

**REPORTS OF INTERNATIONAL
ARBITRAL AWARDS**

**RECUEIL DES SENTENCES
ARBITRALES**

Robert Davie Trudgett (United States) v. Germany

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of any amount. If the *Avon* was sunk by a German submarine or by other act of war, the claimants were not entitled to receive the \$102,500 which they have received from marine insurers but were entitled to the full payment of \$150,000 from the war-risk insurers. While the Umpire's conclusion has been reached independently of these transactions, still the insurance settlements made, as well as those which have not been made, are significant as in some measure reflecting the conclusions of the interested parties in weighing the probabilities of the cause of the loss of the *Avon* in the absence of positive evidence of such cause.

The record indicates that all available evidence tending however remotely to establish the loss of the *Avon* through an act of war has been diligently assembled and presented by able counsel. Weighing the evidence as a whole the Umpire finds that the claimants have failed to discharge the burden resting upon them to prove that the *Avon* was lost through an act of war.

Wherefore the Commission decrees that under the Treaty of Berlin of August 25, 1921, and in accordance with its terms the Government of Germany is not obligated to pay to the Government of the United States any amount on behalf of Waterman A. Taft and others, claimants herein.

Done at Washington August 31, 1926.

Edwin B. PARKER
Umpire.

ROBERT DAVIE TRUDGETT
(UNITED STATES) *v.* GERMANY

(*August 31, 1926, pp. 818-822; Certificate of Disagreement by the National Commissioners, May 14, 1926, pp. 806-818.*)

DAMAGES: PERSONAL INJURIES, PERSONAL PROPERTY TAKEN AND NOT RETURNED, LOST EARNINGS. — WAR: TREATMENT OF PRISONERS OF WAR, RESPONSIBILITY UNDER GENERAL INTERNATIONAL LAW, TREATY OF BERLIN, MEANING OF "CRUELTY, VIOLENCE, MALTREATMENT". Claim for personal injuries (temporarily impaired health through confinement) suffered by American captain of captured and sunk vessel from June 16, 1917, when taken aboard German auxiliary cruiser, until February 25, 1918, when landed at Kiel, Germany, and for loss of personal property. *Held* that Commission not concerned with legality or illegality under general international law of claimant's capture, confinement and detention: Germany liable under Treaty of Berlin, claimant's seizure and imprisonment being acts of "violence" (Part VIII, Section I, Annex I, para. 2, Treaty of Versailles, carried into Treaty of Berlin). *Held* also that Germany not liable for loss of claimant's earnings. Damages allowed for personal injuries, personal property.

Certificate of Disagreement by the National Commissioners

The American Commissioner and the German Commissioner have been unable to agree as to the liability of Germany in the claim of Robert Davie Trudgett, Docket No. 4890, for damages on account of his treatment by German authorities while held as a prisoner, and also as to the value of personal property taken from him during his imprisonment, their respective Opinions being as follows:

OPINION OF MR. ANDERSON, THE AMERICAN COMMISSIONER

This is a claim on behalf of Robert Davie Trudgett for damages on account of his treatment by the German authorities while held as a prisoner, and for the value of personal property taken from him during his imprisonment, and also for loss of salary which he was prevented from earning during the time of his captivity.

As to the portion of the claim which comprises the loss of prospective earnings, the National Commissioners both agree that under the decisions hitherto rendered by this Commission Germany is not obligated under the Treaty of Berlin to make compensation for that portion of the claim.

The facts upon which the claim arises are briefly as follows:

The claimant, an American citizen, was on the 24th day of May, 1917, the master of the schooner *Winslow*, a vessel of American registry. On the day mentioned the *Winslow* sailed from Sydney, Australia, bound for Apia, Samoa, with a cargo consisting of 250 tons of coal, 1500 firebricks, and 100 cases of gasoline.

On June 16, 1917, when the schooner *Winslow* was about 10 miles off the coast of Raoul Island, Kermadec Group, in the Pacific Ocean, in latitude about 29 degrees south and longitude about 179 degrees west, she was captured by the German armed raider *Wolf*. The claimant and the crew of the *Winslow* were thereupon transferred to the *Wolf*, and the *Winslow* was taken to Raoul Island, where she was destroyed after the cargo was taken off.

The *Wolf* was a war vessel of about 5,000 tons displacement, with a crew of about 350 men.

