

Judgment of the International Military Tribunal Against Major Nazi War Criminals and Criminal Organizations

(Continued from August Issue)

On the 22nd August 1939 there took place the important meeting of that day, to which reference has already been made. The Prosecution have put in evidence two unsigned captured documents which appear to be records made of this meeting by persons who were present. The first document is headed: "The Fuehrer's speech to the Commanders-in-Chief on the 22nd August 1939." The purpose of the speech was to announce the decision to make war on Poland at once, and Hitler began by saying:

"It was clear to me that a conflict with Poland had to come sooner or later. I had already made this decision in the spring, but I thought that I would first turn against the West in a few years and only afterwards against the East. I wanted to establish an acceptable relationship with Poland in order to fight first against the West. But this plan, which was agreeable to me, could not be executed since essential points have changed. It became clear to me that Poland would attack us in case of a conflict with the West."

Hitler then went on to explain why he had decided that the most favorable moment had arrived for starting the war. "Now," said Hitler, "Poland is in the position in which I wanted her. I am only afraid that at the last moment some Schweinehund will make a proposal for mediation. A beginning has been made for the destruction of England's hegemony."

This document closely resembles one of the documents put in evidence on behalf of the defendant Raeder. This latter document consists of a summary of the same speech, compiled on the day it was made, by one Admiral Boehm, from notes he had taken during the meeting. In substance it says that the moment had arrived to settle the dispute with Poland by military invasion, that although a conflict between Germany and the West was unavoidable in the long run, the likelihood of Great Britain and France coming to Poland's assistance was not great, and that even if a war in the West should come about, the first aim should be the crushing of the Polish military strength. It also contains a statement by Hitler that an appropriate propaganda reason for invading Po-

land would be given, the truth or falsehood of which was unimportant, since "the Right lies in Victory."

The second unsigned document put in evidence by the Prosecution is headed: "Second Speech by the Fuehrer on the 22nd August 1939," and it is in the form of notes of the main points made by Hitler. Some of these are as follows:

"Everybody shall have to make a point of it that we were determined from the beginning to fight the Western Powers. Struggle for life or death . . . destruction of Poland in the foreground. The aim is elimination of living forces, not the arrival at a certain line. Even if war should break out in the West its destruction of Poland shall be the primary objective. I shall give a propagandist cause for starting the war—never mind whether it be plausible or not. The victor shall not be asked later on whether we told the truth or not. In starting and making a war, not the Right is what matters, but Victory . . . The start will be ordered probably by Saturday morning." (That is to say, the 26th August.)

In spite of it being described as a second speech, there are sufficient points of similarity with the two previously mentioned documents to make it appear very probable that this is an account of the same speech, not as detailed as the other two, but in substance the same.

These three documents establish that the final decision as to the date of Poland's destruction, which had

been agreed upon and planned earlier in the year, was reached by Hitler shortly before the 22nd August 1939. They also show that although he hoped to be able to avoid having to fight Great Britain and France as well, he fully realized there was a risk of this happening, but it was a risk which he was determined to take.

The events of the last days of August confirm this determination. On the 22nd August 1939, the same day as the speech just referred to, the British Prime Minister wrote a letter to Hitler, in which he said:

"Having thus made our position perfectly clear, I wish to repeat to you my conviction that war between our two peoples would be the greatest calamity that could occur."

On the 23rd August Hitler replied:

"The question of the treatment of European problems on a peaceful basis is not a decision which rests with Germany, but primarily on those who since the crime committed by the Versailles Diktat have stubbornly and consistently opposed any peaceful revision. Only after a change of spirit on the part of the responsible Powers can there be any real change in the relationship between England and Germany."

There followed a number of appeals to Hitler to refrain from forcing the Polish issue to the point of war. These were from President Roosevelt on the 24th and 25th August; from His Holiness the Pope on the 24th and 31st August; and from M. Daladier, the Prime Minister of France,

on the 26th August. All these appeals fell on deaf ears.

On the 25th August, Great Britain signed a pact of mutual assistance with Poland, which reinforced the understanding she had given to Poland earlier in the year. This coupled with the news of Mussolini's unwillingness to enter the war on Germany's side, made Hitler hesitate for a moment. The invasion of Poland, which was timed to start on the 26th August, was postponed until a further attempt had been made to persuade Great Britain not to intervene. Hitler offered to enter into a comprehensive agreement with Great Britain, once the Polish question had been settled. In reply to this, Great Britain made a counter-suggestion for the settlement of the Polish dispute by negotiation. On the 29th August Hitler informed the British Ambassador that the German Government, though skeptical as to the result, would be prepared to enter into direct negotiations with a Polish emissary, provided he arrived in Berlin with plenipotentiary powers by midnight for the following day, August 30th. The Polish Government were informed of this, but with the example of Schuschnigg and Hacha before them, they decided not to send such emissary. At midnight on the 30th August the defendant Ribbentrop read to the British Ambassador at top speed a document containing the first precise formulation of the German demands against Poland. He refused, however, to give the Ambassador a copy of this, and stated that in any case it was too late now,

since no Polish plenipotentiary had arrived.

In the opinion of the Tribunal, the manner in which these negotiations were conducted by Hitler and Ribbentrop showed that they were not entered into in good faith or with any desire to maintain peace, but solely in the attempt to prevent Great Britain and France from honoring their obligations to Poland.

Parallel with these negotiations were the unsuccessful attempts made by Goering to effect the isolation of Poland by persuading Great Britain not to stand by her pledged word, through the services of one Birger Dahlerus, a Swede. Dahlerus, who was called as a witness by Goering, had a considerable knowledge of England and of things English, and in July 1939 was anxious to bring about a better understanding between England and Germany, in the hope of preventing a war between the two countries. He got into contact with Goering as well as with official circles in London, and during the latter part of August, Goering used him as an unofficial intermediary to try and deter the British Government from their opposition to Germany's intentions towards Poland. Dahlerus, of course, had no knowledge at the time of the decision which Hitler had secretly announced on the 22nd August, nor of the German military directives for the attack on Poland which were already in existence. As he admitted in his evidence, it was not until the 26th September, after the conquest of Poland was virtually complete, that he first realized that Goering's aim all along had been to get Great Bri-

tain's consent to Germany seizure of Poland.

After all attempts to persuade Germany to agree to a settlement of her dispute with Poland on a reasonable basis had failed, Hitler, on the 31st August, issued his final directive, in which he announced that the attack on Poland would start in the early morning hours of the 1st September, and gave instructions as to what action would be taken if Great Britain and France should enter the war in defense of Poland.

In the opinion of the Tribunal, the events of the days immediately preceding the 1st September 1939 demonstrate the determination of Hitler and his associates to carry out the declared intention of invading Poland at all costs, despite appeals from every quarter. With the ever increasing evidence before him that this intention would lead to War with Great Britain and France as well, Hitler was resolved not to depart from the course he had set for himself. The Tribunal is fully satisfied by the evidence that the war initiated by Germany against Poland on the 1st September 1939 was most plainly an aggressive war, which was to develop in due course into a war which embraced almost the whole world, countless crimes, both against the laws and resulted in the commission of and customs of war, and against humanity.

THE INVASION OF DENMARK AND NORWAY

The aggressive war against Poland was but the beginning. The aggression of Nazi Germany quickly

spread from country to country. In point of time the first two countries to suffer were Denmark and Norway.

On the 31st May 1939 a Treaty of Non-Aggression was made between Germany and Denmark and signed by the defendant Ribbentrop. It was there solemnly stated that the parties to the Treaty were "firmly resolved to maintain peace between Denmark and Germany under all circumstances." Nevertheless, Germany invaded Denmark on the 9th April, 1940.

On the 2nd September 1939, after the outbreak of war with Poland, Germany sent a solemn assurance to Norway in these terms:

"The German Reich Government is determined in view of the friendly relations which exist between Norway and Germany, under no circumstance to prejudice the inviolability and integrity of Norway, and to respect the territory of the Norwegian State. In making this declaration the Reich Government naturally expects, on its side, that Norway will observe an unimpeachable neutrality towards the Reich and will not tolerate any breaches of Norwegian neutrality by any third party which might occur. Should the attitude of the Royal Norwegian Government differ from this so that any such breach of neutrality by a third party occurs, the Reich Government would then obviously be compelled to safeguard the interests of the Reich in such a way as the resulting situation might dictate."

On the 9th April 1940, in pursuance of her plan of campaign, Norway was invaded by Germany.

The idea of attacking Norway originated, it appears, with the defendants Raeder and Rosenberg. On the 3rd October 1939 Raeder prepared a memorandum on the subject of "gaining bases in Norway," and amongst the questions discussed was the question: "Can bases be gained by military force against Norway's will, if it is impossible to carry this out without fighting?" Despite this fact, three days later, further assurances were given to Norway by Germany, which stated:

"Germany has never had any conflicts of interest or even points of controversy with the Northern States and neither has she any today."

Three days later again, the defendant Doenitz prepared a memorandum on the same subject, namely bases in Norway, and suggested the establishment of a base in Trondheim with an alternative of supplying fuel in Narvik. At the same time the defendant Raeder was in correspondence with Admiral Karls, who pointed out to him the importance of an occupation of the Norwegian coast by Germany. On the 10th October Raeder reported to Hitler the disadvantages to Germany which an occupation by the British would have. In the months of October and November Raeder continued to work on the possible occupation of Norway, in conjunction with the "Rosenberg Organization." The "Rosenberg Organization" was the Foreign Affairs Bu-

reau of the NSDAP, and Rosenberg as Reichsleiter was in charge of it. Early in December, Quisling, the notorious Norwegian traitor, visited Berlin and was seen by the defendants Rosenberg and Raeder. He put forward a plan for a *coup d'etat* in Norway. On the 12th December, the defendant Raeder and the naval staff, together with the defendants Keitel and Jodl, had a conference with Hitler, when Raeder reported on his interview with Quisling, and set out Quisling's views. On the 16th December Hitler himself interviewed Quisling on all these matters. In the report of the activities of the Foreign Affairs Bureau of the NSDAP for the years 1933-1943, under the heading of "Political preparations for the military occupation of Norway," it is stated that at the interview with Quisling, Hitler said that he would prefer a neutral attitude on the part of Norway as well as the whole of Scandinavia, as he did not desire to extend the theatre of war, or to draw other nations into the conflict. If the enemy attempted to extend the war he would be compelled to guard himself against that undertaking; however, he promised Quisling financial support, and assigned to a special military staff the examination of the military questions involved.

On the 27th January 1940 a memorandum was prepared by the defendant Keitel regarding the plans for the invasion of Norway. On the 28th February 1940 the defendant Jodl entered in his diary:

"I proposed first to the chief of OKW and then to the Fuehrer

that 'Case Yellow' (that is the operation against the Netherlands) and 'Weser Exercise' (that is the operation against Norway and Denmark) must be prepared in such a way that they will be independent of one another as regards both time and forces employed."

On the 1st March Hitler issued a directive regarding the "Weser Exercise" which contained the words:

"The development of the situation in Scandinavia requires the making of all preparations for the occupation of Denmark and Norway by a part of the German Armed Forces. This operation should prevent British encroachment on Scandinavia and the Baltic; further, it should guarantee our ore base in Sweden and give our Navy and Air Force a wider start line against Britain . . .

The crossing of the Danish border and the landings in Norway must take place simultaneously . . .

It is most important that the Scandinavian States as well as the Western opponents should be taken by surprise by our measures."

On the 24th March the naval operation orders for the "Weser Exercise" were issued, and on the 30th March the defendant Doenitz as Commander-in-Chief of U-boats issued his operational order for the occupation of Denmark and Norway. On the 9th April 1940 the German forces invaded Norway and Denmark.

From this narrative it is clear that as early as October 1939 the question of invading Norway was under consideration. The defense that has been

made here is that Germany was compelled to attack Norway to forestall an Allied invasion, and her action was therefore preventive.

It must be remembered that preventive action in foreign territory is justified only in case of "an instant and overwhelming necessity for self-defense, leaving no choice of means, and no moment of deliberation." (The Caroline Case, 1808.6C.Rob.461.). How widely the view was held in influential German circles that the Allies intended to occupy Norway cannot be determined with exactitude. Quisling asserted that the Allies would intervene in Norway with the tacit consent of the Norwegian Government. The German Legation at Oslo disagreed with this view, although the Naval Attache at that Legation shared it.

The War Diary of the German Naval Operations Staff for January 13th 1940 stated that the Chief of the Naval Operations Staff thought that the most favorable solution would be the maintenance of the neutrality of Norway, but he harbored the firm conviction that England intended to occupy Norway in the near future relying on the tacit agreement of the Norwegian Government.

The directive of Hitler issued on March 1st 1940 for the attack on Denmark stated that the operation "should prevent British encroachment on Scandinavia and the Baltic."

It is, however, to be remembered that the defendant Raeder's memorandum of the 3rd October 1939 makes no reference to forestalling the Allies, but is based upon "the aim of

improving our strategical and operational position."

The memorandum itself is headed "Gaining of Bases in Norway." The same observation applies *mutatis mutandis* to the memorandum of the defendant Doenitz of October 9th 1939.

Furthermore, on the 13th March the defendant Jodl recorded in his diary:

"Fuehrer does not give order yet for 'W' (Weser Exercise). He is still looking for an excuse." (Justification?)

On the 14th March 1940 he again wrote:

"Fuehrer has not yet decided what reason to give for 'Weser Exercise.'"

