

## War Crimes Trials; Vol. I--The "Peleus" Trial (Book Review)

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WAR CRIMES TRIALS; VOL. I—THE "PELEUS" TRIAL. Edited by John Cameron, D.S.C., K.C. London: William Hodge and Company, Limited, 1948. Pp. li, 247. 18s.

On the night of the 13th of March, 1944, the "Peleus," a Greek-owned freighter of 8,833 tons, under charter to the British Ministry of War Transport, was steaming in the South Atlantic, bound from Freetown, Sierra Leone, in West Africa, for the River Plate. The ship, unescorted, but defensively armed, was manned by a crew of 35 Allied nationals.<sup>1</sup> Suddenly, the tracks of two torpedoes were observed on the port beam. Although the Chief Officer promptly sought to swing the ship from the path of the torpedoes, the time was too short, and the torpedoes hit and exploded, sinking the ship within two minutes. The survivors of the explosion remained in the shark-infested sea, several hundred miles from land, clinging to rafts or floating wreckage. The story, thus far, does not differ from that of scores of other merchant vessels sunk without warning. However, the callous cruelty displayed during the ensuing five hours distinguished the story of the "Peleus" from other sinkings, and another infamous story of cold-blooded murder perpetrated upon human beings struggling for survival, is added to the record of atrocities committed in two world wars.

Prepared from the original shorthand transcripts, *The "Peleus" Trial* reproduces the proceedings in the trial of Kapitanleutnant Heinz Eck and four other members of the crew of Unterseeboot 852. This trial, held at Hamburg, Germany, on the 17th day of October, 1945 and the three succeeding days, was the first completed under the jurisdiction of a British Military War Crimes Court.<sup>2</sup> The composition of the court set a precedent in that it included two members of the Royal Hellenic Navy.<sup>3</sup>

The indictment charged the defendants with the commission of a war crime in that, "in the Atlantic Ocean on the night of 13/14th March, 1944, when Captain and members of the crew of Unterseeboot 852 which had sunk the steamship *Peleus* [, ] in violation of the laws and usages of war were concerned in the killing of members of the crew of the said steamship, Allied nationals, by firing and throwing grenades at them."<sup>4</sup>

The evidence for the prosecution consisted of the testimony of several of the crew of U-boat 852, and the affidavits of the three survivors of the "Peleus" who on the 20th of April, 1944, were picked up by a Portuguese steamer, and a week later were taken to Lobito, Angola, in Portuguese West Africa.

Four of the accused were defended by German counsel, and the fifth was defended by a British major, a barrister-at-law. On behalf of all of the accused there appeared Professor A. Wegner who addressed the Court on questions of International Law. It is interesting that on several occasions the Judge

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<sup>1</sup> See appendix VII page 165 for the details of the S.S. "Peleus" and the names and nationalities of its crew.

<sup>2</sup> For the special Army order containing the Royal Warrant with the Regulations for the Trial of War Criminals, see appendix I page 140.

<sup>3</sup> For the names of the members of the court and the defendants and counsel, see pages 1-2.

<sup>4</sup> P. 3.

Advocate requested that Professor Wegner "keep to the International Law."<sup>5</sup> On one of these occasions the Judge Advocate stated, "Professor Wegner, you have obviously taken a great deal of trouble about this, and of course the Court very much appreciates it; but if you have found any authority which justifies the killing of survivors of a sunken ship when they are in the water, will you try and come to it quickly, because that is what we want, you know."<sup>6</sup>

The reader of *The "Peleus" Trial* especially appreciates his being placed in the position of a trier of the facts. This is possible because the facts are not told editorially, but rather the actual questions asked by counsel, and the answers given by the witnesses are given verbatim. Those interested in the law of evidence will appreciate defense counsel's objection to the admissibility of a portion of the affidavit by one of the survivors as to the story told to him by a deceased officer of the "Peleus." Defense counsel stated, ". . . while the regulations do permit affidavits which would not be admissible under the normal rules of evidence, there is nothing in the regulations which says that an affidavit which also includes a statement from a third party should be included in a document which may be introduced before a Court of this character."<sup>7</sup> After conferring, the Court decided to admit the statement.

Briefly stated, the defense of the Kommandant was that of operational necessity, *i.e.*, the elimination of all traces of the sinking was necessary to avoid detection by aircraft.

In answer to the question, "The decision of which you have spoken was a decision to destroy among other things, survivors, was it not?" the U-boat commander replied, "It was clear that through destroying the rafts and wreckage survivors also would die."<sup>8</sup>

The defense of the other defendants was "superior command," *i.e.*, that they acted under the compulsion of the orders of a superior.

The closing speech for the prosecution is impressive for its fairness and terseness. Referring to the maxim *nullum crimen sine lege, nulla poena sine lege*, counsel for the prosecution stated, "In my submission that is only applicable to Municipal and State Law, and could never be applicable to International Law."<sup>9</sup> The clear and impartial summation of the Judge Advocate, whose function was purely advisory, will be appreciated by those readers who may recall other occasions when certain Military Courts may not have been so fortunate in receiving enlightenment as to the applicable principles of substantive law, and the principles of the law of evidence.

All the defendants were found guilty of the crime charged. Three were sentenced to death by shooting, one to life imprisonment, and another to a term of fifteen years imprisonment.

The book contains twenty-two invaluable appendices, consisting of the Royal Warrant with the Regulations for the trial of war criminals; statements of many of the relevant cases that were referred to during the trial,

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<sup>5</sup> P. 97.

<sup>6</sup> P. 99.

<sup>7</sup> P. 15.

<sup>8</sup> P. 54.

<sup>9</sup> P. 118.

and other materials that enable the reader to appreciate the significance of the proceedings of the trial.

The foreword by the Rt. Hon. Sir David Maxwell Fyfe, and the introduction by the learned editor, give the reader an illuminating orientation into the problems of and reasons for the trial of these "minor" war criminals.

This new series of War Crimes Trials, based on the style of the "Notable British Trials" series, represents a most commendable undertaking. It is the result of a project that is a necessary public service, for a permanent record of these events, never to be forgotten, should be made available to the general public. All humanity is vitally interested in these historic events. The events themselves, accurately and impartially portrayed, should be made known not only to the lawyer, political scientist and historian, but to all members of society. This book, and the others of the series, play a definite part in this indispensable mission of public enlightenment. Only such enlightenment can forestall ill-informed criticism.

A reading of *The "Peleus" Trial* is whole-heartedly recommended. The reader will be interested from start to finish. He will feel as though he had been a spectator in The War Crimes Court in Hamburg, Germany. Moreover, he will close the book with something of the same profound emotion and intense thoughtfulness with which he would have departed from the Court-house, enlightened in the existence of certain laws transcending boundaries of states and nations, laws that protect elementary human rights, not only in time of peace, but also in time of war.

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THE SUCCESSFUL PRACTICE OF LAW. By John Evarts Tracy. New York: Prentice-Hall, Inc., 1947. Pp. ix, 466. \$5.75.

The transition from the class room to the court room or office is one of the most difficult and discouraging experiences in the career of the young lawyer. It is not surprising that many of the graduates of our law schools find themselves unable to complete this transition and, either by a gradual process or by deliberate step, embark upon a career other than that for which they spent so many years preparing. The actual translation of the formalized and somewhat static law of the class room into the dynamics of everyday practice is bound to be difficult no matter how well prepared for the practice of law the student may be.

Many young men leaving law school enter practice without an understanding of the myriad problems which practice will present or even a knowledge of their existence. The hundreds of minor details of everyday practice which

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