

CASE No. 28.

TRIAL OF  
CAPTAIN EIKICHI KATO

AUSTRALIAN MILITARY COURT, RABAU

7TH MAY, 1946

A. OUTLINE OF THE PROCEEDINGS

1. THE CHARGES

The accused was charged of the murder of seven civilian inhabitants of North Bougainville between September 1943 and October 1945.

He pleaded not guilty.

2. THE EVIDENCE

The accused admitted that he had ordered the execution of six of the persons mentioned in the charges. He attempted to justify his action by saying that the victims were attached to the Japanese forces, but that they had been proved to be hostile and that after an investigation he had ordered them to be killed to prevent them from escaping and giving information to the Australians, and "to carry out our operation and to keep the order and peace of our unit." He alleged that he had read reports of interrogations and had discussed the matter with his staff officers before ordering the two sets of executions, and that the acts of the deceased constituted war treason and espionage within the meaning of the Japanese laws. The nearness of the Australian Army and the general military situation had prevented the holding of a court.

3. FINDINGS AND SENTENCE

He was found guilty of the murder of the six victims and sentenced to death.

The finding and sentence were confirmed by higher military authority.

B. NOTES ON THE CASE

The attitude of the Court to the legal status of the victims cannot be ascertained, but the Judge Advocate drew its attention to the provisions of international law regarding espionage and war treason as described in two paragraphs in Chapter XIV of the Australian *Manual of Military Law* :

" 158. It is lawful to employ spies and secret agents, and even to gain over by bribery or other means enemy soldiers or private enemy subjects. Yet the fact that these methods are lawful does not prevent the punishment, under certain conditions, of the individuals who are engaged in procuring intelligence in other than an open manner as combatants. Custom admits their punishment by death, although a more lenient penalty may be inflicted.

" 159. The offence is punishable whether or not the individuals succeed in obtaining the information and conveying it to the enemy."

The Judge Advocate made reference to Articles 29 and 30 of the Hague Convention relating to spies and their right to a trial.<sup>(1)</sup>

At the same time the Judge Advocate drew the Court's attention to the following paragraphs in Chapter XIV of the *Manual* relating to reprisals :

" 386. If, contrary to the duty of the inhabitants to remain peaceful, hostile acts are committed by individual inhabitants, a belligerent is justified in requiring the aid of the population to prevent their recurrence and, in serious and urgent cases, in resorting to reprisals.

" 387. An act of disobedience is not excusable because it is committed in consequence of the orders of the legitimate Government, and any attempt to keep up relations with that Government or to act in understanding with it, to the detriment of the occupant, is punishable as war treason.

" 452. Reprisals between belligerents are retaliation for illegitimate acts of warfare, for the purpose of making the enemy comply in future with the recognized laws of war. They are not referred to in the text of the Hague Rules, but are mentioned in the report presented to the Peace Conference of 1889 by the Committee which drew up the Convention respecting the Laws and Customs of War on Land. They are by custom admissible as an indispensable means of securing legitimate warfare. The mere fact that they may be expected, if violations of the laws of war are committed, acts to a great extent as a deterrent. They are not a means of punishment or of arbitrary vengeance, but of coercion.

" 455. Although there is no rule of International Law respecting the matter, reprisals should never be resorted to by the individual soldier, but only by order of a commander.

" 459. What kinds of acts should be resorted to as reprisals is a matter for the consideration of the injured party. Acts done by way of reprisals must not, however, be excessive and must not exceed the degree of violation committed by the enemy."

The Court appears from its decision to have rejected any idea that the killings might have been justified as reprisals,<sup>(2)</sup> and to have held that, whether the victims had been guilty of espionage or war treason or not, and whatever the motive of the accused was in his ordering their shooting, they had not been granted the right to a fair trial. A mere discussion between officers as to the merits of a case, based upon reports of interrogations, would not in fact constitute a trial.<sup>(3)</sup>

(1) Regarding espionage and war treason see pp. 27-30 of this volume and also p. 56.

(2) The law relating to reprisals is to receive further treatment in a subsequent volume of these reports.

(3) See also p. 57, footnote<sup>1</sup>, relating to a similar claim, also unsuccessful, that a decision based upon the result of previous interrogations would constitute a trial.