

1422

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

785017

ACC

10000/104/1021

1423

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

785017

10000/104/1021

FISHING RIGHTS, ADRIATIC
MAR. - NOV. 1946

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41

J.C.L.F.

Have you any comment on folios 39 + 40 please. ARB 14/10

E+Can ARB 42

The matter appears to rest on a question of fact not of law. No comments therefore -

G. S. H

15 Nov 46

1425

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42

E+ Con

The matter appears to rest on a question of fact
not of law. No comments therefore -

S. S. H

15 Nov 66

31

785017

30
C.A. for Comments DS (3/9)

C.L.A. 31
Will you please comment on folio 27. *Minister*

ARB

A. W. AMBOLD
OFFICE OF THE EXECUTIVE COMMISSIONER

(Awaiting Brioni agreement)
File returned 10/9.

34

C.A.
May the Ex Comm please see your
comments on folio 33. *ARB* 11/9

35
art 37. Section VIII of the Peace Treaty with Italy
implicitly lays down that certain pre-war treaties are
still in force or at the most suspended. This would
tend to strengthen the Stalin point of view in regard to
Fishing Treaties, point of view which this S/C shares.
I have asked for copies of the Brioni Nettuno agreements &
will comment further as soon as I have them at hand.

G. S. Hammond
11/11/48
OCT 11

36
11 Sept 48
page 414

C.S.O. *Belmont*
may I please see your comments on
this file? At Folio 19, last para, we are
told to act as a Post office only, and therefore

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of all peace agreements

AWB

A. W. Ambrey
OFFICE OF THE EXECUTIVE COMMISSIONER

(Awaiting Brioni agreement)
File returned 10/9.

34

C.A.A.

May the Ex Comm please for your
comments on folio 35 AWB 11/9

35
out 37. Section VIII of the Peace Treaty with Italy
implicitly lays down that certain pre-war treaties are
still in force or at the most suspended. This would
tend to strengthen the Stalin point of view in regard to
Fishing Treaties, point of view which this S/C shares.
I have asked for copies of the Brioni & Nettuno agreements &
will comment further as soon as I have them at hand.

G. S. Harman for 1st time
DATA

12 Sep 46
page 216

36

C.S.O. Carlson

may I please for your comments on
this file? At folio 19, last para, we are

told to act as a hot office only, and therefore
the matter could be allowed to rest like
that & Dr. Sm oddaha could be^{so} informed.

AWB 10/9

AWB 10/9

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J.C.A.R. Seen

20.

Have you any comments to make on folio 19., please. Your previous opinion is at folio 7. 20/8
see folios 21-24

PA

25.

Please b.f. the papers concerning the sergeant the beats. NS/27/8

No further action in contradiction to 719 but let us carry out the instructions in final para.

NS/29/8

28.

JCLA.

So what?

NS/30/8

29

Ex. Com

Request 111. NS at this rather late in the day. NS/31/8

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

Min. No. 11.

29 July 1946.

To: C.S.O.

This is a difficult question. At Folio 1A the Yugoslav Government, through Dott. Smoljaka, informed A.C., that Italian fishing boats were fishing in Yugoslav waters at a distance of 4 to 7 miles.

He further stated that the BRIONI convention is no longer valid.

The Legal Advisor was asked for his opinion on this point at Folio 1 and gave his opinion that both the BRIONI and NETTONO conventions were still in force. (Folios 6-7).

The Italian Government were informed of the Yugoslav convention at Folio 5 and replied that in their opinion (similar to that of the Legas S/C's opinion) the conventions are still operative. (Folio 8).

They requested that this matter be referred to the Yugoslav Representative on A.C.I., but as he has already stated in Folio 1A that the agreements are no longer operative, I do not see any cause for him changing his mind.

This matter is closely linked with the seizure by the Yugoslavs of Italian fishing vessels and I think that possibly the best way to handle this would be through diplomatic channels.

Handwritten initials

May I have your opinion, please?

12.

This must be a matter for decided between the Italian & Yugoslav govt. In the meantime we should inform the AFCS, XIII (CofS & the two Embassies of the three (conflicting) views.

Handwritten initials

14.

C.S.O. Amended Ref-min 12. Staff at folio 13 for approval, please

16

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valid. He further stated that the BRIONI convention is no longer

The Legal Advisor was asked for his opinion on this point at Folio 1 and gave his opinion that both the BRIONI and NETTONO conventions were still in force. (Folios 6-7).

The Italian Government were informed of the Yugoslav convention at Folio 5 and replied that in their opinion (similar to that of the Legas S/G's opinion) the conventions are still operative. (Folio 8).

They requested that this matter be referred to the Yugoslav Representative on A.C.I., but as he has already stated in Folio 1A that the agreements are no longer operative, I do not see any cause for him changing his mind.

This matter is closely linked with the seizure by the Yugoslavs of Italian fishing vessels and I think that possibly the best way to handle this would be through diplomatic channels.

