

Official Transcript of Military Tribunal III,
Case X, in the matter of the United States
of America against Alfried Krupp, et al, defendants,
sitting at Nurnberg, Germany, on 23 March, 1948,
the Honorable Hu C. Anderson presiding.

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

The Honorable, the Judges of Military Tribunal III.

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

There will be order in the Courtroom.

THE PRESIDENT: The Marshall will report.

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

THE PRESIDENT: Judge Daly will preside today.

DR. WANDSCHNEIDER for the Defendant, Korschan: I now read the
opening statement for my client, Dr. Korschan.

The charges made on the basis of Control Council Law No. 10
consist of two groups of offences which vary according to their signif-
icance and order of importance. Count 4 and 1 form the starting point
and nucleus of the indictment; that is to say, the participation in a
common conspiracy for the commission of crimes against peace and the
direct participation in these crimes, i.e., in aggressive wars. The
most encompassing charge is that of a common conspiracy which, according
to the indictment, comprises all other Counts, one, two and three. The
war crimes against humanity which have been charged in the indictment
are designated as means for a purpose, that purpose being "to support
Germany in the conduct, preparation and institution of further aggressive
wars" (see page 30 of the indictment, German version) and they only
form "a part of the said planning on conspiracy" (see page 51 of the
indictment, German version); this means that they are incorporated
in the all-comprising conception of conspiracy for the commission of
crimes against peace.

It is evident that the two afore-mentioned groups of offences are on different levels as far as their nature is concerned. The field outlined by the indictment includes anything from the responsibility of individuals for world-shattering developments and decisions, as are expressed in the charge concerning the unleashing of aggressive wars and the conspiracy aiming at such wars, a charge which has been legally sanctioned for the first time by the IMT, up to the traditional charges in connection with the alleged war crimes and crimes against humanity, which in the main, may be judged without difficulty even on the basis of the civilized nations' traditional conceptions of penal law. The above discrimination is necessary, because the fact that a small number of industrialists have been picked from a score of persons in equal or similar positions and have been connected from the point of view of penal law, with the alleged criminal instigation of political developments and world -- shattering events of historical importance, requires a specially careful examination of the conception of criminal responsibility, as far as the facts, the causation, the state of mind, and the actual guilt are concerned. In this connection it will be necessary to describe the course of political events before and during the war in their actual significance and simultaneously to outline the personal, and in particular, the professional career of the defendant, in this case Dr. Korsch, during the periods in question. This exposition will show that it will not be possible to maintain the charges made against Dr. Korsch of participation in a conspiracy for the waging of aggressive wars or, going even further, of direct participation in those wars, or to prove that he has committed war crimes and crimes against humanity, without shattering the foundations of the basic conception of individual criminal responsibility.

In his capacity of chairman of the Vorstand of the Borthawerk at Markstaedt, Dr. Korsch is mainly charged with having committed war crimes and crimes against humanity by a compulsory employment of foreign labor, concentration camp inmates, prisoners of war, and other groups

of workers, as well as by his unhuman treatment of those workers. In this connection it will be necessary, by starting out from the crux of the matter, i.e., the unquestionable autocratic power which the State and Party exercised over the industry within the National Socialist State, to show up the decisive responsibility of the governmental, military, and party agencies for the employment of labor, as well as for production as a whole. Furthermore, the way in which Dr. Korschach's powers during his time at Markstaedt were being more and more restricted right from the start will be shown, as well as the things he did within the framework of the powers left to him in order to improve working conditions at the Berthawerk as far as he could, and to secure an existence worthy of human beings for the entire staff, as far as the war conditions of that time permitted. The evidence of the defense will show that Dr. Korschach was not a pliable tool without a will of his own in the service of a slave labor program.

It is pointed out in this connection that the undersigned has undertaken the task, on behalf of the defense as whole, of dealing with the fundamental question of employment of concentration camp inmates within the framework of German industry, before going over to his own particular sector of the defense.

