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MILITARY TRIBUNAL IV CASE XI

FINAL PLEA

for

GOTTLÖB BERGER

Delivered By:

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Nürnberg, Wielandstr. 36/o

1 November 1948

Final Plea BERGER

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YOUR HONORS -

MAY IT PLEASE THE COURT:

Among the large number of figures in the mosaic-like pattern of this trial whom the Prosecution has haled before your Tribunal as defendants the person of the defendant BERGER occupies a special position. Without having connections of any kind with the supporting pillars of the domestic and foreign policy of the former German Reich or with its close-meshed net of widely ramified police organizations and the machinery of a financial and economic rearmament program running at top speed, BERGER, as former head of the SS Main Office and the Political Operations Staff of the Reich Ministry for the Occupied Eastern Territories, as military Commander-in-Chief of Slovakia and Chief of the Prisoner of War Department, was selected by the Prosecution as a drastic example in order to lend further support to the verdict of the IMT on the much-reviled SS, whose leader betrayed hundreds of thousands of credulous and blameless men through a cowardly suicide and brought upon them and their relatives the shame of international criminals.

BERGER was no honorary leader of the SS who played^a purely decorative role as a supernumerary on special occasions and adopted only so much of the SS spirit as was necessary in order for him to be able to wear the uniform conferred upon him with dignity. Nor did BERGER belong to any irrational resistance movement which only opposed the policy of violence of a Hitler behind closed doors without ever summoning up strength for a decisive stroke. BERGER dared to defy orders of the Fuehrer when they ran counter to his humane instincts, even at the risk of losing his own life.

Final Plea BERGER

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With the same manly courage and without any reservations whatsoever BERGER acknowledged his actions, which united a trained sense of duty and soldierly obedience with feelings of deep-rooted humanity, as his conscience as a General of the Waffen S^d bade him.

If words could kill BERGER would have been dead long ago. With respect to probably none of the defendants in this trial has the Prosecution announced with such bombastic words such earth-shaking evidence for the numerous charges in the indictment as did Mr. Peterson, who served as a representative of the Prosecution up to a few weeks ago. BERGER's defense was supposed to collapse like a house of cards under the weight of the witnesses and documents of the Prosecution, especially under cross-examination.

Judged by the volume^{of} the documentary material in no fewer than 20 document books containing nearly 400 documents it was possible for this announcement to appear in certain respects justified. However, the volume of evidence was not^{at} all in proportion to its contents, as the Defense was in a position to perceive long before the evidence was submitted, through its justified and unshakable confidence in BERGER's absolute veracity.

The Defense, therefore, was able to assume the risk of calling BERGER to the witness stand and exposing him to a cross-examination of presumably deadly effect at a date which came ^{months} before the supposed deadline for the presentation of evidence.

The Tribunal will still recall the really dramatic scene when Mr. Peterson broke off his cross-examination after little more than 1 hour because he was no longer able, after fruitless, base attacks on BERGER's

spotless character and after the miserable failure of "his master's voice", to advance even one more argument against the defendant. And this during a cross-examination which in the words of Mr. Peterson was supposed to give the Defense its first real work.

Since then Mr. Peterson has grown quiet. The examination of the witnesses before the Commissioner rounded out the picture in BERGER's favor and the army of witnesses who were supposed to gnaw BERGER's character to pieces like rats dwindled into a very few, who were unable to stand up before the cross-examination of the Defense. Mr. Peterson himself, however, and his staff vanished into oblivion and there were left only the Indictment and a few documents torn out of their context, which even when interpreted in the most pottifogging way could not save the crazily built and legally unsound structure of the Prosecution from collapse.

"Pariunt montes et nascitur ridiculus mus." This saying is recalled by the BERGER case, to which I have given detailed consideration in my Closing Brief. The result might be set down in the following propositions:

I.

In Figures I and II BERGER is charged with complicity in the planning, preparation, initiation and waging of wars of aggression and invasions of other countries, as well as with participation in a conspiracy directed to these ends.

1.) The hearing of the evidence showed that BERGER did nothing which could be interpreted as an act of participation within the meaning of the IMT and IG-Farben verdicts. According to both verdicts affirmation of the question of guilt presupposes knowledge as well as active participation. Both are lacking in BERGER's person. He neither had any voice in establishing foreign policy nor did he otherwise have any common knowledge

of such plans. His work in the Recruiting Office at that time was limited to standardizing the various methods used in the recruitment, registration and physical examination of the General SS, as well as to drawing up a general plan of recruitment for the Waffen-SS for the period after peace should be concluded. BERGER's plan arose from his endeavor to make the military strength of the German national groups useful to the SS in the coming peace. In view of the proposal to found a "Foreign" Recruiting Office (Ergaenzungsamt "Ausland") this idea was completely remote from any secret activity. It was supported by numerous applications which were received at that time from volunteers from the Netherlands for short-term training in the Waffen-SS.

2.) The international character of the Munich Agreement itself, which was intended to eliminate the unrest which was constantly being stirred up anew by the Czechs, excluded the possibility of any occupation carried out in an aggressive manner. The SS did not participate in the entry into the remaining part of Czechoslovakia. In the case of Belgium, Holland, Denmark and Yugoslavia none of the documents submitted was able, in view of the testimony of witnesses, to give any support to the charge of an alleged coercion exerted on so-called dummy and satellite governments. They were completely refuted by documents which the Prosecution itself submitted in rebuttal to prove charges against other defendants, as, for example, in the Veessenmayer case. From them it appears that BERGER was forbidden by the Foreign Office to establish any direct contact with official agencies outside of the German Reich. No other American will attempt to describe the King of Denmark or Regent Horthy as a puppet, as the former Prosecutor Mr. Peterson believed he could allege in general about the governments of countries where recruiting for the SS was carried on.

