

ACC

10000/142/379
(VOL. 2)

10000/142/379
(VOL. 2)

MERCHANT SEAMEN CASES (POLICY)
MAY 1946 - JAN. 1947

5.

Chief Commissioner.

NOV 18 1966

Attached is submitted for your signature

opposed

16/x1

McAnby
BRIGADIER
EXEC. COMM.

Legal Div

6

Its opposite signed by E.C. returned for dispatch. Copies
for E.C. & E.C. files have been withdrawn.

W. H. H.

11

MINUTE No.1

5th November 1946.

To: Legal Division.

Have you any comments please on the draft letter at Folio 4 and will you please complete para 5. This Headquarters will fill in the reference number of the letter referred to in para 5.

Please treat this matter as urgent as this question is being delayed.

M. Carr
M. CARR, Brigadier.
Executive Commissioner.

F & Carr.

2.

Please see Embassy Confidential note opposite.

12th Nov 46

G. P. Humphrey
W. Carr

3.

Chief Legal Adviser.

CC has approved draft reply with minor amendments.

Will you please have papers prepared for signature by CC. Sufficient copies should be typed to permit of distribution to Polads. Two copies go to AFHQ and they should both have a copy of your memorandum attached.

Your memorandum will require some re-editing because it cannot refer to various flags - the references will have to be inserted.

In view of the time which has elapsed since the receipt of letter from AFHQ please treat this matter as urgent. The confidential opinion of Polad (B) on the status of British Merchant Seamen is returned in this file for your retention.

M. Carr

Ex Com.

2.

Please see enclosing confidential note opposite.

G. S. Humphrey
Hase

12th Nov 46

3.

Chief Legal Adviser.

CC has approved draft reply with minor amendments.

Will you please have papers prepared for signature by CC. Sufficient copies should be typed to permit of distribution to Polads. Two copies go to AFHQ and they should both have a copy of your memorandum attached.

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In view of the time which has elapsed since the receipt of letter from AFHQ please treat this matter as urgent. The confidential opinion of Polad (B) on the status of British Merchant Seamen is returned in this file for your retention.

M. Carr

M. CARR,
Brigadier,
Exec. Comm.

14 Nov 46.

4.

Ex Com.

Letter for CC's signature prepared as requested.

G. S. Humphrey
Hase

Hase S/C

14 Nov 46.

Minute Sheet 1.

Legal Sec.

Please see folios 6 (a) and (b). Executive
Commissioner should also see. *Plasma, King*
25 June 66. *CA Section.*

Noted

4-4-14

negot S/C

2

My J.S. Reardon
CA Sec

Copies of Folios 6(a) & (b) copied for ECs file 3606/EC.

Thompson
XBT
Office of EC.

12/7.

notes 7/14 copy CAS

15/7

HEADQUARTERS ALLIED COMMISSION

A P O 794

Office of the Executive Commissioner

FILE

Ref: 5606/172/AC

13 January, 1947

SUBJECT: Jurisdiction over Merchant Seamen

TO : ALLIED FORCE HEADQUARTERS
Attention: G-5 Section

1. Reference is made to this Commission's letter 5606/158/AC 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/AC) 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:

16/M. CARR

Brigadier,
Executive Commissioner.

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



4042

ALLIED FORCE HEADQUARTERS
G-5 Section
APO 512

Legal
4092

G-5: 934.01

December 1946

SUBJECT: Trial of Offenses by Allied Nationals.

TO : Allied Military Government,
Venezia Giulia.

Refer your AMG/LD/122/2941 of 2 October and further to this Headquarters letter G-5: 934.01 of 20 November.

Attached is a copy of a minute of JAG MTOUSA on the legal position of US Nationals as regard jurisdiction.

BY COMMAND OF LIEUTENANT GENERAL LEE:

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

Incl:
as above

Copy to:
ALCOM

LEGAL SUB - COMMISSION	
CJO - CLA	
DCLO	
CHIEF COUNSEL	
ITALIAN SECTION	
Recd	DEC 9 1946

G-5: 934.01

Trial of Offenses by Allied Nationals.

