

0711

Declassified E.O. 12356 Section 3.3/NND No.

785017

ACC

10000/109/1013
(VOL. II)

MERO
(PORT
SEPT.

0712

Declassified E.O. 12356 Section 3.3/NND No.

785017

10000/109/1013
(VOL. II)

MERCHANT SEAMEN
(PORT OF GENOA)
SEPT. 1945; APR. 1946 - JAN. 1947

DRAFT.

January 1947

SUBJECT: Allied Merchant Seamen.

TO: The Ministry of the Interior.

-171

Reference is made to your M.300/63910 of 21st December 1946 on the subject of Allied Merchant Seamen.

This Commission has no comment to make on the letter addressed ~~on 11 October 1946~~ ^{American on 11 October 1946} by the ~~British~~ ^{American} Embassy to the Chief of the UNRRA (Italian) Mission ^{regarding jurisdiction over American Merchant Seamen.}

The question of the status of British Merchant Seamen is under consideration by the British Embassy, and it is suggested that the question of the liability of British Merchant Seamen to trial by Italian Courts and the right of Italian Police to board British Merchant vessels should be taken up with the British Embassy.

Similarly the situation in regard to Merchant Seamen of other of the Allied Nations should be taken up with the appropriate Embassy, if necessary.

Copy to P. D. Adley }
M. Adley } ref. S. 606/172/EC.

5534

171

Reference is made to your N.300/63910 of 21st December 1946 on the subject of Allied Merchant Seamen.

This Commission has no comment to make on the letter addressed ~~extra with volume 1346~~ ^{American on 11th Oct 1946} by the ~~British~~ ^{American} Embassy to the Chief of the UNRRA (Italian) Mission ^{regarding jurisdiction over American Merchant Seamen.}

The question of the status of British Merchant Seamen is under consideration by the British Embassy, and it is suggested that the question of the liability of British Merchant Seamen to trial by Italian Courts and the right of Italian Police to board British Merchant vessels should be taken up with the British Embassy.

Similarly the situation in regard to Merchant Seamen of other of the Allied Nations should be taken up with the appropriate Embassy, if necessary.

5534

Copy to P. S. Adla }
P. S. Adla } ref. S. 606/172/EC.

PA 11/11

176.

AFHQ are of opinion that allied Merchant Seamen do not fall within a category of persons entitled to court immunity under the terms of restoration of territory and other instruments.

If this is the case, the future status of British Merchant Seamen in Italy is obviously a matter for discussion between both governments concerned and not an allied Commission responsibility. I agree.

Legal Division

21 Jan 47

G. G. Humphreys
Hle

177.

✓ Legal Div.

2/ P.S. Div.

5533

Ref. 171 in view of AFHQ's reply at 175 I suggest letter to Mr. J. J. as per draft enclosed. Atty comments please.

28/1/47

McL. B. J.
EC

EC

No comments

Legal Div.
28/1/47

G. G. Humphreys
Hle

785017

3) this is the case. the future status of British Merchant
seamen in Italy is obviously a matter for his country
between both governments concerned and not an allied
Commission responsibility. I agree.

G. G. Thompson
Hue

Legal Division
21 Jan 47

177.

✓ Legal Div.
2/ P.S. Div.

5533

Ref. 171 in view of Atter's reply at 175 I
suggested letter to Mr. J. Pitt. as per draft enclosed
Atty. comments please see

McLain Bay
Ed

28/1/47

EC

No comments

G. G. Thompson
Hue

Legal Div.
28/1/47

179.

Ex Comm.

No comments. Letter prepared

for examination.
28.1.47.

E. J. Dye. Copy
28/1/47

Declassified E.O. 12356 Section 3.3/NND No.

785017

168

Ex Comm.

Folio 167 may be of interest if you
have not already seen it. Alot 19/4

Seen by EC
prior to shipment
12. 1/4
1/5

174.

Ex Comm

Letter at 173 submitted for 5532
signature in accordance with approved
draft.

J.S. 11/1

175

148.

POAD A } Please see folio 144 and
POAD B } attachments for info and
possible comment.

G. MCM. 22/7

149

C.S.O.

Many thanks. I have started

W.S. Palad, AFHQ, re: U.S. civil
Affairs draft presently being
negotiated by U.S. Congressman with
Ital. Govt. and which contains
a clause relating to this subject.

Weller Jones
Pal. Ad (Am)

150.

July 23/46

The British Embassy is awaiting F.O. instructions on
this subject, with reference to the relative article in the
British Draft C.A. Agreement.

Shaw - folio B. 24/7.

N.S. 24/7

151.

Ref. Please see m. 149 & 150. Folio 144 refers to
G. MCM. 26/7. ^{for 5531}

164

To CSO

1 suggested copying of folios 159 to 163
should be sent to G.I.S. so you agree, per

785017

Many thanks. I have edited
 W.S. Palad, AFHQ, re: U.S. civil
 Affairs draft presently being
 negotiated by U.S. Command with
 Ital. Govt. and which contains
 a clause relating to this subject.

W. S. Palad

Pal. Ad (Am)

150.

July 23/46

The British Embassy is awaiting F.O. instructions on
 this subject, with reference to the relative article in the
 British Draft C.A. Agreement.

W. S. Palad B. 24/7.

W.S. 24/7

151.

Please see m. 149 & 150. Folio 144 ⁶⁶ ~~referred to~~
 J. W. C. M. 24/7. ⁸⁵⁵⁵³¹

164

To CSO

1 suggested copies of folios 159 to 163
 should be sent to 915. so you agree, per
 already sent at 158 ^{Aut 8/11}
 H.S. 8/11

0720

Declassified E.O. 12356 Section 3.3/NND No.

785017

132.

Legal S/C

Can you please copy with
Sibrio
131.

Authentic copy.

11/7

131

E.C.

The report was received on the 13th & is now
being translated. It is a fairly long document

S. S. Kamm
17
17
17

15 June 46
Legal S/C

LEGAL S/C 136.

Legal S/C

Please see folios 135, 2, and 134. Executive Committee should

also see.

45 Referred

10/7
S. S. Section

13000

G. S. S.
Legal S/C

C.S.O. 1717

138

Please see folios 134-5 for info. 17/6

145

C.S.O.

min of the meeting on smuggling
for your info, at folio 144. 17/7

146.

Ex Comm.

E.C.

The report was received on the 13th & is now being translated. It is a fairly long document

15 June 46
Major S/C

Declassified E.O. 12356 Section 3.3/NND No.

785017

136.

Please see folios 135 & and 134 Executive Committee should

also see.

95 Reserves
Major
C.A. Section

140 (1947)

S. G. H.
Regd. G/C

C.S.O. H.S. 1717

138

Please see folios 134-5 for wife. Aut. 17/6

145

C.S.O.

min of the meeting on smuggling
for your wife, at folio 144. Aut. 17/17

146.

Ex Comm.

You may have seen H's 144 et seq
but I am sending in in case you
have not. & 131 refers. H.S. 19/17

147.

Seen by H.S. - Photos 'A' & 'B' to see. H.S. 22/7.

0722

785017

V.P. CTS

124

122 + 123

For action in response to Dean for Justice
of direction D/C.A. who may go to
Cenac as an observer only

128/14/6

125

Ex. (Comm.)

D/C.A. was instructed on 14th that he attend
in the capacity only of an observer. D/C.A. has informed
Minister of Grace & Justice that he is attending
as an observer.

McLanby
4 D.C.A.S.

1576/46

127

CSO Ex Comm.

Please see signal at 126 and min
no 125 for info.

19/6 H. 19/6

CSO

124

Copy with explanatory covering letter

Measure

See 130. Aug 12/6

5329

Leave as an observer only

128/14/6

125

Ex. Comm.

D/C.L.A. was instructed on 14th that he attend
in the capacity only of an observer. D/C.L.A. has informed
Minister of Grace & Justice that he is attending
as an observer.

13/6/46

M Landry
4 DEC 46

124

CSO Ex Comm.

Please see signal of 126 and min
no 125 for info.

19/6 H.S. 19/6 ⁵⁵²⁹

CSO

129

Copy with explanatory covering letter

to AFHQ, 2 to Embassies - Moscow
See 130. 19/6

up our last telegram.
123

10/15/6

Declassified E.O. 12356 Section 3.3/NND No.

785017

11b

CSO.

Ref folio 114. a meeting will be
 held 29 May at 1000 hr. Polads A+B,
 Br. and U.S. Reps from Navy Sec and
 DEHA. will attend. do you wish to
 be present please? If so meeting will
 be held in your office.

ALB:297
 Seen by CSO 297

5528

106

eso: folio 103 & 4 for a cc's - fo, please
delay caused by file going to legal &
first. In connection with this, please see

D.C.H.A's min on folio 105.

Please return file to legal & c after personal

Auth
1/17/4

108

eso: folio 108 for signature, please. Auth 1/17/4

109

eso: 107 info. Letter to Ambassador of Heads of Dip Com. Auth 1/14/4

mission should be signed by C.S. or Ex Com.

Auth 1/14/4

113

eso: Auth Letter at 112 for signature, please Auth 1/14/4 2/1/4

115

eso: 114. If you agree, I will
arrange this meeting at the D.C.H.A's
return.

Auth 2/1/5. Yes. Inform Polads. Auth 2/1/5.

5527

0728

Declassified E.O. 12356 Section 3.3/NND No.

785017

5606

5032

175

ALLIED FORCE HEADQUARTERS
G-5 Section
APO 512

G-5: 934.01

18 January 1947

SUBJECT: Jurisdiction over Merchant Seamen.

TO : Chief Commissioner
Allied Commission
APO 794.

173

Reference is made to your letter 5606/172/EC of 13
January 1947.

1. It is not considered that the question of the liability
of British Merchant Seamen to trial by Italian courts has any
Allied military implication.

2. The Italian Government should be advised to take up
the matter with the British Embassy.

BY COMMAND OF GENERAL MORGAN:

Col

A. L. Hamblen

A. L. HAMBLEN
Colonel, G.S.C.
Assistant Chief of Staff, G-5.

See by CC
28/1
mc

5526

Declassified E.O. 12356 Section 3.3/NND No.

785017

Ref: 5606/172/EC

13 January, 1947

172 173

SUBJECT: Jurisdiction over Merchant Seamen

TO : ALLIED FORCE HEADQUARTERS,
Attention: G-5 Section

1. Reference is made to this Commission's letter 5606/158/EC of the 7th November, 1946, and in particular to the letter addressed by the American Embassy to the Chief of the UNRRA Italian Mission (which was forwarded as an enclosure to 5606/158/EC) and of which the sense was communicated by the American Embassy to the Italian Government.

