1949 be amended to revoke its findings of guilt against said defendant on counts five and eight of the indictment, and that the defendant be released from custody. On 19 June 1949 the prosecution filed an answering brief to said motion and on 30 June 1949 the defendant filed a rejoinder to the prosecution's answering brief.

It also appears that on 25 April 1949 the defendant joined in a petition for plenary session of the Tribunal for the purpose of "examining the judgment passed on 14 April 1949 by the Military Tribunal IV." The Tribunal having considered said motion and answering brief of the prosecution and the defendant's rejoinder to said answering brief and being fully advised,

IT IS ORDERED that Schellenberg's motion as to counts five and eight be, and the same is, hereby in all respects denied.

Memorandum hereto attached is made a part of this order.

Dated 12 December 1949.

[Signed] WILLIAM C. CHRISTIANSON
WILLIAM C. CHRISTIANSON
Presiding Judge

[Signed] ROBERT F. MAGUIRE
ROBERT F. MAGUIRE
Judge

MEMORANDUM

The questions raised by the motion of defendant Schellenberg were considered in our opinion. They have been reexamined in connection with his motion and we find no error and no reason why we should not adhere to our findings and conclusions. His motion should be and hereby is overruled and denied *in toto*.

13. SCHWERIN VON KROSIGK—ORDER AND MEMORANDUM OF THE TRIBUNAL

ORDER

On 10 May 1949 defendant Schwerin von Krosigk filed a motion for amendment of the judgment in this case with respect to counts five and six, under which said defendant was convicted, calling attention herein to alleged errors of law and fact. On 19 June 1949 the prosecution filed an answering brief to said motion and on 30 June 1949 the defendant filed a rejoinder to the prosecution's answering brief. It also appears that on 25 April 1949 this defendant joined with others in a petition for a plenary session of the Tribunals for the therein expressed purpose of "examining the judgment passed on 14 April 1949" by the Tribunal in this case.

953718—52——63

The Tribunal having considered the motion for amendment, the answering brief in opposition thereto, and the defendant's rejoinder or reply to the prosecution's answering brief, and being advised in the premises,

IT IS ORDERED that said motion for amendment be, and the same is, hereby in all respects denied.

Memorandum hereto attached is made a part of this order.

Dated 12 December 1949.

[Signed] WILLIAM C. CHRISTIANSON
WILLIAM C. CHRISTIANSON
Presiding Judge

[Signed] ROBERT F. MAGUIRE
ROBERT F. MAGUIRE
Judge

MEMORANDUM

The petition for plenary session hereinbefore referred to as having been joined in by the defendant could not be entertained or determined by the Tribunal, but inasmuch as said petition contains arguments in behalf of defendant, said arguments have been given consideration in connection with the determination of the defendant's motion herein. .

We have considered the motion on behalf of the defendant Schwerin von Krosigk. Our attention is called to the statement in the judgment that the defendant was present at the conference in the Ministry of the Interior which resulted in the issuance of the Eleventh Supplementary Decree to the Reich Citizenship Law. An examination of this document reveals that the defendant himself was not present but that the decree was signed on his behalf by one of his deputies.

Complaint is further made that the Terboven decree regarding the Jews in Norway did not mention Jews of Norwegian birth or Norwegian citizenship. This is true. The decree referred to Jews in Norway who had lost their citizenship in accordance with the Eleventh Supplementary Decree to the Reich Citizenship Law and also applied to stateless Jews who in the past were German citizens, and who usually resided abroad or were about to do so.

It therefore applied to Jews living in Norway who were no longer German citizens.

While the language of the opinion could have been more precise, it was substantially accurate. No justification was offered for the confiscation of the property of either class and there was none.

The intimate connection which the defendant's Ministry of Finance had in the confiscation and realization of Jewish property seized in occupied countries is amply described in [Pros.] Exhibit

3920, Book 212, page 153 [NG–5369], which is the minutes of a conference held in the Ministry of Finance on 11 and 12 December 1942. The measures therein described and proposed are by no means limited to Jews of German nationality, notwithstanding the assertions made by the defendant—a fact, however, which we do not deem to be controlling. There can be no question that the funds thus realized from confiscated property were, and were intended to be, used in carrying on German wars of aggression, nor can there be any doubt of the fate of the vast majority of the Jews thus robbed. Arrest, imprisonment in concentration camps, theft, and death were all essential parts of the same horrible scheme.

