

SWCC 305.0 PRISONERS OF WAR,  
DEATH SENTENCE - MISCELLANEOUS

“**Armorclad**”

Made in U. S. A. T. M. Reg. U. S. Pat. Off.  
U. S. Patents No. 1,370,424 -- 1,511,268 -- 1,544,818  
British Patent No. 224,787

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SWCC 303.6 PRISONERS OF WAR,  
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## LIST OF PAPERS

FILE UNDER NO. SWNCC 014.53 - PRISONERS OF WAR, DEATH SENTENCE

Serial No	From	Date	To	Synopsis
1	War Department	1/29/45	Sect. of War	Memo re death sentence of 2 German prisoners of war.
2	Mr. Stimson	2/22/45	Sect. of State	Letter re death sentence of 5 German Prisoners of War for murder of fellow prisoner of war.

SECRET

EEB 22 1945

The Honorable

The Secretary of State

Dear Mr. Secretary:

Reference is made to your note (SWP) dated January 27, 1945, requesting the observations of the War Department as to the reply that should be made to a note from the Legation of Switzerland, a copy of which was inclosed, setting forth a protest of the German Government, made in a communication of January 24, 1945 from the German Legation in Bern, against the execution of death sentences pronounced by a general court-martial against five German prisoners of war, Beyer, et al., for rioting and for murder of a fellow prisoner of war, Kunze.

In the opinion of this Department the answer that should be made to the four points raised in the protest should be substantially as is indicated below.

The first point is that there is not a three months' interval from the date of furnishing for the German Government details of the circumstances of the offense to the date for execution of the sentence as is required by Article 66 of the Geneva Prisoner of War Convention. Since the German Government in its protest acknowledged that on December 30, 1944 an adequate furnishing of the details was made, and since the execution of the sentence has been postponed, as you have already been informed, from January 25 to March 31 of this year, there is no longer any possible basis for the charge that a three months' period does not intervene. In the opinion of this Department, with which it is understood your Department is in accord, the action taken on December 30 was more than sufficient to meet the requirement of Article 66.

The second point is that the United States was at fault in allowing Kunze, the deceased, to be exposed to the danger of association with "honor-loving" Nazis who considered him a "traitor". This point is considered to be without merit. It cannot be claimed that there is any obligation on the detaining Power to ascertain the political beliefs of prisoners of war in its custody or to segregate them on that basis. Furthermore, it is obvious that a conspiracy among

Information Copy for the Secretariat, SWNCC

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prisoners of war to murder one of their fellow prisoners cannot be justified on the ground that they consider him to be a "traitor". Such considerations do not, under American law, excuse an act of murder, and under Article 45 of the Geneva Prisoners of War Convention, prisoners of war are subject to the "laws, regulations and orders in force in the armies of the detaining Power".

The third point of protest is that under German law the conduct of the accused would have merited only a light punishment, whereas death sentences were imposed by the court-martial. German law is not applicable, however, to this case. The punishment which might have been imposed by a German court-martial is therefore wholly irrelevant.

The fourth and last point in the protest is, briefly, that American law has been applied with "unjustifiable severity" in order to terrorize other German prisoners of war. This allegation is wholly unfounded. The defendants in this case have received the same justice as would have been meted out to American offenders for a like crime. In the case under review, as in all court-martial cases under American law in which the death penalty is imposed, the sentence did not become final until after the entire record in the case had been carefully reviewed by the appropriate legal authorities and had been confirmed by the President. In the opinion of the War Department the facts in this case amply justify the sentence of death.

Sincerely yours,

(Sgd.) HENRY L. STIMSON

Secretary of War.

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1 APPROVAL  
2 SIGNATURE

1 CHIEF OF STAFF  
2 SECRETARY OF WAR

Lt. Col. Bernays/72234

383.6

Death Sentences of German Prisoners of War.

29 Jan 1945

SUMMARY

1. The German Prisoners of War Erich Gauss and Rudolf Straub have been convicted for murder and sentenced to death (Tab A). The question is presented whether the three months period before execution required by Article 66 of the Geneva Prisoners of War Convention (Tab B) is to be computed from 28 December 1944 or some other date.
2. In the opinion of the Personnel Division Article 66 was fully complied with on 28 December 1944, and the three months period referred to began running on that date.
3. However, if the German Government should raise a question as to the conformity of these proceedings to the requirements of the Geneva Prisoners of War Convention, the matter will have to be handled on the governmental basis through the Department of State. The Personnel Division therefore considers that the views of the Department of State should be procured. Concurrently with the action recommended below, the Personnel Division is also asking The Judge Advocate General for his opinion.
4. It is recommended that the attached letter to the Secretary of State, prepared for the signature of the Secretary of War, be signed and dispatched, and that this file be then returned to the Personnel Division for further action in the light of the Secretary of State's reply.

DPC 383 6/29 Jan 45

COORDINATION

5. None

FOR THE ASSISTANT CHIEF OF STAFF, G-1:

Incls.

- Ltr to S/S for sig. S/W, w/incl.
- Memo for G-1, 26 Jan 45, fr PRGO, w/incls. (Tab A).
- Tab B.

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MCB/jic/72234

WDGAP 383.6

The Honorable

The Secretary of State

Dear Mr. Secretary:

There is inclosed herewith a memorandum of the proceedings taken under Article 66 of the Geneva Prisoners of War Convention in the cases of German Prisoners of War Erich Gause and Rudolf Straub, with which your Department is familiar. It is the War Department's view that full compliance with the above Article was had in these cases on December 28, 1944, and that the three months period began running on that date. I should appreciate an early expression of your views in this regard.

Sincerely yours,

Secretary of War

Inc.

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Article 66.

If the death penalty is pronounced against a prisoner of war, a communication setting forth in detail the nature and circumstances of the offense shall be sent as soon as possible to the representative of the protecting Power, for transmission to the Power in whose armies the prisoner served.

The sentence shall not be executed before the expiration of a period of at least three months after this communication.

B