II.

In Figure III Berger is accused of committing war crimes, murdering and mistreating combatants and prisoners of war.

1.) The Nuernberg Prosecution thought that it could borrow the theory of a general conspiracy against the Allied fliers captured in Germany from its affiliate in Dachau and in this way charge Berger with complicity in its "shooting while trying to escape". The Dachau theory did not restrict this act of participation to the act of killing, to incitement or aiding and abetting in the legal sense. On the contrary, in an analogous application of the Soviet Russian theory of collective guilt it saw such a participation in any conceivable kind of remark or action which was connected in space and time with the capture of fliers. It found support for this theory in alleged basic orders issued by top Reich agencies, which were supposed to have called for the killing of Allied fliers, above all in Bormann's circular letter and in certain orders of Himmler. The Prosecution has failed to produce proof that Berger acted in any way whatsoever on the basis of these directives. It was not even ascertained whether the wording of Bormann's alleged circular letter conformed with the Himmler orders, since an authentic text was not produced. On the other hand, the evidence advanced by the Defense showed that in repeated cases Berger protected Allied fliers who landed by parachute from the outraged mob, after they had just treacherously attacked harmless people working in the fields, and had then transferred according to regulations to a prisoner of war camp and that he did this with danger to his life and under especially difficult circumstances against the will of the Fuehrer as well as at the risk of being very severely punished himself.

2.) In the Mesny case the following was clearly established:

- a) The reprisals occasioned by the murder of the German general Prodowsky and 12 other German officers by the French were ordered by the OKW; whether with or without contacting the Foreign Office remains undecided. The OKW, accordingly, was also exclusively vested with the responsibility of checking the admissibility of an act of reprisal in accordance with principles of international law, even if due to a specially phrased newspaper notice the steps taken were supposed to make it evident, that the operation was carried out as a reprisal. Conferences between the offices in authority, OKW, Foreign Office and Inspector of Prisoner of War Matters, had been in progress for a long time before Berger took over the position of Chief of the Prisoner of War Department.
- b) Without Berger's knowledge his deputy Meurer at the order of the OKW gave up three more names from the list of names which had already been submitted to the OKW. Berger severely reprimanded Meurer for taking part in a conference with the Reich Security Main Office. It is further established that Berger, who was absent from the office for a fairly long time during those weeks because of obstructions caused by bombing, had already because of the comparatively long lapse of time gained the belief that his efforts had been crowned with success. After learning of the order Berger endeavored to prevent the execution of the proposed reprisals in repeated calls on Himmler over a period of weeks. This has been clearly proved by the Kersten affidavit, Exh. 73.
- c) Even making the broadest possible interpretation of the rules of causal connection one cannot speak of cause and effect with respect to Meurer's action if the OKW made the decision to carry out the reprisals by selecting a name from the lists which had been submitted to it, not by the Chief but by the Inspector of Prisoner of War Matters, then had three more names given it by Meurer from the same list and chose a different name than the one originally specified. Still less, however, can one hold Berger criminally responsible because Meurer obeyed that order of the OKW without his knowledge and against his wishes. It would stretch the criminal responsibility of the head of a government office too far if one tried to hold him responsible for the act of a subordinate which was not committed with his approval but without his knowledge, at the order of top headquarters.
- d) However, if and in so far as the OKW in January 1945 once more issued the final order for carrying out the reprisals, not to Berger but to the Inspector of Prisoner of War Matters, then Berger as a soldier in accordance with general military opinion could not raise any objection against this order, which was not addressed to him because his office was in no way affected by it. The participation of the counter-intelligence officer in supervising the transport, which was ordered by Meurer, was without Berger's knowledge and therefore for the same reasons as those mentioned above cannot be charged against him. Berger himself did not learn about the execution of the reprisals until a week later.

3.) Nor was the Prosecution able to advance any proof for the allegation of his complicity in subsequent reprisals. The evidence concerning the so-called "forced march" of the prisoners of war into the interior of Germany from the areas near the front threatened by the Russians, which was presumably thought up by Berger, was transformed by the examination of the Prosecution witnesses themselves into a hymn of praise for Berger, who out of human sympathy did everything to eliminate the difficulties which arose and to organize the march as humanely as possible. Quite apart from that the removal of the prisoners of war from areas threatened by the enemy was in accordance with the provisions of the Geneva Convention, as well as with the urgent wishes of the Russian prisoners of war. In the light of its internal improbabilities the Hunter affidavit has showed itself to be worthless.

4.) On the other hand the hearing of the evidence showed that in the spring of 1945 Berger refused, against express orders by the Fuehrer, to transfer 35,000 prisoners of war as hostages to the Tyrol, which would have meant their certain death. I refer to the affidavit of the Secretary of Legation of the Embassy of the Swiss Confederation, Max Koenig (Exh. 5) and the American General Vanaman (Exh. 56).

As General Vanaman again confirms to us in the same affidavit and Dr. Haubold in his affidavit (Exh. 63), Berger, at the risk of endangering his personal safety, evaded Hitler's order to stop supplying prisoners of war with Red Cross packages at once and thereby saved the lives and health of hundreds of thousands of prisoners.

