

Official Transcript of the American Military Tribunal  
in the matter of the United States of America against  
Alfried Krupp, et al, defendants, sitting at Nurnberg,  
Germany, on 22 March, 1938, the Hon. H.C. Anderson,  
presiding.

THE MARSHAL: All persons in the Courtroom will please take their  
seats.

The Honorable, the Judges of Military Tribunal III.

Military Tribunal III is now in session. God save the United States  
of America and this Honorable Tribunal.

There will be order in the Courtroom.

May it please Your Honors, all the defendants are present in the  
Courtroom except Houdremont and Kupke, who have been excused by the  
Court.

THE PRESIDENT: You may proceed, gentlemen.

DR. WECKER (for the defendant Krupp): Your Honors, I shall make the  
opening speech for Dr. Kranzbushler, whom I represent, for Mr. Krupp  
von Bohlen. Before doing so, I should like to read an excerpt from a  
speech made by Cardinal Frings, the Archbishop of Cologne, during a  
Papal celebration in Essen before many thousands of people, on the  
14th of March of this year, and which I just saw now.

THE PRESIDENT: Excuse me, just a minute. This is not coming through.  
See what is the matter. Just a minute, please. It's all right. Pardon  
the interruption.

DR. WECKER: Your Honors, this speech by the Archbishop of Cologne,  
Cardinal Frings, is very interesting in connection with the things  
we are dealing with, and I, therefore, consider it important to  
precede my opening speech with this excerpt. The Cardinal said the  
following:

"When I refer to Krupp and to the family of Krupp, then I mean  
those things which have made Essen as big as it is now. I believe  
I may say that this firm and this family always showed great social  
understanding and cared very much for the welfare of their workers  
and employees. I know that all the people in Essen were proud of

being Krupp workers, employees, and officials. If there is anyone entitled to be an honorable citizen of the city of Essen, then it was surely the head of this house. I do not know how this right was lost and how much guilt there is in this firm in connection with the preparation for the aggressive war, and I do not want to interfere in this matter. However, nobody will think ill of me if I say I feel very deeply for the fate of this family who was once so well thought of."

Your Honors,

When General Taylor delivered his Opening Statement before this Tribunal on 8 December 1947, he spoke as follows:

"In opening a case of such historic import, there is a natural impulse to dramatize the occasion by ringing all the changes on the name 'Krupp', which was described two years ago by Mr. Justice Jackson as ..... 'the focus, the symbo., and the beneficiary of the most sinister forces engaged in menacing the peace of Europe'".

So for me, on the occasion of opening the Defense, there was a natural impulse too to dramatize the situation. There were reasons enough if two years after the father has been dropped from among those on trial, the son sits in the defendants' dock because of precisely the same charges. I shall, however, forbear emphasizing the human and moral side of these inherited accusations. General Taylor's statement will demonstrate much more a different circumstance which brings particularly to light the singular nature of these proceedings.

If the American prosecution staff under the leadership of Justice Jackson believed itself to be in the position in September 1945 to serve an indictment against Gustav Krupp von Bohlen and Halbach on the grounds of crimes against the peace, war crimes, and crimes against humanity, it must have had in its possession as early as that time all the essential documents needed to base such charges. From that time until now a huge staff of prosecutors and investigators has worked on this material, extending and broadening the charges on all sides and establishing bases for them. But it was determined by a decision of the International Military Tribunal that Herr Gustav Krupp von Bohlen and Halbach could never be the defendant against such charges, and so the proceedings, since then, have been directed exclusively against his son, Alfried Krupp von Bohlen and Halbach, and those persons associated in the firm who at the desire of the prosecution staff should be placed in the dock.

I know of no regulated penal code which under such circumstances

would have denied counsel to persons so charged. The Nuernberg prosecution staff which repeatedly has itself depicted in the press as being "so fair" acted according to different principles. Alfried Krupp von Bohlen and Halbach was in custody two years and four months before the indictment was served; during this time he petitioned repeatedly for counsel, and for two years and four months his applications were denied. While he - defenseless, condemned to inactivity, and destitute of all monetary means - was being dragged from one camp and prison to another, the prosecution staff was examining thousands of files and interrogating hundreds of witnesses to build up an unshakable case against him.

