

SEPARATE MEMORANDUM OF JUDGE CHRISTIANSON
WITH RESPECT TO ORDER AND RECOMMENDATION
THAT CONVICTION OF DEFENDANT VON WEIZ-
SAECKER UNDER COUNT ONE BE SET ASIDE
AND HIS SENTENCE REDUCED

I am unable to concur in the order or recommendation of the majority with respect to the conviction of defendant von Weizsaecker under count one. I cannot agree that the majority of the Tribunal in the original judgment erroneously evaluated the evidence with respect to said matter as is now indicated to be the view of my colleagues with respect to the defendant von Weizsaecker's conviction under count one.

A re-examination of the evidence with respect to the actions of defendant von Weizsaecker in connection with the aggression against Czechoslovakia deepens my conviction that said defendant is guilty under said count one. I am therefore unable to concur in the order or recommendation of my colleagues that the conviction of said von Weizsaecker under count one, be set aside and his sentence reduced.

[Signed] WILLIAM C. CHRISTIANSON

2. STEENGRACHT VON MOYLAND—ORDER AND MEMO-
RANDUM OF THE TRIBUNAL AND SEPARATE MEMO-
RANDUM OF PRESIDING JUDGE CHRISTIANSON

ORDER

On 20 May 1949 the defendant Steengracht von Moyland filed a motion praying that his conviction under counts three and five be quashed. Briefs regarding these motions were filed on behalf of the defendant and the prosecution.

The defendant Steengracht von Moyland also joined in a petition for plenary session of the Tribunal for the purpose of "examining the judgment" rendered in this case on 14 April 1949.

The Tribunal having considered the motions of the defendant, the briefs, and the record in the case and being advised in the premises,

IT IS ORDERED that the defendant's motion as to count three is sustained, the judgment modified *pro tanto* in that his conviction under count three is set aside and the judgment of sentence is modified and reduced from 7 years to 5 years, and shall be

deemed to have begun on 23 May 1945. The defendant's motion as to his conviction under count five is in all respects denied.

The memorandum hereto attached is made a part of this order.

Dated 12 December 1949.

[Signed] WILLIAM C. CHRISTIANSON
WILLIAM C. CHRISTIANSON

Presiding Judge

I concur in the above as to count five, but not as to count three.
See my separate memo.

[Signed] ROBERT F. MAGUIRE
ROBERT F. MAGUIRE

Judge

[Signed] LEON W. POWERS
LEON W. POWERS

Judge

MEMORANDUM

We have reexamined the evidence concerning Steengracht von Moyland's connection with the affair of the Sagan murders. Our judgment detailed his alleged participation therein. The note delivered to the Swiss Government, the Protecting Power, was false. It was designed to conceal from the Protecting Power the facts regarding these murders. If, at the time of the delivery of the note, Steengracht von Moyland knew the facts or knew that the explanation was false, then our judgment of guilt is proper.

The question is whether he possessed this knowledge. It is to be remembered that he did not prepare the note but that it was the work of Ritter and Albrecht and that it came to him for purposes of transmittal to the Swiss representative. On reexamination of the record we are of the opinion that it is not established beyond a reasonable doubt that Steengracht von Moyland had the requisite knowledge, even though we are of the opinion that in all likelihood he did. But where there is a reasonable doubt it is our duty to accord it to him. This we do. We set aside his conviction under count three.

Count five. We have carefully reviewed our decision convicting Steengracht von Moyland under count five in view of the ingenious and earnest representations made on his behalf by his counsel. Unfortunately, this review only confirms the findings and conclusions stated in our opinion. With respect to Steengracht von Moyland, as well as the other defendants, we had in the first instance gone as far as human credulity would permit. In fact, in many instances, out of proper regard for the essential doctrine of proof beyond a reasonable doubt, we have stretched that salutary principle almost beyond recognizable form. There are, however, limi-

tations beyond which this cannot be done. A reexamination of the evidence, the testimony submitted on his behalf, and the ingenious presentation of his counsel compels us to the conclusion, not only that no injustice has been done the defendant, Steengracht von Moyland, but that our findings of guilt respecting him are unavoidable. We overrule and deny his motions to set aside his conviction under count five.

Judge Christianson dissents from the Tribunal's action in setting aside the defendant Steengracht von Moyland's conviction under count three, and his memorandum setting forth his views follows.

SEPARATE MEMORANDUM OF JUDGE CHRISTIANSON
WITH RESPECT TO RECOMMENDATION OR ORDER
THAT CONVICTION OF DEFENDANT STEEN-
GRACHT VON MOYLAND WITH RESPECT TO
COUNT THREE BE SET ASIDE AND HIS
SENTENCE REDUCED

I find no justification for a change of view as to the finding of guilt against defendant Steengracht von Moyland with respect to count three. I am satisfied beyond a reasonable doubt that said defendant is guilty under such count three. I do not therefore concur in the majority order or recommendation for vacation of the judgment as to defendant's conviction under count three and for a reduction of said defendant's sentence.

[Signed] WILLIAM C. CHRISTIANSON

3. KEPPLER—ORDER AND MEMORANDUM
OF THE TRIBUNAL

ORDER

The defendant Keppler has filed with the Secretary General a memorandum, dated 12 May 1949, claiming errors in the judgment in this case, with respect to the conviction of said defendant under counts one, five, six, and eight of the indictment, and requesting that said alleged errors be corrected and the finding of guilt against said defendant Keppler under said counts be quashed and that "the sentence be amended or the penalty reduced."

It appears that prior to the date of the foregoing memorandum, the defendant joined in a petition for plenary session of the Tribunals, for the purpose of examining "the judgment passed on 14 April 1949, by Military Tribunal IV in case 11."