INTERNATIONAL MILITARY TRIBUNAL

THE NUREMBERG TRIALS (VOLUME 2)

International Military Tribunal

The Nuremberg Trials (Volume 2)

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INTERNATIONAL MILITARY TRIBUNAL

THE UNITED STATES OF AMERICA, THE FRENCH REPUBLIC, THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND, and THE UNION OF SOVIET SOCIALIST REPUBLICS

— against —

HERMANN WILHELM GÖRING, RUDOLF HESS, JOACHIM VON RIBBENTROP, ROBERT LEY, WILHELM KEITEL, ERNST KALTENBRUNNER, ALFRED ROSENBERG, HANS FRANK, WILHELM FRICK, JULIUS STREICHER, WALTER FUNK, HJALMAR SCHACHT, GUSTAV KRUPP VON BOHLEN UND HALBACH, KARL DÖNITZ, ERICH RAEDER, BALDUR VON SCHIRACH, FRITZ SAUCKEL, ALFRED JODL, MARTIN BORMANN, FRANZ VON PAPEN, ARTHUR SEYSS-INQUART, ALBERT SPEER, CONSTANTIN VON NEURATH, and HANS FRITZSCHE, Individually and as Members of Any of the Following Groups or Organizations to which They Respectively Belonged, Namely: DIE REICHSREGIERUNG (REICH CABINET); DAS KORPS DER POLITISCHEN LEITER DER NATIONALSOZIALISTISCHEN DEUTSCHEN ARBEITERPARTEI (LEADERSHIP CORPS OF THE NAZI PARTY); DIE SCHUTZSTAFFELN DER NATIONALSOZIALISTISCHEN DEUTSCHEN ARBEITERPARTEI (commonly known as the “SS”) and including DER SICHERHEITSDIENST (commonly

known as the “SD”); DIE GEHEIME STAATSPOLIZEI (SECRET STATE POLICE, commonly known as the “GESTAPO”); DIE STURMABTEILUNGEN DER NSDAP (commonly known as the “SA”); and the GENERAL STAFF and HIGH COMMAND of the GERMAN ARMED FORCES, all as defined in Appendix B of the Indictment,

Defendants.

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.

PRELIMINARY HEARING

Wednesday, 14 November 1945

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THE PRESIDENT (Lord Justice Lawrence): Is Counsel for Gustav Krupp von Bohlen in Court?

DR. THEODOR KLEFISCH (Counsel for Defendant Krupp von Bohlen): Yes.

THE PRESIDENT: Do you wish to make your motion now?

DR. KLEFISCH: Yes.

THE PRESIDENT: Will you make your motion?

DR. KLEFISCH: Mr. President, gentlemen: As defense counsel for Krupp von Bohlen und Halbach, I repeat the request which has already been made in writing, to suspend the proceedings against this defendant, at any rate, not to carry out the Trial against this defendant. I leave it to this High Court to decide whether it should suspend proceedings against Krupp for the time being or altogether.

According to the opinion of the specialists, who were appointed by this Court for the investigation of the illness of Krupp, Krupp von Bohlen und Halbach is not able, on account of his serious illness, to appear at this Trial without danger to his life. Their opinion is that he is suffering from an organic disturbance of the brain and that mental decline makes the defendant incapable of reacting normally to his surroundings.

From that it follows that Krupp is not capable of informing his defense. Furthermore, the report states that the deterioration of his physical and mental powers has already been going on for several years and that since Krupp was involved in an auto accident on 4 December 1944, he can only speak a few disconnected words now and again, and during the last two months has not even been able to recognize his relatives and friends. On the basis of these facts one can only establish that Krupp has no knowledge of the serving of the Indictment of 19 October. Thus he does not know that he is accused and why.

The question now arises whether, in spite of this permanent inability to appear for trial, in spite of this inability to inform his defense, and in spite of his not knowing of the Indictment and its contents, Krupp can be tried in absentia. Article 12 of the Charter gives the right to the Tribunal to take proceedings against people who are absent, under two conditions: First, if the accused cannot be found; second, if the Tribunal, for other reasons, thinks it is necessary in the interests of justice, to try him *in absentia*. Since the first condition, impossibility of finding the defendant, is immediately eliminated, it must be examined whether the second condition can be applied, that is, whether it is necessary, in the interests of justice, to try Krupp.