2. Referring to the letter addressed by the American Embassy to the UNRRA Italian Mission, the Ministry of the Interior has now asked for the opinion of this Commission on this matter generally. As you are aware there exists some divergence between the British and American point of view in regard to the extent of Italian jurisdiction over Allied Merchant seamen in that the British Government consider that British Merchant seamen still belong to a category which gives them protection against trial by local Courts.

3. This Commission agrees with the American point of view which is set out in the American Embassy's Note Verbale to the Ministry of Foreign Affairs (which was enclosed with this Commission's letter under reference) and considers that it should be applicable to Allied Merchant Seamen as a whole.

It would be appreciated if I could be informed whether I may so advise the Ministry of the Interior.

FOR THE CHIEF COMMISSIONER:

MC
Brigadier,
Executive Commissioner.

Copy to: Public Safety Div.
Legal Div.
Polad A
Polad B

See 4 145

5525

PA
173

Declassified E.O. 12356 Section 3.3/NND No. 785017

copy of minute ref 1 171

172

P.S. Div.

As you are aware there exists a conflict between the British and American point of view in regard to the extent of Italian jurisdiction over Allied Merchant seamen.

This division concurs with the American point of view because:

a) When returning territory to Italian Sovereignty no restriction or the jurisdiction of local courts over Allied civilians was ever contemplated (and Allied Merchant seamen are civilians and not members of the armed Forces.)

and

b) As soon as the Peace Treaty is signed Italian Courts will exercise their full jurisdiction "ipso facto" and this is only a question of a very short time.

sgd. G G. Hannaford
Lt. Col.

Legal Div.
3 Jan 47.

5504

0729

Declassified E.O. 12356 Section 3.3/NND No.

785017

MINISTRY OF THE INTERIOR
PS General Direction

171.

N. 300/63910

30 DEC 1946
14057
BS

21 December 1946.

SUBJECT : Authorisation to search Allied Merchant Ships.
TO : Public Safety Division
Allied Commission - Rome.

90^A
With reference to your letter AC/14057/PS of 12th inst.,
attached herewith is copy of the communication of the 11th Oct. 46
from the American Embassy in Italy, Foreign Services, to UNRRA -
Italian Mission, concerning the a/o subject.
This Ministry would appreciate knowing your opinion
on the matter.

For the Minister
/s/ Ferrari.

5523

Translation ac/

0730

Declassified E.O. 12356 Section 3.3/NND No.

785017

P.

Mod. 012

Roma 21 Dicembre 1946

Ministero dell'Interno
DIREZIONE GENERALE DELLA PUBBLICA SICUREZZA

AL COMANDO DELLA COMMISSIONE ALLEATA-S. Commissione per la P.S. ROMA

Direzione P.F. e T.P. 2°
Prot. A 300/63910 Allegato I.

Risposta al f. del 12 corr.
In A.C. 24057-B.S.

OGGETTO: Autorizzazione di perquisire navi mercantili alleate.

Con riferimento alla lettera suindicata, si ha il pregio di trasmettere copia della comunicazione, dell'11 ottobre scorso, diretta dall'Ambasciata degli S.U.A. in Italia-Servizio Esteri-all'U. N.R.R.A. Italian Mission, riguardante l'oggetto.

Questo Ministero desidera conoscere, sull'argomento, l'avviso di codesta On.le Commissione.

PEL MINISTRO 5522

[Signature]

Mo.

C O P Y

170

THE FOREIGN SERVICE
OF THE
UNITED STATES OF AMERICA

AMERICAN EMBASSY

Roma October 11, 1946

Dear Mr. Keeny:

I refer to your letter of September 12 (Ref. RD/60/9/P.S.), and to my reply of September 18, regarding the question of jurisdiction over Allied Merchant Seamen.

I am now able to inform you that instructions are being issued to all American Consulates in Italy to the effect that henceforth all cases involving American Seamen accused of violating Italian law in Italy, except, those over which United States Military jurisdiction is preemptive, are to be dealt with by the Italian Authorities under proper safeguards as to healthful detention, expeditions and fair disposition, etc. Jurisdiction over American Seamen in the port of Trieste or in other ports of Venezia Giulia will, however, be exercised exclusively by Military Government Authorities. I am enclosing for you information a copy of an opinion of the Theatre Judge Advocate, MTOUSA, setting forth the type of cases in which U.S. Military Jurisdiction is preemptive.

The answers to questions raised in paragraph 3 (c) of your letter are, of course, subject to the limitations of preemptive Military jurisdiction and to exception for United States Military and Navy vessels. In general, however, Italian Customs laws are applicable to American Seamen, the Italian police have authority to arrest American Seamen for infringement of Italian Customs regulations, and it is permissible for Italian police to board an American Merchant vessel in an official capacity, provided such vessel is in Italian territorial waters at the time the Italian police propose to board it.

I am also communicating the sense of the foregoing to the Allied Commission and to the Italian Government.

Sincerely yours,

David Mak Key, ⁷⁸⁵⁰¹⁷
Charge d'Affaires ad interim.

785017

0731

Roma October 11, 1946

Dear Mr. Keeny:

I refer to your letter of September 12 (Ref. RD/60/9/P.S.), and to my reply of September 18, regarding the question of jurisdiction over Allied Merchant Seamen.

I am now able to inform you that instructions are being issued to all American Consulates in Italy to the effect that henceforth all cases involving American Seamen accused of violating Italian law in Italy, except, those over which United States Military jurisdiction is preemptive, are to be dealt with by the Italian Authorities under proper safeguards as to lawful detention, expeditions and fair disposition, etc. Jurisdiction over American Seamen in the port of Trieste or in other ports of Venezia Giulia will, however, be exercised exclusively by Military Government authorities. I am enclosing for you information a copy of an opinion of the Theatre Judge Advocate, MTOUSA, setting forth the type of cases in which U.S. Military Jurisdiction is preemptive.

The answers to questions raised in paragraph 3 (c) of your letter are, of course, subject to the limitations of preemptive Military jurisdiction and to exception for United States Military and Navy vessels in general, however, Italian Customs laws are applicable to American Seamen, the Italian police have authority to arrest American Seamen for infringement of Italian Customs regulations, and it is permissible for Italian police to board an American Merchant vessel in an official capacity, provided such vessel is in Italian territorial waters at the time the Italian police propose to board it.

I am also communicating the sense of the foregoing to the Allied Commission and to the Italian Government.

Sincerely yours,

David Mak Key, ~~5521~~
Charge d'Affaires ad interim.

Enclosure:

Copy of opinion of
Theatre Judge Advocate, MTOUSA

Mr. S.M. Keeny
Chief of Mission,
UNRRA-Italian Mission

ROME

0733

785017

Declassified E.O. 12356 Section 3.3/NND No.

169

"It has been the policy within this Theater that U.S. Merchant Seamen who are clearly under the jurisdiction of the Military will be tried by U.S. Military Tribunals and not turned over to local authorities.

Where local jurisdiction has attached it has been the policy in the Theater to assert U.S. Military jurisdiction, and to arrange for the handing over of Merchant Seamen who would otherwise be subject to trial before Military Tribunals.

"The test as to whether a Merchant Seaman is subject to Military jurisdiction is based upon a consideration of all the facts of a particular case. Generally, Military Tribunals have jurisdiction over Army transports over the crews of vessels, American and foreign, which are within a base or Military area, or are carrying cargo (material or personnel) in connection with the Military or Naval operations of the United States. If a Merchant Seaman commits an offense while on shore in Italy, facts indicating the name of the ship, its charter and the nature of its cargo, should be determined by the Consular Office, and the facts reported to the Staff Judge Advocate of the Major Command nearest the place of offense to determine once whether the Military is in a position to assume jurisdiction.

"It is suggested that seaport Consulates be advised of the matters set forth in paragraph 2 hereof, and should any doubt arise in their minds in regard to any particular case, or the Staff Judge Advocate to contact, they should call the Theater Judge Advocate, Freedom 156 or 956, at Caserta, Italy. For your information, the Staff Judge Advocate PBS. Value 17, Ieghorn, should be contacted with reference to cases arising in or near ports along the Mediterranean; Staff Judge Advocate; 88th Infantry Division Legion 17, Gorizia should be contacted with reference to cases arising in the Occupied Area (Venezia-Giulia); Staff Judge Advocate Roma Area, MIOUSA, 66395, Rome, should be contacted for offense arising in the Roma Area. For offenses arising in other areas than those mentioned, the Theater Judge Advocate should be called."

220

Declassified E.O. 12356 Section 3.3/NND No.

785017

5806

NOV 18 1946

167

CONFIDENTIAL

Ref.: AC/4595/L.

19 November 1946.

SUBJECT : Jurisdiction over offenses by Allied Nationals.

TO : Allied Force Headquarters.
(Attention: G-5 Section)

NR

1. I refer to your G-5.C1 of 11 October 1946 on the subject of trial of Allied Nationals accused of committing offenses in A.M.G. territory.

2. I am enclosing a copy of a memorandum on this subject prepared by the Chief Legal Advisor of this Command.

3. Not being in possession of any of the original directives which may have been issued in regard to the powers of the Military Governor in this Theatre, I am unable to express an opinion as to whether the Courts established by the Military Governor can have jurisdiction over Allied Nationals.

Proclamation No. 1 would appear to cover Allied Nationals but in the light of the enclosed memorandum there would seem to be some doubt as to the validity of the Proclamation in this respect.

In general, it would appear that the directives dealing with jurisdiction under A.M.G. tend only to cover nationals of the territory under Government.

Since the question raised is one of national laws of the U.S. and the U.K. and not of international law, I suggest that it is for the Judge Advocate General to advise on the powers possessed in this respect by the Supreme Allied Commander in his capacity as Military Governor. It may be that the Supreme Allied Commander should seek directions from higher authority in this matter.

4. The letter from the SMAD Venezia Giulia refers only to American and British Nationals. The problem, however, would appear to arise in the case of all Allied Nationals and it would appear inequitable if the Allied Military Government did not take jurisdiction over all Allied Nationals in respect of violations of AMG Proclamations and of Civil law if it assumes it over American and British Nationals.

5. As regards American Merchant Seamen, a ruling has been conveyed recently to the Italian Government by the American Embassy to the effect that the cases of American Merchant Seamen, except those who come under the jurisdiction of the U.S. military authorities, accused of violating Italian laws in Italy, will be considered as triable by Italian authorities.

5549

G. J. [signature]

ll.

Declassified E.O. 12356 Section 3.3/NND No.

785017

166

The note, however, does state that jurisdiction over American seamen in the port of Trieste or other ports in Venezia Giulia will continue to be determined by A.S.A. authorities. A copy of this ruling was forwarded to your Headquarters under this Commission's letter 5606/15/22 of 7 November 1946.

