

Count III of the indictment charges all of the defendants of a violation of Articles 2B and 2C of Control Council Law No. 10. These provisions are as follows:

"(b) War Crimes. Atrocities or offenses against persons or property constituting violations of the laws or customs of war, including but not limited to, murder, ill treatment or deportation to slave labour or for any other purpose, of civilian population from occupied territory, murder or ill treatment of prisoners of war or persons on the seas, killing of hostages, plunder of public or private property, wanton destruction of cities, towns or villages, or devastation not justified by military necessity.

"(c) Crimes against Humanity. Atrocities and offenses, including but not limited to murder, extermination, enslavement, deportation, imprisonment, torture, rape, or other inhumane acts committed against any civilian population, or persecutions on political, racial or religious ground whether or not in violation of the domestic laws of the country where perpetrated."

It is also averred that the acts relied upon as constituting violations of these provisions were likewise violations of the laws and customs of war, of the general principles of criminal law as derived from the criminal laws of all civilized nations and of international conventions, particularly of certain specified articles of The Hague Regulations of Land Warfare, 1907, and of the Prisoners of War Convention, Geneva, 1929.

All of the acts relied upon as constituting crimes against humanity occurred during and in connection with the war.

Civilians brought under compulsion from occupied territories and concentration camp inmates and prisoners

of war were used in the German armament industry during the war on a vast scale. There is no contention to the contrary. Likewise, the undisputed evidence shows that the firm of Krupp participated extensively in this labor program. According to an analysis, introduced by the prosecution, of the documentary evidence, the whole enterprise consisting of about 81 separate plants within greater Germany employed between 1940 and 1945, a total of 69,898 foreign civilian workers and 4,978 concentration camp inmates. ^The great majority ~~of whom~~ were forcibly brought to Germany and detained under compulsion throughout the period of their service, as well as 23,076 prisoners of war.

The principal plant of the concern was the Gustahlfabrik located in Essen, the headquarters of the enterprise. The Gusstahlfabrik is known in the record as the Cast Steel Factory, the name having been taken from the original factory with which became the nucleus of the Krupp enterprise. However, the name is misleading. It was not a factory but consisted of between 80 to 100 factories all located in Essen. We deem it necessary to deal in detail with this plant only, and for convenience we refer to it upon occasion as the Cast Steel Factory. With one or two exceptions, we need only refer in passing to the subsidiary companies located outside Essen.

It would serve no useful purpose to undertake to specify the number of prisoners of war and foreign civilian workers employed each year in the Cast Steel Factory. Taking, as the defense does, August 1943 as the key date, it is sufficient to say that at that time, of a total number of 70 to 76 thousand workers employed in Essen, 2,412 were prisoners of war and 11,557 were foreign civilian workers.

Under the Hague Regulations of Land Warfare, the employment of prisoners of war must be "according to their rank and aptitude". (Article 6, para.1) Their "tasks shall not be excessive and shall have no connection with the operations of war." (Article 6, para. 2)

Article 29, of Geneva Convention, provides "no prisoner of war may be employed at labors for which he is physically unfit." Article 30 stipulates that "the length of the day's work of prisoners of war, including therein the trip going and returning, shall not be excessive and must not, in any case, exceed that allowed for civil workers in the region employed at the same work. Every prisoner shall be allowed a rest of twenty-four hours of every week, preferably on Sunday." Article 31, paragraph 1, provides that "labor furnished for prisoners of war shall have no direct relation with war operations. It is especially prohibited to use prisoners for manufacturing and transporting arms or munitions of any kind or for transporting material intended for combat units." By Article 32, it is forbidden to use prisoners of war at unhealthful or dangerous work. And the same article also provides that any aggravation of the conditions of labor by disciplinary measures is forbidden.

In a compilation by the Reich Minister of Labor of the laws governing employment of prisoners of war published in the Reich Labor Gazette, July 25, 1940, there was a provision that "the work to be performed by the prisoners of war must not be directly connected with the operations of war." So far as appears, this law was never amended or repealed. Keitel seems to have been responsible for an order to the contrary. There is oral testimony of two or three witnesses to the effect that they thought the order was issued on oral instructions from Hitler.

The laws and customs of war are binding no less upon private individuals than upon government officials and military personnel. In case they are violated there may be a difference in the degree of guilt, depending upon the circumstances, but none in the fact of guilt.

