (*Tr. p. 15471*):

*"A. I knew that the Jews were being killed in large numbers, and I was always of the opinion that there were Jews who were still living in Germany, or in Theresienstadt, or elsewhere in a sort of ghetto.*

*"Q. [By defense counsel] You thought that there were executions but no systematic extermination?"*

*"A. No, I did not want to say that. I am of the opinion, and I knew that at the time, that the extermination of the Jews was carried on systematically, but I did not know that it was supposed to apply to all Jews."*

Stuckart left the SA to become a member of the SS because he thought it more advantageous to belong to the SS. His last rank in that organization was Obergruppenfuehrer, and the witness Globke had the impression that Stuckart liked to show himself in public in his SS uniform. He also testified that before Himmler became Minister of the Interior he repeatedly approached Stuckart in order to get his suggestions adopted by that Ministry, but that after Himmler became Minister, his relationship with Stuckart was not so close.

We do not doubt that this is true. The fact remains, however, that upon Himmler's appointment as Minister he immediately promoted Stuckart to the position of State Secretary; and except as to divisions dealing with public health and probably those dealing with sports, Stuckart was the competent State Secretary in charge of the operations of the Ministry. Knowing what we do

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about Himmler and his character, it is quite unlikely that he would have retained Stuckart unless he felt that the latter would do his bidding and carry out his policy. This we think Stuckart did and strangled his own conscience.

On 20 April 1940 Stuckart wrote to the Ministerial Council for Reich Defense, for the attention of the defendant Lammers, concerning a decree (NG-1143, Pros. Ex. 1531) for the treatment of Jews under German labor laws, stating that he felt that it was not permissible to pay Jews for working hours lost on New Year's Day, Easter Sunday, Whit Monday, or Christmas Day, notwithstanding the fact that German labor was so entitled under the law, and recommended that they be excluded from these privileges.

On 6 September 1939 Stuckart transmitted to the Ministerial Council for Reich Defense a proposed decree (NG-1109, Pros. Ex. 1575) which made sabotage of the German war effort applicable to the inhabitants of Bohemia and Moravia, irrespective of their nationality.

On 15 July 1942 Stuckart with Schlegelberger and Keitel signed an order (2016-PS, Pros. Ex. 644) subjecting non-Germans charged with having attacked a member of the SS or German police to the jurisdiction of combined SS and police courts.

This was for the purpose of depriving the accused of trial by the ordinary courts of the state where the crime was committed. Inasmuch as the members of these organizations were present in Bohemia and Moravia, in obvious violation of international law and as a part of the aggression against Czechoslovakia, there was no legal basis for such legislation, and the scant shrift which SS and police courts gave to any non-German before them, needs no elaboration.

In April 1944 Stuckart's Department I wrote Lammers regarding the then proposed Eleventh Ordinance Supplementing the Reich Citizenship Law, regarding the sterilization of Jews. It not only shows an adherence to the measures but argues the propriety and wisdom thereof, and it speaks with approval of provisions by which Jews could be declared stateless, even though guilty of no offense.

On 7 July 1941, Stuckart's Division I East prepared a communication (NG-2499, Pros. Ex. 1536) to the defendant Lammers as Chief of the Reich Chancellery, as well as to the highest Reich agencies concerning the draft of the Eleventh Ordinance supplementing the Reich Citizenship Law, which contains the following illuminating language:

*"The legal effects of the draft are tied to the permanent residence of the Jew. \* \* \* This means that for the establish-*

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*ment of the permanent residence only objective points of view are of importance; the free will of the person concerned is immaterial in this connection. Therefore, all the Jews evacuated into the Government General come under this regulation." [Emphasis supplied.]*

Thus, not only Jews who lived abroad or should thereafter emigrate of their own choice, but the hapless ones who were deported, not only lost their citizenship and became stateless, but suffered confiscation of property. A more heartless provision can hardly be imagined.

On the same date, in connection with the same communication, Stuckart wrote to Lammers stating that he did not contemplate including in the decree the provision contained in the previous draft that the permanent place of residence in the Government General is equal to a permanent place of residence abroad, because it

seemed inappropriate to designate the Government General in a decree as a foreign country.

On 2 June 1942 Stuckart wrote the Supreme Reich Agencies and others regarding the payment of pensions to Jews who were deported to Lodz, stating that the Eleventh Decree did not apply to them because Lodz was still a part of Germany, but that because of the confiscation of their property the payments of pensions would be suspended. Stuckart had attended the Wannsee conference on 20 January 1942, where the program of deportation and extermination was made clearly apparent.

On 29 November 1941, when Heydrich sent out invitations to attend the luncheon where the final solution was to be discussed, one of which went to the defendant Stuckart, and the other to Kritzinger of the defendant Lammers' Reich Chancellery, he said (709-PS, Pros. Ex. 2506):

*"Considering the extraordinary importance which has to be conceded to these questions, and in the interest of the achievement of the same viewpoint by the central agencies concerned with the remaining work connected with this final solution, I suggest to make these problems the subject of a combined conversation, especially since Jews are being evacuated in continuous transports from the Reich territory, including the Protectorate, Bohemia and Moravia, to the East ever since 15 October 1941."*

On 21 September 1939, Heydrich wrote to the chiefs of the Einsatzgruppen, copies of which went to Stuckart, in which communication he said (3363-PS, Pros. Ex. 2501):

*"Subject: Jewish question in the occupied territory*

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*"With reference to today's conference in Berlin I am once more stressing the entire measures (ergo the final aim) are to be strictly secret. It has to be discriminated between, (1) the final aim (which will take some time) and, (2) the sections of fulfillment of this final aim (which will be achieved in short term)."*

In 1938 Stuckart published a monograph entitled, "The Care for Race and Heredity in the Legislation of the Reich" in which he said (NI-6094, Pros. Ex. 2509):

*"The aim of racial legislation has been achieved and racial legislation can, therefore, be regarded as essentially complete. It leads, as mentioned above, to a preliminary solution of the Jewish problem, and at the same time helps to prepare a definite solution. Many of its decisions will lose their importance as the final solution of the Jewish problem in Germany is approached."*

The prosecution insists that in the use of the term "final solution," Stuckart meant the extermination of the Jews.

The first edition of this monograph was published in 1938, as we have ascertained after conference with counsel for the prosecution and the defense. At the time it was written the plan was not extermination, but emigration or expulsion from Germany. It was not until at least 2 years later that the plan to murder the Jews *en masse* was adopted. While this monograph, therefore, does not refer to mass exterminations, it does throw light upon Stuckart's attitude toward anti-Semitism. His present excuse is that he could not publish his actual views. We do not, however, believe that he had any feeling of tenderness for Jews, or of repulsion against anti-Jewish measures, and that the efforts which he made on behalf of the Mischlings were due largely because he accurately foresaw the psychological effect in Germany which would arise from the breaking up of marriages and the condemnation of those who had at least 50 percent of German blood in their veins.

We are convinced that Stuckart was fully aware of the fate which awaited Jews deported to the East, and there can be no doubt that the legislation and regulations, which he drafted and approved, were a component part of the program which was



intended to and did result in the almost total extermination of Jews. If the commanders of the death camps who blindly followed orders to murder the unfortunate inmates, if those who implemented or carried out the orders for the deportation of Jews to the East are properly tried, convicted, and punished; and of that we have no question whatsoever; then those who in the

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comparative quiet and peace of ministerial departments, aided the campaign by drafting the necessary decrees, regulations, and directives for its execution are likewise guilty.

In all of these matters the skill, learning, and legal knowledge of Stuckart was placed at the disposal of those who originated the plan of extermination. The fact that his conscience may have been troubled and the fact that he saw not only the wrong but the folly of the proposals with respect to Mischlings, cannot excuse or condone what he did.

We find the defendant Stuckart guilty under count five.

#### VEESENMAYER

In discussing the charges against Ritter under count five, we have adverted to much testimony which is applicable to the defendant Veesenmayer, and except where necessary we will not again refer to it. Veesenmayer was a protege of the defendant Keppler and was employed in what was then known as the Keppler Office. He was an enthusiastic and convinced Nazi. He was detailed to accompany Keppler when the latter was sent to Austria shortly before the Anschluss, and later was given special assignments to Danzig immediately before the Polish invasion, and to Croatia shortly before the invasion of Croatia, and again when fighting broke out there, and in 1943 was sent twice to Hungary to conduct secret investigations regarding the political situation there. He was also sent to Slovakia in connection with the anti-Jewish campaign in that area. He was selected for these and his final mission as Minister and Plenipotentiary to Hungary because of his ability, courage, and devotion to the Nazi program.

*Hungary.*—By the Fuehrer Decree of 19 March 1944 (NG-2947, Pros. Ex. 1806), the defendant Veesenmayer was appointed Minister and Plenipotentiary of the Reich to Hungary, then an ally of Germany. By it he was made responsible for all political developments in Hungary, and was to receive directives through von Ribbentrop regarding same. He was given the special task of paving the way for the formation of a new national government, which would carry out the will of Hitler and obligations imposed by the Three Power Alliance; he was charged to keep the Nazi government advised of all important matters and represent its interests, to insure that the entire administration of the country, as long as German troops remained there, was managed by the new government under his guidance in accordance with German directives. A higher SS leader was to be appointed to carry out duties in connection with the Jewish problem, and to act under Veesenmayer's political directives. The German troops in Hun-

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gary were to remain under army command, and Veesenmayer was ordered to meet their requirements. The army was under obligation to support Veesenmayer in his

political and administrative duties.

Paragraph 4 of the Hitler decree contains the following language: "German civilian offices of no matter what nature \* \* \* may be established only with the consent of the Reich Plenipotentiary, and they will be subordinate to him and will act in accordance with his directives." That von Ribbentrop placed great importance on this paragraph is clear from the fact that he ordered Ritter to inform all top Reich agencies of it.

The defendant strenuously contends that this clause became a dead letter. The facts concerning it will be discussed in consideration of the defense. Veesebmayer's instructions (*NG-5522, Pros. Ex. C-438*), given him by Ritter were to cause himself to be presented immediately to the Hungarian Regent, Horthy, inform the latter of Hitler's order to form a new government which was to include Imredy, and in addition Veesebmayer was to nominate other members, in whom he had confidence.

On the following day, 20 March 1944, Ritter wired him (*NG-5520, Pros. Ex. C-439*) to confer with Kaltenbrunner and arrange that all exits of the castle be watched by the German Secret Police, who were to arrest the former Minister President, Kallay, if he attempted to leave the castle.

Among the reasons which induced Hitler to thus shear Hungary of most of its powers as a sovereign nation was the fact that its policies toward the Jews were unsatisfactory. It had become the great refuge of European Jews, who fled from territories which were occupied by the Germans and its satellite countries, and while, as we have heretofore stated, there was a strong current of anti-Semitism there, and numerous restrictive laws had been enacted, nevertheless, in comparison with what they have suffered elsewhere, the Jews' fate in Hungary was at least bearable.

Pressure was brought on Hungary to change its Jewish policy at least as early as August 1942 when Luther discussed the matter with the Hungarian Minister [Sztojay] to Berlin, and on 6 October 1942 [*NG-1800, Pros. Ex. 1804*] again brought the matter up and insisted that all Hungarian Jews in occupied territories must be evacuated, urging Hungary to deprive Jews of their citizenship, so that the deportation measures could be carried out against them, offered to permit Hungary to participate as a trustee in the legal measures pertaining to their properties which were confiscated. He further urged that Hungary take the initiative to solve the Jewish problem within its own borders, by adopting

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measures to eliminate all Jews from the cultural and economic life, marking them, and evacuating them to the East.

The Hungarian Minister, while purporting to show understanding of the German position, insisted that Hungarian Jews in territories under German control be treated according to the principle of the most favored group, and inquired as to whether other countries, such as Rumania and Italy, had agreed to the program with respect to their own Jewish nationals. He further stated that the Prime Minister Kallay was particularly interested in knowing whether a continued existence in the East would be made possible for the Jews after their evacuation; that there were many rumors in this connection which disturbed Kallay somewhat, and the latter did not want to be accused of having exposed Hungarian Jews to misery *or worse* after evacuation. Luther assured him that the Hungarian Jews would be first used in the East for road construction and later settled in a Jewish reserve.

The defendant von Weizsaecker on 20 October 1942 (*NG-5727, Pros. Ex. 3765*) also discussed the matter with the Hungarian Minister and stated that "the way Hungary

treated the Jewish problem has, so far, not been in accordance with our principles." This interview was brought about by the then existing Tripartite Pact and the agreement between Germany and Hungary, and on the same day von Weizsaecker requested that on his return from Budapest the Hungarian Minister give him a report of what the people there thought of the German proposals concerning the treatment of Jews.

On 16 January 1943 (*NG-1798, Pros. Ex. 1805*) Luther conferred with the Hungarian Minister and expressed his surprise that the Hungarian Office for Jewish Affairs had been dissolved, effective 1 January 1943, and reminded him that Hitler was determined, under all circumstances, to remove all Jews from Europe, and that Germany was much concerned that Hungary, a friendly country, should shelter approximately 1,000,000 Jews, and said that Germany could not, in the long run, look upon this danger without taking action; that Sztojaj's excuses were so unconvincing that one could readily see that he did not himself believe them. Luther, in his report, expressed the hope that "our constant urging" would finally be successful.

The situation did not mend, and Veessenmayer was sent to Hungary to make an investigation, and on 30 April 1943 he rendered a long report (*NG-2192, Pros. Ex. 1813*) to von Ribbentrop, a copy of which on 19 May was received and initialed by Himmler. In this report Veessenmayer asserted that the failure, during the winter, of the Hungarian troops in the East was the necessary consequence of the attitude of the Hungarian State and its people;

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that the key to the defeatist attitude of the Hungarian authoritative circles was to be found primarily in Hungarian Jewry, which amounted to almost 10 percent of the entire population, and 35 percent of that in Budapest; that the Jewry's influence was much higher than the numerical percentage indicated; he confirmed that Hungary had made itself a refuge for European Jews in the hope that the benevolent treatment extended them would constitute a guarantee of protection of Hungary's interests at the end of the war; and that this explained Minister President Kallay's attitude in expressing his intention to correct the injustices inflicted on the Jews by his predecessor.

Veessenmayer was severely critical of Horthy (*NG-2192, Pros. Ex. 1813*), stating that the only point he had in common with the Reich was his hatred of bolshevism. He pictured Szalasi and his movement as weak and ineffective; that the Archduke Albrecht could only be valued insofar as he could be utilized, either used or abused; that Imredy and Bardossy were the only men who could be seriously considered for a Nationalist government, but that they could do so only if Germany gave them the necessary backing and assistance; that the opposition to the then government had not been able to create in the rising generation any permanent resonance which would make possible an effective fight against the Jews and the system which was created by them; that there was nothing in Hungary comparable with the Ustachi of Croatia; that the situation was such that it would present a greater danger for the Axis the longer the war existed; that the Hungarian police and the gendarmerie were most effective, but apparently devoted to Horthy and the existing government, that its undermining was practically impossible; that it must be recognized that one was dealing with an opponent who was very cunning and knew how to wield his authority in a masterful way; that Kallay was pro-Jewish and, in addition, held an antagonistic attitude toward Germany on other questions, including the Reich drafting of ethnic

Germans into the SS; that any change in the then Hungarian Government could only be successful if Bethlen, Kallay, and the Jews, Chering and Goldberger, not only disappeared from positions of authority, but vanished completely; that after Horthy's visit to Fuehrer Headquarters, while the Jewish problem had been discussed energetically, nevertheless it had not moved the Regent to permit the necessary measures; that Kallay's tenure in office was uncertain; that after the first shock the Hungarian regime was planning an appropriate substitute for Kallay, who would insure continuous maintenance of the old practice; that the fear existed that German troops would be stationed in Hungary and would demand severe measures against the Jews

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and that everything must "be done to oppose this; that the presence of an SS division in Budapest would mean the beginning of the end of the present Hungarian regime. In conclusion Veessenmayer recommended a thorough shake-up in the government, through, but not without or even against the person of the Regent; that the top clique be removed and supplanted by persons capable of exerting a permanent and beneficial influence upon the Regent from the viewpoint of the Axis; and that, in case Imredy or Bardossy were contemplated for leading positions, it must be recognized that these men represented a red flag to Horthy, and appropriate preparatory measures must be taken or other considerable pressure on the part of the Reich would be necessary. Finally, that the initiative, execution, and safeguarding be directed by persistent influence from the outside, in other words, from the Reich.

On 10 December 1943, after a second trip to Hungary, Veessenmayer made another report of some 28 pages. (NG-5560, Pros. Ex. 3718.)

*"These are the deep-rooted links, and at the same time the reason that the Hungarian is not an anti-Semite. The Jews knew this very well. It is for this reason that this race, with its characteristic instinct succeeded in gaining refuge in Europe. Undermining of the ancient Danube monarchy was, to my mind, not accomplished by the other nationalities such as Czechs, Poles, Croates, etc., but rather the internally infected Hungarians whom the Jew rules predominantly today, not only in the economic, but also in the political field. \* \* \* The Jew is Enemy No. 1. These 1 1/2 million Jews amount to as many saboteurs of the Reich and an identical, if not double, number of Hungarians are followers of the Jews, their auxiliaries and their camouflage, in order to accomplish the comprehensive plot of sabotage and espionage.*

\*\*\*\*\*

*"For the policy of the Reich, a rewarding but pressing task presents itself in the tackling and the straightening out of this problem. This policy holds all the more good since not a military but almost exclusively a political problem is to be dealt with. If fear and cowardice govern the opponent, plain talk and tough demands are sufficient, supported by the hint of German divisions and fighter squads.*

\*\*\*\*\*

*"To sum up, even a Hungarian Government represented by the relatively top men of the [National] opposition today can be viewed as a temporary solution, and a realistic expediency.*

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*It will only gain full value for the Reich if besides, or rather in addition, a German custodian will be placed in an appropriate manner.*

\*\*\*\*\*

*"These men are honest and violent opponents of bolshevism. They can be lined up with a 'liberated' Reichsverweser and might amount to an important relief for the Reich by fighting bolshevism and Jewry.*

\*\*\*\*\*

*"Of all the personalities of the national opposition, former Minister President Imredy appears to me*

*still the fittest figure. He is mentally most alert, his personality and character are well integrated; he disposes of a certain reputation; and his followers in the country are also well organized. \* \* \* For reasons of transitional expediency parts of the present government party could be enlisted either for cooperation or for liquidation of their own past.*

*"The objection of the Reichsverweser designating Imredy as insupportable is correct. This objection results from Imredy's efforts in his previous capacity as Minister President, especially in the field of the Jewish question and the land reform. \* \* \* I am definitely convinced that the Reichsverweser will accept any Minister President without ado if the Fuehrer demands or even desires it, just to save himself and his dynasty and to live to see his dream fulfilled to become a duke.*

*\*\*\*\*\**

*"A keen tackling of the Jewish problems appears for various reasons to be the order of the hour. Its solution is the prerequisite for integrating Hungary into the fight of the Reich for defense and existence."*

The demands of space forbid further quotations from this illuminating document and its conclusions, and we content ourselves with the foregoing and the following excerpts from his proposals and suggestions:

*"Prompt action is imperative. \* \* \* The German press should pursue a systematic policy of hammering on the morale of the opponent, including distinguishing between system of the government and the people \* \* \* current and ever growing criticism with regard to the Jewish question \* \* \* talks between the Hungarian diplomats and press men from the Foreign Office \* \* \* concentration of troop movements on various points of the German-Hungarian frontier \* \* \* invitation to Horthy to attend a Fuehrer conference or a visit to Budapest by leading*

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*German personalities, such as Goering or Himmler; applying to Horthy the method of the kid glove and the iron fist \* \* \* outright demand for the removal of the present government without giving detailed reasons \* \* \* appointment of a new Prime Minister \* \* \* reorganization of the German Legation at Budapest \* \* \* eventual delegation of a political representative fixed with far reaching powers for a certain duration \* \* \* eventually, the delegation of a special, high-ranking German as permanent military adviser to the Reichsverweser; selection of the most suitable members of the new government to be carefully selected with the new Prime Minister \* \* \* the appointment of suitable commissioners with far-reaching powers for five districts to be formed, who must be bloodhounds \* \* \* immediate action in the field of the Jewish question after a previously coordinated plan \* \* \* notifying the enemy that for every Hungarian killed by bombs, one hundred wealthy Jews would be shot and their property used for restitution of damages."*

The recommendations which Veesenmayer outlined were carried out almost to the last detail, and its author was selected as the one best fitted for the task of executing them. It was only in the latter part of the year 1944, when Horthy attempted to break the bonds imposed upon him by Veesenmayer that he was deposed and imprisoned. Veesenmayer insists that these exhibits do not represent the original reports made by him, and that after heated discussion with von Ribbentrop they were abridged and somewhat changed. While it may well be that von Ribbentrop required the reports to be abridged and even insisted on some changes therein, nevertheless Veesenmayer signed them. It is far too great a strain on our credulity to believe that had Veesenmayer been in opposition to the changes, he would have been selected as the man to carry out the recommendations appearing over his signature.

While the defendant is entitled to all reasonable doubts, they must be reasonable and not fanciful. Veesenmayer had no diplomatic experience, although he had been detailed on several occasions to do work in which the Foreign Office was interested, notably in Serbia and Danzig.

It is idle for the defendant now to assert that he was other than a radical anti-Semite, or that he did not advise or take an active part in the horrible mass deportations which took place in accordance with and in execution of the very plan which he

fathered. Nor are we impressed by the insinuations, which he made while on the witness stand, in his final statement and in his brief, that Horthy was in fact sympathetic with the German

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program of the deportation of Jews and their subsequent extermination. It is contradicted by the attitude consistently shown by him and quite generally by the Hungarian Government, except the few who were creatures of the Third Reich; by the fact that it was found necessary to bring continued pressure on him to obtain an even apparent consent to the proposed treatment of the Hungarian Jews; that he continuously sabotaged this apparent consent; that numerous obstacles, real or fancied, were placed in the path of deporting the Jews; and finally, by Veessenmayer's own estimation of Horthy's attitude which is shown by his reports. We recognize that there may be some inaccuracies in Horthy's recollection and testimony, but we find that in the main it states the fact.

Veessenmayer was the *de facto* ruler of Hungary. His main role was to outline for the Hungarian Government the policies which it must follow, and to put into power persons who provided sufficient guarantee that these policies would be carried out with the utmost energy. It was through pressure exerted by him that the Minister of the Interior Jaross was appointed, and his two State Secretaries, Laszlo Endre and Laszlo Baky, were put in office, the last two having command of the gendarmerie and the police, and the first having the mandate to solve the Jewish question. Both Endre and Baky had long been known as fanatic Nazis completely loyal to the German Reich.

The defendant contends that he cannot be held guilty because he could not commit war crimes against Hungarians inasmuch as Hungary was a military ally of Germany. He relies upon a statement made by the prosecution in Case 1 (the Medical Case).<sup>\*</sup> We have examined the record wherein the following language is found (*mimeographed transcript of Medical Case, p. 10723*):

*"The laws and customs of war apply between belligerents, but not domestically or among allies. Crimes by German nationals against other German nationals are not war crimes, nor are acts by German nationals against Hungarians or Rumanians."*

This language has been taken out of its context. Counsel for the prosecution was, at the time, discussing Article II, [paragraph] 1(b), *War Crimes*, and not Article II, paragraph 1(c), *Crimes against Humanity* (Control Council Law No. 10). The latter declares criminal—

*"Atrocities and offenses, including but not limited to murder, extermination, enslavement, deportation, imprisonment, torture,*

<sup>\*</sup>United States vs. Karl Brandt, et al., Volumes I and II, this series.

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*rape, or other inhumane acts committed against any civilian population, or persecutions on political, racial or religious grounds, whether or not in violation of, or against, the domestic laws of the country where perpetrated."*

We readily concede that acts committed by German nationals against other German nationals or German nationals against the nationals of one of its allies do not constitute a violation of the laws or customs of war, but count five is not concerned

with those; it deals with crimes against humanity, irrespective of the nationality of the victims.

The question here is whether or not the defendant was a principal or an accessory to, took a consenting part in, or was connected with plans or enterprises involving the commission of a crime against humanity. The deportation of Jews from Hungary, either for slave labor or for purposes of mass extermination in the gas chambers of the concentration camps was directed to a class extinction, not by reason of individual or mass action, but solely because of their religion. It may well be, and indeed it would be surprising if it were not true, that many Jews who had suffered the tortures and persecutions of the Nazi regime, resented such treatment, and wherever opportunity arose fought back with all the means at their disposal. It may be conceded that, insofar as such individuals were guilty of espionage or sabotage or other offenses cognizable under the rules and customs of war, they were subject to prosecution and punishment, but no attempt was made to single out or prosecute the guilty, and mass action was taken without distinction against both the guilty and innocent. Men, women, children, the babes in arms, school children, the aged, the invalids were deported to slave labor and to death. No justification or excuse can be offered for such action. It was carried on as a part and in aid of German aggressions and crimes against peace.

Moreover, it is clear that, among the Jews deported from Hungary, there were refugees from territories occupied by Germany in the course of its numerous aggressions. In Case 3 (the Justice Case) a number of the defendants were convicted for crimes committed by them upon German nationals, because such crimes were committed pursuant to and in connection with crimes against peace. In our opinion this defense is without merit and we so hold.

On 14 April 1944 within a month after he had taken over Hungary's affairs, Veessenmayer reported (*NG-1815, Pros. Ex. 1808*) to von Ribbentrop that Sztojay had given him a binding promise that by the end of the month 50,000 Jews fit for work

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would be placed at the disposal of the Reich; that all Jews between the ages of 36 to 48 not liable to labor service in Hungary would be registered and drafted, and that by this means another 50,000 Jewish laborers would be deported by the end of May; that from 100,000 to 150,000 Jews would be organized in labor battalions in Hungary at the same time.

On 23 April he again reported (*NG-2233, Pros. Ex. 1811*) that in the Carpate area, the work of putting Jews into ghettos had begun and 150,000 Jews had been evacuated, and that by the end of the week the number would probably be 300,000; that the work would then proceed into other districts and finally into Budapest; that the Jews would be transported at the rate of 3,000 per day beginning 15 May, and that Auschwitz (the notorious extermination camp) was their destination; that the transport by marching was impractical, because of difficulties of food, shoes, and guarding.

On 25 May 1944 von Thadden of the Foreign Office reported (*NG-2190, Pros. Ex. 1818*) to Wagner a visit which von Thadden had made to Budapest and where he conferred with Veessenmayer, Hezinger, Eichmann of the SS, and others. He reported that Eichmann informed him that up to noon on the 24th, approximately 116,000 Jews had been deported to the Reich, 200,000 more were assembled awaiting

deportation, coming mostly from the northeastern parts of Hungary; that similar concentrations had been executed in the south, southeast, and southwest, and on 7 June concentrations would start in the provinces north and northwest of Budapest, and that by the end of June they hoped to begin the concentration of the Jews living in Budapest; that the round-up would amount to about 1,000,000, possibly even more, one-third of whom should be able to work and would be taken over by Sauckel, Organization Todt, etc., in Upper Silesia, and only 80,000 Jews, able to work, would remain in Hungary under Honved guards and be employed in the armament industry there.

The defense that these deportations were being made in order to put the Jews to work in the Reich is effectively disposed of when, from the report itself, it appears that only one-third were those capable of work.

The report is further illuminating upon the relationship existing between Veesenmayer and Hezinger and Eichmann of the SS. The Foreign Office had proposed to recall Hezinger, who was the Jewish expert from the Foreign Office attached to the Embassy. Senior Councillor of Legation Feine informed von Thadden that Hezinger was indispensable. Veesenmayer told him that, while he realized that Hezinger was only loaned to him, he

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must make clear that he, the Minister, had an extremely difficult job, that cooperation with the SS office did not always work smoothly, and that Hezinger not only knew how to carry out his assignment to perfection, but he had established such friendly relations with the office of executive authorities that he was the only one who gave Veesenmayer complete satisfaction and in whose field of work no trouble had thus far occurred; that he was afraid that Hezinger's recall might also cause trouble in this field, and would be very grateful if Hezinger could stay with him for another 3 or 4 weeks, but if this was impossible, he would first use Grell mainly for the work on the Jewish problems.

It further appears from this report that Eichmann was anxious to have Hezinger remain so that no really serious mistakes would occur in the treatment of foreign Jews. The attitude thus expressed by Veesenmayer is in direct contradiction to the testimony which he gave, namely that Hezinger was not subordinated to him and that he was not informed in detail about his activities.

If, as Veesenmayer now claims, these actions were originated and carried out by Eichmann and Winkelmann\* of the SS, it seems most extraordinary that Department Inland II, which at that time was the competent department in the Foreign Office for Jewish affairs, should find it necessary to inform Eichmann, the alleged originator of the planned deportation, of Veesenmayer's reports. But such was done.

The jealousy and bad feeling growing up between Veesenmayer and the SS and Security Police Leaders in Budapest may well be true, and there are strong indications of the fact. The latter had often, as far as they were able, attempted to assert independent authority and power which, in fact, they did not possess. This was characteristic of the SS. The fight for power and authority, the attempts to keep all jurisdiction one had and to constantly reach out for more, even at the expense of another agency, was the common, almost accepted thing in the Nazi Reich. But it is also true that in almost every case it was not a contest over objectives, or an attempt on one side to defeat and on the other to further the savage programs of Nazi policy, but was one for personal prestige, and increase of influence and power, and authority



to implement and carry out those plans.

On 13 April 1944 Veesenmayer submitted to von Ribbentrop a draft (NG-5646, Pros. Ex. 3725) of the address he proposed to make when he presented his credentials. Arrogantly it referred to the unusual circumstances which had caused his appointment;

\* In its original judgment the Tribunal used the name Winkler instead of Winkelmann. This was amended by the Tribunal Order of 12 December 1949 on the motion of the defendant Veesenmayer to correct alleged errors of fact and law in the judgment. See section XVIII D 6.

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that "to hold back the enemy, German troops were on Hungarian soil" and thus many questions, unknown in peacetime and insoluble by methods theretofore used, had arisen and "new ways will have to be found;" that he was convinced that the Hungarian people, after elimination of hostile and seditious elements, would be faithful to its glorious history and conscious of the common fate which it had shared with the German people for hundreds of years, and gather all the powers of the state under the leadership of His Excellency, and fight for the common victory, in its proven comradeship of arms. "I consider it my task to help Hungary according to the best of my ability on this road, carrying out the intentions of my Fuehrer, and I want to express the hope that Your Excellency will support me fully and completely in the execution of my tasks."

This, apparently, was too much, even for von Ribbentrop, who was not noted for delicacy or finesse in diplomacy, and the offending phrases and sentences were eliminated.

It is now asserted on Veesenmayer's behalf that he did not prepare the objectionable address, but it was the work of his deputy Feine, a particularly experienced civil servant well-versed in international law. One of two things, however, is obvious. Either Feine was not the author, or he was not an experienced civil servant versed in international law. The proposed address follows the procedures and policies expressed by Veesenmayer in his previous reports to the Foreign Office too closely to permit us to believe that he did not have at least a guiding and controlling hand in its authorship. In any event, he signed it.

On 20 March Veesenmayer reports a lengthy conference with Horthy (NG-5522, Pros. Ex. C-438), who apparently had refused to appoint Imredy, but said that a government headed by Sztojay or Csatay would be "tolerable" for him, but that he must leave open the question of how long such a government should remain in office; that Veesenmayer had pointed out to Horthy that he considered an interim solution to be politically unwise and impossible in point of time; that the period of eternal compromising was past and that he, Veesenmayer, was under the impression that the Regent was trying to gain time, which was not in accordance with the will of Hitler and the Reich government. His report charges Horthy with lying and that he was no longer physically able to keep up his duties.

It appears that on 22 March 1944 Veesenmayer reported to Ritter that (NG-5526, Pros. Ex. C-440)—

*"Alarm occupation of the castle with distribution of troops will take 3 hours according to army group report. It is hardly*

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*possible to surround the castle effectively in view of its cellars and unknown secret exits."*

This does not evidence a decision to work with Horthy, as the defendant now claims, but a search for means to compel him to do the defendant's will. One does not discuss the seizure or surrounding of a castle occupied by the head of state when intent upon peaceful negotiations and cooperation.

The final selection of Sztojay as Prime Minister represented a compromise brought about by the belief that the time was not yet ripe to take the final step of removing Horthy from office, which came later, and hope had not yet been abandoned that Horthy would become entirely subservient to Veesebmayer's wishes and be dependent on German support for continuance in office. Although Sztojay was a tolerable appointment to the Regent, the Minister of the Interior and his State Secretaries were pro-Nazi and wholly compliant to the demands for the deportation of the Jews. The Ministry of the Interior had demanded command of the Hungarian police and gendarmerie, and it was through the cooperation of these officers with the SS that the Jews were seized, concentrated, and finally deported to slave labor or death.

It is apparent from Veesebmayer's testimony and from the documents that throughout the time he was in Hungary a struggle for power was going on between von Ribbentrop and Himmler; that von Ribbentrop's foreign policy involved retaining Horthy as the nominal head of state and achieving German aims through the subservience of the Hungarian Ministers, who had been selected and approved by the German Reich, in order that the outside world should not realize that the real governing powers lay in the Nazi government. On the other hand, Himmler cared nothing for finesse or outward appearances.

Veesebmayer endeavored to carry out von Ribbentrop's policy and from time to time clashed with Himmler and the SS, who desired to proceed with greater speed, without regard for the repercussions which would arise if Horthy finally rebelled.

In July 1944 Horthy forbade the further deportation of Jews, and Veesebmayer proceeded to reproach him for this and informed him that dismissal of the Sztojay government and the proposed arrest of certain of its members who had carried out anti-Jewish measures would be regarded as a breach of Hungary's obligations to the Reich, and that Hitler would immediately recall the Reich Plenipotentiary, Veesebmayer, and take measures which would preclude a repetition of such events in Hungary once and for all.

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The ultimatum (*NG-2739, Pros. Ex. 1824.*) thus presented by the defendant was in accordance with the detailed, graphic instructions which he received from von Ribbentrop. The defendant insists that he omitted informing Horthy of the threats which were contained in his instructions. This, however, the Regent denied when on the witness stand, and we have no doubt that either Veesebmayer read his instructions word for word or gave the substance of them. He made perfectly clear what would be the result if Horthy attempted to carry out his plans.

These threats were effective for the time being, but on 25 August 1944, the day Rumania signed an armistice, the Regent thought himself strong enough, and Germany's position sufficiently weak, to enable him to dismiss Sztojay and appoint General Lakatos as Premier. Again Veesebmayer intervened and attempted to have pro-German elements included in the Cabinet and government, but, to a large extent, he was unsuccessful. The Lakatos government remained in office until about, approximately, 15 October 1944, when it was ousted by force, the Regent deported

from Hungary and imprisoned in Germany. Szalasi, head of the Arrow Cross movement and a rabid anti-Semite, was appointed in his place. After Szalasi became Prime Minister, about 16 October 1944, deportations were restarted and tens of thousands of Jews, mainly women, were forced to march on the highways leading from Budapest to the German border in rain and snow, without food and with no sleep. Thousands of them died on the way or were shot because they could not continue the march.

Lakatos gave an affidavit with regard to the events of these times. He was not submitted for cross-examination, and we therefore give the statements in his affidavit little effect, except insofar as they may be corroborated by other evidence in the case. This corroboration is, in part, furnished by the testimony of Dr. Rezso Kasztner, a Hungarian Jewish lawyer who, throughout all this terrible period, was President of the Zionist organization of Hungary, and whose organization kept itself currently informed of the political and racial developments in Hungary. Checking his story with what is revealed by the documents of the Foreign Office, including Veesenmayer's own reports, the essential accuracy of his information is verified and substantially corroborates the essential parts of General Lakatos's affidavit. He makes clear that with the appointment of Szarosz as Minister of the Interior in the Sztojay government, and the appointment of the two State Secretaries, Endre and Baky, and their cooperation with the SS, the deportations became merely routine, administrative work.

Kasztner aptly describes the situation (*tr. pp. 3647-3648*).

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*"Q. Do you mean by that, Witness, that the defendant Veesenmayer, was not concerned with the execution of the Jewish deportations which (I will leave open for the moment) was carried out by Jaross, Baky, Endre, Eichmann, or Winkelmann?"*

*"A. My dear colleague, I do not suppose that you will imagine that a man as intelligent as Veesenmayer would formally carry out his mandate as Plenipotentiary and Minister of the German Reich in such a way as to transgress his limits by interfering with the executive. He could not and should not have done it under any circumstances and he did not need to. As I said this morning, by appointing a suitable government in Hungary, and laying down the general political directives for it, further activity and closer activity concerned with greater details of the executive was no longer necessary. He was, if I may say so, the spiritual author, but he was certainly not the executor."*

No one reading the record of this case can be under any doubt but that Veesenmayer was a conscious and consenting participant in the deportation of Jews from Hungary; that he knew what their fate would be; and that he was a willing, zealous, and leading participant therein.

*Alleged diplomatic immunity.*—Veesenmayer asserts the legal defense that inasmuch as he was actually accredited as Minister and Plenipotentiary General for the Greater German Reich in Hungary, his actions were privileged and he is exempt from punishment.

It has been a long-recognized rule that within certain well-recognized limits a diplomatic representative is immune from prosecution by the country to which he is accredited. The rationale is well stated by Hackworth.\*

*"The reason of the immunity of diplomatic agents is clear, namely, that governments may not be hampered in their foreign relations by the arrest or forcible prevention of the exercise of a duty in the person of a governmental agent or representative. If such agent be offensive and his conduct is unacceptable to the accredited nation, it is proper to request his recall; if the request be not honored he may be in extreme cases escorted to the boundary and thus removed from the country. And rightly because self-preservation is a matter peculiarly within the province of the injured state, without which its existence is insecure. \* \* \*"*

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This doctrine, however, has not remained wholly unquestioned. (Stanhope, History of England, I, p. 171.)

*"A foreign minister who conspires against the very government at which he is accredited has clearly violated the law of nations. He is, therefore, no longer entitled to protection from the law of nations."*

In any event, the immunity continues only so long as the diplomatic agent is accredited to the country, plus such additional time as may be necessary to permit him to leave its boundaries.

The rule is thus laid down, on the authority of Professor Binding, himself a German.

*"\* \* \* The incompetence of the local courts is ratione personae and ceases when the person concerned loses the status to which immunity from jurisdiction is attached."*

*"Exterritoriality results in freedom from court process; it operates procedurally, not substantively; in principle it does not result in freedom from punishment, nor exemption from the rules of law, but in non-liability to prosecution. \* \* \* The former (persons enjoying extraterritoriality) are immune from prosecution only for the duration of their extraterritoriality and certainly during the same period, also, for all earlier acts falling under the criminal laws of the state of residence: after conclusion of the extraterritorial relationship they are liable to prosecution for all crimes committed by them while enjoying extraterritoriality and previously, insofar as legal action has not yet been outlawed by the passage of time."*

In the Draft Convention on Diplomatic Privileges and Immunities of the Harvard Research in International Law, 1932, is found the following:

*"Article 29.—Termination of Privileges and Immunities.— When the functions of a member of a mission have been terminated, a receiving state shall continue to accord to him and to the members of his family the privileges and immunities provided for in this convention, until such persons have had reasonable opportunity to leave the territory of the receiving state."*

*In its Comment upon the subject, we find the following:*

*"Comment.—Article 16 undertakes to fix a time for the beginning of immunity and protection. This article undertakes to determine the time at which immunities terminate. Both are based upon long practice."*

*"The functions of a member of a mission may be terminated (a) by the termination of the mission; (b) by the death or*

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abdication of the sovereign, in case the sending state is a monarchy; (c) by revolution in the sending state, as a result of which a new government is established; and (d) by the recall of a member. It is intended that the present article apply to each one of these situations."

Again, in the Cambridge Draft of the Institute of International Law, 1895, the following proposed codification of the recognized practice is found:

*"Article 5.—It (the privilege of inviolability) shall continue to be effective as long as the minister or diplomatic official remains, in his official capacity, in the country to which he has been sent."*

*"It shall hold good, even in time of war between the two powers, for as long a time as is necessary for the minister to leave the country with his staff and his effects."*

Finally, it was held in the case of the former Japanese Ambassador, Oshima, that—

*"Oshima's special defense is that in connection with his activities in Germany he is protected by diplomatic immunity and is exempt from prosecution. Diplomatic privilege does not import immunity from legal liability, but only exemption from trial by the Courts of the State to which an Ambassador is accredited. In any event this immunity has no relation to crimes against international law charged before a tribunal having jurisdiction. The Tribunal rejects this special defense."*

Here as well the defendant is charged with violations of international law. The evidence establishes he is guilty of such violation. He is not being tried by Hungary,

the state to which he was accredited; his term of office has long since expired; he surrendered himself not to the Hungarian authorities, but to the American military authorities. None of the grounds for exemption upon which he bases his plea here exist, and his special defense with respect to his diplomatic exemption is without merit.

*Slovakia.*—On 13 June 1944 Veesenmayer requested the Foreign Office to bring pressure on the Slovakian Government (*NG-5576, Pros. Ex. 3714*), demanding that they indicate their fundamental disinterest in Slovakian Jews in Hungary. The reason for this request was that the Slovakian Legation in Hungary, as well as the Slovakian Minister of the Interior, had informed the Hungarian Government and the SD Referent of their special interest in the repatriation of Jews of Slovakian nationality who were

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then being evacuated from Hungary. Veesenmayer stated that this not only disturbed but also complicated the evacuation of them from Hungary, but also gave the Hungarian Government the impression that Slovakia had adopted an attitude fundamentally opposed to the solution of the Jewish problem.

Hans Ludin, the German Minister to Slovakia, deposed that in December 1943 the defendant Veesenmayer called on him at the Embassy and informed him that, by special order of the Reich Foreign Minister, he was to visit the Slovak State President with the object of deliberating with him upon the further deportation of the Slovak Jews; that after his visit to Dr. Tiso, Veesenmayer reported the result; namely, that the Slovakian State President had agreed to the proposed date, 1 April, and until then all the remaining Jews not having special status granted by the State President were to be deported.

On 22 December 1943 Veesenmayer reported to the Foreign Office the result of his negotiations with Tiso (*NG-4651, Pros. Ex. 3703*), that of the remaining Jews in Slovakia, 16,000 to 18,000 would be sent to Jewish camps within the next few months; that Minister Ludin was to come to an agreement with Tiso during the next few days with respect to the execution of the entire operation; that Tiso did not and could not, at the moment, fix any definite date, so Veesenmayer suggested completing the operation by 1 April 1944 at the latest, and was assured by Tiso that he could make great efforts to adhere to that date; that for reasons of expediency, Veesenmayer refrained from mentioning the question of the baptized Jews, but in talking the matter over with Minister President Tuka, the latter said he would insist that the question be dealt with anew with the stipulation that the baptized Jews must be accommodated in a special camp in order to avoid difficulties with the Church, and promised his full support to the measures agreed upon between Veesenmayer and Tiso.

Dieter Wisliceny deposed that he met Veesenmayer in Bratislava in December 1943 and on that occasion Veesenmayer paid a visit to President Tiso; that in the conversation with Veesenmayer in the anteroom of the German Ministry, he was informed that Veesenmayer was to see Tiso on Hitler's orders, and would then take the opportunity of broaching the subject of Jews in Slovakia; that Veesenmayer asked for a statistical report as to how many Jews were still living in Slovakia, and how many of these had a special permit, and Wisliceny handed this report over to Veesenmayer; that after the latter's visit to Tiso, Wisliceny saw Veesenmayer, who reported that Tiso had promised to screen all special permits by the end of April 1944 and settle the Jewish

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question finally; and that Veesenmayer said that he would put his foot down with Tiso on this question.

Veesebmayer's explanation is that his visit to Tiso and Tuka was not primarily on the Jewish question, but with respect to other political events, particularly the channels which the Hungarian Government "had through Slovakia into Russia, with the idea of making peace, and that the Jewish mission was a camouflage" of his real objectives. He admits, however, making the report before-mentioned, and does not deny that the matters therein contained were in fact discussed and agreed upon. He claims, however, that the proposed deportation did not take place, and we have been able to find nothing in the record to indicate that it was actually carried out.

There is evidence that after the Slovakian revolt in September 1944, many of the remaining Jews in Slovakia were killed, but this apparently has no connection with Veesebmayer's visit in December 1943. Therefore the documents relating to Slovakia, while they tend to prove knowledge of the plan and throw some light on Veesebmayer's attitude toward Slovakian and Hungarian Jews, cannot constitute a substantive offense.

*Serbia.*—On 8 September 1941 the Foreign Office received a wire from Belgrade, signed by Veesebmayer and Benzler (*NG-3354, Pros. Ex. 1714*), stating that it had been proved that Jews were accomplices in numerous acts of sabotage and revolt, and therefore it was urgently necessary to see to it that at least all male Jews be quickly placed in custody and removed, suggesting that they be deported, sent down the Danube, and unloaded in Rumanian territory. The Foreign Office determined that this could not be done and Luther so informed the Plenipotentiary of the Foreign Office at Belgrade.

On 10 September (*NG-3354, Pros. Ex. 1714*) Veesebmayer and Benzler again wired the Foreign Office that "a quicker and Draconian solution of the Jewish question in Serbia is a most urgent and practical necessity," and requested directives from the Foreign Office in order to be able to put the utmost pressure on the military commander of Serbia, saying that it would be most advantageous if Himmler would issue an identical order to the Chief of the Einsatzgruppe of the Security Police and Fuchs of the Security Service.

In the final analysis, Rademacher was sent to Belgrade to ascertain whether these Jews could not be taken care of on the spot. He found that 2,000 had already been shot as reprisals for attacks on German soldiers, and states "in the course of the practical executions of this order, at first the active Communist leaders of Serbian nationality—about fifty of them—and then

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always Jews were shot as Communist instigators; that there were not 8,000 to begin with, but only 4,000, and only 3,500 could be shot, as the remainder are needed by the health police to keep up the health service and discipline in the ghettos which had been established."

As the result of Rademacher's negotiations with the experts on the Jewish question, Sturmbannfuehrer Weimann and Fuchs, it was agreed that the male Jews would be shot by the end of the week, which would solve the problem, and that the rest of about 20,000 Jews, women, children, old people, as well as about 1,500 gypsies,

except the males who were to be shot, would be concentrated in a ghetto in the gypsy sector of Belgrade, where a minimum of food would be guaranteed for the winter, and as soon as the question of the final solution of the Jewish question was reached, and the technical means were available, the Jews would be deported by water to the reception camps in the East. Thus, the quicker and more Draconian solution mentioned by Veesenmayer and Benzler became an accomplished fact.

Veesebmayer's excuse is that he had been sent to Belgrade to make an investigation of the partisan movement which had started there, and the advisability of organizing a Serbian government to alleviate the situation, and that he was only called in by Benzler because of his investigation and knowledge of the partisan movement.

This excuse is without merit. He signed the telegrams; he consulted with Benzler regarding the proposed deportation.

However, it did not take place; other agencies intervened, and, as we have seen, adopted measures even more harsh. For those he cannot be held responsible.

### SCHELLENBERG

Schellenberg joined the Party in 1933. In 1934 he became a member of the SD and was assigned to the Office of Domestic Intelligence Service. In 1939 he became Chief of Amt IV-E, which had charge of domestic counterintelligence. In 1941 he was transferred to and became Chief of Amt VI, RSHA, which dealt with foreign intelligence.

The prosecution contends that Schellenberg took an active part in the preparations for the work of the notorious Einsatzgruppen of the East. The record reveals that in the discussion between Mueller, Chief of Amt IV, RSHA, and Quartermaster General Wagner of the Wehrmacht, an impasse arose regarding the use of these corps in the East and their jurisdiction and competence, and Schellenberg, who was a lawyer by profession, was detailed

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to take up these discussions and attempt to compromise the difference between the Wehrmacht and the RSHA. This he did, and when his final draft of the agreement had been completed Heydrich and Wagner signed it. He asserts that when the two men came to discuss the details of the plan, he was notified to leave the room, and therefore was not informed of the full scope of the activities of these groups, namely, to engage in mass exterminations of the local population and the Jews.

He admits that some time later he attended a meeting in Berlin at which were present counterintelligence officers of the Wehrmacht, but states that this meeting continued over a considerable period and he left several days before it concluded, and he assumed that after he left persons then present were probably informed of the work which the Einsatzgruppen were to carry on.

While we doubt that Schellenberg was as ignorant of the mission of the Einsatzgruppen as he now asserts, the proof that he had knowledge does not convince us to a moral certainty. We therefore give him the benefit of the doubt, and as to this incident we acquit him.

It is also contended that he was deputy to Mueller, Chief of Amt IV, RSHA. While on one or two occasions he signed in that capacity, the record discloses that Mueller had no regular deputy and only when he was absent from his office did one or another of his section chiefs sign communications in his name.

The prosecution further contends that Schellenberg, as Chief of Amt VI, himself,

dispatched an Einsatzkommando to White Ruthenia, but we are satisfied that this group dealt with geological and other scientific research and had no connection with crimes against humanity.

*Serbian Jews.*—While Schellenberg's office was informed of the slaughter of Serbian Jews, it does not appear that Schellenberg took any part in this other than possibly informing Luther, at the latter's request, of Heydrich's return to Berlin, as Luther desired to have a conference with Heydrich regarding the deportation or other disposition of Serbian Jews. The evidence of Schellenberg's guilt is not sufficient, and we acquit him with respect to this incident.

*Einsatzgruppen.*—Copies of Operational Situation report, No. 128, of the Einsatzgruppen, dated 3 November 1941 (NO-3157, Pros. Ex. 2058), were distributed to Schellenberg's group, and to both Aemter IV and VI. It covers approximately 4 months' operations. There the program of murder and extermination is set forth in detail. It callously states that approximately 80,000 persons had been liquidated, describes the objections raised by certain commanders of prisoner-of-war camps, how they were

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overcome, and of the plans for further operations freed from interference by officers of the Wehrmacht. These and the other reports of the Einsatzgruppen were distributed to Schellenberg's office. His claim that he did not see or paid no attention to particulars in which his office was interested cannot be believed.

We have examined the reports and even the most casual glance would bring out the horrible details. Furthermore, unless we are to assume that his division was so inured to reports of mass murder and that these were no longer deemed worthy of notice and comment, it is inconceivable that his section chiefs would not have called his attention to them. His claim of innocence is wholly incredible. But there is no evidence that he participated directly or indirectly in these atrocities.

*Operation Zeppelin.*—On 13 October 1941 (NO-3421, Pros. Ex. 2059) Mueller, Chief of Amt IV, confirmed his telegraphic order regarding the use of Soviet Russians in concentration camps for labor and for the execution of designated Russian prisoners of war.

On 25 October 1941 (NO-3421, Pros. Ex. 2059) he issued a directive stating that for the purpose of selecting suitable informers of the Russian intelligentsia, delegates of Amt VI, Schellenberg's division, would be assigned to the Einsatzkommandos of the Sipo and SD and, during their activities in the prisoner-of-war camps, these delegates would be subordinated to the leadership of the Einsatzkommandos. In addition, the order made it the duty of these delegates to collect information about political, economic, and cultural conditions in Russian areas not yet occupied, and that Soviet functionaries who were deemed suitable were to be transferred to Berlin and put at the disposal of Amt VI. Both of these documents were distributed to Amt VI and Amt IV. This operation was known as "Operation Zeppelin."

The counsel for prosecution contends that the use of prisoners of war for espionage and other like purposes against their own nation, even if voluntary, is a violation of international law and of the Hague Convention Respecting the Rules and Customs of War. (Art. 6, ch. II [Hague Convention No. IV, 18 Oct 1907]; and Art. 31, ch. VI, Geneva Convention [Prisoner of War Convention, 27 Jul 1929].) No other authority other than the Articles themselves has been cited to us, and we have been unable to find any. Ordinarily a national of a country, whether or not he is in military service,



who gives aid or comfort to the enemy, is a traitor to his country. But we have never before heard it suggested that the enemy who takes advantage of his treason is guilty of a breach of international law. We hold that the cited prohibitions of the Hague Convention prohibit the use of pris-

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oners of war in connection with war operations, and apply only when such use is brought about by force, threats, or duress, and not when the person renders the services voluntarily.

We come now to more serious evidence against Schellenberg with respect to Operation Zeppelin. In a number of instances persons who volunteered were thereafter executed, apparently without trial or notice of any offense of which they were alleged to be guilty. If true, this was a flagrant violation of international law. It appears from the testimony of the witness Smolen that he was a political prisoner at the Auschwitz concentration camp from June 1940 to 1941, and was employed as a "responsible prisoner" in the reception office of the political department of the camp which was not under the jurisdiction of the camp commander, and that this political department had jurisdiction over Block 11 of the camp; that approximately 200 Russians were executed in that block; that these prisoners arrived under escort of SD men; the normal entries regarding them were not made in the records; they were not given the usual prison numbers, and that the documents which they carried bearing their personal data, were immediately delivered to the SD upon their arrival; that these men gave no information about themselves and did not have the slightest idea of the fate which awaited them; that they were killed by a shot in the neck within a few days of their arrival; that the papers for their commitment bore the entry "Zeppelin Geheimnisträger" the latter term meaning "one in possession of secret information."

Exhibits 2065, 2066, 2068, and 2069 [Documents NG-4723, NO-5445, NO-5446, and NG-4724, respectively] are the record of some of the men thus executed. We are satisfied that the fifty men mentioned in Exhibits 2063 and 2064 [Documents NG-4721 and NG-4722, respectively] are identical and refer to one operation.

With regard to the cases of Plewako, Kopyt, and Koschilew, the reports state that as a result of various things which happened in the meantime at special camp Wissokoje they were given "special treatment" on 25 November by order of SS Brigadefuehrer Naumann of Einsatzgruppe B. More can be seen from the reports of SS Obersturmfuehrer Sakuth to the RSHA, Amt VI, Department 6-C-Z. In the case of Kosin, it appears that he was sent, by order of Amt VI, to Einsatzgruppe E-B for special treatment. "Special treatment" in the jargon of Nazi Germany meant death, as has been fully established before these tribunals.

Naumann testified in the Ohlendorf case that in this camp there was a house put at the disposal of Amt VI which was not sub-

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ordinated to him; that he had no right to order the executions of the inmates thereof, but that it was up to Amt VI to do so.

Schellenberg first testified that he knew nothing about these executions, but later, when faced with the documents, contended that the men were killed because they were traitors to Germany. The first three men were executed on 25 November 1942,

and Kosin on 5 December 1942, and the reports were all made on 5 December 1942. The reason given for Kosin's death was that he had run away without reason from the SS special camp Wissokoje.

Exhibits 3465, 3466, 3467, and 3468 [NG-5220, NG-5221, NG-5222, NG-5223, respectively] disclose that two Russian prisoners of war who were activists [Aktivisten] employed by Amt VI and who were hospitalized for tuberculosis were thereafter ordered by Weissgerber of Amt VI to be given "special treatment."

Schellenberg insists that he had no knowledge of these last sentences, but that Weissgerber was one of his assistants, as was Grafe. Thus, we are asked to believe that responsible officers of his division, on their own initiative, issued orders for the execution of large numbers of people without his knowledge and without his orders, general or specific. The defense attempts to explain this by affidavits that the head of Operation Zeppelin, although a subordinate of Schellenberg's, acted independently and did not often consult with him, but we view such testimony with suspicion and with great caution. It does not square with Schellenberg's character and temperament as disclosed on the witness stand, or by the proof offered in this case. If Weissgerber and Grafe ordered these executions, their action can only be accounted for if the defendant had permitted an utterly callous attitude toward human life to grow up and become established in his division, or if it was a practice so usual that it was unnecessary to consult him. It must be remembered that these were not isolated instances, but at least 200 men were thus executed. In neither case can he avoid responsibility.

With respect to the Koshilew case, the defendant offered parts of Document NO-5446, which were not offered by the prosecution, as part of Exhibit 2068 and others, to prove that Koshilew was a spy, and furthermore, that this was a matter which Amt IV handled and not Amt VI.

We have considered these documents. It appears that on 16 January 1942 Koshilew was picked up by the army as a suspected spy, but that the Wehrmacht was not certain whether he was a Russian or a German spy. He was interrogated at least twice and maintained that he was not a Russian spy, but that he

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worked with the Gestapo. The army made inquiries of Einsatzgruppe B, the Secret Police, and the Gestapo. This was reported to Amt IV, where it was received on 28 January 1942. On 27 March 1942 Amt IV-1-B informed Einsatzgruppe B that neither Amter IV nor VI knew of this man or his alleged contacts. If true, then obviously the man was a spy and subject to the penalty of being caught as such. But it was not.

Exhibit 2068 [*Document NO-5446*] plainly shows that Koshilew had worked for Referent IV Einsatzgruppe in Smolensk since January 1942. Notwithstanding the denial of 27 March it also appears that at least as late as 1 July 1942 he had been trained at special camp Wissokoje, which was an Amt VI establishment, and that he was convinced that bolshevism must be destroyed, and that he voluntarily reported to the German staff on 16 January 1942. Obviously if in March, both Amt VI and Amt IV were convinced that the man was a spy, that his explanations were fabricated, and that he had never worked for the Gestapo, he would not have been placed and trained in the special camp, nor would there have been the slightest occasion to wait until December 1942 before executing him. The documents may prove other facts, but they do not prove or tend to prove that Koshilew was a Russian spy.

There is no direct evidence that Schellenberg had knowledge of these incidents, but it is clear that his Amt VI had knowledge of all of them and at least in one instance ordered the murder of these Russians. It was intended that these men should be used in the foreign intelligence work, that is, work behind the Russian lines, and this came within the jurisdiction of Amt VI, which selected these men and determined the field in which they should be employed. This is clear not only from the documents, but from Schellenberg's own testimony. When a question arose as to whether or not they were acting in good faith or were, in fact, Russian counterspies, Amt VI would have been deeply interested in the matter because it lay in their field. It is most unlikely that it would not have been consulted, and in the first instance determine the question of their loyalty to Germany and what their fate should be in the event that disloyalty was established. True, once the fact was determined, Amt VI might well have turned them over to Amt IV or some other agency for execution, but this does not lessen Amt VI's responsibility or exonerate it from complicity in the execution. It is significant that when turned over for execution the records merely show that they were "persons in possession of secret information" and not that they were disloyal and had been found to be spies or counterintelligence agents of the Russians. Further-

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more, they were totally ignorant of any accusations against them. It is a fair assumption that if, at the time they were turned over for execution, they had been regarded as spies, the words "persons possessed of secret information" would not have been used, and the words "spy" or "Russian agent" would have been inserted in their place. Their execution, under these circumstances, was merely cold-blooded murder.

A principal cannot be held criminally responsible for isolated criminal acts committed by his criminal subordinates in the execution of the latter's duty, but where there is evidence that this was an official practice, he cannot escape responsibility on the plea of ignorance, inasmuch as such ignorance was in fact nonexistent.

We hold that Schellenberg in fact knew of these practices and is guilty of the crimes as set forth.

#### SCHWERIN VON KROSIGK

The defendant Schwerin von Krosigk, during the entire Nazi regime, was Reich Minister of Finance and a member of the Cabinet. He was educated at the University of Oxford as a Rhodes Scholar, and he spent many years in the Ministry of Finance as a civil servant. He faithfully and with complete loyalty served the Weimar republic under several of its presidents. As time passed, his talents were recognized and he finally became director of its budget.

While von Papen was Reich Chancellor, Schwerin von Krosigk was appointed Minister of Finance. This appointment was not made due to any political or party affiliations.

Upon Hitler's seizure of power he was retained in office solely because of his expert knowledge of governmental finance, and not because he was looked upon either as a Party man or as being devoted to or convinced of the principles of national socialism; but we believe because Hitler felt that it was necessary that the Ministry of Finance be put in charge of one who was divorced from the inexperienced, ignorant, and predatory characters who had flocked to the Party; and he desired one who was

incorruptible and would be content to carry out the functions of his office without interfering in matters of politics.

Irrespective of our evaluations of his subsequent official actions, in justice it must be said that Schwerin von Krosigk's private life was above reproach. He was and is a man deeply religious in character, devoted to his wife and family, simple in his tastes in life, and wholly free from any desire or ambition to use his offi-

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cial position to enrich himself, a decided contrast to many who held high offices in the Reich.

The evidence clearly shows that he was not a member of Hitler's inner circle, that he was not one of his confidants, and that he came in touch with him but seldom before the war, and even less often afterward. During the course of the years he suffered many conflicts of conscience and was fully aware that measures to which he put his name and programs in which he played a part were contrary and abhorrent to what he believed and knew to be right.

It is difficult to understand what motives or what weaknesses impelled or permitted him to remain and play a part, in many respects an important one, in the Hitler regime. It is one of the human tragedies which are so often found in life. That he could have found or made an opportunity to retire and avoid being made a party to what was done, we have no question. In fact, he is one of the defendants who refused to avail himself of the claim that he was bound to remain in office and could not have retired or resigned had he so desired. He testified that at the time of the Crystal Week Pogrom against the Jews in November 1938 he then and always considered it and the measures which followed it to be a disgrace to the character of the German people.

He states that he remained in the Cabinet to raise the voice of reason and justice; that the events of the Roehm Putsch of June 1934\* were a shock to him and emphasized in his mind the dangers inherent in the Nazi regime, but that many people urged him to remain in office so that he could act as a brake to the regime; that among others who held the same idea were some of the chiefs of the bourgeois ministries and old civil servants; that as head of the finance administration he desired his officials should keep their integrity; that the tax administration and other divisions should carry on their tasks with absolute justice; and that he felt as a Minister he could influence laws as they were drafted and after their promulgation exert a "defeating" influence; that in the subsequent years he was able, in certain instances, to help those who were threatened by injustice; that by staying in office he was able to save civil servants from the so-called "purge" law; that in the matter of the billion-mark Jewish fine, he was able to have the funds paid out by the insurance companies for losses incurred during the Crystal Week, and which could not be paid to the Jews themselves, applied upon their respective shares of the national fine.

\* On 30 June 1934 the Roehm Purge or the "blood bath" took place. Ernst Roehm, Chief of Staff of the SA since 1931, together with other oldtime SA leaders, and other personalities whom Hitler wanted eliminated (such as General von Schleicher) were murdered by Hitler's orders. For further information on this subject see Case 3, Volume III, this series, and Trial of the Major War Criminals, op. cit., volume I, page 181.

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He testified that he served the Hitler government initially because it was his duty as a civil servant so to do, and later because only from that position was he able to

prevent injustices so far as his powers extended, and finally, because he thought it was a manifestation of cowardice to desert a sinking ship; that as he views the matter today in the full view of what he then did not know he deems his behavior politically erroneous, because under a dictatorship all decent and respectable work and all honest efforts must be finally brought under the service of the dictator, but all this comes from after-knowledge, and from the considerations then apparent and known to him, had he again to make the decision he would do as his duty commanded and in the same way.

He asserts that there were no financial considerations which impelled him to remain in office, and that had he resigned he would undoubtedly have had opportunities to obtain positions in the commercial and financial field which would in fact have been greatly to his financial advantage; that while he never became associated with any of the resistance groups because he felt he could be of more service in the capacity in which he served, he was personally and well acquainted with many of its members; that it was not until 1938, when the Crystal Week and the Sudeten crisis arose, that the resistance groups first came into being, and that after the outbreak of the war it was out of the question to resign, as everybody had to work in some position.

We are not inclined to be captious in considering and giving weight to his testimony, although we deem it altogether likely that what he says does not supply all of the lights and shadows regarding his reactions then.

As to many of the decrees, laws, and regulations which bore his name as cosignator, he relies upon the so-called "Federfuehrend" doctrine which may be succinctly stated thus, that where one Minister had jurisdiction over the major problem of the legislation or regulation involved and other departments were more or less incidentally concerned, the legal responsibility rested upon the first and the other cosignators assumed no responsibility for the measures other than those provisions which might immediately affect their jurisdiction, and finally, that the right to intervene or object was limited to questions relating to the propriety or practicability of the measures as it affected their sphere of action.

That the principle as thus stated is oversimplified, and the responsibility of cosigners underemphasized, we have no question, as we find in the record instances where the doctrine was rejected and where the proposed cosigner refused to put his name to the document.

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There is a further limitation to this doctrine. Cabinet Ministers had the right to, and in fact did, freely express their views as to proposed legislation. In the early years of the Hitler regime Cabinet meetings were held in which the same right in principle existed. Even when the Cabinet meetings were discontinued, it was the practice, and in fact the invariable rule, that all proposed Reich governmental laws, regulations, and decrees were circulated among the Cabinet Ministers for their objections or suggestions. The defendant Lammers testified that, as to this type of regulation and decree, had a majority of the Cabinet expressed a negative view, Hitler would not have gone contrary to the views of the Cabinet. Lammers stated further, however, that negative views were never expressed and, therefore, the Reich government laws were adopted without dissent. Where the right to object or dissent exists, a majority dissent can only be ascertained if some responsible Minister is the first to register his objections. Under these circumstances one cannot sit supinely by and await the voice of another.

Our attention has not been directed to a single instance in which Schwerin von Krosigk filed his objection or dissent to any proposed Reich government law, regulation, ordinance, or decree which, if enacted, would constitute a crime within the jurisdiction of this Tribunal. Even were we inclined to accept the bald doctrine as of universal application, it could be applicable only to responsibility under German law and is unavailable as a defense to a crime under international law. Furthermore, it cannot be forgotten that, as to the offenses charged under this indictment, we do not deal with the ordinary processes or policies of national law nor even those where there is room for reasonable differences of opinion on political policy.

The offenses charged in this indictment deal with policies which fundamentally violate the common law and understanding of nations, and measures which shocked the consciences of mankind, from which there was, and is, a common revulsion, not limited to those who were or thereafter became political or armed foes of the Third Reich, but among peoples who by choice or necessity remained neutrals. As to those offenses the doctrine of "Federeführend" cannot be applied, although it may be considered with other circumstances in mitigation.

In our examination into the defendant's conduct we have endeavored to state and concede as far and as fully and as fairly as possible the foundations of his defense. We now proceed to ascertain and analyze the particulars of his conduct, that we may weigh profession against performance and general benevolence with specific acts, A troubled conscience is not a defense for acts

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which are otherwise criminal. Nor can we hold that he who signed, cosigned, executed, or administered measures which violate international law, because he thought that acquiescence would enable him to maintain and safeguard the integrity of his department and the career of his officials or even the life or liberty of individuals whose cases came to his attention, but who by his actions condemned the great inarticulate mass to persecution, mistreatment, brutality, imprisonment, deportation, and extermination, escapes responsibility for his conduct.

Schwerin von Krosigk was present at the infamous conference of 12 November 1938 when Goering proposed to levy the billion-mark fine against the Jews. This was shortly after the assassination of von Rath in Paris and the riots and plunderings of the Crystal Week. When the question arose of adopting measures to prevent Jews from realizing on their securities and disposing of their assets, the defendant said (1816-PS, Pros. Ex. 1441):

*"They have to be taken during the next week at the latest."*

When Goering said:

*"I shall choose the wording this way, that German Jewry shall, as punishment for their abominable crimes, and so forth, have to make a contribution of one million [billion]—that will work. The pigs won't commit another murder. Incidentally, I like to say again that I would not like to be a Jew in Germany."*

Schwerin von Krosigk remarked:

*"Therefore, I would like to emphasize what Mr. Heydrich has said in the beginning: That we will have to try to do everything possible by way of additional exports to shove the Jews into foreign countries. The decisive factor is that we don't want the proletariat system [Gesellschaftsproletariat] here. They will always be a terrific liability for us. (Frick: "And a danger.") I don't imagine the prospect of a ghetto is very nice. The idea of the ghetto is not a very agreeable one. Therefore, the goal must be, like Heydrich said, to move out whatever we can."*

It is difficult to reconcile this language and the attitude which the defendant now claims he then took.

It was Schwerin von Krosigk who issued the ordinances of 21 November 1938 and of 19 October 1939, the first of which levied an assessment of 20 percent and the second an additional 5 percent on all Jewish property, by means of which the billion-mark fine was extracted, and it is he who issued the detailed instructions to the various Reich offices as to how and by what means payments could and should be made.

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Regarding the billion-mark fine, two things are to be observed. First, it was not a fine or penalty for any act done or committed by the individuals who were compelled to pay it, nor was there the slightest ground for the charge that the assassination of von Rath was the result of a general Jewish plot. It was a deliberate confiscation of property and a typical piece of the persecution to which German Jews were subjected. Second, this fine and the proceeds of other confiscations of Jewish property were intended to be and were used for the purpose of rearmament and aggression. This statement was made at a meeting of the Reich Defense Counsel on 18 November 1938. There Goering said (3575-PS, Pros. Ex. 106):

*"Very critical situation of the Reich Exchequer. Relief initially through the billion-mark fine imposed on Jewry and through the profits accruing to the Reich in the Aryanization of Jewish enterprises."*

The defendant offers, and there is no justification or excuse for these measures.

*Financing concentration camps.*—As Minister of Finance the defendant furnished the means by which the concentration camps were purchased, constructed, and maintained, but it is clear that he neither originated nor planned these matters, and the funds were provided by him on Hitler's express orders. They were Reich funds and not Schwerin von Krosigk's, and he had no discretion with respect to their disposition. His act in disbursing them for these purposes was actually clerical, and we cannot charge him with criminal responsibility in this matter.

*Deportation of Jews to the East.*—When the cruel deportation of Jews to the East commenced, the defendant caused the necessary instructions to be given to the senior finance presidents throughout the Reich, who were his subordinates, to confiscate the Jewish property. The Jews were only permitted to have 100 marks and 50 kilograms of luggage apiece. These instructions stated that the administration and utilization of the confiscated property was within the defendant's competency, and he transferred it to the senior finance presidents to perform.

The defendant asserts that by his orders an accurate record of all property thus confiscated was kept, so that at some future time the owners might be able to reclaim it or be reimbursed therefor. Inasmuch, however, as the confiscation was complete and final, the possibility of reclamation or reimbursement could only occur as and when the Nazi regime ceased to exist. We deem his contentions in this respect to be an afterthought and without reality in fact or intention. His instructions spoke not only of

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deportations which were then imminent, but of deportations which had already taken place, and further, of deportations which were to follow. The confiscations included not only money, securities, jewelry, furniture, clothing, works of art, but also real estate owned by Jews.

In March 1942 the defendant's deputy, by his order, instructed the finance presidents concerning the seizure of Jewish literature, cultural and artistic works, and ordered

that they be turned over to the Operational Staff Rosenberg which was the collector and holder of this kind of loot.

On 25 November 1941 the defendant's State Secretary, Reinhardt, cosigned the Eleventh Supplement to the Reich Citizenship Law (*NG-2499, Pros. Ex. 1536*), which deprived all Jews living abroad of their citizenship, as well as those who might in the future take up ordinary residence there. The decree confiscated their property, together with the property of all those Jews who at the time of the enforcement of the decree were stateless if they were formerly Reich citizens. This decree was issued as a result of a conference in the Ministry of the Interior which the defendant attended.

Various other implementary decrees and regulations for the confiscation of Jewish property were from time to time issued or cosigned by the defendant's Ministry of Finance, including those which forfeited the property of Jews who had committed suicide to avoid deportation. This latter regulation was made retroactive to 15 October 1940. The defendant pleads ignorance as to the issuing of some of these documents, particularly the last, and it is not unlikely that in some instances this was true, but that such measures were taken independently by his subordinates without knowing that they were in accord with the policies of his department is, we believe, highly unlikely, if not wholly impossible.

The defendant Schwerin von Krosigk with the defendant Stuckart signed the decree of 2 November 1942 (*NG-180, Pros. Ex. 2453*) forfeiting citizenship and confiscating the property of all Bohemian-Moravian Jews who had established domicile abroad, and the defendant approved the draft of the Terboven Ordinance containing like provisions as to Norwegian Jews,

On 3 October 1939 the defendant Schwerin von Krosigk, together with Frick and von Ribbentrop, signed a decree (*NG-3744, Pros. Ex. 638*) providing for the forfeiture of citizenship of all citizens in the Protectorate who may have "acted in a manner detrimental to the interests of the Reich or which damaged its reputation," as well as those who did not return home when ordered to do so by the Minister of the Interior, and the decree included a forfeiture of their property as well.

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On 4 October 1939 the defendant with Frick signed a decree (*NG-3745, Pros. Ex. 635*) which authorized the Reich Protector to sequester, for the benefit of the Reich, the property of individuals or associations who fostered tendencies deleterious to the Reich, and the Protector and the Minister of Interior were authorized to determine what tendencies were to be so considered.

On 24 October 1942 Reinhardt, for the defendant Schwerin von Krosigk, and the defendant Stuckart, for the Minister of the Interior, signed a decree conferring jurisdiction on the Protector, so far as nationals of the Protectorate were concerned, and on the Ministry of the Interior, in all other cases, to determine what activities should be declared "deleterious."