On the 21st March 1940 he recorded the misgivings of Task Force XXI about the long interval between taking up readiness positions and the close of the diplomatic negotiations, and added:

"Fuehrer rejects any earlier negotiations, as otherwise calls for help go out to England and America. If resistance is put up it must be ruthlessly broken."

On April 2nd he records that all the preparations are completed; on April 4th the Naval Operational Order was issued; and on the 9th April, the invasion was begun.

From all this it is clear that when the plans for an attack on Norway were being made, they were not made for the purpose of forestalling an imminent Allied landing, but, at the most, that they might prevent an Allied occupation at some future date.

When the final orders for the German invasion of Norway were given, the diary of the Naval Operations Staff for March 23rd 1940 records:

"A mass encroachment by the English into Norwegian territorial waters . . . is not to be expected at the present time."

And Admiral Assmann's entry for March 26th says:

"British landing in Norway not considered serious."

Documents which were subsequently captured by the Germans are relied on to show that the Allied plan to occupy harbors and airports in Western Norway was a definite plan, although in all points considerably behind the German plans under which the invasion was actually carried out. These documents indicate that an altered plan had been finally agreed upon on March 20th 1940, that a convoy should leave England on April 5th, and that mining in Norwegian waters would begin the same day; and that on April 5th the sailing time had been postponed until April 8th. But these plans were not the cause of the German invasion of Norway. Norway was occupied by Germany to afford her bases from which a more effective attack on England and France might be made, pursuant to plans prepared long in advance of the Allied plans which are now relied on to support the argument of self-defense.

It was further argued that Germany alone could decide, in accordance with the reservations made by many of the Signatory Powers at the time of the conclusion of the Briand-Kellog Pact,

whether preventive action was a necessity, and that in making her decision her judgment was conclusive. But whether action taken under the claim of self-defense was in fact aggressive or defensive must ultimately be subject to investigation and adjudication if international law is ever to be enforced.

No suggestion is made by the defendants that there was any plan by any belligerent, other than Germany, to occupy Denmark. No excuse for that aggression has ever been offered.

As the German armies entered Norway and Denmark, German memoranda were handed to the Norwegian and Danish Governments which gave the assurance that the German troops did not come as enemies, that they did not intend to make use of the points occupied by German troops as bases for operations against England, as long as they were not forced to do so by measures taken by England and France, and that they had come to protect the North against the proposed occupation of Norwegian strong points by English-French forces.

The memoranda added that Germany had no intention of infringing the territorial integrity and political independence of the Kingdom of Norway then or in the future. Nevertheless, on the 3rd of June 1940, a German Naval memorandum discussed the use to be made of Norway and Denmark, and put forward one solution for consideration, that the territories of Denmark and Norway acquired during the course of the war should continue to be occupied

and organized so that they could in the future be considered as German possessions.

In the light of all the available evidence it is impossible to accept the contention that the invasions of Denmark and Norway were defensive, and in the opinion of the Tribunal they were acts of aggressive war.

THE INVASION OF BELGIUM, THE NETHERLAND AND LUXEMBURG

The plan to seize Belgium and the Netherlands was considered in August 1938, when the attack on Czechoslovakia was being formulated, and the possibility of war with France and England was contemplated. The advantage to Germany of being able to use these countries for their own purposes, particularly as air bases in the war against England and France, was emphasized. In May of 1939, when Hitler made his irrevocable decision to attack Poland, and foresaw the possibility at least of a war with England and France in consequence, he told his military commanders:

"Dutch and Belgian air bases must be occupied. . . . Declarations of neutrality must be ignored."

On August 22nd in the same year, he told his military commanders that England and France, in his opinion, would not "violate the neutrality of these countries." At the same time he assured Belgium and Holland and Luxemburg that he would respect their neutrality; and on the 6th October 1939, after the Polish campaign, he repeated this assurance. On the

7th October General von Brauchitsch directed Army Group B to prepare "for the immediate invasion of Dutch and Belgian territory, if the political situation so demands." In a series of orders, which were signed by the defendants Keitel and Jodl, the attack was fixed for the 10th November 1939, but it was postponed from time to time until May of 1940 on account of weather conditions and transport problems.

At the conference on the 23rd November 1939 Hitler said:

"We have an Achilles heel: The Ruhr. The progress of the war depends on the possession of the Ruhr. If England and France push through Belgium and Holland into the Ruhr, we shall be in the greatest danger. . . . Certainly England and France will assume the offensive against Germany when they are armed. England and France have means of pressure to bring Belgium and Holland to request English and French help. In Belgium and Holland the sympathies are all for France and England. . . . If the French army marches into Belgium in order to attack us, it will be too late for us. We must anticipate them. . . . We shall sow the English coast with mines which cannot be cleared. This mine warfare with the Luftwaffe demands a different starting point. England cannot live without its imports. We can feed ourselves. The permanent sowing of mines on the English coasts will bring England to her knees. However, this can only occur if we have occupied Belgium and Holland. . . . My de-

cision is unchangeable; I shall attack France and England at the most favorable and quickest moment. Breach of the neutrality of Belgium and Holland is meaningless. No one will question that when we have won. We shall not bring about the breach of neutrality as idiotically as it was in 1914. If we do not break the neutrality, then England and France will. Without attack, the war is not to be ended victoriously."

On the 10th May 1940 the German forces invaded the Netherlands, Belgium and Luxemburg. On the same day the German Ambassadors handed to the Netherlands and Belgium Governments a memorandum alleging that the British and France armies, with the consent of Belgium and Holland, were planning to march through those countries to attack the Ruhr, and justifying the invasion on these grounds. Germany, however, assured the Netherlands and Belgium that their integrity and their possessions would be respected. A similar memorandum was delivered to Luxemburg on the same date.

There is no evidence before the Tribunal to justify the contention that the Netherlands Belgium and Luxemburg were invaded by Germany because their occupation had been planned by England and France. British and French staffs had been cooperating in making certain plans for military operations in the Low Countries, but the purpose of this planning was to defend these countries in the event of a German attack.

The invasion of Belgium, Holland and Luxemburg was entirely without justification.

It was carried out in pursuance of policies long considered and prepared, and was plainly an act of aggressive war. The resolve to invade was made without any other consideration than the advancement of the aggressive policies of Germany.

THE AGGRESSION AGAINST
YUGOSLAVIA AND GREECE

On the 12th August 1939 Hitler had a conversation with Ciano and the defendant Ribbentrop at Obersalzberg. He said then:

"Generally speaking, the best thing to happen would be for the neutrals to be liquidated one after the other. This process could be carried out more easily if on every occasion one partner of the Axis covered the other while it was dealing with the uncertain neutral. Italy might well regard Yugoslavia as a neutral of this kind."

This observation was made only two months after Hitler had given assurances to Yugoslavia that he would regard her frontier as final and inviolable. On the occasion of the visit to Germany of the Prince Regent of Yugoslavia on 1st June 1939. Hitler had said in a public speech:

"The firmly established reliable relationship of Germany to Yugoslavia now that owing to historical events we have become neighbors with common boundaries fixed for all time, will not only guarantee lasting peace between our two peoples and countries, but can also represent an element of calm to our

nerve-racked continent. This peace is the goal of all who are disposed to perform really constructive work."

On the 6th October 1939 Germany repeated these assurances to Yugoslavia, after Hitler and Ribbentrop had unsuccessfully tried to persuade Italy to enter the war on the side of Germany by attacking Yugoslavia. On the 28th October 1940 Italy invaded Greece, but the military operations met with no success. In November Hitler wrote to Mussolini with regard to the invasion of Greece, and the extension of the war in the Balkans, and pointed out that no military operations could take place in the Balkans before the following March, and therefore Yugoslavia must if at all possible be won over by other means, and in other ways. But on the 12th November 1940 Hitler issued a directive for the prosecution of the war, and it included the words:

"The Balkans: The Commander-in-Chief of the Army will make preparations for occupying the Greek mainland north of the Aegean Sea, in case of need entering through Bulgaria."

On the 13th December he issued a directive concerning the operation "Marita," the code name for the invasion of Greece, in which he stated:

"1. The result of the battles in Albania is not yet decisive. Because of a dangerous situation in Albania, it is doubly necessary that the British endeavor be foiled to create air bases under the protection of a Balkan front, which would be dangerous above all to Italy as to the Rumanian oilfields.

"2. My plan therefore is (a) to form a slowly increasing task force in Southern Rumania within the next month, (b) after the setting in of favorable weather, probably in March, to send a task force for the occupation of the Aegean north coast by way of Bulgaria and if necessary to occupy the entire Greek mainland."

On the 20th January 1941, at a meeting between Hitler and Mussolini, at which the defendants Ribbentrop, Keitel, Jodl and others were present, Hitler stated:

"The massing of troops in Rumania serves a threefold purpose.

"(a) An operation against Greece;

"(b) Protection of Bulgaria against Russia and Turkey;

"(c) Safeguarding the guarantee to Rumania. It is desirable that this deployment be completed without interference from the enemy. Therefore, disclose the game as late as possible. The tendency will be to cross the Danube at the last possible moment, and to line up for attack at the earliest possible moment."

On the 19th February 1941 an OKW directive re the operation "Marita" stated:

"On the 18th February the Fuehrer made the following decision regarding the carrying out of Operation Marita: The following dates are envisaged: Commencement of building bridge—28th February: Crossing of the Danube, 2nd March."

On the 3rd March 1941, British troops landed in Greece to assist the

Greeks to resist the Italians; and on the 18th March, at a meeting between Hitler and the defendant Raeder, at which the defendants Keitel and Jodl were also present, the defendant Raeder asked for confirmation that the "whole of Greece will have to be occupied, even in the event of a peaceful settlement," to which Hitler replied, "The complete occupation is a prerequisite of any settlement."

On the 25th March, on the occasion of the adherence of Yugoslavia to the Tripartite Pact at a meeting in Vienna, the defendant Ribbentrop, on behalf of the German Government, confirmed the determination of Germany to respect the sovereignty and territorial integrity of Yugoslavia at all times. On the 26th March the Yugoslav Ministers, who had adhered to the Tripartite Pact, were removed from office by a *coup d'etat* in Belgrade on their return from Vienna, and the new Government repudiated the pact. Thereupon on 27th March at a conference in Berlin with the High Command at which the defendants Goering, Keitel and Jodl were present, and the defendant Ribbentrop part of the time, Hitler stated that Yugoslavia was an uncertain factor in regard to the contemplated attack on Greece, and even more so with regard to the attack upon Russia which was to be conducted later on. Hitler announced that he was determined, without waiting for possible loyalty declarations of the new Government, to make all preparations in order to destroy Yugoslavia militarily and as a national unit. He

stated that he would act with "unmerciful harshness."

On the 6th April German forces invaded Greece and Yugoslavia without warning, and Belgrade was bombed by the Luftwaffe. So swift was this particular invasion that there had not been time to establish any "incidents" as a usual preliminary, or to find and publish any adequate "political" explanations. As the attack was starting on the 6th April, Hitler proclaimed to the German people that this attack was necessary because the British forces in Greece (who were helping the Greeks to defend themselves against the Italians) represented a British attempt to extend the war to the Balkans.

It is clear from this narrative that aggressive war against Greece and Yugoslavia had long been in contemplation, certainly as early as August of 1939. The fact that Great Britain had come to the assistance of the Greeks, and might thereafter be in a position to inflict great damage upon German interests was made the occasion for the occupation of both countries.

THE AGGRESSIVE WAR AGAINST THE

UNION OF SOVIET SOCIALIST REPUBLICS

On the 23rd August 1939 Germany signed the non-aggression pact with the Union of Soviet Socialist Republics.

The evidence has shown unmistakably that the Soviet Union on their part conformed to the terms of this pact; indeed the German Government itself had been assured of this by the highest German sources. Thus, the German Ambassador in Moscow

informed his Government that the Soviet Union would go to war only if attacked by Germany, and this statement is recorded in the German War Diary under the date of June 6th 1941.

Nevertheless, as early as the late summer of 1940, Germany began to make preparations for an attack on the USSR, in spite of the non-aggression pact. This operation was secretly planned under the code name "Case Barbarossa," and the former Field Marshall Paulus testified that on the 3rd September 1940, when he joined the German General Staff, he continued developing "Case Barbarossa," which was finally completed at the beginning of November 1940; and that even then, the German General Staff had no information that the Soviet Union was preparing for war.

On the 18th of December 1940 Hitler issued directive No. 21, initialled by Keitel and Jodl, which called for the completion of all preparations connected with the realization of "Case Barbarossa" by the 15th May 1941. This directive stated:

"The German armed forces must be prepared to crush Soviet Russia in a quick campaign before the end of the war against England. . . Great caution has to be exercised that the intention of an attack will not be recognized."

Before the directive of the 18th December had been made, the defendant Goering had informed General Thomas, chief of the Office of War Economy of the OKW, of the

plan, and General Thomas made surveys of the economic possibilities of the USSR including its raw materials, its power and transport system, and its capacity to produce arms.

In accordance with these surveys, an economic staff for the Eastern territories with many military-economic units (inspectorates, Commandos, groups) was created under the supervision of the defendant Goering. In conjunction with the military command, these units were to achieve the most complete and efficient economic exploitation of the occupied territories in the interest of Germany.

The framework of the future political and economic organization of the occupied territories was designed by the defendant Rosenberg over a period of three months, after conferences with and assistance by the defendants Keitel, Jodl, Raeder, Funk, Goering, Ribbentrop, and Frick or their representatives. It was made the subject of a most detailed report immediately after the invasion.

