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AFTERNOON SESSION

(The Tribunal reconvened at 1330 hours.)

THE MARSHAL: The Tribunal is again in session.

DR. LINK: (for the defendant Erich Mueller):

Mr. President,

Your Honors,

A.)

As your honors know the defense will deal with count I in a comprehensive statement at the beginning of the presentation of the evidence. I am going to deal with the following points within the scope of this general part of the presentation of the evidence and the distribution of subject matters arranged by the defense:

- 1.) Technical questions connected with rearmament.
- 2.) Basic information with regard to cooperation with military authorities.
- 3.) The "R-agency" in Berlin.

Ad 1.):

Within the scope of this subject matter I am going to show the part played by the Krupp firm in the development of weapons after the first world war until the repeal of the Versailles treaty. Developments are involved representing the part played by the Krupp firm, one of numerous armament firms, in the rearmament of the German Wehrmacht at the beginning of World War II.

Ad 2.):

By necessity we have to start with the mandate of the official Wehrmacht offices in charge of armaments. It will be shown that cooperation with these offices did not represent an activity exceeding a purely technical sphere and entering a general military or even tactical sphere, and that it, in the contrary, remained within the scope of a relation normally existing between mandant and mandatary.

We will have to distinguish between the cooperation of the Krupp firm with the army ordinance office and with the navy ordinance office.

Ad 3.):

The "R-agency" meaning "Armament Agency" was established at the seat of Wehrmacht offices for the purpose of facilitating organisatory matters and decreasing the friction in doing business. It was and remained nothing else but a field office of departments in charge of the respective questions at the seat of the administration of the firm.

B.)

As the defense counsel of the defendant Dr. Erich Mueller I summarize my plan of presentation of the evidence as follows:

I.

1.) Dr. Erich Mueller entered the services of the Krupp firm on April 1935. After a childhood full of hardship, an extraordinary technical talent, manifest at an early time, together with iron zeal launched him, after he had passed examinations with highest honors, and had first proved his technical ability inside and outside of Germany, on a quick ascent in a promising civil service career with the German Reichsbahn. His change-over to industry, to the Krupp firm, is not to be explained by the tasks he had carried out till then, nor was it caused by financial or political considerations.

Only his technical talent is his recommendation and the impulse to prove himself in a field completely new to him.

2.) After one year's intensive initiation, Dr. Mueller took over the management of the Artillery Construction Department (A.K.) in May 1936 and kept it until the collapse in 1945. To it, that is, the development of arms, he devoted all his technical knowledge and his uncommon capacity for work. Here lay the gravitational center of his activity, which made everything else seem unimportant for him:

marital ties and private life,

striving for honors and material gains,
public appearance and political activity.

There were, for him, no general economic, no commercial and financial, no military and tactical, but only technical problems. Insofar as he was brought into contact with other questions transcending the development of weapons, these contacts were marginal contacts and were connected with his activities as a designer, as for instance in the case of the heavy ship turrets where manufacture and development went alongside and where he had also to take care of certain target dates.

In the firm he rose steadily, to become a regular member of the Board of Directors in 1943. These promotions were not the consequence of vain-glorious ambition but were exclusively the result of his personal qualities. His domain remained fundamentally the same. Only from April to November 1943 was he charged with the management of the so-called machine enterprises. He, however, was less concerned with the supervision of the process of production but rather more with the organization of the resumption of work interrupted by heavy bomb damage. Dr. Mueller soon realized that this task kept him away too much from his real work as a developer of arms and after only a few months he achieved that the management of the manufacturing plants was taken off his hands so that he could again devote himself exclusively to his development work.

3.) When Dr. Mueller joined Krupp's in 1935 he was at first disappointed.

The development tasks set by the German Wehrmacht during his one year's service under Ritter were accepted and started without him. When he took over responsibility in 1936, only few new orders came in for the Wehrmacht, orders which did not occupy him to the full. He, therefore, wanted to leave Krupp again and only desisted from doing so, because at the same time a new and large field of activity opened out for him in which he was given full scope. The pronouncement of the German Reich's military sovereignty caused a great number of foreign countries

to take up business connections with Krupp as a supplier of arms connections that had been severed by the First World War and, in the course of the next years, Mueller developed a number of new guns for the armies of these countries. In doing so, he could, free from the tutelage common in German Wehrmacht agencies, give full expression to his development ideas. The guns for foreign countries, therefore, had quite generally a better performance than those developed for the German Wehrmacht before that date.