As regards British Merchant Seamen, the present position is that they are not protected by the Justice or Terms of Restoration of Territory to Italian Administration, nor by any covenant to which the Italian Government are a party. Under international law therefore seamen are triable at present by Italian Courts for offenses committed on Italian territory. The fact that the Foreign Office are of opinion that British seamen should not be tried by Italian Courts but come under the provisions of Articles 10 and 12 of the draft Civil and Military Affairs Agreement is not at present relevant as the Civil Affairs Agreement has not been signed.

British Seamen under English Law are subject to Defence Regulations 47 A/B and triable by British Courts. The Italian State is not legally concerned with British internal regulations and has an unquestionable right to exercise its full jurisdiction over persons who commit offenses in territory where Italian Sovereignty has been fully restored, unless they accept to abandon such jurisdiction by agreement. As far as the Italian authorities have held their hand, not because of lack of jurisdiction but for reasons of policy.

The British Embassy in Rome has brought these facts to the notice of the British Foreign Office and has requested further instructions in view of the definite position taken by the United States in this matter.

6. Having regard to the foregoing, I do not consider that I am presently able to draft the proposed reply to A.S.A. Venezia Giulia letter 482/22/122/2944 of 2 October 1946.

N.R.

/s/ Ellery W. Stone

ELLEERY W. STONE
Rear Admiral, USNR
Chief Commissioner

Copy to: Polad (A)
Polad (B)
Ex. Comm.
CC.

5518

0738

Declassified E.O. 12356 Section 3.3/NND No.

785017

5706

NOV 7 1946

EC
165

7

7 November 1946.

HSC/5612

Subject: Italian Jurisdiction over U. S. Merchant Seamen.

TO: G-5 Section, Allied Force Headquarters.

Seen by CSO
with 164
Alb

1. In accordance with the request contained in your letter G-5: 934.01 of 7 October 1946, the views of the Allied Commission in reply to the questions raised by the U. S. Maritime Commission in their letter of 25 Sept. 1946, are as follows:

Question 1. --In territory restored to Italian administration, Italian authorities have full power to seize and arrest any Allied national committing an offense against Italian law, provided the said national is not a member of the Allied Forces or a camp follower or is not protected by a covenant whereby the Italian State has agreed to abandon jurisdiction.

Question 2. --The Italian authorities are not concerned with American or British or any other Allied legislation covering offenses of Allied merchant seamen. If such seamen do not belong to any of the categories specified above, they are common offenders under the law and are triable by the local Courts, just as much as a British merchant seaman is triable by American Courts for any offense committed on American soil. The question involves a matter of sovereignty. Wherever the sovereignty of the Italian State has been restored there can be no restrictions to its scope unless under an agreement to which the Italian State must be a party.

Question 3. --Customs laws, as stated by the Italian Ministry of Finance, are applicable to Allied citizens and seamen.

Question 4. --It is permissible for Italian Police to board a vessel flying an Allied flag in an official capacity, provided that the ship is a trader and not a warship or a vessel carrying Allied war material.

/s/ Ellery W. Stone

ELLERY W. STONE
Rear Admiral, USNR
Chief Commissioner

Copy
[Signature]

114
29 Nov 46

5606 *AN*
COPY

THE FOREIGN SERVICE
OF THE
UNITED STATES OF AMERICA

NOV 7 1946
163

AMERICAN EMBASSY

Rome, October 11, 1946

My dear Admiral Stone:

I am informed that you and officers of interested Sub-Commissions of the Allied Commission have recently been concerned at the situation regarding jurisdiction over American and other Allied Merchant Seamen in cases involving violation of Italian laws by such Seamen.

I am enclosing for your information, copies of a Note addressed by the Embassy to the Ministry of Foreign Affairs and of a letter to the Chief of the UNRRA - Italian Mission, which seek to clarify the problem.

Sincerely yours,

David McK. Key,
Charge d'Affaires ad interim

Enclosure:

1. Copy Note Verbale to the Ministry of Foreign Affairs.
2. Copy of letter to Chief, UNRRA - Italian Mission

Rear Admiral Ellery W. Stone,
Chief Commissioner,
HQ. Allied Commission,
ROME

5516

See 11. 164

0738

Declassified E.O. 12356 Section 3.3/NND No.

785017

162

COPY

F. O. No. 697

NOTE VERBALE

The Embassy of the United States of America presents its compliments to the Ministry of Foreign Affairs and has the honor to state that it has appeared desirable to the Embassy to survey the question of jurisdiction over American Merchant Seamen accused of violating Italian laws in Italy. As a result, the Embassy is in a position to inform the Ministry that henceforward, all such cases, except those which come under the jurisdiction of the United States Military Authorities, will be considered justifiable by Italian authorities, who will be considered by the United States authorities to have the necessary powers of arrest and detention.

The Embassy has been informed that the Military authorities express the following views with regard to cases over which they will preempt jurisdiction under the relevant terms of the Armistice:

To the

Ministry of Foreign Affairs,

Rome.

5515

- 2 -

161

" It has been the policy within this Theater that U.S. Merchant Seamen who are clearly under the jurisdiction of the Military, will be tried by U.S. Military Tribunals and not turned over to local authorities. Where local jurisdiction has attached it has been the policy in the Theater to assert U.S. Military jurisdiction, and to arrange for the handing over of Merchant Seamen who would otherwise be subject to trial before Military Tribunals.

" The test as to whether a Merchant Seaman is subject to Military jurisdiction is based upon a consideration of all the facts of a particular case. Generally, Military Tribunals have jurisdiction over Army transports, over the crews of vessels, American and foreign, which are within a base of Military area, or are carrying cargo (material or personnel) in connection with the Military or Naval operations of the United States. If a Merchant Seaman commits an offense while on shore in Italy, facts indicating the name of the ship, its charter and the nature of its cargo, should be determined by the Consular Office, and the facts reported to the Staff Judge Advocate of the Major Command nearest the place of offense to determine at once whether the Military is in a position to assume jurisdiction".

All United States Consulates in Italy have been informed of the foregoing and have been advised that action by the Italian Authorities will be recognized subject to proper safeguards as to healthful detention, expeditions and fair disposition, etc.

The Consulates have also been informed that jurisdiction over American seamen in the port of Trieste or other ports in Venezia Giulia will continue to be determined by Allied Military Government Authorities.

Finally, the Consulates have been advised that the Embassy has replied to specific questions posed by the Chief of the UNRRA Italian Mission, stating that subject to limitations of preemptive Military jurisdiction, customs laws are applicable to American Merchant Seamen; that the Italian police have the authority to arrest American Merchant Seamen for infringement of Italian Customs regulations; and that it is permissible for Italian police to board American Merchant vessels, in an official capacity, provided such vessel is in Italian territorial waters at the time the police propose to board it.

- 3 -

160

The Embassy feels sure that the Italian authorities will welcome this clarification and will, in exercising jurisdiction over American seamen who are accused of violating Italian laws, be guided by a spirit of cooperation in giving fair and reasonable consideration to cases with which they deal.

Rome, October 11, 1946.

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AMERICAN EMBASSY
Rome, October 11, 1946

Dear Mr. Keeny:

I refer to your letter of September 12 (Ref. RD/60/9/PES) and to my reply of September 18, regarding the question of jurisdiction over Allied Merchant Seamen.

I am now able to inform you that instructions are being issued to all American Consulates in Italy to the effect that henceforth all cases involving American Seamen accused of violating Italian law in Italy, except those over which United States Military jurisdiction is preemptive, are to be dealt with by the Italian Authorities under proper safeguards as to healthful detention, expeditious and fair disposition, etc. Jurisdiction over American Seamen in the port of Trieste or in other ports of Venezia Giulia will, however, be exercised exclusively by Military Government Authorities. I am enclosing for your information a copy of an opinion of the Theater Judge Advocate, MTOUSA, setting forth the type of cases in which U.S. Military jurisdiction is preemptive.

The answers to question raised in paragraph 3 (c) of your letter are, of course, subject to the limitations of preemptive Military jurisdiction and to exception for United States Military and Naval vessels. In general, however, Italian Customs laws are applicable to American Seamen, the Italian police have authority to arrest American Seamen for infringement of Italian Customs regulations, and it is permissible for Italian police to board an American Merchant vessel in an official capacity, provided such vessel is in Italian territorial waters at the time the Italian police propose to board it.

I am also communicating the sense of the foregoing to the Allied Commission and to the Italian Government.

Sincerely yours,

/s/ David Mok. Key,
Charge D'Affaires ad interim

Enclosure:

Copy of Opinion of
Theater Judge Advocate, MTOUSA.

Mr. S.M. Keeny,
Chief of Mission,
UNRRA - Italian Mission,
ROME.

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Declassified E.O. 12356 Section 3.3/NND No.

785017

158

Ref: 5606/158/31

7 November 1946

SUBJECT: Jurisdiction over U.S. Merchant Seamen

TO : ALLIED FORCES HEADQUARTERS,

Attention: G-5 Section.

There are enclosed herewith copies of a note addressed by the American Embassy to the Minister of Foreign Affairs and of a letter to the Chief of the Italian Mission on the subject of the jurisdiction over Allied Merchant Seamen in cases involving violations of Italian laws by such seamen.

FOR THE CHIEF COMMISSIONER:

MC

H. CARR,
Brigadier,
Executive Commissioner.

Encls: 2.

Copy to: Chief Commissioner (Encls are in your file).
 Reled (A) (U.S. Embassy Note P.O. No. 697 with
 covering letter dated 11 Oct refers).

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Declassified E.O. 12356 Section 3.3/NND No.

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15 October 46

My dear Mr. Key:

Thank you for your letter of 11 October enclosing copies of a Note addressed by the Embassy to the Ministry of Foreign Affairs and of a letter to the Chief of the UNRRA Italian Mission on the subject of jurisdiction over Allied merchant seamen in cases involving violation of Italian laws by such seamen.

Sincerely yours,

ELMERY W. STONE
Rear Admiral, USNR
Chief Commissioner

Mr. David McK. Key
Charge d'Affaires ad interim
American Embassy
Rome

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EC DIST - 22/10/46

ACTION - CC

INFO - EC

Navy s/c

Legal Division

Y m/cml.

(CSO)

10/23/46

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Declassified E.O. 12356 Section 3.3/NND No.

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156

THE FOREIGN SERVICE
OF THE
UNITED STATES OF AMERICA.

AMERICAN EMBASSY

Rome, October 11, 1946.

My dear Admiral Stone:

I am informed that you and officers of interested Sub-Commissions of the Allied Commission have recently been concerned at the situation regarding jurisdiction over American and other Allied Merchant Seamen in cases involving violation of Italian laws by such Seamen.

I am now enclosing for your information, copies of a Note addressed by the Embassy to the Ministry of Foreign Affairs and of a letter to the Chief of the UNRRA - Italian Mission, which seek to clarify the problem.