Captured officers who were in particular danger, the so-called prominent prisoners of war, including the sons of the American Ambassador Winant and the English Field-Marshal Alexander and other leading personages in public life in Great Britain and the USA, whom Hitler had ordered to be shot, were saved from certain death by Berger, who secretly and under his

personal protection handed them over to the Commissioners of the Swiss Confederation at the Swiss border, as was confirmed in words of the deepest gratitude by Lord Elphinstone and Colonel Spivey, as well as by the Envoy Extraordinary and Minister Plenipotentiary of the Swiss Confederation, Dr. Peter Anton Feldscher, in their affidavits 1, 62 and 2.

Finally, in the days of highest tension Berger made it possible through his agreement with General Eisenhower, which was clearly contrary to Hitler's orders, for thousands of American prisoners of war to return home immediately. Colonel Spivey expressly states in gratitude that these prisoners owe their lives to Berger and Berger alone.

5.) Where in the trials which have now been concluded can a German general be found who like Berger forbade the execution of the notorious Orders 606 and 660 about chaining prisoners of war? It was Berger who to the horror of his deputy wrote the following words with bold strokes in blue pencil on the margin of this order:

"Impossible for my department! I forbid any chaining of prisoners of war, this order to take effect immediately."

This document is still in the possession of the American occupying power today in the files on prisoners of war matters. In spite of repeated requests the document, which Berger obviously was unable to identify exactly, was not submitted by the Prosecution, any more than was any other document in favor of the Defense. How much exonerating material Berger could have produced if this file had been made available to him! Will anybody still assert that Prosecution and Defense had equal rights in the trial?

However, that the Prosecution did not submit one incriminating document from these voluminous files is the best proof of the fact that in spite of the most intensive examination of the files they were unable to find any such incriminating document. Berger could not be any more brilliantly justified in this point than by the silence of Mr. Peterson in his documents,

III.

It would be incompatible with such a humane attitude toward prisoners of war whose lives were threatened by crazy orders if Berger had seen in them and in the nations who fought with and for Germany and whose lasting friendship he hoped to gain for the times after the war, especially in their young men, welcome objects of an unbridled policy of enslavement and had treated them with disregard for their dignity as human beings.

1.) In accordance with the rule "semper aliquid haeret" former Prosecutor Peterson has emptied a bucket of accusations over Berger under Count III of the Indictment and charges him with enslaving concentration camp inmates, using prisoners of war for military operations, mistreating, terrorizing, torturing and murdering enslaved persons including prisoners of war, deporting the civilian population of the Occupied Eastern Territories into slavery, and other measures of coercion by military and police units, recruiting young people by force without regard for their age, occupation and sex and enrolling them for service in pseudo-military organizations, and thereby accuses him of complicity in genocide. Without any adequate reason and in a downright unscrupulous way the Prosecution has charged Berger with all the frightful crimes enumerated in the Control Council Law.

2.) Terms which were given a completely false explanation such as the Hey and Air Force Auxiliary Project (Heu und Luftwaffen-Helfer-Aktion) were supposed to prove these alleged brutal actions as striking examples. For all these allegations the Prosecution has not been able to produce the shadow of a proof and for the most part has not even tried. Free of any personal guilt Berger could not be proved to have taken part indirectly in any such occurrences, either. On the contrary, here, too, irrefutable proof was adduced that Berger

did everything, going far beyond what he was obliged to do, to save the youth of the White Ruthenian nation from the lustful and bloodthirsty hordes of Bolshevism and gave them a chance to learn an honest trade, which was intended to enable them to aid in the reconstruction of their immediate fatherland in times of peace.

Berger's much-reviled activity in the Reich Ministry for the Occupied Eastern Territories was also given an explanation by the witnesses of the Prosecution as well as those of the Defense which was obviously extremely inconvenient for Mr. Peterson.. It was clearly established that to his willingness to assume the post of State Secretary in this government office Berger attached the condition of a fundamental change of policy with respect to the treatment of the peoples of the East, that before his official appointment as State Secretary he refused to take charge of the Political Directing Staff (Fuehrungsstab Politik) and that he also discontinued his unofficial collaboration and restricted himself to his work as Liaison Officer, when Rosenberg's feeble and ambiguous attitude capitulated before the intrigues of Berlin society. However, what Berger did and wrote testifies here again to the far-sightedness of the man and his humane attitude, which was not directed at making slaves out of allies but rather friends out of the vanquished.

3.) I have thoroughly discussed all these matters in detail in my Closing Brief. I do not intend to burden this Final Plea with them, since the study of these arguments is better adapted to the quiet work-room of the man who is charged with preparing the verdict on Berger. Here I take the liberty to refer to the testimony of Braeutigan, as well as that of a recognized expert in Eastern affairs, K.J. Albrecht, whose credibility even a Mr. Peterson was unable to shake. Albrecht paid the highest respect to Berger's intelligent and moderate Eastern policy.

IV.

On the same low level are the charges which former Prosecutor Peterson brought against Berger under Count VI of the Indictment for his complicity in robbing and plundering economic and cultural property. Here too it was clearly established that the incidents under consideration merely involved the registration, salvage and placing in safety of artistic and cultural treasures from the Eastern Territories which were exposed to the dangers of war, and that these actions did not proceed from any rapacious intention. Besides this, Berger neither directly nor indirectly ordered the measures, which were justifiable in themselves.

V.

1.) The presentation of the Prosecution's evidence on Count V of the Indictment devoted an especially large amount of space to Berger's alleged participation in crimes against humanity, in which connection anti-Semitic propaganda and inflammatory attacks on the Jews were obviously thrust into the foreground. The anti-Semitic literature issued by various agencies of the Reich Leadership Corps offered a pretext for this.

The question as to whether Berger was involved in its publication or dissemination did not interest the Prosecution. It was left to Berger to produce evidence in rebuttal.