This did not at all, per se, affect considerably the close relationship to the German Wehrmacht. The relationship to them was running along lines fixed by custom. Any advisory activity in the only sector concerned, the technical development sector, was neither asked for nor given. What was done, was the adjustment between specifications and technical execution, as it is usual everywhere. A relationship of trust between Krupp and the Ordnance Offices could, at the most, be said to have existed with respect to the sector dealing with heavy artillery beyond 17 cm. It was a tradition with regard to the Navy. The relationship to the Army Ordnance Office was decidedly bad. Then the Second World War came. Dr. Mueller was as little prepared for it and was as much surprised when it broke out, as were the majority of Germans whose political opinions had been formed only on the basis of the German sources of information.

He never concerned himself with political associations and very definitely lived only for his work. MOB plans for the industry, which existed in Germany just as well as in foreign countries, did not make him think of a war of aggression; these plans were never carried out in the intended form anyway and he himself was not concerned with it directly since he had nothing to do with the production.

The outbreak of this war was for Dr. Mueller everything but the achievement of his greatly desired aim, for the very simple reason that the war destroyed or paralyzed for an undetermined period what he by his technical ability had again made possible: the weapons business with

foreign countries by the firm KRUPP.

4.) Since, however, this was the case, it became the devious patriotic duty for Dr. Mueller to place his abilities at the disposal of the German Wehrmacht during the war. He had no other choice.

What he developed now were not weapons of a certain specific type which were especially suitable for the conduct of aggressive wars, they were completely normal artillery weapons, such as were used by every country and every army of the powers involved in the war. That he also tried to do his best for the German soldier was absolutely natural for him.

5.) Following the creation of the Ministerium Tedt Mueller was appointed head of the Weapons Commission in 1940. Again he was not recommended by the fact that he was a politician or strategist but only because of his technical knowledge which he had proven in the creation of effective guns for foreign countries. The commission which handled development and production, concerned itself during the first two years almost exclusively with the further development of weapons. After the first setbacks in the East and the considerable loss of weapons in connection herewith, the government raised its demand for increased armament production. It soon became obvious that Mueller was not willing to put up with the intervention in industry which the State deemed appropriate. Dr. Mueller took the consequences upon himself and resigned his office in 1942.

It was, however, the opinion that one could not dispense of this technical experience and that is the reason why he later took over the chairmanship of the Weapons Commission which concerned itself exclusively with research work. These were activities which were carried out by thousands of engineers in all countries.

In connection with this I will explain the purposes of the committees, commission and industrial associations.

Because of his position as honorary staff member in an organization of the Sperr Ministry, Dr. Mueller was used quite frequently to pass on

government requests and measures to the firm of Krupp.

Through him, the increased governmental pressure and finally compulsory production in the individual manufacturing fields is applied to Krupp, however, without force being applied by him. His name appears when government orders for the construction of new production sites and for the intensification of armament efforts are passed on.

His participation in the planning of Markstaedt is the natural result of the activities assigned to him in the weapons committee and the connection of this work with Todt and Speer, as is the fact that he was called in by Adolf Hitler during the war in order to participate in certain conferences concerning purely technical matters. In spite of that, he does not only protect the interest of the firm against the exorbitant requests of the ministerial agencies, but also his own opinion. From this, certain consequences result for the firm of Krupp and for his own person of which he was conscious and which he accepted rather than give up his conviction.

Thus he was also brought into the expansion projects in connection with the concentration camp Auschwitz which by the way never materialized. It will have to be shown that it was neither a question of Dr. Mueller's great personal interest nor of Krupp's capitalistic aims, but of the general compulsion by the state, to which he had to yield in the same way as the Krupp management which had to fulfill the impositions by the state.

6.) The indictment especially connects Dr. Mueller with the then head of the German Reich. I shall prove that Dr. Mueller's role as Hitler's "advisor on armament" did not exceed requested and given information on purely technical matters, and at no time extended into the sphere of politics or military tactics. In view of Dr. Mueller's extraordinary gift for technical matters and his lack of understanding of politics and strategy it would have been strange, if it had been different.

