

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

THE UNITED STATES OF AMERICA

-vs.-

ALFRIED FELIX ALVYN 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

related 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-Huette 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, Wolfgang 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 inter-changeably 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.

COUNT TWO - PLUNDER AND SPOILIATION

All of the defendants except the defendants Lehmann and Kupke are charged with War Crimes and Crimes Against Humanity under Count Two of the Indictment. They are accused of having exploited, as principals or as accessories in consequence of a deliberate design and policy, territories occupied by German armed forces in a ruthless way, far beyond the needs of the army of occupation and in disregard of the needs of the local economy.

These acts are alleged to have taken place in France, Belgium and the Netherlands, Austria, Yugoslavia, Greece and the Soviet Union: to have been committed unlawfully, wilfully, and knowingly; and to constitute violations of the laws and customs of war, of international treaties and conventions, including Articles 46-56 inclusive of the Hague Regulations of 1907, of the general principles of criminal law as derived from the criminal laws of all civilized nations, of the internal penal laws of the countries in which such crimes were committed, and of Article II of Control Council Law No. 10.

The pertinent portions of Articles 46-56 of the Hague Regulations are:

"Private property....must be respected" and ".... cannot be confiscated" (Article 46);
"Pillage is formally forbidden," (Article 47);
an occupying army may make requisitions in kind only "for the needs of the army of occupation" and "They shall be in proportion to the resources of the country, and of such a nature as not to involve the inhabitants in the obligation of taking part in military operations against their own country." (Article 52). Article 53 provides, in part: "An army of occupation can only take possession of cash, funds, and realizable securities which are strictly the property of the State, depots of arms, means of transport, stores and supplies, and, generally, all movable property belonging to the State which may be used for military operation." Article 55 reads: "The occupying State shall be regarded only as administrator and usufructuary of public buildings, real estate, forests, and agricultural estates belonging to the hostile State, and situated in

the occupied country. It must safeguard the capital of these properties, and administer them in accordance with the rules of usufruct."

In its Judgment, the International Military Tribunal made the following comment: (p 68)

"....These articles,....make it clear that under the rules of war, the economy of an occupied country can only be required to bear the expense of the occupation, and these should not be greater than the economy of the country can reasonably be expected to bear...."

We quote further from the IMT Judgment: (p 68)

"The evidence in this case has established, however, that the territories occupied by Germany were exploited for the German war effort in the most ruthless way, without consideration of the local economy, and in consequence of a deliberate design and policy. There was in truth a systematic 'plunder of public or private property,' which was criminal under Article 6 (b) of the Charter.The methods employed to exploit the resources of the occupied territories to the full varied from country to country. In some of the occupied countries in the east and the west, this exploitation was carried out within the framework of the existing economic structure. The local industries were put under German supervision, and the distribution of war materials was rigidly controlled. The industries thought to be of value to the German war effort were compelled to continue, and most of the rest were closed down altogether. Raw materials and the finished products alike were confiscated for the needs of the German industry."

In the general summary, the IMT found:

"War Crimes were committed on a vast scale never before seen in the history of war. They were perpetrated in all the countries occupied by Germany."

It has been urged by the Defense that the provisions of the Hague Convention No. IV, and of the Regulations annexed to it, do not apply in "total war".

This doctrine must be emphatically rejected. This Tribunal fully concurs with the Judgment of the IMT that the Hague Convention No. IV of 1907 to which Germany was a party had, by 1939, become customary law and was, therefore, binding on Germany not only as Treaty Law but also as Customary Law.

With further reference to the contention that total war would authorize a belligerent to disregard the laws and customs of warfare, the IMT stated--and this Tribunal again fully concurs:

"....There can be no doubt that the majority of them (War Crimes) arose from the Nazi conception of 'total war' with which the aggressive wars were waged. For in this conception of 'total war' the moral ideas underlying the Conventions which seek to make war more humane are no longer regarded as having force or validity. Everything is made subordinate to the overmastering dictates of war. Rules, regulations, assurances and treaties, all alike, of no moment; and so, freed from the restraining influences of International Law, the aggressive war is conducted by the Nazi leaders in the most barbaric way...."

With particular reference to Articles 46-50-52 and 56 of the Hague Regulations, the IMT states:

"....,that violations of these provisions constituted crimes for which the guilty individuals were punishable is too well settled to admit of argument...."

It must also be pointed out that in the preamble to the Hague Convention No. IV it is made abundantly clear that in cases not included in the Regulations, the inhabitants and the belligerents remain under the protection and the rule of the principles of the Law of Nations, as they result from the usages established among civilized peoples, from the laws of humanity, and dictates of the public conscience.

