

all the defendants without any attempt at individual reasons indicates how little can be spoken here about a personal guilt. This impression is emphasized by the extent of time which the prosecution has given to this part of its case. After the opening statement by General Taylor, there were presented the acts and events, beginning some thirty years ago, upon which the charges of crimes against the peace are based.¹⁾ My client Herr Alfried Krupp von Bohlen and Halbach, was ten years old at the time. No one will hold it against him if he considers as exaggerated the charge of the prosecution that he participated in a conspiracy at that time concerning crimes against the peace.

Ambiguity and exaggeration characterize the entire case of the prosecution with regard to Count I of the indictment. After the IMT occupied itself for an entire year with establishing the responsibility of the National Socialist leaders for the cause and operation of the Second World War, the prosecution now is attempting to make a mere bagatelle of this responsibility which was established by the IMT and substantiated by numerous death sentences--asked by the American prosecution as well. Today we read from the same American prosecution that

"Nazism was, after all, only the temporary political manifestation..
....."2)

Is the American prosecution in the IMT trial presumed to have deceived itself with regard to the significance of the National Socialist leaders? And if that is so, who will guarantee that the prosecution is not committing today in judging these defendants a relatively similar error?

The IMT judgment enjoys no favor at all among the prosecution when it contradicts their novel thesis. The prosecution has been shown, with justification in this courtroom, as inconsistent (3). The heavy demands made

1)
Opening statement (English), page 3.

2)
Opening statement (English), page 2.

3)
Official transcript (German), page 2581.

on evidence cannot make a secret of the fact that the charge of crimes against the peace is justified with regard to not one of these defendants in accordance with principles established by the IMT. The defense submitted these principles of the IMT to the Tribunal along with the motion to drop the charge of crimes against the peace. So long as the Tribunal has not come to a decision with regard to this motion, the defense of necessity must in presenting its case follow the same torturous paths which the prosecution has beaten. Since none of the defendants can consider himself affected in any way by the charge of crimes or conspiracy against the peace, the defense attorneys have arranged a common defense to this part of the charge. The portions which the individual attorneys have taken over within the sphere of this common defense indicate nothing with regard to any sort of connection between their client and that portion.

With regard to both the other counts of the indictment of "spoliation" and "slave labor," the defense attorneys have distributed amongst themselves certain themes, certain topics. These subjects will, moreover, not be presented by the defense as a separate issue as is done in presenting the case against Count I of the indictment, but rather each defense counsel will handle them at the time he presents the case for his client. This distribution of subjects is meant to eliminate repetition and overlapping as much as possible, and in addition, in view of the bulk of the material, to result in a reasonably equitable distribution of work among all attorneys participating in this case. We ask the Tribunal, in this case as well, to draw no conclusions regarding the responsibility of any defendant on the basis of the fact that his attorney presents such a subject. This is a purely technical measure which has come up in other trials and which has proved to be of value.

Before I turn briefly to the counts of the indictment "spoliation" and "slave labor," I feel it necessary to take up the question of the unhappy connection which the prosecution has made between these charges and crimes against the peace. The IMT knowingly rejected the thesis of the

prosecution at that time that there was such a thing as a conspiracy to commit war crimes and crimes against humanity. Correspondingly, Military Tribunals I, II and III on the basis of the plenary session of all Nuernberg military tribunals in bank on 9 July 1947 rejected the charge of a conspiracy to commit war crimes and crimes against humanity without further submission of evidence. The prosecution in this trial doesnot appear to be ready to take the consequences of this decision. War crimes and crimes against humanity are again being smuggled in through a back door as portions of the conspiracy to commit crimes against the peace. The reason is obvious. By means of the idea of conspiracy the prosecution would like to rid itself of the uncomfortable burden of bringing proof against each individual defendant of individual guilt for a particular act. I have as much understanding for this attempt as I have belief that one can create new international law on this basis. A legal standard, in particular a standard of criminal law, should create clearly delineated areas of facts in the case. The attempts of the IMT in this direction are unmistakable, and at least some of the subsequent military tribunals have joined in these attempts. What the prosecution is doing is the exact opposite. The distinction drawn between crimes against the peace and war crimes is, in a practical sense, once again to be erased and therewith in place of a clear legal spring a muddy pond is called into being which will be of interest only to those people who want to fish in it. With regard to this point, as well, the defense counsel has submitted a motion to the Tribunal from which they expect the early rejection of the connection between crimes against the peace and war crimes as contained in Count IV of the Indictment.