The claimant and the cook of the *Winslow*, who was a Japanese subject, were treated as prisoners of war, and the claimant was placed in hold No. 4 between-decks with other prisoners of war already on the *Wolf*. The rest of the crew of the *Winslow*, who were all Scandinavians and of neutral nationality, were placed with other neutral prisoners in a special part of the deck with the crew of the *Wolf*.

No. 3 hold of the *Wolf* was at that time filled with mines and thereafter the *Wolf* proceeded to lay mines in Cook Strait, Bass Strait, and off Singapore. The place where the claimant was confined on the *Wolf* was very crowded and badly ventilated and whenever any other vessel was sighted the hatches were battened down, thus practically shutting off all ventilation.

During the latter part of August, 1917, the *Wolf* anchored in a harbor in the Dutch East Indies, within the territorial waters of the Kingdom of Netherlands, and remained there for a period of three weeks for the purpose of cleaning her bottom and stripping a captured British steamer, the *Matanuga*. During all the time that the *Wolf* was in said neutral territorial limits the claimant was kept under guard below decks except for a little while during the middle of the day.

Later the *Wolf* proceeded to the Arctic Ocean and during the months of December, 1917, and January, 1918, was off Iceland and Greenland. During all of this cruise the claimant was confined in the same quarters and permitted on deck only at intervals.

From the time of the capture of the *Winslow* in June, 1917, for a period of about eight months the claimant was given very little, if any, fresh food and was kept in a half-starved condition on account of the scarcity and poor quality of the food furnished. During this period there were approximately 400 captives on the *Wolf* in addition to its crew of 350 men, and by reason of the poor food furnished to the prisoners and the manner in which they were confined, scurvy broke out among them.

The *Wolf* entered German waters on the 17th of February, 1918, and remained there for the period of a week before any fresh food was given to the claimant. At the end of that week the claimant was taken ashore and sent to the German military camp at Karlsruhe, and later to the military camp at Heidelberg, and on May 1, 1918, to the military camp at Villingen, and on November 1, 1918, to Switzerland, and then was placed in the quarantine camp at Alleroy where he remained until December 14, 1918, when he proceeded to Brest, France, and from there was transported back to the United States.

The facts above stated are found in the sworn statements submitted by the claimant and they are not challenged or contradicted in any important particular by the evidence submitted by the German Agent. It is true that in the report submitted under date of July 14, 1924, by Captain Nerger, who was in command of the *Wolf* during this period, it is stated that the *Wolf's* "stern middle decks were high, roomy and well ventilated", but he also says that "When during the last part of the voyage the prisoners (earlier than our own crew although the latter had been at sea from three to twelve months longer than the different groups of prisoners) were beginning to suffer from scurvy, I withdrew the small residue of fresh food still on board the H. M. S. *Wolf* entirely from our own crew and had it reserved for those prisoners who were ill or in danger of becoming ill." It thus appears that scurvy broke out first among the prisoners and from three to twelve months more quickly than among the crew, and from this it is reasonable to conclude that the breaking out of scurvy among the prisoners was due to the combined effect of the lack of fresh food and the reduced power of physical resistance to disease among them resulting from the confined and unhealthy condition under which they were obliged to live during the eight months cruise of the *Wolf*.

Captain Trudgett does not allege that he himself was attacked by scurvy, but he does show by a doctor's certificate dated August 26, 1919, that upon his arrival in New York in January, 1919, he submitted himself to medical care, that his general health was poor at that time, and that six months later he was still in the need of medical attention.

Among the provisions of the Treaty of Versailles which are incorporated in the Treaty of Berlin, Germany is required and undertakes to make compensation, under Article 232, "for all damage done to the civilian population of the Allied and Associated Powers and to their property during the period of the belligerency of each as an Allied or Associated Power against Germany" by aggressions "by sea", among others, "and in general all damages as defined in Annex I hereto."

Annex I provides that —

"Compensation may be claimed from Germany under Article 232 above in respect of the total damage under the following categories:

* * * * *

"(2) Damage caused by Germany or her allies to civilian victims of acts of cruelty, violence or maltreatment (including injuries to life or health as a consequence of imprisonment, deportation, internment or evacuation, of exposure at sea or of being forced to labour), wherever arising, and to the surviving dependents of such victims.

* * * * *

"(4) Damage caused by any kind of maltreatment of prisoners of war."

In this case the civilian status of the claimant is beyond question, so that in his case category (2) is applicable as well as category (4).

If the claimant had been subjected during imprisonment on land to the same treatment to which he was subjected during his imprisonment at sea that

would unquestionably have constituted maltreatment within the meaning of that term as used in the provisions above-quoted.

