

**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: Zayas, A., *The Wehrmacht War Crimes Bureau, 1939-1945*, University of Nebraska Press, 1989, pp. 261-266]

## HOSPITAL SHIPS

[...]

As the bombardment of hospital ships continued, the Bureau compiled a second list of twenty-four cases covering the period from May 1943 to December 1944, including thoroughly documented attacks on the *Erlangen* on June 13 and 15, 1944 and on the *Freiburg* on August 14, 1944. On the basis of these records the German government submitted protest notes to the British government: for instance, a note of November 1, 1944 described attacks on the *Hüxter*, *Innsbruck*, *Erlangen*, *Bonn*, and *Saturnus* as well as upon hospital trains bearing the red cross.

The most significant case on the Bureau's list was the sinking of the *Tübingen* (3,509 tons) on 18 November 1944 at 0745 hours GMT (Central European Time) near Pola, south of Cape Promontore in the Adriatic. The case was all the more remarkable considering that Great Britain had recognized the *Tübingen* as a hospital ship and the British Mediterranean Command knew its exact course. Yet two British Beaufighter planes attacked and sank it.

Apparently, the sinking came as a surprise to the British Foreign Office; in the afternoon of the same day it communicated the news to the Swiss government as Protecting Power. The Swiss telephoned the German delegation in Bern, which in turn cabled the German Foreign Office in Berlin: "Hospital ship *Tübingen* pursuant to assurances given sailed on 17 November... from Bari to Triest. British authorities have been informed that the hospital ship was attacked in the early hours of today by a British plane and severely damaged. The British have ordered an immediate investigation."

The British government sent a second, more extensive note to the Protecting Power on November 19, 1944. The Official German protest followed on 24 November:

On 18 November 1944 at 0745 hours near Pola the German hospital ship *Tübingen* was attacked by two double-engine British bombers with machine guns and bombs so that it sank, although the course of the hospital ship had been communicated to the British government well in advance of its voyage to Saloniki and back for the purpose of transporting wounded German soldiers. Numerous members of the crew were thereby killed and wounded. The German government emphatically protests the serious violations of international law committed by the sinking of the hospital ship *Tübingen*.

The German government demands that the British government take all necessary measures to prevent the recurrence of such – undoubtedly deliberate – violations of international law. It further reserves the right to draw the appropriate consequences of this and many other violations of international law especially such as were communicated to the Swiss delegation in Berlin by verbal note of November 1, 1944.

This note was forwarded to London by the Swiss on 27 November 1949.

The British Air Ministry had already ordered an inquiry on 18 November 1944, and on 29 November the British Foreign Office informed its delegation in Bern that an investigation of the case was in progress. On 19 November the Royal Air Force headquarters in the Mediterranean had telegraphed the Air Ministry: "The report is too long and intricate to lend itself to summarizing in a signal, but the incident was the result of a curious mixture of bad luck and stupidity." It appears that though a chain of errors on the part of the British pilots and a misunderstanding in the wireless transmission, the order was in fact given to attack the ship. The official British answer, submitted to Germany on 4 December 1944, explained that

four aircraft circled the ship, but as the leader was still unable to identify her he decided to signal sighting details to base and to request instructions. For technical reasons he was unable to transmit the signal himself and he therefore instructed the second aircraft in his section to do so.

The captain of the second aircraft... had identified the ship as a hospital ship and incorrectly assumed that his leader had done so too. He supposed, however, that there must be some special circumstances justifying and exception from standing orders prohibiting attacks on hospital ships and transmitted a message to the following effect: "I H.S. 350" (one hospital ship – course 350 degrees) and giving her position. Owing to atmospheric conditions, this message was received by base incorrectly and read to the following effect: "I H.S.L. 350" (one high-speed launch – course 350 degrees) with a position in the middle of the Gulf of Venice. A second version of this message showing the position of the ship as overland in the Istrian Peninsula and requesting instructions was later retransmitted by another station, but it again incorrectly referred to a high-speed launch.

These messages were then brought to the notice of the controlling officer, who ascertained that no Allied

high-speed launch was in the position indicated in the first version of the message, which was in any case many miles from the Tübingen's position, and gave orders to attack. On receipt of these orders the leader, who was still unaware that the ship was a hospital ship, instructed his section to attack. It was not until he passed over the ship after completing his attack that he distinguished the name Tübingen on her side and realized her identity.

His Majesty's Government have given instructions that the circumstances attending this attack shall be fully investigated at a court of enquiry with a view to preventing any similar incident, and that if the facts disclosed justify such a course, appropriate disciplinary action shall be taken...

Although as stated above, his Majesty's Government regret the sinking of the ship in the circumstances described, they cannot refrain from remarking that had the Tübingen been properly illuminated at the time of sighting in accordance with international practice, the leader of the section would have had no difficulty in identifying her as a hospital ship and the incident would thus have been avoided. They trust that care will be taken to ensure that in the future, all German hospital ships are illuminated in poor visibility in such a way as to leave no doubt as to their identity.

As was to be expected, the German authorities too devoted considerable time to investigating the circumstances of the sinking. On 23 December 1944, ship's captain Wolfgang Dietrich Hermichen, first officer Günter Quidde, and the third officer Heinrich Bruns made sworn statements before German Navy Judge Franz Nadenau; on 29 December they were followed by chief engineer Ernst Frenz, second officer Martin Messeck, and third engineer August Glander. The statement of Captain Hermichen casts doubt on part of the British version:

Both British planes flew 60 to 70 meters right over our ship. With the unaided eye I saw the British colors on the fuselage. Even if the planes had not recognized us before as a hospital ship – something which is, I think, out of the question because of the extraordinarily good visibility – at the very latest, at this moment they must have realized that we were a hospital ship. After both planes had flown over the ship they turned around and flew one by one over the ship, one plane from starboard and the other from port, and attacked us again. The bombardment was repeated about six times from starboard and about three times from port.

Obviously, a key question is whether the ship was immediately identifiable (as the German claimed) or whether the visibility was impaired (as the British contended). Second officer Martin Messeck, who was responsible for illumination, explained: "shortly after 7:00 A.M. I ordered our electrician Kessenich to turn off the night illumination. The sun had risen already about 6:30 A.M... during my watch the weather did not change. After sunrise we had perfectly calm weather..." Shortly after 7 A.M., after the night illumination had been turned off, four fighter bombers circled over us. Yet they turned around and flew southward. They were clearly British planes. I saw their colors." According to the Germans the ship was attacked between 7:45 and 8:05 A.M. and sank at 8:20 A.M. There was enough time to put down lifeboats, and two members of the

crew, sailors Töllner and Heuer, were able to take pictures of the sinking ship. The photographs, which survived the war, show good visibility and calm seas.

On the basis of these depositions the High Command of the German Navy submitted a preliminary report to the German Foreign Office, rejecting the British allegations: "The note's contention that the incident would have been avoided if the Tübingen had been illuminated can only be termed an inadequate excuse, considering that a German court has now taken statements from the captain of the Tübingen as well as the first and third officers, according to whom a mistake about the identity of the ship as a hospital ship was completely out of the question because of the clear weather. [...]"

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