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Documents on Prisoners of War

Howard S. Levie (Editor)

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REPORT OF THE COMMISSION ON THE RESPONSIBILITY OF THE AUTHORS OF THE [FIRST WORLD] WAR AND ON ENFORCEMENT OF PENALTIES
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NOTE

The Commission on the Responsibility of the Authors of the [First World] War and on Enforcement of Penalties was created by the Preliminary Peace Conference which met at Versailles in 1919 and which ultimately drafted the Treaty of Peace between the Allied and Associated Powers and Germany which legally terminated World War I (1914-1918). That Treaty, known as the Treaty of Versailles (DOCUMENT NO. 44), contained a number of provisions for the trial of persons accused of having committed war crimes, including the maltreatment of prisoners of war, as recommended in this Report.

EXTRACTS

The Preliminary Peace Conference at the plenary session on the 25th January, 1919 (Minute No. 2), decided to create, for the purpose of inquiring into the responsibilities relating to the war, a commission composed of fifteen members, two to be named by each of the Great Powers (United States of America, British Empire, France, Italy and Japan) and five elected from among the Powers with special interests.

The Commission was charged to inquire into and report upon the following points:

1. The responsibility of the authors of the war.
2. The facts as to breaches of the laws and customs of war committed by the forces of the German Empire and their Allies, on land, on sea, and in the air during the present war.
3. The degree of responsibility for these offences attaching to particular members of the enemy forces, including members of the General Staffs, and other individuals, however highly placed.
4. The constitution and procedure of a tribunal appropriate for the trial of these offences.
5. Any other matters cognate or ancillary to the above which may arise in the course of the enquiry, and which the Commission finds it useful and relevant to take into consideration.

CHAPTER II

VIOLATIONS OF THE LAWS AND CUSTOMS OF WAR

On the second point submitted by the Conference, *the facts as to breaches of*

the laws and customs of war committed by the forces of the German Empire and their allies on land, on sea, and in the air, during the present war, the Commission has considered a large number of documents. The Report of the British Commission drawn up by Lord Bryce, the labors of the French Commission presided over by M. Payelle, the numerous publications of the Belgian Government, the Memorandum submitted by the Belgian Delegation, the Memorandum of the Greek Delegation, the documents lodged by the Italian Government, the formal denunciation by the Greeks at the Conference of the crimes committed against Greek populations by the Bulgars, Turks and Greeks, the Memorandum of the Serbian Delegation, the Report of the Inter-Allied Commission on the violations of the Hague Conventions and of international law in general, committed between 1915 and 1918 by the Bulgars in occupied Serbia, the summary of the Polish Delegation, together with the Roumanian and Armenian Memoranda, supply abundant evidence of outrages of every description committed on land, at sea, and in the air, against the laws and customs of war and of the laws of humanity.

In spite of the explicit regulations, of established customs, and of the clear dictates of humanity, Germany and her allies have piled outrage upon outrage. Additions are daily and continually being made. It is impossible to imagine a list of cases so diverse and so painful. Violations of the rights of combatants, of the rights of civilians, and of the rights of both, are multiplied in this list of the most cruel practices which primitive barbarism, aided by all the resources of modern science, could devise for the execution of a system of terrorism carefully planned and carried out to the end. Not even prisoners, or wounded, or women, or children have been respected by belligerents who deliberately sought to strike terror into every heart for the purpose of repressing all resistance. Murders and massacres, tortures, shields formed of living human beings, collective penalties, the arrest and execution of hostages, the requisitioning of services for military purposes, the arbitrary destruction of public and private property, the aerial bombardment of open towns without there being any regular siege, the destruction of merchant ships without previous visit and without any precautions for the safety of passengers and crew, the massacre of prisoners, attacks on hospital ships, the poisoning of springs and of wells, outrages and profanations without regard for religion or the honor of individuals, the issue of counterfeit money reported by the Polish Government, the methodical and deliberate destruction of industries with no other object than to promote German economic supremacy after the war, constitute the most striking list of crimes that has ever been drawn up to the eternal shame of those who committed them. The facts are established. They are numerous and so vouched for that they admit of no doubt and cry for justice. The Commission, impressed by their number and gravity, thinks there are good grounds for the constitution of a special commission, to collect and classify all outstanding information for the purpose of preparing a complete list of the charges under the following heads:

The following is the list arrived at:

* * *

(28) Directions to give no quarter.
(29) Ill-treatment of wounded and prisoners of war.
(30) Employment of prisoners of war on unauthorized works.

* * *

The Commission desires to draw attention to the fact that the offences enumerated and the particulars given in Annex I are not regarded as complete and exhaustive; to these such additions can from time to time be made as may seem necessary.