The only excuse given by Captain Nerger in his statement above-mentioned for submitting the claimant to such treatment is that "Nautical military reasons forbade the landing of the detained persons before February 25, 1918 at Kiel." It appears nevertheless that in the latter part of August, 1917, the *Wolf* lay for a period of three weeks in a harbor in the territorial waters of the Kingdom of Netherlands in the Dutch East Indies. There certainly were no nautical military reasons which forbade the landing of the claimant at that time and at that place or at some other place in neutral territory, and there was no justification for the action of the captain in placing and detaining on a warship of only 5,000 tons some 300 or 400 prisoners in addition to a crew of 350 men, and carrying them for an eight months' voyage from tropical to arctic regions under conditions which any competent naval officer must have known were bound to produce physical suffering and disease.

Confining the claimant as a prisoner on a warship for an eight months' raiding cruise under the conditions which have been established in this case was not demanded by any existing military necessity and in any event was a departure from the recognized requirements of decent and humane treatment of prisoners, as defined in the 1899 Hague Convention II which was in force when this capture was made, and by Article XXIV of the Treaty of July 11, 1799, between the United States and Prussia, as revived by Article XII of the Treaty of May 1, 1828, and subsequently accepted by the German Government as binding upon the Empire. Furthermore by the Agreement of November 11, 1918, between the Governments of the United States and Germany concerning prisoners of war humane treatment is explicitly recognized and defined as the required standard for treatment of prisoners.

It follows, therefore, that any treatment of prisoners which violates the standards so declared must be characterized as maltreatment within the meaning of that term as used in the above-quoted extracts from the subsequent Treaties of Versailles and Berlin.

Captain Trudgett was already over fifty years of age at the beginning of his imprisonment on the *Wolf*, and even though the evidence on his behalf does not show that his maltreatment resulted in any permanent ailment or physical disability, nevertheless such specific evidence is not required to bring the case within the terms of the Treaty provisions. Germany is required to make compensation for any damage which has even caused by such maltreatment and it has been sufficiently shown in this case that the claimant suffered treatment of a character which at his age inevitably had the effect of impairing his health and reducing his vitality, thus not only reducing his capacity for earning a living and for enjoying the remaining years of his life, but also tending to shorten his life-expectation period.

In the opinion of the American Commissioner the amount of \$1,500, which is claimed for the damage thus caused, is fully justified and should be awarded to the claimant with interest thereon from the 1st of November, 1923.

The claimant has presented in detail under oath the items and value of the personal property which was taken from him while he was a prisoner, which value he fixes at \$419.00.

The National Commissioners agree that this personal property, in the circumstances of this case, does not come within the classification of "naval and military works or materials" for the loss of which a claim cannot be made. It is objected, however, on the part of Germany that among the documents submitted is a receipt from the German authorities for railway freight for personal luggage from Kiel to Karlsruhe amounting to marks 18.15, and it is inferred

from this that the claimant must have had some personal property when he left the *Wolf*. The point of this objection is that in the claimant's affidavit he alleges that all of his property was confiscated by the officers in charge of the *Wolf*, and if the statement ended there the objection might be tenable. The claimant's affidavit goes on to state, however, that this property was never returned and was totally lost to him, and a fair interpretation of the statement taken as a whole is that it was not returned to him when he left Germany at the end of his imprisonment and was totally lost for that reason.

The American Commissioner is of the opinion, therefore, that the entire amount of \$419.00 claimed for the value of personal property lost should be awarded, with interest thereon from November 11, 1918.

Chandler P. ANDERSON

Opinion of Dr. Kiesselbach, the German Commissioner

The present claimant, the master of the American merchant schooner *Winslow*, is alleged to have sustained damages as the result of treatment to which he was subjected while a prisoner of war aboard the German cruiser H. M. S. *Wolf*. Claim is also made for the value of personal property alleged to have been taken from him at the time of his capture and for loss of earnings during the period of his detention. The National Commissioners are agreed that there can be no recovery for this last item of damage under Administrative Decision No. VII.

The claimant was made a prisoner of war on June 16, 1917, at the time of the capture and destruction of the *Winslow* by the *Wolf* off Raoul Island in the Pacific Ocean. He was detained aboard the *Wolf* eight months, until the end of her cruise at Kiel, in February, 1918, where he was discharged and taken to the prison camp at Karlsruhe. He was liberated and sent to Switzerland November 1, 1918, whence he later returned to his home in the United States.

