International Military Tribunal

THE NUREMBERG TRIALS

Complete Tribunal Proceedings

(V. 22)

International Military Tribunal

The Nuremberg Trials: Complete Tribunal Proceedings (V. 22)

Sentence Proceedings from 27th August 1946 to 1st October 1946

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PREFACE

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Recognizing the importance of establishing for history an authentic text of the Trial of major German war criminals, the International Military Tribunal directed the publication of the Record of the Trial. The proceedings are published in English, French, Russian, and German, the four languages used throughout the hearings. The documents admitted in evidence are printed only in their original language.

The first volume contains basic, official, pre-trial documents together with the Tribunal's judgment and sentence of the defendants. In subsequent volumes the Trial proceedings are published in full from the preliminary session of 14 November 1945 to the closing session of 1 October 1946. They are followed by an index volume. Documents admitted in evidence conclude the publication.

The proceedings of the International Military Tribunal were recorded in full by stenographic notes, and an electric sound recording of all oral proceedings was maintained.

Reviewing sections have verified in the four languages citations, statistics, and other data, and have eliminated obvious grammatical errors and verbal irrelevancies. Finally, corrected texts have been certified for publication by Colonel Ray for the United States, Mr. Mercer for the United Kingdom, Mr. Fuster for France, and Major Poltorak for the Union of Soviet Socialist Republics.

TWO HUNDRED AND TWELFTH DAY,

TUESDAY, 27 AUGUST 1946

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MORNING SESSION

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DR. HANS LATERNSER (Counsel for the General Staff and OKW): Mr. President, I should like to take 2 minutes of the Tribunal's time. Yesterday after the conclusion of the interrogation of the witness Schreiber I received a written report to the effect that, to begin with, research work, as far as bacteriology was concerned, was expressly ordered to be limited to defense, and secondly, that a suggestion of the Army Medical Inspectorate in the autumn of 1943, that all means for an attack should be exhausted, was strongly objected to by the OKW and particularly by Field Marshal Keitel, who pointed out that this was prohibited, and would in no way be considered.

This material I gathered from a letter which was put on my desk yesterday, a letter which I read yesterday evening for the first time.

These two points which I have just quoted as proof can be testified to by Colonel Buerker of the General Staff, who is at present interned in the camp at Dachau. I propose that

we interrogate this witness and confront him with the witness Schreiber.

I assume that this officer is the same colonel who presided over the secret session mentioned by the witness Schreiber. The witness is at Dachau. He could appear before this court tomorrow. My interrogation would take, at the most, 20 minutes. I consider the bringing of this proof to be absolutely essential in the interests of truth. I have submitted my application to the Tribunal in writing.

THE PRESIDENT (Lord Justice Sir Geoffrey Lawrence): The Tribunal will consider your application. Perhaps the Tribunal ought to hear if the Prosecution have anything to say in answer to the application made by Dr. Laternser. The Tribunal would also like to see the report and the letter to which Dr. Laternser referred.

SIR DAVID MAXWELL-FYFE (Deputy Chief Prosecutor for the United Kingdom): If My Lord will just allow me a moment until I see Colonel Smirnov.

THE PRESIDENT: Certainly.

DR. LATERNSER: Mr. President, the letter is from General Warlimont, who is at present in Nuremberg. He wrote this letter on 23 August here in Nuremberg and I received it yesterday. I found it on my table after I came down from the session. I put it in my briefcase without reading it and noted its contents when I arrived home yesterday.

Perhaps I might call the attention of the High Tribunal to the fact that in this letter we are told that after the publication of these bacteriological projects over the radio, this Colonel Buerker whom I have just asked as a witness,

came to Warlimont, who was still at Dachau at the time, and told him those facts which I have presented now.

Meanwhile General Warlimont was transferred to Nuremberg a few days ago. These are the details connected with this point.

THE PRESIDENT: Whose report is it?

DR. LATERNSER: I was referring, Mr. President, to this letter in which ... by General Warlimont, in which the General informs me of the statements which Colonel Buerker made face to face to him a few days ago in the camp at Dachau. These statements are bracketed and I shall be very happy to submit this letter to the High Tribunal.