As the records of the Hague Peace Conference of 1899 which enacted the Hague Regulations show, great emphasis was placed by the participants on the protection of invaded territories and the preamble, just cited, also known as "Mertens Clause", was inserted at the request of the Belgian delegate, Mertens, who was, as were others, not satisfied with the protection specifically guaranteed to belligerently occupied territory. Hence, not only the wording (which specifically mentions the "inhabitants" before it mentions the "Belligerents") but also the discussions which took place at the time make it clear that it refers specifically to belligerently occupied country. The Preamble is much more than a pious declaration. It is a general clause, making the usages established among civilized nations, the

laws of humanity, and the dictates of public conscience into the legal yardstick to be applied if and when the specific provisions of the Convention and the Regulations annexed to it do not cover specific cases occurring in warfare, or concomitant to warfare.

However, it will hardly be necessary to refer to these more general rules. The Articles of the Hague Regulations, quoted above, are clear and unequivocal. Their essence is: if, as a result of war action, a belligerent occupies territory of the adversary, he does not, thereby, acquire the right to dispose of property in that territory, except according to the strict rules laid down in the Regulations. The economy of the belligerently occupied territory is to be kept intact, except for the carefully defined permissions given to the occupying authority—permissions which all refer to the army of occupation. Just as the inhabitants of the occupied territory must not be forced to help the enemy in waging the war against their own country or their own country's allies, so must the economic assets of the occupied territory not be used in such a manner.

It is a matter of historic record that Germany violated these rules even during the first World War; and though she did it at that time on an immeasurably smaller scale than during the second World War, her practices were generally condemned—condemned by the experts of International Law, condemned in the peace treaties (in which Germany promised indemnification for those illegal acts) and condemned by right-thinking Germans themselves. For example, in the sixth revised edition of "International Law" by Oppenheim, revised and edited by Lauterpacht (1944) it is stated:

The rules regarding movable private property in enemy territory were "systematically violated by the central powers during the World War.... Factories and workshops were dismantled and their machinery and materials carried away.... These are but examples of the wholesale seizure of private property practiced by Germany and her allies in the countries which they occupied."

About immovable private enemy property, the same leading textbook writer states:

"Immovable private enemy property may under no circumstances or conditions be appropriated by an invading belligerent. Should he confiscate and sell private land or buildings the buyer would acquire no rights whatsoever to the property. Article 46 of the Hague Convention expressly enacts that 'private property' may not be confiscated, but confiscation differs from the temporary use of private land and buildings for all kinds of purposes demanded by the necessities of war.

"Private personal property which does not consist of war material or means of transport serviceable for military operations may not, as a rule, be seized. Article 46 and 47 of the Hague Regulations expressly stipulate that 'private property may not be confiscated' and 'pillage is formally prohibited'. But it must be emphasized that these rules have, in a sense, exceptions demanded and justified by the necessities of war. Men and horses must be fed; men must ~~protect~~ themselves against the weather. If there is no time for ordinary requisitions to provide food, forage, clothing, and fuel, or the inhabitants of a locality have fled, so that ordinary requisitions cannot be made, a belligerent must take these articles wherever he can get them, and he is justified in so doing. Moreover, quartering of soldiers (who, together with their horses, must be well fed by the inhabitants of the houses where they are quartered) is likewise lawful, although it may be ruinous to the private individuals upon whom they are quartered".

Spoliation of private property, then, is forbidden under two aspects: firstly, the individual private owner of property must not be deprived of it; secondly, the economic substance of the belligerently occupied territory must not be taken over by the occupant or put to the service of his war effort—always with the proviso that there are exemptions from this rule which are strictly limited to the needs of the army of occupation insofar as such needs do not exceed the economic strength of the occupied territory.

Article 43 of the Hague Regulations is as follows:

"The authority of the legitimate power having in fact passed into the hands of the occupant, the latter shall take all the measures in his power to restore, and ensure, as far as possible, public order and safety, while respecting, unless absolutely prevented, the laws in force in the country." (underscoring added)

This Article permits the occupying power to expropriate either public or private property in order to preserve and maintain public order and safety. However, the Article places limitations upon the activities of the occupant. This restriction is found in the clause which requires the occupant to respect, unless absolutely prevented, the laws in force in the occupied country. This provision reflects one of the basic standards of the Hague Regulations, that the personal and private rights of persons in the occupied territory shall not be interfered with except as justified by emergency conditions. The occupying power is forbidden from imposing any new concept of law upon the occupied territory unless such provision is justified by the requirements of public order and safety. An enactment by the German occupation authorities imposing Nazi racial theories can not be justified by the necessities of public order and safety.

In Case Number 3, Tribunal III, citing as authority the Preamble to the Hague Convention and Articles 23 (h), 43, and 46 of the Hague Regulations, stated:

"The extension to and application in these territories of the discriminatory law against Poles and Jews was in furtherance of the avowed purpose of racial persecution and extermination. In the passing and enforcement of that law the occupying power in our opinion violated the provisions of the Hague Convention."

When discriminatory laws are passed which affect the property rights of private individuals, subsequent transactions based on those laws and involving such property will in themselves constitute violations of Article 46 of the Hague Regulations.