The claimant's allegations as to mistreatment are confined to the period of his detention aboard the cruiser *Wolf*. These allegations have to do with the poor ventilation of the quarters assigned to him, the deficiency of fresh food, and the conditions resulting from the number of prisoners aboard the *Wolf*. It is further alleged that the result was to impair the claimant's health.

The claimant, in Exhibit VIII, specifically states that he was not subjected to abuse and rests his whole case upon the allegation that his health was impaired through lack of food, fresh and other kinds, and to the condition and kind of living and sleeping quarters furnished.

Viewed objectively, the claimant's contention is found to be in fact merely that detention on board the cruiser *Wolf* was a hardship in itself. It appears through the evidence that the claimant was treated with every consideration possible in the circumstances and at least as well as the crew of the *Wolf*. In the matter of food, the commander of the *Wolf*, Captain Nerger, states (Exhibit 5 annexed to the German Agent's Reply, paragraph 7) that "The food was for all persons named under No. 4 [that is, *all* prisoners] at least equal to that of our own crew * * *. The captains [of whom claimant was one] received frequently additional rations". The fact that "during the last part of the voyage" both prisoners and crew began to suffer from scurvy, due, no doubt, to deficiency of fresh green foods in the diet, is itself without point since the claimant did not suffer from the disease. It is Captain Nerger's testimony that "When during the last part of the voyage the prisoners * * * were beginning to suffer from scurvy, I withdrew the small residue of fresh food still on board the H. M. S. *Wolf* entirely from our own crew and had it reserved for those prisoners who were ill or in danger of becoming ill" — that is, the prisoners

were given the preference over the crew of the *Wolf* although it is clear from the testimony that the crew were also suffering from scurvy.

As to the quarters provided for the claimant aboard the *Wolf*, they were situated in the stern middle deck of the vessel, and had the same equipment as the crew quarters on the same deck forward in the bow (paragraph 5 of exhibit last cited), except for the lack of heating equipment. This deficiency was supplied by the installation of a good heating equipment before the *Wolf* left the warmer regions. In the same way, partitions were erected whereby the captives who were prisoners of war could have special quarters for themselves (*ibidem*, paragraph 4 c).

There is a conflict of testimony as to the ventilation of the prisoners' quarters. The commander of the *Wolf* testifies that the prisoners' quarters on the stern middle deck were "high, roomy and well ventilated" (*ibidem*, paragraph 5), while the claimant contends that they were very close and badly ventilated. In a later statement (Exhibit 8) he contented himself with the allegation that the ventilation was "not good."

Claimant's statement that the quarters furnished him were crowded may be true in so far as the space available on a raider of about 5,000 tons displacement with a naval crew of 350 men and with captives to the number of about 400 certainly was not abundant. But since only nationals of enemy states were considered as prisoners of war and since only such were lodged together in the stern middle deck of the *Wolf*, and since for instance in the case of the *Winslow* only two of the whole crew — the claimant and the Japanese cook — were of enemy nationality (Exhibit 3), the number of men located there can not have been excessive. This is corroborated by the fact that according to Commander Nerger's statement it was possible to provide special partitions for the captives, to which group claimant belonged.

As to the confinement of the claimant below decks when other vessels were approaching, this action was dictated by considerations of military necessity and was also in accord with international law. The Hague Convention of 1907, in Article V, recognizes that prisoners may be confined as an indispensable measure of safety while the circumstances which necessitate the measure continue to exist. The commander's action was obviously dictated by the desire to avoid mutiny or to prevent a warning to other craft. That it was from no desire to cause discomfort or hardship is shown by the fact that the *Wolf's* crew was frequently under the same restrictions at such times (the exhibit 5 mentioned above).

Like reasons dictated the action of the commander of the *Wolf* in restricting the prisoners to below decks under guard while in neutral waters in order to prevent their escape. International law recognizes that a prisoner may be "confined with such rigour as is necessary for his safe custody" (Hall's International Law, 7th Edition, page 428).

Moreover, it is clear from the evidence that at all other times the claimant was permitted on deck. Captain Nerger states that "The prisoners were always permitted to be on deck in the open air, unless there existed compulsory reasons against it, as for instance, if other vessels were approaching" (aforesaid Exhibit 5, paragraph 6). Claimant's original testimony (Exhibit 4) is substantially in accord with this version of the facts, for he restricts his allegation as to confinement below decks to the statement that he was so confined "whenever there was anything in sight from said raider".

