

UNITED STATES MILITARY TRIBUNAL III
SITTING IN THE PALACE OF JUSTICE, NURNBERG, GERMANY
31 July 1948

THE UNITED STATES OF AMERICA :

-vs.- :

ALFRIED FELIX ALWYN KRUPP VON :
BOHLEN UND HALBACH, EWALD OSKAR :
LUDWIG LOESER, EDUARD HOUDREMONT, :
ERICH MUELLER, FRIEDRICH WILHELM :
JANSSEN, KARL HEINRICH PFIRSCH, :
MAX OTTO IHN, KARL ADOLF FERDINAND :
EBERHARDT, HEINRICH LEO KORSCHAN, :
FRIEDRICH VON BUELOW, WERNER :
WILHELM HEINRICH LEHMANN, HANS :
ALBERT GUSTAV KUPKE :

Case No. 10

Defendants

JUDGMENT OF THE TRIBUNAL

Hu C. Anderson, Presiding Judge
Edward J. Daly, Judge
William J. Wilkins, Judge

This Tribunal was established by and under an order issued by command of the United States Military Commander and Military Governor of Germany (U.S.), and the undersigned were designated as the members thereof. As thus constituted the Tribunal entered upon and completed the trial of the case. The indictment was filed with the Secretary General of Military Tribunals on 16 August 1947 and the case was assigned to this Tribunal for trial. A copy of the indictment in the German language was served upon each defendant on 18 August 1947. The defendants were arraigned on 17 November 1947, each defendant entering a plea of "not guilty" to all charges preferred against him. Thirty-four German counsel selected by the twelve defendants were approved and have represented the respective defendants. One defendant was represented by an American attorney, selected by him, in addition to German counsel.

The presentation of evidence by the prosecution in support of the charges was commenced on 9 December 1947, and was followed by evidence offered by the defendants. The taking of evidence was concluded on 9 June 1947. The Tribunal has heard the oral testimony of 117 witnesses presented by the prosecution and the defendants and 134 witnesses have been examined before commissioners appointed under the authority of Ordinance No. 7, of Military Government for Germany (U.S.) establishing the procedure for these trials. 1471 documents offered by the prosecution have been admitted in evidence as exhibits. 145 documents offered by the prosecution have been marked for identification. 2829 documents offered by the defendants have been admitted in evidence as exhibits and 318 documents offered by the defendants have been marked for identification. No document marked for identification has been considered unless it was one, the contents of which justified us in taking judicial notice thereof.

Ordinance No. 7, referred to above, provides that affidavits shall be deemed admissible, Exercising its right to construe

this ordinance, this Tribunal announced at the beginning of the trial that it would not consider any affidavit unless the affiant was made available for cross-examination or unless the presentation of the affiant for cross-examination had been waived, and this ruling has been strictly adhered to.

The Tribunal ruled to the effect that the contents of affidavits made by defendants would only be considered as evidence against the respective affiants and not as against any other defendant unless such affiant or affiants took the witness stand and became subject to cross-examination by the other defendants or their counsel. None of the defendants took the stand to testify upon the issues in this case, and hence such affidavits have only been considered in accordance with the ruling made.

The trial was conducted in two languages with simultaneous interpretations of German into English and English into German throughout the proceedings.

Final arguments of counsel have been concluded and briefs have been filed. Each defendant was given an opportunity to make a statement to the Tribunal in accordance with the provisions of Article XI of Ordinance No. 7 of the Military Government for Germany (U.S.). Two of the defendants availed themselves of it, one in behalf of himself and the other in behalf of himself and the other ten defendants, and their statements were heard by the Tribunal. The briefs and final pleas of defense counsel consist of more than 1500 pages, and counsel for the defendants consumed five days in final arguments. The briefs and arguments covered every conceivable question of law and fact connected with the case. The closing arguments were made on 30 June 1948 and the case was then taken under consideration.