Sincerely yours,

David McK. Key,
Charge d'Affaires ad interim.

Enclosure:

1. Copy Note Verbale to the Ministry of Foreign Affairs.
2. Copy of letter to Chief, UNRRA - Italian Mission.

Rear Admiral Ellery W. Stone,
Chief Commissioner,
HQ Allied Commission,
R O M E.

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COPY

F. O. No. 697

NOTE VERBALE

The Embassy of the United States of America presents its compliments to the Ministry of Foreign Affairs and has the honor to state that it has appeared desirable to the Embassy to survey the question of jurisdiction over American Merchant Seamen accused of violating Italian laws in Italy. As a result, the Embassy is in a position to inform the Ministry that henceforward, all such cases, except those which come under the jurisdiction of the United States Military Authorities, will be considered justiciable by Italian authorities, who will be considered by the United States authorities to have the necessary powers of arrest and detention.

The Embassy has been informed that the Military authorities express the following views with regard to cases over which they will preempt jurisdiction under the relevant terms of the Amistice:

To the

Ministry of Foreign Affairs,

ROME.

Declassified E.O. 12356 Section 3.3/NND No.

785017

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"It has been the policy within this Theater that U.S. Merchant Seamen who are clearly under the jurisdiction of the Military, will be tried by U.S. Military Tribunals and not turned over to local authorities. Where local jurisdiction has attached it has been the policy in the Theater to assert U.S. Military jurisdiction, and to arrange for the handing over of Merchant Seamen who would otherwise be subject to trial before Military Tribunals.

"The test as to whether a Merchant Seaman is subject to Military jurisdiction is based upon a consideration of all the facts of a particular case. Generally, Military Tribunals have jurisdiction over Army transports, over the crews of vessels, American and foreign, which are within a base of Military area, or are carrying cargo (material or personnel) in connection with the Military or Naval operations of the United States. If a Merchant Seaman commits an offense while on shore in Italy, facts indicating the name of the ship, its charter and the nature of its cargo, should be determined by the Consular Office, and the facts reported to the Staff Judge Advocate of the Major Command nearest the place of offense to determine at once whether the Military is in a position to assume jurisdiction."

All United States Consulates in Italy have been informed of the foregoing and have been advised that action by the Italian Authorities will be recognised subject to proper safeguards as to healthful detention, expeditions and fair disposition, etc.

The Consulates have also been informed that jurisdiction over

American seamen in the port of Trieste or other ports in Venezia

Giulia will continue to be determined by Allied Military Government Authorities. 567

Authorities.

Finally, the Consulates have been advised that the Embassy has replied to specific questions posed by the Chief of the UNRRA Italian

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Mission, stating that subject to limitations of preemptive Military jurisdiction, customs laws are applicable to American Merchant Seamen; that the Italian police have the authority to arrest American Merchant Seamen for infringement of Italian Customs regulations; and that it is permissible for Italian police to board American Merchant vessels, in an official capacity, provided such vessel is in Italian territorial waters at the time the police propose to board it.

The Embassy feels sure that the Italian authorities will welcome this clarification and will, in exercising jurisdiction over American seamen who are accused of violating Italian laws, be guided by a spirit of cooperation in giving fair and reasonable consideration to cases with which they deal.

R O M E, October 11, 1946.

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Declassified E.O. 12356 Section 3.3/NND No.

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152

AMERICAN EMBASSY

Rome, October 11, 1946.

Dear Mr. Keeny:

I refer to your letter of September 12 (Ref. RD/60/9/EAS), and to my reply of September 18, regarding the question of jurisdiction over Allied Merchant Seamen.

I am now able to inform you that instructions are being issued to all American Consulates in Italy to the effect that henceforth all cases involving American Seamen accused of violating Italian law in Italy, except those over which United States Military jurisdiction is preemptive, are to be dealt with by the Italian Authorities under proper safeguards as to healthful detention, expeditious and fair disposition, etc. Jurisdiction over American Seamen in the port of Trieste or in other ports of Venezia Giulia will, however, be exercised exclusively by Military Government Authorities. I am enclosing for your information a copy of an opinion of the Theater Judge Advocate, MTOUSA, setting forth the type of cases in which U.S. Military jurisdiction is preemptive.

The answers to questions raised in paragraph 3 (c) of your letter are, of course, subject to the limitations of preemptive Military jurisdiction and to exception for United States Military and Naval vessels. In general, however, Italian Customs laws are applicable to American Seamen, the Italian police have authority to arrest American Seamen for infringement of Italian Customs regulations, and it is permissible for Italian police to board an American Merchant vessel in an official capacity, provided such vessel is in Italian territorial waters at the time the Italian police propose to board it.

I am also communicating the sense of the foregoing to the Allied Commission and to the Italian Government.

Sincerely yours,

David McK. Key,
Charge d'Affaires ad interim.

Enclosure:

Copy of Opinion of
Theater Judge Advocate, MTOUSA.

Mr. S. M. Keeny,
Chief of Mission,
UMARA - Italian Mission,
R O M E.

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Declassified E.O. 12356 Section 3.3/NND No.

785017

HEADQUARTERS ALLIED COMMISSION
APO 794
LEGAL SUB COMMISSION

TRANSLATION

JUL 18 1946

Sent to 95.
by Legal Sec
19/8

SUBJECT : Draft of a convention for the repression of
offences committed by Allied merchant seamen.

Incl. : 1 Reply to letter 1114
of 12 June 1946.

Genoa, 22 June 1946.

CONFIDENTIAL

to the Ministry of Pardon and Justice

R O M E

1. With reference to the above mentioned letter please be advised that we have talked the matter over with Lt. Col. Hannaford and the President of the Genoa Port Society. The offences being committed by Allied merchant seamen consist generally in the stealing of goods from ships in which said personnel is employed and in the wrongful introduction of such goods into Italian territory. As soon as a ship comes into sight, Italian smugglers and receivers of stolen goods go out to meet it on boats. The wrongful traffic of stolen goods, as well as other goods which the above mentioned seamen have lawfully purchased in foreign countries with the purpose of obtaining a large profit, is usually carried out within the territorial waters and in many instances even in the port itself. Such goods, which are being introduced into the national territory in violation to the Customs and Financial Laws in force, are finally destined to reach the flourishing black market.

2. The repression of such offences cannot be merely considered within the limits of the most common juridical hypothesis viz: theft and contraband; in fact, occur that the criminal act is a complex one and may

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determine the concurrence of other types of offences (e.g. offences against the person, in cases where a fight between the Allied personnel and the Italian receivers of stolen goods may arise; insults or resistance to the Italian police, etc.). In any case, the hypothesis, that the above mentioned personnel could commit an offence different from the ones established above, should also be considered.

As the offences in question may be committed in Italian territorial waters, or in ^{any} Italian port, it is not advisable to limit the provisions of this draft decree to cover only those offences which are committed in the port of Genoa. It is obvious that similar situations may arise also in other ports and that, therefore, similar acts committed in territorial waters or ports other than Genoa should be dealt with in the same manner.

3. The attached draft is based with a view to complying with the rules governing the Italian penal law as established under Art. 3 and pursuant articles of the Penal Code now in force, the Armistice Terms, limiting our jurisdiction solely to necessary measures in order to satisfy the requirements of the Allied Military Authorities as pointed out by Lt.Col. Hannaford, and at the same time to provide a collaboration between the Italian and Allied police as well as to provide for the intervention of Allied observers in the proceedings in such a way as to obtain an efficient repression of the offences in question.

4. The rules as established in the draft will leave it up to the Allied Nations to initiate proceedings and impose punishments in accordance with their own laws for all offences committed by foreign merchant seamen in so far as such offences are not committed to the detriment of the Italian State and/or Italian citizens; it will also confer upon captains or other Allied Military authorities the power to request the intervention of the Italian Police as well as to denounce the offence to the Italian judicial authorities, in which case the Italian law shall apply. (Art. 1).

These laws are applicable in cases where the offence is committed to the detriment of the Italian State and Italian citizens (Art. 2), or in cases where the offender

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Declassified E.O. 12356 Section 3.3/NND No.

785017

- 3 -

142

even though in the service of an Allied Merchant Marine, is an Italian citizen. (Art. 1, last paragraph).

Articles 3 and 4 relate to the intervention of the Italian Police and to the collaboration between the latter and the Allied Police.

5. Lt.Col. Hannafoord has suggested that in any case foreign merchant seamen should be detained, in case of arrest, in a section of the prison different from that of other inmates. In order to comply with such request Articles 5 and 7 have been framed. In this case, however, it must be noted, that there is very little hope of carrying out such a provision, due to the overcrowding of prisons. The prison situation is so serious that recently the judicial authorities have been compelled to release many offenders who had committed thefts at the docks. (1)

6. In so far as the preliminary proceedings and the trials are concerned, the admission of Allied observers to collaborate with the Italian judicial authorities and to participate in the trial with an advisory vote is deemed to be a measure which should fully meet the requirements and exigencies of the Allies. (Art. 6). The convention should be kept in force until the armistice lasts and expire with the signature of the Peace treaty (Art. 8).

IL PROCURATORE GENERALE

Sgd.: Carlo Rolla

THE FIRST PRESIDENT
Sgd.: Giuseppe Giudice

(1) - It is hoped that such situation could be cleared in consequence of the amnesty.

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Declassified E.O. 12356 Section 3.3/NND No.

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DRAFT OF A CONVENTION FOR THE REPRESSON OF OFFENCES

COMMITTED BY ALLIED MERCHANT SEAMEN IN ITALIAN TERRITORIAL WATERS
AND IN ITALIAN HARBOURS.

ART. I

Allied merchant seamen, who shall commit in Italian territorial waters or in Italian Harbours on board of ships in which they are registered, any offences other than those against the Italian State or Italian citizens considered as such by the Law (Art. 3 It. Pen. Code), are subject to the Penal Law and Procedure of the State to which said ships belong.

The Masters of any merchant ship of an Allied State or the Allied Military Authorities may ask for the intervention of Italian Police in order to ascertain the offence and to arrest, as the case may be, persons such as described in para I above. Said authorities may also denounce to the proper Italian Judicial Authorities the said persons; in this case Italian Penal Law and Procedure shall apply save for the modifications under the following articles.

In case the offences described in para I above shall be committed by Italian citizens or with the cooperation of Italian citizens, the said authorities shall in any case ask for or allow the intervention of Italian Police and Italian Penal Law and Procedure shall apply.

ART. II

Allied merchant seamen who shall commit in territory subject to the Italian State (Art. 3 spv. Cod. pen.), including harbours and territorial waters, any offences against the Italian State or Italian citizens or against persons considered as such are subject to Italian Penal Law and Procedure.

