

International Military Tribunal



THE NUREMBERG TRIALS

Complete Tribunal Proceedings

(V. 18)

International Military Tribunal

The Nuremberg Trials: Complete Tribunal Proceedings (V. 18)

Trial Proceedings from 9th July 1946 to 18th July 1946

e-artnow, 2022

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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.

ONE HUNDRED AND SEVENTY-FOURTH DAY, TUESDAY, 9 JULY 1946

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MORNING SESSION

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MARSHAL (Lieutenant Colonel James R. Clifford): May it please the Tribunal, the Defendants Hess and Fritzsche are absent.

THE PRESIDENT (Lord Justice Sir Geoffrey Lawrence): I have an order to read. The Tribunal orders:

1. Applications for witnesses for organizations to be heard by the Tribunal in open court in accordance with Paragraph 5 of the Tribunal's order of 13 March 1946 should be made to the General Secretary as soon as possible, and in any case not later than 20 July.

2. The Tribunal believes that so much evidence has already been taken, and so wide a field has been covered, that only a very few witnesses need be called for each organization.

That is all.

DR. OTTO NELTE (Counsel for Defendant Keitel): Mr. President, Gentlemen of the Tribunal, yesterday I dealt with the problem of Keitel and the Russian campaign. Now I recall

to you what Keitel said in the witness box concerning the so-called ideological orders:

"I knew their content. In spite of my personal misgivings I passed them on without letting myself be deterred by the possibility of serious consequences."

I wanted to point that out in order to make what I have to say now comprehensible, above all, in its extent. In the course of time the opinion arose and was disseminated throughout the Army, that Field Marshal Keitel was a "yes man," a tool of Hitler's and that he was betraying the interests of the Armed Forces. These generals did not see, nor were they interested in the fact that this man was fighting a constant battle, day after day, in every possible field, with Hitler and the forces which were influencing him on all sides. The effects of this distorted picture shown here in detail, which definitely did not apply to Keitel, especially not in the sphere of strategic operations, planning, and execution, made themselves still felt even in this Trial; perhaps not without the fault of the Defendant Keitel himself. As to the justification of his conception of duty there can in principle be no argument. It has also been confirmed here by the witness Admiral Schulte-Mönting for the Defendant Grossadmiral Raeder. There can be no doubt that the rest of the admirals and generals were in principle of the same point of view, that it is impossible in military spheres to criticize before subordinates the decision of a superior as expressed in an order, even if one has misgivings about the order.

One may say that every principle, every basic rule must be interpreted and applied in a reasonable way, that every

exaggeration of a good principle detracts from it. In the case of Keitel this objection affects the problem of his responsibility and guilt.

Does nonrecognition of the point where a principle, correct in itself, is being carried to excess and thus endangers the object for the protection of which it has been established, constitute guilt? In the case of Keitel we must consider this crucial question from the point of view of a soldier. The thoughts and ideas which the Defendant Keitel had in this connection were the following:

It is incontestable that the principle of obedience is necessary for every army; one might say that obedience-in civilian life a virtue and therefore more or less unstable in its application- must be the essential element of a soldier's character, because without this principle of obedience the aim which is to be accomplished by the army could not be achieved. This aim-the security of the country, the protection of the people, the maintenance of the most precious national possessions-is so sacred that the importance of the principle of obedience cannot be valued highly enough. Hence, the duty of those called upon to preserve that national institution, the Armed Forces, in the sense of its higher task, is to emphasize the importance of obedience. But what the general demands of the soldier, because it is indispensable, must hold good for himself too. This also applies to the principle of obedience.

It would be dangerous to weaken an order, still less an essential principle, by mentioning exaggerations and taking them into consideration at the outset. That would leave the principle of decision to the individual, that is, to his

judgment. There may be cases where the decision depends, or must be made dependent, on actual circumstances. In theory, that would lead to a devaluation or even to an abrogation of the principle. In order to forestall this danger and to eliminate any doubt as to its absolute importance, the principle of obedience has been changed in military life into one of "absolute obedience," and embodied in the oath of allegiance. This is equally valid for the general as for the common soldier.

