

Germany with the full consent of their respective governments. This evidence will also show that the introduction of labor service in the various countries outside of Germany must be appraised from a different angle. Conditions in the Western countries were different. They were fundamentally different from those in the East. In this trial, too, the Prosecution failed to explain in detail what, in its opinion, makes the indicted industrialists parties to the deportation of foreign workers. These defendants, among them the defendant Max Ihn, were no government officials, no political functionaries who were co-origina-tors of the Sauckel programs. These defendants were private persons, employees of an industrial enterprise, like many thousands of their colleagues. For this reason I shall also call the attention of the Tribunal to the question of whether it is possible to try private person, business men and industrialist, before this court which has to decide on the responsibility under international law.

But even if they were responsible under international law, the Prosecution did not furnish sufficient evidence to show that these businessmen whom it put into the dock took part in the expansion of the foreign labor program as such. This program, as the Prosecution sees it, spreads over many years and many countries. The defendants in the Flick Trial still had to defend themselves against the charge of having compelled the German Reich Government, out of greed, to recruit and allocate foreign manpower. As far as that is concerned, the Prosecution learned something from the Flick Trial. It obviously no longer asserts that the industry instigated the government to formulate this program. But it still maintains that the defendants, as representatives of the firm of Krupp and - some of them - through their memberships in committees and other bodies belonging to the Reich Association Iron, the Reich Association Coal, and the Economic Group of Iron Extracting Industry and other organizations, had criminally participated in the government program.

Whether these reproaches are correct or not can only be ascertained if this program is being defined in all its various functions such as, supply, allocation and assignment of foreign workers. The program as a whole has been condemned as criminal by the IMT Judgment. A reference thereto does not suffice for establishing the guilt of the individual defendant. For if we find that the defendants only participated in various sections which in themselves were not criminal, or had no knowledge of other sections, then it would be impossible to punish them.

"The slave labor program originated with the government and represented one of their programs.... Already some time before the introduction of.... the slave labor program work assignment within the framework of German industry was being conducted and carried out by the Reich Government....". Bearing these statements of the Flick Judgment in mind, it should have been the task of the Prosecution to submit weighty evidence to the Tribunal to prove that those statements do not, in fact, correspond to the truth. They were, however, not in a position to do so. In their place, however, I myself will submit evidence to the Tribunal that will substantiate the correctness of the Flick Judgment.

It was the National Socialist State which by its manifold authorities and agencies difficult to survey and by an intricate organization, managing and directing production, provided the plants with detailed directions as to the nature and amount of their output. These government agencies and authorities were the ones which controlled the governmental imposts and which saw to it that each individual contractor fulfilled the obligations lest he run the risk of being involved in difficulties should he do otherwise. I shall prove that the State took it upon itself to encroach upon the entire industry by showing in evidence a countless chain of laws and regulations which originated in 1933 and which continues throughout the period of the Four Year Plan and further extended throughout the war, until during the second

half of the war the term "private enterprise" was the catchword of past liberal ages.

Evidence will prove the serving part the industries had to play. It will also prove that the private persons here indicted were squashed by the events and were driven the same as the last of their apprentices, but not that they were responsible for the events.

This force used by the State expressed itself during the war as a constantly increasing pressure on the enterprises for higher production. It was the State and only the State which gave the orders for the type and quantity of production. The State had therefore to find the prerequisites for the production, like machinery, power, raw materials and manpower. The enterprises had no more say in the application for more manpower than they had in the matter of production. Each State-production-program was bound to be also a program of labor allocation by the State. The Prosecution has not even asserted that the defendants had the possibility of evading this State coercion. What should they have done, what should they have been expected to do? This question is left unanswered, because - prudently - it has never been put.

No evidence has been offered in this respect at all. I am going to answer this question unequivocally and to substantiate the answer just as unequivocally. The resulting picture will be convincing to everybody conjecturing that the defendants had freedom of action. The last vestige of freedom of action left to them the defendants have utilized in the sense of their old traditions for the benefit of their staff. In explanation of these conditions I am also going to expound the internal organization of the enterprise and give at the same time an outline of my client Max Ihn's position. I am, however, not going to stress this point more than is necessary in order to elucidate his functions within the firm.

In these expositions I shall confine myself principally to the procurement, utilization and distribution of foreign labor.