CONCLUSIONS

1. The war was carried on by the Central Empires together with their allies, Turkey and Bulgaria, by barbarous or illegitimate methods in violation of the established laws and customs of war and the elementary laws of humanity.

2. A commission should be created for the purpose of collecting and classifying systematically all the information already had or to be obtained, in order to prepare as complete a list of facts as possible concerning the violations of the laws and customs of war committed by the forces of the German Empire and its Allies, on land, on sea and in the air, in the course of the present war.

CHAPTER III

PERSONAL RESPONSIBILITY

The third point submitted by the Conference is thus stated:

> *The degree of responsibility for these offences attaching to particular members of the enemy forces, including members of the General Staffs and other individuals, however highly placed.*

For the purpose of dealing with this point, it is not necessary to wait for proof attaching guilt to particular individuals. It is quite clear from the information now before the Commission that there are grave charges which must be brought and investigated by a court against a number of persons.

In these circumstances, the Commission desire to state expressly that in the hierarchy of persons in authority, there is no reason why rank, however exalted, should in any circumstances protect the holder of it from responsibility when that responsibility has been established before a properly constituted tribunal. This extends even to the case of heads of states. An argument has been raised to the contrary based upon the alleged immunity, and in particular the alleged inviolability, of a sovereign of a state. But this privilege, where it is recognized, is one of practical expedience in municipal law, and is not fundamental. However, even if, in some countries, a sovereign is exempt from being prosecuted in a national court of his own country the position from an international point of view is quite different.

We have later on in our Report proposed the establishment of a high tribunal composed of judges drawn from many nations, and included the possibility of the trial before that tribunal of a former head of a state with the consent of that state itself secured by articles in the Treaty of Peace. If the

immunity of a sovereign is claimed to extend beyond the limits above stated, it would involve laying down the principle that the greatest outrages against the laws and customs of war and the laws of humanity, if proved against him, could in no circumstances be punished. Such a conclusion would shock the conscience of civilized mankind.

In view of the grave charges which may be preferred against — to take one case — the ex-Kaiser — the vindication of the principles of the laws and customs of war and the laws of humanity which have been violated would be incomplete if he were not brought to trial and if other offenders less highly placed were punished. Moreover, the trial of the offenders might be seriously prejudiced if they attempted and were able to plead the superior orders of a sovereign against whom no steps had been or were being taken.

There is little doubt that the ex-Kaiser and others in high authority were cognizant of and could at least have mitigated the barbarities committed during the course of the war. A word from them would have brought about a different method in the action of their subordinates on land, at sea and in the air.

We desire to say that civil and military authorities cannot be relieved from responsibility by the mere fact that a higher authority might have been convicted of the same offence. It will be for the court to decide whether a plea of superior orders is sufficient to acquit the person charged from responsibility.

CONCLUSION

All persons belonging to enemy countries, however high their position may have been, without distinction of rank, including Chiefs of States, who have been guilty of offences against the laws and customs of war or the laws of humanity, are liable to criminal prosecution.

CHAPTER IV

CONSTITUTION AND PROCEDURE OF AN APPROPRIATE TRIBUNAL

The fourth point submitted to the Commission is stated as follows:

> *The constitution and procedure of a tribunal appropriate for the trial of these offences* (crimes relating to the war).

On this question the Commission is of opinion that, having regard to the multiplicity of crimes committed by those Powers which a short time before had on two occasions at The Hague protested their reverence for right and their respect for the principles of humanity, the public conscience insists upon a sanction which will put clearly in the light that it is not permitted cynically to profess a disdain for the most sacred laws and the most formal undertakings.

Two classes of culpable acts present themselves:

(a) Acts which provoked the world war and accompanied its inception.

(b) Violations of the laws and customs of war and the laws of humanity.

* * *

(b) Violations of the Laws and Customs of War and of the Laws of Humanity

Every belligerent has, according to international law, the power and

authority to try the individuals alleged to be guilty of the crimes of which an enumeration has been given in Chapter II on Violations of the Laws and Customs of War, if such persons have been taken prisoners or have otherwise fallen into its power. Each belligerent has, or has power to set up, pursuant to its own legislation, an appropriate tribunal, military or civil, for the trial of such cases. These courts would be able to try the incriminated persons according to their own procedure, and much complication and consequent delay would be avoided which would arise if all such cases were to be brought before a single tribunal.

