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Opening Statement for the United States of America

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TR I B U N A L II-A

Case No. 9

THE UNITED STATES OF AMERICA

-against-

OHLENDORF, et al., Defendants

OPENING STATEMENT FOR

THE UNITED STATES OF AMERICA

NURNBERG
29 September 1947

Benjamin B. Ferencz
Chief Prosecutor
Peter W. Walton
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For:

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and

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INTRODUCTION

It is with sorrow and with hope that we here disclose the deliberate slaughter of more than a million innocent and defenseless men, women and children. This was the tragic fulfillment of a program of intolerance and arrogance. Vengeance is not our goal, nor do we seek merely a just retribution. We ask this Court to affirm by international penal action man's right to live in peace and dignity regardless of his race or creed. The case we present is a plea of Humanity to Law.

We shall establish beyond the realm of doubt facts which, before the dark decade of the Third Reich, would have seemed incredible. The defendants were commanders and officers of special SS groups known as Einsatzgruppen, established for the specific purpose of massacring human beings because they were Jews, or because they were for some other reason regarded as inferior peoples. Each of the defendants in the dock held a position of responsibility or command in an extermination unit. Each assumed the right to decide the fate of men, and death was the intended result of his power and contempt. Their own reports will show that the slaughter committed by these defendants was dictated, not by military necessity, but by that supreme perversion of thought, the Nazi theory of the master race. We shall show that these deeds of men in uniform were the methodical execution of long-range plans to destroy ethnic, national, political and religious groups which stood

condemned in the Nazi mind. Genocide - the extermination of whole categories of human beings, was a foremost instrument of the Nazi doctrine. Even before the war the concentration camps within the Third Reich had witnessed many killings inspired by these ideas. During the early months of the war the Nazi regime expanded its plans for genocide and enlarged the means to execute them. Following the German invasion of Poland there arose extermination camps such as Auschwitz and Maidanek. In Spring 1941, in contemplation of the coming assault upon the Soviet Union, the Einsatzgruppen were created as military units, but not to fight as soldiers. They were organized for murder. In advance of the attack on Russia, the Einsatzgruppen were ordered to destroy life behind the lines of combat. Not all life to be sure. They were to destroy all those denominated Jew, political official, Gypsy, and those other thousands called "asocial" by the self-styled Nazi supermen. This was the new German "Kultur".

Einsatz units entering a town or city ordered all Jews to be registered. They were forced to wear the Star of David under threat of death. All were then assembled with their families to be "re-settled" under Nazi supervision. At the outskirts of each town was a ditch, where a squad of Einsatz men waited for their victims. Whole families were arrayed, kneeling or standing near the pit to face a deadly hail of fire.

Into the prisoner-of-war camps went the Einsatz units, selecting men for extermination, denying them the right to live.

Helpless civilians were conveniently labeled "Partisans" or "Partisan-sympathizers" and then executed.

In the hospitals and asylums the Einsatzgruppen destroyed the ill and insane, for "useless eaters" could never serve the Third Reich.

Then came the gas-vans, vehicles which could receive living human beings and discharge corpses. Every Einstzgruppe had its allotment of these carriages of death.

These in short were the activities of the Einsatzgruppen.

The United States, in 1942, joined 11 nations in condemnation of these Nazi slaughters and vowed that Justice would be done. Here we act to fulfill that pledge, but not alone because of it.

Germany is a land of ruins occupied by foreign troops, its economy crippled and its people hungry. Most Germans are still unaware of the detailed events we shall account. They must realize that these things did occur in order to understand somewhat the causes of their present plight. They put their faith in Hitler and their hope in his regime. The Nazi ideology, devoid of humanism and founded on a ruthless materialism, was proclaimed throughout Germany and was known to all Germans. Hitler and other Nazi

leaders made no secret of their purpose to destroy the Jews. As we here record the massacre of thousands of helpless children the German people may reflect on it to assess the merits of the system they so enthusiastically acclaimed. If they shame at the folly of their choice they may yet find a true ideal in place of a foul fetish.

Proof of a million murders will not be the most significant aspect of this case. We charge more than murder, for we cannot shut our eyes to a fact ominous and full of foreboding for all of mankind. Not since men abandoned tribal loyalties has any state challenged the right of whole peoples to exist. And not since medieval times have governments marked men for death because of race or faith. Now comes this recrudescence - this Nazi doctrine of a master race - an arrogance blended from tribal conceit and a boundless contempt for man himself. It is an idea whose toleration endangers all men. It is, as we have charged, a Crime against Humanity.

The conscience of humanity is the foundation of all law. We seek here a judgment expressing that conscience and reaffirming under law the basic rights of man.

NAZI DOCTRINE OF SUPERIOR AND INFERIOR RACES

As this trial deals with the crime of genocide, it is essential to investigate the basic tenets and the development of the Nazi doctrine which inspired the crimes we shall prove. It is conceded that the Nazis neither invented nor monopolized this idea of superior peoples, but the consequences they wrought gave it a new and terrible meaning. The Nazi conception has little in common with that arrogance and pretension which has frequently accompanied the mingling of different peoples. The master race dogma as the Nazis understood and practiced it, was nothing less than the most all-encompassing and terrible racial persecution of all time. It was one of the most important points of the "unalterable program of the Nazi Party" and the only one which was consistently advanced from the very beginning of Nazi rule in Germany to the bitter end. It was, as Gottfried Feder, the official commentator of the Nazi program, called it "the emotional foundation of the Nazi movement". The Jews were only one of the peoples marked for extermination in the Nazi program. The motivation of the crime of genocide, as it was carried out by Hitler and his legions in all of the occupied and dominated countries, stemmed from the Nazi ideology of "blood and race". In this theory of the predominance of the alleged Nordic race over all others and in the mystic belief that Nordic

blood was the only creative power in the world, the Einsatzgruppen had their ideological basis. In this primitive theory; derived in part from Nietzsche's teaching of the Germanic superman, the Nazis found the justification for Germany's domination of the world. As Rosenberg put it in mystic fog:

"A new faith is arising today: the myth of the blood, the faith, to defend with the blood the divine essence of man. The faith, embodied in clearest knowledge that the Nordic blood represents that mysterium which has replaced and overcome the old sacraments."

