

CASE No. 85

TRIAL OF DR. JOSEPH BUHLER
Staatssekretär and Deputy Governor-General

SUPREME NATIONAL TRIBUNAL OF POLAND
17TH JUNE—10TH JULY, 1948

Liability for War Crimes and Crimes against Humanity Committed by Enacting, and in Pursuance of Laws Issued by Belligerent Power for the Occupied Territory. Occupation Government as a Criminal Organisation.

A. OUTLINE OF THE PROCEEDINGS

1. THE ACCUSED

Before the outbreak of war the accused Dr. Joseph Buhler was a *Ministerialrat* and *Ministerialdirektor* of the Third Reich. After the occupation of Poland and her illegal and arbitrary division by Germany into two separate parts, *i.e.*, the Western Territory which was incorporated into Germany, and the central and southern territories of which the so-called General Government was formed under the governorship of Hans Frank, the accused had been transferred to the latter part of Poland and entrusted by Hitler with the highest functions in the German civil administration of the General Government. Throughout the German occupation the accused held there either successively or simultaneously one or more of the following positions : (a) Chief of the Office of the Governor-General (*Chef des Amtes des Generalgouverneurs*) ; (b) Secretary of State and Chief of the Government (*Staatssekretär und Leiter der Regierung des Generalgouvernements*) ; and (c) Deputy (*Stellvertreter*) to the Governor-General Hans Frank. The accused was also a member of the Nazi Party, although he did not hold in this organisation any of the leading positions.⁽¹⁾

⁽¹⁾ In accordance with the German-Soviet Pact of 28th September, 1939, the Republic of Poland was partitioned as follows :

Out of the entire territory of 150,486 square miles, with a population of 35,340,000, some 72,866 square miles, with a population of some 22,250,000 came under German occupation, and some 77,620 square miles, with a population of some 13,090,000 were taken over by Soviet Russia.

From the beginning, the German-occupied territories were divided into two parts almost equal in extent :

(a) The territories of Western Poland with some additions of Central and Southern Poland, which, in accordance with the Decree of 8th October, 1939, published in the *Reichsgesetzblatt*, but contrary to international law, were incorporated in the German Reich on 26th October, 1939 ;

(b) Of the remainder of the Central and Southern Poland, including the cities of Warsaw, Cracow and Lublin, the so-called Government General was created. This area was intended by the Germans to be a kind of protectorate. It was originally called the " Government General of the Occupied Polish Areas " (*General Gouvernement der besetzten polnischen Gebiete*). On 18th August, 1940, however, this terminology was changed, and thenceforth the territory was called " General Gouvernement " or *General Gouvernement des Deutschen Reichs*.

2. THE CHARGES

It was charged that throughout the period from 28th October, 1939, to 17th January, 1945, on the territory of Poland occupied by the German Reich, the accused :

(i) was a member of the occupation government (the German civil administrations) of the General Government, which was a criminal organisation ;

(ii) acting on behalf of the German Government and of the Nazi Party, either on his own initiative or in pursuance of orders received from the German civil, military and party authorities, he committed war crimes and crimes against humanity, and in particular, that by planning, preparing, organising, abetting and helping in their execution he participated in the commission of the following crimes :

(a) individual and mass murders of the civilian population,

(b) torturing, ill-treating and persecuting of Polish civilians,

(c) systematic destruction of Polish cultural life and looting of Polish art treasures, germanisation, seizure of public property, and in economic exploitation of the country's resources, and of its inhabitants,

(d) in systematically depriving Polish citizens of private property.

3. THE EVIDENCE AND FINDINGS OF THE TRIBUNAL

The Tribunal heard the oral testimony of 25 witnesses and of six experts in various branches of law and public administration, and read a large number of affidavits of other witnesses ; it further received a considerable number of exhibits put in by the Prosecution and containing some 140 volumes of documentary evidence, 11,000 typed pages of Hans Frank's memoirs, and 3,750 page collection of the German Official Gazette for the General Government.

The facts established by the Tribunal may be summarised under the following headings :

(i) *Nazi Policy Towards the " Government General "*

The general policy of Nazi Germany in regard to this part of Poland and its population was more or less similar to that set out for the territories incorporated into the Reich.⁽¹⁾ This policy was part and parcel of a plan directed at the establishment in the East of a German *Lebensraum*, a plan which in its final stage aimed at depriving these territories of its Polish element. The elimination of so many million people was, of course, not an easy task and, therefore, the plan had to be carried out in stages.

Already at the very outset of the German occupation of Poland, Hitler issued on 17th October, 1939, the following directives to his subordinates who had been entrusted by him with the implementation of that policy in the Government General :

(a) The economy and finance of these territories should not be reconstructed in any ordinary sense of the term ;

⁽¹⁾ See *Trial of Artur Greiser*, Case No. 74, pp. 96-99 of Vol. XIII.

(b) The Polish territories shall be organised as a military jumping-board of Germany ;

(c) All Poles and Jews deported from Germany and from the incorporated territories shall be concentrated in the Government General ;

(d) The Polish intelligentsia shall not be allowed to lead the Polish nation ;

(e) All foundations and nuclei of Polish national consolidation shall be destroyed ;

(f) The Poles should be forced down to the lowest standard of living and be allowed only the minimum necessary for the sustenance, so that they become a source of cheap labour for Germany ;

(g) No legal restrictions should impede this national struggle.

The implementation of these directives, very general as they were, was entrusted by Hitler to Dr. Hans Frank as Governor-General and to his deputy, the accused Dr. Joseph Buhler.

On 26th October, 1939, on the day of his installation to the office, Hans Frank issued a proclamation to "Polish men and women," of which the following passages may be quoted as illustrating the German policy set out above. He said :

" . . . In conformity with German interests and within the limits of those interests, the creation of the ' Government General ' marks the end of a historical episode, the responsibility for which entirely falls on the deluded clique of the Government of the *former State of 'Poland,'* and the hypocritical warmongers of Britain. The advance of the German troops has restored order in the Polish territories ; a new menace to European peace, provoked by the unjustified exactions of a State built upon the imposed peace of Versailles, *which will never revive,* has thus been eliminated for ever."⁽¹⁾

After some reference to the neighbourly relations between the Poles and the German nation, he further stated :

" *Liberated from the constraint exercised by the adventurous policy of your intellectual governing class,* you must do your best to fulfil *the duty of general labour* and you will fulfil it under the powerful protection of Greater Germany. All will earn their bread by working under an equitable rule, but *there will no longer be any room* for political instigators, shady profiteers and *Jewish exploiters* in the territory that is under German Sovereignty.

" Any attempt to oppose the promulgated laws and order in the Polish territories will be crushed with merciless severity by the powerful arms of Greater Germany."⁽¹⁾

(ii) *The German New Order*

The Government General was established by the Führer's decree of 12th October, 1939, which came into force on 26th October, 1939. The Governor General had the title of and actually was a Reich Minister and was responsible directly to the Führer. The headquarters of the government was in Cracow. According to the decree, Polish laws were to remain in force

⁽¹⁾ Italics introduced.

but only "in so far as they were not contrary to the taking over of the administration by the German Reich" (Art. 4). The Ministerial Council for Reich Defence, the Commissioner for the Four Year Plan and the Governor-General were empowered to legislate by decree (Art. 5). These and other Reich authorities were also empowered to issue laws required for the planning of the German living and economic space in respect of the territories subordinated to the Governor-General (Art. 6). The central power for these territories was the Reich Minister for the Interior, who had the authority to issue legal and administrative regulations necessary for the execution and supplementation of the decree (Art. 8).