The Defense has produced this proof. The two publications "Jewish Ritual Murder" and "The Subhuman Being" could be traced, as testimony showed beyond a doubt, to Hitler's direct orders, which were not addressed to Berger but to private individuals. Here I refer quite particularly to the Wezel affidavit, Exh. 57, and the Webendoerfer affidavit, Exh. 27, in connection with his statement on page 7676. "Jewish Ritual Murder" had been known to the public ^{long} before Berger's time. The new edition proposed by Hitler was destroyed by enemy action even before it appeared in the book stores. "The Subhuman Being"

was a book published by the Nordland-Verlag which was intended for home consumption, was not sent to the army and had nothing to do with Berger's training manuals.

At Berger's express order the SS Guidebook refrained from any anti-Semitic propaganda. There was no room in Berger's "Education" Office for "orientation of the Jews" or a war against Jewry in the sense of a negative anti-Semitism. The "Education" Office and the literature published by it, especially the SS Guidebook, developed upon far too lofty a plane with respect to the intellectual and ethical leadership of men to have concerned itself with a destructive propaganda against Jews in the style of a Julius Streicher. The Prosecution was not in a position to submit even a single printed line in proof of their allegation. How can it be asserted that Berger disseminated anti-Semitic propaganda or inflammatory attacks on the Jews by means of these manuals? It would really be equivalent to forcing justice into the strait-jacket of vindictive retaliation to try to support a judgment by such fictitious^{us} allegations - only, indeed, because Berger was a member of the SS.

2.) Even more unscrupulous was Mr. Peterson's charge that Berger was to be held responsible for the extermination of Jews.

- a) This allegation is refuted in a purely chronological sense alone by the now well-established fact that the extermination of the Jews had for the most part already been effected in the winter of 1941/42 and was completely stopped one year later. I refer to Defense Document No. 50, Exh. 44 Schollenberg, affidavit by former Swiss President Dr. Muesy.
- But the charge is also completely unfounded with respect to fact. Berger or members of his office did not attend any conference of the Reich Ministry of Propaganda or other agencies in which Jewish matters were discussed. The expression "final solution of the Jewish question" was never used in Berger's office or even merely mentioned in similar words. All conclusions drawn from Hitler's speeches, especially from the Posen speech which was inserted in no fewer than 6 Prosecution Books against Berger and soon grew into a fairy tale, have proved to be untenable, even if the speech in Posen was said to have been reconstructed from smashed phonograph records, just as has the allegation that Berger had received regular reports on the combatting of partisans which contained figures on exterminations of Jews. Berger neither composed these speeches, nor, with the exception of the Posen speech, was he present when they were delivered.

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CERTIFICATE OF TRANSLATION

8 November 1948

I, John B. ROBINSON, Civ.No. AGO X 046350, hereby certify that I am a duly appointed translator for the German and English languages and that the above is a true and correct translation of Final Plea Berger, pages 1 - 12.

John B. ROBINSON
Civ.No. AGO X 046350

Final Plea Berger

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The statements of the witnesses von Woysch, Hildebrandt and von dem Bach-Zelewski which are in complete agreement, make it very probable that the "Final Solution of the Jewish Question" was not even mentioned in the Posen speech.

Documents were pinned together which were not connected either by their dates or by their contents - for example the notorious document NO-511, Exh. 2369 -, with the sole purpose of incriminating Berger. Confronted with the suspicion of falsification, the former prosecutor evaded the demand of defense counsel to put the original documents in evidence by withdrawing said document.

- b) Documents intended to show Berger's position within the framework of the East Ministry could not prove any participation of Berger's in the extermination of the Jews. Berger in his position as liaison officer between Himmler and the East Ministry may be called a better-class postman. Even a man like Mr. Posen was forced to admit that a comparison of Berger's position with that of an errand-boy was not too far fetched, although outwardly his position was superior to that of such low-grade clerical personnel.

Likewise, the contention of the prosecution that by transferring Jews to concentration camps Berger had participated in their extermination, has been proved untenable by the contents of the documents; the Ghetto was dissolved because it was the metropolis of the Soviet Intelligence Service.

- c) Any knowledge of, and participation in, the "Final Solution of the Jewish Question" on Berger's part was clearly disproved by the evidence. This applies to the East as well as to the allied satellite countries Denmark, Hungary, and Slovakia. The contention in respect of Denmark was refuted by the witness Best and once again during rebuttal; Kastner's testimony regarding Hungary and Slovakia, in which he only repeated his hearsay knowledge was refuted by the witnesses Gmelin and Eppenauer. Berger's activities as Commander-in-Chief of Slovakia were clearly established by a number of witnesses who proved that his task was confined to suppressing a revolt and had nothing to do with the extermination of Jews.

- d) In the same way, the atrocities committed by units fighting against partisans and particularly by the Brigade Dirlewanger which are mentioned in certain reports are based on hearsay. The investigations started by Berger yielded neither proof nor clue. What partisan warfare really meant has been described by the prosecution witness von dem Bach-Zelewski, Commander-in-Chief of Partisan-fighting Units. May the day never dawn when soldiers of the U.S. Army have to experience for themselves the terrors of this type of combat and find themselves confronted with the necessity of drawing the same, and only possible military consequences from such a situation. Treacherous cowardice and inhumane conduct of war cannot be fought by benevolent reproach or scathing criticism. Success is the only thing that counts. And success depends on just such brutal countermeasures. That is why, in view of the atrocious bestialities which it is impossible to describe in my final speech, von dem Bach-Zelewski gave the order "to hunt these partisan bands with all means available until they are completely annihilated". It was, however, the Higher SS- and Police Leaders and not Berger; who were in charge of such measures, they and the whole organization of the police, including the Security Police, were directly subordinated to Himmler.

c) Thus the dagger which the former prosecutor aimed at BERGER as the representative of the SS on account of the alleged murder of hundreds of thousands of Jews was wrested out of his hand even before he could thrust it into the back of his adversary. Nothing, actually nothing at all remained from the charges made. The prosecution was not fortunate in choosing BERGER of all men as the last victim of their attack against the SS. If they had chosen other men who under their protection could move freely as prosecution witnesses, they might have gained more of what they consider success.