As regards the assertion of the prosecution that Dr. Korschach was the manager or trustee of the Eastern plants on behalf of the firm of Krupp, evidence will be submitted to the effect that such a measure which had been planned was not realized, and that the plants evacuated to the East continued to remain subordinated to the original directorate at Essen. As far as the prosecution, when making this assertion, should have in mind Krupp's sponsorship of certain plants in the Ukraine, it will be necessary to expound the actual and legal connection between the German Reich and the Berghütte Ost (BHO) on one hand, and between the BHO and the firm of Krupp on the other hand (sponsorship relations). It will be proved that Dr. Korschach was in no way entrusted with the plant management of the factories situated in the Ukraine. Furthermore, it

will have to be shown that in many cases he was not even employed in his intended capacity of intermediary between the plant managements of the Ukrainian factories concerned and the firm Krupp. Quite apart from the fact that Dr. Korschach was not responsible for the plants in the Ukraine, the condition in which these plants were found will be shown, as well as the effects of their being taken over by the Germans, and the extent to which machines and equipment of a similar nature were dismantled when these works were evacuated in 1943. In this connection the question of responsibility for the military measures taken in the course of the carrying-out of the evacuation will have to be specially discussed.

This case is to be judged on the basis of the legal standards laid down in Control Council Law No. 10. It cannot and should not be in the interest of the defense to conduct such a trial by means of feeble glossings-over of the facts or by means of legal hairsplitting. The intention of the United States of America, when conducting the Nuremberg Trials is to promote the ethical ideal of restitution of a true state of law. The German defense admit frankly that the leaders of the National Socialist Reich presumptuously provoked fate and brought immeasurable misery to their own people as well as to foreign peoples. This conclusion remains valid, even if a future encompassing historical evaluation of the years which we have passed through should disclose further causes in connection with the responsibility for this catastrophe. There will always be a policy which does not accord with the principles of morals and ethics. But there is an unalienable human dignity, to which all institutions of Law and State will have to bow if they do not want to nullify their own purpose. Only on the basis of this realization will it in future be possible for us Germans to find among the turmoils and the chaos of the present times a clear path, equally free from hatred and resentment as from inferiority complexes, and openly to acknowledge the wrong, also on behalf of our own people, the effects of which we see daily in the misery of millions of German fugitives and starving masses. Hitler and a restricted circle of his confidants were

guilty of a cynical contempt of the human individual and of their own people. They were the persons who were responsible for instigating a policy which led to catastrophe. It is impossible to place a man like Dr. Kerschman who, as innumerable other Germans like him, was simply swept away by an overpowering tidal wave, in the same street as these persons.

Law, and International Law in particular, is an expression of the times that produce it. The powers that signed the Control Council Law No. 10 accuse each other of all the crimes which form the subject of this trial, starting from the enslavement of masses and the spoliation of occupied territories up to the preparation of an aggressive war. Who is "right", and what is "right"? In this connection not only the question of the formal validity of Control Council Law No. 10 will have to be examined, but also the question whether the penal provisions contained in it constitute binding substantive law. There is open anarchy within the legal community and legal system formed by the powers that signed the Control Council Law No. 10. The course of world politics today is not directed by considerations of law, still less of International Law, but by power policies on a tremendous scale which face each other within the confined area of Germany. No German, be he in the Eastern zone or in the Western zones, can take up a position in which he will be safe - however he may behave - from the most severe criminal charges, according to the contradictory attitudes adopted by the Control Council Powers. There is the tremendous danger that in spite of the formal and apparent maintenance of the principle of individual criminal responsibility, such responsibility may actually be established merely on the basis of the fact that a person adheres to a certain "system", and that thus penal justice may be faced with a task in which in view of its essence it must necessarily fail. The more powerful and contradictory the political ideologies are, on which the world powers opposing each other in Germany, base their administration of justice, the greater is the danger of responsibility being based on the fact that a person

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belongs to a certain "group" or "system" designated by these ideologies, and the more impossible is the task of establishing criminal discriminations merely on account of a tragic connection with world development of historical importance which can only be judged by the future course of history.

DR. POHLE: Dr. Pohle for the defendant, Friedrich von Buelow!

Your Honors:

In the opening statements more than once reference is made to the fact that the Defense intends to deal first of all with the arguments connected with Count I, preparation for and participation in aggressive war. That part of the argument with which I have undertaken to deal can be summed up in the concept: Support given to the National Socialist Party by Industry and the firm of Krupp before and after the seizure of power. This does not mean that my client, Friedrich von Buelow, had any special part in the relations between the National Socialist Party and the firm of Krupp, between National Socialism and Industry. He played neither a greater nor a smaller part in shaping or not shaping these connections than did any of the other defendants here before you. Maybe the Prosecution deduces that such connections did exist from the fact that some of the defendants sat on committees and other bodies of industrial groups or associations which the Prosecution thinks fit to regard as typically National Socialist organisations. Friedrich von Buelow, too, was a member of a small number of committees of a District Group, a district sub-division of the Economic Group Iron Producing Industry. He was only one among the many representatives from other industries, and his task consisted in arranging the meetings, and, to some extent in the exchange of experimental data with the other representatives. The Prosecution describes this activity as extremely risky, without even attempting to adduce any proof of the risk he ran by attending these meetings and discussions.

