

BRIEF ON

DIE REICHSREGIERUNG (REICH CABINET)

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I N D E X

TOPICAL INDEX

Page No.

Section of Indictment	1
Count One, IV(H) Sentence 2.	1
Appendix B	1
Legal References	
Charter of International Tribunal. . .	
Art. 9	11
STATEMENT OF EVIDENCE	1-37
A. Ordinary Cabinet	
1. Composition	1-9
2. Interrelation of Cabinet and Nazi Party	10-12
3. Growth and concentration of legis- lative powers.	13-15
4. Cabinet meetings and circulation of laws and decrees	16-17
5. Laws and decrees passed by the ordinary cabinet.	18
6. Executive and Administrative powers	19-26
B. Secret Cabinet Council.	27
C. Creation of Reich Defense Council . (Reichsverteidigungsrat) And The Plenipotentiaries For Economics And Administration	28-34
D. Council of Ministers for the Defense of the Reich	35-37
APPENDIX A.	38-41
ARGUMENT AND CONCLUSION	42-44

SECTION OF INDICTMENT

Section (H) "INDIVIDUAL, GROUP AND ORGANIZATION RESPONSIBILITY FOR THE OFFENSE STATED IN COUNT ONE" of Paragraph IV "Particulars of the nature and development of the common plan or conspiracy" of COUNT ONE - THE COMMON PLAN OR CONSPIRACY, page 10.

The paragraph entitled, "DIE REICHSREGIERUNG (REICH CABINET)", set forth in Appendix B, page 35 of the indictment.

LEGAL REFERENCES

Article 9 of Section II "JURISDICTION AND GENERAL PRINCIPLES" of the Charter of the International Military Tribunal, Page 2:

"At the trial of any individual member of any group or organization the Tribunal may declare (in connection with any act of which the individual may be convicted) that the group or organization of which the individual was a member was a criminal organization.

"After receipt of the Indictment the Tribunal shall give such notice as it thinks fit that the prosecution intends to ask the Tribunal to make such declaration and any member of the organization will be entitled to apply to the Tribunal for leave to be heard by the Tribunal upon the question of the criminal character of the organization. The Tribunal shall have power to allow or reject the application. If the application is allowed, the Tribunal may direct in what manner the applicants shall be represented and heard."

I. COMPOSITION

The Reichsregierung (Reich Cabinet), as defined in the indictment consists of persons who were members of the ordinary cabinet after 30 January 1933; of persons who were members of the Ministerrat für die Reichsverteidigung, (Council of Ministers for the Defense of the Reich), and of persons who were members of the Geheimer Kabinettsrat (Secret Cabinet Council).

The composition of the ordinary cabinet, to which the term Reichsregierung was commonly applied, is herein-after set forth. For the composition of the Council of Ministers for the Reich Defense, and the Secret Cabinet Council, see parts B and D of this Brief.

The ordinary cabinet in May 1945 consisted of the following members:

- (a) Heads of departments of the central government:

THE CHANCELLOR - Adolf Hitler.

THE MINISTER OF AIR (Reichsluftfahrtminister),

Delegate FOR THE FOUR YEAR PLAN (Beauftragter für den Vierjahresplan) and REICH FOREST MASTER (Reichsforstmeister) Herman Goering.

Appointed as Reichs Minister (without portfolio) 30 January 1933.

351-PS, list of cabinet members from Reich Chancellery files.

1862 PS, 1936 RGBL, I, 887.

2093 PS, 1934, RGBL, I, 617.

Das Archiv, July 1934, p. 519.

Völkischer Beobachter, North German edition, 31 January 1933.

THE MINISTER OF ARMAMENTS AND WAR PRODUCTION

(Reichsminister für Rüstung und Kriegsproduktion), GENERAL INSPECTOR FOR ROADS (Generalinspektor für das Deutsche Strassenwesen), and GENERAL INSPECTOR FOR WATER AND POWER (für Wasser und Energie) - Albert Speer. Appointed 9 February 1942 as Minister of Armaments and Munitions (Reichsminister für Bewaffnung und

Munition) and title changed to above 2 September 1943.

Das Archiv, February 1942, p. 1015.

2092 PS, 1943, RGB1, I, 529.

THE MINISTER FOR CHURCH AFFAIRS (Für die kirklichen Angelegenheiten) not appointed. Acting was Herman Muhs, appointed 3 February 1942.

1997 PS, file on cabinet appointments from the Presidential Chancellery.

THE MINISTER OF ECONOMICS (Reichswirtschaftminister) - Walter Funk. Appointed as of 15 January 1938 on 26 November 1937.

Das Archiv, November 1937, p. 1021.

THE MINISTER OF EDUCATION (Reichsminister für Wissenschaft, Erziehung und Volksbildung) - Bernhard Rust. Appointed 1 May 1934.

351 PS, ibid.

Das Archiv, May 1934, p. 227.

THE MINISTER OF FINANCE (Reichsfinanzminister) - Lutz Schwerin von Krosigk. Appointed 30 January 1933.

351 PS, ibid.

Volkischer Beobachter, North German edition, 31 January 1933.

THE MINISTER FOR FOOD AND AGRICULTURE (Reichsminister für Ernährung und Landwirtschaft) - Walter R. O. Darre. Appointed 30 June 1933.

Volkischer Beobachter, South German edition, 1 July 1933, page 2.

ACTING - Herbert Backe. Appointed as Acting Minister 23 May 1942 and given title of Reich Minister on 4 April 1944.

Das Archiv, May 1942, page 195.

1997 PS, ibid.

THE MINISTER FOR FOREIGN AFFAIRS (Reichsminister des Auswärtigen) - Joachim von Ribbentrop. Appointed 4 February 1938.

Das Archiv, February 1938, page 1417.

THE MINISTER OF THE INTERIOR (Reichsminister des Innern) - Heinrich Himmler. Appointed 25 August 1943. (Deceased).

Das Archiv, August 1943, page 347.

THE MINISTER OF JUSTICE (Reichsjustizminister) - Otto G. Thierack. Appointed 20 August 1942.

1997 PS, file on cabinet appointments from the Presidential Chancellery.

THE MINISTER OF LABOR (Reichsarbeitsminister) - Franz Selite. Appointed 30 January 1933.

351 PS, list of cabinet members from Reich Chancellery files.

Völkischer Beobachter, North German Edition, 31 January 1933.

THE MINISTER OF THE OCCUPIED EASTERN TERRITORIES (Reichsminister für die besetzten Ostgebiete) - Alfred Rosenberg. Appointed 17 July 1941.

1997 PS, ibid.

THE MINISTER OF POSTS (Reichspostminister) - Wilhelm Ohnesorge. Appointed 2 February 1937.

Das Archiv, February 1937, page 1619.

THE MINISTER OF PROPAGANDA (Reichsminister für Volksaufklärung und Propaganda) - Paul Joseph Goebbels. Appointed 13 March 1933.

351 PS, ibid.

Völkischer Beobachter, Munich edition, 14 March 1933, page 2.

THE MINISTER OF TRANSPORT (Reichsverkehrsminister) Julius Dörpmüller. Appointed 2 February 1937.

Das Archiv, February 1937, 1619.

The following were also members of the Reich Cabinet in May 1945.

(b) REICH MINISTERS WITHOUT PORTFOLIO:

The Leader of the Party Chancellery (Leiter der Partei-Kanzlei) - Martin Bormann.

Given the authority of a Reich Minister and made a member of the Cabinet, 29 May 1941.

D 141, 1941, RGB1, I, 295.

The Commander-in-Chief of the Navy - Karl
Doenitz. Appointed 30 January 1943, with
the rank of Reich Minister and the right
to participate in Cabinet meetings.

Volkischer Beobachter, South German
Edition, 31 January 1943.

2098 PS, 1938, RGB1, I, 215.

The Chief of the OKW - Wilhelm Keitel. Given
the rank of a Reich Minister upon appoint-
ment on 4 February 1938 as Chief of the
High Command of the Armed Forces.

1915 PS, 1938, RGB1, I, 111.

Hans Frank. Appointed as Reich Minister with-
out portfolio 19 December 1934.