A further attempt of the prosecution to escape the above-mentioned burden of proof seems to me to be contained in the assertion that the Krupp firm is a criminal organization so that membership in this firm would suffice for sentence. Would that not indicate that all employees and workers of the Krupp firm including foreigners would have to be considered

members of a criminal organization? The IMT declared only a limited circle of organizations as criminal with clear intent. Is this circle to be somewhat extended?

Since precedent still is lacking in questions of responsibility of private businessmen for the preparation and waging of aggressive war, the defense with regard to the question of spoliation and foreign workers is in a different and even better position on the basis of the judgment in the Flick trial. Since this judgment was made public only in December 1947, there was no possibility when the indictment in the Krupp trial was served to consider knowledge of this judgment as limitation of the charges raised. Since then, however, there certainly has been opportunity for such limitation. Since the prosecution has made no use of this situation the defense must once again go into all charges here as well, without regard to whether the standard of the Flick judgment can have any legal significance at all. In this matter, too, the defense will take pains, moreover, to indicate the limitation which the prosecution has permitted to be lacking. In their attempt to shorten proceedings, the defense is taking a risk.

An example of this is as follows: The prosecution cites as proof of the systematic spoliation of occupied territories a speech made by Goering to the Administrative officials of the Eastern Territories on 6 August 1942, in which he stated:

"This everlasting concern about foreign people must cease now, once and for all." (1)

As enticing as it may be, the defense will refrain from extending their proof by calling persons who were present when this speech was made and who could prove that this everlasting concern for foreign people did not cease even after this speech on 6 August 1942. The reason for refraining is that the Goering speech has to do with the delivery of food

1) Speech by Goering on 6 August 1942, quoted in official text of the indictment in Case No. 10, The United States of America against Alfred Krupp von Bohlen and Halbach, et. al., paragraph 35, page 17.

from Russia to Germany, and for this branch of economy counsel for the defense are unable, even with the greatest effort, to recognize any responsibility on the part of the defendants in this case.

But things are not always this simple, and in many details we shall have to prove to the Tribunal that the prosecution has submitted a one-sided and therefore incorrect depiction of actual events. The prosecution has admitted, however, that in instances of "spoliation" one acted as one would if one were actually paying.¹⁾ We shall prove that the Krupp firm in all cases wherein it received something, not only acted as it would if it were paying, but also in reality did pay. When on the other hand, the firm was commissioned by the Reich to take over the business operations, then it had nothing to pay because it also did not receive anything. To what extent business operations of this nature with which the firm was frequently burdened can be considered as participation in spoliation is a legal question which will be considered at a later stage of the proceedings.

An entirely different light than the one envisaged by the prosecution is thrown on the participation of an industrialist in the so-called "slave labor program" by the verdict in the Flick case.

Counsel for the other defendants will refer to the particulars regarding this count. For Herr Alfried Krupp von Bohlen and Halbach a responsibility under this count can only result from his position as member of the Vorstand and as later owner of the firm, and from his activities in the great industrial organizations, the Reich Association Iron (RVE) and the Reich Association Coal (RVK). Therefore, the taking of evidence in his case will cover these points. Just as the prosecution, in arguing their accusation of preparation for war, refers to the old tradition of the firm and the house of Krupp, the defense will also make use of this tradition and make mention of the social achievements for which this family has received uncontested credit until now. We feel particularly called upon to do this as a representative of the prosecution considered it proper to attack the social attitude and motives of the Krupp firm, in connection with Krupp's workers' settlements, in the press.