ART. III

For the offences as set up in Art. II above the Italian

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Declassified E.O. 12356 Section 3.3/NND No.

785017

- 2 -

140

Police has the right to make all necessary investigations to arrest the authors of such offences even on board of mercantile ships belonging to Allied States.

ART. IV

In all cases where authority is granted to officers or agents of Italian Police by the present Convention to investigate offences committed and to arrest the authors thereof even on board of merchant ships belonging to Allied States which are in the territorial water or in Italian harbours, the Allied Military Police shall cooperate with the Italian.

For the purposes of such cooperation in case provided for above the officers and the agents of both Italian and Allied Police shall give immediate notice to each other of the operations they are initiating.

ART. V

Foreign seamen in service with the mercantile Navies of the Allied States shall be held upon arrest in sections of judicial jails separated and distinct from those used for the custody of other prisoners.

The Allied Military Command may appoint special agents to cooperate in the custody and detention of foreign seamen in service with the mercantile Navies of Allied States.

ART. VI

In proceedings and trials under the jurisdiction of Italian Judicial Authorities as set out in the preceding articles, the Allied Military Authorities shall delegate an observer who will have the power to file applications, ask that investigations be made and participate to them.

He will also take part in the trials and will be consulted before sentence is rendered.

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Declassified E.O. 12356 Section 3.3/NND No.

785017

- 3 -

139

ART. VII

For the execution of the sentences of imprisonment against foreign seamen in service with the mercantile Navies of Allied States Art. IV above shall apply.

ART. VIII

The present Convention will have full effect during the period of the armistice and until the ratification of the peace treaty between the Allied States and Italian Republic.

ART. IX

(For the purposes of the Convention the extent of territorial waters is hereby established as three miles).

3974 - RESPONSIBILITIES OF PROVOST AND REGULATING STAFFS IN
COUNTRIES ABROAD UNDER DEFENCE (GENERAL) REGULATIONS
47 AAB AND 48 C

(N.L. 7964/46 - 6 Jun 1946.)

Defence Regulations 47 AAB and 48 C of the Defence (General) Regulations 1939 and Statutory Rule and Order No 744 of 1944 which amends Regulation 48 C, together with copies of Orders made by the Ministry of War Transport under these Regulations are set out in the Appendix hereto.

2. (i) The purpose briefly of Statutory Rule and Order No 744 of 1944 is to empower Provost Marshals, or any officer, seaman or marine, etc. exercising authority under or on his behalf to board a ship and search it for the purpose of effecting an arrest, and also to board and search a ship for material evidence believed to be on board of the commission of an offence which a Naval Court would be competent to investigate.

(ii) To avoid the risk of unacceptable delay the Ministry of Transport representative should always be consulted before action under the amended Regulation is taken.

3. In pursuance of these Regulations and Orders it will now be the duty of the Provost and Regulating Staffs of all Services in the countries referred to therein. -

- (a) To maintain order among Merchant Seamen ashore and arrest British Seamen who are guilty of misconduct, and
- (b) to arrest seamen belonging to British ships whom they have reasonable ground for suspecting to have committed any offences whether at sea or on shore which may be tried or investigated by a Naval Court, and when necessary to detain the seamen for trial by a Naval Court

4. Seamen guilty of misconduct not of a serious nature should if it is necessary to arrest them, be disposed of by returning them to their ships. If they cannot be returned to a

- 2 -

ship, they should be dealt with as may be arranged with the Naval or Consular Authorities on the spot.

5. Seamen who have, or are suspected upon reasonable grounds to have been guilty of more serious misconduct laying them open to a charge for an offence committed at sea or on shore should be detained in custody by Provost and Regulating Staffs in accordance with paragraph 2 of Regulation 48 C and under arrangements as regards accommodation, rations, medical inspection, etc., to be concerted between local Naval or Consular Officers and Military Commanders.

6. A Provost Marshall must be careful immediately after an arrest to report the circumstances of the case to the nearest Naval or Consular Officer (vide paragraph (2) (a) of Defence Regulation 48 C). If the Provost Marshall is informed by a person empowered under Section 48 C of the Merchant Shipping Act, 1894, to summon a Naval Court that he does not propose to summon a Naval Court, the Provost Marshall must forthwith discharge the person detained from custody.

7. The power to detain a seamen which Regulation 48 C gives to a Provost Marshal extends up to the time when he is brought before a Naval Court for trial (paragraph (2) (e)). The Court can under the Merchant Shipping Acts take all steps in its power for the purpose of placing an offender under the necessary restraint, and of sending him in safe custody to the United Kingdom or some British Possession for trial where this course is decided upon. If so requested by the Court the Provost Marshal should give his assistance in the matter of detaining the offender after he has been brought before the court, and until the manner in which he has to be dealt with has been determined.

8. Defence Regulations 47 AAB and 48 C continue in force under the Supplies and Services (Transitional Powers) Act, 1945.

APPENDIX

Defence Regulation 47 AAB.

S.R. & O. 1943, No 1373

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47 AAB. Discipline of Seafaring
Persons in Certain Foreign Countries

(1) If, in any foreign country or part of foreign country to which this Regulation is applied by order of the competent authority, any person to whom this Regulation applies commits either ashore or afloat an offence which, when committed in England, is punishable on summary conviction otherwise than as an offence against Defence Regulations, he shall be guilty of an offence against this Regulation.

(2) Notwithstanding anything in Regulation ninety-three of these Regulations, proceedings in respect of an offence alleged to have been committed by a person against this Regulation shall be taken before a Naval Court under Part VI of the Merchant Shipping Act, 1894, and not otherwise.

(3) The persons to whom this Regulation applies are all British subjects and British protected persons who are for the time being employed as master or member of the crew of any ship other than a Dominion ship or whose occupation though they are not for the time being so employed, is that of master or member of the crew of a ship other than a Dominion ship.

Defence Regulation 48 C.

S.R. 40. 1942, No 1373.

48 C. Detention in Foreign Countries Pending Trial by Naval Court. - (1) In any foreign country a provost marshal may arrest any person whom he has reasonable grounds for suspecting to have committed any offence for which that person may be dealt with by a naval court under paragraph (g) or (h) of subsection (1) of section four hundred and eighty-three of the Merchant Shipping Act, 1894, as amended by these Regulations and detain that person with a view to his being brought before such a court.

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The powers conferred on a provost marshal by this paragraph shall be exercisable also by any officer, seaman, marine, soldier or airman exercising authority under or on behalf of a provost marshal.

(2) Where a person is arrested and detained under paragraph (1) of this Regulation the following provisions shall apply: -

(a) the provost marshal shall forthwith report the circumstances of the case to a person authorized in that

- 4 -

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behalf by ^{the} competent authority;

- (b) the person so authorized shall have power to make a complaint with respect to the case under section four hundred and eighty of the said Act as so amended, to a person empowered under that section to summon a naval court (hereafter referred to as "the convener"), and shall forthwith make such a complaint;
 - (c) on receipt of the complaint the convener shall forthwith either inform the provost marshal that he is taking all practicable steps to summon a naval court as soon as possible and take such steps accordingly, or inform the provost marshal that he does not propose to summon such a court;
 - (d) if the convener informs the provost marshal that he does not propose to summon a naval court, the provost marshal shall forthwith discharge the person detained from custody;
 - (e) if the convener informs the provost marshal that he is taking all practicable steps to summon a naval court, the provost marshal shall keep the person arrested in custody until he can be brought before that court.
- (3) Any person detained in pursuance of this Regulation shall be deemed to be in lawful custody.
- (4) In this Regulation the expression "provost marshal" means a naval, army or air force provost marshal or any assistant of such a provost marshal.

Instrument Defining the Persons Authorised to be the Persons to whom Reports are Required to be Made by Provost Marshals under Regulation 48 C of the Defence (General) Regulations, 1939

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The Defence (General) Regulations, 1939.

I, the Right Honourable Frederik James, Baron Leathers of Purfleet, C.H., the Minister of War Transport, do hereby authorise every British commissioned Naval Officer and every

- 5 -

British Consular Officer as defined in the Interpretation Act, 1889, to be a person to whom a Provost marshal may, in accordance with paragraph (2) of Regulation 48 C of the Defence (General) Regulations, 1939, report the circumstances in which any person suspected of having committed an offence which may be dealt with by a naval court, has been arrested and detained by him.

Given under the Seal of the Minister of War Transport
this thirtieth day of September, 1943.

LEATHERS,

The Minister of War Transport.

Order of the Minister of War Transport Applying Regulation
47 AAB of the Defence (General) Regulations, 1939, to
Certain Countries.

(S.R. & O. 1943, No 1464).

The British Seamen (Offences in Foreign Countries) Order, 1943.
Dated September 30th, 1943

The Minister of War transport in exercise of the powers conferred upon him by Regulation 47 AAB of the Defence (General) Regulations, 1939 (which provides for the trial of British Seamen by naval courts summoned under Part VI of the Merchant Shipping Act, 1904 (a) for certain offences committed in any foreign country or part of a foreign country to which the Regulation is applied by order of the competent authority) and of all other powers enabling him in that behalf, hereby makes the following Order : -

1. Regulation 47 AAB of the Defence (General) Regulations, 1939, shall apply to every foreign country specified in the Schedule of this Order exclusive of any area which is for the time being in the occupation of a Power with whom His Majesty is at war

2. The said Regulation 47 AAB shall likewise apply to every foreign country which on the 1st September, 1939, was a colony, overseas territory ./.
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- 6 -

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protectorate or territory under suzerainty or mandate of a country specified in the schedule to this Order exclusive of any area which is for the time being in the occupation of a Power with whom His Majesty is at war.

3. This Order shall come into force on the thirtieth day of September, 1943, and may be cited as the British Seamen (Offences in Foreign Countries) Order, 1943.

Signed by authority of the Minister of War Transport
this thirtieth day of September, 1943.

T.G. JENKINS,
A Deputy Director General of
the Ministry of War Transport

SCHEDULE

Egypt
France
Iceland
Iraq

Italy
Persia
Union of Soviet Socialist
Republics.

STATUTORY RULES AND ORDERS 1944 No 744

Order in Council amending Regulation 48 C of the Defence
(General) Regulations, 1939.

1. In paragraph (1) of Regulation forty-eight C of the Defence (General) Regulations, 1939, (which empowers a provost marshal in a foreign country to arrest persons suspected of committing offences for which they may be dealt with by naval courts) after the words "such a court" there shall be inserted the words "and for that purpose may go on board and search

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- 7 -

any British ship".

