Introduction

[**Source**: Levie, H.S. (ed.), *International Law Studies: Documents on Prisoners of War*, Naval War College, R.I., Naval War College Press, vol. 60, Document No. 104, 1979, pp. 481-496]

N.B. As per the disclaimer [1]**, 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.

U.S. v. ERNST von WEIZSAECKER *ET AL.* (THE MINISTRIES CASE)

(U.S. Military Tribunal, Nuremberg, April 11-13, 1949)

SOURCE

14 TWC 308

[...]

COUNT THREE – WAR CRIMES, MURDER, AND ILL-TREATMENT OF BELLIGERENTS AND PRISONERS OF WAR

[...]

Steengracht Von Moyland

Sagan murders. -– The International Military Tribunal found:

> "In March 1944 fifty officers of the British Royal Air Force who escaped from the camp at Sagan where they were confined as prisonars [*sic*], were shot on recapture on direct orders of Hitler. Their bodies were immediately cremated, and the urns containing their ashes were returned to the camp. It is not contended by the defendants that this was other than plain murder, in complete violation of international law."

Switzerland, the Protective [*sic*] Power, on 26 May 1944, made inquiry of the German Foreign Office in regard to the escape of these British officers from Stalag Luft III. On 6 June the defendant Steengracht von Moyland, for the Foreign Office, answered that a preliminary note was submitted to the Swiss Legation on 17 April concerning the escape which took place on 25 March, stating that according to the investigation nineteen of the eighty prisoners of war who had escaped were taken back to the camp; that the hunt still continued and investigations had not been concluded; that there were preliminary reports that thirty-seven British prisoners of war were shot down when they were brought to bay by the pursuing detachment and when they offered resistance or attempted escape anew after recapture; and thirteen other prisoners of war of non-British nationality were shot after having escaped from the same camp; that the Foreign Office reserved the right to make a

definite statement after the conclusion of the investigation, and as soon as details were known, but that the following could be said: that mass escapes of prisoners of war occurred in March, amounting to several thousands; that they in part were systematically prepared by the general staffs in conjunction with agents abroad and pursued political and military aims; were an attack on the public security of Germany; were intended to paralyze its administration, and in order to nip in the bud such ventures, especially severe orders were issued to the pursuit detachments not only for recapture but also for protection of the detachments themselves; and accordingly, pursuit detachments launched a relentless pursuit of escaped prisoners of war who disregarded a challenge while in flight or offered resistance, or attempted to re-escape after having been captured, and made use of their arms until the fugitives were deprived of the possibility of resistance or further flight; that arms had to be used against some prisoners of war, including the fifty prisoners of war from Stalag Luft III; that the ashes of twenty-nine British prisoners of war have been brought to camp so far.

Apparently on 23 June the British Foreign Secretary made a declaration with respect to these murders. On 26 June the Swiss again made inquiry of the Foreign Office and received a reply dated 21 July that Germany emphatically rejected the British Foreign Secretary's declaration; that because of alleged bombings of civilian population and other alleged acts, Great Britain must be denied the moral right to take a stand in the matter of the escapees or to raise complaints against others, and the German Government declined to make further communications in the matter.

On 25 May Vogel on instructions from Ritter informed Legation Councillor Sethe that the Foreign Office had not yet received a copy of the communication of the OKW dated 29 April. On 4 June, Ritter informed the Foreign Office that the day before Keitel had agreed to the draft of the note to the Swiss Legation regarding British prisoners of war, and inquired why the Foreign Office wanted to inform the Protective [*sic*] Power of the funeral

beforehand, as this information had not been requested. [...]

On 22 June von Thadden submitted a memorandum to the chief of Inland II that Anthony Eden had made a statement in the House of Commons that a decision would be made with respect to the shooting of British prisoners who escaped from prison camps, and that Albrecht, chief of the Foreign Office legal division, had advised him that the British had been informed via Switzerland that it had been found necessary to shoot several British and other officers in the course of such activities because of refusal to submit to orders when captured; that nineteen other officers who did not offer resistance were taken back to the camp, and that further details of the fifty cases of prisoners being shot would be submitted to the British.

On 17 July Brenner of the Foreign Office informed Ritter that Hitler agreed to the note to the Swiss delegation regarding the escapes from Stalag Luft III, and approved the drafting of a warning against attempts to escape and the publication of Germany's note to the Swiss Legation, and that this warning should be made public; that von Ribbentrop had ordered Ritter to transmit Germany's second reply to the Swiss envoy, and directed Ritter to cooperate with the OKW in composing the warning which was to be posted in the prisoner-of-war camps and to submit the same to von Ribbentrop for approval; that the warning could perhaps state that there were certain death zones where very special weapons were tested, and any person found in one of these zones would be shot on sight, and, as there are numerous such zones in Germany, escaping prisoners would expose themselves not only to the danger of being mistaken for spies, but of unwittingly entering one of the zones and being shot. [...]