Practically everyone of the foregoing provisions were violated in the Krupp enterprises. In the early stages of the war, it was sought to evade the provisions of Article 31 of the Geneva Convention and the corresponding provisions of the Hague Regulations as well as the German law above quoted by an interpretation alleged to have been given by the Commandant of the prisoner of war camp or some other military authorities. This appears from a memorandum of a Krupp representative who attended a conference of Counter-Espionage employees of the armament industry of Wehrkreis VI, held at Essen on December 4, 1940. He reported to the officials of the Krupp firm as follows:

"According to international agreement Ps/W may not be employed in the manufacture and transportation of arms and war material. But if any material cannot be clearly recognized as being part of a weapon, it is permissible to get them to work on it. Responsible for this decision is not the Intelligence branch (Abwehrstelle) but the Commandant of the P/W camp."

This brings to mind the German practices in the first world war in the use of poison gas. By the Hague Convention of 1909 and the Geneva Convention of 1907, it was agreed that the signatories would not use "projectiles", the sole object of which is diffusing of noxious gas. The Germans sought to justify their use of gas by the insistence that in view of the explicit stipulation that "projectiles" are prohibited, the use of gas from "cylinders" was legal and this notwithstanding the effect upon the victim was much worse.

But in the recent conflict all pretense was in time abandoned and by the defense' own evidence, as well as that of the prosecution, it is conclusively shown that throughout German industry in general, and the firm of Krupp and its subsidiaries in particular, prisoners of

war of several nations including French, Belgian, Dutch, Poles, Yugoslavs, Russians and Italian military internees were employed in armament production in violation of the laws and customs of war. It is equally clear that in many instances, including employment in the Krupp coal mines, prisoners of war were assigned to tasks without regard to their previous trainings, in work for which they were physically unfit and which was dangerous and unhealthy.

The practice began as early as August, 1940. At that time, 185 Belgian and Dutch prisoners of war were employed at the Gusstahlfabrik in Essen. French prisoners of war were employed in armament production as early as 1941 and Russian prisoners of war beginning in March, 1942. Polish prisoners of war were employed at Elmag in 1944 and during the disastrous air raids in the fall of that year, more than 3,000 prisoners were employed in Essen. In the various subsidiaries the practice was likewise pursued. These included the Friedrich Alfried Huette, the Bergwerke, Essen, the Griessenwerke, the Berthawerke and the Elmag. In the various enterprises 22,000 prisoners of war were employed in June, 1944.

Russian prisoners of war were discriminated against in every material respect. It was shown before the International Military Tribunal, hereinafter referred to as the IMT, and shown here that prior to the attack on Russia, the high Nazi policy-makers had determined not to observe International Law in the treatment of Russian prisoners of war. The regulations on the subject were signed by General Rienecke on September 8, 1941. They brought a protest from Admiral Canaris. He pointed out in substance that although Russia was not a party to the Geneva Convention, the principles of general international law as to the treatment of prisoners of war were

applicable. Continuing, he said:

"Since the 18th century these have gradually been established along the lines that war captivity is neither revenge nor punishment, but solely protective custody, the only purpose of which is to prevent the prisoners of war from further participation in the war. This principle was developed in accordance with the view held by all armies that it is contrary to military tradition to kill or injure helpless people . . . The decrees for the treatment of Soviet prisoners of war enclosed are based on a fundamentally different view-point."

The IMT held that this protest correctly stated the legal position. However, it was ignored entirely. The reason is indicated by a note by Keitel, Chief of the High Command of the Armed Forces, made on the back of Admiral Canaris' protest. This is as follows:

"The objections arise from the military concept of chivalrous warfare. This is the destruction of an ideology. Therefore I approve and back the measures."

It is well enough to refer just here to the testimony of General Westhof, who was introduced as a witness by the defendants. He had been a Regimental Commander on the Eastern Front, but in February, 1943, returned to Germany to join the Armed Forces High Command for Prisoners of War Affairs. The actual decisions with respect to these matters, he testified, were made by the Chief of the Armed Forces High Command. The office of the Westhof dealt with administrative tasks, particularly with the observance of the Geneva Convention. He said that the order relating to the treatment of Russian prisoners of war did not meet with the approval of armed forces in general, and after a struggle they succeeded in having it rescinded and that as a result after December, 1942, Russian prisoners of war were treated according to the

Geneva Convention. This may have been the official attitude of the competent authorities, but it is abundantly clear that it was not the attitude which prevailed in the Krupp enterprise.

