

1 Introduction

The Inquiry's terms of reference

- 1.1 Pursuant to Regulation 109 of the Defence (Inquiry) Regulations 1985, the Chief of the Defence Force, Air Chief Marshal AG Houston AC AFC, appointed me to constitute a Commission of Inquiry, to be its President and 'to inquire into and report upon circumstances associated with the loss of HMAS SYDNEY (II) in November 1941 and consequent loss of life and related events subsequent thereto'.
- 1.2 The Commission of Inquiry was established after the finding, on 12 March 2008, of the wreck of the German raider vessel HSK KORMORAN and the subsequent finding, on 16 March 2008, of the wreck of HMAS SYDNEY. The location of the two vessels had been unknown since 19 November 1941. Appendix A, a reproduction of the Finding Sydney Foundation's submission, details the search for and finding of SYDNEY.¹

The loss of HMAS SYDNEY

- 1.3 On 19 November 1941 SYDNEY, under the command of CAPT Joseph Burnett RAN, was returning from having escorted HMAS ZEALANDIA to a location near the Sunda Strait. When about 200 kilometres from the coast of Western Australia, en route to Fremantle, SYDNEY sighted a vessel and diverted from her course to investigate. The vessel was the raider KORMORAN, which was disguised as MV STRAAT MALAKKA. SYDNEY and KORMORAN engaged in battle, and both sank. Of the 645 officers and crew on board SYDNEY (see Appendix B), no one survived. Of the 395 officers and crew² and four Chinese laundrymen³ on board KORMORAN, 318 survived (Appendix C lists those who lost their lives).⁴

The rescued KORMORAN survivors were interrogated but, there being no Australian survivors to confirm or deny the Germans' account of the engagement, some people were unable to accept their version of the engagement. Controversy arose and has continued. At issue were the

¹ FSF.013.0001

² COI.004.0163 at 0168

³ AWM.005.0127 at 0128

⁴ COI.004.0168. Compare SPC.002.0233 at 0236. The 318 survivors comprised 315 Germans and three Chinese. These figures are based on the Eldridge report corrected by AWM.005.0127 at 0128 and PINQ.SUBS.018.0046 at 0048, noting that three Chinese survived and that 62 survivors were taken aboard CENTAUR, not 60 (NAA.026.0348).

location of the battle, why SYDNEY had been sunk by KORMORAN, and why there were no survivors from SYDNEY.

Location of the wrecks in March 2008 led to the uncovering of much new evidence, which means rational answers can now be given to many of the questions raised in the controversy.

The Inquiry's approach

- 1.4 Much has in the past been written about the loss of SYDNEY—a parliamentary report, papers delivered at seminars, research publications, newspaper articles and submissions to the Parliamentary Inquiry. The incident has been the subject of many books by authors who have had differing objectives, research capacities and degrees of objectivity. In much of the literature on the loss of SYDNEY there has not been a sufficient distinction drawn between established fact, legitimate and justifiable deductions from such facts, and surmise. There has been much speculation and conjecture. Some authors have begun with a premise that they have sought to establish by the selective use of material. This Inquiry's objective was to provide an independent, impartial, reasoned and fact-based account of the events relating to the loss of SYDNEY.
- 1.5 For this reason my report is divided into two parts. The first part (being Volumes 1 and 2) deals with the evidence, setting out what is known of the factual circumstances relating to SYDNEY and KORMORAN, the engagement between the two ships, and subsequent events. It also examines the accounts given by the German survivors. These derive from statements survivors made shortly after their rescue, Australian military officers' records of interrogation of the survivors, published statements in articles or books subsequently written by survivors, documents obtained from survivors when they were searched whilst in prisoner of war camp and on repatriation from Australia, and evidence I took from survivors or that was given to counsel assisting me in Germany in 2008. Much of this last category of evidence was given on oath.
- 1.6 In assessing the evidence, I applied caution. It is necessary to have regard to the circumstances in which statements were made. Some survivors, being prisoners of war, exercised their right to say nothing; others volunteered information in response to questions; others spoke freely. Some statements made subsequently could have been influenced by the public account of the battle CAPT Theodor Detmers, commanding officer of KORMORAN, gave in his book *The Raider Kormoran*. Accounts given in interviews, on television and, most recently, to this Inquiry are the recollections of events that occurred more than 67 years ago. For the German survivors, engaging in a battle

that resulted in the sinking of their own ship as well as SYDNEY, a subsequent voyage in an open boat for about five days, and then internment in a prisoner of war camp for more than five years would undoubtedly be events in one's life likely to imprint on memory. But the passage of time can distort recollection. The survivors made statements, at least in later times, in the knowledge that there was no contradictor. Nonetheless, the accounts they gave—including the most recent accounts, given to the Inquiry in Germany in 2008—constituted a valuable resource as I sought to uncover what happened on 19 November 1941.

