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

785016

ACC

10000/142/546

MERCANTILE
NOV. 1943 -

1760

Classified E.O. 12356 Section 3.3/HND No. 785016

546

MERCANTILE MATERIAL (SALVAGED VESSELS, COLLISIONS, ETC.)
NOV. 1943 - APR. 1945

17611

Declassified E.O. 12356 Section 3.3/NND No. 785016

FILE CLOSED 17 April 1945

Ref: ~~6526/EC~~
6526/EC

17 April 1945

SUBJECT: Redemption of Italian Merchant Vessels sold to Argentina

TO : AFHQ, G-5

1. By letter dated the 16th January 1945 and forwarded to you under cover of this Commission's letter P/350/385 of 26 January 1945, the Prime Minister expressed the desire of the Italian Government to secure the return from Argentina of eight Italian merchant vessels purchased by Argentina in 1941. The Prime Minister requested that the vessels, if returned, should be placed at the disposal of Italy and exempted from the Armistice obligation of being included in the shipping pool.

2. The letter of the 16th January points out that the return of these vessels would to some extent be based on an option contained in the original contract of sale; that strictly such option does not become operative until after the war; and that therefore the Italian Government has no claim in law to the vessels. The Prime Minister feels, however, that on the grounds of humanity there is some prospect of success.

3. The actual contract of sale has not been produced to this Commission, but upon the basis of the Prime Minister's letter, the United Nations are not in a position under the Armistice terms to require the Italian Government to exercise the option in order to obtain the vessels for the shipping pool.

4. On the other hand, the proposal of the Italian Government does involve a waiver, in respect of these vessels, of one of the clauses of the Armistice terms. Of this, the Prime Minister is fully aware. It is to be observed, however, that unless such waiver is made, the Italian Government will not attempt to obtain the return of the vessels, which will not, therefore, be included in the shipping pool in any event.

5. This Commission strongly recommends that the request of the Italian Government be granted and that no corresponding reduction be made in the tonnage now allocated for shipment to Italy. Such a course will afford some measure of relief to the difficult economic condition of this country and will provide additional transportation which is so urgently required.

6. During the last two months this problem has been referred to G-4 (Nov & Tn) Section, and by that Section to the Chairman Mediterranean Shipping Board. It would appear, however, that no decision has been

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reached, beyond the suggestion, which in the circumstances is not helpful, that the attention of the Italian Government should be drawn, as convenient, to the terms of the Armistice. Copies of the relevant correspondence are attached.

7. This is a matter of urgency which involves a requested waiver of the rights of the United Nations under the Armistice terms and a consideration of the general allocation of shipping to this country. If required to be submitted to the Combined Chiefs of Staff, I recommend that this be done at as early a date as possible, together with the recommendations of this Commission, for an early decision.

[Signature] Ellery W. Stone

KELLEY W. STONE
Rear Admiral, USNR
Chief Commissioner

Copy to: C. Commissioner
Executive Commissioner
Navy Sub-Com
Legal Sub-Com } With enclosures
as in para 6.

INFO - USCOMM	
CIO	
DCIO	
Chief Counsel	
CIO	
Harbor Section	
CI RIS	

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18 APR 1948

Subject: Desire of Italian Government to
Retrieve Italian Merchant Vessels
Sold to the Government of Argentina

Allied Force Headquarters

G-4 (MOV & TR) 5/9/GDM

20 Mar 45

Tel: FREEDOM 302

To : Liaison Division
Headquarters Allied Commission.

Ref your 350/385/BC(L) dated 16 Mar 45.

1. The position still remains as stated in my G-4 (Mov & Tr) 5/9/GDM of 15 Mar 45.
2. In considering the request contained in paras 2 & 3 of your above quoted letter the attention of the Italian Government should be drawn, as convenient, to the Terms of the Armistice conditions relative to the employment of the Italian Mercantile Marine.
3. Further correspondence should be addressed through the Navy Sub-Commission to Chairman Mediterranean Shipping Board.

G. F. RUSSELL, Lt. Col.
for Brigadier,
D.Q.M.C. (Mov & Tr)

Liaison Division

16 March 1945

Ref : 350/385/20/(1)

SUBJECT : Desire of Italian Government to Retrieve Italian Merchant Vessels Sold to the Government of Argentina.

TO : G-4 (Nav & Tr), Allied Force Headquarters.

1. Further to our 2/350/305 of 12 March 1945.
2. A translation of a further letter from the Minister of Foreign Affairs is forwarded herewith for your consideration.
3. It will be noted that the Italian Government ask for the explicit assurance that the ships, when recovered, shall be left at the exclusive disposal of Italy.
4. This matter has been outstanding since 26 January 1945, and it is requested that everything be done to obtain an early decision.

For the Chief Commissioner:

Officer-in-Charge
Liaison Division.

1 Encl: Ltr No. 21/03137/9 of 12 March 1945.

Translation

Ministry of Foreign Affairs
21/03137/9

Rome, 12 March 1945.

Dear Admiral,

In his letter (21/00504/33) of January 16th, His Excellency Bonomi drew your kind attention on a question of great and urgent interest for us, that of the recovering of the eight Italian ships handed over to the Argentine Republic in August 1941.

With the same letter, His Excellency Bonomi prospected to you all the various aspects of the question and asked you to submit it to the competent Allied Governments to obtain the explicit assurance that the steamers, when recuperated, would be left at the exclusive disposal of Italy - and therefore, not included in the pool -, to be able to take immediate action with the Argentine Government to recover the said ships. This would be in fact the only basis for a justified request on our part to the Argentine Government for the anticipated recovering of the said ships.

I have been informed that lately, numerous initiatives among the Italian groups of Latin America wanted to send relief and foodstuffs to the poorest populations of liberated Italy; as for what concerns the resumption of normal relations with American countries, there seem to be great possibilities for the shipping to Italy of essential goods, of which the country is at present so much in need. As usual, the greatest obstacle is the problem of transports, problem which would be partly solved if we could dispose of the eightships we have just mentioned.

I feel certain that you have already taken action with the Washington and London Government. I shall be most grateful if you will kindly ask the said Governments for a favourable decision about this question which is of great and urgent interest for us.

Thanking you for whatever information you will be able to give us, I remain, my dear Admiral,

Yours very truly,

s. DE GANDIA

Admiral Ellery Stone
Chief Commissioner
Allied Commission
R O M E

Subject: Desire of Italian Government
to retrieve Italian Merchant
Vessels sold to the Government
of ARGENTINA .

ALLIED FORCE HEADQUARTERS

G-4 (MOV & TR) 5/9

15 Mar 45

To : H.Q. Allied Commission.

Tel : FREEDOM 302

- 1. Your P/350/385 of 12 Mar refers.
- 2. This matter was submitted to the Ministry of War Transport, LONDON for opinion or submission to the Combined Shipping Adjustment Board.
- 3. As soon as a reply is received, H.Q. A.C. will be notified.

V. KING, Major,
for Brigadier,
D.Q.M.G. (Mov. & Tr).

Copy to : G-5
M.F.T.R.

MEMORANDUM

11080 ✓ Enter File

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TO : Chief Commissioner (through Liaison Division).

1. Herewith is submitted for your approval draft letter to AFHQ.
2. Reference paragraph 3. I do not know whether you feel that we should ask to see the contract. At the moment we have the P.M.'s letter stating categorically (paragraph 2) that the option can only be exercised at the end of the war. Naturally without seeing the contract I cannot confirm or dispute this opinion. If the option were exercisable now COS or AFHQ might require the Italian Government to exercise it under the Armistice. In any case I feel that after 2 months delay it may seem strange to ask the P.M. for the contract now; on the other hand if we do not, I think we should protect ourselves.
3. Reference paragraph 6. As this letter is only a draft I have not had the correspondence re-typed.
4. Reference paragraph 7. I feel myself that the matter should go to COS since it only affects CIGMED after the ships have been recovered from Argentina.

Legal S/C
3 April 1945

W. E. BEHRENS, Colonel,
Deputy Chief Legal Advisor.

HEADQUARTERS ALLIED COMMISSION
OFFICE OF THE CHIEF COMMISSIONER
APO 394

208

Ref: 350/385/85(1)

/rtp.
April 1945.

SUBJECT: Redemption of Italian Merchant Vessels sold to Argentina.

TO: AFHQ, C-5.