2. In the said paragraph (1) the words from "The powers conferred" to the end of the paragraph shall be omitted and in lieu thereof there shall be inserted the following two paragraphs : -

"(1A) If a provost marshal has reasonable grounds for suspecting that an offence has been committed which may be dealt with by a naval court as aforesaid and that evidence of the commission of the offence is to be found in any British ship in any foreign country, he may go on board and search the ship and seize any article which he has reasonable ground for believing to be evidence of the commission of the offence.

(1B) The powers conferred on a provost marshal by paragraphs (1) and (1A) of this Regulation shall be exercisable also by any officer, seaman, marine,, soldier or airman exercising authority under or on behalf of a provost marshal."

3. At the end of the paragraph (4) of the said Regulation there shall be added the words "and the expression "British ship" does not include a Dominion ship".

Order of the Ministry of War Transport Applying Regulation 47 AAB of the Defence (General) Regulations, 1939 to China and Siam

(S.R. & O. 1945, No 975).

THE BRITISH SEAMEN (OFFENCES IN FOREIGN COUNTRIES) ORDER, 1945.
Dated July 25, 1945.

The Minister of War Transport in exercise of the powers conferred upon him by Regulation 47 AAB of the Defence (General) Regulations, 1939 (which provides for the trial of British seamen by Naval Courts summoned under Part VI of the Merchant Shipping Act, 1894 (a), for certain offences committed in

- 8 -

13713

any foreign country or part of a foreign country to which the Regulation is applied by order of the competent authority) and of all other powers enabling him in that behalf, hereby makes the following Order : -

1. Regulation 47 AAB of the Defence (General) Regulations 1939, shall apply to every foreign country specified in the schedule to this Order exclusive of any area which is for the time being in the occupation of a Power with whom His Majesty is at war.

2. The said Regulation 47 AAB shall likewise apply to every foreign country which on the 1st September, 1939, was a colony, overseas territory, protectorate or territory under suzerainty or mandate of a country specified in the Schedule to this Order exclusive of any area which is for the time being in the occupation of a Power with whom His Majesty is at war.

3. This Order shall come into force on the first day of September, 1945, and may be cited as the British Seamen (Offences in Foreign Countries) Order, 1945.

Signed by authority of the Minister of War Transport this twenty-fifth day of July 1945.

T.G. JENKINS,
A Deputy Director General of the
Ministry of War Transport.

SCHEDULE

China
Siam.

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Declassified E.O. 12356 Section 3.3/NND No.

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- 9 -

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Order of the Ministry of War Transport Applying Regulation
47 AAB of the Defence(General)Regulations, 1939 to Japan.

(S.R. & O. 1945, No 1218).

THE BRITISH SEAMEN (OFFENCES IN FOREIGN COUNTRIES) (No 2) ORDER,
1945, DATED SEPTEMBER 25, 1945.

The Minister of War Transport in exercise of the powers conferred upon him by Regulation 47 AAB of the Defence(General) Regulations, 1939 (which provides for the trial of British seamen by Naval courts summoned under Part VI of the Merchant Shipping Act, 1894, (a), for certain offences committed in any foreign country or part of a foreign country to which the Regulation is applied by order of the competent authority) and of all other powers enabling him in that behalf, hereby makes the following Order: -

1. Regulation 47 AAB of the Defence(General)Regulations, 1939, shall apply to Japan and to every foreign country which on the first September, 1939, was a colony, overseas territory, protectorate or territory under suzerainty or mandate of Japan.

2. This Order shall come into force on the eight day of October, 1945, and may be cited as the British Seamen (Offences in Foreign Countries) (No 2) Order, 1945.

Signed by authority of the Minister of War Transport
this day 28th day of September, 1945.

T. G. JENKINS,
A Deputy Director General of the
Ministry of War Transport.

(A.F.Os. 138/44, 3788/44 and 4063/44 are cancelled.)

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Declassified E.O. 12356 Section 3.3/NND No.

785017

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HQ ALCON GITEK AGENT

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APPL FOR C-5 POSITION

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UNCLASSIFIED

SUBJECT IS ALIEN MERCHANT SEAMAN ID

131
REFERENCE YOUR LETTER GRACE DASH FIVE ONE NINE THREE FOUR FIVE ONE DATED NINE
JULY ID

REPORT IN QUESTION BEING TRANSLATED ID COPY TO YOU SOONEST ID

at 144

A. W. Kasey.

ROUTINE

Office of the Executive Commissioner

NICHOLAS FLORENTINO
CWO USA
Asst Adjt

371

5489

P.B. 6/17/46
L.

0765

Declassified E.O. 12356 Section 3.3/NND No.

785017

5606

135

COPIES

COPIES

HEADQUARTERS ALLIED COMMISSION
Office of Political Advisor (A)

June 21, 1946.

JUL 13 1946

MEMORANDUM TO: Executive Commissioner
Civil Affairs Section

SUBJECT: Trial of U.S. merchant seamen

Referenced in title to previous correspondence regarding jurisdiction over Allied merchant seamen ashore in Italian ports.

The ruling of the U.S. War Department in the case of Billy Asher is contained in the attached memorandum of teletype received from the U.S. Political Advisor in Genoa.

/s/ J. Wesley Jones
Political Advisor (A)

Enclosure:
Memorandum of teletype.

Dist - AC

Info Action

Info

CAS
CC

Ex Comm
Polad A
Polad B

see M136 + 138

5488
12/6/46
P.A.
L.

(CAPT K)

0768

Declassified E.O. 12356 Section 3.3/NND No.

785017

13H-

CONFIDENTIAL

CONFIDENTIAL

SECRET

Askew

Sergeant Bill / will be tried by AMT court at Panimular Pass
Section, Bophorn, by instructions from War Department, issued on
May 8 to MNMBA. Court will be convened under authorization from
SAC.

See 119

The directive issued by General Wilson in 1944 is regarded by
MNMBA as still valid, but, since ship on which Askew was downed
was carrying Belgian relief and VMA cargo and no troops or army cargo,
War Dept feels that under authority of article 10 of short terms,
AMT is proper court.

NOTE: Headquarters Allied Commission (2340)

5487

0767

Declassified E.O. 12356 Section 3.3/NND No.

785017

5606 41
ALLIED FORCE HEADQUARTERS
G-5 Section
APO 512

131
9099

G-5: 934.01

9 July 1946

SUBJECT: Allied Merchant Seamen

JUL 11 1946

TO : Chief Commissioner,
Allied Commission,
APO 794.

130
May a copy of the report, referred to in para 4 of Lt. Col. Hannaford's notes of the minutes of the meeting at Genoa on 17 Jun, which was enclosed in your letter 5606/130 EC of the 22 Jun, be forwarded please.

BY COMMAND OF LIEUTENANT GENERAL MORGAN:

A. L. Hamblen
A. L. HAMBLIN
Colonel, G.S.C.
Assistant Chief of Staff, G-5.

Translation being made. Will

see 7132 + 133

5486

(CAPT X)

0768

Declassified E.O. 12356 Section 3.3/NND No.

785017

130

HEADQUARTERS ALLIED COMMISSION

APO 394

Office of the Executive Commissioner

Ref: 5696/130/82

02 June 46

SUBJECT: Allied Control Council

TO : C-4 Section

136

-123

With reference to our signal no. 5697 dated 13 June and your reply no. 243693 of 14 June, Lt. Col. Barnard, Deputy Chief Legal Advisor to the Allied Commission attended a meeting, as an observer, held at Geneva on 17 May 46 and a copy of the minutes is forwarded for your information.

128

For the Chief Commissioner,

A. W. Kalsch

Brigadier,
Executive Commissioner

Copy to: U.S. Embassy
British Embassy

5485

See 7-131

241
62

Allied Seamen

Meeting held on Monday the 17th June 1946 at Office of P.P., Court of
Appeal, Genova

Present: P. Presidente, Procuratore Generale, Chief Cabinet and
Lt.Col. Hannaford.

P. Presidente on the Minister's instructions gave a long expose' of the situation in Genoa.

Smuggling was the most common offence, but there were also cases of theft, attacks on Italian citizens, drunkenness etc.

The lack of Allied Police and Court rendered these offenders practically immune, and the situation was likely to grow worse.

P.P. had been charged by the Minister to make a complete report on the situation and to suggest a remedy which would be acceptable to the Allies without prejudicing Italian sovereignty. The report would be ready this week.

The P.P. was of opinion that a special Court would have to be set up. It would have to be Italian with Allied observers, as he did not think that the Italian Government would accept any form of capitulation Court of which other Allied countries might take unfair advantage of.

He did not believe either that the Italian Government could accept to surrender all Allied nationals committing an offence on Italian soil. It would make it too easy for other nations than U.S. and Britain to create a state of chaos in Italian ports.

The powers and functions of Allied observers, the question of prisons would be also studied in the report the P.P. was to send to the Minister.

There seemed to be complete agreement among the Italians.

Col. Hannaford stated that, no doubt, A.C. would be pleased to forward to SAC any suggestion which might help the settlement of this difficult question.

See h. 129 a 7130

5484

0770

Declassified E.O. 12356 Section 3.3/NND No.

785017

INCOMING MESSAGE

HEADQUARTERS ALLIED COMMISSION

Ex. Comm.
126

Originator's Reference: 45698

Message Centre No: 4/3500

Date/Time of Origin: 141931B JUNE

Date Time Rec'd: JUNE 150915

Precedence: PRIORITY

FROM: AFHQ G5

JUN 15 1946

TO: ALCON ROME INFO CINC MED

UNCLASSIFIED

Reur 3657. Your para 2 agreed.

AC DIST

ACTION: EX COMMISSIONER

INFO: CHIEF COMMISSIONER

5483

POLAD A

POLAD B

LEGAL SC

FLOAT 2

FILE

ACTION

See by
see M-127

HEADQUARTERS
15 JUN 1946
ALCON

Handwritten signature

0771

Declassified E.O. 12356 Section 3.3/NND No.

785017

123

file

HQ ALCOM

JUNE 131800 46B

ATTN: FOR G-5

3657

UNCLASSIFIED

See 122.