SIR DAVID MAXWELL-FYFE: There are two points that occur to me.

First, if Dr. Laternser would let us see the letter, it might be possible to shorten the matter in that way, to make some admission as to the statement in the letter. Otherwise, it might be convenient to see an affidavit from the officer and know what he was going to say before we occupy the time by having him examined. If Dr. Laternser would agree to the Prosecution's having the letter translated and examined, we should be able to make a communication to him and, if necessary, to the Tribunal, in the course of the day.

THE PRESIDENT: That seems a convenient course, particularly in view of the fact that the Tribunal expect to finish the entire hearing of the case this week, certainly by Saturday evening, and it will be, therefore, very difficult to get an affidavit by this Colonel Buerker before that time. Therefore, if the Prosecution are able to agree that Colonel

Buerker would give that evidence, that probably would be the best way of dealing with the matter.

SIR DAVID MAXWELL-FYFE: If Your Lordship pleases; then if Dr. Laternser would allow us to have the letter, we will have it translated and looked into in the course of the day.

THE PRESIDENT: Yes.

DR. LATERNSER: Mr. President, if the witness can be called here through a request by telephone, then I can take his affidavit here or interrogate him briefly. That would be the quickest way. If I have to write to the camp first in order to get the affidavit that way, that would take more time. I assume that the telephone connection is such that we can still call Dachau today to have the witness brought here, and then we can discuss how this evidence will be presented.

THE PRESIDENT: We will see first what the Prosecution say after they have seen the letter.

COLONEL Y. V. POKROVSKY (Deputy Chief Prosecutor for the U.S.S.R.): My Lord, I would like to report that I tried to arrange for the possibility of confronting the witness of Dr. Laternser with Schreiber, but this possibility, unfortunately, has been excluded because Schreiber has been sent back to the prisoner-of-war camp. Thus it is impossible to confront the two witnesses because Dr. Laternser presented his request too late. The Soviet Prosecution does not think that it would be advisable to call the witness requested by Dr. Laternser, especially since the witness requested by Dr. Laternser does not, as far as I know, refute the fact itself that there was a secret session of the OKW, which, in my opinion, is the most important fact in that case. That is all

that I wanted to report to the Tribunal on the part of the Soviet Prosecution.

THE PRESIDENT: The Tribunal will await the communication. from the Prosecution and they will consider the matter.

Dr. Gawlik.

DR. HANS GAWLIK (Counsel for the SD): May it please the High Tribunal: Yesterday I paused at the question whether it would be possible at all to determine those prerequisites which are necessary in order to declare an organization criminal. I shall continue.

My statements made hitherto should lead to the conclusion that the evidence of guilt cannot be summarily determined by drawing conclusions from the number of crimes and the type of crime committed, from the knowledge of all the members of these deeds, and from their consciousness of their illegality. It is, on the contrary, necessary that proof of the knowledge and consciousness of illegality should only be considered in special proceedings in the case of each individual member of the organizations; since everything depends on the circumstances, the individual members must be given the opportunity to reply to them. Even if the members might have had knowledge of the real facts of individual criminal acts, that does not prove that they also knew that their organizations were involved therein.

Now I shall turn to the next section.

A condemnation of the organizations is furthermore in opposition with the principle of penal law: *nulla poena sine lege*. This principle has already been treated in detail by the

defense counsel of the principal defendants. I shall not repeat these statements, but only point out briefly the following points of view.

In his Opening Statement, on 20 November 1945, the American Chief Prosecutor said that the defendants could not invoke this principle because they had themselves transgressed it. This argument in no way concerns the members of the organizations, because the members had no influence on the legislation but were themselves objects of the legislation.

The Prosecutor of the Union of Socialist Soviet Republics pointed out, in the discussion of this principle in his final speech on 29 July 1946, that the Charter of the International Military Tribunal was an inviolable law and absolutely had to be carried out.

