

CASE No. 82

TRIAL OF MAX SCHMID
 UNITED STATES GENERAL MILITARY GOVERNMENT COURT
 AT DACHAU, GERMANY, 19TH MAY, 1947

A. OUTLINE OF THE PROCEEDINGS

1. THE CHARGES

The accused was charged with two murders of prisoners of war and acquitted of both of these charges after a submission of no case by the defence. The third charge against the accused was that he did "wilfully, deliberately and wrongfully encourage, aid, abet and participate in the maltreatment of a dead unknown member of the United States Army."

2. THE EVIDENCE

The accused was the medical officer in charge of a German dispensary at Marquise in France. The evidence showed that shortly before the time of the allied invasion of France the body of a dead U.S. airman was brought to his dispensary by a detail whose duty it was to collect dead bodies, and to remove them from the battlefield. The accused severed the head from the body, boiled it and removed the skin and flesh and bleached the skull which he kept on his desk for several months. The prosecution alleged that he eventually sent it to his wife in Germany as a souvenir. The accused pleaded that he used the skull for instructional purposes and when it had served these purposes, sent it home with the intention of burying it in a cemetery. He maintained that he was not guided by hatred or any intention to mutilate the dead body.

3. FINDINGS AND SENTENCE

The accused was found guilty of the 3rd charge and sentenced to 10 years' imprisonment. The sentence was confirmed by higher military authority.

B. NOTES ON THE CASE: MUTILATION OF DEAD BODIES AND REFUSAL OF HONOURABLE BURIAL

The usage relating to the protection of the dead left on the battlefield goes back to ancient days. It was first described as a usage by Grotius⁽¹⁾. This usage is embodied in the Geneva Convention (1929) "for the Amelioration of the Conditions of the Wounded and Sick of Armies in the Field." This Convention imposes upon belligerents the obligation to search for the wounded and the dead after a battle, to protect both from robbery and ill-treatment and to bury the dead. Article 3, first paragraph, says: "After each engagement the occupant of the field of battle shall take measures to search for the wounded and dead and to protect them against pillage and

⁽¹⁾ *De Jure Belli ac Pacis*, II, Chapter 19.

mal-treatment." Article 4, fourth paragraph, says: "They" (the belligerents) "shall ensure that the burial or cremation of the dead is preceded by a careful and if possible medical examination of the bodies with a view to confirming death, establishing the identity and enabling a report to be made."

Article 4, fifth paragraph, says: "They shall further ensure that the dead are honourably interred that their graves are respected and marked so that they shall always be found." The Field Manual of the United States and the British Armed Forces contain similar provisions.⁽¹⁾

Professor Lauterpacht says⁽²⁾: "According to a customary rule of the law of nations belligerents have the right to demand from one another that dead soldiers shall not be disgracefully treated and in particular that they shall not be mutilated but shall be, as far as possible, collected and buried or cremated on the battlefield by the victor." . . . "The belligerents are bound to make provisions for honourable interment and for respectful treatment and proper marking of graves so that they can always be found."

The court in this case held that a violation of these regulations constituted a war crime. Military courts of various nations have found prisoners guilty of offences against the dead and sentenced them. The following are examples of such charges:

- (1) The United States Military Commission at Yokohama, Japan (20th April, 1946), sentenced Jutaro Kikuchi, a Second Lieutenant in the Japanese Army to 25 years' imprisonment, and Masaak Mahuchi to death, for "bayoneting and mutilating the dead body of a United States prisoner of war." The sentences were approved.
- (2) Another United States Military Commission at the Mariana Islands (2nd-15th August, 1946) tried and convicted Tachibana Yochio, a Lieutenant-General in the Japanese Army and 13 others, of murdering 8 prisoners of war. Some of the accused were also charged with "preventing an honourable burial due to the consumption of parts of the bodies of prisoners of war by the accused during a special meal in the officers' mess." They were found guilty of these charges: sentences ranging from death to imprisonment for 5 years were imposed.
- (3) An Australian Military Court at Wewak (30th November, 1945) sentenced Tazaki Takehiko, a First Lieutenant in the Japanese Army to death for "mutilating the dead body of a prisoner of war" and for "cannibalism." The sentence was commuted to 5 years' imprisonment by the confirming officer.
- (4) Another Australian Military Court at Rabaul (2nd April, 1946) sentenced Tomiyasu Tisato, a First Lieutenant in the Japanese Army, to death after finding him guilty of the "murder of an unknown Indian prisoner of war" and on the charge of "cannibalism." The prosecution in this case alleged that several prisoners had been killed and that their flesh had been eaten. The sentence was commuted to 15 years' imprisonment by the confirming officer.

⁽¹⁾ War Department Basic Field Manual 27/10, *Rules of Land Warfare*, 1940, para. 176. and *British Manual of Military Law*, Chapter 14, paras. 217-220.

⁽²⁾ *International Law*, Vol. II, para. 124.