

THE 1942 LACONIA ORDER: THE MURDER OF SHIPWRECKED SURVIVORS AND THE ALLIED PURSUIT OF JUSTICE 1945-46

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Abstract

This article examines the post-war trials of three German naval officers in connection with the *Laconia* order of 1942. It sets their behaviour, and the order, in the context of maritime custom and the practices of the German submarine arm between 1939 and 1945. It establishes linkages between the three trials and highlights the British Admiralty's faltering pursuit of the German submarine arm over the supposed practice of murdering shipwreck survivors from Allied vessels.

Keywords: *Laconia* order, law of the sea, U-boat war, submarine warfare,

Introduction:

In 1945-46 three German Naval officers stood trial in relation to a 1942 order issued to German submariners. One of those officers had issued it, one had transmitted it and one had apparently acted upon it. Ambiguously worded, the order could be interpreted as a directive to German U-boat crews to murder the survivors of Allied vessels whose ships had been sunk in combat. In 1946 Grand Admiral Karl Doenitz, who had issued the order, denied the interpretation at the Nuremberg International Military Tribunal (IMT) and was acquitted on a related charge. Before a British military tribunal in late 1945 Korvettenkapitän Karl-Heinz Moehle, who had transmitted the order to the 5th Submarine flotilla, accepted the illegal nature of the order and his wrong doing in transmitting it. He was given a jail term of five years. The one man who had seemingly acted upon it, Submarine Kapitänleutnant Heinz Eck, admitted his role in the 1944 murder of survivors from a Greek steamer named the *Peleus*, but denied flatly that he was acting under anyone's orders other than his own. Convicted before a British military tribunal in 1945, Eck was given the death sentence along with two other members of the crew. The three trials were separate (two being held before British Military Tribunals and one before the IMT) but there was some linkage between the three. Evidence produced as a result of the trials of Eck and Moehle was significant in the prosecution case against Doenitz at Nuremberg.

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The three cases have been the subject of on-going scrutiny by legal practitioners and historians since the 1940s.² A.P.V. Rogers, for example, has analysed the operation of British Military tribunals from 1945 to 1949 under the Royal Warrant while Hilaire McCoubrey has written about the legitimacy of the defence of 'superior orders' in war crimes trials.³ This article will examine the three cases in terms of the context of the war waged by the German submarine arm from 1939 to 1945 and shared Anglo-German notions of the 'custom of the sea'. It is only when all three cases are brought together that a coherent picture emerges of the faltering determination of British prosecutors to secure Doenitz's conviction over the so-called *Laconia* order.

1 The *Laconia* Order

The *Laconia* order was issued by U-boat headquarters in Lorient in 1942 following an incident in the Atlantic.⁴ On 12 September 1942 the Royal Mail Steamer *Laconia* was sunk off the coast of West Africa by U-156 commanded by Kapitänleutnant Werner Hartenstein.⁵ The ship was carrying 1,800 Italian prisoners of war, 80 civilians and 428 British and Polish soldiers. Realising the scale of the humanitarian disaster he had initiated Hartenstein summoned other U-boats to assist in the rescue of survivors from the sunken ship. U-boat command in France directed two other U-boats and an Italian submarine to help in the rescue effort (U-506, U-507, *Comandante Cappellini*). Lifeboats were taken in tow by the U-boats, the wounded were given medical treatment and survivors allowed to congregate on the decks of the U-boats. Red Cross flags were displayed to indicate to any passing Allied aircraft that the submarines were engaged in humanitarian relief. A rendezvous was set up with Vichy French ships. Despite this, on the way to the meeting point an attack on the submarines was launched by an American B-24 bomber. There were a large number of casualties amongst the survivors and one of the U-boats was damaged.

² See for example, Willard B. Cowley, 'Trials of War Criminals (Non-Nuremberg)', (1948) 42(2) *The American Journal of International Law* 299-319.

³ A.P.V. Rogers, 'War Crimes under the Royal Warrant: British Practice 1945-1949', (1990) 39 *International and Comparative Law Quarterly* 780-800; A.P.V. Rogers, 'The Use of Military Courts to Try Suspects', (2002) 51 *International and Comparative Law Quarterly* 967-979; Hilaire McCoubrey, 'From Nuremberg to Rome: Restoring the Defence of Superior Orders', (2001) 50 *International and Comparative Law Quarterly* 386-394.

⁴ M. Maurer and L.J. Paszek, 'Origin of the *Laconia* Order', (1964) 109 *The Royal United Services Journal*, 338-344. See also Léonce Peillard, *L'affaire du Laconia, 12 Septembre 1942* (Robert Lafont, 1988); James P. Duffy *The Sinking of the Laconia and the U-boat war* (Praeger, 2009); and Donatello Bellomo, *Prigionieri dell'oceano* (Sperling & Kupfer, 2002).

⁵ Clay Blair, *Hitler and the U-boat War 1942-45* (Weidenfeld and Nicolson, 1999), pp.57-66. Richard Woodman, *The Real Cruel Sea: The Merchant Navy in the Battle of the Atlantic 1939-43* (John Murray, 2004) pp.506-510.

The head of the U-boat arm, Admiral Karl Doenitz, was furious that his submariners should have been endangered while engaged on a rescue mission. This resulted in him issuing instructions which immediately became part of the standing orders governing the operation of German submarines at sea. The so called '*Laconia* order' was composed of four parts:-

- 1 Efforts to save survivors of sunken ships, such as the fishing swimming men out of the water and putting them on board lifeboats, the righting of overturned lifeboats, or the handing over of food and water, must stop. Rescue contradicts the most basic demands of the war: the destruction of hostile ships and their crews
- 2 The orders concerning the bringing-in of skippers and chief engineers stay in effect.
- 3 Survivors are to be saved only if their statements are important for the boat.
- 4 Stay firm. Remember that the enemy has no regard for women and children when bombing German cities!

