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the sense of sub-section 122, para. 1, of the Military Penal Code. On the other hand, the offences under 10, 11, and 12 are more serious. In these the accused punished the prisoners, from a sense of his own superiority and not because of any inadequate or alleged inadequate work. On account of the three last offences against sub-sections 122, 55, of the Military Penal Code, No. 2, separate punishments of two months' imprisonment each have been allotted. For each of the less serious cases of physical ill-treatment (under Nos. 1-9) the court considers a sentence of three weeks' intermediate arrest adequate. For the case of insulting under 13 (sub-section 121 of the Military Penal Code) the Court gives three days' intermediate arrest.

An inclusive sentence of six months' imprisonment is constituted out of these separate sentences in accordance with sub-section 74 of the Penal Code. The period of detention (which the accused has undergone) pending the trial (from 30th January to 2nd June, 1921) is to be reckoned as part of the sentence in accordance with sub-section 60 of the Penal Code.

The decision as to costs is based on sub-sections 497, 498, of the Criminal Procedure Regulations ("St. P.O.") in conjunction with sub-section 4 of the Imperial Law for the prosecution of war crimes and offences of 24th March, 1920.

(Signed) SCHMIDT,
SABARTH,
DR. PAUL,
BACKS,
KLEINE,
HAGEMANN,
DR. VOGT.

The present copy agrees with the original document.

(Signed) The Clerk of the Court of the Second
Criminal Senate of the Imperial Court of
Justice.

(Seal of the Court).

BORCHARD.

JUDGMENT IN CASE OF COMMANDER KARL NEUMANN
HOSPITAL SHIP "DOVER CASTLE"

Rendered June 4, 1921

IN THE NAME OF THE EMPIRE

In the criminal charge against Karl Neumann, Merchant, Commander (retired) of Breslau, born on 22nd December, 1887, in Kallowitz.

The Second Criminal Senate of the Imperial Court of Justice at a Sitting held in public on 4th June, 1921, at which there took part as Judges,

The President of the Senate, Dr. Schmidt, and the Imperial Justices Dr. Sabarth, Backs, Dr. Schultz, Dr. Kleine, Hagemann, Dr. Vogt,

as Official of the Public Prosecutor's Department,

The Oberreichsanwalt, Dr. Ebermeyer,

as Clerk of the Court,

Risch, Official,

after oral evidence:

The accused is acquitted.

The Imperial Treasury is to bear the costs of the Proceedings, including the necessary expenses incurred by the accused.

By Right

REASONS

During the war the accused, as First Lieutenant in the Navy, was Commander of the Submarine U.C. 67. In the list communicated by the Allied Powers to the Government by virtue of Art. 228, par. 2, of the Treaty of Peace he was charged with having, on 26th May, 1917, torpedoed the English hospital ship *Dover Castle* without warning and with having sunk her with exceptional brutality (*d'avoir torpillés sans avertissement et coulé dans des circonstances d'une extraordinaire brutalité le navire hôpital anglais 'Dover Castle'*).

The Attorney General has entered no indictment on this charge, but, in accordance with the law of 12th May, 1921, he has asked for an enquiry to decide the point whether the accused in the Tyrrhenian Sea, on 26th May, 1917, intentionally killed six men and whether these men were killed after full consideration (offence against §211 of the State Code ("StG B" 1). The result of these proceedings is as follows:—

On 26th May, 1917, the accused was in the Tyrrhenian Sea in command of the Submarine U.C. 67.

During the day he sighted two steamers, escorted by two destroyers. The weather was clear and sunny. The accused was therefore soon able to see that the two steamers carried the distinctive outward signs laid down for military hospital ships by the 10th Hague Convention, in accordance with the principles of the Geneva Convention on naval warfare of 18th October, 1907. He then approached nearer to the convoy, which was pursuing a zig-zag course, and about 6.0 p.m. he fired a torpedo at the steamer nearest to him. The steamer was hit; it remained stationary, but did not sink. One of the destroyers, which were accompanying it, came alongside its starboard side and took off its crew, as well as all the sick and wounded on board. Only after this had taken place, about 1½ hours after the first torpedo, did the accused sink the vessel by firing a second torpedo. He then rose to the surface and found out from the markings on the unmanned

life-boats which were drifting about that the sunken steamer was the *Dover Castle*.

According to the statement of the English Government, the *Dover Castle* had been serving for several years as a hospital ship and as such had regularly travelled from England to Malta and Salonica and from there back home. When torpedoed she had sick and wounded on board and was on her way to take them from Malta to Gibraltar. When the vessel was sunk not one of these perished. The first torpedo that was fired, however, caused the death of six members of the crew.

The accused frankly admits sinking the *Dover Castle*. He pleads that in so doing he merely carried out an order of the German Admiralty, his superior authority. With respect to this order the circumstances are as follows:—

During the first years of the war the German Admiralty respected the military hospital ships of their opponents in accordance with the regulations of the 10th Hague Convention referred to above. Later, however, they came to believe that enemy governments were utilizing their hospital ships not only to aid wounded, sick and shipwrecked people, but also for military purposes and that they were thereby violating this convention. In two memoranda, dated 29th January and 29th March, 1917, respectively, the German Government explained its attitude more clearly and gave proof in support of its assertions. It stated that it would not entirely repudiate the convention, but was compelled to restrict the navigation of enemy hospital ships. Accordingly it was announced in the second memorandum that henceforth, as regards the Mediterranean, only such hospital ships would be protected, which fulfilled certain conditions. The hospital ships had to be reported at least six weeks previously and were to keep to a given course on leaving Greece. After a reasonable period of grace, it was announced, all other enemy hospital ships in the Mediterranean would be regarded as vessels of war and forthwith attacked.

