ting aside the defendant Woermann's conviction under count one and his memorandum setting forth his views follows.

SEPARATE MEMORANDUM OF JUDGE CHRISTIANSON WITH RESPECT TO THE ORDER AND RECOMMENDATION THAT THE CONVICTION OF DEFENDANT WOERMANN UNDER COUNT ONE BE SET ASIDE AND HIS SENTENCE REDUCED

I am obliged to differ with my colleagues as to their order and recommendation that the conviction of defendant Woermann under count one, as contained in the original judgment, be set aside and his sentence reduced.

The evidence is such that I am compelled to adhere to the view that prompted me to hold as one of the majority in the original judgment that as to count one, defendant Woermann, because of his activities in the aggression against Poland, was guilty beyond a reasonable doubt. I cannot therefore concur with my colleagues in the recommendation or order that the sentence of Woermann with respect to count one be set aside and his sentence reduced.

[Signed] WILLIAM C. CHRISTIANSON

5. RITTER—ORDER AND MEMORANDUM OF THE TRIBUNAL

ORDER

On 10 May 1949, the defendant Ritter filed a motion praying that his conviction under counts three and five be quashed and that he be acquitted. Briefs were filed both on behalf of the defense and the prosecution.

It appears that the defendant also joined in a petition for plenary session of the Tribunal for the expressed purpose of "examining the judgment rendered by the Tribunal on 14 April 1949."

The Tribunal having considered the defendant's motions, the briefs and the record, and being advised in the premises,

IT IS ORDERED that his motions be and the same hereby are in all respects denied.

Memorandum hereto attached is made a part of this order.

Dated 12 December 1949.

[Signed] WILLIAM C. CHRISTIANSON
WILLIAM C. CHRISTIANSON
Presiding Judge

[Signed] ROBERT F. MAGUIRE
ROBERT F. MAGUIRE
Judge

We have considered the motions filed on behalf of the defendant, Ritter. Our attention has been called to a clerical error in describing Hitler's directive of 4 July. The order provided that notice be served via radio and the press that every enemy aviator shot down while participating in such an attack (i.e., against small localities without war economic or military value) was not entitled to be treated as a prisoner of war, but that he would be killed or treated as a murderer as soon as he fell into German hands. The order continued that nothing was to be done at the moment, but on the contrary, measures of this sort were only to be discussed with the Armed Forces Legal Section and with the Foreign Office.

We have reexamined the defendant's contentions regarding Ritter's responsibility in the matter of the treatment of the so-called terror fliers, and we find no error in the findings and conclusions set forth in the judgment. Von Ribbentrop took an active part in this unlawful plan, and his recommendations were even more unlawful than those which had been proposed, namely to include enemy aviators who engaged in bombing attacks on German cities, a suggestion which was rejected at the conference of 6 June 1944, but there is no evidence that this involved Ritter or that he ever heard of it. The Foreign Office proper became involved in determining how these patent violations of international law could be carried out without informing the world that Germany rejected all doctrines of international law regarding the treatment of prisoners of war. The Foreign Office gave the following advice, saying that to hand the unfortunate aviators over to the SD for special treatment would be tenable only if Germany declared herself free from the obligations imposed by the agreements of international law which were valid and still recognized by Germany, and this the Foreign Office was not prepared to recommend. It suggested an emergency solution of preventing the suspected fliers from ever attaining the status of prisoners of war by telling them that they were regarded not as prisoners of war but as criminals and delivered not to the competent prisoner-of-war authorities but to those competent for the prosecution of criminal acts, to be tried in a summary proceedings, but pointed out that this course would not prevent Germany from being accused of violating existing treaties. The memorandum then stated "It follows from the above the main weight of the action will have to be placed on lynching."

Ritter transmitted this draft to the appropriate army authorities. The recommendation of the Foreign Office that the lynch law be used and obviously encouraged was in fact adopted. In

one camp alone, cases involving the murder of one hundred Allied fliers were tried. The majority of these murders occurred after 15 July 1944.