1. By letter dated the 16th Jan 1945 and forwarded to you under cover of this Commission's letter 350/385/85 of 26 Jan 1945, the Prime Minister expressed the desire of the Italian Government to secure the return from Argentina of 5 Italian Merchant Vessels purchased by Argentina in 1941. The Prime Minister requested that the vessels, if returned, should be placed at the disposal of Italy and exempted from the Armistice obligation of being included in the shipping pool.
2. The letter of the 16th Jan points out that the return of these vessels would to some extent be based on an option contained in the original contract of sale; that strictly such option does not become operative until after the war; and that therefore the Italian Government has no claim in law to the vessels. The Prime Minister feels, however, that on the grounds of humanity there is some prospect of success.
3. The actual contract of sale has not been produced to this Commission, but upon the basis of the Prime Minister's letter, the United Nations are not in a position under the Armistice Terms to require the Italian Government to exercise the option in order to obtain the vessels for the shipping pool.
4. On the other hand, the proposal of the Italian Government does involve a waiver, in respect of these vessels, of one of the clauses of the Armistice Terms. Of this, the Prime Minister is fully aware. It is to be observed, however, that unless such waiver is made, the Italian Government will not attempt to obtain the return of the vessels, which will not, therefore, be included in the shipping pool in any event.
5. This Commission strongly recommends that the request of the Italian Government be granted and that no corresponding reduction be made in the tonnage now allocated for shipment to Italy. Such a course will afford some measure of relief to the difficult economic condition of this country and will provide additional transportation which is so urgently required.
6. During the last two months this problem has been referred to G4 (Mov & Tr) Sec, and by that Section to the Chairman Mediterranean Shipping Board. It would appear, however, that no decision has been reached, beyond the suggestion, which in the circumstances is not helpful, that the attention of the Italian Government should be drawn, as convenient, to the terms of the Armistice.

Copies of the relevant correspondence are attached.

7. This is a matter of urgency which involves a requested waiver of the rights of the United Nations under the Armistice Terms and a consideration of the general allocation of shipping to this country. I recommend that it should be referred as soon as possible to the Combined Chiefs of Staff, and shall be grateful if you will so submit the question, together with the recommendations of this Commission, for an early decision.

MILBY W. STONE,
Rear Admiral, USNR,
Chief Commissioner.

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[Handwritten signature]

HEADQUARTERS VENTURA REGION
Allied Commission
I.S.C. 394.

9 February 1963.

To: Chief Legal Advisor, Legal sub-Commission, I.S.C.
Subject: The "TAMM" - Spindon.
File No: R33/14/109/1/06.

1. I do not think that there is any difficulty about the law in this case. The answer to the problem depends on the facts. Unfortunately the documents before us leave some of the essential facts obscure. I must therefore deal with various alternative possibilities.
2. The first question is whether the British Government is under any liability at all. It is stated that the vessel, the "MILLA DALLIS", was owned by Messrs. Smith, Innes & Co., of Gibraltar, and chartered to the Ministry of War Transport. Nothing is said of the terms of the charter, and there are two possibilities. She may have been chartered on "T.O.P." or similar terms - i.e. on terms that the owners operated her for the benefit of the Crown, the owners finding fuel, stores, etc., and employing their own crew. In this event the crew are the servants of the owners, and not of the Crown, and the owners are responsible for damage caused by negligent navigation, the Crown being under no liability. The above, of course, is subject to the possibility that an officer of the Crown may have interfered with the navigation of the vessel, and by his negligence brought about the damage, in which case the negligence would not be that of the owners' servants but that of an officer of the Crown - but this would not apply to a pilot, who is always in the service of the owners.
3. Alternatively, the "MILLA DALLIS" may have been chartered on bare boat terms - i.e. on the basis that ~~the~~ the owners merely handed over the vessel as she stood, the Crown operating her, providing the fuel, stores, etc., and furnishing the crew. In this event the crew are the servants of the Crown, and the owners would be under no legal liability for their negligence. The Crown would not, of course, be legally liable, but if the damage was caused by negligence on the part of a servant of the Crown, the Crown should, ⁴² matter of ~~fact~~, accept responsibility and meet the claim, although it may say nothing would be against the responsible officer personally.
4. For the purpose of what follows I assume that the second alternative applies - i.e. that the terms of charter are such as to render the Crown, and not the

possibilities. The crew operated her for the benefit of the vessel. In this event the on terms that the owners operated her for the benefit of the vessel. In this event the finding fuel, stores, etc., and employing their own crew. And the crew are crew are the servants of the owner, and not of the vessel, and the vessel is responsible for damage caused by negligent navigation, the vessel being under no liability. The above, of course, is subject to the possibility that an officer of the vessel may have interfered with the navigation of the vessel, and by his negligence brought about the damage, in which case the negligence would not be that of the owner's servants but that of an officer of the vessel - but this would not apply to a pilot, who is always in law the servant of the owner.

3. Alternatively, the "MILITARY" may have been chartered on bare boat terms - i.e. on the basis that ~~the crew~~ the crew merely handled over the vessel as she stood, the vessel operating her, providing the fuel, stores, etc., and furnishing the crew. In this event the crew are the servants of the vessel, and the owner would be under no legal liability for their negligence. The vessel would not, of course, be legally liable, but if the damage was caused by negligence on the part of a servant of the vessel, the vessel would, under the provisions of the Act, be liable, although it remains any notion of ~~the vessel~~, except responsibility and not the claim, although it remains any notion would be against the responsible officer personally.

4. For the purpose of what follows I assume that the second alternative applies - i.e. that the terms of charter are such as to render the vessel, and not the crew, responsible for the negligent navigation of the "MILITARY".

5. It appears that one of the effects of the collision was to loosen a current box which had been applied internally to cover a corroded plate in the bottom of the "MILITARY". In consequence of this it was necessary to slip the "MILITARY" for repairs, involving a claim for (1) tonnage, (2) presumably, use for use of oil, and (3) loss of time. I assume that, but for the damage to this plate, the cost of the collision repairs could have been executed without the necessity for slipping the vessel.

6. I think the only principle involved can be broadly stated as follows. The wrongdoer is responsible for all damage which in fact flows from his negligence, and this damage includes the cost of all repairs rendered necessary by the collision. A repair is not rendered necessary by the collision if it was already necessary in consequence of some other cause - e.g. a previous casualty. But in such case the wrongdoer must show that the repair really was already "necessary", in the sense that arrangements had already been made to have it executed, or that the vessel was so long in a condition to operate without it being executed. If the repair of the previous damage is not immediately necessary - if, for instance, the vessel is seaworthy to continue trading subject to being slipped for repair at some convenient opportunity in the future - then the wrongdoer, who causes damage rendering repair immediately necessary and preventing any possibility of further deferment, must pay the whole cost, including

the cost of storage, ship time and loss of time, and the owner gets the advantage of the repair being done at the wronger's expense and is thus paid for by the wronger. If, on the other hand, the previous design is such that repair was already immediately necessary, the owner must bear the whole cost, including the cost of storage, ship time and loss of time, and the wronger's liability is pro tanto reduced.

7. It follows from this that everything depends on the question of fact, namely whether the "WASUM" prior to the collision was in a condition to continue operating without immediate repair. If she was, and if repair of her previous damage could have been deferred to some future convenient opportunity, the "WABIA" is responsible for the storage, the ship time and the loss of time. If, on the other hand, the "WASUM" at the time of collision was already due for immediate repair, and was unable to continue operating without it, the "WABIA" is not so responsible. The arguments do not enable me to say which is the true view of the facts. It will be observed that diametrically opposite views are expressed, on the one hand by the J.A.S. Chief of Staff in his memo-
 randum of 12 October 1948, and on the other by Lieut. (S) Hood, R.N.R., Base Engineer Officer, in his report on the casualty.

8. I think it is only necessary to add that I am not in agreement with the suggestion made by Lieut. (S) Hood at the end of his report, namely that the allying of the vessel could have been avoided by the expedient of fitting a collision mat. If the repair was in fact rendered necessary by the collision, the owner was entitled to have a complete repair at the expense of the wronger, and not a mere temporary expedient, substituting an old one. Subject to the proviso herein by getting a new plate instead of an old one. Subject to the proviso that the owner must not initiate the damage by acting unreasonably, he is entitled to have the repair done in his own way, and the wronger cannot be heard to say that an incomplete repair, at less expense, was all that was necessary.

H. C. Wilkins 41

Colonel,
 Regional Inland Officer,
 A.C., Victoria Region.

Engineer Officer, in his report on the casualty.

