

MILITARY TRIBUNAL NO. III.

CASE NO. 10.

THE UNITED STATES OF AMERICA

- against -

ALFRIED KRUPP, et al.

ANSWER TO MOTION FOR RECONSIDERATION OF APPLICATION FOR
REPRESENTATION BY AMERICAN COUNSEL OF ALFRIED KRUPP VON
BOHLEN UND HALBACH OR SUBSTITUTION OF ATTORNEYS.

In answer to the aforesaid motion of Alfried Krupp von Bohlen und Halbach, the United States of America states as follows:

1. The motion on behalf of Alfried Krupp is to be determined in the light of Article IV, Paragraph 6) of Ordinance No. 7, which provides that:

- "c) A defendant shall have the right to be represented by counsel of his own selection, provided such counsel shall be a person qualified under existing regulations to conduct cases before the courts of defendant's country, or any other person who may be specially authorized by the Tribunal. The Tribunal shall appoint qualified counsel to represent a defendant who is not represented by counsel of his own selection."

It is apparent that this provision was drawn in harmony with the juridical nature and purpose of Control Council Law No. 10 and of Ordinance No. 7. The Tribunals established under Law No. 10 are, as explained more fully below, international in character, and the subject matter of the proceedings before such Tribunals is, for the most part, facts and circumstances pertaining to Germany. It was therefore apparent that, in ordinary circumstances, German counsel are best qualified to act as defense counsel before the Military Tribunals. However, to cover any special or unusual circumstances, it is provided that other counsel may be specially authorized by the Tribunals. Accordingly, the next step is to examine the grounds on which this special authorization has been requested by the defendant Alfried Krupp.

2. It appears that the grounds urged in support of the motion are based, in large part, upon a misconception as to the legal status and jurisdiction of this Tribunal. The characterization of this Tribunal in

the motion as a Tribunal of the United States of America and the reference in the motion to provisions of the United States Code, to the Fifth and Sixth Amendments to the United States Constitution, and to various decisions of the United States courts, are all indicative of this misconception. This Tribunal is not a part of the judicial system of the United States, but rather is an international court and a court of occupied Germany, deriving its jurisdiction from the legislation of the supreme quadripartite governing body of the occupied country.

As stated by Military Tribunal III in Case No.3, the "Tribunals authorized by Ordinance 7 are dependant upon the substantive jurisdictional provisions of Control Council Law No.10 and are thus based upon international authority and retain international characteristics".^{1/} The Tribunal also noted various provisions of Ordinance No.7 which further disclose the international character of the Military Tribunals.^{2/} Thus, it is provided that the United States Military Governor may agree with other zone commanders for a joint trial (Ordinance No.7, Article 2(c)). The Chief of Counsel for War Crimes, United States, may invite others of the United Nations to participate in the prosecution (Ordinance No.7, Article 3(b)). Various determinations of the International Military Tribunal in the judgments in case No.1 are binding on the Tribunals established under Ordinance No.7 and shall not be questioned except insofar as the participation therein or knowledge thereof by any particular person may be concerned; and statements of the International Military Tribunal in the judgment in Case No.1 constitute proof of the facts stated, in the absence of substantial new evidence to the contrary (Ordinance No.7, Article X). The sentences authorized by Ordinance No.7 are made definite only by reference to those provided for by Control Council Law No.10 (Ordinance No.7, Article 16). The dissenting opinion of Judge Blair in Case No.3 is in full agreement with the majority opinion with respect to the international character and jurisdiction of the Military Tribunals. After reference to the provisions of Control Council

1/ Tr. p. 10612

2/ Tr. pp. 10612-13

Law No.10 and Ordinance No.7, Judge Blair stated,^{1/} "As so created and established this and other similar Military Tribunals are international in character and jurisdiction". Furthermore, since Control Council Law No.10 is "the product of legislative action by an international authority, it follows of necessity that there is no national constitution of any one State which could be invoked to invalidate the substantive provisions of such international legislation."^{2/}