These plans outlined the destruction of the Soviet Union as an independent State, and its partition, the creation of so-called Reich Commissariats, and the conversion of Esthonia, Latvia, Byelorussia and other territories into German colonies.

At the same time Germany drew Hungary, Rumania and Finland into the war against the U. S. S. R. In December 1940 Hungary agreed to participate on the promise of Germany that she should have certain territories at the expense of Yugoslavia.

In May 1941 a final agreement was concluded with Antonescu, the Prime Minister of Rumania, regarding the attack on the U. S. S. R., in which Germany promised to Rumania, Bessarabia, Northern Bukovina and the right to occupy Soviet territory up to the Dnieper.

On the 22nd June 1941, without any declaration of war, Germany invaded Soviet territory in accordance with the plans so long made.

The evidence which has been given before this Tribunal proves that Germany had the design, carefully thought out, to crash the U. S. S. R. as a political and military power, so that Germany might expand to the east according to her own desire. In "Mein Kampf", Hitler had written:

"If new territory were to be acquired in Europe, it must have been mainly at Russia's cost, and once again the new German Empire should have set out on its march along the same road as was formerly trodden by the Teutonic Knights, this time to acquire soil for the German plough by means of the German sword and thus provide the nation with its daily bread."

But there was a more immediate purpose, and in one of the memoranda of the OKW, that immediate purpose was stated to be to feed the German armies from Soviet territory in the third year of the war, even if "as a result many millions of people as the defendant Rosenberg said, will be starved to death if we take out of the country the things necessary for us."

The final aims of the attack on the Soviet Union were formulated at a conference with Hitler on July 16, 1941, in which the defendants Goering, Keitel, Rosenberg and Bormann participated:

"There can be no talk of the creation of a military power west of the Urals, even if we should have to fight 100 years to achieve this. . . . All the Baltic regions must become part of the Reich. The Crimea and adjoining regions (North of the Crimea) must likewise be incorporated into the Reich. The region of the Volga as well as the Baku district must likewise be incorporated into the Reich. The Finns want Eastern Karelia. However, in view of the large deposits of nickel, the Kola peninsula must be ceded to Germany."

It was contended for the defendants that the attack upon the USSR was justified because the Soviet Union was contemplating an attack upon Germany, and making preparations to that end. It is impossible to believe that this view was ever honestly entertained.

The plans for the economic exploitation of the USSR, for the removal of masses of the population, for the murder of Commissars and political leaders, were all part of the carefully prepared scheme launched on the 22nd June without warning of any kind, and without the shadow of legal excuse. It was plain aggression.

WAR AGAINST THE UNITED STATES

Four days after the attack launched by the Japanese on the United States

fleet in Pearl Harbor on December 7, 1941, Germany declared war on the United States.

The Tripartite Pact between Germany, Italy, and Japan had been signed on the 27th September 1940, and from that date until the attack upon the USSR the defendant Ribbentrop, with other defendants, was endeavouring to induce Japan to attack British possessions in the Far East. This, it was thought, would hasten England's defeat, and also keep the United States out of the war.

The possibility of a direct attack on the United States was considered and discussed as a matter for the future. Major von Falkenstein, the Luftwaffe Liaison officer with the Operations Staff of the OKW, summarizing problems which needed discussion in Berlin in October of 1940, spoke of the possibility "of the prosecution of the war against America at a later date." It is clear, too, that the German policy of keeping America out of the war, if possible, did not prevent Germany promising support to Japan even against the United States. On the 4th April 1941, Hitler told Matsuoaka, the Japanese Foreign Minister, in the presence of the defendant Ribbentrop, that Germany would "strike without delay" if a Japanese attack on Singapore should lead to war between Japan and the United States. The next day Ribbentrop himself urged Matsuoaka to bring Japan into the war.

On the 28th November 1941, ten days before the attack on Pearl

Harbor, Ribbentrop encouraged Japan, through her Ambassador in Berlin, to attack Great Britain and the United States, and stated that should Japan become engaged in a war with the United States, Germany would join the war immediately. A few days later, Japanese representatives told Germany and Italy that Japan was preparing to attack the United States, and asked for their support. Germany and Italy agreed to do this, although in the Tripartite Pact, Italy and Germany had undertaken to assist Japan only if she were attacked. When the assault on Pearl Harbor did take place, the defendant Ribbentrop is reported to have been "overjoyed," and later, at a ceremony in Berlin, when a German medal was awarded to Oshima, the Japanese Ambassador, Hitler indicated his approval of the tactics which the Japanese had adopted of negotiating with the United States as long as possible, and then striking hard without any declaration of war.

Although it is true that Hitler and his colleagues originally did not consider that a war with the United States would be beneficial to their interest, it is apparent that a war with the United States would be beneficial to their interest, it is apparent that in the course of 1941 that view was revised, and Japan was given every encouragement to adopt a policy which would almost certainly bring the United States into the war. And when Japan attacked the United States fleet in Pearl Harbor and thus made aggressive war against the United States, the Nazi Government caused Germany to enter that

war at once on the side of Japan by declaring war themselves on the United States.

Violations of International Treaties

The Charter defines as a crime the planning or waging of war that is a war of aggression or a war in violation of international treaties. The Tribunal has decided that certain of the defendants planned and waged aggressive wars against twelve nations, and were therefore guilty of this series of crimes. This makes it unnecessary to discuss the subject in further detail, or even to consider at any length the extent to which these aggressive wars were also "wars in violation of international treaties, agreements or assurances." These treaties are set out in Appendix C of the Indictment. Those of principal importance are the following:

HAGUE CONVENTIONS

In the 1899 Convention the signatory powers agreed: "before an appeal to arms . . . to have recourse, as far as circumstances allow, to the good offices or mediation of one or more friendly powers." A similar clause was inserted in the Convention for Pacific Settlement of International Disputes of 1907. In the accompanying Convention Relative to Opening of Hostilities, Article I contains this far more specific language:

"The Contracting Powers recognize that hostilities between them must not commence without a previous and explicit warning, in the form of either a declaration

of war, giving reasons, or an ultimatum with a conditional declaration of war."

Germany was a party to these conventions.

VERSAILLES TREATY

Breaches of certain provisions of the Versailles Treaty are also relied on by the Prosecution—not to fortify the left bank of the Rhine (Art. 44 42); to "respect strictly the independence of Austria" (Art. 80); renunciation of any rights in Memel (Art. 99), and the Free City of Danzig (Art. 100); the recognition of the independence of the Czecho-Slovak State; and the Military, Naval and Air Clauses against German Rearmament found in Part V. There is no doubt that action was taken by the German Government contrary to all these provisions, the details of which are set out in Appendix C. With regard to the Treaty of Versailles, the matters relied on are:

1. The violation of Articles 42 to 44 in respect of the demilitarized zone of the Rhineland;
2. The annexation of Austria on the 13th March 1938, in violation of Article 80;
3. The incorporation of the district of Memel on the 22nd March 1939, in violation of Article 99;
4. The incorporation of the Free City of Danzig on the 1st September 1939, in violation of Article 100;
5. The incorporation of the provinces of Bohemia and Moravia on the 16th March 1939, in violation of Article 81;

6. The repudiation of the military, naval and air clauses of the Treaty, in or about March of 1935.

On the 21st May 1935 Germany announced, that whilst renouncing the disarmament clauses of the Treaty, she would still respect the territorial limitations, and would comply with the Locarno Pact. [With regard to the first five breaches alleged, therefore, the Tribunal finds the allegation proved.]

TREATIES OF MUTUAL GUARANTEE. ARBITRATION AND NON-AGGRESSION

It is unnecessary to discuss in any detail the various treaties entered into by Germany with other powers. Treaties of Mutual Guarantee were signed by Germany at Locarno in 1925, with Belgium, France, Great Britain and Italy, assuring the maintenance of the territorial status quo. Arbitration treaties were also executed by Germany at Locarno with Czechoslovakia, Belgium and Poland.

Article I of the latter treaty is typical, providing:

"All disputes of every kind between Germany and Poland . . . which it may not be possible to settle amicably by the normal methods of diplomacy, shall be submitted for decision to an arbitral tribunal. . . ."

Conventions of Arbitration and Conciliation were entered into between Germany, the Netherlands and Denmark in 1926; and between Germany and Luxemburg in 1929. Non-aggression treaties were executed by Germany with Denmark and Russia in 1939.

KELLOG-BRIAND PACT

The Pact of Paris was signed on the 27th August 1928 by Germany, the United States, Belgium, France, Great Britain, Italy, Japan, Poland, and other countries; and subsequently by other powers. The Tribunal has made full reference to the nature of this Pact and its legal effect in another part of this judgment. It is therefore not necessary to discuss the matter further here, save to state that in the opinion of the Tribunal this Pact was violated by Germany in all the cases of aggressive war charged in the Indictment. It is to be noted that on the 26th January 1934 Germany signed a Declaration for the Maintenance of Permanent Peace with Poland, which was explicitly based on the Pact of Paris, and in which the use of force was outlawed for a period of ten years.

The tribunal does not find it necessary to consider any of the other treaties, referred to in the Appendix, or the repeated agreements and assurances of her peaceful intentions entered into by Germany.

The Law of the Charter

The jurisdiction of the Tribunal is defined in the Agreement and Charter, and the crimes coming within the jurisdiction of the Tribunal, for which there shall be individual responsibility, are set out in Article 6. The law of the Charter is decisive and binding upon the Tribunal.

The making of the Charter was the exercise of the sovereign legislative power by the countries to which the German Reich unconditionally

surrendered; and the undoubted right of these countries to legislate for the occupied territories has been recognized by the civilized world. The Charter is not an arbitrary exercise of power on the part of the victorious nations, but in the view of the Tribunal, as will be shown, it is the expression of international law existing at the time of its creation; and to that extent is itself a contribution to international law.

The Signatory Powers created this Tribunal, defined the law it was to administer, and made regulations for the proper conduct of the Trial. In doing so, they have done together what any one of them might have done singly; for it is not to be doubted that any nation has the right thus to set up special courts to administer law. With regard to the constitution of the court, all that the defendants are entitled to ask is to receive a fair trial on the facts and law.

The Charter makes the planning or waging of a war of aggression or a war in violation of international treaties a crime; and it is therefore not strictly necessary to consider whether and to what extent aggressive war was a crime before the execution of the London Agreement. But in view of the great importance of the questions of law involved, the Tribunal has heard full argument from the Prosecution and the Defense, and will express its view on the matter.

It was urged on behalf of the defendants that a fundamental principle of all law—international and domestic—is that there can be no punishment of crime without a pre-existing law. "*Nullum crimen sine lege, nulla*

poena sine lege." It was submitted that *ex post facto* punishment is abhorrent to the law of all civilized nations, that no sovereign power had made aggressive war a crime at the time the alleged criminal acts were committed, that no statute had defined aggressive war, that no penalty had been fixed for its commission, and no court had been created to try and punish offenders.

In the first place, it is to be observed that the maxim *nullum crimen sine lege* is not a limitation of sovereignty, but is in general a principle of justice. To assert that it is unjust to punish those who in defiance of treaties and assurances have attacked neighboring states without warning is obviously untrue, for in such circumstances the attacker must know that he is doing wrong, and so far from it being unjust to punish him, it would be unjust if his wrong were allowed to go unpunished. Occupying the positions they did in the government of Germany, the defendants, or at least some of them must have known of the treaties signed by Germany, outlawing recourse to war for the settlement of international disputes; they must have known that they were acting in defiance of all international law when in complete deliberation they carried out their designs of invasion and aggression. On this view of the case alone, it would appear that the maxim has no application to the present facts.

This view is strongly reinforced by a consideration of the state of international law in 1939, so far as aggressive war is concerned. The General Treaty for the Renunciation of

War of August 27, 1928, more generally known as the Pact of Paris or the Kellogg-Briand Pact, was binding on sixty-three nations, including Germany, Italy and Japan at the outbreak of war in 1939. In the preamble, the signatories declared that they were:—

"Deeply sensible of their solemn duty to promote the welfare of mankind; persuaded that the time has come when a frank renunciation of war as an instrument of national policy should be made to the end that the peaceful and friendly relations now existing between their peoples should be perpetuated . . . all changes in their relations with one another should be sought only by pacific means . . . thus uniting civilized nations of the world in a common renunciation of war as an instrument of their national policy . . ."

The first two articles are as follows:

"Article I: The High Contracting Parties solemnly declare in the names of their respective peoples that they condemn recourse to war for the solution of international controversies and renounce it as an instrument of national policy in their relations to one another.

"Article II: The High Contracting Parties agree that the settlement or solution of all disputes or conflicts of whatever nature or of whatever origin they may be, which may arrive among them, shall never be sought except by pacific means."

The question is, what was the legal effect of this pact? The nations who signed the pact or adhered to it un-

conditionally condemned recourse to war for the future as an instrument of policy, and expressly renounced it. After the signing of the pact, any nation resorting to war as an instrument of national policy breaks the pact. In the opinion of the Tribunal the solemn renunciation of war as an instrument of national policy necessarily involves the proposition that such a war is illegal in international law; and that those who plan and wage such a war, with its inevitable and terrible consequences, are committing a crime in so doing. War for the solution of international controversies undertaken as an instrument of national policy certainly includes a war of aggression, and such a war is therefore outlawed by the pact. As Mr. Henry L. Stimson, then Secretary of State of the United States, said in 1932:

“War between nations was renounced by the signatories of the Kellogg-Briand Treaty. This means that it has become throughout practically the entire world . . . an illegal thing. Hereafter, when nations engage in armed conflict, either one or both of them must be termed violators of this general treaty law. . . . We denounce them as law breakers.”

