



German War Trials: Judgment in Case of Lieutenants Dithmar and Boldt

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has never disputed that he knew that the *Dover Castle* was a hospital ship. It is specially noteworthy that he allowed an English captain, whom he had on board his submarine as prisoner, to observe his approach to the *Dover Castle*. Although this enemy subject thus knew about the sinking of the hospital ship, the accused on going ashore gave him a certificate when he asked for one and signed it with his full name, giving his rank in the service. He would not have done this if he had considered that his orders or his execution of them were illegal.

The accused accordingly sank the *Dover Castle* in obedience to a service order of his highest superiors, an order which he considered to be binding. He cannot, therefore, be punished for his conduct.

The decision as to costs is based on §499 St. P.O.

(Signed) SCHMIDT,
SABARTH,
BACKS,
SCHULTZ,
KLEINE,
HAGEMANN,
DR. VOGT.

The accuracy of this copy is hereby certified.

(Signed)

The Clerk of the Court of the 2nd Criminal Senate
of the Imperial Court of Justice.

(Seal of the Court.)

JUDGMENT IN CASE OF LIEUTENANTS DITHMAR AND BOLDT
HOSPITAL SHIP "LLANDOVERY CASTLE"

Rendered July 16, 1921

IN THE NAME OF THE EMPIRE

In the criminal case against:

(1) Ludwig Dithmar of Cuxhaven, First Lieutenant and Adjutant of the Cuxhaven Command, at present detained during trial, born in Aix-la-Chapelle on the 13th May, 1892, and

(2) John Boldt of Altona, retired First Lieutenant, merchant, at present detained during trial, born in Dantzig on the 26th January, 1895.

The Second Criminal Senate of the Imperial Court of Justice, at its public sitting of the 16th July, 1921, at which there took part as Judges:

Dr. Schmidt, President of the Division,

Judges Dr. Sabarth, Dr. Paul, Backs, Dr. Schultz, Hagemann, Dr. Vogt,

as Officials of the Public Prosecutor's Department:

Dr. Ebermayer, the Oberreichsanwalt,

Dr. Feisenberger, State Attorney,

as Clerk of the Court:

Risch, Official,

has pronounced judgment as follows, after hearing the evidence, namely

I. Each of the accused is sentenced to four years' imprisonment for having taken part in homicide;

II. Further,

(i) The accused Dithmar is ordered to be dismissed from the service,

(ii) The accused Boldt is deprived of the right to wear officer's uniform;

III. The accused have to bear the costs of the proceedings.

The expenses, however, are to be paid by the Imperial Treasury.

By Right

REASONS FOR THE DECISION

Up to the year 1916 the steamer *Llandovery Castle*, had, according to the statements of the witnesses Chapman and Heather, been used for the transport of troops. In that year she was commissioned by the British Government to carry wounded and sick Canadian soldiers home to Canada from the European theatre of war. The vessel was suitably fitted out for the purpose and was provided with the distinguishing marks, which the Tenth Hague Convention of the 18th October, 1907 (relating to the application to naval warfare of the principles of the Geneva Convention) requires in the case of naval hospital ships. The name of the vessel was communicated to the enemy powers. From that time onwards she was exclusively employed in the transport of sick and wounded. She never again carried troops, and never had taken munitions on board. There can be no doubt about this in the light of the statements of the witness Thring, as well as of those witnesses who have been on board the steamer.

The witness Meyer, who saw the *Llandovery Castle* at the Port of Toulon, did not notice anything about her that could have led to the conclusion that she was being improperly used for war purposes. The court is convinced that the 120 men in khaki, whom the witness Crompton saw go on board the *Llandovery Castle* in Tilbury Docks at the beginning of December, 1916, belonged to the Medical Corps.

At the end of the month of June, 1918, the *Llandovery Castle* was on her way back to England from Halifax, after having carried sick and wounded there. She had on board the crew consisting of 164 men, 80 officers and men of the Canadian Medical Corps, and 14 nurses, a total of 258 persons. There were no combatants on board, and, in particular, no American air-men. The vessel had not taken on board any munitions or other war material. This has been clearly established by the statement of the second

officer, the witness Chapman. If a few witnesses draw the inference from the violence of the explosion, which they heard when the vessel went down, that not only the vessel's boilers but also munitions exploded, this is not conclusive in the light of the statement of the expert, Corvette Captain Saalwächter. From the sound it is not possible to distinguish with certainty between an explosion of a boiler and one of munitions.