Following the implementation of a decree issued by Frank on 26th October, 1939, and concerning the organisation of the administration of the Government-General, the office of the headquarters in Cracow was divided into six departments: chancellery, legislation, local administration, personnel, organisational matters, business, and fifteen divisions (finance, economy, interior, labour, agriculture and food, justice, enlightenment and propaganda, foreign exchange, education, health, building, forestry, post, railroads, and trustee property administration). In addition there were liaison offices for relations with the army and with the administration of the Four-Years Plan. The Chief of the Governor-General's office, and the High S.S. Commandant and Chief of Police were directly subordinate to the Governor-General and his deputy; the Commandant of the ordinary police and the Commandant of the security police having been in turn subordinated to the first mentioned. More or less similar administrative structure was built up in the offices of the district-governors.

By a decree promulgated on 1st December, 1940, the Office of the Governor-General assumed the name and functions of the Government of the General-Government, and consequently the Chief of the Governor-General's Office became Secretary of State of the Government-General. Both these functions were held in turn by the accused.

The Government-General was originally divided into four districts: Cracow, Warsaw, Radom, and Lublin; and after the occupation of Lwow in 1941 (up to which time it had been held by the Russians), an additional district was formed consisting of Lwow and Eastern Galicia. Each district was under a district-governor. The districts were divided into counties and municipalities, the administration of which was in the hands of mayors appointed by the Governor-General or the district-governors. Directly subordinate to the district-governors were the S.S. and Police Commandants.

On the basis of the regulations set out above and of the evidence put in before the Tribunal, the latter established that the administration of the Government-General was organised in accordance with the *Führerprinzip* and based on full co-operation and interdependence of the administrative and police authorities on all levels. It may be added that the Governor-General was at the same time head of the N.S.D.A.P. of the territory and that the great majority of higher German officials there were members of the Nazi Party. The Tribunal found also that this complex organisation of the German authority was being exercised only in the interests of the Reich and in complete disregard of the interests and rights of the local inhabitants, and was particularly directed at the extermination of the Polish and Jewish population.

The German policy and its implementation found also an expression in the legislative sphere and in the organisation of the administration of justice. As already indicated, apart from the central authorities of the Reich, the Governor-General had full authority to enact legislation and on his authorisation such powers had also been vested in the High S.S. Commandant and Chief of Police.

Frank's decrees⁽¹⁾ laid down that there were to be in the Government-General German and Polish Courts. The decree stated that the task of the German Courts was to deal with cases where attacks on the security and dignity of the German Reich and people, as well as on the life, health and property of German nationals were involved. This jurisdiction of the German Courts applied however not only to German nationals but to all other "persons" in so far as the latter were not already subject to German criminal jurisdiction of Special Courts. All cases were judged and proceeded with according to German law. There were of course some exceptions : a defending counsel was to be appointed only if it appeared expedient, and private prosecution was not admissible.

German Special Courts and Summary Police Courts were established by the decrees of 31st October and 15th December, 1939, in all districts, their jurisdiction insofar as the Poles were concerned having been defined in every type of cases by orders and regulations promulgated by the Governor-General. For example, they tried cases involving offences against the confiscation of private property or against the discriminating measures enforced against Jews, etc. In most cases these courts applied the penalty of death or of deporting to concentration camps ; they were part of the German machinery for extermination of people.

Polish criminal jurisdiction was allowed only insofar as the competence of German courts did not apply. Cases for trial before Polish courts were being allocated by a German prosecuting authority ; and final decisions of these courts could have been revised by German judges, who were empowered to cancel the decision and refer the case to a German court. The provisions of Polish law whereby the Polish courts were entitled to defer the execution of penalties involving loss of liberty, or fines, or to exercise mercy were made invalid.

The Polish courts were under direct supervision of the district-governors. The re-employed former Polish judges and clerks were obliged to make a written declaration to the effect that they will carry out their duties in administering the law in obedience to the German administration.⁽²⁾

Following the findings of the Tribunal, the considerable mass of orders and regulations enacted by the German authorities of the Government-General can be divided into several groups, according to the various groups of crimes for the commission of which these measures were intended to serve as a seemingly legal basis.

(1) Reference is made to : (a) Decree of 26th October, 1939, concerning the Organisation of the Administration of Justice in the Government General ; (b) Decree of 9th February, 1940, concerning German Jurisdiction in the Government General ; and (c) Decree of 19th February, 1940, concerning Polish Jurisdiction in the Government General.

(2) For other provisions of the criminal law enacted for the Government General, see Case No. 35, *The Justice Trial*, in Vol. VI of these Law Reports, pp. 10-14.

(a) Systematic Terrorism

Apart from the general powers vested in the High S.S. Commandant and Chief of Police and which were necessary to enforce order and security in the territory, most relevant in this connection was the order of 31st October, 1939, "concerning the combating of acts of violence," and the order of 2nd October, 1943, "concerning the combating of attempts against the German work of reconstruction."

These two measures coupled with the manner in which the Police Summary Courts were functioning, resulted in a great number of murders, tortures, ill-treatment, plunder, deportation, etc. The acts which came within the scope of these orders were punished only by death or deportation to concentration camps.⁽¹⁾

Of the other regulations which did not provide for the death penalty, but nevertheless were very severe and resulted in most cases in deportation to forced labour or concentration camps, were, for instance: the order of 3rd April, 1941, "concerning the eviction of Poles from flats and houses"; the order of 19th February, 1943, "concerning the curfew"; and the order of 18th October, 1943, "concerning the prohibition to use public transport by non-Germans."

(b) Slave Labour

In this respect the regulations of 26th and 31st October, 1939, and of 14th December, 1939, contained some characteristic provisions.

All Polish inhabitants between the ages of 18 and 60 were subject to compulsory public labour. The latter comprised, in particular, work in agriculture concerns, the building and maintenance of public buildings, the construction of roads, waterways and railways, the regulation of rivers and land work.

The regulations laid down that wages of persons subject to compulsory labour "shall be fixed at rates that may appear to be fair"; and that the welfare of such persons and their families, "shall be secured as far as possible."

The district-governors were entitled to regulate the conditions of labour by ordering tariffs, and were authorised to extend compulsory labour to juveniles between 14 and 18 years.

Compulsory labour was also introduced for all Jews domiciled in the Government-General, *i.e.*, including those who were deported into the territory from other European countries. The Jews were for this purpose formed into forced labour battalions.

At the same time special disciplinary measures were introduced for punishing without trial of all infractions; they provided even for the death penalty and deportation to penal camps.

(c) Extermination of Jews

Measures relating to this subject have already been presented in connection with another Polish trial reported upon in Volume VII.⁽²⁾

⁽¹⁾ For the presentation of crimes committed in concentration camps and ghettos see Case No. 37, *Trial of A. M. Goeth*, and Case No. 38, *Trial of R. F. F. Hoess*, in Vol. VII of this series.

⁽²⁾ See Case No. 38, *Trial of Amon M. Goeth*, Vol. VII, pp. 2-4.

(d) *Measures Against Polish Culture and Education*

Education had been completely reorganised. It was controlled by a special department of the Governor-General's office in Cracow and by corresponding sections created under the district-governors.

The officials of the school administration must have been Germans, although the educational councils could appoint Poles as school supervisors.

Only trade and professional schools had been re-established for Poles. This was in line with the general policy of preparing Polish youth for physical work and to develop technical skill in compliance with the general plan to use the Polish population mainly as a source of manpower. Polish curriculum had been substantially restricted.

All universities and schools of art were closed. Libraries, laboratories, and art galleries, as well as paintings belonging to private individuals, were seized and carried to Germany. Relevant in this latter connection was the decree of 16th December, 1939, concerning the sequestration of works of art.

Instead, in 1940, the Governor-General opened, at the premises of the closed university of Cracow, an Institute for German Work in the East (*Institut für Deutsche Ostarbeit*). Its main task was to do German research work in actual problems of the Government-General. The Governor-General stated in his opening speech that "the establishment of the Institute means the resumption of the historical mission that Germanism is to fulfil in this place" and the "restitution of all that which the Poles took away from the German spirit and German influence in this territory."