¹⁾ Paragraph 35 of the indictment.

The prosecution caps its theory that Krupp was the great advocate of aggressive war with a reference to the Special Law by which in the autumn of 1943 the A.G. Friedrich Krupp was converted into a family enterprise of the same name. The defense will submit to the Tribunal the origin of this "Lex Krupp" and its thirty-years' history, and so will create a basis for the recognition of the fact that this law does not represent the slightest bit of evidence for this theory of the prosecution, and that it is of no importance for those proceedings.

When one looks over the entire course of the prosecution and attempts to envisage the course of the defense, this question appears to me to be the nucleus of the matter: Is an industrial enterprise permitted to produce war material before a war, and is it permitted to continue this production also during the war, that is to say, within the scope of those regulations and laws which have been passed by its government? The prosecution seems to have been under the same impression, else the prosecutor would not have hastened to state that the armament industry is an honorable one and that the accusations made against the firm Krupp do not refer to the armament factories in other countries. In this connection he obviously overlooked the sources from which his colleagues obtained their information. At the outset of these proceedings the prosecution submitted a written statement to the Tribunal which was evidently intended to be endowed with special importance by its title "Basic Information." The facts in the "Basic Information" pertaining to the Krupp firm have been largely drawn from Bernhard Menne's book Blood and Steel--The Rise of the House of Krupp. If the prosecution accents the author as an expert in Krupp matters, it will also have to acknowledge this expert in matters pertaining to the armament factories of other countries.

It is of interest, therefore, to hear what Mr. Menne has to say on this topic in the introduction to his book:

"It is obvious that the association of politics and business, steel and the destiny of nations, revealed in these pages is not to be considered peculiar to the history or the present condition of Germany. Wherever the name 'Krupp' appears, let the Frenchman substitute 'Schneider'; the Englishman 'Vickers'; and any other country, its corresponding firm."

DR. BEHLING: Dr. Behling for defendant Loeser.

Mr. President, your Honors,

I intend to divide my plea methodically into two categories. On one side are the matters which I have to deal with administratively within the framework of the joint defense irrespective of the person of Dr. Ewald Loeser. The second part of my plea will deal specifically with the personality of Dr. Loeser and with the charges brought against him.

To the first group belong a number of questions whose irrelevancy to the outcome of the trial is obvious. Yet I shall have to include them in the sphere of my observations since the charges have been brought and the prosecution could not make up its mind, so far, to drop them as suggested by me. I refer, in the first place, to the concept of the so-called Military Economy Leader (Wehrwirtschaftsfuehrer) which is entirely misconstrued by the prosecution. I shall show that this is a meaningless title, possessing no practical value, either economically or politically. In my opinion this question was most correctly evaluated by the Military Tribunal No. V in the Flick case, this allegedly "serious charge" being passed by without comment. Much the same applies to another point which will deal with the so-called "Small Circle". Analogous to the other economic trials, the prosecution has veiled this phenomenon in magical semi-darkness and thus surrounded it with a semblance of importance which would have been worthy of a better cause.

The Tribunal will be interested to learn that the Flick trial by-passed this point in silence also and denied any responsibility within the purport of the charges.

The discussion concerning the so-called "Small Circle" will be in conjunction with another general topic, that will deal with the Economic Group Iron-Producing Industry and the District Group North-West of this Economic Group. Here again we can cite the findings of the Flick verdict. Just as little as the membership of the small circle, did the Military Tribunal deduce criminal responsibility from the work of the men accused

in the case in the Economic Group and the Sub-Organisations referred to or see reason why even one of the defendants should be sentenced. I shall limit myself, therefore, on the whole to the material already submitted in the Flick case and, moreover, I shall refute the case for the prosecution by the examination of a witness.