2. JA 156 G-5 3 Dec. 46 1. The letter from the Senior Civil Affairs Officer, AMG (AMG/LD/122/2941) dated 2 October 1946, subject: "Jurisdiction over offenses committed by Allied Nationals" has been studied. While it is somewhat difficult to determine exactly what the problem is which confronts AMG, it appears that the main issue is what jurisdiction AMG courts have over Allied Nationals. The Senior Civil Affairs Officer has, in paragraph 3 of the letter referred to made certain comments in paragraph 4 has reached certain conclusions. In the opinion of this office, and from the American point of view only, some of the comments do not appear pertinent or completely accurate. However, as the Chief Civil Affairs Officer has requested only that his conclusions be confirmed or commented upon, the following remarks will be directed toward the conclusions from the U.S. Army point of view only, and with respect to AMG territory.

2. The following general comments are offered with respect to paragraph 4a of the letter in reference:

a. Generally U.S. Merchant Seaman employed on Army vessels or on vessels carrying Military personnel or material and who commit offenses against military laws and regulations, AMG proclamations or Italian law in AMG territory, are subject to trial only before U.S. Military courts. Other U.S. Merchant seaman who are not subject to Military law and who commit offenses in AMG territory generally may be tried before AMG or local courts as determined by the Supreme Allied Commander.

b. Generally U.S. Military personnel, War Department Civilian Employees and their dependents, American Red Cross personnel, and such other U.S. Personnel who, under the provisions of the Articles of War, are subject to military law, and Surrendered Enemy Personnel who commit offenses in AMG territory in violation of military laws and regulations, AMG Proclamations or local laws may be tried only before U.S. Military Courts. Civilian personnel including U.S. UNRRA personnel who are not in the military service of the U.S., other than those categories mentioned, who are not subject to military law, and who commit offenses in AMG territory generally may be tried before AMG or local courts as determined by the Supreme Allied Commander.

c. Generally native civilian employees of the U.S. Army and non-U.S. civilians, other than SEP's, employed by the Army are, as a matter of policy, subject to trial by AMG or local courts as determined by the Supreme Allied Commander with concurrent jurisdiction in U.S. Military Courts.

Trial of Offenses by Allied Nationals

Continued.

2. (Cont'd) It is believed that the same views would be applicable so far as the U.S. Navy is concerned. It may be well to observe that there will arise from time to time many instances in which the correct jurisdiction may not be readily ascertainable. In those cases, it would seem advisable to seek advice from this Headquarters rather than to attempt to assert jurisdiction in AMG courts.

3. With reference to paragraph 4b, the conclusion is not understood. The specifications in a U.S. Military Court-martial is drafted after ascertaining the facts and in accordance with the manual for courts-martial. This is left to the Commanding Officer exercising general court-martial jurisdiction over the accused, if the accused is found to be subject to Military law. I would say generally that the conclusion reached, if it is meant to imply that only the two specifications referred to may be used, is not sound.

4. With reference to paragraph 4c it may be said that personnel of any category mentioned in paragraph 2 hereof may be arrested by AMG, local, Allied Military or Allied Naval police whenever they are found committing offenses in AMG territory and thereafter such person should be immediately turned over to the authorities normally exercising jurisdiction over such person. Investigation of the offense would be a matter for the authority having jurisdiction over the offender with the assistance of such other authorities in the area as might be required.

5. With reference to paragraph 4d, it is believed that the authority trying a person would designate the proper place of confinement, as regards those American nationals not under military jurisdiction, it is believed they would, upon being sentenced to confinement, be confined in such places designated by the AMG or local courts which tried them. They would not, for instance, be confined in the same institutions designated by a U.S. officer exercising general court-martial jurisdiction.

6. The conclusion reached in paragraph 4e has already been discussed in paragraph 2a and needs no further discussion.

THB/ww

TOM H. BARRATT
Colonel, JAGD
Theater Judge Advocate

3648

FILE

ALLIED FORCE HEADQUARTERS
G-5 Section
APO 512

3PA

G-5: 934.01

20 November 1946

SUBJECT: Trial of Offenses by Allied Nationals.

TO : Chief Commissioner,
Allied Commission,
APO 794.

Reference this Headquarters letter 934.01 of 11 October.