- 1.7 There were no Australian survivors, so there is no Australian account of the actual battle. There is, however, much documentary material that is helpful in determining the manner in which Australian warships and their officers and crew—in particular, SYDNEY and her officers and crew—conducted themselves in wartime operations. In addition, I had the advantage of taking evidence from sailors who had served in SYDNEY before she left Fremantle on 11 November 1941. They gave evidence about the operation of the ship under CAPT Joseph Burnett and the ship's preceding commanding officer, CAPT John Collins RAN. I applied the same caution to their evidence as I did to that of the German witnesses: it should be remembered that both the Australian and the German sailors who gave evidence before me and who served in either SYDNEY or KORMORAN were very young in 1941, usually between the ages of 18 and 20 years. Many sailors in both categories now exhibit some frailness of age.
- 1.8 The first part of this report also deals with the known empirical evidence relating to the loss of SYDNEY. Modern science has allowed for testing of relics of the battle, including the remains of a person found off Christmas Island, a recovered Carley float, and fragments of metal recovered from the relics. In addition, the recent finding of the wrecks of SYDNEY and KORMORAN and the photographing, by both video and still cameras, of those wrecks has allowed an assessment to be made not only of the damage sustained by each vessel but also of the probable cause of that damage. Computer technology has enabled a virtual three-dimensional model of SYDNEY to be built, the damage suffered by SYDNEY to be introduced into that model, and the effects of that damage on the ship to be calculated. All of this has made it possible to form a judgment, on empirical grounds, about the probability of the German survivors' account of the battle being correct. Thus, apart from making an assessment of the German account of the battle in the absence of an alternative oral account of the battle, it is for the first time possible to make an assessment of that account against established fact.

- 1.9 The conclusions expressed in this report are based on the evidence presented in Volumes 1 and 2. Where factual circumstances are established by the evidence, logical and reasonable inferences may be drawn from those facts, and this is made clear. If the evidence is insufficient for a conclusion to be drawn, that also is made clear. Speculation – as distinct from permissible inference – is avoided.
- 1.10 As the terms of reference require, the primary function of the report is to examine all matters relating to the loss of SYDNEY. Assessing the theories and speculation that have emerged in relation to that loss is a secondary function. To maintain this distinction, the theories and speculation are discussed in the second part of my report (Volume 3). Each is subject to analysis in order to determine its history, any factual basis for it, and its consistency or inconsistency with established fact. A conclusion is drawn in relation to each such hypothesis, and the reasons for that conclusion are given. The main proponents of each theory were offered an opportunity to present to the Inquiry the material they deemed appropriate to support the theory advanced.
- 1.11 Appendix D provides details of the Inquiry’s administration.

Hindsight

- 1.12 In drawing conclusions, it was important to avoid hindsight and to be mindful of standards of conduct that could reasonably be expected of Naval officers in 1941, with the facilities and information then available to them. The dangers of hindsight were noted by Gleeson CJ in *Rosenberg v Percival*:

In the way in which litigation proceeds, the conduct of the parties is seen through the prism of hindsight. A foreseeable risk has eventuated, and harm has resulted. The particular risk becomes the focus of attention. But at the time of the allegedly tortious conduct, there may have been no reason to single it out from a number of adverse contingencies, or to attach to it the significance it later assumed. [There is] ... the danger of a failure, after the event, to take account of the context, before or at the time of the event, in which a contingency was to be evaluated. This danger may be of particular significance where the alleged breach of duty of care is a failure to warn about the possible risks associated with a course of action, where there were, at the time, strong reasons in favour of pursuing the course of action.⁵

This caution applies equally to a consideration of SYDNEY’s conduct on 19 November 1941. It must always be borne in mind that SYDNEY,

⁵ CASE.005.0001 at 0006 to 0007

when approaching STRAAT MALAKKA, did not know what is now known—that STRAAT MALAKKA was the disguised raider KORMORAN. The reason for SYDNEY approaching the unknown vessel is similarly to be constantly borne in mind.