Besides these points which, in my opinion, have no bearing on the outcome of the trial, there are some questions which necessitate more extensive argumentation. In the foreground of my plea regarding this will be the financial development of the firm of Krupp up to 1943. The period from 1943 to 1945 will be dealt with by my colleague, Dr. Schilf, as a part of his plea. I shall prove that the firm of Krupp did not profit excessively or unduly by the Hitler regime. In this way I shall refute beyond any reasonable doubt, substantiated by sober figures and graphic illustrations the allegation of the prosecution that the firm of Krupp was to be "rewarded" for maintaining its armament potential. In regard to this matter I shall call an expert witness and besides, on hand of further illustrations, I shall provide the Tribunal with the possibility of comparison with the financial development of other firms at home and abroad. It will be inevitable, however, in elaborating these interrelations, to bring to the notice of the Tribunal some of the principles of German financial and tax law.

In the course of these financial dissertations I shall deal with the problems related to the financing of German re-armament. It has always been the practice to revive a prostrate national economy by financial measures. This can be done from the outside with foreign loans or by injecting financial help in the form of an emergency program. But as long as the state is able to help itself, it will prefer to do so. In that case it created its own methods of finance. I shall prove that the so-called "Mefo-drafts" fell into this category. They are, no doubt, not a desirable kind of finance, but nothing criminal either. A witness whom I shall call will demonstrate that the so-called "unemployed" bills of exchange can be regarded as the predecessors of these Mefo bills. I shall

also bring to the official notice of the Tribunal the documents from the IMT, where this subject has already been fully ventilated and led to the acquittal of Reich bank president, Dr. Schacht. If, however, Dr. Schacht, as the originator of these methods, has been acquitted by IMT it will hardly be possible to convict the industrialists charged here for accepting these Mefo-drafts.

Following the plea of my colleague, Dr. Vorwerk, I shall bring supplementary arguments concerning the Germania shipyard. By the submission of affidavits, documents, and a graphic illustration I shall prove that German naval armament, insofar as it was executed by the Germania yard, did by no means serve the preparation for an aggressive war in view of its small scale. Furthermore it will be shown that neither the Germania yard nor the firm of Krupp were able to determine the extent of the production. Despite strong protests the Germania yard had to build what the High Command of the Navy demanded. Neither the Germania shipyard nor Krupp, Essen, had any influence on this. The capacity of the yard was simply requisitioned by the Navy and in the structure of a totalitarian State no possibility existed of evading compulsion. Relative to this I shall briefly touch on German legislation and prove that by means of the so-called Reich labor service law alone an individual as well as firms could be compelled to perform any service deemed necessary by the military authorities.

My colleague, Dr. Schilf, will give the Tribunal an idea of the foreign organization of the firm of Krupp. In this connection I shall deal with the question of exports. In Hitler Germany firms were not free to export as they saw fit either. The State, without restriction, directed the export trade. The merchant was no longer in a position to import or export what he liked, but had to follow instructions from the government offices, in the first place of the Reich Ministry of economics and of the so-called Inspection Offices. The firms had to sell whatever the state direction of economic affairs desired.

Nor were the firms at liberty to choose the export-countries. Strict regulations favored the foreign trade with certain countries, while at the same time they restricted it with other countries. All these measures were ordered by the government. A firm which resisted this, was economically handicapped and under certain circumstances its owner was punished most severely.

Independently of this enforced situation I shall prove that the export and import of the firm of Krupp was entirely within the limits of that of the other German firms. To a notable degree it actually preferred countries not allied to Hitler Germany. By comparative statements with regard to other countries I shall prove beyond this that the figures of German foreign trade corresponded to those of other countries. In any case it will transpire that the allegation of the prosecution, according to which the firm of Krupp had prepared an aggressive war by means of foreign trade, is erroneous. So far the prosecution has not brought any proof for this allegation of theirs. The witness to be called by me will more clearly define these relations to the court.