But it is argued that the pact does not expressly enact that such wars are crimes, or set up courts to try those who make such wars. To that extent the same is true with regard to the laws of war contained in the Hague Convention. The Hague Convention of 1907 prohibited resort to certain methods of waging war. These included the inhumane treatment of prisoners, the employment of poi-

soned weapons, the improper use of flags of truce, and similar matters. Many of these prohibitions had been enforced long before the date of the Convention; but since 1907 they have certainly been crimes, punishable as offences against the laws of war; yet the Hague Convention nowhere designates such practices as criminal, nor is any sentence prescribed, nor any mention made of a court to try and punish offenders. For many years past, however, military tribunals have tried and punished individuals guilty of violating the rules of land warfare laid down by this Convention. In the opinion of the Tribunal, those who wage aggressive war are doing that which is equally illegal, and of much greater moment than a breach of one of the rules of the Hague Convention. In interpreting the words of the Pact, it must be remembered that international law is not the product of an international legislature, and that such international agreements as the Pact of Paris have to deal with general principles of law, and not with administrative matters of procedure. The law of war is to be found not only in treaties, but in the customs and practices of states which gradually obtained universal recognition, and from the general principles of justice applied by jurists and practised by military courts. This law is not static, but by continual adaptation follows the needs of a changing world. Indeed, in many cases treaties do no more than express and define for more accurate reference the principles of law already existing.

The view which the Tribunal takes of the true interpretation of the Pact

is supported by the international history which preceded it. In the year 1923 the draft of a Treaty of Mutual Assistance was sponsored by the League of Nations. In Article I the treaty declared "that aggressive war is an international crime," and that the parties would "undertake that no one of them will be guilty of its commission." The draft treaty was submitted to twenty-nine states, about half of whom were in favor of accepting the text. The principal objection appeared to be in the difficulty of defining the acts which would constitute "aggression," rather than any doubt as to the criminality of aggressive war. The preamble to the League of Nations 1924 Protocol for the Pacific Settlement of International Disputes ("Geneva Protocol"), after "recognizing the solidarity of the members of the international community," declared that "a war of aggression constitutes a violation of this solidarity and is an international crime." It went on to declare that the contracting parties were "desirous of facilitating the complete application of the system provided in the Covenant of the League of Nations for the pacific settlement of disputes between the states and of ensuring the repression of international crimes." The Protocol was recommended to the members of the League of Nations by a unanimous resolution in the Assembly of the forty-eight members of the League. These members included Italy and Japan, but Germany was not a member of the League.

Although the Protocol was never ratified, it was signed by the leading statesmen of the world, representing

the vast majority of the civilized states and peoples, and may be regarded as strong evidence of the intention to brand aggressive war as international crime.

At the meeting of the Assembly of the League of Nations on the 24th September 1927, all the delegations then present (including the German, the Italian and the Japanese), unanimously adopted a declaration concerning wars of aggression. The preamble to the declaration stated:

"The Assembly:

"Recognizing the solidarity which unites the community of nations;

"Being inspired by a firm desire for the maintenance of general peace;

"Being convinced that a war of aggression can never serve as a means of settling international disputes, and is in consequence an international crime . . ."

The unanimous resolution of the 18th February 1928 of twenty-one American republics at the sixth (Havana) Pan-American Conference, declared that "war of aggression constitutes an international crime against the human species."

All these expressions of opinion, and others that could be cited, so solemnly made, reinforce the construction which the Tribunal placed upon the Pact of Paris, that resort to a war of aggression is not merely illegal, but is criminal. The prohibition of aggressive war demanded by the conscience of the world, finds its expression in the series of Pacts and Treaties to which the Tribunal has just referred.

It is also important to remember that Article 227 of the Treaty of Versailles provided for the constitution of a special Tribunal, composed of representatives of five of the Allied and Associated Powers which had been belligerents in the first World War opposed to Germany, to try the former German Emperor "for a supreme offence against international morality and the sanctity of treaties." The purpose of this trial was expressed to be "to vindicate the solemn obligations of international undertakings, and the validity of international morality." In Article 228 of the Treaty, the German Government expressly recognized the right of the Allied Powers "to bring before military tribunals persons accused of having committed acts in violation of the laws and customs of war."

It was submitted that international law is concerned with the actions of sovereign states, and provides no punishment for individuals; and further, that where the act in question is an act of state, those who carry it out are not personally responsible, but are protected by the doctrine of the sovereignty of the State. In the opinion of the Tribunal, both these submissions must be rejected. That international law imposes duties and liabilities upon individuals as well as upon states has long been recognized. In the recent case of *Ex Parte Quirin* (1942 317 US 1), before the Supreme Court of the United States persons were charged during the war with landing on the United States for

purposes of spying and sabotage. The late Chief Justice Stone, speaking for the Court, said:

"From the very beginning of its history this Court has applied the law of war as including that part of the law of nations which prescribes for the conduct of war, the status, rights and duties of enemy nations as well as enemy individuals."

He went on to give a list of cases tried by the Courts, where individual offenders were charged with offenses against the laws of nations, and particularly the laws of war. Many other authorities could be cited, but enough has been said to show that individuals can be punished for violations of international law. Crimes against international law are committed by men, not by abstract entities, and only by punishing individuals who commit such crimes can the provisions of international law be enforced.

The provisions of Article 228 of the Treaty of Versailles already referred to illustrate and enforce this view of individual responsibility.

The principle of international law, which under certain circumstances, protects the representatives of a state, cannot be applied to acts which are condemned as criminal by international law. The authors of these acts cannot shelter themselves behind their official position in order to be freed from punishment in appropriate proceedings. Article 7 of the Charter expressly declares:

"The official position of defendants, whether as heads of state, or

responsible officials in government, departments, shall not be considered as freeing them from responsibility, or mitigating punishment."

On the other hand the very essence of the Charter is that individuals have international duties which transcend the national obligations of obedience imposed by the individual state. He who violates the laws of war cannot obtain immunity while acting in pursuance of the authority of the state in authorizing action moves outside its competence under International Law.

It was also submitted on behalf of most of these defendants that in doing what they did they were acting under the orders of Hitler, and therefore cannot be held responsible for the acts committed by them in carrying out these orders. The Charter specifically provides in Article 8:

"The fact that the defendant acted pursuant to order of his Government or of a superior shall not free him from responsibility, but may be considered in mitigation of punishment."

The provisions of this article are in conformity with the law of all nations. That a soldier was ordered to kill or torture in violation of the international law of war has never been recognized as a defense to such acts of brutality, though, as the Charter here provides, the order may be urged in mitigation of the punishment. The true test, which is found in varying degrees in the criminal law of most nations, is not the existence of the order, but whether moral choice was in fact possible.

The Law as to the Common Plan or Conspiracy

In the previous recital of the facts relating to aggressive war, it is clear that planning and preparation had been carried out in the most systematic way at every stage of the history.

Planning and preparation are essential to the making of war. In the opinion of the Tribunal aggressive war is a crime under international law. The Charter defines this offense as planning, preparation, initiation or waging of a war of aggression "or participation in a common plan or conspiracy for the accomplishment of the foregoing." The Indictment follows this distinction. Count One charges the common plan or conspiracy. Count Two charges the planning and waging of war. The same evidence has been introduced to support both counts. We shall therefore discuss both counts together, as they are in substance the same. The defendants have been charged under both counts, and their guilt under each count must be determined

The "common plan or conspiracy" charged in the Indictment covers twenty-five years, from the formation of the Nazi Party in 1919 to the end of the war in 1945. The party is spoken of as "the instrument of cohesion among the defendants" for carrying out the purposes of the conspiracy—the overthrowing of the Treaty of Versailles, acquiring territory lost by Germany in the last war and "lebensraum" in Europe, by the use, if necessary, of armed force, of aggressive war. The "seizure of power" by the Nazis, the use of terror, the de-

struction of trade unions, the attack on Christian teaching and on churches, the persecution of the Jews, the regimentation of youth—all these are said to be steps deliberately taken to carry out the common plan. It found expression, so it is alleged, in secret rearmament, the withdrawal by Germany from the Disarmament Conference and the League of Nations, universal military service and seizure of the Rhineland. Finally, according to the Indictment, aggressive action was planned and carried out against Austria and Czechoslovakia in 1936-1938, followed by the planning and waging of war against Poland; and, successively, against ten other countries.

The Prosecution says, in effect, that any significant participation in the affairs of the Nazi Party or government is evidence of a participation in a conspiracy that is in itself criminal. Conspiracy is not defined in the Charter. But in the opinion of the Tribunal the conspiracy must be clearly outlined in its criminal purpose. It must not be too far removed from the time of decision and of action. The planning, to be criminal, must not rest merely on the declarations of a party program, such as are found in the twenty-five points of the Nazi Party, announced in 1920, or the political affirmations expressed in "*Mein Kampf*" in later years. The Tribunal must examine whether a concrete plan to wage war existed, and determine the participants in that concrete plan.

It is not necessary to decide whether a single master conspiracy between the defendants has been established by the evidence. The seizure

of power by the Nazi Party, and the subsequent domination by the Nazi State of all spheres of economic and social life must of course be remembered when the later plans for waging war are examined. That plans were made to wage wars, as early as November 5th 1937, and probably before that, is apparent. And thereafter, such preparations continued in many directions, and against the peace of many countries. Indeed the threat of war—and war itself if necessary—was an integral part of the Nazi policy. But the evidence establishes with certainty the existence of many separate plans rather than a single conspiracy embracing them all. That Germany was rapidly moving to complete dictatorship from the moment that the Nazis seized power, and progressively in the direction of war, has been overwhelmingly shown in the ordered sequence of aggressive acts and wars already set out in this Judgment.

In the opinion of the Tribunal, the evidence establishes the common planning to prepare and wage war by certain of the defendants. It is immaterial to consider whether a single conspiracy to the extent and over the time set out in the Indictment has been conclusively proved. Continued planning, with aggressive war as the objective, has been established beyond doubt. The truth of the situation was well stated by Paul Schmidt, official interpreter of the German Foreign Office, as follows:

"The general objectives of the Nazi leadership were apparent from the start, namely the domination of the European Continent, to

be achieved first by the incorporation of all German-speaking groups in the Reich, and secondly, by territorial expansion under the slogan "Lebensraum." The execution of these basic objectives, however, seemed to be characterized by improvisation. Each succeeding step was apparently carried out as new situation arose, but all consistent with the ultimate objectives mentioned above."

The argument that such common planning cannot exist where there is complete dictatorship is unsound. A plan in the execution of which a number of persons participate is still a plan, even though conceived by only one of them; and those who execute the plan do not avoid responsibility by showing that they acted under the direction of the man who conceived it. Hitler could not make aggressive war by himself. He had to have the co-operation of statesmen, military leaders, diplomats, and business men. When they, with knowledge of his aims, gave him their co-operation, they made themselves parties to the plan he had initiated. They are not to be deemed innocent because Hitler made use of them if they knew what they were doing. That they were assigned to their tasks by a dictator does not absolve them from responsibility for their acts. The relation of leader and follower does not preclude responsibility here any more than it does in the comparable tyranny of organized domestic crime.

Count One, however, charges not only the conspiracy to commit aggressive war, but also to commit war crimes and crimes against humanity.

But the Charter does not define as a separate crime any conspiracy except the one to commit acts of aggressive war. Article 6 of the Charter provides:

"Leaders, organizers, instigators and accomplices participating in the formulation or execution of a common plan or conspiracy to commit any of the foregoing crimes are responsible for all acts performed by any persons in execution of such plan."

In the opinion of the Tribunal these words do not add a new and separate crime to those already listed. The words are designed to establish the responsibility of persons participating in a common plan. The Tribunal will therefore disregard the charges in Count One that the defendants conspired to commit war crimes and crimes against humanity, and will consider only the common plan to prepare, initiate and wage aggressive war.

War Crimes and Crimes Against Humanity

The evidence relating to War Crimes has been overwhelming, in its volume and its detail. It is impossible for this Judgment adequately to review it, or to record the mass of documentary and oral evidence that has been presented. The truth remains that War Crimes were committed on a vast scale, never before seen in the history of War. They were perpetrated in all the countries occupied by Germany, and on the High Seas, and were attended by every conceivable circumstance of

cruelty and horror. There can be no doubt that the majority of them arose from the Nazi conception of "total war," with which the aggressive wars were waged. For in this conception of "total war," the moral ideas underlying the Conventions which seek to make war more humane are no longer regarded as having force or validity. Everything is made subordinate to the overmastering dictates of war. Rules, regulations, assurances and treaties all alike are of no moment; and so, freed from the restraining influence of international law, the aggressive war is conducted by the Nazi leaders in the most barbaric way. Accordingly, War Crimes were committed when and wherever the Fuehrer and his close associates thought them to be advantageous. They were for the most part the result of cold and criminal calculation.

On some occasions, War Crimes were deliberately planned long in advance. In the case of the Soviet Union, the plunder of the territories to be occupied, and the ill-treatment of the civilian population, were settled in minute detail before the attack was begun. As early as the Autumn of 1940, the invasion of the territories of the Soviet Union was being considered. From that date onwards, the methods to be employed in destroying all possible opposition were continuously under discussion.

Similarly, when planning to exploit the inhabitants of the occupied countries for slave labor on the very greatest scale, the German Government conceived it as an integral part of the war economy, and planned and or-

ganized this particular War Crime down to the last elaborate detail.

