

MACHINES TAKEN FROM ALS-THOM FACTORY

The German Naval High Command instituted a new submarine building program in the early part of 1941 which was participated in by a Krupp subsidiary, Krupp Stahlbau in Rheinhausen. The plant manager of the Steel and Bridge Construction Department of Stahlbau was sent to France to find bending roll machines of greater dimensions than were available at the Krupp plants in order to fulfill its part in the submarine building program. This Krupp representative accompanied by a naval officer of the Armament Inspectorate of the Navy High Command proceeded to the Alsthom Plant in Belfort where they located two bending machines suitable for Krupp needs. Immediately they placed a "seized" sign upon the machines. The director of the Alsthom firm objected to the confiscation on the ground that the machines were the only ones on which the construction of boiler drums and high pressure tubes was based and that they were essential for this purpose. The machines were heavy machines, one weighing 380 tons and the other about 50 to 60 tons. Neither had been used for military purposes. Moreover, machines of this type, old or new, were not available on the market and could not be produced in less than 18 months at the minimum. Krupp Stahlbau, however, possessed a bending press which they could have used in case of urgent need. Dr. Goerens, now deceased but at that time a member of the Krupp Vorstand, was advised when the procuring of the machine became urgent and he approved of the acquisition after an estimate of the approximate price was given him.

The objections raised to the seizure were of no avail and shortly thereafter the machines were dismantled by Krupp workmen and carried off to Germany. They were installed at the Krupp Stahlbau plant and were used in the submarine building program until the end of the war.

That the Krupp firm intended to permanently acquire these machines there can be little doubt. Repeated attempts were made by the Krupp

firm to obtain title to the machines. It offered to pay Alsthom 108,700 RM for the machines, a price fixed by a German official evaluation which included deductions for repair costs, transportation and installation charges from data furnished by the Krupp firm. When its efforts to purchase the machines failed, the Krupp firm enlisted the aid of the Navy High Command which advised that it could not order Alsthom to accept the price offered by the Krupp firm and that the matter could be settled only by negotiation. However the Military Intendant for France advised Alsthom that compensation was a matter for the German Army, that the Krupp firm should not be expected to handle the matter, and that the only basis for settlement was the price already fixed. From that time forward the firm's efforts to obtain title were directed through the Military authorities so that the Krupp firm would not appear as a party to the negotiations.

The Director of Alsthom not only objected to the seizure and removal of the machines but repeatedly demanded that the machines be returned. He testified that a decree or order of the French collaborationist government was to the effect that if the owner of a confiscated machine refused to negotiate with the German authorities, then, after a certain period, the owner lost all claim to indemnification. In consequence of this order the Director of Alsthom continued to bargain with the Krupp firm and the German authorities as the correspondence reveals; but he pursued delaying tactics which in the end, and only because of the unsuccessful termination of the war for Germany, proved successful.

The Krupp firm was specifically advised of at least some of the illegal aspects of the seizure of these machines. On 21 July 1943, a file memorandum by a Krupp employee stated:

"1. According to information given by attorney-at-law Schuermann, the whole confiscation was carried out at the time in contravention to the rules of the Hague Convention for Land Warfare. This in itself, allows only seizure for the purpose of use, but not seizure with the intention of actual transfer of property. ...

"2. I have asked Herr Sieber, once more to make representations at the Intendantur, asking them to interpose their authority and to settle the matter, as the sending of files back and forth would not lead to anything. Herr Sieber is of the same opinion and wanted once more to approach the Intendantur at the Military Commander's in this matter..

"3. Furthermore, I asked Herr Borchers, to contact Herr Geneuss, once more for the same purpose and to point out to him that the guarantee by the Army agency (Wehrmachtsdienststelle) exists now as before, so that it would be interested in seeing the matter settled as soon as possible."

The attorney Kurt Schuermann was a member of the Krupp Legal Department and was associated with Dr. Ballas and Dr. Joeden in that Department until the end of the war. The Legal Department was directly subordinate to the Vorstand.