[T]wo officials of the criminal police appeared and submitted photostatic copies of teletype messages and reports from various police offices throughout Germany reporting that individuals or groups of prisoners of war from the Sagan camp had been shot while

resisting recapture, or in renewed attempts to escape.

It was apparent to both Ritter and Albrecht that these teletype reports were fictitious – a fact which the police officials did not seriously dispute. Thereupon, according to Albrecht, after conference with Ritter he drafted a reply on the basis of this fictitious and false information, and Ritter submitted it to von Ribbentrop with the urgent advice, in which Albrecht concurred, that it be not sent. [...]

While it may be true that at an early stage Keitel had given orders not to inform the Foreign Office of the Sagan murders, and that the OKW's "provisional communication" of April 29, 1944 was not contemporaneously delivered to the Foreign Office, the fact remains that by May 25, 1944 Legation Councillor Sethe had examined and made a copy of it in the office of the High Command, so that when the note was drafted Ritter had full knowledge of the fact that escaped prisoners of war had been deliberately murdered by officers of the German Reich, in clear violation of international law and of the Geneva Convention. [...]

Brenner's memorandum of 17 July relates to the second note and the warning, and states that Ritter had been directed by von Ribbentrop to cooperate with the OKW in composing the warning, and to submit it to the Foreign Minister for approval, and had made suggestions with respect to the wording of the "death zone" clause. It bears the notation, "Submitted, Ambassador Ritter,".

On August 5, 1944 Ritter wrote to Albrecht that the "enclosed version of a warning has now been approved by the Reich Minister for Foreign Affairs and the OKW;" that the OKW was then engaged in translating it, and when completed it would be given to the prisoner-of-war sections of the OKW for distribution to the camps; that "the Foreign Office has not yet communicated the warning to the Swiss Government, which must coincide with the time of the posting of the warning in the camps; the draft of the note to the Swiss was to

be submitted to Ribbentrop for approval in advance, so that it could be dispatched as soon as possible after the warning has been posted."

On July 21, 1944 the Foreign Office delivered to the Swiss Government a second note stating that the Foreign Office refused to further communicate about the matter on the pretense of Eden's speech of 23 June in the House of Commons. This was an infantile proceeding which, of course, deceived no one.

It does not appear, however, that the proposed note mentioned in Ritter's memo to Albrecht of 5 August was ever sent, and there is no evidence that the warnings were ever posted. It is a fair inference that the German Government concluded that its ostrich-like note of 21 July had enabled it to withdraw with what it hoped to be some shreds of dignity, from an unspeakable situation which it could not maintain, and which it could not afford to have bared to the civilized world; and therefore, the proposed note was not sent, the warnings remained unposted, and a veil was dropped over the whole matter.

While Steengracht von Moyland was not as close to the situation as Ritter, nevertheless it was he who, as the responsible leading official of the Foreign Office, second only to von Ribbentrop, delivered at least the first note to the Swiss delegation.

It is altogether likely that he delivered the second message, inasmuch as that was one of his admitted official functions. He testified he had had no "clear recollection" of the Foreign Office directors' meeting of June 22, 1944 at which was discussed both Eden's speech and Albrecht's statement that the British had been informed, through Switzerland, that several British and other fliers had been shot, and that further details respecting the fifty cases of shooting would be submitted to the British. [...]

In discussing Reinhardt's statement that "such occurrences as in camp Sagan in which fifty

officers were shot after having made an attempt to escape are extremely regrettable," Steengracht von Moyland said: "We all regretted this extremely, and it was a terrible crime."

In a matter as important as this, involving the inevitable repercussions in neutral as well as enemy nations, it is unbelievable that a state secretary would deliver a note so patently lame without making some inquiry about the matter, and it is extremely unlikely that Albrecht or Ritter would not have informed him not only that the justifications for the shootings were fictitious, but their misgivings about the terms of the note as well.

A man of ordinary intelligence would recognize that this was an attempt to cover up an incident which could not bear the light of day. We are convinced that Steengracht von Moyland delivered the note of June 6, 1944 to the Swiss Government, and that he was informed of the actual facts.

The murder of these unfortunate escapees [...] was a crime of insensate horror and brutality [...], and that it violated every principle of the Geneva Convention, is unquestioned. No defendant does other than condemn it, and each disclaims any guilty connection with it.