But it is argued that since the employment of prisoners of war in the armament industry was authorized by directives of government officials or military authorities, the defendants had no reason to believe that it was wrong to do so and hence cannot be said to have had a criminal intent.

We know of no system under which ignorance of the law excuses crime. As to the question of intent, counsel has failed to distinguish between a general intent and a specific intent. When the crime consists not merely in doing an act but in doing it with a specific intent, the existence of that intent is an essential element and is not to be presumed from the commission of the act but must be proved. Upon the other hand, when a person acting without justification or excuse commits an act prohibited as a crime, his intention to commit the act constitutes criminal intent. In such case the existence of the criminal intent is presumed from commission of the act on the ground that a person is presumed to intend his voluntary acts and their natural and probable consequences. The rule that every man is presumed to know the law necessarily carries with it as a corollary the proposition that some persons may be found guilty of a crime who do not know the law and consequently that they may have imputed to them criminal intent in cases of which they have no realization of the wrongfulness of the act, much less an actual intent to commit the crime. A general criminal intent is sufficient in all cases in which a specific or other particular intent or mental element is not required by the law defining the crime.⁽¹⁾

(1) Miller on Criminal Law, Sec. 16, pp. 57-58

But apart from the foregoing well established principles, the evidence in this case shows that at least with respect to the managers of the Krupp enterprise the argument has no factual basis. The prosecution introduced the affidavit of Schroedter who was also examined before the Tribunal. As a witness, he certainly was not hostile to the defendants, but on the contrary endeavored to do the best he could for them. This was quite obvious. From 1926 until September, 1943, Schroedter was the commercial management member of the Vorstand of the Germaniawerft, the shipbuilding subsidiary located at Kiel. The defendants Alfried Krupp, Loeser, and Janssen were members of the Aufsichtsrat of the Germaniawerft at the particular time in question. On account of the drafts of German workers for war service, Schroedter was having difficulty in finding the labor necessary to meet quotas assigned to the Germaniawerft by the Navy. He testified that he had been promised prisoners of war or other foreign workers as replacements. The Germaniawerft was engaged in building warships and Schroedter had some scruples about using prisoners of war. He therefore decided to go to Essen and discuss the matter with the top officials there. This was in 1941 and Schroedter said at that time the prisoners of war available were largely French, Belgian and Dutch.

Upon his arrival in Essen, Schroedter explained his difficulties to the defendants Loeser and Krupp and inquired how the Gusstahlfabrik and other firms of the enterprise were using prisoners of war on armament projects. The defendant Krupp told him nothing specific but instead put him in charge of a plant manager who showed him around the factories in Essen with a view of demonstrating how the matter was handled there.

Schroedter said he was not given any directives on how to employ prisoners of war in armament projects but that the defendant Krupp told him, "you come to see us on all these questions. We'll show how to do it and then you can draw your own conclusions of how to arrange matters in Kiel where conditions are different." Why this evasive attitude rather than an honest and frank discussion is unexplained. The unfavorable inference is inescapable.

Schroeder testified that from what he saw at the Gusstahlfabrik, he did not gain the impression that any prisoners of war were being employed directly in armament production, but in other tasks and that that was the policy he pursued at the Germaniawerft for, he said, "it was quite out of the question as far as I was concerned to occupy a prisoner of war on immediate armament production." But he also testified that in 1943, of 11,000 employees at the Germaniawerft there were 1500 prisoners of war, and that the maximum number employed there at any time was roughly 2,000 including 400-500 French, 200 Dutch and the remainder Russian. At that time, as shown by the defense evidence, Speer in January, 1943, had forbidden all peacetime production. The Germaniawerft was engaged in building warships for the Navy, principally submarines.

In his affidavit, the witness deposed that the defendants Krupp, Loeser and one Giroat told him that "the legitimacy of employing foreign workers on war work was not to be discussed." He further deposed that he often received instructions from Essen which he did not himself approve; that he discussed with the officials there the legitimacy of employing prisoners of war in armament production and was told by Loeser that he was to be guided by the way in which the matter was handled in

Essen and that the question of legitimacy was to be put aside. This testimony leaves no doubt that the officials in Essen were quite well aware of the fact that the employment of prisoners of war in the production of armament was a violation of the law, and none about the fact that they did not intend for the managers of subsidiaries to raise any troublesome questions about it.