1. Your reply has been so long delayed that the matter could no longer be left unanswered. This Headquarters has therefore answered the Venezia Giulia letter AMG/LD/122/2941 of 2 October 1946 by the enclosed letter (G-5: 934.01 of 17 November 1946).

BY COMMAND OF LIEUTENANT GENERAL MORGAN:


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

Encl:
as above.

LEGAL SUB - COMMISSION	
GJO - CLA	
DCLO	
CHIEF COUNSEL	
ITALIAN SECTION	
Recd	NOV 22 1946

ALLIED FORCE HEADQUARTERS
G-5 Section
APO 512

G-5: 934.01

20 November 1946

SUBJECT: Trial of Offenses by Allied Nationals.

TO : Allied Military Government,
Venetia Giulia.

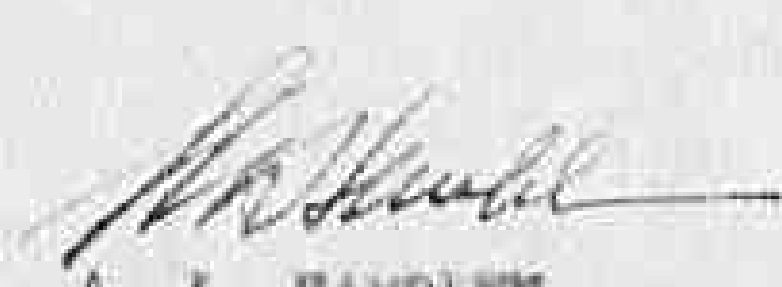
Reference your AMG/ID/122/2941 of 2 October 1946.

1. It is not true that Italian Courts have no jurisdiction of offences committed by Allied Nationals. Roughly the line of differentiation is this. If a person is subject to military law (e.g. a U.S. Seaman serving on a U.S. vessel carrying Army stores) he will be triable by trial by a military court. If he is not subject to military law (e.g. a U.S. Seaman serving on a commercial cargo vessel) he is triable by an Italian Court, or in AMG territory by an AMG Court if the Senior Civil Affairs Officer so directs.
2. There is no provision in British Law analogous to the U.S. Article of War 2. and British seamen are not normally triable under the British Army Act.
3. Concurrent jurisdiction though possible will seldom arise. In case of conflict Allied Military jurisdiction will over-ride Italian jurisdiction. There should be no difficulty as to charges. In the majority of cases of offences by allied civilians the charge will be for breach of the relevant Italian law or AMG proclamation and the case will be tried by an Italian or AMG Court. If the offence is by a person liable to Military Law, the charge will be that appropriate under Military Law. In the case of the British civilians it will be MOST unusual for Military Law to be applicable but if it is, the charge would be brought under Section 4. not Section 40.
4. Confinement ordered by Italian or AMG Courts will be in civil and not military prisons.
5. If any point is not clear please make a further submission.

BY COMMAND OF LIEUTENANT GENERAL MORGAN:

Copy to:

Allied Commission.


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

3650
 ALLIED FORCE HEADQUARTERS
 G-5 Section
 AMG 512

Legal

G-5: 934.01

20 November 1946

SUBJECT: Trial of Offenses by Allied Nationals.

TO : Allied Military Government,
 Venezia Giulia.

Reference your AMG/LB/122/2941 of 2 October 1946.

1. It is not true that Italian Courts have no jurisdiction over offenses committed by Allied Nationals. Roughly, the line of differentiation is this. If a person is subject to military law, he will be triable by a military court. If he is not subject to military law, he is triable by an Italian Court, or in AMG Territory by an AMG Court, if the Senior Civil Affairs Officer so directs.
2. At the present, British Seamen are excepted from this general ruling as their position is under discussion; until other instructions are issued, they should only be tried by AMG Courts, not by Italian Courts.
3. Concurrent jurisdiction though possible will seldom arise. In case of conflict Allied Military jurisdiction will over-ride Italian jurisdiction. There should be no difficulty as to charges. In the majority of cases of offenses by Allied civilians the charge will be for breach of the relevant Italian Law or AMG Proclamation and the case will be tried by an Italian or AMG Court. If the offense is by a person liable to Military Law, the charge will be that appropriate under Military Law.
4. Confinement ordered by Italian or AMG Courts will be in civil and not military prisons.
5. A detailed analysis of the categories of persons triable by the various governments and a more detailed reply to legal points is in course of preparation and will be forwarded to you as soon as possible.