In the evening of 27th June, 1918, at about 9.30 (local time) the *Llandovery Castle* was sunk in the Atlantic Ocean, about 116 miles south-west of Fastnet (Ireland), by a torpedo from the German U-boat 86. Of those on board only 24 persons were saved, 234 having been drowned. The commander of U-boat 86 was First-Lieutenant Patzig, who was subsequently promoted captain. His present whereabouts are unknown. The accused Dithmar was the first officer of the watch, and the accused Boldt the second. Patzig recognized the character of the ship, which he had been pursuing for a long time, at the latest when she exhibited at dusk the lights prescribed for hospital ships by the Tenth Hague Convention. In accordance with international law, the German U-boats were forbidden to torpedo hospital ships. According both to the German and the British Governments' interpretation of the said Hague Convention, ships, which were used for the transport of military persons wounded and fallen ill in war on land, belonged to this category. The German Naval Command had given orders that hospital ships were only to be sunk within the limits of a certain barred area. However, this area was a long way from the point we have now under consideration. Patzig knew this and was aware that by torpedoing the *Llandovery Castle* he was acting against orders. But he was of the opinion, founded on various information (including some from official sources, the accuracy of which cannot be verified, and does not require to be verified in these proceedings), that on the enemy side, hospital ships were being used for transporting troops and combatants, as well as munitions. He, therefore, presumed that, contrary to international law, a similar use was being made of the *Llandovery Castle*. In particular, he seems to have expected (what grounds he had for this has not been made clear) that she had American airmen on board. Acting on this suspicion, he decided to torpedo the ship, in spite of his having been advised not to do so by the accused Dithmar and the witness Popitz. Both were with him in the conning tower, the accused Boldt being at the depth rudder.

The torpedo struck the *Llandovery Castle* amidship on the port side and damaged the ship to such an extent that she sank in about 10 minutes. There were 19 lifeboats on board. Each could take a maximum of 52 persons. Only two of them (described as cutters) were smaller, and these could not take more than 23 persons. Some of the boats on the port side were destroyed by the explosion of the torpedo. A good number of undamaged boats were, however, successfully lowered. The favorable weather assisted life-saving operations. There was a light breeze and a slight swell.

The men who were saved from the *Llandovery Castle* do not agree as regards the number of boats which got away safely. This is sufficiently explained by the circumstances, and particularly by the state of excitement, into which the majority of them were plunged, by the torpedoing and sinking of the ship. However, from the statement of the witness Chapman, in conjunction with other evidence, it may be concluded that of the boats on the starboard side, three (marked with odd numbers) were got away undamaged with two of the boats on the port side (marked with even numbers). Chapman, who was second officer on board the *Llandovery Castle*, has impressed the court as a quiet, clear-headed and reliable witness. The evidence has also on several occasions shown that he did not lose his head while the ship was sinking, but that he coolly took all the necessary measures. Confidence can, therefore, be placed unhesitatingly in his evidence. He saw five boats lowered from the starboard side, two of which, however, capsized, so that only three got away safely. This tallies with the statement of Murphy, 1st class seaman, that he saw that Nos. 1, 3 and 5 of the starboard boats (which he had helped to lower) got clear of the ship. Other witnesses also saw starboard boats safely lowered. Heather saw Nos. 5 and 7 (No 11, according to him, capsized). Abrahams saw Nos. 7 and 1, or 3, and Lyon saw No. 3. Two boats got away from the port side. In one of them, when it left the *Llandovery Castle*, was the captain of the ship, Sylvester, who has since died; 10 other persons were also in his boat. Later it picked up 12 persons, who were swimming about in the water. In addition, as will be further explained later, one man from another life-boat was handed over by the U-boat. This boat ultimately contained 24 men, and will henceforth be referred to as the captain's boat. It was the only one whose occupants were rescued; its occupants are the only survivors of the *Llandovery Castle*. According to the statements of the witnesses Chapman, Abrahams and Murphy, it bore the number 4, whereas witness Lyon thinks it was not No. 4. In addition to the captain's boat, another got clear from the port side, and it had in it the first officer and five or six seamen. According to the evidence of the fourth officer, the witness Barton, this was the port cutter.

It is quite possible that out of these five boats which left the steamer safely, one or two may have been drawn into the vortex made by the sinking ship. But the evidence has shown that at least three of these five boats survived the sinking of the ship. The witnesses Chapman and Barton saw them rowing about at a later period, as well as the captain's boat, the port cutter and boat No. 3. The port cutter was manned by the first officer and a few seamen.

That boat No. 3 got clear away is proved by the following facts:— During the examination of the captain's boat by the U-boat which will be described later, the latter handed over to the former a man belonging to the medical staff, who was not originally in the captain's boat. According to

his statement, the boat on which he had been had also been stopped by the U-boat; he was taken off and detained in the U-boat. He gave the number of the boat in which he originally was as No. 3. This agrees with the statements made by witnesses, who say that No. 3 boat got safely clear of the ship. That the man did not come from the first officer's boat is shown by the fact that the latter, being a port-side boat, bore an even number. No medical corps men, only seamen, were seen in it.

