

8 November 1945

TO: General Donovan

FROM: Dr. von Schlabrendorff

SUBJECT: Arguments of the Defense

Since 1907 the principle of "clausula rebus sic stantibus" (status of existing circumstances) had been admitted into German jurisprudence and German jurisdiction. This principle was first applied in civil law, and later in international law. It provides for the following: Each treaty (or agreement) has certain self-understood basic principles. If these principles are cancelled the partners to the treaty are no longer bound to it.

Example: A and B conclude a contract. A has the obligation to deliver to B 100 tons of wheat. Suddenly a war breaks out. All wheat is being requisitioned. Therefore A cannot deliver the wheat. In a case such as this German jurisprudence would argue as follows: The contract was concluded in peacetime. Since there is now a state of war the circumstances under which the contract was concluded, have been radically changed. The "clausula rebus sic stantibus" brings about a status whereby the partners are no longer bound to their contract.

German jurisprudence applies the same principle in international law.

Example: Two countries conclude a treaty. One country obliges itself to transfer to the other country certain territory against a financial remuneration. While the treaty is still in force, the boundaries are changed as the result of war. Question: Are the two countries, in view of changed circumstances, still obliged to carry out the provisions of the treaty? Answer of the law: No. The circumstances under which the treaty was concluded exist no longer.

I believe that the defense will raise an objection to Point 1 of the indictment (violation of international treaties) on the basis of the principle "clausula rebus sic stantibus".

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