Standard of conduct

- 1.13 Before any conduct by a Naval officer may be regarded as negligent, it must be established that the officer:

[Did] something which in all the circumstances a reasonably capable and careful person of the [officer's] seniority and experience in the service would not have done or alternatively [omitted] to do something which in all the circumstances a reasonably capable and careful person of the [officer's] seniority and experience in the service would have done.⁶

CAPT Burnett's conduct must be measured against that standard.

- 1.14 Reporting on the loss of SYDNEY inevitably means I must report on the conduct of the ship in its approach to and engagement with KORMORAN. Equally inevitably, I must comment on the conduct of SYDNEY's commanding officer, CAPT Burnett. In so doing I sought to avoid a narrow legalistic view of the obligations of command. I sought to identify and record the factors likely to have influenced CAPT Burnett in making the decisions he made. It has been said, correctly, that one can never know all the matters CAPT Burnett considered in making his decision. One does, however, know of the usual, standard procedures for warships when they are approaching other vessels. It is important to recognise the existence of wartime conditions, but it is equally important—particularly when comparing the actions of SYDNEY with other encounters between warships and unidentified merchant vessels—to recognise the location and circumstances in which such encounters took place. These matters are dealt with in the report.
- 1.15 Inevitably, I must determine a cause for the loss of SYDNEY and in doing so attribute responsibility. My finding, reached on the basis of, and with the impartiality of, judicial background and experience, nonetheless is not a judicial finding. It has no legal consequence. No military, civil or criminal consequences follow from it. The objective of the report is to determine in an impartial way and on a reasoned basis from established facts what occurred, the circumstances in which it occurred and the consequences.

⁶ CASE.004.0001 at 0006

Applicable principles of law

- 1.16 Considering the loss of SYDNEY necessarily involves both findings of fact and an analysis of the actions of CAPT Burnett. When considering those matters, regard is to be had to the statement of principle made by Dixon J in *Briginshaw and Anor v Briginshaw*:

... an opinion that a state of facts exists may be held according to indefinite gradations of certainty ... reasonable satisfaction is not a state of mind that is attained or established independently of the nature and consequence of the fact or facts to be proved. The seriousness of an allegation made, the inherent unlikelihood of an occurrence of a given description, or the gravity of the consequences flowing from a particular finding are considerations which must affect the answer to the question whether the issue has been proved to the reasonable satisfaction of the tribunal. In such matters "reasonable satisfaction" should not be produced by inexact proofs, indefinite testimony, or indirect inferences.⁷

Sir Stanley Burbury and Mr Justice Asprey, sitting as the second VOYAGER Royal Commission (the Royal Commission on the Statement of LCDR Cabban and Matters Incidental Thereto, 1967 to 1968), referred to the passage just quoted. They also referred to the words of Morris LJ in *Hornal v Neuberger Products Limited*:

In English law the citizen is regarded as being a free man of good repute. Issues may be raised in a civil action which affect character and reputation, and these will not be forgotten by judges and juries when considering the probabilities in regard to whatever misconduct is alleged. There will be reluctance to rob any man of his good name ...⁸

Reference was also made to principles applicable where there may be an absence of corroboration for an asserted fact or where the only contradictor in relation to an asserted fact is dead. In relation to the former, reference was made to the passage in *In Re Hodgson, Beckett v Ramsdale*:

The statement of a living man is not to be disbelieved because there is no corroboration, although in the necessary absence through death of one of the parties to the transaction, it is natural that in considering the statement of the survivor we should look for corroboration in support of it; but if the evidence given by the living man brings conviction to the tribunal which has to try the question, then there is no rule of law which prevents that conviction being acted upon.⁹

⁷ CASE.001.0001 at 0013

⁸ CASE.006.0001 at 0020 to 0021

⁹ CASE.007.0001 at 0007

In relation to the latter, reference was made to the judgment of Isaacs and Powers JJ in *Matthews and Ors v Matthews*.