In his speech, concluding the Reichsparteitag (Party rally) in Nuremberg, on 3 September 1933, Hitler professed a similar creed, but gave it a more practical expression:

"But long ago man has proceeded in the same way with his fellowman. The higher race - at first higher in the sense of possessing a greater gift for organization - subjects to itself a lower race and thus constitutes a relationship which now embraces races of unequal value. Thus there results the subjection of a number of people under the will often of only a few persons, a subjection based simply on the right of the stronger, a right which, as we see it in Nature, can be regarded as the sole conceivable right because founded on reason."

This theory led the Nazis to consider many of the other nations and races, particularly the Slavs of Eastern Europe, as inferior, and Jews and Gypsies, as sub-human. From this thesis to the conclusion that inferior people should be decimated, and sub-humans exterminated like vermin, is but an easy step. The International Military Tribunal found in

its Judgment:

"The evidence shows that at any rate in the East, the mass murders and cruelties were not committed solely for the purpose of stamping out opposition or resistance to the German occupying forces. In Poland and the Soviet Union these crimes were part of a plan to get rid of whole native populations by expulsion and annihilation, in order that their territory could be used for colonization by Germans. Hitler had written in 'Mein Kampf', on these lines, and the plan was clearly stated by Himmler in July 1942, when he wrote: 'It is not our task to Germanize the East in the old sense, that is to teach the people there the German language and the German law, but to see to it that only people of purely Germanic blood live in the East.'"

In August 1942 the policy for the Eastern Territories as laid down by Bormann was summarized by a subordinate of Rosenberg as follows:

'The Slavs are to work for us. In so far as we do not need them, they may die. Therefore, compulsory vaccination and Germanic health services are superfluous. The fertility of the Slavs is undesirable.'

and

"In Poland the intelligentsia had been marked down for extermination as early as September 1939, and in May 1940 the Defendant Frank wrote in his diary of 'taking advantage of the focussing of world interest on the Western Front, by wholesale liquidation of thousands of Poles, first leading representatives of the Polish intelligentsia.'"

This aim was openly admitted by the highest SS dignitaries. Himmler gave vivid expression to this view point in a meeting of SS Major-Generals at Posen, in October 1943:

"What happens to a Russian, to a Czech, does not interest me in the slightest. What the nations can offer in the way of good blood of our type, we will take, if necessary by kidnapping their children and raising them here with us. Whether nations live in prosperity or starve to death interests me only in so far as we need them as slaves for our Kultur; otherwise, it is of no interest to me. Whether 10,000 Russian females fall down from exhaustion while digging an anti-tank ditch interests me only in so far as the anti-tank ditch for Germany is finished. We shall never be rough and heartless when it is not necessary, that is clear. We Germans, who are the only people in the world who have a decent attitude towards animals, will also assume a decent attitude towards these human animals. But it is a crime against our own blood to worry about them and give them ideals, thus causing our sons and grandsons to have a more difficult time with them. When somebody comes to me and says, 'I cannot dig the anti-tank ditch with women and children, it is inhuman, for it would kill them', then I have to say, 'You are a murderer of your own blood because, if the anti-tank ditch is not dug, German soldiers will die, and they are sons of German mothers. They are our own blood.' That is what I want to instill into this SS and what I believe have instilled into them as one of the most sacred laws of the future. Our concern, our duty is our people and our blood. It is for them that we must provide and plan, work and fight, nothing else. We can be indifferent to everything else. I wish the SS to adopt this attitude to the problem of all foreign non-Germanic peoples, especially Russians. All else is vain, fraud against our own nation and an obstacle to the early winning of the war."

Hans Frank, the Governor General of occupied Poland addressed a Cabinet session in the Government Building at Cracow on 16 December 1941 and advocated the following solution of the Jewish problem:

"Gentlemen, I must ask you to rid yourself of all feeling of pity. We must annihilate the Jews, wherever we find them and wherever it is possible, in order to maintain there the structure of the Reich as a whole."

The same Hans Frank summarized in his diary of 1944 the Nazi policy as follows: "The Jews are a race which has to be eliminated. Wherever we catch one it is his end." And earlier, speaking of his function as Governor General of Poland, he confided to his diary this sentiment: "Of course, I cannot eliminate all lice and Jews in only a year's time."

When von dem Bach-Zelewski, who testified before the International Military Tribunal, was asked how the defendant Ohlendorf could admit the murder of 90,000 people, he replied:

"I am of the opinion that when, for years, for decades, the doctrine is preached that the Slav race is an inferior race, and Jews not even human, then such an outcome is inevitable."

No one could have defined better the ideology which prompted Nazi-Germany to embark on the program of extermination. The prophecy of Hitler, made in his speech to the German Reichstag on 30 January 1939, that the result of war would be the annihilation of the Jewish race in Europe came very near fulfillment. It is estimated that, of the 9,600,000 Jews who lived in Nazi dominated countries, 6,000,000 have perished in the gas chambers of the Concentration Camps or were murdered by the Einsatzgruppen. As the International Military Tribunal found in its Judgment:

"Adolf Eichmann, who had been put in charge of this program by Hitler, has estimated that the policy pursued resulted in the killing of 6 million Jews, of which 4 million were killed in the extermination institutions."

The unholy trinity, the SS, the Gestapo, and the SD, accomplished this work with hideous and ruthless efficiency. It was Himmler who boasted proudly in his speech to the highest SS leaders, in 1943,

"Only the SS was equal to the task of exterminating the Jewish people. Others talked about

it but had too many reservations.....To have completed such a mission is an unwritten page of honor in the history of the SS."