It is apparent from the testimony that the treatment of the claimant aboard the *Wolf* was in accord with the rules of international law, which require that prisoners of war should not be singled out and made to bear burdens not

imposed upon the forces of the captor — in other words, the test is like treatment of prisoners and troops.

This principle is recognized by all leading writers upon international law (see, for instance, Hyde's International Law, volume II, page 538) and is found embodied in Article 7 of the Hague Convention of 1907 already mentioned.

Further, by implication the validity of this rule is recognized in the decision of the Umpire in the claim of George L. Hawley, Docket No. 1322, where the Umpire said:

“ As an evidence of maltreatment emphasis is laid by the claimant on the use of paper bandages by the German hospital authorities in dressing his wounds, but there is no evidence that any other bandages were available, and it appears from the records in other cases before this Commission that German authorities were forced to use paper bandages in the dressing of wounds of German soldiers.”

The ruling recognized that a hardship which arose from necessity and which was borne alike by the captured and the captors would not constitute “ maltreatment ”.

It is argued that the claimant would have been spared the discomfort incidental to his detention aboard the cruiser *Wolf* had he been released in a neutral port, and the American Commissioner sees “ no nautical military reasons which forbade the landing of the claimant at that time and at that place or at some other place in neutral territory ” and states that there was no justification for the action of the captain in placing and detaining on a warship of only 5,000 tons some 300 or 400 prisoners in addition to a crew of 350 men. The American Commissioner does not accept the explanation of the raider's commander that “ Nautical military reasons forbade the landing of the detained persons before February 25, 1918 at Kiel.” Now, it cannot be denied that in August, 1917, when the raider stopped in Dutch waters for three weeks, and in the winter of 1917-1918 the Allied Powers were the masters of the seas. If, therefore, the *Wolf*, being a *merchantman* with the character of a war vessel and with a naval crew and having an outward appearance which did not show her military and naval character, after a trip of many months in tropical waters was to be repaired and readjusted (by “ cleaning her bottom and stripping the British steamer ”, as claimant expresses it — Exhibit 2) in order to continue her perilous voyage, the only protection she had in the Dutch port and the only chance she got to escape through the British-controlled North Sea was to keep absolute secrecy. Thus it is self-evident that under all circumstances the only thing the commander was not allowed to do if he intended to fulfill his military and naval task was to release the captives on board the *Wolf*. The confining of the claimant on the warship during the stay in neutral waters was therefore, though a hardship, demanded by military necessity, certainly not a maltreatment.

There remains the question whether under the provisions of the Treaty of Versailles as cited by the American Commissioner Germany would be liable for an injury to life or health as a consequence of *imprisonment* or of *exposure at sea* even in the absence of maltreatment.

I do not think that the treatment of claimant by Germany could ever be brought under the term of “ exposure at sea ”, but I agree that it can be brought under the term of imprisonment.

But to apply the provisions of paragraph 2 of the Annex I following Article 244 it does not suffice that a person suffered an injury to life or health as a consequence of imprisonment, etc., but the injury to the imprisoned, deported, or interned person must be caused by an act of cruelty, violence, or maltreat-

ment. If it had been the intention of the framers of the Treaty to make Germany *generally* liable for injuries to life or health in the specific cases enumerated in paragraph 2, they would have said so in a general way and not by way of parenthesis to a provision establishing Germany's liability for acts of cruelty, violence, or maltreatment. The leading idea was to make Germany's liability for acts of cruelty, violence, or maltreatment in a specific sense as broad as possible: *wherever arising*. And to make this intention clear and certain they described the "wherever arising" — *id est*, of acts of cruelty, violence, or maltreatment — by expressly stating that they intended to include the consequence of such *acts*, if resulting in injuries to life or health, and *if* being a consequence of imprisonment, deportation, etc.

My conclusion therefore is that under the provisions of said Annex I in the absence of maltreatment the mere fact of the existence of an injury to health as a consequence of imprisonment, etc., does not establish Germany's liability.

Moreover I can not admit that claimant has suffered such injury to his health for which he would be entitled to claim compensation.

It is already noted that claimant himself was not attacked by scurvy.

In Exhibit 4 (answer to question 63) claimant says "The condition of my health at the present time [i. e., August 26, 1919] as the result of the experiences stated is fairly good." And the only medical affidavit submitted, executed the same day, is as follows:

"That Robert Davie Trudgett has been under my professional care since January 22, 1919; that he has an enlargement of the right epididymis, which is quite sensitive and painful at times; that his general health was poor at the time of his first visit to me."