Steengracht von Moyland had no part in either the issuance of the order or its execution. The murders were long-accomplished facts before he knew of them.

However, under the Geneva Convention and Hague Regulation (Art. 77, Geneva Convention [Prisoners of War], 1929, and Art. 14, Hague Regulation [Annex to Convention No. IV, Laws and Customs of War on Land], 1907), Germany was under the duty of truthfully reporting to the Protecting Power, the facts surrounding the treatment of prisoners of war, and of the circumstances relating to the deaths of such prisoners. To make a false report was a breach of its international agreement, and a breach of international law.

The detaining powers' duty to report the facts was intended to prevent the very kind of savagery upon helpless prisoners which took place in the Sagan incident.

If a belligerent can starve, mistreat, or murder its prisoners of war in secret, or if it can, with impunity, give false information to the Protecting Power, the restraining influence which Protecting Powers can exercise in the interests of helpless unfortunates would be wholly eliminated. Thus, the duty to give honest and truthful reports in answer to inquiries such as were addressed by the Swiss Government is implicit.

The false reports which Ritter helped draft and which Steengracht von Moyland transmitted, stupid and inept as they were, were intended and calculated to deceive both the Protecting Power and Great Britain, and at least give a color of legality to what was beyond the pale of international law.

The inquiries from the Protecting Power regarding the treatment of and fate of prisoners of war, addressed to the German Government both by necessity and by diplomatic usage, were addressed to the Foreign Office. The reply of the German Government to the Protecting Power of necessity and by diplomatic usage came from the Foreign Office.

Steengracht von Moyland and Ritter must each be held guilty of the crime set forth in paragraph 28c of count three of the indictment.

Von Weizsaecker and Woermann

Depriving French prisoners of war of a protecting power. – On November 1, 1940, Ritter transmitted to the Foreign Office a memorandum stating that he had informed General Jodl of Hitler's determination to have the United States removed as the Protecting Power for French prisoners of war. This was initiated by von Weizsaecker.

On 2 November, Albrecht, Chief of the Foreign Office Legal Department, wired the German embassy at Paris that the Fuehrer had issued instructions that in the future the French were themselves to act as the Protecting Power for French prisoners of war, and directed Abetz to take up discussions with Laval with the following objectives:

(1) That the French take over protection of their own prisoners of war, and

(2) That it explicitly state to the United States that its activities as a Protecting Power were finished, and, finally,

(3) That Laval be informed that Scapini would suit Germany as Plenipotentiary for prisoners-of-war matters, and that he be directed to visit Berlin for discussion of details.

This teletype was initiated by Ritter, von Weizsaecker, and Woermann.

On 3 November, Abetz wired the Foreign Office that Laval had been so informed and that the Vichy government was immediately informing the United States that it was no longer recognized as a Protecting Power for French prisoners of war, and further that Scapini had been requested to see Marshal Petain on Tuesday to be officially informed of his intended duties and to prepare for the journey to Berlin. This reply was received by von Weizsaecker.

Woermann asserts that “after direct relations have been taken up between Germany and France, a Protecting Power is no longer needed,” and that these matters could be regulated between them and Scapini. He asserts that Scapini’s appointment instead of leading to a deterioration of the conditions of the French prisoners of war, improved it. We greatly doubt that the Franch [*sic*] action was voluntary. Hitler had decided what they should do. The Foreign Office told Abetz to see that the French complied, and within 24 hours the matter was consummated.

Matters of such importance are not consummated with that degree of speed between foreign powers who are each free to act and consider. However, the prosecution has offered no evidence that by reason of the change the conditions and treatment of the French prisoners of war deteriorated, and in the absence of such proof, this incident cannot form the basis of a finding of guilt.

Murder of captured British soldiers. – On 14 February 1941 the United States as Protecting Power made inquiries as to the circumstances under which six British soldiers were captured and then shot in the forest of Dieppe.

A memo from the office of von Ribbentrop, initiated by von Weizsaecker, directs Legation Councillor Albrecht to ascertain the facts, stating that he was of the opinion that the note should be “rejected in the sharpest terms.”

Albrecht made written inquiry of the Wehrmacht prisoner-of-war department. Here the record ends. Whether the Wehrmacht replied, and what response the Foreign Office made to the United States Government, whether the Foreign Office ever even acted on the facts, or rejected the note, are all wholly unknown.

Conviction cannot be based on such a record.