The occupation of Bohemia and Moravia and the formation of the so-called Protectorate were, as we have held, acts of aggression and in violation of international law. The enactment of these decrees was unlawful and was a part and parcel of the original unlawful act and scheme and plan.

It is apparent from the record that the defendant's Ministry of Finance was continually engaged in the work of taking over, disposing of, and realizing on Jewish confiscated property. The number and importance of these transactions and the fact that those engaged therein were responsible officials holding high office in the defendant's



ministry, forecloses any possibility that they could have taken place without his knowledge and consent or subsequent confirmation and approval. They were a part, and an important part, of the Jewish persecutions carried on in the Reich and constitute violations of international law and agreements and crimes under count five. Not only were these confiscations carried on in the Reich and against Jews of German nationality, but they were extended and came to include Jews of all nationalities living in Belgium or the Netherlands, or having fled from thence to occupied France and those who were residents of occupied France. The use to which much of this property was put was to realize foreign exchange for the Reich. They were all without justification, excuse, or legality. The officials of the defendant's ministry participated actively therein. These acts constitute violations of international law and crimes against humanity under count five.

When in June 1944 Himmler made application for the allocation of many millions for the demolition of the Warsaw ghetto, the defendant Schwerin von Krosigk expressed a willingness to make necessary installments on request, but coupled with it the stipulation that Himmler first use the values represented by goods found in the ghetto and inform him how many goods were to be utilized or had been so utilized. Himmler replied that the

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movable goods thus confiscated had been realized upon and the proceeds paid into the Reich's Main Pay Office in favor of the Ministry of Finance under a special account "Max Heiliger." Into this account was deposited the money and the proceeds of the dental gold extracted from the exterminated inmates of concentration camps and the jewelry and precious stones of which they were robbed. The defendant testifies that he had no knowledge of this account and does not know why it was given a fictitious name. It is to be remembered, however, that approximately 33 tons of dental and other gold alone were shipped to the Reich Bank and credited to this account. That such an acquisition to German gold stocks should not have come to the attention of the Minister of Finance we find it difficult to believe, although it is quite possible that he was not advised of the fictitious name under which the account was carried.

Part of the jewels, gold, and works of art which were seized in Paris from the Rothschild family were turned over to and accepted by the defendant and utilized by his department for Reich purposes. He made some objections to this but these were overcome and he accepted the proceeds which amounted to 1,800,000 marks. This was stolen property to which neither the Reich, the Reich agencies which stole it, nor the Ministry of Finance which accepted it, had the slightest legal claim. It was seized, not because of any wrong done by the owners, but merely because they were Jews.

*Final solution.*—The defendant was cosigner with Frick, Minister of the Interior; Bormann, Chief of the Party Chancellery; and Thierack, Minister of Justice, of the 13th Regulation under the Reich Citizenship Law. By its provisions criminal acts by Jews were to be punished by the police and not by judgment of the courts; the provisions of the public penal law were no longer applicable to Jews; on death, the property of a Jew was confiscated to the Reich, and only his non-Jewish heirs residing in Germany became entitled to compensation for the loss of their inheritance; the Minister of the Interior, with the concurrence of the higher authorities of the Reich, was empowered to issue the necessary administrative and enforcement regulations and to determine to what extent those provisions should apply to Jewish

nationals in foreign countries, and finally the regulation was made applicable to Bohemia-Moravia and to all Jewish citizens of the Protectorate. This regulation was enacted in the midst of the extermination program, and by it the bare shadow of legal form was thrown over the confiscation of property of Jews who were done to death in the East.

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The defendant asserts that his only part in the program was to take possession and keep record of the property thus acquired; that Himmler told him the process had been in existence for some months and that he, Schwerin von Krosigk, thought there was nothing he could do, and he "was convinced that the official promulgation would guarantee greater protection under the law than if the police, as heretofore, had handled it anonymously."

This is an explanation which does not explain, and a justification which does not justify. It is difficult to say what comfort it would be to a Jew who was about to be murdered, or to his heirs who were about to be disinherited, to know that he was being robbed according to a tidy governmental regulation and that the receipts of the robbery were to go to the credit of the Reich rather than into the hands and pockets of the executioners.

*Germanization program and DUT.*—The connection of the defendant Schwerin von Krosigk in this program consists almost entirely of setting aside Reich funds for the purposes mentioned, and which we have heretofore discussed with respect to the defendant Keppler. We find no instance, however, where these things were done at his instigation or other than at a direct order of Hitler. Here again he did not provide or dispose of his own funds nor was he in a position to say whether or not they should be so spent.

It is impracticable, within the compass of this opinion, to recite all of the activities in which the defendant and his department engaged within the purview of the charges alleged in count five. It is clear, however, that notwithstanding the conflicts of conscience which he suffered, and of them we have no doubt, he actively and consciously participated in the crimes charged in count five. Neither the desire to be of service nor the desire to help individuals nor the demands of patriotism constitute a justification or an excuse for that which the evidence clearly establishes he did, although they may be considered in mitigation of punishment.

We find the defendant Schwerin von Krosigk guilty under count five in the particulars set forth.

## **COUNT SIX—WAR CRIMES AND CRIMES AGAINST HUMANITY, PLUNDER AND SPOLIATION**

In this count, defendants von Weizsaecker, Steengracht von Moyland, Keppler, Woermann, Ritter, Darré, Lammers, Stuckart, Meissner, Bohle, Berger, Koerner, Pleiger, Kehrl, Rasche, and Schwerin von Krosigk were charged with having, between March 1938 and May 1945, committed war crimes and crimes against

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humanity as defined in Article II of Control Council Law No. 10, in that "they participated in the plunder of public and private property, exploitation, spoliation, and

other offenses against property and the civilian economies of countries and territories which came under the belligerent occupation of Germany in the course of its invasions and aggressive wars."

It is asserted that the defendants committed said war crimes and crimes against humanity in that they were principals in, accessories to, ordered and abetted, took a consenting part in, were connected with plans and enterprises involving, and were members of organizations or groups connected with the commission of war crimes and crimes against humanity.

The count then proceeds to allege generally that the countries and territories occupied by Germany were exploited for the German war effort, without consideration of the local economy, with a view of strengthening Germany *in* waging its aggressive war and to secure the permanent economic domination by Germany of the continent of Europe. It was asserted that the methods employed varied from country to country. In some occupied countries, exploitation was carried out within the framework of the existing economic structure, and pretenses were made to indicate that payment was being made for property thus wrongfully seized.

It is asserted that raw materials, machinery, and other goods sent to Germany from the occupied countries were paid for by the occupied countries themselves, either through the device of excessive occupation costs or by means of forced loans, in return for a credit balance in a "clearing account," which was a nominal account only. It is asserted that in other occupied countries economic exploitation had all of the aspects of deliberate plunder, and that agricultural products and raw materials, which were needed by the German factories, and machine tools, transportation equipment, and other finished products, and foreign securities and holdings of foreign exchange, were sent to Germany.

It is further asserted that in all occupied and incorporated territories, art treasures, furniture, textiles, and other articles were subjected to wholesale plunder in behalf of Germany.

In addition to the foregoing general charges which are directed against all the defendants named in this count, there are further and more specific charges therein directed against each individual defendant. Attention will be called to such specific charges as we hereinafter take up for consideration the case of each individual defendant under this count.

In the course of the trial all the charges of this count, with respect to defendants Steengracht von Moyland, Ritter, and

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Meissner, were dismissed upon motion, and the charges therein against defendants Woermann and Bohle were withdrawn by the prosecution.

Before proceeding to a discussion of the evidence, with respect to the defendants who still stand charged in said count, it is desirable to set out herein the pertinent provisions of Article II of Control Council Law No. 10 and the provisions of the Hague Convention of 1907 which place limitations on the conduct of the military occupant with respect to the economy and property in the territory occupied.

Article II [paragraph 1(b)], War Crimes, Control Council Law No. 10—

*"Atrocities or offenses against persons or property constituting violations of the laws or customs of war, including, but not limited to, murder, ill-treatment or deportation to slave 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.]*

The sections of the Hague Convention of 1907 which are here pertinent are the following:\*

*"Article 46.—Family honour and rights, the lives of persons, and private property, as well as religious conviction and practice, must be respected.*

*"Private property cannot be confiscated.*

\* \* \* \* \*

*"Article 52.—Requisitions in kind and services shall not be demanded from municipalities or inhabitants except for the needs of the army of occupation. They shall be in proportion to the resources of the country, and of such a nature as not to involve the inhabitants in the obligation of taking part in military operations against their own country.*

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

*"Contributions in kind shall as far as possible be paid for in cash; if not, a receipt shall be given and the payment of the amount due shall be made as soon as possible.*

*"Article 53.—An army of occupation can only take possession of cash, funds, and realizable securities which are strictly the*

\* Annex to Hague Convention No. IV. 18 October 1907, TM 27-251, Treaties Governing Land Warfare (U.S. Government Printing Office, Washington, 1944), pages 31-35.

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*property of the State, depots of arms, means of transport, stores and supplies, and generally, all movable property belonging to the State which may be used for military operations.*

*"All appliances, whether on land, at sea, or in the air adapted for the transmission of news, or for the transport of persons or things, exclusive of cases governed by naval law, depots of arms, and, generally, all kinds of ammunition of war, may be seized, even if they belong to private individuals, but must be restored and compensation fixed when peace is made.*

\*\*\*\*\*

*"Article 55.—The occupying State shall be regarded only as administrator and usufructuary of public buildings, real estate, forests, and agricultural estates belonging to the hostile State, and situated in the occupied country. It must safeguard the capital of these properties, and administer them in accordance with the rules of usufruct.*

*"Article 56.—The property of municipalities, that of institutions dedicated to religion, charity, and education, the arts and sciences, even when State property, shall be treated as private property.*

*"All seizure of, destruction or wilful damage done to institutions of this character, historic monuments, works of art and science, is forbidden, and should be made the subject of legal proceedings."*

That a program of spoliation, contrary to the laws and customs of war, was carried out by the Reich government in various of the territories occupied by it, there can be no real doubt. In this connection, attention is also called to the findings of the International Military Tribunal, where it was found that territories occupied by Germany<sup>1</sup> " \* \* \* 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." In the IMT judgment, it was further found that—<sup>2</sup>

*"The methods employed to exploit the resources of the occupied territories to the full varied from country to country. In some of the occupied countries in the East and West, this exploitation was carried out within the framework of the existing economic structure. The local industries were put under German supervision, and the distribution of war materials was rigidly controlled. The industries thought to be of value to the German war effort were compelled to continue, and most of the rest were closed down altogether. Raw materials and the fin-*

<sup>1</sup> Trial of the Major War Criminals, op. cit. supra, volume I, page 289.

<sup>2</sup> Ibid.

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*ished 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 \* \* \*."*

We must analyze the charges and the evidence as they relate to each individual defendant, in order to determine whether such defendants here charged participated in such programs of spoliation so as to be guilty of violating the provisions of the Hague Convention, as hereinbefore set forth. More specifically, we must determine whether they or any of them, participated in the initiation or formulation of such spoliation program, or whether they, or any of them, were vested with responsibility for execution thereof, and in such positions of responsibility, influenced or played a directing role in the carrying out of such criminal program. Before proceeding with such examination and analysis of the charges and evidence, it seems necessary that the Tribunal make some observation, with respect to the application of the provisions of the Hague Convention, and with respect to some of the general defenses interposed by the defendants to the charges in this count.

The evidence adduced with respect to the charges of spoliation as made in this count refers to the occupied territories of Poland, Austria, Russia, Bohemia, Moravia, Sudetenland, Belgium, Holland, Denmark, Norway, and France.

We hold that the charges of spoliation with respect to the Sudetenland are not cognizable by this Tribunal, in that the occupation of the territory by the Reich came as a result of the Munich Pact which did not create a situation of belligerent occupancy subject to the restrictions of the Hague Convention.

We need but briefly discuss the contention that the charges of spoliation with respect to Austria are not cognizable by this Tribunal. The IMT judgment stated:<sup>1</sup>

*"The invasion of Austria was a premeditated aggressive step in furthering the plan to wage aggressive wars against other countries."*

It appears, however, that the defense insists that the alleged acts of spoliation in Austria could not have been committed in violation of the Hague Convention, inasmuch as Austria was not at the time of the alleged acts under belligerent occupation by Germany. In this connection it should be noted that, in the Farben Case (Case 6)<sup>2</sup> and in the Krupp Case (Case 10),<sup>3</sup> the Tribunals hearing such cases refused to take cognizance of alleged

<sup>1</sup> Ibid., p. 192.

<sup>2</sup> United States vs. Carl Krauch, et al., I. G. Farben Case, Volumes VII and VIII, this series.

<sup>3</sup> United States vs. Alfried Krupp, et al., Krupp Case, Volume IX, this series.

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acts of spoliation charged to have been committed in Austria. In the first-mentioned of such cases, the Tribunal, in an order made by it, expressed a view in harmony with the contentions now advanced by the defense in this case. In the instant case, it is not, however, necessary to decision that this Tribunal express itself either in accord with or in opposition to the position taken in this matter by the Farben or the Krupp Tribunals, inasmuch as the evidence introduced in this case, with respect to the charges of spoliation in Austria, would completely fail to establish such charges, even though we were to find that, contrary to the contention of defendants, Austria, during the time in question, was under military occupation by Germany.

The evidence with respect to spoliation in Austria, therefore, in no way has herein contributed to any findings of guilt hereinafter made against any defendant in this count.

The further contention that certain occupied territories were "incorporated" by Germany, following its occupation of such territories, making inapplicable the rules of

warfare to such occupied and subsequently incorporated territories is, in our view, untenable. Similar contentions have been submitted in the trials before other Nuernberg Tribunals, with respect to some of the same territories involved in this case. In this connection, we wish to make reference to the statement of the IMT when such defense was interposed before that Tribunal with respect to Bohemia and Moravia. It stated: <sup>1</sup>

*"The doctrine was never considered to be applicable so long as there was an army in the field attempting to restore the occupied countries to their true owners, and in this case, therefore, the doctrine would not apply to any territories occupied after 1 September 1939. As to war crimes committed in Bohemia and Moravia, it is sufficient answer that these territories were never added to the Reich, but a mere Protectorate was established over them."*

It should be noted that, notwithstanding such contention by the defendants in the IMT case, the Tribunal there found that war crimes had been committed in Alsace-Lorraine, France, in Yugoslavia, in a portion of Poland allegedly incorporated, and in the Protectorate of Bohemia and Moravia. Moreover, other military tribunals have subsequently refused to accept the defense of "incorporation" as justification for acts of spoliation. In the Flick Case (Case 5)<sup>2</sup>, charges of spoliation were found to have been committed in Lorraine. In the Farben Case (Case 6), the

<sup>1</sup> Trial of Major War Criminals, op. cit., volume I, page 254.

<sup>2</sup> United States vs. Friedrich Flick, et al., Volume VI, this series.

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Tribunal there stated, with respect to this defense, as follows (Farben tr. p. 15723)<sup>1</sup>:

*"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 their 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 \* \* \*."*

Within the holding of the IMT, which we follow, there were 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 alleged acts in Poland and Alsace-Lorraine, to consider this distinction which has been urged by the defense."*

And in the Krupp Case (Case 10)<sup>2</sup>, Tribunal III disposed of this defense with respect to French territory allegedly incorporated into the Reich as follows (Krupp tr. p. 13273):

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

This Tribunal, as was done in the IMT Case, the Farben, Krupp, and Flick Cases, rejects the defense of incorporation as advanced in justification of spoliation.

The claim made in the course of argument that the Justice Case (Case 3) made a ruling to the effect that Bohemia and Moravia were legally incorporated into Germany is not a justified claim in the light of a full and careful analysis of the entire context of the judgment in said case.

The efforts here made to justify certain acts of spoliation, on the ground that they were made pursuant to agreement with or following the consent of governments established in the terri-

<sup>1</sup> United States vs. Carl Krauch, et al., Volume VIII, this series.

<sup>2</sup> United States vs. Alfried Krupp, et al., Volume IX, this series.

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tories occupied by Germany are, in our opinion, untenable. We make particular reference to the Vichy government in France. In the Farben Case (Case 6) the Tribunal there refused to accept as a defense the fact that a certain agreement, apparently legal in form, had been entered into between the Vichy government and a representative of the Farben interests, and under which certain charges, acts of spoliation, allegedly had been committed. The Court stated (*Tr. p. 15744*):

*"The essence of the offense is the use of power resulting from the military occupation of France as a 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 a violation of the Hague Regulations is clearly established."*

In the Krupp Case (Case 10) (*Krupp Tr. p. 13325*), Tribunal III stated in disposing of a similar contention in connection with an alleged agreement between the Vichy government and the Reich for the use of French prisoners of war in the armament industry:

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

It is significant that in this case credible testimony (witness Hemmen) was introduced to the effect that in connection with promulgation of French regulations and laws for unoccupied France, which ostensibly was under the Vichy government, consent was necessary from the Reich authorities as a prerequisite to the establishment of such decrees and regulations in unoccupied

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France. This might well justify a holding like that in Case 2 (Milch Case), which stated:<sup>1</sup>

*"This contention entirely overlooks the fact that the Vichy government was a mere puppet set-up under German domination which, in full collaboration with Germany, took its orders from Berlin."*

And finally in this connection, we call attention to the judgment rendered 30 June 1948 in the case of Hermann Roechling and others, tried in Rastatt in the French Zone of Occupation, by an international court under Control Council Law No. 10<sup>2</sup>:

*"\* \* \* the defendant asserts that he had thus secured the agreement of a government which he considered as the legal government of France; that he, however, could not fail to know that this government, whether legal or not, applied the German policy in France in a servile manner and committed treason against its country in dancing to the tune of the enemy."*

It is, of course, a matter of common knowledge that the leading representatives of said Vichy government were, subsequent to the cessation of hostilities, hanged or imprisoned by the French people as traitors.

It has been earnestly contended by the defense that the rules of belligerent occupation in fact have been greatly relaxed and that the defendants could not

properly be convicted on the basis of the law in force at the time of the alleged misdeeds. We have considered this defense and the arguments urged in support thereof. We find no adequate justification for the position thus taken. We are in complete agreement with the statement of Tribunal VI in the Farben Case (Case 6), relative to this defense, and wherein they cite an eminent authority in international law, Lauterpacht. The statement follows (*Farben tr. pp. 15724-15725*):

*"It is further said that the Hague Regulations are outmoded by the concept of total warfare; that liberal 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*

<sup>1</sup> United States vs. Erhard Milch, Volume II, this series, page 788.

<sup>2</sup> The indictment, judgment, and judgment on appeal in the Roechling Case are reproduced as appendix B in this volume.

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*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 hein-*

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*ousness of which is not attenuated by any possible appeal to military necessity, to the uncertainty of the law, or to the operation of reprisals."*

We have also given attention to the defense of *tu quoque*, here presented, the gist of which is that the postwar occupation of Germany by the Allies has resulted in actions which violate the Hague Convention with respect to military occupation. This contention requires very little discussion. The contention that the traditional American view of the law of belligerent occupation permits any kind of conduct in the occupied



territories is not in fact true. One basic error of the position taken in this respect lies in the failure to recognize that there is a great difference between the rights and powers of the Allied governments in the Reich today, and the rights and powers of the Reich in the territories that it belligerently occupied, following its invasions and through the war years. The Allied occupation of Germany following her unconditional surrender and the disbanding of her armies, and the subsequent Allied exaction of reparations to restore and rehabilitate in a measure the territories devastated and despoiled by Germany do not make a situation falling within the contemplation of the provisions of the Hague Convention applicable to belligerent occupancy. The judgment in the Justice Case, Case 3,\* in the course of discussing this matter, points out—

*"\* \* \* that the four powers are not now in belligerent occupation or subject to the limitations set forth in the rules of warfare. Rather, they have justly and legally assumed the broader task in Germany which they have solemnly defined and declared \* \* \*."*

We find, therefore, no justification for the contention that the law of belligerent occupation has changed since 1945, or that the policy of the Allied governments during the postwar occupation of Germany contravenes the Hague Convention so as to make applicable the defense of *tu quoque*, here sought to be interposed.

We do not deem that the other general defenses interposed require or justify a discussion by the Tribunal.

We will not proceed to a consideration of the charges and the evidence relating to each individual defendant charged under this count.

#### VON WEIZSAECKER

In addition to the general charges hereinbefore set forth, and which apply to all the defendants, it was further specifically

\* United States vs. Josef Altstoetter, et al., Volume III, this series.

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charged that defendant von Weizsaecker, as State Secretary of the German Foreign Office, received reports from the representatives of the German Foreign Office concerning the planning and execution of the plans and policies for the economic exploitation of various occupied countries, particularly in occupied territories in the West, which programs it is alleged included exactions of excessive occupation indemnities, establishment of the so-called "clearing accounts," and the transfer to German ownership of industrial participations and foreign investments, by means of compulsory sales. It is further specifically charged that defendant von Weizsaecker, in his position in the German Foreign Office, received and acted upon reports relative to seizures and looting of cultural and art treasures, and that spoliation activities in the Soviet Union were carried out in part by a special battalion, which had been sent to the East by the German Foreign Office to seize and send to Germany objects of cultural and historical value. In support of the charges of this count, the prosecution called as a witness one Hans Richard Hemmen, who had been a member of the Foreign Office from 1938 to 1944. It appears that in July 1940 while he was Chief of the Economic Department of the German Legation at Berne, he was appointed Chief of the Foreign Armistice Delegation for Economy. In that capacity, it appears that he played a leading role with respect to Germany's exploitation of the economy of the occupied territories, particularly in the West.

The testimony of such prosecution witness, as it relates to the spoliation program of the Reich in the western territories and the administration of such program, must be

accorded serious consideration. Among other things, Hemmen testified that, when appointed as Chief of the Foreign Armistice Delegation for Economy, he was informed by Foreign Minister von Ribbentrop to go to Wiesbaden and take charge of negotiations there with the French delegation, which had asked for a reopening of economic relations between Germany and France. It is significant that at this time Hemmen was instructed to report to the Foreign Office and, more specifically, he was told to report to the Foreign Minister von Ribbentrop. Hemmen's testimony with respect thereto is as follows (Tr. p. 3944):

*"The Minister emphasized that it was my duty to take orders and to report exclusively to the Foreign Office, that is, to the Minister himself or his representative, and to take orders from nobody else. In addition he made me personally responsible that none of the members of my delegation, who belonged to the various economic and financial ministries, should report to their own ministry or accept orders from their ministry."*

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The foregoing would indicate a determination on the part of von Ribbentrop that, in matters of policy or administration relative to the spoliation program, authority and power of decision should be held within a very small circle, very near the official top level. It is significant that Hemmen also testified as follows, in connection with the handling of the economic and financial questions in the occupied territories (Tr. p. 4160):

*"Goering was decisive in all economic and financial questions in the occupied zone; and Ribbentrop's influence, as against Goering and the OKW, was, I am afraid, not very great."*

It appears that another Reich agency that played an important role in Germany's exploitation of occupied territories was the Handelspolitischer Ausschuss, frequently referred to as the HPA, in which the Reich Ministers of the Economic and Financial Ministries were represented. This organization actually dates from a period prior to the beginning of the Nazi regime, but it continued as an organization to function through the Nazi period. Represented in the HPA were: OKW, Four Year Plan, Reich Finance Ministry, Minister of Economics, Minister of Agriculture, and the Reich Bank and, when occasion required it, other Ministers, like the Minister of Transport or the Minister of Munitions, were called in. The HPA handled all economic and financial questions between Germany and foreign countries; also the economic and financial questions between the German Government and the Vichy government after the German-French armistice agreement. The director of the economic department of the Foreign Office, a Mr. Wiehl, was chairman of the HPA during the times here under consideration.

It appears from the testimony of Hemmen, which is borne out by recitals in the documentary exhibits introduced in connection with this count by the prosecution, that whenever there were matters requiring a report to superiors, Hemmen transmitted such matters to the Reich Minister for Foreign Affairs, von Ribbentrop, such documents sometimes containing a recital to the effect that they were for the Minister of Foreign Affairs and were routed via the State Secretary. This apparently was fixed routine, according to this prosecution witness.

Practically all the documentary evidence introduced by the prosecution in support of the allegations against von Weizsaecker under this count originated either with the Foreign Armistice Delegation for Economy, headed by Hemmen, or in the HPA, which was headed by Wiehl. A considerable number of such documentary exhibits were introduced by the prosecution to substantiate the charges of this count. Over thirty such exhibits

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were introduced and referred to by the prosecution as applicable to the case of defendant von Weizsaecker under this count. Such documents, for the most part, consist of reports and memorandums by either Hemmen, as head of the Foreign Armistice Delegation for Economy, or from Wiehl, as head of the HPA. They were transmitted usually to von Ribbentrop, such transmission, as hereinbefore indicated, sometimes being via the State Secretary's office. The prosecution has called attention to the fact that, although von Weizsaecker is not the person to whom any of these documents were in fact directed, his name appears on the distribution list on some of such documents. This fact alone, however is not of decisive significance in determining the responsibility of the defendant with respect to the formulation or the carrying out or furtherance of said spoliation program. It was established by competent evidence during the course of this trial, that the mere appearance of an official's name on a distribution list attached to an official document might mean only that it was intended that such official should be advised of the matter involved. It cannot of itself be taken to mean that those whose names appear on such distribution lists have responsibility for, or power and right of decision with respect to the subject matter of such document.

The documents in question, for the most part, dealt with the occupation costs in France, the seizure of art treasures, and the acquisition of securities and gold from western occupied territories. In not a single one of such documents, however, does it appear that defendant von Weizsaecker bore responsibility for the spoliation program in the West, or took such part in the administration thereof as to make him criminally liable. Only two affirmative acts of von Weizsaecker revealed by any of the documents thus introduced, and which in any way touch the spoliation program, are found, the first being in the form of a memorandum dated 21 July 1940 sent to von Weizsaecker by German Legation Secretary, Major von Kuensberg, which memorandum is entitled, "Safeguarding Art Treasures in France." Such memorandum called von Weizsaecker's attention to the fact that Foreign Minister von Ribbentrop had ordered the Reich Plenipotentiary Abetz "to have all art treasures in the occupied French territory, belonging to the State and to Jews, safeguarded." The memorandum indicated that, inasmuch as this was a large assignment, it was highly desirable to have military cooperation, but that it was difficult to secure cooperation from the military, as the military apparently desired to carry out the safeguarding program themselves. The memorandum then states that the Reich Foreign Minister requests that the State Secretary see to it that any mis-

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understanding which might exist on the part of the military commander, be removed. It appears that in response to such request, von Weizsaecker under date of 22 July 1940 prepared a memorandum stating that he had talked to Field Marshal Keitel about the Fuehrer order, transmitted to Ambassador Abetz by the Reich Foreign Minister, concerning the making secure of the entire public and Jewish art treasures in the occupied territories of France, and that Keitel had indicated that he had, at an earlier date, instructed the Military Governor of Paris "to safeguard these art treasures from being carried off illegally." Von Weizsaecker's memorandum concludes by saying that Keitel had given assurance that he would instruct the Military Governor of Paris to give the necessary assistance to Abetz to carry out the

assignment given him, with respect to such art treasure.

The second instance of affirmative action by von Weizsaecker is found in his preparation of a document relating to the matter of a report received from Abetz' deputy in France for the Foreign Office, and of which von Weizsaecker apparently received a copy. Such report reveals seizure of Jewish art treasures in France, and their storage in a building near the Embassy there. Such report was dated 31 July 1942. It appears that on 10 August 1942 von Weizsaecker directed a letter to the Personnel Division and the Division Germany making inquiry as to whether they had examined the legal aspects of the seizure of such art treasures. He made reference to the report of 31 July 1942 received from the deputy of Abetz. Von Weizsaecker asked that the matter be resubmitted to him in a month. No evidence was introduced to indicate the results of such inquiry.

Neither of the above two instances indicate such participation by von Weizsaecker in the spoliation program of the German Reich in the occupied territories in the West as to render him guilty under this count.

A few documents were introduced, dealing with seizure of art treasures in Russia. That need not be discussed here, insofar as the charges against von Weizsaecker are concerned, as they do not involve him in the events alluded to in such documents.

On the evidence presented, in connection with the charges in this count against defendant von Weizsaecker, we must and do find the defendant not guilty.

#### KEPPLER

In addition to the general charges made against all the defendants in this count, defendant Keppler is also specifically charged with having been a leading figure in the Continental Oil Com-

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pany, A.G., which was designated to exploit the oil resources of the Soviet Union and other territory which fell into German hands, and it is asserted that he also participated in the exploitation of Poland through his position and activity in the various spoliation agencies, including Deutsche Umsiedlungs-Treuhandgesellschaft, known as the DUT.

The evidence with respect to this count, and the findings of the IMT, amply establish that two organizations or agencies were active in exploitation and spoliation of the occupied territories, and especially the occupied eastern territories. One such organization was the Continental Oil Company, which had been assigned the particular task to exploit oil resources, and the Deutsche Umsiedlungs-Treuhandgesellschaft, known as the DUT, an organization actively connected with the resettlement program, part of which involved a ruthless spoliation of the economy of some of the occupied territories.

The prosecution places particular stress upon the fact that defendant Keppler was made a deputy chairman of the Aufsichtsrat of the Continental Oil Company. This appears to have been in January 1942. It further appears, however, that in March 1943, Keppler ceased to hold this position with the Continental Oil Company. It appears that the meetings of the Aufsichtsrat were not held more than twice a year. It further appears that it was the duty of the deputy chairman to act in the absence of the chairman. There is evidence to the effect that such organization met only twice each year.

There is considerable testimony in the record indicating that Keppler was active in research and development of oil resources and supplies for the Reich at an early date, going as far back as 1933 and during succeeding years. Much of such evidence, however, relates to a period long before the time covered by the charges in this count. From the evidence, we cannot draw the conclusion that he participated or directed the Continental Oil Company in its spoliation activities or programs. The Tribunal is of the opinion that no showing has been made of such activity or participation on the part of Keppler in the Continental Oil Company as to justify a finding that he is guilty of spoliation, by reason of his affiliation and work in said company.

The prosecution quite correctly insists that Keppler's activities and participation in the operations and programs of the DUT were such as to render him criminally liable therefor. The evidence amply shows the ruthless policy and practices of the DUT, with respect to spoliation incident to resettlement.

The scope and activities of the DUT have been treated at some length in the discussion of count five and will be but briefly

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treated here. The defendant Keppler, in the course of his examination before the Tribunal, admitted that it was on his suggestion that the DUT was organized, that he first suggested it to Himmler, who requested that Keppler take the matter up with the Finance Minister, who approved of the proposition. This was then reported to Himmler, with the result that the organization was created and that Keppler became chairman of the Aufsichtsrat of the organization. It further appears that the defendant Keppler, under date of 3 November 1939, directed a letter to Himmler, (NO-2407, Pros. Ex. 1369), with a list of prospective members for the Aufsichtsrat of the DUT. Under date of 7 November 1939 it appears that Himmler sent a letter to Keppler, advising that he was "fully in agreement" with Keppler's proposed list of members for the Aufsichtsrat of the DUT. It may be noted in passing that defendant Hans Kehrl was one of the names proposed by Keppler for the said board and approved by Himmler.

It appears from the evidence also that, in the summer of 1940, a working committee was appointed by the Aufsichtsrat. Its members were defendant Keppler and three others, among them the defendant Kehrl. Defendant Keppler, on the stand, insisted that the DUT was only concerned with the "matter of property compensation, because the DUT itself was never concerned with evacuation."

One Metzger who had been the head of the legal division of the branch office of the DUT in Luxembourg in 1943 and 1944, and who had an office in Alsace in 1944, described to the Tribunal how the DUT actually handled the property of Alsatian deportees. He stated that the DUT "had to administer the property of the deportees." He indicated that the deportees before departure were obliged to list their property with the DUT, and to appoint "authorized agents who had the authority to receive the movable property, especially the furniture." He stated that, in most cases, the furniture was stored in Luxembourg, either by authorized agents or by acquaintances. He then stated (Tr. p. 2996):

*"For the rest, the property was administered by DUT in such a way that wherever possible resettlers, that is, people who came from the South Tyrol or Rumania, but especially the South Tyrol, to work, were put in industry or agriculture. Their assignment to industry was carried out by the industrial department of the DUT.*

*"For the rest, the property was controlled by the DUT." \* \* \**

In response to a question as to whether the evacuees, that is,

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the deportees, ever received their business properties or real estate, the defendant answered that furniture was handed over to authorized agents who would dispose of it in accordance with the authority given them by the evacuees. He stated also that small sums of money, perhaps "between 2 or 3 hundred marks" were sent to the evacuees monthly, pursuant to their application, if they desired, "but the remainder of the property remained blocked." This witness also testified that he had actually seen deportations, and the evacuees being questioned by DUT employees. He also testified with respect to the so-called evacuees that "there is no doubt that they did not go voluntarily."

The defendant Keppler indicated on the stand that he could not remember whether he was concerned with the matters referred to by Metzger, stating, "I cannot remember for certain, but I imagine not, in view of the unimportance of the subject."

In view of the evidence which indicates the great scope of the resettlement program, with the resulting innumerable confiscations of the type referred to, in Poland, in eastern as well as western occupied territories, it is inconceivable that a man in Keppler's position, as head of the Aufsichtsrat, to which office he admitted he gave considerable attention, would not have found this part of the activities of the DUT a considerable part of their business, so as to make one in Keppler's position thoroughly conversant with its true nature and ramifications. There is other evidence in the record corroborative of that, hereinbefore referred to.

The seizures and the subsequent administration by the DUT of the evacuees' property, in the manner described by the former DUT official, Metzger, was clearly such an activity in implementation of the confiscatory and otherwise illegal program of such resettlement project as to fall within the prohibitions of Article 46 of the Hague Convention with respect to belligerently occupied territories. Keppler's participation therein and responsibility therefor render him guilty under count six.

#### DARRÉ

In addition to the general charges made against defendant Darré in the indictment hereinbefore set forth, it is specifically alleged against him that as the Reich Minister of Food and Agriculture he had an active representative from such Ministry in the office of the Four Year Plan in connection with the setting up of foodstuff quotas for occupied areas. It is alleged that orders for fulfillment of these quotas were transmitted by the Ministry of Food and Agriculture to competent officials in the occupied areas

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with the various agencies directed by the defendant Darré participating in the acquisition of such agricultural products and in their storage and distribution within Germany.

The prosecution has called attention to, and the Tribunal has taken judicial notice of various excerpts from the findings in the judgment of the International Military Tribunal. Among such excerpts the following are particularly pertinent\*:

*"In many of the occupied countries of the East and 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 themselves, 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.*

*"In most of the occupied countries of the East, even this pretense of legality was not maintained; economic exploitation became deliberate plunder. This policy was first put into effect in the administration of the Government General in Poland. The main exploitation of the raw materials in the East was centered on agricultural products, and very large amounts of food were shipped from the Government General to Germany.*

*"The evidence of the widespread starvation among the Polish people in the Government General indicates the ruthlessness and severity with which the policy of exploitation was carried out.*

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*"The economic demands made on the General Government were far in excess of the needs of the army of occupation and were out of all proportion to the resources of the country. The food raised in Poland was shipped to Germany on such a wide scale that the rations of the population of the occupied territories were reduced to the starvation level, and epidemics were widespread. Some steps were taken to provide for the feeding of the agricultural workers who were used to raise the crops, but the requirements of the rest of the population were disregarded."*

The prosecution, in connection with the charges against defendant Darré under this count, in their case in chief relied largely upon two documentary exhibits and two witnesses. Such testimony was directed toward proving that defendant Darré in his capacity as Reich Minister of Food and Agriculture actively par-

\* Trial of the Major War Criminals, op. cit., volume I, pages 240-241, 297.

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icipated in the formulation and carrying out of the Reich program of spoliation and plunder with respect to food and agricultural products in the occupied territories. The findings of the IMT seem to establish conclusively the fact that there was being carried out from the time of their occupation until the end of the war, a program of ruthless spoliation and plunder of food and agricultural products in the occupied territories, particularly in the occupied eastern territories. From the direct evidence presented it appears that from 1939 to 1942, inclusive, which was during Darré's term of office as Reich Minister of Food and Agriculture, a considerable amount of food and agricultural products was brought from occupied territories to the Reich, despite the fact that the inhabitants of those occupied territories were starving. The effort of the defense to minimize the extent of this exploitation by indicating that the program inaugurated by the German Reich in the occupied territories was in fact beneficial to the inhabitants thereof, we regard as entirely untenable. With respect to the authority and responsibility of the defendant Darré in these transactions we find adequate and convincing proof in the testimony of the witnesses called by the prosecution in connection with this matter.

Kurt Dietrich, former Ministerialrat in the Reich Ministry of Food and Agriculture, Division II, which department bore considerable responsibility for the procurement of foodstuffs for the people, testified before the Tribunal on 25 March 1948, and his testimony in the opinion of the Tribunal is entitled to considerable weight. Upon being asked as to the role played by such Division II in the establishment of foodstuff quotas to be imported from the occupied countries of France, Holland, Belgium, Poland, and Russia during the years 1939 to 1942, the period which is covered by Darré's term in office as Reich Minister of Food and Agriculture, the witness stated that the Ministry of Food and Agriculture in general did not participate in the administration of the occupied territories. He stated, however, that the food division in the Four Year Plan, which division was also under State Secretary Backe of the Ministry of Food and Agriculture, submitted to the Ministry of Food and Agriculture

"various reports about the situation in nourishment in the occupied territories," and that the Ministry of Food and Agriculture was then ordered to prepare a plan for the feeding of Germany and the occupied territories. The witness stated (Tr. p. 4622):

*"In this connection so-called food surveys were planned, and these graphs would show the additional quantities which were needed to fill the lacks in the home territory and in the occupied countries."*

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He stated that the final decision as to what "surpluses" from the occupied territories would be sent to the Reich proper was made by the Four Year Plan. In the course of his examination the witness was asked the question (Tr. p. 4268):

*"Did the Division II, after a study of the food available in the occupied countries and after consideration of the need for foodstuffs within the Reich, determine upon the amount of foodstuffs that they would import or that they recommended to be imported to the Reich?"*

To this the witness answered:

*"Division II only made the corresponding recommendations as to which foodstuffs were to be imported so that the German people could be fed."*

Upon being asked whether these imported foods, upon reaching the Reich, would go to the Reich Ministry (Food and Agriculture) the witness stated:

*"The Ministry disposed of these foodstuffs with the help of the various Reich agency offices."*

It may be of some significance that while the persons who were in charge of the agricultural departments in the occupied areas were, as such, subordinate to the military commander or commissioner therein, they had generally been recruited from the Reich Food Estate and were former members thereof. It is to be observed that the Reich Food Estate was under the control and domination of the Reich Ministry of Food and Agriculture.

The witness Dietrich further testified that in all matters pertaining to the Reich Ministry of Food and Agriculture and the Reich Food Estate "it was the Minister who was the responsible man."

Another prosecution witness in this connection was one Walter Pflaumbaum, who formerly held a position within the Reich Ministry of Food and Agriculture as head of the division for livestock raising and animal products. He stated that it was the duty of such department "to take over surplus animal products in the Reich, to stock them up, and to distribute in case of want and also to see to it that the imports of meat and animal products from abroad to the Reich were carried out." He further stated (Tr. p. 4273):

*"The amounts of livestock and meat that were to be imported were told us by the Reich Ministry for Food and Agriculture. The technical carrying out of the taking over of these products formed the competency of the Reich offices."*

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We further quote the following from his examination before the Tribunal (Tr. p. 4274):

*"Q. Now, in the Reich office, you were directly subordinate to the Reich Minister?"*

*"A. The Reichstelle was subordinate to the Ministry for Food and Agriculture and received its directives from there."*

*"Q. You had direct contact with Division II of the Reich Ministry of Food and Agriculture?"*

*"A. Yes, the directives in general came from the Referente who were competent for livestock and meat economy in the Ministry."*

*"Q. As to the distribution of the foodstuffs within the Reich, you followed the orders of the Reich Ministry?"*

*"A. The directives came from the Reich Food Estate which since the beginning of the war was subordinate to the Reich Ministry."*



Further evidence of the fact that Darré substantially contributed to the formulation and implementation of the Reich's program of spoliation in the occupied territories appears from the fact that on 10 January 1940 he, as the Reich Minister of Food and Agriculture, signed and issued a decree effective as of 1 January 1940, making applicable in the so-called "Incorporated" Eastern Territories the Reich Food Estate Law, which law dated from September 1933 and gave to the Reich Minister of Food and Agriculture extensive powers to settle a wide range of agricultural questions, including matters relating to production, sale and prices of agricultural products, and power to issue implementing decrees. It is obvious that such a measure was made applicable to further subject the designated occupied territories to the requirements and demands of the German economy in utter disregard of the provisions of Article 52 of the Hague Convention as hereinbefore set forth. Also violative of the provisions of said Article 52 would be the importations of foodstuffs from the occupied territories as hereinbefore alluded to, irrespective of whether or not they had been subjected to the so-called Reich Food Estate Law.

From the testimony adduced with respect to the charges against defendant Darré in count six, we must and do find defendant Darré guilty thereunder.

#### LAMMERS

We come now to a consideration of the part that defendant Lammers as Reich Minister and Chief of the Reich Chancellery is alleged to have taken in said program of plunder and spoliation.

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In addition to the general charges made against him and other defendants, it is specifically asserted in this count that he participated in, and formulated and signed various decrees authorizing confiscations of property in the occupied countries, and that he attended meetings at which occupational policies were discussed and formulated and received reports relating to the execution of such policies and participated in a wide variety of ways in the furtherance of such policies.

The prosecution introduced considerable evidence to show the defendant held high and strategic positions in the Third Reich during the times covered by the charges in this count, and that in such positions he exercised his powers in the formulation, implementation, and furtherance of the spoliation program in the occupied territories.

The defendant, a man of capacity, learned in the law and possessed of wide experience in governmental and legal spheres, testified at great length, and sweepingly denied that the positions held by him in the Third Reich actually vested him with any real power and authority with respect to the matters concerning which he is charged in this count. He denied any guilty knowledge or intent in the numerous activities attributed to him in the charges and evidence. Before proceeding to a general consideration of the evidence introduced with respect to the charges made against the defendant in this and the succeeding count it seems desirable to first briefly examine the position of importance held by him in the Third Reich as involved in many of the incidents which are the basis of the charges against defendant in this count. It may be noted that in the treatment of preceding counts reference has been made to the defendant's position of responsibility and authority in the Reich government during the times covered by the charges, and to the scope of his activities in such position during such period. While we do not wish to unnecessarily

repeat what heretofore may have been touched upon, we deem it essential to a proper appraisal of much of the evidence in this and the next succeeding count that defendant's qualification, and his position and activities in the government of the Third Reich during the period in question should be further elaborated upon and emphasized.

The most prominent position held by the defendant was that of Chief of the Reich Chancellery. It convincingly appears that the authority and functions of the Reich Chancellery reached into practically all fields of governmental business or activity and that it maintained contacts with the principal departments of the civil government. Evidence introduced with respect to the authority

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and functions of the Reich Chancellery was contained in an official publication of the Reich of 1935 which states:

*"The Reich Chancellery established the contact between the Fuehrer, the Reich ministries, and various other agencies. The State Secretary and Chief of the Reich Chancellery keeps the Fuehrer and Reich Chancellor informed about the current questions of general policy and prepares the decisions to be taken."*

And further:

*"The Reich Chancellery also conducts the current business of the Reich government and attends to the preparation of questions of protocol of the ministers' conferences and cabinet meetings."*

Further evidence introduced on this question also indicates that the office of the Reich Chancellery was in fact a "key" position in the Reich government. In the course of the trial Otto Meissner, one of the defendants in the case, in the course of an examination by the counsel of defendant Lammers, in discussing the office of the Reich Chancellery, stated in part:

*"The center of gravity, the main part of political influence and work, lay with the Reich Chancellery."*

In the course of the same examination the witness Meissner stated further:

*"The actual sphere of activity of the Reich Chancellery was the preparation of decisions of the Reich government—legislation, etc."*

Dr. Meissner also indicated that Dr. Lammers, in his position as Chief of the Reich Chancellery, sometimes acted under special assignments from Hitler.

Despite the general tenor of the defendant's own testimony, which was to the effect that in his position he did little more than act as a conduit, with no authority to initiate or to formulate policy or make decisions, he did make some rather significant admissions with respect to his duties and activities. He was asked the following question by his own counsel (Tr. p. 20224):

*"Q. To make it quite clear, what responsibility did you have in the case of Fuehrer decrees, first, before you cosigned them, and second, after you had been authorized to cosign them?"*

The pertinent part of the defendant's answer to such question was as follows:

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*"A. \* \* \* / was responsible for seeing to it that the Fuehrer's wishes were properly and suitably formulated, and secondly, I had to see to it that as far as the contents of the law went, the ministers concerned had been heard." [Emphasis supplied.]*

Defense counsel asked him the following question (Tr. p. 20227):

*"Q. But surely you had a certain influence on factual contents of the Fuehrer decrees and Fuehrer ordinances, or was that not the case?"*

To this question the defendant made the following answer:

*"A. \* \* \* As far as the legal formulation of the Fuehrer's desire went and the number of the formal regulations, there, of course, I had a certain influence." [Emphasis supplied.]*

Again defendant's counsel asked defendant the following question (Tr. p. 20241):

*"Q. Mr. Witness, the prosecution in the indictment charged that you had exercised a coordinating function at the top authority and embracing nearly all spheres. Now, how about it?"*

The pertinent part of the defendant's answer to such question was as follows:

*"A. In the majority of the cases enumerated by the prosecution I either did not exercise any coordinating function at all, at any rate not to the extent asserted, and partly I had not been concerned at all with the laws or ordinances concerned, nor did I cosign them. I did not participate at all in a large part of the measures adduced by the prosecution. I didn't know the programs that have been mentioned and did not take part in their formulation. I did not receive the reports submitted. All this will only be clarified by the evidence. As far as I did exercise a coordinating function it was confined in the case of laws and ordinances to matters of form." [Emphasis supplied.]*

Then apparently for the purposes of illustrating such "matters of form" the defense counsel propounded the following question to the defendant (Tr. p. 20242):

*"Q. Mr. Witness, I will single out a few instances from the wealth of charges made against you in the indictment. We will get into the details later in discussing the documents. For instance, you are made responsible for the appointment of Gauleiter Sauckel as Plenipotentiary General for the direction of labor. Now, what can you tell us about it in a few brief sentences?"*

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The defendant's answer is so revealing that although rather lengthy it is quoted here in full as follows:

*"A. In fact, this is a typical case, to wit, that of the Fuehrer decree dated 21 March 1942 on the Plenipotentiary General for the direction of labor. When the Fuehrer decided to appoint such a Plenipotentiary General for the direction of labor in the person of Gauleiter Sauckel, then it was the Fuehrer who alone, by virtue of his prerogatives as head of the State, could settle the organizational rights. He alone could lay down, could order that such a Plenipotentiary General was instituted at all and it was only he who could order as to who should be this Plenipotentiary General and to whom he was to be subordinate and what authorities were to be delegated to the Plenipotentiary General in his relation with the Reich Ministers and how in particular his relations should be to the Minister of Labor who had so far settled labor allocation. This was departmental coordination which was necessitated by the case in which I, however, was merely charged with formulating, that is, the task which the Fuehrer wanted to assign to the Plenipotentiary General for the direction of labor had to be phrased properly in the constitutional sense. In addition, and this is typical again, I insured that the decree, because it also dealt with prisoners of war, received the concept or participation of the OKW. In addition I saw to it, because it was a problem touching upon international law, that the Foreign Minister be consulted, and then Hitler's will was formulated and cosigned by me. Thereupon I had to promulgate the decree to the agencies concerned and its publication in the Reich Law Gazette. My instrumentality thus consisted in my coordination in substance merely a matter of form. However, it continued as an independent activity with its own responsibility in the further execution. This again is typical in this respect because the decree states that Departments Three and Five of the Ministry of Labor were to be available to the Gauleiter Sauckel, to the Plenipotentiary General. This regulation was also inserted into the decree itself. It was not ordered by me but upon my suggestion because I didn't think it proper that the Plenipotentiary General for the direction of labor should set up a new authority. It was because I thought it proper that he utilized the departments available of the Reich Ministry of Labor. Now, of course, this had to be distinguished, how the utilization of these departments was to take place and there I myself took the initiative, but the ultimate decision could not be made by me. However, it was possible for me to get the Plenipotentiary General for Labor Direction Sauckel and the Reich Minister for Labor to a com-*

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*mon denominator and to effect the proper cooperation of these agencies. Had such an agreement not been possible, then I would not have been able to decide this formal case. Then in this case I myself would have had to secure the Fuehrer's decision. I think this case is typical, and very much so, for what I have testified as my coordinating functions in the realm of administrative*

organization. [Emphasis supplied.]

From the foregoing statements made by the defendant himself in respect to the part he played in the making of laws, decrees and ordinances, it seems very clear that vital and extremely important assistance was given by defendant in translating into law the various programs decided upon by the Reich government. The fact that defendant persists in his effort to minimize the significance of his work in this matter by referring to his actions in connection therewith as being only "formal" does not reduce in the slightest degree the significance of what was in fact done.

As bearing on the question as to whether defendant's activities in legislation were only formal and did not involve the exercise of initiative or discretion, the legal background and experience as given by the defendant himself while on the stand may well be noted. It appears that he was trained in the law, that he became district judge in 1912, that he became a senior government counsellor with the Ministry of the Interior in 1921; that in 1922 he became a Ministerial Councillor, in which capacity he remained until 1933. In this position he handled matters of constitutional and administrative law generally. In particular in such position he dealt with matters concerning the Reichstag and the Reich Council which was described by him as the "organ of the states of the Reich, an organ of the Reich which in the main handled factual legislative work." It appears that in such position he also dealt with constitutional disputes which were disputes between the Reich and the Laender, between the various Laender, and the constitutional disputes within a land. He states (Tr. p. 19770):

*"All these questions were decided either before the constitutional court or before the Reich Supreme Court. I handled these matters, and I myself, drafted the constitutional law of the Constitutional Court before the Reichstag adopted it, and these disputes were in writing and sometimes verbally represented by me before the Constitutional and Reich Supreme Courts. I'd like to emphasize here that there was another type of constitutional dispute which occupied me far more and these were the constitutional disputes within the Reich." And further on he continued (Tr. p. 19773):*

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*"Then I was concerned with frequently giving opinions on drafts of laws by the ministries, usually from the point of view of the constitution, further, questions as to whether ordinances were legally valid or not, and, to bring this list to an end, I can only say that my work was mainly of a legal nature. Although, of course, these matters always have a certain political content, they were, to a very large extent, of a legal nature."*

And finally as a further emphasis to his eminent qualifications in legal and governmental spheres, the following evidence as given by him on the stand must be noted (Tr. 19775):

*"I wrote a number of books. First of all, a commentary on the law, which I mentioned just now, about the Constitutional Court, in 1922, a law which I had drafted and had handled myself. Then I wrote a book about the Reich Constitution and Reich Administration. Then I wrote a catechism of the Reich Constitution; that was a little book which was to be used in schools for civil law classes. Then I collaborated on articles for various periodicals, for instance, the Handbook of Anschuetz-Thoma, which has been frequently mentioned here. For this I supplied two lengthy articles, one about parliamentary investigation committees, and the other about some question that I have forgotten. Then, I collaborated in the big hand dictionary of legal science by Stier, Vomlo and Elster, also with two fairly lengthy articles. One was called 'Law and Legislation' and the other dealt with the Reichstag. Then, I published six volumes of decisions of the Constitutional Court of the German Reich and the Constitutional Court of German Provinces, together with the late former President of the Reich Supreme Court, Dr. Simons. Then, I wrote masses of articles and theses for legal periodicals, discussed sentences, and so on. These were not political matters, they were all purely academic. Of course, there was a certain political aspect, and sometimes I had some difficulties, and, finally, I withdrew more and more to my writing and to purely reporting work, and*

not so much to creative work. That is shown, for instance, by the six-volume collection of decisions of the Reich Constitutional Court. That is more in the nature of a commentary, where these decisions are put in the proper order, given headings, and put in a certain systematic order.

"To conclude my answer, there is one thing I wish to add. My research work is quoted in almost all commentaries on the Reich Constitution; and, in particular, the last big commentary on the Reich Constitution, by Anschuetz, makes reference to my articles, usually being in complete agreement with them."

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The claim that the office of Chief of the Reich Chancellery when occupied by defendant Lammers was held by a sort of legal automaton who took care only of "formal" matters within the usual acceptance of that term, and was not vested with powers of initiative and discretion in the shaping of legislation is too great a strain upon the Tribunal's credulity.

We will now turn to a consideration of the evidence introduced to show defendant's participation in the creation of laws and decrees and in other alleged acts of participation in the crime of spoliation as charged in this count. We will first consider evidence relating to spoliation in the Netherlands.

It appears that a ruthless program of spoliation was carried out in the occupied Netherlands. A reference to findings of the IMT with respect to the Reich's economic administration of the Netherlands is here pertinent:<sup>1</sup>

*"Seyss-Inquart carried out the economic administration of the Netherlands without regard for the rules of the Hague Convention which he described as obsolete. Instead, a policy was adopted for the maximum utilization of the economic potential of the Netherlands and executed with small regard for its effect on the inhabitants. There was widespread pillage of public and private property which was given color of legality by Seyss-Inquart's regulations and assisted by manipulations of the financial institutions of the Netherlands under his control."*

The IMT also described Goering as the <sup>2</sup>"\* \* \* active authority in the spoliation of conquered territory."

The evidence discloses that on 21 May 1940, defendant Lammers sent to the Reich Ministers a document (NG-1492, Pros. Ex. 2575) which he transmitted as a "top secret." It was an unpublished Hitler decree signed by Hitler and Lammers, dated 19 May 1940 which decree calls attention to the fact that by a decree of 18 May 1940 Dr. Seyss-Inquart had been appointed as Reich Commissioner for the Occupied Netherlands, which decree indicated that Seyss-Inquart was accountable to Hitler, but it also provided that Goering might issue orders to the Reich Commissioner within the framework of his tasks in this capacity for the Four Year Plan.

Next Lammers advises that the decree submitted is an amendment of the earlier decree of 18 May 1940. From this it can be seen that Goering thus gets specific authority to extend his spoliation activities and sphere into the Netherlands.

It is significant that a report covering from 29 May to 19 July 1940 comes to Lammers in which report designated "top secret,"

<sup>1</sup> Trial of the Major War Criminals, op. cit., volume I, page 829.

<sup>2</sup> Ibid., p. 281.

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Seyss-Inquart reports with respect to the situation in the Netherlands and the economic exploitation of such territory. Such report states in part (997—PS, Pros. Ex. 2576):

*"It was obvious that the occupation of the Netherlands necessitated a large number of economic and police measures; the economic measures were aimed, on the one hand, at reducing the*

*consumption of the population in order to gain supplies for the Reich, and, on the other hand, in safeguarding the equitable distribution of the remaining supplies."*

The report continues further on as follows:

*"In fact the following regulations have up to now been cited by the Dutch Secretaries General or the competent economic official so that all these measures appear to be voluntary— All regulations with respect to the collection and distribution of supplies to the population, regulations with respect to restrictions on the forming of public opinion, and also agreements with respect to the requisition of extremely large supplies for the Reich." [Emphasis supplied.]*

This report was in August 1940, transmitted by Lammers to Rosenberg.

It appears that on 22 October 1940 a decree was issued (3333-PS, Pros. Ex. 2581), signed by Seyss-Inquart, which provided for registration of the Jewish business enterprises in Holland. This was an implementation of the earlier decree signed by Hitler and defendant Lammers, 18 May 1940.

It appears that defendant Lammers, on 18 October 1941 (NG-049, Pros. Ex. 2578), reported to the Commissioner for the Four Year Plan, the Reich Minister of Economy, the Reich Minister for Food and Agriculture, and to the Chief of the OKW concerning a conference between defendant Seyss-Inquart and Hitler relative to the food situation and the economic conditions in the occupied Netherlands territories. Here Lammers passes on to the "competent Reich ministers" such report with a request that they follow up the wishes of the Fuehrer, that cooperation with the Reich Commissioner Seyss-Inquart be given.

It appears that on 29 August 1941, Lammers received Goering's so-called "green folder" which was the guide for the control of economy in the newly occupied eastern territories and which set up an Economic Executive Staff East. This directive,\* which is elsewhere in the discussion of this count also referred to, provided for "plundering and abandonment of all industry in the food defi-

\* Introduced in the IMT as Document USA-315, Prosecution Exhibit 472-EC, and the complete German text appears in Trial of Major War Criminals, op. cit., volume XXXVI, pages 542-545.

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cient regions, and from the food surplus regions a diversion of foods to German needs," and further stated:

*"In accordance with orders issued by the Fuehrer all measures must be taken to achieve immediate and most intensive utilization of the occupied territories for Germany's benefit. Thus, all measures which may endanger this aim must be omitted or postponed."*

There was some evidence adduced with a view to showing that defendant Lammers had participated in the spoliation of Luxembourg in connection with the Hermann Goering Works taking over certain Luxembourg iron works. It does not appear to the Tribunal, however, that the evidence presented on that point is sufficient to indicate any real participation by Lammers.

We will now consider the charges of spoliation with respect to Poland. In this connection we first wish to call attention to the following findings of the IMT with respect to spoliation in Poland: \*

*"In most of the occupied countries of the East even this pretense of legality was not maintained; economic exploitation became deliberate plunder. This policy was first put into effect in the administration of the Government General in Poland. The main exploitation of the raw materials in the East was centered on agricultural products and very large amounts of food were shipped from the Government General to Germany.*

*"The evidence of the widespread starvation among the Polish people in the Government General indicates the ruthlessness and the severity with which the policy of exploitation was carried out.*

*"The occupation of the territories of the U.S.S.R. was characterized by premeditated and systematic looting. \* \* \*"*

It was with Poland in mind that on 19 October 1939 Goering issued a directive (*EC-410, Pros. Ex. 1286*), which hereinbefore also has been discussed, and which provided for the exploitation of the occupied territories and announced the creation of the Main Trustee Office East.

It appears that one of defendant Lammers' subordinates, Willuhn, later, upon the invitation of the Main Trustee Office East, made a visit to the eastern occupied territories "for the purpose of preparing a decision affecting property rights of some mines and foundries." A full report thereof was made to Lammers. The defendant Lammers indicated in his testimony that he had no particular interest in this trip but that he permitted Willuhn to make it because Willuhn so requested. This report,

\* *Ibid.*, Volume I, pp. 240-241.

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which indicates clearly that it was in line with the usual exploitation purposes of the Main Trustee Office East, was known to the defendant Lammers.

On 29 May 1941, Hitler and Lammers issued a decree providing for the confiscation of property of enemies of the Reich. This was an obvious device to give a form of legality to illegal seizure of property. Under date of 12 April 1943 a report (*NG-3321, Pros. Ex. 1291*) was made by SS General Krueger and defendant Lammers to Himmler regarding the situation in Poland. Under date of 17 April 1943, Lammers transmitted such a report to Himmler (*NG-4621, Pros. Ex. 1291*). It is to be noted that with respect to the economic tasks in Poland the report said:

*"(1) For the purpose of securing food for the German people, to increase agricultural production and utilize it to the fullest extent, to allot sufficient rations to the native population occupied with work essential for the war effort and to deliver the rest to the armed forces and the Homeland."*  
[Emphasis supplied.]

The general contention of lack of knowledge and lack of participation in the spoliation program cannot be sustained in the face of such evidence.

We come now to the question of spoliation in Russia. On 29 June 1941, just a few days after the invasion of Russia by Germany, a decree (*NG-1280, Pros. Ex. 529*) was issued, signed by Hitler, Lammers, and Keitel, vesting Goering with all necessary authority to institute all measures in the territory occupied "to assure the highest utilization and development of existing stores and capacities of domestic economy in behalf of the German war economy." In considering the question of defendant Lammers' participation in the exploitation of Russia it must not be overlooked that he was one of the small group assembled by Hitler on 16 July 1941 at a policy-making conference with respect to Russia. Those present were Hitler, Rosenberg, Keitel, Goering, Bormann, and Lammers. That Lammers took an active part in such a conference there is no doubt. It was at this meeting that Hitler stated that with respect to Russia (*L-221, Pros. Ex. 527*):

*"On principle we have now to face the task of cutting up the great cake according to our needs in order to be able, first, to dominate it, second, to administer it, and third, to exploit it."*

The evidence shows beyond a reasonable doubt that Lammers, with full knowledge of the ruthless program planned for Russia, actively entered into the formulation thereof and signed a number of decrees designed to implement and carry out such program.

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Among them, for instance, was a decree (*NG-1280, Pros. Ex. 529*) appointing

Rosenberg as Reich Minister for the Occupied Eastern Territories. It appears conclusively from the evidence that as to Russia, defendant Lammers participated in the formulation and execution of the program of spoliation carried through in the occupied territory of that country.

A field of spoliation in which defendant Lammers participated and which he furthered was the plunder of art and cultural treasures in the occupied territories. The important correspondence carried on by him with respect to this matter needs but little discussion. That Lammers' activity in this connection definitely was one of collaboration and furtherance is clear. The plunder of art treasures by the Reich was discussed at some length in the findings of the IMT. There the scope and extent of such program is touched upon. One passage from such judgment is very pertinent here.<sup>1</sup>

*"With regard to the suggestion that the purpose of the seizure of art treasures was protective and meant for their preservation, it is necessary to say a few words. On 1 December 1939 Himmler, as the Reich Commissioner for the Strengthening of Germanism, issued a decree to the regional officers of the secret police in the annexed eastern territories, and to the commanders of the security service in Radom, Warsaw, and Lublin. This decree contained administrative directions for carrying out the art seizure program, and in clause 1 it is stated:*

*"To strengthen Germanism in the defense of the Reich, all articles mentioned in section 2 of this decree are hereby confiscated \* \* \*. They are confiscated for the benefit of the German Reich, and are at the disposal of the Reich Commissioner for the Strengthening of Germanism."*

It appears from the evidence that the office of the Reich Chancellery, and Lammers, cooperated in the carrying out of such confiscation of art treasures in the occupied territories. It also appears that in connection with the plunder of art treasures Lammers was in contact with the director of the State Picture Gallery in Dresden, one Dr. Posse. It is interesting to note that in respect to the same Posse the IMT made the following statement in its judgment:<sup>2</sup>

*"The intention to enrich Germany by the seizures, rather than to protect the seized objects, is indicated in an undated report*

Ibid., p. 242.

Ibid., pp. 242-248.

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by Dr. Hans Posse, director of the Dresden State Picture Gallery—

*" I was able to gain some knowledge on the public and private collections, as well as clerical property, in Cracow and Warsaw. It is true that we cannot hope too much to enrich ourselves from the acquisition of great art works of painting and sculptures, with the exception of the Veit-Stoss altar, and the plates of Hans von Kulnback in the Church of Maria in Cracow \* \* \* and several other works from the National Museum in Warsaw. "*

On 5 July 1942. defendant Lammers informed all supreme Reich authorities and officers directly subordinate to the Fuehrer that Hitler had authorized Rosenberg to search libraries, lodges, and cultural institutions for the purpose of seizing material from these establishments, as well as cultural treasures owned by Jews. The communication concluded (*Steengracht 66, Steengracht Def. Ex. 66*):

*"I inform you of this order of the Fuehrer and request you to support Reichsleiter Rosenberg in the fulfillment of his task."*

It is significant that a Holland Einsatzstab report of the bureau of Reichsleiter Rosenberg for the occupied western territories in the Netherlands gave a comprehensive account of the results of the execution of the plunder program of the Reich with respect to art and cultural treasures in the Netherlands. Such report details and catalogs the many items removed from clubs, lodges, and libraries. The following sentence gives an indication of the magnitude of such confiscations (176-



PS, Pros. Ex. 2577):

*"Altogether 470 cases combining material from the aforementioned lodges and from organizations of a similar status were packed and transported to Germany."*

A report with respect to treasures taken from occupied territories is also in evidence which covers a period from October 1940, to July 1944. As an indication of the magnitude of the seizures there made, the following sentence from the report is of interest (1015-PS, Pros. Ex. 2589):

*"Twenty-nine large shipments including 137 freight cars with 4,174 cases of art works."*

It appears that 25 portfolios of pictures, containing the most valuable works of the art collections seized in the West, were presented to the Fuehrer on 20 April 1943. Dealing with activities in the eastern territories the report states:

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*"In the course of the evacuation of the territory several hundred most valuable Russian ikons, several hundred Russian paintings of the 18th and 19th centuries, individual articles of furniture and furniture from castles were saved in cooperation with the individual army groups, and brought to a shelter in the Reich."*

The findings of the IMT show that Rosenberg participated in the pillage of private houses in France. It appears that defendant Lammers also became involved in such program. It appears that on 18 December 1941 Rosenberg had requested Hitler's authorization "for the confiscation of all household goods of Jews in Paris who had fled or will flee, as well as in all occupied western territories, in order to assist the administration in procuring household furnishings for the eastern territories." On 31 December 1941 Lammers referred to the 18 December 1941 request made by Rosenberg to the Fuehrer. The letter continues (NG-3058, Pros. Ex. 2585):

*"The Fuehrer, in principle, agreed to the proposal as made under paragraph 1. Together with the letter enclosed in copy, a copy of that part of your memorandum which deals with utilization of Jewish household furnishings was forwarded by me to the chief OKW and to the Reich Commissioner for the occupied territories of the Netherlands. May I ask you to contact the other interested offices for the execution of your proposal."*

It appears that at the same time Lammers informed Keitel with respect to this matter in the following words:

*"\* \* \* I have asked the Reich Minister for the Occupied Eastern Territories to contact you; the Reich Commissioner for the Occupied Territories in the Netherlands and the other interested parties for the execution of the proposal. I have forwarded a copy of this letter to the Reich Minister for the Occupied Eastern Territories and the Reich Commissioner for the Occupied Territories in the Netherlands has likewise been informed by me."*

It is to be noted that under date of 16 June 1942 a letter from the Reich Chancellery signed by Stutterheim, a subordinate of Lammers, to the Foreign Office stated in part as follows (NG-5018, Pros. Ex. 3893):

*"(1) The seizure of household effects owned by Jews is to be carried out as inconspicuously as possible. No special ordinance is necessary."*

\* \* \* \* \*

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*"(4) Measure is to be presented, wherever possible, as requisitioning or retribution measure. The Reich Minister for the Occupied Eastern Territories has been informed of these Fuehrer directives."*

During a conference on 15 and 17 November 1943, which was attended by Hitler, Bormann, Himmler, Lammers, Lohse, and Rosenberg, a report (PS-039, Pros. Ex. 2587) was made by Rosenberg as to the program of the confiscation of Jewish homes and furniture and their transport to Germany. In a subsequent report (PS-1737, Pros. Ex. 2584) of 4 November 1943, Rosenberg amplifies the earlier report by

stating that it took 19,334 railroad cars to take the haul to Germany, and that several million reichsmarks and 666,000 kilos of scrap material and spinning material were also seized under this program.

In the light of the evidence the Tribunal finds that the defendant Lammers is guilty under count six.

#### STUCKART

It is specifically alleged against defendant Stuckart, in addition to the general charges made against him in this count, that he formulated and signed various decrees authorizing confiscations of the property in the occupied territories and that he attended various meetings and conferences at which occupation policies were formulated, and received reports concerning the carrying out of such policies, and that he participated in various ways in the furtherance of such policies. It is further specifically alleged that defendant Stuckart was active in the affairs of the Main Trustee Office East, an agency active in the formulation and execution of the program of spoliation in Poland. It is further asserted that Stuckart assisted in the formulation of a program for the fullest possible exploitation of the Soviet economic resources before and after Germany's attack on the Soviet Union, and finally it is asserted that the defendant Stuckart, with other defendants, took part in numerous meetings at which exploitation policies were discussed and plans were made with respect to spoliation in the East.

As heretofore pointed out in our discussion of count five, Stuckart became associated with and active in Nazi affairs at an early date.

The evidence further shows that in 1935 Hitler appointed Stuckart to a position in the Ministry of the Interior where he had charge of division I, which division then had, or subsequently, during Stuckart's incumbency, was given jurisdiction of the following matters:

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- Constitution and organization
- Legislation and administration law
- Citizenship and race
- New organization in the Southeast Protectorate, Bohemia and Moravia
- New organization in the East
- New organization in the West
- Reich defense
- Military law and military policy
- War damages

In 1943 when Himmler became Minister of the Interior defendant Stuckart was appointed State Secretary in the Ministry of the Interior, which position he held until May 1945 when he became Minister of the Interior.

Many other positions of responsibility and authority, each apparently created to implement successive steps of the Reich in its program of invasion and aggression, were given to defendant Stuckart. On 24 March 1938 Stuckart was appointed as Chief of the Central Office for Incorporation of Austria. On 1 October Stuckart was appointed Chief of the Central Office for the Incorporation of the Sudetenland. On 22 March 1939 Hitler appointed Stuckart as Chief of the Central

Office "For the Implementation of the Decree Concerning the Protectorate of Bohemia and Moravia." On 9 August 1940 it was announced that Hitler had appointed Stuckart as Chief of the Central Office for Alsace-Lorraine and Luxembourg. On 12 December 1941 Stuckart was appointed head of the Central Office for Norway. On 22 April 1941 it was announced that Hitler had appointed Stuckart as Chief of the Central Office for the Occupied Southeastern Territories. It further appears from the evidence that on 30 August Stuckart was appointed Chief of Staff for Reich Minister Frick, Plenipotentiary for Reich Administration in the Ministerial Council for Defense of the Reich. At the same time it appears Himmler was appointed as Frick's deputy. On 30 December 1939 Marshal Goering appointed Stuckart to the General Council for the Four Year Plan. It would be difficult to believe that in the course of holding the many important offices above referred to Stuckart did not become well informed concerning the economic and administration policies such offices were in fact created to further and implement. That he was thoroughly conversant with such economic and administrative programs and that he exercised wide powers and prerogatives in several of the offices thus established appears conclusively from the evidence. It further appears that in the exercise of the powers thus vested in him the defendant participated

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in the violation of the Hague Convention with respect to the military occupation of the occupied territories here under consideration. As will later appear, the defendant denied criminal participation in such spoliation program. In view of this it is desirable that we discuss in some detail the evidence presented in connection with this count. It appears that on 30 May 1939 a conference was held relative to war financing, attended by representatives from the following ministries and agencies of the Reich: Ministry of Economics, Ministerial Council for Defense of the Reich, Reich Finance Ministry, Four Year Plan, Reich Bank, Supreme Command of the armed forces, and the Reich Ministry of the Interior. The Reich Ministry of the Interior representatives at such conference were Dr. Danckwerts and one Jacobi. They apparently represented Stuckart as their report of such meeting to the Plenipotentiary General for the Reich Administration in the Reich Ministry of the Interior indicates that attention thereto should be given by Under Secretary Dr. Stuckart or his deputy. The report thus submitted to Stuckart among other things stated:

*"First, as concerns the scope of the total production, it is clear that the economic power of the Protectorate and of other territories possibly to be acquired, must of course be completely exhausted for the purposes of the conduct of the war. It is, however, just as clear that those territories cannot obtain any compensation from the economy of Greater Germany for the products which they will have to give us during the war, because their power must be used fully for the war and for supplying the civilian home population. It is therefore superfluous to add any amount for such compensation to the debt of the domestic German war financing."*

It is stated further that:

*"It goes without saying that the question of covering the minimum requirements of the civilian population during the war in the countries coming into our scope of government, will remain a domestic task of such countries."*

It is significant that on 12 July 1939 a decree (NG-3741, Pros. Ex. 642) was issued by the Reich Minister of the Interior, signed by one Pfundtner, which decreed that:

*"All real estate and personal chattels in the Protectorate of Bohemia and Moravia which were the property of the former Czechoslovak Republic, at 6 o'clock on 15 March 1939, and which were meant entirely or partly for the purposes of the Czechoslovak Wehrmacht, Air Force, and the Meteorological*

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*Service, are transferred as from that date to the ownership of the Reich. \* \* \**

In this connection it must be remembered that it was Stuckart who in March 1939 had been appointed chief of the Central Office "For the Implementation of the Decree Concerning the Protectorate of Bohemia and Moravia." On 3 October 1939 an ordinance was issued relating to the loss of citizenship in the Protectorate, such ordinance being an implementation of the decree of the Fuehrer and the Reich. Chancellor of 16 March 1939 concerning Bohemia and Moravia. This ordinance provided for revocation of the citizenship of members of the Protectorate who were living abroad if they had "acted in a manner detrimental to the interests of the Reich or damaging to the reputation of the Reich." Loss of citizenship would also be suffered by members of the Protectorate who did not return home on request of the Reich Minister of the Interior. It was provided that the property of persons thus losing their citizenship would be forfeited to the Reich. Such ordinance was signed by the Minister of the Interior and by von Ribbentrop and Schwerin von Krosigk. In October 1939 another decree was signed by Frick, Minister of the Interior, and Schwerin von Krosigk, which provided for the confiscation of property of persons living within the Protectorate who had committed acts hostile to the Reich. The Minister of the Interior and the Reich Protector for Bohemia were, by the terms of such decree, authorized to determine what tendencies were to be considered "deleterious" to the Reich.