Moreover, it demonstrates the close connection between the directorate in Essen and the subsidiaries having a separate corporate structure such as Germania-werft.

As already said, Schroedter did the best he could for the defendants. He tried to leave the impression that no prisoners of war were employed in armament production in Essen, or at least that he saw none.

In contrast is an affidavit introduced by the defense of Hans Jauch who, beginning in June, 1942, was the Commander of Stalag VI-F, in Boehol. This Stalag had jurisdiction over the employment of prisoners of war in the Essen area. He deposed as follows:

"At Krupps the assignment of workers to jobs was governed by principles of expediency, that is they were put wherever they were needed. A clear separation of production for war purposes and peace purposes was in a firm like Krupps presumably impossible under the sign (sic) of total war. I am of the opinion that if one had wanted to adhere strictly to the letter of the Geneva Convention in this respect the OKW probably ought not have assigned any PWs at all to a firm like Krupp and all similar firms." (1) DX 1006, Lehmann 149, Bk. 8, pp 21, 23.

The fact that during a substantial part of the war years, Russian prisoners of war and Italian military internees were required to work in a semi-starved

condition is conclusively shown by documentary evidence taken from the Krupp files, ~~which had been secreted as hereinabove stated~~. The evidence on the subject is voluminous and within reasonable limits cannot be discussed in detail. The evidence from the ~~secreted~~ Krupp files is conclusive on the question.

Russian prisoners of war began to arrive early in 1942. Of all the military prisoners they fared the worst. The utter inadequacy of the food supplied them is conclusively shown by protests made by managers of several of the plants of the Cast Steel Factory to which they were assigned by Krupp officials for work. A few illustrations will suffice. On February 25, 1942, the Locomotive Works, one of the factories in Essen, forwarded to Hupe, a Krupp official, the following:

"On the 16th of this month, 23 Russian Prisoners of war were allocated to the boiler construction works. These men came to work in the morning without break or tools. During the two breaks, the prisoners approached the German workers seated in the vicinity and plaintively begged for bread, pointing out that they were hungry. (At lunchtime on the first day, the firm was able to distribute amongst the Russian PoWs food left over by the French PoWs.) On 17 February, at the instigation of Mr. Theile I went to the kitchen in Weidkamp to remedy this state of affairs and negotiated with the manager of the kitchen, Miss Block, about the issue of some lunch. Miss Block immediately promised me to issue some food and in addition lent me the 22 mess-tins which I asked for. On this occasion I also

asked Miss Block to let our Russian POWs have until further notice at lunchtime such food as might be left over by the 800 Dutch personnel fed there. Miss Block agreed to this too, and issued a pot of milk soup as additional food for the next lunch. On the following day again the lunch allocation was very small. Since some Russians had already collapsed and since from the second day onwards the special allocation too had ceased, I tried again to ask Miss Block by telephone for a further issue of food. Since my phone call did not have the desired effect, I paid another personal visit to Miss Block. This time Miss Block refused any further special allocation of food in a very brusque manner.'

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"After the Russian prisoners of war had been allocated to us by the Labor Allocation Office on the 16th of this month, I immediately got in touch with Dr. Lehmann to settle the question of feeding them. I then learned that each prisoner receives 300 gr. of bread between 0400 and 05.00 hours. I pointed out that it was impossible to exist on this bread ration until 18.00 hours, whereupon Dr. Lehmann told me that the Russian prisoners of war must not be allowed to get used to western European ways of feeding. I replied that the prisoners could not carry out the heavy labor required in the boiler construction shop on these rations and that it would not serve our purposes to keep the men at the works under these conditions. At the same time, however, I requested that if the Russians were to continue to be employed they should be given a hot mid-day meal and that, if possible, the bread ration should be divided, one half being distributed early in the morning and the other half at the time of our breakfast-break. This proposal of mine has already been put into effect by us with French prisoners of war and has proved effective and expedient.

"To my regret Dr. Lehmann did not agree to my proposal, however," The Dr. Lehmann referred to in this communication is one of the defendants. On March 26, 1942, Thiele, of the boiler construction shop, reported to Hupe that:

"The Russian P.W.s employed here are in a generally weak physical condition and can only partly be employed, on light fitting jobs, electric welding and auxiliary jobs. 10 to 12 of the 32 Russians here are absent daily on account of illness.