Other War Crimes, such as the murder of prisoners of war who had escaped and then recaptured, or the murder of Commandos or captured airmen, or the destruction of the Soviet Commissars, were the result of direct order circulated through the highest official channels.

The Tribunal proposes, therefore, to deal quite generally with the question of War Crimes, and to refer to them later when examining the responsibility of the individual defendants in relation to them. Prisoners of war were ill-treated and tortured and murdered, not only in defiance of the well-established rules of international law, but in complete disregard of the elementary dictates of humanity. Civilian populations in occupied territories suffered the same fate. Whole populations were deported to Germany for the purposes of slave labor upon defence works, armament production and similar tasks connected with the war effort. Hostages were taken in very large numbers from the civilian populations in all the occupied countries, and were shot as suited the German purposes. Public and private property was systematically plundered and pillaged in order to enlarge the resources of Germany at the expense of the rest of Europe. Cities and towns and villages were wantonly destroyed without military justification or necessity.

MURDER AND ILL-TREATMENT OF PRISONERS OF WAR

Article 6(b) of the Charter defines War Crimes in these words:

"War Crimes: namely, violations of the laws or customs of war. Such violations shall include, but not be limited to, murder, ill-treatment or deportations to slave labor or for any other purpose of civilian population of or in occupied territory, murder or ill-treatment of prisoners of war or persons on the seas, killing of hostages, plunder of public or private property, wanton destruction of cities, towns, or villages, or devastation not justified by military necessity."

In the course of the war, many Allied soldiers who had surrendered to the Germans were shot immediately, often as a matter of deliberate, calculated policy. On the 18th October 1942, the defendant Keitel circulated a directive authorized by Hitler, which ordered that all members of Allied "Commando" units, often when in uniform and whether armed or not, were to be "slaughtered to the last man," even if they attempted to surrender. It was further provided that if such Allied troops came into the hands of the military authorities after being first captured by the local police, or in any other way, they should be handed over immediately to the SD. This order was supplemented from time to time, and was effective throughout the remainder of the war, although after the Allied landings in Normandy in 1944 it was made clear that the order did not apply to "Commandos" captured within the immediate battle area. Under the provisions of this order, Allied "Commando" troops, and other military units operating independently, lost their lives in Norway, France, Czechoslo-

vakia and Italy. Many of them were killed on the spot, and in no case were those who were executed later in concentration camps ever given a trial of any kind. For example, an American military mission which landed behind the German front in the Balkans in January 1945, numbering about twelve to fifteen men and wearing uniform, were taken to Mauthausen under the authority of this order, and according to the affidavit of Adolf Zutte, the adjutant of the Mauthausen Concentration Camp, all of them were shot.

In March 1944 the OKH issued the "Kugel" or "Bullet" decree, which directed that every escaped officer and NCO prisoner of war who had not been put to work, with the exception of British and American prisoners of war, should on recapture be handed over to the SIPO and SD. This order was distributed by the SIPO and SD to their regional offices. These escaped officers and NCOs were to be sent to the concentration camp at Mauthausen, to be executed upon arrival, by means of a bullet shot in the neck.

In March 1944 fifty officers of the British Royal Air Force, who escaped from the camp at Sagan where they were confined as prisoners, were shot on recapture, on the direct orders of Hitler. Their bodies were immediately cremated, and the urns containing their ashes were returned to the camp. It was not contended by the defendants that this was other than plain murder, in complete violation of international law.

When Allied airmen were forced to land in Germany, they were some-

times killed at once by the civilian population. The police were instructed not to interfere with these killings, and the Ministry of Justice was informed that no one should be prosecuted for taking part in them.

The treatment of Soviet prisoners of war was characterized by particular inhumanity. The death of so many of them was not due merely to the action of individual guards, or to the exigencies of life in the camps. It was the result of systematic plans to murder. More than a month before the German invasion of the Soviet Union, the OKW were making special plans for dealing with political representatives serving with the Soviet armed forces who might be captured. One proposal was that "political Commissars of the Army are not recognized as *Prisoners of War*, and are to be liquidated at the latest in the transient prisoner of war camps." The defendant Keitel gave evidence that instructions incorporating this proposal were issued to the German army.

On the 8th September 1941, regulations for the treatment of Soviet prisoners of war in all prisoner of war camps were issued, signed by General Reinecke, the head of the prisoner of war department of the High Command. These orders stated:

"The Bolshevik soldier has therefore lost all claim to treatment as an honorable opponent, in accordance with the Geneva Convention. . . . The order for ruthless and energetic action must be given at the slightest indication of insubordination, especially in the case of Bolshevik fanatics. Insub-

ordination, active or passive resistance, must be broken immediately by force of arms (bayonets, butts and firearms) . . . Anyone carrying out the order who does not use his weapons, or does so with insufficient energy, is punishable. . . . Prisoners of war attempting escape are to be fired on without previous challenge. No warning shot must ever be fired. . . . The use of arms against prisoners of war is as a rule legal."

The Soviet prisoners of war were left without suitable clothing. The wounded without medical care; they were starved, and in many cases left to die.

On the 17th July 1941, the Gestapo issued an order providing for the killing of all Soviet prisoners of war who were or might be dangerous to National Socialism. The order recited:

"The mission of the Commanders of the SIPO and SD stationed in Stalags is the political investigation of all camp inmates, the elimination and further 'treatment' (a) of all political, criminal or in some other way unbearable elements among them, (b) of those persons who could be used for the reconstruction of the occupied territories. . . . Further, the commanders must make efforts from the beginning to seek out among the prisoners elements which appear reliable, regardless if there are Communists concerned or not, in order to use them for Intelligence purposes inside of the camp, and if advisable, later in the occupied territories also. By use of such in-

formers, and by use of all other existing possibilities, the discovery of all elements to be eliminated among the prisoners must proceed step by step at once . . .

"Above all, the following must be discovered: all important functionaries of State and Party, especially professional revolutionaries . . . all People's Commissars in the Red Army, leading personalities of the State . . . leading personalities of the business world, members of the Soviet Russian Intelligence, all Jews, all persons who are found to be agitators or fanatical Communists. Executions are not to be held in the camp or in the immediate vicinity of the camp. . . . The prisoners are to be taken for special treatment if possible into the former Soviet Russian territory."

The affidavit of Warlimont, deputy Chief of Staff of the Wehrmacht, and the testimony of Ohlendorf, former Chief of Amt III of the RSHA, and of Lahousen, the head of one of the sections of the Abwehr, the Wehrmacht's Intelligence Service, all indicate the thoroughness with which this order was carried out.

The affidavit of Kurt Lindown, a former Gestapo official, states:

". . . There existed in the prisoner of war camps on the Eastern Front small screening teams (Einsatz commandos), headed by lower ranking members of the Secret Police (Gestapo). These teams were assigned to the camp commanders and had the job to segregate the prisoners of war who were candi-

dates for execution according to the orders that had been given, and to report them to the office of the Secret Police."

On the 23rd October 1941 the camp commander of the Gross Rosen concentration camp reported to Mueller, chief of the Gestapo, a list of the Soviet prisoners of war who had been executed there on the previous day.

An account of the general conditions and treatment of Soviet prisoners of war during the first eight months after the German attack upon Russia was given in a letter which the defendant Rosenberg sent to the defendant Keitel on the 28th February 1942:

"The fate of the Soviet prisoners of war in Germany is on the contrary a tragedy of the greatest extent . . . A large part of them has starved, or died because of the hazards of the weather. Thousands also died from spotted fever.

"The camp commanders have forbidden the civilian population to put food at the disposal of the prisoners, and they have rather let them starve to death.

"In many cases, when prisoners of war could no longer keep up on the march because of hunger and exhaustion, they were shot before the eyes of the horrified population, and the corpses were left.

"In numerous camps, no shelter for the prisoners of war was provided at all. They lay under the open sky during rain or snow. Even tools were not made available to dig holes or caves."

In some cases Soviet prisoners of war were branded with a special permanent mark. There was put in evidence the OKW order dated the 20th July 1942 which laid down that:

"The brand is to take the shape of an acute angle of about 45 degrees, with the long side to be 1 cm. in length, pointing upwards and burnt on the left buttock . . . This brand is made with the aid of a lancet available in any military unit. The coloring used is Chinese ink."

The carrying out of this order was the responsibility of the military authorities, though it was widely circulated by the Chief of the SIPO and the SD to German police officials for information.

Soviet prisoners of war were also made the subject of medical experiments of the most cruel and inhuman kind. In July 1943 experimental work was begun in preparation for a campaign of bacteriological warfare; Soviet prisoners of war were used in these medical experiments, which more often than not proved fatal. In connection with this campaign for bacteriological warfare, preparations were also made for the spreading of bacterial emulsions from planes, with the object of producing widespread failures of crops and consequent starvation. These measures were never applied, possibly because of the rapid deterioration of Germany's military position.

The argument in defense of the charge with regard to the murder and ill-treatment of Soviet prisoners of war, that the USSR was not a party to the Geneva Convention, is quite

without foundation. On the 15th September 1941 Admiral Canaris protested against the regulations for the treatment of Soviet prisoners of war, signed by General Reinecke on the 8th September 1941. He then stated:

"The Geneva Convention for the treatment of prisoners of war is not binding in the relationship between Germany and the USSR. Therefore only the principles of General international law on the treatment of prisoners of war apply. Since the 18th century these have gradually been established along the lines that war captivity is neither revenge nor punishment, but solely protective custody, the only purpose of which is to prevent the prisoners of war from further participation in the war. This principle was developed in accordance with the view held by all armies that it is contrary to military tradition to kill or injure helpless people . . . The decrees for the treatment of Soviet prisoners of war enclosed are based on a fundamentally different viewpoint."

This protest, which correctly stated the legal position, was ignored. The defendant Keitel made a note on this memorandum:

"The objections arise from the military concept of chivalrous warfare. This is the destruction of an ideology. Therefore I approve and back the measures."

MURDER AND ILL-TREATMENT OF CIVILIAN POPULATION

Article 6(b) of the Charter provides that "ill-treatment . . . of civilian population of or in occupied

territory . . . killing of hostages . . . wanton destruction of cities, towns or villages" shall be a war crime. In the main, these provisions are merely declaratory of the existing laws of war as expressed by the Hague convention, Article 46, which stated:

"Family honor and rights, the lives of persons and private property, as well as religious convictions and practice must be respected."

The territories occupied by Germany were administered in violation of the laws of war. The evidence is quite overwhelming of a systematic rule of violence, brutality and terror. On the 7th December 1941 Hitler issued the directive known as the "Nacht und Nebel Erlass" (Night and Fog Decree), under which persons who committed offenses against the Reich or the German forces in occupied territories, except where the death sentence was certain, were to be taken secretly to Germany and handed over to the SIPO and SD for trial or punishment in Germany. This decree was signed by the defendant Keitel. After these civilians arrived in Germany, no word of them was permitted to reach the country from which they came, or their relatives; even in cases when they died awaiting trial the families were not informed, the purpose being to create anxiety in the minds of the family of the arrested person. Hitler's purpose in issuing this decree was stated by the defendant Keitel in a covering letter, dated 12th December 1941, to be as follows:

"Efficient and enduring intimidation can only be achieved either by capital punishment or by measures by which the relatives of the criminal and the population do not know the fate of the criminal. This aim is achieved when the criminal is transferred to Germany."

Even persons who were only suspected of opposing any of the policies of the German occupation authorities were arrested, and on arrest were interrogated by the Gestapo and the SD in the most shameful manner. On the 12th June 1942 the Chief of the SIPO and SD published, through Mueller, the Gestapo Chief, an order authorizing the use of "third degree" methods of interrogation, where preliminary investigation had indicated that the person could give information on important matters, such as subversive activities, though not for the purpose of extorting confessions of the prisoner's own crimes. This order provided:

". . . Third degree may, under this supposition, only be employed against Communists, Marxists, Jehovah's Witnesses, saboteurs, terrorists, members of resistance movements, parachute agents, anti-social elements, Polish or Soviet Russian loafers or tramps; in all other cases my permission must first be obtained. . . . Third degree can, according to circumstances, consist amongst other methods of very simple diet (bread and water), hard bunk, dark cell, deprivation of sleep, exhaustive drilling, also in flogging (for more than twenty strokes a doctor must be consulted)."

The brutal suppression of all opposition to the German occupation was not confined to severe measures against suspected members of resistance movements themselves, but was also extended to their families. On the 19th July 1944, the Commander of the SIPO and SD in the district of Radom, in Poland, published an order, transmitted through the Higher SS and Police Leaders, to the effect that in all cases of assassination or attempted assassination of Germans, or where saboteurs had destroyed vital installations, not only the guilty person, but also all his or her male relatives should be shot, and female relatives over sixteen years of age put into a concentration camp.

In the summer of 1944 the Einsatz Commando of the SIPO and SD at Luxemburg caused persons to be confined at Sachsenhausen concentration camp because they were relatives of deserters, and were therefore "expected to endanger the interest of the German Reich if allowed to go free."

The practice of keeping hostages to prevent and to punish any form of civil disorder was resorted to by the Germans; an order issued by the defendant Keitel on the 16th September 1941 spoke in terms of fifty or a hundred lives from the occupied areas of the Soviet Union for one German life taken. The order stated that it should be remembered that a human life in unsettled countries frequently counts for nothing, and a deterrent effect can only be obtained by unusual severity. The exact number of persons killed as a result of this policy is not

known, but large numbers were killed in France and the other occupied territories in the West, while in the East the slaughter was on an even more extensive scale. In addition to the killing of hostages, entire towns were destroyed in some cases; such massacres as those of Oradour in France and Lidice in Czechoslovakia, both of which were described to the Tribunal in detail, are examples of the organized use of terror by the occupying forces to beat down and destroy all opposition to their rule.