MY THREE FIVE ONE SIX OF SIX JUNE. PD

PARA ONE PD ITALIAN GOVERNMENT THROUGH MINISTER OF JUSTICE HAS NOW CALLED ATTENTION TO UNSATISFACTORY SITUATION IN GENOA AND HAS ASKED ME TO SEND DEPUTY CHIEF LEGAL ADVISER TO ATTEND MEETING THERE ON ONE SIX JUNE TO STUDY WAYS AND MEANS OF TRYING SUCH SEAMEN PD MINISTER SUGGESTS SETTING UP ITALIAN TRIBUNAL WITH ASSISTANCE OF ALLIED REPRESENTATIVES OR OBSERVERS TO TRY THESE CASES PD

PARA TWO PD I DO NOT THINK I CAN REFUSE TO SEND DEPUTY CHIEF LEGAL ADVISER TO THIS MEETING BUT HE WILL GO WITH STRICT INSTRUCTIONS TO ACT AS OBSERVER ONLY AND NOT REPEAT NOT TO COMMIT US TO ANY ACQUIESCENCE PD IN VIEW OF THE BEARING OF ANY RECOMMENDATION OF THIS MEETING MAY HAVE ON ITALIAN GOVERNMENT'S ATTITUDE TOWARDS RELEVANT ARTICLES IN CIVIL AFFAIRS AGREEMENTS CMA THIS ATTITUDE IS IN MY OPINION ESSENTIAL. PD I HEAR ALSO THAT ITALIAN GOVERNMENT CMA HAVING RECEIVED A DRAFT OF THE BRITISH CIVIL AFFAIRS AGREEMENT CMA IS ALIVE TO THE CAPTULATORY EFFECT OF THESE ARTICLES AND ARE PARTICULARLY CONCERNED LESS FRENCH CMA RUSSIAN CMA YUGOSLAVS CMA ETCETERA MAY CLAIM SIMILAR RIGHTS FOR THEIR SEAMEN

Copy to: Polad (A)
 Polad (B)
 Legal S/C

PRIORITY

CAS

EX. COMMISSIONER.

(Sgd) N. HIND-SMITH, Lt Col.

f M.S. LUSH, BRIGADIER,
 EXECUTIVE COMMISSIONER

5482

See h. 124.

343

9

Declassified E.O. 12356 Section 3.3/NND No.

785017

The Ministry of Foreign Affairs and Justice.

Rome, 12 June 46.

Symposium

122

TO : Vice President
Civil Affairs (Chief Legal Officer)

and for information to:

First President and Procureur General
of the Court of Appeal.SUBJECT : Offences committed by personnel of the Allied
Mercantile Navy in the Port of Genoa.

The question of repressing the crimes committed by personnel of Allied Mercantile Navy in Italian harbours, which has been already discussed with your Sub-Commission is becoming very serious especially in Genoa harbour due to the increase in shipping traffic.

The greatest difficulties are due to the fact that the Italian Judicial Authorities have no jurisdiction to try such offences and that the Allied Military Courts have been gradually dissolved in pursuance to the restoration of territory to the Italian Government.

In consequence such offenders cannot be punished and the Black Market is therefore flourishing to the detriment both Allied and Italian interests.

The Ministry is of opinion that the question be dealt with on the spot and requests your Commission that Lt. Col. H. M. WATFORD who is fully acquainted with the matter be good enough to attend a meeting to be held in Genoa to study ways and means.

This Ministry suggests that an Italian Tribunal be set up and given powers to try said offenders.

It is also recommended that this Court be assisted by Allied representatives or observers. The draft order will be submitted as soon as possible to the undersigned and Allied Authorities for final approval and eventual amendments.

Note: - A conference has been arranged for Sunday 16 inst. at Palazzo of Justice of Genoa. Representatives of the Minister of Justice (Chief Cabinet) Port Authorities and Police will attend. It is hoped to submit a comprehensive suggestion to the Commission within a day or two after the meeting.

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See 7.123
7.124

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785017

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ju
121
HQ ALCOM

6 June 1946

AFHQ: G-5

CONFIDENTIAL

3516

PARA ONE PD LOCAL ITALIAN AUTHORITIES HAVE RECENTLY RAISED THE QUESTION OF THE APPARENT IMMUNITY FROM ARREST AND PROCEEDINGS OF ALLIED MERCHANT SEAMEN PD THIS HEADQUARTERS HAS HAD UNDER CONSIDERATION THE QUESTION OF OFFENCES COMMITTED IN ITALIAN TERRITORY BY SUCH PERSONS AND HAS COME TO THE CONCLUSION THAT THERE SHOULD BE REVERSION TO THE PEACE TIME PROCEDURE BRINGING SUCH SEAMEN UNDER ITALIAN JURISDICTION CMA SINCE NO ALLIED COURTS OR PERSONNEL TO FORM THEM ARE AVAILABLE AND AT MANY PORTS SUCH AS GENOA THERE ARE NO ALLIED POLICE OR FACILITIES AVAILABLE FOR ARREST AND DETENTION PD ALTHOUGH THIS PROCEDURE CANNOT BE CONSIDERED SATISFACTORY OWING TO THE STATE OF ITALIAN PRISONS CMA IT WAS CONSIDERED THE ONLY POSSIBLE SOLUTION PD POLITICAL ADVISERS CONCUR PD

PARA TWO PD IT IS OBSERVED FROM ARTICLE TEN OF THE DRAFT BRITISH CIVIL AFFAIRS AGREEMENT THAT BRITISH MERCHANT SEAMEN WILL BE TRIED BY NAVAL COURTS OR OTHER APPROPRIATE MEANS PD HAVING REGARD TO THE ABSENCE OF PERSONNEL MENTIONED IN PARA ONE IT APPEARS NECESSARY TO CONSIDER WHAT MACHINERY IS TO BE SET UP UNDER ARTICLES TEN AND TWELVE PAREN B PAREN OF THIS AGREEMENT CMA AND ANY SIMILAR ARTICLES IN U.S. AGREEMENT WHICH HAS NOT YET BEEN RECEIVED PD POLADS AGREE PD

PRIORITY

LEGAL S/C

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Declassified E.O. 12356 Section 3.3/NND No.

785017

120

HQ ALCOM

6 June 1946

AFHQ: G-5

3516

CONFIDENTIAL

PARA THREE PD WE HAVE GIVEN NO REPLY TO THE ITALIAN AUTHORITIES

DISTRIBUTION :

CHIEF COMMISSIONER
EXECUTIVE COMMISSIONER
POLAD (A)
POLAD (B)

//

5479

PRIORITY

LEGAL S/C

HEADQUARTERS ALLIED COMMISSION

A P O 794

Office of the Executive Commissioner

MEETING HELD IN ROOM 35, THIRD FLOOR, HQ ALLIED COMMISSION
AT 1000 HRS, ON 29 MAY 1946.

In the Chair: Brigadier CARR.

Present: Mr. WESLEY JONES, Political Adviser (A).
Mr. A. HANFORD, Political Adviser (B).
Comdr. RAHMANN, Navy Sub-Commission.
Lt. Col. HANFORD, Legal Sub-Commission.
Lt. Comdr. DEVER, Navy Sub-Commission.
Capt. A.W. FINELEY, Exec. Comdr's Office.

The meeting had been called to discuss jurisdiction of Allied merchant seamen.

Brigadier CARR said he had been asked to preside as the Executive Commissioner was unable to be present. Owing to the short notice received he was not au fait with the latest situation.

Lt. Col. HANFORD stated that when he was in GENOA recently the two Consul Generals expressed the opinion that it was a police responsibility.

Brigadier CARR reviewed the background and read a memorandum from Chief Legal Adviser to the Political Adviser (B) and Lt. Col. HANFORD explained the procedure that had been adopted in the past.

There was discussion on the rights of merchant seamen in peacetime as compared to wartime.

Mr. WESLEY JONES cited the case of a seaman killing another seaman on land. A coastguard investigation had followed but no court martial resulted and the guilty man was returned to U.S.A. under escort but the U.S. Authorities could take no action as the crime was committed here. Had the crime been committed on board ship, the man would be subject to American law.

Lt. Col. HANFORD read an order from General WILSON dated 14 May 1944, and there was considerable discussion on this.

Brigadier CARR said the question arose as to whether a state of war still existed. Capt. FINELEY remarked that American Red Cross personnel were still subject to Military Law.

Mr. WESLEY JONES was of the opinion that the Second Article of War previously discussed no longer applied. It seemed to him that by the fact of restitution of territory American civilians must come under Italian jurisdiction except to the extent of the armistice terms. Lt. Col. HANFORD was not in agreement with this viewpoint.

Mr. HANFORD said there had been various legal opinions to the effect that

/cont.

HEADQUARTERS ALLIED COMMISSION

A P O 794

Office of the Executive Commissioner

Page 2.

British subjects were liable to Italian civil law. The complication was that merchant seamen had a special status.

Brigadier CARR pointed out that although the Italian Government had taken over jurisdiction the Allies retained the right to set up AEC Courts.

Lt. Col. HANFORD said it was necessary for a standard procedure to be adopted for all Allied merchant seamen and the French would not agree to their nationals being tried by Italian courts.

Mr. WESLEY JONES thought the obvious step was to put all merchant seamen under Italian jurisdiction. He would take up the question of validity of General WILSON's order with the State Department and AFHQ.

Mr. HANFORD mentioned the problem of goods being brought into ITALY. This smuggling was reaching vast proportions and had in fact developed into more or less open trading. He did not agree with the opinion of the Consuls that it was a matter for the police because there were no courts available. Lt. Col. HANFORD said the Consuls were only looking at the immediate problem of arrest and the solution would be to have an AEC Court and bring the offenders to trial. The trouble was that no officers were available for these courts.

Mr. HANFORD said that at present seamen walked off the ships past the customs and sold goods in the black market. Mr. WESLEY JONES stated there was a similar problem on the American side. Brigadier CARR pointed out that if naval or military police were at the port the seamen could be searched.

Lt. Col. HANFORD said the setting up of a permanent court in GENOA in agreement with the Italian Government would solve the problem of trial but it was still necessary to provide police for the searching of seamen. Alternatively the ships themselves could carry police, which was not practical.

Mr. WESLEY JONES suggested that the only way to effect a cure was to remove the clause in the Armistice Terms protecting merchant seamen and make them subject to Italian law. Lt. Col. HANFORD said a decision of this nature would have to come from a very high level and that Political Advisers were the people to make such a recommendation.

Mr. HANFORD said the alternatives should be explained to higher authority: to let the present state of affairs continue, or that those powers under the Armistice Terms that protect Allied merchant seamen should be abrogated.

Lt. Col. HANFORD warned of the repercussions that would arise if merchant seamen were brought to trial, convicted and incarcerated in Italian jails. Agreement might be reached in respect of American and British seamen, 5477 ch,

/cont.

HEADQUARTERS ALLIED COMMISSION

A P O 794

Office of the Executive Commissioner

Page 5.

Yugoslav and other Allied nationals were a problem. Brigadier CARR said a problem would arise with HERRA personnel; at the present time they were protected.

Brigadier CARR asked if there was enough data available to submit a letter to AFHQ. The question seemed academic. Political Advisers considered a letter should be sent to AFHQ so that they could follow up. Mr. WESLEY JONES said he would like to see a recommendation from Allied Commission that merchant seamen should be subject to Italian jurisdiction. Brigadier CARR wondered if the U.S. Government would agree to their nationals being arrested and tried by Italian law and imprisoned in Italian jails in their present unsatisfactory condition.