The Defendant Keitel not only grew up in this school of thought, but during the 37 years of his military service, up to 1938, including the first World War, he had become convinced that this principle of obedience is the strongest pillar upon which the Armed Forces, and thereby the security of the country, rests.

Deeply imbued with the importance of his profession, he had served the Kaiser, Ebert, and Von Hindenburg in accordance with this principle. As representatives of the State, they had to a certain extent an impersonal and symbolic effect on Keitel; Hitler, from 1934, at first appeared in the same light to him, that is, merely as representing the State, without any personal connection, in spite of the fact that his name was mentioned in the oath of allegiance. In 1938 Keitel as Chief of the OKW came into the immediate circle and the personal sphere of Hitler. It appears important for further explanation and in assessing the personality of Keitel to bear in mind that Keitel, as the result of his highly-developed soldierly conception of duty described above, and the pronounced feeling of soldierly obedience, was now exposed to the direct effects of Hitler's personality.

I am inclined to assume that, Hitler had clearly realized, in the preliminary discussions with Keitel which led to the Fuehrer Order of 4 February 1938, that Keitel was the type of person he was including in his calculations: A man upon whom he could rely as a soldier at any time; who was devoted to him with sincere soldierly loyalty; whose bearing fitted him to be a worthy representative for the Armed Forces in his sphere; and who in the opinion of his superiors was an extraordinarily able organizer as shown by the report of Field Marshal Von Blomberg. Keitel himself has admitted that he sincerely admired Hitler, and that the latter subsequently attained a strong influence over him and brought him completely under his spell.

This must be borne in mind if we wish to understand how Keitel could have made out and transmitted orders from Hitler which were irreconcilable with the traditional conceptions of a German officer, such as, for instance, orders C-50, 447-PS, et cetera, submitted by the Soviet Russian Prosecution.

By exploiting the willingness to fight for Germany, which might be taken for granted in the case of every German general, Hitler was able to camouflage his party political aims with the pretext of defending the national interests and to present the impending struggle with the Soviet Union as a dispute which must inevitably be settled-even as a war of defense, the necessity for which was made clear by definite information which had been received and on which depended the existence of Germany.

In this way Hitler broached the fateful question. General Jodl has testified here to the fact that, as an officer of long

standing, Keitel's conscience pricked him nevertheless; and that he repeatedly, but unsuccessfully, raised objections and suggested alternatives to the orders drafted.

During his cross-examination by the representative of the American Prosecution, the Defendant Keitel has openly declared that he was aware of the illegal nature of these orders, but that he believed that he could not refuse to obey the orders of the Supreme Commander of the Armed Forces and head of the State, whose final pronouncement in the case of all objections was: "I do not know why you are worrying; after all, it is not your responsibility. I myself am solely responsible to the German people."

This is a reasoned analysis of Keitel's attitude toward the so-called ideologically-based orders of Hitler.

Keitel's last hope, which in many cases proved to be justified, was that the commanders-in-chief and subordinate commanders of the Armed Forces would at their discretion and within the scope of their responsibility either fail altogether to apply these harsh, inhuman orders, or would apply them only to a limited degree. In view of his position, Keitel had only the choice between military disobedience by refusing to transmit the orders, or complying with the instructions to forward them. I shall investigate in another connection the question of what alternative cases of action might have been open to him. The problem here is to show how Keitel came to forward orders which indisputably violated the laws of warfare and humanity and why, by reason of his duty to obey, his sworn loyalty to the Supreme Commander, and the fact that he saw in the order of the head of the State the absolution of his own responsibility, he

failed to recognize the point at which even the soldier's strict duty of obedience must end.