The Defense is of the opinion that justice does not demand a trial against Krupp *in absentia*, that this would even be contrary to justice. I want to quote the following reasons: The decision on this question must come from the concept of justice in the sense of Article 12 of the Charter.

We must take into account here that the 12th Article is purely a regulation concerning procedure. The question arises, however, whether the Trial against Krupp in his absence would be a just procedure. In my opinion, a just procedure is only then given if it is, as a whole or in its particular regulations, fashioned in such a way that an equitable judgment is guaranteed. That is a judgment whereby the convicted defendant will be punished accordingly and the innocent exonerated from guilt and punishment.

Is it possible that a just judgment can be guaranteed if a defendant is tried *in absentia*, who through no fault of his own, cannot appear and defend himself, who cannot inform his defense counsel, and who does not even know that he is accused and for what reason? To ask this question is to deny it. Even the regulations of the Charter concerning the rights of the defendant in the preliminary procedure and in the main Trial, oblige us to answer this question with “no”.

The following regulations are applicable here:

According to Article 16 (a), the accused shall receive a copy of the Indictment before the Trial.

According to Article 16 (b), the defendant in the preliminary procedure, and in the main Trial, has the right to declare his own position in the face of each accusation.

According to Article 16 (c), a preliminary interrogation of the defendant should take place.

According to Article 16 (d), the defendant shall decide whether he wishes to defend himself or to have somebody else defend him.

According to Article 16 (e), the defendant has the right to submit evidence himself and to cross-examine each witness.

The Defendant Krupp could not make use of any of these rights.

According to Article 24 the same also applies to the special rights, which have been accorded the defendants for the main Trial: The defendant should declare his position in the main Trial, that is, whether he pleads guilty or not.

In my opinion, this is a declaration which is extremely significant for the course of the Trial and of the decision, and the defendant can only do this in persona. I do not know whether it is admissible that Defense Counsel may make this declaration of “guilty” or “not guilty” for the defendant, and even if this were admissible, Defense Counsel would not be able to make this declaration because he had no opportunity to come to any understanding with the defendant.

Finally, the accused, who is not present, cannot exercise his right of a final plea.

The Charter, which has decreed so many and such decisive regulations for the rights of the defendant, thereby recognizes that the personal exercise of these rights which were granted to the accused is an important source of knowledge for the finding of an equitable judgment, and that a trial against such a defendant, who is incapable of exercising these rights through no fault of his own, cannot be recognized as a just procedure in the sense of Article 12.

I should like to go further, however, by saying that the procedure *in absentia* against Krupp, would be contrary to justice, not only according to the provisions of the Charter

but also according to the generally recognized principles of the law of procedure of civilized states.

So far as I am informed, no law of procedure of a continental state permits a court procedure against somebody who is absent, mentally deranged, and completely incapable of arguing his case. According to the German Law of Procedure, the trial must be postponed in such a case (Paragraph 205 of the German Code of Criminal Law). If prohibiting the trial of a defendant, who is incapable of being tried, is a generally recognized principle of procedure (*principe général de droit reconnu par des nations civilisées*) in the sense of Paragraph 38 (c) of the Statute of the International Court in The Hague, then a tribunal upon which the attention of the whole world is, and the attention of future generations will be directed, cannot ignore this prohibition.

The foreign press, which in the last days and weeks has repeatedly been concerned with the law of the Charter, almost unanimously stresses that the formal penal procedure must not deviate from the customs and regulations of a fair trial, as is customary in civilized countries; but it does not object, as far as the penal code is concerned, to a departure from the principles recognized heretofore, because justice and high political considerations demand the establishment of a new international criminal code with retroactive effect in order to be able to punish war criminals.

I wish to add another point here, which may be important for the decision on the question discussed. This High Court would naturally not be able to acquire an impression of the

personality of Krupp, an impression which in such an extraordinarily significant trial is a valuable means of perception, which cannot be underestimated for the judgment of the incriminating evidence. If, in the Charter, trial *in absentia* is permitted on principle against defendants who cannot be located, then corresponding laws of procedure of all states, and even of the German Code of Criminal Procedure agree to that.

A defendant who has escaped is absolutely different from a defendant who cannot argue his case, because in contrast to the latter, he has the possibility of appearing in court and thus, of defending himself. If he deliberately avoids this possibility, then he arbitrarily makes himself responsible for the disadvantages and dangers entailed by his absence. In this case, naturally, there would be no question of an unjust trial.

