

however, only be guided by the broad principles of justice and fairplay which form the basis of every civilized conception of laws and legal procedures." (See judgment of the Military Tribunal No. III in case 3-Justice Case - of 3 December 1947 - German transcript page 10401).

I have undertaken within the scope of the distribution of subjects among the defense counsels, to clarify the legal concept of interest to us here. Since crime is no longer regarded as an attack on the individual, but on the legal order as such, it is agreed that the provisions of criminal law do not belong to civil law (*jus privatum*) but to public law (*jus publicum*). Criminal law now is generally understood to be that law which is delegated to a superior power - the state power - for the purpose of punishing crimes committed (*jus puniendi*). The sum of the principles at the disposal of this *jus puniendi* forms the *jus poenale*, the *jus criminale*. Private law (*jus privatum*) is to be strictly separated from this. According to the consensus of opinion, this also includes commercial law and the total of regulations referring to property, liability arising out of contracts or law. All concepts such as indemnity based on liability in civil law, have purely financial legal consequences. If, for instance, shareholders or creditors of a joint stock company want to lodge a claim against a leading member of this form of undertaking, they make a private claim, whereas according to modern legal opinion, only the state is entitled to a demand for punishment. According to whether a so-called delict produces such a claim or merely a claim for compensation for damage suffered by the person concerned, these delicts are called crimes, criminal offences (*delicta publica*), or private delicts (*delicta privata*). Although both these types of so-called delicts constitute legal offenses and therefore must have been committed unlawfully and culpably they will differ in their legal consequences i.e., the evil threatened by the state will affect a criminal while.

the legal consequence of a private delict merely leads to the indemnification of the injured party in respect of financial legal obligations.

It will be clear that nothing can be done with the concept of "responsibility", resting on which the prosecution seeks to throw everything into one pot. It will transpire further that a legally constituted commercial organization established for economic purposes, business transactions, cannot be transformed into a criminal system like a tracing pattern. The juridical concepts, particularly of German law which may be derived from the commercial legal organization of an enterprise can be converted into criminal guilt not even by the prosecution. If the prosecution has submitted documents relating to German commercial law, particularly joint stock law and charges which are meant to demonstrate that from the mere "position" of any defendant within the commercial legal organization of the firm of Krupp in criminating deductions are to be made it will have to be the task of the defense to show that economic events can at the time not at all be confined in such simple schemes, particularly not in those evolved by the prosecution with the intent to imply consequences according to penal law.

I shall also prove that the firm of Krupp according to its organization cannot be compared to an official organism or a military hierarchy. It is impossible to apply a pattern to a business enterprise that might appear suitable for a supreme official organization. There may be some kind of "responsibility" in the case of persons who have to direct the affairs of state and who are competent for laws and government orders. It will be shown that Krupp was such a large and complicated economic enterprise that one cannot hold its business directives "responsible" by means of a mere hyphen on a chart for events which are very far removed from the desk of a member of the management, both liberally and figuratively speaking. In presenting the case for the prosecution, more-

over, it has already been clearly shown in several cross-examinations that boxes and connecting lines in the prosecution's schemes are nothing more than unsubstantiated and arbitrary configurations. In the presentation of evidence, too, everything remained at the alleged stage. The Defense will show that, merely on the basis of the actual circumstances prevailing at the Krupp enterprise, such as its size and the number of its plants and workers, it is impossible to make a deduction of criminal responsibility from such a game of circles and crosses.

Finally, I shall endeavor to compare the Krupp structure, in its form of business organization under German law, with the American forms of business enterprise and their corresponding legal concepts.

As regards my client, Dr. Friedrich Janssen, I have already pointed out that the Prosecution produced no concrete evidence for the different Counts of the Indictment that would indicate any connection on the part of Dr. Janssen with the material so abundantly produced. In regard to Count I of the Indictment, a war of aggression, I shall prove that my client could neither have had the slightest influence on the conversion of the Krupp Firm to armament production, nor that, personally, he neither wished for nor helped to bring on the war.

Until 31 March 1943 he was head of the Krupp Office in Berlin, and as such, he had no influence on the measures taken by the management in Essen. Had the Prosecution proved - something which it failed to do - that the management in Essen helped to bring about war, such hypothetical proof would not justify the conclusion of any war-promoting activity on the part of my client. In April 1943, when Dr. Janssen came to Essen all the wars of aggression enumerated by the Prosecution had already been under way for some time. Even if the standpoint of the Prosecution were to be adopted, because of this time element alone my client could only be charged with waging a "defensive war", for this was the only kind of war waged in the period from April 1943 until the war's end.