The regulations of 26th and 31st October, 1939, laid down that no newspapers and periodicals of any kind and no printing works could be set up without special licence. In consequence, the whole Polish press was eliminated, and only those papers were allowed which carried German propaganda.

By order of 23rd August, 1940, all Polish organisations and associations were disbanded and new ones prohibited.

(e) *Confiscation of Public and Private Property*

By the decree of 15th November, 1939, issued by Frank, the entire movable and immovable property of the "former Polish State" within the Government-General, together with all accessories, and including all claims, shares, rights and other interests was sequestrated. The seizure, administration and realisation of the sequestrated property was incumbent on the Department of Trustees (*Treuhandstelle*) in the office of the Governor-General. This department was entitled to demand information from anyone for the execution of the decree. Those who refused information or imparted it in a false, incorrect or incomplete manner were subject to imprisonment or an unlimited fine, or both. Trial was within the competence of Special Courts (*Sondergericht*).

On 24th January, 1940, Frank issued yet another decree which concerned sequestration of private property. While the analogous decree issued in the incorporated territories had as the chief reason for confiscations and sequestrations the "strengthening of Germanism,"⁽¹⁾ the decree issued by Frank

(1) See Case No. 74, *Trial of Artur Greiser*, Vol. XIII pp. 78-9.

stated that confiscation or sequestration could be ordered in connection with the carrying out of tasks "serving the public interest." For instance, private property could have been seized because it was "financially unremunerative" or "anti-social." Since the occupant had the right to define these and similar terms, he had likewise the opportunity to use the decree for purposes of war and political pressure. As sequestration of private property in the Government-General was a mass phenomenon, the administration of the property seized was also entrusted to the Treuhandstelle, which employed thousands of so-called trustees to manage the property. The decree provided that when the trustees took over, the rights of third parties in the sequestered property became suspended. On the other hand, the trustees could claim debts owed to the property by third parties.

By this decree, so-called abandoned property, *i.e.*, of people who left the country owing to the circumstances of war or had been deported, and of Jews, was also seized. As a weapon for political purposes, the director of the Trustee Administration was given the power to decide in each individual case whether compensation should be granted for losses arising from the implementation of the decree, although legal processes were precluded. This provision meant in effect that the interested person could always hope to get some compensation in consideration for services to the occupant.

Similar decrees were enacted in regard to the mining rights and mining shares (14th December, 1939), surrender and confiscation of wireless sets (15th December, 1939), and the sequestration of installations and equipment of the mineral oil industry (23rd January, 1940).

(f) *Economic Exploitation*

A clear illustration of the German economic policy in the Government-General is provided by a strictly confidential circular issued on 25th January, 1940, by Frank under the authority of Goering as Commissioner for the Four Year Plan. The object of this policy was to exploit to the utmost the resources and productive forces of the occupied country. But its aims extended far beyond the limits of the immediate benefit and material gain, and was designed to create a powerful war machine.

The general part of the circular's directives "for the execution of the task of systematically placing the economic power of the Government-General in the service of German war economy within the framework of the Four Year Plan" reads as follows :

" 1. In view of the present requirements of the Reich's war economy, no long term economic policy must, in principle, be carried on in the Government-General for the time being. On the contrary, the economy of the Government-General must be so directed that it should within the shortest possible time produce the maximum of that which it is possible to raise out of the economic resources of the Government-General for the immediate reinforcement of the Reich's military power.

" 2. The following contributions, in particular, are expected from the economy of the Government-General as a whole :

" (a) Intensification of agricultural production, particularly in the case of large estates (more than 100 hectares) and planned distribution of the foodstuffs, which are to be registered, in order to ensure the

needs of the troops, military organisations and service organs, as well as the indigenous population, which are not yet entirely covered by the present production.

“(b) The utmost exploitation of the forests, regular forest economy being temporarily interrupted, with a view to supplying to the Reich approximately 1 million cubic metres of sawn timber, 1.2 million cubic metres pit props, and up to 0.4 million cubic metres pulp wood.

“(c) Increase of raw material production in the industrial sphere, particularly :

in connection with the production of iron ores and pyrites to cover the requirements of the blast furnaces worked in the Government-General itself ;

in connection with the extraction of crude oil, to cover the most important requirements of the Government-General from the viewpoint of war economy, and to export the largest possible quantities to the Reich ;

in the chemical industry (nitrogen, phosphates), in order to ensure such supplies of manure for agriculture as may be covered in the Government-General itself.

“(d) Exploitation and if necessary partial extension of the Government-General's existing industrial capacity for the purpose of the most rapid execution of armament orders to be placed by the Reich in the Government-General, production of products which are vital for the operation of the Government-General's industrial apparatus even under the most rigid standards, being maintained.

“(e) Maintenance of the productive capacity of concerns which, though not yet allotted any armament orders, shall be selected as refuge concerns for works important to the war effort which have been or are to be evacuated from the Reich.

“(f) Elimination and breaking up of industrial premises which are neither converted into armaments works, nor declared as refuge works, together with the destroyed buildings.

“(g) Preparations and transportation into the Reich of not fewer than one million male and female agricultural and industrial workers—including approximately 750,000 agricultural workers, at least 50 per cent of whom must be women—in order to safeguard agricultural production in the Reich and supply the deficiency of industrial labour in the Reich.

“3. In order to achieve the expected contribution, provision should be made :

“(a) to complement the measures of organisation designed to increase agricultural production and restore the stocks of cattle which have considerably diminished owing to the war, by ensuring the supply of seeds and fertilisers, if necessary through importation from the Reich ; by adequate provision of agricultural machinery produced in the Government-General ; by systematic development of water economy, simultaneously extending to the requirements of the waterways and power supply ;

“(b) to prohibit in the sphere of forestry all uneconomic use of timber and ensure the despatch of the quantities to be supplied to the Reich ;

“(c) to ensure, in connection with the intensification of raw material production :

the financing,

through the thorough exploitation of the credit apparatus existing in the Government-General ;

the acquisition of the necessary extracting and drilling apparatus, and the provision of the workers with the food and clothing indispensable to maintain their full working capacity ;

and transportation, particularly of mineral oil, to the Reich ;

“(d) to see that when the industrial capacity of the Government-General is covered with armament orders from the Reich, the following shall be consistent :

kind and extent of orders ;

location and capacity of works ;

raw material requirements and supply—if possible from stocks of raw material available in the Government-General ;

labour requirements and supply ;

transport facilities for raw material and finished goods ;

preliminary financing of wages in the Government-General and transfer of proceeds from the Reich ;

“(e) to compile a precise register of the concerns required for the execution of armament orders, those continuing to provide the Government-General with absolutely vital products, those maintained as refuge works, and those to be eliminated and razed, the starting or continuance of works to be uniformly regulated and to be made dependent on a permit ;

“(f) to ensure the supply of Polish labour required for the Reich by :

causing the Labour Offices to bring the levying into harmony with the labour requirements of the Government-General ; effecting despatch so early that the transports may be completed in the course of April ;

by arranging for the transfer of the wage-savings of workers who come to the Reich solely as itinerant casuals.