The Charter is, however, in no way violated and will also be carried out if the Tribunal considers the principle *nulla poena sine lege* and does not condemn the organization, for Article 9 of the Charter is merely an optional regulation. The Chief Prosecutor of the Union of Socialist Soviet Republics further asserted that the Charter represents principles which are contained in a succession of international agreements and in the legislation of all civilized peoples. International agreements and laws of civilized peoples only show that punishable offenses must be judged in individual proceedings. The principle of collective judgment of groups of persons was up to now unknown in international law. On the contrary it is denied, as I said before, by the theory of international law.

Until the first World War it was the custom to include in peace treaties amnesty clauses for war crimes committed. After the first World War the general principle developed that individual members of fighting forces might personally be made responsible after the war for violations of the laws of war. I refer to Fenwick in *International Law*, 1924, Page 578.

The declaration of the chiefs of state of the United States of America, Great Britain, and the Union of Socialist Soviet Republics of 2 November 1943, mentioned by the Prosecutor of the Socialist Soviet Republics, orders expressly that individuals shall be made responsible. This declaration contains no statement to the effect that the collective condemnation of groups of persons is permissible.

Article 9 of the Charter is therefore not the expression of an internationally recognized legal maxim. This clause on the contrary creates a new law and cannot be made applicable with retroactive force, for instance for the time since 1921, as proposed by the Chief Prosecutor of the United States, or even for the time from 1933 on, as proposed by the Prosecutor of the Union of the Socialist Soviet Republics in his final speech on 29 July 1946.

The condemnation of the organizations is therefore in opposition to the principle *nulla poena sine lege*.

In the second section of Part 1, I come to the discussion of the questions of procedure resulting from Article 9 of the Charter. In legal procedure, according to Article 9 of the Charter, an organization or group may be said to be criminal (a) In the trial against a member of such organization or

group, and (b) in connection with any action by reason of which the accused is condemned.

Both these hypotheses must be realized. Of the principal defendants, only the Defendant Kaltenbrunner, Chief of the Security Police and SD, is involved as member of the SD.

It can be gathered from the words, "in connection with any action by reason of which the accused is sentenced," that every action of the member of the organization or group is sufficient to declare the organization or group as criminal. This, however, cannot be the meaning and purpose of this definition, as I should like to illustrate by the law of the United States of 28 June 1940, already quoted.

When persons belonging to one of the associations mentioned in the act of 28 June 1940 are arraigned before a tribunal in several different proceedings, an admittedly extensive examination of evidence, though doubtful in its results, must be effected in each proceeding to determine whether the association to which the person belongs fulfills the primary conditions contained in the above legal stipulations. Then it could happen that in one trial it is established that the organization had pursued the purpose named in the law of 28 June 1940, while in other trials the result of the testimony is not considered sufficient.

In order to avoid these difficulties it could be decreed by a provision of the law that the trial be held against one or several members of the organization, while the other members who have not yet been accused are given the possibility of a legal hearing, and if a member is condemned on account of his membership in an organization within the meaning of the decree of 28 June 1940, the Tribunal makes

the declaration, to take effect for all members of the organization, that the organization fulfills the purpose mentioned in the decree of 28 June 1940.

Such provisions would achieve the following: (1) the testimony on the aims, tasks, and activities of the organization would be taken only once, and (2) contradictory decisions on the objective tasks, aims, and activities of the organization would be avoided.

This purpose is apparently also the intention of Article 9 of the Charter. The situation is to be avoided whereby the military tribunals in the individual occupation zones, in the proceedings against the members of the accused organizations, would have to examine the question of the character of the organization each time by lengthy examination of evidence and perhaps come to contradictory decisions. To be sure, it would ...

THE PRESIDENT: Dr. Gawlik, are you arguing that if any individual were tried under this act of June 1940, that the declaration of this Court under Article 9 would have any effect in the Trial under that act of June 1940? Is that your argument?

DR. GAWLIK: No, Your Lordship. I wanted to explain the stipulation laid down in Article 9 in line with the law of June 1940. The law of June 1940 is something quite different and has no connection with Article 9. 1 wanted to explain in connection with the law of June 1940, which was mentioned by the American Chief Prosecutor, what importance a stipulation would have such as is set down in Article 9.

