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AMGOT/BIGOT, CONSULAR PERSONNEL
DEC. 1942; MAR., JULY 1943

COPYFile Enidias P...
FOREIGN OFFICE, S.W.A.

24th March, 1943.

(W 17205/17001/G)

Dear French,

As Talbot has arranged with you on the telephone, I am sending you herewith the record of a meeting held here last December to consider the question of the treatment to be accorded to enemy consular personnel and archives which might fall into our hands in the territory of third powers.

The considered views of the Foreign Office on this matter may, I think, be of interest to you in connexion with the drafting of the instructions to be followed by the British military authorities in the course of future operations in enemy-occupied territory.

I am sending a copy of this letter with enclosure to Waldock.

Yours sincerely,

(Sgd) J.H. Le Rougetel.

Lieutenant-Colonel,
F.G. French,
M.O.II.,
War Office.

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E.

Copy.
(W 17205/17001/G).

A meeting was held on the 17th December in Sir William Malkin's room, at which Sir William Malkin, Mr. Beckett, Mr. Dean, Mr. Steel, Mr. Le Rougetel, Mr. W. Roberts, Mr. Hutcheon, Mr. Loxley and Mr. Talbot were present, to consider the question of the treatment to be accorded to

- A. Enemy consular personnel, and
- B. Enemy consular archives which might fall into Allied hands in the territory of third Powers.

Cases in point, on which an immediate decision was required, were

- (a) the German Consular personnel seized by the Allied forces under United States command in French North Africa and since brought to this country.
- (b) the attitude to be adopted towards the seizure by the Japanese of the archives of the former British Consulate at Saigon.

The following conclusions were reached:

- A. 1. As regards A a distinction would have to be drawn between German and Japanese personnel on the one hand and Italian personnel on the other.

- 2. German and Japanese. All German and Japanese consular personnel should be detained.

3. No attempt should be made to justify the detention of these Germans and Japanese until a protest was received from the enemy powers. If a protest is received, consideration will then be given as to the best method of answering it, but this will depend upon the form which the protest takes. In any case as regards Germans a clear case for basing our action on retaliation could be made out, in return for the detention of British consular personnel at, e.g., Bergen and other places in Norway. On the other hand it is open to question both on legal and political grounds whether it might not be wiser to justify our action on the more general grounds that the personnel in question is not entitled to any immunity from capture or detention.

- 4. The German and Japanese personnel might be asked any

(b) the attitude to be adopted towards the seizure by the Japanese of the archives of the former British Consulate at Saigon.

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4. The German and Japanese personnel might be asked any questions which it was desired to put to them but no pressure must be used to make them answer if they refused and no form of third degree could be employed. Mr. LOXLEY stated in this connexion that he felt sure that all his friends would wish to have the right of access to the persons concerned in conditions of reasonable privacy.

5. As regards the Italians, although Italian Consular personnel would have to be detained temporarily if they fell into our hands it would be impossible to detain them for any length of time since

(a) no case for retaliation could be made out against the Italian Government and they could not be made liable for the acts committed by their allies; and

(b) an agreement had been concluded by an exchange of notes of the 9th July and 23rd August 1940 under which His Majesty's Government and the Italian Government mutually agreed to release any "diplomatic or consular officers and members of their staffs and families who may fall into their hands". This agreement is still in force and we have had the benefit of it in order to obtain the release of our diplomatic and consular personnel who were captured in Yugoslavia.

Note.

Note. The legal basis for the above conclusions is that the German and Japanese personnel are in a different position to the Italians since as regards the former a clear case for retaliation can be made out and there is no agreement such as that mentioned in conclusion 5 (b) above. The exact status however of consular personnel captured in the territory of a third state is doubtful under international law, and although it seems probable that it would be to our advantage in the immediate future, i.e. during the remainder of the present war, to aim at clarifying this matter in the direction of the non-immunity from capture and detention of consular personnel caught in such territories, the more distant outlook is obscure. Sir William MALKIN reserved his view that His Majesty's Government had already taken up a definite standpoint in this matter as far back as the "Trent" case, and that they were already committed to the view that consular personnel might be detained in the circumstances under consideration.

6. An early opportunity should be taken of informing the Americans of our views. It is clear however that the American attitude will be different since

(a) they have been advised that they have the right under international law to capture and detain all enemy diplomatic and consular personnel who may be found in the territories of third States; and

(b) they are not bound so far as the Italian Government is concerned by any such agreement as that mentioned in conclusion 5(b) above.

7. As regards (a) in the first paragraph of these minutes, since the captured enemy consular personnel are not prisoners of war, a discussion should be held with the Americans as soon as possible in order to decide whether they should be asked to hand over the German consular personnel whom they have brought to this country so that their detention in this country could be put on a secure legal basis. This step however may not be necessary if the Americans intend to remove them to the United States in the near future. No such approach could be made as regards Italian Consular personnel since if they were to be handed over to His Majesty's Government the latter would be bound to release them under the agreement mentioned in conclusion 5 above. Sir William MALKIN agreed to speak to Colonel Betts of the United States Army on this question.

B. 1. All enemy consular archives, even if already handed over to the Protecting Power, should be opened and examined.

2. No distinction need be drawn in this respect between the German,

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B. 1. All enemy consular archives, even if already handed over to the Protecting Power, should be opened and examined.

2. No distinction need be drawn in this respect between the German, Italian or Japanese archives.

3. No attempt to justify this action should be taken until a protest is received from the enemy power concerned. In that event it would be considered upon what grounds to justify the seizure and examination, but so far as the German and Japanese consular archives were concerned, a case could, if thought desirable, be made out on grounds of retaliation for the seizure of British consular archives by those powers (e.g. at Lyons and at various places in Norway and Indo-China). No case for retaliation however could be made out against the Italians.

4. As regards (b), a purely formal protest should be made to the Japanese reserving all our rights in order that we might not appear on record as denouncing on grounds of international law action which we intended ourselves to take in the near future.

+ It now appears from discussion with Colonel Betts that these persons are prisoners of war under United States law and this point is therefore satisfactorily met.

FOREIGN OFFICE, S.W.1.

21st December, 1942.

ARMY FORM C.

MESSAGE FORM

COPY

Register No.

Call.	Srl. No.	Priority	Transmission Instructions	
Above this line for Signals use only.				
From	ORIGINATOR.		Date-Time of Origin.	Office Date Stamp.
(A)	FANTOX		61320 B	
For Action.				
MAIN TWELFTH ARMY FORCE 343				
To	(W) For Information (INFO).		9 Jul 43 7849 II	Message Instructions
				GR

ORIGINATOR's No. 17 291

BIGOT HUSKY - MOST SECRET (.) Following policy will be adopted regarding
 Consulates in HOBBIED (.) Enemy Consulates will be searched documents
 seized officials guarded under house arrest (.) Neutral Consulates will
 not be entered or officials molested.

COPY TO C.C.A.O.

This message may be sent AS WRITTEN by any means except	If liable to be intercepted or fall into enemy hands this message must be sent IN CIPHER.	Originators Instructions Degree of Priority.	THI or THOR
			TIME CLEARED
WIRELESS		IMPORTANT	
Signed.	Signed. for EGS(I) H. Van.		