MS/2/14

May I have your opinion, please?

12.

This must be a matter to be decided

between the Italian & Yugoslav govt. In the meantime

we should inform the AFHQ, XIII Corps & the two

Embassies of the three (conflicting) views.

MS/2/13

14.

C.S.O. Amended

Ref-min 12. Draft at folio 13 for approval, please

MS/2/16

Exc Com. 16

letter at 15 for signature, please.

MS/2/10/8

C.S.O.

Folio 17 for signature please.

Original letter is at folio 8. Aug 48

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

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56118/3388

NOV 14 1946
40
Ex Comm

ALLIED FORCE HEADQUARTERS
G-5 Section
AFC 512

G-5: 910.31-0

9 November 1946.

SUBJECT: Fishing Agreements.

TO : Chief Commissioner,
Allied Commission,
AFC 794.

Further to this Headquarters letter G-5: 910.31-0 of 27
October 1946, and your 50W/15 EG of 12 August.

No claim that territorial waters extend more than three
miles from the shores is recognised by the Allies.

BY COMMAND OF LIEUTENANT GENERAL MORGAN:

A. I. Hambley

A. I. HAMBLEY
Colonel, G.S.C.
Assistant Chief of Staff, G-5.

DWB
Capt 4

28
hwy
15 Nov 46

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

785017

5611 9/29/46

EX-COMM

39

ALLIED FORCE HEADQUARTERS
G-5 Section
APO 512

G-5: 910.31-0

27 October 1946

SUBJECT: Fishing Rights in Adriatic.

OCT 29 1946

TO : Chief Commissioner,
Allied Commission,
APO 794.

15

19

28

Reference your letter 5611/15EC of 12 August and further to this Headquarters letter G-5: 910.31-0 of 17 August. Enclosed is a copy of the Admiralty view on "territorial waters" so far as it affects this case, and of a query raised thereon which is under consideration at this Headquarters.

It is alleged by the Italians that the seized vessels were seven miles from the nearest land. The Jugoslavs, so far as this Headquarters is aware, have made no allegation as to position, beyond the generalisation that these boats were in Yugoslav Territorial waters. While there might be room for error in an opinion as to whether a vessel was six or seven miles from the coast, there can be no confusion between seven miles and less than three.

So what?

BY COMMAND OF LIEUTENANT GENERAL MORGAN:

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

Encl:
Ltr fr CinC Med dtd 26
Sept 46, M.02092/46.

Handwritten notes and initials

(CAPT K)

Handwritten signature

27
P.A. 11/1/46

1433

785017

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

38

COPY

M.02092/46

26th September 1946.

The Commander-in-Chief, Mediterranean.

Copies to:- The Flag Officer Liaison, Italy.
The Naval Officer-in-Charge, Trieste.

With reference to your submission No. 2263/Med. 46/001377/3/1 of the 24th July concerning the seizure of Italian Fishing Vessels in the Adriatic, I am to inform you that in International law islands are normally regarded as having a three mile territorial belt of their own except when they form part of an archipelago. The territorial waters of an archipelago are common to the whole group and are computed from a central point. So far as Their Lordships are aware, the islands shown on the tracing enclosed with the Naval Officer-in-Charge, Trieste's letter of the 5th June do not form part of an archipelago and each should, therefore, be regarded as having a three-mile limit of its own.

BY COMMAND OF THEIR LORDSHIPS

(Sgd) FN.N. SYNNOCT.

26

See F-39

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

37

Ref. : 5611/37/EO

19 September 1946.

SUBJECT: Fishing Rights in the Adriatic.

TO : The Ministry of Foreign Office,
Rome.

27

1. I enclose for your information an extract from letter No. Br. 1324/46 dated 30 Aug on this Subject, from Dr. Smolaka, the Acting Representative of Jugoslavia to the A.C.I. : -

"I have been instructed from the Yugoslav Government to inform you that all treaties and conventions concluded with Italy before the war have lost their value on the day when the war was declared. This implicitly applies to the convention of Briand too".

For the Chief Commissioner:

A. W. Kinsely.

Brigadier,
Acting Executive Commissioner.

Copy to: Polad A
" B

P.A. 19/9/46
25

1435

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

5611 ⁴

EX-Comma
1272 33

ALLIED FORCE HEADQUARTERS
G-5 Section
APO 512

SEP 5 1946

G-5 : 910.31-0

3 September 1946

SUBJECT : Fishing Rights in the Adriatic.

TO : Chief Commissioner,
Allied Commission,
APO 794

Reference your 5611/15 12 AUG 46 and this HQ letter even
ref. 17 AUG 46.

1. Enclosed for information is a copy of "Draft Peace Treaty with Italy" Sec. VIII Article 37 - Bilateral Treaties.
2. The position of the Italo-Yugoslav Fishing Treaties as interpreted by this HQ letter above quoted would appear to be in conformity with the principles on which this article 37 is based.