II.

The indictment asserts that this defendant too participated in the

so-called exploitation of the occupied territories.

With regard to my client I miss any specification whatsoever in this respect.

Therefore I can and have to refer within the scope of my presentation of evidence essentially to the facts which had been discussed and proved in connection with the defendants concerned with these problems.

III.

By making much the same combination the prosecution now attempts to make my client co-responsible for the execution of the so-called slave labor program in Krupp's enterprises.

Wherever State control over production compelled Dr. Mueller to concern himself with questions relating to the employment of workers, it was only in the form of passing on the State's orders concerning the keeping up of production or increasing it.

The actual handling of these questions was reserved to other agencies not subordinated to Dr. Mueller.

Nevertheless, I shall show Dr. Mueller's fundamental attitude to questions relating to the employment of foreign workers, POW's and concentration camp inmates, because it may be seen from it that this forthright disapproval of State orders was just as unavailing as it had been in the case of his co-defendants and of other leading men of German industry.

IV.

As regard to Count IV of the indictment I may refer to the legal arguments already submitted to the Court by the defense and on which we shall elaborate, if necessary.

V.

The prosecution introduced my client in the trial under the name by which he had become known abroad even more than at home: Kanonen-Mueller.

The Prosecution has stated in its opening statement that it was not

at all the question of prosecuting the firm of Krupp as such, nor the profession of armourer.

If the Court holds the same opinion, and I am convinced they do, then my client and myself are not afraid of the verdict.

DR. SCHILF: (for defendant Dr. Janssen): Your Honors:

On 10 September 1945, Dr. Friedrich Janssen was arrested in his office in Essen by British Police, upon the orders of an American agency. On 21 December 1946, he was released by British authorities, but already at the end of January 1947 he was re-arrested at the hospital in Essen, and on 19 February 1947, he was taken by American agents to the Court prison of Nuernberg. Before that date he had been interrogated once by American and once by English officials. In Nuernberg he was interrogated about forty times. The indictment was handed to him on 18 August 1947. That was the first time when, almost two years after his arrest, he had an opportunity of speaking to his defense counsel. Until the time when the indictment was served upon him my client, Dr. Janssen, did not know at all whether charges would be brought against him and why he was deprived of his liberty. The indictment was unsubstantiated as far as my client is concerned. Preparations for his defense were therefore a practical impossibility between August 1947, and the time the Prosecution presented its case. On 8 December 1947 - which means 2 years and three months after his arrest - Dr. Janssen for the first time faced a judge, namely this Tribunal.

Now the presentation of evidence by the Prosecution, during the period of 8 December 1947 and 25 February 1948, failed to bring light into the obscurity of the generalized and intangible charges against my client. Out side of only timid attempts, the expected substantiation of the charges against Dr. Janssen did not materialize and to this day it is still unintelligible what correlation the Prosecution desires to establish between the voluminous and badly arranged evidence and my client. The brief promised by the Prosecution which, according to its statements, was meant to correct this openly admitted defect has not been made

available as yet.

Quite obviously, therefore, Dr. Janssen was arrested, interrogated and finally, charged by the American Prosecution merely because he was one of the leading functionaries of the firm of Fried. Krupp. It is the only reproach - if it can be such - which the Prosecution pronounced, that Dr. Janssen was Vorstand of the Krupp Aktiengesellschaft and later a director of the enterprise. That it was the aim of the Prosecution to drag the managing officials of this undertaking before this court for trial becomes equally clear from the fact that at one time it even boasted of having gathered together in this dock all of the members of the Vorstand, subsequently directors, of Krupp who were still alive at the time of Germany's capitulation or who had not committed suicide while under Allied arrest.

If in the fall of 1945 Gustav Krupp von Bohlen und Halbach had not been unfit to stand his trial, he would have been tried as one of the defendants of the International Military Tribunal, in the proceedings against Goering, et. al., as it had been the plan of the Prosecution. There is reason to assume that in that case there would have been no separate proceedings at all against the defendants here present. The reverse procedure was adopted by the Prosecution in Case No. 11, before Tribunal IV, according to which Herr Rasche, for example, one of the directors of the Dresdner Bank, was being arraigned in the case against Weizsaecker, et. al., while the originally planned separate trial of numerous members of the Vorstand of the Dresdner Bank was abandoned.