The following named persons, twelve in number, are the defendants:

Alfried Felix Alwyn Krupp von Bohlen und Halbach
Ewald Oskar Ludwig Loeser
Eduard Houdremont
Erich Mueller
Friedrich Wilhelm Janssen
Karl Heinrich Pfirsch
Max Otto Ihn
Karl Adolph Ferdinand Eberhardt
Heinrich Leo Korschan
Friedrich von Buelow
Werner Wilhelm Heinrich Lehmann
Hans Albert Gustav Kupke

The indictment contains four counts, which for convenience may be generally described as follows:

- (1) Planning, preparation, initiation and waging aggressive war.
- (2) Plunder and spoliation
- (3) Crimes involving Prisoner of War and Slave Labor
- (4) Common plan or conspiracy to commit crimes against peace.

On 24 February 1948, the prosecution announced that it had completed the presentation of its evidence and rested its case in chief. Thereafter, during the session of April 5, 1948, the Tribunal, through the President said, in part, as follows:

"On March 12 last, the defendants filed a joint motion for an acquittal on the charges of crimes against the peace. We construe this to be a motion for a judgment of not guilty on Counts I and IV of the indictment on the ground that the evidence is insufficient as a matter of law to warrant a judgment against them on those counts.

"After a careful consideration of this motion, the prosecution's reply thereto, and the briefs and the evidence, we have come to the conclusion that the competent and relevant evidence in the case fails to show beyond a reasonable doubt that any of the defendants is guilty of the offenses charged in Counts I and IV. The motion accordingly is granted and for the reasons stated the defendants are acquitted and adjudged not guilty on Counts I and IV of the indictment."

Following this ruling the Tribunal filed an opinion stating the reasons for its conclusion.

In taking the foregoing action with respect to counts I and IV, the Tribunal was guided by the rule as stated in one of the most authoritative American texts. This is as follows:

"The defense is not required to take up any burden until the prosecution has established every essential element of the crime charged beyond a reasonable doubt. When the prosecution has finished its case, the defendant is entitled to an acquittal if the case of the prosecution is not made out beyond a reasonable doubt. When this is done, then, but not before, can the defendant be called upon for his defense." ¹

Consequently in this judgment only those charges which are contained in Counts II and III of the indictment remain for consideration.

Following the unconditional surrender of Germany, the Supreme legislative authority in that country has been exercised by the Allied Control Council composed of the authorized representatives of the Four Powers: The United States of America, The United Kingdom of Great Britain and Northern Ireland, The French Republic and The Union of Soviet Socialist Republics. On 20 December 1945, that body enacted Control Council Law No. 10. The preamble to Control Council Law No. 10 is as follows:

"In order to give effect to the terms of the Moscow Declaration of 30 October 1943 and the London Agreement of 8 August 1945, and the Charter issued pursuant thereto and in order to establish a uniform legal basis in Germany for the prosecution of war criminals and other similar offenders, other than those dealt with by the International Military Tribunal, the Control Council enacts as follows:"

Article 1 reads, in part, as follows:

"The Moscow Declaration of 30 October 1943 'Concerning Responsibility of Hitlerites for Committed Atrocities' and the London Agreement of 8 August 1945 'Concerning Prosecution and Punishment of Major War Criminals of the European Axis' are made integral parts of this Law."

¹Wharton's Criminal Evidence, Vol. I, Sec. 200, 11th Ed.

In Article III it is provided that "Each occupying authority, within its Zone of occupation, shall have the right to cause persons within such zone suspected of having committed a crime, including those charged with crime by one of the United Nations, to be arrestedshall have the right to cause all persons so arrested and charged,... to be brought to trial before an appropriate tribunal. ... The Tribunal by which persons charged with offenses hereunder shall be tried and the rules and procedure thereof, shall be determined or designated by each Zone Commander for his respective Zone."