351 PS, list of cabinet members from
Reich Chancellery files.

Das Archiv, December 1934, page 1197.

Wilhelm Frick. Given the title of Reich Minis-
ter 25 August 1943.

Das Archiv, August 1943, page 348.

The Chief of the Reich Chancellery (Reichs-
kanzlei) - Hans Heinrich Lammers. Appointed
State Secretary and Chief of the Reichs
Chancellery 30 January 1933, and as Reich
Minister 26 November 1937.

351 PS, ibid.

Das Archiv, November 1937, page 1021.

Constantin U. K. von Neurath, retained title
of Reich Minister upon appointment as
President of the Secret Cabinet Council,
4 February 1938.

Das Archiv, August 1943, page 348.

Das Archiv, February 1938, page 1417.

Arthur Seyss-Inquart, named Reich Minister,
1 May 1939.

Das Archiv, May 1939, page 212.

(c) STATE MINISTERS ACTING AS REICH MINISTERS:

Karl Hermann Frank. Named as State Minister of the Protectorate of Bohemia and Moravia and given the rank of Reich Minister, 25 August 1943.

Das Archiv, August 1943, page 348.

Otto Meissner. Appointed State Minister and Chief of the Presidential Chancellery (Chef der Präsidialkanzlei) of the Fuehrer and Reich Chancellor, with the rank of Reich Minister, 1 December 1937.

1997 PS, file on cabinet appointments from the Presidential Chancellery.

(d) OTHERS ENTITLED TO TAKE PART IN CABINET MEETINGS:

The head of the Reich Labor Service - Konstantin Hierl. Given the right to participate in Cabinet meetings 30 January 1937, and the rank of Reich Minister 20 August 1943.

Taschenbuch für Verwaltungsbeamte, 1943.

2094 PS, 1937, RGBL, I, 95.

2095 PS, 1943, RGBL, I, 495.

The Reich Youth Leader - Arthur Axmann, appointed 10 August 1940.

Taschenbuch für Verwaltungsbeamte, 1943, page 4.

Deutscher Beamten-Kalender, 1941, page 104.

Das Archiv, August 1940, page 467.

The Chief of the Foreign Organization (Ausland-sorganization) of the Foreign Office - Ernst W. Bohle. Given the right to take part in Cabinet meetings when his jurisdiction was concerned on 30 January 1937.

2075 PS, 1937, RGBL, I, 187.

The Prussian Finance Minister - Eduard H. J. von Popitz. (Reported to be dead).

1774 PS, (Ernst Huber, Verfassungsrecht des grossdeutschen Reichs, page 225.

Sartorius, Verfassungs und Verwaltungsrecht, 1942, Sec. 19, footnote 8.

THE CABINET PRESS CHIEF:

Otto Dietrich. Appointed 26 November 1937.

Das Archiv, November 1937, page 1102.

Taschenbuch für Verwaltungsbeamte, 1943, page 4.

National Socialist Year Book, 1944, page 291.

The following is a list of persons who were members of the Cabinet prior to May 1945: (Or entitled to take part in its meetings).

Franz von Paper - Vice Chancellor, 30 January 1933-30 July 1934.

351 PS, list of Cabinet members from Reich Chancellery files.

Volksischer Beobachter, North German Edition, 31 January 1933.

Fritz Todt - Minister of Armaments and Munitions - 17 March 1940 - 8 February 1942 (deceased).

2091 PS, 1940, RGBL, I, 513.

Hans Kerrl - Minister for Church Affairs - 16 July 1935 - 13 December 1942 (deceased).

351 PS, ibid.

2090 PS, 1935, RGBL, I, 1029.

Alfred Hugenberg - Minister of Economics and Minister of Food and Agriculture - 30 January 1933 - 29 June 1933.

351 PS, ibid.

Volksischer Beobachter, North German edition, 31 January 1933.

Kurt Schmitt - Minister of Economics - 30 June 1933-30 July 1934.

351 PS, ibid.

Volksischer Beobachter, South German edition, 1 July 1933, page 2.

Hjalmar Schacht - Acting Minister of Economics -
30 July 1934 - 26 November 1937. Named Reich
Minister without portfolio 26 November 1937.
Dismissed from office 21 January 1943.

351 PS, list of Cabinet members from
Reich Chancellery files.

Das Archiv, August 1934, page 715.

Volkischer Beobachter, Munich edition,
31 January 1935.

Das Archiv, November 1937, page 1021.

1997 PS, file on Cabinet appointments
from the Presidential Chancellery.

Constantin U. K. von Neurath - Minister for Foreign
Affairs - 30 January 1933 - 4 February 1938.

Volkischer Beobachter, North German
edition, 31 January 1933.

See also above under Reich Ministers
without portfolio in 1945.

Wilhelm Frick - Reich Minister of the Interior -
30 January 1933 - 25 August 1943.

351 PS, ibid.

Volkischer Beobachter, North German
edition, 31 January 1933.

See also above under Reich Ministers
without portfolio in 1945.

Franz Gürtner - Minister of Justice - 1 February
1933 - 29 January 1941 (deceased).

351 PS, ibid.

Volkischer Beobachter, North German
Edition, 2 February 1933.

Franz Schlegelberger - Acting Minister of Justice -
29 January 1941 - 20 August 1942.

Das Archiv, January 1941, page 1000.

Peter Paul von Eltz-Rubenach - Minister of Posts
and Minister of Transport - 30 January 1933 -
2 February 1937.

351 PS, ibid.

Volkischer Beobachter, North German
edition, 31 January 1933.

1534 PS, letter of resignation,
30 January 1937.

Walter H.A.A. von Brauchitsch - Commander-in-Chief
of the Army with the rank of Reich Minister and
the right to sit in cabinet meetings - 25 February
1938 - 21 December 1941.

2098 PS, 1938, RGBL, I, 215.

Baldur von Schirach - Reich Youth Leader - entitled
to take part in cabinet meetings.

"Taschenbuch für Bewaltungsbeamte,
1939, Page 3.

Deutscher Beamten Kalender, 1941,
page 104.

Werner Eduard Fritz von Blomberg - Minister of
Defense (Reichswehrminister) - 30 January 1933 -
4 February 1938.

351 PS, list of Cabinet members from
Reich Chancellery files.

Volkischer Beobachter, North German
edition, 31 January 1933.

Title changed to Minister of War (Reichs-
kriegsminister) 20 May 1935 and post abolished
4 February 1938.

1915 PS, 1938, RGBL, I, 111.

Heinrich Himmler - As Chief of the German police
in The Ministry of the Interior (Chef der
Deutschen Polizei inn Reichsministerium des
Innern) took part in Cabinet meetings if his
jurisdiction was concerned - 17 June 1936 -
25 August 1943.

2073 PS, 1936 RGBL, I, 487.

See also above under list of Cabinet
Members in 1945.

Erich Raeder - Commander-in-Chief of the Navy with
the rank of Reich Minister and the right to sit
in cabinet meetings 25 February 1938 - 30 Jan-
uary 1943.

2098 PS, 1938, RGBL, I, 215.

Volkischer Beobachter, South German
edition, 30 January 1943.

Rudolf Hess, Deputy of the Fuehrer - 1 December
1933 - 26 May 1941.

351 PS, list of Cabinet members from
Reich Chancellery files.

1395 PS, 1933 RGB1, I, 1016.

Walter Funk, Cabinet Press Chief, 30 January 1933 -
26 November 1937.

351 PS, ibid.

See also above under list of Cabinet
members in 1945.

Gerecke, appointed Commissioner for Creation
of Employment, 30 January 1933.

Volkischer Beobachter, North German
Edition, 31 January 1933.

Ernst Roehm, made a member of the Cabinet 1 December
1933. (Deceased).