Thus, after the sinking of the *Llandovery Castle*, there were still left three of her boats with people on board.

Some time after the torpedoing, the U-boat came to the surface and approached the lifeboats, in order to ascertain by examination whether the *Llandovery Castle* had airmen and munitions on board. The witness Popitz, who was steersman on board the U-boat, took part in the stopping of several lifeboats for that purpose. The occupants of the captain's boat gave a fuller description of this. It was called by the U-boat, while it was busy rescuing shipwrecked men, who were swimming about in the water. As it did not at once comply with the request to come alongside, a pistol shot was fired as a warning. The order was repeated and the occupants were told that, if the boat did not come alongside at once, it would be fired on with the big gun. The lifeboat then came alongside the U-boat. Capt. Sylvester had to go on board the U-boat. There he was reproached by the commander with having had eight American airmen on board. Sylvester denied this and declared that, in addition to the crew, only Canadian medical corps men were in the ship. To the question whether there was a Canadian officer in the lifeboat he answered "Yes." Then the latter, the witness Lyon, doctor and major in the medical corps, were taken on board the U-boat. On being told that he was an American airman, Lyon answered, as was true, that he was a doctor. He also answered in the negative the further question whether the *Llandovery Castle* had munitions on board. Sylvester and Lyon were then released, and the latter was told by one of the U-boat officers that it would be better for them, the occupants of the lifeboat to clear off at once. Captain Sylvester said later that he also was told the same.

The U-boat then left the captain's boat, but, after moving about for a little time, returned and again hailed it. Although its occupants pointed out that they had already been examined, the captain's boat was again obliged to come alongside the U-boat. The witnesses, Chapman and Barton, the second and fourth officers of the *Llandovery Castle*, were taken on board the U-boat and were subjected to a thorough and close examination. The special charge brought against them was that there must have been munitions on board the ship, as the explosion when the ship went down had been a particularly violent one. They disputed this and pointed out that the violent noise was caused by the explosion of the boilers. They were again released. The U-boat went away and disappeared from sight for a time.

The U-boat soon returned, and made straight for the captain's boat. Its occupants feared lest they might be run down. The U-boat, however, passed by, made a big circle and again made straight for the lifeboat, but when quite close to it, it was steered slightly sideways, so that it passed by without touching the lifeboat. The occupants of the boat nevertheless thought that the U-boat wanted to ram it and thus destroy it. There is, however, no conclusive evidence of this, although the suspicion cannot be refuted entirely. The expert, Corvette Capt. Saalwächter, maintains that the direction which the U-boat took at the last moment when approaching the second time, rather points against an intention to ram. In this connection, however, the question does not need to be settled, as the two accused cannot be made answerable, even if the commander of the U-boat had intended at the time to sink the lifeboat. The evidence has not brought out any point in support of the assumption that at that particular time the accused participated in any way in the management of the boat.

After passing by the second time, the U-boat once more went away. The lifeboat, which had hoisted a sail in the meantime, endeavored to get away. But after a brief period, the occupants of the boat noticed firing from the U-boat. The first two shells passed over the lifeboat. Then firing took place in another direction; about 12 to 14 shots fell all told. The flash at the mouth of the gun and the flash of the exploding shells were noticed almost at the same time, so that, as the expert also assumes, the firing was at a very near target. After firing had ceased, the occupants of the lifeboat saw nothing more of the U-boat.

The captain's boat cruised about for some 36 hours altogether. On the 29th June, in the morning, it was found by the English destroyer *Lysander*. The crew were taken on board and the boat left to its fate. During the 29th June, the commander of the English Fleet caused a search to be made for the other lifeboats of the *Llandovery Castle*. The English sloop *Snowdrop* and four American destroyers systematically searched the area, where the boats from the sunken ship might be drifting about. The *Snowdrop* found an undamaged boat of the *Llandovery Castle* 9 miles from the spot on which the *Lysander* had found the captain's boat. The boat was empty, but had been occupied, as was shown by the position of the sail. According to observations made while passing by, this boat bore the number 6. Otherwise the search which was continued until the evening of the 1st July, in uniformly good weather, remained fruitless. No other boat from the *Llandovery Castle* and no more survivors were found.

The firing from the U-boat was not only noticed by the occupants of the captain's boat. It was also heard by the witnesses Popitz, Knoche, Ney, Tegtmeier and Käss, who were members of the crew of the U-boat. According to their statements a portion of the crew of the U-boat were on deck during the evolutions of the U-boat, during the holding up of the lifeboat and during the interrogation of the Englishmen. Witnesses Popitz and Knoche

took part in the interrogation, and confirm that no proof was obtained of the misuse of the *Llandovery Castle*.