Beyond the strictly circumscribed exceptions, the invader must not utilize the economy of the invaded territory for his own needs within the territory occupied. We quote from Garner's "International Law and The World War", volume 2, pp. 124-6, as follows:

"Article 52 of the Hague Convention respecting the laws and customs of war expressly forbids requisitions in kind except 'for the needs of the army of occupation.'

"It was clearly not the intention of the conference to authorize the taking away by a military occupant of live stock for the maintenance of his own industries at home or for the support of the civil population of his country. By no process of reasoning can requisitions for such purposes be construed to be for the 'needs of the army of occupation'

"A similar charge against the Germans was that of committing spoliations upon Belgian manufacturing industries by dismantling factories and workshops and carrying away their machinery and tools to Germany.

"The Belgian Government addressed a protest to the governments of neutral countries against these acts as being contrary to Article 53 of the Hague Convention respecting the laws and customs of war, which, although it allows, subject to restoration and indemnity for its use, the seizure of war material belonging to private persons, does not authorize the seizure and exportation by the occupying belligerent of machinery and implements used in the industrial arts. The industrial establishments of Northern France were similarly despoiled of their machinery much of it being systematically destroyed.

"What was said above in regard to the illegality of the requisition of live stock and its transportation to Germany for the benefit of German industry and for the support of the civil population at home must be said of the seizure and transportation for similar purposes of the machinery and equipment of Belgian and French factories and other manufacturing establishments. The materials thus taken were not for the needs of the army of occupation, and the carrying of them away was nothing more than pillage and spoliation under the disguise of requisitions."

In a footnote on page 126 of the same volume, we find the following pertinent comment:

"The authorities are all in agreement that the right of requisition as recognized by the Hague Convention is understood to embrace only such supplies as are needed by the army within the territory occupied and does not include the spoliation of the country and the transportation to the occupant's own country of raw materials and machinery for use in his home industries... The Germans contended that the spoliation of Belgian and French industrial establishments and the transportation of their machinery to Germany was a lawful act of war under Article 23 (g) of the Hague Convention which allows a military occupant to appropriate enemy private property whenever it is 'imperatively demanded by the necessities of war.' In consequence of the Anglo-French blockade which threatened the very existence of Germany it was a military necessity that she should draw in part on

the supply of raw materials and machinery available in occupied territory. But it is quite clear from the language and context of Art. 23 (g) as well as the discussions on it in the Conference that it was never intended to authorize a military occupant to despoil on an extensive scale the industrial establishments of occupied territory or to transfer their machinery to his own country for use in his home industries. What was intended merely was to authorize the seizure or destruction of private property only in exceptional cases when it was an imperative necessity for the conduct of military operations in the territory under occupation. This view is further strengthened by Art. 46 which requires belligerents to respect enemy private property and which forbids confiscation, and by Art. 47 which prohibits pillage."

Another erroneous contention put forth by the defense is that the laws and customs of war do not prohibit the seizure and exploitation of property in belligerently occupied territory, as long as no definite transfer of title was accomplished. The Hague Regulations are very clear on this point. Article 46 stipulates that "private property....must be respected." However, if, for example, a factory is being taken over in a manner which prevents the rightful owner from using it and deprives him from lawfully exercising his prerogative as owner, it cannot be said that his property "is respected" as under Article 46 it must be.

The general rule contained in Article 46 is further developed in Articles 52 and 53. Article 52 speaks of the "requisitions in kind and services" which may be demanded from municipalities or inhabitants, and it provides that such requisitions and services "shall not be demanded except for the needs of the Army of Occupation." As all authorities are agreed, the requisitions and services which are here contemplated and which alone are permissible, must refer to the needs of the Army of Occupation. It has never been contended that the Krupp firm belonged to the Army of Occupation. For this reason alone, the "requisitions in kind" by or on behalf of the Krupp firm were illegal. All authorities are again in agreement that the requisitions in kind and services referred to in Article 52, concern such matters as billets for the occupying troops and the occupation

authorities, garages for their vehicles, stables for their horses, urgently needed equipment and supplies for the proper functioning of the occupation authorities, food for the Army of Occupation, and the like.

The situation which Article 52 has in mind is clearly described by the second paragraph of Article 52:

"Such requisitions and services shall only be demanded on the authority of the Commander in the locality occupied."

The concept relied upon by the defendants--namely: that an aggressor may first over-run enemy territory, and then afterwards industrial firms from within the aggressor's country may swoop over the occupied territory and utilize property there--is utterly alien to the laws and customs of warfare as laid down in The Hague Regulations, and is clearly declared illegal by them because The Hague Regulations repeatedly and unequivocally point out that requisitions may be made only for the needs of, and on the authority of, the Army of Occupation.