The Military Commandant in France renewed his efforts to force Alsthom to accept the price offered and threatened that unless such offer were accepted, payment by the German Reich would be refused. An increased offer of 190,000 RM was made after this threat failed but it too was refused.

Krupp Stahlbau wrote to their liaison office in Paris as follows:

"The Intendant of the Military Commander has certain scruples about forcing the French to accept a compensation which would, for German conditions be acceptable. Step by step he had gradually advanced the compensation offer to RM 190,000,---.

"We, on our part, are extremely interested in acquiring the machine finally at the estimated value of RM 190,000. But we decline direct negotiations and dealings with Als-Thom, as we are of the opinion that the machine was confiscated by the German Ruestungsinspektion (Armament Inspection) and thus it devolves upon the German authorities to arrange the settlement with the French and that we, thereupon, shall then entire into clearing negotiations with the German authorities."

Upon the allied occupation of Germany the machines were found at the Krupp Stahlbau factory and identified by members of a French commission and thereafter they were returned to the Alsthom plant at Belfort.

Until December 1943 all disbursements for capital investments by subsidiary companies and the parent firm exceeding 5,000 RM had to bear the approval of the three members of the Vorstand who at that time were

defendants Krupp, Loeser and the deceased Goerens. For investments over 10,000 RM the approval of Gustav Krupp was necessary in addition to that of the three members. After December 1943, capital investments of more than 5,000 RM had to have approval of defendants Janssen, Houdremont, Mueller, and the deceased Fritz Mueller who was also a member of the Vorstand. If the amount exceeded 10,000 RM the approval of defendant Alfried Krupp was also necessary.

The minutes of the Vorstand meeting for 4 September 1940 shows the approval of an appropriation of 186,000 RM for the purchase of a machine for the Friedrich-Alfried-Huetten firm at Rheinhausen. Whether this appropriation was intended for the machines confiscated at the Als-Thom plant in the early part of 1941 does not appear. It is apparent to us however from the credible evidence that the matter received the attention of the Vorstand at various times from the acquisition of the machine in 1941 until the liberation of Paris in June 1944, and that defendants Krupp, Loeser, Houdremont, Mueller and Janssen are responsible for this confiscation and detention of these machines.

We conclude from the credible evidence that the removal and detention of these machines was a clear violation of Article 46 of the Hague Regulations.

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MACHINES TAKEN FROM OTHER FRENCH PLANTS

The Krupp firm not only took over certain French industrial enterprises. It also considered occupied France as a hunting ground for additional equipment which was either shipped to the French enterprises operated by the Krupp firm or directly sent to Krupp establishments in Germany. The Krupp firm obtained this machinery from the local French economy, partly through their own efforts, and partly through those of various government offices. Some French machines were obtained from booty depots. Some were directly requisitioned from French firms, with payment offered to the owners after the confiscation. Some were purchased by Krupp through its representatives in Paris, and some could only be obtained after negotiations conducted by Krupp officials had been adequately backed up through the intervention of German authorities.

ROGES

In December 1940 the Raw Materials Trading Co. which had been referred to as Roges was founded at the request of the German Army High Command, the Economic and Armaments Office and the Reich Ministry of Economics "whose desire it was to utilize the raw materials in the occupied countries of western Europe and to accelerate their use in German war economy."

Goods were obtained by Roges in co-operation with the German military and economic agencies which could be placed in two categories, namely: (1) captured goods referred to as "Booty Goods" and (2) purchased goods (those secured through the black market by German official agencies).

Under a special Goering decree, the Office of Plenipotentiary for Special tasks was created which supervised and directed the procuring of goods in occupied countries through the black market. These goods and Booty goods obtained in occupied countries by the German Army Command were turned over to Roges.

These goods as a rule were gathered together in depots from which they were distributed to German firms under directions from the Central Planning Commission. Both the Booty and the black-market goods consisted of wares of all kinds, such as household goods, raw materials, textiles, machines, tools, shoes, scrap metal and other materials and were obtained in all the countries occupied by Germany. There were many machines and machine tools included in the Booty goods.