Dr. Wolf undertook the task of examining the question of requisitioning and employing prisoners of war and its admissibility under international law, whilst Dr. Wandschneider will comment on the subject of employing concentration camp inmates.

Thereupon, I myself will deal with the question of the treatment of foreign laborers. Here too, in the interest of a lucid comprehension of the subject matter, we have made certain sub-divisions. I myself will comment on the principal aspect of the treatment of foreign laborers in Germany during the second world war. The welfare of the prisoners of war will be dealt with in principle by Dr. Wolf also, whilst other fundamental questions, such as the maintenance of quiet and order in the plants and regulating the life in the foreign labor camps, will be treated by other defense counsel. I then am going to show what the Krupp firm has done with the state program. It will be shown that the problem of the welfare of foreign laborers did not exist for the Krupp concern as a whole but independently only for the single plants. As far as detailed comments will be necessary on purely local assignment and treatment of foreign laborers and prisoners of war in the various Krupp plants, this will be done by the individual members of the defense, who will inform the Tribunal of it in their opening pleas or at the appropriate time.

Also with regard to the treatment of the foreign laborers, the Prosecution is trying to create a completely false impression with this Tribunal. It considers all foreign laborers equal to slave laborers. The assertion from the Prosecution Indictment "that millions of prisoners were herded into concentration camps and then were driven to their death in factories and mines or, in a quicker way, in the gas chambers" bears its own characteristics, so that every further comment on it is superfluous.

Subsequently, the Prosecution contends: "The treatment of slave laborers and prisoners of war was based on the principle that they were to be fed, housed, and clothed in such a manner that, with the lowest possible cost, they could be exploited to the highest possible extent." This formula, which has been warmed up and served once more in the Krupp trial, owes its existence to a translation error in a sentence by Sauckel, which probably has been left standing on purpose and against which we have already protested in the session of 28 January 1948. From a translation which, according to my opinion, is correct, nothing else emerged but an economic principle which is obvious in political economy. There was no question of "exploitation" in Sauckel's decree. I will produce evidence showing that the employment of foreign laborers was neither meant to bring profit to an industrialist, nor did it bring such profit. On the contrary; the industry has had losses in connection with employing foreign labor, which even in a state budget would constitute imposing items.

In the document material, the Prosecution has submitted inter-office communications of Keitel, Therack and other personages of the Third Reich, with which they purport to prove the criminal nature of the foreign labor program. But they have not maintained, nor can they do so, that the defendants had any knowledge of it. To these defendants, the "program" presented itself in a multitude of laws, regulations and official decrees. I shall prove that nothing in them points to an enslavement. Many regulations are purely welfare measures and the IMT has expressly certified that Sauckel does not seem to have advocated a brutal treatment of the foreigners. Hence the indictment of the Prosecution boils down to the fact that the defendants obeyed the laws of their country. I shall prove that there was no cause whatever for the defendants, not to follow the instructions of the State. With regard to the decisive accusations concerning wages, payment, leave regulations, etc., I shall submit the essential regulations to the Tribunal.

My colleagues will supplement my statements as regards billeting, feeding, medical care and the maintenance of order. All these regulations were not inhumane. The execution was mainly in the hands of the Administration of the State which maintained a strict control of the enterprises for this purpose.

The Prosecution knows that it is up to them to prove the assertion that "foreign workers, PW's and inmates of concentration camps were exploited under inhumane conditions in the Krupp enterprises and that they were exposed to atrocities, maltreatment and offenses against their persons in countless ways." Allegedly this went on continuously for years in 81 enterprises which numbered nearly 100,000 workers. As late as June 1947 -- the Prosecution would not have made such assertions. At that time, the Prosecution advertised in the "Mitteilungsblatt fuer Politisch Verfolgte" (Gazette for political persecutees) in Bavaria asking all those who were maltreated in the Krupp Works to report in order to facilitate the punishment of the criminals of the Krupp case. I do not know how many replies were made to this. But it seems to me that their number cannot have been very satisfying. Otherwise, the evidence of the Prosecution would have had to be more convincing. Nobody will want to deny that severities and excesses occurred under the conditions of the war years. It could not have been otherwise when thousands of people of many nations were crowded together, with the political tension, and with the spiritual and material distress of all, and the nerveracking bombing from the air. But the crux of the matter is the fact that there was no organized system of inhumane treatment in spite of all the excesses to which individual witnesses have testified. Such a system cannot even be proved by witnesses like Elisabeth or Ernestine Roth who stated that she and her colleagues were beaten twenty times a minute. All the description of the witnesses stop at some subleader of a camp, a foreman or perhaps an assistant of the plant. Since the indictment does not claim, that the Defendants personally kicked