BY COMMAND OF LIEUTENANT GENERAL MORGAN:

DK
Major

1st A. L. HAMBLEN
Colonel CSC
Assistant Chief of Staff, G-5

Incl: as above

See M- 34.

[Handwritten signature]
(Copy K)

P.A. 19/9/46
24-1

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

COPY

32

DRAFT PEACE TREATY WITH ITALY

Section VIII - BILATERAL TREATIES.

Article 37.

1. Each Allied or Associated Power will notify Italy, within a period of six months of the coming into force of the present Treaty, which pre-war bilateral treaties it desires to keep in force or revive. Any provisions not in conformity with the present Treaty shall however be deleted from the abovementioned Treaties.
2. All Treaties so notified will be registered with the Secretariat of the United Nations in accordance with Article 102 of the United Nations Charter.
3. All Treaties not so notified are to be regarded as abrogated.

see 33

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27
AUG 30 1946

30 August 1946

17

DELEGATION OF THE FEDERAL PEOPLES
REPUBLIC OF JUGOSLAVIA
TO THE ADVISORY COUNCIL FOR ITALY

Br. 1524/46

My dear Brigadier Lush,

With reference to your letter N° 5611/16/EC of August 4th,
on the subject of Italian boats fishing in Jugoslav waters.

I have been instructed from the Jugoslav Government to
inform you that all treaties and conventions concluded with Italy
before the war have lost their value on the day when the
war was declared. This implicitly applies to the convention
of Brioni too.

Very truly yours

Dr. Jovan Smodlaka

DR. SLOVEN J. SMODLAKA,
Jugoslav Representative a.i.
Advisory Council for Italy

M.S. LUSH, Brigadier,
Executive Commissioner
Allied Commission.

Aug 28 29 30 31 1946

22
C.D. [unclear]
[unclear]

[Handwritten signatures and initials]

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

AUG 30 1946

30 August 1946

DELEGATION OF THE FEDERAL PEOPLES
REPUBLIC OF JUGOSLAVIA
TO THE ADVISORY COUNCIL FOR ITALY

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war was declared. This implicitly applies to the convention
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Very truly yours

Dr. Jovan Smolaka

DR. SLOVEN J. SMODLAKA,
Jugoslav Representative a.i.
Advisory Council for Italy

M.S. LUSH, Brigadier,
Executive Commissioner
Allied Commission.

22
P.D.

See 1524, 29, 30, 31 & 37

Lush
(copy)
98

1439

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24

D R A F T

- Seizure of Italian fishing boats by the Jugoslavs
- Fishing rights in the Adriatic

These two questions are closely linked together and in my opinion the position appears to be as follows:

Capture of fishing boats during hostilities may be justified and has been effected by countries at war every time it was suspected that such ships might be used for military purposes.

By the Eleventh Hague Convention of 1907 it was agreed that vessels used exclusively in coast fisheries or small boats employed in local trade are exempt from capture as well as their appliance, rigging, tackle and cargo. They cease to be exempt however, as soon as they take any part whatever in hostilities. The contracting powers agreed at the same time not to take advantage of the harmless character of such vessels in order to use them for military purposes while preserving their peaceful appearance. (Art 3).

In the case in point, the hostilities have ceased and obviously it cannot be alleged that the Italian fishing boats were carrying on warlike operations, under the cloak of an innocent trade.

It has always been the practice of civilized countries not to molest fishing craft, as it is indisputable that coasting fishery is the sole means of livelihood of a very large number of families as inoffensive as cultivators of the soil and the seizure of boats while afflicting extreme hardship on their owners, is a measure of general application wholly ineffective

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This is even truer when hostilities have ceased. The practice of not seizing fishing vessels whether in enemy, neutral or territorial waters has been followed by the United

See 4.20.57-26

PA 30/10

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States in the Mexican and Spanish wars; France prohibited the capture of fishing vessels for other than military and naval reasons during her wars with Austria and Germany. The British Government although maintaining the right to seize fishing vessels for sufficient reasons of war always relaxed such rights in the interest of humanity. The right to stop, examine ~~xx~~ enemy fishing vessels ^{at} ports or even detain them has never been questioned, what is contested is the right to seize or confiscate them and their cargo when there is no evidence that they are participating in naval operations but merely carrying on their peaceful trade.

In the present case, therefore, it cannot be maintained that the Italian fishing boats were engaged in any form of military operations. I am of opinion that seizure by the Jugoslav authorities was in ~~direct violation of the spirit and letter~~ ^{of the Hague Convention,} the general practice followed by civilized countries in earlier wars, ~~and contrary to the principles of humanity which have inspired such practice.~~

On the other hand, a fishing convention cannot be considered as a political treaty, therefore, it is not automatically cancelled by the outbreak of war. Its execution is merely suspended when the necessities of war compel the belligerents to do so. It can hardly be maintained that the necessities of war have compelled the Jugoslavs, at the present stage, to suspend the effect of an agreement which was and is still beneficial to the coastal populations of both countries. ~~It understood that the Admiralty have adopted this point of view in similar cases.~~

The opinion that non political treaties are merely suspended and are revived on the cessation of hostilities without any express stipulation is held by many authors in various

rights in the interest of humanity. The right to stop, examine ~~or~~ enemy fishing vessels ^{is being taken} ~~into~~ ports or even detain them has never been questioned, what is contested is the right to seize or confiscate them and their cargo when there is no evidence that they are participating in naval operations but merely carrying on their peaceful trade.

