

Introduction

N.B. As per the disclaimer, neither the ICRC nor the authors can be identified with the opinions expressed in the Cases and Documents. Some cases even come to solutions that clearly violate IHL. They are nevertheless worthy of discussion, if only to raise a challenge to display more humanity in armed conflicts. **Similarly, in some of the texts used in the case studies, the facts may not always be proven;** nevertheless, they have been selected because they highlight interesting IHL issues and are thus published for didactic purposes.

[Source: The United Nations War Crimes Commission, *Law Reports of Trials of War Criminals*, vol. I, 1947, pp. 1-21]

THE *PELEUS* TRIAL

TRIAL OF KAPITÄNLEUTNANT HEINZ ECK AND FOUR OTHERS FOR THE KILLING OF MEMBERS OF THE CREW OF THE GREEK STEAMSHIP *PELEUS*, SUNK ON THE HIGH SEAS

BRITISH MILITARY COURT FOR THE TRIAL OF WAR CRIMINALS HELD AT THE WAR CRIMES COURT, HAMBURG, 17TH-20TH, OCTOBER 1945

2. The charge

The prisoners were:

- Kapitänleutnant Heinz Eck,
- Leutnant zur See August Hoffmann,
- Marine Stabsarzt Walter Weisspfennig,
- Kapitänleutnant (Ing) Hans Richard Lenz,
- Gefreiter Schwender.

They were charged jointly with:

“Committing a war crime in that you in the Atlantic Ocean on the night of 13/14th March, 1944, when Captain and members of the crew of Unterseeboat 852 which had sunk the steamship “Peleus” in violation of the laws and usages of war were concerned in the killing of members of the crew of the said steamship, Allied nationals, by firing and throwing grenades at them.” [...]

3. The opening of the case by the Prosecutor

The “Peleus” was a Greek ship chartered by the British Ministry of War Transport. The crew consisted of a variety of nationalities; on board there were 18 Greeks, 8 British seamen, one seaman from Aden, two Egyptians, three Chinese, a Russian, a Chilean and a Pole.

On the 13th March, 1944, the ship was sunk in the middle of the Atlantic Ocean by the German submarine No. 852, commanded by the first accused, Heinz Eck. Apparently the majority of the members of the crew of the “Peleus” got into the water and reached two rafts and wreckage that was floating about. The submarine surfaced, and called over one of the members of the crew who was interrogated as to the name of the ship, where she was bound and other information.

The submarine then proceeded to open fire with a machine-gun or machine-guns on the survivors in the water and on the rafts, and also threw hand grenades on the survivors, with the result that all of the crew in the water were killed or died of their wounds, except for three, namely the Greek first officer, a Greek seaman and a British seaman. These men remained in the water for over 25 days, and were then picked up by a Portuguese steamship and taken into port. [...]

4. Evidence for the prosecution

[...]

The fifth accused, Kapitän-Leutnant Engineer Lenz, appears to have behaved in the following way: (a) When he heard that the captain had decided to eliminate all traces of the sinking, he approached the captain and informed him that he was not in agreement with this order. Eck replied that he was nevertheless determined to eliminate all traces of the sinking. Lenz then went below to note the survivors' statements in writing and did not take part in the shooting and throwing of grenades. (b) Later on, Lenz went on the bridge and noticed the accused Schwender with a machine gun in his hand. He saw that Schwender was about to fire his machine gun at the target and thereupon he, Lenz, took the machine gun from Schwender's hand and fired it himself in the general direction of the target indicated. He did this because he considered that Schwender, long known to him as one of the most unsatisfactory ratings in the boat, was unworthy to be entrusted with the execution of such an order.

5. Outline of the defence

[...] The Defence claimed that the elimination of the traces of the “Peleus” was operationally necessary in

order to save the U-boat.

The other accused relied mainly on the pleas of superior orders. [...]