There is one important exception, contained in Article 53 (2):

"All appliances, whether on land, at sea, or in the air, adapted for the transmission of news, or for the transport of persons or things, exclusive of cases governed by naval law, depots of arms, and generally, all kinds of ammunition of war, may be seized, even if they belong to private individuals, but must be restored and compensation fixed when peace is made."

The offense of spoliation is committed even if no definite alleged transfer of title was accomplished. The reason why the Hague Regulations do not permit the exploitation of economic assets (except to the limited extent outlined) for the war effort of the occupant, are clear and compelling. If an economic asset which, under the rules of warfare, is not subject to requisition, is nevertheless exploited during the period of hostilities for the benefit of the enemy, the very things result which the law wants to prevent, namely,

a) the owners and the economy as a whole as well as the population are deprived of the respective assets;

b) the war effort of the enemy is unfairly and illegally strengthened;

c) the products derived from the spoliation of the respective asset are being used, directly or indirectly, to inflict losses and damages to the peoples and property of the remaining (non-occupied) territory of the respective belligerent, or to the peoples and property of its allies.

The defendants cannot as a legal proposition successfully contend that, since the acts of spoliation of which they are charged were authorized and actively supported by certain German governmental and military agencies or persons, they escape liability for such acts. It is a general principle of criminal law that encouragement and support received from other wrongdoers is not excusable. It is still necessary to stress this point as it is essential to point out that acts forbidden by the laws and customs of warfare cannot become permissible through the use of complicated legal constructions. The defendants are charged with plunder on a large scale. Many of the acts of plunder were committed in a most manifest and direct way, namely, through physical removal of machines and materials. Other acts were committed through changes of corporate property, contractual transfer of property rights, and the like. It is the results that count, and though the results in the latter case were achieved through "contracts" imposed upon others, the illegal results, namely, the deprivation of property, was achieved just as though materials had been physically shipped to Germany.

Finally, the Defense has argued that the acts complained of were justified by the great emergency in which the German War Economy found itself. With reference to this argument it must be said at the outset that a defendant has, of course, the right to avail himself of contradictory defense arguments. This Tribunal has the duty carefully to consider all of them; but the Tribunal cannot help observing that

the Defense, by putting forth such contradictory arguments, weakens its entire argument. The "emergency argument" implies clearly the admission that, in and of themselves, the acts of spoliation charged to the defendants were illegal, and were only made legal by the "emergency". This argument is bound to weaken the other argument of the Defense, according to which the acts charged to them were legal, anyway.

However, quite apart from this consideration, the contention that the rules and customs of warfare can be violated if either party is hard pressed in war must be rejected on other grounds. War is by definition a risky and hazardous business. That is one of the reasons that the outcome of a war, once started, is unforeseeable and that, therefore, war is a basically un-rational means of "settling" conflicts— why right-thinking people all over the world repudiate and abhor aggressive war. It is an essence of war that one or the other side must lose and the experienced Generals and Statesmen knew this when they drafted the rules and customs of land warfare. In short these rules and customs of warfare are designed specifically for all phases of war. They comprise the law for such emergency. To claim that they can be wantonly—and at the sole discretion of anyone belligerent—disregarded when he considers his own situation to be critical, means nothing more or less than to abrogate the laws and customs of war entirely.

We shall now discuss in appropriate sequence the proven facts relating to the alleged specific acts of spoliation as they appear from the credible evidence presented before us.

On 18 May 1940 the defendant Alfried Krupp and three other industrialists were gathered around a table intently studying a map while listening to a broadcast of German war news over the radio. The four men learned of the great advances of the German Wehrmacht through Belgium and evidently concluded from what they heard that the situation in Holland had been so consolidated that there was a

possibility that outstanding members of the economy now would be able to go there.

At the conclusion of the broadcast the four men talked excitedly and with great intensity. They pointed their fingers to certain places on the map indicating villages and factories. One said "This one is yours, - that one is yours, - that one we will have arrested - he has two factories." They resembled, as the witness Ruemann put it, "vultures gathered around their booty." One of the men (Lipps) telephoned his office to contact the competent military authority to obtain passports to Holland for two of them for the following day.

We are satisfied that this incident occurred as portrayed by the witness Ruemann and that it clearly indicates the attitude of the defendant Alfried Krupp during the period of Germany's aggressions here under contemplation, as judged by this incident and his subsequent actions in the invaded territories which we shall hereinafter discuss at length.

THE AUSTIN PLANT AT LIANCOURT, FRANCE

The Austin factory located at Liancourt, France was founded in 1919. In 1939 the firm was purchased by Robert Rothschild who was a citizen of Yugoslavia and of Jewish extraction. The business of the firm was the production of agricultural tractors. Only during the months of May and June, 1940, upon special instructions from the French Army Headquarters during the German offensive against France, Belgium and Holland, did the Austin factory devote about 90% of its production to war materials and 10% to the production of agricultural tractors for civilian consumption. A department was set up for the manufacture of war materials separate and apart from Austin's regular peace-time industry. The machines were loaned to Austin by the French Government which also furnished the machine tools, raw materials and workmen.