The order has to be understood in terms of the context of the *Laconia* sinking, but also the wider culture and practice prevailing in the German submarine arm. Contrary to wartime British propaganda, German submariners did not routinely machine gun shipwrecked crews whose vessels had been destroyed. Indeed, the reality was quite the opposite. At the start of the war the German submarine arm had tried to abide by the spirit if not the letter of the 1936 London Submarine Protocol governing their operation in time of war. Under the protocol merchant ships were not to be sunk without warning and adequate provision made for their crews. Allowing crews to take to lifeboats and rafts was not considered adequate provision. In effect, observance of the London protocol took away the advantages of the submarine as a weapon of war. Despite this, in the early stages of the war German submariners did try to work within the spirit of the protocol.



Image: Doenitz's forward headquarters at Kerneval near the Lorient submarine pens

German submarine commanders were willing to go to considerable lengths to protect the lives of shipwrecked mariners. When U-47 attacked the *Bosnia* on 5 September one of the ship's boats overturned. One survivor later recalled his horror as he was picked out of the water only to see a fellow crew man lying on the deck of the submarine apparently being beaten by one of the German submariners. He was surprised when he realised that the submariner was actually trying to save the life of the man who had drowned by giving him artificial respiration. The survivor later commented during his debriefing: 'The German Captain was a smashing feller'.⁶ A few days later on 11 September Herbert Schultz commanding U-48, attacked the *Firby*. Giving bandages and bread to a group of survivors in a lifeboat Schultz promised that he would send a message to Churchill to rescue them.⁷ Churchill later confirmed in the House of Commons that he had received the message.⁸ Such was the extent of the assistance given to shipwreck crews by German submariners that Admiral Doenitz, commanding the U-boat force, drafted order No.154 in late November/early December 1939. The order called on U-boat crews to be harsh and not to attempt the rescue of shipwreck survivors. By the late summer of 1940 Germany had effectively renounced the London submarine protocol and Doenitz's U-boats were operating without official restriction against British shipping.

In practice, however, German submarine crews continued to abide by the 'custom of the sea' and to help shipwrecked fellow mariners where and when the occasion arose. With many submarine commanders and men drawn to service from North German backgrounds, spending key parts of their training and early career in sail training and surface ships, the German submarine service was thoroughly grounded in German maritime culture. As members of the *Kriegsmarine* they had a duty to perform to the German State and its navy – as seamen they had another set of duties to perform. The two could be reconciled at the point where an enemy vessel was sunk and its crew's status shifted from 'enemy' to 'fellow seamen in distress'. Individual commanders were obliged to negotiate the fine line between between 'enemy' and 'fellow seamen in distress', and the line between doing the bidding of the Nazi state in the midst of total war and upholding the standards of behaviour of the German navy.

Even in 1942, as the war had grown massively in extent and ferocity, U-boat crews continued to give assistance to the survivors of the vessels that they had sunk. If the occasion presented

⁶ Paddy Bryan Interview (*Bosnia*), Imperial War Museum IWM11393/4.

⁷ Report by Captain Prince (*Firby*), TNA ADM199/2130.

⁸ *House of Commons Debates*, (26 September 1939), vol.351, cols.1243-44.

itself, and a surfaced U-boat encountered survivors, they would routinely be asked to identify their ship, voyage details and perhaps cargo. Following that German crews often gave assistance to men facing a struggle to survive. This might involve helping them to right lifeboats, helping transfer men from the water to rafts, giving provisions and medical supplies etc.. In some cases the U-boat crew indicated a course to steer towards safety, or indeed used their wireless to transmit a distress call. The custom of the sea took precedence over the demands of war. In effect in September 1942, Hartenstein, in initiating the *Laconia* rescue, was acting from the same impulses which governed the behaviour of U-boat crews from 1939-1942. The *Laconia* incident dramatically underlined the dangers such humanitarian impulses could constitute. With Allied air power becoming an ever greater danger to submarines Admiral Doenitz undoubtedly felt the need to prevent U-boat men engaging in actions which could endanger their vessels.