"In March for instance, 7 appeared for work only for a few days, 14 are nearly always ill, or come here in such a condition that they are not capable of even the lightest work. Therefore only 18 of the 32 remained who could be used only for the lightest jobs.

"The reason why the Russians are not capable of production is, in my opinion, that the food which they are given will never give them the strength for working which you hope for. The food one day, for instance, consisted of a watery soup with cabbage leaves and a few pieces of turnip."

This report was made six weeks after the first Russian prisoners of war had been employed in that factory. It was brought to the attention of Dr. Beusch and the defendant Ihn.

That nevertheless the condition continued is indicated by another document from the Krupp files. On November 19, 1942, Instrument Work Shop No. 11, another factory in Essen, reported to the Labor Allocation Office as follows:

"During the last few days we have again and again discovered that the food for the Russian POW's who in our plant are exclusively employed on heavy work is totally inadequate. We have already expressed this in our letter to Herr Ihn dated 30 October 1942. We discover again and again that people who live on this diet always break down at work after a short time and sometimes die. It is no help to us to get a few workers assigned to us after a long fight. For this heavy work (processing of airplane armor plates) we have to insist that the food is adequate enough to actually keep these workers with us."

That the conditions described in these documents were general and known by every agency of the firm employing Russian prisoners of war is shown by the defense documents as well as those of the prosecution.

On October 30, 1942, a report was made by Eickmeier to the defendant Lehmann. Eickmeier was an employee of the Labor Allocation from September 1, 1942, until March 1945, and acted as the liaison official with the army authorities having supervision of the prisoners of war camps. He described his duties as those of a "trouble shooter" to straighten out difficulties arising at numerous Krupp plants employing prisoners of war. He testified that he made frequent inspections of the conditions often in company with an Army Inspection Officer from the Stalag, and also a representative from the German Labor Front; and that in at least one instance such inspection took place in the presence of the officials from the internal labor allocation office.

In his report to the defendant Lehmann, of October 30, 1942, Eickmeier stated the following:

"The general state of health and nutrition in all Russian POW camps is very unfavorable and is obvious to anybody who has had an opportunity to observe those things. I have of course also attempted on the spot to find out the causes of this fact. In all Russian camps, members of the army (among them veterans of the Russian campaign who certainly cannot be classed as friends of the bolshevists) explained to me, that the food as far as quantity was concerned was insufficient, furthermore that food ought to be more substantial. Members of the army who have already been for some time on prisoner guard duty declared that they had on various occasions observed new transports of prisoners who on arrival were in the best of health and appeared sturdy and strong, but after only a few weeks were in an extraordinarily weakened condition. Army medical inspectors have also made remarks in the camps along these lines and stated that they had never met with such a bad general state of affairs in the case of the Russians as in the Krupp Camps. In fact the prisoners returning from work make a completely worn-out and limp impression. Some prisoners just simply totter back into camp. It must be taken into consideration that the prisoners have to march a considerable way to and from work in addition to the normal working hours. In my opinion the food should be improved by additional delivery of potatoes. (I also happened to hear from the guards that the prisoners at HOESCH get 3 liters of food). Furthermore, care should be taken that the prisoners receive their food from the plant at the start of the rest period and do not spend it waiting in a queue for the food to be given out."

A file note of October 11, 1942, made by Troeckel, Krupp employee, to Lehmann, which was also brought to the attention of the defendant Ihn, reports a telephone conversation with the Chief Army Physician of the Bocholt Stalag, Dr. Holstein. This Stalag had supervision of prisoners of war in the Essen area. The conversation was with reference to conditions at Camp Raumerstrasse and came about through the efforts of Krupp to return to the Stalag some of the physically unfit Russian prisoners of war. The report recites that:

"Dr. H. complained bitterly that the Raumerstrasse camp was the one among all the camps under their jurisdiction which always had the largest number of sick prisoners. He could only assume that this was due to the camp food, camp management, etc. It was true, that conditions in the camp had already improved but it still had the highest sick rate. *** He asked us on our part to do our best to improve conditions particularly in connection with food at the Raumerstrasse camp."

In October, 1942, Dr. Toppesser, of the Drop Forge plant, after observing that the Russian prisoners of war who came there for treatment "gave evidence of appalling poor nutrition" pointed out that in a mine in the vicinity, the "nutrition of the prisoners of war was evidently quite good, notwithstanding their

heavy work underground," and that this was due to the fact that the "mine purchased huge quantities of Swedish turnips as additional raw food for them," which put them in good condition. This information was transmitted to the defendant Lehmann.