With regard to the plea of superior orders, Professor Wegner said that he stuck “to the good old English principles” laid down by the “Caroline case”, according to which, he submitted, it was a well-established rule of International Law that the individual forming part of a public force and acting under authority of his own Government is not to be held answerable as a private trespasser or malefactor, that what such an individual does is a public act, performed by such a person in His Majesty’s service acting in obedience to superior orders, and that the responsibility, if any, rests with His Majesty’s Government. [...].

6. Evidence by the accused Heinzeck, Commander of the Submarine

The accused, Heinz Eck, [...] thought that the rafts were a danger to him, first because they would show aeroplanes the exact spot of the sinking, and secondly because rafts at that time of the war, as was well-known, could be provided with modern signalling communication. When he opened fire there were no human beings to be seen on the rafts. He also ordered the throwing of hand grenades after he had realised that mere machine gun fire would not sink the rafts. He thought that the survivors had jumped out of the rafts. [...]

It was clear to him, he went on, that all possibility of saving the survivors’ lives had gone. He could not take the survivors on board the U-boat because it was against his orders. He was under the impression that the mood on board was rather depressed. He himself was in the same mood; consequently he said to the crew that with a heavy heart he had finally made the decision to destroy the remainder of the sunken ship.

Eck referred to an alleged incident involving the German ship “Hartenstein” of which he had been told by two officers. After this boat had saved the lives of many survivors, it was located by an aeroplane. The boat showed the Red Cross sign and one of the survivors, a flying officer, had, with a signal lamp, given some signals to the aeroplane not to attack the boat because of the survivors being on board, including women. The plane left, and after a time it returned and attacked the boat, which was forced to unload the survivors again, in order to dive, and it survived only after sustaining some damage. This case, about which he had been told before the beginning of his voyage, showed him that on the enemy side military reasons came before human reasons, that is to say before the saving of the lives of survivors. For that reason, he thought his measures justified. [...]

Eck’s description of the “Hartenstein” incident was, in the main, confirmed by an English witness, a solicitor serving as a temporary civil servant at the Admiralty. He confirmed that, as a result of the incident, the German U-boat Command issued instructions as follows:

“No attempt of any kind should be made at rescuing members of ships sunk, and this includes picking up

persons in the water and putting them in lifeboats, righting capsized lifeboats and handing over food and water. Rescue runs counter to the rudimentary demands of warfare for the destruction of enemy ships and crews. Orders for bringing Captains and Chief Engineers still apply. Rescue the shipwrecked only if their statements will be of importance for your boat. Be harsh, having in mind that the enemy takes no regard of women and children in his bombing attacks of German cities." [...]

8. Examination of the four other accused

[...]

The accused Weisspfennig also referred to the order but admitted that in the German navy there were regulations about the conduct of medical officers which forbade them to use weapons for offensive purposes. Weisspfennig disregarded this regulation because he had received an order from the Commandant. He did not know whether his regulations provided that he could refuse to obey an order which was against the Geneva Convention. He knew what the Geneva Convention was and realised that one of the reasons why he was given protection as a doctor was because he was a non-combatant. He realised that there were survivors. He did not regard the use of the machine gun in his particular case as an offensive action. [...]

12. Summing up by the Judge Advocate

The Judge Advocate stated at the very outset that the court should be in no way embarrassed by the alleged complications of International Law which, it had been suggested, surrounded such a case as this. It was a fundamental usage of war that the killing of unarmed enemies was forbidden as a result of the experience of civilised nations through many centuries. To fire so as to kill helpless survivors of a torpedoed ship was a grave breach of the law of nations. The right to punish persons who broke such rules of war had clearly been recognised for many years. [...]