1395 PS, 1933, RGB1, I, 1016.

2. INTERRELATION OF CABINET AND NAZI PARTY.

Party participation in the work of the Cabinet was attained inter alia by the participation of Rudolf Hess, Hitler's deputy, in the work of the Cabinet. Gauweiler described Hess' function in this regard thus:

"By an order of the Fuehrer, dated 25 July 1934, his deputy, as well as appointed reviewers, were given the power to take part in the editing of bills dealing with all the departments of the Reich. On the basis of this decree, the Deputy of the Fuehrer was to be invited to all discussions of the department heads to which he could also send his representatives. Drafts of the laws had to be presented to the Fuehrer, in the form of reviewer's drafts (Feferentenentwurfe) and not as Cabinet bills. From a special order from the Fuehrer, 6 April 1935, this privilege of participation in government affairs by the Fuehrer's Deputy was expanded to include all executive decisions and orders insofar as they were published in the Reichsgesetzblatt. The Deputy of the Fuehrer can on his own initiative introduce bills, etc., regardless in what field; insofar as the good of the party is concerned, he is the man in charge."

"Thus, the direct influence of the movement on the legislation and the executive branch was assured at a point where up to now the laws were an internal affair of the individual ministries. From now on, technical considerations or considerations of time cannot interfere with the requests and plans of the party."

1942 PS, Otto Gauweiler, Rechtseinrichtungen und Rechtsaufgaben der Bewegung, 1939, page 20.

D-138, translation of decree of 27 July 1934 regarding Hess' powers.

In a letter of 9 October 1934 to Goebbels, Hess pointed out that his participation in law making meant the taking into account of the Nazi Party as such.

D-139, Original letter from Hess to Goebbels, 9 October 1934.

Hess' participation in drafting laws and decrees was extended in 1938 to include laws and decrees of the "Lander".

D-140, original letter from Lammers to Reich Ministers, 12 April 1938.

After his flight to England, Martin Bormann, as Leader of the Party Chancellery, took over the same functions and was given the authority of a Reich Minister and made a member of the Cabinet.

2099 PS, Decree of 29 May 1941, RGBL, I, 295, relating to the Chief of the Party Chancellery.

On January 30, 1937, Hitler executed the acceptance into the Party of those members of the Cabinet who were not members before.

"
Völkischer Beobachter, 1 February 1937,
South German edition.

"
Thereupon, von Eltz-Rubenach wrote to Hitler resigning his position as Minister of Posts and Minister of Transport, saying that as a Christian he could not accept membership in the National Socialist Party.

1554 PS, letter from von Eltz-Rubenach to
Hitler, 30 January 1937.

His resignation was accepted immediately and Wilhelm Ohnesorge was appointed to the position of Minister of Posts, and Julius Dornmüller to the position of Minister of Transport.

Das Archiv, February 1937, page 1619.

Huber, after referring to the fact that the "Ministry Hess" with its liaison staff was charged with asserting the Party's influence on the legislation and administration of the State, said in 1939 with reference to the unity of the Party and Reich Cabinet:

"Unity of Party and Reich Cabinet (Reichregierung) is furthermore secured by the numerous personal unions, i.e. association of Central State Offices with corresponding party offices. Such personal unions exist in the cases of the Food Minister, (Darré) (State and Party); and the Propaganda Minister, (Goebbels) (State and Party); the Chief of the German Police, (Himmler) (State and Party); and the Reich Labor Leader, (Hierl), (State and Party); the Chief of the Organization in foreign countries, (Böhle) (State and Party); and the Reich Youth Führer, (von Schirach) (State and Party). Furthermore, the majority of the Reich Ministries is occupied by leading old party members. Finally, all Reich Ministers have been accepted by the party on 30 January 1937 and have been decorated with golden party insignia."

1774 PS, page 3-4, translation of excerpt
from Ernst Rudolf Huber, "Verfassungsrecht
des Grossdeutschen Reichs".

At the period of which Huber was writing, the Cabinet members to whom he referred held the following Party position: Darré was Leader of the Reich Office for Agrarian politics;

Goebbels was Reich Propaganda Leader of the NSDAP; Himmler was Reich Leader of the SS; Hierl was Reich Labor Leader; Bohle was Leader of the Foreign Organization; von Schirach was Reich Youth Leader.

National Socialist Yearbook, 1939,
page 190-191.

Upon the appointment of Otto Thierack as Minister of Justice on 20 August 1942, Dr. Lammers pointed out that the Party and State were united by the appointment. (At the same time Thierack was named President of the Academy of German Law and Leader of the National Socialist Organization of Lawyers ("Rechtswahrerbundes")).

1997 PS, file on cabinet appointments
from the Presidential Chancellery.

Das Archiv, August 1942, page 429.

For party positions of other cabinet members in 1943,
see Document 2473 IS.

2473 IS, extracts from the National
Socialist Yearbook, 1943, discussed in
the brief on the Leadership Corps of
the Nazi Party.

3. GROWTH AND CONCENTRATION OF LEGISLATIVE POWERS

Under the Weimar Constitution, the supreme law making body of the German Reich was the Reichstag or German Parliament.

2050-PS, the Constitution of the German Reich, 11 August 1919, Article 68.

The separate states (Lander) were allowed to retain certain legislative functions (Ibid., Art. 12). Further, limited controls over Reich legislation were vested by the Constitution in the Federal Council (Reichsrat) who could raise objections to laws passed by the Reichstag (Ibid., Art. 74); in the President of the Reich, who could force a referendum by the people on any particular law that he did not wish to sign (Ibid, Art. 73); and in the People who had the right of initiative and referendum (Ibid, Art. 73). The cabinet could initiate legislation with the consent of the Reichsrat (Ibid., Art. 68, 69) but otherwise had no legislative powers and was primarily an executive body.

Upon the accession to power by the Nazis in January 1933, the legislative situation was quickly changed. The possibility of securing an enabling act from the Reichstag was discussed at the very first meeting of the new Cabinet under Hitler.

351-PS, Document showing list of Cabinet members and minutes of first sessions of Hitler's Cabinet, 30 January 1933.

On 24 March 1933, the Reichstag passed such an enabling law entitled "An Act to Relieve the Distress of the People and of the Reich".

2001-PS, 1933, Reichsgesetzblatt, Part I, p. 141

Under this law the cabinet secured unlimited legislative powers, with the right to "deviate from the constitution insofar as they do not affect the position of the Reichstag and the Reichsrat", (Ibid, Art. 2). It further decreed that the "powers of the President remain undisturbed", (Ibid, Art. 2). But, the Reichsrat was abolished by the cabinet on 14 February 1934,

2002-PS, 1934, Reichsgesetzblatt, Part I, p. 89

while (upon the death of Hindenburg) the posts of Chancellor and President were merged,

2003-PS, 1934 Reichsgesetzblatt, Part I, p. 747.

Previously, on 30 January 1934, the separate states (Lander) were, by Cabinet law, deprived of their independent character as states and their sovereign functions transferred to the Reich. That law abolished separate constitutions, separate Parliaments and embassies, and separate legislative power.

This law contained a provision (Article 4) to the effect that "the Reichsregierung may issue new constitutional laws".

2006-PS, 1934 Reichsgesetzblatt, Part I, p. 75.

The Enabling Act of 24 March 1933 was at first restricted to four years

2001-PS, 1933 Reichsgesetzblatt, Part I, p. 141, Art. 5.

and then extended three times, twice by the Reichstag for a definite period

2047-PS, 1937 Reichsgesetzblatt, Part I, p. 105

2048-PS, 1939, Reichsgesetzblatt, Part I, p. 99

and the last time by an edict of the Fuehrer for an indefinite period.

2103-PS, 1943 Reichsgesetzblatt, Part I, p. 295.

The Reichstag, since 1933, had virtually ceased its functions as a legislative body.

2481-PS, FRICK, Vier Jahre des Dritten Reiches, in Zeitschrift der Akademie fur Deutsches Recht, (1937), p. 67.

With the exception of the decree making power of Hitler and the Deputy of the Four Year Plan, Goering, (who was also a member of the Cabinet)

1862-PS, 1936, RGBL, I, p. 887

the Cabinet possessed, until 1939, the highest legislative power in the Reich.

Under the Secret Defense Law of 4 September 1938 the Plenipotentiaries for Administration and Economy, who were in fact also the Ministers of the Interior and Economics respectively and to whom certain other ministries were subordinated, were given the power to issue laws in agreement with the OKW which could deviate from existing laws. (See below under section on creation of the Reich Defense Council and the Plenipotentiaries for Administration and Economy).