In this connection I wish to quote the IIT judgment in the Speer Case.

I quote:

"The Tribunal is of the opinion that Speer's activities do not amount to initiating, planning, or preparing wars of aggression, or of conspiring to that end. He became the head of the armament industry well after all of the wars had been commenced and were under way. His activities in charge of German armament production were in aid of the war effort in the same way that other productive enterprises aid in the waging of war, but the Tribunal is not prepared to find that such activities involve engaging in the common plan to wage aggressive war, as charged under Count One, or waging aggressive war, as charged under Count Two."

Dr. Janssen has never - neither at that time nor today - been inclined to put himself on the same plans with Reich Minister Speer. Nevertheless, what cannot be taken amiss in the case of the Reich Minister for Armament and Munitions, the Chief of Organization, Todt, Plenipotentiary General for Armament and member of the Central Planning Department, should just as little be taken as a reason to reproach Dr. Janssen - a private person and an employee of the Krupp firm who did not have any awe-inspiring title.

Therefore, on legal grounds alone, Count 1 of the Indictment is deficient.

2. As to the charge of "spoliation" in Count II of the Indictment, the Prosecution failed completely to prove that Krupp had committed any acts of this kind. Had they been able to do so, then merely from the standpoint of time such acts would have been practically completed in April 1943, when Dr. Janssen came to Essen. The removal of the bombed-out motor vehicle factory (Krawa) to Alsace had already been ordered by the authorities before Janssen's activity in Essen. In this connection, it is pertinent to refer to the general argumentation by Dr. Siemers. Only the process of determining the rent, in agreement with

the German trustee of the Elmag Firm in Huelhausen, occurred in the period in which Dr. Janssen was in charge of the financial department at the Krupp Firm. Even the principal witness for the Prosecution characterized the rental terms as "reasonable", in other words, adequate. Dr. Janssen was severely opposed to the so-called "Ruhrhilfe-Aktion" (Ruhr Help Drive) of the Minister for Armament and Munitions, Speer. Even if this drive as such, which was carried out by the Reich and military authorities, could be represented on any grounds against the Krupp Firm (the argument of the Prosecution did not show this), my client could in no way be held criminally or personally responsible. With his very pronounced feeling for commercial propriety, which he maintained, despite the chaotic conditions that progressively worsened in the last phase of the war, he sought to maintain in his financial department a policy of compensation by means of payments, for the properties damaged as the result of measures taken by the governmental authorities.

Under the plan for the assignment of subjects among the Defense Counsels, I have undertaken the rebuttal of the general charge against the Krupp Firm of "spoliation" in Belgium (paragraph 40 of the indictment). It has no connection with my client, I point out that the argument of the Prosecution did not introduce a single word regarding this "spoliation", as charged in the Indictment. Therefore, I assume that the Prosecution will likewise definitely drop this charge when the Defense begins pleading. Furthermore, this is a good example of the discrepancy, which has already been underscored, between the allegations and the evidence produced by the Prosecution. In regard to Count III of the Indictment, "compulsory labor", it is already in order for my argument to cite the following facts: From April 1943, on Dr. Janssen had a definite and very comprehensive sphere of activity in Essen. It comprised trade and commerce, finance, and administration. It will be shown what is to be understood by these terms. In the course of 27 years, Dr. Janssen climbed the ladder, in the field of finance and commerce at the Krupp Firm, from ordinary salaried employee to Prokurist, Direktor, and finally to commercial representative on the Vorstand. This last position, however, he was able to hold only for a short while. From 1918 until 1937 he worked as assistant to the financial and commercial manager; he had a part in the conversation of the firm, in the commercial sector, to peace-time products after the first World War, and it was his responsibility to prepare the financial statements and reports for the Aufsichtsrat.

From 1937 until 1943 he worked for the sale of peacetime products as head of the Krupp office in Berlin. When, in April 1943, he took over the main financial and business management of the whole of the firm, he had to work on the direction of the financial policy of all Krupp works, the checking of their balance-sheets, the administration of the shares and other assets of the firm, the purchase of raw materials and the sale of products.