This evidence makes no attempt to connect claimant's alleged ill health with his experiences aboard the *Wolf*; nor is there any evidence as to the nature of the malady or the pathological condition from which the claimant is alleged to be suffering other than a brief reference to a purely local condition not uncommon among men of claimant's years. Moreover, the medical examination in question was made eleven months after the claimant left the *Wolf*. There is no allegation that claimant required medical attention in the German prison camps during the nine months which he spent therein immediately following his discharge from the *Wolf*.

In answer to question 17 of the State Department's questionnaire (Exhibit 4) as to residence, he states that he was engaged in going to sea in United States merchant ships from *November 30, 1918*, to *June 26, 1919*, with San Francisco as his home port and Alameda, California, as his residence, and that he was returning from Germany to San Francisco from *November 30, 1918*, to *January 15, 1919*. This evidence, taken in connection with his statement that he worked his passage from France back to the United States in an American vessel, shows that upon his arrival at San Francisco he immediately found employment at his regular trade. This evidence is material on the condition of claimant's health at that time.

It seems a fair conclusion from the evidence that no impairment of the claimant's health has been shown.

The claim for loss of property is not disputed as to the amount of \$185, the value of the claimant's sextant and marine glasses. The contention, however, that all his personal property was taken from him does not seem to be sustained by the evidence. The evidence submitted contains a "Quittung", a receipt, for "Gepäckfracht" or excess baggage for personal use from Kiel to Karlsruhe, amounting to marks 18.15. The receipt is held out by claimant as being for *railway fare* from Kiel to Karlsruhe. As claimant was landed at Kiel and from

there was, according to his own statement, transferred directly to Karlsruhe and as the amount of marks 18.15 for freight on personal luggage indicates that claimant must have possessed a rather considerable amount of personal luggage, since the rate for passenger baggage is rather low, it is certain that the claimant was not stripped of "all his personal property" since leaving the *Wolf*. Such personal property as was taken from him by the commander of the *Wolf* was taken as prize because of its nautical nature. According to Captain Nerger's testimony, such property was turned over to the Imperial Dockyard at Kiel and a valuation there placed upon the sextant of marks 25, while the marine glasses were sold at auction for marks 130.

In view of the fact that it thus appears from the German records that the sextant and marine glasses were the only property seized and inasmuch as the claimant's testimony that he was stripped of all his personal property is shown by the above receipt to be inaccurate, the award for personal property should be limited to the amount of \$185, the value placed upon the sextant and the marine glasses by the claimant.

This claim should therefore be dismissed except as to the claim for the sextant and marine glasses.

W. KIESELBACH

The National Commissioners accordingly certify to the Umpire of the Commission for decision the points of difference which have arisen between them, as shown by their respective Opinions above set forth.

Done at Washington May 14, 1926.

Chandler P. ANDERSON
American Commissioner

W. KIESELBACH
German Commissioner

Decision

PARKER, *Umpire*, rendered the decision of the Commission.

This case is before the Umpire for decision on a certificate of disagreement of the National Commissioners accompanied by their respective opinions. So far as necessary to a decision of this case the facts are as follows:

The American merchant schooner *Winslow* was captured and sunk by the German auxiliary cruiser *Wolf* on June 16, 1917. The claimant, an American national, who was master of the *Winslow*, and then 50 years of age, was taken and held a prisoner on board the *Wolf* from that date until on or about February 25, 1918, when he was landed at Kiel and sent at once to a German prison camp. He was held as a civilian prisoner of war in German prison camps, at Karlsruhe, Heidelberg, and Villingen successively, until November 30, when he was sent to Switzerland and placed in the quarantine camp at Alleroy, where he remained until December 14, 1918, when, on instructions of the military authorities he reported to the United States Consul at Brest, from which port he returned to the United States, arriving in New York January 8, 1919.

During the more than eight months' imprisonment of the claimant on board the *Wolf*, that vessel, in pursuit of its operations of laying mines and capturing enemy craft, cruised through the tropics, to the arctic regions, and back to Germany, under circumstances entailing numerous hardships both to its captives and to the members of its own crew. The quarters which the claimant was compelled to occupy with other prisoners of his rank and station were