The owner, Robert Rothschild, was forced to flee from Liancourt with the general exodus upon the advance of the German army. He went to live south of Lyon in the Department of Dauphine and because of his Jewish extraction was unable to return to German-occupied France so he sent his non-Jewish brother-in-law, Milos Celap, to take charge of the plant. The machines owned by the French Government were sequestered by the German army. The Austin plant immediately upon the occupation in June 1940 was taken over by the German army. The German commander refused to turn over the plant to Celap because it was Jewish owned, but upon the German commander's advice Rothschild assigned his stock to Celap, whereupon the property was released to Celap on 19 October 1940. Celap remained in charge of the property until 28 December 1940 at which time he was dismissed under the provisions of the anti-Jewish Decree issued by the Chief of German Military Government for France on 18 October 1940.

This decree required the registration of Jewish enterprises and authorized the appointment of administrators for such properties. The

decree further provided that any transfer of title to Jewish property after 23 May 1940 could be declared void by the Military Governor. After Celap's dismissal, a provisional administrator was appointed to operate the plant. The owner Rothschild, who remained in the unoccupied zone, opposed the appointment of the administrators and at all times took the position that such appointments were illegal.

In June 1942 an offer was made by the Krupp firm to Maurice Erhard, administrator of the property, for the purchase of the Austin plant for five million francs. Ten other companies, both French and German, were interested at the time in securing the property. Within a month after the offer was made by the Krupp firm, a subordinate in the office of the defendant Loeser reported that Erhard had been delaying negotiations. As a result thereof the German military authorities, after consulting with the Krupp firm, directed Erhard to give the Krupp firm a three year lease if he could not make up his mind to sell the property, and that failure on the part of Erhard to make the lease would result in his dismissal as administrator.

On 1 August 1942 Stein wrote from Paris:

"Furthermore he declared that Herr Erhard had also submitted other purchase offers after we had submitted our offer. It is therefore clearly and unmistakably proven that Herr Erhard was trying to deceive us...

"Thus, the road is open to start direct and final negotiations concerning the rent. Later, after it has been leased, one could work out quietly all the remaining details concerning the purchase..."

Defendant Loeser's subordinate recommended that the lease should be signed purely as an opening wedge for the later acquisition of the plant through a Krupp-owned French corporation.

At the time the lease was signed, the Krupp firm purchased all but thirty of the machines at a ridiculously low price according to Celap. The price for the stock of materials was to be fixed after inventory. Under the provisions of the sales contract the Krupp

firm agreed to furnish spare parts and maintain repairs on the Austin agricultural tractors then in circulation.

The lease agreement was signed by Maurice Erhard as Provisional Administrator pursuant to the German decree for the sequestration of Jewish properties for a three year period, with right of renewal for an additional three years. The Krupp firm was authorized to make extensions, improvements and modifications, and to install new machinery.

The machines of the assembly-line type for agricultural tractor production were sold or sent to other factories to be rebuilt for the Krupp firm production. Considerable machinery which was obtained in other parts of France was installed in the factory by the Krupp firm.

After the Krupp firm took possession of the Austin factory they manufactured parts for other Krupp factories in France and in Germany. These were used for war purposes. Only about 2.1% to 2.2% of the production was devoted to the manufacture of spare parts for agricultural tractors called for in the lease.

The Krupp firm continued its efforts to acquire the plant by purchase and it may be concluded that only the change in the military situation prevented the Krupp firm from finally obtaining title to the property.

The two men most active in the attempt to acquire the plant by purchase were Krupp employees named Stein and Schmidt who were representatives of the firm in France and received instructions from the Krupp firm at Essen.

In fact, in view of the acquisition of additional properties in France by the Krupp firm the defendants Krupp and Loeser discussed the advisability of establishing a French firm to supervise the various Krupp interests in France. Following subsequent discussions between Schroeder, defendant Loeser's chief subordinate, with defendant Krupp

and later with defendant Eberhardt, a joint stock company known as "Krupp Societe Anonyme Francaise" was formed. It had a capital stock authorization of 20,000 shares valued at 1,000 francs per share, 14,000 of which were held by Krupp-Essen. The plan was to have this "French Company" buy up the Austin plant at Liancourt.

Moreover, the Krupp firm selected a valuable property located in the heart of Paris: 141 Boulevard Haussman, which was to become its central office in France. This was to be accomplished by profiting again from the continental wide anti-Jewish policy of the Nazi Regime. The property was owned by Societe Bacri Freres, a Jewish firm, and had been sequestered by the commissioner for Jewish affairs. The Krupp firm's representative in Paris, Walter Stein, acting as attorney-in-fact for Krupp-Essen, obtained a lease of the property with right to purchase it within six months after the date of the lease 1 January 1943 for 2,500,000 francs--not from the rightful owners of the premises but from the provisional administrator of the Societe Bacri Freres by virtue of a decision of a commissariat for Jewish questions. This example of the Krupp firm's exploitation of the Nazi anti-Jewish policy is most objectionable because there was nothing to prevent the firm from honestly leasing or buying a building from a non-Jewish owner in Paris. The records show that on 16 September 1942 defendants Krupp and Loeser approved a loan in the sum of 1,250,000 RM for the establishment of, and loan to, Krupp S.A., Paris.

