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 STEENGRACHT 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."

On 16 June 1949, the prosecution filed an answering brief to the said memorandum of the defendant, and on 30 June 1949, the defendant filed a rejoinder to said prosecution's answering brief.

The Tribunal having considered the memorandum and motion therein, the answering brief thereto, and the rejoinder of defendants said answering brief, and being advised in the premises,

IT IS ORDERED that said defendant's memorandum and motion therein, be and the same are hereby in all respect 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

It will be noted that reference is made in the foregoing order to the fact that the defendant joined in petition for plenary session of the Tribunals. As heretofore indicated in other orders made by the Tribunal, such petition could not be, and was not considered or granted by the Tribunal. The arguments against the convictions made by defendants in such petition for plenary session, however, have been considered by the Tribunal in connection with its consideration of defendant Keppler's memorandum and motion herein.

We will now consider the counts involved in said memorandum, and under which counts the defendant was convicted.

We have reviewed the testimony regarding Keppler's connection with the aggression against Austria, in view of the claims made by the defendant in his motion. We adhere to the findings and conclusions expressed in our judgment. His connection with the aggression is clear, he was in fact the direct representative of Hitler, and engaged in carrying out the plans for the invasions, which had already been made before he left for Vienna. He carried out his instructions, he delivered an ultimatum to President Miklas, the Party organizations had taken possession of the capitol and ousted the lawful representatives of the Austrian Government in accordance with the German plans and orders before German troops actually entered Austria. The fact that this action was so successful, and the invasion of the sovereignty of Austria so complete that, on the fateful night, he attempted to inform Hitler that an armed invasion by Wehrmacht was not

necessary, does not change the nature of his acts or relieve him from guilt. We overrule and deny his motion for acquittal under count one as to Austria.

There is no substance to his motion regarding his conviction as a participant in the aggression against Czechoslovakia. While Slovakia may have been autonomous so far as its local government was concerned, it was an integral part of the Czechoslovakian State. Keppler played an important part in carrying out Hitler's plans for the dissolution of that state. Nor is it a fact that no armed resistance was offered to the German troops on their march into Bohemia and Moravia. Actual conflict took place. True, it was slight but this was due to the overwhelming might of the German Army, and the duress imposed on the unfortunate President Hacha. We find no error in fact or law regarding the defendant's conviction under count one arising out of the aggression against Czechoslovakia, and overrule and deny his motion to set aside his conviction with regard thereto.

We have considered defendant's motion to set aside his conviction under count one, and find it to be without substance. We adhere to the findings and conclusions expressed in our judgment and his motion is overruled and denied.

The reconsideration of the questions of fact and law relating to Keppler's conviction under count five discloses no error. We adhere to the findings and conclusions stated in our judgment and the defendant's motion to set aside his conviction under count five should be and hereby is denied.

With respect to count six, the charge of spoliation is sustained as against Keppler, and he is found guilty under such count. It is contended in the memorandum that Keppler was not involved nor responsible for the acts of spoliation involved in this count, and what we consider an unconvincing effort is made to minimize the testimony of Metzger, the former employee of the DUT. The findings under count six with respect to Keppler should be considered in connection with those made with respect to him under count five, where the activities of the DUT are gone into, which fact is indicated in our treatment of count six of the indictment.

We have reexamined the records in view of the defendant Keppler's motion to set aside his conviction under count eight. We find no error in fact or law and we adhere to the views expressed in our judgment. The defendant's motion to set aside his conviction under count eight should be and hereby is overruled and denied.