3.) In Count V of the Indictment, the Kommando Dirlewanger and the Brigade Kaminski, two units particularly active in partisan warfare, are described as organizations which had developed specific features on account of their subordination to BERGER. The evidence by a number of witnesses has shown, however, that BERGER held neither command authority nor executive power with regard to either of these organizations.

Apart from the original formation of the Kommando Dirlewanger, which, as in every country with a military organization, had to be carried out by military administrative agency, in this case the Replacement Office, BERGER had no administrative or operational connection with the Brigade Dirlewanger, not even as regards the confirmation of court martial-sentences. BERGER was not entitled to deal with either appointments^{or} dismissals or promotions. As shown by Exh. 72 (Himmler-order), the brigade was expressly subordinated to the Main Operational Office. The crown witness Vogel who was called by the prosecution in this connection proved himself to be another of those notorious scoundrels of whom there was certainly no lack during the Nurnberg trials. The record of his previous convictions would probably show that he is one of those professional witnesses who, even when under oath, tell lies with impudent callousness. Anyway, the defense was able to prove, by submitting the judgment of the Denazification Court as evidence, that he certainly is a mendacious fellow. On the other side there were the witnesses Hennings, Bek, Kaiser, Reiner, Graepel, and Stubbe, honorable men all of them, who gave the lie to Vogel's hazy and ambiguous testimony.

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With regard to the Brigade Kaminski, the Prosecution was not able to introduce even a single document, but in this case, too, they thought that by an accumulation of allegations they could make the charge "stick".

4.) I need not speak in detail on Berger's alleged participation in the "special treatment" of foreigners. The Prosecution relied on document NO-1756 Exh. 2220, by which they intended to prove that Berger's interest in the negotiations between the Reich Security Main Office and the Race and Settlement Main Office was so great that he even delegated a member of his own main office to attend these negotiations. By the testimony of the witness Graeper it could be established that the author of the report had erroneously described one of the participants as a member of the SS- Main Office, whereas in fact he was a member of the Reich Security Main Office. On account of this statement the key-document of the Prosecution was reduced to insignificance, and the whole charge has collapsed.

5.) This fate was shared by the Prosecution's allegation that Berger was responsible for the atrocities committed in Concentration Camps since he had a say in the recruitment of the guard personnel. However, document Exh. 69 states expressly that the SS-Main Operational Office under the prosecution witness Justtner was in charge of all Concentration Camp matters until March 1942 and even after that date remained responsible for the guard personnel.

It is interesting to note in this connection that the Prosecution has characterized the transfer of people to a Concentration Camp as a crime but sees no merit in the liberation from a Concentration Camp. Berger liberated Norwegian students who had been wrongfully incarcerated in the Buchenwald Concentration Camp,

and by placing them in the open camp Sernheim enabled them to continue their studies at universities in the vicinity. The first mentioned fact was ignored by the Prosecution, the last mentioned was called a crime against humanity. The disentanglement of this discrepancy would be a fitting subject for a prize puzzle if it did not show only too clearly the intention to incriminate Berger by all possible means.

VI.

In Count VIII of the Indictment Berger is charged with membership in the criminal organization of the SS.

1.) You may think it a temerity, perhaps even a paradox, if I, as Counsel defending a Waffen-SS General refute even this charge.

I am aware of the opinions hitherto given by the Military Tribunals and know that they mostly contained only the one sweeping statement that the defendant in question was a member of the SS within the meaning defined and established by the IMT Judgment and was "therefore" guilty.

On this Count I refrain from pleading not guilty, because the defendant Berger himself would not understand why he as an SS-Obergruppenfuehrer and a General in the Waffen-SS should be acquitted from this charge while so many of his comrades were sentenced who had worn the same uniform and, in some cases, had held a much lower rank and position.

2.) However, my sense of duty as a lawyer forces me to stress once more the fact that the IMT Judgment declares as criminal that group which is composed of persons who were officially admitted to the SS as members or became, or remained, members of this organization knowing that

they were being used to commit acts declared criminal by Article VI charter, or who, as members of that organization, were connected with such crimes. This means that knowledge of the criminal purpose for which they were used or the connection with such crimes is a requirement under the law.

It is to be regretted that in certain cases SS-members, although acquitted from the charge of war crimes and crimes against humanity, were sentenced for membership in the SS without any knowledge on their part of criminal acts committed by the SS having previously been established. In my opinion, such^a finding is wrong. If such knowledge is not established, a finding of guilt for membership in the SS is, according to the clear language of the IMT, not permissible. Any decision to the contrary constitutes a violation of the rules established by the IMT.

3.) If Your Honors agree with my argumentation and come to the conclusion that the defendant Berger does not fulfill the requirements previously set forth, you would have to find the defendant "not guilty" on this part of the charge. To do so should in my opinion not be difficult for you in view of the facts which you will have found established by the evidence concerning Berger's attitude towards the SS and its senior officers. In my Closing Brief (Page 89) I have dealt in detail with these factors. Berger only recognized one aim of the SS: to become an organization consisting of the very best only, an anti-bolshevist spearhead of the German people.