The Booty goods were not paid for and cost Roges only the cost of transportation from the occupied territories to Germany. These as a rule were confiscated by the German military agencies and turned over to the branch offices of Roges for shipment to Germany. The black-market goods were procured by buyers, acting under orders of the German Economic Ministry and the Armaments Ministry. All purchases had to be approved by the competent military commander in the occupied area. Prices were fixed by the buyers and the owners were paid by Roges in currency of the particular occupied country, which foreign currency was furnished by the Reich, which came out of occupation costs.

These goods were then distributed from the Roges depots to the various firms as requested by the Reich agencies and the Economic groups. A great portion of these booty and black-market goods was distributed at the request of the Reich Association Iron (RVE), of which defendant Alfried Krupp was vice-chairman, to its member firms. In many instances the goods were shipped by Roges direct from the occupied country to the firms in Germany when those firms had placed their order for certain goods in advance. In other cases the booty goods were sent by Roges to a special booty center where they were then allocated by the Reich agencies and sent to the respective business firms. As a rule the prices paid for these items were the prevailing domestic prices and lower than Roges paid for the black-market goods.

As Roges paid nothing for the booty goods, the surplus resulting was credited to the supreme command of the Armed Forces.

During the war, campaigns for the collection of scrap metal were conducted and Major Schuh carried on these drives in the occupied territories. These accumulations of scrap metal from the occupied countries were placed by Roges at the disposal of German industry. The Krupp firm regularly obtained large quantities of this scrap metal from Roges.

During the period of the war, the Krupp firm received wares and goods of all kinds from Roges, of a total valuation of 14,243,000 R.M. This amount comprised 3,458,000 R.M. for "Booty" goods and 10,785,000 R.M. for goods purchased on the black market. We are satisfied from the credible evidence presented that the Krupp firm knew the source of these goods purchased from Roges and that certain of these items such as machines and materials were confiscated in the occupied territories and were so-called booty goods. Invoices for goods purchased on the black market always accompanied the goods to the firm as Roges billed the firm for exactly the amount paid for the goods by Roges. In the case of the booty goods, however, Roges did not know the value as they had not paid for these items, hence the goods were sent to the particular firm without an invoice and the price was later settled between the firm and the Reich agency, after which the invoice was sent to the firm. Thus it will be seen that the firms knew when goods arrived without an invoice that they were booty goods as distinguished from the goods purchased through the governmental agencies on the black market.

An interesting item appears in the minutes of the meeting of the Vorstand of Fried. Krupp A.G., 18 September 1941, attended by defendants Krupp and Loeser, showing approval of an appropriation of 13,550 R.M. for purchase of machine tools through "Krupp Reparatur Werk in Paris, Krawa".

On 31 December 1940 defendant Mueller was reporting to some of his colleagues - including among others the defendant Eberhardt - on

a meeting, copies of which were sent to defendants Krupp, Pfirsch, Eberhardt and Korschach, include the following paragraph:

"11. New Machines for Machine Construction 21

Dr. Mueller suggested that the new machines for Mb 21 be set up in Mb 20, as far as space is still available, in order to avoid any inconveniences in Mb 21. He said it would also be advisable to have someone accompany the shipments of machines from France, since that was the only way to insure the speedy arrival of the machines."

In a note to defendant Loeser, 26 August 1942, his subordinate Schroeder stated:

" We are just now considering the intimation by the Wehrmacht to move our 12-ton tractor to France.... For this it is imperative that we purchase in Paris more machines etc. for our workshops necessitating an outlay of about 1.2 million R.M.... We request you to authorize the amount..."

MACHINES AND MATERIALS REMOVED FROM HOLLAND

For several years prior to the outbreak of the war the Krupp firm owned subsidiary Dutch companies, among them being the following:

(1) Fried Krupp's Reederij en Transportbedrijf N.V. (Krupp's Shipping and Transport Co.) (2) Krupp's Erts-Handel Maatschappij N.V. (Krupp's Ore Trading Co.) (3) N.V. Stuwadoors Maatschappij "Kruwal" (The Stevedores Co.) and (4) Devon Erts Maatschappij N. V. (the Devon Ore Co.). The first three maintained their principal places of business at Rotterdam and the latter at Amsterdam.