2194-PS, Top secret letter of 4 September 1939 enclosing copy of Secret Defense Law of 4 September 1938.

A Fuehrer Decree on 30 August 1939 established the Council of Ministers for the Defense of the Reich and authorized the Council to issue decrees with statutory effect "insofar as I have not provided for the passing of a law by the Reich Cabinet (Reichsregierung) or the Reichstag". (See below under the section on the Council of Ministers for the Defense of the Reich).

2018-PS, Decree of 30 August 1939, establishing the Council of Ministers, 1939, RGBL, I, 1539.

The cabinet retained its legislative powers to the end of the war.

Hitler announced early in 1940, in regard to the question as to the extent of the field of legislation of the Council of Ministers for the Defense of the Reich, that he believed it practical to reserve certain

legislative missions for the Reich Cabinet (i.e. The ordinary cabinet).
On 14 June 1942, Dr. Lammers, Reich Minister and Chief of the Reich
Chancellery expressed the opinion that Hitler, as well as Goering, had
not changed their point of view in that regard, and that they would "stress
the fact that the Fuehrer himself and the Reich Cabinet should not be
eliminated from the powers of legislation".

352-PS, letter from Dr. Lammers to the Plenipotentiary
for Administration, 14 June 1942.

As a matter of fact, Cabinet laws continued to be passed during the
years 1939-1944 (i.e. after the establishment of the Council of Ministers)
(1939-1944, RGB1, I, passim).

This circulation of drafts of laws continued throughout the whole war.

Transcript of interrogation of Hans Heinrich Lammers, 16 October 1945, page 3,19.

1701-PS, Memorandum of 9 August 1943 from Frick to the Reich Minister and Chief of the Reich Chancellery enclosing 55 copies of a draft law, and memorandum of comment thereon by Rosenberg, 22 December 1943.

5. LAWS AND DECREES PASSED BY THE ORDINARY CABINET.

Among the laws and decrees enacted by the ordinary cabinet, and discussed in briefs relating to other sections of the indictment, which relate to the common plan or conspiracy of the defendants and which made possible or facilitated the commission of various of the crimes referred to in counts one, two, three and four of the indictment, may be cited those contained in Appendix A collated with reference to Paragraphs of Count I.

6. EXECUTIVE AND ADMINISTRATIVE POWERS

Control over executive and administrative powers of the Reich was secured to and concentrated in the Central Government of the Nazis--the Cabinet--by a series of steps that eliminated the separate states (Lander) as administrative bodies and reduced them to mere geographical divisions. The preliminary processes in that direction were completed by the Cabinet on 30 January 1934 with the enactment of the Law for the Reconstruction of the Reich. By that law the states were definitely deprived of their character as States, their legislative assemblies were abolished and their sovereign powers transferred to the Reich.

2006 RS, 1934, Reichsgesetzblatt,
Part I, Page 75.

Of the centralizing effects of this law, the defendant Frick said:

"The relationship between Reich and Provinces has been placed on a completely new basis, unprecedented in the history of the German people. It gives to the Reich government unlimited power, indeed it obligates it to build up a completely unified leadership and administration of the Reich! Thereby the German Reich has become a unified state and all administration in the provinces ensues only by order of and in the name of the Reich. The Province boundaries are only administrative technical boundaries of an area, but no longer boundaries of authority!"

2380 RS, article by Wilhelm Frick,
"Der Sieg des deutschen Einheits-
gedankens" (National Socialist Year-
book, 1935, page 13).

Further administrative control was effected by the Reich Governors Law passed by the Cabinet on 30 January 1935. This law made all Reich governors (Statthalter) permanent delegates of and subject to the order of the Cabinet and more especially the Reich Minister of the Interior.

2006-RS, 1934, Reichsgesetzblatt,
Part I, page 75.

These Statthalter had been previously created as the supreme state (Land) authorities deriving their existence by appointment of Hitler

In Prussia unification was obtained by merging the various ministries and offices with those of the Reich, except in the case of the Minister of Finance. Hitler in turn kept the Office of Reich Governor of Prussia although he delegated the power to Goering.

"
Taschenbuch für Verwaltungsbeamte
1943, page 185.

Two important functions - Justice and Police - previously the domain of the states, were taken over by the Reich in 1934 and 1936 respectively. By a Cabinet Law of 16 February 1934, the Administration of Justice was transferred to the Reich. All courts became tribunals of the Reich and all ministries of justice of the Lander were abolished.

1934, Reichsgesetzblatt,
Part I, page 91.

Supreme control over police affairs was placed within the jurisdiction of the Reich by decree of 17 June 1936.

2073 PS, 1934, Reichsgesetzblatt,
Part I, page 487.

The executive and administrative powers gathered into the Central Nazi government, were collectively contained in the 16 principal ministries of the Cabinet.

1. The Foreign Office handled relations of the Reich and foreign countries. Diplomatic and consular services, as well as the office for foreign trade, were in this ministry.

PS, Stuckart-Rosen, Verwaltungsrecht, 1944, page 66.

The Chief of the Foreign Organization of the Nazi Party, William Bohle, (who also became a member of the Cabinet), was attached to this office. The AO, as it was called, concerned itself with all matters dealing with Germans abroad.

"
Taschenbuch für Verwaltungsbeamte,
1942, page 8.

2. Ministry of the Interior.

Under the Nazis this was the most important ministry of all. Here belonged general administration, local administration, administration of civil service affairs,

police administration, public health system, welfare system, geodetic system, and sport system. Under the Ministries were the Reich governors, the "land" governments, the Provincial Presidents (Oberpraesidenten) and District Presidents (Regierungspraesidenten), as well as police authorities. In addition, numerous central intermediary boards such as the Reich Health Office and the Reich Geneological Office, ^{PS, Stuckart-Rosen} (Ibid, page 66).

Practically all legislation was prepared in this ministry. Thus the "Enabling" Law of 24 March 1933 (see Section A-3 above), as well as the three racial Nurnberg laws, were drafted by this office.

IS, Das Dritte Reich Im Aufbau,
Volume 4, Page 81.

IS, Das Reichsministerium des
Innern, Medicus, 1940, page 62.

With the acquisition and occupation of new territories, the integration and coordination thereof were placed within this ministry. The Reich Minister of the Interior (in some cases in cooperation with other Reich Ministers) was given regulatory powers over; (a) Austria 1940, Reichsgesetzblatt, Part I, page 237;
(b) Eupen, Malmedy and Moresnet 1940, Reichsgesetzblatt, Part I, page 803); (c) Sudetenland 1939, Reichsgesetzblatt, Part I, page 780); (d) Protectorate of Bohemia and Moravia 1939, Reichsgesetzblatt, Part I, page 485); (e) Danzig 1939, Reichsgesetzblatt, Part I, page 1547); (f) Memel Territory 1939, Reichsgesetzblatt, Part I, page 54);
(g) Incorporated Poland 1939, Reichsgesetzblatt, Part I, page 2042); (h) Occupied Polish Territories 1939, Reichsgesetzblatt, Part I, page 2077);
Norway 1941, Reichsgesetzblatt, Part I, page 765);
and the Saar 1935, Reichsgesetzblatt, Part I, page 66).

The Reich Labor Service also was under this ministry. In 1943, however, the leadership thereof was taken out of the jurisdiction of the Interior Ministry and was given

the status of a Supreme Reich Authority. Reich Labor Leader Karistantin Hierl then received the rank of a Reich Minister. (See Section A-1 of this Brief).

In 1943 when Himmler was appointed Minister of the Interior, all power of the police, the SS and the Interior were united in his person.

3. The Ministry for Public Enlightenment and Propaganda.

This ministry was created on 13 March 1933.

2029 PS, 1933 Reichsgesetzblatt,
Part I, page 104.

Every avenue or means of propaganda and opinion control--radio, press, literature, motion pictures, art, theater,--were under the supervision and control of this ministry. Among other things, the film censorship offices, the Reich Chamber of Culture, the Reich Radio Company, and the Institute of Politics were agencies controlled and supervised by Goebbels as Minister of Propaganda.