4. I think it is only necessary to add that I am not in agreement with the suggestion made by Lieut. (S) Hood at the end of his report, namely that the slipping of the vessel could have been avoided by the expedient of fitting a collision mat. If the repair was in fact rendered necessary by the collision, the owner was entitled to have a complete repair at the expense of the wrongdoer, and not a mere temporary expedient, notwithstanding that he may have derived a benefit by getting a new plate instead of an old one. Subject to the proviso that the owner must not inflate the damage by acting unreasonably, he is entitled to have the repair done in his own way, and the wrongdoer cannot be heard to say that an incomplete repair, at less expense, was all that was necessary.

H.C. Williams 41

Colonel,
Regional Legal Officer,
A.C., Victoria Region.

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HEADQUARTERS ALLIED COMMISSION
APC 394
LEGAL SUB-COMMISSION

AC/4081/1.

13 February 1945. /mt.

SUBJECT : Salvaged Vessel.

TO : Regional Commissioner (Attn: Regional Legal Officer),
SICILIA Region.

Reference your RLE 013.134/EKM of 2 Feb 1945.

- 1. We believe the salvagers should be paid.
- 2. We have requested the Finance Sub-Commission to advise us of any reasons to the contrary, and they have offered no objection.

It is, of course, assumed that there is no question of AC/AGG funds being involved.

By command of Rear Admiral STONE:

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W. E. BEHRENS,
Colonel,
Deputy Chief Legal Advisor.

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FROM: Col. W. E. REHEGENT.

LEGAL SUB-COMMISSION
HQ, ALLIED COMMISSION
APO 394
12 February 1945
AC/ACM/L - rls

Dear

I am very grateful for your opinion on the "Passen"
and the trouble you have taken.

I have passed your opinion to Navy S/C.

With many thanks,

Yours

Colonel H. G. Willmer
Legal Office
AMG 8th Army

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H.Q., Vmesia Region,
Allied Commission.

3 February 1945.

Dear Behrens,

I am not responsible for the delay in replying to your letter of 3 February. It only arrived here yesterday evening, and I have dealt with it at once.

I have given my answer in the form of an Opinion, as I thought that this would be the most convenient way for you. I am sending you herewith my Opinion in duplicate, so that, if you desire, you can forward one copy and retain the other for your own reference.

I am afraid you will think that I have not been able to be much use to you, in the sense that I have not been able to produce a cut and dried answer to the question. But, as appears from my Opinion, I think the question is a simple one of fact, and the documents do not enable me to pronounce judgment on the question of fact. Once the facts are ascertained, I do not think there is such difficulty as to the law. I have tried to deal with the various possible alternative views of the facts, in the hope that once the Navy people have decided for themselves what the true facts are they will be able to see for themselves what are the legal consequences, so that it will not be necessary to refer the papers back to you.

I return all the papers herewith.

Yours sincerely,

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Sandra Williams

Colonel W.E. Behrens,
Chief Legal Adviser,
Legal Sub-Commission,
H.Q., A.C.

LEGAL SUB COMMISSION

CLO

DOLO

Chief Counsel

CLO

11 FEB 1945

Dear

I am very grateful for your opinion on
the "Pamphlet" and the trouble you have taken.

I have passed your opinion to Mary etc.

With many thanks

Yours,

Col. J. C. Walker

101st Airborne

Fort Bragg, N.C.

408P
 ALLIED COMMISSION
 SICILIA REGION HEADQUARTERS
 APO 394

(15A)

FILE: RLE 013.134/EKM

2 February 1945

SUBJECT: Salvaged Vessel.

TO : Headquarters, Allied Commission - APO 394.
 (Attn: Legal Sub-Commission)

1. The following facts are submitted to you for an opinion and/or transmission to the Naval Sub-Commission or other appropriate body for deciding this matter.

a. In November 1944 a lighter was salvaged at Scoglitti, Syracuse by private enterprise and sold for £ 251,110.50 the purchase price being deposited at a bank. The lighter was loaded with timber which has since been sold.

b. The lighter is probably not Italian and its owners are unknown but it has not been possible to obtain more precise information on this point.

c. The matter was carried out with the consent and approval of A.C. and N.O.I.C. Syracuse and under the supervision of the Tenente Colonnello del Porto. The Allied Naval Authority on the spot are not in fact interested in the vessel.

d. All the requirements of Italian law and particularly of the Codice della Navigazione have been observed with reference to the salvage and sale except that advertisement of the matter was limited to Sicily due to the circumstances then existing.

e. The Tenente Colonnello del Porto now requests permission from A.C. to pay the Salvagers the amount to which they are properly entitled under Italian law, namely £ 13,055, the balance arising from the sale to remain deposited for 2 years awaiting claim by the former ship-owners.

h. The lighter is probably not Italian and its owners are unknown but it has not been possible to obtain more precise information on this point.

i. The matter was carried out with the consent and approval of A.C. and N.O.I.C. Syracuse and under the supervision of the Tenente Colonnello del Porto. The Allied Naval Authority on the spot are not in fact interested in the vessel.

d. All the requirements of Italian Law and particularly of the Codice della Navigazione have been observed with reference to the salvage and sale except that advertisement of the matter was limited to Sicily due to the circumstances then existing.

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e. The Tenente Colonnello del Porto now requests permission from A.C. to pay the Salvagers the amount to which they are properly entitled under Italian Law, namely £ 13,055, the balance arising from the sale to remain deposited for 2 years awaiting claim by the former ship-owners.

f. The Procedure adopted and the present application have been considered by a civil judge of the Italian Court who advises me that the matter is all strictly in accordance with Italian Law.

2. Allied Commission have been approached because the Port is still under Allied Naval Control and because the original permission to proceed with the salvage work was obtained from A.C.

3. It appears to the writer that the required permission could be granted in this case but the matter is first referred to you having regard to the fact that similar cases are likely to occur again and to the fact that there were special circumstances existing at the time when this vessel became a wreck. Normally of course the above Italian law applies to any unclaimed wreck irrespective of nationality.

LEGAL SUBCOMMISSION

CLO

DCLO

Chief Counsel

CLO

Please consider.

E.K. Matthews Major, Regional Legal Officer.

7 FEB 1945

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FROM : COLONEL W. E. DENNIS

LEGAL SUB-COMMISSION,

HEADQUARTERS,

ALLIED COMMISSION,

A.P.0394

3rd February 1945.

File 4075

Dear

I shall be most grateful if you will give me your advice on the attached file. The matter has been dragging on for some time but is alleged to be very urgent.

Yours

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Colonel H. G. Willmar,
Legal Officer,
A.M.G. 8 Army.

N.B. Navy Sub-Commission have been informed today that the papers have been passed to Colonel Willmar.

Subject : "Accident to Ship 'PASMAN'".

- Encs. Letter - SNO, Eastern Sicily to Vice Admiral MALTA dated 1 Jan 45.
- " - CDS R. Marina to F.O.L.I. dated - Dec 44. (14667/161)
- Copy letter " " " " 12.10.44. (SM/19508)
- ~~Letter No. SM/19508~~ Letter L.327/4 dated 19 Oct 44 from F.O.L.I. to SNO, Eastern Sicily.
- Letter No. 13740/161 dated 2 Nov 44 from SNO, Eastern Sicily to Vice Admiral, MALTA.
- Letter No. 14296/161 dated 5 Dec 44 ditto. 2 encs.
- " Malta 604 dated 21 Dec 44 from Vice Admiral, MALTA to SNO E. Sicily
- " SM.29372 dated 9. Dec 44 from I.R.N. Staff Office to F.O.L.I.

P.T.O.

111721A
 Message 684 of 11 Dec 44 from F.O.L.I. to S.N.O., Eastern Sicily.
 * 121109 dated 16 Dec 44 from S.N.O., Eastern Sicily to F.O.L.I.
 * 1221620A dated 22 Dec 44 from F.O.L.I. to S.N.O., Eastern Sicily.
 * 241208 dated 25 Dec 44 from S.N.O., Eastern Sicily to F.O.L.I.
 Letter L.327/4 dated 4 Jan 45 from F.O.L.I. to Ministry of Marine, ROME.
 * SM/93 dated 3 Jan 45 from Ministry of Marine to F.O.L.I.
 * from COS, R. Marina to F.O.L.I. dated 12 Jan 45.
 * " " " " " " " " 3 Jan 45.
 * " " " " " " " " 12 Oct 44.

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ITALIAN REQUEST TO SALVE VESSEL IN ENNEHAZI HARBOUR.

(Flag Officer, Taranto, Adriatic and Liaison Italy's letter No.L.296/1 of 4th September, 1944.)

II

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Med.219/3/8.

THE FLAG OFFICER, TARANTO, ADRIATIC AND LIAISON ITALY (ROME).