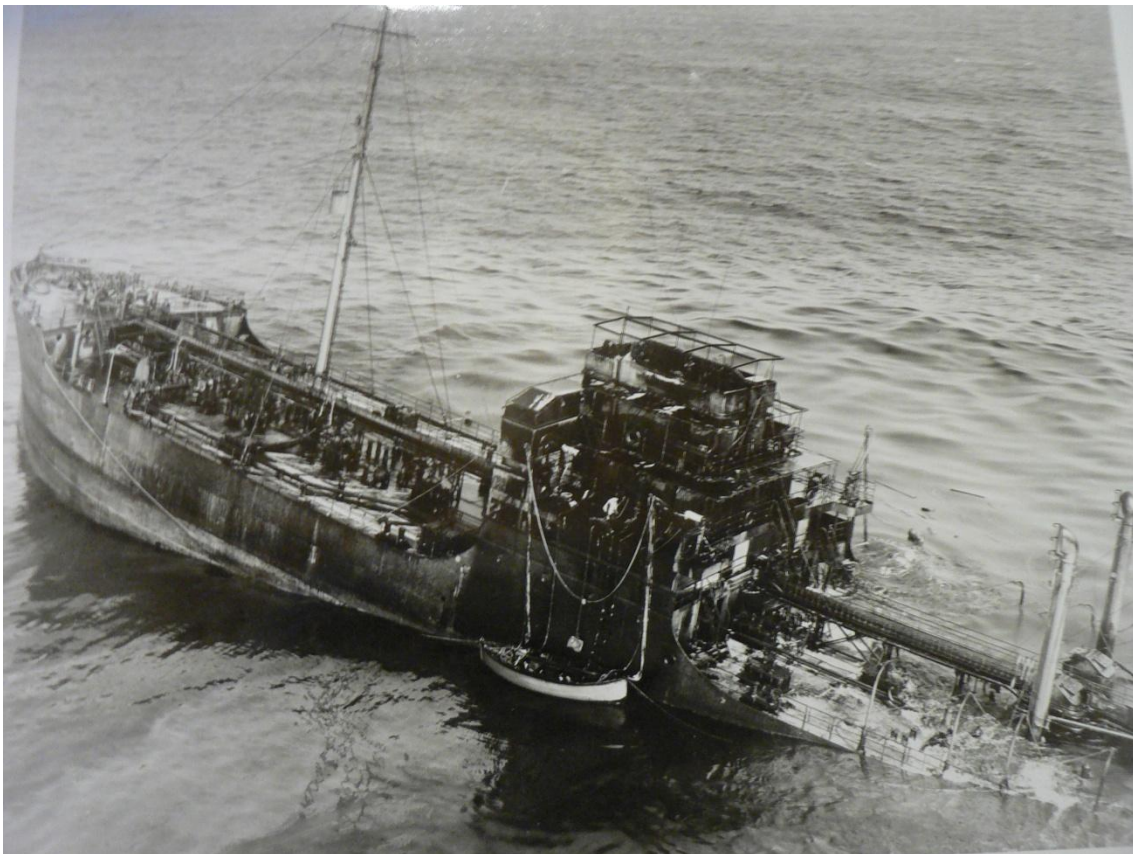


Image: An American tanker falls victim to the U-boats

But there was perhaps a further set of concerns in the mind of Doenitz in September 1942. While his submarines were taking a heavy toll on Allied shipping the entry into the war of the United States threatened to tip the balance, sooner or later, against the German war effort. In particular, while the U-boats were sinking hundreds of thousands of tons of Allied merchant tonnage the ability of American shipyards to replace it was growing still more rapidly. A shipwrecked crew could swiftly find itself back on convoy duty with one of the hundreds of liberty ships being turned out by the American shipyards at an ever increasing rate. One response to this, in force at the time of the *Laconia* incident, was an order requiring submarine crews on encountering shipwreck crews to attempt to locate the Master and Chief Engineer of the sunken vessel. They would then be taken on-board and returned to Germany as prisoners of war. The removal of the two most skilled personnel in a ship's crew was intended to prevent the speedy turn-around of crews into new ships. In practice, however, U-boat crews found that on enquiring from survivors about the whereabouts of the Master and the Chief Engineer they would usually be informed that they had 'gone down with the ship'. The result was that the 'prisoner' policy was of only a limited success. It was evident that Germany needed something to redress the balance and allow the U-boat arm to wage more effectively its war on Allied commerce.

It was then, within the circumstances of the practice of German submariners, the peculiarities of the *Laconia* affair, and a tide of war turning firmly against Germany, that the *Laconia* order was issued by U-boat command. Its ambiguities inviting two clear readings: an instruction not to endanger submarines by engaging in humanitarian relief of shipwrecked crews; or an invitation to follow the logic of total war and to murder survivors in the water and on lifeboats.

Despite the ambiguous nature of the *Laconia* order, in practice German submariners after September 1942 continued to show a remarkable level of concern for the welfare of the crews whose vessels they had just sunk. For example, on 8 October 1942 the crew of U-125 gave eight gallons of water to a lifeboat from the *Glendene*.⁹ Later that same month men from U-159 provided cigarettes to a group of survivors.¹⁰ In November 1942 the crew of U-172 gave assistance to 19 survivors, taking them on board while their lifeboat was checked over and bailed out.¹¹ The report by the US Coastguard on the post-sinking encounter between the crew of the *East Indian* and U-181 which sank her on 3 November 1942, revealed that even though

⁹ Report by Chief Officer Lee (*Glendene*), TNA: ADM199/2142

¹⁰ Report by Captain Dodds (*Ross*), TNA: ADM199/2142

¹¹ Report by Apprentice Whitty (*Llandilo*) TNA: ADM199/2143

the *Laconia* order was in effect German submariners continued to be courteous and kind to their unfortunate victims: 'The sub-commander [Wolfgang Lüth] told me the position and the course back to Cape Town (which was about 370 miles) and offered us water if we wanted it.'¹²

As Wolfgang Lüth's behaviour exemplifies, Royal Navy and US Coastguard records for late 1942 suggest that the practical result of the *Laconia* order was simply nil. In their encounters with survivors submarine commanders carried on much as they had done before September 1942. The pattern continued into 1943, despite Allied propaganda to the contrary, even as the tide of war turned decisively against the U-boats. On 24 July 1943 survivors from the *Fort Chilcotin* were alarmed when U-172 surfaced and began firing machine guns. This was communicated by the *Fort Chilcotin's* bosun who was taken on board the submarine for questioning. Carl Emmerman, commanding U-172 responded in rather hurt tones that he did not do 'that sort of thing' at the suggestion that he might be about to machine gun survivors.¹³ Emmerman explained that his crew had merely been clearing their guns to ensure their readiness in case U-172 was attacked by Allied aircraft.

Despite the overall pattern of U-boat crews continuing to look benevolently on shipwrecked survivors, in 1943 there were some signs that attitudes among German submariners might be changing. The opportunities for contact between submariners and survivors decreased as the Allied anti-submarine effort, especially from the air, became ever more deadly. This had the effect of emphasising a small number of incidents where submarine crews appeared less sympathetic towards shipwreck crews. For example, on 29 May 1943 the *Hopetarn* was sunk by U-198. Captain Wilson of the *Hopetarn* was repeatedly punched by one of the submarine's crew. The U-boat eventually moved away at speed endangering a lifeboat in the process.¹⁴ Early in the following year would come dramatic evidence that the principle of total war was being extended to the war at sea, and that the apparent logic of the *Laconia* order was being embraced by the commanding officers of some U-boat commanders.

¹² Report by 3rd Mate (Esso Houston), Coastguard Collated Action of Enemy Reports, US National Archives, NARA 1, Record Group 26, Entry 189, Box 6. Lüth was the second most successful U-boat commander of the second world war sinking a total of 230,781 gross registered tons of shipping.

