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NAVAL FORCES

April 1944

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HEADQUARTERS
ALLIED CONTROL COMMISSION
Legal Subcommittee
APO 394

GRU/gmf

ACQ/4042/L

SUBJECT: Merchant Seamen.

4 April 1944

TO :

Mr. Makins
Mr. Caccia
Mr. Dean
Col. Willmer KC
Mr. Hutecheon
Mr. Bogarth
Mr. Jaker
Major
Major Rowbotham

- C/O Mr. Caccia
- HQ ACC
- British F.O. C/O Mr. Caccia
- Region 4 ACC
- British F.O.
- JMW (Navy House)
- JMW (Naples)
- HQ LAI (A)
- HQ LAI (AMH)

1. I refer to the meeting (at which all of the above addressees were present), convened by me at the Provincia Building, Naples on 17 March to discuss problems that arise in connection with the trial of Merchant Seamen for offences committed on shore.

2. When draft minutes of the meeting were prepared it was found that one or two small points (e.g. as to the exact status of dominion personnel) remained to be cleared up and Mr. Dean asked for and has received further instructions from the Foreign Office on the matter.

3. In these circumstances I do not propose to circulate minutes but to circulate as an Appendix to this letter the conclusions reached by the meeting, expanded in the light of the above mentioned instructions.

4. If you have any queries hereon or desire any amendments to be made, please let me know as soon as possible.

Copy to: Administrative V.P.
Executive Commissioner (M.B. The substance of App. will be included in Allied Military Courts handbook now in course of preparation).

G. R. UPJOHN, Colonel
Chief Legal Officer.

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- TO :
- Mr. Mullins
 - Mr. Caccia
 - Mr. Dean
 - Col. Williams KC
 - Mr. Hutcheon
 - Mr. Houghton
 - Mr. Jaker
 - Major Rowbottom
 - C/O Mr. Caccia
 - HQ ACC
 - British F.C. C/O Mr. Caccia
 - Region 4 ACC
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R E S T R I C T E D

APPENDIX TO LETTER ACC/4042/L
DATED 20 March 1944.
4 April

MERCHANT SEAMEN

1. Arbit of Discussion.

- (a) The meeting was concerned solely with offences committed on shore in Sicily or Italy by persons who were the master or members of the crew of merchant ships.
- (b) The meeting did not consider the case of persons who were the master or members of the crew of U.S. merchant ships who, it was understood, could be tried by U.S. Courts Martial.
- (c) Furthermore, the meeting did not consider special cases e.g. of a seaman committing a crime of sabotage or other war crime which would deserve special consideration but only ordinary civil crimes e.g. drunkenness, rape, wounding, murder, etc.

2. Extension of Legislation.

In view of the very few serious cases that had arisen either in Italy or Sicily it was agreed that no case could be made for inviting the appropriate Government Department to ask Parliament to extend any existing legislation or regulations on the subject and the meeting proceeded to consider the best machinery to be adopted within the present legislative framework.

3. Trial by Naval Courts under Defence Reg. 47 A.B.

(a) Procedure under this regulation will always be carried out where it is applicable and in this connection it should be noted:

- (i) Persons who may be tried hereunder extend to all British and British protected personnel including Dominion personnel who are serving on a U.K. ship.
- (ii) Persons serving on a Dominion ship may not be tried hereunder even if they are U.K. personnel.
- (iii) This regulation is equally applicable in occupied or unoccupied territory.

4. Dominion Regulations.

The Dominions have no regulations corresponding to 47 A.B. Present policy of the Foreign Office is against making any extension to 47 A.B. in this respect even if it were legally possible.

5. Trial in other cases of British Merchant Seamen.

In the following cases:

- (i) Where British or British

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(b) The meeting did not consider the case of persons who were the master or members of the crew of U.S. merchant ships who, it was understood, could be tried by U.S. Courts Martial.

(c) Furthermore, the meeting did not consider special cases e.g. of a seaman committing a crime of sabotage or other war crime which would deserve special consideration but only ordinary civil crimes e.g. drunkenness, rape, wounding, murder, etc.

2. Extension of Legislation.

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3. Trial by Naval Courts under Defence Reg. 47 AAB.

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(iii) This regulation is equally applicable in occupied or unoccupied territory.

4. Dominion Regulations.

The Dominions have no regulations corresponding to 47 AAB. Present policy of the Foreign Office is against making any extension to 47 AAB in this respect even if it were legally possible.

5. Trial in other cases of British Merchant Seamen.

In the following cases:

(i) Where British or British protected personnel (including Dominion personnel) serving on a U.K. ship are involved in crimes too serious to be tried under 47 AAB.

(ii) Where British or British protected personnel (including Dominion personnel) serving on a ship other than a U.K. ship are involved in any crimes, the procedure set out below will be adopted:

(a) Investigation by a Naval Court followed by a trial in Malta, Gibraltar or the U.K. See Secs. 687, 685(1)(c) & 689 of Merchant Shipping Act, 1895.

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(b) The procedure in (a) above involves procuring the attendance of witnesses at the place of trial and if in any case this proves impossible the following procedure will be followed.

(1) In Occupied Territory.

If the crime is committed in occupied territory, the authority concerned will ask the Chief Legal Officer HQ ACC to convene an Allied Military Court for trial of the accused. HQ ACC will ask the Military Governor to authorize the detention of the accused if found guilty in an Army prison in occupied territory and if such authority is forthcoming the trial will proceed and the accused if found guilty will serve his sentence in an Army prison in occupied territory until the termination of occupation. If occupation ceases before the accused has finished serving his sentence and it proves impracticable to continue his imprisonment in an Army camp, instructions will be sought from AMQ as to his release or continued detention in an Italian jail. This is an admittedly cumbersome procedure and only to be resorted to if trial under (a) above is out of the question. If the aforesaid consent of the Military Governor is not forthcoming, the procedure will be as in the next sub-paragraph.

(2) In Unoccupied Territory.

Where the crime is committed in unoccupied territory (e.g. Bari, Brindisi), as it is politically undesirable at the present time to imprison the personnel mentioned at the beginning of this para to an Italian jail, then if trial under sub-para (a) is out of the question it will be necessary to ask AMQ for special instructions if and when any such case arises, as there appears no other method of trying the case except in the Italian Courts.

6. Trial of Foreign Merchant Seamen.

Where the accused merchant seaman is a national of one of the United Nations or a neutral nation, he will be tried in the appropriate Italian Court or if none are functioning in the locality, in an Allied Military Court, and in either event, if found guilty he will be imprisoned in an Italian jail. It was agreed that there was no objection to this on political grounds.

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