In addition, Krupp Eisenhandel (Krupp Iron Trade Co.), a Krupp subsidiary located at Duësseldorf, Germany, had a branch office at Rotterdam.

Throughout the period of the German occupation the Netherlands industries were forced to produce for the German war economy. By 1942 the so-called Lager-Aktion program was underway, under which the produce of the Dutch firms was seized and held for shipment to Germany. This covered, in the main, the period from 1942 to September 1944 which may be referred to as the first phase of organized spoliation. The branch office at Rotterdam of Krupp Eisenhandel had sold Krupp products for many years in Holland and knew where many of these materials were located. The German authorities were informed and seized these products which included goods owned by the Board of Works, the Municipal Gas Works of Dutch municipalities, and several private firms. (Article 52 of the Hague Regulations protect "Municipalities" of belligerently occupied territories as much as "inhabitants". In addition, Article 56 of the Hague Regulations reiterates: "The property of Municipalities.... should be treated as private property. ...") These municipal and private enterprises were compelled to deliver these confiscated materials to various depots in Holland from which they were transported by the Krupp Dutch subsidiary, Krupp's Shipping and Transport Company, and shipped to Germany. The prices for these goods were arbitrarily set by the German

authorities without the consent or approval of the Dutch owners. During this phase of the spoliation policy the Krupp subsidiary Dutch company shipped to Germany about 16,000 tons of confiscated materials which consisted largely of fire-tubes, iron for re-inforced concrete and shaped iron, a considerable portion of which reached the Krupp firms.

The second phase covers the period of September and October 1944 when it was thought that the Allied troops would soon liberate the Netherlands and that therefore not sufficient time would be available for the complete removal of industrial machinery and materials. Hence, only valuable machines and first-class materials were taken.

The third phase lasted from November 1944 until May 1945 during which time the Allied armies were held by the German army after only a small portion of the Netherlands had been liberated. During this period a systematic plunder of public and private property was carried out.

By the Fall of 1944 the Ruhr district had suffered heavy damage by bombing from the air. As a result, at the instigation of the Speer Ministry, the Ruhr Aid project was set up for the purpose of rehabilitating the industries of the Ruhr area. Under the plan tradesmen and skilled workmen throughout the Reich were to be recruited for work on reconstruction in the Ruhr. Suitable material for reconstruction was sequestered in the Reich and sent to the Ruhr District.

By October 1944 the Gustahlfabrik (Cast Steel Plant) in Essen was badly damaged by air raids. Minister Speer came to Essen to inspect the damaged plants and held a meeting while there which was attended by several members of the technical staff, members of the Vorstand and other Krupp officials. At that meeting Speer proposed that German firms should seize machines and materials from the Dutch to rehabilitate the factories of the Ruhr. This suggestion, without doubt, prompted the ruthless and systematic plunder of Dutch industries which followed and which continued until the complete liberation of the Netherlands.

A As a result of Speer's proposal, two employees of Krupp's Technical Department named Koch and Hennig were appointed by Rosenbaum, defendant Houdremont's direct subordinate, to proceed to Holland for the purpose of selecting machines and materials suitable for the Krupp industries in Germany. Several of the machine factories and the Technical Department were under the supervision of defendant Houdremont. Before leaving they were furnished a list of such machines and materials. At The Hague, Koch and Hennig were joined by Rosenbaum, mentioned above, and Johannes Schroeder, defendant Janssen's chief assistant. Together they proceeded to the German government office where they obtained the addresses of its branch offices in Rotterdam, Amsterdam and Utrecht. At the Rotterdam office of the German Ministry for Armament and War Production they obtained the names of shipyards and manufacturing enterprises in Rotterdam where they could inspect machines and materials for shipment to Germany. Koch and Hennig visited the Lips factory, which will hereinafter be referred to, where they selected machines that were suitable to their lists. Ten fitters were requested from Essen for the purpose of dismantling and shipping these machines to Essen. They also visited the factories of De Vries Robbe & Co. of the N.V. Nederlandsche Seintostellen Fabrik in Hilversum which was a subsidiary of the Philips firm in Eindhoven, of the firm of Rademakers, and the scale factory of Berkel, as well as several idle shipyards; and at each of these plants they selected materials and equipment. At one idle shipyard, for example, they did not even neglect to designate ship-toilets for removal--which appeared to be useful for the barracks at Essen. They also selected profile steel and iron bars. The following comment of Hennig is of interest:

"...At heart, I did not approve the confiscation of the machines from the Dutch owners, since I held the view that the forcible removal of the machines deprived the owners of the Dutch enterprises as well as the Dutch workers of the possibility to continue production. In my opinion, this action was to be condemned as an unjustifiable hardship for the Dutch...."

We shall now discuss the evidence on the looting of three specific factories in the Netherlands which will illustrate the pattern followed

during the period from September 1944 until the complete liberation of Holland in April and May 1945. Those factories are: (1) Metaalbedrijf Rademakers N.V., located at Rotterdam, (2) De Vries-Robbe & co. N.V., located at Gorinchem and (3) Lips Brandkasten-en Slotenfabrieken N.V., located at Dordrecht.

(1) the firm of Rademakers was engaged in a very specialized business--the production of cogwheels. Prior to the war some competition existed between them and the Krupp firm in the Dutch market, hence Krupp was familiar with the factory installations and the type of machinery owned by Rademakers.

On 16 March 1944 Rademakers was advised by letter from the Commissioner for the Netherlands of the Reich Ministry for Armaments and War Production that the Krupp firm at Essen was appointed the "sponsor firm" for Rademakers and that Krupp could delegate a firm commissioner who would exercise strict supervision over orders and deliveries and should be advised by Rademakers of everything relating to German orders and their execution.

In September 1944 a certain Gerosa, the head of the Rotterdam branch of the Office of the Reichministry for War Production came to the Rademaker factory with a requisitioning order signed by himself, listing machines which were to be confiscated. He went through the factory and marked five very modern special grinding machines for confiscation. The following day he returned with twelve German workmen from the Krupp firm at Essen who proceeded to dismantle these machines and others which had been designated for dismantling in the meantime. Gerosa made the management responsible for the correct execution of his orders and threatened them if they failed to comply. At the beginning, only the best and newest machines were taken but a few weeks later they began taking everything that could be removed, including raw materials and tools. In all, there were twenty-one freight cars of machines and materials, all of which were sent to the Krupp firm at Essen.

Immediately upon the termination of the war the Rademaker

firm instituted a search for the eight-four machines which had been confiscated and were able to find all of them with the exception of three or four machines in a bombed-out Krupp shop at Esssen. Fifty percent of the machines were damaged beyond repair.

In November 1944 the two representatives of the Krupp firm at Essen, Messrs. Koch and Hennig, visited the Rademaker factory. At that time practically all of the machines had been removed. They requested an inventory for all confiscated machines and tools which was refused.

The Defense did not deny the fact that this valuable property of Rademakers was received by the Krupp firm, but asserted that Rademaker had voluntarily chosen the Krupp firm to receive it.

In answer to this position of the Defense, we quote from the testimony of the Dutch witness, Hendrikus Esmeyer, as follows:

"...On the 29th of September, Fliegerstabs-Ingenieur or Engineer Bauer appeared, who worked there before, with the motor factory man, and stated that he would come again to take out all machines because they had to be shipped away. Bauer requested that I state an address in Germany where these machines would be shipped to. I said to Herr Bauer, "We do not want these machines taken away because it is a war regulation between Germany and Holland, and this was not in accordance with these regulations." Consequently, Herr Bauer said, "If you do not want to give up these machines we will take them away by force." And I said, well, do what you have to; and he again requested that I give him an address in Germany. I refused that, but I said we have a sponsor firm in Germany, which is Friedrich Krupp. Let Krupp decide this. In answer, after that, machines were sent to Krupp Essen from Rademacher's..."