The second memorandum reached the enemy governments in the early part of April, 1917.

It corresponds with the order of the Admiralty issued on 29th March, 1917, to the German Flotilla in the Mediterranean.

As from 8 April hospital ships generally are no longer to be permitted in the blockaded area of the Mediterranean, including the route to Greece. Only a few special hospital ships, which have been notified by name at least six weeks previously, may use the channel up to the Port of Kalamata. Advise submarines that as from 8 April every hospital ship on the routes named is to be attacked forthwith, excepting such only as have been expressly notified from here, in which cases speed, times of arrival and departure will be exactly stated.

This order was communicated to the accused before his departure from Cattaro. Previously the two memoranda had been also brought to his

knowledge. Exceptions in the case of hospital ships had not been arranged, as the enemy governments made no use of the opportunities to notify their hospital ships given in the memorandum of 29th March, 1917.

In the circumstances the acquittal of the accused has been requested.

It is a military principle that the subordinate is bound to obey the orders of his superiors. This duty of obedience is of considerable importance from the point of view of the criminal law. Its consequence is that, when the execution of a service order involves an offence against the criminal law, the superior giving the order is alone responsible.

This is in accordance with the terms of the German law, §47, para. 1 of the Military Penal Code. It also accords with the legal principles of all other civilized states (*see*, for example, as regards England, the Manual of Military Law (1914), chapter XIV, Art. 443 quoted in Verdross' *Die völkerrechtswidrige Kriegshandlung und der Strafausspruch der Staaten*. "Breaches of International Law in the Conduct of War and National claims for punishment," page 95.)

The Admiralty Staff was the highest service authority over the accused. He was in duty bound to obey their orders in service matters. So far as he did that, he was free from criminal responsibility. Therefore he cannot be held responsible for sinking the hospital ship *Dover Castle* according to orders.

Under §47 of the Military Penal Code quoted above, there are two exceptional cases in which the question of the punishment of a subordinate who has acted in conformity with his orders can arise. He can in the first place be held responsible, if he has gone beyond the orders given him. In the present case the accused has not gone beyond his orders. It was impossible to give a warning to the *Dover Castle* before the torpedo was fired, because she was escorted by two warships. The accused is not charged with any peculiar brutality in sinking the ship. On the contrary he made it possible to save all the sick and wounded on board the *Dover Castle* by allowing about 1½ hours to elapse between the firing of the first and second torpedoes.

According to §47 of the Military Penal Code No. 2, a subordinate who acts in conformity with orders is also liable to punishment as an accomplice, when he knows that his superiors have ordered him to do acts which involve a civil or military crime or misdemeanor. There has been no case of this here. The memoranda of the German Government about the misuse of enemy hospital ships were known to the accused. The facts set out in them he held to be conclusive, especially as he had received, as he has explained, similar reports from his comrades. He was therefore of the opinion that the measures taken by the German Admiralty against enemy hospital ships were not contrary to international law, but were legitimate reprisals. His conduct clearly shows that this was his conviction. He never made any secret of the sinking of the *Dover Castle*. Not only did he report it to his superiors, but he has also frankly admitted it in the present proceedings. He

has never disputed that he knew that the *Dover Castle* was a hospital ship. It is specially noteworthy that he allowed an English captain, whom he had on board his submarine as prisoner, to observe his approach to the *Dover Castle*. Although this enemy subject thus knew about the sinking of the hospital ship, the accused on going ashore gave him a certificate when he asked for one and signed it with his full name, giving his rank in the service. He would not have done this if he had considered that his orders or his execution of them were illegal.

The accused accordingly sank the *Dover Castle* in obedience to a service order of his highest superiors, an order which he considered to be binding. He cannot, therefore, be punished for his conduct.

The decision as to costs is based on §499 St. P.O.

(Signed) SCHMIDT,
SABARTH,
BACKS,
SCHULTZ,
KLEINE,
HAGEMANN,
DR. VOGT.

The accuracy of this copy is hereby certified.

(Signed)

The Clerk of the Court of the 2nd Criminal Senate
of the Imperial Court of Justice.

(Seal of the Court.)

JUDGMENT IN CASE OF LIEUTENANTS DITHMAR AND BOLDT

HOSPITAL SHIP "LLANDOVERY CASTLE"

Rendered July 16, 1921

IN THE NAME OF THE EMPIRE

In the criminal case against:

(1) Ludwig Dithmar of Cuxhaven, First Lieutenant and Adjutant of the Cuxhaven Command, at present detained during trial, born in Aix-la-Chapelle on the 13th May, 1892, and

(2) John Boldt of Altona, retired First Lieutenant, merchant, at present detained during trial, born in Dantzig on the 26th January, 1895.

The Second Criminal Senate of the Imperial Court of Justice, at its public sitting of the 16th July, 1921, at which there took part as Judges:

Dr. Schmidt, President of the Division,

Judges Dr. Sabarth, Dr. Paul, Backs, Dr. Schultz, Hagemann, Dr. Vogt,