One of the most notorious means of terrorizing the people in occupied territories was the use of concentration camps. They were first established in Germany at the moment of the seizure of power by the Nazi Government. Their original purpose was to imprison without trial all those persons who were opposed to the Government, or who were in any way obnoxious to German authority. With the aid of a secret police force, this practice was widely extended, and in course of time concentration camps became places of organized and systematic murder, where millions of people were destroyed.

In the administration of the occupied territories the concentration camps were used to destroy all opposition groups. The persons arrested by the Gestapo were as a rule sent to concentration camps. They were conveyed to the camps in many cases without any care whatever being taken for them, and great numbers died on the way. Those who arrived at the camp were subject to systematic cruelty. They were given hard physical labor, inadequate food.

clothes and shelter, and were subject at all times to the rigors of a soulless regime, and the private whims of individual guards. In the report of the War Crimes Branch of the Judge Advocate's Section of the 3rd U. S. Army, under date 21st June 1945, the conditions at the Flossenburg concentration camp were investigated and one passage may be quoted:

"Flossenburg concentration camp can best be described as a factory dealing in death. Although this camp had in view the primary object of putting to work the mass slave labor, another of its primary objects was the elimination of human lives by the methods employed in handling the prisoners. Hunger and starvation rations, sadism, inadequate clothing, medical neglect, disease, beatings, hangings, freezing, forced suicides, shooting, etc., all played a major role in obtaining their object. Prisoners were murdered at random; spite killings against Jews were common, injections of poison and shooting in the neck were everyday occurrences; epidemic of typhus and spotted fever were permitted to run rampant as a means of eliminating prisoners; life in this camp meant nothing. Killing became a common thing, so common that a quick death was welcomed by the unfortunate ones."

A certain number of concentration camps were equipped with gas chambers for the wholesale destruction of the inmates, and with furnaces for the burning of the bodies. Some of them were in fact used for the extermination of Jews as part of the

"final solution" of the Jewish problem. Most of the non-Jewish inmates were used for labor, although the conditions under which they worked made labor and death almost synonymous terms. Those inmates who became ill and were unable to work were either destroyed in the gas chambers or sent to special infirmaries, where they were given entirely inadequate medical treatment, worse food if possible than the working inmates, and left to die.

The murder and ill-treatment of civilian populations reached its height in the treatment of the citizens of the Soviet Union and Poland. Some four weeks before the invasion of Russia began, special task forces of the SIPO and SD, called *Einsatz* Groups, were formed on the orders of Himmler for the purpose of following the German armies into Russia, combatting partisans and members of Resistance Groups, and exterminating the Jews and communist leaders and other sections of the population. In the beginning, four such *Einsatz* Groups were formed, one operating in the Baltic States, one towards Moscow, one towards Kiev, and one operating in the south of Russia. Ohlendorf, former chief of Amt III of the RSHA, who led the fourth group, stated in his affidavit:

"When the German army invaded Russia, I was leader of *Einsatzgruppe* D, in the southern sector, and in the course of the year during which I was leader of the *Einsatzgruppe* D it liquidated approximately 90,000 men, women, and children. The majority of those

liquidated were Jews, but there were also among them some communist functionaries."

In an order issued by the defendant Keitel on the 23d July 1941, and drafted by the defendant Jodl, it was stated that

"in view of the vast size of the occupied areas in the East, the forces available for establishing security in these areas will be sufficient only if all resistance is punished, not by legal prosecution of the guilty, but by the spreading of such terror by the armed forces as is alone appropriate to eradicate every inclination to resist among the population. . . . Commanders must find the means of keeping order by applying suitable draconian measures."

The evidence has shown that this order was ruthlessly carried out in the territory of the Soviet Union and and in Poland. A significant illustration of the measures actually applied occurs in the document which was sent in 1943 to the defendant Rosenberg by the Reich Commissar for Eastern Territories, who wrote:

"It should be possible to avoid atrocities and to bury those who have been liquidated. To lock men, women and children into barns and set fire to them does not appear to be a suitable method of combatting bands, even if it is desired to exterminate the population. This method is not worthy of the German cause, and hurts our reputation severely"

The Tribunal has before it an affidavit of one Hermann Graebe dated 10th November 1945, describing the

immense mass murders which he witnessed. He was the manager and engineer in charge of the branch of the Solingen firm of Josef Jung in Spolbunow, Ukraine, from September 1941 to January 1944. He first of all described the attack upon the Jewish ghetto at Rowno:

". . . Then the electric floodlights which had been erected all around the ghetto were switched on. SS and militia details of four to six members entered or at least tried to enter the houses. Where the doors and windows were closed, and the inhabitants did not open upon the knocking, the SS men and militia broke the windows, forced the doors with beams and crowbars, and entered the dwelling. The owners were driven on to the street just as they were, regardless of whether they were dressed or whether they had been in bed. . . . Car after car was filled. Over it hung the screaming of women and children, the cracking of whips and rifle shots."

Graebe then described how a mass execution at Dubno, which he witnessed on the 5th October 1942, was carried out:

". . . Now we heard shots in quick succession from behind one of the earth mounds. The people who had got off the trucks, men, women and children of all ages, had to undress upon the orders of an SS man who carried a riding or dog whip. Without screaming or crying these people undressed, stood around by families, kissed each other said farewells, and waited for the command of another SS

man, who stood near the excavation, also with a whip in his hand. . . . At that moment the SS man at the excavation called something to his comrade. The latter counted off about 20 persons, and instructed them to walk behind the earth mound. . . . I walked around the mound and stood in front of a tremendous grave; closely pressed together, the people were lying on top of each other so that only their heads were visible. The excavation was already two-thirds full; I estimated that it contained about a thousand people. . . . Now already the next group approached, descended into the excavation, lined themselves up against the previous victims and were shot."

The foregoing crimes against the civilian population are sufficiently appalling, and yet the evidence shows that at any rate in the East, the mass murders and cruelties were not committed solely for the purpose of stamping out opposition or resistance to the German occupying forces. In Poland and the Soviet Union these crimes were part of a plan to get rid of whole native populations by expulsion and annihilation, in order that their territory could be used for colonization by Germans. Hitler had written in "*Mein Kampf*" on these lines, and the plan was clearly stated by Himmler in July 1942, when he wrote: ,

"It is not our task to Germanize the East in the old sense, that is to teach the people there the German language and the German

law, but to see to it that only people of purely Germanic blood live in the East."

In August 1942 the policy for the Eastern Territories as laid down by Bormann was summarized by a subordinate of Rosenberg as follows:

"The Slavs are to work for us.

In so far as we do not need them, they may die. Therefore, compulsory vaccination and Germanic health services are superfluous. The fertility of the Slavs is undesirable."

It was Himmler again who stated in October 1943:

"What happens to a Russian, a Czech, does not interest me in the slightest. What the nations can offer in the way of good blood of our type, we will take. If necessary, by kidnapping their children and raising them here with us. Whether nations live in prosperity or starve to death interests me only in so far as we need them as slaves for our Kultur, otherwise it is of no interest to me."

In Poland the intelligentsia had been marked down for extermination as early as September 1939, and in May 1940 the defendant Frank wrote in his diary of "taking advantage of the focussing of world interest on the Western Front, by wholesale liquidation of thousands of Poles, first leading representatives of the Polish intelligentsia." Earlier, Frank had been directed to reduce the "entire Polish economy to absolute minimum necessary for bare existence. The Poles shall be the slaves of the Greater German World Empire." In January 1940 he recorded in his diary that "cheap labor must be removed from

the General Government by hundreds of thousands. This will hamper the native biological propagation." So successfully did the Germans carry out this policy in Poland that by the end of the war one third of the population had been killed and the whole of the country devastated.

It was the same story in the occupied area of the Soviet Union. At the time of the launching of the German attack in June 1941 Rosenberg told his collaborators:

"The object of feeding the German people stands this year without a doubt at the top of the list of Germany's claims on the East, and there the southern territories and the northern Caucasus will have to serve as a balance for the feeding of the German people. . . . A very extensive evacuation will be necessary, without any doubt, and it is sure that the future will hold very hard years in store for the Russians."

Three or four weeks later Hitler discussed with Rosenberg, Goering, Keitel and others his plan for the exploitation of the Soviet population and territory, which included among other things the evacuation of the inhabitants of the Crimea and its settlement by Germans.

A somewhat similar fate was planned for Czechoslovakia by the defendant von Neurath, in August 1940; the intelligentsia were to be "expelled," but the rest of the population was to be Germanized rather than expelled or exterminated, since there was a shortage of Germans to replace them.

In the West the population of Alsace were the victims of a German "expulsion action." Between July and December 1940, 105,000 Alsatians were either deported from their homes or prevented from returning to them. A captured German report dated 7th August 1942 with regard to Alsace states that:

"The problem of race will be given first consideration, and this in such a manner that persons of racial value will be deported to Germany proper, and racially inferior persons to France."

Article 49 of the Hague Convention provides that an occupying power may levy a contribution of money from the occupied territory to pay for the needs of the army of occupation, and for the administration of the territory in question. Article 52 of the Hague Convention provides that an occupying power may make requisitions in kind only for the needs of the army of occupation, and that these requisitions shall be in proportion to the resources of the country. These articles, together with Article 48, dealing with the expenditure of money collected in taxes, and Articles 53, 55 and 56, dealing with public property, make it clear that under the rules of war, the economy of an occupied country can only be required to bear the expenses of the occupation, and these should not be greater than the economy of the country can reasonably be expected to bear. Article 56 reads as follows:

"The property of municipalities, of religious, charitable, educational artistic and scientific institutions, although belonging to the State, is

to be accorded the same standing as private property. All pre-meditated seizure, destruction or damage of such institutions, historical monuments, works of art and science, is prohibited and should be prosecuted."

The evidence in this case has established, however, that the territories occupied by Germany were exploited for the German war effort in the most ruthless way, without consideration of the local economy, and in consequence of a deliberate design and policy. There was in truth a systematic "plunder of public or private property," which was criminal under Article 6 (b) of the Charter. The German occupation policy was clearly stated in a speech made by the defendant Goering on the 6th August 1942, to the various German authorities in charge of occupied territories:

"God knows, you are not sent out there to work for the welfare of the people in your charge, but to get the utmost out of them, so that the German people can live. That is what I expect of your exertions. This everlasting concern about foreign people must cease now, once and for all. I have here before me reports on what you are expected to deliver. It is nothing at all, when I consider your territories. It makes no difference to me in this connection if you say that your people will starve."

The methods employed to exploit the resources of the occupied territories to the full varied from country to country. In some of the occupied countries in the East and the

West, this exploitation was carried out within the framework of the existing economic structure. The local industries were put under German supervision, and the distribution of war materials was rigidly controlled. The industries thought to be of value to the German war effort were compelled to continue, and most of the rest were closed down altogether. Raw materials and the finished products alike were confiscated for the needs of the German industry. As early as the 19th October 1939 the defendant Goering had issued a directive giving detailed instructions for the administration of the occupied territories; it provided:

"The task for the economic treatment of the various administrative regions is different, depending on whether the country is involved which will be incorporated politically into the German Reich, or whether we will deal with the Government-General, which in all probability will not be made a part of Germany. In the first mentioned territories, the . . . safeguarding of all their productive facilities and supplies must be aimed at, as well as a complete incorporation into the Greater German economic system, at the earliest possible time. On the other hand, there must be removed from the territories of the Government-General all raw materials, scrap materials, machines, etc., which are of use for the German war economy. Enterprises which are not absolutely necessary for the meager maintenance of the naked exist-

ence of the population must be transferred to Germany, unless such transfer would require an unreasonably long period of time, and would make it more practicable to exploit those enterprises by giving them German orders, to be executed at their present location."

As a consequence of this order, agricultural products, raw materials needed by German factories, machine tools, transportation equipment, other finished products and even foreign securities and holdings of foreign exchange were all requisitioned and sent to Germany. These resources were requisitioned in a manner out of all proportion to the economic resources of those countries, and resulted in famine, inflation and an active black market. At first the German occupation authorities attempted to suppress the black market, because it was a channel of distribution keeping local products out of German hands. When attempts at suppression failed, a German purchasing agency was organized to make purchases for Germany on the black market, thus carrying out the assurance made by the defendant Goering that it was "necessary that all should know that if there is to be famine anywhere, it shall in no case be in Germany."

In many of the occupied countries of the East and the West, the authorities maintained the pretense of paying for all the property which they seized. This elaborate pretense of payment merely disguised the fact that the goods sent to Germany from these occupied countries were paid for by the occupied countries them-

selves, either by the device of excessive occupation costs or by forced loans in return for a credit balance on a "clearing account" which was a naccount merely in name.

In most of the occupied countries of the East even this pretense of legality was not maintained; economic exploitation became deliberate plunder. This policy was first put into effect in the administration of the Government General in Poland. The main exploitation of the raw materials in the East was centered on agricultural products and very large amounts of food were shipped from the Government General to Germany.

The evidence of the widespread starvation among the Polish people in the Government General indicates the ruthlessness and the severity with which the policy of exploitation was carried out.