This observation does not seem superfluous because in our case the indictment mentions my client Dr. Janssen altogether only twice in connection with concrete occurrences (par. 26 and par. 39 of the indictment of 15 August 1947). Matters are involved in the cases there referred to which merely touch on the fringes. Even though the Prosecution had two years and three months for preparation, it did not in the presentation of the evidence itself present anything pertaining to Dr. Janssen which is of any criminal relevance. A few statements by persons directly

effected is all that is available. Regarding the procurement of these statements in prison and a long time prior to indictment the Defense will have a word to say on presentation of its evidence. The parties who furnished such declarations could realize only subsequently that they were to be a means to play them off, one against the other.

The scarcity of concrete evidence discernable even at this juncture already invites any unbiased observer to infer that in our case the Prosecution is not so much concerned with proving the personal guilt of each one of the defendants in detail as to attack a "system". In the Nuernberg industrial trials the Prosecution levels charges against German private individuals, namely, officials of the firms of Flick, I. G. Farben and Krupp, in a most generalized and highly defamatory manner. The attacks are of a kind which, evidently, are meant to hit the entire German industry as a whole and, in fact, the attacks are carried out with a definitely anti-capitalistic tendency. The discrepancy between mere assertions and actual proof is amazing to the unbiased observer.

As a matter of fact, the charges bear a painful resemblance to other charges made before the UN just a few months ago, namely on 18 September 1947, by the Foreign Affairs Deputy Commissioner of the Soviet Union in his capacity as Soviet Delegate. The speech of Andrei Wyschinski caused great consternation. Mr. Wyschinski did not assail the German concerns of Flick, I. G. Farben or Krupp, but the American and I quote, "Capitalist Monopolistic Combines" such as du Pont, Chemical Trust, the Standard Oil, the General Electric, etc., Mr. Wyschinski charged them with preparing for a new war. He said literally, I quote:

"In this war propaganda representatives of the American monopolistic combines of capitalism, representatives of the largest concerns and of the leading American industry, as well as representatives of the banking and stock exchange elements are playing the most active part. They are the elements who during the second world war reaped the biggest

profits, piling up huge fortunes, analogous to what happened during the first world war."

Mr. Wyschinski classifies as "other war mongers" American politicians, statesmen and owners of newspapers who are working hand in glove with the American industrialists. Again, an embarrassing analogy to the charges raised in Nuernberg. Nevertheless one must give Mr. Wyschinski credit for his accusations in that his attacks were not uttered subsequent to the act and not against members of a defeated state.

Instinctively the question comes to mind as to what actually the Prosecution is driving at with its campaign against prominent personalities of German industry.

A reply was given by the numerous critical comments from the United States of America and Great Britain and, conversely, the extremely friendly reaction from the USSR.

The prosecution in the Krupp trial operates from beginning to end with the completely vague and legally irridescent conception of "culpability" or "responsibility". The obvious intention of the prosecution is to construct artificially a "responsibility" which does not exist in life and cannot be fitted into any order based on true law. This is hardly the proper place for advancing juridical arguments concerning the numerous possibilities of interpreting the word "Responsibility". In view of the fact, however, that the prosecution wants to employ a nebulous conception of responsibility, not only as a means of joining their evidence together, but also as a link to connect each of the defendants present, it is necessary to clarify something from the beginning: A "responsibility" is logically conceivable only as the sonsequence of an action, the consequence of an act and, insofar as subjective premises are concerned, as the consequence of personal guilt. If a juridical conclusion is to be reached in any respect, the premises for responsibility must first be determined. The prosecution tries to reverse this process. It attempts to fasten responsibility on the defendants on the strength of purely external, chiefly organizational circumstances without having to prove concrete external actions or personal guilt where a criminal problem is concerned. The concept of "responsibility" apparently, in the opinion of the prosecution, is to become an easily deducible premise to their charges. This follows from their document books I to II and from their Basic Information. It aims at converting regulations concerning the legal liability of property according to German commercial law, particularly joint stock law, juridical concept which can concern only the law of property into a criminal offence. The judicial terms which play such an important part in our case, can,