THE PRESIDENT: What importance are you suggesting it would have?

DR. GAWLIK: Article 9, as I shall set forth, has the following significance:

One member must be accused because of his membership in an organization, an organization which pursues crimes according to Article 6 of this Charter. Then, in this trial against one member, all the facts must be cited against this member because of his membership in the organization, and then the facts that have been ascertained, about the aims, tasks, and activities of the organization, if a conviction is obtained, can be used in the trials against the other members; but only the objective facts, not the guilt, for guilt is an individual matter.

Your Lordship, may I cite an explanatory example. Here one member of the SD would have to be selected and this member would have to be accused, as I shall set forth, because the SD was part of an organization which permitted crimes against the peace, the laws of war, and against humanity. Now, if this member is punished because of his membership in an organization of that nature, you are objectively determining that the SD is an organization of that kind, therefore the objective findings concerning the aims, tasks, and activities of the SD can be used in the proceedings against the other members.

THE PRESIDENT: Well, I think I follow that argument, based upon the first paragraph of Article 9, is that right? It is based upon your construction or interpretation of the first paragraph of Article 9?

DR. GAWLIK: Yes.

THE PRESIDENT: Are you saying that a decision of this Tribunal upon that would have any importance of effect

upon a trial under the act of 1940?

DR. GAWLIK: No, that is only an example.

MR. FRANCIS BIDDLE (Member of the Tribunal for the United States): The law of 1940 is the Sedition Law, is it not? That is the Sedition Law of 1940?

DR. GAWLIK: Yes.

MR. BIDDLE: You say the Prosecution in their argument depended on that act to show that this type of group condemnation was used in other countries -- they made that analogy?

DR. GAWLIK: Yes, I know...

MR. BIDDLE: Yes, you say that is not a true analogy.

DR. GAWLIK: Yes.

MR. BIDDLE: And the reason you say that is that if one individual were tried under the act of 1940 -- do you follow?

DR. GAWLIK: Yes.

MR. BIDDLE: First it would be necessary to show that he belonged to an organization of which the purpose was to overthrow the Government by force or violence, right?

DR. GAWLIK: Yes.

MR. BIDDLE: Now, the court then would have to decide first the purposes of the organization, right?

DR. GAWLIK: Yes.

MR. BIDDLE: Now, you say also that, if a second individual were, at a later time, tried under that act, the Government would again have to prove ...

DR. GAWLIK: Yes.

MR. BIDDLE: ... that the purpose of the organization was to overthrow the Government by force or violence, right?

DR. GAWLIK: Yes.

MR. BIDDLE: And therefore, that the analogy is not true because the finding as to the organization in the first trial against the first individual would have no effect...

DR. GAWLIK: Yes.

MR. BIDDLE: ... on the second trial against the second individual, and that that principle is inherent in all Anglo-Saxon law because the finding of a fact against one individual cannot affect the trial against the second individual, is that your argument?

DR. GAWLIK: Yes. Certainly it would be sufficient for this purpose if the legal effect went only as far as the objective determination of the tasks, aims, and activities of the organization, and the determination of guilt were left to the subsequent proceedings.

With regard to Law Number 10, as was pointed out already, the condemnation of the organizations according to Article 9 of the Charter contains not only the objective statement of the aims, tasks, and activities of the organizations, but beyond this purpose the confirmation of the guilt of the members. Consequently, Article 9 of the Charter, besides the legal material confirmation of objective and subjective factual evidence, also has a legal criminal meaning.

This juridical aim, which is evidently pursued by Article 9 of the Charter, can, however, only be attained if this decision is so interpreted that the member is sentenced on account of membership in an organization whose aims or expedients are punishable according to Article 6 of the Charter, and not on account of any action. Any other interpretation would have no meaning and no purpose.

Only a conviction of the Defendant Kaltenbrunner on account of membership in such an organization could, therefore, according to Article 9 of the Charter, justify the condemnation of the SD.