The correspondence between the Krupp firm and the Paris office shows the avidity of the firm to acquire the Austin factory and the Paris property. Stein, under instructions from Schroeder and defendant Eberhardt, had numerous conferences with German and French officials in an effort to effect the purchases. The French Finance Ministry delayed by raising objections and eventually the change in the military situation prevented the realization of those plans.

In a letter from Schroeder to Krupp employee, Stein, regarding the Paris property, he stated, in part:

"....I myself welcome the acquisition, and I can tell you, that Dr. Loeser also approves of it on principle, provided that Dr. Beusch likewise favors the acquisition...."

When the strenuous efforts to purchase the property did not materialize and difficulties arose between Erhard and the Krupp firm, Erhard through the Krupp firm's influence was dismissed as the provisional administrator and was succeeded in that position by Richard Sandre who was a friend of Krupp employee, Schmidt, mentioned above.

About 6 February 1944, Sandre, the new administrator, called upon Rothschild, the owner, to obtain financial information in order to assess the valuation of the shares of stock of the company. Rothschild had taken along with him all the books of the company containing all the accounting data. Sandre said there was a buyer for the shares and Rothschild knew that the Krupp firm was to be the buyer and that they were already in possession of the property by lease and that they had bought the machines.

Rothschild refused to give the information and was threatened several times. He was told by Sandre "If you don't want to give me that information, well, you can just imagine what will happen to you." Rothschild still refused.

On 21 February 1944 Rothschild was arrested and on March 7th was taken to Auschwitz from which concentration camp he has never returned. He sent a note through a friend to Celap his brother-in-law while being held in a transit camp in France that he had exact information to the effect that the whole affair had been arranged by Sandre and Damour (Damour was the lawyer for the Commissioner for Jewish properties at Lyon).

The Krupp workers evacuated the plant just a few days before the entry of the American troops. Eighteen machines which they had collected

in France were dismantled and taken to Germany. Among these were two of the machines originally obtained from the Austin plant.

The lease and management of the plant, the purchase of the machinery, and the attempts to permanently acquire the property were carried on by the Finance Department of the Krupp firm which was headed by defendant Loeser until April 1943, thereafter by defendant Janssen. The contract for the purchase of the machinery and the lease for the plant were approved by defendants Krupp and Loeser on behalf of the Vorstand. The programs for production at the plant and decisions relating thereto were made by defendants Krupp, Janssen and Eberhardt. In November 1943 defendant Alfried Krupp inspected the plant. He was pleased with its operation but suggested the production of widia tools in order that the plant might be fully utilized. A subordinate in the Finance Department passed this recommendation on to defendants Janssen and Eberhardt suggesting a meeting at Essen. As a result the installation of widia tool production at the Austin factory had been started by March 1944.

On 24 May 1941 a circular was issued by the Krupp Directorium, signed by defendant Loeser, stating that the Krupp firm's interest as to acquiring other plants must be pursued as opportunities occur and that essential information must be communicated without delay to him so that the treatment of the matter can be decided within the small circle of the directorate. On the distribution list were defendants Krupp, Houdremont, Mueller, Janssen, Pfirsch and Korschan.

We conclude from the credible evidence before us that the confiscation of the Austin plant based upon German inspired anti-Jewish laws and its subsequent detention by the Krupp firm constitute a violation of Article 43 of the Hague Regulations which requires that the laws in force in an occupied country be respected: that it was also a violation of Article 46 of the Hague Regulations which provides that private property must be respected: that the Krupp firm, through

defendants Krupp, Loeser, Houdremont, Mueller, Janssen and Eberhardt, voluntarily and without duress participated in these violations by purchasing and removing the machinery and leasing the property of the Austin plant and in leasing the Paris property: and that there was no justification for such action, either in the interest of public order and safety or the needs of the army of occupation.

The Elmag Plant located at Mulhouse

For more than one hundred and twenty-five years a French company known as S.A.C.M. (Alsacian Corporation for Mechanical Construction) had its principal place of business at Mulhouse, Alsace. The company owned eight plants, four of which were located in France, outside of Alsace, but the principal works of the four located in Alsace were at Mulhouse. At the outbreak of the war the principal product of the Mulhouse plant was textile machinery, and a portion of the plant was devoted to the manufacture of combustion engines, machine tools and machinery for the fuel industry.