The Krupp employee Eickmeier, hereinabove referred to was introduced as a witness for the defense. His efforts to explain away his reports were unique. It seems that in an effort to bring about an improvement, Lehmann intended to present the deplorable situation to the top officials of the firm. Eickmeier testified that at Lehmann's request he intentionally exaggerated the facts so as to make more impressive Lehmann's presentation of the need for relief. In the same connection, he testified that "difficulties we could not deal with ourselves were taken by Lehmann to offices in the very top levels in the firm."

But Eickmeier's cross examination developed that his attempted explanation of his reports was not trustworthy. He admitted "the food was very meager; seemed to be largely a liquid diet and I wanted to get them more solid food."

He also testified that before the prisoners of war were sent to the Krupp firm, they were examined by an army doctor for the purpose of weeding out those physically unfit to work and that there was no further examination made after their arrival. He likewise confirmed a statement in his report of October 30, 1942, that

"members of the army who have already been for some time on prisoner of war guard duty declared that they had on various occasions observed new transports of prisoners who, on arrival, were in the best of health and appeared sturdy and strong, but after only a few weeks were in an extra-ordinarily weakened condition."

Conditions at the Krupp prisoners of war camps at the time under consideration were so bad that they came to the attention of the Army High Command. A contemporaneous document from the Krupp files records a telephone call made on October 14, 1942, by the Chief of the Prisoner of War Department of the Supreme Command of the Armed Forces, to the Krupp firm. The call was to the defendant Von Buelow but he seems to have not been

available and apparently it was taken by his secretary who made a record of it, communicating it to Von Buelow. The record is as follows:

"Re: Telephone Call by Oberst (Colonel) Brever of the Supreme Command of the Armed Forces, Dent. POW's, Berlin. Oberst Brever who wanted to talk to Herr von Buelow, requested me to pass on the following to Herr von Buelow:

The Supreme command of the Armed Forces has lately received from their own offices and recently also in anonymous letters from the German population a considerable number of complaints about the treatment of POW's at the firm KRUPP (especially that they are being beaten, and furthermore that they do not receive the food and time off that is due to them. Among other things the POW's are said not to have received any potatoes for six weeks.) All those things would no longer occur anywhere else in Germany, The Supreme Command of the Armed Forces has already requested several times that full food rations should be issued to the prisoners. In addition if they have to perform heavy work, they must also get corresponding time off, the same as the German workers. Oberst Brever also informed me that the conditions at Krupp would be looked into either by the Army District Command or by the Supreme Command of the Armed Forces themselves. He had requested General v.d. Schulenburg on the occasion of a trip to call at Krupp in person concerning this matter; unfortunately this had not been possible. I told Oberst Brever that I could not judge the conditions but would pass on his information to Herr von Buelow immediately".

When the foregoing information was communicated to the defendant von Buelow he passed it to the defendant Lehmann with the advice that he had just had a call from a Captain from the General Command Muester, and that in the course of the conversation,

"I mentioned the call from Colonel Brever and told him that these complaints were certainly not justified. Besides, I was not the proper authority but would pass on the matter to competent officers in our firm. May I request you to take care of everything further."

There were also complaints by Army officers charged with the supervision of prisoners of war about conditions in the Krupp enterprise. In January 1943, they again told Eickmeier that the "Oedema cases only existed in Krupp camp."

In June, 1943, the official vegetable ration for Russian prisoners of war were less than one-quarter pound per day. In view of this fact, it is quite understandable how the department under the charge of the defendant Kupke reported "that it is impossible to prepare two even moderately satisfying hot meals on one and a half liters out of this quantity,"

In the light of the foregoing documents, it cannot be said that the Krupp firm was required by governmental directives to work prisoners of war, who, in many instances, were bordering on starvation. The Cast Steel Factory at Essen (Gusstahlfabrik) had officially been declared a military plant exclusively at the disposal of the High Command of the Armed Forces and of the Wehrmacht Departments under its command, "which will furnish the plant with detailed instructions." The official directive expressly stated that only these military departments will have authority over this plant.