Pursuant to the foregoing authority, Ordinance No. 7 was enacted by the Military Governor for the United States Zone of Occupation. It provides:

ARTICLE I

"The purpose of this Ordinance is to provide for the establishment of military tribunals which shall have power to try and punish persons charged with offenses recognized as crimes in Article II of Control Council Law No. 10, including conspiracies to commit any such crimes. Nothing herein shall prejudice the jurisdiction or the powers of other courts established or which may be established for the trial of any such offenses."

Article II provides, in part, as follows:

"Pursuant to the powers of the Military Governor for the United States Zone of Occupation within Germany and further pursuant to the powers conferred upon the Zone Commander by Control Council Law No. 10 and Articles 10 and 11 of the Charter of the International Military Tribunal annexed to the London Agreement of 8 August 1945 certain tribunals to be known as 'Military Tribunals' shall be established hereunder."

The Tribunals authorized by Ordinance 7 are dependant upon the substantive jurisdictional provisions of Control Council Law No. 10 and administer international law as it finds expression in that enactment and the London Charter which is made an integral part thereof. They are not bound by the general statutes of the United States or by those parts of its Constitution which

relate to courts of the United States.

This Tribunal has recognized and does recognize as binding upon it certain safeguards for persons charged with crime. These were recognized by the International Military Tribunal (IMT). This is not so because of their inclusion in the Constitution and statutes of the United States but because they are understood as principles of a fair trial. These include 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.

The Tribunal has not given and does not give any ex post facto application to Control Council Law No. 10. It is administered as a statement of international law which previously was at least partly uncodified. This Tribunal adjudges no act criminal which was not criminal under international law as it existed when the act was committed.

The original of this opinion and the judgment will be filed in the office of the Secretary-General. If there is any variation from the original in the reading of this opinion or in the mimeographed copies, the original shall constitute the official record of the opinion and judgment.

In examining the evidence in this case and in reaching our conclusions stated herein we have done so realizing that there can be no conviction without proof of personal guilt.

Our conclusions are based, in the main, upon written documents. It appears from the evidence that a great volume of documents from the files of the Krupp firm were burned by order of the defendant von Buelow and other Krupp officials, shortly before the entry of the Allied troops into Essen. The significance of the burning of these documents is not to be overlooked.

The Krupp Concern, as it is frequently referred to, originated with the business known as Fried. Krupp, founded in 1812. This was changed into a corporation (A.G.) in 1903. It was then known as Fried. Krupp A.G., and was a private, limited liability company. Bertha Krupp, the mother of the defendant Alfried Krupp, owned all but a very few shares of this company. The shares not owned by her were held by others for the purpose of complying with legal requirements, and were kept under careful control. In December, 1943, Fried. Krupp A.G. was dissolved and in accordance with provisions of the "Lex Krupp", a special Hitler decree, the defendant Alfried Krupp became the proprietor. Since December 1943, the unincorporated, privately-owned concern, owned and controlled directly, and through subsidiary holding companies, mines, steel and armament plants, two subsidiary operating companies, the Germania shipyards at Kiel, and the Grusonwerk machinery factory at Magdeburg. Many mines, collieries, development, research and other enterprises were conducted by and through many of the subsidiaries.

In the charter of the Fried. Krupp A.G. we find the following:

Article 1.

"The corporation bears the name 'Fried. Krupp Aktiengesellschaft'. It is located in ESSEN on the Ruhr.

"The life of the corporation is not limited to a definite time.

Article 2.

"The purpose enterprise is:

- a) The management of the cast steel factory in Essen formerly belonging to the Fried. Krupp firm in Essen - proprietress, Fraeulein Bertha Krupp - and its branch establishments and subsidiary works (steelworks, shipyards, machine factories, blast furnaces, coal and iron ore mines, etc);

- "b) The production of steel and iron and other metals, as well as all raw and auxiliary materials requisite thereto, processing of steel and iron and other metals for consumer goods, and intermediate products of all kinds, especially the production of railroad and ship construction materials, of war material, ships, and machines, as well as the marketing of all these products;
- "c) The acquisition, erection, and operation of new plants and the conclusion of all kinds of transactions which further the purpose named under a) and b);
- "d) The operation of other enterprises and the undertaking of all kinds of business which are considered as being in the interest of the corporation.