At least one of the chief advocates of the master race theory, Hans Frank, has publicly regretted his advocacy:

"We have fought against Jewry, we have fought against it for years, and we have allowed ourselves to make utterances, and my own diary has become a witness against me in this connection - utterances which are terrible.... A thousand years will pass, and this guilt of Germany will still not be erased."

ORGANIZATION OF THE EINSATZGRUPPEN

During the last years the world has learned much about this "state within the state" which was formed by the SS. Much about this new aristocracy of "blood and elite" need not be repeated here. The Einsatzgruppen were part of the SS. They were created at the direction of Hitler and Himmler, by Heydrich the Chief of the Security Police and SD, who was Himmler's righthand man, and operated under the direct control of the RSHA, the Reichs Security Main Office, one of the most important of the twelve main offices of the SS.

The Einsatzgruppen were formed in the spring of 1941. The sequence of events was as follows:

In anticipation of the assault on Russia, Hitler issued an order directing that the Security Police and the Security Service be called in to assist the Army in breaking every means of resistance behind the fighting front. Thereafter, the Quartermaster General of the Army, General Wagner, representing Keitel, the Chief of the High Command of the Wehrmacht, met Heydrich, Chief of the Security Police and Security Service. These two men reached an agreement concerning the activation, commitment, command and jurisdiction of units of the Security Police and SD within the framework of the Army. The Einsatzgruppen were to function in the rear operational

areas in administrative subordination to the field armies, in order to carry out these tasks as directed by Heydrich and Himmler.

The reason why decisions of the highest military and administrative level were necessary for the creation of such small units is shown by the character of their assignment. These "security measures" were defined according to the principles of the Security Police and the SD, the principles of Heydrich, the principles of unmitigated terror and murder. The actions of the Einsatzgruppen in the conquered territories will demonstrate the purpose for which they were organized.

In the beginning four such Einsatzgruppen were formed, each of which was attached to an Army Group. Einsatzgruppen A was attached to Army Group North, Einsatzgruppe B was attached to Army Group Center, Einsatzgruppe C was attached to Army Group South. Einsatzgruppe D was assigned to the 11th German Army which was to be the nucleus for the formation of a fourth Army Group, after it reached the Caucasus. The function of the Einsatzgruppen was to insure the political security of the conquered territories both in the operational areas of the Wehrmacht and the rear areas which were not directly under civil administration. These two missions were made known at a mass meeting of the Einsatzgruppen personnel before the attack on Russia. At this meeting Heydrich, Chief of the SIPO and SD, and Streckenbach, Chief of the Personnel Office of the RSHA flatly stated that the task of the Einsatzgruppen would be accomplished by exterminating the opposition to National Socialism.

Nor were the commanders of the Armed Forces ignorant of the task of the Einsatzgruppen. Hitler him-

self, instructed them that it was the mission of these Special Task Forces to exterminate all Jews and political commissars in their assigned territories. The Einsatzgruppen were dependent upon the Army Commander for their billets, food and transport: Relations between Armed Forces and the Security Police and SD were close and almost cordial, and the commanders of the Einsatzgruppen reported again and again that the understanding of the Army Commanders for the task of the Einsatzgruppen made their operations considerably easier.

The normal strength of the Einsatzgruppen was from 500 to 800 men. The officer strength of the Einsatzgruppen was drawn from SD, SS, Kripo and Gestapo. The enlisted forces were composed of the Waffen SS, the Order Police, the Gestapo and locally recruited police. When occasion demanded, the Wehrmacht Commanders would bolster the strength of the Einsatzgruppen with contingents of their own. The Einsatzgruppen were divided into Einsatzkommandos and Sonderkommandos. These subunits differed only in name. When a mission called for a very small task force, the Einsatz or Sonderkommando was capable of further subdivision, called Teilkommandos or splinter groups.

The activity of the Einsatzgruppen was not limited to the civilian population alone, but reached into prisoner-of-war camps in total disregard of the rules of warfare. Soldiers were screened by Einsatzkommando personnel in order to find and kill Jews and political commissars.

Shortly before the campaign against Russia, Hitler gave an explanation of the ideological background of this fight to the commanders in chief and the highest officers of the three branches of the Armed Forces.

This war, he said, would not be an ordinary war, but a clash of conflicting ideologies. Special measures would have to be taken against political functionaries and commissars of the Soviet Army. Political activists and commissars were not to be treated as prisoners of war, but were to be segregated and turned over to special detachments of the SD which were to accompany the German troops. The carrying out of this Hitler directive was described by the International Military Tribunal in its judgment that:

"....There existed in the prisoner-of-war camps on the Eastern Front small screening teams (Einsatzkommandos), headed by lower ranking members of the Secret Police (Gestapo). These teams were assigned to the camp commanders and had the job to segregate the prisoners of war who were candidates for execution according to the orders that had been given, and to report them to the office of the Secret Police."

When a general expressed concern that the morale of the average German soldier might suffer from the sight of these executions, the Chief of the Office IV of the RSHA assured him cynically that, in the future, this "special treatment" - the euphemistic expression for killing - would take place outside the camps so that the troops would not see them.

Detailed instructions were put into force that no political functionary, commissar, higher ranking civilian servant, leading personality of the economical field, member of the intelligentsia or Jew might escape extermination. These purposes were realized in actions we shall now describe.

ACTIVITIES OF THE EINSATZGRUPPE

In May and June 1941 the assembling of Einsatzgruppen personnel began in conformity with the agreements between the Army High Command and the Reichs Security Main Office. At first the Border Police School Barracks at Pretzsch in Saxony was designated as an assembly point but because of the inadequacy of facilities, the neighboring villages of Dueben and Schmiedeberg were also designated as assembly points.

Since the majority of the personnel for the Einsatzgruppen came from military or police organizations, they already understood normal military duties. The course of training given them at the assembly points, consisted of lectures and speeches on their new and special functions. After this orientation the Gruppen received their equipment, and were to be committed to action. Events were not long delayed which brought these organizations to their assigned tasks, and their missions were thoroughly understood from the highest ranking leader of a Gruppe down to the lowest SS Man.