This was confirmed by Jauch, Commander of Stalag VI-F at Bocholt, whose affidavit introduced by the defense has already been referred to. He deposed that "naturally there were directives for the employment and treatment of prisoners of war which were based on the Geneva Convention. The executory decrees were issued by the OKW immediately, thus the Stalags were the only organs which had to see to it that these directives were obeyed and not violated."

But apart from this evidence it is conclusively shown that the allocation of prisoners of war and their supervision was by the military authorities and, moreover, that requests by a firm for prisoners of war were granted only on condition that those physically unfit would not be put to work until they had been gotten shape by proper feeding, or whatever measures were necessary.

This is made clear not only by documentary evidence offered by the defense, but also by the defense witness Borschmeyer, who, beginning early in 1942, was the Office Chief of Counter-Intelligence at the Stalag charged with supervision of prisoners of war camps in that area. Borschmeyer did the best he could to exonerate the defendants and the Krupp firm, but in the light of the contemporaneous documents his efforts must be regarded as futile. He testified that in many instances, because of their poor physical condition, Russian prisoners of war had to be "fed up" and "treated very carefully in regard to food in order to bring them up to strength," and very often this was a long process.

But he made it clear that in granting requests for allocation of prisoners of war the Wehrmacht did so with the distinct understanding that it was the obligation of the employer to see that they were in the proper physical condition before putting them to work. With respect to Russian prisoners of war in particular, he testified that "they should be pampered and treated like a raw egg;" and he was emphatic in stating that if any prisoners of war were put to work in a physically unfit or undernourished condition, it was not the fault of the Wehrmacht but in part at least the fault of the factory to which they had been allocated.

Moreover, he confirmed that the employment of prisoners of war in the Krupp enterprise, particularly in Essen, exposed them to great danger. Anticipating the alleged defense of necessity hereinafter discussed it is interesting to note that Borschmeyer testified that he had no fear of reprisals for the policy of "pampering" Russian prisoners of war.

There is much evidence by the defense as to the so-called "pampering" of Russian prisoners of war, by "feeding them up" with extra rations before they were put to work. Such measures seem to have been considered necessary at the most temporarily. The defense introduced a letter from the Board of Directors of Fried, Krupp, A. G., Essen, dated September 25, 1942, signed by the defendants Ihn and Lehmann, addressed to the Army High Command. In this letter it was pointed out that a recent shift of Russian prisoners of war allocated for essential war work were so weak and undernourished that even with the best intention they were unable to work, and that with the food due them they could not be strengthened enough to work in the near future. It was accordingly asked "whether it might be possible to authorize additional food necessary for a feeding up campaign" of from 4 -- 6 weeks, which would be necessary to get the prisoners of war in condition to work. The letter concluded that "as we are under the circumstances described very anxious to employ the Russian prisoners of war in the very near future, we should be most grateful if you would give us your

opinion on this matter as soon as possible."

A reply to this letter, dated October 15, 1942, was as follows:

"As from 19 October 1942 new food-regulations will be in force for Soviet prisoners-of-war with notable improvement of food allocations for these prisoners-of-war both in quality and quantity. The procurement of these supplies will make it possible to feed the Soviet prisoners-of-war adequately and to re-establish the full working-capacity of the prisoners. Further provisions for special feeding up of prisoners should therefore no longer be necessary."

Whatever may be said about the inadequacy of official rations prior to October, 1942, and the efforts made by the Krupp firm to bring about an increase, there are two determinative facts which are established beyond doubt by contemporaneous documents taken from the Krupp files, some of which are quoted hereinabove. These are: (1) that Russian prisoners of war were put to heavy work when, due to undernourishment, they were totally unfit physically; and (2) that not only was there no official requirement that this be done, but it was directly contrary to the orders of the competent officials.

It may be conceded that there was some improvement in the feeding of prisoners of war by the middle of 1943, but such as it was it did not prove to be permanent.

The testimony of defense witness Marquardt, Krupp employee, indicates what the situation was in the summer and fall of 1944 with respect to the noon meals served in the factories during the break in working hours. Marquardt's wife and father-in-law also worked in Rolling Mill 2. Upon one occasion they decided to eat their noon meal at the plant instead of at their home. Marquardt testified that they tried it "but we didn't continue like that for long because the food wasn't very good and definitely not what it should have been."