After the examination was completed the command "Ready for submerging" was given. Whether these actual words were used or whether the command was differently worded, such as "Below," the witnesses do not recollect. At all events, the whole of the crew went below deck, as is the case when the order to be ready for diving is given. There only remained on deck Commander Patzig, the accused, as his officers of the watch and, by special order, the first boatswain's mate, Meissner, who has since died. It is doubtful whether the latter first went below and was then called on deck again, or whether he remained on deck. At any rate, the witness Knoche, who had the same post as Meissner when the boat was under water, never saw him again in the control room of the boat. The statement of witness Ney, who is supposed to have heard from a third party on the following day that Meissner had been ordered on deck, because one of the officers had hurt his hand, is not sufficient for any definite conclusion to be drawn. Moreover, Ney knows nothing about Meissner, only having gone on deck after the firing had begun. Firing commenced some time after the crew had gone below. The witnesses heard distinctly that only the stern gun, a 8.8 c/m gun was in action. While firing, the U-boat moved about. It did not submerge even after the firing had ceased, but continued on the surface.

The prosecution assumes that the firing of the U-boat was directed against the lifeboats of the *Llandovery Castle*. The court has arrived at the same conclusion as the result of the evidence given at this time.

The suggestion that firing was directed against some enemy vessel which appeared suddenly on the surface during the night may be at once dismissed. It is true that, according to the report of the expert, Corvette Captain Saalwächter, it was advisable to have the boat ready for submersion, and accordingly to send the crew below deck, as after the torpedoing of the *Llandovery Castle*, it was necessary to reckon with enemy operations, which might have been the consequence of a wireless call from the sinking ship. He also states that it has often happened that a U-boat has fired a few shots at an enemy vessel coming in sight, so as to make it retire or at least to delay it. But what remains inexplicable is that, if there really was an enemy in the neighborhood, the U-boat was not submerged at once after firing, in order to evade the attack of such enemy in the surest way. There is absolutely no evidence that there were any special circumstances, which would render impossible or superfluous the readiest method of escape, which was submersion. As regards the firing, the fact that diving was not resorted to thus acquires a certain amount of importance, although the command "Ready for diving" is not always, or even generally, followed by submersion.

The further possibility must be considered that the commander of the U-boat may have been deceived by some object floating on the water, and that

he may have mistaken it for an enemy vessel. Such deceptions do occur at night on the open sea. However, they would but seldom occur in the case of an experienced commander, such as Patzig is reported to be. And it is hardly likely that such a mistake would have induced him to fire. It seems impossible that the conduct of Patzig was founded on such an error, if we consider the circumstances, which point to deliberate firing on the lifeboats.

In this connection we must refer to the opinion of the actual witnesses, both English and German. With the exception of a few German witnesses, who adduce nothing to the contrary, but simply abstain from expressing any opinion at all, they all, from their own impressions, describe the firing as being directed against the lifeboats. In the case of the occupants of the captain's boat, the fact must not be overlooked that the impartiality of their opinion may have been affected by their excitement as the result of the sinking of their ship, and by the mistrust, which was prevalent on both sides during the war of the enemy and his method of carrying on war. But it is all the more significant that the witness Chapman, whose clear and impartial attitude has been specially mentioned above, did not at first assume that the two shots, which went far over the captain's boat, were directed against it, but that he finally became convinced that the firing from the U-boat was intended to destroy the lifeboat, because of what he subsequently observed.

The crew of the U-boat have the same conviction. During the following days they were extremely depressed. A subsequent collision with a mine, which placed the U-boat in the greatest danger, was regarded as a punishment for the events of the 27th of June. It is certainly to be taken into consideration that experienced crews, as is well known, easily believe mere rumors; but here also we have again two witnesses, who, by virtue of their position and their personal character, must be regarded as apart from the rest of the crew, and whose opinion is therefore of special value.

The witness Popitz, though a helmsman, was acting in the U-boat as third officer of the watch. In his previous examination he gave his evidence hesitatingly, and it was only after he had been sworn that he committed himself to an unreserved statement. In this trial he has given the impression of being a quiet and cautious man. He was on deck when the lifeboat was hailed, but went below before the order to prepare to dive was given, in order to work out the position where the torpedoing had taken place. After this, he lay down in his bunk, as he was no longer on watch. From then onwards he heard the shooting. He enquired the reason from a member of the crew, and received the reply that there was nothing the matter and that the crew were to remain below. On account of this the witness did not go on deck, although that was his post in the event of a fight. Under these circumstances he took it for granted at once, as there was no question of any other enemy, that the lifeboats were being fired at.

