

UNITES STATES MILITARY TRIBUNAL III

NUERNBERG, GERMANY

THE UNITES STATES OF AMERICA }

- against - }

ALFRED KRUPP VON BOHLEN UND
HALDRUP, et al., }

Defendants.

(stamp): 13⁰⁰
Filed 29 March 1948 with
Secretary General
for Military Tribunal
Defense Center

Case No. 10

MOTION TO DISMISS FOR LACK OF JURISDICTION.

COMES NOW the defendants Friedrich von BUELOW and moves
this Tribunal to dismiss the charges and specifications there-
under upon the grounds that this Tribunal was appointed and
organized in contravention of law and is without authority
in law for its creation. (see Manual for Courts Material
1928, par.2).

General Order No. 126, dated 21 November 1947, pur-
porting to create a court on 12 November 1947, issued by
command of General Lucius D. Clay, Headquarters European
Command, and likewise purporting to appoint three persons
not in the military service of the United States, to wit
H.C. ANDERSON, Presiding Judge; Edward James DALY, Judge;
William John Wilkins, Judge, as members thereof and desig-
nating such Tribunal as a "military" tribunal is in viola-
tion of both the civil and the military law of the United
States. None of the persons so named are in the military serv-
ice of the United States, nor are they officers of the United Sta-
tes, nor are they subject to military orders of the said

General Lucius D. Clay.

Said order is further defective in that there is no provision made either in the military or the civil laws of the United States for the creation of a tribunal composed of three members and is in fact in derogation of the military law which requires the appointment of not less than five members for a military commission or tribunal for the hearing of offenses involving capital punishment, all of whom must be officers of the United States.

Said order is further defective and illegal in that it purports to create a tribunal "pursuant to Military Government Ordinance No.7" which said order was itself promulgated 18 October 1946 by order of the Commanding General of the United States Forces in the Occupied Zone of Germany, and which ordinance is of no higher authority than General Order No. 126, and which can therefore pass no additional authority in General Lucius D. Clay.

General Order No. 126, by incorporating therein by reference provisions of Military Government Ordinance No.7 and by the attempted appointment of three civilians to a military tribunal, violates Article of War 15 and the customary laws and practices and usages of the military service and is contrary to the Constitution and laws of the United States. The composition, the jurisdiction, the procedure, and the review of the military commission's decision was provided for by Congress. (see Ex Parte Quirin 317 United States, 1)

The Congress of the United States incorporated by reference and provided by Article of War 15 for the trial of all offences against the law of nations in the exercise by the Congress of the power and authority invested in it by Article I, Section 9, Clause 9 of the Constitution of the United States

of America.

The character of a Military Tribunal established by laws, customs and usages of the military services of the United States for the trial of offenses against the laws of nations which were so incorporated into Article of War 15 was specifically set out in Winthrop's Military Law and Precedents, pages 831, 835, 836 - 841, 842, 845, 846.

General Order No. 126 and Military Government Ordinance No. 7 incorporated therein are in violation of Article of War 4, 8, 15, 17, 18, 19, 22, 24, 25, 26, 31, 35, 38, 39, 43, 46, 47, 48, 49, 50 1/2, 70, 114; and in violation of those provisions of paragraph 2 of Manual for Courts-Martial 1928 applicable to the trial of enemy nationals for offenses against the laws of war by reason of the fact of belligerent occupancy; and the provisions of General Order No. 126 and Military Government Ordinance No. 7 as incorporated therein are in violation of the following provisions of Manual for Courts-Martial 1928 applicable to each of the defendants herein; paragraphs 4, 5(a), 6, 7, 8, 11, 12, 18, 19, 23, 24, 27, 29(a), 29 (b), 30, 31, 32, 33, 34, 35, 39, 40, 41(a), 41(b), 45, 49 (f), 51(a), 51(c), 51(d), 52(a), 52(b), 52(c), 57(a), 58(a), 58(d), 58(e), 58(f), 51, 62, 64(a), 65, 67, 71(a), 71(b), 71(c), 71(d), 71(e), 73, 74, 75(a), 75(b), 78, 87(a), 87(b), 87(c), 88, 89, 95, 96, 97(a), 97(b), 98(a), 98(b), 98(c), 98(d), 98(e), 98(f), 98(g), 111, 112, 113, 114, 115, 116, 117, 118, 119, 120, 121, 122, 123, 124, 125.

If it be contended that this Tribunal is not an American Military Tribunal, despite the title of the action, as has been maintained in other cases, the Defendant stands ready to establish the falsity and untenability of any such contention.

This motion is based upon the record of trial and oral testimony to be adduced at the hearing thereon.

/s/ Joseph S. Robinson

/s/ Dr. Wolfgang Pohle by We

Joseph S. ROBINSON,
Dr. Wolfgang POHLE,

Attorneys for Friedrich von Buelow