4.) That Himmler was a man of two souls one of which enabled him to rouse flaming idealism and purest devotion, whereas the other brought about the execution of insane crimes - that had^{fact} remained a fateful secret to Berger and to many other SS-leaders. For truth's sake it must be stated once more: the SS as a whole was not that criminal organization as which it was branded by the lust for vengeance

camouflaged by propaganda. Today, this fact has been recognized by a large number of people who had an opportunity to look behind the curtains of the Dachau trials and of the proceedings before denazification courts held in German internment camps.

It is the tragic fate of all SS men, - those still alive and those who died for the fatherland, - supported by their belief in the SS, because of that Janus-head of Himmler's, they now have to bear the blot of membership in a criminal organization. This defamation of the SS is one of those propaganda infiltrations as in the past were blamed on a man like Gobbels and which strongly influenced the judgment of the IMT. BERGER belongs to those who suffer under the heavy burden of this blot. Therefore, I beg to consider, whether, in view of his attitude, and of my evaluation of his actions, BERGER must be found guilty under Count V of the indictment.

VII.

So far, I confined my argument under Count V to the necessary comments on the problem of genocide. Under this Count of the Indictment one other point is to be discussed which, brings BERGER's activities as Chief of the SS Main Office, activities that affected a whole continent within the field of your consideration.

1.) General Taylor, in his Opening Speech (Page 72 of the Transcript) stated that:

"An analogous criminal program was the forced recruitment into the Waffen-SS of prisoners of war and men of military age from the various countries overrun by the Wehrmacht. Special SS-divisions were formed by forceful means from the male population of such territories as Yugoslavia, Albania, the Scandinavian countries and the Baltic countries. This enforced recruitment violated these provisions of the Hague regulation which forbid compelling the inhabitants of an occupied country to swear allegiance to the hostile power, or to take part in military operations against their own country, and were conducted under the general direction of the defendant BERGER."

CERTIFICATE OF TRANSLATION

8 Nov 1948

I, Walter K. Galewski, ETO No. 20145, hereby certify that I am a duly appointed translator for the German and English languages and that the above is a true and correct translation of the FINAL PLEA BERGER, pages No. 13 - 18.

Walter K. Galewski
ETO No. 20145

Final Plea Berger

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As late as 6 January 1948 General Taylor still believed that he could in this way prove the war crimes and crimes against humanity charged against Berger in accordance with Count Five of the Indictment; he maintained that Berger had forcibly drafted foreign citizens to the Waffen-SS and had used them for military services in the war against the USSR. In addition to this, the Prosecution, in accordance with Count One of the Indictment, regarded the induction into the Waffen-SS as a crime against peace in those cases in which citizens of foreign states had volunteered and been drafted to the Waffen-SS accordingly. The former Prosecutor did not for a long time have the necessary understanding for the term "volunteer", although a definition should not be so very difficult. I am convinced that there are no differences of opinion between the present prosecutor and defense counsel concerning the term "volunteer". I can therefore confine myself to pointing out that as far as volunteers for the Waffen-SS were mentioned, it was only a question of persons who without any compulsion, on their own initiative, declared themselves ready to join a certain unit, in this case the Waffen-SS.

2.) The evidence has shown that up to the outbreak of war it was forbidden on principle to accept any foreign citizens for the SS. When the Western Campaign came to an unexpectedly precipitate^{end} in the early summer of 1940, there was, in addition to the well-founded hope for an imminent peace, a prevalent desire that this encounter with the Western powers should be the last which had ever turned Europe into a theater of war. The young Waffen-SS had fought magnificently in the Western Campaign. Its outstanding soldierly virtues of chivalry, courage, and discipline, and in particular its pronounced ideological training, had made it the most talked-about unit of the German Wehrmacht.

To a quite considerable extent this was due to Berger's SS-Manual, which aimed at shaping and developing the personalities of the young men, so that they should not judge the manifestations of life by the standard of doctrines forced upon them, but should form their opinion on the basis of their own deliberations made within the framework of the original ideology of National-Socialism.

3.) It is not my task to give a criticism of the essence of National-Socialism. But in order to understand the following expositions I wish to say that the original idea of National Socialism was regarded by hundreds of thousands as the last sheet-anchor which might save them from going under in the world of materialism of that time which was being engulfed in economic and political confusion. The principles which National Socialism proclaimed at that time, such as: "People, country, blood and soil, soldierly honor, faith, a community spirit prepared to make sacrifices, as well as personal responsibility" make it understandable that during the first phases of National-Socialism the representatives of politics, the Army, - among them Berger - the clergy, science and art, all approved these ideas and followed those who promised to realize them by means of a political movement. The positive attitude towards National-Socialism adopted by persons of world-renown in foreign countries, such as Churchill, who gave expression to it in his "Open Letter to Hitler" published in the Times in 1938, strengthened the confidence of the adherents. In this way the basic ideas which led to the developments in Germany were regarded by a part of the European youth, with whom the SS was now coming in contact, as a trail leading to a country of new hope, the silver outline of which was beginning to appear on the horizon of the old continent. The result of all this was that after the conquest of Belgium and Holland numerous volunteers in these countries reported to the SS and asked to be admitted to short training-courses as soon as peace had been declared.