Regarding the defence of operational necessity, the Judge Advocate stated: "The question whether or not any belligerent is entitled to kill an unarmed person for the purpose of saving his own life has been the subject of much discussion. It may be that circumstances can arise – it is not necessary to imagine them – in which such a killing might be justified. But the court had to consider this case on the facts which had emerged from the evidence of Eck. He cruised about the site of this sinking for five hours, he refrained from using his speed to get away as quickly as he could, he preferred to go round shooting, as he says, at wreckage by means of machine guns." The Judge Advocate asked the court whether it thought or did not think that the shooting of a machine gun on substantial pieces of wreckage and rafts would be an effective way of destroying every trace of the sinking. He asked whether it was not clearly obvious that in any event, a patch of oil would have been left which would have been an indication to any aircraft that a ship had recently been sunk. He went on to say: "Do you or do you not think that a submarine commander who was really and primarily concerned with saving his crew and his boat would have done as Captain Schnee, who was called for the defence, said he would have done, namely have removed himself and his boat at the highest possible speed at the earliest possible moment for the greatest possible distance?"

Eck did not reply on the defence of superior orders. He stood before the court taking upon himself the sole responsibility of the command which he issued.

With regard to the defence of superior orders, the Judge Advocate said: "The duty to obey is limited to the observance of orders which are lawful. There can be no duty to obey that which is not a lawful order. The fact that a rule of warfare has been violated in pursuance of an order of a belligerent government or of an individual belligerent commander does not deprive the act in question of its character as a war crime, neither does it confer upon the perpetrator immunity from punishment by the injured belligerent."

The Judge Advocate added: "It is quite obvious that no sailor and no soldier can carry with him a library on international law or have immediate access to a professor in that subject who can tell him whether or not a particular command is a lawful one. If this were a case which involved the careful consideration of questions of international law as to whether or not the command to fire at helpless survivors struggling in the water was lawful, you might well think it would not be fair to hold any of the subordinate accused in this case responsible for what they are alleged to have done; but is it not fairly obvious to you that if in fact the carrying out of Eck's command involved the killing of these helpless survivors, it was not a lawful command, and that it must have been obvious to the most rudimentary intelligence that it was not lawful command, and that those who did that shooting are not to be excused for doing it upon the ground of superior orders?"

[...]

13. The verdict

The five accused were found guilty of the charge.

14. The sentence

After Counsel for the Defence had pleaded in mitigation on behalf of the accused and some of them had also called witnesses, the following findings and sentences of the court were pronounced on 20th October, 1945, subject to confirmation:

Eck, Hoffmann, Weisspfennig were sentenced to suffer death by shooting. Lenz was sentenced to imprisonment for life, Schwender was sentenced to suffer imprisonment for 15 years.

The sentences were confirmed by the Commander-in-Chief, British Army of the Rhine, on 12th November, 1945, and the sentences of death imposed on Kapitänleutnant Heinz Eck, Marine Oberstabsarzt Walter Weisspfennig, and Leutnant zur See August Hoffmann, were put into execution at Hamburg on 30th November, 1945.

Discussion

Please consider the 1949 Geneva Conventions and the 1977 Additional Protocols applicable for the following discussion.

1. Did Eck violate IHL by not taking the shipwrecked on board his submarine? By destroying their rafts and wreckage? By giving orders to fire upon them? (GC II, Arts 12(2), 18 and 51)
2. Does the Judge Advocate exclude the possibility that firing on shipwrecked persons could be justified by military necessity? Under the 1949 Geneva Conventions, could firing on shipwrecked persons be justified if it were the only means to ensure that a submarine remains undetected? To save the life of the person firing?
3. Which duties of medical personnel did Weisspfennig violate? Is the ban on the use of weapons for offensive purposes by German Navy medical officers necessary under today's IHL? (GC II, Art. 35; P I, Arts 13 and 16(2))
4. Was the conduct of Lenz appropriate? What should he have done so as not to violate IHL? Not participate in the execution of the order? Prevent any of his subordinates from executing the order? Prevent any member of the crew from executing the order? Arrest Eck? (P I, Arts 86-87)
5. When may a superior order prevent punishment for a violation of IHL?
6. Was the British attack on the Hartenstein lawful under present-day IHL? Was it lawful for the crew of the Hartenstein to show the red cross emblem when the ship was attacked? (GC II, Arts 41 and 43 [**See also** San Remo Manual on International Law Applicable to Armed Conflicts at Sea])