The view has been expressed in recent days and weeks that world opinion demands a trial against the Defendant Krupp under all circumstances, and even *in absentia*, because Krupp is the owner of the greatest German armament works and also one of the principal war criminals. So far as this demand of world opinion is based on the assumption that Krupp is one of the principal war criminals, it must be replied that this accusation is as yet only a thesis of the Prosecution, which must first be proved in the Trial.

The essential thing, however, in my opinion, is that it is not important whether world opinion or, perhaps, to use an expression forged in the Nazi work-shop, “the healthy instincts of the people,” or even political considerations play a part in the decision of this question, but that the question

(Article 12) must be decided uniquely from the point of view of whether justice demands the trial against Krupp. I do not want to deny that the cries of justice may be the same as the cries echoing world opinion. However, the demands of world opinion and the demands of justice may be in contradiction to each other.

In the present case, however, a contradiction between the demands of world opinion for a trial against Krupp *in absentia* and the demands of justice exists because, as I just related, it would violate the recognized principles of the legal procedures of all states and especially Article 12 of the Charter, to try a mentally deranged man who cannot defend himself in a trial in which everything is at stake for the defendant,—his honor, his existence, and above all, the question of whether he belongs to the accursed circle of the arch-war criminals who brought such frightful misery to humanity and to their own Fatherland. I do not even wish, however, to put the disadvantages and dangers for the man and the interests of the defendant into the foreground. Much more significant are the dangers and disadvantages of such an unusual procedure for basic justice, because the procedure against such a defendant, who is unfit for trial due to his total inability to conduct his defense properly, cannot guarantee a just and right decision. This danger for basic justice, must, in my opinion, be avoided by a court of such unequalled world historical importance, which has assumed the noble and holy task, by punishment of the war criminals, of preventing the repetition of such a horrible war as the second World War and of opening the gates to permanent peace for all peoples of the earth.

THE PRESIDENT: Mr. Justice Jackson, do you oppose the motion?

MR. JUSTICE ROBERT H. JACKSON (Chief of Counsel for the United States): Appearing in opposition to this motion, I should, perhaps, first file with the Tribunal my commission from President Truman to represent the United States in this proceeding. I will exhibit the original commission and hand a photostat to the Secretary.

I also speak in opposition to this motion on behalf of the Soviet Union and with the concurrence of the French Delegation which is present. I fully appreciate the difficulties which have been presented to this Tribunal in a very loyal fashion by the distinguished representative of the German legal profession who has appeared to protect the interests of Krupp, and nothing that I say in opposing this motion is to imply any criticism of Counsel for Krupp who is endeavoring to protect the interest of his client, as it is his duty to do, but he has a client whose interests are very clear.

We represent three nations of the earth, one of which has been invaded three times with Krupp armaments, one of which has suffered in this war in the East as no people have ever suffered under the impact of war, and one of which has twice crossed the Atlantic to put at rest controversies insofar as its contribution could do so, which were stirred by German militarism. The channel by which this Tribunal is to interpret the Charter in reference to this matter is the interest of justice, and it cannot ignore the interests that are engaged in the Prosecution any more than it should ignore the interests of Krupp.

Of course, trial *in absentia* has great disadvantages. It would not comply with the constitutional standard for citizens of the United States in prosecutions conducted in our country. It presents grave difficulties to counsel under the circumstances of this case. Yet, in framing the Charter, we had to take into account that all manner of avoidances of trial would be in the interests of the defendants, and therefore, the Charter authorized trial *in absentia* when in the interests of justice, leaving this broad generality as the only guide to the Court's discretion.

I do not suggest that Counsel has overstated his difficulties, but the Court should not overlook the fact that of all the defendants at this Bar, Krupp is unquestionably in the best position, from the point of view of resources and assistance, to be defended. The sources of evidence are not secret. The great Krupp organization is the source of most of the evidence that we have against him and would be the source of any justification. When all has been said that can be said, trial *in absentia* still remains a difficult and an unsatisfactory method of trial, but the question is whether it is so unsatisfactory that the interests of these nations in arraigning before your Bar the armament and munitions industry through its most eminent and persistent representative should be defeated. In a written answer, with which I assume the members of the Tribunal are familiar, the United States has set forth the history of the background of the Defendant Krupp, which indicates the nature of the public interest that pleads for a hearing in this case.