¹³ Report by Captain Kerr (*Fort Chilcotin*), TNA: ADM199/2145

¹⁴ Report by Captain Wilson (*Hopetarn*), TNA: ADM199/2145

2 The Peleus Killings and the Trial of Heinz Eck¹⁵

In March 1944 the Greek vessel *Peleus* was in the South Atlantic en-route from Freetown to Buenos Aires. Her crew was mostly Greek, but it included eight British nationals. On the night of 13 March she was sunk by two torpedoes fired by U-852 under the command of Heinz-Wilhelm Eck. Eck's orders were to proceed on war patrol to the Indian Ocean. However, the Greek vessel represented too tempting a target for him to pass. Possibly 15 of the 35 man crew of the *Peleus* survived the sinking.¹⁶ They were left clinging to liferafts and wreckage. The submarine surfaced and two men were taken aboard for interrogation. They were returned to a raft following brief questioning about the name of the ship and details of her voyage. Remarkably, and uniquely in terms of the German submarine service in the Second World War, for the next five hours (until approximately 1am on the following morning) the submarine cruised through the debris field on the surface of the ocean. Machine gun fire and grenades were directed at liferafts and larger pieces of floating wreckage. In the process survivors were killed. Whether they, or the liferafts, were the primary target of the gunfire and grenades was uncertain. To practical effect they were one and the same. Four men survived the attack, although one was to die later as a result of his wounds. The men were picked up on 20 April. Less than two weeks later, on 2 May U-852 was sunk in the Indian Ocean and her crew made prisoner. Eck was amongst the survivors. With his British captors aware of the *Peleus* killings and also the existence of the *Laconia* order a case was assembled against Eck, and some of his subordinates who had taken part in the atrocity. The groundwork was also prepared against Doenitz whose *Laconia* order had seemingly inspired the murders.

Brought to answer charges before a military tribunal in Hamburg in October 1945, Eck's defence rested on two points: that he was trying to destroy the visual evidence of a sinking (rather than survivors) and that it was justified in doing so by the extreme danger to his vessel posed by Allied aerial patrols which had accounted for several U-boats in the South Atlantic. In his testimony before the tribunal Eck was remarkably unforthcoming in his answers. Repeatedly the Judge Advocate had to caution Dr Todsén, counsel for the defence, from asking leading questions of the witness who otherwise did not seek to explain or justify his actions. Eck could not provide satisfactory answers for his course of conduct, or why he had not taken alternative decisions. To spend five hours trying to destroy rafts, which refused to sink because of the

¹⁵ See chapter on the Heinz Eck in Theodore Savas, *Lautlose Jäger: Deutsche U-Boot-Kommandanten im Zweiten Weltkrieg*, (Ullstein Verlag, 2001). For an older interpretation see John Cameron (ed.) *The Peleus Trial* (W. Hodge, 1948).

¹⁶ *The Sydney Morning Herald*, 19 October 1945, p.3.

buoyant filling they contained, rather than using the hours of darkness to distance his vessel from the site of the sinking, seemed illogical in the extreme. Eck provided no insight into his thoughts at the time:

Q. What speed could this submarine do on the surface?

A. About 5 knots

Q. You remained on the spot where the *Peleus* was sunk for five hours, did you not?

A. Yes

Q. Those five hours were hours of darkness, were they not?

A. No, the moon came up.

Q. Why did you not take advantage of the opportunity you had to get away as quickly as possible?

A. I did not see any immediate danger on this night.

Q. Why did you not get away?

A. Because I wanted to destroy the rafts.

Q. Would it not have been much safer for you and your boat to clear out as soon as possible?

A. No.¹⁷

Eck's testimony before the tribunal bears the marks of a man being deliberately unforthcoming in his own defence. Eck was also prepared to lay little false trails for the prosecutor, such as asserting that the moon rising, in an age of radar, made a significant difference to the fact that U-852 had an excellent opportunity to make use of the night time hours in order to slip away. He was also prepared to lie to the court. A type IXD submarine like U-852 had a maximum surface speed of 19.2 knots – not the 5 knots that Eck asserted. Even at a safe and economical surface cruising speed Eck had the opportunity on the night of 13-14 March 1944 to place a considerable distance between him and the surface wreckage of the *Peleus*.

Four other men, members of Eck's crew who had carried out the shooting (Leutnant Hoffman, Naval Doctor Pfenning, Leutnant Lenz, and Leading Seaman Schwender), stood trial with Eck. Their defence rested on the fact that they were carrying out the orders of their superior officer, but Eck singularly failed to offer even the slightest reference to the *Laconia* order. Indeed, while confirming that the *Laconia* order was on-board ship as part of standing orders, he specifically went out of his way to state repeatedly before and at his trial that he was acting solely on his own authority. Eck's un-illuminating testimony reads very much like that of a man who realises the potential for his words to incriminate others. There is no doubt that in the run up to the trial Eck had been heavily pressured to plead that he was under the 'superior orders' constituted by

¹⁷ Eck testimony, 18 October 1945, TNA: WO235/5.

the *Laconia* order.¹⁸ He no doubt suspected that given the slightest opportunity Allied prosecutors would use the *Peleus* case against Grand Admiral Doenitz in the forthcoming Nuremberg trials.

A memorandum emanating from the British Admiralty in November 1945 gives some insight into the pressure that Eck had been placed under:

You will no doubt be aware that the Admiralty have spent a good deal of time and thought on trying to persuade Eck to incriminate Doenitz and, although he had the strongest inducement to plead "superior orders" [*Laconia*] for the *Peleus* incident, he has always refused to do so and, indeed, made an affidavit to the contrary effect at his first interrogation in June 1944. When shown the orders of September 1942, he admitted that he had it on-board, but he continued to deny that it had any connection with his attempt to murder all the survivors from the *Peleus*.¹⁹

Eck was undoubtedly a murderer but he was not about to break the honour code of the German Navy by helping to indict his former commanding officer. Eck's un-illuminating and damaging testimony before the court seems to have been intended to provide the Allied prosecutors with no material with which to pursue Doenitz. Eck and his four crew men were found guilty of war crimes by the Military Court. Eck, Hoffman and Pfennig were sentenced to death on 20 October 1945, with the two other crewmen being sentenced to terms of imprisonment. Sentence was confirmed by the convener of the court, Field Marshal Sir Bernard Law Montgomery, and duly carried out by firing squad on 30 November 1945.²⁰

3 The Moehle Affair

With the facts of the *Peleus* affair documented, British war crimes investigators were determined to examine the possibility that Eck's crimes were not an aberration and that the *Laconia* order of 1942 had constituted an invitation to murder. The suspicion on the part of war crimes investigators was perhaps not surprising when Allied propaganda from 1940 onwards had been ready to portray German submariners as bloodthirsty killers of the sea, and Japanese submariners had routinely carried out atrocities in the Pacific and Indian Oceans. For example, in January 1943 the International Transport Federation had passed a resolution 'condemning the criminal methods of the seamen of Axis countries ... in torpedoing merchant ships without

¹⁸ Eck's refusal to plead superior orders has attracted the attention of many of those people who have reviewed the case. See, for example, L.C. Green's review of J.Cameron, *The Peleus Trial* in (1950) 13(1) *The Modern Law Review* 129-131.