Every soldier who has appeared here as a defendant or as a witness has mentioned the duty of allegiance. All of them, when they sooner or later realized that Hitler had drawn them and the Armed Forces into his egocentric gamble for the highest stakes, have considered their oath of allegiance as rendered to their country and have believed that they must continue to do their duty in circumstances which to us and even to themselves, when they realized the extent of resulting disaster, appear inconceivable. Not only soldiers such as Raeder, Dönitz, and Jodl, but Paulus as well, kept their positions and remained at their posts, and we have heard the same from other defendants. The statements of the Defendants Speer and Jodl in this connection were deeply moving.

The question of whether these facts relieve the Defendant Keitel of guilty responsibility requires investigation. Keitel does not deny that he bears a heavy moral responsibility. He realizes that no one who played even the smallest part in this terrible drama can feel himself devoid of the moral guilt in which he was entangled.

If I nevertheless emphasize the legal point of view, I am doing so because Justice Jackson, in his speech on behalf of the Prosecution, expressly referred to the law as being the basis of your verdict-to international law, the law of individual states, and the law which the victorious powers have embodied in the Charter.

I assume that the Defendant Keitel has recognized that some of Hitler's orders violated international law. The

Charter says that a soldier cannot clear himself by referring to orders given by his superiors or by his government. At the beginning of my argument I asked you to determine whether, independently of the terms of the Charter, the principle is unimpeachable that the standard determining right or wrong cannot but depend on a national concept.

THE PRESIDENT: Dr.Nelte, I see that in the next few pages you pass into the realm of metaphysics. Don't you think that part you might leave for the Tribunal to read?

You must remember that you began your speech-yesterday before the morning adjournment, and you have got over seventy pages left of your speech to read.

DR. NELTE: I have limited it and shall be through by noon.

THE PRESIDENT: Very well. Do you think it is necessary to read these passages about metaphysics?

DR. NELTE: I want to show in these pages that they are not metaphysical forces, and that the individual is not in a position to free himself through metaphysical forces. I shall-well' I think I shall continue on Page 121, immediately following my reference to Hitler's character.

Perhaps I may just read from Page 120 at the bottom.

THE PRESIDENT: Very well, if you tell the Tribunal that you have limited your presentation. I think you began yesterday at a quarter past 12. Go on then. Take your own course, but do your best to limit it, and go to Page 120 now.

DR. NELTE: The French prosecutor, M. De Menthon, has pointed to the 'demoniacal" undertaking of Hitler and therewith pronounced a word which had necessarily to be brought up in a discussion which is dedicated to the investigation of events forming the background of these

Trials. It is the natural endeavor of intelligent people to analyze the reasons for events which have deeply touched the fate of mankind in these days. If these events deviate from the regular happenings and the natural course of things so much that they sharpen our imagination, we take our refuge in metaphysical powers. I ask you not to consider the pointing to such metaphysical forces as an attempt to evade responsibility. We are all still under the impression of the attempt by a single man to lead the world from its course. I should not care to be misunderstood: The "demoniacal" is an incomprehensible yet extremely real power. Many call it "fate." If I speak of fateful, metaphysical powers, I do not mean the fate of antiquity and of pre-Christian Germanism to which even the gods are necessarily subject.

I should like to make this quite clear: The demoniacal about which I am talking in this connection does not exclude the capacity of man to discern evil; of course, I believe that the demoniacal, should it become effective, does limit the capacity for perception. *Principiis obsta*. The old German maxim says: "Resist from the very start, the remedy will be prepared too late."

Fate and guilt are not phenomena excluding one another, but rather circles which overlap, so that there are sections of life when both power groups are operative. I can only indicate here in a few words what things may be considered as being governed by fate: nationality, historical and traditional conditions of existence, individual origin, professional surroundings.