In the present case, therefore, it cannot be maintained that the Italian fishing boats were engaged in any form of military operations. I am of opinion that seizure by the Yugoslav authorities was ^{an act of war} ~~in direct violation of~~ the spirit and letter of the Hague Convention, ^{the} general practice followed by civilized countries in earlier wars, ~~and contrary to the principles of humanity which have inspired such practice.~~

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The opinion that non political treaties are merely suspended and are revived on the cessation of hostilities without any express stipulation is held by many authors in various countries.

Sir R. Phillimore ruled that treaties which recognize a principle and object of permanent policy remain in operation even through the state of war, but those which relate to

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- 3 -

objects of passing or temporary expediency are annulled.

The granting of mutual fishing rights between two countries appears to be much more a matter of policy than one of expediency.

Foreign authors such as Meffter, Galvo, Bluntonli whose opinion is shared by Sir Cecil Hurst submit that the element on which must depend an answer to the question whether a particular treaty is or is not abrogated by the outbreak of war between the parties is to be found in the intention of the parties at the time when the treaty was concluded, rather than in the nature of the treaty itself.

The Brioni Convention embodied an accepted custom followed by the coastal populations of the area concerned for the past centuries. The first treaty of 1878^{between Italy & Austria} regulated a de facto situation dating from the time of the Venetian Republic. (Dandolo Decree 1808 ^{was} the first codification of such custom)

If Sir Cecil Hurst's opinion is ~~acceptable~~^{accepted} then, whether the Brioni Convention can still be considered as remaining in force depends on the evidence as to the intention of Italy and the Kingdom of Serbes, Croates, Slovenes ~~when~~ concluding the treaty. Prima facie such intention can be presumed

the permanence of a situation which the convention was endeavouring to legalize formally. ^{from} Most countries, at the outbreak of war, ^{make} ~~make~~ formal announcement declaring all existing treaties with the enemy ~~at an end~~. As far as I am aware such declaration has not been made, by the Kingdom of Serbes, Croates and Slovenes and ~~therefore~~ ^{therefore} it can be taken that the intention of the parties was that conventions which protected the rights and assured the livelihood of private persons of both countries should remain in force during hostilities are at an end.

from
in order to
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doubt as
to their
intentions.

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From the intention to leave no doubt as to their intentions.
The intention of the parties was that conventions which protected the rights and assured the livelihood of private persons of both countries should remain in force during hostilities are at an end. *make Most countries at the outbreak of war, issue a formal announcement declaring all existing treaties with the enemy at an end. As far as I am aware such declaration has not been made, by the Kingdom of Serbes, Croates and Slovenes and therefore it can be taken that the intention of the parties was that*

The contention hinted at by the Yugoslav Delegation that the Convention was passed between Italy and the Kingdom of Serbes, Croats and Slovenes and not Jugoslavia has no bearing on the case in point. It has always been understood in law

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that the successor state, (Yugoslavia) inherits the existing rights and obligations of its predecessor - the Kingdom of Serbs, Croats and Slovenes). The fact that the Soviet Government renounced all obligations contracted by Russia under Tsarism has never been considered as a legal precedent and in any case is not relevant.

Note. - In answer to Colonel Hamblen's first paragraph in regard to the precedent set up by the Treaty of Versailles, may I quote Hall: "The treaties of peace at the end of the war of 1914-18 followed the principle that as regards a) treaties to which only the belligerents were parties they were deemed to have been annulled by the outbreak of war leaving to each of the victorious Powers to notify to the vanquished state the treaties which they wish to revive, while as regards b) multi-lateral treaties, a list is given of those of 'an economic or technical character' which are revived, though in some cases with important conditions attached. Other treaties not referred to must be considered as remaining in force."

May I add that the point is not whether a convention can or cannot be cancelled at the Peace Treaty but rather if its effects remain in force during hostilities, after an armistice and until the Peace Treaty is signed.

This in my opinion is the case of the question, - therefore I respectfully submit that the effects of a treaty such as the Birming Convention ~~is not~~ remain in force and notwithstanding on the contracting parties even during hostilities, unless one of the parties deliberately violates its provisions - chooses to violate its provision

785017

Note. - In answer to Colonel Humble's first paragraph in regard to the precedent set up by the Treaty of Versailles, may I quote Hall: "The treaties of peace at the end of the war of 1914-18 followed the principle that as regards a) treaties to which only the belligerents were parties they were deemed to have been annulled by the outbreak of war leaving to each of the victorious Powers to notify to the vanquished state the treaties which they wish to revive, while as regards b) multi-lateral treaties, a list is given of those of 'an economic or technical character' which are revived, though in some cases with important conditions attached. Other treaties not referred to must be considered as remaining in force."