"Q.-Witness, you mentioned something concerning asking the Krupp officials to safeguard the machines. Does this mean that you desired the machines removed from your factory to Germany.

"A.-I absolutely refused to have these machines taken away to Germany because I felt that in September or October 1944 the machines were much safer in Holland than in Essen, Germany. I also told Messrs. Hennig and Koch that I have only one fear about the machines, that the Allied armies

would advance through Essen and that our machines would be destroyed in the course of that advance...."

(2) In the case of De Vries Robbe & Co., the system pursued followed closely that employed in the case of Rademakers.

A department of the Krupp firm, Stahlbau-Rhinehausen, manufactured the same products as were produced by the De Vries firm. Consequently, throughout the occupation of Holland by Germany the De Vries firm was required to produce for the Krupp firm at Rhinehausen. As early as September or October 1940, some Krupp Rhinehausen officials looked over the factory. In 1942 technical officials of Krupp Rhinehausen spoke to technical officials of the De Vries firm about Krupp's intention to buy or otherwise take over the factory, but for some time no further steps were taken in that direction.

On 21 April 1944 the De Vries firm was advised by the Netherlands Office of the Reich Ministry for Armaments & War Production that it was placed under the sponsorship of the Krupp-Rhinehausen firm. A letter of Krupp-Rhinehausen, dated 5 June 1944, confirmed this, stating that Karl Breitung of the Dutch subsidiary firm Krupp Eisenhandle had been appointed as Rhinehausen's delegate to the firm.

In October 1944 the same Captain Bauer of the German Air Force who carried out the confiscation of Rademaker's advised the De Vries firm that all their material would be confiscated. Immediately the German military authorities carried away large quantities of zinc wire, bolts and nuts which were shipped to the Krupp firm at Rhinehausen. Thereafter the De Vries firm was informed that its machines would also be taken, giving as a reason that the valuable machines and materials had to be protected and placed with Krupp for safe-keeping in view of a possible Allied invasion. Resistance to this seizure was impossible. In late November Koch and Hennig of the Krupp Essen firm called at the factory and designated the machines and the machine tools which were to be taken. As a result of this visit, a large shipload of material was sent to Krupp Rhinehausen in January 1945.

At first only the most valuable and modern machines were taken. Later on, everything that could be used and dismantled was carried away.

Practically all the material taken was sent to Krupp-Rhinehausen. Its total weight, exclusive of the machines and tools taken, was 2, 860 tons. Of the forty-eight machines sent to Rhinehausen, twenty were found and returned after the war ended. About 47% of the material dispatched to Rhinehausen was found and returned.

(3) The same pattern was followed in the case of the Lips firm. This firm was engaged in the manufacture of safes, steel furniture, locks and other related items. The factory was located at Durdrecht, but the company also operated branch stores in other cities of the Netherlands. In September and October 1944, members of the Field Economics Office came to the town of Durdrecht and proceeded to confiscate the goods of various firms of that city, including the Lips firm. Not only were the machines of the company confiscated but also implements, boxes, charcoal, tables, chairs, dining utensils, their entire stock of locks from the branch store at Utrecht--without opportunity to invoice them--and a number of locks from their stock at Durdrecht.

Representatives of the Krupp firm at Essen came to the factory in December 1944 to look over the machinery and in about a month thereafter the Krupp workmen participated actively in removing machines from the factory. They told the Lips workmen that if they did not work fast enough in assisting to remove the machines they would call in the Wehrmacht. A comment reported to have been made by two representatives of the Field Economic Office, namely, Boilke and Goetz is of interest. They advised the Lips firm that in their opinion enough machines had been removed from the factory and referred to the Krupp man as the "Robbers." The specific items which were forwarded to the Krupp firm at Essen consisted largely of machines and materials and are shown in Prosecution Exhibit No. 752.

The position taken by Lips was the same as that of the other firms. Active resistance was impossible and out of the question. They did not place any price on the seized machines and materials although the opportunity was extended to them because they did not trade in these goods and they wanted to make it clear that the materials were taken from them by force and without any voluntary assistance or assent on their part.