Mankind today cannot yet recognize the difference between the fateful, that is, the metaphysical powers which have become operative, and the persons who have appeared as tools of these powers; therefore the people who made their appearance as actors on the stage of this terrible drama are "guilty people" to them. The further removed mankind is from the events, the less it sees or feels the consequences, the more objective does judgment-divested of actuality and subjective instincts-become within the framework of the history of human development. In this way the active figures and their share in the events will be better recognized. But as long as we are under the recent impression of the events, we do, it is true, realize the border line between guilt and fate, but we cannot yet recognize it clearly.

No less a person than Marshal Stalin has pointed out in February 1946 that the second World War was not so much the result of mistakes of individual statesmen, but rather the consequence of a development of economic and political tension on the basis of the existing capitalist economic system.

I am now beginning Paragraph 3 on Page 120.

Hitler was the exponent of an idea. He was not only the representative of a Party political program, but also of a philosophy which separated him and the German people from the ideology of the rest of the world. As a convinced enemy of parliamentary democracy, and obsessed with the conviction that this was the true ideology, he was devoid of tolerance and the spirit of compromise. This produced an egocentric ideology which recognized as right only his own

ideas and his own decisions. It led to the "Fuehrer State," in which he was enthroned on a lonely height as the incarnation of this faith, blind and deaf to all misgivings and objections, suspicious of all those who he thought might constitute a threat to his power, and brutal to everything that crossed his ideological path.

This outline of his character, which has been verified by the evidence, is incompatible with the Prosecution's assumption that a partnership of interests might have existed between Hitler and the defendant. There was no partnership of interests and no common planning between Hitler and the men who were supposed to be his advisers. The hierarchy of the Fuehrer State, in connection with the Fuehrer Order Number 1, which gives the crudest expression to the separation of work, can only admit of the conclusion that the so-called co-workers were merely mouthpieces or tools of an overwhelming will, and not men who translated their own will into deeds. The only question, therefore, which can be raised is whether these men were guilty in putting themselves at the disposal of such a system and in submitting to the will of a man like Hitler.

This problem requires special examination in the case of soldiers, because this submission to the will of some person, which is contrary to the nature of a free man, is for the soldier the basic element of his profession, and of the duties of obedience and allegiance which exist for the soldier in all political systems.

The legal problem of conspiracy in the sense of the Indictment has been dealt with by my colleague Dr. Stahmer and by Dr. Horn. In the specific case of the Defendant Keitel

I should only like to refer to two sentences of the speech as the starting point of my statements:

(1) "It is not sufficient that the plan be common to them all; they must know that it is common to all of them, and each one of them must of his own accord accept the plan as his own.

(2) "That is why a conspiracy with a dictator at the head is a contradiction in itself. The dictator does not enter into a conspiracy with his followers; he concludes no agreement with them; he dictates."

Dr. Stahmer has pointed out that no one acting under or on account of pressure can therefore be a conspirator. I should like to modify this for the circle to which the Defendant Keitel belonged. To say that the defendants belonging to the military branch acted on account of or under pressure, does not accurately represent the real circumstances. It is correct to say that soldiers do not act voluntarily, that is, of their own free will. They must do what they are ordered, regardless of whether or not they approve of it. Accordingly, when soldiers engage in any action, their will is disregarded, or at least not taken into consideration; it will in fact always be disregarded because of the nature of the military profession, and in applying the Leadership Principle in the Armed Forces it cannot appear as a causal factor in the initiation and execution of orders. In this military sphere, therefore, we are not dealing with an abstract and thus theoretical deduction, but with a conclusion which is bound to result from the nature and practice of the military profession, when we maintain that the function of the Defendant Keitel was based on military

orders. The activity of the Defendant Keitel with regard to the initiation of orders, decrees, and other measures by Hitler, even insofar as they are criminal, cannot therefore be considered as common work, that is, as the result of a common plan within the meaning of the term "conspiracy." Keitel's activity in regard to the execution of orders consists in the proper transmission of orders in the operations sector and in the proper execution of orders concerning the administration of the war, that is, in the so-called ministerial sector.