“4. In order to accomplish the uniform adaptation of the entire economy of the Government-General for the present incumbent tasks, the following further measures shall be taken :

“(a) In connection with the food supply for the population it must be attained at all costs that people engaged in concerns of vital or military importance shall maintain their efficiency, while the rest of the population shall during the food shortage be reduced to a minimum of food ;

“(b) All production based on raw materials of military importance, but relating to objects which are not absolutely vital within the frame-

work of the present Plan, must be ruthlessly prohibited, unless it is possible to deflect it to raw materials and other products available in adequate quantities (e.g., production of wooden clogs, production of leather shoes and boots for the indigenous population being prohibited). For the rest, the raw material saving regulations and the prohibitions and rules relating to production and application which are in force in the Reich must also be enforced in the Government-General, at least to the same extent ;

“(c) The despatch of raw materials to the Reich is to be limited to the quantities which are not absolutely necessary in the Government-General to secure the production important to war economy. The right of disposal over the raw materials, semi-manufactured and finished products existing in the Government-General, is reserved for your Office. For the better regulation of supplies small quantities of valuable raw materials from the concerns that are to be eliminated and from small warehouses are to be collected at a central warehouse ;

“(d) The supply of concerns important to war economy with coal and the supply of the population’s most urgent requirements of household coal is to be secured by agreement with the competent Reich authorities ;

“(e) Collection of leather, waste material and scrap must be systematically pursued. In view of the special conditions existing in the Government-General, Jewish dealers may also be employed in this connection, and may for this purpose be relieved of forced labour, etc. ;

“(f) In order to adapt transport requirements and transport facilities to each other and work out a preferential scale, a transport plan must be arranged in consultation with the transport authorities, and all further planning must be based thereon ;

“(g) The regulation of prices and wages, the safeguarding of currency and also credit policy must be harmonised with each other, in order to create stable conditions as the indispensable basis of all economic planning ;

“(h) In order to obtain a survey of the probable development of mutual payments between the Reich and the Government-General, a payments account must be drawn up as soon as it is possible to estimate to what extent armament orders from the Reich can be carried out in the Government-General.”

In order to achieve the expected contributions, the circular further directed to make specific provisions which were to be extended to all spheres of economic activities. This was duly followed by a great number of regulations which implemented the measures set out above.

(iii) *The Personal Responsibility of the Accused*

The decrees and regulations enumerated or quoted in the preceding sections just to illustrate the general pattern, constituted in the view of the Tribunal incontrovertible proof that the legal new order introduced by the Germans in the Government-General was in itself contrary to all long established principles and rules of international law. As already indicated,

it gave rise in fact, as was intended, to mass criminality indulged in by German officials and functionaries against the individuals, and the Polish and Jewish nations as a whole.

In judging the criminal responsibility of the accused Buhler, the Tribunal had not only to view it in the light of these legal enactments, but actually analysed it at much length also against the background of the role and activities of his immediate superior and leader, Hans Frank. In this respect it will be convenient to quote here a few passages from the Judgment of the Nuremberg Tribunal by which Frank himself was judged and sentenced to death, and with which the findings of the Polish Supreme National Tribunal are entirely in line. The Nuremberg Tribunal said :

“ On 3rd October, 1939, he [Frank] described the policy which he intended to put into effect by stating : ‘ Poland shall be treated like a colony ; the Poles will become the slaves of the Greater German World Empire.’ The evidence establishes that this occupation policy was based on the complete destruction of Poland as a national entity, and a ruthless exploitation of its human and economic resources for the German war effort. All opposition was crushed with the utmost harshness. A reign of terror was instituted, backed by summary police courts which ordered such actions as the public shootings of groups of twenty to two hundred Poles, and the widespread shootings of hostages. The concentration camp system was introduced in the General Government by the establishment of the notorious Treblinka and Majdanek camps. As early as 6th February, 1940, Frank gave an indication of the extent of this reign of terror by his cynical comment to a newspaper reporter on von Neurath’s poster announcing the execution of the Czech students : ‘ If I wished to order that one should hang up posters about every seven Poles shot, there would not be enough forests in Poland with which to make the paper for these posters.’ On 30th May, 1940, Frank told a police conference that he was taking advantage of the offensive in the West which diverted the attention of the world from Poland to liquidate thousands of Poles who would be likely to resist German domination of Poland, including ‘ the leading representatives of the Polish intelligentsia.’ Pursuant to these instructions the brutal A.B. action was begun under which the Security Police and S.D. carried out these exterminations which were only partially subjected to the restraints of legal procedure. On 2nd October, 1943, Frank issued a decree under which any non-Germans hindering German construction in the General Government were to be tried by summary courts of the Security Police and S.D. and sentenced to death.

“ The economic demands made on the General Government were far in excess of the needs of the army of occupation, and were out of all proportion to the resources of the country. The food raised in Poland was shipped to Germany on such a wide scale that the rations of the population of the occupied territories were reduced to the starvation level, and epidemics were widespread. Some steps were taken to provide for the feeding of the agricultural workers who were used to raise the crops, but the requirements of the rest of the population were disregarded. It is undoubtedly true, as argued by counsel for the defence, that some suffering in the General Government was inevitable

as a result of the ravages of war and the economic confusion resulting therefrom. But the suffering was increased by a planned policy of economic exploitation.

“ Frank introduced the deportation of slave labourers to Germany in the very early stages of his administration. On 25th January, 1940, he indicated his intention of deporting one million labourers to Germany, suggesting on 10th May, 1940, the use of police raids to meet this quota. On 18th August, 1942, Frank reported that he had already supplied 800,000 workers for the Reich, and expected to be able to supply 140,000 more before the end of the year.

“ The persecution of the Jews was immediately begun in the General Government. The area originally contained from 2,500,000 to 3,500,000 Jews. They were forced into ghettos, subjected to discriminatory laws, deprived of the food necessary to avoid starvation, and finally systematically and brutally exterminated. On 16th December, 1941, Frank told the Cabinet of the Governor-General: ‘ We must annihilate the Jews wherever we find them and wherever it is possible, in order to maintain there the structure of Reich as a whole.’ By 25th January, 1944, Frank estimated that there were only 100,000 Jews left.

“ At the beginning of his testimony, Frank stated that he had a feeling of ‘ terrible guilt ’ for the atrocities committed in the occupied territories.”⁽¹⁾

After having made references to the defence submitted by Frank, the Nuremberg Tribunal concluded its statement in the following words :

“ . . . Frank was a willing and knowing participant in the use of terrorism in Poland ; in the economic exploitation of Poland in a way which led to the death by starvation of a large number of people ; in the deportation to Germany as slave labourers of over a million Poles ; and in a programme involving the murder of at least three million Jews.”⁽²⁾

As stated previously, the accused Buhler was not only Frank's deputy in the sphere of policy making, but also his principal aid in supervising and directing the entire civil and legal administration in the Government-General. In the words of the Polish Tribunal, Buhler was a type of war criminal who did not directly commit any common crime himself, but one who sitting comfortably in his cabinet office, took part in the commission of war crimes and crimes against humanity by directing and supervising the actual perpetrators, and by providing them with the useful instrument of administrative and legal measures ; he was the chief engineer of the complicated and widespread criminal machinery, who guided thousands of the willing tools in how to use it.

In his manifold official capacity, Buhler regularly took part in the meetings of the Government-General's cabinet, and in drafting and approving laws and orders, especially those which resulted in deportation, persecution and extermination of people, and had a detailed knowledge of how all these measures were being put into practice. Innumerable instances illustrating

(1) The Nuremberg Judgment, His Majesty's Stationery Office, Cmd. 6964, pp. 97-98.

(2) *Ibid.* p. 98.

these criminal activities of the accused are provided for in the findings of the Tribunal. One instance, in particular, may be referred to here in more detail.

On 20th January, 1942, a conference took place in Berlin, in the Reich Security Office, under the chairmanship of S.S. Obergruppenführer Heydrich. It was attended by representatives of several ministries and other central offices, and by the accused Buhler. As recorded in the minutes, it was decided at this meeting to deport all Jews from the Reich to the General Government where they had to be liquidated. During the discussions Buhler stated that the Cabinet of the Government-General shall welcome such a solution of the Jewish problem which involved also about three million Jews in that territory, and that the necessary action will be supported by all German authorities there. He asked only for one thing, namely, that the actions should be put into effect speedily and, if possible, "without unduly disturbing the local population." At this conference an outline of putting into effect the general plan for the extermination of Jews in the occupied territories was also discussed.

