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WAR CABINET.

DEATH PENALTY FOR OFFENCES COMMITTED ON ACTIVE SERVICE.

Memorandum by the Secretary of State for War.

REPRESENTATIONS have been received from the Commander-in-Chief, Middle East, pressing for legislation to reintroduce into the Army Act the death penalty for the offences of desertion in the field and cowardice in the face of the enemy. General Auchinleck's letter is attached as Annex I.

Mutiny and treachery on active service are the only offences which now carry the death penalty. During the war of 1914-18, there was a much longer list, and I attach a note at Annex II showing how the present position was reached. The note also shows that even with the wider range of offences which in 1914-18 carried the death penalty, in only a small percentage of cases (300 out of 200,000 charges) was that penalty enforced.

My military advisers are unanimous in their opinion that the abolition of the death penalty for desertion in the field and cowardice in the face of the enemy was a major mistake from the military point of view. They hold that the penalty was a powerful deterrent against ill-discipline in the face of the enemy, which might so easily mean a lost battle and a lost campaign. In this connection it may be noted that the American Army retain the death penalty for practically the whole range of offences to which it applied in the British Army in 1914-18, and the Naval Discipline Act retains the penalty for a group of offences involving cowardice and desertion of post in the face of the enemy. But it is recognised that to promote legislation reintroducing the death penalty would, from a political and public point of view, be extremely difficult. It is a subject on which there are strong feelings, and to justify a modification of the present law we should have to produce facts and figures as evidence that the British soldiers' morale in the face of the enemy is so uncertain as to make the most drastic steps necessary to prevent it breaking. Any such evidence would come as a profound shock to the British public and our Allies and as a corresponding encouragement to our enemies. I doubt very much whether the facts given in General Auchinleck's letter could be regarded as proving the necessity for such a step. Moreover, any legislation which we introduce would not affect the Dominion forces, who in various theatres of war fight alongside British troops, and whose disciplinary code does not include the death penalty, nor would it affect the Free French and other Allied Forces who are governed by their own codes.

Nevertheless, if military efficiency were the sole consideration, I should be in favour, as are my military advisers, of the reintroduction of the death penalty for the offences in question. But the political aspects are, at any rate, in present circumstances, as important, if not more important, than the military.

P. J. G.

War Office, S.W. 1.

ANNEX I.

(CRME/877/7/AG2.)

THE UNDER-SECRETARY OF STATE,
THE WAR OFFICE.

G.H.Q., M.E.F., April 7, 1942.

1. I have to request that His Majesty's Government may be pressed to give urgent consideration to the immediate introduction of the legislation necessary to restore into the Army Act the punishment of death for the offences of Desertion in the Field and of Misbehaving in the face of the Enemy in such a manner as to show cowardice.

2. I am aware of the circumstances and considerations, political and humanitarian, which led in time of peace to the abolition of the death penalty for these and other grave military offences. I am, however, convinced and fortified by the unanimous concurrence of my Army Commanders and other senior Commanders with experience in the Field in this theatre of war during the past year that no less a deterrent is proved to be required from time to time, not merely in the interests of discipline, but for the conduct of operations in conditions of strain and stress.

3. I do not suggest that the frequent execution of a sentence of death will be necessary even on a scale comparable with that of the war of 1914-1918 (total 300 odd). Approval of the sentence would be reserved strictly to the C.-in-C. in the Field, and safeguards provided in the way of reports from the soldier's C.O., Brigade Commander, &c., to ensure that the exaction of the penalty was only resorted to where no less punishment would suffice.

4. Statistics in this theatre of war for the past year will give some indication of the problem of punishment. Apart from natives of Cyprus, among whom the offence has been abnormally prevalent, there have been 291 convictions for desertion. In 16 of these cases the offence was aggravated by the taking of a W.D. vehicle from a battle area to base area. In 77 of these cases sentences of penal servitude were awarded. Convictions for cowardice numbered 19. In 15 of these, sentences of penal servitude have been awarded.