Brigadier CARR asked Lt. Col. SANFORD to prepare a letter to AFHQ setting forth the alternative suggestions.

Mr. WESLEY JONES would inform Brigadier CARR of the reply received from the State Department in regard to General WILSON's order.

ALAN W. KESSELY,
Capt.
S.O.III.

Copy to 1008/EC

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Declassified E.O. 12356 Section 3.3/NND No.

785017

5606 *q*

114

HEADQUARTERS ALLIED COMMISSION
Office of Political Adviser (A)

May 17, 1946

MAY 20 1946

MEMORANDUM TO: Executive Commissioner

SUBJECT : Control of Allied Seamen in Italian Ports

112

I refer to your letter of April 25, 1946, File 5606/112/EC to Mr. Key, enclosed copy of the Legal Adviser's views with respect to the status of British and American seamen in Italian ports.

The Department of State is pressing the Embassy for definitive recommendations with respect to the jurisdiction over merchant seamen ashore. Since the Legal Sub-Commission's memorandum of April 16 is inconclusive, may I suggest that you call a meeting of the Legal Sub-Commission, the Polads, and if you consider it advisable, the Naval Sub-Commission to discuss this question further and resolve our views and recommendations.

J. Wesley Jones
J. Wesley Jones
Political Adviser (A)

Copy to 1008/EC

See Memo 115, 116

5475

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*q**q*
(CAPTR)

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Declassified E.O. 12356 Section 3.3/NND No.

785017

112

Ref. : 3605/112/80

25 April 1966

My dear Mr. May,

107

With further reference to my letter of 16 April, No. 3605/107/80 concerning smuggling and theft in the Port of Genoa.

I now enclose a copy of my Deputy Chief Legal Adviser's views on the matter and trust that this information will be of assistance.

Yours very truly,

M. S. LUSH

See in 113

Brigadier,
Acting Chief Commissioner.

Mr. David May,
Charge d'Affaires ad interim,
United States Embassy,
Rome.

Copy to: *Reled 'A'*
Reled 'B'
Deputy Chief Legal Adviser. } *These enclosures.*
1008/EC

See 7-114

54
12/25
8

1008 7 566
 SUB-NAVY'S ALLIED COMMISSION
 APO 394
 LEGAL SUB-COMMISSION

H-3-M-C-N-A-N-D-J-H

/ada.

AC/1042/1.

18 April 1946.

SUBJECT : Status of British Merchant Seamen.

APR 18 1946

TO : Poland (B).

1. The status of merchant seamen, not only British, but of all nationalities, became, if not in theory, at least in practice more and more indefinite as the war went on.

2. While for instance American merchant seamen were treated by U.S. Naval Authorities as naval personnel falling under the jurisdiction of Courts martial, British seamen still enjoyed peace time privileges. They fell under the jurisdiction of the British Court nearest to the place where the offence was committed. Seamen of other nationalities serving on Allied ships appeared to have escaped all jurisdiction other than that of Allied or neutral Courts, if and when they committed an offence within the jurisdiction of such Courts.

3. In Italy, local Courts lost jurisdiction over British seamen, owing to the state of war and Allied occupation. The situation arising from the numerous crimes committed by them became so acute, that, in agreement with the Royal Navy, it was decided that British merchant seamen would be tried by AIS Courts, and English law applied. This procedure was followed in Sicily and in Southern Italy with fairly satisfactory results.

4. Now that nearly the whole of Italian territory and all the ports have been restored to Italian administration English and Proclamation law cannot be applied any longer and in any case there are no Allied Courts to administer it.

5. The situation is therefore very intricate, and can see two solutions only to the problem:

- a) to establish one or more Special Allied Courts in the ports. Such Courts would have to apply Italian law to merchant seamen of all nationalities, as no other is operative in Italian territory;
- b) or to extend the jurisdiction of Italian Courts to Allied merchant seamen.

6. Both methods are obviously in adequate. The shortage of legal officers make the first one a practical impossibility at present, Venezia-Giulia being the only reserve of qualified lawyers and no one can be spared.

7. The second solution would be technically the most satisfactory and ensure the return to the normal peace time practice. Politically it

+ Legislation

5473

SUBJECT : Status of British Merchant Seamen.

APR 18 1946

TO : Poland (B).

1. The status of merchant seamen, not only British, but of all nationalities, becomes, if not in theory, at least in practice more and more indefinite as the war went on.

2. While for instance American merchant seamen were treated by U.S. Naval Authorities as naval personnel falling under the jurisdiction of Courts martial, British seamen still enjoyed peace time privileges. They fell under the jurisdiction of the British Court nearest to the place where the offense was committed. Seamen of other nationalities serving on Allied ships appeared to have escaped all jurisdiction other than that of Allied or neutral Courts, if and when they committed an offense within the jurisdiction of such Courts.

3. In Italy, local Courts lost jurisdiction over British seamen, owing to the state of war and Allied occupation. The situation arising from the numerous crimes committed by them became so acute, that, in agreement with the Royal Navy, it was decided that British merchant seamen would be tried by MG Courts, and English law applied. This procedure was followed in Sicily and in Southern Italy with fairly satisfactory results.

4. Now that nearly the whole of Italian territory and all the ports have been restored to Italian administration English and Proclamation law cannot be applied any longer and in any case there are no Allied Courts to administer it.

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- a) to establish one or more Special Allied Courts in the ports. Such Courts would have to apply Italian law to merchant seamen of all nationalities, as no other is operative in Italian territory;
- b) or to extend the jurisdiction of Italian Courts to Allied merchant seamen.

6. Both methods are obviously in adequate. The shortage of legal officers make the first one a practical impossibility at present, Venezia-Giulia being the only reserve of qualified lawyers and no one can be spared.

7. The second solution would be technically the most satisfactory and ensure the return to the normal peace time practice. Politically it

+ Legislation

5473

Dec 112

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Declassified E.O. 12356 Section 3.3/NND No. 785017

might be considered undesirable and I feel certain that the French for instance and may be other Governments would not agree to their nationals being tried by Italian Courts and certainly not arrested by Italian Police.

8. The matter therefore is one of expediency, and legal consideration may very well have to be shelved in favour of ad hoc measures of a more practical nature.

9. No doubt you will wish to consult Lord A and other Allied representatives on the subject and let this Sub-Commission have your opinion.

G.G. HAMMARD,
Lt. Colonel,
Deputy Chief Legal Advisor.

Copy to Executive Commissioner.
" " Polad (A).

5472

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Declassified E.O. 12356 Section 3.3/NND No.

785017

107

Ref: 5606/107/20

16 April 1946.

My dear Mr. Key,

104
Thank you for your letter of 5 April concerning the smuggling and theft in the port of Genoa.

I have referred the whole matter to my legal advisers and I will let you have a reply as soon as I receive their opinion.

Yours very truly,

/s/ N.W. HIND SMITH
MAT

for Brigadier,
Acting Chief Commissioner.

Mr. David McKey,
Charge d'Affaires ad interim,
United States Embassy,
Rome.

see M108.109.

5471

Declassified E.O. 12356 Section 3.3/NND No. 785017

OFFICE OF THE BRITISH CONSUL
ADVISER
H.Q. ALLIED COMMISSION.

To: D.C.I.A., H.Q. Allied Commission.

APR 13 1946

Subject: Status of British Merchant Seamen.

Copy: British Embassy, Rome.

The Allied Mercantile Marine authorities are concerned over the extent of smuggling by merchant seamen in Genoa port.

2. Effective measures to prevent smuggling cannot be taken by the Allied military authorities owing to lack of manpower and it has accordingly been suggested that the Italian Guardia di Finanza be asked to co-operate in searching Allied seamen when they come ashore.

3. Could you please advise me as to the present status of British merchant seamen in Italian ports? Do they still retain their belligerent privileges under the Armistice? Or are they now subject to normal peace-time Italian Port and Customs Regulations?

Stefano
Political Adviser
(British)

28th March 1946.

10/4

*0 person in Genoa
prepared a voluntary
will to work*

5470

SS-A

The Allied Mercantile Marine authorities are concerned over the extent of smuggling by merchant seamen in Genoa Port.

2. Effective measures to prevent smuggling cannot be taken by the Allied military authorities owing to lack of manpower and it has accordingly been suggested that the Italian Guardia di finanza be asked to co-operate in searching Allied seamen when they come ashore.

3. Could you please advise me as to the present status of British merchant seamen in Italian ports? Do they still retain their belligerent privileges under the Armistice? Or are they now subject to normal peace-time Italian Port and Customs regulations?

W. J. P. [Signature]

Political Adviser
(British)

28th March 1946.

10/14

0/10/14 in evening

prepared & returned to home

will be made

SS-A

5470

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0786

Declassified E.O. 12356 Section 3.3/NND No. 785017

THE FOREIGN SERVICE
OF THE
UNITED STATES OF AMERICA

5606-86

Rome, April 5, 1946

APR 9 1946

My dear Brigadier Lush,

I refer to my letter of March 8, 1946, to Admiral Stone concerning the problem of smuggling and theft in the port of Genoa and the necessity of control over Allied seamen in order to combat this problem, to Admiral Stone's acknowledgment of March 12 and to a letter to you of February 25 (AO/76) from the Chief Liaison Officer, Liguria Liaison Group, regarding contravention of customs regulations and black market activities in the port of Genoa. The Embassy has now received a telegram from the Department of State based on a report from the Consul General in Genoa in February on this problem, a copy of which is enclosed in paraphrase. I would be grateful for any information which you may have or suggestions which the Allied Commission might care to make regarding the problem and the appropriate action which might be taken to prevent further abuses of this nature. I should be particularly grateful for your views regarding the appropriateness of raising this question with the Italian authorities if Allied military authorities are no longer competent.

Sincerely yours,

David McK. Key
David McK. Key
Charge d'Affaires ad interim

Enclosure

Brigadier Maurice Lush,
Executive Commissioner,
Allied Commission,
Rome.

(Capt. K.)

107
5469

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Declassified E.O. 12356 Section 3.3/NND No.

785017

103

Telegram from Dept. of State, dated March 29, 1946.

"In February report was received from Consulate General in Genoa regarding trouble caused by American servicemen owing to exemption from arrest by the Italian civil authorities and the lack of Allied military police, Genoa was directed to communicate with the U.S. Political Adviser at ANHQ.

Report has now been received of one seaman being murdered by another at Civitavecchia; Coast Guard investigated the matter but no court martial action followed. The accused, one Billie Askew, is being returned aboard SS Samuel Johnston to US in custody but Department of Justice can take no action since the crime was committed ashore. It would seem necessary that competent jurisdiction be exercised by either civil or military authorities to prevent more crimes going unpunished.

This matter should be investigated and appropriate action taken and the Department of State should be notified"

5468