them or maltreated them (the prisoners), members of the personnel, i.e., workers or officials of the firm Krupp itself, must be considered as the culprits. The Court knows from the letter of protest, dated 25 February 1948, which the present works council has forwarded to the American Military Tribunal No. III with copy for the Prosecution, what opinion the present personnel of Krupp has of the matter in question. It is stated therein that the witness Ernestine Roth wanted to prove the collective guilt of the workers of Krupp. The letter continues as follows; I quote:

"We protest herewith against this in the name of our employees whom we represent. We know all too well of the tragic fate of those who were deported by force. We also know that there were German and Krupp workers who let themselves be induced to maltreat the foreign male and female workers under their care. They represent, however, but a small percentage of the personnel."

These individual cases, can only be of importance in this trial, if the Defendants had knowledge of them and omitted to take steps which they were in duty bound to take, in order to prevent such incidents in the future. The Prosecution has not stated any facts and has not proved anything. As far as I can note, all witnesses have declared that they did not submit a report to higher supervisors with regard to individual incidents.

In contradiction to all this I shall submit material to show how much the Defendants were conscious and aware of their obligations, in accordance with a frequently quoted sentence of the great founder of the world-wise fame of Krupp. Alfred Krupp: "To make work a blessing, by caring for the welfare of the community." The Tribunal will obtain an insight into the system of the plant control and the supervision in its smallest details, which were destined to guarantee decent conditions in the plants and for the workers and a good, decent name in the world.

In this connection it should become clear how insignificant political ideologies appeared to the defendants in comparison with the ideals of a

model concern along Krupp lines. Together with my colleagues I will prove that the foreign workers employed by Krupp were, within the sphere of existing possibilities, treated in such a way, with regard to freedom, accommodation, nutrition, pay, working hours and health, that in these proceedings also, the Tribunal will arrive at the same conclusion as was reached in the Flick case, namely, that "the evidence offered in support of these charges was...far outweighed by the substantial and impressive evidence submitted by the defendants to the contrary...(and that)...isolated instances of ill-treatment or neglect shown by the evidence were not the result of a policy of the plant's managements, but were in direct opposition to it."

In consideration of all these individual matters which I will present to the Tribunal by means of documents, witnesses and pictures, one thing, your Honors, will play an important part: The circumstance that the great mass of foreign workers employed by Krupp were assigned to the plant by the state without the plant having requested these workers, at a time when the war had already become total. Already at that time want and privation of all kinds was prominent in the entire German population the male part of which had suffered tremendous losses on the battlefields of the East. From the middle of the year 1942 onwards, the whole of Germany, but especially the Ruhr area, with its linked-up cities, was suffering from the effects of heavy enemy air attacks. I cannot mediate to the Tribunal the gruesome experience, but I can prove the fact that Essen was a battlefield. The war in the air raged there for years on end and made ruins of the city of Essen, its industry, its cast-iron production, and its people.

It will be easy then for the Tribunal to conclude what demands may, under these circumstances, be made in good faith on the welfare-duty of the defendants.

In connection with all this, concerning questions of the internal organization of the firm of Krupp, there will be little mention, except

for a few remarks, of my client Max IHN. However, on having produced the evidence, I shall go into the details of his person. As personnel manager of the firm of Krupp, he lived and worked just as numerous other personnel managers of other firms do. None of them is in the dock; most of them pursue today peacefully their old professions in their former positions or occupy, with the approval of the Military Governments of their zones, public offices in the German states. Max Ihn, in his entire personality, is just as little a criminal as his colleagues of the other big firms of the Ruhr. He is not a criminal just as is none of the other defendants in the dock here.

PRESIDENT: You may proceed.

DR. SIEMERS: Dr. Siemers, defense counsel for Karl Eberhardt.
May it please the Tribunal.

I have the honor today to make the opening statement in the third and the last of the trials of industrialists in Nurnberg. The first trial against industrialists, namely the trial against the Flick-Konzern has already been concluded by the verdict of the American Military Tribunal of 22 December 1947. In fundamental questions this verdict was pronounced in favor of the German industry. It followed largely the arguments of the defense and consequently rejected many theses of the prosecution.