On 22 June 1941, with no previous warning, Germany invaded Soviet Russia. The Einsatzgruppen, already alerted, fell in behind the marching columns of the Wehrmacht as an integral part of the machine constructed for swift and total war. Within a space of three days the training grounds in Saxony were empty and all Einsatzgruppen had entered upon the performance of their various missions.

The Tribunal will recall how rapidly the Wehrmacht overran vast territory in the early months of this aggression. By December 1941 the Eastern front extended from Leningrad on the North to the Crimean Peninsula in the South. The Baltic States, White Ruthenia and most of the Ukraine were in German hands. In this wide land the Einsatzgruppen moved behind the lines of combat. They were deployed from north to south in alphabetical order across the east of Europe.

The precise areas in which they did their work will become apparent as the proof is adduced. And it will be seen that they

followed like methods in executing their common mission. Identity of purpose and of top command were reflected in a common pattern of performance. Some victims were disposed of casually. Political functionaries were shot where found. Prisoners of war who fell in the category of opponents of National Socialism were handed by the Wehrmacht to the Einsatzgruppen and killed. These swift methods were also applied in disposing of Jews, gypsies and persons falling under that vague denomination "undesirables." But these latter classes of humans marked for slaughter were large -- too large to be disposed of by casual assassination. Their very numbers demanded that they be killed en masse. Accordingly, we find plans and methods adapted to this necessity.

We must remember that the Einsatzgruppen were small forces of 500 to 800 men. Four of these small forces totaling not more than 3,000 men killed at least 1,000,000 human beings in approximately two years' time. These figures enable us to make estimates which help considerably in understanding this case. They show that the four Einsatzgruppen averaged some 1,350 murders per day during a two year period; 1,350 human beings slaughtered on the average day, 7 days a week for more than 100 weeks. That is 337 murders per average day by each group of 500 to 800 men during the two year period. All these thousands of men, women and children killed had first to be selected, brought together, held in restraint and transported to a place of death. They had to be counted, stripped of possessions, shot and buried. And burial did not end the job, for all of the pitiful possessions taken from the dead had to be salvaged, crated and shipped to the Reich. Finally, books were kept to cover these transactions. Details of all these things had to be recorded and reported.

Upon entry into a given area and after establishing itself for an extermination operation, an Einsatz unit rounded up those elements of the population marked for slaughter. This was accomplished by special orders to report and by

manhunts. It was followed by concentration of the victims under guard to be transported to a place for execution or at the abbatoir itself. In accomplishing roundups a common deceit was widely practiced: those who were to die were told to report for "resettlement" - hope was held out to those who had none in fact, and who awaited certain death. The methods of extermination varied little. Mass shooting, the commonest means of slaughter, was described with classic simplicity by Herman Graebe, a German civilian, before the International Military Tribunal. Graebe was in charge of a building firm in the Ukraine. May I read from his statement:

"I walked around the mound, and found myself confronted by a tremendous grave. People were closely wedged together and lying on top of each other so that their heads were visible. Nearly all had blood running over their shoulders from their heads. Some of the people shot were still moving. Some were lifting their arms and turning their heads to show that they were still alive. The pit was already 2/3 full. I estimated that it already contained about 1,000 people. I looked for the man who did the shooting. He was an SS-man, who sat at the edge of the narrow end of the pit, his feet dangling into the pit. He had a tommy gun on his knees and was smoking a cigarette. The people, completely naked, went down some steps which were cut in the clay wall of the pit and clambered over the heads of the people lying there, to the place to which the SS-man directed them. They lay down in front of the dead or injured people; some caressed those who were still alive and spoke to them in a low voice. Then I heard a series of shots. I looked into the pit and saw that the bodies were twitching or the heads lying already motionless on top of the bodies that lay before them. Blood was running from their necks. I was surprised that I was not ordered away, but I saw that there were two or three postmen in uniform nearby. The next batch was approaching already. They went down into the pit, lined themselves up against the previous victims and were shot. When I walked back, round the mound I noticed another truck-load of people which had just arrived. This time it included sick and infirm persons. An old, very thin woman with terribly thin legs was undressed by others who were already naked, while two people held her up. The woman appeared to be paralyzed. The naked people carried the woman around the mound. I left with MOENNIKES and drove in my car back to Dubno.

On the morning of the next day, when I again visited the site, I saw about 30 naked people lying near the pit - about 30 to 50 meters away from it. Some of them were still alive; they looked straight in front of them with a fixed stare and seemed to notice neither the chilliness of the morning nor the workers of my firm who stood around. A girl of about 20 spoke to me and asked me to give her clothes, and help her escape. At that moment we heard a fast car approach and I noticed that it was an SS-detail.

I moved away to my site. 10 minutes later we hear shots from the vicinity of the pit. The Jews still alive had been ordered to throw the corpses into the pit; - then they had themselves to lie down in this to be shot in the neck.

Another form of extermination employed was asphyxiation by lethal gasses in enclosed trucks or vans. Here again the victims were induced to enter these death machines by the promise that they would be transported to other areas for re-settlement. As the van left the loading area it was filled with deadly fumes. A few minutes later, when the van reached the disposal point, the corpses were unloaded into prepared excavations which became unmarked mass graves. These, then, were the usual methods used by the Einsatzgruppen. May I now briefly detail some of their activities.

Einsatzgruppe A

Einsatzgruppe A made a comprehensive report in October 1941 describing what they had been doing. The report gave the total of 121,817 persons killed. The Commanding Officer stated:

"To our surprise it was not easy at first to set in motion an extensive pogrom against the Jews. Klimatis, the leader of the partisan unit, mentioned above, who was used for this purpose primarily, succeeded in starting pogroms on the basis of advice given to him by a small advanced detachment acting in Kowno and in such a way that no German order or German instigation was noticed from the outside. During the first pogrom in the night from 25 to 26 July, the Lithuanian partisans did away with more than 1,500 Jews, set fire to several synagogues or destroyed them by other means and burned down a Jewish dwelling district consisting of about 60 houses. During the following nights, approximately 2,300 Jews were made harmless in a similar way."