¹⁹ Military Branch (Admiralty) to Colonel Haldane (Headquarters, British Army of the Rhine), November 1945 [precise date illegible], TNA: WO309/365.

²⁰ See *The Sydney Morning Herald*, 22 October 1945, p.1.

warning ... and with shelling and machine-gunning lifeboats'.²¹ The idea of survivors being machine-gunned in the water by German submariners was powerful and emotive even though the Admiralty held a considerable weight of testimony from survivors that the instincts of U-boat men were contrary to the propaganda image.

Thus as the end of the war approached Admiralty investigators carefully went back through the files of the Casualty section looking for incidents of U-boat crews firing on survivors.²² After the German surrender, releases of men held in German prisoner of war camps sometimes satisfactorily resolved the circumstances surrounding the loss of vessels from which there had previously been no known survivor.²³ The release of men from Japanese prisoner of war camps helped the American authorities resolve a number of cases of ships disappearing without trace.²⁴ In some cases American survivors emerged from captivity to explain how their ships had been attacked by German submarines or surface ships en-route to Japan. In addition, newly captured U-boat war diaries were scrutinised and former submarine commanders were interrogated about their conduct of the war at sea. Some of those interrogations pointed to a German naval officer named Karl Heinz Moehle who had stressed the significance of the *Laconia* order to submarine commanders in the 5th U-boat flotilla. He had given 'verbal orders to the CO's that when Allied ships were sunk there were to be no survivors'.²⁵ Moehle had joined the Reichsmarine in 1930 and by the outbreak of war in 1939 had been awarded command of his own submarine.²⁶ By 1941 he had sunk 22 ships totaling 95,416 tons and was highly regarded by his senior officers. He had therefore been given command of the 5th Submarine Flotilla at Kiel, and in March 1943 had been promoted to the rank of Korvettenkapitan. With Kiel, and the relatively safe waters of the Baltic, the principal training ground for new submarine crews Moehle's superiors clearly hoped in making the appointment that he would be able to foster the appropriate spirit amongst successive generations of U-boat crews. Moehle spoke to each submarine commanding officer as they prepared to deploy from the Baltic to the

²¹ *The Seaman*, February/March 1943, p.217.

²² See list of vessels whose sinking was subject to further inquiry in TNA: ADM5549.

²³ For example, the circumstances surrounding the loss of the Shaw Savill liner *Ceramic* on 6 December 1942 were relayed to the Admiralty in 1945 by Sapper Eric Munday of the Royal Engineers. Picked up and made prisoner of war by a U-boat in the midst of a gale which accounted for other survivors, he was the sole survivor out of the 378 persons on-board after *Ceramic* was torpedoed in the Atlantic.

²⁴ See J. Bunker, *Heroes in Dungarees: The Story of the American Merchant Marine in World War II* (United States Naval Institute Press, 1995) pp.290ff.

²⁵ See for example Report on the Interrogation of some Members of the Crew of U-889, 13 May 1945, www.uboardarchive.net/U-889INT.htm accessed 1/2/2011. Report by Sapper Munday (Royal Engineers) on the sinking of the *Ceramic*, TNA: ADM199/2148.

²⁶ See Moehle biography www.uboard.net/moehle.htm accessed 2/2/2011.

operational bases in France and Norway drawing their attention to the *Laconia* order along with other 'standing orders'. Submarine commanders remembered little doubt in Moehle's mind as to what they were being encouraged to do by U-boat High Command.

With Eck refusing to incriminate Doenitz, Moehle represented another means to establish the guilt of Doenitz and the German submarine arm over the *Laconia* order. Arrested at the end of the war, Moehle 'started by being less than frank' with his interrogators'.²⁷ However, he later had a change of heart. Marked 'Top Secret', a letter from the Admiralty to War Office prosecutor Colonel Halse in November 1945 explained that Moehle had 'only confessed when he decided that the evidence against him was too strong and that he would be best advised to try to save himself by putting the blame on his superior officers'.²⁸ It is hard not to try to read between the lines of a phrase like 'best advised' and not to reach conclusions about the apparent inducement being put before Moehle. It may have been suggested to Moehle (and he may well have believed it), that pleading superior orders represented his best defence from war crimes charges. In the early part of the war superior orders had indeed been recognized in British military law as a legitimate defence from punishment for following orders. However, in April 1942 the Manual of Military Law was amended to remove the defence.²⁹ In 1945 British military law, and international law, simply did not recognise 'superior orders' as a legitimate defence in respect of 'illegal orders'. Those who sought to convince Moehle to plead superior orders were either unaware or unconcerned that the defence would not be recognized by a British military court.

In July 1945 Moehle gave a written statement to his interrogators. He fully accepted that he had passed on the *Laconia* order to submarine commanders. He further accepted that the order constituted an instruction to murder, and that this was the intention of U-boat High Command, however ambiguously the order was worded. He considered that it was 'quite impossible that an order of such importance could have been given 'without the knowledge' of the head of the submarine service, Admiral Karl Doenitz:

So far as concerns the order itself, it undoubtedly states, and in particular for those who know the manner in which Commander-in-Chief U-Boats is wont to give his orders, that the High Command regard it as desirable that not only ships but also their crews should be regarded as objects of attack, ie. that they should be destroyed; at that time German propaganda was continually stressing the shortage of crews for enemy merchant ships

²⁷ C.H. Waldick (Admiralty) to Colonel P.W. Halse (War Office), 7 November 1945, TNA: WO311/272.