The occupation of the territories of the USSR was characterized by premeditated and systematic looting. Before the attack on the USSR, an economic staff—Oldenburg—was organized to ensure the most efficient exploitation of Soviet territories. The German armies were to be fed out of Soviet territory, even if "many millions of people will be starved to death." An OKW directive issued before the attack said:

"To obtain the greatest possible quantity of food and crude oil for Germany—that is the main economic purpose of the campaign." Similarly, a declaration by the defendant Rosenberg of the 20th June 1941 had advocated the use of the produce from Southern Russia and of

the Northern Caucasus to feed the German people, saying:

"We see absolutely no reason for any obligation on our part to feed also the Russian people with the products of that surplus territory. We know that this is a harsh necessity, bare of any feelings."

When the Soviet territory was occupied, this policy was put into effect; there was a large scale confiscation of agricultural supplies, with complete disregard of the needs of the inhabitants of the occupied territory.

In addition to the seizure of raw materials and manufactured articles, a wholesale seizure was made of art treasures, furniture, textiles and similar articles in all the invaded countries.

The defendant Rosenberg was designated by Hitler on the 29th January 1940 Head of the Center for National Socialist Ideological and Educational Research, and thereafter the organization known as the "Einsatzstab Rosenberg" conducted its operations on a very great scale. Originally designed for the establishment of a research library, it developed into a project for the seizure of cultural treasures. On the 1st March, 1942, Hitler issued a further decree, authorizing Rosenberg to search libraries, lodges and cultural establishments, to seize material from these establishments, as well as cultural treasures owned by Jews. Similar directions were given where the ownership could not be clearly established. The decree directed the co-operation of the Wehrmacht High Command, and indicated that Rosenberg's activities in

the West were to be conducted in his capacity as Reichsleiter, and in the East in his capacity as Reichsminister. Thereafter, Rosenberg's activities were extended to the occupied countries. The report of Robert Scholz, Chief of the special staff for Pictorial Art, stated:

"During the period from March 1941 to July 1944 the special staff for Pictorial Art brought into the Reich 29 large shipments, including 137 freight cars with 4,174 cases of art works."

The report of Scholz refers to 25 portfolios of pictures of the most valuable works of the art collection seized in the West, which portfolios were presented to the Fuehrer. Thirty-nine volumes, prepared by the Einsatzstab, contained photographs of paintings, textiles, furniture, candelabra and numerous other objects of art, and illustrated the value and magnitude of the collection which had been made. In many of the occupied countries private collections were robbed, libraries were plundered, and private houses were pillaged.

Museums, palaces and libraries in the occupied territories of the USSR were systematically looted. Rosenberg's Einsatzstab, Ribbentrop's special "Battalion," the Reichscommissars and representatives of the Military Command seized objects of cultural and historical value belonging to the people of the Soviet Union, which were sent to Germany. Thus, the Reichcommissar of the Ukraine removed paintings and objects of art from Kiev and Kharkov and sent them to East Prussia. Rare volumes

and objects of art from the palaces of Peterhof, Tsarskoye Selo, and Pavlovsk were shipped to Germany. In his letter to Rosenberg of the 3rd October 1941 Reichscommissar Kube stated that the value of the objects of art taken from Byelorussia ran into millions of roubles. The scale of this plundering can also be seen in the letter sent from Rosenberg's department to von Milde-Schreden in which it is stated that during the month of October 1943 alone, about 40 box-cars loaded with objects of cultural value were transported to the Reich.

With regard to the suggestion that the purpose of the seizure of art treasures was protective and meant for their preservation, it is necessary to say a few words. On the 1st December 1939 Himmler, as the Reich Commissioner for the "strengthening of Germanism," issued a decree to the regional officers of the secret police in the annexed eastern territories, and to the commanders of the security service in Radom, Warsaw and Lublin. This decree contained administrative directions for carrying out the art seizure programme, and in Clause 1 it is stated:

"To strengthen Germanism in the defense of the Reich, all articles mentioned in Section 2 of this decree are hereby confiscated. . . . They are confiscated for the benefit of the German Reich, and are at the disposal of the Reich Commissioner for the strengthening of Germanism."

The intention to enrich Germany by the seizures, rather than to protect the seized objects, is indicated in an un-

dated report by Dr. Hans Posse, director of the Dresden State Picture Gallery:

"I was able to gain some knowledge on the public and private collections, as well as clerical property, in Cracow and Warsaw. It is true that we cannot hope too much to enrich ourselves from the acquisition of great art works of paintings and sculptures, with the exception of the Veit-Stoss altar, and the plates of Hans von Kulnback in the Church of Maria in Cracow . . . and several other works from the national museum in Warsaw."

SLAVE LABOR POLICY

Article 6(b) of the Charter provides that the "ill-treatment or deportation to slave labor or for any other purpose, of civilian population of or in occupied territory" shall be a War Crime. The laws relating to forced labor by the inhabitants of occupied territories are found in Article 52 of the Hague Convention, which provides:

"Requisition in kind and services shall not be demanded from municipalities or inhabitants except for the needs of the army of occupation. They shall be in proportion to the resources of the country, and of such a nature as not to involve the inhabitants in the obligation of taking part in military operations against their own country."

The policy of the German occupation authorities was in flagrant violation of the terms of this convention. Some idea of this policy may

be gathered from the statement made by Hitler in a speech on November 9th, 1941:

"The territory which now works for us contains more than 250,000,000 men, but the territory which works indirectly for us includes now more than 350,000,000. In the measure in which it concerns German territory, the domain which we have taken under our administration, it is not doubtful that we shall succeed in harnessing the very last man to this work."

The actual results achieved were not so complete as this, but the German occupation authorities did succeed in forcing many of the inhabitants of the occupied territories to work for the German war effort, and in deporting at least 5,000,000 persons to Germany to serve German industry and agriculture.

In the early stages of the war, manpower in the occupied territories was under the control of various occupation authorities, and the procedure varied from country to country. In all the occupied territories compulsory labor service was promptly instituted. Inhabitants of the occupied countries were conscripted and compelled to work in local occupations, to assist the German war economy. In many cases they were forced to work on German fortifications and military installations. As local supplies of raw materials and local industrial capacity became inadequate to meet the German requirements, the system of deporting laborers to Germany was put into force. By the middle of April 1940 compulsory de-

portation of laborers to Germany had been ordered in the Government General; and a similar procedure was followed in other eastern territories as they were occupied. A description of this compulsory deportation from Poland was given by Himmler. In an address to SS officers he recalled how in weather 40 degrees below zero they had to "haul away thousands, tens of thousands, hundreds of thousands." On a later occasion Himmler stated:

"Whether ten thousand Russian females fall down from exhaustion while digging an anti-tank ditch interests me only insofar as the anti tank ditch for Germany is finished.

. . . We must realize that we have 6-7 million foreigners in Germany.

. . . They are none of them dangerous so long as we take severe measures at the merest trifles."

During the first two years of the German occupation of France, Belgium, Holland and Norway, however, an attempt was made to obtain the necessary workers on a voluntary basis. How unsuccessful this was may be seen from the report of the meeting of the Central Planning Board on the 1st March 1944. The representative of the defendant Speer, one Koehrl, speaking of the situation in France, said:

"During all this time a great number of Frenchmen were recruited, and voluntarily went to Germany."

He was interrupted by the defendant Sauckel:

"Not only voluntary, some were recruited forcibly."

To which Koehrl replied:

"The calling up started after the recruitment no longer yielded enough results."

To which the defendant Sauckel replied:

"Out of the five million workers who arrived in Germany, not even 200,000 came voluntarily"

and Koehrl rejoined:

"Let us forget for the moment whether or not some slight pressure was used. Formally, at least, they were volunteers."

Committees were set up to encourage recruiting, and a vigorous propaganda campaign was begun to induce workers to volunteer for service in Germany. This propaganda campaign included, for example, the promise that a prisoner of war would be returned for every laborer who volunteered to go to Germany. In some cases it was supplemented by withdrawing the ration cards of laborers who refused to go to Germany, or by discharging them from their jobs and denying them unemployment benefit or an opportunity to work elsewhere. In some cases workers and their families were threatened with reprisals by the police if they refused to go to Germany. It was on the 21st March 1942 that the defendant Sauckel was appointed Plenipotentiary-General for the Utilization of Labor, with authority over "all available manpower, including that of workers recruited abroad, and of prisoners of war."

The defendant Sauckel was directly under the defendant Goering as Commissioner of the Four Year Plan, and a Goering decree of the 27th March 1942 transferred all his au-

thority over manpower to Sauckel. Sauckel's instructions, too, were that foreign labor should be recruited on a voluntary basis, but also provided that "where, however, in the occupied territories, the appeal for volunteers does not suffice, obligatory service and drafting must under all circumstances be resorted to." Rules requiring labor service in Germany were published in all the occupied territories. The number of laborers to be supplied was fixed by Sauckel, and the local authorities were instructed to meet these requirements by conscription if necessary. That conscription was the rule rather than the exception is shown by the statement of Sauckel already quoted, on the 1st March 1944.

The defendant Sauckel frequently asserted that the workers belonging to foreign nations were treated humanely, and that the conditions in which they lived were good. But whatever the intention of Sauckel may have been, and however much he may have desired that foreign laborers should be treated humanely, the evidence before the Tribunal establishes the fact that the conscription of labor was accomplished in many cases by drastic and violent methods. The "mistakes and blunders" were on a very great scale. Manhunts took place in the streets, at motion picture houses, even at churches and at night in private houses. Houses were sometimes burnt down, and the families taken as hostages, practices which were described by the defendant Rosenberg as having their origin "in the blackest pe-

riods of the slave trade." The methods used in obtaining forced labor from the Ukraine appear from an order issued to SD officers which stated:

"It will not be possible always to refrain from using force. . . . When searching villages, especially when it has been necessary to burn down a village, the whole population will be put at the disposal of the Commissioner by force. . . . As a rule no more children will be shot. . . . If we limit harsh measures through the above orders for the time being, it is only done for the following reason. . . . The most important thing is the recruitment of workers."

The resources and needs of the occupied countries were completely disregarded in carrying out this policy. The treatment of the laborers was governed by Sauckel's instructions of the 20th April 1942 to the effect that:

"All the men must be fed, sheltered and treated in such a way as to exploit them to the highest possible extent, at the lowest conceivable degree of expenditure."

The evidence showed that workers destined for the Reich were sent under guard to Germany, often packed in trains without adequate heat, food, clothing or sanitary facilities. The evidence further showed that the treatment of the laborers in Germany in many cases was brutal and degrading. The evidence relating to the Krupp Works at Essen showed that punishments of the most cruel kind were inflicted on the workers. Theoretically at least the workers were

paid, housed and fed by the DAF, and even permitted to transfer their savings and to send mail and parcels back to their native country; but restrictive regulations took a proportion of the pay; the camps in which they were housed were insanitary; and the food was often less than the minimum necessary to give the workers strength to do their jobs. In the case of Poles employed on farms in Germany, the employers were given authority to inflict corporal punishment and were ordered, if possible, to house them in stables, not in their own homes. They were subject to constant supervision by the Gestapo and the SS, and if they attempted to leave their jobs they were sent to correction camps or concentration camps. The concentration camps were also used to increase the supply of labor. Concentration camp commanders were ordered to work their prisoners to the limits of their physical power. During the latter stages of the war the concentration camps were so productive in certain types of work that the Gestapo was actually instructed to arrest certain classes of laborers so that they could be used in this way. Allied prisoners of war were also regarded as a possible source of labor. Pressure was exercised on non-commissioned officers to force them to consent to work, by transferring to disciplinary camps those who did not consent. Many of the prisoners of war were assigned to work directly related to military operations, in violation of Article 31 of the Geneva Convention. They were put to work in munition factories and even made to load bombers, to carry ammunition

and to dig trenches, often under the most hazardous conditions. This condition applied particularly to the Soviet prisoners of war. On the 16th February 1943, at a meeting of the Central Planning Board, at which the defendants Sauckel and Speer were present, Milch said:

"We have made a request for an order that a certain percentage of men in the Ack-Ack artillery must be Russians; 50,000 will be taken altogether. 30,000 are already employed as gunners. This is an amusing thing, that Russians must work the guns."

And on the 4th October 1943, at Posen, Himmler, speaking of the Russian prisoners, captured in the early days of the war, said:

"At that time we did not value the mass of humanity as we value it today, as raw material, as labor. What, after all, thinking in terms of generations, is not to be regretted, but is now deplorable by reason of the loss of labor, is that the prisoners died in tens and hundreds of thousands of exhaustion and hunger."

The general policy underlying the mobilization of slave labor was stated by Sauckel on the 20th April 1942. He said:

"The aim of this new gigantic labor mobilization is to use all the rich and tremendous sources conquered and secured for us by our fighting armed forces under the leadership of Adolf Hitler, for the armament of the armed forces, and also for the nutrition of the Homeland. The raw materials, as well as the fertility of the conquered

territories and their human labor power, are to be used completely and conscientiously to the profit of Germany and her Allies. . . . All prisoners of war from the territories in the West, as well as the East, actually in Germany, must be completely incorporated into the German armament and nutrition industries. . . . Consequently it is an immediate necessity to use the human reserves of the conquered Soviet territory to the fullest extent. Should we not succeed in obtaining the necessary amount of labor on a voluntary basis, we must immediately institute conscription or forced labor. . . . The complete employment of all prisoners of war, as well as the use of a gigantic number of new foreign civilian workers, men and women, has become an indisputable necessity for the solution of the mobilization of the labor program in this war."