Upon the German occupation of Alsace in June 1940, a "Chief of Civilian Administration" was appointed by the Germans, and German law was introduced. A German administrator was appointed to take charge of the S.A.C.M. properties which we shall refer to hereinafter as ELMAG, an abbreviation of the German translation of the name of the firm, namely, Elsaessische Maschinenfabrik A.G. The reason for this seizure seems to have been that the majority of the stock of the company was owned by Frenchmen, living outside of Alsace. The company was referred to as "an Alsatian enterprise in which enemy interests predominate". The action was protested by the president and those of the directors who had remained with the company after the occupation.

In August 1940 when the German administrator took over the plant, Elmag still used about one-half of the working hours for producing textile machinery but this figure rapidly decreased later in favor of direct and indirect production for the German Armed Forces.

As a result of damaging air raids on the Gusstahlfabrik-Essen plant in March 1943 it was decided to move the Krupp-Krawa factory (automotive works) to the Elmag plant. On 27 March 1943, a meeting for that purpose was held in the Reich Armament Ministry in Berlin, there being present the defendants Janssen and Eberhardt as well as other Krupp officials, representatives of the Armament Ministry, of the German Civil Administration for Alsace, and of Elmag.

Minutes of the meeting were recorded by defendant Eberhardt and distributed to defendants Krupp, Mueller, and Pfirsch.

Strenuous opposition was raised by the administrators for Alsace and the Elmag representatives to taking over the plants by the Krupp firm, but transfer of the automotive factory from Essen to the Elmag plant had been decided upon and nothing could be done to alter the decision. The Krupp representatives obtained a statement by the Armament Ministry, to the effect that "The entire plant at Mulhouse, Masmuenster and Jungholz will be for the credit and debit of Krupp..." It was also determined that "the construction of signals and of machine tools will be abandoned by Elmag; the construction of textile machinery is to be continued for the time being."

At a conference of Krupp officials in April 1943 attended, among others, by the defendants Krupp, Eberhardt and Janssen it was decided to set up a new firm to operate the plant under lease from the old Elmag company. Under the terms of the lease signed for the Krupp firm by defendant Eberhardt the management of the three plants in Mulhouse, Masmuenster and Jungholz was turned over to the Krupp firm for the duration of the war. The machinery and fixed installations were to remain the property of Elmag. Raw materials usable by the Krupp firm were to be inventoried and paid for. The Krupp firm was authorized to make such changes and modifications in the plants as were deemed necessary for operation. When the terms of this contract were learned by the administrator of the old Elmag company he complained to the Armaments Ministry that Elmag for which he was speaking as administrator "considers itself raped by the form of plant management contract chosen by the Krupp, A.G."

The new firm of Elmag G.M.B.H., which was 90% Krupp owned was issued a permit to operate in Alsace, 27 April 1943. The civil administrator of Alsace notified the administrator of Elmag of the ceding of the plant to the Krupp firm, effective 1 May 1943.

The program of war production initiated by the German administrators was greatly increased when the Krupp firm took over the plant. In addition to this heavy armament program the production of military tractors by Krupp Krawa was added. Extensive preparations were made for the production of 8.8 anti-aircraft guns. Productions not strictly in the armament field were geared to the war production requirements of Germany. Definite instructions called for continuous full production of military tractor parts and full utilization of local labor for this purpose. To carry out this task additional machinery was requisitioned by special searching missions.

That the Krupp firm desired ultimately to permanently acquire the Elmag plant there can be little doubt. In the minutes prepared by the defendant Eberhardt of the Berlin meeting, 27 March 1943, and distributed to defendants Krupp, Mueller and Janssen, there appears the following comment "As regards Ministerial Rat Sauer's suggestion for Krupp's purchasing Elmag, this can be handled in negotiations; this must not, however, hold up the relocation." Eberhardt made the following notation of portions of a telephone conversation between himself and the civil administrator for Alsace on 6 April 1943; "I replied in the affirmative to the question whether the new company would come forward as a buyer if the works to be taken over and now in operation, would be sold."

Whatever the ultimate intention of the Krupp firm towards Elmag might have been, the turn in the fortunes of war forced the Krupp firm to evacuate the Elmag plants because of the advance of the Allied armies. In view of this situation, the exploitation of the Elmag plants was substituted by outright physical looting.

The evacuation of the Krawa plant from Alsace was decided by Reich Minister Speer in early September 1944. The plant was hurriedly evacuated and re-established in Bavaria. The program for the acquisition of machinery was greatly accelerated. Machinery which was the property of the Elmag plant, including machinery which was in the

plant when it was seized by the German authorities, and machines acquired from other sources were evacuated along with Krupp's own machiner. Nine machines originally owned by the old SACM company were included. The anti-aircraft gun plant was moved to the Groeditz plant of Mitteldeutsche Stahlwerke. A total of 100 to 102 machines were shipped to this plant of which 31 were the property of the SACM company and 55 the property of Elmag A.G. In late September the anti-aircraft gun plant was moved to central Germany. Special equipment designed at Elmag was taken as well as regular machinery and tools belonging to the plant prior to the occupation. Additional machines would have been taken at the time of the evacuation except for the necessity of continued was production at Elmag itself. Even after evacuation of the Krawa plant the production of military tractor parts, which was given the same priority as the anti-aircraft gun program, was turned over to the machine shops remaining in Alsace. The Krupp officials of the Elmag plant left in such a hurry that they failed to pay 800,000 RM then owing to the workers.

