

Judge Hudson

I n s e r t i o n

to the Final Plea made by Dr. alter

S I E M E R S

on behalf of

Karl EBERHARDT

Insertion in page 29, beginning, before paragraph 2:

At this point I beg to be permitted to make an insertion which is not yet included in the mimeographed final plea.

The day before yesterday, i.e., on the 24th of June 1948, Judge WILKINS asked the Prosecution, in connection with their final plea, whether the Hague Convention, the Control Council Law No. 10, the IMT judgment and the Flick judgment are the only sources of law for the judging of spoliation or whether there are still other laws or court decisions to serve as precedence cases. Mr. MANLELLAUB replied for the Prosecution that there is an extensive literature which the Prosecution has, however, not yet used in its final plea and its briefs, but they would be prepared to submit a brief listing all the literature not later than 30 June 1948. On Judge WILKINS' remarks that in his opinion only the 4 sources of law mentioned could be of use for the judgment, Mr. MANLELLAUB had to admit that the legal questions on spoliation which are of interest in this case have been treated very insufficiently and scantily in the literature. I am of the same opinion and believe that it is hardly possible to find any material in the literature on international law over and above those 4 before-mentioned legal treatises which would be of any use to us in the legal judgment of this case.

It is not surprising if the literature on international law gives no clear definition of the "requirements of war" mentioned in the Hague Convention, as this literature was written at a time

when there was no such a thing as total war. As a consequence the literature did not deal at all, or only inadequately, with the problem involved here, namely the question of how far the requirements of war are no longer limited to the purely military interests of warfare of the last century, but also embrace the war economy interests of a belligerent occupying power. Total war brought it about that every industrial activity became important for the war, even if there were qualitative differences. Undoubtedly, the activity of a Krupp Konzern, as the "Reich's largest arms force" as the Prosecution called it several times in its final plea the day before yesterday, became particularly important for the war effort. To follow up my argumentation, this means that private property which is important for the war effort may be seized or removed on the basis of articles 23 and 52 of the Hague Convention only if and insofar as the belligerent occupying power urgently needs these machines or materials for its own war effort, in other words, if the removal or seizure becomes necessary because of requirements of war economy.

For the same reason there can be precedence cases in the form of court judgments only if facts constituting spoliation since the time when total war began were dealt with by a court, in other words, by judgments which were passed after the end of this war. This applies, as far as I know, only to the IMT judgment in 1946 and the Flick judgment passed on 22 December 1947. The Flick judgment in particular specially stressed the development of the war and the waging of total war during the second world war, and, in those points, tallies with my argumentation.

Through a fortunate coincidence I am in a position to inform the Tribunal of a further judgment dealing with an incident which occurred during this last war, and which may therefore be regarded as a precedence case. This is a judgment of which I gained knowledge only 3 days ago. This judgment was passed 2 months ago, namely on 27 April 1948, and was proclaimed by a Dutch court in the name of the Queen of the Netherlands. In view of the fact that I have only just heard of this judgment I was not able to submit it as evidence. However, as it represents a legal basis, I beg the Tribunal to take notice officially of this judgment; I have appended the statements of the Dutch court in the Dutch language and in German and English translations to my Closing Brief. *)

This case deals with criminal proceedings against the German Professor ESAU. The Prosecution demanded that Professor ESAU be given 4 years' imprisonment, the time of detention on remand to be deducted from the sentence, for spoliation in the Netherlands during 1944. The defendant was charged with having removed materials and equipment, for instance drills, lathes, oscillographs, short-wave transmitters, lamps and tubes, from the well-known Dutch radio factory Phillips Fabriken A.G. in the interests of German high-frequency research. The Prosecution saw in this act a spoliation of the Dutch firm's private property which was not justified by military necessities.

*) Closing Brief by Dr. SIEMENS for the general defense in case X ad count 2 of the indictment, "spoliation", page 9 et seq.

However, the Dutch court acquitted Prof. Esau, since the aforementioned equipment and material

"were of great importance to the German war effort", and arrived at the conclusion that, for this reason,

"the removal of that material on the basis of article 53 of the Hague Convention must be considered permissible".

I beg the Tribunal to note that this justification of the acquittal does in principle correspond precisely with my argumentation.

What is the reason why this line of thought is not understood by the U.S. Prosecution? In their final plea of 24 June 1948, they give as examples 2 cases of spoliation, and, in misjudging the legal basis and misjudging article 53 of the Hague Convention, they consider it especially incriminating that Krupp's worked "for the German Wehrmacht", or rather by order of the Wehrmacht used the plant "for war purposes" in the Elma, Mulhouse, and in the Austin-Liaison plant. (pages 11 and 13). How does the Prosecution arrive at its far-reaching theory according to which every industrial activity in the occupied territory represents spoliation? In its Final Plea the Prosecution has done me the favor of declaring their hand; they concluded their statements by asking the Tribunal "to declare " Krupp's property "as forfeited" in accordance with the Control Council Law No. 10.

If General TAYLOR were a Counsel for the defense instead of for the Prosecution he would say, in agreement with his other arguments,

"Under the guise of law private property is to be taken away, in other words to be plundered".

The extensive dismantling at Krupp's is not enough for the Prosecution; they want to bring it about in this trial that everything is taken away from Krupp's.

I am confident that this attempt to take away a large private fortune from its rightful owner through a court decision and an application in law will remain a deceptive hope. However, this attempt is in line with the document which shows that during the occupation property worth millions of Marks was taken away from the rightful owner at the villa Huegel (Eberhardt Doc. No. 804, book VIII, page 45).

In the same way this attempt by the Prosecution is in line with the fact that drills and milling machines at Krupp's were destroyed by the occupying power although they were essential for peace-time production and for the maintenance of the German economy, and with the further order by the occupying power that a special machine for the production of large forge blocks, worth more than half a million Marks, was to be destroyed although this machine bought in Germany from a German firm in 1942 was not used at all during the war, and therefore did not serve the war production.

CERTIFICATE OF TRANSLATION

1 July 1948

I, Monica WELLMOOD E. 20148, hereby certify that I am a duly appointed translator for the German and English languages and that the above is a true and correct translation of Insertion to the Final Plea made by Dr. Walter SIEMERS.

Monica WELLMOOD
No. 20148