4.) Though Berger was a soldier he was never a militarist. He combined his soldierly sense of duty with deep humaneness. He knew that its youth represented a country's greatest treasure. To keep this youth fit and healthy for their country was for many years the main task of his life. But even the short Eastern and Western Campaigns had again cost the German nation much valuable blood, and that only because statesmen and governments who were dependent on parties could not agree about European problems. Therefore Berger thought that he ought to make the attempt of preventing future wars by a union of states, and of implanting in the nations which had only recently faced each other as opponents the idea of such a union of Germanic states; this he proposed to do with the help of the recruiting forces of the SS. This union of Germanic states was not intended as a Germanisation such as that enforced by the Carolingians or, for instance, Charles V; the aim was to combine the individual states in one united structure similar to the USA, while they still completely retained their sovereignty, their specific national features, and their culture. The SS was to be the fundament and main support of this union. Its "volunteers" from the Germanic states were to go through a short training course in the SS and then to return to their homes and there, by their personal example, awaken the idea of a Germanic Renaissance in the minds of their country-men; they should also propagate the Germanic idea by forming SS-units in their home countries.

For this purpose Berger requested and obtained the approval of the applications submitted to him as well as of the establishment of Office VI, which was entrusted with the care of the Germanic volunteers and also dealt with their replacement. How it is possible to twist this method of recruiting volunteers into a crime against peace, whereas it was just the desire for permanent peace which had been the decisive influence in the development of the idea of a Germanic empire?

5.) The Prosecution was not in doubt about a reply. I quote from General Taylor's Opening Statement: (P. 12):

"From its inception, the Third Reich dedicated itself to the creation of "Greater Germany" and the complete subjugation of surrounding territories. This goal, which contemplated the total destruction of the existing European order, was the motivating force behind the sacrifices exacted from the German people as the Reich mobilized for war. The domination of Europe, and later of the world, was the flaming creed of German Nazism and militarism."

End of quotation.

I will admit that the original and in itself not anti-democratic ideology of National-Socialism which I have before described was betrayed in the course of time, especially during the last stages of the peace, by the insane methods adopted by a degenerate clique among the leaders !

The idea of ruling Europe and later even the whole world never constituted a fanatical belief of the German National-Socialists. It is true that up to 1939 the German people by their votes supported Hitler's policy of German expansion in opposition to the Versailles Treaty. But the overwhelming majority of the German people never was in favor of an unbounded policy of expansion, and the overwhelming majority of the National-Socialists never aimed at bringing Europe, still less the whole world, under their rule.

6.) Whoever knows the history of the European nations since the beginning of this century will not be able to ignore the fact that a long time before the outbreak of the First World War Russia's urge for expansion towards the West cast a shadow over the peace of Europe. Her metamorphosis from an agricultural country - the largest up to 1918 - to an industrial state, the building-up of her Red Army in connection with the ideology of asiatic Bolshevism, concealed the mortal danger of an attack on Germany. Once Germany had been conquered and destroyed and the Eastern countries had become satellite states of the USSR, then even the strategical defense line of the Rhine would not be able to stand up to Soviet pressure.

Then the hour of the fall of Western Europe would become horrible reality.

Naturally it cannot be denied that Hitler started the attack on Poland on 1 September 1939. But the last incident which leads to a war must not be confounded with its basic cause. For years Hitler had recognized the danger which was threatening Europe from the East. As Poland, supported by the short-sighted promise of England, had refused to come to an agreement with Germany concerning a new order of ethnographical conditions in the East, an order by which Poland would have become the bulwark against the Soviet Union, war ensued.

The agreement between Germany and the USSR of 23 August 1939 with its secret additional clause, couched in the terms of eternal friendship, could not conceal the true intentions of the Kroml in the times which followed: the aim was not to strengthen Germany but to weaken both her and the Western powers. By means of a protracted war of attrition a Europe drained of its blood was to fall an easy prey to the concentrated power of the USSR.

It was the realization of this intention which Hitler sought to forestall by his attack on the Soviet Union.

The attempt failed. The agreement of Yalta and America's invasion in June 1944 gave Stalin the possibility to carry out his victorious march to Berlin, this place on which the eyes of an alarmed world are now focussed.

- 7.) BERGER, too, had studied the ideology of Bolshevism for many years and knew its enormous power. Under the impression of the titanic struggle and the terrible experiences of the German Army in their fight against a merciless enemy he came to realize that Bolshevism has started its decisive battle against Western culture with the help of the tremendous military resources at its disposal. BERGER was convinced that only by uniting all men from all over Europe who were prepared to resist, would it be possible to produce the power which could save Western Europe from utter chaos. Therefore BERGER decided to take a step which the Western powers have meanwhile copied under the pressure of a similar necessity, though they did not address their request for assistance directly to the men fit for military service but used the Government channels of each individual state.

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Fully aware of the fact that he in his capacity of chief of the SS Main Office was responsible for supplying the Waffen-SS with the military forces required to ward off the danger threatening the whole of Europe, Berger followed the suggestions submitted to him from all Germanic countries and later on even from countries in the south-eastern territory, to the effect that he should form European legions and units of volunteers.

Berger has fully admitted that foreign citizens were accepted and drafted into the Waffen-SS, but he has energetically denied that recruitment was carried out by force and, in particular, that prisoners of war were drafted for military service.

8.) The evidence has shown that at Berger's order foreign citizens of non-German descent were only accepted into the Waffen-SS if they had volunteered. No compulsion of any kind was exerted; it was ruled out anyway by the consideration that an army of mercenaries would never be fit to fight the Bolsheviks. The Englishman Freeman, has explicitly confirmed this in his affidavit (Exh. 23).

Foreign citizens of German descent, so-called ethnic Germans, who had been resettled in the Reich and had acquired German nationality were drafted for military service on the basis of the German military laws. Ethnic Germans residing in foreign countries were at first only drafted if they volunteered. Later on their induction took place on the basis of state agreements which were concluded without any co-operation of Berger's between the Foreign Office of the German Reich and the foreign state concerned, the drafting was carried out in accordance with the military laws valid in that particular state.