When the charges finally were made known to the defendants in August of last year and when the defendants were permitted, for the first time, to engage counsel, they and their defense attorneys were in somewhat the same position as a man who undertakes to raze a skyscraper with a pick axe. But the man with the pick axe at least knows that even after the indictment was served because it was not to be seen from the indictment itself which charges were to be brought against which defendants. Counsel for the defense had to object at the very beginning of the trial on the grounds that the indictment was totally without substantiation. Even during the presentation of their case, the prosecution was not in a position to remedy this lack. A written exposition of the charges, suggested by the Tribunal and promised by the prosecution, has as yet not been received. I leave open the question of the reasons for this failing.

The defense is forced, therefore, to refute charges which are totally ambiguous. This is particularly true for my client who publicly is being held responsible for things which occurred before his birth, before his entry into the firm, and before the acceptance of the chairmanship in the Vorstand of the Krupp firm.

It is not necessary for me to recall for the Tribunal the many further difficulties which have rendered the work of the defense more arduous and which we have brought to the attention of the Tribunal in repeated motions for adjournment. I should like only to mention in passing that we were granted access to considerably more than three thousand documents, previously unknown to us, only after the conclusion of the prosecution's case, that is, only four weeks before the beginning of our defense. Even today we are still lacking a great many documents. We know that many of them were in this building at one time because the prosecution files show that they were removed by Allied personnel. Apparently, however, they are no longer available since they are not contained in the list which is being prepared under the auspices of the prosecution. Among those files which are shown as available in the list, many are completely empty. Others bear the prosecution notation, "taken out." Therefore, while the prosecution had more than two years to appraise this great bulk of material, only a portion of it has remained for the defense. In my opinion no one can take it amiss if I believe that source material which could have been of valuable service to the defense was among the missing documents.

With regard to evidence I need not say anything more specific about the difficulties borne by the defense in causing German witnesses to testify truthfully in favor of the defendants. It throws a revealing light and is certainly no accident that a member of the prosecution staff, as he admitted here, was present at the denazification proceedings against one witness. The peculiar situation, moreover, regarding foreign witnesses in a war-crimes trial against Germans requires no particular exposition; I simply recall in this connection the trials of collaborationists in France and Belgium.

These difficulties which I have just described and which were present or came up during the course of the trial, are, in my view, the lesser

evil when compared with the entire system employed in the preparation of the charges.

Such a system makes an empty formality of the principle of equality between prosecution and defense, a principle upon which all Anglo-Saxon procedure rests. And not only is the situation of the defense adversely affected by this character of the pre-trial proceedings, but the judges, too, are denied the possibility of finding justice. Since in this proceeding the judges can evaluate as evidence for their judgment only the material which is submitted by both parties, they lack all the necessary facts and documents which the defense cannot produce and submit because of the limitation of time and facilities.

I request that the Tribunal take this situation into consideration in accepting and judging the evidence which the defense will submit or has submitted under steady pressure. Of necessity everything is done piecemeal, and we must rely upon the fact that the Tribunal will not charge the shortcomings of the defense to the defendants who were hindered in timely preparation, but rather to the system which itself is responsible for such hindrance.

In submitting our evidence we shall suffer from the same insecurity which plagues all Nuernberg proceedings. Until now no one has been able to tell us what actually is the legal nature of these tribunals staffed by judges who were appointed simultaneously or one after the other by the President of the United States of America and the Military Governor of the American Occupied Zone in Germany. I do not choose to touch upon this question despite its importance, within the sphere of my opening statement to any extent greater than the necessity required by such an opening.