Discussion

> *In the following discussion please apply international humanitarian law as it stands today.*

1. What is a Protecting Power? (P I, Art. 2(c) [2]) What role does it play? (GC I-IV, Arts 8 [3]/8 [4]/8 [5]/9 [6] respectively) Are the tasks of the Protecting Power limited to those defined in

the various articles of the Geneva Conventions? Which tasks does the Protecting Power perform e.g. with respect to prisoners of war? (GC III, Arts 13 [7]-108 [8] and 126 [9])

2. a. What are the procedures for appointing a Protecting Power? Who may be a Protecting Power? Who appoints the Protecting Power? Must the enemy power automatically accept the Protecting Power? Could it refuse all neutral powers appointed? (GC I-IV, Arts 10 [10]/10 [11]/10 [12]/11 [13] respectively; P I, Art. 5 [14])
b. After concluding an armistice with the Detaining Power, may a State dismiss a Protecting Power? If the prisoners of war remain detained, do they still benefit from the services of a Protecting Power? Even despite the fact that the territory of their power of origin is occupied by the Detaining Power? May a power of origin be the Protecting Power of its own prisoners of war? Could a Detaining Power agree with a power of origin to waive the protection laid down by Convention III? (GC III, Arts 5 [15], 6 [16] and 8 [5]; P I, Art. 5 [14])

3. When do the duties of a Protecting Power end? When occupation extends to the whole territory of the power of origin? When a cease-fire is concluded? When there are no longer any protected persons within the meaning of the Convention? (GC III, Arts 5 [15], 6 [16] and 8 [5]; P I, Art. 5 [14])

4. a. Which obligations has the Detaining Power vis-à-vis the Protecting Power? Has the Detaining Power an obligation to inform the Protecting Power of all violations of IHL committed against prisoners of war? Of any deaths of prisoners of war? Of the results of an inquiry into the death of a prisoner of war? Of the reasons for any deaths of prisoners of war? (GC III, Arts 121 [17], 122 [18] and 126 [9]) What are the consequences for wilfully disregarding these obligations? Does such disregard constitute a grave breach of the Conventions? A war crime? (HR, Art. 14 [19]; GC I-IV, Arts 50 [20]/51 [21]/130 [22]/147 [23] respectively; P I, Arts 11(4) [24] and 85 [25])

b. Are the defendants found guilty for having disregarded the obligation to properly inform the Protecting Power? Or for the specific act which they concealed, i.e. murdering prisoners of war? Or for both? If for the specific act they concealed, why? Does concealing the crime after the fact constitute a participation in that act? Should that be the case? (GC I-IV, Arts 50 [20]/51 [21]/130 [22]/147 [23] respectively; P I, Arts 11(4) [24] and 85 [25])

5. According to IHL today, if the United Kingdom were bombing Germany's civilian population, would the United Kingdom lose the right to ensure that Germany applies the Conventions with regard to British prisoners of war? Would Germany no longer remain bound to respect the Conventions vis-à-vis the United Kingdom? (GC I-IV, Arts 1 [26] and 2(3) [27]; GC II, Art. 13(3) [28]; P I, Arts 51(6) [29] and 96(2) [30]; Vienna Convention on the Law of Treaties, Art. 60 [See Quotation, Part I, Chapter 13. IX. 2(c)(dd) But no reciprocity].

6. a. May a Detaining Power shoot at prisoners of war to prevent their escape? At prisoners of war who have escaped in order to recapture them? Only as an extreme measure? Only when they are armed? Would the German behaviour have been compatible with IHL if the facts were as described in the reply by the German Foreign Office on 6 June 1944? (GC III, Art. 42 [31])
b. May a Detaining Power punish prisoners of war for an attempted escape? For a successful escape if they are recaptured before reaching their lines? May the punishment even be the death penalty? May those who escaped be punished for common-law crimes committed for the sole purpose of escaping (stealing money, shooting at a guard etc.)? (GC III, Arts 89 [32], 91 [33]-93 [34] and 100 [35])

