

United States Military Court in Germany, Trial of Skorzeny and Others

[Source: The United Nations War Crimes Commission, *Law Reports of Trials of War Criminals*, vol. IX , 1949, pp. 90-93]

TRIAL OF OTTO SKORZENY AND OTHERS

General Military Government Court of the U.S. Zone of Germany

18th August to 9th September, 1947

A. OUTLINE OF THE PROCEEDINGS

The ten accused involved in this trial were all officers in the 150th Panzer Brigade commanded by the accused Skorzeny. They were charged with participating in the improper use of American uniforms by entering into combat disguised therewith and treacherously firing upon and killing members of the armed forces of the United States. They were also charged with participation in wrongfully obtaining from a prisoner-of-war camp United States uniforms and Red Cross parcels consigned to American prisoners of war.

In October, 1944, the accused Colonel Otto Skorzeny had an interview with Hitler. Hitler

knew Skorzeny personally from his successful exploit in liberating Mussolini and commissioned him to organise a special task force for the special Ardennes offensive. This special force was to infiltrate through the American lines in American uniform and to capture specified objectives in the rear of the enemy. [...] [The] special task force called the 150th Brigade was formed. [...] They received training in English, American mannerisms, driving of American vehicles, and the use of American weapons. The Chief-of-Staff of the German Prisoner-of-War Bureau was approached by Skorzeny to furnish the Brigade with American uniforms. These uniforms were mainly obtained from booty dumps and warehouses, but some were obtained from prisoner-of-war camps where they were taken from the prisoners on orders from two of the accused. [...]

The piercing of the enemy lines by the S.S. Armoured Division was not successful, and on 18th December Skorzeny decided to abandon the plan of taking the three Maas bridges [the Ardennes offensive] and put his brigade at the disposal of the commander of the S.S. corps [...], to be used as infantry. He was given an infantry mission to attack towards Malmedy. During this attack several witnesses saw members of Skorzeny's brigade, including two of the accused, wearing American uniforms and a German parachute combination in operational areas, but the evidence included only two cases of fighting in American uniform.

In the first case, Lieutenant O'Neil testified that in fighting in which he was engaged about 20th December his opponents wore American uniforms with German parachute overalls, some of them who were captured by him said "that they belonged to the 'First', or the 'Adolf Hitler', or the 'Panzer' Division". The second case was contained in an affidavit of the accused Koscherscheid, who [...] said in his affidavit that during the attack on Malmedy he and some of his men were engaged in a reconnaissance mission in American uniform [...].

All accused were acquitted of all charges. [...]

Discussion

1.
 - a. Is it ever permissible to wear enemy uniform? Is it always permissible under IHL, or only sometimes? When? Is it permitted to wear enemy uniform during an attack? If not, why not? Is it permissible to wear enemy uniform prior to an attack, as here in the Ardennes Offensive when the task force wanted to enter enemy territory? As long as combatants wear their own uniforms once actual fighting starts? Could Skorzeny have been acquitted if Protocol I was applicable? (HR, Art. 23(b) ^[1] and (f) ^[1]; P I, Arts 37 ^[2] and 39(2) ^[3], CIHL, Rule 62 ^[4])
 - b. Is the wearing of enemy uniforms an act of perfidy? What is the difference between perfidy and ruses of war? Are not the latter permitted? Yet are ruses of war not also attempts to mislead the enemy? Did Skorzeny mislead the enemy as to whether he was protected by IHL? (HR, Arts 23(f) ^[1] and 24 ^[5]; P I, Arts 37 ^[2] and 44(3) ^[6]; CIHL, Rule 57 ^[7])
2. Would not the use of the parcels marked with a red cross to disguise an offensive at least be considered perfidy? Does a person carrying a red cross parcel seek to make the enemy believe that he is protected by IHL? (P I, Arts 37(1)(d) ^[2], 38 ^[8] and 39 ^[3]; CIHL, Rule 59 ^[9]) Is such use of the emblem of the red cross or red crescent a grave breach? (P I, Art. 85(3)(f) ^[10]) Is the marking of such parcels with the red cross an indicative or a protective use of the emblem? Is it lawful? (GC I, Arts 38 ^[11]-44 ^[12])

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[4] https://www.icrc.org/customary-ihl/eng/docs/v1_rul_rule62

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