(Copies to:- The Flag Officer, Taranto and Adriatic.
The Shipping Sub-Commission, Headquarters, Allied Control Commission.
The Legal Sub-Commission, Headquarters, Allied Control Commission.)

Paragraph 3 of minute I is approved.

MEDITERRANEAN.
3rd October, 1944.

LEGAL SUB-COMMISSION	
CLERKS	
REPORT	

[Signature]
for ADMIRAL

See Minute II is not held by the Sub-Com

hand
ADV
CLO, also
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FLAG OFFICER LIAISON ITALY,
ALLIED CONTROL COMMISSION
HEADQUARTERS, ROME.

4 September 1944.

No. L. 296/1

COMMANDER-IN-CHIEF, MEDITERRANEAN.
(Copy to: ~~Flag Officer Farento, Adriatic & Liaison Italy.~~
Shipping Sub-Commission, Hq, ACC.
Legal Sub-Commission, Hq, ACC.

ITALIAN REQUEST FOR PERMISSION TO SALVE COMMERCIAL
VESSEL IN BEGHALI HARBOR

1. Enclosure (A) is forwarded herewith. It contains a request by the Italian Minister of Marine that two Italian merchant seamen be permitted to travel to North Africa and to institute salvage operations on the privately owned fishing vessel "S. Antonio" which is sunk in Benghazi harbour.

2. If paragraph B of reference (a) is considered to govern the status of the "S. Antonio", then she is a prize of war and is not subject to salvage by or return to Italian nationals. But if she was employed exclusively in coast fishing or in local trade, she is exempt from capture according to Article 3 of Hague Convention XI, 1907 and it would appear correct to allow her to be salvaged by her Italian owner provided other considerations do not render such a course of action inadvisable at present. In any case the question of the "S. Antonio's" status is one of fact and can only be determined by a prize court.

3. However, in view of present rigid travel restrictions which are designed to curtail Italian movement ³⁴ and in view of possible complications which might arise by allowing Italians to visit North Africa, it is considered that the salvage of the "S. Antonio" by individual Italian civilians should not be permitted. Thus, it is believed unnecessary to determine the "S. Antonio's" status at this time, and it is proposed to notify the Minister of Marine that the travel of the two merchant seamen cannot be authorized. This decision is considered expedient in spite of the correctness of the Minister of Marine's statement that it is of interest to salvage as many fishing vessels as possible to alleviate the country's food shortage.

No. L. 296/1

4-9-44

Subject: Italian Request for Permission to Salvage
Commercial Vessel in Benghazi Harbor.

4. Consents on the above proposal are desired prior to informing the Minister of Marine, as it is believed that in the future there will be additional similar requests for Italian civilians to be allowed to salvage their vessels which are in North African waters and which in some instances cannot be considered as prizes due to the terms of Article 3 of Hague Convention XI.

(Sgd.) I. M. PALMER.
for REAR ADMIRAL.

Reference (a): Enclosure No. 1 to C in C, Med, ltr
No. Med 219/3/8 dated 10 July 1944.

Enclosure (A): Translation Minister of Marine ltr
No. 7838 of 29 August 1944.

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From: Ministry of Marine (Cabinet)
To : F O L I - Rome
Date: 29.8.44
Ref. 7838

COPY

Subject: M. Fishing Vessel "S. ANTONIO".

1) The above M/F.V. on 6th November 1942, as the result of an air-attack on Benghazi, was sunk in that harbour due to leaks sprung by bomb-splinters.

2) The Owner, Sig. MALESTRIBI, Antonio, living at Isola delle Femmine (Palermo) has submitted a declaration to this Ministry in which he states that it is his intention to salvage the vessel, and to accomplish this it would be necessary to send on the spot Merchant Mariners CARDINALI, Gaspare di Salvatore and CARDINALI, Gaetano di Salvatore, Skipper and M. Mechanic respectively.

3) In view of the fact that it is of interest to salvage as many M/Fish.VS. as possible to assist in improving the Country's food situation, we request you to approach Allied Authorities concerned so that the above two Merchant Seamen may be allowed to go to Benghazi.

(Sgd.) CHIEF OF CABINET.

DG.-)

1787

4081

11A

FLAG OFFICER LIAISON, ITALY,
AREA COMBINED HEADQUARTERS,
TARANTO.

9th July, 1944.

No. T.A. 976.

File

MINISTER OF MARINE,
MARISTAT, PALAZZO RISTA,
TARANTO.

SALVAGED GERMAN SHIPWRECK.

With reference to your letter No. 428/P.O. of 26th June, 1944, the enemy material referred to in Article 27 of the Armistice Terms includes enemy vessels sunk at the time of the Armistice and subsequently salvaged. All such vessels are therefore liable to seizure by the Allied Authorities.

2. There is no objection however to the salvage of enemy vessels or material by private firms provided it is clearly understood that upon being salvaged they are liable to requisition by the Allies if required.

31

(Copy to:
Legal Sub-Commission,
Allied Control Commission.)

(Signed) C. E. MORGAN

REAR-ADMIRAL.

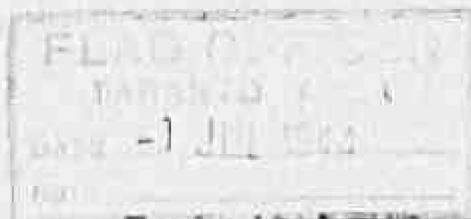
From .. Ministry of Marine. Cabinet .
Date .. 26th June 1944. N°:428/F.O .
To .. F.O.L.I

GERMAN SHIPPING SUNK IN ITALIAN WATERS & SALVAGED.

1. In accordance with Article 27 of the Convention of Armistice, merchant ships, fishing boats and other craft belonging to Germany and present in Italian waters, are subject to capture.
2. The presence of craft (motor launches, barges, lighters, landing craft, &c.), formerly belonging to the German Armed Forces, has been reported among the material salvaged by authorized firms.
3. It does not seem from a literal interpretation that the aforesaid article refers to German shipping sunk in our waters and salvaged. This Ministry, however, in the spirit of collaboration which exists between the Italian and the Allied Armed Forces, considers that an exchange of views on the subject would be convenient, with the object of rapidly bringing back into use, in the interest of the common War Effort, the salvaged material.

THE MINISTER
DE COURTEN.

30



NAVAL HEADQUARTERS
 ALLIED CONTROL COMMISSION
 Legal Subcommission
 APO 394

WJC/gf

ACC/4081/L

3 Jul 44

SUBJECT: Status of Schooners.

TO : Naval Subcommission (~~Class Admin. Section~~).

1. Ref your letter 27 June 1944 (File No. SL/NSC Serial 32).
2. Under date of 28 May 1944 (Ref ACC/4081/L we submitted opinion (subject Motor Schooner "Del Prado" in response to your request (your letter 11 May 1944 ALL-2/ACC Serial (195))).
3. Your present inquiry covers the same general subject matter, but requires more definitive advice as to specific vessels with respect to the hire status of each.
4. Unfortunately we have no naval literature in our office upon which we can predicate an opinion as requested. Diligent inquiry of local naval authorities was unproductive in this connection. Accordingly we are presently unable to submit an opinion in less general terms than contained in ours 28 May 1944 (above).
5. Legal navy personnel would undoubtedly be able to supply the opinions desired but there are none such in the vicinity of this Headquarters.
6. Under the circumstances we are endeavouring to contact navy personnel at Naples in the hope of securing the necessary naval literature on this subject.
7. Meanwhile will you kindly advise us which if any of the craft referred to come within the category of "vessels employed in coast fisheries and small boats employed in local trade".

29

MAJ. J. GIBBSMAN, Lt. Col.
 for Chief Legal Officer.

8A

Lt Col
~~Admiral~~ Grossman's notes
(Keep on file.)

1. Report to request for private
a public property and services
para 8 (Document A)
2. all Italian merchant
shipping and fishing and
other craft whatever they
may be etc - will be
made available in good
repair and in seaworthy
condition & conserved at
Italian embassies at
such places and for
such purposes as the
United Nations may prescribe
(14A) Instrument of surrender
3. "will comply with instructions
of E.M.C. regarding use and
control of "shipping"
21 (B) 27

2 And gives the right of a belligerent to the free disposal of enemy property taken by him in no way, but the rights & value of the property, it is not usual to permit captives to destroy a ransom price, however undoubted may be their ownership & capt where their retention is difficult or inconvenient.

note 2 pg 547

Indeed the being into adjudication at all of an enemy's vessel is not called for by any aspect to the right of the enemy proprietor where there is no neutral property on board.

vested in the state to which the capture belongs
 so soon as an effectual seizure has been
 made they may in due order be disposed
 of by him as the agent of the state

in whatever manner he chooses. So
 long as they were taken the property
 of the enemy at the time of capture
 it is immaterial from the point
 of view of international law whether
 the capture find their home for
 sale, or destroy them a release
 them upon ransom.

