UNITED STATES MILITARY TRIBUNALS
SITTING IN THE PALACE OF JUSTICE, NURNBERG, GERMANY
AT A SESSION OF MILITARY TRIBUNAL IV
HELD 22 DECEMBER 1947

THE UNITED STATES OF AMERICA -vs- FRIEDRICH FLICK, OTTO STEINBRINCK, ODILO BURKART, KONRAD KALETSCH, BERNHARD WEISS, AND HERMANN TERBERGER, Defendants.	DECISION OF MOTIONS

- - - - - - - - - - -

At the close of the proceedings on 8 November, the defendants jointly and severally made a series of motions, among other things attacking the jurisdiction of this Tribunal and asking for the dismissal of the various Counts of the indictment as to the defendants charged therein, and seeking to strike from the record hearsay testimony and affidavits on various grounds, and on 12 November defendant Flick moved to strike documents offered by prosecution on rebuttal, and on 14 November defendant Steinbrinck made a further motion.

We have examined all of these motions with care and hereby deny them all except the motion to dismiss the Third Count which we will determine in that part of the judgment itself which relates to that Count. We find the motions otherwise fully and conclusively answered in the brief interposed by the prosecution in objection to the motions.

In order to avoid any misunderstanding, however, we make these summary statements.

As to the Tribunal, its nature and competence: The Tribunal is not a court of the United States as that term is used in the Constitution of the United States. It

is not a court martial. It is not a military commission. It is an international tribunal established by the International Control Council, the high legislative branch of the Four Allied Powers now controlling Germany. (Control Council Law No. 10 of 20 December 1945.) The Judges were legally appointed by the Military Governor and the later act of the President of the United States in respect to this was nothing more than a confirmation of the appointments by the Military Governor. The Tribunal administers international law. It is not bound by the general statutes of the United States or even by those parts of its Constitution which relate to courts of the United States.

Some safeguards written in the Constitution and statutes of the United States as to persons charged with crime, among others such as the presumption of innocence, the rule that conviction is dependent upon proof of the crime charged beyond a reasonable doubt, and the right of the accused to be advised and defended by counsel, are recognized as binding on the Tribunal as they were recognized by the International Military Tribunal (IMT). This is not because of their inclusion in the Constitution and statutes of the United States but because they are deeply ingrained in our Anglo-American system of jurisprudence as principles of a fair trial. In committing to the occupying authorities in the various zones the duty to try war criminals, it is implicit therein that persons charged with crime are to be given a fair trial according to the jurisprudence prevalent in the courts of the power conducting the trials.

As to hearsay evidence and affidavits: A fair trial does not necessarily exclude hearsay testimony and ex parte affidavits, and exclusion and acceptance of such

matters relate to procedure and procedure is regulated for the Tribunal by Article VII of Ordinance 7 issued by order of the Military Government and effective 18 October 1946. By this Article, the Tribunal is freed from the restraints of the common law rules of evidence and given wide power to receive relevant hearsay and ex parte affidavits as such evidence was received by IMT. The Tribunal has followed that practice here.

As to counsel and witnesses: The defendants have not been denied the right to be advised and defended by counsel of their own choice. Defendants have not been denied the right to call any witness to give relevant testimony nor has the production of any available relevant document been denied by the Court.

As to the law administered: The Tribunal is giving no ex post facto application to Control Council Law No. 10. It is administering that law as a statement of international law which previously was at least partly uncodified. Codification is not essential to the validity of law in our Anglo-American system. No act is adjudged criminal by the Tribunal which was not criminal under international law as it existed when the act was committed.

/S/ CHARLES B. SEARS
Charles B. Sears
Presiding Judge
Tribunal IV