This, his second job in Essen, was in the final phase of the war during which Essen was transformed by allied airattacks into a battlefield, and finally into a heap of rubble. Already prior to his starting work there the plants in Essen had been destroyed to a large extent. A quick breakdown followed. The periods of respite between airraids were not sufficient to restore the normal Krupp order of administration. Many improvisations had to replace former well-thoughtout administrative work.

Dr. Janssen's work entirely excluded the possibility of his being employed on labor questions. Therefore, he had even less to do with foreign workers, prisoners of war and prisoner labor. Furthermore, at the time when Dr. Janssen came to Essen, there had been put into effect to its full extent, a government program which had not only originated with the government but also had been directed and effected by it.

I shall strengthen the supposition of his innocence by proofs of his good character and his love for the truth.

I undertook together with Dr. Behling, the job of providing the Tribunal with a short review of the financial development of the Krupp Konzern. It will be shown that the allegations of the prosecution about the financial effects of arms production and the war conditions on Krupp are quite incorrect. Since my client did not take over the management of finances in Essen until April 1943, I shall only describe the financial developments from this time until the end of the war and thereby also deal with the financing of the Berthawerk. Also, by reason of the division of topics, I have undertaken the task of dealing with the far-reaching but so far unproven allegations of the prosecution concerning the "affiliated firms of Krupp which are distributed all over the globe" (indictment paragraph 6) and, their foreign patents and contracts, their license agreements with American firms and their alleged camouflage (indictment paragraph 21.)

That the prosecution failed to give proof here is another typical example for the difference between the allegations and the evidence of the prosecution.

During the presentation of evidence I shall finally present material which will disprove the theories of the prosecution on the questions of participation in the sense of control law No. 10, and on the conspiracy they allege. I shall deal with both subjects on behalf of the whole of the defense.

As far as the term conspiracy is concerned, may I here refer to my memorandum of 15 March 1948, in which I reserved the right to make a statement on the very unclear term "conspiracy" brought up by the prosecution in as far as, furthermore, a conspiracy to wage an aggressive war is also alleged by the prosecution. What the prosecution desires to be understood under this common plan, fluctuates in a wide arc between the conspiracy from the indictment before the International Military Tribunal down to a "Krupp conspiracy", specially construed by the prosecution in our case on 16 December 1947. The conspiracy in the sense of the prosecution before the IMT was, by the judgment of that tribunal, already limited in such a way, that hardly more than the mere word remained. The prosecution in our case did not make use of the international conspiracy alleged at the time. The conspiracy however, was, by the judgment of the IMT, limited to such an extent that it appears surprising that the prosecution should still employ this term with such farreaching intent. Quite rightly the French member of the IMT - compare this with my note of 15 March 1948 under II 1st thesis - pointed out that this judgment declined to draw a practical conclusion from this term of conspiracy. The judgment had also taken from this term its important content and limited it to the very narrow concept of collaboration in the carrying out of a clearly defined act of aggression. The other cases completed meanwhile before the Nuernberg Tribunals have not so far deviated from this line first drawn by the IMT.

No doubt, it was not at all easy for the prosecution in this case to place their multicolored theses on the conspiracy at all. It appears to me that the greatest result of their labors is the above mentioned special "Krupp-conspiracy", which - had it ever existed would logically have to led to a special "Krupp war". In view of this argument of the prosecution I should not like to neglect to point out here, that the word conspiracy, during recent years, seems to have been robbed of its legal contents, that rather it has now became of the favorite and most used words of politics. One found it not only in the vocabulary of the dictator, Adolf Hitler - which was also pointed out by the French member of the IMT - but also now in certain police states, who now are arousing the indignation of leading personalities in USA. It can, however, also be found on the other side as is shown by the speech of Senator Lister Hill of Alabama published a few days ago. He stated:, "the world is being driven towards a new war by a gigantic conspiracy led by the Soviet Union" (UP-report from Washington of 11 March 1948).

As opposed to this, it will be our duty, in considering whether the personal and relevant guilt of one of the defendants can be legally established, to deal only with dry and sober facts and hold ourselves at a distance from such discredited terms.

DR. VORWERK: Dr. Vorwerk, for the defendant, Pfirsch.

THE PRESIDENT: Your opening statement does not seem to have been processed today as yet, doctor. That is all right. You may proceed.

Opening Statement Pfirsch

OPENING STATEMENT
in case 10
for the defendant Karl Pfirsch
submitted by attorney-at-law Dr. Vorwerk.

