

“(c) Decisions by joint sessions of the Military Tribunals, unless thereafter altered in another joint session, shall be binding upon all the Military Tribunals. In the case of the review of final rulings by joint sessions, the judgments reviewed may be confirmed or remanded for action consistent with the joint decision.

“(d) The presence of a majority of the members of each Military Tribunal then constituted is required to constitute a quorum.

“(e) The members of the Military Tribunals shall, before any joint session begins, agree among themselves upon the selection from their number of a member to preside over the joint session.

“(f) Decisions shall be by majority vote of the members. If the votes of the members are equally divided, the vote of the member presiding over the session shall be decisive.”

It will be recalled that a joint session of the Military Tribunals was held to decide the question whether conspiracy to commit war crimes and crimes against humanity could be regarded as a separate offence.⁽¹⁾ It should be noted that the convening of a joint session is within the discretion of the presiding judges and it is not obligatory that a joint session should be held upon a motion being received from Counsel. On the other hand, decisions reached by joint sessions are binding for the future on the individual tribunals, unless altered by a subsequent joint session.

CASE No. 49

TRIAL OF HANS SZABADOS

PERMANENT MILITARY TRIBUNAL AT CLERMONT-FERRAND
JUDGMENT DELIVERED ON 23RD JUNE, 1946

Putting to death of Hostages—Destruction of property by arson—Pillage

A. OUTLINE OF THE PROCEEDINGS

The accused, a former German non-commissioned officer of the 19th Police Regiment, who had been stationed at Ugine, Haute-Savoie, during the occupation of France, was charged with “complicity in murder, arson of inhabited buildings, pillage in time of war and wanton destruction of inhabited buildings, by means of explosives” on two different occasions.

On 5th June, 1944, at about 8 a.m., unknown members of the French Resistance Movement had blown up part of the road in the district of the railway station at Ugine, killing nine German soldiers and wounding several others. It was shown that the accused, in the absence of his superiors, Captain Schultz and Lieutenant Rassi, had surrounded the whole area with men of his regiment and arrested a number of local inhabitants and passers-by found on the road. They were detained by the accused as hostages. Upon

(1) See Vol. VI, p. 104.

the arrival of the two superior officers, 28 hostages were shot at about 11.30 a.m. on the same day. All the victims except one were duly identified. It was further shown that the accused ordered the inhabitants of several houses in Ugine, regarded as harbouring "terrorists", to leave the premises, whereupon three houses were set on fire. The accused personally threw hand-grenades into the houses and did so while the inhabitants were still removing their belongings, thus endangering their lives.

The following day, 6th June, the accused took part in the destruction by dynamite of a block of three more houses which it was found difficult to set on fire. During these events property of the dwellers was looted. The accused personally took all radio sets.

As a result 421 inhabitants remained without shelter and total damages of 21,000,000 francs were inflicted. The accused claimed to have taken part in the above destruction and looting upon the orders of his superiors.

On the 15th June, 1944, a detachment of the same regiment under the command of Lieutenant Rassi and the accused was passing through Puisot, a hamlet in the area of Annecy. The accused maintained that several shots were fired on the detachment. It was shown that when the officer resumed his journey the accused surrounded the hamlet with his detachment. All the houses were set on fire, several inhabitants shot and their bodies thrown into the fire, including a youth of 16, and food, belongings and other articles of property were looted. Here also, the accused invoked the plea of superior orders.

The accused was found guilty on all Counts, but was not held responsible for the killings which took place at Puisot on the 15th June, 1944. The Tribunal passed the sentence of hard labour for life.

B. NOTES ON THE CASE

1. THE COURT

The trial was held by the Permanent Military Tribunal at Clermont-Ferrand, whose competence, like that of the Tribunals before which the other French trials reported in this volume were held, was based on the Ordinance of 28th August, 1944, concerning the Suppression of War Crimes.⁽¹⁾

2. THE NATURE OF THE OFFENCE

(a) *Putting to death of hostages*

The court established that the accused had taken part in the killing of hostages at Ugine, and passed judgment on this count on the basis of Art. 2, para. 4 of the Ordinance of 28th August, 1944, and Art. 296 of the French Penal Code. Art. 2, para. 4 provides that "Premeditated murder, as specified in Art. 296 of the Penal Code, shall include killing as a form of reprisal". Under Art. 296, in conjunction with Arts. 302 and 304 of the Penal Code, premeditated murder is punishable by death or hard labour for life. The accused was found guilty of the crime as an accomplice and in circumstances warranting the life sentence only. In the

⁽¹⁾ For the French law relating to the punishment of war crimes, see Vol. III of this series, Annex II, pp. 93-101.

field of international law the provision quoted touches upon the important questions of reprisals and of the permissibility of killing persons detained as hostages. Both questions are given special consideration in Vol. VIII, pp. 76-88 and in Vol. XIV (*Trial of A. Rauter*).

(b) *Arson and Destruction of Inhabited Buildings by Explosives*

The wanton destruction of inhabited buildings by fire and explosive was regarded by the Court in its judgment as being a crime under Article 434 of the French Penal Code. This article prescribes the heaviest penalty, death, for anybody who "wantonly sets fire to buildings, vessels, boats, shops, works, when they are inhabited or used as habitations, and in general to places inhabited or used as habitations".

The specific provision of the laws and customs of war which covers such a type of destruction is Article 23(g) of the Hague Regulations of 1907. It forbids the "destruction or seizure of enemy property" unless it is "imperatively demanded by the necessities of war". It is generally understood that "imperative demands of the necessities of war" can exist only in the course of active military operations, which was not the case with the circumstances of the trial.

Such cases of destruction were regarded as criminal by the 1919 Commission on Responsibilities and were described in item XVIII of its list of war crimes as "wanton devastation and destruction of property".

(c) *Pillage*

The looting of personal belongings and other property of the civilians evicted from their homes prior to their destruction was found by the Court to be provided against by the terms of Article 440 of the French Penal Code, which deals with pillage. In applying this Article the Court appears to have preferred it to Article 221 of the French Code of Military Justice, which deals specifically with pillage by military personnel. One of the differences between the two provisions is that in violation of the Military Code, pillage entails, as a rule, a heavier penalty than pillage contrary to the Penal Code, that is, hard labour for life instead of for a maximum of 20 years. This, however, had no practical effect upon the sentence passed in this case, the accused having been found guilty of other crimes permitting and justifying life sentence. Pillage is included in the list of war crimes of the 1919 Commission on Responsibilities and is expressly forbidden by Article 47 of the Hague Regulations of 1907.

3. PLEA OF SUPERIOR ORDERS

The accused's plea that he had acted on the orders of his superiors was not admitted. The Court applied the rule that superior orders do not in themselves exonerate the perpetrator from responsibility when the orders are illegal, as provided in Article 3 of the Ordinance of 28th August, 1944.⁽¹⁾

(1) See Vol. III of this series, pp. 54-55. For the development of rules concerning the plea of superior orders as evidenced in the municipal law of other countries as well as in instruments of international law, see Vol. I of this series, pp. 18-20, and 31-33; and (particularly) Vol. V, pp. 13-22.