In consideration of these statements the formal hypotheses for the application of Article 9 of the Charter do not appear appropriate to me. It would be necessary for the Defendant Kaltenbrunner to have been charged on account of his membership in the SD as a criminal organization within the meaning of the Charter, and for the character of the SD to have been examined in this proceeding against the Defendant Kaltenbrunner. Only then would there be a case at hand -- as the Chief Prosecutor for the United States has stated -- on the basis of which the criminality of the SD could be examined. Such a charge has, however, not been made against the Defendant Kaltenbrunner. The Defendant Kaltenbrunner has not been accused of belonging to the SD as a criminal organization, but is to be sentenced for other punishable offenses.

Therefore, taking the statement of the American Prosecutor as a basis, it must be considered as inadmissible that for the proof of the criminality of the SD evidence has been produced which has no connection with the criminal actions with which the Defendant Kaltenbrunner has been charged.

Finally, it will have to be examined what connection exists between the period during which the accused member belonged to the organization and the period for which the organization is to be declared criminal. This purely legal question is completely different from the question of

the period during which an organization was criminally active. Here we are only concerned with this question: can, in the proceedings against a defendant, the organization of which he was a member be declared criminal also for the period during which he did not belong to the organization?

According to the statements made by the American Prosecutor, the criminality of the organization is to be examined only on the strength of the defendant's action. Any action of the defendant limits the examination as to whether the organization can be declared criminal also in regard to time. The evidence in the proceedings against an accused member can only justify any decision regarding the organization for the period during which the defendant belonged to the organization.

This limit in time is justified for another reason: Whoever is to be sentenced has the right to be heard. This right to be heard is not met by the making of statements before the court, but includes the right to participate in the whole proceedings. According to Article 9 of the Charter, this right to participate in the entire proceedings is obviously not to be annulled, but only restricted to a single person of the organization mentioned, in order to save time, on the principle that the depositions of further members as to the aims and tasks and activities of the organization would be cumulative. A member who did not belong to the organization during the whole period for which the organization is to be declared criminal, can define his attitude toward the question of the aims, tasks, and activities of the organization only for the duration of his membership. According to the principle of legal hearing it is,

therefore, necessary that such a member should participate in the proceedings as a defendant, who was a member of the organization during the whole period for which the organization is to be declared criminal.

For these judicial reasons the organization can equally be declared criminal only for the period during which the defendant was a member of it. Should an organization be declared criminal for the entire duration of its existence, then a member must be indicted who belonged to it during the whole period. For judicial reasons the SD, therefore, could be declared criminal only for the period during which the Defendant Kaltenbrunner was Chief of the Sipo and the SD, that is, since January 1943. The crimes with which Aemter III and VI are charged must, therefore, have been committed during this period.

I now come to the real evaluation of the facts based upon the results of the evidence. This is my second main part, and first of all I shall deal with general statements.

The Prosecution has submitted a large number of documents in which the SD is mentioned, thus wishing to prove that the Aemter III and VI were those responsible for them. However, the Prosecution itself has said that in common usage, and even in orders and decrees,

"SD" was used as an abbreviation for "Sipo and SD." I refer to the trial brief against the Gestapo and SD, Page 19 of the German text, and to the session of 3 January 1946. Even according to the Prosecution, a document mentioning the SD is no proof that this deed must have been committed by members of Aemter III and VI. These may just as well be deeds of the Sipo. That has been proved by the evidence.

The witness Von Manstein, one of the highest military leaders of the former German Wehrmacht, was heard before the Tribunal. This witness spoke repeatedly of the SD in his hearings before the Tribunal and the Commission. When I asked the witness what he understood by SD, he declared that he was not quite certain. My further question whether he believed this to mean Aemter III and VI he answered in the negative (Session of 10 August 1946).

The shooting of a Commando in the north of Norway was mentioned in the examination of the Defendant Jodl on the witness stand. The Defendant Jodl was told that the prisoners had been shot by the SD. Thereupon the Defendant Jodl declared, and I refer to the record and quote (Session of 6 June): "Not by the SD; that is not correct, but by the Security Police."