The second trial of the industrialists against the I.G. Farben-Konzern is still within the stages of presentation of evidence by the defense and the third trial of industrialists, i.e. the one of interest here against the Krupp-Konzern will now begin with the defense.

In comparing the indictments and the opening statements by the prosecution in these 3 trials a remarkable similarity is manifest which goes so far as to show the prosecution using the same exaggerating expressions in all 3 trials. To my dismay, the prosecution fully disregarded the old latin proverb: "Variatio delectat" in these 3 trials. Counsel for defense in the third trial therefore finds it difficult to be versatile if the prosecution on her part has remained dull and neglected to offer proof of their ability i.e. if they have not varied their points. This is not a reproach arising solely from the sphere of aesthetics however much I must admit that I find this sufficiently important. It is moreover a point which involves more and touches the juridical and philosophical sphere. Roosevelt's and his allies' intention, upon which the trial before the International Military Tribunal in 1946 was based did not only serve the purpose of indicting the highest political, military and Party leaders of Germany but beyond that it contained the sound and great idea to establish the most

important principles of international law, binding for the whole world, binding for victor and vanquished. To a certain extent this aim has been accomplished. Unfortunately however it is the prosecution who endanger this goal by not complying with the principles of the IMT judgment but by deviating from it wherever the judgment contradicts their own theses, thus for instance, whether facts which occurred before 1 September 1939 can be made a basis for the charge of aggressive war and spoliation. The judgment in the IMT trial as well as the judgment in the Flick trial has rejected such facts as are connected for instance with the annexation of Austria in March 1938 or with the occupation of the Sudetenland based on the Munich agreement of 1 October 1938 or with the aryanization prior to 1 September 1939. The IMT judgment rejected the collective guilt of Germany as propagated by the prosecution and demanded a positive knowledge of Hitler's aggressive plans if sentence for aggressive warfare was to be passed. The facts of re-armament and violations against the treaty of Versailles have been dealt with thoroughly and in detail in the IMT judgment and no guilt was established with regard to this Court. The prosecution however was not moved by this ruling, it repeated its old theses with which we are acquainted here in Nurnberg for the past 2½ years and it is not aware of any new developments, of any variations. The only progress which may be ascertained with regard to the prosecution, consists in their waiving the trial already prepared against the German banking syndicates.

2. The complete similarity in the indictment against the three largest Konzerns confirms the thesis, repeatedly represented by me, that the prosecution does not wish to prosecute the individual defendant but that it wishes to prosecute the whole of the German industry and the whole of the German economy. It is a mere coincidence that the defendants had the misfortune to be working in one of the largest and best known Konzerns. The fundamental charges raised against the defendants may be raised against numerous Germans and this was actually done. In

this connection one need consider only the large number of Germans that were subject to so-called "automatic arrest" and the great number of industrialists who for more than 2 years were arrested as so-called "witnesses" and were or still are confined in the Nurnberg prison. With regard to Count I (aggressive warfare) not only the defendants but the whole industry is charged with having given support to Hitler in general and support to his aggressive plans. The same is true with respect to Count II, i.e. Spoliation and Count III: Employment of forced labor and prisoners of war. In the opinion of the prosecution all activity of an industrial enterprise in the occupied area is to be regarded as spoliation and as a war crime. If this was correct, every German who, during the course of the war worked in the occupied territory within the sphere of the German industry would be guilty of this crime. In the opinion of the prosecution the mere employment of a foreign workers and the employment of a prisoner of war in the armament industry would constitute a war crime. If this conception was correct the number of guilty Germans would be infinite. For then, every owner of a large, medium or small industrial enterprise or of any workshop and each supervisor, engineer, foreman and laborer in whose department or shop foreign workers had been employed would be liable to punishment as participant as defined by the Control Council Law. This concept however is incorrect, it must be incorrect and it has logically been rejected in the judgment in the Flick trial. Only the prosecution continues in this train of thought because it adheres too strictly to the idea of a collective guilt and it is biased in favor of the Morgenthau-plan.

It is regrettable that the prosecution conducts the trial as if no binding rules had been established by the IMT judgment and as if no judgment had been pronounced in the Flick trial. Unfortunately the trial is considerably prolonged by such conduct of the prosecution. Many points are settled by themselves if one takes the IMT judgment in the Flick