On his return to Cracow, the accused himself issued the necessary orders and instructions for the implementation of the above decision. Similar attitude was displayed by Buhler in connection with the setting up of the special summary police courts in the Government-General. This attitude showed that Buhler was rather in favour of inconspicuous and seemingly legal measures, but none the less equally effective. The Tribunal stated in this connection that even if there were no other proofs of the criminal activities of the accused, this personal participation of his in the extermination of the Jews would be sufficient for his conviction. However, there was ample evidence as to other criminal activities in the Government-General of which he knew well enough and for which he was responsible.

After having studied the German Official Gazette published in the General Government for the years 1939-1945, the Tribunal established that a great majority of the laws, orders and regulations contained therein were in violation of the rights of the inhabitants and contrary to international law. Most of these enactments were signed by Frank, and 112 of them by the accused Buhler. Many of the enactments provided for heavy punishments including the penalty of death. To this latter category belong, for instance, those which concerned : the duty laid upon all former Polish army officers to report to the German authorities ; the improper use of uniform ; possession of arms ; restrictions as to residence ; the setting up of separate quarters for the Jewish population ; forced labour ; control of prices ; confiscation of wireless apparatus ; use of cars and motor cycles ; collections for the *Winterhilfe* ; the trading in poison ; protection of forests and game ; protection of war economy, etc. According to these provisions the jurisdiction for applying the death penalty rested with the summary police courts or with the Special Courts.

Apart from having signed himself and promulgated a number of enactments of the type indicated above, the accused was also responsible for taking part in the preparation of all legal measures published in the Official Gazette, whether they were signed by Frank or by the accused himself. In particular, he was supervising the drafting of these measures, taking part in conferences and discussions over such drafts and, finally, giving his final consent in

writing for the texts to be submitted to Frank for signature. He was thus responsible not only for the formal and technical side of the whole legislative procedure, but also for the substantive law embodied in the enactments.

As already stated, the legal measures enacted by the German authorities in the Government-General with full knowledge and participation of the accused resulted in many murders and other crimes. The Tribunal was, of course, not in the position to establish how many such crimes had been committed, but stated generally that many thousands of innocent people lost their lives or were put to death, or were otherwise punished, for deeds which were not criminal according to Polish municipal law and international law. All these measures resulted also in general persecutions of Polish citizens and in the extermination of hundreds of thousands of the Jewish population.

In regard to the accused's participation in other criminal activities, the Tribunal established, *inter alia*, the following :

(a) As has already been mentioned, in May, 1940, a so-called action A—B was initiated (Ausserordentliche Befriedungsaktion) and which aimed at the extermination of the Polish intellectual classes. In this connection two governmental conferences took place in Cracow on 16th and 20th May, 1940. The accused took part in these meetings and gave full support to Frank on this issue.

(b) By an order of 20th December, 1941, Governor-General Frank transferred his prerogative of mercy to the district-governors in all cases where the Jews had been sentenced to death for having escaped from ghettos. In a special circular dated 12th January, 1942, the accused Buhler instructed all the governors that Frank's order shall be understood in the sense that appeals for mercy should as a rule be rejected by them ; in exceptional cases where clemency should in their view be granted, they should refrain from deciding upon it themselves and submit the cases for Frank's decision. By these instructions the accused prevented the governors from exercising the prerogative of mercy in favour of the Jewish victims.

(c) By ordinances of 18th May, 17th August and 17th September, 1944, the accused introduced compulsory work for the Polish inhabitants on military works and establishments. The first of these ordinances permitted as a means of compulsion, *inter alia*, the imposition of contributions on the whole cities and towns. Such a contribution of ten million zlotys was in fact imposed, for instance, on the population of Warsaw in February, 1943.

(d) The accused was responsible for having issued various measures in connection with the confiscation of movable property left by the exterminated Jews or by the Jewish population expelled from their places of residence. He was also responsible for preparing in advance all plans for expulsion and deportation of Poles from specific towns and districts (orders dated 16th December, 1941, and 7th October, 1942).

(e) On the 12th February, 1940, the accused circulated the Goering-Frank circular of 25th January, 1940 (see paragraph (f) of Section (ii) above) together with instructions for the district-governors and heads of offices as to the implementation of measures relating to the Four-Year Plan in the Government-General.

(f) By an appropriation of 24th November, 1939, the accused Buhler provided the office of Dr. Mühlmann with the necessary funds for covering expenses in connection with the removal from the Government-General of art treasures and scientific equipment.

(g) On instructions issued by Buhler on 22nd August, 1940, the names of many streets and places had been changed for German denominations or provided with entirely new German descriptions.

There are in all 22 instances of similar matters enumerated in the judgment and for which the Tribunal held the accused personally responsible.

4. THE CASE FOR THE DEFENCE

The accused, who was defended by counsel appointed by the Tribunal, pleaded not guilty. His general line of defence was the following.

The accused admitted that he was a member of the Nazi Party and had held the highest official positions in the government of the occupied Polish territory as mentioned in the Indictment. He denied, however, that he had any knowledge of the criminal aims of these organisations. This plea was rejected by the Tribunal as unfounded and incredible in the light of the facts and evidence established during the trial.

The defendant further admitted that he had signed a number of the laws and decrees promulgated in the Official Gazette, but defended himself by alleging that he did so on express orders of Frank and without having realised the criminal character of these enactments. He was not sufficiently acquainted with the principles of the laws of nations and was satisfied that in view of the subjugation of Poland the legislative activities of the German authorities in the Government-General were not subject to any restrictions. In rejecting this plea, the Tribunal based itself on para. 1 of Article 5 of the Decree of 10th December, 1946, which provides that "The fact that an act or omission was caused by a threat or order, or arose out of obligation under municipal law does not exempt from criminal responsibility."⁽¹⁾ The Tribunal referred also in this connection to Article 8 of the Charter of the International Military Tribunal,⁽²⁾ and added, as regards the second part of his plea, that the accused was a doctor of laws and must have had therefore sufficient knowledge of the rights and duties of an occupying power as laid down by international law, and of the general principles of criminal law, common to all civilised nations.

As regards the general practice of his having first approved of and endorsed almost all the laws, decrees and orders before they had been submitted to Frank for his signature, the accused submitted that this could not have any bearing on his responsibility for them. In fact, he alleged, all these enactments were prepared and drafted by the appropriate legal department of the Frank's cabinet, for which the responsibility rested solely with the respective departmental head, and his, the accused's, participation was restricted to a mechanical formality which he most frequently discharged without having read their contents. It often also happened that the endorse-

⁽¹⁾ See p. 88 of the Annex to Vol. VII of the Law Reports.

⁽²⁾ Article 8 reads: "The fact that the Defendant acted pursuant to order of his Government or of a superior shall not free him from responsibility, but may be considered in mitigation of punishment if the Tribunal determines that justice so requires."

ments were given by him only after the acts had been signed by Frank. The Tribunal rejected this submission in view of the facts established by the evidence before it, which showed that the accused personally and actively exercised a decisive influence and supervision over the whole field of legislative activities of all the governmental departments, and also because during the trial the accused proved himself thoroughly acquainted with all legal measures enacted during his period of office. From this responsibility the accused could have been exempted only if he showed that he had refused to approve and endorse those legislative acts which were contrary to international law. The Tribunal was however not in possession of one single item of proof that such a course was ever taken by the accused, or that he at any time was opposed to any of such acts.