There remain, however, a number of charges:

(a) Against persons belonging to enemy countries who have committed outrages against a number of civilians and soldiers of several Allied nations, such as outrages committed in prison camps where prisoners of war of several nations were congregated or the crime of forced labor in mines where prisoners of more than one nationality were forced to work;

(b) Against persons of authority, belonging to enemy countries, whose orders were executed not only in one area or on one battle front, but whose orders affected the conduct of operations against several of the Allied armies;

(c) Against all authorities, civil or military, belonging to enemy countries, however high their position may have been, without distinction of rank, including the heads of states, who ordered, or, with knowledge thereof and with power to intervene, abstained from preventing or taking measures to prevent, putting an end to or repressing, violations of the laws or customs of war (it being understood that no such abstention should constitute a defence for the actual perpetrators);

(d) Against such other persons belonging to enemy countries as, having regard to the character of the offence or the law of any belligerent country, it may be considered advisable not to proceed before a court other than the high tribunal hereafter referred to.

For the trial of outrages falling under these four categories the Commission is of opinion that a high tribunal is essential and should be established according to the following plan:

(1) It shall be composed of three persons appointed by each of the following governments: The United States of America, the British Empire, France, Italy and Japan, and one person appointed by each of the following governments: Belgium, Greece, Poland, Portugal, Roumania, Serbia and Czecho-Slovakia. The members shall be selected by each country from among the members of their national courts or tribunals, civil or military, and now in existence or erected as indicated above.

(2) The tribunal shall have power to appoint experts to assist it in the trial of any particular case or class of cases.

(3) The law to be applied by the tribunal shall be "the principles of the

law of nations as they result from the usages established among civilized peoples, from the laws of humanity and from the dictates of public conscience."

(4) When the accused is found by the tribunal to be guilty, the tribunal shall have the power to sentence him to such punishment or punishments as may be imposed for such an offence or offences by any court in any country represented on the tribunal or in the country of the convicted person.

(5) The tribunal shall determine its own procedure. It shall have power to sit in divisions of not less than five members and to request any national court to assume jurisdiction for the purpose of inquiry or for trial judgment.

(6) The duty of selecting the cases for trial before the tribunal and of directing and conducting prosecutions before it shall be imposed upon a Prosecuting Commission of five members, of whom one shall be appointed by the Governments of the United States of America, the British Empire, France, Italy and Japan, and for the assistance of which any other government may delegate a representative.

(7) Applications by any Allied or Associated Government for the trial before the tribunal of any offender who has not been delivered up or who is at the disposition of some other Allied or Associated Government shall be addressed to the Prosecuting Commission, and a national court shall not proceed with the trial of any person who is selected for trial before the tribunal, but shall permit such person to be dealt with as directed by the Prosecuting Commission.

(8) No person shall be liable to be tried by a national court for an offence in respect of which charges have been preferred before the tribunal, but no trial or sentence by a court of an enemy country shall bar trial and sentence by the tribunal or by a national court belonging to one of the Allied or Associated States.

CONCLUSIONS

The Commission has consequently the honor to recommend:

1. That a high tribunal be constituted as above set out.

2. That is shall be provided by the treaty of peace:

(a) That the enemy governments shall, notwithstanding that peace may have been declared, recognize the jurisdiction of the national tribunals and the high tribunal, that all enemy persons alleged to have been guilty of offences against the laws and customs of war and the laws of humanity shall be excluded from any amnesty to which the belligerents may agree, and that the governments of such persons shall undertake to surrender them to be tried.

(b) That the enemy governments shall undertake to deliver up and give in such manner as may be determined thereby:

(i) The names of all persons in command or charge of or in any way exercising authority in or over all civilian internment camps, prisoner-of-war camps, branch camps, working camps and

"commandoes" and other places where prisoners were confined in any of their dominions or in territory at any time occupied by them, with respect to which such information is required, and all orders and instructions or copies of orders or instructions and reports in their possession or under their control relating to the administration and discipline of all such places in respect of which the supply of such documents as aforesaid shall be demanded;

(ii) All orders, instructions, copies of orders and instructions, General Staff plans of campaign, proceedings in naval or military courts and courts of inquiry, reports and other documents in their possession or under their control which relate to acts or operations, whether in their dominions or in territory at any time occupied by them, which shall be alleged to have been done or carried out in breach of the laws and customs of war and the laws of humanity;

(iii) Such information as will indicate the persons who committed or were responsible for such acts or operations;

(iv) All logs, charts, reports and other documents relating to operations by submarines;

(v) All orders issued to submarines, with details or scope of operations by these vessels;

(vi) Such reports and other documents as may be demanded relating to operations alleged to have been conducted by enemy ships and their crews during the war contrary to the laws and customs of war and the laws of humanity.

3. That each Allied and Associated Government adopt such legislation as may be necessary to support the jurisdiction of the international court, and to assure the carrying out of its sentences.

4. That the five states represented on the Prosecuting Commission shall jointly approach neutral governments with a view to obtaining the surrender for trial of persons within their territories who are charged by such states with violations of the laws and customs of war and the laws of humanity.