

PART B

OCC
Brief Section 3

(Major Lacy W. Hinely)

TRIAL BRIEF

AGGRESSION AGAINST

BELGIUM, THE NETHERLANDS, AND LUXEMBOURG

INDEX

I. Topical Index	<u>Page</u>
A. Section of Indictment	1
B. Legal References	1, 2
C. Statement of Evidence	2-8
D. Argument and Conclusion	8
II. Documents	
A. Numerical	
<u>C-Documents:</u>	
<u>C-10.</u> Operational plans for the 7th Flieger Division, Berlin 28 November 1939. Signed by Keitel	6
<u>C-62.</u> Directive No. 6 for the conduct of the war, dated Berlin 9 October 1939, signed by Hitler; and Supreme Command of the Armed Forces communi- cation issued 15 November 1939, signed by Keitel	6
<u>C-72.</u> Seventeen orders by the Supreme Command of the Armed Forces issued between 7 November 1939 and 9 May 1940 setting, postponing, and resetting the date for invasion in the West	7
<u>C-128.</u> Inclosure 6 to Appendix 5, Commander-in-Chief, Army - Army General Staff, Operations Division, dated 29 October 1939	6

I-Documents:

I-52. Memorandum and Directive for Conduct of the War in the West, dated Berlin 9 October 1939. (Unsigned. Obviously prepared by Hitler and distributed to OKW and the Commanders-in-Chief of the Army, Navy, and Air Force.) 5

I-79. Minutes of a Conference on 23 May 1939 at Hitler's Study in the New Reichschancellory. Signed by Schmundt 4

PS-Documents:

375-PS. Communication, Subject: Case "Green" with wider implications. Critical examination of the situation with special reference to the position of the enemy. Dated 25 August 1938. Signed by Wolter, GAF General Staff 3

440-PS. Fuehrer order No. 8, dated 20 November 1939 6

789-PS. Fuehrer's Speech to all military commanders, 23 November 1939. (Unsigned) . . . 7

1809-PS. Jodl's diary from February 1 to May 26, 1940 8

2329-PS. Nine documents pertaining to "Fall Gelb", the plan for invasion of Holland, Belgium and Luxembourg, dated between 7 October and 22 November 1939 6

B. Types

1. Correspondence:

C-10

2. Military Orders:

C-62

C-72

C-128

L-52

440-PS

2329-PS

3. Reports of Meetings, Conferences, Discussions:

L-79

375-PS

789-PS

4. Other Evidence:

Diaries:
1809-PS

C. List of Individual Defendants Involved:

Goering:

C-10	L-52	375-PS
C-62	L-79	440-PS
C-72		789-PS
		1809-PS
		2329-PS

Jodl:

C-10		789-PS
C-72		1809-PS

Keitel:

C-10	L-52	440-PS
C-62	L-79	789-PS
C-72		1809-PS
		2329-PS

Raeder:

C-10	L-52	440-PS
C-62	L-79	789-PS
C-72		2329-PS

D. List of Criminal Organizations Involved:

General Staff and High Command:

C-10	L-52	375-PS
C-62	L-79	440-PS
C-72		789-PS
C-128		1809-PS
		2329-PS

B R I E F

A. SECTION OF INDICTMENT:

Count One - The Common Plan or Conspiracy

Section IV (F) 5: Expansion of the war into a general war of aggression: planning and execution of attacks on Belgium, The Netherlands, and Luxembourg: 1939 to April 1941.

B. LEGAL REFERENCES:

1. Agreement of London dated 8 August 1945 between United States of America, the French Republic, the United Kingdom of Great Britain and Northern Ireland, and the Union of Soviet Socialist Republics; and Article 6 (a), Crimes Against Peace, Charter of the International Military Tribunal.
2. (a) Convention for the Pacific Settlement of International Disputes, signed at the Hague, 18 October 1907. (TC-2) (Appendix C II)
- (b) Hague Convention III Relative to the Opening of Hostilities, signed 18 October 1907. (TC-3) (Appendix C III)
- (c) Hague Convention V Respecting the Rights and Duties of Neutral Powers and Persons in case of War on Land, signed 18 October 1907. (TC-4) (Appendix C IV)
- (d) Treaty of mutual guarantee between Germany, Belgium, France, Great Britain, and Italy, done at Locarno, 16 October 1925. (TC-12) (Appendix C VII (4) and (5))
- (e) Arbitration Convention between Germany and Belgium, done at Locarno, 16 October 1925. (TC-13) (Appendix C IX)
- (f) Convention of Arbitration and Conciliation entered into between Germany and the Netherlands on 20 May 1926. (TC-16) (Appendix C XI)
- (g) Treaty between Germany and other Powers providing for Renunciation of War as an Instrument of National Policy, signed at Paris, 27 August 1928, known as the Kellogg-Briand Pact. (TC-19) (Appendix C XIII)
- (h) Treaty of Arbitration and Conciliation entered into between Germany and Luxembourg on 11 September 1929. (TC-20) (Appendix C XIV)

Assurances

The Netherlands:

German assurances given on 30 January 1937 (TC-38), 28 April 1939 (TC-39), 26 August 1939 (TC-40), and 6 October 1939 (TC-41), to respect the neutrality and territorial inviolability of the Netherlands. (Appendix C XVIII)

Belgium

German assurances given on 30 January 1937 (TC-33), 13 October 1937 (TC-34), 28 April 1939 (TC-35), 26 August 1939 (TC-36), and 6 October 1939 (TC-37), to respect the neutrality and territorial integrity and inviolability of Belgium. (Appendix C XIX)

Luxembourg:

German assurances given on 28 April 1939 (TC-42A), and 26 August 1939 (TC-42), to respect the neutrality and territorial inviolability of Luxembourg. (Appendix C XXIII)

C. STATEMENT OF EVIDENCE

Section I

Summary Statement of Matters Involved

The development and execution of the Nazi plans for aggressive war against the Kingdom of Belgium, the Kingdom of the Netherlands ("Holland"), and the Grand-Duchy of Luxembourg (hereinafter sometimes referred to collectively as the Low Countries), are shown in the documents cited below.

In executing a part of the master plan for aggression, particularly against France and England, the Nazis were extremely anxious to secure forward bases to assure protection of the vital Ruhr area and from which to launch air attacks against England.

The war against the western countries, including specific aggression against the Low Countries, had been planned for a long time. When the Nazi military machine had so quickly succeeded in overcoming Poland in September, 1939, decision was made to immediately press on against Belgium, Holland, and Luxembourg, and through them against France and England. Treaties,

assurances, and rights of sovereign States were not to be respected; and brutal force implemented by camouflage and surprise action were to assure fulfillment of Nazi desires. The Low Countries were invaded early in the morning of 10 May 1940.

Section II

Planning, Preparation, and Execution of the Aggression

As early as August, 1933, general plans were being made to utilize the Low Countries as advance bases for decisive action in the West in the event France and England opposed Germany in its planned aggression against Czechoslovakia. The Air Force was preparing maps of objectives in Belgium and Holland for probable distribution in October, and requested that the Army report conditions under which occupation of the Low Countries could be carried out and how long it would take. Excerpts from an Air Force General Staff report substantiate this:

"...The Dutch-Belgian area...has the role of the zone immediately in advance of the operational bases for the air war....The basic target maps of GAF objectives for Belgium and the Netherlands are ready for printing. Reproduction and distribution (including Sector maps)...not be possible until October....Belgium and the Netherlands would in German hands represent an extraordinary advantage... essential to obtain the opinion of the Army as to the conditions under which an occupation of this area could be carried out."

375-PS. Communication, Subject: Case "Green" with wider implications. Critical examination of the situation with special reference to the position of the enemy. Dated 25 August 1938. Signed by Wolter, GAF General Staff.

The great importance to Germany of Dutch and Belgian air bases for prosecution of the war again received special consideration at a conference in May, 1939. The conclusion was reached that, "If Holland and Belgium are successfully occupied and held,...a successful war against England will have been

secured". The Nazis determined to adapt circumstances to aims; to shed blood if necessary; to occupy Dutch and Belgian air bases by armed force at the opportune time; and, in certain eventualities, to occupy Holland with lightning speed up to the Zuider Zee in order to secure a defense line in Holland, and keep the fighting away from German soil. Considerations of right, wrong, neutrality, and treaties were to be ignored in executing the plan. It was recognized that the "plan of attack" (against the West) required a correct estimate of weapons and immediate preparedness on the part of the Army. A small planning staff was formed at OKW with responsibility for further planning of the aggression and complete secrecy was invoked. The conference was attended by (among others) defendants GOERING, RADER, and KEITEL.

"The possession of the Ruhr basin will determine the duration of our resistance."

"The Dutch and Belgian air bases must be occupied by armed force. Declarations of neutrality must be ignored."

"We must aim at securing a new defense line on Dutch soil up to the Zuider Zee."

L-79. Minutes of a Conference on 23 May 1939 at Hitler's Study in the New Reichschancellory. Signed by Schmudt.

Following the Polish campaign, the Nazis analyzed the situation with respect to the possibilities of continuing their planned aggression by a one-front war against the West, including the Low Countries. The conclusion was that passage of time permitted the intended victims to grow stronger, and a long war was sure to be unfavorable to Germany. Protection of the Ruhr was essential for a victory. Bases in the Low Countries were necessary to facilitate this protection and enable continuance of the war, the object of which was "the final military despatch of the West".

It was admitted that "as far as the outside world is concerned... various propaganda adjustments" were necessary "from a psychological point of view". The time of the planned attack against the Low Countries was to depend on suitable weather and availability of troops. The plans was "to penetrate the area LUXEMBOURG-BELGIUM-HOLLAND in the shortest possible time, and to engage and defeat the Belgian-French-English forces". Antwerp was to be cut off from the west and forced to capitulate.