Finally, the accused submitted that the decree of 31st August, 1944, was not applicable to him in view of the fact that the accused was himself one of the two highest representatives of the German authorities of occupation, while this decree provided only for punishment of persons who assisted such authorities in the commission of crimes. This plea could not, however, be upheld as, according to Article 3, para. 6, of the Polish Criminal Code, the Polish criminal law is applicable to all persons, irrespective of their nationality, who committed crimes on the territory of the Polish State.⁽¹⁾

Jointly with the above plea, the accused also submitted that the acts committed by him were acts of State, for which he could not be held responsible as otherwise this would be contrary to international law. The Tribunal rejected this plea and referred in this connection to Article 7 of the Charter of the International Military Tribunal of 8th August, 1945, which provides that the "official position of defendants, whether as Heads of State or responsible officials in Government Departments, shall not be considered as freeing them from responsibility or mitigating punishment."⁽²⁾

5. THE VERDICT AND SENTENCE

The Supreme National Tribunal found the accused Joseph Buhler guilty of the crimes with which he was charged in the Indictment, and sentenced him to death. In addition, the Tribunal pronounced the loss of public and civic rights, and forfeiture of all property of the accused.

B. NOTES ON THE CASE

1. THE COURT AND THE LEGAL BASIS OF THE TRIAL

As already indicated, the Court was the Supreme National Tribunal established for trial of war criminals, who, "in accordance with the Moscow Declaration signed by the United States, the U.S.S.R. and Great Britain, will be surrendered to the Polish authorities." The powers of this Tribunal have been defined in the Decrees of 22nd January, 1946, and 11th April, 1947.⁽³⁾

⁽¹⁾ See also the Annex to Vol. VII, *l. cit.*, pp. 82-86.

⁽²⁾ As to the development in the doctrine of acts of State in international law, see the *History of the United Nations War Crimes Commission and the Development of the Laws of War* (Chapter X, pp. 262-288), published by His Majesty's Stationery Office, London, 1948.

⁽³⁾ See Vol. VII of the Law Reports, Annex on *Polish Law Concerning Trials of War Criminals*, Part II, Section I, pp. 91-97.

The case was tried in Cracow where the accused exercised his powers as Staatssekretär and Deputy to Governor-General of the occupied Polish territories.

The trial found its legal basis in the decree of 31st August, 1944, on the punishment of war criminals, as amended by the Decree of 16th February, 1945. The consolidated text of those decrees, together with the subsequent changes, have been promulgated in the Decree of 10th December, 1946.⁽¹⁾

2. THE NATURE OF THE OFFENCES

The acts committed by the accused were crimes in violation of Article 1, para. 1, and Article 2 of the Decree of 31st August, 1944, mentioned in the preceding section.

Inasmuch as the charges contained under (ii) of Section 2 of Part A are concerned, these acts were also in violation of those provisions of the Polish Civil Criminal Code of 1932 which deal with complicity in murder, grievous bodily harm, ill-treatment, and further with infringement of personal liberty, slavery and illegal appropriation of property, and finally with insulting and deriding of national dignity and that of the State (Articles 152, 199, 225, 235, 236, 248, 249, 257-259, 261 and 262), and with instigating, abetting and attempting the commission of such crimes (Articles 23, 26 and 27).

Apart from the provisions of the Decree of 1944 already indicated, the Tribunal based its judgment on the provisions concerning superior orders, and on that providing for additional penalties. The Tribunal also applied the relevant provisions of the Criminal Code which deal with the basic principles of responsibility for criminal acts.

In addition, the Prosecution alleged, and the Tribunal generally accepted that all the acts were war crimes and crimes against humanity in violation of the laws and customs of war as laid down in Articles 43, 46, 47, 50, 52, 55 and 56 of the Hague Convention No. IV.

As regards the charge contained in section 2 (i) of Part A, which deals with the accused's membership in criminal organisations, the legal aspects involved are presented and analysed in detail in section 3 below.

In its judgment, the Tribunal also dealt at some length with such legal questions as: (a) subjugation of enemy territory; (b) military authority over the occupied territory of the hostile State, and the rights and duties of the belligerent power towards the inhabitants of such territory; and (b) with genocide. As the findings of the Tribunal concerning these problems did not bring any new points of interest, the reader is referred to other Polish trials which have been reported upon in the other volumes.⁽²⁾

3. OCCUPATION GOVERNMENT AS A CRIMINAL ORGANISATION

The most interesting decision made by the Tribunal in connection with the present trial, is the declaration on the criminal character of the occupation government as a whole. The Tribunal was asked by the Prosecution to

⁽¹⁾ *Ibid.*, Part I, pp. 82-91.

⁽²⁾ As regards questions under (a) and (b), see Case No. 74, *Trial of Artur Greiser*, Vol. XIII; and in regard to genocide see the above case and also Cases Nos. 37 and 38, *Trials of A. M. Goeth and of R. F. F. Hoess* respectively, reported in Vol. VII.

convict the accused on the count of his membership in the occupation government which, the indictment alleged, was a criminal organisation. This charge and the conviction was based on Article 4, paras. 1 and 2 (b), of the already cited Decree of 31st August, 1944, the full text of which reads :

“ Para. 1. Any person who was a member of a criminal organisation established or recognized by the authorities of the German State or of a State allied with it, or by a political association which acted in the interest of the German State or a State allied with it—is liable to imprisonment for a period of not less than three years, or for life, or to the death penalty.”

“ Para. 2. A criminal organisation in the meaning of para. 1 is a group or organisation :

(a) which has as its aims the commission of crimes against peace, war crimes or crimes against humanity ; or

(b) which while having a different aim, tries to attain it through the commission of crimes mentioned under (a).”

“ Para. 3. Membership of the following organisations especially is considered criminal :

(a) the German National Socialist Workers' Party (National Sozialistische Deutsche Arbeiter Partei—N.S.D.A.P.) as regards all leading positions,

(b) the Security Detachments (Schutzstaffeln—S.S.),

(c) the State Secret Police (Geheime Staats-Polizei—the Gestapo),

(d) the Security Service (Sicherheits Dienst—S.D.).”

The above provisions have been introduced in the consolidated text of the Decree in December, 1946, in order to bring Polish municipal law into line with the developments which, in the meantime, had taken place in international criminal law, in particular, in connection with the London Agreement of 8th August, 1945, and the Judgment of the Nuremberg Tribunal. Therefore, in interpreting the conceptions and notions referred to in Article 4, one would have recourse to these international documents.

From the rule laid down by Article 10 of the Nuremberg Charter⁽¹⁾ it follows that since the ratification of the London Agreement by Poland, whenever a person is tried on a charge of membership in a group or organisation the criminal character of which was under examination of the Nuremberg Tribunal, the Polish Courts are in law bound by the findings of the Tribunal and cannot re-examine the question of the criminal character of the organisation dealt with in the Judgment. Thus, the findings of the Tribunal create for the Polish Court a *praesumptio juris ac de iure* which cannot be invalidated.

On the other hand, it is clear from the law as laid down in para. 2 of Article 4 of the decree that Polish courts are not bound by the fact that

(¹) Article 10 of the Charter reads :

“ In cases where a group or organisation is declared criminal by the Tribunal, the competent national authority of any Signatory shall have the right to bring individuals to trial for membership therein before national, military or occupation courts. In any such case the criminal nature of the group or organisation is considered proved and shall not be questioned.”

certain other groups or organisations have not been indicted and adjudicated as criminal within the meaning of the Charter. In these cases the Polish court may declare such groups or organisations to be criminal within the Polish jurisdiction. Accordingly, the practice of the Polish Supreme National Tribunal has declared as criminal also some other Nazi groups and organisations which displayed particular zeal in occupied Poland, such as, for instance, members of the concentration camp staff at Auschwitz.⁽¹⁾ This contention and practice is also based on the fact that para. 3 of Article 4 is not exhaustive and the organisations mentioned therein are enumerated only *exempli causa*. The reasons for such an interpretation of Article 4 given by the Tribunal in the Auschwitz case were, *inter alia*, these :

(a) The Nuremberg Judgment does not limit the right of the Polish legislator to decide those acts which were not a subject of the findings of the Nuremberg Tribunal and can be considered as liable to punishment within the Polish jurisdiction, unless they have been explicitly declared as not criminal, as, for instance, the acts of the organisation of the S.A.