BY COMMAND OF LIEUTENANT GENERAL MORGAN:

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

Copy to: JAG
 Allied Commission
 Brit Polad
 US Polad
 NIO

Ref.: 10/400/1.

CONFIDENTIAL

18 November 1946.

SUBJECT: Jurisdiction over offenses by Allied Nationals.

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

1. I refer to your G-5.01 of 11 October 1946 on the subject of trial of Allied Nationals accused of committing offenses in A.S.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.S.G. tend only to cover nationals of the territory under Government.

Since the question raised is one of national law of the U.S. and the U.S. 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 SMO 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 inevitable if the Allied Military Government did not take jurisdiction over all Allied Nationals in respect of violations of A.S.G. 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 law in Italy, will be considered as triable by Italian authorities.

DOWN GRADED

UNCLASSIFIED

Col. J. F.
Chief Judge Advocate
for Chief of Staff

The note, however, does state that jurisdiction over American seamen in the port of Venice or other ports in Venezia Giulia will continue to be determined by U.S. authorities. A copy of this ruling was forwarded to your Headquarters under this Ambassador's letter 556/15/20 of 7 November 1946.

As regards British Merchant Seamen, the present position is that they are not protected by the Articles 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 AB 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. So far 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 U.S. Venezia Giulia letter 450/13/122/2941 of 2 October 1946.

MILROY S. STONE
Rear Admiral, USN
Chief Commissioner

Copy to: EC
EC
Polad (A)
Polad (B)

211

HEADQUARTERS ALLIED COMMISSION
NAVY SUB COMMISSION APO 794

36A

NSC/5660
18 November 1946

From: Navy Sub-Commission, Headquarters Allied Commission.
To: Legal Division, Headquarters Allied Commission.
Subject: Italian Jurisdiction Over U.S. Merchant Seamen.
Enclosure: (A) Copy of AFHQ ltr. G-5: 934.01 dated 10 November 1946,
and enclosures thereto.

1. Enclosure (A) is forwarded herewith for appropriate action.
2. It is requested that copies of correspondence initiated by the Legal Division in this case be furnished the Navy Sub-Commission.




REAR ADMIRAL,
CHIEF, NAVY SUB-COMMISSION, A.C.

MSC/5660
18 November 1946

From: Navy Sub-Commission, Headquarters Allied Commission.
To: Legal Division, Headquarters Allied Commission.
Subject: Italian Jurisdiction Over U.S. Merchant Seamen.
Enclosure: (A) Copy of AFHQ ltr. G-5: 934.01 dated 10 November 1946,
and enclosures thereto.

1. Enclosure (A) is forwarded herewith for appropriate action.
2. It is requested that copies of correspondence initiated by the Legal Division in this case be furnished the Navy Sub-Commission.

JANE RISK
Lieut. Comdr., USN
For REAR ADMIRAL,
CHIEF, NAVY SUB-COMMISSION, A.C.

98

(nt'd) -2

PLAIN

CIRCULAR

Confusion which arises from the presence of the Army, Navy or Coast Guard in an area may be clarified by the following : During the war, the United States military and naval forces exercised jurisdiction over merchant seamen by virtue of broad interpretation of the Second Article of War (10 U.S.C. 1473) and Public Law 12, 78th Congress, respectively. These laws were interpreted to cover seamen in a theatre of military operations as accompanying or serving with the Armed Forces. The Department is informed that relatively few merchant seamen cases will come within these laws now and that Army and Navy Officers have been instructed to act only in cases where they clearly have jurisdiction.

The United States Coast Guard has at various foreign ports, Merchant Marine Hearing Details which have authority to suspend or revoke seamen's papers for cause but which takes place aboard ship and does not extend to misconduct ashore unless of a particularly serious nature.

ACHESON
(Acting)

to advise this Embassy to reject the new Italian draft Convention submitted by the Italian authorities to the Legal Adviser to the Allied Commission, in view of the opinion previously expressed by the Ministry of War Transport that a compromise of this sort should not be accepted, and that British seamen should have the full protection that would be afforded by Articles 10 and 12 of the draft Civil and Military Affairs Agreement.