No matter how this activity in itself might be qualified in terms of the penal code, the Prosecution have not, I think, so far submitted anything which could refute this train of thought as to the conspiracy.

This is a soldierly principle, and is valid wherever the military command system exists. The significance of this statement is particularly important in the case of the Defendant Keitel. For the validity of such evidence might be questioned by saying that Keitel's functions were not those of a soldier, or at least not only those of a soldier; and that he is therefore not entitled to claim consideration purely on the grounds of the existing system of command. The unfortunate nature of his position and the many and varied assignments, not all of which can be fitted into the framework of a system, which fell to him as Chief of the OKW, tend to obscure for us the primary factor with regard to the Defendant Keitel, namely, that no matter what Keitel did, or with what authority or organization he negotiated or was in contact, he was always motivated by his function as

a soldier and by some general or particular order issued by Hitler.

The existence of a conspiracy seems to me incompatible with the theory of a soldier's functions and with Keitel's position as head of the OKW, and cannot logically be derived therefrom. In all cases in which the Prosecution has claimed conspiracy to be prejudice, the purpose of this conspiracy is an activity indulged in by the members in perpetrating acts which differ from their normal private activity. The *ex contrario* proposition is that the activity which a man must practice because it belongs to his profession or office cannot be termed a conspiracy. It may be added that the soldier does not act on his own initiative, but on orders received. A soldier may therefore take part in a conspiracy aimed against the duties he has undertaken as a soldier; but his activity within the scope of his military functions can on no account be termed a conspiracy.

The OKW, including the Armed Forces Operations Staff, was relatively little affected by the conduct of the war in the East. By the OKW I mean the staff of the OKW. It is well known that Hitler himself as Supreme Commander of the Armed Forces, dealt with all matters concerning the conduct of this-his own-ideological war and took a hand in it. The Army was in command; but Hitler was in close and constant collaboration with the Commander-in-Chief of the Army and his Chief of General Staff up to December 1941 when, after taking over the supreme command of the Army, he also took over its direct leadership.

This union in one person of the Supreme Commander of the Armed Forces and Commander-in-Chief of the Army was

evidently the cause of the numerous mistakes which led to the severe incrimination of the OKW as staff OKW, and of its Chief of Staff, Keitel.

Keitel feels himself to be gravely incriminated by the frank statements he made in the witness box on the whole question of the Russian war. It is, therefore, not only an understandable proceeding on the part of the defense, but in fact its duty, to clarify the extent to which Keitel bears the responsibility for these entire conditions of most frightful atrocity and unimaginable degeneration.

To make these matters of competency, which are frequently extremely complicated, easier of understanding, I refer to the Defendant Keitel's affidavit Number K-10, which was submitted to the Tribunal. It seems to me essential just to emphasize the fact that the war against the Soviet Union was from the first subject to three effective factors: (1) Operations and command: High Command of the Army; (2) Economics: The Four Year Plan; (3) Ideological: The SS Organizations.

These three factors were outside the competency of the OKW, which was not empowered to issue orders affecting them. It is true, nevertheless, that as a result of Hitler's practically anarchic methods, by which he himself retained entire control of the Government in his own hands, the OKW and Keitel were sometimes used to transmit Hitler's orders; but this fact cannot in itself deflect the basic responsibility.

In view of the mass of material presented by the Soviet Prosecution, I can refer within the scope of my statement to only a comparatively small number of the documents. I shall

give a brief summary of the documents which have been dealt with separately, Pages 126 to 136.

To begin with, I referred to Documents USSR-90, 386, 364, 366, 106, and 407, and tried to prove in detail that the charges made against the OKW and Keitel as the guilty parties have no value as evidence as far as these documents are concerned.

Then, on Page 130, I referred to a category of documents with which I have dealt earlier in Part 2 of my presentation on the subject of official documents. If I refer in this connection to the official reports of the Investigation Commission, I do so not because of their actual contents, but because, although they were submitted in order to implicate Keitel, they are in themselves proof that the charges made against Keitel and the OKW are not justified as far as these grave indictments are concerned.