Reference should also be made to the policy which was in existence in Germany by the summer of 1940, under which all aged, insane, and incurable people, "useless eaters," were transferred to special institutions where they were killed, and their relatives informed that they had died from natural causes. The victims were not confined to German citizens, but included foreign laborers, who were no longer able to work, and were therefore useless to the German war machine. It has been estimated that at least some 275,000 people were killed in this manner in nursing homes, hospitals and asylums, which were under the jurisdiction of the de-

fendant Frick, in his capacity as Minister of the Interior. How many foreign workers were included in this total it has been quite impossible to determine.

PERSECUTION OF THE JEWS

The persecution of the Jews at the hands of the Nazi Government has been proved in the greatest detail before the Tribunal. It is a record of consistent and systematic inhumanity on the greatest scale. Ohlendorf, chief of AMT III in the RSHA from 1939 to 1943, and who was in command of one of the Einsatz groups in the campaign against the Soviet Union testified as to the methods employed in the extermination of the Jews. He said that he employed firing squads to shoot the victims in order to lessen the sense of individual guilt on the part of his men; and the 90,000 men, women and children who were murdered in one year by his particular group were mostly Jews.

When the witness Bach Zelewski was asked how Ohlendorf could admit the murder of 90,000 people, he replied:

"I am of the opinion that when, for years, for decades, the doctrine is preached that the Slav race is an inferior race, and Jews not even human, then such an outcome is inevitable."

But the defendant Frank spoke the final words of this chapter of Nazi history when he testified in this court:

"We have fought against Jewry; we have fought against it for years; and we have allowed ourselves to make utterances and my own diary has become a witness against me

in this connection — utterances which are terrible. A thousand years will pass and this guilt of Germany will still not be erased."

The anti-Jewish policy was formulated in Point 4 of the Party Program which declared "Only a member of the race can be a citizen. A member of the race can only be one who is of German blood, without consideration of creed. Consequently, no Jew can be a member of the race." Other points of the program declared that Jews should be treated as foreigners, that they should not be permitted to hold public office, that they should be expelled from the Reich if it were impossible to nourish the entire population of the State, that they should be proclaimed from publishing German newspapers. The Nazi Party preached these doctrines throughout its history. "Der Stuermer" and other publications were allowed to disseminate hatred of the Jews, and in the speeches and public declarations of the Nazi leaders, the Jews were held up to public ridicule and contempt.

With the seizure of power, the persecution of the Jews was intensified. A series of discriminatory laws were passed, which limited the offices and professions permitted to Jews; and restrictions were placed on their family life and their rights of citizenship. By the autumn of 1938, the Nazi policy towards the Jews had reached the stage where it was directed towards the complete exclusion of Jews from German life. Pogroms were organized, which included the burning and demolishing

of synagogues, the looting of Jewish businesses, and the arrest of prominent Jewish business men. A collective fine of one billion marks was imposed on the Jews, the seizure of Jewish assets was authorized, and the movement of Jews was restricted by regulations to certain specified districts and hours. The creation of ghettos was carried out on an extensive scale, and by an order of the Security Police Jews were compelled to wear a yellow star to be worn on the breast and back.

It was contended for the Prosecution that certain aspects of this anti-Semitic policy were connected with the plans for aggressive war. The violent measures taken against the Jews in November 1938 were nominally in retaliation for the killing of an official of the German Embassy in Paris. But the decision to seize Austria and Czechoslovakia had been made a year before. The imposition of a fine of one billion marks was made, and the confiscation of the financial holdings of the Jews was decreed. at a time when German armament expenditure had put the German treasury in difficulties, and when the reduction of expenditure on armaments was being considered. These steps were taken, moreover, with the approval of the defendant Goering, who had been given responsibility for economic matters of this kind, and who was the strongest advocate of an extensive rearmament program notwithstanding the financial difficulties.

It was further said that the connection of the anti-Semitic policy with

aggressive war was not limited to economic matters. The German Foreign Office circular, in an article of January 25th 1939, entitled "Jewish question as a factor in German Foreign Policy in the year 1938," described the new phase in the Nazi anti-Semitic policy in these words:

"It is certainly no coincidence that the fateful year 1938 has brought nearer the solution of the Jewish question simultaneously with the realization of the idea of Greater Germany, since the Jewish policy was both the basis and consequence of the events of the year 1938. The advance made by Jewish influence and the destructive Jewish spirit in politics, economy, and culture, paralyzed the power and the will of the German people to rise again, more perhaps even than the power policy opposition of the former enemy Allied powers of the 1st World War. The healing of this sickness among the people was therefore certainly one of the most important requirements for exerting the force which, in the year 1938, resulted in the joining together of greater Germany in defiance of the world."

The Nazi persecution of Jews in Germany before the war, severe and repressive as it was, cannot compare, however, with the policy pursued during the war in the occupied territories. Originally the policy was similar to that which had been in force inside Germany. Jews were required to register, were forced to live in ghettos, to wear the yellow star, and were used as slave labor-

ers. In the summer of 1941, however, plans were made for the "final solution" of the Jewish question in all of Europe. This "final solution" which early in 1939 Hitler had threatened would be one of the consequences of an outbreak of war, and a special section in the Gestapo under Adolf Eichmann, as head of Section B 4 of the Gestapo, was formed to carry out the policy.

The plan for exterminating the Jews was developed shortly after the attack on the Soviet Union. Einsatzgruppen of the Security Police and SD, formed for the purpose of breaking the resistance of the population of the areas lying behind the German armies in the East, were given the duty of exterminating the Jews in those areas. The effectiveness of the work of the Einsatzgruppen is shown by the fact that in February 1942 Heydrich was able to report that Estonia had already been cleared of Jews and that in Riga the number of Jews had been reduced from 29,500 to 2,500. Altogether the Einsatzgruppen operating in the occupied Baltic States killed over 135,000 Jews in three months.

Nor did these special units operate completely independently of the German Armed Forces. There is clear evidence that leaders of the Einsatzgruppen obtained the cooperation of Army Commanders. In one case the relations between an Einsatzgruppe and the military authorities was described at the time as being "very close, almost cordial";

in another case the smoothness of an Einsatzkommando's operation was attributed to the "understanding for this procedure" shown by the army authorities.

Units of the Security Police and SD in the occupied territories of the East, which were under civil administration, were given a similar task. The planned and systematic character of the Jewish persecutions is best illustrated by the original report of the SS Brigadier-General Stroop, who was in charge of the destruction of the ghetto in Warsaw, which took place in 1943. The Tribunal received in evidence that report, illustrated with photographs, bearing on its title page: "The Jewish Ghetto in Warsaw no longer exists." The volume records a series of reports sent by Stroop to the Higher SS and Police Fuehrer East. In April and May of 1943, in one report, Stroop wrote:

"The resistance put up by the Jews and bandits could only be suppressed by energetic actions of our troops day and night. The Reichsfuehrer SS ordered therefore on the 23rd April 1943 the cleaning out of the ghetto with utter ruthlessness and merciless tenacity. I therefore decided to destroy and burn down the entire ghetto, without regard to the armament factories. These factories were systematically dismantled and then burnt. Jews usually left their hideouts, but frequently remained in the burning buildings, and jumped out of the windows, only when the heat became unbearable. They

then tried to crawl with broken bones across the street into buildings which were not afire. . . . Life in the sewers was not pleasant after the first week. Many times we could hear loud voices in the sewers. . . . Tear gas bombs were thrown into the manholes, and the Jews driven out of the sewers and captured. Countless numbers of Jews were liquidated in sewers and bunkers through blasting. The longer the resistance continued, the tougher became the members of the Waffen SS, Police and Wehrmacht, who always discharged their duties in an exemplary manner."

Stroop recorded that his action at Warsaw eliminated "a proved total of 56,065 people. To that we have to add the number of those killed through blasting, fire, etc., which cannot be counted." Grim evidence of mass murders of Jews was also presented to the Tribunal in cinematograph films depicting the communal graves of hundreds of victims which were subsequently discovered by the Allies.

These atrocities were all part and parcel of the policy inaugurated in 1941, and it is not surprising that there should be evidence that one or two German officials entered vain protests against the brutal manner in which the killings were carried out. But the methods employed never conformed to a single pattern. The massacres of Rowno and Dubno, of which the German engineer Graebe spoke, were examples of one method, the systematic extermination

of Jews in concentration camps, was another. Part of the "final solution" was the gathering of Jews from all German occupied Europe in concentration camps. Their physical condition was the test of life or death. All who were fit to work were used as slave laborers in the concentration camps. All who were not fit to work were destroyed in gas chambers and their bodies burnt. Certain concentration camps such as Treblinka and Auschwitz were set aside for this main purpose. With regard to Auschwitz, the Tribunal heard the evidence of Hoess, the Commandant of the camp of Auschwitz alone in that time 2,500,000 persons were exterminated, and that further 500,000 died from disease and starvation. Hoess described the screening for extermination by stating in evidence—

"We had two SS doctors on duty at Auschwitz to examine the incoming transports of prisoners. The prisoners would be marched by one of the doctors who would make spot decisions as they walked by. Those who were fit for work were sent into the camp. Others were sent immediately to the extermination plants. Children of tender years were invariably exterminated since by reason of their youth they were unable to work. Still another improvement we made over Treblinka was that at Treblinka the victims almost always knew that they were to be exterminated and at Auschwitz we endeavored to fool the victims into thinking that they were to go through a delousing process. Of course, frequently they realized our

true intentions and we sometimes had riots and difficulties due to that fact. Very frequently women would hide their children under their clothes, but of course when we found them we could send the children in to be exterminated." He described the actual killing by stating:

"It took from three to fifteen minutes to kill the people in the death chamber, depending upon climatic conditions. We knew when the people were dead because their screaming stopped. We usually waited about one-half hour before we opened the doors and removed the bodies. After the bodies were removed our special commandos took off the rings and extracted the gold from the teeth of the corpses."

Beating, starvation, torture, and killing were general. The inmates were subjected to cruel experiments; at Dachau in August 1942 victims were immersed in cold water until their body temperature was reduced to 28 Centigrade, when they died immediately. Other experiments included high altitude experiments in pressure chambers, experiments to determine how long human beings could survive in freezing water, experiments with poison bullets, experiments with contagious diseases, and experiments dealing with sterilization of men and women by X-rays and other methods.

Evidence was given of the treatment of the inmates before and after their extermination. There was testimony that the hair of women victims was cut off before they were

killed, and shipped to Germany, there to be used in the manufacture of mattresses. These clothes, money and valuables of the inmates were also salvaged and sent to the appropriate agencies for disposition. After the extermination the gold teeth and fillings were taken from the heads of the corpses and sent to the Reichsbank.

After cremation the ashes were used for fertilizer, and in some instances attempts were made to utilize the fat from the bodies of the victims in the commercial manufacture of soap. Special groups traveled through Europe to find Jews and subject them to the "final solution." German missions were sent to such satellite countries as Hungary and Bulgaria, to arrange for the shipment of Jews to extermination camps and it is known that by the end of 1944, 400,000 Jews from Hungary had been murdered at Auschwitz. Evidence has also been given of the evacuation of 110,000 Jews from part of Rumania for "liquidation." Adolf Eichmann, who had been put in charge of this program by Hitler, has estimated that the policy pursued resulted in the killing of 6,000,000 Jews, of which 4,000,000 were killed in the extermination institutions.

The Law Relating to War Crimes and Crimes Against Humanity

Article 6 of the Charter provides:

(b) War Crimes: namely, violations of the laws or customs of war. Such violations shall include, but not be limited to, murder, ill-treatment or deportation to slave

labor or for any other purpose of civilian population of or in occupied territory, murder or ill-treatment of prisoners of war or persons on the seas, killing of hostages, plunder of public or private property, wanton destruction of cities, towns or villages, or devastation not justified by military necessity;

“(c) Crimes against Humanity: namely, murder, extermination, enslavement, deportation, and other inhumane acts committed against any civilian population, before or during the war; or persecutions on political, racial or religious grounds in execution of or in connection with any crime within the jurisdiction of the Tribunal, whether or not in violation of the domestic law of the country where perpetrated.”

As heretofore stated, the Charter does not define as a separate crime any conspiracy except the one set out in Article 6 (a), dealing with crimes against peace.

The Tribunal is of course bound by the Charter, in the definition which it gives both of war crimes and crimes against humanity. With respect to war crimes, however, as has already been pointed out, the crimes defined by Article 6, Section (b), of the Charter were already recognized as war crimes under international law. They were covered by Articles 46, 50, 52, and 56 of the Hague Convention of 1907, and Articles 2, 3, 4, 46, and 51

of the Geneva Convention of 1929. That violations of these provisions constituted crimes for which the guilty individuals were punishable is too well settled to admit of argument.

But it is argued that the Hague Convention does not apply in this case, because of the “general participation” clause in Article 2 of the Hague Convention of 1907. That clause provided:

“The provisions contained in the regulations (Rules of Land Warfare) referred to in Article I as well as in the present convention do not apply except between contracting powers, and then only if all the belligerents are parties to the convention.”

Several of the belligerents in the recent war were not parties to this convention.

In the opinion of the Tribunal it is not necessary to decide this question. The rules of land warfare expressed in the convention undoubtedly represented an advance over existing international law at the time of their adoption. But the convention expressly stated that it was an attempt “to revise the general laws and customs of war,” which it thus recognized to be then existing, but by 1939 these rules laid down in the convention were recognized by all civilized nations, and were regarded as being declaratory of the laws and customs of war which are referred to in Article 6(b) of the Charter.

(To be continued in the next issue)