I will not repeat what is contained beyond summarizing that for over 130 years the Krupp enterprise has flourished by furnishing the German military machine its implements of war. During the interval between the two world wars, the present defendant, Krupp von Bohlen und Halbach, was the responsible manager, and during that time his son, his eldest son, Alfried, was initiated into the business in the expectation that he would carry on this tradition. The activities were not confined to filling orders by the Government. The activities included the active participation in the incitement to war, the active breaking up through Germany's withdrawal of a disarmament conference and the League of Nations; the active political campaigning in support of the Nazi program of aggression in its entirety.

It was not without profit to the Krupp enterprises, and we have recited the spectacular rise of its profits through aiding to prepare Germany for aggressive war. So outstanding were these services that this enterprise was made an exception to the nationalization policy and was perpetuated by Nazi decrees as a family enterprise in the hands of the eldest son, Alfried.

Now it seems to us that in a trial in which we seek to establish the principle juridically, as it has been established by treaties, conventions, and international custom, that the incitement of an aggressive war is a crime, it would be unbelievable that the enterprise which I have outlined to you should be omitted from consideration.

Three of the prosecuting nations ask the permission of this Tribunal immediately to file an amendment to the Indictment, which will add the name of Alfried Krupp von

Bohlen und Halbach at each point in the Indictment after the name of Gustav Krupp von Bohlen, and that the Tribunal make immediate service of the Indictment on son Alfried, now reported to be in the hands of the British Army of the Rhine.

I have to face the problem whether this will cause delay. All of the nations at your Bar deplore delay. None deplore it more than I, who have long been active in this task, but if the task in which we are engaged is worth doing at all, it is worth doing well; and I do not see how we can justify the placing of our convenience or a response to an uninformed demand for haste ahead of doing this task thoroughly. I know there is impatience to be on with the trial, but I venture to say that very few litigations in the United States involving one plaintiff and one defendant under local transactions in a regularly established court come to trial in 8 months after the event, and 8 months ago the German Army was in possession of this room and in possession of the evidence that we have now. So we make no apology for the time that has been taken in getting together a case which covers a continent, a decade of time, and the affairs of most of the nations of the earth.

We do not think the addition of Alfried Krupp need delay this Trial by the usual allowance of time to the defendant. The work already done on behalf of Krupp von Bohlen would no doubt be available to Alfried. The organization Krupp is the source of the documents and of most of the evidence on which the Defense will depend. If this request of the United States of America, the Soviet Union, and the French Republic is granted, and Alfried Krupp is joined, we would then have

no Objection to the dismissal, which is the real substance of the motion, of the elder Krupp, whose condition doubtless precludes his being brought to trial in person.

THE PRESIDENT: Mr. Justice Jackson, may I draw your attention to Page 5 of the written statement of the United States? At the bottom of Page 5 you say, “the prosecutors representing the Soviet Union, the French Republic, and the United Kingdom unanimously oppose inclusion of Alfried Krupp”, and then you go on to say on the fourth line of Page 6, “immediately upon service of the Indictment, learning the serious condition of Krupp, the United States again called a meeting of prosecutors and proposed an amendment to include Alfried Krupp. Again the proposal of the United States was defeated by a vote of three to one.” Are you now telling the Tribunal that there has been another meeting at which the prosecutors have reversed their two previous decisions?

MR. JUSTICE JACKSON: Your Honor, I understand the French Delegation has filed a statement with the Secretary of the Tribunal, which joins in the position of the United States. I have just been called, on behalf of the Soviet Prosecutor, General Rudenko, who is now in Moscow, to advise us that the Soviet Delegation now joins, and I was this morning authorized to speak in their behalf. Both those delegations desire to reduce, as, of course, do we, any possible delay to a minimum.

I may say that the disagreement at the outset over the inclusion of Alfried was due not to any difference of opinion as to whether this industry should be represented in this Trial, but it was not understood that the condition of the

elder Krupp was such as would preclude his trial. It was believed that it was. . . .

THE PRESIDENT: Mr. Justice Jackson, forgive my interrupting you, but the words that I have just read show that the condition of Krupp was comprehended at the time. The words are: “Immediately upon service of the Indictment, learning of the serious condition of Krupp, the United States again called a meeting of Prosecutors, and again the proposal of the United States was defeated by a vote of three to one.”