The exposition of these relations between Industry and Party which I

have undertaken to make hardly concerns any of the defendants. It could confidently have been left to historical research to adduce the facts; and the necessity of burdening this trial could thus have been avoided.

The program of the Nazi Party, so the Prosecution claims, coincided with the endeavors of the firm of Krupp to build up again a mighty Germany, with Krupp as the focal point of the armaments industry.

The main points of that program are alleged to have been reprehensible. In this connection the Prosecution choose to attack above all the doctrine of "living space" although that word does not occur in the Party program, but they pass over in silence the fact that points 1 and 2 of the Party program postulate self determination and equal rights for all nations - postulates which had figured prominently during the first world war in the 14 points of President Wilson. In its stead the Prosecution mention as a special point in the program of the NSDAP a statement which I have been unable to discover therein to the effect that war was a noble and necessary activity of Germans, and go on to state that "the name, prestige and financial support of Krupp was used to bring the NSDAP into power over Germany and to put into effect its announced program".

This statement of the Prosecution represents a certain advance compared with the allegations made in earlier industrial trials. In other trials the Prosecution went so far as to claim - I quote from the various of the indictments - "Krupp, Flick, Thyssen and a few others had persuaded the industrialists in 1933 to support them; Beck, Fritsch Rundstedt and other typical militarists dominated the military clique. Supported by these groups Hitler seized power, and having seized power he embarked on conquest". In this trial the Prosecution have refrained from invoking that unholy Trinity, because, apparently, they were incapable of taking it seriously themselves. Small wonder, since they made the fatal mistake of conjuring up as mephistophelian powers, apart from the naughty industrialists, the Generals Beck and Freiherr von Fritsch, who were alleged to have put Hitler in the saddle. The Prosecution should have known then, and do, it may be surmised, know today, that Beck was cold-shouldered as a staunch opponent of Hitlerism long before the war broke out and that he was shot on the 20th of July and that Fritsch who had become involved in the disgusting machinations directed against him by certain national socialist leaders, was dismissed from his post and found the death he sought at the beginning of

the war.

Thus the Prosecution no longer insist in this trial on the alleged collusion of these infernal powers: industry, the army, and the party, as far, at any rate, as the seizure of power by the NSDAP is concerned; they no longer insist on conjuring up the spirit of militarism: they are content with stating quite simply, that Gustav Krupp von Bohlen and Halbach and the German industry with him enabled Hitler to seize power. In proof of that statement the Prosecution have in the main adduced the following four events:

Hitler's speech in the Industrie Club at Duesseldorf 17 January 1932; the discussion between Papen and Hitler in the house of the banker Freiherr von Schroeder in Cologne on 4 January 1933; Hitler's speech to the industrialists on 20 February 1933 prior to the Reichstag elections in March 1933; and finally the enabling act of 24 March 1933.

I shall discuss these four events in detail in the course of my presentation of evidence, but I should like at this point to make the following general statements:

The speech in the Duesseldorf Industrie Club was anything but a success for Hitler with the liberal circles of Western industry, skeptical as they were. Liberalism and broadmindedness, progress and the common weal had been the motto of the men from Rhine and Ruhr ever since - to mention but a few - Friedrich Grillo, Alfried Krupp, Adolf von Hansemann and, last but not least, the Irishman Thomas Mulvany had laid the foundations of the industrial development of the Ruhr district. Thus the descendants of these men received Hitler's vociferation at Duesseldorf with distaste and reserve. Even had it been a success it is hard to see what part the Directors of the firm of Krupp who now stand accused could possibly have played in making it so. Gustav Krupp von Bohlen und Halbach was not present when Hitler made his speech in the Duesseldorf Industrie Club in January 1932.

The subjects of discussion between Hitler and Papen in the house of

the banker Freiherr von Schroeder at Cologne on 4 January 1933 were undoubtedly very interesting and of great national political importance to the development of Germany and the world. The witness Freiherr von Schroeder described the intensely interesting encounter to us under cross examination. He added, however, at the same time, that he had absolutely no contact with Krupp. Of what the part played by the Krupp firm in this discussion consisted, thus remains yet another riddle which the Prosecution have not solved.