I furthermore draw your attention to the affidavit of the Defendant Keitel -- SD-52 -- who declared under oath that he only realized during the Trial at Nuremberg that the opinion frequently prevailing also in military circles concerning the tasks and competence of the SD as an executive police organ was not correct. Therefore in military language and decrees the SD was often mentioned when the competent police organ with executive power was meant. Keitel declared further that concerning the competencies of the SD an erroneous conception had existed which had led to the wrong interpretation of the abbreviation "SD."

In this connection I also refer to the affidavit of the former Chief of the General Staff of the Luftwaffe, Koller (Document Number Jodl-58, Pages 179 and following, in

Document Book Jodl). In this affidavit Koller reports upon a situation conference with Hitler. At this conference Hitler gave the order to turn over all bomber crews of the various Allied forces to the SD and to liquidate them through the SD. Then Koller describes a conversation he had with Kaltenbrunner after this conference. According to Koller, Kaltenbrunner made the following statement during this conversation: "The Fuehrer's conceptions are quite erroneous. The tasks, too, of the SD are constantly being misinterpreted. Such things are no concern of the SD."

The French Prosecution has submitted a great number of documents in which the SD is mentioned. I have shown these documents to the witness Knochen, who was examined before the Commission.

Knochen was the Commander of the Security Police and the SD in France. In connection with these documents he said that there had been a confusion in terminology, and that SD should be interpreted as "Field Police." To my question: "What does turning over to the SD mean?" the witness Knochen answered, and I quote: "that means transfer to the Executive Section IV of the Security Police."

I showed the witness Dr. Hoffmann Document 526-PS before the Commission. Hoffmann was an official of the Security Police and never belonged to the SD. Document 526-PS concerns the carrying out of a Commando order in a Norwegian fjord. This report states: "Fuehrer Order carried out by SD." To my question to the witness Hoffmann, what was to be understood by SD, he answered literally: "Since this seems to be an executive measure, SD must here be

interpreted as Security Police; the Wehrmacht often mixed up the two ideas."

The Prosecution has furthermore submitted Document Number 1475-PS. This is a report of the commander of the prison at Minsk, dated 31 May 1943, in which he reports that Jews had been brought into the prison by the SD, through Hauptscharfuehrer Ruebe, and that the gold bridges, fillings, and crowns had been removed from their teeth. In this connection I have submitted Affidavit Number SD-69 of Gerty Breiter, a stenographer employed with the Commander of the Security Police and the SD in Minsk. Gerty Breiter states that Ruebe was an official of the Gestapo, and that the SD in Minsk had nothing to do with Jewish affairs. The sole activity of the SD in Minsk was to make reports upon the general attitude and opinions of the public. There were no SD prisons in Minsk.

This confusion in terminology is apparently due to the fact that the members of the SS special formation "SD" which, as I said in the introduction, was something entirely different from the SD Intelligence Service, wore the SS uniform with the SD insignia.

In the territories occupied by Germany, all members of the RSHA, including all members of the Stapo and Kripo, even those who were not members of the SS or SS candidates, wore the SS uniform with the SD insignia. Thus every member of the Sipo was characterized as an SD man, and measures carried out by the Security Police were considered to be SD measures. I refer in particular to the Commission record and to the Court record (Session of 1 August 1946).

THE PRESIDENT: Did you say then that all members of the SS, including the Kripo and the Sipo, when they were working in the East were in the uniform of the SS with an SD badge on them?

DR. GAWLIK: Yes. The witness has given this in evidence, Your Lordship.

THE PRESIDENT: Go on.

DR. GAWLIK: In this connection I would point out that about 90 percent of all members of Aemter III and VI were unpaid, and only a small part of them belonged to the SS or were SS candidates (Affidavit Number SD-32). During the war a large number of the members of the SD, Aemter III and VI, were women. These persons were not entitled to wear the uniform of the SS formation SD.

According to the subdivisions of the trial brief against the Gestapo and the SD, I shall discuss:

a. The charge of Conspiracy

b. Crimes against Peace

c. War Crimes

d. Crimes against Humanity.

I shall now refer to the conspiracy charges. I still do not have Evidence III of the English trial brief against the Gestapo and SD.