It must here be noted that the evidence shows that a series of meetings of the Reich Defense Council, under the chairmanship of Goering, were held between 1 September 1939 and 15 November 1939, both inclusive. It appears from the evidence that defendant Stuckart attended all of the meetings. It appears that at such meetings a wide range of important matters were gone into and considered, examples of which are ratification of decrees, such as decree for war economy, decree for change of the military service law, decree about the organization of the administration and about the German Safety Police in the Protectorate of Bohemia and Moravia, decree about appointment of Reich defense commissioners, and questions relating to the civil administration in the occupied Polish territory, and particularly concerning the economic evacuation measures in that territory. It is important at this point to take note of the general policy of the Reich with respect to the economy of the occupied territories as announced by Goering on 19 October 1939 in a letter directed to the Reich Ministers, business groups, and General Plenipotentiaries for the

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*Four Year Plan. In such letter Goering states that (EC-410, Pros. Ex. 1286):*

*"The task for the economic treatment of the various administrative regions is different, depending on whether a country is involved which will be incorporated politically into the German Reich, or whether the Government General is involved, which in all probability will not be made a part of Germany. In the first-mentioned territories, the reconstruction, development and safeguarding of all their productive facilities and supplies must be aimed at, as well as a complete incorporation into the Greater German economic system, at the earliest possible time. On the other hand, there must be removed from the territories of the Government General all raw material, 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 bare existence of the population must be transferred to Germany, unless such transfer would require an unreasonably long period of time \* \**

*\* "*

In order to carry out the policy thus announced, he also announced the founding of Main Trustee Office East which would be under his own authority, and the purpose of which was among other things, to register the property of the Polish State, and also private Polish and Jewish property within the territories occupied by German troops, and the safeguarding of an orderly administration, and further for the regulation of economic measures which were deemed necessary for the transfer of the economic direction to the various administrative territories, and the settlement of all disputes and accounts in connection therewith. It was provided that the principal trustee office was to be located in Berlin, but separate trustee offices for the various administrative regions included were to be established. Subsequently, and prior to 5 January 1940, Goering issued a series of decrees and ordinances in connection with the said office. It is significant that under date of 5 January 1940, defendant Stuckart issued a letter (NG-1707, Pros. Ex. 2160), directed to various Reich ministers, stating that the Director of the Main Trustee Office East had expressed to Stuckart a wish that before any laws or decrees or other legal provisions were issued affecting the tasks of an office the Main Trustee Office East would be given opportunity for comment. Stuckart, in this manner, calls attention to the fact that the duties of the Main Trustee Office East were established by Goering in that official's letter of 19 October 1939, and then concludes (1707-PS, Pros. Ex. 2160):

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*"In the interest of the unified execution of possible legislative measures, I ask that the wish of the Main Trustee Office East be taken into consideration."*

This clearly demonstrates that Stuckart at such early date, was actively engaged in securing full cooperation from other Reich officials and agencies for the Main Trustee Office East and its announced purposes and program.

On 12 February 1940, a decree (NO-2049, Pros. Ex. 2510) which therein stated to be in accordance with Article VIII of a decree of 8 October 1939, issued by the Fuehrer and Reich Chancellor, relative to the structure and administration of the eastern territories, was signed by the Reich Minister of Economy and by Stuckart for the Reich Minister of the Interior. Such decree provided for the assignment of the coal mines for the so-called Incorporated Eastern Territories to the district of the Upper Silesian Coal Management, and gave the Reich Minister of Economy wide and arbitrary powers with respect to the coal industry thus taken over. It further appears that on 8 May 1940, defendant Stuckart signed a decree (NG-2043, Pros. Ex. 1403) of the Reich Minister of the Interior whereby it was provided that through agreement with the Main Trustee Office East, German communities in occupied eastern territory should, without further legal formality, become the owners of the property of the Polish community. Again on 12 June 1940, defendant Stuckart signed a decree (NG-2047, Pros. Ex. 1404) of the Reich Minister of the Interior which provided that property seized from the former Polish state, Polish nationals, and Polish Jews, by police and other authorities, should be registered with the Main Trustee Office East by 1 July 1940. The decree also states in part:

*"I respectfully request to take all necessary measures immediately and to instruct the Landraete, Lord Mayors, Mayors and local police authorities to hand over the seized and safeguarded assets on request of the Main Trustee Office East."*

It appears from the terms of the decree that the property in contemplation was as follows: Money, specie, and bills; stocks and other securities of all kinds; bills of exchange and checks; mortgages and land charge deeds; unclaimed gold and silver; foreign exchange; cut and uncut precious stones; and other valuables.

The evidence further discloses that on 24 September 1940 a meeting of a committee, called Political Trade Committee, was held in Berlin, attended by high Reich ministers. The Reich Ministry of the Interior was represented at said meeting by Ministerialdirektor Ehrensberger who was Stuckart's deputy. The minutes of such meeting disclose that consideration was given to

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the questions of confiscating French, Belgian, and Polish gold, and the taking over of shares of stock in Rumanian oil companies owned by the French.

While such evidence does not affirmatively show that the report was read or seen by defendant Stuckart, it is to be noted that on 19 November 1940 Senior Councillor Jacobi of the Ministry of the Interior, and in fact a subordinate of Stuckart, transmitted to the Foreign Office a copy of a report of the Military Commander of Belgium and northern France (NG-2380, Pros. Ex. 1685). Such report detailed the spoliation activities in Belgium and northern France, and described the hardships resulting therefrom to the inhabitants of the territories affected. That this highly important information would be handled by a subordinate and transmitted on to the Foreign Office without Stuckart's receiving information as to the contents may be possible but highly improbable.

The evidence further shows that between 20 December 1939 and 24 June 1941 several important meetings of the General Council for the Four Year Plan were held and that at practically all of these Stuckart was present or was represented by deputy. At such meetings extended discussions were had concerning a wide range of subjects relating to the prosecution of the war. Particularly significant is the top secret meeting of 24 June 1941 attended by the defendant Stuckart and presided over by State Secretary Koerner. In this meeting, among the many discussions had and reports made, the minutes indicate that Koerner stated that (NI-7474, Pros. Ex. 582):

*"The entire economic command in the newly occupied eastern territories is in the hands of the Reich Marshal as Plenipotentiary for the Four Year Plan. The Reich Marshal is to make use of the services of the Economic Operations Staff East which consists of the representatives of the leading departments. The measures are to be carried out by the Economic Staff East under the leadership of Lieutenant General [Major General] Schubert, who is supported for the industrial sector by Ministerialdirigent Dr. Schlotterer, and for the agricultural sector by Ministerialdirektor Riecke.*

*"The Economic Command in the newly occupied territories should direct its activities to extracting the maximum quantities of goods required for the war effort, particularly steel, mineral oil, and food. All other points of view should take second place."*

It appears that Stuckart's Division I, Southeast, in the Ministry of the Interior exerted influence in shaping policy with respect

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to the exploitation of property of former Yugoslavia, for this department, in a letter dated 23 August 1941, suggested that the pattern followed in the former Czechoslovakian state with respect to the territories incorporated with the Sudetenland be used with respect to Yugoslavia.

The active participation by Stuckart in the program of spoliation in the southeastern territories is clearly demonstrated in an exchange of correspondence between him and other high Reich officials with respect to the confiscation and seizure of property belonging to nationals and juristic persons of the former Yugoslavian state. Such correspondence shows that Stuckart made recommendations and Stuckart reported to Goering and Schwerin von Krosigk the decision finally made with respect to such

matter at "a discussion which took place in my ministry of 18 September 1941."

The evidence discloses that Goering's Economic Management Staff for the East took an important part in the spoliation program in the East, and that Stuckart was invited to the meetings of this body. On 18 November 1941 a secret memorandum of a meeting of the Four Year Plan, Economic Management East, was transmitted to the Ministry of the Interior. This enunciated some of the principles for the economic policy to be pursued in the recently occupied eastern territories. One principle was that such occupied eastern territories were to be economically exploited from colonial views and by colonial methods. This memorandum indicated, among other things, that only the Germans located or to be settled there and the elements to be Germanized were to be assured adequate living standards.

Under date of 24 October 1942 a decree (NG-3794, Pros. Ex. 636), signed by Stuckart and State Secretary Reinhardt, deals with the confiscation of property in the Protectorate of Bohemia and Moravia. It defined the cases in which the Ministry of the Interior would decide what property was to be deemed enemy property.

As hereinbefore indicated, defendant Stuckart, in testifying in his own behalf, denied criminal participation in the spoliation charges made in this count. In support of this position evidence was adduced from other witnesses, some of whom had been associated with him in the Ministry of the Interior. Explanations, all-inclusive in their scope, were made through such testimony to show that the defendant knowingly did not participate in the acts of spoliation charged against him. Such explanations to be accepted as true would mean that defendant Stuckart occupied, in the various important positions which he held, offices without any authority to shape policy or to implement the exe-

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cution of Reich programs and legislation. Such a conclusion, however, is completely out of harmony with the nature of the offices held by the defendant and with the evidence which overwhelmingly demonstrates that Reich officials repeatedly looked to and called upon defendant Stuckart for participation and help. Furthermore, the record discloses that defendant Stuckart was a man of large capacities and came to the various offices after he had demonstrated capacity which made him a fit incumbent for the offices given him by the Reich government from time to time. He certainly was not the innocuous figurehead official that the explanations offered in evidence would tend to make him seem.

That defendant Stuckart himself indicated that he had taken active part in the program of economic spoliation of the occupied territories, and that he had ambitious plans for the extension of said program is amply indicated in a letter by him to Heinrich Himmler under date of 16 June 1942, concerning the founding of an "International Academy for Political and Administrative Sciences." In such letter Stuckart states in part (NG-3385, Pros. Ex. 1416):

*"\* \* \* Already last year, I closed the Brussels Institute in a manner which will secure the transfer of its research material, its library, and personnel card index, and the scientific card indexes to an institution serving the interests of the Reich. All documents are in my custody.*

*"The securing of the German claim for leadership of Europe will essentially depend on winning over the politically active and intellectually dominant forces of the important European nations for a continent under the leadership of the Reich. In this connection and in view of the task of political, economic and social reformation of Europe, which has fallen to Germany through the war events, special significance must be attached to the penetration of the economy and administration of the European people in the disguise of political and administrative sciences."*

The Tribunal finds the defendant Stuckart guilty under count six.

## BERGER

In addition to the general charges made against defendant Berger under this count it is also specifically alleged therein that the defendant Berger, as liaison officer between Rosenberg, Reich Minister for the Occupied Eastern Territories, and Himmler, was active in the execution of the various parts of the plans for

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spoliation in the East, and that Berger, as chief of the political directing staff of the Reich Ministry for the Occupied Eastern Territories, assumed charge in 1943 of the central office for the collection of cultural objects, and that thus he was an active participant in the transfer to Germany of a vast number of art treasures and other articles seized in the East.

Evidence adduced by the prosecution was directed to prove that, in his capacity as liaison officer between Himmler and Rosenberg, defendant Berger coordinated the work and authority of Himmler and Rosenberg in the carrying out of the spoliation program in the eastern territories, with respect to food and agricultural products. A number of items of documentary evidence were introduced by the prosecution, showing that Himmler transmitted directives relating to the collection of raw materials in the eastern territories to Berger, and requested that such matters be brought to the attention of Rosenberg, head of the Reich Ministry for the Occupied Eastern Territories. Nowhere does it appear, however, that defendant transmitted such documents or orders to Rosenberg. Nowhere do we find an acknowledgment from Berger indicating his cooperation with Himmler in this connection. Witnesses called by the prosecution also failed to show a real participation by Berger in said program of spoliation. One prosecution witness testified that he had not seen any orders or directives issued by Berger in connection with the execution of the spoliation program relating to food and agricultural products in the eastern occupied territories, but stated that he had been told by another that Berger issued such directives and orders.

In answer to such testimony and contentions of the prosecution, we have the testimony of two witnesses who were, by reason of their position, conversant with the food procurement program in the eastern territories during the times in question. One was Hans Joachim Riecke who, from August 1939 until May 1942, was employed in the Reich Ministry for Food and Agriculture, first as Ministerial Director, and later as State Secretary. It appears that he also was head of the Executive Group A, food and agriculture, in the Economic Staff East, and in the Ministry for the eastern territories. His testimony was to the effect that Himmler had been asked to make guard personnel available, in connection with the procurement of certain foodstuffs, and that in issuing an order indicating that he had charge of the collection of food, which he sought to transmit through Berger, as liaison officer, to Rosenberg, he was overreaching his authority, and that such order had no effect whatsoever and did not really affect spheres of jurisdiction, and that the crop collection thereafter continued

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as before in the hands of the agriculture agencies, that is, in the control office of Executive Group A for food and agriculture of the Economy Staff East and of the Ministry for the eastern territories, and regionally with the economy inspectorates and Reich commissars, respectively. This witness concluded his testimony that, because



of such spheres of jurisdiction which had been clearly denned for this field, Berger could not have had anything to do with the collection of the harvest, and that he, the witness, had never heard of any such thing during his term of office.

The other defense witness on this phase of the charges against Berger was one Helmuth Koerner, who, apparently, was director of the executive group for agriculture of the Economic Inspectorate South from June 1941, and from October 1941 to the end of the war he also was director of the Main Food and Agriculture Department under the Reich Commissioner for the Ukraine. This witness states that he was advised that one SS Police Leader Preussner had received an order from Himmler concerning the securing of the harvest, but that this did not change the spheres of jurisdiction as theretofore existing, and that the seizure of harvest remained the task of the Economic Inspectorate South and the related offices of the Reich Commissioner for the Ukraine.

This witness also testified that he did not come across the name of Berger during his entire period of activity in the area of his jurisdiction in the East.

The Tribunal is of the opinion that it has not been proved beyond a reasonable doubt that defendant Berger did participate in the spoliation of food and agricultural products in the eastern territories, as charged in this count.

With respect to the accusation that Berger participated in the looting of art treasures in the Occupied Eastern Territories, considerable evidence was adduced by the prosecution. Reference is made to the findings of the IMT, which showed that a program of the Third Reich was being carried out, which detailed an extensive seizure of art treasures and scientific apparatus in the Occupied Eastern Territories. That such program was being carried out, there is no doubt. It appears from the evidence that on 7 April 1942, Dr. Georg Liebbrandt, while he held the position of Chief of the Main Department for Politics [of the Reich Ministry for the Occupied Eastern Territories], issued an order directed to the Reich Commissioner for Ostland at Riga, and to the Reich Commissioner for the Ukraine at Rowne, placing the task and responsibility for the seizure of art treasures in the Eastern Occupied Territories exclusively in the hands of Rosenberg's Einsatzstab. Such order stated in part (151-PS, Pros. Ex. 2410):

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*"I have assigned Reichsleiter Rosenberg's Einsatzstab for the occupied territories with the seizure and competent handling of cultural goods, research material, and scientific apparatus from libraries, archives, scientific institutions, museums, etc., which are found in public, religious, or private buildings. The Einsatzstab begins its work, as recently directed by the Fuehrer decree of 1 March 1942, immediately after occupation of the territories by the combat troops, in agreement with the Chief of Supply and Administration of the Army [Generalquartiermeister des Heeres] and after civil administration has been established, continues it in agreement with the competent Reich commissioners until final completion. I request all authorities of my administration to support, as far as possible, the members of the Einsatzstab in carrying out all measures and in giving all necessary information, especially in regard to objects which may have been already seized from the Occupied Eastern Territories and removed from their previous location, and information as to where this material is located at the present time."*

Further on the order recites:

*"All authorities of my administration are hereby instructed that objects of the aforementioned type will be seized only by Reichsleiter Rosenberg's Einsatzstab, and to stop from arbitrary handling as a matter of principle."*

It appears that Leibbrandt ceased to be such Chief of the Main Department for Politics in August 1943, and defendant Berger became charged with the direction of the political directing staff in the territories under consideration. This, it is argued by

the prosecution, involves the defendant Berger in the spoliation program as to art treasures in the Occupied Eastern Territories, so as to make him criminally guilty under this count. There was no testimony, either oral or documentary, indicating that after Berger in August 1943, succeeded to the office and authority formerly held by Leibbrandt, Berger did anything to implement or further the program of spoliation with respect to art treasures, as originally launched in the Eastern Occupied Territories by Leibbrandt in behalf of the Reich. On the other hand, it appears that by the time Berger assumed the former duties and authority of Leibbrandt, the spoliation program with respect to art treasures in the Occupied Eastern Territories had been carried forward to a very considerable extent. The IMT judgment makes the following reference to the progress of this program, as of October 1943: \*

\* Trial of the Major War Criminals, op. cit., volume I, page 242.

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*"The scale of this plundering can also be seen from the letter from Rosenberg's department to von Milde-Schreden, in which it is stated that during the month of October, 1943, alone, about 40 box cars loaded with objects of cultural value were transported to the Reich."*

Attention is called by the prosecution to the fact that his activity was subsequent to the time when Berger became chief of the political directing staff. This, however, does not, in view of the orders already referred to, indicate that defendant Berger did anything to advance or further the spoliation program which had already been inaugurated. There is no evidence to indicate that he did so. The only indication of any participation to any degree whatsoever on the part of Berger is that in September 1944, one Milde-Schreden, already referred to in the above excerpt from the IMT judgment, reported to Berger (NG-4353, Pros. Ex. 2411) that 85 wooden crates of paintings and other art objects had been taken from Kiev and Kharkov by the Reich Commissioner for the "Ukraine, and were now safely stored in East Prussia. It appears that he included a long list of the items comprising such seized art objects. He requests that the defendant Berger place his signature on a draft of the inventory thus submitted, since—

*"In accordance with the decision of the Reich Chancellery dated 18 November 1940, it appears necessary that an inventory of the items be submitted to the Fuehrer."*

It appears from the record of the testimony that the list was passed through Berger's hands on to the proper agency. There is no other evidence of Berger's participation in such spoliation program inaugurated pursuant to Reich authority, prior to his taking office as chief of the political directing staff, and which program, it appears from the evidence, had been vigorously executed and carried forward prior to Berger's assuming the office of Leibbrandt, and which, therefore, probably did not require any direction from Berger's office.

The Tribunal is of the opinion that, under the evidence adduced, it must and hereby does find defendant Berger not guilty under this count.

KOERNER

We come now to a consideration of the charges in count six as they apply to defendant Koerner. Specific allegations are made against defendant Koerner as follows: That as permanent deputy of Goering, the Plenipotentiary of the Four Year Plan, Koerner in fact headed the work of the Office of the Four Year

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Plan in fixing foodstuff quotas for the occupied areas, and that as Goering's representative for the Economic Executive Staff East, an organization established to organize and direct economic spoliation of the occupied eastern territories, he was an active participant. It is asserted that this organization contemplated the abandonment of all industry in the food deficient regions and the diverting of food to German needs in food surplus regions. It is asserted that the defendant Koerner with the defendant Pleiger, as individuals who largely influenced and controlled the Hermann Goering Works, secured ownership and control of plants and properties in Czechoslovakia. It is further alleged that Koerner, with other defendants, even before the attack on the Soviet Union, assisted in the formulation of a program for the fullest possible exploitation of all Soviet economic resources, and that he actively participated in the carrying out of such program after the attack on the Soviet Union. It is also alleged that Koerner, as deputy to Goering, the Plenipotentiary for the Four Year Plan, participated in the formulation and execution of measures under a decree of 21 June 1943, which directed the Plenipotentiary for the Four Year Plan to order all necessary measures in the newly occupied eastern territories for the fullest exploitation of supplies and economic power found there for the benefit of the German war economy, and it is specially alleged that defendant Koerner, during the period from August 1941, to March 1943, was chairman of the Verwaltungsrat (Supervisory Board) of the Berg-und Huettenwerke Ost G.m.b.H., commonly referred to as BHO, the "trustee" for the iron, steel, and mining industry, which, it is asserted, was the main spoliation agency in its field of operations.

At the outset of our consideration of charges against Koerner under this count it is important that note be taken of various positions of authority and responsibility held by defendant Koerner in the government of the Third Reich during the times under consideration.

Defendant Koerner was deputy of Goering as the Plenipotentiary of the Four Year Plan, and Chief of the Office of the Four Year Plan from 1936 to 1945.

He was chairman of the General Council of the Four Year Plan from 1939 to 1942.

He was member of the Central Planning Board from 1942 to 1945.

He was State Secretary to the Plenipotentiary for the Four Year Plan from 1936 to 1945.

He was deputy head of the Economic Executive Staff East from 1941 to 1945.

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He was Chairman of the Verwaltungsrat of the Berg-und Huettenwerke Ost [Mining and Smelting Works East, Inc.], G.m.b.H., commonly known as the BHO from 1941 to 1943.

He was Chairman of the Aufsichtsrat of the Reichswerke fuer Erzbergbau und Eisenhuetten [Reich Works for ore mining and iron smelting] "Hermann Goering" from 1937 to 1942.

He was Chairman of the Aufsichtsrat of the Reichswerke A.G. fuer Berg-und Huettenbetriebe [Reich works for mining and smelting enterprises] "Hermann Goering" from 1940 to 1942.

We will first consider the charges of spoliation directed against the defendant as to Czechoslovakia (Bohemia and Moravia). In the course of the defendant's examination in his own behalf he was asked whether he had ordered the acquisition of the Skoda and Vitkovice plants in Bohemia and Moravia. The defendant replied that on 15 March 1939, Goering had ordered him to acquire Skoda, Z-Waffen, Poldi

and Vitkovice "insofar as they could be acquired by purchase." The evidence adduced by the prosecution to show participation by Koerner in these "purchases" is rather weak. The Tribunal is not disposed to supplement such evidence by surmise. It is the contention of the prosecution that a possible finding by the Tribunal that defendants Rasche, Kehrl and Pleiger are guilty with respect to these transactions would require a finding that defendant Koerner, too, is guilty in these transactions as having ordered and abetted and having taken a consenting part therein. On the evidence offered, however, such contention by the prosecution is untenable.

With respect to charges of spoliation in Poland, attention must again be called to the fact that within a month after the commencement of the German invasion of Poland, Goering, as Plenipotentiary of the Four Year Plan, issued a decree heretofore referred to in our discussion of the charges made with respect to other defendants under this count. Such decree provided for reservation to him, Goering, of the right of the uniform economic supervision of Poland. On 19 October 1939, he issued a directive or decree announcing the establishment of the Main Trustee Office East as an exploitation measure. Goering at this time laid down the proposition that "enterprises which are not required for the meager maintenance of the naked existence of the population must be transferred to Germany."

It must be borne in mind that defendant Koerner was, during this time, Goering's deputy in the Four Year Plan in which position he actually exercised considerable discretionary authority. Koerner sent out the proclamation of the establishment of the Main Trustee Office East 1 November 1939. The evidence further discloses that defendants Koerner and Schwerin von Krosigk

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were among those present at a top secret meeting under the chairmanship of Goering on 12 February 1940 at which meeting Goering announced that, "The strengthening of the war potential of the Reich must be the chief aim of all measures to be taken in the East." The report (EC-305, Pros. Ex. 1289) indicates that with respect to agriculture it was decided that, "The task consists of obtaining the greatest possible agricultural production from the new eastern Gaue, disregarding questions of ownership." With respect to the subject of "trade economy" the report of the meeting states in part:

*"The main thing here is the petroleum which must be exploited and transported into the Reich regardless of how the payment for it is to be arranged. The mining of ore must also be pressed forward."*

It seems that from time to time Goering specifically broadened the scope of the HTO organized, as hereinbefore stated, as an exploitation agency for the Reich with respect to Poland. Among such decrees was one (designated therein as ordinance) dated 12 June 1940 (NO-4396, Pros. Ex. 2162) which designates the Main Trustee Office East (HTO) as "an office under the jurisdiction of the Plenipotentiary for the Four Year Plan." The ordinance provided in part that HTO had authority for the registration and administration of property belonging to nationals of the former Polish State and, among other things, stated that (NO-4396, Pros. Ex. 2162):

*"The Main Trustee Office East is authorized to execute legally final transfers of property in pursuance of directives issued by me.*

\* \* \* \* \*

*"The Main Trustee Office East is the only authorized agent to order confiscation, to appoint and dismiss administrative commissioners within the framework of the duties assigned to it.*

\* \* \* \* \*

*"The Main Trustee Office East will issue ordinances and administrative regulations required for the*

*execution of its duties.*

\* \* \* \* \*

*"The Police authorities will be at its disposal for the forcible execution of its measures in pursuance of the provisions of an agreement concluded with the Reichsfuehrer SS and Chief of the German Police."*

Goering on 17 September 1940 issued a further decree which, among other things, provided that, "The property of the citizens

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of the former Polish State is subject to seizure, property custodianship and confiscation. Seizure is to be performed in the case of property, (a) of Jews, and (b), of persons who have fled or who are not only temporarily absent." The decree provided that (NO-4672, Pros. Ex. 2163):

*"The necessary administrative regulations for carrying out these orders will be issued by the Plenipotentiary for the Four Year Plan and the Main Trustee Office East in collaboration with the responsible authorities."*

Therefore it appears that decrees were issued to implement the said decree of 17 September 1940 and which turned over the administration of confiscated property of Polish nationals to the HTO. Another decree was issued by Koerner providing for the issuance of necessary regulations for the execution of the ordinance concerning treatment of property of the "former Polish State" and which provided that such, as far as possible, be issued in agreement with the Reich Commissioner for Strengthening of Germanism.

Presented in evidence was a report (NI-3724, Pros. Ex. 3233) by the head of the HTO, dated 20 February 1941, which gives an impressive account of the extent of the program carried out by the HTO pursuant to the decree of 17 September 1940 above alluded to. Through the HTO much property was plundered and taken over by the Reich. Attention is called to the fact that defendant Koerner was chairman of the Aufsichtsrat of the Hermann Goering Works, which organization, according to a report in evidence, was the recipient of considerable property seized in Poland through the Main Trustee Office East. Notable among the property thus mentioned were certain brick works.

The evidence adduced in the case disproves the statement of Koerner as made by him on the stand that he had what amounted to only perfunctory information concerning the HTO and its activities. It is true that Goering was vested with supreme authority in matters falling within the sphere of such organization, but it is clear that Koerner, as his deputy, in the light of the evidence introduced in the case, was given and in fact exercised wide powers of responsibility in the HTO, which powers and authority were sufficiently great and of such discretionary nature as to have enabled Koerner to strongly influence the policy of, and to further the work and purposes of the HTO in the spoliation program in Poland.

We come now to consideration of the charges of spoliation with respect to Lorraine in France. The evidence establishes to the satisfaction of the Tribunal that defendant Koerner participated

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in the spoliation of Lorraine as deputy to the Plenipotentiary of the Four Year Plan. German industrialists began to vie with each other for acquisition of plants in Lorraine after such territory had come under the domination of the German Reich, and it seems it was to Koerner some of these industrialists appealed. From the evidence it

appears that the Hermann Goering Works was among those who made claims with respect to certain plants in the Lorraine. Attention is here again called to the fact that Koerner was at this time chairman of the Aufsichtsrat of the Hermann Goering Works. It is futile for defendant to attempt to minimize the nature of his activity in the Lorraine spoliation. A letter dated 29 October 1940 written by Koerner to defendant Pleiger, the general director of the Hermann Goering Works, comments on the claims made by the Hermann Goering Works to plants of the DeWendel concern in Lorraine, that is, coal mines and foundries, along with certain other plants in the Lorraine, and recommends that Pleiger submit a legal and suitable claim to the Reich Minister of Economics and then states (NID-15558, Pros. Ex. 3769):

*"I am reserving my decision as to appropriate support of your application of which I request a copy."*

It should be noted too in this connection in testifying in his own behalf, defendant upon being asked if he had been connected with the taking over of the French firm of DeWendel in Lorraine by the Reichswerke, answered as follows:

*"Yes, in my capacity as chairman of the Aufsichtsrat of the Reichswerke."*

It appears that ultimately some of the DeWendel plants were allocated to the Hermann Goering Works under terms which are hereinafter alluded to in connection with our treatment of the spoliation charges against Pleiger. Allocation under the terms under which it was done clearly constitutes a violation of the Hague Conventions, and it has been so held in the prior judgments of other Nuernberg tribunals.

With respect to charges of spoliation in Russia, the prosecution has charged defendant Koerner with having participated in the planning and preparation for spoliation of Russia, even before the invasion of that country by Germany. The evidence shows that as early as November 1940 General Thomas, Chief of the Economic Armament Division of the General Staff, and defendant Koerner and others were "informed by the Reich Marshal of the action planned in the East." The defendant in the course of his testimony was disposed to minimize the prosecution showing with

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respect to this matter by asserting that there was nothing aggressive contemplated. Defendant finally admitted, however, that "it was only about 10 days before the actual outbreak" that he "came to hear anything at all of the date set."

The evidence abundantly shows that Koerner was included in some conferences where the economic program with respect to the Russian territory contemplated for invasion was considered and planned. It is significant that when an economic program was presented to Goering by Thomas, Chief of the Economic Armament Office, Thomas reporting in connection therewith stated in part as follows (1456-PS, Pros. Ex. 1050):

*"(1) Organization Barbarossa. The Reich Marshal fully agrees with the organization which was proposed to him. The following persons shall become members of the executive staff: Koerner, Backe, Henneken, Alpers, and Thomas. The Economic Armament Office will be the executive office."*

This report was dated 19 March 1941 approximately 3 months before the beginning of the invasion of Russia by the Reich.

Study of the conferences referred to disclose that a program of spoliation was contemplated. It should be noted that only 2 days after the invasion, that is, 24 June 1941 it was defendant Koerner, acting as chairman of the General Council of the

Four Year Plan, at a meeting held on that day, who reported with respect to the Economic Operation Staff East and the Economic Staff. The report of the said meeting states in part (NI-7474, Pros. Ex. 582):

*"State Secretary Koerner opened the meeting and stated that owing to preparations for the case of war with Russia (Eventualfall 'Russland'), the convocation of the General Council had to be omitted up to now. Since fighting in Russia has now started, he was able to make the following statements about the work which has been done within the Economic Executive Staff East:*

*"The entire economic command in the newly occupied eastern territories is in the hands of the Reich Marshal as Plenipotentiary for the Four Year Plan. The Reich Marshal is to make use of the services of the Economic Executive Staff East which consists of the representatives of the leading departments. The measures are to be carried out by the Economic Staff East under the leadership of Lieutenant General [Major General] Schubert, who is supported for the industrial sector by Ministerialdirigent Dr. Schlotterer, and for the agricultural sector by Ministerialdirector Riecke.*

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*"The economic command in the newly occupied territories should direct its activities to extracting the maximum quantities of goods required for the war effort, particularly steel, mineral oil, and food. All other points of view should take second place.*

*"The necessary organization is in existence and will be utilized in accordance with the progress of the military operations.*

*"State Secretary Koerner gave State Secretary Backe permission to speak about the food situation."*

It must not be overlooked that in July 1941 Goering issued what has come to be known as the "green folder" which was issued "for official use only" and contained directives "for the operation of economy in the newly occupied eastern territories." The International Military Tribunal judgment made the following statement concerning the "green folder": \*

*"This directive contemplated plundering and abandonment of all industry in the food deficit regions and, from the food surplus regions, a diversion of food to German needs."*

We here call attention to the following from said "green folder" (NI-6366, Pros. Ex. 1054):

*"Economic Organization.*

*a. In general—For the uniform direction of the economic administration in the areas of operations and in the areas of the future political administration, the Reich Marshal has created the Economic Executive Staff East which is responsible directly to him and which, in the absence of the Reich Marshal, is directed by State Secretary Koerner."*

That defendant Koerner's position in this spoliation organization was recognized as one of power and importance is obvious from the respect given it by Rosenberg, the Reich Minister for the Occupied Eastern Territories, for in a recital contained in a directive issued by him relative to the civil administration in the occupied eastern territories contained in what is known as the "brown folder" he stated (N1-10119, Pros. Ex. 1055):

*"The Reich Marshal formed the Economic Executive Staff East (directed by State Secretary Koerner as his deputy) in which all the departments concerned are unified and are given the possibility to state their points of view and to influence all the decisions concerning the eastern territories."*

The record discloses that defendant Koerner did not display any particular reluctance in assuming the authority and powers thus

\* Ibid., page 281.

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vested in him. In the course of a decree issued by Koerner in September of 1942 it states as follows (*EC-347, Pros. Ex. 1058; Koerner 450, Koerner Ex. 176*):

*"VI. The directives required in the interest of German war economy and concerning the economic exploitation areas put under civil administration will be issued by me through the Economic Executive Staff East. It will especially fix the quantities of food and industrial raw materials to be sent to the Reich. In cases of doubt involving essentially economic matters, and especially in cases in which the chiefs of Civil Administration have in view the slackening of the orders of the Economic Executive Staff East having a special importance, my decision should be obtained through the Economic Executive Staff East.*

*"VII. The Reichskommissar Ostland, the Oberpresident of East Prussia and the Governor General are requested to report to me through the Economic Executive Staff East, Berlin W 8, Leipzigerstrasse 3, on the economic development in the areas taken over by them." [Emphasis supplied.]*

Various decrees to implement the spoliation program were issued by Koerner. When the BHO was established 20 August 1941, which organization has hereinbefore been alluded to and which was the principal spoliation agency of the Reich with respect to industrial plants in occupied Russia, it was defendant Koerner who became chairman of the Verwaltungsrat of such organization, which position he held until 31 March 1943 at which time, at the behest of Hitler, he resigned such position because of his membership in the Reichstag, whereupon such position was taken over by the defendant Pleiger, as hereinafter discussed in our treatment of the case against Pleiger in this count.

The record further contains many instances demonstrating beyond reasonable doubt that the defendant actively participated in and furthered many phases of the Reich spoliation program in Russia. Such activities were many and varied. It is needless to discuss them all in this opinion. They also include the plundering and spoliation of industrial properties. The effort made by defendant to show that he did not in fact participate in the planning, formulation, or execution of the spoliation program of the Reich are far from convincing, and the argument made in his behalf that some of the territories under consideration had become a part of the Reich so as to make the Hague Conventions inapplicable with respect to the charges of spoliation is likewise untenable.

From the evidence we must and do find the defendant Koerner guilty under count six.

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## PLEIGER

The specific charges in count six with respect to defendant Pleiger are to the effect that Pleiger held various policy-making positions in governmental agencies which were active in the industrial life of Germany and that in such capacities he was active in the initiation, formulation, and furtherance of the Reich program of plunder and spoliation. It is specifically asserted that he and the defendant Koerner largely influenced and controlled the Hermann Goering Works when, in the course of plunder and spoliation, such concern secured ownership and control of plants and properties in Czechoslovakia. It is further alleged that defendant Pleiger, from August 1941 to March 1943, was manager of the Berg-und Huettenwerksgesellschaft Ost m.b.H., commonly referred to as the BHO, and thereafter, until 1945, chairman of its Verwaltungsrat, Supervisory Board, "trustee" for the iron, steel, and mining industry, and the principal spoliation agency in its fields of operation. It is further asserted that after March 1943, Pleiger was both general manager and chairman of the Supervisory Board of the BHO, and it is alleged that the BHO was responsible for the



exploitation of coal and iron ore mines and the draining off of raw materials from the occupied territories, and that said agency was also responsible for the transfer under sponsorships, of industrial plants to private enterprises for exploitation in the interests of Germany, and the dismantling of some Ukrainian plants and the shipment of the equipment thereof to Germany for the use of German industries. It is further alleged that the BHO removed from many plants in said occupied territories, machinery, installations, and materials, and stored and distributed such machines, installations, and materials for the benefit of the German economy, and it is alleged that the Hermann Goering Works, with the defendant Pleiger playing a leading part therein, engaged in various transactions in conjunction with the BHO involving the economic spoliation of the Soviet Union.

From the evidence it clearly appears that during the times referred to in count six, Pleiger held positions of great influence and authority affecting the industrial life of Germany and the economy of the territories occupied by Germany. A brief discussion concerning some of the most important of the positions thus held by Pleiger is requisite to a proper appraisal of the evidence introduced relative to the charges made against the defendant in this count.

It appears that when the Hermann Goering Works was founded in 1937 defendant Pleiger was appointed a Vorstand member of

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such company and that from that time until the end of the war he remained a dominant figure in such organization, particularly in the Montan companies of the concern which were engaged in the iron ore and coal mining, in smelting, in iron and steel productions, and other activities. In 1941 Goering, Plenipotentiary for the Four Year Plan, named Pleiger as chairman of the Reich Association Coal, and he was also in 1941 appointed the Reich Plenipotentiary for Coal by Walter Funk, the then Minister of Economy, with the approval of Marshal Goering. It further appears that on 10 January 1942, Marshal Goering appointed Pleiger Reich Plenipotentiary for Coal for the Occupied Territories. It further appears that in August 1941, when the Reich established the Berg-und Huettengewerkschaft Ost, commonly referred to as BHO, a corporation established for the announced object of exploitation of the occupied Russian territories, defendant Pleiger was given the management of said concern. It also appears that although Pleiger was not designated as a member of the Central Planning Board he received important assignments from such organization and apparently exerted considerable influence in such organization. In this connection it is significant that on 2 October 1943 Marshal Goering, in declaring that the Central Planning Board was competent for the economy of the Occupied Eastern Territories, stated (NID-14601, Pros. Ex. 2268):

*"General Director, State Councillor Paul Pleiger is appointed Plenipotentiary of the Central Planning Board for the eastern industrial economy. He is authorized to make all decisions for the full use of the industrial economy of the occupied eastern territories for the German war economy within the scope of the tasks and the decisions of the Central Planning Board."*

Such decree further announces that various Reich offices are to be "at his [meaning Pleiger's] disposal for carrying out his tasks."

Goering further decreed that Sauckel, who was the Plenipotentiary General for the utilization of labor, was to cooperate closely with the Plenipotentiary for eastern industrial economy, Pleiger, and that in the event of differences of opinion between Pleiger and Sauckel, the Central Planning Board would make the decision. It is further to be noted that Albert Speer, who was chief for Armaments and War

Production, and a member of the Central Planning Board within the Four Year Plan, notified Pleiger as follows (NID-14600, Pros. Ex. 2269):

*"You are to exercise also my powers as Plenipotentiary for Armament Tasks in the Four Year Plan and as Inspector for*

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*Water and Energy in the Occupied Eastern Territories, including the area of operations, insofar as I do not reserve to myself the carrying out of these tasks in the individual cases."*

We will not discuss the evidence adduced by the prosecution with respect to the alleged transfer of Skoda and Bruenner Waffen Works to the Hermann Goering Works, nor evidence adduced by the prosecution with respect to the acquisition of Ferdinand Nordbahn, inasmuch as the prosecution, in its brief with respect to count six, states that it does not feel it has established Pleiger's role in these transactions. Nor will we discuss any evidence adduced by the prosecution with respect to alleged spoliation of the property and economy of the Sudetenland falling within the category of belligerently occupied territories contemplated by the Hague Convention with respect to military occupation.

We will first consider the evidence adduced with respect to the charges of spoliation allegedly committed in Czechoslovakia. The Poldihuetette in Czechoslovakia was one of the world's largest refined steel producing enterprises. Control of this organization was attained by the end of 1943 by the Hermann Goering Works, by which time it had secured more than 75 percent of the shares of Poldihuetette, although such Hermann Goering Works had in fact been in control of the organization since 1939. The evidence discloses that Pleiger proposed that Poldihuetette take over another seized Polish enterprise, the Stalowa Wola, which until then had been under the management of a Hermann Goering Works subsidiary, Stahlwerke Braunschweig, the proposal being that in exchange Poldihuetette should issue new capital shares to be given to the Hermann Goering Works. This plan apparently was carried through. Defendant Pleiger himself testified:

*"The thing that I had to do was to fulfill a quota, and I wished that Poldihuetette should be incorporated with the HGW (Hermann Goering Works) so that we could work together on a refined steel basis."*

It appears that during the German occupation Poldihuetette produced airplane motor parts for the forces of the occupant. During the period controlled by the Hermann Goering Works it further appeared that Poldihuetette took over the Jewish enterprise, Lana-Rakonitzer Steinkohlen A.G., acquiring same through so-called purchase of shares from the Reich Aryanization agencies.

Another Czechoslovakian enterprise was the Vitkovice Gewerkschaft which produced over a third of all coal in Bohemia-Moravia, more than 40 percent of the pig iron made therein, and more than 30 percent of the crude steel manufactured therein. After the German occupation of the Protectorate it appears that

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Goering ordered a negotiation to be conducted with the owners for these properties. It seems that Pleiger was chairman of a committee set up for Vitkovice to take over the direction of the enterprise, and he held such position from the end of 1939 until 1943. Pleiger on the stand stated that there were no acquisitions made by the Hermann Goering Works that he did not know about. That the properties thus acquired were exploited without any regard for the economy of Czechoslovakia or its

inhabitants is indicated very graphically by the fact that Pleiger took millions of marks from the earnings of the Vitkovice Bergbau und Eisenhuetten Gewerkschaft and the Poldihuetten and presented such to Reich Marshal Goering. Illustrative of this generosity is a letter of 5 December 1941 directed to the Reich Marshal and which stated therein in part as follows (NID-15575, Pros. Ex. 3771):

*"The Vitkovice Bergbau & Eisenhuetten Gewerkschaft and the Poldihuetten A.G., both belonging to the Montanblock of the Hermann Goering Works have given to me, out of the profits of the business year 1941 now nearing its end, an amount of RM 3,000,000 with the directive to put it at your disposal, Mr. Reich Marshal. RM 2,400,000 came from the Vitkovice profits and RM 600,000 from the Poldihuetten A.G. profits."*

We will now turn to the evidence introduced with respect to the charges of spoliation in Poland. Following the occupation of Polish territory by the German forces in the autumn of 1939 a large-scale program of plunder and spoliation was inaugurated by the German authorities. The scope of such a program is revealed in a decree by Marshal Goering under date of 19 October 1939 which provided for the creation of the Main Trustee Office for the East which has heretofore been referred to in our treatment of the case of defendant Stuckart under this count. We again wish to emphasize that the obvious and announced purpose of the creation of the Main Trustee Office East was the exploitation of Polish properties for the Reich, which included "the property and real estate, plants, mobile objects, and rights taken out of Polish hands."

A short time after the German invasion of Poland the Hermann Goering Works took over the iron works and foundries of Starachowice and Stalowa Wola, the most important enterprises of that type in Poland. The evidence reveals that on 9 October 1939 defendant Pleiger held a conference with General Stud of the German High Command, the result of which was that the management of the iron works and foundries thus seized were transferred to defendant Pleiger. In the letter ordering the taking over of such management by the Stahlwerke Braunschweig, a

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subsidiary of the Hermann Goering Works, it was stated (NI-4798, Pros. Ex. 3409):

*"All property rights of the former Polish plants are not affected hereby,"*

but it is to be particularly noted that in February 1940 a letter (NI-4801, Pros. Ex. 3410) from the Stahlwerke Braunschweig in the Starachowice plant requested the dismantling of eight lathes and five drilling machines for transfer to the Vitkovice Works, the company hereinbefore referred to as having been taken over by the Hermann Goering Works in Czechoslovakia. The request stated:

*"The delivery is to be declared as steel scrap material."*

At the time in question defendant Pleiger was the chairman of the Aufsichtsrat of the Stahlwerke Braunschweig, the subsidiary of the Hermann Goering Works. The looting of this Polish plant, however, did not stop with the dismantling and shipment of the machines above mentioned. The evidence discloses that competent military authorities had objected to the removal of 187 machines from the Starachowice plant, 29 of which machines had been sent to Salzgitter, the main plant of the Hermann Goering Works. Further efforts were made on the part of the Hermann Goering Works to secure more machines from Starachowice, and a final suggestion by Rheinlaender, one of the directors of the Stahlwerke Braunschweig, was that Pleiger intervene in behalf of the Hermann Goering Works to accomplish the desired purpose. It is important to note that in evidence is a communication addressed by one Rheinlaender to the Vitkovice Works, which, as hereinbefore stated, was a

subsidiary of the Hermann Goering Works, which shows that machinery from Starachowice was in fact removed to Braunschweig on orders of defendant Pleiger. It appears that in a letter addressed by Raabe of the Hermann Goering Works to the military authorities, the question of stripping other Polish plants was discussed, and as a result thereof permission was given the Hermann Goering Works to remove machinery from Budzyn in Poland and to send same to Salzgitter, Starachowice, and Braunschweig.

Defendant Pleiger's active role in this program of plunder and spoliation is further proved by evidence of one of the defendant's witnesses, Raabe, who said that as Vorstand member of the Hermann Goering Works he was requested by Pleiger to take over the directorship of the spoliated Polish plants. He testified that much machinery was, in fact, sent to Salzgitter. It appears elsewhere in the record that it was claimed in behalf of Pleiger that all machines taken to Salzgitter were taken there for repairs, but

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that such machines were never returned. He asserted further that in discussing with Pleiger the fact that military authorities objected to removal of such machinery Pleiger requested him to adjust the matter with the military authorities.

The extent of Pleiger's participation in the spoliation program in Poland is revealed in a file memorandum of the Hermann Goering Works dated 21 September 1942 which states that:

*"By order of Mr. Staatsrat Pleiger the productions of the HG plants are to be transferred to plants of the Konzern located in the Reich. For this purpose machinery and installations, raw materials as well as store goods, tools, and contrivances amounting to approximately 5,000 truckloads were removed from the plants."*

We find further spoliation activities in Poland by Pleiger in behalf of the Hermann Goering Works in connection with the coal mines in Upper Silesia. It appears from the evidence that the spoliation agency HTO, to which reference has already been made, on 23 July 1940, gave to the Hermann Goering Works a so-called "trusteeship" of all peat coal mines in Upper Silesia. Subsequently, certain of these coal enterprises were by the Reich government transferred to a subsidiary of the Hermann Goering Works.

One Dewall, a defense witness,\* stated that he had been manager of the Polish coal mines and that he had been appointed as such by the defendant Pleiger in 1940. His testimony showed the active interest of Pleiger in the development of the mines, and that all construction in such seized properties was done only through "special permission" of Pleiger. This witness gave the highly significant testimony that there was taken from such coal mines in 1940, 62,000 tons; 1941, 62,400 tons; 1942, 69,300 tons; 1943, 74,800 tons; and in 1944, 77,900 tons, and that of these amounts two-thirds went to Germany. Pleiger's own testimony was to the effect that he was active in connection with the coal enterprises.

It is repeatedly contended by the defense that the plants and properties in question were not operated for the German economy but in fact for the economy of the occupied territories and their inhabitants. This explanation, however, is very difficult to accept in view of the wholesale stripping of the plants, coupled with the fact that during such processes Pleiger with others was trying to acquire ownership of the plants themselves, all of which indicates that the general intent and purpose of the program was in

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fact one of spoliation. It must not be forgotten that the HTO was created for the announced purpose of exploiting the economy of the occupied territories for the benefit of the German economy. That the annexation of these plants was conducted in accordance with the program thus announced and implemented by the Reich government, there can be little doubt. In this connection and as bearing upon the dominating intention and motives of the defendant Pleiger and others involved we may call attention to the communication directed by Raabe on 22 July 1940, to Kehrl, the Generalreferent with the Reich Ministry for Economics. Mr. Raabe states in part (NID-15350, Pros. Ex. 3778):

*"We agreed with Mr. Pleiger on the following point: to take on lease first of all, those three works and this through the Stahlwerke Braunschweig in order to facilitate a later transfer."*

The three works referred to were Starachowice, Stalowa Wola, and Ostrowiec. The communication later states:

*"For us (Stahlwerke Braunschweig) is only of importance that we keep those works in our hands up to the transfer of ownership, because it is clear that the works up to the abovementioned moment are only to be directed through us, for the technical as well as also the other matters can only then be carried through exclusively, provided we know that we shall get the ownership in the future. If, for instance, a new trustee will be appointed or another firm will take those works on lease, the works would be developed into an entirely different direction and with ideas different from those that we want to apply later when owners of these works, in other words, the uniform development would be broken."*

It is significant also that as late as 1943 Pleiger, in behalf of the Hermann Goering Works, was apparently trying to get Stalowa Wola for Poldihuetten. The fact that these particular acquisitions did not come to fruition is not important. They do disclose the existence of the general plan and purpose. The general plan and purpose was one of spoliation completely out of harmony with the professions made during the course of the trial by defendant and his witnesses that they were free of illegal motives in the actions which they took.

The prosecution also introduced some evidence to prove Pleiger's participation in spoliation in Lorraine in connection with the iron producing and mining industries. It appears that the Reich government, upon occupation of eastern France, decided that the Lorraine industries should be administered under con-

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tracts between the Reich and German individuals who were for the purpose designated as "trustees," which contract provided that upon return of peace such trustees should have opportunity to purchase the properties thus held by them as trustees. It developed that the Hermann Goering Works, through Pleiger, secured a so-called trusteeship over the DeWendel plants in Lorraine. For the purpose of such trusteeship the Hermann Goering Works created a subsidiary company called the Huetttenverwaltung Westmark. It appears from testimony of defense witnesses that Pleiger was manager of this subsidiary company. The claim that machinery was taken from the DeWendel plants for transfer to plants in occupied Russian territory is not, in the opinion of the Tribunal, adequately proved. There does appear to have been some correspondence concerning such matter, but there is not sufficient and satisfactory evidence to indicate that such transfers were in fact made. The question here is whether the taking over of such DeWendel plant under the so-called

trusteeship contract constitutes spoliation within the provisions of the Hague Convention. There apparently was not an abandonment of the plant either so as to require its taking over by the Reich government.

It is significant that the Vichy government, although in many ways collaborating with the Reich, objected strenuously to the taking over of plants in occupied France, including the DeWendel. It was pointed out in said protest made by the French Government that such plants had been taken over under an arrangement that was tantamount "to a partial execution of a program of dispossession of the companies owning the plants."

It is the position of the Tribunal that this domination of the plants with provision for ultimate acquisition under a trustee arrangement constitutes spoliation to such an extent as to amount to a violation of the Hague Conventions. To this same effect was the judgment in *United States vs. Flick* and *United States vs. Farben*, and others.

We will now take up the charges of spoliation against Pleiger as made with respect to Russia. Reference is here again made to the Goering decree of 27 July 1941, where he set forth the objectives and organizations for the exploitation of the eastern occupied territories and where he indicated approval of the Reich Ministry of Economics as follows (*NI-3777, Pros. Ex. 1976*):

*"4. Furthermore, in reply to the suggestion of the Reich Minister of Economics, I agree that the following monopoly companies be created in accordance with the submitted company charters and commissioned by executive authorities—*

*"a. The Ostland Berg-und Huetttenwerksgesellschaft m.b.H. with the task of managing, in the interest of the German war*

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*economy, the Russian coal and iron industry as well as the mining of iron ore."*

The Ostland Berg-und Huettenswerksgesellschaft thus referred to was thereafter, on 20 August 1941, organized—

*\*\*\*\*for the purpose of managing in the interests of the German war economy the Russian coal and iron industry, as well as the mining of iron ore."*

This concern thus organized is commonly known and referred to as the BHO. It appears that defendant Pleiger was, on 24 August 1941, invested with the management of the BHO, and at said time a directive by Reichert of the economy group of the iron producing industry stated that the company BHO,

*\*\*\*\*will operate according to an order of the Plenipotentiary for the Four Year Plan."*

One defense witness, Carlowitz, testified that this assignment for Pleiger as manager of the BHO was given to him by Goering as the result of a conference held between Goering and Pleiger. On 3 November defendant Pleiger announced and issued over his signature a set of "principles" for the management of the plants thus sponsored, and it is significant that among other things it was stated there (*NI-3689, Pros. Ex. 1992*):

*"The sponsor must take all measures which are necessary to make the sponsored plant useful for the Reich defense in the shortest possible time and the most effective possible manner."*

This Pleiger-issued order also stated:

*"The BHO will exert its influence in the final settlement of the ownership of the industrial property in the occupied [eastern] territories in such manner as to insure that the interests of the sponsor will be taken into consideration to a degree corresponding to the extent of its cooperation in the development of the economy of the region."*

It would seem to be too clear for argument that the announced purpose for which BHO was created, and the "principles" thus enunciated by its manager Pleiger conclusively show that the purpose and the program of the BHO was predominately one of exploitation and spoliation of the territories in which it was created to operate.

It appears that BHO concentrated its efforts largely upon the manganese ore mines in Nikopol, the iron mines in Krivoi Rog, and the coal and ore mining in the Donetz Basin. This is indicated by the minutes of the meeting of the Verwaltungsrat of the

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BHO held 31 March 1943 (NI-5261, Pros. Ex. 1994.) in Berlin, at which meeting General Director Pleiger was present. It is noteworthy that defendant Koerner, as chairman of the Verwaltungsrat, presided at this meeting. At this meeting, however, he resigned such chairmanship because, as was indicated, he was also a member of the Reichstag, and the Fuehrer, for that reason, apparently did not wish him to hold the chairmanship of the Verwaltungsrat of the BHO at the same time. Upon his resignation as chairman of the Verwaltungsrat at this meeting the defendant Pleiger was made the new chairman of the Verwaltungsrat, and Pleiger at such meeting took over the chairmanship of the meeting and made an extensive report with respect to the activities of the BHO in the iron mining industry in the occupied Russian territory.

He reported that 110,000 tons of manganese had been mined in 1942, which exceeded that which had formerly been mined by the Russians. He estimated at such meeting that the amount could be doubled in 1943 which would be—" \* \* \* sufficient to satisfy the entire European requirements."

An earlier report of the BHO (NI-4332, Pros. Ex. 1993) indicates that the brown coal deposits in the western Ukraine were also being exploited, " \* \* \* in an increased degree from the summer of 1942 onwards." Such report also states that—

*" \* \* \* the Wehrmacht requires that coal deposits be exploited as rapidly and extensively as possible. This demand will be complied with. The necessary steps have been taken."*

This same report also disclosed the real motivating consideration for the development of the manganese ore mining industry in the occupied Russian territory as follows:

*"The development of the manganese ore mining industry was taken in hand as being particularly urgent,"*

and the report later resumes as follows:

*"The resumption of operations in the iron mining industry was temporarily suspended in view of supplying with manganese ores those industries belonging to Germany and her allies which are important for the conduct of the war."*

This same report gives some impressive figures for 1942 of BHO's production in the occupied territory.

But exploitation of the Russian iron ore mining industry was not the only activity of the BHO in Russia. On 17 June 1943 defendant Pleiger sent a report (NG-2695, Pros. Ex. 1996) to all offices of the BHO calling attention to the fact that an inspection

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of plants of the BHO in the Ukraine had shown that a number of installations could not be further operated because "they are too destroyed." He then states that the installation parts of such works are free for use within a sphere of the BHO "or in the Reich." The latter then continues:

*"Furthermore, care has to be taken that the parts which are still usable won't be brought into the Reich as salvage, but will be used for the accelerated construction of the iron works, which are important for the conduct of the war. For that purpose, I order that the gentlemen mentioned below will inform themselves through thorough inspections of the shut-down iron works and plants which installations can be moved to the Reich for the speeding up of the construction of the H.G.W."*

*"Dr. Rheinlaender*

*"Direktor Schieggries I*

*"Direktor Schieggries II HGW.-Salzgitter, iron works*

*Braunschweig*

*"Direktor Eisfeld*

*A.G. fuer Bergbau*

*und Huettenbedarf*

*"I instruct all offices of the BHO to support the above-mentioned gentlemen in carrying out their tasks in every respect. The execution of dismantling the individual installations and their transfer to the Reich are to be arranged on the spot as far as possible. The release of the individual installations, through the BHO, is to be left to me.*

*Paul Pleiger"*

That vast amounts of equipment were in fact taken from plants in occupied Russia and sent to the Reich is conclusively proven by both documentary evidence adduced by the prosecution and by admissions of the defense witnesses as well. It is also clear that Pleiger displayed considerable energy in the execution of such a program of spoliation. He utterly disregarded the limitations of the Hague Conventions in this respect.

It has been pointed out that the property seized in Russia, both movable and immovable, was, to a large extent, state-owned, and it has been urged that, as such, it is subject to seizure and utilization without regard to whether or not its use was necessary for military operations by the occupying army, and that under conditions of modern total warfare, all produce and material, raw or processed, including those of the soil, mines, forests, and oil fields, together with the plants which process them, are essential to military operations. This claim is far too broad.

The provisions of Articles 53 and 55 of the Hague Convention, which have been heretofore set forth, place limitations upon the

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occupant's right of seizure and utilization, with respect to movable and immovable state-owned property. Article 55, it will be noted, contains limitations with respect to state-owned properties, such as public buildings, real estate, forests, and agricultural estates. The provision states that the occupant "must safeguard the capital of these properties, and administer them in accordance with the rules of usufruct." This right obviously does not include the privilege to commit waste or strip off the property involved, nor is it conceivable that the administrator or usufructuary may with impunity so use the property as to ruin or destroy the economy of the occupied territories, or to deprive its inhabitants of food, clothing, coal, oil, iron, and steel for their normal needs.

It seems clear from the evidence that the state-owned properties which were here seized, were seized and used without regard to the rules of usufructuary, as contemplated by that term, in said Article 53.

We find defendant Pleiger guilty under count six.

KEHRL

In addition to the general charges contained in count six against defendant Kehrl, a number of specific charges are also made against him, among them the following: He is charged with having been, together with defendant Rasche, active in the plunder of public and private property in Czechoslovakia. It is asserted that by virtue of the powers delegated by Reich Minister of Economics Funk, Kehrl directed and reviewed German acquisitions of industrial and financial properties in the Sudetenland and the "Protectorate" (Bohemia-Moravia) and that he and Rasche were specifically



authorized by Goering to acquire and regroup major segments of Czech industry, so that they could be coordinated effectively with the German war effort. It is asserted that defendants Kehrl and Rasche drafted and executed plans for the seizure of control of important Czech coal, steel, and armament properties. It is alleged that the defendant Kehrl supervised the acquisition, through Rasche, of many Czech properties, and it is alleged that the defendants Kehrl and Rasche were instrumental in securing for the Hermann Goering Works the ownership and control of plants and properties forming a foundation of the industrial life of Czechoslovakia. It is further asserted that Kehrl played an active and important role in the transfer and control of major financial institutions in Czechoslovakia to Germans, and that immediately after the occupation of Bohemia and Moravia, defendant Rasche obtained defendant Kehrl's approval for taking over the Boehmische Escompte Bank, herein referred to as the

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BEB, all of which was carried out as is hereinafter set forth in our treatment of the charges of spoliation against Rasche. It is also specifically asserted that defendant Kehrl drafted and participated in the execution of the so-called "Kehrl Plan" for the exploitation of the textile industry in the occupied western territories, and otherwise participated as Generalreferent in the Reich Ministry of Economics in the programs for economic exploitation in the occupied territories. It is asserted that under the Kehrl Plan complete control was obtained by Germans of the existing textile production in the occupied regions of Belgium and northern France, and that enormous quantities of raw materials and finished products were transferred from the occupied western territories to Germany. It is alleged that the defendant Kehrl was chairman of the Verwaltungsrat of Ostfaser G.m.b.H. and its subsidiary companies, which were established as "trustees" for the textile industries in the Soviet Union and other occupied eastern territories. It is asserted that the activities of these "trustees," directed and supervised by Kehrl, included the taking over and operation of hundreds of textile plants, the seizure of enormous quantities of raw materials and the exportation to the Reich of seized materials and plant production. It is also alleged that the defendant Kehrl, together with defendants Schwerin von Krosigk, Darré, Lammers, Koerner, Pleiger and Stuckart, took part in numerous meetings, at which exploitation policies were discussed and plans were made.

Immediately following the invasion of Bohemia-Moravia by the Germans, and for a period of years thereafter, the defendant Kehrl was possessed of extensive powers and authority in the execution of the Reich plan to work the Czechoslovakian industry into the structure of German war production, and exploiting it for the German war effort. The defendant Kehrl, in testifying in his own behalf before this Tribunal, stated as follows (*Tr. p. 15565*):

*"A. I had been in the Ministry just 6 weeks when Austria was annexed, and a circular letter from the Minister of the Interior came to the Ministry of Economics that an office would be set up in Vienna under Keppler, a Ministry of the Reich Commissioner, to which every major industry would send a representative. State Secretary Brinckmann looked me up at that time, primarily because I knew Keppler well from our previous work together, and also because he had in the Ministry of Economics no economist available with an extensive knowledge. I went to Austria and was active for a few weeks on Keppler's staff. Then I became liaison man between the Reich Ministry of Economics and the Reich Commissioner Buerckel,*

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and on commission from the Minister of Economics I was active in the reincorporation of Austria into the Reich. This activity took about 3 days out of the week in Berlin and lasted until roughly October 1938. When the Sudetengau was incorporated into the Reich I was assigned a similar task for it, and when the Protectorate was set up I received similar tasks for it, since the problems to be solved were all very similar. Thus, from that first accidental assignment the others developed more or less automatically." [Emphasis supplied.]

Attention is here directed to a letter dated 30 September 1939, written by defendant to Himmler, in which he stated as follows (NID-14621, Pros. Ex. 2005):

"I was in charge from 15 March of this year to July, as representative of the Plenipotentiary for the Four Year Plan and of the Reich Economics Minister, and also as Economic Delegate of the Reich Protector, of the initiation and execution of the economic reintegration of the Protectorate, and I now continue this job, after I organized a department of economy attached to the Reich Protector, within the Reich Economics Ministry.

"In view of the impression which I gained during this my activity, and particularly on my last visit to Prague, I consider myself under the obligation to ask you for an opportunity to report to you about the political situation there, as I see it, particularly since I am convinced that my report to you might be of value to you in your decisions regarding the handling of police power in the Protectorate."

It appears that the defendant held the positions of responsibility and authority referred to under the designation of a Generalreferent for special tasks in the Reich Ministry of Economics. The defense witness Koester, a former assistant of Kehrl, stated in the course of testifying before this Tribunal that Kehrl's tasks in Bohemia-Moravia were "to effect a smooth transition of Bohemian-Moravian economy \* \* \*." In his own testimony Kehrl admitted that all questions relating to German purchases of Czechoslovakian enterprises were subject to decision by him. He further admitted that it was provided in a decree of the Reich Ministry of Economics that Kehrl was to be consulted in making all decisions relative to such purchases.

The evidence clearly establishes that the defendant Kehrl, as such Referent for special tasks in the Reich Ministry of Economics, took part in, and to a considerable extent directed, the acquisition of important banking interests and industrial enterprises in Czechoslovakia, largely for the benefit of the German economy. It also appears from the evidence that he participated

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in the initiation and carrying out of the Reich program of Aryanization in Czechoslovakia. With respect to the whole economic program of the Reich in Bohemia-Moravia during the period in question, in the objectives sought and the manner of carrying out the program to obtain such objectives, we allude to the official report of the Czech Government, as made to the International Military Tribunal, which report is also introduced in evidence in this case. We quote the following excerpts from such evidence (998-PS, Pros. Ex. 3065):

"The German troops who invaded Prague brought with them a German staff of economic experts, that is, of experts in economic looting.

\* \* \* \* \*

"The Reich German Commissioner of the Czechoslovak National Bank stopped all payments of monies abroad and seized all the gold reserves and foreign bills in the Protectorate. Thus the Germans took 23,000 kilogrammes of gold to a nominal value of 737,000 million crowns (£5.265.000) by transferring the gold deposited in the Bank of the International Settlement to the Reich Bank.

"(2) Economic Germanization.

\* \* \* \* \*

"After the invasion German managers, supervisors and foremen replaced the representatives of

*the Czechoslovak Republic in state-owned plants.*

*"Germanization of private estates began, of course, with the catchword 'Aryanization.'*

*\* \* \* \* \**

*"Czech peasants were offered compensation for their estates, but inadequate prices.*

*\* \* \* \* \**

*"The looting of property and wealth was followed by the pillaging of products of the soil. Heavy fines and often the death penalty were imposed on Czech peasants for intentionally disregarding the orders about production, delivery and rationing.*

*"B. Expropriation of Banks and Holdings.*

*\* \* \* \* \**

*" (b) After Invasion of March 15th, 1939.*

*"After the invasion several Czechoslovak banks in Bohemia became, by means of the Aryanization, the property of the Bank of Dresden; the German bank took over, among others, the Union Bank of Bohemia. In this way all financial interests*

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*which these banks had in Czech industry as well as their entire share-capital, fell into German hands.*

*"Hence started the penetration of German bank capital into the Czech banks, their expropriation and incorporation into the German bank system. The 'Dresdner Bank' (being the actual establishment for handling the funds of the National Socialist Party) and the 'Deutsche Bank' were officially entrusted with the task of expropriating the funds belonging to the Czechoslovak banking concerns.*

*"By diverse 'transactions', by gaining influence through the Sudeten branch banks upon the Prague Headquarters of the respective banks, by reducing the share capital and then increasing it with German help, by acquisition of industrial holdings and thus gaining influence upon the controlling banks, by depriving banks of their industrial interest, etc., the two Berlin banks gained complete control over the banks of the Protectorate. Gestapo terror helped them.*

*"The control of the Czechoslovak banks meant actually the control over practically the whole industry directed by the Dresdner Bank and Deutsche Bank on the one hand, and by the big German industrial concerns on the other hand.*

*\* \* \* \* \**

*"(b) Armament factories.*

*"The Dresdner Bank acquired the most important armament factories of Czechoslovakia, that is, the Skoda works in Pilsen and the Czechoslovak Zbrojovka in Brno. The private shareholders were forced to surrender their shares far below their actual value; the bank paid for these shares with bank notes which had been withdrawn from circulation or which the Germans had confiscated in the districts ceded by the Munich Agreement.*

*"(c) Goering Concern.*

*"The German domination over the Czechoslovak banks and, therefore, over the industry through the big Berlin banks, was accomplished through the gigantic Hermann Goering concern which, one by one, seized the greatest Czechoslovak industries at the smallest financial cost, that is to say by the chief pretext of Aryanization, by pressure from the Reich, by financial 'measures' and by the threat of Gestapo and concentration camps.*

*"Finally all big industrial holdings, works, and plants of the armament, coal and iron industry fell into German hands. The great chemical industry was absorbed by the German concern 'I. G. Farben Industrie.'*

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*"(b) After the Invasion of March 15th, 1939.*

*"(aa) Assault on the Currency.*

*"After the invasion the Nazis immediately introduced a fixed rate of 10 crowns to one mark, thus lowering it to the disadvantage of the Czech crown. The invading German Army and other Germans could so plunder the rich Czech reserves at low prices still current in the Protectorate.*

*In addition, all stocks of precious metals, diamonds, foreign currencies, had to be exchanged for the German paper mark in the entire area of the Protectorate.*

*"(bb) Clearing 'Agreement.'*

*"A big financial looting started with the financial clearing agreement negotiated between the Czech National Bank and the Reich Bank. This simple measure enabled the Germans to import goods freely from the Protectorate without burdening the German balance of payment with an equivalent. The German importer paid the Reich Bank in marks for the goods which he had bought and the Reich Bank entered the equivalent in crowns to the credit of the Czech National Bank on the clearing account. The National Bank in Prague could do nothing but enter these sums as assets, they appeared in its weekly statements under the heading 'Other assets,' although they were doubtful from the beginning and worthless at the end."*

The foregoing indicates the methods employed to effect "a smooth transition of Bohemian-Moravian economy \* \* \*" the responsibility for the execution of which was largely in the hands of the defendant Kehrl. In view of the great authority and responsibility vested in him in this program and his active participation therein as indicated by the evidence, he can find no refuge behind the plea of being ignorant of the nature of the methods employed.

The various items of evidence hereinafter referred to in the opinion of the Tribunal are but corroborative of the evidence hereinbefore referred to with respect to Kehrl and his participation in spoliation in Czechoslovakia.

We will, for reasons hereinbefore in this judgment stated, refrain from discussing the charges made against defendant, with respect to property in the Sudetenland. We will first consider here the role played by Kehrl in Czechoslovakian banking enterprises being acquired by German interests. It appears that from the beginning Kehrl played a vital directing role in these acquisitions.

It appears that on 21 March 1939, but a few days after the appearance of the Reich military invasion forces in Prague, a conference was held in Prague between German banks, with a view to determining the allocation of Czech banks among the

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German banks. It is stated in the report of such conference, the report being made by Koester, Kehrl's assistant, who apparently presided over the meeting, that the meeting was held *"to draw up a proposal suitable to be submitted to President Kehrl to enable him to arrive at a final decision."* [Emphasis supplied.]

Documentary evidence introduced takes into consideration also that defendant Kehrl passed upon and approved appointments to the supervisory board of the BEB after it had been acquired by the Dresdner Bank. It further appears that he also approved appointments to the supervisory boards of the various concerns in which participations had been acquired through the medium of the BEB. From the files of the BEB, we have in evidence a report of a conference attended by defendant Kehrl, which report is dated 13 April 1939. Such conference report is here quoted in full, as it indicates beyond question that defendant Kehrl played an extremely active and supervisory role in the position which he held as Referent for Special Tasks of the Economics Ministry. Such report reads as follows:

"Prague 13 April 1939

*Conference with President Kehrl.*

*"1. Bebca Verwaltungsrat—Mr. Kehrl agrees with the list of Verwaltungsrat members presented to him. Mr. von Hinke should, for the time being, not be asked by us to accept a mandate.*

*"Dr. Hans Ringhoffer should remain in the National Bank meanwhile, while his brother Franz should join the Verwaltungsrat of Bebca to keep this position open for his brother.*

*"2. Bebca-Direction—It is Mr. Kehrl's wish that Dr. Fousek immediately resign his position on the executive board of directors.*

*"3. Bebca-Presidium—We informed Mr. Kehrl about our ideas to have Dr. Rasche elected chairman and Dr. Hummelberger and Hoedel vice chairmen. Mr. Kehrl said that he would consider*

*this plan, but it didn't seem to him too good a plan, because the influence of DB [Deutsche Bank] on Bebca would be stressed too much.*

*"4. Poldi-Syndicate—Mr. Kehrl agrees with the list of persons presented to him. The representatives of DB have to be told that it is only a temporary arrangement for about a year.*

*"President Kehrl agrees with keeping Baron Kubinsky in the Verwaltungsrat, for the time being.*

*"Mr. Kehrl wants the Bebca to confirm in writing to him (Kehrl) that upon request it is prepared to sell its shares, which are part of the syndicate agreement, to the German industrial group. Mr. von Luedinghausen pointed out that this was*

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*possible only if the price would correspond to the one previously paid by DB."*

The foregoing, and much other evidence in the record, some of which will hereinafter be referred to, shows clearly that Mr. Kehrl knew of and had a directing hand in the course of measures employed by the Reich in the acquisition of BEB by German interests. Such evidence is in line with, and corroborative of, the statements made in the Czech Commission report for the IMT, and which is in evidence in this case.