Sonderkommando 1a, which was under the command of the defendant Sandberger, arrested all male Jews over 16 in their area and with the exception of doctors and the Counsel of Elders, they were all executed. The defendant Strauch commanded Einsatzkommando 2. Six months after they began operations, they reported a total of 33,970 executions. The Commissioner General of White Ruthenia had the following to say:

"During detailed consultations with the SS Brigadefuehrer Zenner and the extremely capable Chief of the SD, SS Obersturmbannfuehrer Dr. Juris Strauch, we found that we had liquidated approximately 55,000 Jews in White Ruthenia during the last 10 weeks. In the Minsk-Land area the Jewry was completely exterminated, without endangering the allocation of labor in any way."

The defendant Jost was in command of Einsatzgruppe A on 27 March 1942 when they reported that 15,000 Jews were shot in Tschwerwen. The report pointed out that these acts created a feeling of insecurity and even anxiety in the population of White Ruthenia and that it was impossible to estimate the consequences

of such measures. At another time while this Einsatzgruppe was under Jost's command, it reported that it had executed 1,272 persons including those too aged and infirm to work and political leaders. The report adds that 14 of this number of more than 1,000 persons slaughtered were either guilty of misdeeds or were criminals. The proof will show, we believe, that this proportion of only 2% of the victims shot for crime is not unusual.

EINSATZGRUPPE B

The defendant Naumann commanded Einsatzgruppe B. In Minsk this Einsatzgruppe had rounded up all male inhabitants and put them in a civilian prison camp. By careful screening, with the help of the Secret Field Police, it was able to liquidate over a thousand Jews. In Lithuania, a local commando of this Gruppe reported that 500 Jews were being liquidated daily. The report also stated that nearly half a million roubles in cash "which belonged to Jews who were subject to special treatment were appropriated as belonging to the enemies of the Reich and confiscated." By the middle of November 1941, Einsatzgruppe B could report a total of 45,467 executions. These executions were broken down as follows:

Staff and Vorkommando Moscow	-	2,457
Sonderkommando 7A	-	1,517
Sonderkommando 7B	-	1,822
Einsatzkommando 8	-	28,290
Einsatzkommando 9	-	11,452

In reporting further executions in the civilian prisoners camps in Minsk, Einsatzgruppe B stated that another 733 civilian prisoners were liquidated. The comment made concerning these executions is:

"All the persons executed were absolutely inferior elements with a predominate mixture of Asiatic blood. No responsibility could be assumed if they were left in the occupied zone."

The defendant Blume was chief of Sonderkommando 7A in Einsatzgruppe B. In one of his affidavits he says:

"I carried out one execution in the course of my duty. I remember one occasion on which between 70 and 80 people were executed in Witebsk and on another occasion on which a similar number were executed in Minsk.....in both occasions a kind of trench was dug, the persons destined to die were placed in front of it and shot with carbines. About 10 people were shot simultaneously by an execution force of 30 to 40 men. There was no doctor present at the execution but the leader of the execution force who was responsible made sure that the people were dead. Coups de grace were not necessary."

Eugen Steimle, the defendant, commanded Sonderkommando

7A. In one of his affidavits he tells us that he had been reprimanded for not shooting women and children in his mass executions. His reports will indicate that the reprimand was not without effect.

The defendant Adolf Ott commanded another unit in Einsatzgruppe B and he tells us:

"During the time I was Kommando Head of the Kommando 7B, about 80 to 100 executions were carried out by this Kommando. I remember one execution which took place in the vicinity of Bryansk. The people to be executed were handed over to my unit by the local Commandant. The corpses were temporarily buried in the snow and later buried by the army. The valuables which were collected from these people were sent to Einsatzgruppe B.

Other units of Einsatzgruppe B headed by the defendants Klingelhofer and Six did not vary from this standard pattern.

EINSATZGRUPPE C

Einsatzgruppe C, did not fail to report the success of its work. Under the significant heading, "Executive Activities", this group reported in the first days of November:

"As to purely executive matters, approximately 80,000 persons were liquidated until now by the Kommandos of the Einsatzgruppe.....

Several retaliatory measures were carried out as large scale actions. The largest of these actions took place immediately after the occupation of Kiev; it was carried out exclusively against Jews with their entire families.

The difficulties resulting from such a large scale action - in particular concerning the seizure - were overcome in Kiev by requesting the Jewish population through wall-posters to move. Although only a participation of approximately 5 - 6,000 Jews had been expected at first, more than 30,000 Jews arrived who until the very moment of their execution still believed in their resettlement, thanks to an extremely clever organization.

Even though approximately 75,000 Jews have been liquidated in this manner, it is already at this time evident, that this can not be a possible solution of the Jewish problem. Although we succeeded, in particular in smaller towns and also in villages in accomplishing a complete liquidation of the Jewish problem, again and again it is however observed in larger cities that after such an execution all Jews have indeed disappeared. But when after a certain period of time a Kommando returns again, the number of Jews still found in the city always considerably surpasses the number of the executed Jews."

The killing of 33,000 Jewish inhabitants of Kiev in only two days stands out even among the ghastly records of the Einsatzgruppen. It was the defendant BLOBEL, who with his unit under the command of the defendant RASCH, accomplished this massacre which nearly defies human imagination. Although Einsatzgruppe C received high praise for its activities from the Commander of the 6th Army High Command, Generalfeldmarschall von REICHENAU. This ruthless, mass killing, shamed some of the German witnesses, and the Einsatzgruppe had to report that "Unfortunately if often occurred that the Einsatzkommandos had to suffer more or less hidden reproaches for their consequent stand on the

Jewish problem".