In October 1944 a Krupp employee of Elmag inspected the Peugeot Works in Sochaux, France and the Alsthom plant at Belfort, looking for machinery and equipment that would be usable in Krupp's plants. His report, initialled by defendant Houdremont, is in part as follows:

"Major Wetzke promised me to have this car sequestered if it would be required by Elmag. In general the subject of our discussion with Major Wetzke was that we have to come to an immediate decision regarding the machines and the PKW (automobile) aforementioned. Information by phone will be sufficient. Major Wetzke may be reached at any time from 8:00 in the morning to 7:00 in the evening. The settlement for the confiscated machines will be done over by the Ruestungskommando and by the purchasing office established for this purpose by the Reich. In order to carry out the transportation of the machines I propose the following:

"Senior foreman Luttenauer (father) and 2 workmen, expert in dismantling of machines, leave on Monday, accompanied by me, for Belfort, and Sochaux resp. Lodging for

these 3 men will be provided at
Belfort. Connection to Sochaux
is secured by military transportation facilities."

After the Krupp-Krawa plant had been transferred from Mulhouse
to Bavaria
to Bavaria the company wrote to Elmag as follows:

"Your file note of 26 October and that of Herr Ziebeil of 27 October show that a considerable number of 'Bottleneck' machines (Engpassmaschinen) and above all of tempering equipment was chosen at the Peugeot-works and transported to Muehlhausen. Above all the tempering equipment which Herr Ziebeil picked out must be sent here as soon as possible by express freight. You probably know that we have no gas in Kulmbach and that we can only depend on electric power. It would be irresponsible if in the future we should continue to rely only on the help of the High Command of the Army while on the other hand equipment and installations are procured and set up in Muehlhausen which are not needed urgently. At your end the entire old Elmag tempering installation is intact and apart from that there are still three gas furnaces which for the time being can also remain there in the Krawa tempering installation. Please make a special effort to this effect.

"In addition we are lacking for the program 'Bottleneck' machines, such as interior grinding machines, key ways, grinding machines and thread milling machines. As far as these machines are also available at Peugeot please get them for Kulmbach. As Herr Hubert informs us a number of other installations such as Sicken machines, spot welding machines, rounding off machines, tube-bending machines, and above all 12 Demag pulleys were procured. The latter must be sent here on quickest way together with the fuel if possible.

"Further I ask you to please exactly determine and make a list of the screw taps, rapid change chucks, rapid screw heads, rapid screw wedges (Gewindeschnellbacken) hard metal sheets, etc., in short everything necessary for production, as far as it is at all possible to foresee requirements for the production in Kulmbach and Nuernberg and inasmuch as you need the same for Muehlhausen."

Defendants Janssen and Eberhardt attended the conference at
Berlin when the decision was made to take over the plant.

Janssen was Eberhardt's superior during the greater portion of the period in question, having succeeded Loeser as head of the Finance Department. Eberhardt was in charge of the negotiations for taking over the plant and signed the contracts. Defendant Krupp participated in the discussions with Janssen and Eberhardt as to methods to be employed to acquire the plant. Defendants Mueller and Pfirsch were advised of these discussions. The correspondence regarding the acquisition was conducted by defendant Krupp and brought to the attention of Eberhardt and Mueller. Defendant Eberhardt participated in the removal of the machinery and the plant to Germany and defendants Krupp, Houdremont, Mueller and Janssen were kept informed concerning the evacuation of the machinery. Houdremont was informed concerning the acquisition of machines and equipment from other industrial firms in France for Elmag. Defendant Mueller participated in directing the production progress at Elmag. The management of the Elmag plant was responsible to the Krupp-Essen Vorstand which prior to April 1943 consisted of Defendants Krupp, Loeser, and Goerens; and thereafter of defendants Krupp, Houdremont, Mueller and Janssen and Fritz Mueller, now deceased.

From a careful study of the credible evidence we conclude there was no justification under the Hague Regulations for the seizure of the Elmag property and the removal of the machinery to Germany. This confiscation was based on the assumption of the incorporation of Alsace into the Reich and that property in Alsace owned by Frenchmen living outside of Alsace could be treated in such a manner as to totally disregard the obligations owed by a belligerent occupant. This attempted incorporation of Alsace into the German Reich was a nullity under International Law and consequently this interference with the rights of private property was a violation of Article 46 of the Hague Regulations.