Moreover, that the prisoners were required to work in highly dangerous areas is conceded. It is no answer to say that because of the bombing attacks and the military situation in general life for everyone in Essen, including Germans, had become dangerous and difficult. The prisoners of war, concentration

camp inmates and in large part the foreign civilian workers were not in Essen by choice. They had been brought there to an enemy country against their will, and kept there in a state of involuntary servitude. They were utterly unable to help themselves and absolutely dependent upon the officials of the Krupp firm for protection and for their every need. They had no choice as to when, how or where they should work; or whether they should work at all. In no sense can it be said that they were in any wise responsible for the conditions now pleaded as an excuse. If those conditions made it impossible to give them the proper care, food and protection they should not have been required to work at all, especially in one of the most dangerous places in all Europe. Instead what was required of the workers, including the foreigners, is correctly described in the brief of counsel for the defendant Krupp as follows:

"The cast steel factory was in the very center of this inexorable struggle, and was most severely affected by it. One workshop after the other went up in flames or was gutted. Every breathing space was used to repair the damage and to maintain production. The big raid of March 5, 1943, caused such extensive damage in the works, that the production wage hours fell by fifty per cent, and continued to fall from that date onwards almost without interruption. One third and more of the whole work was devoted to the removal of damages and reconstruction."

It is further said in the same brief that "until the middle of 1943 it was attempted, as a matter of principle, to reconstruct destroyed huts as quickly as possible. After that these efforts were limited to a few camps only, which subsequently experienced up to five consecutive destructions and reconstructions."

In this connection it is proper to state that the evidence affirmatively shows that the Krupp officials as well as the German workers at that time had become convinced that the struggle was hopeless and defeat for Germany was inevitable.

The rations for Italian military internees were the same as those for western prisoners of war, but their diet had very bad results. The evidence with respect to the status of these internees is not very satisfactory. From what there is of it, it appears that in the main they were Italian soldiers who surrendered with their arms to the Germans in North Italy after

the Badoglio Government came into power but before it declared war on Germany. These Italians were first accorded the status of prisoners of war, but later were forced to accept the status of foreign workers. We do not regard it necessary for present purposes to resolve this question one way or the other. In either view, it is obvious that they were brought to Germany under compulsion and kept in a state of servitude while employed in the armament industry in connection with a war against their own country.

They were principally employed in four plants, two of them the Gusstahlfabrik, Essen, and the Friedrich Alfried Huetten at Rheinhausen. A report from the latter concern in February, 1944, showed that a sickness rate of 11 percent including 70 cases of oedema and a hundred loss of weight. It is also stated that of 765 camp inmates, 35 percent were unfit or only partly fit for work and that the number of undernourished persons and cases of stomach and bowel trouble shows the food unsuitable for most of the Italian military internees.

A report from the same source in March, 1944, shows a further deterioration in the condition of the prisoners. It concludes that "the present weight of these people, most of whom are expected to do work involving considerable physical exertion, is too low. With regard to the food and subsequently the output of the Italian military internees there exists an acute emergency which could only be met by a generous release of suitable food stuffs." The sickrate was still abnormally high in June, 1944, and had increased in August, 1944, almost a year after their imprisonment. In addition, the report of that month recites that a large part of these prisoners "suffered many foot injuries due to poor footwear." A similar situation prevailed in Essen with respect to the food given Italian military internees and the resulting sick rate. This is reflected by reports from the department headed by the defendant Kupke in the spring and summer of 1944.

Italian military internees were converted into civilian workers on September 1, 1944. From that date, all the limitations resulting from their former status were abolished and they thereafter received the rations of free foreign workers. The documents show a substantial improvement thereafter.

The defense claims that the condition of the Italian military internees during the time they were treated as prisoners of war was due not to the insufficiency of the food but to the manner in which it was prepared and the fact that it was of a kind to which the Italians were not accustomed. It is also insisted that this condition was soon remedied by putting in charge Italian chefs. If this be true, it must be conceded that it took an extraordinarily long time to find and apply the remedy. Moreover, the fact that the trouble was not entirely that claimed by the defense is indicated by the report of Dr. Jaeger, Krump's senior camp physician. On the day the change of status took place he reported that "the food is now good and sufficient. There have been no more complaints, in spite of the scarcity of potatoes. I have been able to ascertain during the past year that the susceptibility and the bad general physical condition of the Italians improved a little. They were in a very bad general physical condition even when they arrived and this was of course increased by long marches on the way here, and unaccustomed working and climatic conditions."