The witness Knoche was the chief engineer of *U-86*. He also was below when the firing took place, but he also assumed that it was connected with

the lifeboats. He says that he set the idea aside, as he did not at all like it. He did not want to know what was going on on deck. Some days later he was talking to Patzig about the occurrence and told him that he could not have done "That;" Patzig answered him that he could never do it a second time. It is unthinkable that this conversation could have related only to the torpedoing of the *Llandovery Castle*, and not also to the subsequent shooting which took place, even though the witness now says that it related only to the first occurrence, namely, the sinking.

The evidence of the witnesses brings out a further damaging feature of importance, and this is the behavior of Patzig as well as of the accused. Only slight importance is to be attached to the fact that the latter, on finding that they would be called as witnesses, when proceedings were first being taken against Patzig alone, refused to give their testimony, on the ground that their utterances would lay them open to the danger of punishment according to law. But it is very much to their prejudice that, in the further proceedings, and then also in this trial, they have refused, when called upon, every explanation on essential points, on the ground that they had promised Patzig to be silent with respect to the occurrences of the 27th June, 1918. The accused, Dithmar, has only added that he disputes the fact that he did anything deserving punishment. In the course of the proceedings, he also pointed out that he never operated the after gun, which was the one in action. The accused Boldt has said a little more. He likewise repudiated any guilt, and specially denied having fired. He then went on to say that, whatever part he took in the events in question, he was always under the orders of his commander. He says that it was not known to him that these orders contained anything for which punishment would be inflicted, or that by carrying them out he rendered himself liable to punishment.

This refusal of the accused to give any adequate explanation of the matter might, perhaps, be understood, if it were only a question of a decision being given with regard to the torpedoing of the *Llandovery Castle*. But the promise of silence which, according to their joint testimony, they gave to Patzig, extended also to the subsequent events. This can only lead to the conclusion that they also have reason to fear the light of day, as events which deserve punishment did actually take place. This can only have been the firing on the lifeboats. If the firing could be explained in any other way, it cannot be imagined that the agreement of the accused to maintain silence could prevent them from denying the firing on the boats, without entering into other matters.

Similarly, the conduct of Patzig can only be explained on the supposition, that he does not regard himself as guilty only of the inexcusable torpedoing of the *Llandovery Castle*. It is clear that by every means he has endeavored to conceal this event. He made no entry of it in the vessel's log-book. He has even entered on the chart an incorrect statement of the route taken by the ship, showing a track a long way distant from the spot where the tor-

pedoing occurred, so that, in the event of the sinking of the *Llandovery Castle* becoming known, no official enquiries into the matter could connect him with it. But his precautions extended further. The promise to maintain silence, which he extracted from the accused, has already been put in its true light. If it covered no more than the quite well-known fact of the torpedoing, Patzig would certainly have found ways and means of releasing his subordinates from this promise, after proceedings had been instituted against them. But, on the contrary, he endeavored to bind to silence the remainder of the crew of the U-boat with regard to the events of the 27th June. He called them together on the following day and made a speech to them, in the course of which he requested them to say nothing about the happenings of the previous day. He laid emphasis in his speech on the fact that, for what had taken place, he would be responsible to God and to his own conscience. It is hardly necessary to draw attention to the fact that behavior of this nature on the part of a commander towards his crew is unusual and striking. Although Patzig in this speech may have made no special mention of gunfire, he certainly would have alluded to it, specially had not his request for silence covered the subsequent firing. The view of the crew that the shooting was directed entirely against the lifeboats cannot have been hidden from him. It was also entirely within his power to correct this opinion when he was speaking to them about the events of the 27th June, and to explain to them, if their opinion was wrong, the real object of the firing.

The promise which the accused Boldt exacted from the two English prisoners, who were in the U-boat (the witnesses Potts and Crosby), to the effect that they should keep silent until the end of the war with regard to their detention on board the U-boat, is not of importance. A promise of this kind must, as the naval expert points out, necessarily be given by prisoners on board a U-boat. There is, therefore, nothing remarkable about this incident.

The naval expert has also to admit that the whole episode, as set forth in the evidence, is very much to the discredit of the U-boat, and that it compels the impression that all was not as it should be. He himself admits that his own efforts to explain away the circumstances, merely as signs of negligence on the part of Patzig, are not entirely satisfactory. The only way, in which he can suggest that a conclusion of deliberate intention can be avoided, is by a refusal to recognize the force of the overwhelming evidence. The firing on the boats on a dark night—though with good visibility—may not furnish complete proof of their destruction. Perhaps, if the U-boat had approached the lifeboats and had thrown hand-grenades at them, there might have been a better chance of success. But there was always the possibility of their object being attained in the way which the officers chose to pursue. So it is not inconceivable that Patzig, in the position in which he found himself placed as the result of the torpedoing of the *Llandovery Castle*, adopted a

method whereby there was a constant risk of something miscarrying. How easy it was to fire on the boats, is shown by the threat made when the captain's boat was stopped, as has already been mentioned, to the effect that, if it did not approach it would be fired on with the big gun. The number of the boats and their position must have been quite well known to Patzig, when one takes into account for how long a time he had been cruising around. The fact that the captain's boat rowed away may easily be explained by the darkness of the night. The attempt of the U-boat did not meet with full success. The English prisoners on board the U-boat were not able to give a definite account of the events. With reference to them, the fact must not be overlooked that it was not until after the war was over that they could be in a position to state what they had seen and heard.