Out of the large number of documents in this connection I have dealt with USSR-40, 35, and 38. These official reports, which implicate the High Command of the Armed Forces, do not contain a single concrete fact referring to the Staff of the OKW-that is, Keitel-as the perpetrator or instigator of these atrocities.

I make no comment on the contents of the documents; I merely point out that Keitel in his official position, had neither the authority nor the opportunity to give orders which resulted in the crimes alleged.

First of all I shall deal with the Documents USSR-90, 386, 364, 366, 106, 407, submitted by the Prosecution for the specific purpose of establishing Keitel's responsibility.

They will show that not in a single ease are they orders, decrees, or regulations issued by the German High Command of the Armed Forces and that it has not been proved that the latter was even informed thereof.

(1) The document Exhibit USSR-90 is a court-martial sentence against the German Generals Bernhardt and Hamann, and includes the following sentence:

"During the temporary occupation of the Orlova area ... German Fascist intruders committed bestial crimes in huge numbers against the peaceful populations and prisoners of war on direct orders of the rapacious Hitler Government and the command of the Armed Forces, thus violating the rules of warfare established by international law...."

The argumentation leading up to the verdict does not reveal proof of the claim that the "German Armed Forces command"-if this means the OKW and the Defendant Keitel-ordered the crimes with which the court-martial verdict is dealing. This is another of the frequent confusions as to the status of the High Command of the Army and the High Command of the Armed Forces. Statements on Page 2 of the verdict seem to indicate this; it is said there:

"The defendant, Lieutenant General Bernhardt... acted according to plans and instructions of the Commander-in-Chief of the Army..."

This document, therefore, cannot furnish proof for the Prosecution's contention that the Defendant Keitel is connected with the crime which is described in Document USSR-90.

(2) In connection with the facts in the case dealing with 'compulsory labor,' the Prosecution submitted in proof of its

charge against Keitel Document USSR-36, a letter by Reich Marshal Göring, in whom Hitler had vested general powers within the framework of the Four Year Plan for this essential project- Plan Barbarossa-Oldenburg-as shown in the Green File.

(3) Nor does the report or discussion of the Economic Staff East (Wirtschaftsstab Ost) of 7 November 1911 (USSR-386) touch upon the competency and responsibility of OKW, because the Economic Staff East had nothing to do with the OKW and the Defendant Keitel.

This is also proved by the Green File, the Thomas Document 2353-PS, and Keitel's affidavit, Keitel Document Book 2, Exhibit Number Keitel-II.

The conclusion drawn by the Soviet Russian Prosecution that ``Proof is established of the OKW commander having been primarily responsible for the mobilization of labor in the Reich,, is erroneous, if the argument is to establish responsibility on the part of the Defendant Keitel. If, on the other hand, reference as commander of the OKW is made to Hitler, this cannot be contradicted.

(4) Document USSR-364 is a document from the OKH (High Command of the Army), signed by the Quartermaster General of the Army, Wagner. It can be seen from the distribution of the document that the OKW was not even informed through the usual channels.

(5) Document USSR-366 mentions the name of the defendant as having complained because: ``OT (Organization Todt) units operating in the vicinity of Lvov paid local laborers a daily wage of 25 rubles and because OF availed itself of the services of local factories."`

The Prosecution's argument runs that "Keitel writes to Minister Todt. . ." The document which was submitted does not reveal this, because it does not make any mention of such a letter. Inasmuch as the entire economic administration and the exploitation of the Eastern Territories had been transferred to the Four Year Plan, OKW had no relevant office problem.

This becomes evident from the Green File just referred to, and from the Fuehrer order for the "Barbarossa-Oldenburg Plan." Presumably, after discussion of the basic question during the conference on the situation, Keitel once again received orders from Hitler to get into touch with Reich Minister Todt. This would then be one of the instances where the defendant merely served as an instrument for the transmission of a Hitler order to the competent office without the matter being in any way within the competency of the OKW. In any case, the information conveyed by the document does not show in how far this problem should be a charge on Keitel.