But the Jews were by no means the only part of the population which was marked for extermination. They were only the most helpless victims. Therefore, Einsatzgruppe C stressed the point of the political sources of danger by reporting:

"Even if an immediate hundred percent exclusion of the Jewry were possible, this would not remove the political source of danger. The Bolshevistic work depends on Jews, Russians, Georgians, Armenians, Poles, Lartians, Ukrainians; the Bolshevistic machine is by no means identical with the Jewish population. In this situation, the goal of a political police security would be missed, if the main task of the destruction of the communistic machine were put back into second or third place in favor of the practically easier task of the exclusion of the Jews."

Einsatzkommando 5 was commanded by the defendant SCHULZ. Only half a year after this Einsatzkommando had begun its activities, it was able to report a total of 15,000 executions. It was reported that the liquidation of insane Jews represented a particularly heavy mental burden for the members of Schulz's Einsatzkommando, who were in charge of this operation. Nor were the non-Jewish inmates of insane asylums spared. Einsatzkommando 6 killed 800 of them in one asylum alone. The commander of this unit, at a later time, was the defendant BIBERSTEIN. Before he became leader of Einsatzkommando 6, he was a Protestant Minister - and under his aegis two to three thousand helpless people were murdered, and he himself supervised executions which were carried out by his unit by means of a gas-van.

EINSATZGRUPPE D

The Headquarters Staff of Einsatzgruppe D is in the dock. The Commander was the defendant Ohlendorf and his Deputy was the defendant Seibert. Ohlendorf's Adjutant was the defendant Schubert. A sub-unit of Ohlendorf's command, Einsatzkommando 12, was commanded by the defendant Nosske. A third unit of Einsatzgruppe D, Sonderkommando 10, was led by one Persterer who is now deceased. Persterer's Deputy was the defendant Ruehl.

During the first nine months of Ohlendorf's year in command of Einsatzgruppe D, this force destroyed more than 90,000 human beings. These thousands, killed at an average rate of 340 per day, were variously denominated Jews, gypsies, asiatics, and "undesirables". Between 16 November and 15 December 1941, this Einsatzgruppe killed an average of 700 human beings per day for the whole thirty day period. The intensity of the labors of Einsatzgruppe D is suggested by an April 1942 report upon its work in the Crimea:

"The Crimea is freed of Jews. Only occasionally some small groups are turning up, especially in the northern areas. In cases where single Jews could camouflage themselves by means of forged papers, etc. they will, nevertheless, be recognized sooner or later, as experience has taught."

In ordering these massacres Ohlendorf and his men were not without scruples.

"It was," he said, "my wish that these executions be carried out in a manner and fashion which was military and suitably humane under the circumstances. For this reason I personally inspected a number of executions, for example, executions which were carried out by Kommando 11B under the direction of Dr. Werner BRAUNE, executions by Kommando 11A under Sturmbannfuehrer ZAPP in Nikolajew, and a smaller execution by Kommando 10B under the leadership of Alois PERSTERER in Ananjew. For technical reasons (e.g. because of road conditions) it was not possible to inspect all mass executions. Insofar as I was prevented from inspections for personal reasons, I ordered members of my staff to represent me at these. I remember that SCHUBERT inspected an execution which was carried out by Kommando 11B under BRAUNE's direction in December 1941 in Simferopol. The only people whom I generally assigned to inspections were, except for

SCHUEERT, Willi SEIBERT und Hans GABEL."

The execution at Simferopol which Ohlendorf mentions was reported to Berlin as, "very difficult" because "reports about actions against Jews gradually filtered through from fleeing Jews, Russians, and also from unguarded talks of German soldiers." But these difficulties apparently increased the determination of Einsatzgruppe D. On 18 February it reported to Berlin:

" By the end of February the combing-through of the occupied Crimea will have been finished. Certain important areas in towns in particular are being regularly rechecked. The search for isolated Jews who have up to now avoided being shot by hiding themselves or by giving false personnel data, was continued. From 9 January to 15 February more than 300 Jews were apprehended in Simferopol and executed. By this the number of persons executed in Simferopol increased to almost 10,000 Jews, about 300 more than the number of Jews registered. In the other Kommando areas as well, 100-200 Jews were still disposed of in each instance. "

The International Military Tribunal reached the conclusion from the evidence then before it that:

" Einsatzgruppen of the Security Police and SD operating behind the lines of the Eastern Front engaged in the wholesale massacre of Jews.... Commissars, Jews, members of the intelligentsia, fanatical communists and even those who were considered incurably sick were classified as 'intolerable', and exterminated.....These units were also involved in the widespread murder and ill-treatment of the civilian population of occupied territories. Under the guise of combatting partisan units, units of the SS exterminated Jews and people deemed politically undesirable by the SS, and their reports record the execution of enormous numbers of persons."

The brief details I have recounted indicate the character of the proof to come. It is for such crimes as these that we invoke the jurisdiction of this Court.

Jurisdiction of the Court.

International agreements adopted by twenty-three nations and Control Council Law No. 10, a quadripartite enactment made pursuant to these agreements, authorize the creation of this court. These Military Tribunals, established by the United States as agencies to administer Law 10, are in essence and in fact International Courts.

The murders in this case were committed in particular cities and towns, but the rights the defendants violated belong to all men everywhere. These rights may be vindicated by any nation, alone or in concert with others. The nationality of the victim and the time and place of crime do not impugn this jurisdiction. We find this law both in opinions of the Permanent Court of International Justice and the practice of states in military offenses.¹ The permanent court has held that states have legal power to determine any criminal matter as long as such legal action is not prohibited by international law.² Where conduct menaces the universal social order, there can be and has been no prohibition on the right of courts to act. No law has ever prohibited the trial by any court of crimes such as we shall here disclose.