If finally the question is asked—what can have induced Patzig to sink the lifeboats, the answer is to be found in the previous torpedoing of the *Llandovery Castle*. Patzig wished to keep this quiet and to prevent any news of it reaching England. He may not have desired to avoid taking sole responsibility for the deed. This fits in with the descriptions given of his personality. He may have argued to himself that, if the sinking of the ship became known (the legality of which he, in view of the fruitlessness of his endeavors to prove the misuse of the ship, was not able to establish), great difficulties would be caused to the German Government in their relations with other powers. Irregular torpedoings had already brought the German Government several times into complications with other states, and there was the possibility that this fresh case might still further prejudice the international position of Germany. This might bring powers, that were still neutral, into the field against her. Patzig may have wished to prevent this, by wiping out all traces of his action. The false entries in the log-book and the chart, which have already been mentioned, were intended, having regard to his position in the service, to achieve this object. This illusion could be, however, of but short duration, if the passengers in the lifeboats, some of whom had been on board the U-boat, and who, therefore, could fully describe it, were allowed to get home. It was, therefore, necessary to get rid of them, if Patzig did not wish the sinking of the *Llandovery Castle* to be known. Herein is to be found the explanation of the unholy decision, which he came to and promptly carried out after his fruitless examination of the boats.

On these various grounds the court has decided that the lifeboats of the *Llandovery Castle* were fired on in order to sink them. This is the only conclusion possible, in view of what has been stated by the witnesses. It is only on this basis that the behavior of Patzig and of the accused men can be explained.

The court finds that it is beyond all doubt that, even though no witness had direct observation of the effect of the fire, Patzig attained his object so far as two of the boats were concerned. The universally known efficiency

of our U-boat crews renders it very improbable that the firing on the boats, which by their very proximity would form an excellent target, was without effect. This must be considered in conjunction with the special circumstances in this case. As has been shown above, three boats escaped when the ship sank. In view of the danger of being drawn into the vortex of the sinking steamer, they had rowed away, and they were then in the open sea where only the perils of the sea surrounded them. These, however, at the time were not great. The wind and sea were calm. There is, therefore, no reason why the two missing boats, as well as the captain's boat which was rescued, should not have remained seaworthy until the 29th of June, 1918, when, after the latter had been picked up, a search was made in the neighboring waters. This search was thoroughly carried out by five warships, without a trace of either of the boats being discovered. The empty boat, which was encountered by the *Snowdrop*, was evidently, having regard to the position where it was found and the description which was given of it, the abandoned boat of the captain. The discrepancy in the reports about the number of the two boats can easily be due to a mistake. In any case, the boat which was seen by the *Snowdrop*, was not the boat No. 3 which was, without any dispute, proved to have been stopped by the U-boat. If the boats had not fallen victims to the gunfire, it is certain that they must have been found by the warships engaged in searching for them. For their disappearance the U-boat must be held responsible.

For the firing on the lifeboats only those persons can be held responsible, who at the time were on the deck of the U-boat; namely Patzig, the two accused and the chief boatswain's mate Meissner. Patzig gave the decisive order, which was carried out without demur in virtue of his position as commander. It is possible that he asked the opinion of the two accused beforehand, though of this there is no evidence. As Meissner was the gunlayer and remained on deck by special orders, it may be assumed with certainty that he manned the after gun which was fired. In the opinion of the naval expert, he was able to act without assistance. According to this view, owing to the nearness of the objects under fire, there was no need for the fire to be directed by an artillery officer, such as the accused Dithmar. The only technical explanation, which both the accused have given and which fits in with the facts, is that they themselves did not fire. Under the circumstances this is quite credible. They confined themselves to making observations while the firing was going on. The naval expert also assumes that they kept a look-out. Such a look-out must have brought the lifeboats, which were being fired on, within their view. By reporting their position and the varying distances of the life-boats and such like, the accused assisted in the firing on the life-boats, and this, quite apart from the fact that their observations saved the U-boat from danger from any other quarter, and that they thereby enabled Patzig to do what he intended as regards the life-boats. The statement of the accused Boldt that "so far as he took

part in what happened, he acted in accordance with his orders" has reference to the question whether the accused took part in the firing on the life-boats. He does not appear to admit any participation. But the two accused must be held guilty for the destruction of the life-boats.