After careful examination of the record relating to the defendant's connection with the crimes charged in count five of the indictment, we are of the opinion that no error in fact or law was committed. The defendant was too intimately and actively connected with the offenses described in this count of the indictment to escape criminal responsibility. There is an additional incident not mentioned in our discussion of his case, namely, his connection with the so-called Melmer deposits of the Reich Bank, which were the proceeds of the loot of the concentration camps. The Reich Bank's internal memorandum of 31 March 1944 [PS–3947] (Exhibit 1914, Book 151, page 94) reads in part as follows:

> "According to the oral confidential agreement between vice president, Mr. Puhl, and the chief of one of Berlin's public offices, the Reich Bank took over the selling of local and foreign currency, gold and silver coins, precious metals, securities, jewels, watches, diamonds, and other precious objects. * * * The Reich Marshal of the Greater German Reich, the deputy for the Four Year Plan informed the German Reich Bank, 19 March 1944, a copy of which is enclosed, that considerable amounts of gold and silver objects, jewels, etc., at the main office of the Board of Trustees East should be delivered to the Reich Bank according to the order issued by the Minister of the Reich Funk, Graf Schwerin von Krosigk. The utilization of these objects should be accomplished in the same way as the Melmer deliveries."

The acts with which the defendant Schwerin von Krosigk was connected, which occurred prior to 1 September 1939, which we recited, were considered only insofar as they had connection with or were in furtherance or aid of Hitler's plans for aggressive war. All were a part of the execution of those plans. The confiscation of Jewish property, as the record clearly demonstrates, was important and at times almost an essential part of prepara-

tions for war. These confiscations were without legal or moral justification as the defendant himself admits.

In sustaining the motion to dismiss count four of the indictment, the Tribunal held that crimes committed by the Nazi government against German nationals prior to 1 September 1939 were not *per se* crimes under international law, but we made clear throughout the trial that if any of these crimes were pursuant to or in execution of Hitler's plans to commit crimes against peace it came within our jurisdiction even though committed prior to 1 September 1939. The defendant's guilt under count five was amply and overwhelmingly established. His motions to set aside the judgment of convictions should be, and hereby are, overruled.

The defendant's counsel has argued very earnestly that the conviction under count six is not in fact sustained by the evidence. For the most part such contention is based upon an interpretation of the evidence by the said defendant's counsel most favorable to his client, and in which interpretation it appears the Tribunal is in disagreement with counsel in many respects.

It must be noted that the defense counsel contends that the spoliation charges against defendant with respect to Poland are not sustained, and he contends that such conviction cannot be upheld because one particular exhibit cited in the judgment makes reference to Russian territory and not to Polish territory, the exhibit in question being Prosecution Exhibit 1062 [NI–440] commencing on page 723 of the judgment.

Even if the contention of the defense counsel to the effect that this document referred exclusively to Russia were true, it is too much to contend that the conviction under this count would not be amply sustained without it. To the evidence specifically referred to in the judgment, as well as considerable evidence not in fact specifically referred to but introduced in the record, in the words of the judgment, demonstrate that this defendant was "a participant in the formulation, implementation, and furtherance of the Reich's spoliation program as it dealt with Poland" and "is criminally responsible therefor." With respect to said Exhibit 1062, however, the emphatic and confident assertion of the defendant's counsel that said exhibit refers only to Russian territory is not justified. It is true that there are references there to specific Russian cities, etc., but repeatedly throughout said exhibit the references indicate that the subject under discussion is "the Occupied Eastern Territories" which well might include Polish territory. Nowhere in the document does it specifically indicate that Russian territory is the only territory contemplated within the term "Occupied Eastern Territories." We must adhere to our finding of guilt with respect to this count.