In addition to the ordinary onus of establishing an affirmative allegation, the Court must bear in mind the weaknesses and temptations of human nature, and, in the absence of the only person who could contradict or explain the claimant's version, should, as a matter of prudence, display very great care in testing and examining his evidence and should cautiously require such light, and look for such corroboration, as in the circumstances of the case one would reasonably expect to find.¹⁰

- 1.17 I had regard to these statements of principle. It is not to be overlooked, however, that in writing a history of the Royal Australian Navy from 1939 to 1942 (published in 1957 and republished in 1985) G Hermon Gill was severely critical of CAPT Burnett and undoubtedly diminished Burnett's reputation. Among other things, he wrote:

The story of how *Sydney* was lost would appear to be straightforward. What induced Burnett to place her in the position where her loss in such a way was possible, must remain conjecture. Burnett had the usual peacetime sea experience of an R.A.N. officer on the permanent list, both in ships of the R.A.N. and on exchange with the Royal Navy; but by reason of his wartime appointment at Navy Office, and the employment of his first wartime sea command in routine duties in an area which for nearly twelve months had known no enemy action, he lacked that experience which, gained in a recognised war zone, sharpens suspicion and counsels caution on all chance meetings. Yet, as Deputy Chief of the Naval Staff at Navy Office, he had participated as a behind-the-scenes-operator in the earlier raider attacks on or near the Australia Station. He would have realised that a repetition was always possible. From the fact that he went to action stations and approached *Kormoran* with his main armament and torpedo tubes bearing, it would seem that he had suspicions of her *bona fides*. If it were just a routine measure, other routine measures of greater importance in such a situation were neglected.

Why Burnett did not use his aircraft, did not keep his distance and use his superior speed and armament, did not confirm his suspicions by asking Navy Office by wireless if *Straat Malakka* was in the area, are questions that can never be answered.¹¹

And later:

... and it may well be that, influenced by the near approach of darkness, he was moved to determine the question quickly; and thus was swayed to over confidence; first in the genuineness of *Straat*

¹⁰ CASE.008.0001 at 0027

¹¹ PUB.016.0001 at 0456 to 0457

Malakka; second in *Sydney's* ability, with all armament bearing and manned, to overwhelm before the trap, if such existed, were sprung. Yet to act as Burnett did was to court disaster should a trap exist, disaster at the worst total, as it was; at the best professional for Burnett; for even had *Sydney* triumphed in an action it is improbable that it would have been without damage and casualties, and Burnett would have been unable to explain the risks he ran.¹²

I revisited these matters 67 years after they occurred and 51 years after the findings and expressions of opinion by G Hermon Gill adverse to CAPT Burnett.

CAPT Burnett's representation

1.18 Notwithstanding the history written by G Hermon Gill, which has been generally accepted as being adverse to the reputation of CAPT Burnett, I recognised that in this Inquiry the interests of CAPT Burnett were entitled to representation before the Commission. This was to ensure that any matters advanced that might be adverse to CAPT Burnett's interests could be considered by those representing him and be the subject of submissions, as well as affording CAPT Burnett's interests the opportunity to advance matters they considered relevant to the encounter, its outcome and his reputation. CDRE RW Burnett RAN Rtd, CAPT Burnett's son, assumed the role of protecting the interests of the late CAPT Burnett and gave instructions to CMDR JG Renwick RANR and LCDR DH Katter RANR, both experienced lawyers. In addition to appearing before the Inquiry when they regarded that as appropriate, they were given full access to the Inquiry's database and to the submissions advanced by counsel assisting.

I had the advantage of two sets of helpful submissions on behalf of CAPT Burnett from his representatives. Whilst I have not referred to them in terms, I have had full regard to their content.

International law

1.19 Two questions of international law arise:

- Does international law permit the use of raiders during war? By 'raider' I mean a merchant ship adapted to carry disguised armaments and crewed by officers and men in a belligerent's armed services.

¹² PUB.016.0001 at 0458

- Does international law require that before or at the time of opening fire a vessel disguised as a raider show her colours by flying her country's flag?

Both questions can be responded to together.

1.20 International law is established by conventions or treaties to which nation states are parties or by customary law. 'Customary law' means the norms of behaviour accepted by nation states. Conventions or treaties can be declaratory of the customary law, or they might be an agreement between nation states as to what the law is and should be. Acceptance of a position recognised by customary law can be found in the statutes or regulations of a nation state or by the recording in learned texts of the state of customary law generally accepted in the international community.