12 ppent cum
8193 18379

I

As soon as a vessel is seized, she must be
conducted to a convenient port of adjudication
- must be taken straight to a convenient
port of adjudication and only in case of
distress or necessity is delay allowed.

Hall §150 pg. ~~to be~~ the property in an
enemy vessel or cargo is X

But as the property of belligerents
is often much mixed up with that
of neutrals, it is the universal
practice for the former to guard the
interests of the latter by requiring captives
as a general rule to bring prizes
into port for adjudication.

vested in the state to which the captor belong
So soon as an effectual seizure has been
made they may in due order be disposed
of by him as the agent of the state

in whatever manner he chooses. So
long as they were clearly the property
of the enemy at the time of capture
it is immaterial from the point
of view of international law whether
the captor send them home for
sale, or destroy them or release
them upon ransom.

4091 ✓

7A

File No.
SI/WSC

ALLIED CONTROL COMMISSION
NAVAL SUB-COMMISSION
Navy House, Taranto, Italy

Serial 32.

27 June 1944.

R-E-S-T-R-I-C-T-E-D:

From: Naval Sub-Commission, Allied Control Commission.
To : Legal Sub-Commission, Allied Control Commission.
Subject: Status of schooners.

Enclosure: (A) DSTO, Italy ltr S/187/6 of 31 May 1944.
(B) HQ. AAI, CMF ltr ST/1/7/3 of 25 May 1944,
and appendices 'A', 'B', 'C', 'D', 'E'.

1. Enclosed herewith are documents relative to Italian schooners presently under Royal Army Service Corps control.
2. Flag Officer Taranto and Adriatic Liaison, Italy, has requested that all papers be forwarded to the Legal Sub-Commission, A.C.C. for establishment of the hire status of each vessel.

H. W. Zirolli ww
H. W. ZIROLI,
Commodore, U. S. Navy,
for Chief, Naval Sub-Commission, ACC.

NAVAL SUB-COMMISSION	
CLO	<input type="checkbox"/>
DCLO	<input type="checkbox"/>
Chief Counsel	<input type="checkbox"/>
CJO	<input type="checkbox"/>
Italian section	<input type="checkbox"/>
CL RKS	<input type="checkbox"/>
	<input type="checkbox"/>
	<input type="checkbox"/>

24

1797

76

C-C-P-Y

FROM: DIVISIONAL SEA TRANSPORT OFFICER, ITALY.
DATE: 31st May, 1944. Ref. S/187/6
TO : F. O. T. A. L. I.

SUBJECT: Schooners

The enclosed copy of a letter from D.D.S.T., H.Q. A.A.I., gives a list of various craft which are considered to be prizes of war, or whose status is in doubt.

It is requested that this list may be examined with a view to establishing the hire position of each vessel where applicable, on a definite basis, and that I may be informed of a decision regarding those of doubtful status.

S.O.S.C. to
D.S.T.O. ITALY

RESTRICTED:

SUBJECT: Schooners - Prizes of War.

H.Q. A.A.I., C.M.F.
ST/1/7/3

25 May 44

D.S.T.O. (ITALY(2 copies)

Ref your S/7/5 dated 2 May 44.

1. Information regarding schooners, operated by R.A.S.C., which are either considered to be prizes of war, or the status of which is in doubt, has been obtained from all available sources, and is forwarded herewith as requested.

Relative Documents Attached.

2. (803) PADRE ETERNO ('Y' Water Tpt Coy)

S.S.T.O. SYRACUSE
letter dated 16
Aug 43.
(APPENDIX 'A')

(a) Taken over by 247 Motor Boat Coy from
S.S.T.O. SYRACUSE, as prize vessel,
16 August 43.

(b) Now manned by Italian Crew paid by RASC.

(c) No arrangements made with owners.

3. (833) GILANDO: (845) MARIA; (847) MILINO
(809) SALONIA (full name understood to be
CARMALO SALONIA) (All 'X' Water Tpt Coy)

N.O.I.C. CROTONE
letter dated 23
Sept 43.
(APPENDIX 'B')

(a) Taken over by N.O.I.C. CROTONE 23 Sept
43 for employment by 247 Motor Boat Coy.

(b) GILANDO and MARIA manned by Italian Crews
paid by RASC.

MILINO manned by Italian Crew paid by
RASC, until 14 Apr 44; manned by Partisan
crew (unpaid) since that date.

SALONIA manned by Yugoslav civilian crew
paid by RASC, until 7 Apr 44; since that

22

N.O.I.C. CROTONE
letter dated 23
Sept 43.
(APPENDIX 'B')

22

S.S.T.O. SICILY
letter dated 12
Nov 43.
(APPENDIX 'C')

N.O.I.C. AUGUSTA
ltr dated 31
Aug 43 and S.S.T.O.
AUGUSTA letter
dated 31 Aug 43.
(APPENDIX 'D')

/contd.

(a) taken over by
S.S.T.O. SIRACUSE, as prize vessel,
16 August 43.

(b) Now manned by Italian Crew paid by RASC.
(c) No arrangements made with owners.

(833) GILANDO: (845) MARIA; (847) MILINO
(809) SALONIA (full name understood to be
CARMELO SALONIA) (all 'X' Water Tpt Coy)

(a) Taken over by N.O.I.C. CROTONE 23 Sept
43 for employment by 247 Motor Boat Coy.

(b) GILANDO and MARIA manned by Italian Crews
paid by RASC.

MILINO manned by Italian Crew paid by
RASC, until 14 Apr 44; manned by Partisan
crew (unpaid) since that date.

SALONIA manned by Yugoslav civilian crew
paid by RASC, until 7 Apr 44; since that
date manned by Partisan crew (Unpaid).

(c) No arrangements made with owners.

(805) BALENA: (807) PR SAN GIUSEPPE.
(Both 'Y' Water Tpt Coy).

(a) Handed over by S.S.T.O. CATANIA to
S.M. H.Q. No. 1 District (SICILY),
12 Nov 43, as questionable prizes of war.

(b) Both vessels manned by Italian crews,
paid by RASC.

(c) No arrangements made with owners.

(939) RITA ('X' Water Tpt Coy)

(a) Handed over to 247 Motor Boat Coy by
S.T.O. AUGUSTA. 31 Aug. 43 as prize of
war.

(b) Manned by Italian crew paid by RASC

(c) No arrangements made with owners.

Relative Documents Attached.

D.D.S.T. No. 1
District letter
ST/10/513 dated
23 Nov 43, and U.S.
Naval Operating
Base letter, Serial
651, dated 7 Dec 43.
(APPENDIX 'E').

6. (781) MARIETTA G. (247 Motor Boat Coy) and
(-)
SAN ANTONIO (Y' Water Tpt Coy)

(a) Handed over to 247 Motor Boat Coy by
Commandant, Naval Operating Base, U.S.
Navy, PALERMO, 8 Sept 43. These
vessels were not taken over as Prizes
of war, but no proof of ownership has been
presented, nor have any payments been
made.

(b) MARIETTA G manned by RASC personnel.
SAN ANTONIO manned by Italian crew paid
by RASC.

7. The following vessels are also noted in view of their doubtful
status:-

(a) (725) ALMA (Y' Water Tpt Coy).

Taken over at ISCHIA 20 Dec 43. The crew of the vessel had
been imprisoned for looting A.M.G. Cargo; now manned by
Italian crew paid by RASC.

(b) (99) GICGINA (Y' Water Tpt Coy).

Taken over from Lieut U.S. TOBEY, U.S.N.R., 25 Dec 43, at
MESSINA. The original crew has been kept on board and paid
at a monthly rate.

(c) (853) SAN GENNARO (Y' Water Tpt Coy)

Taken over at Palermo, 27 Dec 43. It is understood that
legal ownership was disputed in an Italian Court of Law in
December 43, and that an award was made in favour of Sigona
and Porcella S/A.

8. It is requested that any decisions that may be made as to the status
of the above mentioned schooners should be communicated to this Directorate.

Taken over at ISCHIA 20 Dec 43. The crew of the vessel has been imprisoned for looting A.M.C. Cargo; now manned by Italian crew payd by RASC.

(b) (99) GIORGINA ('X' Water Tpt Coy).

Taken over from Lieut M.S. TOBEY, U.S.N.R., 25 Dec 43, at MESSINA. The original crew has been kept on board and paid at a monthly rate.