Aemter III and VI are accused of having participated in a conspiracy to commit crimes against peace, war crimes, and crimes against humanity. There are three possibilities for an organization to be in contact with a circle of conspirators:

I. The organization can belong to the circle of conspirators. This presumes that all the members of the organization participated in the agreement or the secret

plan to commit illegal actions or to carry out legal actions by illegal means.

It must therefore be proved (a) that such a plan existed, and (b) that all members adopted this plan as their own (Archbold: *Pleading, Evidence, Practice*, Page 1426).

Second possibility: Organizations can have the aim and the purpose of supporting participants in a conspiracy. For this is required: (a) A secret plan or an agreement; (b) the organization must objectively have pursued the aim of aiding one or more of the participants in the execution of the plan; (c) all members must have known of it and desired it.

Third possibility: The organization can be used objectively by conspirators to carry out the secret plan without the members realizing it.

In this case there can be no question of punishable participation of the organization, because the characteristic of factual culpability is lacking. The organization is merely an unpunishable tool and cannot be declared criminal.

On Case I the Prosecution has submitted that not all participated in the conspiracy, though all contributed to the offenses (Session of 20 December 1945). This indicates that the Prosecution does not want to contend that the organizations were participants in the conspiracy. I shall therefore not deal further with this question.

The punishable support of a conspiracy, Case II, also requires (a) the existence of a secret plan, (b) knowledge on the part of the members.

Therefore the existence of a secret plan and the members' knowledge thereof must also be proved.

Hitherto it has in no way been shown that such a plan for the commission, of crimes against peace, war crimes, and crimes against humanity actually existed.

This has already been presented in detail by counsel for the principal defendants and I do not want to repeat these statements, but I should like briefly to point out the following:

A conspiracy cannot be considered proved until evidence is brought as to: time, place, persons among whom this common agreement was reached, and nature of the contents.

Even if such a plan should have existed, it has in no way been shown that it was known to members of the SD, and that therefore they had in mind the purpose of supporting such a conspiracy with their activity. The Prosecution has derived the fact that such a conspiracy existed in particular from facts mentioned in the so-called key documents. The facts mentioned in these documents were, however, kept strictly secret and were known only to the persons immediately concerned with them. Members of the organizations which participated had no knowledge of these things; this can be assumed as being known to the Court.

If the fact of a secret plan for the commission of crimes against peace, war crimes, and crimes against humanity, arises from the key documents, the members of the SD did not know this, and therefore did not have the intention of supporting such a circle of conspirators with their activity.

The facts which the Prosecution produced to prove that members of the SD knew of a conspiracy cannot be regarded as "violent" assumptions, nor as "probable"

assumptions, but at most as "light" or "rash" assumptions which are without significance (Archbold: *Pleading, Evidence, Practice*, 1938, Pages 404, 405).

Furthermore, I believe that the examination of witnesses and the affidavits has brought proof that members of the SD had no knowledge that a secret plan for the commission of crimes against peace, war crimes, and crimes against humanity existed and that, therefore, there was no intention in the SD to support such a circle of conspirators with their activity.

It is, thus, impossible to pass sentence on the SD for participation in a conspiracy, because proof is lacking that (a) a circle of conspirators did in fact exist, and (b) the members of the SD had knowledge of this fact and intended to afford assistance to such a circle of conspirators by their activities.

Therefore, in this Trial before the International Military Tribunal it does not matter whether the SD supported the SS, the Gestapo, the Party, or individual persons of the State leadership, unless the Prosecution has brought proof of the prerequisites which I have indicated: (a) existence of a secret plan for the commission of crimes according to Article 6, and (b) knowledge on the part of the members of the SD.

Furthermore, the factual submission of the Prosecution concerning the co-operation of the SD with the SS, the Gestapo, or other persons, requires correction.

I have already explained that the SD did not form part of the SS, but that the Domestic Intelligence Service and the Foreign Intelligence Service were independent organizations. The question arises whether the independent

organization of the SD aided the independent organization of the SS in pursuing its aims and tasks.