2030 PS, 1933, Reichsgesetzblatt,
Part I, page 449.

 PS, Stuckart-Rosen, Verwalt-
ungsrecht, 1944, page 66.

4. The Reich Minister of Aviation and Supreme Commander (Oberbefehlshaber) of the Air Force administered civil and military aviation.

 PS, Ibid, page 66.

5. The Reich Minister of Finance administered the budget and financial system of the Reich including taxes, monopolies and tariffs.

 PS, Ibid, page 66.

6. The Ministry of Justice handled all matters touching on the judicial system. Under the Minister were all courts and their personnel, and all prosecutors.

 PS, Ibid, page 66.

On 24 April 1934, the People's Court was created and placed within the jurisdiction of this Ministry.

2014PS, 1934, Reichsgesetzblatt, Part I,
page 341.

7. The Reich Minister for Armament and War Production had the responsibility of bringing

"to a level of highest production all offices active in producing arms and munitions. Furthermore, he is responsible for the area of raw materials and productions in industry and manual labor".

____ IS, Stuckart-Rosen, Verwaltungsrecht, 1944, page 67.

8. The Reich Minister for the Occupied Eastern Territories administered the occupied eastern (Russian) territories. Under him were the Reich Commissars, the Commissar General, Head Commissars and Area Commissars in those territories.

____ IS, Ibid, page 67.

The other ministries, whose powers are inherent in the very nature of their portfolio, were the High Command of the Armed Forces, Economics, Food and Agriculture, Labor, Education, Church Affairs, Transportation, and Posts.

____ IS, Ibid, page 66 et. seq.

In addition, the Protector of Bohemia and Moravia, the defendant, von Neurath (later the defendant Frick); the Governor General of Poland, the defendant Hans Frank; the Reich Commissioner in the Occupied Netherland territories, the defendant, Seyss-Inquart; the Reich Youth Leader, the defendant Shirach (and later Axman), were all Cabinet members. While the sole political party of the Reich--the Nazi Party--was officially represented in the cabinet, not only through Hitler, but through^{Hess and} the Chief of the Party Chancellery, Borman. (See Section A-2 of this brief).

This tremendous concentration of executive, and administrative power in the Cabinet was further enhanced by many additional regulatory and administrative powers delegated to the several ministers by laws or decrees. The laws or decrees were themselves usually very broad, thereby leaving much room for discretionary action on the part of the designated Enforcement Minister.

A few pertinent examples are:

LAW

Minister or Ministers
to whom enforcement
or regulatory powers
were delegated.

Cabinet law of 7 April 1933,
purging the Civil Service.

2005FS, 1933, Reichsgesetz-
blatt, Part I, page 175.

Interior, Finance.

Cabinet Law of 26 May 1933
confiscating communist property.

1396FS, 1933 Reichsgesetz-
blatt, Part I, page 293.

Interior.

Cabinet Law of 14 July 1933
confiscating property subversive
to the people and the state.

1388FS, 1933, Reichsgesetz-
blatt, Part I, page 480.

Interior.

Reich Citizenship Law (Nurnberg)
of 15 September 1935.

1416 FS, 1935, Reichsgesetzblatt,
Part I, page 1146.

Interior.

Cabinet law of 30 April 1939 dis-
criminating against Jewish tenants.

1419FS, 1939, Reichsgesetzblatt,
Part I, page 869.

Interior, Justice.

Decree of 12 November 1938 elimin-
ating Jews from German economic
life.

FS, 1938, Reichsgesetzblatt,
Part I, page 1580.

Economics and
competent ministries.

Decree of 12 November 1938 levying
fine of one billion marks upon Jews
of German Nationality.

1412FS, 1938, Reichsgesetzblatt,
Part I, page 1579.

Finance and
competent
ministers.

Decree of 30 June 1942 regulating
conditions of employment of Eastern
workers.

FS, 1942, Reichsgesetzblatt,
Part I, page 419.

Finance, Interior,
Occupied Eastern
Territories, Food
and Agriculture.
(In consultation
with each other and
the General Manpower
authority).

Into the Council of Ministers for the Defense of the
Reich (See Section D of this Brief), which was expressly
created "for the uniform leadership of administration and
economy", were collected and concentrated all the collec-
tive powers of the Cabinet as represented by the ministries
and ministers therein contained.

2018 FS, 1939, Reichsgesetzblatt,
Part I, page 1539.

The Council of Ministers itself was a committee formed out
of the secret Reich Defense Council. (See Section C of
this Brief). Both of these bodies had as integral members

thereof the Plenipotentiary for Economy, the Plenipotentiary for Administration, and the Chief of the High Command of the Armed Forces. (Ibid). Subordinate to and within the sphere of the directions of the Plenipotentiary for Economy were the Ministers of Economics, Food and Agriculture, Labor, the Forest Master, and for limited purposes, the Reich Finance Ministry and the Reichsbank.

Subordinate to and within the sphere of the directions of the Plenipotentiary for Administration were the Ministers of Interior, Justice, Education, Churches, and the Reich Office for Space Allocation (Raumordnung). Immediately under the Chief of the High Command of the Armed Forces, were the Reich Postal Ministers, the Reich Transportation Minister.

2194 PS, top secret letter from the Ministry for Economy and Labor, Saxony, to the Reich Protector in Bohemia and Moravia, 4 September 1939, enclosing copy of the 1938 Secret Defense Law.

The Chief of the OKW could, under certain conditions, also give directions to the other two Plenipotentiaries and to the Reich Ministers not subordinate to them.

2194 PS, *ibid*, (Par. 11).

This concentration of power did not stop short at the top, but was also extended to the provincial level by the creation and appointment by the Council of Ministers of National Defense Commissioners. On 1 September 1942, 18 commissioners were appointed.

1939, RGB1, I, page 1565.

This number was increased to 42 on 16 November 1942.

1942, RGB1, I, page 649.

These commissioners were the executive agents of the Ministerial Council. They had no apparatus of their own, but had to utilize the existing local machinery. They were the superior administrative officials on the regional level.

. Ibid.

Further, the forty-two defense commissioners were also
the Gauleiter of the Party.

IS, Stuckart-Rosen, Verwaltungsrecht,
1944, page 81.

B. THE SECRET CABINET COUNCIL

The Secret Cabinet Council (GeheimerKabinettsrat) was established by decree of the Fuehrer of 4 February 1938.

2031 PS, decree establishing the Secret Cabinet Council, (1938, RGBL, I, page 112).

The members of the Secret Cabinet Council were: Reich Minister von Neurath, President; The Foreign Minister (von Ribbentrop); the Prussian Ministerial President, Minister of Air and Commander of the Air Force, (Goring): the Minister of Propaganda (Goebbels); the Reich Minister and Chief of the Reich Chancellery (Lammers): the Commander^{-in-Chief} of the Army (von Brauschitsch); the Commander^{-in-Chief} of the Navy (Raeder); the Chief of the OKW (Keitel). The duty of the Secret Cabinet Council was to advise the Fuehrer on the conduct of foreign relations.

The President of the Secret Cabinet Council, von Neurath, was a member of the Reich Defense Council (Reichsverteidigungsrat. (See infra).

2194 PS, top secret letter of 4 September 1939 enclosing copy of Secret Reich Defense Law of 4 September 1938.

It is to be noted that all of the members of the Secret Cabinet Council were members of the ordinary cabinet.

Huber pointed out that the Secret Cabinet Council represented "a select committee" of the Cabinet for deliberation on foreign affairs.

1774 PS, extracts from Ernst Rudolf Huber, Verfassungsrecht des Grossdeutschen Reiches (1939) (page 3 of translation).

9. CREATION OF THE REICH DEFENSE COUNCIL (Reichsverteidigungsrat) AND THE PLENIPOTENTIARIES FOR ECONOMICS AND ADMINISTRATION.

Shortly after coming into power, the ordinary Cabinet, by decision of 4 April 1933, established a Reich Defense Council (Reichsverteidigungsrat), reference to which is made in a cabinet decision of 21 May 1935.

