

The Tribunal having considered the motion of defendant, the answer thereto of the prosecution, the defendant's rejoinder to said answer, the argument contained in petition for plenary session insofar as pertinent herein, and being advised in the premises,

IT IS ORDERED that defendant Rasche's said motion 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

With respect to count six, defendant has to a great extent re-argued the facts and law, which were by him argued prior to the preparation and rendition of the judgment. He now argues that the Tribunal has in many respects wrongly interpreted the evidence and incorrectly construed the applicable law. He has also sought to add considerable evidence by appending to his motion a considerable number of affidavits, and other documentary evidence, all prepared and dated subsequent to the rendition of the judgment. Obviously these cannot now be considered.

It does not appear that the defendant has called our attention to such errors of law, in the judgment, with respect to count six, or errors of fact therein of such materiality or substance, as to properly require the amendment of the judgment as to count six, as prayed in defendant's motion.

We have reviewed the conclusions expressed in our opinion and the evidence on which they are based in light of the defendant's motion. We find no error and no reason to modify the views there expressed. His motion to set aside his conviction under count eight is hereby denied.

16. KOERNER—ORDER AND MEMORANDUM OF THE TRIBUNAL

ORDER

On 10 May 1949 counsel for defendant Koerner filed with the Secretary General a memorandum and amendment motion, and an appendix thereto, alleging errors in fact and law in the judg-

ment of this Tribunal, in which judgment said defendant was convicted under counts one, six, seven, and eight. It also appears that on 16 June 1949, the prosecution submitted an answering brief to said memorandum and amendment motion, and that on June 30th defense counsel filed a rejoinder to said answering brief of prosecution counsel. It also appears that following the rendering of said judgment and prior to filing of above memorandum and answering brief, and rejoinder, the defendant's counsel had joined in a petition for plenary session of Tribunals containing arguments herein also considered.

The Tribunal having considered the foregoing memorandum and motion for amendment, the answering brief in said matter, and the rejoinder thereto, and being advised in the premises,

IT IS ORDERED that said memorandum and 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

Counsel contends generally that the Tribunal erroneously convicted defendant because defendant did not occupy positions on a policy-making level, etc., it being claimed, for instance, that the defendant was by the Tribunal erroneously designated to be deputy chairman of the Ministerial Council, whereas he in fact was deputy chairman of the General Council. See page 7 of defendant's memorandum. This, the defendant states, see page 6 of memorandum, "must result in a change in the Tribunal's interpretation of the level of Koerner's position."

A reference, however, to the judgment indicates, page 170, that the Tribunal did not state that Koerner was otherwise than the deputy of the General Council. We quote again the exact statement of the Tribunal from page 170 thereof: "A minister's council, referred to as the *General Council*, was created for the making of principal decisions in connection with the Four Year Plan and its work. Such council included, among others, the State Secretary and Chief of the Reich Chancellery, defendant Lammers, and defendant Keppler. Koerner was Deputy Chairman of *such General Council for the Four Year Plan* from 1939 to 1942. While

only carrying the title of Deputy Chairman he was the virtual chairman thereof, as he regularly presided." [Emphasis supplied.]

We are not able to discern the confusion that defendant's counsel attributes to the Tribunal in this respect. The Tribunal has in this instance stated specifically that Koerner was deputy chairman of the General Council. This is correct. The duties of the General Council are likewise indicated. Confusion is thus avoided as to its functions and authority in that connection, and as stated in the judgment (page 172) "That the Four Year Plan was an instrumentality for the planning and carrying on of aggression is no longer a matter of dispute."

The defendant's contentions with respect to the conviction on count one must be overruled. A careful reading of the judgment with respect to count one indicates that although there was considerable evidence showing knowledge by Koerner of the various planned aggressions of the Reich prior to the attack on Russia, and which aggressions were carried out, the conviction of Koerner under said count is in fact specifically based on the aggressive war on Russia. On page 185 of the judgment (English) it is stated: "The evidence indicates that Koerner participated in the planning and preparation of the aggression against Russia," and on page 189 of the judgment (English) it is stated "We have specifically alluded to but a small portion of the voluminous evidence introduced with respect to these matters, but the foregoing and other evidence in the record satisfied the Tribunal beyond a reasonable doubt that defendant Koerner participated in the plans, preparations, and executions of the Reich's aggression against Russia."

We do not observe any claimed factual errors on this specific phase of the charge against Koerner under count one. Certainly there are none of any material significance.

With respect to count six and count seven, under which defendant was convicted, we have given study and thought to the claims of defendant as contained in his memorandum of claimed errors, and we must reject same as without merit. No material discrepancies or errors are presented requiring correction.

Counsel for the most part reargues what he already had argued in prior final briefs. It consists mostly of the contention that the Tribunal misinterpreted the evidence. The Tribunal does not, however, believe that in the instances here claimed, any material error in this respect was made.

A review of defendant's motion reveals no substantial errors and the record amply establishes our finding of guilt. The defendant's motion to set aside his conviction under count eight should be, and hereby is, denied.