²⁸ *Ibid.*

²⁹ *House of Lords Debates*, (25 April 1950), vol. 166, cols.1110-26.

and the consequent difficulties.... Had the point of view of the High Command been otherwise the order would undoubtedly have been expressed in different words. It would then only have stated that for reasons of security rescue measures were to cease and this order would have been passed as a normal secret W/T message. It was perhaps even the intention that this order could be interpreted in two ways and the reason may be that in the first place, it contravenes international laws of warfare and secondly, that it was an order which must give rise to serious conflicts of conscience in commanding officers.³⁰

In further support of his reading of the *Laconia* order, Moehle cited an incident when a submarine on patrol had encountered five allied airmen in a raft. Without space to make the men prisoners the submarine had simply left them in the raft and had carried on its patrol. Within Admiral Doenitz's staff there was criticism of the submarine commander for not destroying the raft, and that five allied airmen had been left potentially to fight another day. To his interrogators Moehle was adamant that there could be no doubt as to the intentions of Doenitz in issuing the *Laconia* order. He also ventured that in passing on the *Laconia* order to submarine commanders the reaction of 'many' was to comment "That is quite clear and unequivocal however hard it may be".³¹

Moehle was eventually tried before a British Military Court at the Curio Haus at Hamburg on 15-16 October 1945. He was charged with:

Committing a war crime in that he at Kiel, between September 1942 and May 1945, when senior officer of the 5th U-boat flotilla, in violation of the laws and usages of war, gave orders to Commanding officers of U-boats who were due to leave on war patrols, that they were to destroy ships and their crews.³²

Moehle's defence rested on 'superior orders' as a mitigating factor and he maintained the lines of argument set out in his July 1945 written statement. He was duly convicted and sentenced 15 October 1945 to 5 years imprisonment.³³ While Eck had refused to play the game of the British authorities in building a case against Doenitz over the *Laconia* order, Moehle was to find himself a key witness for the prosecution.

4 The Doenitz Trial

By late 1945 British War Crimes investigators were ready to conclude that their case against Doenitz in respect of the *Laconia* order was weak. Eck's trial and testimony had offered little

³⁰ Translation of a written statement by Korvettenkapitan Moehle, 19 July 1945, TNA: ADM116/5549.

³¹ Ibid.

³² Colonel B.C. Fletcher (Regional Government Officer, Hamburg) to M.D.C. Macaskie (Head of Legal Division, British Army of the Rhine), 30 October 1946. TNA: WO235/695.

³³ See file TNA: WO311/272 .

evidence of use against Doenitz. For whatever reason, and despite the heinous nature of his crimes, the submarine commander had doggedly refused to incriminate his former commanding officer. Moehle had been much more forthcoming, and he was ready to give evidence against Doenitz in court. However, and most importantly of all, by late 1945 the Admiralty had concluded its reviews of those cases where it was suspected that German submarines had fired on shipwreck survivors. The results were definitive: 'The Admiralty have no knowledge of any case, other than that of the *Peleus*, in which a deliberate attempt was made by a U-boat commander to kill survivors of sunken ships'. In support of this those German officers who had been questioned about the *Laconia* order after the war had

insisted that the order was intended only to prevent U-boat commanders from exposing their U-boats to attack, and that the references [in the order] to the need to destroy ships and crews, and to the bombing of German cities, were inserted to overcome the humanitarian scruples of the Commanders.

Resignedly the Admiralty commented: 'such is the evidence'.³⁴ Despite the doubts within the Admiralty with preparations for the Nuremberg trial in full swing there was seemingly no question of dropping the pursuit of Doenitz over the *Laconia* order

In May 1946 at Nuremberg Doenitz was indicted on three counts: conspiracy; crimes against peace and war crimes. On the latter count Doenitz was charged with authorizing the sinking of ships in contravention of the 1936 London Submarine Protocol, and the murder of shipwreck survivors under the *Laconia* order. Throughout Doenitz's trial both issues were hopelessly intertwined. This made the prosecution's task doubly difficult. The pious sentiments and impractical nature of the 1936 Submarine Protocol had been evident even before the outbreak of war. This was not recognized by Allied prosecutors who approached 'violations of International Law, including the laws, rules, and customs of land and naval warfare' with the belief that 'the rules of warfare are well established and generally accepted by the nations'.³⁵ This was simply not the case with the 1936 London Protocol.

In addition, breaching a treaty that was a dead letter as soon as it was signed was a small issue compared to the holocaust, the horrors of the war on the Eastern front, or with initiating a deliberate policy of murdering shipwreck survivors. Moehle, sticking closely to the lines of his July 1945 statement, and his evidence before the military court, was the star witness for the

³⁴ C.H. Waldick (Admiralty) to Colonel P.W. Halse (War Office), 7 November 1945, TNA: WO311/272.

³⁵ Robert H. Jackson (Chief of Counsel for Prosecution of Axis Criminality) to President Truman, 6 June 1945, p.15. Harry S. Truman's Private Office Files, part 3, reel 30.

prosecution. With him would be another submarine officer, Leutnant Heisig, who made an affidavit shortly before the execution of Eck and his fellow submariners seemingly in the hope of preventing their deaths. The affidavit made reference to the *Laconia* order as an explanation for the actions of the men on U-852.

Following the presentation of the case for the prosecution Doenitz's defence counsel, German Naval Lawyer Dr Kranzbuehler, carefully picked apart the evidence relating to the *Laconia* order. After an exploration of the *Laconia* incident he went straight to the heart of the matter:

FLOTTENRICHTER KRANZBUEHLER: In the opinion of the Prosecution, Admiral, you used that incident to carry out in practice an idea which you had already cherished for a long time, namely, in the future to kill the shipwrecked. Please state your view on this.

DOENITZ: Actually, I cannot say anything in the face of such an accusation. The whole question concerned rescue or nonrescue; the entire development leading up to that order speaks clearly against such an accusation. It was a fact that we rescued with devotion and were bombed while doing so; it was also a fact that the U-boat Command and I were faced with a serious decision and we acted in a humane way, which from a military point of view was wrong. I think, therefore, that no more words need be lost in rebuttal of this charge.

FLOTTENRICHTER KRANZBUEHLER: Admiral, I must put to you now the wording of that order from which the Prosecution draws its conclusions. I have read it before; in the second paragraph it says. "Rescue is contrary to the most primitive laws of warfare for the destruction of enemy ships and crews."

What does that sentence mean?