Article 3.

The corporation is authorized to found branch establishments and take part in other enterprises."

The Gusstahlfabrik at Essen was the most important enterprise in the higher concern. It operated open hearth and electric steel furnaces, armor plate mills, large forge and press shops, iron and steel foundries, plate and spring shops and many machine shops. It produced semi-finished and finished iron and steel products, armaments, including armor plate, guns, tank hulls, tank turrets, shells and parts for fortifications. The Fried. Krupp Grusonwerk A. G. was located in the interior of Germany, made finished guns, tanks and shells. The Germaniawerft, a shipyard located at Kiel Harbor, designed and built ships of many types including submarines. The stock of both the Grusonwerk and Germaniawerft was completely held by the Fried. Krupp A.G. and its successor Fried. Krupp, except for a few shares owned by Berthe Krupp.

In practice the control of the whole Krupp concern was vested in the Vorstand of Fried. Krupp, A.G. The Aufsichtsrat of Fried. Krupp, A.G. appears to have had the power to review the activities of the Vorstand. However, it met only once a year, and its functions were purely formal.

Gustav Krupp, because of his wife's ownership of practically all of the stock of Fried. Krupp, A.G., and his position as chairman of the Aufsichtsrat, had a very great

influence over the company. On March 8, 1941, Gustav Krupp as chairman of the Aufsichtsrat of Fried. Krupp A.G. issued a directive. It referred to the Direktorium as consisting of Goerens, and the defendants Loeser and Krupp, and to six deputy members, including the defendants Pfirsch, Janssen, Houdremont, Korschan, Erich Mueller, and in addition one Fritz Mueller. It also stated that Goerens and the defendants Loeser and Krupp formed the Select Vorstand. It stated that next to the Chairman of the Aufsichtsrat, "the Select Vorstand is in charge of the management of the Fried-Krupp Aktiengesellschaft as well as of the Krupp Konzern. Its decisions are binding for the other Direktorium members and the Vorstaende of the companies of the Konzern. It also handled the business distribution."

The directive also provided that the Select Vorstand had the leadership of the plant, and that the decisions for the Select Vorstand in technical affairs "are made by Herr Goerens, in commercial and administrative affairs by Herr Loeser and in matters pertaining to mining and armament by Herr A. von Bohlen und Halbach. These persons must keep in close contact with each other and must confer and agree especially on matters which their respective spheres of activities have in common or which are of general or special importance."

"If the necessary close cooperation is maintained the Select Vorstand should succeed in coming to a general agreement. Should there be differences of opinion nevertheless, each member of the Select Vorstand is entitled to call for the decision of the chairman of the Aufsichtsrat.

"According to the work distribution carried out by the Select Vorstand the following Dezernente are responsible for the spheres of activity assigned to them: the deputy members of the Direktorium and, inasfar as they are

immediately subordinated to the Direktorium, the directors, department and workshop directors of the Fried. Krupp Aktiengesellschaft as well as the directors of the plants of the Konzern.

"In this sense the plants which have been conducted in the form of an independent body corporate as well as those which are merely considered departments of the Fried. Krupp Aktiengesellschaft are considered plants of the Konzern.

"In this sense the plants which have been conducted in the form of an independent body corporate as well as those which are merely considered departments of the Fried. Krupp Aktiengesellschaft are considered plants of the Konzern. The Select Vorstand decides which plants belong to these groups.