We need not here dwell further upon the acquisition of control of the banking interests, such as BEB in Bohemia and Moravia. The discussion and treatment of defendant Rasche's part therein, as hereinafter contained, shows the methods and results of this acquisition program. Evidence here adduced with respect to the charges against Kehrl under this count, as hereinbefore stated, has shown his directing hand and voice therein. We have but to allude to part of his cross-examination before this Tribunal under date of 19 August 1948. We quote therefrom (*Tr. pp. 16927-16928*):

*"Q. Weren't the proposals of all the big German banks for allocation of a sphere of interest in the Bohemian-Moravian Protectorate transmitted to you for final decision?*

*"A. Well, that is putting it rather generally. The sphere of interest in the banking field, you mean?*

*"Q. Yes, the sphere of interest of banks in the banking field?*

*"A. Yes, I testified to that effect.*

*"Q. Didn't you also review the appointments to the boards of the Germanized banks and decide then whether the German banks were sufficiently represented?*

*"A. Well, that is putting it rather generally.*

*"Q. All right, I will put it more specifically.*

*"A. I beg your pardon?*

*"Q. I will put it more specifically. In the case of BEB didn't you argue with the Dresdner Bank they were not putting enough Germans into the management?*

*"A. I can't remember, but it may be."*

That defendant Kehrl had a very decisive voice in the matter of the acquisition of banks in Bohemia-Moravia after the invasion is admitted by him in the course of his testimony before this Tribunal on 13 August 1948, when he stated (*Tr. p. 15901*):

*"Immediately after my arrival in Prague I went to the Dresdner Bank, the Deutsche Bank, the BEBCA and BUB and the Kreditanstalt der Deutschen [that is, all German banks in*

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*Bohemia-Moravia], and I forbade them from purchasing any Czech shares without my permission."*

We will not consider the participation of Kehrl in the acquisition of Poldihuetten, Erste Bruenner, Skoda, Bruenner Waffen and Vitkovice, extremely important industrial establishments in Bohemia-Moravia, and concerning the acquisition of which we hereinafter dwell at some length in discussing charges of spoliation against Rasche. In this connection, we refer to a communication sent by defendant Rasche to Gritzbach, chief of the staff office of the Reich Marshal Goering, dated 23 December 1943, enclosing a file note, wherein he discusses the Poldihuetten matter and in the course of which discussion he states (*NI-2028, Pros. Ex. 3103*):

*"(As you know, during the course of developments President Kehrl and I were given further special authority by the Reich Marshal for the acquisition and regrouping of such industrial affairs, and I think we were very successful in executing this order on the basis of authority he accorded to us). As you know, the Skoda shares also were the outcome of these negotiations in addition to the ones named above; also the Bruenner Waffen shares."*

Under date of 3 July 1939, it seems that Walther Funk, the Reich Minister of Economics, wrote to the Dresdner Bank relative to acquiring Poldihuetten and Erste Bruenner shares, stating in the course of such letter (NID-13667, Pros. Ex. 3123):

*"You have declared your agreement to receive the following mission from the German Reich, that is, to carry out the transaction which has been defined by this agreement and the syndicate contracts."*

He further stated:

*"As far as I have not nominated any other gentleman of my ministry it shall suffice for your clearance to carry out the instructions of my Generalreferent Kehrl."*

It appears further from the evidence that the Poldihuetten and Erste Bruenner shares acquired and held by the Dresdner Bank under the trusteeship for the Reich, were subsequently transferred to the Hermann Goering Works. In connection with this acquisition, attention is called to contents of a report of the Reich Finance Ministry, dated 9 January 1940, which states that Kehrl had offered various Czechoslovakian acquisitions, including Poldihuetten, Erste Bruenner shares, to the Hermann Goering Works. We quote the following from such report (NID-15639, Pros. Ex. C-184):

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*"1. Upon orders by the Plenipotentiary for the Four Year Plan the aforementioned investments were bought—for the time being, to be held in trust for the account of whoever is concerned—by the R.W.i.M. (Generalreferent Hans Kehrl) partly through Dresdner Bank and partly through Kehrl and Bankdirektor Dr. Rasche personally. According to the R.W.i.M. the purchases were made for ethnical, economic, and especially military-political reasons."*

In our discussion of the charges against Rasche, the acquisition of Skoda and Bruenner Waffen shares is also discussed. In the course of an interrogation on 18 October 1946, which is in evidence in this case, Kehrl stated with respect to said matter (NID-14584, Pros. Ex. 3108):

*"When I was first sent to Prague, as I told you before, Funk told me that Goering had ordered that the majority or the total holdings—he wasn't very definite in expressing his detailed views—of the Skodawerke and its daughter companies should be procured for the Reich at his disposal and that I, when coming to Prague, should see to it how it could best be managed \* \* \* "*

And he stated further:

*"I talked with the Czech Finance Minister and told him about Goering and about the wish of Goering, and he told me that the government had sold out to the Zivno, and that there was no object to acquire that part from the Zivno Bank, but that the Czech Government would be thankful for not interfering in all of the other interests or the part interests in these companies."*

He then indicated that the part sold to the Zivno Bank was acquired and held at the disposal of Goering, and he stated further:

*"Conversations with the Zivno Bank were made on behalf of the government by Dr. Rasche."*

It appears from the evidence that the key to the financial control of Skoda was through control of Bruenner Waffen. It appears in the memorandum of the OKW, issued within 2 weeks after the occupation of Prague, that Kehrl was endeavoring to purchase shares of the Bruenner-Waffen through the Dresdner Bank, and it was indicated that the negotiations were to be kept strictly confidential, and it further appears that Kehrl and the Dresdner Bank were successful in acquiring 130,000 shares of Bruenner Waffen by the end of March 1939. Subsequently, that is, in April

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1939, it appears that defendants Kehrl and Rasche had secured syndicate agreements assuring them control of Bruenner-Waffen and Skoda. Such so-called syndicate agreements gave extensive powers to both Kehrl and Rasche, as for instance, the right to appoint important key personnel. There is ample credible evidence in the record to satisfy beyond reasonable doubt that such acquisitions were accomplished in no small measure through coercive measures. From Kehrl's interrogation of 18 October 1946, hereinbefore referred to, it is indicated quite clearly that the holders of the invaded shares did not have much choice but to sell.

Relative to this matter, and bearing also upon transactions hereinbefore discussed, and which will be hereinafter dealt with in the course of our treatment of the charges against Kehrl, we call attention to the testimony of Jan Dvoracek, a former official of the Zivno Bank in Prague. By reason of his position, his experiences, and his observations, he was able to give competent and credible evidence relative to the economic progress of the Reich in Czechoslovakia, following the military invasion on 15 March 1939. It is significant that defendant Kehrl himself has quite unreservedly approved of said Dvoracek, for in the course of his examination before this Tribunal on 13 August 1948, Kehrl said with respect to Dvoracek (Tr. p. 15893) —

*"I have already said that Dvoracek, as a leading director of the Zivno Bank, played an important part in economic life. At that time I had very great respect for him, and I still have \* \* \*. The witness, under very great prosecution pressure, and, unfortunately, pressure from my own defense counsel too, at no time let himself be led away into saying anything that was untrue, although he was in Nuernberg under somewhat unfavorable conditions."*

We will now quote from the cross-examination of said Dvoracek, on 11 June 1948 (Tr. pp. 8487-8488):

*"Q. Did Mr. Kehrl in any of these conferences use duress, or threaten you, or make any attempt to induce you in any way to do anything you did not want to do?"*

*"A. I can answer that question with yes. Mr. Kehrl did have us do various things which we did not want to do, and which we would never have done without his suggestion. It was not necessary for Mr. Kehrl to threaten us personally. We were quite aware of who Mr. Kehrl was, and Mr. Kehrl never made any secret of it. For example, when, immediately after 15 March, he came to Prague and said that he had to take over armament concerns for Goering, we realized what was going*

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*on; in our position such suggestions were orders of the Reich authorities, the Reich government, and all the power of the Third Reich.*

*"Q. Witness, you said that after 15 March Kehrl came to Prague and said that he came on behalf of Goering to take over the armament concerns?"*

*"A. Yes.*

*"Q. You mean Skoda and Bruenner-Waffen?"*

*"A. Yes.*

*"Q. Did Mr. Kehrl not always try to fulfill any wishes that you presented to him?"*

*"A. Doctor, Mr. Kehrl tried to carry out the orders of Field Marshal Goering in such a way that these orders were complied with in every way. We tried to manage to keep the Czech personnel in charge; we were forced to a transaction we would never have gone into independently. When I say 'we' I am speaking of the whole Czech group of stockholders, including the Finance Ministry.*

*"Q. You are speaking of Skoda and Bruenner-Waffen?"*

*"A. Yes."*

We must now touch briefly upon the evidence bearing upon the claim that Kehrl also took part in measures taken to acquire the Vitkovice enterprise in Czechoslovakia, hereinafter also mentioned in connection with our consideration of the charges in evidence with respect to Rasche under this count. The evidence clearly shows that Kehrl had been authorized to acquire control of Vitkovice and that on 23 March 1939 there was sent from his office a letter of authorization to defendant Rasche, stating in

part (NID-13407, Pros. Ex. 3140):

*"In reference to the decree of the Reich Minister of Economics, dated 28 February 1939, authorizing me, in agreement with the Plenipotentiary for the Four Year Plan, Minister President, General Field Marshal Goering, concerning the iron works, Vitkovice, I hereby authorize you, together with Dr. Jaroslav Preiss, President of Zivnostenska Bank, Prague, to conduct negotiations with the Rothschild family \* \* \*."*

The holdings of the Rothschilds apparently were necessary to a control of Vitkovice plant. As stated hereinafter in connection with Rasche's role in this transaction, during the negotiations Louis Rothschild was in custody of the Gestapo in Vienna. It was rather significant that, when asked concerning these negotiations, particularly as to whether the release of Louis Rothschild was not a condition imposed by Eugen Rothschild before he would sign over his interests, defendant Kehrl stated—"I couldn't say. I

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didn't negotiate with Rothschild." It does appear from the evidence, however, that it was through Kehrl's office that on 14 April 1939, authorization was given Rasche to see Louis Rothschild in Vienna, relative to Vitkovice, and it was Kehrl's office which, on 13 April 1939, wrote the State Police Headquarters in Vienna, requesting that an opportunity be given defendant Rasche to speak to Louis Rothschild, such letter explaining (NID-13790, Pros. Ex. 3143):

*"I have commissioned Dr. Rasche with the negotiations concerning the Vitkovice iron plants."*

In this connection, evidence was introduced in this case which definitely shows that one Karl von Lewinski, on 25 April 1939, directed a letter (NID-15550, Pros. Ex. 3820) to Dr. Bretsch, the so-called "trustee for the Rothschild property" in the Reich Ministry of Economy, wherein he stated in part, relative to the negotiations going on for the sale of the Rothschild holdings, said Lewinski being the representative of the Rothschild group:

*"In order to expedite the release of the sequestered securities held by Kuhn Loeb, New York, Baron Eugen Rothschild is prepared to send the following telegram to his legal representative in New York, provided you approve of it as a satisfactory guarantee that the conditions will be met:*

*"Please inform Kuhn Loeb that I agreed to withdraw attachments and request them to cable and confirm by letter to S.M. as follows: 'At request Eugen Rothschild we agree to hold at your disposal all balances previously attached by him and also that the following securities (list follows) on a condition firstly that Louis Rothschild shall have freely left Germany over Swiss or French frontier on or before May 4th and secondly that you shall not remove the securities belonging to Eugen Rothschild from our custody without his consent and to place at his disposal in dollars the income collected thereon to date.'"*

In his testimony before this Tribunal, Kehrl admitted that Louis Rothschild had been released from custody of the Gestapo in Vienna, stating:

*"If I remember right it was shortly after negotiations began."*

That Kehrl had detailed and firsthand knowledge of the negotiations with respect to Vitkovice seems clear from the evidence. In the course of his own testimony (Tr. p. 16945) before this Tribunal, when examined with respect to the negotiations between Rasche and the Rothschild-Gutmann representatives in Paris, he was asked—

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*"Q. Didn't you instruct Rasche that he was being too favorable to these people?"*

The defendant answered—

*"A. I don't remember, but I have talked very often and written very often about the subject. That may be."*

He was then asked—"Did you talk to him very often?" He answered—"I did talk very



often," Because of the outbreak of the war, the agreement which was under such circumstances consummated was not fully carried out. It cannot be overlooked, however, that Kehrl participated in and directed, to a considerable degree, the taking over of actual control and custody of the Vitkovice plants, pending the so-called negotiations for their purchase, inasmuch as he caused to be appointed a German, Henke, to take over the operation of Vitkovice, on the flimsy pretext that the managers in charge could not operate it properly. Obviously this taking over and withholding from the true owners was done for the benefit of the German economy. If it were to be claimed that this was done only to preserve public order and safety, we find irrefutable contradiction thereto in the thinly disguised and coercive steps taken to acquire the plant through the ostensible buying of control. Obviously, this indicated above all things a purposeful design to acquire the Vitkovice plant permanently for the German economy. The plant was, therefore, physically withheld from the owners, although the forced sale transaction was not fully consummated. Kehrl played a prominent and vital role in the taking over of such plants, and the placing of Henke therein as the Reich representative.

The regulations of the Hague Convention were clearly violated by such conduct. The incidents in this case are, in some respects, comparable to those surrounding the taking over of the Rombach plant by the defendant Friedrich Flick, and which was treated in Case 5 by Tribunal IV, as a violation of the Hague Convention.

There is an abundance of credible evidence in the record to show that the defendant Kehrl sanctioned the so-called Aryanization program of the Reich in the occupied territory of Bohemia and Moravia, which Aryanization program, with its confiscatory measures, became an important instrumentality to the spoliation program of the Reich.

It is indeed significant that among the various exhibits introduced by defendant is one which is an article written by him in April 1939 for the magazine "Four Year Plan." We refer to [Document Kehrl 101] Kehrl Exhibit 80, and we quote the following therefrom:

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*"In the reconstruction of the Bohemian and Moravian economy, a banking system simplified and strengthened by the financial power of the Reich, banking institutions of the Reich will play a leading part. Abuses such as the unhealthy domination of the industries in the Protectorate by the banks, which were largely in Jewish hands, will have to be eliminated. The new, organized banking system will be able (especially for the export trade) to secure for the Bohemian and Moravian economy all the facilities, which are warranted by tradition, of the German institutes and their intensive work just in this field during the last years. With regard to the Aryanization of numerous branches of industry which, of necessity, will be started and will have to be carried out carefully, the banks will be able to give powerful help." [Emphasis supplied.]*

There is no doubt but that the Hermann Goering Works gained control of the bulk of the steel production of the Protectorate as well as substantial holdings in other enterprises. The evidence of the witness Dvoracek, who has been hereinbefore referred to as a qualified and credible witness, stated with respect to the economic results of the occupation of Czechoslovakia (*Tr. p. 8500*):

*"Q. Mr. Dvoracek, can you just explain these very briefly, just the over-all effect of these transfers of control?"*

*"A. Yes. The Kehrl-Rasche group, after the occupation, wanted to get control, in one form or another, over Vitkovice. It had not been arranged by contract because of the outbreak of the war. There was then an absentee administration \* \* \* over enemy property, and then the Hermann Goering Works had control. The Poldihuette foundry also came under the control of the Hermann Goering Works. That began after Munich in the spring of 1938, before the occupation, when the BEBCA stocks were being sold, because of the conditions among the Sudeten Germans, and*

control was acquired by the Hermann Goering Works. The Ferdinand Nordbahn also went over to the Hermann Goering Works, and the majority by taking over the coal fields, in short, everything of importance in the heavy industry with the exception of one machine factory came into German hands predominantly.

"Q. Mr. Dvoracek, my question is not the nature of the transfers, not what was transferred, but what was the significance of these things for the Czech economy? What was it, in economic terms, which went to the Germans?

"A. I can tell you that in a few sentences. Actual control of the Czech economy came into German hands. The Czech stockholders either had to sell their stocks or become unimportant

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*minorities, and even in so-called private economy, from the practical point of view, the control went into the hands of the Reich."*

Despite such testimony, however, the defendant insisted during his examination that he was guided by humane and lofty motives. During his testimony on 12 August 1948, he stated (Tr. p. 15772):

*"With reference to the Czech economy in the Protectorate, I was guided by the desire to contribute everything possible from the economic side to bring about a reconciliation between the Czechs and the Germans. To the best of my knowledge and conscience I did everything for this purpose that lay in my power. In my sphere of work I adhered to the sense of the Fuehrer decree and considered myself to be a genuine protector of the economic interests of the Czechs. I stuck to this opinion to the very last day of the war."*

We now call attention to excerpts from another defense exhibit, namely an article of September 1940, written by defendant Kehrl for the "Four Year Plan" magazine, being [Document Kehrl 119] Kehrl Exhibit 82. We quote the following therefrom:

*"Bringing about the Economic Integration of the Protectorate."*

*"\* \* \* The return of Bohemia and Moravia was followed by months of highest political tension with its repercussion on economic life, and finally on 1 September 1939, by the war, which England had declared in such a wanton manner, bringing about a complete change of all economic possibilities.*

*"The necessity and the logic of the political developments leading up to the return of Bohemia and Moravia into the framework of Greater Germany was fully understood in the country itself only by a few far-sighted politicians \* \* \*."*

*"In spite of these unfavorable pre-conditions and in spite of the absence of racial and political sources of energy which had such a favorable influence on the reunion of Ostmark and the Sudetenland, the economic coordination and integration of Bohemia and Moravia has now been almost completely carried out \* \* \* ;*

*\* \* \* \* \**

*"The last available capacities were utilized to meet the tremendous requirements of Greater Germany, thus eliminating still existing unemployment. First consideration in this connection—according to the structure of the territory and the political signs of the hour—was the participation in the armament of the Reich. Within a short time the production of the*

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*world-renowned and efficient works of the country such as the Skoda, Vitkovice, Bruenner-Waffen, etc., which to some extent were teamed up with German works for common production, were brought into line with the requirements of the German Wehrmacht, and these works have since had a valuable share in the completion of the German armament and in assuring ammunition requirements for the war. Thus they have contributed their share for the securing of their country, whose protection has been assumed by the Reich."*

The evidence above alluded to, amply corroborated as it is by other evidence in the record, substantiates the charges that Kehrl, through his active participation in the acquisition and control of the industries and enterprises hereinbefore specifically referred to, violated the Hague Convention with respect to belligerent occupancy.

We will now consider the charge that Kehrl, through his participation in the formulation and execution of the so-called "Kehrl Plan," whereby Germany exploited

textile production in the occupied territories of Belgium and France, including the removal of vast amounts of raw materials and manufactured products to the Reich from the occupied western territories, acted in violation of the Hague Convention. A careful examination of the evidence introduced in support of and in refutation of such charge convinces the Tribunal beyond reasonable doubt that the charge is true, and that such measures were a clear violation of Article 52 of the Hague Convention. We will here but briefly refer to some of the most significant items of evidence which support such conclusions.

It appears that defendant Kehrl had, prior to the war, become an expert on textiles. He had gained much experience in the textile industry prior to his taking up tasks for the Reich. In the course of his examination before the Tribunal by his own counsel, he stated with respect to his "positions and tasks in the Reich Ministry of Economics" as follows:

*"I had two functions there simultaneously. First of all I was Chief of the Textile Department, and at the same time I was Generalreferent for Special Tasks with the State Secretary. These two positions I occupied until November 1942. In November 1942, after my former chief left, General von Hannecken, I became Chief of the Main Department II of which the Textile Department was a sub-department."*

On 16 August 1940, it appears that defendant Kehrl signed and submitted a plan for the control and regulation of the French and Belgian textile production, which plan was drastic in its pro-

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visions, and provided for a heavy percentage of textile deliveries in Germany from such western territories. Seizure of raw materials was contemplated, and certain textile factories were to be closed down. The German minimum for the amount of viscose silk which was required for delivery to Germany was provided for. It was further provided that if production did not satisfy the minimum demand for viscose, the minimum would still have to be procured " \* \* \* at the expense of the Belgian consumption or export." Further illustrative of the drastic nature of the provisions is the following excerpt (NI-817, Pros. Ex. 2416):

*"The quantity of fabric produced in Belgium and northern France will be taken over to an extent of 70 percent (northern France 50 percent) through orders by the Wehrmacht plus central orders through the Zentraletextil. The remaining 30 percent 50 (percent resp.) are available for covering the civilian demands."*

The plan thus submitted points out that in order to make the plan work "is to avail oneself of the following factors":

*"Immediately entering into with the procurement office of the Wehrmacht via the local armament office. Should individual offices fail to undertake the necessary steps at once, the undersigned must be wired personally."*

The "undersigned" was, of course, Kehrl. It was contended by the defendant that the so-called plan hereinbefore referred to and signed by him, as of 16 August 1940, was not really the Kehrl plan, but was in the nature of a file note outlining "what the discussion had been and what was to be done to clarify the situation in the future." He admitted that he had done extensive work in the formulation of a plan through discussion and made definite contributions with respect to the matter which resulted in a so-called plan in February 1941, which was in the nature of an agreement signed by the French State Secretary, and the production ministry and Dr. Michel, the German Military Administrative Chief in the Headquarters, Paris, and by the Chief of the Office of the Military Commander in Brussels. This agreement, defendant admits, came to be known as the Kehrl plan, and is contained in [Document NID-14479]

Prosecution Exhibit 2418, received in evidence by the Tribunal. In the course of his testimony before this Tribunal, defendant was asked, in effect, if the agreement thus consummated was not really carrying out the general objectives and promises and agreements that he had arrived at with the French in the conference which he had conducted. The defendant answered, "Yes, Your Honor, with minor changes."

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It is necessary that we briefly consider the evidence with respect to the extent and amount of the textile removals from the occupied territories to Germany, pursuant to the Reich textile program, in the execution of which the evidence has indicated Kehrl was a vital and directing factor. A French official report introduced in evidence indicates in detail the following percentages of removals from the occupied territory of France over the 4 years 1941 to 31 May 1944, as follows (*NID-14479, Pros. Ex. 2418*):

*"59 percent of all French wool products  
53 percent of all French cotton products  
65 percent of all French flax products."*

The report states—

*"It should not be overlooked, however, that these figures constitute just one portion of the German removals—the only portion considered because it alone can be compared with the respective French resources. The seizure, requisition, removals of the accumulated stocks of the army, the orders over and above the imposition programs, etc., increase the amount of deliveries effected under the terms of the agreement."*

The report also states that:

*"France supplied to Germany during the years of the war as raw materials or as manufactured products—as a minimum in terms of wool, 140,000 tons (of which 100,000 tons were posted in the books) ; in terms of cotton, 99,000 tons (of which 10,000 tons were posted in the books) ; in terms of flax, 53,000 tons (of which 38,000 tons were posted in the books) ; in terms of rags, 108,000 tons (of which 77,000 tons were posted in the books)."*

The report goes on to state that in francs of current value and after deducting for reciprocal deliveries, and without considering the territories of the East, the total of the German removals thus made amounted to 32,055,000,000 francs. The evidence indicates that these products and materials, thus taken out of France, were purportedly paid for, largely through the device of the "clearing account," a device with respect to which the IMT made the following finding: \*

*"In many of the occupied countries of the East and 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*

\* Trial of the Major War Criminals, op. cit., volume I, page 240.

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*these occupied countries were paid for by the occupied countries themselves, 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."*

The evidence also indicates that to a lesser degree the device of occupation francs, which was charged against occupation costs, was employed. Occupation costs in France have hereinbefore been discussed under the circumstances here obtaining. The seizure of these textile materials and products is in obvious violation of the Hague Convention. The imposition of quotas, if not here amounting to out-and-out

confiscation, would, under the most favorable construction for defendants, be termed requisitions. It appears clearly from the evidence that those were not imposed strictly for the army of occupation. On the other hand, it appears they were made for both the general army needs as well as the occupation army, and were also, to a substantial degree, imposed for the benefit of the civilian economy of Germany. This program, therefore, as carried out by the Reich under the direction of the defendant Kehrl, appears to be a violation of Article 52 of the Hague Convention.

The result of this systematic draining off of the vital resources and products was that rationing of textiles became necessary in France, and so extensive was spoliation of such products that during the last year of the war, it appears that textiles were practically off the French market, as far as purchases by the French people were concerned. In this connection, we will here call attention to a report of the Military Governor of France, dated 10 September 1942, and from which we quote the following excerpts:

*"The manufacturing and production capacity of French industry which, at the armistice, had large supplies of raw materials and finished goods at its disposal, has, to a very great extent, been made to serve German war production."*

He then makes the following specific reference to the French textile industry:

*"The textile section shows a similar picture of the way in which French industry has been utilized to a far-reaching extent to the advantage of the Reich, 71,000 tons of wool, 64,000 tons of cotton, 70,000 tons of rags and further quantities of linen goods, cellular wool, and artificial silk being delivered to the Reich. France retained only 30 percent of the normal production of the woolen industry, 16 percent of the cotton and 13 percent of the linen production, for her own use."*

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It is significant that, with respect to Belgian flax, defendant himself, in his testimony of 19 August 1948, after having stated that the majority of Belgian flax was processed in Belgium "for linen goods", was asked who received such linen goods, and he stated:

*"Partly the Belgian population; partly technical purposes in Belgium; partly the German Wehrmacht; partly German civilian consumption."*

He then admitted that, of these groups, the German Wehrmacht got most. Upon being asked from the bench what percentage of the production the Wehrmacht actually got, he stated:

*"A very high percentage, Your Honor. Now, I shouldn't be surprised if it was something like 70 percent."*

Corroborating in many respects the evidence we have here alluded to, is the testimony given by one Elmar Michel, formerly Ministerialdirigent and head of the Economics Division in the Military Administration of France. Contained in a statement made by him, we have the following (NID-14829, Pros. Ex. 2419):

*"After Speer, as Minister, had the whole armaments and production, practically everything which concerned the production was drawn together there. Kehrl became Generalreferent for Special Tasks in the Ministry of Economics. As such indeed he could not issue the directives, but could have insight into all the departments. With the double function as Chief of the Planning Office and as Chief of the Raw Material Office, Kehrl held the key position in his hand, since setting up the Central Planning Board. It was Kehrl therefore, who fixed the quotas according to the decisions of the Central Planning Board and in this way had the decision about the civilian demand also in France, in the most important fields. The complaint, which I raised against Kehrl, was the inconsiderate relegation of human interests behind the armament demand, never mind whether in Germany or in France."*

In redirect examination, the witness stated that during the occupation of France the defendant made a number of visits to Paris. When asked as to the purposes of these visits to Paris by the defendant, the witness stated (Tr. pp. 5568-5569)—

*"There were a number of visits. First of all, as you can see from the statements I made so far, there*

was a participation in the negotiations concerning textile supplies and exports which took place under the chairmanship of Herr Kehrl. Then later

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*when Kehrl was in Speer's ministry as a Chief of the Office of Raw Materials and Planning, he also came to Paris in this capacity."*

On re-cross-examination, defense counsel asked said witness the following question and elicited the following answer (Tr. p. 5570):

*"Q. Witness, who was the competent authority to initiate the textile rationing in France? Was that authority Kehrl?"*

*"A. The competent authority for the question of the introduction of rationing of textiles in France, as seen by the Reich, was Kehrl, as Chief of the Textile Department of the German Ministry of Economics, to introduce textile rationing in France. \* \* \* Well, formally of course not. Formally textile rationing in France could only be introduced by French law, and that is what happened."*

In this connection, the Tribunal here calls attention to the fact that it has heretofore, in the course of discussing some of the general defenses interposed in this count, pointed out the untenability of the defense here interposed in behalf of Kehrl, also that activities of the occupying power in France were carried out under laws or sanctions of the renegade French Government at Vichy. We, therefore, deem it unnecessary to here further comment on this farcical pretense of legality with which the defendant here seeks to clothe his activities with respect to the Reich textile program in France.

An effort has been made to show that defendant Kehrl was of the opinion that he was acting properly, and that he was actually endeavoring to carry out the textile program in such a way as not to subject the French population to such excessive demands that it would result in privation to the French people. These professions, however, are not impressive in view of the defendant's actions, and in light of statements made by him during the course of such textile program. We will refer to one documentary exhibit of defendant's own authorship, in the form of a directive from Kehrl to Reich offices in control of production in France and touching, among other things, textile products and production. This directive is dated 27 March 1943. We quote the following excerpts therefrom:

*"The task to mobilize all economic forces in the German sphere of influence for armaments, requires that the control in the occupied territories, above all in the West, will be adapted to that in the Reich as quickly and completely as possible and thereby to fit into the Central Planning Board."*

\* \* \* \* \*

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*"The Military Commander and I consider it to be urgently necessary to convert the control exercised in France, which is already extensively adapted to that in Germany, to a planned control of the finished products, according to the new order in the Reich.*

*"The commodity offices which are to be adjusted if necessary to the German area of jurisdiction for this purpose are to apply the procedure of the positive production directive, that is order what goods are to be produced, in what quantities and kinds they are to be produced, and who has to produce them. All other production except that which is prescribed is to be prevented. All other enterprises, except those taken over according to plan, have to close."*

The Tribunal is of the opinion that the evidence establishes beyond a reasonable doubt that defendant Kehrl's participation in the formulation and execution of the Reich's spoliation program with respect to textiles, as hereinbefore discussed, is a violation of Article 52 of the Hague Convention.

We come now to the charges made against Kehrl under this count, with respect to spoliation in Russia and other occupied territories of the Baltic countries. It appears

that on 4 August 1941 the Ostfaser Gesellschaft m.b.H. was organized, for the primary purpose of "managing the Russian textile industry in the interest of the German war economy." Kehrl became chairman of the Verwaltungsrat through the German Minister of Economics Funk, Kehrl being given wide powers in this organization. Subsidiary companies of the Ostfaser were subsequently organized with defendant Kehrl as chairman of the Verwaltungsrat of one of such subsidiaries, and as chairman of the Aufsichtsrat of two such subsidiaries. That Kehrl exercised extensive supervisory authority in connection with the operation of these enterprises is clear from reports submitted with relation to their activities. We quote from the business report of Ostfaser and its subsidiaries for the years 1941-42, as follows:

*"For the first tasks, President Kehrl, established the following principles, on the occasion of two visits in Riga. Practical take-over of the factor plant management through the main offices and centers, consolidation of factory staffs (zusammengefasste Belegung) of the factories, uniform price policy, central purchasing, central adjustment of investments (Investitionen) necessary for the war economy, as well as laying claim to central bank credits and directing the use of capital through the Ostland Faser."*

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From a secret report on the activities of the Ostfaser companies from 1941 to 1942, we quote the following:

*"In accordance with the principles which were formed in the general plan and in the directives drawn up by President Kehrl, the planning of the production of its allocation (Belegung) followed through the central offices (Zentrale) in agreement with the authorities and the leadership staff (Fuehrungsstab) Berlin."*

The evidence shows that through the Ostfaser Company and its subsidiaries, a vast number of industries were taken over and administered in Russia and the Baltic countries. The evidence establishes that through these organizations, vast quantities of raw materials were removed from the occupied territories for export to the Reich. As a matter of fact, the activity report of the Ostfaser G.m.b.H. for 1941-42 shows that during the 21 month period ending 30 June 1943, these removals totaled 29,208 tons, of which 26,000 tons were sent to the Reich. Other evidence also shows large shipments of raw materials out of the eastern territories during said period, through these Kehrl-dominated organizations. The same was true of textile stocks found by the Germans in the occupied territories in the Ostland. Indicative of the thoroughness of the spoliation thus practiced, we have but to note Ostfaser report of 1941-42 that shows that over 10,000 tons of wool and animal hair were removed during such period from the occupied eastern territories, valued at over 19 million reichsmarks.

It appears that one Dr. Doran, chairman of the board of the Aufsichtsrat, in the course of making a general business report at a general meeting of the Ostfaser and its subsidiaries, which meeting was presided over by Kehrl, on 13 December 1944, indicated that about 83,800 tons of textiles had been imported from the East to the Reich and that about 15,000 tons of cellulose and paper had been imported into the Reich from the eastern occupied territories. It also appears from the evidence that in the course of the evacuation of the eastern territories, when they were retaken from the German forces, great quantities of raw materials and finished textile products were shipped to Germany with the help of these organizations. In addition to this, vast amounts of factory machinery were sent to the Reich from the factories in the East. One prosecution witness [affiant], namely Lizdens, who had been employed in an Ostfaser enterprise in Latvia, stated (NID-15677, Pros. Ex. C-461):

*"During the time that I worked with the Baltische Seidenmanufaktur Rigas Audums, material was processed there which*

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*had been stored for years. The greatest part, 75 percent approximately, of the production, however, was exported to Germany, Among other things, the plant was very extensively engaged in the special production of parachute silk for the use of the German armed forces. I know that, because the drivers of the motor trucks told us that they transported the material to a place from where it was shipped to Germany.*

*"I know, and it is a matter of common knowledge to anyone who lived in Latvia, that, during the German occupation, virtually no textile goods were available for the Latvian civilian population. Particularly no stockings were available to anyone for years. The suggestion that the average civilian got 5-6 pairs of stockings per year is simply ridiculous."*

\* \* \* \* \*

*"When in 1944 the Germans anticipated the approach of the Russian Army, the work management of the Ostlandfaser loaded all supplies of goods and stripped the plant of all its machines and crated them. I myself have participated in the loading of goods. Among the items, inventoried for shipment to Germany, was also an excellent motor launch which belonged to the original owner of Rigas Audums, Hirsch."*

It appears from the evidence that plans of evacuation were prepared jointly by the Ostfaser authorities and the Reich authorities, for a secret report on the activities of the Ostfaser companies from 1941 to 1944, hereinbefore referred to, stated that:

*"In virtue of the experience, in the evacuation of the Ukraine and in consideration of the far greater industrial significance of the Ostland, evacuation plans, which have later proved very good, were jointly drawn up with the authorities, and have realized in the removal of the goods being carried out according to plan everywhere, where suitable schedules existed and the required loading space could be obtained."*

From the evidence, the Tribunal is satisfied beyond a reasonable doubt that Kehrl's activities and participation in the spoliation program in Russia and in the occupied territories of the Baltic states, violates Article 52 of the Hague Convention, also Articles 53 and 55 thereof. We have heretofore, in connection with our treatment of charges against another defendant under this count, discussed the scope and applicability of the provisions of Articles 53 and 55 of the Hague Convention, with respect to state-owned property. There is no doubt but that, whether state or privately owned property was involved in the spoliation activities in which Kehrl took part, as hereinbefore indicated, such

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property was treated in utter disregard of the provisions of the Hague Convention. It is clear that the last-mentioned stripping of plants in the eastern occupied territories, and shipping of the machinery therefrom to the Reich, was outright plunder, and a violation of the Hague Convention, whether such machinery was taken from state or privately owned plants in the occupied territories.

We find the defendant Kehrl guilty under count six.

#### RASCHE

In addition to the general charges made against defendant Rasche in this count, he is also specifically accused of having participated in the plunder of public and private property in Czechoslovakia. It is asserted that he and the defendant Kehrl were specifically empowered by Goering to acquire and regroup major segments of Czech industry, so that they could be coordinated effectively with the German war effort. It is asserted that these two defendants drafted and executed plans for the seizure of control of important Czech coal, steel, and armament properties. It is alleged that with defendant Kehrl supervising, the defendant Rasche acted as the sole negotiator for



many of the properties selected for acquisition and that he was authorized to employ all necessary means and devices, including the use of forced expropriations. It is asserted that, as a result of these activities of defendants Rasche and Kehrl, the Hermann Goering Works secured ownership and control of plants and properties forming the foundation of the industrial life of Czechoslovakia.

It is asserted that Rasche participated in the transfer and control of major financial institutions in Czechoslovakia to Germans, and that after the absorption of various branch banks in the Sudetenland and after the occupation of Bohemia-Moravia, the defendant was able to secure for the Dresdner Bank, control of the Boehmische Escompte Bank, hereinafter referred to as BEB. It is asserted that the formal exchange of control of the BEB was accomplished by writing down the value of the existing shares, and issuing new shares, to which the Dresdner Bank subscribed. It is asserted that the Dresdner Bank, by the use of similar techniques, acquired the Bank fuer Handel und Industries, formerly the Laenderbank, Prague, and merged it with the BEB. It is alleged that the defendant Rasche further participated in, facilitated and sought advantages from, the program of Aryanization introduced into countries occupied by Germany, designed to expel Jews from economic life and involving threats, pressure, and coercion to force Jews to transfer their properties to Germans.

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It is further asserted that defendant Rasche participated in the necessary financing of spoliation agencies in eastern occupied territories. It is specifically asserted that defendant Rasche directed and supervised the activities of the Dresdner Bank and its affiliates in occupied western areas, involving economic exploitation, including particularly activities involving transfer of control of Dutch enterprises to selected German firms through the process called "Verflechtung," which was an interlacing of Dutch and German capital and economic interests.

Because of the vast amount of testimony here adduced by the prosecution and the defense, rigorous summarization becomes necessary in our treatment of this part of the case. We will first turn to the charges relating to Czechoslovakia, exclusive of the Sudetenland. The findings of the IMT and the evidence in this case clearly establish the carrying on of an indefensible spoliation program in the eastern occupied territories, including Czechoslovakia. The judgment of the IMT states, "Czechoslovakian industry was worked into the structure of German war production and exploited for the German war effort." We are here concerned with the question whether Rasche participated in such spoliation program. The evidence shows that immediately following the occupation of Prague, the Boehmische Escompte Bank, BEB, was taken over by German interests. The taking-over measures consisted of a series of rather thinly disguised actions in connection with which defendant Rasche appears to have been closely identified. It is of interest to note that on the very day of March 1939, when the Reich forces marched into Prague, von Luedinghausen, a then member of the Vorstand of the Dresdner Bank, appeared in the BEB at Prague, garbed in military uniform. Immediately thereafter, the Verwaltungsrat of BEB was reorganized, in the course of which sixteen members resigned, of whom ten apparently were so-called non-Aryans. It appears that seventeen new members were chosen, and among them were defendant Rasche and Gustav Overbeck, also a member of the Vorstand of the Dresdner Bank. Defendant Rasche became chairman of the Verwaltungsrat of the BEB. It is significant that on ] 5 March 1939, at the time of the invasion of Czechoslovakia, the BEB had a capital stock of 130,000,000

koruna, divided into 650 shares. At that time, it appears that the Dresdner Bank did not own any shares of BEB. At least, they were not shareholders of record. Despite this, it appears that the control of said bank was dominated by the Dresdner Bank from and after 15 March 1939. The evidence shows that thereafter the formality of a general meeting of shareholders was held on 22 May 1939. It appears

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that defendant Rasche assumed the presiding position in such meeting, although his election had not yet been approved by the general meeting. It was at this meeting that a plan for the reduction of the capital stock from 130,000,000 koruna to 32,500,000 was effected, followed by an increase to 100,000,000. The last-mentioned increase was largely taken up by the Dresdner Bank which, with the shares they acquired out of the BEB treasury stock, gave them holdings equivalent to approximately 70 percent of the outstanding stock, whereas prior to such manipulation they were not even stockholders of record. It appears that at this meeting defendant Rasche's position as chairman of the Vorstand was confirmed. The defendant, in the course of his testimony before this Tribunal, in making reference to the appearance of von Luedinghausen, a director of the Dresdner Bank, in the BEB, on the day of the invasion of Prague, indicated that it was little more than a coincidence. It has been observed, however, from the evidence, that the same von Luedinghausen had displayed an active interest in the acquisition of the BEB prior to the invasion, and continued to be an active participant in the affairs of the Dresdner Bank and the BEB, and their activities with respect to Czechoslovakia after 15 March 1939. The evidence establishes beyond reasonable doubt that the BEB was taken over and dominated by the Dresdner Bank and Rasche, by and through coercive police-state measures, including the use of threats and concentration camps and Aryanization of holdings in such bank, all of which was possible because of the Reich's purpose to work the BEB and other financial institutions into the German economy.

After the BEB came thus under the domination of the Dresdner Bank, it was conducted by Rasche and such Dresdner Bank. We must remember that during this period the defendant Rasche was also chairman of the Vorstand of the Dresdner Bank. The foregoing references to the evidence allude to but a small part of the great mass of evidence, which establishes clearly the illegality of the taking over and the domination of the BEB by the Dresdner Bank and Rasche.

Following the taking over of control of the BEB by the Dresdner Bank, and while it was largely under the supervision and control of defendant Rasche, the BEB took an active part in the extreme confiscatory and indefensible Aryanization program of the Reich in Czechoslovakia. This is abundantly proved by various items of documentary evidence introduced in this case. In this connection it is noteworthy that, in a report of the Dresdner Bank dated August 1941, mention was made with respect to the Aryanization activities of such bank from March 1939

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to April 1941. We quote the following excerpts from said report (*NID-13463, Pros. Ex. 3095*):

*"According to the enclosed report we have carried out officially approved Aryanizations amounting to a total purchase price of about K 232,000,000 since the establishment of the Protectorate in March 1939 until April 1941. In respect to these purchase prices, consideration should be given to*

*the fact that they were set as low as could be economically justified. In normal times, of course, the total value of Jewish property so far transferred into Aryan hands with our help would undoubtedly be higher.*

*"We have received commissions of about K 4,900,000 from these activities. The report states that there are presently approximately 100 uncompleted Aryanizations. Most of the cases are in textile or food categories.*

*"Our intensive efforts in the 'Entjudungssektor' (De-Judification Branch) have brought in a number of valuable accounts and an expansion of our credit business. In addition, the specialized activity in the field was highly beneficial in the general promotion of our business."*

Defendant Rasche, while on the stand, denied that he had ever seen this report. This is not important. The fact remains that it is credible evidence of the extent of the Dresdner Bank participation in the Aryanization program during the period mentioned. It further indicates the effectiveness of the Aryanization as an instrumentality of spoliation. There can be little question but that defendant, as active head of the Vorstand of the BEB, was conversant with such an extensive activity of such bank. In this connection, we also make reference to a letter, under date of 29 March 1939, containing a memorandum relative to conferences held, which memorandum was made by one Herbeck, a Vorstand member of the Dresdner Bank, and was directed to the defendant Rasche. This memorandum reveals the purpose and manner of Aryanization authorized and decided upon for the German banks, with respect to Czechoslovakia. The cover letter to Dr. Rasche reads as follows (NID-13365, Pros. Ex. 3093):

*"My dear Dr. Rasche: Enclosed you will find a memorandum covering various conferences concerning different affairs, which will interest you. Tonight a meeting of the German banks will take place at Mr. Kehrl's office where directives for Aryanizations in this territory will be discussed. I have an appointment with von Luedinghausen on Friday in Dresden and at that occasion I will report to you about the results of that meeting.*

*"With Heil Hitler I am very truly yours,*

*(Signed) HERBECK"*

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A pertinent excerpt from said report read as follows:

*"Conference with Referents of RWM, SD and Gestapo.*

*"In order to maintain the German economic position in Bohemia and Moravia local German banks will preferably be concerned in cases of Aryanization. Aryanization will be carried through on the principles of private economy. Our advantage compared with Czech banks: Priority exit visa issued by Gestapo. Non-Aryans transfer their property through trustees to local German banks and receive exit permits in return.*

*"In order to avoid Jewish influence to be taken over by the Czechs a special decree will be issued tomorrow according to which the sale of Jewish property must be approved upon by the authorities. Schicketanz and Overbeck started already on the first cases of Aryanization. (Bloch-Bauer)."*

The foregoing references allude to but a small part of the evidence, which establishes clearly that Rasche participated with the Dresdner Bank in the Reich's indefensible program of Aryanization in connection with the illegal program of spoliation of Czechoslovakian economy.

We will now turn to the charge that defendant Rasche participated in the spoliation program of the Reich, with respect to Czechoslovakian industry. It appears clearly that defendant Rasche took an active part in bringing important Czechoslovakian industries under the complete domination and control of Reich interests, all in keeping with the announced purpose of the Nazi hierarchy, as indicated in the findings of the IMT hereinbefore referred to.

It appears that sweeping and coercive police-state measures were also used in securing shares in such industries, so that an ostensible majority stock control could

be displayed. Sales under duress, Aryanization of Jewish holdings, tantamount in a great many cases to plain confiscation, were extensively practiced. In such program, the BEB and its Vorstand President Rasche, played an important role. As a result, it was possible for the Hermann Goering Works to secure control of both the Poldihuetten and Erste Bruenner Maschinenfabrik holdings in Czechoslovakia. It is noteworthy that the Poldihuetten of Prague was a large producer of steel of the highest quality, and it and the Erste Bruenner Maschinenfabrik were among some of the most vital and important companies in Czechoslovakia. It is significant that subsequently authorization was given for the making of outright gifts from Poldihuetten to Reich Marshal Goering in the sum of 600,000 RM. This would indicate the correctness of the claim that the

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seizure and domination of such industries was entirely for the benefit of the German masters.

It is further claimed by the prosecution that Rasche also took an important and active part in acquiring for German interests control of the large Skodawerke in Czechoslovakia, an armament, tank, and vehicle producing plant, and another similar plant, the Bruenner Waffenwerke. According to statements of defendant Kehrl, made by him during an interrogation on 18 October 1946, he and defendant Rasche represented the Reich government in the plan to acquire control of the Skodawerke, and that the demand of the German Government for a transfer of a controlling block of stock in Skoda from Czechoslovakian hands to German hands, was transmitted by them. It appears that Kehrl and Rasche began work on the acquisition of Skoda and Bruennerwerke immediately after the occupation of Prague. From the evidence, it appears clearly that coercive measures were again employed in acquiring these industries. As a result of the activities of Rasche and Kehrl in these transactions, controlling interests in these industries came into possession of Kehrl and Rasche as trustees, and were subsequently—that is, late in 1939 or early in 1940—transferred to the Hermann Goering Works. That such transaction was an illegal act of spoliation, there can be no doubt. A great deal of evidence in the record, not here specifically alluded to, further sustains this charge.

It appears that Rasche took an active part in negotiations for the acquisition of the Rothschild-Gutmann holdings in the great Vitkovice steel plants, the then largest producer of iron and steel in Czechoslovakia. It appears that such negotiations were finally concluded, but the payment never was completed because of the progress of the war. While such negotiations were going on, it appears that the plant was being operated for the benefit of the German war economy under a so-called absentee trusteeship in which defendant Rasche held a managing position. It further appears that while such negotiations were being conducted, one of the Rothschilds was in custody of the Gestapo in Vienna. It appears from the documentary evidence that permission was secured for Rasche from the Gestapo to interview said Rothschild, while he was in such custody. It further appears that Rasche hinted at drastic measures if the agreement was not reached. The documentary evidence with respect to this matter is interesting, as illustrative of some of the methods resorted to by the Reich in the carrying out of spoliation projects.

The evidence is voluminous and convincing that the Dresdner Bank and the defendant Rasche also participated in the Reich spoliation program in Holland. It is amply proved that, through

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coercion, Aryanization tactics, and other police-state measures, vast amounts of property were transferred to German interests, and that the Dresdner Bank and Rasche took an active part in various ways in such nefarious traffic. In Holland, this was largely done through the agency of the Handelstrust West, a concern organized and controlled by the Dresdner Bank as a subsidiary. The Aryanization activities and the traffic in confiscated property in Holland, as carried out by this agency, it is abundantly proved, was extensive and was carried out under the control of the Dresdner Bank, whose policies in these respects reflected the attitude and purposes of defendant Rasche. Efforts made by the defendant and some witnesses to minimize these activities are ineffectual and unconvincing.

We will here refer to but a few of the numerous exhibits introduced by the prosecution in support of the charges against defendant Rasche with respect to spoliation in Holland. These are illustrative of the voluminous evidence introduced, and which convincingly establish said charges. It appears that the Dresdner Bank played a leading role in the organization of the Handelstrust West in Holland in 1938, and that from then on "its issued capital \* \* \* was uninterruptedly in the hands of the Dresdner Bank or undertakings under the control of the Dresdner Bank \* \* \*." It further appears that after Holland had been overrun by the German forces, the Handelstrust West assumed a more active role, and acted as the representative of the Dresdner Bank. The evidence shows that, in 1940, one F. Dellschow, a former employee of Dresdner Bank in Berlin, became manager of Handelstrust West. In such capacity, he made detailed reports to the Dresdner Bank, and frequently went to Berlin to make personal reports.

It appears that in March 1941 Seyss-Inquart, the Reichs Commissioner for the occupied Netherlands, issued a decree, dated 12 March 1941 which was therein referred to as "Decree of Economic De-Judaization," which decree provided in part as follows (NID-14791, Pros. Ex. 3000):

*"(1) The Reich Commissioner for the occupied Netherlands (Commissioner General for Finance and Economy) may appoint trustees for enterprises subject to registration.*

*"(2) The cost of the trustee administration will be borne by the enterprise concerned."*

*[Paragraph 8]*

*"(1) Unless otherwise stipulated on the appointment of a trustee, the latter has power to handle all legal business and transactions in and out of court, which the management of the enterprise entails. He may, in particular, sell the whole or part*

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*of the enterprise, and fix the terms of sale. While the enterprise is under trusteeship, a guardian, custodian or other administrator cannot validly be appointed. While the enterprise is under trusteeship, the powers of the proprietor, the manager or any other person authorized to act as deputy of the administrator, are suspended. The same applies for the powers of all existing boards; their powers are conferred upon the trustee. However, the Reich Commissioner for the Occupied Netherlands (Commissioner General for Finance and Economy) may decree, that the boards retain part of or all their powers.*

*"(2) If the enterprise is entered in the commercial register, the appointment of the trustee will be entered free of charge in the commercial register as a matter of official routine." [Emphasis supplied.]*

*[Paragraph 12]*

*"The Reich Commissioner for the Occupied Netherlands (Commissioner General for Finance and Economy) may forbid enterprises which are subject to registration to carry on business. He may give instructions that such enterprise be wound up or closed down altogether, up to a certain date*

*fixed by him."*

It should here be noted that a memorandum by one Rienecker, an official of the Dresdner Bank, dated 5 March 1941, and directed to defendant Rasche, makes reference to the fact that a draft of an Aryanization law had been completed and would probably be promulgated on 15 March of that year, it being indicated that same came as the result of a conference with German officials in The Hague. Said memorandum then proceeds to describe quite correctly the provisions of said decree, as revealed by its subsequent publication, such decree being the same hereinbefore referred to as made by Seyss-Inquart. The memo further states (NID-8866, Pros. Ex. 2958):

*"For the banks it would be advisable to obtain powers of attorney from their German customers and to file the claims on their behalf in advance of such 'Meetings of Planning' in which they do not participate. The procedure of the Meetings of Planning is also going to start in the middle of March and is carried on independently of the date on which the Aryanization Law becomes effective. Therefore months will elapse yet. We have to find out details yet in regard to the order in which each of the trades will be dealt with.*

*"In case the Meeting of Planning has finally determined the person who is to acquire the enterprise, and if in principle this person agrees to the acquisition, the purchase price will not be*

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*fixed by negotiations but a so-called fair price will be arrived at and fixed by a trustee's office which will be set up for this purpose by the office of the Reich Commissioner." [Emphasis supplied.]*

From the evidence it also appears that, on 15 March 1941, Dellschow wrote to defendant Rasche that (NID-8865, Pros. Ex. 3006):

*"The text of the Aryanization Law which will be supplemented by carrying-out ordinances, was promulgated on 13 March. We have immediately wired the essential parts of the contents to Berlin. "At a meeting which took place here in Amsterdam on 12 March and in which the Reich Commissioner addressed the German colony, he declared, that the 'de-Judaification' of the economy will radically be carried out here in Holland. We of the Handelstrust will therefore soon have to reckon with much work in this field, as we can already see from the length of our waiting list of persons interested in acquiring businesses of that kind."*

In evidence we also have the statement of one Max Bardroff who, from 1940 to September 1944, was a member of the Advisory Committee of Handelstrust West in Amsterdam. Said statement reads in part as follows (NID-13645, Pros. Ex. 2970):

*"1. I was assigned to above position by the Vorstand of the Dresdner Bank, Dr. Rasche personally. At the time of my activity Dr. Rasche was a member of the Vorstand of the Dresdner Bank responsible for Holland. At the same time I was manager of the Dresdner Bank Duesseldorf, which also was subordinated to Dr. Rasche. I was, therefore, in all my activities responsible to Dr. Rasche. My activities with the Handelstrust West N.V. naturally consisted mainly in negotiations and carrying out transactions between western Germany and Holland. I wish to add that the majority of transactions of the Handelstrust West N.V. were carried out with western Germany. Apart from that I put my experiences as branch manager at the disposal of the management of the Handelstrust West, as the majority of them did not have sufficient knowledge. I did this in compliance with the request of Dr. Rasche, who had full confidence in me. My position therefore was not only an official one but also a position of trust. Apart from the current business reports which were sent from the Handelstrust West N.V. via the Auslandssekretariat S to Dr. Rasche, I kept Dr. Rasche constantly informed of the affairs of the Handels-*

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*trust West N.V., mostly verbally when we met. So, Dr. Rasche was informed in detail of all important occurrences, transactions and conferences of the Handelstrust West N.V.*

*"2. In June, 1940, the Handelstrust West N.V. had a staff of 5-6 employees which evenly increased until September 1944 to 40-50. This increase resulted from the expansions of the transactions. I have to explain that in 1940 the Handelstrust West N.V. had no branches for stocks and bonds, letters of credit, or banking transactions; all of which were only established after 1940.*

"3. For interlacing transactions, and Aryanizations, Dr. Robert Hobirk was delegated to the Handelstrust West N.V. as an employee of the Dresdner Bank. This was necessary as on account of the increase of these transactions, the assignment of a special employee had become imperative. Dr. Hobirk therefore had been given special leave from the forces in compliance with a request made by the Handelstrust West N.V. with Dr. Rasche's consent. Dr. Hobirk kept the Auslandssekretariat S informed as to his activities and apart from that also Dr. Rasche on his visits to Holland."

There was also introduced in evidence a statement by the said Dr. Hobirk, above referred to, which throws light upon his activities, the responsible role of Dr. Rasche in the spoliation program and the extent to which same was carried on. We quote the following therefrom (NID-13647, Pros. Ex. 2971):

*"In Berlin, I was an official handling assigned problems (Sachbearbeiter) in one of the Dresdner Bank's branch offices, where I became chief of department in 1939. In spring 1939 I was called out into the army, at first for voluntary training period which subsequently became military service for war purposes. In June 1940, I was assigned as organizer of the main registry in the office of the Wehrmacht Commander for the Netherlands. In about October 1940, on request of Dr. Karl Rasche and Max Bardroff, I was exempted from military service for a daughter company of the Dresdner Bank, the Handelstrust West in Amsterdam, where I stayed until November 1942. From the knowledge acquired within this period I am in a position to make the following statement:*

*"My working sphere at the Handelstrust West was the so-called interlocking of capital (Kapitalverflechtung). For further elucidation I want to say that this expression indicates the participation of German capital in Dutch enterprises, be it by way of voluntary purchase or other steps, as for instance by Aryanization. This was part of the program of the German*

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*Government for the Netherlands, This sphere of tasks was allocated to me by Mr. Bardroff by order of Dr. Rasche. Dr. Rasche, at that time, was V or stand member of the Dresdner Bank and in this capacity responsible for the Netherlands. I have been acquainted with Dr. Rasche since 1935. During my activity I was not an employee of the Handelstrust West, but of the Dresdner Bank, and my salary was also paid in Berlin, though I received daily allowance in Holland. These daily allowances, however, were paid back by the Foreign Secretarial Office. (Auslandssekretariat). On my activity I reported to the Foreign Secretarial Office, attention Dr. Entzian. Dr. Rasche received these reports, as he was responsible for Holland. I further reported continually on western German affairs to Bardroff, and to Dr. Rasche I also reported orally on my activity as often as he was in Holland. Dr. Rasche expressed his satisfaction on the progress of my work, in view of the fact that by this the Handelstrust West was earning commissions.*

*"In order to be able to carry out my tasks, I resorted to various brokers who informed me of available Jewish property and other objects for acquisition. I then tried to find a German buyer for this object. Simultaneously, I asked the owner about his readiness to sell and negotiated with him. In other cases, Germans recommended by the Foreign Secretarial Office of the Dresdner Bank came and informed me of their interest in an object already defined or of their interest of general nature. I may add that, in Holland, this amalgamation business (Verflechtungsgeschaef) consisted of 50 percent of Aryanizations." [Emphasis supplied.]*

Also in evidence is a statement of said Hobirk listing numerous firms which were Aryanized and merged through the Handelstrust West.

That the Handelstrust West did a brisk business in the execution and carrying out of such Aryanization program appears from a report of the foreign department of the Dresdner Bank of 12 September 1941, which report states in part as follows (NID-8868, Pros. Ex. 3010):

*"In the course of the Aryanization of the Dutch industry the local customers made use, to a considerable extent, of the services of the Handelstrust. Numerous visitors from Germany—an average of 150 per month—were there given advice and aid."*

There is considerable evidence in the record showing specific instances of Aryanization through threats and pressure, and

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active participation by the Handelstrust West in the consummation of such illegal transactions.

The evidence introduced to sustain the charges made against defendant Rasche with respect to spoliation in Belgium, is not so voluminous or convincing as that introduced with respect to Holland. An official report of the Commissioner of the National Bank of Belgium, covering from May 1940 to May 1941, the first year of the German occupation of Belgium, indicates that among the German banks which, through permission of the Reich Economic Ministry, had been permitted to found strongholds in Belgium, was "the Dresdner Bank, which took up activities under the name of Continentale Bank SA, N. V. This is in the form of a corporation under Belgian law, and has a stock capital of 10 mill. bfrs." It further appears that Rasche was the member of the Vorstand of the Dresdner Bank given responsibility for the conduct of its business in Belgium.

A number of communications, emanating from various officials in the Dresdner Bank and the Continentale Bank, indicate that participation in the spoliation program through Aryanization was within the contemplation of such officials, and it seems that some such communications were directed to Rasche. For instance, in evidence is a letter from a director of the Dresdner Bank to an official of the Continentale Bank, suggesting that—

*"It seems to be particularly advisable to make sure of an influential informant in Belgium who has good insight into matters and with whom one can cooperate, and who, in the interest of both, draws attention to possibilities of industrial participation. As far as it would be possible to reveal weak points in the manner, (non-Aryan blocks of shares and other debatable participations), affiliated firms could be contacted here in the Reich and given a useful hint."*

From such evidence, however, it does not convincingly appear that defendant Rasche furthered or implemented the spoliation program through the Continentale Bank, or that the spoliation activities charged were, in fact, committed by the Continentale Bank, either with or without his knowledge. The fact that correspondence and other documentary evidence indicates that sinister and illegal plans were being contemplated does not, of itself, constitute sufficient basis for a finding of guilt. Furthermore, we can not predicate guilt on the showing that the Dresdner Bank provided several million marks for the acquisition of certain Polish shares of the blasting furnace plant Ostrowiec for the Hermann Goering Works. The statement by the prosecution, as contained in its brief, that "it is perfectly clear from the time

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sequence and the amounts involved that Rasche participated as a major agent in the forced transfer of these shares" is not a tenable contention.

The further claim that the Continentale Bank lent itself to the spoliation of Belgium, by acting as an agent in the disposal of allegedly confiscated securities and other valuables, likewise cannot, under the evidence adduced, be made the basis of a finding of guilt. The evidence discloses that the bank did handle some securities, which the witness, Count Philip Orssich, concluded were confiscated securities. There does not appear to be in evidence, however, adequate factual basis for the witness's conclusion. In evidence also is a statement of one Janmart, an employee of the Continentale Bank during the German occupation of Belgium. In such statement,



witness indicates that he observed what seemed to him to be rather questionable business transactions, with respect to certain securities, which were handled and disposed of by the Continentale Bank. This witness also concluded that such securities were illegally confiscated property, and he states, "\* \* \* it is evident that the whole business was one of the numerous forms of 'legal looting' carried out by the Germans during the occupation of Belgium." The sincerity of the witness in arriving at such conclusion is not questioned, but the fact remains that it does not appear that his conclusion is supported properly by factual evidence. We would not be justified in predicating a finding of guilt on such conclusion, with respect to the charges made against Rasche regarding spoliation in Belgium.

The charges against defendant Rasche, with respect to spoliation activities in Poland and Russia and the Baltic countries, consist largely of claims that defendant Rasche, through Dresdner Bank, gave financial assistance in financing the requirements of Reich spoliation agencies, active in the Reich program of spoliation in such territories. It appears from the evidence that credit was given to agencies which probably were engaged in spoliation activities. As hereinbefore indicated, on this question in discussions in our treatment of count five, and in view of the evidence generally with respect to the credits here involved, we do not find adequate basis for a holding of guilty on account of such loans. Because of defendant's participation in spoliation in Bohemia-Moravia and Holland, we find him guilty under count six.

#### SCHWERIN VON KROSIGK

In addition to the general charges made against all defendants in this count, it is specifically charged that, "the German Foreign

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Office and the defendant Schwerin von Krosigk played a significant role in establishing and carrying out programs for economic exploitation in various occupied countries, particularly in occupied territories in the West. These programs included exaction of excessive occupation indemnities, establishment of so-called "clearing accounts" and the "transfer to German ownership of industrial participation and foreign investments by means of compulsory sales." It is further specifically alleged that defendant Schwerin von Krosigk, with other defendants, took part in numerous meetings at which exploitation policies were discussed and plans were made.

At all the times covered by the charges in this count defendant Schwerin von Krosigk was Reich Minister of Finance, he holding such position from 1932 to 1945. He thus held that important Cabinet office in the Reich throughout the period in which the Reich, under Hitler, launched and carried out its various aggressive invasions, wars, and other unconscionable crimes and programs which are under consideration in this proceeding.

The defendant, in the course of his examination before this Tribunal, sought to justify his continuance in such position throughout the period in question by asserting that he desired to exert a good influence upon the Nazi government. He indicated that in the fall of 1938 he had consulted people close to him on whether or not he should stay in his Cabinet position. He stated that a resignation by him "would have robbed myself and those circles in the population who knew and trusted me of the opportunity to see to justice, right, order, and decency in my own sphere of work, over and beyond that of trying, if an opportunity should arise, to raise the voice of reason and justice \* \* \*." We also wish to here allude to another statement made by

the defendant during the course of his examination. With respect to a prosecution exhibit dealing with a conference over which Goering had presided the defendant stated, "It didn't matter so much what Goering said, but on what was actually done." We must here point out that what defendant now says is of much less importance than what he actually did during the times in question with respect to the formulation, execution, or furtherance of the wrongful acts or programs which are here involved. It appears that within a few weeks after Poland was invaded by German forces a decree, bearing date 12 October 1939 (2537-PS, Pros. Ex. 491), and signed by Hitler and various other Reich officials, among them the defendant Schwerin von Krosigk, was issued, placing the territories thus occupied under the authority of Dr. Frank as Governor General. Section VII of such decree provided:

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*"(1) The cost of administration shall be borne by the occupied territory.*

*"(2) The Governor General shall draft a budget. The budget shall require the approval of the Reich Minister of Finance."*

This is of importance as indicating that as of that early date and at that stage of the Reich's program of aggression and crime, defendant Schwerin von Krosigk was one of the officials whose participation and approval was essential, his role being with respect to an extremely vital feature of the project.

It must be noted that on the date of 19 October 1939 Goering directed to all the Reich ministers, business groups, plenipotentiaries of the Four Year Plan a rather long and formal directive in the nature of a recapitulation of directives for the economic administration of the occupied territories, which directives he had issued "during a session of 13 October." We quote the following excerpt from said directives (EC-410, Pros. Ex. 1286):

*"On the other hand, there must be removed from the territories of the Government General all raw materials, scrap materials, machines, etc., which are of use for German war economy. Enterprises which are not absolutely necessary for the meager maintenance of the bare existence of the population must be transferred to Germany, unless such transfer would require an unreasonably long period of time, and would make it more practicable to give these enterprises German orders, to be executed at their present location."*

He also called attention in said directive to the fact that he had founded a Main Trustee Office for the East and defined its duties with respect to the economic administration of the occupied territories.

That the Reich Minister of Finance cooperated in the program which thus included sweeping confiscatory features is attested to by the fact that under date of 18 January 1940 a note by Ministerialdirigent Bayrhofer of the Ministry of Finance sets forth the procedure for the handling of "captured funds," prefacing said statement with the words (NG-5251, Pros. Ex. 3922):

*"The following was arranged at the conference held on 29 November 1939, in agreement with the OKH and OKM (High Command of the Army and High Command of the Navy)."*

It is true that the note in question does not expressly indicate whether or not the "captured funds" were state-owned or privately owned, but it appears that specific reference is therein made to savings account books which obviously would not be state-owned property and the defendant during his examination

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before this Tribunal practically admitted that he could not conceive that kind of property to be "war booty."

That the defendant was kept informed of the nature and progress of the Reich's criminal program in Poland becomes clear from the fact that on 12 February 1940, Field Marshal Goering held a meeting in Berlin (*EC-305, Pros. Ex. 1289*) which in the report thereof is designated as "most secret." At such meeting, among others, were present Governor General Frank, defendant Koerner, Reich Leader SS Himmler, and defendant Schwerin von Krosigk. At such meeting Goering explained "that the strengthening of the war potential of the Reich must be the chief aim of all measures to be taken in the East." We call attention to the following excerpts from said report.

*"If all measures must serve the chief purpose of strengthening the economic power, we must refrain, within the area, from the attempt of Germany to bring it up to the standard of the Old Reich (Altreich) immediately. The process of assimilation in the new eastern Gaue will, therefore, be much slower than was possible in Austria and in the Sudeten Gau in times of peace. It will be the task of the Reich to carry out the reconstruction of the East with all its power after the end of the war. \* \* \* \* \**

*"The task consists of obtaining the greatest possible agricultural production from the new eastern Gaue disregarding questions of ownership. The Minister of Food and Agriculture has the sole responsibility for this, regardless of when, where, and how they will later be settled. Transfer of property can be considered only for the Baltic Germans and for the Volhynian Germans \* \* \*."*

At said meeting it was reported by one Lord Lieutenant [Oberpraesident] and Gauleiter Wagner with respect to the eastern territories that:

*"Agriculture is in good shape. Industry could increase its output by 30 to 50 percent if it were possible to eliminate the transportation difficulties. No evacuations have taken place so far. However, for the future the deportation of 100 to 120 thousand Jews and 100,000 unreliable Polish immigrants is being considered \* \* \*."*

It further appears that:

*"The Reich Commissioner for the Consolidation of the German Race, Reichsfuehrer SS Himmler, reports that 40,000 Reich Germans had to be accommodated in Gotenhafen [Gdynia], and that room had to be made for 70,000 Baltic Germans and 130,000 Volhynian Germans. Probably not more than 300,000*

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persons have been evacuated so far (the Polish population being 8 Mill.)

*"On the other hand it will probably be necessary to transfer into the eastern Gaue 30,000 Germans from the Lublin area east of the Weichsel which is to be reserved for Jews."*

It appears from the evidence that Goering conducted another meeting concerning the economic policy and economic organization in the recently occupied eastern territories on 8 November 1941. The memorandum prepared on the results of such meeting, and dated 18 November 1941, (*NI-440, Pros. Ex. 1062*), it appears was sent to, among others, the defendants Lammers, Darré, Pleiger, and Schwerin von Krosigk. We call attention to the following significant paragraphs from such memorandum:

*"I. For the duration of the war the requirements of the war industry are the supreme law of all economic operation in the recently occupied eastern territories.*

*"II. In the long-range view, the recently occupied eastern territories will be economically exploited from colonial viewpoints, and by colonial methods. The only exceptions are those parts of the Eastland which are designated for Germanization at the direction of the Fuehrer; but they too are subject to the principle stated in I above.*

*"III. The point of gravity for all economic work lies in the production of food and raw materials. The highest possible production prices for the supplying of the Reich and the other European countries are to be attained through cheap production and maintenance of the low living standards of the native population. In this manner, a source of income for the Reich is to be opened up, which will make it possible to cover in a few decades a large part of the debts incurred in the financing of the war while sparing the German taxpayer insofar as possible, and at the same time will fill the European food and raw material requirements to the greatest possible extent.*

*"IV. Further processing will be admitted in the occupied eastern territories only insofar as this is*

absolutely necessary:

a. To reduce the volume of transportation (that is, processing in principle as far as steel and aluminum ingots),

b. To fill the urgent demands for repairs in the country,

c. To exploit capacities in the armament field during the war.

\* \* \* \* \*

"VI. There is no question of supplying the population with high-priced consumers' goods. Rather, all tendencies toward raising the general living standard are to be forestalled by the sharpest possible measures. The kind and quantity of the

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consumers' goods and means of production to be delivered to the recently occupied eastern territories are to be agreed upon with the economic agencies of the Reich Commissioners.

Even the Eastland [Ostland] must for the present be supplied with consumers' goods only to the most modest extent possible. The long-range order for the Germanization of the Eastland must not lead to a general raising of the living standard for all the peoples living there. Only the Germans located in the Eastland, or to be settled there, and the elements to be Germanized, may be treated better.

"VII. The Russian price and wage level is to be kept as low as is anyway possible. Any disturbance of the price and wage policy, aimed exclusively at the interests of the Reich, will be ruthlessly prosecuted. The principle applies even to the Eastland that the surpluses, especially in the agricultural sector, must flow into the Reich at the lowest possible prices.

\* \* \* \* \*

"B. Directives for the military economic exploitation of the recently occupied eastern territories.

"1. Feeding and Agriculture—The point of gravity lies in the feeding sector. Everything must be done to produce as many agricultural products as possible and to make them usable for the requirements of the troops and the Reich. This involves the following requirements:

\* \* \* \* \*

"3. In certain territories (especially the middle territory) there are large stocks of animals which must be ruthlessly and rapidly seized in order to ease the meat situation in the Reich, so that the animals may not lose too much weight. A prerequisite for the collection and removal of these stocks is for the moment still lacking military and police security in the territories from which large quantities of livestock can be taken. Here the Army must assist under all circumstances.

\* \* \* \* \*

"e. Provisions for the population—

\* \* \* \* \*

"2. The urban population can receive only slight quantities of foodstuffs. For the big cities (Moscow, Leningrad, Kiev) nothing at all can be done for the time being. The consequences resulting therefrom are hard, but unavoidable.

"3. Persons working directly in the German interest will be fed at the plants by direct issues of foodstuffs in such a manner that their working strength will be maintained to some extent.

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"4. In the Eastland, also, the food rations for the indigenous population will be reduced to a level lying considerably below the German (level) so that from there also the largest possible surpluses may be squeezed out for the Reich.

\* \* \* \* \*

"a. All agricultural and industrial installations are the property of the Soviet State. This property has now been transferred to the Reich.

\* \* \* \* \*

"3. It is the clearly pronounced will of the Fuehrer that the Reich's burden of debt arising from the war must for the most part be covered by receipts that must be extracted from the recently occupied eastern territories.

\* \* \* \* \*

"1. Budgets for the income and outgo of the Reich Commissariats will be drawn up by the Reich Minister for the Occupied Eastern Territories and approved by the Reich Finance Minister.

"2. The Reich Finance Minister will determine what receipts in the Occupied Eastern Territories shall flow directly into the Reich Treasury and what receipts shall be left at the disposal of the

*Reich Commissioners within the framework of their budget."*

From the foregoing it is obvious that Schwerin von Krosigk was given vital assignments in connection with the program of spoliation embarked upon by the Reich. That Schwerin von Krosigk took seriously the assignments thus given him and that he supported and aided in the program of spoliation and that he urged and suggested improved methods with a view to greater efficiency of such program is indisputably clear from a secret memorandum signed by Schwerin von Krosigk, dated 4 September 1942, which memorandum was directed to, among others, the Reich Marshal of Greater Germany, the Reich Minister and Chief of the Reich Chancellery, the Chief of the OKW, the Leader of the Party Chancellery, the Reich Minister for the Occupied Eastern Territories, the Reich Minister for Arms and Ammunition, the Reich Minister of Economics, the Reich Minister of the Interior, and the Reich Minister for Food and Agriculture. We call attention to the following excerpts from said secret memorandum (NG-4900, Pros. Ex. 3924):

*"Administration, economy, and finances of the occupied territories in the East.*

*"The Reich expects considerable economic and financial relief to come from the occupied eastern territories. These terri-*

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*ories are to secure the food for the German people. Oil, coal, ores, and other raw materials are to be taken out of the East for the purposes of the German, nay the European economy. A considerable part of the war debits, especially the interest and amortisation debits of the Reich, are to be covered by the financial surplus of the occupied eastern territories and by the integration of the difference in prices between the Reich and the East. Even now, the occupied territories in the East have gained an extraordinary importance within the framework of the German war economy. For food supplies, they are the largest supplier of the armies in the field. The mining of shale in Esthonia, and of manganese ore in the Ukraine are valuable credit items. In spite of Soviet destruction, a multitude of industrial plants go on working. The labor potential of the East is serving our production. Even greater use will have to be made of the eastern territories in the present situation. In this connection I may refer to the statements of the Reich Marshal at the meeting of 6 August 1942." [Emphasis supplied.]*

Referring to the shortcomings of the organization involved he states:

*"It would have been within the meaning of the original plan to have entrusted a unified, strong leadership with the building-up of administration and economy. In the East, the economy was not supposed to lead the state, but the property of the Reich, conquered by German soldiers in self-sacrificing combat and still being so conquered, should be administered and kept in trust, in the true sense of the word, in the interests of the Reich and used exclusively to further its interests. The power and the skill of the German entrepreneurs should have been exploited through several big East companies, whereas the political direction should have been safeguarded by the Reich commissioners concerned. These measures of organization were supposed to form the basis of a clear and simple price policy, which would have helped on its part to relieve the immense, financial stress on the Reich." [Emphasis supplied.]*

That the spoliation program with respect to Poland thus participated in by Schwerin von Krosigk, resulted in tremendous returns for the Reich the evidence amply demonstrates. Included in the evidence bearing on this is a report of the Research Office for Military Economy, dated 10 October 1944, dealing with "the financial achievements of occupied areas up to 31 March 1944." We find from such report that the Governor General contributed about 1,200,000,000 reichsmarks as a so-called "defense contri-

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bution." The evidence indicates that the confiscation program extended into the Danzig area also and that a report from the office of the Reich Minister of Finance

concerning the confiscation of Polish and Jewish estates in Danzig indicates that 345 estates were confiscated and debts totalling millions of reichsmarks were canceled because owed to the Poles. A communication from the Reich Minister of the Interior included in such correspondence and other evidence in the record makes it appear that the Reich Minister of Finance actively participated in the administration of such confiscated property. As a participant in the formulation, implementation and furtherance of the Reich's spoliation program as it dealt with Poland, he is criminally responsible therefor.