3. Not only are the grounds urged in support of the motion based upon erroneous legal concepts; they are also obviously insufficient to constitute the basis for a special authorization under paragraph (e) of Article IV of Ordinance No.7. The grounds specified are in no respect special or peculiar to the defendant Alfried Krupp. Indeed, on the contrary, they are grounds which, if correct, would apply equally to every defendant in every case before all the Military Tribunals. If the application were to be granted upon the grounds presented in the motion - all of which are general rather than special grounds pertaining to this defendant - it would follow that no defendant in any case before these Military Tribunals could present a proper defense unless represented by American as well as German counsel. That this assumption is erroneous in law has been set forth above; it is also worth noting that 135 or more defendants, prior to the defendant Alfried Krupp, have been on trial, effectively represented by German defense counsel, and that this motion is the first indication that any defendant or any defense counsel has felt that representation by non-German defense counsel is essential. No showing whatsoever has been made in the application why the defendant Alfried Krupp's situation is any different from that of any other defendants before any of the Military Tribunals, and such a special showing is clearly a prerequisite to the granting of the application under Paragraph (e) of Article IV of Ordinance No.7.

^{1/} Tr. p. 109330

^{2/} Judgment, Military Tribunal III, Case No. III, Tr. p. 10621

4. There are various factors which, in our view, should be taken into consideration by the Tribunal in the exercise of its sound discretion in this matter:

a. Subsection (b) of Rule 7 of the Uniform Rules of Procedure of the Military Tribunals, as revised, provides that:

"Application for particular counsel shall be filed with the Secretary General, promptly after service of the indictment upon the defendant."

The present application was made 112 days after the service of the indictment upon the defendant Alfried Krupp on 18 August 1947. For many months prior to the service of the indictment, counsel for the Krupp family and firm was active in preparation of defenses for Krupp officials who might be indicted and as early as June or July 1946 the defendant Alfried Krupp was granted permission to discuss appointment of counsel with his brother. When Dr. Kranzbuehler made application on 25 August 1947 to represent the defendant Alfried Krupp, he gave no notice that such application might be for a temporary period or that in the view of the defendant, adequate defense required representation by any other counsel. Indeed, such notice as to the views of defendant was given for the first time at the opening of the trial of this case. In this connection it is interesting to observe that, according to the information of the prosecution, Dr. Kranzbuehler is to participate as defense counsel in the trial of directors of the firm of ~~ROSCHELINE~~ on charges of crimes specified in Control Council Law No.10 brought by the General Tribunal of Military Government for the French Zone of Occupation in Germany, which proceedings, we understand, are to commence about 15 January 1947.

b. The application for American counsel and the motion for reconsideration of that application contain no showing that the counsel requested is specially qualified to represent defendant Krupp against charges that he committed crimes specified in Control Council Law No.10 or that he is better able to represent the defendant than the attorney he has already selected. The crimes specified in Control Council Law No.10

have their basis in international conventions and other sources of customary international law, and particularly in the Charter annexed to the London Agreement of 8 August 1945, as interpreted and applied by the International Military Tribunal. Furthermore, Ordinance No. 7 expressly provides that the Military Tribunals shall not be bound by technical rules of evidence and under the combined Continental and Anglo-American procedures of these Tribunals no detailed knowledge of American rules of evidence is necessary. As noted by this Tribunal in the denial of the application on 9 December 1947, Dr. Kranzschuler, who upon application was appointed counsel for defendant Alfred Krupp by order entered on 25 August 1947, has had experience in the I.M.T. trial and other experience in the Nurnberg trials which make him eminently qualified to represent the defendant in question. Furthermore, neither in the trial before the International Military Tribunal nor in the various trials before the Military Tribunals in Nurnberg has it been deemed necessary to have American counsel assigned in order to assure a fair and just trial.