Gustav Krupp von Bohlen und Halbach, as President of the Reichsverband der deutschen Industrie, on the other hand, was present in the palace of the Reichstag President on 20 February 1933 when Hitler made his speech, when Goering issued his appeal for financial support for the March elections and when Schacht collected the election funds. The Prosecution has quoted parts of Hitler's speech in order to show that the industrialists had recognized and approved Hitler's allegedly treasonable intentions. I propose to answer this by merely quoting other passages from Hitler's speech, which will cast an entirely different light on the political situation at the time. I quote now:

"We are thus faced with the following situation: Weimar has imposed upon us a certain constitution, thereby establishing the country on a democratic basis. With this constitution, however, we have been granted no effective governmental authority. On the contrary, as I stated in my criticism of democracy at the beginning of my speech, it was inevitable that communism should penetrate further and further into the German people. The result was an ever-growing tension, of which even the courts of justice - and this is the worst aspect - did not escape the influence. Thus two fronts grew up, facing us with a choice, either Marxism in quintessence or the other side....
".... I still have one wish for industry, namely that, alongside with internal development, a peaceful future may await it.... Internal stability can be ours only after Marxism has been dealt with. This is

the decision which we must face, be the fight never so fierce."

And from Goering's speech, I quote:

"He also counts on the fact that, with political tranquility, economy would achieve stability too. Experiments were not to be the order of the day. In order to reach the goal, however, it would be necessary to muster all our forces on the 5th of March. Above all, it was important to penetrate even those circles which were still in the toils of Marxism and which were vegetating listlessly in a slough of sullen despair...."

Was it any wonder, is it so extraordinary, does it, in fact, constitute high treason, that, in the fact of such statements, the industrialists assembled in Berlin promised to provide certain sums of money for the election campaign? Is not the fact that they expressly specified at the time that the funds provided should benefit not only the NSDAP but also the German Nationals and even the German People's Party (Deutsche Volkspartei) rather indicative throughout of a certain spirit of resistance? And did not the liberal views of Mr. Schacht provide the industrial leaders with a guarantee of normal and peaceful development?

For it was in such development - and not in the hazards of war - that the owners of industrial enterprises in Germany and particularly the major Rhine and Ruhr companies, saw their opportunities. Its collaboration of decades' standing with French, British and Belgian industrialists and business contacts abroad - its activity in international associations, its far-flung markets abroad - all these were factors which rendered a peaceful development absolutely necessary to industry, and which must of necessity have made war appear to threaten the very existence of their plants.

The so-called Ermachtigungs-Gesetz (Enabling Act) of 24 March 1933 was in no way at variance with these considerations. It is entitled the "Law for the Elimination of the Distress of People and Reich", it

authorized the Reich Government to make certain laws and was valid until 1 April 1937. Its issue was not recognizably connected with Hitler's speech of 20 February 1933. Although the Prosecution would have us believe this, they remain without any proof of the fact that it was, in fact, industry which inspired this law. The draft law was introduced by the Reichstag parliamentary faction of the NSDAP. Not only did the small bourgeois parties of the Center vote for the law, in addition to the NSDAP, but also the closed block of the Centrum Party, which certainly did not contribute to the election funds provided by industry. At the division during the meeting of the Reichstag on 23 March 1933, 441 votes were recorded for the law and only 94 against.

It is scarcely astonishing that the Prosecution has not attempted to explain the fact that more than 37% of the electorate had already voted for National Socialism in 1932, for the conception of National Socialism as a mass movement of the petit bourgeois and workers would not fit into that historical perspective which the Prosecution seeks to conjure up in the face of the events of the time, in order to find - in accordance with the basic principles underlying these trials - some sort of moral justification for the punishment of individual industrialists on the grounds of illicit preparation and conduct of wars of aggression. A serious attempt to defend the theory that a mass movement could be launched and maintained by a few hundred thousand marks, or that its existence could be jeopardized by the withholding of such funds, would imply complete misunderstanding of the immense psychological forces involved in a rising of the masses. The irresistible onward sweep of history, the rise and fall of party political and national strongholds and the mysterious effects of demagoguery cannot be explained by such formulae, which in themselves contradict the laws of mass psychology. Nevertheless, it is necessary to go into this theory propounded by the Prosecution. For the Prosecution seem to attach great importance to the contributions made by industry and by the Krupp firm to the Nazi Party and its branch organ-