

MILITARY TRIBUNAL III

CASE NO. 10

THE UNITED STATES OF AMERICA

- against -

ALFRIED KRUPP VON BOHLEN UND HALENACH

et al.

FILED 5 April 48 with
Secretary General
for Military Tribunals
Defense Center

Answer to Motion of the Defense to Delete Count Four of the
Indictment.

The following answer is made to the motion of the Defense of 15 March 1948 "to delete Count Four of the Indictment because the common plan or conspiracy in regard to War Crimes and Crimes against Humanity can be no separate crime".

The motion of the Defense is based upon a number of misconceptions which become clearly apparent upon an examination of the Indictment and upon a consideration of the written statement submitted by Dr. Schilf in support of the motion.

Count Four of the Indictment provides as follows:

"64. All of the defendants, with diverse other persons, during a period of years preceding 8 May 1945, participated as leaders, organizers, instigators and accomplices in the formulation and execution of a common plan and conspiracy to commit, and which involved the commission of, Crimes against Peace (including the acts constituting War Crimes and Crimes against Humanity, which were committed as an integral part of such Crimes against Peace) as defined in Control Council Law No. 10, and are individually responsible for their own acts and for all acts committed by any persons in the execution of such common plan or conspiracy.

"65. The acts and conduct of the defendants set forth in Counts One, Two, and Three of this Indictment formed a part of said common plan or conspiracy and all the allegations made in said Counts are incorporated in this Count."

As is clear from Dr. Schilf's written statement, the motion of the Defense is based upon an assumption that Count Four charges as a separate substantive crime a conspiracy to commit War Crimes and Crimes against Humanity. This is a misconception of Count Four. The common plan and

conspiracy here charged is a common plan and conspiracy to commit, and which involved the commission of, Crimes against Peace. The additional words "including the acts constituting War Crimes and Crimes against Humanity, which were committed as an integral part of such Crimes against Peace" do not change the character of the conspiracy charged or constitute a charge of a conspiracy to commit War Crimes and Crimes against Humanity. Nor do the allegations contained in Count Four under paragraph 65 constitute any such charge. It is there charged that the acts and conduct of the defendants set forth in Counts Two and Three, relating to War Crimes and Crimes against Humanity, formed a part of the common plan and conspiracy to commit Crimes against Peace. This is but another way of saying that the acts and conduct of the defendants set forth in said Counts were in fact committed as an integral part of the Crimes against Peace.^{1/}

The definition of Crimes against Peace is not limited to planning, preparation or initiation of wars of aggression and invasion of other countries, but includes also waging a war of aggression and invasion. Although the matters charged in Counts Two and Three, relating to spoliation and slave labor, are recognized in Article II of the Control Council Law as being distinct crimes - namely War Crimes and Crimes against Humanity - they also constitute Crimes against Peace, in our judgment, to the extent that spoliation and slave labor are a part of the preparation for or the waging of war. Consequently, any acts charged in Counts Two and Three, which are an integral part of the preparation for or waging of aggression and invasion of other countries, are also Crimes against Peace independent of the fact that they are also War Crimes and Crimes against Humanity. This is set forth in Count One of the Indictment, where at paragraph 29 the acts set forth in Counts Two and Three of the Indictment are incorporated in Count One, thus bringing them within the charges dealing with the commission of

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^{1/} Since the legal sufficiency of Count Four has been raised by a motion to dismiss, a decision on the motion must be based upon the assumption that all the facts alleged therein are true.

Crimes against Peace.

The position of the Prosecution is not inconsistent with the judgment of the International Military Tribunal nor the judgments of other Nurnberg tribunals. Count One of the Indictment before the International Military Tribunal charged "not only the conspiracy to commit aggressive war, but also to commit War Crimes and Crimes against Humanity." The Tribunal found that the Charter did "not define as a separate crime any conspiracy except one to commit acts of aggressive war" and stated that it would "therefore disregard the charges in Count One that the defendants conspired to commit War Crimes and Crimes against Humanity".^{1/} There is a clearcut distinction, however, between the conspiracy charge involved in the Indictment before the International Military Tribunal and the conspiracy charge here involved. In the Indictment in this case, no conspiracy is charged except the conspiracy dealing with Crimes against Peace. Nothing in the judgment of the International Military Tribunal conflicts with the view that in regard to such conspiracy acts constituting War Crimes and Crimes against Humanity are properly included if such acts were committed as an integral part of the Crimes against Peace.

The judgments of other Nurnberg tribunals which are referred to in Dr. Schilf's written statement deal exclusively with charges of conspiracies to commit War Crimes and Crimes against Humanity. The Indictments in those cases contained no charge that Crimes against Peace were committed, much less any charge of a conspiracy to commit Crimes against Peace.

Similar motions to the motion of the Defense here under consideration are pending before Military Tribunals IV (Ministriss Case) and VI (Farben Case).

^{1/} Vol. I, Judgment of the IMT, Trial of the Major War Criminals, p.226.

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5 April 1948

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