"The successes of the Polish campaign have made possible a war on a single front, awaited for past decades....The essential factor for the victorious conduct of the war is to safeguard RONA production....The possession of this area [Low Countries] by Germany would be one of the few factors that would cause a favorable outcome... If we were in possession of Holland, Belgium, as jumping off bases for German aircraft [a mortal blow could be struck]....the passing of every further month represents a loss of time unfavourable to the German power of offensive....Attack is to be preferred to defence as the decisive war-winning method. The sooner the better...preparation and disposition for this attack will be camouflaged..."

I-52. Memorandum and Directive for Conduct of the War in the West, dated Berlin 9 October 1939. (Unsigned. Obviously prepared by Hitler and distributed to OKW and the Commanders-in-Chief of the Army, Navy, and Air Force.)

In pursuance of the plans outlined in the general directive cited above, specific plans were made under the code word "Fall Gelb", and numerous orders issued during October and November, 1939, by the General Staff and High Command for execution of the long-intended aggression against the Low Countries. The object of the attack continued to be stated as defeat of major enemy forces and acquisition by force of great areas in the Low Countries for use as bases for further aerial and sea warfare. Preparations were disguised as measures against concentrations of French and English forces in northern and eastern France. Questions of how

far the troops should advance under the plan were clarified.

(C-62, infra; and 440-PS, infra) Officers were chosen for command of certain units. (2329-PS, infra) Instructions were issued for deployment of troops (2329-PS, infra); and for the administration and pacification of the Low Countries. (2329-PS, infra; and C-128, infra) Special instructions were issued concerning communications systems, time and methods of crossing the borders, and rates of exchange which were to apply. (2329-PS, infra) Provisions were made for special operations by the 7th Flieger Division near the Belgian-French border. (C-10, infra)

C-10. Operational plans for the 7th Flieger Division, Berlin 28 November 1939. Signed by Keitel.

C-62. Directive No. 6 for the conduct of the war, dated Berlin 9 October 1939, signed by Hitler; and Supreme Command of the Armed Forces communication issued 15 November 1939, signed by Keitel.

C-128. Inclosure 6 to Appendix 5, Commander-in-Chief, Army - Army General Staff, Operations Division, dated 29 October 1939.

440-PS. Fuehrer order No. 8, dated 20 November 1939.

2329-PS. Nine documents pertaining to "Fall Gelb", the plan for invasion of Holland, Belgium and Luxembourg, dated between 7 October and 22 November 1939.

Briefly, all preparations were made by the Nazis to strike a surprise blow, and overrun Belgium, the Netherlands, and Luxembourg. At a conference on 23 November 1939 for all military commanders, Hitler made a speech reviewing the years 1919-1939, and the plans and successes of the Nazis. He pointed out that now the time had come for an attack on the Low Countries, that the breach of their neutrality meant nothing, and that the spirit of determination must be passed on to the lower echelons.

789-PS. Fuehrer's Speech to all military commanders, 23 November 1939. (Unsigned)

Due to unfavorable weather conditions, seventeen orders were issued by the Supreme Command of the Armed Forces between 7 November 1939 and 9 May 1940, setting and postponing the day for the commencement of operations in the West, the orders being signed either by defendant KEITEL or defendant JODL. The orders were dated 7, 10, 13, 16, 20, 27, and 29 November, and 4, 6, 12, 27, and 30 December 1939, and 9, 11, and 13 January (13 January order is erroneously dated 1939 instead of 1940), and 7 and 9 May 1940. The order of 11 January 1940 clearly shows that all these orders referred to action against Luxembourg, Belgium, and Holland (including "Fall Gelb" or plan Yellow) and that the 7th Flieger (Air) Division was involved. The order of 9 May 1940 set the invasion date as 10 May 1940, when the invasion actually took place.

C-72. Seventeen orders by the Supreme Command of the Armed Forces issued between 7 November 1939 and 9 May 1940 setting, postponing, and resetting the date for invasion in the West.

Between 1 February and 5 May 1940, members of the General Staff and High Command were conferring almost daily in perfecting the plans for the invasion of the Low Countries and on a possible date for the invasion. Use of paratroop forces was considered for an attack on the Hague; airports were to be seized; the drive through Belgium was to be in the direction of Sedan; and the deployment of the German Army through Belgium was carefully considered. Hitler was doubtful whether it would be better to attack Norway or the Low Countries first. (Norway and Denmark were invaded 9 April 1940.) Hitler finally decided to move against the Low Countries sometime

between 1 and 7 May. The Foreign Office did not regard the prepared justification for the intended attack as satisfactory, but JODL considered it sufficient. The attack day was set for 8 May and subsequently for 10 May 1940. (The invasion of the Low Countries took place on 10 May 1940). These things are confirmed by entries in defendant JODL's diary between the dates indicated. The diary also confirms existence of the above described plan against the Low Countries and steps taken to put it into execution.

1809-PS. Jodl's diary from February 1 to May 26, 1940.

D. ARGUMENT AND CONCLUSION

It is submitted that the foregoing documents show that the Nazis conceived, planned, and executed in a systematic manner the aggression against Belgium, the Netherlands, and Luxembourg; and that all of this was done without regard to treaties, assurances, international law, or sovereign rights of neutral States.