May it please the Tribunal:

In the field of planting, producing and trading with narcotics, the concepts of "national sovereignty" had to give way to the world-wide imperious public demands for effective international regulations. It is characteristic that today anything connected with narcotics is regulated in a most effective manner, and even in cases where national governments adopt an uncooperative attitude there are provisions in the regulations to keep those governments in line.

To my knowledge this supervisory body constitutes the only international control agency, which in its particular field completely overrules all claims to sovereign nationality.

In the field of armament production too, organizations have been created on an international basis and efforts have been made at least in this respect to restrict the armament potential of the world and thus the "national sovereignty" of the individual nations; it has been recognized as undisputably correct that even in the most crucial political times and at the most critical moments in the world's history only those cannons can be fired which exist. These endeavors have so far been without any result. This may be the main reason for the following statement of the prosecution I quote :

"We do not seek, in this case, to level any attack against the business of making arms as such. We are not trying to prove that all wars derive from the sinister machinations of armament manufacturers and their sales agents. The armourer's trade is no more inherently unlawful than that of the soldier or diplomat; all of these professions revolve around war and statecraft, but that does not make them criminal per se."

The question necessarily arises what is the difference between the

Krupp firm, in which the defendants were employed, and other producers of armaments, such as the prosecution enumerated, for example, in its opening statement. Inasmuch as these differences refer to the commission of crimes, which is all that concerns us here, it is for the prosecution to produce proof of this.

In the opinion of the prosecution these differences must be serious and must be relevant from the point of view of criminal law, since it felt itself entitled and obliged to bring this charge before this Tribunal. I refer to counts 1 and 4 of the indictment.

Actually it did not hesitate to charge all the defendants with crimes against peace. They were supposed to have planned, prepared, initiated and waged wars of aggression and to have participated in a Common Plan or Conspiracy for the waging of such wars of aggression.

With regard to Counts 1 and 4, the defense contends that not even prima facie proof has been offered.

In actual fact the prosecution has proved that the firm Krupp A.G. was a large and productive enterprise and that, together with many other enterprises in Germany, it participated in the rearmament of Germany in the same way as many other enterprises in other countries participated in the rearmament of their countries.

But is such proof sufficient? It was not sufficient for the International Military Tribunal. I take the liberty of quoting from the opinion of the judgment of the IMT concerning the defendant Schacht, whom Schmidt, the prosecution witness and Hitler's interpreter, described to this High Tribunal as a "highly informed person". I quote:

"It is clear that Schacht was a central figure in Germany's rearmament program, and the steps which he took, particularly in the early days of the Nazi regime, were responsible for Nazi Germany's rapid rise as a military power. But rearmament of itself is not a criminal under the Charter. To be a Crime Against Peace under Article 6 of the Charter it must be shown that Schacht carried out this rearmament as part

of the Nazi plans to wage aggressive wars." End quote.

Does the prosecution wish to proceed beyond this limit set by the IMT?

However, I want to be fair and do not want to maintain that the very capable members of the prosecution had overlooked this difficult part of their task. What I do maintain, however, is that the prosecution has attempted, with practically no exceptions, to bring only summary proof with respect to the war of aggression, as required by the IMT - summary not only with respect to the defendants, but with respect to the entire population of Germany. In doing so the prosecution obviously proceeds on the assumption that everyone in Germany who held a prominent political, government or military position or any equally high one in the world of finance, industry or economics, is automatically to be considered guilty of having committed crimes against peace. But in my opinion such aspects of the case should be a matter to be decided by denazification courts. As I understand the tasks of this High Tribunal, it is not to judge the overall conduct of men but to pass judgment for the commission of clearly defined crimes. Military Tribunal I states the following in its opinion in Case No. I against the doctors concerning the circumstantial evidence. I quote:

"The value of circumstantial evidence depends upon the conclusive nature and tendency of the circumstances relied on to establish any controverted fact. The circumstances must not only be consistent with guilt, but they must be inconsistent with innocence. Such evidence is insufficient when, assuming all to be true which the evidence tends to prove, some other reasonable hypothesis but that of guilt which invests mere circumstances with the force of proof. Therefore, before a court will be warranted in finding a defendant guilty on circumstantial evidence alone, the evidence must show such a well-connected and unbroken chain of circumstances as to exclude all other reasonable hypotheses but that of the guilt of the defendant. What circumstances can amount to proof can never