necessarily cramped and frequently the ventilation was bad. The food was restricted in variety and quantity and most of the time no fresh or green foods were supplied. As a consequence a number of the prisoners and a part of the crew became ill from scurvy, although it does not appear from the record that the claimant suffered from this malady. It does appear, however, that as a result of claimant's confinement on the *Wolf* he suffered great discomfort and inconvenience and his health was temporarily but not permanently impaired and his vitality substantially reduced. There is no suggestion that claimant suffered from any indignities or abuse, physical or otherwise, or that he was wilfully subjected to any discomforts. On the contrary, it appears that he was lodged and fed approximately as well as the members of the crew of the *Wolf*, although when nearing a port or a ship he and the other prisoners were confined to their cramped and ill-ventilated quarters to prevent their communicating with the outside world. This Germany seeks to justify as rendered necessary by the very nature of the daring military operations of the *Wolf*, to the success of which secrecy of whereabouts, operations, and purpose was essential. Likewise the failure earlier to land claimant at either a neutral or a German port, the German Agent maintains, was justified by considerations of secrecy and nautical military strategy.

No complaint is made of the treatment of claimant on being landed at Kiel and thereafter held a prisoner. The claim for impairment of health is predicated wholly on his capture, confinement, and detention on the *Wolf* and the treatment there accorded him. It will not be profitable here to consider the legality or illegality as tested by rules of international law of such capture, confinement, and detention¹. As this Commission has frequently held, Germany's liability in claims presented here is determined not by rules of international law but by the terms of the Treaty of Berlin irrespective of the legality or illegality of the act complained of.

Assuming without deciding that under the laws of war the considerations relied on by the German Agent justified the treatment accorded to claimant by Germany, nevertheless they do not enter as factors in determining whether or not such damages are embraced within those categories for which Germany is obligated to make compensation by the terms of the Treaty of Berlin, or the extent of the damage, if any, suffered by claimant as a consequence of such treatment. That Treaty provides (paragraph 2 of Annex I to Section I of Part VIII — Reparation — of the Treaty of Versailles, carried into the Treaty of Berlin) that Germany shall compensate for

“Damage caused by Germany or her allies to civilian victims of acts of cruelty, violence or maltreatment (including injuries to life or health as a consequence of

¹ It is interesting to note in passing that during the Franco-Prussian War Count Bismarck vigorously denied that sailors found in merchant vessels can be made prisoners of war (see Hall's International Law, 7th edition, page 426, note). The generally accepted rule at that time seems to have been that sailors on board an enemy's merchant ship may be taken as prisoners of war because of their fitness for immediate use on ships of war. The claimant Trudgett was a noncombatant past fifty years of age and hardly available for military duty. It is not necessary here to decide how far that rule had, at the time of claimant's capture and enforced confinement, been modified, especially by Article 6 of the Hague Convention XI of 1907, which was formally ratified by most of the nations engaged in the World War, including Germany, which provides:

“The captain, officers, and members of the crew [of a captured enemy merchant ship], when nationals of the enemy state, are not made prisoners of war, on condition that they make a formal promise in writing not to undertake, while hostilities last, any service connected with the operations of the war.”

imprisonment, deportation, internment or evacuation, of exposure at sea or of being forced to labour), wherever arising, and to the surviving dependents of such victims.”

Does the claim here put forward fall within this provision? The Umpire decides that it does. This provision requires Germany to compensate for damage caused to civilian victims by Germany or her allies through acts of cruelty, violence, or maltreatment wherever arising. The terms “cruelty,” “violence,” and “maltreatment” are general. Ordinarily they connote the exercise of force by a human agency, frequently but not necessarily in such manner as to inflict injury through physical contact. However, violence may consist of the exercise of force, without physical contact, in such manner as to produce fear, terror, apprehension, or restraint. Realizing that the use of these general terms might give rise to controversy with respect to their scope and meaning, the draftsmen of the Treaty, without undertaking to enumerate all “acts of cruelty, violence or maltreatment” embraced within this category, and being careful not to exclude those not enumerated, expressly provided that damages to civilians caused by acts of cruelty, violence, or maltreatment should include “injuries to life or health as a consequence of” (a) imprisonment, (b) deportation, (c) internment or evacuation, (d) exposure at sea, or (e) being forced to labor. It may well be that Germany’s act of imprisoning the claimant did not constitute either “maltreatment” or “cruelty” within the meaning of the provision quoted, but his seizure and imprisonment by Germany were certainly acts of violence. Any doubt which might have existed with respect to the impairment of claimant’s health, directly attributable to those acts of violence, being embraced within this category is removed by the express provision that “injuries to life or health as a consequence of imprisonment” are included in “Damage caused by Germany * * * to civilian victims of acts of cruelty, violence or maltreatment”². Here is an express enumeration of particulars embraced within the preceding general terms without, however, limiting the generality of such terms or excluding acts of the same nature not enumerated.