(6) Document USSR-106 is a Fuehrer Order of 8 September 1942, dealing with the employment of prisoners of war and the construction of field fortifications behind the front. The heading of the Fuehrer order reads:

"The Fuehrer.

"OKH. General Staff of the Army Operations Section 1."

The order was signed by the Army General Staff and issued by Halder. This proves conclusively that the Defendant Keitel or the OKW was not involved.

(7) Nor is it possible to refer to Document USSR-407 for the establishment of the defendant's participation. This

document deals with the order given by a local commander, who refers to alleged OKW instructions.

It has already been emphasized on several occasions that the OKW does not mean Keitel. It may however be quite possible, as no date of the alleged OEW order is mentioned in Document USSR-407, that this is one of the numerous cases of confusion, especially since even in Armed Forces circles the exact conception of the OKW was not known.

In any case the conclusion by the Soviet Russian Prosecution, after submission of this document, that "OKW and Keitel have not only ordered the mobilization of labor from the occupied part of Russia, but have worked directly in the execution of this order" is incorrect and has not been proved.

Now there is still a category of documentary evidence which contains official communiqués of the Extraordinary Commission for the determination and investigation of War Crimes and Crimes against Humanity. I already some time ago dealt with the importance of official documents in the presentation of evidence, and pointed out their limited value as evidence.

If in this connection I discuss the official reports of the investigating commissions, then I do so because ostensibly they have been presented in order to incriminate Keitel, while in actual fact they furnish proof that the accusations against Keitel and the OKW Staff are not based on any reasoning in these very weighty Prosecution charges.

From the large number of documents concerning this I would refer to the following:

Document USSR-4 has been submitted to show that the Soviet-Russian population was exterminated through intentional infection with typhus, and that this was a case of a planned spreading of typhus-epidemics among the Soviet population. For this the following, among others, are named as the culprits (Page 10 of the document), "The Hitler Government and the Supreme Command of the Armed Forces."

Once again it cannot be seen from the document itself on what concrete facts the commission supports the guilt of the "Supreme Command of the German Armed Forces" and what military agency is thereby described. There is no mention made of an order of the "Supreme Command of the German Armed Forces" in any part of this lengthy document. However, since the Prosecution have presented this document as proof of the guilt of the Defendant Keitel and the OKW, I establish that this document cannot be valid as evidence for an accusation against Keitel in this horrible charge.

Document USSR-9 bears the heading:

"Report of the Extraordinary State Commission for the determination and investigation of the atrocities of the Fascist German invaders and the damage caused to citizens, collective organizations, State plants and institutions of the Soviet Union.

"Regarding the demolitions and bestialities which the German Fascist invaders have committed in Kiev."

On Page 4 it is stated: By order of the German High Command German Army units looted, blew up, and destroyed the old cultural monument, the Lavra of Kiev. The

following are described as responsible: "The German Government and the German High Command and all officers and officials listed by name." From the speech of the representative of the Prosecution and from the term, "the German Government and the German High Command" it can be seen that the High Command of the Armed Forces and Keitel are to be accused as having been responsible. This document lacks any positive statement on which the Investigating Commission supports this judgment.

It is also shown here that the judgment of the investigating commission- in any ease with reference to the Defendant Keitel-is not basically supported.

Document USSR-35 is a report "regarding the material damage which the Fascist German invaders inflicted on State plants and institutions, collective industries, and citizens of the Soviet Union."

This document states:

``The German armies and occupation authorities which earned out the directives of the criminal Hitler Government and the High Command of the Armed Forces, destroyed and looted the Soviet cities occupied by them"

To this it must be stated:

(1) The contents of this document do not show one single concrete "directive" issued by the OKW or Keitel.

(2) The OKW had no authority to give orders, and therefore could not issue directives.