May I add that the point is not whether a convention can or cannot be cancelled at the Peace Treaty but rather if its effects remain in force during hostilities, after an armistice and until the Peace Treaty is signed.

This in my opinion is the crux of the question, and I respectfully submit that the effects of a treaty made as the Birminghams Convention ~~is stated~~ remain in force and hostilities, unless one of the parties deliberately violates its provisions - chooses to violate its provisions

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

785017

ALLIED FORCE HEADQUARTERS
G-5 Section
APO 512

5611
Ex Comm 19
639

G-5: 910.31-0

17 August 1946.

SUBJECT: Fishing Rights in the Adriatic.

TO : Chief Commissioner,
Allied Commission,
APO 794.

Reference your 5611/15/EC, 12 August 1946.

This Headquarters cannot concur with the opinion enclosed with your above quoted letter.

According to OPPENHEIM "International Law" Vol 11 page 246 Non Political Treaties not intended to set up a permanent condition of things are not ipso facto annulled but the parties may annul them or suspend them at their discretion.

The latest precedent on the subject is the plan adopted on the Treaties of Peace after the War of 1914 - 18. Then all Treaties to which two belligerent were the only parties were regarded as annulled and the Victorious Power was given an option to revive them on certain conditions.

These Italo-Yugoslav Fishing Treaties would seem to fall into this category. They are clearly treaties not intended to set up a permanent condition of things and equally it appears that the Yugoslavs regard them at an end. This appears to be within their rights and is in keeping with the theory that the parties may annul or suspend such treaties. To allow the loser to retain such a right would be illogical, clearly such a right is a prerogative of the victor.

It is therefore the view of this Headquarters that the Yugoslav opinion in this case is the more likely to prevail and it is therefore recommended that any expression of views on your part is avoided and that your activities are confined strictly to "post-officing" between the Italian Government and the Yugoslav Delegation.

BY COMMAND OF LIEUTENANT GENERAL LEE

EC Disc - 20/8/46

Info: SCAO ~~KUI~~ Corps
Brit/US Embassies
Navy s/c
Polands 'A' & 'B'
Iran Sec
Legal s/c

[Signature]
A.L. HAMBLEN
Colonel, G.S.C.
Assistant Chief of Staff

See m-26
Lu 7-39

175. 20/8/46
P.A.
[Signature]

3
(PART K)

785017

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

P. Ltd. Wt. 607D. 3/4.

File 17

Ref. : 5644/16/80

13 August 1946.

My Dear Dr. MacFlake,

With reference to your letter No. Br. 353/46, dated 25 March 46, on the subject of Italian boats fishing in Yugoslav waters.

I forward for your information a copy of the Italian Ministry of Marine's reply:

"It does not appear from our investigations that during period 28nd - 27th January last any Italian fishing craft had fished in Yugoslav waters, which extend for 6 miles for fishing purposes as well as others, according to the information of the Ministry of Marine (Law controlling sea fishing dated 30th March 1922)".

"Regarding the convention of Briand of 14th September 1921, we maintain that it was not cancelled by the war between the 2 Principal Signatories, but that it is merely in abeyance".

Yours very truly

M. S. LUSH

Brigadier,
Executive Commissioner,
for the
Chief Commissioner.

Copy to: Navy S/C
Point A
Point B
Econ Sec
Legal S/C

see M 18 727

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

15

Ref. : 5644/15/EC

12 August 1946.

SUBJECT: Fishing Rights in the Adriatic.

TO : G-5 Section,
AFHQ.

10

1. Reference your letter G-5:910,34 dated 19 July 46.
2. The Yugoslav Government, through Dr. Smoljaka, requested, by letter dated 25 March that the Allied Commission inform the Italian Government that the BRIONI fishing agreement of 1921 was no longer valid. It further stated that Italian fishing boats were continuing to fish in Yugoslav territorial waters.
3. This information was conveyed to the Italian Government, who replied to the effect that, in their opinion, the agreement is still operative and requested that the matter be referred to the Yugoslav Representative to the A.C.I.
4. The Legal opinion of this Commission's Legal Branch, supports the Italian view, in stating that although the agreement may have lapsed during the war, it is, nevertheless, still effective (See Appendix A).
5. This matter is closely related to the seizure of Italian fishing vessels in the Adriatic to which my letter 5609/278/EC of 9 August 46 refers and the question remains as to procedure, always provided that you agree with the view of the Italian Government endorsed by my Legal S/C.
6. In view of the fact that the Yugoslav Government considers the BRIONI Fishing Agreement cancelled, I do not consider any useful result will be obtained by merely presenting the contrary opinions to Dr. Smoljaka unless we were prepared to say that SACMED agreed with the Italian view and was prepared to afford his (naval) protection to Italian fishing vessels in the exercise of their rights in Adriatic waters, and that the Allied Governments would hold the Yugoslav Government responsible for any damage to Italian interests inflicted by the Yugoslav Government on Italian vessels or personnel in this connection. However this would obviously be impolitic at the present time and I will therefore carry out the request of the Italian Government (Vide Para 3) and we must leave the matter at that point.