(c) (853) SAN GENNARO ('X' Water Tpt Coy)

Taken over at Palermo, 27 Dec 43. It is understood that legal ownership was disputed in an Italian Court of Law in December 43, and that an award was made in favour of Sigona and Porcella S/A.

8. It is requested that any decisions that may be made as to the status of the above mentioned schooners should be communicated to this Directorate.

J. M. Raffae Major

f. Brigadier,
D.D.S.T.

C-O-P-Y

TD

COPY:

APPENDIX 'A' TO H.Q. A.A.I. LETTER
ST/1/7/3 dated 25 MAY 44

OFFICE OF THE SSO SYRACUSE

DATE: 16 AUGUST 1943.

Re Auxiliary schooner "PADRE ETERNO" of 44.69 GRT 34.16 NRT of about 75 tons D.W. and registered at the port of SYRACUSE (certificate No. 413).

WHEREAS this vessel formerly owned by GIOVANNI PALUMBO was seized in PRIZE in the name of H.M. Majesty's Government upon the occupation of the port of SYRACUSE and now acting upon the instructions received by me delivery of the said vessel is being made to-day for operational purposes.

2. Attached is an inventory of vessels fittings at this date.

(SGD) ? ? ?

Commander R.N.R.
S.S.T.O. SYRACUSE.

Countersigned as having received delivery of the said vessel.

20

O.C. 247 Motor Boat Coy

B.N.A.F.

APPENDIX 'B' TO H.Q. A.A.I.
LETTER
SI/1/7/3 dated 25 MAY 44

COPY

NAVY HOUSE,
CROTONE.
23rd September, 1943.

I have been authorised by the Commander-in-Chief, Mediterranean, and Flag Officer, Sicily to take over the schooners MARIA, MILINO, and CARMELO, now lying in CROTONE Harbour. It is hoped that the Italian Merchant Seamen who now man these craft will continue to do so.

2. It is the intention that these craft should be employed by 247 Motor Boat Coy RASC. Capt G.E.J. BENN will be in charge for sailing these craft from CROTONE.

(Sgd) - ROWLEY M. NICHOLL,
Commander, R.N.
Naval Officer-in-Charge.

APPENDIX 'C' TO H.Q. A.A.I. LETTER
ST/1/7/3 dated 25 MAY 44

7F

COPI

S & T HQ. No. 1 DISTRICT

DATE: 12 NOVEMBER, 1943.

FROM: SUPERINTENDING SEA TRANSPORT OFFICER, SICILY.

SUBJECT MARIA PORTO SALVO - PATRIARCA SAN GIUSEPPE - BALENA.

In accordance with your request the above three Italian Schooners are handed over to you with present crews. Duplicate Articles and crew lists are attached.

The crews have been paid up to 31 Oct 43.

These vessels were found abandoned at MESSINA and have been operated as Prizes.

The status of these vessels is now, due to Italy's position, in some doubt but whether Prize of Requisition does not affect their operation.

(Sgt.) ? ?
Commander, R.N.
SSTO, SICILY

18

Copy to: NOIC MESSINA
PSTO Med
Mov & Tn MESSINA
Flag Officer Liaison, TARANTO
Claims & Hirings, CATANIA.

APPENDIX 'D' TO H.Q. A.A.I. LETTER
SI/1/7/3/ dated 25 MAY 44

COPY

OFFICE OF THE NAVAL OFFICER IN
 CHARGE - AUGUSTA

31 August, 1943.

Memorandum No. 1174/21

The Sea Transport Officer, AUGUSTA.

By virtue of the powers vested in me as Admiralty Marshal I have seized as Prize of War in the name of His Britannic Majesty's Government the schooners:

RITA
 CARMEN

formerly in the possession of the Italian Government.

I hereby discharge these vessels into your control.

(Sgd) H.J. WAIGHT,
 CAPTAIN, R.N.

Captain G.E.J. BERN, RA
 247 Motor Boat Coy.

The schooners RITA and CARMEN are further transferred to you as representative of 247 Motor Boat Coy.

(Sgd). S.D. MASON,
 Lieutenant-Commander, R.N.
 Sea Transport Officer - AUGUSTA.

(Sgd) G.E.J. BERN, CAPT RA
 247 Motor Boat Coy.

APPENDIX 'E' TO H.Q. A.A.I. LETTER
ST/1/7/3 dated 25 MAY 44

COPY

H. Q. No. 1 DISTRICT

ST BRANCH

SUBJECT: - Prize Craft.

ST/1D/513
Tel Auto 15604
23 Nov 43

Commandante,
Naval Operating Base,
U. S. Navy
PALERMO

W.T. 93 MARIETTA G.
W.T. 94 GIANNINA

W.T. 95 MADONNA DI POMPEI
W.T. 96 SAN ANTONIO

The above craft were handed over from you to Capt BERN of the 247 Motor Boat Coy RASC on 8 Sept 43. Would you please state whether these craft were seized as prize or requisitioned by you. If they were requisitioned is payment being made? If so to whom?

16

(Sgd) J. M. ARCHIBALD, Maj

Deputy Director of Supplies and Transport,
for colonel,

Inth Fd.

COPY:

FFD/wdm

NB/A17-10

U. S. NAVAL OPERATING BASE
Palermo-Sicily.

7 December, 1943.

Serial: 651

From: Commandant

To: Deputy Director of Supplies and Transport, H.Q. No. 1 District;
ST Branch.

Subject: - Native Craft.

the above craft were Motor Boat Coy RASC on 8 Sept 43. Would you please state whether these craft were seized as prize or requisitioned by you. If they were requisitioned is payment being made? If so to whom?

16

(Sgd) J. M. ARCHIBALD, Maj

for colonel,
Deputy Director of Supplies and Transport.

Inth Ed.

FRD/wdm

C O P Y:

NE/AL7-10 U. S. NAVAL OPERATING BASE
Palermo-Sicily.

7 December, 1943.

Serial: 651

From: Commandant
To : Deputy Director of Supplies and Transport, A. O. No. 1 District;
ST Branch.

Subject: - Native Craft.

Reference: 9a - Letter of DDST dated 23 Nov 43 ST/ID/513 Tel Auto 15604.

1. The native craft referred to in(a) were not seized as prizes of war. As these craft belonged to private individuals, a verbal invitation had been extended the owners, through their masters, to present proof of ownership for requisitioning purposes. This was in accordance with instructions from higher authority.

2. When the craft were relinquished by this base, no proof of ownership had been presented, therefore no requisition forms were issued and no payment had been made.

(Sgd) L. TOUGNEY, Jr.

S E C R E T

REAR HEADQUARTERS
 ALLIED CONTROL COMMISSION
 LEGAL SUB-COMMISSION
 APO 394

ACC/4081/L.

/rlp.
28 May 1944.

SUBJECT : Motor Schooner "Del Fredo."

TO : Naval Sub-Commission.

1. Reference your letter A14-2/ACC Serial (195) of 11 May 1944 and enclosures.

2. The law is in my view as follows:

a. In time of war privately owned enemy vessels may, subject to the qualification mentioned in the next sub-paragraph, properly be seized whether within territorial waters or on the open sea (Hall's International Law, 6th Ed., pp. 526, 532; Oppenheim's International Law, 6th Ed., Vol. II, p. 365).

b. Vessels employed exclusively in coast fisheries and small boats employed in local trade are exempt from capture (see Hague Convention XI Article 3; Hall supra p. 537; Oppenheim supra p. 372). Whether a particular boat comes within either of these categories is a question of fact in each case.

c. Cities of occupation are entitled to requisition private property; but as regards privately owned vessels, these rights do not extend to cases governed by naval law (Hague Regulations 1907, Art. 53). Whether the specific exemption in (b) overrides the general right of requisition is doubtful (Feilchenfeld's International Economic Law, p. 39, Note 6).

d. Under the Armistice terms all Italian ships without exception are put at the disposal of the United Nations.

e. As regards restoration and compensation:

(1) In the case of vessels seized under (a) the question is one for the Prize Court (Oppenheim sup. p. 369).

(2) In the case of requisitions under (c), there is an absolute obligation to restore at the end of hostilities (i.e., treaty of peace) and pay compensation (Hague Regulations, 1907, para. 53).

(3) In the cases falling under (d), the United Nations are under no present financial liability.

3. The facts of the present case are that the schooner "DEL FREDO" was taken over prior to the armistice under the authority of a document which on

S E C R E T

(19)

its fact gave the owner to understand that compensation could be claimed from the United Nations. It is claimed by the Italians that the schooner was employed exclusively in minor local navigation services; and in the papers enclosed this claim is not contested.