"The management of these plants which are conducted as mere departments of the Fried. Krupp sign for their spheres, as the following example shows:

"Friedrich-Alfred-Huetten der Fried. Krupp A.G.
Die Direktion (The Management)

"The Dezernente must manage their spheres of work in such a way as to take full responsibility for the results achieved by their departments. As heads of the spheres of activity assigned to them they must always bear in mind, that they are not conducting an individual business or plant, but part of a whole on the rise and fall of which also their own work depends. For this reason they must observe a collegiate and mutual basis of cooperation and information with these plants and departments with whom they share common interests in their respective spheres of activity. They must inform the Select Vorstand briefly and comprehensively about the progress of work in their field, about new plans and important decisions before they are made final.

"Through the business distribution the Select Vorstand appoints the Dezernente who apart from their immediate sphere of activities will assist the Select Vorstand in its capacity as management of the Konzern. These Dezernente must keep in contact with the directors of the Konzern plant and work together with them on a collegiate basis inasmuch as the unification of the Konzern requires. The directors of the Konzern plants are under the same obligation. In the case of differences of opinion between the directors of the Konzern plants and the Dezernente, these must jointly be submitted to the Select Vorstand for decision.

"Legal advisers to the firm and to the Konzern are at the present moment the gentlemen Ballas and Joeden. They have been entrusted, in collegiate collaboration with the Dezernente, to give legal advice.

"In order to make legal counsel effective the Dezernente are not only bound to submit to the legal advisers all legal questions which have arisen, contracts to be drawn up etc., in good time, but also to keep in touch with the legal advisers to keep the latter informed about the various spheres of activities.

"Whatever has been said of the legal department under IV applies to the patent department accordingly."

The Law on Joint Stock Corporations and Joint Stock Corporations En Commandite, known as the Joint Stock Law became effective in Germany on 30 January 1937. A Commentary on this law was written by Dr. Franz Schlegelberger, Staatssekretaer, Leo Quassowski, Ministerialdirektor, Gustav Herbig, Amtsgerichtsrat, Ernst Gessler, Landgerichtsrat, Wolfigage Hofermehl, Landgerichtsrat. They were all in the Reich Ministry of Justice.

The Tribunal has taken judicial notice of this commentary. In it, it is said that the "Vorstand, with care of and honest and conscientious business manager . . . is to further the corporation to the best of his ability and to attend to the protection of its interests.

" . . . If the Vorstand consists of one person, he alone is the leader of the enterprise, if the Vorstand consists of several persons, then, in the case of full representation (Gesamtvertretung) the several members together, in the case of single representation, every individual member are to be regarded as leader of the enterprise . . .

"Beyond this the Vorstand has . . . generally the duty, to use its influence to secure . . . a just pay policy of the corporation and to create healthy working conditions."

The words "Vorstand" and "Direktorium" were used interchangeably in documents in evidence. Both terms refer to the small group of men in the Krupp concern in whom management was centralized. "Direktorium" is the name given to that body after the reorganization in December 1943. There was, in fact, no difference in responsibility and activities within the concern. 1

In December, 1943, pursuant to the provisions of the "Lex Krupp", as stated above, the Fried. Krupp Aktiengesellschaft was converted into the individually owned firm of Fried. Krupp with headquarters in Essen. On the same date, December 15, 1943, simultaneously and on establishment of articles of incorporation of the Fried. Krupp, the Firm was vested in the sole ownership of the defendant Alfried Krupp von Bohlen und Halbach. Upon registration in the Commercial Recording Office the family enterprise had the name Fried. Krupp, and the branch enterprise Fried Krupp, Aktiengesellschaft, Friedrich-Alfred-Huette and Krupp Stahlbau, Fried. Krupp, Aktiengesellschaft thereafter

had the trade-names of: Fried. Krupp, Friedrich-Alfred Huette and Fried. Krupp, Stahlbau. Thereafter, the defendant Krupp had the name of Alfried Krupp von Bohlen und Halbach, whereas heretofore, his name had been Alfried von Bohlen und Halbach. After the conversion in December, 1943, the owner of the family enterprise, Alfried Krupp von Bohlen und Halbach, had the full responsibility and direction of the entire enterprise. To assist him he appointed a business management with the name, "Das Direktorium". The regular and deputy members of the former Vorstand, with the exception of the defendant Loeser, who had resigned, continued to be the regular and deputy members of the Direktorium. Thereafter, they had authority to sign for the Firm in place of the owner, and without mention of "Prokura".

