

A p p e n d i x 1

to the brief by Dr. W. Siemers of 26 April 1948.

in CASE X.

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Excerpts from the Plea by Dr. W. Siemers for Bernhard Weiss in the
Flick Case (CASE V).

Page 132/35:

1. The Prosecution has again and again overlooked Article 43 of the Hague Land Warfare Convention. That article provides that the occupying party should take all necessary measures within its power to "restore and maintain public order and public life." This working must be interpreted in its proper sense and in accordance with the economic conditions. This entails, however, that economic life in an occupied territory is maintained. This entails further that in spite of exigencies of war and in spite of the justified interests of the victor, the operations of the industrial plants of the occupied territory must be carried on so that the population of the occupied territory may participate in the fruits of such operations, and so that the population itself may be provided with work and bread. There is no doubt that this article 43 frequently overlaps other articles of the Hague Convention of Land Warfare; a fact simply due to the Hague Convention on Land Warfare having been created in 1907 and is this not able of taking the present economic conditions fully into consideration. In case of such overlappings therefore, the only thing to do is to seek a reasonable way out which corresponds to the spirit. This way out, however,

does not consist in interpreting the Hague Rules of Land Warfare in an exaggeratedly formal and narrow manner, and then to bring pharisaical charges against capitalism in the occupied country.

It is regrettable enough that the National-Socialist Government disregarded the fundamental principle of human right. But one must never forget that the Government deceived our people in the same way as they deceived the foreign countries. One must never forget that the many documents which the Prosecution has offered as representing the National-Socialist program were just as unknown to industry as they were unknown in foreign countries. Private industry saw what was made public to the outside world and could not know that the so-called sovereigns pursued different ideas.

In this respect I may refer to a significant example:

We all now know the inhuman ideas that Hitler had, which he realized particularly in the East, and we now learned from the documents submitted by the Prosecution the program according to which the Eastern Territories were to be exploited. But how differently it sounds in the official declaration which was issued by Hitler on this subject. I refer to Hitler's Decree on the administration of the newly occupied Eastern Territories of 17 July 1941 and I quote the preamble:

"In order to reestablish and to maintain public order and public life in the newly occupied Eastern territories, I decree...."

But that is literally Paragraph 43 of the Hague Land Warfare Convention.

With that I come to the last point of International Law which plays a part in this trial:

I have shown in my document books how heterogeneously International Law has been interpreted and what an insecure basis International Law gives. For the "Prisoner of War" theme I produced three documents, and those were in connection with the exposition of Paragraph 31 of the Geneva Convention: Oppenheim's opinion, Rasmussen's opinion, and the various opinions which are expressed in the minutes of the meetings of the second Commission of 20 June 1929.

It suffices here that Oppenheim, with respect to Paragraph 31, expressly refers to the "certain ambiguity of the prohibitions", and the language of the minutes in the debate whether prisoners of war may be employed in building fortifications and trenches is unmistakeable insofar as the President of the Commission interrupts the debate and declares that it is necessary "to allow a certain elasticity" and puts it on the vote in order to put nothing in the way of an agreement being reached.

Things are similar in all the other spheres of International Law, be it conscription in occupied territories or be it the use of the economic capacity in occupied territories or the dismantling process. This uncertainty could be clearly seen in Germany at the end of the war and after the collapse. The point of view is taken that the Hague Land Warfare Convention will not be applied in Germany because Germany capitulated unconditionally, or because there is no longer a sovereign government, or for the reasons suggested by General Clay that Germany herself has violated the Hague Land Warfare Convention in too many respects.

All these reasons are incorrect, and simply because they are not contained in the Hague Rules for Land Warfare. The Hague Land Warfare Convention speaks only of occupied territory and according to the Hague Land Warfare Convention every occupied territory is to be treated according to its regulations, no matter how it has come to be occupied. That the Allies also originally took this point of view is shown quite clearly in the directives of the U.S. Chiefs of Staff for General Dwight D. Eisenhower, which were issued in April 1945. It says there:

"Germany is not occupied for the purpose of liberation, but as a conquered enemy state. Your aim is not the oppression but the occupation of Germany in order to achieve certain aims."

From that it is seen quite clearly that the Allies considered Germany an occupied territory in the sense of the Hague Land Warfare Convention, and consequently the Hague Land Warfare Convention is to be applied.

In the same directive it says that it is intended that "No steps shall be taken in the direction of reestablishing Germany economically nor any which could aim at the maintaining or strengthening of German economy."

With this additional sentence the basic concept of the Hague Land Warfare Convention is abolished; for this statement is in contradiction to Paragraph 43 of the Hague Land Warfare Convention, which was dealt with at the beginning. This defective has been in force for two years. It now no longer applies. That is, an alteration has again appeared in the interpretation. The uncertainty can scarcely be proven more clearly.