There were other firms such as the Nederlandsche Seintostellen Fabriek N.V., located at Hilversum and various shipyards which have been mentioned above from which machines, implements and material were taken. Suffice to say that the system of confiscation and transportation of these goods followed the same pattern. After the war ended most of the machines sent to the Krupp-Essen firm from Holland were found in Machine Construction Shops 9 & 10.

We conclude that it has been clearly established by credible evidence that from 1942 onwards illegal acts of spoliation and plunder were committed by, and in behalf of, the Krupp firm in the Netherlands on a large scale, and that particularly between about September 1944 and the Spring of 1945, certain industries of the Netherlands were exploited and plundered 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...."

Another example of the aggressive attitude of the Krupp firm and the reliance placed upon government officials to assist it in acquiring properties in the occupied territories is the attempted purchase of a shipyard in the Netherlands, owned by a Dutchman named Wortelboor. The Krupp firm wished to obtain a shipyard on the Rhine to be used in conjunction with the Krupp-Stahlbau plant at Rhinehausen. For this purpose, Schroeder, defendant Loeser's chief assistant, journeyed to Holland in company with an official of the Krupp-Stahlbau plant and a Dr. Knobloch to inspect and appraise the Wortelboor shipyard.

Schroeder reported to defendant Loeser his superior that the

shipyard would be suitable, but the Krupp firm's subsequent efforts to purchase the property were frustrated because Wortelboor decided not to sell. We quote from a portion of Schroeder's report, dated 11 June 1942:

"Herr Wortelboor is a Hollander. He plainly has no interest in furthering the plans of the German Navy.A plan of working in co-operation with Wortelboor does not appear feasible to us....We would be interested in buying the dockyard if it is to be had at a reasonable price. Dr. Knobloch will inform the Navy of our way of looking at the matter, and will suggest that the Navy exert a certain amount of pressure on Wortelboor....Perhaps Wortelboor will then yield and agree to make a sale, for which he shows no interest at the moment.
(underscoring added)

The credible evidence discloses active participation in the acquisition of machines from France and Holland by defendants Krupp, Houdremont, Mueller, Janssen, and Eberhardt and from Holland by the same defendants with the exception of defendant Eberhardt. Defendant Loeser did not participate in the acquisition of machinery and materials subsequent to April 1943 but prior thereto as head of the Finance Department and member of the Inner Vorstand he, together with defendant Krupp, approved a credit application for purchase of machinery at the Austin factory and an application for credit of 1.2 million R.M. for the purchase of machinery in France. The agenda for an Aufsichtsrat meeting in March 1943 sent out by defendant Krupp to defendants Loeser, Houdremont, Mueller, Janssen, Pfirsch and Korschach included a large list of credits for new construction and acquisition of machines which includes an item of "800,000 R.M. for Booty machines for machine construction 20 and 21". A report on the method of acquisition of machines in France was initialled by defendant Houdremont. Reference has already been made to the statement by defendant Mueller that someone should accompany the machines from France in order to assure their speedy arrival. Moreover, subsequent to April 1943, expenditures for machinery in excess of 5,000 R.M. needed the approval of defendants Houdremont, Mueller and Janssen, and if in excess of 10,000 R.M. the approval of defendant Krupp. As has been previously stated defendants Krupp and Loeser were members

of the Vorstand of the Krupp firm until April 1943 at which time defendant Loeser retired from the firm and thereafter the Vorstand consisted of defendants Krupp, Houdremont, Mueller and Janssen. Defendant Eberhardt was a deputy member and head of the commercial Sales Department. In the acquisition of machines and property in France he was the most active in the field of all defendants.