(b) The provisions of the Polish law now in force are not in contradiction to the Nuremberg Judgment. The interpretation of the Polish law cannot be contrary to the explicit text of this Judgment, but on the other hand there is no legal obstacle in the way of supplementing the legal principles established in this Judgment by further principles, if in substance they are not in contradiction with the former.

(c) Article 9 of the Nuremberg Charter states that the International Military Tribunal has the power to declare at the trial of any individual member of any group or organisation (in connection with any act of which the individual may be convicted) that the group or organisation of which the individual was a member was a criminal organisation. Thus, Article 9 gave to the Tribunal the power to declare criminal *any* group or organisation, the members of which committed any of the crimes enumerated in Article 6 of the Charter, *i.e.*, crimes against peace, war crimes and crimes against humanity.

(d) According to the law laid down in Article 9 of the Charter, an international Tribunal may at any time and at its discretion increase the number of organisations considered as criminal. If therefore, the Charter and the Nuremberg Judgment are both a source of law, of which the former permits any organisation to be declared criminal, and the latter does not prevent this, there is no legal obstacle in the way of declaring, in accordance with Article 4, para. 2, of the Decree of 1944, as criminal some other Nazi groups and organisations.

The case of members of the occupation government is another instance of a Nazi group having been declared criminal.

The question of the criminal nature of the organisation described as occupation government came under consideration of the Polish Supreme National Tribunal for the first time in the trial against Ludwik Fischer, former governor of Warsaw, and against Ludwik Leist, the former's plenipotentiary and later *Stadthauptmann* of the City of Warsaw. In its judgment of 3rd March, 1947, delivered against these two accused, the Tribunal declared the group of persons specified below, and who took part in the

(1) See Case No. 38 already cited, Vol. VII, pp. 20-24.

occupation government in Poland, as a criminal group within the meaning of Article 4, and found both the accused guilty of such a membership.

The following are the reasons which the Tribunal gave in justification of its declaration :

(a) There are certain basic moral principles and rules governing international relations which are binding on all nations. Those rules are of a superior order in relation to the laws which may be enacted by individual States contrary to the former, and which cannot be violated without punishment.

The fact that these rules had been violated on a large scale provides Polish courts, in accordance with Article 8 of the Penal Code, with an adequate substantive legal basis for prosecuting the offenders, in cases where their deeds endangered the internal or external security of the Polish State, even if the perpetrators have been of a foreign nationality and committed the offences abroad, irrespective of the law in force in the territory where the acts had been committed.

(b) The Polish legislator recognised as criminal, *inter alia*, the following organisations : the S.S., the S.D., the Gestapo and the leadership corps of the Nazi Party, the latter organisation having planned from the very outset aggressive wars and, in accordance with its programme, having aimed at the violation of all rules and customs adopted by all civilised nations.

The Supreme National Tribunal decided that, in addition to the above organisations, the governorship and the top-ranking officials of the German administration of the so-called General Government from the *Kreis* and *Stadthauptmanns* (heads of county and town districts) upwards should also be declared as a criminal group.

(c) The Supreme National Tribunal considered that any person who being acquainted with the programme and methods of a party or of another criminal group joined them, did so conscious of the activities of the party or group and approved of them, and thereby undertook to observe statutory obligations to participate, assist and obey and, if in a leading position, to take initiative and act in accordance with the rules and programme of the party or group. Consequently, those who joined such a group accepted full responsibility for its activities.

(d) In this connection the problem of superior order as a circumstance which could exclude criminal responsibility becomes irrelevant. For if an individual joined a certain group, which imposes upon him unqualified obedience and discipline, and if he approved of the ideological aims of the group and its methods of action, then he accepted in advance responsibility for the orders which he decided to obey.

Consequently, criminal responsibility of a member is governed not by the circumstance when a criminal order was actually received by him, but by the time of his joining in the party or another criminal group.

(e) Crimes committed by groups of people do not diminish, but rather increase the responsibility of members of the group, as such acts are more dangerous than crimes committed by individuals. That is why penal repression in respect of such crimes must be more severe.

Mass crimes, destruction and losses could not have been caused by individuals acting even in large numbers, if the latter were not permeated by one ideology, cemented by one will, and aiming at the same goal. Such criminality can only be the work of groups of people which have properly been selected for the projected tasks and organised, trained and supported by an adequate technical apparatus, executive power and financial means.

(f) German officials who, owing to the extent of authority exerted by them, had influence over the conditions of life either on the whole territory of the General Government or in larger areas of the country, should be considered as a criminal group, for they must have been conscious of the criminal aims set out by the highest authority. Such a consciousness could and should be ascribed to the top-ranking officials of the German civil administration in the General Government.

The Supreme National Tribunal considered that to this group should at the least be included all members of the government of the General Government (central office of the General-Governor), all district-governors and their deputies, further all heads of departments and sections in the governors' offices and all heads of lesser districts, *i.e.*, all who were commonly known as the political authority. The degree of knowledge of the ultimate criminal aims might have been different at various levels of this hierarchy, but nevertheless this knowledge was undoubtedly there.

While making the above declaration, the Tribunal was of the opinion that the German administration established by the occupant in the territory of Poland and especially in the former General Government, had not had even a pretence of legality. Hitler and the German Government had maintained that Poland as a State ceased to exist and that, therefore, they were free to act in this territory without waiting for the termination of war or being bound by any rules of international law, and in particular by the Hague Convention of 1907. The Tribunal therefore held that this administration was illegal, and also criminal in view of its aims and actual activities which, the Tribunal found, were, *inter alia*, the following :

- (a) the establishment of the German sovereignty over this territory,
- (b) the biological extermination of the entire Jewish population, and partly of the Polish,
- (c) the ruthless exploitation of the inhabitants of that territory, and of its resources for the needs of the German war effort,
- (d) the destruction of the cultural values, and of the Polish Nation.

These aims had been in fact gradually put into effect by :

- (a) the almost complete replacement of the Polish administration by the German offices,
- (b) the disbandment of Polish organisations and associations, and the prohibition of any new ones,
- (c) the closing of all secondary, non-technical schools, and of universities, theatres, museums, public libraries and scientific institutes,
- (d) the exclusion of Polish language, history and geography from the syllabus of all primary and technical schools,
- (e) pillage and exportation to Germany of Polish property in general, and that of Polish scientific and cultural institutions in particular,

- (f) the prohibition of publishing of Polish books and periodicals,
- (g) the introduction of forced labour and slavery,
- (h) the deportation to Germany of Polish labour,
- (i) the fixing of the maximum of wages below the minimum necessary for existence,
- (j) the expropriation or seizure of the great majority of larger Polish undertakings, and of all Jewish enterprises,
- (k) the removal to Germany of machinery from factories,
- (l) starvation of the civilian population through insufficient allocations of food,
- (m) a series of measures tending to lower the dignity and integrity of the Polish and Jewish population, and to demoralise the youth.

The activities of the German administration in the General Government in the spheres enumerated above found their expression in numerous decrees, orders and regulations issued by the German authorities, and carried out by them in a most ruthless manner. It would suffice to mention in this connection that during the occupation of Poland about 4,750,000 people have been put to death in various ways and the fate of 1,700,000 is unknown, and that the material losses amount to many million pounds, not to mention other irreparable losses which can never be assessed.

As regards the question of participation of various heads of the German offices and departments of the administration in the group thus declared criminal, the Tribunal based itself on the decrees and regulations relevant to the organisation of the German administration in the General Government.

In the opinion of the Tribunal, all German top-ranking officials can be brought to trial for membership in the group defined above, who participated therein voluntarily and were conscious of the aims and activities, no matter whether they were, or not, at the same time members of the Nazi Party (N.S.D.A.P.). Their simultaneous membership in the latter, especially on leading positions, would constitute only a presumption as to their guilty knowledge and would make irrelevant the question whether they took up the leading administrative posts voluntarily or upon orders.