The authority to sign for the individually owned firm by the others who were formerly the authorized agents of the Fried. Krupp Aktiengesellschaft was confirmed. No change was made with regard to the subsidiary companies which were continued to be managed as independent legal entities.

Control and management of the subsidiary companies was maintained in a number of ways. At least one member of the Vorstand was on the Aufsichtsrat of each of the principal subsidiary companies. The defendants Krupp, Loeser, and Janssen were members of the Aufsichtsrat at the Germaniawerft and the Grusonwerk, during various periods. The members of the Vorstand of the principal subsidiaries were required to and did submit regular reports of their activities to the parent company at Essen. Financial questions of consequence were decided by the Vorstand of the parent company, including all capital investments in excess of 5,000 Reichsmarks.

The defendant Loeser entered the Krupp firm on 1 October 1937 as a member of the Vorstand. The defendant Krupp became a member of the Vorstand in 1938. The third member was Paul Goerens. In April, 1943, the Vorstand was enlarged, and the defendants Erich Mueller, Houdremont, and Janssen also became members, as did one Fritz Mueller. Before that, these four had all been deputy directors, and then deputy Vorstand members. In 1937, the defendant Janssen became Deputy Director. In 1938, the defendants Everhardt, Houdremont, Korschan, Ihn and Erich Mueller became Deputy Directors. In 1941, Pfirsch, who had been a deputy director since 1923, and the defendants Janssen, Korschan and Mueller were made deputy Vorstand members. In 1943, the defendants Everhardt and Ihn were made deputy Vorstand members. As previously stated, the regular and deputy members of the Vorstand, with the exception of Loeser, were made regular and deputy members of the Direktorium when Fried. Krupp A.G. became the private firm Fried. Krupp in 1943.

Until 1943, various phases of activities were divided among the three members of the Vorstand. One field was Finance and Administration which had been under the direction of the defendant Loeser, and was under the direction of the defendant Janssen after Loeser resigned. Production in the plants was under Goerens, and the design, sale and development of war material had been under the direction of the defendant Alfried Krupp.

Although each member had his own sphere of activity, the management of the enterprise depended upon the coordinated efforts of the members. This has already been stated, as it was required by the Charter of Fried. Krupp, A.G. The coordination of three departments was required on major enterprises.

When the Vorstand was enlarged in April, 1943, Alfried Krupp became chairman of the Vorstand, and Goerens became Deputy Chairman. Houdremont was then put

in charge of metallurgy and steel plants, and also in charge of machine plants after November 1943. From April 1943 on, Janssen was in charge of trade, finance and administration. All of the foregoing were members of the enlarged Vorstand. These defendants continued in these activities when the Vorstand members became Direktorium members in December 1943 at the time Fried. Krupp A. G. became a private firm. The department directors were referred to as "Dezernenten". They had full responsibility for the results achieved by their departments, and apart from their immediate sphere of work, assisted the Vorstand in its capacity as management of the concern. An order issued by the Vorstand dated 31 January 1942, provided in part as follows:

"The work of the Dezernenten with the plants outside the Gusstahlfabrik will generally be restricted to questions of a basic nature and decisions of considerable importance...It is the plant manager's duty to get in touch with the respective Dezernenten when necessary, while on the other hand, the Dezernenten have to instruct the plant manager accordingly."

The defendants Houdremont, Mueller, Janssen, Pfirsch, Ihn, Eberhardt and Korschan were all within this class at one time or another. The defendant von Buelow achieved a status which for all practicable purposes was the same as that of a department director.