MR. JUSTICE JACKSON: Your Honor is referring to the meeting which was held after the Indictment had been served. I am referring to the original framing of the Indictment, so we are speaking of two different points of time.

THE PRESIDENT: I see.

MR. JUSTICE JACKSON: It was felt that it would be very difficult to manage a trial which included too many defendants, and that inasmuch as Gustav Krupp von Bohlen was in, it was unnecessary to have others. When the Indictment was served, the information came to us of his condition, and we called the meeting. It was not then anticipated with certainty that the Trial could not proceed. His condition was then, we knew, serious, but the extent of it was not known to us as definitely as it is now; and it was felt by the other three prosecuting nations at that time that it would not be necessary to make this substitution.

In the light of what has now happened, both the Soviet Union and the French Republic join in the position of the United States.

THE PRESIDENT: Then may I ask you how long [a] delay you suggest should be given, if your motion for the addition of Alfried Krupp were granted?

MR. JUSTICE JACKSON: Of course I hesitate to say what might be reasonable from the point of view of the defendants, but it would seem to me that in the first place, he might be willing to step into his father's place without delay; but in any case that the delay should not postpone the commencement of this trial beyond the 2d day of December, which I think is Monday, which would enable him, it seems to me, with the work that has been done, to prepare adequately, and would enable us to serve immediately. If permission is granted, we can immediately make the service; and, of course, they have already had full information of the charges, and access to the documents.

THE PRESIDENT: Is he not entitled under the Charter and the rules of procedure to 30 days from the service of the Indictment upon him?

MR. JUSTICE JACKSON: I think the Charter makes no such requirement, and I understand that the rules of the Court are within the control of the Court itself.

THE PRESIDENT: Would you suggest that he should be given less time than the other defendants?

MR. JUSTICE JACKSON: I have no hesitation in sponsoring that suggestion, for the reason that the work that has already been done presumably would be available to him; and as I have suggested, of all the defendants, the Krupp family is in the best position to defend, from the point of view of resources, from the point of view of the reach of

their organization; and, I am sure you will agree, they are not at all handicapped in the ability of counsel.

THE PRESIDENT: I have one last question to put to you: Can it be in the interest of justice to find a man guilty, who, owing to illness, is unable to make his defense properly?

MR. JUSTICE JACKSON: Assuming the hypothesis that Your Honor states, I should have no hesitation in saying that it would not be in the interests of justice to find a man guilty who cannot properly be defended. I do not think it follows that the character of charges that we have made in this case against Krupp, Gustav Krupp von Bohlen, cannot be properly tried *in absentia*. That is an arguable question; but it can be assumed that all of the acts which we charge him with are either documentary, or they were public acts. We are not charging him with the sort of thing for which one resorts to private sources. The one serious thing that seems to me, is that he would not be able to take the stand himself in his defense, and I am not altogether sure that he would want to do that, even if he were present.

THE PRESIDENT: But you have stated, have you not, and you would agree, that according to the Municipal Law of the United States of America, a man in the physical and mental condition of Krupp could not be tried.

MR. JUSTICE JACKSON: I think that would be true in most of the jurisdictions.

THE PRESIDENT: Thank you.

Mr. Attorney General.

SIR HARTLEY SHAWCROSS (Chief Prosecutor for the United Kingdom): May it please you, Mr. President: The matters which I desire to submit to the Tribunal can be

shortly stated, and first amongst them I should say this: There is no kind of difference of principle between myself and my colleagues, representing the other three prosecution Powers, none whatsoever. Our difference is as to method and as to procedure. In the view of the British Government, this Trial has been enough delayed, and matters ought now to proceed without further postponement.

Before I say anything in regard to the application which is before the Tribunal, on behalf of Gustav Krupp von Bohlen, may I say just one word about our position in regard to industrialists generally. Representing, as I do, the present British Government, it may be safely assumed by the Tribunal that I am certainly not less anxious than the representatives of any other state the part played by industrialists in the preparation and conduct of the war should be fully exposed to the Tribunal and to the world. That will be done, and that will be done in the course of this Trial, whether Gustav Krupp von Bohlen or Alfried Krupp are parties to the proceedings or not. The defendants who are at present before the Tribunal, are indicted for conspiring not only with each other, but with divers other persons; and if it should be the decision of the Tribunal that Gustav Krupp von Bohlen should be dismissed from the present proceedings, the evidence as to the part which he, his firm, his associates, and other industrialists played in the preparation and conduct of the war, would still be given to this Tribunal, as forming part of the general conspiracy in which these defendants were involved with divers other persons, not now before the Court.