In connection with the general subjects I now have to deal with the purchase of the Berndorf works in Austria. The prosecution base on this business transaction the accusation of plunder of foreign property and infers from this that the firm of Krupp had made a further contribution to the preparation of an aggressive war by purchasing the Berndorfer Metallwarenfabrik. So far I have been unable to ascertain what legal arguments prompted the prosecution to go so far. At any rate I can see in this neither

a war crime in the sense of Control Council Law No. 10, nor a violation of the Hague Convention on Land Warfare. The basic premise for the accusation brought by the prosecution would be as I see it, that at the time of the purchase the republic of Austria was a subject of the League of Nations, and was in a state of war with Germany. If however - as in this case - this premise is non-existent the accusation is without any foundation, because the acquisition of Berndorf can in that case no longer constitute an offense against international law. At any rate I shall prove beyond any reasonable doubt by a witness that the defendants during the purchase negotiations regarding Berndorf assumed and were entitled to assume with impunity that Austria was no state or part of a state at war with Germany. According to the penal code of all civilized nations, every error regarding primary questions of public and private law excludes the punishability of an act. Moreover, I shall prove that the purchase of Berndorf by the firm of Krupp was nothing but a transaction brought about by family reasons, which was carried through lawfully and caused no damage. Concerning the more detailed circumstances and, more particularly, to refute the prosecution witness Glatz, the witness named by me will make further statements.

Finally, relative to the defense as a whole I have to deal with a few events which occurred during the war in France. It concerns the dismantling of the sheet metal bending machine of the firm of Als-Thom in Belfort, the use of the Austin Works in Liancourt, and the formation of the Krupp Société Anonyme, Paris. Also for this I shall call some witnesses who will prove clearly that neither the firm of Krupp nor one of these defendants present acted contrary to penal law. Especially it will be shown that the accusation of plunder brought by the prosecution is unjustified.

In the second part of my opening statement of evidence I shall deal with the specific responsibility of my client, Dr. Ewald Loeser.

It is now almost 4 years ago since friends for the first time requested me to defend Dr. Loeser. At that time Dr. Loeser stood

before the People's Court as a conspirator against the Hitler regime, being accused of high treason and undermining of the armed forces morale. A death sentence seemed certain for him. This I cannot only prove from my own experience as defense counsel, but shall prove it by presenting the prosecution statement and an affidavit of the former Oberreichsanwalt (Reich Chief Prosecutor). Today Dr. Loeser has to defend himself against the opposite accusation, namely against alleged conspiracy in cooperation with the Hitler regime. From these observations alone it becomes evident that the allegation of the prosecution seems to be decidedly paradoxical. If one accepts the statements of the prosecution, it is clear that Dr. Loeser must have been a member of two opposing conspiracies. In that case he would be a conspirator against himself. The best refutation of this thesis is the life story of my client.

Dr. Loeser experienced the accession to power by Hitler under rather dramatic circumstances as Mayor and Treasurer of one of the best known large German cities, to wit, the town of Leipzig. As such he was the closest and most confidential collaborator of the then chief mayor (Oberbuergermeister) Dr. Goerdeler, who as head of the civilian section of the resistance movement was sentenced to death and executed in connection with the attempt on Hitler's life of 20 July 1944 by the same People's Court, before which Dr. Loeser had to defend himself. In spite of the dramatic start at the time when Hitler usurped the power Dr. Loeser at first remained in office. Like all other responsible democratic circles, he likewise attempted to maintain the principles of orderly administration in the face of the obstacles raised by the Party offices. Soon, however, he was forced to acknowledge that he was confronted with an impossible task. From these realizations he drew the consequences as early as in 1934, relinquished his office and turned to a position of private economy.

In 1935 to 1937 we find Dr. Loeser as member of the Vorstand of the Berliner Hotelbetriebs-Aktiengesellschaft. His colleague in the Vor-