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5609

See 331.

15
5/8/46
P.A.

See 19-39-40

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

15A

- 2 -

7. It is interesting to note in this connection that Mr. Spolaka has just entered a protest through the Allied Commission to the Italian Government for alleged search of a Yugoslav vessel plying between MARSEILLES and JUGOSLAVIA when within 4 miles of the Italian coast, and of another vessel lying off the Italian coast in the course of loading salt destined for Jugoslavia.

For the Chief Commissioner:

M. S. LUSH

Brigadier,
Executive Commission.

- Copy to: SCAG XIII Corps
- British Embassy
- U. S. Embassy
- Navy S/C
- Polad A
- Polad B
- Econ Sec
- Legal S/C
- File 5609/EC

Distribution

14

785017

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

TYPE 13

D R A F T

Ref. : 5611/15/EC

August 1946.

SUBJECT: Fishing Rights in the Adriatic.

TO : G-5 Section,
AFHQ

1. Reference your letter G-5:910.31 dated 19 July 46.
2. The Yugoslav Government, through Dr. Smolaka, requested, by letter dated 25 March that the Allied Commission inform the Italian Government that the BRIONI fishing agreement of 1921 was no longer valid. It further stated that Italian fishing boats were continuing to fish in Yugoslav territorial waters.
3. This information was conveyed to the Italian Government, who replied to the effect that, in their opinion, the agreement is still operative and requested that the matter be referred to the Yugoslav Representative to the A.C.I.
4. The Legal opinion of this Commission's Legal Branch, supports the Italian view, in stating that although the agreement may have lapsed during the war, it is, nevertheless, still effective (See Appendix A).
5. This matter is closely related to the seizure of Italian fishing vessels in the Adriatic to which my letter 5609/278/EC of *9 Aug 46* refers. ~~today's date~~ refers and the question remains as to procedure, always provided that you agree with the view of the Italian Government endorsed by my Legal S/C.

6. In view of the fact that the Yugoslav Government considers the BRIONI Fishing Agreement cancelled, I do not consider any useful

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

TO : G-5 Section,
AFHQ

1. Reference your letter G-5:910.31 dated 19 July 46.
2. The Yugoslav Government, through Dr. Smodlaka, requested, by letter dated 25 March that the Allied Commission inform the Italian Government that the BRIONI fishing agreement of 1921 was no longer valid. It further stated that Italian fishing boats were continuing to fish in Yugoslav territorial waters.
3. This information was conveyed to the Italian Government, who replied to the effect that, in their opinion, the agreement is still operative and requested that the matter be referred to the Yugoslav Representative to the A.C.I.
4. The Legal opinion of this Commission's Legal Branch, supports the Italian view, in stating that although the agreement may have lapsed during the war, it is, nevertheless, still effective (See Appendix A).
5. This matter is closely related to the seizure of Italian fishing vessels in the Adriatic to which my letter 5609/278/EC of *Paris* ~~today's date~~ refers and the question remains as to procedure, always provided that you agree with the view of the Italian Government endorsed by my Legal S/C.
6. In view of the fact that the Yugoslav Government considers the BRIONI Fishing Agreement cancelled, I do not consider any useful result could be obtained by merely presenting the contrary opinions to Dr. Smodlaka unless we ^{can} ~~are~~ prepared to say that SACMED agreed with

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

the Italian view and was prepared to afford his (naval) protection to Italian fishing vessels in the exercise of their rights in Adriatic waters, and that the Allied Governments would hold the Yugoslav Government responsible for any damage to Italian interests inflicted by the Yugoslav Government on Italian vessels or personnel in this connection. This would obviously be impolitic at the present time and I will therefore carry out the request of the ~~Yugoslav~~ *Nation* Government (Vide para 3) and we must leave the matter at that point.

7. It is interesting to note in this connection that Dr. Smodlaka has just entered a protest through the Allied Commission to the Italian Government for alleged search of a Yugoslav vessel plying between MARSEILLES and YUGOSLAVIA when within 4 miles of the Italian coast, and of another vessel lying off the Italian coast in the course of loading salt destined for YUGOSLAVIA.

For the Chief Commissioner:



Brigadier,
Executive Commissioner.

- Copy to:
- SCAO XIII Corps
 - British Embassy
 - U.S. Embassy Rome
 - Navy S/C
 - Polad A
 - Polad B
 - Econ Sec
 - Legal S/C
 - File 5609/EC

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

5611 9/6

10

ALLIED FORCE HEADQUARTERS
G-5 Section
APO 512

G-5; 910.31

19 July 1946

JUL 19 1946

SUBJECT: Italo - Yugoslav Fishing Agreements.