4. Assuming that the Italian claim is correct, then in my opinion the schooner could not properly be taken in prize. On the other hand, I think it could properly have been requisitioned and that it was in fact properly requisitioned.

5. In any event, whether properly requisitioned or not, it had to be made available to us on execution of the Armistice terms, Sec 2(d) above and was properly used by us after that date. It follows that there is no obligation to return the schooner at any time prior to the Treaty of Peace.

6. The Minister should be informed that in view of the Armistice terms the question of returning the schooner cannot be considered. As regards compensation, it may be that a claim arises in respect of the period from the date of requisition to the date of the Armistice; and if the Minister wishes this matter to be pursued, the owner should be instructed to proceed through the ordinary channels.

GERALD R. UPJOHN,
Colonel,
Chief Legal Officer.

File

(5A)

Subject motor Schooner Sel Fedo
to Cal upjolen.

- (1) Mrs Schooner would appear to have been exempt from seizure under the Hague Convention. Whether seizure includes requisition I am not prepared to say, ~~not do it~~.
- (2) ~~There~~ No books are available on the question of the right of naval requisition, if any. Nor do the facts disclose where the Schooner was located when taken, whether on the high seas or in port.
- (3) I am not prepared to express any opinion as to the right to take over the vessel as of 10/8/1943.
- (4) On the other hand the report clearly stated following the armistice¹³ and well as the power to transfer the ship to the Yugoslav Navy.
- (5) It follows that had the ship then been available it could have been legally requisitioned. ~~In that case~~ It might therefore be argued that the action has not been prejudiced - since the action was merely anticipatory of what later might be done. Presumably

he will be paid for the ship.

6. This argument is not altogether satisfactory and no doubt it would be better to resolve the question as of the date of seizure.
7. Under these circumstances, shall we be content with the justification afforded by the terms of surrender, or since the interests of marine is entrusted should the real question be explored. In a sense it becomes merely academic since the vessel would probably be immediately requisitioned if no surrender to the amer.
8. I thought the Naval S.C. might be of assistance but no one was there available.

Alh-2/ACC

Serial: (195)

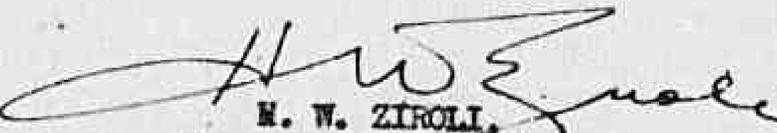
ALLIED CONTROL COMMISSION
NAVAL SUB-COMMISSION
Navy House, Tarento, Italy

11 May, 1944.

From: Naval Sub-Commission, Allied Control Commission.
To : Legal Sub-Commission, Allied Control Commission.
Subject: Motor Schooner "GEL FREDO".
Enclosure: (A) Italian Minister of Marine - Cabinet - letter of
1 April, 1944, same subject, and 5 relevant papers.

1. It is requested that the papers forwarded as Enclosure (A) be examined by the Legal Sub-Commission with a view to determining the rights of the owner of subject schooner under the rules of International Law.

2. The return of all papers is desired together with the Sub-Commission's opinion.


H. W. ZIROLLI,
Comodore, U. S. Navy,
for Chief, Naval Sub-Commission, A..C. C.

Copy to:
FOTALI
NavRep, NavSub-Com, ACC, Salerno.

1813

438

JK

HEADQUARTERS
ALLIED CONTROL COMMISSION
Agriculture Sub-Commission
APO 398

AGR/BCPW/jak

1 May 1944

AGR/50010

SUBJECT: Confiscated Fishing Boats

TO : Regional Commissioner, Region III, APT, Legal Officer

1. Reference is made to yours of 28 April 1944, 1-2085/1. NR
2. Our letter of 26 April 1944 (AGR/50000) furnishes you with the name of the office where the information required can be found, namely, Port Security Office (Provost Marshall) 4 Piazza Municipio. 10
3. The number of small boats which have been confiscated for various and sundry violations is numerous, and the data desired and any other pertinent legal information relative hereto should be gathered by your office in the interest of time and elimination of duplication.

W. A. HARTMAN
Major
Director

DISTRIBUTION:

Copy to: Economic Section
Legal Sub-Commission

785016

MA

408t ylo...
408t ylo...

AGR/DCRM/wht

HEADQUARTERS
ALLIED CONTROL COMMISSION
Agriculture Sub-Commission
AFO 394

25 APRIL 1944

50000/AGR

SUBJECT: Confiscated Fishing Boats.

TO : Regional Commissioner, Region III. (ATT: Legal Officer)

1. Reference is made here to letter (copy attached) from the Captain of Port Office (Italian) to the Fisheries Division of this Sub-Commission, under date of 21 April 1944.

2. The Army ~~was~~ assigned to patrol duty in the local harbor by the Port Security Office (Provost Marshal) 4 Piazza Municipio has confiscated a number of boats from fishermen found to be violating existing regulations. In addition the fishermen involved were either fined or jailed.

3. It is requested that arrangements be made with the office of the Port Security for the disposition of these boats by public auction. It has been referred to this office that some of the confiscated boats were later stolen by local persons and sold. The same is true for some of the fishing gear in the confiscated craft.

4. A very intensive effort is being made to increase fish production here. If the confiscated boats can be sold at auction the new owners would put them to use, and thereby increase the local production.

5. Enclosed herewith are statements by the following fishermen:

- Ioino Pasquale
- Giulio Giovanni
- Giulio Genaro
- Giulio Giuseppe
- De Martino Ciro

11

This Sub-Commission has not investigated their statements, and, therefore, has no knowledge of the violations committed. They should be investigated if the Legal Officer deems it necessary to do so.

referred to this office that the
local persons and sold. The same is true for some of the fishing gear in the
confiscated craft.

4. A very intensive effort is being made to increase fish production here.
If the confiscated boats can be sold at auction the new owners would put them
to use, and thereby increase the local production.

5. Enclosed herewith are statements by the following fishermen:

- Luino Pasquale
- Giovane Giovanni
- Giovane Gennaro
- Giovane Giuseppe
- De Martino Ciro

10

This Sub-Commission has not investigated their statements, and, therefore, he
has no knowledge of the violations committed. They should be investigated if
the legal Officer deems it necessary to do so.

W. A. MALDEN
Major
Director

List: Economic Section ACC.
Legal Sub-Commission, ACC.

4051
SECRET

ALLIED FORCE HEADQUARTERS
Military Government Section

HP/thh

Fite (1A)

2 April 1944

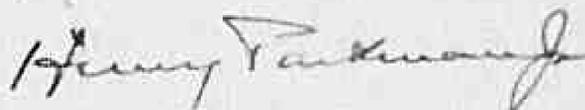
MGS 561.1

SUBJECT: Transmittal of Documents

TO : Headquarters, Allied Control Commission
(Attention: Chief Legal Officer)

The following documents are transmitted for your information and files:

- (a) Report dated 17 January 1944 subject: "Auxiliary Schooner "Arduino" and supporting papers.
- (b) Copy of signal, subject: "Dodecanese Caiques at Cyprus" and supporting papers.
- (c) Report dated 12 November 1943, subject: "Machinery in Sicilian Forts" and supporting papers.



HENRY PARKMAN, JR.,
Lt. Col., G.S.C.,
Acting Chief of Section.

Incls: as above

9

SECRET

(COPY)

4081

SECRET

18

ALLIED FORCE HEADQUARTERS
Military Government Section

HP/CP/cags

MGS: 561.1

21 March 1944

SUBJECT: Dodecanese Caiques now at Cyprus

TO : The Commander in Chief, Mediterranean Station
(Attention: P/Lt. Comdr. Lumley, R.N.)

1. You have presented for consideration by this Section, in the light of the terms of Armistice with Italy, the problem presented by CONFIDENTIAL signal TOC 04 1226B, with indorsement by POLIM, cite 321/00170/22. No objection is seen, from the point of view of the conditions of Armistice, to making the Greek Consul responsible for supervising the employment of the caiques, it being understood throughout that there is thereby no relinquishment of ultimate Allied control, nor any subjection of these craft to Greek legislation.

2. The papers under consideration are returned herewith.

HENRY PARKMAN, JR.
Lt. Col., G.S.C.
Acting Chief of Section.

Incl: as above.

SECRET

SECRET

(COPY OF SIGNAL)

FOLEM
INFO COMLA PSTOME DSCL.

NOIC. G.P.