The claimant, a civilian American national, through acts of violence was seized and long imprisoned by Germany. As a consequence of such acts he suffered a temporary impairment of health. Injuries to the health of a civilian as a consequence of imprisonment are expressly included in the damages for which Germany must compensate. The claim therefore falls within the category above quoted fixing Germany’s liability.

The claimant has not sought to exaggerate the hardships suffered by him or their consequence to his health or the amount of his damage as measured by pecuniary standards. The Umpire agrees with the American Commissioner that on this particular count an award should be made in favor of the claimant for the full amount claimed, namely, \$1,500.

² The British Reparation Claim against Germany under a schedule dealing with “injury to persons or injury to health of civilians” includes an item of 2,454 “internment” cases with damages aggregating £687,120. The Umpire prefers to believe that the British Government in presenting this claim construed paragraph 2 of Annex I to Section I of the Reparation provisions (Part VIII) of the Treaty quoted above as construed in this opinion rather than in accordance with the contention of the German Agent and the opinion of the German Commissioner herein. From the latter construction it would result that the British Reparation Claim embraces a large item for damages alleged to have been suffered by 2,454 interned British civilian victims of acts of Germany involving moral turpitude, acts wilful and malicious in their nature and impairing the health of the victims.

On the record presented the Umpire further finds that the personal property surrendered by the claimant to the agents of Germany and not returned to him was of the value of \$419, the full amount claimed, for which Germany is liable.

As pointed out in the opinions of the National Commissioners, Germany is not liable under the Treaty to pay the other amount claimed herein, for the loss of claimant's earnings from the time of his capture to the date of return to his home.

Applying the rules announced in previous decisions of the Commission to the facts as disclosed by this record, the Commission decrees that under the Treaty of Berlin of August 25, 1921, and in accordance with its terms the Government of Germany is obligated to pay to the Government of the United States on behalf of Robert Davie Trudgett the sum of one thousand five hundred dollars (\$1,500.00) with interest thereon at the rate of five per cent per annum from November 1, 1923, and the further sum of four hundred nineteen dollars (\$419.00) with interest thereon at the rate of five per cent per annum from November 11, 1918.

Done at Washington August 31, 1926.

Edwin B. PARKER
Umpire

HARRISS, IRBY & VOSE (UNITED STATES) *v.* GERMANY

(August 31, 1926, pp. 822-827.)

SEA WARFARE: DESTRUCTION OF VESSEL BY MINE. — WAR: RESPONSIBILITY UNDER GENERAL INTERNATIONAL LAW, TREATY OF BERLIN; NEGLIGENCE. — DAMAGE: RULE OF PROXIMATE CAUSE. — DAMAGES: MARKET VALUE. — PROCEDURE: CONFIRMATION BY NATIONAL COMMISSIONERS OF AGREEMENT BETWEEN AGENTS. — EVIDENCE: REPORT BY GERMAN NAVAL OFFICER, TESTIMONY OF CAPTAIN, PILOT; PROBABILITIES. Destruction of vessel on February 19, 1915, by floating German mines. *Held* that there is no evidence that claimants or their agents did not exercise care of reasonably prudent man and that, therefore, Germany's act in planting mines was proximate cause of loss. *Held* also that Commission not concerned with legality or illegality of planting mines under general international law: Germany liable under Treaty of Berlin. Agreement between Agents on fair market-value of vessel confirmed by National Commissioners. Evidence: see *supra*.

PARKER, *Umpire*, rendered the decision of the Commission.

This case is before the Umpire for decision on a certificate of disagreement of the National Commissioners.

It is put forward by the United States on behalf of Harriss, Irby & Vose, claimants, a copartnership which in December, 1914, was and ever since has been composed of American nationals. An award is sought for the value of the American Steamship *Evelyn*, alleged to have been destroyed off the Dutch coast on February 19, 1915, by contact with a submerged mine planted by Germany. The *Evelyn* was an iron steamship, 32 years old at the time of loss, of 2,800 deadweight tons registered at the port of New York. She was in excellent condition and had a classification of *100 A-1 Lloyd's Register. The Agents of the United States and of Germany have agreed, confirmed by the National Commissioners, that the fair market value of this ship at the date of loss was \$210,000. At that time her owners carried war-risk insurance on her to the amount of \$100,000 which was collected in full, deducting which from the agreed market value leaves a net loss to the claimants of \$110,000.