1.21 Under customary international law there is no doubt that the use of raiders in time of war was permissible in 1941. There is a long history of the use of such vessels, dating back at least to 1672.¹³ During World War 1 Germany used raiders. British Fighting Instructions recognised the use of ruses by British ships.¹⁴

1.22 It is equally clear that a vessel intending to open fire on a vessel of a belligerent was obliged at or before the time of firing to fly the ensign of her own nation. This is established from the following international law texts:

- WE Hall: *A Treatise on International Law* (1880, 7th edn 1917)

In discussing the means of exercising the rights of offence and defence, Hall noted:

184. In a general sense a belligerent has a right to use all kinds of violence against the person and property of his enemy which may be necessary to bring the latter to terms. *Prima facie* therefore all forms of violence are permissible. But the qualification that the violence used shall be necessary violence has received a specific meaning ; so that acts not only cease to be permitted so soon as it is shown that they are wanton, but when they are grossly disproportioned to the object to be attained ; and the sense that certain classes of acts are of this character has led to the establishment of certain prohibitory usages.

These prohibitory usages limit the right of violence in respect of

1. The means of destruction which may be employed.

¹³ PUB.025.0001 at 0024

¹⁴ UKAA.010.0198 at 0292

2. The conditions under which a country may be devastated
3. The use of deceit.¹⁵

On deceit, he wrote:

187. As a general rule deceit is permitted against an enemy; and it is employed either to prepare the means of doing violent acts under favourable conditions, by misleading him before an attack, or to render attack unnecessary, by inducing him to surrender, or to come to terms, or to evacuate a place held by him. But under the customs of war it has been agreed that particular acts and signs shall have a specific meaning, in order that belligerents may carry on certain necessary intercourse; and it has been seen that persons and things associated with an army are sometimes exempted from liability to attack for special reasons. In these cases an understanding evidently exists that particular acts shall be done, or signs used, or characters assumed, for the appropriate purposes only, and it is consequently forbidden to employ them in deceiving an enemy. Thus information must not be surreptitiously obtained under the shelter of a flag of truce, and the bearer of a misused flag may be treated by the enemy as a spy; buildings not used as hospitals must not be marked with a hospital flag; and persons not covered by the provisions of the Geneva Convention must not be protected by its cross.

A curious arbitrary rule affects one class of stratagems by forbidding certain permitted means of deception from the moment at which they cease to deceive. It is perfectly legitimate to use the distinctive emblems of an enemy in order to escape from him or to draw his forces into action; but it is held that soldiers clothed in the uniforms of their enemy must put on a conspicuous mark by which they can be recognised before attacking, *and that a vessel using the enemy's flag must hoist its own flag before firing with shot or shell*. The rule, disobedience to which is considered to entail grave dishonour, has been based on the statement that 'in actual battle, enemies are bound to combat loyally and are not free to ensure victory by putting on a mask of friendship'.¹⁶ [emphasis added]

In a footnote Hall observed, 'The German Naval Prize Regulations of 1914, art 82, states: "During the chase it is not necessary to show the war flag, any mercantile flag may be flown"'.¹⁷ Implicitly, this recognises that the war flag must be shown at the time of conflict.

- LHL Oppenheim: *International Law: a treatise*, vol. II, *Disputes, War and Neutrality* (1952, 7th edn, ed. Lauterpacht)

¹⁵ PUB.049.0001 at 0567

¹⁶ PUB.049.0001 at 0576 to 0577

¹⁷ PUB.049.0001 at 0578

As regards the use of a false flag, it is by most writers considered perfectly lawful for a man-of-war to use a neutral or enemy flag (1) when chasing an enemy vessel, (2) when trying to escape, and (3) for the purpose of drawing an enemy vessel into action. On the other hand, *it is universally agreed that, immediately before an attack, a vessel must fly her national flag.*¹⁸ [emphasis added]

- HA Smith: *The Law and Custom of the Sea* (1948, 3rd edn 1959)

Discussing ruses of war, Professor Smith wrote:

Debate stretches back to early times, but there was substantial agreement in the general conclusion reached, that all ruses are permissible which do not involve a breach of faith.

...