TO : Chief Comdant, Allied Commission, APO 794.

1. In response to a request from Cinc Med the Flag Officer Liaison Italy has supplied the following information as to the agreements governing fishing rights which were concluded between the Italian and Yugoslav Governments.
2. The information is passed to you, without comment as to the legality of the views expressed, in case it is not already in your possession.
3. Agreements signed between Italian and Yugoslav Governments at BRIONI 14th Sept 1921 and METUNO 28 July 1925 established fishing rights:-
 - (A) Along the Dalmation Coast inshore of CHERSO between PIUME and ZARA.
 - (B) Between KORCULA and TAGOSTA.
 - (C) Off DRIACOSA
4. The fall of Austrian Empire having rendered null Italo-Austrian Agreement of CORIZIA (1884) normal international regulations are considered to govern fishing in those parts of ADRIATIC not stated in Para 3 e.g. fishing by another nationality forbidden in territorial waters. A Yugoslav law of 30th March 1922 fixed the limit of Yugoslav territorial waters at 6 miles from the coast.
5. It is understood that the Yugoslav Representative on the Advisory Council for Italy has informed you that his Government considers the Agreement in para 3 lapsed on the declaration of war between Italy and Yugoslavia. The Italian Government maintains that the Agreements are thereby suspended and have not lapsed.

BY COMMAND OF LIEUTENANT GENERAL MORGAN:

CC Distribution

cc EC ✓

No action required per CC (corr 10)

Shan

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

M. J. P. 25/7/46
J.P.

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

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HEADQUARTERS ALLIED COMMISSION
NAVY SUB-COMMISSION APO 794

5611 9/

9

NSC/5278
13 July 1946

JUL 13 1946

MEMORANDUM FOR THE EXECUTIVE COMMISSIONER:

Subject: Fishing in Yugoslav Waters.

Enclosure: (A) Ministry of Marine ltr. 2357/MT of
5th July 1946.

8.

1. Confirming conversation with Captain Knisely and
Commander BAHLMANN, enclosure (A) is forwarded for information
and any action deemed necessary, since your office has already
acted upon subject.

H. W. Knisely
H. W. KNISELY,
COMMODORE, U. S. NAVY,
FOR COMMODORE, USN,
CHIEF, NAVY SUB COMMISSION, A.C.
ACTING.

9

(initials)

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

From: MINISTRY OF MARINE (Cabinet)
 To: A.C. - CA. Section per: H.S.C.
 and for Info.: Ministry of Agriculture
 Date: 5th July 1946
 Ref.: 2357/UF

Subject: Fishing in Jugoslav waters

Reference is made to letter 1A/12A/CA of 20th May last.

1. It does not appear from our investigations that during period 22nd - 27th January last any Italian fishing craft had fished in Jugoslav waters, which extend for 6 miles for fishing purposes as well as others, according to the information of the Ministry of Marine (Law controlling Sea fishing dated 30th March 1922).

2. Regarding the convention of Briant of 14th September 1921, we maintain that it was not cancelled by the war between the 2 Principal Signatories, but that it is merely in abeyance.

3. It is requested that the above be brought to the notice of the Jugoslav Representative on the Consultative Council for Italy.

THE MINISTER

JLE/WH/2.
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Declassified E.O. 12356 Section 3.3/NND No.

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SUBJECT : Fishing rights.

- Questions to be determined:
- A) Extent of territorial waters
 - B) Validity of pre-war treaties
 - C) Fishing rights in waters between 4 to 6 miles from the coast.

After a careful consideration we have arrived at the following opinion:

1. As to point A): No international provision exists which determines the extent of territorial waters.
2. The State cannot fix of its own accord the extent of territorial waters which will have binding effect as regards third parties, and therefore the Yugoslav law, which fixes the limit of territorial waters at six miles, cannot affect third parties.
3. It must be noted that as regards fishing rights the extent of territorial waters is always the most limited one.
4. Even in the case of territorial waters being fixed at three miles, the question as from what point the area should be measured will still remain to be determined.
5. International Law also contemplates the so called "adjacent zone" next territorial waters, wherein the right of fishing reserve is excluded.

As to point B)

It is an unassailable principle of International Law that war abrogates all treaties existing between belligerents, but this principle is subject to many exceptions. We are interested in that exception relative to treaties which are meant to regulate in a definite manner a "de facto" situation for the future. The exercise of rights deriving from treaties is merely suspended, but such rights are not cancelled because of war. This point of view is sustained by the unanimous opinion of the best authorities, and by historical precedents.

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

- 2 -

6

In a similar question which arose about the year 1815 between the United States and Great Britain both parties admitted that all agreements "in the nature of perpetual obligation" constitute an exception to the rule whereby treaties cease to be valid on account of war.