Piracy and brigandage were the forerunners of modern international crimes. International jurisprudence soon gave States the right to punish these violators regardless of the victim's nationality or the location of the crime. This applied in time of war or peace. It has long been accepted that a belligerent may punish members of enemy forces in its

1. Cowles, Universality of Jurisdiction of War Crimes.
Alif. Law Rev. June 1945

2. SS Latus (France vs Turkey) Judgment No. 9, Series A,
No. 10. Cited in Cowles, op. cit. pp 178-180

custody who have violated the laws and customs of war.¹ the jurisdiction exercised by military courts trying offenses against the laws of war has never been territorial! Sir Hartley Shawcross, the British prosecutor at the International Trial, pointed out that:

"The right of humanitarian intervention on behalf of the rights of man trampled upon by a State in a manner shocking the sense of mankind has long been considered to form part of the law of nations."²

German law professors too declared this in their writings.³

The jurisdictional power of every State extends to the punishment of offenses against the law of nations "by whomsoever and where-soever committed".⁴

It is, therefore, wholly fitting for this Court to hear these charges of international crimes and to adjudge them in the name of civilization.

The charges we have brought accuse the defendants of having committed Crimes against Humanity. The same acts we have declared under Count I as Crimes against Humanity are alleged under Count II as War Crimes. The same acts are, therefore, charged as separate and distinct offenses. In this there is no novelty. An assault punishable in itself may be part of the graver offense of robbery, and it is proper pleading to charge both of the crime. So here the killing of defenseless civilians during a war may be a war crime, but the same killings are part of another crime, a graver one if you will, genocide - or a Crime against Humanity. This is the distinction we make in our pleading. It is real and most significant. To avoid at the outset any possible misconception, let us point out the difference between the two offenses.

1. Ibid p. 206

2. Transcript p. 813

3. Bluntschi, "Das Moderne Volkerrecht der Civilisierten Staaten"

4. Wheaton, cited in Cowles, op cit. supra p. 191

War Crimes are acts and omissions in violation of the laws and customs of war. By their very nature they can effect only nationals of a belligerent and cannot be committed in time of peace. The Crime against Humanity is not so delimited. It is fundamentally different from the mere war crime in that it embraces systematic violations of fundamental human rights committed at any time against the nationals of any nation. They may occur during peace or in war. The animus or criminal intent is directed against the rights of all men, not merely the right of persons within a war zone. At a recent conference for the unification of penal law, the definition of crimes against humanity was a leading topic. There it was the Counselor of the Vatican who said:

"The essential and inalienable rights of man cannot vary in time and space. They cannot be interpreted and limited by the social conscience of a people or a particular epoch for they are essentially immutable and eternal. Any injury ... done with the intention of extermination, mutilation, or enslavement, against the life, freedom of opinion the moral or physical integrity of the family or the dignity of the human being, by reason of his opinion, his race, caste, family or profession, is a crime against humanity."¹

One series of events, if they happen to occur during the time of hostilities, may violate basic rights of man and simultaneously transgress the rules of warfare. That is the intrinsic nature of the offense here charged. To call them war crimes only is to ignore their inspiration and their true character.

Control Council Law No. 10 clearly lists war crimes as offenses constituting violations of the laws and customs of war, and Crimes against Humanity as a distinct offense unrelated to war.² The London Charter restricted the jurisdiction

1. Report of the VIIIth Conference for the Unification of Penal Law, 11 July 1947

2. Art. II, 1(b) and (c)

of the International Military Tribunal to Crimes against Humanity connected with Crimes against Peace or War Crimes.¹ This restriction does not appear in the Control Council enactment, which recognizes that Crimes against Humanity are in international law, completely independent of either Crimes against Peace or War Crimes. To deny this independence would make the change devoid of meaning.²

In this case the crimes occurred while Germany was at war. This is a coincidence of time. The plans for persecution and annihilation were rooted deep in Nazi ideology and would have been effected even had their aggressions failed to erupt in open conflict. This was shown by their actions in Germany itself, in Austria and in Czechoslovakia.

1. Charter of the IMT, Art. 6(c)

2. The opening statement by the Prosecution in Case No. 5, U.S. v. Flick et al, pp. 56-73, contains a detailed exposition of the distinction between War Crimes and Crimes against Humanity.

COUNT ONE

Count One of our Indictment enumerates the Crimes against Humanity which we have charged. It accuses these defendants of atrocities and offenses, including persecutions on political, racial and religious grounds, murder, extermination, imprisonment and other inhumane acts. Each of these is recognized as a crime by Law No. 10. That murder and extermination violated the criminal laws of all civilized nations even the defendants will not be heard to deny.

Can it be said that international conventions and the law of nations gave no warning to these accused that their attacks against ethnic, national, religious and political groups infringed the rights of mankind? We do not refer to localized outbursts of hatred nor petty discriminations which unfortunately occur in the most civilized of states. When persecutions reach the scale of nationwide campaigns designed to make life intolerable for, or to exterminate large groups of people, law dare not remain silent. We must condemn the motive if we would affect the crime. To condemn an evil and ignore its cause is to invite its repetition. The Control Council simply re-asserted existing law when naming persecutions as an international offense.

In dealings between nations these principles were well known and Germany itself had been their champion. In the Berlin Treaty of 1878, Germany declared that religious differences could not be used to exclude a person from his civil or political rights. Following the first World War, in the German-Polish Convention of 1922, Germany obtained the legal protection for her ethnic minorities throughout Poland. The German Government bound itself under German Law to guarantee the complete protection of the life and liberties of all inhabitants, without discrimination as to their birth, nationality, language, race or religion.¹ Germany agreed that these were obligations of international

1. Reichsgesetzblatt, Part II, 1922, No. 10, dated 15 May 1922, Art. 66, 67, 68, 71.

concern¹ and were basic laws which could not be superceded by any official, order, or any other law.² In the Permanent Court of International Justice Germany obtained recognition of and guarantees by International Law of her minority rights in Poland.³ Indeed it was under the guise of protecting the rights of minorities that the Nazis invaded Czechoslovakia. So mindful of their own rights; so callous of the rights of others.

The history of nations in asserting human rights gave ample warning to the world. It should come as no surprise to these defendants that they may now be judged under international law for acts which were always known as crimes.