2261 PS, top secret letter from von Blomberg, 24 June 1935 enclosing Secret Reich Defense Law of 21 May 1935 and Cabinet decision of 21 May 1935.

Hans B. Brausse, Die Fuhrungsordnung des Deutschen Volkes, 1940, page 162.

The Reich Defense Council was clearly a war planning group. Frick has stated upon interrogation:

"It was supposed to plan preparations for war and wartime decrees which later on were published by the Ministerial Council for the Defense of the Reich."

Transcript of interrogation Wilhelm Frick, 13 October 1945, page 9-10.

Its duties are defined in paragraph 10 of the Secret Defense Law enacted by the Cabinet on 4 December 1938 as consisting "in peace time in the decision on all measures for the preparation of the Reich Defense and on gathering together of all forces and means of the nation according to the directions of the leader and Reich Chancellor", (underscoring added).

The Chairman of the Reich Defense Council was Hitler: His permanent deputy was Goering. Permanent members were:

The Reich Minister of Air and Supreme Commander of the Air Force,

The Supreme Commander of the Army,

The Supreme Commander of the Navy,

The Chief of the OKW,

The Deputy of the Leader,

The Reich Minister and Chief of the Reich Chancellery,

The President of the Secret Cabinet Council,

The Plenipotentiary for the Reich Administration,

The Plenipotentiary for Economics,

The Reich Minister of Foreign Affairs,

The Reich Minister of the Interior,

The Reich Finance Minister,

The Reich Minister for Popular Enlightenment and Propaganda,

The President of the Reich Bank Directory.

Other Reichsministers and Offices directly subordinated to Hitler were to be consulted if necessary.

Within the Reich Defense Council was the Reich Defense Committee, a working committee (Reichsverteidigungsausschuss) presided over by the Chief of the OKW. It was composed of the OKW, the Deputy of the Commissioner for the Four Year Plan, the leader staffs of the Plenipotentiary for Administration, (Generallbevollmächtigte für die ^{Reichs}Verwaltung)(see below), and the Plenipotentiary for Economy, (Generallbevollmächtigte für die Wirtschaft)(see below), and the Reich Defense officials. These defense officials were commissioned by Hitler's Deputy, Hess, by the Reich Chancellery, by each Reich Ministry, by the Reich Leader of the SS and Chief of the German Police (Himmler), by the Reich Labor Leader (Hierl), by the Reich Forest Master (Goering), by the General Inspector for German Roads (Deutsche Strassenwesen) by the Reich Office for Space Order (Reichsstelle für Raumordnung) by the Reichsbank directorate, and by the Prussian State Ministry. They were immediately subordinate to the Minister or State Secretary and the chief of the Reich Office respectively. (Paragraph 11).

2194-PS, top secret letter from the Ministry for Economy and Labor, Saxony, to the Reich Protector in Bohemia and Moravia, 4 September 1939, enclosing copy of the 1938 Secret Defense Law.

In this way the Cabinet by its own law, signed by Hitler, Goering, Hess, Frick, Funk and von Ribbentrop, set up a large war-planning body of sixteen members, all of whom were Cabinet members, and a small working committee composed also of Cabinet members and the Reich Defense officials, the majority of whom were appointed by Cabinet members and subordinated thereto.

Article 6 of the Secret Defense Law, enacted by the Cabinet, 21 May 1935, provided for the appointment by Hitler of a Plenipotentiary for War Economy (Generallbevollmächtigte für die Kriegswirtschaft) whose task was "to put all economic

forces in the service of carrying on the war and to secure the life of the German people economically". Subordinated to him were the Reich Ministers of Economy, Food and Agriculture, the Reich Forest Master and all Reich agencies immediately subordinate to Hitler. The financing of the war effort in the province of the Finance Ministry and the Reichsbank was done under his responsibility. The Plenipotentiary for War Economy was authorized to issue legal regulations deviating from existing law.

In a cabinet decision of the same date, 21 May 1935, it was provided that the Plenipotentiary for War Economy would "begin his work already in peace-time". The ministries subordinate to him were "bound already in time of peace to observe his recommendations for the preparation of a war economy and the financing of the war effort".

Dr. Schacht, President of the Directorate of the Reichsbank, who was then Acting Minister of Economy was named by Hitler as Plenipotentiary for War Economy.

2261-PS, Top secret letter from von Blomberg, 24 June 1935 enclosing Secret Reich Defense Law of 21 May 1935 and Cabinet decision of 21 May 1935.

The Secret Defense Law enacted by the Cabinet on 4 September 1938, which superseded the Secret Defense Law of 21 May 1935, also provided (Paragraph 4) for a Plenipotentiary for Economy (Generalbevollmächtigte für die Wirtschaft or GBW), who was to take over the direction of the economy upon declaration of a "state of defense". His task was to "put all economic forces into the service of the Reich defense, and to safeguard economically the life of the German nation". The same Reich Ministries as listed in the Secret Defense Law of 21 May 1935 were subordinated to him. These ministries were already (in time of peace) bound by the directions of the Plenipotentiary for Economy for the preparation of the Reich Defense (Paragraph 14).

The Plenipotentiary for Economy was the Reich Minister for Economy, Funk, who signed the law of 4 September 1938 in the former capacity.

Paragraph 3 of the law of 4 September 1938 provided further for a Plenipotentiary for Administration (General-bevollmächtigte für die Reichsverwaltung or GBV) to whom were subordinated the Reich Ministers of Interior, Justice, Education and Church Affairs and the Reich Office for Space Order (Raumordnung). His duties were to take over "the uniform leadership of the non-military administration with exception of the economic administration" upon the declaration of a "state of defense". (Paragraph 3). The officials subordinate to him, however, were bound by his directions "already in peace time". (Paragraph 13).

2194 PS, top secret letter from the Ministry for Economy and Labor, Saxony, to the Reich Protectorate Bohemia and Moravia, 4 September 1939, enclosing copy of the 1938 Secret Defense Law.

The Plenipotentiary for Administration was the Reich Minister of the Interior, Frick. His deputy was Himmler. Upon Himmler's appointment as Reichsminister of the Interior, he succeeded Frick in both capacities.

Transcript of interrogation Wilhelm Frick, 13 October 1945, Page 20.

Neugestaltung von Recht und Wirtschaft, Heft 13¹, Stuckart and Schiedermair, Neues Staatsrecht I, (1943), page 139.

Das Archiv, August 1943, page 347.

Frick stated during an interrogation:

"The task of the Plenipotentiary of Administration before this period (30 August 1939) probably was the preparation for the organization in the event of war, such as appointing different advisers in the different ministries who would keep in touch with him and so on".

Transcript of interrogation Wilhelm Frick, 13 October 1945, 1045 to 1230, page 31.

Paragraph 5 of the law of 4 September 1938 provided that the Reich Minister of Transport and the Reich Minister of Posts would, with the declaration of a state of defense, receive orders from the OKW.

2194 PS, top secret letter from the Ministry for Economy and Labor, Saxony, to the Reich Protectorate Bohemia and Moravia, 4 September 1939, enclosing copy of the 1938 Secret Defense Law.

Thus all of the Ministries, with the exception of the Ministry of Propaganda and the Foreign Office, were lined up in time of peace for purposes of war planning according to a law enacted by the Cabinet itself, in three groups headed respectively by the Plenipotentiary for Economy, the Plenipotentiary for Administration and the OKW, all of whom were in fact members of the Cabinet.

In a lecture at the University of Freiburg in 1940, Frick said:

"The planned preparation (of the administration) for the possibility of a war has already been carried out during the peace. For this purpose the Fuehrer appointed a Plenipotentiary General for the Reich Administration and Plenipotentiary for the Economy".

2608 PS, extracts from a lecture by Frick, "The Administration in Wartime".

The two Plenipotentiaries and the OKW formed what has been described as a "Three Man College".

2608 PS, extract from lecture by Frick at the University of Freiburg, 1940.

Deutscher Beamten-Kalender, 1940, page 111.

This system of a three man college functioned as follows, from a legislative point of view:

The Plenipotentiary for Economy was empowered by paragraph 4 of the Secret Defense Law of 4 September 1938 to issue laws within his sphere with the consent of the OKW and the Plenipotentiary for Administration, which differed from existing laws.