In connection with the charges against defendant with respect to the criminal program of spoliation carried out by the Reich in Belgium, Holland, and Luxembourg, there is considerable evidence in the record to show the illegal nature and sweeping scope of the spoliation program of the Reich in those countries. This is true with respect to occupational costs levied against Belgium. The illegal removal of gold and securities and other confiscatory measures and programs destructive and harmful to the economy of the occupied territories are contrary and in violation of the Hague Convention. The evidence, however, adduced to implicate defendant in such spoliation program with respect to Belgium, Holland, and Denmark does not convincingly establish such participation as to render defendant Schwerin von Krosigk guilty under the charges made. The evidence indicates that he received information with respect to many of the illegal actions complained of, but the Tribunal is not satisfied beyond a reasonable doubt that he participated in the formulation, implementation, or furtherance of the acts of spoliation hereinbefore referred to with respect to Belgium, the Netherlands, or Denmark. With respect to Yugoslavia there is a communication indicating that he expressed an intention to increase the tax levy in such country for the benefit of the Reich. We find, however, no evidence that he caused such levy to be imposed.

We come now to the charges of spoliation made against defendant Schwerin von Krosigk with respect to the occupied territory of France. The spoliation of France by the Reich authorities has been abundantly established by the findings of the IMT and by a vast amount of evidence introduced in this case. The question for our decision is whether defendant Schwerin von Krosigk took such part in the formulation, execution, or furtherance of such spoliation measures as to render him guilty of violation of the Hague Conventions governing belligerent occupancy. The evi-

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dence in this case established beyond any doubt that the so-called occupation costs imposed on France were outrageously excessive. There is evidence in the record indicating that this was in fact the view of some of the German officials who were connected with the imposition thereof. It is also clear from the evidence that a considerable part of such so-called occupation costs were not in fact allocated to cover occupation expenses, but were used for other general purposes. It appears from the evidence that the defendant Schwerin von Krosigk was advised and knew of the nature and extent of such imposition. It appears, however, to the Tribunal, from the evidence introduced with respect to Schwerin von Krosigk, and also from evidence which has been touched upon in the treatment of charges against other defendants under this count, that the actual responsibility for the imposition of such excessive occupation costs was not actually shared by the defendant Schwerin von Krosigk. We will, therefore, not pursue the discussion of occupational costs further.

We come now to the contention that defendant Schwerin von Krosigk, as Reich

Minister of Finance, administered plundered property taken over by the Ministry of Finance through the Reich Main Pay Office, and that Schwerin von Krosigk gave orders as to its liquidation. The defendant, in the course of his testimony on the stand, indicated that he had helped in the administration of war booty and that he had included in the things that he had thus administered savings bank books of individual savers. An attempt to justify the seizure and administration of such property and securities as having been the securities of the enemy power and not of private individuals apparently was abandoned by the defendant, he finally asserting that the seizure "was Wehrmacht jurisdiction."

It is significant that a memorandum from the Reich Ministry of Finance office is in evidence dated 17 January 1944, which states that (NG-5338, Pros. Ex. 3925):

*"On the occasion of his visit to Sigmaringen on 13 January 1944 the Minister ordered that the articles of booty which are located in the Reichshauptkasse (Reich Treasury) are to be utilized. For this purpose it is to be ascertained what quantities are located there. The stored articles are then to be handed over to suitable agencies for realization."*

There is also in evidence a letter written by defendant Schwerin von Krosigk, dated 19 December 1944, to the Reich Main Pay Office, also designated War Booty Office, wherein the defendant states such office is (NG-5248, Pros. Ex. 3926):

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*"\* \* \* to allow the Municipal Pawn Shop to utilize also the objects made from precious metals, precious stones, and pearls, which are stored with you.*

*"Objects made from platinum and gold (bracelets, rings without stones and pearls), old and working silver, silver shavings and silver in rolls, are immediately to be transferred to the Reich Office for Precious Metals in Berlin."*

There is no justification for asserting as a defense that the articles above referred to were seized and administered as war booty. The term "war booty" has become limited to including enemy property which, because of its military character, and not on account of military necessity, would be liable to confiscation. From the evidence it appears that the Reich Ministry of Finance had, for a considerable period of time and on different occasions, participated in exchanges with other Reich offices and officials relative to the seizure and administration of property belonging to inhabitants of the occupied territories, often Jewish-owned property being specifically mentioned. Such discussions and consideration took place with respect to property from Belgium, France, and Poland, but apparently was not limited to such areas. From the foregoing it is established beyond a reasonable doubt that defendant Schwerin von Krosigk wrongfully participated in the wrongful confiscation of property from the occupied territories through his work in connection with its custody after seizure, and subsequent liquidation. Because of defendant's active participation in the formulation, implementation, and furtherance of the spoliation program of the Reich in Poland, and because of his part in the custody and subsequent administration and liquidation of the Reich's illegally confiscated property, improperly referred to as "war booty" by defendant, which activities we deem to have been in clear violation of the Hague Conventions with respect to military occupancy, we must and do find defendant Schwerin von Krosigk guilty under count six.

## **COUNT SEVEN—WAR CRIMES AND CRIMES AGAINST HUMANITY; SLAVE LABOR**

Count seven charges that defendants von Weizsaecker, Steengracht von Moyland, Woermann, Lammers, Stuckart, Ritter, Veesenmayer, Berger, Darré, Koerner,

Pleiger, Kehrl, Puhl, and Rasche committed, during the period from March 1938 to May 1945, war crimes and crimes against humanity, as defined by Article II of Control Council Law No. 10—

*“\* \* \* in that they participated in enslavement and deportation to slave labor on a gigantic scale of members of the*

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*civilian population of countries and territories under the belligerent occupation of, or otherwise controlled by, the Third Reich; enslavement of concentration camp inmates, including German nationals; the use of prisoners of war in war operations and work having a direct relation to war operations; and the ill treatment, terrorization, torture, and murder of enslaved persons, including prisoners of war. The defendants committed war crimes and crimes against humanity 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 connected with, the commission of war crimes and crimes against humanity.”*

It is further asserted in this count that the acts and conduct above referred to were carried out as part of the slave-labor program of the Third Reich, with the deliberate purpose to maintain German military power and to weaken the countries and territories occupied by Germany.

It is further asserted that the resources and needs of the occupied countries were completely disregarded in the carrying out of such slave-labor programs, as also were the family honor and rights of the civilian populations involved. It is asserted that frequently the work assigned was of a character which required the laborers to assist military operations against their own countries, and prisoners of war were often compelled to work on projects directly related to war operations. It is asserted that, through such slave-labor program, at least 5,000,000 workers were deported to Germany, and that other inhabitants of occupied territories were conscripted and compelled to work in their own countries to assist the German war economy. It is further alleged that, in many cases, labor was secured through fraud or by drastic and vile methods, including systematic impressment in the streets and by police invasions of homes. There are further allegations to the effect that persons deported were transferred under armed guard, often being packed in trains under cruel and degrading conditions, without adequate heat, food, clothing, or sanitation. It is alleged that millions of persons, including women and children, were subjected to such labor under cruel and inhumane conditions, such as lack of adequate food or shelter, which resulted in widespread suffering and many deaths.

It is asserted that the treatment of slave labor and prisoners of war was based on the principle that they were to be fed, sheltered, and treated in such a way as to exploit them to the greatest possible extent at the lowest possible cost.

During the course of the trial, the charges of this count of the indictment were dismissed, insofar as they relate to the defendant Woermann.

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In addition to the foregoing general allegations, which are directed against all the defendants who are charged in this count, the count contains further and more specific charges against each individual defendant. Such specific charges will hereinafter be set forth in connection with our consideration of the case of each individual defendant in this count. It is asserted that the said acts and conduct of the defendants hereinbefore set forth were committed unlawfully, wilfully, and knowingly, and in violation of international conventions, including the Hague Convention of 1907,



the Prisoners-of-War Convention, Geneva, 1929, of the laws and customs of war, and of Article II of Control Council Law No. 10, as well as general principles of criminal law, as derived from the criminal law of all civilized nations, and of the internal penal law of countries in which such crimes were committed.

The provisions of the said Hague Convention and the Prisoners-of-War Convention, Geneva, 1929, and Article II of Control Council Law No. 10 which are here pertinent follow:

Article 52 of the Hague Convention [Annex to Convention No. IV of 18 October 1907] provides in part as follows:

*"Requisitions in kind and services shall not be demanded from municipalities or inhabitants except for the needs of the army of occupation. They shall be in proportion to the resources of the country, and of such a nature as not to involve the inhabitants in the obligation of taking part in military operations against their own country."*

The Prisoner-of-War Convention, Geneva, 1929, provides in part as follows:

*"Article 29. No prisoner of war may be employed at labors for which he is physically unfit."*

*"Article 30. The length of the day's work of prisoners of war, including therein the trip going and returning, shall not be excessive and must not, in any case, exceed that allowed for the civil workers in the region employed at the same work. Every prisoner shall be allowed a rest of twenty-four consecutive hours every week, preferably on Sunday."*

*"Article 31. Labor furnished by prisoners of war shall have no direct relation with war operations. It is especially prohibited to use prisoners for manufacturing and transporting arms or munitions of any kind, or for transporting material intended for combatant units."*

\* \* \* \* \*

*"Article 32. It is forbidden to use prisoners of war at unhealthful or dangerous work."*

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*"Any aggravation of the conditions of labor by disciplinary measures is forbidden."*

Article II, Control Council Law No. 10, paragraph 1(b) and (c), state:

*"(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."*

*"(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 need not here discuss at length the great mass of evidence which establishes beyond any doubt that, during the times charged in this count, a slave-labor program had been inaugurated and was being carried out during said period, by and under Reich governmental control. A great deal of evidence adduced in this case is corroborative of and amplifies the findings set forth in the IMT judgment. Inasmuch as it may be helpful in the ensuing treatment of this count, we call attention to the following excerpts from the IMT judgment, with respect to the Reich slave-labor program, which program is involved in this count.\*

*"The laws relating to forced labor by the inhabitants of occupied territories are found in Article 52 of the Hague Convention, which provides:*

*" 'Requisition in kind and services shall not be demanded from municipalities or inhabitants except for the needs of the army of occupation. They shall be in proportion to the resources of the country, and of such a nature as not to involve the inhabitants in the obligation of taking part in military operations against their own country.'"*

*"The policy of the German occupation authorities was in flagrant violation of the terms of this convention. Some idea of this policy may be gathered from the statement made by Hitler in a speech on 9 November 1941—*

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*"The territory which now works for us contains more than 250,000,000 men, but the territory which works indirectly for us includes now more than 350,000,000. In the measure in which it concerns German territory, the domain which we have taken under our administration, it is not doubtful that we shall succeed in harnessing the very last man to this work."*

*"The actual results achieved were not so complete as this, but the German occupation authorities did succeed in forcing many of the inhabitants of the occupied territories to work for the German war effort, and in deporting at least 5,000,000 persons to Germany to serve German industry and agriculture.*

*"In the early stages of the war, manpower in the occupied territories was under the control of various occupation authorities, and the procedure varied from country to country. In all the occupied territories compulsory labor service was promptly instituted. Inhabitants of the occupied countries were conscripted and compelled to work in local occupations, to assist the German war economy. In many cases they were forced to work on German fortifications and military installations. As local supplies of raw materials and local industrial capacity became inadequate to meet the German requirements, the system of deporting laborers to Germany was put into force. By the middle of April 1940 compulsory deportation of laborers to Germany had been ordered in the Government General; and a similar procedure was followed in other eastern territories as they were occupied. A description of this compulsory deportation from Poland was given by Himmler. In an address to SS officers he recalled how in weather 40 degrees below zero they had to 'haul away thousands, tens of thousands, hundreds of thousands'. On a later occasion Himmler stated:*

*"We must realize that we have 6 to 7 million foreigners in Germany \* \* \*. They are none of them dangerous so long as we take severe measures at the merest trifles."*

*"During the first two years of the German occupation of France, Belgium, Holland, and Norway, however, an attempt was made to obtain the necessary workers on a voluntary basis. How unsuccessful this was may be seen from the report of the meeting of the Central Planning Board on 1 March 1944."*

The report of the meeting of the Central Planning Board of 1 March 1944, above alluded to in the IMT judgment, was also introduced in evidence before this Tribunal. We quote further from the said IMT judgment, with respect to the slave-labor program:\*

\* Ibid., pp. 244-247.

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*"Committees were set up to encourage recruiting and a vigorous propaganda campaign was begun to induce workers to volunteer for service in Germany. This propaganda campaign included, for example, the promise that a prisoner of war would be returned for every laborer who volunteered to go to Germany. In some cases it was supplemented by withdrawing the ration cards of laborers who refused to go to Germany, or by discharging them from their jobs and denying them unemployment benefit or an opportunity to work elsewhere. In some cases workers and their families were threatened with reprisals by the police if they refused to go to Germany. It was on 21 March 1942 that the defendant Sauckel was appointed Plenipotentiary-General for the Utilization of Labor, with authority over 'all available manpower, including that of workers recruited abroad, and of prisoners of war.'*

*"The defendant Sauckel was directly under the defendant Goering as Commissioner of the Four Year Plan, and a Goering decree of 27 March 1942 transferred all his authority over manpower to Sauckel. Sauckel's instructions, too, were that foreign labor should be recruited on a voluntary basis, but also provided that 'where, however, in the occupied territories, the appeal for volunteers does not suffice, obligatory service and drafting must under all circumstances be resorted to.' Rules requiring labor service in Germany were published in all the occupied territories. The number of laborers to be supplied was fixed by Sauckel, and the local authorities were instructed to meet these requirements by conscription if necessary. That conscription was the rule rather than the*

*exception is shown by the statement of Sauckel already quoted, on 1 March 1944.*

*"The resources and needs of the occupied countries were completely disregarded in carrying out this policy. The treatment of the laborers was governed by Sauckel's instructions of 20 April 1942 to the effect that: '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.'*

*"The general policy underlying the mobilization of slave labor was stated by Sauckel on 20 April 1942. He said:*

*"The aim of this new gigantic labor mobilization is to use all the rich and tremendous sources conquered and secured for us by our fighting armed forces under the leadership of Adolf Hitler, for the armament of the armed forces, and also for the*

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*nutrition of the Homeland. The raw materials, as well as the fertility of the conquered territories and their human labor power, are to be used completely and conscientiously to the profit of Germany and her allies \* \* \*. All prisoners of war from the territories of the West, as well as the East, actually in Germany, must be completely incorporated into the German armament and nutrition industries \* \* \*. Consequently it is an immediate necessity to use the human reserves of the conquered Soviet territory to the fullest extent. Should we not succeed in obtaining the necessary amount of labor on a voluntary basis, we must immediately institute conscription of forced labor \* \* \*. The complete employment of all prisoners of war, as well as the use of a gigantic number of new foreign civilian workers, men and women, has become an indisputable necessity for the solution of the mobilization of the labor program in this war."*

The question requiring our determination is whether the defendants charged under this count, or any of them, were responsible for the formulation, execution, or furtherance of such slave-labor program. We must find the answer to such question by examination and analysis of the evidence adduced by the prosecution to sustain the charges made in this count, and through examination and analysis of the evidence adduced by the defendants in refutation of the charges here made.

We will now proceed to a consideration of the charges and the evidence in this count, as they relate to the individual defendants.

#### VON WEIZSAECKER

In addition to the general charges contained in count seven and made against all the defendants, the defendant von Weizsaecker is specifically accused, with other defendants, of having [par. 64 of the indictment]—

*"\* \* \*supported and effected such transfers and deportations on a large scale. Their participation in the slave-labor program included securing the enactment of compulsory labor laws for occupied and satellite countries, conducting negotiations and bringing pressure upon those governments to send workers to Germany, urging military commanders in the occupied territories to fill manpower quotas, giving 'legal' advice and justifications to German authorities, and defending or concealing the character of the labor program from the inquiries of neutral states acting as protecting powers, and sanctioning the use of prisoners of war in war operations."*

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The Tribunal is unable to find in the testimony adduced by the prosecution, with respect to count seven, sufficient basis for a finding of guilt, insofar as defendant von Weizsaecker is concerned. Some official documents may have come to his attention, which may have apprised him of the existence of the slave-labor program. We consider, however, that there is a complete failure to show active participation or

responsibility on the part of von Weizsaecker for the formulation of the slave-labor program, its execution or furtherance. We, accordingly, must and do find the defendant von Weizsaecker not guilty as charged in count seven.

#### STEENGRACHT VON MOYLAND

In addition to the general allegations made against all defendants in count seven, the defendant Steengracht von Moyland is specifically accused of having attended an important manpower conference in July 1944, which conference was presided over by defendant Lammers, and which dealt with the question of introducing more ruthless methods of conscription and exploitation of slave labor, and at which conference it is asserted defendant Steengracht von Moyland stated [par. 63 of the indictment]:

*"\* \* \* that continuous political and diplomatic pressure would be maintained on the puppet and satellite governments to secure their maximum cooperation in effecting these measures."*

It is further specifically alleged that defendant Steengracht von Moyland, with other defendants, supported and effected transfers and deportations of slave labor on a large scale from satellite governments, and that he, with other defendants, participated in the slave-labor program, in that he was instrumental in securing [par. 64 of the indictment]—

*"\* \* \* the enactment of compulsory labor laws for occupied and satellite countries, conducting negotiations and bringing pressure upon those governments to send workers to Germany, urging military commanders in the occupied territories to fill manpower quotas, giving 'legal' advice and justifications to German authorities, defending or concealing the character of the labor program from the inquiries of neutral states acting as protecting powers, and sanctioning the use of prisoners of war in war operations."*

The defendant Steengracht von Moyland did not assume the position of State Secretary in the Foreign Office until 1943, which was after the institution of the notorious slave-labor program of

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the Reich. It is obvious, therefore, that he took no part in the launching of such program. It is the contention of the prosecution, however, that he actively participated in carrying out and in furthering said program of slave labor. To substantiate such claim, the prosecution introduced evidence relative to a conference held on 11 July 1944, presided over by defendant Lammers, and attended by many Reich departmental chiefs. Reference is made to the fact that Steengracht von Moyland, who attended such meeting on behalf of the Foreign Office, seems to have participated in the discussion. It appears that said meeting had been called at the apparent behest of the Plenipotentiary General for Labor Allocation, Sauckel, with a view to overcoming the deficiencies of labor, the labor recruitment program of the Reich not having supplied the necessary requirements of the Reich. It seems that at this meeting, it was indicated that the Foreign Office might do something definite in procuring the greater cooperation of the foreign satellite governments in the slave-labor program. It appears that defendant Steengracht von Moyland indicated that the Foreign Minister was generally in sympathy with Sauckel's program of labor recruitment, but that the Foreign Office was without effective means for securing such cooperation, it being pointed out that the most that could be done by the Foreign Office was to remind and to urge the foreign governments to comply with the wishes and requirements of the Reich on the question of labor supply. It appears also that defendant Steengracht von Moyland indicated that the remedy for the situation must come from someone vested with the proper authority and power to accomplish the

desired ends, and that such power and authority was not in fact vested in the Foreign Office.

It appears that the meeting was given suggestions by Plenipotentiary Sauckel as to the methods which should be employed in the effort to overcome the difficulties being experienced on the labor question, it being stated by the presiding officer that such suggestions would be transmitted to the Fuehrer.

The Tribunal has carefully considered the evidence and is of the opinion that the participation of defendant Steengracht von Moyland in the slave-labor program, as represented by his participation in, and contribution to, the general discussion at the conference in question, does not constitute such participation or furtherance of the slave-labor program as would make defendant Steengracht von Moyland guilty under count seven.

There is not sufficient evidence to sustain the other charges made in count seven against defendant Steengracht von Moyland, to the effect that he supported and effected transfers and deportations of slave labor from the satellite governments on a

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large scale, or was instrumental in securing the enactment of compulsory labor laws for occupied and satellite countries, or that he brought pressure upon commanders in the occupied territories to fill manpower quotas, or gave spurious legal advice and justifications to the German authorities relative to the slave-labor program, or that he concealed the character of the labor program from the inquiries of neutral states, acting as protecting powers, or that he sanctioned the use of prisoners of war in war operations.

The Tribunal, therefore, finds the defendant Steengracht von Moyland not guilty under count seven.

#### LAMMERS

In addition to the general charges made against all defendants in count seven, the defendant Lammers is specifically charged with having coordinated the activities of the various Nazi agencies involved in the slave-labor program, and to have resolved their jurisdictional disputes, and to have served as a liaison between these agencies and Hitler. It is asserted that the defendant Lammers presided at major conferences on the labor problem, where he mediated conflicting views and offered his own suggestions to the direct administrators of the program, such as Sauckel. It is alleged that his influence in slave-labor matters was consistently exercised in the direction of the strongest execution of the enslavement program. It is charged that on 21 March 1942, the defendant Lammers, with Hitler and Keitel, signed legislation (*1666-PS, Pros. Ex. 2605*) appointing Sauckel as Plenipotentiary General for the Utilization of Labor, with a view to utilizing all available manpower, including that of workers recruited abroad and of prisoners of war. It is further asserted that defendant Lammers, with other defendants, participated in the formulation, drafting, and issuance of laws and decrees which regulated the wages and conditions of employment of slave labor, and that defendant Lammers and defendant Stuckart determined the respective priorities of labor recruitment drives. It is specifically alleged that at an important manpower conference in July 1944 which was presided over by defendant Lammers, the introduction of more ruthless methods of conscription and exploitation of slave labor were discussed. It is further asserted that defendant Lammers, in cooperation with defendants Berger and Stuckart,

participated in the execution of plans for the forceful seizure and impressment of young persons from the occupied territories without regard for age, sex, or work status into the service of pseudo-military organizations, commonly known as the

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SS Air Force Helpers, SS Trainees, SS Helpers, and Air Force Helpers. It is pointed out in such charges that, in the so-called Heu-Aktion, which was a part of the same program, thousands of boys and girls 10-15 years of age were conscripted and deported to the Reich to work in the German armament industry.

The evidence adduced by the prosecution in support of the charges above referred to is extremely voluminous. A detailed discussion of all the evidence thus introduced cannot be indulged in here. Specific references, however, to some of the most significant parts of the testimony are essential to this opinion, especially in view of the fact that the defendant, in testifying in his own behalf, specifically asserted that the slave-labor program was "not within his sphere," thereby seeking to absolve himself from all blame for the formulation, implementation, or carrying on of such program. It was further asserted by the defendant that some of the acts charged were made with respect to legal recruitment.

We have heretofore, in connection with the preceding counts, discussed the defendant Lammers' role in the formulation and promulgation of decrees. A brief consideration of the decrees signed by Lammers in connection with the formulation, implementation, and carrying out of the slave-labor program is, therefore, necessary in a consideration of the claims made that Lammers is guilty of criminal participation in the slave-labor program. Before referring to decrees issued in connection with the slave-labor program, it is well to note that as early as 21 March 1940 the Reich Minister of Labor directed a long and comprehensive report to defendant Lammers, as the Reich Minister and Chief of the Reich Chancellery, relative to employment since the beginning of the war, and which report made reference to an earlier report of 31 October 1939. The report thus made to Lammers calls attention to industrial and war production labor requirements, and reference is made to the extensive use already being made of Polish workers from the Government General and the Incorporated Eastern Territories. The report concludes (*NG-1190, Pros. Ex. 2603*):

*"I should be pleased if during a discussion you would inform the Fuehrer on developments of the labor situation as based on the above statements."*

On 31 October 1941 we find defendant Lammers writing to the manager of the Party Chancellery, Reichsleiter Bormann, wherein Lammers reasons and argues against the setting up of a new and additional office for the administration of labor. Here Lammers

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also discusses "the indoctrination and police supervision of the foreigners."

Especially significant in this letter, as revealing the influence of Lammers in the shaping of important policy legislation before submission to Hitler for final approval and action, is the following passage (*NG-1179, Pros. Ex. 2604*):

*"In conclusion, I want to express my thanks to you, because by making the appropriate reference you have supported my constant endeavors to procure in a subject matter for the persons concerned the opportunity to state their opinion before the Fuehrer decides an issue. Such -prior hearing of all persons concerned is not only necessary at all times in the interest of the issue at hand, but also requisite to prevent that decisions which are inadequate or not fully reflected upon be submitted to the Fuehrer for execution. [Emphasis supplied.]"*

On 21 March 1942 a Hitler decree, cosigned by defendant Lammers and Keitel, was promulgated. This decree did not set up a new labor office, which Lammers had opposed, but instead it appointed Gauleiter Fritz Sauckel as Plenipotentiary General for the Utilization of Labor. This decree states that it is being made (1666-PS, Pros. Ex. 2605):

*"In order to secure the manpower requisite for the war industries as a whole, and particularly for armaments, it is necessary that the utilization of all available manpower, including that of workers recruited (Angeworbenen) abroad and of prisoners of war, should be subject to a uniform control, directed in a manner appropriate to the requirements of war industry, and further that all still incompletely utilized manpower in the Greater German Reich, including the Protectorate, and in the Government General and in the occupied territories, should be mobilized."*

In the discussion under count six, with respect to the part played by Lammers in the promulgation of decrees, this particular decree and the part played by Lammers, according to his own testimony, in the making thereof, is treated.

On 30 September 1942 another Hitler decree was issued (1903-PS, Pros. Ex. 2607), also cosigned by Lammers and Keitel. This decree authorized Sauckel to take all necessary measures for the enforcement of the 21 March 1942 decree within the territory of the Greater German Reich, in the Protectorate of Bohemia and Moravia, and in the occupied territories.

It further appears from the evidence that on 15 February 1942 following the death of Fritz Todt, Albert Speer was appointed

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Reich Minister for Armaments and Munitions. The decree of appointment was signed by defendant Lammers. This appointment is here noted for the reason that the activities of Speer became a big factor in the slave-labor program in the Reich, and will be hereinafter discussed in another connection.

Further and convincing evidence as to the importance of the role played by defendant Lammers in the policy and conduct of the labor program is found in the fact that on 13 February 1943 the defendant Lammers sent out an invitation to the heads of the Reich administrations in the occupied countries of Norway, Holland, the Protectorate of Bohemia and Moravia, Belgium, France, and the Government General for a conference relating to "measures for the mobilization and the commitment of labor for tasks connected with the Reich defense." It appears that Bormann, Funk, Speer, and Sauckel were also invited to attend such conference. In such invitation, Lammers calls attention to the fact that (NG-3388, Pros. Ex. 2612):

*"The Fuehrer has commissioned the Chief of the Wehrmacht High Command, the Leader of the Party Chancellery, and myself, to take care of a systematic carrying out of his directives in the occupied territories too. In agreement with the Chief of the Wehrmacht High Command and the Leader of the Party Chancellery, I think it advisable to discuss with you, as well as with the competent supreme Reich offices, what measures you can take in this respect in the territories administered by you." [Emphasis supplied.]*

The results of such conference were a series of reports on the problems being encountered by the Reich in the application of its slave-labor program in the occupied countries. Further proof of the active policy role of Lammers in the slave-labor program appears from a conference held on 4 January 1944 (1292-PS, Pros. Ex. 2617), this one being attended by Hitler, Lammers, Sauckel, Speer, Keitel, Milch, Backe, and Himmler. At such conference it was decided, among other things, that "at least four million new workers from the occupied territories" were to be procured, and it was to be determined "how the production of the actual existing labor, especially that of the prisoners of war, can be activated and intensified." The report of such

meeting was subsequently sent by defendant Lammers to Bormann. Immediately after the conference just referred to, it appears that Sauckel requested the defendant Lammers "to support me in the introduction of the measures which have become necessary as a result of the conference." As an indication of the importance of the part played by defendant Lammers in the slave-labor pro-

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gram, it may be noted that Gauleiter Sauckel, who was the director for the slave-labor allocation in Germany, and Speer who had a persuasive voice in the recruitment of labor for the armament industries in the occupied territories, had substantial differences because each encroached on the province of the other to fill his slave-labor quota. As a result of such difference, and with a view to reconciling the conflicting demands, an important conference was called to meet in Berlin on 11 July 1944. It is significant that such conference was attended by the Ministers of the Reich, or their representatives, and also by heads of important departments of government, as well as representatives from the administration of the occupied territories. Among those present were Gauleiter Sauckel, General Warlimont of the OKW, the representative of the Military Commander of Belgium and Northern France, the Plenipotentiary General for Italy, Reichsleiter Dr. Ley, Reich Minister Funk, Reich Minister Speer, Ambassador Abetz, and Kaltenbrunner, the Chief of the Security Police. It is interesting to note that the preserved notes of said meeting state that (NG-2296, Pros. Ex. 2627):

*"As introduction Reich Minister Dr. Lammers reported concerning several applications submitted by the Plenipotentiary General for Labor Allocation. Their purpose is to bring about the increase of labor allocation in Germany which is absolutely necessary for the achievement of final victory. He limited the theme of the discussion to the effect that all possibilities should be screened which would make possible to cover the existing deficit of foreign labor. For instance, this would include the problem of reconstituting an acceptable price and wage differential between the Reich and non-German territories; however, the foreground would be taken up by the clarification of the question how and in which manner increased compulsion could be used to procure labor for Germany. Relative to this, one should find out how the executive could be reinforced. The Plenipotentiary General for Labor Allocation complains bitterly concerning its inefficiency. This might be done on the one hand by using pressure on foreign governments, and on the other, by enlarging our own executive by an increased use of the Wehrmacht, of the police, or of other German agencies. Thereupon, Reich Minister Dr. Lammers presents the Plenipotentiary General for Labor Allocation, Gauleiter Sauckel." [Emphasis supplied.]*

It is also interesting to observe that the notes of said meeting indicate that it was—

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*"At the suggestion of Reich Minister Dr. Lammers, Gauleiter Sauckel indicated his willingness to list a certain program of requirements which he will coordinate with the interested parties and which thereupon are to be submitted to the Fuehrer for approval and legalization."*

It appears further that on 21 July 1944 defendant Lammers caused to be circulated to the supreme Reich authorities in the occupied territories a Fuehrer decree relating to the total war effort which was made applicable to the Incorporated Occupied Territories. Said decree was cosigned by Dr. Lammers and Dr. Bormann. On said date, a supplementary decree was issued appointing Dr. Goebbels as Reich Plenipotentiary for Total War Effort, and which decree was cosigned by Goering and Lammers. The first of such decrees authorized the Reich supreme agencies and made public legal regulations and basic administrative orders, in agreement with the



Reich Ministers and the Chief of the Reich Chancellery (Lammers), the Chief of the Party Chancellery (Bormann), and the Plenipotentiary for Reich Administration (Frick).

From the foregoing references to parts of the testimony adduced by the prosecution, the Tribunal is convinced that the defendant Lammers participated actively in the shaping of policy with respect to the slave-labor program, and that he took an active and vital part in the coordinating of the various Reich agencies in the carrying out of said slave-labor program.

With reference to the charge that Lammers participated in the execution of plans for the forcible seizure and impressment of young persons from the Occupied Eastern Territories without regard to age, sex, or work status, into the service of pseudo military organizations, the evidence is ample to sustain such charge. It should be noted in this connection that on 29 March 1944, Lammers directed a letter to Mr. Rosenberg, the Reich Minister for the Occupied Eastern Territories, relating to the "general mobilization in Esthonia, Latvia, and Lithuania." In this letter Lammers states (NG-1330, Pros. Ex. 2624):

*"Reichsleiter Bormann has sent me copies of his teletype messages to you and to Reich Commissioner Lohse of the 23 instant concerning the general mobilization in Estonia, Latvia, and Lithuania ordered by the Fuehrer, and yours and the Reich Commissioner's teletype replies of the 25th instant and has requested me to deal further with the matter because it belongs to my sphere of competency.*

*"I think it is advisable for you to mention the subject when you report next time to the Fuehrer. If you attach great value*

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*to my previously contacting Field Marshal Keitel and the Reich Leader SS, I would ask you to let me know." [Emphasis supplied.]*

Considerable other correspondence concerning this mobilization program, and involving Bormann, Rosenberg, Reich Commissioner Lohse, and Lammers, is in evidence. Such correspondence serves to corroborate and further establish that Lammers had an active and important role in the carrying out of such program.

The statements made by the defendant Lammers, to the effect that the labor problems were not within his sphere, and that part of the so-called slave-labor program was based upon legal recruitment, fails to clear him of blame for participation in the slave-labor program. His policy making role therein, and his active coordination of the various agencies engaged in the administration of such program, is so strongly established by the evidence that we must, and do, find defendant Lammers guilty under count seven.

#### STUCKART

Defendant Stuckart, in addition to the general charges made against all the defendants named in count seven is also specifically charged with having participated in the formulation, drafting, and issuing of laws and decrees which regulated the wages and conditions of employment of slave labor, and with having determined, together with defendant Lammers, the respective priorities of labor recruitment drives. It is further alleged that Stuckart participated in the execution of plans for the forcible seizure and impressment of young persons from the occupied territories without regard for age, sex, or work status, into the service of pseudo-military organizations, through which program it is asserted that thousands of boys and girls, 10-15 years old, were conscripted and deported to the Reich, to work in the German armament industry.

Evidence was introduced by the prosecution to show that Stuckart at an early date became conversant with the contemplated mass allocation of Poles to meet the labor shortage in the Reich. It appears from the evidence that at a meeting of the General Council for the Four Year Plan, held on 20 December 1939, which was attended by defendant Stuckart, State Secretary Backe made a report with respect to the labor situation in the Reich in which he stated in part as follows (NG-1162, Pros. Exhibit 581):

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*"Although compulsory service measures are not to be resorted to generally, ways must be found of insuring that female labor from occupations related to agriculture, and part of the labor which will become available in industry will be directed into agriculture. In addition, as from January, 1,500,000 Poles must be allocated to areas of labor shortage, although they will constitute an added burden on the supply system."*

It appears that in May 1940 defendant Stuckart was involved in the shaping of labor legislative policy, which would withhold certain benefits and protective provisions from Polish laborers who were engaged as German laborers. The incidents mentioned, however, do not constitute proof of the charges of participation in the slave-labor program, although they may show Stuckart's familiarity with the extent of the use of Polish labor in the Reich. The labor legislation mentioned, together with subsequent legislation in which Stuckart was involved, withheld from the Polish workers many benefits such as social security and overtime for Sunday and holiday work, which were accorded the German laborers. Such discrimination, however, it does not appear was especially directed at slave laborers, but against Polish laborers and others from occupied countries, whether they had come through voluntary recruitment or forcible conscription.

It appears that Stuckart attended a conference held by Sauckel on 21 November 1944 for the purpose of discussing wage regulations, which Sauckel indicated were necessary to increase the individual efficiency of the workers. Attendance at such a conference does not constitute such participation in the slave-labor program as to make the defendant guilty on that account. Such further suggestions and regulations as may be ascribed to Stuckart and cited as being discriminatory against foreign workers, because of differences of wages, withholding of certain benefits and privileges are not in themselves such implementations directed to the furtherance of the slave-labor program as to constitute criminal participation by defendant Stuckart therein and such as to render him guilty under this count.

Stuckart, however, is further charged with having participated in the bringing in of young people from the occupied territories into pseudo-military organizations, such as the SS Air Force Helpers, SS Trainees, SS Helpers, and Air Force Helpers, and he is accused of having been involved in the so-called Heu-Aktion matter, which is alleged to have been part of the same program. It is asserted that under such program thousands of boys and girls 10-15 years of age were conscripted and brought to work in the German armament industry.

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The evidence adduced by the prosecution shows a number of documents relating to such program, which, however, were not written by Stuckart. Some of these documents refer to Stuckart's duties and tasks in connection with such program, such as the settling of jurisdictional disputes and reconciling differences of the different

departments with respect to such program, but nothing appears to show that Stuckart took any affirmative action with respect to any requests that may have come to him with respect to said program. We consider the evidence with respect thereto as not establishing beyond reasonable doubt Stuckart's alleged participation in such program.

We find defendant Stuckart not guilty under count seven.

#### RITTER

In addition to the general charges made against all the defendants named in count seven, defendant Ritter is specifically accused of having supported the conscription and deportation of workers to Germany from satellite governments and others dominated by Germany. It is asserted that his participation with other defendants in the slave-labor program included securing the enactment of compulsory labor laws for occupied and satellite countries, conducting negotiations and bringing pressure upon these governments to send workers to Germany, urging military commanders in the occupied territories to fill manpower quotas, giving spurious legal advice and justifications to German authorities, defending or concealing the character of the labor program from the inquiries of neutral states acting as protecting powers, and sanctioning the use of prisoners of war in war operations.

The evidence, as introduced against defendant Ritter to sustain the charges in this count, consist for the most part of a series of reports and other communications, relating to some aspects of the conscription of labor from the occupied countries. The majority of these, however, were not addressed to Ritter. In some instances he was put on the distribution list. The most that can be gathered from such documents is that he may have received knowledge of some aspects of the program under consideration. Such reports, however, it does not appear resulted in any affirmative act in furtherance of the slave-labor program by defendant Ritter.

One documentary exhibit, greatly relied upon by the prosecution to establish Ritter's guilty participation in the slave-labor program, is an exhibit relating to the contemplated seizure of Dutch nationals for German labor. It appears that this exhibit consists of a telegram, dated 24 April 1943, from Ritter to the

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political division of the Foreign Office, advising such office of the text of a public notice approved by the Fuehrer, relative to the reinstatement of the members of the former Dutch army as prisoners of war. Such telegram gives some of the apparent reasons for such decision and notice. It is significant, however, that the evidence does not show that Ritter actually participated in the formulation or the making of the decision leading to such notice. It does appear that he transmitted the text of the notice and decision to the political department. The Tribunal does not find, from such circumstances, such participation in the formulation or furtherance of the slave-labor program as to render defendant Ritter guilty of the charges under this count.

The Tribunal finds defendant Ritter not guilty under count seven.

#### VEESENMAYER

In addition to the general charges in count seven made against all the defendants named therein, the defendant Veessenmayer is specifically accused, with other defendants, of having supported and effected transfers and deportations on a large scale of inhabitants of satellite governments and others dominated by Germany. He

is accused of having participated in the slave-labor program by assisting in the procurement of compulsory labor laws for occupied satellite countries, conducting negotiations, and bringing pressure upon these governments to send workers to Germany, urging military commanders in the occupied territories to fill manpower quotas, giving "legal" advice and justifications to German authorities, defending or concealing the character of the labor program from the inquiries of neutral states acting as protecting powers, and sanctioning the use of prisoners of war in war operations.

In our treatment of the charges against Veessenmayer in count five, his activities in Hungary as referred to in the charges under count five, are gone into in some detail. A considerable amount of the testimony introduced with respect to count five and discussed by the Tribunal in connection with its treatment of such count is also relevant in count seven. It will not, therefore, again be detailed at length in connection with count seven.

It appears from the evidence that on 14 April 1944 Veessenmayer, the German Minister and Plenipotentiary of the Reich in Hungary, sent a teletype designated as "top secret" to von Ribbentrop advising as follows (NG-1815, Pros. Ex. 1808):

*"During yesterday's discussion Sztojaj gave me the binding promise that up to the end of April at least 50,000 Jews fit for*

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*work will be placed at the disposal of the Reich by Hungary. Practical measures are already in progress in the form of a drive already started by the SD and Hungarian police. He says that the Regent has also agreed to it and that Honved and the Ministry of the Interior were willing to cooperate. At the same time all Jews between the ages of 36 and 48, who had hitherto not yet been liable to labor service, will be registered and drafted. Thereby and through other drives already envisaged, it should be possible to place another 50,000 Jewish laborers at the disposal of the Reich during the month of May and to increase the number of Jews organized in labor battalions in Hungary to 100,000-150,000 at the same time."*

It appears further that such information was in a few days thereafter transmitted to the Reich Security Main Office. It further appears that on 15 April 1944 Veessenmayer sent a wire to the Foreign Office stating (NG-2191, Pros. Ex. 1809):

*"Upon my demand addressed to Minister President Sztojaj and accepted by him to place at disposal for work in Germany 50,000 Jews until the end of this month, I received today from the Honved Ministry the information that 5,000 Jews would be placed at disposal forthwith, and after that continuously every 3-4 days, a further 5,000 until the number of 50,000 is reached.*

*"Will agree upon the details of transportation with Obergruppenfuehrer Winkelmann and may send further report in this respect. Ask however even now for earliest instruction to what place in the Reich transport should be directed."*

On 19 April and 21 April 1944 it appears that Veessenmayer sent telegrams to von Ribbentrop reporting wholesale arrests of Jews, and it is to be noted that special reference is made therein to one Dr. Bence, it being stated that (NG-2060, Pros. Ex. 1810):

*"Bence has injured the German interests in every conceivable way. By means of certifying false results of medical examinations he managed to achieve that numerous Jews were liberated from labor service."*

On 20 April 1944 Veessenmayer reported to the German Foreign Office that 10,000 Jews were ready for deportation and requested that transfer be begun as quickly as possible. It is indeed significant that on 27 April 1944 Ritter advised von Thadden, Legation Councillor, that information had been received from the Chief of the Security Police and the Security Service that it would be impossible to accept 50,000 Jews for "open labor assignment in

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the plants of the Reich," but that, on the other hand, there is no objection to placing the Hungarian Jews into Reich labor camps which are under the control of the Reich Leader SS. It is to be noted here again that the maintenance of labor camps under control of the SS was one of the regular operational features of the Reich slave-labor program.

The evidence discloses that on 8 May 1944 Veessenmayer sent a secret telegram containing a report for distribution to the officials of the Reich Foreign Ministry and other officials, which report stated (NG-2059, Pros. Ex. 1816):

*"During the conference held on 1 May when the Organization Todt, the Plenipotentiary General for the Allocation of Labor, Security Police, and Wehrmacht were represented, it was decided that in the future all requirements of Hungarian workers (Jews and non-Jews) for allocation in Hungary were to be forwarded to the representative of the Todt Organization with the Honved Ministry; the latter will maintain close contact with our representative of the Plenipotentiary General for the Allocation of Labor with regard to the question of non-Jews.*

*"In order not to jeopardize urgent military projects by the planned deportation of Jews from Hungary it is intended to increase the 210 companies of the Jewish labor service hitherto existing to 575. In this way approximately 150,000 Jews from the labor service would be exempt from the evacuation measures.*

*"Security Police has no objection that these Jews from the labor service remain in Hungary, providing they are housed in concentration camps and guarded by the constabulary. Negotiations on this matter are currently being carried out.*

*"The 100,000 Hungarian workers required by the Todt Organization for labor allocation in the Reich would have to be requested from the SS Main Administrative and Economic Office (SS Gruppenfuehrer Gluecks), which is in charge of Jews to be deported from Hungary."*

Some idea of the extent of the slave-labor program in Hungary is revealed by a report of von Thadden, Legation Councillor, dated 25 May 1944. In such report he stated in part as follows (NG-2980, Pros. Ex. 1817):

*"\* \* \* that up to the noon of the 24th about 116,000 Jews had been deported to the Reich. Approximately 200,000 more are assembled and await their deportation. They were mostly Jews from the northeastern parts of Hungary. In addition*

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*to this concentrations have been effected in the south, southeast, and southwest of the country in a border zone 30 kilometers wide. On 7 June concentration in the provinces north and northwest of Budapest will start. It is estimated that there will be about 250,000 Jews. At the same time the concentration in ghettos will be completed in the parts of the country south of Budapest. By the end of June they hope to be able to begin the concentration of the Jews living in Budapest. They believe to round up about 1 million Jews (possibly even more), one-third of whom should be able to work and will be taken over by Sauckel, the Organization Todt, etc., in Upper Silesia. Only about 80,000 Jews able to work will remain in Hungary under Honved guard in order to be employed in the Hungarian armament industry. The entire operation is to be concluded by the end of July (including deportation). "*

It appears that on 26 May 1944 the same von Thadden made a more formal report of what he had learned in Budapest, which report was apparently sent to the Foreign Office and others. The following excerpts from said report are noteworthy (NG-2190, Pros. Ex. 1818):

*"The Hungarian Government has agreed to the deportations to the eastern territories of all Hungarian citizens who, according to Hungarian law, are considered to be Jews. Only 80,000 Jews will be retained who will be assigned to work in Hungarian defense factories and who will be guarded by the Hungarian Army.*

\* \* \* \* \*

*"According to present information, about one-third of the Jews deported are able to work. Immediately after arrival at the concentration camp Auschwitz they will be distributed to the agencies of Gauleiter Sauckel, the Organization Todt, etc. Several organizations have sent representatives to Berlin for the purpose of having Jewish workers assigned to them. The agencies of the Reich Leader in Budapest, however, do not even discuss these matters, but send these representatives back to their stations with the simple answer that only the SS Wirtschaftshauptamt in Berlin is authorized to handle these requests."*

It appears that on 30 June 1944 defendant Veesenmayer sent a telegram from Budapest to the Foreign Office reporting that 381,661 Jews had been deported and that further deportations were pending. This report stated in part (NG-2263, Pros. Ex. 1821):

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*"Simultaneously small special actions in suburbs of Budapest as preparatory measures have started. Furthermore, a few small special transports with political Jews, intellectual Jews, Jews with many children, and especially skilled Jewish workers are still on the way."*

The evidence discloses that on 7 July 1944 Veesenmayer reported from Budapest to the German Foreign Office that the Ministerial Council had reached the conclusion that "Polish Jews should be treated according to regulations for Hungarian Jews," and that "the bulk of Polish Army and civilian refugees will be assembled in camps and heavily guarded. Polish refugee labor will be allocated in a body to industry and agriculture and kept under guard."

Under date of 23 November 1944 defendant Veesenmayer reported from Budapest to the Bureau Reich Foreign Minister that he had (NG-4987, Pros. Ex. 3717)—

*"Informed Szalasi today in accordance with your instructions. In spite of technical difficulties he is willing to speed up evacuation of Budapest Jews energetically; he emphasizes, however, that a large portion of male Jews fit for labor service have already been evacuated, Jewish females fit for labor service are being evacuated, whereas the remainder is composed of males and females unfit for labor service and \* \* \* who have ceased to be a serious political danger. However, he will see to it, that the wish of the Reich Foreign Minister will be to the largest possible extent fulfilled by repeated combing-out drives."*

The foregoing are references to but a portion of the evidence adduced by the prosecution to prove defendant's participation in the slave-labor program. A portion of his own testimony with respect to this matter should also be noted. On 23 July 1948 in the course of being examined before the Tribunal with respect to Jews in Hungary the defendant, after admitting that he considered them dangerous to the war effort, said (Tr. p. 13455):

*"However, I was of the fundamental opinion that these men should work, and even if possible should work in a way that contributed to our war effort."*

The Tribunal is of the opinion that the evidence establishes beyond reasonable doubt that defendant Veesenmayer was in a substantial degree responsible for obtaining consent of the Hungarian Government, dominated as it was by Germany, to the forcible conscription and deportation of workers to Germany, and that he "supported and effected such transfers and deportations on a large scale." The efforts made to minimize the author-

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ity and activities of the defendant in connection with such slave-labor program are squarely in conflict with impressive and substantial proof to the contrary.

The Tribunal accordingly finds defendant Veesenmayer guilty under count seven.

BERGER

In addition to the general allegations made against all the defendants named in this count, the defendant Berger is specifically accused of having, together with Lammers and Stuckart, participated in the formulating, drafting, and execution of laws and decrees for regulating the wages and conditions of employment of slave labor. He is also specifically accused of having participated in the planning and execution of the enslavement and subsequent deportation of the civilian population of the Occupied Eastern Territories of the Reich. It is asserted that Berger recruited military and police battalions for the purpose of effecting such conscriptions and deportations. It is specifically asserted that Berger, in cooperation with defendants Lammers and Stuckart, participated in the execution of plans for the forcible seizure and impressment of young persons, without regard to sex or work status, from the Occupied Eastern Territories into the service of pseudo-military organizations variously known as SS Air Force Helpers, SS Trainees, SS Helpers, and Air Force Helpers. It is asserted that the so-called Heu-Aktion was a part of the same program whereby thousands of boys and girls 10-15 years of age were conscripted and deported to the Reich to work in the German armament industry. It is further alleged that the mobilization of labor of prisoners of war was organized by Berger in cooperation with Pohl, Chief of the SS Main Economic and Administrative Department. Not all of the allegations of count seven as made against Berger are sustained by the evidence.

It was, however, clearly established that the defendant Berger was closely identified with the forcible conscription program in the Occupied Eastern Territories. A part of such program was the infamous Heu-Aktion, a program for conscription of children from the territories in the East as they were evacuated by the Reich forces, following the retaking of such territories by the Allies. An order for the institution of the Heu-Aktion program was signed by the notorious Rosenberg, Plenipotentiary for the Occupied Eastern Territories, who was later tried and convicted by the IMT. It appears indisputably that the defendant Berger was instrumental in the formulation of the youth conscription program. The Heu-Aktion had its beginning in a meeting held

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in June 1944 where Berger was represented by his personal adviser, one Brandenburg, and one Nickel, as representative of the Ministry for the Occupied Eastern Territories. At such meeting, attended by other prominent officials, including the Chief of the Hitler Youth War Service Commandos of the Army Group Center, the fate of thousands of alien children was decided for the benefit of the German war effort. This program contemplated the separation of these children from their parents. The use of compulsion was contemplated. It appears that at the conclusion of such conference Berger's personal adviser agreed to secure a decision from the Ministry within a few days. Further and convincing evidence was introduced to show that Berger's influence in the prosecution of this indefensible program of conscription of children was repeatedly and aggressively exerted. That such program was effected is clearly established by a report submitted by said Nickel on 1 August 1944 which report states in part (NO-3038, Pros. Ex. 3390):

*"It was therefore intended to take 40,000 children in the ages from 10 to 14 years to the Reich for placement in training camps for the German armament industry. The preparations for this were concluded toward the beginning of June and the first transports got on the way. 2,500 could still be brought to the Reich, they are now already employed with the Junkers Works."*

This same report reveals some of the methods employed in carrying out of this children conscription program.

*"Toward the beginning of the year 1944, children's villages were established in the army's rear echelons. The able-bodied inhabitants of a number of villages immediately behind the front line, who were particularly endangered by the partisan situation, were concentrated in labor battalions which were permanent units of the front line troops. The remainder of the adult population, made up of those who were incapable of working, were deported to the enemy; the children up to the age of 14 years were, under German leadership, concentrated in a children's village. In the village itself an extremely small detachment of German leadership personnel was in charge of security, order, and education and, beyond, of such production as could be carried out also by children (horticulture, raising of domestic animals, home work, etc.). Here are the most important results.*  
*"(a) The wide area around the children's village was free of partisans.*

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*"(b) The German troops had absolute control over the adult personnel in the labor battalions.*

*"(c) At the time when changes occurred in the front line the evacuation was most simple, because only the children's village had to be moved; the population followed then willingly."*

A subsequent report is in evidence giving the results obtained in such program of youth conscription. This report shows assignments to which boys and girls were committed in armament industries and also to various pseudo-military organizations referred to in count seven. It is indeed significant that on 16 June 1944 one Straube, personal adviser to Berger, directed a request to Nickel on behalf of Berger which states in part as follows (NO-338, Pros. Ex. C-212):

*"Obergruppenfuehrer Berger wishes 100 selected young people to be withdrawn in connection with the Heu-Aktion. These are to be put at the disposal of Walther Arms Factory in Zella-Mehlis. I beg you to take this into consideration from the beginning and let me know on what date we may count on having these young people assigned. The affair is urgent as the Obergruppenfuehrer has promised to have it done."*

This document refutes the claim of the defendant that he was not involved in the recruitment of juveniles through Heu-Aktion. The recruitment of juveniles, however, was not confined to children between the ages of 10 and 15 for industrial purposes, but simultaneously a program for recruiting them for several pseudo-military organizations was going on. It appears that on 31 May 1944, a Mr. Straube, hereinbefore referred to as Berger's adviser, in a file note reveals the results of a conference between Berger and other Reich officials with respect to the recruiting of Latvian Air Force Helpers, ostensibly on a voluntary basis but with the proviso that if the "7,000 fixed cannot be met by voluntary recruiting, the balance is to be supplied by local administration." It appears that for such pseudo-military organizations, Berger did not hesitate to take recruits of an extremely tender age, for in a communication dated 26 June 1944 to the Reich Ministry to the Occupied Eastern Territories he states (NO1877, Pros. Ex. 3387):

*"1. The question of Air Force Helpers (Luftwaffenhelfer) gets to be of much greater importance than originally suspected. To be pushed under all circumstances. Especially the affair in Lithuania is to start and finish with all means.*

*"2. The transfer (Uberfuehrung) of the racially well-fitted*

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*boys beginning at the age of 12, and eventually, in the case of very suitable boys, for age of 10, from the areas White Ruthenia, North Ukraine, to accelerate with all means. Great tasks called upon by the Fuehrer. Preparatory conferences to be held now."*

The evidence indicates that this youth conscription program was in the main compulsory, although the defendant denies this. It is to be noted that it was understood that if the voluntary recruitment failed, the balance is to be supplied by the local administration. That Berger was the motivating and responsible force back



of the conscription of alien children and youth for the benefit of the Reich seems to be indisputably clear from the contents of a document which defendant admits he signed. This is a memorandum dated 6 April 1944 for distribution among all members of his political directing staff. Such document states (NO-1713, Pros. Ex, 3362):

*"The matter of the Air Force Helpers has taken such an unfavorable development that the prestige of the Reich East Ministry came near to being severely damaged; that is, we were almost placed in a position of sharpest opposition to the policies of the Fuehrer. I therefore order:*

*"(1) Agreements of any kind which are not endorsed by me, are invalid.*

*"(2) I forbid any direct reports on this matter without my approval to the Reich Minister.*

*"(3) The total responsibility for these recruiting measures (posters, handbills, etc.) I transfer to Hauptbannfuehrer Nickel. He will in the true sense of the word vouch with his life for a proper settlement of this problem.*

*"(4) On the future application of the educational and provisional possibilities laid out by the Reich East Ministry for this operation, further orders will be given after the officials concerned will have been consulted."*

The explanation made by defendant that the execution of this document was in fact beyond his authority and was done out of vexation on his part is an unimpressive and unconvincing explanation, especially in view of the many other items of evidence to the contrary.

That the recruiting drive under consideration was in fact carried out on a large scale is indisputably established by a report of Nickel under date of 19 October 1944 to Straube, the subordinate of Berger. Such report shows that after May 1944 thousands of youth had been recruited for the air force, and for the armament industries and other war work.

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The Tribunal is of the opinion that as an active participant in the planning and carrying out of the youth and children conscription program referred to, Berger became a criminal participant in the Reich slave-labor program. The evidence with respect to slave labor indicates the further involvement of Berger in the slave-labor program. It appears that in June 1943 Berger received a so-called top secret order from Himmler with respect to a program of enslavement of the male population of the northern Ukraine and central Russia. The order was to be passed on to Rosenberg, the Plenipotentiary for the Occupied Eastern Territories. The following passages of such order are significant (NO-2034, Pros. Ex. 3354):

*"1. The Fuehrer has decided that the partisan-infested areas of the northern Ukraine and central Russia are to be evacuated of their entire population.*

*"2. The entire able-bodied male population will be assigned to the Reich Commissioner for Allocation of Labor [Reichskommissar fuer den Arbeitseinsatz], in accordance with arrangements yet to be decided upon, under conditions applicable to prisoners of war, however.*

*"3. The female population will be assigned to the Reich Commissioner for Allocation of Labor [Reichskommissar fuer den Arbeitseinsatz] for employment in the Reich.*

*"4. A part of the female population and all orphaned children will enter our reception camps [Auffangslager].*

*"5. In accordance with an agreement yet to be reached with the Reich Minister for Food [Reichsernaehrungsminister] and the Minister for Occupied Eastern Territories [Minister fuer die besetzten Ostgebiete], the Higher SS and Police Leader [Hoehere SS-und Polizeifuehrer] are to arrange, as far as is practicable, for the farming of the areas evacuated of their population; to have them planted, in part, with Kok-Saghyz,\* and to utilize them for agricultural purposes, as far as possible. The children's camps are to be located at the border of these areas, so that the children will be available as manpower for the cultivation of Kok-Saghyz and for agriculture."*

The testimony of Berger was to the effect that he was not in favor of such an announced program and that, in fact, the mass evacuation provided for in Himmler's order was not carried out. In view of convincing evidence to the contrary, however,

the Tribunal is obliged to reject the explanation and defense thus given by Berger. It appears that on 14 July 1943 we find defendant Berger addressing a letter to Himmler [memorandum for the record]

\* A plant of the dandelion family used for the production of rubber.

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concerning the labor resources untapped in Lithuania. In such letter Berger asks Himmler "for a decision" along with other consideration of the following (NO-3370, Pros. Ex. 2376):

*"Lithuania has not been worked upon at all as far as labor is concerned. The police forces in that district are too weak, however, and say that in case labor is conscripted by force there would be large partisan gangs. I would suggest that, after the termination of the actions in central Russia and northern Ukraine, a strong action for labor conscription in Lithuania is initiated."*

It is to be observed in this connection that this request on the part of Berger was, under date of 20 August 1943 accepted by Dr. Rudolf Brandt, Himmler's adjutant, as follows (NO-3304, Pros. Ex. 2377):

*"The Reich Leader SS has noted that sufficient forces for the labor conscription in Lithuania will be allocated at the proper time when the fighting of partisans and other conditions permit this."*

With respect to the claim that the evacuation program as announced by Himmler was not carried out, it should be noted that defendant's own witness, Braeutigam, testified (Tr. p. 6575):

*"\* \* \* as it well known, in the autumn of 1943 the Ukrainians had already been evacuated to a large extent \* \* \*."*

It is also significant in this connection that in the months following the institution of such evacuation program the evidence discloses various reports were made to Berger and others concerning the forcible deportation and mistreatment of Ukrainians who were being shipped to the Reich for slave labor.

The prosecution has contended that the defendant Berger is also responsible for the employment of prisoners of war in work related to war operations, for instance, such as armament production. It is pointed out that this defendant was Chief of Prisoner-of-War Affairs from 1944 to 1945. There is no question but that there were instances of the employment of war prisoners by Germany in war industries and war operations during the war years. The evidence is not clear that in any of these instances such employment was carried out or was engaged in through the initiative and cooperation of the defendant Berger. The Tribunal does not feel that such particular charge has been proved beyond reasonable doubt. However, from the evidence adduced with respect to other charges of this count, and as hereinbefore discussed, the Tribunal finds that the defendant Berger is guilty under count seven.

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## DARRÉ

Defendant Darré, as Reich Minister of Food and Agriculture, is specifically accused in this count of having directed and supervised staffs which regulated the entire agricultural economy of Germany and carried out and controlled the individual conduct of millions of German farmers and their employees. It is asserted that shortly after the invasion of Poland, Darré sought a million or more Polish workers for use on German farms and that through his representatives in the General Council of the Four Year Plan he brought pressure upon Hans Frank, Governor General for

occupied Poland, to satisfy such labor demands, suggesting forcible and violent measures for recruitment where necessary. It is alleged that deputies of Darré were dispatched to the Government General to guarantee that the deportations would be carried out promptly. It is further asserted that during the war years the defendant dispatched demands to the Government General for the prompt carrying out of deportations. It is further alleged that during such years the demands of the defendant Darré for more slave labor were unremitting and that hundreds of thousands of persons were deported for the use of German agriculture. It is asserted that defendant Darré advocated a ruthless treatment of slave laborers employed by German farmers in full accordance with the racial precepts and standards of national socialism. It is further alleged that Darré, with knowledge of the actual treatment which was being meted out to slave laborers, directly and through his agencies protested against leniency in the treatment of these "racial enemies" and transmitted SS and Nazi Party instructions and warnings to German farmers against a humane feeling toward the slave workers, and recommended corporal punishment to discourage laziness or refractory attitude, and suggested that the facilities of the SS and Gestapo be used to maintain good discipline. It is also asserted that defendant was responsible for giving semistarvation rations to foreign workers and prisoners of war, and that he was further responsible for discriminatory classification along racial lines with resultant detriment to Poles, Jews, and Russians, both civilians and prisoners of war. It is finally asserted that as a result of this policy large numbers of foreign workers were starved to death, and others suffered and died from diseases induced by nutritional deficiencies, while others suffered and are suffering from permanent physical impairments as a result of such treatment.

The findings of the IMT and the evidence in this case leave no doubt as to the truth of the charges that great numbers of foreign workers, particularly Poles, were forcibly deported to Germany and used for agricultural work in Germany. It is also clear

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that the defendant Darré, at an early date following the beginning of the war, emphatically made it known in competent higher officialdom in Germany that there was urgent need for more agricultural labor if food production was to be efficiently and satisfactorily carried out, and that he indicated that Polish workers should be procured for this purpose. This in itself, however, does not indicate that defendant Darré participated in the establishment of forcible recruitment of agricultural laborers from Poland. It is clear from the evidence in this case that it had been common practice prior to the war to employ great numbers of Polish workers in German agriculture. It also appears from the evidence in this case that, under date of 3 January 1940, the requirements for agricultural laborers were made known at a session of the General Council for the Four Year Plan through State Secretary Backe, who reported on the state of agricultural production and the requirements for labor. It is interesting to note that the minutes of said meeting state in part as follows (NG-1162, Pros. Ex. 581 and Ex. 2522):

*"Although compulsory service measures are not to be resorted to generally, ways must be found of insuring that female laborers from occupations related to agriculture, and part of the labor which will become available in industry will be directed into agriculture."*

It does not appear that at that time there was any demand for forcible recruitment by the agricultural authorities nor that any action was taken by the General Council of the Four Year Plan for such forcible recruitment.

It does appear that from time to time discussions were had with Governor General

Frank of Poland with respect to the allocation of Polish labor. It appears from the evidence that during such sessions suggestions were made, sometimes by Frank, that compulsory measures might have to be resorted to. There is no satisfactory proof that defendant Darré ever suggested forcible recruitment as a means to secure the needed laborers, nor that he was actually instrumental in establishing a program of forcible recruitment of Polish workers for German agriculture. It is true that representatives of agriculture sometimes attended conferences with Frank. There is no convincing evidence that any one of these were ever instructed by Darré to press for forcible recruitment to meet the agricultural demand for labor.

The defendant's testimony to the effect that his activities in the actual methods of procurement of labor were limited, is not irreconcilable with the prosecution's evidence. In this connection we call attention to the statement of Erwin Lorenz who was a

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Ministerial Dirigent in the Reich Ministry of Food and Agriculture, and who attended conferences between Governor General Frank and officials of the Reich Ministry of Food and Agriculture and the Reich Ministry of Labor. An excerpt from said Lorenz's statement follows (NID-12375, Pros. Ex. 2526):

*"The section 'Labor' of the Reich Ministry of Food and Agriculture which was headed by me, had to deal with all questions pertaining to the jurisdiction of the Reich Ministry of Labor, among them the question of labor requirements, from the point of view of food economy. In all these matters my section could only advise the Reich Ministry of Labor, submit suggestions, convey wishes, and request that they be considered as far as possible. On the other hand the Reich Ministry of Food and Agriculture was not itself empowered to issue any regulations, orders, etc. on these matters. In order to ascertain the wishes and requirements of food and economy as they arose, it requested the attitude of the Reich Food Estate before making a decision in important matters. Important applications to the Ministry of Labor were made by me in writing. The correspondence was drafted by me or by my assistant and, according to its significance, either signed by me or forwarded for signature to the division chief, Ministerial Director Harmening, to State Secretary Backe, or Minister Darré. All important requests for labor requirements were principally forwarded for signature to the State Secretary or to the Minister. In less important matters I got in touch with Ministerialrat Timm of the Reich Ministry of Labor."*

Nowhere does it satisfactorily appear that Darré urged forcible recruitment or that he could have altered the situation, had it come to his attention. Some of the prosecution witnesses have assumed or indicated a belief that Darré was advised of all plans and operations involving recruitment of Polish workers, but such conclusions are not adequately supported by factual evidence. The charge that Darré was instrumental in imposing harsh measures against foreign workers employed in agriculture in Germany is not adequately established by the evidence.

The Tribunal is of the opinion that the charges against Darré as contained in count seven are not proved beyond a reasonable doubt, and it, therefore, finds defendant Darré not guilty under such count.

#### KOERNER

It is specifically alleged that, defendant Koerner, during the period from September 1939 to May 1945, was permanent deputy

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to Goering as General Plenipotentiary for the Four Year Plan, charged with the task of representing Goering in all current activities of the Four Year Plan, which, among

other things, was concerned with the recruitment and allocation of manpower. It is alleged that Koerner was active in the formulation and execution of the program for forced recruitment, enslavement, and exploitation of foreign workers, and the use and exploitation of prisoners of war in work relating directly to war operations. It is asserted that he, as chairman of the General Council for the Four Year Plan during the period from December 1939 to 1942, dealt with questions of labor conscription and allocation, including the use of forced foreign labor. It is alleged that the General Council for the Four Year Plan was charged with the task of planning and supervising the work of the Four Year Plan departments and that its influence, under the leadership of defendant Koerner, was important in the slave-labor program. It is charged that Koerner, during the period from April 1942 to April 1945, was a member of the Central Planning Board which had supreme authority for the scheduling of production and the allocation and development of raw materials in the German war economy. It is charged that the Central Planning Board determined the labor requirements of industry, agriculture, and all other sections of the German economy, and made requisitions for and allocations of such labor. It is alleged that Koerner had full knowledge of the illegal manner in which foreign workers were conscripted and prisoners of war utilized to meet such requisitions, and that he knew of the unlawful and inhumane conditions under which they were exploited. It is charged that he attended the meetings of the Central Planning Board, participated in its decisions, and in the formulation of the basic policies with reference to the exploitation of such labor. It is further charged that defendant Koerner held numerous key positions and was one of the leading figures in the Hermann Goering Works, a vast, Reich-owned, industrial empire, the activities of which, among other things, ranged over nearly every branch of mining and heavy industry, and also in many branches of armament production. It is asserted that the Hermann Goering Works used many thousands of foreign laborers, prisoners of war, and concentration camp inmates, and that in the course of the use of forced labor in such works the workers were exploited under inhumane conditions with respect to their personal liberty, shelter, food, pay, hours of work, and health. It is asserted that compulsory means were used to force these workers to enter or remain in involuntary servitude, and it is asserted that prisoners of war were used in work having a direct relation to war operations, and in unhealthful and dangerous

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work. It is asserted that Koerner was active in recruiting slave labor, including prisoners of war, for these enterprises.

The evidence adduced against defendant Koerner in support of the charges in this count is so voluminous that a detailed discussion thereof is not practicable in this opinion. It will suffice, however, that we specifically call attention to some parts of the evidence, and that we quite generally comment on the character of the whole.

The evidence has established that during the times in question defendant Koerner held high positions in the Reich government on the policy making level, and that he held important positions in the Reich-owned Hermann Goering Works, an industrial concern of vast scope and of great importance in the industrial life of Germany. From the evidence it appears that in such capacities he became involved in the formulation and execution of the slave-labor program to an extensive degree. The defendant, at an early date, was made Goering's deputy in the Four Year Plan, Goering stating in the decree establishing such Four Year Plan that "in all current business concerning

the Four Year Plan I shall be represented by State Secretary Koerner." The evidence abundantly shows that to a great extent the Four Year Plan was inextricably bound up with the execution and furtherance of slave labor, and that Koerner played an important role in connection therewith as Goering's deputy.

It appears that in December 1939 Koerner became Goering's deputy in the General Council of the Four Year Plan. It appears that it was Koerner who most frequently presided over the meetings of such General Council. Such General Council was an extremely important organization including practically all the Ministries, as well as General Thomas of the armed forces High Command. Goering's decree creating such General Council stated (*NG-1177, Pros. Ex. 461*):

*"The function of the General Council for the Four Year Plan is the current distribution of the tasks of the individual departments, and the receipt and discussion of the members concerning the state of the work of the individual departments, including the instigation of the necessary measures."*

The decree stated that the members of such General Council will be the State Secretaries Koerner, Neumann, Landfried, Backe, Syrup, Kleinmann, Alpers, and Stuckart; and the Reich Commissioner for Price Control; and Major General Thomas as Chief of the War Economy Office of the OKW; and a representative for the Fuehrer's deputy. The decree stated, "I take the chair in the General Council. My deputy will be State Secretary Koerner."

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It appears that at meeting after meeting of such General Council presided over by Koerner, matters relating to the conscription and allocation of labor were discussed and planned. The matter of forcible conscription of such labor in the occupied territories was repeatedly the subject of discussion and action. For instance, on 14 February 1940 a meeting of the General Council for the Four Year Plan took place at which defendant Koerner was present and at which he presided. The minutes of said meeting indicate that State Secretary Backe stated (*NG-1408, Pros. Ex. 977*):

*"If, as it appears likely, there will be in the government difficulties at the labor recruiting offices in the recruiting of civilian Poles, it will be unavoidable to give the occupation army authority and directive to cause by force the necessary number of workers to be transported to Germany."*

We also call attention to the eighth meeting of the General Council for the Four Year Plan presided over by Koerner and held on 17 April 1940. The minutes of such meeting which were recorded by one Dr. Gramsch, who, in the trial of this case, was a defense witness in behalf of Koerner contains the following statement (*NID-15581, Pros. Ex. C-43*):

*"Owing to the increased resistance on the part of the Poles, the propaganda action in the Government General came to a standstill even after the transportation difficulties were removed. The only thing which can be done is to carry out a forced conscription by calling up certain age classes of Poles."*

The defense of Koerner that the compulsion advocated by State Secretary Backe in the meeting of the General Council of 14 February 1940 was in fact opposed and never carried out does not appear to be true. The witness Gramsch who was present at said meeting and kept the minutes thereof, testified that there was in fact no opposition to Backe's proposal for compulsion.

In this connection it is to be noted that the IMT in its finding with respect to compulsory deportation of laborers from Poland said: \*

*"By the middle of April 1940 compulsory deportation of laborers to Germany had been ordered in the Government General; and a similar procedure was followed in other eastern territories as they were occupied."*

The foregoing evidence would seem to establish beyond doubt Koerner's knowledge

of and participation in the slave-labor program, but we will briefly touch upon other roles played by the

\* Trial of the Major War Criminals, op. cit. supra, volume I, page 244.

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defendant Koerner in this nefarious program. In April 1942 Goering established the Central Planning Board, the decree creating it stating that same was set up (NOKW-244, Pros. Ex. 2014)—

*"In order to secure priority for rearmament as ordered by the Fuehrer and to consolidate all demands made on the entire economic structure during the war, and also to provide an adjustment for nutritional security and for the potentialities of industry, that is, with respect to raw materials and production, I decree:*

*"1. A 'Central Planning' will be established within the framework of the Four Year Plan. It will be under my immediate command.*

*"2. Reich Minister Speer, Field Marshal Milch, and State Secretary Koerner, together, will take over the control of the 'Central Planning.'*

*"3. The 'Central Planning' will encompass the entire economic structure and has among others the following tasks \* \* \*." [Emphasis supplied.]*

And after enumerating tasks the decree continues:

*"Insofar as in individual cases I have not preserved the power of decision for myself, the 'Central Planning' will make the final decision on its own authority by virtue of the powers vested in me." [Emphasis supplied.]*

It will be noted that Speer, Milch, and defendant Koerner were the original members of such planning board. Funk, the Reich Minister of Economics, also became a member of such Central Planning Board over a year later. The findings of the IMT, as well as the evidence in this case, establish the criminal character and activities of the Central Planning Board. Funk, who became a member of such planning board (more than a year after Koerner), and Speer, were both convicted by the IMT. Pertinent herein are the following references made by the IMT in its judgment against Funk and Speer: \*

*"In the fall of 1943 Funk was a member of the Central Planning Board which determined the total number of laborers needed for German industry, and required Sauckel to produce them, usually by deportation from occupied territories. Funk did not appear to be particularly interested in this aspect of the forced labor program, and usually sent a deputy to attend the meetings \* \* \*. But Funk was aware that the board of which he was a member was demanding the importation of slave*

\* Ibid., p. 306.