COUNT TWO

Count Two of our Indictment accuses these defendants of violations of the laws and customs of war. The acts particularized in Count One, in addition to constituting Crimes against Humanity also violated rules for the conduct of hostilities and are therefore charged as a distinct offense.

The Einsatzgruppen operated in Occupied countries. The standards of conduct for an occupying Power were established by the Rules of War. They were obligated by international agreements to protect family honor and rights, to respect the person and property of non-combatants as well as their freedom of religion. Prisoners-of-war were to be treated as prescribed by humane codes adopted by all civilized nations. The evidence will disclose how the defendants in this case defied these laws, how unarmed civilians were methodically liquidated, how

1. Ibid - Art. 72

2. Ibid - Chap. I i.

3. Opinion No. 6 and 7. Permanent Court of International Justice - Series A, No. 6, p. 4-41, dated 25 August 1925; Series A, No. 7 p. 4-107, dated 25 May 1926.

prisoners-of-war were casually selected for extermination, and it will also show wholesale plunder and destruction devoid of all military necessity. All of these acts are war crimes as recognized in Law No. 10.

COUNT THREE

The Judgment of the International Military Tribunal declared that the SS, the Gestapo, and the SD were criminal organizations. In reaching their decisions the Court made frequent reference to the deeds of the Einsatzgruppen. These activities contributed largely to the Tribunal's finding that membership in the organizations named constituted crime. We have charged that all of these defendants were members of one or more of these criminal groups on or after 1 September 1939. Proof of such continuing membership supports conviction under Count Three of our Indictment. There will be little doubt that each one knew the criminal nature of the band he joined. If the law condemns any man for these participations none can bear greater guilt than the defendants in this case.

Theory of Individual Responsibility

We have briefly outlined how this case is being tried, how the Einsatzgruppen were organized and their ideological foundation in Nazi Germany. We have suggested that the chief significance of this case lies in the protection by law of fundamental human rights and we have described how those rights were systematically violated. We also seek here to hold a handful of men responsible for crimes they alone could not possibly have committed. What are the standards by which we test their guilt?

Many of the defendants ordered and participated in the mass executions committed by their units. In those cases they are clearly responsible under standards known and accepted by all. In other cases it may not be known that these defendants specifically ordered or directly participated in the crimes of their Kommandos. Here guilt is just as great.

Every man in the dock had full knowledge of the purpose of his organization. We cannot believe that any member of a group engaged in murders by the thousands could fail to know its criminal intent. We do not undertake the burden of showing any defendant's foreknowledge of the precise contours of the crime committed. Nowhere on earth does the law impose such a burden.

Each defendant held a position of responsibility or command in an extermination unit. By virtue of his post he had the power to order executions. It is not conceivable that these grave deeds were independent acts of misguided subordinates. They were bound by law, if not by conscience to refrain from such activity. That they knew, no doubt, as well as all men know it. They

will not here deny their knowledge of the Lord's commandment.

As military commanders these men were bound by laws well known to all who wear the soldier's uniform. Laws impose on him who takes command the duty to prevent, within his power, crimes by those in his control. These laws, declaratory of common morality rest lightly on the honorable soldier. He feels no restraint in the rule that old men, women and children shall be protected as far as military necessity permits. It is this duty, legal and moral, to prevent, to mitigate, and to disavow the slaughter of innocents, that all the defendants flagrantly violated. The purpose of the laws of war to protect civilian populations and prisoners would largely be defeated if a commander could with impunity neglect to take reasonable measures for their protection. This was declared by the Supreme Court of the United States¹ and relied upon by Military Tribunal I in the case against German doctors.²

We shall show in this case that the rank and position of these defendants carried with it the power and duty to control their subordinates. This power, coupled with the knowledge of intended crime and the subsequent commission of crime during their time of command imposes clear criminal responsibility.

It is not infrequent in the legend of these crimes that some word of explanation edges in as if to salve the conscience of the executioner. "So and so many persons were shot," the report will read "because they were too old and infirm to work," "this or that ghetto was liquidated, to prevent an epidemic," "so many children were shot, because they were mentally ill. "

1. Application of Yamashita, 66 Supreme Court 340-347

2. Judgment of Military Tribunal, Case No. 1, p. 70.

Such lean tokens cannot exculpate these wrongs. The Euthanasia doctrine based on a Hitler order scorning pre-existing law spurred the annihilation program. Military Tribunal I, in discussing euthanasia laws stated:

"The Family of Nations is not obligated to give recognition to such legislation when it manifestly gives legality to plain murder and torture of defenseless and powerless human beings of other nations."¹

Murder cannot be disguised as mercy.

Law No. 10 specifically declares that certain acts are Crimes against Humanity "whether or not in violation of the internal law of the country where perpetrated." The defendants here can seek no refuge in the Law.

The fact that any person acted on the order of his government or of a superior does not free him from responsibility for crime.

It may be considered in mitigation. This is in the law we follow here, and is no innovation to the men we charge. Even the German Military Code provides that:

"If the execution of a military order in the course of duty violates the criminal law, then the superior officer giving the order will bear the sole responsibility therefor. However, the obeying subordinates will share the punishment of the participant:

(1) If he has exceeded the order given to him or

(2) It was within his knowledge that the order of his superior officer concerned an act by which it was intended to commit a civil or military crime or transgression."²

Was it not within the knowledge of the accused that the mass murder of helpless people constituted crime? Moral teachings have not so decayed that reasonable men could think these wrongs were right.

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1. Military Tribunal I, Case No. 1, p. 50.
 2. Reichsgesetzblatt 1926, No. 37, p. 278, Art. 47, (cited in Jackson Opening).

The Judgment of the International Military Tribunal declares that 2 million Jews were murdered by the Einsatzgruppen and other units of the Security Police¹. The defendants in the dock were the cruel executioners, whose terror wrote the blackest page in human history. Death was their tool and life their toy. If these men be immune, then law has lost its meaning and man must live in fear.

1. Official Text p. 292.