With regard to the question of the guilt of the accused, no importance is to be attached to the statements put forward by the defence, that the enemies of Germany were making improper use of hospital ships for military purposes, and that they had repeatedly fired on German lifeboats and shipwrecked people. The President of the court had refused to call the witnesses on these points named by the defence. The defence, therefore, called them direct. In accordance with the rules laid down by law (para. 244 St. P.O.) the court was obliged to grant them a hearing. What the witnesses have testified cannot, in the absence of a general and exhaustive examination of the events spoken to by them, be taken as evidence of actual facts. The defence refused a proposal for a thorough investigation of the evidence thus put forward having regard, particularly, to the opinion of the naval expert, Saalwächter, that throughout the German fleet it was a matter of general belief that improper use of hospital ships was made by the enemy. It must, therefore, be assumed for the benefit of the accused, that they also held this belief. Whether this belief was founded on fact or not, is of less importance as affecting the case before the court, than the established fact that the *Llandovery Castle* at the time was not carrying any cargo or troops prohibited under clause 10 of the Hague Convention.

The act of Patzig is homicide, according to para. 212 of the Penal Code. By sinking the life-boats he purposely killed the people who were in them. On the other hand no evidence has been brought forward to show that he carried out this killing with deliberation. Patzig, as to whose character the court has no direct means of knowledge, may very well have done the deed in a moment of excitement, which prevented him from arriving at a clear appreciation of all the circumstances, which should have been taken into consideration. The crew of a submarine, in consequence of the highly dangerous nature of their work, live in a state of constant tension. This is liable to become greater if a torpedoing takes place, particularly in the case of the commander, who is responsible for the act. Several factors were present in this case, which tended specially to deprive Patzig of the power to arrive at a calm decision. He had said that he would torpedo a hospital ship, with all its characteristic markings, in the expectation of being able to prove that it was being used for improper purposes. His hope was in vain. In spite of the most minute investigation, it was not possible for him to obtain any confirmation of his assumption. Then arose the question, how he could avert the evil consequences of his error of judgment. He had to decide quickly: he had to act quickly. Under this pressure of circumstances, he proceeded in a manner which the naval expert rightly described as imprudent. In the darkness of the night there was only

a small chance of hitting all the boats. The fact that, as explained above, this did not restrain him from the act, points to the consideration that he did not allow himself time to think the matter over, so little was the idea in his mind of the far-reaching effect of his action.

In view of this state of excitement, which under the circumstances has to be taken into account, the execution of the deed cannot definitely be called deliberate (in the sense implied in para. 211 of the Penal Code).

The firing on the boats was an offence against the law of nations. In war on land the killing of unarmed enemies is not allowed (compare the Hague regulations as to war on land, para. 23(c)), similarly in war at sea, the killing of shipwrecked people, who have taken refuge in life-boats, is forbidden. It is certainly possible to imagine exceptions to this rule, as, for example, if the inmates of the life-boats take part in the fight. But there was no such state of affairs in the present case, as Patzig and the accused persons were well aware, when they cruised around and examined the boats.

Any violation of the law of nations in warfare is, as the Senate has already pointed out, a punishable offence, so far as in general, a penalty is attached to the deed. The killing of enemies in war is in accordance with the will of the State that makes war, (whose laws as to the legality or illegality on the question of killing are decisive), only in so far as such killing is in accordance with the conditions and limitations imposed by the law of nations. The fact that his deed is a violation of international law must be well-known to the doer, apart from acts of carelessness, in which careless ignorance is a sufficient excuse. In examining the question of the existence of this knowledge, the ambiguity of many of the rules of international law, as well as the actual circumstances of the case, must be borne in mind, because in war time decisions of great importance have frequently to be made on very insufficient material. This consideration, however, cannot be applied to the case at present before the court. The rule of international law, which is here involved, is simple and is universally known. No possible doubt can exist with regard to the question of its applicability. The court must in this instance affirm Patzig's guilt of killing contrary to international law.

The two accused knowingly assisted Patzig in this killing, by the very fact of their having accorded him their support in the manner, which has already been set out. It is not proved that they were in agreement with his intentions. The decision rested with Patzig as the commander. The others who took part in this deed carried out his orders. It must be accepted that the deed was carried out on his responsibility, the accused only wishing to support him therein. A direct act of killing, following a deliberate intention to kill, is not proved against the accused. They are, therefore, only liable to punishment as accessories. (Para. 49 of the Penal Code.)