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*laborers and allocating them to the various industries under its control." [Emphasis supplied.]*

Again speaking with reference to the meaning of the Central Planning Board the IMT states: \*

*"Speer knew when he made his demands on Sauckel that they would be supplied by foreign laborers serving under compulsion. He participated in conferences involving the extension of the slave-labor program for the purpose of satisfying his demands \* \* \*;*

*"Sauckel continually informed Speer and his representatives that foreign laborers were obtained by force. At a meeting on 1 March 1944 Speer's deputy questioned Sauckel very closely about his failure to live up to the obligation to supply 4 million workers from occupied territories. In some cases Speer demanded laborers from specific foreign countries. Thus, at the conference 10-12 August 1942 Sauckel was instructed to supply Speer with 'a further million Russian laborers for the German armament industry up to and including October 1942.' At a meeting of the Central*

*Planning Board on 22 April 1943 Speer discussed plans to obtain Russian laborers for use in the coal mines, and flatly vetoed the suggestion that this labor deficit should be made up by German labor."*

With respect to the making of decisions in the Central Planning Board, Speer testified as follows when asked if he was chairman of that "office" (3720-PS, Pros. Ex. 2263):

*"The Central Planning Board was no office as such; it was a place where decisions were made. The Central Planning Board was not led by me but the decisions were made by three men in common, Milch, Koerner, and myself. After we took over the production department from the Ministry of Economics the fourth man, Funk, was added." [Emphasis supplied.]*

From the evidence introduced it appears that from its inception in April 1942 to 7 June 1944 over fifty meetings of the Central Planning Board were held, and it appears that defendant Koerner was present in practically all of such meetings. For examples of subjects taken up and decisions made at such meetings we refer to the following:

1. The 21st meeting of 30 October 1942 (R-124-C, Pros. Ex. 2276), in which the participants agreed on using SS and Police forces and concentration camps as measures to intimidate slave laborers who claimed to be sick.

\* Ibid., pp. 331-332.

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The 36th meeting of 22 April 1943 (R-124-J, Pros. Ex. 2283), in which plans were discussed for securing Russian laborers for use in coal mines and in which meeting Speer opposed the suggestion that this labor deficit should be made up by German labor.

The 54th meeting of 1 March 1944 (R-124-O, Pros. Ex. 2288), in which it became obvious that foreign laborers were being conscripted by force. It was at such meeting that Sauckel stated (R-124-O, Pros. Ex. 2288):

*"Out of the 5 million workers who arrived in Germany, not even 200,000 came voluntarily."*

The defendant Koerner was present at all of the meetings here specifically referred to.

That the Central Planning Board played a prominent role in the execution and furtherance of the slave-labor program is indubitably clear. That Koerner participated therein as an active member of the Central Planning Board, present at most of its meetings, is likewise beyond question. Koerner's efforts to minimize his weight or activity in the Central Planning Board are not worthy of much consideration. It must be remembered that throughout, Koerner was deputy to Goering and that by reason thereof, his prestige and influence in the Central Planning Board or in any other council of Reich officials doubtless were considerable. Furthermore, the records of the meetings of the Central Planning Board indicate that he made himself heard when he so desired. It does not appear that he opposed the enslavement measures and activities discussed and acted upon by such Central Planning Board.

We will now briefly discuss one more role in which Koerner participated in the slave-labor program—that is, as an official in the Hermann Goering Works. Koerner was chairman of the Aufsichtsrat (supervisory board) of the Hermann Goering Works from its beginning until 1942 when a holding company of such concern, Reichswerke A.G. Hermann Goering, was established. In 1939 Koerner became chairman of its Aufsichtsrat and continued as such until 1942. In 1940, apparently because of the vast growth of these Reich-owned industries, they were organized into three blocks; one, the Montan including important iron ore mining, coal, iron, and steel plants, and a few armament plants—altogether a vast organization. Defendant Koerner became



chairman of the Montan's Aufsichtsrat and continued in that capacity into 1942. It was stated in the course of the testimony of one of the defense witnesses that the duties of the Aufsichtsrat of which Koerner was chairman included "personnel" matters.

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While no specific mention was made as to labor matters, we find that on 2 September 1941 defendant Koerner wrote to State Secretary Dr. Syrup in the Reich Ministry of Labor, requesting 10,000 Russian prisoners of war for the Hermann Goering Works. While the allocation of prisoners of war in this instance may not have been criminal, the request in this instance by Koerner indicates his involvement to a considerable degree in the question of labor matters insofar as the Hermann Goering Works was concerned. It is significant also that on 17 October 1941 one Meinberg of the Hermann Goering Works directed a communication to the same Dr. Syrup requesting him to inaugurate the forcible conscription of Czech labor on the ground that the Hermann Goering Works needed 1,500 Czechs. Other evidence discloses that a very considerable number of foreign workers, including prisoners of war, became employed in the Hermann Goering Works for the year 1941. Further evidence also discloses that from 1939 until the end of the war the Hermann Goering Works employed thousands of foreign civilian workers, who were often retained therein through compulsion. It further appears from the evidence that conditions under which these laborers were obliged to work and the treatment accorded them in many instances was cruel and brutal.

Supervisory positions of responsibility such as held by defendant Koerner in the Hermann Goering Works, coupled with actions actually taken by him, precludes our absolving him from blame for the slave-labor established and maintained in the Hermann Goering Works. As chairman of the Aufsichtsrat of Reichswerke A.G. fuer Erzbergbau and Eisenhuetten "Hermann Goering" from its beginning until 1942, as chairman of the Aufsichtsrat of the Reichswerke A.G. Hermann Goering from 1939 until 1942, and as chairman of the Aufsichtsrat of the Montan Block (Reichswerke A.G. fuer Berg-und Huettenbetriebe "Hermann Goering") from 1940 to 1942, his duties of management were obviously such as to have made him, in all probability, thoroughly cognizant of such an important and vital an element as labor conditions would be in industries of such magnitude and complexity as were these in the Hermann Goering Works.

The Tribunal finds defendant Koerner guilty under count seven.

#### PLEIGER

Defendant Pleiger is specifically accused of participation in the slave-labor program. It is asserted that he was the chairman of the Praesidium, the governing board of the Reichsvereinigung Kohle, commonly known as the RVK, an official agency for the

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regulation of the entire German coal industry, which organization possessed wide powers and exercised important functions with respect to the procurement, allocation, use, and treatment of slave labor, including prisoners of war. It is asserted that Pleiger was the dominant figure in the RVK, the chief participant in the formulation and execution of policies designed to procure, enslave, and exploit labor. It is alleged that Pleiger, as head of the RVK, presented the manpower requirements of the coal

industry to the Central Planning Board and urged the recruitment and allocation of great numbers of slave laborers to the coal mines. It is also alleged that he sought out and recruited foreign workers, prisoners of war, and concentration camp labor through the Third Reich and satellite governments and agencies, the German military forces, the SS, and elsewhere. It is also alleged that Pleiger held key positions and was one of the leading figures in the Hermann Goering Works; and that the Hermann Goering Works used many thousands of foreign laborers, prisoners of war and concentration camp inmates; and that such labor while employed in the Hermann Goering Works was subjected to exploitation under inhumane conditions with respect to their liberty, shelter, food, pay, hours of work, and health. It is asserted that repressive measures were used to force these workers to enter and remain in involuntary servitude, and it is asserted that prisoners of war were used in work having a direct relation to war operations, and in unhealthy and dangerous work; and finally, it is asserted that Pleiger was active in recruitment of slave labor, including prisoners of war, for the Hermann Goering Works enterprises. It is asserted that he made arrangements for joint enterprises between the SS and the Hermann Goering Works involving the use of concentration camp workers in such enterprises. The evidence adduced by the prosecution and by the defense with respect to the charges in this count is very voluminous. Much time has been consumed by the Tribunal in consideration of both the documentary and oral evidence before the Tribunal. A detailed resume and discussion of all such testimony is not practicable here. Only such portions thereof as seems necessary to explain and justify the Tribunal's conclusion with respect to this count will, therefore, be specifically referred to in this opinion.

In our treatment of the charges against defendant Koerner under this count we discussed the establishment of the Central Planning Board, its membership, and its functions. We called attention to the part that such organization played in the carrying out of the slave-labor program.

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Evidence introduced by the prosecution in the form of minutes of numerous meetings of the Central Planning Board establish clearly and indubitably that defendant Pleiger, as chairman of the Reich Association Coal, and as general manager of the BHO, and as chairman of the Vorstand of the Montan Block division of the Hermann Goering Works, repeatedly and aggressively pressed the Central Planning Board to supply these industries thus represented with labor. Pleiger himself testified in this proceeding in answer to a question as to who was invited to meetings of the Central Planning Board:

*"Whoever, as representatives of an industrial branch or of an economic group, had perhaps some importance in any of the decisions to be taken by the Central Planning Board."*

In his own testimony the defendant denied that he ever made "demand" for labor from the Central Planning Board, but stated that he did "apply" for it. As illustrative of the manner of *applying* for labor, we refer to the minutes of the meetings of the Central Planning Board where such applications were made by Pleiger. It appears that at meeting after meeting of the Central Planning Board he wanted more laborers for mining and other industries. He knew at the time that such Central Planning Board was determining labor allocation from forcibly conscripted people of the occupied territories and from prisoners of war, in which latter case allocation was being made to employment in dangerous occupations and to work under conditions which made such employment a violation of the Geneva Convention.

It is to be noted that on 9 August 1948 the defendant in the course of testifying in his own behalf in response to a question, stated that in 1943 he heard for the first time that Sauckel was forcibly recruiting workers in the East. It was apparent that the defendant sought to have the Tribunal believe that such revelation had shocked the defendant. We cannot accept the testimony of the defendant with respect to such matter as being true. It appears that on 10 August 1948 the defendant testified that 90 percent of the workers in the BHO were Russian civilians, but declared that he did not know that any of them were forcibly recruited, this despite the fact that Pleiger himself was at the times in question general manager of the BHO. When, during cross-examination, he was shown an activity report of the BHO, dated 30 April 1942, which showed that Russian miners had been recruited in that area for the BHO in Nikopol through police coercion, the defendant admitted that the receipt of this report by him "was quite probable." It is also significant that one of the defendant's own witnesses, one Adolf Carlowitz, in testifying

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on behalf of the defendant on 2 August 1948, stated that he had first learned about involuntary workers when he made a trip with Pleiger to Krivoi-Rog in September 1941, having learned that "the idea had come up to employ eastern workers in Germany, and these eastern workers were to be accommodated in special camps surrounded by barbed wire." He "reported this to Pleiger." He testifies that Pleiger objected strongly to "having assigned labor in this manner." (*Tr. pp. 14495-14496.*)

If any shock was ever felt by defendant Pleiger concerning the forcible recruitment of laborers it must have been short-lived for, aside from the testimony of defendant's witness Carlowitz, the record contains very little that can be construed as protest or objection to such form of conscription of labor. On the contrary, the record discloses that defendant Pleiger took positive action to apply compulsion in order to retain workers employed in industries in which he had an interest or to which his authority extended. Attention is called to a letter introduced in evidence dated 5 August 1943, signed by Pleiger, addressed to Sauckel, but also sent to Himmler and Kaltenbrunner by Pleiger. Such letter calls attention to the fact "that the eastern workers, Poles and also Ukrainians, were leaving their jobs in great numbers."

To remedy such situation the defendant Pleiger advises that as countermeasures, absolutely necessary, the following steps should be taken. The first three points stressed by defendant as "countermeasures" were then stated as follows (*NG-5701, Pros. Ex. 3788*):

*"1. To make it possible to get hold of fugitives, the name of the plant, its Reich plant number, or the number of the labor office is to be stamped durably into the individual underwear and clothing of the eastern worker, etc. In addition each eastern worker is to be given a dog tag and a pass (work book) containing his picture. Both must indicate in figures which is the labor office dealing with his employment and where he is employed.*

*"The plan already considered of organizing a Reich card index with finger printing appears to me to be very inadvisable.*

*"2. The eastern workers have to confirm with their signatures that they were told to report immediately to the plant the loss of the dog tag and of the pass, and that the neglect to do that or the removal of the marks in the clothing is subject to severe punishment (concentration camp for a longer period).*

*"3. Eastern workers and Poles caught when trying to escape, and also Ukrainians escaped or not returned from their vacations, are to be taken back on principle to the plant which they had left without permission. An agreement of this sort is in*

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*existence between the Reich Leader SS and the GBA (Plenipotentiary of Labor), however, it was not applied in regard to eastern workers, and to the others, evidently only rarely applied. Even if the place where they are caught is very distant from the place where they had their old job, the workers have to be taken back, and that has to be done for reasons of education in respect to the other eastern workers, and also in order not to reduce the road in case of a second escape."*

Obviously the defendant had no qualms about retaining workers by force even though he may, in 1941, have had objections to involuntary conscription. The involuntary nature of the servitude imposed is, of course, wrongful, whether arising in the first instance from forcible conscription or whether arising from forcible retention in the employment. Furthermore, it appears that on 12 February 1943 Pleiger had sent a letter to Sauckel which also indicates that he was in favor of the application of force with respect to the recruitment and retention of Poles in the mining industry. We quote the following therefrom (NG-5704, Pros. Ex. 3790):

*"Dear Party Member Sauckel,*

*"Referring to our telephone conversation regarding the use of Polish labor in the mining industry I wish to impress this matter upon you once again. As I already have told you in the presence of Reich Minister Speer, I have pointed out to the Fuehrer that the increase in production which the mining industry is asked to accomplish can be realized best by using young fresh Polish labor. In saying that I have emphasized that their allocation is the condition for drafting German miners into the Wehrmacht.*

*"I wish to ask you again to speed up the allocation of the Poles to the mining industry. In this respect it cannot be a question of recruiting individual men; two or three whole age groups, preferably those of 19-22 years of age, have to be drafted for 3 years to the mining industry.*

*"As I have already stressed in my discussions with General von Unruh, the objections that the Polish construction service would not have enough personnel for guarding them are not justified. It is quite possible to organize the disciplinary care of the Poles by the mining industry itself, sufficient miners being on hand with a military record who can take over their guarding." [Emphasis supplied.]*

In view of the fact that the defendant, in testifying in his own behalf and through testimony of other witnesses, has sought to

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create the impression that he took a generally benevolent attitude toward laborers in the plants and industries subject to his authority, it is revealing to examine the minutes of a meeting of the Stahlwerke Braunschweig, a Hermann Goering Works foundry, held as early as 21 March 1940 and presided over by defendant Pleiger. This meeting, it appears, was attended by a number of important Hermann Goering Works officials. The minutes clearly justify the conclusion that Pleiger was a dominating force in the Hermann Goering Works, especially in the Montan companies of such concern. What is particularly pertinent in connection with our consideration of this count is that it is here shown that strong disciplinary measures were taken against Polish workers at that early date. The report of the meeting states in part (NG-5709, Pros. Ex. 3792):

*"Mr. Schiegries complains about the Polish workers who are often shirking or simply report sick. One should stop issuing them food. Mr. Schiegries receives all powers to take appropriate countermeasures. Moreover, the special camp will be ready shortly, where such men will have to stay for 3 weeks. But Mr. Pleiger also agrees to the deprivation of food."*

The evidence discloses that Pleiger was not averse to employing ruthless measures to keep foreign workers in involuntary servitude. A letter which appears to have been written by Pleiger to Speer, dated 30 August 1943, is revealing. Pleiger does not deny authorship of such letter. When such letter was shown him during his cross-examination he stated (Tr. p. 15363):

*"\* \* \* I think that this letter was sent out. I cannot say however with certainty."*

The contents of such letter are in part as follows (NG-5703, Pros. Ex. 3791):

*"Dear Party Member Speer,*

*"Enclosed I am sending you a study regarding the development of the personnel in the coal mining industry during the month of July and for the period 1-20 August of this year. In conclusion it shows that from 1 July to 20 August, 54,375 workers had been allocated to coal mining. 14,942 thereof were eastern workers and 20,630 PW's. Extraordinarily high is the number of those who during the same period had left their job, namely 42,477 which is 78.1 percent of all workers put to work, thereof 21,311 eastern workers and PW's. Due to this high figure of men who had left, the net addition from 1 July to 20 August is only 11,898. The total personnel in German coal mining at the end of June was 926,738, and on the 20 August it was 938,636.*

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*"Already on 5 August when I received the first evidence as to the quickly increasing figure of the men who had left, I contacted by the same letters Gauleiter Sauckel and the Chief of the Security Police, asking for a more stringent control of foreigners. I am enclosing a copy of this letter. I am convinced that by far the greater part of the foreigners are finding other jobs somewhere else in Germany. However, means and methods must be found to bring these workers back to their job in the mining industry, or else the flight from mining will continue to increase if the men remaining on their job see that their compatriots are free to leave their working place. The labor employment offices which today possibly even welcome any additional labor in their district coming from any other district must be given the strictest order to put these men back on a job in the mining industry.*

*"This frequent leading of a vagrant life of these foreigners brings about in all cases losses in production to a considerable degree. The great lack of discipline of the foreigners becomes noticeable in first line in mining industry as two Sunday shifts are involved, and work in the mines for people not used to it is particularly difficult and dangerous.*

*"Means and methods must be found to make these escapees return to the mining industry as fast as possible. In this connection camps should be set up in the mining areas or departments in camps already existing for the educational discipline of those people when caught. Furthermore, it appears to me to be a necessity that a strongly worded order should be given not only to the labor offices but also to all employers, stating that the persons employing men having left their mining job are subject to punishment."*

Evidence in the record shows indisputably that not only was involuntary foreign civilian labor employed in the mines of the Reich and in the industries of the Hermann Goering Works, but that in the course of such employment there was extensive exploitation of such workers in that there were many instances of their working under unhealthy conditions while at the same time being subjected to harsh and inhumane treatment.

In April 1941 the Reich Coal Association, RVK, was created by Funk, the Reich Minister of Economics, for the purpose of governing and regulating the coal industry in Germany. Defendant Pleiger was chairman of the Praesidium of such association from its founding until the end of the war. In such position he exercised considerable power and was active in the procurement of labor for the coal industry. This is apparent from the minutes of the Central Planning Board which hereinbefore have been

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recruitment of eastern workers until 1943, that the evidence referred to, and by reason of his recommendations, and evidence of other activities. It is indeed significant, in view of the testimony of Pleiger to the effect that he did not know of involuntary shows that he, as head of the RVK, was advocating forcible conscription of eastern workers as early as 19 September 1941. Files of the military economic

staff of the Army High Command, dated 20 September 1941, state in part (EC-75, Pros. Ex. 1944):

"NOTICE

*"Subject; Recruiting Ukrainian workers from the district of Krivoi-Rog*

*"In the course of a telephonic conversation on 19 September, 11:15 a.m., Mr. Pleiger thought it necessary to discuss the various questions already in the first letter to the RAM (Reich Ministry of Labor). Paying the German wage scale would adversely influence wage levels in the Donetz Basin and in Krivoi-Rog from the beginning, Mr. Pleiger contended it would be better not to hire these workers but simply to assign them work and to give them, besides their food, pocket money and an allowance to their dependents. Moreover, Mr. Pleiger referred to the necessity to avoid from the beginning a clashing with the interests of other consumers.*

*"In an oral discussion between Dr. von Carlowitz (referred to by Mr. Pleiger) and Dr. Menger the impossibility had been discussed to continue hiring workers on the basis heretofore customary in the occupied territories. The following proposal in regard to a method of procedure was being discussed: The workers are to be recruited by military administration headquarters (IV Wi) under the supervision of rear area commander in cooperation with the economic inspector. After the economic inspectors once had ascertained how many workers are available and how many would be needed locally to operate the mines which are still in good working condition, the result thus determined should, by taking into account the requirements calculated by the RAM in connection with the Reich Association Coal, furnish the basis for recruiting figures. Actual recruiting should be carried out by the military administration headquarter, transportation and feeding as far as the Reich border should be organized by the German Wi organization (economic organization) in cooperation with the transportation officer and the competent military rations supply offices."*  
[Emphasis supplied.]

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At a Praesidium meeting of the RVK held on 25 and 26 September 1941, under chairmanship of Pleiger, it was stated (NI-1512, Pros. Ex. 1946), "Recruitment abroad (Krivoi-Rog, Poland, etc.) is to be continued energetically."

That such forced recruitment program was in fact carried out is evidenced by the Social Political Bulletin of the RVK dated 1 December 1941 which stated in part (NI-4102, Pros. Ex. 1948):

*"A commission consisting of representatives of the interested offices of the OKW, the Reich Leader SS, the authorities, the Party, and the Reich Coal Association stayed in Krivoi-Rog from 8 November to 10 November 1941 in order to pass the necessary measures for the transfer of miners to the Ruhr district, in accordance with the Reich Marshal's decree of 24 October 1941. At present about 6,000 of the 10,000 to 12,000 miners provided come under consideration of this.*

*"Representatives of the Reich Ministry of Labor and the Reich Coal Association together with the competent Wehrmacht offices will jointly prepare the necessary measures concerning local affairs.*

*"The registration of workers is being done by the labor authorities of Krivoi-Rog. The first medical examination will be made by an army physician. Every worker who is to be transferred will be disinfected twice. The first disinfection will take place at Krivoi-Rog, further disinfections at Przemyśl, Lemberg [Lwow], or Tschenstochau [Czestochowa] according to choice. The police examination of the workers is carried out by Kommandos of the Security Police. All workers will first be employed as haulers in the Ruhr mines. Wages will correspond to the conditions ordered by the Reich Marshal.*

\* \* \* \* \*

*"The transport will be carried out in closed transport trains under guard. Supervisory personnel will presumably be provided by the Reich Leader SS. The food supply for the transport will be handled by the army victualing offices.*

*"The transfer can be expected to begin in the next few days. According to the plan provided, the first transport will start from Krivoi-Rog on 5 December 1941."*

On 23 June 1942 Pleiger addressed a letter to all district groups of the coal industry, the members of the Praesidium of the RVK and the syndicates, calling attention to the fact that agreements had been reached with Sauckel and Speer for the allocation to Goering of 43,000 Russian civilians and for the allocation of Russian prisoners of

war to such industry. These were to be used in German-operated mines. Because of so many unfit people

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among the Russian civilians thus to be allocated Pleiger states in part as follows (NI-4731, Pros. Ex. 1954):

*"In view of these facts the Plenipotentiary General for Labor Allocation has agreed with the Reich Minister of Armaments and Munition and the competent military authorities, that Russian prisoners of war immediately have to be allocated to the German coal mining industries. The Ruhr district has put at disposal 30 officials who will go immediately to the PW camps and according to directives of the Plenipotentiary General for Labor Allocation will take all measures necessary for the technical expediency of the transports to all mining districts.*

*"The program for transports of PW's provides, from 23-29 June, daily transports of 2,000 men; on 29 and 30 June, 4,000 men on each day; and beginning with 1 July, 5,000 men daily.*

*"The transports of PW's are directed to the Stalag camps of the individual military areas. The transport and skilled metal workers are selected from these arriving transports of PW's in the Stalag camps. The remainder will be put at the disposal of the mining industries. It is your duty to take care that the personnel appointed by you examine once more whether the Russian PW's are physically fit for allocation in your plants. The labor which is declared unfit by you will be put at the disposal of the regional labor offices to be allocated elsewhere. I request you to contact immediately your competent regional labor offices and the Stalag camps and insure that the selection takes place in perfect order.*

*"5. The transport of PW's are directed in such a way that at first the requirements (indicated in column 1) of the abovementioned list of barracks will be filled. The following order will be applied:*

*"(1) Ruhr, Aachen, Ibbenbueren, Rheinische Braunkohle, (Rhineland Brown Coal).*

*"(2) Westmark.*

*"(3) Mitteldeutsche Braunkohle (Central German Brown Coal).*

*"(4) Upper and Lower Silesia.*

*"(5) Sudetenland."*

This and other evidence shows the extensive employment of Russian prisoners of war in the coal mines in the Reich.

Employment of prisoners of war in coal mines may not be *per se* a violation of the Geneva Convention as constituting employment of prisoners of war in a dangerous occupation. Coal mining by a miner trained for that purpose and working under

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conditions where proper regulations and other safeguards are insisted upon and applied, may not constitute such dangerous work as to make it wrongful to employ prisoners of war therein. This, however, is not the only test. The Geneva Convention prohibits the employment of prisoners of war in work for which they may be physically unfit. It makes wrongful the employment of prisoners of war in work which has a direct relation to war operations. It provides that work hours must not be excessive, and that a weekly rest period of 24 hours must be allowed the workers each week. It provides that working conditions shall not be unhealthful and shall not be aggravated by disciplinary measures.

The testimony in this case proves beyond reasonable doubt that in many instances prisoners of war from Russia, Poland, Belgium, and France were employed, some in the coal mining industry, and some in the plants of the Hermann Goering Works. It appears, however, that in many instances requirements of the Geneva Convention with respect to prisoners of war were not observed in that in some instances men were assigned to work for which they were not fit; that they were assigned to work under conditions that were unhealthful; that they were not humanely treated; and

their work was sometimes aggravated by disciplinary measures. There is little question but that Pleiger was aware of the conditions under which such prisoners of war were employed. In this connection it is significant to note that Pleiger, at the 17th meeting of the Central Planning Board on 28 October 1942, made a report on prisoner-of-war employment which in part is as follows (*R-124, Pros. Ex. 2275*):

*"Let me point out once more: so far 123,172 men were newly assigned while 36,842 have left. Furthermore, we have to take into consideration that we lost approximately 1,000 men per month in the Ruhr by accidents, death, etc. A certain replacement should follow automatically. We should, by right, add a certain quality factor to the percentage which we request. We lost 9,051 PW's, 8,150 eastern workers, and 19,641 other foreigners. These shortages are the reason for the fact that practically no satisfaction of the Ruhr mining industry could be achieved so far."*

When thereupon being asked by Milch, "How can it be explained that you lost so many PW's?" the defendant Pleiger stated: "Through sickness and disability, also partly through self-mutilation." It appears to be clear that the use of prisoners of war in coal mines and under the conditions disclosed by the record in this case is a violation of the regulations of the Geneva Convention.

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The evidence also establishes beyond reasonable doubt that forcibly conscripted foreign workers, including many foreign inmates from concentration camps, were employed in the Hermann Goering Works, and many foreign civilian workers were also employed in the coal mines of such Hermann Goering Works. The coal mines of such concern constituted a substantial coal production source of the Reich. It further appears that such laborers in the plants and in the mines of the Hermann Goering Works were exploited.

It also appears that prisoners of war were employed in the Hermann Goering plants under conditions that were in violation of the Geneva Convention. A few of such prisoners of war were used for transporting shells. Some prisoners of war there employed, because of the harsh and coercive measures used, abandoned their prisoner of war status and agreed to take civilian employment, and were thereupon assigned to the manufacture of materials for warfare. The evidence clearly shows that the objectionable conditions under which prisoners of war and the civilian foreign workers were employed did not consist merely of isolated and unusual instances, but were prevalent to such an extent as might well cause them to be called general. As to the employment of slave laborers in the concerns coming within the sphere of the RVK and in the plants of the Hermann Goering Works, there can be no question but that such objectionable labor conditions and treatment were within the knowledge of the defendant Pleiger who, as is disclosed by the evidence, held dominant and active positions in the RVK and in the Hermann Goering Works, and who had been instrumental in the procurement and allocation of these foreign slave laborers and prisoners of war to the coal mines and the plants in question. He would have us believe that he was not aware of any of these conditions. He has stated that if they were general he would have known about them. This is not, under the circumstances and in view of the evidence, an acceptable explanation. Many reports were directed to the RVK, the Praesidium of which was headed by Pleiger. Such reports were of such a nature as to apprise the RVK officials of conditions that needed immediate remedying. It appears that Pleiger visited plants. He has testified that when he did so he visited with the workers and would speak to them. He has stated that he does not *remember* labor reports. In view of the evidence and in view of the positions held by Pleiger we cannot believe that he was not aware of the objectionable and inhumane



conditions under which the laborers in some of the mines and some of the plants were forced to labor.

We have here reviewed and called attention to but a small part of the evidence adduced by the prosecution. There is much other

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evidence in the record that is corroborative of the conclusions that we have here reached. We have considered the evidence and arguments of the defense. From our consideration of all the evidence, we must and do find defendant Pleiger guilty under count seven.

#### KEHRL

In addition to the general charges made against all defendants in count seven it is specifically alleged that defendant Kehrl, during the period from September 1943 to May 1945, was Chief of the Planning Office of the Central Planning Board, and Chief of the Planning Office of the Reich Ministry of Armaments and War Production, in which capacities, among others, it is alleged he participated actively in the formulation and execution of the slave-labor program of the Third Reich. It is alleged these activities included arrangements for, attendance at, and participation in meetings of the Central Planning Board, and the submittal of proposed assignments of manpower to industry, agriculture, and other sectors of the German economy for decision by the Central Planning Board. It is alleged that he participated in the preparation of the decisions of the board and acted in supervision over their execution. It is further alleged that with full knowledge of the nature of the slave-labor program, he advocated and took part in numerous measures involving the forced recruitment and exploitation of foreign workers and the use and exploitation of prisoners of war in work directly relating to war operations.

The defendant Kehrl's position and activities in the Reich during the war years were, as has heretofore been indicated, numerous and important. It is apparent that these positions did not come to him by chance; nor were they unearned rewards. Important tasks were doubtless assigned to him because he had demonstrated himself to be a man of great energy and large capacities, a man who got things done.

Heretofore in our treatment of count seven we have discussed the creation and functions of the Central Planning Board. Its large and decisive role in the formulation and execution of the slave-labor program has been set forth. On 4 September 1943 Goering, by a decree, provided for the establishment of an executive office for said Central Planning Board which was known as the Planning Office. It is important to note some of the provisions of the decree establishing such a Planning Office (NOKW-260, Pros. Ex. 2260).

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*"For the preparation of decisions of the Central Planning [Board] and in order to secure the coordination of war needs in all branches of economy, I am setting up a Planning Office under the General Plenipotentiary for Armaments. It will be at the disposal of the Central Planning for all its tasks. The tasks and powers of the Planning Office will be fixed by the General Plenipotentiary for Armaments, who, with my consent, will appoint the chief of the Planning Office."*

The defendant Kehrl was appointed chief of such Planning Office. It is again important to note that Speer by decree of 16 September 1943 set forth the duties of such Planning Office. Pertinent sections of said decree are as follows (NI-2031, Pros.

Ex. 2016):

- "1. The Planning Office prepares the decisions of Central Planning and supervises their execution.
- "2. In this connection it will especially prepare the distribution to consumers of basic materials (for instance, iron, metals, coal, mineral oil, nitrogen, and other important raw materials).
- "3. As a working basis for Central Planning, the Planning Office has to draw up plans for production and distribution for the entire war economy, the demand scheduled being based on the demands of the entire German sphere of power. In this connection imports and exports are to be considered. The entire planning is to be synchronized in advance with the participating departments and specialist offices, taking into account production requisites. The Planning Office will constantly have to summarize and to evaluate the necessary statistical material.
- "4. The Planning Office will have to submit to Central Planning for decision the proposed assignment of manpower to the individual big sectors of employment (trade economy on war work, traffic, foodstuffs, etc.) It also has to evaluate statistically the carrying through of the assignments. [Emphasis supplied.]
- "5. The Planning Office will have to advocate toward the Reich Ministry of Economics the requirements of war industry in connection with the establishment of import and export quotas. It has to report constantly to Central Planning about the state of imports essential for war economy.

"II

\* \* \* \* \*  
"4. The Planning Office has to evaluate statistically the industrial and war production existing within the power sphere of Greater Germany or of the states allied with the Reich; it has

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*to develop out of that evaluation proposals for a common exchange of production in order to increase the initial war production."*

In this connection it is important to remember that during the period from 1943 to 1945 defendant Kehrl, among other important positions, also held the office of Chief in the Raw Material Office of the Ministry of Armaments and War Production.

While the defendant was not a member of the Central Planning Board itself, his activities and influence on such board was very considerable. This is convincingly proved by the minutes of many meetings of the Central Planning Board which are in evidence in this case. The repeated efforts of the defendant himself in the course of the case, as well as by witnesses testifying in his behalf, to minimize the importance and extent of Kehrl's influence and activities in the Central Planning Board are not at all convincing in view of the unalterable record presented by the minutes of the various meetings of the Central Planning Board. In this connection we may well refer to the meeting of such board held on 26 January 1943 which was, in fact, before the creation of the Planning Office of which he subsequently became chairman. Here the proceedings indicate clearly that defendant Kehrl was one who helped shape policy before such Board. In such meeting, for instance, the defendant Kehrl stated (*R-124, Pros. Ex. 2279*):

*"I have so far repeatedly left the impression of extreme stubbornness in the Central Planning Board. I believe, however, that such stubbornness is necessary from at least one side."*

The minutes further reveal that Speer stated:

*"As Kehrl is working in a high position with the Ministry of Economics, I want to ask him to make his requests as urgent as possible \* \* \*."*

The defendant Kehrl responded:

*"I had just intended today to ask you for support in this direction. I also am of the opinion that the war situation would look entirely different if we had used radical measures in the past."*

At the same meeting the defendant said:

*"The occupied territories ought to be placed under strict economic control. Holland is now under our Reich office. In the beginning of February I want to go to Brussels. The occupied territories*

*should be utilized much more."*

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The Planning Office of the Central Planning Board played an extremely vital role in the functioning of the Central Planning Board, including important plans and decisions with respect to questions relating to the procurement and allocation of labor. Efforts of the defendant and other witnesses to minimize the extent of the defendant's activities as the head of said planning board, as hereinbefore indicated, are unconvincing. Various so-called weekly reports of the Planning Office which, in fact, were introduced by the defense in this case indicate strongly the nature and extent of such activities. Evidence introduced in this case indicates that Kehrl, as Chief of the Planning Office and Chief of the Raw Material Office of the Armaments Ministry and War Production, attended practically all the meetings of the Central Planning Board. The Central Planning Board, it appears, assigned to and relied upon the Planning Office headed by Kehrl to make important estimates as to the best possible industrial use of new labor supply. It appears that Kehrl was present in the Central Planning Board on 1 March 1944 when questions pertaining to labor supply and the allocation of labor were discussed. Here it is graphically illustrated that as Chief of the Planning Office of the Central Planning Board, Kehrl was not a mere innocuous administrative clerk, but one who took an active part in the discussions of such Central Planning Board and helped direct and shape its policies and decisions. In such meeting of 1 March 1944 the questions pertaining to the procurement of additional foreign labor were exhaustively discussed. Kehrl contributed considerably to such discussion. Kehrl, with others, indicated more labor was needed.

Another meeting of the Central Planning Board must also be referred to in this connection, also held on 1 March 1944. At such meeting questions pertaining to labor were exhaustively gone into. Again Kehrl took an active part in the discussion and deliberations of such board. At such meeting it appears that Kehrl, speaking in behalf of Speer, said (*R-124, Pros. Ex. 2288*):

*"May I briefly explain the point of view of the Minister. Otherwise the impression might be given that the measures applied by Minister Speer are incomprehensible or senseless, and I would not like such an impression to be created. To us, the affair looks as follows: The assignment of labor for German purposes in France was of comparatively modest proportions up to the beginning of 1943, because the extent of the shifting over of production was limited to a few things with which the German capacity could not cope and beyond that to a few main industries. During all this time a great number of Frenchmen were recruited and voluntarily went to Germany."*

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It appears that Sauckel interrupted by saying, "Not only voluntarily; some were recruited forcibly." To which it appears Kehrl rejoined:

*"The calling-up started after the recruitment did no longer yield enough results."*

Sauckel then said:

*"Out of the 5 million foreign workers who arrived in Germany, not even 200,000 came voluntarily."*

The defendant Kehrl then rejoined:

*"Let us leave open for the moment the question to what extent slight pressure was used. Formally, at least, they were volunteers. Since this voluntary recruitment no longer had satisfactory results, we started a call-up according to age groups, and in this we were very successful with the first age group. At least 80 percent of the age group was conscripted and sent to Germany. This started about June of last year. Proportionately to the military developments in Russia and their repercussions on the attitude of the western nations to the war, the conscription by age group decreased substantially, as can be seen from statistical data available; people tried to dodge this*

*conscript to Germany by age groups partly by failing to register at all, partly by not showing up for shipment or leaving the transports en route. On the first attempts of this sort in July and August, they noticed that the German authorities were either not able or not willing to seize these dodgers and take them into custody, or transfer them to Germany by force; as a result, the willingness to comply with conscription orders was reduced to a minimum, and thereafter it was only possible to conscript relatively low percentages in the individual countries. On the other hand, fearing that the German authorities might after all prove capable of tracing them, these people did not go into French, Belgian, or Dutch plants, but dispersed into the mountains and found help and assistance among the small partisan groups there."*

It thus appears that Kehrl had detailed knowledge of the slave-labor program and its indefensible methods.

The evidence also reveals that in the Central Planning Board meeting of 25 May 1944 Kehrl suggested the use of 35,000 prisoners of war for use in the Ruhr mines. He even suggested that he might discuss the question with Himmler who had some Russian prisoners. The recorded proceedings of this meeting indicate that defendant Kehrl was inclined to exercise a positive and

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aggressive attitude with respect to the deliberations and decisions of the Central Planning Board. As indicative thereof, reference is made to a discussion between Kehrl and Speer over coal allocation. In such dialogue Speer stated:

*"I would be ready to decide from the Central Planning Board to proceed according to this plan and would draw the corresponding deductions from it. But somehow we must also sign what we have suggested. I'm ready to sign the proposition."*

Kehrl then stated, "I am not ready to sign it." To which Speer rejoined, "You are subordinate to me." To this Kehrl replied:

*"But I have the opportunity to say something before the final word. I don't think that the suggestion as it is here is possible to that extent with the full burdening of the iron."*

Kehrl then proceeded to make a lengthy argument in support of his position. The deliberations of this meeting as a whole indicate indisputably the aggressiveness and the influence of Kehrl with respect to the decisions of the Central Planning Board.

It appears from the evidence in the record Kehrl had knowledge that prisoners of war were being employed in the production of armaments.

There is evidence proving Speer designated Kehrl to represent him in a meeting to be held on 3 January 1944 with Himmler, Keitel, and Sauckel to discuss the "transfer" of French labor. It appears from the evidence that the defendant Kehrl also was active in the Central Planning Board with the allocation of concentration camp inmates to industry. A great deal of evidence, corroborative of the matters hereinbefore referred to, establish beyond reasonable doubt the activity and the influence of defendant Kehrl in the shaping and carrying out of the slave-labor program. As heretofore stated, efforts made by the defendant and his witnesses to minimize the importance and influence of Kehrl's position and activities, with respect to the slave-labor program, were not convincing. In fact evidence introduced in the defendant's behalf indicates indisputably that the functions and activities of the defendant as head of the Planning Office of the Central Planning Board and in other capacities were considerable with respect to the policies and execution of the slave-labor program.

The defendant also, by the way of defense, has alluded to the fact that he differed with Sauckel with respect to the so-called protected-plant scheme, whereby certain industries in occupied countries were given war work, and the workers therein were not subject to deportation to Germany. It appears that Sauckel

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disliked such scheme as it interfered with his seizure of foreign workers thus employed. While an extensive operation of such protected plants may have served to decrease the number of foreign laborers deported to Germany, this cannot serve to absolve him from the guilt that attaches to him for his otherwise energetic furtherance of said program. The Tribunal will not ignore efforts thus made by Kehrl to alleviate the harshness of the slave-labor program by a policy which would thus restrict deportations from the occupied territories into Germany. We cannot, of course, overlook the fact that the carrying out of a slave-labor program by the German Reich in plants operated by it in a foreign territory would still be slave labor. In this connection the International Military Tribunal stated as follows \*:

*"Speer has argued that he advocated the reorganization of the labor program to place a greater emphasis on utilization of German labor in war production in Germany and on the use of labor in occupied countries in local production of consumer goods formerly produced in Germany. Speer took steps in this direction by establishing the so-called 'blocked industries' in the occupied territories which were used to produce goods to be shipped to Germany. Employees of these industries were immune from deportation to Germany as slave laborers, and any worker who had been ordered to go to Germany could avoid deportation if he went to work for a blocked industry. This system, although somewhat less inhumane than deportation to Germany, was still illegal. The system of blocked industries played only a small part in the over-all slave-labor program, although Speer urged its cooperation with the slave-labor program, knowing the way in which it was actually being administered."*

From a full consideration of all the evidence adduced by the prosecution and the evidence offered in opposition thereto by the defendant, the Tribunal finds the defendant Kehrl guilty under count seven.

#### PUHL

The defendant Emil Puhl, under count seven, is specifically charged with having been active in financing enterprises which, to his knowledge, were primarily created to exploit slave labor. It is asserted that in 1939 defendant Puhl, acting directly through the instrumentality of the Reich Bank and otherwise, conducted negotiations with the SS concerning a loan of 8 million reichsmarks to the Deutsche Erd-und Steinwerke, commonly known as the DEST, an SS economic subsidiary which was especially de-

\* Trial of the Major War Criminals, op. cit., volume I, page 332.

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signed to utilize concentration camp labor for the purposes of the Four Year Plan. It is further alleged that upon the recommendation of Puhl such loan was granted by the Golddiskontbank, and that thereafter the defendant assisted the DEST in securing additional large loans, obtaining reductions on interest rates on such loans, and receiving extensions of time for repayment.

The evidence adduced by the prosecution indicates that the defendant Puhl was a member of the Aufsichtsrat of the Deutsche Golddiskontbank, which was a subsidiary of the Reich Bank from 1935 to 1945, and that he was a member of the board of directors of the Reich Bank from 1935 to 1945, and vice president of the Reich Bank from 1939 to 1945. It appears from the evidence that an application for a loan from the Golddiskontbank was made in behalf of the DEST for the purpose of expanding the activities of such organization to make use of the labor of inmates of concentration camps in accordance with the purposes of the Four Year Plan. From the evidence it appears that it was recognized that neither the Reich Bank nor the

Golddiskontbank could with propriety issue such credit, but a substantial loan, to wit, in the sum of 8 million reichsmarks, was made pursuant to such request in October 1939 from funds on deposit there by the Reich Ministry of Economics, such loan being made after payment had been acquiesced in by the Minister of Economics and the president of the Deutsche Reich Bank, Walther Funk. In the connection it is well to note that findings in the IMT judgment with respect to the said Funk who was there a defendant contain the following\*:

*"As president of the Reich Bank, Funk was also indirectly involved in the utilization of concentration camp labor. Under his direction the Reich Bank set up a revolving fund of 12 million reichsmarks to the credit of the SS for the construction of factories to use concentration camp laborers."*

The prosecution introduced evidence to show that the defendant made a visit to certain concentration camps of the DEST in connection with the loan of the DEST, with a view to determining the meritoriousness of the application for said loan. Such visit it appears was made in 1939. There is nothing in the evidence, however, to indicate that the defendant at that time was aware that nationals of countries other than Germany were imprisoned in such camps, although such seems to be the contention of the prosecution. At this early date probably, if there were other nationals in such camps they were so extremely few in number as not to be noticeable.

\* Ibid., p. 306.

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A further request for a loan appears to have been made and acted upon favorably in May of 1941. Here again, however, it appears that such loan was granted only "after a thorough discussion with the Reich Minister of Economy and president of the German Reich Bank, Walther Funk." Taking the documentary evidence submitted by the prosecution to show the granting of loans to the SS for the purpose of utilization of concentration camps, we are inclined to the view that Funk was the deciding individual in such transactions. The contention of the prosecution, to the effect that Puhl had authority to make such loans and did in fact make them on his own discretion, does not appear to be justified by the evidence. The evidence adduced to show that the defendant Puhl held positions of considerable responsibility and authority are not in themselves controlling on this question. There is nothing to indicate that Funk in these particular transactions was not the deciding factor. Evidence offered in behalf of the defendant also tends to throw serious doubt upon the contention that Puhl played a decisive role in the granting of such loans. From the evidence it is doubtful whether defendant Puhl did more than act as a conduit in these particular transactions.

The Tribunal is of the opinion that the charges against defendant Puhl under count seven have not been proved beyond a reasonable doubt and he is, accordingly, found not guilty under such count.

#### RASCHE

The defendant Rasche is specifically accused under count seven with having been active in financing enterprises which, to his knowledge, were primarily created to exploit slave labor. It is specifically asserted that Rasche took a leading role, in conjunction with one Emil Meyer, who is alleged to have been his colleague in the SS, the Circle of Friends, and the Vorstand of the Dresdner Bank, in sponsoring, supporting, approving, and obtaining approval for loans totaling millions of

reichsmarks to enterprises which used concentration camp labor on a wide scale and under inhumane conditions. It is asserted that the enterprises to which such loans were made included numerous industries and services maintained and operated throughout Germany and the occupied countries by the Economic and Administrative Main Department (Wirtschafts-und Verwaltungshauptamt, commonly known as the WVHA), which was the main department of the SS charged with the operation, maintenance, administration, and establishment of concentration camps. It is alleged that in many instances the loans were unsecured and in other instances they were secured only by a so-called "declaration of the Reich Leader SS."

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Considerable evidence was introduced by the prosecution with respect to this count. The defendant also introduced considerable evidence in refutation of the charges made hereunder.

The Tribunal is not impressed with the proof adduced by the prosecution to sustain the charges here made against defendant Rasche.

It appears that defendant Rasche was a member and later "speaker" of the Vorstand of the Dresdner Bank from 1935 to 1945. While in such position it is claimed by the prosecution he participated in the financing of SS enterprises which used concentration camp labor on a wide scale and under inhumane conditions. Careful consideration of the evidence as adduced by the prosecution and by the defense fails to reveal that the defendant Rasche did in fact wrongfully participate "in sponsoring, supporting, approving, and obtaining approval for loans totaling millions of reichsmarks to SS enterprises which used concentration camp labor." The testimony reveals that the Dresdner Bank did, over a period of time, make loans of various amounts to SS enterprises which were being operated with concentration camp labor. There is little doubt but that the Emil Meyer referred to in the charges as having acted in conjunction with defendant Rasche, took an active part in handling the applications for such loans when they were submitted to the Dresdner Bank. In this connection it is well to note that the Dresdner Bank was a private banking institution conducting a great volume of business. It appears that the loans, despite the claims of the prosecution to the contrary, were for the most part short-term loans and bear all the indications of having been conducted with the same objectives in mind as usually prompt the making of loans by any banking institution. The prosecution failed to establish their contention that the defendant Rasche in fact was one of the really deciding individuals within the bank in the making of such loans. It appears that such loans were usually secured. It is charged that some of such loans were not backed by any other guarantee than that of the Reich Leader SS. This is not serious in view of the fact that under the conditions that prevailed in Germany at said times a guarantee by the Reich Leader SS of such loans could reasonably be considered as tantamount to a guarantee of such loan by the Reich itself. This appears to have been the view of the loaning bank officials.

In view of the foregoing, further discussion with respect to the charges against Rasche in this count may not be necessary. The Tribunal, however, wishes to note that even if it were assumed that the defendant Rasche took or played a decisive role in the granting of said applications for loans to the SS it would

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be difficult to find him guilty of participation in the slave-labor program on that account. The evidence adduced by the prosecution to show knowledge on the part of Rasche as to what was taking place in the SS enterprises with respect to labor is very unconvincing. The prosecution frequently referred to in their brief and relied upon the fact that Oswald Pohl, the head of the WVHA, in an affidavit introduced in evidence, indicated that Rasche had visited with others in concentration camps at a date antedating the war, and in which affidavit the affiant Pohl concluded that Rasche and the said Emil Meyer knew "that concentration camp prisoners were employed in those enterprises." The testimony of Oswald Pohl, as given in this case on 16 June 1948, deprives the statements of his affidavit of well nigh all of its claimed value in that he then stated that his affidavit, as made in 1946, was largely made from memory, and that with respect to the references therein made to defendant Rasche, "whom he admits that he did not know at the time of the alleged visits to the concentration camps," he stated (*Tr. p. 8921*):

*"\* \* \* and I do not know myself how I came to make that statement; I was completely hazy."*

The defendant Rasche himself unequivocally denied ever having visited concentration camps. Other testimony offered to prove knowledge by Rasche of concentration camp employment in the enterprises in question and of the alleged inhumane exploitation of labor therein for the most part consisted of poorly supported conclusions. In this connection it may be well to remember that the employment of prisoners is not, *per se*, a violation of international law. At the date when defendant Rasche is alleged to have made visits to the concentration camps, Germany apparently was not yet engaged in seizing of nationals from other countries and placing them in concentration camps for labor in SS industries. Knowledge, therefore, with respect to the illegal use of labor in the SS enterprises cannot be predicated upon such alleged visit or visits. That knowledge subsequently came to the defendant Rasche with respect to such alleged illegal use of labor in the SS enterprises to which the Dresdner Bank had made loans is certainly not proved beyond reasonable doubt. The defense testimony was to the effect that the defendant had no such knowledge. We cannot go so far as to enunciate the proposition that the official of a loaning bank is chargeable with the illegal operations alleged to have resulted from loans or which may have been contemplated by the borrower. Rasche as an official of the loaning bank under the circumstances surrounding the loans here under consideration, as revealed by the evidence, did not thereby become

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a criminal partner of the SS in the slave-labor program.

The Tribunal finds the defendant Rasche not guilty under count seven.

## **COUNT EIGHT—MEMBERSHIP IN CRIMINAL ORGANIZATIONS**

The defendant von Weizsaecker, Keppler, Bohle, Woermann, Veessenmayer, Lammers, Stuckart, Darré, Dietrich, Berger, Schellenberg, Rasche, Kehrl, and Koerner are charged with membership, subsequent to 1 September 1930, in Die Schutzstaffel der National-Sozialistischen Deutschen Arbeiterpartei (commonly known as the SS) which was declared by the International Military Tribunal to be a criminal organization.

The defendant Schellenberg is charged with membership subsequent to 1 September 1939 in the Sicherheitsdienst des Reichsfuehrer SS (commonly known as



the SD) likewise declared to be criminal by the International Military Tribunal. The defendants Bohle, Darré, Dietrich, and Keppler are charged with membership subsequent to 1 September 1930 in categories of the Leadership Corps of the Nazi Party.

In determining the fact of innocence or guilt of these defendants we shall scrupulously bear in mind the words of caution found in the International Military Tribunal judgment: first, that guilt is personal and mass punishments should be avoided; that in determining criminality of members of the prescribed organizations those who, though their membership was voluntary had no knowledge of the criminal purposes or acts, as excluded, as well as those who were drafted by the State for membership, unless they are personally implicated in the commission of acts declared criminal by Article 6 of the Charter [Charter of the International Military Tribunal] as members of the organization. Therefore, membership alone does not constitute proof of guilt.

A number of the defendants involved in this count assert that they were only nominal members of the SS, known as Ehrenfuehrer; that they took no part in the activities of the SS, had no functions, and performed no duties, and that therefore they cannot be convicted under count eight.

Shortly after the seizure of power and increasingly thereafter, Himmler, as Reich Leader SS, instituted a program of conferring an honorary rank in the SS upon officials in other governmental departments, and upon many who were prominent in industry, commerce, banking, science, and other phases of civilian life.

On 23 January 1936 the title of Ehrenfuehrer was abolished and those who had held such a title became ordinary members of the SS and were assigned to various staffs of that organization.

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In most instances those so appointed were given no official duties or responsibilities, and had no executive, administrative, or command functions in the organization. The motives which prompted Himmler are not wholly clear, but we think included at least the following:

1. A desire to bring into the SS organization the prominent and respectable in the Reich that he might be able to point with pride that it contained names which, if they did not glitter, at least were honored as respected and powerful.
2. That by conferring these titles he could thereby put the recipient under a certain measure of obligation to him and arouse at least in some instances a sense of loyalty to himself and his organization.
3. That he harbored definite plans to ultimately make the SS the real governing power of Germany.

Those who accepted his offers did so from a variety of reasons. Some were not interested in and were quite unsympathetic toward Himmler and his organization, but were urged or instructed to accept rank in the SS by superiors who felt either pride or political necessity in establishing that they and their officials were in close touch and harmony with the powerful Himmler. Others sought and accepted them as a sort of insurance against interference by the Gestapo or the SD, and some because they felt that the glamour of the uniform and a position of rank would better enable them to carry out programs of their own.

Finally, there were others who approved of Himmler's policy, and desired to be associated therewith, and to obtain credit and gain which they hoped such

association would bring in its train.

#### BOHLE

The defendant Bohle entered a plea of guilty to count eight. He was appointed Brigadefuehrer in the SS in September 1936, and Gruppenfuehrer in April 1937, then Obergruppenfuehrer in June 1943, which ranks are comparable with those of brigadier general, major general, and lieutenant general in the Waffen SS.

He was a Gauleiter and a member of the Leadership Corps of the Party after 1 September 1939. He was aware of the criminal nature of the SS organization, and so knowing he remained a member after 1 September 1939.

His plea of guilty has been accepted, and we find him guilty as charged.

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#### VON WEIZSAECKER

The defendant von Weizsaecker at the insistence, even the order of von Ribbentrop, in 1938 accepted the so-called honorary rank of Oberfuehrer, and finally by January 1942 he was promoted to that of Brigadefuehrer.

We find that he had and exercised no functions in the SS, that he was wholly unsympathetic with it, and that Himmler, on his part, had neither liking for and felt considerable distrust of von Weizsaecker. This is substantiated by the fact that the defendant did not receive an SS rank comparable to his position as State Secretary in the Foreign Office.

While it may be inaccurate to say that he was drafted by the State for membership, the circumstances of his appointment are such that we can see no substantial difference between him and those who were drafted by decree or order.

Von Weizsaecker was quite aware that the SS was a criminal organization, a fact which is apparent from his own testimony, but we do not find that he was personally implicated as a member of the organization in the commission of acts declared criminal by Article 6 of the Charter.

Von Weizsaecker should be and hereby is acquitted under count eight.

#### WOERMANN

As Under Secretary to the Foreign Office, the defendant Woermann was made an SS Standartenfuehrer in 1938 and promoted to Oberfuehrer in 1941. Like von Weizsaecker, he accepted membership in the SS at the insistence or even order of von Ribbentrop. He did not voluntarily become a member, and performed no functions, and exercised no command, and had no desire to do either.

That von Ribbentrop solicited and obtained honorary ranks in the SS for both von Weizsaecker and Woermann was due to the desire, born of his inordinate vanity, that members of the Foreign Office appear at public functions wearing some sort of uniform, and this desire persisted until a Foreign Office uniform was designed and approved.

We do not look upon Woermann as a voluntary member of the SS. We have no doubt that he was or soon became acutely aware of its criminal program. He was not *persona grata* with Himmler or the latter's coterie.

Our finding with respect to him is identical with that made regarding von Weizsaecker. He should be and is acquitted under count eight.

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## KEPPLER

The defendant Keppler became a member of the SS on 21 March 1933. For a considerable time prior, and for a number of years subsequently, he was one of Hitler's principal advisers. He was chosen to go to Vienna as Hitler's direct and personal representative during the crucial days immediately prior to the invasion and aggression against Austria. He advised Himmler to organize the DUT which, as we have heretofore held, was an essential component in the Germanization and resettlement program, created and carried out by the Reich Leader SS, and was one of the executive and administrative organizations of the DUT carrying out this program. He was familiar with the objects, purposes of, and the methods used by the Germanization and resettlement program.

We have found him guilty under count five by reason of the part which he played in the organization of the DUT and as chairman of the Aufsichtsrat. Keppler also organized the circle which became known as the Himmler Circle of Friends, the purpose of which was to bring personages prominent in the commercial, banking, and scientific world into close and sympathetic touch with Himmler and his organization.

Immediately upon entering the SS he received the so-called honorary rank of colonel [Standartenfuehrer]. On 23 August 1933 he was promoted to the rank of Oberfuehrer, or senior colonel, on 30 January 1935 to Brigadefuehrer, on 13 September 1936 to SS Gruppenfuehrer, and on 30 January 1942 to Obergruppenfuehrer. These ranks correspond to those of colonel, senior colonel, brigadier general, major general, and lieutenant general in the Waffen SS.

The defendant insists that all these ranks were honorary and that he did not participate in SS activities. We are unable to accept this defense. The evidence establishes beyond a doubt that he not only knew of the criminal acts and purposes of the SS, but that he actively participated in some of them, particularly in those of the DUT.

We find the defendant Keppler guilty under count eight.

## VEESENMAYER

This defendant was a convinced National Socialist. He had an early Party number of 873,780, and an SS number of 202,122. On 13 September 1938 he received the rank of Untersturmfuehrer, on 9 November 1937 that of Hauptsturmfuehrer, on 12 March 1938 that of Standartenfuehrer, on 30 January 1942 that of Oberfuehrer, and on 15 March 1944 he became a Brigadefuehrer.

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He collaborated with the SS in his operations in Serbia and Croatia, and with Benzler took an active part in the proposal for deportation of the Serbian Jews.

It was he who reported, investigated, and recommended to von Ribbentrop a program to compel the Hungarians to organize and become a puppet government and state under the complete domination of Germany, thus depriving her of her sovereign powers, and to compel her to enact anti-Jewish measures and join in the deportation of Hungarian Jews to the East. His recommendations were accepted and he was selected to act as German Minister and Plenipotentiary to Hungary and carry out those measures. He was intimately connected with the brutal deportation of

Hungarian Jews to the East where they were committed to slave labor or exterminated.

He was fully aware of the criminal nature of the SS and the part it was to and did play in the deportation and extermination of Jews. The defendant insists that his actions in Hungary were not as a member of the SS and that he came into various conflicts with the SS leaders there, but those disputes arose over questions of timing and method rather than objectives. His acts in Hungary, however, were those of an official of the Foreign Office and not as a member of the SS.

We note that when he fell under the displeasure of Goering he applied to Heydrich and Himmler as an SS member to have his honor and position reestablished. He is, and we find him guilty as charged in count eight.

#### LAMMERS

The defendant Lammers was appointed Oberfuehrer in the SS on 29 September 1933, Brigadefuehrer on 20 April 1935, Gruppenfuehrer on 30 January 1938, and Obergruppenfuehrer on 20 April 1940.

While, as we have stated, the title Ehrenfuehrer was abolished by Himmler in 1936, we are nevertheless of the opinion that Lammers' rank and position in the SS was in fact honorary. He had no function and exercised no command by reason of them. His relations with Himmler were on a friendly and intimate basis. He was fully aware of the criminal nature of the SS organization and of its programs, where and how they were executed.

As Reich Minister and Chief of the Reich Chancellery, he learned of the criminal conduct of the Einsatzkommandos, and of the Higher SS and Police Leaders in the East, of the complaints made by Rosenberg, Frank, and Kube of the outrages committed by Koch and the SS organizations. He had no illu-

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sions that they were anything other than history has disclosed them to be. He knew of the mass murders in the East; he knew of the forced evacuations of the civilian populations; he knew of the deportation of Jews to the East and of the fate which awaited them there. His membership in the SS was voluntary, and with the knowledge of those criminal activities he remained a member.

We find the defendant Lammers guilty under count eight.

#### STUCKART

The defendant Stuckart became a member of the SD in September 1936 and a member of the SS in the same year. Apparently his first rank in the latter organization was Obersturmfuehrer.

On 30 January 1944 he was promoted to SS Obergruppenfuehrer, equivalent to that of lieutenant general, having in the meantime held intermediate ranks. He was well acquainted with Himmler. He advised with him with regard to many of the criminal activities and programs of the SS, and he continued to remain a member of the organization; he was advised by Loesner of the mass murder of Jews at Riga, was present at the Wannsee conference when the fatal "final solution" of Jews was announced, and he made the recommendation that the Mischling Jews be sterilized instead of deported to the East, a suggestion that no one would father unless he knew and appreciated that deportation would be a worse fate.

He played a part in drafting the laws, decrees, and regulations which helped the SS

carry on many of its criminal activities. He was appointed Secretary of the Ministry of Interior when Himmler became its Minister, and remained there until its collapse. We find him guilty as charged under count eight.

#### BERGER

The defendant Berger was a member of the SS. He was Chief of the SS Main Office. He attained the rank of SS Obergruppenfuehrer; he was one of the principal subordinates of Himmler in the SS. He was himself engaged in active participation in some of the crimes committed by that organization. He was intimately acquainted with its criminal activities.

We find him guilty under count eight.

#### SCHELLENBERG

The defendant Schellenberg was a member of the SS and SD. He was one of the officers in Amt IV and became Chief of Amt VI

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of the RSHA. He was promoted from time to time and attained the rank of SS Brigadefuehrer.

It is established beyond doubt, and in fact the defendant's own testimony reveals, that he was familiar with many, if not all, of the criminal activities of the SS.

We find the defendant guilty as charged in count eight.

*Matters of extenuation and mitigation.*—We think it is clear that in the latter years of the war, and particularly when the defeat and collapse of Germany became apparent to all except the most blind, Schellenberg participated in the aiding of those who suffered from imprisonment, oppression, and persecution in the Third Reich, and that these activities were of actual and notable aid in immediate amelioration of their distress.

We deem it unnecessary to determine whether these actions arose from true benevolence or from a desire to curry favor with the then imminent victors. His motives made no difference to the beneficiaries of his acts, and we shall not deprive him of the credit arising therefrom.

#### DIETRICH

The defendant Dietrich was a Reichsleiter in the Leadership Corps of the Nazi Party in 1932. He maintained that position until the collapse. He was the Party Press Chief, Hitler's Press Chief, Reich Press Chief, and State Secretary in the Ministry of Propaganda.

He played an active part in the anti-Jewish persecutions by means of his control over the press. He was in constant attendance at the Fuehrer Headquarters. He voluntarily became a member of the SS on 24 December 1932 with the rank of Oberfuehrer; was promoted to Brigadefuehrer on 1 January 1934, Gruppenfuehrer on 27 January of that year, and Obergruppenfuehrer on 20 April 1941. He knew that the SS was a criminal organization and he knew of its criminal programs. He remained a member of the SS until the last.

It is clear, however, that he had no functions or exercised no command in the SS by reasons of the ranks conferred upon him, but knowing its program and knowing its activity, he remained a member.

We find him guilty as charged in count eight.

## DARRÉ

Darré was a Reichsleiter of the Party Leadership Corps. He was Minister of Food and Agriculture, and exercised the duties of that office until 1942. He was a member of the SS, and from 1931 to 1938 served as Chief of the Race and Settlement Main

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Office of the SS. He attained the rank of Gruppenfuehrer [Obergruppenfuehrer]. As Minister of Food and Agriculture he took an important part in the Germanization and resettlement program, and, as he himself reported, made the plans prior to the outbreak of war for resettling Reich and ethnic Germans on farms confiscated from Polish nationals, and under his direction the ethnic and German farmers were selected and settled on those confiscated lands.

While the Fuehrer decree made Himmler Commissioner for the Strengthening of Germandom, nevertheless, after a considerable struggle, Darré succeeded in keeping a part of that program under his direction and control. He testifies that he quarreled with Himmler in 1938 and attempted to resign from the SS, and that Himmler referred the matter to Hitler who refused to permit him to resign, and that thereafter he took no part in SS activities and wore the uniform occasionally and then only at public functions, and finally, after 1939 he did not wear it at all.

While we have considerable doubt that the reasons which he gave for the quarrel, namely, that he disapproved of Himmler's policy, are entirely accurate or complete, we think the facts regarding his connection with the SS are substantially as he relates. There can be no question that as Himmler's powers increased and Backe's intrigues as State Secretary of the Department of Food and Agriculture came to successful fruition, Darré's power and influence considerably decreased.

We are not impressed with the prosecution's contention that a defendant, who in fact attempted to resign from a criminal organization, but who was kept on its rolls because Himmler or Hitler would not accept his resignation, can be convicted of membership in a proscribed organization. We are satisfied that Darré's activities in the Germanization program were those arising from his position as Minister of Food and Agriculture, and not from his membership in the SS, and that after 1 September 1939 he was a member of the organization in name only—that against his will.

We therefore acquit Darré of this charge.

He was, however, a Reichsleiter in the Leadership Corps of the Party and functioned in that position after 1 September 1939 and at least until he fell from power.

He was familiar with the Party program and the program of the Nazi government, and willingly participated in its criminal programs, particularly those relating to Germanization and resettlement.

We find him guilty under paragraph 75 of count eight, namely, of being a member of the Leadership Corps of the Nazi Party.

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## RASCHE

The defendant Rasche joined the SS on 9 November 1938, and was given the rank of Untersturmbannfuehrer [sic], and later was promoted, first, to Sturmbannfuehrer

and in 1943 to Obersturmbannfuehrer. He exercised no executive or administrative command. He was a member of the Circle of Himmler's Friends, attended many of its meetings, and was a willing party to the annual contributions of 50,000 RM made to Himmler by the Dresdner Bank, of which he was a Vorstand member.

The evidence, however, does not establish that the Circle of Friends had any official connection with, or was a part of the SS, or that it played any part in the SS policy-making or participated in any of its criminal designs.

While Rasche's original entrance into the SS may have been due to his interest and position in the world of sports, we are convinced that his motives in retaining membership and in joining the Circle of Himmler's Friends was for the purpose of gaining prestige for himself, to improve the position of the Dresdner Bank, and to obtain connections which could be used as a lever to enable him and the bank to carry out his and its own designs in the commercial and banking field, and probably to enable him to assert pressure on those from whom the bank and its clients desired to purchase or otherwise acquire property.

His promotions in the SS were not due to the position which he held in the field of sports, but because of his connection with the bank and the business relations of the bank with the SS. He knew of the Germanization and resettlement program, knew that it was accomplished by forcible evacuation of the native populations and the settlement of ethnic Germans on the farms and homes confiscated from their former owners, and knew it was one of the SS programs and projects. This is disclosed by the record of the bank, to which we have heretofore adverted. With this knowledge he remained a member of the organization.

We do not find, however, that Rasche as a member of the organization participated in any crime committed by the SS.

We find the defendant Rasche guilty under count eight.

#### KEHRL

While the defendant Kehrl was working in Keppler's office, the latter told him that he had spoken to Himmler regarding his appointment to the SS and asked if this was agreeable. Kehrl answered in the affirmative. He states that he was appointed as an Ehrenfuehrer, but inasmuch as this office had been abolished prior to the time he joined the SS, this is evidently in error. He

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first received a rank which corresponded to a second lieutenant, which evidently affronted him, and he left the SS, but reentered again in 1937 at the same rank, and was shortly thereafter promoted to first lieutenant, and on 24 April 1938 to the rank of [senior] colonel (Oberfuehrer), and on 21 January 1941 to the grade of Brigadefuehrer.

However, he had exercised no functions as an SS member and had no right of command. He wrote Himmler on 30 September 1939 requesting an interview, stating that he desired to report about the political situation in the Protectorate which he was convinced would be of value to Himmler in his decisions regarding the handling of the police power there. He explains that he desired to complain to Hitler regarding hostages which were being taken by the Gestapo and other brutal steps for which the latter were responsible.

Kehrl was appointed to and acted as a member of the Aufsichtsrat of the DUT and was a member of its three-man working committee, along with Keppler and Greifelt.

He was fully informed of its policies and functions, and became and remained a member of that board as representing the interest of the Ministry of Economy. He had knowledge of the objects and purposes of and the methods used in the Germanization and resettlement program.

We have heretofore discussed this program and held it to be criminal as a violation of international law and a crime against humanity within the meaning of Control Council Law No. 10.

The DUT was essentially an SS organization, and it is impossible to separate his activities in that organization as a member of the SS and as a representative of the Ministry of Economy. He was not selected by the Ministry but by Keppler and Himmler.

We find the defendant Kehrl guilty as charged under count eight.

#### KOERNER

The defendant Koerner voluntarily became a member of the SS in December 1931 because he thought, as Goering's adjutant and co-worker, it should be advantageous and because as he says he felt that organization to be a select one and composed of persons of excellent character. He received a rank comparable to a major in February 1932 and shortly thereafter was promoted to the rank of colonel and in April 1933 to that of senior colonel.

In July of that year he was promoted to Gruppenfuehrer and on 30 January 1942 to the rank of Obergruppenfuehrer which compares to that of a lieutenant general.

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It was Goering who on 31 July 1941 ordered Himmler, as Reich Leader SS, and Heydrich as Chief of the RSHA, to plan and execute the Final Solution of the Jewish Question within the spheres of German influence in Europe. Koerner was Goering's representative in the Four Year Plan, and when the latter's star waned and Speer's arose, he acted as a member of the Central Planning Board. He knew that the labor for many of the war industries was furnished by Himmler from the inmates of concentration camps, and that this was done at the insistence and request of the board of which he was a member.

He knew of the atrocities and crimes against humanity committed by the SS. He remained a member of the organization.

We find him guilty as charged in count eight.

To recapitulate its conclusions, the Tribunal finds the defendants, hereinafter named, guilty under the counts set opposite their respective names:

Von Weizsaecker	one, five.
Steengracht von Moyland	three, five.
Keppler	one, five, six, eight.
Bohle	eight.
Woermann	one, five.
Ritter	three.
Veesenmayer	five, seven, eight.
Lammers	one, three, five, seven, eight.
Stuckart	five, six, eight.
Darré	five, six, eight.
Dietrich	five, eight.



Berger	three, five, seven, eight.
Schellenberg	five, eight.
Schwerin von Krosigk	five, six.
Puhl	five.
Koerner	one, six, seven, eight.
Pleiger	six, seven.
Kehrl	five, six, seven, eight.
Rasche	six, eight.

[Signed] WILLIAM C. CHRISTIANSON  
Presiding Judge

I reserve the right to file later, separate dissenting  
views as to some convictions.

[Signed] LEON W. POWERS Judge

[Signed] ROBERT F. MAGUIRE Judge

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### **C. SENTENCES\***

THE MARSHAL: The honorable, the judges of Military Tribunal IV. American Military Tribunal IV is now in session. God save the United States of America and this honorable Tribunal.

There will be order in the Court.

PRESIDING JUDGE CHRISTIANSON : Tribunal IV convened this morning for the purpose of imposing sentences upon those defendants who have been found guilty in this case, Case 11. The Tribunal will now impose sentences upon those defendants who have been adjudged guilty in these proceedings. The Marshal will produce the defendant Ernst von Weizsaecker.

ERNST VON WEIZSAECKER, on the counts of the indictment on which you have been convicted the Tribunal sentences you to imprisonment for 7 years. The period already spent by you in confinement before and during the trial is to be credited on the term stated, and to this end the term of your imprisonment as now adjudged shall be deemed to begin on 25 July 1947. The Marshal will remove the defendant Weizsaecker.

The Marshal will produce before the Tribunal the defendant Ernst Bohle.

ERNST BOHLE, on the count of the indictment on which you have been convicted, the Tribunal sentences you to imprisonment for 5 years. The period already spent by you in confinement before and during the trial is to be credited on the term stated, and to this end the term of your imprisonment as now adjudged shall be deemed to begin on 23 May 1945.

The Marshal will remove the defendant Bohle, and the Marshal will produce before the Tribunal the defendant Ernst Woermann.

ERNST WOERMANN, on the counts of the indictment on which you have been convicted the Tribunal sentences you to imprisonment for a period of 7 years. The period already spent by you in confinement before and during the trial is to be credited on the term stated, and to this end the term of your imprisonment as now adjudged shall be deemed to begin on 15 October 1945.

The Marshal will remove the defendant Woermann and produce the defendant Karl Ritter.

KARL RITTER, on the count of the indictment on which you have been convicted the

Tribunal sentences you to imprisonment for 4 years. The period spent by you in confinement before and during the trial is to be credited on the term stated, and to this end the term of your imprisonment as now adjudged shall be deemed to begin on 15 May 1945.

The Marshal will remove the defendant Karl Ritter and produce before the Tribunal the defendant Edmund Veesenmayer.

EDMUND VEESENMAYER, on the counts of the indictment on

\* Sentences were imposed on 14 April 1949, transcript 28807-28813.

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which you have been convicted the Tribunal sentences you to imprisonment for a period of 20 years. The period already spent by you in confinement before and during the trial is to be credited on the term stated, and to this end the term of your imprisonment as now adjudged is deemed to begin on 14 May 1945.

The Marshal will remove the defendant Veesenmayer and produce before the Tribunal the defendant Hans Lammers.

HANS LAMMERS, on the counts of the indictment on which you have been convicted, the Tribunal sentences you to imprisonment for 20 years. The period already spent by you in confinement before and during the trial is to be credited on the term stated, and to this end the term of your imprisonment as now adjudged shall be deemed to begin on 11 May 1945.

The Marshal will remove the defendant Lammers and produce before the Tribunal the defendant Richard Darré.

RICHARD DARRÉ, on the counts of the indictment on which you have been convicted the Tribunal sentences you to imprisonment for a period of 7 years. The period already spent by you in confinement before and during the trial is to be credited on the term already stated, and to this end the term of your imprisonment as now adjudged shall be deemed to begin on 14 April 1945.

The Marshal will remove the defendant Darré and produce before the Tribunal the defendant Otto Dietrich.

OTTO DIETRICH, on the counts of the indictment on which you have been convicted the Tribunal sentences you to 7 years. The period already spent by you in confinement before and during the trial is to be credited on the term already stated, and to this end the term of your imprisonment as now adjudged is deemed to begin on 18 August 1945.