CONFIDENTIAL

Of 64 Dodecanese CAIQUES which have sought refuge in FAMAGUSTA during the past four months, 26 have been allotted to different Allied Authorities including U.S.A. Two have been permitted to fish in local waters and 34 remain for disposal.

These latter vessel are small majority, are not in good condition. Some have no engines and all are being maintained by this Base including the supply of provisions, fuel, etc. Greek Consul is prepared to take over the responsibility of supervising these craft and victualling their crews. Request approval to hand over available Dodecanese CAIQUES to Greek Consul. CYPRUS Government concurs.

TCO 04 1226B

II/.....

II

FOLEM. 321/00170/22.

THE COMMANDER-IN-CHIEF,
MEDITERRANEAN.

Submitted for favourable consideration, and with reference to the Chief of Military Government Section, Allied Force Headquarters' letter to Chief of Staff Mediterranean, No. MGS: 561.1 of 22nd January 1944.

/s/ J. N. Brownfield
for VICE ADMIRAL.

7

Office of Flag Officer,
Levant & Eastern Mediterranean.
9th February 1944.**SECRET**

(COPY)

No. MED. 0060/15

4081 0

(10)

3rd February, 1944

AUXILIARY SCHOONER "ARDUINO."

1 D/C.O.S. M.G.S. 3.2.44
to C-in-C
Med.
No. 0060/15

I should be grateful for your remarks on this matter.

sg/ M. B. Laing
Captain, Royal Navy,
Deputy Chief of Staff to
Commander in Chief, Mediterranean

2 MGS D/C.O.S. 11 Feb.
to C-in-C 44
MED.

The request of the Italian Minister of Marine has been considered in the light of the Conditions of Armistice with Italy, and no basis is perceived therein upon which the request can be founded.

A. T. MAXWELL, Colonel
for J. C. HOLMES,
Brigadier General, G.S.C.
Chief, Military Government Section.

ATM/CF/JW

(COPY)

AUXILIARY SCHOONER "ARDUINO"
(Ministry of Marine's No. 2075/S dated 17th January, 1944.)

II

No. T.A. 1023/27.

COMMANDER-IN-CHIEF,
MEDITERRANEAN.

This is a case of an Italian schooner proceeding from one enemy occupied Italian port to another, being seized by passengers from another enemy occupied Italian port and finally captured by Yugoslav Partisans on calling at a Yugoslav port.

2. It appears to me that this is a legitimate prize for the Yugoslav Partisans and that therefore there is no question of transferring the ship to the co-belligerent Italian Government, but I should be glad of your views before replying to the Minister of Marine.

/s/ ?

REAR ADMIRAL

TARANTO.
27th January 1944.

(COPY)

(1P)

From: Ministry of Marine (Cabinet).

Date: 17th January, 1944

To : F.O.L.I. TARANTO

No : 2075/S.

Subject: AUXILIARY SCHOONER "ARDUINO".

1). The Captain of the Port Offices at BARI, has reported that on the 23rd December, 1943 the officially recognized master SANTINI Angelo, and the Engineer PASQUALE Settimo, Commander and Engineer respectively of the Italian Auxiliary Schooner "ARDUINO", registered No. 683 in the files of ANCONA, arrived at BARI aboard a Jugo-Slav Auxiliary Schooner from Lissa.

These two mariners have reported that the Auxiliary Schooner in question left ANCONA on the 13th September, 1943, bound direct for CIVITANOVA, having disembarked the other members of the crew, as, upon arrival, she was to be laid-up.

Off MONTE CONERO a group of citizens of ZARA, who were concealed aboard, forced Santini to steer for BERGUGLIE, from whence they planned to reach ZARA.

At BERGUGLIE the Partisans took possession of the Schooner, killed some of the passengers whom they recognized as Italian anti-Jugo-Slav elements, and pressed SANTINI and PASQUALE into service on their behalf.

Subsequently the two mariners were replaced by Jugo Slav personnel and sent to BARI, the Schooner being retained.

2). In bringing these facts to the notice of F.O.L.I. it is requested that the proper Allied Authorities be asked to ensure the return of the Schooner to Italy, just as the Jugo-Slav Naval and Commercial Units have been restored.

(Signed) The Minister.

4

(COPY)

29 December 1943

SUBJECT: Machinery in Sicilian Ports

TO : Commander-in-Chief, Mediterranean Station.

1. Your memorandum of 12 November 1943, No. Med. 1256/4/12, stated that there is available, in Eastern Sicilian ports, a large quantity of machinery and material which it is desired to employ for the rehabilitation of the Malta Dockyard and in other ports now in use by the Allied Forces. It was then proposed, subject to the concurrence of this Headquarters, to take desired machinery and material, without further reference to the Italians, and use it for the purpose described.
2. Following the receipt of that letter discussions have taken place between the Navy and other interested Sections at this Headquarters. It was agreed that the allocation of machinery and material would be a matter for agreement between yourself, the Commander United States Naval Forces in North West African Waters, Transportation Section AFHQ, and the Captured Enemy Material Executive Committee (C.E.M.E.C.).
3. The conditions of the Armistice with Italy provide that port equipment will be held at the disposal of the United Nations for such purposes as they may direct. War material, subject to such use as the Allied Commander-in-Chief may make of it, will be placed under such control as he may direct; its ultimate disposal will be prescribed by the United Nations. It is understood that the machinery and material which it is proposed to take will fall within the description either of "port equipment" or of "war material." It is important, however, that an inventory be made of whatever is taken, and a record given to the owner. Either an appraisal of the value should be made, or sufficiently detailed data be preserved to enable a valuation later to be fixed. For while the right to dispose of port equipment and war material is established in the Armistice, questions may well arise as to the value of what was so taken and the disposition to which it was put. In any event it is to be expected that the Italian Government will in many situations provide payment to private owners, and the taker should leave with them the data necessary to sustain their claim to payment.
4. Subject to the above, the proposed course of action is approved.

/s/ J. A. Whiteley
Maj. General
for/t/ DWIGHT D. EISENHOWER
General, U.S.A.
Allied Commander-in-Chief

3

(COPY)

ALLIED FORCE HEADQUARTERS
Military Government Section

JCH/dlc
29 December 1943

SUBJECT: Reply to Commander in Chief,
Mediterranean Station

TO : The Chief of Staff

I. Discussion.

The Commander in Chief, Mediterranean Station, purposes in his letter on "Machinery at Eastern Sicilian Ports" (Tab A) to take a quantity of machinery and material found in Sicilian ports and use it in rehabilitation of Malta Dockyard and other ports now in use by the Allied Navies. The concurrence of this headquarters is requested.

In acting upon the letter it developed that discussions should take place between Navy and the Transportation Section, as a result of which it was agreed that in any move of material from Sicilian ports, certain machine tools would be allocated to Transportation for use at East Coast ports in Italy. Discussions also took place between Navy and Military Government Section to ascertain the bearing of the conditions of the Armistice upon the course purposed to be followed.

It is believed that the action of the Commander in Chief, Mediterranean Station, is proper under Articles 11 and 14B of the Additional Conditions of Armistice, but that proper record should be made of the taking. A draft reply to this effect, prepared for the signature of General Eisenhower, is enclosed. (Tab B)

II. Recommendation:

1. That the draft letter (Tab B) be signed and transmitted.
2. That the Military Government Section be advised when action is taken, in order that the Allied Control Commission and Headquarters Allied Military Government may be informed.

III. Concurrences:

Mr. MacMillan
Mr. Murphy
C.A.O.

/s/ J. C. Holmes

/t/ J. C. HOLMES
Brigadier General, G. S.C.
Chief, Military Government Section

2 Incls:
as above.

(COPY)

①

Office of the Commander-in-Chief,
Mediterranean Station,
Allied Force Headquarters,
ALGIERS.

12th November, 1943

No. Med. 1256/4/12

THE COMMANDER-IN-CHIEF, ALLIED FORCES.
(Copy to:- Commander United States Naval Forces,
North West African Waters.)

MACHINERY AT EASTERN SICILIAN PORTS

A survey of Eastern Sicilian ports has disclosed that there is available, in these bases, a large amount of Italian machinery and material which could be most usefully employed for the rehabilitation of Malta Dockyard and in other ports now in use by the Allied Navies.

2. A survey of other Sicilian ports, not yet carried out, will probably disclose more useful material.

3. It is proposed, subject to your concurrence, to take this material, without further reference to the Italians, and to use it for the purpose described. Its allocation would, of course, be decided in agreement with the Commander United States Naval Forces, North West African Waters and the Battlefield Clearance Section, Allied Force Headquarters.

4. Approval for this course of action is requested.

/s/ A. B. Cunningham

A D M I R A L.

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