

CASE NO. 69

TRIAL OF ARNO HEERING

BRITISH MILITARY COURT, HANOVER,
24TH-26TH JANUARY, 1946

A. OUTLINE OF THE PROCEEDINGS

Heering was accused of having committed a war crime "in that he between 24th January, 1945, and 24th March, 1945, when a member of the guard company with a column of prisoners of war on a march from Marienburg to Brunswick did, in violation of the laws and usages of war, ill-treat" two named members of the British Army "and other British and Allied nationals". The plea was one of not guilty. The accused admitted that he was actually in charge of a column of prisoners of war who were being evacuated from a camp. It was alleged that he failed to provide the prisoners with sufficient food, adequate billets or any medical supplies, and that he marched them excessive distances and actively ill-treated them.

The Court found the accused guilty of the charge, but omitting therefrom the names of the British soldiers and altering "and other British and Allied nationals" to "a British national". In view of the fact that he had been detained as an accused person since 27th August, 1945, the Court sentenced Heering to one day's imprisonment. The sentence was confirmed.

B. NOTES ON THE NATURE OF THE OFFENCE ALLEGED

The Prosecutor drew the Court's attention to Articles 2, 11, 12, 18 and 54 of the Geneva Prisoners of War Convention of 1929. He submitted that the column of march described in the trial was to all intents the same and in the same position as a prisoner of war camp. All the duties set out fell on the shoulders of the accused.

The provisions from the Convention which the Prosecutor quoted were the following :

"Art. 2. Prisoners of war are in the power of the hostile Government, but not of the individuals or formation which captured them.

They shall at all times be humanely treated and protected, particularly against acts of violence, from insults and from public curiosity.

Measures of reprisal against them are forbidden."

"Art. 11. The food ration of prisoners of war shall be equivalent in quantity and quality to that of the depot troops.

Prisoners shall also be afforded the means of preparing for themselves such additional articles of food as they may possess.

Sufficient drinking water shall be supplied to them. . . .

. . . . All collective disciplinary measures affecting food are prohibited."

"Art. 12. Clothing, underwear and footwear shall be supplied to prisoners of war by the detaining Power. The regular replacement and repair of such articles shall be assured . . ."

"Art. 18. Each prisoner of war camp shall be placed under the authority of a responsible officer . . ."

"Art. 54. Imprisonment is the most severe disciplinary punishment which may be inflicted on a prisoner of war . . ." ⁽¹⁾

During his closing address, the Prosecutor pointed out that the accused had admitted giving orders in the presence of British prisoners to his guards to shoot prisoners who left the column of march after ordering them to halt three times. Presumably if a man suffering from dysentery left the column to relieve himself and did not halt, he would be shot. He claimed that as the prisoners, reduced in health and many of them sick, might very well be considerably mentally disturbed by a threat of this kind, the accused's words amounted to gross ill-treatment, and were contrary to Article 2. Although admitting that the accused did go on to say that there was an understanding between him and his guards that no shooting should take place, he claimed that his words constituted a threat of an act of violence which could not be construed as humane treatment. There was no question of their trying to escape. The Legal Member pointed out that the words complained of were used to the guards, not to the prisoners, and that mere words could not constitute an assault. Applying the analogy of the rules and principles applied in the Divorce Court in regard to the question of mental cruelty, he thought that the Prosecutor would have to prove first that there was something in the nature of mental cruelty, and secondly that there was some interference with health or well-being in consequence of it. The Prosecutor claimed, in reply, that threats of that description issued to men in the condition in which the prisoners were at the time were quite likely to produce extremely bad results in their health.

(1) Similarly, in the trial of Shoichi Yamamoto and others by an Australian Military Court at Rabaul, 20th-27th May 1946, several accused were found guilty of "ill-treatment of prisoners of war between Sandakan and Ranau between 29 January, 1945 and 28 February, 1945 compelled prisoners of war in their charge to march long forced marches under difficult conditions when sick and underfed as a result whereof many of the said prisoners of war died". The offence proved took place when about 450 prisoners of war were being moved from one camp to another.

That the protection of the laws and customs of war attaches to prisoners of war wherever they may be is further proved by the trial of Kishio Uchiyama and Mitsugu Fukuda by an Australian Military Court at Singapore, 18th-29th April, 1947. Here the accused were found guilty of "Committing a war crime in that they on the high seas between 4 July, 1944 and 8 September, 1944 on a voyage from Singapore to Moji (Japan) aboard the s.s. "Rashin Maru" as officer in charge and non-commissioned officer second in charge respectively of a draft of Allied prisoners of war for whose well-being they were responsible were in violation of the laws and usages of war together concerned in the inhumane treatment of the said prisoners of war thereby contributing to the physical and mental suffering of the said prisoners of war."