In the same letter, however, the Foreign Office stated that in fairness to the Italian Government they wanted to be sure that British merchant seamen were not in the meantime able to escape unpunished for offences committed against Italian laws. They therefore asked the views of the Ministry of Transport on certain points connected with the validity or otherwise of the British Order in Council making applicable to Italy the Defence Regulation 47 AAB, to which it is understood British merchant seamen are at present subject.

The Foreign Office have not informed us of any further developments, and they have been asked for instructions in view of the definite position which has been taken up by the United States Embassy in this matter.

11.11.46.

W.H. [unclear]

32A

ALLIED FORCE HEADQUARTERS

G-5 Section
APO 512

G-5: 934.01

10 November 1946.

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

TO : Chief Commissioner,
Allied Commission,
APO 794.

Reference: G-5: 934.01, 7 October 1946.
G-5: 934.01, 25 October 1946.
Your signal 5345, 31 October 1946.

1. The policy to which reference is made is that U.S. nationals in Italy not subject to military law who commit offenses against Italian law are triable by Italian courts. The enclosed copy of circular airgram US State Dept. dated 9 October 1946 deals with this matter is forwarded as a matter of interest. *May this be treated as a matter of agency plans.*

BY COMMAND OF LIEUTENANT GENERAL MORGAN:

A. I. Hamblin

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

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- 2 -

We understand that policies exist, however, we desire some rulings in order to issue necessary advices and instructions.

S.L. THOUTMAN
Operations Manager, Mod.
U.S. Maritime Commission

ELT:TF

c.c. Mr. Myron Black
American Embassy, Rome

c.c. APL Genoa, APL Genoa, Lykes Bros. Genoa

30

CIRCULAR

PLAIN

In cases of crimes committed aboard ship, seamen may and usually should be returned to the United States for trial. It should be borne in mind however that when the incident occurs in a port or territorial waters of another nation, local authorities have a right to take jurisdiction.

Circular airgram of June 21, 8:45 a.m. entitled Reports of Crimes or Misconduct of Seamen Aboard American Ships outlines requirements in relation to reports for use of the Department of Justice or the United States Coast Guard in cases where there is to be a trial or hearing in the United States.

Confusion which arises from the presence of the Army, Navy or Coast Guard in an area may be clarified by the following: During the war, the United States military and naval forces exercised jurisdiction over merchant seamen by virtue of broad interpretation of the Second Article of War (10 U.S.C. 1473) and Public Law 12, 78th Congress, respectively. These laws were interpreted to cover seamen in a theatre of military operations as accompanying or serving with the armed forces. The Department is informed that relatively few merchant seamen cases will come within these laws now and that Army and Navy officers have been instructed to act only in cases where they clearly have jurisdiction.

The United States Coast Guard has at various foreign ports, Merchant Marine Hearing Details which have Authority to suspend or revoke seamen's papers for cause but which have no criminal jurisdiction. Furthermore basis for action against seamen's papers is usually limited to misconduct which takes place aboard ship and does not extend to misconduct ashore unless of a particularly serious nature.

ACHESOL
(Acting)

4043
HQ ALCOE LEGAL DIVISION

30

29A
OCT 46

APHQ G-5

5345

UNCLASSIFIED

SUBJECT IS ITALIAN JURISDICTION OVER UNITED STATES MERCHANT
SEAKER PD

PARA ONE PD REFERENCE GEORGE DASH FIVE COLUMN NINE THREE FOUR
DOT ZERO ONE DATED SEVEN OCTOBER PD

PARA TWO PD BEFORE GIVING OPINION ON QUESTIONS SUBMITTED LEGAL
DIVISION WOULD LIKE TO SEE THE QUOTE RECENT ANNOUNCEMENT OF
POLICY UNQUOTE BY ABLE FOR HOW QUEEN REFERRED TO IN PARA TWO OF
YOUR LETTER OF SEVEN OCTOBER

ROUTINE

LEGAL DIVISION

302

84
JOHN R. HAYES
Maj ACD
Adjutant