Similarly, the Plenipotentiary for Administration was empowered by paragraph 3 of the same law to issue laws within his sphere with the consent of the OKW and the Plenipotentiary for Economy, which differed from existing laws.

In the spheres of the Reich Minister of Posts, the Reich Minister of Transport and of the General Inspector for German roads (Generalinspektor für die Strassenwesen), the Chief of the OKW had the right, under paragraph 5 of the same law, to issue laws in agreement with the Plenipotentiaries for Administration and Economy which differed from existing laws.

2194-PS, top secret letter from the Ministry for Economy and Labor, Saxony, to the Reich Protectorate Bohemia and Moravia, 4 September 1939, enclosing copy of the 1938 Secret Defense Law.

The legislative function of the three man college, prior to 9 September 1939 was one of drafting decrees to be used in time of war. When asked upon interrogation whether the college "really concerned planning for war measures" and whether most of them were carried out later by the (Ministerial) Council for the Defense of the Reich", Frick replied:

"Yes, because, you see, as soon as the war started, all these things had to be done in a very speedy manner and there would have been no time for planning. All one wanted to do was to look into the drawer of the desk and have the ready made preparations there".

Transcript of interrogation of Wilhelm Frick, 13 October 1945, page 7.

The activities of the "Three-man college" prior to the outbreak of the war, remained strictly secret. The publication of the Secret Defense Law of 21 May 1935 has been suspended although it became effective on the date of its signature. A memorandum signed by the Deputy of the Reichsminister of Transport, dated 17 July 1939, stated that it remained prohibited publicly to cite the Secret Reich Defense Law of 4 September 1938, although it was permissible publicly to mention all institutions founded on the law and their functions, without referring to the law, and for the Plenipotentiaries of Administration and Economy to co-sign "laws which are prepared and announced in peace time for war".

2194 PS, top secret letter from the Ministry for Economy and Labor, Saxony, to the Reich Protectorate Bohemia and Moravia, 4 September 1939, enclosing copy of the 1938 Secret Defense Law.

No record has been found of either law ever having been published, even after the outbreak of the war. The published decrees of the three man college, enacted pursuant to the 1938 law, do not make the customary recital of the specific law or decree under the authority of which they were enacted, but recite merely that they are enacted "on the basis of legislative authority" (auf Grund gesetzlicher Ermächtigung).

Neugestaltung von Recht und Wirtschaft,
Heft 13¹, Stuckart and Schiedermaier,
Neuestaatsrecht 1, page 139.

D. THE COUNCIL OF MINISTERS FOR THE DEFENSE OF THE REICH.

The Council of Ministers for the Defense of the Reich (hereinafter referred to as the Council of Ministers) was established by decree of the Fuehrer of 30 August 1939. It was formed out of the Reich Defense Council (Reichsverteidigungsrat) discussed supra, Section C. Its members were (Art. I (2)):

Chairman, General Field Marshal Hermann Goering.

The Deputy of the Fuehrer, Rudolf Hess.

The Plenipotentiary for Administration, Wilhelm Frick.

The Plenipotentiary for Economics, Walter Funk.

The Reich Minister and Chief of the Reich Chancellery, Hans Heinrich Lammers.

The Chief of the High Command of the Armed Forces, Wilhelm Keitel.

Other members of the Reich Defense Council, and other persons were entitled to take part in the meetings of The Council of Ministers (Art. I (3)). Such other persons, including members of the Reich Cabinet, did in fact take part in the meetings of the Council of Ministers as is shown in the minutes of its meetings of 1 September, 4 September, 19 September, 16 October and 15 November 1939.

_____, Minutes of meetings of the Council of Ministers.

The Council of Ministers was given the power to pass decrees (Verordnungen) with the force of law if the Fuehrer did not order the passage of laws by the Reich Cabinet (Reichsregierung) or the Reichstag (Art. II).

The business of the Council of Ministers was managed by the Reich Minister and Chief of the Reich Chancellery, Hans Heinrich Lammers (Art. V).

2018, PS, decree of 30 August 1939 establishing the Council of Ministers, (1939, RGBL, I, 1539).

The Council of Ministers was given the power by decree of the Fuehrer of 12 October 1939 to legislate for the Occupied Eastern Territories. (1939, RGBL, I, 2077).

Pursuant to this decree, the Council of Ministers enacted the following decrees inter alia:

PS, 1941, RGB1, I. - The decree of 4 December 1941 regarding penal measures against Jews and Poles in the Occupied Eastern Territories.

2039-PS - Decree of 30 June 1942 concerning the employment of Eastern Workers. (1942, RGB1, I.)

Frick testified upon interrogation that the decree of 4 December 1941, above referred to,

"was drafted by the Ministry of Justice and came to me in my capacity as Plenipotentiary of Administration and then came to the Ministerial Council for realization".

Transcript of Interrogation Wilhelm Frick, 13 October 1945, page 19.

The decrees of the Council of Ministers before enactment were circulated among all of the members by written communication from Dr. Lammers.

2231-PS - Translation from von Stutterheim, Die Reichskanzlei (1940).

Transcript of Interrogation Hans Heinrich Lammers, 16 October 1945, page 14-15.

They were also circulated to all the various Reich Ministers who were not members of the Council of Ministers, for their comment.

1141-PS - Copy of letter from Dr. Lammers to the Members of the Council of Ministers for the Defense of the Reich, 17 September 1939.

The minutes of the Council of Ministers show that such questions as the following were discussed at their meetings: The population of the future Polish Protectorate and the placement of Jews living in Germany (19 September 1939); treatment of Polish prisoners of war (15 November 1939).

PS, Minutes of the Council of Ministers.

Between 1 September 1939 and 31 August 1942, the Council of Ministers published 157 decrees.

Between 27 August 1939 and 31 August 1942 sixty-one decrees were "announced by authority of the Reich Defense Law" (i.e., pursuant to the system of the "three-man college").

PS, File memorandum, 23 December 1942, from the files of the Council of Ministers, initialled L.

In a lecture in 1940, Frick pointed out that the Deputy of the Fuehrer represented the Party on the Council of Ministers "thus guaranteeing the unity between Party and State also within the Ministerial Council for the Defense of the Reich".

He characterized the Council of Ministers as "the highest permanent organ of the Reich with comprehensive jurisdiction, responsible only to the Fuehrer". "The composition of the Ministerial Council for the Defense of the Reich", he added, "shows the real concentration of power in it".

2608-PS, Extracts from lecture by Frick,
1940, "The Administration in Wartime".

APPENDIX A.

Laws Relating to Count One, IV, D2. (Acquisition of control of Germany).

- 1396-PS Law of 26 May 1933, providing for the confiscation of communist property. (1933, RGBL, I, 293).
- 1388-PS Law of 14 July 1933, against the new establishment of parties. (1933, RGBL, I, 479).
- 1388-PS Law of 14 July 1933 providing for the confiscation of property of Social Democrats and others. (1933, RGBL, I, 479).
- 1395-PS Law of 1 December 1933 securing the unity of party and state. (1933, RGBL, I, 1016).
- 2077-PS Law of 27 February 1934 for the care of fighters for the National revolution, (providing compensation for members of the Nazi party, etc.). (1934, RGBL, I, 133).
- 1393-PS Law of 20 December 1934 on treacherous acts against State and Party, and for the protection of the Party uniforms. (1934, RGBL, I, 1269).

Laws relating to Count One, IV, D3a, (Consolidation of control of Germany).

- 2076-PS Decree of the Cabinet, 21 March 1933, creating special courts. (1933, RGBL, I, 136).
- 2004-PS Law of 31 March 1933 for the integration of States into the Reich. (1933, RGBL, I, 153).
- 2005-PS Law of 7 April 1933 for the reestablishment of the Professional Civil Service. (1933, RGBL, I, 175).
- 2005-PS Law of 7 April 1933 for the integration of states into the Reich. (1933, RGBL, I, 173).
- 1400-PS Law of 30 June 1933 ruling out civil servants married to non-Aryans. (1933, RGBL, I, 433).
- 1398-PS Law of 20 July 1933 providing for the discharges of communist officials. (1933, RGBL, I, 518).
- 2006-PS Law of 30 January 1934 on the rebuilding of the Reich, providing for the abolition of the parliamentary bodies of the Lander. (1934, RGBL, I, 462).
- Law of 16 February 1934 transferring administration of justice to the Reich. (1934, RGBL, I, 91).