c. Engaging in a business or profession in the European Theater is limited by directives of the United States Forces, European Theater, and particularly by USFET Circular No. 1140, dated 26 September 1946. Paragraph 4(d) of this circular expressly provides that no individual may engage in any profession in any capacity in the U.S. occupied territories of Germany, whether or not for profit, gain or other advantage, except as provided in Paragraph 4(c). The exceptions contained in said Paragraph 4(c) are in no wise here relevant. By subsequent directive of 14 March 1947, it was provided that "upon specific request of the accused, submitted through channels, requested counsel, upon proper clearance, may be permitted to enter the U.S. Occupied Zone of Germany for the purpose of appearing" as special defense counsel before a court-martial. The directive further provided that "no civilian will appear as special defense counsel, or otherwise, before any court-martial held in this theater, without the written authority of this headquarters for appearance in the specific case". Copies of pertinent

parts of USFET Circular No. 140 and the subsequent directive of 14 March 1947 are attached to this Answer.

d. Earl J. Carroll, the American attorney requested by defendant Alfred Krupp as counsel, was granted an Entry Permit into the United States Zone of Occupied Germany in connection with certain court-martial cases. However, it appears affirmatively that he has not otherwise been granted a right to engage in the practice of law in the Occupied Zone of Germany. Indeed, according to information reaching the Headquarters, European Command, Mr. Carroll engaged in activities going beyond the conditions of his Entry Permit and which constituted also engaging in a profession in violation of USFET Circular No. 140. On this account, he would have been called upon to show cause why his Entry Permit should not be cancelled and his expulsion from Germany directed, except that his "withdrawal might have been inconsistent with the efficient administration of military justice and prejudicial to the right of those accused whom (he had) been permitted to defend". Furthermore, Mr. Carroll has been expressly directed by General Lucius D. Clay, as Commander-in-Chief and Military Governor, "in all respects", other than in specified court martial cases, "to refrain from acting as attorney or counsel for any person in the United States Zone of Occupied Germany"; and has been explicitly informed that upon completion of the cases in which he is permitted to appear, his authority to appear in Germany will terminate; and also that any violation of the conditions stated will be cause for immediate termination of his Entry Permit. The aforesaid information appears in a letter from General Clay to Mr. Carroll, dated 30 April 1947, a copy of which is attached to this answer. Attention is also invited to the fact that a copy of this letter was sent by command of General Clay to "All Commanders Exercising Court-Martial Jurisdiction" for their information, with the covering communication stating, in pertinent part, as follows:

"It has come to the attention of this headquarters that Mr. Carroll has contracted or negotiated with reference to the defense of several other accused within this command. In connection therewith, you are directed to permit Mr. Carroll's appearance only in those cases in which he has already appeared at the arraignment."

A copy of this covering communication is also attached to this Answer.

e. According to information received by the prosecution, Mr. Carroll is still engaged as a defense counsel in two court martial cases, one of which probably will be completed this week and the other, which is not yet in trial, should be completed by the end of this month. The prosecution is further informed, however, that on 16 December 1947, Mr. Carroll had his Entry Permit extended to 30 April 1948 for the purpose of completing work upon such court-martial cases.

f. Even if the counsel now requested by defendant Alfried Krupp was found to be otherwise qualified for appointment by special authorization of the Tribunal and the circumstances otherwise justified the granting of such special authorization, the circumstances presented here would appear to suggest the desirability of a full disclosure of all facts pertaining to the arrangements, including financial arrangements, between the defendant and Mr. Carroll. It would be most unfortunate and would prejudice the reputation of these trials for fairness and impartiality, if a special exception without adequate legal grounds were made in favor of the defendant Alfried Krupp, who has been the owner of enormous financial resources. The suggested procedure would also appear advisable in view of the regulations in effect pertaining to engaging in the practice of professions in the United States Occupied Zone of Germany and the regulations pertaining to the freezing and blocking of funds of German nationals. Such a procedure moreover is entirely in keeping with the inherent right of a court to protect itself and its proceedings.

For: THOMAS TAYLOR
Brigadier General, USA
Chief of Counsel for War Crimes

By: *Rawlings Hagland*
RAWLINGS HAGLAND
Deputy Chief of Counsel

H. Russell Thayer
H. RUSSELL THAYER
Chief, Trial Team III.

17 December 1947.
Nuremberg, Germany.