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## Einsatzgruppen Case: Opening Statement for Defense - Dr. Hans Surholt for Otto Rasch

International Military Tribunal

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DR. SURHOLT: Your Honor, the prosecution --

THE PRESIDENT: Might you indicate your name and the client you represent for the purposes of the record?

DR. SURHOLT: Attorney Surholt for the Defendant Dr. Rasch.

The Prosecution charges the defendant Dr. Otto Rasch with

I. Crimes against Humanity

II. War Crimes

III. Membership in Criminal Organizations (SS, SD and Gestapo).

The defendant pleaded "not guilty" in the arraignment of the Tribunal. To motivate this and to contest the indictment, the Defense will submit the following:

1. The Einsatzgruppen were established in the early summer of 1941 in accordance with such principles as are generally recognized as admissible from the view point of international law in the event of war. The forces selected for this assignment received a special but purely military training. The instructions given to them in view of the tasks with which they were to be charged shortly in the course of the assignment pertained solely to a security of the "military zone in the rear". This security was to be attained by rendering harmless saboteurs, by fighting partisans, and in general by fighting all such elements as, according to general war experience, endanger the safety of the fighting troops in areas already occupied by them. Any form of training or even an indication for an assignment of such a nature as the Prosecution is now quoting under the name of Crimes against Humanity and War Crimes was not given, neither could it be surmised.

Thus the defendant Dr. Rasch had no reason to reject the command over Einsatzgruppe C with which he was charged.

2. Accordingly, the assignment of the Gruppen, or at any rate that of Gruppe C headed by Rasch, was motivated by military necessity. The orders he passed on to the subordinate Kommandos were based on adequate prerequisites. Executions were only to be carried out if the actual facts of the crime were established, they had thus to be limited

to cases involving persons who had participated in murders, looting acts of sabotage, etc.

3. Things changed only when new orders came out to the effect that in the area to be made safe by the Einsatzgruppe the Jews including women and children, were to be annihilated. The defendant Dr. Rasch can no longer recall the exact date of this order. It may have been in August, but also in September 1941. The order was transmitted to Rasch by SS-Obergruppenfuehrer Jeckeln. This order seemed so incredible to Rasch that he immediately left for Berlin to obtain a direct explanation. The first evening he got as far as Cracow from where he reported to SS-Gruppenfuehrer Heydrich by telephone to consult him in this matter. The latter confirmed the contents of the order as binding pointing out explicitly that it came from the Fuehrer himself and was to be carried through under all circumstances.

Rasch does not deny that after his return he passed on the orders he received to the units under his command, although he personally not only disagreed with these orders, but rejected them. Although he was a high SS-leader, yet he had no possibility directly to refuse compliance with that order without exposing his own person to immediate grave danger. Like a number of other high SS-leaders before him, he would first have been sent to a KZ and then to one of the so-called "lost battalions" (Verlorener Haufen), whose members were assigned to especially dangerous tasks and thus systematically annihilated. It was moreover evident from the situation that a refusal would not have prevented or even hindered the execution of the order. Therefore, without refusing to comply with the order as such, he attempted to obtain release from his command on grounds which appeared to have no bearing on the matter. Consequently, he was relieved of his function and sent on leave in October on his own request because of his health and divergencies in opinion with Reich Commissioner, Gauleiter Koch.

Already in November 1941 the Reichfuehrer SS called him to new duties as higher SS and Police-leader in France and Northern Italy. IN

view of his experiences, Rasch gave ill health as a reason, in order to be excused from further duties. He looked around for a civilian job; at first he intended to return to the legal profession but then changed over into industry by joining the Continental Oel A.G. He remained with that firm to the end of the war.

4. The Defense is going to prove the facts stated up to the present partly from documents presented by the Prosecution, partly through witnesses, and particularly through putting the defendant into the witness stand in his own case.

For the immediate proof of the above statement the Defense further intends to show that the defendant Rasch obstructed hindered the aims and measures of the Party on several other occasions as well. In that way he opposed the Party in their endeavors to interfere in the normal communal administration, consciously risking and losing his position as Lord Mayor of Wittenberg. He further saved political and also racial persecutees from the concentration camp and even from death, without being prompted by any but purely humane motives. In that he even went as far as to use his rank for giving orders to subordinate agencies, to which he was not authorized in the course of duty. Evidence to that effect will be given through witnesses and the submission of defense documents.

5. With regard to the legal position, the Defense is fully aware that, according to Article II 4b of the Control Council Law No. 10, the fact that an action was committed under orders does not exempt a person from responsibility for a crime and can, at most, be taken into consideration as a mitigating circumstance. It is, however, the opinion of the Defense that the written law is always subordinate to the recognized laws of nature. No man can be denied the right to defend himself in a state of necessity. It will be the task of the Defense to elaborate on this idea in detail, at the conclusion of the hearing of the evidence.

6. Rasch was a member of the SS and the SD - not, however, of the Gestapo (Secret State Police). In that respect, however, he denies

having had the intent necessary for his conviction in accordance with the rules laid down by the verdict of the IMT.

May I make some explanation? The preparation of the defense of Dr. Rasch, owing to the sickness of my client, during the decisive days of the last week --

THE PRESIDENT: Slowly.

DR. SURHOLT: On the other hand, however, in particular, during the decisive days of the last week for the reason that I was sick myself, and also my right hand was badly burned -- owing to that, I have not proceeded very far in preparing my case as yet, and, in particular, I have not yet discussed the case of the prosecution in detail with the defendant. I therefore ask, that the case of Rasch be not heard yet. I ask, therefore, that the case of Rasch be put back for the moment, as I am not quite ready yet. Quite apart from the fact that the Tribunal has not yet decided as regards my motion to separate the case of my client.

THE PRESIDENT: I don't quite understand what you mean by your request that the case of Otto Rasch not be taken up for the moment, because there is no possibility that his case will be called for the moment. We have first all the opening statements. Then we will have Ohlendorf's defense. Then there will be Naumann's defense, and then the Joost defense, and Rasch won't be reached for some few days.

DR. SURHOLT: Yes, I repeat, I cannot see how long it will take. I only say since my predecessors are not present, I will not have sufficient time.

THE PRESIDENT: Well, at the present moment, you are not threatened with any immediate presentation of your client. Let's wait and see what develops. As the situation at present presents itself, I do not see where you have any problem at all. If in the matter of three or four days you seem to feel that you are being pressed unduly for time, then your motion to the Tribunal and we will rule upon it.

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DR. SURHOLT: Thank you very much.

THE PRESIDENT: In view of the lateness of the hour, perhaps we won't take up another opening statement, but will now recess until 1:45.

(A recess was taken until 1345 hours.)