The ruse which is of most practical importance in naval warfare is the use of the false flag. It now seems to be fairly well established by the custom of the sea that a ship is justified in wearing false colours for the purpose of deceiving the enemy, provided that she goes into action under her true colours. The celebrated German cruiser *Emden* made use of this stratagem in 1914 when she entered the harbour of Penang under Japanese colours, hoisted her proper ensign, and then torpedoed a Russian cruiser lying at anchor. It is equally permissible for a warship to disguise her outward appearance in other ways and even to pose as a merchant ship, *provided that she hoists the naval ensign before opening fire. Merchant vessels themselves are also at liberty to deceive enemy cruisers in this way.*¹⁹ [emphasis added]

- CJ Colombos: *International Law of the Sea* (1967, 6th edn)

Ruses are allowed in naval warfare, but perfidy is prohibited.

...

The use of a false flag by a warship is not, however, prohibited when trying to escape or when pursuing an enemy ship, or for the purpose of enticing an enemy warship to fight. *But the warship must fly her national flag immediately before opening fire.* As Lord Stowell said in *The Peacock*: "To sail and chase under false colours may be an allowable stratagem of war, but firing under false colours is what the maritime law of this country does not permit; for it may be attended with very unjust consequences; it may occasion the loss of the lives of persons who, if they were apprised of the real character of the cruiser might, instead of resisting, implore protection." The Italian War Regulations of 1938 similarly prohibit combat by a warship under a false flag (article 138). The

¹⁸ PUB.050.0001 at 0399

¹⁹ On this matter the law seems to be clear. PUB.027.0001 at 0115 to 0116

French naval instructions of 1934 also prescribe the hoisting of her flag by a warship before she signals a vessel to stop for visit and search (article 91).²⁰ [emphasis added]

Colombos discussed instances of the use of ruses in the two World Wars. The first instance is SMS EMDEN entering Penang Harbour, as just referred to. The second is the SYDNEY-KORMORAN encounter. Colombos wrote:

During the Second World War, Germany resorted to a much more frequent use of this disguise by fitting her armed raiders with dummy funnels and deck cargoes, false bulwarks and deck houses. They only revealed their identity as warships when within sufficiently close range to open fire. An incident demonstrating these tactics took place in November 1941 when the German armed raider *Kormoran* identified herself as a Dutch merchant vessel when approached by the Australian cruiser *Sydney*. But before *The Sydney* could verify the truth or falsity of this identity, *The Kormoran* shewed her true colours of a German warship and opened fire at a distance of 2,000 yards, sinking *The Sydney* with the loss of her officers and crew.²¹

It is submitted that the right principle on this point is accurately expressed in section 640 of the United States *Law of Naval Warfare*, which provides that “stratagems or ruses of war are legally permitted. In particular, according to custom it is permissible for a belligerent warship to use false colours and to disguise her outward appearance in other ways in order to deceive an enemy, provided that prior to going into action such warship shows her true colours ... acts of treachery, whether used to kill, wound or otherwise obtain an advantage over an enemy, are legally forbidden”.²²

That Germany accepted the principles cited is clear from evidence given by the German Admiral Raeder, as recorded in *Proceedings of the International Military Tribunal at Nuremburg, 1945-46*. When questioned about German warships flying a British flag as a ruse, he said:

That is quite a regular ruse of war, that warships carry a foreign flag. A requisite for the legality of that act, however, is that at the moment of an enemy action, the moment fire is opened, their own flag must be hoisted in time. That has always been done in the German Navy, especially in the case of our auxiliary cruisers, which frequently sailed under a foreign flag in order to avoid

²⁰ PUB.024.0001 at 0496 to 0497

²¹ PUB.024.0001 at 0497. Colombos cites Roskill: *Military History of the Second World War: the war at sea (1939-1945)* (1954, pp. 547-9).

²² PUB.024.0001 at 0497 to 0498

being reported by merchant ships, but which always lowered that flag in time. That is a matter of honor.²³

And later:

*That is the principle which is absolutely recognized in naval warfare, that at the moment of firing you have to raise your own flag.*²⁴
[emphasis added]

- 1.23 By the beginning of World War 2 the use of disguised ships and false flags was long established. There was nothing novel, or illegitimate, in the German Navy refitting STEIERMARK (later to be commissioned as KORMORAN) as a raider to disrupt Allied shipping. It was, however, imperative under international law that at or before the time of opening fire the ship's true flag be hoisted. This position was recognised and accepted by both Germany and the Allies.

²³ CASE.009.0001 at 0099

²⁴ CASE.009.0001 at 0194