The Prosecution have claimed that this was the case. In refutation of this I wish to draw attention to the testimony of the witness Hoeppner and to the affidavit (Number SD-27) by Albert, who have stated that the SD could be considered an SS Intelligence Service only until the beginning of the year 1934, but that this task had been discontinued as from that date, so that the SD became the general Intelligence center for the State and the Party. These facts have been corroborated both by the witnesses Ohlendorf and Hoeppner and by the SS witnesses Pohl, Hausser, and Reinecke.

As regards the position of the SD in relation to the Police, the Prosecution have maintained that the SD formed part of a uniform police system and that the two sections had been merged into a powerful, politically centralized police system (Session of 19 December 1945). Specifically, the SD did not become part of the Police or of a police system either by the appointment of Himmler as Deputy Chief of the Gestapo in Prussia, or the appointment of Heydrich as Chief of the Security Police and the SD in June 1936, or by the institution of the Reich Security Main Office (RSHA) in September 1939. 1 refer to the, statements of the witnesses Hoeppner, Roessner Wisliceny, and Best in connection with this subject. In refutation of the Prosecution's claim it must be established that the SD never formed part of the Police (Affidavits SD-2, 27, 28, 33, 34, 35, 61, 63), nor did the SD ever have to undertake police work in any sphere of life (Statement by Hoeppner, SD-2, 18, 63).

As to organization, the position of the SD with regard to the Security Police within the Reich was different from that in the occupied territories. I refer to the Headquarters Manual of the United Nations, which I submitted as Document Number SD-70, where the organization of Aemter III and VI is correctly given, and also to the testimonies of the witnesses Best, K. H. Hoffmann, Hoeppner, Dr. Ehlich, Dr. Knochen, Straub and Affidavits Numbers SD-25 and 26.

They all show that within the Reich the agencies of the SD, Aemter III and VI, were always independent with regard to the Security Police. No connection between the SD and the Security Police was formed either by the Higher SS and Police Leaders or by the inspectors of the Security Police and the SD. The latter enjoyed personal privileges of inspection over the agencies of the Security Police and those of the, SD, and therefore they did have knowledge of some of the ordinances relating to any one of the agencies under their control. However, it is not permissible to conclude, from the simple fact that they issued or received some decree, that such decree was necessarily within the competence of the SD. The point is rather, as with all decrees of the Chief, the inspectors, and the commanders of the Security Police and the SD, whether they were dealt with by Aemter III and VI. This can be ascertained from the reference numbers. Only those decrees showing the reference numbers III and VI came within the scope of the Domestic Intelligence Service or the Foreign Intelligence Service and might be charged to the SD. As regards the Higher SS and Police Leaders I wish to refer to Affidavit Number SD-34, for the inspectors of the Security Police and

the SD to Affidavit Number SD-35 and the testimony of Hoeppner.

In the territories occupied by Germany the Security Police and the SD for purposes of organization were united under the commanders of the Security Police and the SD. The Domestic Intelligence Service was dealt with by Department III, the Foreign Intelligence Service by Department VI, while Department IV was the Gestapo and Department V the Criminal Police. Thus, one cannot speak of a uniform organization of Aemter III and VI in the Reich and abroad. The Domestic Intelligence Service in Germany, the Foreign Intelligence Service in Germany, and the activities of the Stapo, the Criminal Police, and the SD in the occupied territories, united for organizational purposes under the commanders of the Security Police and the SD, represented different organizations. It must be noted that, as to their tasks, the Independence of Aemter III and VI in foreign countries was ensured (Affidavit SD-56).

Special reference must be made to the relationship between the SD and the Gestapo. The Prosecution have suggested that the Gestapo was the executive organ, while the SD attended to espionage (Session of 19 December 1945). This description of the relationship between the Gestapo and the SD is not correct. Actually, it is hardly possible to define clearly the relationship between the Gestapo and the SD for the entire period from 1931 until 1945. It varied according to time and place. As regards the period before 1934, I have already shown that presumably there were no relations between the Gestapo and the SD, since at that time the SD was the Intelligence service of the