9.) Even the different manner in which the recruiting of the Waffen-SS was carried out in the countries belonging to the south-eastern territory could be cleared-up completely after a detailed taking of evidence. Thus, in particular, the testimony of the witness Bok (transcript 8376 engl.) made it clear that the only case in which some irregularities seem to have occurred was the Division "Prinz Eugen", which as early as 1941 had been built-up from a local self-protection unit by General of the Waffen-SS, Pfeleps, without any co-operation of Berger's Replacement Office, and which was currently reinforced up to March 1942. Therefore, the way in which this unit was formed and recruited up to that date was no responsibility of Berger's or of his office. Only after that date the replacements were carried out under Berger's responsibility by replacement agencies in the prescribed and normal manner.

10.) In the Baltic countries the drafting was partly done on a voluntary basis, partly on the basis of the mobilization orders issued by the competent indigenous governments without any co-operation of Berger's. This has been made clear by the testimony Mae, even though Mae in order to ensure his own safety was extremely reluctant to make this admission which, by the way, has also been confirmed by the defendant, Rasche.

11.) The assertion that prisoners-of-war were forced to join the Waffen-SS has not been proved by the Prosecution. In addition, it has been refuted by the testimony of Freeman. The Document NO-1720/Exh. C-209 proved to contain nothing but empty rumours.

Apart from the fact that it has thus been proved that nowhere and at not time was there any compulsion exerted in connection with the recruitment for, or drafting to, the Waffen-SS, it is rather surprising that the Prosecution of the USA of all countries, regards this alleged compulsion as a crime against humanity. The document NO-4527/Exh. Book 210, page 122 has shown that in the USA, by virtue of an

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amendment of 20 December 1941 of the military draft law of 16 December 1940 every male foreigner between 25 and 45 years of age living in the USA has been made liable for military service.

Even conceding the point that Americans and Germans do not only speak two different languages but that their thoughts are the thoughts of two different continents, the question arises: Should the Atlantic Ocean really be permitted to constitute a dividing line with regard to the conception of crimes against humanity, so that on either side of this great ocean the term may be interpreted in a different way?

VIII.

Thus, from the very beginning of the Russian war, men from almost all European countries who had been recruited either on a voluntary basis or on the basis of the military laws in force in their home states fought by side against the culture-destroying, Asiatic Bolshevism, men who no longer regarded themselves as Germans, Dutchmen, Frenchmen, Hungarians, or Roumanians, but just as Europeans. For days on end Frenchmen defended the German fortress of Kolberg against a superior force of Russians. Ukrainians and Cossacks fought in their separate divisions for the liberation of their country from Bolshevism, a doctrine which they regarded as the enforcement of the law applicable to the inhabitants of the steppes: viz. the destruction of all culture and civilization, Collectivism and Nihilism. Berger and his men were firmly convinced that after such a titanic struggle the barriers between the individual nations would fall, which up to then had prevented a mutual understanding and the just exchange of goods between industrial and agricultural countries in order to satisfy their respective needs. By the defeat of Bolshevism Berger and his SS-men wanted to clear the way for a united Europe which was to encompass all European states from the Atlantic Ocean to the Don, from Esthonia to the Caucasus. The peace of Europe was to blossom in a large united territory with no national border lines, with a communal fighting force, and a carefully planned economic direction.

Berger's indefatigable preparatory work done in his "Germanische Leitstelle" (Germanic Directing Office) which had grown out of Office VI, served this purpose; it was with this aim in mind that he cared for the voluntary SS-members and formed voluntary SS-units in non-German countries with the exception of Switzerland, as Berger considered it a paramount obligation to respect the Swiss neutrality. If ever a high-ranking leader of the SS, imbued with fanatical idealism, in passionate devotion to the purity of his ideas, and supported by the confidence of his "Germanic Legions" ^{made} an eleventh-hour-attempt to save Europe from ruin, slavery and sordid Collectivism, this man was last General of the Waffen-SS, Gottlob Berger, who today as a defendant before this court is being tried on the charge of having attempted to save Europe.

Union or ruin, those were the alternatives; his task was the common fight against Bolshevism, his hope was the common victory, his aim was the establishment of a common order among the members of the no longer Germanic but "European Union of States."

In this Europe Germany did not intend to rule but to serve the community of nations as a member with equal rights in a pacified Western world. The fact that viewed as a state and a power this Germany today is only a *Fata Morgana* without any importance, that Europe has now lost its mighty heart whose blood provided a bulwark against Bolshevism, that fact will make itself felt when the day of decision

Whether the world will look upon Europe as a Switzerland or a Balkan State will depend on whether it is a Europe with or without Germany. I ask Your Honors for a just decision based on the defense documents submitted by Berger. Berger's fate was that he looked upon himself as a European; his aim was to fulfill the task set him by fate; his actions were prompted by the purest motives and dictated by voice of his European's conscience - all this a crime according to the Prosecution.

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I ask for Berger's acquittal under the Counts I to VII of the
Indictment for:

the unmistakable reply to the question as to whether Berger's
actions were justified is given by the Western Pact and the Atlantic
Charter.

FINAL PLEA BERGER

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CERTIFICATE OF TRANSLATION

5 November 1948

I, Julia Kerr, ETO No. 20185, hereby certify that I am a duly appointed translator for the German and English languages and that the above is a true and correct translation of Final Plea Berger, Pages 19 to 28.

Julia Kerr
ETO No. 20185

! END !