It is exactly the same with Proclamation No. 2 of Control Council of 29 October 1945. Although Germany is an occupied territory, it is stated there that "The German authorities must carry out or procure the surrender or transfer of all property, all estates, rights, claims or interests..."

and moreover, it states:

"labor forces, specialized and other services are to be made available for use inside and outside Germany, as ordered by the Allied representatives."

These provisions are obviously inconsistent with the articles of the Hague Land Warfare Convention discussed in this trial.

The debate within the Control Council between the Soviet Union and the British Government agencies in the fall of 1946 showed the same thing.

The same uncertainty follows from the individual measures taken in Germany. The dismantling list set for reparation purpose is inadmissible according to the Hague Land Warfare Convention. It is inconsistent with the principle very frequently stressed during this trial that the victor must not do anything final before the conclusion of a peace treaty.

In the documentary evidence submitted by me, I have given some examples which show how much dismantling methods vary in occupied Germany. I refer to the case of the comb factory Kolibri²⁴⁵). In this case I have produced exact documentary evidence to the effect that the owner of a comb factory in England was at the same time the head of a commission in Germany which inspected the factory in question. As a result, the German firm was dismantled and the machinery had to be surrendered to the English

firm in question, although nothing but peacetime production was involved. 246) and 247)

In addition I refer also to Bockhauser's affidavit, according to which the firm of Wagner and Company at Dortmund, which deals with the production of machine tools and rolling mill auxiliary machines, was dismantled²⁴⁸⁾, and everything was done in such a way that it seemed to be in agreement with the Hague Land Warfare Convention. The firm Dr. Schiess A.G. Duesseldorf and the firm Dr. Waldrich K.G.²⁴⁹⁾ at Siegen suffered the same fate; both were completely dismantled; both were purely plants for the construction of heavy machinery.

In his affidavit under V, Bockhauser says the following:

"With the dismantling of these three firms — Schiess, Waldrich, and Wagner, three-fourth of the German production of heavy machine tools was stopped as the only one of the four heavy machine tool plants existing in the whole of Germany is the firm of Froriep at Rheydt, which has, for its part, been damaged to the extent of 70 — 80% by bomb damage. This is the situation with regard to the German heavy machine tool industry."

The same uncertainty exists with regard to the use of scrap metal seeing Schroeder's affidavit²⁵⁰⁾, where, under technical instruction No. 6, it is tried to keep to the Hague Land Warfare Convention and to give definitions for war materials and loot.

Finally I would like to refer to the affidavit of Buch²⁵¹⁾, according to which blueprints were taken away by reason of a blank with the title "Order blank of the British fighting forces." Here the obvious endeavor to keep to the Hague Land Warfare Convention is shown, although blueprints hardly serve the occupation army, but rather the home economic strength of the occupying power.

May it please the Tribunal, if we pool all this material of International Law, such an uncertainty in the concepts of International Law appears that I hardly know how a lawyer can find his way around. As I myself am no specialist in International Law, I have asked Professor Dr. Herbert Kraus to give me an expert opinion on, for instance, one single question, namely, with regard to the precise interpretation of Paragraph 31 of the Geneva Convention which concerns the use of prisoners of war. Professor Kraus broke down on this question, and he explained to me that he was not in a position to deal with it. I do not think that I would have had any more success with a task with regard to the Hague Land Warfare Convention. I myself consider the question of the Hague Land Warfare Convention to be even more difficult and hope that under these circumstances the Tribunal will understand that it is impossible to expect an industrialist to understand these things, to survey them and to be responsible for them under penal law.

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In my plea I have pointed out that the Directive JCS 1067, which was issued when General Eisenhower's troops entered Germany, is the contradiction to International Law, that is to say, of the basic principles upon which this trial is based, and I have furthermore pointed to the precariousness of International Law as far as the occupied territories are concerned and to the untenable thesis of the Prosecution which with regard to International Law, wants to consider Germany as being in a vacuum. During the time I have had to live at Nuernberg for professional reasons, that is, since the IMT trial started, which was two years ago, many things have changed. The Directive JCS 1067 no longer exists and the new directive of General Clay

dated 17 July 1947 speaks explicitly of

"complying with international conventions"

and intends to prevent

"all arbitrary measures."

The principle of the total conquest through total occupation to total absence of rights for Germany is thus broken, and at the same time, the peace is finally proclaimed. Only the Prosecution retains to its old attitude and repeats its old formula on share labor and spoliation in the fight against the German industry. But I have the hope that here in this room where the decision on principles is made, the Nuernberg charges against the German industry will find their just limits.