Now, then, in regard to the application which is before the Court on behalf of Gustav Krupp von Bohlen, the matter is, as it seems to me, entirely one for the Tribunal; and I would only wish to say this about it: It is an application which, in my submission, must be treated on its own merits. This is a court of justice, not a game in which you can play a substitute, if one member of a team falls sick. If this defendant is unfit to stand his trial before this Tribunal, and whether he is fit or unfit is a matter for the Tribunal, he will be none the less unfit because the Tribunal decides not to join some other person, not at present a party to the proceedings.

There is provision under the Charter for trial *in absentia*. I do not wish to add anything which has been said in regard to that aspect of the matter by my friend, Mr. Justice Jackson, but I ask the Tribunal to deal with the application, made on behalf of Gustav Krupp von Bohlen, quite independently of any considerations as to the joinder of some other person, considerations which, in my submission, are relevant to that application. There is, however, before the Tribunal, an independent application to permit the joinder of a new defendant at this late state. I think I should perhaps say this: That as you, Mr. President, pointed out, at the last meeting of the Chief Prosecutors, at which this possibility was discussed, not for the first time, the representatives of the Provisional Government of France and of the Soviet Government were, like ourselves, as representing the British Government, opposed to the addition of any defendant involving any delay in the commencement of these proceedings. I take no technical

point upon that at all. I am content that you should deal with the matter now, as if the Chief Prosecutors had had a further meeting, and as a committee, in the way that they are required to act under the Charter, had by majority decided to make this application. I mention the matter only to explain the position in which I find myself, as the representative of the British Government, in regard to it. At the last meeting of Chief Prosecutors, there was agreement with the British view. The representatives of the other two States, as they were quite entitled to do, have since that meeting come to a different conclusion. Well, now, Sir, so far as that application is concerned, I would say only this: The case against the existing defendants, whether Gustav Krupp von Bohlen is included amongst them or not, can be fully established without the joinder of any additional person, whoever he might be. The general part played by the industrialists can be fully established without the joinder of any particular industrialist, whoever he might be. That case will indeed be developed, and will be made clear in the course of this Trial. That is not to say that Alfried Krupp should not be brought to justice. There is provision under the Charter for the holding of further trials, and it may be according to the result of the present proceedings, that hereafter other proceedings ought to be taken, possibly against Alfried Krupp, possibly against other industrialists, possibly against other people as well. At present, we are concerned with the existing defendants. For our part, the case against them has been ready for some time, and it can be shortly and succinctly stated; and in my submission to the Tribunal, the interests of justice demand, and world

opinion expects, that these men should be put upon their defense without further delay.

And I respectfully remind the Tribunal of what was said at the opening session in Berlin by General Nikitchenko, in these terms:

“The individual defendants in custody will be notified that they must be ready for trial within 30 days after the service of the Indictment upon them. Promptly thereafter, the Tribunal shall fix and announce the date of the Trial in Nuremberg, to take place not less than 30 days after the service of the Indictment; and the defendants shall be advised of such date as soon as it is fixed.”

And then these words:

“It must be understood that the Tribunal, which is directed by the Charter to secure an expeditious hearing of the issues raised by the charges will not permit any delay, either in the preparation of the defense, or of the Trial.”

Of course, if it happened that Alfried Krupp were prepared to step into his father’s shoes in this matter, without any delay in the proceedings, the British Prosecutors would welcome that procedure, but if his joinder involves any further delay in the Trial of the existing defendants, we are opposed to it.

THE PRESIDENT: May I ask you: Do you agree that according to the Municipal Law of Great Britain, in the same way that I understood it to be the law of the United States of America, a man in the mental and physical condition of Gustav Krupp could not be tried?

SIR HARTLEY SHAWCROSS: I do, Sir. I take the same view, if I may say so, with respect, as Mr. Justice Jackson took upon the question you addressed to him.

THE PRESIDENT: And in such circumstances, the prosecution against him would not be dismissed, but he would be detained during the pleasure of the sovereign power concerned.