DOENITZ: That sentence is, of course, in a sense intended to be a justification. Now the Prosecution says I could quite simply have ordered that safety did not permit it, that the predominance of the enemy's air force did not permit it-and as we have seen in the case of the *Laconia*, I did order that four times. But that reasoning had been worn out. It was a much-played record, if I may use the expression, and I was now anxious to state to the commanders of the submarines a reason which would exclude all discretion and all independent decisions of the commanders. For again and again I had the experience that, for the reasons mentioned before, a clear sky was judged too favorably by the U-boats and then the submarine was lost; or that a commander, in the role of rescuer, was in time no longer master of his own decisions, as the *Laconia* case showed; therefore under no circumstances-under no circumstances whatsoever-did I want to repeat the old reason which again would give the U-boat commander the opportunity to say, "Well, at the moment there is no danger of an air attack"; that is, I did not want to give him a chance to act independently, to make his own decision, for instance, to say to himself, "Since the danger of air attack no longer permits." That is just what I did not want. I did not want an argument to arise in the mind of one of the 200 U-boat commanders. Nor did I want to say, "If somebody with great self-sacrifice rescues the enemy and in that process is killed by him, then that is a contradiction of the most elementary laws of

warfare." I could have said that too. But I did not want to put it in that way, and therefore I worded the sentence as it now stands.³⁶

Kranzbuehler also appreciated that it was necessary to discredit the evidence of Moehle and Heisig. Admiral Wagner (appearing as witness for the defence), questioned Heisig's testimony especially over the timing/intent of the affidavit and its linkage to Heinz Eck and the *Peleus* case.³⁷ Doenitz dismissed Moehle as 'the only person who had doubts about the meaning of that order', and the Admiral expressed regret that Moehle 'did not find occasion to clarify these doubts immediately, either through me, to whom everybody had access at all times, or through the numerous staff officers who... were either also partly responsible or participated in the drafting of these orders'. Doenitz suggested that the *Peleus* case had no bearing on his case since Eck had not pleaded superior orders so therefore he had 'acted on his own decision, and his aim was not to kill survivors but to remove the wreckage'.³⁸ While Doenitz did not approve of Eck's actions he went out of his way to express some understanding: 'I want to say that Kapitanleutnant Eck was faced with a very grave decision. He had to bear responsibility for his boat and his crew, and that responsibility is a serious one in time of war'. Kranzbuehler pointedly asked Doenitz whether he knew of any case, other than that of the *Peleus*, where a German U-boat had fired on survivors. Doenitz responded 'Not a single one'. Kranzbuehler further went on to reveal evidence from the summer of 1943 when Doenitz had been put under pressure by the Foreign Office to do something about the large number of survivors from sinkings (some 87% of crews). Doenitz stated that he wrote to the Foreign Office to explain that 'I had already been forced to prohibit rescue because it endangered the submarines, but that other measures were out of the question for me'.³⁹ Admirals Godt and Hessler of the naval staff were called as witnesses to support Doenitz's testimony.⁴⁰

Most tellingly of all, in dealing with the violation of the 1936 London Submarine Protocol Kranzbuehler was able to damage the prosecution's case over the *Laconia* order. Kranzbuehler produced evidence to demonstrate that the United States Navy had avoided rescuing

³⁶ Doenitz testimony, 9 May 1946, <http://avalon.law.yale.edu/imt/05-09-46.asp> accessed 19/8/2010.

³⁷ Wagner testimony, 14 May 1945, <http://avalon.law.yale.edu/imt/05-14-46.asp>, accessed 19/8/2010. See also on the issue of Heisig's testimony Telford Taylor, *The Anatomy of the Nuremberg Trials: A Personal Memoir* (Bloomsbury, 1993) pp.406-7.

³⁸ Doenitz testimony, 9 May 1946, <http://avalon.law.yale.edu/imt/05-09-46.asp> accessed 19/8/2010.

³⁹ Doenitz testimony, 9 May 1946, <http://avalon.law.yale.edu/imt/05-09-46.asp> accessed 19/8/2010.

⁴⁰ Godt and Hessler testimonies, 14 May 1945, <http://avalon.law.yale.edu/imt/05-14-46.asp#godt>, <http://avalon.law.yale.edu/imt/05-14-46.asp#hessler> accessed 19/8/2010.

shipwrecked enemy survivors and had sunk enemy merchant ships without warning.⁴¹ Telford Taylor, later commented that the evidence was devastating to the prosecution case and that if Doenitz 'deserved to hang' for the operational practices of the submariners which he commanded then so too did some admirals on the Allied side.⁴² Kranzbuehler's demolition of the charge relating to Germany's breach of the 1936 London Submarine Protocol cast a long shadow over the charge relating to the *Laconia* order. Evidence provided by Admiral Nimitz for the United States Navy demonstrated that the Submarine Protocol had been disregarded by all sides, and that not rescuing survivors (in-line with the defence's reading of the *Laconia* order) was a logical extension of operational practices on both sides. Indeed, if Kranzbuehler had dug a little deeper he would have found that, in contrast to the campaign in the Atlantic, from the outset of the Pacific war no restrictions had been placed on submarine operations.⁴³ Kranzbuehler had managed to turn the conflation of charges under a count of war crimes to the decisive advantage of his client and former commanding officer.

The Times newspaper recognized that the clash between prosecution and defence over the *Laconia* order had seen 'the keenest legal battle of the Nuremberg trials'.⁴⁴ While Doenitz would be convicted in respect of other charges the tribunal supported his contention 'that the evidence does not establish with the certainty required that Doenitz deliberately ordered the killing of shipwrecked survivors'. The tribunal did, however, censure him for issuing ambiguous orders.⁴⁵ Kranzbuehler's defence had demonstrated the realities of the war at sea, but the central flaw in the prosecution case was that as evidence of 'action on the order' it could only show 'the stupid and brutal bungling of Eck on his first combat mission'.⁴⁶ That Eck went out of his way to absolve his superior officer of any responsibility for the *Peleus* murders, despite every encouragement to do the opposite, fatally compromised the prosecution case over the *Laconia* order. Doenitz's acquittal on charges relating to the *Laconia* order raised questions about Moehle's conviction and that of the two crewmen from U-852 who had been sentenced to terms of imprisonment. With petitions for a pardon, and some internal debates the Judge Advocate General's Department of the British Army of the Rhine, Moehle was eventually released from

⁴¹ <http://avalon.law.yale.edu/imt/07-02-46.asp> accessed 19/8/2010.