5. I have no doubt that, had enforcement of the death sentence been within my discretion, the knowledge of this fact would have proved a salutary deterrent in a number of cases, in which the worst example was set by men to whom the alternative of prison to the hardships of battle conveyed neither fear nor stigma.

6. It has been argued, I understand, that there is something undemocratic in the punishment of death for military offences. This argument is, I suggest, based on false sentimentality, coupled with an underlying suspicion that distinction of rank or class may be made in its enforcement. On the assumption that discipline and military justice is administered without favour, I do not believe that the great majority of soldiers of ordinary courage, resolution and sense of duty will resent the idea that dangers which they themselves face without flinching should also lie in wait, in circumstances of dishonour, for those who shirk their duty and abandon their comrades and their arms. The same "anti-democratic" argument was behind much of the opposition to conscription.

7. I am aware that it may not be found possible to induce the Dominions to pass parallel legislation. Regrettable as that may be, I would urge that it should not be held a ground for inaction. A similar variation existed in 1914-18.

C. J. E. AUCHINLECK, *General,*
Commander-in-Chief, Middle East Forces.

ANNEX II.

1. Up to the year 1924, the Army Act contained provision for the death penalty in war for certain offences which, from time immemorial, had been considered as warranting the sentence of death, since the commission of such offences either brought about, or risked bringing about, the death of a soldier's comrades and the defeat and destruction of his nation.

2. In 1924, the Government of the day ordered a committee to investigate the whole question of the death penalty. This committee sat, but had not finished its deliberations before the Government resigned. In 1925, however, the committee issued its report. The committee had taken evidence from men of all walks of life, including officers and civilians, lawyers and private soldiers. The active-service offences for which the punishment was then death were, in general: mutiny, treachery, cowardice, desertion, sleeping or drunkenness on sentry, leaving a guard without order, forcing a safeguard or sentinel, plundering, gross insubordination and violence to superiors, impeding the Provost-Marshal, violence to persons bringing in supplies, offences against the inhabitants, and irregular appropriation of supplies. The committee unanimously recommended that no change should be made in the law as regards the death penalty for military offences committed on active service, except that the penalty should be abolished for the offences of impeding the Provost-Marshal, violence to persons bringing in supplies, offences against inhabitants and irregular appropriation of supplies. The changes were carried out in the Army and Air Force (Annual) Act, 1925.

3. By 1928, further consideration had been given to the question, with the result that the Army and Air Force (Annual) Bill of 1928 withdrew the death penalty for several other offences, thus leaving the death penalty for only the following: mutiny, treachery, cowardice, desertion and leaving a guard without orders.

4. Upon the resumption of office in 1929-30 by the political party which had formed the ministry in 1924, the then Secretary of State for War raised the matter again. The Secretary of State's proposal, as regards military offences on active service, was to abolish the death penalty for cowardice and to leave it as a maximum penalty for mutiny, treachery and desertion only. The Army Council took strong exception to this proposal, and the Air Council took the same view. In the result, the Army and Air Force (Annual) Bill of 1930 was put forward with amendments abolishing the death penalty for cowardice and certain offences allied to it, against the expressed view of the Secretary of State's military advisers. The Government amendments were carried and, in addition, the death penalty for desertion was abolished by a private Member's amendment which was carried, on a free vote of the House being taken. This left only mutiny and treachery on active service subject to the death penalty.

5. It is relevant to state that, though wider powers of inflicting the death penalty were held by the Commander-in-Chief in the Great War, it was only on relatively few occasions that the death penalty was inflicted. Out of 115,005 cases of desertion from the 4th August, 1914, to the 11th November, 1918, the number tried by courts-martial was 31,367, and the number of executions was 266 or .85 per cent. Out of over 10,000 trials for sleeping on their posts, only two men were shot.

There were, in addition, executions for the following offences:—

- 18 for cowardice.
- 7 for quitting posts.
- 6 for striking or violence.
- 5 for disobedience.

That is, a total of 304 executions out of over 200,000 charges for offences of the above kinds.