The Defense have argued at length that the Krupp firm did not desire to participate in the spoliation of occupied countries but that whatever action was taken on their part in the acquiring of machines, materials and other properties was solely upon the orders of the Reich government in the furtherance of war production. For example, the claim is made that the confiscation of the two large bending machines obtained from Als-Thom--which we have discussed heretofore--was the direct responsibility of the Navy High Command, and that the Krupp firm had no alternative except to remove the machines and utilize them for the duration in carrying out the submarine program. Another example is the claim that the Krupp firm did not desire to use confiscated machines from Holland although the record shows that their own men proceeded to Holland with a suggested list of essential machines and on the basis of this list selected machines which were confiscated and sent to Germany for use in Krupp plants. There are numerous other such examples, all of which make it clear to us that the initiative for the acquisition of properties, machines, and materials in the occupied countries was that of the Krupp firm and that it utilized the Reich government and Reich agencies whenever necessary to accomplish its purpose, preferring in some instances, as has been shown, to remain in the background while the negotiations were handled by the government agencies.

This "initiatibe" on the part of the Krupp firm is best shown by two letters admitted in evidence, both of which are signed by Defendant Loeser's right hand man, Johannes Schroeder. One is addressed to his colleague Dr. Buseman and the other to defendant Eberhardt. We quote

them in toto--their purpose is clear:

"Mr. A. V. Bohlen just asked me which steps we had undertaken to secure trusteeships of enterprises of interest to us in case American property would be confiscated as a retaliation against the Americans.

"I told him that you are slated to become a trustee for the NATIONAL-KRUPP REGISTRIERKASSEN G. m.b.H. (NATIONAL-KRUPP CASH REGISTER LTD:)

"In my opinion, however, it is not sufficient if this is arranged with the company. There is rather required a consent from Government authorities, probably from Ministerial direktor Dr. ERNST.

"Mr. A.v. BOHLEN requests you to report to him briefly.

"Since I shall not be present to-morrow, and not having been able to reach you today, I inform you about this matter in writing."

The second letter is as follows:

"We were discussing the DUERKOFF WORKS a few days ago. I have not done anything yet, since I wanted to await the return of Dr. LOESER.

"Would the 'SINGER SEWING MACHINES' also be suitable for you. The SINGER SEWING MACHINES are, to my knowledge, American property. The appointment of trustees as a retaliation against the Americans is to be reckoned with shortly. Maybe a man of KRUPP could then become a trustee."

Thus we see that six months prior to the attack on Pearl Harbor, the defendant Alfried Krupp was taking the initiative in acquiring American interests for the Krupp firm of which fact the defendants Loeser and Eberhardt were well aware.

With respect to the acquisition of the Berndorfer plant in Austria by the Krupp firm we are of the opinion that we do not have jurisdiction to which conclusion Judge Wilkins dissents.

After a careful review of all the evidence presented by the Prosecution and the Defense we are convinced beyond all reasonable doubt that the defendants Krupp, Loeser, Houdremont, Mueller and Janssen participated actively in the spoliation of France and Holland and that defendant Eberhardt participated actively in the spoliation of France. Therefore we find the defendants Krupp, Loeser, Houdremont, Mueller, Janssen and Eberhardt guilty of the crime of spoliation as alleged in Count Two of the Indictment. The reasons upon which these

Upon the facts hereinabove found we conclude beyond a reasonable doubt that the defendants Krupp, Loeser, Houdremont, Mueller, Janssen and Eberhardt are guilty on Count Two of the Indictment. The reasons upon which these findings of guilt are based have been set forth heretofore in the discussion of each specific act of spoliation.

The nature and extent of their participation was not the same in all cases and therefore these differences will be taken into consideration in the imposition of the sentences upon them.

The evidence presented against the defendants Karl Pfirsch, Heinrich Korschach, Max Ihn and Friedrich von Buelow we deem insufficient to support the charge of spoliation against them as set forth in Count Two, and we, therefore acquit Karl Pfirsch, Heinrich Korschach, Max Ihn, and Friedrich von Buelow of Count Two of the Indictment.

The defendants Werner Lehmann and Hans Kupke were not charged with this offense.

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 of 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 Freidrich 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 Westof, 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.

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

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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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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.

Schroedter 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

"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 Shon 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 bolsheviks) 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, 1943, 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, Dept. 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 Huette 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, Krupp'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."