The Marshal will remove the defendant Dietrich and produce before the Tribunal the defendant Gottlob Berger.

We must have quiet in the courtroom.

GOTTLob BERGER, on the counts of the indictment on which you have been convicted, the Tribunal sentences you to imprisonment for a period of 25 years. The period already spent by you in confinement before and during the trial is to be credited on the term stated, and to this end the term of your imprisonment as now adjudged shall be deemed to begin on 7 May 1945.

The Marshal will remove the defendant Berger and produce the defendant Schwerin von Krosigk.

SCHWERIN VON KROSIGK, on the counts of the indictment on which you have been convicted, the Tribunal sentences you to a period of 10 years. The period already spent by you in confinement before and during the trial is to be credited on the term already stated, and to this end the term of your imprisonment as now adjudged shall

be deemed to begin on 23 May 1945.

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The Marshal will remove the defendant Schwerin von Krosigk and produce the defendant Emil Puhl.

EMIL PUHL, on the count of the indictment on which you have been convicted, the Tribunal sentences you to imprisonment for 5 years. The period already spent by you in confinement before and during the trial is to be credited on the term stated and to this end the term of your imprisonment, as now adjudged, shall be deemed to begin on 1 May 1945.

The Marshal will remove the defendant Emil Puhl and produce the defendant Karl Rasche.

KARL RASCHE, on the counts of the indictment on which you have been convicted, the Tribunal sentences you to imprisonment for a period of 7 years. The period already spent by you in confinement before and during the trial is to be credited on the term stated, and to this end the term of your imprisonment as now adjudged shall be deemed to begin on 8 April 1945.

The Marshal will remove the defendant Rasche and produce the defendant Paul Koerner.

PAUL KOERNER, on the counts of the indictment on which you have been convicted, the Tribunal sentences you to imprisonment for a period of 15 years. The period already spent by you in confinement before and during the trial is to be credited on the term stated, and to this end the term of your imprisonment as now adjudged shall be deemed to begin on 6 May 1945.

The Marshal will remove the defendant Koerner and produce the defendant Paul Pleiger.

PAUL PLEIGER, on the counts of the indictment on which you have been convicted, the Tribunal sentences you to imprisonment for a term of 15 years. The period already spent by you in confinement before and during the trial is to be credited on the term stated, and to this end the term of your imprisonment as now adjudged shall be deemed to begin on 15 April 1945.

The Marshal will remove the defendant Pleiger and produce the defendant Hans Kehrl.

HANS KEHRL, on the counts of the indictment on which you have been convicted, the Tribunal sentences you to imprisonment for the term of 15 years. The period already spent by you in confinement before and during the trial is to be credited on the term stated, and to this end the term of your imprisonment as now adjudged shall be deemed to begin on 8 June 1945.

The Marshal will remove the defendant Hans Kehrl.

Inasmuch as the defendants Gustav Adolf Steengracht von Moyland, Wilhelm Keppler, Wilhelm Stuckart, and Walter Schellenberg, who have all been convicted in these proceedings, are ill and hospitalized, it becomes necessary to impose sentences on them *in absentia*. Each of these defendants, through their counsel, has

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requested permission to be absent during the imposition of sentence, which requests have been granted. All of these defendants are represented by counsel here today, I believe.

Is Steengracht von Moyland represented here? Yes, I see, by Dr. Haensel.

On the counts of the indictment upon which the defendant GUSTAV ADOLF STEENGRACHT VON MOYLAND has been convicted, we sentence him to imprisonment for a term of 7 years. The period already spent by him in confinement before and during the trial is to be credited on the term stated, and to this end the term of imprisonment as now adjudged shall be deemed to begin on 23 May 1945.

We will now impose sentence in the case of Wilhelm Keppler. Wilhelm Keppler's counsel is also present.

On the counts of the indictment upon which this defendant— that is, WILHELM KEPPLER—has been convicted, the Tribunal sentences him to imprisonment for a period of 10 years. The period already spent by him in confinement before and during the trial is to be credited on the term stated, and to this end the term of his imprisonment as now adjudged shall be deemed to begin on 10 May 1945.

We will now impose sentence in the case of WILHELM STUCKART, who is also represented by counsel here this morning.

In connection with this sentence, the Tribunal wishes to make this statement: Except for a short period of time when he was engaged in presenting his own defense, it has been necessary to excuse the defendant Stuckart from attendance in Court because of illness; he has been hospitalized most of the time, a situation which is expected to continue. His counsel have reported to the Tribunal concerning his physical condition, and they have submitted the report of German medical experts. The Tribunal requested that the United States Army appoint a board of competent Army officers to make a thorough physical examination of the defendant. This was done, and a written report has been submitted which has been filed with the records of this case. It appears that the defendant's physical condition is serious. He suffers from hypertensive cardio vascular disease or high blood pressure, anginal syndrome, and myocardial degeneration of the heart. Neither the American board of physicians nor the German doctors were able to give a favorable prognosis. The defendant is unable to undergo any physical exertion or strain, and must have complete rest and proper medication, and will require more or less constant hospitalization in the future. Under these circumstances, it is not at all unlikely that confinement would be equivalent to the death sentence. We have found the defendant guilty of serious charges, but his degree of guilt is not such as

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to warrant a sentence of capital punishment, and we are not willing to impose a sentence which in practical effect might entail death. Under these circumstances, the Tribunal is of the opinion that the ends of justice will be met if the sentence which we impose practically coincides with the imprisonment that the defendant Stuckart has thus far undergone. He has been under arrest since 26 May 1945 and has been in continuous custody since that time. The Tribunal therefore sentences this defendant, Wilhelm Stuckart, to imprisonment for a period of 3 years, 10 months, and 20 days. The period already spent by him before and during the trial is to be credited to the term stated, and to this end the term of his imprisonment as now adjudged shall be deemed to begin on 26 May 1945.

We will now impose sentence in the case of WALTER SCHELLENBERG. Is Walter Schellenberg's counsel here? Yes, I see he is.

On the counts of the indictment on which the defendant Schellenberg is convicted, the Tribunal now sentences him to a term of imprisonment of 6 years. The period

already spent by him in confinement before and during the trial is to be credited on the term stated, and to this end the term of his imprisonment as now adjudged shall be deemed to begin on 17 June 1945. This completes the imposition of sentences. Dr. Kubuschok?

DR. KUBUSCHOK: On behalf of all defense counsel I herewith submit to the Secretary General a motion which has been addressed to the Tribunal in which those defendants pronounced guilty ask that the judgment be set aside because of lack of jurisdiction of the Tribunal, and because of error in convictions and in facts.<sup>1</sup>

PRESIDING JUDGE CHRISTIANSON: Just a moment, Doctor. We have made formal provision for the filing of motions.<sup>2</sup> You may file your motion. File that with the Secretary General, and it will receive consideration.

DR. KUBUSCHOK: I shall now hand my motion to the Secretary General. PRESIDING JUDGE CHRISTIANSON: Very well, it will be filed. When the Tribunal presently adjourns it will convene again only if it deems it necessary to consider and dispose of motions which it has by order authorized may be made in connection with this case.\* In such event, the Tribunal will convene at such time and place as may be designated by the Presiding Judge of the Tribunal.

Military Tribunal No. IV will and does now adjourn.

(At 1040 hours, 14 April 1949, the Tribunal adjourned.)

<sup>1</sup> The Tribunal's order on this motion is reproduced in section XVIII B.

<sup>2</sup> Two orders of the Tribunal concerning the filing of motions alleging errors of facts and law in the judgment are reproduced in section XVII.

\*The orders of the Tribunal after judgment are all reproduced in section XVIII.

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## XVI. DISSENTING OPINION OF JUDGE POWERS<sup>1</sup>

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## B. DISSENTING OPINION

It is a matter of deep regret to me that I am unable to agree with my associates in all that is determined in the opinion and judgment filed herein. That was indicated when I signed it with reservations. One who disassociates himself from a substantial part of an opinion and judgment is under some obligation, it seems to me, to state the reasons. That is my present purpose.

The limited time available does not permit me to indulge in elaboration, or to mention all the points of difference with the opinion. I must be content, therefore, in indicating in broad outline those differences of view which seem to me to be of

<sup>1</sup> The dissenting opinion was not read in open Court but filed with the Secretary General as a part of the record in the case at the time when the judgment of the Tribunal was being pronounced.

<sup>2</sup> This index was filed with the dissenting opinion.

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major importance. Some preliminary observations by way of background for such discussion may be helpful.

The evidence in this case is not in substantial conflict, so far as it relates to the vital evidentiary facts. For the most part, in spite of some difference in coloration, the evidence for the defense rounds out and supplements the picture given by the prosecution. The divergence of opinion of the Tribunal arises chiefly from a difference of view as to the interpretation of the evidence, and particularly as to what inferences may properly be drawn therefrom and as to what facts must necessarily be shown to constitute guilt of a particular crime, and the degree of proof with which it must be established.

These matters will not be treated separately, or in order, but my position, with reference to all of them, will be expressed or illustrated in the course of this separate opinion.

It seems to me important also that we should refresh our recollection as to some of the rights of an accused and some dangers which must be guarded against to insure a just verdict, and that will be discussed also.

Beginning with the judgment of the International Military Tribunal decided under the London Charter, and running through all the decisions of subsequent tribunals at Nuernberg, which were decided under Control Law No. 10, of which the London Charter is made a part, the following propositions are clearly discernible:

1. That guilt is personal and individual and must be based on the personal acts of the individual charged and is not constructive or collective so that criminal acts of some may be charged to others who had no part in their commission and no control over those who did commit them.

2. That to establish personal guilt it must appear that the individual defendant must have performed some act which has a causal connection with the crime

charged, and must have performed it with the intention of committing a crime. Such act may be an act of omission where there is a duty to act and power to prevent. Crimes, generally speaking, are intentional wrongs, the intentional results of action or non-action. They are committed willfully and knowingly as the indictment charges. They are not the result of accident or of circumstances over which the actor had no control and no reason to anticipate.

3. All the elements necessary to establish the personal guilt of the individual charged must be proven beyond a reasonable doubt.

This last proposition means that the burden is on the prosecution to establish the guilt of the defendant, in accordance with the preceding propositions, by proof beyond a reasonable doubt.

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It means that in the meantime he is presumed to be innocent, and that such presumption stands as a witness for him throughout the trial. It means that all the material evidence must be considered and if from the credible evidence two inferences may be drawn, one of guilt and one of innocence, the latter must prevail. It means that where circumstances are relied upon to establish guilt, the circumstances must be so complete as to exclude any other reasonable hypothesis.

These propositions are not a mere collection of words to be repeated, given lip service, and then ignored. They are basic. The ideas they represent must be constantly kept in mind if the rights of the accused are to be properly safeguarded and the conviction of those who may not have actually committed the crime charged avoided. To ignore them and what they require of the Tribunal in the way of mental attitude at any stage of the proceedings is to open the door to error and injustice. There is a vast difference between evidence which proves a crime and that which confirms a suspicion.

Unfortunately the prosecution's case was, for the most part, not presented either in the evidence or in argument in harmony with these propositions and the concept which they represent. For example, evidence as to all the crimes committed by the Third Reich, and they were many and horrible, has been introduced before us in all their gory details, including movies of conditions in some concentration camps taken after Allied troops occupied the territory, although it is not charged that any defendant in this dock had any direct connection with or responsibility for such conditions. It is argued that the defendants are guilty of all these crimes of which they received knowledge, actual or constructive. Much of the time of the trial was taken up with an effort to prove such knowledge, frequently by means of documents which are shown to have reached their office. The theory is that if a defendant knew of a crime anywhere in the government and remained at his post of duty, he thereby approved the crime and became guilty of it. Of course, the same result would follow if a defendant by some document or otherwise took cognizance of the fact that a crime had been committed unless he openly and vigorously protested against it.

Other statements of the prosecution are more frank and realistic. Witness the following from a prosecution brief:

*"Unless we subscribe to the preposterous proposition that a crime should not be atoned for if it was committed by a state, those must atone for a nation's crimes who held prominent positions in agencies involved in their planning or execution."*

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This may explain many things in this case, including the fact that the men who seem to have actually committed war crimes by their own testimony appear in this case, not in the dock, but as witnesses for the prosecution.

These attitudes reflect impatience with the idea that these defendants, as individuals, must be shown to have personally committed crimes according to the usual and customary standards or tests. They may also indicate a realization that the evidence in many instances is insufficient to establish guilt by such standards. They represent a concept of mass or collective guilt, under which men should be found guilty of a crime even though they knew nothing about it when it occurred, and it was committed by people over whom they had no responsibility or control. The theory seems to be that this concept applies with special emphasis when the defendants held prominent positions in the government of Germany when the crimes were committed.

There are other arguments advanced to sustain convictions on a mass scale, which, in my judgment, are even more unsound on legal grounds and more vicious in their consequences. But since the opinion does not mention them, or reveal the part they played in the decision, I shall not attempt to discuss them. It is sufficient to say that I reject them all. Since conspiracy is out of this case, no sort of legal legerdemain can substitute for proof that the defendant as an individual committed some act either of omission or commission with the intent thereby to bring about a result which is a crime charged in the indictment, and which accomplished its purpose. If the evidence is insufficient to establish guilt beyond a reasonable doubt on the basis of such individual responsibility, as distinguished from group responsibility, this Tribunal has no other alternative than to acquit.

All of these arguments and contentions in behalf of the prosecution lead by somewhat different routes to a very simple formula for determining guilt as follows: The government of the Third Reich committed many crimes; the defendants held prominent positions in that government, and knew of some of these crimes; therefore, they are guilty. It smacks more of something else than a proceeding to fix the legal responsibility for crime.

It is strange doctrine and reasoning to be advanced by lawyers representing American justice, and the American concept of crime. One excuse for it is that Control Law No. 10 contains a provision that those are guilty of a crime "who took a consenting part therein."

The phrase is interpreted to mean that by giving consent to the crime after it was committed was to take a consenting part, and that failure to either openly protest or go on a sit-down strike in

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time of war, after receiving knowledge that somebody somewhere in the government committed a crime, was to consent to the crime and thereby become guilty of it. It makes proof easy and guilt almost universal.

Frankly, it is incredible to me that such a contention should be advanced, and more incredible that it should receive serious consideration. It is wholly unrealistic. It has neither reason nor a rudimentary conception of justice to support it. It does not even give proper effect to the language used in Control Law No. 10, and has no support so far as I have been able to ascertain in any of the decisions here at Nuernberg. Properly construed, this phrase simply means that one who "took a consenting part" must be one who *took a part* in the *crime* and the consent must play a *part* in the crime. This is the language of the statute. Consent after the crime, if such a thing is



possible, could not play a *part* in the crime. A failure to openly object to a crime after it has been committed, where there is no right of objection, because of absence of jurisdiction in the matter, and where such objection would, therefore, accomplish nothing, cannot properly be called "consent" at all, and even if failure to resign under such circumstances after hearing about a crime can properly be called "consent" it could not play a *part* in the crime. The phrase "take a consenting part" properly construed is not inconsistent with the idea of individual responsibility for crimes. It is not inconsistent with the idea that to constitute a crime there must be on the part of the person charged some action or omission of duty having a causal connection with the crime charged and undertaken with the intention of committing a crime. Any person who can order a crime committed can consent to its commission with equal effect and with equal responsibility. To take a consenting part means no more than that.

This is the only interpretation which makes sense. It is the only interpretation which is consistent with the allegations of the indictment that defendants committed crimes "knowingly and willfully." It is the only interpretation which is consistent with a presumption of innocence, and that personal and individual guilt must be established beyond a reasonable doubt.

Moreover, Control Council Law No. 10 does not provide that remaining in office after receiving knowledge that someone in the government has committed a crime, is in itself a crime, and the indictment makes no such charge. It is not a crime and it does not in itself prove any other crime. Nor can it properly be allowed to sustain a conviction, or motivate a conviction on some other ground.

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In order to comply with the letter and spirit of what has been heretofore stated, we must put out of mind entirely the fact that these defendants were recently members of a regime which we thoroughly disliked and with which we were recently at war, and that some of them have uttered offensive sentiments against our country, its leaders, and its troops. We must put out of mind entirely all the crimes of their compatriots in which they took no part. We must disregard all the evidence of such crimes and the horrible details and pictures presented here in connection therewith, all of which are inflammatory in character and likely to arouse passion and prejudice. The men in this dock must be tried and judged on what they did, and not on what somebody else did. They must be tried solely on the evidence relating to the particular crimes charged against them. They must be judged on fair and impartial consideration of all the evidence relating to their guilt, and not on the personal beliefs of members of the Tribunal, which are not established by the evidence beyond a reasonable doubt. There must be no assumption on the part of the Tribunal that it knows more about the facts than is thus established by the evidence. Such detachment from all of these irrelevant and inflammatory matters, and such devotion to the essentials of a fair and proper trial must be achieved, if justice is to be done.

If there be those who regard such an approach with disfavor, let them take comfort in the fact that it represents not only the law applicable to the Tribunals, but the ideals of justice of the people of the nation which sponsors these trials, and that a vast majority of those people would feel betrayed if convictions were based on any lesser standard.

Moreover, they should reflect on the fact that if these trials have a reason for existence, it is to encourage respect for the rules applicable to warfare. Such

encouragement comes quite as much in freeing from punishment those who are not shown to have willfully, knowingly, and with criminal intent violated these rules as it does in punishing those who have so violated them. Any suggestion of constructive or collective guilt, no matter how disguised, would, of course, punish those who did not individually and personally violate the rules equally with those who did, and thus destroy not only respect for the rules but also the whole legitimate purpose of the trials.

Any other approach to these trials or purpose in pursuing them could not have respect for law and justice as its object.

It has seemed to me not only proper but necessary to refer in this separate opinion to the arguments and contentions in behalf of conviction hereinabove discussed because of the light they may

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cast on many of the convictions contained in the Tribunal's judgment. Many of these convictions are incomprehensible to me except as viewed in the light of such arguments and similar lines of reasoning. Unfortunately the opinion, long as it is, reveals little of the process of legal reasoning which sustains the conclusion.

There are other preliminary matters which should be briefly considered as an aid to a better understanding of the discussion of the law and the facts with reference to some of the counts of the indictment which follow.

One thing which should be made unmistakably clear at the outset is that this Tribunal is not a law-making institution. I violently disagree with the opinion that we are engaged in enforcing international law which has not been codified, and that we have an obligation to lay down rules of conduct for the guidance of nations in the future. Such a conception entirely misconstrues our function and our power, and must inevitably lead to error of the grossest sort. It is not for us to say what things should be condemned as crimes and what things should not. That has all been done by the law-making authority. Control Law No. 10 gives us jurisdiction only of three crimes which are described therein, namely:

1. Crimes against peace.
2. War crimes.
3. Crimes against humanity.

Crimes against peace and crimes against humanity are defined by the act. War crimes are defined in part by the act and in part as violations of the laws and customs of war. There is no claim that there are any laws and customs of war applicable here except as contained in the Hague or Geneva Conventions, or described in Control Law No. 10. Thus, a definition or description of all the crimes for which we are authorized to convict has been reduced to writing for our guidance.

We have no power to reach out and condemn and punish anything and everything which we may believe to be wrong. Unless the acts of a defendant are a crime within the terms of a statute or rule, we have no authority to declare them a crime. In a case where the defendants are charged with violating these rules, we must be careful not to violate them ourselves by declaring an act to be a crime, which is not made a crime by these rules.

We are not enforcing uncodified international law, and no one has been indicted here for violating an uncodified rule of international law. Where a crime described in Control Law No. 10 purports to be a codification of a pre-existing rule of international law, and a question of interpretation arises, we may properly

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look to the rule as it existed before such codification as an aid to the interpretation. Other than that, we have no concern with uncodified international law.

Moreover, it must be realized that these rules do not contain a complete code of laws which cover every situation which may arise during warfare. Many acts which we may regard as cruel and wrong, do not come within their terms.

As Professor Wechsler has said \*:

*"Once the evil of war has been precipitated, nothing remains but the fragile effort, embodied for the most part in the conventions, to limit the cruelty by which it is conducted."*

The legal question, therefore, for us to determine is not whether a particular act ought to be a crime, but whether it is a crime under the rules applicable here, always keeping in mind that we have no right to extend these rules by construction.

It is the general rule that statutes and rules defining crime must be strictly construed in favor of the accused. This means that questions involving doubtful construction should be resolved in favor of the accused.

Other questions will be considered as they arise in connection with the discussion of the convictions under the several counts of the indictment, to which this separate opinion is directed.

My disagreement with the judgment in this case is limited to convictions which I believe to be either unwarranted or exaggerated and which, in my opinion, are not justified by the law or the facts. It will, therefore, be necessary to discuss both the applicable law and facts.

It would serve no useful purpose and is obviously impractical for me to discuss all the individual convictions in all the counts of the indictment. I shall, therefore, discuss in connection with the several counts, to which this separate opinion is directed, only such individual convictions as seem necessary to illustrate my separate view.

### COUNT ONE

Count one charges the defendants therein named of crimes against peace—

*"In that they participated in the initiation of invasions of other countries and wars of aggression in violation of international laws and treaties including but not limited to planning, preparation, initiation and waging of wars of aggression,*

\* Wechsler, Herbert, "Issues of the Nuremberg Trial," *Political Science Quarterly* (1947), volume 62 (Academy of Political Science, Columbia University, New York, 1947), page 17.

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*and wars in violation of international treaties, agreements and assurances."*

The opinion and judgment of the Tribunal convicts the defendants von Weizsaecker, Keppler, Woermann, Lammers, and Koerner of this charge.

I am unable to agree with this judgment. Rather than attempting to point out the points of disagreement with the opinion on this count, it will be simpler to present my views independent of the opinion.

### THE APPLICABLE LAW

At the outset, it seems important that we consider the law applicable to the situation. Not until we know what is necessary as a matter of law to constitute guilt, can we intelligently consider the evidence bearing on the question. Unfortunately, we are met

here with a surprising lack of clarity in the decisions, and with some uncertainty, and an apparent divergence of view.

Some confusion appears to have resulted from the discussion in the cases, and some of it from holdings without adequate discussion of the legal basis therefor. I shall attempt to set out in some detail, my own analysis of the legal situation and my conclusions with reference thereto, and the reasons therefor.

The law which is the basis of our authority is Control Council Law No. 10, hereinafter referred to as "Law 10," enacted by the four occupying powers, on 20 December 1945. That law is binding upon us. It is the basis for the jurisdiction of this Tribunal. We have no power or jurisdiction with reference to any crime not described in that law, and the description or definition of the crime as contained in that law is binding on us.

Law 10 defines "crimes against peace" in Article II [paragraph 1] (a) as follows:

*" (a) Crimes against Peace. Initiation of invasions of other countries and wars of aggression in violation of international laws and treaties, including but not limited to planning, preparation, initiation or waging a war of aggression, or a war of violation of international treaties, agreements or assurances, or participation in a common plan or conspiracy for the accomplishment of any of the foregoing."*

Some questions of interpretation arise at the outset. In the solution of these problems we must look to the language of the act primarily, and if there is still uncertainty, we must look to the historical background in an effort to arrive at the true meaning.

It must be conceded that, while the Control Council had power to enact any sort of law which it desired, the obvious purpose was

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to provide machinery for the punishment of crimes which were thought to be crimes under international law existing at the time. This principle will be of some help in the matter of interpretation where it becomes necessary to resort to interpretation.

#### CAN THERE BE A CRIME AGAINST PEACE WITHOUT WAR?

The first question which arises is whether or not there can be a crime against peace within the meaning of Law 10 where there is no war. This is important for our consideration, because of the acts in Austria and Czechoslovakia, where troops moved in and occupied the country, but there was no war, and because of the further fact that there are some convictions here based on such actions. There are several matters which need to be considered in arriving at a proper solution of this question.

1. In the first place, the London Charter, which was adopted by the four occupying powers, and which was the basis for the prosecution of the major war criminals by the International Military Tribunal, (hereinafter referred to as the "IMT") makes no reference to "invasions" but referred only to "wars."

Law 10 states that its purpose is to give effect to the London Charter, and by its terms, the London Charter is made an integral part thereof. This being true, the description of crimes against peace contained in the London Charter [IMT charter] is also contained in Law 10, and we thus have two descriptions of the crimes against peace, and the problem of reconciling them.

This task must be approached with the assumption that by Law 10 there was no intention to substantially alter or change the definition of crimes against peace as contained in the London Charter, and incorporated in Law 10.

2. Moreover, the IMT held that the invasions of Austria and Czechoslovakia were "aggressive acts," but did not hold that they were "aggressive wars."

3. Law 10, by specifically referring to invasions and aggressive wars, recognizes that they are not the same thing, so that we cannot say that war includes invasions.

4. As previously pointed out, Law 10 obviously attempts to provide machinery for the punishment of crimes which were thought to be crimes prior to its enactment. Some of the authors of the London Charter have declared that it did not create any new crime against peace, but was merely a description or codification of a crime against peace, which existed prior to its adoption.

The IMT took the same view, basing its conclusion for the most

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part upon the fact that some 63 nations of the world had agreed to abolish war as an instrument of national policy, in the Kellogg-Briand Pact, and some other treaties of the same general purport. But such reasoning would apply only to wars, because neither in the Kellogg-Briand Pact, nor any other treaty, so far as I am aware, is there any treaty or agreement affecting the countries here involved with reference to mere invasions—at least not invasions accomplished under the circumstances under which Austria and Czechoslovakia were invaded. The thing which is prohibited by all of these treaties is war. If we start with the premise that what was intended was to describe crimes which were already crimes under international law, we will have to exclude invasions, because there was no possible basis for claiming that a mere invasion was contrary to international law, prior to the enactment of Law 10.

5. An analysis of the language of Law 10 and its grammatical construction does not support the contention that a mere invasion is a violation of its terms. For example, it will be noticed that all of the alternative acts which the Statute provides shall each constitute the crime are separated by a comma, and the disjunctive word "or," whereas "invasions of other countries" and "wars of aggression, etc." are not so separated but, on the contrary, are united by the conjunctive word "and" which, from a purely grammatical standpoint, suggests that both are necessary to constitute the crime.

It has been suggested that such a construction is "unrealistic, because it would mean that, in order for a war of aggression to be a crime against peace, it would have to be accompanied by an invasion. But it must be remembered that Law 10, in giving these Tribunals jurisdiction over certain described crimes, does not purport to describe comprehensively all of the crimes that may exist under international law. Indeed it restricts them and restricts our jurisdiction both in time and in territory.

There is nothing inconsistent, therefore, for Law 10 to limit our jurisdiction only to such crimes against peace as involved an invasion, first, because the invasion, coupled with the war, helps to emphasize its aggressive character, and ordinarily constitutes the best evidence that the war is one of aggression; and, second, because nearly all of the aggressive wars with which we have to deal, did include invasions.

Such a limitation contained in Law 10, has no effect in limiting international law generally, but only limiting the particular type of crime with which we are authorized to deal.

6. In addition, some rather absurd results follow an interpretation that invasions of other countries alone, and without war,

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constitute a crime against peace. For instance, if we regard them as separate crimes, that is, if we regard invasions of other countries as a crime, and wars of aggression in violation of international law and treaties, as another crime, then any and all invasions, regardless of purpose, intention or effect, would be criminal, whereas, wars would be criminal only in the event they were aggressive, and in violation of international law and treaties, and if it is suggested that the phrase, "of aggression and in violation of international laws and treaties" applies to invasions as well as to wars, we are confronted with the obvious proposition that there are no such things as invasions in violation of international law and treaties, there are no treaties by which the nations have agreed to abandon invasions and no possible basis for the claim that an invasion without war was contrary to international law prior to the adoption of Law 10.

As to wars, there may—and indeed there seems to be—a difference of opinion as to whether initiating a war of aggression was a crime under international law, when the wars here involved were started, but at least there is substantial basis for such a claim in view of the fact that some 63 nations had joined in announcing the principle, and in a covenant to the effect that they would not resort to war as an instrument of national policy, and that Germany was a party to that covenant.

There is nothing of that sort so far as mere invasions are concerned.

7. Furthermore, it is very difficult to understand how any act can properly be described as a crime against peace, which does not constitute a breach of the peace. We are sometimes inclined to talk about the "crime of aggression," whereas the statute speaks of "crimes against peace." Confusion results. Neither the statute nor the treaties on which it is based condemn aggression. It condemns war for the purpose of aggression. Many acts may be aggressive that are short of war. They may merit the condemnation of all right-thinking people, but unless they involve a breach of the peace, it would be an abuse of language to call them "crimes against peace." For all of the foregoing reasons, I have reached the conclusion that what happened in Austria and Czechoslovakia, where the troops of Germany marched in, but there was no disturbance of the peace, and no war, does not constitute a crime against peace.

#### WHEN IS THE CRIME AGAINST PEACE COMPLETE?

In view of the claim made in the opinion that all those who participated in a war of aggression knowingly, are guilty of crimes against peace, consideration must be given to the ques-

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tion of what the crime is, and when it is complete. In other words, are those who participated in a war, after it has commenced, either on the economic, diplomatic, or military front, or in any other way, guilty of crimes against peace?

The prosecution, in its brief, contends that the word "waging" as used in the statute, means participation in the war in a substantial manner. The opinion gives no explanation as to the reason for its conclusion that such participation is a crime against peace.

I do not believe that a correct interpretation of the word "waging" as used in Law 10, leads to the conclusion that participation in the war, after it has commenced, is a crime against peace. According to Law 10, the crime against peace consists in "initiating" a war of aggression. The terms "planning," "preparation," "waging" are only means by which the war is gotten into motion.

The prosecution, in its brief, takes the position that the word "waging," as used in the statute, means something entirely different from "preparation," "planning," and "initiation." The principle of *ejusdem generis*, on the other hand, would suggest that it has a somewhat similar meaning, or is at least related to the previous words.

When the statute provides that "waging" is included in "initiation" it must, it seems to me, be given such meaning as relates it to initiations.

This is clearly stated in Law 10. It was not so clear under the terms of the Charter, and yet it was given such meaning by the IMT even under the Charter.

It has been claimed that there is some language in the IMT judgment decided under the provisions of the London Charter with reference to Doenitz, which appears to support a contrary view. If so, it is of minor importance in view of the numerous and definite expressions in that judgment, even as it relates to Doenitz, which show a contrary view.

For example, at the very outset of the discussion of "The Common Plan of Conspiracy and Aggressive War," the Tribunal, after saying that war was an essentially evil thing, states: \*

*"To initiate a war of aggression, therefore, is not only an international crime; it is the supreme international crime \* \* \*." [Emphasis supplied.]*

A review of the facts stated by the IMT to support a conviction of waging an aggressive war, reveals that the emphasis is all placed upon what the defendant did before the war started, not afterward.

\* Trial of the Major War Criminals, op. cit., volume I, page 186.

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For example, in the case of Goering, the Luftwaffe which he commanded, and which raised havoc during the war, is hardly mentioned in connection with crimes against peace committed by him. The substance of his acts, which support his conviction, is contained in the last paragraph of the Tribunal's summing up for Goering as follows: <sup>1</sup>

*"After his own admissions to this Tribunal, from the positions which he held, the conferences he attended, and the public words he uttered, there can remain no doubt that Goering was the moving force for aggressive war, second only to Hitler. He was the planner and prime mover in the military and diplomatic preparation for war which Germany pursued."*

In like manner, an examination of the facts stated by that Tribunal, to establish guilt of other defendants, shows that the emphasis and the facts which led to a conviction were activities of the defendants in bringing about the war, not in fighting it, or in participating in it in any way after it came into existence.

Even in the case of Doenitz, a careful examination of the case against him, as stated by the Tribunal, will show that it was what he did before hostilities actually broke out, and in reviving them after they were in fact over, that led to his conviction.

After stating the things that Doenitz did not do, the Tribunal makes this statement: <sup>2</sup>

*"Doenitz did, however, wage aggressive war within the meaning of that word as used by the Charter. Submarine warfare which began immediately upon the outbreak of the war was fully coordinated with the other branches of the Wehrmacht. It is clear that his U-boats, few in number at the time, were fully prepared to wage war." [Emphasis supplied.]*

Then, after further statements concerning the influential positions of Doenitz, occurs this very significant statement: <sup>3</sup>

*"As late as April 1945, when he admits he knew the struggle was hopeless, Doenitz, as Commander in Chief, urged the Navy to continue its fight. On 1 May 1945 he became the Head of State and, as such, ordered the Wehrmacht to continue its war in the East, until capitulation on 9 May 1945."*

This is the final fact stated by the Tribunal in the case against Doenitz, and it must

have been regarded by the Tribunal as of the highest importance. Its obvious purpose is to show that, even after the war, which began in 1939, was in fact over,

<sup>1</sup> Ibid., p 280.

<sup>2</sup> Ibid., p. 310.

<sup>3</sup> Ibid., p. 311.

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Doenitz ordered further and continued attacks. If this statement serves any purpose, it is to show that he, in effect, by what he did, initiated a new war, or revived one which was already over.

If "waging" in the sense of fighting a war, or merely participating in a war, was sufficient to establish his guilt, why was it necessary to refer to this fact in order to connect him with the initiation of a new war, or the extension of a war, already in existence, after it was, in fact, over?

This, it seems to me, clearly demonstrates that, in the opinion of that Tribunal, something more than participating in a war already initiated was necessary to establish waging within the meaning of Law 10.

This conclusion becomes even more imperative when it is considered that Doenitz commanded the submarines and that these submarines wrought terrific damage and destruction all during the course of the war. Yet this fact is not even mentioned in connection with crimes against peace. If waging war, in the ordinary sense of participating in the war, constituted guilt, these facts would establish it beyond peradventure or doubt. It would have been wholly unnecessary to refer to the fact that he had his submarines ready and in a position to strike in advance of the actual outbreak of the war and that he revived the war after it was otherwise over, and to base their judgment on these facts.

The prosecution cites some authorities which I think support the view that the word "waging" referred to in Law 10 does not mean participation in the war after it is started.

For example, Justice Jackson is quoted as saying the following: <sup>1</sup>

*"\* \* \* our first task is to examine the means by which these defendants and their fellow conspirators prepared and incited Germany to go to war."*

It is obvious that statement must have been made in the trial before the IMT. Professor Wechsler is also quoted as saying this: <sup>2</sup>

*"The greatest evil is, of course, the initiation of war itself. Once the evil of war has been precipitated, nothing remains but the fragile effort embodied for the most part in the conventions, to limit the cruelty by which it is conducted."*

<sup>1</sup> Ibid., volume II, p. 104,

<sup>2</sup> Wechsler, *loc. cit.*

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This clearly shows that the initiation is thought to be the crime, and that, so far as participation is concerned, nothing remains but the conventions to govern it.

Moreover, where a statute codifies preexisting law, it is customary to look to the preexisting law as an aid to interpretation. The situation is not unlike that existing where the common law is in effect. Frequently a legislature will abolish common law crimes, for example, and then enact a statute defining a crime briefly which existed at common law. It is the universal practice in such instances to look to the common law definition of the crime to aid in the construction of the statute.



Here we have a one-sentence definition of an international crime which was said to exist under international law before the definition was adopted.

For a more exact definition, especially on a point which may not be clear, we certainly have a right to look to what constituted that crime under international law, as it existed prior to the adoption of the statute, especially where, as here, it was the intention to adopt a description of a crime previously existing.

The reason why wars of aggression were held to be a crime against international law, prior to Law 10, was because to start such a war would be to violate the Kellogg-Briand Pact, under which the nations agreed to abandon war as an instrument of national policy, and other treaties of the same general purport. Under that pact, what would be the crime and when would it be complete?

If the treaty prohibited the use of war as an instrument of national policy, it seems obvious that the pact would be breached when the nation resorted to a war of aggression or to serve any other national policy. An agreement not to resort to war as an instrument of national policy is breached only by resorting to war, and the breach is complete when war has begun.

The offense, then, under this preexisting international law, would consist in creating a condition of war. There is nothing in that treaty, or in any of the other treaties of similar purport, which makes it a crime to participate in a war after it comes into existence.

When a nation finds itself at war, and its very existence is at stake, there is nothing in any of these treaties which even remotely suggests that it would be a crime for the citizens of either country, under these conditions, to participate in the war and to wage war to the limit, so long as they conform to the conventions in the conduct of war. So when we consider the background of the statute, and the reasons advanced to support the findings of the IMT, that is but a re-enactment of preexisting international

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law, we are forced to the conclusion that those who participated in the war, after it has been started, even with knowledge of the true character of the war, are not guilty of waging a war of aggression.

Finally, there is a conclusive reason why it must be said that those who associate themselves with a war, after it is started, cannot, on that account, be guilty, and that is the very language of the Law 10. It defines the crime as:

*"Initiation of invasions of other countries and wars of aggression in violation of international laws and treaties \* \* \*."* [Emphasis supplied.]

When the statute says initiation is the crime, what right do we have to say that participation is also a crime?

The word "waging," as used in the statute, is referred to by the IMT as participation in a plan to wage war. It refers to the preliminary procedure up to and including the outbreak of war, not the participation in the war, after it has been initiated.

#### PERSONS CAPABLE OF COMMITTING CRIMES AGAINST PEACE

One further legal question must be considered here. We have already called attention to the statement of the IMT that it is the *initiation* of wars of aggression, which are the supreme crimes. We have called attention to the fact that under the law existing prior to the London Charter, or Law 10, the offense would consist in resorting to war as an instrument of national policy.

We have called attention to the working of Law 10, which described crimes against

peace as the *initiation* of invasions of other countries, and wars of aggression, etc. The question then arises, "What action, and by whom, may be said to constitute the crime of initiating a war of aggression?" The question of whether or not a nation will wage an aggressive war is a question of national policy. Obviously not everybody in the nation is in a position to participate in the formulation of such a policy. Whatever many of them do, as individuals, is so devoid of significance or effect that it would be wholly unrealistic to say that they were a factor in determining the policy to wage an aggressive war and therefore guilty of initiating a war of aggression. The IMT, in its judgment concerning the defendants who were convicted, lays emphasis not only on their attitude and participation in a plan to wage a war of aggression, but also on the relation

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of such defendant to Hitler and the opportunities they had and the capacity they had to influence national policy through Hitler.

The comments of that Tribunal are equally significant with reference to some of the defendants who were acquitted.

For example, take the case of Fritzsche. He not only delivered the daily paroles to the press, which directed the propaganda campaign in the press, and which were obviously very important in conditioning the minds of the German people for war, but he subsequently delivered radio addresses. These he apparently prepared himself, yet the Tribunal held him not guilty. It did not even go into the question as to whether he knew of a plan to wage a war of aggression. It speaks of Fritzsche's lack of position and influence in the Third Reich, and the further fact that he had never had a conversation with Hitler. It thus appears that position and influence, and standing with Hitler, were thought to be important, in order to play a part in initiating a war.

Of course, mere proximity to Hitler, such as a secretary or adjutant would have, would not be controlling. But in view of the power Hitler had, it is a factor in determining whether a person participated in the initiation of a war or not. To participate, requires, in addition, a position of power and influence, and the use of it, for the purpose of initiating a war, • knowing the war will be one of aggression.

There is another thing about the holding as to Fritzsche that is significant. The Tribunal said he was but a conduit for the transmission of the daily paroles, and that he prepared and formulated daily radio paroles "according to the general political policies of the regime."

This suggests that people who are in a subordinate position, and who merely carry out tasks assigned them, according to the general political policies of the Nazi regime, are not in the class of people who can be said to have knowingly and willfully participated in a plan to wage a war of aggression. It suggests a substantial limitation on those who may properly be said to have committed crimes against peace.

The Tribunal in the Farben case in considering this question said in substance that the IMT had placed the dividing line just below the policy-making level. In other words, only those persons who were on a policy-making level could be liable for the commission of crimes against peace.

This statement was reaffirmed, at least in principle, in the Krupp case, and again in the High Command case. These holdings are persuasive and I think they are correct. Who then are the people on the policy-making level?

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A comprehensive definition will not be attempted. This much may, however, be said on the subject. Only those are included, regardless of title or official position, who, by reason of their position of power, are able to exercise, as a matter of free choice, influence on the governmental policy, so far as the question of going to war or refraining from going to war is concerned. The attitude or actions of others would be without significance or effect, and they could not, therefore, be said to have been a party to the initiation of a war. As to each defendant, therefore, we must seek the answer to the following three questions:

1. Did he knowingly engage in some activity in support of a plan or purpose to induce his government to initiate a war?
2. Did he know that the war to be initiated was to be a war of aggression?
3. Was his position and influence, or the consequences of his activity such that his action could properly be said to have had some influence or effect in bringing about the initiation of the war on the part of his government?

Only if all of these questions are answered in the affirmative will we be justified in finding a crime against peace has been committed.

It appears without question that the wars in connection with which some of the defendants in this case have been convicted were wars of aggression. It was so found by the IMT, and there is no occasion to discuss that question further. There is, as previously indicated, a question as to whether there was any aggressive war in Austria and Czechoslovakia, where German troops marched into the country. But this question has previously been discussed. There remains, therefore, for consideration, only the question as to whether the evidence establishes the guilt of the defendants according to the tests above outlined.

It seems to me unfortunate that the opinion quotes a statement of the IMT which was made with reference to the conspiracy count. The defense in that case had argued that there could not be a common plan or conspiracy in a dictatorship, because the dictator alone made the plans.

The Tribunal, in dealing with this question, in effect said, with reference to those who were fully advised of Hitler's plans and purpose, that those with knowledge of his plans, who gave him their aid, were liable. The statement, standing alone, and without reference to the context, and the fact that a common plan or conspiracy was under discussion when the statement was made, is misleading.

In the first place, it must be borne in mind that Hitler's plan therein referred to was the common plan or conspiracy to wage

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aggressive war—a plan which the IMT held must be concrete and definite and not too far removed from the time of action. Also the "aid" referred to was to help bring the plan into realization by the initiation of the war involved in the plan. It does not include the performance of the normal functions of a civil servant.

Obviously, that statement cannot properly and literally be applied to anyone charged in this count. This is not a conspiracy count. The conspiracy count, which is count two, has been dismissed and it has thereby been adjudicated that the defendants were not parties to any common plan or conspiracy. What the defendants are charged with is what the IMT called, "waging." That is participation in a plan or a purpose to initiate a war, knowing that it was to be a war of aggression.

VON WEIZSAECKER

Von Weizsaecker is convicted because of his alleged participation in the initiation of the invasion of Czechoslovakia, or that part of Czechoslovakia which remained after the Sudetenland had been ceded, and Slovakia had declared its independence.

In my view, he is not guilty for two reasons. One, the invasion of Czechoslovakia was not a crime against peace, because there was no war, and no disturbance of the peace. Two, he took no part in bringing about or initiating such an invasion.

The first proposition has already been discussed. I turn to the second.

The opinion states in substance that von Weizsaecker did not originate the invasion and forcible incorporation of Bohemia and Moravia, and that we do not believe he looked upon the project with favor.

In spite of this concession, he is convicted. The opinion states, in substance, that although the defendant von Weizsaecker was not present at the conferences where Hitler announced plans of aggression, he became familiar with them from reliable sources, that is, von Ribbentrop, Canaris, leading generals of the Wehrmacht, and others, who furnished him with accurate information.

That is the first I have heard in this case of any such claim and, so far as I am aware, there is no evidence to support it. It is true, of course, that von Weizsaecker received some information as to what was actually going on, which may not have been generally available, but it has not been suggested heretofore, that he received information with reference to these conferences, where the common plan and conspiracy to wage an aggressive war were formed.

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It is significant that on such an important matter no evidence is cited or referred to in support of the statement. Significantly, it appears elsewhere in the opinion that von Weizsaecker was not in von Ribbentrop's confidence and that they did not get along very well.

It is my judgment, based on the evidence in this case, that von Weizsaecker's knowledge of planned, future developments in the field of foreign policy, as it affected war, was limited to inferences which he was able to draw from what was going on about him. This was consistent with the secrecy regulations which were rigorously enforced in the Reich, and which provided that no one should be told of what was being done or planned with reference to matters of this sort, except that an official might be told what was necessary for him to know in order to perform his duties. But only so much was to be told as it was necessary for him to know, and not that until the time came when he must know.

For example, von Weizsaecker was not told of the planned invasion of Denmark and Norway until about 3 days before the invasion occurred, and after the German troops had departed, and was told then only because it was necessary for the Foreign Office to prepare and communicate a statement to be delivered to the Danish and Norwegian Governments.

Now what is the evidence on which the opinion relies to convict von Weizsaecker which indicates that he aided in the initiation of the invasion of Czechoslovakia? What he did before the marching in of the German troops, according to the opinion, is the following.

He received a memo from von Ribbentrop of an interview with Hitler which had to do with the relations with Hungary. It does not indicate that Hitler had any intentions of military action against Czechoslovakia. The balance of the evidence consists of memos of interviews with representatives of foreign governments, such as Britain,

France, Italy, and Czechoslovakia, concerning a guaranty which Germany had agreed to give in the Munich Agreement.

In all of these interviews von Weizsaecker tried to avoid, excuse, and justify the failure and refusal of his government to enter into such a guaranty. But what did all of that have to do with the invasion which followed?

If the guaranty had been entered into, would the invasion have been less likely to follow? Hitler was not embarrassed by treaty obligations in his other campaigns. What reason is there to suppose that he would have been restrained by this one, especially since the so-called invasion or marching in of troops was carried out in accordance with, or as a result of, an agreement

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on the part of the President and the Foreign Minister of Czechoslovakia ?

But even more important than that, what could von Weizsaecker do about it? He was not in charge of the foreign policy of the Reich. It was not for him to decide whether such a guaranty should be entered into or not. He could not control that. If his government did not want to enter into such a guaranty, he could not compel it to do so.

It would be wholly unrealistic to suppose that von Weizsaecker had any control over such matters. He did not make the policy. He could only reflect the facts as to whether or not his government was willing to enter into such a guaranty. All he could do, and all he did do, was to make the best case in behalf of his government that he could, and that does not indicate any purpose or intention on his part to encourage a military assault on Czechoslovakia, nor did it, in fact, encourage such an assault.

These interviews do not appear to have had any connection whatever with Hacha's visiting Berlin, and with his submitting to Hitler's will, and his opening the door for the entry of the German Army, nor does it appear that they were intended to have such purpose. These interviews did not initiate, and had no connection with the initiation of that proceeding, and they are in no way connected with it.

The opinion then sets out a number of interviews with these same foreign representatives, which von Weizsaecker held following the absorption of Czechoslovakia, in which he defended the action which his government had taken, and claimed it was the result of an agreement between the two states, and that other governments had no grounds for complaint.

The opinion seems to lay stress upon what happened subsequently, and to draw from it the conclusion that von Weizsaecker played a consenting part. There is a suggestion also that what von Weizsaecker did following the absorption of Czechoslovakia was an implementation of the enterprise.

I am unable to support this line of reasoning. If what happened with reference to Czechoslovakia was in fact a crime against peace, von Weizsaecker could be found guilty in my judgment, only if he affirmatively did something to initiate the enterprise, and did it with the intention of initiating the enterprise. Evidence of that sort is entirely lacking.

The opinion reveals that von Weizsaecker had played a heroic part in an effort to preserve decency and peace. Because he was silent in this instance he is convicted, although evidence is lacking that he had advance notice of Hitler's purpose sufficient to enable

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him to attempt anything effective to prevent it, if indeed, there was anything he could have done under any circumstance.

But, in my judgment, his failure to do anything to prevent the proceedings, even if he had had an opportunity, cannot be regarded as a crime. He does not commit a crime against peace in any event, by inaction. Something affirmative is required.

It is not possible to examine and discuss the other convictions under this count in detail, and no useful purpose would be served thereby. It is sufficient to say that not in any of them is there any evidence to show that the defendants did anything affirmatively to initiate a war, knowing it was to be a war of aggression.

Woermann was the head of the political division in the Foreign Office, and as such, subordinate to von Weizsaecker and to von Ribbentrop. He is convicted because of certain diplomatic messages he sent which are described in the opinion. The only ones which relate to a possible future war are those sent to Slovakia. They are obviously messages which originated with the army and have to do with coordinating military action in case of attack.

The Foreign Office is, of course, the only appropriate channel of communication between nations. In transmitting these messages the Foreign Office acted merely as a transmission line. It is hardly to be supposed that these messages represent Woermann's plan. He was not running the army, nor planning military cooperation with Slovakia in case of attack. It was a proper precautionary measure in any event. But it was in fact, as we know now, a preparation for attack on Poland. But it was disguised as a defense arrangement. It was so represented to Slovakia, and there is no reason why Woermann should have recognized at the time that it was an act of preparation for a war of aggression against Poland. But if he had recognized it, I do not see what he could have done about it. He was a subordinate in the Foreign Office. The Foreign Office was available for such communications regardless of what Woermann may have thought about the matter.

None of the other matters cited in the opinion have anything to do with initiating the war against Poland. Indeed, many of them are concerned with events happening after the war was over. For instance, there is a message sent by him stating that a certain Polish Bishop would not be permitted to return to Poland after the war. This could have no connection with initiating that war, in any event. Moreover, the message merely conveyed the decision of his government. It would be wholly unrealistic to suppose that it was up to Woermann to decide whether the return of the Bishop should be permitted or not.

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This and many other like items of evidence cited in the opinion seem to indicate that the controlling consideration, so far as the opinion is concerned, is whether or not, in what the defendant did, he acted in sympathy with the Reich program or in opposition to it. And if it can be found that the things he did are in harmony with the Reich program, no matter how innocent the acts in themselves may be, the opinion seems to hold that he then cooperated with or implemented such program. Of course, under such a formula, one may be held to participate who merely writes a letter or receives one, or forwards a report, no matter how harmless these documents may be in themselves.

In my judgment, the field is not that open. To be guilty—I repeat—the defendant must

have participated in the initiation of a war of aggression. In order to do that, he must have committed some act intended to have some effect in bringing about a war, knowing it would be a war of aggression. That kind of evidence is conspicuous by its absence here.

## KEPPLER

As to Keppler, his activities were in Austria, where there was no war, and this, in itself, in my judgment, is a complete defense to the charge.

Moreover, there is no indication that he worked there with a view of initiating a war. His job was to seek a union with Austria by peaceful means. Since all the political parties in Austria favored a union, it was not unreasonable to suppose it could be accomplished.

The conditions requisite for such a union had already been accomplished before the German troops entered Austria. A government favorable to such a program had been established before the troops moved in.

That Keppler did not favor the entry of the troops is shown by his statement quoted by the IMT. When Goering telephoned Keppler to have Seyss-Inquart send a telegram requesting German troops to enter Austria to prevent bloodshed, Keppler replied: \*

*"Well, SA and SS are marching through the streets, but everything is quiet."*

This indicates pretty clearly that Keppler did not favor the entry of German troops and that he believed it unnecessary.

The opinion does not cite any facts or evidence to support the proposition that Keppler initiated, or helped to initiate, an invasion of Austria. His guilt seems to consist in an interference with Austrian affairs. But this is not a crime against peace.

\* Trial of the Major War Criminals, op. cit., volume I, page 193.

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## OTHER DEFENDANTS

As to the defendants who were convicted because of their activity in the Four Year Plan, it does not appear that they knew that preparation was being made for an aggressive war. There is no doubt that the Four Year Plan, at least in its later stages, was engaged in preparation for war on a rather large scale, but every nation engages in military preparations. Such preparations are as useful for defense as for aggression.

Hitler, up to the outbreak of the war in 1939, repeatedly declared that such preparations were for defense, and there was great emphasis placed on the danger which confronted Germany from without. Those who engaged in production of armament and military preparation are not liable unless they do so for the purpose of preparing for a war of aggression. Proof of this essential fact is lacking.

The same consideration, of course, applies to other kinds of defense preparations, such as defense councils and defense committees, and other types of civil and government organization.

Lammers is held largely because of his preparation of decrees and other documents for Hitler. The nature of his work and the liabilities of one who merely formulates decrees and other official documents, is discussed under count six of this separate opinion. It is sufficient here to say that he was, in the words of the prosecution, "Hitler's faithful servant," exercising clerical and secretarial functions and drafting

decrees as a technician in that field.

He was the office chief of Hitler's office, as Chancellor, and served Hitler in the civilian sector of government. Hitler had other offices through which he exercised other functions, including military functions. Lammers was not concerned with policy. He exercised no policy-making functions. While he held the title of Minister, it was purely honorary. He exercised the functions of a State Secretary. He cannot properly be said to have been on a policy-making level, or to have exercised any influence or power in the direction of initiating a war.

In my view, none of the defendants convicted under this count can properly be held to have participated in a plan to wage a war of aggression, or of exercising any activity with the intention or purpose in view of starting or initiating such a war, and if such a construction could possibly be placed on their activities, it does not appear that they had any influence or effect in bringing about a state of war. Neither they nor their activities appear to have had any influence on Hitler. They were not the people on whom Hitler relied for guidance and support in such mat-

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ters, and their actions were without significance, so far as the initiation of the war with which they are charged, is concerned.

### **COUNT THREE**

Count three charges the defendants therein named with participation in the murder of prisoners of war and belligerents engaged in the war against Germany.

#### **RITTER**

Ritter is alleged to have participated in such murders because of two incidents, to wit:

1. The murder of Allied fliers;
2. The Sagan murders.

The murder of Allied fliers refers to the lynching of Allied fliers who bailed out of their planes after allegedly making machine gun attacks on civilians on the highways or in the fields, while flying at low altitude. In the interest of brevity they will be referred to here merely as, "Allied fliers."

That such incidents occurred, and that Allied fliers were lynched and murdered, and that such acts were indefensible murders, is well established. If it be conceded that these Allied fliers had made attacks on civilians as claimed by the defense, the remedy was not lynch murders. They were entitled to be taken as prisoners of war and if they committed war crimes they were subject to trial and punishment in accordance with the rules of the Hague and Geneva Conventions. There was no excuse or justification for murdering them.

Our task here is to determine whether the defendant Ritter had any criminal responsibility for such murders. It would seem almost superfluous to suggest in a legal opinion that a person to be guilty under this charge must have himself murdered prisoners of war or ordered others to do so, or at least performed some act or non-act which had a causal connection with such murders and was performed with the intention of causing or assisting in causing such murders.

Ritter became attached to the German Government as a civil servant before the First World War. He served first in the Colonial Office. He was a soldier during the First World War. He joined the Foreign Office in 1922. His work there was mostly in the field of economics and in connection with commercial matters. He worked on



reparations after the First World War, and negotiated many trade treaties subsequently for Germany. He became Ambassador to Brazil in 1937. He was withdrawn from

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that position due to Party opposition. He had reached retirement age, and asked to be retired, but was not permitted to do so. He was made Ambassador for Special Assignments in the Foreign Office.

After the war broke out he was made liaison officer between von Ribbentrop, the Minister of Foreign Affairs, and Keitel, the head of the armed forces. The functions of that position are indicated by the title. His job was to maintain contact or liaison between these two top officers, and to facilitate communication between them. For that purpose he maintained field headquarters not too far removed from either. He had no authority to determine policy, or to make any decisions concerning policy either for the Foreign Office or for the army. The purpose of liaison was to keep each informed in matters which concerned both and to facilitate negotiations between them, and to enable the two officers to better coordinate their efforts.

It is no doubt true that where differences arose he was free to make suggestions, and did make suggestions with a view to enabling the parties to reach a common agreement or understanding.

On 15 June 1944 Hitler received from Keitel, as stated in the opinion, a proposed program of procedure concerning the mistreatment of Allied fliers, and Keitel requested the opinion of the Foreign Office with reference thereto. The Foreign Office was naturally consulted because it would be required to answer protests received from the protective powers of enemy countries.

This communication requested the opinion of the Foreign Office by the 19th. On the 18th Ritter telephoned that the opinion of the Foreign Office could not be delivered by the 19th because it would be necessary to contact Berlin. On the 25th of the month Ritter wrote to Keitel's office, transmitting (*PS-735, Pros. Ex. 1232*):

*"For your preliminary information, the draft of a reply to the Chief of the Supreme Command of the Armed Forces in answer to his letter of 15 June. The draft has been submitted to the Reich Foreign Minister.*

*"Since the Reich Foreign Minister is away on travel for several days, he was not able, as yet, to give his approval to the draft."*

This draft had Ritter's name typed at the end of it, and was obviously prepared in the form of a letter to be sent by Ritter, but Ritter drew a line with a pen through his name and marked it "draft," and wrote a separate letter enclosing it, as above stated.

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Ritter's conviction is based on his alleged authorship of this draft, or his transmittal of it to Keitel's office. The draft is an expert legal opinion and deals particularly with the Geneva Convention, and the rules developed thereunder. It bears every evidence of having been prepared by an expert in that field. Ritter was not such an expert. His specialty was economics. No witness testified that Ritter prepared it. He testified that he did not. The circumstances all confirm his statement.

There is the circumstance that he telephoned that the attitude of the Foreign Office could not be transmitted until he contacted Berlin. There is the long delay in formulating the Foreign Office opinion. There is the fact that Keitel asked for the Foreign Office's opinion, and the further fact that the draft did contain the Foreign

Office's opinion, as von Ribbentrop's subsequent approval shows. There is nothing whatever in the evidence to suggest that Ritter prepared it.

The opinion relies wholly upon the fact that it bears a stamp of having been in his office, but that circumstance proves nothing as to where it was prepared. There was no claim in the trial or in the argument that the markings, or absence of markings on the draft had significance. It appears for the first time in the opinion. Under such circumstances it is a pretty slender reed on which to hang a conviction.

It is true that the draft, although making several objections based on international law, does recite that the Foreign Office agrees in principle, but as will hereafter appear, von Ribbentrop had already agreed in principle. This fact was unknown to Ritter and this is another circumstance which indicates that von Ribbentrop's office prepared the draft, or that it was done under pretty close supervision by von Ribbentrop, and that Ritter did not prepare it. It seems to me that the finding that Ritter prepared the draft is contrary to the evidence.

The important thing, however, is that nothing came of the draft. It had no consequence whatever. Ritter's communication to Keitel's office gave notice that von Ribbentrop's approval was subject to Hitler's approval, and that he would not give his final approval until Hitler had approved.

It further appears, without dispute, that Sonnleithner, of von Ribbentrop's office, was to present the matter to Hitler. This circumstance suggests that he may have had something to do with the preparation of the draft. In any event when it was presented to Hitler, Hitler said it was "nonsense," according to von Ribbentrop's testimony before the IMT, and nothing was ever done about it. It never went into effect. No orders were ever

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issued because of it. It could not possibly, under any circumstances, be the cause of the murder of Allied fliers.

There is another circumstance which shows that Ritter took no part in the formulation of any policy with reference to Allied fliers. On 28 May Jodl asked Ritter about the radio campaign then being put on by Goebbels, with reference to these Allied fliers, and what was proper to be done to resist them. Ritter replied that he "should apply to a legal expert."

The manner in which this policy of lynching of Allied fliers was initiated and developed is clearly shown in the evidence, and it clearly appears that Ritter had nothing whatever to do with it. The IMT, in its judgment concerning Bormann stated: <sup>1</sup>

*"Bormann is responsible for the lynching of Allied airmen. On 30 May 1944 he prohibited any police action or criminal proceedings against persons who had taken part in the lynching of Allied fliers. This was accompanied by a Goebbels' propaganda campaign inciting the German people to take action of this nature, and the conference of 6 June 1944, where regulations for the application of lynching were discussed."*

The same Tribunal, in its judgment against von Ribbentrop stated: <sup>2</sup>

*"Von Ribbentrop participated in a meeting of 6 June 1944, at which it was agreed to start a program under which Allied aviators, carrying out machine gun attacks on civilian population, should be lynched."*

This conference was held with Hitler at Hitler's headquarters, and Keitel and Jodl of the armed forces, as well as von Ribbentrop, were in attendance. This clearly demonstrates that the Foreign Office, or rather von Ribbentrop, the Foreign Minister, had agreed to this general policy on 6 June, at a conference which Keitel also attended, so that when Keitel addressed the communication to von Ribbentrop on 15 June it was not to seek his opinion about the general policy, but rather the details

of a program to put the policy into effect, and this involves technical procedures upon which Ritter obviously was not qualified to act, and did not attempt to act.

On 4 July, Hitler issued the following directive (741-PS, Pros. Ex. 1238):

*"According to press reports the Anglo-Americans intend to subject to air attacks, small localities without any war, economic or military value, as a reprisal against V-1. In the event this report proves true, the Fuehrer orders that notices*

<sup>1</sup> Trial of the Major War Criminals, op. cit., volume I, page 340.

<sup>2</sup>ibid., p. 287.

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*be served by way of radio and the press that every enemy aviator who is shot down while participating in such an attack, is not entitled to treatment as a prisoner of war, but that he will be killed as soon as he falls into German hands. This rule shall apply to all attacks on small localities which constitute neither military targets nor communication targets, etc., and are, therefore, of no military significance."*

As stated in the opinion, this order was actually put into effect and became the official policy.

It will be noted that this statement of Hitler's provides no machinery of any kind for determining whether Allied fliers who bailed out had attacked civilians or nonmilitary objects, and it contains no definition of "nonmilitary" objects. The inevitable result was to make all bailed-out fliers subject to attack according to the judgment or opinion of the attacker.

The opinion of the Foreign Office which Ritter transmitted would have been an improvement on this, but it had no effect. It was declared to be nonsense and discarded. This order of Hitler's had its origin in the Bormann action, and the conference of 6 June. It was uninfluenced in any way by any document which Ritter even touched.

My conclusion is that Ritter played no part in this transaction, except the normal function of liaison; that he performed no act, not even of liaison, which has a causal connection with the death of any Allied fliers, and that what he did indicates no criminal intention whatever, and I am unable to follow the reasoning which leads to the conclusion that he is guilty of participating in multiple murders.

#### SAGAN MURDERS STEENGRACHT VON MOYLAND AND RITTER

In connection with this incident not only Ritter but also Steengracht von Moyland, who was then State Secretary in the Foreign Office, are convicted—Ritter because it is claimed he helped prepare a diplomatic note, and Steengracht von Moyland because it is claimed he dispatched it.

It is doubtful if the indictment charges any such crime against Steengracht von Moyland, and it is certain that it does not against Ritter.

Unfortunately, the opinion attempts to abstract rather than to quote what the indictment charges in count three, and by the process of reversing the order of statement, greatly enlarges the scope of the charge. What the count charges has already been stated in substance, but in view of the confusion at this point, and

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in aid of a better understanding, it may be well to quote it verbatim:

*"27. The defendants von Weizsaecker, Steengracht von Moyland, Ritter, Woermann, von Erdmannsdorff, Lammers, Dietrich, and Berger, with divers other persons, during the period from*

*September 1939 to May 1945, committed war crimes, as defined in Article II of Control Council Law No. 10, in that they participated in atrocities and offenses against prisoners of war and members of the armed forces of nations then at war with the Third Reich or were under the belligerent control of, or military occupation by Germany, including murder, ill-treatment, enslavement, brutalities, cruelties, and other inhumane acts. Prisoners of war and belligerents were starved, lynched, branded, shackled, tortured, and murdered in flagrant violation of the laws and customs of war, and through diplomatic distortion, denial, and fabricated justification, the perpetration of these offenses and atrocities was concealed from the protecting powers. The defendants committed war crimes 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 and groups connected with, the commission of war crimes."*

It will be noticed that what is charged here is participation in the murder of prisoners of war and belligerents of countries at war with Germany. All other allegations are but means by which it is claimed the crimes were committed.

The indictment is so framed that the first paragraph of each count charges the crime. In succeeding paragraphs is stated, by way of a bill of particulars, what each defendant did to constitute his guilt of such charge. The legal sufficiency of such statements in the paragraphs to sustain the charge is, of course, a legal question for the Tribunal.

Paragraph 28c is the one which describes the acts of Steengracht von Moyland and Ritter which it is claimed constitute their guilt, and the opinion specifically finds them guilty of the crimes set forth in said paragraph. It is as follows:

*"28c: In March 1944, approximately fifty officers of the British Royal Air Force, who escaped from the camp at Stalag Luft III where they were confined as prisoners of war, were shot on recapture. The German Foreign Office was fully advised and prepared "cover up" diplomatic notes to the Protecting Power, Switzerland. Von Thadden of the German Foreign Office wrote to Wagner, a subordinate of the defendant Steengracht von Moyland, stating that a communication was being sent to Great Britain via Switzerland to the effect that,*

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*in the course of a search 'a number of British and other escaped officers had to be shot, as they had not obeyed instructions when caught.' In furtherance of this policy to shoot escaped prisoners of war upon recapture, the defendant Ritter, issued a warning notice, disclosing the creation of so-called 'death zones' for the alleged protection of 'vital installations' wherein 'all unauthorized persons will be shot on sight.' A letter from the German Foreign Minister to the defendant Ritter in July 1944, stated that the Fuehrer was in agreement with the German Foreign Office communication to the Swiss Embassy concerning the escape of the prisoners of war from Stalag III, and that he further agreed to the issuance of the warning notice and the forwarding of such a communication to the Swiss Embassy."*

It will be noted that this paragraph does not charge Steengracht von Moyland with having done anything. It simply charges that someone wrote a letter to his subordinate. It charges Ritter only with having written warning notices of danger zones, a charge on which, by the opinion, he is acquitted.

It has been the settled view of these Tribunals that no defendant should be convicted on a charge not mentioned in the bill of particulars contained in the paragraphs of the indictment. Indeed such would have to be the rule if indictments are to mean anything. Otherwise, Ritter would appear to defend under count three for having posted warning notices of danger zones in prisoner-of-war camps, and find himself convicted of an entirely different charge. That is what has actually happened.

Tribunal No. I in Case 1 (Doctor's [Medical] Case) stated the rule as follows: \*

*"However, no adjudication either of guilt or innocence will be entered against Rose for criminal participation in these experiments for the following reason: In preparing counts two and three of its indictment, the prosecution elected to frame its pleading in such a manner as to charge all defendants with the commission of war crimes and crimes against humanity generally, and at the*

same time to name in each paragraph dealing with medical experiments only those defendants particularly charged with responsibility for each particular item.

*"In our view this constituted, in effect, a bill of particulars and was, in essence, a declaration to the defendants upon which they were entitled to rely in preparing their defenses, that only such persons as were actually named in the designated experiments would be called upon to defend against the specific items. Included in the list of names of those defendants specifically charged with responsibility for the malaria experi-*

\* United States vs. Karl Brandt, et al., Judgment, volume II, this series, pages 266-267.

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*ments, the name of Rose does not appear. We think it would be manifestly unfair to the defendant to find him guilty of an offense with which the indictment affirmatively indicated he was not charged."*

If we are to follow this rule—and there is no reason why we should not—there should, on that account, be no conviction here as to either Steengracht von Moyland or Ritter, and especially not Ritter.

But, passing that, the evidence does not warrant a conviction in any case.

It is probably unnecessary to say more about the facts than appears in the opinion, in order to demonstrate that neither Steengracht von Moyland nor Ritter is shown to be guilty of participation in the murder of these unfortunate British prisoners of war who had escaped from prison. But before approaching that question, some correction and supplementation of the facts seems appropriate. It will then appear, I think, that they are not guilty of anything.

Complaint is made in the opinion as to the [two] notes sent to Switzerland as Protective Power for Great Britain. Both were introduced as rebuttal documents (Exhibit C-372) [NG-58844] which, when considered in connection with the absence of a specific charge against Steengracht von Moyland and the complete absence of a charge against Ritter with reference thereto, raises a further question as to the propriety of considering them in connection with a substantive, affirmative charge against these defendants.

On 26 May, the German Foreign Office received an inquiry (NG-5844, Pros. Ex. C-372) from the Swiss Government, as Protective Power for Great Britain, about the reported death of British prisoners of war who had escaped from a prison camp in March, preceding. It was Ritter's task, as liaison man with the armed forces, to investigate this matter. There is no indication that he had ever heard of it before receiving this assignment.

Keitel denied any knowledge of the matter, but gave some indication that these prisoners had escaped from the prison camp and were captured by the police. Ritter then contacted the police and was furnished perfect records, showing these men were shot while resisting arrest.

Albrecht, the head of the legal division of the Foreign Office, had been summoned by von Ribbentrop from Berlin to Salzburg, where von Ribbentrop maintained his headquarters, to prepare a reply to this inquiry from the Swiss Government. Ritter thought these records of the police were a "swindle" and so advised von

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Ribbentrop and Albrecht. He told the police the same thing, and they did not resist the idea very strongly.

Albrecht prepared the reply note. The opinion convicts Ritter largely because Albrecht says he prepared the note after talking to Ritter. Of course he talked to

Ritter. He would hardly prepare the note at von Ribbentrop's invitation without talking to the man who investigated the facts. There is no claim that Ritter deceived him. He could not report anything more than what had been reported to him. He told Albrecht what the police reported, and also that he thought it was a swindle. What more could he do? And after the note was prepared, both Albrecht and Ritter advised von Ribbentrop not to send it. Von Ribbentrop, of course, as Foreign Minister, completely controlled what note, if any, should be sent. Ritter had no control over that.

What von Ribbentrop did with it, and whether or not he sent it, and whether or not the note in evidence which apparently came from the British Foreign Office files was the one Albrecht prepared, does not appear. But, assuming that it was sent, and that the copy in evidence is a true copy of what Albrecht prepared, Ritter has committed no crime.

Whether or not Steengracht von Moyland dispatched the note at von Ribbentrop's orders, or had anything to do with it, does not satisfactorily appear. No names are attached to the notes in evidence. But if he did send it, as the opinion states, it was by order of von Ribbentrop and without any knowledge as to its incorrect statements. At least the evidence fails to show he had any knowledge that it contained incorrect statements.

As to the second note it does not appear that Ritter had anything to do with that. Steengracht von Moyland has some recollection of it. But it was obviously a high policy matter for which Hitler and von Ribbentrop were responsible. At least it does not appear that Steengracht von Moyland prepared it or dispatched it. The opinion seems to take the view that because he stated he had no clear recollection of it, that such statement is evidence that he did send it.

It thus appears that neither Ritter nor Steengracht von Moyland had any part in a deliberate fabrication of a falsehood to be sent in a diplomatic note to Great Britain. Steengracht von Moyland had nothing to do with the preparation of the note and was not informed as to its incorrectness when at the direction of the Foreign Minister, he dispatched it, if he did dispatch it.

Ritter reported truthfully and fully as to the facts revealed in his investigation. Albrecht prepared the note. Von Ribbentrop, the Foreign Minister, controlled the matter of sending it after being fully advised as to the facts as was possible at the time.

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But even if it be conceded *arguendo*, that Ritter and Steengracht von Moyland deliberately and intentionally played a part in sending a false note, the crime would not be participating in the murder of the British prisoners of war, which took place some 2 months before they ever heard of it.

It later came to light, and is now known, that Hitler issued a direct order to the police to run down these escaped prisoners of war and kill them. There is no suggestion in the evidence that Ritter or Steengracht von Moyland knew this at the time these notes were prepared and dispatched, or that they had any other information than that contained in the note prepared by Albrecht at Salzburg.

I am unable to follow the reasoning which leads to the conclusion that Steengracht von Moyland and Ritter are guilty of participating in murders which occurred 2 months before they heard of them, or took any action with reference to them.

LAMMERS

What has heretofore been said in the discussion of the case against Ritter and his

alleged participation in the murder of Allied fliers is equally applicable to other defendants so charged in count three, including the defendant Lammers. He is charged, because of a letter (635-PS, *Pros. Ex. 1229*) he wrote to the Minister of Justice on 4 June transmitting the circular decree of Bormann dated 30 May.

In transmitting this decree Lammers was performing the normal functions of the Chancellery. It was a sort of secretariat which served the Chancellor much as any secretarial organization would serve the head of a government. It was the proper avenue through which approaches were made to the Chancellor, and was the mechanism designed to distribute communications of all kinds from the Chancellor to the ministries or other agencies of government.

Lammers, as head of the secretarial organization known as the Chancellery, had no right to decide what he would or would not distribute. He had no choice in the matter. In performing that purely clerical or ministerial task, he could hardly be charged with criminal intent in any situation. He gave no orders, and of course, had no authority to do so. He did call attention to the respect in which the decree might be applicable to the operations of the Ministry of Justice.

If the Ministry of Justice did anything as a result, it was done because of the decree of Bormann, not because of Lammers' letter transmitting it.

But the conclusive circumstance that Lammers' letter, even if it

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led to the dismissal of prosecutions of people who had engaged in lynching (and there is no evidence that it did), could not have thereby encouraged future lynchings is the fact that the police had already been prohibited from interfering with lynchings, and this was accompanied by a radio campaign. (See quotation from IMT, *supra*.) The dismissals, therefore, if there were any, were the *result* of a public policy of authorized lynchings, not the *cause* of it. It can hardly be claimed that the letter had any causal connection with the lynchings which had already taken place.