(3) Therefore the findings of the State investigation commission, which for formal reasons would not be binding for the Tribunal, cannot be considered as justified insofar as the OKW and Keitel are concerned.

(4) No opinion is going to be expressed as to the remaining contents of the reports.

Document USSR-38 is entitled:

"Communication of the Extraordinary State Commission for the Determination and Investigation of the Atrocities of the Fascist German invaders and their Accomplices. Regarding atrocities of the Fascist German invaders in the city of Minsk."

In this document it is stated on Page 1:

``Following instructions, which were issued directly by the German Government, the Hitlerite military authorities destroyed without any limitation scientific research institutes, et cetera... they exterminated thousands of peace-loving Soviet citizens and also prisoners of war."

Page 13 states:

"Responsible for the crimes committed by the Germans at Minsk... are the Hitler Government and the High Command of the Armed Forces."

Nowhere in this document have either concrete or verifiable instructions or orders by the Defendant Keitel or from the OKW been given.

Then, on Page 134, Paragraph 1:

In the documents previously quoted, either Keitel or the OKW is named as the responsible party. However, during the Prosecution's presentation many such official reports were quoted as evidence for Keitel's guilt, which do not even mention either the name of the defendant or the OKW. In this connection, I draw your attention to Documents USSR-8, 39, 45, 46, and 63. I only ask the Tribunal to examine the remaining documents with equal care in order to ascertain

whether, if submitted in connection with Keitel and the OKW, they allow Keitel's guilt whether that is not the case. In this connection I should like to add that I am not going to read, and am not referring to, the remarks at the bottom of Page 134 (USSR-3).

I beg the Tribunal to take note of my statements on the economic exploitation of the occupied territories-Pages 137 to 142- without my reading them. Since Reich Marshal Goering's defense counsel has already dealt with this problem and has clarified the spheres of competency and responsibility, it would mainly be repetition for me to speak on it. However, I wish to draw attention to this part of my presentation and beg the Tribunal to take judicial notice of it.

In the war against Poland as well as later in the West, extended on the basis of experiences in Poland, expert personnel trained in military economy were detached from the Armed Forces Economic Office in the form of small staffs and units to the Army Groups and Army High Commands as expert advisers and assistants in all military economic questions which resulted from the conquest and occupation of economically and industrially valuable territories. The Economic Armament Office, together with the OKW, prepared the organization of these groups of experts and technical detachments.

By and large, they consisted of: (a) Expert advisers with the unit staffs (at first known as liaison officers of the OKH Economic Armament Office); (b) Reconnaissance Staffs for factories and raw materials important to war economy; (e) technical detachments and formations for security, repairs,

and protection from destruction of essential and vital plants and supply installations.

This organization was prepared by the OKW (Economic Armament Office) because it relied on expert research personnel from all three branches of the Armed Forces and civilian economy with the 'technical emergency aid', (Technische Nothilfe). The Army completed the set-up itself.

The organization was subordinated to the senior troop commanders in charge. Their employment took place exclusively on the orders of the troop command, for which each adviser submitted suggestions from time to time to the unit staffs (the General Staff Ib or the Chief Quartermaster).

The missions of these technical detachments were: (a) Advising the command concerning the importance and significance of industrial plants and supply installations (fuel, water, electric current, repair plants, mines, et cetera); (b) Protection of these installations from destruction by the enemy and our own forces and the civilian population; (c) Utilization for the purpose of Germany's conduct of the war for troops and population, (d) Examination of essential and vital plants and establishment of their productive capacity for German use; (e) Establishment of raw material supplies of metals, ore, coal, fuel, et cetera, for reindustrialization of Germany's conduct of the war.

All functions, with the exception of those mentioned under (d) and (e), served exclusively to supply the fighting troops, the occupational troops, and the native population. The statistical collections (d) and (e) were reported through military channels to the competent offices at home (Plenipotentiary for Economy, Four Year Plan, Minister of