⁴² Telford Taylor, *The Anatomy of the Nuremberg Trials*, p.409.

⁴³ Robert C. Tucker, *The Law of War and Neutrality at Sea* (The Law Book exchange limited, 2006), p.66.

⁴⁴ *The Times*, 15 May 1946, p.3.

⁴⁵ Judgement of the International Military Court, Nuremberg, on Karl Doenitz, <http://avalon.law.yale.edu/imt/juddoeni.asp> accessed 18/8/2010.

⁴⁶ Taylor, *The Anatomy of the Nuremberg Trials*, p.408.

prison in November 1949.⁴⁷ The following year the sentence of one of Eck's co-convicted in the *Peleus* affair would be reduced from 15 years to 10.⁴⁸ Leading Seaman Schwender was released in 1951, and his fellow crewman Hans Lenz in 1952, despite the fact that he had been sentenced to life imprisonment.⁴⁹ It would be left to the post-war generation of German historians, in writing the early history of the war at sea, to maintain the line of Doenitz and Kranzbuehler at Nuremberg: the German *Kriegsmarine* had fought a 'clean war'; Eck had acted on his own authority; and that Moehle had misinterpreted the intentions of the High Command.⁵⁰ In his memoirs published in German in 1958, Doenitz expressed his continuing outrage at the charge leveled at him in respect of the *Laconia* order blaming the prosecution 'and enemy propaganda' for a personal and national slur.⁵¹

Conclusion

At the end of the Second World War British prosecutors were convinced that the *Laconia* order was an instruction by the head of the German submarine service to the crews under his command to carry out the murder of shipwrecked survivors. In trying to establish a case against Doenitz over the *Laconia* order British prosecutors went to considerable, and ethically questionable, lengths in the handling of two defendants before British Military Tribunals. The cases against Eck and Moehle were overshadowed by the looming trial of their commanding officer. In the absence of hard evidence, indeed even circumstantial evidence, that the *Peleus* affair was part of a wider pattern of atrocity and murder, the prosecution case against Doenitz was flimsy in the extreme. This meant that it was even more important to secure the co-operation of Eck and Moehle. Eck simply refused to take the deal that was seemingly put in front of him: potentially escape the death sentence in exchange for incriminating Doenitz. With the one man actually guilty of ordering the murder of a shipwrecked crew intent on absolving Doenitz of all blame for the *Peleus* murders, and without evidence to suggest that other incidents of murder had taken place, the prosecution could not demonstrate its interpretation of the meaning of the *Laconia* order to the satisfaction of the International Military Tribunal.

⁴⁷ See for example, Colonel B.C. Fletcher (Regional Government Officer, Hamburg) to M.D.C. Macaskie (Head of Legal Division, British Army of the Rhine), 30 October 1946. WO235/695. Petition for Pardon, 26 March 1947, WO235/209. Brigadier Russell of Liverpool (Deputy Judge Advocate General, British Army of the Rhine) to Acting Military Governor and Commander-in-Chief, British Army of the Rhine, 31 May 1949. TNA: WO235/209.

⁴⁸ *House of Lords Debates*, 5 April 1950, vol.166, col.904 written answers.

⁴⁹ See *The Times*, 24 December 1951, p.4 and 30 August 1952, p.3.

⁵⁰ See for example C.D. Bekker, *Swastika at Sea: The Struggle and Destruction of the German Navy 1939-1945* (William Kimber, 1953) pp. 26-34 and Jochen Brennecke, *Der Fall Laconia* (Koehler Verlag, 1959).

⁵¹ Admiral Doenitz, *Ten Years and Twenty Days* (Weidenfeld and Nicolson, 1959) p.264.

Whatever Doenitz's intentions with the *Laconia* order, a final possibility presents itself: the German submarine arm may not have been the only audience for its ambiguous meanings. On at least one occasion Hitler raised the possibility of ordering the murder of shipwrecked crews. In conversation with Baron Oshima, the Japanese ambassador in Berlin, on 3 January 1942 Hitler raised the idea that he would have to order U-boats to surface and fire on survivors.⁵² On 6 September 1942 at dinner Hitler again expressed frustration that U-boat crews routinely assisted survivors following a sinking. He suggested that the Allies would have to be dealt with on the basis of an eye for an eye and a tooth for a tooth' including the deliberate targeting of survivors in lifeboats and on rafts'.⁵³ In response to the menacing noises being made by Hitler about the possible changes to the operational orders and practices of the U-boat arm, Doenitz seems to have tried to pre-empt the Fuehrer. In May he reported to Hitler that the development of more effective torpedoes would inevitably kill more seamen whose ships were hit.⁵⁴ The following month he instituted the policy of taking prisoner Masters and Chief Engineers. Twelve days after issuing the *Laconia* order Doenitz reported the matter to Hitler in a meeting in the Reich Chancellery in Berlin. Hitler clearly approved of the order commenting: 'It is very much to our disadvantage if a large percentage of the crews of sunken ships is able to go to sea again in new ships'.⁵⁵ Strong circumstantial evidence suggests that the *Laconia* order was Doenitz's means of avoiding a possible Fuehrer order to murder survivors? With Hitler's practice of giving verbal orders, Doenitz found himself under pressure to do something about the large numbers of Allied seamen surviving the sinking of their vessels? Instead of an invitation to murder, the *Laconia* order just might have been Doenitz's attempt to satisfy a political master while allowing the German submarine arm to wage a war according to the custom of the sea and to standards acceptable to the Kriegsmarine.

⁵² See G.H. and R. Bennett, *Survivors: British Merchant Seamen in the Second World War* (Continuum, 2007) p.118.

⁵³ H.R. Trevor-Roper (ed.), *Hitler's Table Talk* (Weidenfeld, 1953) pp.696-97.

⁵⁴ *Fuehrer Conferences on Naval Affairs, 1939-1945* (Greenhill, 1990) p.283.

⁵⁵ *Ibid*, p.294.