#### BERGER

Berger is convicted of participation in the murder of the French General, Mesny, a prisoner of war. That General Mesny was brutally murdered in reprisal or revenge for the alleged shooting, by the French Maquis, of a German general, and that this was done on direct order of Hitler, given to Keitel, there can be no doubt. Our task is to determine whether or not defendant Berger had any criminal responsibility for the crime.

Berger held many positions in the SS. He was Lieutenant General in the SS and the Waffen SS; liaison officer between the Reichsfuehrer SS and the Reich Minister for the Occupied Eastern Territories; Chief of the political directing staff of the Reich Minister for the Occupied Eastern Territories; Supreme Military Commander in Slovakia in 1944, and Chief of the Postal Censorship. He obviously could not devote all of his time to any one of them. In addition to these tasks, he was made Chief of Prisoner-of-War Affairs under Himmler, and subordinate in that function not only to Himmler but to Keitel, and of course, Hitler as well.

The office had previously existed under that same name, Chief of Prisoner-of-War Affairs, in the organization of the army. Berger, upon his appointment, assumed that title so that the term Chief of Prisoner-of-War Affairs, may refer to the agency or to the person of Berger, and it is important to know in every case in which sense it is used. In the documents which the opinion cites, the agency is referred to because the

evidence shows, without dispute, that Berger did not sign any of these documents. Some of them were signed by Meurer, who was his Chief of Staff in Prisoner-of-War Affairs, and in charge of the office, and who was in the habit of signing Berger's name to documents involving the agency.

Meurer was a witness for the prosecution and conceded these facts.

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Berger began taking over the agency on 1 October and had completed a considerable portion of the task by 23 October, but the complete take-over did not take place until about the middle of November. When Berger took over the agency, he took over the personnel of the agency with him. These were all Wehrmacht men who belonged to the armed forces under Keitel.

Berger's first knowledge of the proposal to execute a French general came to him from Meurer early in November. Meurer, as a prosecution witness, testified to Berger's reactions as follows (*Tr. p. 2351*):

*"He was horrified at the teletype letter and the whole contents of the telegram and he immediately said in no case would he agree to this, and under no circumstances would he have the matter carried out."*

Further, in cross-examination, he testified (*Tr. p. 2376*):

*"When the written order came in he at once and spontaneously declared that he would not have carried out an order of that sort; he also stated that he would immediately contact Himmler on this matter, and, if necessary, would contact the Fuehrer himself."*

The evidence shows that he did attempt to contact Hitler, but that Hitler would not receive him. Before he was able to contact Himmler, Berger was injured, early in the month of November, as a result of being buried alive in debris in a bombing raid, and was confined to the hospital for at least 2 weeks.

Upon his return from the hospital he inquired of Meurer what, if anything, had been done about the matter, and learned that there had been no further developments. He went to southwest Germany to see Himmler at Freiburg, and finally contacted him at Ulm, and after much difficulty had an interview with Himmler, in which he protested against this procedure, and apparently Himmler gave him some encouragement to believe that it would be abandoned, and wrote him a Christmas letter which seemed to contain such assurance.

Early in January, Berger had to leave on a business trip and before leaving told Meurer to keep a sharp lookout and to let him know. Apparently, he had some apprehension at the time that the matter was being revived. While Berger was away, and on 19 January, this murder took place. It was accomplished by SS men in Wehrmacht uniforms, while transferring some French generals from one camp to another.

The opinion puts great stress upon the fact that some of the men in the group were subordinates of Berger in the agency, Chief

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of Prisoner-of-War Affairs, but there isn't a suggestion in the evidence that they acted upon any order of Berger's. It must be remembered that while these men were subordinate to Berger, they were also subordinate to Keitel and to Himmler, as was Berger himself, and that they would naturally act in accordance with orders originating from that source regardless of whether they had Berger's permission or not.



An unfortunate error seems to have crept into the opinion. It quotes Berger as saying to Meurer, when Meurer reported to him on sending in the three names, that Berger approved of Meurer's action saying:

*" \* \* \* because, after all, there are no possibilities left."*

This statement, given as a direct quote from Berger, would indicate that Berger had given up the struggle and was determined to make no further resistance, but this also is not the record. The witness Meurer testified as follows:

*"I informed him of the changes that meanwhile occurred, and he approved my measures, because after all, there were no other possibilities left to me." (Tr. 2375.)*

This conveys quite a different meaning, and does not suggest that Berger had given up the struggle. The facts appear to be, even as related by the prosecution witness Meurer, that Berger did nothing in the way of participating in this scheme to murder a French general; that, on the contrary, he did everything he could do to prevent the carrying out of such a scheme, even to the point of advising his office chief that he would have nothing to do with it.

The attitude of Berger to the execution of this order to have a French general shot is fully shown by the testimony to be one of opposition, and as effective opposition as it was possible for him to exert.

His attitude is further shown by the fact that almost immediately thereafter he heard that Hitler planned to hold as hostages certain prominent English prisoners of war who were connected with the Royal family, and Berger promptly had these prisoners of war moved to a point in Germany near the Swiss border, and from there, on his order, they were taken into Switzerland, and Berger declared at the time that it was being done to "prevent a second Mesny affair." He went to the extent of violating Hitler's order, to put prisoners of war beyond the reach of anyone who sought to carry out another murder like the Mesny affair.

Berger's conviction seems to rest upon the proposition that he was unable and unsuccessful in preventing Hitler, Keitel, and

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Himmler from carrying out this enterprise. They were his superiors. Many lives have been lost by efforts to prevent these men from carrying out their will. The law imposes upon Berger no such obligation. He did expose himself to danger in his opposition, and he did nothing affirmative to aid the action. I am unable to see any legal basis for the conviction of Berger in connection with this unfortunate murder.

## **COUNT FIVE**

Count five charges the defendants therein named with war crimes and crimes against humanity—

*"\* \* \* in that they participated in atrocities and offenses, including murder, extermination, enslavement, deportation, imprisonment, killing of hostages, torture, persecutions on political, racial, and religious grounds, and other inhumane and criminal acts against German nationals and members of the civilian populations of countries and territories under the belligerent occupation of, or otherwise controlled by Germany, plunder of public and private property, wanton destruction of cities, towns, and villages, and devastation not justified by military necessity."*

The opinion contains a lengthy discussion preliminary to the question of guilt of individual defendants. It seems necessary to refer to it only briefly.

In my judgment, it is incorrect to say that all of the German people, except a few, participated in the persecution of the Jews, and it is incorrect to say that the Foreign Office knew of exterminations of the Jewish people, especially if by the term, "Foreign Office," it is intended to imply that the Foreign Office defendants here had

such knowledge. The evidence, in my opinion, falls far short of supporting any such a conclusion.

It is incorrect also, it seems to me, to assume that every reference to the "Final Solution" of the Jewish Question means extermination. The fact is that when the first campaigns against the Jews were inaugurated, the term, "Final Solution" came into use. Generally in the early stages, the final solution meant forced emigration. During one period it meant deporting the Jews to Madagascar. As a result of the Wannsee Conference, it meant deporting them to labor camps in the East. It never meant extermination, except to a few of the initiated.

The evidence shows that the program of extermination was handled with the greatest of secrecy. Hitler orally instructed and directed Himmler to start this action; Himmler carefully

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selected and pledged to secrecy the men who were to work with him and to carry out these exterminations; places were selected which were isolated, and were camouflaged by being identified with labor camps nearby, and the program was carried on with the deliberate purpose and design of preventing the German people, and all others not connected with the enterprise, from knowing what was going on. The evidence by those who were on the inside of this terrible extermination program strongly tends to show that not over 100 people in all were informed about the matter. This is rather eloquently illustrated by the case of Fritzsche. Fritzsche was a responsible official in the Propaganda Ministry. He gathered news for the press and made news broadcasts over the radio; his whole activity was to discover the news and know what was going on, and yet the IMT found that he did not know about these exterminations.

He testified in that case that he had heard rumors; that he had asked Goebbels about the matter and that Goebbels informed him that it was just foreign propaganda. Under such circumstances, I do not believe it can be assumed, even though rumors may have been heard, that the defendants in the Foreign Office, or any other of the defendants, had knowledge of these exterminations at the time they were occurring, or at any time material here. The evidence certainly fails to show it beyond a reasonable doubt. Of course, they all know of them now and the world knows of them.

#### VON WEIZSAECKER and WOERMANN

The discussion in the opinion concerning von Weizsaecker and Woermann, in count five, which deals with the persecution of the Jews, is a long one. It reveals all of the details of those horrors. I fear it gives the impression that the Foreign Office was the principal agency for the execution of such policies. The method of presentation should not prevent a calm and logical analysis of the entire matter. The situation demands, for a just solution, reason and judgment, not emotion.

I have discussed some of the evidence with reference to the knowledge of the Foreign Office defendants of the extermination of Jews, to some extent in connection with another defendant. I will not repeat it here, but will expect what is said on that subject in connection with the Foreign Office defendants to apply to all.

Something additional, however, must be said here. The handling of the so-called Jewish question was vested by Hitler exclu-

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sively in Himmler and his SS. The limited field in which von Weizsaecker and Woermann might exercise a veto on proposed Jewish measures will be discussed later. With reference to the question of knowledge on the part of von Weizsaecker and Woermann, the opinion cites the entire record of the Jewish persecutions. These persecutions increased in intensity as the years went by. Exterminations did not become a significant part of the program until about the middle of 1942 and most of the exterminations took place during the last 2 years of the war.

The opinion cites the Einsatzgruppen reports as charging von Weizsaecker and Woermann with knowledge of them. These reports are those of the SS units engaged in behind-the-line activities in Russia, and as a part of the war against Russia. But that war did not start until June 1941. Strange as it may seem, the incidents on which von Weizsaecker and Woermann are convicted are events which happened in June or July 1942, before they are shown to have had notice of those horrible things having happened, so that obviously, von Weizsaecker and Woermann could not be charged with having acted with knowledge of such events.

Moreover, it must be remembered that both von Weizsaecker and Woermann left Germany in 1943. Both were demoted by von Ribbentrop. Von Weizsaecker was sent to the Vatican, and Woermann to China, so at the time the worst persecutions took place, they were not even in the country.

The opinion cites the testimony of von Weizsaecker's son. It fails to show that von Weizsaecker had knowledge of any systematic exterminations at any time. It shows only that he knew of individual deaths, and that he could not understand them. But even more important than that, there is no time fixed in the son's testimony as to when his father heard of these deaths, whether at the beginning, in the middle, or at the end of the war. The testimony of the son quoted is worthless on that account.

There is nothing to impeach von Weizsaecker's testimony about what he knew. Certainly it is not impeached by the kind of facts referred to in the opinion. Moreover, it is indicated in the opinion that von Weizsaecker has some responsibility for what was done by Luther and Rademacher of the Foreign Office, whose activities are extensively quoted in the opinion.

Von Ribbentrop testified before the IMT that he set up a department in the Foreign Office to carry out Party programs. That was the Department "Germany" or "Deutschland." It was directly subordinate to von Ribbentrop, reported to him and received its instructions from him. Neither von Weizsaecker nor Woermann had anything to do with it.

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With some of these irrelevancies out of the way, what was the picture? When the first action against Jews in Germany began, and Jews were required to register their property, the Foreign Office received many protests from foreign governments based on the grounds that Jewish nationals of those governments residing in Germany were required to register their property. Von Weizsaecker immediately conferred with the governmental department that was handling Jewish matters, and succeeded in having all Jews of foreign nationality relieved of this requirement, and an exception made in their favor. Later the general exception seems to have been lost, as pressure against the Jews increased, but the Foreign Office as represented by von

Weizsaecker and Woermann continued to insist that it be consulted whenever any action against Jews of foreign nationality was contemplated. The object, of course, was to enable the Foreign Office to satisfy the reasonable demands of foreign governments, and to cultivate good relations with such foreign governments, and to prevent anything from happening which would produce bad international relations. This was a matter of foreign relations or foreign politics which was their particular responsibility and gave them a right to be heard, and that right was accorded them. Thus, when it was proposed to deport Jews from Holland, the Foreign Office was consulted. Von Weizsaecker objected that since Sweden was the Protective Power for Holland, it would not only have the right to object but the right to inspect the places where these people were housed, and that if it were discovered that they had been removed from Holland, the results would not be good so far as the relations with Sweden were concerned.

When it came to the proposal to deport Jews from France, von Weizsaecker objected vigorously to the deportation of Jews of American nationality on the ground that such treatment of American nationals would lead to bad international relations with America. He could not object on that ground to the deportation of other Jews of foreign nationality, because the governments of nations of which they were nationals, had agreed to their deportation. But this action of von Weizsaecker's was overruled by von Ribbentrop, and American Jews were deported.

When it came to deporting French and stateless Jews, a deportation for which von Weizsaecker and Woermann are convicted, the Foreign Office had no legitimate grounds to object. France agreed to the deportations; the Jews were stateless. No grounds, therefore, based on foreign politics existed for objection. Their consent meant no more than that. If von Weizsaecker's objection made on good grounds concerning American Jews was to be overruled, what possible grounds could be urged against the deporta-

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tion of these French and stateless Jews, so far as foreign politics were concerned? So the so-called consent of von Weizsaecker and of Woermann was merely the recognition of a fact that conditions were absent which gave them a right to object on the grounds of foreign politics. But the opinion seems to hold, especially as to von Weizsaecker, that even in such a situation, he should have taken advantage of the opportunity to deliver a lecture to von Ribbentrop on international law and on morality.

Such a sentiment fails, it seems to me, to appreciate the realities of the situation prevailing in the Reich and the personality of von Ribbentrop. He was in the habit of doing the lecturing. For an underling who, he had recently overruled to attempt to lecture him certainly would have done no good, and it might have done a lot of harm. If von Weizsaecker could not prevent von Ribbentrop from deporting Jews of American nationality on the ground that it might disturb international relations, how could he expect to interest him in nondeportation of Jews on grounds of general morality? But I do not see how either of these men can be convicted for such an oversight in any event, and failure to preach morality is not a crime—at least not one charged in the indictment or provided for in Control Council Law No. 10.

I am unable to grasp the significance of the other incident cited against von Weizsaecker concerning employees of diplomatic corps. I understand that the term "Diplomatic Corps" includes all people employed by the government, which maintains

the mission and for the purpose of carrying out the functions of the mission. The dispute has reference to people personally employed by such members, as for instance, household help in their homes.

If my interpretation is correct, it seems to me that von Weizsaecker's opinion was correct. But whether it was or not, there is nothing to indicate that it was not given in good faith, and honestly. A mistake in the interpretation or application of the law, fortunately, is not a crime.

I see no justification for holding von Weizsaecker or Woermann guilty of persecution of the Jews in connection with the matters recited in the opinion. The deportation of these Jews was in the hands of the SS or the occupying forces in France. The Foreign Office, as represented by von Weizsaecker and Woermann, had a limited right of objection as to Jews of foreign nationality. They seem to have exercised that right wherever it was available. Where it was not available, they had no grounds for objection. That is the extent of their consent. To convict them, is to punish them for the acts of another department of government, which they did not order, and which they were powerless to prevent.

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#### STEENGRACHT VON MOYLAND

Steengracht von Moyland is charged in paragraph 42 of the indictment:

"42. \* \* \* *innocent members of the civilian population of the occupied countries not connected with any acts against the occupying power were taken as hostages and, without benefit of investigation or trial, were summarily deported, hanged, or shot. These innocent victims were executed or deported at arbitrarily established ratios for attacks by person or persons unknown on German installations and German personnel in the occupied territories. In many cases the recommendation and approval of the German Foreign Office, with the participation of \* \* \* Steengracht von Moyland \* \* \* [and others] were required prior to the execution of these measures and the necessary diplomatic 'cover-up' was effected to conceal the nature of these crimes.*

\* \* \* \* \*  
"48. \* \* \* *Since by far the greater part of the victims of this genocidal program were nationals of puppet and satellite countries dominated by the Third Reich, the German Foreign Office, through the defendants \* \* \* Steengracht von Moyland \* \* \* [and others] forced these governments to deport persons of Jewish extraction within their countries to German extermination camps in the East, and directed and controlled the execution of these measures. \* \* \**

It will be observed that in the first paragraph [above] Steengracht von Moyland is charged with *approving* deportations, and in the second with *forcing* deportations.

A reading of the opinion reveals that Steengracht von Moyland is not convicted on either of these grounds, and that the reason for his conviction is remote from any statement contained in the bill of particulars against him.

As previously pointed out, it is my view that indictments should mean something and that no defendant should be convicted except upon a charge contained in the bill of particulars.

But that aside, the things on which Steengracht von Moyland is convicted do not, in my opinion, constitute a crime against humanity at all. For that reason it seems to me unnecessary to go into the question of whether all of the findings of fact contained in the opinion are justified.

Assuming that they are justified by the evidence, no crime against humanity appears.

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What appears in the facts, as found by the Tribunal, is the following:

1. That on von Ribbentrop's order, Steengracht von Moyland organized an office for anti-Jewish action abroad;
  2. That a card index of Jews abroad was prepared and presented to him;
  3. That a memorandum was presented to him recommending violent action against the Jews in Budapest; that he referred this to the Minister at Budapest, who disapproved it, and nothing came of the matter. The subsequent action against Jews in Budapest had no connection with Steengracht von Moyland, and is not claimed to have had;
  4. He advised the Swedish envoy that he was not competent to deal with Danish questions. He was legally correct. The opinion suggests he should have shown sympathy.
  5. Several reports and memorandums were prepared in the Foreign Office, one with reference to the deportation of Jews in Greece, particularly in the Salonika area, but this appears to have exempted Jews of foreign nationality, whose governments had not consented to the deportation, and this was the only competency that Steengracht von Moyland, or the Foreign Office, had in the Jewish question.
  6. There was extensive correspondence had, and memorandums and reports made, in an effort to permit some Jewish children to emigrate. The original request was to permit them to emigrate to Palestine. This could not be done under the German policy prevailing at the time. The German Government was courting the Arabs; the Mufti of Jerusalem was in Germany. Germany hoped to make contact with the Arab world and to conclude an alliance with it, and did not want to risk displeasing the Arabs by sending Jews to Palestine. This was a high-level decision which Steengracht von Moyland did not make and could not violate. There were some negotiations with a view of having them taken to England and various reports and memorandums were prepared on the subject until von Ribbentrop stopped the whole business.
  7. Steengracht von Moyland wired the Legation at Bucharest to make an effort to have the Rumanian Government cancel its permit for the Jews to emigrate to Palestine, in order to bring its policy in accordance with the German policy.
- It is transactions of this type that are the basis of the conviction of Steengracht von Moyland, and particularly negotiations concerning permissions to emigrate. The opinion, after describing these documents, states in the two final paragraphs, the conclusions with reference to them as follows:

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*"It would be difficult to conceive of a more flagrant bad faith than that which was carried out in these negotiations. Here at least is one occasion where Ribbentrop, as Foreign Minister, asked for advice of his Foreign Office. Here was the opportunity for the Foreign Office and its State Secretary to give good advice instead of bad; to point out how the improvement in German foreign relations and its rehabilitation in the eyes of the world would be possible by at least permitting children to be saved from extermination; but every step which the Foreign Office took, every recommendation that it made, was directed to block efforts made by leading countries of the world, neutral as well as enemy states, to permit little children to come unto them and to defeat the efforts of the good Samaritans, and turn their offers into Nazi propaganda."*

*"Steengracht was a party to this; he must bear the responsibility. He should be and is held guilty under count five."*

This shows pretty clearly that Steengracht von Moyland's guilt consists in his failure to read a moral lecture to von Ribbentrop. It is unnecessary to speculate as to whether or not he should have done so, and what the effect would have been if he had. It is only necessary to point out that his failure to do so is not a crime against

humanity charged in the indictment and defined in Control Council Law No. 10. The opinion in this [case], and in the case of other defendants in this count, seems to me to ignore the definition of crimes against humanity as contained in the law, and to proceed upon the theory that anything which a defendant may have done, which fails to meet the personal approval of the writer of the opinion, as to what constitutes proper conduct, is a crime against humanity.

This impression is fortified by statements in the opinion as follows:

*"The defendants here are charged with violation of international law.*

*"International law is not statutory."*

In my view, we are not enforcing any vague uncodified law, which we are free to mold to suit our own tastes. There is no such thing as a crime against humanity within our jurisdiction, except a violation of the provisions of Control Council Law No. 10 [Article II, paragraph 1(c)] which defines the crime as follows:

*"Crimes against Humanity. Atrocities and offences, including but not limited to murder, extermination, enslavement, deportation, imprisonment, torture, rape, or other inhumane*

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*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."*

It has been held by these Tribunals, and uniformly followed, that under the principle of *ejusdem generis* the word "persecutions," as used in this statute, refers to the same kind of acts and offenses enumerated in the same sentence, that is, murder, extermination, enslavement, etc. A persecution, therefore, must involve some act of violence against the person of the persecutee. The expression of anti-Semitic ideas, or sentiments, no matter how unreasonable and unjustifiable it may be, is not in that class.

The opinion fails to show any act on the part of Steengracht von Moyland which was intended to produce, and which did in fact produce, any mistreatment of Jewish people which can properly be described as a "crime against humanity."

#### KEPPLER

The defendant Keppler is convicted because he helped organize, and was a member of, the Aufsichtsrat of the corporation known as DUT.

When the government was transferring ethnic Germans into the Reich to become citizens of Germany, the defendant Keppler recognized the hardships to which these people were exposed and took the lead in organizing a corporation under the private incorporation laws to serve their interests. It is DUT. It was generously supplied with government capital and, in addition, borrowed large sums of money which it used in helping these people transfer to their new location and to become rehabilitated there. Frequently they were not permitted to take along with them their household furniture and farm machinery and livestock and things of that kind. The corporation helped with the liquidation of such property in cases of that kind, under a power of attorney given by the person. In the case of removals from the South Tyrol, they were not permitted to move out any of their property. The DUT helped to list and appraise the property, and present and collect a claim for it from the Italian Government.

When the settler arrived in Germany, it made advances to him in the way of loans until he could become self-supporting and made loans to him to enable him to become established in whatever trade or business he was accustomed to. If he was a farmer they helped him get a farm and to buy the necessary machinery and equipment to reestablish himself. The same policy was pursued if he followed some

trade or business.

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The nature of its business functions is well described in one of its reports (*NID-7721, Pros. Ex. 2829*) which the prosecution put in evidence as follows:

*"The tasks and duties of our company on the one hand comprise the care of all matters connected with the settling of property questions and the transfer of property belonging to resettlers and left behind in their country of origin. On the other hand, it takes care of all economic aspects in connection with the reemployment of the resettlers in the new settlement areas of the Reich. It was essential that a suitable organization be created with the utmost dispatch, which would make it possible to provide for the resettlers not only advice and care with regard to economic problems, but also—in the interim period until their reemployment—to obtain loans against cash property left behind, assistance payments, transfer money when a home is assigned and, finally, the financial means for making a new start."*

Considering the nature of this corporation and the service it rendered, what, may we ask, was Keppler's crime in helping to organize it and serving on its governing board? The opinion does not say much about DUT. It speaks rather of what others did, and of other programs. Keppler is responsible only for what he himself did and, conceding that others may have been guilty of a crime against humanity in forcing a person to enter the Reich, there is no reason why such person must be allowed to starve to death. Those who offer him food and help, and minister to his wants, are not made criminals simply because he may be a victim of somebody else's wrongs.

DUT was a separate corporation, set up to render a service, including a financial service, to these people. Its service was an aid to humanity, not a crime against humanity.

These comments apply equally to the defendant Kehrl in this count.

#### VEESENMAYER

The opinion with reference to Veesenmayer seems to me to present a greatly exaggerated, and in some instances an incorrect, description of his activities and the results thereof. He had been an instructor in political science and economics at Munich University. He became attached to Keppler when Keppler was Economics Adviser to the Party. With Keppler he went to Berlin, where he continued to serve on a part-time basis, dividing his time between the University of Berlin and his work with Keppler.

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When Keppler went to the Foreign Office, Veesenmayer went with him. He continued to work with Keppler on economic questions, and he was used by von Ribbentrop for special assignments in the political field.

The opinion discusses his activities in reverse order. He was sent to Serbia in 1941 while it was belligerently occupied by Germany and at a time when partisan warfare and the shooting of hostages, which was taking place there, marked it as one of the bloodiest chapters of the war. Jews were being shot as hostages at a terrific rate. Veesenmayer's task was to try to work out some political arrangement which would result in the pacification of the country.

When he discovered the situation—and he was then carrying the title of "Reich Plenipotentiary"—he joined with the Minister Benzler in a message to the political division of the Foreign Office recommending that an arrangement be worked out for the removal of the Jews from Serbia by sending them down the Danube River to



Rumania.

Later the same day, both these parties joined in a second message, emphasizing that a quick and laconic solution was necessary as a matter of practical necessity. This message, of course, referred to the recommendation for the removal of the Jews by sending them down the river in barges. The attempts in the opinion to make it appear that the reference is to extermination of Jews is wholly unwarranted. This is all Veesenmayer did in Serbia.

Benzler, the Minister, had labored to the same end before Veesenmayer arrived and continued the same effort after Veesenmayer's departure, but to no avail. The partisan warfare and the shooting of hostages continued until in the process the Jews were so reduced in number as to cease to be a factor. While the opinion heaps scorn on Veesenmayer on account of this matter, it had to recognize that these unfortunate Jews in Serbia lost their lives not because the recommendations of Veesenmayer and Benzler were followed, but because their recommendations were not followed. If their recommendations had been carried out, at least thousands of these unfortunate people could have been saved. The part which he and Benzler played in Serbia merits no condemnation under the circumstances which existed there. The cause of humanity would have been served if their recommendations could have been carried out.

## HUNGARY

Veesenmayer is convicted because of his activities in Hungary. In 1943, Hungary, which was an ally of Germany in the war, was

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showing a lack of enthusiasm for the struggle. Its troops were displaying a lack of fighting spirit. There were elements in the population of Hungary which wanted to abandon the alliance with Germany and to make peace with Russia. This feeling grew as the Russian armies advanced toward the Hungarian border.

Von Ribbentrop sent Veesenmayer to investigate the political situation and report. He made a detailed study of the situation in Hungary. In his report he discussed many of the political leaders and their attitude. He listed the elements in the population which were hostile to Germany, and inclined to adhere to her enemies, and whose influence was operating to pull Hungary away from her alliance with Germany. He listed first among those elements the Jews, and third, the clerical circles. No one in this case has questioned the fact that his report is objective, unprejudiced, and factually correct. He explains why the Jewish population was opposed to Germany. He states that it is because of the manner in which Jews have been treated in Germany. This might even be considered a criticism of the German policy, but nobody questions that it is a correct judgment.

It should be remembered that Veesenmayer's work had not been in connection with Jewish questions; that was the exclusive prerogative of Himmler and the SS. He had shown no particular anti-Semitic sentiments. His work had been exclusively in the field of economics and politics. He recognized, as a fact, that the Jewish elements in Hungary, with their friends and the influence they were able to exert, represented a balance of power in Hungary which was pulling Hungary away from her alliance with Germany.

The correctness of his judgment on that proposition is not challenged.

He also reported that there were elements in the government, including the Prime

Minister, which were opposed to Germany. His only recommendation was that there should be a shake-up in the government. This report he sent to von Ribbentrop. Whether anyone else ever saw it or not is not discussed by the evidence. The opinion condemns Veesenmayer for this report, which, in my judgment is without reason. Later he made what has been called a second report, which only suggests means which might be effective for accomplishing a change in the government, but the matter seems to have taken a different course than the one he recommended. The situation in Hungary continued to worsen from the German standpoint. Other reports were received from Hungary, especially from the SS

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which had some of its units there. The army also had a small detachment there. In March 1944, Hitler and Horthy, who was the Regent of Hungary, had a meeting as a result of which Horthy agreed to form a new government which would cooperate more closely with Germany. Such a government was formed and Veesenmayer was sent to Hungary as German Plenipotentiary and Minister. He carried the title of Plenipotentiary in other countries previously, and carried that title in Serbia, as previously noted.

He was to be the highest political officer of the Reich in Hungary, and take his instructions from von Ribbentrop. His powers are outlined insofar as Germany is concerned by the instrument of his appointment. The description of his powers, as contained in the opinion, are greatly exaggerated. For instance the opinion states:

*"The army was under obligation to support Veesenmayer in his political and administrative duties."*

This suggests that he was exercising power in Hungary by virtue of the force of the German Army. There is nothing of that sort in the instrument of appointment, and in order to make it clear what functions Germany expected him to perform, I set out the instrument of appointment in full as follows (NG-2947, Pros. Ex. 1806):

*" (1) The interests of the Reich in Hungary will henceforward be protected by a Plenipotentiary of the Greater German Reich in Hungary, who will simultaneously bear the designation Minister.*

*" (2) The Reich Plenipotentiary is responsible for all political developments in Hungary and receives his directives through the Reich Minister for Foreign Affairs. He has the special task of paving the way for the formation of a new national government which will be resolved to fulfill loyally and until final victory is achieved the obligations imposed upon it by the Tripartite Pact. The Reich Plenipotentiary will advise this government on all important matters and represent always the interests of the Reich.*

*"(3) The Reich Plenipotentiary is to ensure that the entire administration of the country, as long as German troops are there, is carried out by the new national government under his guidance in all fields, and with the object of utilizing to the fullest all the resources the country has to offer, in particular the economic possibilities, for the joint conduct of the war.*

*" (4) German civilian offices, no matter of what nature which are to operate in Hungary, may be established only with the*

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*consent of the Reich Plenipotentiary; they will be subordinate to him and will act in accordance with his directives.*

*"To perform tasks of the SS and Police concerning in Hungary, and especially police duties in connection with the Jewish problem, a Higher SS and Police Leader will be appointed to the staff of the Reich Plenipotentiary and will act in accordance with his political directives. [Emphasis supplied.]*

*"(5) As long as German troops remain in Hungary, military sovereignty will be exercised by the Commanding Officer of these troops. The Commanding Officer is subordinated to the High Command of the Wehrmacht and receives his directives from him.*

*"The Commanding Officer of troops is responsible for the internal military security of the country and for its defense against threats from abroad.*

*"He supports the Reich Plenipotentiary in his political and administrative duties and acquaints him with all Wehrmacht requirements, especially with regard to the utilization of the country for the provisioning of the German troops.*

*"The requirements of the Wehrmacht, insofar as they concern the realm of civilian affairs, are met by the Reich Plenipotentiary.*

*"In cases of imminent danger the Commanding officer of German troops has the right to order also in the realm of civilian affairs, measures necessary for the fulfillment of military tasks. He will arrive at an agreement with the Reich Plenipotentiary concerning this as soon as ever possible.*

*"The Reich Plenipotentiary and the Commanding officer of German troops must cooperate as closely as possible wherever their spheres of activity overlap and agree on all measures.*

*"(6) I name Party Member Dr. Edmund Veesenmayer Plenipotentiary of the Greater German Reich and Minister in Hungary.*

*Fuehrer HQ. 19 March 1944*

*Signed: Adolf Hitler"*

Moreover, such army detachments as were in Hungary when he was appointed, left very soon thereafter.

The opinion lays stress upon the fact that this instrument provides that no German civil offices were to be opened in Hungary without Veesenmayer's consent. I see nothing remarkable in such a position. His job in Hungary was primarily to keep Hungary in the war on Germany's side. He represented the German political line or policy in Hungary under directives furnished him by von Ribbentrop. This operation might be

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greatly hampered if other German civil offices were established which pursued a different and an inconsistent policy.

It should be remembered that Himmler and his SS organization maintained a foreign intelligence service, and were frequently in disagreement with the Foreign Office in the field of foreign policy. It was established in this case that the SS representatives in Hungary were not in sympathy with the policy pursued by the Foreign Office in Hungary. They were impatient at the restraint imposed by the method of working with the Hungarian Government. They wanted to take over Jewish matters themselves. They favored a more aggressive policy. They were suspicious of Veesenmayer. In view of this background, it is easy to see why von Ribbentrop would insist on his representative being the ranking German *political* leader in Hungary. It gave him control over the policy to be pursued there by Germany.

After the new government set up following the Hitler-Horthy Conference, and Veesenmayer became established in Hungary, he reported to his government what the Hungarian Government was doing, and promising to do, in the way of deporting Jews to work camps in Germany. These reports are numerous and cover a period from the latter part of March until a little after the middle of June 1944. These reports seem to be the basis of his conviction. But Veesenmayer did not deport anybody. The deportations were carried out by the Hungarian Government.

Not a single witness or document introduced in the case indicates that Veesenmayer was doing the deporting. The opinion quotes testimony of the head of the Jewish organization in Hungary, a prosecution witness who certainly could not be charged with being prejudiced in favor of the defendant. Such question we may assume to be the strongest evidence in the case supporting the Tribunal's conclusion, and yet, if it is analyzed, it will be found that in place of supporting the Tribunal's conclusion, it is

in opposition to it. For continuity I reproduce that quotation here (Tr. p. 3647):

*"Q. Do you mean by that, Witness, that the defendant Veesenmayer was not concerned with the execution of the Jewish deportations which (I will leave open for the moment) was carried out by Jarosz, von Baky, Endre, Eichmann, or Winkelmann?"*

*"A. My dear colleague, I do not suppose that you will imagine that a man as intelligent as Veesenmayer would formally carry out his mandate as Plenipotentiary and Minister of the German Reich in such a way as to transgress his limits by interfering with the executive. He could not and should not*

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*have done it under any circumstances and he did not need to. As I said this morning, by appointing a suitable government in Hungary, and laying down the general political directives for it, further activity and closer activity concerned with greater details of the executive was no longer necessary.*

*He was, if I may say so, the spiritual author, but he was certainly not the executor."*

It will be noticed that the witness states first that Veesenmayer did not and should not transgress his limits as Plenipotentiary and Minister of the German Reich by interfering with the executive, and that he was not the executor of the Jewish policy. This is inconsistent with the claim made in the opinion to the effect that Veesenmayer ordered these deportations and was the *de facto* government of Hungary. The witness states second, that the deportations were accomplished by appointing a suitable government in Hungary and laying down the political directives for it. The witness is of the opinion that this was the manner in which Germany influenced deportations, and that it was the work of Veesenmayer, and therefore, that he was the spiritual author.

But it appears without any dispute in this record that Veesenmayer did not appoint the new government, and that Veesenmayer did not lay down the political directives for it.

The new government was appointed by Horthy. True, it was influenced by Germany. That influence was by Hitler and is manifest by the agreement between Hitler and Horthy. To the extent that Germany agreed to the appointment of certain individuals to be in the new government, that agreement was expressed by von Ribbentrop. It is undisputed, and the instrument of appointment clearly provides that the political directives are to be issued by von Ribbentrop.

Veesenmayer merely passed on these political directives from von Ribbentrop to the Hungarian Government, so according to the witness' own tests, Veesenmayer cannot be the spiritual author of these deportations because he neither appointed the new government, nor issued political directives to it.

After these deportations had continued for a few months they were suddenly stopped. They were stopped by Horthy, and so completely and effectively were they stopped that trains which had already started for Germany carrying Jewish deportees, were stopped en route, and returned to the point from which they started, and the people unloaded. This should end all argument as to where the power of government in Hungary lay during this period. Horthy himself testified that after he stopped them, Veesenmayer requested, on behalf of his government, that they be resumed, and that he refused.

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Horthy claims that he took this action after having heard a report that these Jews were being mistreated in Germany, and that he heard this report from people who obtained it by monitoring a message of a foreign government sent from Switzerland.

It is wholly unrealistic to charge Veesenmayer with responsibility for these deportations, or to assume that he had any power in Hungary to effect deportations. Whatever was done in Hungary during this period was done by the Hungarian Government and in accordance with its agreement with Hitler. It may be true that the Hungarian Government was influenced by Germany, but if so, it was Germany as represented by Hitler, at his meeting with Horthy, and by von Ribbentrop—men who controlled the Government of Germany—and not by Veesenmayer, a young man who for the first time in his life was serving in a ministerial capacity.

It is a little surprising to find such praise for Horthy in the opinion. It apparently overlooks that he was an enthusiastic ally of Hitler, and pursued the same program until the Russian troops came so close to the Hungarian border that he decided that it was the better part of discretion to take another line.

The opinion also seems to overlook that Horthy, together with Mussolini, enjoyed the distinction of having each been kidnapped by German forces, as a means of rescue from the wrath of their own people, and brought to safety in Germany. These rewards were compensation for cooperation, and that fact should not be overlooked.

These deportations were the result of the Hitler-Horthy conference, and were to be carried out by a new government to be set up by Horthy, yet Veesenmayer was appointed as the diplomatic representative of Germany, and charged with the responsibility of reporting what the Hungarian Government was doing to carry out that agreement, and of delivering to it the political directives which von Ribbentrop transmitted to him, and that this course involved urging the Hungarian Government to remain faithful to its agreement with Germany, and, therefore, it might, as a matter of first impression, appear that Veesenmayer aided and abetted these deportations.

The difficulty with this line of reasoning is that Veesenmayer, as an individual, had of course, no influence with the Hungarian Government. No act of his could have any effect on the policy pursued by the Hungarian Government. If the messages he delivered to the Hungarian Government had effect, it was because they were messages from the German Government, demands, requests, and suggestions of various sorts. As to them, Veesenmayer was little more than a postman delivering messages.

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For example, the opinion lays great stress upon the fact that Veesenmayer was instructed to deliver to the Hungarian Government an ultimatum, and that he did deliver the ultimatum as instructed. Can anybody claim that such delivery constituted a crime? It was not his ultimatum; it did not purport to be. It was not understood to be. In delivering it he acted merely as a messenger, and so it is with the various communications which the German Government sent through Veesenmayer to the Hungarian Government.

As to the diplomatic representative of Germany, he was the proper person to deliver all such messages. I am unable to see that in so doing he had any criminal intention or that the delivery of them constituted any crime.

Elsewhere in this separate opinion I have discussed the responsibility of the man who formulates decrees or even signs orders at the direction of somebody else, as in the case of the Chief of Staff, and have reached the conclusion that no crime is involved. Much less is it a crime to act as a messenger.

The person who is responsible for the issuance of an order that requires the

commission of a crime, and the person who executes such an order, is liable, but the messenger who carries it, or the postman who delivers it, or the diplomatic representative who delivers it, commits no crime so far as I am able to see.

The opinion closes with the remarkable statement that, "We believe Veesenmayer knew that these Jews were being exterminated and so find."

It is significant that the opinion does not say that the evidence shows such facts beyond a reasonable doubt. There is no evidence that any of these Jews which Veesenmayer reported did not go to work camps in Germany as he reported, and as had obviously been reported to him, nor is there any evidence that they were thereafter exterminated. There is no evidence that I can find that Veesenmayer even heard a rumor of exterminations until Horthy claimed to have had it reported to him from some message of a foreign government which had been monitored. But the deportations stopped then. There is no evidence that Veesenmayer was in any way connected with any further deportations. He did urge them on Horthy, in accordance with a directive of his government, but Horthy refused.

Veesenmayer was a diplomatic representative whose duties were to report from Hungary and to make representations to the Hungarian Government in accordance with directives issued to him by the Reich. The attempt to make him responsible for the crimes of Hitler and Horthy, and their governments, and the SS over

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whom he exercised no command authority, cannot be sustained by the facts or the law.

The charge of the indictment that Veesenmayer *forced* the Hungarian Government to deport its Jews, is not established by the evidence beyond a reasonable doubt. If the Hungarian Government was forced at all, it was by Hitler, and in his conference with Horthy and by threats emanating from him, and which had effect because they came from him and not because they may have been delivered by Veesenmayer.

Incidentally, Veesenmayer is convicted under count seven, the slave labor count, of a war crime in that he participated in the deportation of these same people, involved in this count, to Germany for slave labor. Obviously, this could not legally stand even if he had a part in such deportations, for the reason that the deportations were not from belligerently occupied territory but from the territory of an ally.

In addition to that, he is also convicted under count eight, on account of this same matter, although in the opinion it is recognized that what he did in Hungary was not as a member of an SS unit, but as a Foreign Office representative.

#### DIETRICH

The defendant Dietrich is charged in the paragraph of the bill of particulars in the indictment with the following:

*"46. A program for the extermination of all surviving European Jews was set up by the defendants in the winter of 1941-42 and organized and systematically carried out during the following period. Through the efforts of the defendants, \* \* \* Dietrich [and others] the rationale and justification for, and the impetus to, mass slaughter were presented to the German people. \* \* \**  
\* \* \* \* \*

*"48. \* \* \* The defendants Lammers and Stuckart were principally connected with the formulation of the genocidal policy, and the defendant Dietrich conditioned public opinion to accept this program, by concealing the real nature of the mass deportations. \* \* \*"*

A reading of the opinion does not lead to the conclusion that the Tribunal regards either of these specifications as having been established by the evidence. As to the first, no evidence is cited to establish that the defendant organized and systematically

carried out a program for the "extermination of all surviving European Jews during the winter of 1941-42." There is nothing in the evidence to indicate that the defendant Dietrich had anything

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to do with the formulating of such a program or had anything to do with carrying out of such a program, or had any knowledge of the existence of such a program.

As to the charge in the second paragraph that he concealed information for the purpose of deception of the people as to the real nature of the deportations, the opinion expressly exonerates him from that.

Why then was he convicted?

In brief, the opinion holds that he is responsible for anti-Jewish propaganda material issued to the press as daily directives; and that—

*"\* \* \* the only reason for this campaign was to blunt the sensibilities of the people regarding the campaign of persecution and murder which was being carried out."*

Not a single fact or circumstance is cited in the opinion to justify this sweeping conclusion.

The opinion seems to presuppose a grand conspiracy in which all the people in the government were members, and that its object was to exterminate all Jews and that every anti-Semitic act of any defendant was directed toward that end. It seems to make no difference that such a conspiracy is not allowable under the law, is not plead in the indictment, and is not established by the evidence, and that no attempt was made to establish it.

There is not a particle of evidence that Dietrich knew anything about exterminations, and if he did not know, how could that have been his reason, assuming he was responsible for the daily directives?

Moreover, the conclusion assumes that people generally knew of these exterminations and therefore had to have their sensibilities blunted. This is an even wilder assumption.

It should be borne in mind that the IMT held that anti-Semitism was not a crime, and that Fritzsche who put out this same kind of propaganda over the radio was acquitted by that Tribunal.

But, aside from that, the evidence fails to show that Dietrich was even responsible for these daily paroles which are relied upon.

Dietrich was a sort of press secretary for Hitler during his rise to power. As Press Chief he controlled the Party press, but that is not material here. What is involved here is the daily parole.

The origin of the material which went into these daily paroles is rather clearly established. Goebbels was the Minister of Propaganda; he had a state secretary in his department for press, for radio, and for some other divisions of his ministry. Dietrich was the State Secretary for the Press.

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Minister Goebbels held a conference every morning at which the propaganda line was announced orally by Goebbels. Other ministries were also represented, such as the Foreign Office and the OKW, and they suggested propaganda ideas. These were written up from notes taken by men from Dietrich's office in the Ministry. They were then submitted to Dietrich usually by telephone since he personally was always at Hitler's headquarters, and was a press representative for Hitler. Hitler was no

amateur propagandist himself. He had ideas. These were communicated to Dietrich, whose suggestions were then given priority over those of Goebbels, not because Dietrich was superior to the Minister Goebbels, but because his voice was the voice of Hitler. He was regarded, and so far as appears, rightly, as expressing the wishes of Hitler. There is no evidence that Dietrich personally and on his own motion, ever originated a parole. The contents of these paroles cannot, therefore, be charged to him. It is claimed that he had the right to veto them and that they were all read to him for his approval before dispatch. It is true that he could and did exercise that right, but only because being at Hitler's headquarters, he was reflecting Hitler's ideas. He could not and so far as the proof goes, did not overrule his Minister on his own notion and responsibility.

As to the weekly or periodical service, Dietrich is not shown to have had anything to do with those. The evidence is undisputed that the weekly service, extracts from which are introduced in evidence, was carried on as a private enterprise and sold to periodicals, and were not submitted to or approved by Dietrich.

There was a service available to periodicals and for which of course no charge was made. But it was made up of collections of daily paroles.

Dietrich is not shown to be responsible for the particular daily directives on which the opinion relies and which were issued over a period of over 4 years. The daily paroles were, of course, secret, and had no effect so far as the public was concerned, except as they were reflected in the press. How they were reflected in the press does not appear. It is obvious, however, that expression of a mild brand of anti-Semitism would meet their demands. Many things, it will be noticed, are in the daily paroles, which do not require publication. Indeed many things are in them which, according to their terms, are not to be published.

It should be borne in mind that anti-Semitism was a part of the NSDAP program from the beginning, even before it came to power; that it characterized the propaganda line of the Ministry of Propaganda from its establishment; and that those facts do

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not square very well with the Tribunal's unsupported conclusion as to the reason for them.

These daily paroles lay down an anti-Semitic propaganda line which is far from being admirable, but they do not prove a crime against humanity.

#### SCHWERIN VON KROSIGK

The opinion which convicts Schwerin von Krosigk of crimes against humanity in count five shows on its face that he is not guilty. He is charged with participation in the levying of fines against Jews and the confiscations of Jewish property.

First of all, it should be noted that he participated in these matters only to the extent of approving the provisions of decrees which were applicable to his office. Jewish matters were not his responsibility. He was, however, Finance Minister. It was universally recognized under German law that where he cosigned a decree which originated elsewhere, such cosignature meant only approval so far as the provisions applicable to his office were concerned. Under German law he was responsible only to that extent. The opinion rejected this admitted legal proposition. I do not see how it can be separated from the intent with which he acted. And unless criminal intent is regarded as having become obsolete in this case, it should be considered.

Moreover, many of the acts such as the Jewish fines took place before the war began



and are not within our jurisdiction.

But disregarding all such considerations, the most that can be claimed is that he participated in depriving Jews of property. This cannot be a war crime because the victims were German nationals. It cannot be a crime against humanity because, merely depriving people of their property is not such a crime. There must be some mistreatment of the person as previously pointed out. Schwerin von Krosigk is not shown to have participated in any such mistreatment of the person of Jews or anybody else.

#### PUHL

The conviction of Puhl seems to me to be wholly unwarranted. The Reich Bank was organized on the Fuehrer principle. The president, who was Minister Funk, was the sole authority in the operation of the bank. There was no division of authority in the bank. Funk was supreme. He made the arrangements with Himmler to receive these articles. What Puhl did was to communicate that information to the appropriate receiving teller of the bank, at Funk's direction. There was no crime in that. He

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had no knowledge then that these articles were obtained as the result of a crime. He supposed they were legitimate booty obtained by the Waffen SS in the campaign in Poland.

This is confirmed by his statement to the receiving teller 2 weeks later that the receipts must be about over. Moreover, the opinion recognized he acted innocently at the time. But the articles continued to come in and the nature and volume of the articles were such as to raise some question about their propriety. The evidence fails to show that Puhl knew this. He had no responsibility for the matter and no reason to keep in touch with it. But assume he did know about it. There was nothing he could do. He had no more authority to cancel an arrangement made by the president, than the office boy had.

The opinion seems to lay stress on the fact that he was a vice president, and the ranking officer in the bank when the president was absent, and that the president was frequently absent. This does not change the situation. It certainly does not authorize him to cancel an arrangement made by the president, as soon as the president left the bank. Moreover, it did not authorize him to assume the responsibilities of the president. In Funk's absence, Puhl merely communicated to the departments of the bank other than his own, what President Funk desired to be done. In other words, in Funk's absence, Puhl communicated to the operating men in the bank Funk's directions. Funk was running the bank whether present or not.

But the important thing is that Puhl had no authority whatever to overrule Funk. That certainly was no part of his responsibilities. He committed no crime either by act of omission or commission.

#### CONCLUSION

The foregoing examination of convictions under this count has been only for the purpose of illustrating methods of interpreting facts and law and determining guilt with which I am unable to agree. No useful purpose would be served by examining other convictions. The same or similar defects exist, however, in my judgment as to all of the findings of guilt in this count. This does not mean that in my opinion no findings of guilt are justified. It does mean that where a finding of guilt is justified, the opinion so

exaggerates the guilt, that I cannot concur in it.

## COUNT SIX

Count six is designated as, "War Crimes and Crimes Against Humanity: Plunder and Spoliation." It charges the defendants therein named with such crimes—

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*"\* \* \* in that they participated in the plunder of public and private property, exploitation, spoliation, and other offenses against property and the civilian economies of countries and territories which came under the belligerent occupation of Germany in the course of its invasions and aggressive wars."*

My inability to adhere to the decisions reached under this count arises chiefly from a difference of view as to what constitutes spoliation and what proof is necessary to establish it. Unfortunately, the opinion does not attempt to define the crime or lay down any standards or tests with reference to it. The Hague Rules are quoted, but many of the convictions do not appear to have much connection with or relation to those rules.

Here, as elsewhere, a better understanding of the legal concept on which the convictions rest, may perhaps be had by reference to the argument made on behalf of the prosecution. It is argued in this case that any benefit to the German economy arising from the occupation, or in any way connected with it, is unlawful.

It is contended that Germany was required, under the law, to maintain herself and carry on the war with her own resources, and that if she used any of the resources of occupied countries to maintain herself or to carry on the war, a war crime was committed, regardless of the manner of acquisition. It was further contended that if German citizens bought into business enterprises in the occupied territories, and thereby obtained some control over such enterprises, and the general economy of the occupied territories, that that too was a war crime.

Agreement with this view, at least to some extent, appears to be reflected in the opinion.

Prior to the adoption of the Hague Rules of Land Warfare, a belligerent could do whatever he wished in occupied territories. The Hague Rules placed limitations on what could be done. Those rules contain certain prohibitions, a violation of which constitutes a war crime. Unless it appears that a defendant charged here violated some of these rules, there can be no proper legal basis for his conviction.

These rules provide, in Articles 46 and 47 that: \*

*"Pillage is formally forbidden,"*

and that:

*"\* \* \* private property \* \* \* must be respected."*

Pillage is generally interpreted to meant simply stealing. The indictment, in place of using that term, uses the term in the

\* Annex to Convention No. IV, 18 October 1907, War Department Technical Manual 27-251, Treaties Governing Land Warfare (United States Government Printing Office, 1944), Articles 46-47, page 31.

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heading, "Plunder and Spoliation," and then in the first [sixth] count of the indictment, it expands to:

*"\* \* \* exploitation, spoliation and other offenses against property and the civilian economies of the countries \* \* \*."*

In the argument it expands to include almost any form of contact with the economy of the occupied territory. So far as I am concerned, it seems to me that it still has to be "pillage" or some reasonable equivalent thereof, if it is to constitute a violation of Articles 46 or 47.

The opinion refers to the IMT judgment to support the proposition that there was extensive plunder and spoliation in the occupied countries. That such is the fact, may be accepted without question, but those activities were carried on by Goering through economic missions set up to work with the army and the civilian administration in the occupied territories.

What was done by that organization has little or no connection with the men charged here. Those were requisitions or forced exactions. They were contributions which the occupied territories were required or forced to make. What was said by the IMT has no bearing on whether or not these defendants are guilty of plunder and spoliation, in spite of the great reliance which the opinion and judgment in this case, seem to place on it.

Since the applicable Hague Rules are set out in the Tribunal's judgment, I shall here only refer to those which may have some direct bearing on the facts of this case.

Rule [Article] 46 provides that private property must be respected and cannot be confiscated.

Rule [Article] 47 provides that, "Pillage is formally forbidden."

Rule [Article] 52 provides:

*"Requisitions in kind and services shall not be demanded from municipalities or inhabitants except for the needs of the army of occupation. They shall be in proportion to the resources of the country, and of such a nature as not to involve the inhabitants in the obligation of taking part in military operations against their own country."*

This rule, which is frequently referred to, it will be noticed, has to do with requisitions only, and that it limits such requisitions to the needs of the army of occupation and provides that they must be in proportion to the resources of the country. Requisitions involve the taking of property without the consent of the owner, but payment of compensation. Attempts to apply these limitations to anything else than requisitions, is certainly not authorized by the Rules.

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Rule [Article] 53 provides:

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

Rule [Article] 55 provides:

*"The occupying State shall be regarded only as administrator and usufructuary of public buildings, real estate, forests, and agricultural estates belonging to the hostile State, and situated in the occupied country. It must safeguard the capital of these properties, and administer them in accordance with the rules of usufruct."*

Generally speaking, these are the rules relating to property which a belligerent occupant\* is required to observe as a part of the Rules of Land Warfare.

It will be observed that they contain no prohibition against purchases or sales of property located in the belligerent occupied territory. Indeed, it is difficult to see how private property could be respected, if the right to sell it were denied. Much private property, such as the products of factories and of farms, has value only as an article of sale or exchange. There are no prohibitions against purchases either by members of the armed forces or civilians of the occupying power in belligerently occupied territory.

Obviously, a sale represents a mutual agreement by the buyer and seller. It is a bilateral transaction. If it is not that kind of a transaction, but a taking of property by force or duress, it is not a sale but a form of requisition, even though a fair compensation is paid.

The opinion holds that the Hague Rules of Land Warfare apply to all territories occupied by Germany except Austria and the Sudetenland. The same exception, in my judgment, should be applied to Bohemia and Moravia. It was occupied by the German Army, completely subjugated and annexed to the Reich, as completely as was Austria, and there is no valid reason for making a distinction.

The IMT made the distinction on the ground that Bohemia and Moravia had not been annexed to the Reich. But this does not seem to be the fact. It had been annexed. Prosecution Exhibit 1152 (1397-PS) is a decree annexing it to the Reich. True, it is given the name of "Protectorate," and a certain apparent autonomy is given to it. But these were grants from the Reich and could be changed at the will of the Reich.

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Bohemia and Moravia no longer had any vestige of sovereignty of its own. It became Reich territory and the Reich exercised sovereignty over it as completely as over any other part of its territory. It only exercised it in a little different way. It was not belligerently occupied territory, and the Rules of Land Warfare should not be applied to it.

The situation is different with reference to all the other countries occupied by the German Government in the course of its wars which began on 1 September 1939, some months after both Austria, Bohemia, and Moravia were annexed. They did not completely subjugate and conquer any territory which they occupied as a belligerent in the course of those wars.

Even though a country may be completely occupied, as long as it has not surrendered, but, with the aid of allies, carries on the war, the issue remains undetermined, the occupation continues to be a belligerent occupation. It cannot be changed by an attempt to annex such territory or any part thereof. This was the situation as to all the countries occupied, except France.

The situation as to France seems to me to require a little different treatment, although I realize that in making the suggestion I am faced with the overwhelming weight of opinion of the Nuernberg Tribunals. It is the general rule, which the Hague Convention seems to recognize, that a general armistice, while it does not end the war, fixes the rights of the parties during the armistice period and takes priority over the rules of belligerent occupation to the extent that it enlarges the rights of the occupant.

It seems to me that whatever may have been done in France, in accordance with the armistice agreement and in cooperation with the government of France, should not, therefore, be held criminal on the ground that it violates the Hague Rules of Land Warfare. Those rules are not limitations on the right of a sovereign government to enter into agreements. The reasons given for avoiding such a conclusion—some of them inconsistent—seem entirely unsatisfactory to me.

Our problem here is to determine whether the particular defendant charged, violated these Hague Rules of Belligerent Occupation, for they contain the only rules and customs of war referred to in the definition of the crime. It is not claimed by the prosecution that there are other rules and customs of war which have become so universally practiced and accepted, as to entitle them to recognition here.

## KEPPLER

Keppler is convicted as a member of the Aufsichtsrat of DUT. The nature of this organization has been discussed in this sep-

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arate opinion in connection with count five. There is no occasion to repeat it here. It is sufficient to say that it was a corporation set up at government expense and supplied with public funds as well as large credits from banks in order to enable it to render a service to those who were forced to resettle in the Reich. To call it a "spoliation agency" is, in my judgment, entirely incorrect. Nothing quoted from the testimony of the witness Metzger changes that picture. Indeed, it appears that what the DUT did, with reference to liquidating a settler's property in the place from which he moved, was in pursuance of a power of attorney. When, then should it be called "seizure"?

The only compulsion was apparently that of circumstances over which the DUT had no control. If a settler was required to move and denied the right to take his furniture and equipment, he had to dispose of it. The DUT was there as a service organization to help him with that task. It not only looked after the liquidation of his property for him, but loaned him additional sums to become rehabilitated in his new location.

It should not be forgotten that this organization served only ethnic Germans who were coming to the Reich to become citizens. Germany was interested in winning their good will and loyalty. DUT was a means to that end. It is hardly likely that it would start out by plundering them and seizing their property. The evidence, in my judgment, fails to show that it did.

But even if in individual cases, the officer in charge did use some force, there is no evidence that such was the policy of DUT or that Keppler, as a member of the governing board, knew about it. Certainly it was not set up for that purpose. (See discussion of Keppler under count five.) Such a policy is inconsistent with its purposes. Under such circumstances, something more would have to be shown to convict Keppler of crime. It would have to appear that he knew and approved of such illegal tactics.

The opinion also indicates that the DUT is criminal because other agencies of government committed crimes. I cannot follow this reasoning. Once it is embarked upon, there is no limit to it. It could as well be said that Darré, for example, is guilty of murder of numerous people in the occupied portion of Russia, because, as Minister of Food, he had charge of the Food Estate and supplied the food that maintained the Einsatzgruppen in that territory; that it was all a part of one operation and the feeding of the troops an essential part, without which the murders could not have been committed. This may seem fanciful, and indeed it is, but it is the same principle on which Keppler is held to have committed the crime of spoliation, insofar as the opinion rests on the proposition that DUT is criminal because some other

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agency of government was guilty in bringing people to the Reich, or expelling people from it.

Indeed the Food Estate was far more essential to the operations of the Einsatzgruppen than DUT was to Germanization. People could be moved around and brought into the Reich without any welfare organization like DUT to look after them, and try to mitigate the hardships of their resettlement, but the Einsatzgruppen could

not operate at all without the Food Estate.

The conviction of Keppler for being a member of a governing board of a welfare organization is, in my opinion, wholly unjustified.

#### LAMMERS

I am unable to understand the basis for the conviction of Lammers. He exercised no authority in the occupied territories, and fixed no policy to be pursued there. So far as I can determine, his conviction rests on his personal stature and his knowledge of what others may have been doing, or proposed to do, and the fact that he formulated Hitler decrees.

It seems to be important at the outset to clarify Lammers' position in the government, and the responsibilities of that position.

The Chancellery is a purely service organization which was set up to perform the various detailed tasks connected with the office of the Chancellor. It is a secretariat. It is the Chancellor's office. It serves him much as the less elaborate organization under a secretary serves the President of the United States.

It gathers information and reports for the Chancellor, makes investigations for him, and in general furnishes facilities to keep him advised as to functioning of various governmental departments. It is the contact between the Chancellor and the various ministries. All decisions, directives and other communications of the Chancellor are properly channeled through the Chancellery. All approaches to the Chancellor are made through the Chancellery. In short, it serves as a secretarial office for the Chancellor, in the civilian sector of government. It apparently has nothing to do with the armed services.

It prepares such documents for the Chancellor as he may require.

It makes no decisions with reference to government policy. It is not an executive agency, and therefore, not engaged in enforcing any policies. Decisions which come out of the Chancellery are the decisions of the Chancellor. Hitler was the Chancellor.

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Among the tasks performed by the Chancellery was the preparation of decrees which have the effect of laws. Lammers as the head of the Chancellery was particularly well qualified for this task. He was an expert in the field of constitutional and administrative law, and a skilled technician in the drafting of laws. But he acted only as a technician in the formulation of laws and decrees. The substance of the laws and decrees was supplied by others. Hitler, in the case of Fuehrer decrees, and the Cabinet members in the case of Cabinet decrees.

He is held responsible for having drafted Hitler's decrees. It is undisputed that in all such cases, Hitler, as Chancellor, gave directions as to the substance and content of such decrees, and what Lammers did was to formulate them as a technician, for Hitler's signature.

It was the practice for Lammers to cosign Hitler decrees prepared by him. It is not contended by anyone that his signature was necessary to the validity of such decrees. Hitler's power to enact decrees was not dependent upon Lammers joining him. Lammers signature was a certifying signature. It had significance only as between Lammers and Hitler. By it, he certified that he had followed Hitler's instructions as to consultations with others, and ascertained what, if any, objections existed before preparing the decree, and that he would properly distribute or publish the decree after its execution.

The position of head of the Chancellery ordinarily carried the title of State Secretary, and that was Lammers' title in the beginning.

Hitler gave him the title of "Minister," but that did not alter his functions. As a minister he had no ministry. It entitled him to attend Cabinet meetings, but after his appointment, few, if any, were held. He was also given the title of "Chief of the Chancellery," but that only affected his relations with the people working in the Chancellery. It did not enlarge his jurisdiction otherwise.

In my judgment, he cannot properly be held guilty of a crime on the basis of his having prepared and signed with Hitler, Fuehrer decrees. His relationship to those decrees, and responsibility for them, was not substantially different in principle than that of the stenographer who typed them. They were not his decrees, they were Hitler's, and he could not be said to have had a criminal intent in preparing them, even in cases where they required for their execution, the commission of a crime.

In this connection, attention is again called to the holding of Tribunal No. V, Case 7. In that case the chief of staff to a commander, was directed by the commander to issue and distribute

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an order for the shooting of hostages at the ratio of 50 to 1, for every member of the armed forces killed by the people of an occupied territory. He prepared the order, signed it himself with his own name, and distributed it to the army. He was held not to be criminally liable. It was not his order, it was the commander's, and it was held that in what he did, no criminal intent existed. It appears that a chief of staff holds a far more responsible position with reference to his commander than Lammers held toward Hitler.

For example, a chief of staff is an adviser to the commander. Lammers was not an adviser to Hitler. A chief of staff is a deputy to the commander, and in the absence of the commander, he is in command. Lammers was not a deputy to Hitler, and did not exercise any of his functions during his absence. If a chief of staff is not to be held liable under the circumstances cited, then *a fortiori*, Lammers cannot be held liable for having formulated Hitler decrees. Moreover, the order signed by the chief of staff required the commission of a crime for its execution. The decrees signed by Lammers did not.

The opinion lays stress on his educational qualifications and his learning in the field of constitutional and administrative law. But that is not a crime. Indeed, it may be due to that fact, and his complete appreciation of the limitations on his position, which kept him out of the policy-making and policy-executing field. It is significant that while nearly everybody else in the Reich government was quarreling over their various competencies and reaching out for power, Lammers never became involved in this. He stayed strictly in his own field.

An effort is made in the opinion to show he had "a certain influence." But all that appears is from his own testimony, and that shows that he influenced decrees at times so far as they related to administrative machinery, that is, he would suggest using an existing organization to carry out the function, rather than create a new one. He also testified that he used that influence to modify Hitler's tendency to depart from the decencies. How that can prove that he had any influence or tried to exercise any influence to induce Hitler to commit spoliation, I am unable to see.

The opinion states that Lammers cooperated with the program of spoliation. What is meant by such a statement is not clear. People on a highway who hastily vacate the

road to make way for a speeding bandit on his way to rob a bank are cooperating with the bandit, but one would hardly say they were guilty of robbing the bank.

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Lammers' cooperation must be judged by the things he did, as cited in the opinion. The things he did on which stress is laid are significant. He formulated a decree at Hitler's direction to appoint Seyss-Inquart Commissioner in Holland, and made him subject to Goering's order. This is the sort of thing which, under the name of cooperation, makes Lammers guilty of spoliation according to the opinion. In my judgment it proves nothing.

His distribution of reports and forwarding of reports and other documents, as a part of the work of the Chancellery, seems to be regarded as cooperation also. But it proves only his knowledge that spoliation activities were taking place, if it can be assumed he read all of the reports and documents which passed through his Chancellery. In my view, that does not constitute a crime.

For Lammers, or any other defendant, to be held guilty, it should appear, beyond a reasonable doubt, that he committed some act having a causal connection with spoliation, and did it with the intention of committing spoliation or having it committed. There is no such showing in this record, in my judgment.

What is said here with reference to the responsibility of one who, as a technician, and as a part of his regular work, prepares decrees, at the direction of others who prescribe the content, is equally applicable to the consideration of Lammers' guilt under count five, and to the defendant Stuckart in both counts five and six, to the extent that his guilt is based on the fact that he prepared such decrees.

#### RASCHE

Rasche was a member of the Vorstand of the Dresdner Bank and active in its affairs. The Dresdner Bank was the second largest commercial bank in Germany. It had many branch banks in Germany and owned many affiliates in other European countries. In Germany much of the financing of industry is done by banks, and Rasche had many contacts in the world of business and industry. In addition he maintained good relations with the government, and especially with the Ministry of Economics.

It has already been indicated that in my judgment there could be no spoliation as a war crime in Bohemia and Moravia because they were a part of the Reich and not belligerently occupied territory.

Rasche's activities there will not, therefore, be considered in detail. He made many purchases, but the evidence that they lacked the character of bilateral transactions, and were not arrived at by the ordinary process of negotiation between seller and buyer, and did not represent the free choice of both parties to the trans-

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action, is far from convincing. Indeed, it does not seem to be the chief reliance for conviction. The offense seems to consist in acquiring these properties regardless of how real and fair the purchase, because to do so was an offense against the economy of Bohemia and Moravia, and led to control or domination of the economy of the territory. This will be more clearly shown in what follows.

Rasche is convicted for his activities in Holland. He neither bought nor sold property



there. The Dresdner Bank owned at least a controlling interest in a bank in Amsterdam known as the Handelstrust West. It was a Holland banking corporation, with its own staff of officers. It maintained a securities department, which handled securities on a commission basis. Its service was to bring seller and buyer together. Through this department, many properties and securities of enterprises in Holland were sold to German capitalists or industrialists. There is no evidence that it exercised any force or duress to complete these transactions.

Indeed the indictment [paragraph 54] does not charge that these transactions were accomplished by any force. It charges:

"The defendant Rasche directed and supervised activities of the Dresdner Bank and its affiliates in occupied western areas involving economic exploitation, including particularly activities involving transfer of control of Dutch enterprises to selected German firms through the process called 'Verflechtung,' which was an 'interlacing' of Dutch and German capital and economic interests."

It will be observed that the offense charged here is the mere "transfer of control" of Dutch enterprises to German owners; it assumes they are voluntary. It charges that, in spite of that fact, it is a crime. It is doubtful whether the evidence shows the sales arranged by Handelstrust West involved control.

But assume that they did. And I think it may be assumed also that the purpose in many instances was to secure control of enterprises in order to insure that they would produce for the German economy and war effort, and that high prices were offered and paid for enterprises with that object in view. But if this were a crime who would be guilty of it? Possibly the parties to the transaction, and even the broker who arranged the transaction. But how about the stockholder in the bank which acted as broker? But Rasche was only an officer of a bank which held stock in the bank which acted as broker. But were these transactions crimes? There is no article in the Hague Rules of Land Warfare which prohibits them. Under such circumstances I do not see how it can be said that they violate the rules and customs of war.

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It is not likely that any useful purpose will be served by discussing other individual convictions. If it is obvious that some acts of actual spoliation were committed, such as Pleiger's taking over the deWendel plant in France, and Stuckart's taking the records of an International Society from Amsterdam to Berlin, but these are so joined with other alleged acts of spoliation which go under the name of "participating" in a program, or "cooperating" with a program that the guilt of any defendant convicted is exaggerated, and, therefore, I am unable to concur in the opinion as to any defendant convicted under this count.

To illustrate further what results from convictions based on "participation" consider the letter which Schwerin von Krosigk wrote to Goering and others concerning the activities of the agencies addressed, in the eastern territories. The letter starts out by saying the Reich expected to gain financially from the occupation of these territories, and points out that certain vital materials can be obtained more cheaply from such territories. But the letter goes on to complain about the administration of the territories and the large sums being paid to German nationals for services rendered in the territory, and that was the obvious purpose of the letter. This is said to prove participation, and is strongly emphasized in the opinion. I am unable to see that it proves anything, except that Schwerin von Krosigk, as Finance Minister, was

concerned about the waste of public money in an extravagant and wasteful administration of the territories.

To say that the letter constitutes participation in spoliation it must be assumed that the statement in the letter, that the Reich expects financial gain from the occupied territories, is a recognition of the fact that spoliation is occurring, and that his failure to protest or resign constitutes consent to it, and that such consent constitutes participation. I cannot concur either in the premises or the conclusion. The opinion contains many similar illustrations.

Acts of this character, which do not cause any pillage or plunder, and are not intended to do so, fall far short of proving spoliation.

#### CONCLUSION

I have attempted by explanation and illustration to show why I am unable to concur in the convictions under counts one, three, five, and six.

Except as may have been heretofore otherwise expressed herein, I raise no questions and express no dissenting views as to the decision of the Tribunal concerning counts two, four, seven, and eight.

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### **XVII. ORDERS OF THE TRIBUNAL PERMITTING THE FILING OF MEMORANDA CONCERNING ALLEGED ERRORS**

#### A. INTRODUCTION

On 6 April 1949, shortly before the Tribunal rendered its decision and judgment, the Tribunal on its own motion issued an "Order Permitting the Filing of Memoranda Concerning Alleged Errors" that may be found in its judgment. The order permitted "any defendant whose interests are affected" to file within 15 days after decision and judgment "a memorandum calling to the attention of the Tribunal any matters of fact or law which it is believed are in error, together with citations to the record as to the facts, and authorities as to the law which are relied upon in support thereof." On 14 April 1949, the day on which sentences were pronounced, the Tribunal issued a further order with an identical title which extended the time for filing such memoranda from 15 to 25 days. These two orders are reproduced in sections B and C respectively.

#### **B. TRIBUNAL ORDER PERMITTING THE FILING OF MEMORANDA CONCERNING ALLEGED ERRORS: 6. APRIL 1949**

##### **ORDER PERMITTING THE FILING OF MEMORANDA CONCERNING ALLEGED ERRORS**

The Tribunal takes note of the fact that there is at present only one Military Tribunal constituted in the American Zone of Occupation pursuant to Control Council Law No. 10 and Military Government Ordinance No. 7. Accordingly, the provisions of Article V (6) of Ordinance No. 7, as amended by Ordinance No. 11,\* will not be applicable when this Tribunal renders judgment, inasmuch as Article V (6) applies only in circumstances where more than one Military Tribunal is in existence. No motion for a joint session of Tribunals will be accepted or considered.

The Tribunal also takes note of the fact that the record of this case is unusually long and presents a multiplicity of issues, legal and factual, and that an opportunity should

be afforded, by some appropriate procedure, to draw the attention of the Court to any errors that may be found in its judgment.

IT IS, THEREFORE, ORDERED BY THE TRIBUNAL:

*"That any defendant whose interests are affected, may,*

\* Military Government Ordinances Nos. 7 and 11 are reprinted in full in the introductory parts of volume XII, which is the first volume in this series dealing with the Ministries case.

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*within 15 days following the rendition of the decision and judgment of the Tribunal, file with the Secretary General a memorandum calling to the attention of the Tribunal any matters of fact or law which it is believed are in error, together with citations to the record as to the facts, and authorities as to the law which are relied upon in support thereof. The memorandum shall specifically refer to the place in the opinion and judgment where it is alleged there is error. Memorandum so filed will be brought to the attention of the Tribunal forthwith for such action as it may deem appropriate to correct such errors. All parties will be notified by the Secretary General of the action taken by the Tribunal with respect thereto. Nothing herein shall be construed to modify the requirement of Regulation Number 1, issued under Ordinance No. 7 as amended by Ordinance No. 11, that petitions for clemency to the Military Governor must be filed within 15 days of the imposition of sentence in open court. No motions to extend the time within which to file such memorandum or to extend the time for which to file petitions for clemency will be considered by the Tribunal."*

Nuernberg, Germany  
6 April 1949

[Signed] William C. Christianson  
WILLIAM C. CHRISTIANSON  
Presiding Judge  
Tribunal No. IV

C. TRIBUNAL ORDER PERMITTING THE FILING OF MEMORANDA  
CONCERNING ALLEGED ERRORS, 14 APRIL 1949, WITH MEMORANDUM  
ORDER PERMITTING THE FILING OF MEMORANDA CONCERNING ALLEGED  
ERRORS

The Tribunal takes note of the fact that there is at present only one Military Tribunal constituted in the American Zone of Occupation pursuant to Control Council Law No. 10 and Military Government Ordinance No. 7. Accordingly, the provisions of Article V (b) of Ordinance No. 7, as amended by Ordinance No. 11, will not be applicable when this Tribunal renders judgment, inasmuch as Article V (b) applies only in circumstances where more than one Military Tribunal is in existence. No motion for a joint session of Tribunals will be accepted or considered.

The Tribunal also takes note of the fact that the record of this case is unusually long and presents a multiplicity of issues, legal

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