SIR HARTLEY SHAWCROSS: Yes, Sir.

THE PRESIDENT: That is one question that I wanted to put to you.

Do you then suggest that, in the present circumstances, Gustav Krupp ought to be tried in his absence, in view of the medical reports that we have before us?

SIR HARTLEY SHAWCROSS: Well, it is a matter which is entirely in the discretion of the Tribunal, and which I do not wish to press in any way; but as the evidence involving his firm will in any event be laid before the Tribunal, it might be convenient that he should be represented by counsel, and that the Tribunal, in arriving at its decision, should take account, as it necessarily would, of his then condition.

THE PRESIDENT: Is there any precedent for such a course as that, to hold that he could not be tried and found guilty or not guilty and yet to retain counsel to appear for him before the Tribunal?

SIR HARTLEY SHAWCROSS: No, Sir, I was not suggesting that he should not be treated as being an existing defendant before the Tribunal and held guilty or not. I was dealing with the subsequent course which the Tribunal might adopt in regard to him if they held him guilty of some or all of these offenses.

THE PRESIDENT: But I thought you agreed that according to, at any rate, Municipal Law, a man in his physical condition ought not be tried.

SIR HARTLEY SHAWCROSS: I am not agreed that according to English Municipal Law he could not be tried.

THE PRESIDENT: And that law is based upon the interests of justice?

SIR HARTLEY SHAWCROSS: Mr. President, I cannot dispute that, but our law of course contains no provision at all for trial *in absentia*. Express provision is made for such trials in the Charter constituting this Tribunal, provided that the Tribunal considers it in the interests of justice.

THE PRESIDENT: What exactly is it you are suggesting to us, that he should be tried in absence or that he should not be tried in absence?

SIR HARTLEY SHAWCROSS: Mr. President, we have suggested that advantage should be taken of the provision for trial *in absentia*, but as I said at the beginning, it is, as it appears to me, entirely a matter for the discretion of the Tribunal, not one in which I wish to press any particular view.

THE PRESIDENT: Does the Chief Prosecutor for the Soviet Union desire to speak? You were authorized, I think, Mr. Justice Jackson, to speak on behalf of the Chief Prosecutor of the Soviet Union.

MR. JUSTICE JACKSON: I was authorized to state that they take the same position as the United States. I don’t know that in answering their questions I would have always given the answers that they would have given. I understand, for example, that they do try cases *in absentia*, and I think their

position on that would be somewhat different from the position I have given.

THE PRESIDENT: This question I asked you, of course, was directed solely to the Municipal Law of the United States. Does the Chief Prosecutor of the Soviet Union wish to address the Tribunal?

COLONEL Y. V. POKROVSKY (Deputy Chief Prosecutor for the U.S.S.R.): No.

THE PRESIDENT: Then does the Chief Prosecutor for the French Republic wish to address the Tribunal?

M. CHARLES DUBOST (Deputy Chief Prosecutor for the French Republic): It would be easy to justify the position taken today by the French Delegation by merely reminding oneself that on numerous occasions the French Delegation has advocated the immediate preparation of a second trial in order that it might be possible to proceed with it as soon as the first trial was completed. We could in this way have prosecuted the German industrialists without any interruption. This point of view has never been adopted. We have rallied to the point of view of the United States as being the most expedient and most susceptible of giving complete satisfaction to French interests. We are anxious that Krupp the son should be tried. There are serious charges against him, and no one could possibly understand that there should be no representative in this trial of the greatest German industrial enterprise, as being one of the principal guilty parties in this war. We should have preferred that a second trial be made against the industrialists, but since this second trial is not to take place, we consider the presence of Alfried Krupp to be absolutely necessary.

THE PRESIDENT: What is the position, which you take up if the substitution of Alfried Krupp would necessarily lead to delay?

M. DUBOST: I beg your pardon, Mr. President, but I believe you have in your hand a second note which I submitted this morning to the Court after having received a telephone call from Paris.

THE PRESIDENT: I have in my hand a document of 13 November 1945, signed by you, I think.

M. DUBOST: That is right. There is, however, a supplementary note, which I submitted this morning, according to which I adopt the same viewpoint as that expressed by Mr. Justice Jackson. I was in fact able to find out between the document of last night and that of this morning the consequences that would be brought about. . . .

THE PRESIDENT: Perhaps the best course would be to read this document which has now been put before us.