This case related to the establishment of fishing rights in territorial waters: much more so should the exception referred to above apply to waters which can hardly be considered as territorial. From the above it appears that all treaties concerning fishing rights between Yugoslavia and Italy are still valid. Apart from this fishing rights of Italian fishermen, also in territorial waters, would derive from a customary rule of international law. Such rule was embodied in the Convention of Brioni which therefore made no innovation in the relations already existing between the parties.

This Sub Commission is of opinion that irrespective of the extent of territorial waters Italian fishermen have fishing rights even in "territorial waters" (viz. near the coast) both because the Conventions Brioni and Nettuno and the customary rule are still in force.

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

copy

copy

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Ref. : 14/12A/CA

20th May, 1946.

SUBJECT: Fishing in Yugoslav Waters.

TO : The Ministry of Agriculture,
Via XX September,
Rome

1A

The attached copy letter dated 25 March 46 received from the Deputy Representative of Yugoslavia, Advisory Council for Italy is forwarded to you.

FOR THE CHIEF COMMISSIONER.

M. Carr, Brigadier.
VP. CA. Section

cc Ministry of Marine
Economic Section (Food & Agriculture Branch)
File.

6

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

785017

copy

copy

Ref. : 14/12A/CA+ 17th May, 1946.

SUBJECT: Italian Fishing in Yugoslav Waters.

TO : Dr. Sloven J. Smolaka
Deputy Representative of Yugoslavia
Advisory Council for Italy

The contents of your letter reference ER. 353/46 of
25th March 1946 have been passed to the appropriate Ministry
of the Italian Government.

FOR THE CHIEF COMMISSIONER

/s/M. CARR, Brigadier,
V.P. CA. SECTION

14

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

COPY

5611 AB

3

HEADQUARTERS ALLIED COMMISSION
APO 394
LEGAL SUB-COMMISSION

/mda

AC/4132/L

9 April 1946

SUBJECT : Fishing Rights.

TO : HQ. AC, Food & Agriculture Branch

2

Reference your letter No.5.50/AGR of 9 April 1946.

1. It is regretted that it has not yet been possible to reply to your 5.50/AGR of 3 April 1946.

2. The question of fishing rights in the Adriatic appears to be rather complex and fairly considerable research will be required before the exact status of the various nations concerned is determined.

G.G. HANNAFORD,
Lt. Col.,
Deputy Chief Legal Advisor.

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

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HEADQUARTERS ALLIED COMMISSION
APO 394
FOOD & AGRICULTURE BRANCH

VRAC/18

Ext. 584

9 April 1946

Ref. 5.50/AGR

SUBJECT : Fishing Rights.

TO : Chief Legal Advisor
Legal Sub-Commission

Reference 5.50/AGR dated 3 April 1946.

May a reply be given, please, to the above mentioned letter.

V.R.A. COWPER
Lt. Colonel
Director, Food & Agriculture Branch

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5611-AD
HEADQUARTERS ALLIED COMMISSION
APO 394
FOOD & AGRICULTURE BRANCH

V RAC/28

Ext. 584

3 April 1946

Ref. 5.50/AGR

JUL 11 1946

SUBJECT : Fishing rights

TO : Chief Legal Advisor
Legal Sub-Commission

1. Complaint has been received from the Yugoslavs that Italian fishermen are fishing in waters 4 to 6 miles from the Yugoslav coasts.

2. May this office be informed, please,

a) What in fact constitute territorial waters.

This Office has already be informed by the Italian Fishery Expert formerly employed by Agriculture Sub-Commission and now with UNRRA that the territorial limit is 3 miles, but that under an agreement reached in 1925 between the Italian Government and the Yugoslav Government, Italians were permitted to fish in certain areas irrespective of territorial limits. This agreement has now of course lapsed.

b) Will it be correct to assume therefore that there being no agreements to the contrary, Italian subjects are perfectly entitled to fish outside the 3 mile limit and that any interference by Yugoslav nationals with Italian subjects pursuing their lawful occasions on the High Seas would constitute a breach of International Law?

V.R.A. COWPER
Lt. Colonel
Director ,Food & Agriculture Branch

See 7-2

2

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

785017

COPY

IA

Jugoslav Delegation
to the Advisory Council for Italy

Br. 333/45

25 March 1946

SUBJECT : Italian fisher boats in Yugoslav waters

TO : Chief Commissioner
Allied Commission

1. The Yugoslav Government informed us that on 22, 26 and 27 January 1946 Italian fisher boats were fishing in Yugoslav waters at the distance of 4-7 miles.

2. The Yugoslav Government would appreciate that the competent Italian Authorities be informed about the a/m case, since the Convention on fishing, concluded on 19 September 1921 between the ex Kingdom of Serbs, Croates and Slovenes and Italy, allowing mutual fishing in territorial waters of the High Contracting Parties, is not more in vigour.

s/s . Dr. Sloven J. SMODJAKA,
Deputy Representative of Jugoslavia
Advisory Council for Italy.

see 475

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