Patzig's order does not free the accused from guilt. It is true that according to para. 47 of the Military Penal Code, if the execution of an order

in the ordinary course of duty involves such a violation of the law as is punishable, the superior officer issuing such an order is alone responsible. According to No. 2, however, the subordinate obeying such an order is liable to punishment, if it was known to him that the order of the superior involved the infringement of civil or military law. This applies in the case of the accused. It is certainly to be urged in favor of the military subordinates, that they are under no obligation to question the order of their superior officer, and they can count upon its legality. But no such confidence can be held to exist, if such an order is universally known to everybody, including also the accused, to be without any doubt whatever against the law. This happens only in rare and exceptional cases. But this case was precisely one of them, for in the present instance, it was perfectly clear to the accused that killing defenceless people in the life-boats could be nothing else but a breach of the law. As naval officers by profession they were well aware, as the naval expert Saalwächter has strikingly stated, that one is not legally authorized to kill defenceless people. They well knew that this was the case here. They quickly found out the facts by questioning the occupants in the boats when these were stopped. They could only have gathered, from the order given by Patzig, that he wished to make use of his subordinates to carry out a breach of the law. They should, therefore, have refused to obey. As they did not do so, they must be punished.

The witnesses, Vice-Admiral (retired) von Trotha, and Toepffer, the President of the District Court (the latter acted during the war as an adviser to the Navy on the law relating to war), admitted frankly that in the German fleet, the impression prevailed that a naval officer, who in the course of a fight exceeded the bounds of the law, was not thereby rendered liable to punishment, although he might be answerable for his action to his superiors. The statements of these two witnesses relate, however, to the point of view, which was held by the higher command in the fleet at the time. They did not maintain that the accused shared this opinion. It appears that neither of these witnesses applied himself to the application of these ideas to the incidents now in question. These opinions are based on a misunderstanding of the law and are irrelevant here. They are of no avail for the accused, because the sinking of the life-boats was not done in the course of a fight, neither in an attack on the enemy nor in defence against him. Although a submarine, while cruising, must continually and in a special degree be ready for fighting, and is always (in the sense of para. 11 of the Military Penal Code) "before the enemy," nevertheless it can do things which are not concerned with fighting.

The defence finally points out that the accused must have considered that Patzig would have enforced his orders, weapon in hand, if they had not obeyed them. This possibility is rejected. If Patzig had been faced by refusal on the part of his subordinates, he would have been obliged to desist from his purpose, as then it would have been impossible for him to attain his object, namely, the concealment of the torpedoing of the *Llandovery*.

Castle. This was also quite well-known to the accused, who had witnessed the affair. From the point of view of necessity (para. 52 of the Penal Code), they can thus not claim to be acquitted.

In estimating the punishment, it has, in the first place, to be borne in mind that the principal guilt rests with Commander Patzig, under whose orders the accused acted. They should certainly have refused to obey the order. This would have required a specially high degree of resolution. A refusal to obey the commander on a submarine would have been something so unusual, that it is humanly possible to understand that the accused could not bring themselves to disobey. That certainly does not make them innocent, as has been stated above. They had acquired the habit of obedience to military authority and could not rid themselves of it. This justifies the recognition of mitigating circumstances. In determining the punishment under para. 213, 49, para. 2, 44 of the State Penal Code, a severe sentence must, however, be passed. The killing of defenceless shipwrecked people is an act in the highest degree contrary to ethical principles. It must also not be left out of consideration that the deed throws a dark shadow on the German fleet, and specially on the submarine weapon which did so much in the fight for the Fatherland. For this reason a sentence of four years' imprisonment on both the accused persons has been considered appropriate.

In accordance with Section 34, para. 1, No. 2, Section 40, para. 1, No. 1, and Section 36 of the Military Penal Code, the accused, Dithmar, is dismissed from the service, and the accused, Boldt, is condemned to lose the right to wear officer's uniform.

The behavior of the accused during the proceedings has not been such as to justify reducing the period of imprisonment by the comparatively short period, during which they have already been detained.

The determination of the costs is based on para. 497 of the St. P.O., in conjunction with Art. 1, para. 4, of the law of 24th March, 1920 (R.G. Bl., page 341). The last-mentioned regulation only comes into operation in regard to a prosecution demanded by the Allied Powers in virtue of the Treaty of Peace. Such an accusation is only made against Patzig, but not against the two accused men. The proceedings against them are a direct result of the accusation made against Patzig. The concessions made by a reduction in the costs under the regulations of para. 4 are applicable in the present case. It has therefore been requested that para. 4 may be applied. The expenses, which fall on the State Treasury, do not include those of the accused persons themselves and particularly not those of the evidence put forward in order to obtain their acquittal.

(Signed) SCHMIDT,
SABARTH,
BUCKS,
HAGEMANN,
DR. VOGL.

The members of the Senate, Dr. Paul and Dr. Schultz, were prevented by absence from affixing their signatures.

(Signed) SCHMIDT.

The above copy agrees with the original.

RISCH,
Official.

Clerk of the Second Criminal
Senate of the Imperial High Court.

[Seal of the Court.]