In the present case against the accused Buhler, the Tribunal took into consideration the fact that the criminal nature of the group of persons under discussion had already been proved in the trial of Ludwik Fischer *et al.*, and having also taken into account some additional evidence established in this case, found the accused Buhler guilty on the count of membership in the occupation government which was previously declared by this same Tribunal as a criminal organisation. The Tribunal added that, considering his high position, there could be no doubt that the accused had perfect knowledge of the criminal aims of that government, as it was in fact established during the trial. Therefore, the accused had to bear the responsibility for all criminal acts, whether committed by himself as one of the leaders, organisers, instigators and accomplices who participated in the formulation or execution of a common plan or conspiracy to commit such acts, or committed by his subordinates in execution of such plan.⁽¹⁾

The declaration of the Polish Tribunal is illustrative of State legislation and

⁽¹⁾ Compare with Article 7 (last paragraph) of the Charter of the International Military Tribunal.

practice of some of the Allied countries which, in view of the different circumstances and of the extent of Nazi criminality in the respective territories under German occupation, tended to include among the criminal groups and organisations some other besides those which had been considered or declared as such by the Nuremberg Tribunal.⁽¹⁾ As already indicated this practice does not run counter to the rules laid down by international criminal law as it has been developed by the Charter and it constitutes a further contribution to the retributive action enforced by the Allied Nations against war criminals, and seems justified by the unique position of the States in question among the most persecuted countries.

As far as is known, there is however no precedent or any other example of declaring an occupation government as a criminal organisation. The fact that the Polish Tribunal thought it justified to establish such a precedent was presumably also connected to some extent with the view held and expressed by this Tribunal in a number of trials of war criminals, namely, that the hostilities begun against Poland on 1st September, 1939, did not constitute a war according to international law, but a "criminal invasion" in violation of a non-aggression pact. Consequently, in the opinion of the Tribunal, the so-called "occupation" of the Polish territories taken by force of arms was not even an occupation in the true meaning of that word, but "an unlawful seizure of territory by force and compulsion." Therefore, such an act should be evaluated in accordance with the well-known maxim of Roman law that *quod ab initio turpe est, non potest tractu temporis convalescere*. The Tribunal held further that even if one were to accept the view that it nevertheless was an occupation, though only a *de facto* one, yet it was carried out in violation of all the postulates and rules of the Hague Regulations; it was a caricature of military administration as understood by international law, carried out in flagrant violation of all the rights of the local population.⁽²⁾

It is apparent that the description "occupation government" applied in the preceding sections has been used in a wider sense. This government, declared by the Tribunal as criminal organisation, consisted of members of the Cabinet, *i.e.*, the Governor-General, his deputy, and all heads of departments in the central office of the Governor-General; and of the district-governors and all other high ranking officials of district offices enumerated by the Tribunal.

If we take the first group, it can be said that from the point of view of State administration on governmental level, some definite similarity of organisation and structure existed between the Cabinet of the Government-General and that of a government of a sovereign State as a whole.⁽³⁾ This

⁽¹⁾ To countries which have expressly enacted that some other organisations, named in advance, are to be regarded as criminal, belong, for instance, Czechoslovakia which included among such groups six other German, Hungarian or quisling organisations. The law laid down by other countries, like France, permit on the other hand to declare as criminal any organisations or undertakings of systematic terrorism. (See the *History of the United Nations War Crimes Commission, op. cit.*, Chapter XI, part C, pp. 324-331.)

⁽²⁾ These views have been expressed by the Tribunal in the case against Artur Greiser, Vol. VII, pp. 110-112; in the Trial of Albert Forster, Gauleiter of Danzig, not reported upon in this series; and the present trial of Joseph Buhler.

⁽³⁾ It is regretted that because of lack of space, it was not possible to provide detailed information on the organisation of the German administration in the Government-General. Its general description has been presented in Section 2 (ii) of Part A above.

similarity and also that of the criminal purposes, permit a comparison between the stand taken by the Polish Tribunal and the findings of the Nuremberg Tribunal as regards the Reich Cabinet which, it had been alleged, was also a criminal organisation.

The prosecution at Nuremberg named the Reich Cabinet (*Die Reichsregierung*) as a criminal organisation, which consisted of the ordinary cabinet, further of members of the Council of Ministers for the Defence of the Reich, and members of the Secret Cabinet Council. The term "ordinary cabinet" as used in the Nuremberg Indictment meant the Reich Ministers, i.e. heads of departments of the Central Government; Reich Ministers without portfolio; State Ministers; and all other officials entitled to take part in the meetings of this Cabinet. It was further alleged that these persons functioning in association as a group, possessed and exercised legislative, executive, administrative and political powers and functions of a very high order in the system of German Government. Accordingly, they were charged with responsibility for the policies adopted and put into effect by that Government, including those which comprehended and involved the commission of the crime of the common plan or conspiracy, crimes against peace, war crimes and crimes against humanity.⁽¹⁾

The Nuremberg Tribunal was of the opinion that no declaration of criminality should have been made with respect to the Reich Cabinet, and this for two reasons. The first, which is of no relevance to the matter discussed here, was that it was not shown that after 1937 the Reich Cabinet ever really acted as a group for the purpose of conspiracy to make aggressive war. The Tribunal added, however, that "various laws authorising acts which were criminal under the Charter were circulated among the members of the Reich Cabinet and issued under its authority and signed by the members whose departments were concerned. This does not, however, prove that the Reich Cabinet, after 1937, ever really acted as an organisation."⁽²⁾

As to the second reason, the Tribunal stated:

"It is clear that those members of the Reich Cabinet who have been guilty of crimes should be brought to trial; and a number of them are now on trial before the Tribunal. It is estimated that there are 48 members of the group, that eight of these are dead and 17 are now on trial, leaving only 23 at the most, as to whom the declaration could have any importance. Any others who are guilty should also be brought to trial; but nothing would be accomplished to expedite or facilitate their trials by declaring the Reich Cabinet to be a criminal organisation. Where an organisation with a large membership is used for such purposes, a declaration obviates the necessity of inquiring as to its criminal character in the later trial of members who are accused of participating through membership in its criminal purposes and thus saves much time and trouble. There is no such advantage in the case of a small group like the Reich Cabinet."⁽²⁾

From the above statement it seems that purely practical considerations guided the Tribunal in refusing to make a general declaration on the criminal

⁽¹⁾ See *Nuremberg Indictment*, His Majesty's Stationery Office, Cmd. 6696, pp. 40-41.

⁽²⁾ See *Nuremberg Judgment*, His Majesty's Stationery Office, Cmd. 6964, p. 81.

character of the Reich Cabinet, and that on the other hand the Tribunal was fully aware of the responsibility which rested on members of this Cabinet, for crimes committed by enacting various laws that authorised acts that were criminal under the Charter. In fact, most of the 17 members of this group of persons who were on trial at Nuremberg, have been found guilty of war crimes, and/or crimes against humanity.

It has been shown in Part A of this report what was the responsibility of members of the Cabinet of the Government-General, what were the various laws enacted by it and authorising acts which were criminal under international and municipal law, and the extent of criminality committed in pursuance to these laws and administrative directives. The responsibility for them rested in fact not only on the Cabinet, but also on a large number of high administrative German officials who occupied the kind of positions indicated in the declaration of the Polish Tribunal. These officials were members of the German administrative apparatus which was built up for the realisation and putting into effect of general plans laid down by the Reich Government, and which in a very large measure flouted principles binding on all civilised nations. All these officials had great power, each headed an appropriate department or government office, and each participated in preparing and realising the Nazi programme in occupied Poland. Their number was comparatively large, comprising several hundred persons, and therefore it was thought by the Polish Tribunal that a declaration of criminality against this group of persons was expedient and of great importance.