7. Does this case show that IHL had any importance for Hitler and his officials?

---

[2]
https://www.icrc.org/applic/ihl/ihl.nsf/Article.xsp?action=openDocument&documentId=696C11E357DC2C9AC12563CD
[3]
https://www.icrc.org/applic/ihl/ihl.nsf/Article.xsp?action=openDocument&documentId=4DF82915515D968BC12563CD0
[4]
https://www.icrc.org/applic/ihl/ihl.nsf/Article.xsp?action=openDocument&documentId=481F15BAB0DA5589C12563CD
[5]
https://www.icrc.org/applic/ihl/ihl.nsf/Article.xsp?action=openDocument&documentId=AF0617D438F20792C12563CD0
[6]
https://www.icrc.org/applic/ihl/ihl.nsf/Article.xsp?action=openDocument&documentId=FD95937B720041DDC12563CD
[7]
https://www.icrc.org/applic/ihl/ihl.nsf/Article.xsp?action=openDocument&documentId=CD863DC518A5E1D7C12563CD
[8]
https://www.icrc.org/applic/ihl/ihl.nsf/Article.xsp?action=openDocument&documentId=D0C16ACFF067B9D5C12563CD
[9]
https://www.icrc.org/applic/ihl/ihl.nsf/Article.xsp?action=openDocument&documentId=7906C83A016D8A9EC12563CD
[10]
https://www.icrc.org/applic/ihl/ihl.nsf/Article.xsp?action=openDocument&documentId=BEF79902B343C195C12563CD0
[11]
https://www.icrc.org/applic/ihl/ihl.nsf/Article.xsp?action=openDocument&documentId=67403CAC2C6205ACC12563CD
[12]
https://www.icrc.org/applic/ihl/ihl.nsf/Article.xsp?action=openDocument&documentId=0C498FD69BB810A4C12563CD
[13]
https://www.icrc.org/applic/ihl/ihl.nsf/Article.xsp?action=openDocument&documentId=7E1E884B4477A458C12563CD0
[14]
https://www.icrc.org/applic/ihl/ihl.nsf/Article.xsp?action=openDocument&documentId=618A63724ED44823C12563CD0
[15]
https://www.icrc.org/applic/ihl/ihl.nsf/Article.xsp?action=openDocument&documentId=B243E5B9DC2F3C13C12563CD
[16]
https://www.icrc.org/applic/ihl/ihl.nsf/Article.xsp?action=openDocument&documentId=8014011E31807F8AC12563CD00
[17]
https://www.icrc.org/applic/ihl/ihl.nsf/Article.xsp?action=openDocument&documentId=343A776AFC5D068CC12563CD
[18]
https://www.icrc.org/applic/ihl/ihl.nsf/Article.xsp?action=openDocument&documentId=D5DB08032EF1E670C12563CD0
[19]
https://www.icrc.org/applic/ihl/ihl.nsf/Article.xsp?action=openDocument&documentId=E1C45B34F450790CC12563CD0

[20]
https://www.icrc.org/applic/ihl/ihl.nsf/Article.xsp?action=openDocument&documentId=8DE472A17F7E30AFC12563CD
[21]
https://www.icrc.org/applic/ihl/ihl.nsf/Article.xsp?action=openDocument&documentId=14F60F779A9C29F2C12563CD0
[22]
https://www.icrc.org/applic/ihl/ihl.nsf/Article.xsp?action=openDocument&documentId=DD77A07DBDF8B9A2C12563C
[23]
https://www.icrc.org/applic/ihl/ihl.nsf/Article.xsp?action=openDocument&documentId=F8D322BF3C0216B2C12563CD
[24]
https://www.icrc.org/applic/ihl/ihl.nsf/Article.xsp?action=openDocument&documentId=28D300B20C31500CC12563CD
[25]
https://www.icrc.org/applic/ihl/ihl.nsf/Article.xsp?action=openDocument&documentId=73D05A98B6CEB566C12563CD
[26]
https://www.icrc.org/applic/ihl/ihl.nsf/Article.xsp?action=openDocument&documentId=074D7AE3436CF248C12563CD
[27]
https://www.icrc.org/applic/ihl/ihl.nsf/Article.xsp?action=openDocument&documentId=41229BA1D6F7E573C12563CD
[28]
https://www.icrc.org/applic/ihl/ihl.nsf/Article.xsp?action=openDocument&documentId=6F743996A6E529C2C12563CD
[29]
https://www.icrc.org/applic/ihl/ihl.nsf/Article.xsp?action=openDocument&documentId=4BEBD9920AE0AEAEC12563C
[30]
https://www.icrc.org/applic/ihl/ihl.nsf/Article.xsp?action=openDocument&documentId=4B3EBFB356E8FA04C12563CD
[31]
https://www.icrc.org/applic/ihl/ihl.nsf/Article.xsp?action=openDocument&documentId=BFD6417C56244A55C12563CD
[32]
https://www.icrc.org/applic/ihl/ihl.nsf/Article.xsp?action=openDocument&documentId=3AC275B2CA2BB3DBC12563C
[33]
https://www.icrc.org/applic/ihl/ihl.nsf/Article.xsp?action=openDocument&documentId=3EB0DF5E7909A466C12563CD
[34]
https://www.icrc.org/applic/ihl/ihl.nsf/Article.xsp?action=openDocument&documentId=B1F1F5DA1D5A2C5FC12563CD
[35]
https://www.icrc.org/applic/ihl/ihl.nsf/Article.xsp?action=openDocument&documentId=DC4FD1618DF61FECC12563CD