There are two problems which are of direct practical importance to the defense in this connection. The one concerns the regulations according to which evidence is received or considered inadmissible. We have allowed ourselves during the submission of evidence by the prosecu-

tion to be led by the idea that this Tribunal is an American tribunal and is required to follow essentially the rules of evidence which are prescribed in American law for military tribunals of this nature. This cannot have escaped the notice of the Tribunal. Our numerous objections against the evidence submitted are based on this concept. In few cases did we have any success; in a great many cases, on the contrary, the Tribunal withheld its decision. The prosecution submitted many documents for so-called "identification" which were rejected as evidence or which the prosecution itself doubted as being acceptable. Since we do not know what the Tribunal will decide in the cases in which decision has been withheld, and since we also do not know if a document accepted for "identification" will not actually be employed as valid evidence in reaching judgment, our evidence to the contrary must cover many pieces of evidence of the prosecution which, according to American law, without any doubt were inadmissible. It is of not much assistance that we in submitting our evidence can make use of evidentiary materials of that sort.

The second problem stemming from the legal nature of this Tribunal which is of immediate importance in accepting evidence for the defense is concerned with the problem of material law. The charges have been served because of offenses against international law and against Control Council Law No. 10. The American prosecution staff is obviously of the opinion that there is no difference between international law in general and the legal specifications of Control Council Law No. 10. In the opinion of the Legal Division of OMGUS Berlin, which presented the charges with regard to the appeal against the judgment in the Milch Trial to the Supreme Court in Washington, it is stated:

"Military Tribunal II is not required to apply the law of the United States in the trial of petitioner, nor even the law of nations as heretofore recognized by the courts in the United States. As a court of occupied Germany it is required to apply the laws of the quadripart-

ite governing body for occupied Germany. The crimes specified in Control Council Law No. 10 have their basis in international conventions, and particularly in the charter annexed to the London Agreement of 8 August 1946, as interpreted and applied by the International Military Tribunal."

If this Tribunal considers itself an occupational court and considers itself bound by the conception which the Military Government has concerning Control Council Law No. 10, then the criminal charges against which we have to defend our clients have a different aspect than if they are judged in accordance with international law in general. As far as I can see, Nuernberg military tribunals in the past have avoided stating in their judgments their decision on the basis of Control Council Law No. 10. I submit, for example, the judgment of the Flick Case in which the Tribunal specifically refused to punish acts which were not considered criminal according to international law in general at the time of commission. I recall in this connection that this Tribunal demonstrated through the mouth of its President no inclination to associate itself with an estimation of guilt as it is contained, for instance, in Control Council Law No. 10, Article 2 f. The presiding judge expressly stated in the course of the argument that it is for the Prosecution to prove the guilt of each individual defendant. The defense accepts this principle, which corresponds to the criminal law of all civilized nations, as a basis for the extent and purpose of its evidence as well. The purpose is therefore to arouse in the judges a reasonable doubt that the evidence submitted by the prosecution establishes the guilt of the individual defendants.

In order not to be misunderstood, I should like specifically to emphasize that the defense, in making this contention, is not renouncing its contention of complete innocence for the defendants. But faced with such a charge, the defense simply cannot see itself in a position to prove their innocence. The entire evidence of the prosecution is in no way direct but rather only circumstantial. Not one of

these defendants started a war himself or took anything himself or maltreated anybody at all. The prosecution attempts, however, by means of a chain of hundreds of facts or assumptions to connect the individual defendants with such acts, acts which they themselves did not commit. Many of these hundreds of facts appear from the very beginning to be totally unimportant; at first glance a certain significance can be attached to others. It is impossible for the defense to consider all facts and assumptions which have been submitted, and therefore the defense also cannot prevent the possibility that one or another circumstance which leaves open the possibility of the guilt of a defendant remains unconsidered. This situation is due just as much to the extent of the circumstantial evidence gathered together by the prosecution as to the peculiar laws according to which judgment is to be rendered on crimes against the peace, war crimes, and crimes against humanity.