APPENDIX A Cont'd.

- 2014-PS Law of 24 April 1934 creating the People's Courts. (1934, RGBL, I, 341).
- 2003-PS Law of 1 August 1934 uniting the office of President and Chancellor. (1934, RGBL, I, 747).
- 2007-PS Law of 30 January 1935, Reich Governor Law, further reducing the independence of the states. (1935, RGBL, I, 65).
- 2008-PS Law of 30 January 1935 providing for the abolition of representatives or deliberative bodies in the municipalities. (1935, RGBL, I, 49).
- 2340-PS Law of 26 January 1937, comprehensive civil service law. (1937, RGBL, I, 39).
- 2355-PS Law of 18 March 1938 providing for the submission of one list of candidates to the electorate for the entire Reich. (1938, RGBL, I, 258).

Laws relating to Count One, IV, D3(b), (Consolidation of control of Germany, use of a system of terror).

- 1388-PS Law of 14 July 1933 against the new establishment of parties (containing a penal clause). (1933, RGBL, I, 479).
- 2057-PS Law of 3 July 1934 concerning measures for emergency defense of the State (legalizing the Roehm purge). (1934, RGBL, I, 529).
- 1393-PS Law of 20 December 1934 on treacherous acts against state and party and for the protection of party uniforms. (1934, RGBL, I, 1269).
- 2548-PS Law of 24 April 1935 making the creation of new or continuance of existing parties an act of treason. (1935, RGBL, I, 341).
- 1962-PS Law of 28 June 1935 changing the Penal Code (permitting punishment under analogous law). (1935, RGBL, I, 839).
- 2550-PS Law of 16 September 1939 permitting second prosecution of an acquitted person before a special court, the members of which were named by Hitler. (1939, RGBL, I, 1841).

Laws relating to Count One, IV, D3(c), (Consolidation of control of Germany, destruction of trade unions).

- 1770-PS Law of 4 April 1933 concerning factory representative councils and economic organizations, (controlling employee representation). (1933, RGBL, I, 161).
- 405-PS Law of 19 May 1933 concerning Trustees of Labor (abolishing collective bargaining). (1933, RGBL, I, 285).
- 1861-PS Law of 20 January 1934 regulating National Labor (placing leadership principle in industrial relations).

APPENDIX A Cont'd.

1389-PS

Law of 26 June 1935 establishing Reich Labor Service (compulsory labor service). (1935, RGBL, I, 769).

Laws relating to Count One, IV, D3(d), (Consolidation of control of Germany, Jewish persecution).

1401-PS

Law of 7 April 1933 permitting persons of non-Aryan descent to be refused permission to practice law and excluding communists from admission to the bar. (1933, RGBL, I, 188).

2022-PS

Law of 25 April 1933 restricting number of non-Aryan Germans in schools and high institutions. (1933, RGBL, I, 225).

1402-PS

Law of 29 September 1933, the "Homestead Law" regarding the "peasantry", and excluding therefrom persons of Jewish blood. (1933, RGBL, I, 685).

Law of 19 March 1937 excluding Jews from Reich Labor Service. (1937, RGBL, I, 325).

Law of 28 March 1938, on the legal status of Jewish religious communities. (1938, RGBL, I, 338).

1410-PS

Law of 6 July 1938 amending regulations on industrial enterprises forbidding Jews to engage in certain industrial enterprises. (1938, RGBL, I, 823).

1419-PS

Law of 30 April 1939 restricting rights of Jewish tenants. (1939, RGBL, I, 864).

Laws relating to Count One, IV, D3(e), (Consolidation of control of Germany, control of education and training of youth).

1392-PS

Law of 1 December 1936 on Hitler Youth (establishing the Hitler Youth). (1936, RGBL, I, 9993).

Law of 6 July 1938 for Reich Student Association (Reichstudentenwerk). (1938, RGBL, I, 802).

Law of 22 September 1933, establishing a Culture Chamber. (1933, RGBL, I, 661).

Laws relating to Count One, IV, F, (conspiracy regarding aggressive war).

1654-PS

Law of 16 March 1935 on compulsory conscription. (1935, RGBL, I, 369).

Law of 21 May 1935, the Defense Law (Wehrgesetz). (1935, RGBL, I, 609).

2261-PS

Law of 21 May 1935, the Secret Reichs Defense Law (unpublished).

APPENDIX A Cont'd.

2307-PS

Law of 13 March 1938 on Anschluss
with Austria. (1938, RGB1, I,
237).

2194-PS

Law of 4 September 1938, the Secret
Reich Defense Law (unpublished).

ARGUMENT AND CONCLUSION

From 1933 to the end of the war the Reichsregierung comprised the dominant body of influence and leadership--below Hitler--in the Nazi government. Three subdivisions are included in the term Reichsregierung, the ordinary cabinet, the Secret Cabinet Council, the Council of Ministers for the Defense of the Reich. Yet, in reality, there was only an artificial illusory boundary between the three. In the ordinary cabinet (commonly referred to as the Reichsregierung) were the leading political and military figures in the Nazi government. Seventeen of the twenty-four defendants were members thereof. From the body of the ordinary cabinet were selected not only the members of the Secret Cabinet Council and the Council of Ministers for the Defense of the Reich, but also the members of the war planning group, the Reich Defense Council, which was in fact secret. And when it was deemed essential, for the purposes of the conspiracy to wage aggressive war, to concentrate power in a few individuals, again the members of the ordinary cabinet were used as a manpower pool. Thus, the Plenipotentiaries for Economy and Administration were also ministers in the ordinary cabinet. And they were also members of the Council of Ministers as well as the Reich Defense Council. Under them were grouped all but three of all the ministries in the ordinary cabinet. Members of the ordinary cabinet attended meetings of the Council of Ministers and the draft decrees of the latter body were circulated to all members of the ordinary cabinet. Where political considerations of foreign policy required another small group to act as advisers, the members of the Secret Cabinet Council were drawn from the ordinary cabinet.

The Cabinet was dominated by the Nazi party through the control exercised over its legislation by the Fuehrer's deputy, Hess, and later by the leader of the Party Chancellery, Bormann, as well as through the individual party

membership of all members, and the union of various key cabinet and Party positions in one man.

Through the union in various individual Cabinet members, not only of Cabinet and Party positions but also of important Governmental positions outside the Cabinet, an enormous concentration of political power was centered within the Cabinet.

Through its interrelated meetings and the circulation procedure which continued during the whole period of the Nazi regime, the Cabinet functioned as a cohesive group. Every member was free to resign, as von Eltz-Rubonach did in 1937, when he protested that his Christian principles would not permit him to accept the Party membership conferred on Cabinet members.

The laws enacted by the Cabinet as a whole established the framework within which the Nazi conspirators established their control of Germany as set forth in Count I of the indictment and committed the crimes referred to in Counts I, II, III, IV of the indictment.

Moreover, the Cabinet, as a whole, almost immediately upon the coming into power of Hitler became a war planning group through its establishment in April 1933 of a Reich Defense Council and its enactment of the Reich Defense Laws of 1935 and 1938. In this capacity it functioned in the utmost secrecy, as has been shown above.

Individually, Cabinet members were responsible for innumerable criminal acts, as is shown by the briefs on the seventeen defendants who were members of the Cabinet.

CONCLUSION

By providing the legal framework for the common plan and conspiracy described in Count One of the Indictment, particularly by becoming an active participant in the common plan or conspiracy to commit crimes against peace and by the passage of harsh penal laws, discriminatory laws, confiscatory laws, in violation of the principles and laws

of justice and humanity and by virtue of the acts of the individual criminals collectively functioning therein, the Reichsregierung as defined in Appendix B, page 35 of the indictment, should be declared a criminal group within the meaning of Article 9 of Section II of the Charter of the International Military Tribunal.