The contention that the Army High Command objected to these proposals is disposed of by an examination of Keitel's remarks on Warlimont's memorandum of 6 June 1944 (*735–PS, Pros. Ex. 1232*) and by Warlimont's remarks on the Foreign Office draft (*728–PS, Pros. Ex. 1236*).

Consideration of Ritter's motion with respect to the "terror flier" conviction for participation in the plan to murder Allied aviators bailing out over Germany discloses no error, in our judgment and his motions with respect thereto are denied.

The defendant complains that the indictment does not specifically charge him with criminal responsibility for these murders but that under paragraph 28 (c) his name is only mentioned regarding the posting of warning notices prescribing certain "death zones," and that inasmuch as he was acquitted with respect thereto he cannot be convicted in the matter of the Sagan murders.

We reject this contention.

Count three charges that the defendant, with others, participated in atrocities and offenses against prisoners of war and members of the armed forces of nations then at war with the Third Reich; that prisoners of war and belligerents were starved, lynched, and murdered in flagrant violation of the laws and customs of war, and through diplomatic distortions, denials, and fabricated justifications the perpetration of the offenses and atrocities was concealed from the Protective Powers.

Paragraph 28 (c) charges the Sagan murders as being one of the instances involved. While Ritter's name was not specifically mentioned in paragraph 28 (c), in connection with the Sagan murders, this is unnecessary as he was generally charged in the count.

The documents upon which his conviction was based were offered and received long before he was called upon to make his defense. He testified regarding the episode and his connection with it. Both Ritter and Steengracht von Moyland contended that the note on which Ritter and Albrecht collaborated was never sent to Switzerland, the Protective Power. In rebuttal the prosecution offered [*NG–5844, Pros. Ex. C–372*] which contains the two notes sent by the Foreign Office to Switzerland and refers to a preliminary notice of 17 April 1944. There is no substance to the defendant's contention that this exhibit cannot be considered as evidence in his case, or that it was not properly received, or that he had no opportunity to meet it. The Tribunal attempted

to set a deadline in which both prosecution and defense testimony should be concluded. It later became apparent that due to technical difficulties, which neither party could avoid, this was not altogether possible. The Tribunal therefore in a number of cases permitted testimony to be received after the so-called deadline specified. The defendant Ritter was aware of this exhibit and objected to its receipt in evidence. His objection was overruled and no application was made on his part to offer testimony rebuttal. He attached to his motion his affidavit as to this particular document. We have examined it and it contains nothing which leads us to any different conclusion than that expressed in our judgment. An examination of the documents involved in the Sagan incident satisfies us beyond a reasonable doubt that the note to the Swiss Government of 6 June was prepared by Albrecht and Ritter and submitted to von Ribbentrop. Among other things it contains a reference to the prospective funerals of the murdered flyers. Keitel made objection on 4 June 1944 to the inclusion of any such information to the Protective Power. It contains the statements regarding all of these deaths which von Thadden, in his memorandum of 22 June, reports that Albrecht mentioned as being contained in the Swiss note. We find no error in law or fact in our judgment and we deny Ritter's motions to set aside his conviction with respect to the Sagan murders.

6. VEESENMAYER—ORDER AND MEMORANDUM OF THE TRIBUNAL

ORDER

On 10 May 1949, defendant Veesenmayer, filed a motion praying that the convictions of said defendant under counts five, seven, and eight of the indictment in this case be quashed and that the defendant be acquitted, or alternatively the term of imprisonment imposed upon said defendant by the Tribunal be reduced. On 19 June 1949, the prosecution filed an answering brief in opposition to said motion, and on 27 June 1949 the defendant filed a rejoinder or reply brief to said answering brief of the prosecution.

It appears that the defendant prior to filing of the above motion also joined in a petition for plenary session of the Tribunals for the therein expressed purpose of "examining the judgment" rendered in this case by the Tribunal on 14 April 1949.

The Tribunal having considered the motion of the defendant, the prosecution's answer thereto, and the defendant's reply to the prosecution's answer, and being advised in the premises,

IT IS ORDERED that said motion of defendant be and the same is hereby in all respects denied.