Since the question in this connection is to be considered in the light of the standards of international law, it appears suitable to go back to the actual principles of international law. It develops, as Justice Jackson said with justification in his opening statement before the International Military Tribunal, out of the acts of governments. A tribunal which has the mission to decide questions of international law, particularly those of great bearing, not for the defendants alone, must possess the desire and the readiness to consider the actions of governments and to weigh carefully the influence which these actions have upon the formation of international law. Even the trial before the International Military Tribunal indicated that this mission is particularly difficult and perhaps is not to be accomplished at all through the medium of a criminal proceeding. The actions of the German government since 1933, perhaps since 1918, lie exposed every day in broad outline and in many evil details because of the trials developed here in Nuernberg. But this, unfortunately, does not comprehend the actions of other governments whose activities for the practice of

international law are certainly of at least the same importance. The defense will submit as evidence on one point or another the governmental policy of other nations, as was done before the IMT and in other Nuernberg trials, in order to create the basis for the judgment of practices under international law. In the readiness of the Tribunal to consider these necessary principles of a just decision, we shall see the desire to render such a decision.

In a trial with a political background it may be that such evidence from the defense could be uncomfortable. It must, however, even then and in that very type of trial be taken into the bargain. Unfortunately, during the submission of evidence by the prosecution when we put questions in points which could have had political significance, it was not always possible for us to convince the Tribunal of the necessity of such questions. I recall that in the examination of the witness General Morgan the question of the participation of the British government in this trial was stricken from the record. A similar thing was true of the question directed to Colonel Warner when he was asked if he considered the war operations of the United States of America against Germany to be offensive in nature. In this case the presiding judge instead of the witness made the statement that it was well known that Germany had declared war against the United States.

I do not mention these incidents by way of criticism. At that time we were all in a stage of the proceedings at which the significance of the questions thus put was not entirely recognizable. Now the situation is different and at the opening of the defense case I feel it my duty to give voice with all earnestness to the hope and the expectation that the defense will find during the presentation of its evidence and arguments just as open an ear on the part of the Tribunal as the prosecution has found.

This open ear should be lent to the recognition of circumstances, the significance of which can come in view of the creation of international

law through the practice of governments. It should be lent equally for a consideration of the political situation in Germany, for the foreign and domestic needs in the years after the First World War, and for the particular circumstances which have existed in Germany during the years since 1933. An especially acute demand is made upon the ability of the judge to place himself among events foreign to him in order then to pass judgment on them. The Iron Curtain with which the people of the earth choose to cut themselves off from one another since the end of the First World War, now here now there, was lowered in a considerable measure since 1933 between Germany and the United States of America. You, Your Honors, will unquestionably believe my assurance that the Germans

could not find the full truth for themselves after that time regarding anything which happened outside their borders. You will also concede on the basis of your knowledge of the IET judgment that the Germans also knew only very incompletely what happened within their own borders. Many Americans, however, will not be ready even today to concede that people in the United States, as well, had no actual picture of what was going on in Germany after 1933. Much will be able to be understood only by him who experienced it himself: the extraordinary mixture of genuine love of one's country and unhealthy nationalism, of justified consciousness of one's self and racial superiority; the harmony between voluntary readiness for sacrifice and terroristic force, the intermingling of faith, self-deception, and betrayal. We have heard the opinion often enough that all that really did not actually exist, that these are things which the Nazis now have thought up to excuse themselves. He who approaches the problems of the war period and the time before the war with this point of view will never understand them properly. This Tribunal is meant to judge the individual guilt of men who lived at this time and in this country. It will not close its eyes to the necessity of concerning itself, unprejudiced and with the desire to understand, with the events which actually determine the thoughts and decisions of the defendants.

The prosecution claims for itself that it has proved the individual guilt of the defendants. It is difficult to believe that this opinion is seriously held if one examines the charges in detail. This doubt arises most acutely with regard to the charge of the defendants' having participated in a conspiracy for the preparation and waging of an aggressive war or of having prepared or waged such a war themselves. This charge is directed indiscriminately against the present owner of the firm, Herr Alfred Krupp von Bohlen and Halbach—who became a member of the Vorstand of the firm only one year before the outbreak of war, as well as against all his colleagues, down to Prokurists and the custodian of an artillery range, who are now sitting in the dock. This very extension to